



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-041008-028)

In The Matter Of:

WARREN H. HONE, R.Ph.

1347 Northwoods Drive

Hillsboro, Ohio 45133

(R.Ph. No. 03-2-08034)

INTRODUCTION

THE MATTER OF WARREN C. HONE CAME FOR HEARING ON MAY 3, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

WARREN C. HONE WAS REPRESENTED BY ELIZABETH Y. COLLIS. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Ann Abele, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. Warren H. Hone, R.Ph., Respondent
2. Roberta Schrenk

State's Exhibits

1. Notice of Opportunity For Hearing letter [10-08-04]
1A-1D. Procedurals
2. Rx #6866290 [06-16-03]
3. Summary of Dispensing Report for Rx #6866290[06-16-03 to 10-27-03]
4. Four stock bottles of Rx #6866290 [08-19-03]; one vial of Rx #6866290 [10-24-03]; two vials of Rx #6866290 [10-27-03]
5. Dispensing Report for Pancrease MT 10, Lipram-CR 10 & Creon 10 at Hillsboro K-Mart [06-03 to 12-03]
6. Kmart Pharmacy #4964 Medical Expenses Report [01-01-03 to 12-31-03]
7. The Children's Medical Center Pulmonary Clinic Sick Call Record [11-21-03]
8. Notarized Statement of Robert Fink, M.D. with attachments [01-08-04]
9. Dangerous Drug Distributor Inspection Report of Kmart Pharmacy #4964 [01-12-04]

10. Four computer screen printouts for Rx #6866290 [07-09-03 to 10-24-03]
11. Four page Daily Audit Listing report of Kmart Pharmacy #4964 [07-09-03]
- 11A. Daily Audit Listing report of Kmart Pharmacy #4964 [08-19-03]
- 11B. Four page Daily Audit Listing report of Kmart Pharmacy #4964 [09-22-03]
- 11C. Three page Comprehensive Audit Listing report of Kmart Pharmacy #4964 [10-24-03]
- 11D. Five page Daily Audit Listing report of Kmart Pharmacy #4964 [10-27-03]
12. Notarized Statement of Warren H. Hone, R.Ph. [01-12-04]
13. Five Notarized Statements of John Brauner [02-06-04]; Larry A. Miller [01-19-04]; Matthew Bremer [01-28-04]; Jerry Fraley, R.Ph. [01-26-04]; Hai Nguyen [01-26-04]
14. Ohio Attorney General's Medicaid Fraud Control Unit Report #01, Docket No. M2030547 [12-02-03]
15. Ohio Attorney General's Medicaid Fraud Control Unit Report #02, Docket No. M2030547 [12-04-03]
16. Notarized Statement of Jessica Cramton [01-06-04]
17. Three page Drug Movement Report of KMart Pharmacy #4964 [01-12-04]
18. E-Mail letter from Ann Abele [01-20-04]; Purchase Report of KMart Pharmacy #4964 for Lipram CR10; Pancrease MT 10 and Creon 10 [06-06-03 to 12-11-03]
19. Two page KMart Pharmacy Rx Partial Fill Log [08-14-03 to 10-29-03]
20. Two computer screen printouts showing history of Rx #6866290 [06-16-03 to 10-27-03]
21. Reversal of 10-24-03 Billing [10-27-03]
22. Three page Drug Fact and Comparisons for Digestive Enzymes [November 2002]
23. Hand-written note on computer screen printout [01-13-04]
24. Four page Transaction List Detail Reports of KMart Pharmacy #4964 for Rx #6866290 [06-16-03 to 10-24-03]
25. Five page Daily Audit Listing Reports of KMart Pharmacy #4964 [06-16-03]
26. Handwritten Notes on Pricing/Product Comparison [not dated]

Respondent's Exhibits

- A. Reprinted Label for Rx #6866290 [07-09-03]
- B. Reprinted Label for Rx #6866290 [08-19-03]
- C. Reprinted Label for Rx #6866290 [09-22-03]
- D. Reprinted Label for Rx #6866290 [10-24-03]
- E. Reprinted Label for Rx #6866290 [10-27-03]
- F. Notarized Statement of Pat Maher, R.Ph. [04-26-05]
- G. Eight page Drug Fact and Comparisons for Digestive Enzymes, www.efactsonline.com, © 2003-2004

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Warren H. Hone was originally licensed by the State of Ohio on August 19, 1963, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect during the relevant time periods stated herein, Warren H. Hone was the Responsible Pharmacist at KMart Pharmacy #4964, 1249 North High Street, Hillsboro, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

- (2) Warren H. Hone did, on or about July 9, 2003, and on subsequent refill dates, misbrand a drug, to wit: when dispensing prescription number 6866290, Warren H. Hone dispensed Lipram-CR 10, but falsely labeled the vial as Pancrease MT 10. Further, Warren H. Hone billed Medicaid for a drug which was not dispensed. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (3) Warren H. Hone did, on or about July 9, 2003, and on subsequent refill dates, substitute a drug despite the prescriber's designation on the prescription as "DAW," and the drug Warren H. Hone substituted was not generically equivalent, to wit: when dispensing prescription number 6866290, Warren H. Hone substituted Lipram-CR 10 for Pancrease MT 10, though the prescriber indicated that the prescription was to be dispensed as written. Further, the drug Warren H. Hone substituted is not generically equivalent to the drug prescribed. Such conduct is in violation of Section 4729.38 of the Ohio Revised Code.
- (4) Warren H. Hone did, on or about October 27, 2003, and dates preceding, when utilizing a computerized recordkeeping system at K-Mart Pharmacy, fail to keep refill records which included positive identification of the dispensing pharmacist(s) and accurate refill dispensing records, to wit: the recordkeeping system allowed for false dispensing entries; failed to keep record of actual dates of dispensing; failed to keep record of positive identification of the dispensing pharmacist(s) or patient counseling; and failed to keep accurate records of generic dispensing. Such conduct is in violation of Rule 4729-5-27 of the Ohio Administrative Code.
- (5) Warren H. Hone did, on or about the following dates, when utilizing a computerized recordkeeping system at K-Mart Pharmacy, fail to keep records dispensing, to wit: the system failed to document accurate and correct refill information as follows:

| <u>Violation</u> | <u>Date</u> |
|------------------------------|-------------|
| Utilized a stamped signature | 06-16-03 |
| | 07-09-03 |
| | 09-22-03 |
| | 10-27-03 |
| No pharmacist signature | 10-24-03 |

Such conduct is in violation of Rule 4729-5-28(C) of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 3715. or 4729. of the Revised Code or any rule adopted by the Board as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of Warren H. Hone as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Warren H. Hone a monetary penalty of one thousand three hundred and fifty dollars (\$1,350.00) due and owing on or before July 9, 2005. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

Further, the State Board of Pharmacy stipulates that:

- (A) Warren H. Hone must obtain, within ninety days from the effective date of this Order, three hours of continuing pharmacy education (0.3 CEUs) on Bioequivalency and (0.3 CEUs) on Therapeutic Substitution, which may not also be used for license renewal.
- (B) Warren H. Hone must attend, within ninety days from the effective date of this Order, a Reciprocity hearing conducted by the Ohio State Board of Pharmacy.
- (C) The State Board of Pharmacy hereby declares that, for one year from the effective date of this Order, Warren H. Hone's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (D) Warren H. Hone may not, for one year from the effective date of this Order, serve as a responsible pharmacist.
- (E) Warren H. Hone may not, for one year from the effective date of this Order, work in a pharmacy more than 50 hours per week.
- (F) Warren H. Hone must not violate the drug laws of Ohio, any other state, or the federal government.
- (G) Warren H. Hone must abide by the rules of the State Board of Pharmacy.
- (H) Warren H. Hone must comply with the terms of this Order.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-2/Abstain-1).

MOTION CARRIED.

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

Section 119.12 of the Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common

