



OHIO STATE BOARD OF PHARMACY

- An Equal Opportunity Employer and Service Provider -

77 S. High Street, 17th Floor: Columbus, Ohio 43266-0320
Telephone: 614/466-4143 FAX: 614/752-4836
TTY/TDD Ohio Relay Service: 1-800/750-0750

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-930112-055)

In The Matter Of:

DONALD A. MIGLIORE, R.Ph.
2473 Columbiana Road
P.O. Box 75
New Springfield, Ohio 44443
(R.Ph. No. 03-2-08414)

INTRODUCTION

THE MATTER OF DONALD A. MIGLIORE CAME TO HEARING ON JUNE 29, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY D. MOORE, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; METTA LOU HENDERSON, R.Ph.; PAUL F. LAMPING, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE.

DONALD A. MIGLIORE WAS REPRESENTED BY THOMAS P. PAPPAS, AND THE STATE OF OHIO WAS REPRESENTED BY CINDY MARTIN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Donald A. Migliore, Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Summary Suspension Order dated January 12, 1993.
- (2) Exhibit 1A - Hearing Request letter dated January 25, 1993.
- (3) Exhibit 1B - Hearing Schedule letter dated February 2, 1993.
- (4) Exhibit 2 - Copies of twelve pages of computer-generated receipt labels from Revco for patient James Yallech dated from December 9, 1989, through March 13, 1992.
- (5) Exhibit 3 - Prescription No. 0044-660991.

- (6) Exhibit 4 - Twelve prescriptions numbered as follows: 0348-091492, 0348-091493, 0348-079412, 0348-079413, 0348-074252, 0348-074253, 0348-074254, 0044-660957, 0044-660958, 0044-657233, 0044-657234, and 0348-066700.
- (7) Exhibit 5 - Twelve-page Statement of Thomas E. Ragland, D.O. signed and notarized on April 27, 1992.
- (8) Exhibit 6 - Two-page Statement of Mr. James Yallech signed and notarized on May 11, 1992.
- (9) Exhibit 7 - Four-page handwritten statement of Donald A. Migliore signed and notarized on May 18, 1992; and four-page copy of handwritten statement and worksheet of Donald A. Migliore signed and witnessed on April 2, 1992.
- (10) Exhibit 8 - Three-page certified Journal Entry, Finding on No Contest Plea to Amended Indictment, in the Court of Common Pleas, Trumbull County, Ohio, Case No. 92-CR-390, of Donald E. Migliore dated November 17, 1992.
- (11) Exhibit 9 - Two-page certified Journal Entry, in the Court of Common Pleas, State of Ohio, County of Trumbull, Case No. 92-CR-390, of Donald E. Migliore dated March 18, 1993.

Respondent's Exhibits:

- (1) Exhibit A - Letter from Zenon Forosty, R.Ph. dated June 12, 1993; and letter from Jim Chalfin, R.Ph. with attached business card, dated June 5, 1993.
- (2) Exhibit B - Copy of letter from Dr. Gerald A. Mihok, Inc. dated November 27, 1992; copy of letter from Rev. Timothy H. O'Neill dated November 29, 1992; copy of letter from Joseph S. D'Antony dated November 25, 1992; copy of letter from Bill Klim dated November 22, 1992; copy of letter from Charles Zander dated November 20, 1992; copy of letter from Mrs. Peggy A. Jones dated November 30, 1992; copy of letter from John and Stamatia Hruby, not dated; copy of letter from Nicholas A. Paolone, R.Ph. dated November 24, 1992; copy of letter from Valerie Sirigas dated November 30, 1992; copy of letter from Sy Rachic dated November 25, 1992; copy of letter from Joseph G. Anthony, R.Ph. dated November 23, 1992; and three-page copy of petition in the matter of Don Migliore dated from November 29, 1992, through December 1, 1992.

FINDINGS OF FACT

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

- (1) Records of the Board indicate that on January 12, 1993, Donald A. Migliore was Summarily Suspended from the practice of pharmacy in Ohio due to a felony drug abuse offense conviction.
- (2) On November 17, 1992, Donald A. Migliore was found guilty in the Common Pleas Court of Trumbull County, Ohio, of False Registration Certification, a fourth degree felony under Section 4729.61(C) of the Ohio Revised Code.
- (3) Donald A. Migliore did, on or about September 5, 1990, make a false or forged prescription for a dangerous drug, to wit: Donald A. Migliore altered prescription number 0044-660991. The prescription was written for Buspar 5mg by the physician on May 15, 1990; and Donald A. Migliore forged

the date to read August 15, 1990. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (4) Donald A. Migliore did, on or about the following dates, make false prescriptions, to wit: Donald A. Migliore created prescriptions for the following dangerous drugs:

<u>Rx No.</u>	<u>Drug</u>	<u>Date</u>
0044-066700	Anaprox DS 550mg	06/14/90
0348-074252	Dolobid 500mg	11/10/90
0348-074253	Anaprox DS 550mg	11/10/90
0348-074254	Buspar 5mg	11/10/90
0348-079412	Anaprox DS 550mg	02/11/91
0348-079413	Dolobid 500mg	02/11/91
0348-091492	Anaprox DS 550mg	09/25/91
0348-091493	Dolobid 500mg	09/25/91
0044-657233	Anaprox DS 550mg	07/11/90
0044-657234	Dolobid 500mg	07/11/90
0044-660957	Anaprox DS 550mg	09/05/90
0044-660958	Dolobid 500mg	09/05/90

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (5) Donald A. Migliore did, on or about the following dates, offer for sale, give away, or otherwise deliver to the consumer without a legitimate prescription, to wit: Donald A. Migliore sold the following dangerous drugs to patient James Yallech when the drugs had not been prescribed by a physician:

<u>Rx No.</u>	<u>Drug</u>	<u>Date</u>
0348-066700	Anaprox DS 550mg	06/14/90
0348-066701	Dolobid 500mg	06/14/90
0348-074252	Dolobid 500mg	11/10/90
0348-074252	Dolobid 500mg	12/07/90
0348-074252	Dolobid 500mg	01/04/91
0348-074252	Dolobid 500mg	08/26/91
0348-074253	Anaprox DS 550mg	11/10/90
0348-074253	Anaprox DS 550mg	12/07/90
0348-074253	Anaprox DS 550mg	01/04/91
0348-074254	Buspar 5mg	11/10/90
0348-074254	Buspar 5mg	12/07/90
0348-074254	Buspar 5mg	01/04/91
0348-074254	Buspar 5mg	02/11/91
0348-074254	Buspar 5mg	03/21/91
0348-074254	Buspar 5mg	04/12/91
0348-074254	Buspar 5mg	05/10/91
0348-079412	Anaprox DS 550mg	02/11/91
0348-079412	Anaprox DS 550mg	03/15/91
0348-079412	Anaprox DS 550mg	04/12/91
0348-079412	Anaprox DS 550mg	05/10/91
0348-079412	Anaprox DS 550mg	06/07/91
0348-079412	Anaprox DS 550mg	07/01/91
0348-079412	Anaprox DS 550mg	08/01/91
0348-079412	Anaprox DS 550mg	08/26/91

<u>Rx No.</u>	<u>Drug</u>	<u>Date</u>
0348-079413	Dolobid 500mg	02/11/91
0348-079413	Dolobid 500mg	03/15/91
0348-079413	Dolobid 500mg	04/12/91
0348-079413	Dolobid 500mg	05/10/91
0348-079413	Dolobid 500mg	06/07/91
0348-079413	Dolobid 500mg	07/01/91
0348-079413	Dolobid 500mg	08/01/91
0348-091492	Anaprox DS 550mg	09/25/91
0348-091492	Anaprox DS 550mg	10/27/91
0348-091492	Anaprox DS 550mg	11/23/91
0348-091492	Anaprox DS 550mg	12/18/91
0348-091492	Anaprox DS 550mg	01/17/92
0348-091492	Anaprox DS 550mg	02/18/92
0348-091493	Dolobid 500mg	09/25/91
0348-091493	Dolobid 500mg	10/27/91
0348-091493	Dolobid 500mg	11/23/91
0348-091493	Dolobid 500mg	12/18/91
0348-091493	Dolobid 500mg	01/17/92
0348-091493	Dolobid 500mg	02/18/92
0044-642569	Dolobid 500mg	01/04/90
0044-642569	Dolobid 500mg	02/01/90
0044-642569	Dolobid 500mg	03/07/90
0044-642569	Dolobid 500mg	04/07/90
0044-642569	Dolobid 500mg	05/18/90
0044-642570	Anaprox DS 550mg	01/04/90
0044-642570	Anaprox DS 550mg	02/01/90
0044-642570	Anaprox DS 550mg	03/07/90
0044-642570	Anaprox DS 550mg	04/07/90
0044-642570	Anaprox DS 550mg	05/18/90
0044-657233	Anaprox DS 550mg	07/11/90
0044-657233	Anaprox DS 550mg	08/08/90
0044-657234	Dolobid 500mg	07/11/90
0044-657234	Dolobid 500mg	08/08/90
0044-660957	Anaprox DS 550mg	09/05/90
0044-660957	Anaprox DS 550mg	10/05/90
0044-660958	Dolobid 500mg	09/05/90
0044-660958	Dolobid 500mg	10/05/90
0044-660991	Buspar 5mg	09/05/90
0044-660991	Buspar 5mg	10/05/90
0348-900344	Anaprox DS 550mg	03/13/92
0348-900345	Dolobid 500mg	03/13/92

Such conduct is in violation of Section 3715.52(L) of the Ohio Revised Code.

- (6) Donald A. Migliore did, between January 4, 1990, through March 31, 1992, with the purpose to deprive, knowingly obtain money by deception from a third party insurance plan, to wit: Donald A. Migliore submitted fraudulent billings to Mahoning/Trumbull County Building Trades Insurance Fund, and was reimbursed approximately \$4,000.00. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued January 12, 1993.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Donald A. Migliore:

- (A) On the basis of the Findings of Fact and paragraphs (1) and (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the identification card, No. 03-2-08414, held by Donald A. Migliore indefinitely, effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Donald A. Migliore may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Further, the Board will permit Donald A. Migliore to petition the Board for reinstatement of his license after September, 1995. The license may be reinstated only if the following conditions have been met:
 - (1) Donald A. Migliore must take and successfully complete the Federal Drug Law Examination and the Jurisprudence Examination offered by the Board prior to petitioning;
 - (2) Donald A. Migliore must not violate the drug laws of the state of Ohio, any other state, or the federal government;
 - (3) Donald A. Migliore must abide by the rules of the State Board of Pharmacy; and
 - (4) Donald A. Migliore must comply with the terms of this Order.

(C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of five thousand five hundred dollars (\$5,500.00) due and owing within thirty (30) days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320, with the enclosed form.

Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-0).

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 Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

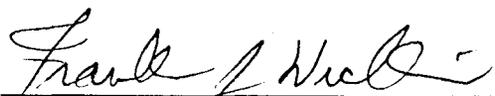
BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED

AND EFFECTIVE: August 13, 1993

CERTIFIED MAIL
Return Receipt
#P 373 708 402

FZW/so

By 
Franklin Z. Mackham, R.Ph., M.S.
Executive Director

cc: Cindy Martin, Assistant Attorney General
Thomas P. Pappas, Attorney for Respondent; Calfee, Halter & Griswold;
88 East Board Street, Suite 1500; Columbus, Ohio 43215