



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Case Number 2012-1419)

In The Matter Of:

Anthony DiTommaso, R.Ph.

851 Stuart Avenue

Youngstown, OH 44512

(R.Ph. Number 03-2-09026)

INTRODUCTION

The Matter of Anthony DiTommaso came for consideration on October 6, 2014, before the following members of the Board: Michael A. Moné, R.Ph, (presiding); Edward T. Cain, Public Member; Melinda J. Ferris, R.Ph.; Richard F. Kolezynski, R.Ph.; Megan E. Marchal, R.Ph.; Fred M. Weaver, R.Ph. and Kilee S. Yarosh, R.Ph.

Margaret A. Huwer, Absent.

Anthony DiTommaso was not present nor was he represented by counsel. The State of Ohio was represented by Charissa D. Payer, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness:

1. Thomas Miksch, Ohio State Board of Pharmacy

Respondent's Witnesses:

None

State's Exhibits:

- | | | |
|-----|--|----------|
| 1. | Notice of Opportunity for Hearing | 02-04-14 |
| 1A. | Procedural | |
| 2. | Anthony DiTommaso, R.Ph. Board Order | 01-29-88 |
| 3. | Notarized Statement of Sue Ellen Hall | 09-26-12 |
| 4. | Notarized Statement of Lisa Ciccolella | 10-10-12 |
| 5. | CVS #3996 Accountability Statement | 03-13-13 |
| 6. | CVS #3996 Accountability Statement | 03-13-13 |
| 7. | CVS #3996 Accountability Statement | 03-13-13 |
| 8. | CVS #3996 Accountability Statement | 03-13-13 |
| 9. | CVS #3996 Accountability Statement | 03-13-13 |
| 10. | CVS #3996 Accountability Statement | 03-13-13 |
| 11. | CVS #3996 Accountability Statement | 03-13-13 |
| 12. | CVS #3996 Surveillance Camera Footage | 09-14-12 |
| 13. | CVS #3996 Surveillance Camera Footage | 09-14-12 |
| 14. | CVS #3996 Surveillance Camera Footage | 09-14-12 |

15. CVS #3996 Surveillance Camera Footage

09-14-12

Respondent's Exhibits:

None

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witness, 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 Anthony DiTommaso was originally licensed in the State of Ohio on August 12, 1968, pursuant to Examination, and his license to practice pharmacy in the State of Ohio has lapsed. Records further reflect that Anthony DiTommaso was previously disciplined by this Board on January 29, 1988.
- (2) Anthony DiTommaso did, between December 30, 2011 to October 14, 2012 with purpose to deprive, knowingly obtain or exert control over a dangerous drug, the property of CVS Pharmacy #3996, beyond the express or implied consent of the owner, to wit: Anthony DiTommaso stole 849 tablets of carisoprodol 350 mg from CVS Pharmacy #3996, while employed there as a pharmacist. Such conduct constitutes a violation of Section 2913.02(A) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) of the Findings of Fact constitutes 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.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and pursuant to Section 4729-9-01(E) of the Ohio Administrative Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Anthony DiTommaso as follows:

- (1) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-2-09026, held by Anthony DiTommaso effective as of the date of the mailing of this Order.
- (2) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification

card, No. 03-2-09026, held by Anthony DiTommaso effective as of the date of the mailing of this Order.

Anthony DiTommaso, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license to practice (pocket ID card) and registration (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Megan Marchal moved for Findings of Fact; Fred Weaver seconded the motion. Motion passed (Aye-6/Nay-0).

Kilee Yarosh moved for Conclusions of Law; Fred Weaver seconded the motion. Motion passed (Aye-6/Nay-0).

Megan Marchal moved for Action of the Board; Fred Weaver seconded the motion. Motion passed (Aye-5/Nay-1).

SO ORDERED.

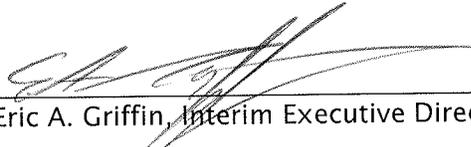
~~It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.~~

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 pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of 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 the ORIGINAL Notice of Appeal with the State Board of Pharmacy and a copy with the appropriate court within fifteen (15) days after the mailing of this Order and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: November 12, 2014

By: 
Eric A. Griffin, Interim Executive Director

EAG/rlc
Certified Mail / Return Receipt
7011 2970 0004 0908 0565

C: Charissa Payer, Assistant Attorney General



OHIO STATE BOARD OF PHARMACY

65 S. Front Street, Room 504
Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-871028-082)

In The Matter Of:

ANTHONY DiTOMMASO, R.Ph.
851 Stuart Avenue
Youngstown, Ohio 44512

INTRODUCTION

THE MATTER OF ANTHONY DiTOMMASO CAME TO HEARING ON DECEMBER 3, 1987 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: NORMAN LEIBOW, R.Ph. (pre-siding); GERALD CLOUSE, R.Ph.; TIMOTHY MOORE, R.Ph.; BETTY NICHOL, R.Ph.; JOSEPH SABINO, R.Ph.; JEROME WIESENHAHN, R.Ph.; AND MELVIN WILCZYNSKI, R.Ph.

ANTHONY DiTOMMASO WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY CHRISTOPHER COSTANTINI, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Exhibits

- (1) Exhibit #A - Notice of Opportunity dated October 28, 1987 in the matter of Anthony DiTommaso.
- (2) Exhibit #B - Request for hearing dated October 30, 1987.
- (3) Exhibit #C - Hearing schedule letter dated November 9, 1987.
- (4) Exhibit #1 - Notification of change of responsible person dated May 1, 1985 and letter dated April 4, 1985 from The Tamarkin Company showing Anthony DiTommaso as responsible pharmacist for Phar-Mor Discount #17.
- (5) Exhibit #2 - Accountability statement showing 1,145 shortage of Dexedrine-5mg tablets.
- (6) Exhibit #3 - Statement dated October 16, 1987.
- (7) Exhibit #4 - Report of theft or loss of controlled substances dated 9/28/87.
- (8) Exhibit #5 - Statement dated September 29, 1987.

Respondent's Exhibits

- (1) Polygraph Examination Report dated September 23, 1987.
- (2) Letter dated November 12, 1987 from Robert W. McCurdy.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that the records of the Board of Pharmacy reflect the fact that Anthony DiTommaso was the responsible pharmacist required by Ohio Revised Code Section 4729.55 for Terminal Distributor of Dangerous Drugs License No. 02-413900 between the dates of May 1, 1985 and October 19, 1987, and that Mr. DiTommaso has actively engaged in the practice of pharmacy at this location since May 1, 1985.
- (2) From the evidence presented, the State Board of Pharmacy finds that Anthony DiTommaso did, between the dates of January 1, 1987 and October 27, 1987, obtain 1,145 tablets of Dexedrine-5mg without the consent or beyond the consent of the owner thereof, Phar-Mor Discounts, 3491 Belmont Avenue, Youngstown, Ohio 44505. Such conduct is in violation of Section 2925.21 of the Ohio Revised Code.
- (3) From the evidence presented, the State Board of Pharmacy finds that Anthony DiTommaso did, between the dates of January 1, 1987 through October 27, 1987, without a written or oral prescription given by a practitioner, dispense a quantity of approximately 1,145 tablets of Dexedrine-5mg, a Schedule II controlled substance and dangerous drug which may be dispensed only upon the prescription of a practitioner, in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code. Such conduct is not in accordance with Revised Code Chapters 3715., 3719., and 4729., and is prohibited by Sections 2925.03(A)(7), 3715.52(L), and 3719.05(A) of the Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Anthony DiTommaso did willfully and knowingly fail to maintain complete and accurate records of all controlled substances dispensed in compliance with federal laws and regulations and state laws and rules. Such conduct constitutes unprofessional conduct in the practice of pharmacy as that phrase is defined in Section 4729.16 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (4) of the Findings Of Fact constitutes gross immorality.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (4) of the Findings Of Fact constitutes dishonesty and unprofessional conduct in the practice of pharmacy.

- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (4) of the Findings Of Fact constitutes willful violations of the provisions of Chapters 2925., 3715., 3719., and 4729. of the Ohio Revised Code.

ORDER

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the pharmacist license, No. 03-2-09026, held by Anthony DiTommaso:

(A) On the basis of paragraphs (1) and (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Anthony DiTommaso for 36 months.

(B) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two thousand dollars (\$2,000.00), 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, 65 S. Front Street, Room 504, Columbus, Ohio 43266-0320, with the enclosed form.

(C) Further, the Board suspends 35 months of the 36-month suspension imposed in paragraph (A) above on condition that Anthony DiTommaso:

- (1) takes and successfully completes a Jurisprudence exam offered by the Board;
- (2) does not violate the drug laws of the state of Ohio, any other state, or the federal government; and
- (3) abides by the rules of the State Board of Pharmacy.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is ..., suspended, ..., 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.

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.

ANTHONY DiTOMMASO, R.Ph.

Page Four

Order of the Board

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

CERTIFIED MAIL
Return Receipt

ORDER ISSUED: January 29, 1988

FZW/sb

By

Franklin Z. Wickham
Franklin Z. Wickham, Executive Director

cc: Christopher Costantini, Assistant Attorney General