



# OHIO STATE BOARD OF PHARMACY

65 S. FRONT STREET, ROOM 504  
COLUMBUS, OHIO 43215  
TELEPHONE: 614/466-4143

THE STATE BOARD OF PHARMACY

VS

MARSHALL LEWIS WEXLER, R.Ph.

THE MATTER OF MARSHALL LEWIS WEXLER, DOCKET NO. 6-148-1, WAS HEARD PURSUANT TO CHAPTERS 119. AND 4729. OF THE REVISED CODE ON MONDAY, APRIL 21, 1986. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTIONS WERE MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

## ORDER

### Findings Of Fact

- (1) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about October 5, 1983, willfully violate Division (A) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did sell an unknown quantity of dangerous drugs at wholesale for \$255.00 to a terminal distributor of dangerous drugs without a wholesale distributor of dangerous drugs registration. Such sale was not an occasional sale as defined in Rule 4729-9-10 of the Administrative Code.
- (2) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about October 5, 1983, willfully violate Sections 2925.36 and 3719.81 of the Revised Code, to wit: Mr. Wexler did illegally possess samples of drugs since he was not registered as a wholesale distributor of dangerous drugs pursuant to Section 4729.52 of the Revised Code, and he did furnish sample drugs to a person other than a practitioner. Such conduct is not in accordance with Chapters 3719. and 4729. of the Revised Code, and is prohibited by Section 2925.36 of the Revised Code.
- (3) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about October 5, 1983, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess samples of dangerous drugs.

- (4) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about January 31, 1984, willfully violate Division (A) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did sell approximately 44 units of Lo-Ovral-21, approximately 40 units of Lo-Ovral-28, approximately 30 units of Ovral-21, and approximately 20 units of Ovral-28 at wholesale for \$569.50 to a terminal distributor of dangerous drugs without a wholesale distributor of dangerous drugs registration. Such sale was not an occasional sale of dangerous drugs at wholesale as defined in Rule 4729-9-10 of the Administrative Code.
- (5) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about January 31, 1984, willfully violate Sections 2925.36 and 3719.81 of the Revised Code, to wit: Mr. Wexler did illegally possess samples of drugs since he was not registered as a wholesale distributor of dangerous drugs pursuant to Section 4729.52 of the Revised Code, and he did furnish sample drugs to a person other than a practitioner. Such conduct is not in accordance with Chapters 3719. and 4729. of the Revised Code, and is prohibited by Section 2925.36 of the Revised Code.
- (6) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about January 31, 1984, willfully violation Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess samples of dangerous drugs.
- (7) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, illegally possess a controlled substance in an amount equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Revised Code, to wit: approximately 150 capsules of Fastin-30mg in the original containers in which they were placed by the manufacturer, and were plainly marked as "Physician Starter Doses". Such conduct is not in accordance with Chapters 3719. and 4729. of the Revised Code, and is prohibited by Section 2925.03(A)(6) of the Revised Code.
- (8) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 98 tablets of Ativan-0.5mg that were plainly marked as "Samples: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code.

- (9) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, hold for sale or delivery, drugs that were misbranded, to wit: approximately 200 capsules of Minipres-2mg whose labeling stipulated that the drug was "For In-Institution Use Only". Such conduct is in violation of Division (A)(1) of Section 3715.64 of the Revised Code, and is prohibited by Section 3715.52 of the Revised Code.
- (10) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 171 tablets of Phenergan Compound that were in a container plainly marked "Sample: Not To Be Sold", and that was not the container in which such drugs were placed by the manufacturer. Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (11) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did knowingly make or affix a false or forged label to a package or receptacle containing dangerous drugs, to wit: approximately 171 tablets of Phenergan Compound. Such conduct is prohibited by Division (D) of Section 2925.23 of the Revised Code.
- (12) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 19 Phenergan-12.5mg suppositories that were in containers plainly marked as "Samples: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (13) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, hold for sale or delivery, dangerous drugs that were adulterated, to wit: approximately 19 Phenergan-12.5mg suppositories that were held for sale or delivery after the expiration date stated by the manufacturer in its labeling, and also was not stored as indicated in the product labeling. Such conduct is prohibited by Division (A)(1) of Section 3715.52 of the Revised Code.
- (14) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 540 capsules of Keflex-500mg that were in manufacturer containers and were plainly marked as "Samples: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code and, therefore, not otherwise specifically provided by law.

- (15) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 1,451 capsules of Keflex-250mg that were in manufacturer containers and were plainly marked as "Samples: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code and, therefore, not otherwise specifically provided by law.
- (16) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 22 containers of Keflex-250mg for oral suspension that were in manufacturer containers and were plainly marked as "Professional Package: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code and, therefore, not otherwise specifically provided by law.
- (17) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 26 units of Ovrал-21, approximately 14 units of Lo-Ovrал-21, approximately 10 units of Ortho-Novum 1/80-28, approximately 10 units of Ortho-Novum 10/11, approximately 9 units of Ortho-Novum 1/35-28, approximately 8 units of Ortho-Novum 7/7/7-21, approximately 6 units of Nordette-21, approximately 6 units of Ovrал-28, approximately 4 units of Ortho-Novum 10/11-28, approximately 3 units of Lo-Ovrал-28, and approximately 2 units of Modicon-21 that were in containers in which they were placed by the manufacturer and were, at one time, plainly marked as sample drugs. Such conduct is not in accordance with Section 3719.81 of the Revised Code and, therefore, not otherwise specifically provided by law.
- (18) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 90 capsules of Ceclor-250mg that were in the original manufacturer containers and were plainly marked as "Professional Package: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (19) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 9 containers of Septra Susp. (15ml or 600mg) that were in the original manufacturer containers and were plainly marked as "Professional Sample". Such conduct is not in accordance with Section 3719.81 of the Revised Code.

- (20) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 48 tablets of Parafon Forte that were in the original manufacturer containers and were plainly marked as "Sample". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (21) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 20 containers of Pediazole (10ml) that were in the original manufacturer containers and were plainly marked as "Physician's Sample". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (22) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 266 tablets of Salutensin-Demi that were in the original manufacturer containers and were plainly marked as "Physician's Sample". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (23) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, hold for sale or delivery dangerous drugs that were adulterated, to wit: approximately 266 tablets of Salutensin-Demi were held for sale or delivery after the expiration date stated by the manufacturer in its labeling. Such conduct is prohibited by Division (A)(1) of Section 3715.52 of the Revised Code.
- (24) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 24 capsules of Ultracef-500mg that were in the original manufacturer containers and were plainly marked as "Physician's Sample". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (25) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 24 tablets of Maxzide that were in the original manufacturer containers and were plainly marked as "Sample: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code.

- (26) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately 14 systems of Transderm-Nitro 10 that were in the original manufacturer containers and were plainly marked as "Patient Starter Pack: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (27) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, willfully violate Division (C) of Section 4729.51 of the Revised Code, to wit: Mr. Wexler did illegally possess approximately one container of Ceclor-125mg oral suspension that was in the original manufacturer container and was plainly marked as "Professional Package: Not To Be Sold". Such conduct is not in accordance with Section 3719.81 of the Revised Code.
- (28) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, hold for sale or delivery dangerous drugs that were adulterated, to wit: approximately 5,000 capsules of Pavabid were held for sale or delivery after the expiration date (9/73) stated by the manufacturer in its labeling. Such conduct is prohibited by Division (A)(1) of Section 3715.52 of the Revised Code.
- (29) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did, on or about September 13, 1985, hold for sale or delivery dangerous drugs that were adulterated, to wit: approximately 95 capsules of Nitrobid-6.5 were held for sale or delivery after the expiration date (7/83) stated by the manufacturer in its labeling. Such conduct is prohibited by Division (A)(1) of Section 3715.52 of the Revised Code.
- (30) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did cause the misbranding of a drug, to wit: approximately 75 capsules of Nitrobid-2.5mg; in violation of Section 3715.64 of the Revised Code. Such conduct is prohibited by Section 3715.52 of the Revised Code.
- (31) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did cause the misbranding of a drug, to wit: approximately 334 capsules of Tranxene-7.5mg; in violation of Section 3715.64 of the Revised Code. Such conduct is prohibited by Section 3715.52 of the Revised Code.
- (32) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did cause the misbranding of a drug, to wit: approximately 450 capsules of Ornade Spansule; in violation of Section 3715.64 of the Revised Code. Such conduct is prohibited by Section 3715.52 of the Revised Code.

- (33) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did cause the misbranding of a drug, to wit: approximately 70 tablets of Cyclapen W-500mg; in violation of Section 3715.64 of the Revised Code. Such conduct is prohibited by Section 3715.52 of the Revised Code.
- (34) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did cause the misbranding of a drug, to wit: approximately 2 Phenergan-50mg suppositories; in violation of Section 3715.64 of the Revised Code. Such conduct is prohibited by Section 3715.52 of the Revised Code.
- (35) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did hold for sale or delivery drugs that were adulterated and/or misbranded, to wit: approximately 29 containers of various drugs which were not labeled as required by Section 3715.64 of the Revised Code. Such conduct is prohibited by Section 3715.52 of the Revised Code.
- (36) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did illegally possess a controlled substance in an amount less than a bulk amount as defined in Division (E) of Section 2925.01 of the Revised Code, to wit: approximately 122 capsules of Tranxene-7.5mg which were found in an unlabeled container in a paper bag underneath the prescription counter and behind a typewriter on the floor. Such conduct is not in accordance with Chapters 3715., 3719., and 4729. of the Revised Code, and is prohibited by Section 2925.11 of the Revised Code.
- (37) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler did illegally possess controlled substances in amounts greater than three times the bulk amount as defined in Section 2925.01 of the Revised Code, to wit: approximately 100 capsules of Ionamin-30mg and 100 tablets of Adipex-P which were found in an unlabeled container in a paper bag underneath the prescription counter and behind a typewriter on the floor. Such conduct is not in accordance with Chapters 3715., 3719., and 4729. of the Revised Code, and is prohibited by Division (A)(6) of Section 2925.03 of the Revised Code.
- (38) From the evidence presented, the State Board of Pharmacy finds that Marshall Lewis Wexler, as the responsible pharmacist for the terminal distributor of dangerous drugs license and owner of Wexler's Lake Milton Pharmacy, 17674 Mahoning Avenue, Lake Milton, Ohio 44429, did not keep a record of all controlled substances received or dispensed; in violation of the provisions of Section 3719.07 of the 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 (1) through (38) 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 (1) through (38) of the Findings Of Fact constitutes dishonesty 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 (1) through (38) of the Findings Of Fact constitutes willful violations of the provisions of Chapters 2925., 3715., 3719. and 4729. of the Revised Code.

Pursuant to Section 4729.16 of the Ohio Revised Code, and the foregoing Findings Of Fact and Conclusions Of Law, the State Board of Pharmacy takes the following actions concerning the pharmacist license held by Marshall Lewis Wexler, No. 03-2-09823:

(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 Marshall Lewis Wexler for 24 months, effective July 1, 1986.

(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 thirty-six thousand five hundred dollars (\$36,500.00).

(C) Further, the Board suspends 12 months of the 24-month suspension imposed in paragraph (A) above, and eleven thousand five hundred dollars (\$11,500.00) of the monetary penalty, provided Marshall Lewis Wexler abides by the terms of probation set by the Board. The terms provide that Marshall Lewis Wexler:

- (1) takes and successfully completes a Jurisprudence examination offered by the Board prior to July 1, 1987;
- (2) does not violate any 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.

The twenty-five thousand dollar (\$25,000.00) monetary penalty that was not suspended in paragraph (C) above is due and owing within thirty (30) days of the issuance of this Order. Said monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 65 S. Front Street, Columbus, Ohio 43266-0320, with the enclosed form.

MARSHALL LEWIS WEXLER, R.Ph.

Page Nine

Order of the Board

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 ... (of the effective date) 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.

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: June 9, 1956

FZW/sb

By

Franklin Z. Wickham  
Franklin Z. Wickham, Executive Director

cc: John E. Breen, Assistant Attorney General  
James H. Granecki, Attorney; 118 E. Oak Street;  
Bowling Green, Ohio 43402