



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-940808-008)

In The Matter Of:

WILLIAM S. SMITH, R.Ph.

67 East Hillcrest Avenue

Dayton, Ohio 45405

(R.Ph. No. 03-2-10109)

INTRODUCTION

THE MATTER OF WILLIAM S. SMITH CAME TO HEARING ON JANUARY 27, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

WILLIAM S. SMITH WAS REPRESENTED BY RUDY WEHNER, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Fred Williams, Ohio State Board of Pharmacy
- (2) Garry Hobson, Rite Aid
- (3) William S. Smith, Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated August 8, 1994.
- (2) Exhibit 1A--Hearing Request letter dated September 6, 1994.
- (3) Exhibit 1B--Hearing Schedule letter dated September 6, 1994.
- (4) Exhibit 1C--Pharmacist File Front Sheet of William Samuel Smith showing original date of registration as July 20, 1972, with attached Certified Receipt, No. 436062,

dated September 18, 1972; and Renewal Application for Pharmacist License, No. 03-2-10109, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, of William S. Smith dated August 15, 1994.

- (5) Exhibit 2--Report of Investigation form, Case No. 92-1874, with attached prescription label number 298327 dated August 13, 1992.
- (6) Exhibit 3--Report of Investigation form, Case No. 92-1874, with attached prescription label number 289513 dated May 1, 1992.
- (7) Exhibit 4--Report of Investigation form, Case No. 92-1874, with attached prescription label number 289512 dated May 1, 1992.
- (8) Exhibit 5--Report of Investigation form, Case No. 92-1874, with attached prescription label number 294391 dated June 27, 1992.
- (9) Exhibit 6--Report of Investigation form, Case No. 92-1874, with attached prescription label number 294330 dated June 26, 1992.
- (10) Exhibit 7--Report of Investigation form, Case No. 92-1874, with attached prescription label number 284911 dated March 12, 1992.
- (11) Exhibit 8--Report of Investigation form, Case No. 92-1874, with attached prescription label number 284912 dated March 12, 1992.
- (12) Exhibit 9--Copy of six-page handwritten statement of William S. Smith, not dated.
- (13) Exhibit 10--Handwritten statement of Garry Hobson signed and notarized on October 14, 1992.
- (14) Exhibit 11--Certified Termination Entry in the Montgomery County Common Pleas Court, Case No. 92-CR-3311, of William S. Smith dated May 24, 1993.
- (15) Exhibit 12--Handwritten statement of William S. Smith signed and notarized on October 14, 1992.

Respondent's Exhibits:

- (1) Exhibit A--Letter from Rita S. Russell dated December 27, 1994.
- (2) Exhibit B--Six-Count Indictment in the Montgomery County Common Pleas Court, Case No. 92-CR-3311, of William S. Smith dated February 2, 1993.
- (3) Exhibit C--Copy of letter from Mathias H. Heck, Jr., not dated; Offense Report, Number 02340841, dated December 4, 1992; Report regarding William S. Smith, not dated; Pre-Interview Rights/Waiver of Rights form signed by William S. Smith on December 10, 1992; copy of handwritten statement of William S. Smith dated October 14, 1992; copy of handwritten statement of Garry Hobson dated October 14, 1992; and copies of seven prescription labels numbered and dated as follows: 294330 dated June 26, 1992; 294391 dated June 27, 1992; 289513 dated May 1, 1992; 289512 dated May 1, 1992; 298327 dated August 13, 1992; 284911 dated March 12, 1992; and 284912 dated March 12, 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 of Pharmacy indicate that William S. Smith was originally licensed in the state of Ohio on July 20, 1972, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) William S. Smith did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: William S. Smith created the following prescriptions which were not prescribed by a practitioner:

<u>Rx. No.</u>	<u>Date</u>	<u>Patient Name</u>	<u>Drug/Qty.</u>	<u>Refills</u>
298327	08/13/92	Jeremy Kordelewski	60 Kwell 1% lotion	0
289513	05/01/92	Jeremy Kordelewski	3 Habitrol 7mg/24hr patch	5
289512	05/01/92	Jeremy Kordelewski	3 Habitrol 14mg/24hr patch	5
294391	06/27/92	Rachel Kordelewski	120 Lindane 1% shampoo NPC	0
294330	06/26/92	Rachel Kordelewski	120 Lindane 1% shampoo NPC	0
284911	03/12/92	William Smith	10 Otocort Otic Susp Lem	0
284912	03/12/92	William Smith	30 Cephalexin 500mg	1

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

- (3) William S. Smith was, on or about May 19, 1993, convicted in the Common Pleas Court of Montgomery County, Ohio, of Attempted Illegal Processing of Drug Documents in violation of Section 2923.02 of the Ohio Revised Code as it relates to Section 2925.23(A) of the Ohio Revised Code, a misdemeanor of the first degree.
- (4) William S. Smith did, as the Responsible Pharmacist at Rite Aid, 1905 Wayne Ave., Dayton, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code, fail to provide supervision and control, and adequate safeguards over the drug stock so as to prevent theft or diversion, to wit: from April, 1992, through October, 1992, William S. Smith repeatedly permitted a non-pharmacist convicted felon to have access to the drug stock, during which time the following controlled substances were stolen:

<u>Drug</u>	<u>Schedule</u>	<u>Quantity</u>
Xanax .25mg	IV	300
Xanax .5mg	IV	250
Diazepam 10mg	III	60

Such conduct is not in accordance with Section 4729.55 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 dishonesty in the practice of pharmacy as provided in Division (A)(2) 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) and (4) of the Findings of Fact constitute being guilty of 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 paragraph (3) of the Findings of Fact constitutes having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (4) 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 Chapters 2925. and 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of William S. Smith:

- (A) On the basis of the Findings of Fact and paragraphs (1) through (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby places the pharmacist identification card, No. 03-2-10109, of William S. Smith on probation for five years, effective as of the date of the mailing of this Order. The terms of probation are as follows:
- (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that William S. Smith's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
 - (2) William S. Smith may not serve as a responsible pharmacist.
 - (3) William S. Smith must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (4) William S. Smith must abide by the rules of the Ohio State Board of Pharmacy.
 - (5) William S. Smith must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

- (B) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days of the issuance of this Order. 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, 17th Floor, Columbus, Ohio 43266-0320.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.