



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950331-046)

In The Matter Of:

**ROBERT A. ESAREY, R.Ph.**

963 East Meadowlawn Boulevard  
Seven Hills, Ohio 44131  
(R.Ph. No. 03-2-11228)

### INTRODUCTION

THE MATTER OF ROBERT A. ESAREY CAME TO HEARING ON SEPTEMBER 20, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ROBERT A. ESAREY WAS REPRESENTED BY NICHOLAS E. PHILLIPS, AND THE STATE OF OHIO WAS REPRESENTED BY LAWRENCE D. PRATT, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Robert Cole, Ohio State Board of Pharmacy
- (2) Margaret Cook
- (3) David Gallagher, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Cynthia Schwartz, Summit County Probation Office
- (2) Colleen Kemp
- (3) Robert Esarey, Son of Respondent
- (4) Robert Esarey, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated March 31, 1995.
- (2) Exhibit 1A--Hearing Request letter dated April 25, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated May 1, 1995.
- (4) Exhibit 1C--Addendum Notice dated May 11, 1995.
- (5) Exhibit 1D--Pharmacist File Front Sheet of Robert A. Esarey showing original date of registration as August 4, 1975.
- (6) Exhibit 1E--Renewal Application for Pharmacist License, No. 03-2-11228, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, of Robert A. Esarey dated August 12, 1994.
- (7) Exhibit 1F--Order of the Ohio State Board of Pharmacy in the matter of Robert A. Esarey, R.Ph. dated November 13, 1985.
- (8) Exhibit 1G--Copy of the Journal Entry, Case No. CR 52101, in the Cuyahoga County Court of Common Pleas dated August 25, 1980 in the matter of Robert A. Esarey.
- (9) Exhibit 2--Two-page copy of the Journal Entry, Case No. CR 95 02 0502, in the Summit County Court of Common Pleas dated March 30, 1995 in the matter of Robert A. Esarey.
- (10) Exhibit 3--Two-page Transcript of Case Docket, Case No. 94 CRB 00927, Barberton Municipal Court, dated April 12, 1995.
- (11) Exhibit 3A--Two-page copy of letter from Robert A. Esarey dated May 21, 1994.
- (12) Exhibit 4C--Prescription No. 0355-660471.
- (13) Exhibit 4D--Prescriptions numbered 0355-668529 and 0355-008301.
- (14) Exhibit 4E--Prescription No. 0355-675728.
- (15) Exhibit 5--Prescriptions numbered 1168-008298, 1168-008299, 1168-008300, and 1168-008301.
- (16) Exhibit 6--Two-page Statement of Barbara A. Lohmeyer, D.O. dated November 10, 1994.
- (17) Exhibit 7--Statement of Duane Roe, M.D. dated November 29, 1994.
- (18) Exhibit 8--Two-page Revco Prescription Access Link Patient Insurance Profile For Colleen Kemp Covering From January 1, 1991, to April 18, 1995.
- (19) Exhibit 9--Copy of Offense or Incident Report, No. 94-91, Norton Police Dept., dated May 27, 1994; and copy of Supplementary Offense Report, No. 94-91, dated May 27, 1994.
- (20) Exhibit 10--Receipt For Drugs Issued To Margaret M. Cook dated November 4, 1994; and Identidex® Tablet and Capsule Identification Reports for Amoxicillin capsule 250mg, Donnatal tablet, Suprax tablet 400mg, Ritalin tablet 5mg, Methylphenidate Hydrochloride tablet 20mg, Methylphenidate Hydrochloride tablet 10mg, Ritalin tablet 10mg, Valium tablet 5mg, Xanax tablet 0.25mg, and Methylprednisolone tablet 4mg.
- (21) Exhibit 10A--Unlabeled amber vial with Revco cap containing 48 brown and yellow capsules.
- (22) Exhibit 10B--Sample box marked Ventolin Inhalation Aerosol 6.8g, Lot Z3090AA, Exp Sep 92, containing inhalation canister.
- (23) Exhibit 10C--Stock bottle labeled Methylprednisolone tablets 4mg containing 88 white oval tablets.
- (24) Exhibit 10D--Amber vial with label from CHMCA Ambulatory Care Pharmacy marked "1 cap every 5-6h for cough" containing 34 round yellow tablets.
- (25) Exhibit 10E--Unlabeled amber vial with Revco cap containing 43 yellow tablets, 31 light blue tablets, and 23 white tablets.
- (26) Exhibit 10F--Unlabeled amber vial with Revco cap containing 10 Suprax 400mg tablets.

- (27) Exhibit 10G--Box marked Depo-Medrol 80mg per mL, containing one 5mL vial.
- (28) Exhibit 10H--Unlabeled amber vial containing 35 round, yellow tablets.
- (29) Exhibit 10I--White bottle labeled LactiCare-HC Lotion 2-1/2%, 2 fl. oz.
- (30) Exhibit 10J--Amber vial labeled Donnatal tabs for Beth Esarey containing 38 round, white tablets.
- (31) Exhibit 10K--White bottle labeled Vancenase AQ 25g Nasal Spray 0.042%.
- (32) Exhibit 10L--White bottle labeled Vancenase AQ 25g Nasal Spray 0.042%.
- (33) Exhibit 10M--Clear jar containing 25 empty clear capsules.
- (34) Exhibit 10N--Two single-dose packages of Xanax 0.25mg.
- (35) Exhibit 11--Prescription written from Clifford C. Perera, M.D. for Robert Esarey dated June 27, 1994.
- (36) Exhibit 12--Amber vial labeled Prescription No. 0355-657957 for Colleen Kemp for 120 Bentyl 10mg capsules and containing 97 blue capsules.
- (37) Exhibit 13--Empty amber vial labeled Prescription No. 0355-950299 for Colleen Kemp for 40 Vicodin tablets.
- (38) Exhibit 14--Unlabeled amber vial with Revco cap containing 2 white capsules marked "biocraft 03".
- (39) Exhibit 15--Unlabeled amber vial containing 20 white tablets.
- (40) Exhibit 16--Partially used 2.5ml container of Stadol NS 10mg/mL Nasal Spray.
- (41) Exhibit 17--One white weekly medication container with assorted unidentified pills inside.
- (42) Exhibit 17A--One yellow weekly medication container with assorted unidentified pills inside.
- (43) Exhibit 17B--Identidex® Tablet and Capsule Identification Reports for Pamelor capsule 50mg, Zantac tablet 300mg, Uniphyl tablet, Cylert tablet 37.5mg, Hismanal tablet 10mg, Verapamil Hydrochloride Extended-Release tablet 240mg, Norwich Aspirin tablet 325mg, Carisoprodol tablet 350mg, Dexedrine tablet 5mg, Duratuss tablet (2), Cyclobenzaprine Hydrochloride tablet 10mg, Drixoril tablet, Ceftin tablet 250mg, and Yocon tablet 5.4mg.
- (44) Exhibit 18--Case Summary regarding Robert Esarey dated January 6, 1995.
- (45) Exhibit 19--Statement of Timothy B. Cox, D.D.S. dated April 18, 1995.
- (46) Exhibit 20--Statement of Barbara Coynmeyer, D.O. dated April 18, 1995.
- (47) Exhibit 21--Prescription No. 0355-657957.
- (48) Exhibit 22--Notice of Opportunity issued to Robert A. Esarey, Docket No. 6-107-1, dated May 17, 1985.
- (49) Exhibit 23--Three-page Revco Prescription Access Link Patient Insurance Profile For Robert A. Esarey Covering From January 1, 1992, to June 1, 1994.
- (50) Exhibit 24--Four-page Revco Prescription Access Link Patient Insurance Profile For Margaret Cook Esarey Covering From January 1, 1992, to June 1, 1994.
- (51) Exhibit 25--Audio tape of Statement of Colleen Kemp.
- (52) Exhibit 26--Audio tape of Statement of Robert Esarey.
- (53) Exhibit 27--Booking photograph of Colleen Kemp taken on February 1, 1995.
- (54) Exhibit 28--Receipt For Property taken by Compliance Agent David Gallagher from Colleen Kemp on April 17, 1995.

Respondent's Exhibits:

- (1) Exhibit A--Two-page Psychiatric Evaluation of Robert Esarey by Clifford C. Perera, M.D. dated June 27, 1994.

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 Robert A. Esarey was originally licensed to practice pharmacy in the state of Ohio on August 4, 1975, and on May 11, 1995, his license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2) Robert A. Esarey was, on or about March 30, 1995, convicted of Illegal Processing of Drug Documents in violation of Section 2925.23(B)(1) of the Ohio Revised Code, a felony of the fourth degree.
- (3) On or about November 13, 1985, the Ohio State Board of Pharmacy found the following to be fact:
  - (a) On one or more occasions between May 1, 1979, and October 21, 1979, sales of schedule II controlled substances were made at Friendly Discount Drug Co., 8934 Brecksville Road, Brecksville, Ohio 44141, in amounts equal to or exceeding three times the bulk amount as defined in Section 2925.01 of the Ohio Revised Code; in that, approximately 3,704 tablets of Percodan, approximately 1,244 capsules of Biphedamine 20mg, approximately 864 tablets of Preludin 75mg, approximately 680 tablets of Dilaudid 4mg, approximately 662 tablets of Ritalin 10mg, approximately 445 tablets of Ritalin 5mg, approximately 364 tablets of Quaalude 300mg, and approximately 344 tablets of Dilaudid 2mg were sold without a prescription and that Robert A. Esarey's conduct was not in accordance with Chapters 3715., 3719., and 4729. of the Revised Code, and is prohibited by Section 2925.03(A)(7) of the Revised Code.
  - (b) Robert A. Esarey plead guilty to 10 counts of violating Section 2925.23 of the Revised Code, possession of false or forged prescriptions, in Cuyahoga County Common Pleas Court and on August 15, 1980, the Common Pleas Court sentenced Robert A. Esarey to eighteen months to ten years of incarceration on each count.

Pursuant to these findings of fact, the Board suspended Robert A. Esarey's license to practice pharmacy in Ohio for a period of two years for being guilty of a felony; and an additional two years for gross immorality, suspensions were to run concurrently. A monetary penalty of five thousand dollars was imposed for willfully violating provisions of Chapters 2925., 3715., 3719., and 4729. of the Revised Code. The Board suspended half of said suspension, effective December 1, 1986, with conditions. The conditions being met, Robert A. Esarey's license was reinstated on December 1, 1986.

- (4) Robert A. Esarey was, on or about June 15, 1994, in the Barberton Municipal Court of Ohio, found to be guilty of Petty Theft, in violation of Section 2913.02 of the Ohio Revised Code, the victim being his employer, Revco Drugs.
- (5) Robert A. Esarey did, on or about February 18, 1994, make or utter a false or forged prescription for a dangerous drug, to wit: Robert A. Esarey created prescription number 660471 for 60 units of Fioricet, having two refills, when such medication was not authorized by a physician. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (6) Robert A. Esarey did, on or about February 18, 1994, while not being a practitioner or a terminal distributor, sell a dangerous drug at retail, to wit: Robert A. Esarey sold 60 units of Fioricet pursuant to prescription number 660471 when only 30 units were authorized. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (7) Robert A. Esarey did, on or about May 20, 1994, make or utter a false or forged prescription for a dangerous drug, to wit: Robert A. Esarey created prescription number 675728 for 100 units of Phenergan when such medication was not authorized by a physician. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (8) Robert A. Esarey did, on or about May 20, 1994, while not being a practitioner or a terminal distributor, sell a dangerous drug at retail, to wit: Robert A. Esarey sold 100 units of Phenergan pursuant to prescription number 675728 when such medication was not authorized by a physician. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (9) Robert A. Esarey did, on or about March 30, 1994, make or utter a false or forged prescription for a dangerous drug, to wit: Robert A. Esarey created prescription number 8298 for 50 units of Fioricet when such quantity was not authorized by a physician. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (10) Robert A. Esarey did, on or about March 30, 1994, while not being a practitioner or a terminal distributor, sell a dangerous drug at retail, to wit: Robert A. Esarey sold 50 units of Fioricet pursuant to prescription number 8298 when only 30 units were authorized. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (11) Robert A. Esarey did, on or about March 30, 1994, make or utter a false or forged prescription for a dangerous drug, to wit: Robert A. Esarey created prescription number 8299 for 30 units of Ambien 5mg when such quantity was not authorized by a physician. Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.
- (12) Robert A. Esarey did, on or about March 30, 1994, while not being a practitioner or a terminal distributor, sell a dangerous drug at retail, to wit: Robert A. Esarey sold 30 units of Ambien 5mg pursuant to prescription number 8299 when only 15 units were authorized. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.

- (13) Robert A. Esarey did, on or about March 30, 1994, intentionally create and/or knowingly possess a false or forged prescription, to wit: Robert A. Esarey sold 20 units of Xanax .5mg, a schedule IV controlled substance, pursuant to prescription number 8300 when such was not authorized by a physician and was not for a legitimate medical purpose. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (14) Robert A. Esarey did, on or about March 30, 1994, knowingly sell a controlled substance in amounts less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Robert A. Esarey sold 20 units of Xanax .5mg pursuant to prescription number 8300 when such was not authorized by a physician and was not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (15) Robert A. Esarey did, on or about March 30, 1994, and again on April 7, 1994, intentionally create and/or knowingly possess a false or forged prescription, to wit: Robert A. Esarey sold 50 units of Fiorinal with Codeine #3, a schedule III controlled substance, pursuant to prescription number 8301 when such was not authorized by a physician and was not for a legitimate medical purpose. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (16) Robert A. Esarey did, on or about March 30, 1994, and again on April 7, 1994, knowingly sell a controlled substance in amounts less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Robert A. Esarey sold 50 units of Fiorinal with Codeine #3 pursuant to prescription number 8301 when such was not authorized by a physician and was not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (17) Robert A. Esarey did, on or about May 20, 1994, knowingly sell or offer to sell a controlled substance in an amount greater than bulk but less than three times bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Robert A. Esarey sold 100 capsules of Fiorinal with Codeine #3 pursuant to the two remaining refills of false or forged prescription number 355-668529. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (18) Robert A. Esarey did, on or about March 19, 1994, knowingly sell or offer to sell a controlled substance in an amount greater than bulk but less than three times bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: while working at Revco #355, Robert A. Esarey sold 40 tablets of Vicodin pursuant to false or forged prescription number 950299. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (19) Robert A. Esarey did, on or about March 19, 1994, intentionally make and/or knowingly possess a false or forged prescription, to wit: Robert A. Esarey created prescription number 950299 as a telephone prescription for Vicodin and kept it on file at Revco #355, when it had not been authorized by a practitioner. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (20) Robert A. Esarey did, on or about March 19, 1994, knowing that he had no privilege to do so, falsify computer data, to wit: while Revco #355's computer was "off line" from

its headquarters' computer system, Robert A. Esarey used its attributes to create a false prescription within the system so as to avoid detection of dispensing prescription number 950299. Such conduct is in violation of Section 2913.42(B) of the Ohio Revised Code.

- (21) Robert A. Esarey did, on or about February 3, 1994, make or utter a false or forged prescription for a dangerous drug, to wit: Robert A. Esarey created and dispensed prescription number 355-697957 for 120 units of Bentyl 10mg without authorization from a practitioner. Such conduct is in violation of Section 4729.61(C) 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) and (4) through (21) 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) and (5) through (21) of the Findings of Fact constitute being impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) 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 paragraph (4) of the Findings of Fact constitutes being 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.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (5) through (21) 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 2925. 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 May 11, 1995.

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

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-11228, held by Robert A. Esarey effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification

card, No. 03-2-11228, held by Robert A. Esarey effective as of the date of the mailing 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 revokes the pharmacist identification card, No. 03-2-11228, held by Robert A. Esarey effective as of the date of the mailing of this Order.
- (D) 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 five hundred dollars (\$500.00) 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.
- (E) On the basis of the Findings of Fact and paragraph (5) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-11228, held by Robert A. Esarey effective as of the date of the mailing of this Order.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "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.

MOTION CARRIED.

SO ORDERED.