



OHIO STATE BOARD OF PHARMACY

77 S. High Street, 17th Floor
Columbus, Ohio 43266-0320
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THE STATE BOARD OF PHARMACY
(Docket No. D-900130-058)

In The Matter Of:

RICHARD D. MARTEL, R.Ph.
4675-A Mayfield Road
South Euclid, Ohio 44121
(R.Ph. No. 03-2-11517)

THE MATTER OF RICHARD D. MARTEL CAME ON FOR CONSIDERATION BY THE STATE BOARD OF PHARMACY ON APRIL 26, 1990. MOTIONS WERE MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Exhibits

State's Exhibits:

- (1) Exhibit A - Notice of Opportunity letter dated January 30, 1990.
- (2) Exhibit B - Notice of Consideration letter dated March 21, 1990.
- (3) Exhibit 1 - Front Sheet for Richard David Martel showing February 25, 1976 as original date of licensure.
- (4) Exhibit 2 - Applications for Renewal as a Terminal Distributor for Hudson Pharmacy for 1985 and 1986.
- (5) Exhibit 3 - Statement of Richard Martel dated August 2, 1987.
- (6) Exhibit 3A - Twenty-seven pages of Accountability Statements for Upson Pharmacy dated November 22, 1987.
- (7) Exhibit 3B - Roche Biomedical Laboratories, Inc. two-page Final Report of test results for Richard Martel dated August 7, 1987; Notarized Chain of Custody Request dated September 19, 1987; Notarized Certification of Positive Result(s) dated September 19, 1987; Chain of Custody Request dated August 2, 1987; one-page Preliminary Report of test results for Richard Martel dated August 7, 1987.
- (8) Exhibit 4 - Drug Inventory sheet dated 06/22/87.
- (9) Exhibit 5 - Drug Inventory sheet dated 06/24/87.
- (10) Exhibit 6 - Drug Inventory sheet dated 06/26/87.
- (11) Exhibit 7 - Drug Inventory sheet dated 06/28/87.
- (12) Exhibit 8 - Drug Inventory sheet dated 06/29/87.
- (13) Exhibit 9 - Drug Inventory sheet dated 07/01/87.

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- (14) Exhibit 10 - Drug Inventory sheet dated 07/03/87.
- (15) Exhibit 11 - Drug Inventory sheet dated 07/04/87.
- (16) Exhibit 12 - Drug Inventory sheet dated 07/05/87.
- (17) Exhibit 13 - Drug Inventory sheet dated 07/07/87.
- (18) Exhibit 14 - Drug Inventory sheet dated 07/08/87.
- (19) Exhibit 15 - Drug Inventory sheet dated 07/09/87.
- (20) Exhibit 16 - Drug Inventory sheet dated 07/11/87.
- (21) Exhibit 17 - Drug Inventory sheet dated 07/12/87.
- (22) Exhibit 18 - Drug Inventory sheet dated 07/13/87.
- (23) Exhibit 19 - Drug Inventory sheet dated 07/14/87.
- (24) Exhibit 20 - Drug Inventory sheet dated 07/15/87.
- (25) Exhibit 21 - Drug Inventory sheet dated 07/16/87.
- (26) Exhibit 22 - Drug Inventory sheet dated 07/17/87.
- (27) Exhibit 23 - Drug Inventory sheet dated 07/18/87.
- (28) Exhibit 24 - Drug Inventory sheet dated 07/19/87.
- (29) Exhibit 25 - Drug Inventory sheet dated 07/20/87.
- (30) Exhibit 26 - Drug Inventory sheet dated 07/21/87.
- (31) Exhibit 27 - Drug Inventory sheet dated 07/22/87.
- (32) Exhibit 28 - Drug Inventory sheet dated 07/23/87.
- (33) Exhibit 29 - Drug Inventory sheet dated 07/24/87.
- (34) Exhibit 30 - Drug Inventory sheet dated 07/27/87.
- (35) Exhibit 31 - Drug Inventory sheet dated 07/29/87.
- (36) Exhibit 32 - Drug Inventory sheet dated 07/30/87.
- (37) Exhibit 33 - Drug Inventory sheet dated 07/31/87.
- (38) Exhibit 34 - Drug Inventory sheet dated 08/01/87.
- (39) Exhibit 35 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 300 unit shortage of Dexedrine 5mg.
- (40) Exhibit 36 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 24 unit shortage of Dexedrine 10mg.
- (41) Exhibit 37 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 40 unit shortage of Dexedrine 15mg.
- (42) Exhibit 38 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 111 unit shortage of Methadone 5mg.
- (43) Exhibit 39 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 26 unit shortage of Percocet.
- (44) Exhibit 40 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 742 unit shortage of Ritalin 5mg.
- (45) Exhibit 41 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 1,051 unit shortage of Ritalin 10mg.
- (46) Exhibit 42 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 50 unit shortage of Ritalin SR-20mg.
- (47) Exhibit 43 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 38 unit shortage of Seconal 50mg.
- (48) Exhibit 44 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 394 unit shortage of Seconal 100mg.
- (49) Exhibit 45 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 113 unit shortage of Tuinal 100mg.
- (50) Exhibit 46 - Accountability Statement for Hudson Pharmacy dated November 21, 1987 showing 1,460 unit shortage of Tylox.

- (51) Exhibit 47 - Journal Entry in the Cuyahoga County Court of Common Pleas, No. CR-231339, dated December 9, 1988; Journal Entry in the Cuyahoga County Court of Common Pleas, No. CR-231339, dated January 5, 1989.
- (52) Exhibit 48 - Journal Entry in the Cuyahoga County Court of Common Pleas, No. CR 39847 B, dated August 25, 1978; Journal Entry in the Cuyahoga County Court of Common Pleas, No. CR 39847 B, dated October 30, 1978.

Respondent's Exhibits:

- (1) Exhibit 1 - Two-page Letter from Richard Martel, Deltex Industries, dated February 6, 1990.

Findings Of Fact

- (1) On January 30, 1990, Richard D. Martel, R.Ph. was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of February 3, 1990, Richard D. Martel received the letter of January 30, 1990 informing him of the allegations, and his rights.
- (3) Richard D. Martel, R.Ph. submitted a letter, dated February 6, 1990, setting forth his position and contentions in writing, and has not requested a hearing in this matter.
- (4) The State Board of Pharmacy finds that records of the Board of Pharmacy indicate that Richard D. Martel was originally licensed to practice pharmacy in this state on February 25, 1976, pursuant to reciprocity, and Richard D. Martel, at times pertinent hereto, was the Responsible Pharmacist at Hudson Pharmacy, 922 E. 222 St., Euclid, Ohio, pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (5) The State Board of Pharmacy finds that Richard D. Martel is addicted or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Richard D. Martel has admitted to Pharmacy Board Agents his addiction to and abuse of controlled substances.
- (6) The State Board of Pharmacy finds that Richard D. Martel, as Responsible Pharmacist for Hudson Pharmacy, did fail to keep records of all controlled substances received or dispensed by the pharmacy, to wit: records were not kept of all controlled substances which were dispensed, as defined in Section 3719.01(F) of the Ohio Revised Code, by the pharmacy. Such conduct is in violation of Section 3719.07(C) of the Ohio Revised Code and Rule 4729-5-17 of the Ohio Administrative Code.

- (7) The State Board of Pharmacy finds that Richard D. Martel did, on or about the following dates, obtain dangerous drugs by committing a theft offense, to wit: Richard D. Martel stole the following amounts of Percocet and Percodan, Schedule II controlled substances, from the Upson Pharmacy, 481 E. 260 St., Euclid, Ohio:

<u>Date</u>	<u>Drug</u>	<u>Amount</u>
June 22, 1987	Percocet	11 tablets
June 24, 1987	Percocet	15 tablets
June 30, 1987	Percocet	5 tablets
July 1, 1987	Percocet	11 tablets
July 6, 1987	Percodan	6 tablets
July 8, 1989	Percodan	7 tablets
July 10, 1987	Percodan	8 tablets
	Percocet	16 tablets
July 12, 1987	Percocet	13 tablets
July 13, 1987	Percocet	9 tablets
	Percodan	8 tablets
July 14, 1987	Percodan	8 tablets
July 15, 1987	Percocet	13 tablets
	Percodan	7 tablets
July 16, 1987	Percodan	8 tablets
July 17, 1987	Percodan	8 tablets
July 27, 1987	Percodan	12 tablets
July 29, 1987	Percodan	15 tablets
July 30, 1987	Percodan	9 tablets
July 31, 1987	Percodan	33 tablets
August 1, 1987	Percodan	22 tablets

Such conduct is in violation of Section 2925.21 of the Ohio Revised Code.

- (8) The State Board of Pharmacy finds that Richard D. Martel did, between May 1, 1985 and May 26, 1987, obtain dangerous drugs by committing a theft offense, to wit: Richard D. Martel stole the following Schedule II controlled substances from Hudson Pharmacy, 922 E. 222 St., Euclid, Ohio:

<u>Drug</u>	<u>Units / % of Inventory</u>
Dexedrine 5mg	300 or 56.6%
Dexedrine 10mg	24 or 21.0%
Dexedrine 15mg	40 or 12.9%
Methadone 5mg	111 or 21.9%
Percocet	26 or 1.3%
Ritalin 5mg	742 or 27.7%
Ritalin 10mg	1,051 or 30.2%

<u>Drug</u>	<u>Units / % of Inventory</u>
Ritalin SR 20mg	50 or 17.4%
Seconal 50mg	38 or 38.8%
Seconal 100mg	394 or 94.9%
Tuinal 100mg	113 or 32.7%
Tylox	1,460 or 97.0%

Such conduct is in violation of Section 2925.21 of the Ohio Revised Code.

- (9) The State Board of Pharmacy finds that Richard D. Martel did, on or about August 1, 1987, being the owner and/or operator of a motor vehicle, knowingly permit such vehicle to be used for commission of a felony drug abuse offense, to wit: after stealing Percocet, a Schedule II controlled substance, and ingesting a part of the stolen quantity, Richard D. Martel transported the remaining quantity in his Pontiac Fiero automobile bearing Ohio license plates "BAD DNA". Such conduct is in violation of Section 2925.13(A) of the Ohio Revised Code. Having been previously convicted of a felony drug abuse offense, such conduct constitutes a felony of the fourth degree.
- (10) The State Board of Pharmacy finds that Richard D. Martel was, on or about January 13, 1989, convicted in the Cuyahoga County Common Pleas Court of Theft of Drugs in violation of Section 2925.21 of the Ohio Revised Code, a felony of the fourth degree.
- (11) The State Board of Pharmacy finds that Richard D. Martel was, on or about November 2, 1978, convicted in the Cuyahoga County Common Pleas Court of two counts of Drug Abuse in violation of Section 2925.11 of the Ohio Revised Code, felonies of the fourth degree.

Conclusions of Law

- (1) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (7) through (11) 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 the conduct set forth in paragraphs (6) through (11) 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.

- (3) The State Board of Pharmacy concludes that the conduct set forth in paragraph (5) of the Findings Of Fact constitutes being addicted to or abusing liquor and drugs or 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) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (6) through (11) of the Findings Of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, and aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the 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 concerning the pharmacist license, No. 03-2-11517, held by Richard D. Martel:

- (A) On the basis of paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Richard D. Martel.
- (B) On the basis of paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Richard D. Martel.
- (C) On the basis of paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Richard D. Martel.
- (D) On the basis of paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Richard D. Martel.

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

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Order of the Board

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.

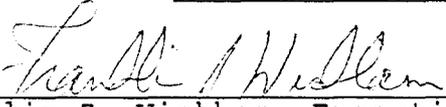
BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL
Return Receipt
#P 497 578 706

ORDER MAILED: JUNE 29, 1990

FZW/la

By


Franklin Z. Wickham, Executive Director

cc: Jeanny Eaton, Assistant Attorney General