



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

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ORDER OF THE STATE BOARD OF PHARMACY (Docket Nos. D-070508-047 and D-070625-052)

In The Matter Of:

DOUGLAS ELWOOD McOWEN, R.Ph.

1771 North Main Street
Urbana, Ohio 43078
(R.Ph. No. 03-2-12516)

INTRODUCTION

THE MATTER OF DOUGLAS ELWOOD McOWEN CAME FOR HEARING ON SEPTEMBER 10, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: GREGORY BRAYLOCK, R.Ph. (presiding); ELIZABETH I. GREGG, R.Ph.; RICHARD F. KOLEZYNSKI, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; JAMES E. TURNER, R.Ph.; AND JEROME J. WIESENHAHN, R.Ph.

DOUGLAS ELWOOD McOWEN WAS REPRESENTED BY STEPHEN B. YURIK. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Todd Knauss, Ohio State Board of Pharmacy

Respondent's Witness

1. Douglas Elwood McOwen, R.Ph., Respondent

State's Exhibits

1. Notice of Opportunity For Hearing letter [05-08-07]
1A-1B. Procedurals
1C. Summary Suspension Order/Notice of Opportunity For Hearing letter [06-25-07]
1D-1E. Procedurals
2. State Board of Pharmacy Settlement Agreement In Re Douglas E. McOwen [07-05-94]
3. Rx #N614127 [06-21-06]
4. Medication Log for Douglas McOwen [01-17-03 to 06-21-06]; Copy of two prescriptions prescribed by James C. Binski, M.D. for Douglas McOwen [06-21-06]
5. CVS Pharmacy #3452 Patient Prescription Record for Douglas E. McOwen [01-01-05 to 10-19-06]
6. Notarized Statement of James C. Binski, M.D. [08-02-06]
7. Rx #C587623 [02-01-06]
8. Notarized Statement of Victoria Dyer, CMA [10-27-06]

9. Rx # C608777 [05-20-06]
10. Notarized Statement of Victoria Dyer, CMA [08-02-06]
11. Indictment, State of Ohio vs Douglas E. McOwen, Case No. 2007CR93, Champaign County Common Pleas Court [04-19-07]; Final Appealable Order [08-21-07]

Respondent's Exhibits

- A. Medical History of Douglas McOwen [not dated]
- B. Six Colored Photographs of Douglas McOwen [08-23-02]
- C. Letter from James C. Binski, M.D. to William T. Winsley, M.S., R.Ph. [not dated]
- D. Progress Report from Sheri Haines, MA, LPC, LICDC to Stephen B. Yurik, Attorney at Law [06-26-07]
- E. Discharge Report from Sheri Haines, MA, LPC, LICDC to Stephen B. Yurik, Attorney at Law [07-31-07]
- F. Nine Letters of Support [06-06-07 to 06-19-07]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, 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 Douglas Elwood McOwen was originally licensed by the State of Ohio as a pharmacist on August 9, 1978, pursuant to examination, and that his license was summarily suspended on June 25, 2007. Records further reflect during the relevant time periods stated herein, Douglas Elwood McOwen was the Responsible Pharmacist at CVS Pharmacy #3452, 719 Scioto Street, Urbana, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Records further reflect that Douglas Elwood McOwen was previously disciplined by the Board on July 5, 1994.
- (2) Douglas Elwood McOwen did, on or about June 21, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen altered Rx #614127, written for 90 tablets of Percocet 5/325 mg, to 90 tablets of oxycodone with APAP 7.5/325 mg, without the permission of the prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (3) Douglas Elwood McOwen did, on or about February 1, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created and kept on file in the pharmacy Rx #587623, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (4) Douglas Elwood McOwen did, on or about March 21, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #587623, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (5) Douglas Elwood McOwen did, on or about May 20, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen

created and kept on file in the pharmacy Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

- (6) Douglas Elwood McOwen did, on or about June 18, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (7) Douglas Elwood McOwen did, on or about July 27, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (8) Douglas Elwood McOwen did, on or about September 1, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (9) Douglas Elwood McOwen did, on or about October 7, 2006, intentionally create and/or knowingly possess a false or forged prescription, to wit: Douglas Elwood McOwen created, kept on file in the pharmacy, and refilled Rx #608777, for 90 tablets of hydrocodone with APAP 10/325 mg, without a prescription from a prescriber and for his own personal use. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (10) Douglas Elwood McOwen did, on or about June 15, 2007, plead guilty in State of Ohio vs Douglas E. McOwen, Case No. 2007 CR 93, Champaign County Common Pleas Court, to one (1) count of Illegal Processing of Drug Documents, a felony of the fourth degree, under Section 2925.23(B)(1)(F)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (10) of the Findings of Fact constitute 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) through (10) 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) The State Board of Pharmacy concludes that paragraphs (2) through (10) 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. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION 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 to Douglas Elwood McOwen on June 25, 2007.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of Douglas Elwood McOwen as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for two years the pharmacist identification card, No. 03-2-12516, held by Douglas Elwood McOwen and such suspension is effective as of the date of the mailing of this Order.
 - (1) Douglas Elwood McOwen, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
 - (2) Douglas Elwood McOwen, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (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.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Douglas Elwood McOwen a monetary penalty of ten thousand dollars (\$10,000.00) 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, Room 1702, Columbus, Ohio 43215-6126.
- (C) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby limits Douglas Elwood McOwen's practice of pharmacy in that he may not dispense prescriptions for himself or for any member of his family.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-3).

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 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: **OCTOBER 11, 2007**

By: _____
William T. Winsley, M.S., R.Ph., Executive Director

WTW/lf

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 5124

c: Sally Ann Steuk, Assistant Attorney General
Stephen B. Yurik; Attorney for Respondent; Lane, Alton & Horst LLC; Two Miranova Place;
Suite 500; Columbus, Ohio 43215



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

June 25, 2007

Douglas Elwood McOwen, R.Ph.
1771 North Main Street
Urbana, Ohio 43078

Re: Ohio Registered Pharmacist
Number 03-2-12516

Dear Mr. McOwen:

Records of the Board indicate that you are a pharmacist registered by this Board to practice pharmacy in the State of Ohio.

In accordance with Section 2929.24 of the Ohio Revised Code, the office of the Prosecuting Attorney of Champaign County, Ohio, has submitted to this Board information which indicates that on June 15, 2007, you pled guilty in the Common Pleas Court of Champaign County, Ohio, to a felony drug abuse offense under Section 2913.02 of the Ohio Revised Code. State of Ohio vs Douglas E. McOwen, Case No. 2007 CR 93, Champaign County Common Pleas Court.

YOU ARE HEREBY NOTIFIED that Section 3719.121 of the Ohio Revised Code states, in pertinent part:

(C) On receiving notification pursuant to Section 2929.24 or 3719.12 of the Revised Code, the Board under which a person has been issued a license, . . . immediately shall suspend the license, . . . of that person on a plea of guilty to, a finding by a jury or court of the person's guilt of, or conviction of a felony drug abuse offense . . .

WHEREFORE, PURSUANT TO SECTION 3719.121(C) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO ARE HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until an adjudicatory hearing is held by the Board under Chapter 119. of the Revised Code, during which time you may not engage in the practice of pharmacy.

Additionally, you are hereby notified that you have the right to a hearing on the following allegations:

- (1) Records of the State Board of Pharmacy indicate that you were originally licensed in the State of Ohio on August 9, 1978, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio. Records further reflect during the relevant time periods stated herein, you were the Responsible Pharmacist at CVS Pharmacy #3452, 719 Scioto Street, Urbana, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Records further reflect that you were previously disciplined by the Board on July 5, 1994.
- (2) You did, on or about June 15, 2007, plead guilty in State of Ohio vs Douglas E. McOwen, Case No. 2007 CR 93, Champaign County Common Pleas Court, to one (1) count of Illegal Processing of Drug Documents, a felony of the fourth degree, under Section 2925.23(B)(1)(F)(1) of the Ohio Revised Code. Such conviction indicates that you are guilty of a felony or gross immorality within the meaning of Section 4729.16 of the Ohio Revised Code.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states in pertinent part:

- (A) The State Board of Pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Ohio Revised Code for a similar offense, or in the case of a violation of a section of the Ohio Revised Code that does not bear a penalty, a monetary penalty or forfeiture of no more than five hundred dollars, if the Board finds a pharmacist or pharmacy intern:
 - (1) Guilty of a felony or gross immorality;
 - (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
 - (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy;
 - (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
 - (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 or Chapter 2925. or 3719. of the Revised Code;
 - (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
 - (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;
 - (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner,

manager, or employee of a health care facility, residential care facility, or nursing home;

- (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;
- (10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

IF YOU DESIRE A HEARING, such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. YOUR REQUEST MUST BE IN WRITING, AND MUST BE RECEIVED IN THE OFFICE OF THE OHIO STATE BOARD OF PHARMACY ON OR PRIOR TO THE THIRTIETH (30TH) DAY FOLLOWING THE MAILING DATE OF THIS NOTICE. You may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

YOU ARE FURTHER ADVISED that if there is no request for such a hearing received by the Board on or prior to the thirtieth (30th) day following the mailing of this notice, the Ohio State Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "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.

BY ORDER OF THE STATE BOARD OF PHARMACY

WTW/lf (D-070625-052)

CERTIFIED MAIL / Return Receipt
7004 2510 0006 9804 1768

William T. Winsley, M.S., R.Ph.
Executive Director

c: Sally Ann Steuk, Assistant Attorney General
Stephen B. Yunk, Attorney for Respondent; Lane, Alton & Horst LLC; Two Miranova Place, Suite 500; Columbus, Ohio 43215



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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-930629-097)

In The Matter Of:

DOUGLAS E. McOWEN, R.Ph.

4525 Briarwood Drive

Urbana, Ohio 43078

(R.Ph. No. 03-2-12516)

This Settlement Agreement is entered into by and between Douglas E. McOwen and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act (Chapter 4729. of the Ohio Revised Code).

Douglas E. McOwen enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Douglas E. McOwen is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against him and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Douglas E. McOwen's license to practice pharmacy in the state of Ohio, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings:

1. The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
2. On June 29, 1993, Douglas E. McOwen was notified, pursuant to Chapter 119. of the Ohio Revised Code, by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing. Attached hereto and incorporated with this Agreement is the Notice of Opportunity letter dated June 29, 1993, marked as Exhibit A.
3. As demonstrated by return receipt of July 2, 1993, Douglas E. McOwen received the letter of June 29, 1993, informing him of the allegations against him and his rights.
4. Douglas E. McOwen, by and through his counsel, requested a hearing and a hearing was scheduled in accordance with Chapter 119. of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Douglas E. McOwen knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Douglas E. McOwen's license to practice pharmacy in the state of Ohio is suspended indefinitely, effective July 15, 1994. Division (B) of Section 4729.16 of the Revised Code provides that: "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.
 - (1) Further, the Board will reinstate Douglas E. McOwen on October 15, 1994, and place his identification card on probation through October 15, 1996, provided that Douglas E. McOwen takes and successfully completes the Jurisprudence and Federal Drug Law Examinations offered by the Board prior to October 15, 1994. The terms of probation are as follows:
 - (a) Douglas E. McOwen must not violate the drug laws of the state of Ohio, any other state, or the federal government;
 - (b) Douglas E. McOwen must abide by the rules of the State Board of Pharmacy;
 - (c) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Douglas E. McOwen's pharmacist identification card is not in good standing and hereby denies him the privilege of being a preceptor and training pharmacy interns until October 15, 1996; and
 - (d) Douglas E. McOwen must comply with the terms of this Agreement.
 - (2) If Douglas E. McOwen does not receive a passing score prior to October 15, 1994, the indefinite suspension will remain in effect until the exams are successfully completed.
- (B) The State Board of Pharmacy imposes a monetary penalty of \$1,000.00 due and owing prior to August 15, 1994. 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 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Douglas E. McOwen appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may institute formal disciplinary proceedings for any and all possible violations or breaches including, but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Douglas E. McOwen acknowledges that he has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on

