



OHIO STATE BOARD OF PHARMACY

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

-Equal Opportunity Employer and Service Provider-

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URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-060817-006)

In The Matter Of:

TIMOTHY E. GILMARTIN, R.Ph.
7617 Diamondback Avenue, N.W.
Canal Fulton, Ohio 44614

(R.Ph. No. 03-2-12551)

INTRODUCTION

THE MATTER OF TIMOTHY E. GILMARTIN CAME FOR HEARING ON MARCH 6, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JAMES E. TURNER, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

TIMOTHY E. GILMARTIN WAS NOT REPRESENTED BY COUNSEL. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Thomas Michael Miksch, Ohio State Board of Pharmacy
2. Timothy E. Gilmartin, R.Ph., Respondent

Respondent's Witnesses

None

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [08-17-06]
1A-1B. Procedurals
1C. Addendum Notice [02-13-07]
1D-1E. Procedurals
2. State Board of Pharmacy Order, with attachments, in re Timothy E. Gilmartin [01-29-88]
3. Notarized Statement of Timothy Gilmartin [08-11-06]
4. Three Photographs of two Stock Bottles of Hydrocodone 7.5/750 mg and 5/500 mg tablets [not dated]
5. Dangerous Drug Distributor Inspection Report/Receipt [08-11-06]
6. Indictment, State of Ohio v. Timothy E. Gilmartin, Case No. 2006-09-3529 [10-05-06];
Journal Entry [11-20-06]

Respondent's Exhibits

None

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 Board of Pharmacy indicate that Timothy E. Gilmartin 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 August 17, 2006. Records further reflect that Timothy E. Gilmartin was previously disciplined by the Board on January 29, 1988.
- (2) Timothy E. Gilmartin is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Timothy E. Gilmartin has admitted to a Board agent that he is addicted to hydrocodone. Timothy E. Gilmartin has admitted to stealing hydrocodone, a Schedule III controlled substance, from his employers for the past ten years. Timothy E. Gilmartin indicated that he stole approximately one to two 500-count bottles of hydrocodone per month for his own personal abuse. Such conduct indicates that Timothy E. Gilmartin is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Timothy E. Gilmartin did, on or about the month of August, 2006, with purpose to deprive, knowingly obtain or exert control over a bottle of 500 unit doses of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance, the property of CVS, by deception, to wit: Timothy E. Gilmartin admittedly stole a full stock bottle of hydrocodone from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Timothy E. Gilmartin did, on or about the month of August, 2006, with purpose to deprive, knowingly obtain or exert control over a bottle of 500 unit doses of hydrocodone/APAP 5/500 mg, a Schedule III controlled substance, the property of CVS, by deception, to wit: Timothy E. Gilmartin admittedly stole a full stock bottle of hydrocodone from his employer, and he relinquished to a Board agent 295 tablets that he had yet to consume. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) On or about November 20, 2006, Timothy E. Gilmartin pled guilty to two (2) counts of Possession of Drugs, felonies of the third degree, under Section 2925.11(A), two (2) counts of Theft of Drugs, felonies of the fourth degree, under Section 2913.02(A)(3) of the Ohio Revised Code. Timothy E. Gilmartin was granted Intervention in Lieu of Conviction. State of Ohio vs. Timothy E. Gilmartin, Case No. CR 06 09 3529, Summit County Common Pleas Court.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (3) through (5) 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 (3) through (5) 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 paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or 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 paragraph (5) of the Findings of Fact constitutes 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 Timothy E. Gilmartin on August 17, 2006.

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 suspends indefinitely the pharmacist identification card, No. 03-2-12551, held by Timothy E. Gilmartin and such suspension is effective as of the date of the mailing of this Order.

- (A) Timothy E. Gilmartin, 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.
- (B) Timothy E. Gilmartin, 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.

Further, after three years from the effective date of this Order, the Board will consider any petition filed by Timothy E. Gilmartin for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (A) Timothy E. Gilmartin must enter into a **new** contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, and submit a copy of the signed contract to the Board office. The contract must provide that:
 - (1) **Random, observed** urine drug screens shall be conducted at least once each month.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

- (b) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
- (2) The intervener/sponsor shall submit to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
- (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
- (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Timothy E. Gilmartin must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (C) Timothy E. Gilmartin must provide, at the reinstatement petition hearing, documentation of the following:
 - (1) An effort of payment for restitution to CVS Pharmacy;
 - (2) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);
 - (3) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
 - (4) Compliance with the terms of this Order.
- (D) If reinstatement is not accomplished within four years of the effective date of this Order, Timothy E. Gilmartin must also show successful completion of the NAPLEX and MPJE examinations or equivalent examinations approved by the Board.
- (E) Upon such time as the Board may consider reinstatement, Timothy E. Gilmartin will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).
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 a Notice of Appeal with both the State Board of Pharmacy and 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: **April 12, 2007**

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9805 7752

WTW/lf

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



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

August 17, 2006

Timothy E. Gilmartin, R.Ph.
7617 Diamondback Avenue, N.W.
Canal Fulton, Ohio 44614

Re: Ohio Registered Pharmacist
Number 03-2-12551

Dear Mr. Gilmartin:

In accordance with Section 3719.121(A) of the Ohio Revised Code, the Board has determined that you are addicted to the use of controlled substances. The reasons for the Board's action are that you have committed any and/or all of the following acts:

- (1) Records of the 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 that you were previously disciplined by the Board on January 29, 1988.
- (2) You are addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy, to wit: you have admitted to a Board agent that you are addicted to hydrocodone. You have admitted to stealing hydrocodone, a Schedule III controlled substance, from your employers for the past ten years. You indicated that you stole approximately one to two 500-count bottles of hydrocodone per month for your own personal abuse. Such conduct indicates that you are within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) You did, on or about the month of August, 2006, with purpose to deprive, knowingly obtain or exert control over a bottle of 500 unit doses of hydrocodone/APAP 7.5/750 mg, a Schedule III controlled substance, the property of CVS, by deception, to wit: you admittedly stole a full stock bottle of hydrocodone from your employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) You did, on or about the month of August, 2006, with purpose to deprive, knowingly obtain or exert control over a bottle of 500 unit doses of hydrocodone/APAP 5/500 mg, a Schedule III controlled substance, the property of CVS, by deception, to wit: you admittedly stole a full stock bottle of hydrocodone from your employer, and you relinquished to a Board agent 295 tablets that you had yet to consume. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(A) of the Ohio Revised Code states, in pertinent part: "any ... pharmacist, ... who is or becomes addicted to the use of controlled substances, shall be suspended by the board that authorized the person's license, certificate, or registration..."

WHEREFORE, PURSUANT TO SECTION 3719.121(A) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO IS 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 has been held pursuant to Chapter 119. of the Revised Code, and a final Order has been issued, during which time you may not engage in the practice of pharmacy.

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 the pharmacist or pharmacy intern 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

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

WTW: (D-060817-006)



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THE STATE BOARD OF PHARMACY

(Docket No. D—871016—048)

In The Matter Of:

TIMOTHY E. GILMARTIN, R.Ph.
5005. Main Street, Apt. F
Webster Springs, West Virginia 26288

THE MATTER OF TIMOTHY E. GILMARTIN CAME ON FOR CONSIDERATION BY THE STATE BOARD OF PHARMACY ON DECEMBER 2, 1987. MOTIONS WERE MADE AND RECORDED TO ADOPT THE FOLLOWING ORDER:

Findings of Fact

- (1) On October 16, 1987, Timothy E. Gilmartin, R.Ph. No. 03—2—12551, was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his position, contentions, and arguments in writing.
- (2) As demonstrated by return receipt of October 20, 1987, Timothy E. Gilmartin received the letter of October 16, 1987 informing him that the Board proposed to deny his application for renewal of his identification card since he had not continued his pharmacy education in accordance with Section 4729.12 of the Revised Code, and Chapter 4729—7 of the Administrative Code.
- (3) Timothy E. Gilmartin has not responded in any manner to the letter of October 16, 1987, and has not requested a hearing in this matter.
- (4) The State Board of Pharmacy finds that Timothy E. Gilmartin has not continued his pharmacy education in accordance with Chapter 4729—7 of the Ohio Administrative Code.
- (5) The State Board of Pharmacy finds that Timothy B. Gilmartin has not submitted the required 4.5 CEUs needed for renewal of his pharmacist license.

Conclusion of Law

- (1) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (4) and (5) of the Findings Of Fact constitutes failure to meet the requirements for a renewal identification card as set forth in Section 4729.12 of the Ohio Revised Code.

Pursuant to Section 4729.12 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusion of Law, the State Board of Pharmacy hereby denies the renewal application for an identification card of Timothy E. Gilmartin.

After fifteen (15) days following the issuance of this Order, Timothy E. Gilmartin may not engage in the active practice of pharmacy in Ohio, and may not compound or dispense dangerous drugs in Ohio.

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 ORDER ISSUED: January 29, 1988

By: Franklin Z. Wickham, Executive Director

Enc/Pharmacist ID Card Summary

License Reciprocation Note

cc: Christopher Costantini, Assistant Attorney General