



OHIO STATE BOARD OF PHARMACY

77 S. High St., 17th Floor; Columbus, Ohio 43266-0320

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-Equal Opportunity Employer and Service Provider-

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950502-050)

In The Matter Of:

SHERYL JoANN DOWNEY, R.Ph.

3048 Southern Road

Richfield, Ohio 44286

(R.Ph. No. 03-2-13928)

INTRODUCTION

THE MATTER OF SHERYL JoANN DOWNEY CAME TO HEARING ON JUNE 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.

SHERYL JoANN DOWNEY WAS REPRESENTED BY BRUCE H. BRUBAKER, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Gallagher, Ohio State Board of Pharmacy
- (2) Sheryl JoAnn Downey, Respondent
- (3) Tim Benedict, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Fred Karaffa, M.D., Shepherd Hill Hospital
- (2) Craig S. Downey

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Hearing Request letter dated April 25, 1995, and pages five and six of the Order of the Board in the matter of Sheryl JoAnn Downey dated February 14, 1994.
- (2) Exhibit 2--Hearing Schedule letter dated May 2, 1995.
- (3) Exhibit 3--Copy of the Order of the State Board of Pharmacy, Docket No. D-930429-083, in the matter of Sheryl JoAnn Downey dated February 14, 1994.
- (4) Exhibit 4--Copy of PRO Inc. Pharmacist's Recovery Contract of Sheryl Downey dated February 11, 1995.

Respondent's Exhibits:

- (1) Exhibit A--Two-page copy of Shepherd Hill Hospital Recovery Monitoring Services Agreement of Sheryl Downey dated July 9, 1993, and April 13, 1994.
- (2) Exhibit B--Two-page copy of PRO Inc. Pharmacist's Recovery Contract of Sheryl Downey dated February 11, 1995.
- (3) Exhibit C--Copy of Shepherd Hill RMS Extended Service Agreement of Sheryl J. Downey dated June 13, 1995.
- (4) Exhibit D--Copy of letter from Jacqueline Abrams dated June 14, 1995.
- (5) Exhibit E--Copy of letter from Shirley Lathem dated June 14, 1995.
- (6) Exhibit F--Copy of letter from Carol M. Noble dated June 17, 1995.
- (7) Exhibit G--Four-page copy of meeting verification sheets dated from July 13, 1993, through March 21, 1995.
- (8) Exhibit H--Eighteen-page copy of meeting verification sheets of Sherry Downey dated from July 31, 1993, through June 21, 1995.
- (9) Exhibit I--Letter from Massood R. Babai, M.D. dated June 15, 1995.
- (10) Exhibit J--Two-page facsimile from Bruce Brubaker as follows: page one - cover sheet dated June 28, 1995, and page two - letter from Robert L. Hope dated June 13, 1995.
- (11) Exhibit K--Pages one through sixty-five of a seventy-eight (*sic*) page facsimile received from Dr. Fred Karaffa on June 28, 1995, regarding urine drugs screens of Sheryl J. Downey dated from July 19, 1993, through June 14, 1995.
- (12) Exhibit L-- Pages sixty-six through eighty of a seventy-eight(*sic*) page facsimile received from Dr. Fred Karaffa on June 28, 1995, as follows: copies of twelve letters from Fred N. Karaffa dated November 17, 1993; November 30, 1993; December 22, 1993; January 28, 1994; March 21, 1994; June 21, 1994; July 18, 1994; September 27, 1994; November 16, 1994; January 13, 1995; March 24, 1995; and June 28, 1995; and two copies of letters from Andrew Seipel, M.D. dated August 23, 1993; and October 11, 1993.

FINDING 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) Sheryl JoAnn Downey did not meet the conditions for reinstatement set forth in the Order of the Board, Docket No. D-930429-083, dated February 14, 1994.

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the Finding of Fact constitutes not meeting the requirements for reinstatement as set forth in the Order of the State Board of Pharmacy, Docket No. D-930429-083.

ACTION OF THE BOARD

Pursuant to the Order of the Board, Docket No. D-930429-083, the Ohio State Board of Pharmacy takes the following actions in the matter of Sheryl JoAnn Downey:

- (A) On the basis of the Finding of Fact set forth above, the State Board of Pharmacy hereby denies the petition for reinstatement of Sheryl JoAnn Downey, and Ms. Downey's pharmacist identification card, No. 03-2-13928, will remain suspended indefinitely. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Sheryl JoAnn Downey may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while suspended.
- (B) Twelve months after the date of the mailing of this Order, the Board will consider any petition filed by Sheryl JoAnn Downey for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of her license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
 - (1) Sheryl JoAnn Downey must provide a new contract with the Pharmacists Rehabilitation Organization, Inc. or other certified Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment program acceptable to the Board for a period of not less than five years. The contract must provide that:
 - (a) random, **observed** urine screens shall be conducted twice a month. The urinalysis drug screens must include reporting of specific gravity;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
 - (c) the program shall immediately report to the Board of Pharmacy any violations of the contract.
 - (2) Sheryl JoAnn Downey must provide, at the time of petitioning the Board for reinstatement, a copy of the treatment provider contract signed within thirty days from the date of this Order, and complete documentation of compliance with this Order and the treatment contract including, but not limited to, any written reports, written documentation from her treatment provider regarding compliance with the program pursuant to the contract, all urine screens, and any other relevant documents.

SHERYL JoANN DOWNEY, R.Ph.

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Order of the Board

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 the 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 (Aye-7/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 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 Ohio Revised Code.

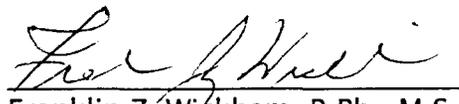
BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED

AND EFFECTIVE: AUGUST 4, 1995

CERTIFIED MAIL
Return Receipt
#Z 000 929 588

By:



Franklin Z. Wickham, R.Ph., M.S.
Executive Director

FZW/so

xc: Larry Pratt, Assistant Attorney General
Bruce H. Brubaker, Attorney for Respondent; 60 York Street; Akron, Ohio 44310



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ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-930429-083)

In The Matter Of:

SHERYL JoANN DOWNEY, R.Ph.
3048 Southern Road
Richfield, Ohio 44286
(R.Ph. No. 03-2-13928)

INTRODUCTION

THE MATTER OF SHERYL JoANN DOWNEY CAME TO HEARING ON DECEMBER 8, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; TIMOTHY D. MOORE, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

SHERYL JoANN DOWNEY WAS REPRESENTED BY BRUCE H. BRUBAKER, AND THE STATE OF OHIO WAS REPRESENTED BY GREGG THORNTON, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joseph R. Sabino, Jr.; Revco, Pharmacy Supervisor
- (2) Robert Hope; Revco, Loss Prevention Manager
- (3) David Gallagher; Ohio Board of Pharmacy

Respondent's Witnesses:

- (1) Sheryl JoAnn Downey, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Summary Suspension Order/Notice of Opportunity letter dated April 29, 1993.
- (2) Exhibit 1A - Hearing Request letter dated May 21, 1993.
- (3) Exhibit 1B - Hearing Schedule letter dated May 24, 1993.
- (4) Exhibit 1C - Representation letter from Bruce H. Brubaker dated October 12, 1993.
- (5) Exhibit 1D - Hearing Schedule letter dated October 21, 1993.
- (6) Exhibit 1E - Pharmacist File Front Sheet of Sheryl JoAnn Sidles Downey showing original date of registration as August 1, 1980.

- (7) Exhibit 2 - Copy of handwritten statement of Sheryl J. Downey signed and witnessed on April 1, 1993.
- (8) Exhibit 3 - Journal Entry in the Court of Common Pleas, County of Summit, Case No. CR 93 06 1366, of Sheryl L. (sic J.) Downey dated July 22, 1993; and Journal Entry in the Court of Common Pleas, County of Summit, Case No. CR 93 06 1366, of Sheryl L. (sic J.) Downey dated August 26, 1993.
- (9) Exhibit 4 - Prescription number 1309-397347.
- (10) Exhibit 5 - Sixteen-page Revco Prescription Access Link, Patient Insurance Profile from January 1, 1991, to April 2, 1993, of Sheree J. Downey dated April 5, 1993.
- (11) Exhibit 6A - Two-page list of prescription drugs, Case No. 93-1294, listed in date sequence.
- (12) Exhibit 6B - Two-page list of prescription drugs, Case No. 93-1294, listed in alphabetical order by drug.
- (13) Exhibit 6C - Two-page list of prescription drugs, Case No. 93-1294, listed in alphabetical order by drug showing usage.
- (14) Exhibit 7 - Ohio State Board of Pharmacy, Statement Form, Case No. 93-1294, of Massood R. Babai, M.D. signed and notarized on August 10, 1993.
- (15) Exhibit 8A - Revco - Loss Prevention, Report of Controlled Substance Audit of Store No. 1309 dated April 2, 1993.
- (16) Exhibit 8B - Revco - Loss Prevention, Controlled Substance Audit Computation Chart of Store No. 1309, for the following drugs: Lorazepam 1mg, Lorazepam 2mg, Darvocet N-100, Propoxyphene N-100 APAP, Klonopin .5mg, and Klonopin 1mg, report dated April 12, 1993.
- (17) Exhibit 8C - Revco - Loss Prevention, Controlled Substance Audit Computation Chart of Store No. 1309, for Ativan 1mg, dated April 12, 1993.
- (18) Exhibit 9 - City of Cuyahoga Falls, Ohio, Police Department, Case No. 91-00010348, regarding Sheryl J. Downey dated April 21, 1993.

Respondent's Exhibits:

- (1) Exhibit A - Two-page copy of Shepherd Hill Hospital, Recovery Monitoring Services Agreement of Sheryl Downey dated July 9, 1993; and copies of two pages of attachments regarding Ms. Downey's recovery plan.
- (2) Exhibit B - Motion for Treatment in Lieu of Sentencing in the Court of Common Pleas, Summit County, Ohio of Sheryl J. Downey dated August 12, 1993.
- (3) Exhibit C - First page of Journal Entry in the Court of Common Pleas, County of Summit, Case No. CR 93 06 1366, of Sheryl J. Downey, not dated.
- (4) Exhibit D - Two-page copy of Pharmacists Rehabilitation Organization Inc. Recovering Pharmacist's Contract of Sherry Downey dated October 18, 1993.
- (5) Exhibit E - Letter from Jacqueline J. Abrams dated December 3, 1993; letter from Craig S. Downey dated December 1, 1993; letter from Shirley Lathem dated November 16, 1993; letter from Kevin Kramer dated November 24, 1993; letter from Mary Spain dated November 19, 1993; and letter from Fred N. Karaffa dated November 17, 1993.
- (6) Exhibit F - Copies of eighteen Urinalysis Drug Screens of Sheryl Downey dated as follows: from July 21, 1993, to November 16, 1993.
- (7) Exhibit G - Six pages of AA/NA Meeting Verification Sheets of Sheryl Downey dated from July 31, 1993, to December 6, 1993; and copies of two Certificates of Completion of Sherry Downey dated October 23, 1993.

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 Sheryl JoAnn Downey was originally licensed to practice pharmacy in the state of Ohio on August 1, 1980; and on April 29, 1993, Ms. Downey's license was Summarily Suspended pursuant to Section 3719.121(B) of the Ohio Revised Code, to wit: the Board determined that there was clear and convincing evidence that the continuation of Sheryl JoAnn Downey's practice of pharmacy and/or her method of distributing controlled substances presented a danger of immediate and serious harm to others. The specific evidence in support of this determination is listed in paragraphs (2) through (5) below.
- (2) On April 1, 1993, Sheryl JoAnn Downey admitted stealing drugs such as Darvocet N-100 and Prednisone 20mg from her employer, Revco #1309, 2837 State Road, Cuyahoga Falls, Ohio.
- (3) Sheryl JoAnn Downey did, on or about January 12, 1993, intentionally make and/or knowingly possess a false or forged prescription, to wit: Sheryl JoAnn Downey created and maintained in the records of Revco #1309 prescription number 393993 which was not authorized by a practitioner, thereby forging records to cover drug shortages. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (4) Sheryl JoAnn Downey did, on or about March 5, 1993; March 19, 1993; and again on March 31, 1993; intentionally make and/or knowingly possess a false or forged prescription, to wit: Sheryl JoAnn Downey created and maintained in the records of Revco #1309 prescription number 397347 which was not authorized by a practitioner, thereby forging records to cover drug shortages. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (5) Sheryl JoAnn Downey did, between May 1, 1992, and April 8, 1993, with purpose to deprive, knowingly obtain or exert control over drugs belonging to Revco, beyond the express or implied consent of Revco, to wit: Sheryl JoAnn Downey stole the following controlled substances from Revco:

<u>Drug</u>	<u>Shortage</u>
Lorazepam 1mg	792 units
Ativan 1mg	18 units
Lorazepam 2mg	799 units
Darvocet N-100	240 units
Propoxyphene 100mg	36 units
Klonopin 1mg	7 units
Klonopin .5mg	65 units

Such conduct is in violation of Chapter 2913.02 of the Revised Code.

- (6) Sheryl JoAnn Downey did, on or about August 29, 1992, intentionally make and/or knowingly possess a false or forged prescription, to wit: Sheryl JoAnn Downey created and maintained in the records of Revco #1309 prescription number 386646 which was not authorized by a practitioner, thereby forging records to cover drug shortages. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (7) Sheryl JoAnn Downey is addicted to or abusing drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: Sheryl JoAnn Downey admitted to stealing drugs, forging prescriptions and other documents, and abusing drugs while practicing pharmacy due to her addiction.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) 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.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (7) 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 her unfit to practice pharmacy as provided in Division (A)(3) 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), (3), (4), and (6) 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 Chapters 2925., 3719., 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 April 29, 1993.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Sheryl JoAnn Downey:

- (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 suspends the identification card held by Sheryl JoAnn Downey indefinitely and such suspension is 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 suspends the identification card held by Sheryl JoAnn Downey indefinitely and such suspension is effective as of the date of the mailing of this Order.

SHERYL JoANN DOWNEY, R.Ph.
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Order of the Board

(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 suspends the identification card held by Sheryl JoAnn Downey indefinitely and such suspension is effective as of the date of the mailing of this Order.

(D) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Sheryl JoAnn Downey may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(E) Twelve months after the date of the mailing of this Order, Sheryl JoAnn Downey may request to appear before the Board in order to petition for reinstatement of her license to practice pharmacy in Ohio. The Board will consider the petition only if the following conditions have been met:

(1) Sheryl JoAnn Downey must modify her contract(s)/monitoring agreement(s) and, upon modification, submit the new contract(s)/monitoring agreement(s) to the Board office. The contract(s)/monitoring agreement(s) must provide that:

(a) the program shall immediately report to the Board of Pharmacy any positive urine screen or other violations of the contract(s)/monitoring agreement(s).

(b) the urinalysis drug screens must include testing for Propoxyphene.

(2) Sheryl JoAnn Downey must provide, at the time of petitioning the Board for reinstatement, written documentation from her treatment provider regarding compliance with the program pursuant to the contract(s)/monitoring agreement(s).

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.

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 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.

SHERYL JoANN DOWNEY, R.Ph.
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Order of the Board

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

ORDER MAILED

AND EFFECTIVE: FEBRUARY 14, 1994

CERTIFIED MAIL
Return Receipt
#P 373 708 545

FZW/so

By



Franklin Z. Wickham, R.Ph., M.S.
Executive Director

cc: Gregg Thornton, Assistant Attorney General
Bruce H. Brubaker, Attorney for Respondent; 60 York Street;
Akron, Ohio 44310