



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-040426-067)

In The Matter Of:

JOSEPH MARTIN RUKSE, JR., R.Ph.

23 Colonial Court

Barboursville, West Virginia 25504

(R.Ph. No. 03-2-15318)

INTRODUCTION

THE MATTER OF JOSEPH MARTIN RUKSE, JR. CAME FOR HEARING ON JANUARY 3, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JOSEPH MARTIN RUKSE, JR. WAS REPRESENTED BY DOUGLAS E. GRAFF AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. None

Respondent's Witnesses

1. Joseph Martin Rukse, Jr., R.Ph., Respondent
2. Michael D. Quigley, R.Ph.

State's Exhibits

1. Reinstatement Hearing Request letter from Joseph M. Rukse, Jr. [03-31-04]
- 1A-1C. Procedurals
2. State Board of Pharmacy Order in re Joseph Martin Rukse, Jr. [07-21-03]
3. State Board of Pharmacy Order in re Joseph Martin Rukse, Jr. [05-05-99]
4. Information, United States of America v. Joseph M. Rukse, Jr. Case No. 3:00-00219, United States District Court For The Southern District of West Virginia, Huntington [10-11-00]; Letter of Agreement in re United States v. Joseph M. Rukse, Jr. [07-18-00]; Order [11-13-00]; Judgment in a Criminal Case [01-24-01]

5. KMart Loss Control Report of Investigation [03-01-97]
6. Criminal Affidavit, Complaint By Prosecuting Attorney Upon Affidavit, and Judgment Entry of Plea and Sentencing, for Theft. State of Ohio vs. Joseph Rukse, Case No. 97-CRA-393, Lawrence County Municipal Court [04-29-97 to 06-02-97]
7. Renewal Application for Pharmacist License of Joseph M. Rukse, Jr. [07-15-97]
8. Complaint, State of Ohio v. Rukse, Case No. 98/013821, Franklin County Municipal Court [05-29-98]; Sentencing Entry [11-24-98]
9. Copy of letter from William T. Douglass, Jr. [04-23-02]

Respondent's Exhibits

- A. Letter from Michael D. Quigley, R.Ph. [11-18-04]; Three PRO Pharmacist's Recovery Contracts for Joseph Rukse [08-25-00, 06/21/02, and 07-25-03]
- B. Treatment Progress Report for Joseph M. Rukse from Frederick N. Karaffa, M.D. [12-29-00]; Shepherd Hill Hospital Counselor Discharge Summary [05-24-00]; Marshall University Psychiatric Evaluation report [02-24-00] and clinical records (02/29/00 to 10/03/00) for Joe Rukse
- C. Calendar Pages for June 2000 to November 2004; Support Group Attendance Records [06-23-00 to 12-30-04]
- D. Letter from Lola I. Toney [11-16-04]; Drug Screen Reports [04-10-00 to 10-06-04]; Facsimile Transmission cover sheet and Letter from Lola I. Toney [01-03-05] with two Drug Screen Reports [11-29-04 and 12-09-04]
- E.C. Conditions of Probation and Supervised Release [01-24-01]; Criminal Docket [10-11-00 to 10-29-04]; Entirety of Agreement [11-13-00]; Information [not dated]. United States of America v. Joseph M. Rukse, Jr., Case No. 3:00CR00219-01, U.S. District Court for the Southern District of West Virginia.
- F. U.S. District Court: WVSD - Docket Report of Restitution [01-24-01 to 10-29-04]
- G. State Board of Pharmacy Order in re Joseph Martin Rukse, Jr. [07-21-03]
- H. Eighteen Letters of Support and Recommendation [12-15-00 to 11-23-04]
- I. Continuing Pharmaceutical Education Credit Statements and Certificates [05-21-02 to 07-28-04]
- J. Federal Correctional Institution Certificate of Achievement for Joseph Rukse [07-13-01]; Four Program Review Reports [03-07-01 to 11-15-01]
- K. Ohio State Board of Pharmacy Jurisprudence Examination (MPJE) grade letter [12-13-04]

FINDING 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 that Joseph Martin Rukse, Jr. has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-001226-027, effective July 21, 2003.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-2-15318, held by Joseph Martin Rukse, Jr. to practice pharmacy in Ohio and places Joseph Martin Rukse, Jr. on probation for five years beginning on the effective date of this Order, with the following conditions:

(A) Joseph Martin Rukse, Jr. 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 submit a copy of the signed contract to the Board office before his pharmacist identification card is issued. The contract must provide that:

- (1) Random, observed urine drug screens shall be conducted at least once each month for the first year and then at least once every three months for the remaining four years.
 - (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. Refusals of urine screens or diluted urine screens are equivalent to a positive result. Any positive results, including those that may have resulted from ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicate a violation of probation.
 - (2) The intervener/sponsor shall provide copies of all drug and alcohol screen reports to the Board in a timely fashion.
 - (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) Joseph Martin Rukse, Jr. must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) A written description of Joseph Martin Rukse, Jr.'s progress towards recovery and what Joseph Martin Rukse, Jr. has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that Joseph Martin Rukse, Jr.'s pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.

- (2) Joseph Martin Rukse, Jr. may not serve as a responsible pharmacist.
- (3) Joseph Martin Rukse, Jr. may not destroy, assist in, or witness the destruction of controlled substances.
- (4) Joseph Martin Rukse, Jr. may not, during the first six months of practice, work in a pharmacy more than 40 hours per week.
- (5) Joseph Martin Rukse, Jr. must, during the first six months of practice, work only with a pharmacist whose license is in good standing.
- (6) Joseph Martin Rukse, Jr. must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
- (7) Joseph Martin Rukse, Jr. must not violate the drug laws of Ohio, any other state, or the federal government.
- (8) Joseph Martin Rukse, Jr. must abide by the rules of the State Board of Pharmacy.
- (9) Joseph Martin Rukse, Jr. must comply with the terms of this Order.

(D) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Joseph Martin Rukse, Jr. is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.



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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-001226-027)

In The Matter Of:

JOSEPH MARTIN RUKSE, JR., R.Ph.
23 Colonial Court
Barboursville, West Virginia 25504
(R.Ph. No. 03-2-15318)

INTRODUCTION

THE MATTER OF JOSEPH MARTIN RUKSE, JR. CAME FOR HEARING ON JUNE 2, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JOSEPH MARTIN RUKSE, JR. WAS REPRESENTED BY DOUGLAS E. GRAFF AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Joseph Martin Rukse, Jr., R.Ph., Respondent

Respondent's Witnesses

1. Annetta Spurlock

State's Exhibits

1. Copy of Summary Suspension Order/Notice of Opportunity For Hearing [12-26-00]
1A-1K. Procedurals
2. Information, United States of America v. Joseph M. Rukse, Jr., Criminal No. 3:00-00219, U.S. District Court for the Southern District of West Virginia [10-11-00]
3. Letter of Agreement in re United States v. Joseph M. Rukse, Jr. [07-18-00]
4. Order [11-13-00]

5. Judgment in a Criminal Case [01-24-01]
6. Copy of State Board of Pharmacy Order in re Joseph Martin Rukse, Jr., R.Ph. [05-05-99]
7. Kmart Loss Control Report of Investigation [03-01-97]
8. Criminal Affidavit, Complaint By Prosecuting Attorney Upon Affidavit, and Judgement Entry of Plea and Sentencing, for Theft. State of Ohio vs. Joseph Rukse, Case No. 97-CRA-393, Lawrence County Municipal Court [04-29-97 to 06-02-97]
9. Standard Rules of Probation, Lawrence County Municipal Court [not dated]
10. Copy of Renewal Application for Pharmacist License of Joseph M. Rukse [07-15-97]
11. Complaint, State of Ohio v. Rukse, Case No. 98/013821, Franklin County Municipal Court [05-29-98]
12. Sentencing Entry [11-24-98]
13. Copy of letter from William T. Douglass, Jr. [04-23-02]

Respondent's Exhibits

- A1. Support Group Attendance Records [05-19-00 to 04-22-03]
- A2. Copy of PRO Pharmacist's Recovery Contract for Joseph Rukse [09-19-00]; Copy of PRO Pharmacist's Recovery Contract for Joseph Rukse [06-21-02]
- A3. Twelve Statements of Account re Joseph M. Rukse, Jr. by the U.S. Department of Justice [12-14-01 to 04-04-03]
- A4. Thirty-two Continuing Pharmaceutical Education Certificates [05-21-02 to 04-27-03]
- A5. Letter from Frederick N. Karaffa, M.D. [12-29-00]; Letter from Steve Gifford, B.A., CCDC III-E [06-06-00]
- A6. Letter from Kelly M. Clark [03-26-02]
- A7. Letter from J. Thomas Jones [12-21-00]
- A8. Copy of letter from John Paull Hogg [12-15-00]
- A9. Letter from Dana D. Varney [03-02]
- A10. Letter from Karl S. Valentine, R.Ph. [04-29-03]
- A11. Letter from Bruce J. Merkin, M.D. [05-01-03]
- A12. Letter from Kimberly D. Holton [04-12-03]
- A13. Letter from Robert Holton [not dated]
- A14. Letter from Marshall T. Reynolds [04-24-03]
- A15. Letter from Randy Patrick [not dated]
- A16. Copy of Certificate of Achievement [07-13-01], Copies of four Program Review Reports re Joseph M. Rukse, Jr. [03-02-01 to 11-09-01]
- A17. Copy of Facsimile Transmission Form from the United States Probation Office to Graff & Associates, L.P.A. [05/30/03], Drug Screen Reports [03-22-02 to 03-26-03]
- A18. Drug Screen Reports [01-22-02 to 03-11-02]
- A19. Drug Screen Reports [09-28-00 to 02-08-01]
- A20. U.S. Department of Justice Statement of Account re Joseph M. Rukse, Jr. [05-19-03]

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 Joseph Martin Rukse, Jr. was originally licensed by the State of Ohio as a pharmacist on September 27, 1983, pursuant to reciprocity, and that his license to practice pharmacy in Ohio was summarily suspended effective December 26, 2000.
- (2) Joseph Martin Rukse, Jr. is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Joseph Martin Rukse, Jr. has admitted that he has a chemical dependence, and that he has sought treatment. Such conduct indicates that Joseph Martin Rukse, Jr. falls within the ambit of Sections 3719.121(A) and 4729.16(A)(3) of the Ohio Revised Code.
- (3) Joseph Martin Rukse, Jr. was convicted on or about November 1, 2000, in the United States District Court for the Southern District of West Virginia of 18 U.S.C. § 1347 (defrauding a health care benefit program) and 21 U.S.C. § 843(a)(3) (acquire a controlled substance by deception). United States of America v. Joseph M. Rukse, Jr., Criminal Action No. 3:00-00219. Such conduct indicates that Joseph Martin Rukse falls within the ambit of Section 3719.121(C) of the Ohio Revised Code.
- (4) Joseph Martin Rukse, Jr. did, on various dates during the year 2000, violate his Board-Ordered probation, to wit: Joseph Martin Rukse, Jr. was placed on probation for three years by Board Order dated May 5, 1999. The Board suspended his license for forty-two months, but stayed thirty-six months on condition that he violate no drug laws. Paragraphs (2) and (3) above indicate that Joseph Martin Rukse, Jr. violated his probation.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraph (3) 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 paragraph (3) 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 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.

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 Joseph Martin Rukse, Jr. on December 26, 2000.

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. 03-2-15318, held by Joseph Martin Rukse, Jr. and such suspension is effective as of the date of the mailing of this Order.

- (A) Joseph Martin Rukse, Jr., 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) Joseph Martin Rukse, Jr., 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 December 31, 2004, the Board will consider any petition filed by Joseph Martin Rukse, Jr. 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) Joseph Martin Rukse, Jr. must take and pass the Multistate Pharmacy Jurisprudence Examination (MPJE) or an equivalent examination approved by the Board
- (B) Joseph Martin Rukse, Jr. must enter into a 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, upon signing, mail a copy of the 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. 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) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (C) Joseph Martin Rukse, Jr. 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.

- (D) Joseph Martin Rukse, Jr. must provide, at the reinstatement petition hearing, documentation of the following:
- (1) 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.);
 - (2) Compliance with the continuing pharmacy education requirements as 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 (i.e.-CEUs must be obtained during the three years immediately preceding the petition hearing);
 - (3) Compliance with the terms of this Order.
- (E) If reinstatement is not accomplished within three years of the effective date of this Order, Joseph Martin Rukse, Jr. must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-2).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JULY 21, 2003



OHIO STATE BOARD OF PHARMACY

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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

December 26, 2000

Joseph M. Rukse, R.Ph.
208 Bevis Circle
Huntington, WV 25705

Re: Ohio Registered Pharmacist
Number 03-2-15318

Dear Mr. Rukse:

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. Further, in accordance with Section 3719.121(C) of the Ohio Revised Code, the Board has determined that you were convicted of a felony drug abuse offense. 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 September 27, 1983, pursuant to reciprocity, and are currently licensed to practice pharmacy in the state of Ohio.
- (2) You are addicted to liquor or drugs or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy, to wit: you have admitted that you have a chemical dependence, and that you have sought treatment. Such conduct indicates that you fall within the ambit of Sections 3719.121(A), and 4729.16(A)(3) of the Ohio Revised Code.
- (3) You were convicted on or about November 1, 2000, in the United States District Court for the Southern District of West Virginia of 18 U.S.C. § 1347 (defrauding a health care benefit program) and 21 U.S.C. § 843(a)(3) (acquire a controlled substance by deception). United States of America v. Joseph M. Rukse, Jr., Criminal Action No. 3:00-00219. Such conduct indicates that you fall within the ambit of Sections 3719.121(C).
- (4) You did, on various dates during the year 2000, violate your Board-Ordered probation, to wit: you were placed on probation for three years by Board Order dated May 5, 1999. The Board suspended your license for forty-two months, but stayed thirty-six months on condition that you violate no drug laws. Paragraphs (2) and (3) above indicate that you violated your probation.

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 sub-

stances, shall be suspended by the board that authorized the person's license, certificate, or registration..."

YOU ARE HEREBY NOTIFIED that Section 3719.121(C) 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 SECTIONS 3719.121(A) and (C) 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, 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.

IF YOU REQUEST A HEARING within 30 days of the time of the mailing of this notice, such will be afforded. Such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. 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 you do not request such a hearing within thirty (30) days of the mailing of this notice, the 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.

(D-001226-027)

BY ORDER OF THE STATE BOARD OF PHARMACY

SUMMARY SUSPENSION EFFECTIVE DECEMBER 26, 2000

*This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.
(Order Effective July 21, 2003)*



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-981230-026)

In The Matter Of:

JOSEPH MARTIN RUKSE, JR., R.Ph.

208 Bevis Circle

Huntington, West Virginia 25705

(R.Ph. No. 03-2-15318)

INTRODUCTION

THE MATTER OF JOSEPH M. RUKSE, JR. CAME TO HEARING ON APRIL 5, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH MARTIN RUKSE, JR. WAS REPRESENTED BY ROBERT D. NOBLE, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) None

Respondent's Witnesses:

- (1) Joseph Martin Rukse, Jr., R.Ph., Respondent
(2) Darlene Rukse, Wife of Respondent
(3) Larry Edge, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated December 30, 1998.
(2) Exhibit 1A--Hearing Request letter dated January 12, 1999.
(3) Exhibit 1B--Copy of Hearing Schedule letter dated January 21, 1999.

- (4) Exhibit 1C--Copy of Pharmacist File Front Sheet of Joseph Martin Rukse, Jr. showing original date of registration as September 27, 1983, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-15318, for a license to practice pharmacy in Ohio from September 15, 1998, to September 15, 1999, of Joseph Martin Rukse, Jr. dated September 15, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated March 10, 1999.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated March 23, 1999.
- (7) Exhibit 2--Three-page copy of Kmart Loss Control Report of Investigation regarding Joseph Rukse dated March 1, 1997.
- (8) Exhibit 3--Certified copy of the following: Judgement Entry Plea and Sentencing in the Lawrence County Municipal Court, State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, dated June 2, 1997; Complaint by Prosecuting Attorney Upon Affidavit in the Lawrence County Municipal Court, State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, dated April 32 (*sic May 2*), 1997; and Criminal Affidavit of Joseph M. Butcher signed and notarized on April 29, 1997.
- (9) Exhibit 4--Copy of Rule 5 - Standard Rules of Probation in the Lawrence County Municipal Court.
- (10) Exhibit 5--Copy of front side of Renewal Application for Pharmacist License, No. 03-2-15318, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Joseph M. Rukse dated July 15, 1997.
- (11) Exhibit 5A--Copy of Complaint in the Franklin County Municipal Court in the matter of Joseph M. Rukse, Jr., Case No. 13821, dated May 28, 1998.
- (12) Exhibit 6--Three-page certified copy of Sentencing Entry in the Franklin County Municipal Court, State of Ohio, City of Columbus, Ohio, v. Rukse, Case No. 98/013821 dated November 24, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Education and Employment History of Joseph Martin Rukse, Jr. dated from 1972, to present.
- (2) Exhibit B--Copy of letter from David L. Hatfield dated March 1, 1999.
- (3) Exhibit C--Copy of letter from K. Paul St. Germain dated February 25, 1999.
- (4) Exhibit D--Copy of letter from Jerry Frame dated February 23, 1999.
- (5) Exhibit E--Copy of letter from Diane Varney dated February, 1999.
- (6) Exhibit F--Copy of letter from Larry W. Edge dated March 3, 1999.

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 of Pharmacy indicate that Joseph Martin Rukse, Jr. was originally licensed in the state of Ohio on September 27, 1983, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Joseph Martin Rukse, Jr. did, from January 20, 1997, through February 26, 1997, with purpose to deprive, knowingly obtain or exert control over property of Kmart Pharmacy #4422 in Chesapeake, Ohio, without consent, to wit: Joseph Martin Rukse, Jr. stole approximately \$879.22 in cash and merchandise from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (3) Joseph Martin Rukse, Jr. was, on or about June 2, 1997, convicted of theft, in violation of Section 2913.02 of the Ohio Revised Code, a misdemeanor of the first degree. State of Ohio vs. Joseph Rukse, Case No. 97CRA 393, Lawrence County Municipal Court.
- (4) Joseph Martin Rukse, Jr. did, on or about July 15, 1997, knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when the statement was made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, or registration, to wit: in order to obtain his pharmacy renewal license without repercussions, Joseph Martin Rukse, Jr. lied on his pharmacy renewal application, indicating that he had not been convicted of a felony or misdemeanor within the preceding eighteen months when in fact he had. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.
- (5) On November 24, 1998, Joseph Martin Rukse, Jr. entered a "no contest" plea to the charge of Attempted Falsification, a violation of Section 2923.02 of the Ohio Revised Code, being a misdemeanor of the second degree. State of Ohio vs. Joseph M. Rukse, Case No. 98/013821, Franklin County Municipal Court.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) 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.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (5) of the Findings of Fact constitute having been 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.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joseph Martin Rukse, Jr.:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-2-15318, held by Joseph Martin Rukse, Jr. for 42 months, and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Joseph Martin Rukse, Jr. may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is under active suspension.
- (B) Further, the Board will stay 36 months of the suspension and place the pharmacist identification card on probation during the 36-month stay. The terms of probation are as follows:
 - (1) The State Board of pharmacy hereby declares that Joseph Martin Rukse Jr.'s pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.

- (2) Joseph Martin Rukse Jr. may not serve as a responsible pharmacist.
- (3) Joseph Martin Rukse Jr. must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (4) Joseph Martin Rukse Jr. must abide by the rules of the Ohio State Board of Pharmacy.
- (5) Joseph Martin Rukse Jr. must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

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 license to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The wall 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-6/Nay-1).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE MAY 5, 1999