



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-021119-030)

In The Matter Of:

JOHN RANDALL TOMKO, R.Ph.

5812 Watson Street S.E.

Hubbard, Ohio 44425

(R.Ph. No. 03-2-15734)

INTRODUCTION

THE MATTER OF JOHN RANDALL TOMKO CAME FOR HEARING ON AUGUST 4, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE, R.Ph (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JOHN RANDALL TOMKO WAS REPRESENTED BY JOHN F. SHULTZ AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witnesses

1. John Randall Tomko, R.Ph., Respondent
2. Patricia Tomko, R.Ph.
3. Michael Quigley, R.Ph.

State's Exhibits

1. Reinstatement Hearing Request letter from John F. Shultz [11-18-02]
- 1A-1B. Procedurals
- 2.
- 2A. Copy of State Board of Pharmacy Order in re John R. Tomko, R.Ph. [9-19-02]
- 3.
- 4.
- 5.
- 6.

Respondent's Exhibits

- A. Copy of PRO Pharmacist's Recovery Contract for John (Randy) Tomko [10-09-02]

- B. Copy of Treatment Compliance letter from Murphy Lewis, M.Ed., CCDC-III-E [03-31-03]; Drug Screen Reports [08-12-02 to 03-03-03]
- C. Calendar pages for August 2002 to July 2003; Copy of Support Group Attendance Records [08-01-02 to 08-03-03]
- D. Compass Vision Licensee Summary Report [05-16-02 to 07-08-03]; Copy of letter from Brian Bizub, Lab Assistant [07-18-03]; Specimen Custody and Control Forms [07-25-02 to 07-28-03]; Drug Screen Report [07-28-03]
- E.
- F. Copy of State Board of Pharmacy Order in re John R. Tomko, R.Ph. [09-19-02]; Copy of Hearing Schedule letter [11-19-02]
- G. Copy of seventeen letters of support [12-03-02 to 08-02-03]
- H. Copy of eighteen pages of Continuing Pharmacy Education attendance summary and certificates [10-11-02 to 04-27-03]

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 John Randall Tomko has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-020307-045, effective September 19, 2002.

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. 03-2-15734, held by John Randall Tomko to practice pharmacy in Ohio and places John Randall Tomko on probation for five years beginning on the effective date of this Order, with the following conditions:

(A) John Randall Tomko 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 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. 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.

(c) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.

(2) The intervener/sponsor shall provide copies of all drug 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) John Randall Tomko 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 John Randall Tomko's progress towards recovery and what John Randall Tomko 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 John Randall Tomko'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) John Randall Tomko may not serve as a responsible pharmacist.

(3) John Randall Tomko may not destroy, assist in, or witness the destruction of controlled substances.

(4) John Randall Tomko must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.

(5) John Randall Tomko must not violate the drug laws of Ohio, any other state, or the federal government.

(6) John Randall Tomko must abide by the rules of the State Board of Pharmacy.

(7) John Randall Tomko 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.

If John Randall Tomko's pharmacist identification card to practice pharmacy in Ohio is not issued within three years of the effective date of this Order, John Randall Tomko must also take and pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination accepted by the Board.

John Randall Tomko 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 (Aye-6/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: SEPTEMBER 10, 2003

CERTIFIED MAIL / Return Receipt
#7099 3400 0013 9263 8949

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



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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020307-045)

In The Matter Of:

JOHN R. TOMKO, R.Ph.

5812 Watson Street S.E.

Hubbard, Ohio 44425

(R.Ph. No. 03-2-15734)

INTRODUCTION

THE MATTER OF JOHN R. TOMKO CAME FOR HEARING ON AUGUST 7, 2002, 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.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JOHN R. TOMKO WAS REPRESENTED BY JOHN R. SHULTZ AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

Joann D. Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. John R. Tomko, R.Ph., Respondent
2. Joseph Gioiello, R.Ph.
3. Patricia A. Tomko, R.Ph.

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing [03-07-02]
 - 1A-1C. Procedurals
 - 1D. Amendment Notice [04-23-02]
 - 1E. Procedurals
 - 1F.
 - 2.
 - 3.

JOHN R. TOMKO, R.Ph.

- 4.
- 5.
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- 9.
- 10.

Respondent's Exhibits

- A. Pharmacist's Recovery Contract for John Tomko [04-28-02]
- B.
- C. Support Group Attendance Records [03-04-02 to 07-30-02]
- D.
- E. Drug Screen Reports [05-16-02 to 07-25-02]
- F. Drug Screen Reports [03-04-02 to 07-29-02]
- G. Letters of Support from Patricia A. Tomko, R.Ph. [07-31-02]; Roy Perry, R.Ph. [not dated]; Murphy Lewis, M.Ed., CCDC-III-E [08-06-02]; Reverend Timothy H. O'Neill, Pastor [07-12-02]; Ralph Rich [07-14-02]; Gabriel J. Illes Jr., R.Ph. [06-19-02]; Richard Rumelfanger, R.Ph. [not dated]; Peter Cefrick Jr., R.Ph. [06-20-02]; David M. Tamulonis, R.Ph. [06-28-02]; Joseph C. Salmen, R.Ph. [07-29-02]; Todd R. Jaros, R.Ph. [07-11-02]; Christopher M. Holzman, R.Ph. [07-12-02]; and Eugene O'Brien, Ph.D. [07-23-02]
- H. Continuing Pharmaceutical Education Certificates [08-26-99 to 04-28-02]

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 John R. Tomko was licensed by the State of Ohio as a pharmacist, pursuant to examination, on August 8, 1984 and that his license to practice pharmacy in Ohio was summarily suspended effective March 7, 2002.
- (2) John R. Tomko is addicted to the use of controlled substances,
- (3)
- (4)
- (5)

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (3) through (5) of the Findings of Fact constitute being guilty of 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 (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 paragraphs (2) through (5) of the Findings of Fact constitute 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 John R. Tomko on March 7, 2002.

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. 03-2-15734, held by John R. Tomko and such suspension is effective as of the date of the mailing of this Order.

(A) John R. Tomko, 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) John R. Tomko, 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 nine months from the effective date of this Order, the Board will consider any petition filed by John R. Tomko 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) John R. Tomko 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.

JOHN R. TOMKO, R.Ph.

(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.

(B) John R. Tomko 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) John R. Tomko 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 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;

(3) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, John R. Tomko 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-1).

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

JOHN R. TOMKO, R.Ph.

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: SEPTEMBER 19, 2002

CERTIFIED MAIL / Return Receipt
#7099 3400 0014 5032 4265

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