



OHIO STATE BOARD OF PHARMACY

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-Equal Opportunity Employer and Service Provider-

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-050817-020)

In The Matter Of:

JANET ANN DeHART, R.Ph.

5265 Croft Mill Road

Bradford, Ohio 45308

(R.Ph. No. 03-2-16438)

INTRODUCTION

THE MATTER OF JANET ANN DeHART CAME FOR HEARING ON MARCH 8, 2006, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE R. EASTMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JANET ANN DeHART WAS REPRESENTED BY DOUGLAS E. GRAFF. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Jesse Wimberly, Ohio State Board of Pharmacy

Respondent's Witness

1. Janet Ann DeHart, R.Ph., Respondent

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [08-17-05]
1A-1C. Procedurals
2. Notarized Statement of Janet Ann DeHart [07-13-05]
3. Statement of Paula Hogan [07-07-05]
4. Walgreens Patient Prescription Profile for Janet DeHart [03-24-04 to 07-07-05]
5. Two Walgreen Company Item Movement Reports for Store #05517 and Store #4613 [07-11-05]
6. Photograph of two unmarked vials of tablets [not dated]
7. Indictment, State of Ohio vs. Janet Ann DeHart, Montgomery County Common Pleas Court, Case No. 2005 CR 03572 [10-28-05]; Decision and Order of Intervention in Lieu of Conviction [01-10-06]

Respondent's Exhibits

- A. Summary Suspension Order/Notice of Opportunity for Hearing letter [08-17-05]

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- B. Decision and Order of Intervention in Lieu of Conviction. State of Ohio vs. Janet Ann DeHart, Case No. 2005 CR 03572, Montgomery County Common Pleas Court [01-10-06]; Motion for Intervention in Lieu of Conviction [11-29-05]
 - C. Letter from Michael de Colgyll BA, CCDC III-E [02-07-06]; Miami County Mental Health Center Appointment Receipts for Janet A. DeHart [12-12-05 to 01-24-06]
 - D. Two Letters from Kathy Sowder, M.S. PCC, LICDC to Doug Graff [03-02-06 and 12-16-05]; Twelve Invoice/Receipts [08-23-05 to 02-01-06]
 - E. Three LabCorp Drug Screen Reports [09-07-05 to 11-03-05]; Three Quest Diagnostics Drug Screen Reports [12-08-05 to 03-01-06]
 - F. Calendar pages for September 2005 to February 2006; Support Group Attendance Records [08-18-05 to 02-22-06]; List of Books [not dated]
 - G. Letter from Jeffrey P. Compton Requesting Restitution to the Walgreen Company [08-31-05]; Restitution Receipt of Full Payment [11-18-05]
 - H. Letter from Nicholas R. Spagnola, M.D. [03-01-06]

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 Janet Ann DeHart was originally licensed by the State of Ohio as a pharmacist on August 6, 1986, pursuant to examination, and that her license to practice pharmacy in Ohio was summarily suspended effective August 17, 2005.
- (2) Janet Ann DeHart is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: Janet Ann DeHart has admitted to Board agents that she has stolen approximately 2,600 unit doses of butalbital with APAP since January or March of 2005 for her personal abuse of the drug; Janet Ann DeHart has admittedly consumed the drug while practicing pharmacy, using up to 10 tablets per day. Though she had been prescribed the medication, she stole more of the drug to deal with increased stress at home. Furthermore, Janet Ann DeHart was observed in May of 2005 practicing pharmacy when it was believed that she was impaired. Such conduct indicates that Janet Ann DeHart is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.
- (3) Janet Ann DeHart did, between January 2005 and July 13, 2005, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Walgreens, beyond the express or implied consent of the owner, to wit: Janet Ann DeHart has admittedly stolen 2,543 tablets of butalbital with APAP from Walgreens #4613 and 63 additional tablets from Walgreens #5517. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

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.

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- (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 paragraphs (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 her 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 Janet Ann DeHart on August 17, 2005.

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. 03-2-16438, held by Janet Ann DeHart and such suspension is effective as of the date of the mailing of this Order.

- (A) Janet Ann DeHart, 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) Janet Ann DeHart, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return her 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 one year from the effective date of this Order, the Board will consider any petition filed by Janet Ann DeHart 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) Janet Ann DeHart 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, 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. 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

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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) Janet Ann DeHart must demonstrate satisfactory proof to the Board that she is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.
- (C) Janet Ann DeHart 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, Janet Ann DeHart must also show successful completion of the NAPLEX and MPJE examinations or equivalent examinations 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 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.

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BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: APRIL 7, 2006

CERTIFIED MAIL/Return Receipt
7001 0360 0002 4139 7027

WTW/lf

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

cc: Sally Ann Steuk, Assistant Attorney General
Douglas E. Graff, Attorney for Respondent; Graff & Associates Co., L.P.A.;
604 East Rich Street; Columbus, Ohio 43215



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

August 17, 2005

Janet Ann DeHart, R.Ph.
5265 Croft Mill Road
Bradford, Ohio 45308

Re: Ohio Registered Pharmacist
Number 03-2-16438

Dear Ms. DeHart:

In accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice presents a danger of immediate and serious harm to others. 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 6, 1986, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio.
- (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 Board agents that you have stolen approximately 2,600 unit doses of butalbital with APAP since January or March of 2005 for your personal abuse of the drug; you have admittedly consumed the drug while practicing pharmacy, using up to 10 tablets per day. Though you have been prescribed the medication, you steal more of the drug to deal with increased stress at home. Furthermore, you were observed in May of 2005 practicing pharmacy when it was believed that you were impaired. 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, between January 2005 and July 13, 2005, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Walgreens, beyond the express or implied consent of the owner, to wit: you have admittedly stolen 2,543 tablets of butalbital with APAP from Walgreens #5517 and 63 additional tablets from Walgreens #4613. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code, and if proven constitutes being guilty of a felony or gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

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

- (B) If the board under which a person has been issued a license, . . . , . . . determines that there is clear and convincing evidence that continuation of the person's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license, . . . , . . . , without a prior hearing.

WHEREFORE, PURSUANT TO SECTION 3719.121(B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO ARE HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until a final adjudication order becomes effective, 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;

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- (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 REQUEST A HEARING within thirty (30) days of the time of the mailing of this notice, such will be afforded. 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 HEREBY 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 (10) 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
(D-050817-020)