



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-040420-066)

In The Matter Of:

**DAVID RAY SPENCE, R.Ph.**

22072 Bolender Pontious Road  
Circleville, Ohio 43113

(R.Ph. No. 03-2-16627)

### INTRODUCTION

THE MATTER OF DAVID RAY SPENCE CAME FOR HEARING ON NOVEMBER 9, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph.; (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; KEVIN J. MITCHELL, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

DAVID RAY SPENCE WAS REPRESENTED BY DANIEL D. CONNOR AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

#### State's Witnesses

1. Christopher K. Reed, Ohio State Board of Pharmacy

#### Respondent's Witnesses

1. David Ray Spence, R.Ph., Respondent
2. Annette Paige Spence, R.Ph.
3. Michael Saunders
4. Denise Weaver

#### State's Exhibits

1. Notice of Opportunity For Hearing letter [04-20-04]
- 1A. Amendment/Addendum Notice letter [04-29-04]
- 1B-1E. Procedurals
2. Notarized Statement of David R. Spence, R.Ph. [03-17-04]
3. Stock bottle containing 82.5 phentermine 37.5 mg tablets [not dated]
5. Stock bottle containing 64 Provigil 200 mg tablets [not dated]
6. Drug Accountability Statement at Wal-Mart Pharmacy 10-2666 for Provigil 200 mg tablets [03-30-04]
7. Plastic bag containing 2.5 phentermine 37.5 mg tablets and 2 Provigil 200 mg tablets [not dated]

## Respondent's Exhibits

- A1. PRO Pharmacist's Recovery Contract for David Ray Spence [07-08-04]
- A2. Treatment Summary letter from Edna Jones, M.D. [10-19-04]
- A3. Three Treatment Compliance letters from Kerry Kennedy, MSW, LISW, CCDCIII [09-17-04 to 11-01-04]
- A4. Parkside Behavioral Healthcare Medical Records for David R. Spence [06-01-04 to 10-15-04]
- A5. Compass Vision, Inc. Drug Screen Report [10-20-04]; Licensee Summary Report [08-13-04 to 09-21-04]; LabCorp Drug Screen Reports [06-01-04 to 06-02-04]
- A6. Support Group Attendance Records [06-15-04 to 10-20-04]
- A7. Letters of Support [09-10-04 to 11-01-04]
- B. Support Group Attendance Records [10-20-04 to 11-07-04]

## 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 David Ray Spence was originally licensed by the State of Ohio as a pharmacist on November 5, 1986, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect that during the relevant time periods stated herein, David Ray Spence was the Responsible Pharmacist at Wal-Mart Pharmacy 10-5184, 6674 Winchester Boulevard, Canal Winchester, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) David Ray Spence did, on or about March 12, 2004, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Wal-Mart Pharmacy 10-5184, beyond the express or implied consent of the owner, to wit: David Ray Spence admittedly stole a stock bottle containing phentermine HCL 37.5 mg. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) David Ray Spence did, on or about March 12, 2004, knowing that an investigation was likely to be instituted, alter a thing with purpose to impair its value or availability as evidence in such investigation, to wit: David Ray Spence disconnected two video surveillance cameras so that he would not be video taped stealing drugs. Such conduct is in violation of Section 2921.12 of the Ohio Revised Code.
- (4) David Ray Spence was, on or about March 17, 2004, and dates preceding, abusing drugs to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code, to wit: David Ray Spence stole and abused drugs because he "wanted to get a lift" to help him work long hours in the pharmacy.
- (5) David Ray Spence did, on or about March 17, 2004, and during the preceding eighteen months, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Wal-Mart Pharmacy 10-2666, beyond the express or implied consent of the owner, to wit: David Ray Spence admittedly

stole four or five 100 count stock bottles containing Provigil 200 mg tablets. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (6) David Ray Spence did, on or about March 17, 2004, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: David Ray Spence possessed 64 tablets of Provigil 200 mg in his vehicle, outside the confines of a pharmacy, and without having a valid prescription for the drug. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (7) David Ray Spence did, on or about March 17, 2004, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: David Ray Spence possessed 82.5 tablets of phentermine HCL 37.5 mg in his residence, outside the confines of a pharmacy, and without having a valid prescription for the drug. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (8) David Ray Spence did, on or about March 17, 2004, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: David Ray Spence possessed 2.5 tablets of phentermine/HCL 37.5 mg and 2 tablets of Provigil 200 mg in a clear plastic bag on his person, outside the confines of the pharmacy, and without having a valid prescription for the drugs. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

#### CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (8) 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 (8) 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 (4) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs and 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 paragraphs (6) through (8) of the Findings of Fact constitute 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 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of David Ray Spence as follows:

(A) On the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for six months the pharmacist identification card, No. 03-2-16627, held by David Ray Spence effective as of the date of the mailing of this Order.

- (1) David Ray Spence, 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.
- (2) David Ray Spence, 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.

(B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places David Ray Spence on probation for five years effective upon reinstatement of his identification card. The terms of probation are as follows:

- (1) David Ray Spence 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 six months and submit a copy of the signed contract to the Board office before his pharmacist identification card is issued. The contract must provide that:
  - (a) 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.
    - (i) 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.
    - (ii) Phentermine and Provigil must be added to the standard urine drug screen and documentation provided to show inclusion in the test panel.
    - (iii) Results of all drug screens must be negative. Refusal of a drug screen or a diluted urine screen is 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 the contract.
  - (b) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.

- (c) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
  - (d) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (2) David Ray Spence 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:
  - (a) The written report and documentation provided by the treatment program pursuant to the contract, and
  - (b) A written description of David Ray Spence's progress towards recovery and what David Ray Spence has been doing during the previous three months.
- (3) David Ray Spence must provide documentation to the Board of full restitution to Wal-Mart Pharmacy 10-2666.
- (4) The State Board of Pharmacy hereby declares that David Ray Spence'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.
- (5) David Ray Spence may not serve as a responsible pharmacist.
- (6) David Ray Spence may not destroy, assist in, or witness the destruction of controlled substances.
- (7) David Ray Spence must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
- (8) David Ray Spence must not violate the drug laws of Ohio, any other state, or the federal government.
- (9) David Ray Spence must abide by the rules of the State Board of Pharmacy.
- (10) David Ray Spence must comply with the terms of this Order.
- (11) David Ray Spence's license is deemed not in good standing until successful completion of the probationary period.
- (12) 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.

David Ray Spence 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-7/Nay-0).  
MOTION CARRIED.  
SO ORDERED.

It is hereby certified by this Board that the preceding 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: DECEMBER 9, 2004

CERTIFIED MAIL / Return Receipt  
# 7003 0500 0002 4347 2771

WTW/lf

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

c: Sally Ann Steuk, Assistant Attorney General  
Daniel D. Connor, Attorney for Respondent; Connor Behal LLP; 501 S. High Street;  
Columbus, Ohio 43215