



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-070412-039)

In The Matter Of:

JOHN SHELL, R.Ph.

6387 Branchill-Miamiville Road

Loveland, Ohio 45140

(R.Ph. No. 03-2-18094)

INTRODUCTION

THE MATTER OF JOHN SHELL CAME FOR HEARING ON JUNE 4, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JAMES E. TURNER, 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.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

JOHN SHELL WAS REPRESENTED BY KEVIN P. BYERS. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witness

1. John Shell, R.Ph., Respondent

State's Exhibits

1. Reinstatement Hearing Request letter from Kevin P. Byers [04-11-07]
1A-1E. Procedurals
2. State Board of Pharmacy Order In Re John Shell, R.Ph. [04-07-06]

Respondent's Exhibits

- A. PRO Pharmacist's Recovery Contract for John Shell [04-30-06]
- B. FirstLab Test History Report [09-27-05 to 03-13-07]; NWT MedPro Panel "E" [updated 02-10-05]
- C. Drug Screen Reports [03-03-06 to 04-30-07]
- D. Support Group Attendance Records [04-03-06 to 04-28-07]
- E-F. Two Letters from Diane Brock, LICDC to John Shell [07-06-06 and 08-14-06]
- G. Letter from John H. Keyser, R.Ph. [04-19-07]
- H. Continuing Pharmaceutical Education Credits and Certificates [04-30-06 to 04-22-07]

- I. Letter from James F. Liebetrau, R.Ph. [05-22-07]
- J. Letter from Michael D. Quigley, R.Ph. [05-22-07]; FirstLab Test History Report [09-27-05 to 05-12-07]
- K. Support Group Attendance Records [04-30-07 to 05-30-07]

FINDING OF FACT

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds that John Shell has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-050208-045, effective April 7, 2006.

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. 03-2-18094, held by John Shell to practice pharmacy in Ohio and places John Shell on probation for five years beginning on the effective date of this Order, with the following conditions:

(A) John Shell 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) approved 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. Refusal of a urine screen or a diluted urine screen is equivalent to a positive result. 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) The intervener/sponsor shall submit to the Board reports, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.

(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 Shell 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 Shell's progress towards recovery and what John Shell 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 Shell'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 Shell may not serve as a responsible pharmacist.

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

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

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

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

(7) John Shell must comply with the terms of this Order.

(8) John Shell 's license is deemed not in good standing until successful completion of the probationary period.

(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.

John Shell 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-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 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 the ORIGINAL Notice of Appeal with the State Board of Pharmacy and a copy with 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: July 12, 2007

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

WTW/lf

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 1867

c: Sally Ann Steuk, Assistant Attorney General
Kevin P. Byers, Attorney for Respondent; Kevin P. Byers Co., LPA; 107 South High Street,
Suite 400; Columbus, Ohio 43215



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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-050208-045)

In The Matter Of:

JOHN SHELL, R.Ph.
6387 Branchill-Miamiville Road
Loveland, Ohio 45140
(R.Ph. No. 03-2-18094)

INTRODUCTION

THE MATTER OF JOHN SHELL CAME FOR HEARING ON MARCH 6, 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.

JOHN SHELL WAS REPRESENTED BY KEVIN P. BYERS. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Richard Haun, Ohio State Board of Pharmacy

Respondent's Witness

1. John Shell, R.Ph., Respondent

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [02-08-05]
- 1A-1E. Procedurals
2. Notarized Statement of John Shell [01-24-05]
3. Drug Accountability Statement at Sam's #6544 for hydrocodone 10/325 mg [01-24-05];
Drug Accountability Statement at Sam's #6544 for hydrocodone 10/500 mg [01-24-05];
Drug Accountability Statement at Sam's #6544 for hydrocodone 10/650 mg [01-24-05];
Drug Accountability Statement at Sam's #6544 for hydrocodone 10/660 mg [01-24-05];
Drug Accountability Statement at Sam's #6544 for hydrocodone 5/500 mg [01-24-05];
Drug Accountability Statement at Sam's #6544 for hydrocodone 7.5/750 mg [01-24-05];
Drug Accountability Statement at Sam's #6544 for propoxyphene-n/APAP 10/650 mg [01-24-05]
- 3A. Drug Accountability Statement at Sam's #8132 for hydrocodone 10/325 mg [01-24-05];
Drug Accountability Statement at Sam's #8132 for hydrocodone 10/650 mg [01-24-05];

- Drug Accountability Statement at Sam's #8132 for hydrocodone 5/500 mg [01-24-05];
Drug Accountability Statement at Sam's #8132 for hydrocodone 7.5/750 mg [01-24-05]
4. Rx #4402401 [09-08-04]; Rx #4403420 [09-10-04]; Rx #4403440 [09-16-04];
Rx #4402445 [09-21-04]; Rx #4403508 [09-25-04]; Rx #4403533 [09-30-04];
Rx #4403569 [10-09-04]; Rx #4403570 [10-09-04]

Respondent's Exhibits

- A. Indictment, State of Ohio vs. John Shell, Case No. B 0501028, Hamilton County Common Pleas Court [03-17-05]; Entry Withdrawing Plea of Not Guilty and Entering Plea of No Contest [03-30-05]; Entry Finding Defendant Eligible for Treatment in Lieu of Conviction, Staying Proceedings, and Ordering Period of Rehabilitation [07-05-05]
- B. Bethesda Alcohol and Drug Treatment Programs Discharge Summary for John Shell [06-06-05 to 07-18-05]
- C. Bethesda Alcohol and Drug Treatment Plan [07-18-05]
- D. PRO Pharmacists Recovery Contract for John Shell [08-07-05]
- E. Support Group Attendance Records [06-07-05 to 03-01-06]
- F. Northwest Toxicology Drug Screen Reports [09-27-05 to 02-08-06]
- G. Letter from James F. Liebetrau, R.Ph. [02-27-06]
- H. Letter from Ed Tullins [03-03-06]

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 John Shell was originally licensed by the State of Ohio as a pharmacist on October 26, 1989, pursuant to examination, and that his license to practice in Ohio was summarily suspended effective February 8, 2005.

(2) John Shell is addicted to or abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: John Shell has admitted to a Board agent that he has a serious drug problem and is addicted to controlled substances. Further, John Shell has admitted stealing controlled substances and abusing them while practicing pharmacy, consuming as many as forty-five hydrocodone tablets during a shift. John Shell has admitted to creating false prescriptions to cover the shortages. Such conduct indicates that John Shell is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

(3) John Shell did, from May 1, 2004, through January 31, 2005, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Sam's Pharmacy 10-6544 and Sam's Stores East, Inc. 10-8132, beyond the express or implied consent of the owner, to wit: John Shell has admittedly stolen over 1,700 unit doses of hydrocodone from Store 10-6544 and over 1,600 unit doses of hydrocodone from Store 10-8132. Such conduct, 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.

(4) John Shell did, on or about the following dates, intentionally create and/or knowingly possess the following false or forged prescriptions, to wit: John Shell

created and then possessed on file at the pharmacies the following documents, purporting to be prescriptions, so as to cover the drug thefts:

at Sam's Pharmacy 10-6544:

Date	Rx#	Drug	Qty
09/10/04	4403420	hydrocodone 7.5/750	135
09/16/04	4403440	hydrocodone 7.5/750	135
09/25/04	4403508	hydrocodone 7.5/750	120
09/30/04	4403533	hydrocodone 7.5/750	150
10/09/04	4403569	hydrocodone 7.5/750	150
10/09/04	4403570	hydrocodone 7.5/750	120

at Sam's Stores East, Inc. 10-8132:

Date	Rx#	Drug	Qty
09/08/04	4402401	hydrocodone 7.5/750	120
09/21/04	4402445	hydrocodone 10/325	120

Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute 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 paragraphs (3) and (4) 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) 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 (4) 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. and 3719. 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 Shell on February 8, 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. 03-2-18094, held by John Shell and such suspension is effective as of the date of the mailing of this Order.

(A) John Shell, 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 Shell, 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 one year from the effective date of this Order, the Board will consider any petition filed by John Shell 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 Shell 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 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 Shell 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 Shell 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 Shell 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-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 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: April 7, 2006

CERTIFIED MAIL/Return Receipt
7001 0360 0002 4139 4859

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

WTW/lf

cc: Sally Ann Steuk, Assistant Attorney General
Kevin P. Byers, Attorney for Respondent; 21 East State Street, Suite 220; Columbus,
Ohio 43215