



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-970701-001)

In The Matter Of:

**ERIK SCOT DAVIS**

1964 Blain Highway  
Waverly, Ohio 45690  
(D.O.B. 4/12/60)

### INTRODUCTION

THE MATTER OF ERIK SCOT DAVIS CAME TO HEARING ON JANUARY 14, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ERIK SCOT DAVIS WAS REPRESENTED BY MARK S. GUTENTAG, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David L. Rowland, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Erik Scot Davis, Respondent
- (2) Tamra Davis, Wife of Respondent
- (3) Dennis Garman, Mount Tabor Community Christian Church, Chillicothe, Ohio

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of five-page Notice of Opportunity for Hearing letter dated July 1, 1997.
- (2) Exhibit 1A--Hearing Request letter dated July 20, 1997.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated July 24, 1997.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated September 9, 1997.

- (5) Exhibit 1D--Letter of Representation and Continuance Request from the law firm of Gamble Hartshorn Alden Co. LPA dated October 1, 1997.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated October 6, 1997.
- (7) Exhibit 1F--Copy of Hearing Schedule letter dated November 14, 1997.
- (8) Exhibit 2--Application for Examination as a Pharmacist of Erik Scot Davis signed and notarized on May 5, 1997, with attached copy of seven-page Order of the State Board of Pharmacy, Docket No. D-920507-139, of Erik Scot Davis dated October 27, 1992, and explanation to section five of the application.
- (9) Exhibit 3--Copy of seven-page Order of the State Board of Pharmacy, Docket No. D-920507-139, of Erik Scot Davis dated October 27, 1992.
- (10) Exhibit 4--Two-page certified copy of Indictment in the Hamilton County Common Pleas Court, Case No. B912347, in the matter of Eric (*sic* Erik) S. Davis dated May 1, 1991.
- (11) Exhibit 4A--Certified copy of Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty in the Hamilton County Court of Common Pleas, The State of Ohio vs. Erik Davis, Case No. B912347 dated January 13, 1992.
- (12) Exhibit 4B--Certified copy of Entry Accepting Plea of Guilty in the Hamilton County Common Pleas Court, The State of Ohio vs. Erik S. Davis, Case No. B912347 dated October 28, 1992.
- (13) Exhibit 4C--Certified copy of Judgment Entry, Sentence, Incarceration in the Hamilton County Common Pleas Court, The State of Ohio vs. Erik S. Davis, Case No. B912347 dated October 28, 1992.
- (14) Exhibit 5--Three-page certified copy of Indictment in the Hamilton County Common Pleas Court, Case No. B914437, in the matter of Erik S. Davis dated July 31, 1991.
- (15) Exhibit 5A--Certified copy of Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty in the Hamilton County Court of Common Pleas, The State of Ohio vs. Erik Davis, Case No. B914437, dated October 28, 1992.
- (16) Exhibit 5B--Copy of Report of Probation Violation in the Hamilton County Court of Common Pleas, State of Ohio vs. Erik S. Davis, Case No. B914437, dated March 30, 1992.
- (17) Exhibit 5C--Certified copy of Entry Accepting Plea of Guilty in the Hamilton County Common Pleas Court, The State of Ohio vs. Erik S. Davis, Case No. B914437 dated October 28, 1992.
- (18) Exhibit 5D--Certified copy of Judgment Entry, Sentence, Incarceration in the Hamilton County Common Pleas Court, The State of Ohio vs. Erik S. Davis, Case No. B914437 dated October 28, 1992.
- (19) Exhibit 6--Two-page certified copy of Judgment Entry Sentencing Defendant in the Clermont County Court of Common Pleas, State of Ohio vs. Eric (*sic* Erik) S. Davis, Case No. 92-CR-005141, dated October 27, 1992.
- (20) Exhibit 7--Handwritten statement of Erik Scot Davis signed and notarized on January 31, 1992.

Respondent's Exhibits:

- (1) Exhibit A--Nine-page Introduction, Statement of Facts, Discussion, and Conclusion and subsections as follows: Section 1--Three-page letter from Erik Scot Davis dated December 24, 1997. Section 2--Six-page Curriculum Vita of Erik Scot Davis dated January, 1998. Section 3--Seven-page Order of the State Board of Pharmacy, Docket No. D-920507-139, of Erik Scot Davis dated October 27, 1992, and copy of five-page Notice of Opportunity for Hearing letter dated May 7, 1992. Section 4--Copy of eight-page unsigned Agreed Board Order #L-93-012 in the matter of Erik Scot Davis before the Texas State Board of Pharmacy, not dated; and copy of seven-page Order of the State Board of Pharmacy, Docket No. D-920507-139, of Erik Scot Davis dated October 27, 1992. Section 5--Two two-page letters from Tamra Lynn Davis dated January 3, 1998. Section 6--Letter from

Dennis Garman dated December 30, 1997; letter from Carl Alan Cox dated December 30, 1997; letter from Deric A. Cox dated December 31, 1997; letter from Mary Ellen Cox dated December 31, 1997; letter written on notebook paper, in black ink, name illegible, not dated; letter from Donna and Roger Remington, not dated; letter from Kim Young dated December 31, 1997; letter from John R. Cottrill not dated; letter from Jon and Cynthia Bee dated January 1, 1998; letter from Carol R. Arnold and Harry E. Arnold, Jr. dated December 30, 1997; two-page letter from Patty Richards, not dated; letter from Leeann Carter dated December 31, 1997; letter from Melody Derouin dated December 30, 1997; letter from Arvel D. Phipps dated December 30, 1997; copy of letter from Tod and Pam Gallagher dated December 30, 1997; letter from Martha Rucker dated January 4, 1998. Section 7--Five-page copy of 1960 OAG 1465 Attorney General's Opinion dated June 14, 1960. Section 8--Letter from Jennifer Clemans dated December 30, 1997; copies of two urine drug screen reports of Erik Davis dated April 18, 1997, and February 25, 1997; copies to two pages of AA Group attendance verification sheets of Erik Davis dated from April 15, 1997, through May 17, 1997. Section 9--Copy of letter from C. O. Elliott dated January 7, 1998. Section 10--Letter from Kevin G. Schill dated December 16, 1997.

#### 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 Erik Scot Davis submitted an Application for Examination as a Pharmacist on or about May 7, 1997.
- (2) Records further indicate that Erik Scot Davis was originally licensed to practice pharmacy in the state of Ohio on June 26, 1990, and his license was summarily suspended on or about January 6, 1992, in accordance with Section 3719.121 (C) of the Ohio Revised Code. Further, on or about October 27, 1992, the Board found the following to be fact:
  - (a) Erik Scot Davis was originally licensed in the state of Ohio on June 26, 1990, pursuant to reciprocity, and was suspended without a prior hearing on January 6, 1992, due to being judicially declared eligible for Treatment in Lieu of Conviction.
  - (b) Erik Scot Davis did, on or about March 23, 1991, operate a motor vehicle while under the influence of alcohol and/or drugs, and he was, on or about June 7, 1991, convicted in the Hamilton county Municipal Court of Operation of a Motor Vehicle While Under the Influence in violation of Section 4511.19 of the Ohio Revised Code.
  - (c) Erik Scot Davis did, on or about March 23, 1991, knowingly carry or have concealed on his person or concealed ready at hand a deadly weapon, to wit: when arrested for OMVI, Erik Scot Davis had a concealed 9mm semiautomatic firearm. Such conduct is in violation of Section 2923.12 of the Ohio Revised Code.
  - (d) Erik Scot Davis did, on or about January 30, 1992, with the purpose to deprive the owner, York Discount Drugs, 220 Main St., Owensville, Ohio 45160, knowingly obtain or exert control over dangerous drugs beyond the

consent of the owner, to wit: Erik Scot Davis stole 200 unit doses of Adipex-P and 1,000 unit doses of Diazepam 10mg. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (e) Erik Scot Davis did, on or about January 30, 1992, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code and when the sale was within 1,000 feet of a school building, to wit: after stealing 200 unit doses of Adipex-P and 1,000 unit doses of Diazepam 10mg, Erik Scot Davis sold them without a prescription and not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (f) Erik Scot Davis did, between the dates of August 7, 1991, and February 7, 1992, with the purpose to deprive the owner, York Discount Drugs, 220 Main St., Owensville, Ohio 45160, knowingly obtain or exert control over dangerous drugs beyond the consent of the owner, to wit: Erik Scot Davis stole the following drugs from his employer: 1,747 unit doses of Diazepam 10mg, 163 unit doses of Vicodin ES, 20 unit doses of Fastin 30mg, and 554 unit doses of Carisoprodol 350mg. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (g) Erik Scot Davis did, on or about the following dates, intentionally make and/or knowingly possess a false or forged prescription, to wit: Erik Scot Davis created and retained in the files of York Discount Drugs the following false and/or forged prescriptions for patient Ronald A. Cupp, allegedly authorized by telephone by Dr. Patricia Cusumano:

<u>Rx No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Date Sold</u>
C71792	Diazepam 10mg	100	11/07/91
C71792	Diazepam 10mg	100	11/11/91
C71792	Diazepam 10mg	100	11/13/91
C72088	Diazepam 10mg	100	11/18/91
C72088	Diazepam 10mg	100	11/25/91
C72088	Diazepam 10mg	100	12/09/91
C73295	Diazepam 10mg	100	12/26/91
C73295	Diazepam 10mg	100	01/14/92
C73295	Diazepam 10mg	100	01/27/92

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

- (h) Erik Scot Davis did, between November 7, 1991, and January 27, 1992, knowingly sell a controlled substance in an amount greater than three times the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Erik Scot Davis sold 900 unit doses of Diazepam 10mg without a valid prescription and not for a legitimate medical purpose. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.
- (i) Erik Scot Davis did, between February 1, 1991, and April 4, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope of consent of the owner, Rite Aid, to wit: Erik Scot Davis stole the following drugs:

<u>Drug</u>	<u>Quantity</u>
Vicodin ES	1
Tylenol #4	150
Glutethimide	71
Propoxyphene 65mg	73
Fiorinal w/Codeine	21
Phentermine 37.5mg	60
Diazepam 10mg	43
Phentermine 30mg	5
Temazepam 30mg	23
Flexeril	73
Valium 10mg	45
Valium 5mg	6
Soma	4
Halcion .25mg	124
Xanax	67
Synalgos	35
Oxazepam 30mg	3
Flurazepam	96
Diphenoxylate 2.5mg	2
Cocaine Crystals	350mg

These dangerous drugs were surrendered to the Cincinnati Police Department. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (j) Erik Scot Davis did, on or about March 31, 1991, intentionally make and/or knowingly possess a false or forged prescription, to wit: Erik Scot Davis fabricated false prescription number 011155 by transferring it from another pharmacy for the purpose of obtaining the drugs, 100 tablets of Vicodin ES, for himself. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (k) Erik Scot Davis did, on or about February 7, 1991, intentionally make and/or knowingly possess a false or forged prescription, to wit: Erik Scot Davis fabricated false prescription number 011155 by transferring it from another pharmacy for the purpose of obtaining the drugs, 100 tablets of Vicodin ES, for himself. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (l) Erik Scot Davis did, between February 1, 1991, and April 4, 1991, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope of consent of the owner, Rite Aid, to wit: Erik Scot Davis stole the following drugs:

<u>Drug</u>	<u>Quantity</u>
Halcion .25mg	171
Xanax 1mg	100
Diazepam 2mg	94
Ativan 1mg	98
Diazepam 10mg	120
Propoxyphene N-100	39

Propoxyphene N-50	20
Propoxyphene Comp. 65mg	85
Ionimin 30mg	58
Dalmane 30mg	30

These dangerous drugs were surrendered to the Ohio State Board of Pharmacy. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

The Board concluded that Erik Scot Davis was guilty of gross immorality; guilty of a felony; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy; and guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code within the meaning of Section 4729.16 of the Ohio Revised Code. For these reasons, Erik Scot Davis' license to practice pharmacy in the state of Ohio, No. 03-2-18565, was revoked.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(c) through (2)(l) of the Findings of Fact constitute being guilty of a felony as provided in paragraph (A) of Rule 4729-5-04 of the Ohio Administrative Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2)(a) and (2)(b) of the Findings of Fact constitute having been convicted of violating state or federal pharmacy or drug laws as provided in paragraph (B) of Rule 4729-5-04 of the Ohio Administrative Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes not being of good moral character and habits as provided in paragraph (C) of Rule 4729-5-04 of the Ohio Administrative Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2)(a) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs as provided in paragraph (D) of Rule 4729-5-04 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes having been disciplined by the Ohio State Board of Pharmacy pursuant to Section 4729.16 of the Revised Code as provided in paragraph (E) of Rule 4729-5-04 of the Ohio Administrative Code.

#### ACTION OF THE BOARD

Pursuant to Section 4729.08 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby denies the issuance of a certificate of registration or an identification card, and therefore denies the Application for Examination as a Pharmacist submitted by Erik Scot Davis.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-1).

MOTION CARRIED.

SO ORDERED.