

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-011004-014)

In The Matter Of:

FOSTER D. FARONE, R.Ph.
5472 Koiner Ford Road
Mt. Crawford, Virginia 22841
(R.Ph. No. 03-2-21590)

INTRODUCTION

THE MATTER OF FOSTER D. FARONE CAME FOR CONSIDERATION ON FEBRUARY 6, 2002, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph; AND JAMES E. TURNER, R.Ph.

FOSTER D. FARONE WAS NOT PRESENT NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Todd Knauss, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of letter from Foster D. Farone dated September 10, 2001.
- (2) Exhibit 1A--Copy of four-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated October 4, 2001.
- (3) Exhibit 1B--Copy of Ohio Pharmacist Computer Record of Foster D. Farone.
- (4) Exhibit 2-- Copy of thirteen pages of Pennsylvania State Police records for Incident No. E5-806246 that occurred on February 23, 1998 involving Foster D. Farone dated May 20, 1998 to October 26, 2001.
- (5) Exhibit 3--Copy of fifteen pages of Pennsylvania State Police records for Incident No. E5-805611 that occurred on February 28, 1998 involving Foster D. Farone dated April 30, 1998 to October 26, 2001; Copy of two-page "Sentence" for Verdict of Guilty to Obtaining Controlled Substance by Fraud, etc.; Theft, Commonwealth of Pennsylvania vs. Foster D. Farone, Case No. 1998-818, Crawford County, Pennsylvania Common Pleas Court, date not legible.

- (6) Exhibit 4--Copy of thirty-four pages of Pennsylvania State Police records for Incident No. E5-798506 that occurred on February 28, 1998 involving Foster D. Farone dated March 3, 1998 to October 26, 2001.
- (7) Exhibit 5--Copy of "Information", Commonwealth of Pennsylvania vs. Foster D. Farone, Criminal Action No. 1998-792, Crawford County Common Pleas Court, not dated.
- (8) Exhibit 6--Copy of two-page "Sentence" for Verdict of Guilty to Obtaining Controlled Substance by Fraud, etc.; Possession of Controlled Substance; Theft, Commonwealth of Pennsylvania vs. Foster D. Farone, Case No. 1998-792, Crawford County, Pennsylvania Common Pleas Court, dated September 12, 2001.
- (9) Exhibit 7--Copy of "Information", Commonwealth of Pennsylvania vs. Foster D. Farone, Criminal Action No. 1998-818, Crawford County Common Pleas Court, dated August 20, (year not legible).
- (10) Exhibit 8--Copy of two-page "Sentence" for Verdict of Guilty to Obtaining Controlled Substance by Fraud, etc.; Theft, Commonwealth of Pennsylvania vs. Foster D. Farone, Case No. 1998-818, Crawford County, Pennsylvania Common Pleas Court, dated September 12, 2001.
- (11) Exhibit 9--Copy of five-page Virginia Board of Pharmacy "Order" in re Foster D. Farone dated November 14, 2001; Copy of two-page Virginia Board of Pharmacy "Notice of Hearing" in re Foster D. Farone dated October 31, 2001; Copy of Virginia Department of Health Professions "Order" in re Foster D. Farone dated October 22, 2001.

Respondent's Exhibits:

- (1) None

FINDINGS 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 the following to be fact:

- (1) On October 4, 2001, Foster D. Farone was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit any contentions in writing.
- (2) As demonstrated by return receipt of October 10, 2001, Foster D. Farone received the letter of October 4, 2001, informing him of the allegations against him, and his rights.
- (3) Foster D. Farone has not responded in any manner to the letter of October 4, 2001, and has not requested a hearing in this matter.
- (4) Records of the State Board of Pharmacy indicate that Foster D. Farone was originally licensed by the State of Ohio on April 23, 1996, pursuant to reciprocity, and that his license to practice pharmacy in the state of Ohio was summarily suspended effective October 4, 2001.

- (5) Foster D. Farone is addicted to liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Foster D. Farone has admitted to a Board agent that he is addicted to Alprazolam, Benzphetamine Hydrochloride, and Hydrocodone products. Additionally, Mr. Farone stole such drugs from his employer. Foster D. Farone did enroll in drug treatment and Foster D. Farone has been convicted of felony drug charges. Such conduct indicates that Foster D. Farone falls within the ambit of Sections 3719.121 and 4729.16(A)(3) of the Ohio Revised Code.
- (6) Foster D. Farone was convicted, on or about August 31, 2001, in the Common Pleas Court of Crawford County, Pennsylvania, for two counts of obtaining controlled substances by fraud, a felony of the third degree, two counts of possession of controlled substances, a misdemeanor of the third degree, and two counts of theft by unlawful taking, a misdemeanor of the second and third degree, in violation of the Pennsylvania Controlled Substance Laws, equivalent to felony drug abuse offenses in Ohio. Commonwealth of Pennsylvania vs. Foster D Farone, Case numbers 1998-792 and 1998-818. Such conduct constitutes being guilty of a felony or gross immorality within the meaning of Section 4729.16(A) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) and (6) 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) and (6) 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) 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 him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (6) 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 Chapters 2925. and 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION 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 Foster D. Farone on October 4, 2001.

Pursuant to Section 4729.16 of the Ohio Revised Code, and on the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy takes the following actions in the matter of Foster D. Farone:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-21590, held by Foster D. Farone effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-21590, held by Foster D. Farone effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-21590, held by Foster D. Farone effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-21590, held by Foster D. Farone effective as of the date of the mailing of this Order.

Pursuant to Section 4729.16(B) of the Ohio Revised Code, Foster D. Farone must return the 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.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE MARCH 7, 2002

SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

October 4, 2001

Foster D. Farone, R.Ph.
5472 Koiner Ford Road
Mt. Crawford, Virginia 22841

Re: Ohio Registered Pharmacist
Number 03-2-21590

Dear Mr. Farone:

In accordance with Section 3719.121(A) of the Ohio Revised Code, the Board has determined that you are addicted to the use of controlled substances. Further, 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. Further, in accordance with Section 3719.121(C) of the Ohio Revised Code, the Board has determined that you were convicted of a felony drug abuse offense. 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 April 23, 1996, pursuant to reciprocity, and are currently licensed to practice pharmacy in the State of Ohio.
- (2) You are addicted to liquor or drugs or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy, to wit: you have admitted to a Board agent that you are addicted to Alprazolam, Benzphetamine, Hydrochloride, and Hydrocodone products. Additionally, you have stolen such drugs from your employer. You have enrolled in drug treatment and you have been convicted felony drug charges. Such conduct indicates that you fall within the ambit of Sections 3719.121(A), 3719.121(B), and 4729.16(A)(3) of the Ohio Revised Code.
- (3) You were, on or about August 31, 2001, convicted in the Common Pleas Court of Crawford County, Pennsylvania, obtaining controlled substances by fraud, a felony of the third degree, possession of controlled substances, a misdemeanor of the third degree, and theft by unlawful taking, a misdemeanor of the third degree, in violation of the Pennsylvania Controlled Substance Laws, equivalent to felony drug abuse offenses in Ohio. Commonwealth of Pennsylvania vs. Foster D Farone., Case Nos. 1998-792 and 1998-818. Such conduct constitutes being guilty of a felony or gross immorality within the meaning of Section 4729.16(A) of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(A) of the Ohio Revised Code states, in pertinent part: "any ... pharmacist, ... who is or becomes addicted to the use of controlled substances, shall be suspended by the board that authorized the person's license, certificate, or registration..."

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.

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

(C) On receiving notification pursuant to Section 2929.24 or 3719.12 of the Revised Code, the Board under which a person has been issued a license, immediately shall suspend the license, . . . of that person on a plea of guilty to, a finding by a jury or court of the person's guilt of, or conviction of a felony drug abuse offense . . .

WHEREFORE, PURSUANT TO SECTIONS 3719.121(A), (B), AND (C) 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 an adjudicatory hearing has been held pursuant to Chapter 119. of the Revised Code, and a final Order has been issued, 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 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;

(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.

IF YOU REQUEST A HEARING within 30 days of the time of the mailing of this notice, such will be afforded. Such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. 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 FURTHER 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 days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

(D-011004-014)

BY ORDER OF THE STATE BOARD OF PHARMACY

SUMMARY SUSPENSION EFFECTIVE OCTOBER 4, 2001

*This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.
(Order Effective March 7, 2002)*