



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket Number D-100630-136)

In The Matter Of:

ZACHARY DANIEL HENNEKES, R.Ph.

2530 Bremont Avenue

Cincinnati, Ohio 45237

(R.Ph. Number 03-2-23584)

INTRODUCTION

The Matter of Zachary Daniel Hennekes came for hearing on January 11, 2011, before the following members of the Board: Richard F. Kolezynski, R.Ph. (presiding); Edward T. Cain, Public Member; Donald M. Casar, R.Ph.; Troy A. Gahm, R.Ph.; Deborah A. Lange, R.Ph.; and Jerome J. Wiesenhahn, R.Ph.

Brian M. Joyce, R.Ph., Absent

Zachary Daniel Hennekes was represented by Harry B. Plotnick. The State of Ohio was represented by Tracy M. Greuel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

None

Respondent's Witnesses:

1. Zachary Daniel Hennekes, R.Ph., Respondent
2. Jamie Hennekes
3. James Liebetrau, R.Ph., PRO Vice President

State's Exhibits:

1. Reinstatement hearing request letter [06-29-10]
1A-1B. Procedurals
2. State Board of Pharmacy Order in re Zachary Daniel Hennekes, R.Ph. [07-13-04]

Respondent's Exhibits:

- A. State Board of Pharmacy Order in re Zachary Daniel Hennekes, R.Ph. [07-13-04]
- B.
- C. Ohio Pharmacists Rehabilitation Organization Licensee Summary Report for Zachary Hennekes [05-05-04 to 08-12-05]; FirstLab Test History Reports for Zachary D. Hennekes [09-21-05 to 10-21-10]; Letter from Tim O'Leary, MT (ASCP) Tri-State Laboratory Services,

- Inc. [12-10-10]; National Medical Services drug screen lab slip for Zachary D. Hennekes [08-12-05]; Quest diagnostics lab slips [01-22-08 to 08-24-09]; FirstLab Test History Report [09-21-05 to 12-02-10]; E-mail correspondence [09-17-09 to 09-18-09]
- D. Support Group Meeting Attendance records for Zachary D. Hennekes [01-08-04 to 01-08-11]
- E. Continuing Education Credits and Certificates for Zachary D. Hennekes [07-27-03 to 12-06-10]
- F. Letter from Stan Reid, CDCA, Gateways to Harry B. Plotnick, Esq. [11-16-10]; Letter from Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy [06-18-10]; Two letters from Harry B. Plotnick, Esq. to Pierce Bryant, The Kroger Co. [05-11-09 and 12-28-10]

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 that Zachary Daniel Hennekes has complied with the terms set forth in the Order of the State Board of Pharmacy Docket Number D-031224-048, effective July 13, 2004.

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, Number 03-2-23584, held by Zachary Daniel Hennekes to practice pharmacy in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

(A) Zachary Daniel Hennekes 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 and alcohol 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) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.

(c) Results of all drug and alcohol 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

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Order of the Board

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 reports to the Board, 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 calendar week (Sunday through Saturday), 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) Zachary Daniel Hennekes 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 Zachary Daniel Hennekes' progress towards recovery and what Zachary Daniel Hennekes 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 Zachary Daniel Hennekes' 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) Zachary Daniel Hennekes may not serve as a responsible pharmacist.

(3) Zachary Daniel Hennekes may not destroy, assist in, or witness the destruction of controlled substances.

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

(5) Zachary Daniel Hennekes must not violate the drug laws of Ohio, any other state, or the federal government.

(6) Zachary Daniel Hennekes must abide by the rules of the State Board of Pharmacy.

(7) Zachary Daniel Hennekes must comply with the terms of this Order.

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(8) Zachary Daniel Hennekes' 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.

Zachary Daniel Hennekes 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.

Donald Casar moved for Action of the Board; Jerome Wiesenhahn seconded the motion. Motion passed (Aye-5/Nay-0).

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: FEBRUARY 11, 2011

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



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-031224-048)

In The Matter Of:

ZACHARY DANIEL HENNEKES, R.Ph.

2777 McIntire Road

Morrow, Ohio 45152

(R.Ph. No. 03-2-23584)

INTRODUCTION

THE MATTER OF ZACHARY DANIEL HENNEKES CAME FOR HEARING ON JUNE 23, 2004 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

ZACHARY DANIEL HENNEKES WAS REPRESENTED BY HARRY B. PLOTNICK AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Richard Haun, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Zachary Daniel Hennekes, R.Ph., Respondent
2. James Liebetrau, R.Ph.
3. Christopher Good, R.Ph.

State's Exhibits

1. Copy of Summary Suspension Order/Notice of Opportunity For Hearing letter [12-24-03]
1A-1C. Procedurals
2. Notarized Statement of Zachary Hennekes [12-16-03]
3. Notarized Statement of Jamie Hennekes [12-16-03]
- 4.

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Respondent's Exhibits

- A.
- B. Judgment Entry of Sentence [05-25-04]
- C. Copy of PRO Pharmacist's Recovery Contract for Zachary D. Hennekes [03-11-04]
- D. Copy of Scheduling Letter from Mental Health & Recovery Centers of Warren County to Zachary Hennekes [02-11-04]
- E. Copy of Support Group Attendance Records [01-08-04 to 05-29-04]
- F. Copy of Progress Report from Donna Kahle, LSW, CCDCI and Jane L. Groh, MSW, LISW [06-04-04]

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 Zachary Daniel Hennekes was originally licensed by the State of Ohio as a pharmacist on July 16, 1999, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended effective December 24, 2003. Records further reflect that during the relevant time periods stated herein, Zachary Daniel Hennekes was the Responsible Pharmacist at Kroger Pharmacy #014408, 5705 South State Route #48, Maineville, 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)

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CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (6) 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 (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) The State Board of Pharmacy concludes that paragraph (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 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 (5) and (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 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Zachary Daniel Hennekes, R.Ph. on December 24, 2003.

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. 03-2-23584, held by Zachary Daniel Hennekes and such suspension is effective as of the date of the mailing of this Order.

(A) Zachary Daniel Hennekes, 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) Zachary Daniel Hennekes, 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, seven years from the effective date of Zachary Daniel Hennekes' Summary Suspension Order, the Board will consider any petition filed by Zachary Daniel Hennekes 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) Zachary Daniel Hennekes 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)

(c) 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) Zachary Daniel Hennekes 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) Zachary Daniel Hennekes must provide, at the reinstatement petition hearing, documentation of the following:

(1) An effort of payment for restitution to Kroger;

(2) Taking and passing, no more than one year prior to his reinstatement hearing, the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination approved by the Board.

(3) 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.);

(4) 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;

(5) Compliance with the terms of this Order.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-3).

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.

Zachary Daniel Hennekes, R.Ph.

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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: **JULY 13, 2004**

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



OHIO STATE BOARD OF PHARMACY

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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

December 24, 2003

Zachary Daniel Hennekes, R.Ph.
8640 Maineville Road
Maineville, Ohio 45039

Re: Ohio Registered Pharmacist
Number 03-2-23584

Dear Mr. Hennekes:

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. The reasons for the Board's actions 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 July 16, 1999, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio. Records further reflect during the relevant time periods stated herein, you were the Responsible Pharmacist at Kroger Pharmacy #014408, 5705 South State Route #48, Maineville, 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)

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Zachary Daniel Hennekes, R.Ph.

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Summary Suspension Order

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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.

WHEREFORE, PURSUANT TO SECTIONS 3719.121(A) and (B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO IS 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 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;

(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 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.

BY ORDER OF THE STATE BOARD OF PHARMACY

Timothy J. Benedict., R.Ph.
Assistant Executive Director