



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020710-001)

In The Matter Of:

THOMAS ALLEN OSWALD, R.Ph.

486 Tulip Trail
Wadsworth, Ohio 44281
(R.Ph. No. 03-2-23749)

INTRODUCTION

THE MATTER OF THOMAS ALLEN OSWALD CAME FOR HEARING ON DECEMBER 2, 2002, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, 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.

THOMAS ALLEN OSWALD WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witnesses

1. Donald F. Gale
2. Chris Holzman
3. Thomas Allen Oswald, R.Ph., Respondent

State's Exhibits

1. Reinstatement Hearing Request letter from Thomas A. Oswald [07-10-02]
- 1A-1B. Procedurals
- 2.
- 2A.
- 3.
- 4.
- 5.
- 6.

Respondent's Exhibits

- A. PRO Pharmacist's Recovery Contract for Thomas A. Oswald [03-19-01]
- B. Drug Screen Reports [12-28-00 to 11-01-02]
- C. Support Group Attendance Records [11-05-00 to 11-29-02], Calendar pages for November 2000 to November 2002
- D. Continuing Pharmaceutical Education Certificates [04-26-00 to 08-31-02]
- E.
- F. Letter from Paul Lindenmuth B.A. CCDC III-E [02-20-02]
- G.

FINDING 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 Thomas Allen Oswald has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-001108-023, effective February 12, 2001.

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. 03-2-23749, held by Thomas Allen Oswald to practice pharmacy in Ohio and places Thomas Allen Oswald on probation for five years from the date of the mailing of this Order, with the following conditions:

(A) Thomas Allen Oswald must enter into a 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 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 a month for the first twelve months 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) Marinol must be added to the standard urine drug screen.

(c) Results of all drug screens must be negative. 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 probation.

(d) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.

(2) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.

(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) Thomas Allen Oswald 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 Thomas Allen Oswald 's progress towards recovery and what he 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 Thomas Allen Oswald'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) Thomas Allen Oswald may not serve as a responsible pharmacist.

(3) Thomas Allen Oswald may not destroy, assist in, or witness the destruction of controlled substances.

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

(5) Thomas Allen Oswald must not violate the drug laws of Ohio, any other state, or the federal government.

(6) Thomas Allen Oswald must abide by the rules of the State Board of Pharmacy.

(7) Thomas Allen Oswald must comply with the terms of this Order.

(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.

Thomas Allen Oswald 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.

ORDER EFFECTIVE JANUARY 9, 2003

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-001108-023)

In The Matter Of:

THOMAS ALLEN OSWALD, R.Ph.
486 Tulip Trail
Wadsworth, Ohio 44281
(R.Ph. No. 03-2-23749)

INTRODUCTION

THE MATTER OF THOMAS ALLEN OSWALD CAME FOR HEARING ON JANUARY 8, 2001, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

THOMAS ALLEN OSWALD WAS REPRESENTED BY MICHAEL E. MURMAN, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joann Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Thomas Allen Oswald, R.Ph., Respondent
- (2) Chris Holzeman, R.Ph., Pharmacists Rehabilitation Organization
- (3) Jeffrey Carty, R.Ph., Omnicare (Lo-Med Unit)
- (4) Donald Gale, R.Ph., Lo-Med Pharmacy Unit
- (5) Carl LaRubbio, R.Ph., Omnicare
- (6) Melinda Baum
- (7) Greg Oswald, R.Ph., Father of Respondent, Lo-Med

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1
- (2) Exhibit 1A--Hearing Request letter dated November 15, 2000.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated November 20, 2000.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated December 4, 2000.
- (5) Exhibit 1D--Copy of Pharmacist File computer record of Thomas Allen Oswald showing original date of registration as August 13, 1999.
- (6) Exhibit 2
- (7) Exhibit 3

(8) Exhibit 4

Respondent's Exhibits:

- (1) Exhibit A--Letter regarding Thomas Oswald from Peggy Schmidt, Alcohol & Drug Dependency Services of Medina County, Inc., dated January 2, 2001 with the following attachments: copy of two-page Intensive Outpatient Program description and copy of two-page Intensive Outpatient Program Contract of Thomas Allen Oswald dated November 15, 2000.
- (2) Exhibit B--Copies of three urine screen reports for samples collected from Tom Oswald on November 2, 2000, November 28, 2000, and December 21, 2000.
- (3) Exhibit C--Ten pages of copies of Alcoholics Anonymous Meeting Attendance verifications dated from December 4, 2000, through December 30, 2000.
- (4) Exhibit D--Copies of twenty-six pages of medical records of Tom Oswald as follows: Alcoholism "A Disease of Perception" dated November 22, 2000; Jellinek Diagnostic Chart of Symptoms dated November 27, 2000; "The Moon" dated November 29, 2000, hand-written notes about "Situations, Trigger Feelings, and Consequences" dated November 30, 2000, hand-written notes dated December 7, 2000; "What I Can Be Thankful For" dated November 20, 2000; "How Will Others Know I Am recovering?" dated December 5, 2000; two-page "20 Reasons You Know You're Alcoholic/Addict" dated December 14, 2000; eight-page "Treatment Plans" for Problems #1, #2, #3, and #4 dated November 8, 2000.
- (5) Exhibit E--Two-page letter from Andy Nichols dated January 2, 2001.
- (6) Exhibit F--Copy of two-page PRO Inc. Pharmacist's Recovery Contract of Thomas A. Oswald dated December 7, 2000.
- (7) Exhibit G
- (8) Exhibit H--Copy of letter from Pastor Timothy J. Hull dated January 5, 2001.

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 Thomas Allen Oswald was originally licensed in the state of Ohio on August 13, 1999, pursuant to examination. On November 8, 2000, Thomas Allen Oswald's license was summarily suspended in accordance with Section 3719.121 of the Ohio Revised Code.
- (2)
- (3)

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) 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.

- (2) Upon consideration of the record as a whole, 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) 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 3719. or 4729. 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 Thomas Allen Oswald on November 8, 2000.

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 hereby suspends indefinitely the pharmacist identification card, No. 03-2-23749, held by Thomas Allen Oswald and such suspension is effective as of the date of the mailing of this Order.

- (A) Thomas Allen Oswald, 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) Thomas Allen Oswald, pursuant to Section 4729.16(B) of the Ohio Revised Code, 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.

Further, after one year from the effective date of this Order, the Board will consider any petition filed by Thomas Allen Oswald 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) Thomas Allen Oswald must enter into a contract, signed within sixty 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) Marinol must be added to the standard urine drug screen.
 - (c) Results of all drug screens must be negative. 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) Thomas Allen Oswald 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 and alcohol 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.
- (C) If reinstatement is not accomplished within three years of the effective date of this Order, Thomas Allen Oswald must show successful completion of the NAPLEX examination or an equivalent examination 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.

ORDER EFFECTIVE FEBRUARY 12, 2001

SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

November 8, 2000

THOMAS ALLEN OSWALD, R.Ph.
486 Tulip Trail
Wadsworth, Ohio 44281

Re: Ohio Registered Pharmacist
Number 03-2-23749

Dear Mr. Oswald:

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 action are that you have committed any and/or all of the following acts:

- (1) Records of the State Board of Pharmacy indicate that you were originally licensed in the state of Ohio on August 13, 1999, pursuant to examination, 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 been stealing and abusing controlled substances; you have admitted to a Board agent that you are addicted to marijuana, a Schedule I controlled substance; that your abuse of marijuana and Marinol, a Schedule III controlled substance, has increased to a point when your use was once "all day, each day;" you have admitted that you abuse drugs to relieve your perceived pressure from family and friends. You have admitted to stealing Marinol because the "effect was better than [your] regular daily marijuana use." Such conduct indicates that you fall within the ambit of Sections 3719.121(A) and (B), and 4729.16(A)(3) of the Ohio Revised Code.
- (3) You did, on or about the following dates, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Healthrays Pharmacy, by deception, to wit: you stole the following:

<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
02-25-00	Marinol 2.5mg	100 units
02-25-00	Marinol 5.0mg	100 units
06-01-00	Marinol 2.5mg	100 units
07-18-00	Marinol 2.5mg	60 units
07-26-00	Marinol 2.5mg	60 units
12-99 through 07-00	Marinol 2.5mg	226 units
12-99 through 07-00	Marinol 5.0mg	70 units

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

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

- (A) *... 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*
 - (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 hearing.*
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WHEREFORE, PURSUANT TO DIVISIONS (A) AND (B) OF SECTION 3719.121 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.

PURSUANT TO CHAPTER 119. OF THE REVISED CODE, THIS SUSPENSION SHALL REMAIN IN EFFECT UNTIL AN ADJUDICATORY HEARING HAS BEEN HELD AND A FINAL ORDER HAS BEEN ISSUED, DURING WHICH TIME YOU MAY NOT ENGAGE IN THE PRACTICE OF PHARMACY.

PURSUANT TO PARAGRAPH (F) OF RULE 4729-9-01 OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE STATE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS.

PURSUANT TO DIVISION (B) OF SECTION 4729.16 OF THE OHIO REVISED CODE, YOU MUST RETURN YOUR 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.

YOU ARE FURTHER NOTIFIED that Division (A) of Section 4729.16 of the Ohio Revised Code states:

The state board of pharmacy, after notice and hearing in accordance with Chapter 119. of the Revised Code, may revoke, suspend, place on probation, or refuse to grant or renew an identification card, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not 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 of the Revised Code, 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.*

YOU ARE HEREBY ADVISED THAT IF YOU REQUEST A HEARING within thirty (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.

(D-001108-023)

BY ORDER OF THE STATE BOARD OF PHARMACY

SUMMARY SUSPENSION EFFECTIVE NOVEMBER 8, 2000

*This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.
(Order Effective February 12, 2001)*