



OHIO STATE BOARD OF PHARMACY

77 S. High Street, 17th Floor
Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-890906-039)

In The Matter Of:

SHELDON GOLDSTEIN, R.Ph.
2640 Whiton Road
University Heights, Ohio 44118
(R.Ph. No. 03-3-05000)

Filed by

5-17-90

DATE

WJA

INITIALS

THE MATTER OF SHELDON GOLDSTEIN CAME ON FOR CONSIDERATION BY THE STATE BOARD OF PHARMACY ON MARCH 9, 1990 AS A RESULT OF THE REPORT AND RECOMMENDATION SUBMITTED TO THE BOARD BY HEARING OFFICER AND BOARD MEMBER MELVIN WILCZYNSKI. FOLLOWING CONSIDERATION OF THE REPORT AND RECOMMENDATION, THE TRANSCRIPT OF THE HEARING, AND EVIDENCE ADDUCED AT THE HEARING, MOTIONS WERE MADE AND RECORDED THE FOLLOWING ORDER BE ADOPTED:

ORDER

State's Exhibits

- (1) Exhibit A - Notice of Opportunity letter for New Heights Pharmacy dated September 1, 1989.
- (2) Exhibit B - Notice of Opportunity letter for Sheldon Goldstein, R.Ph. dated September 6, 1989.
- (3) Exhibit C - Request for Hearing letter for New Heights Pharmacy and Sheldon Goldstein, R.Ph. dated September 14, 1989.
- (4) Exhibit D - Hearing Schedule letter for New Heights Pharmacy and Sheldon Goldstein, R.Ph. dated September 27, 1989.
- (5) Exhibit 1 - Terminal Distributor of Dangerous Drugs Renewal Applications for New Heights Pharmacy Inc. for 1986 through 1988.
- (6) Exhibit 2 - Record of Exempt Narcotics Sold from October 10, 1987 through October 14, 1987 showing Frank Smith purchased Cheracol on October 12, 1987 and October 13, 1987.
- (7) Exhibit 3 - Record of Exempt Narcotics Sold from October 18, 1987 through October 22, 1987 showing Frank Smith purchased Cheracol on October 19, 1987 and October 20, 1987.
- (8) Exhibit 4 - Statement by Sheldon I. Goldstein dated July 28, 1988.
- (9) Exhibit 5 - Two-page Record of Exempt Narcotics Sold from March 5, 1988 through March 13, 1988 showing Cheracol was sold to the same person on March 8, 1988 and March 9, 1988.
- (10) Exhibit 6 - Record of Exempt Narcotics Sold from March 20, 1988 through March 25, 1988 showing D. Bernstein purchased Elixir Terpin Hydrate with Codeine on March 24, 1988 and March 25, 1988.
- (11) Exhibit 7 - Statement from R.Ph. Sidney Wolkov dated August 5, 1988.

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- (12) Exhibit 8 - Two-page Record of Exempt Narcotics Sold from June 5, 1987 through June 12, 1987 showing Christopher K. Reed purchased Elixir Terpin Hydrate with Codeine on June 8, 1987 and June 9, 1987.
- (13) Exhibit 9 - Record of Exempt Narcotics Sold from June 9, 1987 through June 12, 1987 showing Christopher K. Reed purchased Elixir Terpin Hydrate with Codeine on June 9, 1987 and Chris Reed purchased Elixir Terpin Hydrate with Codeine on June 10, 1987.
- (14) Exhibit 10 - Statement from Marvin Shapiro dated May 11, 1988.
- (15) Exhibit 11 - Journal Entry from Cuyahoga County Court of Common Pleas for Sheldon Goldstein, Case No. CR-231338, date filed being February 9, 1989.

Respondent's Exhibits

- (1) Exhibit A - Heights Pharmacy Internal Investigation File on Theresa Byrne from Bruce Marks dated April 21, 1987, Case No. 8703-05-501.
- (2) Exhibit B - Letter from Henry W. Eisenberg, M.D. regarding Mrs. Beverly Goldstein dated September 25, 1989.

Findings Of Fact

The State Board of Pharmacy hereby agrees with and adopts the Findings Of Fact set forth in the Report and Recommendation of Hearing Officer and Board Member Melvin Wilczynski, as follows:

- (1) The State Board of Pharmacy finds that records of the Board of Pharmacy indicate that Sheldon Goldstein was the responsible pharmacist at New Heights Pharmacy, 2179 South Green Road, University Heights, Ohio 44121, Terminal Distributor of Dangerous Drugs license number 02-136750, pursuant to Section 4729.27 of the Ohio Revised Code and Rule 4729-5-23 of the Ohio Administrative Code.
- (2) The State Board of Pharmacy finds that Sheldon Goldstein did, on or about October 13, 1987, while practicing pharmacy at New Heights Pharmacy, dispense or sell, under exemptions of Section 3719.15 of the Revised Code, to one person a preparation included within such section when he knew, or could by reasonable diligence ascertain, that such dispensing or selling would provide the person to whom sold, within any forty-eight consecutive hours, with more than one preparation exempted by the provisions of Section 3719.15 of the Revised Code, to wit: Sheldon Goldstein sold one four-ounce bottle of Cheracol after the same person purchased one four-ounce bottle of Cheracol within forty-eight hours previous. Such conduct is in violation of Section 3719.16 of the Ohio Revised Code.
- (3) The State Board of Pharmacy finds that Sheldon Goldstein did, on or about October 18, 1987, while practicing pharmacy at New Heights Pharmacy, dispense or sell, under exemptions of Section 3719.15 of the Revised Code, to one person a preparation included within such section when he knew, or could by reasonable diligence ascertain, that such dispensing or selling would provide

the person to whom sold, within any forty-eight consecutive hours, with more than one preparation exempted by the provisions of Section 3719.15 of the Revised Code, to wit: Sheldon Goldstein sold one four-ounce bottle of Cheracol after the same person purchased one four-ounce bottle of Cheracol within forty-eight hours previous. Such conduct is in violation of Section 3719.16 of the Ohio Revised Code.

- (4) The State Board of Pharmacy finds that Sheldon Goldstein did, on or about July 28, 1988, while practicing pharmacy at New Heights Pharmacy, hold or offer for sale drugs that were adulterated pursuant to Section 3715.63 of the Ohio Revised Code and Rule 4729-5-13 of the Ohio Administrative Code, to wit: New Heights Pharmacy and Sheldon Goldstein as responsible pharmacist held for sale numerous outdated drugs. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (5) The State Board of Pharmacy finds that Sheldon Goldstein did, on or about July 28, 1988, while practicing pharmacy at New Heights Pharmacy, hold or offer for sale drugs that were misbranded pursuant to Section 3715.64 of the Ohio Revised Code, to wit: twenty-four containers of dangerous drugs were held for sale which were misbranded or mislabeled. Such conduct is in violation of Section 3715.52(A) of the Ohio Revised Code.
- (6) The State Board of Pharmacy finds that Sheldon Goldstein was, on or about February 9, 1989, convicted in the Common Pleas Court of Cuyahoga County, Ohio, of Illegal Sale of Exempted Narcotics in violation of Section 3719.16 of the Ohio Revised Code, a felony of the fourth degree.

Conclusions Of Law

- (1) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (6) of the Findings Of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (6) of the Findings Of Fact constitutes willfully violating any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Ohio Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

Action Of The Board

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby imposes a monetary penalty of five hundred dollars (\$500.00).

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Further, the State Board of Pharmacy will set aside four hundred dollars of the five hundred dollar monetary penalty imposed above on the condition that Mr. Goldstein successfully pass, prior to July 1, 1990, the Jurisprudence examination given by the Board.

The one hundred dollar (\$100.00) monetary penalty that was not set aside above is due and owing within thirty (30) days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320, with the enclosed form.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

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 Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in 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 the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL
Return Receipt
#P 497 578 690

ORDER MAILED: May 4, 1990

FZW/pw

By Franklin Z. Wickham
Franklin Z. Wickham, Executive Director

cc: Steve Dlott, Assistant Attorney General
Leonard A. Wolkov, Lovinger, Wolkov & Schwartz, 1020 Standard
Building, 1370 Ontario Street, Cleveland, Ohio 44113