

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-010615-076)

In The Matter Of:

RICHARD D. DUDEK, R.Ph.
8007 Fox Hound Run
Warren, Ohio 44484
(R.Ph. No. 03-3-07233)

INTRODUCTION

THE MATTER OF RICHARD D. DUDEK CAME FOR HEARING ON DECEMBER 3, 2001, 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.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

RICHARD D. DUDEK WAS REPRESENTED BY MICHAEL H. GERTNER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Richard D. Dudek, R.Ph., Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Notice of Opportunity for Hearing letter dated June 15, 2001.
- (2) Exhibit 1A--Hearing Request letter from Michael H. Gertner dated June 25, 2001.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated July 2, 2001.
- (4) Exhibit 1C--Copy of Ohio Pharmacist Computer Record of Richard D. Dudek.
- (5) Exhibit 2--Copy of two-page Dangerous Drug Distributor Inspection Report of Westside Family Discount Drugs dated December 7, 1999.

- (6) Exhibit 3--Copy of ten Accountability Statements, one for each of the following drugs: OxyContin 20mg tablets; MS Contin 30mg tablets; methylphenidate 10mg tablets; methylphenidate 20mg tablets; methylphenidate 5mg tablets; Tylox 5/325 capsules; Percocet 5/325 tablets; Percodan 4.5 .38/325 tablets; Roxicet 5/325 tablets; and Roxiprin 4.25 .38/325 tablets, at Westside Pharmacy dated March 12, 2000.
- (7) Exhibit 4--Copy of fourteen-page transcript of an interview by George Pavlich with Richard D. Dudek on February 10, 2000.
- (8) Exhibit 5--Dangerous Drug Distributor Inspection Report-Receipt of Richard Dudek, R.Ph. dated February 10, 2000.
- (9) Exhibit 6--Three amber plastic bottles, one with no label, one with a blue label, and one with a white label handwritten with Tussionex and directions for use.
- (10) Exhibit 7--Copy of three Summa Health Systems Toxicology/Therapeutic Drug Monitoring Reports for three vials collected from Dick Dudek dated February 14, 2000; Copy of Summa Health Systems Chain of Custody Form for Dick Dudek dated February 14, 2000.
- (11) Exhibit 8--Copy of Accountability Statement for Tussionex Syrup 10mg/5ml at Westside Pharmacy dated March 12, 2000.
- (12) Exhibit 9--Copy of two-page DEA 106 Report Of Theft Or Loss Of Controlled Substances of Westside Family Discount dated March 11, 2000.
- (13) Exhibit 10--Playful Puppies 1999 Calendar.
- (14) Exhibit 11--Five-page copy of Indictment, State of Ohio vs. Richard Dudek, R.Ph., Trumbull County Common Pleas Court, Case No. 2000CR313, dated May 25, 2000.
- (15) Exhibit 12--Two-page copy of Journal Entry, State of Ohio vs. Richard Dudek, Trumbull County Common Pleas Court, Case No. 00-CR-313, dated October 27, 2000.

Respondent's Exhibits:

- (1) Exhibit A--Copy of resume of Richard D. Dudek, not dated.
- (2) Exhibit B--Letter from Michael H. Gertner dated December 14, 2000.
- (3) Exhibit C--Two-page copy of letter from Ed Simko, R.Ph. dated November 18, 2001; Copy of letter from James J. Gomochak, R.Ph. dated November 24, 2001; Copy of letter from Tullio Belmaggio dated November 25, 2001; Copy of letter from Frank E. Roberts, R.Ph. dated November 18, 2001; Copy of letter from Dennis J. Persin dated November 19, 2001; and Copy of letter from Nellie A. Rutherford dated November 23, 2001.
- (4) Exhibit D--Four-page copy of Agreed Entry Of Stipulation Of Use Of Polygraph, State of Ohio vs. Richard R.(sic) Dudek, Case No. 00-CR-313, Trumbull County Common Pleas Court, not signed or dated.
- (5) Exhibit E--Three-page copy of Finding On Guilty Plea To Bill Of Information, State of Ohio vs. Richard Dudek, Case No. 00-CR-313-A, Trumbull County Common Pleas Court, not signed or dated.

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 Richard D. Dudek was originally licensed by the State of Ohio on August 8, 1960, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Board records further indicate that during the relevant time periods stated herein, Richard D. Dudek was the Responsible Pharmacist at Westside Pharmacy, 1180 W. Market Street, Warren, Ohio 44485, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Richard D. Dudek as the Responsible Pharmacist did, from April 29, 1999, through November 23, 1999, fail to provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs, to wit: the following controlled substances were diverted from Westside Pharmacy, Warren Ohio, while Richard D. Dudek was the Responsible Pharmacist:

<u>Drug</u>	<u>Amount</u>
OxyContin 20mg	100
MS Contin 30mg	100
Ritalin 10mg	493
Ritalin 20mg	575
Ritalin 5mg	280
Tylox 5mg	300
Percocet 5mg	1,376
Percodan	500
Roxicet 5mg	2,831
Roxiprin 5mg	12

Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code.

- (3) Richard D. Dudek did, on or about April 29, 1999, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Westside Pharmacy, beyond the express or implied consent of the owner, to wit: Richard D. Dudek admittedly stole 500cc of Hydrocodone Syrup, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Richard D. Dudek did, on various dates throughout 1999, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Westside Pharmacy, beyond the express or implied consent of the owner, to wit: Richard D. Dudek admittedly stole 10 units of Provera and 25 units of Premarin each month (except May and June) for Richard D. Dudek's wife's use. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Richard D. Dudek did, on various dates throughout 1999, sell dangerous drugs when the conduct was not in accordance with Chapters 4729. and 4731. of the Ohio Revised Code, to wit: without prescription, Richard D. Dudek gave his wife a continuous supply of Provera and Premarin that Richard D. Dudek had stolen from the pharmacy in which Richard D. Dudek was employed. Such conduct is in violation of Section 4729.51(C)(1) of the Ohio Revised Code.

- (6) Richard D. Dudek did, on or about April 17, 18, 19, and 20, 1999, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of another, beyond the express or implied consent of the owner, to wit: Richard D. Dudek admittedly stole Amoxil from his employer Westside Pharmacy. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (7) Richard D. Dudek did, on or about January 31, 2000, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Westside Pharmacy, beyond the express or implied consent of the owner, to wit: Richard D. Dudek admittedly stole one package of Zithromax. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (8) Richard D. Dudek was convicted of two counts of theft, first degree misdemeanors, in violation of Section 2913.02(A)(1) of the Ohio Revised Code. State of Ohio v. Richard Dudek, Case No. 00-CR-313-A, Trumbull County Common Pleas Court. Such conviction indicates being convicted of a misdemeanor related to, or committed in, the practice of pharmacy within the meaning of Section 4729.16 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 (2) through (8) 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (8) 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 (8) of the Findings of Fact constitutes having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) 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 (5) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 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 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 for ten years the pharmacist identification card, No. 03-3-07233, held by Richard D. Dudek and such suspension is effective as of the date of the mailing of this Order.

- (A) Richard D. Dudek, 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) Richard D. Dudek, 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, the Board will stay the last nine years of the suspension and place Richard D. Dudek on probation for those nine years, provided that Richard D. Dudek meets the following conditions:

- (A) Richard D. Dudek must, within one year from the date of the mailing of this Order, take and pass the Multistate Pharmacy Jurisprudence Examination, or an equivalent examination approved by the Board, and submit documentation of this to the Board office. If Mr. Dudek does not pass the examination within the one-year period, his license will remain suspended until this condition has been achieved.
- (B) Richard D. Dudek must, from the date of the mailing of this Order, attend one live continuing pharmacy education program in Board-approved Jurisprudence each year for ten years, which may not be used for license renewal, and submit documentation of each to the Board office.
- (C) Upon reinstatement of Richard D. Dudek's identification card to practice pharmacy in the state of Ohio, the conditions of probation are as follows:
 - (1) The State Board of Pharmacy hereby declares that Richard D. Dudek'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) Richard D. Dudek may not serve as a responsible pharmacist.
 - (3) Richard D. Dudek must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (4) Richard D. Dudek must abide by the rules of the Ohio State Board of Pharmacy.
 - (5) Richard D. Dudek must comply with the terms of this Order.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-2).
MOTION CARRIED.
SO ORDERED.

ORDER EFFECTIVE JANUARY 11, 2002