



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-971113-021)

In The Matter Of:

**ARTHUR P. HESS, R.Ph.**

3625 N. Roger Drive  
Port Clinton, Ohio 43452  
(R.Ph. No. 03-3-07255)

### INTRODUCTION

THE MATTER OF ARTHUR P. HESS CAME ON FOR CONSIDERATION ON JANUARY 14, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ARTHUR P. HESS 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) Dale Fritz, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing letter dated November 13, 1997.
- (2) Exhibit 1A--Copy of Renewal Application for Pharmacist License, No. 03-3-07255, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Arthur P. Hess dated July 28, 1996.

- (3) Exhibit 2--Two-page Kmart Pharmacy #3784 Medical Expenses report of Art Hess dated from August 19, 1993, to March 17, 1997.
- (4) Exhibit 3--Handwritten statement of John M. Jonesco, D.O. dated May 8, 1997.
- (5) Exhibit 4--Prescription number 4400695.
- (6) Exhibit 5--Prescription number 4401580.
- (7) Exhibit 6--Two-page Kmart Pharmacy #3784 Medical Expenses report of Radelle Hess dated from August 19, 1993, to March 17, 1997.
- (8) Exhibit 7--Handwritten statement of M. Scott Mead, D.D.S. signed and notarized on May 2, 1997.
- (9) Exhibit 8--Prescription number 4403594.
- (10) Exhibit 9--Two-page copy of Bill of Indictment filed in the Criminal Division of Sandusky County Common Pleas Court, State of Ohio vs. Arthur P. Hess, Case No. 97-CR-720, dated September 25, 1997.
- (11) Exhibit 10--Copy of Judgment Entry filed in the Sandusky County Common Pleas Court, State of Ohio vs. Arthur P. Hess, dated January 5, 1998.
- (12) Exhibit 11--Two-page handwritten statement of Joanne Langley signed and notarized on January 8, 1998.

Respondent's Exhibits:

- (1) None

#### FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the State Board of Pharmacy finds the following to be fact:

- (1) On November 13, 1997, Arthur P. Hess was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of November 17, 1997, Arthur P. Hess received the letter of November 13, 1997, informing him of the allegations against him, and his rights.
- (3) Arthur P. Hess has not requested a hearing in this matter.
- (4) Records of the Board of Pharmacy indicate that Arthur P. Hess was originally licensed in the state of Ohio on August 8, 1960, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (5) Arthur P. Hess did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Arthur P. Hess created the following prescriptions to cover for his use of the drugs without having valid prescriptions issued by prescribers:

<u>Date</u>	<u>Rx No.</u>	<u>Type</u>	<u>Drug</u>	<u>Qty.</u>	<u>Payment</u>
02/02/94	4400695	New	Propoxyphene N/APAP 100/650	100	Cash
06/25/94	4400695	Refill	Propoxyphene N/APAP 100/650	100	Cash
08/10/94	4401580	New	Propoxyphene N/APAP 100/650	100	PCS
08/31/94	4401580	Refill	Propoxyphene N/APAP 100/650	100	PCS
09/11/94	4401580	Refill	Propoxyphene N/APAP 100/650	100	Cash
10/15/94	4401580	Refill	Propoxyphene N/APAP 100/650	100	Cash

11/14/95	4404452	New	Propoxyphene N/APAP 100/650	100	PCS
05/21/96	4405717	New	Propoxyphene N/APAP 100/650	100	Cash
09/23/96	4405717	Refill	Propoxyphene N/APAP 100/650	100	Cash
01/09/97	6645971	Refill	Ibuprofen 800mg	100	PCS
02/15/97	6645971	Refill	Ibuprofen 800mg	100	PCS

Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (6) Arthur P. Hess did, on or about the following dates, make or utter a false or forged prescription for a dangerous drug, to wit: Arthur P. Hess created the following prescriptions for dangerous drugs to cover for his use of the drugs without having valid prescriptions issued by prescribers:

<u>Date</u>	<u>Rx No.</u>	<u>Type</u>	<u>Drug</u>	<u>Qty.</u>	<u>Payment</u>
02/02/94	6605734	New	Motrin 800mg	100	Cash
02/11/94	6606174	New	Ceclor 500mg	20	Cash
06/25/94	6605734	Refill	Motrin 800mg	100	Cash
05/21/96	6645971	New	Motrin 800mg	100	Cash

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised.

- (7) Arthur P. Hess did, on or about June 26, 1995, intentionally make and/or knowingly possess a false or forged prescription, to wit: Arthur P. Hess created prescription number 4403594 for 50 unit doses of Propoxyphene Napsylate/APAP 100/650 to cover for his use of the drugs without having a valid prescription issued by a prescriber. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (8) Arthur P. Hess did permit someone other than a pharmacist or pharmacy intern to practice pharmacy, to wit: while working at Kmart Pharmacy #3784, Arthur P. Hess failed to remain in the pharmacy at all times when it was open and did not check prescriptions filled by the pharmacy technicians. Such conduct is in violation of Rule 4729-5-25 of the Ohio Administrative Code.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of a felony 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) 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 Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of abusing drugs 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 paragraphs (5) through (7) 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. or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (8) of the Findings of Fact constitutes being guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy as provided in Division (A)(6) of the Ohio Revised Code.

#### ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Arthur P. Hess:

- (A) On the basis of the Findings of Fact and paragraphs (1), (2), (3), and (5) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-3-07255, held by Arthur P. Hess indefinitely, effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Arthur P. Hess may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension. Further, Arthur P. Hess must petition the Board to request reinstatement and must appear personally.
- (B) 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 imposes a monetary penalty of five thousand dollars (\$5,000.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "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.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-0).

MOTION CARRIED.

SO ORDERED.