



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-930505-086)

In The Matter Of:

ROY STUART PAYNE, R.Ph.
P. O. Box 546
Miamisburg, Ohio 45343
(R.Ph. No. 03-3-07292)

INTRODUCTION

THE MATTER OF ROY STUART PAYNE CAME TO HEARING ON OCTOBER 26, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH R. SABINO, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; TIMOTHY D. MOORE, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

ROY STUART PAYNE WAS REPRESENTED BY RALPH E. BREITFELLER, AND THE STATE OF OHIO WAS REPRESENTED BY GREGG THORNTON, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) David Avery, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Roy Stuart Payne, Respondent
- (2) Kirk Eby
- (3) Roy F. Payne

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Hearing Request letter dated May 1, 1993.
- (2) Exhibit 1A - Summary Suspension Order/Notice of Opportunity letter dated May 5, 1993; Hearing Schedule letter dated May 5, 1993.
- (3) Exhibit 1B - Amendment letter dated September 21, 1993.
- (4) Exhibit 1C - Notice of Appearance of Ralph E. Breitfeller received in the Board office on October 7, 1993.
- (5) Exhibit 2 - Prescription number 61570.
- (6) Exhibit 3 - Prescription number 70065.
- (7) Exhibit 4 - Prescription number 58541.

- (8) Exhibit 5 - Prescription number 63427.
- (9) Exhibit 6 - Prescription number 70064.
- (10) Exhibit 7 - Statement of Roy S. Payne signed and notarized on August 13, 1992.
- (11) Exhibit 8 - Two-page statement of William E. Heil, M.D. signed and notarized on March 3, 1992.
- (12) Exhibit 9 - Two-page letter from H. Spencer Turner, M.D. signed and notarized on February 26, 1992.
- (13) Exhibit 10 - Two-page certified Entry in the Court of Common Pleas, Preble County, Ohio, Case No. 92CR007013, of Roy C. Payne (sic Roy S. Payne) dated April 16, 1993.
- (14) Exhibit 11 - Prescription number 66938.
- (15) Exhibit 12 - Computer printout of Lewisburg Disc Drugs, Record of Prescriptions for Ruth M. Payne, report dated February 13, 1992.
- (16) Exhibit 13 - Copy of computer printout of Lewisburg Disc Drugs, Record of Prescriptions for Roy F. Payne, report dated February 13, 1992.
- (17) Exhibit 14 - Copy of computer printout of Lewisburg Disc Drugs, Record of Prescriptions for Roy S. Payne, report dated February 13, 1992.

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) Records of the Board indicate that Roy Stuart Payne's license to practice pharmacy in the State of Ohio was summarily suspended on May 5, 1993.
- (2) Roy Stuart Payne did, on or about April 10, 1991, and again on October 30, 1991, intentionally create and knowingly possess false and forged prescriptions, to wit: Roy Stuart Payne created prescription numbers 61570 and 70065, both written for 100 units of Darvocet N-100, a schedule IV controlled substance, which were purported to be legitimate telephone prescriptions for his father, Roy F. Payne. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (3) Roy Stuart Payne did, on various dates, intentionally create and knowingly possess false and forged prescriptions, to wit: Roy Stuart Payne created the following prescriptions for the following dangerous drugs, which were purported to be legitimate prescriptions for himself or a family member:

<u>Rx No.</u>	<u>Patient Name</u>	<u>Drug/Quantity</u>	<u>Date</u>
58541	Roy F. Payne	Tagamet 200mg/100 units	02/02/91
63427	Ruth M. Payne	Trandate 200mg/100 units	05/21/91
70064	Ruth M. Payne	Trandate 200mg/100 units	10/30/91

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

- (4) Roy Stuart Payne did, on or about August 19, 1991, intentionally create and knowingly possess a false and forged prescription, to wit: Roy Stuart Payne created prescription number 66938, written for 100 units of Synalgos DC capsules, a schedule III controlled substance, which was purported to be a legitimate telephone prescription for himself. Such conduct is in violation of Section 2925.23(B)(1) 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) and (4) 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 (2) through (4) 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 paragraphs (2) through (4) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 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 on May 5, 1993.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Roy Stuart Payne:

(A) On the basis of the Findings of Fact and paragraphs (1) and (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby places the identification card, No. 03-3-07292, held by Roy Stuart Payne on probation for five years effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (1) Roy Stuart Payne must not violate the drug laws of the state of Ohio, any other state, or the federal government;
- (2) Roy Stuart Payne must abide by the rules of the State Board of Pharmacy; and
- (3) Roy Stuart Payne must comply with the terms of this Order and 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.

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Order of the Board

(B) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand dollars (\$1,000.00) 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.

Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Roy Stuart Payne's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns for a period of five years.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

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

ORDER MAILED

AND EFFECTIVE: DECEMBER 9, 1993

CERTIFIED MAIL

Return Receipt

#P 596 184 128

FZW/so

By



Franklin Z. Wickham, R.Ph., M.S.
Executive Director

cc: Gregg Thornton, Assistant Attorney General
Ralph E. Breitfeller, Attorney for Respondent; McShane, Breitfeller & Witten; Suite 201; 600 South High Street; Columbus, Ohio 43215