



# OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY  
(Docket No. D-921217-045)

In The Matter Of:

**THOMAS W. GALLAGHER, R.Ph.**  
421 East Street  
Minerva, Ohio 44657  
(R.Ph. No. 03-3-07396)

## INTRODUCTION

THE MATTER OF THOMAS W. GALLAGHER CAME TO HEARING ON MARCH 11, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY D. MOORE, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; METTA LOU HENDERSON, R.Ph.; PAUL F. LAMPING, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; NICHOLAS R. REPKE; AND ROBERT W. VALENTINE, R.Ph.

THOMAS W. GALLAGHER WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY RONDA ANDERSON, ASSISTANT ATTORNEY GENERAL.

## SUMMARY OF EVIDENCE

### (A) Testimony

State's Witnesses:

- (1) Kerrie Jarvis
- (2) Nelson Carman
- (3) Bruce Alan Thomas, R.Ph.
- (4) Thomas Gallagher, Respondent
- (5) David Gallagher, Ohio State Board of Pharmacy
- (6) Roberta J. Carman

Respondent's Witnesses:

- (1) Leslie Yoder
- (2) Bruce Alan Thomas, R.Ph.
- (3) Thomas Gallagher, Respondent

### (B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Notice of Opportunity letter of Bruce Alan Thomas dated October 28, 1992.

- (2) Exhibit 1A - Notice of Opportunity letter of Thomas Drug dated October 28, 1992.
- (3) Exhibit 1B - Hearing Request letter in Re: Thomas Drug and Bruce Alan Thomas from Attorney Russ Kendig dated November 23, 1992.
- (4) Exhibit 1C - Hearing Schedule letter dated November 27, 1992.
- (5) Exhibit 1D - Notice of Appearance and Certificate of Service in the matter of Bruce A. Thomas and Thomas Drug from Attorney David W. Grauer dated December 1, 1992.
- (6) Exhibit 1E - Continuance Request letter and Certificate of Service in the matter of Bruce A. Thomas and Thomas Drug from Attorney David W. Grauer dated December 1, 1992.
- (7) Exhibit 1F - Notice of Opportunity letter of Thomas W. Gallagher dated December 17, 1992.
- (8) Exhibit 1G - Hearing Request letter in Re: Thomas W. Gallagher from Attorney Russ Kendig dated January 8, 1993.
- (9) Exhibit 1H - Hearing Schedule letter in Re: Thomas W. Gallagher dated January 14, 1993.
- (10) Exhibit 1I - Notice of Appearance and Certificate of Service in the matter of Thomas W. Gallagher and Thomas Drug dated March 3, 1993.
- (11) Exhibit 1J - Hearing Schedule letter dated March 4, 1993.
- (12) Exhibit 2 - Pharmacist File Front Sheet of Bruce Alan Thomas showing original date of registration as March 23, 1982; and Renewal Application for Pharmacist License, No. 03-3-14551, for a license to practice pharmacy in Ohio from September 15, 1992, to September 15, 1993, dated August 10, 1992.
- (13) Exhibit 3 - Pharmacist File Front Sheet of Thomas William Gallagher showing original date of registration as March 6, 1961, and Renewal Application for Pharmacist License, No. 03-3-07396, for a license to practice pharmacy in Ohio from September 15, 1992, to September 15, 1993, dated August 11, 1992.
- (14) Exhibit 4 - Renewal Application for DDD License, Number 02-384000, for a Terminal Distributor of Dangerous Drugs License from January 1, 1992, to December 31, 1992, of Thomas Drug dated September 19, 1991.
- (15) Exhibit 5 - Three-page handwritten statement of Kerrie Anne Jarvis signed and notarized on November 6, 1991.
- (16) Exhibit 6 - Handwritten statement of Bruce Thomas signed and notarized on November 7, 1991.
- (17) Exhibit 7 - Copy of refill label of patient Nelson Carman, prescription number 613903, dated August 22, 1991.
- (18) Exhibit 8 - Copies of page eleven and page eighteen of Thomas Drug, Refill Prescription Log Report for Period August 22, 1991, through August 22, 1991.
- (19) Exhibit 9 - Copy of Thomas Drug, Detailed Prescription Profiles for Period January 1, 1991 to September 25, 1991 of patient Nelson Carman.
- (20) Exhibit 10 - Copy of one unit of Calan 240mg caplet in the possession of patient's attorney, Joyce Lamb.
- (21) Exhibit 11 - Handwritten statement of Leslie Yoder dated November 7, 1991.
- (22) Exhibit 12 - Handwritten statement of Pat Morckel dated September 25, 1991.
- (23) Exhibit 13 - Handwritten statement of Tom Gallagher dated September 25, 1991.
- (24) Exhibit 14 - Page Four of Dangerous Drug Distributor Inspection Report of DDD No. 02-384000 dated September 25, 1991.
- (25) Exhibit 15 - Copy of refill label of patient Kellen Yoder, prescription number 600016, dated September 25, 1991.

- (26) Exhibit 16 - Handwritten statement of Bruce Thomas signed and notarized on September 25, 1991.
- (27) Exhibit 17 - Statement of Nelson D. Carman, written by Roberta J. Carman, signed and notarized on September 25, 1991.

Respondent's Exhibits:

- (1) Exhibit A - Copy of letter from Donald J. Pentz dated March 10, 1993; copy of letter from Dave Fettman dated March 9, 1993; and copy of letter from Carl Cosmia dated March 10, 1993.
- (2) Exhibit B - Copy of letter from William F. Jobes dated March 6, 1993; copy of letter from Rudolph E. Battista dated March 2, 1993; and two-page copy of letter from Robert H. Hines, not dated.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that records of the Board indicate that Thomas W. Gallagher was originally licensed in the state of Ohio on March 6, 1961, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) From the evidence presented, the State Board of Pharmacy finds that Thomas W. Gallagher did, on or about September 25, 1991, while employed as a pharmacist at Thomas Drug, allow persons who were not registered pharmacists or registered pharmacy interns to practice pharmacy and/or to dispense dangerous drugs, to wit: Thomas W. Gallagher permitted technicians Leslie Yoder and Pat Morckel to fill and dispense a prescription when he was not present in the pharmacy area. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (3) From the evidence presented, the State Board of Pharmacy finds that Thomas W. Gallagher did, on or about September 25, 1991, knowingly make a false statement with the purpose to mislead a public official in performing his official function; and, with the purpose to hinder the discovery, apprehension, and/or prosecution or another for crime, Mr. Gallagher did communicate false information to another, to wit: after allowing unlicensed individuals to dispense dangerous drugs, Thomas W. Gallagher lied to the State Board of Pharmacy inspector by claiming responsibility for dispensing a prescription which had been dispensed by technicians when in fact Mr. Gallagher was not in the pharmacy area. Such conduct is in violation of Sections 2921.13 and 2921.32 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 (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 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.

- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) 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 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 takes the following actions concerning the pharmacist license, No. 03-3-07396, held by Thomas W. Gallagher:

(A) On the basis of paragraphs (1) and (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby places Thomas W. Gallagher on probation for one year, effective as of the date of the mailing of this Order. The terms of probation are as follows:

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

(B) On the basis of paragraph (2) of the Conclusions of Law set forth above, the State Board 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 Thomas W. Gallagher'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 one year, effective as of the date of the mailing of this Order.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-5/Nay-1).

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.

THOMAS W. GALLAGHER, R.Ph.  
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Order of the Board

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.

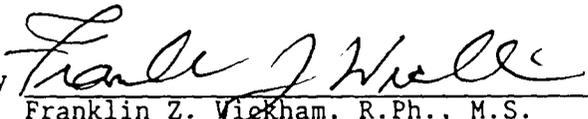
Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED  
AND EFFECTIVE:           MAY 5, 1993          

CERTIFIED MAIL  
Return Receipt  
#P 497 578 940

FZW/so

By   
Franklin Z. Vickham, R.Ph., M.S.  
Executive Director

cc: Ronda Anderson, Assistant Attorney General  
David W. Grauer, Attorney for Respondent; Squire, Sanders & Dempsey;  
1300 Huntington Center; 41 South High Street; Columbus, Ohio 43215