



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950925-019)

In The Matter Of:

JAMES D. VOGELSONG, R.Ph.

818 Main Street

Box 723

Lucasville, Ohio 45648

(R.Ph. No. 03-3-08137)

INTRODUCTION

THE MATTER OF JAMES D. VOGELSONG CAME ON FOR CONSIDERATION ON MARCH 7, 1996, BY THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

THE EVIDENTIARY HEARING WAS HELD ON JANUARY 4, 1996, BEFORE BOARD MEMBER SUZANNE L. NEUBER, R.Ph. PURSUANT TO SECTION 4729.17 OF THE OHIO REVISED CODE. JAMES D. VOGELSONG WAS REPRESENTED BY KEVIN L. SHOEMAKER, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN AND LAWRENCE D. PRATT, ASSISTANT ATTORNEYS GENERAL.

FOLLOWING CONSIDERATION OF THE REPORT AND RECOMMENDATION AND RESPONDENT'S OBJECTION THERETO, THE TRANSCRIPT OF THE HEARING, AND EVIDENCE ADDUCED AT THE HEARING, MOTIONS WERE MADE AND RECORDED TO ADOPT THE FOLLOWING ORDER:

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) James Dalton, Lucasville, Ohio
- (2) Sergeant Charles Horner, Portsmouth Police Department assigned to the Southern Ohio Drug Task Force
- (3) Ernest Eichenlaub, Lucasville, Ohio
- (4) Jerry Binion, Wheelersburg, Ohio
- (5) Cathy Meyers, Wheelersburg, Ohio
- (6) Officer Todd Bryant, Portsmouth Police Department assigned to the Southern Ohio Drug Task Force
- (7) Joseph Holliday, Ohio State Board of Pharmacy
- (8) Robert Amiet, Jr., R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

(1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated September 25, 1995.
- (2) Exhibit 1A--Request for Hearing and Certificate of Service dated October 4, 1995.
- (3) Exhibit 1B--Two-page Public Records Request dated October 4, 1995.
- (4) Exhibit 1C--Hearing Schedule letter dated October 5, 1995.
- (5) Exhibit 1D--Letter from David L. Rowland dated October 9, 1995.
- (6) Exhibit 1E--Letter from David L. Rowland dated November 27, 1995.
- (7) Exhibit 1F--Copy of two-page letter from Mary L. Hollern dated November 17, 1995, and copy of three-page Curriculum Vitae of Robert H. Amiet, Jr., R.Ph., M.B.A.
- (8) Exhibit 1G--Hearing Schedule letter dated December 1, 1995.
- (9) Exhibit 1H--Pharmacist File Front Sheet of James D. Vogelsong showing original date of registration as February 11, 1964; and Renewal Application for Pharmacist License, No. 03-3-08137, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of James D. Vogelsong dated July 28, 1995.
- (10) Exhibit 3--Three-page Dangerous Drug Distributor Inspection Report of Vogelsong's Family Pharmacy, Terminal Distributor License No. 02-107350, dated September 8, 1993.
- (11) Exhibit 3A--Three-page Dangerous Drug Distributor Inspection Report of Vogelsong's Family Pharmacy, Terminal Distributor License No. 02-107350, response to pink sheet, received in the Board office on September 21, 1993.
- (12) Exhibit 5--Two-page Dangerous Drug Distributor Inspection Report of Vogelsong's Family Pharmacy, Terminal Distributor License No. 02-107350, dated September 19, 1995.
- (13) Exhibit 6--Copy of page 1931 of the Physicians' Desk Reference, 47th Edition.
- (14) Exhibit 7--Copy of page 1392 of the Physicians' Desk Reference, 47th Edition.
- (15) Exhibit 8--Copies of pages 1391 and 1392 of the Physicians' Desk Reference, 47th Edition.
- (16) Exhibit 9--Copy of page 1956 of the Physicians' Desk Reference, 47th Edition.
- (17) Exhibit 11--Sealed record regarding patient identification.
- (18) Exhibit 12.1--Copy of six-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Jerry Binion from September 18, 1991, through October 10, 1995.
- (19) Exhibit 12.2--Copy of six-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Cathy Meyers from September 18, 1991, through September 11, 1995.
- (20) Exhibit 12.3--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #3 from September 9, 1994, through September 7, 1995.

- (21) Exhibit 12.4--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #4 from July 8, 1991, through September 7, 1995.
- (22) Exhibit 12.5--Copy of nine-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #5 from February 14, 1989, through October 10, 1995.
- (23) Exhibit 12.6--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #6 from September 16, 1991, through September 6, 1995.
- (24) Exhibit 12.7--Copy of three-page list of exempt narcotic sales made by Vogelsong's Family Pharmacy to Patient #7 from September 9, 1994, through September 7, 1995.
- (25) Exhibit 13--Copy of prescriptions numbered 405801 and 405802.
- (26) Exhibit 14--Copy of prescription number 405806.
- (27) Exhibit 15--Copy of prescriptions numbered 405810 and 405811.
- (28) Exhibit 16--Copy of prescriptions numbered 405822, 405823, 405824, and 405825.
- (29) Exhibit 17--Copy of prescriptions numbered 405835 and 405836.
- (30) Exhibit 18--Copy of prescriptions numbered 405837 and 405838.
- (31) Exhibit 19--Copy of prescriptions numbered 405843 and 405844.
- (32) Exhibit 20--Copy of prescription number 405847.
- (33) Exhibit 21--Copy of prescriptions numbered 405860 and 405861.
- (34) Exhibit 22--Copy of prescription number 405870.
- (35) Exhibit 23--Copy of prescriptions numbered 405880 and 405881.
- (36) Exhibit 24--Copy of prescriptions numbered 405893 and 405894.
- (37) Exhibit 25--Copy of prescription number 405895.
- (38) Exhibit 26--Copy of prescriptions numbered 405898 and 405899.
- (39) Exhibit 27--Copy of prescriptions numbered 405900 and 405901.
- (40) Exhibit 28--Copy of prescriptions numbered 405902, 405903, and 405904.
- (41) Exhibit 29--Copy of prescriptions numbered 405906 and 405907.
- (42) Exhibit 30--Copy of prescription number 405908.
- (43) Exhibit 31--Copy of prescription number 405909.
- (44) Exhibit 32--Copy of prescription number 405910.
- (45) Exhibit 33--Copy of prescription numbered 405913 and 405914.
- (46) Exhibit 34--Copy of prescriptions numbered 405915 and 405916.
- (47) Exhibit 35--Copy of prescription number 405922.
- (48) Exhibit 36--Copy of prescription number 405924.
- (49) Exhibit 37--Four-page Consent Agreement of the Ohio State Board of Pharmacy, Docket No. D-940214-047, in the matter of James D. Vogelsong, effective date January 24, 1994, with two attachments as follows: copy of two-page Entry in the Court of Common Pleas of Franklin County, Ohio, Case No. 90CR-09-4393A, of James D. Vogelsong dated January 12, 1994, and copy of two-page Entry in the Court of Common Pleas of Franklin County, Ohio, Case No. 90CR-09-4393B, of James D. Vogelsong dated January 12, 1994.
- (50) Exhibit 38--Five exempt narcotics registers of Vogelsong's Family Pharmacy dated as follows: book number one is labeled Safe-Repet and is dated from February 15, 1986, through February 11, 1989; book number two is labeled Safe-Repet and is dated from February 13, 1989, through November 19, 1990; book number three is labeled Samuel's Products Exempt Narcotics Register and is dated from November 20, 1990, through March 19, 1992; book number four is labeled Samuel's Products Exempt Narcotics Register and is dated from March 19, 1992, through September 14, 1993; and book number five is labeled Samuel's Products Exempt Narcotics Register and is dated August 8, 1994,

through September 8, 1995; book number five also contains one loose sheet dated from July 29, 1994, through August 8, 1994.

Respondent's Exhibits:

- (1) None

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 the Hearing Officer, with modification, as follows:

- (1) Records of the Board indicate that James D. Vogelsong was originally licensed to practice pharmacy in the state of Ohio on February 11, 1964, pursuant to examination; and on September 25, 1995, James D. Vogelsong's license was summarily suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (2) James D. Vogelsong did, from March 19, 1992, to September 14, 1993, and again from August 8, 1994, to September 8, 1995, knowingly sell a controlled substance in an amount greater than three times bulk but less than one hundred times bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: James D. Vogelsong and another pharmacist sold the following numbers of preparations of exempt narcotics to the same individuals without a legitimate medical purpose:

<u>Patient No.</u>	<u>18-month period</u>	<u>13-month period</u>	<u>sales identified to J.D.V.</u>	<u>sales identified to others or unknown</u>
1	227	175	38	137
2	226	176	93	83
3	128	131	32	99
4	0	117	28	89
5	163	86	21	65
6	123	100	19	81
7	0	108	17	91

The evidence presented in State's Exhibits 12.1 through 12.7 proved to understate the sales; however, the evidence presented in the five Exempt Narcotic Books, labeled as State's Exhibit 38, clearly illustrate these figures. Such conduct is in violation of Section 2925.03(A)(7) of the Ohio Revised Code.

- (3) James D. Vogelsong did, on or about September 8, 1995, intentionally make and/or knowingly possess false or forged prescriptions, to wit: for the following prescriptions, James D. Vogelsong wrote incorrect refill dates, as shown in bold print below, so as to make the prescriptions' refills appear legitimate:

<u>Originally Rx No.</u>	<u>Drug</u>	<u>Qty.</u>	<u>Refill Filled</u>	<u>Refill # 1</u>	<u>Refill # 2</u>	<u>Refill # 3</u>	<u>Refill # 4</u>	<u>Refill # 5</u>	<u># 6</u>
405801	Anexsia	60	8/22/95	8/28/95	9/4/95	9/9/95			
405802	Valium	60	8/22/95	8/28/95	9/4/95	9/9/95			
405806	Anexsia	90	8/26/95	8/31/95	9/5/95	9/6/95	9/8/95	9/10/95	9/11/95
405810	Anexsia	40	8/23/95	8/31/95	9/4/95	9/10/95			
405823	Fiorinal	60	8/24/95	9/5/95	9/11/95				
405836	Anexsia	60	8/25/95	8/31/95	9/5/95	9/10/95			
405837	Anexsia	40	8/25/95	8/31/95	9/5/95	9/10/95			
405843	Anexsia	60	8/25/95	8/31/95	9/5/95	9/10/95			
405844	Valium	40	8/25/95	8/31/95	9/5/95	9/10/95			
405847	Fiorinal	45	8/23/95	8/27/95	9/4/95	9/8/95	9/13/95	9/18/95	

405860	Lorcet Plus	60	8/28/95	8/30/95	9/6/95	9/11/95
405870	Lorcet Plus	60	8/30/95	9/6/95	9/9/95	
405880	Anexsia	60	9/1/95	9/10/95	9/15/95	
405881	Valium	60	9/1/95	9/10/95	9/15/95	
405893	Tylenol 4	60	9/5/95	9/11/95	9/17/95	9/22/95
405895	Lorcet Plus	60	9/5/95	9/11/95	9/14/95	
405898	Anexsia	60	9/5/95	9/12/95		
405900	Anexsia	40	9/5/95	9/11/95	9/16/95	
405902	Lorcet Plus	40	9/5/95	9/10/95	9/15/95	9/21/95
405904	Xanax?	60	9/5/95	9/11/95	9/16/95	9/22/95
405906	Anexsia	60	9/6/95	9/12/95	9/16/95	
405907	Valium	60	9/6/95	9/12/95	9/16/95	
405908	Anexsia	60	9/6/95	9/12/95	9/16/95	
405909	Anexsia	40	9/6/95	9/12/95		
405910	Xanax	40	9/6/95	9/12/95		
405913	Anexsia	60	9/6/95	9/12/95	9/18/95	
405914	Valium	30	9/6/95	9/12/95	9/18/95	
405915	Anexsia	60	9/6/95	9/12/95	9/17/95	
405916	Diazepam	40	9/6/95	9/12/95	9/17/95	
405922	Anexsia	60	9/7/95	9/12/95		
405924	Anexsia	40	9/7/95	9/13/95		

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

CONCLUSIONS OF LAW

The State Board of Pharmacy hereby agrees with and adopts the Conclusions of Law set forth in the Report and Recommendation of the Hearing Officer, with modification, as follows:

- (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 paragraphs (2) and (3) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of Chapter 2925. 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 the issue raised by the objection submitted by the Respondent has been ruled upon by the Franklin County Court of Common Pleas, Civil Division, Case No. 96CVH-01-536, on its Journal Entry dated February 13, 1996, and is therefore moot.

ACTION OF THE BOARD

Pursuant to Section 4729.17 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby agrees with and adopts the recommendation for action set forth in the Report and Recommendation of the Hearing Officer, with modification, as follows:

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued September 25, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby takes the following actions in the matter of James D. Vogelsong:

- (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 suspends the pharmacist identification card, No. 03-3-08137, held by James D. Vogelsong indefinitely and such suspension is effective as of the date of the mailing of this Order. James D. Vogelsong 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.
 - (1) Three years after the effective date of this Order, the State Board of Pharmacy will reinstate James D. Vogelsong's license to practice pharmacy in Ohio provided that he takes and successfully completes the law examination(s) required, at the time he takes the examination(s), in paragraph (B)(1) of Rule 4729-5-31 of the Ohio Administrative Code, prior to that date. If James D. Vogelsong has not successfully completed the examination(s) prior to three years from the effective date of this Order, his license will remain under suspension until such condition has been achieved.
 - (2) Upon reinstatement of James D. Vogelsong's license to practice pharmacy in Ohio, his identification card will be placed on probation for five years with the following stipulations and conditions:
 - (a) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, declare that James D. Vogelsong's pharmacist identification card is not in good standing and thereby deny the privilege of being a preceptor and training pharmacy interns.
 - (b) James D. Vogelsong may not serve as a responsible pharmacist.
 - (c) James D. Vogelsong must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (d) James D. Vogelsong must abide by the rules of the Ohio State Board of Pharmacy.
 - (e) James D. Vogelsong must comply with the terms of the Order.

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.

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

MOTION CARRIED.

SO ORDERED.



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: <http://www.pharmacy.ohio.gov>

THE OHIO STATE BOARD OF PHARMACY
(Docket No. D-940214-047)

In The Matter Of:

JAMES D. VOGELSONG, R.Ph.

CONSENT AGREEMENT

This Consent Agreement is entered into between the Ohio State Board of Pharmacy (hereinafter "Board") and James D. Vogelsong, R.Ph., License No. 03-3-08137, (hereinafter "Vogelsong"), a licensee of the Board. In order to reconcile the possibility of disciplinary charges being filed by the Board against Vogelsong as a result of his plea of guilty to the charge of falsification in Case No. 90CR-09-4393 A and B in the Franklin County Court of Common Pleas, and in order to obviate the need to conduct an administrative hearing to consider possible disciplinary sanctions against Vogelsong's license, the Board and Vogelsong agree as follows:

1. The Board and Vogelsong stipulate that Vogelsong is, and has been since February 11, 1964, a licensee of the Board.
2. The Board and Vogelsong stipulate that Vogelsong entered a plea of guilty to the charge of falsification, R.C. 2921.13, a misdemeanor of the first degree to counts 1 and 3 of the indictment in the Franklin County Court of Common Pleas.
3. The Board and Vogelsong stipulate that Vogelsong entered into a consent agreement with the Ohio Attorney General's Office, Medicaid Fraud Section to resolve Case No. 90CR-09-4393 A and B, copy attached hereto as Exhibit A.
4. The Board and Vogelsong stipulate that Vogelsong waives his opportunity for an administrative hearing before the Board.
5. The Board and Vogelsong stipulate that Vogelsong shall fully comply with all of the terms indicated in Exhibit A.
6. The Board and Vogelsong stipulate that Vogelsong's Family Pharmacy shall pay a fine to the Board in the amount of \$10,000 payable within thirty (30) days from the date of execution of this agreement.
7. The Board and Vogelsong stipulate that Vogelsong shall pay a fine to the Board in the amount of \$2,500 payable within thirty (30) days from the date of execution of this agreement.

8. The Board and Vogelsong stipulate that Vogelsong shall receive a sixty (60) day suspension of his pharmacy license, said suspension to commence on April 1, 1994 and end May 30, 1994, provided he satisfies the terms of condition in paragraph 9. If the terms of condition in paragraph 9 are not satisfied by May 30, 1994, Vogelsong's license to practice pharmacy shall remain under suspension until such time as the terms in paragraph 9 are met. Vogelsong shall be prohibited from entering into any pharmacy as defined in O.R.C. 4729.02 during the term of his suspension.
9. The Board and Vogelsong stipulate that Vogelsong shall retake and successfully pass the FDLE and State Jurisprudence exam before his license is reinstated. Vogelsong may retake said exam in January, 1994.
10. The Board and Vogelsong stipulate that Vogelsong shall receive a two year probationary term with the Board after the completion of his suspension and successfully passing the FDLE and State Jurisprudence exam.
11. The Board and Vogelsong stipulate that Vogelsong shall not be a preceptor during the probationary time period.
12. The agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies these terms.
13. Vogelsong waives any and all claims or causes of action his may have against the State of Ohio, the Board, and members and officers, employees and/or agents of either, arising out of matters which are the subject of this Consent Agreement, including all claims for recovery of attorney's fees.
14. This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.
15. Upon the consent of both parties, the terms and conditions of this Consent Agreement may be modified or terminated in writing.
16. This agreement shall not become effective until it is approved by the Board at its meeting of October 25-29, 1993. If approved, the acceptance of this agreement by the Board and Vogelsong will be entered into the minutes of the Board. In event that this Consent Agreement is not fully executed, this offer is withdrawn, and the terms of this Consent Agreement shall not be relied upon or introduced in any other civil or administrative action by either party.
17. This Consent Agreement will be effective upon the last date of signature below.

OHIO STATE BOARD OF PHARMACY

/S/ J R Sabino
JOSEPH R. SABINO, PRESIDENT

/D/1-24-94
DATE

/S/ James D. Vogelsong
JAMES D. VOGELSONG

/D/11-11-93
DATE

_____/S/Gregg B. Thornton_____
GREGG B. THORNTON
Assistant Attorney General
Counsel for the Ohio State Board
of Pharmacy

_____/D/1-24-94_____
DATE

_____/S/Thomas F. Vivyan_____
Attorney for James D. Vogelsong

_____/D/11-11-93_____
DATE