

THE STATE BOARD OF PHARMACY

VS

LUTHER C. SMITH, R.Ph.
AND
SMITH DRUG COMPANY, INC.

THE MATTERS PERTAINING TO THE REGISTERED PHARMACIST IDENTIFICATION CARD OF LUTHER C. SMITH, R.Ph. NO. 03-30-8545, AND THE TERMINAL DISTRIBUTOR LICENSE HELD BY SMITH DRUG COMPANY, INC., NO. 02-05-2299, WERE CONSOLIDATED, DOCKET NO. 6-54-1, AND HEARD PURSUANT TO CHAPTERS 4729. AND 119. OF THE REVISED CODE. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTION WAS MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings of Fact

- (1) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: obtaining dangerous drugs by attempting or committing a theft offense; in violation of Section 2925.21(A) of the Ohio Revised Code.
- (2) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Dilaudid, a Schedule II drug, knowing and having reasonable cause to believe such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (3) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Biphedamine, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Morphine Sulfate, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.

- (5) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Percocet-5, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (6) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Parest, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (7) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Demerol, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (8) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Dolophine, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (9) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was found guilty of a felony on February 26, 1982 by the Scioto County Court of Common Pleas, to wit: knowingly preparing for distribution, or distributing Meperidine, a Schedule II drug, knowing or having reasonable cause to know such drug was intended for sale or resale by another; in violation of Section 2925.03(A)(2) of the Ohio Revised Code.
- (10) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith did engage in a conspiracy to divert controlled substances for illegal sale, to wit: participating in a set-up robbery of the Smith Drug Company, Inc., located at 741 2nd Street, Portsmouth, Ohio 45662, with an Edward Lee Scott of Portsmouth, Ohio; in violation of Section 2923.01 of the Ohio Revised Code.

- (11) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith did illegally possess controlled substances, to wit: 12 Quaalude 300mg capsules and 31 Ritalin 10mg tablets were in his residence, located at 309 Washington Street, Portsmouth, Ohio, a place other than that described in the Terminal Distributor of Dangerous Drugs license issued to Smith Drug Company, Inc.; in violation of Section 4729.51(E) of the Ohio Revised Code.
- (12) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith was the president and responsible pharmacist, as required by Section 4729.55 of the Revised Code, for Smith Drug Company, Inc., 742 2nd Street, Portsmouth, Ohio 45662, Terminal Distributor of Dangerous Drugs License No. 02-05-2299, between the dates of June 7, 1970 and October 9, 1981.
- (13) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith, as the responsible pharmacist for Smith Drug Company, Inc., did not keep a record of all controlled substances received or dispensed; in violation of Section 3719.07(G) of the Ohio Revised Code, Rule 4729-9-14 of the Ohio Administrative Code, Section 301 of the Federal Narcotic Law, 84 Stat. 1236, as amended, and Section 1308.04 of the Federal Regulations, Title 21.
- (14) From the evidence presented, the State Board of Pharmacy finds Luther C. Smith, as the responsible pharmacist for Smith Drug Company, Inc., did dispense, without a written prescription given by a practitioner, a quantity of approximately 85,220mg of Cocaine HCl, approximately 2,217 Percodan tablets, approximately 1,906 Percocet-5 tablets, approximately 876 Quaalude 300mg tablets, approximately 747 Dilaudid 4mg tablets, approximately 626 Dexedrine 15mg tablets, approximately 554 Morphine Sulfate 15mg tablets, approximately 520 Tuinal 200mg capsules, approximately 517 Amytal 30mg capsules, approximately 476 Dilaudid 1mg tablets, approximately 489 Codeine Sulfate 30mg tablets, approximately 417 Preludin 75mg tablets, approximately 365 Eskatrol capsules, approximately 246 Parest 400mg capsules, approximately 150 Dolophine 5mg tablets, and approximately 108 Parest 200mg capsules, all of which are Schedule II substances and drugs which may be dispensed only upon prescription of a practitioner; in violation of Sections 2925.03(A), 3715.52(L), 3715.64(A)(13)(b), 3719.05(A) of the Ohio Revised Code, the Federal Narcotic Law as defined in Section 4729.02 of the Ohio Revised Code, and the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C. 301.

Conclusions of Law

- (1) The State Board of Pharmacy, on the basis of paragraphs (1) through (9) of the Findings of Fact, concludes that Luther C. Smith is guilty of a felony within the meaning of Section 4729.16(A) of the Revised Code.

- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (11) and (14) of the Findings of Fact constitutes gross immorality within the meaning of Section 4729.16(A) of the Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (11), (13), and (14) of the Findings of Fact constitutes willful violations of more than one time any of the provisions of Chapters 2925., 3715., 3719., and 4729. of the Ohio Revised Code.
- (4) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraph (13) of the Findings of Fact constitutes violations of Rule 4729-9-14 of the Ohio Administrative Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraph (13) of the Findings of Fact constitutes violations of the provisions of the "Federal Food, Drug, and Cosmetic Act", 52 Stat. 1040 (1938), 21 U.S.C.A. 301 and Chapter 3715. of the Ohio Revised Code.
- (6) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (11), (13), and (14) of the Findings of Fact constitutes violations of the provisions of the Federal Narcotic Law as defined in Section 4729.02 of the Ohio Revised Code, Chapter 2925., and Chapter 3719. of the Ohio Revised Code.

Pursuant to Sections 4729.16 and 4729.54 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy takes the following actions concerning the registered pharmacist license of Luther C. Smith, No. 03-30-8545, and the Terminal Distributor of Dangerous Drugs license held by Smith Drug Company, Inc., No. 02-05-2299:

- (A) On the basis of paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the registered pharmacist identification card held by Luther C. Smith.
- (B) On the basis of paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the registered pharmacist identification card held by Luther C. Smith.
- (C) On the basis of paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the registered pharmacist identification card held by Luther C. Smith.

(D) On the basis of paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Smith Drug Company, Inc., a monetary penalty of one thousand dollars (\$1,000.00).

(E) On the basis of paragraphs (5) and (6) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the Terminal Distributor of Dangerous Drugs license of Smith Drug Company, Inc. for two years.

Further, the Board suspends the two-year suspension on condition that the Smith Drug Company, Inc. abides by the terms of probation set by the Board. The terms provide that the Smith Drug Company, Inc. shall not violate any drug laws of Ohio, abide by the rules of the Ohio State Board of Pharmacy, and that Luther C. Smith never have any ownership in, participate in the operation of, or be allowed on the premises of the pharmacy owned and operated by Smith Drug Company, Inc.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.