

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020606-060)

In The Matter Of:

DALE E. LEWIS, R.Ph.
3854 Washington Boulevard
University Heights, Ohio 44118
(R.Ph. No. 03-3-08567)

INTRODUCTION

THE MATTER OF DALE E. LEWIS CAME FOR HEARING ON FEBRUARY 5, 2003, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

DALE E. LEWIS WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Joann Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. Dale E. Lewis, R.Ph., Respondent
2. Mary Jane Lewis
3. Robert Lewis, R.Ph.

State's Exhibits

1. Copy of Notice of Opportunity for Hearing letter [06-06-02]
1A-1D. Procedurals
2. Written statements of Dale E. Lewis [02-14-02 & 02-15-02]
3. Written statement of James Posendek, R.Ph. [02-19-02]
4. St. Vincent Charity Occupational Medicine Drug Test Results [02-14-02]
5. Sample of Cocaine bottle
6. Respondent's penknife
7. Summary Audit Report [02-20-02]

Respondent's Exhibits

- A. Letter from Sharon Carpenter, PCC, CCDC-111 [01-23-03]
- B. Letter from Kathleen A. Rice [01-27-03]
- C. Letter from Dennis E. O'Brien, R.Ph. [01-21-03]

- D. Letter from Robert E. Lewis, R.Ph. [01-23-03]
- E. Letter from Daniel Lewis, Pharm.D. [01-27-03]
- F. Letter from Mary Jane Lewis [02-01-03]

FINDINGS OF FACT

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

(1) Records of the State Board of Pharmacy indicate that Dale E. Lewis was originally licensed by the State of Ohio as a pharmacist on June 27, 1966, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.

(2) Dale E. Lewis did, during the two weeks immediately preceding February 14, 2002, use a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Dale E. Lewis has admittedly abused a controlled substance by sniffing cocaine powder while practicing pharmacy. Dale E. Lewis had not been prescribed such medication by an authorized prescriber. Dale E. Lewis has admitted that he had been stealing and consuming controlled substances while practicing pharmacy during and after stressful days at work so as to relax. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

(3) Dale E. Lewis did, on or about unknown dates prior to February 14, 2002, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of St. Vincent Charity Hospital, beyond the express or implied consent of the owner, to wit: Dale E. Lewis stole cocaine powder, a Schedule II controlled substance, for his personal use. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(4) Dale E. Lewis did, on or about unknown dates prior to February 14, 2002, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of St. Vincent Charity Hospital, beyond the express or implied consent of the owner, to wit: Dale E. Lewis stole hydrocodone cough syrup, a Schedule III controlled substance, for his personal use. Such conduct is in violation of Section 2913.02 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) through (4) of the Findings of Fact constitute being guilty of gross immorality 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 abusing drugs to such a degree as to render him unfit to practice pharmacy 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 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 provisions of Chapter 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-3-08567, held by Dale E. Lewis effective as of the date of the mailing of this Order. Further, the Board suspends the suspension and places Dale E. Lewis on probation for one year with the following conditions:

(A) Dale E. Lewis must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted each month for the first year and then once every three months for the remaining four years.

(a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(b) Results of all drug screens must be negative. Any positive results, including those that may have resulted from ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicate a violation of probation.

(c) Refusals of urine screens or diluted urine screens are equivalent to a positive result and indicate a violation of probation.

(2) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.

(3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Dale E. Lewis must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10) that include:

- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
- (2) A written description of Dale E. Lewis' progress towards recovery and what he has been doing during the previous three months.

(C) Other terms of probation are as follows:

- (1) The State Board of Pharmacy hereby declares that Dale E. Lewis' pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (2) Dale E. Lewis may not serve as a responsible pharmacist.
- (3) Dale E. Lewis may not destroy, assist in, or witness the destruction of controlled substances.
- (4) Dale E. Lewis must abide by the contract with his treatment provider and must immediately report any violation of the contract to the Board.
- (5) Dale E. Lewis must not violate the drug laws of Ohio, any other state, or the federal government.
- (6) Dale E. Lewis must abide by the rules of the State Board of Pharmacy.
- (7) Dale E. Lewis must comply with the terms of this Order.

(D) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

Dale E. Lewis 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.

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

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE MARCH 6, 2003