



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-031024-026 and D-040218-061)

In The Matter Of:

**TERRELL L. MUNDHENK, R.Ph.**

7571 Cloverbrook Park Drive

Centerville, Ohio 45459

(R.Ph. No. 03-3-08732)

### INTRODUCTION

THE MATTER OF TERRELL L. MUNDHENK CAME FOR HEARING ON MAY 3, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

TERRELL L. MUNDHENK WAS REPRESENTED BY RAY A. COX AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

#### State's Witnesses

1. Jesse Wimberly, Ohio State Board of Pharmacy

#### Respondent's Witnesses

1. Robert A. Blair, R.Ph.
2. Julia K. Wharff, Pastor
3. Terrell Mundhenk, R.Ph., Respondent

#### State's Exhibits

1. Copy of Notice of Opportunity For Hearing letter [10-24-03]
  - 1A-1E. Procedurals
  - 1F. Copy of Summary Suspension Order/Notice of Opportunity For Hearing letter [02-18-04]
  - 1G. Procedural
2. Copy of e-mail letter from Cassie to Brent Kovalyak [07-25-03]
3. Copy of Statement of Terrell Mundhenk [09-04-03]
4. Copy of letter from Edmund Choroski [03-22-04]; copy of record of Ann Mundhenk's prescriptions [10-21-02 to 08-30-03]; copy of record of Terrell Mundhenk's prescriptions [10-31-02 to 05-30-03]; copy of letter from Audrey J. Aronsohn [03-23-04]

5. Copy of Walgreens Prescription Refill Request for Ann Mundhenk [07-23-03]; copy of Walgreens Second Prescription Refill Request for Ann Mundhenk [07-25-03]
6. Copy of twenty-three page Prescription Profile for Ann Mundhenk [05-20-02 to 09-02-03]
7. Copy of Statement of J. Koren, D.O.[09-04-03]
8. Copy of nineteen page Prescription Profile for Amy Mundhenk [05-20-02 to 09-02-03]
9. Copy of Statement of S. Lee, M.D. [09-04-03]
10. Copy of eleven page Prescription Profile for Terrell L. Mundhenk [05-20-02 to 09-02-03]
11. Indictment [11-06-03]; Entry of Plea of Not Guilty [11-20-03]; Motion for Intervention in Lieu of Conviction [12-02-03]; Decision and Order of Intervention in Lieu of Conviction [02-04-04] State of Ohio vs. Terrell L. Mundhenk, Case No. 2003 CR 03614, Montgomery County Common Pleas Court

Respondent's Exhibits

- A. Letter from Robert Blair, R.Ph. [04-27-04]
- B. Letter from Ronald E. Seigla, R.Ph. [not dated]
- C. Letter from William M. Powers, Jr. [04-26-04]
- D. Letter from Julia K. Wharff, Pastor [04-27-04]
- E. Copy of Demand for Payment letter from Civil Recovery Services [11-10-03]; copy of Section 2307.61 (Damages Recoverable For Willful Damage Or theft; Demand; Agreement for Payment: Procedure) of the Ohio Revised Code [10-13-97]; copy of United States Postal Service Money Order Receipt, No. 04611184402 [12-08-03]; copy of U.S. Postal Service Certified Mail Receipt No. 7003 1680 0004 2120 8811[02-26-04]
- F. Copy of Miami Valley Pharmacists Association *MVPA Newsletter* [not dated]
- G. Letter from James H. Davis, M.D. [04-22-04]
- H. Letter from James A. Derksen, M.D., FAAFP [04-28-04]

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 Terrell L. Mundhenk was originally licensed by the State of Ohio as a pharmacist on February 13, 1967, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended effective February 18, 2004.
- (2) Terrell L. Mundhenk did, on or about the following dates, intentionally create and/or knowingly possess a false or forged prescription, to wit: Terrell L. Mundhenk created the following documents to obtain drugs for his wife without authorization from a prescriber:

<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
147619	Aciphex 20 mg	30	03/21/03
147798	ranitidine 150 mg	60	03/24/03
149156	Levoxyl .05 mg	60	04/04/03
150308	Allegra-D	60	04/14/03
150424	ranitidine 150 mg	60	04/15/03
150835	chlordiazepoxide	90	04/18/03
152046	clotrimazole/Cream 1%	45	04/30/03
152937	ranitidine 150 mg	60	05/07/03
155498	ranitidine 150 mg	60	05/30/03

156034	Levoxyl .05 mg	60	06/05/03
156417	Aciphex 20 mg	30	06/09/03
160993	Allegra-D	60	07/23/03

Such conduct violates Section 2925.23(B) of the Ohio Revised Code.

- (3) Terrell L. Mundhenk did, on or about the following dates, intentionally create and/or knowingly possess a false or forged prescription, to wit: Terrell L. Mundhenk created the following documents to obtain drugs for his daughter, in order to "keep her calm and stable," without authorization from a prescriber:

<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
144286	omeprazole 20 mg	30	01/09/03
148655	omeprazole 20 mg	30	03/31/03
150303	fluoxetine 20 mg	30	04/14/03
150304	clonazepam 1 mg	60	04/14/03
150306	hydrocodone/APAP 5/500	40	04/14/03
153135	clonazepam 1 mg	60	05/09/03
153136	hydrocodone/APAP 5/500	40	05/09/03
155905	hydrocodone/APAP 5/500	40	06/04/03
156429	clonazepam 1 mg	60	06/09/03
157479	fluoxetine 20 mg	30	06/19/03
159212	hydrocodone/APAP 5/500	40	07/07/03
159213	mirtazapine 15 mg	30	07/07/03

Such conduct violates Section 2925.23(B) of the Ohio Revised Code.

- (4) Terrell L. Mundhenk did, on or about the following dates, intentionally create and/or knowingly possess a false or forged prescription, to wit: Terrell L. Mundhenk created the following documents to obtain drugs for himself without authorization from a prescriber:

<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
145453	Paxil 20 mg	30	02/02/03
155499	omeprazole 20 mg	30	05/30/03
153289	Glucotrol XL 5 mg	30	03/04/02
153291	Paxil 20 mg	30	04/11/02
152617	Actos 15 mg	30	06/17/02
157882	Actos 15 mg	30	07/19/02
158231	Paxil 20 mg	60	07/21/02
158232	Glucotrol XL 5mg	30	07/21/02
164240	Paxil 20 mg	30	08/26/02
164242	Actos 15 mg	30	08/26/02
170288	Glucotrol XL 5 mg	30	09/30/02
170289	Paxil 20 mg	30	09/30/02
170290	Actos 15 mg	30	09/30/02
172395	Nexium 40 mg	7	10/10/02
175781	Paxil 20 mg	30	10/31/02
175782	Glucotrol XL 5 mg	30	10/31/02
175783	Actos 15 mg	30	10/31/02
179535	Nexium 40 mg	30	11/19/02
180875	Paxil 20 mg	30	11/26/02
180876	Actos 15 mg	30	11/26/02
180877	Glucotrol XL 5 mg	30	11/26/02

<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
186862	Actos 15 mg	30	01/01/03
186863	Paxil 20 Mg	30	01/01/03
186864	Glucotrol XL 5mg	30	01/01/03

Such conduct violates Section 2925.23(B) of the Ohio Revised Code.

- (5) Terrell L. Mundhenk did, on or about the following dates, by deception, procure the dispensing of a dangerous drug, to wit: by creating false or forged prescriptions to disguise the illegitimacy of his actions, Terrell L. Mundhenk procured the following dispensings of dangerous drugs:

<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
147619	Aciphex 20 mg	30	03/21/03
147798	ranitidine 150 mg	60	03/24/03
149156	Levoxyl .05 mg	60	04/04/03
150308	Allegra-D	60	04/14/03
150424	ranitidine 150 mg	60	04/15/03
150835	chlordiazepoxide	90	04/18/03
152046	clotrimazole/Cream 1%	45	04/30/03
152937	ranitidine 150 mg	60	05/07/03
155498	ranitidine 150 mg	60	05/30/03
156034	Levoxyl .05 mg	60	06/05/03
156417	Aciphex 20 mg	30	06/09/03
160993	Allegra-D	60	07/23/03
144286	omeprazole 20 mg	30	01/09/03
148655	omeprazole 20 mg	30	03/31/03
150303	fluoxetine 20 mg	30	04/14/03
150304	clonazepam 1 mg	60	04/14/03
150306	hydrocodone/APAP 5/500	40	04/14/03
153135	clonazepam 1 mg	60	05/09/03
153136	hydrocodone/APAP 5/500	40	05/09/03
155905	hydrocodone/APAP 5/500	40	06/04/03
156429	clonazepam 1 mg	60	06/09/03
157479	fluoxetine 20 mg	30	06/19/03
159212	hydrocodone/APAP 5/500	40	07/07/03
159213	mirtazapine 15 mg	30	07/07/03
145453	Paxil 20 mg	30	02/02/03
155499	omeprazole 20 mg	30	05/30/03
153289	Glucotrol XL 5 mg	30	03/04/02
153291	Paxil 20 mg	30	04/11/02
152617	Actos 15 mg	30	06/17/02
157882	Actos 15 mg	30	07/19/02
158231	Paxil 20 mg	60	07/21/02
158232	Glucotrol XL 5mg	30	07/21/02
164240	Paxil 20 mg	30	08/26/02
164242	Actos 15 mg	30	08/26/02
170288	Glucotrol XL 5 mg	30	09/30/02
170289	Paxil 20 mg	30	09/30/02
170290	Actos 15 mg	30	09/30/02
172395	Nexium 40 mg	7	10/10/02
175781	Paxil 20 mg	30	10/31/02
175782	Glucotrol XL 5 mg	30	10/31/02
175783	Actos 15 mg	30	10/31/02

<u>Rx #</u>	<u>Drug</u>	<u>Qty.</u>	<u>Date</u>
179535	Nexium 40 mg	30	11/19/02
180875	Paxil 20 mg	30	11/26/02
180876	Actos 15 mg	30	11/26/02
180877	Glucotrol XL 5 mg	30	11/26/02
186862	Actos 15 mg	30	01/01/03
186863	Paxil 20 Mg	30	01/01/03
186864	Glucotrol XL 5mg	30	01/01/03

Such conduct violates Section 2925.22 of the Ohio Revised Code.

- (6) In accordance with Section 2929.24 of the Ohio Revised Code, the office of the Prosecuting Attorney of Montgomery County, Ohio, submitted to this Board information which indicates that on February 4, 2004, Terrell L. Mundhenk was found by a court to be eligible for Intervention in Lieu of Conviction, State of Ohio vs. Terrell L. Mundhenk, Case No. 2003 CR 03614, Montgomery County Common Pleas Court.

#### CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) 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) The State Board of Pharmacy concludes that paragraphs (2) through (5) 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) The State Board of Pharmacy concludes that paragraphs (2) through (6) 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Terrell L. Mundhenk on February 18, 2004.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Terrell L. Mundhenk as follows:

- (A) On the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends for one year the pharmacist identification card, No. 03-3-08732, held by Terrell L. Mundhenk effective as of the date of the mailing of this Order. Further, the Board suspends the suspension and places his identification card on probation for three years, with the following conditions:
- (1) Terrell L. Mundhenk may not dispense prescriptions for himself or for any member of his family.

- (2) The State Board of Pharmacy hereby declares that Terrell L. Mundhenk's 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.
- (3) Terrell L. Mundhenk may not serve as a responsible pharmacist.
- (4) Terrell L. Mundhenk must not violate the drug laws of Ohio, any other state, or the federal government.
- (5) Terrell L. Mundhenk must abide by the rules of the State Board of Pharmacy.
- (6) Terrell L. Mundhenk must comply with the terms of this Order.
- (7) Terrell L. Mundhenk's license is deemed not in good standing until successful completion of the probationary period.
- (8) 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.

- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Terrell L. Mundhenk a monetary penalty of five thousand dollars (\$5,000.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

Terrell L. Mundhenk 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.

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 Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of 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 both the State Board of Pharmacy and the

appropriate court within fifteen (15) days after the mailing of this Order and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

**BY ORDER OF THE STATE BOARD OF PHARMACY**

ORDER MAILED & EFFECTIVE:     **JUNE 28, 2004**    

CERTIFIED MAIL / Return Receipt  
#7001 0360 0002 4137 2154

WTW/lf

By: \_\_\_\_\_  
William T. Winsley, M.S., R.Ph., Executive Director