



OHIO STATE BOARD OF PHARMACY

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Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-900516-099)

In The Matter Of:

GARY J. FISCHER, R.Ph.
2349 James Drive
Pittsburgh, Pennsylvania 15237
(R.Ph. No. 03-3-09048)

THE MATTER OF GARY J. FISCHER CAME ON FOR CONSIDERATION BY THE STATE BOARD OF PHARMACY ON OCTOBER 23, 1990 AS A RESULT OF THE REPORT AND RECOMMENDATION SUBMITTED TO THE BOARD BY HEARING OFFICER AND BOARD MEMBER GERALD CLOUSE. FOLLOWING CONSIDERATION OF THE REPORT AND RECOMMENDATION, THE TRANSCRIPT OF THE HEARING HELD AUGUST 15, 1990, AND EVIDENCE ADDUCED AT THE HEARING, MOTIONS WERE MADE AND RECORDED THE FOLLOWING ORDER BE ADOPTED:

ORDER

State's Witnesses

- (1) Gary J. Fischer, Respondent

Respondent's Witnesses

- (1) None

State's Exhibits

- (1) Exhibit A - Notice of Opportunity For A Hearing letter dated May 16, 1990.
(2) Exhibit B - Hearing Request letter dated May 22, 1990.
(3) Exhibit C - Hearing Schedule letter dated June 7, 1990.
(4) Exhibit D - Request For Continuance letter dated June 12, 1990.
(5) Exhibit E - Hearing Schedule letter dated June 27, 1990.
(6) Exhibit 1 - Pharmacist Renewal Application for Gary J. Fischer dated March 30, 1990.
(7) Exhibit 2 - Pharmacist File Front Sheet of Gary Joseph Fischer.
(8) Exhibit 3 - Adjudication and Order in the matter of the Pennsylvania State Board of Pharmacy vs. Gary J. Fischer, No. 87-54-0087, mailed December 15, 1988.

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 Hearing Officer and Board Member Gerald Clouse, as follows:

- (1) The State Board of Pharmacy finds that records of the Board of Pharmacy indicate that Gary J. Fischer was originally licensed to practice pharmacy in the state of Ohio on August 12, 1968, pursuant to examination.
- (2) The State Board of Pharmacy finds that Gary J. Fischer was, on or about October 16, 1986, convicted in Pennsylvania of the following felony charges:
 - (a) Five counts of violating Section 7(a)(4) of the Fraud and Abuse Control provisions of the Public Welfare Code of Pennsylvania, 62 Pa. C.S. 1407(a)(4), relating to submitting a claim for services, supplies or equipment which were not rendered to a recipient;
 - (b) Four counts of violating Section 7(a)(7) of the Public Welfare Code of Pennsylvania, 62 P.S. 1407(a)(7), relating to submitting a claim which misrepresents the description of services, supplies or equipment dispensed or provided, the dates of services, the identity of the recipient, the identity of the attending, prescribing or referring practitioner, or the identity of the actual provider; and
 - (c) One count of violating Section 13(a)(7) of the Controlled Substance, Drug, Device and Cosmetic Act of Pennsylvania, 35 P.S. 780-113(A)(7), relating to placing or causing to be placed upon any container of any controlled substance, or other drug, with intent to defraud, the trade name, trademark or other identifying mark of another drug.

As a result of such conviction, Gary J. Fischer was fined twenty-eight thousand dollars (\$28,000.00), ordered to pay restitution in the amount of twenty-nine thousand dollars (\$29,000.00), placed on probation for 20 years, and suspended from the Pennsylvania Department of Public Welfare and the Pace Program.

- (3) The State Board of Pharmacy finds that Gary J. Fischer's license to practice pharmacy in the state of Pennsylvania was, on or about December 15, 1988, suspended by the Commonwealth of Pennsylvania Department of State Bureau of Professional and Occupational Affairs for a period of six months, to commence on January 17, 1989, and Gary J. Fischer was assessed a civil penalty of one thousand dollars (\$1,000.00).

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 Hearing Officer and Board Member Gerald Clouse, as follows:

- (1) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) and (3) of the Findings Of Fact constitutes being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Revised Code.
- (2) The State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) and (3) of the Findings Of Fact constitutes being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Revised Code.

Action Of The Board

The State Board of Pharmacy hereby agrees with and adopts the recommendation for action set forth in the Report and Recommendation of Hearing Officer and Board Member Gerald Clouse. Therefore, pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-3-09048, held by Gary J. Fischer for five years.

Further, the Board will set aside four years of the five-year suspension on the condition that Gary J. Fischer:

- (1) does not violate the drug laws of the state of Ohio, any other state, or the federal government; and
- (2) abides by the rules of the State Board of Pharmacy.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is ..., suspended, ..., shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of 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.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

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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

CERTIFIED MAIL
Return Receipt
#P 497 578 758

ORDER MAILED: DECEMBER 18, 1990

FZW/sb

By


Franklin Z. Wickham, Executive Director

cc: Jeanny Eaton, Assistant Attorney General
Carl Gainor, Attorney for Respondent; 1600 Lawyers Bldg.;
Pittsburgh, PA 15219