



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950619-067)

In The Matter Of:

MARK ERNEST BOYE, R.Ph.

1056 Howland Springs Boulevard SE

Warren, Ohio 44484

(R.Ph. No. 03-3-14165)

INTRODUCTION

THE MATTER OF MARK ERNEST BOYE CAME TO HEARING ON OCTOBER 20, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MARK ERNEST BOYE WAS REPRESENTED BY GARY L. BRAUN, AND THE STATE OF OHIO WAS REPRESENTED BY LAWRENCE D. PRATT, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joann Predina, Ohio State Board of Pharmacy
- (2) Patrolman Jeffrey R. Hoolihan, Warren Police Department
- (3) Patrolman Melanie Gambill, Warren Police Department

Respondent's Witnesses:

- (1) Mark Ernest Boye, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated June 19, 1995.
- (2) Exhibit 1A--Hearing Request letter dated July 31, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated August 7, 1995.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Mark Ernest Boye showing original date of registration as July 31, 1981.

- (5) Exhibit 1D--Renewal Application for Pharmacist License, No. 03-3-14165, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Mark Ernest Boye dated July 29, 1995.
- (6) Exhibit 2--Four-page copy as follows: Vehicle Inventory Tow Report, License No. E633898, dated March 13, 1993; two-page Warren Police Department Investigative Report of Mark E. Boye dated March 1, 1993, (sic March 13, 1993); and Warren Police Department constitutional rights form of Mark E. Boye dated March 14, 1993.
- (7) Exhibit 3--Six-page copy of eleven Warren Municipal Court citations of Mark E. Boye for the following charges: Resisting Arrest, Drug Abuse of Didrex, Drug Abuse of Ionamin, Aggravated Menacing, Drug Abuse of Xanax, Drug Abuse of Ritalin, Aggravated Trafficking of Halcion, Drug Abuse of Dexedrine, Carrying Concealed Weapons, Designation of Emergency Snow Removal Streets, and Obstructing Traffic. All citations issued on March 13, 1993.
- (8) Exhibit 3A--Eight Certified Criminal Docket sheets from the Warren Municipal Court, Case No. 93CRB557, in the matter of Mark Boye for the following: Designation of Removal (Snow Removal), Aggravated Menacing, Resisting Arrest, Carrying Concealed Weapons, Obstructing Traffic, and three for Drug Abuse. All dockets stemming from the March 13, 1993, charges.
- (9) Exhibit 4--Two-page copy of the Bureau of Criminal Identification and Investigation Evidence Submission Sheet, BCI Lab No. 93-31509, dated March 24, 1993; and Bureau of Criminal Identification and Investigation Laboratory Report, BCI Lab No. 93-31509, analysis date May 5, 1993.
- (10) Exhibit 5--Five-page Certified Copy of Indictment in the Trumbull County Court of Common Pleas, Case No. 93-CR-188, of Mark E. Boye dated April 7, 1993.
- (11) Exhibit 6--Two-page Certified Copy of Journal Entry in the Trumbull County Court of Common Pleas, Case No. 93-CR-188, of Mark E. Boye dated January 5, 1994; and three-page Certified Copy of Finding on Guilty Plea to Amended Indictment in the Trumbull County Court of Common Pleas, Case No. 93-CR-188, of Mark Boye dated October 14, 1993.
- (12) Exhibit 7--Five-page handwritten statement of Mark E. Boye signed and notarized on March 24, 1994.
- (13) Exhibit 9--Copy of Release of Information letter to the Cleveland Clinic from Mark E. Boye dated October 17, 1994; and attached copies of twenty-one pages of medical records of Mark Boye.
- (14) Exhibit 10--Copy of certified mail envelope addressed to "George Gentithes Sir, Esq, ***" and letter titled "Mark E. Boye vs. The Greek/Gentithes Aligned Mafia (The post-valentine massacre ... revisited)" dated February 1993; and copy of certified mail envelope addressed to "Constance - of Chernoble-Gentithes" and letter titled "Mark E. Boye vs. The Greek/Gentithes Aligned Mafia (The post-valentine massacre ... revisited)" dated February 1993.

- (15) Exhibit 11--Copy of "Mark E. Boye vs. The Greek/Gentithes Aligned Mafia (The post-valentine massacre ... revisited)"; facsimile coversheet to Joann from Pam Baker dated October 17, 1994; and two copies of certified mail envelope addressed to "Pamela Gentithes Boye, BA*".
- (16) Exhibit 15--Copy of citation from the Portage County Municipal Court of Mark E. Boye for Attempted Theft on May 25, 1991; copy of Kent State University Police Department Property Record, No. 914307, dated May 25, 1991; copy of statement of Debra K. Marcovechio dated May 25, 1991; copy of Kent State University Libraries Security System Incident Report regarding Mark Ernest Boye dated May 25, 1991; Kent State University Police Department Miranda Warnings form of Mark E. Boye dated May 25, 1991; and copy of Continuation/Follow-Up Report dated May 25, 1991.
- (17) Exhibit 15A--Copy of Kent State University Police Department Statement of Mark E. Boye signed and dated on May 25, 1991.
- (18) Exhibit 16--Certified Copy of Sentencing Journal Entry in the Portage County Municipal Court, Case No. K91CRBO969-S, of Mark E. Boye dated June 27, 1991; and Certified Copy of Citation in the Portage County Municipal Court, Case No. K91CRBO969S, of Mark E. Boye dated May 25, 1991.
- (19) Exhibit 18--Two-page copy of Bill of Particulars in the Trumbull County Common Pleas Court, Case No. 93-CR-188, of Mark Boye dated September 20, 1993.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from Murphy Lewis dated October 11, 1993; copy of letter from Murphy Lewis dated December 28, 1993; ten pages of Support Group Attendance Verification Sheets of Mark Boye dated from November 11, 1993, (sic November 15, 1993), through November 11, 1994; Certificate of Appreciation of Mark B. dated July 15, 1994; and letter from Murphy Lewis dated October 19, 1995.
- (2) Exhibit B--Two-page copy of urine drug screen report of Mark Boye dated March 15, 1993.
- (3) Exhibit C--Letter from Keith A. Evans dated October 19, 1995.
- (4) Exhibit D--Letter from Rev. Charles W. Crumbley, Pastor, dated October 19, 1995.
- (5) Exhibit E--Copy of Finding on Guilty Plea to Amended Indictment in the Trumbull County Court of Common Pleas, Case No. 93-CR-188, of Mark Boye, not signed or dated.
- (6) Exhibit F--Two-page Academic Record from the Youngstown State University of Mark Ernest Boye issued March 31, 1995; Statement of Goals and Objectives of Mark E. Boye dated May 1992; letter from the Ohio State University Admissions Office dated May 29, 1995; letter from Marie T. Taris dated May 30, 1995; letter from Roy A. Koenigsknecht, not dated; copy of letter from Jamie Newmeyer and John Wilhelm dated July 31, 1995; copy of letter from Donald O. Fedder dated June 22, 1992; and two-page copy of an article titled "Ph.D. in Pharmacy Administration" from the School of Pharmacy, University of Maryland at Baltimore, not dated.

FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Mark Ernest Boye was originally licensed in the state of Ohio on July 31, 1981, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Mark Ernest Boye did, on or about March 13, 1993, knowingly obtain and/or possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Ernest Boye possessed, outside the confines of a pharmacy and without a prescription for legitimate medical purpose, 317 assorted oral dosage units consisting of the following controlled substances:

<u>Drug</u>	<u>Schedule</u>	<u>Degree</u>
Didrex	III	M3
Ionamin	IV	M3
Xanax	IV	M3
Ritalin	II	F4
Dexedrine	II	F4

Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.

- (3) Mark Ernest Boye did, on or about March 13, 1993, knowingly possess a controlled substance in an amount exceeding the bulk amount, but in an amount less than three times that amount when the conduct was not in accordance with Chapter 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Ernest Boye possessed greater than the bulk amount of Halcion, a schedule IV controlled substance, outside the confines of a pharmacy and without a prescription or legitimate medical purpose. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (4) Mark Ernest Boye was, on or about October 15, 1993, in the Warren Municipal Court, convicted of Aggravated Menacing in violation of Section 537.05 of the Warren Municipal Code, a misdemeanor of the first degree.
- (5) Mark Ernest Boye was, on or about January 5, 1994, after a plea in the Trumbull County Common Pleas Court, convicted of one count of Drug Abuse in violation of Section 2925.11 of the Ohio Revised Code, a misdemeanor of the third degree; and two counts of Drug Abuse in violation of Section 2925.11 of the Ohio Revised Code, felonies of the fourth degree. Mark Ernest Boye was sentenced to 3 years probation and ordered to attend drug treatment.
- (6) Mark Ernest Boye is addicted to or abusing controlled substances and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Mark Ernest Boye has admitted to Board agents that he has continuously ingested Fastin and/or other amphetamines "only to keep working" and to "keep [him] alert;" Mark Ernest Boye has admitted to ingesting Ativan and "Halcion-type medication" to allow him to sleep; Mark Ernest Boye was admitted for treatment in 1988/1989 for clinical depression secondary to prolonged drug use

of Halcion, Ativan, and amphetamines; and Mark Ernest Boye has been criminally convicted of drug-related offenses and court-ordered into treatment.

- (7) Mark Ernest Boye was, on or about June 27, 1991, in the Portage County Municipal Court, convicted of Attempted Theft in violation of Section 2923.02 of the Ohio Revised Code as it relates to Section 2913.02 of the Ohio Revised Code, a misdemeanor of the second degree.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being guilty of a felony 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), (3), (5), and (6) 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), (3), (5), and (6) of the Findings of Fact constitute being addicted to or abusing liquor or drugs or impaired physically or mentally 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 (5) of the Findings of Fact constitutes having been convicted of a misdemeanor related to, or committed in, the practice of pharmacy as provided in Division (A)(4) of Section 4729.16 of the Ohio Revised Code.
- (5) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2), (3), (5), and (6) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Mark Ernest Boye:

On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-3-14165, held by Mark Ernest Boye indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Mark Ernest Boye 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.

- (A) Two years after the effective date of this Order, the Board will consider any petition filed by Mark Ernest Boye for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
- (1) Mark Ernest Boye must enter into a contract, after the effective date of this Order, with a limited treatment provider acceptable to the Board, for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (a) random, **observed** urine screens shall be conducted at least once a month. The urinalysis drug screens must report testing of creatinine as the dilutional standard or specific gravity;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
 - (c) the treatment provider shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.
 - (2) Mark Ernest Boye must obtain a full psychiatric evaluation by a licensed psychiatrist that includes a recommended treatment plan and, when completed, submit a copy of the results to the Board office.
 - (a) Mark Ernest Boye must abide by the treatment plan as designed by the professional.
 - (b) The psychiatrist shall immediately notify the Board of Pharmacy of any failure to comply with the recommended treatment plan.
 - (3) At the time of petitioning the Board for reinstatement, Mark Ernest Boye must provide the following:
 - (a) written documentation from his treatment provider regarding compliance with the contract, including copies of all urine screens; and
 - (b) documentation of compliance with the recommended treatment plan and a summary and/or opinion made just prior to petitioning the Board of Mr. Boye's rehabilitation and his capability to practice pharmacy.

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.