



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-940314-072)

In The Matter Of:

JOSEPH MARTIN VOGEL, R.Ph.

Rd. 1, Box 24

Enon Valley, PA 16120

(R.Ph. No. 03-3-17027)

INTRODUCTION

THE MATTER OF JOSEPH MARTIN VOGEL CAME TO HEARING ON MARCH 8, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOSEPH MARTIN VOGEL WAS REPRESENTED BY RALPH E. BREITFELLER, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Steven Kantaras, Kmart Pharmacy
- (3) Joseph Martin Vogel, Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated March 14, 1994.
- (2) Exhibit 1A--Addendum Notice dated October 28, 1994.
- (3) Exhibit 1B--Hearing Request letter dated July 8, 1994.
- (4) Exhibit 1C--Hearing Schedule letter dated July 13, 1994.

- (5) Exhibit 1D--Notice of Appearance and Continuance Request letter dated November 10, 1994.
- (6) Exhibit 1E--Hearing Schedule letter dated November 14, 1994.
- (7) Exhibit 2--Renewal Application for Pharmacist License, No. 03-3-17027, for a license to practice pharmacy in Ohio from September 15, 1993, to September 15, 1994, of Joseph Martin Vogel dated November 11, 1993.
- (8) Exhibit 3--Forty-two prescriptions numbered as follows: 384935, 384917, 384928, 385021, 385025, 385014, 385143, 385120, 385127, 385128, 385369, 385370, 385365, 385368, 385544, 385547, 385556, 385709, 385693, 385696, 386021, 386032, 386019, 386046, 386044, 386047, 386144, 386123, 386146, 386373, 386376, 386374, 386436, 386408, 386431, 386657, 386650, 386606, 386624, 386677, 386680, and 386685.
- (9) Exhibit 4--Renewal Application for Pharmacist License, No. 03-3-17027, for a license to practice pharmacy in Ohio from September 15, 1990, to September 15, 1991, of Joseph Martin Vogel dated October 17, 1990.
- (10) Exhibit 4A--Renewal Application for Pharmacist License, No. 03-3-17027, for a license to practice pharmacy in Ohio from September 15, 1992, to September 15, 1993, of Joseph Martin Vogel dated January 14, 1993.
- (11) Exhibit 6--Dangerous Drug Distributor Inspection Report of Kmart Pharmacy, Terminal Distributor License No. 02-157250, dated October 19, 1992.
- (12) Exhibit 7--Prescription No. 6604921.
- (13) Exhibit 7A--Copy of Prescription Incident Report regarding patient Theresa Infante dated January 5, 1991.
- (14) Exhibit 7B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6604921.
- (15) Exhibit 8--Computer-generated label, prescription information, and receipts for prescription number 4400968.
- (16) Exhibit 8A--Copy of Prescription Incident Report regarding patient Thomas Simerlink dated January 5, 1991.
- (17) Exhibit 9--Two computer-generated labels attached to a blank prescription numbered 6600105 and 262981.
- (18) Exhibit 9A--Copy of Prescription Incident Report for patient Sandra Creatore dated March 31, 1992.
- (19) Exhibit 9B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6600105.
- (20) Exhibit 10--Prescription No. 6612698 and Prescription No. 6612699.
- (21) Exhibit 10A--Copy of Prescription Incident Report of patient Walter Szpiech dated May 6, 1992.
- (22) Exhibit 10B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6612699.
- (23) Exhibit 11--Prescription number 6605318 and prescription number 6605319.
- (24) Exhibit 11A--Copy of Prescription Incident Report regarding patient Gary Hoyer dated May 6, 1992.
- (25) Exhibit 11B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6605318.
- (26) Exhibit 12--Computer generated label, prescription information, and receipts for prescription number 6613183.
- (27) Exhibit 12A--Copy of Prescription Incident Report regarding patient Di Ann Wasacz dated May 24, 1992.
- (28) Exhibit 12B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6613183.
- (29) Exhibit 13--Computer-generated labels attached to a blank prescription numbered 6601198 and 262183.

- (30) Exhibit 13A--Copy of Prescription Incident Report regarding patient Al Madar dated July 15, 1992.
- (31) Exhibit 13B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6601198.
- (32) Exhibit 13C--Copy of two-page letter from Alvin J. Madar dated August 8, 1992.
- (33) Exhibit 14--Prescription number 4401555 and prescription number 6610164.
- (34) Exhibit 14A--Copy of Prescription Incident Report regarding patient Brad Chuey dated June 11, 1992.
- (35) Exhibit 14B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 4401555.
- (36) Exhibit 15--Prescription number 6614791.
- (37) Exhibit 15A--Copy of Prescription Incident Report regarding patient Catherine Schuster dated June 17, 1992.
- (38) Exhibit 15B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6614791.
- (39) Exhibit 16--Prescription number 6608938.
- (40) Exhibit 16A--Copy of Prescription Incident Report regarding patient Michael Diprizio, Sr. dated August 1, 1992.
- (41) Exhibit 16B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 6608938.
- (42) Exhibit 17--Prescription No. 4402736.
- (43) Exhibit 17A--Copy of Prescription Incident Report regarding patient Robert Greenwalt dated August 1, 1992.
- (44) Exhibit 17B--Kmart Pharmacy #4233 Comprehensive Audit Listing showing prescription number 4402736.
- (45) Exhibit 18--Rite Aid Pharmacy #3104 Pharmacist's Statement of dispensings to patient Joseph Vogel from October 1, 1993, through May 16, 1994.
- (46) Exhibit 18A--Microcassette tape recording of Joe Vogel with George Pavlich on June 9, 1994.
- (47) Exhibit 19--Three prescriptions numbered as follows: 598671, 601610, and 603391.
- (48) Exhibit 19A--Handwritten statement of Joseph Mersol, M.D. signed and notarized on May 25, 1994.
- (49) Exhibit 19B--2½" x 4" date book with several handwritten notations, names, numbers, etc.

Respondent's Exhibits:

- (1) Exhibit A--Two-page copy of St. Elizabeth Hospital Medical Center Multiple Sleep Latency Test of Joseph Vogel dated March 20, 1991.
- (2) Exhibit B--Report of FICA earnings and employer name and address for the years 1987 through 1993, report dated March 6, 1995.
- (3) Exhibit C--Affidavit of Shoukry Matta, M.D. signed and notarized on March 7, 1995.

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 Joseph Martin Vogel was originally licensed in the state of Ohio on August 3, 1987, pursuant to

examination, and Joseph Martin Vogel allowed his identification card to lapse on September 15, 1993, contrary to Section 4729.12 of the Ohio Revised Code. On March 14, 1994, an identification card was issued in response to Joseph Martin Vogel's application for renewal.

- (2) Joseph Martin Vogel did, from September 16, 1993, through October 23, 1993, while not being a registered pharmacist or a pharmacy intern under the personal supervision of a registered pharmacist, dispense or sell dangerous drugs, to wit: while practicing pharmacy at Rite Aid #3105 in Youngstown, Ohio, Joseph Martin Vogel dispensed the following prescriptions, and others, after his license to practice pharmacy had lapsed and prior to its renewal:

| <u>Date</u> | <u>Rx No.</u> | <u>Drug</u> | <u>Quantity</u> |
|-------------|---------------|-------------------------------|-----------------|
| 09/16/93 | 384917 | Talacen caplet | 30 |
| 09/16/93 | 384928 | Phentermine 30mg | 14 |
| 09/16/93 | 384935 | Roxicet | 40 |
| 09/18/93 | 385021 | Percocet | 90 |
| 09/18/93 | 385025 | APAP/Codeine 60mg | 50 |
| 09/18/93 | 385014 | Lortab 7.5mg | 30 |
| 09/21/93 | 385143 | Hydrocodone/APAP | 30 |
| 09/21/93 | 385120 | Lorazepam 1mg | 60 |
| 09/21/93 | 385127 | Methylphenidate 5mg | 60 |
| 09/21/93 | 385128 | Clonidine 0.1mg | 60 |
| 09/25/93 | 385369 | Ilosone 250mg/5ml | 120ml |
| 09/25/93 | 385370 | Hycodan/Phenergan Expectorant | 180ml |
| 09/25/93 | 385365 | Propoxyphene-N/APAP | 100 |
| 09/25/93 | 385368 | Tylenol/Codeine 60mg | 90 |
| 09/29/93 | 385544 | Diazepam 5mg | 20 |
| 09/29/93 | 385547 | APAP/Codeine | 40 |
| 09/29/93 | 385556 | Diazepam 10mg | 60 |
| 10/02/93 | 385709 | Propoxyphene-N/APAP | 30 |
| 10/02/93 | 385693 | Methylphenidate 20mg | 60 |
| 10/02/93 | 385696 | Temazepam 30mg | 30 |
| 10/09/93 | 386021 | Hydrocodone/APAP 5mg | 30 |
| 10/09/93 | 386032 | Propoxyphene-N/APAP | 30 |
| 10/09/93 | 386019 | Vicodin ES | 18 |
| 10/10/93 | 386046 | Phenobarbital 30mg | 60 |
| 10/10/93 | 386044 | Temazepam 15mg | 30 |
| 10/10/93 | 386047 | Darvocet-N-100 | 20 |
| 10/12/93 | 386144 | Diazepam 5mg | 40 |
| 10/12/93 | 386123 | Percodan | 20 |
| 10/12/93 | 386146 | APAP/Codeine 30mg | 30 |
| 10/17/93 | 386373 | Dilantin 50mg | 120 |
| 10/17/93 | 386376 | Keflex 500mg | 20 |
| 10/17/93 | 386743 | Diphenhydramine Elx. 12.5/5 | 180ml |
| 10/18/93 | 386436 | Soma 350mg | 90 |
| 10/18/93 | 386408 | Cipro 250mg | 6 |
| 10/18/93 | 386431 | Vasotec 10mg | 30 |
| 10/22/93 | 386657 | Tylenol/Codeine 30mg | 15 |
| 10/22/93 | 386650 | Diazepam 10mg | 90 |
| 10/22/93 | 386606 | Darvocet N-100 | 15 |
| 10/22/93 | 386624 | Cipro 500mg | 314 |
| 10/23/93 | 386677 | Fiorinal/Codeine 3mg | 10 |
| 10/23/93 | 386680 | Methylphenidate 10mg | 120 |
| 10/23/93 | 386685 | APAP/Codeine 30mg | 40 |

Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

- (3) Joseph Martin Vogel failed to renew his identification card on the fifteenth day of September, 1990, as required by Section 4729.12 of the Ohio Revised Code when he did not renew until October 22, 1990; Joseph Martin Vogel failed to

renew his identification card on the fifteenth day of September 1992, as required by Section 4729.12 of the Ohio Revised Code when he did not renew until January 15, 1993.

- (4) Joseph Martin Vogel is impaired physically and/or mentally to such a degree as to render him unfit to practice pharmacy, to wit: during a seven month time period Joseph Martin Vogel committed the following eleven errors in dispensing medication:

Error Number 1

| | |
|---------------------|------------------|
| Date of Dispensing: | 1/3/92 |
| Patient: | Theresa Infante |
| Rx Number: | 6604921 |
| Drug Prescribed: | Lanoxicaps 0.1mg |
| Drug Dispensed: | Lanoxicaps 0.2mg |

The label on the vial was correct; however, the wrong drug was dispensed. Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply noted.

Error Number 2

| | |
|---------------------|------------------|
| Date of Dispensing: | 1/3/92 |
| Patient: | Thomas Simerlink |
| Rx Number: | 4400968 |
| Drug Prescribed: | Vicodin ES #40 |
| Drug Dispensed: | Biaxin 500mg |

The patient called the pharmacy and Joseph Martin Vogel advised the patient that he (the patient) had received a generic product. Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply noted.

Error Number 3

| | |
|---------------------|-------------------------------|
| Date of Dispensing: | 3/24/92 |
| Patient: | Mocha, K-9 of Sandra Creatore |
| Rx Number: | 66000105 |
| Drug Prescribed: | Dilantin w/pb ½ gr (30mg) #60 |
| Drug Dispensed: | Dilantin 30mg |

The patient noticed the difference in capsules. Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply noted.

Error Number 4

| | |
|---------------------|----------------|
| Date of Dispensing: | 5/4/92 |
| Patient: | Walter Szpiech |
| Rx Number: | 6612699 |
| Drug Prescribed: | Vasodilan 10mg |
| Drug Dispensed: | Vasotec 10mg |

Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply.

Error Number 5

| | |
|---------------------|--------------------|
| Date of Dispensing: | 5/4/92 |
| Patient: | Gary Hoyer |
| Rx Number: | 6605318 |
| Drug Prescribed: | Combipres 0.1 #100 |
| Drug Dispensed: | Clonid/chlor 1/15 |

Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply.

Error Number 6

| | |
|---------------------|-----------------|
| Date of Dispensing: | 5/13/92 |
| Patient: | Di Ann Wasacz |
| Rx Number: | 6613183 |
| Drug Prescribed: | Inderal 80mg |
| Drug Dispensed: | Inderal LA 80mg |

Joseph Martin Vogel's written response on the Kmart incident complaint report: "This was a stupid mistake made because of the speed the customers like this filled."

Error Number 7

| | |
|---------------------|-----------------------|
| Date of Dispensing: | 5/27/92 |
| Patient: | Al Madar |
| Rx Number: | 6601198 |
| Drug Prescribed: | Nitro-Dur 0.4mg patch |
| Drug Dispensed: | Nitro-Dur 0.2mg patch |

Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply noted.

Error Number 8

| | |
|---------------------|--------------------------|
| Date of Dispensing: | 6/5/92 |
| Patient: | Brad Chuey |
| Rx Number: | 4401555 |
| Drug Prescribed: | Phenobarbital ½gr (30mg) |
| Drug Dispensed: | Phenobarbital 1gr (60mg) |

Joseph Martin Vogel's written response on the Kmart incident complaint report: "The Rx was exchanged for the corrected strength. This was one of the scripts filled during a very busy time and [word illegible] the Rx was checked, it is not possible to devote as much time to each Rx as I would like due to the busy pharmacy and inadequate help that was available."

Error Number 9

| | |
|---------------------|--------------------|
| Date of Dispensing: | 6/16/92 |
| Patient: | Catherine Schuster |
| Rx Number: | 6614791 |
| Drug Prescribed: | Calan SR 240mg |
| Drug Dispensed: | Cardizem CD 240mg |

Joseph Martin Vogel's written response on the Kmart incident complaint report: "Rx was corrected and patient given dollar off coupons. Several scripts for Cardizem CD [word illegible] in a row and it was confused with these."

Error Number 10

| | |
|---------------------|------------------------------------|
| Date of Dispensing: | 7/31/92(original Rx dated 2/19/92) |
| Patient: | Michael Diprizio |
| Rx Number: | 6608938 |
| Drug Prescribed: | Procardia XL 60mg one tab daily |
| Drug Dispensed: | Procardia XL 30mg one tab daily |

The label on the container was correct 60mg; however, 30mg was dispensed. Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply noted.

Error Number 11

| | |
|---------------------|---------------------------------|
| Date of Dispensing: | 7/31/92 |
| Patient: | Robert Greenwalt |
| Rx Number: | 4402736 |
| Drug Prescribed: | Tylenol #4 one every four hours |
| Drug Dispensed: | Tylenol #2 one every four hours |

The label on the container was correct as Tylenol #4; however, the wrong drug was dispensed. Joseph Martin Vogel's written response on the Kmart incident complaint report: No reply noted.

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 dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) 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 paragraph (4) of the Findings of Fact constitutes being 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.
- (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 constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 3719., 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued March 14, 1994.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Joseph Martin Vogel:

- (A) 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. 03-3-17027, held by Joseph Martin Vogel 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, Joseph Martin Vogel 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.

- (B) Joseph Martin Vogel's license will only be reinstated upon successful completion of the NABPLEX and FDLE examinations.

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 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.