



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

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URL: <http://www.pharmacy.ohio.gov>

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-070412-041)

In The Matter Of:

JAE-SEUNG LEE, R.Ph.
7679 Windsor Drive
Dublin, Ohio 43016
(R.Ph. No. 03-3-22050)

INTRODUCTION

THE MATTER OF JAE-SEUNG LEE CAME FOR HEARING ON OCTOBER 10, 2007, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: GREGORY BRAYLOCK, R.Ph. (presiding); ELIZABETH I. GREGG, R.Ph.; RICHARD F. KOLEZYNSKI, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; HEATHER L. PASQUALE, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; JAMES E. TURNER, R.Ph.; AND JEROME J. WIESENHAHN, R.Ph.

JAE-SEUNG LEE WAS REPRESENTED BY EDWARD S. KIM. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Robert Amiet, Jr., R.Ph., Ohio State Board of Pharmacy

Respondent's Witness

1. Jae-Seung Lee, R.Ph., Respondent

State's Exhibits

- 1L. Summary Suspension Order/Notice of Opportunity For Hearing letter [04-12-07]
- 1C, 1L-A. Hearing Request letter from Jae-Seung Lee [04-23-07]
- 1C, 1L-B. Hearing Schedule letter [04-24-07]
- 1C, 1L, 1RPH-C. Hearing Continuance Request letter from Edward S. Kim [09-10-07]
- 1L-D. Hearing Continuance letter [09-13-07]
- 1L-E. Hearing Schedule letter [09-28-07]
- 1L-F. Pharmacist computer record of Jae-Seung Lee [10-03-07]
2. Caringwell Pharmacy and Jae Lee's Prescription Data for November 2006
3. Three Graphs of Caringwell Pharmacy's Average Number of Prescriptions Per Day, Out-of-State Sales, Percentage of Controlled Substances [November 2006 to March 2007]
4. Two Colored Maps of the United States showing Legitimate Prescription Prescribers for Caringwell Pharmacy and Jae Lee, R.Ph. [not dated]

5. Two Colored Maps of the United States showing Internet Prescription Prescribers for Caringwell Pharmacy and Jae Lee, R.Ph. [not dated]
6. List of Prescribers that Caringwell Pharmacy and Jae Lee, R.Ph. Dispensed Prescriptions for from December 2006 to March 2007; List of Number of Prescriptions Dispensed by each State from December 2006 to March 2007
7. Internet Prescription Orders #443074, #443071 and #443076 from Jeffrey White, M.D. of Florida [11-25-06]
8. Internet Rx #6466 [12-26-06], Rx #6455 [12-26-06] and Rx #13805 [03-27-07] from Nancy E. Tice, D.O. of New York
9. Internet Rx #6495 [12-26-06], Rx #6471 [12-26-06] and Rx #6475 [12-26-06] from Shelly A. Hope
- 9A. Internet Rx #13908 [03-28-07], Rx #13909 [03-28-07] and Rx #13903 [03-28-07] from Michael Feinberg of Florida
10. List of Caringwell and Jae Lee, R.Ph. Dispensing Date [11-29-06 to 03-29-07]
11. Seven color photographs of Caringwell Pharmacy [not dated]
12. Two Dangerous Drug Distributor Inspection Reports of Caringwell Pharmacy [03-27-07 and 03-29-07]
- 13-14. Two notarized statements of Jae-Sung (Sic) Lee [03-29-07]
15. Application for Registration As A Terminal Distributor of Dangerous Drugs for RPH Care, Inc. [02-14-07]

Respondent's Exhibits

None

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 Board of Pharmacy indicate that Jae-Seung Lee was originally licensed by the State of Ohio as a pharmacist on October 16, 1996, pursuant to examination, and that his license was summarily suspended on April 12, 2007. Records further reflect during the relevant time periods stated herein, Jae-Seung Lee was the Responsible Pharmacist at Caringwell Pharmacy, 5695 Avery Road, Dublin, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

(2) Jae-Seung Lee did, from November 29, 2006, through March 29, 2007, a period of 120 days, knowingly sell controlled substances when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Jae-Seung Lee dispensed the following Controlled Substances without valid prescriptions. Practically all the following prescriptions were generated from Internet websites by out-of-state physicians for patients that reside in other states:

CONTROLLED SUBSTANCE	No. OF Rxs	QTY. OF DRUG
hydrocodone/APAP 10/325 mg tablets	3231	348,480
hydrocodone/APAP 10/500 mg tablets	1412	154,336
hydrocodone/APAP 7.5/500 mg tablets	109	11,010

CONTROLLED SUBSTANCE	No. OF Rxs	QTY. OF DRUG
hydrocodone/APAP 7.5/750 mg tablets	193	19,530
hydrocodone/APAP 10/650 mg tablets	550	62,570
hydrocodone/ APAP 10/660 mg tablets	15	1,800
TOTAL	5510	597,726
alprazolam 1 mg tablets	82	6,330
alprazolam 2 mg tablets	527	46,890
TOTAL	609	53,220
diazepam 10 mg tablets	205	16,265

Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(3) Jae-Seung Lee did, on or about March 29, 2007, and dates immediately preceding, fail to ensure that only a pharmacist had access to the prescription department and stock of dangerous drugs in his pharmacy, to wit: Jae-Seung Lee permitted a technician to possess a key to the pharmacy and open the pharmacy without Jae-Seung Lee being present. When Board of Pharmacy agents arrived at Jae-Seung Lee's pharmacy, two technicians were in the pharmacy, but there was no pharmacist on site. One technician admitted that Jae-Seung Lee had given him a pharmacy key so he could open that morning. After the technician phoned Jae-Seung Lee, he arrived approximately ten minutes later. During an inspection of Jae-Seung Lee's pharmacy on the previous day, he stated that no one other than a pharmacist possessed keys to the pharmacy, and Jae-Seung Lee also signed the inspection report which included that statement. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code.

(4) On or about March 27, 2007, and on dates immediately preceding, Jae-Seung Lee directed and permitted a person other than a registered pharmacist or a pharmacy intern under the personal supervision of a pharmacist to sell dangerous drugs and/or otherwise engage in the practice of pharmacy, to wit: Jae-Seung Lee has admitted that he permitted a pharmacy technician to dispense drugs without a pharmacist being present. Further, Jae-Seung Lee stated that a pharmacy technician began working at the pharmacy in March of 2005, indicating that "I worked at Apria Healthcare and Pure Service between May 2004 and October 2006, and during that time I have allowed Richard Kim to be an acting pharmacist approximately three months or so." Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (1) 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) 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) 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 Chapters 2925. and 3719. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

(4) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute being guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy as provided in Division (A)(6) of 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 Jae-Seung Lee on April 12, 2007.

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 Jae-Seung Lee as follows:

(A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22050, held by Jae-Seung Lee effective as of the date of the mailing of this Order.

(B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22050, held by Jae-Seung Lee effective as of the date of the mailing of this Order.

(C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22050, held by Jae-Seung Lee effective as of the date of the mailing of this Order.

(D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law, the State Board of Pharmacy hereby revokes permanently the pharmacist identification card, No. 03-3-22050, held by Jae-Seung Lee effective as of the date of the mailing of this Order.

Jae-Seung Lee, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-1).

MOTION CARRIED.

SO ORDERED.

JAE-SEUNG LEE, R.Ph.

Page 5

Order of the Board

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 the ORIGINAL Notice of Appeal with the State Board of Pharmacy and a copy with 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: NOVEMBER 7, 2007

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

WTW/lf

CERTIFIED MAIL/Return Receipt
7004 2510 0006 9804 2895

c: Sally Ann Steuk, Assistant Attorney General
Edward S. Kim, Attorney for Respondent; 400 South Fifth Street, Suite 200; Columbus,
Ohio 43215



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

April 12, 2007

Jae-Seung Lee, R.Ph.
7679 Windsor Drive
Dublin, Ohio 43016

Re: Ohio Registered Pharmacist
Number 03-3-22050

Dear Mr. Lee:

In accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice presents a danger of immediate and serious harm to others. The reasons for the Board's action are that you have committed any and/or all of the following acts:

- (1) Records of the Board of Pharmacy indicate that you were originally licensed in the State of Ohio on October 16, 1996, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio. Records further reflect during the relevant time periods stated herein, you were the Responsible Pharmacist at Caringwell Pharmacy, 5695 Avery Road, Dublin, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) You did, from November 29, 2006, through March 29, 2007, a period of 120 days, knowingly sell controlled substances when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: you dispensed the following Controlled Substances without valid prescriptions. Practically all the following prescriptions were generated from Internet websites by out-of-state physicians for patients that reside in other states:

CONTROLLED SUBSTANCE	No. OF RX'S	QTY. OF DRUG
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diazepam 10 mg tablets	205	16,265

Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

- (3) You did, on or about March 29, 2007, and dates immediately preceding, fail to ensure that only a pharmacist had access to the prescription department and stock of dangerous drugs in your pharmacy, to wit: you permitted a technician to possess a key to the pharmacy and open the pharmacy without you being present. When Board of Pharmacy agents arrived at your pharmacy, two technicians were in the pharmacy, but there was no pharmacist on site. One technician admitted that you had given him a pharmacy key so he could open that morning. After the technician phoned you, you arrived approximately ten minutes later. During an inspection of your pharmacy on the previous day, you stated that no one other than a pharmacist possessed keys to the pharmacy, and you also signed the inspection report which included that statement. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code.
- (4) On or about March 27, 2007, and on dates immediately preceding, you directed and permitted a person other than a registered pharmacist or a pharmacy intern under the personal supervision of a pharmacist to sell dangerous drugs and/or otherwise engage in the practice of pharmacy, to wit: you have admitted that you permitted a pharmacy technician to dispense drugs without a pharmacist being present. Further, you stated that a pharmacy technician began working at the pharmacy in March of 2005, indicating that "I worked at Apria Healthcare and Pure Service between May 2004 and October 2006, and during that time I have allowed Richard Kim to be an acting pharmacist approximately three months or so." Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(B) of the Ohio Revised Code states, in pertinent part:

(B) If the board under which a person has been issued a license, . . . , . . . determines that there is clear and convincing evidence that continuation of the person's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license, . . . , . . . , without a prior hearing.

WHEREFORE, PURSUANT TO SECTION 3719.121(B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO ARE HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until a final

adjudication order becomes effective, during which time you may not engage in the practice of pharmacy.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states, in pertinent part:

(A) The State Board of Pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Ohio Revised Code for a similar offense, or in the case of a violation of a section of the Ohio Revised Code that does not bear a penalty, a monetary penalty or forfeiture of no more than five hundred dollars, if the Board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 or Chapter 2925. or 3719. of the Revised Code;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;
- (9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;
- (10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

Jae-Seung Lee, R.Ph.

Page 4

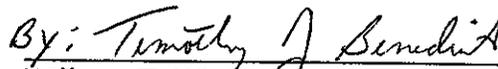
Summary Suspension

IF YOU DESIRE A HEARING, such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. YOUR REQUEST MUST BE IN WRITING, AND MUST BE RECEIVED IN THE OFFICE OF THE OHIO STATE BOARD OF PHARMACY ON OR PRIOR TO THE THIRTIETH (30TH) DAY FOLLOWING THE MAILING DATE OF THIS NOTICE. You may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

YOU ARE FURTHER ADVISED that if there is no request for such a hearing received by the Board on or prior to the thirtieth (30th) day following the mailing of this notice, the Ohio State Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part 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 (10) days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

BY ORDER OF THE STATE BOARD OF PHARMACY

By: 

William T. Winsley M.S., R.Ph.
Executive Director

WTW:lf (D-070412-041)

CERTIFIED MAIL / Return Receipt
7004 2510 0006 9804 7197

cc: Sally Ann Steuk, Assistant Attorney General