



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-080109-026)

In The Matter Of:

BRYAN PAUL MURPHY

4123 North Terraceview, Apt.10

Toledo, Ohio 43607

(Intern License No. 06-0-06078)

INTRODUCTION

THE MATTER OF BRYAN PAUL MURPHY CAME FOR HEARING ON JUNE 4, 2008, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: GREGORY BRAYLOCK, R.Ph. (presiding); ELIZABETH I. GREGG, 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.

BRYAN PAUL MURPHY WAS REPRESENTED BY DANIEL D. CONNOR. THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witness

1. Mark Kabat, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Bryan Paul Murphy, Respondent
2. William J. Murphy
3. Michael Quigley, R.Ph.

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [01-09-08]
1A-1E. Procedurals
2. Notarized Statement of Bryan Murphy [12-27-07]
- 2A. Application for Pharmacy Intern Registration with Attachment submitted by Bryan Paul Murphy [04-13-06]
3. Seven photographs of respondent [12-06-07]
4. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/660 [02-28-08]
- 4A. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/660 [02-28-08]
5. Twelve photographs of respondent [12-20-07]

6. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/325 [02-28-08]
- 6A. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/325 [02-28-08]
7. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/650 [02-28-08]
- 7A. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/650 [02-28-08]
8. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/660 [02-28-08]
- 8A. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 10/660 [02-28-08]
9. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 7.5/750 [02-28-08]
- 9A. Drug Accountability Statement at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 7.5/750 [02-28-08]
10. Six Drug Accountability Statements at CVS/Pharmacy #3339 for hydrocodone bitartrate/APAP 5/500; hydrocodone bitartrate/APAP 7.5/500; Vicodin ES 7.5/750; Lortab 10/500; hydrocodone bitartrate/APAP 10/500; hydrocodone bitartrate/IBU 7.5/200 [02-28-08]
11. Prescription written for Vicodin ES; Rx #C801307 [12-21-07]

Respondent's Exhibits

- A. PRO Pharmacist's Recovery Contract for Bryan P. Murphy [03-10-08]
- B. The Toledo Hospital Medical Records for Bryan Murphy [01-31-08 to 03-03-08]
- C. Letter from Marilyn Horton BS, CAC to Dan Connor [03-05-08]
- D. Letter from Cynthia A. Schroeder to Daniel D. Connor [05-06-08]
- E. Drug Screen Reports [02-04-08 to 03-03-08]
- F. Drug Screen Reports [03-31-08 to 05-02-08]; Drug Testing Panels [updated 10-11-06]
- G. Support Group Attendance Records [01-11-08 to 05-19-08]
- H. Seven Letters of Support [05-05-08 to 05-19-08]
- I. Drug Screen Reports [03-31-08 to 05-29-08]
- J. Letter for Restitution from Daniel D. Connor [06-04-08]
- K. Support Group Attendance Records [05-19-08 to 06-02-08]

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 Bryan Paul Murphy was originally licensed by the State of Ohio as an intern on June 29, 2006, and that his license to practice pharmacy as a pharmacy intern in Ohio was summarily suspended on January 9, 2008.

(2) Bryan Paul Murphy did, on or about December 6, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: Bryan Paul Murphy admittedly stole a full, 100-

count stock bottle of hydrocodone/APAP 10/660 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(3) Bryan Paul Murphy did, on or about December 20, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: Bryan Paul Murphy admittedly stole 2 full, 100-count stock bottles of hydrocodone/APAP 10/660 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(4) Bryan Paul Murphy did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: Bryan Paul Murphy admittedly stole a full, 100-count stock bottle of hydrocodone/APAP 10/325 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(5) Bryan Paul Murphy did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: Bryan Paul Murphy admittedly stole a full, 100-count stock bottle of hydrocodone/APAP 10/650 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(6) Bryan Paul Murphy did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: Bryan Paul Murphy admittedly stole approximately 20 tablets of hydrocodone 10/660 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(7) Bryan Paul Murphy did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: Bryan Paul Murphy admittedly stole approximately 244 tablets of hydrocodone 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(8) Bryan Paul Murphy did, on or about various and unknown times during the year 2007, knowingly sell or offer to sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731., to wit: on two or three occasions Bryan Paul Murphy admittedly sold a quantity of 50 dosage units, and/or 100 dosage units, of hydrocodone, a Schedule III controlled substance. Bryan Paul Murphy sold them in exchange for entry fees into "Texas Hold'em" poker tournaments. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(9) Bryan Paul Murphy did, on or about various and unknown times during the year 2007, knowingly sell or offer to sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731., to wit: Bryan Paul Murphy admittedly sold a quantity of 50 dosage units, and/or 100 dosage units, of hydrocodone, a Schedule III controlled substance. Bryan Paul Murphy sold them in exchange for "loans between \$500.00 and \$1,000.00." Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

(10) Bryan Paul Murphy did, on or about December 21, 2007, intentionally create and/or knowingly possess a false or forged prescription, to wit: Bryan Paul Murphy forged Rx

#C801378 for 80 tablets of hydrocodone/APAP 10/660 mg to cover for his theft of the drug. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

(11) Bryan Paul Murphy is abusing drugs and/or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: Bryan Paul Murphy has admittedly stolen controlled substances for his own personal abuse, using 10 to 20 tablets per day "when available." Such conduct indicates that Bryan Paul Murphy is within the ambit of Sections 3719.121 and/or 4729.16(A)(3) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (10) 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 (10) 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 (11) of the Findings of Fact constitutes 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) The State Board of Pharmacy concludes that paragraphs (8) through (10) 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. 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 Bryan Paul Murphy on January 9, 2008.

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 Bryan Paul Murphy as follows:

(A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacy intern identification card, No. 06-0-06078, held by Bryan Paul Murphy 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 set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacy intern identification card, No. 06-0-06078, held by Bryan Paul Murphy 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 set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacy intern identification card, No. 06-0-06078, held by Bryan Paul Murphy 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 set forth above, the State Board of Pharmacy hereby revokes permanently the pharmacy intern identification card, No. 06-0-06078, held by Bryan Paul Murphy effective as of the date of the mailing of this Order.

Pursuant to Section 4729.16(B) of the Ohio Revised Code, Bryan Paul Murphy 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-4/Nay-3).

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 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: July 9, 2008

By: _____

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

WTW/lf

CERTIFIED MAIL/Return Receipt

7004 2510 0006 9805 8285

c: Sally Ann Steuk, Assistant Attorney General

Daniel D. Connor, Attorney for Respondent; Connor, Evans & Hafenstein LLP; 501 South High Street; Columbus, Ohio 43215



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SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

January 9, 2008

Bryan Paul Murphy
35318 Keller Drive
Avon, Ohio 44011

Re: Ohio Pharmacy Intern
Number 06-0-06078

Dear Mr. Murphy:

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 as an intern in the State of Ohio on June 29, 2006.
- (2) You did, on or about December 6, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: you admittedly stole a full, 100-count stock bottle of hydrocodone/APAP 10/660 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) You did, on or about December 20, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: you admittedly stole 2 full, 100-count stock bottles of hydrocodone/APAP 10/660 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) You did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: you admittedly stole a full, 100-count stock bottle of hydrocodone/APAP 10/325 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) You did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: you admittedly stole a full, 100-count stock bottle of

Bryan Paul Murphy
Summary Suspension

hydrocodone/APAP 10/650 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (6) You did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: you admittedly stole approximately 30 tablets of hydrocodone 10/660 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (7) You did, on or about December 21, 2007, with purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, CVS #3339, to wit: you admittedly stole approximately 50 tablets of hydrocodone 7.5/750 mg, a Schedule III controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (8) You did, on or about various and unknown times during the year 2007, knowingly sell or offer to sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731., to wit: on two or three occasions you admittedly sold a quantity of 50 dosage units, and/or 100 dosage units, of hydrocodone, a Schedule III controlled substance. You sold them in exchange for entry fees into "Texas Hold'em" poker tournaments. Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (9) You did, on or about various and unknown times during the year 2007, knowingly sell or offer to sell a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731., to wit: you admittedly sold a quantity of 50 dosage units, and/or 100 dosage units, of hydrocodone, a Schedule III controlled substance. You sold them in exchange for "loans between \$500.00 and \$1,000.00." Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.
- (10) You did, on or about December 21, 2007, intentionally create and/or knowingly possess a false or forged prescription, to wit: you forged Rx #C801378 for 80 tablets of hydrocodone/APAP 10/660 mg to cover for your theft of the drug. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (11) You are abusing drugs and/or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy, to wit: you have admittedly stolen controlled substances for your own personal abuse, using 10 to 20 tablets per day "when available." Such conduct indicates that you are within the ambit of Sections 3719.121 and/or 4729.16(A)(3) 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

Bryan Paul Murphy
Summary Suspension

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;

Bryan Paul Murphy
Summary Suspension

(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.

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

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

WTW: (D-080109-026)

CERTIFIED MAIL / Return Receipt
7004 2510 0006 9804 3908

cc: Sally Ann Steuk, Assistant Attorney General