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Minutes Of The Meeting

Ohio State Board of Pharmacy
Columbus, Ohio
July 24, 1996

WEDNESDAY, JULY 24, 1996

9:50 a.m. ROLL CALL

The State Board of Pharmacy convened in Room 1922, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Amonte B. Littlejohn, R.Ph. (Vice-President); Robert Cavendish, R.Ph.; Paul Lamping, R.Ph.; Joseph Maslak, R.Ph.; Ruth Plant, R.Ph.; and Nicholas Repke, Public Member.

The Board was joined by the following staff members: Tim Benedict, Compliance Administrator; David Rowland, Legal Affairs Administrator; Mark Keeley, Compliance Specialist; and Dale Fritz, Compliance Agent. Also present was Assistant Attorney General Mary Hollern.

Mr. Cavendish moved that the Board go into Executive Session for the purpose of discussing the investigation of complaints and charges against licensees and registrants of the Board. The motion was seconded by Mrs. Plant and a roll call vote was conducted by presiding member Mr. Littlejohn as follows: Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

10:05 a.m.

RES. 97-001

The Executive Session was concluded and the meeting opened to the public. Mr. Cavendish moved that the Board summarily suspend the license of R.Ph. Thomas L. Bridge (03-3-16000) for the reason that there is clear and convincing evidence that the continuation of his professional practice and method of distributing controlled substances presents a danger of immediate and serious harm to others. The motion was seconded by Mr. Littlejohn and approved by the Board (Aye-6/Nay-0).

The Board was joined by Assistant Attorney General Mary Hollern for the purpose of conducting a hearing in the matter of R.Ph. Brian Ward Chaney (03-1-10261) pursuant to Chapters 119. and 4729. of the Revised Code.

11:32 a.m.

The hearing was concluded and the record closed. Mr. Maslak moved that the Board go into Executive Session for the purpose of deliberating on the evidence and testimony received during the hearing. The motion was seconded by Mr. Lamping and a Roll Call vote was conducted by Vice-President Amonte Littlejohn as follows: Cavendish-Yes, Lamping-Yes, Littlejohn-Yes, Maslak-Yes, Plant-Yes, and Repke-Yes.

11:45 a.m.

RES. 97-002 The Executive Session was concluded and the meeting opened to the public. Mr. Cavendish moved that the Board adopt the following Order:

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-960708-068)

In The Matter Of:

BRIAN WARD CHANEY, R.Ph.
P.O. Box 535
126 South Main Street
Bradner, Ohio 43406
(R.Ph. No. 03-1-10261)

INTRODUCTION

THE MATTER OF BRIAN WARD CHANEY CAME TO HEARING ON JULY 24, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph., (presiding); ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

BRIAN WARD CHANEY WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Dale Fritz, Ohio State Board of Pharmacy
- (2) Brian Ward Chaney, Respondent

Respondent's Witnesses:

- (1) Nancy Chaney, Wife of Respondent
- (2) Brian Ward Chaney, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated July 8, 1996.
- (2) Exhibit 1A--Hearing Request letter from Allen N. Kepke dated July 10, 1996.
- (3) Exhibit 1B--Hearing Request letter from Brian W. Chaney dated July 10, 1996.
- (4) Exhibit 1C--Hearing Schedule letter dated July 12, 1996.
- (5) Exhibit 1D--Pharmacist File Front Sheet of Brian Ward Chaney showing original date of registration as July 20, 1972; and Renewal Application for Pharmacist License, No. 03-1-10261, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Brian Ward Chaney dated July 20, 1995.
- (6) Exhibit 2--Four-page certified copy of Judgment Entry in the Wood County Common Pleas Court, Case No. 96CR059, of Brian W. Chaney dated June 27, 1996.
- (7) Exhibit 3--Prescription number C108751.
- (8) Exhibit 4--Copy of statement of Brian Chaney dated May 23, 1995, re-signed and notarized on March 12, 1996.
- (9) Exhibit 5--Three-page Bradner Pharmacy Patient Prescription Summary of Robert Dix dated from February 1, 1994, to March 21, 1996.
- (10) Exhibit 6--Prescription number C109255.
- (11) Exhibit 7--Copy of prescriptions numbered C109255 and C108751.

Respondent's Exhibits:

- (1) Exhibit A--Letter from Charles F. Kurfess dated July 19, 1996; two-page copy of letter from Richard and Barbara Karr dated July 10, 1996; copy of letter from Biff Matthews dated April 2, 1996; copy of letter from Joe Boyle dated March 27, 1996; copy of letter from Joel Tavormina dated March 26, 1996; copy of letter from Deborah A. Wilson dated March 21, 1996; copy of letter from G. J. Thompson dated March 21, 1996; copy of letter from Richard R. Teeple dated March 29, 1996; copy of letter from Janice A. Stump dated March 27, 1996; copy of letter from Reverend Zedda E. Myers dated April 4, 1996; copy of letter from Tom Amos dated March 22, 1996; copy of letter from Lynn and Wayne St. Clair dated March 26, 1996; copy of letter from Harold Mitchem, not dated; copy of letter from Virginia C. Johnson dated March 25, 1996; two-page copy of letter from Dale W. Chaney dated March 24, 1996; copy of letter from David K. Stroud dated March 19, 1996; copy of letter from Sally and Herb Wunderlich, not dated; copy of Charles H. Barndt dated March 27, 1996; copy of letter from William F. Green, not dated; copy of letter from Joann and Lee Ninke dated March 25, 1996; and copy of letter from Roy and Mary Stahl, 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 indicate that Brian Ward Chaney was originally licensed to practice pharmacy in the state of Ohio on July 20, 1972, pursuant to examination; and, on July 8, 1996, Brian Ward Chaney's license was summarily suspended in accordance with Section 3719.121(C) of the Ohio Revised Code.
- (2) Brian Ward Chaney was convicted, on or about June 27, 1996, in the Common Pleas Court of Wood County, Ohio, Case No. 96CR059, of Illegal Possession of a Drug Document, in violation of Section 2925.23 of the Ohio Revised Code, a felony of the fourth degree.
- (3) Brian Ward Chaney did, on or about June 12, 1994, knowingly sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an amount less than three times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a legitimate prescription and pursuant to forged prescription number C108751, Brian Ward Chaney sold 30 tablets of Hydrocodone 5mg with APAP 500mg. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.
- (4) Brian Ward Chaney did, on or about June 12, 1994, intentionally make and/or knowingly possess a false or forged prescription, to wit: Brian Ward Chaney created prescription number C108751 for a patient and maintained it on file, knowing that there had been no prescription authorized by a practitioner. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (5) Brian Ward Chaney did, on or about July 5, 1994, knowingly sell a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a legitimate prescription and pursuant to forged prescription number C108751, Brian Ward Chaney sold 30 tablets of Hydrocodone 5mg with APAP 500mg as a refill. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (6) Brian Ward Chaney did, on or about July 5, 1994, intentionally make and/or knowingly possess a false or forged prescription, to wit: on false and forged prescription number C108751, Brian Ward Chaney indicated a refill and maintained it on file. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (7) Brian Ward Chaney did, on or about July 13, 1994, knowingly sell a controlled substance in an amount equal to or exceeding the bulk amount, but in an

amount less than three times that amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: without a legitimate prescription and pursuant to forged prescription number C109255, Brian Ward Chaney sold 40 tablets of Hydrocodone 5mg with APAP 500mg. Such conduct is in violation of Section 2925.03(A)(5) of the Ohio Revised Code.

- (8) Brian Ward Chaney did, on or about July 13, 1994, intentionally make and/or knowingly possess a false or forged prescription, to wit: Brian Ward Chaney created prescription number C109255 for a patient and maintained it on file, knowing that there had been no prescription authorized by a practitioner. Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.
- (9) Brian Ward Chaney did, knowing that an official investigation was likely to be instituted, alter records with purpose to impair their value or availability as evidence in such investigation, to wit: knowing that prescriptions he forged would be evidence in an investigation, Brian Ward Chaney altered the information written on the face of prescription numbers C108751 and C109255. Such conduct is in violation of Section 2921.12 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) 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) through (9) of the Findings of Fact constitute being guilty of 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) through (8) 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.

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 July 8, 1996.

Pursuant to Section 4729.16 of the Ohio Revised Code, and pursuant to the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places the pharmacist identification card, No. 03-1-10261, of Brian Ward Chaney on probation for one year, effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (1) Brian Ward Chaney must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (2) Brian Ward Chaney must abide by the rules of the Ohio State Board of Pharmacy.
- (3) Brian Ward Chaney must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

Mr. Repke seconded the motion and it was approved (Aye-6/Nay-0). The Board members also directed staff to immediately issue Mr. Chaney his license (identification card) to practice pharmacy in Ohio.

11:55 a.m. Mr. Cavendish moved that the Board members participating in this meeting receive Per Diem and that the meeting be adjourned. The motion was seconded by Mrs. Plant and approved (Aye-6/Nay-0).

/s/ Amonte B. Littlejohn

Date

/d/ 10/21/96

Amonte B. Littlejohn, Vice-President

Wickham

Director

/s/ Franklin Z.

Franklin Z. Wickham, Executive