



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-940901-013)

In The Matter Of:

MARIAN T. FISK, R.Ph.

4396 University Parkway
University Heights, Ohio 44118
(R.Ph. No. 03-1-06554)

INTRODUCTION

THE MATTER OF MARIAN T. FISK CAME TO HEARING ON JANUARY 24, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, 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.

MARIAN T. FISK WAS REPRESENTED BY DAVID W. GRAUER, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Joann Predina, R.Ph., Ohio State Board of Pharmacy
- (2) James Polgar, Loss Prevention Specialist, Interfact, Inc.
- (3) Tina Williams Murrell, Pharmacy Technician
- (4) Charles E. Seyfried, R.Ph., Director of Pharmacy Operations, Kaiser Permanente
- (5) Skip Estrella, Ph.D., Regional Manager of Security, Kaiser Permanente
- (6) Marian T. Fisk, R.Ph., Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated September 1, 1994.
- (2) Exhibit 1A--Request for Hearing and Notice of Appearance dated September 22, 1994.
- (3) Exhibit 1B--Hearing Schedule letter dated September 22, 1994.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Marian Louise Tarver Fisk showing original date of registration as August 5, 1957; and Renewal Application for Pharmacist License, No. 03-1-06554, for a license to practice pharmacy in Ohio from September 15, 1993, to September 15, 1994, of Marian T. Fisk dated August 2, 1993.
- (5) Exhibit 2--Audio tape of interview of Marian T. Fisk on February 11, 1993, provided by Interfact, Inc.
- (6) Exhibit 2A--Audio tape of interview of Marian T. Fisk on February 11, 1993, provided by Interfact, Inc. (Same as Exhibit 2)
- (7) Exhibit 3--Copy of three-page Handwritten Statement of Marian T. Fisk dated February 11, 1993.
- (8) Exhibit 4--Copy of four-page Confidential Report written by Jim Polgar for Kaiser Permanente regarding Marian Tarver Fisk dated February 15, 1993.
- (9) Exhibit 5--Two-page Handwritten Statement of Marian Fisk signed and notarized on February 26, 1993.
- (10) Exhibit 6--Drug Identification Request dated June 29, 1994, with attached Indentidex® Tablet and Capsule Identification for Acetaminophen with Codeine No. 4 from Lemmon.
- (11) Exhibit 6A--Amber vial, not numbered, marked by a plain white label stating directions only, containing 8 units of Acetaminophen with Codeine No. 4.
- (12) Exhibit 7--Drug Identification Request dated June 29, 1994, with attached Indentidex® Tablet and Capsule Identification for Naprosyn Tablet 500mg from Syntex.
- (13) Exhibit 7A--Amber vial, not numbered, marked by a Kaiser label stating directions only, containing 5 units of Naprosyn 500mg.
- (14) Exhibit 8--Copy of four-page Confidential Report written by Bruce Marks for Kaiser Permanente regarding Tina L. Murrell dated February 15, 1993, and attached copy of four-page handwritten statement of Tina L. Murrell dated February 11, 1993.
- (15) Exhibit 9--Page 1 of Medical Record, No. 362162, of Tina L. Murrell dated February 15, 1993.
- (16) Exhibit 10--Copy of two-page Handwritten Statement of Diana Y. Talley dated February 11, 1993, and attached copy of three-page Confidential Report written by Bruce Marks for Kaiser Permanente regarding Diana Y. Talley dated February 15, 1993.
- (17) Exhibit 11--Two-page Medical Record, No. 326815, of Dianna Y. Talley dated February 15, 1993.
- (18) Exhibit 12--Copy of two-page Handwritten Statement of Antoinette Bryson dated February 11, 1993, and attached copy of three-page Confidential Report written by Bruce Marks for Kaiser Permanente regarding Antoinette Bryson dated February 15, 1993.
- (19) Exhibit 13--Three-page Medical Record, No. 296373, of Antoinette Bryson dated February 15, 1993.
- (20) Exhibit 14--Copy of two-page Handwritten Statement of Nicole Marchelle Rainey dated February 12, 1993, and attached copy of three-page Confidential Report written by Keith Weiner for Kaiser Permanente regarding Nicole Marchelle Rainey dated February 15, 1993.
- (21) Exhibit 15--Copy of three-page Handwritten Statement of Pamela L. Porter dated February 11, 1993, and attached copy of three-page Confidential Report written

by Jim Polgar for Kaiser Permanente regarding Pamela Louise Porter dated February 15, 1993.

- (22) Exhibit 16--Four-page Medical Record, No. 574590, of Pamela L. Porter dated February 15, 1993.
- (23) Exhibit 17--Certified copy of three-count Indictment in the Cuyahoga County Common Pleas Court, Case No. CR 305765, of Marian T. Fisk dated February 2, 1994.
- (24) Exhibit 18--Certified copy of Journal Entry in the Cuyahoga County Common Pleas Court, Case No. CR 305765, of Marian T. Fisk dated July 6, 1994.

Respondent's Exhibits:

- (1) Exhibit A--Two-page Curriculum Vitae of Marian Tarver Fisk.
- (2) Exhibit B--Plea/Verdict Journal Entry Form in the Cuyahoga County Common Pleas Court, Case No. CR 305765, of Marian Fisk dated June 28, 1994; Summons in the Cuyahoga County Common Pleas Court, Case No. CR 305765, of Marian Fisk dated February 9, 1994; and three-count Indictment in the Cuyahoga County Common Pleas Court, Case No. CR 305765, of Marian T. Fisk dated February 2, 1994.
- (3) Exhibit C--Letter from Louis Stokes dated January 17, 1995.
- (4) Exhibit D--Letter from F. Allison Phillips dated January 13, 1995, with attached business card of F. Allison Phillips.
- (5) Exhibit E--Letter from Susie M. Rivers dated January 15, 1995.
- (6) Exhibit F--Letter from William H. Andrews dated January 5, 1995.
- (7) Exhibit G--Letter from Tracy Love dated January 17, 1995.
- (8) Exhibit H--Letter from Sonya M. Shultz dated January 12, 1995.
- (9) Exhibit I--Letter from Walter P. Moore dated January 19, 1995.
- (10) Exhibit J--Copy of letter from Kathryn A. Paul dated February 26, 1987, with attached copy of letter from Kathryn A. Paul dated March 9, 1987, also showing Kaiser Foundation Health Plan, Inc. Employees Earnings and Deduction Record for Employee No. 8-30-274302464 for period ending March 1, 1987.

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 Marian T. Fisk was originally licensed in the state of Ohio on August 5, 1957, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Marian T. Fisk did, at a time prior to February 11, 1993, with the purpose to deprive, knowingly obtain or exert control over the property of another beyond the express or implied consent of the owner, Kaiser Cleveland Medical Center, 2475 Martin Luther King, Jr. Drive, Cleveland, Ohio 44120, the property being dangerous drugs, to wit: Marian T. Fisk stole the following drugs for her own use and/or for the use of others:

<u>Drug</u>	<u>Quantity</u>
Naprosyn 375mg	60 tablets
Hytone Cream 1%	partial 1oz. tube
Amoxicillin 500mg	30 to 60 capsules

<u>Drug</u>	<u>Quantity</u>
Tamine SR	2 bottles of 100
Tylenol w/Codeine #4	8 tablets
Naprosyn 500mg	5 tablets
Xylocaine Ointment	unknown
Compazine	unknown
Isocom	unknown
Tylenol w/Codeine #3	unknown
Robaxin or Flexeril	unknown
Ercaf	unknown
Motrin	unknown
Entex LA	unknown
Lidocaine Ointment	unknown
Rondec DM Syrup	unknown
Motrin 400mg	unknown
Amoxicillin 500mg	30 tablets

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (3) Marian T. Fisk did, at a time prior to February 11, 1993, 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: Marian T. Fisk sold to Tina Murrell without a prescription eight tablets of Acetaminophen with Codeine 60mg, a Schedule III controlled substance. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (4) Marian T. Fisk did, at a time prior to February 11, 1993, while not being a practitioner or a terminal distributor, sell a dangerous drug at retail, to wit: Marian T. Fisk sold to Tina Murrell without a valid prescription five tablets of Naprosyn 500mg. Such conduct is in violation of Section 4729.51(C) of the Ohio Revised Code.
- (5) On or about July 6, 1994, in the Cuyahoga County Common Pleas Court, Marian T. Fisk pled guilty to a Prohibition of Ohio's Pure Food and Drug Act, in violation of Section 3715.52 of the Ohio Revised Code, a misdemeanor of the fourth degree.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) 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 (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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (4) 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 Sections 3715.52 to 3715.72 or

Chapter 2925., 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Marian T. Fisk:

- (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. 03-1-06554, held by Marian T. Fisk for thirty days, and such suspension is effective as of March 15, 1995. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Marian T. Fisk 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) Further, Marian T. Fisk must take and successfully complete the Federal Drug Law Examination and state jurisprudence examination offered by the Board, prior to March 15, 1996. If Marian T. Fisk has not successfully completed the examinations prior to March 15, 1996, her license will be suspended indefinitely until this condition has been achieved.

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.