



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950830-016)

In The Matter Of:

**LEON DAVID KESSEL, R.Ph.**

222 Tallowood Drive  
Westerville, Ohio 43081  
(R.Ph. No. 03-1-08042)

### INTRODUCTION

THE MATTER OF LEON D. KESSEL CAME TO HEARING ON MARCH 5, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

LEON D. KESSEL WAS REPRESENTED BY PAUL J. COVAL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Christopher K. Reed, Ohio State Board of Pharmacy
- (2) William L. Padgett, Ohio State Board of Pharmacy
- (3) Fred Williams, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated August 30, 1995.
- (2) Exhibit 1A--Hearing Request letter dated September 12, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated September 19, 1995.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Leon David Kessel showing original date of registration as August 19, 1963.

- (5) Exhibit 1D--Renewal Application for Pharmacist License, No. 03-1-08042, of Leon David Kessel for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, dated September 10, 1995.
- (6) Exhibit 2--Renewal Application for Pharmacist License, No. 03-1-08042, of Leon David Kessel for a license to practice pharmacy in Ohio from September 15, 1984, to September 15, 1985, received November 7, 1984.
- (7) Exhibit 3--Annual Pharmacist License Renewal for Licensure Period September 15, 1994, to September 15, 1995, of Leon David Kessel, No. 03-1-08042, showing the date received as October 3, 1994.
- (8) Exhibit 4--Prescription number 1031907 and prescription number 1031911.
- (9) Exhibit 5--Prescription number 1031948 and prescription number 1031947.
- (10) Exhibit 6--Prescription number 1032038 and prescription number 1032045.
- (11) Exhibit 7--Prescription number 1032217 and prescription number 1032190.
- (12) Exhibit 8--Three prescriptions numbered as follows: 1032406, 1032430, and 1032429.
- (13) Exhibit 9--Prescription number 1032539 and prescription number 1032563.
- (14) Exhibit 10--Three prescriptions numbered as follows: 1032646, 1032654, and 1032653.
- (15) Exhibit 11--Prescription number 1032711.
- (16) Exhibit 12--Prescription number 1032831 and prescription number 1032805.
- (17) Exhibit 13--Handwritten statement of Leon D. Kessel signed and notarized on April 26, 1995.
- (18) Exhibit 14--Two-page Dangerous Drug Distributor Inspection Report of Kessco Drugs, Terminal Distributor License No. 02-108300, dated April 26, 1995.
- (19) Exhibit 15--Letter from Leon Kessel, response to pink sheet, received May 16, 1995.
- (20) Exhibit 16--Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated May 6, 1992.
- (21) Exhibit 17--Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated October 26, 1990.
- (22) Exhibit 19--Two-page Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated May 2, 1990.
- (23) Exhibit 20--Letter from Leon Kessel, response to pink sheet, dated May 9, 1990.
- (24) Exhibit 21--Dangerous Drug Distributor Inspection Report of Dane Drug #7, Terminal Distributor License No. 02-108300, dated September 7, 1989.
- (25) Exhibit 22--Response to pink sheet from L. D. Kessel, received September 25, 1989.
- (26) Exhibit 23--Twelve D. E. A. 222 forms of Kessco, Inc. numbered as follows: 941072719, 941072720, 941072721, 941072724, 941072725, 941072726, 941072727, 941072728, 950194460, 950194461, 950194462, and 950194466.
- (27) Exhibit 24--Narcotic and Poison Register of Kessco Drugs dated from August 17, 1987, through April 26, 1995.
- (28) Exhibit 25--Two-page letter from Leon Kessel dated April 15, 1979; with attached example of patient profile.
- (29) Exhibit 26--Two-page letter from Franklin Z. Wickham dated November 15, 1979.

Respondent's Exhibits:

- (1) None

## 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 Leon David Kessel was originally licensed in the state of Ohio on August 19, 1963, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Leon David Kessel is the Responsible Pharmacist at Kessco Drugs, 952 Parsons Ave., Columbus, Ohio 43206 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Section 4729-5-11 of the Ohio Administrative Code.
- (2) Leon David Kessel did, from September 16, 1984, to November 7, 1984, and again from September 16, 1994, to October 3, 1994, allow his license to lapse; and, while not a registered pharmacist or pharmacy intern, dispense or sell dangerous drugs, to wit: after allowing his license to lapse and prior to its renewal, Leon David Kessel dispensed dangerous drugs pursuant to prescriptions. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.
- (3) Leon David Kessel did, from September 7, 1989, to April 26, 1995, after several written warnings by various Board agents, willfully and knowingly fail to maintain complete and accurate records of all controlled substances received or dispensed in compliance with federal laws and regulations and state laws and rules, to wit: during this time period Leon David Kessel has committed the following violations:
  - (a) Leon David Kessel or pharmacists under his control failed to manually initial prescriptions when dispensed in violation of Rule 4729-5-17 of the Ohio Administrative Code;
  - (b) Leon David Kessel or pharmacists under his control failed to record the date of receipt and the quantity received when purchasing schedule II controlled substances on the following D.E.A. 222 order forms in violation of Section 1305.09 of the Code of Federal Regulations:

<u>D.E.A. 222 Form No.</u>	<u>Date of Order</u>
941072719	01-31-95
941072720	03-02-95
941072721	03-02-95
941072724	02-17-95
941072725	02-17-95
941072726	[illegible]
941072727	02-20-95
941072728	02-07-95
950194460	03-18-95
<u>D.E.A. 222 Form No.</u>	<u>Date of Order</u>
950194461	04-07-95
950194462	04-12-95
950194466	03-28-95

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- (c) Leon David Kessel or pharmacists under his control failed to take and maintain a biennial inventory of controlled substances on two separate occasions during

this time period in violation of Section 1304.13 of the Code of Federal Regulations and Section 3719.07 of the Ohio Revised Code;

- (d) Leon David Kessel or pharmacists under his control failed to maintain a library containing a copy of current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio in violation of Rule 4729-9-02 of the Ohio Administrative Code; and
- (e) Leon David Kessel or pharmacists under his control failed to manually record his/her initials when making sales of exempt narcotics in violation of Section 1306.32 of the Code of Federal Regulations.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) 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.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) 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 3719., or 4729. of the Revised Code as provided in Division (A)(5) 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 paragraph (2) 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 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 Leon David Kessel:

- (A) On the basis of the Findings of Fact and paragraphs (1) and (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-1-08042, held by Leon David Kessel for ninety days, effective as of the date of the mailing of this Order. Further, Leon David Kessel must take and successfully complete the jurisprudence examination offered by the Board prior to March 1, 1997. If Leon David Kessel has not successfully completed the exam prior to March 1, 1997, his license will be suspended until successful completion has been achieved.
- (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 imposes a monetary penalty of \$1,000.00 due and owing within 30 days of the effective date of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

Division (B) of Section 4729.16 of the Ohio Revised Code provides: "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.