



OHIO STATE BOARD OF PHARMACY

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

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

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

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-961104-018)

In The Matter Of:

DAVID P. McMILLEN, R.Ph.

1717 E. Union Hills #1078

Phoenix, Arizona 85024

(R.Ph. No. 03-1-08884)

INTRODUCTION

THE MATTER OF DAVID P. McMILLEN CAME ON FOR CONSIDERATION ON APRIL 22, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DAVID P. McMILLEN WAS NOT PRESENT, NOR WAS HE 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) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated November 4, 1996.
(2) Exhibit 1A--Pharmacist File Front Sheet of David Paul McMillen showing original date of registration as August 14, 1967.
(3) Exhibit 1B--Three Renewal Applications for Pharmacist License, No. 03-1-08884, for a license to practice pharmacy in Ohio of David P. McMillen for the renewal periods as follows: from September 15, 1996, to September 15, 1997, dated August 11,

1996; from September 15, 1995, to September 15, 1996, dated August 10, 1995; and from September 15, 1994, to September 15, 1995, dated August 31, 1994.

- (4) Exhibit 2--Copy of two-page Amended Board Order before the Arizona State Board of Pharmacy, No. 94-06-H, of David P. McMillen dated September 22, 1994; and copy of five-page Findings of Fact, Conclusions of Law and Board Order before the Arizona State Board of Pharmacy, No. 94-06-H, in the matter of David P. McMillen dated September 22, 1994.
- (5) Exhibit 3--Certification of Authenticity letter from Sharon Campbell Knowles, Florida Board of Pharmacy, dated June 4, 1996, with the following attachments: copy of three-page Final Order of the State of Florida Board of Pharmacy, Case No. 94-18830, in the matter of David McMillen dated February 8, 1996; copy of four-page Administrative Complaint from the State of Florida Agency for Health Care Administration Board of Pharmacy, Case No. 94-18830, in the matter of David P. McMillen dated July 27, 1995; copy of two-page Amended Board Order before the Arizona State Board of Pharmacy, No. 94-06-H, of David P. McMillen dated September 22, 1994; and copy of five-page Findings of Fact, Conclusions of Law and Board Order before the Arizona State Board of Pharmacy, No. 94-06-H, in the matter of David P. McMillen dated September 22, 1994.
- (6) Exhibit 4--Letter from L. A. Lloyd, Arizona State Board of Pharmacy, dated November 12, 1996, with the following attachment: certified copy of five-page Findings of Fact, Conclusions of Law and Board Order before the Arizona State Board of Pharmacy, No. 94-06-H, in the matter of David P. McMillen dated September 22, 1994.

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) On November 4, 1996, David P. McMillen was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of November 12, 1996, David P. McMillen received the letter of November 4, 1996, informing him of the allegations against him, and his rights.
- (3) David P. McMillen has not responded in any manner to the letter of November 4, 1996, and has not requested a hearing in this matter.
- (4) Records of the Board of Pharmacy indicate that David P. McMillen was originally licensed in the state of Ohio on August 14, 1967, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (5) David P. McMillen was disciplined by the Arizona State Board of Pharmacy on or about September 22, 1994, and by the State of Florida, Board of Pharmacy on or about February 8, 1996, for having stolen controlled substances from his employ-

ing pharmacy without a legitimate medical need, without a valid prescription order, and for personal use.

- (6) David P. McMillen did, from May 2, 1993, through July 9, 1994, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Osco Drug #2310, Phoenix, Arizona, beyond the express or implied consent of the owner. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (5) and (6) 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.

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 David P. McMillen:

- (A) On the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card, No. 03-1-08884, held by David P. McMillen indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, David P. McMillen may not be employed by or work in a facility licensed by the Ohio Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) After September 22, 1999, the Board will consider any petition filed by David P. McMillen for a hearing, pursuant to Ohio Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if David P. McMillen appears before the Ohio Board and provides evidence of compliance with each of the probation requirements as set forth in the Order - Part III, of the Findings of Fact, Conclusions of Law and Board Order before the Arizona State Board of Pharmacy, No. 94-06-H, dated September 22, 1994.

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.