



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY (Docket No. D-920901-016)

In The Matter Of:

MICHAEL C. KLUS, R.Ph.
1721 Fallbrook Lane
Cincinnati, Ohio 45240
(R.Ph. No. 03-1-09184)

INTRODUCTION

THE MATTER OF MICHAEL C. KLUS CAME TO HEARING ON OCTOBER 21, 1992, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY D. MOORE, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; METTA LOU HENDERSON, R.Ph.; PAUL F. LAMPING, R.Ph.; WAYNE C. MILLER, R.Ph.; RUTH A. PLANT, R.Ph.; NICHOLAS R. REPKE; JOSEPH R. SABINO, R.Ph.; AND ROBERT W. VALENTINE, R.Ph.

MICHAEL C. KLUS WAS REPRESENTED BY PETER ROSENWALD, AND THE STATE OF OHIO WAS REPRESENTED BY RONDA ANDERSON, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Michael C. Klus, Respondent
- (2) David Henry

Respondent's Witnesses:

- (1) Mary Lee Klus
- (2) Michael Klus, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Summary Suspension Order, Docket No. D-920901-016, of Michael C. Klus dated September 1, 1992.
- (2) Exhibit 1A - Hearing Request letter dated September 9, 1992.
- (3) Exhibit 1B - Hearing Schedule letter dated September 14, 1992.
- (4) Exhibit 2 - Ohio State Board of Pharmacy, Form PHA-0004, in the matter of The State of Ohio versus Michael C. Klus; certified copy of State of Ohio, Hamilton County, Court of Common Pleas, Waiver of Indictment, Case No. B925026, of Michael C. Klus, not dated; certified copy of the State

- of Ohio, Hamilton County, Court of Common Pleas, Criminal Division, Information, Charge: Illegal Processing of Drug Documents, Case No. B925026, of Michael C. Klus, not dated; and two-page certified copy of the State of Ohio, Hamilton County, Court of Common Pleas, Plea of Guilty under Information, of Michael C. Klus, not dated.
- (5) Exhibit 3 - Four-page copy of handwritten statement of Michael C. Klus dated January 4, 1992.
 - (6) Exhibit 4 - Handwritten statement of Michael C. Klus signed and notarized on April 23, 1992.
 - (7) Exhibit 5 - Handwritten Statement of Dr. Fred Elkus signed and notarized on April 9, 1992.
 - (8) Exhibit 6 - Prescription number 366089.
 - (9) Exhibit 7 - Prescription number 372445.
 - (10) Exhibit 8 - Prescription number 402770, written for 30 units of 5mg Valium, having five refills, dated November 21, 1989; and prescription number 0448-402770, written for 30 units of 5mg Valium, having 5 refills, dated April 12, 1990.
 - (11) Exhibit 9 - Prescription number 377204.
 - (12) Exhibit 10 - Prescription number 381890.
 - (13) Exhibit 11 - Prescription number 392885.
 - (14) Exhibit 12 - Prescription number 397610.
 - (15) Exhibit 13 - Prescription number 0448-459162, written for 30 units of Valium 5mg, having five refills, dated April 12, 1990; and prescription number 0448-459162, written for 30 units of Diazepam 5mg, having five refills, dated August 23, 1990.
 - (16) Exhibit 14 - Prescription number 0448-464538, written for 30 units of Diazepam 5mg, having five refills, dated June 19, 1991; and prescription number 0448-464538, written for 30 units of Diazepam 5mg, having five refills, dated August 23, 1990.
 - (17) Exhibit 15 - Prescription number 0448-478938, written for 30 units of Diazepam 5mg, having five refills, dated June 19, 1991.
 - (18) Exhibit 16 - Prescription number 40041849.
 - (19) Exhibit 17 - Prescription number 40055266.
 - (20) Exhibit 18 - Seventy-one page transcript of interview of Michael Klus, with Michael Cluxton, Cheryl Rooks, Dave Henry, and Mike Puccini on April 23, 1992.
 - (21) Exhibit 19 - Prescription number 387410.

Respondent's Exhibits:

- (1) Exhibit A - Letter from Vincent C. DiMaggio dated October 10, 1992.
- (2) Exhibit B - Letter from Sandra J. Raabe dated October 9, 1992.
- (3) Exhibit C - Letter from Tony Raabe dated October 12, 1992.
- (4) Exhibit D - Copy of letter from Steven W. Sininger dated October 13, 1992.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that Michael C. Klus was licensed to practice pharmacy in Ohio until September 1, 1992, when Mr. Klus' license to practice pharmacy was summarily suspended.
- (2) From the evidence presented, the State Board of Pharmacy finds that on or about October, 1983, through January 3, 1992, Michael C. Klus was the responsible pharmacist at Revco Discount Drug Center #448, 4016 Pleasant Avenue, Hamilton, Ohio 45015.

- (3) From the evidence presented, the State Board of Pharmacy finds that on or about August 30, 1992, Michael C. Klus pled guilty in the Common Pleas Court of Hamilton County, Ohio, to Illegal Processing of Drug Documents, a felony in violation of Section 2925.23(B)(1) of the Ohio Revised Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Michael C. Klus has admitted stealing drugs and merchandise of approximately \$600.00 from his employer, Revco Discount Drug Center #448. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) From the evidence presented, the State Board of Pharmacy finds that Michael C. Klus as responsible pharmacist did, on or between June 1, 1991, and January 4, 1992, with the purpose to deprive, knowingly obtain dangerous drugs beyond the scope or consent of the owner, Revco Discount Drug #448, to wit: Michael C. Klus and/or a pharmacist under his control stole approximately 585 units of Diazepam 5mg, a schedule IV controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) From the evidence presented, the State Board of Pharmacy finds that Michael C. Klus did, on or about December, 1991, misbrand a drug, to wit: Michael C. Klus admitted placing 30 units of Diazepam 5mg in unmarked containers on two separate occasions, and taking such containers out of the pharmacy. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (7) From the evidence presented, the State Board of Pharmacy finds that Michael C. Klus intentionally created and knowingly possessed false and forged prescriptions, to wit: Michael C. Klus admitted creating the following false and forged prescriptions:

<u>Rx. No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Refills</u>	<u>Date</u>
366089	Valium 5mg	30	5	06/08/87
372445	Valium 5mg	30	5	11/02/87
381890	Valium 5mg	30	5	06/03/88
377204	Valium 5mg	30	5	12/14/88
392885	Valium 5mg	30	5	03/06/89
397610	Valium 5mg	30	5	07/12/89
402770	Valium 5mg	30	5	11/21/89
0448-402770	Valium 5mg	30	5	04/12/90
0448-459162	Valium 5mg	30	5	04/12/90
0448-459162	Diazepam 5mg	30	5	08/23/90
0448-464538	Diazepam 5mg	30	5	08/23/90
0448-464538	Diazepam 5mg	30	5	06/19/91
0448-478938	Diazepam 5mg	30	5	06/19/91
40041849	Diazepam 5mg	30	3	01/23/92
40055266	Diazepam 5mg	30	3	03/28/92

Such conduct is in violation of 2925.23(B) of the Ohio Revised Code.

- (8) From the evidence presented, the State Board of Pharmacy finds that Michael C. Klus sold controlled substances in amounts less than the bulk amount when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Michael C. Klus sold the following controlled substances in the following amounts to his wife, Mary Lee Klus:

<u>Rx. No.</u>	<u>Drug</u>	<u>Quantity</u>	<u>Refills</u>	<u>Date</u>
366089	Valium 5mg	30	5	06/08/87
372445	Valium 5mg	30	5	11/02/87
381890	Valium 5mg	30	5	06/03/88
377204	Valium 5mg	30	5	12/14/88
392885	Valium 5mg	30	5	03/06/89
397610	Valium 5mg	30	5	07/12/89
402770	Valium 5mg	30	5	11/21/89
0448-402770	Valium 5mg	30	5	04/12/90
0448-459162	Valium 5mg	30	5	04/12/90
0448-459162	Diazepam 5mg	30	5	08/23/90
0448-464538	Diazepam 5mg	30	5	08/23/90
0448-464538	Diazepam 5mg	30	5	06/19/91
0448-478938	Diazepam 5mg	30	5	06/19/91
40041849	Diazepam 5mg	30	3	01/23/92
40055266	Diazepam 5mg	30	3	03/28/92

Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3), (4), (5), (7), and (8) of the Findings of Fact constitute 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 (4) through (8) of the Findings of Fact constitute being guilty of dishonesty or 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 (3), (6), (7), and (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 the 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued September 1, 1992.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the pharmacist license, No. 03-1-09184, held by Michael C. Klus:

(A) On the basis of paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of one thousand five hundred dollars (\$1,500.00) due and owing within thirty (30) days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320, with the enclosed form.

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(B) On the basis of paragraphs (1) and (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the identification card, No. 03-1-09184, held by Michael C. Klus until September 1, 1997.

(C) Further, the Board will suspend four years of the suspension and place Michael C. Klus on probation from September 1, 1993 through September 1, 1997 provided that Mr. Klus:

- (1) takes and successfully completes the State Jurisprudence Examination and the Federal Drug Law Examination (FDLE) offered by the Board before September 1, 1993;
- (2) does not violate the drug laws of the state of Ohio, any other state, or the federal government;
- (3) abides by the rules of the State Board of Pharmacy; and
- (4) complies with the terms of this Order.

Michael C. Klus may not work in a pharmacy, as defined in Section 4729.02(A) of the Ohio Revised Code, while under suspension.

Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Michael C. Klus' pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns until September 1, 1997.

The Board further stipulates that Michael C. Klus may not serve as a responsible pharmacist until September 1, 1997.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-8/Nay-0).

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 Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

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Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED
AND EFFECTIVE: DECEMBER 16, 1992

CERTIFIED MAIL
Return Receipt
#P 749 728 940

FZW/so

By 
Franklin Z. Wickham, R.Ph., M.S.
Executive Director

cc: Ronda Anderson, Assistant Attorney General
Peter Rosenwald, Attorney for Respondent; 2602 Central Trust Tower;
One W. Fourth Street; Cincinnati, Ohio 45202