



OHIO STATE BOARD OF PHARMACY

77 S. High Street, 17th Floor
Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-890516-119)

In The Matter Of:

JOHN E. McCLELLAN, R.Ph.
P.O. Box 9266
Phoenix, Arizona 85068
(R.Ph. No. 03-1-09882)

THE MATTER OF JOHN E. McCLELLAN CAME ON FOR CONSIDERATION BY THE STATE BOARD OF PHARMACY ON DECEMBER 14, 1989 AS A RESULT OF THE REPORT AND RECOMMENDATION SUBMITTED TO THE BOARD BY HEARING OFFICER AND BOARD MEMBER GERALD CLOUSE. FOLLOWING CONSIDERATION OF THE REPORT AND RECOMMENDATION, THE TRANSCRIPT OF THE HEARING, AND EVIDENCE ADDUCED AT THE HEARING, MOTIONS WERE MADE AND RECORDED THE FOLLOWING ORDER BE ADOPTED:

ORDER

State's Exhibits

- (1) Exhibit A - Notice of Opportunity letter dated May 16, 1989.
- (2) Exhibit B - Hearing Schedule letter dated July 19, 1989.
- (3) Exhibit 1 - Pharmacist John E. McClellan's front sheet from Board of Pharmacy records.
- (4) Exhibit 2 - Board Order from the Arizona Board of Pharmacy for John E. McClellan held on September 9, 1986.
- (5) Exhibit 3 - Notice of Hearing from the Arizona Board of Pharmacy directed to John E. McClellan received in office on March 22, 1988.

Respondent's Exhibits

- (1) Exhibit 1 - Letter from John E. McClellan dated May 21, 1989, and Letter from the Kentucky Board of Pharmacy dated December 15, 1987 directed to John E. McClellan.
- (2) Exhibit 2 - Letter from Llyn A. Lloyd, Executive Director of the Arizona Board of Pharmacy, dated October 20, 1989; Pharmacy Inspection Report from the Arizona State Board of Pharmacy for Kachina Pharmacy, Responsible Pharmacist being John McClellan; Certified copy of transcript of Arizona State Board of Pharmacy hearing held on September 9, 1986 with John E. McClellan.
- (3) Exhibit 3 - Letter from John E. McClellan dated October 17, 1989;

Business card for Kachina Pharmacy and Electronics showing John E. McClellan as Pharmacist-Owner; Letter from John E. McClellan dated May 21, 1989; Letter from the Ohio Board of Pharmacy to Mr. L. A. Lloyd of the Arizona Board of Pharmacy dated May 26, 1989; and Letter from Richard L. Ross, R.Ph., Executive Director of the Kentucky Board of Pharmacy, dated December 15, 1987 directed to John E. McClellan.

Findings Of Fact

The State Board of Pharmacy hereby agrees with and adopts the Findings Of Fact set forth in the Report and Recommendation of Hearing Officer and Board Member Gerald Clouse, as follows:

- (1) The State Board of Pharmacy finds that on May 16, 1989, John E. McClellan 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) The State Board of Pharmacy finds that, as demonstrated by return receipt of May 19, 1989, John E. McClellan received the letter of May 16, 1989, informing him of the allegations, and his rights.
- (3) The State Board of Pharmacy finds that John E. McClellan submitted a letter, received May 25, 1989, setting forth his position and contentions in writing, and has not requested a hearing in this matter.
- (4) The State Board of Pharmacy finds that John E. McClellan was licensed as a pharmacist in the State of Ohio by examination on July 26, 1971.
- (5) The State Board of Pharmacy finds that John E. McClellan, on or about October 27, 1986, was found to be in violation by the Arizona State Board of Pharmacy of thirty-three separate charges of state and federal laws, rules, and regulations.

Conclusions Of Law

The State Board of Pharmacy hereby agrees with and adopts the Conclusions Of Law set forth in the Report and Recommendation of Hearing Officer and Board Member Gerald Clouse, as follows:

- (1) The State Board of Pharmacy concludes that the conduct set forth in paragraph (5) of the Findings Of Fact constitutes being guilty of a felony or gross immorality as provided in division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that the conduct set forth in paragraph (5) of the Findings Of Fact constitutes 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) The State Board of Pharmacy concludes that the conduct set forth in paragraph (5) of the Findings Of Fact constitutes willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Ohio Revised Code as provided in division (A)(5) of Section 4729.16 of the Ohio Revised Code.

Action Of The Board

The State Board of Pharmacy hereby agrees with and adopts the recommendation for action set forth in the Report and Recommendation of Hearing Officer and Board Member Gerald Clouse. Therefore, pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby suspends the Ohio pharmacist identification card held by John E. McClellan until September 8, 1991 pending action taken by the Arizona Board of Pharmacy and, at that time, Mr. McClellan must appear before the Ohio Board of Pharmacy for consideration of the reinstatement of his Ohio pharmacist identification card.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is ..., suspended, ..., 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.

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.

JOHN E. McCLELLAN, R.Ph.

Page Four

Order of the Board

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

CERTIFIED MAIL
Return Receipt
#P-417-664-125

ORDER MAILED: JANUARY 28, 1990

FZW/pw

BY


Franklin Z. Wickham, Executive Director

cc: Steve Dlott, Assistant Attorney General