

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-011108-018)

In The Matter Of:

JOHN H. KEYSER, R.Ph.
9701 Cooper Lane
Cincinnati, Ohio 45242-7005
(R.Ph. No. 03-1-12366)

INTRODUCTION

THE MATTER OF JOHN H. KEYSER CAME FOR HEARING ON FEBRUARY 5, 2002, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ANN D. ABELE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; AND JAMES E. TURNER, R.Ph.

JOHN H. KEYSER WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

- (1) John H. Keyser, R.Ph., Respondent
- (2) Wayne Miller, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Hearing Request letter from John H. Keyser, R.Ph. dated November 1, 2000.
- (2) Exhibit 1A--Copy of Hearing Schedule letter dated November 9, 2000.
- (3) Exhibit 1B--Hearing Request letter from John H. Keyser, R.Ph. dated March 29, 2001.
- (4) Exhibit 1C--Copy of two-page Failure To Meet Requirements of Board Order letter to John H. Keyser, R.Ph. dated April 4, 2001.
- (5) Exhibit 1D--Letter from John H. Keyser, R.Ph. dated May 10, 2001.
- (6) Exhibit 1E--Copy of two-page Hearing Schedule letter dated May 22, 2001.
- (7) Exhibit 1F--Copy of Ohio Pharmacist Computer Record of John H. Keyser.
- (8) Exhibit 1G--Hearing Request letter from John H. Keyser, R.Ph. dated November 7, 2001.
- (9) Exhibit 1H--Copy of two-page Hearing Schedule letter dated November 8, 2001.

- (10) Exhibit 2--Copy of five-page Order of the State Board of Pharmacy, Docket No. D-950426-048 in the matter of John H. Keyser, R.Ph. dated March 15, 1996.
- (11) Exhibit 3--Copy of Statement of R. Brian McDonald, R.Ph. notarized May 8, 1995.
- (12) Exhibit 4--Copy of Statement of Steve Shepherd notarized May 11, 1995.
- (13) Exhibit 5--Copy of Statement of Jerome R. Rega notarized July 13, 1995.
- (14) Exhibit 6--Copy of thirty-six-page Transcript of Interview of John Keyser, R.Ph. taken March 21, 1995.

Respondent's Exhibits:

- (1) Exhibit A1--Letter from Donald P. Rakel, M.D. dated January 26, 2002; Letter from Nolan Weinberg, M.D. dated January 27, 2002; Two-page letter from David W. Baker dated January 23, 2002; Letter from Elizabeth Murcia, R.Ph. dated January 20, 2002; and letter from Marcia L. Aschendorf, NMD, DC, DM, DR dated January 25, 2002.
- (2) Exhibit A2--Four pages of Bethesda Hospital records of John H. Keyser dated from June 12, 1995 to November 27, 1996; Copy of "Entry Granting Motion To Dismiss And Seal Record", State of Ohio vs. John Keyser, Case No. B953603, Hamilton County Common Pleas Court, dated May 13, 1997.
- (3) Exhibit A3--Copies of seventy-five pages of drug screen reports and chain of custody forms for specimens collected from John H. Keyser from April 18, 2000 to January 28, 2002.
- (4) Exhibit A4--Copies of one hundred five pages of support group attendance records dated from February 15, 2000 to January 31, 2001.
- (5) Exhibit A5--Copy of two-page Continuing Education Summary for John H. Keyser, R.Ph.; and seventy-one pages of continuing pharmacy education participation dated from March 14, 2000 to September 9, 2001.

FINDING OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds John H. Keyser has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-950426-048, effective March 15, 1996.

ACTION OF THE BOARD

On the basis of the Finding of Fact set forth above, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-1-12366, held by John H. Keyser to practice pharmacy in the state of Ohio and places John H. Keyser on probation for five years from the date the identification card is issued, with the following conditions:

- (A) John H. Keyser must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office with the renewal application. The contract must provide that:

- (1) Random, observed urine drug screens shall be conducted each month for the first twelve months and then at least once every three months for the remaining four years.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (b) Results of all drug screens must be negative. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract and probation.
 - (2) The intervener/sponsor shall provide copies of all drug screen reports to the Board in a timely fashion.
 - (3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
 - (4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) John H. Keyser must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
- (1) The written report and documentation provided by the treatment program pursuant to the contract, and
 - (2) A written description of John H. Keyser's progress towards recovery and what Mr. Keyser has been doing during the previous three months.
- (C) Other terms of probation are as follows:
- (1) The State Board of Pharmacy hereby declares that John H. Keyser's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
 - (2) John H. Keyser may not serve as a responsible pharmacist.
 - (3) John H. Keyser must work with another pharmacist for one year from the effective date of this Order.
 - (4) John H. Keyser may not work in a pharmacy more than forty-four hours per week for a period of two years from the effective date of this Order.
 - (5) John H. Keyser may not destroy, assist in, or witness the destruction of controlled substances.

- (6) John H. Keyser must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
- (7) John H. Keyser must not violate the drug laws of the State of Ohio, any other state, or the federal government.
- (8) John H. Keyser must abide by the rules of the State Board of Pharmacy.
- (9) John H. Keyser must comply with the terms of this Order.

John H. Keyser is hereby advised that the Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-6/Nay-1).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE MARCH 7, 2002

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-950426-048)

In The Matter Of:

JOHN H. KEYSER, R.Ph.
9701 Cooper Lane
Cincinnati, Ohio 45242
(R.Ph. No. 03-1-12366)

INTRODUCTION

THE MATTER OF JOHN H. KEYSER CAME ON FOR CONSIDERATION ON JANUARY 22, 1996, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JOHN H. KEYSER 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) Tim Benedict, R.Ph., Ohio State Board of Pharmacy
- (2) William McMillen, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Summary Suspension Order/Notice of Opportunity letter dated April 26, 1995.
- (2) Exhibit 1A--Pharmacist File Front Sheet of John H. Keyser showing original date of registration as August 10, 1977.
- (3) Exhibit 1B--Renewal Application for Pharmacist License, No. 03-1-12366, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, signed and dated on July 6, 1994.
- (4) Exhibit 2--Handwritten statement of R. Brian McDonald signed and notarized on May 8, 1995.
- (5) Exhibit 3--Handwritten statement of Steve Shepherd signed and notarized on May 11, 1995.
- (6) Exhibit 4--Handwritten statement of Jerome R. Riga signed and notarized on July 13, 1995.

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 April 26, 1995, John H. Keyser 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 May 1, 1995, John H. Keyser received the letter of April 26, 1995, informing him of the allegations against him, and his rights.
- (3) John H. Keyser has not responded in any manner to the letter of April 26, 1995, and has not requested a hearing in this matter.
- (4) Records of the Board indicate that John H. Keyser was originally licensed to practice pharmacy in the state of Ohio on August 10, 1977, pursuant to examination; and, on April 26, 1995, John H. Keyser's license was summarily suspended in accordance with Sections 3719.121(A) and 3719.121(B) of the Ohio Revised Code.
- (5) John H. Keyser is addicted to or abusing controlled substances or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code, to wit: John H. Keyser has admitted to stealing Cocaine HCl, Vicodin, and Xanax; John H. Keyser has admitted to abusing such drugs while practicing pharmacy; and, John H. Keyser has admitted to being addicted to controlled substances.
- (6) John H. Keyser did, over a two month time period during 1995, with the purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, Bethesda North Hospital, to wit: John H. Keyser stole 14.6gm of Cocaine HCl from his employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes 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 paragraphs (5) and (6) of the Findings of Fact constitute being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) 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 (5) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 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 April 26, 1995.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of John H. Keyser:

- (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. 03-1-12366, held by John H. Keyser indefinitely, effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, John H. Keyser 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) One year after the effective date of this Order John H. Keyser may petition the Board for reinstatement. The petition will be considered only if the following conditions have been met:
- (1) John H. Keyser must enter into a contract, after the effective date of this Order, with a limited treatment provider acceptable to the Board, for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (a) random, **observed** urine screens shall be conducted at least once a month. The urine drug screens must report testing for alcohol and must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
 - (c) the program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.
 - (2) The petition for reinstatement must include the following:
 - (a) Copies of contract(s) with treatment providers.
 - (b) Copies of all urine drug screen reports from the effective date of this Order.

- (c) Documented evidence of at least three support group meetings per week. The verification must include the signature of the chairman.
- (d) Written documentation from the treatment provider regarding compliance with the program pursuant to the contract(s).
- (e) Certificates of continuing pharmacy education experience obtained during the three years prior to submitting the petition.

The petition will be reviewed by the Compliance Administrator to determine that it contains all required documentation and presented to the Board for their consideration. If the documentation is complete and the Board is convinced that Mr. Keyser has complied with the Board's Order, the license to practice will be reinstated. If the documentation does not establish compliance with the Board's Order, the Board will propose to deny the petition for reinstatement and a Notice of Opportunity for a Chapter 119. hearing will be issued by the Board.

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 (Aye-6/Nay-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE MARCH 15, 1996

April 26, 1995

JOHN H. KEYSER, R.Ph.
9701 Cooper Lane
Cincinnati, Ohio 45242

Re: Ohio Registered Pharmacist
Number 03-1-12366

Dear Pharmacist:

Records of the Board indicate that you are a pharmacist registered by this Board to practice pharmacy in the state of Ohio.

In accordance with Section 3719.121(A) of the Ohio Revised Code, the Board has determined that you are addicted to the use of controlled substances. Further, in accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice and/or your method of distributing controlled substances presents a danger of immediate and serious harm to others. The reasons for the Board's action are that you have committed any and/or all of the following acts:

(1) You are addicted to or abusing controlled substances or impaired physically or mentally to such a degree as to render you unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code, to wit: you have admitted to stealing Cocaine HCl Vicodin, and Xanax; you have admitted to abusing such drugs while practicing pharmacy; and, you have admitted to being addicted to controlled substances.

(2) You did, over a two month time period during 1995, with the purpose to deprive, knowingly obtain or exert control over a dangerous drug beyond the express or implied consent of the owner, Bethesda North Hospital, to wit: you stole 14.6gm of Cocaine HCl from your employer. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

YOU ARE HEREBY NOTIFIED that Section 3719.121(A) of the Ohio Revised Code states, in pertinent part: "any ... pharmacist, ... who is or becomes addicted to the use of controlled substances, shall have his license or registration suspended by the board" Additionally, Section 3719.121(B) of the Ohio Revised Code states, in pertinent part:

(B) The license or registration of a ... pharmacist, ... may be suspended without a prior hearing by the board under which he has been licensed or registered if the board determines that there is clear and convincing evidence that continuation of his professional practice or his method of distributing controlled substances presents a danger of immediate and serious harm to others. ...

WHEREFORE, PURSUANT TO SECTIONS 3719.121(A) AND (B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO IS HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until an adjudicatory hearing is held by the Board under Chapter 119. of the Revised Code, during which time you may not engage in the practice of pharmacy. If you request a hearing within 30 days of the time of the mailing of this notice, such will be afforded. You may appear at such hearing in person, by or with your attorney, or you may present your position, arguments, or contentions in writing; and at this hearing, you may present evidence and examine any witnesses appearing for and against you.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states, in pertinent part:

(A) The state board of pharmacy, after notice and hearing in accordance with sections 119.01 to 119.13 of the Revised Code, may revoke, suspend, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not more than five hundred dollars, if the board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of 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 Revised Code;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending his name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy; or
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, a practitioner or any owner, manager, or employee of a health care facility, rest home, or nursing home.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part 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.

(D-950426-048)

BY ORDER OF THE STATE BOARD OF PHARMACY

SUMMARY SUSPENSION EFFECTIVE APRIL 26, 1995

*This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.
(Order Effective March 15, 1996)*