



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-040805-008)

In The Matter Of:

DAVID R. JAMES, R.Ph.
6897 Southampton Lane
Hamilton, Ohio 45011
(R.Ph. No. 03-1-20960)

INTRODUCTION

THE MATTER OF DAVID R. JAMES CAME FOR HEARING ON APRIL 13, 2005, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph., ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

DAVID R. JAMES WAS REPRESENTED BY MARK W. NAPIER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. David R. James, R.Ph., Respondent
2. Richard Haun, Ohio State Board of Pharmacy
3. Rod MacGregor, M.D.
4. Kevin Murphy
5. Joanne Morgan, R.Ph.
6. Jeanne Getter, R.Ph.

Respondent's Witnesses

1. Jill James
2. David R. James, R.Ph., Respondent

State's Exhibits

1. Notice of Opportunity For Hearing letter [08-05-04]
1A-1B. Procedurals
1C. Addendum Notice letter [12-16-04]
1D-1J. Procedurals
2. Labcorp Chain of Custody Form [05-30-03]; LabCorp Drug Screen Report [05-30-03]; Excel Corporate Care MRO Flowsheet [06-10-03]
3. Dangerous Drug Distributor Inspection Report of Middcare, Inc. [05-28-03]

4. Three Accountability Statements completed at Middcare Pharmacy for the following drugs: hydrocodone 10/500, hydrocodone 10/650 and hydrocodone 10/660 [07-22-03]
5. Notarized Statement of Carol LeRoy [01-25-05]
6. Notarized Statement of Kevin M. Murphy [01-18-05]
7. Notarized Statement of Dan Weiss [01-18-05]
8. Notarized Statement of Jeanne Getter [01-18-05]
9. Notarized Statement of Fay Smillie [02-15-05]
10. Notarized Statement of Rod McGregor, M.D. [02-17-05]
11. Two DEA Reports of Theft or Loss of Controlled Substances of Middcare Pharmacy [06-03-03]
12. Three letters of resignation from David R. James [06-02-03 to 06-04-03]; Letter to Ohio State Board of Pharmacy from David R. James [not dated]

Respondent's Exhibits

- A. Resume of David Richard James, R.Ph. [not dated]
- B. The Children's Hospital Discharge Summary for David James [04-20-69]
- C-E. Four page Indiana University Medical Center Medical Record for David R. James [07-27-94]
- F. Letter from Daniel H. Walters, M.D. and Mina H. Lutts, M.D. [02-22-05]
- G. Seven page Middletown Regional Health System Annual Review of David James [08-27-02]
- H. Five page Middletown Regional Hospital Performance/Competency Assessment of David James [12-14-98]
- I. Three page E-mail letter between David James and Joanne Morgan [09-28-01 to 10-01-01]
- J. E-mail letter from David James to Kevin Murphy [12-17-02]
- K. Two page Middcare Pharmacy 2003 Strategic Business Plan [not dated]
- L. Four page Middletown Regional Hospital Project Justification Form [02-13-03]
- M. Medical Report of David James [10-11-95]
- N. Two page Middcare Inc. Financial Review, December 2001.
- O. Two page MRH Owes Middcare Report [03-01-03 to 03-31-03]
- P. E-mail letter from Jenny Stoops to David James [02-05-03]
- Q. Letter from Robin N. Piper, Butler County Prosecuting Attorney to Mark W. Napier [09-03-04]
- R. Public Records Request letter from Mark W. Napier [08-30-04]; Reply to Public Records Request letter from Sally Ann Steuk, Ohio State Board of Pharmacy [09-08-04]; Reply letter from Mark Napier [09-15-04]
- S. Six page facsimile for Subpoena Requests from Mark W. Napier [02-17-05]
- T. Middcare Pharmacy Policy and Procedure for "After Hours Access into Middcare Pharmacy" [Revised May 29, 2003]
- U. Middletown Regional Hospital Security Report [05-22-03]
- V. Two page Medco Health Solutions Performance Review of David James [11-16-04]
- W. Letter from Lisa A. Martinex, RN/JD to Mark W. Napier [04-06-05]; two Subpoenas for Middletown Regional Hospital Custodian of Records and Middcare Pharmacy Custodian of Records [03-07-05]
- X. Two page Middcare, Inc. Policy and Procedure for "Drug Inventory" [Revised March, 2002]
- Y. Two page Middcare, Inc. Policy and Procedure for "Middcare Pharmacy Quality Assessment and Improvement Plan" [Revised March, 2002]
- Z. Middcare, Inc. Policy and Procedure for "The Administration of Drugs in Accordance with Licensure, Laws and Regulations" [Revised March, 2002]
- AA. Middcare, Inc. Policy and Procedure for "Cash and Controlled Drug Storage and Security" [Revised March, 2002]
- BB. Middcare, Inc. Policy and Procedure, with attachment for "After Hours Access into Middcare Pharmacy" [Revised March, 2002]

- CC. Middletown Regional Hospital Purchase Order Listing [03-02-05]
- DD. E-mail letter from Mark W. Napier to David Rowland [04-08-05]

FINDINGS 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 the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that David R. James was originally licensed in the State of Ohio on March 7, 1995, pursuant to reciprocity, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) David R. James, as Responsible Pharmacist did, on or about May 31, 2001 to May 31, 2003, fail to provide "supervision and control" of dangerous drugs as required in Section 4729.55(B) of the Revised Code, and "adequate safeguards" to assure that dangerous drugs are being distributed in accordance with all state and federal laws as required in Section 4729.55(C) of the Revised Code, to wit: David R. James only worked in the pharmacy approximately 10 hours per week; and, when drugs were missing, David R. James did not fill out appropriate forms. The Board specifically finds that David R. James' testimony was contrived and not credible. David R. James' performance or lack thereof, fell far short of the necessary functioning of a responsible pharmacist. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code.
- (3) David R. James, as Responsible Pharmacist did, on or about May 31, 2001 to May 31, 2003, fail to provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs, to wit: the following drugs were diverted from the pharmacy without adequate detection and/or prevention:

Drug	Strength	Amount
Hydrocodone	10/500 mg	1834
Hydrocodone	10/650 mg	8653
Hydrocodone	10/660 mg	2497

The Board specifically finds that David R. James' testimony was contrived and not credible. David R. James' recordkeeping, especially the use of white-out on pharmacy records, was unacceptable. Further, David R. James' testimony regarding drug returns defies industry standards, and was rejected by the Board as not credible. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and is not in accordance with Section 4729.55 of the Ohio Revised Code and, constitutes willfully violating a rule of the Board a provision of Chapter 4729. of the Ohio Revised Code and/or within the meaning of Section 4729. of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) and (3) 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.
- (2) 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 2925. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of David R. James as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on David R. James a monetary penalty of one thousand dollars (\$1,000.00) due and owing on or before June 5, 2005. 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 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby places David R. James on probation for two years from the effective date of this Order with the following conditions:
 - (1) David R. James must obtain, within one hundred-eighty days from the effective date of this Order, two hours (0.2 CEUs) of Board approved continuing pharmacy education in jurisprudence, which may not also be used for license renewal. If proof of successful completion is not submitted to the Board office before the end of the probation period, David R. James will remain on probation until this condition is achieved.
 - (2) The State Board of Pharmacy hereby declares that David R. James'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.
 - (3) David R. James may not serve as a responsible pharmacist.
 - (4) David R. James must not violate the drug laws of Ohio, any other state, or the federal government.
 - (5) David R. James must abide by the rules of the State Board of Pharmacy.
 - (6) David R. James must comply with the terms of this Order.
- (C) Any violation of probation may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code.

David R. James 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-7/Nay-0).

MOTION CARRIED.

SO ORDERED.

