

ORDER OF THE STATE BOARD OF PHARMACY
(Docket No. D-030926-020)

In The Matter Of:

KEVON JAMES ARMSTRONG, R.Ph.
8240 Kingsmere Court
Cincinnati, Ohio 45231
(R.Ph. No. 03-1-24310)

INTRODUCTION

THE MATTER OF KEVON JAMES ARMSTRONG CAME FOR HEARING ON MARCH 10, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

KEVON JAMES ARMSTRONG WAS REPRESENTED BY LaTONIA DENISE WRIGHT AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Ann Abele, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

1. Kevon James Armstrong, R.Ph., Respondent

State's Exhibits

1. Copy of Notice of Opportunity For Hearing letter [09-26-03]
1A-1E. Procedurals
2. Copy of written prescription for Carbatrol 200 mg and prescription tag for Rx #00142 482014 [04-18-03]
3. Copy of Rite Aid Pharmacy #00142 Prescription Register [04-18-03]
4. Photocopy of Rx #00142 482014 medicine vial labeled as containing Carbatrol 200 mg capsules [04-18-03]
5. Statement of Carrie Klein [05-14-03]
6. Highland District Hospital Emergency/Outpatient Services Record for Patient #C84014 [04-24-03]
7. Notarized Statement of Kevon Armstrong [05-29-03]
8. Notarized Statement of Amy Williams, R.Ph. [05-28-03]

9. Notarized Statements of Holly I. Walker, Christa M. Wilson, Jenny L. Roler, Jeanna Vanderpool, Laura M. Pelfrey, and James R. Juillerat [05-28-03]
10. Epilepsy Foundation Medicine Identification Chart for Carbatrol®, Copyright ©2001, 2002, 2003 [02-12-04]
11. Errors in Dispensing report for Kevon Armstrong [04-18-03 to 01-29-01]
12. Notarized Statement of John Giordullo, R.Ph. [02-20-04]
13. Copy of written prescription for Synthroid 100 mg [11-20-02]
14. Medco computer information for Rx #0303002097 [01-30-03]
15. Copy of Counseling Report for Kevon Armstrong [04-02-03]
16. Copy of written prescription for Zoloft 50 mg [01-06-03]
17. Medco computer information for Rx #0301008870 [01-10-03]
18. Copy of Counseling Report for Kevon Armstrong [02-20-03]
19. Copy of Medco Health Solutions of Fairfield Disciplinary Request Form re Kevon Armstrong [02-20-03]
20. Copy of written prescription for Claritin 24° [08-21-02]
21. Medco computer information for Rx #0223802658 [08-26-02]
22. Copy of Counseling Report for Kevon Armstrong [09-06-02]
23. Copy of Merck-Medco Rx Services of Fairfield Notice of Disciplinary Action for Kevon Armstrong [09-06-02]
24. Copy of written prescription for Prozac 40 mg [07-11-02]
25. Medco computer information for Rx #0220006538 [07-19-02]
26. Copy of Counseling Report for Kevon Armstrong [07-29-02]
27. Copy of Merck-Medco Rx Services of Fairfield Disciplinary Request Form re Kevon Armstrong [07-29-02]
28. Copy of written prescription for BD-UF 30 Unit Insulin Syringes [06-20-02]
29. Medco computer information for Rx #0219908566 [07-18-02]
30. Copy of Counseling Report for Kevon Armstrong [04-18-03]
31. Copy of written prescription for Lipitor 20 mg [03-13-02]
32. Medco computer information for Rx #0209120285 [04-02-02]
33. Copy of Counseling Report for Kevon Armstrong and External Interview Questions sheet [04-09-02]
34. Copy of written prescription for Enalapril 10 mg [11-26-01]
35. Medco computer information for Rx #0133422164 [12-03-01]
36. Copy of Counseling Report for Kevon Armstrong [not dated]
37. Copy of Merck-Medco Rx Services of Fairfield Notice of Disciplinary Action for Kevon Armstrong [12-21-01]
38. Copy of written prescription for OxyContin 20mg and prescription tags for Rx #2212811 [06-12-01] and Rx #2212799 [06-10-01]
39. Kroger Pharmacy Misfill Report [06-12-01]
40. Copy of written prescription for Relafen 500 mg [04-07-01]
41. Copy of Medco computer label for Rx #0112801990 [05-08-01]
42. Copy of Counseling Report for Kevon Armstrong [06-04-01]
43. Copy of written prescription for Hytrin 10 mg [01-11-01]
44. Copy of Medco computer label for Rx #0102605896 [01-29-01]
45. Copy of Counseling Report for Kevon Armstrong [02-15-01]

Respondent's Exhibits

- A. Copy of two Letters of Support [02-23-04]
- B. Copy of article by Harris Fleming Jr., "The Human Side of Prescription Misfills Surfaces in New Study" [*Drug Topics*, 1999,18:16]
- B1. Copy of article by Flynn Warren, MS and Monica Ali, PhD, "Medication Errors: They Just Won't Go Away" [*Georgia Pharmacist Quarterly*, Vol. 80, No. 3, University of Georgia College of Pharmacy, Summer 2003]
- B2. Copy of article by Fred Gebhart, "Can Test Determine Which R.Ph.s Are Prone To Errors?" [*Drug Topics*, Feb. 9, 2004,148:40]
- B3. Copy of article by Eric M. Grasha, "Discovering Pharmacy Error: Must Reporting, Identifying, and Analyzing Pharmacy Dispensing Errors Create Liability for Pharmacists?" [*The Ohio State Law Journal*, Vol. 63, No. 5, The Ohio State University College of Law, 2002-2003]
- C. Reliable One Staffing Services Employee Time Sheet for Kevon Armstrong [04-14-03 to 04-18-03]

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 Kevon James Armstrong was originally licensed by the State of Ohio as a pharmacist on September 12, 2000, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Kevon James Armstrong did, on or about April 18, 2003, misbrand a drug, to wit: when Kevon James Armstrong received a prescription for Carbatrol 200 mg, he dispensed Carbatrol 300 mg, Rx #00142482014, which had not been prescribed by the physician. The 5-year-old patient was subsequently harmed. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (3) Kevon James Armstrong did, on or about January 30, 2003, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for Synthroid 100 mcg, he entered Synthroid 150 mcg into the computer, Rx #03030-02097, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (4) Kevon James Armstrong did, on or about January 10, 2003, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for TAC (triamcinolone) cream, he entered Tazorac cream into the computer, Rx #0301008870, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (5) Kevon James Armstrong did, on or about August 26, 2002, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for Claritin-24, he entered Claritin-D into the computer, Rx #0223802658, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(6) Kevon James Armstrong did, on or about July 19, 2002, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for Prozac 40 mg, he entered Prilosec into the computer, Rx #0220006538, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(7) Kevon James Armstrong did, on or about July 18, 2002, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for BD 30-unit insulin syringes, he entered BD 1cc insulin syringes into the computer, Rx #0219908566, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(8) Kevon James Armstrong did, on or about April 2, 2002, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for Lipitor 20 mg, he entered Lasix into the computer, Rx #0209120285, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(9) Kevon James Armstrong did, on or about December 3, 2001, cause a prescription drug to be misbranded pursuant to prescription, to wit: when entering Rx #01334-2216417 into the computer, Kevon James Armstrong did not indicate the directions for use of the drug as was prescribed by the physician. Such conduct is in violation of Rule 4729-5-16 of the Ohio Administrative Code.

(10) Kevon James Armstrong did, on or about June 10, 2001, misbrand a drug, to wit: when Kevon James Armstrong received a prescription for OxyContin 20 mg, he dispensed OxyContin 80 mg, Rx #2212799, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(11) Kevon James Armstrong did, on or about May 8, 2001, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for Relafen 500 mg, he entered Keflex into the computer, Rx #0112801990, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

(12) Kevon James Armstrong did, on or about January 29, 2001, cause a prescription drug to be misbranded, to wit: when Kevon James Armstrong received a prescription for Hytrin 10 mg, he entered Hytrin 1 mg into the computer, Rx #0102605896, which had not been prescribed by the physician. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraphs (2) through (12) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) 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 Kevon James Armstrong as follows:

(A) On the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two thousand five hundred dollars (\$2,500.00) on Kevon James Armstrong and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance 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 Conclusion of Law set forth above, the State Board of Pharmacy hereby places Kevon James Armstrong on probation for one year from the effective date of this Order with the following conditions:

(1) Kevon James Armstrong must obtain, within one year from the effective date of this Order, five hours (0.5 CEUs) of approved continuing pharmacy education relating to medication error prevention, 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, Kevon James Armstrong will remain on probation until this condition is achieved.

(2) Kevon James Armstrong must not violate the drug laws of Ohio, any other state, or the federal government.

(3) Kevon James Armstrong must abide by the rules of the State Board of Pharmacy.

(4) Kevon James Armstrong must comply with the terms of this Order.

(5) 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.

(6) Kevon James Armstrong's license is deemed to be not in good standing until successful completion of the probationary period.

Kevon James Armstrong 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.

ORDER EFFECTIVE APRIL 8, 2004