



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-980616-068)

In The Matter Of:

**MARY BERK MORTUS, R.Ph.**

9387 Huntington Park Drive

Strongsville, Ohio 44136

(R.Ph. No. 03-2-09832)

### INTRODUCTION

THE MATTER OF MARY BERK MORTUS CAME TO HEARING ON NOVEMBER 3, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MARY BERK MORTUS WAS REPRESENTED BY MICHAEL E. MURMAN, 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) Mary Berk Mortus, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Notice of Opportunity for Hearing letter dated June 16, 1998.
- (2) Exhibit 1A--Hearing Request letter dated July 8, 1998, with attached copy of urine drug screen report of Mary Mortus dated May 13, 1998, and copy of breathalyzer report of Mary B Mortus dated May 13, 1998.

- (3) Exhibit 1B--Copy of Hearing Schedule letter dated July 14, 1998.
- (4) Exhibit 1C--Copy of Pharmacist File Front Sheet of Mary Berk Mortus showing original date of registration as July 26, 1971, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-09832, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, signed and dated on July 17, 1997.
- (5) Exhibit 1D--Letter from Michael E. Murman dated July 22, 1998.
- (6) Exhibit 1E--Copy of Hearing Schedule letter dated July 27, 1998.
- (7) Exhibit 1F--Copy of Hearing Schedule letter dated August 3, 1998.
- (8) Exhibit 2--Copy of six-page Order of the State Board of Pharmacy, Docket No. D-970327-035, in the matter of Mary Berk Mortus dated October 8, 1997.
- (9) Exhibit 3--Typewritten statement of Holly L. Reilly signed and notarized on October 23, 1998.
- (10) Exhibit 4--Handwritten statement of Vincent May signed and notarized on May 18, 1998.
- (11) Exhibit 5--Three-page handwritten statement of Gina Marie Rogers signed and notarized on May 18, 1998.
- (12) Exhibit 6--Three-page handwritten statement of George J. Lemke, Jr. signed and notarized on May 18, 1998.
- (13) Exhibit 7--Copy of ARUP Laboratories urine drug screen report of Client No. 05783 dated May 14, 1998.
- (14) Exhibit 8--Copy of University Hospitals Health Systems Laboratory Report, Accession No. 8133-GL2716, dated May 13, 1998.
- (15) Exhibit 9--Copy of note on a 4" x 6" Premarin notepad regarding a prescription error, dated July 10, 1997.
- (16) Exhibit 10--Copy of Community Hospital Bedford Anecdotal Note regarding sediment in Walter Hoenigman's IVPB dated May 9, 1997.

Respondent's Exhibits:

- (1) Exhibit A--Copy of three-page Glenbeigh Health Sources Discharge Summary of Mary Mortus, date of discharge: July 20, 1998.
- (2) Exhibit B--Copy of University Hospitals Health System Bedford Medical Center Agreement to Submit to an Alcohol and/or Drug Screen of Mary B. Mortus dated May 13, 1998; copy of ARUP Laboratories urine drug screen report of Client No. 05783 dated May 14, 1998; and copy of University Hospitals Health Systems Laboratory Report, Accession No. 8133-GL2716, dated May 13, 1998.
- (3) Exhibit C--Letter from Marilou Mertz dated August 31, 1998.
- (4) Exhibit D--Letter from Marilou J. Mertz dated October 19, 1998.
- (5) Exhibit E--Letter from Kathy Fussell Springer dated October 29, 1998, and attached two-page copy of credentials of Kathy Fussell Springer, not dated.
- (6) Exhibit F--Copy of Breath Alcohol Testing Form of Mary Mortus dated August 28, 1998.
- (7) Exhibit G--Copy of LabCorp urine drug screen report of Mary Mortus dated August 30, 1998.
- (8) Exhibit H--Copy of Breath Alcohol Testing Form of Mary Mortus dated September 30, 1998.
- (9) Exhibit I--Copy of Breath Alcohol Testing Form of Mary Mortus dated October 30, 1998.
- (10) Exhibit J--Copy of LabCorp urine drug screen report of Mary Mortus dated October 2, 1998.

- (11) Exhibit K--Copy of seven pages of AA/NA Attendance Verification of Mary Mortus dated from June 21, 1998, through October 26, 1998.
- (12) Exhibit L--Copy of letter from Pat Pusateri dated October 28, 1998.
- (13) Exhibit M--Letter from Ronald E. Mortus, not dated.
- (14) Exhibit N--Letter from B. Jeanette Zuffa dated October 26, 1998.
- (15) Exhibit O--Copy of letter from Kathy Seibyl dated August 17, 1998, with attached copy of two-page University Hospitals Health System Bedford Medical Center Corrective Action of Mary Mortus dated August 13, 1998
- (16) Exhibit P--Letter from Antoinette Leiser, not dated.
- (17) Exhibit Q--Letter from Emil G. Dontenville dated November 11, 1998.

#### 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) Records of the Board of Pharmacy indicate that Mary Berk Mortus was originally licensed in the state of Ohio on July 26, 1971, pursuant to examination; however, on June 16, 1998, Mary Berk Mortus' license was suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (2) Mary Berk Mortus was disciplined pursuant to the Order of the State Board of Pharmacy, Docket No. D-970327-035, dated October 8, 1997. The Board placed Mary Berk Mortus on probation for five years for the following cause:

Mary Berk Mortus is addicted to or abusing liquor or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy within the meaning of Section 4729.16(A)(3) of the Ohio Revised Code, to wit: Mary Berk Mortus admitted to a Board agent that she had a seven-year history of alcohol use which increased to "problematic drinking" during 1992-1993; Mary Berk Mortus indicated that she had been drinking to escape problems attendant to the practice of pharmacy, e.g. working too many hours due to "scheduling problems" and becoming physically exhausted. Further, Mary Berk Mortus admitted herself to a two-week inpatient treatment program, followed by an aftercare program for her alcohol abuse problems in July, 1994, after having been subjected to disciplinary action by her employer, Lakewood Hospital, for having ingested enough alcohol to test 0.1 blood-alcohol level; and, her employment with Lakewood Hospital was terminated subsequent to December 28, 1995, for having violated her PRO (Pharmacists' Rehabilitation Organization, Inc.) contract by drinking alcohol, practicing pharmacy, and substituting water for urine when giving urine and blood samples for analysis. On March 27, 1996, Mary Berk Mortus had a meeting with a Board agent at which time she smelled of an alcoholic beverage.

- (3) Mary Berk Mortus was, on or about May 13, 1998, addicted to or abusing liquor and/or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, to wit: while on probation with the Board of Pharmacy, and while engaged in the practice of pharmacy at University Bedford Hospital, Mary Berk Mortus came to work under the influence of alcohol: she was acting "silly" and she smelled of alcohol. Though Mary Berk Mortus first denied drinking, she later admitted it when giving blood and urine samples. Further, Mary Berk Mortus admitted herself to Glenbeigh Hospital for a detoxification program and treatment; while there, Mary Berk Mortus telephoned the Board office and admitted drinking after having been placed on probation by the Board. Mary Berk Mortus has committed numerous errors while practicing pharmacy during her period of addiction to alcohol, at least one of which was a potentially deadly threat to a patient.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) 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 her unfit to practice pharmacy as provided in Division (A)(3) 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 June 16, 1998.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Mary Berk Mortus:

- (A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-09832, held by Mary Berk Mortus effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-2-09832, held by Mary Berk Mortus effective as of the date of the mailing of this Order.

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 license to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The wall 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.



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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-970327-035)

In The Matter Of:

**MARY BERK MORTUS, R.Ph.**  
9387 Huntington Park Drive  
Strongsville, Ohio 44136  
(R.Ph. No. 03-2-09832)

### INTRODUCTION

THE MATTER OF MARY BERK MORTUS CAME TO HEARING ON SEPTEMBER 9, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; JOSEPH J. MASLAK, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MARY BERK MORTUS WAS NOT 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) Keith E. Maitland, R.Ph., Bay Pharmacy
- (2) Mary Berk Mortus, R.Ph., Respondent
- (3) Joann Predina, R.Ph., Ohio State Board of Pharmacy
- (4) Jeffrey E. Rinda, R.Ph., Pharmacists Rehabilitation Organization, Inc.

Respondent's Witnesses:

- (1) Mary Berk Mortus, R.Ph., Respondent
- (2) Ronald Mortus, R.Ph., Husband of Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated March 27, 1997.
- (2) Exhibit 1A--Hearing Request letter dated April 22, 1997.

- (3) Exhibit 1B--Hearing Schedule letter dated April 29, 1997.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Mary Berk Mortus showing original date of registration as July 26, 1971; Renewal Application for Pharmacist License, No. 03-2-09832, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Mary M. Berk Mortus dated July 5, 1996; and Change of Employment form of Mary B. Mortus dated March 31, 1997.
- (5) Exhibit 1D--Hearing Schedule letter dated May 20, 1997.
- (6) Exhibit 1E--Copy of letter from Jeffrey E. Rinda dated September 8, 1997.
- (7) Exhibit 2--Copy of Lakewood Hospital Emergency Department report of regarding Mary Mortus dated July 7, 1994; and copy of two-page Emergency Treatment Record of Mary Mortus dated July 7, 1994.
- (8) Exhibit 3--Copy of urine drug screen report of Mary Mortus dated July 8, 1994; and copy of two-page Blood Chemistry Discharge Report of Mary M. Berk Mortus dated July 8, 1994.
- (9) Exhibit 4--Copy of two-page Pharmacists Rehabilitation Organization, Inc. Recovering Pharmacist's Contract of Mary Mortus dated September 20, 1994.
- (10) Exhibit 5--Two-page copy of Lakewood Hospital Program Contract entered into on September 20, 1994, by Mary Mortus.
- (11) Exhibit 6--Copy of two-page urine drug screen report of Mary Mortus dated October 23, 1995.
- (12) Exhibit 7--Copy of Lakewood Hospital Blood and Urine Chemistry Discharge Report of Mary M. Berk Mortus dated December 29, 1995; and copy of Lakewood Hospital Authorization for Release of Information from Lakewood Hospital of Mary B. Mortus dated March 5, 1996.
- (13) Exhibit 8--Copy of front and back of pocket card stating "Know Your Limit - Where Should You 'Draw the Line' On Drinking If You Plan To Drive."
- (14) Exhibit 9--Copy of letter from Keith E. Maitland dated January 4, 1996.
- (15) Exhibit 10--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of Mary B. Mortus dated March 18, 1996.
- (16) Exhibit 11--Letter from Keith E. Maitland dated March 19, 1996.
- (17) Exhibit 12--Copies of eleven pages consisting of ten urine drug screens of Mary Mortus dated from January 4, 1995, through April 9, 1996.

Respondent's Exhibits:

- (1) Exhibit A--Copy of letter from George J. Lemke dated September 5, 1997.
- (2) Exhibit B--Copy of letter from Jeffrey E. Rinda dated September 4, 1997.
- (3) Exhibit C--Copy of three-page letter from Cynthia Downing dated August 28, 1997; and copy of Earthrise Recovery Services, Inc. Authorization for Release of Information of Mary Mortus dated April 9, 1997.
- (4) Exhibit D--Copy of letter from Melanie A. Stephenson dated August 24, 1997.
- (5) Exhibit E--Copy of letter from Carol M. Noble dated August 31, 1997.
- (6) Exhibit F--Copy of letter from Michael R. Sammon dated August 21, 1997.
- (7) Exhibit G--Copy of two-page letter from Wilma Britt, not dated.
- (8) Exhibit H--Copy of letter from Antoinette Leirer dated September 7, 1997.
- (9) Exhibit I--Copy of letter from Cynthia Downing dated April 19, 1996.
- (10) Exhibit J--Copy of two-page letter from Ray Isackila dated May 6, 1996.
- (11) Exhibit K--Copy of letter from Cynthia Downing dated May 17, 1996.
- (12) Exhibit L--Copy of letter from Cynthia Downing dated September 28, 1994.
- (13) Exhibit M--Two-page copy of Lakewood Hospital Program Contract entered into on September 20, 1994, by Mary Mortus; and copy of Authorization for Release of Information from Pharmacists Rehabilitation Organization, Inc. of Mary Mortus dated September 20, 1994.

- (14) Exhibit N--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Recovering Pharmacist's Contract of Mary Mortus dated September 20, 1994.
- (15) Exhibit O--Two-page copy of Shepherd Hill Hospital Recovery Plan of Mary Mortus dated September 16, 1994.
- (16) Exhibit P--Copy of list of continuing education programs dated from December 8, 1996, through March 21, 1997.
- (17) Exhibit Q--Copy of two-page list of continuing education programs dated from September 29, 1993, through June 26, 1996.
- (18) Exhibit R--Copies of forty-two pages of AA attendance verification sheets of Mary Mortus dated from September 16, 1994, through August 27, 1997.
- (19) Exhibit S--Copies of seventy pages consisting of sixty-eight urine drug screen reports of Mary Mortus dated from October 14, 1994, through August 28, 1997.
- (20) Exhibit T1 through T4--Four-page facsimile from Cynthia Downing dated September 9, 1997.

#### 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) Records of the Board of Pharmacy indicate that Mary Berk Mortus was originally licensed in the state of Ohio on July 26, 1971, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Mary Berk Mortus is addicted to or abusing liquor or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy within the meaning of Section 4729.16(A)(3) of the Ohio Revised Code, to wit: Mary Berk Mortus has admitted to a Board agent that she has a seven-year history of alcohol use which increased to "problematic drinking" during 1992-1993; Mary Berk Mortus has indicated that she has been drinking to escape problems attendant to the practice of pharmacy, e.g. working too many hours due to "scheduling problems" and becoming physically exhausted. Further, Mary Berk Mortus admitted herself to a two-week inpatient treatment program, followed by an aftercare program for her alcohol abuse problems in July, 1994, after having been subjected to disciplinary action by her employer, Lakewood Hospital, for having ingesting enough alcohol to test 0.1 blood-alcohol level; and, Mary Berk Mortus' employment with Lakewood Hospital was terminated subsequent to December 28, 1995, for having violated her PRO (Pharmacists' Rehabilitation Organization) contract by drinking alcohol, practicing pharmacy, and substituting water for urine when giving urine and blood samples for analysis. On March 27, 1996, Mary Berk Mortus had a meeting with a Board agent at which time she smelled of an alcoholic beverage.

#### CONCLUSION OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy, without strict probationary compliance, as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

#### ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and the foregoing Findings of Fact and Conclusion of Law, the State Board of Pharmacy hereby places the pharmacist identification card, No. 03-2-09832, held by Mary Berk Mortus on probation for five years, effective as of the date of the mailing of this Order. The terms of probation are as follows:

- (A) Mary Berk Mortus must enter into a new 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 submit a copy of the signed contract to the Board office within one month from the effective date of this Order. The contract must provide that:
- (1) Random, **observed** urine samples shall be provided to, and conducted in, a certified Ohio Department of Alcohol and Drug Addiction Service (ODADAS) facility at least once a month for the first two contract years, and once every three months for the remaining three contract years. Each urine screen must comply to the following standards:
    - (i) Samples must be collected within six (6) hours of random notification and notification must be made personally by the intervenor to Mary Berk Mortus. Leaving a message on an answering machine or with another individual is not acceptable.
    - (ii) Chain of custody must be maintained and documented for each sample/screen.
    - (iii) Reports must include testing the sample for alcohol and must also report testing for specific gravity or creatinine as the dilutional standard.
    - (iv) Sample analysis and reports must be completed within forty-eight (48) hours from the urine collection time.
  - (2) Regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required and such meetings shall be documented.
  - (3) The intervenor/sponsor shall provide copies of all urine screens, in compliance with paragraph (A)(1) above, to the Ohio Board of Pharmacy quarterly; due January 10, April 10, July 10, and October 10; of each year of probation.
  - (4) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (B) Mary Berk Mortus 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.
  - (2) Copies of AA meeting attendance verification.
  - (3) A written description of her progress towards recovery and what she has been doing during the previous three months.

(C) Other terms of probation are as follows:

- (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that the pharmacist identification card of Mary Berk Mortus is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.
- (2) Mary Berk Mortus may not serve as a responsible pharmacist.
- (3) Mary Berk Mortus must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
- (4) Mary Berk Mortus must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (5) Mary Berk Mortus must abide by the rules of the Ohio State Board of Pharmacy.
- (6) Mary Berk Mortus must comply with the terms of this Order.

Mary Berk Mortus 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.

MOTION CARRIED.

SO ORDERED.