

ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-010615-073)

In The Matter Of:

MICHELE M. MIDLICK, R.Ph.

4009 Estates Place
Columbus, Ohio 43224
(R.Ph. No. 03-2-11259)

INTRODUCTION

THE MATTER OF MICHELE M. MIDLICK CAME FOR HEARING ON MAY 8, 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.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

MICHELE M. MIDLICK WAS REPRESENTED BY DANIEL D. CONNOR AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Christopher K. Reed, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Michele M. Midlick, R.Ph., Respondent

State's Exhibits

1. Notice of Opportunity for Hearing letter [06-15-2001]
1A-1F. Procedurals
1G. Addendum Notice [08-23-2001]
1H-1M. Procedurals
2. Letter from Dionne Ellefson [02-13-2001]
3. Statement by Jason Bockis, R.Ph. [02-26-2001]
4. Accountability Worksheet for Butalbital/APAP 50/325 [02-06-2001 to 02-13-2001]
5. Accountability Worksheet for Fiorinal [02-08-2001 to 02-13-2001]
6. Accountability Worksheet for Butalbital/APAP/Caffeine [02-08-2001 to 02-13-2001]
7. Accountability Worksheet for Butalbital/ASA/Caffeine [02-07-2001 to 02-13-2001]
8. Indictment, State of Ohio vs. Michele M. Midlick, Case No.01-CR-08-4768, Franklin County Common Pleas Court [08-17-2001]

Respondent's Exhibits

None

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 Michele M. Midlick was originally licensed by the State of Ohio on August 4, 1975, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Michele M. Midlick did, on or about February 5, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick was observed stealing a product containing butalbital from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (3) Michele M. Midlick did, from February 6, 2001, through February 10, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole three unit doses of butalbital/APAP 50/325 from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) Michele M. Midlick did, from February 10, 2001, through February 13, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole three unit doses of Fiorinal from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Michele M. Midlick did, from February 8, 2001, through February 10, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole thirty-two unit doses of butalbital/APAP/caffeine from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) Michele M. Midlick did, from February 10, 2001, through February 13, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole thirty-one unit doses of butalbital/APAP/caffeine from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(7) Michele M. Midlick did, from February 13, 2001, through February 15, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole five unit doses of butalbital/APAP/caffeine from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(8) Michele M. Midlick did, on or about February 14, 2001, possess dangerous drugs when not in accordance with Chapter 4729. of the Ohio Revised Code, to wit: Michele M. Midlick was observed possessing, using (abusing), and/or placing in her pocket butalbital/APAP/caffeine when she did not have a prescription for the drug, either for herself or for any other patient. Such conduct is in violation of Section 4729.51(C) (3) of the Ohio Revised Code.

(9) Michele M. Midlick did, from February 6, 2001, through February 8, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole twenty unit doses of butalbital/APAP/caffeine from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(10) Michele M. Midlick did, from February 6, 2001, through February 10, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole three unit doses of Fiorinal from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(11) Michele M. Midlick did, from February 7, 2001, through February 10, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole three unit doses of butalbital/ASA/caffeine from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(12) Michele M. Midlick did, from February 10, 2001, through February 13, 2001, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Drug Emporium, beyond the express or implied consent of the owner, to wit: Michele M. Midlick stole five unit doses of butalbital/ASA/caffeine from the pharmacy while she was working. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (7) and (9) through (12) of the Findings of Fact constitute being guilty of a felony as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (2) through (12) 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.

(3) The State Board of Pharmacy concludes that paragraph (8) 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.

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 hereby suspends indefinitely the pharmacist identification card, No. 03-2-11259, held by Michele M. Midlick and such suspension is effective as of the date of the mailing of this Order.

(A) Michele M. Midlick, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(B) Michele M. Midlick, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return the identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, the Board will suspend the suspension and place Michele M. Midlick on probation for three years from the date her identification card to practice pharmacy is issued only after the following requirements have been met:

(A) Michele M. Midlick must obtain, within sixty days after the effective date of this Order, a full psychiatric or psychological evaluation by a licensed psychiatrist or psychologist and must abide by the treatment plan as designed by that psychiatrist or psychologist. The psychiatrist or psychologist must provide an initial status report, which includes the recommended treatment plan, to the Board within ten days after completing the assessment.

(B) Michele M. Midlick must provide, with her application for reinstatement, documentation of the following:

(1) Compliance with the licensed psychiatrist's or psychologist's recommended treatment plan;

(2) A report by the licensed psychiatrist or psychologist regarding Michele M. Midlick's fitness for readmission into the practice of pharmacy;

(3) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;

(4) Compliance with the terms of this Order.

(C) If reinstatement is not accomplished within three years of the effective date of this Order, Michele M. Midlick must show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

The terms of probation are as follows:

(A) The treating psychiatrist or psychologist must submit written quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation).

(B) The State Board of Pharmacy hereby declares that Michele M. Midlick'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.

(C) Michele M. Midlick may not serve as a responsible pharmacist.

(D) Michele M. Midlick may not work in a pharmacy for more than forty hours per week.

(E) Michele M. Midlick must not violate the drug laws of the state of Ohio, any other state, or the federal government.

(F) Michele M. Midlick must abide by the rules of the State Board of Pharmacy.

(G) Michele M. Midlick must comply with the terms of this Order.

Michele M. Midlick 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-8/Nay-0).

MOTION CARRIED.

SO ORDERED.

ORDER EFFECTIVE JUNE 10, 2002