



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-030910-006)

In The Matter Of:

DeLINDA SPILLMAN McDANIEL, R.Ph.

7182 Donnybrook Drive

Dublin, Ohio 43017

(R.Ph. No. 03-2-13996)

INTRODUCTION

THE MATTER OF DeLINDA SPILLMAN McDANIEL CAME FOR HEARING ON FEBRUARY 4, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT P. GIACALONE, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; AND JAMES E. TURNER, R.Ph.

DeLINDA SPILLMAN McDANIEL WAS NOT REPRESENTED BY COUNSEL AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

(1) William McMillen, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses

(1) DeLinda Spillman McDaniel, R.Ph., Respondent

State's Exhibits

1. Copy of Notice of Opportunity For Hearing letter [09-10-03]
1A-1C. Procedurals
2. C.P.E. Report Form for DeLinda McDaniel [09-08-02]
3. C.P.E. Audit Request letter to DeLinda McDaniel [09-17-02]
4. C.P.E. Audit Request Non-Compliance letter to DeLinda McDaniel [10-17-02]
5. Notarized Statement of DeLinda S. McDaniel [01-17-03]
6. Record of C.P.E. Audit[09-09-02 to 10-30-02]
7. C.P.E. Verification Request letter to Amy Bennett, R.Ph., Ohio Pharmacists Foundation, Inc. [11-05-02]
8. Reply to C.P.E. Verification Request letter from Amy Bennett, R.Ph., Ohio Pharmacists Association [11-20-02]
9. C.P.E. Verification Request letter to Terry Baker, Pharm.D., Continuing Education Network, Inc. [11-05-02]

10. C.P.E. Verification Report for DeLinda McDaniel, Not Titled [09-20-02]
11. C.P.E. Verification Request letter to Dianne Tharp, R.Ph., Power-Pak C.E. [11-05-02]
12. Power-Pak C.E. Online Test History for DeLinda McDaniel [09-24-02 to 10-30-02]
13. C.P.E. Verification Request letter to Kimberly Werner, Pharm.D., Drug Store News [11-05-02]
14. Reply to C.P.E. Verification Request letter from Kimberly Werner, Pharm.D., Drug Store News [11-14-02]
15. C.P.E. Verification Request letter to Michael Shannon, Creative Educational Concepts, Inc. [11-05-02]
16. Reply to C.P.E. Verification Request letter from Janet W. Cline, R.Ph., Creative Educational Concepts, Inc. [not dated]
17. C.P.E. Verification Request letter to Dr. Ronald Nickel, Ph.D., Medical University of South Carolina College of Pharmacy [11-05-02]
18. Reply to C.P.E. Verification Request letter from Ronald Nickel, Ph.D., R.Ph., Medical University of South Carolina College of Pharmacy [11-14-02]
19. C.P.E. Verification Request letter to James Appleby, R.Ph., M.P.H., American Pharmaceutical Association [11-05-02]
20. Reply to C.P.E. Verification Request from Susan M. Weedon, American Pharmaceutical Association [11-18-02]
21. C.P.E. Verification Request letter to Stephen Kalinowski, GlaxoSmithKline [11-05-02]
22. Reply to C.P.E. Verification Request from Steve Kalinowski, R.Ph., GlaxoSmithKline [11-12-02]
23. C.P.E. Verification Request letter to Derek Pike, Florida Society of Health-System Pharmacists, Inc. [11-05-02]
24. Reply to C.P.E. Verification Request letter from Tamekia L. Fitzgerald, Florida Society of Health-System Pharmacists, Inc. [12-20-02]
25. C.P.E. Verification Request letter to Lynn Bedford, Ohio Northern University College of Pharmacy [11-05-02]
26. Copy of Ohio Administrative Code Rule 4729-7-01 (Definitions) [03-01-99]
27. Copy of Ohio Administrative Code Rule 4729-7-02 (Requirements for renewal of a pharmacist identification card) [02-01-02]
28. Copy of Ohio Administrative Code Rule 4729-7-03 (Evidence of continuing pharmacy education experiences) [03-01-99]

Respondent's Exhibits

- A. Copy of State's Exhibit 4 (C.P.E. Audit Request Non-Compliance letter to DeLinda McDaniel) [10-17-02]
- B. Copy of State's Exhibit 6 (Record of C.P.E. Audit) [09-09-02 to 10-30-02]; Continuing Pharmaceutical Education Credits and Certificates [12-20-99 to 10-31-02]
- C. Copy of State's Exhibit 17 (C.P.E. Verification Request letter to Dr. Ronald Nickel, Ph.D., Medical University of South Carolina College of Pharmacy) [11-05-02] and State's Exhibit 18 (Reply to C.P.E. Verification Request letter from Ronald Nickel, Ph.D., R.Ph., Medical University of South Carolina College of Pharmacy) [11-14-02]
- D. Copy of Chapter 4729-7 (Continuing Pharmacy Education) of the Ohio Administrative Code [02-01-02]
- E. Copy of C.P.E. Sample Report Form A [03-15-02]
- F. Copy of Ohio Pharmacists Association Code of Ethics [not dated]
- G. Copy of two Letters of Support [02/01/04]

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 DeLinda S. McDaniel was originally licensed by the State of Ohio as a pharmacist on March 2, 1981, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect that, during the relevant time periods stated herein, DeLinda S. McDaniel was the Responsible Pharmacist at Big Bear Pharmacy #237.
- (2) DeLinda S. McDaniel did, on or about September 8, 2002, knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when the statement was made with purpose to secure the issuance by a governmental agency of a license or registration, to wit: DeLinda S. McDaniel falsely indicated on her Continuing Pharmacy Education (C.P.E.) Report Form that she had acquired credit hours for programs that she had not completed. Though DeLinda S. McDaniel had signed and dated her C.P.E. Report Form on September 8, 2002, the majority of the programs she claimed to have completed had not been submitted to the providers for credit until after she had received notice from the Board that her C.P.E. hours were being audited. Such conduct is in violation of Section 2921.13(A)(5) of the Ohio Revised Code.
- (3) DeLinda S. McDaniel did, on or before September 17, 2002, fail to submit evidence of six C.E.U.s (continuing education units) of approved continuing education, to wit: though DeLinda S. McDaniel timely submitted the form for evidence of continuing education, the form did not contain evidence of her having completed the required approved continuing education. Such conduct is in violation of Rule 4729-7-02(A) of the Ohio Administrative Code.
- (4) DeLinda S. McDaniel did, on or about January 17, 2003, knowingly make a false statement when the statement was made with purpose to mislead a public official in performing the public official's official function, to wit: when Board agents were investigating DeLinda S. McDaniel's activities in submitting her C.P.E. Report Form, DeLinda S. McDaniel lied so as to mislead them in their official investigation about submitting her C.P.E. Report Form. Such conduct is in violation of Section 2921.13(A)(3) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (4) 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 paragraph (3) 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.

- (3) The State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute being guilty of committing fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the Board under Chapter 4729. of the Revised Code as provided in Division (A)(10) 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 DeLinda Spillman McDaniel as follows:

- (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 suspends for one year the pharmacist identification card, No. 03-2-13996, held by DeLinda Spillman McDaniel effective as of the date of the mailing of this Order. Further, the Board suspends the suspension and places DeLinda Spillman McDaniel's identification card on probation with the following conditions:
 - (1) DeLinda Spillman McDaniel will be on probation through the next continuing pharmacy education reporting period (May, 2005), to terminate if successfully audited.
 - (2) DeLinda Spillman McDaniel will be audited in 2008.
 - (3) DeLinda Spillman McDaniel must abide by the rules of the State Board of Pharmacy.
 - (4) DeLinda Spillman McDaniel must comply with the terms of this Order.
 - (5) DeLinda Spillman McDaniel's license is deemed not to be in good standing until successful completion of the probationary period.
 - (6) 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.
- (B) On the basis of the Findings of Fact and paragraphs (2) and (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of two thousand five hundred dollars (\$2,500.00) due and owing within thirty days of the issuance of this Order. 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.

DeLinda Spillman McDaniel 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-0).
MOTION CARRIED.
SO ORDERED.

ORDER EFFECTIVE MARCH 11, 2004