



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-990311-038)

In The Matter Of:

PENNY ELLEN MATTERN, R.Ph.

4723 Sheboygan Avenue, Apt. 104

Madison, Wisconsin 53705

(R.Ph. No. 03-2-15391)

INTRODUCTION

THE MATTER OF PENNY ELLEN MATTERN CAME TO HEARING ON SEPTEMBER 8, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

PENNY ELLEN MATTERN WAS NOT PRESENT AND WAS REPRESENTED BY DANIEL D. CONNOR, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Robert Wagonblott, R.Ph., Meijer Stores
- (2) Dean Keith Gross, R.Ph.
- (3) Goldie B. Ohde, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated March 11, 1999.
- (2) Exhibit 1A--Continuance Request letter submitted by Daniel D. Connor dated May 18, 1999.
- (3) Exhibit 1B--Hearing Request letter dated March 22, 1999.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated May 26, 1999.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated March 30, 1999.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Penny Ellen (Hunter) Mattern showing original date of registration as March 1, 1984; and two-page copy of Renewal Application for Pharmacist License No. 03-1-15391 for a license to practice pharmacy in Ohio from September 15, 1998 to September 15, 1999, of Penny Ellen Mattern dated July 27, 1998.
- (7) Exhibit 2--Doctor Notes from Marla D. Michaels, M.D. on patient Alvina Richardson dated January 22, 1998.
- (8) Exhibit 3--Copy of Meijer #49 "Medical Expenses" report of patient Alvina R. Richardson for January 1, 1996 to January 27, 1998.
- (9) Exhibit 4--Copy of "Meijer Pharmacy Phone Order" for patient Alveena (*sic* Alvina) Richardson for K[C]lonidine 0.5mg, #60 (sixty), 1/2 QID, dated January 22, 1998.
- (10) Exhibit 5--Copy of prescription label numbered 4118068.
- (11) Exhibit 6--Handwritten statement of Penny Mattern dated January 27, 1998.
- (12) Exhibit 7--Copy of Meijer "Pharmacy Discrepancy and Incident Report" and "Supplemental Incident Report" completed by Michelle Lake dated January 26, 1998.
- (13) Exhibit 8--Dangerous Drug Distributor Inspection Report for Meijer, Inc. #49 dated January 27, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Manila file folder containing the following documents: Two-page affidavit of Penny E. Mattern dated August 30, 1999; copy of three-page letter from Daniel D. Connor regarding Dean Keith Gross dated August 4, 1999; copy of three-page letter from Daniel D. Connor regarding Penny Ellen Mattern dated August 4, 1999; and copy of three-page letter from Daniel D. Connor regarding Goldie Ohde dated August 4, 1999 with the following attachments: copy of letter from Kerrie A. Foxall, R.Ph. dated July 23, 1999; copy of letter from W. Richard Waddle dated July 20, 1999; and copy of letter from Vira L. Penrod-Wise dated July 29, 1999.

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 Penny Ellen Mattern was originally licensed in the state of Ohio on March 1, 1984, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) Penny Ellen Mattern did, on or about January 22, 1998, sell a misbranded drug, to wit: when presented with a prescription for Clonidine, Penny Ellen Mattern sold a vial to a seven-year-old patient's mother which contained Clonazepam. The patient took the medication as stated in the directions for use and was thus severely harmed psychologically, to wit: she attempted to stab her brother with a knife, she attempted to jump out a second-story window, and she missed school and had to be held back a year. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.

CONCLUSIONS 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 guilty of 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 paragraph (2) 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 Sections 3715.52 to 3715.72 of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy hereby imposes a monetary penalty of two hundred fifty dollars (\$250.00) 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, 17th Floor, Columbus, Ohio 43266-0320.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.