



OHIO STATE BOARD OF PHARMACY

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: exec@bop.state.oh.us

FAX: 614/752-4836

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

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ORDER OF THE STATE BOARD OF PHARMACY
(Docket Nos. D-971124-022 and D-980210-040)

In The Matter Of:

RODNEY ALLEN KELLER, R.Ph.

37 Schonhardt Street

Tiffin, Ohio 44483

(R.Ph. No. 03-2-16459)

INTRODUCTION

THE MATTER OF RODNEY ALLEN KELLER CAME TO HEARING ON MARCH 10, 1998, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: AMONTE B. LITTLEJOHN, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

RODNEY ALLEN KELLER WAS REPRESENTED BY ELSEBETH M. BAUMGARTNER AND MARY BETH CIOCCO, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Kevin J. Kinneer, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Rodney Allen Keller, Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of five-page Notice of Opportunity for Hearing letter dated November 24, 1997.
- (2) Exhibit 1A--Copy of Hearing Request letter dated December 23, 1997.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated January 30, 1998.
- (4) Exhibit 1C--Copy of three-page Summary Suspension Order/Notice of Opportunity for Hearing letter dated February 10, 1998.

- (5) Exhibit 1D--Copy of Pharmacist File Front Sheet of Rodney Allen Keller showing original date of registration as August 6, 1986, and two-page copy of Renewal Application for Pharmacist License, No. 03-2-16459, for a license to practice pharmacy in Ohio from September 15, 1997, to September 15, 1998, of Rodney Allen Keller dated August 8, 1997.
- (6) Exhibit 2--Copies of four Daily Audit Listing reports of The Pharm #924 dated as follows: December 24, 1995; January 25, 1996; February 22, 1996; and April 18, 1996.
- (7) Exhibit 3--Copy of prescriptions numbered 4401663 and 4401664.
- (8) Exhibit 4--Copy of The Pharm #924 Medical Expenses report for Richard Keller dated from January 1, 1995, to July 30, 1996.
- (9) Exhibit 5--Copy of four-page statement of Rodney Keller signed and notarized on December 10, 1996.
- (10) Exhibit 5A--Copy of four-page statement of Jeffrey A. Biro, D.O. signed and notarized on August 9, 1996.
- (11) Exhibit 6--Copy of prescription number 6609824.
- (12) Exhibit 7--Copy of prescription number 6609272.
- (13) Exhibit 8--Copy of prescription number 6609710.
- (14) Exhibit 9--Copy of prescriptions numbered 6609822, 6609823, and 8800264.
- (15) Exhibit 10--Copy of prescription number 8800318.
- (16) Exhibit 11--Copy of prescription number 6610075.
- (17) Exhibit 11A--Copy of The Pharm #924 Medical Expenses report for Joann Keller dated from January 1, 1995, to July 30, 1996.
- (18) Exhibit 11B--Copy of four-page statement of Bhaskar Vourganti, M.D. signed and notarized on November 21, 1996.
- (19) Exhibit 12--Copy of prescriptions numbered 6609331, 6609332, and 6609333.
- (20) Exhibit 13--Copy of prescription number 6611405.
- (21) Exhibit 14--Copy of prescription number 6614016.
- (22) Exhibit 15--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Talwin NX dated January 12, 1995.
- (23) Exhibit 16--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Oxycodone/ASA dated January 12, 1995.
- (24) Exhibit 17--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Percocet dated January 12, 1995.
- (25) Exhibit 18--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Demerol 50mg dated January 12, 1995.
- (26) Exhibit 19--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Diazepam 2mg dated January 12, 1995.
- (27) Exhibit 20--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Diazepam 5mg dated January 12, 1995.
- (28) Exhibit 21--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Valium 5mg dated January 12, 1995.
- (29) Exhibit 22--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Pt. Clinton, for Diazepam 10mg dated January 12, 1995.
- (30) Exhibit 23--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Demerol HCl 50mg/5ml syrup dated October 18, 1996.
- (31) Exhibit 24--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Demerol 50mg dated January 12, 1995.
- (32) Exhibit 25--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Roxicet 5/325mg dated October 18, 1996.
- (33) Exhibit 26--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Percocet dated October 18, 1996.
- (34) Exhibit 26 (Corrected)--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Percocet dated October 18, 1996.

- (35) Exhibit 27--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Lorcet Plus dated October 18, 1996.
- (36) Exhibit 28--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Lorcet 10/650mg dated October 18, 1996.
- (37) Exhibit 29--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Hydrocodone/APAP 5/500 dated October 18, 1996.
- (38) Exhibit 30--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Vicodin dated January 12, 1995.
- (39) Exhibit 31--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Diazepam 10mg dated January 12, 1995.
- (40) Exhibit 32--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Diazepam 5mg dated January 12, 1995.
- (41) Exhibit 33--Copy of Ohio State Board of Pharmacy Drug Audit Accountability Sheet of The Pharm, Bucyrus #924, for Valium 10mg dated January 12, 1995.
- (42) Exhibit 34--Copy of two-page handwritten statement of Joni R. Smith signed and notarized on September 18, 1996.
- (43) Exhibit 35--Copy of letter to Lucy from Rod dated April 10, 1996.
- (44) Exhibit 36--Partial copy of a cash register tape dated May 20, 1996.
- (45) Exhibit 37--Two-page copy of Judgment Entry in the Crawford County Common Pleas Court, State of Ohio vs. Rodney A. Keller, Case No. 97 CR-0097, dated January 21, 1998.

Respondent's Exhibits:

- (1) Exhibit 1--Copy of Two Count Indictment in the Crawford County Common Pleas Court, State of Ohio vs. Rodney A. Keller dated November 10, 1997.
- (2) Exhibit 3--Copy of letter from Hope M. Sweeney and S. Renee Gerome dated March 9, 1998.
- (3) Exhibit 4--Copy of twenty-four-page Report of Investigation of Kevin J. Kinneer regarding Rodney Allen Keller, Case No. 96-1738, dated December 30, 1996.

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 Rodney Allen Keller was originally licensed in the state of Ohio on August 6, 1986. However, on or about February 10, 1998, Rodney Allen Keller's license to practice pharmacy in the state of Ohio was summarily suspended pursuant to Section 3719.121(C) of the Ohio Revised Code.
- (2) Rodney Allen Keller did, on or about the following dates, knowingly sell a controlled substance in an amount less than bulk when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Rodney Allen Keller sold the following drugs to his father on the following occasions without having valid prescriptions:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
4401664	12-23-95	Ambien 10mg	35
4401664	01-24-96	Ambien 10mg	35
4401664	02-21-96	Ambien 10mg	35
4401664	04-17-96	Ambien 10mg	35

Such conduct is in violation of Section 2925.03 of the Ohio Revised Code.

- (3) Rodney Allen Keller did, on or about December 23, 1995, intentionally make and/or knowingly possess a false or forged prescription, to wit: Rodney Allen Keller created and possessed on file in the pharmacy a document assigned prescription number 4401664 purporting to be a prescription so as to cover for his sale of the drugs on four separate occasions. Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.
- (4) Rodney Allen Keller did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Rodney Allen Keller created the following documents purporting to be prescriptions to cover for the sales of the drugs to his father when the drugs had not been prescribed:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
6609824	11-06-95	Quinine Sulfate 260mg	30
6609272	10-11-95	Zocor 20mg	30
6609710	11-01-95	Feldene 20mg	35
6609822	11-06-95	Desyrel 150mg	30
8800264	11-06-95	Zostrix 0.25%	90gm
8800318	01-24-96	Zostrix 0.25%	90gm
6609823	11-06-95	Norgesic Forte	50

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (5) Rodney Allen Keller did, on or about the following dates, make false or forged prescriptions for dangerous drugs, to wit: Rodney Allen Keller created the following documents purporting to be prescriptions to cover for the sales of the drugs to his mother when the drugs had not been prescribed:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>
6610075	11-16-95	Hemorrhoid HC 25mg	24ml
6609332	11-21-95	Carafate 1mg	100
6611405	04-14-96	Premarin 0.25mg	100
6614016	05-10-96	Reglan 10mg	100

Such conduct is in violation of Section 4729.61(C) of the Ohio Revised Code.

- (6) Rodney Allen Keller did, on or about January 20, 1998, plead guilty to Theft (Dangerous Drugs) in violation of Section 2913.02 of the Ohio Revised Code, a fourth degree felony, and to Illegal Processing of Drug Documents in violation of Section 2925.23 of the Ohio Revised Code, a fourth degree felony, in the Crawford County Common Pleas Court, State of Ohio vs. Rodney A. Keller, Case No. 97 CR-0097.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (6) of the Findings of Fact constitutes being guilty of a felony as provided in Division (A)(1) 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) through (5) 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) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 2925. or 4729. 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 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued February 10, 1998.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Rodney Allen Keller:

- (A) On the basis of the Findings of Fact and the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends, for a minimum of six months, the pharmacist identification card, No. 03-2-16459, held by Rodney Allen Keller and such suspension is effective as of the date of the mailing of this Order.
 - (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Rodney Allen Keller may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs while his license is under suspension.
 - (2) Six months after the effective date of this Order, the Board will reinstate Rodney Allen Keller's license to practice pharmacy in Ohio provided that he takes and successfully completes the Jurisprudence Examination offered by the Board prior to that date. If Rodney Allen Keller has not successfully completed the examination prior to six months from the effective date of this Order, his license will remain under suspension until this condition has been achieved.

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 certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

- (B) From the date of reinstatement, Rodney Allen Keller's pharmacist identification card, No. 03-2-16459, will be placed on probation for five years. The terms of probation are as follows:
 - (1) The State Board of Pharmacy hereby declares that Rodney Allen Keller'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.
 - (2) Rodney Allen Keller may not serve as a responsible pharmacist.

- (3) Rodney Allen Keller must not violate the drug laws of the state of Ohio, any other state, or the federal government.
- (4) Rodney Allen Keller must abide by the rules of the Ohio State Board of Pharmacy.
- (5) Rodney Allen Keller must comply with the terms of this Order.

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-4/Nay-1).

MOTION CARRIED.

SO ORDERED.