



OHIO STATE BOARD OF PHARMACY

77 S. High Street, 17th Floor
Columbus, Ohio 43266-0320
Telephone: 614/466-4143

THE STATE BOARD OF PHARMACY
(Docket No. D-900130-061)

In The Matter Of:

JUDSON A. CLEMENTS, R.Ph.
539 Twp. Rd. 2152, RD 1
Loudonville, Ohio 44842
(R.Ph. No. 03-3-07628)

INTRODUCTION

THE MATTER OF JUDSON A. CLEMENTS CAME TO HEARING ON WEDNESDAY, APRIL 25, 1990 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: TIMOTHY MOORE, R.Ph. (presiding); GERALD CLOUSE, R.Ph.; METTA LOU HENDERSON, R.Ph.; NORMAN LEIBOW, R.Ph.; BETTY NICHOL, R.Ph.; JOSEPH SABINO, R.Ph.; ROBERT VALENTINE, R.Ph.; AND MELVIN WILCZYNSKI, R.Ph.

JUDSON A. CLEMENTS WAS REPRESENTED BY SHERRI BLANK LAZEAR AND MARK D. SENFF, AND THE STATE OF OHIO WAS REPRESENTED BY JEANNY EATON AND STEVE DLOTT, ASSISTANT ATTORNEY GENERALS.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Cheryl Rooks - Ohio Board of Pharmacy
- (2) Chris Reed - Lorain County MEG Unit
- (3) Dana Hutchison - Ohio Board of Pharmacy
- (4) Lana Cline - Bookkeeper, Towne Pharmacy
- (5) Sharon Clements - Vice President, Towne Pharmacy

Respondent's Witnesses:

- (1) Judson Clements - Respondent

(B) Exhibits

State's Exhibits:

- (1) Exhibit A - Notice of Opportunity letter to Judson A. Clements, R.Ph. dated January 30, 1990.
- (2) Exhibit B - Notice of Opportunity letter to Glasgo's Drugs, Inc. dba Towne Pharmacy dated January 30, 1990.

- (3) Exhibit C - Request for Hearing letter for Judson A. Clements, R.Ph. and Glasgo's Drugs, Inc. dba Towne Pharmacy from Sheri Blank Lazear and Mark Senff, Counsellors at Law, dated February 21, 1990.
- (4) Exhibit D - Hearing Schedule letter to Sherri Blank Lazear, Counsellor At Law, dated February 27, 1990.
- (5) Exhibit 1 - Front sheet showing original date of pharmacist licensure for Judson Arthur Clements; Application for Registration As A Distributor of Dangerous Drugs for Towne Pharmacy received August 20, 1985; and Application for Registration as a Terminal Distributor dated August 20, 1985.
- (6) Exhibit 2 - Renewal Application for Terminal Distributor License for 1985 for Glasgos Drugs, Inc., and Renewal Applications for Terminal Distributor Licenses for 1986, 1987, 1988, 1989, and 1990 for Towne Pharmacy.
- (7) Exhibit 3 - Pink Sheet for Towne Pharmacy dated September 25, 1989.
- (8) Exhibit 3A - Letter from Towne Pharmacy dated April 28, 1989.
- (9) Exhibit 4 - Pink Sheet for Towne Pharmacy dated December 21, 1988.
- (10) Exhibit 4A - Letter from Towne Pharmacy dated January 17, 1989.
- (11) Exhibit 5 - Inspection Sheet for Towne Pharmacy dated October 27, 1987.
- (12) Exhibit 6 - Pink Sheet for Towne Pharmacy dated September 17, 1987.
- (13) Exhibit 6A - Letter from Towne Pharmacy dated October 9, 1987.
- (14) Exhibit 7 - Pink Sheet for Glasgos Drugs dated July 2, 1985.
- (15) Exhibit 7A - Letter from Towne Pharmacy dated July 22, 1985.

Respondent's Exhibits:

- (1) Exhibit 1 - Security System Quote from Quality Electronics for Towne Pharmacy dated March 6, 1989.
- (2) Exhibit 2 - Invoices from Quality Electronics for Towne Pharmacy dated December 15, 1989 and February 23, 1990.
- (3) Exhibit 3 - Invoice from The Locksmith Shop for Towne Pharmacy dated February 7, 1990.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that records of the Board of Pharmacy indicate that Judson A. Clements is an owner and also the Responsible Pharmacist pursuant to Sections 4729.55 and 4729.27 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code at Towne Pharmacy, 17 East Main Street, Ashland, Ohio 44805. Records also indicate that Judson A. Clements was originally registered as a pharmacist in this state pursuant to examination on March 14, 1962.

- (2) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about September 25, 1989, allow a person other than a pharmacist to have access to the prescription department or stock of dangerous drugs, to wit: Judson A. Clements permitted non-licensed personnel to possess keys to the pharmacy. Such conduct is in violation of Rule 4729-9-11(A)(2)(d) of the Ohio Administrative Code.
- (3) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about December 21, 1988, allow a person other than a pharmacist to have access to the prescription department or stock of dangerous drugs, to wit: Judson A. Clements permitted non-licensed personnel to possess keys to the pharmacy. Such conduct is in violation of Section 4729.55 of the Ohio Revised Code, and Rule 4729-9-11(B)(5) of the Ohio Administrative Code.
- (4) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about October 27, 1987 and dates prior thereto, fail to maintain adequate records in that pharmacists did not manually record his/her name or initials on the original prescription or alternate record. Such conduct is in violation of Rule 4729-5-17(A) of the Ohio Administrative Code.
- (5) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about September 17, 1987, allow Towne Pharmacy to fail to satisfy the minimum standards for a retail pharmacy in that a library was not maintained which was equipped with current federal and state laws, regulations, and rules governing the legal distribution of drugs in Ohio. Such conduct is in violation of Rule 4729-9-02(A)(1) of the Ohio Administrative Code.
- (6) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about September 17, 1987, and dates prior thereto, fail to properly execute controlled substance order forms, to wit: DEA 222 forms, upon receipt of controlled substances. Such conduct is in violation of Section 1305.09 of the Code of Federal Regulations.
- (7) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about September 17, 1987 and dates within the immediately preceding two years, fail to maintain an inventory of controlled substances. Such conduct is in violation of Section 1304.04 of the Code of Federal Regulations and Rule 4729-9-14 of the Ohio Administrative Code.

- (8) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about September 17, 1987 and dates prior thereto, sell a controlled substance in an amount less than the minimum bulk amount when the conduct was not in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. of the Ohio Revised Code, to wit: the pharmacy sold Cocaine Hydrochloride in Brompton's Solution when such was banned by rule of the State Medical Board, Rule 4731-11-02(B) of the Ohio Administrative Code. Such conduct is in violation of Section 2925.03(A)(1) of the Ohio Revised Code.
- (9) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about September 17, 1987 and dates prior thereto, fail to maintain adequate records in that Mr. Clements and/or other pharmacists did not manually record his/her name or initials on the original prescription or alternate record. Such conduct is in violation of Rule 4729-5-17(A) of the Ohio Administrative Code.
- (10) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about July 2, 1985, allow a person other than a pharmacist to have access to the prescription department or stock of dangerous drugs, to wit: Judson A. Clements permitted non-licensed personnel to possess keys to the pharmacy. Such conduct is in violation of Rule 4729-9-11(B)(5) of the Ohio Administrative Code.
- (11) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about July 2, 1985 and dates within the immediately preceding two years, fail to maintain an inventory of controlled substances. Such conduct is in violation of Section 1304.04 of the Code of Federal Regulations, Chapter 3719. of the Ohio Revised Code, and Rule 4729-9-14 of the Ohio Administrative Code.
- (12) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about July 2, 1985 and dates prior thereto, fail to maintain prescription files which were readily retrievable, to wit: prescriptions were intermingled but not stamped with a red "C". Such conduct is in violation of Section 1304.04(g)(2) of the Code of Federal Regulations.
- (13) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about July 2, 1985 and dates prior thereto, fail to maintain adequate records in that the pharmacy maintained prescriptions which did not have recorded thereon the address of the patient. Such conduct is in violation of Rule 47295-5-17(A) of the Ohio Administrative Code.

- (14) From the evidence presented, the State Board of Pharmacy finds that Judson A. Clements, as Responsible Pharmacist, did, on or about July 2, 1985 and dates prior thereto, fail to maintain adequate records in that the pharmacy did not maintain a bound record book for dispensing of Schedule V controlled substances in which the pharmacists initialed transactions of exempt narcotic sales. Such conduct is in violation of Sections 1306.32(e) and 1304.04 of the Code of Federal Regulations.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (2) through (14) of the Findings Of Fact constitutes 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 the conduct set forth in paragraphs (2) through (14) of the Findings Of Fact constitutes willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ORDER

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the pharmacist license, No.03-3-07628, held by Judson A. Clements:

(A) On the basis of paragraph (1) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Judson A. Clements for 12 months effective October 1, 1990.

(B) On the basis of paragraph (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of five thousand dollars (\$5,000.00).

(C) Further, the Board will set aside 11 months of the suspension and two thousand five hundred dollars of the monetary penalty imposed above on the condition that Mr. Clements successfully completes the Jurisprudence exam given by the Board prior to October 1, 1990.

Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that Judson A. Clement's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns for a period of 12 months.

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Order of the Board

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is ..., suspended, ..., 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.

The monetary penalty of two thousand five hundred dollars (\$2,500.00) that was not set aside in paragraph (C) above is due and owing within thirty (30) days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320, with the enclosed form.

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

MOTION CARRIED.

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

Section 119.12 of the Revised Code authorizes an appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to said court of the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Revised Code.

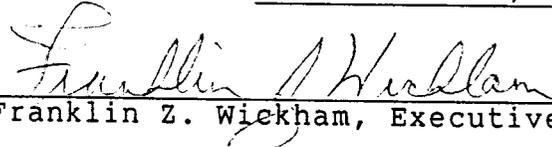
BY ORDER OF THE STATE BOARD OF PHARMACY

CERTIFIED MAIL
Return Receipt
#P 497 578 703

ORDER MAILED: JUNE 29, 1990

FZW/la

By


Franklin Z. Wickham, Executive Director

cc: Jeanny Eaton and Steve Dlott, Assistant Attorney Generals
Sherri Blank Lazear and Mark D. Senff, Attorneys for Respondent;
Capitol Square, 65 East State, Street, Columbus, Ohio 43215