



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-020319-047)

In The Matter Of:

JAMES MURRAY BAYLESS, R.Ph.

1404 East Henry Clay
Fort Wright, Kentucky 41011

(R.Ph. No. 03-3-10368)

INTRODUCTION

THE MATTER OF JAMES MURRAY BAYLESS CAME FOR HEARING ON AUGUST 6, 2002, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: DIANE C. ADELMAN, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; LAWRENCE J. KOST, R.Ph.; NATHAN S. LIPSYC, R.Ph.; DOROTHY S. TEATER, PUBLIC MEMBER; AND JAMES E. TURNER, R.Ph.

JAMES MURRAY BAYLESS WAS REPRESENTED BY ERIC J. PLINKE AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

None

Respondent's Witnesses

1. James Murray Bayless, R.Ph., Respondent
2. Matthew Fischer, R.Ph.
3. Penelope Rogers

State's Exhibits

1. Reinstatement Hearing Request letter from Eric J. Plinke [03-15-02]
1A-1B. Procedurals
2. State Board of Pharmacy Order, in re James Murray Bayless, R.Ph. [07-17-00]
3. Photocopy of drugs
- 4.
- 5.

Respondent's Exhibits

- A. State Board of Pharmacy Order in re James Murray Bayless, R.Ph [07-17-00]
- B.
- C. Pharmacist's Recovery Contract of James M. Bayless [09-01-00]; letter from Michael D. Quigley, R.Ph. [08-04-02]; letter from Michael D. Quigley, R.Ph. [08-05-02]

- D. Urine drug screen reports [06-28-00 to 07-06-02]
- E. Support Group Attendance Records [05-29-00 to 07-31-02]
- F. Recovery Progress letters from Thomas Cox MS, CCDCI [07-18-02]; Diane Brock, CCDC IIIe [12-21-00]
- G. Continuing Pharmaceutical Education Credits and Certificates [03-25-99 to 06-17-02]
- H.

- I. Letters of support for James Murray Bayless from James C. Ward [07-25-02]; Linda Ochs [07-23-02]; John P. Tekulve, not dated; Jay S. Belcher, R.Ph. [07-20-02]; David White [07-20-02]; Richard Sorrell [07-28-02]; James F. Liebetrau, R.Ph. [07-16-02]; Diane Brock CCDC IIIe [07-23-02]; Joseph E. Geiser, R.Ph. [08-01-02];

FINDING 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 that James Murray Bayless has complied with the terms set forth in the Order of the State Board of Pharmacy, Docket No. D-990908-018, effective July 17, 2000.

DECISION OF THE BOARD

On the basis of the Finding of Fact set forth above, the State Board of Pharmacy hereby approves the reinstatement of the pharmacist identification card, No. 03-3-10368, held by James Murray Bayless to practice pharmacy in the state of Ohio and places James Murray Bayless on probation for five years from the date the identification card is issued, with the following conditions:

(A) James Murray Bayless must enter into a contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and submit a copy of the signed contract to the Board office with the renewal application. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted each month for the first twelve months and then once every three months for the remaining four years.

(a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(b) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.

(c) Results of all drug and alcohol screens must be negative. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract and probation.

(2) The intervener/sponsor shall provide copies of all drug and alcohol screen reports to the Board in a timely fashion.

(3) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(4) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) James Murray Bayless must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:

(1) The written report and documentation provided by the treatment program pursuant to the contract, and

(2) A written description of James Murray Bayless' progress towards recovery and what he has been doing during the previous three months.

(C) Other terms of probation are as follows:

(1) The State Board of Pharmacy hereby declares that James Murray Bayless' 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) James Murray Bayless may not serve as a responsible pharmacist.

(3) James Murray Bayless may not destroy, assist in, or witness the destruction of controlled substances.

(4) James Murray Bayless must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.

(5) James Murray Bayless must not violate the drug laws of the State of Ohio, any other state, or the federal government.

(6) James Murray Bayless must abide by the rules of the State Board of Pharmacy.

(7) James Murray Bayless must comply with the terms of this Order.

James Murray Bayless 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 SEPTEMBER 19, 2002



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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-990908-018)

In The Matter Of:

JAMES MURRAY BAYLESS, R.Ph.

431 Highland Avenue
Fort Thomas, KY 41073
(R.Ph. No. 03-3-10368)

INTRODUCTION

THE MATTER OF JAMES MURRAY BAYLESS CAME FOR HEARING ON JUNE 13, 2000, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, 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.

JAMES MURRAY BAYLESS WAS REPRESENTED BY ERIC J. PLINKE, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Michael Cluxton, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) James Murray Bayless, Respondent
- (2) Wayne Miller, R.Ph., Pharmacists Rehabilitation Organization, Inc.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of four-page Summary Suspension Order/Notice of Opportunity for Hearing dated September 8, 1999.
- (2) Exhibit 1A--Hearing Request letter dated October 5, 1999.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated October 8, 1999.
- (4) Exhibit 1C--Hearing Representation and Continuance Request letter dated January 13, 2000.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated January 14, 2000.

- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of James Murray Bayless showing original date of registration as March 6, 1973, and copy of Renewal Application for Pharmacist License No. 03-3-10368 for a license to practice pharmacy in Ohio from September 15, 1999, to September 15, 2000, of James Murray Bayless dated August 1, 1999.
- (7) Exhibit 2--Three 4" x 4" photos of drugs possessed by James M. Bayless on August 26, 1999.
- (8) Exhibit 3--Copy of "382-Price Hill Drug Audit" report for the period of August 25, 26, 1999.
- (9) Exhibit 4--Copy of three-page "Agreed Order" of the Commonwealth of Kentucky, Kentucky Board of Pharmacy vs. James M. Bayless, Agency Case No. 97-0091, signed and dated by James M. Bayless on September 16, 1999; and "Agreed Order of Surrender" of the Commonwealth of Kentucky Board of Pharmacy In Re: James Murray Bayless effective October 27, 1999.
- (10) Exhibit 5--

- (11) Exhibit 6--

- (12) Exhibit 7--

Respondent's Exhibits:

- (1) Respondent's Exhibit List dated June 13, 2000.
- (2) Exhibit A--Medical Records Release form of James Bayless dated April 27, 2000; and copies of sixty-six pages of Bethesda Treatment Records regarding James M. Bayless dated from November 29, 1999, through February 10, 2000.
- (3) Exhibit B1--Letter from Diane Brock dated May 18, 2000.
- (4) Exhibit B2--Copy of Letter from Molly E. Fitzgerald dated May 23, 2000, and copy of letter from Tim O'Leary dated May 11, 2000.
- (5) Exhibit B3--Letter from Jay S. Belcher dated May 21, 2000.
- (6) Exhibit B4--Copy of letter from Rick Michler dated December 8, 1999.
- (7) Exhibit B5--Letter from Sidney Crow, not dated.
- (8) Exhibit C1--Copies of fifteen 12-Step Reaction Sheets dated from January 11, 1999, through February 4, 2000.
- (9) Exhibit C2--Copies of three pages of Record of Meeting Attendance of Client No. 144 dated from February 6, 2000, through May 28, 2000.
- (10) Exhibit D--Copies of thirteen pages consisting of twelve urine drug screen reports of James Bayless dated from December 13, 1999, through April 27, 2000.
- (11) Exhibit E1--Two-page copy of Pharmacists Rehabilitation Organization, Inc. Pharmacist's Recovery Contract of James M. Bayless dated January 18, 2000.
- (12) Exhibit E2--Letter from Matthew E. Fisher dated June 9, 2000.
- (13) Exhibit E3--Letter from Matthew E. Fisher, not dated and E-mail message from Keith Wire dated June 7, 2000.
- (14) Exhibit E4--Copy of Airborne Express Airbill, No. 3458045360, from Matt Fisher dated May 18, 2000; and copy of Chain of Custody Document/Request Form regarding Donor James M. Bayless dated May 18, 2000.

- (15) Exhibit F--Copies of ten Continuing Pharmacy Education Certificates of James Bayless dated from February 20, 2000, through June 2, 2000.
- (16) Exhibit G--Copy of three-page Commonwealth of Kentucky Board of Pharmacy "Agreed Order of Surrender" In Re: James Murray Bayless entered October 27, 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 James Murray Bayless was originally licensed in the state of Ohio on March 6, 1973, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio.
- (2) James Murray Bayless is addicted to and/or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: James Murray Bayless has admitted stealing drugs from his employer; James Murray Bayless has admitted that he has a "drinking problem"; James Murray Bayless has admitted consuming a fifth of Vodka on a daily basis, at times with controlled substances; and James Murray Bayless has admitted practicing pharmacy while impaired. Such conduct indicates that James Murray Bayless falls within the ambit of Sections 3719.121(B) and 4729.16(A)(3) of the Ohio Revised Code.
- (3) James Murray Bayless did, on August 26, 1999, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Kroger Pharmacy #382, beyond the express or implied consent of the owner and/or by deception, to wit: James Murray Bayless stole the following controlled substances from his employer:

<u>Drug</u>	<u>Quantity</u>
Lortab 7.5mg	8
Vicoprophen	1
Wellbutrin	1
Percocet	40

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (4) James Murray Bayless did, from July 4, 1998, through August 26, 1999, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Kroger #382, beyond the express or implied consent of the owner and/or by deception, to wit: James Murray Bayless stole the following controlled substances from his employer:

<u>Drug</u>	<u>Quantity</u>
Tenuate 25mg	134
Tenuate 75mg	109
Diethylpropion 75mg	100
Ionamin 30mg	98
Phentermine 37.5mg	94
Phentermine 30mg	200
Phentermine 15mg	100
Roxicet	54
Meridia 10mg	25

Meridia 15mg	74
Hydrocodone 7.5mg w/APAP 500mg	40
Hydrocodone 2.5mg w/APAP 500mg	2
Vicodin 5mg/500mg	148
Hydrocodone 5mg/APAP 500mg	6,204
Hydrocodone 10mg/APAP 650mg	66
Vicodin ES	295
Lortab 5/500	16
Vicoprofen 7.5/200	350
Methylphenidate 5mg	6

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (3) and (4) 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) Upon consideration of the record as a whole, 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.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.
- (4) 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 Chapters 3719. and 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 to James Murray Bayless on September 8, 1999.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of James Murray Bayless:

- (A) On the basis of the Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby indefinitely suspends the pharmacist identification card, No. 03-3-10368, held by James Murray Bayless and such suspension is effective as of the date of the mailing of this Order.
 - (1) James Murray Bayless, 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

Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

- (2) James Murray Bayless, 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. The certificate and identification card should be sent by certified mail, return receipt requested.

(B) Further, two years from the effective date of this Order or thereafter, the Board will consider any petition filed by James Murray Bayless for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (1) James Murray Bayless must obtain, within 90 days after the effective date of this Order, a full psychiatric or psychological evaluation by a licensed psychiatrist or psychologist that includes a recommended treatment plan. James Murray Bayless must abide by the treatment plan as designed by that psychiatrist or psychologist.

- (2) James Murray Bayless must enter into a contract, signed within 90 days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years. The contract must provide that:

(a) Random, **observed** urine drug screens shall be conducted at least once each month.

(i) The urine sample must be given within twelve hours of notification. The urine screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(ii) Alcohol must be added to the standard urine drug screen. A Breathalyzer may be used to test for alcohol, but the test must be conducted by an appropriately certified individual within twelve hours of notification.

(iii) Results of all drug and alcohol screens must be negative. Any positive results, including those that may have resulted from ingestion of food, but excluding false positives that resulted from medication legitimately prescribed, indicates a violation of the contract.

(b) Regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required.

(c) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.

- (3) James Murray Bayless must provide, at the reinstatement petition hearing, documentation of the following:
- (a) Compliance with the licensed psychiatrist's or psychologist's recommended treatment plan.
 - (b) A report by the licensed psychiatrist or psychologist regarding James Murray Bayless' fitness for readmission into the practice of pharmacy.
 - (c) Compliance with the contract required in paragraph (B)(2) above (e.g.-proof of giving the urine sample within 12 hours of notification, copies of all urine screen reports, meeting attendance records, treatment program reports, etc.).
 - (d) Compliance with the continuing pharmacy education requirements as set forth in Chapter 4729-7 of the Ohio Administrative Code in effect on the date of petitioning the Board for reinstatement.
 - (e) Compliance with the terms of this Order.
- (D) If reinstatement is not accomplished within three years after the effective date of this Order, James Murray Bayless must successfully complete the NAPLEX examination or an equivalent examination approved by the Board.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-0).
MOTION CARRIED.
SO ORDERED.

ORDER EFFECTIVE JULY 17, 2000