



# 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](mailto:exec@bop.state.oh.us)

FAX: 614/752-4836

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

URL: <http://www.pharmacy.ohio.gov>

## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-950601-062)

In The Matter Of:

**MICHAEL JAMES FOGEL, R.Ph.**

1508 Wood Thrush Way

Marietta, GA 30062

(R.Ph. No. 03-3-11924)

### INTRODUCTION

THE MATTER OF MICHAEL JAMES FOGEL CAME TO HEARING ON NOVEMBER 29, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: PAUL F. LAMPING, R.Ph. (presiding); AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MICHAEL JAMES FOGEL WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

#### (A) Testimony

State's Witnesses:

- (1) Timothy J. Benedict, R.Ph., Ohio State Board of Pharmacy
- (2) Lt. Kelly Blair, Sugarcreek Police Department

Respondent's Witnesses:

- (1) Michael J. Fogel, Respondent

#### (B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated June 1, 1995.
- (2) Exhibit 1A--Hearing Request letter dated June 26, 1995.
- (3) Exhibit 1B--Hearing Schedule letter dated June 30, 1995.
- (4) Exhibit 1C--Hearing Schedule letter dated July 11, 1995.

- (5) Exhibit 1D--Pharmacist File Front Sheet of Michael James Fogel showing original date of registration as August 4, 1976.
- (6) Exhibit 1E--Renewal Application for Pharmacist License, No. 03-3-11924, for a license to practice pharmacy in Ohio from September 15, 1995, to September 15, 1996, of Michael James Fogel dated July 18, 1995.
- (7) Exhibit 2--Eight-page Order of the Ohio State Board of Pharmacy, Docket No. D-890201-097, in the matter of Michael J. Fogel dated August 23, 1989.
- (8) Exhibit 3--Two-page Certified Copy of Judgment Entry in the Court of Common Pleas, Greene County, Ohio, Case No. 90-CR-341, of Michael Fogel dated April 12, 1991.
- (9) Exhibit 4--Copy of two-page Certified Copy of Sentencing Entry on Probation Violation in the Common Pleas Court of Shelby County, Ohio, Criminal Division, Case No. 88CR000019, of Michael J. Fogel on November 26, 1990.
- (10) Exhibit 5--Renewal Application for Pharmacist License, No. 03-3-11924, for a license to practice pharmacy in Ohio from September 15, 1994, to September 15, 1995, of Michael James Fogel dated January 8, 1994.
- (11) Exhibit 6--Prescription No. 6603855.
- (12) Exhibit 7--Prescription No. 6600179.
- (13) Exhibit 8--5" x 7" full-length black and white photograph of Michael James Fogel.
- (14) Exhibit 9--5" x 7" full-length black and white photograph of Michael James Fogel.
- (15) Exhibit 10--3" x 3" head-and-shoulders color photograph of Michael James Fogel.

Respondent's Exhibits:

- (1) Exhibit A--Copy of typewritten explanation, not signed, not dated.
- (2) Exhibit B--Letter from Harold B. Daubenspeck dated November 1, 1995.
- (3) Exhibit C--Letter from Bryan T. Kovacs dated November 13, 1995.
- (4) Exhibit D--Letter from Dale N. Hugo dated August 22, 1995.
- (5) Exhibit E--Fax copy of letter from Norman C. Haas, not dated.

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 Michael James Fogel was originally licensed in the state of Ohio on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that Michael James Fogel was suspended from the practice of pharmacy in Ohio on August 23, 1989, for a term of five years for having been found by the Board of the following:
  - (a) Michael James Fogel was the Responsible Pharmacist at Hooks SuperX Drugs #257 in Sidney, Ohio, from March, 1987, until December 9, 1987, pursuant to Section 4729.27 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code, and Michael James Fogel had been a licensed pharmacist in the state of Ohio since August 4, 1976.
  - (b) Michael James Fogel did, between March, 1987, and December 9, 1987, while practicing pharmacy at Hook's SuperX Drugs #257, obtain a dangerous drug by attempting or committing a theft offense, to wit: Michael James Fogel stole the following drugs in the following amounts from the pharmacy:

	<u>Drug</u>	<u>Amount</u>	<u>Schedule</u>
Acetaminophen #3		1,859 units	III
Tylenol #3		412 units	III
Acetaminophen #4		151 units	III
Tylenol #4		27 units	III

Such conduct is in violation of Section 2925.21 of the Ohio Revised Code.

- (c) Michael James Fogel did, between March, 1987, and December 9, 1987, while practicing pharmacy at Hook's SuperX Drug #257, by theft acquire a prescription, to wit: Michael J. Fogel stole the following prescriptions, written by Dr. Glen Aukerman, from the files of Hook's SuperX Drugs #257:

<u>Rx No</u>	<u>Drug</u>	<u>Refills/Qty</u>	<u>Date</u>	<u>Patient</u>
60318776	Neggram 500mg	1/100	10/13/87	R. Leininger
60319288	Feldene 20mg	7/50	10/23/87	Vena Kies
60319531	Neggram 500mg	0/28	10/28/87	E. Stumpff
60320004	Xanax .5mg	3/100	11/06/87	R. Emert
60321603	Tagamet 300mg	2/100	12/09/87	W. Leiss
60321564	Zantac 150mg	1/60	12/09/87	Vernon Kies
60321565	Metatensin 4mg	1/100	12/09/87	Vena Kies
60305884	Monistat-3	5/3	01/02/87	R. Lenhart
60305876	Metatensin 4mg	3/60	01/05/87	E. Poppe
60306221	Butazolidin tablets	2/100	01/06/87	G. Hon
60305956	Micronase 5mg	5/100	01/07/87	S. Pequignot
60306607	Sinubid tablets	3/100	01/23/87	M. Herring
60310742	Eurax Cream	0/60gr	02/02/87	R. Kosel

Such conduct is in violation of Section 2925.23(C)(1) of the Ohio Revised Code.

- (d) Michael James Fogel did, between May 3, 1987, and March 12, 1988, with the purpose to defraud, forge writings of another without authority, to wit: Michael James Fogel forged the following prescriptions to obtain drugs:

<u>Rx No</u>	<u>Drug</u>	<u>Refills/Qty</u>	<u>Date</u>	<u>Patient</u>
002864	Tylenol #3	4/100	05/03/87	Miller
002961	Tavist-1	6mo/30	05/08/87	Manis
002962	Soma 350	6mo/60	05/08/87	Manis
60073612	Tylenol #4	3/50	08/05/87	Laub
180301	Tylenol #3	5/100	03/12/88	Aukerman
191669	Tylenol #3	5/50	01/28/88	Aukerman

Such conduct is in violation of Section 2913.31(A)(1) of the Ohio Revised Code.

- (e) Michael James Fogel did, between March, 1987, and December 9, 1987, with purpose to defraud, forge writings so that they purported to be the act of another who did not authorize the act, to wit: Michael James Fogel forged the following documents to appear as if they were phoned-in prescriptions to replace the genuine prescriptions which were stolen:

<u>Rx No</u>	<u>Drug</u>	<u>Refills/Qty</u>	<u>Date</u>	<u>Patient</u>
60318776	Neggram 500mg		1/100	10/13/87 R. Leininger
60319288	Feldene 20mg		7/50	10/23/87 Vena Kies
60319531	Neggram 500mg		0/28	10/28/87 E. Stumpff
60320004	Xanax .5mg		3/100	11/06/87 R. Emert
60321603	Tagamet 300mg		2/100	12/09/87 W. Leiss
60321564	Zantac 150mg		1/60	12/09/87 Vernon Kies
60321565	Metatensin 4mg		1/100	12/09/87 Vena Kies

Such conduct is in violation of Section 2913.31(A)(2) of the Ohio Revised Code.

- (f) Michael James Fogel did, between March, 1987, and December 9, 1987, with purpose to defraud, forge a writing so that it purported to be genuine when it was actually spurious, to wit: Michael James Fogel created a fictitious patient profile in the name of James Woodley, 12564 St. Rt. 47, Sidney, Ohio 45365, using Dr. Howard Sampson's name as the treating physician, when no such patient existed. Such conduct is in violation of Section 2913.31(A)(2) of the Ohio Revised Code.
- (g) Michael James Fogel did, between August 8, 1987, and August 11, 1987, intentionally make, utter, or knowingly possess false or forged prescriptions, to wit: Michael James Fogel created the following false or forged prescriptions for a fictitious patient:

<u>Rx No</u>	<u>Drug</u>	<u>Refills/Qty</u>	<u>Date</u>	<u>Doctor</u>
60315524	Soma 350mg		3/60	08/08/87 Sampson
60315525	Pen VK 250mg		0/28	08/08/87 Sampson
60315610	Tylenol #4		3/50	08/11/87 Sampson

Each prescription was indicated as filled with generics. Such conduct is in violation of Section 2925.23(B)(1) of the Ohio Revised Code.

- (h) Michael James Fogel was, on or about November 1, 1988, convicted in the Common Pleas Court of Shelby County, Ohio of two counts of Illegal Processing of Drug Documents in violation of Section 2925.23(B) of the Ohio Revised Code, felonies of the fourth degree.

The Board found Michael James Fogel to be guilty of a felony and gross immorality; guilty of dishonesty and unprofessional conduct in the practice of pharmacy; and guilty of willfully violating, conspiring to violate, attempting to violate, and aiding and abetting the violation of provisions of Chapter 2925. of the Ohio Revised Code. For these reasons Michael James Fogel's license to practice pharmacy in the state of Ohio was suspended for five years. The Board stipulated to allow Michael James Fogel the opportunity for early reinstatement of his license, by petition, provided he successfully complete the pharmacology course approved by the Board and successfully pass the Jurisprudence examination offered by the Board; however, Michael James Fogel did not seek petition for reinstatement while his license was suspended. After the five-year suspension and after completing the required amount of continuing education credits for renewal, Michael James Fogel's license was reinstated on December 22, 1994.

- (2) Michael James Fogel was, on or about April 12, 1991, convicted in the Common Pleas Court of Greene County, Ohio, of Complicity to False Registration Certificate in violation of Section 2923.02 of the Ohio Revised Code as it relates to Section 4729.61 of the Ohio Revised Code, a felony of the fourth degree. Michael James Fogel was sentenced to a

term of incarceration of six months, said term to be served consecutive to his sentence in Shelby County, Ohio.

- (3) Michael James Fogel was, on or about November 26, 1990, sentenced in the Common Pleas Court of Shelby County, Ohio, for having violated the terms of his probation in Case Number 88 CR 000019. Michael James Fogel was sentenced to a term of incarceration of one year on each of two counts, the terms being concurrent with each other.
- (4) Michael James Fogel did, on or about January 8, 1994, knowingly make a false statement when the statement was made with purpose to secure the issuance by a governmental agency of a license or registration, to wit: on his renewal application for a license to practice pharmacy in Ohio, Michael James Fogel stated that he had not, within the preceding 18 months, been the subject of disciplinary action by any state or federal agency when Michael James Fogel had been under suspension by this Board for the immediately preceding five years. Such conduct is in violation of Section 2921.13 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 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) and (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.

#### ACTION OF THE BOARD

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

- (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 revokes the pharmacist identification card, No. 03-3-11924, held by Michael James Fogel effective as of the date of the mailing of this Order.
- (B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card, No. 03-3-11924, held by Michael James Fogel effective as of the date of the mailing of this Order.

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.

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

MOTION CARRIED.

SO ORDERED.