



OHIO STATE BOARD OF PHARMACY

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

-Equal Opportunity Employer and Service Provider-

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-941213-027)

In The Matter Of:

DAVID F. MERK, R.Ph.

7147 State Road

Parma, Ohio 44134

(R.Ph. No. 03-3-14282)

INTRODUCTION

THE MATTER OF DAVID F. MERK CAME TO HEARING ON MARCH 9, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DAVID F. MERK WAS REPRESENTED BY JOHN S. PYLE, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) David F. Merk, Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Order of the Ohio State Board of Pharmacy, Docket No. D-931028-024, of David F. Merk dated February 14, 1994.
- (2) Exhibit 2--Hearing Request letter dated December 7, 1994.
- (3) Exhibit 3--Hearing Schedule letter dated December 13, 1994.

Respondent's Exhibits:

- (1) Exhibit A--Compliance Documentation of David F. Merk containing six sections, copies as follows: Contracts: Glenbeigh Health Sources contract dated May 11, 1994; Glenbeigh Health Sources contract dated March 1, 1994; and two Pharmacists Rehabilitation Organization Inc. contracts dated September 9, 1993. Urine Drug Screens: twenty urine drugs screens dated from August 9, 1993, through February 14, 1995; one chain of custody request dated February 13, 1995; Company Health Care drug/alcohol screen authorization form dated January 9, 1995; and three letters from Francisco Mendoza and/or Antonio Settanni dated December 22, 1994. Meeting Documentation: Verification of attendance at AA meetings dated from July 19, 1993, through March 3, 1995. Treatment letters: Letter from Ellen K. Bishko dated February 22, 1995; letter from Chuck Helmick dated February 3, 1995; letter from Gregory B. Collins dated February 24, 1995; letter from Ben Camp dated November 30, 1993; and Power House Certificate dated July 1, 1993. Continuing Education Credits: Thirty-three continuing pharmacy education certificates dated from December, 1991, through January, 1995. Letters of Reference: Letter from Nick A. Kallis dated March 3, 1995; letter from Jeffrey E. Rinda dated February 24, 1995; letter from Jeffrey E. Rinda dated February 20, 1995; letter from David M. Boyer dated February 21, 1995; letter from Robert Kerek dated February 23, 1995; letter from Lisa M. Mora dated February 23, 1995; letter from Stanley A. Skowronski dated March 7, 1995; original letter from Dorothy and Frank Merk dated March 6, 1995; and three certificates of appreciation dated December 17, 1994; May 28, 1994; and April 23, 1994.
- (2) Exhibit B--Deposition of Jeffrey Rinda taken on February 24, 1995.
- (3) Exhibit C--Journal Entry in the Court of Common Pleas of Jefferson County, Ohio, Case No. 93-CR-23 of David F. Merk dated October 11, 1994.

FINDING 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) David F. Merk has complied with the requirements of the Order of the State Board Pharmacy, Docket No. D-931028-024, dated February 14, 1994.

ACTION OF THE BOARD

The State Board of Pharmacy hereby approves the reinstatement of David F. Merk's pharmacist identification card to practice pharmacy in the state of Ohio and places him on probation for five years, with the following conditions:

- (A) David F. Merk must provide evidence that he has entered into a new contract with an alcohol and/or drug addiction treatment provider acceptable to the Board, for a period of not less than five years. The contract must provide that:
 - (1) random, **observed** urine screens shall be conducted at least once every three months. The urine drug screens must include reporting of specific gravity;

- (2) regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required during outpatient treatment and/or during aftercare;
 - (3) the intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion; and
 - (4) the program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (B) David F. Merk must submit a copy of the signed contract to the Board prior to reinstatement of his license.
- (C) David F. Merk must provide evidence of four and one-half C.E.U.s of approved continuing education with the application for renewal of a pharmacist identification card. The C.E.U.s shall be documented on a form provided by the Board, and original certificates must be submitted for approval. The C.E.U.s must be obtained during the three-year period immediately preceding the date of applying for renewal.
- (D) David F. Merk 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 his progress towards recovery and what he has been doing during the previous three months.
- (E) Other terms of probation are as follows:
- (1) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of Pharmacy hereby declares that David F. Merk's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns while on probation.
 - (2) David F. Merk may not serve as a responsible pharmacist while on probation.
 - (3) David F. Merk may not destroy, or may not assist in or witness the destruction of controlled substances while on probation.
 - (4) David F. Merk must abide by the contract from the treatment provider and any violation must be reported to the Board immediately.
 - (5) David F. Merk must not violate the drug laws of the state of Ohio, any other state, or the federal government.
 - (6) David F. Merk must abide by the rules of the Ohio State Board of Pharmacy.
 - (7) David F. Merk must comply with the terms of this Order.

David F. Merk 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.

MOTION CARRIED.

SO ORDERED.



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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-931028-024)

In The Matter Of:

DAVID F. MERK, R.Ph.
14400 Wheeler Road
Maple Heights, Ohio 44137

(R.Ph. No. 03-3-14282)

INTRODUCTION

THE MATTER OF DAVID F. MERK CAME TO HEARING ON DECEMBER 10, 1993, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; TIMOTHY D. MOORE, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER. DAVID F. MERK WAS REPRESENTED BY JOHN S. PYLE, AND THE STATE OF OHIO WAS REPRESENTED BY GREGG THORNTON, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) George Pavlich, Ohio State Board of Pharmacy
- (2) Elaine Ravotto, Ohio Valley Hospital
- (3) Gerald John, Ohio Valley Hospital

Respondent's Witnesses:

- (1) David Merk, Respondent
- (2) Jeff Rinda, Pharmacists Rehabilitation Organization, Inc.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1 - Summary Suspension Order dated October 28, 1993.
- (2) Exhibit 1A - Hearing Request letter dated November 5, 1993.
- (3) Exhibit 1B - Hearing Schedule letter dated November 16, 1993.

- (4) Exhibit 2 - Pharmacist File Front Sheet of David Francis Merk showing original date of registration as July 31, 1981; and Renewal Application for Pharmacist License, No. 03-3-14282, of David Francis Merk for a license to practice pharmacy in Ohio from September 15, 1992, to September 15, 1993 dated July 16, 1992.
- (5) Exhibit 2A - Two-page yellow copy of Dangerous Drug Distributor Inspection Report of Valley Apothecary dated September 2, 1992; four-page yellow copy of Dangerous Drug Distributor Inspection Report of Valley Apothecary dated July 27, 1992; four-page yellow copy of Dangerous Drug Distributor Inspection Report of Ross Park Pharmacy dated November 2, 1992; four-page Dangerous Drug Distributor Inspection Report of Ross Park Pharmacy dated November 2, 1992; four-page Dangerous Drug Distributor Inspection Report of Valley Apothecary dated July 27, 1992; and two-page Dangerous Drug Distributor Inspection Report of Valley Apothecary dated September 2, 1992, with attachments: four-page copy of DEA Form 41, Registrants Inventory of Drugs Surrendered, of Valley Apothecary dated September 2, 1992, and two-page "pink sheet" response of Valley Apothecary received in the Board office on September 10, 1992.
- (6) Exhibit 3 - Ohio Board of Pharmacy, Permission for Installation of Video Equipment, Case No. 92-1960, at 380 Summit Avenue, Steubenville, Ohio 43952 signed and notarized on November 6, 1992; copy of Ohio Board of Pharmacy, Permission for Installation of Video Equipment, Case No. 92-1960, at 1 Ross Park, Steubenville, Ohio 43952 signed and notarized on November 5, 1992; Ohio Board of Pharmacy, Video Recorder Request Report, Case No. 92-1960, dated November 4, 1992; and Ohio Board of Pharmacy, Video Recorder Request Report, Case No. 92-1960, dated, November 4, 1992.
- (7) Exhibit 4 - Fifteen video cassette tapes received from Gerald John, Director of Pharmacy, Ohio Valley Hospital.
- (8) Exhibit 4A - Page Six of a report, Recorded Tampering with Camera Equipment and Recorded Theft by Merk with Video Camera.
- (9) Exhibit 5 - Video cassette tape labeled "Theft #1, Main Pharmacy, December 8, 1992."
- (10) Exhibit 6 - Video cassette tape labeled "Tampering with the Video Camera, Ross Park Pharmacy, November 16, 1992."
- (11) Exhibit 7 - Five-page Ohio State Board of Pharmacy, Report of Investigation, Case No. 92-1960, Audit Report of Ross Park Pharmacy with ten pages of attachments; and a computer printout, Selected Sales History for Columbus, Alco Health Services, for sales of controlled substances to VHA Ross Park Pharmacy, 1 Ross Park, Steubenville, Ohio 43952, report dated December 16, 1992.
- (12) Exhibit 8 - Four-page copy of DEA Form 106, Report of Theft or Loss of Controlled Substances, of Ohio Valley Hospital Association, Valley Apothecary, and Ross Park Pharmacy dated May 11, 1993, and May 12, 1993.
- (13) Exhibit 9 - Statement of Dave F. Merk signed and notarized on December 9, 1992; and thirty-eight-page Transcript of Audio-Taped Interview of David Francis Merk with George Pavlich and Tim Benedict on December 9, 1992.
- (14) Exhibit 10 - Certified Seventeen Count Indictment, in the State of Ohio, Court of Common Pleas, Jefferson County, of David Francis Merk dated February 17, 1993; and Journal Entry, Case No. 93-CR-23, in the State of

Ohio, Court of Common Pleas, Jefferson County, of David F. Merk dated March 16, 1993.

- (15) Exhibit 11 - Certified copy of Defendant's Speedy Trial Waiver, Case No. 93 CR 23, in the Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated March 1, 1993; Certified copy of Motion for Treatment in Lieu of Conviction, Speedy Trial Waiver and Waiver of Appearances, Case No. 93 CR 23, in the Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated March 1, 1993; Certified copy of Journal Entry, Case No. 93-CR-23, in the Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated March 16, 1993.
- (16) Exhibit 12 - Certified copy of Journal Entry, Case No. 93-CR-23, In the Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated July 30, 1993.

Respondent's Exhibits:

- (1) Exhibit A - Two-page copy of Pharmacists Rehabilitation Organization Inc. Recovering Pharmacist's Contract of David Merk dated September 9, 1993.
- (2) Exhibit B - Copies of four drug screen urinalysis of David Merk dated December 2, 1993; November 12, 1993; October 18, 1993; and September 24, 1993.
- (3) Exhibit C - Twenty-page copy of AA/NA Meeting Attendance Verification sheets of David Merk dated from July 19, 1993, to December 3, 1993.
- (4) Exhibit D - Copy of letter from Rita A. Hanushock and Gregory B. Collins dated December 2, 1993; copy of certificate, Power House, of David Merk dated July 1, 1993; three-page copy of Power House Services, Inc. After-care Plan of David Merk dated July 1, 1993; Two-page Phase II Evaluation by Robin Hodges dated Hay 21, 1993; Two-page Phase II Evaluation by Robin Hodges dated April 15, 1993; copy of letter from Robin Hodges dated March 12, 1993; copy of license in the State of Louisiana, Department of Health and Hospitals, of Power House Services, Inc. dated October 28, 1992; copy of pocket identification card from the Louisiana State Board of Certification for Substance Abuse Counselors of Robin A. Hodges for the period of January 1, 1992, to January 1, 1994; and letter from Rita A. Hanuschock dated January 19, 1993, with attached business card of Jim Frost, Power House Programs.
- (5) Exhibit E - Copies of twenty-five certification of continuing education participation verification forms numbered as follows: 679-009-91014; 680-056-91-123; 680-073-92-12; 680-073-92-09; 189-761-92-006; 692-424- 93-001; 689-356-93-008; 679-00991015; 679-00991016; 190-422-92-003; 190-422-92-001; 692-424-93-008; 692-424-93-003; 680-057-90-013; 191-777-92-022; 692-424-93-002; 689-356-92-018; 689-356-91-039; 681-213-093-059; 681-213-093-058; 692-424-92-002; 180-316-91-003; 680-005-90-014; 679300-92024; 67930093002; and one certification of continuing education participation verification form, number 686-342 (illegible).
- (6) Exhibit F - Certified Journal Entry, Case No. 93-CR-23, in the Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated July 30, 1993; three-page certified Journal Entry, Case No. 93-CR-23, in the Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated July 30, 1993; and three-page certified Journal Entry, Case No. 93-CR-23, in the

Court of Common Pleas, Jefferson County, Ohio, of David F. Merk dated March 16, 1993.

- (7) Exhibit G - Copy of pages 366, 367, and 368 of the Ohio Criminal Law Handbook, Section 2951.01.1, Treatment in lieu of conviction.
- (8) Exhibit H - Two-page copy of letter from Dorothy and Frank Merk dated December 8, 1993; two-page copy of letter from Mrs. Becky Merk dated December 8, 1993; and two-page copy of letter from Ellen K. Bishko dated December 8, 1993.

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 indicate that David F. Merk was originally licensed to practice pharmacy in the state of Ohio on July 31, 1981. On October 28, 1993, Mr. Merk's identification card was suspended after having been found eligible for treatment in lieu of conviction in the Common Pleas Court of Jefferson County, Ohio, for having been charged with felony drug abuse offenses under Sections 2913.02 and 2925.11 (as well as Section 2921.12) of the Ohio Revised Code.
- (2) David F. Merk did, between January 6, 1992, and December 11, 1992, with the purpose to deprive, knowingly obtain or exert control over drugs belonging to Ross Park Pharmacy, beyond the express or implied consent of the owner, to wit: David F. Merk stole the following controlled substances from Ross Park Pharmacy: *

<u>Drug</u>	<u>Shortage</u>
Dexedrine 15mg	87 units
Fastin 30mg	102 units
Ionamin 30mg	116 units
Ritalin 5mg	65 units
Ritalin 10mg	25 units

Such conduct is in violation of Chapter 2913.02 of the Revised Code.

- (3) David F. Merk did, between November 6, 1992, and December 8, 1992, with the purpose to deprive, knowingly obtain or exert control over drugs belonging to Ohio Valley Hospital Association, beyond the express or implied consent of the owner, to wit: David F. Merk stole the following controlled substances from Ohio Valley Hospital Association:

<u>Drug</u>	<u>Shortage</u>
Morphine Sulfate 10mg Inj.	10 tubex
Hydromorphone 2mg Inj.	10 tubex
Percodan	175 units
Roxilox	314 units

Such conduct is in violation of Chapter 2913.02 of the Revised Code.

- (4) David F. Merk did, prior to September, 1992, with the purpose to deprive, knowingly obtain or exert control over drugs belonging to Valley Apothecary, beyond the express or implied consent of the owner, to wit: David F. Merk stole the following controlled substances from Valley Apothecary:

<u>Drug</u>	<u>Shortage</u>
Dexedrine Span. 10mg	5 units
Ritalin 10mg (Brand)	62 units
Ritalin 5mg (Goldline)	23 units
Methadone 5mg/5cc Oral	775 cc

Such conduct is in violation of Chapter 2913.02 of the Revised Code.

- (5) David F. Merk is addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy, to wit: David F. Merk admitted to stealing drugs, forging documents, and abusing drugs while practicing pharmacy due to his addiction.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (1) through (4) of the Findings of Fact constitute being guilty of gross immorality 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 (1) through (4) of the Findings of Fact constitute being guilty of dishonesty or 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 (5) 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 paragraphs (1) through (4) of the Findings of Fact constitutes being guilty of 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.

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 David F. Merk on October 28, 1993.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of David F. Merk:

- (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 suspends the identification card held by David F. Merk indefinitely and such suspension is 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 suspends the identification card held by David F. Merk indefinitely and such suspension is effective as of the date of the mailing of this Order.
- (C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the identification card held by David F. Merk indefinitely and such suspension is effective as of the date of the mailing of this Order.
- (D) On the basis of the Findings of Fact and paragraph (4) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby suspends the identification card held by David F. Merk indefinitely and such suspension is effective as of the date of the mailing of this Order.
- (E) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, David F. Merk 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.
- (F) Twelve months after the date of the mailing of this Order, David F. Merk may request to appear before the Board in order to petition for reinstatement of his license to practice pharmacy in Ohio. The Board will consider the petition only if the following conditions have been met:
 - (1) David F. Merk must enter into a new contract with a certified Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment program acceptable to the Board, for a period of not less than twelve months and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (a) random observed urine screens shall be conducted at least every three months.
 - (b) regular attendance at an Alcoholics Anonymous, Narcotics Anonymous, or a similar support group meeting is required during outpatient treatment and/or during aftercare, as determined by the treatment provider.
 - (c) the program shall immediately report to the Board of Pharmacy any violations of the contract.
 - (2) David F. Merk must provide, at the time of petitioning the Board for reinstatement, written documentation from his treatment provider regarding compliance with the program pursuant to the contract.

Division (B) of Section 4729.16 of the Revised Code provides that: "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 (Aye-7/Nay-O).

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

ORDER MAILED AND EFFECTIVE: FEBRUARY 14, 1994

CERTIFIED MAIL

Return Receipt

*P 373 708 541

Franklin Z. Wickham, R.Ph., M.S.

Executive Director

By _____

cc: Gregg Thornton, Assistant Attorney General

John S. Pyle, Attorney for Respondent; Gold, Rotatori & Schwartz Co., L.P.A.; 1500 Leader Building; Cleveland, Ohio 44114-1498