



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-900516-103)

In The Matter Of:

SYNCOR CORPORATION
Frank R. Alto, R.Ph.
3721 King Avenue
Cleveland, Ohio 44106
(Terminal Distributor No. 02-231650)

INTRODUCTION

THE MATTER OF SYNCOR CORPORATION CAME TO HEARING ON OCTOBER 22, 1990 BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH R. SABINO, R.Ph. (presiding); GERALD CLOUSE, R.Ph.; METTA LOU HENDERSON, R.Ph.; NORMAN LEIBOW, R.Ph.; TIMOTHY MOORE, R.Ph.; BETTY NICHOL, R.Ph.; ROBERT VAL-ENTINE, R.Ph.; AND MELVIN WILCZYNSKI, R.Ph.

SYNCOR CORPORATION WAS NOT REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY JEANNY EATON, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) None

Respondent's Witnesses:

(1) David A. Hurwitz, Ph.D., R.Ph. - Syncor Corporation

(B) Exhibits

State's Exhibits:

- (1) Exhibit A - Notice of Opportunity issued to Syncor Corporation, 3025 E. Fourteenth Avenue, Columbus, Ohio, dated May 16, 1990.
- (2) Exhibit A1 - Renewal Application for Syncor Corporation, 3025 E. Fourteenth Avenue, Columbus, Ohio, showing Albert Easley as the responsible pharmacist, dated November 28, 1989.
- (3) Exhibit A2 - Ohio Board of Pharmacy Order in the matter of William Boyce Taylor, Docket No. D-880310-142, dated July 26, 1988.

- (4) Exhibit A3 - Prescriptions 393213, 393300, 395392, 400112, 400113, 401288, 401289, 402600, 402969, 402970, 402975.
- (5) Exhibit B - Notice of Opportunity issued to Syncor Corporation, 3721 King Avenue, Cleveland, Ohio, dated May 16, 1990.
- (6) Exhibit B1 - Renewal Application for Syncor Corporation, 3721 King Avenue, Cleveland, Ohio, showing Frank Alto as the responsible pharmacist, dated January 1, 1990.
- (7) Exhibit B2 - Certificate of Non-registration for Steven M. Schultz dated April 13, 1990.
- (8) Exhibit B3 - Ohio Board of Pharmacy Order in the matter of Steven M. Schultz, Docket No. D-900416-077, dated August 21, 1990.
- (9) Exhibit B4 - 381 prescriptions filled by Steven Schultz, who was not a licensed Ohio pharmacist at the time of the filling of the prescriptions.
- (10) Exhibit C - Hearing Request letter from William A. Kemmel, Jr., General Counsel for Syncor Corporation, dated June 4, 1990.
- (11) Exhibit D - Hearing Request letter from William A. Kemmel, Jr., General Counsel for Syncor Corporation, dated June 6, 1990.
- (12) Exhibit E - Hearing Schedule letter dated June 25, 1990.
- (13) Exhibit F - Hearing Continuance Request letter from David A. Hurwitz, Chief, Pharmacy Compliance, Syncor Corporation, dated July 30, 1990.
- (14) Exhibit G - Hearing Consolidation Request letter from David A. Hurwitz, Chief, Pharmacy Compliance, Syncor Corporation, dated August 16, 1990.
- (15) Exhibit H - Hearing Schedule & Consolidation Approval letter dated August 17, 1990.

Respondent's Exhibits:

- (1) Exhibit 1 - Two-page Memorandum to Jack Coffey from David Hurwitz dated January 29, 1988.
- (2) Exhibit 2 - Four-page Materials License Supplementary Sheet from the U.S. Nuclear Regulatory Commission for Syncor Corporation, License No. 34-16654-01MD, Docket or Reference number 030-11424, dated March 28, 1990.

FINDINGS OF FACT

- (1) From the evidence presented, the State Board of Pharmacy finds that the records of the Board of Pharmacy indicate that Frank R. Alto is the Responsible Pharmacist pursuant to Sections 4729.55(B) and 4729.27 of the Ohio Revised Code and Rule 4729-15-03 of the Ohio Administrative Code at Syncor Corporation, 3721 King Avenue, Cleveland, Ohio 44106, Terminal Distributor No. 02-231650.
- (2) From the evidence presented, the State Board of Pharmacy finds that Syncor Corporation, on or about March 6, 1989, ceased to satisfy the qualifications of a terminal distributor as set forth in Section 4729.55(C) of the Ohio Revised Code, to wit: adequate

safeguards were not assured to prevent the sale or other distribution of dangerous drugs by persons other than a pharmacist or practitioner. Such conduct violates Section 4729.55(B) of the Ohio Revised Code and Rule 4729-15-03 of the Ohio Administrative Code.

- (3) From the evidence presented, the State Board of Pharmacy finds that Syncor Corporation did, between the dates of March 6, 1989 and May 26, 1989, aid and abet in the compounding and/or dispensing of dangerous drugs by a person not a registered pharmacist or pharmacy intern under the personal supervision of a registered pharmacist, to wit: Syncor Corporation employed Steven Schultz, a person not registered as a pharmacist or pharmacy intern, to compound and dispense 381 nuclear prescriptions. Such conduct is in violation of Rule 4729-15-06 of the Ohio Administrative Code and Section 2923.03 of the Ohio Revised Code as it relates to Section 4729.28 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 (2) and (3) of the Findings Of Fact constitute violating the rules of the Board as provided in Division (A)(2) of Section 4729.57 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings Of Fact constitute violating the provisions of Chapter 4729. of the Revised Code as provided in Division (A)(3) of Section 4729.57 of the Ohio Revised Code.
- (3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings Of Fact constitute ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in Section 4729.55 of the Revised Code as provided in Division (A)(7) of Section 4729.57 of the Ohio Revised Code.

ORDER

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions concerning the terminal distributor license, No. 02-231650, held by Syncor Corporation:

(A) On the basis of paragraphs (1) and (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of three thousand dollars (\$3,000.00).

(B) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the terminal distributor license held by Syncor Corporation for 30 days, effective February 1, 1991.

(C) Further, the Board will set aside the suspension and one thousand dollars (\$1,000.00) of the three thousand dollar monetary penalty provided that Syncor Corporation appear before the Board during the January 1991 meeting and present written policies and procedures which have been adopted by the corporation to prevent the recurrence of these violations. Such policies and procedures must be acceptable to the Board.

The two thousand dollar (\$2,000.00) monetary penalty that will not be set aside 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 497 578 864

ORDER MAILED: DECEMBER 18, 1990

FZW/sb

By Franklin Z. Wickham
Franklin Z. Wickham, Executive Director

cc: Jeanny Eaton, Assistant Attorney General
William A. Kemmel, Jr., General Counsel; Syncor Corporation;
20001 Prairie Street; Chatsworth, California 91311
David A. Hurwitz, Ph.D., R.Ph.; Chief, Pharmacy Compliance;
Syncor Corporation; 1176 E. 38th Street; Cleveland, Ohio 44114