



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-940901-012)

In The Matter Of:

CHARLES V. SCHWALLIE, R.Ph.

3978 Sunday Lane
Maineville, Ohio 45039
(R.Ph. No. 03-3-04367)

INTRODUCTION

THE MATTER OF CHARLES V. SCHWALLIE CAME ON FOR CONSIDERATION ON APRIL 27, 1995, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: RUTH A. PLANT, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; JOHN L. HANNA, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; WAYNE C. MILLER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

CHARLES V. SCHWALLIE WAS NOT PRESENT NOR WAS HE REPRESENTED BY COUNSEL, AND THE STATE OF OHIO WAS REPRESENTED BY ROBERT J. McCLAREN, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Franklin Z. Wickham, Ohio State Board of Pharmacy
- (2) Deputy Tom Stratman, Clermont County Sheriff's Department
- (3) Michael Cluxton, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity letter dated September 1, 1994.
- (2) Exhibit 1A--Letter from Charles V. Schwallie dated September 6, 1994; and copy of letter from D. Vincent Faris dated July 20, 1994.

- (3) Exhibit 1B--Letter from Charles V. Schwallie dated September 22, 1994; and copy of letter from John F. Clement, M.D. dated April 14, 1993.
- (4) Exhibit 1C--Pharmacist File Front Sheet of Charles V. Schwallie showing original date of registration as July 18, 1949; and Renewal Application for Pharmacist License, No. 03-3-04367, for a license to practice pharmacy in Ohio from September 15, 1993, to September 15, 1994, of Charles V. Schwallie dated July 9, 1993.
- (5) Exhibit 2--Prescription No. 4006805.
- (6) Exhibit 3--Wal-Mart Pharmacy Medical Expenses of David Dennemann dated from January 1, 1991, to March 15, 1993.
- (7) Exhibit 4--Prescription No. 4008796.
- (8) Exhibit 5--Computer generated label for prescription number 4009408.
- (9) Exhibit 6--Computer generated label for prescription number 4009409.
- (10) Exhibit 7--Prescription No. 4010233.
- (11) Exhibit 8--Prescription No. 4010234.
- (12) Exhibit 9--Two-page voluntary statement of John Clement, M.D. signed and notarized on March 30, 1993.
- (13) Exhibit 12--Copy of Clermont County Sheriff's Department Evidence Tag No. D93-076 dated March 11, 1993.

Respondent's Exhibits:

- (1) None

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) On September 1, 1994, Charles V. Schwallie was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.
- (2) As demonstrated by return receipt of September 3, 1994, Charles V. Schwallie received the letter of September 1, 1994, informing him of the allegations against him, and his rights.
- (3) Charles V. Schwallie submitted two letters, on September 6, 1994, and on September 22, 1994, setting forth his position and contentions in writing, and has not requested a hearing in this matter.
- (4) Records of the Board of Pharmacy indicate that Charles V. Schwallie was originally licensed in the state of Ohio on July 18, 1949, pursuant to examination, and his license has been lapsed since September 15, 1994.

- (5) Charles V. Schwallie did, on or about the following dates, intentionally make and/or knowingly possess false or forged prescriptions, to wit: Charles V. Schwallie created and subsequently maintained in pharmacy files the following prescriptions which had not been authorized by a practitioner:

<u>Date</u>	<u>Rx No.</u>	<u>Drug</u>	<u>Qty.</u>
06-13-92	4006805	Fiorinal w/Codeine #3	60
07-23-92	4007300	Fiorinal w/Codeine #3	60
09-26-92	4007300	Fiorinal w/Codeine #3	60
11-16-92	4008796	Diazepam 5mg	100
01-05-93	4009408	Diazepam 5mg	100
01-05-93	4009409	Fiorinal w/Codeine #3	60
03-06-93	4010233	Fiorinal w/Codeine #3	100
03-06-93	4010234	Diazepam 5mg	100

Such conduct is in violation of Section 2925.23 of the Ohio Revised Code.

- (6) Charles V. Schwallie did, from June 13, 1992, through March 6, 1993, with the purpose to deprive, knowingly obtain or exert control over the property of another, Wal-Mart, beyond the express or implied consent of the owner, the property being dangerous drugs, to wit: Charles V. Schwallie stole 340 capsules of Fiorinal w/Codeine #3, a schedule III controlled substance, and 400 tablets of Diazepam 5mg, a schedule IV controlled substance, after having forged the prescriptions to cover for the thefts. 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 (5) and (6) 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.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (5) 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 Chapter 2925. 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Charles V. Schwallie:

- (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. 03-3-04367, held by Charles V. Schwallie 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. 03-3-04367, held by Charles V. Schwallie effective as of the date of the mailing of this Order.

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 the 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.