



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-980803-006)

In The Matter Of:

MARK JEFFREY SCHIRTZINGER, R.Ph.

324 Kinsey Road

Xenia, Ohio 45385

(R.Ph. No. 03-3-17133)

INTRODUCTION

THE MATTER OF MARK JEFFREY SCHIRTZINGER CAME TO HEARING ON JANUARY 5, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH J. MASLAK, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

MARK JEFFREY SCHIRTZINGER 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) Mark Jeffrey Schirtzinger, Respondent

Respondent's Witnesses:

- (1) None

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of five-page Settlement Agreement with the State Board of Pharmacy, Docket No. D-960212-038, in the matter of Mark Jeffrey Schirtzinger, effective July 13, 1997.
- (2) Exhibit 1A--Hearing Request letter dated July 30, 1998.
- (3) Exhibit 1B--Copy of Hearing Schedule letter dated August 3, 1998.
- (4) Exhibit 1C--Continuance Request letter dated October 22, 1998.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated October 23, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Three-ring binder containing Reinstatement Request of Mark J. Schirtzinger, R.Ph. and documentation for reinstatement petition (sections titled as follows: Settlement Agreement; Pro Contract and Documentation; Dr. Lunderman Examination Report; Testimonials; Greene Hall Treatment Information; Continuing Pharmacy Education Certificate; Urine Screen Reports 10/3/97 - Present; Urine Collection Documentation; Support Group Meeting Documentation; AA/Caduceus St. Francis; AA Greene Hall; Caduceus Attendance Roster) and additions as follows: copy of letter from Rodney E. Stone, M.D. with attached medical records of Mark Jeffrey Schirtzinger; copy of pages 959 through 966 of "Endocrine Disorders"; and copy of two-page letter from Jack C. Lunderman, Jr. M.D. dated October 31, 1998.

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) Mark Jeffrey Schirtzinger has not complied with the terms set forth in the Settlement Agreement with the State Board of Pharmacy, Docket No. D-960212-038, effective July 13, 1997.

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 Mark Jeffrey Schirtzinger:

- (A) On the basis of the Finding of Fact set forth above, the State Board of Pharmacy hereby denies the reinstatement petition of Mark Jeffrey Schirtzinger, R.Ph. No. 03-3-17133. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Mark Jeffrey Schirtzinger 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.
- (B) The Board will consider any petition filed by Mark Jeffrey Schirtzinger for a hearing, pursuant to Revised Code Chapter 119., upon the question of the reinstatement of his license to practice pharmacy in Ohio only if he has documentation adequate to prove that the following conditions have been met:

(1) Mark Jeffrey Schirtzinger must abide by the contract(s) with his treatment provider(s) for a minimum of one year. The contract(s) must provide:

- (a) Random, **observed** urine drug screens shall be conducted at least every three months.
 - (i) 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.
 - (ii) Alcohol and carisoprodol (Soma) must be added to the standard urine drug screen. Testing for alcohol must be conducted within forty-eight hours from the time the sample is given. A breathalyzer may be used

to test for alcohol, but an appropriately certified individual must conduct the test within twelve hours of notification.

- (iii) Results of urine 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.
 - (b) The intervener/sponsor shall provide copies of all urine screens to the Ohio Board of Pharmacy in a timely fashion.
 - (c) Regular attendance, a minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting is required.
 - (d) The program shall immediately report to the Ohio Board of Pharmacy any violations of the contract and/or lack of cooperation.
- (2) Mark Jeffrey Schirtzinger must provide the results of an examination of his chemical dependency status including an addictionology consultation and proposed treatment plan.
 - (3) Mark Jeffrey Schirtzinger must provide copies of all contract(s) with treatment provider(s) and written documentation from the treatment provider(s) regarding compliance with the program(s).
 - (4) Mark Jeffrey Schirtzinger must provide copies of all urine screen reports.
 - (5) Mark Jeffrey Schirtzinger may provide any testimonials from others.
 - (6) Mark Jeffrey Schirtzinger must provide original continuing pharmacy education certificates documenting compliance with the continuing education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code for the three-year period immediately preceding the date of the reinstatement petition hearing.

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

MOTION CARRIED.

SO ORDERED.



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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-960212-038)

In the Matter of:

MARK JEFFREY SCHIRTZINGER, R.Ph.

324 Kinsey Road

Xenia, Ohio 45385

(R.Ph. No. 03-3-17133)

This Settlement Agreement is entered into by and between Mark Jeffrey Schirtzinger, R.Ph. and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Mark Jeffrey Schirtzinger enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein.

Mark Jeffrey Schirtzinger is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against him, and in order to obviate the need to conduct an administrative hearing to consider the disciplinary sanctions against his license to practice pharmacy in the state of Ohio, Mark Jeffrey Schirtzinger enters into this Agreement on the basis of the following stipulations, admissions, and understandings:

- (A) The Ohio State Board of Pharmacy is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card, or impose a monetary penalty on the license holder for violation of any of the enumerated grounds.
- (B) On or about February 12, 1996, and again on August 12, 1996, pursuant to Chapter 119. of the Ohio Revised Code, Mark Jeffrey Schirtzinger was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Further, in accordance with Chapter 119. of the Ohio Revised Code, a hearing was requested and scheduled for April 23, 1997.
- (C) Mark Jeffrey Schirtzinger stipulates to the allegations stated in the Notice of Opportunity for Hearing letter dated February 12, 1996, and the Summary Suspension Order/Notice of Opportunity for Hearing letter dated August 12, 1996; and the Board herein adjudicates the same:

- (1) Records of the Board of Pharmacy indicate that Mark Jeffrey Schirtzinger was originally licensed in the state of Ohio on October 23, 1987, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. On August 12, 1996, Mark Jeffrey Schirtzinger's license was suspended in accordance with Section 3719.121(B) of the Ohio Revised Code.
- (2) Mark Jeffrey Schirtzinger did, on or about September 3, 1995, operate a vehicle in the state of Ohio while under the influence of alcohol and/or a drug of abuse, to wit: Mark Jeffrey Schirtzinger was observed by the Xenia Police Department to be driving while under the influence of alcohol and/or drugs at 6:30 a.m. Such conduct is in violation of Section 4511.19 of the Ohio Revised Code.
- (3) Mark Jeffrey Schirtzinger did, on or about September 3, 1995, possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Mark Jeffrey Schirtzinger possessed the following controlled substances outside the confines of a pharmacy and not for a legitimate medical purpose: 12 tablets of Diazepam 5mg, ~~5 tablets of Didrex 50mg~~, (MS) and 15 capsules of Ionamin 30mg. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (4) Mark Jeffrey Schirtzinger did, from June 1, 1995, through October 5, 1995, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Revco #478, 595 Ledbetter Road, Xenia, Ohio, beyond the express or implied consent of Revco, to wit: while practicing pharmacy Mark Jeffrey Schirtzinger stole 28 capsules of Ionamin 30mg, 100 tablets of Diazepam 5mg, 15 tablets of Diazepam 10mg, ~~5 tablets of Didrex 50mg~~, (MS) and 100 tablets of Zoloft 100mg. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) Mark Jeffrey Schirtzinger did, on or about August 3, 1996, possess a dangerous drug when the conduct was not in accordance with Chapters 3719., 4729, and 4731. of the Ohio Revised Code, to wit: within one hour after practicing pharmacy, Mark Jeffrey Schirtzinger possessed Carisoprodol for personal abuse and without a prescription. Such conduct is in violation of Section 4729.51(C)(3) of the Ohio Revised Code.
- (6) Mark Jeffrey Schirtzinger did, on or about August 3, 1996, operate a motor vehicle while under the influence of alcohol and/or drugs of abuse, to wit: Mark Jeffrey Schirtzinger was arrested by the Xenia Police Department after having been observed operating his car while impaired within one hour after practicing pharmacy. Such conduct is in violation of Section 4511.19 of the Ohio Revised Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Mark Jeffrey Schirtzinger knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) The removal of the Summary Suspension Order issued August 12, 1996, pursuant to Section 3719.121(B) of the Ohio Revised Code.
- (B) The indefinite suspension of his pharmacist identification card, No. 03-3-17133.

- (1) Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Mark Jeffrey Schirtzinger 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) 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.
- (C) September 1, 1997, or thereafter, the Board will consider any petition filed by Mark Jeffrey Schirtzinger for a hearing, pursuant to Revised Code Chapter 119. of the Ohio Revised Code, upon the question of the reinstatement of his license to practice pharmacy in Ohio. The Board will consider the reinstatement of the license only if the following conditions have been met:
- (1) Mark Jeffrey Schirtzinger must enter into a new contract with a limited treatment provider acceptable to the Board for a period of not less than five years from the effective date of this Agreement and, upon signing, submit a copy of the contract to the Board office. The contract must provide:
 - (a) random, **observed** urine drug screens shall be conducted at least every three months. The urine drug screens must report testing for alcohol; and must also report testing for creatinine or specific gravity of the sample as the dilutional standard;
 - (b) regular attendance, at least three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meetings, and at meetings of a professional support group, is required during outpatient treatment and/or during aftercare; and
 - (c) the program shall immediately report to the Board of Pharmacy any positive urine screens and/or other violations of the contract.
 - (2) Mark Jeffrey Schirtzinger upon petitioning the Board for reinstatement, must provide evidence of at least one year of documented sobriety including:
 - (a) the results of an examination of his chemical dependency status including an actionology consultation and proposed treatment plan;
 - (b) any testimonials from others;
 - (c) all contract(s) with treatment providers and written documentation from the treatment provider(s) regarding compliance with the program(s);
 - (d) copies of all urine screen reports; and
 - (e) original continuing pharmacy education certificates documenting 4.5 C.E.U.s in compliance with Chapter 4729-7 of the Ohio Administrative Code for the three-year period prior to the date of the reinstatement petition hearing. Two hours or 0.2 C.E.U.s of the 4.5 requirement must

be approved Jurisprudence courses in accordance with Rule 4729-7-02 of the Ohio Administrative Code.

If, in the judgment of the Board, Mark Jeffrey Schirtzinger appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Mark Jeffrey Schirtzinger acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Mark Jeffrey Schirtzinger waives any and all claims or causes of action he may have against the State of Ohio or the Board, and its members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement.

In the event the Board, in its discretion, does not approve this Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Mark Jeffrey Schirtzinger agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the Board President's signature below.

/s/ Mark Jeffrey Schirtzinger
Mark Jeffrey Schirtzinger, Respondent

/d/ 7-1-97
Date of Signature

/s/ Douglas Graff
Douglas E. Graff, Attorney for Respondent

/d/ 7/2/97
Date of Signature

/s/ Suzanne L. Neuber
Suzanne L. Neuber, President, Ohio State Board of Pharmacy

/d/ 7/13/97
Date of Signature

/s/ Mary L. Hollern
Mary L. Hollern, Ohio Assistant Attorney General

/d/ 7/14/97
Date of Signature