State Board of Pharmacy <> 77 S. High St., Room 1702; Columbus, OH 43215-6126 <> 614/466-4143 <> legal@bop.state.oh.us

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-030917-013, D-030917-014 and D-030917-015)

In The Matter Of:

B. ELISE MILLER, R.Ph.
MILLER PHARMACY
and
THREE RIVERS O.P.T.I.O.N. CARE, INC.
2171 Forest Hill
Coshocton, Ohio 43812
(R.Ph. No. 03-1-12257)
(TDDD No. 02-0084550 and 02-0517450)

This Settlement Agreement is entered into by and between B. Elise Miller, Miller Pharmacy and Three Rivers O.P.T.I.O.N. Care, Inc. (hereinafter referred to as "Respondents") 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.

Respondents voluntarily enter into this Agreement being fully informed of all their rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Respondents each acknowledge that by entering into this agreement each has waived all rights under Chapter 119. of the Revised Code.

Whereas, the Board is empowered by Sections 4729.16 and 4729.57 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, B. Elise Miller is licensed to practice pharmacy in the State of Ohio.

Whereas, Miller Pharmacy and Three Rivers O.P.T.I.O.N. Care, Inc. are licensed as Terminal Distributors of Dangerous Drugs in the State of Ohio.

Whereas, on or about September 17, 2003, pursuant to Chapter 119. of the Ohio Revised Code, Respondents were notified of the allegations or charges against them, their rights to hearings, their rights in such hearings, and their rights to submit contentions in writing. Respondents requested hearings; they were scheduled, consolidated and continued. The September 17, 2003, Notice of Opportunity for Hearing letters contain the following allegations or charges:

B. Elise Miller:

(1) Records of the Board of Pharmacy indicate that B. Elise Miller was originally licensed in the State of Ohio as a pharmacist on March 6, 1978, pursuant to examination and that her license expired on September 15, 2001. Records further reflect during the relevant time periods stated herein, B. Elise Miller was indicated as the Responsible Pharmacist at Miller Pharmacy.

(2) B. Elise Miller did, from September 15, 2001, through March 24, 2003, while not a registered pharmacist or pharmacy intern under the supervision of a registered pharmacist, practice pharmacy, to wit: after B. Elise Miller's license to practice pharmacy lapsed, she admittedly continued to practice pharmacy and dispense dangerous drugs. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(3) B. Elise Miller did, on or about March 24, 2003, and on occasions previous thereto, knowingly make false statements when the statements were made with purpose to mislead a public official in performing the public official's official function, to wit: B. Elise Miller repeatedly lied to Board of Pharmacy specialists and agents as follows:

(a) B. Elise Miller twice stated that she was not practicing pharmacy during the period of her pharmacist's license lapse;

(b) B. Elise Miller lied to agents of the Board about the status of the Responsible Pharmacist at facilities that she owns and that are licensed with the Board as terminal distributors;

(c) B. Elise Miller lied to an agent of the Board when she indicated that she submitted her renewal application during the week of March 17, 2003;

(d) B. Elise Miller lied to an agent of the Board when she indicated that a Board specialist had approved her system of managing Synagis dispensings.

Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

(4) B. Elise Miller did, on or about dates immediately preceding March 24, 2003, allow access to the physical confines of the pharmacy when not under the personal supervision of a pharmacist, to wit: in Three Rivers O.P.T.I.O.N. Care, Inc. she allowed the lone pharmacist to leave for lunch breaks or to work elsewhere without coverage by another pharmacist and without physically securing the pharmacy and its dangerous drug stocks. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code.

(5) B. Elise Miller did, on or about the following dates, knowingly make false statements when the statements were made with purpose to secure the issuance by a governmental agency of a license, to wit: B. Elise Miller submitted applications to the Board for renewal of the following terminal distributor of dangerous drugs licenses, where B. Elise Miller listed herself as a registered pharmacist in the position of Responsible Pharmacist:

02-0084550	date signed: 10-01-01
02-0517450	date signed: 10-04-01
02-0084550	date signed: 09-20-02
02-0517450	date signed: 01-02-03

Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

Miller Pharmacy:

(1) Records of the Board of Pharmacy indicate that Miller Pharmacy is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and James H. Sycks, R.Ph. is the Responsible Pharmacist pursuant to Rule 4729-5-11 of the Ohio Administrative Code and Sections 4729.27 and 4729.55 of the Ohio Revised Code.

(2) Miller Pharmacy did, from September 15, 2001, through March 24, 2003, cease to satisfy the qualifications of a terminal distributor of dangerous drugs as set forth in Section 4729.55 of the Ohio Revised Code, to wit: the pharmacy did not have a registered pharmacist in full and actual charge of the pharmacy during this time period, and adequate safeguards were not assured to prevent the sale or distribution of dangerous drugs by persons other than a pharmacist or licensed prescriber. Such conduct is in violation of Section 4729.27 of the Ohio Revised Code.

Three Rivers O.P.T.I.O.N. Care, Inc.:

(1) Records of the Board of Pharmacy indicate that Three Rivers O.P.T.I.O.N. Care, Inc. is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and B. Elise Miller is the owner of Three Rivers O.P.T.I.O.N. Care, Inc.

(2) Three Rivers O.P.T.I.O.N. Care, Inc. did, from September 15, 2001, through March 24, 2003, while not a pharmacist or pharmacy intern under the personal supervision of a pharmacist, compound, dispense, or sell dangerous drugs or otherwise engage in the practice of pharmacy, to wit: the pharmacy, through its owner, B. Elise Miller, whose pharmacist license had lapsed, dispensed dangerous drugs and/or practiced pharmacy. Such conduct is in violation of Section 4729.28 of the Ohio Revised Code.

(3) Three Rivers O.P.T.I.O.N. Care, Inc. did, from September 15, 2001, through March 24, 2003, allow access to the physical confines of the pharmacy when not under the personal supervision of a pharmacist, to wit: when the lone pharmacist on duty was permitted to leave to cover for lunch breaks of the pharmacist at Miller Pharmacy, the pharmacy was left without coverage by another pharmacist and the pharmacy and its dangerous drug stocks were not physically secured. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code.

(4) Three Rivers O.P.T.I.O.N. Care, Inc. did, from September 15, 2001, through March 24, 2003, cease to satisfy the qualifications of a terminal distributor of dangerous drugs as set forth in Section 4729.55 of the Ohio Revised Code, to wit: the pharmacy did not have a registered pharmacist in full and actual charge of the pharmacy during this time period, and adequate safeguards were not assured to prevent the sale or distribution of dangerous drugs by persons other than a pharmacist or licensed prescriber. Such conduct is in violation of Section 4729.27 of the Ohio Revised Code.

(5) Three Rivers O.P.T.I.O.N. Care, Inc. did, on or about May 3, 2003, and dates subsequent, cease to satisfy the qualifications of a terminal distributor of dangerous drugs as set forth in Section 4729.55 of the Ohio Revised Code, to wit: the pharmacy's Responsible Pharmacist resigned, and was not replaced with another Responsible

Pharmacist. As such, the pharmacy did not have a registered pharmacist in full and actual charge of the pharmacy during this time period, and adequate safeguards were not assured to prevent the sale or distribution of dangerous drugs by persons other than a pharmacist or licensed prescriber. Such conduct is in violation of Section 4729.27 of the Ohio Revised Code.

(6) Three Rivers O.P.T.I.O.N. Care, Inc. did, on or about April 23, 2003, and on dates subsequent, fail to keep records of the practice of pharmacy subject to inspection by the Board, and it did fail to make records readily available and/or promptly produce such records upon the request of a Board of Pharmacy agent, to wit: though an agent of the Board requested records of drugs dispensed, the pharmacy has failed to produce the records as requested. Such conduct is in violation of Section 4729.37 of the Ohio Revised Code and/or Rules 4729-5-27 and 4729-5-28 of the Ohio Revised Code.

Respondents neither admit nor deny the allegations stated in the Notice of Opportunity for Hearing letters dated September 17, 2003; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Respondents knowingly and voluntarily agree with the State Board of Pharmacy to the following:

(A) B. Elise Millers' pharmacist identification card, No. 03-1-12257, will be suspended for six months from the effective date of this Agreement.

(B) B. Elise Miller agrees to the imposition of a monetary penalty of three thousand dollars ($3,000.00), due and owing within thirty (30) days from the effective date of this Agreement.

(C) Miller Pharmacy agrees to the imposition of a monetary penalty of three thousand dollars ($3,000.00), due and owing within thirty (30) days from the effective date of this Agreement.

(D) Three Rivers O.P.T.I.O.N. Care, Inc. agrees to the imposition of a monetary penalty of seventeen thousand five hundred dollars ($17,500), due and owing within thirty (30) days from the effective date of this agreement.

Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed forms to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6126.

Respondents acknowledge that they have 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.

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Respondents waive any and all claims or causes of action they may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Respondents waive any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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 date of the Board President's signature below.

SIGNED AND EFFECTIVE APRIL 5, 2004