



OHIO STATE BOARD OF PHARMACY

77 South High Street, 17th Floor; Columbus, Ohio 43266-0320

-Equal Opportunity Employer and Service Provider-

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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-961217-022)

In the Matter of:

KMART PHARMACY #4169

2600 Lincoln Way E.

Massillon, Ohio 44646

(Terminal Distributor No. 02-0149300)

This Settlement Agreement is entered into by and between Kmart Pharmacy #4169 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.

Kmart Pharmacy #4169 enters into this Agreement being fully informed of its 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.

Kmart Pharmacy #4169 is knowingly and voluntarily acknowledging that, in order to settle the charges that have been filed by the Board against Kmart Pharmacy #4169, and in order to obviate the need to conduct an administrative hearing to consider disciplinary sanctions against Kmart's license, this Agreement is entered into on the basis of the following stipulations, admissions, and understandings. Kmart Pharmacy #4169 neither admits nor denies the allegations stated in the Notice of Opportunity for hearing letter; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same:

- (1) The Ohio State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew, or impose a monetary penalty on any terminal distributor of dangerous drugs for violation of any of the enumerated grounds.
- (2) Kmart Pharmacy #4169 did, from December, 1992, through June, 1993, fail to provide effective and approved controls and procedures to guard against theft and diversion of dangerous drugs, to wit: when thefts of controlled substances were reported by the practicing pharmacists to Kmart security and district managers on a monthly basis, Kmart Pharmacy #4169 did nothing to change its controls and/or procedures to prevent further thefts or losses. Such conduct is in violation of Rule 4729-9-05(A) of the Ohio Administrative Code.
- (3) Kmart Pharmacy #4169 did, from December, 1992, through June, 1993, fail to notify the Board of Pharmacy, the Drug Enforcement Administration (DEA), and local law

enforcement authorities pursuant to Section 2921.22 of the Ohio Revised Code upon discovery of the theft or significant loss of controlled substances, to wit: knowing that the following thefts and/or significant losses of controlled substances had occurred, and though the practicing pharmacists reported to Kmart district managers, Kmart Pharmacy #4169 did not report them:

<u>Drug</u>	<u>Shortage</u>
Demerol 50mg	1
Oxycodone with APAP 5mg	9
Oxycodone with ASA 5mg	1
Ritalin 5mg	115
Methylphenidate 5mg	27
Methylphenidate 10mg	29
Methylphenidate 20mg	110
Ritalin SR 20mg	1

Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code, and if proven constitutes violating a rule of the Board within the meaning of Section 4729.57 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, Kmart Pharmacy #4169 knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

Kmart Pharmacy #4169 agrees to the imposition of a monetary penalty of three thousand dollars (\$3,000.00) due and owing within 30 days of the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Kmart Pharmacy #4169 appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, 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.

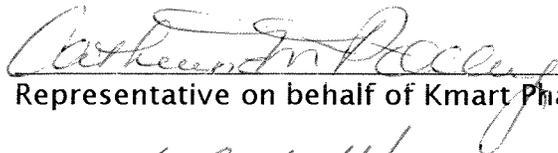
Kmart Pharmacy #4169 acknowledges that it has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Kmart Pharmacy #4169 waives any and all claims or causes of action it 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.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, 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. Kmart Pharmacy

#4169 agrees that should the Board reject this Agreement and if this case proceeds to hearing, it will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

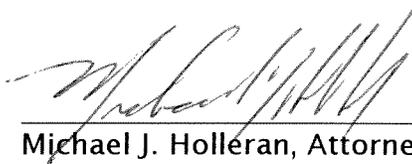
This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.



Representative on behalf of Kmart Pharmacy #4169

10-31-97

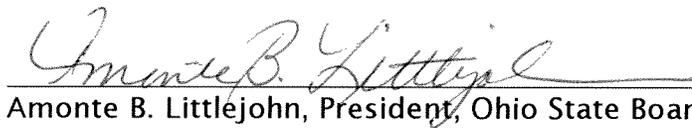
Date of Signature



Michael J. Holleran, Attorney for Respondent

11/18/97

Date of Signature



Amonte B. Littlejohn, President, Ohio State Board of Pharmacy

12/8/97

Date of Signature



Sally Ann Steuk, Ohio Assistant Attorney General

12-9-97

Date of Signature