



OHIO STATE BOARD OF PHARMACY

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-Equal Opportunity Employer and Service Provider-

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SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket Nos. D-040518-073, D-040518-074, D-040518-076,
D-040621-077 and D-041122-035)

In the Matter of:

RITE AID DISCOUNT PHARMACY #3086

RITE AID #3088

RITE AID OF OHIO, INC. #1186

RITE AID DISCOUNT PHARMACY #1659

RITE AID DISCOUNT PHARMACY #2304

C/O KAREN MANKOWSKI

(Terminal Distributor Nos. 02-0094400, 02-0094750, 02-0181100,
02-0438400 and 02-0583400)

This settlement agreement is entered into by and between Rite Aid Discount Pharmacy #3086, Rite Aid #3088, Rite Aid of Ohio, Inc. #1186, Rite Aid Discount Pharmacy #1659 and Rite Aid Discount Pharmacy #2304 (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 enter into this agreement being fully informed of 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, the right to appeal. Respondents acknowledge that by entering into this agreement each has waived all rights under Chapter 119. of the Revised Code.

WHEREAS, the State Board of Pharmacy is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty on the license holder, for violation of any of the enumerated grounds of Section 4729.57 of the Ohio Revised Code.

WHEREAS, Respondents are licensed terminal distributors of dangerous drugs in the State of Ohio.

WHEREAS, on or about May 18, 2004, June 22, 2004, and November 22, 2004, pursuant to Chapter 119. of the Ohio Revised Code, Respondents were notified of the allegations or charges against them, their rights to a hearing, their rights in such hearing, and their rights to submit contentions in writing. Respondents requested hearings; they were scheduled, consolidated, and continued. The Notices of Opportunity for Hearing contain the following allegations or charges:

Rite Aid Discount Pharmacy #3086:

- (1) Records of the Board of Pharmacy indicate that Rite Aid Discount Pharmacy #3086, 1248 North Broad Street, Fairborn, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Jerry L. Durst 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) Rite Aid Discount Pharmacy #3086 did, on or about August 31, 2003, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of the following controlled substances, he reported it immediately to Rite Aid Loss Prevention; however, required notification to the Board was not made.

Drug	Strength	Qty
lorazepam	1 mg	1000
Xanax	1 mg	300
alprazolam	0.25 mg	370
alprazolam	1 mg	850
alprazolam	2 mg	770
clonazepam	2 mg	50
hydrocodone/APAP	5/500 mg	107
hydrocodone/APAP	7.5/750 mg	400
Concerta	27 mg	100
Percocet	2.5/500 mg	20

Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

Rite Aid #3088:

- (1) Records of the Board of Pharmacy indicate that Rite Aid #3088, 4328 North Main Street, Dayton, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Jerome F. Holtel 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) Rite Aid #3088 did, on or about August 12, 2003, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of 50 unit doses of oxycodone with APAP 5 mg/325 mg, a schedule II controlled substance, he reported it to Rite Aid supervisors and indicated that an employee was terminated after being found stealing the drugs. It was later determined by Rite Aid that the pharmacist had miscounted the drugs. A DEA 106 form indicating the theft or other significant loss of the drugs was completed and filed; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

Rite Aid of Ohio, Inc. #1186:

- (1) Records of the Board of Pharmacy indicate that Rite Aid of Ohio, Inc. #1186, 1805 South Limestone Street, Springfield, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Martin D. Sutter, 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) Rite Aid of Ohio, Inc. #1186 did, on or about January 22, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of 500 unit doses of diazepam 2 mg and 125 unit doses of lorazepam 1 mg, schedule IV controlled substances, he reported it immediately to his supervisor; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.
- (3) Rite Aid of Ohio, Inc. #1186 did, on or about March 12, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. The store's pharmacist detected a shortage of 100 unit doses of methylphenidate, a schedule II controlled substance, while checking the perpetual inventory. The next day, while conducting a count of the schedule II controlled substances, the pharmacist discovered a loss of 1 Adderall 15 mg tablet. The pharmacist reported it immediately to his supervisor; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

Rite Aid Discount Pharmacy #1659:

- (1) Records of the Board of Pharmacy indicate that Rite Aid Discount Pharmacy #1659, 437 North Wolf Creek Street, Brookville, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and Sam Jawahar, 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) Rite Aid #1659 did, on or about March 31, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When the store's pharmacist detected a shortage of 5 Duragesic 100 mcg patches, schedule II controlled substances, he reported it to his supervisor; however, required notification to the Board was not made. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.

Rite Aid Discount Pharmacy #2304:

- (1) Records of the Board of Pharmacy indicate that Rite Aid Discount Pharmacy #2304, 2990 Derr Road, Springfield, Ohio, is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect that during the relevant time periods stated herein, Daniel L. Deem, R.Ph. was the District Manager and/or Responsible Pharmacist pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.

- (2) Rite Aid Discount Pharmacy #2304 did, on or about March 10, 2004, and March 17, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. Though the store detected a shortage of Concerta (March 10, 2004) and methylphenidate (March 17, 2004), Schedule II Controlled Substances, the required notification to the Board was not made until March 26, 2004; further, this notification indicated a false date of April 9, 2004, as the date of discovery of the loss of methylphenidate. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.
- (3) Rite Aid Discount Pharmacy #2304 did, on or about April 28, 2004, fail to immediately notify the Ohio State Board of Pharmacy by telephone upon discovery of the theft or significant loss of any dangerous drug or controlled substance. When a loss of Duragesic, a Schedule II Controlled Substance, was detected, Rite Aid Discount Pharmacy #2304, did not notify the Board. Such conduct is in violation of Rule 4729-9-15 of the Ohio Administrative Code.
- (4) Rite Aid Discount Pharmacy #2304 did, from February 23, 2004, through May 24, 2004, and dates thereafter, fail to employ a Responsible Pharmacist who was physically present in the pharmacy a sufficient amount of time to provide supervision and control, to wit: the pharmacist designated as the Responsible Pharmacist resigned on February 23, 2004. The designated replacement as the Responsible Pharmacist was the district manager, Daniel Deem, effective March 26, 2004, and was physically in the store only a few times. Deem was admittedly responsible for forty stores, and could not perform both functions: district manager and Responsible Pharmacist. Such conduct is in violation of Rule 4729-5-11 of the Ohio Administrative Code.

Respondents, Rite Aids admit the allegations stated in the Notices of Opportunity for Hearing letters dated May 18, 2004, June 22, 2004 and November 22, 2004, as reiterated herein.

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) Respondents agree to the collective imposition of a monetary penalty of five thousand dollars (\$5,000.00), due and owing within thirty (30) days from the effective date of the Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form 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.

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 agreement embodies the entire agreement between and of the parties. There are no express or implied promises, guarantees, terms, covenants, conditions, or obligations other than those contained herein; and this agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

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.

Karen Mankowski for Respondents

07/21/05
Date of Signature

David W. Grauer, Attorney for Respondents

07/16/05
Date of Signature

Suzanne R. Eastman, President, Ohio State Board of Pharmacy

08/08/05
Date of Signature

Sally Ann Steuk, Ohio Assistant Attorney General

08/08/05
Date of Signature