

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY  
(Docket No. D-021119-035)

In the Matter of:

**BIG BEAR PHARMACY #208**  
c/o William Joseph Gongola, R.Ph.)  
1171 Hill Road North  
Pickerington, Ohio 43147  
(Terminal Distributor No. 02-0599100)

This Settlement Agreement is entered into by and between Big Bear Pharmacy #208 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.

Big Bear Pharmacy #208 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, the right to a formal adjudication hearing on the issues contained herein.

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, Big Bear Pharmacy #208 is a licensed terminal distributor of dangerous drugs in the State of Ohio.

WHEREAS, on or about November 19, 2002, pursuant to Chapter 119. of the Ohio Revised Code, Big Bear Pharmacy #208 was notified of the allegations or charges against it, its right to a hearing, its rights in such hearing, and its right to submit contentions in writing. Big Bear Pharmacy #208 requested a hearing; it was scheduled and continued. The November 19, 2002, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that Big Bear Pharmacy #208 is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs and William J. Gongola 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) Big Bear Pharmacy #208 did, on or about July 18, 2000 to March 5, 2002, fail to provide "supervision and control" of dangerous drugs as required in Section 4729.55(B) of the Revised Code, and "adequate safeguards" to assure that dangerous drug are being distributed in accordance with all state and federal laws as required in Section 4729.55(C) of the Revised Code, to wit: a technician was given authority to order all medications from wholesalers, checked the orders when received, and stocked the shelves with the medications, without any supervision. Such conduct is in violation of Rule 4729-9-11 of the Ohio Administrative Code and is not in accordance with Section 4729.55 of the Ohio Revised Code.

- (3) Big Bear Pharmacy #208 did, on or about July 18, 2000 to March 5, 2002, fail to provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs, to wit: the following drugs were diverted from the pharmacy without adequate detection and/or prevention:

Drug Type	Strength	Shortage	% Short
diazepam	10 mg	3,613	60 %
diazepam	2 mg	177	15%
diazepam	5 mg	3,681	34%
hydrocodone/APAP	5/500	6,253	16%
hydrocodone/APAP	10/325	5,199	40%
hydrocodone/APAP	10/500	2,894	36%
hydrocodone/APAP	10/660	1,589	40%
hydrocodone/APAP	5/325	18	2%
hydrocodone/APAP	7.5/325	100	50%
OxyContin	10 mg	41	41%
OxyContin	20 mg	236	3%
OxyContin	40 mg	120	0.4%
OxyContin	80 mg	201	0.6%
OxyContin	160 mg	100	50%
carisoprodol / soma	350 mg	11,143	49%
Vicoprofin	200/7.5	470	27%
phentermine	37.5 mg	5,548	76%

Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Big Bear Pharmacy #208 knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (1) Big Bear Pharmacy #208 agrees to the imposition of a monetary penalty of Two Thousand Dollars (\$2000.00) 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 43215-6126.
- (2) Big Bear Pharmacy #208 agrees to adopt and implement the policies as submitted to the Ohio State Board of Pharmacy in its letter dated January 2, 2003, and amended by the Board's letter dated January 8, 2003, so as to include "drugs of abuse" as well as controlled substances in said policies. These policies are incorporated into this agreement as if fully rewritten herein.

Big Bear Pharmacy #208 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.

Big Bear Pharmacy #208 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. Big Bear Pharmacy #208 waives 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.

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. Big Bear Pharmacy #208 agrees that should the Board reject this Agreement and if this case proceeds to hearing, Big Bear Pharmacy #208 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.

**SIGNED AND EFFECTIVE MARCH 3, 2003**