



# 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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URL: <http://www.pharmacy.ohio.gov>

## SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket Number D-120828-264)

In The Matter Of:

**Wal-Mart Pharmacy #10-2350**

**C/O Rick Irby, D.Ph., CHC**

702 S.W. 8<sup>th</sup> Street

Bentonville, AR 72716

(TDDD No. 02-0850200)

This Settlement Agreement is entered into by and between Wal-Mart Pharmacy #10-2350 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.

Wal-Mart Pharmacy #10-2350 voluntarily 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, and the right to appeal. Wal-Mart Pharmacy #10-2350 acknowledges that by entering into this Agreement it has waived its rights under Chapter 119. of the Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, limit, 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, Wal-Mart Pharmacy #10-2350 is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about August 28, 2012, pursuant to Chapter 119. of the Ohio Revised Code, Wal-Mart Pharmacy #10-2350 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. Wal-Mart Pharmacy #10-2350 requested a hearing; it was scheduled and continued. The August 28, 2012, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that Wal-Mart Pharmacy #10-2350 is licensed with the State Board of Pharmacy as a Terminal Distributor of Dangerous Drugs. Records further reflect during the relevant time periods stated herein, Steve Mantel was 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) Wal-Mart Pharmacy #10-2350 did, on or about July 9, 2011, cease to satisfy the qualifications of a terminal distributor, to wit: adequate safeguards were not in place to assure that Wal-Mart Pharmacy #10-2350 would carry on the business of a terminal distributor of dangerous drugs in a manner that allowed pharmacists and pharmacy interns to practice pharmacy in a safe and effective manner. Specifically, after RX #7060538 was prepared for a patient, it was then dispensed to the incorrect patient who had a similar last name. Thus the patient received Levothyroxine 88 mcg instead of her prescription for Chantix. Pharmacy procedures allowed this situation to occur; such situations being hazardous to patients' health.

Wal-Mart Pharmacy #10-2350 admits to the facts stated in the Notice of Opportunity for Hearing letter dated August 28, 2012, but neither admits nor denies any violation of law; 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, Wal-Mart Pharmacy #10-2350 knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

(A) Wal-Mart Pharmacy #10-2350 agrees to the imposition of a monetary penalty of five hundred dollars (\$500.00) due and owing within 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, Room 1702, Columbus, Ohio 43215-6126.

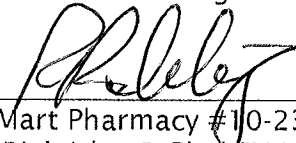
If, in the judgment of the Board, Wal-Mart Pharmacy #10-2350 appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Wal-Mart Pharmacy #10-2350 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.

Wal-Mart Pharmacy #10-2350 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. Wal-Mart Pharmacy #10-2350 waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

Wal-Mart Pharmacy #10-2350,  
C/O Rick Irby, D.Ph., CHC  
Page 3  
Settlement Agreement

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.

  
\_\_\_\_\_  
Wal-Mart Pharmacy #10-2350  
C/O Rick Irby, D.Ph., CHC, Respondent

8/9/13  
\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Thomas W. Hess, Attorney for Respondent

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Kevin J. Mitchell, R.Ph., President  
Ohio State Board of Pharmacy

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Date of Signature

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Charissa D. Payer, Ohio Assistant Attorney General

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Date of Signature