

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

(Docket No. D-030417-067)

In The Matter Of:

KELLY NICOLE LUTZ, R.Ph.

7906 Cheriton Circle
Reynoldsburg, Ohio 43068
(R.Ph. No. 03-2-23148)

This Settlement Agreement is entered into by and between Kelly Nicole Lutz 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.

Kelly Nicole Lutz voluntarily enters into this Agreement being fully informed of her 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. Kelly Nicole Lutz acknowledges that by entering into this agreement she has waived her 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, 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, Kelly Nicole Lutz is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about October 17, 2003, pursuant to Chapter 119. of the Ohio Revised Code, Kelly Nicole Lutz was notified of the allegations or charges against her, her right to a hearing, her rights in such hearing, and her right to submit contentions in writing. Kelly Nicole Lutz requested a hearing; it was scheduled and continued. The October 17, 2003, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that Kelly Nicole Lutz was originally licensed in the State of Ohio on August 11, 1998, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect during the relevant time periods stated herein, Kelly Nicole Lutz was the Responsible Pharmacist at Kroger Pharmacy #290 pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Kelly Nicole Lutz did, on or about August 15, 2001, misbrand a drug, to wit: when Kelly Nicole Lutz received a prescription for 90 dosage units of propylthiouracil 50 mg, to be taken one tablet three times per day, with two refills, she dispensed Rx# 6956310 Purinethol 50 mg, which had not been prescribed by the physician. The patient was subsequently harmed. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (3) Kelly Nicole Lutz did, on or about August 15, 2001, when dispensing Rx# 6956310, fail to offer to counsel the patient or caregiver, to wit: neither Kelly Nicole Lutz nor her designee personally offered to counsel the patient. Such conduct is in violation of Rule 4729-5-22 of the Ohio Administrative Code.

Kelly Nicole Lutz neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated October 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, Kelly Nicole Lutz knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Kelly Nicole Lutz agrees to the imposition of a monetary penalty of two hundred fifty dollars (\$250.00) due and owing within thirty 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 43266-0320.
- (B) In addition to any and all other continuing pharmacy education requirements, Kelly Nicole Lutz agrees to attend, within one year of the effective date of this agreement, 2.0 CEU hours of continuing education, for preventing prescription errors in a retail pharmacy.

If, in the judgment of the Board, Kelly Nicole Lutz 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, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may 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.

Kelly Nicole Lutz acknowledges that she 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.

Kelly Nicole Lutz waives any and all claims or causes of action she 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. Kelly Nicole Lutz waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

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. Kelly Nicole Lutz agrees that should the Board reject this Agreement and if this case proceeds to hearing, she 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 FEBRUARY 2, 2004