



**STATE OF
OHIO**
BOARD OF PHARMACY

IN THE MATTER OF:

CASE NO. A-2023-0340

Rite Aid #3041

28600 Chagrin Boulevard
Beachwood, Ohio 44122

Inactive License No. 02-1069000

SETTLEMENT AGREEMENT WITH THE STATE OF OHIO BOARD OF PHARMACY

This Settlement Agreement (Agreement) is entered into by the State of Ohio Board of Pharmacy (Board) and Rite Aid #3041 for the purpose of resolving all issues between the parties relating to the Board investigation of drug security. Together, the Board and Rite Aid #3041 are referred to hereinafter as “the parties.”

JURISDICTION

1. Pursuant to Section 4729.57 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit or refuse to grant or renew any license issued pursuant to Section 4729.54 of the Ohio Revised Code.
2. Rite Aid #3041, previously located at 28600 Chagrin Boulevard, Beachwood, Ohio, has an inactive Terminal Distributor of Dangerous Drugs license, number 02-1069000.

FACTS

1. The Board initiated an investigation of Rite Aid #3041, Terminal Distributor of Dangerous Drugs license number 02-1069000, related to Rite Aid #3041’s drug security.
2. On or about July 23, 2024, the Board sent a Notice of Opportunity for Hearing to Rite Aid #3041, which outlined the allegations and provided notice of its right to a hearing, its rights in such hearing, and its right to submit contentions in writing.

WHEREFORE, the parties desire to resolve the issues relating to the above-referenced findings without resorting to further administrative proceedings.

TERMS

77 South High Street, 17th Floor, Columbus, Ohio 43215

T: (614) 466.4143 | F: (614) 752.4836 | contact@pharmacy.ohio.gov | www.pharmacy.ohio.gov



NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Rite Aid #3041 neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated July 23, 2024; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Rite Aid #3041 agrees to pay to the Board a monetary penalty the amount of \$1,000.00. This fine will be attached to your license record and must be paid no later than 180 days from the effective date of this Agreement. To pay this fine you must login to www.elicense.ohio.gov and process the items in your cart.
4. The Board hereby imposes a written reprimand on Rite Aid #3041's inactive TDDD license, number 02-1069000.
5. Rite Aid #3041 agrees and acknowledges that this Board disciplinary action must be disclosed to the proper licensing authority of any state or jurisdiction, as required by any such state or jurisdiction, in which it currently holds a professional license, including the Board on renewal applications or applications for a new license.
6. Rite Aid #3041 agrees to comply with all federal and state requirements related to Terminal Distributors of Dangerous Drugs, including but not limited to, Ohio Revised Code Chapter 4729, and the Rules adopted thereunder, Chapter 3719, and the Rules adopted thereunder, Chapter 3715, and the Rules adopted thereunder as well as the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301 and Chapter 21, Section 360 of the United States Code, and Section 207.20 of the Code of Federal Regulations. Any violation by Rite Aid #3041 of the terms of one or more federal or state requirements may constitute sufficient grounds for further enforcement action related to any licenses granted to Rite Aid #3041 by the Board and will NOT discharge Rite Aid #3041 from any obligation under the terms of this Agreement.
7. Rite Aid #3041 agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Rite Aid #3041 understands that it has the right to be represented by counsel for review and execution of this agreement.
9. This Agreement is binding upon any and all successors, assigns, affiliates, and subsidiaries of the parties or any other corporation through whom or with whom Rite Aid #3041 will operate.

10. Rite Aid #3041 waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code, and waives any right to an appeal.
11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
15. This Agreement shall become effective upon the date of the Board President's signature below.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties to this Agreement have executed it and/or cause it to be executed by their duly authorized representatives.

Approved by:

Jermaine Smith
Jermaine Smith, VP Government & Regulatory Affairs,
on behalf of, Rite Aid #3041, Respondent

09/25/2024
Date of Signature

Attorney for Respondent (if applicable)

Date of Signature

Mindy Ferris
Mindy Ferris, RPh, President,
State of Ohio Board of Pharmacy

09.27.2024
Date of Signature



-THIS IS A RED INK STAMP-
I certify this to be a true and exact copy of the original document on file with the Ohio State Board of Pharmacy.
Steven W. Schierholt
Steven W. Schierholt, Esq., Executive Dir.
Date: 7/23/2024
-MUST HAVE BOARD SEAL TO BE OFFICIAL-

**NOTICE OF OPPORTUNITY FOR HEARING
PROPOSAL TO TAKE DISCIPLINARY ACTION AGAINST LICENSEE**

IN THE MATTER OF:

CASE NO. A-2023-0340

Rite Aid #3041

Inactive License No. 02-0169000

28600 Chagrin Boulevard
Beachwood, Ohio 44122

July 23, 2024

Dear Rite Aid #3041:

You are hereby notified, in accordance with the provisions of Section 119.07 of the Ohio Revised Code the Ohio Board of Pharmacy (Board) proposes to take action against your license as a Terminal Distributor of Dangerous Drugs (TDDD) under authority of Section 4729.57 of the Revised Code.

JURISDICTION

1. Pursuant to section 4729.57 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to section 4729.55 of the ORC to practice as a TDDD in the state of Ohio. Additionally, Section 4729.57 of the Ohio Revised Code grants the Board the authority to impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense or \$1,000 if the acts committed have not been classified as an offense by the ORC.
2. Rite Aid #3041, previously located at 28600 Chagrin Boulevard, Beachwood, Ohio, has an active TDDD license with the Board under license number 02-0169000, which, at the time the conduct occurred, listed Ashley Thomas, RPh as the Responsible Person.

ALLEGATIONS

1. On or about February 22, 2023, Rite Aid #3041, previously located at 28600 Chagrin Boulevard, Beachwood, Ohio, filed a Theft and Significant Loss Report. The investigation revealed the cause of the loss was unknown. The loss included 45 tablets of Clonazepam 1mg, a Schedule IV controlled substance.
2. Between on or about April 29, 2021 and April 29, 2023 (24 months) Rite Aid #3041 has submitted seven initial notifications and two Theft and Significant Loss Reports. During this time period, the following unexplained losses were reported:

- a. December 26, 2021: oxycodone/acetaminophen 5mg/325mg, 8 tablets
 - b. January 30, 2022: zolpidem tartrate 10mg, 14 tablets
 - c. April 4, 2022: oxycodone HCl/acetaminophen 5mg/325mg, 37 tablets
 - d. May 1, 2022: butalbital-acetaminophen-caffeine 50/325/40mg, 180 tablets
 - e. October 23, 2022: alprazolam .25mg, 30 tablets
 - f. December 30, 2022: lorazepam .5mg, 30 tablets
 - g. January 28, 2023: clonazepam 1mg, 45 tablets
 - h. February 20, 2023: clonazepam .5mg, 5 tablets
 - i. February 20, 2023: clonazepam 1mg, 30 tablets
 - j. April 9, 2023: butalbital-acetaminophen-caffeine 50/325/40mg, 5 tablets
 - k. April 9, 2023: lorazepam 2mg, 6 tablets
 - l. April 9, 2023: zolpidem tartrate 5mg, 20 tablets
3. An inspection was conducted by agents of the Board on or about May 9, 2023. As a result of the inspection, a written response was required for: theft and significant loss of drugs. A response was received by the Board on or about June 8, 2023. Diversion was not suspected.
 4. On June 28, 2023, Rite Aid #3041 filed an initial notification for the loss of eight alprazolam 2mg tablets. Michael Esterak, Senior Leader of Investigations, stated the loss was discovered during the monthly count. The cause of the loss was unknown. The loss was deemed to be non-reportable for DEA purposes and no DEA-106 Form was submitted to the Board.

POTENTIAL VIOLATIONS OF LAW

1. Such conduct as set forth in Allegations Section, if proven, constitutes a violation of Section 4729.55(D) of the ORC, as effective March 31, 2021, TDDD license requirements, each violation punishable by a maximum penalty of \$1,000: Adequate safeguards are assured that the applicant will carry on the business of a terminal distributor of dangerous drugs in a manner that allows pharmacists and pharmacy interns employed by the terminal distributor to practice pharmacy in a safe and effective manner.
2. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of each of the following divisions of Section 4729.57(B) of the ORC, each violation punishable by a maximum penalty of \$1,000:
 - a. Violating any rule of the board, ORC Section 4729.57(B)(2); and/or
 - b. Violating any provision of this chapter, ORC Section 4729.57(B)(3); and/or
 - c. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, ORC Section 4729.57(B)(7); and/or
 - d. Any other cause for which the board may impose discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.57(B)(10).

3. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of the following sections of Rule 4729:5-3-14 of the OAC, as effective March 1, 2020, each punishable by a maximum penalty of \$500: All terminal distributors of dangerous drugs shall provide effective controls and procedures to:
 - a. Deter and detect the theft and diversion of dangerous drugs, OAC Rule 4729:5-3-14(A)(1); and/or
 - b. Ensure supervision and control of dangerous drugs, as required in division (B) of section 4729.55 of the Revised Code, and adequate safeguards to ensure that dangerous drugs are being distributed in accordance with all state and federal laws, as required in section 4729.55 of the Revised Code, OAC Rule 4729:5-3-14(A)(2).

4. Such conduct as set forth in Allegations Section, if proven, each constitutes a violation of the following sections of Rule 4729:5-4-01 of the OAC, as effective March 1, 2019, and April 25, 2022, each violation punishable by a maximum penalty of \$1,000:
 - a. Violating any rule of the board, OAC Rule 4729:5-4-01(B)(2); and/or
 - b. Violating any provision of Chapter 4729. Of the Revised Code, OAC Rule 4729:5-4-01(B)(3); and/or
 - c. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, OAC Rule 4729:5-4-01(B)(7).

5. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of the following sections of Rule 4729:5-2-01 of the OAC, Responsible Person of a Terminal Distributor, as effective March 1, 2019, and April 25, 2022, each violation punishable by a maximum penalty of \$1,000:
 - a. The responsible person shall be responsible for the practice of the profession of pharmacy, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(A)(2); and/or
 - b. The person to whom the terminal distributor of dangerous drugs license has been issued and all pharmacists on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of drugs and the practice of pharmacy, OAC Rule 4729:5-2-01(A)(3).
 - c. The responsible person to whom the terminal distributor of dangerous drugs license has been issued and all licensed health professionals on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of dangerous drugs, OAC 4729:5-2-01(E)(4); and/or

- d. The responsible person shall be responsible for ensuring the terminal distributor of dangerous drugs requirements are met, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC 4729:5-2-01(E)(6).

YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the Ohio Board of Pharmacy, if you request such a hearing within thirty (30) days of the date of the service of this notice.

IF YOU DESIRE A HEARING, such request shall either be mailed to the Ohio Board of Pharmacy, Attn: Legal, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6126 or an e-mail request may be sent to legal@pharmacy.ohio.gov (**please note faxes will not be accepted**). **YOUR REQUEST MUST BE RECEIVED ON OR PRIOR TO THE 30TH DAY FOLLOWING THE SERVICE DATE OF THIS NOTICE.** Please note that if you submit a request via email, your request will be acknowledged within one business day of receipt. If you do not receive an acknowledgment, please contact the Board offices at 614-466-4143 and request the legal department. You may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you. **If you are a business entity, including but not limited to a corporation, limited liability company, or a limited partnership, you must be represented at the hearing by an attorney licensed to practice in the state of Ohio.**

YOU ARE FURTHER ADVISED that if there is no request for such a hearing received by the Board on or prior to the 30th day following the service of this notice, the Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing, and may adopt a final order that contains the board's findings. In the final order, the board may impose any of the sanctions listed in division RC 4729.57(A).

If you have questions regarding the Chapter 119. Administrative Hearing process, please e-mail your questions to legal@pharmacy.ohio.gov or call the Board office at 614-466-4143 and ask for the legal department.

BY ORDER OF THE STATE BOARD OF PHARMACY



Steven W. Schierholt, Esq., Executive Director



SWS/alg/jrn

cc: Deb Hurley, via email at: dhurley@riteaid.com