

**NOTICE OF OPPORTUNITY FOR HEARING
PROPOSAL TO TAKE DISCIPLINARY ACTION AGAINST
TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS LICENSEE**

IN THE MATTER OF:

Case No. A-2021-0084

Marc's Pharmacy Massillon
c/o Allisa Morgan White, RPh
1413 Amherst Rd NE
Massillon, OH 44646

License No. 02-0763950

November 4, 2022

Dear Marc's Pharmacy Massillon and Allisa Morgan White:

You are hereby notified, in accordance with the provisions of Section 119.07 of the Ohio Revised Code the State of Ohio Board of Pharmacy (Board) proposes to take action against your license as a Terminal Distributor of Dangerous Drugs under authority of Section (TDDD) 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 4729.54 of the Ohio Revised Code to practice as a TDDD in the state of Ohio. Additionally, Section 4729.57 of the 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 Revised Code.
2. Marc's Pharmacy Massillon has an active TDDD license with the Board under license number 02-0763950, which, at the time the conduct occurred, listed Benjamin Finley, RPh, as the Responsible Person.

ALLEGATIONS

1. On or about December 16, 2020, the Board was contacted by you regarding employee theft from the pharmacy. Dylan Landers had stolen dangerous drugs from the pharmacy. The following dangerous drugs were stolen from the pharmacy:
 - a. Hydrocodone 5/325, 26 tablets, a Schedule II controlled substance.
 - b. Clonazepam 1mg, 7 tablets, a Schedule IV controlled substance.

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



- c. Tylenol #4, 14 tablets, a Schedule IV controlled substance.
- 2. On or about December 18, 2020, a partial inspection (due to COVID-19 restrictions) of Marc's Pharmacy Massillon, located at 1413 Amherst Rd. NE, Massillon, Ohio, revealed Dylan Landers was performing pharmacy technician duties without proper registration with the Board. The inspection revealed Landers had been working as a floating pharmacy technician. Landers worked at least one shift at six separate Marc's Pharmacy locations, including 48 shifts at Marc's Pharmacy Massillon from on or about August 1, 2020, to on or about November 24, 2020, without Board issued registration.
 - 3. On or about December 18, 2020, Benjamin Patrick Finley, RPh, spoke with agents of the Board and provided a written, notarized statement. He stated:
 - a. Dylan Landers worked as a technician under his supervision.
 - b. He was not aware of Landers' lack of a pharmacy technician license. He was under the impression Landers was licensed because Landers was in the trainee program.
 - c. Since Landers was issued his own access code and access badge by corporate, he assumed Landers' license requirements were fulfilled at the corporate level.
 - d. Landers was engaged in the practice of pharmacy while employed by Marc's as a technician with everything he did being tracked by Landers' own login credentials and barcode.
 - e. He noticed that his Percocet 5/325mg count was three (3) tablets short.
 - f. Landers diverted controlled substances.
 - g. He was not sure why the theft of drugs was not immediately reported to the Board.

POTENTIAL VIOLATIONS OF LAW

- 1. Such conduct, as set forth in the Allegations Section, if proven, constitutes a violation of Section 4729.95(C) of the ORC, No terminal distributor of dangerous drugs shall knowingly allow any person employed or otherwise under the control of the person who owns, manages, or conducts the terminal distributor to violate division (A) which states: No person who is not a pharmacist, pharmacy intern, registered pharmacy technician, certified pharmacy technician, or pharmacy technician trainee shall knowingly engage in any of the activities listed in section 4729.91 of the Revised Code in a location licensed as a terminal distributor of dangerous drugs, a misdemeanor of the second degree, punishable by a maximum penalty of \$4,000.
- 2. Such conduct, as set forth in the Allegations Section, if proven, constitutes a violation of each of the following divisions of Section 4729.55 of the ORC, 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, ORC 4729.55(D).

3. Such conduct, as set forth in the Allegations Section, if proven, constitutes a violation of each of the following divisions of Section 4729.57 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 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).
4. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of the following sections of Rule 4729:5-2-01(A)(3) of the OAC, effective March 1, 2019, 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, each punishable by a maximum penalty of \$1,000.
5. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of the following sections of Rule 4729:5-5-23(A)(1) of the OAC, effective December 1, 2020, a pharmacist shall provide supervision of the dangerous drugs, hypodermics, D.E.A. controlled substance order forms, all records relating to the distribution of dangerous drugs, except where the board has granted permission for such records to be stored at a secure off-site location in accordance with this chapter of the Administrative Code, at all times in order to deter and detect theft or diversion, each punishable by a maximum penalty of \$1,000.
6. Such conduct, as set forth in the Allegations Section, if proven, constitutes a violation of the following sections of Rule 4729:5-4-01 of the OAC, effective March 1, 2019, each violation punishable by a maximum penalty of \$1,000 if committed by an organization:
 - 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 terminal distributor of dangerous drugs set forth in section 4729.55 of the Revised Code, OAC Rule 4729:5-4-01(B)(7).

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 State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

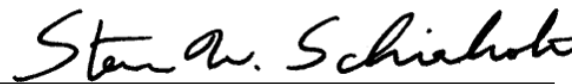
IF YOU DESIRE A HEARING, such request shall either be mailed to the State of Ohio Board of Pharmacy, Attn: Legal, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6126 or an e-mail request may be sent to

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 MAILING 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 corporation, 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 mailing of this notice, the State of Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

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

A handwritten signature in black ink, reading "Steven W. Schierholt". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Steven W. Schierholt, Esq., Executive Director

SWS/jak/kll

CMRRR: 9414 7118 9956 2913 8039 47