



IN THE MATTER OF:

Kroger Pharmacy #014441

c/o Jacob Tunnell, RPh
3420 Towne Blvd.
Middletown, OH 45005

CASE NO. A-2022-0365

CASE NO. A-2022-0370

CASE NO. A-2022-0372

License No. 02-1044400

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 Kroger Pharmacy #01441 for the purpose of resolving all issues between the parties relating to the Board investigation of theft or drug loss at the pharmacy. Together, the Board and Kroger Pharmacy #01441 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. Kroger Pharmacy #01441 is a licensed Terminal Distributor of Dangerous Drugs under license number 02-1044400.

FACTS

1. The Board initiated an investigation of Kroger Pharmacy #01441, Terminal Distributor of Dangerous Drugs license number 02-1044400, related to Kroger Pharmacy #01441’s report of theft or drug loss at the pharmacy.
2. On or about April 25, 2023, the Board sent a Notice of Opportunity for Hearing to Kroger Pharmacy #01441, 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.
3. On or about May 9, 2023, Kroger Pharmacy #01441, through counsel Mary Barley-McBride, timely requested an administrative hearing, which was subsequently scheduled for November 8, 2023.

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

TERMS

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. Kroger Pharmacy #01441 neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated April 25, 2023; 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. Kroger Pharmacy #01441 agrees to pay to the Board a monetary penalty the amount of \$2,000. 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. Kroger Pharmacy #01441 agrees to require responsible person Jacob Tunnell, RPh, to participate in a "Responsible Person Roundtable" event within 90 days from the effective date of this Agreement. Verification of the completed Roundtable must be e-mailed to legal@pharmacy.ohio.gov.
5. The Board agrees to dismiss the following cases against responsible person Jacob Tunnell, RPh: A-2022-0366, A-2022-0371, and A-2022-0373.
6. The Board hereby imposes a written reprimand on Kroger Pharmacy #01441's TDDD license, number 02-1044400.
7. Kroger Pharmacy #01441 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.
8. Kroger Pharmacy #01441 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 Kroger Pharmacy #01441 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 Kroger Pharmacy #01441 by the Board and will NOT discharge Kroger Pharmacy #01441 from any obligation under the terms of this Agreement.

9. Kroger Pharmacy #01441 agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
10. Kroger Pharmacy #01441 understands that it has the right to be represented by counsel for review and execution of this agreement.
11. 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 Kroger Pharmacy #01441 will operate.
12. Kroger Pharmacy #01441 explicitly withdraws its request for a hearing, 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.
13. 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.
14. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
15. 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.
16. 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.
17. This Agreement shall become effective upon the date of the Board President's signature below.

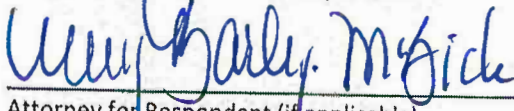
[SIGNATURE PAGE FOLLOWS]

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:



Responsible Person Name, on behalf of,
Kroger Pharmacy #01441, Respondent



Attorney for Respondent (if applicable)



Trina Buettner, RPh, President,
State of Ohio Board of Pharmacy

8/3/2023

Date of Signature

8/4/2023

Date of Signature

08.17.2023

Date of Signature



**STATE OF
OHIO**
BOARD OF PHARMACY



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

IN THE MATTER OF:

CASE NO. A-2022-0365

CASE NO. A-2022-0370

CASE NO. A-2022-0372

Kroger Pharmacy #014441

c/o Jacob Tunnell, RPh
3420 Towne Blvd.
Middletown, Ohio 45005

License No. 02-1044400

April 25, 2023

Dear Kroger Pharmacy #014441 and Jacob Tunnell:

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 (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. Kroger Pharmacy #014441, located at 3420 Towne Blvd, Middletown, Ohio, has an active TDDD license with the Board under license number 02-1044400, which lists Jacob Tunnell, RPh as the Responsible Person.

ALLEGATIONS

1. On or about November 30, 2021, the Board received a Report of Theft or Loss of Controlled Substances (DEA-106 Form) from Jacob Tunnell, RPh, responsible person (RP) of Kroger Pharmacy #014441, located at 3420 Towne Blvd., Middletown, Ohio. The report indicated ninety-one (91) pregabalin 75mg capsules, a Schedule V controlled substance, were unaccounted for. The pharmacy checked past prescriptions and video to identify where the drugs might have gone and were unable to account for the loss. This was the fourth loss since January 2021. The three prior theft and loss reports filed in 2021 were on April 24, 2021, sixty (60) Zolpidem 6.25mg tablets, a Schedule IV

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controlled substance; May 18, 2021, one hundred fifty-three (153) alprazolam 1mg tablets, a Schedule IV controlled substance; and October 10, 2021, thirty (30) methylphenidate 5mg tablets, a Schedule II controlled substance.

2. On or about December 3, 2021, the Board received a Report of Theft or Loss of Controlled Substances (DEA-106 Form) from Jacob Tunnell, RPh, responsible person (RP) at Kroger Pharmacy #014441 located at 3420 Towne Blvd., Middletown, Ohio. RPh Tunnell reported the loss of sixty-one (61) diphenoxylate / atropine 0.025 / 2.5 mg, a Schedule V controlled substance. All shipments and dispensing were accounted for. This was the second loss reported in a two-month period and the fifth loss reported in 2021.
3. On or about December 28, 2021, the Board received a Report of Theft or Loss of Controlled Substances (DEA-106 Form) from Jacob Tunnell, RPh, responsible person (RP) of Kroger Pharmacy #014441, located at 3420 Towne Blvd., Middletown, Ohio. RPh Tunnell reported the loss of thirty (20) buprenorphine 2mg tablets, a Schedule III controlled substance. Kroger Pharmacy #014441 had received a shipment containing two (2) thirty (30) count bottles on December 24, 2021. There was also a dispensing on December 24, 2021, for thirty-three (33) tablets. The loss was never accounted for. This was the sixth loss reported in 2021.

POTENTIAL VIOLATIONS OF LAW

1. Such conduct as set forth in Allegations Section, if proven, constitutes a violation of each of the following divisions of Section 4729.55 of the ORC, as effective March 31, 2021, TDDD license requirements, each violation punishable by a maximum penalty of \$1,000:
 - a. A pharmacist, licensed health professional authorized to prescribe drugs, animal shelter licensed with the state board of pharmacy under section 4729.531 of the Revised Code, or a laboratory as defined in section 3719.01 of the Revised Code will maintain supervision and control over the possession and custody of dangerous drugs that may be acquired by or on behalf of the applicant, ORC 4729.55(B); and/or
 - b. Adequate safeguards are assured to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist or licensed health professional authorized to prescribe drugs, ORC 4729.55(C); and/or
 - c. 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); and/or
2. Such conduct as set forth in Allegations Section, if proven, constitutes a violation of each of the following divisions of Section 4729.57(B) of the ORC, as effective September 29, 2017, 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. Violating any provision of the federal drug abuse control laws or Chapter 2925. or 3719. of the Revised Code, ORC Section 4729.57(B)(5); and/or
 - d. Ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in section 4729.55 of the Revised Code, ORC Section 4729.57(B)(7); and/or
 - e. 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 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, 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. Violating any provision of the federal drug abuse control laws or Chapter 2925. Or 3719. of the Revised Code, OAC Rule 4729:5-4-01(B)(5); and/or
 - d. 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).
4. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of each of the following divisions of Rule 4729:5-2-01 of the OAC as effective March 1, 2019, each violation punishable by a maximum penalty of \$500:
- 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); and/or
 - 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 Rule 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 Rule 4729:5-2-01(E)(6).

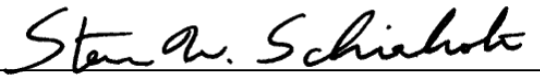
YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

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 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 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, 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/MLB/kll

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