

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

**IN THE MATTER OF:**

**CASE NO. A-2020-0614**

**Kroger Pharmacy #014445**

**License No. 02-1261900**

c/o Shannon Fink, RPh, Responsible Person  
1014 Vine Street, Attn: Licensing Department  
Cincinnati, OH 45202

May 19, 2022

Dear Kroger Pharmacy #014445 and Shannon Fink:

**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, reprimand, or refuse to grant or renew any license issued pursuant to Section 4729.55 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. Kroger Pharmacy #014445, located at 4001 Hamilton Cleves Road, Cleves, OH 45002, has an active TDDD license with the Board under license number 02-1261900, which lists Shannon Fink, RPh, as the Responsible Person.

**ALLEGATIONS**

1. On or about August 22, 2019, while pharmacist Lisa Weisenbach was working at Kroger Pharmacy #014445, located at 4001 OH-128, Cleves, OH 45002, prescription # 6742841 was processed for patient V.D. The prescription was for hydroxyzine HCl 25mg tablets, 1 tablet every six hours as needed. However, prescription #6742841 was dispensed as hydrochlorothiazide 25 mg tablets with the same instructions. Certified pharmacy technician Jennifer Schulte incorrectly entered the prescription as hydrochlorothiazide 25 mg into the pharmacy's system and Lisa Weisenbach was the pharmacist of record for the prescription.

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

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Although she verified the prescription, she did not catch the error, overrode a DUR alert for high dosage, and patient V.D. received the incorrect medication.

2. Patient V.D. ingested approximately 8 tablets of the incorrect medication pursuant to the instructions on the label. Patient V.D. was hospitalized August 29-31, 2019, and experienced the following:
  - a. Acute kidney injury/acute renal failure due to dehydration and probable over-diuresing;
  - b. Hypokalemia;
  - c. Worsening chronic kidney disease;
  - d. Dehydration;
  - e. General weakness;
  - f. Lightheadedness;
  - g. Shortness of breath and difficulty breathing;
  - h. Increased anxiety; and/or
  - i. Financial hardship due to hospital admission.

#### **POTENTIAL VIOLATIONS OF LAW**

1. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of section 3715.52(A)(2) of the ORC, the adulteration or misbranding of any food, drug, device, or cosmetic, a misdemeanor of the fourth degree, punishable by a maximum penalty of \$250.
2. Such conduct as set forth in the Allegations Section, if proven, constitutes the following violations of section 3715.64 of the ORC, Misbranding, each violation punishable by a maximum penalty of \$150:
  - a. The drug sold or dispensed is not the brand or drug specifically prescribed or ordered or, when dispensed by a pharmacist upon prescription, is neither the brand or drug prescribed nor a generically equivalent drug, ORC Section 3715.64(A)(10)(d).
  - b. Any drug dispensed pursuant to a written, electronic, or oral prescription of a licensed health professional authorized to prescribe drugs shall be exempt from the requirements of division (A) of this section, except divisions (A)(1) and (10) of this section, if the drug bears a label containing the name and address of the dispenser, the serial number and the date the prescription is dispensed, the name of the prescriber, the name of the patient, and, if stated in the prescription, the directions for use and cautionary statements, ORC Section 3715.64(B)(1).
3. Such conduct as set forth in the Allegations Section, if proven, also constitutes a violation of the following provisions of Rule 4729-5-20(A) of the OAC, as effective March 1, 2017, punishable by a maximum penalty of \$500:
  - a. Over-utilization or under-utilization, OAC Rule 4729-5-20(A)(1); and/or
  - b. Therapeutic duplication, OAC Rule 4729-5-20(A)(2); and/or
  - c. Incorrect drug dosage, OAC Rule 4729-5-20(A)(2).
4. Such conduct as set forth the Allegations Section, if proven, constitutes a violation of section 4729.55(D) of the ORC, as effective April 6, 2017, adequate safeguards are assured to carry on the business of a TDDD

in a manner that allows pharmacists and pharmacy interns employed by the terminal distributor to practice pharmacy in a safe and effective manner punishable by a maximum penalty of \$1,000.

5. 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. Except as provided in section 4729.89 of the Revised Code, violating any provision of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, or Chapter 3715. of the Revised Code, ORC Section 4729.57(B)(4); and/or
  - d. 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
  - 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).
6. 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. Except as provided in section 4729.89 of the Revised Code, violating any provision of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, or Chapter 3715. of the Revised Code, OAC Rule 4729:5-4-01(B)(4); 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).

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.

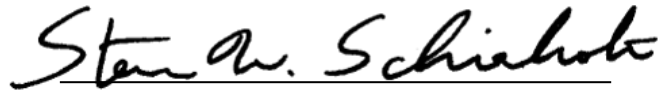
**IF YOU DESIRE A HEARING**, such request shall either be mailed to the State of Ohio Board of Pharmacy, Attn: Legal, 77 South High Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215-6126 or an e-mail request may be sent to [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov) (please note faxes will **not** be accepted). **YOUR REQUEST MUST BE RECEIVED ON OR PRIOR TO THE 30<sup>TH</sup> 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 30<sup>th</sup> day following the mailing of this notice, the State of Ohio 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](mailto: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 fluid and cursive, with the first name "Steven" and last name "Schierholt" clearly legible. The middle initial "W." is smaller and less distinct.

Steven W. Schierholt, Esq., Executive Director

SWS/mlw/kll

Enclosure: Patient ID Key

CMRRR: 9414 7118 9956 2886 6883 29



**IN THE MATTER OF:**

**CASE NO. A-2020-0614**

**Kroger Pharmacy #014445**

**License No. 02-1261900**

c/o Shannon Fink, RPh, Responsible Person  
1014 Vine Street, Attn: Licensing Department  
Cincinnati, OH 45202

### **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 #014445 for the purpose of resolving all issues between the parties relating to the Board investigation of an error in dispensing. Together, the Board and Kroger Pharmacy #014445 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 #014445 is a licensed Terminal Distributor of Dangerous Drugs under license number 02-1261900.

### **FACTS**

1. The Board initiated an investigation of Kroger Pharmacy #014445, Terminal Distributor of Dangerous Drugs license number 02-1261900, related to Kroger Pharmacy #014445's error in dispensing.
2. On or about May 19, 2022, the Board sent a Notice of Opportunity for Hearing to Kroger Pharmacy #014445, 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 June 13, 2022, Kroger Pharmacy #014445, through counsel Mary Barley McBride, timely requested an administrative hearing, which was subsequently scheduled for December 5, 2022.

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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 #014445 neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated May 19, 2022, 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 #014445 agrees to pay to the Board a monetary penalty the amount of \$3,000.00. This fine will be attached to the license record and must be paid no later than 180 days from the effective date of this Agreement. To pay this fine, login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart.
4. The Board hereby imposes a written reprimand on Kroger Pharmacy #014445's TDDD license, number 02-1261900.
5. Kroger Pharmacy #014445 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. Kroger Pharmacy #014445 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 #014445 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 #014445 by the Board and will NOT discharge Kroger Pharmacy #014445 from any obligation under the terms of this Agreement.
7. Kroger Pharmacy #014445 agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.

8. Kroger Pharmacy #014445 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 Kroger Pharmacy #014445 will operate.
10. Kroger Pharmacy #014445 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.
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.

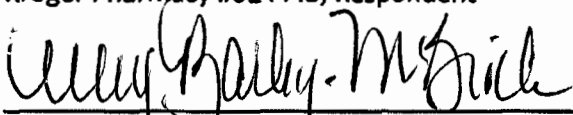
*[SIGNATURE PAGE FOLLOWS]*

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

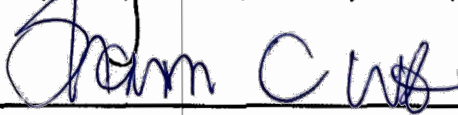
Approved by:

  
\_\_\_\_\_  
Shannon Fink, RPh, on behalf of,  
Kroger Pharmacy #014445, Respondent

12/15/2022  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Mary Barley McBride, Attorney for Respondent

12/15/2022  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Shawn Wilt, RPh, President,  
State of Ohio Board of Pharmacy

01.05.2023  
\_\_\_\_\_  
Date of Signature