

IN THE MATTER OF:

CASE No. A-2020-0410

501-1788

DCR Surgery Center
 c/o Deepak Kumar, MD
 245 W. Elmwood Drive
 Centerville, Ohio 45459

License No. 02-1884600

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 DCR Surgery Center for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of medical grade oxygen and controlled substances, while operating without a Board-issued license. Together, the Board and DCR Surgery Center 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, or refuse to grant or renew any license issued pursuant to Section 4729.54 of the Ohio Revised Code.
2. DCR Surgery Center is a licensed Terminal Distributor of Dangerous Drugs under license number 02-1884600.

FACTS

1. The Board initiated an investigation of DCR Surgery Center, Terminal Distributor of Dangerous Drugs license number 02-1884600, related to DCR Surgery Center's illegal purchases of medical grade oxygen and controlled substances while operating without a Board-issued license.
2. On or about March 5, 2021 the Board sent a Notice of Opportunity for Hearing to DCR Surgery Center, 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 or judicial proceedings.

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

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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. DCR Surgery Center neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated March 5, 2021; 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. DCR Surgery Center agrees to pay to the Board a monetary penalty the amount of \$1,200.00. This fine will be attached to your license record and must be paid no later than 30 days from the effective date of this Order. To pay this fine you must login to www.elicense.ohio.gov and process the items in your cart.
4. DCR Surgery Center 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.
5. DCR Surgery Center 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 DCR Surgery Center 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 DCR Surgery Center by the Board and will NOT discharge DCR Surgery Center from any obligation under the terms of this Agreement.
6. DCR Surgery Center agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
7. DCR Surgery Center understands that it has the right to be represented by counsel for review and execution of this agreement.
8. 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 DCR Surgery Center will operate.
9. DCR Surgery Center 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.

10. 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.
11. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
12. 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.
13. 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:

Deepak Kumar
Deepak Kumar, on behalf of,
DCR Surgery Center, Respondent

9/16/21
Date of Signature

Attorney for Respondent (if applicable)



Date of Signature

Rich Miller, RPh, President,
State of Ohio Board of Pharmacy



09.30.2021
Date of Signature

Henry Appel, Ohio Assistant Attorney General

09.30.2021
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-2020-0410
501-1788**

DCR Surgery Center
c/o Deepak Kumar, MD
245 W. Elmwood Drive
Centerville, OH 45459

License No. 02-1884600

March 5, 2021

Dear Dr. Kumar and DCR Surgery Center:

-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: 03/05/2021

MUST HAVE BOARD SEAL TO BE OFFICIAL

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 (ORC) and the rules adopted thereunder, the Board has the authority to suspend, revoke, 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 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. DCR Surgery Center has a current TDDD license with the Board under license number 02-1884600, which lists Deepak Kumar, MD as the Responsible Person.

ALLEGATIONS

1. From on or about April 1, 2019 to on or about October 29, 2019, DCR Surgery Center, located at 245 W. Elmwood Drive, Centerville, Ohio, failed to renew their Terminal Distributer of Dangerous Drugs License (TDDD) and was operating as an unlicensed terminal distributor of dangerous drugs. From on or about April 1, 2019 to on or about October 29, 2019, DCR Surgery Center made four illegal purchases of medical grade oxygen, a dangerous drug, from Geer Gas Corporation, located at 820 Yellow Springs Fairfield Road, Fairborn, Ohio. The illegal sales of medical grade oxygen include:
 - a. April 23, 2019, one cylinder
 - b. May 28, 2019, one cylinder

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- c. July 23, 2019 one cylinder
 - d. August 9, 2019, one cylinder
- 2. DCR Surgery Center made the following purchases of controlled substances from KHN Pharmacy-Sycamore, while DCR Surgery Center did not have an active TDDD license:
 - a. midazolam HCL 5mg/ml SDV 25 x 1 ml (July 26, 2019)
 - b. midazolam HCL 5m/ml SDV; 25 x 1 ml (August 22, 2019)
 - c. meperidine 100 mg/ml SDV; 50 x 1 ml (August 22, 2019)
- 3. Records from KHN Pharmacy-Sycamore revealed the following:
 - a. You picked up the drugs you ordered from the seller; no drugs were shipped to DCR Surgery Center while the license was lapsed.
 - b. You used the address for Dayton Colon and Rectal Center (DCRC) and DEA-222 forms that correspond with your sole prescriber DEA number which is registered to DCRC (not DCR Surgery Center).
- 4. On or about March 23, 2020, you spoke with an agent of the Board. You stated the following:
 - a. You manage two businesses with TDDD licenses, and you somehow forgot to renew the license for DCR Surgery Center.
 - b. During the time the license was lapsed, you purchased oxygen from Geer Gas Corporation and surgical drugs from KHN Pharmacy-Sycamore.
 - c. KHN Pharmacy-Sycamore may have sold you the drugs using your other business name, DCRC, which had an active TDDD license at the time.
 - d. You purchased and stored controlled substances at DCR Surgery Center.

POTENTIAL VIOLATIONS OF LAW

- 1. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of Section 4729.51(E)(1)(c) of the ORC, as effective March 22, 2019, Except as provided in division (E)(2) of this section, no person shall do any of the following: possess dangerous drugs, each violation is a misdemeanor of the first degree, punishable by a maximum penalty of \$5,000 if committed by an organization.
- 2. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of Rule 4729-21-01 of the OAC, as effective May 24, 2015, no person, whether located within or outside this state, shall possess or sell compressed medical gases in Ohio unless they are registered as a wholesale distributor of dangerous drugs or licensed as a category II or category III terminal distributor of dangerous drugs with the board, each punishable by a maximum fine of \$2,500 if committed by an organization.

3. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of Rule 4729:5-17-04(A) of the OAC, as effective September 1, 2019, Each person, whether located within or outside this state, who seeks to possess or sell compressed medical gases in this state shall maintain, based upon the person's business activities, a wholesale distributor of dangerous drugs license in accordance with Section 4729.52 of the Revised Code or terminal distributor of dangerous drugs license in accordance with Section 4729.54 of the Revised Code, each punishable by a maximum fine of \$2,500 if committed by an organization.
4. Such conduct as set forth in Allegations Section, if proven, constitutes a violation of each of the following divisions of Section 4729.57 of the ORC, as effective September 29, 2017, each violation punishable by a maximum penalty of \$1,000 if committed by an organization:
 - 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).
5. 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 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).

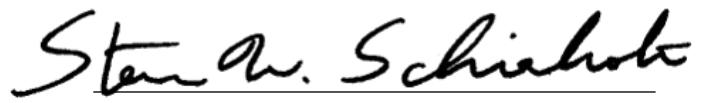
YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

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.** 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 Ohio 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



Steven W. Schierholt

Steven W. Schierholt, Esq., Executive Director

SWS/alg/kll

Encl: Attachment A

CMRRR: 7020 1290 0001 7926 0732