



**STATE OF
OHIO**
BOARD OF PHARMACY

2326910
\$ 4000.00
05/11/2023

IN THE MATTER OF:

**CASE NOS. A-2021-0378
A-2022-0381
A-2022-0493**

CVS Pharmacy #6134
c/o Erika Muhlenkamp, RPh
1009 East Main Street
Greenville, OH 45331

License No. 02-2012850

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 CVS Pharmacy #6134 for the purpose of resolving all issues between the parties relating to the Board investigation of drug security issues. Together, the Board and CVS Pharmacy #6134 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. CVS Pharmacy #6134 is a licensed Terminal Distributor of Dangerous Drugs under license number 02-2012850.

FACTS

1. The Board initiated an investigation of CVS Pharmacy #6134, Terminal Distributor of Dangerous Drugs license number 02-2012850, related to drug security issues.
2. On or about September 15, 2022, the Board sent a Notice of Opportunity for Hearing to CVS Pharmacy #6134, 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.

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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. CVS Pharmacy #6134 neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated August 31, 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. CVS Pharmacy #6134 agrees to pay to the Board a monetary penalty the amount of \$4,000.00. 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 CVS Pharmacy #6134's TDDD license, number 02-2012850.
5. CVS Pharmacy #6134 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. CVS Pharmacy #6134 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 CVS Pharmacy #6134 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 CVS Pharmacy #6134 by the Board and will NOT discharge CVS Pharmacy #6134 from any obligation under the terms of this Agreement.
7. CVS Pharmacy #6134 agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.

8. CVS Pharmacy #6134 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 CVS Pharmacy #6134 will operate.
10. CVS Pharmacy #6134 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:



Leo Lariviere, Lead Director, Regulatory Affairs,
on behalf of, CVS Pharmacy #6134, Respondent

5/3/23

Date of Signature

Attorney for Respondent (If Applicable)

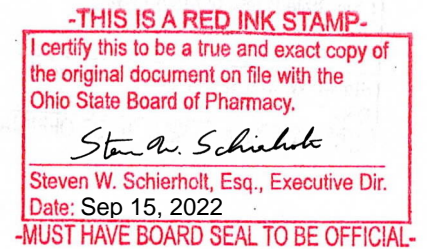
Date of Signature



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

05.23.2023

Date of Signature



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

IN THE MATTER OF:

**CASE NOS. A-2021-0378, A-2022-0381 &
A-2022-0493**

CVS Pharmacy #6134
c/o Erika Muhlenkamp, RPh
1009 East Main Street
Greenville, Ohio 45331

License No. 02-2012850

September 15, 2022

Dear CVS Pharmacy #6134 and Ms. Muhlenkamp:

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. CVS Pharmacy #6134, located at 1009 East Main Street, Greenville, Ohio, has an active TDDD license with the Board under license number 02-2012850, which lists Erika Muhlenkamp, RPh, as the Responsible Person.

ALLEGATIONS

1. On or about July 28, 2021, CVS Pharmacy #6134, located at 1009 E. Main Street, Greenville Ohio, submitted a Report of Theft or Loss of Controlled Substances to the Board. The report indicated the losses occurred on March 9, 2021. The pharmacy was unable to identify a reason for the losses. The Report indicated a significant loss of the following controlled substances:
 - a. 178 methylphenidate 20mg tablets (Controlled II substance)
 - b. 71 lisdexamfetamine 10mg capsules (Controlled II substance)

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- c. 66 hydrocodone/APAP 7.5/325mg tablets (Controlled II substance)
2. On or about July 28, 2021, an agent of the Board spoke with a CVS Regional Loss Prevention Manager. He indicated he was unsure why CVS corporate did not ever file an initial notification when the losses were discovered (in March 2021). After the losses were discovered, Erika Muhlenkamp, the Responsible Person, conducted daily counts of medication for approximately three weeks. No additional losses were discovered and theft was not suspected.
3. On or about January 7, 2022, CVS Pharmacy #6134, submitted a Report of Theft or Loss of Controlled Substances to the Board. The report indicated a loss of 587 alprazolam 1mg tablets (a Schedule IV controlled substance); however, a 500 tablet stock bottle was later recovered bringing the total loss to 87. The pharmacy was unable to identify a reason for the losses.
4. On or about January 25, 2022, Pharmacy #6134 submitted a Report of Theft or Loss of Controlled Substances to the Board. The pharmacy was unable to identify a reason for the losses. The report indicated a loss of the following controlled substances:
 - a. 97 oxycodone/APAP 5/325mg tablets (Controlled II substance)
 - b. 60 Vyvanse 50mg tablets (Controlled II substance)
5. On or about August 29, 2022, Erika Muhlenkamp, the Responsible Person, spoke with an agent of the Board. She stated the following:
 - a. The (most recent) loss was due to poor pharmacy practice prior to April 2020. The loss occurred prior to April 2020 you reported to her corporate headquarters and thought it was taken care of.
 - b. The loss was reported in January 2022 because it had not been reported to the Board in 2020.
 - c. The losses mainly occur due to poor practice and in back counting. The issue had since been corrected and there had no further losses.

POTENTIAL VIOLATIONS OF LAW

1. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of Section 4729.55 of the ORC, effective April 6, 2017, March 22, 2020 and March 31, 2021, each punishable by a maximum penalty of \$150:
 - a. A pharmacist... 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 Section 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 Section 4729.55(C); and/or

- c. Adequate safeguards are assured to 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 Section 4729.55(D).
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 4729:5-2-01 of the OAC, as effective March 1, 2019, each 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).
4. 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).
5. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of the following sections of Rule 4729-9-05(A) of the OAC, as effective September 15, 2017, each punishable by a maximum penalty of \$500: All licensees and registrants shall provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs. In order to determine whether a licensee or registrant has provided effective and approved controls against diversion, the state board of pharmacy shall use the security requirements set forth in rule 4729-9-11 of the Administrative Code as standards for the security controls and operating procedures necessary to deter and detect diversion, OAC Rule 4729-9-05(A).
6. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of Rule 4729-9-11(A)(1) of the OAC, punishable by a maximum penalty of \$500: A pharmacist, prescriber, and responsible person pursuant to rule 4729-5-11 of the Administrative Code shall provide 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, by the following procedures: In a pharmacy: Except as provided in paragraph (A)(2) of this rule, a pharmacist shall provide personal supervision of the dangerous drugs, exempt narcotics, hypodermics, poisons, D.E.A. controlled substance order forms, all records relating to the distribution of dangerous drugs, except where the board has granted a permission for such records to be stored at a secure off-site location pursuant to rules 4729-9-14 and 4729-9-22 of the Administrative Code, at all times in order to deter and detect theft or diversion.
7. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of Rule 4729:5-3-02(A)(1) of the OAC, punishable by a maximum penalty of \$500: A terminal distributor of dangerous drugs shall notify the following upon discovery of the theft or significant loss of any dangerous drug or controlled substance, including drugs in transit that were either shipped from or to the licensed location: The state board of pharmacy, by telephone or other method determined by the board, immediately upon discovery of the theft or significant loss.
8. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of the following divisions 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. 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).

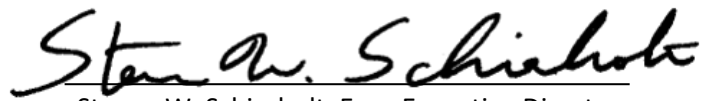
YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

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

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