



IN THE MATTER OF:

CASE No. A-2018-0093

Downtown Drug of Hillsboro

c/o Gary Barr, RPh
1199 S. High Street
Hillsboro, OH 45133

License No. 02-2642850

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 Downtown Drug of Hillsboro (Downtown Drug) for the purpose of resolving all issues between the parties relating to the Board investigation of an error in dispensing. Together, the Board and Downtown Drug 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. Downtown Drug, located at 1199 S. High Street, Hillsboro, Ohio, has an active TDDD license with the Board under license number 02-2642850, which lists Gary Barr, RPh as the Responsible Person and owner.

FACTS

1. The Board initiated an investigation of Downtown Drug, TDDD license number 02-2642850, related to an error in dispensing.
2. On or about April 21, 2021, the Board sent a Notice of Opportunity for Hearing to Downtown Drug, 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 5, 2021, Downtown Drug, through counsel Zachary Swisher, timely requested an administrative hearing, which was subsequently scheduled for September 15, 2021.

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

T: (614) 466.4143 | F: (614) 752.4836 | contact@pharmacy.ohio.gov | www.pharmacy.ohio.gov



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. Downtown Drug neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated April 21, 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. Downtown Drug agrees to pay to the Board a monetary penalty the amount of \$500.00. This fine will be attached to your license record and must be paid no later than 180 days from the effective date of this Order. To pay this fine you must login to www.elicense.ohio.gov and process the items in your cart.
4. Downtown Drug's Responsible Person must complete the Responsible Person Roundtable, a total of one hour (0.1 CEU). The 0.1 CEU must be completed within 180 days from the effective date of this agreement and cannot be used toward license renewal for the Responsible Person. Copies of completed CEUs must be e-mailed to legal@pharmacy.ohio.gov.
5. Downtown Drug 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. Downtown Drug 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 Downtown Drug 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 Downtown Drug by the Board and will NOT discharge Downtown Drug from any obligation under the terms of this Agreement.
7. Downtown Drug agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Downtown Drug 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 Downtown Drug will operate.
10. Downtown Drug expressly waives its opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code, specifically withdraws its request for a hearing, and waives any right to 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. 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:

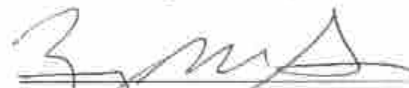
Approved by:



Gary Barr, RPh on behalf of,
Downtown Drug of Hillsboro, Respondent

8-12-2021


Date of Signature



Zachary Swisher, Attorney for Respondent

8-16-21

Date of Signature



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

09.20.2021

Date of Signature



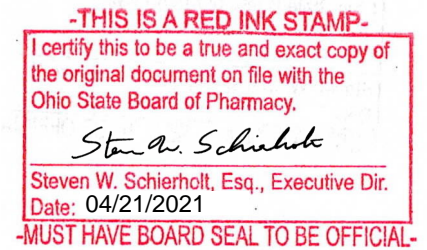
Henry Appel, Ohio Assistant Attorney General

09.20.2021

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-2018-0093

Downtown Drug of Hillsboro
c/o Gary Barr, RPh
1199 S. High St.
Hillsboro, OH 45133

License No. 022642850

April 21, 2021

Dear Downtown Drug of Hillsboro and Gary Barr:

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. Downtown Drug of Hillsboro has an active current TDDD license with the Board under license number 02642850, which lists Gary Barr R.Ph. as the Responsible Person.

ALLEGATIONS

1. On or about January 12, 2018, Dane Allard (the former Responsible Person at Downtown Drug of Hillsboro) dispensed Prescription No. 401161, Clonazepam 0.5 mg tabs, 60 tabs to patient J.W. to whom it was not currently prescribed. Dane Allard filled the prescription based on a three-page medication list, faxed to Downtown Drug of Hillsboro. The faxed document contained information for the clonazepam prescription and also listed fifteen other dangerous drugs. The DEA number of the prescriber was not present on the medication list. The quantity of the drug was not present on the medication list. Further, Dane Allard failed to check the Ohio Automated Rx Reporting System when filling Prescription No 401161. Patient J.W. ingested the medication and was hospitalized due to excessive sedation.

2. On or about January 12, 2018, Dane Allard dispensed eighteen prescriptions to patient J.W. from a three page medication list faxed to Downtown Drug of Hillsboro and without a prescription written in compliance with OAC 4729-5-13 and 4729-5-30 and without conducting proper drug utilization review, in particular for Prescription No. 615517; simvastatin and Prescription No. 615494; atorvastatin which are therapeutic duplications. "Per MD Ray Mick" was written on the faxed, three-page medication list; however, Dane Allard never spoke with APRN Ray Mick to confirm these prescriptions. The following list contains the entirety of the dispensations Dane Allard made to patient J.W. from the faxed medication list:
 - a. Rx# 401161, Clonazepam 0.5 mg tabs, 60 tabs
 - b. Rx# 615492, Buspirone 15 mg tabs, 60 tabs
 - c. Rx# 615493, Donepezil 5 mg tabs, 30 tabs
 - d. Rx# 615494, Atorvastatin 40 mg tabs, 30 tabs
 - e. Rx# 615496, Clopidogrel 75 mg tabs, 30 tabs
 - f. Rx# 615498, Escitalopram 10 mg tabs, 30 tabs
 - g. Rx# 615499, Gabapentin 300 mg caps, 30 caps
 - h. Rx# 615501, Pantoprazole 40 mg tabs, 30 tabs
 - i. Rx# 615502, Vitamin D 50,000 U caps, 2 caps
 - j. Rx# 615504, Lantus Solostar 100 U/mL, 15 mL
 - k. Rx# 615508, Novolog 100 U/mL, 15 mL
 - l. Rx# 615512, Clotrimazole/Betamethasone 1/0.05 mg cream, 45 grams
 - m. Rx# 615514, Fluconazole 100 mg tabs, 15 tabs
 - n. Rx# 615516, Lisinopril 5 mg tabs, 30 tabs
 - o. Rx# 615517, Simvastatin 10 mg tabs, 30 tabs
 - p. Rx# 615522, Athletes Foot 1% Cream, 30 grams
 - q. Rx# 615523, Ipratropium/Albuterol 0.5mg/2.5 mg solution, 360 mL
 - r. Rx# 615524, Ammonium Lactate 12% Cream, 140 grams

POTENTIAL VIOLATIONS OF LAW

1. 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.
2. 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, as effective September 29, 2017, a minor misdemeanor, each 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
3. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of Rule 4729-9-19(A)(4) of the OAC, as effective October 5, 2015, not of good moral character and habits, punishable by a maximum fine of \$1,000.
4. Such conduct as set forth in the paragraph (1) of the Allegations Section, if proven, constitutes a violation of section 3715.64(A)(10) of the ORC, a drug or device is misbranded within the meaning of sections

3715.01 and 3715.52 to 3715.72 of the Revised Code if it is a drug and its container is so made, formed, or filled as to be misleading, a misdemeanor of the fourth degree, punishable by a maximum penalty of \$2,000 if committed by an organization.

5. Such conduct as set forth in paragraph (1) and/or (2) of the Allegations Section, if proven, each constitutes a violation of each of each of the following division of Rule 4729-5-13(A) of the OAC, each violation punishable by a maximum penalty of \$500:
 - a. The prescription is issued in compliance with 4729-5-30 of the OAC, OAC Rule 4729-5-13(A)(1); and/or
 - b. If handwritten or typewritten, there are no more than three noncontrolled substance prescription orders per prescription form OAC Rule 4729-5-13(A)(2); and/or
 - c. If preprinted with multiple drug names or strength combinations:
 - a. There are no controlled substances among the choices; OAC Rule 4729-5-13(A)(3)(a); and/or
 - b. There is only one prescription order selected per form. OAC Rule 4729-5-13(A)(3)(b).
6. Such conduct as set forth in paragraph (1) and (2) of the Allegations Section, if proven, each constitutes a violation of the following division of Rule 4729-5-13(B) of the OAC, each violation punishable by a maximum penalty of \$500:
 - a. The controlled substance prescription has been issued in compliance with Rule 4729-5-30 of the Administrative code, OAC Rule 4729-5-13(B)(1); and/or
 - b. The controlled substance prescription contains only one prescription order per prescription form, whether handwritten, typewritten, or preprinted OAC Rule 4729-5-13(B)(2); and/or
 - c. The controlled substance prescription quantity has been written both numerically and alphabetically. OAC Rule 4729-5-13(B)(3).
7. Such conduct as set forth in paragraph (1) and/or (2) of the Allegations Section, if proven, each constitutes the following violations of Rule 4729-5-30(B) Manner of issuance of a prescription, each punishable by a maximum fine of \$500, All prescriptions issued by a prescriber shall:
 - a. Be dated as of and on the day when issued, OAC Rule 4729-5-30(B)(1); and/or
 - b. Indicate the quantity to dispense, OAC Rule 4729-5-30(B)(6); and/or
 - c. For a controlled substance: Indicate the drug enforcement administration registration number of the prescriber pursuant to Title 21 CFR 1305.05 (3/31/2010). OAC Rule 4729-5-30(B)(14)(a).
8. Such conduct as set forth in paragraph (1) and/or (2) of the Allegations Sections, if proven, each constitutes a violation of Rule 4729-5-20 of the OAC Prospective Drug Utilization Review, each violation punishable by a maximum penalty of \$500:

- a. Therapeutic duplication; OAC Rule 4729-5-20(A)(2); and/or
- b. Prior to dispensing an outpatient prescription for a reported drug as listed in rule 4729-37-02 of the Administrative Code, at a minimum, a pharmacist shall request and review an OARRS report covering at least a one year time period, including a border state's information when the pharmacist is practicing in a county bordering another state if that state's information is available, in any of the following circumstances: A patient adds a different or new reported drug to their therapy that was not previously included, OAC Rule 4729-5-20(D)(1).

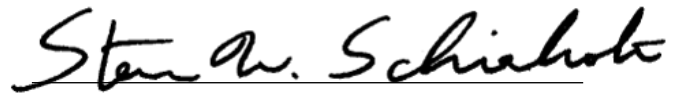
YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

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 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, Esq., Executive Director

SWS/nmd/alg/kll

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