



**STATE OF  
OHIO**  
BOARD OF PHARMACY

**IN THE MATTER OF:**

**Case No. A-2019-0053**

**Douglas Birkhimer, R.Ph.**  
6048 Carnation Drive  
Westerville, Ohio 43081

**SURRENDERED License No. 03-124341**

**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 Douglas Birkhimer, for the purpose of resolving all issues between the parties relating to Douglas Birkhimer's failure to comply with terms of her Board Order. Together, the Board and Douglas Birkhimer are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.16 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 Sections 4729.07 and 4729.08 of the Ohio Revised Code to practice pharmacy in the state of Ohio.
2. Douglas Birkhimer is an Ohio-licensed pharmacist under suspended license number 03-124341.

**FACTS**

1. On or about January 31, 2019, the Board sent a Summary Suspension/Notice of Opportunity for Hearing to Douglas Birkhimer, which outlined the allegations and provided notice of his right to a hearing, his rights in such hearing, and his right to submit contentions in writing.
2. On or about February 12, 2019, Douglas Birkhimer, by and through counsel Douglas A. Funkhouser, requested a hearing in this matter.
3. On or about May 7, 2019, this administrative matter was heard before the Board, during which Douglas Birkhimer was represented by counsel, Douglas A. Funkhouser. On or about May 10, 2019, the Board issued an Order lifting the summary suspension and placing Douglas Birkhimer's license to practice pharmacy on indefinite suspension for no less than two (2) years conditioned upon the results of a hair test, which, after an additional hearing, the Board found was positive for a substance for which Douglas Birkhimer did not have a prescription. The Board also found that the prescription(s) provided for the substances actually prescribed to Douglas Birkhimer were illegally dispensed by Douglas Birkhimer both as to form of the medication and due to the fact that it was dispensed at a facility without a valid Terminal Distributor of Dangerous Drugs License.



4. Accordingly, in a July 23, 2019 Order, the Board maintained the indefinite suspension of Douglas Birkhimer's Pharmacist License no. 03-124341 for a minimum of two years, with a number of terms and conditions.
5. On or around December of 2019, Douglas Birkhimer's monitoring agency notified the Board that Douglas Birkhimer had not been compliant with the terms of his contract, was no longer attending meetings and was no longer calling in for random drug testing as required by both the Board's May 10, 2019 and July 23, 2019 Orders.
6. As of the signature date on this document, Douglas Birkhimer acknowledges that he has been noncompliant with the terms of his treatment monitoring contract and his Board Order(s).

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

#### TERMS

NOW WHEREFORE, in consideration of the mutual promises wherein 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. **IN LIEU OF ADDITIONAL ADMINISTRATIVE ACTION, DOUGLAS BIRKHIMER PERMANENTLY AND VOLUNTARILY SURRENDERS TO THE STATE OF OHIO BOARD OF PHARMACY HIS LICENSE TO PRACTICE PHARMACY, LICENSE NO. 03-124341, WITH DISCIPLINE PENDING.**
3. Douglas Birkhimer agrees to immediately return his license and wall certificate to the Board, if the Board is not already in possession of both.
4. Douglas Birkhimer may never reapply for any license or registration over which the State of Ohio Board of Pharmacy has jurisdiction, including those set forth in Chapters 3719., 3796., 4729. or 4752. of the Revised Code.
5. Douglas Birkhimer agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
6. Douglas Birkhimer understands that he has the right to be represented by counsel for review and execution of this agreement.
7. Douglas Birkhimer agrees and acknowledges that this Board disciplinary action must be disclosed to the proper licensing authority of any state or jurisdiction in which he currently holds a professional license.
8. Douglas Birkhimer waives his right to formal notice and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
9. 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.



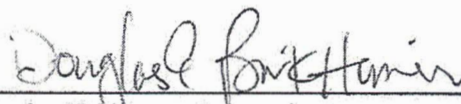
10. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.

11. 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.

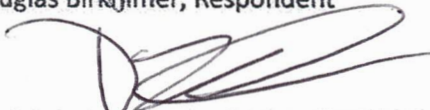
12. This Agreement shall become effective upon the date of the Board President's signature below.

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

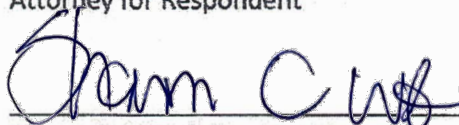
Approved by:

  
\_\_\_\_\_  
Douglas Birkhimer, Respondent

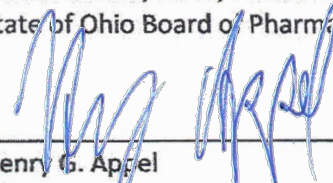
4/7/20  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Douglas A. Funkhouser 0064831  
Attorney for Respondent

4/8/20  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Shawn C. Wilt, R.Ph., President  
State of Ohio Board of Pharmacy

05.05.2020  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Henry G. Appel  
Ohio Assistant Attorney General

05.05.2020  
\_\_\_\_\_  
Date of Signature



**STATE OF  
OHIO**  
BOARD OF PHARMACY

**ORDER OF THE STATE BOARD OF PHARMACY**

(Case Number A-2019-0053)

In The Matter Of:

**Douglas Birkhimer, R.Ph.**  
6048 Carnation Drive  
Westerville, OH 43081  
(License No. 03-124341)

**INTRODUCTION**



The Matter of Douglas Birkhimer came for hearing originally on May 7, 2019 and was subsequently resumed on July 8, 2019 and the record was held open for additional testimony and evidence which was presented on July 10, 2018, before the following members of the State of Ohio Board of Pharmacy (Board): Shawn C. Wilt, RPh, *Presiding*; Jennifer M. Rudell, R.Ph.; Megan E. Marchal, R.Ph.; Donald R. Miller, R.Ph.; Fred M. Weaver, R.Ph.; and Kilee S. Yarosh, R.Ph.

Joshua M. Cox, R.Ph. and Richard J. Newlon, *Public Member*, were absent.

Douglas Birkhimer was represented by Douglas A. Funkhouser. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

**SUMMARY OF EVIDENCE**

**State's Witnesses:**

1. Douglas Birkhimer

**Respondent's Witnesses:**

1. Douglas Birkhimer

**State's Exhibits:**

- |                                |            |
|--------------------------------|------------|
| 1. Notice Letter               | 01.31.2019 |
| 2. Request for Hearing         | 02.12.2019 |
| 3. Scheduling Order            | 02.13.2019 |
| 4. Summary Suspension of TDDD  | 12.13.2018 |
| 5. Statement of Respondent     | 01.25.2019 |
| 6. Consent Agreement with TDDD | 01.29.2019 |

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



7. List of Medications Dispensed	12.13.2018-01.25.2019
8. Copy of Notice Posted on Door	No Date
9. Adjudication Order	05.10.2019
10. Drug Test	05.26.2019
11. Order Reopening Hearing	06.06.2019
12. Medication Labels	Various
13. Original E-Prescription Received by Kroger Pharmacy 965	01.08.2019

Respondent's Exhibits:

A. Birkhimer Emergency Room Records	09.12.2018
B. Birkhimer Kroger E-Prescription	01.08.2019

DECISION OF THE BOARD

The State of Ohio Board of Pharmacy, having already issued its Decision as to the Findings of Fact and Conclusions of Law in the Board Order issued on May 10, 2019, further finds the hair test to have been positive for a substance for which Douglas Birkhimer did not have a prescription and also finds that the prescription provided for the substances prescribed to Douglas Birkhimer was illegally dispensed by Douglas Birkhimer both as to form of the medication and due to the fact that it was dispensed at a facility without a valid Terminal Distributor of Dangerous Drugs License. Accordingly, the Board hereby maintains the indefinite suspension of Douglas Birkhimer's Pharmacist License No. 09-124341 for a minimum of two years, with the addition of the following terms:

Further, after 2 years from the date of the May 10, 2019 Order, the Board will consider any petition filed by Douglas Birkhimer for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- A. Douglas Birkhimer must enter into and adhere to the terms of a **new** contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Mental Health and Addiction Services (ODMHAS) treatment provider or a treatment monitor acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. Failure to adhere to the terms of the treatment contract will be considered a violation of the Board's Order and subject Douglas Birkhimer to potential sanctions up to and including revocation of license. The contract must provide that:
  - a. Random, observed urine drug screens shall be conducted at least once each month.
  - b. The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
  - c. Alcohol and Ethyl Glucoronide (ETG) must be added to the standard urine drug screen.



- d. Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
  - e. In the event of a negative diluted screen, a hair sample test must be completed at the cost of the Douglas Birkhimer in a timeframe consistent with the drug lab's recommended policy, but in any event no later than 12 days after the negative diluted screen.
  - f. The intervener/sponsor/monitor shall submit reports to the Board, in a format acceptable to the Board, indicating drug screens and their results in a timely fashion. Actual copies of drug screens shall be made available to the Board upon request.
  - g. Attendance is required a minimum of three times per calendar week (Sunday through Saturday) on separate days, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.
  - h. The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- B. Douglas Birkhimer shall not refuse an employer provided drug or alcohol screen. If the Board becomes aware of any positive drug or alcohol screen results that were obtained in the course of employment or any mechanism other than via the signed contract with ODMHAS, the Board shall treat these results as a violation of the Board's Order and request Douglas Birkhimer reappear before the Board for possible additional sanctions, including and up to revocation of license.
- C. Douglas Birkhimer shall not refuse a breathalyzer or other drug testing requested by law enforcement during the duration of suspension. The Board shall treat any such refusal as a violation of the Board's Order and request Douglas Birkhimer reappear before the Board for possible additional sanctions, including and up to revocation of license.
- D. Douglas Birkhimer must immediately report any violation of the terms of this suspension to the Board by contacting [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov). Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Douglas Birkhimer to possible additional sanctions, including and up to revocation of license.
- E. Douglas Birkhimer must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render her unfit to practice pharmacy.
- F. Douglas Birkhimer must provide, in the reinstatement petition, documentation of the following:
- a. Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug and alcohol screen reports, meeting attendance records, treatment program reports, etc.);

- b. Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
  - c. Compliance with the terms of this Order.
- G. Violation of any term of suspension, including but not limited to any violation of the contract signed with the ODMHAS or other approved treatment provider or treatment monitor may result in additional action before the Board up to and including revocation of your pharmacy license.
- H. Any violation of Chapters 2925., 3715., 3719., 3796., 4729., of the Ohio Revised Code, any administrative code violation or a violation of any other state or federal law will be considered a violation of this Order resulting in a hearing before the Board and may also result in criminal and/or administrative charges.

In addition to the terms set forth above, the Board maintains its Decision as to the following terms, as stated in the Board's May 10, 2019 Order:

- I. Douglas Birkhimer may petition for reinstatement of his license no earlier than April 1, 2020, once he has supplied proof of the following, in addition to the items outlined above, to the Board:
  - 1. Successful passing of the Multistate Pharmacy Jurisprudence Exam taken within six months of the date of his reinstatement petition; and
  - 2. Hair test results of a second hair test, to be administered by a Board-approved provider with the results released and supplied to the Board from the provider. The hair test will be scheduled on a date of the Board's choosing at or near a time when Douglas Birkhimer has alerted the Board about his intention to petition for reinstatement; and
  - 3. In the event Douglas Birkhimer's license remains in suspended status for three years from the date of the January 31, 2019 summary suspension, Douglas Birkhimer will also be required to take and pass the North American Pharmacist Licensure Examination (NAPLEX); and
  - 4. Compliance with the continuing pharmacy education requirements set forth in Chapter 4729:1-5 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement; and
  - 5. Douglas Birkhimer must maintain a current address with the Board throughout the duration of the suspension.

Additional restrictions to be permanently placed on Douglas Birkhimer's license at the time of reinstatement include at a minimum:

- J. Douglas Birkhimer may never serve as a Responsible Person as that term is used in Chapter 4729. of the Revised Code and related rules; and



K. Douglas Birkhimer may never be a preceptor; and

L. Douglas Birkhimer may never apply to own or operate any type of Terminal Distributor of Dangerous Drugs.

Failure to complete the terms set forth in this Board's Order, or to petition for reinstatement within five years of the date of this Order, will result in the Board issuing a notice of opportunity for hearing to consider additional disciplinary action, including and up to revocation of Douglas Birkhimer's license.

Douglas Birkhimer, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his license (wall certificate) to the office of the State of Ohio Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The wall certificate should be sent by certified mail, return receipt requested.

Douglas Birkhimer, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

The Board grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information contained in the record, specifically State's exhibits: 7, 12, and 13, and also grants Respondent's Motion to Seal Exhibits A and B.

Donald R. Miller moved for Action of the Board; Megan E. Marchal seconded the motion. Motion passed (Aye-5/Nay-0).

SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

#### **TIME AND METHOD TO PERFECT AN APPEAL**

Any party desiring to appeal shall file a Notice of Appeal with the Pharmacy Board, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal shall also be filed by the appellant with the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. If any party appealing from the order is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin county. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of this Order as provided in Section 119.12 of the Ohio Revised Code.



**BY ORDER OF THE STATE BOARD OF PHARMACY**

ORDER MAILED & EFFECTIVE: **July 23, 2019**

By: Steven W. Schierholt/mc  
Steven W. Schierholt, Esq., Executive Director

SWS/nmd/kll

CMRRR: 9414 7118 9956 1476 8698 89

cc: Douglas Funkhouser; via email: [doug@funkhouserlaw.com](mailto:doug@funkhouserlaw.com)



**STATE OF  
OHIO**  
BOARD OF PHARMACY

**SUMMARY SUSPENSION/NOTICE OF OPPORTUNITY FOR HEARING**

**IN THE MATTER OF:**

**CASE NO. A-2019-0053**

**Doug Birkhimer**  
6048 Carnation Drive  
Westerville, OH 43081

**SUSPENDED License No. 03-124341**

January 31, 2019

Dear Mr. Douglas Birkhimer:



You are hereby notified, in accordance with Section 119.07 of the Revised Code, the State of Ohio Board of Pharmacy (Board) hereby **SUMMARILY SUSPENDS** your Ohio license as a pharmacist, License No. 03-124341, under authority of Sections 3719.121 and 4729.16 of the Revised Code.

**PURSUANT TO SECTION 3719.121(B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO ARE SUSPENDED. SECTION 4729.16(B) OF THE ORC REQUIRES THAT YOU RETURN YOUR LICENSE TO THE OFFICE OF THE BOARD WITHIN 10 DAYS OF RECEIPT OF THIS NOTICE.**

**PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY. THIS SUSPENSION SHALL REMAIN IN EFFECT UNTIL A FINAL ADJUDICATION ORDER BECOMES EFFECTIVE, DURING WHICH TIME YOU MAY NOT ENGAGE IN THE PRACTICE OF PHARMACY.**

**JURISDICTION**

1. Records of the Board indicate you are currently licensed to practice pharmacy in the State of Ohio under license number 03-124341.
2. The Board has the authority to pursue a summary suspension of a pharmacist's license pursuant to Section 3719.121 and discipline of a pharmacist license pursuant to Section 4729.16 of the Ohio Revised Code (ORC).
3. The Board may suspend the license of a pharmacist if there is clear and convincing evidence that continuation of the person's professional practice or method of administering, prescribing, preparing, distributing, dispensing, or personally furnishing controlled substances or other dangerous drugs presents a danger of immediate and serious harm to others. ORC Section 3719.121(B).

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





## ALLEGATIONS

1. On or about December 12, 2018, you were notified as the owner, that pursuant to its authority under Sections 4729.57 and 4729.571 of the ORC, the Board issued a Notice of Opportunity for Hearing summarily suspending the Terminal Distributor of Dangerous Drugs License of Medical Center West Pharmacy (MCWP), 5212 W. Broad Street, Columbus, Ohio 43228, License Number 02-2661450. When you were informed of MCWP's summary suspension, the Board Agent explained that the practice of pharmacy could no longer occur at MCWP until further notice, and that all prescriptions should be transferred. You acknowledged this information as well as clarified that no pharmacy practice could occur at MCWP.
2. From on or about December 18, 2018 to January 25, 2019, you filled, dispensed and sold prescriptions for dangerous drugs from a location, Medical Center West Pharmacy, 5212 W. Broad Street, Columbus, Ohio 43228, knowing that it did not have a valid Terminal Distributor of Dangerous Drugs License from the State of Ohio Board of Pharmacy. The dates of sale are as follows:
  - a. December 19, 2018- (2) prescriptions; and/or
  - b. December 24, 2018- (1) prescription; and/or
  - c. December 26, 2018- (4) prescriptions; and/or
  - d. December 28, 2018- (1) prescription; and/or
  - e. December 31, 2018- (16) prescriptions; and/or
  - f. January 2, 2019- (13) prescriptions; and/or
  - g. January 3, 2019- (8) prescriptions; and/or
  - h. January 4, 2019- (8) prescriptions; and/or
  - i. January 5, 2019- (3) prescriptions; and/or
  - j. January 7, 2019- (16) prescriptions; and/or
  - k. January 8, 2019- (5) prescriptions; and/or
  - l. January 9, 2019- (18) prescriptions; and/or
  - m. January 10, 2019- (9) prescriptions; and/or
  - n. January 11, 2019- (7) prescriptions; and/or
  - o. January 14, 2019- (17) prescriptions; and/or

- p. January 15, 2019- (26) prescriptions; and/or
  - q. January 16, 2019- (6) prescriptions; and/or
  - r. January 17, 2019- (12) prescriptions; and/or
  - s. January 18, 2019- (3) prescriptions; and/or
  - t. January 21, 2019- (11) prescriptions; and/or
  - u. January 22, 2019- (3) prescriptions; and/or
  - v. January 23, 2019- (8) prescriptions; and/or
  - w. January 24, 2019- (7) prescriptions.
3. On or about January 24, 2019, you spoke with agents from the Board regarding your actions in the location since the suspension became effective. You stated you had been in the pharmacy cleaning, getting drugs ready to go back to the reverse distributor, transferring prescriptions, and speaking to patients. You did not acknowledge any dispensing at that time and led Board Agents to believe WCWP had not been operational as a pharmacy. After this misrepresentation to Board staff, agents from the Board discovered MCWP had dispensed at least twenty-five (25) controlled substances between the January 7, 2019 to January 22, 2019.
  4. On or about January 25, 2019, you reported to Board agents that you did receive and read the Board Order suspending the TDDD license of Medical Center West Pharmacy that was issued in December 2018. You admitted that you had dispensed from MCWP's location during the timeframe in which the license was suspended and you also admitted to lying to agents on January 24, 2018 about whether the practice of pharmacy had occurred at MCWP following its suspension.

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

1. Such conduct as set forth in paragraph (2)(a) through (w), inclusive, of the Allegations Section, if proven, constitutes a violation of the following division (E)(1)(a) of section 4729.51 of the ORC, as effective September 29, 2017, no person shall sell or distribute, at retail, dangerous drugs each violation constituting a felony of the fourth degree, each punishable by a maximum fine of \$5,000.00 if committed by an individual.
2. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of the following divisions of (A) of section 4729.16 of the ORC effective as of April 6, 2017, each violation constituting a minor misdemeanor, each punishable by a maximum penalty of \$150:
  - a. Engaged in dishonesty or unprofessional conduct in the practice of pharmacy, ORC 4729.16 (A)(2)(b); and/or



- b. Violated, conspired to violate, attempted to violate, or aided and abetted the violation of any of the provisions of this chapter 3715.75 to 3715.72 of the Revised Code, Chapter 2925. or 3719. of the Revised Code, or any rule adopted by the board under those provisions, ORC 4729.16(A)(2)(e); and/or
  - c. Failed to comply with an order of the board or a settlement agreement, ORC 4729.16(A)(2)(k); and/or
  - d. Engaged in any conduct for which the board may imposed discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.16(A)(2)(l).
- 3. Such conduct as set forth in the Allegations section, if proven, constitutes a violation of each of the following divisions of Rule 4729:1-4-01 of the OAC as effective May 1, 2018, each violation punishable by a maximum penalty of \$500:
  - a. Engaged in dishonesty or unprofessional conduct in the practice of pharmacy, OAC Rule 4729:1-4-04(B)(2)(b); and/or
  - b. Violated, conspired to violate, attempted to violate, or aided and abetted the violation of any of the provisions of Chapter 4729. of the Revised Code, sections 3715.52 to 3715.72 of the Revised Code, Chapter 2925., 3796., 3719. or 4752. of the Revised Code, or any rule adopted by the board under those provisions, OAC Rule 4729:1-4-04(B)(2)(e); and/or
  - c. Failed to comply with an order of the board or a settlement agreement, OAC Rule 4729:1-4-04(B)(2)(k); and/or
  - d. Violated any state or federal law, regulation or rule regardless of the jurisdiction in which the acts were committed, except for minor traffic violations such as parking violations, speeding tickets and violations such as failure to obey a red light, failure to use a turn signal or expired vehicle registration, OAC Rule 4729:1-4-04(B)(2)(m); and/or
  - e. Failed to conform to prevailing standards of care of similar pharmacists under the same or similar circumstances, whether or not actual injury to a patient is established, OAC Rule 4729:1-4-04(B)(2)(p).

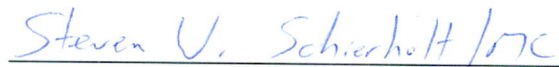
YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

**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.

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 Ohio State 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](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 OF OHIO BOARD OF PHARMACY

A handwritten signature in blue ink that reads "Steven W. Schierholt /s/c". The signature is written in a cursive style and is positioned above a horizontal line.

Steven W. Schierholt, Esq., Executive Director

SWS/jak/kll

CMRRR: 9414 7118 9956 0082 4878 21

cc: Douglas Funkhouser, 765 S. High Street, Columbus, OH 43206; [doug@funkhouserlaw.com](mailto:doug@funkhouserlaw.com)  
Henry Appel, [Henry.Appel@ohioattorneygeneral.gov](mailto:Henry.Appel@ohioattorneygeneral.gov)