



**STATE OF
OHIO**
BOARD OF PHARMACY

IN THE MATTER OF:

**Case No. A-2020-0009
I-2019-1147-B**

Jacqueline Mathenge, RPh
4345 Glen Este Withamsville Road, Apt. 316
Cincinnati, Ohio 45245

License No. 03-236572

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 Jacqueline Mathenge, for the purpose of resolving all issues between the parties relating to the Board investigation of an employee performing pharmacy technician duties without obtaining appropriate registration with the Board. Together, the Board and Jacqueline Mathenge 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 Section 4729.16 of the Ohio Revised Code to practice pharmacy as in the state of Ohio.
2. Jacqueline Mathenge is a licensed pharmacist in the state of Ohio under license number 03-236572.

FACTS

1. The Board initiated an investigation of Jacqueline Mathenge, pharmacist license number 03-236572, and Benzer Pharmacy, related to an employee of Benzer Pharmacy performing pharmacy technician duties without obtaining registration with the Board.
2. On or about April 6, 2020 the Board sent a Notice of Opportunity for Hearing to Jacqueline Mathenge, which outlined the allegations and provided notice of her right to a hearing, her rights in such hearing, and her 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

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. Jacqueline Mathenge neither admits nor denies the allegations stated in the Notice of Opportunity for hearing letter dated April 6, 2020; 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. Jacqueline Mathenge agrees to pay to the Board the amount of amount of \$500.00. This fine will be attached to your registration 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. Jacqueline Mathenge must obtain, within six months from the effective date of this Agreement, six hours of approved continuing pharmacy education (0.6 CEUs), which may not also be used for license renewal. One hour (0.1 CEU) must be the Responsible Person Roundtable. Copies of completed CEUs must be e-mailed to legal@pharmacy.ohio.gov.
5. The Board hereby imposes a written reprimand on Jacqueline Mathenge's license number 03-236572.
6. Jacqueline Mathenge agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
7. Jacqueline Mathenge understands that she has the right to be represented by counsel for review and execution of this agreement.
8. Jacqueline Mathenge agrees and acknowledges that this Board disciplinary action must be disclosed to the proper licensing authority of any state or jurisdiction in which she currently holds a professional license, including to the Board on renewal applications or applications for a new license.
9. Jacqueline Mathenge waives 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:

Jacqueline Mathenge, RPh
 Jacqueline Mathenge, RPh, Respondent

10/16/20
 Date of Signature

 Attorney for Respondent (if applicable)
Jennifer M. Rudell, RPh

 Date of Signature
10.29.2020

Jennifer M. Rudell, RPh, President,
 State of Ohio Board of Pharmacy

 Date of Signature

Henry Appel
 Henry Appel, Ohio Assistant Attorney General

10.29.2020
 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-2020-0009
I-2019-1147-C**

Jacqueline Mathenge, RPh
4345 Glen Este Withamsville Road, Apt. 316
Cincinnati, Ohio 45245

License No. 03-236572

April 6, 2020

Dear Ms. Jacqueline Mathenge:



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 for violations of Chapter 4729. of the Revised Code and Section 4729 of the Administrative Code under authority of Section 4729.16 of the Revised Code.

JURISDICTION

1. Pursuant to division (A)(1) of Section 4729.16 (effective September 9, 2017) of the Ohio Revised Code (ORC), the Board may impose any one or more of the following sanctions on a pharmacist or pharmacy intern if the board finds the individual engaged in any of the conduct set forth in division (A)(2) of this section:
 - a. Revoke, suspend, restrict, limit, or refuse to grant or renew a license, ORC 4729.16(A)(1)(a); and/or
 - b. Reprimand or place the license holder on probation, ORC 4729.16(A)(1)(b); and/or
 - c. Impose a monetary penalty or forfeiture not to exceed in severity any penalty designated under the Revised Code for a similar offense or in the case of a violation of a section of the Revised Code that does not bear a penalty, impose a monetary penalty or forfeiture of not more than \$500, ORC 4729.16(A)(1)(c).
2. Rule 4729:1-4-01 of the Ohio Administrative Code (OAC) provides that the Board may discipline or deny the issuance of a certificate of registration or an identification card to practice pharmacy as a pharmacist in Ohio.
3. Jacqueline Mathenge is a licensed pharmacist in the state of Ohio under license number 03-236572, who is listed as the Responsible Person of Benzer OH 6, LLC d.b.a. Benzer Pharmacy, located at 155 N. Point Drive, Mount Orab, Ohio.

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



ALLEGATIONS

1. From March 2019 to on or about October 10, 2019, Pamela Hatmaker worked full-time performing duties of a certified technician at Benzer Pharmacy, located at 155 N. Point Drive, Orab, Ohio. On or about August 2, 2019, Pamela Hatmaker was notified by the Board she must stop performing duties of a pharmacy technician until she receives her technician registration from the Board. She was also notified that once she is issued a technician trainee registration, she may not perform duties that exceed the scope of a technician trainee.
2. On or about August 15, 2019, Pamela Hatmaker was issued her pharmacy technician trainee registration from the Board. On or about October 10, 2019, Ms. Hatmaker stated to an agent of the Board she spoke with Benzer Pharmacy's Responsible Person, Jacqueline Mathenge, who advised her to limit her duties to those of a pharmacy technician trainee. The following day Ms. Hatmaker was told by Ms. Mathenge to resume her usual technician duties which exceeded the scope of those allowed by a technician trainee.
3. On or about August 27, 2019, you signed an Employer-Based Training Program Attestation on behalf of Benzer Pharmacy, attesting that Pamela Hatmaker had successfully completed a formalized technician training program at Benzer Pharmacy. Ms. Hatmaker confirmed that she had never engaged in formalized training at Benzer Pharmacy.
4. On or about October 28, 2019, you stated the following to an agent of the Board:
 - a. Ms. Hatmaker has worked beyond the scope of what she is permitted to do as a trainee.
 - b. Ms. Hatmaker made you aware she was notified by the Board she is not allowed to practice outside the scope of a trainee; however, you allowed her to resume duties exceeding the scope of what she is allowed to do as a trainee because you needed help in the pharmacy.
 - c. You signed the "Employer Based Training Program" affidavit which affirmed Benzer Pharmacy had a training program in place; however, there was not a program at the pharmacy and Ms. Hatmaker did not complete formalized employer-based training.

POTENTIAL VIOLATIONS OF LAW

1. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of Section 4729.95(C) of the ORC, No pharmacist shall knowingly allow any person employed or otherwise under the control of the pharmacist to violate division (A) of this section which states: No person who is not a pharmacist, pharmacy intern, registered pharmacy technician, certified pharmacy technician, or pharmacy technician trainee shall knowingly engage in any of the activities listed in section 4729.91 of the Revised Code in a location licensed as a terminal distributor of dangerous drugs, a misdemeanor of the second degree, punishable by a maximum penalty of \$750.
2. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of the following sections of Rule 4729-5-11 of the OAC, as effective February 17, 2017, each punishable by a maximum penalty of \$500:
 - a. 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 4729-5-11(A)(3); and/or

- b. 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 as required in rule 4729-9-11 of the Administrative Code and maintaining all records relating to the distribution dangerous drugs, OAC Rule 4729-5-11(C)(6).
3. Such conduct as set forth in the Allegations Section, if proven, constitutes a violation of Section 4729.08(B) of the ORC, not of good moral character and habits, punishable by a maximum penalty of \$500.
 4. 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 September 29, 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 Section (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).
 - c. 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).
 5. Such conduct as set forth in the Allegations Section, if proven, each constitutes a violation of each of the following divisions of Rule 4729:1-4-01(B)(2) 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 4729:1-4-01(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 4729:1-4-01(B)(2)(e); and/or
 - c. Violated any state or federal law, regulation or rule regardless of the jurisdiction in which the acts were committed, except for minor traffic violations..., OAC Rule 4729:1-4-01(B)(2)(m).

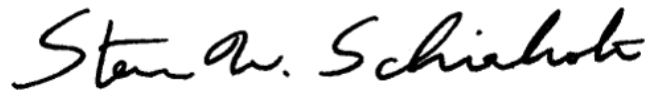
YOU ARE FURTHER NOTIFIED, in accordance with the provisions of Chapters 119. and 4729. of the Ohio Revised Code, that you are entitled to a hearing before the State of Ohio Board of Pharmacy, if you request such a hearing within thirty 30 days of the date of the mailing of this notice.

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.

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

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