



**STATE OF
OHIO**
BOARD OF PHARMACY

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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. Schierholz

Steven W. Schierholz, Esq., Executive Dir.
Date: Dec 18, 2023

-MUST HAVE BOARD SEAL TO BE OFFICIAL-

AMENDED ORDER OF THE STATE BOARD OF PHARMACY

Case Number A-2022-0436

In The Matter Of:

Robert Herberger
6156 Chidester Drive
Canfield, OH 44406
License no. 03-236632

INTRODUCTION

The Matter of Robert Herberger came for hearing on December 5, 2023, before the following members of the State of Ohio Board of Pharmacy (Board): Trina Buettner, RPh, *Presiding*; Mindy Ferris, RPh, Vice President; Anthony Buchta, Sr., RPh; Victor Goodman, *Public Member*; Jeff Huston, RPh; Rich Miller, RPh; and Christine Pfaff, RPh.

T.J. Grimm, RPh; Jason George, RPh; Absent.

Robert Herberger was represented by Robert Garrity. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. None

Respondent's Witnesses:

1. Robert Herberger

State's Exhibits:

1. Original Notice Letter
2. Board Order
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Respondent's Exhibits:

- A. Current PRO contract and UDS results

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- B. Chemical dependency treatment documentation
- C. 12 Step meeting attendance
- D. Résumé
- E. Continuing education documentation
- F. Letters of support

FINDINGS OF FACT & DECISION OF THE BOARD

After hearing the testimony, observing the demeanor of the witnesses, considering the evidence, and weighing the credibility of each, the Board finds that Robert Herberger has substantially complied with the terms set forth in the Board Order of the State of Ohio Board of Pharmacy, Case No. A-2022-0436 dated July 21, 2022

On the basis of the Finding of Fact set forth above, and after consideration of the record as a whole, the State of Ohio Board of Pharmacy hereby approves the reinstatement of the pharmacist license no. 03-236632, held by Robert Herberger to practice pharmacy in Ohio subject to a period of probation for five years beginning on the effective date of this Order, with the following conditions:

1. Robert Herberger must enter into and adhere to the terms of a new contract, signed within thirty days after the effective date of this Order, with a Board approved treatment monitor for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. Robert Herberger should also submit to the Board documentation demonstrating compliance with an Ohio Department of Mental Health and Addiction Services (ODMHAS) treatment provider, if applicable. Failure to adhere to the terms of the treatment contract and/or monitoring contract will be considered a violation of the Board's Order and subject Robert Herberger to potential sanctions up to and including revocation of license. The monitoring 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 Robert Herberger 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. Robert Herberger must meet the daily check-in requirements of the testing center or check-in requirements as otherwise proscribed by the treatment monitor.
- 2. The intervener/sponsor 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.
 - a. 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.
 - b. The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- 3. Robert Herberger 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 Robert Herberger reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 4. Robert Herberger shall not refuse a breathalyzer or other drug testing requested by law enforcement during the duration of probation. The Board shall treat any such refusal as a violation of the Board's Order and request Robert Herberger reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 5. [REDACTED]
- 6. [REDACTED]
- 7. Robert Herberger must submit quarterly progress reports to the Board (due January 10, April 10, July 10, and October 10 of each year of probation) that include:
 - a. The written report and documentation provided by the treatment program pursuant to the contract, and
 - b. A written description of Robert Herberger's progress towards recovery and what Robert Herberger has been doing during the previous three months, and
 - c. Proof of compliance with all terms of probation, the monitoring contract, including all terms in OAC Rule 4729:4-1-04, and proof of compliance with treatment, if applicable.
- 8. Robert Herberger must provide copies of the board order or settlement agreement to all employers or prospective employers, all licensing authorities in which Robert Herberger holds a professional license or applies for a professional license, and all persons who provide Robert Herberger chemical dependency treatment or monitoring, during the effective period of this order or agreement.

9. Other terms of probation are as follows:

- a. Robert Herberger must meet at least annually with the Board's Probation Committee, the first meeting to be held December 9, 2024. Additional periodic appearances may be requested.
- b. The State of Ohio Board of Pharmacy hereby declares that Robert Herberger's pharmacist license is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraphs (K) and (O) of Rule 4729:2-1-01 of the OAC.
- c. Robert Herberger must obtain prior approval of the board or the board's probation committee of departures or absences in excess of ten days from the country. Periods of departure or absence shall not change the probationary term, unless otherwise determined by motion of the board or the board's probation committee. For absences of three months or longer, the board or its probation committee may toll the length of probation, other than in instances where the board or its probation committee can be assured that probationary monitoring is otherwise being performed.
- d. Robert Herberger may not serve as a responsible pharmacist or a designated representative in a dispensary or for home medical equipment.
- e. Robert Herberger may not engage in a consult agreement, unless approved by the board.
- f. Robert Herberger may not destroy, assist in, or witness the destruction of controlled substances.
- g. Robert Herberger may not work in a pharmacy more than 40 hours per week or 80 hours over a two-week period.
- h. Robert Herberger must not violate the drug laws of Ohio, any other state, or the federal government.
- i. Robert Herberger must abide by the rules of the State of Ohio Board of Pharmacy.
- j. Robert Herberger must comply with the terms of this Order.
- k. Robert Herberger's license is deemed not in good standing until successful completion of the probationary period.
- l. Robert Herberger must provide continuing authorization for disclosure by the monitor and treatment provider (when applicable) to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for those individuals to fulfill their duties.

10. When deemed appropriate by the Board, Robert Herberger must submit to a psychiatric evaluation, and, where appropriate, continued treatment acceptable to the Board.
11. Robert Herberger may not request modifications to probationary terms for at least three years, however, limited, isolated deviations may be granted with approval by the Board, in exceptional circumstances.

12. Robert Herberger must immediately report any violation of the terms of this probation to the Board by contacting legal@pharmacy.ohio.gov. Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Robert Herberger to possible additional sanctions, including and up to revocation of license.
13. Any violation of probation or this Board's Order may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code, including and up to revocation of Robert Herberger's license.
14. Periods during which Robert Herberger is not in compliance with all probationary terms shall toll the length of time of probation, or the Board may implement additional disciplinary action in addition to or instead of tolling probation.

At the conclusion of the probationary period, the Board will issue a letter indicating whether probation has been successfully completed. If the Board determines probation has not been successfully completed, it will issue a notice of opportunity for hearing to Robert Herberger.

Mindy Ferris moved for Findings of Fact; Jeff Huston seconded the motion. Motion passed (Yes-6/No-0).

Mindy Ferris moved for the Decision of the Board; Jeff Huston seconded the motion. Motion passed (Yes-6/No-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 State of Ohio Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, OH 43215, 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 in 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 the appellant 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 service of the notice of the State of Ohio Board of Pharmacy's Order as provided in Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: **December 18, 2023**

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

SWS/jak/kll



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Steven W. Schierholt

Steven W. Schierholt, Esq., Executive Dir.

Date: Dec 11, 2023

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Case Number A-2022-0436

In The Matter Of:

Robert Herberger
6156 Chidester Drive
Canfield, OH 44406
License no. 03-236632

INTRODUCTION

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T.J. Grimm, RPh; Jason George, RPh; Absent.

Robert Herberger was represented by Robert Garrity. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

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1. None

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- B. Chemical dependency treatment documentation
- C. 12 Step meeting attendance
- D. Résumé
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FINDINGS OF FACT & DECISION OF THE BOARD

After hearing the testimony, observing the demeanor of the witnesses, considering the evidence, and weighing the credibility of each, the Board finds that Robert Herberger has substantially complied with the terms set forth in the Board Order of the State of Ohio Board of Pharmacy, Case No. A-2022-0436 dated July 21, 2022

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 - a. The written report and documentation provided by the treatment program pursuant to the contract, and
 - b. A written description of Robert Herberger's progress towards recovery and what Robert Herberger has been doing during the previous three months, and
 - c. Proof of compliance with all terms of probation, the monitoring contract, including all terms in OAC Rule 4729:4-1-04, and proof of compliance with treatment, if applicable.
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9. Other terms of probation are as follows:

- a. Robert Herberger must meet at least annually with the Board's Probation Committee, the first meeting to be held Monday, December 9, 2024. Additional periodic appearances may be requested.
- b. The State of Ohio Board of Pharmacy hereby declares that Robert Herberger's pharmacist license is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraphs (K) and (O) of Rule 4729:2-1-01 of the OAC.
- c. Robert Herberger must obtain prior approval of the board or the board's probation committee of departures or absences in excess of ten days from the country. Periods of departure or absence shall not change the probationary term, unless otherwise determined by motion of the board or the board's probation committee. For absences of three months or longer, the board or its probation committee may toll the length of probation, other than in instances where the board or its probation committee can be assured that probationary monitoring is otherwise being performed.
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- i. Robert Herberger must abide by the rules of the State of Ohio Board of Pharmacy.
- j. Robert Herberger must comply with the terms of this Order.
- k. Robert Herberger's license is deemed not in good standing until successful completion of the probationary period.
- l. Robert Herberger must provide continuing authorization for disclosure by the monitor and treatment provider (when applicable) to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for those individuals to fulfill their duties.

10. When deemed appropriate by the Board, Robert Herberger must submit to a psychiatric evaluation, and, where appropriate, continued treatment acceptable to the Board.

11. Robert Herberger may not request modifications to probationary terms for at least three years, however, limited, isolated deviations may be granted with approval by the Board, in exceptional circumstances.

12. Robert Herberger must immediately report any violation of the terms of this probation to the Board by contacting legal@pharmacy.ohio.gov. Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Robert Herberger to possible additional sanctions, including and up to revocation of license.
13. Any violation of probation or this Board's Order may result in a Board hearing to consider alternative or additional sanctions under Section 4729.16 of the Ohio Revised Code, including and up to revocation of Robert Herberger's license.
14. Periods during which Robert Herberger is not in compliance with all probationary terms shall toll the length of time of probation, or the Board may implement additional disciplinary action in addition to or instead of tolling probation.

At the conclusion of the probationary period, the Board will issue a letter indicating whether probation has been successfully completed. If the Board determines probation has not been successfully completed, it will issue a notice of opportunity for hearing to Robert Herberger.

Mindy Ferris moved for Findings of Fact; Jeff Huston seconded the motion. Motion passed (Yes-6/No-0).

Mindy Ferris moved for the Decision of the Board; Jeff Huston seconded the motion. Motion passed (Yes-6/No-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.

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Any party desiring to appeal shall file a Notice of Appeal with the State of Ohio Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, OH 43215, 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 in 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 the appellant 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 service of the notice of the State of Ohio Board of Pharmacy's Order as provided in Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: **December 11, 2023**

By: *Steven W. Schierholt*
Steven W. Schierholt, Esq., Executive Director

SWS/jak/kll



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Steven W. Schierholt

Steven W. Schierholt, Esq., Executive Dir.
Date: Dec 09, 2022

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ORDER OF THE STATE BOARD OF PHARMACY

Case Number A-2022-0436

In The Matter Of:

Robert Herberger
6156 Chidester Drive
Canfield, OH 44406
License no. 03-236632

INTRODUCTION

The Matter of Robert Herberger came for hearing on December 6, 2022, before the following members of the State of Ohio Board of Pharmacy (Board): Shawn Wilt, RPh, *Presiding*; Trina Buettner, RPh, Vice President; Mindy Ferris, RPh; Jason George, RPh; Victor Goodman, *Public Member*; T.J. Grimm, RPh; Jeff Huston, RPh; Rich Miller, RPh; and Christine Pfaff, RPh.

Robert Herberger was represented by Robert Garrity. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witnesses:

1. None

Respondent's Witnesses:

1. Robert Herberger

State's Exhibits:

1. Notice Letter
2. Request for Hearing
3. Initial Scheduling Order
4. Current Scheduling Order
5. Statement of Salmen
6. DEA 106 Form
7. Screenshots from Surveillance Camera



Respondent's Exhibits:

- A. Current PRO Contract
- B. Treatment Discharge Paperwork
- C. Record of Meeting Attendance
- D. Certificate of Completion
- E. Resume
- F. CPE Monitor Activity Transcript
- G. Letters of Support
- H. Screens
- I. Report

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the Board finds the following to be fact:

1. From on or about June 23, 2022 to on or about July 16, 2022, Robert Herberger stole dangerous drugs from your employer, Rite Aid Pharmacy #2357, located at 2229 E. State Street, Salem, Ohio. Robert Herberger stole oxycodone/acetaminophen, 5/325mg tablets, a Schedule II controlled substance on the following dates:
 - a. On or about June 23, 2022, two tablets of oxycodone 5/325mg while dispensing prescription #1267354.
 - b. On or about July 1, 2022, three tablets of oxycodone 5/325mg while dispensing prescription #1269140.
 - c. On or about July 1, 2022, five tablets of oxycodone 5/325mg while dispensing prescription #1268946.
 - d. On or about July 15, 2022, five tablets of oxycodone 5/325mg while dispensing prescription #1271640.
 - e. On or about July 15, 2022, five tablets of oxycodone 5/325mg while dispensing prescription #1271662.
 - f. On or about July 16, 2022, two tablets of oxycodone 5/325mg from a stock bottle located in the pharmacy.
2. On or about July 16, 2022, Robert Herberger was interviewed by an agent from the Board. Robert Herberger stated he had never trafficked any medication.

CONCLUSIONS OF LAW

1. Such conduct as set forth in paragraphs (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) of the Allegations Section, if proven, constitutes a violation of Section 2913.02 of the ORC, theft of a dangerous drug (Schedule II controlled substance).
2. Such conduct as set forth in paragraphs (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) the Allegations Section, if proven, constitutes a violation of Section 2925.11(A) of the ORC, aggravated possession of drugs.

3. 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 October 9, 2021:
 - a. Engaged in dishonesty or unprofessional conduct in the practice of pharmacy, ORC 4729.16 Section (A)(2)(b); and
 - b. Is addicted to or abusing alcohol or drugs or is impaired physically or mentally to such a degree as to render the pharmacist unfit to practice pharmacy, ORC Section 4729.16(A)(2)(c); and
 - c. Violated, conspired to violate, attempted to violate, or aided and abetted the violation of any of the provisions of this chapter, sections 3715.52 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
 - d. Engaged in any other conduct for which the board may impose discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.16(A)(2)(l).
4. 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 April 25, 2022:
 - a. Engaged in dishonesty or unprofessional conduct in the practice of pharmacy, OAC Rule 4729:1-4-01(B)(2)(b); and
 - b. Is addicted to or abusing alcohol or drugs or is impaired physically or mentally to such a degree as to render the pharmacist unfit to practice pharmacy, OAC Rule 4729:1-4-01(B)(2)(c); and
 - c. 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)(d); and
 - 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 4729:1-4-01(B)(2)(k); and
 - 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 4729:1-4-01(B)(2)(n).

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Robert Herberger on July 21, 2022.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist license no. 03-236632, held by Robert Herberger and such suspension is effective as of the date of the mailing of this Order.

Robert Herberger, pursuant to Rule 4729:1-1-01(T) 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 and/or medical marijuana during such period of suspension.

Further, after one year from the effective date of this Order, the Board will consider any petition filed by Robert Herberger 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:

1. Robert Herberger must maintain a current address with the Board throughout the duration of the suspension.
2. Robert Herberger must enter into and adhere to the terms of a new contract, signed within thirty days after the effective date of this Order, with a Board approved treatment monitor for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. Robert Herberger should also submit to the Board documentation demonstrating compliance with an Ohio Department of Mental Health and Addiction Services (ODMHAS) treatment provider, if applicable. Failure to adhere to the terms of the treatment contract and/or monitoring contract will be considered a violation of the Board's Order and subject Robert Herberger to potential sanctions up to and including revocation of license. The monitoring contract must provide that:
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- 3. Robert Herberger 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 Robert Herberger reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 4. Robert Herberger 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 Robert Herberger reappear before the Board for possible additional sanctions, including and up to revocation of license.
- 5. Robert Herberger must immediately report any violation of the terms of this suspension to the Board by contacting legal@pharmacy.ohio.gov. Failure to self-report any violation shall be treated as a violation of this Board's Order and will subject Robert Herberger to possible additional sanctions, including and up to revocation of license.
- 6. Robert Herberger 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 him unfit to practice pharmacy.
- 7. Robert Herberger 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 4729:1-5-02 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.
- 8. If reinstatement is not accomplished within three years of the effective date of this Order, Robert Herberger must also show successful completion of the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Exam (MPJE), or an equivalent examination(s) approved by the Board.
- 9. Robert Herberger must provide continuing authorization for disclosure by the monitor and treatment provider (when applicable) to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for those individuals to fulfill their duties.

10. When deemed appropriate by the Board, Robert Herberger must submit to a psychiatric evaluation, and, where appropriate, continued treatment acceptable to the Board.
11. Robert Herberger must obtain prior approval of the board or the board's probation committee of departures or absences in excess of ten days from the country. Periods of departure or absence shall not change the probationary term, unless otherwise determined by motion of the board or the board's probation committee. For absences of three months or longer, the board or its probation committee may toll the length of suspension, other than in instances where the board or its probation committee can be assured that monitoring is otherwise being performed.
12. Violation of any term of suspension, including but not limited to any violation of the contract signed with the treatment monitor and/or ODMHAS or other approved treatment provider may result in additional action before the Board up to and including revocation of your pharmacy license.
13. Any violation of Chapters 2925., 3715., 3719., 4729., of the Ohio Revised Code, any administrative code violation or a violation of any other state, federal, or local 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.
14. Periods during which Robert Herberger is not in compliance with all terms of suspension shall toll the length of time of suspension during which Robert Herberger was out of compliance. The minimum length of time each violation will toll the suspension term is available on the Board's website, www.pharmacy.ohio.gov. The Board may implement additional disciplinary action in addition to or instead of tolling suspension.
15. If Robert Herberger's employment is related to the practice of pharmacy, Robert Herberger must provide copies of the board order or settlement agreement to all employers or prospective employers, all licensing authorities in which Robert Herberger holds a professional license or applies for a professional license, all persons who provide Robert Herberger chemical dependency treatment monitoring, and law enforcement and court personnel if Robert Herberger has court involvement, such as ILC, drug court or diversion, related the suspension, during the effective period of this order or agreement.
16. 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, may result in the Board issuing a notice of opportunity for hearing to consider additional disciplinary action, including and up to revocation of Robert Herberger's license.

Rich Miller moved for Findings of Fact; T.J. Grimm seconded the motion. Motion passed (Aye-8/Nay-0).

Jason George moved for Conclusions of Law; T.J. Grimm seconded the motion. Motion passed (Aye-8/Nay-0).

Mindy Ferris moved for Action of the Board; Jeff Huston seconded the motion. Motion passed (Aye-8/Nay-0).

SO ORDERED.

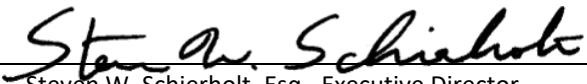
It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

TIME AND METHOD TO PERFECT AN APPEAL

Any party desiring to appeal shall file a Notice of Appeal with the State of Ohio Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, OH 43215, 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 in 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 the appellant 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 the State of Ohio Board of Pharmacy's Order as provided in Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: December 9, 2022

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

SWS/jak/kll
CMRRR: 9414 7118 9956 2377 6694 48



**STATE OF
OHIO**
BOARD OF PHARMACY

-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: 7/21/2022

-MUST HAVE BOARD SEAL TO BE OFFICIAL-

SUMMARY SUSPENSION/NOTICE OF OPPORTUNITY FOR HEARING

IN THE MATTER OF:

CASE NO. A-2022-0436

Robert Herberger, RPh
6156 Chidester Dr.
Canfield, OH 44406

SUSPENDED License No. 03-236632

July 21, 2022

Dear Mr. Robert Herberger, RPh:

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. 03-236632, under authority of Sections 3719.121 and 4729.16 of the Revised Code.

PURSUANT TO RULE 4729:1-1-01(T) 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 03-236632.
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).

ALLEGATIONS

1. From on or about June 23, 2022 to on or about July 16, 2022, you stole dangerous drugs from your employer, Rite Aid Pharmacy #2357, located at 2229 E. State Street, Salem, Ohio. You stole oxycodone/acetaminophen, 5/325mg tablets, a Schedule II controlled substance on the following dates:

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



- a. On or about June 23, 2022, two tablets of oxycodone 5/325mg while dispensing prescription #1267354.
 - b. On or about July 1, 2022, three tablets of oxycodone 5/325mg while dispensing prescription #1269140.
 - c. On or about July 1, 2022, five tablets of oxycodone 5/325mg while dispensing prescription #1268946.
 - d. On or about July 15, 2022, five tablets of oxycodone 5/325mg while dispensing prescription #1271640.
 - e. On or about July 15, 2022, five tablets of oxycodone 5/325mg while dispensing prescription #1271662.
 - f. On or about July 16, 2022, two tablets of oxycodone 5/325mg from a stock bottle located in the pharmacy.
2. On or about July 16, 2022, you were interviewed by an agent from the Board. You stated you had never trafficked any medication.

POTENTIAL VIOLATIONS OF LAW

1. Such conduct as set forth in paragraphs (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) of the Allegations Section, if proven, constitutes a violation of Section 2913.02 of the ORC, theft of a dangerous drug (Schedule II controlled substance), each a felony of the fourth degree, punishable by a maximum fine of \$5,000.
2. Such conduct as set forth in paragraphs (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) the Allegations Section, if proven, constitutes a violation of Section 2925.11(A) of the ORC, aggravated possession of drugs, each a felony of the fifth degree, punishable by a maximum fine of \$2,500.
3. 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 October 9, 2021, 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. Is addicted to or abusing alcohol or drugs or is impaired physically or mentally to such a degree as to render the pharmacist unfit to practice pharmacy, ORC Section 4729.16(A)(2)(c); and/or
 - c. Violated, conspired to violate, attempted to violate, or aided and abetted the violation of any of the provisions of this chapter, sections 3715.52 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

- d. Engaged in any other conduct for which the board may impose discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.16(A)(2)(l).
- 4. 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 April 25, 2022, 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. Is addicted to or abusing alcohol or drugs or is impaired physically or mentally to such a degree as to render the pharmacist unfit to practice pharmacy, OAC Rule 4729:1-4-01(B)(2)(c); and/or
 - c. 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)(d); 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 4729:1-4-01(B)(2)(k); 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 4729:1-4-01(B)(2)(n).

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 Ohio State 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 4729.16(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 OF OHIO BOARD OF PHARMACY



Steven W. Schierholt, Esq., Executive Director

SWS/jak/jrn

CMRRR: 9414 7118 9956 2597 1462 86

cc: (Rite Aid Pharmacy #2357, c/o Joseph Salmen, R.Ph., 2229 E. State Street, Salem, OH 44460)