



**MINUTES OF THE DECEMBER 5-6, 2022**  
**MEETING OF THE STATE OF OHIO BOARD OF PHARMACY**

**Monday, December 5, 2022**

**10:10 a.m.** The State of Ohio Board of Pharmacy convened in the Hearing Room, 17th Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, for a public meeting, which was also broadcast via Microsoft Teams audio/visual conference call, with the following members present:

Shawn Wilt, RPh, *Presiding*; Trina Buettner, RPh, *Vice President*; Mindy Ferris, RPh; Jason George, RPh; Victor Goodman, *Public Member*; TJ Grimm, RPh; Jeff Huston, RPh; Rich Miller, RPh; and Christine Pfaff, RPh.

Also present were Steven Schierholt, *Executive Director*; Sharon Maerten-Moore, *Chief Legal Counsel*; Ashley Gilbert, *Senior Legal Counsel*; Kathryn Lewis, *Legal Administrator*; and Jennifer Nelson, *Legal Administrative Assistant*.

**10:11 a.m.** Mr. Griffin provided the Compliance Report.

**10:13 a.m.** Ms. Southard provided the Licensing Report.

**10:17 a.m.** Ms. Southard presented an Obot Non-Physician Owner/Operator Waiver Request from CleanSlate Medical Group of Ohio, LLC – Parma, OH (APP-000570657) to the Board for consideration.

**R-2023-0128** Ms. Buettner moved that the Board grant CleanSlate Medical Group of Ohio, LLC's waiver request. The motion was seconded by Mr. Huston and approved by the Board: Yes-8, No-0

**10:19 a.m.** Ms. Southard presented an Obot Non-Physician Owner/Operator Waiver Request from CleanSlate Medical Group of Ohio, LLC, - Operator Change of Officers to the Board for consideration.

**R-2023-0129** Mr. Huston moved that the Board grant CleanSlate Medical Group of Ohio, LLC's waiver request. The motion was seconded by Ms. Buettner and approved by the Board: Yes-8, No-0

**10:20 a.m.** Ms. Southard presented a Pharmacist Technician Trainee Extension Request from James Waldroup – Canal Fulton, OH (09104702) to the Board for consideration.

**R-2023-0130** Mr. Miller moved that the Board grant James Waldroup's extension request. The motion was seconded by Mr. Huston and approved by the Board: Yes-8, No-0

**10:21 a.m.** Ms. Southard presented a Pharmacist Technician Trainee Extension Request from Britnee Adams – Springfield, OH (09112420) to the Board for consideration.

**R-2023-0131** Mr. Huston moved that the Board grant Britnee Adams' extension request. The motion was seconded by Mr. George and approved by the Board: Yes-8, No-0

**10:25 a.m.** Ms. Southard presented a Pharmacist Licensure by Reciprocity Request from Ashley Ramjattan – Westlake, OH (APP-000654880) to the Board for consideration.

**R-2023-0132** Mr. Huston moved that the Board approve a resolution *titled Pharmacist Licensure by Reciprocity Waiver*. The motion was seconded by Mr. George and approved by the Board: Yes-7, No-0, Recused-1 (Mr. Grimm). The following resolution was adopted by the Board:

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#### **Pharmacist Licensure by Reciprocity Waiver**

In direct response to a NAPLEX score result adjustment for licensure as pharmacist by reciprocity candidate Ashley Ramjattan (APP-00054880), the Board hereby amends the requirement for participation in a law review hearing pursuant to paragraph (C) of Ohio Administrative Code 4729:1-2-02 to ninety (90) days post-license issuance and grants an Ohio pharmacist license to Ms. Ramjattan.

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**10:26 a.m.** Ms. Southard presented a resolution titled *Responsible Person Requirements for Licensure* to the Board for consideration.

**R-2023-0133** Mr. Huston moved that the Board approve the resolution. The motion was seconded by Ms. Pfaff and approved by the Board: Yes-8, No-0. The following resolution was adopted by the Board:

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The Board hereby makes the following additions to the Responsible Person Requirements for Licensure resolution last amended on September 12, 2022 (R-2023-0056) and publicly posted at [www.pharmacy.ohio.gov/rp](http://www.pharmacy.ohio.gov/rp):

- To the Terminal – Facility – Limited license types:

TERMINAL - FACILITY - LIMITED				
Subcategory	Subcategory Description	Approved Credentials for Responsible Person	Special Requirements	Applicable Inspection Guide
PT	Physical Therapy	DO, MD, <a href="#">RPH</a>		<a href="#">Limited Facility</a> (OAC <a href="#">4729:5-23</a> )

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**10:28 a.m.**

Ms. Southard presented a resolution titled *Requirements for Online Sales of Dangerous Drugs* to the Board for consideration.

**R-2023-0134**

Mr. Huston moved that the Board approve the resolution. The motion was seconded by Ms. Ferris and approved by the Board: Yes-8, No-0. The following resolution was adopted by the Board:

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**Requirements For Online Sales of Dangerous Drugs for Veterinary Use Only**

The Board hereby amends the requirements in Ohio administrative rule 4729:5-3-08 for licensed terminal distributors engaged in the online sale of dangerous drugs for veterinary use only to maintain a Healthcare Merchant Accreditation from the National Association of Boards of Pharmacy (NABP).

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**10:33 a.m.**

Ms. Southard presented a resolution titled *Certificate of Operation Expiration Dates* to the Board for consideration.

**R-2023-0135**

Mr. George moved that the Board approve the resolution. The motion was seconded by Ms. Buettner and approved by the Board: Yes-8, No-0. The following resolution was adopted by the Board:

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**Certificates of Operation awarded pursuant to the 2021 Request for Dispensary Applications (RFA II)**

The Board hereby amends paragraph (C) of Ohio administrative rule 3796:6-2-06 to issue an expiration date of July 1, 2025 for each dispensary that was awarded a provisional dispensary license pursuant to the 2021 request for application period and qualifies for a certificate of operation pursuant to the aforementioned rule.

Rule reference: [OAC 3796:6-2-06](#)

*(C) After receiving notice of a satisfactory final inspection from the state board of pharmacy, the dispensary shall submit to the state board of pharmacy payment of the fee required under rule [3796:6-5-01](#) of the Administrative Code for a certificate of operation. The initial certificate of operation shall be effective from the date the certificate is issued until the expiration date of the first day of July of each odd-numbered year. Initial certificates of operation awarded on or after the first day of April of each odd-numbered year shall receive an expiration date of the first day of July of the next odd-numbered year.*

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- 10:37 a.m.** Mr. Schierholt provided the Executive Director Report.
- 10:39 a.m.** The Board recessed for lunch.
- 1:26 p.m.** The Board returned to public session. The Board heard the Oral Address to the Board for a Medical Marijuana Provisional Dispensary Application Denial in the Matter of Seven Legendz Fountain Square (A-2022-0291).
- 1:49 p.m.** Ms. Wai led a discussion on the Pilot Project at Kroger Pharmacy.
- R-2023-0136** Mr. Miller moved that the Board approve the Pilot Project in perpetuity. The motion was seconded by Mr. Grimm and approved by the Board: Yes-8, No-0.
- 2:10 p.m.** The Board recessed.
- 2:24 p.m.** The Board returned to public session. Ms. Wai led a discussion on CVS Pharmacy's Proposal on an Alternative Method for Positive Identification.
- 2:48 p.m.** The Board recessed.
- 2:55 p.m.** The Board returned to public session. Ms. Wai continued the discussion on Positive Identification.

- R-2023-0137** Mr. Grimm moved that the Board deny CVS Pharmacy's Proposal for an Alternative Method for Positive Identification. The motion was seconded by Ms. Ferris and denied by the Board: Yes-8, No-0.
- 3:04 p.m.** Mr. McNamee provided the Legislative Report.
- 3:11 p.m.** Mr. McNamee presented rules *Pharmacist and Intern Immunization Administration (OAC 4729:1-3-02 & 4729:2-3-03)* and *Pharmacy Technician Immunization Administration (OAC 4729:3-3-06)* to the Board for consideration.
- R-2023-0138** Mr. Miller moved that the Board approve rules *Pharmacist and Intern Immunization Administration (OAC 4729:1-3-02 & 4729:2-3-03)* and *Pharmacy Technician Immunization Administration (OAC 4729:3-3-06)* for filing with CSI and JCARR. The motion was seconded by Mr. Huston and approved by the Board: Yes-8, No-0.
- 3:45 p.m.** Mr. McNamee led a discussion on the Pharmacist Workload Advisory Committee – Mandatory Breaks.
- 3:54 p.m.** The Board recessed.
- 4:10 p.m.** The Board returned to public session. Mr. McNamee led a discussion on the Pharmacist Workload Advisory Committee – Staffing Plan.
- 4:39 p.m.** Ms. Maerten-Moore led a discussion on the 40/80 work week as it relates to probation with the Board. The Board concluded that some flexibility would be allowed in most cases as long as the spit of hours was reasonable. However, the Board would not permit probationers to exceed 80 hours of work per two-week period.
- 4:55 p.m.** The Board Adjourned for the day.

**Tuesday, December 6, 2022**

**9:05 a.m.** The State of Ohio Board of Pharmacy convened in the Hearing Room, 17th Floor, of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio, for a public meeting, with the following members present:

Shawn Wilt, RPh, *Presiding*; Trina Buettner, RPh, *Vice President*; Mindy Ferris, RPh; Jason George, RPh; Victor Goodman, *Public Member*; TJ Grimm, RPh; Jeff Huston, RPh; Rich Miller, RPh; and Christine Pfaff, RPh.

Also present were Steven Schierholt, *Executive Director*; Sharon Maerten-Moore, *Chief Legal Counsel*; Ashley Gilbert, *Senior Legal Counsel*; Kathryn Lewis, *Legal Administrator*; and Jennifer Nelson, *Legal Administrative Assistant*.

**9:07 a.m.** The Board was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Robert Herberger, RPh, Canfield, Ohio.**

**R-2023-0139** Ms. Buettner moved that the Board recess in order to consider the quasi-judicial matters in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision*, et al. (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Ferris and a roll-call vote was conducted by *President Wilt* as follows: Buettner-yes; Ferris-yes; George-yes; Goodman-yes; Grimm-yes; Huston-yes, Miller-yes; and Pfaff-yes.

**9:57 a.m.** The deliberation ended and the hearing was opened to the public.

**R-2023-0140** After votes were taken in public session, the Board adopted the following order in the Matter of **Robert Herberger, RPh, Canfield, Ohio.**

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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:
  - 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 Glucuronide (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.
  - g. 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.
  - h. 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.
  - i. 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

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](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 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](http://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.

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**9:59 a.m.**

The Board recessed.

**10:08 a.m.**

The Board returned to public session and was joined by Assistant Attorney General Henry Appel to conduct an adjudication hearing in accordance with the Ohio Revised Code Chapters 119. and 4729. In the Matter of **Kelli Jo Waggoner, RPh, Lebanon, Ohio and Kroger Pharmacy #014447, Lebanon, Ohio.**

**R-2023-0141**

Ms. Buettner moved that the Board recess in order to consider the quasi-judicial matters in accordance with Chapter 119. of the Revised Code and the case precedent of *Angerman v. State Medical Bd.* (1990) 70 Ohio App.3d 346 and *TBC Westlake Inc. v. Hamilton Cty Bd of Revision*, et al. (1998) 81 Ohio St.3d 58. The motion was seconded by Ms. Pfaff and a roll-call vote was conducted by *President Wilt* as follows: Buettner-yes; Ferris-yes; George-yes; Goodman-yes; Grimm-yes; Huston-yes, Miller-yes; and Pfaff-yes.

**1:33 a.m.**

The deliberation ended and the hearing was opened to the public.

**R-2023-0142**

Mr. Wilt announced the dismissal of the Notice of Opportunity for Hearing issued on July 27, 2021, in the matter of Healthdirect Institutional Pharmacy Services, Inc. (A-2021-0268).

**R-2023-0143**

Mr. Wilt announced the dismissal of the Notice of Opportunity for Hearing issued on March 22, 2022, in the matter of Celgene Corporation (A-2020-0779).

**R-2023-0144**

Mr. Wilt announced the dismissal of the Notice of Opportunity for Hearing issued on March 22, 2022, in the matter of Celgene Corporation (A-2020-0778).

**R-2023-0145**

Mr. Wilt announced the dismissal of the Notice of Opportunity for Hearing issued on January 13, 2022, in the matter of Robert Richter (A-2022-0025).

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**R-2023-0146**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0103  
I-2022-0147**

**Medical Spa NP**  
**License No. 02-64000322**  
c/o Lindsay Eckles Hoffman  
2686 N. Columbus St, Suite 101  
Lancaster, Ohio 43130

**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 Medical Spa NP for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of dangerous drugs, including controlled substances, while unlicensed. Together, the Board and Medical Spa NP 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. Medical Spa NP is a licensed Terminal Distributor of Dangerous Drugs under license number 02-64000322.

**FACTS**

1. The Board initiated an investigation of Medical Spa NP, Terminal Distributor of Dangerous Drugs license number 02-64000322, related to Medical Spa NP’s illegal purchases of dangerous drugs, including controlled substances, while unlicensed.
2. On or about August 12, 2022 the Board sent a Notice of Opportunity for Hearing to Medical Spa NP, 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.

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

**TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Medical Spa NP neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated August 12, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Medical Spa NP agrees to pay to the Board a monetary penalty the amount of \$3,000. 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](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Medical Spa NP's TDDD license, number 02-64000322.
5. Medical Spa NP 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. Medical Spa NP 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 Medical Spa NP 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 Medical Spa NP by the Board and will NOT discharge Medical Spa NP from any obligation under the terms of this Agreement.
7. Medical Spa NP agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Medical Spa NP 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 Medical Spa NP will operate.
  10. Medical Spa NP waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
  11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
  14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0147**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0309  
I-2022-0485**

**Respiratory Care Partners  
License No. 01-3000049  
c/o Amy Waid  
2868 Niles Cortland Rd NE  
Cortland, Ohio 44410**

**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 Respiratory Care Partners for the

purpose of resolving all issues between the parties relating to the Board investigation of illegal sales of medical oxygen to an entity operating without a Board-issued license. Together, the Board and Respiratory Care Partners are referred to hereinafter as "the parties."

### **JURISDICTION**

1. Pursuant to Section 4729.56 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 4729.52 of the Ohio Revised Code.
2. Respiratory Care Partners is a licensed Wholesale Distributor of Dangerous Drugs under license number 01-30000049.

### **FACTS**

1. The Board initiated an investigation of Respiratory Care Partners, Wholesale Distributor of Dangerous Drugs license number 01-30000049, related to Respiratory Care Partners' illegal sales of medical oxygen to an entity operating without a Board-issued license.
2. On or about September 30, 2022, the Board sent a Notice of Opportunity for Hearing to Respiratory Care Partners, 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Respiratory Care Partners neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 30, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Respiratory Care Partners agrees to pay to the Board a monetary penalty the amount of \$275.00. This fine will be attached to your license record and must be paid no later than 60 days from the

effective date of this Order. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.

4. The Board hereby imposes a written reprimand on Respiratory Care Partners' WDDD license, number 01-30000049.
5. Respiratory Care Partners 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. Respiratory Care Partners agrees to comply with all federal and state requirements related to Wholesale 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 Respiratory Care Partners 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 Respiratory Care Partners by the Board and will NOT discharge Respiratory Care Partners from any obligation under the terms of this Agreement.
7. Respiratory Care Partners agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Respiratory Care Partners 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 Respiratory Care Partners will operate.
10. Respiratory Care Partners waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.

13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
15. This Agreement shall become effective upon the date of the Board President's signature below.

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**R-2023-0148**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2022-0403**

**Kara Blevins, RPh  
License No. 03-136231  
3235 State Route 3  
Catlettsburg, KY 41129**

**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 Kara Blevins, RPh, for the purpose of resolving all issues between the parties relating to the Board investigation of you arriving at your place of employment under the influence of alcohol. Together, the Board and Kara Blevins 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, restrict, limit, 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. Kara Blevins is a licensed pharmacist in the state of Ohio under license number 03-136231.

### FACTS

1. The Board initiated an investigation of Kara Blevins, pharmacist license number 03-136231, related to you arriving at your place of employment under the influence of alcohol.
2. On or about June 30, 2022, the Board sent a Summary Suspension/Notice of Opportunity for Hearing to Kara Blevins, 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.
3. On or about July 7, 2022, Kara Blevins, through counsel Todd Collis, timely requested an administrative hearing, which was subsequently scheduled for October 11, 2022.

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

### TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Kara Blevins neither admits nor denies the allegations stated in the Summary Suspension/Notice of Opportunity for hearing letter dated June 30, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. The Board agrees to lift the summary suspension and reinstate Kara Blevin's license to practice pharmacy, license number 03-136231
4. Kara Blevins agrees to pay to the Board a monetary penalty in the amount of \$1,200.00. This fine will be attached to Kara Blevins's license record and must be paid no later than 180 days from the effective date of this Order. To pay this fine, login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart.
5. Kara Blevins must obtain fifteen hours of approved continuing pharmacy education (1.5 CEUs) in the areas of professionalism, ethics, and/or substance abuse, which may not also be used for license renewal. The 1.5 CEUs must be completed within six months

from the effective date of this agreement. Copies of completed CEUs must be e-mailed to [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov).

6. The Board hereby imposes a written reprimand on Kara Blevins's pharmacist license, number 03-136231.
  7. Kara Blevins agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
  8. Kara Blevins understands that she has the right to be represented by counsel for review and execution of this agreement.
  9. Kara Blevins 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.
  10. Kara Blevins explicitly withdraws her request for a hearing, waives an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code, and waives any right to an appeal.
  11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
  14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0149**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2020-0778**

**Celgene Corporation**  
**License No. 01-2212350**  
c/o Thomas Scalone  
86 Morris Avenue  
Summit, NJ 07901

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES  
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 Celgene Corporation (Celgene) for the purpose of resolving all issues between the parties relating to the Board investigation of Celgene's self-report to the Board on October 26, 2020. Together, the Board and Celgene are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.56 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.52 of the Ohio Revised Code.
2. Celgene is a licensed Wholesale Distributor of Dangerous Drugs under license number 01-2212350.

**FACTS**

1. The Board initiated an investigation of Celgene, Wholesale Distributor of Dangerous Drugs license number 01-2212350, related to Celgene's self-report to the Board on October 26, 2020.
2. On or about March 22, 2022, the Board sent a Notice of Opportunity for Hearing to Celgene, 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 April 15, 2022, Celgene, through counsel Adam Yoffie, timely requested an administrative hearing, which was subsequently scheduled for September 14, 2022. This matter was settled prior to hearing.

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

### TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Agreement as though fully set forth herein.
2. The Board agrees the Notice of Opportunity for Hearing issued to Celgene on March 22, 2022, Case No. A-2020-0778, will be dismissed by the Board upon execution of this Agreement.
3. Celgene agrees and acknowledges that Celgene will not institute any actions against the Board in any jurisdictions, in any forum, tribunal, court or administrative proceeding, for any form of relief against the Board relating to, arising from, or concerning the matter described herein.
4. Celgene hereby fully and forever releases the Board from any and all claims, demands, damages, attorneys fees, actions, and rights or causes of action of every kind and description, which it now has or hereafter can have or may have, whether known or unknown, arising out of or related to the subject matter of this Agreement. Celgene agrees not to pursue litigation in this matter or for any released claim related to the matter described herein.
5. Each party shall be responsible for the costs, expenses, and attorneys fees, it incurred in connection with the matter described herein, Case No. A-2020-0778.
6. The Board agrees the dismissal and release applies only to the matter at issue, Case No. A-2020-0778, regarding only the subject matter in this case. This Release has no affect on any conduct not included in Case No. A-2020-0778. Should a violation of law occur that is not listed in the Notice of Opportunity for Hearing, Case No. A-2020-0778, the Board will proceed in the normal course of business and this Agreement shall not apply.
7. Parties acknowledge the releases contained herein, Term 3 through Term 6, do not affect the parties' rights to enforce the terms of this Agreement.
8. Celgene agrees that this Agreement is not Board disciplinary action and does not require disclosure to licensing authorities.
9. Celgene agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement by Celgene.



10. Celgene understands that it has the right to be represented by counsel for review and execution of this Agreement.
  11. 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 Celgene will operate.
  12. Celgene explicitly withdraws its request for a hearing, waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code, and waives any right to an appeal.
  13. 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.
  14. The parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  15. 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.
  16. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  17. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0150**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2020-0779**

**Celgene Corporation**  
**License No. 01-1786350**  
c/o Carmen Ortiz  
7339 Industrial Blvd  
Allentown, PA 18106

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES  
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 Celgene Corporation (Celgene) for the purpose of resolving all issues between the parties relating to the Board investigation of Celgene's self-report to the Board on October 26, 2020. Together, the Board and Celgene are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.56 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.52 of the Ohio Revised Code.
2. Celgene, located at 7339 Industrial Blvd, Allentown, PA, has an active WDDD license with the Board under license number 01-1786350.

**FACTS**

1. The Board initiated an investigation of Celgene, Wholesale Distributor of Dangerous Drugs license number 01-1786350, related to Celgene's self-report to the Board on October 26, 2020.
2. On or about March 22, 2022, the Board sent a Notice of Opportunity for Hearing to Celgene, 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 April 15, 2022, Celgene, through counsel Adam Yoffie, timely requested an administrative hearing, which was subsequently scheduled for September 14, 2022. This matter was settled prior to hearing.

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

**TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Agreement as though fully set forth herein.

2. The Board agrees the Notice of Opportunity for Hearing issued to Celgene on March 22, 2022, Case No. A-2020-0779, will be dismissed by the Board upon execution of this Agreement.
3. Celgene agrees and acknowledges that Celgene will not institute any actions against the Board in any jurisdictions, in any forum, tribunal, court or administrative proceeding, for any form of relief against the Board relating to, arising from, or concerning the matter described herein.
4. Celgene hereby fully and forever releases the Board from any and all claims, demands, damages, attorneys fees, actions, and rights or causes of action of every kind and description, which it now has or hereafter can have or may have, whether known or unknown, arising out of or related to the subject matter of this Agreement. Celgene agrees not to pursue litigation in this matter or for any released claim related to the matter described herein.
5. Each party shall be responsible for the costs, expenses, and attorneys fees, it incurred in connection with the matter described herein, Case No. A-2020-0779.
6. The Board agrees the dismissal and release applies only to the matter at issue, Case No. A-2020-0779, regarding only the subject matter in this case. This Release has no affect on any conduct not included in Case No. A-2020-0779. Should a violation of law occur that is not listed in the Notice of Opportunity for Hearing, Case No. A-2020-0779, the Board will proceed in the normal course of business and this Agreement shall not apply.
7. The parties acknowledge the releases contained herein, Term 3 through Term 6, do not affect the parties' rights to enforce the terms of this Agreement.
8. Celgene agrees that this Agreement is not Board disciplinary action and does not require disclosure to licensing authorities.
9. Celgene agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement by Celgene.
10. Celgene understands that it has the right to be represented by counsel for review and execution of this Agreement.
11. 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 Celgene will operate.
12. Celgene explicitly withdraws its request for a hearing, waives its right to a hearing and an opportunity to be heard pursuant to

Chapter 119. of the Ohio Revised Code, and waives any right to an appeal.

13. 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.
14. The parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
15. 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.
16. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
17. This Agreement shall become effective upon the date of the Board President's signature below.

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**R-2023-0151**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0298  
I-2022-0201**

**Canal Pointe NSG & Rehab Center  
License No. 02-1787350  
c/o Benson Bonyo, DO  
145 Olive St.  
Akron, OH 44310**

**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 for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of medical oxygen while operating without a Board-issued license. Together, the Board and Canal Pointe NSG & Rehab Center 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. Canal Pointe NSG & Rehab Center is a licensed Terminal Distributor of Dangerous Drugs under license number 02-1787350.

### **FACTS**

1. The Board initiated an investigation of Canal Pointe NSG & Rehab Center, Terminal Distributor of Dangerous Drugs license number 02-1787350, related to Canal Pointe NSG & Rehab Center illegal purchases of medical oxygen while operating without a Board-issued license.
2. On or about October 3, 2022 the Board sent a Notice of Opportunity for Hearing to Canal Pointe NSG & Rehab Center, 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Canal Pointe NSG & Rehab Center neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated October 3, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Canal Pointe NSG & Rehab Center agrees to pay to the Board a monetary penalty the amount of \$250.00. 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](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Canal Pointe NSG & Rehab Center's TDDD license, number 02-1787350.

5. Canal Pointe NSG & Rehab Center 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. Canal Pointe NSG & Rehab Center 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 Canal Pointe NSG & Rehab Center 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 Canal Pointe NSG & Rehab Center by the Board and will NOT discharge Canal Pointe NSG & Rehab Center from any obligation under the terms of this Agreement.
7. Canal Pointe NSG & Rehab Center agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Canal Pointe NSG & Rehab Center 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 Canal Pointe NSG & Rehab Center will operate.
10. Canal Pointe NSG & Rehab Center waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.

14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0152**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0133  
I-2021-1219**

**Sanctuary at Wilmington Place  
License No. 02-2678400  
c/o Jeffrey Weiner  
264 Wilmington Avenue  
Dayton, Ohio 45420**

**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 Sanctuary at Wilmington Place for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of medical oxygen while operating without a Board-issued license. Together, the Board and Sanctuary at Wilmington Place 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. Sanctuary at Wilmington Place is a licensed Terminal Distributor of Dangerous Drugs under license number 02-2678400.

### FACTS

1. The Board initiated an investigation of Sanctuary at Wilmington Place, Terminal Distributor of Dangerous Drugs license number 02-2678400, related to Sanctuary at Wilmington Place's illegal purchases of medical oxygen while operating without a Board-issued license.
2. On or about September 30, 2022, the Board sent a Notice of Opportunity for Hearing to Sanctuary at Wilmington Place, 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.

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

### TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Sanctuary at Wilmington Place neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 30, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Sanctuary at Wilmington Place agrees to pay to the Board a monetary penalty the amount of \$1,350.00. This fine will be attached to your license record and must be paid no later than 60 days from the effective date of this Order. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Sanctuary at Wilmington Place's TDDD license, number 02-2678400.
5. Sanctuary at Wilmington Place 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. Sanctuary at Wilmington Place 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 Sanctuary at Wilmington Place 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 Sanctuary at Wilmington Place by the Board and will NOT discharge Sanctuary at Wilmington Place from any obligation under the terms of this Agreement.

7. Sanctuary at Wilmington Place agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
  8. Sanctuary at Wilmington Place 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 Sanctuary at Wilmington Place will operate.
  10. Sanctuary at Wilmington Place waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
  11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
  14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0153**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2020-0615**

**Lisa Weisenbach, RPh  
License No. 03-129884  
514 Americas Way PMB 14574  
Box Elder, SD 57719-7600**

**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 Lisa Weisenbach, RPh, for the purpose of resolving all issues between the parties relating to the Board investigation of your error in dispensing of a prescription. Together, the Board and Lisa Weisenbach 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, restrict, limit, 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. Lisa Weisenbach is a licensed pharmacist in the state of Ohio under license number 03-129884.

**FACTS**

1. The Board initiated an investigation of Lisa Weisenbach, pharmacist license number 03-129884, related to your error in dispensing of a prescription.
2. On or about May 19, 2022, the Board sent a Notice of Opportunity for Hearing to Lisa Weisenbach, 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.
3. On or about June 10, 2022, Lisa Weisenbach, through counsel Levi Tkach, timely requested an administrative hearing, which was subsequently scheduled for December 5, 2022.

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

### TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Lisa Weisenbach neither admits nor denies the allegations stated in the Notice of Opportunity for hearing letter dated May 19, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Lisa Weisenbach agrees to pay to the Board a monetary penalty in the amount of \$500.00. This fine will be attached to Lisa Weisenbach's license record and must be paid no later than 180 days from the effective date of this Order. To pay this fine, login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart.
4. Lisa Weisenbach must obtain six hours of approved continuing pharmacy education (0.6 CEUs), which may not also be used for license renewal. The 0.6 CEUs must be completed within six months from the effective date of this agreement. Copies of completed CEUs must be e-mailed to [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov).
5. The Board hereby imposes a written reprimand on Lisa Weisenbach's pharmacist license, number 03-136231.
6. Lisa Weisenbach agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
7. Lisa Weisenbach understands that she has the right to be represented by counsel for review and execution of this agreement.
8. Lisa Weisenbach 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. Lisa Weisenbach explicitly withdraws her request for a hearing, 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. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  14. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0154**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2022-0333  
I-2022-0624**

**Medline Industries, LP**  
**License No. 01-30000190**  
c/o James Eveland  
1040 Enterprise Parkway South  
West Jefferson, OH 43162

**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 Medline Industries, LP, for the purpose of resolving all issues between the parties relating to the Board investigation of illegal sales of dangerous drugs to an unlicensed entity. Together, the Board and Medline Industries, LP are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.56 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.52 of the Ohio Revised Code.
2. Medline Industries, LP, is a licensed Distributor of Dangerous Drug, License No. 01-30000190, which lists James Eveland, as the Responsible Person.

### **FACTS**

1. The Board initiated an investigation of Medline Industries, LP, Distributor of Dangerous Drugs License No. 01-30000190, related to Medline Industries, LP's illegal sales of dangerous drugs to an unlicensed entity.
2. On or about September 28, 2022, the Board sent a Notice of Opportunity for Hearing to Medline Industries, LP, 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Medline Industries, LP neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 28, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Medline Industries, LP agrees to pay to the Board a monetary penalty in the amount of \$1,125.00. 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](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Medline Industries, LP's WDDD license, number 01-30000190.
5. Medline Industries, LP 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. Medline Industries, LP agrees to comply with all federal and state requirements related to 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 Medline Industries, LP 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 Medline Industries, LP by the Board and will NOT discharge Medline Industries, LP from any obligation under the terms of this Agreement.
7. Medline Industries, LP agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Medline Industries, LP 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 Medline Industries, LP will operate.
10. Medline Industries, LP waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be

deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.

15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0155**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0308  
I-2021-1622**

**Concord Care Center of Toledo  
License No. 02-2607450  
c/o Erika Harman  
3121 Glanzman Rd.  
Toledo, Ohio 43614**

**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 Concord Care Center of Toledo for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of medical oxygen while operating without a Board-issued license. Together, the Board and Concord Care Center of Toledo 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. Concord Care Center of Toledo is a licensed Terminal Distributor of Dangerous Drugs under license number 02-2607450.

**FACTS**

1. The Board initiated an investigation of Concord Care Center of Toledo, Terminal Distributor of Dangerous Drugs license number 02-2607450, related to Concord Care Center of Toledo's illegal

purchases of medical oxygen while operating without a Board-issued license.

2. On or about September 30, 2022, the Board sent a Notice of Opportunity for Hearing to Concord Care Center of Toledo, 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Concord Care Center of Toledo neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 30, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Concord Care Center of Toledo agrees to pay to the Board a monetary penalty the amount of \$550.00. This fine will be attached to your license record and must be paid no later than 60 days from the effective date of this Order. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Concord Care Center of Toledo's TDDD license, number 02-2607450.
5. Concord Care Center of Toledo 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. Concord Care Center of Toledo 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 Concord Care Center of Toledo 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 Concord Care Center of Toledo by the Board and will NOT discharge Concord Care Center of Toledo from any obligation under the terms of this Agreement.

7. Concord Care Center of Toledo agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Concord Care Center of Toledo 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 Concord Care Center of Toledo will operate.
10. Concord Care Center of Toledo waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
15. This Agreement shall become effective upon the date of the Board President's signature below.

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**R-2023-0156**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2021-0365  
I-2021-0795**

**AmerisourceBergen  
License No. 011434450  
c/o Frank Dicenso  
6305 Lasalle Drive  
Lockbourne, OH 43137**

**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 AmerisourceBergen for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of dangerous drugs from an entity without a Board-issued license. Together, the Board and AmerisourceBergen 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. AmerisourceBergen is a licensed Wholesale Distributor of Dangerous Drugs under license number 011434450.

**FACTS**

1. The Board initiated an investigation of AmerisourceBergen, Wholesale Distributor of Dangerous Drugs license number 011434450, related to AmerisourceBergen's illegal purchases of dangerous drugs from an entity without a Board-issued license.
2. On or about September 30, 2022, the Board sent a Notice of Opportunity for Hearing to AmerisourceBergen, 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.

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

**TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. AmericsourceBergen neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 30, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. AmericsourceBergen agrees to pay to the Board a monetary penalty the amount of \$2750.00. This fine will be attached to your license record and must be paid no later than 60 days from the effective date of this Order. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.
4. AmericsourceBergen 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.
5. AmericsourceBergen agrees to comply with all federal and state requirements related to Wholesale 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 AmericsourceBergen 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 AmericsourceBergen by the Board and will NOT discharge AmericsourceBergen from any obligation under the terms of this Agreement.
6. AmericsourceBergen agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.

7. AmericourceBergen understands that it has the right to be represented by counsel for review and execution of this agreement.
  8. 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 AmericourceBergen will operate.
  9. AmericourceBergen waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
  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.
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**R-2023-0157**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2022-0109**

**KAV Health Group, LLC**  
**PENDING License No. APP-000483791**  
c/o Vincent DeNitis  
5563 Far Hills Ave.  
Dayton, OH 45429-2225

**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 KAV Health Group, LLC for the purpose of resolving all issues between the parties relating to the Board investigation of KAV Health Group LLC's July 2, 2021 application for a Terminal Distributor of Dangerous Drugs (TDDD) license. Together, the

Board and KAV Health Group, LLC are referred to hereinafter as “the parties.”

### **JURISDICTION**

1. Pursuant to Section 4729.57 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit or refuse to grant or renew any license issued pursuant to Section 4729.54 of the Ohio Revised Code.
2. On or about July 2, 2021, Misty Moore, APRN.CNP signed as the Responsible Person on an application for a TDDD License on behalf of KAV Health Group, LLC, located at 5563 Far Hills Ave., Dayton, Ohio, Application No. APP-000483791. All documents required for application were submitted to the Board by February 15, 2022.

### **FACTS**

1. The Board initiated an investigation of KAV Health Group, LLC, Terminal Distributor of Dangerous Drugs license Application No. APP-000483791, related to KAV Health Group, LLC’s application.
2. On or about May 25, 2022, the Board sent a Notice of Opportunity for Hearing to KAV Health Group, LLC, 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 27, 2022, KAV Health Group, LLC, timely requested an administrative hearing, which was subsequently scheduled for October 12, 2022. Settlement of this matter was reached prior to hearing.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. KAV Health Group, LLC neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated May 25, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio’s pharmacy law as set forth in the Notice, and hereby adjudicates the same.

3. The Board agrees KAV Health Group, LLC's Terminal Distributor of Dangerous Drugs license application, No. APP-000483791, submitted on or about July 2, 2021, will be withdrawn by the Board upon execution of this Agreement.
4. KAV Health Group, LLC agrees to pay to the Board a monetary penalty in the amount of \$1,000.00. This fine will be attached to your license record and must be paid no later than 180 days from the effective date of this Agreement. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.
5. **KAV Health Group, LLC, its current owners and operators, agree never to reapply for any license over which the Board has jurisdiction, including those set forth in Chapters 3719., 3796., 4729. or 4752. of the Revised Code.**
6. **Vincent DeNittis, owner and operator of KAV Health Group LLC, agrees never to 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.**
7. The Board hereby imposes a written reprimand on KAV Health Group, LLC, Terminal Distributor of Dangerous Drugs license application, No. APP-000483791.
8. KAV Health Group, LLC 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.
9. KAV Health Group, LLC 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 KAV Health Group, LLC 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 KAV Health Group, LLC by the Board and will NOT discharge KAV Health Group, LLC from any obligation under the terms of this Agreement.
10. KAV Health Group, LLC agrees to pay all reasonable costs associated with the collection of any payment associated with this Agreement.

11. KAV Health Group, LLC understands that it has the right to be represented by counsel for review and execution of this agreement.
  12. 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 KAV Health Group, LLC will operate.
  13. KAV Health Group, LLC explicitly withdraws its request for a hearing, waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code, and waives any right to an appeal.
  14. 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.
  15. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  16. 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.
  17. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  18. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0158**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
Case No. A-2022-0284**

**Onyx Warren f.k.a. Chase Michael Warren  
Registration No. 09-117654  
2469 Kimberly Pkwy E., Apt. K9  
Columbus, OH 43232**

**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 Onyx Warren f.k.a. Chase Michael Warren for the purpose of resolving all issues between the parties relating to the Board investigation of working at Pharmscript of OH, LLC, located at 1685 Westbelt Drive, Columbus, Ohio, without a valid registration as a pharmacy technician trainee. Together, the Board and Onyx Warren f.k.a. Chase Michael Warren are referred to hereinafter as "the parties."

### **JURISDICTION**

1. Pursuant to Section 4729.96 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Sections 4729.90 and 4729.92 of the Ohio Revised Code to perform the duties of a pharmacy technician trainee in the state of Ohio.
2. Onyx Warren f.k.a. Chase Michael Warren, at the time the conduct occurred, you were a pharmacy technician trainee in the state of Ohio under registration number 09-117654.

### **FACTS**

1. The Board initiated an investigation of Onyx Warren f.k.a. Chase Michael Warren, pharmacy technician trainee registration number 09-117654, related to Onyx Warren f.k.a. Chase Michael Warren's working as a pharmacy technician trainee at Pharmscript of OH, LLC without maintaining a valid registration as a pharmacy technician trainee.
2. On or about October 6, 2022, the Board sent a Notice of Opportunity for Hearing to Onyx Warren f.k.a. Chase Michael Warren 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 proceedings.

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.



2. Onyx Warren f.k.a. Chase Michael Warren neither admits nor denies the allegations stated in the Notice of Opportunity for hearing letter dated October 6, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Onyx Warren f.k.a. Chase Michael Warren agrees to pay to the OSBP the amount of amount of \$25.00. This fine will be attached to the registration record and must be paid no later than 180 days from the effective date of this Order. To pay this fine, login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart.
4. The Board hereby imposes a written reprimand on Onyx Warren f.k.a. Chase Michael Warren's technician registration, number 09-117654.
5. Onyx Warren f.k.a. Chase Michael Warren agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
6. Onyx Warren f.k.a. Chase Michael Warren understands that she has the right to be represented by counsel for review and execution of this agreement.
7. Onyx Warren f.k.a. Chase Michael Warren 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.
8. Onyx Warren f.k.a. Chase Michael Warren waives 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. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be

deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.

13. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0159**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0325  
I-2022-0024**

**Linde Gas North America LLC Linde  
License No. 01-1576950  
dba Linde Gas & Equipment Inc.  
c/o Darin Dittman  
7029 Huntley Road, Suite K  
Columbus, OH 43229**

**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 Linde Gas North America LLC Linde dba Linde Gas & Equipment Inc. (Linde Gas & Equipment) for the purpose of resolving all issues between the parties relating to the Board investigation of illegal sales of medical grade oxygen, a dangerous drug to an unlicensed entity. Together, the Board and Linde Gas & Equipment are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.56 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.52 of the Ohio Revised Code.
2. Linde Gas North America LLC Linde dba Linde Gas & Equipment Inc., is a licensed Wholesaler Distributor of Dangerous Drug, License No. 01-1576950, which lists Darin Dittman, as the Responsible Person.

**FACTS**

1. The Board initiated an investigation of Linde Gas & Equipment, Wholesaler Distributor of Dangerous Drugs License No. 01-1576950,

related to Linde Gas & Equipment's illegal sales of medical grade oxygen, a dangerous drug, to an unlicensed entity.

2. On or about September 14, 2022, the Board sent a Notice of Opportunity for Hearing to Linde Gas & Equipment 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Linde Gas & Equipment neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 14, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Linde Gas & Equipment agrees to pay to the Board a monetary penalty in the amount of \$75.00. This fine will be attached to your license 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](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Linde Gas & Equipment WDDD license, number 011576950.
5. Linde Gas & Equipment 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. Linde Gas & Equipment agrees to comply with all federal and state requirements related to Wholesale 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 Linde Gas & Equipment 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 Linde Gas & Equipment by the Board and will NOT discharge Linde Gas & Equipment from any obligation under the terms of this Agreement.

7. Linde Gas & Equipment agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
  8. Linde Gas & Equipment 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 Linde Gas & Equipment will operate.
  10. Linde Gas & Equipment waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
  11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
  14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0160**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2021-0362  
I-2021-0629**

**Medicure Pharma Inc.**  
**License No. 011892400**  
c/o Shireen Nouhi  
116 Village Blvd. Ste 200  
Princeton, NJ 08540

### **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 Medicure Pharma, Inc., for the purpose of resolving all issues between the parties relating to the Board investigation of sales of dangerous drugs while operating without a Board-issued license. Together, the Board and Medicure Pharma, Inc. are referred to hereinafter as "the parties."

#### **JURISDICTION**

1. Pursuant to Section 4729.56 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.52 of the Ohio Revised Code.
2. Medicure Pharma, Inc., is a licensed Wholesaler Distributor of Dangerous Drug, License No. 011892400, which lists Shireen Nouhi, as the Responsible Person.

#### **FACTS**

1. The Board initiated an investigation of Medicure Pharma, Inc., Wholesaler Distributor of Dangerous Drugs License No. 011892400, related to Medicure Pharma, Inc. illegal sales of dangerous drugs without obtaining a Board-issued license.
2. On or about September 30, 2022, the Board sent a Notice of Opportunity for Hearing to Medicure Pharma, Inc., 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.

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

#### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Medicure Pharma, Inc. neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 30, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Medicure Pharma, Inc. agrees to pay to the Board a monetary penalty in the amount of \$2,750.00. This fine will be attached to your license record and must be paid no later than 60 days from the effective date of this Order. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.
4. Medicure Pharma, Inc. Wholesale Distributor of Dangerous Drugs license will be issued subject to satisfactory completion of all application and inspection requirements and payment of the fine.
5. Medicure Pharma, Inc. 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. Medicure Pharma, Inc. agrees to comply with all federal and state requirements related to Wholesale 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 Medicure Pharma, Inc. 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 Medicure Pharma, Inc. by the Board and will NOT discharge Medicure Pharma, Inc. from any obligation under the terms of this Agreement.
7. Medicure Pharma, Inc. agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Medicure Pharma, Inc. 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 Medicure Pharma, Inc. will operate.

10. Medicure Pharma, Inc. waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
  11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
  14. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0161**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
Case No. A-2022-0540**

**Brittney Bussa**  
**SUSPENDED Registration No. 09-314198**  
4922 Greengate Drive  
Groveport, Ohio 43125

**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 Brittney Bussa, for the purpose of resolving all issues between the parties relating to the purchase(s) and use of cocaine, a Schedule I controlled substance. Together, the Board and Brittney Bussa are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.96 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 4729.90 of the Ohio Revised Code to perform the duties of a certified pharmacy technician in the state of Ohio.

2. Brittney Bussa is an Ohio registered certified pharmacy technician under suspended registration number 09-314198.

### **FACTS**

1. The Board initiated an investigation of Brittney Bussa, registered pharmacy technician, registration number 09-314198, related to Brittney Bussa's purchase(s) and use of cocaine, a Schedule I controlled substance.
2. On or about October 20, 2022, the Board sent a Summary Suspension/Notice of Opportunity for Hearing to Brittney Bussa, 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 proceedings. Any criminal proceedings resulting from this investigation are not affected by this Agreement.

### **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. Brittney Bussa neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated October 10, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. **BRITTNEY BUSSA VOLUNTARILY SURRENDERS TO THE STATE OF OHIO BOARD OF PHARMACY HER REGISTRATION AS A CERTIFIED PHARMACY TECHNICIAN, REGISTRATION NO. 09-314198, WITH DISCIPLINE PENDING.**
4. **Brittney Bussa may only apply 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, if she provides satisfactory proof to the Board that she 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, to include at minimum, unless otherwise approved by the Board:**

- a. Successful completion of a Board-approved or court-ordered treatment program; and**
  - b. Continuous participation in a Board-approved monitoring program for no less than 24 months, to include all components set forth in OAC 4729:4-1-04.**
5. Brittney Bussa agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
  6. Brittney Bussa understands that she has the right to be represented by counsel for review and execution of this agreement.
  7. Brittney Bussa 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.
  8. Brittney Bussa waives an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and specifically withdraws her request for a hearing in this matter 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.

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**R-2023-0162**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE No. A-2022-0311**

**Maplecrest Care Center, dba Cred-Kap Inc.  
License No. 02-2304500  
c/o Clinton Ansell  
400 Sexton Street  
Struthers, Ohio 44471**

**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 Maplecrest Care Center, dba Cred-Kap Inc. (Maplecrest Care Center) for the purpose of resolving all issues between the parties relating to the Board investigation of illegal purchases of medical oxygen while operating without a Board-issued license. Together, the Board and Maplecrest Care Center 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. Maplecrest Care Center is a licensed Terminal Distributor of Dangerous Drugs under license number 02-2304500.

**FACTS**

1. The Board initiated an investigation of Maplecrest Care Center, Terminal Distributor of Dangerous Drugs license number 02-2304500, related to Maplecrest Care Center's illegal purchases of medical oxygen while operating without a Board-issued license.
2. On or about November 9, 2022, the Board sent a Notice of Opportunity for Hearing to Maplecrest Care Center, 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.

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

### TERMS

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Maplecrest Care Center neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated November 9, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Maplecrest Care Center agrees to pay to the Board a monetary penalty the amount of \$400.00. This fine will be attached to your license record and must be paid no later than 60 days from the effective date of this Order. To pay this fine you must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Maplecrest Care Center's TDDD license, number 02-2304500.
5. Maplecrest Care Center 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. Maplecrest Care Center 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 Maplecrest Care Center 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 Maplecrest Care Center Maplecrest Care Center by the Board and will NOT discharge Maplecrest Care Center from any obligation under the terms of this Agreement.

7. Maplecrest Care Center agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
  8. Maplecrest Care Center 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 Maplecrest Care Center will operate.
  10. Maplecrest Care Center waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
  11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
  13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
  14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  15. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0163**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE NO. A-2021-0558**

**Brandon McKinney, RPh**  
**License No. 03-439091**  
8375 Shorthorn Dr.  
Sagamore Hills, OH 44067

## **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 Brandon McKinney, RPh, for the purpose of resolving all issues between the parties relating to the Board investigation of an error in dispensing. Together, the Board and Brandon McKinney 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, restrict, limit, 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. Brandon McKinney is a licensed pharmacist in the state of Ohio under license number 03-439091.
3. Brandon McKinney, at the time the conduct occurred, was the Responsible Person of Rite Aid #3153 D.B.A. Rite Aid #3153, located at 15149 Snow Road, Brook Park, Ohio.

### **FACTS**

1. The Board initiated an investigation of Brandon McKinney, pharmacist license number 03-439091, and Rite Aid #3153 D.B.A. Rite Aid #3153, related to an error in dispensing.
2. On or about November 4, 2022, the Board sent a Notice of Opportunity for Hearing to Brandon McKinney, 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.

2. Brandon McKinney neither admits nor denies the allegations stated in the Notice of Opportunity for hearing letter dated November 4, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Brandon McKinney agrees to pay to the Board a monetary penalty in the amount of \$250.00. This fine will be attached to Brandon McKinney's license record and must be paid no later than 180 days from the effective date of this Order. To pay this fine, login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart.
4. Brandon McKinney must obtain six hours of approved continuing pharmacy education (.6 CEUs) which may not also be used for license renewal. The .6 CEUs must be completed within six months from the effective date of this agreement. Copies of completed CEUs must be e-mailed to [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov).
5. The Board hereby imposes a written reprimand on Brandon McKinney's pharmacist license, number 03-439091.
6. Brandon McKinney agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
7. Brandon McKinney understands that he has the right to be represented by counsel for review and execution of this agreement.
8. Brandon McKinney 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, including to the Board on renewal applications or applications for a new license.
9. Brandon McKinney 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. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
  14. This Agreement shall become effective upon the date of the Board President's signature below.
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**R-2023-0164**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
Case No. A-2022-0420**

**Arlington Pharmacy, LTD  
License No. 02-1566000  
c/o Sheri Jo Sponsler, RPh  
106 N. Main St.  
Arlington, OH 45814**

**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 Arlington Pharmacy, LTD for the purpose of resolving all issues between the parties relating to the Board investigation of an employee performing duties of a pharmacy technician without obtaining and/or maintaining appropriate registration with the Board. Together, the Board and Arlington Pharmacy, LTD are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.57 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.54 of the Ohio Revised Code.
2. Arlington Pharmacy, LTD has an active TDDD license with the Board under license number 02-1566000, which lists Sheri Jo Sponsler, RPh, as the Responsible Person.

**FACTS**

1. The Board initiated an investigation of Arlington Pharmacy, LTD, TDDD license number 02-1566000, related to an employee performing duties of a pharmacy technician without obtaining and/or maintaining appropriate registration with the Board.
2. On or about November 7, 2022, the Board sent a Notice of Opportunity for Hearing to Arlington Pharmacy, LTD, 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.

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

### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Arlington Pharmacy, LTD neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated November 7, 2022, however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Arlington Pharmacy, LTD agrees to pay to the Board a monetary penalty the amount of \$250.00. This fine will be attached to Arlington Pharmacy, LTD's license record and must be paid no later than 90 days from the effective date of this Order. To pay this fine, login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart.
4. The Board hereby imposes a written reprimand on Arlington Pharmacy, LTD's TDDD license, number 02-1566000.
5. Arlington Pharmacy, LTD 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. Arlington Pharmacy, LTD 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 Arlington Pharmacy, LTD 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 Arlington Pharmacy, LTD by the Board and will NOT discharge Arlington Pharmacy, LTD from any obligation under the terms of this Agreement.

7. Arlington Pharmacy, LTD agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Arlington Pharmacy, LTD 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 Arlington Pharmacy, LTD will operate.
10. Arlington Pharmacy, LTD waives its opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code 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. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.

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

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**R-2023-0165**

Mr. Wilt announced the following Settlement Agreement has been signed by all parties and is now effective:

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**IN THE MATTER OF:  
CASE Nos. A-2021-0496 & A-2021-0501**

**Respiratory Care Partners  
License No. 01-3000049  
c/o Justin Schuster  
1868 Niles Cortland Road  
Cortland, Ohio, 44410**

**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 Respiratory Care Partners for the purpose of resolving all issues between the parties relating to the Board investigation of illegal sales of dangerous drugs to unlicensed entities. Together, the Board and Respiratory Care Partners are referred to hereinafter as "the parties."

**JURISDICTION**

1. Pursuant to Section 4729.56 of the Ohio Revised Code and the rules adopted thereunder, the Board has the authority to suspend, revoke, restrict, limit, or refuse to grant or renew any license issued pursuant to Section 4729.52 of the Ohio Revised Code.
2. Respiratory Care Partners is a licensed Wholesaler Distributor of Dangerous Drug, License No. 01-3000049 which lists Justin Schuster, as the Responsible Person.

**FACTS**

1. The Board initiated an investigation of Respiratory Care Partners Wholesaler Distributor of Dangerous Drugs License No. 01-3000049, related to Respiratory Care Partners illegal sales of dangerous drugs to unlicensed entities.
2. On or about August 31, 2022, the Board sent a Notice of Opportunity for Hearing to Respiratory Care Partners, 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.

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

#### **TERMS**

NOW THEREFORE, in consideration of the mutual promises herein expressed, the parties knowingly and voluntarily agree as follows:

1. The recitals set forth above are incorporated in this Settlement Agreement as though fully set forth herein.
2. Respiratory Care Partners neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated August 31, 2022; however, the Board has evidence sufficient to sustain the allegations, finds them to violate Ohio's pharmacy law as set forth in the Notice, and hereby adjudicates the same.
3. Respiratory Care Partners agrees to pay to the Board a monetary penalty in the amount of \$1,300.00. 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](http://www.elicense.ohio.gov) and process the items in your cart.
4. The Board hereby imposes a written reprimand on Respiratory Care Partners' WDDD license, number 01-30000049.
5. Respiratory Care Partners 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. Respiratory Care Partners agrees to comply with all federal and state requirements related to Wholesale 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 Respiratory Care Partners 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 Respiratory Care Partners by the Board and will NOT discharge Respiratory Care Partners from any obligation under the terms of this Agreement.

7. Respiratory Care Partners agrees to pay all reasonable costs associated with the collection of any payment, and of the prosecution of any violation of this Agreement.
8. Respiratory Care Partners 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 Respiratory Care Partners will operate.
10. Respiratory Care Partners waives its right to a hearing and an opportunity to be heard pursuant to Chapter 119. of the Ohio Revised Code and waives any right to an appeal.
11. This Agreement may be executed in counterparts or facsimiles, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. All parties to this Agreement understand that this document is a public record pursuant to Ohio Revised Code Section 149.43.
13. This Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.
14. If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon both Parties.
15. This Agreement shall become effective upon the date of the Board President's signature below.

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**R-2023-0166**

After votes were taken in public session, the Board adopted the following order in the Matter of **Kelli J. Waggoner, RPh, Lebanon, Ohio**.

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**ORDER OF THE STATE BOARD OF PHARMACY**  
(Case Numbers A-2020-0737 & A-2021-0231)

In The Matter Of:

**Kelli J. Waggoner, RPh**  
1520 Golf Club Drive

Lebanon, Ohio 45036  
(License No. 03-226329)

### INTRODUCTION

The Matter of Kelli J. Waggoner 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.

Kelli Waggoner was represented by Mary Barley McBride. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

### SUMMARY OF EVIDENCE

#### State's Witnesses:

1. Kelli Waggoner, RPh, Respondent
2. Andrew Bouza, Agent of the Board

#### Respondent's Witnesses:

1. Kelli Waggoner, RPh
2. Michelle Izor, PharmD; The Kroger Co. Division Health Leader, Cincinnati Division

#### State's Exhibits:

- 1a. Notice Letter to Kelli Waggoner (6/8/2021)
- 1b. Patient Key
2. Notice Letter to Kelli Waggoner (9/3/2021)
3. Notice Letter to Kelli Waggoner (5/31/2022)
4. Notice Letter to Kelli Waggoner (9/15/2022)
- 5a. Notice Letter to Kroger Pharmacy #014447 (6/8/2021)
- 5b. Patient Key
6. Notice Letter to Kroger Pharmacy #014447 (9/3/2021)
7. Notice Letter to Kroger Pharmacy #014447 (5/31/2022)
8. Notice Letter to Kroger Pharmacy #014447 (9/15/2022)
9. Request for Hearing for Kelli Waggoner & Kroger Pharmacy #014447
10. Request for Hearing for Kelli Waggoner & Kroger Pharmacy #014447
11. Inspection Report
12. Kroger's Response to Inspection Report

13. Statement of Kelli Waggoner dated 7/21/2020
14. Statement of Stevens
15. Prescription for Patient B.R.
16. Kroger Documents Regarding June 28, 2020, Dispensing Error
17. Omitted n.a.
18. Theft & Loss Report from Kroger #014447 dated 6/17/2019
19. Theft & Loss Report from Kroger #014447 dated 9/4/2019
20. Theft & Loss Report from Kroger #014447 dated 4/20/2020
21. Theft & Loss Report from Kroger #014447 dated 7/7/2020
22. Theft & Loss Report from Kroger #014447 dated 4/12/2021
23. Statement of Deborah Estep
24. Email from Alison Cook to Andrew Bouza dated 5/6/2021
25. Statement of Kelli Waggoner dated 2/24/2022
26. Dispensing of Morphine IR
27. Theft & Loss Report from Kroger #014447 dated 11/22/2021
28. E-mail from Charles D'Imperio to Andrew Bouza dated 7/22/2022
29. Theft & Loss Report from Kroger #014447 dated 7/24/2022
30. Kroger #014447 Controlled Substance Action Plan
31. Shelf Maintenance Report dated 1/12/2022
32. Shelf Maintenance Report dated 2/16/2022

Respondent's Exhibits:

- A. Breach Root Cause Analysis Retraining with Pharmacy Staff sign-off (August, 2020)
- B. Release to Patient Return to Stock Retraining with special notation of handling controlled substances with Pharmacy Staff sign-off (August, 2020)
- C. Controlled Substance Action Plan (for Loss control and Prevention) with Pharmacy Staff sign-off (undated)
- E. Diagram of 7 camera locations

FINDINGS OF FACT

The parties stipulated to – and the Board hereby adopts as fact – the Allegations as set forth in Amended Notice of Opportunity for Hearing dated September 3, 2021, Case Numbers A-2020-0737 and A-2021-0231, reiterated herein and set forth below.

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. On or about June 28, 2020, Kelli Waggoner was the Responsible Person for Kroger Pharmacy #014447, located at 1425 Columbus Avenue, Lebanon, Ohio, when a medication was mistakenly given to a patient. Patient B.R. was prescribed three medications. When she arrived to pick-up her medications, she decided she no longer wanted prescription #2337687, oxycodone HCL 5 mg tablets, as her insurance did not cover the medication. Pharmacy technician Lauren Stevens cashed out patient B.R., however, prescription #2337687, 15 oxycodone HCL 5 mg tablets, was not removed from the packaged items. The loss of 15 oxycodone HCL 5 mg tablets, a Schedule II controlled substance, was discovered when the drug was randomly back counted.
2. It was discovered during an internal investigation by Kroger that there were only two cameras in operation in the pharmacy. The cameras did not capture any of the points of sale- the registers used by technicians to sell medications to customers.
3. On or about July 21, 2020, an inspection of Kroger Pharmacy was conducted by agents of the Board. The inspection resulted in four warnings/written responses required, including:
  - a. Security of the pharmacy drug stock is not adequate to detect and deter drug theft and diversion.
    - i. Pharmacy Consultation Room was unlocked and unsecured. The room was accessible to the public and not under supervision of a pharmacist.
    - ii. Within the room, cabinets containing hypodermic needles were not secure.
    - iii. The pharmacy did not have cameras to capture the employees working in the pharmacy.
  - b. Kroger Pharmacy #014447 has had several "Theft and Significant Loss Reports" in recent years, including:
    - i. Loss of 100 oxycodone 5 mg tablets, January 3, 2017.
    - ii. Loss of a bottle of hydrocodone-acetaminophen 5/325 tablets, June 17, 2019.
    - iii. 100 hydrocodone-acetaminophen 5/325 tablets mixed in with hydrocodone-acetaminophen 7.5/325 tablets, September 4, 2019.
    - iv. Prescription for hydrocodone-acetaminophen was miscounted/unable to determine which patient received 30 extra hydrocodone-acetaminophen 10/325 tablets, April 20, 2020.
  - c. Pharmacy's perpetual C-II drug inventory was not accurate.

- i. The perpetual inventory in the computer indicated there were 413 oxycodone 5 mg tablets in the pharmacy. The on-hand count was 513.
    - d. Pharmacists requesting OARRS reports when appropriate.
      - i. The computer system had a hard stop on requesting an OARRS Report when necessary, however, the pharmacy was not able to verify/provide the dates/times/users that had requested the reports.
- 4. On or about July 21, 2020, Lauren Stevens, pharmacy technician, spoke with an agent of the Board and stated the following:
  - a. She was a new technician and needed assistance cashing out patient B.R. on June 28, 2020. Kelli Waggoner, RPh, assisted her. She thought oxycodone prescription #2337687 was physically removed from the patient's bag, but she cannot say this occurred with certainty.
- 5. On or about April 12, 2021, Kelli Waggoner, Responsible Person, reported an additional loss of controlled substances to the Board by submitting a theft and loss report. Ms. Waggoner reported 80 amphetamine salt 5 mg capsules were missing from Kroger Pharmacy. Video surveillance was reviewed, and it was discovered that a pharmacy technician had inadvertently thrown away a stock bottle of amphetamine salt capsules, resulting in the reported loss. This loss occurred despite implementation of a corrective action plan following previous losses of controlled substances.

#### CONCLUSIONS OF LAW

- 1. Such conduct as set forth in the Findings of Fact Section, each constitutes a violation of the following sections of Rule 4729:5-2-01 of the OAC, as effective March 1, 2019:
  - a. The responsible person shall be responsible for the practice of the profession of pharmacy, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(A)(2); and
  - b. The person to whom the terminal distributor of dangerous drugs license has been issued and all pharmacists on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of drugs and the practice of pharmacy, OAC Rule 4729:5-2- 01(A)(3); and



- c. The responsible person to whom the terminal distributor of dangerous drugs license has been issued and all licensed health professionals on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of dangerous drugs, OAC Rule 4729:5-2-01(E)(4); and
- d. The responsible person shall be responsible for ensuring the terminal distributor of dangerous drugs requirements are met, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2- 01(E)(6).

#### DECISION OF THE BOARD

The Board hereby closes the Matter of Kelly Waggoner, Case Nos. A-2020-0737 and A-2021-0231.

Further, the Board hereby grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information and security information contained in the record, specifically State's exhibits: 1b, 5b, 15, 16, and 26, and Respondent's Exhibit E.

Jason George moved for Findings of Fact; Jeff Huston seconded the motion. Motion passed (Yes-8/No-0).

Jason George moved for Conclusions of Law; Jeff Huston seconded the motion. Motion passed (Yes-8/No-0).

Jason George moved for Action of the Board; Jeff Huston seconded the motion. Motion passed (Yes-8/No-0).

SO ORDERED.

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**R-2023-0167**

After votes were taken in public session, the Board adopted the following order in the Matter of **Kelli J. Waggoner, RPh, Lebanon, Ohio**.

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**ORDER OF THE STATE BOARD OF PHARMACY**

(Case Numbers A-2022-0113 &amp; A-2022-0452)

In The Matter Of:

**Kelli J. Waggoner, RPh**1520 Golf Club Drive  
Lebanon, Ohio 45036  
(License No. 03-226329)**INTRODUCTION**

The Matter of Kelli J. Waggoner 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.

Kelli Waggoner was represented by Mary Barley McBride. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

**SUMMARY OF EVIDENCE****State's Witnesses:**

1. Kelli Waggoner, RPh, Respondent
2. Andrew Bouza, Agent of the Board

**Respondent's Witnesses:**

1. Kelli Waggoner, RPh
2. Michelle Izor, PharmD; The Kroger Co. Division Health Leader, Cincinnati Division

**State's Exhibits:**

- 1a. Notice Letter to Kelli Waggoner (6/8/2021)
- 1b. Patient Key
2. Notice Letter to Kelli Waggoner (9/3/2021)
3. Notice Letter to Kelli Waggoner (5/31/2022)
4. Notice Letter to Kelli Waggoner (9/15/2022)
- 5a. Notice Letter to Kroger Pharmacy #014447 (6/8/2021)
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20. Theft & Loss Report from Kroger #014447 dated 4/20/2020
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23. Statement of Deborah Estep
24. Email from Alison Cook to Andrew Bouza dated 5/6/2021
25. Statement of Kelli Waggoner dated 2/24/2022
26. Dispensing of Morphine IR
27. Theft & Loss Report from Kroger #014447 dated 11/22/2021
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29. Theft & Loss Report from Kroger #014447 dated 7/24/2022
30. Kroger #014447 Controlled Substance Action Plan
31. Shelf Maintenance Report dated 1/12/2022
32. Shelf Maintenance Report dated 2/16/2022

Respondent's Exhibits:

- A. Breach Root Cause Analysis Retraining with Pharmacy Staff sign-off (August, 2020)
- B. Release to Patient Return to Stock Retraining with special notation of handling controlled substances with Pharmacy Staff sign-off (August, 2020)
- C. Controlled Substance Action Plan (for Loss control and Prevention) with Pharmacy Staff sign-off (undated)
- E. Diagram of 7 camera locations

### FINDINGS OF FACT

The parties stipulated to – and the Board hereby adopts as fact – the Allegations as set forth in Amended Notice of Opportunity for Hearing dated September 15, 2022, Case Numbers A-2022-0113 and A-2022-0452, reiterated herein and set forth below.

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. On or about November 19, 2021, Kelli Waggoner was the Responsible Person for Kroger Pharmacy #014447, located at 1425 Columbus Avenue, Lebanon, Ohio, when a loss of 100 tablets of Morphine IR 15mg was discovered. From on or about August 16, 2021 (when the shipment of Morphine IR 15mg was received) to on or about November 19, 2021 the pharmacy dispensed Morphine IR 15mg to four different patients. After a review of the pharmacy's records, surveillance video, and a physical search of the pharmacy, there was no explanation found for the loss.
2. On or about January 12 and January 26, 2022, covert counts of Schedule II controlled substances were conducted. Additional-although less substantial- losses were discovered including, but not limited to, 130 ml of Hydromet 5mg/5ml solution, a Schedule II controlled substance.
3. On or about February 2, 2022, an action plan was implemented to address the loss of Morphine IR 15mg and other unexplained losses experienced by the pharmacy.
4. On or about May 18, 2022, the Board was notified a loss of 100 amphetamine salt 15mg tablets had occurred and Kroger staff's investigation was ongoing.
  - a. On or about July 24, 2022, the Board received notice that the investigation had been concluded and found there to be a loss of 99 tablets. The DEA-106 form stated the bottle of 100 amphetamine salt 15mg tablets was believed to have been thrown in the trash in error.
  - b. The Board was also notified that Kroger pharmacy staff reviewed video and checked the pharmacy to determine what happened to the missing drugs. The pharmacy was unable to determine the cause for the loss.

CONCLUSIONS OF LAW

2. Such conduct as set forth in the Findings of Fact Section, each constitutes a violation of the following sections of Rule 4729:5-2-01 of the OAC, as effective March 1, 2019:
  - a. The responsible person shall be responsible for the practice of the profession of pharmacy, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(A)(2); and
  - b. The person to whom the terminal distributor of dangerous drugs license has been issued and all pharmacists on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of drugs and the practice of pharmacy, OAC Rule 4729:5-2- 01(A)(3); and
  - c. The responsible person to whom the terminal distributor of dangerous drugs license has been issued and all licensed health professionals on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of dangerous drugs, OAC Rule 4729:5-2-01(E)(4); and
  - d. The responsible person shall be responsible for ensuring the terminal distributor of dangerous drugs requirements are met, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2- 01(E)(6).

DECISION OF THE BOARD

The Board hereby closes the Matter of Kelly Waggoner, Case Nos. A-2022-0113 and A-2022-0452.

Further, the Board hereby grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information and security information contained in the record, specifically State's exhibits: 1b, 5b, 15, 16, and 26, and Respondent's Exhibit E.

Jason George moved for Findings of Fact; Jeff Huston seconded the motion. Motion passed (Yes-8/No-0).

Jason George moved for Conclusions of Law; Jeff Huston seconded the motion. Motion passed (Yes-8/No-0).

Jason George moved for Action of the Board; Jeff Huston seconded the motion. Motion passed (Yes-8/No-0).

SO ORDERED.

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**R-2023-0168**

After votes were taken in public session, the Board adopted the following order in the Matter of **Kroger Pharmacy #014447, Lebanon, Ohio.**

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**ORDER OF THE STATE BOARD OF PHARMACY**

(Case Numbers A-2020-0736 & A-2021-0230)

In The Matter Of:

**Kroger Pharmacy #014447**

1425 Columbus Avenue  
Lebanon, Ohio 45036  
(License No. 02-1042850)

**INTRODUCTION**

The Matter of Kroger Pharmacy #014447 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.

Kroger Pharmacy #014447 was represented by Mary Barley McBride. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCEState's Witnesses:

1. Kelli Waggoner, RPh, Respondent
2. Andrew Bouza, Agent of the Board

Respondent's Witnesses:

1. Kelli Waggoner, RPh
2. Michelle Izor, PharmD; The Kroger Co. Division Health Leader, Cincinnati Division

State's Exhibits:

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29. Theft & Loss Report from Kroger #014447 dated 7/24/2022
30. Kroger #014447 Controlled Substance Action Plan
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32. Shelf Maintenance Report dated 2/16/2022

Respondent's Exhibits:

- A. Breach Root Cause Analysis Retraining with Pharmacy Staff sign-off (August, 2020)
- B. Release to Patient Return to Stock Retraining with special notation of handling controlled substances with Pharmacy Staff sign-off (August, 2020)
- C. Controlled Substance Action Plan (for Loss control and Prevention) with Pharmacy Staff sign-off (undated)
- E. Diagram of 7 camera locations

FINDINGS OF FACT

The parties stipulated to – and the Board hereby adopts as fact – the Allegations as set forth in Amended Notice of Opportunity for Hearing dated September 3, 2021, Case Numbers A-2020-0736 & A-2021-0230, reiterated herein and set forth below.

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. On or about June 28, 2020, a medication was mistakenly given to a patient at Kroger Pharmacy #014447, located at 1425 Columbus Avenue, Lebanon, Ohio, where Kelli Waggoner was the Responsible Person. Patient B.R. was prescribed three medications. When she arrived to pick-up her medications, she decided she no longer wanted prescription #2337687, oxycodone HCL 5 mg tablets, as her insurance did not cover the medication. Pharmacy technician Lauren Stevens cashed out patient B.R., however, prescription #2337687, 15 oxycodone HCL 5 mg tablets, was not removed from the packaged items. The loss of 15 oxycodone HCL 5 mg tablets, a Schedule II controlled substance, was discovered when the drug was randomly back counted.



2. It was discovered during an internal investigation by Kroger that there were only two cameras in operation in the pharmacy. The cameras did not capture any of the points of sale- the registers used by technicians to sell medications to customers.
3. On or about July 21, 2020, an inspection of Kroger Pharmacy was conducted by agents of the Board. The inspection resulted in four warnings/written responses required, including:
  - a. Security of the pharmacy drug stock is not adequate to detect and deter drug theft and diversion.
    - i. Pharmacy Consultation Room was unlocked and unsecured. The room was accessible to the public and not under supervision of a pharmacist.
    - ii. Within the room, cabinets containing hypodermic needles were not secure.
    - iii. The pharmacy did not have cameras to capture the employees working in the pharmacy.
  - b. Kroger Pharmacy #014447 has had several "Theft and Significant Loss Reports" in recent years, including:
    - i. Loss of 100 oxycodone 5 mg tablets, January 3, 2017.
    - ii. Loss of a bottle of hydrocodone-acetaminophen 5/325 tablets, June 17, 2019.
    - iii. 100 hydrocodone-acetaminophen 5/325 tablets mixed in with hydrocodone-acetaminophen 7.5/325 tablets, September 4, 2019.
    - iv. Prescription for hydrocodone-acetaminophen was miscounted/unable to determine which patient received 30 extra hydrocodone-acetaminophen 10/325 tablets, April 20, 2020.
  - c. Pharmacy's perpetual C-II drug inventory was not accurate.
    - i. The perpetual inventory in the computer indicated there were 413 oxycodone 5 mg tablets in the pharmacy. The on-hand count was 513.
  - d. Pharmacists requesting OARRS reports when appropriate.
    - i. The computer system had a hard stop on requesting an OARRS Report when necessary, however, the pharmacy was not able to verify/provide the dates/times/users that had requested the reports.
4. On or about July 21, 2020, Lauren Stevens, pharmacy technician, spoke with an agent of the Board and stated the following:
  - a. She was a new technician and needed assistance cashing out patient B.R. on June 28, 2020. Kelli Waggoner, RPh, assisted her. She thought oxycodone prescription #2337687 was physically

removed from the patient's bag, but she cannot say this occurred with certainty.

5. On or about April 12, 2021, Kelli Waggoner, Responsible Person, reported an additional loss of controlled substances to the Board by submitting a theft and loss report. Ms. Waggoner reported 80 amphetamine salt 5 mg capsules were missing from Kroger Pharmacy. Video surveillance was reviewed, and it was discovered that a pharmacy technician had inadvertently thrown away a stock bottle of amphetamine salt capsules, resulting in the reported loss. This loss occurred despite implementation of a corrective action plan following previous losses of controlled substances.

#### CONCLUSIONS OF LAW

1. Such conduct as set forth in the Findings of Fact, each constitutes a violation of Section 4729.55 of the ORC, effective April 6, 2017:
  - a. The applicant is equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor of dangerous drugs within the category of licensure approved by the board, ORC 4729.55(A); and
  - b. A pharmacist... will maintain supervision and control over the possession and custody of dangerous drugs that may be acquired by or on behalf of the applicant, ORC Section 4729.55(B); and
  - c. Adequate safeguards are assured to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist or licensed health professional authorized to prescribe drugs, ORC Section 4729.55(C); and
  - d. Adequate safeguards are assured to carry on the business of a terminal distributor of dangerous drugs in a manner that allows pharmacists and pharmacy interns employed by the terminal distributor to practice pharmacy in a safe and effective manner, ORC Section 4729.55(D).
2. Such conduct as set forth in the Findings of Fact, each constitutes a violation of each of the following divisions of Section 4729.57 of the ORC:
  - a. Violating any rule of the board, ORC Section 4729.57(B)(2); and
  - b. Violating any provision of this chapter, ORC Section 4729.57(B)(3); and
  - c. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, ORC Section 4729.57(B)(7); and

- d. Any other cause for which the board may impose discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.57(B)(10).
3. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following sections of Rule 4729:5-2-01 of the OAC, as effective March 1, 2019:
  - a. The responsible person shall be responsible for the practice of the profession of pharmacy, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(A)(2); and
  - b. The person to whom the terminal distributor of dangerous drugs license has been issued and all pharmacists on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of drugs and the practice of pharmacy, OAC Rule 4729:5-2-01(A)(3); and
  - c. The responsible person to whom the terminal distributor of dangerous drugs license has been issued and all licensed health professionals on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of dangerous drugs, OAC Rule 4729:5-2-01(E)(4); and
  - d. The responsible person shall be responsible for ensuring the terminal distributor of dangerous drugs requirements are met, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(E)(6).
4. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following sections of Rule 4729-9-05(A) of the OAC, as effective September 15, 2017: All licensees and registrants shall provide effective and approved controls and procedures to deter and detect theft and diversion of dangerous drugs. In order to determine whether a licensee or registrant has provided effective and approved controls against diversion, the state board of pharmacy shall use the security requirements set forth in rule 4729-9-11 of the Administrative Code as standards for the security controls and

operating procedures necessary to deter and detect diversion, OAC Rule 4729-9-05(A).

5. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following sections of Rule 4729-9-11 of the OAC: A pharmacist, prescriber, and responsible person pursuant to rule 4729-5-11 of the Administrative Code shall provide supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, and adequate safeguards to ensure that dangerous drugs are being distributed in accordance with all state and federal laws as required in section 4729.55 of the Revised Code, by the following procedures:
  - a. In a pharmacy: Except as provided in paragraph (A)(2) of this rule, a pharmacist shall provide personal supervision of the dangerous drugs, exempt narcotics, hypodermics, poisons, D.E.A. controlled substance order forms, all records relating to the distribution of dangerous drugs, except where the board has granted a permission for such records to be stored at a secure off-site location pursuant to rules 4729-9-14 and 4729-9-22 of the Administrative Code, at all times in order to deter and detect theft or diversion, OAC Rule 4729-9-11(A)(1); and
  - b. Whenever personal supervision of the dangerous drugs is not provided by a pharmacist, physical or electronic security of the dangerous drugs must be provided according to the following requirements:
    - i. Any designated area outside the prescription department at the location licensed as a terminal distributor of dangerous drugs intending to be used for the storage of dangerous drugs, D.E.A. controlled substance order forms, exempt narcotics, hypodermics, poisons, records relating to the distribution of dangerous drugs except where the board has granted a permission for such records to be stored at a secure off-site location pursuant to rules 4729-9-14 and 4729-9-22 of the Administrative Code, and every other item or product that requires the personal supervision or sale by a pharmacist shall meet the following requirements:
      1. The designated area shall be secured by either a physical barrier with suitable locks and/or an electronic barrier to detect unauthorized entry. Such a barrier, before being put into use, must be approved by the state board of pharmacy, OAC Rule 4729-9-11(A)(2)(h)(i); and
      2. No item, product, record, or equipment that must be accessible to anyone other than a pharmacist may be stored in the designated area, unless authorized by the board of pharmacy, OAC Rule 4729-9-11(A)(2)(h)(ii); and

3. Authorized personnel may have access if there is on-site supervision by a pharmacist, OAC Rule 4729-9-11(A)(2)(h)(iii); and
  - c. Only individuals authorized under state laws or rules shall have unsupervised access to dangerous drugs, OAC Rule 4729-9-11(E).
6. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following sections of Rule 4729-9-02 of the Ohio Administrative Code (OAC), effective May 22, 2014, minimum standards for a pharmacy: All storage areas shall provide adequate physical security for all dangerous drugs in accordance with rules 4729-9-05 and 4729-9-11 of the Administrative Code, OAC rule 4729-9-02(E)(3).
7. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following divisions of Rule 4729:5-4-01 of the OAC, as effective March 1, 2019:
  - a. Violating any rule of the board, OAC Rule 4729:5-4-01(B)(2); and
  - b. Violating any provision of Chapter 4729. Of the Revised Code, OAC Rule 4729:5-4-01(B)(3); and
  - c. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, OAC Rule 4729:5-4-01(B)(7).

#### DECISION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy hereby imposes a monetary penalty on Kroger Pharmacy #014447 in the amount of \$6,000 to be paid within six months of the issuance of this Order. To pay this fine, a Kroger representative must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart, or e-mail [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov) to establish a payment plan, to be approved by the Board.

Additionally, Kroger Pharmacy #014447's Responsible Person must attend the "Responsible Person Roundtable" within six months of the issuance of this Order.

Further, the Board hereby grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information and security information contained in the record, specifically State's exhibits: 1b, 5b, 15, 16, and 26, and Respondent's Exhibit E.

Christine Pfaff moved for Findings of Fact; Rich Miller seconded the motion. Motion passed (Yes-8/No-0).

Christine Pfaff moved for Conclusions of Law; Rich Miller seconded the motion. Motion passed (Yes-8/No-0).

Christine Pfaff moved for Action of the Board; Rich Miller seconded the motion. Motion passed (Yes-8/No-0).

SO ORDERED.

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**R-2023-0169**

After votes were taken in public session, the Board adopted the following order in the Matter of **Kroger Pharmacy #014447, Lebanon, Ohio.**

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**ORDER OF THE STATE BOARD OF PHARMACY**

(Case Numbers A-2022-0112 & A-2022-0451)

In The Matter Of:

**Kroger Pharmacy #014447**

1425 Columbus Avenue  
Lebanon, Ohio 45036  
(License No. 02-1042850)

**INTRODUCTION**

The Matter of Kroger Pharmacy #014447 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.

Kroger Pharmacy #014447 was represented by Mary Barley McBride. The State of Ohio was represented by Henry Appel, Assistant Attorney General.

SUMMARY OF EVIDENCEState's Witnesses:

1. Kelli Waggoner, RPh, Respondent
2. Andrew Bouza, Agent of the Board

Respondent's Witnesses:

1. Kelli Waggoner, RPh
2. Michelle Izor, PharmD; The Kroger Co. Division Health Leader, Cincinnati Division

State's Exhibits:

- 1a. Notice Letter to Kelli Waggoner (6/8/2021)
- 1b. Patient Key
2. Notice Letter to Kelli Waggoner (9/3/2021)
3. Notice Letter to Kelli Waggoner (5/31/2022)
4. Notice Letter to Kelli Waggoner (9/15/2022)
- 5a. Notice Letter to Kroger Pharmacy #014447 (6/8/2021)
- 5b. Patient Key
6. Notice Letter to Kroger Pharmacy #014447 (9/3/2021)
7. Notice Letter to Kroger Pharmacy #014447 (5/31/2022)
8. Notice Letter to Kroger Pharmacy #014447 (9/15/2022)
9. Request for Hearing for Kelli Waggoner & Kroger Pharmacy #014447
10. Request for Hearing for Kelli Waggoner & Kroger Pharmacy #014447
11. Inspection Report
12. Kroger's Response to Inspection Report
13. Statement of Kelli Waggoner dated 7/21/2020
14. Statement of Stevens
15. Prescription for Patient B.R.
16. Kroger Documents Regarding June 28, 2020, Dispensing Error
17. Omitted n.a.
18. Theft & Loss Report from Kroger #014447 dated 6/17/2019
19. Theft & Loss Report from Kroger #014447 dated 9/4/2019
20. Theft & Loss Report from Kroger #014447 dated 4/20/2020
21. Theft & Loss Report from Kroger #014447 dated 7/7/2020
22. Theft & Loss Report from Kroger #014447 dated 4/12/2021

23. Statement of Deborah Estep
24. Email from Alison Cook to Andrew Bouza dated 5/6/2021
25. Statement of Kelli Waggoner dated 2/24/2022
26. Dispensing of Morphine IR
27. Theft & Loss Report from Kroger #014447 dated 11/22/2021
28. E-mail from Charles D'Imperio to Andrew Bouza dated 7/22/2022
29. Theft & Loss Report from Kroger #014447 dated 7/24/2022
30. Kroger #014447 Controlled Substance Action Plan
31. Shelf Maintenance Report dated 1/12/2022
32. Shelf Maintenance Report dated 2/16/2022

Respondent's Exhibits:

- A. Breach Root Cause Analysis Retraining with Pharmacy Staff sign-off (August, 2020)
- B. Release to Patient Return to Stock Retraining with special notation of handling controlled substances with Pharmacy Staff sign-off (August, 2020)
- C. Controlled Substance Action Plan (for Loss control and Prevention) with Pharmacy Staff sign-off (undated)
- E. Diagram of 7 camera locations

FINDINGS OF FACT

The parties stipulated to – and the Board hereby adopts as fact – the Allegations as set forth in Amended Notice of Opportunity for Hearing dated September 15, 2022, Case Numbers A-2022-0112 & A-2022-0451, reiterated herein and set forth below.

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. On or about November 19, 2021, Kelli Waggoner was the Responsible Person for Kroger Pharmacy #014447, located at 1425 Columbus Avenue, Lebanon, Ohio, when a loss of 100 tablets of Morphine IR 15mg was discovered. From on or about August 16, 2021 (when the shipment of Morphine IR 15mg was received) to on or about November 19, 2021 the pharmacy dispensed Morphine IR 15mg to four different patients. After a review of the pharmacy's records, surveillance video, and a physical search of the pharmacy, there was no explanation found for the loss.
2. On or about January 12 and January 26, 2022, covert counts of Schedule II controlled substances were conducted. Additional-



although less substantial- losses were discovered including, but not limited to, 130 ml of Hydromet 5mg/5ml solution, a Schedule II controlled substance.

3. On or about February 2, 2022, an action plan was implemented to address the loss of Morphine IR 15mg and other unexplained losses experienced by the pharmacy.
4. On or about May 18, 2022, the Board was notified a loss of 100 amphetamine salt 15mg tablets had occurred and Kroger staff's investigation was ongoing.
  - a. On or about July 24, 2022, the Board received notice that the investigation had been concluded and found there to be a loss of 99 tablets. The DEA-106 form stated the bottle of 100 amphetamine salt 15mg tablets was believed to have been thrown in the trash in error.
  - b. The Board was also notified that Kroger pharmacy staff reviewed video and checked the pharmacy to determine what happened to the missing drugs. The pharmacy was unable to determine the cause for the loss.

#### CONCLUSIONS OF LAW

1. Such conduct as set forth in the Findings of Fact, each constitutes a violation of Section 4729.55 of the ORC, effective March 31, 2021:
  - e. A pharmacist... will maintain supervision and control over the possession and custody of dangerous drugs that may be acquired by or on behalf of the applicant, ORC Section 4729.55(B); and
  - f. Adequate safeguards are assured to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist or licensed health professional authorized to prescribe drugs, ORC Section 4729.55(C); and
  - g. Adequate safeguards are assured to carry on the business of a terminal distributor of dangerous drugs in a manner that allows pharmacists and pharmacy interns employed by the terminal distributor to practice pharmacy in a safe and effective manner, ORC Section 4729.55(D).
2. Such conduct as set forth in the Findings of Fact, each constitutes a violation of each of the following divisions of Section 4729.57 of the ORC:
  - e. Violating any rule of the board, ORC Section 4729.57(B)(2); and

- f. Violating any provision of this chapter, ORC Section 4729.57(B)(3); and
  - g. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, ORC Section 4729.57(B)(7); and
  - h. Any other cause for which the board may impose discipline as set forth in rules adopted under section 4729.26 of the Revised Code, ORC Section 4729.57(B)(10).
3. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following sections of Rule 4729:5-2-01 of the OAC, as effective March 1, 2019:
- e. The responsible person shall be responsible for the practice of the profession of pharmacy, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(A)(2); and
  - f. The person to whom the terminal distributor of dangerous drugs license has been issued and all pharmacists on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of drugs and the practice of pharmacy, OAC Rule 4729:5-2-01(A)(3); and
  - g. The responsible person to whom the terminal distributor of dangerous drugs license has been issued and all licensed health professionals on duty are responsible for compliance with all state and federal laws, regulations, and rules governing the distribution of dangerous drugs, OAC Rule 4729:5-2-01(E)(4); and
  - h. The responsible person shall be responsible for ensuring the terminal distributor of dangerous drugs requirements are met, including, but not limited to, the supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, adequate safeguards as required in division (C) of section 4729.55 of the Revised Code, security and control of dangerous drugs and maintaining all drug records otherwise required, OAC Rule 4729:5-2-01(E)(6)
4. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following sections of Rule 4729-9-05(A) of the OAC, as effective September 15, 2017: All licensees and registrants shall provide effective and approved controls and procedures to deter and

detect theft and diversion of dangerous drugs. In order to determine whether a licensee or registrant has provided effective and approved controls against diversion, the state board of pharmacy shall use the security requirements set forth in rule 4729-9-11 of the Administrative Code as standards for the security controls and operating procedures necessary to deter and detect diversion, OAC Rule 4729-9-05(A).

5. Such conduct as set forth in the Findings of Fact, each constitutes a violation of Rule 4729-9-11(A)(1) of the OAC: A pharmacist, prescriber, and responsible person pursuant to rule 4729-5-11 of the Administrative Code shall provide supervision and control of dangerous drugs as required in division (B) of section 4729.55 of the Revised Code, and adequate safeguards to ensure that dangerous drugs are being distributed in accordance with all state and federal laws as required in section 4729.55 of the Revised Code, by the following procedures: In a pharmacy: Except as provided in paragraph (A)(2) of this rule, a pharmacist shall provide personal supervision of the dangerous drugs, exempt narcotics, hypodermics, poisons, D.E.A. controlled substance order forms, all records relating to the distribution of dangerous drugs, except where the board has granted a permission for such records to be stored at a secure off-site location pursuant to rules 4729-9-14 and 4729-9-22 of the Administrative Code, at all times in order to deter and detect theft or diversion.
6. Such conduct as set forth in the Findings of Fact, each constitutes a violation of the following divisions of Rule 4729:5-4-01 of the OAC, as effective March 1, 2019:
  - d. Violating any rule of the board, OAC Rule 4729:5-4-01(B)(2); and
  - e. Violating any provision of Chapter 4729. Of the Revised Code, OAC Rule 4729:5-4-01(B)(3); and
  - f. Ceasing to satisfy the qualifications of a TDDD set forth in section 4729.55 of the Revised Code, OAC Rule 4729:5-4-01(B)(7).

#### DECISION OF THE BOARD

Pursuant to Section 4729.57 of the Ohio Revised Code, the State Board of Pharmacy hereby imposes a monetary penalty on Kroger Pharmacy #014447 in the amount of \$6,000 to be paid within six months of the issuance of this Order. To pay this fine, a Kroger representative must login to [www.elicense.ohio.gov](http://www.elicense.ohio.gov) and process the items in the cart, or e-mail [legal@pharmacy.ohio.gov](mailto:legal@pharmacy.ohio.gov) to establish a payment plan, to be approved by the Board.

Additionally, Kroger Pharmacy #014447's Responsible Person must attend the "Responsible Person Roundtable" within six months of the issuance of this Order.

Further, the Board hereby grants the State's Motion to Seal the Record in this matter including, but not limited to, all confidential patient health information and security information contained in the record, specifically State's exhibits: 1b, 5b, 15, 16, and 26, and Respondent's Exhibit E.

Christine Pfaff moved for Findings of Fact; Rich Miller seconded the motion. Motion passed (Yes-8/No-0).

Christine Pfaff moved for Conclusions of Law; Rich Miller seconded the motion. Motion passed (Yes-8/No-0).

Christine Pfaff moved for Action of the Board; Rich Miller seconded the motion. Motion passed (Yes-8/No-0).

SO ORDERED.

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**R-2023-0170**

Ms. Buettner moved that the Board go into Executive Session to consider the investigation of charges or complaints against a licensee, confer with Board counsel regarding a pending or imminent court action and to discuss matters required to be confidential by law pursuant to Section 121.22(G)(1), (3) & (5) of the Ohio Revised. The motion was seconded by Ms. Ferris and a roll-call vote was conducted *President Wilt* as follows: Buettner-yes; Ferris-yes; George-yes; Goodman-yes; Grimm-yes; Huston-yes, Miller-yes; and Pfaff-yes.

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**3:52 p.m.**

The Board returned to Public Session, but Mr. Goodman was no longer present.

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**R-2023-0171**

After votes were taken in public session, the Board adopted the following order in the **Matter of Seven Legendz Fountain Square**.

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**ORDER OF THE STATE OF OHIO BOARD OF PHARMACY  
CONFIRMING AND APPROVING IN PART AND MODIFYING IN  
PART  
REPORT & RECOMMENDATION OF HEARING EXAMINER**  
(Case Number A-2022-0291)

IN THE MATTER OF:  
Seven Legendz Fountain Square  
c/o Lloyd Pierre-Louis, Registered Agent  
150 E. Gay St., Columbus, OH 43215  
Application No.: QN648  
Application District: Southwest-1  
Application Dispensary Address: 417 Vine St., Cincinnati, OH 45202

**INTRODUCTION**

Respondent Seven Legendz Fountain Square (Seven Legendz) came for a hearing before Hearing Examiner Margaret Brewer on Wednesday, August 24, 2022. On Monday, December 5, 2022, the parties made an oral address to the State of Ohio Board of Pharmacy (Board), and the Board considered the matter on Tuesday, December 6, 2022, before the following members of the Board: Shawn Wilt, RPh, *Presiding*; Trina Buettner, RPh, Vice President; Mindy Ferris, RPh; Jason George, RPh; T.J. Grimm, RPh; Jeff Huston, RPh; Rich Miller, RPh; and Christina Pfaff, RPh. Victor Goodman, *Public Member*, was present for the oral address but abstained from the vote.

Respondent was represented by Lloyd Pierre- Louis, Dickinson Wright. The State of Ohio was represented by Henry G. Appel, Assistant Attorney General.

**BOARD REVIEW OF THE RECORD**

Prior to making its decision, the Board reviewed the entire administrative record in this matter, consisting of the following items:

- 1) Notice of Opportunity for Hearing/Notice of Intent to Deny Application, dated May 17, 2022, attached hereto as Exhibit A;
- 2) Seven Legendz Exhibit List, filed August 15, 2022;

- 3) Seven Legendz Amended Exhibit List, filed August 16, 2022, which included the following Exhibits:
  - A. Applicant's application as submitted (relevant excerpts)
  - B. Application Instructions
  - C. Rule 3796:6-2-02 (final filed rule)
  - D. Board Q&A 1
  - E. Board Q&A 2
  - F. April 20, 2022 correspondence from Board to Applicant
  - G-1. April 29, 2022 correspondence from Applicant to Board
  - G-2. Attachment to April 29 email
  - H. May 16, 2022 Board Minutes
  - I. Notice of Intent to Deny Applicant's Application
  - J. CV of Paul Attwood
  
- 4) State's Exhibits, filed August 17, 2022, which included the following Exhibits:
  1. Photos
  2. Site Plan for Big Perm Dispensary
  3. 500 Foot Survey for Big Perm Dispensary
  
- 5) Joint Exhibits, filed August 17, 2022, which included the following Exhibits:
  1. RFAII Presentation
  2. FAQ from April 2021
  3. Request for Applications/Instructions
  4. Application (preview)
  5. Q&A Round 1
  6. Q&A Round 2
  7. Number of Applications Received by District
  8. Drawing Results
  9. FAQ from January 2022
  10. List of Provisional Dispensary Licenses
  11. Summary of PDLs Awarded
  12. Presentation from May 2022
  13. FAQ from May 2022
  - 14a. Notice Letter
  - 14b. Attachment to Notice Letter
  15. Request for Hearing
  16. First Hearing Letter
  17. Scheduling Order
  18. Application (without attachments or section B)
  19. Site Plan (Attached to Application)
  20. Survey (Attached to Application)
  21. Request for Clarification
  - 22a. Response to Request for Clarification
  - 22b. Updated Site Plan (attached to Response to Request for Clarification)

- 6) Prehearing Brief of the State, filed August 19, 2022;
- 7) Prehearing Brief of Seven Legendz, filed August 19, 2022;
- 8) Joint Stipulations of the Parties, filed August 22, 2022;
- 9) Hearing Transcript, filed September 8, 2022;
- 10) Hearing Examiner Brewer's Report and Recommendation, filed September 30, 2022;
- 11) Hearing Examiner Brewer's corrected Report and Recommendation, filed October 5, 2022, attached hereto as Exhibit B;
- 11) Objections of Seven Legendz to Report & Recommendation of Hearing Examiner with Request for Oral Presentation, filed October 17, 2022, which included the following Exhibits:
  1. Include Definition
  2. Identify Definition
  3. Demonstrate Definition
  4. Rule 3796:6-2-02 (final filed rule)
- 12) State's Response to Objections, filed December 1, 2022;
- 13) Seven Legendz Supplement to Objections, filed December 5, 2022.

#### DECISION OF THE BOARD

After thorough review of all documents related to the case and consideration of the oral address made to the Board, the Board hereby confirms and approves Hearing Examiner Brewer's Findings of Fact, as attached hereto as Exhibit B, as it relates to the Board's May 17, 2022 Notice of Opportunity for Hearing/Notice of Intent to Deny, but also modifies the report to include additional findings of fact and correct grammatical errors. Specifically, the Board modifies the Findings of Fact as follows:

As to paragraph 6 of the Findings of Fact, the Board modifies the paragraph to include additional facts relating to the request for clarification and the information provided to Seven Legendz therein. Specifically, the Board modifies paragraph 6 to read (insertions bolded):

Pursuant to Ohio Adm.Code 3796:6-2-04(G), the Board on April 20, 2022, requested that Respondent supply additional clarifying information regarding its adequacy of liquid assets and to demonstrate that the "site plan includes an enclosed delivery bay or other equally secured delivery area." **In the clarification request, the Board cited Question 18 of the Q&A and the Board's response thereto as stated in paragraph 3 of these Findings of Fact. The Board informed Respondent that "[t]he response to Question 18 does not mean applicants do not need to demonstrate compliance with Ohio Adm. Code 3796:6-3-06(D) in the application. The response to this question indicated that the need for a roof or an**

**outdoor delivery area would be assessed before a certificate of operation could be awarded. It did not obviate the need for applicants to include a plan in their application for an “enclosed delivery bay or other equally secured delivery area” as required by Ohio Adm.Code 3796:6-2-02(B)(7).” The clarification request further informed Respondent that “you may modify your site plan to clearly identify an “enclosed delivery bay or other equally secured delivery area” where access is limited to necessary licensed processor, cultivator, and dispensary employees.” Respondent responded timely to the Board’s request to supply information and an updated floor plan []. (Joint Stipulated Fact #26; Joint Exhibit 14, Exhibit I, **Joint Exhibit 21, Respondent’s Exhibit F**).**

As to paragraph 7 of the Findings of Fact, the Board modifies the paragraph to include the word “area” after the term “equally secured delivery” on line 5 of the paragraph. This modification is made to correct a grammatical error in the paragraph.

As to paragraph 9 of the Findings of Fact, the Board modifies the paragraph to change “FAQs” to “Q&As.” This modification is to correct a grammatical error in the paragraph.

Following paragraph 10 of the Findings of Fact, the Board adds an additional finding of fact to include testimony presented by Seven Legendz’s expert witness, Paul Attwood. Specifically, the Board modifies the Findings of Fact to include:

**NEW 10(A). Mr. Attwood testified regarding the difference between an “enclosed delivery bay” and an “equally secured delivery area.” Specifically, Mr. Attwood testified:**

**An enclosed delivery bay would be an area within the facility that a vehicle can actually drive into and deliver their product. An equally secured area would be an area where the product can be delivered but it has equal securities measures to that security bay. Now, these measures can be provided by a number of other means to mitigate the risks. They would be location dependent, but we can use a variety of measures, from the human element, access control, also surveillance systems. (Transcript at p. 93)**

Following paragraph 15 of the Findings of Fact, the Board adds an additional finding of fact to include testimony of Agent of the Board, Jason Doty, regarding his investigation of the proposed dispensary location. Specifically, the Board modifies the Findings of Fact to include:



**NEW 16.** Agent Doty also testified that he observed a truck parked in the delivery area Respondent identified as the loading zone where delivery vehicles would park. He indicated that the side of the vehicle facing the street was not visible from the location of the dispensary. He further testified that he spoke to a parking enforcement official working near the location who said the loading zones were not exclusive to one business. Although businesses could request a reservation, Agent Doty testified that Department of Commerce rules require that delivery times vary and not be "set" times. (Tr. pp. 230-233).

The Board further confirms and approves Hearing Examiner Brewer's Conclusions of Law in their entirety, as set forth in the Report and Recommendation, attached hereto as Exhibit 2, but also modifies the report to include additional conclusions of law as approved by the Board. Specifically, the Board modifies the Conclusions of Law to also include:

**NEW 10(A).** The Board provided Q&As to assist applicants in completing the application process; however, responses to the Q&As cannot supersede the application and security requirements identified in Revised Code 3796 or the administrative rules promulgated thereunder. In Q&As #18 and #275, the Board was asked whether certain characteristics were required for an "equally secured delivery area." The Q&A responses to those questions indicated that the Board would review whether any specific elements would be required (e.g., a roof versus a locking fence) after provisional dispensary licenses have been awarded. The responses further noted the requirements of Ohio Adm.Code 3796:6-3-06(D) - that all areas where medical marijuana is delivered shall be secured and monitored with video surveillance, and access shall be limited to necessary licensed processor, cultivator, and dispensary employees. Therefore, the Board's Q&A responses, when read in context, put Respondent on notice that any "equally secured delivery area," identified in its application must at minimum meet the requirements of Ohio Adm.Code 3796:6-3-06(D) and any additional elements (e.g., a wall versus a fence), could be resolved post-provisional dispensary license award. The Board also informed Respondent during the clarification process and prior to final review of the application that it must meet the requirement of Ohio Adm.Code 3796:6-2-02(B)(7) in order to meet the PDL requirements.

**NEW 10(B).** Although the term “equally secured delivery area” was not defined in the rule or application, Respondent’s expert witness – who helped prepare the application – testified that an “enclosed delivery bay” would be “an area within the facility that a vehicle can actually drive into and deliver their product.” Therefore, a “delivery area” that is equal to “an enclosed delivery bay,” must include the area where the delivery vehicle will park and unload and the area between the unloading area and the dispensary building, if any. Here, this area would include the street “loading zone” and the sidewalk area across which the medical marijuana is transported. Further, Ohio Adm.Code 3796:6-3-06(D) requires that *all areas* where medical marijuana is delivered shall be secured and monitored. Therefore, Respondent’s contention that the only “delivery area” which must be secured and otherwise meet the requirements of Ohio Adm.Code 3796:6-3-06(D) is the alleyway and area identified within the dispensary building is unsupported by rule or its own witness testimony. Respondent has not identified a delivery area that is secured, monitored, and accessible only to necessary licensed processor, cultivator, and dispensary employees.

All violations of law are supported by the evidence in the record. Specifically, the submitted application number QN648 was not complete because, under Ohio Adm.Code 3796:6-2-02(B)(7)(e), Seven Legendz was required to submit a site-specific floor plan including and identifying “an enclosed delivery bay or other equally secured delivery area as approved by the board where medical marijuana deliveries will be made pursuant to a standard operating procedure approved by the board.” The floor plan submitted with application number QN648 and the clarification responses submitted in response to the Board’s request failed to include and identify a “an enclosed delivery bay or other equally secured delivery area” that meets the requirements of Ohio Adm.Code 3796:6-3-06(D). Accordingly, Seven Legendz has not demonstrated compliance with Revised Code Chapter 3796 and the administrative rules promulgated thereunder, as required by Ohio Adm.Code 3796:6-2-04(B) in order to be awarded a provisional dispensary license by the Board.

**The Board confirms and approves, with modification, the Report and Recommendation of Hearing Examiner Brewer, and denies Seven Legendz Fountain Square’s application, Application No. QN648, for a provisional dispensary license.**

Mr. Miller moved to confirm and approve the Hearing Examiner's Findings of Fact, with the modifications as set forth herein; Ms. Buettner seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

Mr. Miller moved to confirm and approve the Hearing Examiner's Conclusions of Law, with the modifications as set forth herein; Ms. Buettner seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

Mr. Miller moved to confirm and approve the Hearing Examiner's recommendation; Ms. Buettner seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

SO ORDERED.

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**R-2023-0172**

After votes were taken in public session, the Board adopted the following order in the Matter of **Culture Retail Partners of Ohio dba Culture Cannabis Club, Westlake, Ohio.**

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**ORDER OF THE STATE OF OHIO BOARD OF PHARMACY**  
**CONFIRMING AND APPROVING**  
**REPORT & RECOMMENDATION OF HEARING EXAMINER**  
(Case Number A-2022-0339)

IN THE MATTER OF:  
Culture Retail Partners of Ohio dba Culture Cannabis Club  
c/o Legallnc Corporate Services Inc., Registered Agent  
1991 Crocker Road, Suite 600A  
Westlake, OH 44145  
Provisional License No. MMD.04101  
Application No.: QS226  
Application District: Northeast-6  
Application Dispensary Address: 4880 N. Ridge Rd. W, Ashtabula, OH  
44004

**INTRODUCTION**

Respondent Culture Retail Partners of Ohio dba Culture Cannabis Club (Culture Retail) came for a paper hearing by joint agreement of the parties before Hearing Examiner Michelle Riske-Morris, and for consideration by the State of Ohio Board of Pharmacy (Board) on December 6, 2022, before the following members of the Board: Shawn Wilt, RPh, Presiding; Trina Buettner, RPh, Vice President; Mindy Ferris, RPh; Jason George, RPh; T.J. Grimm, RPh; Jeff Huston, RPh; Rich Miller, RPh; and Christina Pfaff, RPh. Victor Goodman, Public Member, abstained from the proceedings.

Respondent was represented by Thomas G. Haren and Patrick A. Walsh, Frantz Ward LLP. The State of Ohio was represented by Henry G. Appel, Assistant Attorney General.

#### BOARD REVIEW OF THE RECORD

Prior to making its decision, the Board reviewed the entire administrative record in this matter, consisting of the following items:

- 1) Notice of Opportunity of Hearing/Notice of Intent to Revoke Provisional Dispensary License with Attachment (GIS Review of Application QS226), dated June 3, 2022;
- 2) Culture Retail's Exhibit List, filed September 8, 2022;
- 3) State's Exhibit List and Exhibits, filed September 11, 2022, which included the following Exhibits:
  1. Site Plan (attached to application)
  2. Documents from Ashtabula County Auditor Website
  3. Maps from Ashtabula County Auditor Website
  4. Web Page for Saybrook Township Park District
  5. E-mail From Saybrook Township Park Dept.
- 4) Amended Notice of Opportunity for Hearing/Notice of Intent to Revoke Provisional Dispensary License with Attachment (GIS Review of Application QS226), dated September 13, 2022, attached hereto as Exhibit 1;
- 5) Stipulated Facts, filed September 30, 2022;
- 4) Brief of Culture Cannabis, filed September 30, 2022;
- 5) Brief of the State, filed October 7, 2022;
- 6) Reply Brief of Culture Cannabis, filed October 14, 2022;
- 7) Joint Exhibits, filed October 17, 2022, which included the following Exhibits:
  1. RFAII Presentation
  2. FAQ from April 2021
  3. Request for Applications/Instructions
  4. Application (preview)
  5. Q&A Round 1
  6. Q&A Round 2
  7. Number of Applications Received by District
  8. Drawing Results
  9. FAQ from January 2022
  10. List of Provisional Dispensary Licenses
  11. Summary of PDLs Awarded
  12. Presentation from May 2022
  13. FAQ from May 2022
  - 14a. Notice Letter
  - 14b. Attachment to Notice Letter
  15. Request for Hearing
  16. First Hearing Letter
  17. Current Scheduling Order

18. Application of Respondent (without attachments & section B questions)
  19. 500 Foot Survey (attached to application)
  20. Award Letter
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- 8) Joint Exhibit 21, Amended Notice of Opportunity for Hearing/Notice of Intent to Revoke Provisional Dispensary License with Attachment (GIS Review of Application QS226), filed November 14, 2022;
  - 9) Hearing Examiner Riske-Morris' Report and Recommendation, filed November 18, 2022, attached hereto as Exhibit 2;
  - 10) Objections of Culture Cannabis to Report & Recommendation of Hearing Examiner, filed November 28, 2022;
  - 11) State's Response to Objections, filed November 29, 2022;
  - 12) Reply of Culture Cannabis to State's Response to Objections, filed December 6, 2022.

#### DECISION OF THE BOARD

After thorough review of all documents related to the case, the Board hereby confirms and approves in its entirety Hearing Examiner Riske-Morris' Report and Recommendation, attached hereto Exhibit 2, as it relates to the Board's September 13, 2022 Amended Notice of Opportunity of Hearing/Notice of Intent to Revoke Provisional Dispensary License with Attachment to Culture Cannabis, including the Findings of Fact and Conclusions of Law.

All violations of law are supported by the evidence in the record. Specifically, the dispensary location is within five hundred feet of the boundaries of a parcel of real estate having on it a public park, in violation of R.C. 3796.30(A), R.C. 3796.10(B)(4), and Ohio Adm.Code 3796:6-2-02(B)(2)(k)(i) as measured pursuant to Ohio Adm.Code 3796:6-2-02(B)(2)(l). Accordingly, Culture Retail has not demonstrated compliance with Revised Code Chapter 3796 and the administrative rules promulgated thereunder, as required by Ohio Adm.Code 3796:6-2-04(B) in order to be awarded a provisional dispensary license by the Board.

The Board confirms and approves the Report and Recommendation of Hearing Examiner Riske-Morris, and revokes provisional dispensary license number MMD.04101 previously issued to Culture Retail Partners of Ohio, Inc. dba Culture Cannabis Club.

Ms. Buettner moved to confirm and approve the Hearing Examiner's Findings of Fact; Mr. George seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

Ms. Buettner moved to confirm and approve the Hearing Examiner's Conclusions of Law; Mr. George seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

Ms. Buettner moved to confirm and approve the Hearing Examiner's recommendation; Mr. George seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

SO ORDERED.

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**R-2023-0173**

After votes were taken in public session, the Board adopted the following order in the Matter of **MLH Ohio Dispensary IV, LLC, Wynnewood, PA.**

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**ORDER OF THE STATE OF OHIO BOARD OF PHARMACY  
CONFIRMING AND APPROVING IN PART AND MODIFYING IN  
PART  
REPORT & RECOMMENDATION OF HEARING EXAMINER**  
(Case Number A-2022-0225)

IN THE MATTER OF:  
MLH Ohio Dispensary IV, LLC  
c/o Alexander C. Chadwick  
308 E. Lancaster Avenue, Suite 300  
Wynnewood, PA 19096  
Application No.: RR876  
Application District: Southeast-6  
Application Dispensary Address: 251 W. Main St., Pomeroy, OH 45769

**INTRODUCTION**

Respondent MLH Ohio Dispensary IV, LLC (MLH) came for a paper hearing by joint agreement of the parties before Hearing Examiner Michelle Riske-Morris, and for consideration by the State of Ohio Board of Pharmacy (Board) on December 6, 2022, before the following members of the Board: Shawn Wilt, RPh, Presiding; Trina Buettner, RPh, Vice President; Mindy Ferris, RPh; Jason George, RPh; T.J. Grimm, RPh; Jeff Huston, RPh; Rich Miller, RPh; and Christina Pfaff, RPh. Victor Goodman, Public Member, abstained from the proceedings.

Respondent was represented by Thomas G. Haren and Patrick A. Walsh, Frantz Ward LLP. The State of Ohio was represented by Henry G. Appel, Assistant Attorney General.

#### BOARD REVIEW OF THE RECORD

Prior to making its decision, the Board reviewed the entire administrative record in this matter, consisting of the following items:

- 1) Notice of Opportunity of Hearing/Notice of Intent to Deny Application with Attachment (GIS Review of Application RR876), dated May 17, 2022, attached hereto as Exhibit A;
- 2) MLH's Exhibit List, filed July 19, 2022;
- 3) Joint Exhibits, filed July 19, 2022, which included the following Exhibits:
  1. RFAII Presentation
  2. FAQ from April 2021
  3. Request for Applications/Instructions
  4. Application (preview)
  5. Q&A Round 1
  6. Q&A Round 2
  7. Number of Applications Received by District
  8. Drawing Results
  9. FAQ from January 2022
  10. List of Provisional Dispensary Licenses
  11. Summary of PDLs Awarded
  12. Presentation from May 2022
  13. FAQ from May 2022
  - 14a. Notice Letter
  - 14b. Attachment to Notice Letter
  15. Request for Hearing
  16. First Hearing Letter
  17. Current Scheduling Order
  18. Application of Respondent (without attachments & section B questions)
  19. 500 Foot Survey Attached to Application of Respondent
  20. Site Plan Attached to Application of Respondent
  21. Option to Purchase Attached to Application of Respondent
  22. Request for Clarification
  23. Response to Request for Clarification (with attachments)
- 4) Exhibits of the State, filed July 19, 2022, which included the following exhibits:
  1. Documents About Dispensary Parcel Provided by Meigs County Auditor
  2. Documents About Library Parcel Provided by Meigs County Auditor
  3. Meigs County Auditor Documents About Library Parcel

- 5) Brief of MLH, filed August 26, 2022;
- 6) Joint Stipulated Facts, filed August 26, 2022;
- 7) State's Brief, filed September 6, 2022;
- 8) Reply Brief of MLH, filed September 9, 2022;
- 9) Hearing Examiner Riske-Morris' Report and Recommendation, filed October 7, 2022, attached hereto as Exhibit B;
- 10) Objections of MLH to Report & Recommendation of Hearing Examiner, filed October 17, 2022;
- 11) State's Response to Objections, filed November 30, 2022;
- 12) Reply of MLH to State's Response to Objections, filed December 6, 2022.

#### DECISION OF THE BOARD

After thorough review of all documents related to the case, the Board hereby confirms and approves Hearing Examiner Riske-Morris' Findings of Fact, attached hereto and incorporated as though fully set forth herein as Exhibit B, in their entirety, as it relates to the Board's May 17, 2022 Notice of Opportunity of Hearing/Notice of Intent to Deny Application with Attachment.

The Board further confirms and approves with modifications to include additional conclusions of law as approved by the Board, Hearing Examiner Riske-Morris' Conclusions of Law in their entirety, as set forth in the Report and Recommendation. Specifically, the Board modifies the Conclusions of Law to also include:

The purpose of an administrative rule is to accomplish the ends sought by the legislation enacted by the General Assembly and an administrative rule does not conflict with a statute to the extent that it provides a reasonable, supportable interpretation of it (*Maralgate, LLC v. Greene County Bd of Revision*, 130 Ohio St.3d 316 (citing *Rich's Dept. Stores, Inc. v. Levin*, 125 Ohio St.3d 15, 2010, Ohio 957, 925 N.E.2d 951, quoting *Hoffman v. State Med. Bd. of Ohio*, 113 Ohio St.3d 376, 2007 Ohio 2201, 865 N.E.2d 1259, and *Chicago Pacific Corp. v. Limbach*, 65 Ohio St.3d 432, 435, 1992 Ohio 10, 605 N.E.2d 8). An administrative rule that is issued pursuant to statutory authority has the same force of law unless it is unreasonable or conflicts with a statute covering the same subject matter. (*Maralgate, LLC v. Greene County Bd of Revision*, 130 Ohio St.3d 316 (citing *Nestle R&D Ctr., Inc. v. Levin*, 122 Ohio St.3d 22, 2009 Ohio 1929, 907 N.E.2d 714, quoting *State ex rel. Celebrezze v. Natl. Lime & Stone Co.*, 68 Ohio St.3d 377, 382, 1994 Ohio 486, 627 N.E.2d 538).

Ohio Adm.Code 3796:6-2-02(B)(2)(l) has the force of law because (1) the Board had statutory authority to promulgate the rule, (2) the rule is not unreasonable, and (3) the rule does not conflict with R.C. 3796.30.



All violations of law are supported by the evidence in the record. Specifically, the proposed dispensary location is within five hundred feet of the boundaries of a parcel of real estate having on it a public library, in violation of R.C. 3796.30(A), R.C. 3796.10(B)(4), and Ohio Adm.Code 3796:6-2-02(B)(2)(k)(i) as measured pursuant to Ohio Adm.Code 3796:6-2-02(B)(2)(l). Accordingly, MLH has not demonstrated compliance with Revised Code Chapter 3796 and the administrative rules promulgated thereunder, as required by Ohio Adm.Code 3796:6-2-04(B) in order to be awarded a provisional dispensary license by the Board.

The Board confirms and approves with modification the Report and Recommendation of Hearing Examiner Riske-Morris, and denies MLH Ohio Dispensary IV, LLC's application, Application No. RR876, for a provisional dispensary license.

Mr. Grimm moved to confirm and approve the Hearing Examiner's Findings of Fact; Mr. George seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

Mr. Grimm moved to confirm and approve the Hearing Examiner's Conclusions of Law, with the modification as set forth herein; Mr. George seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

Mr. Grimm moved to confirm and approve the Hearing Examiner's recommendation; Mr. George seconded the motion. Motion passed (Yes-7/No-0/Abstain-1).

SO ORDERED.

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**R-2023-0174**

Ms. Buettner moved to adjourn the December 2022 State of Ohio Board of Pharmacy Meeting. The motion was seconded by Ms. Pfaff and approved by the Board: yes-7, No-0.

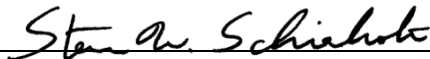
**3:58 p.m.**

The Board Meeting Adjourned.



Shawn Wilt, RPh, President

Date: 01/11/2023



Steven W. Schierholt, Executive Director

Date: 01/11/2023