OHIO STATE BOARD OF PHARMACY

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-Equal Opportunity Employer and Service Provider-

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-920728-007)

In The Matter Of:

BERNARD FRIEDMAN, R.Ph.
168 S. Merkle Road
Columbus, Ohio 43209
(R.Ph. No. 03-1-05108)

INTRODUCTION

THE MATTER OF BERNARD FRIEDMAN CAME ON FOR CONSIDERATION ON MARCH 9, 1994, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: JOSEPH R. SABINO, R.Ph. (presiding); ROBERT B. CAVENDISH, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; WAYNE C. MILLER, R.Ph.; TIMOTHY D. MOORE, R.Ph.; SUZANNE L. NEUBER, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE., PUBLIC MEMBER.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

(1) Timothy J. Benedict, Ohio State Board of Pharmacy
(2) Marilyn Guiran, Division of Medicaid Fraud, Department of Health and Human Services

Respondent's Witnesses:

(1) None

(B) Exhibits

State's Exhibits:

(1) Exhibit 1 - Summary Suspension Order dated July 28, 1992.
(2) Exhibit 2 - Three-page Journal Entry in the Court of Common Pleas, Franklin County, Ohio, Criminal Division of Bernard Friedman, Case No. 89CR-06-2783, dated July 17, 1992.
(3) Exhibit 3 - Two-page certified Journal Entry in the Court of Common Pleas, Franklin County, Ohio, Criminal Division of Bernard Friedman, Case No. 89CR-

12-5757(A), dated March 29, 1991, with eleven pages of attachments prepared by Medicaid Fraud.

Respondent's Exhibits:

(1) None

FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, weighed their credibility, and upon consideration of the record as a whole, the State Board of Pharmacy finds the following to be fact:

(1) On July 28, 1992, Bernard Friedman was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit his contentions in writing.

(2) As demonstrated by return receipt of July 29, 1992, Bernard Friedman received the letter of July 28, 1992, informing him of the allegations against him and his rights.

(3) Bernard Friedman has not responded in any manner to the letter of July 28, 1992, and has not requested a hearing in this matter.

(4) Bernard Friedman is registered by the Board to practice pharmacy in the state of Ohio and on July 28, 1992, his identification card was summarily suspended.

(5) Bernard Friedman was, on or about July 17, 1992, convicted in the Common Pleas Court of Franklin County, Ohio, of a felony under Section 2923.02 as it relates to Section 2925.03 of the Ohio Revised Code.

(6) Bernard Friedman was, on or about March 29, 1991, convicted in the Common Pleas Court of Franklin County, Ohio, of Medicaid Fraud, a fourth degree felony, in violation of Section 2913.40(B) of the Ohio Revised Code.

(7) Bernard Friedman did, as a continuing course of conduct, submit fraudulent billings to the Department of Health and Human Services for Medicaid reimbursement, to wit: from March, 1986, to August, 1988, Bernard Friedman dispensed generic products and billed for brand-name products, created prescriptions solely for reimbursement, billed for strengths other than dispensed, and/or billed for quantities larger than that which had been prescribed. An investigation by Medicaid Fraud of only ten patients at Zell Prescription Center was conducted and listed below are the findings:

Patient	Time Period	Overpayment
Lorraine Conley	08/15/87 to 07/31/88	$2,872.18
Ada Acker	03/17/86 to 10/30/87	$1,488.23
Ernest Conn	11/20/87 to 07/31/88	$393.46
Rolland Carwins	10/15/86 to 07/31/88	$3,506.88
Wayne Ditrick	02/10/86 to 07/31/88	$2,273.21
Christine Brown	05/26/86 to 07/31/88	$2,878.50

Beverly M. Ditrick	09/11/86 to 07/31/88	$2,189.98
Dorothy Dillow	06/12/86 to 02/02/88	$7,664.84
Frank Yarbrough	04/15/87 to 12/28/87	$1,799.15
Catherine Chainey	05/16/88 to 12/28/87	$728.43
Total	03/17/86 to 07/31/88	$25,794.86

Such conduct is in violation of Section 2913.40(B) of the Ohio Revised Code.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraphs (5) through (7) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of Sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ACTION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the summary suspension issued July 28, 1992.

Pursuant to Section 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Bernard Friedman:

(A) On the basis of the Findings of Fact and paragraph (1) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Bernard Friedman, No. 03-1-05108, effective as of the date of the mailing of this Order.

(B) On the basis of the Findings of Fact and paragraph (2) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Bernard Friedman, No. 03-1-05108, effective as of the date of the mailing of this Order.

(C) On the basis of the Findings of Fact and paragraph (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby revokes the pharmacist identification card held by Bernard Friedman, No. 03-1-05108, effective as of the date of the mailing of this Order.

(D) On the basis of the Findings of Fact and paragraphs (1), (2), and (3) of the Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of $2,500.00 due and owing within 30 days from the effective date of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 S. High Street, 17th Floor, Columbus, Ohio 43266-0320.

Division (B) of Section 4729.16 of the Revised Code provides that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

STATE BOARD OF PHARMACY

VS

BERNARD FRIEDMAN

CORRECTIVE ENTRY

Pursuant to the Decision and Entry of Judge Jay C. Flowers in State Board of Pharmacy v Bernard Friedman, Case No. 78 CV-12-5982, entered February 14, 1980, Paragraph 3 of this Board's Order of December 11, 1978, is hereby corrected to read as follows:

> The State Board of Pharmacy hereby suspends the identification card of Bernard Friedman for a period of six (6) months effective March 10, 1980.

This corrective entry was approved by a roll call vote of the State Board of Pharmacy

Motion carried

BY ORDER OF THE STATE BOARD OF PHARMACY

THE STATE BOARD OF PHARMACY

VS

BERNARD FRIEDMAN

THE MATTER OF THE STATE BOARD OF PHARMACY VERSUS BERNARD FRIEDMAN, DOCKET 6-26-2, WAS HEARD PURSUANT TO CHAPTERS 4729. AND 119., REVISED CODE. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTION WAS MADE AND RECORDED THE FOLLOWING ORDER BE ADOPTED:

ORDER

1. THE STATE BOARD OF PHARMACY FINDS BERNARD FRIEDMAN DID VIOLATE SECTION 4729.16(A), OHIO REVISED CODE, IN THAT ON MARCH 23, 1978 HE WAS FOUND GUILTY OF A FELONY BY THE FRANKLIN COUNTY COMMON PLEAS COURT AT COLUMBUS, OHIO, TO WIT: THEFT, A VIOLATION OF SECTION 2913.02, REVISED CODE.

2. THE STATE BOARD OF PHARMACY FINDS UNDER SECTION 4729.16, REVISED CODE:

   "THE STATE BOARD OF PHARMACY, AFTER NOTICE AND HEARING IN ACCORDANCE WITH SECTIONS 119.01 TO 119.13 OF THE REVISED CODE, MAY REVOKE, SUSPEND OR REFUSE TO GRANT AN IDENTIFICATION CARD OR RENEWAL IDENTIFICATION CARD UNDER THIS CHAPTER, OR MAY IMPOSE A MONETARY PENALTY OR FORFEITURE NOT TO EXCEED IN SEVERITY ANY FINE DESIGNATED UNDER THE REVISED CODE FOR A SIMILAR OFFENSE, IF A MAJORITY OF THE MEMBERD OF THE BOARD FIND A PHARMACIST:

   (a) GUILTY OF A FELONY."

3. THE STATE BOARD OF PHARMACY HEREBY SUSPENDS THE IDENTIFICATION CARD OF BERNARD FRIEDMAN FOR A PERIOD OF SIX MONTHS EFFECTIVE AUGUST 1, 1978 AND FINES HIM $2500.00 DOLLARS.

THIS ORDER WAS APPROVED BY A ROLL CALL VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

THE STATE BOARD OF PHARMACY

VS

BERNARD FRIEDMAN

THE MATTER OF THE STATE BOARD OF PHARMACY VERSUS BERNARD FRIEDMAN, DOCKET 6-26-2 WAS HEARD PURSUANT TO CHAPTERS 4729.and 119., OHIO REVISED CODE. THE BOARD ENTERED AN AMENDED ORDER IN THIS MATTER DATED JULY 20, 1978.

THEREAFTER COUNSEL FOR MR. FRIEDMAN ENTERED AN APPEAL FOR THAT AMENDED ORDER. AS A RESULT OF THAT APPEAL THE HONORABLE JAY C. FLOWERS, COURT OF COMMON PLEAS FRANKLIN COUNTY OHIO ORDERED THE BOARD OF PHARMACY TO RECONSIDER THIS MATTER.

ON DECEMBER 6, 1978 THE BOARD DID THEN RECONSIDER THE MATTER AND AS A RESULT ADOPTED THE FOLLOWING ORDER.

ORDER

1. THE STATE BOARD OF PHARMACY FINDS BERNARD FREIDMAN DID VIOLATE SECTION 4729.16(A), OHIO REVISED CODE, IN THAT ON MARCH 23, 1978 HE WAS FOUND GUILTY OF A FELONY BY THE FRANKLIN COUNTY COMMON PLEAS COURT AT COLUMBUS, OHIO, TO WIT: THEFT, A VIOLATION OF SECTION 2913.02, REVISED CODE.

2. THE STATE BOARD OF PHARMACY FINDS UNDER SECTION 4729.16, REVISED CODE:

   "THE STATE BOARD OF PHARMACY, AFTER NOTICE AND HEARING IN ACCORDANCE WITH SECTIONS 119.01 TO 119.13 OF THE REVISED CODE, MAY REVOKE, SUSPEND OR REFUSE TO GRANT AN IDENTIFICATION CARD OR RENEWAL IDENTIFICATION CARD UNDER THIS CHAPTER, OR MAY IMPOSE A MONETARY PENALTY OR FORFEITURE NOT TO EXCEED IN SEVERITY ANY FINE DESIGNATED UNDER THE REVISED CODE FOR A SIMILAR OFFENSE IF A MAJORITY OF THE MEMBERS OF THE BOARD FIND A PHARMACIST:

   (a) GUILTY OF A FELONY."

3. THE STATE BOARD OF PHARMACY HEREBY SUSPENDS THE IDENTIFICATION CARD OF BERNARD FRIEDMAN FOR A PERIOD OF NINE (9) MONTHS EFFECTIVE JANUARY 1, 1979.

THIS ORDER EAS APPROVED BY A ROLL CALL VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.

(12/18/78)

THE STATE BOARD OF PHARMACY

VS

BERNARD FRIEDMAN

THE MATTER OF THE STATE BOARD OF PHARMACY VERSUS BERNARD FRIEDMAN, DOCKET 6-26-2, WAS HEARD PURSUANT TO CHAPTERS 4729. AND 119., REVISED CODE. THE BOARD ENTERED AN ORDER IN THIS MATTER DATED JULY 5, 1978.

THEREAFTER COUNSEL FOR MR. FRIEDMAN PRESENTED EVIDENCE TO THE BOARD WHICH INDICATED THAT THE EFFECTIVE DATE OF THE SUSPENSION SET OUT IN PARAGRAPH THREE (3) OF THE ORDER WOULD ACT TO IMPOSE SEVERE HARDSHIP ON MR. FRIEDMAN. THEREFORE, IN THAT NO APPEAL HAS BEEN TAKEN IN THIS MATTER AS OF THIS DATE AND THE TIME FOR APPEAL HAS NOT ELAPSED, THE FOLLOWING ORDER AMENDING PARAGRAPH THREE OF THE ORDER OF JULY 5, 1978 WAS APPROVED BY A ROLL CALL VOTE OF THE STATE BOARD OF PHARMACY.

ORDER

PARAGRAPH THREE (3) OF THE ORDER OF JULY 5, 1978 IN THE MATTER OF BERNARD FRIEDMAN IS AMENDED AS FOLLOWS:

3. THE STATE BOARD OF PHARMACY HEREBY SUSPENDS THE IDENTIFICATION CARD OF BERNARD FRIEDMAN FOR A PERIOD OF SIX MONTHS EFFECTIVE SEPTEMBER 1, 1978 AND FINES HIM $2500.00 DOLLARS.

MOTION CARRIED

SO ORDERED.

(7/20/78)