



OHIO STATE BOARD OF PHARMACY

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-Equal Opportunity Employer and Service Provider-

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SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into, as of the latest date set forth below, by and among, on the one hand, Fairview Park Pharmacy, Inc. ("FPP"), Stephen H. Dolin, R.Ph., as co-owner, an officer of FPP and in his individual capacity ("Dolin") and Lawrence M. Friedman, R.Ph., as co-owner, an officer of FPP and in his individual capacity ("Friedman"), and on the other hand, the Ohio State Board of Pharmacy ("Pharmacy Board"), a State Agency charged with enforcing, *inter alia*, the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729 of the Ohio Revised Code, and the Ohio Bureau of Workers' Compensation ("BWC"), a State Agency, charged with, *inter alia*, the administration of the Ohio Workers' Compensation Program and enforcing the Ohio Workers' Compensation laws as set forth in Chapters 4121 and 4123 of the Ohio Revised Code.

WITNESSETH THAT:

WHEREAS, FPP, Friedman and Dolin enter into this Agreement being fully informed of its and their rights afforded under Chapter 119 of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues contained herein; and

WHEREAS, the Pharmacy Board (a) has licensed Dolin as a pharmacist (R.Ph. No. 03-1-11043), (b) has licensed Friedman as a pharmacist (R.Ph. No. 03-1-06240), and (c) has licensed FPP as a terminal distributor of drugs (Terminal Distributor No. 02-0420800); and

WHEREAS, the Pharmacy Board has been investigating FPP, Friedman and Dolin for allegedly illegal conduct in connection with the practice of pharmacy, including, but not limited to, the commencement of an investigation in 1993 docketed internally at the Pharmacy Board as Case No. 93-1461; and

WHEREAS, BWC has been investigating FPP, Friedman and Dolin for allegedly illegal conduct in connection with billing the BWC for drugs dispensed to BWC claimants, including, but not limited to, the commencement of an investigation in 1993 docketed internally at the BWC as Case No. 587-93; and

WHEREAS, the Pharmacy Board is empowered by Section 4729.57 of the Ohio Revised Code to suspend, revoke, refuse to renew, or impose a monetary penalty on any terminal distributor of dangerous drugs for violation of Section 4729.57; and

WHEREAS, the Pharmacy Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an

identification card, or impose a monetary penalty on the license holder for violation of Section 4729.16; and

WHEREAS, the BWC is empowered by Chapters 4121 and 4123 of the Ohio Revised Code, *inter alia*, to administer the payment for drugs dispensed to BWC claimants by health care providers, and pursuant to Section 4123-7-40 of the Ohio Administrative Code may sanction, suspend or exclude a health care provider from participation in the treatment of BWC claimants for violations of Chapter 4121 and 4123 of the Ohio Revised Code; and

WHEREAS, attached hereto and incorporated herein are (a) the Pharmacy Board's Notice of Opportunity for Hearing (Docket Nos. D-980211-042 (related to Dolin), D-980211-043 (related to Friedman) and D-980211-044 (related to FPP)) dated February 11, 1998, labeled "States Exhibits A, B and C" respectively, (b) with respect to Docket No. D-980211-042, the Amendment Notice dated August 24, 1998, labeled "State's Exhibit D," and (c) with respect to Docket No. D-980211-043, the Amendment Notice dated August 24, 1998, labeled "State's Exhibit E," setting forth certain charges against FPP, Friedman and Dolin (collectively, Exhibits A, B, C, D and E are referred to as the "Notices"); and

WHEREAS, on September 23, 1998, FPP, Friedman and Dolin filed a lawsuit in the Franklin County, Ohio, Court of Common Pleas commencing Case No. 98CVH09-7343, styled *Lawrence M. Friedman, et al. v. Ohio State Board of Pharmacy, et al.*, which lawsuit was dismissed by Court Order dated September 30, 1998; and

WHEREAS, FPP, Friedman and Dolin appealed such dismissal to the Tenth District Court of Appeals, Franklin County, Ohio, commencing Case No. 98 APE-10-1269, styled *Lawrence M. Friedman, et al. v. Ohio State Board of Pharmacy, et al.*; and

WHEREAS, the consolidated hearing in Pharmacy Board Docket Nos. D-980211-042, D-980211-043 and D-980211-044 was commenced on or about October 5, 1998, adjourned and continued to February 8, 1999, and has been adjourned and continued pending the drafting and execution of this Agreement; and

WHEREAS, FPP, Friedman and Dolin have denied the allegations set forth in the Notices and by this Agreement do not admit to the allegations set forth in the Notices; and

WHEREAS, FPP, Friedman and Dolin are knowingly and voluntarily acknowledging that in order to settle the allegations of illegal conduct under investigation by the Pharmacy Board and the BWC, including, but not limited to, the allegations set forth in the Notices, this Agreement is entered into on the basis of and in reliance on all of the stipulations, admissions, and understandings set forth herein; and

WHEREAS, the Ohio Industrial Commission was not a party to any investigation of FPP, Friedman and/or Dolin; and

WHEREAS, the parties hereto desire to compromise, settle, dispose of and release each other from all disputes, differences, charges and legal controversies arising out of or relating to any conduct of FPP, Friedman and/or Dolin through and including the date of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and obligations of this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree with each other as follows:

1. The recitals set forth above are true and accurate, and are incorporated into this Agreement as if fully rewritten.
2. (A) To avoid the additional expense and cost of litigation, FPP agrees to the payment of a monetary charge in the amount of Thirteen Thousand Five Hundred Twenty-Seven Dollars and Forty-Eight Cents (\$13,527.48) to be paid as set forth in paragraph 2(C) below.
 - (B) FPP agrees to pay to BWC for over-charges the amount of Eighty-Six Thousand Four Hundred Seventy-Two Dollars and Fifty-Two Cents (\$86,472.52) to be paid as set forth in paragraph 2(C) below.
 - (C) The payments to be made as set forth in paragraphs 2(A) and 2(B) above shall be paid together in twelve (12) installments, each installment totaling Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) by check(s) and mailed with the form attached hereto as "State's Exhibit F," to the Pharmacy Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320. Such installments shall be paid commencing on or before the first day of the month following the Suspension Period (as defined below in paragraph 3) as follows:
 - (i) On or before the first day of the month following the Suspension Period, payment in the amount of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) by check made payable to "Treasurer, State of Ohio";
 - (ii) On or before the first day of the month following the payment made as set forth in paragraph 2(C)(i) above, two payments, one in the amount of Five Thousand One Hundred Ninety-Four Dollars and Fifteen Cents (\$5,194.15) by check made payable to "Treasurer, State of Ohio," and the other in the amount of Three Thousand One Hundred Thirty-Nine Dollars and Eighteen Cents (\$3,139.18) by check made payable to the "Ohio Bureau of Workers' Compensation"; and
 - (iii) Ten payments each in the amount of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) by check made payable to the "Ohio Bureau of Workers' Compensation," the first such payment due and owing on or before the first day of the month following the payment made as set forth in paragraph 2(C)(ii) above, and continuing on or before the first day of each month for nine successive months.

- (D) The Pharmacy Board shall forward the checks made payable to the "Ohio Bureau of Workers' Compensation" to the attention of Tom Sant, 30 West Spring Street, Columbus, Ohio 43215.
3. Dolin agrees to a three-month suspension (the "Suspension Period") of his pharmacist identification card, No. 03-1-11043, and such suspension is effective as of the date of this Agreement. Division (B) of Section 4729.16 of the Ohio 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 the notice of such action." Such certificate and identification card shall be forwarded to the Pharmacy Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320, by certified mail, return receipt requested. At the conclusion of the Suspension Period, the Pharmacy Board shall return such certificate and identification card, and shall automatically reinstate Dolin as a pharmacist in good standing.
 4. Friedman agrees to the revocation of his pharmacist identification card, No. 03-1-06240, effective immediately. Division (B) of Section 4729.16 of the Ohio 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 the notice of such action." Such certificate and identification card shall be forwarded to the Pharmacy Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320, by certified mail, return receipt requested.
 5. If any of the parties hereto violates or breaches any terms or conditions of this Agreement, the parties hereto may institute proceedings for breach of this Agreement as permitted by the laws of the State of Ohio, including but not limited to, the enforcement of this Agreement.
 6. The parties hereto acknowledge that they have had an opportunity to ask questions concerning the terms of this Agreement, that all questions asked have been answered in a satisfactory manner, and that they have had the opportunity to seek advice of counsel.
 7. (A) The Pharmacy Board, on the one hand, and FPP, Friedman and Dolin, on the other, agree to release, settle, cancel, discharge and acknowledge to be fully satisfied, any and all claims, demands, charges, rights and causes of action of every kind, nature or description whatsoever, which the Pharmacy Board and FPP, Friedman and Dolin may now or hereafter have or assert against the other, or against each other, arising out of or by reason of or in any manner connected with or related to the conduct of FPP, Friedman and/or Dolin, and any other employees, owners and/or agents of FPP, Friedman and/or Dolin, through the date of this Agreement, or arising out of the subject matter of this Agreement.

(B) The BWC on the one hand, and FPP, Friedman and Dolin, on the other, agree to release, settle, cancel, discharge and acknowledge

to be fully satisfied, any and all claims, demands, charges, rights and causes of action of every kind, nature or description whatsoever, which the BWC and FPP, Friedman and Dolin may now or hereafter have or assert against the other, or against each other, arising out of or by reason of or in any manner connected with or related to the conduct of FPP, Friedman and/or Dolin, and any other employees, owners and/or agents of FPP, Friedman and/or Dolin, which was the subject of the Notices or which involved similar practices of billing the BWC for drugs dispensed to BWC claimants through the date of this Agreement, or arising out of the subject matter of this Agreement.

8. BWC agrees that the conduct of FPP, Friedman and Dolin, arising out of or by reason of or in any manner connected with the investigation of allegedly illegal conduct in connection with the Notices or similar practices if billing the BWC for drugs dispensed to BWC claimants through the date of this Agreement, or arising out of matters which are the subject of this Agreement, shall not be pursued or utilized to sanction, suspend or exclude FPP as a health care provider entitled to participate in the treatment of BWC claimants.
9. As to any issues, disputes or questions regarding the future practices of FPP, Friedman and/or Dolin which arise after the date of this Agreement, FPP, Friedman and/or Dolin may make a written request regarding such issues, disputes or questions to the Pharmacy Board and/or the BWC, and the Pharmacy Board and/or the BWC shall promptly provide FPP, Friedman and/or Dolin with a written response to such request in accordance with law.
10. This Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall be deemed effective upon the latest date set forth in the signature block below.
11. This Agreement can be modified only by a writing executed by each of the parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and no other agreements or understandings, or any representations or warranties with respect thereto, shall be binding on the parties unless specifically set forth herein.
12. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, members, officers, employees, attorneys, and/or agents.
13. FPP, Friedman and Dolin hereby agree to dismiss the appeal pending in the Tenth District Court of Appeals, Franklin County, Ohio, Case No. 98 APE-10-1269, with prejudice.
14. The Pharmacy Board hereby agrees that the internal investigation commenced in 1993 (Pharmacy Board Case No. 93-1461) is closed.
15. BWC agrees that the investigation commenced in 1993 (BWC Case No. 587-93) is closed.

16. This Agreement may be executed and delivered in any number of original or facsimiled counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto acknowledge that they have read the foregoing and that they understand and freely and voluntarily have executed this Agreement, and that they have the authority to so execute this Agreement, as of the date set forth next to each signature.

<u>/s/ Stephen H. Dolin</u> Stephen H. Dolin, R.Ph., as an individual, and as a Co-Owner and Officer of Fairview Park Pharmacy, Inc.	<u>/d/ 4-23-99</u> Date of Signature
<u>/s/ Lawrence M. Friedman</u> Lawrence M. Friedman, R.Ph., as an individual, and as a Co-Owner and Officer of Fairview Park Pharmacy, Inc.	<u>/d/ 4/23/99</u> Date of Signature
<u>/s/ D A Roth</u> Dennis A. Roth, Attorney for Fairview Park Pharmacy, Inc.	<u>/d/ 4-21 99</u> Date of Signature
<u>/s/ Alan S. Kopit</u> Alan S. Kopit, Attorney for Lawrence M. Friedman, R.Ph. and Stephen H. Dolin, R.Ph.	<u>/d/ 4/29/99</u> Date of Signature
<u>/s/ Joseph J Maslak, Jr.</u> Joseph J. Maslak, Jr. President, Ohio State Board of Pharmacy	<u>/d/ 4/24/99</u> Date of Signature
<u>/s/ Sally Ann Steuk</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/ 4-23-99</u> Date of Signature
<u>/s/ Thomas J. Wersell, Director of Investigations</u> For James Conrad, Administrator, Ohio Bureau of Workers' Compensation	<u>/d/ 4/27/99</u> Date of Signature
<u>/s/ Cheryl J. Nester</u> Cheryl J. Nester, Ohio Assistant Attorney General	<u>/d/ 4/28/99</u> Date of Signature