



# OHIO STATE BOARD OF PHARMACY

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## ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-960814-005)

In The Matter Of:

**JEROME FRIEDMAN, R.Ph.**

3115 East Broad Street

Columbus, Ohio 43209

(R.Ph. No. 03-1-09439)

### INTRODUCTION

THE MATTER OF JEROME FRIEDMAN CAME TO HEARING ON MARCH 4, 1997, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: SUZANNE L. NEUBER, R.Ph. (presiding); DIANE C. ADELMAN, R.Ph.; JOHN L. HANNA, R.Ph.; PAUL F. LAMPING, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; JOSEPH J. MASLAK, R.Ph.; RUTH A. PLANT, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

JEROME FRIEDMAN WAS REPRESENTED BY MARK SENFF, AND THE STATE OF OHIO WAS REPRESENTED BY MARY L. HOLLERN, ASSISTANT ATTORNEY GENERAL.

### SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) Jean Shea (asserted Fifth Amendment privilege)
- (2) Christopher K. Reed, Ohio State Board of Pharmacy
- (3) Jerome Friedman, Respondent

Respondent's Witnesses:

- (1) Ronald Cohen
- (2) Dale Lucas

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Notice of Opportunity for Hearing letter dated August 14, 1996.
- (2) Exhibit 1A--Hearing Request letter dated August 20, 1996.
- (3) Exhibit 1B--Hearing Schedule letter dated August 22, 1996.

- (4) Exhibit 1C--Pharmacist File Front Sheet of Jerome Friedman showing original date of registration as February 25, 1970; and Renewal Application for Pharmacist License, No. 03-1-09439, for a license to practice pharmacy in Ohio from September 15, 1996, to September 15, 1997, of Jerome Friedman dated July 1, 1996.
- (5) Exhibit 1D--Two-page Application for Registration as a Terminal Distributor of Dangerous Drugs of Westland Medical Pharmacy dated November 27, 1982; five Renewal Applications for DDD License, No. 02-160250, for a Terminal Distributor of Dangerous Drugs License of Westland Medical Pharmacy for the following years: 1992, 1993, 1994, 1995, and 1996; and Written Notice of Discontinuing Business form of Westland Medical Pharmacy dated March 18, 1996.
- (6) Exhibit 2--Three-page Dangerous Drug Distributor Inspection Report of Westland Medical Pharmacy dated July 26, 1995.
- (7) Exhibit 3--Three-page Dangerous Drug Distributor Inspection Report Pink Sheet Response of Westland Medical Pharmacy, response not dated.
- (8) Exhibit 4--Typewritten resignation, not dated and not signed.
- (9) Exhibit 5--Dangerous Drug Distributor Inspection Report of Westland Medical Pharmacy dated October 13, 1995.
- (10) Exhibit 6--Dangerous Drug Distributor Inspection Report, Pink Sheet Response of Westland Medical Pharmacy, response not dated.
- (11) Exhibit 7--Accountability Statement of Westland Medical Pharmacy for Methylphenidate 10mg dated July 26, 1995.
- (12) Exhibit 8--Westland Medical Pharmacy Worksheet for Methylphenidate 10mg dated from July 27, 1993, to July, 1995.
- (13) Exhibit 9--Accountability Statement of Westland Medical Pharmacy for Phentermine HCl 37.5mg dated July 26, 1995.
- (14) Exhibit 10--Westland Medical Pharmacy Worksheet for Phentermine HCl 37.5mg dated from July 27, 1993, to July, 1995.
- (15) Exhibit 11--Accountability Statement of Westland Medical Pharmacy for Diethylpropion HCl 75mg dated July 26, 1995.
- (16) Exhibit 12--Westland Medical Pharmacy Worksheet for Diethylpropion HCl 75mg dated from July 27, 1993, to July, 95.
- (17) Exhibit 13--Accountability Statement of Westland Medical Pharmacy for Phentermine HCl 30mg (Blue) dated July 26, 1995.
- (18) Exhibit 14--Westland Medical Pharmacy Worksheet for Phentermine HCl 30mg (Blue) dated from July 27, 1993, to July, 1995.
- (19) Exhibit 15--Statement of Jerome Friedman signed and notarized on September 19, 1995.
- (20) Exhibit 16--Sixteen-page copy of Westland Medical Pharmacy Event History Display dated from February 4, 1994, through October 13, 1995.

Respondent's Exhibits:

- (1) Exhibit A--Letter from Evonne Woods Evans dated February 21, 1997.
- (2) Exhibit B--Letter from Susan Rosser dated February 21, 1997.
- (3) Exhibit C--Letter from Joe Shamhart dated February 21, 1997.
- (4) Exhibit D--Copy of letter from Betty Jane Nichol dated February 26, 1997.
- (5) Exhibit E--Copy of letter from Joseph Nichol dated February 26, 1997.
- (6) Exhibit F--Copy of letter from Harley D. Greene dated February 26, 1997.
- (7) Exhibit G--Letter from Bryan N. Feldman dated February 24, 1997.
- (8) Exhibit H--Letter from Elliott P. Feldman dated February 21, 1997.
- (9) Exhibit I--Letter from Kathleen R. Martin dated February 18, 1997.
- (10) Exhibit J--Copy of letter from Robert J. Hirsh dated February 24, 1997.
- (11) Exhibit K--Letter from John Petrie dated February 15, 1997.

- (12) Exhibit L--Letter from A. C. Strip dated February 19, 1997.
- (13) Exhibit M--Copy of letter from Ernest E. Boyd dated February 25, 1997.

#### FINDINGS OF FACT

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

- (1) Records of the Board of Pharmacy indicate that Jerome Friedman was originally licensed in the state of Ohio on February 25, 1970, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further reflect that, during the relevant time periods alleged herein, Jerome Friedman was the Responsible Pharmacist at Westland Medical Pharmacy pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-16 of the Ohio Administrative Code.
- (2) Jerome Friedman did, on or about July 26, 1995, and dates immediately preceding, permit persons other than a registered pharmacist to possess keys to a pharmacy which is not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: Jerome Friedman allowed Jean Shea, a pharmacy employee but not a registered pharmacist, and William Foster, the pharmacy's janitor, to possess keys and the alarm access codes to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (3) Jerome Friedman did, on or about July 27, 1995, and dates subsequent thereto, permit persons other than a registered pharmacist to possess keys to a pharmacy which is not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: after being directed by a Board agent to collect the keys to the pharmacy from non-registered personnel, Jerome Friedman took a key from Jean Shea, a pharmacy employee but not a registered pharmacist, and Mr. Friedman immediately returned the key to her, so as to allow her to again possess a key and the alarm access codes to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (4) Jerome Friedman did, on or about October 12, 1995, and dates immediately preceding, permit persons other than a registered pharmacist to possess keys to a pharmacy which is not secured by a physical barricade when personal supervision of the dangerous drug stock was not provided, to wit: after having been previously warned against such conduct by Board agents, Jerome Friedman allowed Cindy Evans, a pharmacy technician and not a registered pharmacist, and Andrew Feldman, the business manager of a physician's office located within the same building as the pharmacy and not a registered pharmacist, to possess keys and alarm access codes to the pharmacy. Such conduct is in violation of Rule 4729-9-05 of the Ohio Administrative Code and Section 4729.27 of the Ohio Revised Code.
- (5) Jerome Friedman as the Responsible Pharmacist did, from July 27, 1993, through July 26, 1995, while acting as a category III terminal distributor of dangerous drugs, fail to keep a record of all controlled substances received or dispensed, to wit: Jerome Friedman failed to keep records of the following drugs, purchased by Mr.

Friedman and Westland Medical Pharmacy but unaccounted for on the final date of the Board audit:

<u>Drug</u>	<u>Qty.</u>	<u>% of Stock</u>
Methylphenidate 10mg	6,978 units	59.7 %
Phentermine HCl 37.5mg	4,757 units	46.9 %
Diethylpropion HCl 75mg	2,484 units	26.1 %
Phentermine HCl 30mg	1,985 units	24.6 %

Such conduct is in violation of Section 3719.07 of the Ohio Revised Code.

- (6) Jerome Friedman as the owner and Responsible Pharmacist did, from July 27, 1993, through July 26, 1995, fail to be personally in full and actual charge of Westland Medical Pharmacy or to have in his employ a registered pharmacist in full and actual charge of the pharmacy to wit: Jerome Friedman allowed non-registered individuals access to the pharmacy and Mr. Friedman failed to maintain adequate safeguards to prevent the sale or other distribution of dangerous drugs by persons other than registered pharmacists as required by Rules 4729-5-11, 4729-9-05, and 4729-9-11 of the Ohio Administrative Code. Such conduct is in violation of Section 4729.27 of the Ohio Revised Code.

#### CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) through (6) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 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 4729.16 of the Ohio Revised Code, the State Board of Pharmacy takes the following actions in the matter of Jerome 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 suspends the pharmacist identification card, No. 03-1-09439, held by Jerome Friedman indefinitely and such suspension is effective as of the date of the mailing of this Order. Pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, Jerome Friedman may not be employed by or work in a facility licensed by the Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

- (1) Two years after the effective date of this Order, the Board will reinstate Jerome Friedman's license to practice pharmacy in Ohio provided that he take and successfully complete the jurisprudence examination offered by the Board, prior to that date. If Jerome Friedman has not successfully completed the examination prior to two years from the effective date of this Order, his license will not be reinstated until this condition has been achieved.

(2) Further, upon reinstatement of Jerome Friedman's license, his identification card will be placed on probation for five years. The terms of probation are as follows:

(a) Pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code, the State Board of pharmacy hereby declares that Jerome Friedman's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns.

(b) Jerome Friedman may not serve as a responsible pharmacist.

(c) Jerome Friedman must not violate the drug laws of the state of Ohio, any other state, or the federal government.

(d) Jerome Friedman must abide by the rules of the Ohio State Board of Pharmacy.

(e) Jerome Friedman must comply with the terms of this Order.

The Board may at any time revoke probation for cause, modify the conditions of probation, and reduce or extend the period of probation. At any time during this period of probation, the Board may revoke probation for a violation occurring during the probation period.

(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 imposes a monetary penalty of five thousand dollars (\$5,000.00) due and owing within thirty days of the issuance 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 South 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 the 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.