THE STATE BOARD OF PHARMACY

vs

MILTON J. BERN, R.Ph.

THE MATTER OF MILTON J. BERN, DOCKET NO. 6-107-2, WAS HEARD PURSUANT TO CHAPTERS 119. AND 4729. OF THE REVISED CODE ON TUESDAY, OCTOBER 1, 1985. AFTER CONSIDERATION OF THE EVIDENCE ADDUCED, MOTIONS WERE MADE AND RECORDED THAT THE FOLLOWING ORDER BE ADOPTED:

ORDER

Findings Of Fact

(1) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did, on one or more occasions between June 6, 1983 and December 17, 1984 at Caroll Drug-Mayland, 5896 Mayfield Road, Mayfield Heights, Ohio 44124, without a written or oral prescription given by a practitioner, dispense approximately 900 capsules of Propoxyphene HCl-65mg, a Schedule IV controlled substance and drug which may be dispensed only upon the prescription of a practitioner; in violation of Sections 2925.03(A)(7), 3715.52(L), 3715.64(A)(13)(b), and 3719.05(A) of the Revised Code.

(2) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did intentionally make and knowingly possess a false or forged prescription, to wit: Prescription No. 335729 for 100 capsules of Darvon-65mg; in violation of Division (B) of Section 2925.23 of the Revised Code.

(3) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did, on or about January 10, 1985 at Caroll Drug-Mayland, 5896 Mayfield Road, Mayfield Heights, Ohio 44124, dispense approximately 100 capsules of Propoxyphene HCl-65mg, a Schedule IV controlled substance and drug which may be dispensed only upon the prescription of a practitioner; in violation of Sections 2925.03(A)(1), 3715.52(L), 3715.64(A)(13)(b), and 3719.05(A) of the Revised Code.

(4) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did obtain remuneration by fraud, misrepresentation, and deception by dispensing generic drugs and charging for the brand name drugs prescribed.

(5) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did obtain remuneration by fraud, misrepresentation, and deception by dispensing a lesser quantity and charging for the prescribed quantity.

(6) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern violated Section 2925.23(D) of the Revised Code more than one time; in that, Mr. Bern knowingly made or affixed a false or forged label to receptacles containing dangerous drugs, to wit: Prescriptions No. 334701 and 335800.

(7) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern violated Section 2925.23(D) of the Revised Code more than one time; in that, Mr. Bern knowingly made or affixed a false or forged label to receptacles containing dangerous drugs, to wit: three glass quart bottles labeled as follows:

Receptacle No. 1	-	Ambenyl Exp Ambenyl Syr 88-1240-18 472-717-16
Receptacle No. 2	-	Dimetapp Elixir 31-2224-12 472-714-16
Receptacle No. 3	-	Phenergan VC Codeine 8-551-03 472-1511-16

(8) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did cause the misbranding of drugs held for sale at Caroll Drug-Mayland, 5896 Mayfield Road, Mayfield Heights, Ohio 44124; in that, a container labeled "Dicyclomine Hydrochloride 20mg", manufactured by Bolar Pharmaceutical Co., Inc., also contained Dicyclomine HCl 20mg manufactured by a different company. Such conduct is in violation of Revised Code Section 3715.64 and is prohibited by Section 3715.52 of the Revised Code.

(9) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did dispense drugs which were not generically equivalent drugs; in violation of Sections 3715.64(A)(11)(d) and 4729.38 of the Revised Code, to wit: Prescriptions No. 333169, 304951, and 314776 indicates that a generically equivalent drug whose manufacturer is not known was dispensed in lieu of the brand name drug indicated by the NDC numbers on the prescriptions.

(10) From the evidence presented, the State Board of Pharmacy finds that Milton J. Bern did dispense a drug which was not a generically equivalent drug; in violation of Sections 3715.64(A)(11)(d) and 4729.38 of the Revised Code, to wit: Prescription No. 333203 which indicates that a generically equivalent drug whose manufacturer is not known was dispensed in lieu of the brand name drug indicated by the NDC number on the prescription.

Conclusions Of Law

(1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (10) of the Findings Of Fact constitutes gross immorality, within the meaning of Division (A)(1) of Section 4729.16 of the Revised Code.

(2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (10) of the Findings Of Fact constitutes dishonesty and unprofessional conduct in the practice of pharmacy, within the meaning of Division (B) of Section 4729.16 of the Revised Code.

(3) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that the conduct set forth in paragraphs (1) through (10) of the Findings Of Fact constitutes willful violation of more than one time of the provisions of Chapters 2925., 3715., 3719., and 4729. of the Revised Code.

Pursuant to Section 4729.16 of the Ohio Revised Code, and the foregoing Findings Of Fact and Conclusions Of Law, the State Board of Pharmacy takes the following actions concerning the pharmacist license held by Milton J. Bern, R.Ph. No. 03-2-07468:

(A) On the basis of paragraph (1) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Milton J. Bern for 24 months.

(B) On the basis of paragraph (2) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby suspends the pharmacist identification card held by Milton J. Bern for 24 months.

(C) On the basis of paragraph (3) of the Conclusions Of Law set forth above, the State Board of Pharmacy hereby imposes a monetary penalty of five thousand dollars ($5,000.), due and owing within 30 days of the issuance of this Order. Said monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed to the State Board of Pharmacy, 65 S. Front Street, Room 504, Columbus, Ohio 43266-0320, with the enclosed form.

(D) Further, the two 24-month suspensions shall run concurrently and the Board suspends 12 months of each of the 24-month suspensions on condition that Milton J. Bern abides by the terms of probation set by the Board. These terms provide that Milton J. Bern:

(1) takes and successfully completes a jurisprudence examination offered by the Board during its October, 1986 meeting;

(2) does not violate any drug laws of the state of Ohio, any other state, or the federal government; and

(3) abides by the rules of the Board of Pharmacy.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is ..., suspended, ..., 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.