



# State Medical Board of Ohio

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July 14, 2004

Robert A. Berkman, M.D.  
279 S. Drexel Avenue  
Columbus, OH 43209

Dear Doctor Berkman:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 14, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

*Lance A. Talmage, M.D.*  
Lance A. Talmage, M.D. /TAD  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 2747  
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 2778  
RETURN RECEIPT REQUESTED

*Mailed 8-9-04*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 14, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and correct copy of the Order of the State Medical Board of Ohio, as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

July 14, 2004

\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

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ROBERT A. BERKMAN, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 14, 2004.

Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **SUSPENSION, PARTIALLY STAYED; PROBATION:** The certificate of Robert A. Berkman, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period time, but not less than one year. All but one hundred eighty days of the minimum term of suspension is **STAYED**.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Berkman's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Berkman shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Certification of Compliance with the Order of the New Jersey State Board of Medical Examiners [New Jersey Board] and the New York State Board for Professional Medical Conduct [New York Board]:** At the time he submits his application for reinstatement or restoration, Dr. Berkman shall

submit to the Board certification from the New Jersey and New York Boards, dated no earlier than sixty days prior to Dr. Berkman's application for reinstatement or restoration, that Dr. Berkman has maintained full compliance with the Orders of the New Jersey and New York Boards.

3. **Certification of Compliance with the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Berkman shall submit to the Board certification from the United States District Court for the District of Delaware, dated no earlier than sixty days prior to Dr. Berkman's application for reinstatement or restoration, indicating that Dr. Berkman has maintained full compliance with terms of probation in criminal case number 03-45.
  4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Berkman has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Berkman's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law and Terms of Criminal Probation:** Dr. Berkman shall obey all federal, state and local laws, and all rules governing the practice of medicine and surgery in Ohio, and all terms of probation imposed by the United States District Court of the District of Delaware in criminal case number 03-45.
  2. **Declarations of Compliance:** Dr. Berkman shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Berkman's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Declarations of Compliance with the Terms Imposed by the New Jersey Board and the New York Board:** Dr. Berkman shall submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the New Jersey and New York Boards. Moreover, Dr. Berkman shall cause to be submitted to the Board copies of any reports that he submits

to the New Jersey and New York Boards whenever the New Jersey and New York Boards require such submission. Dr. Berkman shall ensure that the declarations of compliance with the New Jersey Board Consent Order and the New York Board Consent Agreement and Order and any copies of reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Berkman's quarterly declaration.

4. **Personal Appearances**: Dr. Berkman shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Berkman's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. **Professional Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Berkman shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
6. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Berkman shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
7. **Tolling of Probationary Period While Out of State**: In the event that Dr. Berkman should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Berkman must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

8. **Violation of Terms of Probation:** If Dr. Berkman violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Berkman's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Berkman shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Berkman shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Berkman shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Berkman shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Berkman shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective thirty days after the mailing of notification of approval by the Board.

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

July 14, 2004

\_\_\_\_\_  
Date

STATE MEDICAL BOARD  
OF OHIO

2004 MAY 21 P 1: 16

**REPORT AND RECOMMENDATION  
IN THE MATTER OF ROBERT A. BERKMAN, M.D.**

The Matter of Robert A. Berkman, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on April 19, 2004.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated December 10, 2003, the State Medical Board of Ohio [Board] notified Robert A. Berkman, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on an allegation that Dr. Berkman had pleaded guilty to, and had been adjudicated guilty of, one felony count of Conspiracy to Violate the Prescription Drug Marketing Act, in violation of Title 18, United States Code, Section 371.

The Board alleged that Dr. Berkman's guilty plea and the judicial adjudication of guilt constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in R.C. 4731.22(B)(9)." Accordingly, the Board advised Dr. Berkman of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On January 7, 2004, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Berkman. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

- A. Presented by the State  
Robert A. Berkman, M.D.

B. Presented by the Respondent

1. Terri Sommer
2. Robert A. Berkman, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1N: Procedural exhibits.
2. State's Exhibit 2: Certified copy of the Information filed in the United States District Court for the District of Delaware in *United States of America v. Robert A. Berkman, M.D.*, Criminal Action No. 03-45 [*U.S. v. Berkman*]. (Note: The Hearing Examiner numbered the pages of this exhibit post-hearing.)
3. State's Exhibit 3: Certified copy of the Waiver of Indictment filed in *U.S. v. Berkman*.
4. State's Exhibit 5: Certified copy of the Memorandum of Plea Agreement filed in *U.S. v. Berkman*.
5. State's Exhibit 6: Certified copy of the Judgment in *U.S. v. Berkman*.
6. State's Exhibit 7: Certified transcript of the July 17, 2003, plea hearing in *U.S. v. Berkman*.
7. State's Exhibit 8: Certified transcript of the November 6, 2003, sentencing hearing in *U.S. v. Berkman*.

B. Presented by the Respondent

1. Respondent's Exhibit A: Copies of the cover of a Zoladex box, with and without labeling covering the words "not for retail sale."
2. Respondent's Exhibit B: Copy of an April 19, 1997, handwritten agreement between an AstraZeneca sales representative and Robert A. Berkman, M.D.
3. Respondent's Exhibit C: Curriculum vitae of Dr. Berkman. (Note: The office address on page one is no longer current; Dr. Berkman has closed his practice. See Hearing Transcript at 67.)

4. Respondent's Exhibit D: Copy of *AstraZeneca Pleads Guilty in Cancer Medicine Scheme*, an article by Melody Petersen that appeared in the New York Times on June 21, 2003.
5. Respondent's Exhibit E: Copy of *AstraZeneca to Settle Fraud Charges*, an article by Scott Hensley that appeared in the Wall Street Journal.
6. Respondent's Exhibit F: Copy of *Doctors in Legal Trouble for Billing for Free Drug Samples*, an article by Tanya Albert that appeared in American Medical News.
7. Respondent's Exhibit G: Copy of *AUA Brings Important Message about Payment Crisis to Key Lawmakers*, an article by Cherie McNett that appeared in the June 2003 issue of Health Policy Brief, issued by the American Urological Association, Inc.
8. Respondent's Exhibit H: February 5, 2004, letter to the Board from Joseph J. Farnan, Jr., Judge of the United States District Court, District of Delaware.
- \* 9. Respondent's Exhibit I: April 9, 2004, letter in support of Dr. Berkman.
10. Respondent's Exhibit J: April 8, 2004, letter in support of Dr. Berkman from Charles L. Ewell, Jr., M.D.
- \* 11. Respondent's Exhibit K: April 8, 2004, letter in support of Dr. Berkman.
- \* 12. Respondent's Exhibit L: August 6, 2003, letter in support of Dr. Berkman.
- \* 13. Respondent's Exhibit M: Copies of letters from medical professionals (many of whom were also patients) in support of Dr. Berkman that were submitted to the court in *U.S. v. Berkman*.
- \* 14. Respondent's Exhibit N1: Copies of letters from patients in support of Dr. Berkman that were submitted to the court in *U.S. v. Berkman*.
15. Respondent's Exhibit N2: Copies of letters in support of Dr. Berkman from his son and daughter, which were submitted to the court in *U.S. v. Berkman*.
16. Respondent's Exhibit O: Copy of a March 18, 2004, Consent Order of the New Jersey State Board of Medical Examiners.
17. Respondent's Exhibit P: Copy of an April 8, 2004, Consent Agreement and Order issued by the New York State Board for Professional Medical Conduct.

18. Respondent's Exhibit Q: April 30, 2004, Affidavit of Dr. Berkman.

\* (Note: Exhibits marked with an asterisk [\*] are sealed to protect patient confidentiality).

### **PROCEDURAL MATTERS**

1. The Hearing Examiner held the record open until May 3, 2004, so that Respondent could supplement Respondent's Exhibit G, originally presented as a partial copy of an article. Respondent timely submitted the complete copy of the article and it was admitted to the record without objection.
2. The Respondent also submitted an April 30, 2004, affidavit of Dr. Berkman. The State did not object to its admission; therefore, the Hearing Examiner admitted the affidavit as Respondent's Exhibit Q.

### **SUMMARY OF THE EVIDENCE**

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. Robert A. Berkman, M.D., testified that he had received his medical degree in 1972 from Albany Medical College of Union University, in Albany, New York. Dr. Berkman spent two years in a general surgery residency at Albany Medical Center Hospital. In 1976, he received a doctoral degree in human physiology from Albany Medical College. From 1976 through 1977, he participated in a urology residency program at Mount Sinai Hospital in New York City and, from 1978 through 1980, he participated in residency programs in general surgery and urology at the University of Medicine and Dentistry of New Jersey in Newark, New Jersey. Dr. Berkman testified that he had completed his residency in urology in 1980. Dr. Berkman states that he was certified by the American Board of Urology in 1982. (Hearing Transcript [Tr.] at 14-16; Respondent's Exhibit [Resp. Ex.] C).

After completing his training in 1980, Dr. Berkman moved to Columbus, Ohio to practice urology. He testified that he had moved to Columbus because he had liked the Midwest and the quality of life here. His urology practice was a standard one, with "significant teaching of residents" affiliated with Ohio State University and the Cleveland Clinic Foundation. Dr. Berkman practiced urology in Columbus for thirty years. Dr. Berkman testified, however, that he had recently closed his practice because he can no longer afford malpractice insurance. Dr. Berkman believes that his malpractice insurance premiums have become cost-prohibitive because of the felony conviction that is presently at issue before the Board. (Tr. at 13-14, 17-19, 22, 27, 64-65, 67-68; Resp. Ex. C).

Dr. Berkman has also relinquished all of his hospital privileges, but he previously had privileges at many local hospitals. Dr. Berkman served as Chairman of the Department of Urology at Mount Carmel East from 1995 until the closing of his practice. He has also served as a member of the Central Quality Peer Review Committee of Mount Carmel East. (Tr. at 18-19, 64-65; Resp. Ex. C).

2. On May 19, 2003, an Information was issued in the United States District Court for the District of Delaware in *United States of America v. Robert A. Berkman, M.D.*, Criminal Action No. 03-45 [*U.S. v. Berkman*]. (State's Exhibit [St. Ex.] 2). The Information included the following allegations:
  - Dr. Berkman practiced urology in Columbus, Ohio. During the course of his practice, Dr. Berkman prescribed Zoladex for some of his patients who were suffering from prostate cancer. Dr. Berkman obtained the Zoladex from a company referred to in the Information as "Company Y." (St. Ex. 2 at 1)
  - Zoladex was administered in pellet form, by injection, typically with local anesthetic into the skin of the patients abdomen, by a physician or a nurse under the supervision of a physician. A patient being treated with Zoladex for prostate cancer typically receives monthly or quarterly injections of Zoladex for the remainder of his life. (St. Ex. 2 at 2).
  - At all times relevant to the Information, it was a crime for an employee of a company engaged in the lawful distribution of drugs to provide a drug sample free of charge to a physician with the expectation that the physician would use that dose or sample in the treatment of a patient and thereafter bill either the patient or the patient's insurance company for that drug sample. (St. Ex. 2 at 2).
  - Between February 1994 and July 1996, Dr. Berkman received approximately 223 one month samples of Zoladex from Company Y free of charge. During that time, Dr. Berkman administered those free doses to patients and submitted claims to the patients and to the patients' insurers and was paid for at least 220 of the free doses. (St. Ex. 2 at 2-3).
  - Dr. Berkman and Company Y "did knowingly and willfully" conspire to violate the law by submitting claims for payment to patients and patients' insurers for the doses Zoladex that had been provided to Dr. Berkman free of charge. (St. Ex. 2 at 3).
  - The core objective of the conspiracy was to obtain money from the patient's insurers through the prescription of Zoladex. It was the objective of Company Y to provide free samples of Zoladex, as well as other things of value, including money, to physicians as an inducement to those physicians to order Zoladex. It was an objective of Dr. Berkman to bill for the free doses in order to increase his income. (St. Ex. 2 at 3)

3. On July 17, 2003, in the United States District Court for the District of Delaware, Dr. Berkman pleaded guilty to one felony count of Conspiracy to Violate the Prescription Drug Marketing Act, a violation of Title 18, United States Code, Section 371. (St. Ex. 7 at 1, 4, 17; St. Ex. 2 at 5). In submitting his guilty plea, Dr. Berkman stated to the judge,

I have violated federal law, your Honor. I should have understood that the Medicare system was a reimbursement system and that it was not a for-profit system. That was my first error.

My second was that I was engaged in the use of the medication Zoladex and the pharmaceutical company, AstraZeneca, presented to me incentives relative to the purchase and securement of the medication, and advising me that it could be used for enhancing revenues in my practice by virtue of purchase agreements and incentives and implications, I accepted them, your Honor.

I take responsibility for that. They purported that it was appropriate. I realize now that it was not and the discounts that I received, I realize that I should have reported them, but I did not.

(St. Ex. 7 at 8).

In the plea agreement, Dr. Berkman admitted that he had received more than \$84,448.06 from billing for the free samples of Zoladex. Moreover, the government agreed not to oppose a reduction in sentencing in consideration of Dr. Berkman's "affirmative acceptance of responsibility." (St. Ex. 5 at 1).

On November 6, 2003, the court found Dr. Berkman guilty and sentenced him to serve one year of unsupervised probation. The court also ordered Dr. Berkman to pay \$84,448.06 in restitution and a \$10,000 fine. Dr. Berkman testified that he has paid his restitution and fine. (Tr. at 21-22; St. Ex. 6; St. Ex. 8 at 1, 7-8).

In imposing the sentence, the judge made the following statement to Dr. Berkman:

I've told the other doctors that in my view, the perpetrator here was the drug company and the sales representatives. I told the last doctor who was here if he felt that he was being treated unjustly, his feeling is correct he was being treated unjustly. The only thing I can do is downwardly depart [from the Sentencing Guidelines] which I'm going to do.

(St. Ex. 8 at 7). (Note: Judge Joseph J. Farnan, Jr., the district court judge, included these comments and other statements in support of Dr. Berkman in a February 5, 2004, letter to the Board. See Resp. Ex. H.)

4. Various newspaper articles were submitted at hearing to provide information regarding the federal government's investigation of AstraZeneca, the large pharmaceutical company that marketed Zoladex, a prostate-cancer drug. (Tr. at 20; Resp. Exs. D, E, F). In one of those articles, the Wall Street Journal reported:

The government alleged that sales representatives for [AstraZeneca] provided as many as 400 doctors with large numbers of free samples of Zoladex, used to treat prostate cancer, to win future business from the doctors.

The company, prosecutors allege, knew the doctors would profit by falsely charging government insurance programs, including Medicare and Medicaid, for the samples. Zoladex, which doctors inject into patients in the office, is one of a small number of drugs paid for by Medicare.

Doctors could make about a \$300 profit by billing the government for a one-month dose of Zoladex that they received free, the government said. Two doctors have pleaded guilty to falsely billing the government for the free samples. A third doctor was charged last month.

Enriched by these profits, the doctors would then be inclined to buy Zoladex instead of other medicines, the government said. The scheme was designed to boost the sales and market share of Zoladex.

(Resp. Ex. E).

The New York Times reported about another aspect of the scheme:

Mr. Andrews [a federal prosecutor] said that AstraZeneca had reported false and inflated prices for Zoladex to the federal government so that doctors could earn significant profits by prescribing the drug. Medicare reimbursed the doctors based on the inflated prices that AstraZeneca reported, he said, while the company charged doctors for the drug at deep discounts.

For example, the company reported to the government that the average wholesale price for a monthly dose of Zoladex was about \$300, prosecutors said, but doctors were charged about \$170 for that dose. That resulted in a \$130 profit to the doctor, the government said.

(Resp. Ex. D).

AstraZeneca pleaded guilty to a felony charge of health care fraud and agreed to pay \$355 million to settle criminal and civil accusations of wrongdoing. (Resp. Ex. D, E).

5. At hearing, Dr. Berkman testified that Zoladex is a medication that is used to treat prostate cancer. It is implanted under the skin of the abdomen via a syringe. Dr. Berkman explained that the more commonly used equivalent to Zoladex was Lupron, marketed by Tap Pharmaceuticals. Lupron is a liquid that is administered as an intramuscular injection. Dr. Berkman testified that he had used Zoladex rather than Lupron because he felt that there were increased risks with Lupron, and because Lupron was three times more expensive than Zoladex. (Tr. at 23-26, 63).

[Note: The New York Times article and an article in American Medical News state that Tap Pharmaceuticals has also been criminally investigated for unlawful marketing practices in its sales of Lupron. (Resp. Ex. D; Resp. Ex. F at 2)].

Dr. Berkman explained that, before his relationship with AstraZeneca, he had never ordered directly from a pharmaceutical company. Rather, he had dealt with third-party vendors. He had received free samples of other drugs, but he had never charged for any of those free samples. He had billed for the samples of Zoladex, he testified, because he had believed that he had paid for the samples, that they were not “free” samples, and that they had been salable. He testified that he had not known that his actions were unlawful. (Tr. at 28-31, 33, 38, 89-90, 95).

Dr. Berkman testified that, when he began purchasing Zoladex, AstraZeneca’s sales representatives had advised him that he could receive a “volume discount” if he purchased more of the product. Dr. Berkman testified that the discount would often be given “in product,” e.g. eight doses for the price of seven. Dr. Berkman testified that it was the extra dose, the eighth dose, that the government considered to be the free sample. (Tr. at 30-33, 60-61, 92, 96).

Dr. Berkman testified that AstraZeneca’s pricing specials would vary from month to month. Eventually, Dr. Berkman began attempting to stabilize the price by negotiating contracts with the sales representatives. (Tr. at 32-33, 59-61). For example, an April 18, 1997, contract stated:

I, Ron R. Villa, as a representative of [Astra]Zeneca Pharmaceutical will continue to give a 12.5 percent discount above the volume discount price. This may be given in product. This will be for at least one year.

(Tr. at 59-60; Resp. Ex. B).

Dr. Berkman testified that it was his policy never to accept free samples from AstraZeneca, but that occasionally his office would receive boxes labeled as free samples as part of the ordered shipments. When Dr. Berkman complained to AstraZeneca, he was advised that the inclusion of boxes labeled as free-samples was due to an inept shipping department. AstraZeneca’s representatives further advised Dr. Berkman to re-label the boxes, with

stickers printed and provided by AstraZeneca, to cover up the “free sample” notations. (Tr. at 30, 34, 38, 62, 71-72).

Dr. Berkman testified that he had refused to re-label the boxes, and requested that AstraZeneca re-label the boxes before shipping them to him. However, Dr. Berkman’s medical assistant testified that, unbeknownst to Dr. Berkman, she had re-labeled the doses at Dr. Berkman’s office with labels provided to her by an AstraZeneca sales representative. Dr. Berkman confirmed that he had not known that this was being done at his office until he was informed by federal investigators. (Tr. at 42, 45-48, 56-57, 61-62, 88).

Dr. Berkman admitted that, in his thirty years of running his own practice, he had never received any similar discounts for any other drugs, and that no other company had ever suggested re-labeling free samples. (Tr. at 27, 71-72, 89-90, 93-97).

6. The government alleged in Dr. Berkman’s Information that he billed for the free samples to increase his income. Dr. Berkman testified that, during the time of his association with AstraZeneca, his practice had been financially thriving. He had more than one thousand patients and his practice grossed about five or six hundred thousand dollars per year. Dr. Berkman testified that he had not needed to increase his income. (Tr. at 35, 37, 88; St. Ex. 2 at 3; St. Ex. 5 at 1).
7. Dr. Berkman is also licensed to practice medicine in New York and New Jersey. The medical boards of those states have already taken action against Dr. Berkman based on his felony conviction. On March 18, 2004, the New Jersey Board of Medical Examiners issued a Consent Order which reprimanded Dr. Berkman and placed his license on probation for three years. On April 8, 2004, the New York Board for Professional Medical Conduct issued a Consent Agreement and Order which censured and reprimanded Dr. Berkman, placed him on probation for three years, and fined him \$5,000.00. (Tr. at 13, 83-86; Resp. Exs. O and P).
8. Dr. Berkman submitted an Affidavit which states that, despite his felony conviction, he will not be excluded from being a provider in the Medicare system. (Resp. Ex. Q).
9. Dr. Berkman testified that he wants to stay in Ohio, and to continue to practice medicine here, because he loves Ohio and it is his home. Dr. Berkman is willing to comply with any conditions or requirements imposed by the Board. He is hopeful, if he is allowed to keep his license, that medical insurance may become more reasonable and that he will be able to practice again. Alternatively, he would like to continue to teach full-time or to work as a staff urologist at a hospital. (Tr. at 85-87).
10. Dr. Berkman submitted many letters in support, a few of which were written specifically for this proceeding, but most of which were written for his criminal proceeding. The letters are notable for their quality and quantity. The letters describe Dr. Berkman as an excellent

physician, an excellent teacher, and an excellent father, well regarded both by those who work with him and those whom he treats. The letters further demonstrate that he is considered to be an ethical and honest physician. The letters provide many examples of Dr. Berkman's willingness to help patients above and beyond that which is necessary to provide medical care. (Resp. Exs. M, N1, and N2).

For instance, one patient wrote to Judge Farnan:

A few years ago I had my first TIA and when [Dr. Berkman] became aware of this, he called me to ask if he could shop for me and bring me groceries. We had a bad snow storm and he insisted that he could reach me because he drove a truck. He knew that I was alone and elderly and he was concerned. Three weeks later I had a second TIA and once again he personally called me to offer to bring me food. I will never forget his thoughtfulness and kindness. He is a very busy doctor and a good family man, but yet he took the time to call me and offer his help. I will never forget this, as long as I live.

(Resp. Exs. N1 at 26).

### **FINDINGS OF FACT**

On July 17, 2003, in the U.S. District Court for the District of Delaware, Robert A. Berkman, M.D., pleaded guilty to one felony count of Conspiracy to Violate the Prescription Drug Marketing Act, in violation of Title 18, United States Code, Section 371. In the Memorandum of Plea Agreement, Dr. Berkman stipulated that he had received more than \$84,448.06 from billing for free or sample doses of Zoladex, which was prescribed for prostate cancer patients. On November 6, 2003, Dr. Berkman was adjudicated guilty and sentenced to serve one year of unsupervised probation, to pay restitution in the amount of \$84,448.06, and to pay a fine in the amount of \$10,000.00.

### **CONCLUSIONS OF LAW**

The guilty plea and adjudication of guilt of Robert A. Berkman, M.D., as set forth in the Findings of Fact, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

\* \* \* \* \*

Dr. Berkman admittedly committed a serious felony. Although he testified that he unknowingly participated in the criminal conspiracy, ignorance of the law is not a defense. In mitigation,

however, Dr. Berkman has no other criminal or disciplinary history. He is widely regarded as honest, thoughtful, and caring, and the letters submitted in his support are affecting. Further, Dr. Berkman is remorseful and he is extremely unlikely to ever commit a crime, or to violate any Board rule, in the future.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **SUSPENSION, PARTIALLY STAYED; PROBATION:** The certificate of Robert A. Berkman, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period time, but not less than one year. All but ninety days of the minimum term of suspension is **STAYED**.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Berkman's certificate to practice medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Berkman shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Certification of Compliance with the Order of the New Jersey State Board of Medical Examiners [New Jersey Board] and the New York State Board for Professional Medical Conduct [New York Board]:** At the time he submits his application for reinstatement or restoration, Dr. Berkman shall submit to the Board certification from the New Jersey and New York Boards, dated no earlier than sixty days prior to Dr. Berkman's application for reinstatement or restoration, that Dr. Berkman has maintained full compliance with the Orders of the New Jersey and New York Boards.
  3. **Certification of Compliance with the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Berkman shall submit to the Board certification from the United States District Court for the District of Delaware, dated no earlier than sixty days prior to Dr. Berkman's application for reinstatement or restoration, indicating that Dr. Berkman has maintained full compliance with terms of probation in criminal case number 03-45.
  4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Berkman has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

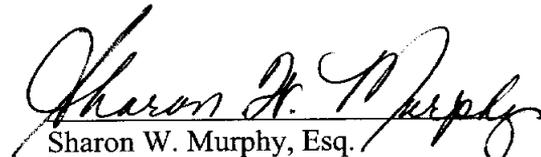
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Berkman's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law and Terms of Criminal Probation:** Dr. Berkman shall obey all federal, state and local laws, and all rules governing the practice of medicine and surgery in Ohio, and all terms of probation imposed by the United States District Court of the District of Delaware in criminal case number 03-45.
  2. **Declarations of Compliance:** Dr. Berkman shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Berkman's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Declarations of Compliance with the Terms Imposed by the New Jersey Board and the New York Board:** Dr. Berkman shall submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the New Jersey and New York Boards. Moreover, Dr. Berkman shall cause to be submitted to the Board copies of any reports that he submits to the New Jersey and New York Boards whenever the New Jersey and New York Boards require such submission. Dr. Berkman shall ensure that the declarations of compliance with the New Jersey Board Consent Order and the New York Board Consent Agreement and Order and any copies of reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Berkman's quarterly declaration.
  4. **Personal Appearances:** Dr. Berkman shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Berkman's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  5. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Berkman shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course

or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

6. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Berkman shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
  7. **Tolling of Probationary Period While Out of State**: In the event that Dr. Berkman should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Berkman must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
  8. **Violation of Terms of Probation**: If Dr. Berkman violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Berkman's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Berkman shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Berkman shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Berkman shall provide a copy of this Order by certified mail, return receipt

requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Berkman shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Berkman shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective thirty days after the mailing of notification of approval by the Board.

  
Sharon W. Murphy, Esq.  
Hearing Examiner



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

## EXCERPT FROM THE DRAFT MINUTES OF JULY 14, 2004

### REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Jeremy Amps, M.D.; Robert A. Berkman, M.D.; Jeremy John Burdge, M.D.; David A. Hoxie, M.D.; Jeffrey Thomas Jones, P.A.; Tom Reutti Starr, M.D.; and Karen Ann Vossler, M.T. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Sloan	- aye

Ms. Sloan asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

Dr. Steinbergh - aye  
Ms. Sloan - aye

Ms. Sloan noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Ms. Sloan stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....  
ROBERT A. BERKMAN, M.D.

Ms. Sloan directed the Board's attention to the matter of Robert A. Berkman, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Ms. Sloan continued that a request to address the Board has been timely filed on behalf of Dr. Berkman. Five minutes would be allowed for that address.

Dr. Berkman was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that it has been an honor to represent Dr. Berkman. He commented that in his 14 years of this type of practice, he doesn't believe that he has run into a physician who better exemplifies what a physician should be to his community, to his medical peers. Dr. Berkman has impressed him as an honestly forthcoming person who benefits all who have the chance to meet him, whether it is in the patient role or not.

Mr. Byers stated that he has been involved in the legal system for about 25 years, 16 of those as a practicing attorney. When a physician or client comes in and tells him a story, he's not only skeptical, he's cynical. He does not believe them. Dr. Berkman came in and told him a story, and essentially made it sound like he was a victim of a big pharmaceutical company. Mr. Byers stated that he didn't believe Dr. Berkman. He checked it out as thoroughly as he could, and he came to believe it. Mr. Byers stated that the record reflects that the sentencing judge came to believe that Dr. Berkman was a victim. The judge told Dr. Berkman that in open court. Mr. Byers stated that he believes that Hearing Examiner Murphy has viewed Dr. Berkman as somewhat of a victim.

Mr. Byers stated that Dr. Berkman is certainly responsible for his behavior. He cooperated in the criminal

investigation, and he has admitted responsibility for a lack of due diligence. When this offer was presented to him, along with the other 300 or so urologists around the country that are involved in this, he should have gone to someone who could have advised him as to whether this is appropriate under the rules, whether there is a safe harbor. It should have seemed so good that he realized it was too good to be true. Dr. Berkman failed to do so. For that he was convicted of a felony, he has lost his practice, he has not practiced since April of this year. His malpractice premiums skyrocketed, he could not get insurance, he lost his hospital privileges. Dr. Berkman has suffered shattering losses. Mr. Byers stated that he hopes that the Board is as lenient, reasonable and fair as it was in the previous case that the Board considered, hopefully understanding the unique circumstances of this matter, looking at Dr. Berkman's 30-plus years of stellar service to the community at large, not just the patient population.

Dr. Berkman thanked the Board for its time. He stated that he would like to apologize to the Board and to the citizens of the State of Ohio for what has occurred here. He takes full responsibility for what has occurred on his part. Dr. Berkman stated that he would also like to personally thank the Board for its objectivity and for reviewing his case. He thanked Ms. Murphy for her diligence in looking at the issues objectively and studying them in depth, which, obviously, she did. Dr. Berkman stated that he would be happy and privileged to be able to continue to practice medicine within the constraints of Ms. Murphy's recommendations. Dr. Berkman stated that he loves the practice of medicine. It has been his life, and his patients have been his family. At the termination of his practice, he was the only physician urologist with staff privileges at Ohio State University who was taking care of indigent patients. He was the only one listed on emergency room call. Dr. Berkman stated that the practice of medicine, to him, was enjoyable, fun, and it was his life.

Dr. Berkman continued that the Board can't imagine the sadness, the humiliation, and the deep regrets that he has in terms of what has occurred here. Had he seen what was occurring, he certainly would have made other decisions in retrospect.

Dr. Berkman again apologized to the Board, and asked that the Board look at this issue for what it is and give him an opportunity to make it up to the citizens of Ohio by once again being a practicing physician and offering to them what he had offered to them in the past.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he believes the Report and Recommendation does a good job of summarizing this case; however, he doesn't agree with the provision that stays all but 90 days of the suspension. Mr. Wilcox stated that he doesn't believe that Dr. Berkman was clueless to what was transpiring here. He is a very experienced physician who testified that he's very involved with the daily operation and business matters regarding his practice. He knew what he was doing by charging for these free samples. His office even changed the labeling on the samples and covered up where it said "free sample" on the packaging.

Mr. Wilcox stated that he believes this case is pretty simple, in that Dr. Berkman saw a chance to increase revenue in his practice. He knew it was wrong. The tendency here is to blame the big pharmaceutical

company in this case, AstraZeneca, for this mess, but they needed willing participants in this scheme. Mr. Wilcox stated that he would agree with the Hearing Examiner that Dr. Berkman has a clean prior record, but his actions were just based on financial gain, and a longer suspension is warranted for a felony conviction in federal court.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT A. BERKMAN, M.D. MR. BROWNING SECONDED THE MOTION.**

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Egner stated that she feels like being lenient in this case, too, although she doesn't think that Dr. Berkman was an innocent victim. She does feel that Dr. Berkman did succumb to the great influence that she imagines the drug representative used on him. Dr. Egner commented that she thinks that all physicians are exposed to that in one way or another. She doesn't think that there are very many physicians who really get involved in buying of a drug, administering it and billing for it in the office, but she may be wrong. She believes that, for the most part, physicians are prescription writers, sending patients to pharmacies to get prescriptions filled. So, in this instance, she would say that this is not something that is every day practice for physicians. This was something rather unusual with which he got involved. She added that it might not be unusual for a urologist, given the high number of patients under this treatment, but it's not part of the usual practice.

Dr. Egner stated that this was done to increase Dr. Berkman's revenues. She added that, unfortunately, in this day and age when reimbursements are poor, you feel powerless in some aspects of the practice of medicine. She thinks more physicians bend the rules than the Board has any idea of. Dr. Berkman did it to a larger extent and got caught, but she doesn't think that Dr. Berkman is alone in this area. Dr. Egner stated that she would not impose a longer suspension. She added that she would like to make the suspension period a straight 90 days. She doesn't see the sense in setting a year's suspension and staying all but 90 days. She would just impose the 90-day suspension and the three-year probation.

Dr. Bhati disagreed with Dr. Egner. He stated that this is a situation where, from February 1994 to July 1996, there were 223 samples taken. They were considered to be free samples. The labels were changed and bills were submitted and 220 samples were paid for. That's excessive. Dr. Bhati stated that he doesn't feel very sympathetic to this case at all.

Dr. Kumar stated that he has managed some surgicenters, and has had some urologists who partner in them. Dr. Kumar stated that he doesn't believe that this is simply an isolated case. Pharmacology companies come out with deals, such as buy 10 and get the 11<sup>th</sup> one free, which are very suspicious and very questionable. Dr. Kumar stated that he thinks that Dr. Berkman just succumbed to that. Dr. Kumar stated that he has seen the same kind of process happen for oncologists. They buy prescriptions for chemotherapy drugs for their office and dispense it. He has seen the same process for haemopoietic drugs, where pharmacists come out and say, okay, you buy this much, and if you spend this much, the next is

free. This is a process that is more out in the community than is realized.

Dr. Kumar stated that he agrees with Dr. Bhati in the sense that it wasn't just simply a matter of getting caught in a process which was suggested by the pharmaceutical industry, but rather a definite effort was made to hide the process by changing the labels and so on and so forth. Dr. Kumar stated that he has some reservation about reducing the period of suspension. He thinks 90 days is too short.

Dr. Steinbergh stated that she agrees with Dr. Kumar and Dr. Bhati. To her, this was not such a difficult case. It's clear that Dr. Berkman is not the only one who's been involved in this type of scheme. She agrees with Mr. Wilcox's comments in the hearing record that the judge's comments lacked a bit of credibility. Dr. Steinbergh stated that she finds that Dr. Berkman is as guilty as AstraZeneca. He was responsible for the business management of his practice. Although, over and over again Dr. Berkman said that he was not a business person, in fact, he did run the business of the practice, and, therefore, he was a businessman. When you get something for free, you can't charge for it. It's really pretty clear. When you get samples, you cannot profit by charging another person. Dr. Steinbergh stated that she finds that Dr. Berkman's conviction was appropriate. She agrees that it's unfortunate. She added that she does believe that other physicians are being pressured to do that under today's economic struggle for physicians, but that's why the Board makes the decisions that it does. Physicians are an ethical group who make less money and work harder, but they can't cheat people and they can't bill the government for something that was given to them. They can't bill patients for something that was given to them. That kind of a decision, to her, is very clear.

Dr. Steinbergh stated that she supports the Report and Recommendation, except she agrees that she would not be lenient, and this particular Recommendation is lenient for a felony conviction of this sort.

Dr. Robbins also spoke against leniency in this case. If, as some Board members have said, this is out there in any amount in the medical community, the Board needs to put a stop to it and do everything in its power to stop it. There is no rationale of any kind to charge a patient or charge an insurance company for a free sample. A free sample is just that. It's free and should be given free to the patient, with no exception. Dr. Robbins stated that he can make no exception in this case. He added that, to think that this goes on for three years without the doctor knowing it is, as far as he's concerned, naïve. Dr. Robbins agreed that Dr. Berkman suffered from this, but he would say that Dr. Berkman should. This is totally unacceptable and needs to be stopped. Dr. Robbins stated that he would be against leniency.

Dr. Buchan stated that he's not convinced that the changing of the labels was done by Dr. Berkman. There was some confusion as to whether his staff did it, but, certainly, it appeared that the drug representatives supplied those labels. Dr. Buchan stated that he was affected by the letters of support by patients and by colleagues. He saw Dr. Berkman more as a respected teacher and as an educator, and not a felon. Dr. Berkman paid a debt to the community in the states of New York and New Jersey. He has a reprimand and three years of probation. The U.S. District Court Judge said that it is unlikely that Dr. Berkman will repeat this offense, and he downwardly departed from the sentencing guidelines. Dr. Buchan stated that he pays attention to the Board's guidelines every month, but he would suggest that the Board downwardly

depart from its guidelines as well. Dr. Buchan concluded by stating that he is in favor of the Report, as written, or lesser.

Mr. Browning recommended striving for some middle ground on this.

**MR. BROWNING MOVED TO AMEND THE PROPOSED ORDER BY INCREASING THE 90-DAY SUSPENSION TO SIX MONTHS. DR. BHATI SECONDED THE MOTION.**

Dr. Buchan stated that that's not the kind of middle ground he was looking for, and stated that he stands in opposition to a six-month suspension.

Dr. Robbins advised that Mr. Browning's motion is the kind of middle ground he was looking for, and he would stand in favor of it.

Dr. Kumar also agreed to the proposed amendment. Dr. Kumar pointed out that many times the way these things are presented is a little complicated. It's not just presented as a free sample. They are presented as a business deal. He stated that it's like going to K-Mart and finding something sold as two for the price of one. If you order one, you will get two or three in conjunction with it. So, they will come out and say if you order ten of a particular thing, we'll give you five extra free. The word "free" there bothered him tremendously. Dr. Kumar concluded, however, that he is in agreement with the six-month suspension as a compromise.

Dr. Robbins stated that it's that exact approach that is deceptive here. If you do twenty, we're going to give you ten free. Dr. Robbins stated that he'd say take 30 and charge them all the same, not take the ten free.

Mr. Dilling asked Mr. Browning if he would accept a substitution of the term "six months" with "180 days," to be consistent with other Board Orders.

**MR. BROWNING STATED THAT HE WOULD. DR. KUMAR, AS SECOND, AGREED.**

A vote was taken on Mr. Browning's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye

Dr. Garg - abstain  
Dr. Steinbergh - aye

The motion carried.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ROBERT A. BERKMAN, M.D. DR. KUMAR SECONDED THE MOTION. A vote was taken:**

Vote:

Mr. Albert	- abstain
Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

December 10, 2003

Robert A. Berkman, M.D.  
279 Drexel Avenue  
Columbus, Ohio 43209

Dear Doctor Berkman:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about July 17, 2003, in the U.S. District Court for the District of [the State of] Delaware, you pleaded guilty to one (1) felony count of Conspiracy to Violate the Prescription Drug Marketing Act, in violation of Title 18, U.S.C., §371.

In the Memorandum of Plea Agreement, you stipulated you had received more than \$84,448.06 from billing for the free or sample doses of Zoladex [prescribed for prostate cancer patients].

On or about November 6, 2003, you were adjudicated guilty and sentenced to serve one (1) year unsupervised probation, to pay restitution in the amount of \$84,448.06, and a fine in the amount of \$10,000.00.

The underlying conduct is provided in greater detail in the Information, Memorandum of Plea Agreement, and Judgment in a Criminal Case, copies of which are attached hereto and incorporated herein.

Your plea of guilty to, and/or the judicial finding of guilt, as alleged in paragraph one (1) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in R.C. 4731.22(B)(9).

Pursuant to R.C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

*Mailed 12-11-03*

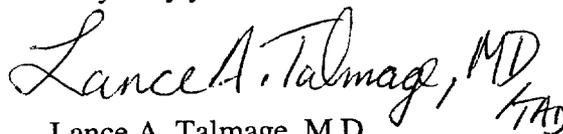
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Handwritten signature of Lance A. Talmage, MD, with initials 'LATD' written below the signature.

Lance A. Talmage, M.D.  
Secretary

LAT/cad  
Enclosures

CERTIFIED MAIL #7000 0600 0024 5149 4356  
RETURN RECEIPT REQUESTED

5969 East Broad Street, Suite 306  
Columbus, Ohio 43213

CERTIFIED MAIL #7000 0600 0024 5149 4349  
RETURN RECEIPT REQUESTED

NO. \_\_\_\_\_

**UNITED STATES DISTRICT COURT**

*District of Delaware*

Division \_\_\_\_\_

THE UNITED STATES OF AMERICA

vs.

**INFORMATION**

A true bill.

Foreman \_\_\_\_\_

Filed in open court this \_\_\_\_\_ day,

of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

Clerk \_\_\_\_\_

Bail, \$ \_\_\_\_\_

I, Robert A. Berkman, M.D. having been presented with a copy of the Information, do hereby, in open Court, ~~waive my right to have the Court appoint counsel for me; and, upon arraignment, I do hereby enter a plea of \_\_\_\_\_ guilty to the Information filed in this case.~~

Dated this 17 day of July, 192003

[Signature] def.  
[Signature] att.

Robert A. Berkman M.D. having been presented with a copy of the Information, do hereby, in open Court, waive my right to have the Court appoint counsel for me; and, upon arraignment, I do hereby enter a plea of guilty to the Information filed in this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Def. \_\_\_\_\_

Cnsl. \_\_\_\_\_



has employed and maintained extensive marketing and sales departments. Since at least the early 1990's, Company Y has sold and provided the drug Zoladex to urologists across the country, including to urologists practicing medicine in the State of Delaware, and since at least the beginning of 1993, to the defendant, Berkman, practicing medicine in the State of Ohio.

4. Zoladex was administered in pellet form by injection, typically with local anesthetic, into the skin of the patient's abdomen, by a physician or a nurse under the supervision of a physician. At various times in the 1990's and continuing until the present, Zoladex was available in one month and three month doses. It was typical that a patient whose prostate cancer was being treated with Zoladex would receive regular injections of that drug for the remainder of his life.

5. At all times material to this Information, Company Y sold Zoladex to physicians, among other purchasers. At all times material to this Information, an industry reference known as the Redbook published a price, known as the Average Wholesale Price or "AWP," for Zoladex based upon information supplied to the Redbook's publishers by Company Y.

6. At all times material to this Information, it was a crime, in violation of 21 U.S.C. §§ 331(t) and 333(c), for an employee of a company engaged in the lawful distribution of drugs to provide a drug dose or sample free of charge to a physician with the intention and expectation that the physician would use that dose or sample in the treatment of a patient and thereafter bill either the patient or the patient's insurance company for that drug dose or sample which had been provided to the physician free of charge.

7. Beginning in or around February, 1994, and continuing into at least July, 1996, the defendant, Berkman, received from Company Y, free of charge, approximately 223 one month sample doses of Zoladex. Throughout that time period, the defendant, Berkman, prescribed and

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administered those free doses to patients and submitted claims to the patients and to the patients' insurers and was paid for the prescription of at least 220 of these free dosages.

**COUNT ONE**

8. Paragraphs 1 through 7 of this Information are herein realleged and incorporated by reference.

9. From in or around February, 1994, through in or around at least July 1996, in the District of Delaware, the Southern District of Ohio, and elsewhere throughout the United States, the defendant, Robert A. Berkman, together with Company Y and employees of Company Y, and with others known and unknown to the Acting United States Attorney, did knowingly and willfully combine, conspire and agree to violate 21 U.S.C. §§ 331(t) and 333(c) by submitting, and by causing to be submitted, claims for payment to patients and to those patients' insurance companies for the prescription of Zoladex which had been provided free of charge to the defendant, Robert A. Berkman.

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**Objective of the Conspiracy**

10. The objectives of this conspiracy varied depending upon the participant. The core objective of this conspiracy for all participants was to obtain money from the patient's health care insurers through the prescription of Zoladex. It was an objective of Company Y in this conspiracy to provide free doses or samples of Zoladex, as well as other things of value, including money, to physicians as an inducement to those physicians to order Zoladex. It was an objective of the defendant, Robert A. Berkman, to bill for the free doses or samples in order to increase his income.

11. By virtue of this conspiracy, the defendant, Robert A. Berkman, would and did obtain from Company Y in the time period February, 1994, through at least July, 1996, 223 doses of Zoladex for free, which he billed to patients and to their insurance companies.

**Overt Acts**

12. In furtherance of the conspiracy, the defendant Robert A. Berkman and other conspirators known and unknown to the Acting United States Attorney committed among other acts the following overt acts in the District of Delaware and elsewhere:

a. On various dates beginning in February, 1994, and continuing until at least July, 1996, employees of Company Y provided to the defendant, Robert A. Berkman, free doses or samples of Zoladex; and

b. On various dates beginning in or around February, 1994, and continuing until at least July, 1996, the defendant, Robert A. Berkman, submitted bills to patients and to their insurance companies for sample doses of Zoladex which he had received free from Company Y.

All in violation of Title 18, United States Code, Section 371.

RICHARD G. ANDREWS  
Acting United States Attorney

BY: Beth Moskow-Schnoll  
Beth Moskow-Schnoll  
Assistant United States Attorney

Dated: *May 19, 2003*

CHILD WELFARE BOARD  
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5. The parties agree that, for sentencing purposes, the violation to which the defendant is pleading guilty is covered under USSG §2N2.1 (1995 edition). Pursuant to that section, the base offense level is 6. USSG §2N2.1(b)(1) directs that USSG §2F1.1 be applied. Thus, 6 levels are added under USSG §2F1.1(b)(1)(G) for the amount of loss, and an additional 2 levels are added under USSG §2F1.1(b)(2), resulting in a total offense level of 14. If 2 points are deducted under USSG §3E1.1 for the defendant's acceptance of responsibility, the defendant's offense level is 12 and his guideline sentencing range is 10-16 months imprisonment. The defendant understands that his sentence may be lowered if the Government, in its sole discretion, determines that the defendant has made a good faith effort to provide substantial assistance and then files a motion for downward departure. *See* paragraphs 11-13, *infra*. The defendant further understands and agrees that only the Court can determine the defendant's sentence, and the Court's rejection of any or all of the agreements and/or sentencing guideline calculations contained in this Memorandum will not provide a basis for the defendant to withdraw his guilty plea.

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6. The defendant agrees to pay a fine of \$20,000 at the time of sentencing.

7. The defendant has knowingly and voluntarily agreed to waive any statute of limitations defense he might have regarding the charged matters.

8. The defendant agrees to a period of physician community service as may be ordered by the Court.

9. The defendant has entered into a Settlement Agreement with the Office of Inspector General of the United States Department of Health and Human Services. Pursuant to that agreement, a copy of which is attached hereto, the Office of Inspector General agrees to waive its permissive exclusion authority provided the defendant complies with the conditions imposed upon him by the Settlement Agreement.

10. The defendant agrees to cooperate fully and truthfully with the Government as follows:

a. Defendant agrees to provide truthful, complete and accurate information and testimony. The defendant understands that if he testifies untruthfully in any material way he can be prosecuted for perjury. The defendant understands that if his prior statements to the Government are untruthful in any material way this agreement is violated and becomes void.

b. Defendant agrees to provide all information concerning his knowledge of, and participation in, the subject matter of the Indictment and/or Information of which he has knowledge.

c. Defendant agrees that he will not falsely implicate any person or entity and he will not protect any person or entity through false information or omission.

d. Defendant agrees to testify as a witness before any Grand Jury, hearing, or trial when called upon to do so by the Government.

e. Defendant agrees to hold himself reasonably available for any interviews as the Government may require.

f. Defendant agrees to provide all documents or other items under his control or which may come under his control which may pertain to any crime.

g. Defendant understands that his cooperation shall be provided to any law enforcement agency as requested by counsel for the Government.

h. To enable the Court to have the benefit of all relevant sentencing information, the defendant waives any rights to a prompt sentencing, and will request that sentencing be postponed until his cooperation is complete.

i. Defendant agrees and understands that this agreement requires that his cooperation may continue even after the time that the defendant is sentenced. Failure to continue to cooperate after sentence is imposed shall be grounds to void this agreement.

j. Defendant agrees that if the Government determines that the defendant has not provided full and truthful cooperation, or has committed any federal, state, or local crime, other than violations or traffic offenses, between the date of this agreement and his sentencing, or has

OHIO STATE MEDICAL BOARD  
NOV 18 2003

otherwise violated any other provision of this agreement, the agreement may be voided by the Government and the defendant shall be subject to prosecution for any federal crime which the Government has knowledge including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation.

12. If the Government in its sole discretion determines that the defendant has fulfilled his obligations of cooperation as set forth above, at the time of sentencing, the Government will:

a. Make the nature and extent of the defendant's cooperation known to the Court.

b. Make a motion to allow the Court to depart from the Sentencing Guidelines pursuant to Sentencing Guideline §5K1.1, 28 U.S.C. §994(n), and 18 U.S.C. §3553(e), only if the Government, in its sole discretion, determines that the defendant has provided substantial and truthful assistance in the investigation or prosecution of another person who has committed an offense. The defendant understands that his debriefing and cooperation have not yet been completed and that a debriefing does not amount to substantial assistance.

c. Make whatever sentencing recommendation the Government deems appropriate.

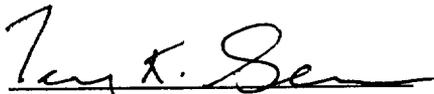
13. The defendant's rights under this agreement shall in no way be dependent upon or affected by the outcome of any case in which he may testify.

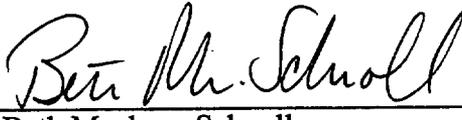
14. It is further agreed by the undersigned parties that this Memorandum supersedes all prior promises, representations, and statements of the undersigned parties; that this Memorandum may be modified only in writing signed by all the undersigned parties; and that any and all promises, representations, and statements made prior to or after this Memorandum are null and void and have

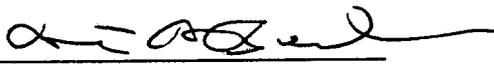
U.S. SENTENCING BOARD  
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no effect whatsoever, unless they comport with the subsequent written modification requirements of this paragraph.

RICHARD G. ANDREWS  
Acting United States Attorney

  
Terry Sherman, Esq.  
Attorney for Defendant

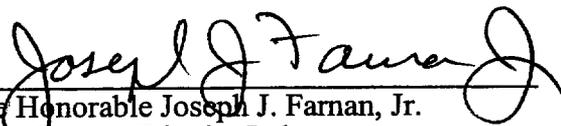
BY:   
Beth Moskow-Schnoll  
Assistant United States Attorney

  
Robert A. Berkman  
Defendant

Dated: 5/16/03

OHIO STATE MEDICAL BOARD  
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AND NOW this 18 day of May, 2003, the foregoing Memorandum of Plea Agreement is hereby accepted (~~rejected~~) by the Court.

  
The Honorable Joseph J. Farnan, Jr.  
United States District Judge

DEPT \_\_\_\_\_  
YTTA \_\_\_\_\_  
APU \_\_\_\_\_  
MPJ \_\_\_\_\_  
BOPT \_\_\_\_\_  
ED JRE \_\_\_\_\_  
RT OF STATE \_\_\_\_\_  
EVGSA 30 JJA \_\_\_\_\_

15

# UNITED STATES DISTRICT COURT

## District of Delaware

UNITED STATES OF AMERICA

v.

ROBERT A. BERKMAN, M.D.

### JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 03CR00045-001(JJF)

Terry K. Sherman, Esq.

Defendant's Attorney

#### THE DEFENDANT:

- pleaded guilty to count(s) one
- pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 §§ 331(t) and 333(e) all in violation of 18 U.S.C. § 371	Conspiracy to violate the Drug Marketing Act	July 1996	one

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: December 14, 1946

Defendant's USM No.: 04724015

Defendant's Residence Address:

276 S. Drexel Avenue

Columbus, OH 43209

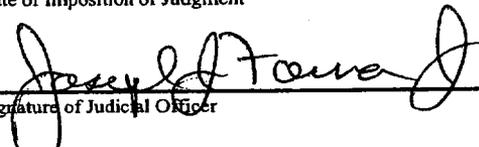
Defendant's Mailing Address:

276 S. Drexel Avenue

Columbus, OH 43209

November 6, 2003

Date of Imposition of Judgment

  
Signature of Judicial Officer

Judge Joseph J. Farnan, Jr. U.S. District Court Judge

Name and Title of Judicial Officer

November 17, 2003

Date

STATE MEDICAL BOARD  
OF OHIO  
NOV 20 A 10:16

DEFENDANT: ROBERT A. BERKMAN, M.D.  
CASE NUMBER: 03CR00045-001(JJF)

## PROBATION

The defendant is hereby sentenced to probation for a term of one year unsupervised

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ROBERT A. BERKMAN, M.D.  
CASE NUMBER: 03CR00045-001(JJF)

**ADDITIONAL PROBATION TERMS**

1. The defendant shall pay any financial penalty that is imposed by this judgment.



DEFENDANT: ROBERT A. BERKMAN, M.D.  
CASE NUMBER: 03CR00045-001(JJF)

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A  Lump sum payment of \$ 100.00 due immediately, balance due
  - not later than \_\_\_\_\_ .or
  - in accordance with  C,  D, or  E below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  E below); or
- C  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Special instructions regarding the payment of criminal monetary penalties:
  - Special Assessment shall be made payable to Clerk, U.S. District Court.
  - Criminal monetary payments, with the exception of restitution and those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made payable to Clerk, U.S. District Court. Any restitution ordered is to be made payable to the victim, and collected by the U.S. Probation Office.

The defendant shall pay to the United States a fine of \$10,000 to be paid during the year of probation. The defendant to make restitution to the United States Department of Health and Human Services in the amount of \$84,448.06 to be made during the year of probation.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

**CERTIFIED: 11/19/03**  
**AS A TRUE COPY:**

**ATTEST:**

**PETER T. DALLEO, CLERK**

BY Brian T. Mace  
**Deputy Clerk**

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.