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FILED

March 18, 2004

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

By: Mileidy Perez
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

Robert A. Berkman, M.D.
License No. MA29958

Administrative Action

CONSENT ORDER

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information from Respondent that on or about May 16, 2003, Respondent entered into a Memorandum of Plea Agreement with the United States of America in a criminal action filed in the U.S. District Court of Delaware. The Memorandum of Plea Agreement ("Plea Agreement") was signed by the Honorable Joseph J. Farman, Jr., a United States District Court Judge, stating that Respondent agreed to waive indictment and plead guilty to a one count information charging him with conspiring to violate the Prescription Drug Marketing Act, 21 U.S.C. Sections

CERTIFIED TRUE COPY

331(t) and 333 (c), all in violation of Title 18, U.S.C. Section 371. Pursuant to the Plea Agreement, Respondent stipulated to receiving more than \$84,448.06 from billing for free or sample doses of Zoladex that the manufacturer represented to Respondent to be "product discounts" and that Respondent prescribed to his patients. Under the terms of the Plea Agreement, the Respondent agreed to pay a fine of \$20,000, restitution of \$84,448.06 and a special assessment of \$100.00. The Respondent also agreed to complete a period of physician community service as may be ordered by the Court and to fully cooperate with the Government's investigation.

On or about July 17, 2003, Respondent pled guilty to one count information charging him with conspiring to violate the Prescription Drug Marketing Act, 21 U.S.C. Sections 331(t) and 333 (c), all in violation of Title 18, United States Code, Section 371, in the United States District Court, District of Delaware. Pursuant to the Judgement entered on November 6, 2003, Respondent was sentenced to unsupervised probation for a term of one year and ordered to pay a fine of \$10,000, restitution of \$84,448.06 and a special assessment of \$100.00.

Thereafter, on or about July 17, 2003, Respondent entered into a Settlement Agreement with the Office of the Inspector General of the Department of Health and Human Services ("OIG"). The OIG Settlement Agreement incorporated the terms of the Memorandum of

Plea Agreement filed by the U.S. District Court. Under the terms of the OIG Settlement Agreement the Respondent agreed to pay the OIG the differential between \$126,672.09 and the amount of restitution he is ordered to pay in connection with his plea in the Criminal Action. Respondent further agreed that if he fulfills his obligations under both the Memorandum of Settlement Agreement and the OIG Settlement Agreement, the OIG will release Respondent from any claims or causes of action it may have against him under 40 U.S.C. §§ 1320a-7a(a)(1)(B), 1320a-7a(a)(7), and 1320a-7(b)(7) for the Covered Conduct. Under the OIG Settlement Agreement Respondent agreed to a compliance period of three (3) years from the effective date of the Agreement.

The parties being desirous of resolving this matter and the Board finding the within Order to be adequately protective of the public interest and for good cause shown,

ACCORDINGLY, IT IS on this FIRST day of MARCH, 2004, HEREBY ORDERED AND AGREED THAT:

1. Respondent shall be and hereby is reprimanded by the New Jersey State Board of Medical Examiners.

2. Respondent's license to practice medicine and surgery in the State of New Jersey shall be and hereby is placed on probation for a period of three years.

3. Respondent has informed the State of New Jersey Board of Medical Examiners that he holds additional licenses to practice

medicine and surgery in the States of Ohio and New York. This Consent Order contains and constitutes the final and complete resolution of this matter regardless of any additional sanctions arising from the same subject matter described herein that those jurisdictions may impose in the future.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: 
David M. Wallace, M.D.
Board President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the New Jersey Board of Medical Examiners to enter this Order.


Robert A. Berkman, M.D.


Date


David W. Fassett, Esq.


Date