

RECEIVED

MAY 20 1980

Robert A. Sack
111 South Franklin
Manchester, Iowa 52057

IOWA PHARMACY EXAMINERS

Norman Johnson, Secretary
Iowa Board of Pharmacy Examiners
217 Jewett Building
Des Moines, Iowa 50319

Thomas D. McGrane, Assistant Attorney General
Iowa Department of Justice
Hoover Building
Des Moines, Iowa 50319

Mailing Date: MAY 19 1980

STATEMENT OF THE CASE:

On May 13, 1980, a hearing was held to determine what, if any, action should be taken regarding the license of Robert A. Sack. Appearing at the hearing were the following Board members: Susan C. Lutz, Chairperson; Angelo J. Palmer, Vice Chairperson; Robert E. Bellinger; and Dennis D. Killion. Also appearing at the hearing were Robert A. Sack and Thomas D. McGrane, Assistant Attorney General.

FINDINGS OF FACT:

The hearing officer, from the evidence in the record, finds that: Robert A. Sack overbilled the Medicaid program (Title XIX) on at least one occasion by filling a prescription for a so-called name brand drug with its lower priced generic equivalent without reducing the Medicaid claim(s) to reflect the price differential. Mr. Sack thus obtained a fee(s) by fraud or misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

Rule 620-10.1(4)(t) of the Iowa Administrative Code reads as follows: "The board may impose any of the disciplinary sanctions set out in subrule 10.1(2), including civil penalties in an amount not to exceed \$1,000.00, when the board determines that the licensee or registrant is guilty to the following acts or offenses:

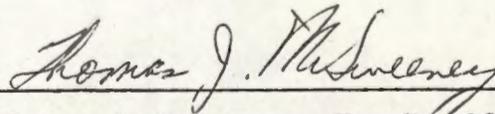
* * *

"t. Obtaining any fee by fraud or misrepresentation."

Based upon the evidence in the instant case, the Iowa Board of Pharmacy Examiners has recommended that Robert A. Sack be placed on probation until November 12, 1980. See Rule 620-10.1(2)(e) of the Iowa Administrative Code. The hearing officer is in agreement with the recommendation of the Iowa Board of Pharmacy Examiners. The decision is within legal bounds, and the facts established on the record convince the hearing officer that the recommendation of the Iowa Board of Pharmacy Examiners is correct. The record clearly shows, and Mr. Sack has admitted, filling a prescription for a so-called name brand drug with its lower priced generic equivalent without reducing the Medicaid claim to reflect the price differential.

DECISION:

It is the decision of the hearing officer, upon the recommendation of the Iowa Board of Pharmacy Examiners, that Mr. Sack be, and is hereby, placed on probation until November 12, 1980.

A handwritten signature in cursive script, reading "Thomas J. McSweeney", is written over a horizontal line.

Thomas J. McSweeney, Hearing Officer



United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF IOWA
P. O. BOX 4710
CEDAR RAPIDS, IOWA 52401
TELEPHONE—AREA 319 NO. 366-2411 EXTN. 508

Exhibit 2
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MAR 26 1980
MEDICAL SERVICES SECTION

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MAR 28 1980

PRESS RELEASE

IOWA PHARMACY EXAMINERS

AN OUT-OF-COURT SETTLEMENT WAS REACHED MARCH 18,

1980, BETWEEN THE UNITED STATES ATTORNEY'S OFFICE FOR THE NORTHERN DISTRICT OF IOWA AND PHARMACIST ROBERT A. SACK, PROPRIETOR OF WIDNER DRUG IN MANCHESTER, IOWA, IN A CIVIL SUIT FILED IN FEDERAL COURT IN CEDAR RAPIDS, IOWA ON FEBRUARY 21, 1980. THE UNITED STATES HAD ALLEGED THAT MR. SACK HAD OVERBILLED THE MEDICAID PROGRAM \$1.39 ON EACH OF EIGHT PRESCRIPTIONS FILLED FOR A MEDICAID INSURED DURING THE PERIOD FROM FEBRUARY, 1978 THROUGH JANUARY, 1979. THE GOVERNMENT ALLEGED THAT MR. SACK HAD FILLED THE PRESCRIPTIONS FOR A "NAME BRAND" DRUG WITH ITS LOWER PRICED GENERIC EQUIVALENT WITHOUT REDUCING THE MEDICAID CLAIMS TO REFLECT THE \$1.39 PRICE DIFFERENTIAL.

ALTHOUGH SUCH SUBSTITUTIONS ARE LAWFUL UNDER IOWA LAW UNLESS THE PRESCRIBING PHYSICIAN SPECIFICALLY STATES OTHERWISE, SUBMITTING THE CLAIMS TO MEDICAID WITHOUT ADJUSTMENT FOR THE PRICE DIFFERENTIAL COULD HAVE BEEN FOUND TO BE A VIOLATION OF FEDERAL LAW. IF THE VIOLATIONS COULD HAVE BEEN PROVEN, UNDER THE FALSE CLAIMS ACT HE COULD HAVE BEEN MADE TO PAY DOUBLE THE AMOUNT OF THAT PORTION OF THE CLAIMED OVERCHARGE PAID BY THE FEDERAL GOVERNMENT, ALONG WITH A FORFEITURE OF \$2,000.00 FOR EACH CLAIM

SUBMITTED. IN THE SETTLEMENT REACHED, MR. SACK AGREED TO PAY TO THE U.S. GOVERNMENT \$11.12 (THE TOTAL OF THE CLAIMED OVERCHARGES) ALONG WITH \$2,000.00 AND THE COSTS OF THE SUIT. IN RETURN THE GOVERNMENT WILL DISMISS ITS SUIT WITHOUT A FINDING OF A VIOLATION.

(FOR FURTHER INFORMATION CONTACT ROBERT L. TEIG, ASSISTANT UNITED STATES DISTRICT ATTORNEY, NORTHERN DISTRICT OF IOWA. PHONE 319-366-2411 EXT. 503)



United States Department of Justice

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF IOWA

P. O. BOX 4710

CEDAR RAPIDS, IOWA 52401

TELEPHONE—AREA 819 NO. 866-2411 EXT. 503

RECEIVED
MAR 26 1980
MEDICAL SERVICES SECTION

March 17, 1980

Robert L. Sudmeier
900 Dubuque Bldg.
Dubuque, IA 52001

← he called 9:55 am 3/18 +
said go ahead
RLT

Re: United States v. Robert A. Sack,
Civil No. C 80-2009

Dear Mr. Sudmeier:

This is in confirmation of our telephone call this date. As we discussed, the settlement agreement outlined on page two of your March 12, 1980 letter is acceptable with these exceptions:

1. The press release will be as revised by you and Tom Gillespie (a copy of which is enclosed) and, as we previously discussed, I will answer any questions should I be contacted by the press.

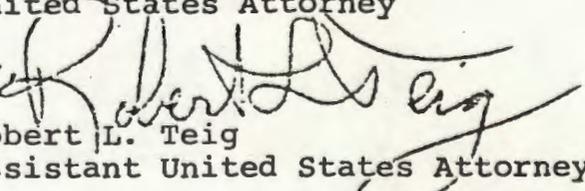
2. Paragraph #4 as to criminal prosecution is stricken from the agreement. As we discussed, any possible criminal violation had no part in these negotiations. This was strictly a civil matter. Previously a criminal prosecution was declined on the information currently available, but I make no representations as to possible future action should further information become available.

If this is also your understanding of our agreement, please advise me and we shall procede with dismissal. Thank you for your cooperation.

Sincerely,

JAMES H. REYNOLDS
United States Attorney

By,


Robert L. Teig
Assistant United States Attorney

RLT/lgm

Enc.

FUERSTE, CAREW, COYLE, JUERGENS & SUDMEIER

900 DUBUQUE BUILDING
DUBUQUE, IOWA 52001

WILLIAM C. FUERSTE
ALLAN J. CAREW
MICHAEL J. COYLE
STEPHEN J. JUERGENS
ROBERT L. SUDMEIER

DOUGLAS M. HENRY
LAURA J. HANN

March 12, 1980

AREA CODE 319
TELEPHONE
556-4011

Mr. Robert L. Teig
Assistant United States Attorney
P. O. Box 4710
226 Federal Building
Cedar Rapids, Iowa 52407

Mr. Thomas M. Gillespie
Legal Intern
P. O. Box 4710
226 Federal Building
Cedar Rapids, Iowa 52407

Re: United States v. Robert A. Sack,
Civil No. C80-2009

Gentlemen:

In telephone conversation with Mr. Teig on March 11, 1980, we indicated that it would be our recommendation to our client, Mr. Sack, to accept in principal your proposed settlement with amendment of the Press Release to issue from your office. We further indicated to Mr. Teig that we would be visiting with Mr. Sack on the evening of March 11, 1980, and that in the event this matter could be resolved, it would have to be done without delay.

As you know, Manchester is equally distant from Cedar Rapids and Dubuque. The Cedar Rapids Gazette picked up the story on the filing of this lawsuit as did the Dubuque Telegraph Herald. Both papers are papers of wide circulation in the Manchester, Iowa area and, in fact, are distributed in substantial volume through Mr. Sack's store. Additionally, the Oelwein radio station broadcasted the news of the filing on at least six different occasions. This publicity has been extremely hard on the Sacks, particularly their children. Because of all the publicity that this matter has been given in the Manchester community we believe it imperative and Mr. Sack agrees that any publicity that you feel must issue from your office with respect to the settlement of this matter issue at once. They do not want

Page Two

March 12, 1980

this matter to recede into the minds of their customers and friends only to be painfully brought out again weeks or months later. We are, accordingly, proposing to settle this entire matter by this correspondence and enclosures and your release of the PRESS RELEASE enclosed immediately upon your satisfaction as to the settlement of this matter.

To facilitate settlement, we are enclosing here-with the following:

1. a check made payable to the United States District Attorney in the amount of \$75.00 for the costs of this suit (\$60.00 filing fee plus \$15.00 marshall's fee);
2. check for \$2,011.39;
3. a PRESS RELEASE as drafted by this office from your original draft;
4. DISMISSAL WITH PREJUDICE.

Because of the time delay that would be necessarily attendant preparation of a settlement agreement and the securing of its execution by Mr. Sack and the United States of America, we propose to treat this correspondence as an embodiment of the terms of our settlement and to such end are enclosing a copy for your approval by execution and return. The terms of the settlement proposed for your acceptance are:

1. Mr. Sack's payment of \$2,011.12 (\$11.12 being the total amount of the claimed overcharges);
2. Mr. Sack's payment of the costs of suit, which costs are in the amount of \$90.00;
3. The United States' dismissal with prejudice of the suit;
4. ~~Your agreement not to proceed criminally as to the subject matter or factual averments of the civil complaint;~~
5. Release to the press of the enclosed PRESS RELEASE.

March 12, 1980

The settlement herewith proposed as outlined in the foregoing paragraph is identical to that proposed by you with the exception of the urgency attached to immediate issuance of the PRESS RELEASE and the change in text of the release. We have explained our reasons for wanting this entire matter expedited. With respect to the other change, that in the text of the PRESS RELEASE, the release contains the factual information in your release as originally drafted but is regarded by us as being an improvement for the following reasons:

1. It indicates that the suit was filed in Federal Court in Cedar Rapids, Iowa which would not be known to a layman by mere indication that it was filed in the District Court for the Northern District of Iowa;
2. It makes crystal clear that the case involves overbilling rather than erroneously filling a prescription;
3. It indicates that substitutions of generic equivalents are lawful under Iowa law unless the prescribing physician specifically states otherwise (See Section 155.37 Code of Iowa);
4. It makes clear that the dismissal is without a finding of a violation.

We would not be at all displeased if you elected not to release any information to the press as to this settlement in light of the attention it has already been given by the press and the adverse effect it has had on the Sack family and wish to advise that you need not feel compelled to issue any press release because of the terms of the settlement as recited above. If, however, a press release is to issue we believe that our redraft of your press release should issue rather than the press release as originally drafted by you and have, accordingly, made issuance of the within release part of our proposed settlement.

If this matter can be resolved on the basis outlined in this correspondence you are, accordingly, authorized to file the within Dismissal with Prejudice, negotiate the within drafts and to release the within PRESS RELEASE in its

Page Four

March 12, 1980

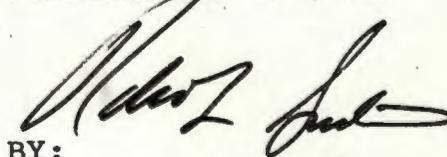
present form. Further, we would expect that you would execute the copy of this correspondence approving the settlement outlined herein and returning it to the undersigned. Mr. Teig indicated that he would be in Des Moines for the balance of the week but that Mr. Gillespie could attend to this matter, we assume working in concert with Mr. Teig over the telephone or otherwise.

We do not wish to be interpreted as dictating the terms of this settlement but, rather, as refining it. We found Mr. Sack to be most cooperative throughout this matter and remorseful, to say the least. Further, we believe that our draft of the press release, though at slight variance with yours, will give you all the deterrent effect that you need and, in fact, believe that the stories that have already issued accomplish that. Upon receipt of this correspondence and determination of acceptability of the settlement proposed, we would appreciate your immediate attention to effecting the settlement including release of the PRESS RELEASE, if thought necessary. Further, we would appreciate your telephone call in advance of your return of the copy of this correspondence so that we may be assured that this matter is being attended to at once and so that we can brace our clients for a second and hopefully final wave of adverse publicity.

Thanking you and with kindest regards, we are,

Very truly yours,

FUERSTE, CAREW, COYLE,
JUERGENS & SUDMEIER



BY:

ROBERT L. SUDMEIER

RLS:nae

Enclosures

Settlement approved:

FOR JAMES H. REYNOLDS
UNITED STATES DISTRICT ATTORNEY

RECEIVED
MAR 26 1960
MEDICAL SERVICES SECTION

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

FILED
CEDAR RAPIDS, IOWA
MARCH 24 1960
U.S. DISTRICT COURT OF IOWA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT A. SACK, d/b/a)
 Widner Pharmacy, Manchester,)
 Iowa)
)
 Defendant.)

By: _____
DEPUTY

Civil No. C 80-2009

COMPLAINT

COMES NOW, the United States of America by its Attorney,
James H. Reynolds, and for its cause of action states as follows:

CLAIM 1

1. This is a civil action under the False Claims Act, 31 U.S.C. §231.
2. This Court has jurisdiction pursuant to 31 U.S.C. §232 and 28 U.S.C. §1345.
3. At all times pertinent hereto, the defendant, Robert A. Sack, was, and now is, a registered pharmacist doing business as the Widner Pharmacy in Manchester, Iowa, in the Northern District of Iowa.
4. Pursuant to Subchapter XIX of the Social Security Act, 42 U.S.C. §1396, et. seq. ("The Act") the United States Department of Health, Education and Welfare shares with each state with qualifying plans the cost of medical services to families with dependent children and to aged, blind, or permanently and totally disabled persons whose income and resources are insufficient to meet the costs of necessary medical services. This program is commonly known as "Medicaid."
5. Pursuant to the Act, each state must promulgate a plan for Medicaid assistance. The State of Iowa has such a plan which is administered by the Iowa Department of Social Services.

6. Medicaid suppliers submit claims to Blue Cross/Blue Shield, as agent for the Iowa Department of Social Services, on a monthly basis and in return are paid on a monthly basis.

7. Claims for the Federal share of the program are submitted quarterly to the Department of Health, Education & Welfare. The State of Iowa was reimbursed for 51.96 per cent of the cost of Medicaid during 1978.

8. Robert A. Sack provided prescription medicines to recipients of Medicaid, submitted claims for payment, and was reimbursed pursuant to the Act.

9. Among the claims submitted by Robert Sack were fillings of prescriptions for Hydrodiuril or "name brand" drug for the use of Jerome Ernster.

10. These prescriptions were in fact filled with its lower priced generic equivalent, Hydrochlorothiazide.

11. Medicaid regulations allowed a pharmacist to charge the wholesale cost of the drug plus a fee of \$2.55 for each filling of the prescription during the period July 1977 to July 1, 1979.

12. The Hydrochlorothiazide used by the defendant in filling the prescriptions came from H. L. Moore Drug Exchange, Inc. The wholesale cost of that item was \$.0054 per tablet at that time. The maximum fee allowable for the 30 tablet filling would be \$.16 plus \$2.55 or \$2.71.

13. On February 17, 1978, the defendant filled prescription No. 230787 and billed the State of Iowa on February 28, 1978, for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

14. As a consequence of these acts, the defendant has defrauded the United States in the amount of \$.72.

15. As a consequence of these acts, the defendant has made or caused to be made, or presented or caused to be presented for payment or approval, a claim upon or against the United States knowing such claim to be false, fictitious, or fraudulent, in violation of 31 U.S.C. §231.

16. That for the purpose of obtaining or aiding to obtain payment or approval of a claim upon or against the United States, the defendant made or used, or caused to be made or used a false document which the defendant knew to contain a fictitious or fraudulent statement or entry; in violation of 31 U.S.C. §231.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 2

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On May 23, 1978, the defendant filled prescription No. 237193 and billed the State of Iowa on June 2, 1978 for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

3. The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 3

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On June 20, 1978, the defendant filled prescription No. 238854 and billed the State of Iowa on July 1, 1978 for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

3. The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just:

CLAIM 4

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On August 18, 1978, the defendant refilled prescription No. 230787 and billed the State of Iowa on September 6, 1978 for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

3. The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 5

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On September 19, 1978, the defendant refilled prescription No. 230787 and billed the State of Iowa on October 4, 1978, for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

3. The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 6

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On October 20, 1978, the defendant refilled prescription No. 230787 and billed the State of Iowa on November 11, 1978 for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

3. The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 7

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On November 17, 1978, the defendant refilled prescription No. 230787 and billed the State of Iowa on December 8, 1978 for \$4.10 thereby defrauding Iowa Medicaid of \$1.39.

The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 8

1. The allegations contained in paragraphs 1 through 12 of Claim 1 are realleged herein as though fully set forth.

2. On December 15, 1978, the defendant refilled prescription No. 230787 and billed the State of Iowa on January 5, 1979 for \$4.10 thereby defrauding Iowa Medicaid of \$1.39

3. The allegations contained in paragraphs 14, 15 and 16 of Claim 1 are realleged herein as though fully set forth.

WHEREFORE, the Plaintiff prays for judgment against the defendant for damages in the amount of \$1.44, forfeiture of \$2,000.00 and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

CLAIM 9

1. The allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 11 of Claim 1 are realleged herein as though fully set forth.

2. The defendant made a practice of supplying various nursing home patients covered under the Act with the generic equivalent of the "name brand" drugs called for on their prescriptions and billing the Iowa Department of Social Service for the "brand name" drug.

3. Thus by his actions, the defendant has defrauded Iowa Medicaid and the United States of an indeterminate amount of money.

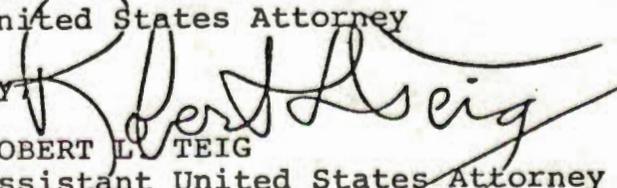
4. Thus by his actions, the defendant has made or caused to be made, or presented or caused to be presented for payment or approval, claims upon or against the United States knowing such claims to be false, fictitious, or fraudulent; in violation of 31 U.S.C. §231.

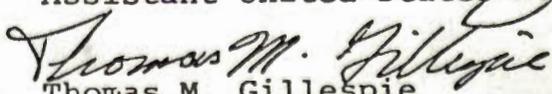
5. That for the purpose of obtaining or aiding to obtain payment or approval of a claim upon or against the United States, the defendant made or used, or caused to be made or used, false documents which the defendant knew to contain fictitious or fraudulent statements or entries; in violation of 31 U.S.C. §231.

WHEREFORE, the Plaintiff prays for judgment against the defendant for double the amount of damages, such forfeitures as are allowable, and costs of suit as authorized by 31 U.S.C. §231; and such other relief as may be just.

JAMES H. REYNOLDS
United States Attorney

By


ROBERT L. TEIG
Assistant United States Attorney


Thomas M. Gillespie
Legal Intern