

BEFORE THE INDIANA STATE
BOARD OF PHARMACY
CAUSE NO. 2001 IBP 002

STATE OF INDIANA,

Petitioner,

v.

CVS/PHARMACY #6252,
Hook SuperRx, Inc.
License Number 60004524A,

Respondent.

FILED

MAY 29 2003

HEALTH PROFESSIONS
BUREAU

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Indiana State Board of Pharmacy ("Board") held an administrative hearing beginning on December 9, 2002 and concluding on May 12, 2003, in Room A of the Conference Center of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, concerning the request by CVS/Pharmacy #6252 ("Respondent"), to withdraw the probation on its license.

Respondent appeared by corporate representatives and by counsel, John Chavis of Locke Reynolds LLP of Indianapolis.

The Board, after considering the evidence presented and taking official notice of its file in this matter, issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent operates a pharmacy at 4028 N. First Street, Evansville, Indiana 47710. That pharmacy has license number 6252.
2. The Health Professions Bureau sent and Respondent received timely and proper notice of the date, time and location of this hearing pursuant to Indiana Code §4-21.5-3-20.
3. The Board is empowered to hold this administrative hearing pursuant to the authority of Indiana Code §25-1-9-9 and Indiana Code §4-21.5-3.

4. The Board placed the license for CVS/Pharmacy #6252 on probation in 2001 because there was a failure in the air conditioning system at the store that summer. As a result of that failure it became inordinately hot at the facility and the quality of the drugs may have been compromised.
5. In lieu of a hearing, CVS entered into an agreement which was endorsed by the Board. CVS agreed to deal with the drugs that might have been damaged and also agreed that its license be placed on probation so that the Board might monitor the progress of CVS in dealing with the problems at CVS/Pharmacy #6252.
6. One of the terms of probation on the license was that CVS submit quarterly reports "concerning their policies and procedures, what they have done to implement those policies and procedures, and a copy of an action plan for dealing with future emergencies concerning heating and cooling at its stores."
7. The quarterly reports referenced above were not submitted in a timely manner but CVS has remedied that situation to the satisfaction of the Board. In addition, CVS has also complied with the other terms of its agreement. The pharmacist in charge at that store testified at the hearing on withdrawal of probation. He maintained that because of changes in corporate policy he will be better able to deal with an emergency similar to the one that resulted from the failure of the air conditioning system.
8. The deficiencies that led to the discipline on the license of CVS Pharmacy #6252 involved inadequate air conditioning at the store which might have damaged drugs stored in that facility. Respondent's compliance with the probation constitutes evidence that the deficiency has been cured.

CONCLUSIONS OF LAW

1. "The board may withdraw or modify the probation ... if it finds, after a hearing, that the deficiency that required disciplinary action has been remedied, or that changed circumstances warrant a modification of the order." IC 25-1-9-9(b).

2. Respondent's compliance with the probation constitutes evidence that the deficiency that required disciplinary action has been remedied.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board **WITHDRAWS** the probation on Respondent's license.

SO ORDERED this 24 of May, 2003.

INDIANA STATE BOARD OF PHARMACY

By: Lisa Hayes
Lisa Hayes
Executive Director
Health Professions Bureau

Copies to:

John Chavis
LOCKE REYNOLDS LLP
201 North Illinois Street
Suite 1000
P.O. Box 44961
Indianapolis, Indiana 46244-0961
SENT CERTIFIED MAIL NO. _____
RETURN RECEIPT REQUESTED

Joshua Bolin
Executive Director
Indiana Board of Pharmacy
Indiana Government Center South
402 West Washington Street, Room 041
Indianapolis, Indiana 46204

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