

BEFORE THE INDIANA STATE  
BOARD OF PHARMACY  
CAUSE NUMBER: 2006 IBP 0013

STATE OF INDIANA,

Petitioner,

v.

GILBERT CHAVARRIA, R.PH.  
LICENSE NUMBER: 26019304,

Respondent.



**COMPLAINT**

The State of Indiana, by counsel, Deputy Attorney General, Elizabeth E. Kiefner, on behalf of the Office of the Attorney General ("Petitioner"), and pursuant to Indiana Code § 25-1-7-7 et seq., Ind. Code §25-1-5-3, Ind. Code §25-26-13-4 et seq., the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 et seq. and Ind. Code § 25-1-9-1 et seq. files its Complaint against the Indiana State Board of Pharmacy's license of Gilbert Chavarria, R.Ph. ("Respondent"), and in support alleges and states:

**FACTS**

1. Respondent's address on file with the Board is 6361 Eastern Range Road, Indianapolis, IN, 46234 and he is a licensed Pharmacist in the State of Indiana holding license number 26019304.

2. On or about May 19, 1997, Respondent was hired by CVS as a pharmacist.

3. On or about July 7, 2005 a confidential informant advised CVS that the Respondent was writing and filling fraudulent prescriptions for pharmacy technicians including

but not limited to Pharmacy Technician Eunice Little ("Little"), Pharmacy Technician Jacy Deckard ("Deckard"), and Pharmacy Technician Nancy Flagle ("Flagle").

4. On or about July 7, 2005 CVS Investigator Dann Cooper conducted an in person interview with Pharmacy Technician Little. Little admitted that the Respondent wrote and filled four (4) prescriptions for her including Amoxicillin, Ery-tab, and Ibuprofen.

5. On or about July 7, 2005 CVS Investigator Dann Cooper conducted an in person interview with Pharmacy Technician Flagle. Flagle admitted that the Respondent medicated her with Compazine, Ibuprofen, and Duratuss without valid prescriptions. Flagle did not pay for these medications. Flagle further admitted that the Respondent wrote and filled a prescription for her dog. Flagle paid for the prescription for her dog. Flagle further admitted that she had seen the Respondent exit the CVS store through the front door and then enter the drive-thru lane to remove outdated controlled substances in boxes.

6. On or about July 11, 2005, CVS Investigator Dann Cooper conducted an in person interview with Pharmacy Technician Deckard. Deckard admitted that the Respondent wrote and filled six (6) prescriptions for her including Amoxicillin, Tannic, Guaifenicen, Lidocaine, Septra DS, and Pyridium. The Respondent also medicated her with Ibuprofen on approximately two occasions without valid prescriptions.

7. On or about August 4, 2005, the Respondent, through his counsel Kevin McShane, admitted to the following:

(A) Respondent admitted that he wrote four (4) prescriptions for Pharmacy Technician Little using Dr. Theodora Jenkins name without her knowledge, permission, or consent;

(B) Respondent admitted that he filled the above-mentioned prescriptions for Pharmacy Technician Little;

(C) Respondent admitted that he wrote himself a prescription for thirty (30) tablets of 200 mg Benzonatate using Dr. Theodora Jenkins name without her knowledge, permission or consent and filled said prescription;

(D) Respondent admitted that he wrote and filled a prescription for Pharmacy Technician Flagle for her dog;

(E) Respondent admitted that he wrote and filled prescriptions for Pharmacy Technician Deckard for "antibiotics and an analgesic" without the knowledge, permission, or consent of any physician.

8. On or about June 13, 2005, Respondent was terminated from his employment as a CVS Pharmacist for "gross violation".

#### **COUNT I**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Amoxicillin for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent.

#### **COUNT II**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Ery-tab for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent.

#### **COUNT III**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or

activities by writing and filling a prescription for Ibuprofen for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent.

#### **COUNT IV**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Pharmacy Technician Flagle's dog without a valid prescription.

#### **COUNT V**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by medicating Pharmacy Technician Flagle with Compazine, Ibuprofen, and Duratuss without a valid prescription.

#### **COUNT VI**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by medicating Pharmacy Technician Deckard with Ibuprofen without a valid prescription.

#### **COUNT VII**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Amoxicillin for Pharmacy Technician Deckard.

### **COUNT VIII**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Tannic for Pharmacy Technician Deckard.

### **COUNT IX**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Guaifenen for Pharmacy Technician Deckard.

### **COUNT X**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Lidocaine for Pharmacy Technician Deckard.

### **COUNT XI**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Septra DS for Pharmacy Technician Deckard.

### **COUNT XII**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Pyridium for Pharmacy Technician Deckard.

### **COUNT XIII**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(1)(B) in that the Respondent engaged in fraud or material deception in the course of professional services or activities by writing and filling a prescription for Benzonatate for himself.

**COUNT XIV**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(4)(A)(i) in that the Respondent has continued to practice although unfit due to professional incompetence that may include the undertaking of professional activities that the practitioner is not qualified by training or experience to undertake as evidenced by the Respondent's writing and filling prescriptions for himself and Pharmacy Technicians Little, Deckard, and Flagle.

**COUNT XV**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(3) knowing violation of a state statute or rule, federal statute or rule, or regulation regulating the profession in question to wit: 856 IAC 1-20-1(10) in that a pharmacist shall not "practice pharmacy in such a manner as to amount to incompetency or negligence in the sale or dispensation of legend drugs." as evidenced by his writing and filling prescriptions for himself and Pharmacy Technicians Little, Deckard, and Flagle.

**COUNT XVI**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4 (a)(8) in that the Respondent diverted a legend drug or any other drug or device issued under a drug order for another person as evidenced by the Respondent's diversion of various substances for Pharmacy Technicians Little, Deckard, and Flagle.

**COUNT XVII**

Respondent's conduct constitutes a violation of Indiana Code § 25-1-9-4(a)(4)(B) in that the Respondent has continued to practice although unfit due to failure to keep abreast of current theory or practice as evidenced by the diversion of various substances for both himself and for Pharmacy Technicians Little, Deckard, and Flagle.

**WHEREFORE**, Petitioner demands an order against the Respondent, that:

1. Imposes the appropriate disciplinary sanction;
2. Directs Respondent to immediately pay all the cost incurred in the prosecution of this case; and;
3. Provides any other relief the Board deems just and proper.

Respectfully submitted,

STEVE CARTER  
Attorney General of Indiana

By:   
Elizabeth E. Kiefner  
Deputy Attorney General  
Attorney Number: 24261-49

**Office of the Attorney General**  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204-2770  
(317) 234-2257

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing "Complaint" has been served upon the Respondent listed below, by United States mail, first class postage prepaid, on this 21<sup>st</sup> day of February, 2006:

Kevin McShane  
235 North Delaware  
Indianapolis, IN 46204

Gilbert Chavarria, R.Ph.  
6361 Eastern Range Road  
Indianapolis, IN 46234



Elizabeth E. Kiefner

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