

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

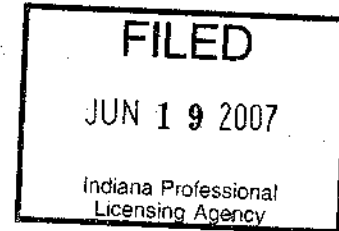
STATE OF INDIANA,

Petitioner,

v.

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

Respondent.



**FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT,**

**CONCLUSIONS OF LAW AND ORDER**

The Petitioner, the State of Indiana, by Deputy Attorney General Elizabeth E. Kiefner, Division of Consumer Protection ("Petitioner"), Respondent's counsel Kevin McShane, and the Respondent, Gilbert Chavarria, R.Ph., ("Respondent") entered into a Settlement Agreement ("Agreement") that purports to resolve all issues involved in the action by the Petitioner before the Indiana Board of Pharmacy ("Board") regarding Respondent's license, and which Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the June 11, 2007 meeting, now finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement as if fully set forth herein and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 6 in favor, 0 against and 0

abstaining with amendments to include increasing the number of continuing education credits to ten (10) hours total in the specific areas of pharmacy scope of practice and ethics and a provision that each of the Respondent's employers send a signed copy of the Final Order in this matter to the Board within seven (7) days of hiring or continued employment. The Board hereby issues the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order:

### **FINDINGS OF FACT**

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 ("Investigator 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, Investigator 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.

6. On or about July 11, 2005, Investigator 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; and

(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's employment as a CVS Pharmacist was terminated for "gross violation".

### **CONCLUSIONS OF LAW**

1. Respondent is in 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:

A. Writing and filling a prescription for Amoxicillin for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent;

B. Writing and filling a prescription for Ery-tab for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent;

C. Writing and filling a prescription for Ibuprofen for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent;

D. Writing and filling a prescription for Pharmacy Technician Flagle's dog without a valid prescription;

E. Medicating Pharmacy Technician Flagle with Compazine, Ibuprofen, and Duratuss without a valid prescription;

F. Medicating Pharmacy Technician Deckard with Ibuprofen without a valid prescription;

G. Writing and filling a prescription for Amoxicillin for Pharmacy Technician Deckard;

H. Writing and filling a prescription for Tannic for Pharmacy Technician Deckard;

I. Writing and filling a prescription for Guaifenen for Pharmacy Technician Deckard;

J. Writing and filling a prescription for Lidocaine for Pharmacy Technician Deckard;

K. Writing and filling a prescription for Septra DS for Pharmacy Technician Deckard;

L. Writing and filling a prescription for Pyridium for Pharmacy Technician Deckard; and

M. Writing and filling a prescription for Benzonatate for himself.

2. Respondent is in 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.

3. Respondent is in violation of Indiana Code § 25-1-9-4(a)(3), in that, the Respondent knowingly violated 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 incompetence 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.

4. Respondent is in 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.

5. Respondent is in 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.

#### **ULTIMATE FINDINGS OF FACT**

Respondent's violation is cause for disciplinary sanctions that may be imposed singly or in combination such as censure, a letter of reprimand, probation, suspension, or revocation and a fine up to the amount of \$1,000 per violation as detailed at Ind. Code §25-1-9-9.

#### **ORDER**

1. The Board has jurisdiction over the Respondent and the subject matter in this disciplinary action commenced on February 21, 2006.

2. The parties executed this Agreement voluntarily.

3. Respondent and Petitioner voluntarily waived their rights to a public hearing on the Complaint and all other proceedings in this action to which either party may be entitled by law, including judicial appeal or review.

4. Petitioner agrees that the terms of this Agreement will resolve any and all outstanding claims or allegations or potential claims or allegations relating to disciplinary action against Respondent's license for the period between November 2005 and the date of the Final Order.

5. Respondent fully understands its terms and that, subject to a final order issued by the Board, this Agreement is a final disposition of all matters and not subject to further review.

6. Respondent shall abide by all terms of the Settlement Agreement, which is attached hereto and incorporated herein as Exhibit A and the two amendments made by the Board as indicated above and approved by the parties.

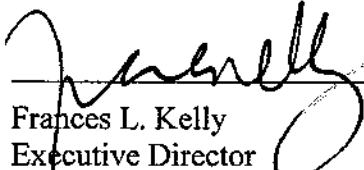
7. Respondent further understands that failure to comply with the Board's order may result in the State requesting an emergency suspension of Respondent's license, as well as possible reinstatement of the initial action giving rise to this resolution, an Order to Show Cause as may be issued by the Board, or a new cause of action being filed pursuant to Indiana Code § 25-1-9-4(a)(10), any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

8. The parties agree to the continuing jurisdiction of the Board

So ORDERED, ADJUDGED, and DECREED, this 19 day of June,

2007.

INDIANA BOARD OF PHARMACY

  
\_\_\_\_\_  
Frances L. Kelly  
Executive Director  
Indiana Professional Licensing Agency

**Copies To:**

Kevin McShane  
Counsel for Respondent  
235 N. Delaware  
Indianapolis, IN 46204

Elizabeth E. Kiefner, Deputy Attorney General  
Office of the Attorney General  
302 West Washington Street, Fifth Floor  
Indianapolis, Indiana 46204-2770

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

VIA CERTIFIED MAIL NO. 7005 3110 0002 4931 1678

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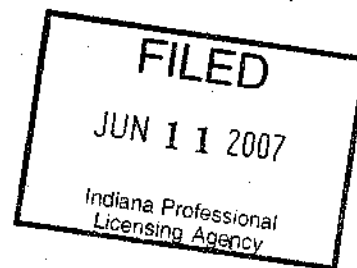
STATE OF INDIANA,

Petitioner,

v.

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

Respondent.



**PROPOSED SETTLEMENT AGREEMENT**

The Petitioner, the State of Indiana, by Elizabeth E. Kiefner, Deputy Attorney General, Division of Consumer Protection ("Petitioner"), and the Respondent, Gilbert Chavarria, ("Respondent"), by counsel, Kevin McShane, Esq., hereby execute this agreement as a disposition of the disciplinary complaint filed by the Petitioner on February 21, 2006. This agreement is subject to the review and approval of the Indiana State Board of Pharmacy ("Board") pursuant to Indiana Code § 25-23-1-7 *et seq.*, the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 *et seq.* and consistent with Ind. Code § 4-21.5-2-2.

**STIPULATED 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.

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, Guaifenen, 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;

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(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".

#### **STIPULATED CONCLUSIONS OF LAW**

1. Respondent is in 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:

A. Writing and filling a prescription for Amoxicillin for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent;

- B. Writing and filling a prescription for Ery-tab for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent;
- C. Writing and filling a prescription for Ibuprofen for Pharmacy Technician Little and using Dr. Theodora Jenkins name without her knowledge, permission, or consent;
- D. Writing and filling a prescription for Pharmacy Technician Flagle's dog without a valid prescription;
- E. Medicating Pharmacy Technician Flagle with Compazine, Ibuprofen, and Duratuss without a valid prescription;
- F. Medicating Pharmacy Technician Deckard with Ibuprofen without a valid prescription;
- G. Writing and filling a prescription for Amoxicillin for Pharmacy Technician Deckard;
- H. Writing and filling a prescription for Tannic for Pharmacy Technician Deckard;
- I. Writing and filling a prescription for Guaifenicen for Pharmacy Technician Deckard;
- J. Writing and filling a prescription for Lidocaine for Pharmacy Technician Deckard;
- K. Writing and filling a prescription for Septra DS for Pharmacy Technician Deckard;

L. Writing and filling a prescription for Pyridium for Pharmacy Technician Deckard;

M. Writing and filling a prescription for Benzonatate for himself.

2. Respondent is in 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.

3. Respondent is in 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 incompetence 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.

4. Respondent is in 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.

5. Respondent is in 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.

Whereas, the Respondent and Petitioner wish to resolve this matter prior to a hearing and have reached a resolution:

It is now therefore **AGREED** by the Respondent and the Petitioner as follows:

1. The Board has ongoing jurisdiction over the Respondent and the subject matter of this disciplinary action.
2. This agreement is executed voluntarily by both parties.
3. The Respondent and the Petitioner voluntarily waive their rights to a public hearing on the Complaint and all other proceedings in this action to which either party may be entitled by law, including judicial appeal or review.
4. Respondent has carefully read and examined this agreement and fully understands its terms and that, subject to a final order issued by the Board, this Agreement is a final disposition of all matters and not subject to further review.
5. Respondent's Indiana Pharmacist license shall be placed on a **THREE (3) MONTH SUSPENSION**, beginning from the date of the Final Order and automatically ending three (3) months from the date of the Final Order.
6. Following the term of Suspension, Respondent's Pharmacist license shall be placed on **INDEFINITE PROBATION**. Respondent may not request withdrawal of his probation for a period of five (5) years and is subject to the following terms and conditions:
  - A. Respondent shall keep the Board apprised of his current residential address and telephone number; place of employment, employer phone number, and the name of his supervisor; and his work schedule including number of hours worked per week.

B. Respondent shall cause his employer to submit quarterly reports to the Board indicating his professional competence, sense of responsibility, and work habits. Quarterly reports shall be submitted every ninety days from the date of the beginning of the probationary period. Respondent understands that it is his responsibility to ensure that the Board received employer reports in a timely manner.

C. Respondent shall not serve as a qualifying pharmacist for the duration of his probation.

D. Respondent shall personally appear before the Board on a quarterly basis beginning at the first scheduled Board meeting following the Respondent's completion of his suspension.

E. Respondent shall complete six <sup>/a</sup>(6) contact hours of continuing education on laws and ethics governing the profession of pharmacy services.

Proof of completion to be submitted to the Board within ninety (90) days of the Final Order.

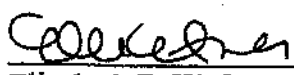
F. Respondent shall complete ten (10) hours of community service, to be completed within six (6) months of the date of the Final Order. Community service activities must be approved by the Board.

7. The Petitioner agrees that the terms of this Agreement will resolve any and all outstanding claims or allegations or potential claims or allegations relating to disciplinary action against Respondent's license arising out of facts and circumstances surrounding the Complaint filed on February 21, 2006.

8. Respondent further understands that failure to comply with the Board's order may result in the State requesting an emergency suspension of Respondent's license, as well as possible reinstatement of the initial action giving rise to this resolution, an Order to Show Cause as may be issued by the Board, or a new cause of action being filed pursuant to Indiana Code § 25-1-9-4(a)(10), any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

9. The parties agree to the continuing jurisdiction of the Board.

4/11/07  
DATE

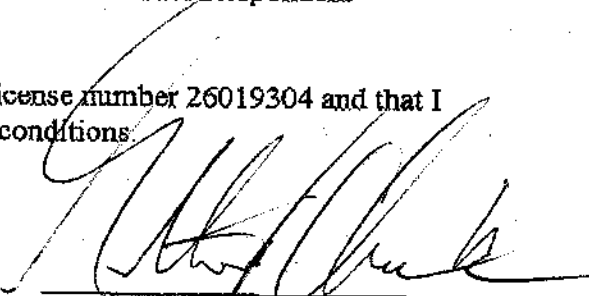
  
Elizabeth E. Kiefner  
Attorney No. 24261-49  
Deputy Attorney General

6/11/07  
DATE

  
Kevin McShane  
Attorney No. 9861-49  
Counsel for Respondent

I, Gilbert Chavarria, confirm that I hold license number 26019304 and that I understand and agree to the foregoing terms and conditions.

6/11/07  
DATE

  
Gilbert Chavarria