

INDIANA STATE BOARD
OF PHARMACY
CAUSE NO.: 95 IBP 001

STATE OF INDIANA,)
)
Petitioner,)
)
v.)
)
CARMELLA MARTIN DUNN, R.PH.,)
License Number: 26016517,)
)
Respondent.)

FILED

AUG 15 1995

**HEALTH PROFESSIONS
BUREAU**

FINDINGS OF FACT AND ORDER

The Indiana State Board of Pharmacy ("Board") held an administrative hearing on July 17, 1995, in Rooms 1 and 2 of the Conference Center of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204, concerning a disciplinary Complaint filed by the State on March 23, 1995 against the registered pharmacy license of Carmella Martin Dunn, R.Ph. ("Respondent").

The State of Indiana was represented by Amy Huffman Oliver, Deputy Attorney General. The Respondent was present and represented by Steven H. Johnsonbaugh, attorney at law in Indianapolis, Indiana.

The Board, after taking official notice of its file in this matter and considering the evidence presented, by a vote of 5 to 1, with William X. Malloy, R.Ph. abstaining, issues the following Findings of Fact:

FINDINGS OF FACT

1. The Attorney General of Indiana is empowered to bring disciplinary complaints in the name of the State of Indiana before the Indiana State Board of Pharmacy ("Board") pursuant to IC 25-1-7-1 *et seq.*
2. The Board is charged with the duty and responsibility of regulating the practice of pharmacy in the State of Indiana pursuant to IC 25-26-13-4.
3. The Board is empowered to hold this disciplinary hearing pursuant to the authority of IC 25-1-9-4 and IC 4-21.5-3 *et seq.*
4. Respondent's address is 624 South 20th Street, Terre Haute, Indiana 47803.
5. Respondent is a duly licensed registered pharmacist in the State of Indiana holding license number 26016517.

COUNT I

1. The Respondent has been employed in the Terre Haute Regional Hospital pharmacy from August 6, 1991, to the present date.
2. John Webb, director of the hospital's pharmacy and the Respondent's supervisor, testified that in approximately March and April of 1994, the pharmacy kept approximately five (5) to ten (10) grams of pure cocaine in stock in a locked schedule II cabinet for use in making tact gel. This gel is primarily used along with an anesthetic in the emergency room. He also stated that the pharmacy kept approximately four (4) c.c. of four (4) percent liquid cocaine in stock in the same cabinet.

3. Mr. Webb testified that around the end of March of 1994, that he and another pharmacist, Minh Pham, found an empty bottle of powdered cocaine in the locked cabinet and an empty liquid cocaine bottle. He testified that they marked the location and position of the bottles in the cabinet and watched closely to see if there were any changes over the next few days.

4. The following day, the empty powder bottle had been moved and was full of a white powder. The Respondent had worked the night shift immediately preceeding the morning Mr. Webb found the bottle refilled.

5. Mr. Webb called the Respondent into his office to talk about the incident. Mr. Webb testified that he stated to the Respondent that he "knew what was going on." The Respondent began to cry and admitted to an addiction to cocaine. Mr. Webb testified that he believed that the Respondent admitted during that conversation to diverting the cocaine for her own use and to putting ascorbic acid in the empty cocaine bottle. However, Mr. Webb additionally stated that he did not clearly remember the exact words used during the conversation and he is not certain that she actually stated that she diverted the cocaine from the pharmacy.

6. Mr. Webb testified that he then took the Respondent to the Human Resources Department where a leave of absence for her rehabilitation was arranged.

7. Mr. Webb testified since her return to work in June of 1994, the Respondent has worked at the pharmacy under conditions imposed by the hospital

administration. He stated that she does not have access to the schedule II cabinet key, that she must call him to find out where it is located, and that she must have someone accompany her while she is in the cabinet.

8. Mr. Webb testified that the Respondent is one of his best employees and that there have been no problems with her work performance or other missing medication since she completed her rehabilitation. He has given the Respondent excellent performance evaluations over the past year.

9. Mr. Webb also testified that the pharmacy no longer keeps pure cocaine powder in stock.

10. The Respondent testified that she was actively addicted to cocaine from April of 1993, through April of 1994. While she was using cocaine, she testified that she paid \$50.00 per week for approximately one half gram of cocaine. She stated that she has probably had a problem with alcohol since she was in college.

11. The Respondent testified that she always obtained cocaine "off the street" because she did not want to jeopardize her job by diverting cocaine from her workplace. She also testified that she did not use cocaine at work.

12. The Respondent testified that Mr. Webb misunderstood her confession to him in early April of 1994. She stated that she admitted to him that she was addicted to cocaine, but that she did not admit to any diversion of cocaine or replacement of cocaine with a look-alike substance.

13. The Respondent testified that on the night shift in question, there were only two (2) hours when she was the only pharmacist on duty and that six (6) to seven (7) other people had keys to the cabinet.

14. The Respondent testified that she attempted to stay clean on her own several times, but failed. She testified that since April of 1994, she has been drug-free, with the exception of one (1) relapse into the use of cocaine and alcohol in February of 1995. She admitted to the relapse and that it was not discovered during a drug screen. She testified that she went to her counselor the same day of the relapse and that she immediately addressed the issues which led to her use.

15. The Respondent testified that she completed two (2) and one half days of detoxification at the Hamilton Center in Terre Haute, Indiana, in April of 1994, and that she completed fifteen (15) days of inpatient treatment at Fairbanks Hospital in Indianapolis, Indiana, after that. She testified that she has also completed an Aftercare program and sought individual counseling at the Hamilton Center approximately one (1) time per week.

16. The Respondent testified that she attends three (3) to four (4) AA/NA/CA meetings per week and that she talks frequently with her sponsor. She also started a book/study program for others with addictions and she pays attention to her possible relapse triggers, which include contact with certain members of her family.

17. The Respondent presented evidence of negative urine screens ordered primarily by her counselor and the Indiana Pharmacist's Association PRN

Committee. There are no urine drug screens between November of 1994 and June of 1995, however, the Respondent testified that she remembered submitting to one in late April or early May of 1995, of which she did not have a copy.

18. The Respondent testified that she has been under a contract with the Indiana Pharmacist's Association PRN program since June of 1994, and that she renewed the contract on July 17, 1995, for an additional year of monitoring.

19. The Respondent testified that she is still under restrictions of her practice at the hospital.

20. The Respondent testified that felony criminal charges are pending against her in the Vigo County Superior Court regarding the alleged diversion incident at the hospital.

21. The Board finds that the above conduct constitutes a violation of the following state statutes and regulations: IC 25-1-9-4(a)(4)(D), to-wit: the practitioner has continued to practice although the practitioner has become unfit to practice due to addiction to, abuse of, or severe dependence upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely.

22. The Board finds that the State has not met its burden of proof on the issue of diversion of cocaine from the pharmacy.

23. The Board finds the imposition of disciplinary sanctions to be appropriate based upon the Respondent's addiction to cocaine and alcohol and length of recovery time.

ORDER

Based upon the above Findings of Fact, the Board issues the following Order:

1. The Respondent's license shall be placed on INDEFINITE PROBATION. The Respondent may apply for termination of this Order after a period of five (5) years.

2. The Respondent's license shall be governed by the following TERMS AND CONDITIONS:

a.) The Respondent shall keep the Board informed of her residential address and telephone number at all times.

b.) The Respondent shall keep the Board informed of her employer's address, supervisor's name and telephone number at all times. The Respondent shall immediately notify the Board of any change in her job status or change in employment.

c.) The Respondent shall give each and every employer and potential employer a copy of this Order. The Respondent shall cause any employer to verify in writing to the Board that it has received and read this Order.

d.) The Respondent shall cause any pharmacy employer to submit written supervisor reports to the Board describing the Respondent's work performance, attendance and ability to practice pharmacy safely. Such reports shall be submitted to the Board monthly for the first six (6) months of this probationary order and quarterly thereafter.

e.) The Respondent shall not handle, possess, or have access to any controlled substances and she shall not work as a pharmacist without another pharmacist on site.

f.) The Respondent shall not be a qualifying pharmacist and shall not have any supervisory responsibilities.

g.) The Respondent shall not work more than forty-five (45) hours per week as a pharmacist.

h.) The Respondent shall maintain a contract with the PRN Committee of the Indiana Pharmacist's Association during the period of this probationary order.

i.) The Respondent shall notify the Board in writing of any relapse within forty-eight (48) hours. If the Respondent fails to comply with this paragraph, the Board may immediately place her license on emergency suspension without notice to her.

j.) The Respondent shall attend at least three (3) AA/NA/CA or health professional support group meetings per week.

k.) The Respondent shall submit quarterly reports to the Board verifying her attendance at the meetings referenced in paragraph (j) of this Order.

l.) The Respondent shall attend four (4) individual counseling sessions per month. If her counselor believes that counseling is no longer therapeutically necessary, he or she must so inform the Board in a timely manner.

m.) The Respondent shall submit to monthly, random, urine drug and alcohol screens at her own expense within eight (8) hours of notification of a

request by the Board, her counselor, her PRN representative, her employer or her primary care physician. Results of each screen shall be submitted directly to the Board.

n.) The Respondent shall provide a standing physician's order to the Board within seventy-two (72) hours of receipt of this order authorizing the urine screens referred to in paragraph (m).

o.) The Respondent shall cause any treating physician to provide the Board with copies of all prescriptions written for her.

p.) The Respondent shall appear before the Board on a monthly basis for the first six (6) months of this Order, on a quarterly basis for the next two (2) and one half years, and semi-annually for the last two (2) years of this probationary order.

q.) The Respondent shall notify the Board in writing within seventy-two (72) hours of any resolution of the criminal matter pending in Vigo County Superior Court.

r.) The Respondent shall pay the costs in this matter in the amount of \$228.18 to be forwarded to the Board at the Health Professions Bureau, Room 041, 402 West Washington Street, Indianapolis, Indiana 46204.

SO ORDERED this 15th day of August, 1995, *nunc pro tunc* to July 17,
1995.

INDIANA STATE BOARD OF PHARMACY

By: Laura B. Langford
Laura B. Langford
Executive Director
Health Professions Bureau

cc:

Carmella Martin Dunn, R.Ph.
624 South 20th Street
Terre Haute, Indiana 47803

SENT CERTIFIED MAIL NO. 2 360 990 967
RETURN RECEIPT REQUESTED

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