

INDIANA STATE BOARD
OF PHARMACY
CAUSE NO. 95 IBP 001

STATE OF INDIANA,

Petitioner,

v.

CARMELLA M. DUNN, R.PH.,
License No. 26016517,

Respondent.

FILED

SEP 8 - 1995

**HEALTH PROFESSIONS
BUREAU**

MOTION TO STAY AND MODIFY ORDER

Carmella M. Dunn, by counsel, respectfully moves the Board to modify the terms of the Order issued on August 15, 1995, and to Stay said Order pending a decision on the motion to modify. In support hereof, Respondent would show the Board as follows:

1. A hearing was held in this matter on July 17, 1995.
2. Following the hearing, the Board voted to place Respondent's license on indefinite probation and imposed certain terms and conditions on Respondent's practice of pharmacy.
3. Subparagraph 2 (e) of the Board's Order provides:

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.

4. The language of subparagraph 2 (e) is inconsistent with the evidence and the Board's Findings and deliberations and makes it impossible for Respondent to work as a pharmacist in any pharmacy under any circumstances. Thus, subparagraph 2 (e) amounts to a de facto suspension of Respondent's pharmacy license even though the Board clearly and unmistakably intended to design an Order that would permit Respondent to maintain her long-standing position with the Terre Haute

Regional Hospital Pharmacy.

5. Respondent believes that the language that appears in subparagraph 2 (e) of her Order must be the result of a misunderstanding or mistake and that it does not actually express the intent of the Board.

6. John Webb, Director of the Terre Haute Regional Hospital Pharmacy where Respondent is employed, testified to the following pertinent facts:

a. Respondent returned to work in June of 1994 following a leave of absence to obtain treatment;

b. That, upon her return, the hospital imposed certain conditions on Respondent's work as a pharmacist that limited Respondent's access to the cabinet in which schedule II controlled substances were stored. The specific conditions changed depending on whether Respondent was working alone or with other pharmacists. Thus, when Respondent was working a shift with another pharmacist, she was required to be accompanied by another pharmacist anytime she obtained access to the schedule II cabinet. When Respondent worked evenings and was the only pharmacist on duty, the key to the locked schedule II cabinet was hidden. Thus, if Respondent was required to fill a prescription for a schedule II controlled substance during her shift, Respondent was required to call Mr. Webb to learn the location of the hidden key so that she could then obtain access to the cabinet in order to fill the prescription. Once the prescription was filled, Respondent was required to lock the cabinet and to slide the key under Mr. Webb's locked office door. The cabinet and the controlled substances in the cabinet were closely monitored to insure that nothing was ever removed from the cabinet other than the order filled by Respondent.

c. These conditions made it possible for Respondent to have regular access to schedule III and IV controlled substances and to work evening shifts where she was the only pharmacist on duty, while providing adequate safeguards to insure that there was no tampering with schedule II controlled substances.

d. Mr. Webb further testified that Respondent had been working under these conditions for over a year, that there had been no problems with any missing medications in all that time, and that Respondent is one of his best employees who has received excellent

performance evaluations.

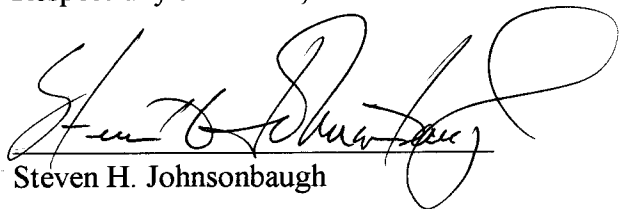
7. The evidence presented at the hearing demonstrated that Respondent has been working for over a year, often alone, and without incident. The evidence further demonstrated that the public's interest can be protected without prohibiting Respondent from working alone or from having access to all controlled substances. Rather, these concerns can be adequately addressed by terms and conditions that are similar to those under which Respondent has been working for over a year.

8. Respondent has been informed by Mr. Webb and the Hospital administration that it will be impossible for the Hospital to allow her to work so long as she is prohibited by Board Order from having any access to all controlled substances and from working alone.

9. The terms and conditions imposed by subparagraph 2 (e) of the Board's Order are overly burdensome and restrictive and have the practical effect of making it impossible for Respondent to maintain her position with Terre Haute Regional Hospital, where she has worked for more than four years, or to obtain employment in any pharmacy.

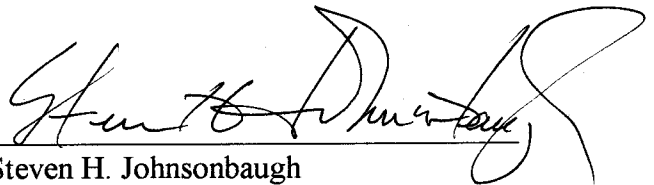
WHEREFORE, Respondent, by counsel, respectfully moves the Board to Stay the August 15 Order pending a hearing on her Motion to Modify; to modify subparagraph 2 (e) of its Order to allow Respondent access to Scheduled III and IV controlled substances, restricted access to Schedule II controlled substances, and to work alone; and for all other proper relief.

Respectfully submitted,


Steven H. Johnsonbaugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served upon Amy Huffman Oliver, Deputy Attorney General, 402 W. Washington Street, Fifth Floor, Indianapolis, Indiana 4604-2770, by U.S. First Class Mail, postage prepaid, this 5th day of September, 1995.


Steven H. Johnsonbaugh

STEVEN H. JOHNSONBAUGH
ATTORNEY AT LAW
LOCKERBIE SQUARE
302 N. EAST STREET
INDIANAPOLIS, INDIANA 46202
ATTORNEY I.D. 5540-49