

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

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HEALTH PROFESSIONS
BUREAU

OBJECTION AND MOTION TO QUASH PRELIMINARY HEARING NOTICE

Carmella M. Dunn, by counsel, hereby respectfully objects to and moves to quash the Preliminary Hearing Notice served on counsel by facsimile on February 7, 1996. In support hereof, Respondent would show the Board as follows:

1. Respondent's pharmacy license was suspended pursuant to an Emergency Suspension Order issued by the Board on November 17, 1995.
2. On February 7, 1996, the Board issued and served Respondent's counsel with a Preliminary Hearing Notice that advised Respondent and counsel that this matter was scheduled for a preliminary hearing on February 12, 1996, to determine whether the Emergency Suspension imposed by the Board's Order of November 17, 1995, should be voided, terminated, modified, stayed, or continued.
3. The Board's Preliminary Hearing Notice issued on February 7, 1996, is objectionable and invalid because it fails to provide Respondent and counsel with reasonable timely notice of the scheduled hearing as required by law.
4. Indiana Code 4-21.5-3-20(a) provides:

The administrative law judge for the hearing shall set the time and

place of the hearing and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. Unless a shorter notice is required to comply with any law or is stipulated by all parties and persons filing written requests for intervention, an agency shall give at least five (5) days notice of the hearing.

5. Indiana Code 4-21.5-3-2 sets out the statutory method by which various time periods are computed. Relevant parts I.C. 4-21.5-3-2 provide:

(a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included.

....

(b) A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

6. It is patently clear that the Preliminary Hearing Notice issued on Wednesday, February 7, 1996, setting this matter for a hearing on Monday, February 12, 1996, allowed only a total of five days between the date the notice was issued and the date of the scheduled hearing. This notice fails to comply with the requirements of I.C. 4-21.5-3-20, however, because the period allowed is less than seven (7) days, which means the intermediate Saturday and Sunday are excluded from the calculation. I.C. 4-21.5-3-2(b). Thus, the Preliminary Hearing Notice issued by the Board on February 7, 1996, provides only three (3) days notice of the scheduled hearing and fails to comply with the five (5) day notice requirement mandated by I.C. 4-21.5-3-20. Therefore, the Board's Preliminary Hearing Notice is untimely and invalid.

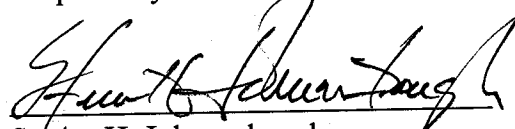
7. By failing to provide Respondent with the statutorily mandated minimum notice of five (5) days, the Board's Preliminary Hearing Notice deprives Respondent of the minimum due process

rights created and guaranteed by the Administrative Orders and Procedures Act.

8. Respondent objects to the inadequate and untimely notice, moves to quash the Preliminary Hearing Notice issued on February 7, 1996, and prays that the Preliminary Hearing scheduled for February 12, 1996 be vacated.

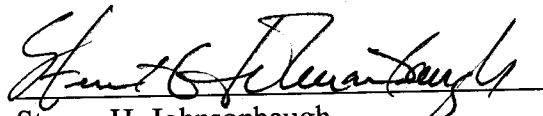
WHEREFORE, Respondent, by counsel, respectfully objects to the Preliminary Hearing Notice issued on February 7, 1996, moves to quash the Preliminary Hearing Notice, prays that the Preliminary Hearing scheduled for February 12, 1996, be vacated and for all other proper relief.

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 9 day of February, 1996.


Steven H. Johnsonbaugh

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