

STATE OF FLORIDA
BOARD OF PHARMACY

Final Order No. DOH-98-0958 Date 9-1-98
FILED
Department of Health
Angela Hall, AGENCY CLERK
By: Stephen J. Davis
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO.: 97-15183

ACCU-CARE SERVICES, INC.,

Respondent.

FINAL ORDER


Respondent, Accu-Care Services, Inc., holds Florida license number PH 0012679 as a licensed pharmacy. Petitioner filed an Administrative Complaint seeking disciplinary action against the license; a copy of that complaint is attached to and made a part of this Final Order.

Petitioner and Respondent have stipulated to a disposition of this case; said Stipulation was presented to the Board of Pharmacy at its August 17, 1998, meeting held in Tallahassee, Florida. The Board concurs that this Stipulation is an appropriate settlement of the cause. The Stipulation is attached to and made a part of this Final Order.

It is therefore Ordered that the Stipulation is adopted, and Respondent shall be governed accordingly.

This Final Order shall become effective upon filing with the Clerk of the Department.

DONE AND ORDERED this 31st day of August, 1998, by
the Florida Board of Pharmacy.



JOHN D. TAYLOR R.Ph.
EXECUTIVE DIRECTOR

Copies furnished to:

Accu-Care Services, Inc.
351 NE LeJune Road, Ste. 306
Miami, Florida 33126

William M. Furlow, Esq.
Katz, Kutter, Haigler & Alderman
106 East College Av.
Tallahassee, FL 32301

Gregory Files, Staff Attorney
Agency for Health Care Administration

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,
BOARD OF PHARMACY,**

Petitioner,

vs.

Case No. 97-15183

**ACCU-CARE SERVICES, INC.,
DBA HOME INFUSION,**

Respondent.

STIPULATION

Pursuant to Section 120.57(4), Florida Statutes, the above named parties hereby offer this Stipulation to the Board of Pharmacy as disposition of the Administrative Complaint, attached hereto as Exhibit "A", in lieu of any other administrative proceedings. The terms herein become effective only if and when a Final Order accepting this Stipulation is issued by the Board and filed. In considering this Stipulation, the Board may review all investigative materials regarding this case. If this Stipulation is rejected, it, and its presentation to the Board, shall not be used against either party.

STIPULATED FACTS

1. For all times pertinent herein, Respondent was a licensed pharmacy in the State of Florida, having been issued license number PH 0012679. Respondent's last known address is 351 NE Lefune Road, Suite 306, Miami, Florida 33126.

2. The Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapters 455 and 465,

Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit "A".

3. Respondent admits the factual allegations contained in the Administrative Complaint for the purposes of settlement in these administrative proceedings only.

STIPULATED LAW

1. Respondent admits that he is subject to the provisions of chapter 455 and 465, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the stipulated facts, if proven true, constitute violations of laws as alleged in the Administrative Complaint.

3. Respondent admits that the stipulation is a fair, appropriate, and reasonable resolution of this pending matter.

PROPOSED DISPOSITION

1. The Respondent shall be present when this Stipulation is presented to the Board, and under oath shall answer questions by the Board concerning this case and the disposition thereof.

2. The license of the Respondent shall be reprimanded by the Board of Pharmacy.

3. The Board of Pharmacy shall impose an administrative fine of two thousand (\$2,000) dollars against the license of the Respondent, to be paid by the Respondent to the Executive Director of the Board of Pharmacy, within thirty (30) days of the filing of a Final Order accepting and incorporating this Stipulation.

4. The license of Respondent shall be placed on a one (1) year probationary period to commence upon the filing of the Final Order of the Board incorporating this Stipulation.

During the period of probation the Respondent shall be subject to the following terms and conditions:

A. The Prescription Department Manager shall submit written reports to the Probation Supervisor at the Department which contain the permittee's name, permit number, current address, and phone number, current name, address, and phone number of each current pharmacy employee, including all pharmacists, pharmacy interns, pharmacy technicians, relief pharmacists, and prescription department managers working within the Respondent's prescription area. These reports shall be submitted to the Probation Supervisor every three (3) months in a manner as directed by the Probation Supervisor.

B. The Department through the Agency for Health Care Administration shall conduct semi-annual inspections of the Respondent, at the Respondent's cost.

5. Respondent shall not in the future violate Chapters 455, 465, 499, and/or 893, Florida Statutes, the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or to the ability to practice pharmacy.

6. It is expressly understood that a violation of the terms of this Stipulation shall be considered a violation of the Final Order of the Board of Pharmacy, for which disciplinary action may be initiated pursuant to Chapter 465, Florida Statutes.

7. It is expressly understood that this Stipulation is subject to approval of the Board and Agency and has no force or effect until an Order is based upon it by the Board.

8. This Stipulation is executed by the Respondent for the purpose of avoiding further administrative action with respect to this particular cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to

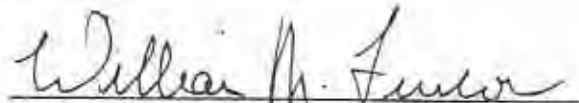
or in conjunction with consideration of the stipulation. Furthermore, should this Stipulation not be accepted by the Board, it is agreed that the presentation and consideration of this Stipulation and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

9. The Respondent and the Agency fully understand that this Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or Agency against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint, attached hereto as Exhibit "A", issued in this cause.

10. The Respondent waives the right to seek attorney's fees and/or costs from the Agency in connection with this disciplinary proceeding.

WHEREFORE, the parties hereby request the Board to enter a Final Order accepting and implementing the terms contained herein.

SIGNED this 6th day of May, 1998.

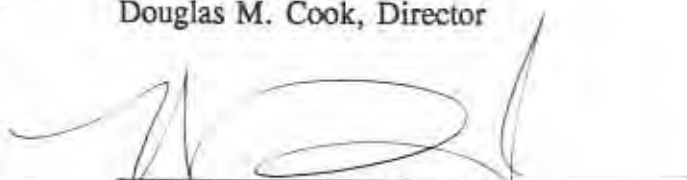

CASE NO. 97-15183

Before me personally appeared _____, whose identity is known to me by _____ (type of identification), and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed by Respondent before me this _____ day of _____, 1998.

APPROVED this 12 day of June, 1998.

Douglas M. Cook, Director



By: Nancy M. Snurkowski, Chief Attorney
Allied Health

Counsel for Petitioner:
Gregory W. Files, Staff Attorney
FBN 0113476
Agency for Health Care Administration
Office of the General Counsel, MQA, Allied Health
2727 Mahan Drive
Tallahassee, Florida 32308
850-487-2225
H:\USERS\BILLF\CARCIAFE\ACCU.STP

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No. 97-15183

ACCU-CARE SERVICES, INC.
d/b/a HOME INFUSION,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, DEPARTMENT OF HEALTH, hereinafter referred to as "Petitioner," files this Administrative Complaint before the Board of Pharmacy against ACCU-CARE SERVICES, INC., d/b/a HOME INFUSION, hereinafter referred to as "Respondent," and alleges:

1. Effective July , 1997, Petitioner is the state agency charged with regulating the practice of pharmacy pursuant to Section 20.43, Florida Statutes (Supp. 1996); Chapter 455, Florida Statutes; and Chapter 465, Florida Statutes.
2. Pursuant to the authority of Section 20.43(3)(f), Florida Statutes (Supp. 1996), the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate, including the issuance of emergency orders of suspension or restriction.
3. Respondent's last known address is 351 NW Le Jeune Road, Suite 306, Miami, Florida 33126.

4. Respondent is, and has been at all times material hereto, a licensed pharmacy, having been issued permit number 0012679.
5. On or about June 11, 1997, an agency inspector conducted a routine inspection of Respondent pharmacy.
6. A pharmacist was not on duty when the agency inspector entered Respondent facility.
7. Respondent failed to display a sign stating "Prescription Department Closed."
8. Two women were filling Nebulizing solutions from a spray bottle into screw cap vials. The Nebulizing solution bottles did not contain lot numbers.
9. The women were not licensed pharmacists and were not properly identified as pharmacy technicians.
10. The unlicensed employees were not supervised by a licensed pharmacist.
11. There was medication in a separate computer area where an unlicensed employee was entering prescriptions into a computer, reading case reports for Nebulizing solutions and generating labels for prescriptions.
12. Respondent failed to apply for approval for a 2:1 pharmacist/technician ratio.
13. Respondent pharmacy did not contain a positive formulary.
14. Respondent failed to maintain a certified daily log.

COUNT I

15. Petitioner realleges and incorporates by reference the allegations contained in the foregoing paragraphs as if fully stated herein.
16. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.023(1)(c), Florida Statutes, by

violating Rule 64B16-27.101, Florida Administrative Code, which states that no pharmacist or pharmacy employee or proprietor shall knowingly purchase, sell, possess or distribute drugs which are commonly called counterfeit, or which are misbranded, or improperly labeled as described by the Florida Drug and Cosmetic Law.

COUNT II

17. Petitioner realleges and incorporates by reference the foregoing allegations contained in paragraphs one (1) through fourteen (14) as if fully stated herein.

18. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-27.410, Florida Administrative Code, which states that all pharmacy technicians shall identify themselves as pharmacy technicians by wearing a type of identification badge that is clearly visible which specifically identifies the employee by name and status as a "pharmacy technician."

COUNT III

19. Petitioner realleges and incorporates by reference the foregoing allegations contained in paragraphs one (1) through fourteen (14) as if fully stated herein.

20. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-27.420, Florida Administrative Code, which states that pharmacy technicians may perform duties in addition to those identified in Section 64B16-27.410, in a ratio of two pharmacy technicians to one pharmacist. The prescription department manager or consultant pharmacist is required to submit a request and receive approval from the Board of Pharmacy prior to practicing with a 2:1 ratio of supervision.

COUNT IV

21. Petitioner realleges and incorporates by reference the foregoing allegations contained in paragraphs one (1) through fourteen (14) as if fully stated herein.

22. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-28.109, Florida Administrative Code, which states that the prescription department of any community pharmacy permittee shall be considered closed whenever the establishment is open and a Florida registered pharmacist is not present and on duty. A sign with bold letters not less than two (2) inches in width and height shall be displayed in a prominent place in the prescription department so that it may easily be read by patrons of that establishment. The sign shall contain the following language: "Prescription Department Closed."

COUNT V

23. Petitioner realleges and incorporates by reference the foregoing allegations contained in paragraphs one (1) through fourteen (14) as if fully stated herein.

24. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-28.120(1), Florida Administrative Code, which states that all medicinal drugs or drug preparations within a community pharmacy shall be stored within the confines of the prescription department of a community permittee.

COUNT VI

25. Petitioner realleges and incorporates by reference the foregoing allegations contained in paragraphs one (1) through fourteen (14) as if fully stated herein.

26. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-28.140(3)(c), Florida Administrative Code, which states that the daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

27. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to further discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-28.140(3)(d), Florida Administrative Code, which states that each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document within seven days from the date of dispensing.

28. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to further discipline pursuant to Section 465.023(1)(c), Florida Statutes, by violating Rule 64B16-28.140(3)(e), Florida Administrative Code, which states that in lieu of producing the printout, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing

to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Agency for Health Care Administration.

COUNT VII

29. Petitioner realleges and incorporates by reference the foregoing allegations contained in paragraphs one (1) through fourteen (14) as if fully stated herein.

30. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.025(5), Florida Statutes, which states that each community pharmacy shall establish a formulary of generic and brand name drug products which, if selected as the drug of choice, would not pose a threat to the health and safety of patients receiving prescription medication.

WHEREFORE, Petitioner respectfully requests the Board of Pharmacy enter an Order imposing one or more of the following penalties: imposition of an administrative fine not to exceed \$1,000 for each offense, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate


SIGNED this 3rd day of April, 1998

Douglas M. Cook
Director



By: Nancy M. Snurkowski
Chief Attorney
On Behalf of the Agency for
Health Care Administration

COUNSEL FOR AGENCY:

Susan B. Bodell 
Senior Attorney
Florida Bar Number 0987859
Agency for Health Care Administration
General Counsel's Office - MQA
Allied Health
P.O. Box 14229
Tallahassee, FL 32317-4229
(850) 487-9637

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Tiffany M. Allen*
DATE 4/9/98

SBB:cb

PCP: MS/LI

DOM: 3-16-98