

PL-22

STATE OF FLORIDA
BOARD OF PHARMACY

Final Order No. DOH-98-0948 Date 9-1-98
FILED
Department of Health
Angela Hall, AGENCY CLERK
By: *Stephanne G. DeW*
Deputy Agency Clerk

DEPARTMENT OF HEALTH,
Petitioner,

vs.

CASE NO.: 97-011769

MARILYN GARCIA-FERRO,
Respondent.

_____ /

FINAL ORDER


Respondent, Marilyn Garcia-Ferro, holds Florida license number PS 0028793 as a licensed pharmacist. 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:

William M. Furlow, Esq.
Katz, Kutter, Haigler & Alderman
106 East College, 12th Floor
Tallahassee, Florida 32301

Marilyn Garcia-Ferro
15480 SW 95th Lane
Miami, Florida 33196

Gregory Files, Staff Attorney
Agency for Health Care Administration

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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DEPARTMENT OF HEALTH,
BOARD OF PHARMACY,

Petitioner,

vs.

Case No. 97-11769

MARILYN GARCIA-FERRO,

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 pharmacist in the State of Florida, having been issued license number PS 0028793. Respondent's last known address is 15480 SW 95th Lane, Miami, Florida 33196.

2. The Respondent was charged by an Administrative Complaint filed by the Agency 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 one thousand (\$1,000) 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 Respondent agrees to enroll in and successfully complete a twelve (12) hour continuing education course on the laws of the State of Florida within one (1) year of the filing

of the Board's Final Order in this cause. This continuing education course shall be in addition to the continuing education credits normally required for renewal of Respondent's license. Home study courses will not be accepted to satisfy this condition unless specifically authorized by the Board. Verification of successful completion and documentation of course content shall be submitted to the Compliance Officer for the Board of Pharmacy within thirty (30) days after completion of the continuing education course.

5. The Respondent shall within thirty (30) days of entry of the Final Order accepting and adopting this stipulation, provide the Board office with an affidavit attesting that she has read and understands the laws and rules governing the practice of pharmacy in the State of Florida.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 21st day of May, 1998.

William M. Linton
CASE NO. 97-11769

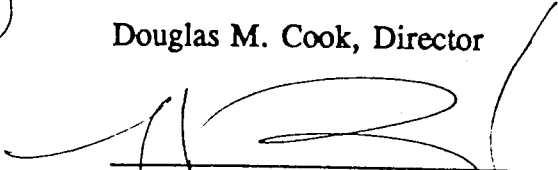
Before me personally appeared _____, whose identity is known to me by _____ (type of identification), and who, under oath, acknowledges that his/her signature appears above.

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

Notary Public
My Commission Expires:

APPROVED this 4 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
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850-487-2225
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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

vs.

MARILYN GARCIA-FERRO,

Case No. 97-11769

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, DEPARTMENT OF HEALTH, hereinafter referred to as "Petitioner," files this Administrative Complaint before the Board of Pharmacy against Marilyn Garcia-Ferro, hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 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 is, and has been at all times material hereto, a licensed pharmacist, having been issued license number 0028793.

4. Respondent's last known address is 15480 SW 95th Lane, Miami, FL 33196.
5. At all times material hereto, Respondent was employed by Acu-Care Services located at Le Jeune Executive Bldg, 351 NW Le Jeune Road, Miami, Florida 33126.
6. Respondent is the owner and the pharmacy manager at the aforementioned establishment.
7. On or about June 11, 1997, a routine investigation was conducted at Acu-Care Services.
8. Investigation revealed that the Respondent failed to maintain a proper pharmacist/technician ratio. Furthermore, the Respondent failed to apply for pharmacy technician 2:1 ratio.
9. Investigation revealed that the Respondent failed to properly identify and supervise technicians.
10. Investigation revealed that the Respondent failed to have an active pharmacist on duty while the pharmacy was open.
11. Investigation also revealed that the Respondent failed to display a sign stating that the pharmacy department was closed.
12. Investigation revealed that the Respondent failed to ensure that medication was properly labeled. The investigator discovered nebulizing solutions which had no Lot # on the bottles.

13. Investigation revealed that the Respondent failed to secure all medication within the pharmacy department. The investigator found medications stored in a computer area.

14. Investigation revealed that the Respondent failed to provide a positive drug formulary.

15. Investigation also revealed that the Respondent failed to maintain a certified daily log of prescriptions. The certified daily logs did not have any signatures.

COUNT I

16. Petitioner realleges and incorporates by reference the allegations contained in the foregoing paragraphs as if fully stated herein.

17. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.016 (1)(n), 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

18. Petitioner realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifteen (15) as if fully stated herein.

19. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.016(1)(n), Florida Statutes, by violating Rule 64B16-27.410, which states that pharmacy technicians may

assist a Florida licensed pharmacist in performing professional services within a community pharmacy or institutional pharmacy environment provided that no licensed pharmacist shall supervise more than one pharmacy technician unless otherwise permitted by the Florida Board of Pharmacy. Also, 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 by status as a "pharmacy technician".

COUNT III

20. Petitioner realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifteen (15) as if fully stated herein.

21. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.016(1)(n), Florida Statutes, by violating Rule 64B16-27.420, Florida Administrative Code, which states the requirement for a prescription department manager or consultant pharmacist to submit a request and receive approval from the Board of Pharmacy prior to practicing with a 2:1 ratio or supervision.

COUNT IV

22. Petitioner realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifteen (15) as if fully stated herein.

23. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.016(1)(n), 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

24. Petitioner realleges and incorporates by reference the allegations contained in paragraphs one (1) through 15 (fifteen) as if fully stated herein.

25. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.016 (1)(n), Florida Statutes, by violating Rule 64B16-28.120, Florida Administrative Code, which states that all medicinal drugs or drug preparations as defined by Section 465.003(7), Florida Statutes, within a community pharmacy shall be stored within the confined area of the prescription department of a community pharmacy.

COUNT VI

26. Petitioner realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifteen (15) as if fully stated herein.

27. 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),(d),(e), 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; it continues to state that each individual pharmacist who dispenses or refills a prescription drug order shall verify the date 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; furthermore, it states the requirement for each pharmacy to maintain a log book in which individual pharmacists using the data processing center shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed and is correct as entered.

COUNT VII

28. Petitioner realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifteen (15) as if fully stated herein.

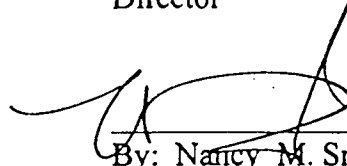
29. Based on the foregoing, the Respondent's license to practice pharmacy in the State of Florida is subject to discipline pursuant to Section 465.025(5), Florida Statutes, which states the requirement for each community pharmacy to establish a formulary of generic and brand name drug products which, if selected as the drug product of choice, would not pose a threat to the health and safety of patients receiving prescription medication. Each community pharmacy shall make such formulary available to the public, Board of Pharmacy, or any physician requesting the same.

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, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 5th day of February, 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 *SBB*
Senior Attorney
Florida Bar Number 0987859
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PCP: LN/DF 1.27.98

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK *Stephanie Q. Dier*

DATE 2/11/98

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF PHARMACY

DEPARTMENT OF HEALTH,

Petitioner,

vs.

CASE NO.: 97-11769

MARILYN GARCIA-FERRO,

Respondent.

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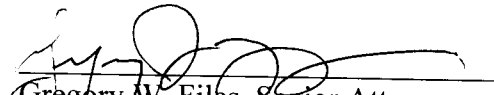
**MOTION FOR FINAL BOARD ACTION
ACCEPTING STIPULATION**

The Petitioner, by and through its undersigned counsel, the Agency for Health Care Administration, moves the Board of Pharmacy for final Board action accepting the Stipulation offered by the parties in the above-styled cause. As grounds for this motion, the Petitioner states the following:

1. On or about February 11, 1998, the Petitioner filed an Administrative Complaint against the Respondent.
2. On or about May 8, 1998, Respondent executed the Stipulation, a copy of which is attached hereto.
3. The Stipulation was executed by Nancy Snurkowski, Chief Attorney of the Allied Health section of AHCA/MQA.
4. The Stipulation is a fair, appropriate, and reasonable resolution to the pending matter.

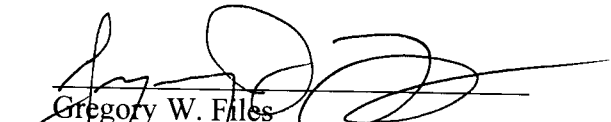
WHEREFORE, the Petitioner moves that the Board of Pharmacy accept the Stipulation as offered.

Respectfully submitted,


Gregory W. Files, Senior Attorney
Florida Bar No. 0113476
Agency for Health Care
Administration
P.O. Box 14229
Tallahassee, Florida 32317-4229
(850) 487-9649

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail this 20th day of July, 1998, to: Respondent at 15480 SW 95th Lane, Miami, Florida 33196.


Gregory W. Files
Senior Attorney

GWF/vlp
7/20/98