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IN THE MATTER OF	*	BEFORE THE
CHINYERE NWANERI, P.D.	*	MARYLAND STATE
License No. 9891	*	BOARD OF PHARMACY
Respondent	*	
* * * * *		

FINAL ORDER

Based on information received by the State Board of Pharmacy (the "Board"), the Board charged Chinyere Nwaneri, P.D. (the "Respondent"), with violations of Md. Code Ann., Health Occupations Article §12-313(2), (6), (7), and (14). (1994 Repl. Vol.) §12-313 provides that a majority of the Board then serving may sanction a licensee who:

- (2) Fraudulently or deceptively uses a license;
- (6) Willfully makes or files a false report or record as part of practicing pharmacy;
- (7) Willfully fails to file or record any report that is required by law;
- (14) Without first having received a written or oral prescription for the drug from an authorized prescriber, dispenses any drug for which a prescription is required;

A hearing was conducted before a quorum of the Board on February 15, 1995 at 4201 Patterson Avenue, Baltimore, Maryland. Also present at the hearing were: Roberta Gill, Assistant Attorney General and Administrative Prosecutor, Paul J. Ballard, Assistant Attorney General and Counsel to the Board, the Respondent, and Bruce Marcus, Esquire, on behalf of the Respondent.

Based upon the evidence presented at the hearing and the unanimous vote of the Board members present at the hearing, the Board makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in the State of Maryland and was employed by CVS Pharmacy/Peoples Drug Stores as a "floating pharmacist" , meaning that the Respondent typically worked at more than one pharmacy to cover for other pharmacists for sick calls, vacations, and similar reasons. (T. 16-18).

2. On September 10, 1992, the Respondent was assigned as a floating pharmacist to the Peoples Drug Store in Oxon Hill, Maryland. On that day, Scott Staso, Ms. Nwaneri's pharmacy supervisor, was contacted by the manager of the Oxon Hill pharmacy regarding the possibility that prescriptions had left the store that day without payment. In response, Mr. Staso scheduled a meeting with the Respondent for October 5, 1992 to investigate the facts surrounding the missing prescriptions. Mr. Staso explained the purpose of the meeting to the Respondent prior to her being questioned and he informed her that the results of the meeting could result in disciplinary action. (T. 19; 21-22; 30).

3. A meeting took place in Mr. Staso's office on October 5, 1992 between the Respondent, Mr. Staso, and Clarence Turks, loss prevention representative for CVS. Mr. Staso informed Respondent that she could leave the meeting at any time. Mr. Turks then questioned her about prescriptions missing on September 10, 1992 and at other times during her career. (T. 29-30).

4. Copies of computer prescription labels had been generated on September 10, 1992 in the Oxon Hill pharmacy. Printed on these prescription labels were both the Respondent's initials as the dispensing pharmacist and "Dr. Bone" as the authorized prescriber. These labels were for the following prescription drugs: Seldane, Rondec-DM Syrup, Ceclor, Polynox, and Cortisporin. The patients listed on these prescriptions were Ngozika Nwaneri, the Respondent's husband, and one of her children. (T. 51-54; State's Exhibit 3-C).

5. During the course of the meeting held on October 5, 1992, The Respondent admitted that on September 10, 1992 and on other occasions she had entered prescriptions into the pharmacy computer without receiving the proper authorization of physicians in order to obtain prescription drugs. The Respondent also stated that she would either enter the names of Howard University Hospital or Dr. George Bone on the prescriptions as the prescribing physician. The Respondent then told Mr. Staso and Mr. Turks that neither Howard University Hospital nor Dr. Bone had authorized the prescriptions. (T. 30-31).

6. Although the Respondent was told she could terminate the meeting with Mr. Staso and Mr. Turks at any time, she never asked to terminate the meeting. The Respondent also never requested a union representative or a lawyer. At the conclusion of the interview, the Respondent composed, read, and signed a voluntary statement which she attested to be "true and correct" in her own handwriting. Mr. Staso witnessed her signature on this voluntary statement. (T. 32-34; State's Exhibit 2-B).

7. In her written voluntary statement, the respondent admitted that on several occasions she had written the names of "Dr. Bone" or "Howard University Hospital" as authorized prescribers when they had not prescribed the drugs. She further admitted that on September 10, 1992, she had used Dr. Bone's name in this manner to obtain prescription drugs without his knowledge or permission. Through this method, she also admitted to obtaining the following prescription drugs from the CVS pharmacies: Ceclor, Ampicilin, Polymox, Oticair, Urised, Seldane, Phenergan, Bactrim, and Keflex. (T. 30-34; State's Exhibit 2-B).

8. George Bone, M.D., testified that he had a specific recollection of prescribing the medications that were at least similar to the ones obtained by the Respondent on September 10, 1992. However, Dr. Bone could not remember the specific date he prescribed the medications in question for the Respondent's husband or for one of her children. Dr. Bone could only remember that he had prescribed them sometime in August or September of 1992. (T. 146-147; 154-155).

9. Dr. Bone testified that he occasionally prescribed medication for the Respondent's children over the telephone without examining them but never wrote prescriptions for them and never kept records of his oral prescriptions. Dr. Bone admitted that his failure to keep records of the prescriptions for Respondent's children departed from his normal practice. He stated that it is the common practice of his profession to keep a record of prescriptions that are ordered. (T. 149-151; 154; 157-159).

10. Dr. Bone explained that he prescribed medications over the telephone as a professional courtesy to the Respondent's husband, Dr. Ngozika Nwaneri, who was one of his physician friends. Dr. Bone stated that for such persons he does not keep detailed records. Dr. Bone further explained that because Dr. Nwaneri's children were receiving care from their own pediatrician, it was not necessary for Dr. Bone to keep records of their time-limited illnesses. (T. 143-145; 161-162).

11. The Respondent did not attempt to challenge the authenticity of the voluntary statement she signed on October 5, 1992, or to otherwise explain her statements contained therein. Instead, the Respondent attempted to show through the cross-examination of Mr. Staso and the testimony of Dr. Bone that her own statement was inaccurate. In addition, the Respondent's husband, Dr. Ngozika Nwaneri, testified that he thought she had signed the statement just to "have peace." (T. 179-180).

12. In essence, the Respondent challenges the truthfulness of her admissions because they were allegedly made under duress. However, the evidence presented at the hearing does not support the Respondent's implied claim of duress. Mr. Staso testified that when he contacted the Respondent to schedule the meeting that he had explained the investigatory purpose of the meeting and its possible disciplinary consequences. Mr. Staso also told the Respondent that she could leave the meeting at any time. At no time during the meeting did the Respondent request to terminate the meeting or to be allowed to call her lawyer or union representative. Absent evidence that the Respondent was incompetent when she composed and signed this voluntary statement, which evidence was never presented, the Respondent's oral admissions and her voluntary written statement constitutes reliable evidence that she dispensed prescription drugs on September 10, 1992 and on other occasions without first obtaining an authorized prescription. (T. 30, 32).

13. The Board also finds Dr. Bone's testimony unconvincing. Had Dr. Bone kept records of his prescriptions consistent with his normal practice, which he did not, the Board could have compared those records to the Respondent's oral and written admissions. However, given the Respondent's admissions that she had dispensed prescription drugs without authorized prescriptions by using both Dr. Bone's and Howard University Hospital's names, Dr. Bone's nonspecific memory of prescribing drugs for his physician friend's family does not persuade the Board that the Respondent's own admissions of unauthorized dispensing were inaccurate.

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CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following conclusions of law:

1. The Respondent is guilty of violating Md. Code Ann., Health Occ. § 12-313(14), "Without first having received a written or oral prescription for the drug from an authorized prescriber, dispenses any drug for which a prescription is required."

2. The Respondent is not guilty of violating Md. Code Ann., Health Occ. § 12-313(2), "Fraudulently or deceptively uses a license," § 12-313(6), "Willfully makes or files a false report or record as part of practicing pharmacy," or §12-313(7), "Willfully fails to file or record any report that is required by law."

ORDER

On this 17th day of May, 1995, it is hereby ORDERED by a majority of the Board, that the Respondent's license to practice pharmacy is hereby SUSPENDED for one year, and be it further

ORDERED that said SUSPENSION be immediately STAYED, and be it further

ORDERED that the RESPONDENT be immediately placed on PROBATION subject to the following conditions:

1. The Respondent must complete one college-level ethics course pre-approved by the Board and the Respondent must complete said ethics course with a grade of "B" or better; and


2. The Respondent must submit quarterly reports to the Board explaining in detail what events are transpiring in her professional life as a pharmacist. In her quarterly report she must also explain in detail what she has learned in her ethics course and give specific examples of how she has applied that new knowledge to her practice of pharmacy. And be it further

ORDERED that if the Respondent violates any of the conditions of Probation set forth herein, the Board may, after providing the Respondent with an opportunity to be heard, lift the stay and impose the suspension of her license. And be it further

ORDERED that on or after one year from the date of this Final Order, the Board shall entertain a petition for termination of Respondent's probationary status and full reinstatement of her license without conditions of Probation. And be it further

ORDERED that a copy of this Final Order shall be filed with the State Board of Pharmacy and that this Final Order is subject to public inspection in accordance with Md. Code Ann., State Gov't §10-617(h)(2)(vi) (1994 Cum. Supp.).

5/17/95
Date


George Voxakis, P.D.
Presiding Member
Board of Pharmacy

NOTICE OF APPEAL RIGHTS

Pursuant to the provisions of Md. Code Ann., Health Occ. §12-316, the Respondent may appeal this Final Order in accordance with the provisions of Md. Code Ann., State Gov't §10-222 and Maryland Rules 7-201 through 7-210.