

**HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
STATE OF COLORADO**

Appeal No. 245-00

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

SARA CORDOVA, Appellant,

Agency: DENVER HEALTH AND HOSPITAL AUTHORITY.

INTRODUCTION

For purposes of these Findings and Order, Sara Cordova shall be referred to as "Appellant." Denver Health and Hospital Authority shall be referred to as the "Hospital" or "DHHA." The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held on May 17 and 18, 2001, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Cheryl Hutchinson, AFSCME. Steven W. Moore, Esq., Assistant City Attorney, represented the Hospital with Randell Orcutt appearing as the advisory witness.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Department:

Appellant, Randell Orcutt, Tammie Le, Solida Nuon, Paul Lehr, Scott McLain

The following witnesses were called by and testified on behalf of the Appellant:

Delia Nieto, Carl Booker, Amanda Ruybol, Appellant

The following exhibits were offered and admitted into evidence on behalf of the Agency:

Exhibits 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

D, K

The following exhibits were admitted into evidence by stipulation:

Exhibits 1, 5, 7, 8, 9, 10, 11

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

NATURE OF APPEAL

Appellant is appealing her termination for alleged violations of CSR §§16-50 A. 1), 3) and 20) and 16-51 A. 2), 5) and 6) and is requesting reinstatement and return of the lost pay and benefits.

ISSUES ON APPEAL

Whether Appellant violated CSR §§16-50 A. 2), 3) and 20) and 16-51 A. 2) and 11)?

Whether the Agency's action terminating Appellant from her employment for the alleged violations of CSR §§16-50 A. 2), 3), and 20) and 16-51 A. 2), and 11) was arbitrary and capricious or otherwise contrary to rule or law?

If Appellant violated any provisions of CSR §§16-50 and 16-51, what is the appropriate sanction?

PRELIMINARY JURISDICTIONAL MATTERS

None.

TESTIMONY

1. Appellant was employed by the Denver Health and Hospital Authority as a pharmacy technician at the Westside Neighborhood Clinic during the relevant time period. She was a Career Service employee since 1992. She was a custodian with Public Office Buildings. She later became an automobile mechanic with the Denver Police Department. In 1996 or 1997, she became a pharmacy technician at the Hospital.

2. Appellant has been the military for sixteen years. She is currently a pharmacist in the Reserves. She does not need a pharmacist license to work as a pharmacist in the Reserves.

3. Appellant suffers from asthma. During the relevant time period, she had prescriptions for Albuterol in both tablet and inhaler form. (Exhibit K)

4. On October 4, 2000, Randell Orcutt, RPH, Outpatient Pharmacy Director, and Solida Nuon, RPH, the manager of the Westside Clinic Pharmacy, were cleaning the Westside Pharmacy. They were checking for expired drugs, overstock, unwanted trash and miscellaneous items. Mr. Orcutt opened an unlabeled and unlocked drawer below one of the counters. He found two Albuterol inhalers taped together, still in their boxes with their pricing stickers still attached to the boxes. The stickers indicated that they had been received from the wholesaler on August 30, 2000.

5. According to Mr. Orcutt, Albuterol inhalers are a frequently dispensed item and need to be restocked several times a week. He stated that he hadn't seen boxes taped together in the pharmacy.

6. Carl Booker, RPH, also testified that Albuterol inhalers need to be restocked frequently and that it would be unusual for them to be on the shelves for more than one or two months.

7. Mr. Orcutt removed the Albuterol inhalers from the drawer and asked what the inhalers were doing in the drawer. Appellant indicated that it was her drawer. Mr. Orcutt told her that it was not "her drawer" but that it was as "pharmacy drawer."

8. According to Mr. Orcutt, Appellant indicated that the inhalers were hers, but that she just had not labeled them.

9. Appellant testified that she asked Mr. Orcutt what he was doing in her personal drawer and that Mr. Orcutt told her it was a pharmacy drawer. She testified that she did not know that the inhalers were in the drawer and she suggested that they fell into the drawer from a shelf above the drawer at some unknown time. She denied that she told Mr. Orcutt that the inhalers were hers. She stated that the reason she was upset was because she was embarrassed as she had sanitary napkins in the drawer.

10. The independent witnesses observed and heard only portions of the conversation between Mr. Orcutt and Appellant. Tammy Le, RPH, testified that she heard Appellant identify the inhalers as hers. Ms. Nuon testified that she heard Mr. Orcutt say something about "no label" and Appellant reply, "What are you doing in my drawer?" and "This is mine." Paul Lehr, RPH, testified that he heard Mr. Orcutt ask whose drawer it was and Appellant reply that it was hers. Scott McLain, RPH, testified that he heard Mr. Orcutt say, "What's this," and Appellant say, "That's mine," indicating the drawer. He also testified that he saw Appellant take the boxes away from Mr. Orcutt. Delia Nieto testified that she heard Appellant say that it was her drawer. Amanda Ruybol testified that she heard Appellant say "What are you doing in my drawer?" and Mr. Orcutt reply, "This is not property of yours. It's property of Westside."

11. Mr. Orcutt testified that the inhalers belonged on a shelf and not hidden in a drawer.

12. Immediately after finding the Albuterol in Appellant's drawer, Mr. Orcutt went to a computer to see Appellant's prescription profile. He had Ms. Nuon log onto the computer for him. When they checked the computer profile, there was no indication that Appellant had obtained a refill for her Albuterol prescription since June 30, 2000.

13. Later that day, after Mr. Orcutt returned to Denver General, he again checked Appellant's profile. When he went into the computer at that time, he found that the prescription refill had been entered into the computer at 1:20 p.m., approximately twenty minutes after Mr. Orcutt left the Westside Pharmacy. According to the updated computer records, Tammie Le, RPH, filled the prescription and prepared the prescription label.

14. Mr. Orcutt checked with all the pharmacists at the Westside Clinic. All of them, including Ms. Le, denied filling the prescription for Appellant.

15. All the pharmacists on duty at the Westside Clinic on October 4, 2000, testified during the hearing. Each of them, including Ms. Le, testified that he or she had not filled the prescription for Appellant on October 4.

16. Appellant testified that Ms. Nuon told her to make the refill label so that "there would be no problems with" Mr. Orcutt. Appellant testified that she went to work at the intake window and then to lunch; therefore she did not do the label. She also testified that she did not know who entered the information into the computer and produced the label.

17. Delia Nieto, Appellant's former roommate who also worked at the Westside Clinic Pharmacy at the time as a pharmacy technician, testified that she printed a label to the Albuterol inhalers because Ms. Nuon asked her to. She said she did it because "(Ms. Nuon) did not want anymore trouble."

18. Ms. Nuon denied she asked Appellant, Ms. Nieto or anyone else to enter the information into the computer and print a label for the Albuterol.

19. When prescriptions are filled, duplicates of the labels are made and placed onto a log sheet for the day. The pharmacist filling the prescription initials the label. The log sheet for October 4, 2000, for the Westside Clinic does not contain a label for Appellant's Albuterol prescription. (Exhibit 12)

20. Appellant testified that, when she left for the day, Ms. Nuon reminded her to take the Albuterol so that there would be no more trouble with Mr. Orcutt. Appellant noticed the Albuterol had been placed into her bag by an unknown person. She did not check to see if a label had been affixed. She figured that someone had been told to run the label by Ms. Nuon. When Appellant got home, she saw the label was on the box. She put the boxes away. Sometime later she discarded the boxes with the label on them.

21. Appellant denied ever putting the Albuterol into her drawer, printing a label for the Albuterol, or putting the boxes into her bag to take home. She claimed that she had never seen the Albuterol in her drawer at any time because it was a full drawer and the Albuterol was at the back

22. Appellant testified that the entire pharmacy had access to the drawer. She also suggested that the Albuterol fell into the back of her drawer from a stock shelf above the drawer.

23. In a statement Appellant gave to the Denver Police Department, she indicated that, while she did not think that anyone in the pharmacy would have put the Albuterol into her drawer, there were about fifteen relief personnel with the pharmacy. (Exhibit D)

24. On some unknown date, but after October 4, Appellant approached Carl Booker, RPH, at the Infectious Disease Clinic Pharmacy and asked him to reprint the Albuterol label for her. (Exhibit K)

25. As a DHHA employee, Appellant's prescriptions are covered by insurance. However, the Hospital has to put in a claim for any prescriptions filled for its employees in order to be reimbursed by the insurance company.

26. Appellant was placed on investigatory leave on October 6, 2000. (Exhibit 1) Notice of Contemplation of Disciplinary Action was issued on October 20, 2000. (Exhibit 7) The predisciplinary hearing was held on October 27, 2000. On October 31, 2000, the Notice of Dismissal was issued. It was served by mail on Appellant on November 1, 2000. (Exhibit 8) Appellant filed her Notice of Appeal on November 8, 2000. (Exhibit 9)

27. On January 25, 2000, Appellant was given a verbal warning for excessive tardiness. (Exhibit 11)

DISCUSSION AND CONCLUSIONS OF LAW

Applicable Rules and Regulations

CSR Rule 16 governs discipline. CSR §16-10 sets out the purpose of the Rule:

The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority or designee will impose the type and amount of discipline she/he believes is needed to correct the situation and achieve the desired behavior or performance.

The disciplinary action taken must be consistent with this rule. Disciplinary action may be taken for other inappropriate conduct not specifically identified in this rule.

CSR §16-20, Progressive Discipline, provides in relevant part:

- 1) In order of increasing severity, the disciplinary actions which an appointing authority or designee may take against an employee for violation of career service rules, the Charter of the City and County of Denver, or the Revised Municipal Code of the City and County of Denver include:
 - a) Verbal reprimand, which must be accompanied by a notation in the supervisor's file and the agency file on the employee;
 - b) Written reprimand, a copy of which shall be placed in the employee's personnel file kept at Career Service Authority;
 - c) Suspension without pay, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority;
 - d) Involuntary demotion, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority; and
 - e) Dismissal, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority.

- 2) Wherever practicable, discipline shall be progressive. However, any measure or level of discipline may be used in any given situation as appropriate. This rule should not be interpreted to mean that

progressive discipline must be taken before an employee may be dismissed.

- 3) In those cases when the discipline deemed appropriate is suspension without pay of an overtime-exempt employee, the suspension shall be for at least a whole workweek or multiples of whole workweeks.

CSR §16-50, Discipline and Termination, provides, in relevant part:

A. Causes for dismissal.

The following may be cause for dismissal of a career service employee. A lesser discipline other than dismissal may be imposed where circumstances warrant. It is impossible to identify within this rule all conduct which may be cause for discipline. Therefore, this is not an exclusive list.

- 2) Theft, destruction, or gross neglect in the use of City and County property and/or property of any agency or entity having a contract with the City and County of Denver; theft of property or materials of any person while the employee is on duty or on City and County premises.
- 3) Dishonesty, including, but not limited to: altering or falsifying official records or examinations; accepting, soliciting, or making a bribe; lying to supervisors or falsifying records with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours; using official position or authority for personal profit or advantage, including kickbacks; or any other act of dishonesty not specifically listed in this paragraph.
- 20) Conduct not specifically identified herein may also be cause for dismissal.

CSR §16-51, Causes for Progressive Discipline, provides, in relevant part:

A.. The following unacceptable behavior or performance may be cause for progressive discipline. Under appropriate circumstances, immediate dismissal may be warranted. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment. It is impossible to identify within this rule all potential grounds for disciplinary action; therefore, this is not an exclusive list.

- 2) Failure to meet established standards of

performance including either qualitative or quantitative standards.

- 11) Conduct not specifically identified herein may also be cause for progressive discipline.

Relevant CRS Provisions

Title 12, Chapter 22 of the Colorado Revised Statutes governs pharmacists and pharmacies. It provides in relevant part:

§12-22-102 Definitions

- (9) "Dispense" means to prepare a drug or device pursuant to a lawful prescription order of a practitioner, together with an appropriate label, in a suitable container for subsequent administration to or use by a patient or other individual entitled to receive the prescription order.
- (24) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.
- 26) "Practice of pharmacy" means:
 - (a) An initial interpretation, selection of ingredients and final evaluation of each prescription order or chart order, the participation in drug selection and drug utilization reviews, the participation in administration of drugs, the provision of pharmaceutical care including patient counseling and prospective drug review, drug and drug-related research not including prescriptive authority, the advising and providing of information concerning utilization of drugs and devices in the treatment of an injury and the treatment and prevention of disease, and the offering or performing of these health services, operations, or transactions necessary in the conduct, operation, and control of a prescription drug outlet by a pharmacist.
 - (b) The responsibility for the compounding, dispensing, labeling (except nonprescription drugs), delivery, storage, and distribution of drugs and devices and the maintenance of proper records thereof.
- (27) "Practitioner" means a person authorized by law to prescribe any drug or device, acting within the scope of such authority.
- (29) "Prescription" means the finished product of the dispensing of a prescription order in an appropriately labeled and suitable container.
- (33.5) (a) "Unlicensed assistant" means an unlicensed person who performs those functions set forth in paragraph (b) of subsection

(26) of this section under the supervision of a pharmacist. A pharmacist manager of a prescription drug outlet employing an unlicensed assistant shall file with the board the name and date of birth of each unlicensed assistant who is employed by the outlet.

§12-22-119 Prescription drug outlet under charge of pharmacist

(5)(b)(l)The pharmacist responsible for the prescription order or chart order may delegate certain specific tasks, as provided in section 12-22-102(26)(b), to a person who is not a pharmacist or pharmacy intern but who is an unlicensed assistant under such pharmacist's supervision if, in the pharmacist's professional judgment, such delegation is appropriate; except that no such delegation may be made if the delegation jeopardizes the public health, safety, or welfare, is prohibited by rule or regulation of the board, or violates the provisions of section 12-22-126 (1).

§12-22-121 Compounding, dispensing, and sale of drugs and devices

- (1) Except as otherwise provided in this section and part 3 of this article, no drug, controlled substance, as defined in section 12-22-303(7), or device shall be sold, compounded, dispensed, given, received, or held in possession unless it is sold, compounded, dispensed, given, or received in accordance with this section.
- (4) An order shall be compounded or a prescription dispensed only from a registered prescription drug outlet or other outlet registered pursuant to section 12-22-120(1) (e).

§12-22-122 Prescription required

(2) A pharmacist may refill a prescription order for any prescription drug without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare. Such prescription refill shall only be in an amount sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this subsection (2) continue medication beyond seventy-two hours. However, if the prescriber states on the prescription that there shall be no emergency filling of the prescription, then the pharmacist shall not issue any medication not authorized by the prescription. Neither a prescription drug outlet nor a pharmacist shall incur any liability as a result of refusing to refill a prescription pursuant to this subsection (2).

§12-22-123 Labeling

(2) Except as otherwise required by law, any drug dispensed pursuant to a prescription order shall bear a label prepared and

placed on or securely attached to the medicine container stating at least the name and address of the prescription drug outlet, the serial number, and the date of the prescription or of its filling, the name of the drug dispensed unless otherwise requested by the practitioner, the name of the practitioner, the name of the patient, and, if stated in the prescription, the directions for use and cautionary statements, if any, contained in such prescription.

§12-22-125 Licenses or registrations may be denied, suspended, or revoked

- (2)(a) The board may deny, suspend, or revoke any license to practice as a pharmacist or pharmacy intern, after a hearing held in accordance with the provisions of this section, upon proof that the licensee:
- (III) Knowingly permits a person not licensed as a pharmacist or pharmacy intern to engage in the practice of pharmacy;

§12-22-126 Unlawful acts

1) It is unlawful:

- (a) To practice pharmacy without a license;
- (b) To obtain or dispense or to procure the administration of a drug by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of an order, or by the use of a false name or the giving of a false address;
- (c) To willfully make a false statement in any order, report, application, or record required by this part 1;
- (d) To falsely assume the title of or to falsely represent that one is a pharmacist, practitioner, or registered outlet;
- (e) To make or utter a false or forged order;
- (f) To affix a false or forged label to a package or receptacle containing drugs;

* * *

- (h) To sell, compound, dispense, give, receive, or possess any drug or device unless it was sold, compounded, dispensed, given, or received in accordance with sections 12-22-121 to 12-22-124;

* * *

- (m) To dispense any drug without complying with the labeling, drug identification, and container requirements imposed by law.

Analysis

The City Charter C5.25 (4) requires the Hearing Officer to determine the facts in this matter "de novo." This has been determined by the Courts to mean an independent fact-finding hearing considering evidence submitted at the de novo hearing and resolution of factual disputes. *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. Ct. of App., 1975).

Because this is an appeal of a disciplinary action (termination from employment) the Agency has the burden of proof to demonstrate that its decision was within its discretion and appropriate under the circumstances.

The first provision Appellant is charged with is §16-50 A. 2), theft, misuse or gross neglect in the use of City property. In the instant case, Appellant is charged with the theft of two Albuterol inhalers. The CSR does not define "theft." One must look to the Colorado Revised Statutes for that. CRS §18-4-401 defines "theft" as knowingly obtain or exercise control over anything of value without authorization and either intends to permanently deprive another of the use or benefit of the thing of value, knowingly uses, conceals, or abandons the thing of value in such a manner as to deprive the other permanently of the thing of value, or uses, conceals or abandons the thing of value in a manner as to permanently deprive the other person of its use or benefit.

The credible testimony of the pharmacists establishes that Appellant obtained the Albuterol without authorization, the first requirement of the statute. The problem is that, once the Albuterol prescription was entered into the computer by either Appellant or her former roommate, Ms. Nieto, the Hospital was no longer deprived of the use or benefit of the inhalers as the computer entry caused the insurance company to automatically reimburse the Hospital for the value of the inhalers. There is no "misuse" of City property because Appellant had a prescription for the Albuterol inhalers; therefore, she had a right to the prescription, had it been properly filled by a pharmacist. Likewise, "gross neglect" was also not made out, as the entry of the information into the computer was intentional. Therefore, the violation of CSR §16-50 A. 2) was not made out.

The next provision with which Appellant is charged is CSR §16-50 A. 3), dishonesty, which includes, but is not limited to falsifying official records and "any other act of dishonesty not specifically listed." Appellant's witness, Delia Nieto, claims that she was the one who printed the label for the inhalers at Ms. Nuon's request. Appellant also claims that the label was on the boxes when she got them home, but that she threw the boxes and the label away at some unknown time. The Hearing Officer finds neither Ms. Nieto nor Appellant credible on these points.

Ms. Nuon denies that she instructed anyone to print the label. Assuming that she did ask either Appellant or Ms. Nieto to print the label, neither Ms. Nieto nor Appellant offered a reasonable explanation why Ms. Le's name was entered into the computer as the filling pharmacist; Ms. Le credibly testified that she never authorized either of them to enter the prescription under her name. Further, there is no indication on the log sheets that Ms. Le, who was filling other prescriptions on October 4, or any other pharmacist on duty, initialed the duplicate label and placed it onto the log sheet as required as part of the filling procedure. The absence of the label leads the Hearing Officer to the irrefutable conclusion that no label was ever printed for and placed onto the Albuterol.

Appellant also claimed that she did not check the boxes before she left with them but that she assumed that they were labeled when she saw them in her bag. She then testified that she saw that the boxes were labeled when she got home, but that she threw the boxes away at some unspecified time. She testified that she asked Carl Booker to "reprint" the label when she saw him at the ID Clinic on some unknown date because she wanted to have "proof" that there had been a label. The Hearing Officer does not find this testimony credible. It is not logical that someone who was found to

have an unlabeled prescription in her possession would not check to see if the boxes were labeled before she left the pharmacy. It is not logical that someone who knew that there was an issue about the label on the boxes would throw away the best proof of the label's existence. The fact that Mr. Booker could "reprint" a label on some unspecified date is not relevant to establishing that the label was on the boxes when Appellant left the pharmacy with them. Once the information was placed into the computer on October 4, anyone could go back into the computer and have a label printed.

It is more credible that either Appellant, or Ms. Nieto at Appellant's suggestion¹, entered the information onto the computer, using Ms. Le's initials, in an ill-advised attempt to make the whole incident go away. However, this act only compounded Appellant's problems. While she was no longer guilty of "theft" as the Hospital would now be reimbursed for the Albuterol, she was now engaging in other forms of dishonest conduct, including the falsifying of official records by entering Ms. Le's name into the computer as the filling pharmacist when Ms. Le had not filled the prescription and by claiming that Ms. Le not only filled the prescription, but that she, or someone at her direction, pasted the non-existent label onto the boxes.

The CSR permits termination from employment based upon dishonest acts not specifically described in the Rules. The CRS, which governs the practice of pharmacy in this State, permits only licensed pharmacists, and not pharmacy technicians such as Appellant and Ms. Nieto, to fill prescriptions. In other words, the alleged label for the Albuterol could only be printed at the direction of one of the licensed pharmacists and then it had to be initialed by that pharmacist. That was not done here.

The overwhelming evidence establishes that Appellant violated CSR §16-50 A. 3) by her dishonesty in entering (or asking Ms. Nieto to enter) the prescription into the computer without authorization and then lying about the label ever being printed and affixed onto the Albuterol inhaler boxes.

The violation under the "catch-all" provisions, CSR §§16-50 A. 20) and 16-51 A. 11) are also established. Appellant's misconduct was also a violation of the CRS provisions governing the practice of pharmacy in this State. She removed Albuterol from the pharmacy without having it filled, dispensed and labeled in accordance with State law. The violations of these two catch-all provisions have been made out.

Appellant has been charged with violating CSR §16-51 A. 2), the failure to meet established standards of performance. The requirements for this provision are meant to cover performance deficiencies that can be measured upon either qualitative or quantitative standards, such as those one finds in a PEPR. The Department did not present any evidence of performance deficiencies in Appellant's work. This allegation is dismissed.

The last issue before the Hearing Officer is the appropriate discipline for Appellant's violations of the CSR. Mr. Orcutt terminated Appellant from her employment because of the extreme nature of her misconduct. The Hearing Officer agrees this is appropriate.

¹ It should also be noted that Ms. Nieto, while claiming that she entered the information into the computer, never went so far as to say that she printed the label, gave the prescription to Ms. Le to fill, or put the boxes into Appellant's bag. The Hearing Officer must conclude that Ms. Nieto was willing to accept "responsibility" only so far for her friend.

Mr. Orcutt testified at the hearing that violating the CRS provisions governing the practice of pharmacy is a very serious matter. First, a pharmacist must be able to trust his or her pharmacy technician because the statute, in a sense, makes the pharmacist vouch for the honesty and integrity of the pharmacy technician. While the various pharmacists at the Westside Clinic had different opinions about their ability to work with Appellant now that she has been less than honest, the inability of even one of them because of a lack of trust is sufficient to support termination.

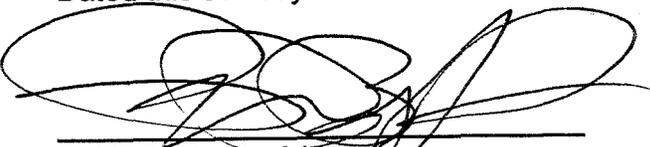
Even if the individual pharmacists felt comfortable with Appellant as a pharmacy technician, Mr. Orcutt had another valid concern that supports the decision to terminate Appellant's employment. According to the CRS, any pharmacy that does not comply with the law governing the filling and dispensing of drugs is at risk of losing its license. The potential ramifications of Appellant's misconduct are a serious matter. Her acts of dishonesty put the license for the Westside Clinic at risk. If the Westside Clinic lost its license to dispense prescriptions, its clientele would suffer immeasurable hardship.

Appellant was in a position of trust. She knew the penalties for not complying with the CRS. She violated the public trust and the applicable statutes by entering (or asking another to enter) the name of a third person as the filling pharmacist into the computer. She lied about the existence of a label for the prescription. During the hearing she told a story that made no sense and was internally inconsistent. She talked about her private drawer and then stated that everyone had access to it in an attempt to implicate unknown parties for putting the Albuterol into the drawer in the first place. She also attempted to blame gravity, saying that the Albuterol must have fallen into the drawer and then said that she did not see it because it was in the back, hidden behind other things. Instead of providing an honest explanation of how the Albuterol got into her drawer, she only offers specious excuses. The evidence in the record amply supports Mr. Orcutt's determination that Appellant's misconduct merited termination. The discipline, therefore, is upheld.

ORDER

The Hearing Officer MODIFIES the disciplinary action as follows: the Hospital's determination that Appellant violated CSR §§16-50 A. 3) and 20) and 16-51 A. 11) is SUSTAINED; the Hospital's determination that Appellant violated CSR §§16-50 A. 2) and 16-51 A. 2) is DISMISSED. Appellant's termination from employment with the Hospital is SUSTAINED and the request for reinstatement and recovery of back pay and benefits is DENIED.

Dated this 30th day of June 2001.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board