

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)	
BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-2951PL
)	
PAMELA FRANKLIN,)	
)	
Respondent.)	
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RECOMMENDED ORDER

On September 25, 2000, a formal administrative hearing in this case was conducted in Tallahassee, Florida, before Don W. Davis, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael E. Duclos, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Building 3, Room 3240
Tallahassee, Florida 32308

For Respondent: Donna H. Stinson, Esquire
Broad & Cassel
215 South Monroe Street, Suite 400
Post Office Box 11300
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

The issue in the case is whether the allegations of the Administrative Complaint filed by Petitioner are correct and, if so, what penalty should be imposed against Respondent.

PRELIMINARY STATEMENT

By Amended Administrative Complaint dated June 13, 2000, the Department of Health (Petitioner) alleged that Pamela Franklin (Respondent) violated Section 464.018(1)(h), Florida Statutes. Respondent requested a formal hearing. The Department forwarded the request for hearing to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, Petitioner presented the testimony of three witnesses and had Exhibits numbered 2-7 admitted into evidence. Respondent presented the testimony of three witnesses, inclusive of herself and had Exhibits numbered 1-10 and 12 admitted into evidence. The Transcript of the hearing was filed on October 5, 2000. Both parties filed Proposed Recommended Orders which have been reviewed and utilized in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulation of the practice of nursing in State of Florida.

2. At all times material to this case, Respondent has been licensed as a registered nurse in the State of Florida, holding license no. 2003552, with a last known address of 1407 Wekewa Nene, Tallahassee, Florida 32301.

3. Respondent was employed at all times material to this case by Tallahassee Memorial Hospital (TMH) until December 1, 2000, when her employment was terminated.

4. On November 23, 1999, Respondent was working a day shift at TMH as a nurse at 1300 Miccosukee Road, Tallahassee, Florida.

5. On November 23, 1999, Sharissa Holloway was a student nurse from the Florida State University (FSU) School of Nursing and happened to be doing a clinical rotation on the TMH orthopedic/neurological floor. Respondent was the primary nurse for the patients on that floor who were under the care of the student nurse.

6. The student nurse received the patient assessment sheets from Respondent prior to 8:00 a.m. with entries already charted by Respondent for estimating Patient N.C.'s pain, and a sedation scale already charted by Respondent covering the period of time that stretched all the way to 12 o'clock noon. When handing the patient assessment sheets to the student nurse at approximately 7:30 a.m., Respondent stated "I have already started the notes." The note entries had Respondent's initials next to them in the appropriate column.

7. Narrative notes on Patient N.C. had already been written indicating that a dressing change of a surgical wound had been done at 8:00 a.m. These notes bore Respondent's signature. The student nurse also got these notes from Respondent before 8:00 a.m.

8. Concerned with the advanced notations that she discovered, the student nurse took the patient assessment sheets which bore Respondent's entries for future times up to 12 o'clock

noon to her FSU clinical nursing instructor who was on the premises at the time. Proceeding to Patient N.C., the instructor verified that the patient's wound dressing had not been changed. The student nurse did the dressing change at approximately 8:30 a.m.

9. The nursing instructor took the documents to the head nurse for the orthopedic/neurological floor, Kay Keeton. Keeton requested that both the student nurse and the nursing instructor submit independent written statements. They complied with Keeton's request.

10. Contemporaneously with the drafting of statements by the clinical nurse instructor and the student nurse, photocopies of the patient assessment sheets were made at least two hours prior to 12 o'clock noon. Keeton made notes on the sheets to show entries charted by Respondent as opposed to entries charted by the student nurse. Keeton is familiar with Respondent's signature. After determining that Respondent had charted something that had not been done yet, Keeton made her report to the TMH administration.

11. When questioned about the entries on December 1, 1999, Respondent denied making the entries. She was given a disciplinary form entitled "Notice of Corrective Action." Upon her refusal to sign the form, Respondent was terminated from her employment.

12. Respondent has experienced employment problems at TMH for which Notices of Corrective Action were issued which date back to 1996. This history, in conjunction with Respondent's demeanor while testifying and her lack of candor, dictate that her denial of improper action in this case, cannot be credited.

13. Minimal acceptable standards of prevailing nursing practice require that documentation of care provided to patients be recorded contemporaneously with the provision of the care.

14. Respondent's "before the fact" documentation of care provided to the patients identified herein fails to meet minimally acceptable standards of prevailing nursing practice.

15. The placing of a care provider's initials on a medication administration record indicates that medication has been administered to patients. "Pre-initialing" or signatures on medication administration records poses a risk of confusion to other care providers working in the facility and is not an acceptable practice.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

17. The Department of Health, Board of Nursing, is responsible for disciplinary proceedings against registered nurses in Florida. Chapter 464, Florida Statutes.

18. The Department has the burden of proving the allegations against Respondent by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). In this case, the burden has been met.

19. Section 464.018, Florida Statutes, provides grounds for disciplinary actions against licensees. Section 464.018(1)(h), provides for the imposition of discipline for "[u]nprofessional conduct, which shall include, but not be limited to, any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice. . . ."

20. Rule 64B9-8.005, Florida Administrative Code, includes "inaccurate recording, falsifying or altering of patient records or nursing progress reports" within the definition of unprofessional conduct.

21. Rule 64B9-8.006(3)(i), Florida Administrative Code, provides a range of disciplinary guidelines for use by the Board of Nursing in imposing discipline for violation of Section 464.018(1)(h), Florida Statutes, where the violation involves administrative duties including charting. The rule authorizes a fine of \$250 to \$1000 for an infraction of the sort perpetuated by Respondent plus probation or suspension of licensure.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner enter a final order against Respondent, imposing a fine of \$250, requiring completion of appropriate continuing education in nursing records documentation in addition to any existing continuing education requirement, and placing the Respondent on probation for a period of one year under such conditions as the Board of Nursing determines are warranted.

DONE AND ENTERED this 24th day of October, 2000, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of October, 2000.

COPIES FURNISHED:

Michael E. Duclos, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Building 3, Room 3240
Tallahassee, Florida 32308

Donna H. Stinson, Esquire
Broad & Cassel
215 South Monroe Street, Suite 400
Post Office Box 11300
Tallahassee, Florida 32302

Ruth R. Stiehl, Ph.D., R.N.
Executive Director
Board of Nursing
Department of Health
4080 Woodcock Drive, Suite 202
Jacksonville, Florida 32207-2714

Theodore M. Henderson, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701

William W. Large, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.