

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD)	
OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-0369PL
)	
LILLIE FERRY,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Administrative Law Judge Daniel Manry conducted the administrative hearing of this case on April 4, 2001, in St. Petersburg, Florida.

APPEARANCES

For Petitioner: Reginald D. Dixon, Esquire
Agency for Health Care Administration
Office of the General Counsel
Post Office Box 14229, Mail Stop No. 39
Tallahassee, Florida 32317-4229

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent violated Section 464.018(1)(j), Florida Statutes (2000), by being unable to practice nursing with reasonable skill and safety to patients by reason of illness or as a result of any mental condition, and, if so, what discipline should be imposed pursuant to Florida Administrative Code Rule 64B9-8.006(3) and

(4). (All chapter and section references are to Florida Statutes (2000), unless otherwise stated. Unless otherwise stated, all references to rules are to rules promulgated in the Florida Administrative Code in effect on the date of this Recommended Order.)

PRELIMINARY STATEMENT

On November 21, 2000, Petitioner filed an Administrative Complaint against Respondent's license to practice nursing. Respondent timely requested an administrative hearing.

At the hearing, Petitioner presented the testimony of eight witnesses and submitted nine exhibits for admission in evidence. Respondent did not appear at the hearing and did not submit any testimony or exhibits for admission in evidence.

The identity of the witnesses and exhibits, and any attendant rulings, are set forth in the Transcript of the hearing filed on April 26, 2001. Petitioner timely filed its Proposed Recommended Order (PRO) on April 30, 2000. Respondent did not file a PRO.

FINDINGS OF FACT

1. Petitioner is the state agency responsible for regulating the practice of nursing pursuant to Chapters 20, 456, and 464. Respondent is licensed as a registered nurse in the State of Florida pursuant to license number RN 3379152.

2. In April 2000, Respondent was employed by Advance Nursing Solutions ("ANS"), a nurse-staffing agency. ANS assigned Respondent to provide home health nursing care to patient D.B.

3. D.B. was four years old and depended on two tubes for oxygen and nourishment. A tracheotomy tube provided oxygen to D.B., and a "G-tube" provided him with food.

4. D.B. required constant in-home monitoring by nurses. Respondent worked the night shift at the patient's home.

5. On April 7, 2000, Judy Gonyea, L.P.N., observed Respondent wearing several layers of clothing. The clothing included pants, a wool skirt, a robe, a vest, and a blazer. The weather outside was not cold, and it was warm inside the patient's home.

6. On the same day, Respondent informed Nurse Gonyea that D.B.'s pulse oximetry, or level of oxygen saturation, had increased to 157 because D.B. had placed the oximetry probe on the foot of a "shiver doll." The shiver doll was a vibrating stuffed clown that sang "Happy Birthday."

7. The highest possible pulse oximetry level is 100. The oximetry probe would not read any oximetry level on an inanimate object such as a doll.

8. On April 8, 2000, Respondent appeared for her shift dressed in ripped shorts and a T-shirt. She appeared to Nurse Gonyea to be in disarray.

9. Respondent's behavior on April 8, 2000, prevented Nurse Gonyea from apprising Respondent of the patient's condition ("giving report"). Giving report is important because the oncoming nurse needs to be aware of the patient's condition so that the oncoming nurse knows what to watch for during his or her shift.

10. Respondent refused to accept the report from Nurse Gonyea on April 8, 2000. Respondent jumped around, blew bubbles, and did not pay attention to Nurse Gonyea when Nurse Gonyea attempted to give the report to Respondent.

11. Nurse Gonyea asked D.B.'s grandmother, if she wanted Nurse Gonyea to stay until another nurse could be assigned. The grandmother stated that would not be necessary. The grandmother later found Respondent asleep on the floor of D.B.'s room.

12. Later on April 8, 2000, the grandmother became concerned that Respondent had been in the bathroom for quite a while. The grandmother walked into the bathroom and observed the Respondent dipping Respondent's stethoscope into the toilet. Respondent explained that she was "fishing" in the

toilet. The grandmother observed the remains of feces in the toilet.

13. In a later episode on April 8, 2000, the grandmother found Respondent lying on top of D.B. The grandmother had to physically remove Respondent from D.B.

14. Respondent resisted the grandmother's attempts to remove her from D.B. Respondent claimed that D.B. did not need oxygen or anything else.

15. The grandmother forced Respondent out of the house onto the back porch. Respondent began beating on the back door of the house with a mop. The grandmother called 911 for help.

16. Two Pinellas County Sheriff's deputies responded to the 911 call. They were Deputy Bernard Sinkiewicz and Deputy Anthony Larusso.

17. Respondent did not recognize the deputies as law enforcement officers even though both deputies were fully uniformed. Respondent babbled, spoke in "baby talk," and recited nursery rhymes.

18. Deputy Sinkiewicz contacted Respondent's husband and asked him to assist the deputies in their attempt to calm Respondent down and remove her from the residence. Respondent's husband arrived at the patient's residence and attempted to help the deputies. Respondent did not appear to

recognize her husband, referring to him as "Tricky Dicky I" and "Tricky Dicky II."

19. Respondent resisted the deputies' attempts to remove her from the residence. The deputies had to physically restrain Respondent with handcuffs.

20. Respondent was placed in the Pinellas Enrichment Mental Health Services ("PEMHS"). On April 11, 2000, Respondent telephoned Errol Dean, the Administrator for ANS.

21. The Respondent told Mr. Dean that "she didn't understand what was going on, what was the problem, that she figured it was a big misunderstanding by all parties concerned. . . ." Respondent indicated that she was "fine" and that "all that stuff was just being made up" and that "she was trying to talk to D.B. in adult language, not baby language" and that her ex-husband or "someone else had tapped her phone line to listen to her conversation from across the street."

22. On April 12, 2000, Respondent met with Mr. Dean at the ANS office. Respondent re-iterated to Mr. Dean that the events of April 8, 2000, were "a big misunderstanding, that everyone knew the truth that she was a good nurse and that she couldn't explain as to why the stories were being made up."

23. In September 2000, at Petitioner's request, Dr. David Myers, an expert in the treatment and monitoring of

health care practitioners, evaluated Respondent for fitness to practice. Dr. Myers initially concluded that Respondent's problems were psychiatric as opposed to chemically dependent and referred Respondent to Drs. James E. Adams and Peter R. Vagg for further evaluation.

24. On or about September 13, 2000, Dr. Adams, an expert in the psychiatric treatment, monitoring, and care of health care practitioners, evaluated Respondent for fitness to practice. Respondent stated during the patient history interview that she had been involuntarily committed pursuant to the Baker Act on three separate occasions. Respondent did not believe that she had any psychiatric illness and that everything was a misunderstanding. Dr. Adams was concerned with Respondent's lack of insight.

25. Dr. Adams concluded that Respondent had experienced a psychotic episode. Dr. Adams opined that Respondent was not in contact with reality in an appropriate way and was unable to understand, had no insight, and was psychotic in her thinking. Dr. Adams further concluded that it was not safe for Respondent to practice nursing with reasonable skill and safety.

26. On or about September 13, 2000, Dr. Vagg, an expert in the psychological treatment and monitoring of health care practitioners, evaluated Respondent for fitness to practice.

Dr. Vagg reviewed test results that had been performed by Health Care Connection staff. Dr. Vagg found the test results to be invalid based on the high incidence of responses that were very socially desirable.

27. Dr. Vagg administered a revised Wexal Memory Scale test to Respondent. The Wexal Memory Scale tests the level of memory skills of Respondent and how well she remembered material, both short-term and long-term.

28. Respondent scored well on the short-term memory components of the Wexal Memory Scale but had difficulty with the delayed recall portion of the test. Her score on the delayed recall portion was such that Dr. Vagg had a concern that Respondent would not be able to retain information for very long, which could affect her ability to practice as a nurse.

29. Dr. Vagg also administered the Rorschach test to Respondent. The Rorschach test, commonly referred to as the "inkblot test," tests how a person solves problems by having the subject look at a series of inkblots and having the subject identify what the inkblot looks like. The Rorschach tests the subject's cognitive processes.

30. Respondent's Rorschach score indicated that Respondent is someone who sees the world very differently than most people. The Respondent did not understand conventional

society and was not easily able to restrict herself to behaving in normal ways. The Respondent has a lot of trouble understanding what reality is and what fantasy is. Dr. Vagg concluded that Respondent was unable to practice nursing without psychotropic medications, counseling with a psychiatrist, and supervision.

31. Dr. Myers concluded that Respondent cannot practice nursing with reasonable skill and safety without monitoring. Dr. Myers based his opinion on his initial evaluation and the evaluations and reports from Drs. Adams and Vagg. Respondent is not currently able to practice nursing with reasonable skill and safety to patients.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding. Sections 120.57(1) and 120.68(8), Florida Statutes (2000). (All section references are to Florida Statutes (2000) unless otherwise stated.) The parties received adequate notice of the administrative hearing.

33. The burden of proof is on Petitioner. Petitioner must prove the material allegations by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

34. Petitioner satisfied its burden of proof. Petitioner showed by clear and convincing evidence that

Respondent violated Section 464.018(1)(j) by being unable to practice nursing with reasonable skill and safety to patients by reason of illness or as a result of any mental condition.

35. Section 464.018(1)(j), authorizes the Board of Nursing to discipline Respondent for violating the statute. Rule 64B9-8.006(3) and (4) prescribes the range of discipline.

36. Rule 64B9-8.006(3), provides the following penalty range for violations of 464.018(1)(j):

"[f]ine from \$100 - \$1000 plus referral to IPN and stayed suspension under IPN or probation with conditions. . . [n]ot in IPN . . . [s]uspend for time certain to show continuous sobriety and until proof of safety to practice, fine from \$250 - \$1,000 prior to reinstatement followed by probation with conditions or IPN participation."

37. Rule 64B9-8.006(4) provides that the Board of Nursing may deviate from the disciplinary guidelines set forth in Rule 64B9-8.006(3) based on aggravating or mitigating circumstances. Several factors may be considered as aggravating circumstances, including but not limited to, any danger to the public.

38. Petitioner showed by clear and convincing evidence that several aggravating circumstances are present in this case. Respondent's conduct placed a very fragile patient in danger. Respondent has no insight into her problem. Respondent can be violent and abusive.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law, it is

RECOMMENDED that the Board of Nursing enter a final order finding Respondent guilty of violating Section 464.018(1)(j), reprimanding Respondent, suspending Respondent's license for one year, imposing a fine of \$250, and imposing administrative costs of \$2,626.46. The final order should provide that, prior to returning to the practice of nursing, Respondent shall pay the fine and costs and shall submit to an evaluation by a psychiatrist or psychologist approved by the Intervention Project for Nurses (IPN). That evaluation must specifically state that the Respondent is able to practice nursing with reasonable skill and safely to patients and in accordance with the laws of Florida. If the evaluation indicates that Respondent is able to practice nursing with reasonable skill and safety to patients and in accordance with the laws of Florida, the suspension shall be lifted and Respondent allowed to practice nursing under the monitoring and supervision of IPN. If IPN recommends further treatment, Respondent shall comply with those recommendations prior to resuming the practice of nursing in the State of Florida.

DONE AND ENTERED this 1st day of June, 2001, in
Tallahassee, Leon County, Florida.

DANIEL MANRY
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 1st day of June, 2001.

COPIES FURNISHED:

Reginald D. Dixon, Esquire
Agency for Health Care Administration
Office of the General Counsel
Post Office Box 14229, Mail Stop No. 39
Tallahassee, Florida 32317-4229

Lillie Ferry
101 131st Avenue, East
Madeira Beach, Florida 33708

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

William W. Large, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701

Theodore M. Henderson, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
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 should be filed with the agency that will issue the Final Order in this case.