

OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)	
NURSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-1282PL
)	
BEVERLY COOPER,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

On June 29, 2001, a formal administrative hearing in this case was held by videoconference in Tallahassee and Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael J. Kapperman, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

For Respondent: No Appearance

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

On January 24, 2001, the Department of Health, Board of Nursing (Petitioner) filed an Administrative Complaint against Beverly Cooper (Respondent) alleging that while working at a nursing home, the Respondent struck a resident at the facility with a closed fist. The Respondent filed a request for formal hearing. The request was forwarded to the Division of Administrative Hearings, which scheduled the proceeding.

During the hearing, the Petitioner presented the testimony of four witnesses and had Exhibits numbered 1-4 admitted into evidence. The Respondent did not attend the hearing.

A Transcript of the hearing was filed on July 11, 2001. The Petitioner filed a Proposed Recommended Order that was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is the state agency charged with the responsibility for regulation and discipline of nursing practice within the State of Florida.

2. The Respondent is a registered nurse holding Florida license number 2551692.

3. On June 1, 2000, the Respondent was employed as a registered nurse at Harborside Healthcare Nursing Home.

4. The Respondent was assigned to provide patient care including administration of medications to residents.

5. L. M. was a resident of Harborside Healthcare. L. M. was a diabetic and required insulin injection as a part of her treatment for the diabetes.

6. On June 1, 2000, the Respondent attempted to administer an insulin injection to L. M. Two Certified Nursing Assistants were present in L. M.'s room at the time of the injection.

7. When the Respondent began the injection, L. M. "jumped" or "jerked," and the Respondent struck L. M.'s arm with the Respondent's closed fist.

8. Both of the nursing assistants reported the incident to the facility's Director of Nursing. The Director of Nursing investigated the incident and discussed it with the Respondent, who initially admitted the striking although she later denied the event.

9. The Respondent was immediately suspended from her employment and was subsequently terminated.

10. Minimal standards of professional nursing practice prohibit the striking of a patient.

CONCLUSIONS OF LAW

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

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

13. The evidence establishes that on June 1, 2000, the Respondent struck a patient under her care. There was no evidence presented which could offer an explanation or justification for the Respondent's action.

14. Section 464.018, Florida Statutes, sets forth the grounds for disciplinary action by the Board of Nursing against a licensed registered nurse.

15. Section 464.018(1)(h), Florida Statutes, prohibits "[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, in which case actual injury need not be established."

16. Rule 64B9-8.005(13), Florida Administrative Code, prohibits "[f]ailure to conform to the minimal standards of acceptable prevailing nursing practice, regardless of whether or not actual injury to a patient was sustained."

17. In striking the patient, the Respondent departed from minimal standards of acceptable and prevailing nursing practice.

18. Rule 64B9-8.006, Florida Administrative Code, provides guidelines for the determination of appropriate discipline imposed upon a violation of the disciplinary statute.

19. For a violation of Section 464.018(1)(h), Florida Statutes, the rule provides a penalty range from reprimand to suspension until proof of safety to practice, followed by probation with conditions and appropriate continuing education courses, and an administrative fine of \$250 to \$1,000.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Health, Board of Nursing, enter a Final Order imposing an administrative fine of \$1,000, and suspending the Respondent's licensure until such time as the Respondent provides to the Board proof of her ability to practice nursing safely, after which the Respondent shall be placed on probation for a one-year period under such conditions as the Board deems appropriate.

DONE AND ENTERED this 27th day of August, 2001, in Tallahassee, Leon County, Florida.

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of August, 2001.

COPIES FURNISHED:

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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.