

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-1526PL
)	
GRACE M. HODGSON,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference in Tallahassee on August 14, 2001, with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Reginald D. Dixon, Esquire
Agency for Health Care Administration
Post Office Box 14229, Mail Stop 39
Tallahassee, Florida 32317-4229

For Respondent: Peter Loblack, Esquire
Law Office of Peter Loblack, P. A.
Office Parks at the California Club
1031 Ives Dairy Road, Suite 132
Miami, Florida 33179

STATEMENT OF THE ISSUES

Whether the Respondent committed the violation alleged in the Amended Administrative Complaint and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On September 7, 1999, the Department of Health on behalf of the Agency for Health Care Administration (Petitioner or Department) filed an Administrative Complaint against the Respondent, Grace M. Hodgson. Thereafter the Respondent timely filed an Election of Rights and the matter was forwarded to the Division of Administrative Hearings for formal proceedings on April 23, 2001. The basis for the delay between the time the complaint was entered and the date on the Respondent's request for hearing (March 28, 2001) is not addressed by the record in this cause.

On May 14, 2001, an order was entered to grant the Petitioner's request to correct an error on the Administrative Complaint. Thus the case proceeded to hearing on the Amended Administrative Complaint with a corrected date.

At the hearing, the Petitioner presented testimony from Lauren Center, the Director of Human Resources for North Shore Medical Center; Tamy Ziaukas, a registered nurse formerly employed at North Shore Medical Center; Sandia Mezadieu, a nurse employed by North Shore Medical Center on September 29, 1998;

Raymond Santiago, a registered nurse employed by North Shore Medical Center on September 29, 1998, as a nursing coordinator/supervisor; Valerie Mallette, a former director of oncology and medical surgical services for North Shore Medical Center; and Joeann Moncur, former nurse manager on the pediatric medical surgical floor at North Shore Medical Center. Petitioner's Exhibits numbered 2, 3, 4, 5, and 8 were admitted into evidence.

The Respondent testified in her own behalf. Respondent's Exhibit 1 was received in evidence.

The transcript in this case was filed with the Division of Administrative Hearings on August 22, 2001. Thereafter the Petitioner timely filed a Proposed Recommended Order that has been considered in the preparation of this order. The Respondent did not timely file a proposed order and did not timely seek additional time to file a Proposed Recommended Order. The Respondent's Motion to Waive Submission of All Proposed Orders was denied.

FINDINGS OF FACT

1. The Department is the state agency charged with the responsibility of regulating the practice of nursing in the State of Florida.

2. At all times material the allegations of this case, the Respondent was a licensed registered nurse, license number RN 3254372.

3. At all times material to the allegations of this case the Respondent was employed at the North Shore Medical Center located in Miami, Florida. The Respondent was assigned to the pediatric floor and was to provide nursing services to patients on that floor during her duty hours.

4. Tamy Ziaukas was also employed at North Shore and had been there prior to the Respondent's employment. Ms. Ziaukas was designated the senior nurse for the pediatric floor from 11:00 p.m. until 7:00 a.m. As such, she helped coordinate the work for the nurses assigned to the floor. Although technically not a supervisor, Ms. Ziaukas did perform duties as a charge nurse for the floor.

5. The Respondent did not appreciate the manner in which Ms. Ziaukas assumed and performed the duties of charge nurse for the floor. Although their disagreement was little more than a personality conflict, the Respondent maintains that such disagreement fueled the allegations of the instant case. Such contention is not supported by the persuasive evidence in this case.

6. To the contrary, the weight of the credible evidence supports the finding that the Respondent inappropriately handled a pediatric patient on or about September 29, 1998.

7. The Respondent responded to a pediatric patient whose I-V had come out. The patient was agitated and did not want the

line to be reinserted. Three nurses were present for the procedure. Respondent was to insert the I-V while Ms. Ziaukas and another nurse, Ms. Mezadieu, assisted. The patient continued to be difficult. When the patient refused to cooperate, the Respondent either slapped or pushed the patient on his face to get him to submit to the procedure.

8. The force of the slap was not sufficient to leave a mark on the patient's face. Nevertheless, Ms. Ziaukas reported the incident to her supervisor; moreover, the Respondent reported the incident to the patient's physician.

9. When the nurses were questioned about the incident Ms. Ziaukas characterized the touch as a "slap." The Respondent did not deny touching the child but said it was a "push" to get the child to calm down. The third witness to the incident has no current recollection of the event.

10. Statements taken from the witnesses at or near the time of the incident confirmed that the Respondent touched the child's face.

11. The use of a forceful push or slap to a pediatric patient's face would not be medically necessary. A difficult patient may be held down or subdued without inappropriately touching the face.

12. Prior to this incident, the Respondent had performed all aspects of her job in a satisfactory manner. The Respondent

was given the opportunity to attend an anger management class but declined the employer's offer. Subsequently, the Respondent left employment at North Shore Medical Center.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57(1), Florida Statutes.

14. The Petitioner bears the burden of proof in this cause to establish by clear and convincing evidence the allegations of the Amended Administrative Complaint. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). It has met that burden.

15. Section 464.018(1)(h), Florida Statutes, provides:

(1) The following acts shall be grounds for disciplinary action set forth in this section:

* * *

(h) Unprofessional 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 64B9-8.006, Florida Administrative Code, sets forth the range of penalties for violations of Section 464.018, Florida Statutes. Such rule provides, in pertinent part:

(1) The legislature created the Board to assure protection of the public from nurses who do not meet minimum requirements for safe practice or who pose a danger to the public. Among the suspensions, restrictions

of practice, and conditions of probation used by the Board in discharging its duties under Section 464.018, F.S., are:

- (a) Suspension until appearance before the Board or for a definite time period and demonstration of ability to practice safely.
- (b) Suspension until appearance before the Board, or for a definite time period, and submission of mental or physical examinations from professionals specializing in the diagnosis or treatment of the suspected condition, completion of counseling, completion of continuing education, demonstration of sobriety and ability to practice safely.
- (c) Suspension until fees and fines paid or until proof of continuing education completion submitted.
- (d) Suspension until evaluation by and treatment in the Intervention Project for Nurses. In cases involving substance abuse, chemical dependency, sexual misconduct, physical or mental conditions which may hinder the ability to practice safely, the Board finds participation in the IPN under a stayed suspension to be the preferred and most successful discipline.
- (e) Suspension stayed so long as the licensee complies with probationary conditions.
- (f) Probation with the minimum conditions of not violating laws, rules, or orders related to the ability to practice nursing safely, keeping the Board advised of the nurse's address and employment, and supplying both timely and satisfactory probation and employer/supervisor reports.
- (g) Probation with specified continuing education courses in addition to the minimum conditions. In those cases involving unprofessional conduct or substandard practice, including recordkeeping, the Board finds continuing education directed to the practice deficiency to be the preferred punishment.
- (h) Probation with added conditions of random drug screens, abstention from alcohol

and drugs, participation in narcotics or alcoholics anonymous, psychological counseling, the prohibition on agency work, or the requirement that work must be under direct supervision on a regularly assigned unit.

(i) Personal appearances before the Board to monitor compliance with the Board's order.

(j) Administrative fine and payment of costs associated with probation or professional treatment.

17. As it relates to the violation in this case, the disciplinary guidelines set forth by rule provide for a penalty ranging from a fine (\$250-\$1,000) with a probation to suspension of the license. Further, conditions to a suspension may include the completion of continuing education courses.

18. In this case the Petitioner has established by clear and convincing evidence that the Respondent inappropriately touched the minor child on his face. Whether the touch is characterized as a slap or a push, is immaterial to the conclusion reached herein; such a touch is not medically necessary to subdue a child in order to insert an I-V line. The weight of the credible evidence supports the conclusion that the Respondent was impatient with the child, was defensive toward her colleague, and was determined to insert the I-V. Instead of working with the child to alleviate his fears, the Respondent acted impulsively and inappropriately. That she failed to thereafter take full responsibility for the momentary lack of

judgment is troubling. It is concluded that the Petitioner has established by clear and convincing evidence a violation of Section 464.018(1)(h), Florida Statutes.

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 in the amount of \$250, requiring the Respondent to remit the agency's costs in prosecuting this case, requiring the Respondent to complete an anger management course, and placing the Respondent on probation for a period of three years.

DONE AND ENTERED this 3rd day of October, 2001, in Tallahassee, Leon County, Florida.

J. D. PARRISH
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 3rd day of October, 2001.

COPIES FURNISHED:

Reginald D. Dixon, Esquire
Agency for Health Care Administration
Post Office Box 14229, Mail Stop 39
Tallahassee, Florida 32317-4229

Peter Loblack, Esquire
Law Office of Peter Loblack, P.A.
Office Parks at California Club
1030 Ives Dairy Road, Suite 132
Miami, Florida 33179

Lawrence Allen Schwartz, Esquire
8005 Northwest 155th Street
Miami, Florida 33016

Theodore M. Henderson, Agency Clerk
Department of Health
4052 Bald Cypress Way
Bin A00
Tallahassee, Florida 32399-1701

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

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 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.