

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)	
NURSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 02-4163PL
)	
GREGORY NORTON, R.N.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings conducted a formal administrative hearing in this case on December 17, 2002, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Amy M. Pietrodangelo, Esquire
Michael T. Flurry, Esquire
Department of Health
Bureau of Health Care Practitioner
Regulation - Legal
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Tallahassee, Florida 32399-3265

For Respondent: Harvey L. Jay, III, Esquire
Erica Vitsky, Esquire
Saalfeld, Coulson, Shad & Jay, P.A.
1000 First Union Tower
225 Water Street
Jacksonville, Florida 32202-4458

STATEMENT OF THE ISSUES

The issue to be resolved in this proceeding concerns whether disciplinary action should be taken against Respondent's nursing license based on an alleged violation of Section 464.018(1)(h), Florida Statutes.

PRELIMINARY STATEMENT

On July 29, 2002, an Administrative Complaint was filed against Respondent, Gregory Norton, seeking to permanently revoke, suspend, or otherwise discipline his license to practice nursing.

Respondent timely requested a formal hearing and the matter was referred to the Division of Administrative Hearings for a formal hearing. The Administrative Complaint alleges that Respondent practiced below the minimal acceptable standards of prevailing nursing practice, specifically Section 464.018(1)(h), Florida Statutes. The single charge in the Administrative Complaint is premised on Respondent's treatment of patient, M.E. on December 6, 2001.

At the hearing, Petitioner called five witnesses: M.E., the patient; R.A., the patient's mother; Jeanne Baranek, a Wolfson Children's Hospital nurse without an independent recollection of M.E.; Fern Rossello, a Wolfson Children's Hospital nurse without an independent recollection of M.E.; and Worthlyn White, an expert contracted with the Agency for Health

Care Administration to provide expert testimony. Petitioner offered two exhibits: Exhibit 1 was M.E.'s medical records at Wolfson Children's Hospital from December 5, 2001, to December 7, 2001; Exhibit 2 was a copy of Worthlyn White's abbreviated resume.

Respondent called three witnesses: Kip Deckerhoff, a nurse manager at Wolfson Children's Hospital; Gregory Norton, Respondent; and Cynthia Gerdik, an expert witness in pediatric nursing. Respondent did not offer any exhibits.

A Transcript of the hearing was ordered and filed with the Division of Administrative Hearings on January 16, 2003. The parties requested and were granted leave to file proposed recommended orders more than ten days after the filing of the Transcript. Both parties filed Proposed Recommended Orders which have been reviewed in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent, Gregory Norton, is a licensed registered nurse in the State of Florida holding License No. RN 2219032.

2. On December 5, 2001, M.E. presented at Wolfson Children's Hospital with complaints of pneumonia and fever and was admitted for treatment. M.E. had been previously diagnosed with sickle cell disease prior to his admission to the hospital.

3. Respondent was not working at Wolfson Children's Hospital on December 5, 2001.

4. In compliance with his duties at Wolfson Children's Hospital, Respondent performed a full assessment on M.E. on December 6, 2001.

5. M.E. was discharged from the hospital on December 7, 2001. Again, Respondent was not working at Wolfson Children's Hospital on December 7, 2001.

6. At the final hearing, M.E. stated under oath that he had no recollection of any events at Wolfson Children's Hospital on December 6, 2001, the only date alleged in the Administrative Complaint. Specifically, M.E. testified that he did not remember any examination by or discussion with Respondent on December 6, 2001.

7. On December 6, 2001, M.E., in R.A.'s presence, denied to Kip Deckerhoff that Respondent had engaged in any inappropriate conduct during his examination. M.E.'s denial is confirmed by sworn testimony provided by both R.A. and Kip Deckerhoff, the nurse manager of M.E.'s floor at Wolfson Children's Hospital.

8. R.A. has no personal knowledge regarding Respondent's examination of her son, M.E.

9. Worthlyn White, an expert witness presented by Petitioner, has no current clinical nursing role or consulting

contracts with any other employers at this time. White has a contract/fee agreement with Petitioner to serve as an expert witness. This is the only Florida case in which White has offered an expert opinion. Before she became a consultant for Petitioner, White worked at the facility, Express Care, where she rarely saw pediatric sickle cell patients. Her primary area of certification is neonatal nursing. A neonate is a newborn child up to 28 days of age. Teenagers are not classified as neonates.

10. At the final hearing, White conceded that according to Stedman's Medical Dictionary for the Health Professional, perineum is defined as the area between the thighs extending from the coccyx to the pubis and lying below the pelvic diaphragm and, accordingly, Respondent's care and examination of M.E.'s perineum was appropriate. Respondent's total examination of M.E. was within the standard of care and Respondent's femoral pulse check on M.E. was not below the standard of care.

11. Respondent testified regarding his treatment of M.E. on December 6, 2001. Respondent has worked clinically at Wolfson Children's Hospital for 20 years. He has practiced as a registered nurse in the State of Florida for 12 years. There has never been an investigation of Respondent's license prior to Petitioner's allegations in this case.

12. Respondent testified that he performed a required physical examination on M.E on December 6, 2001. When asked his personal opinion on the standard of care, Respondent testified that his treatment of M.E. on December 6, 2001, was appropriate.

13. Cynthia Gerdik, an expert in the area of pediatric nursing, has practiced as a registered nurse for 30 years. She is currently the nurse manager of Pediatric Services at Shands Jacksonville and the manager of the only sickle cell clinic in North Florida.

14. Testimony of Gerdik establishes that Respondent's full head-to-toe assessment on M.E., including an examination of all body systems was within the standard of care. Further, it was within the standard of care for Respondent to perform a femoral pulse check and assess M.E.'s perineum. None of Respondent's actions, pertaining to the treatment of M.E. on December 6, 2001, fell below the standard of care.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding, pursuant to Section 120.57(1), Florida Statutes. Disciplinary licensing proceedings are penal in nature. State ex rel. Vining v. Florida Real Estate Commission, 281 So. 2d 487 (Fla. 1973). In this disciplinary licensing proceeding, Petitioner has the burden of proving by clear and convincing

evidence the allegations against Respondent. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1st DCA 1987).

16. The standard of "clear and convincing evidence" requires that:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produced in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983) (emphasis added).

17. The Administrative Complaint alleges that Respondent practiced below the minimal acceptable standards of prevailing nursing practice by improperly performing a femoral pulse check and exam on M.E.'s genitals on December 6, 2001.

18. Under the definition of clear and convincing evidence, Petitioner has not proven that Respondent's treatment of M.E. fell below the standard of care.

RECOMMENDATION

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

That a final order be entered dismissing the complaint against Respondent Gregory Norton.

DONE AND ENTERED this 14th day of February, 2003, in
Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of February, 2003.

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.