

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
NURSING, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-2248PL  
 )  
LOUVEDOR BONHOMME, C.N.A., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 13, 2004, in Naples, Florida, before Susan B. Harrell,<sup>1</sup> a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Judith A. Law, Esquire  
Ellen M. Simon, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399

For Respondent: Victor M. Arias, Esquire  
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STATEMENT OF THE ISSUES

Whether Responded violated Subsections 464.018(1)(n) and 464.204(1)(b), Florida Statutes (2002), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On April 13, 2004, Petitioner, Department of Health, Board of Nursing (Department), filed an Administrative Complaint against Respondent, Louvedor Bonhomme, C.N.A. (Bonhomme), alleging that she was guilty of violating Subsections 464.018(1)(n) and 464.204(1)(b), Florida Statutes (2002). Bonhomme requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings to assign an administrative law judge to conduct the final hearing.

The final hearing was scheduled for August 4, 2004. Respondent requested a continuance, which was granted, and the final hearing was rescheduled for October 13, 2004.

At the final hearing, the Department presented the following witnesses: Nicole Joseph, Finemy Cange, and Suzanne Salyer. Petitioner's Exhibits 1 through 9 were admitted in evidence.

Respondent testified in her own behalf and presented Respondent's Exhibits 1 through 4, which were admitted in evidence.

On November 1, 2004, the Transcript of the final hearing was filed. Petitioner and Respondent filed their proposed recommended orders on November 12, 2004, and November 15, 2004, respectively. The parties' recommended orders have been considered in rendering this Recommended Order.

## FINDINGS OF FACT

1. The Department is the state agency charged with the responsibility of regulating the practice of certified nursing assistants pursuant to Section 20.43 and Chapters 456 and 464, Florida Statutes (2004).

2. Bonhomme is a certified nursing assistant (C.N.A.) licensed by the Department under Certificate No. CX 1100000012785.

3. The incident at issue in this proceeding took place on April 21, 2003, when Bonhomme was employed as a C.N.A. at Imperial Health Care Center (Imperial), where E.O. was a resident. Nicole Joseph (Joseph), a C.N.A., was assigned to care for E.O.

4. E.O. spends a good deal of her time sitting in a wheelchair at the nurses' station in "A" Hall. E.O. speaks very little English, and communicates mostly in German. When she needs to go to the restroom, she will usually yell, "Hello," and the C.N.A. will come and get her, take her to the restroom, and assist her in using the facilities.

5. On April 21, 2003, E.O. indicated that she needed to use the restroom, and a nurse paged Joseph to come and get E.O. Joseph was busy assisting another resident when the page was made, and Bonhomme took up the task of taking E.O. to the restroom. Bonhomme began to wheel E.O. down the hall towards

E.O.'s room. Joseph came out of the other resident's room and followed Bonhomme and E.O. into E.O.'s room.

6. While Bonhomme was taking E.O. to her room, Bonhomme would shake E.O.'s wheelchair from side to side, upsetting E.O. and causing her to scream in German. When they were inside E.O.'s room, Joseph began to remove the foot plates from the wheelchair so that E.O. could access the toilet from the wheelchair. E.O., still upset, began to kick Joseph.

7. E.O. carries a small red pocketbook containing pens, pencils, and paper. She uses the writing materials to assist in communicating with others who do not speak German. E.O. becomes very upset when anyone touches her pocketbook.

8. Joseph wheeled E.O. into the bathroom and placed E.O.'s pocketbook on top of the toilet. Bonhomme took the pocketbook and threw it on the floor. Her actions upset E.O., who began to scream. Joseph took the pocketbook and replaced it on the toilet tank top. Again Bonhomme took the pocketbook and threw it on the floor. Joseph picked up the pocketbook and placed it on E.O.'s bed within E.O.'s sight. After Joseph placed the pocketbook on the bed, E.O. began to calm down.

9. Joseph got E.O. situated on the toilet and returned to another resident's room to assist that resident, leaving Bonhomme in the bathroom with E.O.

10. Finemy Cange (Cange), a C.N.A. employed by Imperial, was caring for a resident in the room across the hall from E.O.'s room. Cange saw Bonhomme take E.O. into her room and later heard E.O. screaming in her bathroom. Cange went to the storage room to get a nightgown for a resident. On returning from the storage room, she continued to hear E.O. yelling. Cange, carrying the nightgown, and another C.N.A., Catherine George, went into E.O.'s room. Cange found Bonhomme standing in front of E.O. in the bathroom, making faces at E.O. This was upsetting to E.O.

11. Bonhomme took a rubber glove that was in the bathroom, filled it with water, and bounced it on E.O.'s head. E.O., still seated on the toilet, became more upset and continued to yell. Cange told Bonhomme that placing the glove on E.O.'s head was not funny. Bonhomme quit bouncing the glove on E.O.'s head and placed the glove in the sink.

12. Joseph, who was assisting another resident, heard E.O.'s continued screaming. She left the other resident and returned to E.O.'s room. She saw Bonhomme with the water-filled glove, but did not know that Bonhomme had bounced it on E.O.'s head.

13. Next Bonhomme took the nightgown from Cange, threw it on E.O.'s head and turned out the lights. Cange turned the

lights back on. At this juncture, Joseph told Bonhomme to leave.

14. Joseph got E.O. off the toilet, dressed her and returned her to the nurses' station, where she left her. E.O. was visibly upset. She was pointing to her head, crying, and talking in German. The nurse at the nurses' station contacted Suzanne Salyer (Salyer), the director of nursing at Imperial.

15. Salyer questioned Bonhomme and Joseph, but they denied anything happened. Both C.N.A.'s were suspended pending an investigation. The following morning Joseph went to Salyer and told her what happened.

16. Salyer is a registered nurse and is qualified as an expert in nursing and the duties and responsibilities of C.N.A.'s. It is her expert opinion that C.N.A.'s should take care of the residents as if they were family and that placing a nightgown on a resident's head, placing a water-filled glove on a resident's head, and turning off the light after placing the nightgown on the resident's head are actions which fall below the minimal standards of acceptable and prevailing nursing practices.

17. Bonhomme was aware that the actions were prohibited. When she began working at Imperial, she signed a Resident's Rights Agreement that provided that a resident has the right

"[t]o be free from verbal, physical or mental abuse, corporal punishment and involuntary seclusion."

18. Bonhomme has not had her certificate disciplined prior to this proceeding.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2000).

20. Petitioner has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

21. Petitioner alleged in the Administrative Complaint that Respondent violated Subsection 464.204(1)(b), Florida Statutes (2002), which provides that a certified nursing assistant may be disciplined for intentionally violating any provisions of Chapter 464, Florida Statutes (2002). Petitioner further alleged that Respondent violated Subsection 464.018(1)(n), Florida Statutes (2002), which provides that the following constitutes grounds for discipline:

Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience.

22. In the Administrative Complaint, the Department alleged that Bonhomme failed to meet minimal standards of acceptable and prevailing nursing practice when she was "mentally and physically abusive to Resident E.O., when she poked E.O., bounced a water-filled glove off of E.O.'s head and when she placed a nightgown over E.O.'s head and then turned off the lights."

23. The Department has established that Bonhomme intentionally violated Subsection 464.018(1)(n), Florida Statutes (2002), by bouncing a water-filled glove on E.O.'s and by placing a nightgown over E.O.'s head and then turning off the lights. The circumstances in which these actions occurred demonstrate that the actions were intentional. It was not accidental that Bonhomme took a rubber glove, filled it with water, and bounced it on a resident's head. Nor was it accidental that Bonhomme took a nightgown from the hands of another C.N.A., threw the nightgown on top of a resident, who was seated on a toilet, and then turned out the light. The actions were done deliberately to upset E.O.

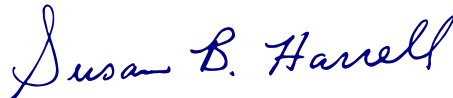
#### RECOMMENDATION

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



RECOMMENDED that a final order be entered finding that Louvedor Bonhomme violated Subsection 464.204(1)(b), Florida Statutes (2002), by violating Subsection 464.018(1)(n), Florida Statutes (2002); imposing an administrative fine of \$100; requiring Louvedor to attend continuing education classes as specified by the Board of Nursing; and placing Respondent on probation for two years under conditions as specified by the Board of Nursing.

DONE AND ENTERED this 6th day of December, 2004, in Tallahassee, Leon County, Florida.



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SUSAN B. HARRELL  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of December, 2004.

ENDNOTE

1/ At the time of the final hearing, Administrative Law Judge Susan B. Harrell was named Susan B. Kirkland.

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.