

STATE OF FLORIDA
BOARD OF NURSING

Final Order No. DOH-12-1407-^{FOF}-MQA
FILED DATE: Jul 09 2012
Department of Health
By: Angel Saucedo
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2009-11401
DOAH CASE NO.: 10-0855PL
LICENSE NO.: CNA 139966

FEDELINE GEORGES, C.N.A.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF NURSING (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 8, 2012, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Thomas Dickens and William Miller, Assistant General Counsels. Respondent was represented by Thomas C. Grajek, Esquire.

Upon review of the Recommended Order, the argument of the parties and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

1. Petitioner's exceptions address the Administrative Law Judge's (ALJ) conclusions of law with regard to the penalty recommended by the ALJ. Petitioner cites the danger to the

public and patients and the extraordinarily vulnerable condition that Patient T.D. was as aggravating factors justifying a stricter penalty than that recommended by the ALJ. Testimony and findings of fact were made by clear and convincing evidence at the formal hearing supporting Petitioner's exceptions and were directly cited in paragraphs 4, 10, 12, and 14 of the recommended order. Petitioner requests that the penalty be increased to permanent revocation. Petitioner's exceptions are denied.

2. Respondent's exceptions address the ALJ's finding of fact that alleging that clear and convincing evidence was used to prove the facts alleged and those facts do not warrant discipline of the Respondent. Respondent requests that this action be dismissed without punishment. Respondent's exceptions are denied.

FINDINGS OF FACT

3. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
4. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

5. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 464, Florida Statutes.

6. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ADOPTED and includes as follows:

The Respondent must pay an administrative fine of \$150.00. Payment shall be made by cashier's check or money order payable to the Board of Nursing and mailed to, DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer.

The license of FEDELINE GEORGES is placed on probation for a period of two(2) year(s) subject to the following terms:

The Respondent shall not violate chapters 456 or 464, Florida Statutes, the rules promulgated pursuant thereto, any other state or federal law, rule, or regulation relating to the practice or the ability to practice as a nursing assistant.

The Respondent must report any change in address or telephone number, employment, employer's address or telephone number, or any arrests in writing within 10 working days to the Department of Health, 4052 Bald Cypress Way, Bin C02, Tallahassee, Florida 32399-3252.

Whether employed as a nursing assistant or not, the Respondent shall submit written reports to the Nursing Compliance

Officer which shall contain the Respondent's name, license number, and current address; the name, address, and phone number of her current employer; and a statement by the Respondent describing his/her employment. This report shall be submitted to the Nursing Compliance Officer every three (3) months in a manner as directed by the Nursing Compliance Officer.

All current and future settings in which the Respondent practices as a nursing assistant shall be promptly informed of the Respondent's probationary status. Within five days of the receipt of this Order, the Respondent shall furnish a copy to her nursing supervisor. The supervisor must acknowledge this probation to the Nursing Compliance Officer in writing on employer letterhead within ten days. Should the Respondent change employers, he/she must supply a copy of this Order to his/her new nursing supervisor within five days. The new employer shall acknowledge probation in writing on employer letterhead to the Nursing Compliance Officer within ten days. The Respondent shall be responsible for assuring that reports from nursing supervisors will be furnished to the Nursing Compliance Officer every three (3) months. That report shall describe the Respondent's work assignment, work load, level of performance, and any problems. Any report indicating an unprofessional level of performance shall be a violation of probation.

The Respondent must work in a setting under direct

supervision and only on a regularly assigned unit. Direct supervision requires a nurse to be working on the same unit as the Respondent and readily available to provide assistance and intervention. The Respondent cannot be employed by a nurse registry, temporary nurse employment agency or home health agency. Multiple employers are prohibited. The Respondent cannot be self-employed as a nursing assistant.

If the Respondent ceases to practice as a nursing assistant this probation shall be tolled until the Respondent returns to active practice as a nursing assistant. Unless this Order states otherwise, any fines imposed or continuing education required must be paid or completed within the time specified and are not tolled by this provision. Employer reports are not required during the time probation is tolled. Working as a nursing assistant without notification to the Board is a violation of this Order.

The Respondent's failure to comply with the terms of this Probation Order without the prior written consent of the Board shall be a violation of this Probation. The probation shall not be terminated until the Respondent has complied with all terms of probation. The failure to comply with the terms of probation set forth above shall result in a subsequent Uniform Complaint Form being filed by the Board with the Department of Health against the Respondent's license, which may result in additional administrative fines, probationary periods, and/or suspensions

being imposed against the Respondent's license.

The Respondent shall pay all costs necessary to comply with the terms of this Order. Such costs include, but are not limited to, the cost of preparation of investigative and probationary reports detailing the compliance with this probation; the cost of obtaining, and analysis of, any blood or urine specimens submitted pursuant to this Order; and administrative costs directly associated with the Respondent's probation.

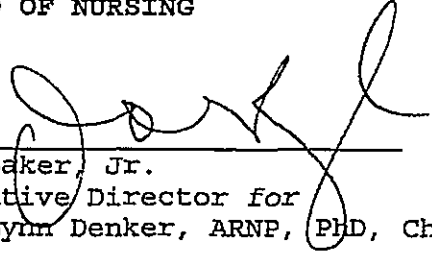
RULING ON MOTION TO ASSESS COSTS

The Board retained jurisdiction to consider the Motion to Assess Costs. The issues regarding costs were presented to the Board at its duly-noticed public meeting on June 8, 2012 in Tampa, Florida. The Board imposes the costs associated with this case in the amount of \$2,177.79. Said costs are to be paid within 36 months from the date this Final Order is filed. Payment shall be made by cashier's check or money order payable to the Board of Nursing and mailed to, DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 9th day of July, 2012.

BOARD OF NURSING



Joe Baker, Jr.
Executive Director for
Ann-Lynn Denker, ARNP, PhD, Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Clerk of the Department of Health, 4052 Bald Cypress Way, Bin C02, Tallahassee, Florida 32399-3252, and a second copy, accompanied by filing fees prescribed by law, with the First District Court of Appeal or the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of this Final Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to FEDELINE GEORGES, 517 Montgomery Ave., Lakeland, FL 33803 and Thomas C. Grajek, 206 Easton Dr., Suite 102, Lakeland, FL 33803; and by interoffice mail to Rachel W. Clark, Assistant Attorney General, PL-01, The

Capitol, Tallahassee, Florida 32399-1050; and William Miller,
Assistant General Counsel, Department of Health, 4052 Bald
Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 on this
9th day of July, 2012.

Orlando Sanders

Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF NURSING

DEPARTMENT OF HEALTH,

Petitioner,

v.

FEDELINE GEORGES, C.N.A.,

Respondent.

DOH Case No.: 2009-11401

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DEPARTMENT'S MOTION FOR ENTRY OF
NEW FINAL ORDER PURSUANT TO
DECISION IN APPEAL FROM FINAL ORDER
PREVIOUSLY ENTERED IN THIS CASE

The petitioner, the Department of Health, asks the Board to enter a new final order (1) vacating the corrected final order previously entered in this case on December 17, 2010, and (2) imposing discipline and costs as stated in this motion. As grounds for this motion, the Department states the following.

1. On December 17, 2009, the Department filed an administrative complaint alleging that the respondent, Fedeline Georges, was subject to discipline because she violated Section 464.204(1)(b), Florida Statutes (2008), by violating Section 464.018(1)(h), Florida Statutes (2008), by

engaging in unprofessional conduct, as defined in Rule 64B9-8.005(1)(h), Florida Administrative Code (2008), by stealing from a patient.

2. Ms. Georges submitted an Election of Rights form saying that she disputed some of the factual allegations in the administrative complaint, and that she was requesting a formal hearing before an administrative law judge of the Division of Administrative Hearings, pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

3. On February 17, 2010, the Department referred the matter to the Division of Administrative Hearings.

4. On May 17, 2010, the administrative law judge issued a recommended order, which recommended that the Board should enter a final order (1) finding that Ms. Georges was subject to discipline for the reasons stated in the complaint, (2) imposing a fine of \$250.00, and (3) placing Ms. Georges on probation for two years.

5. On June 2, 2010, the Department filed an "Exception to Penalty and Motion to Increase Penalty." In that document, the Department objected to the administrative law judge's recommendation of a penalty consisting of a fine of \$250.00 and probation for two years. The

Department asked the Board to instead impose permanent revocation of Ms. Georges' license as the penalty in this case.

6. On June 9, 2010, the Department filed a "Motion to Assess Costs." That motion asked the Board to assess against Ms. Georges, and pursuant to Section 456.072(4), Florida Statutes, the amount of \$15,703.17 for costs related to the investigation and prosecution of this case. The motion showed that the total of \$15,703.17 included \$13,525.38 for costs related to the time spent by the Department's attorneys working on this case.

7. On or about July 26, 2010, Ms. Georges submitted a document titled "Respondent's Answer to Exception to Penalty." In that document, Ms. Georges objected to the recommended order's finding that Ms. Georges had committed the theft alleged in the administrative complaint, and she asked the Board to dismiss this case.

8. At the Board's meeting on August 5, 2010, the Board voted to deny and overrule Ms. Georges' exceptions to the recommended order. (See transcript of discussion of case at August 5 meeting, pages 12-13). The Board voted to grant the Department's exceptions, and to reject the administrative law judge's recommended penalty (of a fine and probation),

and to instead impose the revocation of Ms. George's license as discipline in this case. (Transcript, pages 13-18). The Board voted to adopt the recommended order in all other respects, including the findings of fact and the conclusions of law. (Transcript, pages 18-19).

9. On December 17, 2010, the Board entered a final order¹ which confirmed the Board's denial of Ms. Georges' exceptions, the Board's granting of the Department's exceptions, the Board's approval and adoption of the findings of fact and the conclusions of law in the recommended order, and the Board's revocation of Ms. Georges' license. The final order also assessed costs in the amount of \$15,703.17, as requested by the Department.

10. Ms. Georges filed a notice of appeal from the Board's final order, and on November 2, 2011, the District Court of Appeal issued a decision in that appeal. The District Court affirmed the Board's determination that Ms. Georges stole money from a patient and that she was therefore guilty of unprofessional conduct and subject to discipline.

¹ The order filed on December 17 has the caption "corrected final order." The Board entered a corrected order because, on September 7, 2010, the Board entered a final order which stated that the Department's exceptions had been denied and that the penalty imposed was that specified in the recommended order, a fine of \$ 250.00 and probation for two years. The order filed on December 17 corrected these errors.

The District Court reversed the revocation of Ms. Georges' license, however, on the grounds that (1) revocation is above the range of penalties specified by the disciplinary guidelines applicable to this case, and it exceeds the penalty specified in the recommended order, (2) the Department did not offer any evidence, at the formal hearing, of any aggravating factors to justify such an increased penalty, (3) the administrative law judge did not make any findings of any aggravating circumstances, in her recommended order, and (4) the Department's exceptions failed to specify any aggravating circumstances. The District Court held that in light of the facts just mentioned, the Board "did not have any aggravating factors properly before it to justify deviating from the ALJ's recommended penalty."

11. The District Court of Appeal decision also noted that the fine of \$250.00 specified in the recommended order exceeds the maximum amount specified in the disciplinary guidelines, which is \$150.00.

12. The District Court of Appeal also reversed the assessment of costs in this case. The District Court held that the Board erred in assessing costs in the amount of \$15,703.17 because (1) that amount included


\$13,525.38 for time spent on this case by the Department's attorneys, and (2) the Department did not present any affidavit from any attorney to verify the amount of time spent on the case, the reasonableness of the amount of time spent, or the reasonableness of the amount charged for that time.

13. The Department believes that the effect of the appellate decision is that the Board must vacate the corrected final order filed on December 17, 2010, and enter a new final order which (1) does not impose any penalty that exceeds the penalty specified in the recommended order, (2) does not impose any fine that exceeds the amount of \$150.00, and (3) does not impose costs in excess of \$2,177.79 (the portion of the original amount of \$15,703.17 remaining after subtraction of the \$13,525.38 for attorney time).

Wherefore, the petitioner, the Department of Health, respectfully asks the Board of Nursing to enter a new final order (1) vacating the final order entered on September 7, 2010, and the corrected final order entered on December 17, 2010, (2) denying both parties' exceptions to the recommended order, (3) adopting and approving the findings of fact and the conclusions of law in the recommended order, (4) imposing, as

discipline, a fine of \$150.00 and probation for two years, with conditions determined by the Board, and (5) assessing \$2,177.79 in costs pursuant to Section 456.072(4), Florida Statutes.

Respectfully submitted,


Casey Cowan
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casey_cowan@doh.state.fl.us

CERTIFICATE OF SERVICE

I certify that a copy of this document was furnished by mail, this
2nd day of March, 2012, to the following:

Thomas C. Grajek (Attorney for Respondent)
206 Easton Drive
Suite 102
Lakeland, FL 33803-2936
Telephone (863) 688-4606


Casey Cowan