

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
NURSING,

Petitioner,

vs.

Case No. 15-0957PL

TAMAR LAURENT, C.N.A.,

Respondent.

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RECOMMENDED ORDER

On June 24, 2015, a final administrative hearing was held in this case by video teleconferencing, with sites in Orlando and Tallahassee, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Judson Searcy, Esquire
Ana Margarita Garollo-McDonald, Esquire
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399

For Respondent: Tamar Laurent, pro se
1270 Woodman Way
Orlando, Florida 32818

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent's license to practice as a certified nursing assistant should be revoked or

otherwise disciplined based on the charges of unprofessional conduct by stealing from a patient.

PRELIMINARY STATEMENT

The Petitioner, Department of Health (DOH), Board of Nursing (Board), filed an Administrative Complaint against the Respondent, Tamar Laurent, charging her with intentionally violating section 464.204(1)(b), Florida Statutes (2012), by engaging in unprofessional conduct under 464.018(1)(h), as defined by Florida Administrative Code Rule 64B9-8.005(4), by stealing from a patient. (Unless otherwise stated, all statutes and rules are the versions in effect at the time of the alleged theft in early 2013). The Respondent requested a hearing, and the matter was referred to DOAH.

At the DOAH hearing on June 24, 2015, DOH called the Respondent and four other witnesses who were cross-examined by the Respondent: Detective David Osso; the patient's son, R.G. III; the floor nurse at Westminster Towers, Rita Burginia; and the former director of nursing at Westminster Towers, Nicole Daigneault. Petitioner's Exhibits 1 through 3 were received in evidence. The Respondent testified in her case-in-chief after DOH rested.

The Transcript of the final hearing was filed on August 5, 2015. The parties were given until August 15, 2015, to file proposed recommended orders. Only DOH has filed a proposed

recommended order, and it has been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. The Respondent, Tamar Laurent, is a certified nursing assistant (CNA) in the State of Florida having been issued license CNA 43605. This is the first time action has been taken by DOH and the Board to discipline her license.

2. In December 2012 and January 2013, the Respondent was employed by Westminster Towers. While working at Westminster Towers, the Respondent was assigned to care for patient R.G.

3. R.G. was given a cell phone by his son R.G. III. The Respondent picked up the cell phone, which was lying on the floor next to R.G.'s bed, and placed it in the drawer of a nightstand that was for and contained R.G.'s personal items. The Respondent thought the phone belonged to R.G. One week later, she went back into the drawer and took the cell phone to give to her son.

4. While visiting his father, R.G. III realized that the cell phone was missing. R.G. III attempted to find the phone using family location tracking and looking up the call log. The information he uncovered was given to the Orlando Police Department and Westminster Towers.

5. Nicole Daigneault was the director of nursing at the time of the incident. After receiving the information from R.G. III, she initiated an internal investigation and reported

the incident as a theft to the Agency for Healthcare Administration. The internal investigation discovered that the Respondent and the Respondent's son were in possession of the cell phone. The Respondent contacted Detective Osso of the Orlando Police Department. During an interview with Detective Osso, the Respondent admitted to taking R.G.'s cell phone. A few days after the interview, the Respondent retrieved the cell phone from her son and gave it to her attorney to return to R.G. III.

6. During the hearing, the Respondent maintained that she did not know the cell phone belonged to R.G. and that she placed it in his bedside table because she found it next to his bed. This contradicted her own testimony during the hearing, and in the Respondent's earlier statement to the Orlando Police Department, that she assumed the cell phone belonged to R.G. when she put it in his drawer. The Respondent knew that the cell phone did not belong to her and that she did not have a right to take it.

7. During the hearing, the Respondent stated her supervisor, Rita, gave her permission to take the cell phone if she brought it back the next day. However, Rita Burginia, the supervisor of nursing assistants at the time of the incident, never had a conversation with the Respondent or would never authorize anyone to take the personal property of a patient. After the testimony of Ms. Burginia, the Respondent then claimed

she spoke to a different supervisor, also named Rita. Nicole Daigneault can only recall one Rita working at Westminster Towers at that time, Rita Burginia. In any event, the Respondent did not return the cell phone the next day but rather kept it for a few weeks.

CONCLUSIONS OF LAW

8. Section 464.204(1)(b), Florida Statutes (2012), authorizes the board to impose discipline against a license for intentionally violating any provision of chapter 464, chapter 456, or the rules adopted by the Board.

9. Intentionally committing unprofessional conduct under section 464.018(1)(h) as defined by rule 64B9-8.005(4), by stealing from a patient, is grounds for license discipline.

10. This is a license discipline case, which placed the burden on DOH to prove the charges by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The Supreme Court has stated:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction,

without hesitancy, as to the truth or the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

11. The evidence was clear and convincing that the Respondent intentionally committed unprofessional conduct, as defined by rule 64B9-8.005(4), by stealing a cell phone from patient R.G.

12. Rule 64B9-15.009 contains the penalty guidelines for violations. The range of discipline for a first offense under section 464.018(1)(h) is from a \$50 fine, reprimand and probation, and continuing education, to a denial of certification or \$150 fine, reprimand, suspension followed by probation, or revocation. Fla. Admin. Code R. 64B9-15.009(3)(ii). The evidence does not support deviation from the guidelines based on mitigating or aggravating factors. Fla. Admin. Code R. 64B9-15.009(5). The Respondent's intentional wrongdoing, compounded by her untruthfulness, justifies revocation.

13. Section 456.072(4) provides that the Board shall assess costs related to the investigation and prosecution, in addition to other discipline imposed for violating a practice act.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Nursing enter a final

order finding the Respondent guilty as charged; and revoking her license to practice as a certified nursing assistant; and assessing costs of investigation and prosecution.

DONE AND ENTERED this 11th day of September, 2015, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of September, 2015.

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.