

STATE OF FLORIDA  
BOARD OF NURSING

Final Order No. DOH-19-0783-FDF-MQA

FILED DATE **MAY 13 2019**

Department of Health

By: *[Signature]*  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2018-01780

DOAH CASE NO.: 18-2802PL

LICENSE NO.: CNA 16962

JACQUELINE JEAN,

Respondent.

**FINAL ORDER**

**THIS CAUSE** came before the BOARD OF NURSING (Board) pursuant to Sections 120.569, 120.57(1), and 120.57(2) Florida Statutes, at the properly noticed meeting on April 4, 2019, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (RO), (a copy of which is attached hereto as Exhibit A). Petitioner was represented by Kristen Summers, Assistant General Counsel. Respondent, Jacqueline Jean, was present at the meeting.

**PROCEDURAL HISTORY**

1. On or about March 8, 2018, the Department of Health (DOH) filed an Administrative Complaint against Respondent, Jacqueline Jean.
2. The case was referred to the Division of Administrative Hearing (DOAH) and a hearing on was held on November 6, 2018.
3. Administrative Law Judge, J. Bruce Culpepper (ALJ) issued a Recommended Order (RO) on January 30, 2019.

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4. Petition timely filed exceptions to the RO.

**EXCEPTIONS**

5. Petitioner first exception is a general exception that the ALJ did not make a determination of credibility between the eye witness, and Respondent.

The ALJ opined that both the witness and Respondent appeared credible (RO para 28).

The Board REJECTS Petitioner's first exception.

6. Petitioner's second exception is directed to a finding of fact in paragraph 9 of the RO. Petitioner points out that the only testimony as to the distance between D.D. and J.H.'s bed was D.D.'s testimony that the space between the beds was "about the width of a small dresser, maybe a little more than that." The RO's finding of fact that the beds were "about four-to-six feet apart" is not supported by competent, substantial evidence.

Petitioner's second exception is ACCEPTED and the finding in paragraph 9 that the beds were separated by "about the width of a small dresser, maybe a little more than that," is substituted in the RO for the findings that the beds were "about four-to-six feet apart."

7. Petitioner third exception is directed to a finding of fact in paragraph 10 of the RO, to the finding "When [D.D.] turned to look, D.D. saw that J.H. seemed annoyed..." The ALJ could have come to that factual finding from the evidence presented.

Petitioner's third exception is REJECTED.

8. Petitioner fourth exception is directed to a finding of fact in paragraph 11 of the RO, to the finding that Respondent returned to the room "about an hour later" after the first encounter with J.H. The ALJ could have come to that factual finding from the evidence presented.

Petitioner's fourth exception is REJECTED.

9. Petitioner's fifth exception is directed to a finding of fact in paragraph 12 of the RO, specifically the finding of fact that "D.D. disclosed that she did not directly observe the incident because she was sitting in her bed, and the privacy curtain obstructed her line of sight." Review of the transcript indicates that J.H. testified that she observed the incident by way of the mirror. (Tr. p. 26:16-19; Tr. p. 27:14-24; Tr. p 28:14-22, 23-25; Tr. p. 29:11-14; and Tr. p. 30:3-12). That finding in paragraph 12 of the RO is not based on competent substantial evidence.

Petitioner's fifth exception is ACCEPTED and a finding in paragraph 12 that "D.D. testified that she did not directly observe the incident because she was sitting in her bed, however she observed the entire incident through the mirror," is substituted in the RO for the finding that "D.D. disclosed that she did not directly observe the incident because she was sitting in her bed, and the privacy curtain obstructed her line of sight."

10. Petitioner's sixth exception is directed to a conclusion of law in paragraph 28 of the RO. The RO bases a conclusion of law upon both the witness and the Respondent testifying with equal conviction and believability. Because the department bears the burden of proof by clear and convincing evidence, Petitioner's sixth exception is REJECTED.

11. Petitioner's seventh exception is directed to endnote 4/a. related to paragraph 28 of the RO. The endnote appears to confuse the evidence presented. The exception is ACCEPTED and after changes, to the footnote will read:

Avante's Executive Director's included "findings" in her written report that do not appear to be based on competent substantial evidence. For example, it was reported that: "J.H.'s arms were flailing when [Respondent] was providing care." D.D. and Respondent were the only other individuals present during the encounter. However, no evidence or testimony records D.D. describing J.H.'s "flailing" behavior to the Department, or during the final hearing. The social worker also wrote in J.H.'s progress notes on the day after the incident that J.H. was "unable to provide [a]statement due to impaired cognition." Consequently, because the undersigned finds that the social worker's report is not sufficiently credible on its face, her narrative description of this event cannot serve as a basis for a finding of fact in this matter.

12. Petitioner's eighth exception is also directed to conclusion of law in paragraph 28 of the RO. The ALJ could have come to that conclusion of law from the evidence presented and it appears to be a reasonable conclusion given the weight placed on the evidence.

**FINDINGS OF FACT**

13. There is competent substantial evidence to support the findings of facts, excepting the changes made to paragraphs 9, 12 and footnote 4.a., to paragraph 28 of the RO.

14. The findings of fact as amended per the exceptions as set forth in the above and in the RO are approved, adopted, and incorporated herein by reference.

**CONCLUSIONS OF LAW**

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

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

**PENALTY**

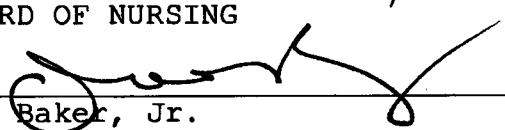
**WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:**

17. The Administrative Complaint against Jacqueline Jean is **DISMISSED.**

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

DONE AND ORDERED this 13<sup>th</sup> day of May, 2019.

BOARD OF NURSING

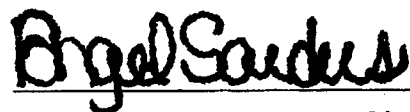
  
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Joe Baker, Jr.  
Executive Director for  
Kathryn Whitson, MSN, RN,  
Chair

**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 AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: **Jacqueline Jean**, 1191 Saturn Street, Palm Bay, FL 32909; and by U.S. Mail to: **J. Bruce Culpepper**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by e-mail to: **Matthew Witters**, Assistant General Counsel, at Matthew.witters@flhealth.gov; and **John Fricke**, Assistant Attorney General, at John.fricke@myfloridalegal.com, this 13<sup>M</sup> day of May, 2019.



Deputy Agency Clerk