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STATE OF FLORIDA  
BOARD OF RESPIRATORY CARE

Final Order No. DOH-19-1761-~~FOF~~-MQA  
FILED DATE - NOV 05 2019  
Department of Health  
By: Christine Mous  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2018-03613  
DOAH CASE NO.: 18-05694PL  
LICENSE NO.: RT8824 95701

JENNIFER ABADIE, R.R.T.,

Respondent.

FINAL ORDER

**THIS CAUSE** came before the BOARD OF RESPIRATORY CARE (Board) pursuant to Sections 120.569, 120.57(1), and 120.57(2) Florida Statutes, at a properly noticed meeting on October 11, 2019, in Tallahassee, 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 Mary Wessling (Iglehart), Assistant General Counsel. Respondent, JENNIFER ABADIE, was present at the meeting.

PROCEDURAL HISTORY

1. On or about August 22, 2018, the Department of Health (DOH) filed an Administrative Complaint against Respondent, JENNIFER ABADIE.
2. The case was referred to the Division of Administrative Hearings (DOAH) and a hearing on was held on May 20, 2019.

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DIVISION OF ADMINISTRATIVE HEARINGS

3. Administrative Law Judge, John D. C. Newton II (ALJ), issued a Recommended Order (RO) on July 17, 2019.

4. Petitioner timely filed exceptions to the RO.

#### EXCEPTIONS

5. Petitioner's first exception is directed at a finding of fact in paragraph 28 of the RO. Petitioner asserts the ALJ's finding is a conclusion of law mislabeled as a finding of fact. Petitioner contends the ALJ incorrectly interpreted and applied the law by concluding that Petitioner's expert opinion was not entitled to significant weight.

6. The ALJ opined that the training and experience of Petitioner's expert did not qualify him as someone whose opinion on sexual misconduct should be entitled to significant weight. Petitioner's expert had never written about, lectured about, or testified to an opinion about sexual misconduct. (RO para 28). It is the function of the ALJ to weigh the evidence and credibility of witnesses. The ALJ could come to that factual finding from the evidence presented.

The Board REJECTS Petitioner's first exception.

7. Petitioner's second exception is directed to a finding of law in paragraph 36 of the RO. Petitioner argues that there was "undisputed testimony" that skin-to-skin contact occurred between patient G.B. and Respondent. Petitioner states that based on the

testimony this is a finding of fact that is inaccurate and unsupported rather than a conclusion of law.

8. The ALJ explained in paragraph 36 that the burden of proof affects the findings of fact. There was disputed testimony about skin-to-skin contact between patient G.B. and Respondent. The testimony about skin-to-skin contact was not sufficiently persuasive and corroborated to convince the ALJ without hesitancy that it was accurate. (RO para 36). The ALJ could come to the finding of facts based on the evidence and conclude that the evidence did not provide clear and convincing evidence of a violation.

The Board REJECTS Petitioner's second exception.

9. Petitioner's third exception is directed to a conclusion of law in paragraph 43 of the RO. Petitioner submits that the Respondent's and patient G.B.'s "inappropriate touching" is sexual misconduct.

10. The ALJ states that behavior that may be inappropriate or a boundary violation does not necessarily amount to a disciplinary offense. All boundary issues are not sexual misconduct. Possible inappropriate behavior or a boundary violation, at worst, is what was proved by clear and convincing evidence. (RO para 43).

The Board rejects Petitioner's third exception.

**FINDINGS OF FACT**

11. There is competent substantial evidence to support the findings of fact.

12. The findings of fact in the RO are approved, adopted, and incorporated herein by reference as the findings of fact of the Board.

**CONCLUSIONS OF LAW**

13. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 468, Florida Statutes.

14. The conclusions of law set forth in the Recommended Order are approved, adopted, and incorporated herein by reference as the Board's conclusions of law.

**PENALTY**

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

15. The Board adopts the ALJ's recommended penalty and dismisses the Administrative Complaint against JENNIFER ABADIE.

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

DONE AND ORDERED this 1 day of November, 2019.

BOARD OF Respiratory Care



Allen Hall  
Executive Director for  
Ronald Eric Mitchell, C.R.T.  
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: **JENNIFER ABADIE**, 2035 Philippe Parkway, Apt. 104, Safety Harbor, FL 34695, and 2346 Bent Tree Road, Apt. 1915, Palm Harbor, FL 34683; **Kennan Dandar, Esq.**, Dandar & Dandar, 1211 North Westshore Blvd., Suite 103, Tampa, FL 33607; and by U.S. Mail to: **John D. C. Newton, II**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by e-mail to: **Matthew Witters**, Chief Legal Counsel, at matthew.witters@flhealth.gov; and **John B. Fricke, Jr.**, Assistant

Attorney General, at john.fricke@myfloridalegal.com, this 5<sup>th</sup>  
day of November, 2019.

Annunzio Maus  
DEPUTY AGENCY CLERK