

FILED DATE - AUG 25 2021

Department of Health

By: *Quinn Munn*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF NURSING

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NUMBER: 2018-11927
DOAH CASE NUMBER: 21-0828PL
LICENSE NO.: RN 9184977

FRANSETTA COEN D'AMICO, R.N.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF NURSING (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 5, 2021, at a duly noticed public meeting in Fort Lauderdale, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Petitioner's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A and B, respectively). Respondent did not file Responses to Petitioner's Exceptions to the Recommended Order, in the above-styled cause. Petitioner was represented by Matthew Witters, Chief Legal Counsel. Respondent was not present and not represented by counsel.

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.

RULING ON EXCEPTIONS

The Board reviewed and considered the Petitioner's Exceptions to the Recommended Order and ruled as follows:

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1. The Board found that the written exceptions complied with the legal requirements for exceptions and voted to accept Petitioner's exception to Paragraph 13 of the Recommended Order. The Board cited the video that was admitted into evidence as competent and substantial evidence to overturn the Finding of Fact in Paragraph 13. The Board voted to change Paragraph 13 to read as follows:

13. As Patient A.S. reached down, Respondent slapped her arm.

2. Petitioner's second exception was to the Conclusion of Law in Paragraph 25. The Board voted that the evidence presented in the admitted video was clear and convincing evidence that Respondent slapped Patient A.S. and therefore, did violate Section 464.018(1)(h), Florida Statutes, as defined in Rule 64B9-8.005(13), F.A.C., by committing unprofessional conduct by using force against a patient or striking a patient. The Board granted the exception and voted to change Paragraph 25 to the following:

25. Considering the evidence and burden of proof in this case, it is found that the Department established by clear and convincing evidence that Respondent violated Section 464.018(1)(h), Florida Statutes, violating a rule of the Board, by violating Rule 64B9-8.005(13), Florida Administrative Code, by committing unprofessional conduct by using force against a patient or striking a patient.

3. Petitioner's third exception is to the Conclusion of Law in Paragraph 26 of the Recommended Order. The Administrative Law Judge found that the actions taken by Respondent were designed to warn and protect the patient; however, the Board agreed with Petitioner that intent to harm is not relevant to the act of striking a patient. The Board granted the exception and voted to change Paragraph 26 to the following:

26. Although Respondent's actions may have been designed to warn and protect the patient, Respondent used force against or struck a patient.

FINDINGS OF FACT

4. The findings of fact set forth in the Recommended Order, as modified by the Board's acceptance of Petitioner's exception number one, are amended, approved and adopted and incorporated herein by reference.

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

CONCLUSIONS OF LAW

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

7. The conclusions of law set forth in the Recommended Order as amended by the Board's acceptance of Petitioner's exceptions 2 and 3, are amended, approved and adopted and incorporated herein by reference.

8. Based on these holdings, the Board found that Respondent did violate Section 464.018(1)(h), Florida Statutes, violating a board rule, by violating Rule 64B9-8.005(13), by using force against a patient or striking a patient.

PENALTY

Upon a complete review of the record in this case and the Board's acceptance of Petitioner's exceptions, the Board voted to reject the Administrative Law Judge's recommendation that the Administrative Complaint be dismissed.

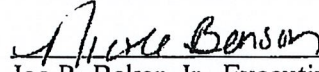
Based upon the Board's finding that Respondent violated the practice act as set forth above, the Board determines that Respondent shall receive a reprimand on her license as the penalty for this violation.

MOTION TO BIFURCATE COSTS

The Board granted Petitioner's Motion to Bifurcate Costs and retained jurisdiction to impose costs in a future Order.

DONE AND ORDERED this 24th day of August, 2021.

BOARD OF NURSING



Joe R. Baker, Jr., Executive Director
for Deborah McKeen, CD-LPN, BS, 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 THE FILING DATE OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Fransetta Coen D'Amico**, 593 Gondolier Terrace, Deltona, Florida 32725 and **James H. Peterson, III**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by email to: **Matthew Witters**, Chief Legal Counsel, Department of Health-PSU, Matthew.Witters@flhealth.gov; and **Deborah Loucks**, Senior Assistant Attorney General, Deborah.Loucks@myfloridalegal.com; on August 25, 2021.



Deputy Agency Clerk



TO: Jennifer Wenhold, Acting Director
Division of MQA

FROM: Joe Baker, Jr., Executive Director
FBON

DATE: August 3, 2021

RE: Delegation of Authority

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The following managers are delegated authority for the Board office:

8/4-8/6	Sandi Williams	Regulatory Supervisor
8/9-25	Nicole Benson	Program Ops Administrator

Thank you.

JBjr/ms