BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NUMBER: 2004 NB 0164

STATE OF INDIANA,)
)
Petitioner,)
)
v.)
)
Virginia A. Hinote Mitchell, R.N.,)
License No: 28130282A,)
27014822A,)
)
Respondent.)

FILED
AUG 27 2004
HEALTH PRO
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FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Petitioner, the State of Indiana, by Steven P. Douglas, Deputy Attorney General, Division of Consumer Protection ("Petitioner"), and the Respondent, Virginia A. Hinote Mitchell, R.N., L.P.N., ("Respondent"), signed an Agreement which purports to resolve all issues involved in the action by the Petitioner and the Indiana State Board of Nursing ("Board") regarding Respondent's licenses, and which Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the August 19, 2004 meeting now finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement as fully set forth herein and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 6 in favor and 0 against and 0 abstaining. Incorporated into the Agreement was the consensus of both parties to the

following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order. The Board, hereby issues the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Respondent's address on file with the Health Professions Bureau is R.R. 1, Box 218, Carbon, Indiana 47837 and she is a duly licensed registered nurse in the State of Indiana having been issued license number 28130282A. Respondent's registered nurse license is active. Respondent is also a duly licensed practical nurse in the State of Indiana having been issued license number 27014822A. Respondent's licensed practical nurse license is also currently active.

2. On or about August 14, 2003, Respondent was working at Lee Alan Bryant Healthcare Facility ("LAB") in Parke County, Indiana.

3. On or about November 17, 2003, Investigator Todd M. Graham ("Graham") was assigned to investigate several allegations against LAB.

4. Graham's investigation led him to believe that on or about August 14, 2003, Respondent was working the 3:00 p.m. to 11:00 p.m. shift at LAB. Respondent was acting as Charge Nurse and maintained direct supervision over residents A.S. and F.F. Resident F.F. was a total care resident with a significant loss of mobility, including, but not limited to, any use of his right hand and arm. Resident F.F. was not capable of ambulating on his own and could not speak, only uttering moans and cries. Resident A.S. was capable of ambulating on her own. A.S. was diagnosed with Schizophrenia and was known for her behavior problems which were intensified by teasing or tormenting. Resident A.S. also had short-term memory recall.

5. Graham's investigation uncovered allegations that during Respondent's August 14, 2003 shift, Respondent knowingly or intentionally aided or induced resident F.F. to commit sexual battery on resident A.S.

6. On or about January 28, 2004, Graham interviewed Melissa Marshall ("Marshall"), the FAB administrator.

7. Marshall confirmed the allegation against Respondent and told Graham that she had conducted her own internal investigation.

8. Marshall informed Graham that on August 31, 2003, Respondent was suspended without pay, pending the outcome of the investigation. The investigation uncovered the following facts:

a. Witnesses and written statements were secured;

b. Witnesses confirmed that Respondent did knowingly or intentionally allow resident A.S. to sit in the lap of resident F.F.;

c. While A.S. was on F.F.'s lap, Respondent took hold of F.F.'s right arm and hand, placing them over the breast of A.S.;

d. Respondent then moved F.F.'s hand in such a manner as to fondle A.S.'s breast;

e. A.S. made repeated demands that Respondent stop, threatening physical strikes if not released;

f. A.S. struck Respondent and Stacey Whitford, C.N.A. ("Whitford");

g. Respondent called Dr. Gonzales to request an order for Haldol. A.S. was forcefully taken to her room where Respondent administered the shot of Haldol;

h. The investigation concluded with statements from witnesses that Respondent regularly tormented and teased A.S.

9. Pursuant to the findings of the investigation, Marshall terminated Respondent's employment on or about October 31, 2003.

10. On or about January 28, 2004, Graham met with Respondent and conducted an interview. A synopsis of the interview is as follows:

a. Respondent claimed to have cared for A.S. and enjoyed caring for her;

b. Concerning the incident in question, Respondent stated that she saw A.S. sitting on F.F.'s lap. Respondent claimed that it was not uncommon for A.S. to act out sexually or be bold enough to willingly sit on another resident;

c. Respondent claimed that A.S. was sitting on F.F.'s paralyzed arm and that F.F. was moaning and showing signs of pain;

d. Respondent stated that an aide, Karie Hayn ("Hayn"), questioned the inappropriate activity. Respondent stated that "They (A.S. and F.F.) do a lot more than that together.";

e. Respondent stated that she told Hayn that A.S. would often enter other rooms and "jack them off." Respondent stated

that she and other staff members were laughing and joking about the situation;

f. Respondent stated that after encouragement from Karie Hayn, she agreed to remove A.S. from F.F.'s lap;

g. Respondent admitted to taking F.F.'s arm and hand and placing them on A.S.'s breast for others to see. Respondent claimed the F.F.'s hand was on A.S.'s breast for two (2) seconds;

h. Respondent stated that she did this as a joke and did not intend to harm either A.S. or F.F.;

i. Respondent stated that A.S. lashed out and struck Whitford.

j. Respondent stated that she and Whitford removed A.S. from F.F.'s lap and returned her to her room. Respondent stated that A.S. was in an agitated state;

k. Respondent stated that shortly thereafter, A.S. left her room and approached her from behind, striking her in the back. Whitford immediately grabbed A.S. and took her back to her room;

l. Respondent stated that A.S. bit Whitford, drawing blood. At that point, Respondent stated that she called Dr. Gonzales who gave orders for A.S. to receive an injection of Haldol;

m. Respondent stated that she and others took A.S. back to her room where Respondent administered the shot of Haldol.

According to Respondent, the Haldol did not take immediate effect;

n. According to Respondent, within minutes after receiving the shot of Haldol, A.S. left her room and walked to the nurse's station where she collapsed. A.S. was found sleeping on the floor and taken back to her room.

11. On or about March 23, 2004, Graham interviewed Karie Hayn about witnessing the incident involving Respondent, A.S. and F.F. and another resident, R.K. The interview with Hayn revealed the following:

a. At the time of the incident, Hayn was a new employee at LAB;

b. Hayn believed that Respondent's acts were acts of perversion and that she seemed to gain satisfaction from them;

c. Hayn was concerned that she would experience retribution and waited a day to report the incident;

d. Hayn observed A.S. seated on F.F.'s lap with another resident, R.K., seated close by. Resident R.K. was a long-term resident who suffered from severe head trauma. All three (3) residents were within five (5) feet of the nurse's station;

e. Hayn's claims that Respondent was "antagonizing" all three (3) residents, but more focused on A.S.;

f. Hayn asked Respondent if it was all right for A.S. to be sitting in F.F.'s lap. Hayn said that Respondent then went over and placed F.F.'s hand on A.S.'s breast;

g. Hayn stated that Respondent moved F.F.'s hand over A.S.'s breast in a circular motion for approximately ten (10) seconds;

h. Hayn stated that A.S. was angry and asked Respondent to stop. Hayn stated that A.S. then moved to the floor and started cleaning it, which apparently was a common occurrence;

i. While on the floor, A.S. was in reach of R.K. According to Hayn, R.K. started pointing at A.S.'s buttocks and making fun of something that was protruding from her rectal area.

j. According to Hayn, Respondent encouraged R.K.'s actions by asking him, "You want a piece of that ass, don't you. Go ahead and touch it.";

k. Hayn stated that R.K. then reached down and grabbed A.S.'s buttocks. At this point, A.S. warned R.K. to stop or she would hit him. R.K. again started poking fun at the protrusion from A.S.'s buttocks as Respondent continued watching and verbally encouraging R.K.'s behavior;

l. According to Hayn, A.S. then struck R.K. in the face, knocking off his glasses. R.K. grabbed A.S.'s arm and

started to squeeze. A.S. grabbed a handrail on the opposite wall and tried to free herself;

m. Hayn stated that Respondent stood watching this incident and laughed;

n. Even though she was not certified to handle a situation like this, Hayn stated that she started to intervene. At that time, Respondent took hold of R.K. and separated the altercation;

o. Hayn stated that she went home and reported the incident to her family. After receiving their advice, she reported the incident the next day.

12. On or about April 13, 2004, a Probable Cause Affidavit was filed in Parke Circuit Court, alleging that Respondent committed the following criminal offenses:

a. Aiding, Inducing or Causing An Offense (Class D felony);

b. Sexual Battery (Class D felony);

c. Neglect of a Dependent (Class D felony); and

d. Battery (Class B misdemeanor).

13. On or about May 10, 2004, Respondent pled guilty to Battery as a Class B misdemeanor in a plea agreement. Pursuant to the plea agreement, Respondent was sentenced to one hundred eighty (180) days, all suspended and placed on probation for the balance of one (1) year. The Respondent was also ordered to have no contact with resident A.S.

ULTIMATE FINDINS OF FACT

1. Respondent's conduct constitutes a violation of IND. CODE § 25-1-9

4(a)(2) in that she has been convicted of a crime that has a direct bearing on her ability to continue to practice competently.

2. Respondent's conduct constitutes a violation of IND. CODE § 25-1-9 4(a)(4)(B) in that she has failed to keep abreast of current professional theory or practice.

3. Respondent's conduct constitutes a violation of IND. CODE § 25-1-9 4(a)(3) in that she has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 848 IAC 2-2-2(1) in that she has failed to function within the legal boundaries of nursing practice based on the knowledge of statutes and rules governing nursing.

4. Respondent's conduct constitutes a violation of IND. CODE § 25-1-9-4(a)(3) in that she has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 848 IAC 2-2-2(5) in that she has failed to respect the dignity and rights of her patients regardless of socioeconomic status, personal attributes, or nature of health problems.

5. Respondent's conduct constitutes a violation of IND. CODE § 25-1-9 4(a)(3) in that she has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 848 IAC 2-2-3(1) in that she has used unsafe judgment, technical skills, or inappropriate interpersonal behaviors in providing nursing care.

6. Respondent's conduct constitutes a violation of 848 IAC 2-2-3(3) in that she has disregarded a patient's dignity, right to privacy, or right to confidentiality.

7. Respondent's conduct constitutes a violation of 848 IAC 2-2-3(5) in that she has abused a patient verbally, physically, emotionally, or sexually.

8. Respondent's conduct constitutes a violation of 848 IAC 2-2-3(7) in that she has abandoned or knowingly neglected patients requiring nursing care.

9. Respondent's conduct constitutes a violation of IND. CODE § 25-1-9 4(a)(5) in that Respondent has engaged in a course of lewd or immoral conduct in connection with delivery of services to the public.

CONCLUSIONS OF LAW

Respondent's failure to comply with the above referenced standards is cause for disciplinary sanctions which could include a fine in the amount of $1000.00, probation, suspension, or a revocation of license as detailed in Ind. Code § 25-1-9-9 and Ind. Code § 25-23-1-7.

ORDER

The Respondent's Indiana Registered Nurse license is hereby **REVOKED.**

The Respondent's Indiana Licensed Practical Nurse license is hereby **REVOKED.**

WHEREFORE, RESPONDENT IS ORDERED to immediately cease and desist all acts constituting the practice of nursing.

IT IS FURTHER ORDERED, that Respondent shall immediately surrender all indicia of licensure, including her pocket licenses and wall licenses, to the Board in care of the Health Professions Bureau, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204.

So ORDERED, ADJUDGED, DECREED, this 27th day of August, 2004.

INDIANA STATE BOARD OF NURSING

Lisa R. Hayes
Executive Director
Health Professions Bureau

Copies sent to:

Virginia A. Hinote Mitchell
7758 East County Road 900 South
R.R. 1, Box 218
Carbon, Indiana 47837
CERTIFIED MAIL #**7002 2410 0002 4111 5703**
RETURN RECEIPT REQUESTED

Steven P. Douglas, Deputy Attorney General
Office of the Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, Indiana 46204