

# Disciplinary Actions Evaluated by the State Board of Nursing

written by Nancy Brent | May 26, 2016

## **Avoiding Liability Bulletin - May 15, 2016**

In past Bulletins, I have written about your nursing assistant / nursing aide (CNA) role and the potential for inclusion in a lawsuit alleging professional negligence when a patient for whom you provided care was injured in some way or died. There is another significant area of liability you need to be aware of—discipline by the state regulatory agency that certifies you.

In some states, the state board of nursing controls CNA practice, including setting qualifications for certification, mandating CE requirements, and issuing your certificate. In other states, your practice may be regulated by a state department, such as the public health department. In either case, your practice must conform to the requirements of your CNA licensing statute as well as any rules and regulations that define your practice.

In the following case<sup>1</sup>, a CNA found out how her practice was evaluated by the state board of nursing.

T.G. was employed by a nursing home. During one shift, she worked in the central station dining room helping a resident, H. C., eat her lunch. T.G. was observed “force feeding” H.C. while H.C. continued to tell the CNA that she had to go to the bathroom. The CNA told H.C. she must eat first.

T.G. ignored the resident’s requests and, when the resident was trying to speak about the need to go to the bathroom, witnesses saw her put food in her mouth. The CNA held her hand on the resident’s mouth to keep the food in and prevent her from spitting it out. The CNA admitted her behavior, but stated that she was only trying to “catch” any food that might fall out from the resident’s mouth.<sup>1</sup>

T.G. was terminated from her employment and the Director of Nursing at the facility filed a complaint with the state board of nursing.

T.G. admitted her conduct with the resident and entered a Settlement Agreement with the state board of nursing. In the Agreement, the board of nursing cited the sections of the act that granted them the power to discipline a CNA. They included:

- Engaging in any act inconsistent with uniform and reasonable standards of nursing practice as defined by the board;
- Is unfit or incompetent to practice nursing by reason of negligence, habits, or other causes including but not limited to...unsafe nursing practice or failure to conform to the essential standards of acceptable and prevailing nursing practice, in which case actual injury need not

- be established; and
- Has been found by the board to have violated any of the provisions of this act or of board rules and regulations.<sup>1</sup>

The board then specifically cited what disciplinary grounds were applicable to T.G.'s conduct. They held that her conduct was indicative of an inability to function with reasonable skill and safety for the following reasons, the listing not being all inclusive:

- Client abuse, including sexual abuse;
- Client neglect;
- Performance of unsafe client care; and
- Failure to conform to the standards of prevailing nursing and nursing assistant/nurse aide practice, in which actual injury need not be established.<sup>1</sup>

A Reprimand was given to T.G. for her conduct and the discipline became a public record, which is the case in any professional disciplinary proceedings. In addition, as is also standard, the Reprimand was reported to the Healthcare Integrity and Protection Data Bank.

This case is a good example of how not to care for a resident. What T.G. was thinking while conducting herself in this way is unknown, but her behavior is a clear lesson about what not to do. Moreover, a simple trip to the bathroom and then returning to the dining room to allow H.C. to complete the meal would have completely avoided this entire scenario.

Any discipline by a state board of nursing or department that regulates CNAs is a public record. The discipline can result in future difficulties obtaining employment, especially in view of the violations upon which this reprimand was based.

This difficulty is intensified because any discipline by a state regulatory agency is also reported to the Healthcare Integrity and Protection Data Bank. Such a reporting allows any potential employer across the United States to search the Bank for names of those who are applying a position.

Also, keep in mind that an actual injury is not required for a state regulatory agency to take a disciplinary action against you. Your conduct is the key element in such proceedings.

So, thinking before acting, and treating all residents for whom you provide care with respect, dignity, and humanity at all times, are take-away principles of this case.

## **FOOTNOTES**

1. In the Disciplinary Matter of Tyana Giesler, CNA, Docket Number 05-096, before the Wyoming State Board of Nursing (2008), 1-8.

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