

Resort to Court System an Option When Board of Nursing Decision is Problematic

written by Nancy Brent | January 15, 2018

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Denise Campbell, LPN, worked at a Florida assisted living facility. When one of the facility's residents was found unresponsive in the dining room, she instructed nursing staff to place the patient back in his bed to receive CPR.

When checking the resident's medical record during the move, it was determined that he had a DNR order. As a result, no CPR, nor any other treatment, was initiated, and the patient died later that day.

Campbell documented the incident in the patient's medical record but recorded that the patient had been discovered unresponsive in his bed and not the dining hall.¹

Approximately one year later, the Department of Health filed a complaint, alleging that Campbell engaged in unprofessional conduct by "inaccurately documenting the event and falsifying or altering the patient's records".¹

The complaint, along with "an election-of-rights" form, was sent to Campbell. The form informed Campbell that she could dispute the facts alleged against her and request a formal hearing. However, she had to request the formal hearing within twenty-one days or she would waive her right to the formal hearing before the state board of nursing.

A conflict arose about the form and its timely filing. Campbell's attorney filed an affidavit attesting to the fact that he hand-delivered the request to the Department within the twenty-one-day requirement. The Department filed an affidavit that the form was never received.

As a result, the board of nursing had contradictory evidence about the request for a formal hearing. Rather than make an effort to determine the actual facts surrounding the situation, it deemed the formal hearing waived.

The board then held an informal hearing on the Department's complaint. It determined Campbell acted improperly, but rather than upholding the Department's recommended discipline—probation and a fine—the board decided to revoke Campbell's LPN license.

The board's decision to revoke the LPN license was based on Campbell's documenting false information (which it held led to the patient's death) and her delegation to an unlicensed person the obligation of transferring a non-responsive patient to his bed, which the board saw as a duty solely of the LPN.

Campbell appealed the board's decision to the Florida District Court of Appeals, challenging both the board's decision that she waived her right to a formal hearing and the board's discipline.¹

The Appeals Court opined that the board should have afforded Campbell an evidentiary hearing on the issue of whether or not she timely requested a formal hearing. The Court reversed and remanded the case back to the board on this issue, holding that if, after such a hearing, she did not waive her right to a formal hearing, the Department of Health's final order cannot stand.

If, in contrast, Campbell did waive her right, then the Department's disciplinary decision can stand.

The Court then analyzed the second basis of Campbell's appeal: the board's discipline of revocation. The Appeals Court held that revocation is a possible discipline the board can impose based on the state nurse practice act and one aspect of Campbell's conduct: falsification of patient records.

Because a board of nursing decision can only be overturned in certain situations, such as an abuse of discretion, a court does not have the legal authority to do so.²

Moreover, the state nurse practice act allows for a revocation for a first time falsification of patient records. Accordingly, the Court could not reverse that penalty.¹

The case was reversed and remanded on this issue as well.

Because the case was just decided in December of 2017, it is unclear when Campbell's case will go to a hearing on the timely filing of a request for a formal hearing and when a decision will occur. I will try to follow up on the final determination in the months or years ahead.

Until then, this case raises many implications for you as an LPN or RN. They include:

1. Never falsify a patient's medical record. Doing so is a clear instance of unprofessional conduct under any nurse practice act;
2. Never delegate to an unlicensed assistive person a duty that is yours alone;
3. Although there was a DNR order involved in this case, remember that time is of the essence when a patient is "non-responsive"; evaluating a patient's status quickly and providing whatever emergency or non-emergency care is required is essential;
4. Carefully evaluate whether moving a patient to his/her room to initiate CPR is consistent with the standard of practice and the standard of care;
5. Never ignore any notice from a state board of nursing or from the department/agency the board is a part of;
6. When responding to any notice from a department/agency or state board of nursing, be certain to obtain documentation that your response has been received, with details as to date, time, and to whom it was delivered;
7. Remember that your state board of nursing's decisions can only be overturned by a court if the decision is arbitrary, capricious, or an abuse of discretion; and

8. A board of nursing's power is not unbridled when there is conflicting evidence about an issue; rather, it must conduct an evidentiary hearing on that issue before rendering discipline.

FOOTNOTES

1. Campbell v. Department of Health, Case Number 1D16-2291, FL. District Court of Appeals, December 13, 2017.
2. "Documentation: Court Says Nurse Can Lose Her License For Falsification", Legal Eagle Eye Newsletter for the Nursing Profession , January 2018, 2.

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