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~~New Jersey Board of Nursing~~

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING
OAL DOCKET NO. BDS 08101-17

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
 :
NAOMI DERRICK, RN : **FINAL DECISION AND ORDER**
License No. 26NR13632300 :
 :
TO PRACTICE NURSING :
IN THE STATE OF NEW JERSEY :
 :

This matter was returned to the New Jersey Board of Nursing ("Board") to consider a recommended Initial Decision by Administrative Law Assignment Judge Joann Lasala Candido ("ALAJ") issued on June 4, 2019 following a one day hearing at the Office of Administrative Law. As set forth in the Initial Decision, ALAJ Candido found that on May 16, 2016, Naomi Derrick, RN ("Respondent") was the assigned nurse for E.R., a ten year old autistic child in a hospital acute psychiatric unit. On that date, Respondent continually threatened E.R. by saying that she would give him a needle if he didn't listen. She was further found to have carried through with the threat by jabbing the child on multiple occasions. Respondent's interactions with the child were captured on videotape, which was shown at the hearing and is part of the record below. ALAJ Candido found that Respondent had

engaged in gross and repeated acts of negligence, malpractice and incompetence and that she lacked good moral character required of a nursing licensee. Based on the findings made, ALAJ Candido recommended that the Board revoke Respondent's license, and impose ten percent of costs.

Based upon our review of the entire record, to include the full record below, post-hearing briefs filed at the Office of Administrative Law, written exceptions filed with the Board, and oral arguments of counsel, we have determined to adopt all the findings of fact and conclusions of law within the Initial Decision. However, based upon our independent review of the record and our exercise of nursing expertise, we also conclude that there was sufficient basis to sustain the charges in the Administrative Complaint that Respondent engaged in professional misconduct and we thus modify the Initial Decision to add that conclusion of law. Finally, for the reasons set forth below, we adopt ALAJ Candido's recommendations as to penalty.

PROCEDURAL HISTORY

The procedural history of this matter - prior to the issuance of the Initial Decision - is set forth in ALAJ Candido's decision. Following the issuance of the Initial Decision, written exceptions were filed on June 19, 2019 by both the Attorney General and Respondent. Neither party filed a reply to the exceptions. A hearing to consider the written exceptions and to consider what

penalties should be ordered was held before the Board on July 12, 2019. Deputy Attorney General David Puteska represented the State, James M. Carter, Esq. appeared on behalf of Respondent, and Respondent testified.

ALAJ's FINDINGS

As set forth in the Initial Decision, two witnesses testified at the hearing below. Erica Popkin, RN, employed by the hospital, testified that she observed Respondent jab E.R. with an uncapped needle at least six times. Her observations were corroborated by video evidence. Testifying on her own behalf, Respondent denied that she ever touched E.R. with the needle, but conceded that she did "threaten him with the needle to calm him down" and that she "continually [told] E.R. that if he did not listen he will be put in restraints and get the injection." ALAJ Candido found Ms. Popkin's testimony, as buttressed by the video evidence, to be more credible than Respondent's, and thus concluded both that Respondent used the capped hypodermic needle to threaten E.R. if he did not behave (finding of fact #6) and that, on at least six occasions, she jabbed E.R. with an uncapped hypodermic needle (finding of fact #7).

We fully echo the discussion of ALAJ Candido, who then went on to specifically conclude that:

The act of jabbing anyone, but especially a special needs child such as E.R. on at least six occasions during one shift demonstrates

gross repeated negligence, malpractice and incompetence pursuant to N.J.S.A. 45:1-21. It further demonstrates a lack of good moral character of an experienced nurse working in a psychiatric ward. . . . At the very least, uncapping a needle and holding it near an autistic child who is flailing his arms and legs is an inherent danger in and of itself.

EXCEPTIONS

In written exceptions, neither party specified any finding of fact to which they took exception. The Attorney General did, however, contend that Respondent's conduct also should have been found to constitute professional misconduct, pursuant to N.J.S.A. 45:1-21(e), as alleged in the Verified Complaint. The remainder of both parties written "exceptions" focused only ALAJ Candido's recommendations as to penalty. At the hearing before the Board, both parties agreed to forego oral argument on exceptions to the findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the entire record below, written arguments of counsel regarding exceptions, and a review of all submissions, the Board unanimously determined to adopt the recommended findings of fact and conclusions of law of the ALAJ in this matter. However, the Board also agrees with the Attorney General's written contention that Respondent's conduct should have been found to constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e), as had been alleged in the Verified Complaint.

The Initial Decision included a block quote of the statutory provision relating to professional misconduct, N.J.S.A. 45:1-21(e), but did not mention it thereafter. We modify the ALAJ's Initial Decision to add the conclusion of law that Respondent's conduct also constituted professional misconduct pursuant to N.J.S.A. 45:1-21(e).

Respondent's use of a hypodermic needle in this matter was not related to any legitimate nursing act. For instance, this was not a situation where Respondent attempted to draw a blood sample and needed more than one stick to find a vein. Nor was this a situation where Respondent was attempting to administer intramuscular injections of medications or vaccines. The hypodermic needle was empty. Respondent's use of the needle as a threat and for discipline constitutes professional misconduct.

PENALTY HEARING

Immediately following the Board's announcement of its determination that cause for discipline had been found, the Board proceeded to conduct a hearing for determination of penalties. In her Initial Decision, ALAJ Candido recommended that Respondent's license to practice nursing be revoked and that she pay ten percent of costs.

In her written exceptions, and at the penalty hearing, Respondent argued that her license should not be revoked, and instead suggested that her license be suspended for some period of

time. Respondent argued that there was no evidence that the child was injured - that no blood or bruising could be seen on the video and an examination of the child on the next day revealed no obvious signs of injury. Respondent also argued that she had been a nurse for eight years prior to this matter and had no other disciplinary order against her. She submitted information indicating that it would be a financial hardship for her to pay the full amount of costs as she works in a retail store earning \$10/per hour.

In written exceptions and at oral argument, the Attorney General urged the Board to revoke Respondent's license and to impose one hundred percent of the costs.

DISCUSSION ON SANCTIONS

We find that the ALAJ's recommended penalty in this matter is sufficient. Respondent's conduct was disturbing and egregious. Quite simply, Respondent should not be a nurse. With her license revoked, she has lost the privilege to practice. The Board notes that the egregiousness of her acts were of a magnitude that would assuredly militate against any future reinstatement of that privilege.

The Board's primary mission is to protect the public law and safety. Ensuring that Respondent cannot practice nursing is of utmost importance and the revocation of her license effectively accomplishes that public protection goal. On the issue of cost assessments, the Board is satisfied, on balance, that good cause

exists to adopt ALAJ Candido's recommendation that only ten percent of costs be assessed, as we accept Respondent's representation regarding her inability to pay all of the costs sought.

We have reviewed the cost application submitted by the State and find the application sufficiently detailed. The amount of attorney fees sought is reasonable given the length of time expended and the complexity of the prosecution in this matter. We also find the rates sought for attorney fees to be reasonable. Respondent has not disputed the costs, only her ability to pay. The total amount of costs in the record is \$21,660 in attorney's fees. Ten percent of costs amounts to \$2,166.

For all reasons set forth above, we adopt ALAJ Candido's recommendation to revoke Respondent's license and impose ten percent of costs.

WHEREFORE IT IS ON THIS 15th DAY OF August, 2019,
AS ORALLY ORDERED ON THE RECORD ON JULY 12, 2019:

1. The license of Naomi Derrick, RN, to practice nursing in the State of New Jersey is hereby revoked.

2. Respondent shall pay costs in the amount of two thousand one hundred sixty-six dollars (\$2,166). Payment shall be made by certified check, bank cashier check, or money order payable to "State of New Jersey," or by wire transfer, direct deposit, or credit card payment delivered or mailed to State Board of Nursing, Attention: Disciplinary Unit, P.O. Box 45010, Newark, New Jersey

07101. Any other form of payment will be rejected and will be returned to the party making the payment. Payment shall be made no later than twenty-one (21) days after the date of filing of this Final Order. In the event Respondent fails to make a timely payment, a certificate of debt shall be filed in accordance with N.J.S.A. 45:1-24 and the Board may bring such other proceedings as authorized by law.

NEW JERSEY BOARD OF NURSING

By: Barbara Blozen EdD MA RN-BC CNL
Barbara Blozen, EdD, MA, RN-BC, CNL
Board President