IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BETTY J. BRYANT,	:	
	:	**C.A. NO: K10A-06-005 (RBY)**
Appellant,	:	
	:	
v.	:	
	:	
DELAWARE BOARD OF NURSING,	:	
	:	
	:	
Appellee.	:	

Submitted: November 1, 2010
Decided: January 12, 2011

Upon Consideration of the Decision of
the Delaware Board of Nursing
AFFIRMED

Betty J. Bryant, *pro se.*

Barbara J. Gadbois, Esq., Department of Justice, Wilmington, Delaware for Appellee.

Young, J.

Bryant v. Delaware Board of Nursing
C.A. No: K10A-06-005 (RBY)
January 12, 2011

SUMMARY

Pursuant to 29 *Del. C.* § 10142, Betty Joyce Bryant appeals from the Delaware Board of Nursing's decision to suspend her nursing license. The Board's decision is supported by substantial evidence, and is therefore **AFFIRMED**.

FACTS

On October 24, 2007, the State of Delaware (the "State") filed a complaint against Betty Joyce Bryant, R.N., before the Delaware Board of Nursing (the "Board"). The complaint stems from an incident that occurred while Bryant was working as a nurse at the Emily P. Bissell Hospital in Wilmington. In the early morning hours of March 7, 2007, one of Bryant's patients made derogatory and insulting remarks about Bryant and one of Bryant's supervisors. Bryant chose to transcribe those remarks on the patient's dry-erase board. The remarks upset the patient, but Bryant refused to comply with the patient's requests to remove them.[1] Bryant was then relieved of her nursing duties, and reassigned to the hospital's dietary department. Bryant refused reassignment, and later resigned from the hospital.

A panel of the Delaware Board of Nursing (the "Panel") held a hearing on this matter on February 17, 2010. The State's complaint alleged that Bryant violated 24 *Del. C.* § 1922(a)(8), which, *inter alia*, prohibits unprofessional conduct.

[1] The patient's care plan indicated that she engaged in "socially inappropriate behaviors" and that care givers were not to "make judgments or jokes about the behaviors" and should "document and report the number of times the resident is redirected." Bryant did not document or otherwise report the patient's derogatory remarks or her response to them.

Specifically, the State alleged that Bryant engaged in unprofessional conduct by violating the following Rules of the Delaware Board of Nursing: (1) Rule 10.4.2.4 in that she inaccurately recorded a patient and agency record; (2) Rule 10.4.2.5 in that she verbally abused a patient; (3) Rule 10.4.2.10 in that she failed to safeguard a patient's dignity in providing services; and (4) Rule 10.4.2.27 in that she failed to take appropriate action and failed to follow policies and procedures in the practice situation designed to safeguard her patient.

The State called three witnesses at the hearing: Susan Cook, Kathy Gibson, and Susan Mitchell. All three witnesses were employed by the Emily Bissell Hospital at the time of the incident: Cook was director of nursing, while Gibson and Mitchell worked in hospital administration.

Cook testified that she was informed about the words written on the patient's dry-erase board around lunchtime on March 7. Upon entering the patient's room, Cook observed that the patient's dry-erase board read "Ugly Betty (black version). Lou, Betty (black version) gave me a problem especially after I called her a Bitch 0155 after I called Ezekiel a pussy."[2] Cook explained that Ugly Betty (black version) referred to Bryant, Lou referred to the assistant director of nursing, and Ezekiel referred to one of the nursing supervisors. Cook further explained that the patient was infatuated with several male nurses, including Ezekiel, and was upset because she didn't want Ezekiel to be mad at her because of what was written on the board.

[2] Cook told the Panel that the board was placed in the patient's room so that basic information could be written for the patient; such as the name of her caretaker for the day, or any special appointments she might have.

Cook later reported Bryant to the Board of Nursing.

Kathie Gibson testified that she initiated an investigation into Bryant's conduct shortly after the incident occurred. Gibson received statements from eight people, including the facility's neuropsychologist. The neuropsychologist found that the patient was "shocked and embarassed when [Bryant] wrote about her on the board. She has been quite upset and bothered, because she blamed herself for what happened." Gibson's review of the statements submitted by other employees confirmed the neuropsychologist's assessment: the patient was concerned, upset, and distressed not only because the information was written on the board, but because she was unable to get out of bed to erase it. Susan Mitchell also testified before the Board. Her testimony was mostly related to the patient's care plan, and reaffirmed Gibson's findings that the patient was very upset following the incident.

Bryant testified in her own defense. Bryant explained that the entire incident was overblown, and that she and the patient were simply joking. In support of this assertion, Bryant introduced a letter dictated by the patient on the night before the hearing. In part, the letter reads: "Betty Bryant was a very good nurse and very professional. She and I joked a lot, and what was written on my board was a joke and did not offend me at all. It was taken way too far, and I could tell Sue Mitchell was out to get Betty Bryant even before the incident occurred. She did not embarrass me, and it upsets me she is no longer my nurse. She should not have lost her job. The punishment was too harsh, and this whole situation has been blown out of proportion."

After hearing all of the evidence, the Panel rejected the State's contention that

Bryant had violated Rule 10.4.2.4 (verbal abuse of a patient), but found that she had violated the other three Rules (inaccurately recording a patient record, failing to safeguard a patient's dignity in providing services, and failing to follow the policies and procedures designed to safeguard the patient). As punishment, the Panel recommended that the Board suspend Bryant's license for one year, followed by five years of probation, and recommended that Bryant be required to complete a course on interpersonal relationships.

On May 12, 2010, the Board voted to accept the Panel's Findings of Fact and Conclusions of Law. The Board suspended Bryant's license for one year, to be followed by five years of probation. The Board also ordered Bryant to complete an educational course on interpersonal relationships, and, while she remained on probation, required Bryant's supervisor to provide semi-annual reports to the Board concerning Bryant's interactions with patients and her interpersonal skills.

STANDARD OF REVIEW

The review of an administrative agency's decision is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists to support the Board's findings of fact and conclusions of law.[3] Substantial evidence equates to "such relevant evidence as a reasonable mind might accept as

[3] *Histed v. E.I. Dupont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Willis v. Plastic Materials*, 2003 WL 164292 (Del. Super. Ct. Jan. 13, 2003); *Robinson v. Metal Masters, Inc.*, 2000 WL 1211508 (Del. Super. Ct. July 14, 2000).

adequate to support a conclusion."[4] This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.[5] Errors of law are reviewed *de novo*.[6] Absent errors of law, the standard of review for an administrative agency's decision is abuse of discretion.

DISCUSSION

Bryant contends that the Board erred by refusing to accept that the incident was a joke, and that, because of this, the State failed to meet its burden of proving that she failed to safeguard the patient's dignity. There is ample evidence on the record to sustain the Board's decision: not only for this violation, but with respect to the other two charges as well.

First, the Board appears to have relied upon the testimony of Susan Cook, Kathie Gibson, and Susan Mitchell in finding that Bryant's act caused the patient emotional trauma, and thus constituted a violation of the Rule 10.4.2.10, which commands nurses to safeguard their patients' dignity. Second, Bryant admitted writing the patient's offensive words on the dry-erase board, but failed to note the incident in the resident's chart. This admission provided the substantial evidence necessary for the Board to find that she inaccurately recorded a patient record, and that she failed to follow the policies and procedures, i.e. the care plan, that were

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[4] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Mar. Comm'n* 383 U.S. 607, 620 (1966)).

[5] *Collins v. Giant Food, Inc.*, 1999 WL 1442024 (Del. Super. Ct. Oct. 13, 1999) (quoting *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

[6] *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154 (Del. 1998).

designed to safeguard the patient. Finally, the Court notes that the Board's opinion expresses particular concern with Bryant's conduct, because she was in a supervisory position when the incident occurred. Taken together, the record supplies substantial evidence to support the Board's decision.

CONCLUSION

The Court passes no judgment as to the correctness of the Board's ultimate conclusion, or as to the ultimate fairness of the Board's prescribed method of punishment. This is not the Court's function. On appeal, the Court's task is to examine the evidence to determine whether the record supplies substantial evidence for the Board's final determination. After a thorough review of the record, the Court is convinced that there is substantial evidence to support the Board's decision. Therefore, the decision of the Board of Nursing is **AFFIRMED**.

SO ORDERED this 12th day of January, 2011.

/s/ Robert B. Young
J.

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