

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
DIVISION OF PROFESSIONAL REGULATION

in re

A.H. File No. PR 93-21

EVELYN M. BURNHAM, N.A.

ORDER

This matter came on to be heard on the 13th day of July 1993 upon a complaint of the Department of Health, Division of Professional Regulation (Department) that Evelyn M. Burnham, Nursing Assistant, (Burnham) threw two glasses of milk at a resident of Zambarano Hospital and did use abusive language toward the resident. The Department stated that Section 23-17.9-8(a), (b) and (e) of the R.I.G.L. allows such conduct to be considered as grounds for revocation of Burnham's certificate of registration as a Nursing Assistant.

The Department was represented by Gregory A. Madoian, Esquire, and Burnham, though advised of her right to counsel, represented herself. The hearing was conducted under the provisions of Chapters 23-17.9 and 42-35 of the R.I.G.L. and the respective rules promulgated thereunder.

Based upon the exhibit and testimony presented and the argument heard the following FINDINGS OF FACT have been determined;

1. Chapter 23-17.9 of the R.I.G.L. requires all nursing assistants (NA) in this state to be certified and registered by the Department and further sets standards for training, qualifying and the disciplining of said NA's.

2. Evelyn Burnham is certified and registered as a NA in this state. (Exhibit 1)

3. The Department proposes to revoke Burnham's registration as a NA because of actions which constitute cause for disciplinary action as specified in; §23-17.9-8(a) ". . .is unfit or incompetent by reason of negligence, habits, or other causes."

§23-17.9-8(b) ". . .has willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance therewith; or willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home in which he or she is providing nursing assistant services;"

* * *

§23-17.9-8(e)". . .has engaged in conduct detrimental to the health, welfare and safety of patients, residents in his/her care."

4. Margaret A. Howard testified that she worked at Zambarano with Burnham and that on 23 October 1992 she observed Burnham throw two cups of milk in a patient's face and swear at him. (Transcript page 8 to 11 and page 29, line 10 to 15)

5. Donna A. Turner testified that she worked with Burnham at Zambarano on 23 October 1992 and observed Burnham throw two glasses of milk in a patient's face and then swear at him. (Transcript page 12 to 13 and page 28, line 25 to page 29, line 8)

6. Candice P. Yates, Burnham's supervisor at Zambarano testified that on 28 October 1992 during a discussion with Burnham about the incident, Burnham admitted throwing two glasses of milk at the patient and speaking to him in an unprofessional manner and apologized for her behavior. (Transcript page 14 to 15)

7. Burnham tendered her resignation on the 23rd of October

1993, the day of the incident. (Transcript page 15, line 7 to 19)

8. Burnham testified that she twice accidentally threw the milk at the patient and did swear because she was upset. (Transcript page 17, line 14 to page 20, line 1)

CONCLUSIONS OF LAW

I

Chapter 23-17 of the R.I.G.L. empowers the Department to regulate nursing assistants in this state and to establish standards for training, qualifying and disciplining nursing assistants and Burnham has been charged with conduct that is unprofessional for a nursing assistant, therefore, this matter is properly before the Department.

II

The Department, under Section 23-17.9-8 may suspend, revoke, reprimand, censure or otherwise discipline a nursing assistant if it is proven that said assistant is unfit or incompetent by reason of negligence, habits or other causes; or has willfully or repeatedly violated any provision of this chapter or rules enacted under said chapter or willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients; or has engaged in conduct detrimental to the health, welfare and safety of patients/residents in her care; and Burnham has been observed by two co-workers throwing two glasses of milk in a patients face and further they heard her using foul and abusive language to said patient, therefore, if their testimony is believed, Burnham is guilty of unprofessional conduct and in violation of §23-17.9-8(a), (b) and (e).

DISCUSSION

After comparing the testimony demeanor of Burnham, as compared to her accusers Howard and Turner, the testimony of the latter two is much more persuasive for the reasons that their stories matched perfectly; there was nothing introduced that showed any animosity between the two witnesses and Burnham prior to the reported incident, and moreover, by Burnham's own version, she did have the two cups of milk in her hand prior to the milk ending up in the patient's face. Burnham's testimony was unimpressing, and her testimony was more specious contention than reality. Her credibility in this matter is open to question.

ORDERED

1. That the nursing assistant certification of Evelyn M. Burnham is hereby revoked.
2. That this revocation shall be for a period of three (3) years from the date of this order.
3. That at the end of this three (3) year period Burnham may reapply for registration under the statute and rules in effect at that time.

You have thirty (30) days in which to appeal this order, if you so desire, to the Superior Court of the State of Rhode Island, however, said appeal by and of itself would not negate the effect of this order.

4 August 1993
date

Joseph D. Almonte
Joseph D. Almonte
Adjudication Officer
R.I. Department of Health

CERTIFICATION

I hereby certify that a copy of the within ORDER has been sent by both regular and certified mail to Ms. Evelyn M. Burnham, 9 Abby Lane, Foster, RI, 02825 on the 4th day of August 1993.

Michelle A. Santos