

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

vs

A.H. FILE NO. PR 98-5

JEFFREY GAVLIK, CNA

ORDER

This matter was heard before a Hearing Officer of the Department of Health upon a complaint of the Division of Professional Regulation, Rhode Island Department of Health (DOH), that Jeffrey Gavlik (Gavlik), a Certified Nursing Assistant (CNA), had allegedly engaged in acts of verbal and physical abuse towards patients while employed at Mount St. Francis Health Center (St. Francis), Woonsocket, RI. Specifically, Gavlik is charged with pulling a patient's wheelchair backwards and jerking her down the hall doing "wheelies"; flicked patient's ears and nose and used inappropriate language with patient; and to have verbally abused a patient while the patient was in the shower.

The DOH was represented by Gregory A. Madoian, Esquire, and Gavlik represented himself. The hearing was conducted under the provisions of Chapters 23-17.8, 23-17.9 and 42-35 of the R.I.G.L.

The definition of abuse, under Section 23-17.8-1. (a) (1) means:

- (i) Any assault as defined in chapter 5 of title 11, including, but not limited to, hitting, kicking, pinching, slapping, or the pulling of hair, provided, however, unless such is required as an element of offense charged, it shall not be necessary to prove that the patient or resident was injured thereby, or;
- (ii) ***
- (iii) ***
- (iv) Any conduct which harms or is likely to physically harm the patient or resident except where the conduct is part of the care and treatment, and in furtherance of the health and safety of the patient or resident, or
- (v) Intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional or psychological harm to the patient or resident, including but not limited to, ridiculing or demeaning a patient or resident, making derogatory remarks to a patient or resident or cursing directed towards a patient or resident, or threatening to inflict physical or emotional harm on a patient or resident.

Section 23-17.9-8 allows the DOH to suspend or revoke any certificate of registration or to reprimand, censure, or otherwise discipline or deny an application, after hearing, in any of the following cases:

- (1) Upon proof that the nursing assistant is unfit or incompetent by reason of negligence, habits, or other causes;
- (2) Upon proof that the nursing assistant 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;
- (3) Upon proof that the nursing assistant has been convicted in a court of competent jurisdiction, either within or without the state, of a felony;
- (4) Otherwise violate any of the provisions of this chapter.
- (5) Has engaged in conduct detrimental to the health, welfare and safety of the patients/residents in his/her care;

(6) Such other causes as may be set forth in regulations promulgated under this chapter.

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

-Under the provisions of Chapters 23-17.9 of the R.I.G.L. the DOH has the authority and responsibility to regulate and certify nursing assistants in this state. Gavlik is a certified nursing assistant in this state.

-Monica Kay, a CNA at St. Francis, testified that she worked with Gavlik when he was on the first floor of the facility and observed him talking to patient Lydia, a female patient, as the patient came out of the shower. Gavlik referred to the patient as "Queen Latipha" and said he "couldn't wait until he could give her a shower", and Lydia said it "would be a cold day in hell before he gave her a shower". Gavlik replied he "wouldn't want to see her fat ass anyway". This incident took place on 8 November 1997.

-Anna Poisson, another CNA at St. Francis was also at work on 8 November 1997. Poisson was the person giving Lydia a shower that day and heard the remarks of Gavlik. Gavlik approached Lydia and called her "Queen Latipha" and said "I can't wait to give you a shower Lydia" with Lydia replying "You'll never give me a shower" and Gavlik "I wouldn't want to see your big fat ass." Poisson asked Gavlik why he had to be so rude to Lydia and he replied that she was always rude to him. She reported the incident to the charge nurse.

-Diane Vachon, Nursing Supervisor at St. Francis, testified that on 9 November 1997 the Director of Social Service, Tara Pryhoda, told her of the incident involving Gavlik. After speaking to Monica Kay and Anna Poisson she confronted Gavlik and he denied the incident.

-Heather Marderosian, formally a CNA at St. Francis, testified that she worked on the third floor of the facility in 1997. In November 1997 she observed Gavlik with a patient called Ida. Ida was a patient who had a pacemaker and was in a wheelchair. She could be aggravating and often screamed. Gavlik was taking her down the hall and all of a sudden he popped the wheelchair up on two wheels for a few feet. Another patient, Edwina was an amputee. Gavlik was trying to show Marderosian how Edwina swore so he was flicking Edwina's nose and he would start a rhyme while flicking her nose "enni meanie minne moe" and Edwina would finish the rhyme "catch the nigger by the toe". Edwina is a Afro American patient approximately 100 years old. Gavlik would flick her nose and or ears to get her to swear. Other personnel witnessed the incidents but Marderosian is the only person to report it. She further testified that she had no animosity toward Gavlik prior to reporting the incident and reported because what she saw him do to Ida and Edwina was not proper.

-Gavlik did not present any witnesses but did present four letters from co-workers attesting to his good character and work habits.

-The DOH requested a three year suspension with the possibility of reinstatement only after Gavlik completes the necessary nursing assistant training and competency evaluation program rather than an outright revocation.

CONCLUSIONS OF LAW

I

Under the provision of Chapter 23-17.9 of the RIGL the DOH has the authority and responsibility to certify and regulate nursing

assistants in this state, and Gavlik is a nursing assistant and is therefore subject to said 23-17.9 so this matter is properly before the DOH.

II

Under Section 23-17.9-8 the department is authorized to revoke, suspend, reprimand, censure, or deny an application if there is proof that the person;

(1) is unfit or incompetent by reason of negligence, habits or other causes;

(2) that the nursing assistant 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 nursing assistant services;

(3)***

(4)***

(5) has engaged in conduct that is detrimental to the health, welfare and safety of patients/residents in his or her care;

(6)***;

and Gavlik has been accused of violating (1), (2), and (5) of said section, therefore, if the charges are proven, his registration as a certified nurse assistant could be revoked or have sanctions imposed that amount to something less than revocation.

III

The definition of abuse, under Section 23-17.8-1.(a)(1) is:

(i) Any assault as defined in Chapter 5 of Title 11, including but not, limited to, hitting, kicking, pinching, slapping, or the pulling of hair, provided, however, unless such is required as an element of offense charged, it shall not be necessary to prove that the patient or resident was injured thereby, or;

(ii) ***

(iii)***

(iv) Any conduct which harms or is likely to physically harm the patient or resident except where the conduct is part of the care and treatment, and in furtherance of the health and safety of the patient or resident, or

(v) Intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional or psychological harm to the patient or resident, including but not limited to, ridiculing or demeaning a patient or resident, making derogatory remarks to a patient or resident, or cursing directed towards a patient or resident, or threatening to inflict physical or emotional harm on a patient or resident.

Gavlik, by flicking patient Edwina's nose and ears is guilty of violating (i), (iv) and (v). Gavlik, by referring to patient Lydia as "Queen Latipha" and making disparaging comment about her posterior is guilty of violating (v). Gavlik, by doing a "wheelie" with patient Ida in a wheelchair is guilty of violating (iv) and (v). Gavlik, by engaging patient Edwina in a repulsive, racial rhyme is guilty of violating (v).

OPINION

The testimony of the four witnesses are much more persuasive than that of Gavlik. The four witnesses expressed no animosity towards Gavlik prior to the reported incidents and he did not claim anything unusual in their prior relationship. No one has said the tending of elderly patients is uncomplicated, and the task has to be very demanding at times, however, only enough energy to manage that patient, or avert a patient from injuring themselves or others, should be allowed. It is not appropriate for the persons

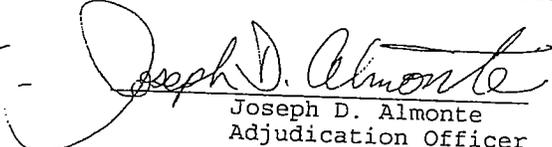
entrusted with the care of patients with physical or mental disabilities to take retribution in kind to a patient's behavior or to initiate reprehensible behavior. - It is evident Gavlik did not bear in mind the training he received, or should have received, regarding the handling of difficult patients. The patients rationality is restricted and they don't always discern their actions. The care giver is compelled to know better and should not respond, in kind, to insults from patients.

ORDERED

1. That the Certificate of Registration of Jeffrey Gavlik as a Nursing Assistant is hereby revoked.
2. That this revocation shall be for a period of no less than five (5) years from the date of this Order.
3. That following the five year period of revocation Gavlik may re-apply for certification as a nursing assistant but must first present evidence of being retrained as a nursing assistant.

YOU HAVE THIRTY 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 DOES NOT NEGATE THE AFFECT OF THIS ORDER

28 September 1998
date


Joseph D. Almonte
Adjudication Officer
R.I. Dept. Of Health

CERTIFICATION

I hereby certify that the within ORDER was sent by regular and certified mail to Jeffrey Gavlik, 70 Colonial Road, Harrisville, RI 02830 this 28th day of September 1998.

Dennis E. Dennis

CC Mary Ellen McCabe, Esquire
✓ Russell J. Spaight
Patricia A. Nolan, MD, MPH, Director of Health