

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

vs

A.H. FILE NO. PR 98-17

KEITH THOMPSON, 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 Keith Thompson (Thompson), a Certified Nursing Assistant (CNA), had allegedly engaged in acts of physical abuse towards patients while employed at Cartie's Health Center (Cartie's), Central Falls, RI. Specifically, Thompson is charged with throwing a cane at a bed and the cane hit a patient, and on another occasion did hit a patient.

The DOH was represented by Gregory A. Madoian, Esquire, and Thompson was represented by Patrick Quinn. 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) of the R.I. General Laws 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 obligation to monitor and certify nursing assistants in this state. Thompson is a certified nursing assistant in this state.

-Ernie Blanchette, a social worker at Cartie's testified that he had received patient complaints about Thompson but had never seen any patient abuse by Thompson.

-Linda A. Lagasse, a CNA at Carti's, was at work on 24 October 1997 and saw patient Arthur Woolley, about 95 years of age. His hands were normal that morning. At about 1145 AM she saw him and his hands were bruised. Thompson was responsible for the care of Woolley that day. Thompson did not seek help of a nurse for Woolley and went to his next patient. She reported Woolley's bruised hand to her supervisory nurse.

-Pamela Droney, another CNA at Carti's, testified she was in and out of the shower room while Thompson was washing Woolley and did not see Thompson injure Woolley. She did not see Woolley's hand swollen prior to the shower, at 11:30 AM, but did notice the swollen hand after the shower at 11:50.

-Thompson testified that he was terminated after this incident and has not returned to work yet. He thinks Woolley is about 87 years old and never did anything to injure him. He did not see Woolley injure his hand and he looked for the Charge Nurse after he noticed Woolley's hand was injured. He said he did not throw a cane at patient Champoux. He was the only person giving Woolley a shower and the hand was alright before the shower but was injured when the shower was over.

-There is no evidence presented that indicates Thompson threw a cane at patient Champoux.

-Arthur Woolley, a 96 year old patient at Carti's, was deposed on 24 March 1998 and a written deposition and video were admitted into the record. Woolley was confused about some questions and didn't have a clear answer to all questions, however he was consistent in his recollection that he was pushed around in the shower and his hand was twisted by Thompson. He also recalled that he had the shower hose in his hand for a short period of time but didn't remember if he had sprayed Thompson with the hose. He stated several times that he was "punished" while in the shower.

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 Thompson is a nursing assistant and is therefore subject to said 23-17.9 so this matter is appropriately 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 Thompson 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.

Thompson, by pushing Woolley and twisting his hand is guilty of violating (i) and (iv).

OPINION

The testimony of witness Lagasse and patient Woolley is much more persuasive than that of Thompson. The testimony of Droney was not helpful to Thompson's case because she also did not notice anything wrong with Woolley's hand until after the shower. Something indisputably happened during the shower. No one but Woolley gave an explanation as to what happened. The three CNA witnesses declared no hostility towards each other prior to the reported incidents. The tending of elderly patients must 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 evident Thompson did not bear in mind, the population entrusted to his care, the training he received, or should have received, regarding the handling of patients.

ORDERED

1. That the Certificate of Registration of Keith Thompson as a Nursing Assistant is hereby revoked.
2. That this revocation shall be for a period of no less than three (3) years from the date of this Order.
3. That following the three year period of revocation Thompson may re-apply for certification as a nursing assistant but must first present evidence of being retrained as a nursing assistant. If he is certified after the three year revocation, he shall be on probation, while employed as a certified nurse assistant, for a period of one (2) years.

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

19 October 1998

date

Joseph D. Almonte
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 Keith Thompson, 94 Montgomery St., Pawtucket, RI 02860 this 19th day of October 1998.

Denise E. Dennis

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