

Issue: Group I Written Notice (unsatisfactory job performance); Hearing Date: 07/09/02; Decision Date: 08/03/02; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; AHO: Carl Wilson Schmidt, Esq.; Case No. 5462



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 5462**

Hearing Date: July 9, 2002  
Decision Issued: August 3, 2002

**PROCEDURAL HISTORY**

On April 3, 2002, Grievant was issued a Group I Written Notice of disciplinary action for:

*Unsatisfactory job performance. Failure to follow supervisor's instructions as well as follow policy concerning the toothpaste incident with patient.*

On April 9, 2002, Grievant timely filed a grievance to challenge the disciplinary action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On June 6, 2002, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On July 10, 2002, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant  
Grievant's Representative  
Agency Party Designee  
Agency Representative  
Nursing Instructor

Director of Nursing  
Registered Nurse  
DSA II

## **ISSUE**

Whether Grievant should receive a Group I Written Notice of disciplinary action.

## **BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual (“GPM”) § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

## **FINDINGS OF FACT**

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Department of Mental Health Mental Retardation and Substance Abuse Services employs Grievant as a Registered Nurse. She has been working for the Agency for approximately four years with positive performance evaluations. She received a Group I Written Notice on March 14, 2002.

Symbols are sometimes used to document a patient’s medical treatment. A circle by itself indicates that the nurse omitted giving the patient medication. A circle with a slash from the top right side to the lower left side of the circle indicates that the nurse offered medication to a patient but the patient refused to take the medication. In other words, a circle is an omission and a circle with a line through it is a refusal. If a circle with or without a slash is used to document treatment, the nurse must also write an explanation in the patient’s Interdisciplinary Notes.<sup>1</sup>

In order to correct a mistake made on a medical administrator record, a nurse should (1) strike through the entry, (2) write the word “error”, (3) write his or her initials, and (4) write the date of the entry. A separate incident report must also be completed explaining that an error was made.

Grievant provides nursing care to patients with mental illness at the Facility. She is obligated to “Perform ongoing assessment and documentation of the physical and

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<sup>1</sup> Agency Exhibit 4, Nursing Policy and Procedure #3.

mental condition of patients, using appropriate interventions based on each patient's treatment plan.<sup>2</sup> Grievant attended orientation training regarding proper techniques for medical documentation.<sup>3</sup>

The Patient resides at the Agency's Facility and is under Grievant's care. A medical professional prescribed Preident toothpaste to be given to the Patient each time he brushed his teeth. This toothpaste is kept secured with other controlled drugs and given to the patient in small doses. Grievant informed the Patient that when he was ready to brush his teeth, he should bring his toothbrush to her at the nursing station and she would give him the toothpaste.

On March 18<sup>th</sup>, March 20<sup>th</sup>, and March 21<sup>st</sup>, 2002, Grievant wrote a circle in the Patient's medication administration record to indicate the Patient's receipt of the prescription toothpaste had been omitted. No reason had been documented for omitting the toothpaste.

On March 23, 2002, Grievant's Supervisor learned that the Patient had not received his toothpaste and asked Grievant why the toothpaste had not been given. Grievant responded that she had informed the Patient that if he wanted the toothpaste, he should bring his toothbrush to her when she was at the medication cart and she would apply the toothpaste to his brush. The Patient did not come to Grievant to receive toothpaste.

As a result of her discussion with the Supervisor, Grievant concluded that the Patient had refused the toothpaste on the days in question rather than having the administration of the toothpaste omitted. Since Grievant had written a circle on the Patient's medication administration record and a circle represented an omission, Grievant concluded she needed to correct the record. She obtained the Patient's medication administration record and wrote a slash through the circles for the three days. She also<sup>4</sup> made an entry in the Patient's Interdisciplinary Notes explaining her conversation with the Patient during which she informed him to come to her when he wanted toothpaste.<sup>5</sup> Her note does not mention how and why she changed the medication administration record.

The Agency later reviewed the Patient's medication administration record and concluded that Grievant had not properly corrected her error and that such failure to properly correct the error justified issuance of a Group I Written Notice.

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<sup>2</sup> Grievant Exhibit 6.

<sup>3</sup> Agency Exhibit 7.

<sup>4</sup> Grievant wrote an incident report as instructed by her Supervisor.

<sup>5</sup> Grievant Exhibit 9.

## CONCLUSIONS OF LAW AND POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “include types of behavior least severe in nature but which require correction in the interest of maintaining a productive and well-managed work force.” P&PM § 1.60(V)(B).<sup>6</sup> Group II offenses “include acts and behavior which are more severe in nature and are such that an additional Group II offense should normally warrant removal.” P&PM § 1.60(V)(B)(2). Group III offenses “include acts and behavior of such a serious nature that a first occurrence should normally warrant removal.” P&PM § 1.60(V)(B)(3).

“Inadequate or unsatisfactory work performance” is a Group I offense. In order to prove inadequate or unsatisfactory work performance, the Agency must establish that Grievant was responsible for performing certain duties and that Grievant failed to perform those duties. This is not a difficult standard to meet.

Grievant was obligated as part of her position to properly correct errors she made in medical records. By failing to write “error”, initial the change, and write the date, Grievant failed to properly correct her prior documentation error. Her failure to do so is inadequate or unsatisfactory work performance thereby justifying issuance of a Group I Written Notice.

Grievant contends that the policies regarding correcting medical records conflict and, at a minimum, are confusing. The Hearing Officer agrees that the policies are neither as clear nor as well written as they could be. None of the policies, however, suggest that a documentation error made several days earlier can be corrected by marking through the entry without taking actions indicating an error occurred. Even if the Hearing Officer were to agree with Grievant that there may be more than one way to correct erroneous entries, the method chosen by Grievant is not appropriate.<sup>7</sup>

Grievant contends that the Supervisor tacitly approved Grievant’s action, because Grievant informed the Supervisor that Grievant would change the medication administration record from omission to refusal, yet the Supervisor did not prohibit Grievant from making the change. This argument lacks merit because if Grievant indicated she would correct the error, the Supervisor had reason to believe Grievant would do so according to the Agency’s documentation practices. None of the Supervisor’s actions or statements could have indicated to Grievant that she was free to deviate from the proper documentation procedures.

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<sup>6</sup> The Department of Human Resource Management has issued its *Policies and Procedures Manual* (P&PM”) setting forth Standards of Conduct for State employees.

<sup>7</sup> It is clear from the Agency’s testimony that when a medical record is changed, the event of correcting a medical record it itself is an event that must be documented. If someone unfamiliar with the Patient were to read the Patient’s medication administration record as corrected by Grievant, the reader would not be able to tell that the event of correcting a medical record occurred.

Grievant argues that other nursing staff do not comply with the Agency's documentation requirements. Grievant offered several examples of incorrect documentation practices. In order for Grievant's argument to be persuasive, however, it would have been necessary for Grievant to show that the Agency managers were aware of these deviations from accepted documentation practices. No such evidence was presented. The Hearing Officer has no reason to believe the Agency managers knowingly fail to enforce documentation requirements.

Grievant expressed concern that she was being singled out for discipline and subject to a hostile work environment. No credible evidence was presented to support these allegations.

## DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group I Written Notice of disciplinary action is **upheld**.

## APPEAL RIGHTS

As Sections 7.1 through 7.3 of the Grievance Procedure Manual set forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review – This decision is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision:

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.
2. **A challenge that the hearing decision is inconsistent with state or agency policy** is made to the Director of the Department of Human Resource Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy.
3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **10**

**calendar** days of the **date of the original hearing decision**. (Note: the 10-day period, in which the appeal must occur, begins with the date of **issuance** of the decision, **not receipt** of the decision. However, the date the decision is rendered does not count as one of the 10 days; the day following the issuance of the decision is the first of the 10 days). A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 10 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.

#### Judicial Review of Final Hearing Decision

Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

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Carl Wilson Schmidt, Esq.  
Hearing Officer