

Issue: Group II Written Notice (engaging in inappropriate, non-therapeutic interaction with a client); Hearing Date: 10/28/04; Decision Issued: 11/29/04; Agency: DMHMRSAS; AHO: Carl Wilson Schmidt, Esq.; Case No. 7888



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 7888

Hearing Date: October 28, 2004
Decision Issued: November 29, 2004

PROCEDURAL HISTORY

On June 28, 2004, Grievant was issued a Group II Written Notice of disciplinary action for:

Engaging in an inappropriate non-therapeutic interaction with a patient she was not assigned to. Approach in redirecting the patient was loud and intimidating in demeanor and unprofessional. Intervening without consulting the patient's chart showed a lack of prudent judgment.

On July 15, 2004, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On October 5, 2004, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On October 28, 2004, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Representative
Agency Party Designee

Agency Representative
Witnesses

ISSUE

Whether Grievant should receive a Group II Written Notice of disciplinary action for engaging in an inappropriate non-therapeutic interaction with a client.

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 at one of its facilities. Prior to the incident, Grievant’s work performance had been satisfactory to the Agency. Grievant’s supervisor describes Grievant as having “the education, experience, but more importantly, the confidence to work appropriately with management problem patients.”¹ No evidence of prior disciplinary action against Grievant was introduced at the hearing.

The Client is a 46 year old male who resides at the Facility where Grievant is employed. He spent 25 years incarcerated in a State prison. He suffers from Bipolar Disorder. After his release from prison, questions arose regarding whether the Client would commit suicide. He was re-hospitalized for evaluation and stabilization. He often refuses to take his medication and become manic and impulsive.

On April 29, 2004, the Client and another client became involved in a conflict requiring staff to separate the clients. The Client was loud, agitated, and escalating. Grievant was in the nursing station when she heard the conflict in the dayroom. Grievant quickly left the nursing station and entered the dayroom where she observed the Client very close to the Doctor who also had responded to the conflict. The Client then sat down in a chair. At some point during the conflict, the Client had referred to the Doctor as a “sand ni—er”. Grievant yelled at the Client that “This is your doctor and you

¹ Grievant Exhibit 9.

need to listen to him.” Grievant pointed at the patient and at the doctor. Grievant believed the Client was going to hit the Doctor.

One doctor who observed Grievant pointing described Grievant’s manner as suggesting to the Client that “you are going to get yours.” A clinical social worker who also observed Grievant’s behavior said Grievant “just lost it.”

CONCLUSIONS OF POLICY

Agency Policy Number RI 050-20 addresses *Staff and Patient Interaction* and states that all staff must “maintain professional interaction with patients for the entire period that the patient is hospitalized and for as long as the staff is employed, or provides any service (volunteer or otherwise).” Staff behavior considered to be inappropriate includes, “Using words, tones, or body language to provoke or entice a patient.”²

As the Client was escalating, Grievant should have taken action to calm the Client such as diverting his attention and remaining calm. Instead, Grievant continued to escalate the Client by confronting him and creating a contest of wills. By yelling at the Client and ordering him to listen to the Doctor and pointing at the Client, Grievant increased the likelihood that the Client would feel challenged and react in an even more confrontational manner.

“Failure to ... comply with established written policy” is a Group II offense.³ Grievant’s interaction with the Client was inappropriate and non-therapeutic. Grievant’s words and actions could have provoked the Client further and were contrary to Agency Policy RI 050-20. The Agency has presented sufficient evidence to justify its issuance of a Group II Written Notice.

Grievant contends she raised her voice so that the Client could hear her over the noise. She says she was attempting to re-direct the Client by using a strong tone of voice. She asserts that the Client was not harmed by her actions because he later subpoenaed her to testify on his behalf in a court proceeding.

When the evidence is taken as a whole, it is more likely than not that doctor and clinical social worker who observed Grievant and independently reported her inappropriate behavior were better able to observe and evaluate Grievant’s behavior. Grievant admitted to raising her voice and instructing the Client. Her statements are consistent with the testimony of other witnesses who said Grievant was yelling at the client and telling him he had to listen to the Doctor.

² Agency Exhibit 5.

³ DHRM § 1.60(V)(B)(2)(a).

DECISION

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

APPEAL RIGHTS

You may file an administrative review request within **15 calendar** days from the date the decision was issued, if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.
2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

Director
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

Director
Department of Employment Dispute Resolution
830 East Main St. STE 400
Richmond, VA 23219

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must give a copy of your appeal to the other party. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when administrative requests for review have been decided.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction

in which the grievance arose within **30 days** of the date when the decision becomes final.⁴

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

Carl Wilson Schmidt, Esq.
Hearing Officer

⁴ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.