

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,

Petitioner,

vs.

MAURY R. HEFELE,

Respondent.

No. 10-1137 BN

DECISION

Maury R. Hefele is not subject to discipline because the Board of Nursing (“the Board”) failed to present any evidence that Hefele improperly disposed of bio-waste.

Procedure

On June 21, 2010, the Board filed a complaint seeking to discipline Hefele. Hefele filed an answer on October 25, 2010. A hearing was held on April 18, 2011. Stephan Cotton Walker represented the Board. Hefele appeared with her attorney, Nicole Sublett. This case became ready for our decision on June 21, 2011, when the last written argument was submitted.

Findings of Fact

1. Hefele was registered by the Board as a professional nurse (“RN”). Her license was current and active during all relevant times.
2. Hefele was employed as an RN with Maxim Healthcare Services in Columbia, Missouri, during all relevant times.

3. On February 11, 2008, Hefele visited a Maxim patient's home and obtained a lab specimen.¹

4. After Hefele left the patient's home, she took all the bio-waste with her and placed it in her vehicle.²

5. On February 13, 2008, the housekeeping staff of Ellis Fischel Cancer Center ("Ellis Fischel") gave Dawn Nunez, manager of Ellis Fischel, a manila envelope they found in the trash cans in front of the building.

6. The envelope had a syringe with a needle in it. The needle was uncapped and had some blood in it. There was also a partially filled syringe, a small unidentified blue case, and a gold top tube with a sticker on it containing patient information. There were no other names on the envelope or on any of the contents of the envelope to identify who was responsible for it.

7. Nunez investigated to see how the envelope could have been left in the trash can. Through her investigation, she discovered, based on the patient information on the tube, that the individual had been a patient of Ellis Fischel earlier in February 2008.

8. Nunez also discovered that someone from Maxim had treated the patient on February 11, 2008.

Conclusions of Law

We have jurisdiction to hear the case.³ The Board has the burden of proving that Hefele committed an act for which the law allows discipline.⁴ The Board alleges that there is cause for discipline under § 335.066.2:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority,

¹There is no evidence as to what the lab specimen contained.

²There is no evidence as to what kind of bio-waste was placed in the vehicle.

³Section 621.045. Statutory references are to RSMo Supp. 2010.

⁴*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration nor authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence[.]

The Board fails to provide any evidence that Hefele acted improperly and is subject to discipline. The facts tell us that Hefele was employed by Maxim, obtained a lab specimen from a patient on February 11, 2008, and placed bio-waste in her vehicle after leaving the patient's home. The Board failed to prove what happened to the bio-waste after Hefele left the patient's home. The Board alleges Hefele disposed of the bio-waste that was found in the trash can. During the hearing, the Board questioned Nunez, a manager with no personal knowledge of the incident, regarding who was responsible for the bio-waste found. Hefele objected to the question as hearsay within hearsay, and the objection was sustained. Moreover, Nunez was the only witness who was called to testify even though Hefele, who had possession of the bio-waste at some relevant point, was present at the hearing. The Board failed to present deposition, affidavit, admissions or other evidence to connect Hefele to the bio-waste bag that was found in the trash can outside Ellis Fischel. This Commission will not just assume what happened.

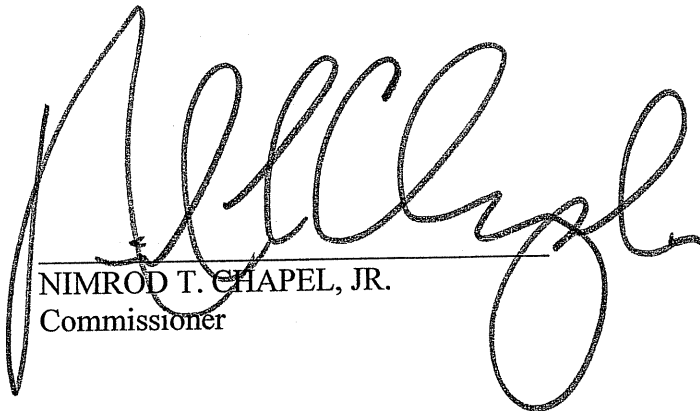
Additionally, in its complaint, the Board claims, "The trash can where the bio-waste container was found was not an approved disposal site for bio-waste containers." The Board failed to provide evidence as to what the appropriate procedure is for bio-waste disposal and that the trash can is not appropriate.

Therefore, we find that Hefele is not subject to discipline because the Board failed to meet the burden of proof of showing how Hefele was connected to the bio-waste found in the trash can.

Summary

Hefele is not subject to discipline.

SO ORDERED on January 31, 2012.



NIMROD T. CHAPEL, JR.
Commissioner