

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

SUSAN MEADE,
Credential No. NAR.NA.00154703,

Respondent.

Master Case No. M2010-1596

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

APPEARANCES:

Susan Meade, Respondent, pro se

Department of Health Nursing Assistant Program (Program), by
Michael Ellsworth, Staff Attorney

PRESIDING OFFICER: Laura Farris, Health Law Judge

A hearing was held in this matter on October 6, 2011, regarding allegations of unprofessional conduct. License suspended.

ISSUES

Did the Respondent commit unprofessional conduct as defined by RCW 18.130.180(4), (5) and (7)?

If the Program proves unprofessional conduct, what are the appropriate sanctions under RCW 18.130.160?

SUMMARY OF PROCEEDINGS

At the hearing, the Program presented the testimony of the Noel Kuntzman, Nursing Assistant; Luella Larsen, Resident Manager; Pam Pratt, Resident A's daughter; Rodney C. Johnson, Department of Health (DOH) Health Care Investigator; Katherine Bodin, Nurse Investigator, Washington Department of Social & Health Services ; and Robin Bucknell, DOH Health Services Consultant.

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The Respondent testified on her own behalf.

The Presiding Officer admitted the following Program exhibits:

P-1: Investigator's Report, Department of Social & Health Services #09-04-08763;

P-2: DSHS Notice of Preliminary Finding, dated April 22, 2010; and

P-3: DSHS Notice of Final Finding, dated May 27, 2010.

I. FINDINGS OF FACT

1.1 The Respondent was granted a license to practice as a registered nursing assistant in the state of Washington on April 15, 2003.

1.2 On April 22, 2010, the Department of Social & Health Services DSHS, issued a Notice of Preliminary Finding that read in pertinent part as follows:

You were a caregiver at Angelbrook Estates Adult Family Home. The residents that lived there were vulnerable adults. On (sic) about March 31, 2009 you mentally abused the first vulnerable adult by yelling at her, threatening her, and calling her a derogatory name. On (sic) about April 11, 2009 you mentally abused the first vulnerable adult by calling her a derogatory name. In February 2009, you physically abused her when you rubbed a soiled disposable brief in her face. You mentally abused a second vulnerable adult by ridiculing her and calling her a derogatory name. You mentally abused a third vulnerable adult by calling her a derogatory name.

1.3 On May 27, 2010, DSHS issued a Notice of Final Finding that found that the Respondent:

Abused vulnerable adults while working as a caregiver at an adult family home. This finding is based on incidents of abuse that took place between February 2009 and April 2009 at Angelbrook Estates Adult Family Home. Accordingly, the finding will be placed on the Residential Care Services Registry. This information will be available to licensed long-term care facilities or any other individual who requests it. Based upon state law (RCW 74.39.050), Susan Meade may not be employed in a

position that involves the care of vulnerable adults, or in a position that allows unsupervised access to vulnerable adults.”

1.4 In her Answer to the Statement of Charges, the Respondent admitted that based on the conduct described in paragraphs 1.4 and 1.5 of the Statement of Charges, DSHS issued a Notice of Preliminary Findings which found that she mentally and physically abused Resident A and mentally abused Resident B. She also admitted that DSHS issued a Notice of Final Finding based upon the finding that she physically abused Resident A and mentally abused Resident B. DSHS restricted the license of Respondent by prohibiting her from working in a position that involves the care of vulnerable adults, or in a position that allows unsupervised access to vulnerable adults. See RCW 74.39A.050(8)

1.5. The standard of care for nursing assistants in dealing with combative patients who are upset is to step back and give the patient time to calm down. By mentally and physically abusing Resident A and mentally abusing Residents B and C, Respondent violated the standard of care for nursing assistants.

1.6 The Respondent testified that she did not mentally and physically abuse Resident A, nor did she mentally abuse Residents B and C. The Presiding Officer does not find the Respondent to be credible given the testimony of Luella Larsen and Noel Kuntzman. More importantly, the Respondent was collaterally stopped from relitigating the DSHS case.

II. CONCLUSIONS OF LAW

2.1 The Secretary of Health (and by designated authority, the Presiding Officer) has jurisdiction over the Respondent and the subject of this proceeding. Chapter 18.130 RCW.

2.2 The standard of proof in nursing assistant discipline cases is proof by preponderance of the evidence. *Hardee v. Dept. of Social and Health Services*, 2011 Wash. LEXIS 517.

2.3 A collateral attack is one which a party seeks to evade a judgment by attacking that judgment in a proceeding not instituted for that purpose. *Hanna v. Allen*, 153 Wn. 485 (1929). An order may only be attacked in a collateral proceeding if the order is “absolutely void, not merely erroneous.” *Bresolin v. Morris*, 86 Wn.2d 241 (1975). “A judgment is void only when the court lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the particular order involved.” *Id* (citing Duke v. Dike 75 Wn. 2d 1(1968)). The issue in this case has been confused by both parties. This case is not an opportunity to relitigate the charges brought by DSHS. The issue is whether the DSHS action against Respondent implicates Respondent’s nursing assistant license. The Presiding Officer concludes that it does. The Program proved by a preponderance of the evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(5).

2.4 The next question is whether, given the DSHS findings, the Respondent violated RCW 18.130.180(4) and (7). The Presiding Officer concludes the Program proved by a preponderance of the evidence that the Respondent committed

unprofessional conduct as defined in RCW 18.130.180(4) and (7). With regard to RCW 18.130.180(7), Respondent violated WAC 246-841-400(6) (g).

2.5 In determining appropriate sanctions, public safety must be considered before the rehabilitation of the Respondent. RCW 18.130.160. Respondent's conduct falls in Tier B of the "Practice Below the Standard of Care" schedule. WAC 246-16-810. The Presiding Officer considered the following aggravating factors when determining the sanction in this matter: abuse of trust; emotional harm to the victims; number and pattern of acts of unprofessional conduct; and the vulnerability of the victims. The Presiding Officer considered the fact that Respondent had no prior discipline history as a mitigating factor.

III. ORDER

3.1 The Respondent's license to practice as a registered nursing assistant in the state of Washington is **SUSPENDED** for a period of at least three years from the effective date of this order.

3.2 The Respondent may not seek modification of this order for three years from the effective date of this order. Prior to petitioning for reinstatement, Respondent shall complete anger management training from a Program-approved anger management program.

3.3 Change of Address. The Respondent shall inform the program manager and the Adjudicative Service Unit, in writing, of changes in her residential and/or business address within 30 days of such change.

3.4 Assume Compliance Costs. The Respondent shall assume all costs of complying with all requirements, terms, and conditions of this order.

Dated this 24 day of October, 2011.

/s/
LAURA FARRIS, Senior Health Law Judge
Presiding Officer

CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(4)	Violated
RCW 18.130.180(5)	Violated
RCW 18.130.180(7)	Violated

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Nursing Assistant Program
P.O. Box 47864

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The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-10-704. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at <http://www.doh.wa.gov/hearings>.