



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

DOLORES PORRECA

v.

DOCKET NO. BOR-88-183

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Dolores Porreca, has been employed as a Licensed Practical Nurse I at West Virginia University Hospital (University) for six years. Ms. Porreca filed a level one grievance on August 10, 1988 as a result of a warning letter being issued to her and placed in her personnel file. The matter was denied at levels one and two and was appealed to level four on September 27, 1988. An evidentiary hearing was held on March 6, 1989.

On July 1, 1988 Charlotte Bennett, Nurse Manager, issued a written warning to the grievant regarding her failure to assist a patient in distress. The grievant argues the letter was issued without just cause and casts doubts upon her competence. She asks to have the letter and all reference thereto removed from her file.

At the level two and four hearings Ms. Bennett testified that on June 27, 1988 she was proceeding down the hallway when she heard a patient coughing and having

difficulty breathing. Entering the room she found the patient, a quadriplegic paralyzed from the the chest area down, on a Stryker frame, basically a sandwich-type bed which allows the patient to be turned from his back to his stomach. The patient was face down with his head supported by straps on the forehead and chin. He had also undergone a tracheostomy and the trach mask, which provides oxygen, had slipped and was pushing on the tracheostomy which acted as an irritant and impeded his breathing. This together with a profuse amount of secretions which caused him to cough resulted in a high level of distress for the patient.¹

Ms. Bennett stated that she found the grievant in the room (a four bed ward) making up an unoccupied bed and not assisting the patient in any way. Ms. Bennett stated that the grievant was expected to take some action in the patient's behalf, seeking assistance if she could not handle the situation herself.²

After discussing disciplinary options with the Division of Human Resources Ms. Bennett determined the incident did not warrant termination as the patient suffered no long-term

¹According to Ms. Bennett, the patient had only gross arm movement capability permitting a sort of flopping motion. He could activate his nurse call light when the cords were exactly positioned; however, when anxious or frightened the patient was not able to activate the light. This appears to have been the case.

²Ms. Bennett indicated that her response was to adjust the trach mask and suction the secretions.

ill effects but due to the potential severity the lack of action could have caused, she determined that a verbal reprimand was insufficient. Therefore, a warning letter was issued.

The grievant testified that a nurse had recently left the room and while the patient was making some noises she did not consider them unusual for a trach patient and did not believe that he was in distress. However, she states that she was about to approach the patient as Ms. Bennett entered the room. Upon the nurse's appearance she continued making the bed and left. The grievant argues that there was no intent to neglect the patient and at most she simply did not react quickly enough. She asserts that a verbal warning would be more appropriate.³

The West Virginia University Employee Handbook, (pp.51-52) provides a broad spectrum of disciplinary options. Counseling, or a verbal warning may be implemented when an employee does not maintain established standards of performance and conduct. Immediate dismissal may occur in cases of flagrant or willful violation of policy, rules, regulations, standards of acceptable behavior or

³At the level two hearing the issue was raised as to whether it was within the duties and responsibilities of an LPN I to care for a patient in this situation. As the grievant indicated in her own testimony that she had extensive experience working with trach patients (T.p 35) this argument does not merit consideration.

performance. Written warnings may also be given to an employee when a dean, director, or supervisor decides that the nature of the offense requires such action. Progressive discipline (counseling, warning letters, dismissal) is appropriate in many instances; however, it is clear that depending upon the severity of the incident other alternatives, including dismissal, may be applied even in the first instance.

While the grievant may well have intended to check the patient just as Ms. Bennett entered the room, her good intentions do not alleviate the fact that his condition was so pronounced that it was discernible from the hallway. The delay caused by her inaccurate assessment of his condition caused the patient distress and could have resulted in more severe damage. The University has shown just cause for the disciplinary action taken.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant has been employed by West Virginia University for six years as a Licensed Practical Nurse I.

2. On June 27, 1988 Nurse Manager Charlotte Bennett was proceeding down a hallway when she heard a patient coughing and having difficulty breathing.

3. Upon entering the room Ms. Bennett discovered the patient in distress while the grievant was making an unoccupied bed.

4. The patient was a quadriplegic, paralyzed from the chest down, with only gross arm movements. He was strapped to a special bed face down and could not activate his nurse call light. His tracheostomy mask had slipped and he was experiencing a build up of secretions which caused coughing and difficulty with breathing.

5. Nurse Bennett adjusted the mask and suctioned the secretions. The grievant finished making the bed and left the room.

6. Nurse Bennett issued a warning letter to the grievant for her failure to assist a patient in distress.

Conclusion of Law

The University has established by a preponderance of the evidence just cause for taking disciplinary action and that the level of discipline imposed is not arbitrary or capricious or clearly excessive.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court

DATED: March 31, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER