

Before the  
Administrative Hearing Commission  
State of Missouri



STATE BOARD OF NURSING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-1982 BN
	)	
RHONDA SMITH,	)	
	)	
Respondent.	)	

**DECISION**

Rhonda Smith is subject to discipline because she fell asleep while on duty.

**Procedure**

The State Board of Nursing (“Board”) filed a complaint on November 18, 2013, seeking this Commission’s determination that cause exists to discipline Smith’s license as a licensed practical nurse (“LPN”). Smith was personally served with a copy of the complaint and our notice of complaint/notice of hearing on January 16, 2014. Smith did not file an answer until the Board moved for a default decision on February 18, 2014. On March 3, 2014, she filed objections to the motion for default, along with her answer to the complaint. On March 4, 2014, we denied the motion for default.

This Commission convened a hearing on the complaint on June 5, 2014. Smith’s counsel, David F. Barrett, requested a continuance in writing on June 2, 2014 and orally at the

time of hearing because he alleged he lost contact with Smith. The requests were denied, and the hearing proceeded without Smith. The Board was represented by Rodney P. Massman. The matter became ready for our decision on August 26, 2014, the last date for filing a written argument.

### **Findings of Fact**

1. Smith was licensed by the Board as an LPN at all times relevant to these findings.
2. On March 11, 2013, Smith was employed as a home health nurse with Advantage Nursing Services in Columbia, Missouri.
3. On that date, Smith was on duty in the home of patient C.C. and was scheduled to be relieved of duty at 7:00 a.m.
4. C.C. suffered a traumatic brain injury, which left him unable to talk or move on his own, so he required round the clock care.
5. C.C. lived in his mother's home, but she had already gone to work when the relief nurse, Angela Carroll, LPN, arrived for duty.
6. Smith knew that C.C. was ill and had been given instructions to pass information about his condition to the relief nurse so that a call could be placed to C.C.'s doctor for guidance on what should be done for C.C. in light of his illness.
7. When Carroll arrived at 6:55 a.m., Smith was asleep in a rocking chair. She remained asleep, even after Carroll came into the front door and called out to Smith.
8. When Smith was awakened and she and Carroll proceeded to C.C.'s room to check on him, his blood oxygen level was below normal, and he was in respiratory distress. His body was also covered in a significant amount of urine and feces.
9. Due to C.C.'s respiratory difficulty, Carroll called in C.C.'s respiratory care therapist who administered treatment that restored C.C.'s proper oxygen level.

## Conclusions of Law

We have jurisdiction to hear the case.<sup>1</sup> The Board has the burden of proving that Smith has committed an act for which the law allows discipline.<sup>2</sup> The Board alleges that there is cause for discipline under § 335.066<sup>3</sup>:

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, 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 or 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[.]

### Professional Standards – Subdivision (5)

In its complaint, the Board limits its allegations under this subdivision to misconduct. Therefore, we limit our analysis under this subdivision to this issue. Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”<sup>4</sup> Smith fell asleep while caring for a patient. This conduct is willful. It is also wrongful conduct for any health care provider, including LPNs, to fall asleep while patients are in need of their care.

Smith is subject to discipline under § 335.066.2(5).

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<sup>1</sup>Section 621.045. Statutory references are to RSMo. Supp. 2013 unless otherwise noted.

<sup>2</sup>*Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>3</sup>RSMo. Supp. 2012.

<sup>4</sup>*Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App. E.D. 1988).

### Professional Trust – Subdivision (12)

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.<sup>5</sup> It may exist not only between the professional and her clients, but also between the professional and her employer and colleagues.<sup>6</sup> Employers and patients must trust LPNs to be awake and alert while on duty. By sleeping while on duty, Smith violated professional trust. She is subject to discipline under § 335.066.2(12).

#### **Summary**

Rhonda Smith is subject to discipline under § 335.066.2(5) and (12).

SO ORDERED on October 21, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>5</sup>*Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

<sup>6</sup>*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App. E.D. 1989).