

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
v.)	No. 13-0591 BN
)	
DESIREE IRWIN,)	
)	
Respondent.)	

DECISION

Respondent Desiree Irwin, a licensed practical nurse, is subject to discipline against her license for violation of professional trust or confidence. She is not subject to discipline for incompetency or misconduct.

Procedure

Petitioner State Board of Nursing filed a complaint on April 23, 2013, seeking this Commission's determination that cause exists to discipline Ms. Irwin's license. Ms. Irwin was served with a copy of the complaint, and our notice of complaint and notice of hearing, on September 12, 2013 and filed an answer on October 5, 2013.

We held a hearing on October 16, 2013. The Board was represented by its attorney, Ian Hauptli. Ms. Brown appeared in person and represented herself. The case became ready for decision on January 10, 2014, when the briefing schedule ended.

Findings of Fact

1. Desiree Irwin is licensed by the State Board of Nursing as a licensed practical nurse (LPN) and has been at all times relevant to these proceedings.

2. Ms. Irwin was employed as an LPN by Firstat Nursing, a company that provides nursing care to persons in their homes.

3. Ms. Irwin was caring for patient K.K. on the night shift between 2200 hours on February 12 and 0600 hours on February 13, 2013, in K.K.'s foster home. K.K. is a non-verbal, medically fragile pediatric patient, and an insulin-dependent diabetic whose blood glucose levels can quickly and unexpectedly rise very high or drop very low. Per her physician's orders, her blood glucose levels are checked every two hours, and she receives insulin to control her blood glucose levels.

4. K.K. had been receiving insulin by injection, but been switched to insulin delivery by insulin pump about a month before February 12-13, 2013, to try to better control her blood glucose levels.

5. Prior to caring for K.K. on the February 12-13 night shift, Ms. Irwin had cared for her one or two eight-hour shifts per month, over a period of several months, for a total of about twelve shifts. Including the February 12-13 night shift, Ms. Irwin had cared for K.K. no more than three shifts since K.K. had been switched from insulin injections to the insulin pump.

6. Ms. Irwin did not have training in the use of insulin pumps during her LPN course of study. Firstat did not give Ms. Irwin training on use of the pump. Another Firstat nurse had shown Ms. Irwin how to set K.K.'s pump to deliver a correction dose of insulin, but not how to trouble-shoot the pump. There was no user manual for K.K.'s pump available to Ms. Irwin on

February 12-13, nor were there any other written instructions or notes about how to operate or troubleshoot it.

7. The physician's orders in place for K.K. directed that if her blood glucose level was 200 or higher, she was to be given a correction dose of insulin (in a specified amount, depending on the level) to lower it, except that no correction doses were to be given between 0200 and 0599 hours, or at 1400 hours.

8. During the February 12-13 night shift, insulin in injectable form was available in the house to give to K.K., but Ms. Irwin did not know it was available.

9. K.K.'s foster mother was present in the house during the February 12-13 night shift, sleeping in a bedroom across the hall from K.K. A note posted on the foster mother's bedroom door directed caregivers not to disturb her except in case of emergency.

10. Another Firstat nurse was also present in the house on the night shift, caring for another child.¹

11. At 0000 hours on February 13, K.K.'s blood glucose level was 500 and she required a correction dose of insulin to lower it. Ms. Irwin checked the insulin pump to prepare to deliver the correction dose.

12. Ms. Irwin found the pump beeping. She could not make it accept override commands or otherwise get it to work.

13. K.K.'s vital signs were stable and K.K. was sleeping. Ms. Irwin concluded that the situation was not an emergency and so did not wake up K.K.'s foster mother. Ms. Irwin did not call Firstat about the problem, call K.K.'s doctor, or contact anyone else. She made a note about the problem with the pump in K.K.'s medical record, and gave K.K. no correction dose of

¹ The other nurse was new and had never cared for K.K. The evidence does not show that the other nurse knew how to operate or trouble-shoot K.K.'s insulin pump.

insulin at that time.

14. Ms. Irwin tested K.K.'s blood glucose at 0200 hours and again at 0400 hours on February 13, and it was still over 500 both times. But per the physician's order, Ms. Irwin did not administer correction doses of insulin.

15. At 0600 hours on February 13, K.K.'s blood glucose level was 491. Ms. Irwin found the pump in the same condition as she had at 0000 hours and could not get it to work to deliver the correction dose. She did not contact anyone for assistance in operating the pump and did not give K.K. a correction dose at that time.

16. The pump was beeping because the pump needed to be recalibrated.

17. K.K.'s foster mother complained to Firstat about Ms. Irwin's inaction, and Firstat filed a complaint with the Board.

Conclusions of Law

We have jurisdiction. §§ 335.066 and 621.045, RSMo.²

The Board bears the burden of proving that a basis exists to discipline Ms. Irwin's license, which it must do by a preponderance of the evidence. *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.* This Commission judges witness credibility and may believe all, part or none of a witness' testimony. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992).

The Board's complaint establishes notice of the bases for discipline. The Board alleges here that cause for discipline exists under § 335.066.2(5), for incompetency and misconduct, and § 335.066.2(12), for violation of professional trust or confidence:

² References to "RSMo" are to the Revised Statutes of Missouri (2012 Supp.), unless otherwise noted.

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 [or] misconduct...in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096; [and]

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

We address the bases in turn.

A. Section 335.066.2(5)—Neither Incompetency Nor Misconduct Proven

The Board has not established by a preponderance of the evidence that cause exists to discipline Ms. Irwin’s license for incompetency or misconduct.

1. Incompetency

Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability. *Albanna v. State Bd. of Regis. for Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009). Incompetency is not necessarily established by a negligent act, or even a series of negligent acts, but by demonstration that the professional is unable or unwilling to function properly. *Id.* at 436 (citing *Tendai v. State Bd. of Regis. for Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005)).

LPNs promote health, and care for persons who are “ill, injured, or experiencing alterations in normal health processes[.]” using “substantial specialized skill, judgment, and knowledge.” § 335.016(14), RSMo. They provide such nursing care under the direction of

physicians or other persons licensed to prescribe medications and treatments, or registered professional nurses. *Id.*

We conclude that Ms. Irwin's action or inaction on the February 12-13, 2013 night shift may have been negligent, but the Board has not proven incompetence. Ms. Irwin appears generally to have had sufficient professional ability to care for K.K. But her LPN course of study did not include use of insulin pumps, and such training was not given to her by Firstat prior to assigning her to care for K.K. She also was not aware that injectable insulin was available in the house, and we see no reason to fault her for failing to figure out that it was, inasmuch as K.K. had been switched from insulin delivery by injection to delivery by pump. Ms. Irwin did attempt to make the pump work. When she could not, she exercised her judgment, observed that K.K.'s vital signs were stable and K.K. was sleeping, concluded the situation was not an emergency, and decided to do nothing. We do fault her for failing to attempt to contact anyone about the pump. Although the foregoing suggests negligence, it does not demonstrate that Ms. Irwin was unable or unwilling to function properly.

We find no cause for discipline under § 335.066.2(5) based on incompetency.

2. Misconduct

In the context of professional licenses and discipline, Missouri courts define "misconduct" as "the willful doing of an act with a wrongful intention." *See Duncan v. Mo. Bd. for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524, 541 (Mo. App. E.D. 1988).

Ms. Irwin candidly testified that if she had things to do over again, she would have wakened K.K.'s foster mother or called someone, and sought out training on use of the pump

before that time.³ It appeared to us that she cared about her patient, and in failing to administer insulin to K.K. at 0000 hours and 0600 hours, we do not believe she acted willfully and with wrongful intention. The Board failed to prove misconduct by a preponderance of the evidence.

We find no cause for discipline under § 335.066.2(12) based on misconduct.

B. § 335.066.2(12)—Violation of Professional Trust or Confidence Proven

Cause exists to discipline Ms. Irwin’s license for violation of professional trust or confidence.

The phrase “professional trust or confidence” is not defined in Chapter 335. Nor has the phrase been defined in case law (which we will discuss below). Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Director of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]... engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency...[; and]...characterized or conforming to the technical or ethical standards of a profession or an occupation....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident dependence on the character, ability, strength, or truth of someone or something...[.]

Id. at 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at

³ Tr. 19.

