

Before the  
Administrative Hearing Commission  
State of Missouri



TERESA JACKSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12-1849 AF
	)	
STATE BOARD OF NURSING,	)	
	)	
Respondent.	)	

**DECISION**

We deny Teresa Jackson’s application for fees and expenses incurred in *State Board of Nursing v. Teresa Jackson*, case number 10-1408 BN (“underlying case”), and this case.

**Procedure**

On October 9, 2012, Jackson filed a complaint, seeking this Commission’s determination that she is entitled to fees and expenses.

This Commission convened a hearing on the complaint on March 18, 2013. Stephen J. Nangle represented Jackson. Stephan Cotton Walker represented the State Board of Nursing (“Board”).

The matter became ready for our decision on June 27, 2013, when the Board filed its final written argument.

## **Findings of Fact**

1. On July 26, 2010, the Board filed a complaint seeking discipline against Jackson's license as a registered nurse. On September 19, 2012, we issued a decision finding no cause for discipline in the underlying case.

2. The underlying case stems from care Jackson provided to M.J., a resident of Bertrand Nursing Facility ("Bertrand"), where Jackson was employed as the Director of Nursing, on June 26, 2008.

3. In the complaint of the underlying case, the Board listed three allegations as causes for discipline:

A. Jackson failed to suction M.J.'s oral cavity prior to administering medication sublingually;

B. Jackson failed to return to M.J.'s room within 30 minutes to suction fluid from M.J.'s oral cavity; and

C. Jackson refused R.N.'s<sup>1</sup> request to attend to M.J. and argued with R.N. regarding the care of M.J.

4. In determining whether to pursue discipline against Jackson in the underlying case, the Board reviewed an investigative report prepared by one of its investigators.

5. The investigative report contained of summaries of interviews the investigator conducted with R.N., Teresa Meyer, Danielle Cravens, Diana Orman, Tammie Gore, Renee Coleman, and Jackson. Each of these individuals is described below.

6. The investigative report also contained of nine documents:

A. a copy of R.N.'s complaint to the Board;

B. a letter from R.N. to the Board; while listed as a separate document by the Board's investigator, it was merely a detailed statement attached to R.N.'s complaint;

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<sup>1</sup> R.N. is M.J.'s adult daughter.

- C. hospice records for M.J., recorded by Meyer;
- D. Bertrand's nursing notes for M.J.;
- E. Bertrand's grievance report<sup>2</sup> of Jackson's care of M.J. on June 26, 2008;
- F. Orman's written statement;
- G. Gore's written statement;
- H. Coleman's written statement;
- I. Jackson's written statement.

7. Only those individuals present in M.J.'s room at Bertrand at the time Jackson administered medication to M.J. have personal knowledge of the events alleged in the Board's complaint. This would have been between 9:30pm and 10:00pm on June 26, 2008.

8. The investigative report provides that five individuals were present at the time Jackson administered medication to M.J. on June 26, 2008. These individuals were M.J., Gore, Coleman, Jackson, and R.N. M.J. was in the final stages of her life, passed away at 5:45am the following day, and was in no condition to provide information regarding the events of June 26, 2008.

9. According to the investigative report, Meyer was also a registered nurse employed by Bertrand. On the evening of June 26, 2008, she was not on duty. She received a call from R.N. regarding Jackson's care of M.J. The hospice records for M.J., recorded by Meyer, begin with an arrival time of 10:10pm. Therefore, Meyer's statement and hospice records contain no personal knowledge of the events that transpired in M.J.'s room between 9:30pm and 10:00pm.

10. According to the investigative report, Cravens was the administrator for Bertrand. From her interview with the investigator, it is apparent that Cravens' knowledge of the events in

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<sup>2</sup> This was completed by Cravens and appears to be an internal report kept by Bertrand. It refers to "attached documents." However, it appears in the investigative report as a single page. The "attached documents" may refer to the remaining documents provided in the investigative report, but it is not clear.

M.J.'s room between 9:30pm and 10:00pm on June 26, 2008 were from statements made by R.N. and Bertrand's nursing notes<sup>3</sup> for M.J. Bertrand's nursing notes indicate that Jackson followed all proper procedures with M.J. on June 26, 2008. Cravens summarized her understanding of the events of June 26, 2008 in the grievance report she completed for Bertrand and that was also contained in the investigative report. This report provides no additional information beyond her interview with the investigator.

11. According to the investigative report, Orman was employed as a medication technician with Bertrand. From both her interview with the investigator and her written statement, it is apparent that Orman had no personal knowledge of the events that transpired in M.J.'s room between 9:30pm and 10:00pm on June 26, 2008.

12. According to the investigative report, both Gore and Coleman were employed as certified nurse assistants ("CNAs") with Bertrand. According to their interviews and Coleman's written statement, both CNAs were in M.J.'s room between 9:30pm and 10:00pm on June 26, 2008. Both observed Jackson administer medication to M.J. without first suctioning her oral cavity.

13. According to the investigative report, R.N. complained Jackson did not suction M.J.'s oral cavity prior to or immediately after the 9:35pm administration of medication and Jackson failed to provide medication to M.J. at other times when requested by R.N.

14. According to the investigative report, after administering medication at 9:35pm, Jackson observed purulent drainage flowing out of M.J.'s mouth.<sup>4</sup>

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<sup>3</sup> These nursing notes are located next to M.J. and completed by nurses whenever an action is taken regarding M.J.'s care.

<sup>4</sup> This differs from the live testimony provided at the hearing in the underlying case. This information is used only for the purpose of determining whether the Board was substantially justified in its underlying case for discipline.

15. According to the Board's expert witness, in order for this medication to be effective, the oral cavity must first be cleared of fluids and other objects.

### **Conclusions of Law**

We have jurisdiction to hear the complaint in this case under § 536.087,<sup>5</sup> which provides:

1. A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

### Prevailing Party

Section 536.085(2) defines a "party," for purposes of § 536.087, as:

- (a) An individual whose net worth did not exceed two million dollars at the time the civil action or agency proceeding was initiated[.]

Jackson's net worth at the time the Board filed the underlying complaint was within the amount that allows her to be a party in a fee proceeding.

Section 536.085(3) defines "prevails" as:

- obtains a favorable order, decision, judgment, or dismissal in a civil action or agency proceeding[.]

In the underlying complaint, the Board asked that we find cause to discipline Jackson's nursing license. We decided that Jackson was not subject to discipline. Clearly, Jackson prevailed.

However, Jackson failed to provide evidence that her net worth did not exceed two million dollars at the time the underlying case was initiated. Therefore, she does not qualify as a party under § 536.085(2).

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<sup>5</sup> Statutory references are to RSMo 2000.

### Substantially Justified

“Missouri courts have interpreted the term ‘substantially justified’ to mean there must be ‘reasonable basis both in law and fact’ for the government's action.”<sup>6</sup> An agency's action must be clearly reasonable not just marginally reasonable.<sup>7</sup> “The burden is on the [government] to establish substantial justification [.]”<sup>8</sup>

The Board relied on the investigative report prepared by its investigator in determining whether to pursue disciplinary action against Jackson. An investigative report collects information, including witness interviews, and not all information a report contains would necessarily be helpful to a state agency in determining how to proceed. In the investigative report in this case, we see the hearsay statements and interviews of Meyer, Cravens, and Orman as unhelpful.

However, the Board is comprised of licensed nurses, who are presumably aware of the procedures for administering medication sublingually, as described by their expert witness at the hearing in the underlying case. According to the investigative report, R.N., Gore, Coleman, and Jackson had personal knowledge of the events in question and made consistent statements that Jackson failed to remove fluids that were present in M.J.’s oral cavity prior to administering medication. Combining these allegations in the investigative report with the Board’s knowledge of nursing practice, we find, the Board has shown that it relied on information that provided a clearly reasonable basis for its pursuit of discipline against Jackson in the underlying case. Accordingly, we find the Board’s actions were substantially justified. Jackson is not entitled to fees and expenses.

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<sup>6</sup> *Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 354 (Mo. banc 2001) (citations omitted).

<sup>7</sup> *Dishman v. Joseph*, 14 S.W.3d 709, 717 (Mo.App. W.D.2000).

<sup>8</sup> *Greenbriar*, 47 S.W.3d at 354.

## Summary

Jackson not entitled to fees and expenses because she has not shown that she qualifies as a party under § 536.085(2) and the Board was substantially justified in pursuing discipline in the underlying case.

SO ORDERED on August 1, 2013.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner