

Before the
Administrative Hearing Commission
State of Missouri

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|-------------------------|---|----------------|
| STATE BOARD OF NURSING, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | No. 12-2068 BN |
| |) | |
| DAWN TALBERT, |) | |
| |) | |
| Respondent. |) | |

DECISION

Dawn Talbert is subject to discipline because she conveyed false information to an insurance company regarding treatment that was never rendered.

Procedure

On November 26, 2012, the State Board of Nursing (“the Board”) filed a complaint seeking to discipline Talbert. On November 29, 2012, we served Talbert with a copy of the complaint and our notice of complaint/notice of hearing. On December 18, 2012, Talbert filed her answer.

The Commission convened a hearing on February 10, 2014. The Board was represented by Rodney P. Massman. Talbert was represented by Kevin J. Dolley. The case became ready for our decision on August 26, 2014, the date the last written argument was due.

Findings of Fact

1. Talbert was licensed by the Board as a registered professional nurse (“RN”) at all times relevant to these findings. Talbert was also certified as an advanced practice registered nurse (“APRN”) at all times relevant to these findings.

2. At all relevant times, Dr. Mark Matthews, a licensed physician and surgeon, owned and operated Heritage Medical Clinic (“Heritage”), which had patient care sites in the towns of Cassville and Monett, Missouri.

3. On October 1, 2009, Talbert entered into a collaborative practice arrangement with Matthews. Talbert practiced in both of Heritage’s offices.

2011 Billing Fraud

4. On September 8, 2011, Talbert’s minor daughter, K.T., was involved in a car accident.

5. Following the accident, Talbert generated false records of clinical encounters and medical treatment purportedly rendered to K.T. at Heritage. This treatment never occurred.

6. Talbert then submitted these false records, along with false bills, to her automobile insurance provider, Progressive Automobile Insurance (“Progressive”) to support her insurance claims.

7. Talbert was paid directly by Progressive for these false 2011 insurance claims.

2012 Billing Fraud

8. In February 2012, Talbert was involved in a serious car accident. She was evaluated and treated at a hospital emergency room immediately following the accident.

9. Talbert generated false records of self-evaluation and medical treatments she purportedly rendered by herself and to herself, as the attending clinician. This included a false record reflecting the administration of a trigger point injection given between her own neck and shoulder area, as well as two false sets of x-rays.

10. Talbert did not administer a trigger point injection to herself and had never obtained any x-rays from Heritage.

11. Talbert, through Heritage, billed Progressive for \$976 worth of medical evaluation and treatment services and supplies that she had not received.

12. On March 6, 2012, Progressive issued a check for \$976 to Heritage, rather than directly to Talbert, for her false medical bills. Heritage was unaware of the false billing submitted by Talbert until this check was received.

Conclusions of Law

We have jurisdiction to hear this case.¹ The Board has the burden of proving that Talbert has committed an act for which the law allows discipline.² This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.³ When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony.⁴

Talbert's Arguments and Credibility

Talbert argues that there is no evidence of her dishonesty or intent to defraud anyone and thus no cause for discipline of her license. With respect to the two sets of x-rays for which she billed and was paid by Progressive, she claims that it was her intent to actually obtain the x-rays at some future point in time, but she never did because she was too busy. We find that billing for two sets of x-rays when she claims to have been unable to afford the time to get them is evidence that the intent was to inflate the insurance claim in order to receive a larger payment. There is no evidence that Talbert ever tried to notify Progressive that the claim was erroneous or that she returned the money Progressive paid her for x-rays.

Talbert also argued that she actually paid Heritage out of the insurance proceeds she received related to claims submitted for K.T. At the hearing, Talbert said she remitted \$2,200 or \$2,300 to Heritage for amounts owed for K.T.'s treatment after the proceeds from Progressive

¹Section 621.045. Statutory references are to RSMo Cum. Supp. 2013 unless otherwise noted.

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

³*Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

⁴*Id.*

were deposited in her bank account.⁵ Talbert testified she paid nothing for her own treatment and was never advised by Heritage she had a balance.⁶ These statements were not corroborated by any other witness and no documents support them. We do not find Talbert's testimony credible.

Cause for Discipline

The Board alleges that Talbert's conduct is cause for discipline under § 335.066.2⁷:

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:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(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;

(6) Violation of, or assisting or enabling any person to violate, an provision of sections 335.011 to 335.096, or of any lawful rule or regulation adopted pursuant to sections 335.011 to 335.096;

* * *

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

Fraud, Deception and Misrepresentation – Subdivision (4)

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.⁸ Deception is the act of causing someone to accept as

⁵ Tr. 124-125.

⁶ Tr. 157.

⁷ RSMo Cum. Supp. 2010.

⁸ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

true what is not true.⁹ Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹⁰

Talbert intentionally perverted the truth to induce Progressive into relying on her false assertions and records. This was done with the purpose of having Progressive part with money belonging to it. Therefore, Talbert committed fraud. Likewise, Talbert caused Progressive to accept as true the untrue and false medical records and bills. Therefore, she acted with deception. Finally, Talbert's submission of false medical records and bills to Progressive constituted falsehoods made with the purpose of deceit. Therefore, Talbert committed misrepresentation. Talbert committed this fraud and misrepresentation, and acted with dishonesty, to obtain compensation from Progressive.

Talbert is subject to discipline under § 335.066.2(4).

Professional Standards – Subdivision (5)

In its complaint, the Board limits its allegations under this subdivision to misconduct, fraud, misrepresentation, and dishonesty. We have already found that Talbert committed fraud and misrepresentation. Talbert used her position as an APRN with a collaborative practice arrangement to facilitate this fraud and misrepresentation. Therefore, it occurred in the performance of the functions or duties of an APRN. We now turn to our analysis of misconduct and dishonesty.

Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”¹¹ Talbert willfully submitted false medical bills and false medical records to Progressive with the wrongful intention of receiving payment. Accordingly, we find she

⁹MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 322 (11th ed. 2004).

¹⁰*Id.* at 794.

¹¹*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).

committed misconduct. As with fraud and misrepresentation, Talbert used her position as an APRN to facilitate this misconduct.

Dishonesty is a lack of integrity or a disposition to defraud or deceive.¹² Talbert's submission of false medical records and medical bills to Progressive demonstrates a disposition to defraud or deceive. Accordingly, we find she acted with dishonesty by using her position as an APRN.

Talbert is subject to discipline under § 335.066.2(5) for misconduct, fraud, misrepresentation, and dishonesty.

Violation of Statutes and Regulations – Subdivision (6)

The Board alleges there is cause to discipline Talbert's license under § 335.066.2(6), but its complaint contains no statute or regulation under Chapter 335 that she allegedly violated. We cannot find cause to discipline for uncharged conduct.¹³ Talbert is not subject to discipline under § 335.066.2(6).

Professional Trust – Subdivision (12)

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.¹⁴ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹⁵ Physicians must trust that RNs with whom they enter into a collaborative practice arrangement will properly complete the paperwork related to health care. This includes the proper maintenance of medical records as well as proper billing. Talbert violated this professional trust by creating false medical records and submitting false medical bills to Progressive. There is cause for discipline under § 335.066.2(12).

¹² MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹³ *Dental Board v. Cohen*, 867 S.W.2d 295, 297 (Mo.App. W.D. 1993).

¹⁴ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹⁵ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App. E.D. 1989).

Summary

Talbert is subject to discipline under § 335.066.2(4), (5) and (12).

SO ORDERED on October 30, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner