

STATE OF CONNECTICUT  
BOARD OF EXAMINERS FOR NURSING

Department of Health Services v.

Joan G. Yaw, R.N.

License No. E50694

314 Holcomb Street

Hartford, Connecticut 06112

CASE PETITION NO. 900425-10-024

MEMORANDUM OF DECISION

INTRODUCTION

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Health Services (hereinafter the "Department") with a Statement of Charges dated March 11, 1991. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Joan G. Yaw (hereinafter the "Respondent").

The Board issued a Notice of Hearing dated May 23, 1991. The hearing originally scheduled for January 23, 1992 was continued on two occasions. The hearing was rescheduled and heard on March 25, 1992 in Room 112, National Guard Armory, Maxim Road, Hartford, Connecticut. (State's Exhibit 1)

During the hearing on March 25, 1992 the Board was presented, by the Department, with an Amended Statement of Charges dated February 13, 1992. (State's Exhibit 1) The Respondent, through her attorney, answered the Amended Statement of Charges. (Hearing Transcript, March 25, 1992, pp. 8-9)

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record and their specialized professional knowledge in evaluating the evidence.

#### FACTS

Based on the testimony given and the exhibits offered into evidence, the Board made the following findings of fact:

1. Joan G. Yaw, hereinafter referred to as Respondent, was aware of the time and location of the hearing. State's Exhibit 1 indicates that notification of this hearing was delivered by certified mail to the Respondent and her attorney.
2. The Respondent was present at the hearing and was represented by counsel. (Hearing Transcript, March 25, 1992, pp. 2-3)
3. Pursuant to the General Statutes of Connecticut Section 4-182(c), the Respondent was provided full opportunity prior to the institution of agency action to show compliance with all the terms for retention of her license. (State's Exhibit 2)

4. The Respondent at all times referenced in the Amended Statement of Charges was the holder of Connecticut registered nurse license number E-50694. (Answer: Hearing Transcript, March 25, 1992, p. 8)
5. The Respondent, while employed as a registered nurse at Lorraine Manor (a skilled nursing facility), Hartford, Connecticut, was working as a supervisor and was one of two charge nurses on duty for the second floor "B" wing on the 11:00 p.m. to 7:00 a.m. shift October 15, 1989 to October 16, 1989. (Answer: Hearing Transcript, March 25, 1992, p. 8) (Hearing Transcript, March 25, 1992 pp. 13, 17-19)
6. On or about October 16, 1989, "Mary Roe", a 32 year old woman with Traumatic Brain Syndrome and spastic quadraparesis, was a patient on the second floor "B" wing of Lorraine Manor. (Answer: Hearing Transcript March 25, 1992, p. 8) (Hearing Transcript, March 25, 1992, p. 20)
7. That the physical and mental condition of patient "Mary Roe" was such, that she was severely disabled rendering her incapable of walking, feeding herself, reading, writing, defending herself or calling out for help. (Hearing Transcript, March 25, 1992, pp. 20-27, 54, 142-143)
8. On or about October 16, 1989, "John Doe", an 82 year old male, was a patient on the second floor "B" wing of Lorraine Manor and

resided in a room across the hall from patient "Mary Roe".  
(Hearing Transcript, March 25, 1992, p. 28)

9. The Respondent, while employed as a registered nurse at Lorraine Manor, Hartford, Connecticut, was responsible for the care of patients "Mary Roe" and "John Doe" on the 11:00 p.m. to 7:00 a.m. shift October 15, 1989 to October 16, 1989. (Hearing Transcript, March 25, 1992, pp. 20, 29)
10. That on October 16, 1989 between approximately 6:20 a.m. to 6:45 a.m. patient "John Doe" entered the room of patient "Mary Roe". That patient "John Doe" was in the bed of patient "Mary Roe" and engaged in sexual intercourse with patient "Roe". (Hearing Transcript, March 25, 1992, pp. 50-53, 75-76, 136, 139, 146)  
(Respondent's Exhibit A)
11. That the Respondent was summoned to the room of patient "Mary Roe", by nurse's aide Minnie Green, during the time cited in Fact 10 and while patient "John Doe" was engaging in sexual intercourse with patient "Mary Roe". (Hearing Transcript, March 25, 1992, pp. 136, 151)
12. That the Respondent, when asked what should be done about patient "John Doe" engaging in sexual intercourse with patient "Mary Roe, replied that he "John Doe" should be allowed to finish and that it was the "patient's right". (Hearing Transcript, March 25, 1992, pp. 136-137, 141, 151)

13. That nurse's aide Minnie Green closed the privacy curtain around patient "Mary Roe's" bed two times, when personnel of the facility began to gather in "Mary Roe's" room. The Respondent opened the privacy curtain each time such that facility personnel were able to observe patient "John Doe" engaging in sexual intercourse with patient "Mary Roe". (Hearing Transcript, March 25, 1992, pp. 137, 141)
14. That the Respondent did not intervene to stop patient "John Doe" from engaging in sexual intercourse with patient "Mary Roe". (Hearing Transcript, March 25, 1992, pp. 54, 137, 141)
15. That on October 16, 1989 between approximately 7:00 a.m. and 7:30 a.m. patient "John Doe" again entered the room of patient "Mary Roe" and engaged in sexual intercourse with patient "Roe". (Hearing Transcript, March 25, 1992, pp. 32, 38, 93-95, 132) (State's Exhibit 4, pp. 4, 12) That patient "John Doe" was removed from patient "Mary Roe's" room and subsequently segregated from patient "Roe" until he (Doe) was transferred to the Norwich State Hospital. (State's Exhibit 4, pp. 12, 14) (Hearing Transcript, March 25, 1992, pp. 94-95)
16. That the Respondent while working in the capacity of supervisor and charge nurse on the 11:00 p.m. to 7:00 a.m. shift October 15, 1989 to October 16, 1989 was responsible for charting in the medical record of patients "Mary Roe" and "John Doe" any incidents or occurrences involving these patients that occurred on said shift. (Hearing Transcript, March 25, 1992, pp. 100, 164)

17. That the medical record of patients "Mary Roe" and "John Doe" contained no documentation on the 11:00 p.m. to 7:00 a.m. shift October 15, 1989 to October 16, 1989 of the incident which occurred involving the patients on said shift. (State's Exhibit 4) (Hearing Transcript, March 25, 1992, pp. 31, 34)
18. That the Respondent, while working in the capacity of supervisor on the 11:00 p.m. to 7:00 a.m. shift, October 15, 1989 to October 16, 1989, was responsible for submitting a supervisor's report, during shift change, of any incidents and/or occurrences which took place on said shift. (Hearing Transcript, March 25, 1992, pp. 35, 91)
19. That the Respondent did not report the incident involving patients "Mary Roe" and "John Doe" which occurred on the 11:00 p.m. to 7:00 a.m. shift October 15, 1989 to October 16, 1989. (Hearing Transcript, March 25, 1992, pp. 40, 42, 92-93)
20. That the administration of Lorraine Manor was not aware of the incident involving patients "Mary Roe" and "John Doe", which occurred on October 16, 1989 between approximately 6:20 a.m. to 6:45 a.m., until on or about March - April, 1990. (Hearing Transcript, March 25, 1992, pp. 36-39, 96-98)
21. That an assessment of patient "Mary Roe" was charted in the patient's medical record by Assistant Director of Nurses Carol

Gaughn, R.N., at 8:00 a.m. on October 16, 1989. (State's Exhibit 4, p. 4) (Hearing Transcript, March 25, 1992, pp. 128-129)

22. That the medical record of patient "Mary Roe" contained a notation describing a physical examination which was signed "J Yaw R.N." at a time of 7:45 a.m. on October 16, 1989. That this notation appeared after that which was written by Carol Gaughn, R.N. (State's Exhibit 4, p. 4) (Hearing Transcript, March 25, 1992, p. 129)
23. That the medical record of patient "John Doe" did not contain any documentation by the Respondent that "John Doe's" physical or mental condition was assessed by the Respondent on October 16, 1989. (State Exhibit 4)

#### DISCUSSION AND CONCLUSIONS

The FIRST COUNT PARAGRAPH 4 of the Amended Statement of Charges alleges that on or about October 16, 1989 at approximately 6:30 a.m. patient "Mary Roe" was sexually assaulted by patient "John Doe".

The Respondent denies this allegation. (Answer: Hearing Transcript March 25, 1992, p. 8)

The Board has found (FACT 10) that on October 16, 1989 between approximately 6:20 a.m. and 6:45 a.m. patient "John Doe" engaged in sexual intercourse with patient "Mary Roe".

The Respondent does not dispute that sexual intercourse occurred between the two patients but contends that patient "Mary Roe" consented to sexual intercourse therefore a sexual assault did not occur. (Hearing Transcript, March 25, 1992, p. 169)

In reaching a conclusion on this allegation the Board must first determine if "Mary Roe" consented to sexual intercourse with "John Doe".

The Board considered the testimony of Brenda Cole, Minnie Green and Diane Rawson in which the physical condition and capabilities of "Mary Roe" were described.

The Board gave the greatest weight to the testimony of Diane Rawson. Ms. Rawson by virtue of her education and training as a registered nurse and her position as Director of Nursing is able to form opinions and conclusions based on her observation of "Mary Roe" and her knowledge of "Mary Roe's" condition.

Specifically, "Mary Roe" was a 32 year old female patient who suffered from Traumatic Brain Syndrome and spastic quadraparesis. "Mary Roe" is unable to walk, feed herself, read, write, talk or communicate in any manner or form. She was able to react to stimuli but was unaware of the source of stimulation (FACT 7).

Based on the testimony describing "Mary Roe's" condition and inabilities the Board concludes that "Mary Roe" was unable to give

consent to sexual intercourse with patient "John Doe". The Board further concludes, that based on "Mary Roe's" inability to consent and her physical helplessness, that patient "Mary Roe" was sexually assaulted by patient "John Doe".

The FIRST COUNT PARAGRAPH 5 of the Amended Statement of Charges alleges the "Respondent was summoned to the scene by a nurse's aide while the assault was still in progress".

The Respondent denies this allegation. (Answer: Hearing Transcript March 25, 1992, p. 8)

The Board concludes, based on FACTS 11-13, that the Respondent was summoned to the room of "Mary Roe" by nurse's aide Minnie Green while "John Doe" was in the progress of sexually assaulting "Mary Roe and that the Respondent arrived at "Mary Roe's room and observed the sexual assault taking place.

The FIRST COUNT PARAGRAPH 6 of the Amended Statement of Charges alleges the "Respondent failed to intervene to stop the assault and stated that Patient John Doe should be allowed to finish".

The Respondent denies this allegation. (Answer: Hearing Transcript March 25, 1992, p. 8)

In reaching a conclusion on this allegation the Board considered the credible testimony of Brenda Cole and Minnie Green.

The Board concludes based on FACTS 11-14 that the Respondent not only failed to stop the sexual assault of "Mary Roe" by "John Doe" but made comments that the assault should continue and that she purposely allowed facility personnel to view the assault.

A registered nurse, in addition to providing care to a patient for physical and/or mental illness is responsible for protecting patients under his/her care from any actual or potential harm.

Both patients, "Mary Roe" and "John Doe" were under the care of the Respondent. (FACT 9)

The Board concludes, that by failing to intervene to stop the sexual assault of "Mary Roe" by "John Doe", by making comments allowing the assault to continue and by allowing personnel to view the assault, both patient's were subject to actual and/or potential harm.

The General Statutes of Connecticut Section 20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession, which includes "... (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions...."

The Board concludes that the Respondent's conduct as described above is a violation of the General Statutes of Connecticut Section 20-99(b)(2) and therefore renders the Respondent subject to disciplinary action pursuant to the General Statutes of Connecticut.

The SECOND COUNT PARAGRAPH 6 of the Amended Statement of Charges alleges the Respondent failed to conform to the accepted standards of the nursing profession in that she "a. failed to report the assault on patient Roe to any appropriate authority; and/or b. failed to document the assault on patients records; and/or c. failed to timely assess patients physical and mental conditions; and/or d. failed to timely document patient conditions on patients records."

The Respondent denies these allegations. (Answer: Hearing Transcript March 25, 1992, p. 9)

The Respondent while working as a supervisor and charge nurse (FACT 5) was responsible for charting in the medical record of patients under her care (FACT 16) and submitting a supervisor's report at shift change (FACT 18) of any incidents or occurrences involving patients which occurred on the shift for which she was responsible. The Respondent was also responsible for timely examining and assessing any patient that exhibited a change in their physical/mental status and/or was subject to any injury or harm.

The Respondent was also responsible for reporting to an appropriate authority (i.e. Director of Nursing, Patient's Physicisn, Facility Administration, etc.) any incident or occurrence involving any patient under her care.

In reaching a conclusion on these allegations the Board considered the credible testimony of Diane Rawson and Carol Gaughn and examined the medical record of patients "Mary Roe" and "John Doe".

Based on FACTS 17, and 19-23 the Board concludes that the Respondent failed to document the sexual assault of "Mary Roe" by "John Doe" in the patients' medical records and failed to report the assault to an appropriate authority. The Board further concludes that the Respondent failed to assess the physical and mental conditions of "Mary Roe" and John Doe" following the assault, as evidenced by the lack of documentation and/or timely documentation in the medical records of the patients.

The General Statutes of Connecticut Section 20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession, which includes "... (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions...."

The Board concludes that the Respondent's conduct as specified in the Second Count Paragraph 6 is a violation of the General Statutes of Connecticut Section 20-99(b)(2) and therefore renders the Respondent subject to disciplinary action pursuant to the General Statutes of Connecticut.

The Board is of the opinion that the Respondent's conduct of failing to intervene to stop the sexual assault of "Mary Roe" by "John Doe" as specified in the First Count and the Respondent's failure to report the assault as specified in the Second Count, contributed to the second sexual assault of patient "Mary Roe" by patient "John Doe". (FACT 15)

ORDER

Pursuant to its authority under the General Statutes of Connecticut Sections 19a-17 and 20-99, the Board hereby orders:

1. That for the First Count, the registered nurse license of the Respondent be revoked.
2. That for the Second Count, the registered license of the Respondent be revoked.
3. That the date of revocation shall become effective on August 1, 1992.

The Respondent, Joan G. Yaw, is hereby directed to surrender her Registered Nurse License No. E50694 and current registration to the Board of Examiners for Nursing, 150 Washington Street, Hartford, Connecticut 06106, on or before August 1, 1992.

The Board of Examiners for Nursing hereby informs the Respondent, Joan G. Yaw, and the Department of Health Services of the State of Connecticut of this decision.

Dated at Hartford, Connecticut, this 18 day of June, 1992.

BOARD OF EXAMINERS FOR NURSING

By Janice Thibodeau