

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 97-433, Appeal of Joanne Johnson, the court upon June 9, 1998, made the following order:

The parties having reached a settlement agreement with respect to the issues raised on appeal, plaintiff's request to withdraw the appeal is granted.

Appeal withdrawn.

Distribution:

NH Personnel Appeals Board 96-T-5
Suzanne M. Gorman, Esquire
A. G. O'Neil, Jr., Esquire
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State of New Hampshire



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APPEAL OF JOANNE JOHNSON

New Hampshire Hospital

Docket #96-T-5

Response to Appellant's Motion for Rehearing

May 21, 1997

On September 5, 1996, the New Hampshire Personnel Appeals Board received the appellant's Motion for Rehearing in the above-captioned appeal. The State's response was received on September 13, 1996.

The appellant argued that Ms. Johnson's termination from employment was effected in violation of Per 1001.08(f), and as such, her reinstatement would be subject to the provisions of RSA 21-I:58, I which states, in part:

"...If the personnel appeals board finds that the action complained of... was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period."

The appellant also argued that the Board's order suspending Ms. Johnson for one year violated Per 1001.05 of the Rules of the Division of Personnel which permits suspensions in excess of 20 working days only when the employee's offense in relationship to the employee's job function warrants a longer period of suspension. The appellant argued that there was neither discussion nor explanation in the Board's decision setting forth or establishing the seriousness of Ms. Johnson's offense in relation to her job function which would warrant a suspension in excess of 20 days.

The appellant requested that the Board reconsider its decision and modify its order, reinstating Ms. Johnson with all back pay and benefits, and removing any "implication that Ms. Johnson's performance warranted discipline of any kind or in the alternative that the level of discipline applicable be determined as a letter of warning..."

In its Response, New Hampshire Hospital argued that the Board's order had described the appellant's offense in relationship to her job function by finding that the appellant's conduct "compromised staff safety, compromised patient care, and warranted substantial disciplinary action. New Hampshire Hospital also argued that even if the Board were to find that a termination was effected in violation of rules adopted by the Director of Personnel, RSA 21-I:58,I does not necessarily require reinstatement without loss of pay or benefit in all cases.

RSA 21-I:58,I also provides, in pertinent part:

"In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." (Emphasis added.)

Having considered the Motion and Response in light of the Board's August 9, 1996 Decision, the Board voted unanimously to deny Appellant's Motion for Rehearing. The Board remains of the opinion that in adopting RSA 21-I:58,I the legislature conferred upon the Board broad equitable powers, and that as the statute provides, in all cases the Board may reinstate an employee or

otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.

Accordingly, the Board voted to deny Appellant's Motion for Rehearing, and in so doing, to affirm its decision to order Ms. Johnson reinstated after a one year disciplinary suspension.

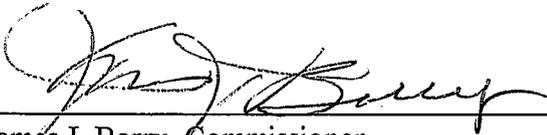
THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Lisa A. Rule, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
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State of New Hampshire



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APPEAL OF JOANNE JOHNSON

New Hampshire Hospital

Docket #96-T-5

August 9, 1996

The New Hampshire Personnel Appeals Board (Bennett, Rule and Barry) met on Wednesday and Thursday, July 24 and 25, 1996, to hear the termination appeal of Joanne Johnson, a former employee of New Hampshire Hospital. Ms. Johnson was represented at the hearing by Attorney A. Gerald O'Neil, Jr. Attorney John Martin appeared on behalf of New Hampshire Hospital. Ms. Johnson was appealing her October 9, 1995, dismissal from her position as a registered nurse assigned to Unit E, on the following charges:

1. That Ms. Johnson engaged in professional and supervisory misconduct by carrying out inappropriate medication practices;
2. That Ms. Johnson failed to follow policies with respect to high risk patients, thereby placing the patients and staff at risk;
3. That Ms. Johnson demeaned employees she supervised; and
3. That Ms. Johnson violated New Hampshire Hospital Posted Policy #26 which states, "You shall not abuse any patient. Abuse is defined as, but not limited to, acts of omission or commission that are disparaging or degrading to a patient, injurious to him/her, or compromise the professional care being provided to the patient."

Before receiving evidence on the merits of the appeal, the Board ruled as follows on several pre-hearing motions:

1. State's Motion for Protective Order: The motion was granted to the extent that any portion of the record dealing with incident reports will be sealed, and any reference to patients' names shall be redacted from the record.
2. Appellant's Motion to Sequester: The motion was granted. Before being asked to leave the hearing room, the witnesses were instructed not to discuss their testimony until the hearing had been concluded and a decision had been issued.
3. Appellant's Motion to Dismiss or in the Alternative to Exclude Evidence: The motion was denied, although the Board allowed the appellant to raise the motion later in the hearing. The Board ruled that the substance of the motion was a question of fact which could only be resolved by receiving evidence on the factual disputes.

In his opening statement, Mr. Martin asserted that over a period of several years, Ms. Johnson had engaged in supervisory and professional misconduct, including violation of New Hampshire Hospital Policy on Administration of Medication. He argued that evidence of the extent and seriousness of the offenses in question did not come to light until a 1996 investigation into practices on the unit to which Ms. Johnson was assigned. He asserted that on September 20, 1995, after meeting with Ms. Johnson to discuss the allegations of supervisory and professional misconduct, New Hampshire Hospital placed Ms. Johnson on a paid administrative leave while New Hampshire Hospital concluded its investigation.

Mr. Martin asserted that over the previous few years, Ms. Johnson had been counseled regarding some of the issues that ultimately lead to her termination, and that New Hampshire Hospital supervisory staff had believed that Ms. Johnson was taking steps to address those problems. Mr. Martin argued that if the State had been aware of the seriousness and frequency of the offenses, termination would have occurred sooner. However, he argued when New Hampshire Hospital determined that corrective action had not been taken, and that Ms. Johnson had engaged in nursing practices which constituted abuse under New Hampshire Hospital Policy #26. He asked the Board

to find that New Hampshire Hospital had no option but to dismiss her from her employment under the optional dismissal provisions of Per 1001.08 (b) of the Rules of the Division of Personnel.

Mr. O'Neil argued that although Ms. Johnson's October 9, 1995, notice of termination purported to list all the appropriate and relevant evidence supporting the Hospital's decision to dismiss the appellant from her position, specific charges against Ms. Johnson which appeared in the notice of termination were never disclosed to the appellant, or discussed with her prior to her dismissal. Mr. O'Neil argued that Ms. Johnson had been called in from her vacation and asked to participate in a meeting on September 20, 1995. He said that Ms. Johnson was told it would "be in her best interest" to attend the meeting, but was never apprised that the purpose of the meeting was to discuss her potential termination from employment. Mr. O'Neil argued that New Hampshire Hospital failed to provide the appellant with any specific charges or allegations to refute, that her supervisors questioned her without prior warning, and that they failed to provide Ms. Johnson any meaningful opportunity to refute whatever evidence they intended to rely upon in dismissing her from her employment.

Mr. O'Neil argued that none of the doctors on staff at New Hampshire Hospital were consulted prior to the appellant's termination. He argued that New Hampshire Hospital failed to disclose the name of any patient who had suffered any harm at Ms. Johnson's hands. He argued that all of Ms. Johnson's annual performance evaluations for the previous eight years ultimately concluded that Ms. Johnson "met expectations" over-all.

Finally, he asserted that the evidence supporting Ms. Johnson's termination was based solely on the statements of Mental Health Workers supervised by the appellant who believed that Ms. Johnson had participated in the decision not to post a position of Mental Health Worker II into which one of them might have been promoted. Mr. O'Neil argued that the investigation which New Hampshire Hospital conducted was nothing more than a "fishing expedition" in which the hospital engaged after receiving a complaint against Ms. Johnson from a Mental Health Worker who just had been counseled by the appellant. He argued that termination was not an appropriate remedy, and that if

New Hampshire Hospital had concerns about the appellant's work performance, the appellant should have been apprised of those concerns and allowed an opportunity to rectify them.

The following persons offered sworn testimony: Gary Gordon, Mental Health Worker; Kathy M. Pimley, Mental Health Worker; Sylvia Grandfield, Nursing Coordinator; Vareen Domaleski, Chief Nurse Executive and Administrator of Patient Care; Dr. Jeffrey Haines; Mary Ellen Duncan, retired Mental Health Worker II; Nancy West, R.N.; and Joanne Johnson, Appellant. The following exhibits were offered and admitted into evidence:

Slate's #1 - August 29, 1995, statement of Gary Gordon

Slate's #3 - December 12, 1994, counseling letter from Sylvia Grandfield to
Joanne Johnson

Slate's #4 - 12/15/94 Performance Evaluation of Joanne Johnson

Slate's #5 - 12/17/93 Performance Evaluation of Joanne Johnson

Slate's #6 - June 30, 1995 follow-up counseling letter from Sylvia Grandfield to
Joanne Johnson

Slate's #7 - Minutes of the September 20, 1995, meeting preceding Ms. Johnson's
administrative leave

Slate's #8 - 2/3/92 Policy on Administration of Medications

Slate's #9 - New Hampshire Hospital Rules and Regulations

Appellant's A - 12/7/94 Unit E Nursing Team Meeting Record

Appellant's B - 9/23/94 Unit E Nursing Team Meeting Record

Appellant's C - 3/2/95 Unit E Nursing Team Meeting Record

Appellant's E - 5/9/94 Response from Joanne Johnson to Performance Summary

Appellant's F - Clinical Practice Evaluation of Joanne Johnson completed by
Sylvia Grandfield

State's Exhibit #2 (Kathy M. Pimley's statement) and Appellant's Exhibit D (Judy Clark's Progress Notes) were excluded from consideration at the conclusion of the hearing. In deciding to exclude those exhibits, the Board found that the information contained therein was not disclosed to the appellant at any time prior to her termination, and she was therefore denied any meaningful opportunity to the refute the allegations which stemmed from those reports. Consistent with that decision, the Board excluded from consideration any allegations contained in the letter of termination which were based upon either the Pimley or Clark evidence. (See below)

At the conclusion of the hearing, both parties submitted numerous proposed findings of fact and rulings of law. Having reviewed those requests, the Board decided to issue its own findings of fact and rulings of law. To the extent that the parties' requests are consistent with the findings and rulings below, they are granted. Otherwise, they are denied.

Findings of Fact

1. Ms. Johnson was employed as a nurse by New Hampshire Hospital for approximately eight and a half years prior to her termination from employment.
2. Ms. Johnson's performance evaluations noted a number of deficiencies in her performance, including planning and organizing her workload efficiently, expressing information in an appropriate fashion, asking for help when needed, adapting to new methods or tasks in a cooperative manner, attempting to find solutions to problems encountered and seeking guidance when necessary.
3. Ms. Johnson received counseling from her supervisor for unsatisfactory job performance for frequently being absent from Unit E during her assigned shift for extended periods of time. She was also counseled for demonstrating a lack of leadership, leaving staff feeling unsafe and compromised by the lack of attention they and the patients were receiving from the appellant.
4. Ms. Johnson received counseling from her supervisor concerning her conduct toward subordinate staff.
5. On at least one occasion, Ms. Johnson signed admission paperwork which she had not reviewed with a patient.

6. On infrequent occasions, Ms. Jolmson directed Mental Health Workers to administer medication to patients.
7. The practice of allowing a Mental Health Worker to deliver medication to a patient is not common, but has been used by other staff when a patient refuses to accept medication from the nurse, and administering the medication is considered the best way to avoid declaring a "personal safety emergency" for the patient.
8. In January, 1995, Ms. Johnson asked a Mental Health Worker to deliver a pill to one of the patients. Her supervisor, Sylvia Grandfield learned of the incident, discussed it with Ms. Johnson, and directed her to cease the practice. No warning was issued as a result of Ms. Grandfield's discovery that Ms. Johnson had allowed a Mental Health Worker to deliver medication to a patient.
9. Ms. Johnson admitted that she had referred to herself as the "biggest baby-sitter," and that she had made disparaging remarks about her subordinates. However, the evidence reflects that carping among staff was relatively commonplace.
10. Ms. Johnson frequently avoided one-on-one confrontations with patients, testifying, "My job is supervisory. I'm not the first line of battle." Ms. Johnson allowed the Mental Health Workers to deal with patient interventions, testifying that if one patient becomes agitated, the others become involved, and someone from the staff needs to be free to call for help.
11. Ms. Johnson often began her shift by making a list of the prn (as needed) medication which had been authorized for the patients on the unit. In ordering administration of prn medication, or approving the use of pm medication at a patient's request, Ms. Johnson relied on the patient's past history in determining whether or not the medication should be administered.
12. Ms. Johnson frequently relied on Mental Health Workers to make observations of patient behavior in completing patient assessments.
13. Investigation of Ms. Johnson's conduct on Unit E was the direct result of a sexual harassment complaint filed against Ms. Johnson by a Mental Health Worker whom Ms. Johnson had counseled previously on a safety issue.
14. Ms. Johnson was called to a meeting on September 20, 1995, at New Hampshire Hospital. Varen O. Domaleski, Sandra M. Davis, Sylvia Grandfield, Sally Darling, Joanne Johnson and SEA Field Representative Jean Chellis were present. At the meeting, Ms. Johnson was asked to

respond to questions concerning her nursing and supervisory practice. She was not asked to respond to specific allegations concerning individual incidents or patients.

15. At the September 20th meeting, Ms. Jolmson requested copies of the specific allegations against her which staff had made. Ms. Domaleski consulted with legal counsel at New Hampshire Hospital and was informed that the statements were confidential and should not be released to Ms. Johnson.

Rulings of Law

1. New Hampshire Hospital Posted Policy #26 states: "You shall not abuse any patient. Abuse is defined as, but not limited to acts of omission or commission that are disparaging or degrading to a patient, injurious to him/her, or compromise the professional care being provided to the patient." Violation of Posted Policy #26 constitutes grounds for immediate dismissal, without prior warning.
2. New Hampshire Hospital Policy regarding the Administration of Medications states, in part, "Only registered nurses, licensed practical nurses and graduate nurses scheduled for or awaiting State Board results shall pour and administer medications to patients. Student nurses may pour and administer medications under supervision of their clinical instructor."
3. New Hampshire Hospital Policy regarding the Administration of Medications states, in part, "The nurse shall assess the patient's need for and response to drug therapy. The assessment includes patient's medical history, history of drug allergies, medication history, patient's attitude about and understanding of drug therapy and a review of the patient's current condition."
4. Per 1001.08 (b) of the Rules of the Division of Personnel provides that, "In cases such as, but not necessarily limited to, the following, the seriousness of the offense may vary. Therefore, in some instances immediate discharge without warning may be warranted while in other cases one written warning prior to discharge may be warranted..." The list of offenses includes, "Violation of a posted or published agency policy, the text of which clearly states that violation of same may result in immediate dismissal."
5. Per 1001.08 (f) provides that, "No appointing authority shall dismiss a classified employee under this rule until the appointing authority: (1) Meets with the employee to discuss whatever

evidence the appointing authority believes supports the decision to dismiss the employee prior to issuing the notice of dismissal; (2) Provides the employee with an opportunity at the meeting to refute the evidence presented by the appointing authority... (3) Documents in writing the nature and extent of the offense; (4) Lists the evidence the appointing authority used in making the decision to dismiss the employee..."

Discussion

First, the Board was extremely troubled by New Hampshire Hospital's attempt to enter into evidence State's Exhibit 2, the typed version of the Pimley statement. Mr. O'Neil objected to the admission of that exhibit, insisting that if the Board were to read the statement, it should review the handwritten original which was dated September 24th, four days after the meeting at which Ms. Johnson allegedly was allowed to review all the evidence supporting her termination. New Hampshire Hospital vigorously advanced the argument that Ms. Pimley had mistakenly dated her statement September 24th, but actually wrote it on August 24th. Ms. Pimley insisted that she had written the statement in September after having been contacted by New Hampshire Hospital staff and asked to write a statement. A similar discrepancy was found on a second piece of evidence, which New Hampshire Hospital originally represented as having been reviewed with the appellant at the September 20th meeting, although that evidence was not available until three days after that meeting.

This evidence, which was excluded from the Board's consideration of the merits of the appeal, strongly suggests that New Hampshire Hospital misrepresented the date of both the typed Pimley statement and the Clark evidence. There is also conflicting testimony which suggests that at least one of New Hampshire Hospital's witnesses misrepresented the extent of the discussion at the meeting with Ms. Johnson on September 20th, knowing that certain evidence did not exist on the date that Ms. Johnson allegedly was permitted to respond to the allegations arising from that evidence.

On the merits of the appeal, the record reflects that New Hampshire Hospital had significant concerns about Ms. Johnson's performance for several years prior to her termination from employment. At least nine months prior to Ms. Johnson's termination, Sylvia Grandfield was aware that Ms. Johnson had allowed a Mental Health Worker to administer medication to a patient. In spite of its later assertion that this practice constituted a violation of the Hospital's policy on the administration of medication and represented an offense warranting the appellant's immediate termination without prior warning, New Hampshire Hospital took no action to discipline Ms. Johnson when she admitted to that conduct in January, 1995.

New Hampshire Hospital was aware of continuing allegations by staff that Ms. Johnson avoided direct intervention with patients, and that her failure to intervene left the staff feeling uncomfortable and threatened. In spite of solid evidence to that effect, New Hampshire Hospital took no formal disciplinary action, choosing instead to counsel her and admonish her to improve her performance in that area. Similarly, New Hampshire Hospital was aware of Ms. Johnson's frequent absences from the unit and the resulting potential for risk to patients and staff. Still, New Hampshire Hospital imposed no formal discipline, electing instead to counsel Ms. Johnson and admonish her to improve her performance in that area.

New Hampshire Hospital took steps to investigate allegations about Ms. Johnson's professional and supervisory conduct, but failed to apprise her of the specific allegations she was expected to refute at the meeting on September 20, 1995. New Hampshire Hospital attempted to introduce evidence, in the form of typewritten statement dated August 24, 1995, by Kathy Pimley, detailing an incident of improper nursing practice. New Hampshire Hospital asserted that the allegations contained in the Pimley statement were discussed with Ms. Johnson at the September 20, 1995, meeting. However, Ms. Pimley's handwritten statement was dated September 24, 1995, and Ms. Pimley testified that she had not written the statement until after speaking with New Hampshire Hospital staff on September 22, 1995, and being asked to write the statement in question. The Clark statement on which New Hampshire Hospital also relied in its letter of termination was dated September 23, 1995, three days after the meeting with Ms. Johnson.

Decision and Order

The facts in evidence do not support the immediate termination without prior warning of a permanent full-time employee. Instead, the evidence makes a compelling case for progressive discipline. While the evidence supports New Hampshire Hospital's assertion that Ms. Johnson carried out her nursing and supervisory responsibilities in a substantially unacceptable manner, there was insufficient evidence to persuade the Board that her conduct constituted "abuse" within the meaning of New Hampshire Hospital Posted Policy #26.

Several witnesses, including Dr. Haines, testified that the practice of allowing Mental Health Workers to administer medication was rare, but that with patient care in mind, a nurse or doctor might ask a Mental Health Worker to hand a pill or a cup of medication to a patient in the nurse's presence if the patient refused to take it from the nurse or doctor. If New Hampshire Hospital believed that Ms. Johnson's practice violated its medication policies, or represented a threat of harm to patients and staff, New Hampshire Hospital could have sought the assistance of the Board of Nursing for investigation into her continued eligibility for licensure. New Hampshire Hospital might also have disciplined the appellant for insubordination for specifically ignoring Ms. Grandfield's earlier directive to cease that practice.

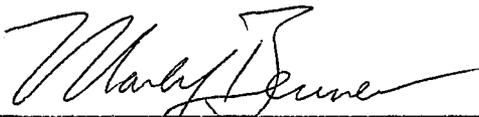
The fact that Ms. Johnson was often absent from the unit or that she avoided direct intervention with patients was also known to New Hampshire Hospital supervisory personnel at least two years before the date of termination. New Hampshire Hospital had every opportunity to take appropriate disciplinary action at that time, but chose not to do so.

The Board voted unanimously to reinstate Ms. Johnson. However, in so doing, the Board voted to reinstate her without benefit of back pay, leave accrual, insurance payments or seniority credit, following a one year suspension without pay, which shall expire on October 8, 1996. The Board found that Ms. Johnson's conduct compromised staff safety and patient care, and warranted substantial disciplinary action. Therefore, her period of absence shall be treated as a disciplinary suspension. Furthermore, the Board voted to order that the notice of suspension shall serve as a first

warning under the optional dismissal provisions of Per 1001.08 (b) of the Rules of the Division of Personnel. As such, any further offense as described by Per 1001.08 (b) of those Rules shall be treated as grounds for immediate dismissal without further warning.

Ms. Johnson shall be reinstated, following her suspension, to a nursing position at New Hampshire Hospital at a time which is mutually convenient to the parties. New Hampshire Hospital shall be authorized to determine the unit and shift to which Ms. Johnson shall be assigned where she can receive the maximum amount of supervision, and her performance can be subject to closer scrutiny by supervisory nursing personnel.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Lisa A. Rule, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
John Martin, Esq., Division of Mental Health and Developmental Services
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APPEAL OF JOANNE JOHNSON

Docket #96 - T - 5

New Hampshire Hospital

June 3, 1996

A quorum of the New Hampshire Personnel Appeals Board (McNicholas and Bennett) met Wednesday, April 3, 1996, for a prehearing conference in the above-captioned termination appeal. Marie Lang, New Hampshire Hospital Human Resources Administrator, appeared on behalf of the State. Attorney A. G. O'Neil appeared on the appellant's behalf.

Mr. O'Neil said that during the discovery process, New Hampshire Hospital had provided him with copies of statements written by three Mental Health Workers, and that those statements contained the basis of seventeen separate allegations upon which New Hampshire Hospital relied in terminating Ms. Johnson's employment. Mr. O'Neil said that he had requested work assignment and scheduling information for the unit Ms. Johnson supervised, as well as performance evaluations and injury reports for those persons expected to testify at Ms. Johnson's hearing. He said that New Hampshire Hospital refused his request for employee information on the grounds that performance evaluations and injury reports are confidential documents which may not be released without the employee's consent.

The appellant also had requested copies of correspondence related to a counselling letter issued to one of Ms. Johnson's subordinates. Mr. O'Neil said that he had been denied access to the counselling letter, the employee's written response to the counselling, and information relating to a sexual harassment complaint which that employee later filed against Ms. Johnson.

Ms. Lang confirmed that New Hampshire Hospital had declined to provide the records requested by Attorney O'Neil. She said that New Hampshire Hospital had an obligation to maintain the confidentiality of employee records. However, she said that New Hampshire Hospital was willing to release employee information if the employees themselves authorized release of their records to Mr. O'Neil.

After hearing oral argument by the representatives of the parties on each of the requests, the Board issued an oral order at the hearing. Ms. Lang asked the Board to reduce its orders to writing to protect New Hampshire Hospital from any controversy arising out of the release of employee records to the Appellant.

1. First Report of Injury, Employee Duty Rosters and Incident Reports:

Mr. O'Neil argued that the claims against his client included allegations that as a result of poor supervisory practices, subordinate employees had sustained workplace injuries. He said that without specific information about the date(s) of alleged injuries, the nature of the injuries, and information concerning the incident(s) during which the injuries allegedly occurred, his client would be unable to respond in a meaningful fashion to the allegations. The Board granted the Appellant's request.

To the extent that the aforementioned information was available, it was to have been provided to the Appellant, with patient names redacted, not later than April 17, 1996.

2. Assignments and duty rosters - January 1, 1995 through August 31, 1995.

Mr. O'Neil argued that without specific information about work assignments, his client would be unable to answer the allegation that she employed "favoritism" in scheduling and assignments, and had workplace "pets." Ms. Lang said that New Hampshire Hospital had no objection to providing the information, but doubted that duty rosters or assignment lists for that period of time still existed.

To the extent that duty rosters or assignment sheets for the period of January 1, 1995, through August 31, 1996, were available, or could be recreated or reproduced, New Hampshire Hospital agreed to provide them to the Appellant not later than April 17, 1996.

3. Performance evaluations of the State's witnesses: Mr. O'Neil said that he had requested copies of performance evaluations for three of Ms. Johnson's former subordinates, and copies of any evaluations which Ms. Johnson might have signed. He argued that for eight and one half years there had never been any concerns about Ms. Johnson's performance. He argued that it was imperative for his client to have information about her former subordinates immediately prior to the date of Ms. Johnson's termination, as well as the most recent evaluation to obtain information about their working

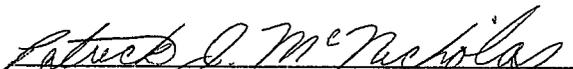
relationships before and after the termination.

Ms. Lang objected to disclosing the contents of personnel files to the Appellant without authorization from the employees to do so. After some deliberation, the Board authorized Mr. O'Neil to take the depositions of the witnesses rather than requiring New Hampshire Hospital to produce the employees' performance evaluations.

4. Counselling letter and response: Mr. O'Neil asserted that in August, the Appellant had issued a letter of counselling to a subordinate employee. He said that when the employee responded to the counselling, the response contained a charge of sexual harassment, prompting the subsequent investigation which ultimately resulted in Ms. Johnson's termination from employment. Mr. O'Neil argued that although New Hampshire Hospital had not listed this employee as a potential witness, nor the employee's statement as a potential exhibit, the appellant should be entitled to whatever information the Hospital relied upon in undertaking an investigation of Ms. Johnson's conduct and performance. Ms. Lang argued that the employee had made a "very general statement" which Ms. Lang then reported to the Nursing Supervisor. She argued that a "two-track" investigation was undertaken, one to investigate the charges of sexual harassment and the other to explore the performance issues.

New Hampshire Hospital was directed to provide a copy of the counselling letter and reply to the Appellant not later than April 17, 1996.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner

cc: A. G. O'Neil, Esq.
Marie Lang, Human Resources Administrator
Barbara Maloney, Esq.