State of New Hampshire

PERSONNEL APPEALS BOARD
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APPEAL OF BRENDA POEHLER (DOCKET #92-T-27)
AND
LINDA MCKENZIE (DOCKET #92-T-28)
New Hampshire Hospital

July 6, 1993

The New Hampshire Personnel Appeals Board (McGinley and Johnson) met Wednesday, January 6, 1993, and February 17, 1993, to hear the appeals of Brenda Poehler and Linda McKenzie, former employees of New Hampshire Hospital who were discharged from employment as Mental Health Workers prior to the expiration of their probationary periods. Ms. Poehler and Ms. McKenzie were represented at the hearing by Michael J. Tocci. Attorney Barbara Maloney appeared on behalf of New Hampshire Hospital.

Both appellants had been employed by New Hampshire Hospital as Mental Health Worker Trainees assigned to Unit H, a long-term residential unit for severely mentally ill patients with a variety of diagnosed psychoses. Before assignment to the wards, Mental Health Worker Trainees complete a four-week training program during which they receive instruction and practical experience in areas such as CPR, medications, medical record-keeping, crisis intervention, infection control, patient safety, activities of daily living, and maintaining appropriate relationships with patients. Several of the competency areas listed on the training evaluation form offered as Appellants' Exhibit #9 include the following:

> Maintains a tactful, empathetic and supportive manner with each patient.
> Interacts appropriately in dealing with specific behaviors (i.e., suicidal, manipulative, hypochondriacal, depressed, hyperactive, agitated, hallucinatory and delusional).
> Demonstrates good judgement and approved techniques in managing the physically aggressive patient.
> Assists the nurse with medication (i.e., prepares drinks, locates and observes patients).
> Follows appropriate procedures for special precautions.

On Unit H, employees also received specialized training in handling specific patient needs and issues, particularly for those patients on the ward diagnosed as "borderline personalities", who tend to display self-injurious behavior and engage in "staff splitting" by trying to pit one employee against another. Two patients on the unit, identified for the purposes of the hearing by their initials D.S. and D.M., were considered to be borderline personalities. Both had histories of being sexually abused. Both were on the unit for long-term treatment, and both were considered high-risk, disruptive patients.

Both Ms. McKenzie and Ms. Poehler had been counselled by supervisory staff during their initial probationary periods for work performance deficiencies, with a documented counselling

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session for each appellant concerning the appellants' failure to follow appropriate procedure and to seek advice and/or permission from nursing 'or supervisory staff to deviate from the established nursing plan. For example, in the case of Ms. Poehler, a notation of counselling was placed in her file on 3/10/92 as a result of her agreeing to run an errand for a patient by exchanging a pair of slacks the patient had purchased. In addition to violating the hospital's policy on engaging in any financial transactions with patients and maintaining a scrupulous regard for patients' property, the transaction compromised the individual nursing plan for the patient.

In Ms. McKenzie's case, she allowed a patient to leave the building unescorted when her nursing plan prohibited such an absence, even briefly. In spite of the prohibition against this patient leaving the building, Ms. McKenzie allowed her to walk to a vehicle in which the patient's sister's children were waiting. She said she didn't fully understand the restriction, and believed she could authorize the patient to visit with family outside the building because she and the patient had "contracted", and she was watching the patient from a window in the building.

Although both events could have been considered significant enough to warrant discipline or dismissal for a probationary employee, neither employee was disciplined or dismissed. In each case, a written notice of counselling was placed in the employees' files.

Both Ms. Poehler and Ms. McKenzie had been encouraged to establish friendly relationships with the patients in Unit H, as were all Mental Health Workers. Ms. Poehler and Ms. McKenzie were in the habit 'of meeting approximately twice a week with patients D.S. and D.M. in their rooms where they would talk. On the evening in question, May 17, 1992, Ms. Poehler had brought in her knitting to show patient D.S., who shared Ms. Poehler's interest in crafts. Ms. Poehler did not check the contents of her bag before she brought it on the unit. A magazine containing sexually explicit information and prescription medication were also in the bag. Ms. Poehler was unaware that the magazine had been inadvertently left in her bag.

Ms. Poehler went to D.S.'s room. D.M. and Ms. McKenzie were already there. Ms. McKenzie was supposed to be "on a level" with D.M., keeping her in sight and remaining within arms reach of her. She was considered to be at particularly high risk that night because she was to meet the following morning with her treatment team regarding some privileges she believed she should have earned.

In D.S.'s room, D.S. was on the bed. D.M. was standing in the room. Both Ms. McKenzie and Ms. Poehler were on the vacant bed with their backs to the patients. Ms. McKenzie was reclining on the bed with her feet up against the wall. Neither of the appellants had either of the patients in sight, as Ms. McKenzie was required to do so when "on a level" with D.M.

Ms. McKenzie and Ms. Poehler heard the two patients giggling and turned to find that they had removed the magazine from Ms. Poehler's knitting bag and were looking through the magazine containing advertisements for sex toys. One of the women mentioned a "Mr. Thick". Ms. Poehler realized that the patients had taken the magazine out of her knitting bag without either of the appellants realizing what they were doing. Ms. Poehler testified that she took the magazine away from them immediately and put it in her locker. Security Officer Chapman testified that both D.S. and D.M. told him during the course of his investigation that all four women sat together with the magazine, looking at it and talking about it.

Both Ms. Poehler and Ms. McKenzie testisfied that after the magazine incident, the four women remained in D.S.'s room and talked a while about D.M.'s meeting with the treatment team the following day and discussed the privileges she was hoping to be granted. Later in the shift,

D.M. asked to be placed in 4-point restraints, saying she was feeling upset and self-abusive. While D.M. was in 4-point restraints, Ms. Poehler went to the treatment room to talk to her and asked what had upset her. She continued questioning her about her day in general, and whether seeing the magazine may have caused her to be upset. Although she told Ms. Poehler it had not upset her, she later told the treatment team that seeing the magazine had brought back terrible memories and had bothered her tremendously. Neither Ms. Poehler nor Ms. McKenzie told the nursing staff about the magazine incident.

In written statements supplied by Ms. Poehler as part of an investigation of allegations of Class I Abuse of a patient by Ms. McKenzie, Ms. Poehler said she was aware of and had been present during past talks between Ms. McKenzie and D.S. and D.M. on the subject of sex and masturbation. In her statement, Ms. Poehler said she was uncomfortable with the conversations and may have laughed or said there was nothing wrong with masturbation, but that she had not initiated any of the conversations. She said she recalled Ms. McKenzie telling D.S. and D.M. about sex toys such as "Mr. Thick", and being asked by D.S. one day if she had a Mr. Thick, to which Ms. Poehler responded, "Yes, my husband." She said that neither she nor Ms. McKenzie would have engaged in such conversations if they thought it would harm the patients. She also said that she should have realized sooner that the discussions were inappropriate and should have been referred to nursing staff.

Ms. McKenzie admitted to having had conversations with the patients about sex and masturbation, and said that the patients were preoccupied with those issues. She said that during unit meetings on patient treatment, the staff were repeatedly advised that the patients should be assured that masturbating was perfectly normal. She said she did not initiate the conversations and simply repeated what she had heard in treatment meetings in her response to patients who asked about sex or masturbation.

Ms. McKenzie declined to make any statement during the pre-termination investigation. Following the incident on May 17, 1992, Ms. McKenzie was accused of possible Class I abuse, in which she allegedly climbed on top of a female patient and whispered in her ear. Ms. McKenzie said the incident was not as alleged, but rather that she had leaned over the patient to tell her good night, and had whispered in her ear to "keep your head above water", referring to the patient's meeting with the treatment team the following day. The allegations of Class I abuse against Ms. McKenzie were ultimately reported as unsubstantiated allegations. However, New Hampshire Hospital determined that her behavior during this particular incident and her performance in general warranted termination before Ms. McKenzie's probationary period was completed.

The appellants argued that they had never been previously warned for engaging in "non-therapeutic" relationships with patients and had in fact been encouraged to spend time with both D.S. and D.M. The State argued that Ms. Poehler's and Ms. McKenzie's inability to recognize the seriousness of the incident and their failure to take any responsibility for the poor judgment they displayed warranted their immediate termination for failure to meet the work standard.

Per 1001.02(a) of the Rules of the Division of Personnel provides the following:

> At any time during the initial probationary period an appointing authority may dismiss an employee who fails to meet the work standard provided the dismissal is not arbitrary, illegal, capricious, or made in bad faith.

The work standard in this instance was articulated through the four week Mental Health

Worker training, as well as during intershift and staff meetings. Neither Ms. Poehler nor Ms. McKenzie appeared to understand the limitations of their positions, and the need for treatment decisions to be left up to the staff clinically trained to develop appropriate individualized treatment plans for the patients on the unit. During the incident on the evening of May 17, 1992, both Ms. Poehler and Ms. McKenzie took a dangerously casual approach to their interactions with D.S. and D.M., failing to maintain the professional distance necessary between patient and care-giver. The appellants' inattention to their roles as part of a treatment team and the resulting failure to carefully and fully monitor the patients' activities and needs resulted in sexually explicit materials being brought onto the unit, and the high-risk patients having access to such highly inappropriate material. Once it was discovered that the patients had the magazine, neither of the appellants reported the incident to nursing staff.

The Board found that these two appellants failed to demonstrate an ability to meet the work standard and, as such, were subject to termination as provided in Per 1001.02 (a) of the Rules of the Division of Personnel. Having so found, the Board ruled as follows on the Appointing Authority's Requests for Findings of Fact and Rulings of Law:

Appeal of Brenda Poehler (92-T-27)
Findings of Fact:
1 - 10 are granted
Rulings of Law:
1 - 5 are granted

Appeal of Linda McKenzie (92-T-28)
Findings of Fact:
1 - 4 are granted
5 is granted after deleting paragraph (a)
6 - 10 are granted
Rulings of Law:
1 - 5 are granted

Accordingly, the appeals of Ms. Poehler and Ms. McKenzie are denied.

THE PERSONNEL APPEALS BOARD

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Karen S. McGinley, Esq., Commissioner

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