

FILED
March 12, 2013
released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

LOUGHRY, Justice, concurring:

I concur with the majority in granting the petitioner's request for relief in prohibition given the Board's unconscionable conduct in allowing this matter to linger for nearly five years without any good cause shown. Due process and fundamental fairness clearly dictate that a nursing professional subject to the disciplinary authority of its licensing board be afforded a fair and prompt hearing in cases such as the one presently at issue.

However, I write separately to highlight the alarming allegations in the underlying complaints, which, in light of the Board's failure to adhere to statutory procedural requirements, will never be resolved on their merits. The first complaint against the petitioner, filed by Charleston Area Medical Center ("CAMC"), alleged that she improperly removed Lortab, Ambien, and Xanax from the hospital's Accu-dose machine. It was further alleged that throughout a three-month period, these "medications were taken out four (4) at a time within minutes and hours on the same patient" under the petitioner's name. In filing its complaint, CAMC concluded that the petitioner had unlawfully obtained prescription narcotics for personal use or distribution to others.

After the petitioner was terminated by CAMC, she found employment at Logan Regional Medical Center. The petitioner was terminated less than one year later after Logan Regional Medical Center filed a complaint with the Board suggesting that (once again) the petitioner had unlawfully obtained prescription narcotics for personal use or distribution to others. In its complaint filed with the Board, Logan Regional Medical Center alleged that medications were removed from the Med-Select machine in the hospital's emergency room under the petitioner's name and password even though "[t]here was no order or documentation of medications given to patients." It was specifically alleged that "for a 31 day cycle, 280 Hydrocodone Lorcet/Lortab 10 mg tablets were taken from the Med-Select under [the petitioner's] name and identification, approximately 260 more than other staff [and that] Versed [a sedative] was found in [her] locker."

The record before us indicates that the petitioner has admitted that she acted "negligently" at two separate hospitals in two different parts of this State. Whether her actions were, in fact, much more than that will never be determined because she will never be required to account to the Board for her "negligence" regarding the serious, disturbing, and potentially dangerous events occurring at these hospitals. The Board's inaction in this matter has far-reaching implications for the 30,000 nursing professionals subject to the Board's authority and for the patients they serve. It is the responsibility of the Board to act diligently and promptly in reviewing, investigating, and conducting disciplinary hearings on

complaints brought before it not only to guarantee that nurses will be held accountable for proven misconduct, but most importantly, to ensure the safety of patients and the public. Such expeditious action by the Board also assures hardworking, diligent, and caring nurses that they are working alongside other nurses who are competent and fit to hold a nursing license in this State. This results in protecting the public while also preserving the integrity of the nursing profession.

In many ways, nurses are the backbone of our entire healthcare system. They advocate for health promotion, dispense medications, educate patients and the public on the prevention of illness and injury. They also make doctors aware of any changes in a patient's status that may require attention and often provide emotional and physical support to patients. The quality of nursing care can sometimes make the difference between life and death. It is inexcusable that the Board allowed this matter to go unresolved for five years. For the health, safety, and welfare of patients under nurses' care, it is my hope that the Board will take a serious look at its inaction in the handling of this matter to make certain this does not occur in the future.

For the foregoing reasons, I concur with the majority's opinion.