

IN THE COURT OF APPEALS OF IOWA

No. 6-542 / 05-1403
Filed August 23, 2006

MARY E. HOFFMANN,
Petitioner-Appellant,

vs.

IOWA BOARD OF NURSING,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Mary Hoffman appeals from the Iowa Board of Nursing's finding she
engaged in unethical conduct. **REVERSED AND REMANDED.**

David L. Brown and Aaron T. Oliver of Hansen, McClintock & Riley, Des
Moines, for appellant.

Thomas J. Miller, Attorney General, Emily Kimes-Schwiesow, Assistant
Attorney General, Administrative Law Division, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

The Iowa Board of Nursing cited Mary Hoffman for violating Iowa Code section 147.55(3) (1999) by violating patient confidentiality. On judicial review, the district court affirmed. Hoffman appeals, contending the board's conclusion is contrary to the statute, produces an absurd result, and is not supported by substantial evidence.

Hoffman is a licensed registered nurse. She worked at Westside Clinic as chief nurse for Dr. Patrick Sterrett. Dr. David Field was the other doctor at the clinic. The two doctors jointly owned the clinic and the building where the clinic was located. In 1999 Dr. Sterrett decided to leave the clinic and form his own clinic. He intended to set up his new clinic in the same building. The parting was not friendly. In preparation for his move, Dr. Sterrett planned to copy a large number of his patients' records. The records were to be kept at the clinic until the patients authorized their release. He enlisted the help of his wife and Hoffman. On Sunday, August 15, 1999, the copying commenced. Hoffman's children, ages eleven and thirteen, assisted in the copying process by pressing the "start" button on the copy machine and by monitoring the copying process to make sure only one page went through the machine at a time. For this they were paid by Dr. Sterrett. Dr. Field interrupted the copying and ordered everyone out of the clinic. No records were taken from the clinic.

Six months later, in February 2000, Westside Clinic's administrator, Margy Schulte, filed a written complaint with the Iowa Board of Nursing against Hoffman for, among other things, allowing her children to assist in the copying of patient records. On March 10, 2004, the board filed a statement of charges against

Hoffman. It alleged unethical conduct in violation of Iowa Code section 147.55(3) (as defined by Iowa Administrative Code rule 655-4.6(4)(h)) for “violating the confidentiality and privacy rights of the patient or client.” Following a December 2004 hearing, the board found Hoffman violated section 146.55(3) by allowing “her children to participate in copying confidential patient records”. It also found: “[T]he presence and participation of the children still violated patient confidentiality by giving them access to confidential information, including but not limited to the names of the patients.” Hoffman appealed to the district court, which affirmed.

Iowa Code section 17A.19 (2005) sets forth the provisions for judicial review of an agency action. Relief from agency action may be provided by the court when a party's “substantial rights have been prejudiced because the agency's action meets any one of several statutory criteria.” Iowa Code §17A.19(10). An agency action shall be reversed where it is (1) not supported by substantial evidence, (2) based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law, (3) based upon an irrational, illogical, or wholly unjustifiable application of law to fact, or (4) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *Id.* §§ 17A.19(10)(f), (l), (m), (n).

Iowa Code section 147.55(3) (1999) states a license to practice a profession shall be suspended or revoked when the licensee engages in unethical conduct or practice harmful or detrimental to the public. It further states that proof of actual injury does not need to be established. Iowa Code § 147.55(3). Iowa Administrative Code rule 655-4.6(4)(h) states unethical conduct

includes “[v]iolating the confidentiality or privacy rights of the patient or client.” The term “violating” is not defined.

A decision is “arbitrary” or “capricious” when it is made without regard to the law or underlying facts. *Norland v. Iowa Dep’t of Job Service*, 412 N.W.2d 904, 912 (Iowa 1987). A decision is “unreasonable” if it is against reason and evidence “as to which there is no room for difference of opinion among reasonable minds.” *Id.* The only persons to whom improper access to confidential records was even arguably given were the children. There is no finding by the agency that the children read any of the information contained within the medical records, or even the names on the files. They simply pressed the “start” button on the copy machine and were supervised throughout the process. The copying was done at the direction of Dr. Sterrett and the children were paid for their participation. Finding a violation of patient confidentiality under these facts is unreasonable, arbitrary, capricious, and an abuse of discretion. Accordingly, we reverse the Iowa Board of Nursing’s finding Hoffman violated patient confidentiality. The matter is remanded to the Board of Nursing for dismissal of both the charges and the disciplinary action.

REVERSED AND REMANDED.