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8-10-2011

TENNESSEE DEPARTMENT OF HEALTH,
Petitioner, vs. LINDA HENSLEY, Grievant

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2. Dr. Catherine Phillips is the Regional Dental Director for the Upper Cumberland Region. Emily Edwards worked for the Department from August 2006 until March 2011 as a clinical services and fluoridation coordinator. Part of Ms. Edwards' responsibility was to ensure the Department's dental clinics throughout the state were compliant with the health and sanitation guidelines of both the Center for Disease Control and the Tennessee Dental Practice Act.

3. In 2008, Dr. Phillips and Ms. Edwards began making periodic audit visits to the dental clinics, including those where the Grievant and Dr. Dedmon were working. They went to the Smith County clinic on May 6, 2008 and the DeKalb County clinic on August 20, October 8, and November 5, 2008. On each occasion Dr. Phillips and Ms. Edwards found numerous critical deficiencies including violations of infection controls and patient charting guidelines. Specifically, they observed Dr. Dedmon and the Grievant not using gloves in a sterile manner, using items beyond their expiration dates, failing to appropriately maintain plastic barriers on equipment designed to prevent the spread of infection and failing to properly maintain equipment. After each visit the deficiencies were noted and the Grievant and Dr. Dedmon were counseled about the problems. Despite assurances by Dr. Dedmon and the Grievant that they would improve their practice, Dr. Phillips and Ms. Edwards were unable to ascertain any noticeable improvement throughout the months of their visits.

4. Dr. Susan Hayes is the Dental Director for the Department. Because of the continued deficiencies found at the clinics of Dr. Dedmon and the Grievant, Dr. Hayes accompanied Dr. Phillips to the DeKalb County clinic on November 19, 2008. Dr. Hayes observed the same numerous deficiencies and sub-standard practices that had been noted on previous visits to the dental clinics.

5. On June 3, 2008, the Grievant was given an oral warning for her failure to follow standard dental practices as noted by Dr. Phillips and Ms. Edwards after the audit visit to the Smith County clinic in May. On August 26, 2008, the Grievant received a written warning as a result of the August 20 audit visit in Dekalb County. On January 29, 2009, the Grievant received a one day suspension for her continued failure to maintain compliance with appropriate dental standards.

6. In December 2008, Dr. Dedmon chose to retire as an alternative to potential disciplinary action being taken against him by the Department. Also beginning in the latter part of 2008 and continuing through 2009, Dr. Phillips had the Grievant begin working under the supervision of Dr. William Whitworth, a dentist with the Putnam County Health Department. Dr. Whitworth was to provide clinical training for the Grievant in an effort to improve the deficiencies in her work. Beginning in June 2009, Dr. Whitworth began preparing written evaluations of the Grievant's work for submission to Dr. Phillips. Dr. Whitworth found much of the Grievant's work to be unsatisfactory.

7. Also throughout 2009, Ms. Edwards continued to make periodic visits to the clinics where the Grievant was working. Ms. Edwards continued to find deficiencies in the Grievant's work similar to those previously noted in 2008.

8. By November 2009, Dr. Phillips had concluded that despite the additional training the Grievant had undergone with Dr. Whitworth, her skills were simply not adequate to remain in her position. By letter of November 5, 2009, the Commissioner notified the Grievant of her intent to terminate the Grievant's employment for the good of the service due to inefficiency, incompetency and negligence in the performance of her duties.

9. The Grievant stated that her work standards did not change from the time she was first employed in 2001 until Ms. Edwards began her audit visits in 2008. Her evaluations from Dr. Dedmon during that time period were always “superior” or “good.” The Grievant testified that the first formal training she ever received was with Dr. Whitworth beginning in late 2008.

RELEVANT LEGAL AUTHORITY

1. **Tenn. Code Ann. § 8-30-326 Dismissal.**

(a) An appointing authority may dismiss any employee in the authority’s division when the authority considers that the good of the service will be served thereby.

2. **Department of Human Resources Rule 1120-10-.06 Examples of Disciplinary Offenses**

- (1) Inefficiency or incompetence in the performance of duties;
- (2) Negligence in the performance of duties;

CONCLUSIONS OF LAW

1. The Department has carried its burden of proof by a preponderance of the evidence that the Grievant’s conduct constituted inefficiency, incompetence and negligence in the performance of her duties and thus her termination was justified for the good of the service.

2. Despite repeated counseling and retraining by Department personnel throughout 2008 and 2009, the Grievant’s work remained out of compliance with the required health and sanitation guidelines of both the Center for Disease Control and the Tennessee Dental Practice Act. There did not appear to be any noticeable improvement in her work during this time period. Clearly the Grievant was inefficient, incompetent and negligent in her practice.

3. A dental assistant working for the Department in the public health clinics throughout the state provides a critical service to members of the public, primarily minors, who otherwise would go without dental care. Providing dental service that is professional and meets

all sanitation and infection control guidelines must be a prerequisite to anyone serving in the position of a dental assistant. Despite working in the position for nine years and undergoing extensive counseling and training for approximately one and half years, there was no reason to be believe that the Grievant was capable of meeting these standards. Removing a potentially unsafe practitioner from her position as a dental assistant was necessary for the good of the service.

4. It must be noted that major factors in this case are both the apparent ineptness of Dr. Dedmon and the Department's allowing him to continue to practice in this manner for the years in question. Ultimately, Dr. Dedmon as the dentist was responsible for everything that happened in his clinics, including the activity of the Grievant. The record is clear that for the entire time the Grievant was working under Dr. Dedmon, from 2001 through 2008, her actions were condoned by him. Through little fault of her own, the Grievant had no idea her work was sub-standard prior to May 2008 when Ms. Edwards and Dr. Phillips began monitoring the clinics. The Department must accept partial blame in this case for the slack of oversight of Dr. Demon's practice from 2001 until 2008.

5. Based upon the foregoing, it is hereby **ORDERED** that the Grievant's termination is hereby **UPHELD**.

This Initial Order entered and effective this 23 day of January, 2012

Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 23 day of
January, 2012

Thomas G. Stovall, Director
Administrative Procedures Division