

JCCC Johnson County Community College

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30 *ojw*
November 29, 2010

Doyle Byrnes

6702 W 156th Terrace

Overland Park, KS 66223

Dear Doyle,

This letter is in regard to the written appeal submitted by you on November 17, 2010 regarding your dismissal from the Associate Degree Nursing Program at Johnson County Community College.

After reviewing information related to the event that took place on November 10, 2010, your letter of appeal, and the discussion you and I had November 22, 2010, I have decided to uphold my decision of dismissal from the program. However, I would support readmission to the third semester of this program for Fall Semester, 2011.

The application for readmission must be submitted by March 15, 2011 for the following Fall Semester, 2011. There will be certain guidelines or recommendations that you will need to address and include with that application. You will receive these recommendations by email in January, 2011.

If you wish to appeal my decision uphold my decision of dismissal from the program, please review the appeal process on line in the JCCC College Catalog. The next person in the appeal process is Dr. Clarissa Craig, Dean of Health Care Professions and Wellness. If you have questions please contact Dr. Day in Student Services.

Sincerely,



Jeanne Walsh R.N., M.S.N.

Director, Nursing



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December 2, 2010

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(OF COUNSEL)
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Dr. Clarissa Craig
Dean of Health Care Professions
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*ADMITTED ONLY IN KANSAS
*ALSO ADMITTED IN ILLINOIS
ALL OTHERS ADMITTED IN
KANSAS AND MISSOURI

Re: Doyle Byrnes
**Appeal of Dismissal from Johnson County Community College
Associate Degree Nursing Program**

Dear Dr. Craig:

Doyle Byrnes has engaged me to file this Appeal on her behalf. Without waiving numerous objections to the appeal process communicated to Ms. Byrnes by the letter from Jeanne Walsh of November 30, 2010, we are following Ms. Walsh's instructions by presenting this Appeal to you.

I. THE DISMISSAL DECISION IS NOT SUPPORTED BY THE FACTS

First of all, there is no assurance that Ms. Walsh had all of the relevant facts when she made her decision to terminate Ms. Byrnes from the nursing program. It is an undisputed fact that Ms. Byrnes and the other three students dismissed were either intentionally misled or negligently misled by their instructor, Amber Delphia, into believing that taking photographs of a placenta specimen and posting the photographs on Facebook was acceptable to Johnson County Community College.

I don't mean to imply that Ms. Byrnes exercised the best judgment on November 10, 2010. Obviously, it would have been far more prudent to either take no photos or, if photos were taken for educational purposes, not to post them to the Facebook website.

However, Ms. Byrnes was the student and Ms. Delphia was not only the instructor, but was the apparent agent of Johnson County Community College when she granted these four students permission to take the photographs.



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The facts are that Chrystie North asked Ms. Delphia if they could take the photographs, and she replied that it was "okay as long as they removed any patient identification."

Amber Delphia asked Chrystie what she was planning to do with the photos. Chrystie said she was planning to put them on Facebook to show friends and family what they were doing in their nursing program.

Ms. Delphia replied: "Oh, you girls", with a smile.

II. DISMISSAL IS AN EXCESSIVE PENALTY FOR CONDUCT THAT NEITHER HARMED A PATIENT NOR DAMAGED THE NURSING PROGRAM

The same night that the Facebook photos appeared, Amber Delphia called the students and directed them to remove the photographs. They complied.

Doyle Byrnes has no history of misconduct and has been a good student, scheduled to graduate in May, 2011. (See transcript attached).

Ms. Walsh cites lack of professional behavior, disruption to the learning environment and not exemplifying professional behavior.

If the Code of Conduct is to be used to justify the dismissal, it certainly fails to clearly warn that such conduct is expressly prohibited, or, if prohibited, would be treated so harshly. It fails to distinguish what conduct merits merely documenting the student's file, as opposed to probation, or to distinguish offenses that merit probation versus dismissal.

If the specimen had been a liver or a kidney, would the reaction of Ms. Walsh been so extreme?

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Another important question for the College is whether the Code of Conduct needs to be updated for the Internet Age. I am 62 years old; I don't use Facebook, Twitter or any other social networking site. But my premise is that 90% or more of 22-year-olds do. Young people the age of Doyle don't have the same concepts of privacy or dignity, and routinely share every detail of their lives on Facebook. The JCCC Code of Conduct really doesn't inform them that sharing the excitement of learning about helping a woman give birth or the image of a placenta in a photograph is considered offensive by the College, if indeed that is a JCCC policy.

III. THE ALLEGED HARM TO JCCC IS FAR OUTWEIGHED BY THE DAMAGE TO MS. BYRNES FINANCIALLY AND TO HER REPUTATION AND CAREER OPPORTUNITIES.

The very temporary embarrassment to the nursing program inflicts no lasting harm to the fine reputation of Johnson County Community College or its nursing school. However, this dismissal causes immediate, significant and possibly permanent damage to Ms. Byrnes.

She is engaged to be married August 12, 2011. Her fiancé lives in Smithfield, Virginia. She expected to graduate in May, 2011 and after her wedding, move to Virginia and become employed as a Registered Nurse at a local hospital.

The other three students may not suffer as greatly from the dismissal if, as Ms. Walsh suggests, they are readmitted to the program for Fall, 2011.

To the contrary, Ms. Byrnes incurs a substantial risk of not being allowed to complete her education in Virginia or have her credits accepted. What nursing school would accept her after a dismissal from your program? The stigma of being dismissed is so likely to prevent her from pursuing her nursing career as to be the equivalent of barring her from nursing permanently. That real possibility has the potential to destroy her career.

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Dr. Craig, that is a terrible and unjust result for a momentary lapse in judgment, particularly when the College's agent, Ms. Delphia, could have withheld her approval and the event would not have occurred.

IV. MS. BYRNE'S OFFER OF AN AGREED RESOLUTION

Ms. Byrnes is willing to accept a formal censure to be placed in her file. She is willing to perform community service as a tangible expression of her remorse and acceptance of responsibility for using immature judgment. She is willing to publicly apologize to the faculty and students for causing embarrassment to the school and the nursing program. However, she must be allowed to make up any work she has missed and to graduate in May, 2011 assuming she has completed all requirements.

V. THE DISCIPLINARY PROCESS APPLIED TO MS. BYRNES IS QUESTIONABLE

Dr. Craig, I would not be doing my job if I did not look closely at JCCC's processes employed in this matter. Ms. Byrnes only wishes to be allowed to finish her nursing education, get married and move on to her new life with her husband in Virginia.

However, it is clear to me that Ms. Walsh failed to afford minimal due process when Ms. Byrnes was not provided written notice of the specific charges and grounds, which, if proven, would justify expulsion from the nursing program. Next, she was denied a hearing before the guilty verdict and sentence were summarily imposed. Our federal courts in Kansas have addressed due process in university discipline matters.

Almost 40 years ago, Judge Theis of the U.S. District Court for Kansas laid out what is required for due process in student disciplinary cases, in *Gardenhire v. E.L. Chalmers, Chancellor of the University of Kansas*, 326 F.Supp. 1200 (February 1, 1971 (copy attached)).

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Certainly, JCCC may choose to convene a full and fair hearing to take a new look at what really occurred on November 10, 2010. Such a hearing must include the right for Ms. Byrnes to call witnesses; to cross examine Ms. Delphia and to have all of the safeguards Judge Theis addressed.

Even high school students in Kansas get fairer treatment than has been afforded Ms. Byrnes. The Kansas Supreme Court has outlined the requirements of disciplinary hearings for high school students that require specific and timely notice of charges. I question whether the damage done by failing to give Ms. Byrnes her constitutionally-mandated rights prior to dismissal can now be rectified by a new hearing. See *Smith v. Miller, President of Board of Education*, 514 P.2d 377 (Kansas Supreme Court, 1973) (copy attached).

I am further very troubled by Ms. Walsh's apparent disregard of Section 319.02 which clearly affords JCCC students the right to have the Dean of Student Services impose disciplinary measures and then affords a right of appeal to the Vice-President of Student Services, then to the Campus Appeals Board.

Instead, Ms. Walsh's letter of November 30, 2010 direct Ms. Byrnes to make her appeal to you, apparently under Section 319.03. However, 319.03 "Student Academic Appeals", as stated on the website, "provides the student with an approach to question academic behavior by faculty members, administration, counselors, and staff or other college personnel."

Clearly, this is not intended for student discipline, which is why Section 319.02 exists. However, Ms. Byrnes does not wish to be in default of any apparent requirement imposed on her to follow Ms. Walsh's directive. However, Ms. Byrnes strenuously objects to this appeal process.

Finally, I enclose for your consideration an excellent law review article on due process in university discipline matters.

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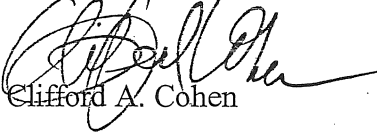
CONCLUSION

Ms. Byrnes is willing to waive her legal objections to the process employed if she is permitted to immediately resume her nursing education under the conditions offered in section IV herein. While you consider this matter and during the pendency of any further appeal process, Ms. Byrnes should be allowed to resume her nursing training. Her chances of success on appeal within JCCC or in federal court are so substantial that she should not suffer continuing damage to her education and career while any appeal is pending.

Dr. Craig, the proposed resolution would provide a just result. The interests of the College would be well served in obtaining a prompt and fair resolution. Please give this Appeal your utmost consideration. I assume, pursuant to Section 319.03 that I will receive your decision within five (5) working days.

Respectfully submitted

COHEN McNEILE & PAPPAS, P.C.


Clifford A. Cohen

CAC: chcb

Enclosures (4)

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RECEIPT FOR APPEAL OF DOYLE BYRNES

The undersigned acknowledges receipt of a written Appeal of the Dismissal of

Doyle Byrnes from the Associate Degree Nursing Program.

December 2, 2010

Rhonda Scattery

Print name: RHONDA SCATTERY

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