

Cliff A. Cohen

From: Cliff A. Cohen
Sent: Tuesday, December 07, 2010 3:45 PM
To: 'ccraig@jccc.edu'
Cc: 'Doyle Byrnes'
Subject: Informal meeting of Doyle Byrnes with Dr. Clarissa Craig

Dear Dr. Craig,

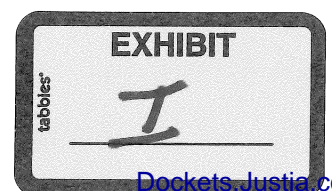
As you know from our phone conversation about 20 minutes ago, I asked you if the meeting you requested with Doyle Byrnes for tomorrow morning was intended by Johnson County Community College to be the equivalent of affording her an appeal of the dismissal decision made November 11, 2010 by Ms. Walsh, Director of the Nursing Program. You responded that it was not a formal appeal procedure but you simply wished to better understand what happened and that you had not decided what to do in response to the appeal.

I am willing to allow my client to meet with you as long as I am present. I will not interfere with your effort to question her about what occurred on November 10, 2010. However, this agreement is with the express understanding that this meeting is not a substitute for a due process appeal hearing, as I outlined in my appeal papers served on you last Thursday. The only reason I am willing to allow this informal meeting is my hope that you will authorize Doyle's immediate reinstatement and that an appeal hearing would then not be necessary.

Sincerely,

Clifford A. Cohen
Cohen McNeile & Pappas P.C.
4601 College Blvd., Suite 200
Leawood, KS 66211
913-491-4050 (phone)
913-491-3059 (fax)
ccohen@cmplaw.net

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Johnson County Community College
12345 College Blvd.
Overland Park, Kansas 66210-1299
913-469-8500 www.jccc.edu

December 8, 2010

Doyle Byrnes
6702 W. 156th Ter.
Stanley, KS 66223

Dear Ms. Byrnes:

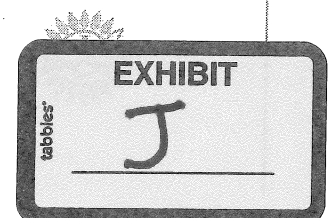
Per the College process for student academic appeals (JCCC Student Academic Appeals-319.03), I am officially responding within five working days. I am in receipt of the appeal materials that were delivered to my office on your behalf by your counsel, Mr. Clifford Cohen on 12/2/10. Thank you for coming in today to answer questions to help further clarify the course of events that occurred in clinic on 11/11/10 that led to your dismissal from the nursing program.

As we discussed today, I am very much interested in exploring and reviewing information to my satisfaction before finalizing a decision. While I could provide a decision as part of this response and within the five working days designated as part of the academic appeal process, I would not be able to be as fully informed and comfortable in that decision. We agreed that I would be allowed to have extended time into next week to continue my exploration & review before making a decision. The concern was expressed that should a decision involving reinstatement be determined, a delay in time beyond next week would not be reasonable. I recognize this concern and have no intention of delaying a decision such that it precludes reinstatement as a possibility. I am anticipating that it will take me through Wednesday to finalize and prepare my decision. I will contact you on Thursday for when this will be available for you to pick up, either later that day or on Friday, December 17.

Sincerely,

Clarissa M. Craig, Ph.D.
Dean, Health Care Professions & Wellness

Phone: 913-469-2573
e-mail: cccraig@jccc.edu



LAW OFFICES OF
COHEN McNEILE & PAPPAS P.C.

4601 College Boulevard, Suite 200
Leawood, KS 66211-1650
(913) 491-4050 • Fax (913) 491-9318
Internet: www.cmpsllaw.com

CLIFFORD A. COHEN
JAMES M. McNEILE
GREGORY J. PAPPAS
SUSAN P. DeCOURSEY
MICHAEL J. TERNUS
RICHARD MILONE

December 9, 2010

(OF COUNSEL)
EDWARD A. GILKERSON
W. JACK PEGGS*

Dr. Clarissa Craig
Dean of Health Care Professions
and Wellness
Johnson County Community College
12345 College Blvd.
Overland Park, Kansas 66210-1299

*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:

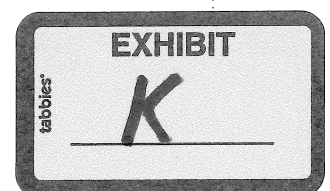
First of all, thank you for agreeing to my attendance at your interview of Doyle Byrnes. I appreciate the obvious thought and consideration you intend to give to Doyle's appeal.

As you consider what is the correct decision for you to make, I am requesting, on Doyle's behalf, that you consider what other schools of nursing do with regard to establishing standards of conduct, publishing clear guidelines for student behavior and affording students a fair and legally sufficient process when accused of misconduct.

As your students often transfer to the University of Kansas School of Nursing, I looked at their policies and rules. A copy is enclosed for your convenience.

Page 16 of 52 defines Academic Misconduct. The closest description that could arguably equate to Doyle's alleged misconduct is "violation of regulations on ethical codes for the treatment of human and animal subjects, or otherwise acting dishonestly in research; knowingly violating the rights of patients for confidential, safe, professional and human treatment".

It is apparent that even though the KU description of academic misconduct is more detailed and descriptive than the "Code of Conduct" cited by Ms. Walsh in Doyle's case, there is no reference in either document to a prohibition regarding taking photographs or transmitting photographs of clinical education settings where patient confidentiality has been respected.



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KU's definition deliberately uses the phrase "knowingly violating the rights of patients . . .".

Given Ms. Delphia's role as a clinical preceptor, her express or tacit permission granted for the alleged misconduct certainly removes the "knowing" aspect of Doyle's actions.

The KU School of Nursing has a code of conduct for preceptors, known as "Preceptor-Preceptee-Faculty Responsibilities". Preceptors agree, among other things, to:

"4. Serve as a role model to foster professional behaviors."
(See N490 Professional Practicum document attached.)

The KU School of Nursing document, at page 39 of 52, addresses "Removal from the Clinical Setting," and "Removal from the Clinical Course."

KU's policy appears to be to remove a student from the clinical setting temporarily for "displaying behaviors defined as academic or non-academic misconduct". However, the policy is clear that "removal from the clinical course may be recommended should the deficit remain unresolved following assistance and counseling."

Dr. Craig, Doyle was given no assistance or counseling and no opportunity to learn from the experience. That seems not only contrary to the University of Kansas School of Nursing model, but contrary to any modern philosophy of education.

Finally, KU has an extensive student rights procedure for alleged misconduct beginning at page 16 of 52 and it incorporates a progressive discipline philosophy. At page 22 of 52, it sets out eight levels of sanctions, the lowest being "Admonition" and the most severe being "Expulsion". There are five lesser sanctions than suspension.

I looked at another nursing program document from Louisiana which is the Our Lady of the Lake College Student Handbook, General Policies and Procedures for Students

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in All Programs 2010-2011. (Copy enclosed). This institution is devoted to health care education.

Section 1.1 contains General Regulations Governing Student Behavior. 1.1g addresses making personal calls or texts during clinical experience.

1.1i addresses disseminating information regarding patients.

At the end of Section 1.1 it states:

“Though generally violations of the above rules would not be grounds for dismissal, repeated violations may lead to escalated sanctions.”

Dr. Craig, my appeal letter for Doyle suggested to you that your students in their 20's have a different view of privacy and communication over the internet than certainly my generation. I found a very interesting article in “The Online Journal of Issues in Nursing”, from May 31, 2006. The article addresses the “Net Generation”.

At the bottom of page 1 of 9, the author discusses “the complicating impact of information technologies in higher education.”

At page 2 there is a discussion of “The Net Generation Learners”. One of the bullet points is:

Emotion and intellectual openness: The N-Geners value the openness of the online environment, like anonymity, and communicate through numerous tools.

Another bullet point is Investigations:

Curiosity, discovery, and exploration are key for this generation.

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At page 3 of 9, the author asserts:

“Net Generation characteristics include digital literacy, experiential and engaging learning, interactivity and collaboration, and immediacy and connectivity.”

Page 5 of 9 contains a paragraph discussing use of wikis. It ends with this statement:

“For Net Geners, the notion of collaboratively constructing knowledge within a social community is very appealing.”

Dr. Craig, you have an opportunity to make this incident a learning experience for not just the four students involved, but for the faculty and entire healthcare student body.

It is not necessary to choose such an extreme sanction as suspension for one year, even if you were to disregard the apparent cause of the conduct being tied so closely to the instructor's approval of the conduct.

I thank you for taking the time to read this lengthy letter and the enclosures. Too much is at stake for me to fail to give you every opportunity to consider what is the right decision.

Sincerely yours,

COHEN McNEILE & PAPPAS, P.C.



Clifford A. Cohen
ccohen@cmplaw.net

CAC: chcb
Enclosures (4)
cc: Dennis Day w/enclosures



Johnson County Community College
12345 College Blvd.
Overland Park, Kansas 66210-1299
913-469-8500 www.jccc.edu

December 16, 2010

Doyle Byrnes
6702 W. 156th Ter.
Stanley, KS 66223

Dear Ms. Byrnes:

In following the process outlined for student academic appeals (JCCC Student Academic Appeals-319.03), you have appealed the decision made by Ms. Jeanne Walsh, Director of the JCCC Nursing Program, which resulted in your dismissal from the nursing program. As was noted in the letter you received (dated 11/16/2010), the dismissal "was based on the Code of Conduct that appears in the JCCC Nursing Student Handbook on page 5 and that you accepted upon entrance to the program. Your demeanor and lack of professional behavior surrounding this event [referring to the event of 11/10/2010] was considered a disruption to the learning environment and did not exemplify the professional behavior that we expect in the nursing program." In the initial dismissal decision, Ms. Walsh indicated that rather than receiving a failing grade, you would be administratively withdrawn from the NURS 228 Maternal Child Nursing course, receiving a grade of "W." In the follow up appeal decision of 11/29/10, the dismissal decision was upheld but Ms. Walsh indicated that she would support readmission to the third semester in Fall 2011.

I have carefully reviewed what was submitted as part of your appeal, gathered information related to your first appeal to Ms. Walsh and initiated additional discussions to gain a better understanding of the course of events from which to render my opinion on your appeal. I support the original decision to dismiss you from the nursing program. I believe that Ms. Walsh has taken into consideration your nursing future by recommending the grade of "W" rather than "F" and the opportunity to be considered for readmission to the program next Fall. I recognize that this does not mesh with what you have as your specific plans but I do consider these to be reasonable steps in a lesson hard learned. I would be happy to work with you and Ms. Walsh in helping you think through your options related to a possible transfer to another program.

If you wish to appeal my decision, the next person in the appeal process is Dr. Marilyn Rhinehart, Vice President of Instruction/Chief Academic Office. Dr. Rhinehart is the final step in the academic appeal process.

Sincerely,

Clarissa M. Craig
Clarissa M. Craig, Ph.D.

Dean, Health Care Professions & Wellness

