STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Joyce N. Guilfoyle	:	
	:	
v.	:	**A.A. No. 14 - 147**
	:	
Department of Labor and Training,	:	
Board of Review	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED,

that the Findings and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 30th day of June, 2015.

By Order:

____/s/_____________
Stephen C. Waluk
Chief Clerk

Enter:

___/s/______________
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
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Joyce Guilfoyle	:	
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Department of Labor and Training,	:	
Board of Review	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Joyce Guilfoyle asks this Court to set aside a final decision of the Board of Review of the Department of Labor and Training which held that she was not entitled to receive employment security benefits because she was terminated for proved misconduct. This matter has been referred to me for the making of Findings and Recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. After comparing the decision rendered by the Board of Review with the record certified to this Court, I have concluded that the decision disqualifying Ms. Guilfoyle is not clearly

erroneous in light of the probative, reliable, and substantial evidence of record; I therefore recommend that the decision of the Board of Review be AFFIRMED.

I
FACTS AND TRAVEL OF THE CASE

The facts and travel of the case are these: Ms. Joyce Guilfoyle worked for the Holiday Retirement Home for one year as a licensed practical nurse (LPN) until March 11, 2014, when she was discharged. She filed a claim for unemployment benefits and on May 22, 2014, a designee of the Director of the Department of Labor and Training determined her to be eligible to receive benefits pursuant to the provisions of Gen. Laws 1956 § 28-44-18, because the employer did not prove misconduct.

The Employer filed an appeal and a hearing was conducted by Referee Carol A. Gibson on July 3, 2014. On this occasion Claimant appeared with counsel; an employer representative also appeared, without counsel. Four days later, on July 7, 2014, the Referee issued her written Decision, in which she made Findings of Fact on the issue of misconduct, which are quoted here in their entirety —

> The claimant had worked for the employer, a nursing home, for a year as a licensed practical nurse. The claimant had not received any disciplinary action during the period of her employment. When the claimant was last employed, she was primarily working on a unit with residents who suffered from dementia. Prior to the claimant's separation, the employer discovered a concern relating to the lab work for residents who took thyroid medication. The employer began a quality assurance review to determine if there was any issue with the administration of medication to these residents. The claimant worked the 11:00 p.m. to 7:00 a.m. shift. The thyroid medication is typically administered at 6:00 a.m. All staff sign onto the employer's system and are required to indicate when the medication has been administered. The initials for the employees appear on a report when they indicate the medication has been given to the resident. The thyroid medication for each resident is in a bubble pack on a card. On March 10, 2014 the thyroid medication for all residents on the floor where the claimant worked was counted. The medication was counted again on March 11, 2014. Eight residents were to receive thyroid medication but only three had medication gone from their supply. The medication bubble pack/card for five of the residents had not been touched. The claimant had signed off in the employer's computer system that she had administered the medication to all of the residents. The residents in question had dementia and could not be questioned regarding this issue. The claimant was unable to explain why the medication count did not change when she verified in the system that she had administered this medication. The claimant was discharged as a result of this incident.

Decision of Referee, July 7, 2014 at 1-2. Based on these facts — and after quoting extensively from Gen. Laws 1956 § 28-44-18 and the leading case in this area, Turner v. Department of Employment and Training Board of

Review, 479 A.2d 740 (R.I. 1984) — Referee Gibson pronounced the following conclusions:

> …
> In cases of termination, the employer bears the burden to prove by a preponderance of credible testimony or evidence that the claimant committed an act or acts of misconduct as defined by the law in connection with the work. It must be found and determined the employer has met their burden. The credible evidence and testimony presented by the employer has established the claimant was discharged when it was discovered she had indicated in the system that she had administered medication to five residents who never received the medication. The claimant's actions constitute negligence and misconduct in connection with the work. Therefore, benefits must be denied in this matter.

Decision of Referee, July 7, 2014 at 2-3. Thus, the Referee reversed the decision of the Director granting benefits. Id., at 3.

Claimant appealed and the Board of Review took up the matter. On August 26, 2014, the Board of Review conducted a further hearing on the case. Ms. Guilfoyle again appeared with counsel; two employer representatives also appeared. Thirty days later, on September 25, 2015, the Board published its decision, a split decision with the Chairman and Member Representing Industry affirming the Referee's decision finding Claimant to be ineligible to receive unemployment benefits because she was discharged for proved misconduct. The members of the majority approved the findings

made by the Referee and incorporated them into the Board's decision. However, the Board supplemented the Referee's findings as follows —

> … Claimant, a licensed practical nurse, reported administering thyroid medication to eight patients when, in fact, she had neglected to administer the medication to five of the eight patients; such behavior was unintentional.

Decision of Board of Review, September 25, 2014, at 1.[1] Based on the facts found by the Board, it then made the following conclusions —

> Having thoroughly reviewed the record from the hearing below and received additional testimony and argument from both parties, the Board **concludes** that the Claimant was terminated for reasons which under section 28-44-18, constitute "misconduct."
>
> Given the Claimant's occupation — and the potential for serious harm to result from the type of mistake at issue — the Board concludes that the Claimant's conduct, albeit accidental, evidenced "negligence of such degree" as to evidence "willful or wanton disregard of [the] Employers interests" required under the standard for misconduct set forth by the Rhode Island Supreme Court in Turner v. Department of Employment and Training, 479 A.2d 740, 741-42 (R.I. 1984).

Decision of Board of Review, September 25, 2014, at 1 (Emphasis in original). Accordingly, the majority affirmed the decision of the Referee and

[1] It may be noted that the Member fully endorsed and joined in the majority's findings of fact; he dissented only on the application of those facts to the pertinent law. Decision of Board of Review, September 25, 2014, at 2 (Dissent of Member Representing Labor).

found that Claimant was properly disqualified from the receipt of unemployment benefits for misconduct. Decision of Board of Review, September 25, 2014, at 2.

The Member Representing Labor dissented — declining to find misconduct because, in his estimation, the Claimant was merely guilty of ordinary negligence; he also concluded that this was an isolated incident. Decision of Board of Review, September 25, 2014, at 2 (Dissent of Member Representing Labor).

Finally, Ms. Guilfoyle filed a complaint for judicial review in the Sixth Division District Court on October 22, 2014. A conference was conducted in this matter by the undersigned on December 17, 2014, at which a briefing schedule was set. A learned and helpful memorandum has been received from both the Claimant and the Board of Review, for which the Court hereby expresses its appreciation.

II
APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically addresses misconduct as a circumstance which disqualifies a claimant from

receiving benefits; Gen. Laws 1956 § 28-44-18, provides:

> **28-44-18. Discharge for misconduct. —** … For benefit years beginning on and after July 6, 2014, an individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had earnings greater than, or equal to, eight (8) times, his or her weekly benefit rate for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

(Emphasis added). In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term "misconduct" previously pronounced in a decision of the Wisconsin Supreme Court —

Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

> 'Misconduct' * * * is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

The employer bears the burden of proving by a preponderance of evidence that the claimant's actions constitute misconduct as defined by law.[2]

III
STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

> **42-35-15. Judicial review of contested cases.**
> …
> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

[2] Foster-Glocester Regional School Committee v. Board of Review, Department of Labor and Training, 854 A.2d 1008, 1018 (R.I. 2004).

> The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.' "[3] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[4] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[5]

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[3] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

[4] Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

[5] Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). Also D'Ambra v. Board of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I.1986).

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing the Employment Security Act:

> * * * eligibility for benefits is to be determined in the light of the expressed legislative policy that "Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family." G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

IV

ANALYSIS

A

The Facts of Record

While the facts of this case are not truly in dispute, it is nonetheless appropriate to begin our analysis of the Board of Review's decision by recounting the evidence and testimony adduced at the hearing, so that we may

determine whether the Board's conclusion is clearly erroneous in light of the reliable, probative, and substantial evidence.

1

Testimony of Leslie Duke

The employer's witness at the hearing conducted by Referee Gibson was Ms. Leslie Duke, R.N., the Assistant Director of Nursing for Holiday Home, which she described as a nursing home, mostly serving elderly patients. Referee Hearing Transcript, at 7.

Focusing in on the Claimant, she said that Ms. Guilfoyle was employed by the nursing home as a full-time LPN from February of 2013 to March of 2014. Referee Hearing Transcript, at 6-7. She was assigned to the 11:00 p.m. to 7:00 a.m. shift, mostly to the dementia unit, where the patients "have to have all their needs anticipated." Referee Hearing Transcript, at 7-8.

Ms. Duke then explained the circumstances that led to Ms. Guilfoyle's termination. Referee Hearing Transcript, at 8. She said that she, Ms. Kerry George (the Director of Nurses), and Mr. David Parent, the daytime supervisor, were doing their normal "Quality Assurance" (or "QA") on the lab work when they noticed that the levels of two patients on thyroid

medication began to rise after they were moved to the dementia unit. Referee Hearing Transcript, at 8-9.

In support of this effort, they looked not only at the patients' computerized medical charts — where they found that someone had given a patient the wrong dosage of Synthroid (the thyroid medicine) charts — but the actual medication packets, so they could count the pills to make sure the medicine was actually being distributed properly. Referee Hearing Transcript, at 9-11. On March 10, 2014, they counted all the Synthroid cards. Referee Hearing Transcript, at 11.[6] The next day, they determined that five of the eight cards on the unit had the same number of dosages left as they did the day before, signaling that five patients with thyroid issues had not received their medicine. Id. Ms. Duke stressed that, although the day nurse could dispense it, Synthroid is only given at 6:00 a.m. Referee Hearing Transcript, at 11.

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[6] I read this statement to mean that they took each card and determined how many Synthroid dosages remained on each; and not that they counted the number of Synthroid cards they had in the unit, which was eight. Referee Hearing Transcript, at 11. Later, Ms. Duke testified that they made the count "as a team" and she saw the material personally. Referee Hearing Transcript, at 12.

The witness also explained that, after medication is dispensed, the nurse "charts" that fact in the computer system, which is password-protected. Referee Hearing Transcript, at 11-12, 15-17.[7] In this case, Mr. Guilfoyle charted that that she had dispensed the Synthroid to all eight patients. Referee Hearing Transcript, at 12. And so, they met with Claimant on the 14th of March. Id. Claimant insisted that she dispensed the medication, and was unable to explain why the amount of medication had not gone down. Id.

Ms. Duke denied that Ms. Guilfoyle had previously made errors or had been disciplined for any reason. Referee Hearing Transcript, at 13-14. Nevertheless, she was terminated for these errors because of their seriousness. Referee Hearing Transcript, at 14. Moreover, they reported the matter to the Department of Health. Referee Hearing Transcript, at 20.

Ms. Guilfoyle was terminated because management concluded that her failure to dispense was not inadvertent, given the number of patients involved. Referee Hearing Transcript, at 20. After this incident, they looked for other discrepancies but found none. Referee Hearing Transcript, at 21.

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[7] Ms. Duke testified that, if the nurse is unable for any reason to dispense medicine during her shift he or she would report that fact to the nurse on the following shift; but this was not done by Ms. Guilfoyle. Referee Hearing Transcript, at 18-19.

2
Testimony of Ms. Guilfoyle

Next, Ms. Guilfoyle testified. Referee Hearing Transcript, at 22 et seq. She explained her process for dispensing medications to the patients on the ward —

> … pull them up on the computer, pour them into a cup, most of them get crushed because of the type of unit it is. And at whatever substance putting apple sauce whatever and administer them that way. Some can take them with water but most of them have to have it in a supplement of some sort.

Referee Hearing Transcript, at 22. She said that this was the protocol of the nursing home and this is the way she did it — to her knowledge and recollection. Referee Hearing Transcript, at 23.

Regarding the events of March 11, 2014, she said there was a patient dying, and so, she started her "med pass" early, since she knew the family was coming. Referee Hearing Transcript, at 23. She said she did remember giving out the medicine, especially to a married couple who shared a room. Referee Hearing Transcript, at 24-25. She could not explain the apparent discrepancies in the distribution of the medication and stated that she would never fail to medicate a patient for any reason. Referee Hearing Transcript, at 24-25, 27-29.

Ms. Guilfoyle did not proffer the death in the unit as a reason why she might have been distracted. Referee Hearing Transcript, at 25, 27.

She stated that she only had one previous medication error — which she reported to management herself. Referee Hearing Transcript, at 24-25.

3

Supplemental Testimony Taken by the Board of Review

As stated above, the Board of Review conducted its own hearing in this matter. It was, however, very short. The Board received only brief supplemental testimony.

Ms. Guilfoyle testified that she mainly worked on three other units. Board of Review Hearing Transcript, at 3. Her next previous shift on the dementia ward had been eight days before (her last shift). Id. She added that on her last shift she had a dying patient in her care; as a result, some of her attention was taken up in communications with the patient's family. Board of Review Hearing Transcript, at 4.

Ms. Guilfoyle stated that she believed she had medicated all the patients and denied she had intentionally not done so. Board of Review Hearing Transcript, at 4. She could not explain how she could have signed-off on the medications when, in fact, she had not given them. Board of Review

Hearing Transcript, at 5.

B

Position of the Parties

1

Position of the Petitioner

In her Memorandum of Law, submitted to this Court on March 31, 2015, Claimant emphatically argues a single point — her failure to dispense medication to five of her patients on March 11, 2014 ought not be deemed misconduct within the meaning of § 28-44-18 because the Board found her omissions to have been accidental; as such, they constituted no more than ordinary negligence, not willful or wanton behavior. See Appellant's Memorandum of Law, at 2-4. And, at least by inference, she urges that, while there may be serious consequences to errors committed by a nurse, there is no special rule for nurses — the § 18 standard applies unaltered to those in the medical community. Id., at 4.

2

Position of the Board of Review

The Board of Review takes the opposite view in its memorandum filed with this Court on May 15, 2015. The Board invokes that part of § 18 which declares that a single act may constitute misconduct if they exhibit "… willful

or wanton disregard of [the] employer's interests." See Appellee's Memorandum of Law, at 5 citing Turner, 479 A.2d at 741-42, quoting Boynton Cab, 296 N.W. at 640.[8] The Board then cited a 1993 decision of this Court — LeBeau v. Department of Employment and Training Board of Review, A.A. No. 92-353 (Dist. Ct. 1993) — wherein the Claimant's failure to record medication was found to be misconduct; however, that decision is distinguishable from the instant case because, as the Board noted, this omission had recurred on several occasions. Id.[9]

The Board, in its Memorandum, then asserts that the element of repetition is satisfied in this case by the fact that five patients failed to receive their thyroid medicine. See Appellee's Memorandum of Law, at 6. The Board also urges us to recall that the claimant not only failed to administer the medications, but reported it to have been given. Id.

Finally, the Board asserts that the circumstances of this case — i.e., that Ms. Guilfoyle was a licensed nurse caring for dementia patients who had been working at the facility for more than a year — distinguish the instant

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[8] A fuller version of this quotation may be found ante, at 8.

[9] The decision was authored by Chief Judge Albert E. DeRobbio. The holding may be cited to the slip opinion at 6-7.

case from other cases where failures of performance were deemed non-disqualifying. See Appellee's Memorandum of Law, at 6-7.

C

Resolution

The findings of fact made by the Board of Review in this case are unimpeachable, given the limited standard of review applicable to our consideration of appeals from the Board of Review. See Gen. Laws 1956 § 42-35-15(g). In my view, they are full supported by the testimony of record and the evidence presented held at the hearings in this case. See Part IV-A of this opinion, ante at 10-15. Our task, therefore, is to determine if these facts can support a finding of proved misconduct or whether the decision is clearly erroneous in light of the reliable, probative, and substantial evidence of record. Gen. Laws 1956 § 42-35-15(g)(5).

We shall base our decision in this matter on the application of the definitions of misconduct set forth in § 18 and in the decisions of our Supreme Court, particularly the Turner case.

1
Misconduct As Defined in Rhode Island Law

For convenience' sake, we shall set forth once again the pertinent language of the statute and the case law. We begin by citing the definition of misconduct provided in § 18 —

> For the purposes of this section, "misconduct" is defined as deliberate conduct in willful disregard of the employer's interest ...

Now, under this definition, only intentional conduct may constitute misconduct. Clearly, Ms. Guilfoyle did not violate this standard of misconduct. And so, we must also turn to the definition of misconduct embraced in Turner —

> 'Misconduct' * * * is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee's duties and obligations to his employer.

(Emphasis added). Turner, 479 A.2d at 741-42. Under this standard, unintentional conduct can only be misconduct if it is "of such degree or recurrence as to manifest equal culpability." Id. But, the quotation goes on to state what misconduct is not —

> On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.

(Emphasis added). We must now decide if the failures of Ms. Guilfoyle (as found by the Board) meet these standards.

2

Application of the Standard

The Board found Ms. Guilfoyle's actions were "accidental" and "unintentional." Decision of Board of Review, at 1. Nevertheless, Rhode Island law does anticipate that negligence (whether errors of commission or omission) can constitute disqualifying misconduct if it is "of such degree" that it demonstrates "willful or wanton disregard of [the] employer's interests." Decision of Board of Review, at 1-2 citing Turner, ante, 479 A.2d at 741-42. Weighing the extent of the error (i.e., the number of patients who were not properly medicated), the possible harm, and the Claimant's position (as an LPN), the Board found this standard had been met. Id., at 2.

Had we been reviewing this matter de novo, I might well have embraced the view of the case expressed in the dissent of the Member Representing Labor — that mere ordinary negligence was shown and the

Claimant should not be disqualified. Decision of Board of Review, at 2. But can I state that the majority's decision was clearly erroneous? No, I believe not.

3
Resolution

Each of the factors relied upon by the Board in finding more than ordinary negligence (the number of errors, the extent of the potential harm, and the expertise of the Claimant), are all perfectly appropriate and valid. It is clear that the Board weighed these factors together in a "totality of the circumstances" approach, not over emphasizing one or more inappropriately.[10] In these circumstances, and where the Claimant indicated in

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[10] Clearly, the Board of Review considered Ms. Guilfoyle's professional status as one factor in its disqualification of her; however, it did not declare her (and other healthcare professionals) to be subject to a higher standard of performance simply because of that status. Doing so would be improper, since § 18 provides one standard for all professions. See Navickas v. Unemployment Compensation Review Board, 567 Pa. 298, 305-09, 787 A.2d 284, 288-92 (2001)(Overruling a series of cases decided by a lower court in which a higher standard was established for errors by medical professionals; however, the Court found the claimant nurse eligible for benefits despite her medication error because it had not been shown that her negligence indicated an "intentional disregard of her employer's interest."). Cf. Turner, quoted ante at 8 and again at 19 establishing that mere negligence can be of "such a degree" as to justify disqualification for misconduct.

the system that medications had been given to the five affected patients, I cannot state that the Board's decision was clearly erroneous.

V
CONCLUSION

Pursuant to the applicable standard of review described ante at 8-10, the decision of the Board of Review must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. Applying this standard of review, I find that the decision of the Board of Review is not affected by error of law; nor is it clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Gen. Laws 1956 § 42-35-15(g)(3), (4), and (5). Accordingly, I recommend that the decision rendered by the Board of Review in this case be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate
June 30, 2015