

**Summary of SC91219, *Catherine Ann Stone v. Missouri Department of Health and Senior Services***

Appeal from the Cole County circuit court, Judge Richard G. Callahan  
Argued and submitted February 8, 2011; opinion issued July 19, 2011

**Attorneys:** The department was represented by Edwin R. Frownfelter of the attorney general's office in Jefferson City, (573) 751-3321; and Stone was represented by Mariam Decker and Julia S. Grus of Oliver Walker Wilson in Columbia, (573) 443-3134.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** This case requires review of a circuit court's judgment reversing an agency's decision to place the name of a licensed practical nurse on the state's employee disqualification list after determining that she knowingly abused a patient under her care. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the circuit court's judgment. It was not necessary for the agency to present expert testimony about whether the nurse's actions constituted abuse or whether she acted knowingly. Viewing the record as a whole, the agency provided substantial and competent evidence that the nurse knowingly abused the patient. Because she had notice of the charges against her, she was not deprived of procedural due process. The agency's decision to place the nurse's name on the employee disqualification list is authorized by law.

**Facts:** Licensed practical nurse Catherine Stone was employed as a charge nurse at Maries Manor, a skilled nursing facility in Vienna. She had received only one evening of training for working the night shift, which she began working in November 2007. On her second night of working the night shift, she was in the dining room dispensing medication to patients. When she attempted to administer medication to a patient, the patient knocked the medication spoon away, swung her right arm and hand, and hit Stone in her right shoulder. Stone instructed another employee to restrain the patient's arm, and Stone forced medication into the patient's mouth with a small, wooden ice cream spoon while pushing the patient's head forcefully against her wheelchair. This particular patient, who was diagnosed with dementia and an intellectual disability, often would become agitated and combative when her medication was administered. Her individualized care plan, kept near the nurses' station, instructed nurses to leave her alone if she reacted negatively to being given her medication, walk away and allow her to calm down, and administer the medication later or ask someone else to make an attempt to administer the medication. A dietary aide at the facility who saw Stone restrain the patient and force medication into her mouth reported the incident to the facility's nursing director four days later. The facility immediately suspended Stone and reported the incident to the central registry hotline of the department of health and senior services. The next day, after the nursing director conducted an investigation, the facility fired Stone. A department facility investigator conducted an investigation and concluded that Stone's actions constituted abuse. In February 2008, the department sent Stone a notice of violation and informed her it intended to place her name on the employee disqualification list for 18 months. Employers who receive the list – which denotes individuals the department has found to have committed reckless or knowing abuse or neglect in

violation of section 198.070.13, RSMo Supp. 2010 – are prohibited by section 660.315.12, RSMo Supp. 2010, from employing a person on the list. Stone challenged the department’s decision to place her name on the list. During an August 2008 hearing, testimony was taken from the dietary aide, the facility’s nursing director and the department investigator as well as from a co-worker who testified on Stone’s behalf. In October 2008, the hearing officer issued his decision and order affirming the department’s decision, finding that a preponderance of the evidence indicated that Stone knowingly abused the patient. Stone sought judicial review in the circuit court, which reversed the department’s decision. This Court now is asked to review the agency’s decision and to act on the circuit court’s judgment.

**REVERSED.**

**Court en banc holds:** (1) Expert testimony was not necessary to prove knowing abuse. Section 198.070.13 defines “abuse” as “the infliction of physical, sexual, or emotional injury or harm.” Although neither the statute nor case law define “emotional injury or harm,” this Court’s interpretation of “physical harm” is instructive. In *Klein v. Mo. Dep’t of Health and Senior Servs.*, 266 S.W.3d 163, 164 (Mo. banc 2007), this Court determined that section 198.006 does not require a physical manifestation of injury or harm, nor a long-term, lingering or residual injury, to find “abuse” as defined by section 198.006(1). As such, this Court concluded that there is a “low threshold for establishing the infliction of physical injury or harm.” *Id.* This low threshold for establishing the infliction of physical harm or injury applies equally to proof of emotional harm or injury and does not require expert testimony. Expert testimony generally only is required when a fact at issue is so technical or complex that no fact finder could resolve the issue without expert testimony. It is within the adjudicator’s discretion to determine the necessity of the expert testimony. If a fact at issue is “open to the senses,” a lay witness’s opinion is admissible. Such opinion may include conclusions about a person’s mental or emotional condition based on evidence of the person’s actions or behaviors.

The issue of whether a person with dementia and an intellectual disability suffers the level of emotional harm contemplated by section 198.006(1) is not a sophisticated injury that requires highly scientific information or a complex diagnosis. Lay witnesses can testify about their perceptions of the person suffering emotional harm. Further, a fact finder does not need a sophisticated explanation of the victim’s reaction to render a competent, proper decision about whether abuse occurred as defined by section 198.006(1). Therefore, it was not necessary for the department to present expert testimony about whether Stone’s actions constituted abuse.

Further, expert testimony was not necessary to establish Stone’s culpable mental state. Determining whether a person acted “knowingly” is not outside the realm of common experience, and fact finders often determine a party’s mental state absent the aid of expert testimony. Expert testimony also was not necessary to establish that Stone knowingly acted outside the standard of care. Stone uses “standard of care” to reference the procedures a person was supposed to follow if the patient at issue refused her medications. At the administrative hearing, Stone argued she complied with the patient’s care plan; before this Court, she argues she did not have actual knowledge of the care plan. The department put forth ample evidence of the applicable “standard of care” through the testimony of a nursing assistant, the dietary aide and the facility’s nursing director about the patient’s individualized care plan, which specifically

addressed how Stone was to proceed if the patient became combative and refused her medications. This testimony shows that Stone should have known the patient's care plan and that using force to administer her medication was contrary to the care plan.

(2) Viewing the record as a whole, the department provided substantial and competent evidence that Stone knowingly abused the patient. The lay witnesses testified about facts that were "open to the senses," specifically the patient's general temperament and individualized care plan, Stone's actions in forcing the patient to take her medication, and the patient's reaction to Stone. The nursing assistant and dietary aide testified that they were familiar with the patient, her combativeness and her aversion to taking her medicine; about the protocol the facility staff were to follow when the patient became combative and refused to take her medication; and about what they observed in the dining room that evening when Stone attempted to administer medication to the patient. Their testimony at the administrative hearing was consistent with statements they submitted as part of the facility's investigation and made during the department's investigation; Stone's testimony was not. The record contains substantial evidence supporting the hearing officer's conclusion that Stone acted knowingly. The evidence shows that Stone disregarded the patient's care plan, pushing the patient's head into her wheelchair and forcing medication into her mouth. A reasonable person should have known that doing so would cause physical or emotional harm or injury to the patient. While Stone presented evidence that contravenes the hearing officer's finding of abuse, that evidence is inconsistent, unpersuasive and does not overwhelmingly outweigh the substantial evidence of abuse the department presented: that Stone knowingly decided to force the patient to take her medication despite her violent reaction, and Stone's restraint of the patient in attempting to do so amounted to abuse. Further, in resolving the conflicts in all the testimony about the events at issue, the hearing officer chose to believe some evidence and disbelieve other evidence. Stone's evidence does not overwhelmingly contradict the substantial evidence supporting a finding of abuse; as such, this Court will not disturb the hearing officer's credibility findings and implicit rejection of some evidence.

(3) The department did not violate Stone's procedural due process rights in not providing notice in its letter to her of her violation of 19 CSR 30-88.010 before finding her in violation of this regulation. The letter providing notice of Stone's violation does not cite to any regulations. While the hearing officer's decision and order briefly mentions the regulation in support of the proposition that the patient had the right to refuse the administration of medication and the right to be free of restraint and coercion, it is clear he based his decision and order not on the regulation but on Stone's violations of sections 198.006 and 198.070, RSMo Supp. 2010. Because Stone had notice of the charges against her, she was not deprived of procedural due process. The department's decision to place Stone's name on the employee disqualification list for 18 months is authorized by law.