

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 DHR 05611

DECISION

APPEARANCES

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and acted erroneously or acted arbitrarily or capriciously when Respondent substantiated the allegation that Petitioner abused a resident (E.B.) of Croasdaile Village in Durham, North Carolina, by hitting E.B. on her arm and placing a soiled stool protector in E.B.'s face, and entered said finding on the North Carolina Nurse Aide Registry and Health Care Personnel Registry.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-256
N.C. Gen. Stat. § 150B-1, *et seq.*
42 CFR § 488.301
10A N.C.A.C. 130.0101(1)

EXHIBITS

Respondent's Exhibits 1 – 14 were admitted into the record.

WITNESSES

Frieda Willis (Former Certified Nurse Aide, Croasdaile Village)
Morrissa Angelica Richmond (Petitioner)
Stella Haynes, RN (Regional Supervisor, Health Care Personnel Registry Investigations Branch)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the undersigned makes the following findings of fact and conclusions of law. In making the findings of fact, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. At all times relevant to this matter, Morrissa Angelica Richmond ("Richmond") was employed as a health care personnel—namely, a Certified Nurse Aide ("CNA")—at Croasdaile Village in Durham, North Carolina.
2. Croasdaile Village is a skilled nursing facility, as defined by N.C.G.S. § 131E-255, and is therefore subject to the purview of N.C.G.S. § 131E-256.
3. Richmond's duties as a CNA included, among other things, assisting residents with eating, bathing, dressing, toileting, personal hygiene, and other activities of daily living.
4. Richmond received training in the areas of resident's rights, abuse, and the treatment of residents with Alzheimer's, among others. (Resp. Exh. 4)
5. On April 27, 2010, Richmond was assigned to provide care to E.B., an 88-year-old female resident of Croasdaile Village with a primary diagnosis of Alzheimer's dementia. (Resp. Exh. 6)

6. At approximately 10:00 a.m., Richmond and Frieda Willis (“Willis”), then a CNA at Croasdaile Village, entered E.B.’s room to change her. E.B. was being combative and Willis attempted to restrain E.B. by holding E.B.’s hands while Richmond cleaned and changed E.B. At some point, E.B. jerked her hands away from Willis and struck Richmond on her arm. (Resp. Exhs. 7 and 8)

7. In response to E.B. striking her, Richmond stated, “I hit back,” and forcefully struck E.B. on her arm. E.B. yelled at Richmond to leave her room. Then, Richmond took a feces-soiled bib, placed it under E.B.’s nose, and said, “smell this shit.” (Resp. Exhs. 7 and 8) Richmond did not actually touch E.B. with the soiled bib.

8. Willis warned Richmond that E.B. could suffer a bruise as a result of Willis having struck E.B. with such force. (Resp. Exh. 8)

9. Willis and Richmond had been friends for the approximately five (5) years Richmond had worked at Croasdaile Village. They would take breaks and eat lunch together and socialized outside the workplace as well by visiting each other’s homes. (Resp. Exh. 8)

10. Because of the close friendship, Willis was hesitant to report Richmond’s actions to the supervisor because Willis did not want Richmond to get into trouble. Willis first consulted another co-worker, hoping the co-worker would report the incident so that she would not have to report her friend. When the co-worker did not report the incident, Willis was aware that she had to report, and after much deliberation she reported the incident to her supervisor. (Resp. Exh. 8)

11. On April 27, 2010, Croasdaile Village notified the North Carolina Health Care Personnel Registry (“HCPR”) of the allegation of abuse against Richmond by submitting a 24-Hour Initial Report. (Resp. Exh. 1)

12. Croasdaile Village placed Richmond on suspension and conducted an internal investigation regarding the allegation of abuse against Richmond by interviewing staff members and assessing E.B. As a result of the internal investigation, Croasdaile Village substantiated the allegation of abuse against Richmond and terminated Richmond’s employment on May 3, 2010. Croasdaile Village also submitted a 5-Working Day Report to HCPR notifying it of the completion of its internal investigation and substantiation of the allegation of abuse against Richmond. (Resp. Exhs. 2, 11, and 12)

13. HCPR investigates allegations against unlicensed health care personnel working in health care facilities in North Carolina. The allegations investigated by HCPR include, but are not limited to, abuse and neglect. With the exception of a finding of a single instance of neglect, substantiated findings against health care personnel are permanently listed on the HCPR. N.C.G.S. § 131E-256.

14. Upon receipt of the allegation against Richmond, Cheryl Guinan, RN (“Guinan”), Investigator for HCPR, determined that the matter required further investigation and, by certified letter dated June 16, 2010, notified Richmond of the same. (Resp. Exh. 3)

15. At all times relevant to this incident, Guinan was employed as an Investigator for HCPR. She was charged with investigating allegations of abuse and neglect, among others, against unlicensed health care personnel in Durham County, North Carolina, and was assigned to conduct the investigation into the allegation against Richmond.

16. As a part of her investigation, Guinan visited Croasdaile Village and reviewed E.B.’s medical records, Richmond’s personnel file, and Croasdaile Village’s documentation regarding this incident. Guinan also interviewed Willis, Richmond, and several other staff members of Croasdaile Village. Stella Haynes (“Haynes”), Regional Supervisor for HCPR, was also present during Guinan’s interview of Willis. (Resp. Exhs. 4, 5, 6, 7, 10, 11, and 12)

17. Based on her investigation, Guinan determined that Richmond abused E.B. on April 27, 2010, and, accordingly, substantiated the allegation against Richmond. (Resp. Exh. 13)

18. By certified letter dated August 5, 2010, Guinan notified Richmond that the allegation that Richmond had abused E.B. had been substantiated and said finding would be listed on the Nurse Aide I Registry and the Health Care Personnel Registry. Richmond was further notified of her right to appeal. (Resp. Exh. 14)

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. Pursuant to N.C.G.S. § 131E-256, the North Carolina Department of Health and Human Services (“Department”) is required to establish and maintain a health care personnel registry that contains the names of all unlicensed health care personnel working in health care facilities in North Carolina who are subject to a finding by the Department that they, among other things, abused or neglected a resident in a health care facility, or have been accused of such an act if the Department has screened the allegation and determined that an investigation is warranted.

4. Croasdaile Village is a skilled nursing facility, as defined by N.C.G.S. § 131E-255, and is therefore subject to the purview of N.C.G.S. § 131E-256.

5. As a health care personnel—namely, a Certified Nurse Aide—working in a skilled nursing facility, Richmond is subject to the provisions of N.C.G.S. § 131E-256.

6. “Abuse” is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. 10A N.C.A.C. 13O .0101(1); 42 CFR § 488.301.

7. The preponderance of the admissible evidence in the record shows that on April 27, 2010, Richmond abused E.B. by hitting E.B. on her arm and placing a soiled stool protector up to E.B.’s face without actually touching E.B., resulting in pain and mental anguish.

8. Respondent’s action to substantiate the allegation of abuse against Richmond is supported by a preponderance of the evidence.

9. Richmond is not a credible witness and her testimony is inconsistent with the admissible evidence in the record.

10. Willis is a credible eyewitness and none of the testimony supports the contention that Willis had any reason to falsely accuse Richmond of striking E.B. or placing the soiled stool protector up to E.B.’s face. Willis and Richmond were friends for approximately five (5) years and had not been involved in any dispute or had any other conflicts prior to Willis’s allegation against Richmond.

11. Richmond failed to meet her burden that Respondent substantially prejudiced her rights and acted erroneously or acted arbitrarily or capriciously when Respondent substantiated the allegation that Richmond abused a resident (E.B.) of Croasdaile Village in Durham, North Carolina, by hitting E.B. on her arm and placing a soiled stool protector in E.B.’s face, and entered said finding on the North Carolina Nurse Aide Registry and Health Care Personnel Registry.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent’s decision to place a finding of abuse against Petitioner on the North Carolina Nurse Aide I Registry and Health Care Personnel Registry should be **UPHELD**.

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services, Division of Health Service Regulation.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision by the Administrative Law Judge and to present written arguments to those in the Agency who will make the final decision. N.C.G.S. § 150-36(a) (2011). The Agency is required to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings. N.C.G.S. § 150B-36(b3) (2011).

In accordance with N.C.G.S. § 150B-36, the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the Agency in not adopting the finding of fact. For each new finding of fact made by the Agency that is not contained in the Administrative Law Judge's decision, the Agency shall set forth separately and in detail the evidence in the record relied upon by the Agency in making the finding of fact.

This the 7th day of February, 2014.

The Honorable Donald W. Overby
Administrative Law Judge