

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 DHR 07883

Daniel J. Harrison,
Petitioner,

vs.

DHHS Division of Health Service Regulation,
Respondent

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DECISION

THIS MATTER came for hearing before the undersigned, the Honorable Selina M. Brooks, Administrative Law Judge presiding, on November 13, 2012, in the Vanguard Center, 5501 Seventy Seven Center Drive, Suite 150, Charlotte, North Carolina.

APPEARANCES

For Petitioner:

Christopher J. Neeson, Esquire
RAWLS, SCHEER, FOSTER & MINGO, PLLC
1011 East Morehead Street, Suite 300
Charlotte, NC 28204
COUNSEL FOR PETITIONER

For Respondent:

Derek L. Hunter
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
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ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and acted erroneously; failed to use proper procedure; or acted arbitrarily or capriciously when Respondent substantiated the allegations that Petitioner misappropriated a facility's property; committed fraud against a facility; misappropriated the property of ten (10) residents; and committed fraud against ten (10) residents of Mecklenburg Open Door in Charlotte, North Carolina, by transferring the residents' funds from the payee services account to Mecklenburg Open Door's operating account, and Respondent entered said findings on the North Carolina 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. 13O .0101(5)
10A N.C.A.C. 13O .0101(8)
10A N.C.A.C. 13O .0101(9)

EXHIBITS

Respondent's Exhibits 1 – 22 were admitted into the record.

WITNESSES

Petitioner

Daniel J. Harrison (Petitioner)

Respondent

James R. Cook, Ph.D. (Professor, UNC-Charlotte; Former President of the Board of Directors,
Mecklenburg Open Door)

Terry Christopher Thompson (Budget Manager, Monarch; Former Finance Director for the
Board of Directors, Mecklenburg Open Door)

Lynn M. Lee (Financial Support Specialist, Monarch; Former Finance Manager, Mecklenburg
Open Door)

M. Lawrencette McSwain, RN (Investigator, Health Care Personnel Registry)

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. From July 2008 until August 24, 2010, Daniel J. Harrison (“Harrison” or “Petitioner”) was employed as a health care personnel—namely, the Chief Financial Officer (“CFO”)—at Mecklenburg Open Door (“MOD”) in Charlotte, North Carolina.

2. At all times relevant to this matter, MOD was a residential facility, as defined by N.C.G.S. § 122C-3(14)(e), and is therefore subject to N.C.G.S. § 131E-256.

3. The “finance department” at MOD consisted of two (2) employees—Harrison, the CFO, and Lynn Lee (“Lee”), the Finance Manager.

4. As CFO, Harrison was responsible for all of the financial operations of MOD, including financial strategy and analysis for various MOD programs and services, managing the financial growth of MOD, managing employees, developing budgets, and evaluating the profitability of programs, among other duties. (T pp. 15, 156)

5. MOD served as representative payee for several of its residents. A representative payee is an individual or organization appointed by the Social Security Administration to receive Social Security and/or Social Supplemental Income (SSI) benefits for someone who cannot manage or direct someone else to manage his or her money. A representative payee may not use the beneficiary’s money for anything other than the beneficiary’s needs and expressly cannot deposit a beneficiary’s Social Security and/or SSI benefits into his, her, or another person’s account or, if an organization, into the organization’s operating account. (Resp. Exh. 3; T pp. 59-61)

6. Prior to and during Harrison’s tenure as CFO, MOD deposited the funds of several of its residents into MOD’s operating account instead of the payee services account. In addition, on numerous occasions between 2009 and 2010, when MOD began to experience financial difficulties and was rendered unable to meet its payroll and other financial obligations, Harrison authorized Lee to transfer residents’ monies from MOD’s payee services account to MOD’s operating account so that MOD could meet its various financial obligations. MOD planned to return the residents’ monies to the payee services account when MOD received payment from its various income sources. (Resp. Exhs. 14 and 15; T, pp. 21-24, 109-112, 117)

7. There were at least ten (10) residents whose monies were either deposited directly or transferred into MOD’s operating account to cover MOD’s financial obligations. Those residents were E.G., L.F., T.G., V.W., M.A., B.F., L.G., R.F., M.S., and J.M. (Resp. Exhs. 5-14)

8. The amount of residents’ monies deposited or transferred into MOD’s operating account and used by MOD to cover its operating expenses was at least Two Hundred One Thousand Three Hundred Fifty and 93/100 Dollars (\$201,350.93). (Resp. Exhs. 4-14; T pp. 64-72)

9. In or around May 2010, MOD's Board of Directors ("the Board") was informed that its Executive Director had stolen funds from the company and that the company's finances had been mismanaged. As a result, the Board hired a forensic accountant to investigate the company's finances. The forensic accountant discovered, among other things, that various grant funds were not in the accounts in which they should have been, payroll taxes had not been paid, and funds were missing from the payee services account. The Board specifically directed Harrison, as CFO, to locate and place the missing funds back into the appropriate accounts. (T pp. 16-17, 20, 21)

10. On August 24, 2010, the Board terminated Harrison as CFO of MOD. (T pp. 14, 29-30)

11. On or about August 25, 2010, MOD's Board of Directors hired Terry Christopher Thompson ("Thompson"), an accountant, to reconcile MOD's bank statements and provide an accurate and trustworthy assessment of MOD's finances. (T pp. 17, 54)

12. Thomas determined that as of September 2010, MOD still owed its residents Thirty-Five Thousand Five Hundred Seventy-Six and 99/100 (\$35,576.99). (Resp. Exhs. 4-14; T pp. 64-72)

13. All of the monies were eventually paid back to the residents by the time MOD dissolved and ceased operations. (T pp. 20, 23-24, 74-75)

14. On or about October 28, 2010, MOD notified the North Carolina Health Care Personnel Registry ("HCPR") of the allegations that Harrison had misappropriated the funds of numerous residents and had committed fraud against said residents. (Resp. Exh. 20)

15. The 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, misappropriation of resident property and fraud against residents. 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.

16. Upon receipt of the allegations against Harrison, M. Lawrencette McSwain, RN ("McSwain"), Investigator for HCPR, determined that the matter required further investigation.

17. At all times relevant to this matter, McSwain was employed as an Investigator for the HCPR. She is charged with investigating allegations of misappropriation of resident property and fraud against residents, among others, against unlicensed health care personnel, and was assigned to conduct the investigation into the allegations against Harrison.

18. As a part of her investigation, McSwain interviewed at least ten (10) individuals with knowledge of the allegations, including Harrison, and reviewed a copious amount of MOD's documentation regarding these allegations. (Resp. Exhs. 16-18)

19. Based on her investigation, McSwain determined that Harrison misappropriated the property of ten (10) residents, committed fraud against said ten (10) residents, misappropriated MOD's property, and committed fraud against MOD, and, accordingly, substantiated these twenty-two (22) allegations against Harrison. (Resp. Exh. 20)

20. By certified letter dated December 22, 2010, McSwain notified Harrison that said allegations had been substantiated and said findings would be listed on the HCPR. Harrison was further notified of his right to appeal.

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, misappropriated the property of or committed fraud against 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. At all times relevant to this matter, Mecklenburg Open Door was a residential facility, as defined by N.C.G.S. § 122C-3(14)(e), and therefore subject to N.C.G.S. § 131E-256.

5. As a health care personnel working in a residential facility, Harrison is subject to the provisions of N.C.G.S. § 131E-256.

6. Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent. 10A N.C.A.C. 130 .0101(8); 42 CFR § 488.301

7. The preponderance of the admissible evidence in the record shows that Harrison misappropriated the property of ten (10) residents by authorizing and directing that said residents' monies be transferred from the payee services account to MOD's operating account to cover various MOD operating expenses.

8. Respondent's action to substantiate against Harrison the ten (10) allegations of misappropriation of resident property is supported by a preponderance of the evidence.

9. Misappropriation of the property of a health care facility means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a health care facility's property without the facility's consent. 10A N.C.A.C. 130 .0101(9)

10. The preponderance of the admissible evidence in the record does not support the finding that Harrison misappropriated the property of MOD.

11. Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law. 10A N.C.A.C. 130 .0101(5)

12. The preponderance of the admissible evidence in the record does not support the findings that Harrison committed fraud against MOD or the residents of MOD.

13. Harrison failed to meet his burden that Respondent substantially prejudiced his rights and acted erroneously; failed to use proper procedure; or acted arbitrarily or capriciously when Respondent substantiated the allegations that Harrison misappropriated the property of ten (10) residents of Mecklenburg Open Door by transferring the residents' funds from the payee services account to Mecklenburg Open Door's operating account, and Respondent entered said findings on the North Carolina Health Care Personnel Registry.

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

RECOMMENDED DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent's decision to place findings on the North Carolina Health Care Personnel Registry that Petitioner misappropriated the property of ten (10) residents 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). 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).

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 12th day of April, 2013.

The Honorable Selina M. Brooks
Administrative Law Judge

