

STATE OF NORTH CAROLINA		IN THE OFFICE OF
COUNTY OF FORSYTH		ADMINISTRATIVE HEARINGS
		11 DHR 13906
Tarsand Denise Morrison)	DECISION
Petitioner,)	
)	
v.)	
)	
Department of Health and Human Services)	
Division of Health Service Regulation)	
Respondent.)	

THIS MATTER came on for hearing before the undersigned, Randall May, Administrative Law Judge, on March 27, 2011, in High Point, North Carolina.

APPEARANCES

For Petitioner: Cecil C. Summers, Esq.
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Winston-Salem, North Carolina 27106

For Respondent: Josephine N. Tetteh
Assistant Attorney General
North Carolina Department of Justice
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ISSUE

Whether Respondent otherwise substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner abused a resident of Rose Tara Plantation in King, North Carolina, and entered findings of abuse by Petitioner's name in the Health Care Personnel Registry.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-255
N.C. Gen. Stat. § 131E-256
N.C. Gen. Stat. §150B-23
42 CFR § 488.301
10A N.C.A.C. 13O.0101

EXHIBITS

Respondent's Exhibits 1-4, 7, 10-16, 18-21, 23-24 were admitted into the record.

WITNESSES

Tarsand Morrison (Petitioner)
Mary Leyva (supervisor)
Maxine Hamilton (co-worker)
Doreen Rogers (co-worker)
Rebecca Roman (supervisor)
Frances Key (supervisor)
Jeanne Goss (HCPR Nurse Investigator)

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. 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 witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. At all times relevant to this matter Petitioner, Tarsand Morrison, was employed as a supervisor-in-charge and certified nursing assistant at Rose Tara Plantation, ("Rose Tara") in King, North Carolina. Rose Tara is a health care facility and therefore subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. pp. 19-20, 84; Resp't Exs. 1-2)
2. Petitioner's job duties included administering medication and helping maintain self-respect, personal dignity, and personal safety of residents. (T. pp. 20-21; Resp't Ex. 1)
3. Petitioner was trained for her position including resident rights and abuse. (T. pp. 21, 27; Resp't Exs. 3-4)
4. Petitioner was one of three staff assigned to work the second shift on August 27, 2011. The other staff members assigned to the shift on August 27, 2011 included Doreen Rogers ("Rogers") and Maxine Hamilton ("Hamilton"). At all times relevant to this proceeding, Hamilton and Rogers were employed at Rose Tara. (T. pp. 21-23, 34, 45-46, 56-57)
5. At all times relevant to this proceeding, Resident PM has been a resident of Rose Tara. Resident PM's diagnoses include Alzheimer's and dementia. Resident PM uses a walker and wanders. Resident PM was eighty-five years old in August 2011. (T. pp. 48, 54, 61, 73; Resp't Exs. 20, 23)

6. Petitioner found water on Petitioner's medicine cart after Petitioner returned from giving medicine to another resident. Petitioner stated she thought Resident PM had spilled the water. The facility training for when a resident spills water is for the staff member to clean the water up. (T. pp. 24, 46, 52; Resp't Exs. 10-11)

7. Petitioner insisted Resident PM clean the water. Petitioner dragged Resident PM down the hall to make Resident PM clean up the water. Petitioner dragged Resident PM without Resident PM's walker. Hamilton was in the hallway when Petitioner dragged Resident PM down the hallway. Rogers was in the room next door to Resident PM's and came out after she heard noise. Rogers observed Petitioner dragging Resident PM by the arm. (T. pp. 47, 52-55, 57-58; Resp't Exs. 10-13)

8. At the end of the shift, Petitioner was relieved by Rebecca Roman ("Roman"). At all times relevant to this hearing, Roman was the oncoming third shift supervisor at Rose Tara. (T. pp. 24, 71-72)

9. Roman and Petitioner talked at the nursing station about what had happened during the shift. Petitioner described and demonstrated for Roman how she (Petitioner) had dragged Resident PM during the shift and made her clean spilled water. Rogers was present when Petitioner described Petitioner's actions to Roman. Roman reported the information to Frances Key ("Key"). At all times relevant to this proceeding, Key was the Resident Care Coordinator at Rose Tara. (T. pp. 24-25, 59, 72-73, 77-78; Resp't Exs. 13-15)

10. Petitioner and Rogers worked together on August 28, 2011. During the shift, Rogers observed Resident PM come out of her room directly after Petitioner. Resident PM was wet from head to toe and stating that she needed to be changed. Rogers went to help Resident PM change and observed a large amount of water on Resident PM's bed and floor. Resident PM told Rogers the lady who gave her medicine had thrown water on her. (T. pp. 22, 28, 57, 59, 61, 67-68)

11. Mary Leyva, ("Leyva") was informed of the incident between Resident PM and Petitioner. At all times relevant to this proceeding, Leyva was employed with Rose Tara as an Administrator. (T. pp. 8-9; Resp't Ex. 18)

12. After becoming aware of the incident, Leyva obtained written statements from Hamilton, Rogers, and Roman and conducted an investigation. Leyva attempted to interview Petitioner by calling Petitioner several times. (T. pp. 9-10, 31; Resp't Ex. 18)

13. Leyva filled out a 24-hour report and sent the form to the Health Care Personnel Registry ("HCPR"). Leyva also sent the results of her investigation to the Health Care Personnel Registry on the 5-Working Day Report. (T. pp. 10-11; Resp't Exs. 19-20)

14. At all times relevant to this matter, Jeanne Goss ("Goss") was a nurse investigator with the Health Care Personnel Registry. Goss is charged with investigating allegations against health care personnel in the north-central regions of North Carolina. Accordingly, she received and investigated the allegation that Petitioner had abused Resident PM at Rose Tara. (T. pp. 82-84)

15. Goss reviewed the facility documents and conducted her own investigation, which included interviewing people involved with the incident; reviewing Petitioner's personnel file; and reviewing Resident PM's medical documentation. (T. pp. 85-91; Resp't Exs. 21, 23)

16. Following the conclusions of her investigation, Goss notified Petitioner of her decision to substantiate the allegation of abuse. (T. p. 91; Resp't Ex. 24)

17. Abuse is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish". Goss determined Petitioner abused Resident PM. (T. pp. 90-91; Resp't Ex. 23)

18. Respondent submitted a Proposed Decision on May 17, 2012. Petitioner did not submit a Proposed Decision after the hearing or in response to Order for Proposed Decision of June 15, 2012.

Based upon the foregoing Findings of Fact, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C. Gen. Stat. §§ 131E and 150B-23 *et seq.* All necessary parties have **been joined** and have received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of law are Findings of Fact, they should be so considered without regard to the given labels.

2. As a nurse aide and a healthcare worker working in a health care facility, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.

3. "Abuse" is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish". 10A NCAC 13O.0101, 42 CFR §488.301

4. On or about August 27 and August 28, 2011, Tarsand Morrison, a Health Care Personnel, abused a resident (PM) by grabbing the resident's arm and dragging the resident down the hallway, while yelling at the resident to clean up the spilled water, actions all witnessed by other staff; and on the next day, by throwing a pitcher of water on the resident (PM), the resident's bed, and the resident's bedroom floor, resulting in pain and mental anguish to the resident.

5. Respondent did not act erroneously because there is sufficient evidence to support Respondent's conclusion that Petitioner abused Resident PM.

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 by Petitioner's name on the Nurse Aide Registry and the 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 Resources, Division of Service Regulation.

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

In accordance with N.C. Gen. Stat. § 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 10th day of July, 2012.

J. Randall May
Administrative Law Judge