

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DHR01732

Nicole Lynn Hudson, Petitioner,  v.  North Carolina Department of Health and Human Services Division of Health Service Regulation, Respondent.	<b>FINAL DECISION</b>
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THIS MATTER came on for hearing before Beecher R. Gray, Administrative Law Judge, on December 7 and 14, 2012, in Raleigh, North Carolina. Petitioner filed a Proposed Decision on January 28, 2013. Respondent filed exceptions to Petitioner's Proposed Decision on February 12, 2013.

**APPEARANCES**

For Petitioner:	Jared W. Pierce Pierce Law Offices, PLLC 2304 S. Miami Blvd, Suite 123 Durham, North Carolina 27703
For Respondent:	Thomas E. Kelly Josephine N. Tetteh Candace A. Hoffman Associate Attorneys North Carolina Department of Justice P.O. Box 629 Raleigh, NC 27602

**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 neglected a resident of Murdoch Developmental Center in Butner, North Carolina and entered findings of neglect by Petitioner's name in the Health Care Personnel Registry and Nurse Aide Registry.

## **APPLICABLE STATUTES AND RULES**

N.C. Gen. Stat. § 131E-256

N.C. Gen. Stat. §150B-23

## **EXHIBITS**

Petitioner's exhibit 16 was admitted into the record.

Respondent's exhibits 1 – 24 were admitted into the record.

## **WITNESSES**

Nicole Hudson (Petitioner)

Alberta Waldon

Christine Dykeman

Liza Harris

Stacy Szumigala

Maureen Crews

Solomon Weiner (HCPR Investigator)

Daphne Allen

**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 and documentary evidence admitted, the Undersigned makes the following:

## **FINDINGS OF FACT**

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. At all times relevant to this matter Petitioner, Nicole Hudson, was a Youth Program Educational Assistant ("YPA I") at Murdoch Developmental Center ("Murdoch") in Butner, North Carolina. Murdoch is a State-operated health care facility and therefore subject to N.C. Gen. Stat. § 131E-256.

3. Respondent is a North Carolina State Agency charged with investigating allegations of abuse or neglect by health care personnel and, if allegations are verified by Respondent, a written account of the findings is entered into the North Carolina North Carolina Health Care Personnel Registry.
4. On May 17, 2012, Respondent informed Petitioner that an investigation of the events on December 20, 2011, had caused Respondent to conclude that Petitioner had neglected K.O., a resident at Murdoch.
5. Respondent found that Petitioner's discontinued involvement in a two-person therapeutic hold, as well as Petitioner's leaving of the immediate area prior to the resident being calm, constituted neglect. Respondent therefore entered Petitioner's name into the State Health Care Personal Registry.
6. Petitioner gave timely Notice of Appeal from the finding of neglect and entry into the State Health Care Personnel Registry.
7. Petitioner's regular duties as a YPA I included the supervision of Murdoch residents, focusing on classroom assistance.
8. On or about December 20, 2011, Petitioner, along with Alberta Waldon and Liza Harris, was assigned to supervise several Murdoch residents.
9. During the course of the afternoon, one of the residents, K.O., began displaying behavior challenges and was escorted to his bedroom area by Alberta Waldon and Liza Harris.
10. Murdoch resident K.O. stopped participating in the activity lead partly by Petitioner and proceeded towards the boys' bedroom area. Alberta Waldon took supervision of K.O. as she returned from assisting Liza Harris in the boys' bedroom area. Alberta Waldon told K.O. not to enter the boys' bedroom area and to return to the large day room.
11. K.O. is a mentally handicapped individual with a history of aggression and a clinical diagnosis of Oppositional Defiant Disorder ("ODD"). K.O.'s Behavioral Intervention Plan ("BIP"), a part of her care plan, contains Psychological/Behavioral Recommendations that one should avoid giving K.O. commands or negative directives of what not to do, such as phrases beginning with the words "no," "don't," or "stop," as it likely will foster an oppositional response. Alberta Waldon told K.O., "you cannot be on the boys' side; you can't be here."
12. Following the commands from Alberta Waldon, K.O. became aggressive, both physically and verbally, towards Alberta Waldon. Alberta Waldon called Petitioner for assistance with K.O. Alberta Waldon testified that she was unfamiliar with K.O.'s file and that she never had seen the BIP document listing negative or command "triggers" for K.O.'s aggressive behavior. Alberta Waldon became more aggressive and authoritative with K.O. as this event started and progressed.

13. As Petitioner approached in order to render assistance, Petitioner observed Alberta Waldon attempting to secure a one-person Therapeutic Hold (hereinafter “T-hold”) on K.O. Alberta Waldon was standing with K.O. and holding K.O.’s wrists while K.O. fought to be released from her grasp.
14. As the struggle continued, Petitioner observed that Alberta Waldon focused on subduing K.O. by attempting a one-person T-hold, despite Petitioner’s presence and involvement, as well as the need for a secure two-person T-hold. Alberta Waldon initially testified that she initiated a T-hold by going around behind K.O. after Petitioner came into the room. Upon further questioning, she then testified that she had K.O. in a secure T-hold before Petitioner came into the room.
15. Alberta Waldon called for Liza Harris to come from the boys’ bedroom area and assist as well. Liza Harris arrived but did not assist physically.
16. K.O. continued struggling and began to drop to the floor. Petitioner, wishing to avoid a potentially injurious ground-based struggle, believed that it would be safer for everyone involved and more therapeutic for the resident to discontinue any ground-based efforts.
17. Given the lack of communication between Alberta Waldon and Petitioner, Alberta Waldon’s insistence on a one-person T-hold, and the perceived lack of objectivity to the situation, Petitioner believed the safest course of action to be to discontinue all attempts at a T-hold while K.O. was on the floor.
18. Petitioner stated out loud that she was going to let go of K.O. and asked Alberta Waldon if she was in a position to let go. Alberta Waldon testified that she heard Petitioner say this but thought Petitioner was talking to K.O. Petitioner waited a moment and release K.O. simultaneously with Alberta Waldon. Liza Harris, also in the room documenting the T-hold, heard Petitioner speak to Alberta Waldon before they released K.O. but could not distinguish exactly what Petitioner said.
19. Immediately after K.O. was released, K.O. remained on the ground and ceased all physical aggression and target behaviors.
20. K.O. neither was interviewed nor spoken to regarding the incident because K.O.’s actions were considered target behaviors, and it was felt that an interview could reinforce the inappropriate behavior. Additionally, K.O. suffered no broken skin, no injuries, and did not require any medical treatment.

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 under Chapters 131E and 150B of the North Carolina General Statutes.
2. All parties correctly have been designated, and there is no question as to misjoinder or nonjoinder.
3. As a Youth Program Educational Assistant I working in a health care facility in North Carolina, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. § 131E-256.
4. Neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.
5. There is insufficient evidence in this case to find that Petitioner failed to provide the care necessary to avoid physical harm.
6. The greater weight of the evidence produced in this contested case hearing does not support the decision made by Respondent to substantiate neglect of Murdoch Developmental Center resident K.O. by Petitioner on December 20, 2011.

## FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby determines that Respondent's findings of substantiation against Petitioner for neglect of Murdoch Developmental Center resident K.O. are not supported by sufficient evidence and are REVERSED.

## NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of

Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 11th day of June, 2013.

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Beecher R. Gray  
Administrative Law Judge