

STATE OF NORTH CAROLINA
COUNTY OF PERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR05355

Shannon Wallace, Petitioner, v. North Carolina Department of Health and Human Services, Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before the undersigned, Beecher Gray, Administrative Law Judge, on January 14, 2013, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Shannon Wallace, appearing pro se
1211 Meadow Woods Ct.
Roxboro, NC 27573

For Respondent: Josephine N. Tetteh
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether Respondent otherwise substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated the allegations of fraud and neglect and entered the findings of fraud and neglect 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 ("R. exs.") 1-16 were admitted into the record.

WITNESSES

Shannon Wallace (Petitioner)
Andy Williams (caretaker)
AC (resident)
Ann Lucas (nurse)
Shelbia Battle (supervisor)
Cynthia Haynes (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. The parties received notice of hearing by certified mail more than fifteen (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 Shannon Wallace was a health care personnel at Bayada Home Health Care ("Bayada") in Yanceyville, North Carolina. Bayada is a health care facility and therefore is subject to N.C. Gen. Stats. §131E-255 and §131E-256. (Transcript ("T.") pp. 10, 61)
3. Petitioner was trained on client rights, including neglect and fraud. Petitioner received client-specific training. (T. pp. 10-12; R. Ex. 2)
4. Petitioner was assigned to work the three (3) p.m. to eleven (11) p.m. shift on March 28, 2012. Petitioner was responsible for Client AC. As Client AC's provider, Petitioner was supposed to perform various tasks for Client AC, including assisting Client AC after class and ensuring his safe return to his dorm room after class. (T. pp. 12-13, 41-42, 51; R. Exs. 6 & 11)

5. At all times relevant to this proceeding, Client AC has been a client of Bayada in Yanceyville, North Carolina. Client AC uses a motorized wheelchair and requires assistance. Client AC is alert and oriented. (T. p. 69; R. Ex. 11)
6. During the afternoon of March 28, 2012, Ann Lucas, a registered nurse employed in a supervisory role by Bayada, went to the campus of the University of North Carolina at Chapel Hill to do a supervisory visit of Petitioner and Client AC. At all times relevant to this proceeding, Ann Lucas was an employee of Bayada. (T. p. 33; R. Exs. 4 & 5)
7. Ann Lucas arrived at Client AC's campus room at three (3) p.m. and saw Andy Williams (hereinafter "Williams"). At all times relevant to this proceeding, Williams was the overnight caregiver for Client AC. Ann Lucas and Williams talked for approximately half an hour to an hour while waiting for Petitioner and Client AC to return from Client AC's class. Client AC had a scheduled English class from three-thirty (3:30) p.m. to four forty-five (4:45) p.m. on March 28, 2012. (T. pp. 34, 43; R. Exs. 4 & 7)
8. Client AC returned to his dorm room unaccompanied after his class was cancelled. Petitioner was supposed to have escorted Client AC back from his class to his dorm room. Ann Lucas asked Client AC where Petitioner was, and Client AC indicated that Petitioner was sitting outside the dorm at a picnic table. (T. pp. 36, 39, 43-44; R. Ex. 5)
9. Ann Lucas found Petitioner outside at the picnic table. Petitioner explained to Ann Lucas that she was working on her (Petitioner's) personal homework for a course she was taking. Petitioner also explained to Ann Lucas that she always changed into her work clothes when she goes to take care of Client AC. At the time Ann Lucas saw her, Petitioner was dressed in tee shirt, shorts, and flip-flops. (T. pp. 37-39, 43; R. Exs. 5 & 8)
10. After leaving Petitioner, Ann Lucas called Shelbia Battle, a registered nurse who also conducted supervisory visits. Ann Lucas informed Shelbia Battle that Petitioner had been late, and Client AC had returned to his dorm room unaccompanied. At all times relevant to this proceeding, Shelbia Battle was the Clinical Manager/Director at Bayada. (T. pp. 49-50; R. Ex. 7)
11. Shelbia Battle noticed that the time reported on Petitioner's time sheet was different from the time Ann Lucas had reported seeing Petitioner on March 28, 2012. When queried about her timesheet, Petitioner explained to Shelbia Battle that she got to work fifteen (15) minutes late. Petitioner's timesheet did not show that she was late. Creditable evidence from Andy Williams, assigned by Ebenezer Children's Home to provide direct care to Client AC, demonstrated that he had signed Petitioner's time sheets in blank most of the time and that she usually was late to her assignment with AC by 45-60 minutes. (T. pp. 54-55; R. Ex. 3)
12. At all times relevant to this matter, Cynthia Haynes was an investigator with the Health Care Personnel Registry ("HCPR"). Nurse Investigator Haynes has been a registered nurse for thirty (30) years. As an HCPR investigator, Nurse Investigator Haynes is

charged with investigating allegations against unlicensed health care personnel. Accordingly, she received and investigated the allegation that Petitioner had neglected and committed fraud against Client AC. (T pp. 58-60; R. Ex. 9)

13. Nurse Investigator Haynes reviewed the facility documents and conducted her own investigation, which included interviewing people involved with the incident; reviewing Petitioner's time sheet; reviewing Client AC's medical documentation; and obtaining a map of the campus and Client AC's class schedule. (T. pp. 61-62, 86; R. Exs. 6, 14, & 15)
14. Based on her review of all the information, Nurse Investigator Haynes concluded that, contrary to facility policy and the precautions in place at the time to ensure Client AC's safety, Petitioner did not provide the required level of supervision for Client AC and committed fraud by reporting the wrong time on her time sheet. Nurse Investigator Haynes also documented her conclusions in an investigation conclusion report. (T. pp. 66-70; R. Ex. 15)
15. Following the conclusions of her investigation, Nurse Investigator Haynes notified Petitioner of her decision to substantiate the allegations of neglect and fraud. (T. pp. 70-71; R. Ex. 16)
16. "Neglect" is the "failure to provide goods and services necessary to prevent physical harm, mental anguish and mental illness." (T. p. 66; R. Ex. 15)
17. "Fraud" is the "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." (T. p. 70; R. Ex. 15)

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 health care professional 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.
4. On or about March 28, 2012, Shannon Wallace, a Health Care Personnel, neglected a resident (AC) by failing to ensure the resident's safety while the resident was in his classroom and then later as the resident returned to his dormitory room alone.

5. Respondent did not act erroneously because there is sufficient evidence to support Respondent's conclusion that Petitioner neglected Client AC.
6. On or about March 28, 2012, Shannon Wallace, a Health Care Personnel, committed fraud against resident (AC) and Bayada Home Health Care by falsifying her time worked with AC on her timesheet for March 28, 2012.
7. Respondent did not act erroneously because there is sufficient evidence to support Respondent's conclusion that Petitioner committed fraud.

FINAL 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 neglect and a finding of fraud by Petitioner's name on the Health Care Personnel Registry is supported by a preponderance of the evidence and is AFFIRMED.

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 26th day of June, 2013.

Beecher R. Gray
Administrative Law Judge

