

STATE OF NORTH CAROLINA
COUNTY OF BURKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR05745

BRENDA TRIPLETT ANDREWS, Petitioner, v. DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH SERVICE REGULATION, Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before Beecher R. Gray, Administrative Law Judge, on October 4, 2012, in Morganton, North Carolina.

APPEARANCES

Petitioner: Brenda Triplett Andrews, appearing *pro se*
5994 Branstrom Orchard St.
Morganton, North Carolina 28655

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 allegation that Petitioner abused and neglected a resident of Handi-Care, Inc. in Drexel, North Carolina and entered findings of abuse 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. 130.0101

EXHIBITS

Respondent's exhibits ("R. Exs.") 1-10 and 12-16 were admitted into the record.

WITNESSES

Brenda Triplett Andrews (Petitioner)
Alisa Guion (former co-worker)
Gwen Hood (daughter of Resident DS)
Debbie Little (supervisor)
Barbara Powell (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.

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, Brenda Triplett Andrews, was a nurse aide II at Handi-Care, Inc. ("Handi-Care") in Drexel, North Carolina. Handi-Care is a residential care facility and therefore subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. pp. 6-7, 35; R. Ex. 1)
3. Petitioner was trained on facility policies, including abuse, neglect, and transportation of clients. (T. pp. 8-10; R. Exs. 2, 6)
4. Petitioner was assigned to take care of Resident DS for specified hours. At all times relevant to this proceeding, Resident DS has been a client of Handi-Care. (T. p. 10 ; R. Ex. 3)
5. On or about March 29, 2012, Petitioner was taking care of Resident DS. At that time, Petitioner, according to her uncontested testimony, handwrote three signs for Resident DS at the Resident's request. The signs read as follows: "I don't know;" "I don't care;" and "I don't give a damn;" again according to the express request of the Resident. Petitioner highlighted the signs and posted them above Resident DS' bed. (T. pp. 10-11; R. Ex. 4)

6. Resident DS's daughter, Gwen Hood, saw the signs when she visited Resident DS. When asked by Gwen Hood, Petitioner readily admitted to her and Alisa Guion that Petitioner had written the signs at the request of Resident DS. At all times relevant to this proceeding, Alisa Guion was Petitioner's co-worker. (T. pp. 17-18, 25; R. Exs. 7-8)
7. Resident DS has dementia, the depth of which Gwen Hood testified just was being realized. When Gwen Hood visited her mother and saw the signs, her mother was not aware of the signs but became upset when they were pointed out to her by Gwen Hood, calling them cruel and inappropriate. Gwen Hood testified that her mom generally mirrored her own emotional state at any given moment.
8. On or about March 30, 2012, Petitioner took Resident DS out of the facility without permission. Petitioner did not notify Gwen Hood or the facility that she had taken Resident DS out to eat. Petitioner was aware that she was not supposed to take Resident DS out of the facility without permission or notification. (T. pp. 12-13)
9. At all times relevant to this proceeding, Debbie Little ("Nurse Manager Little") was the supervising nurse manager at Handi-Care. Little was notified about the events of March 29-30, 2012. Nurse Manager Little interviewed Petitioner. During the interview, Petitioner admitted to writing the signs at Resident DS' request to make her happy and taking Resident DS out of the facility without permission. Nurse Manager Little notified the Health Care Personnel Registry. (T. pp. 14, 30; R. Exs. 5, 9-10, 12)
10. At all times relevant to this matter, Barbara Powell ("Nurse Investigator Powell") was an investigator with the Health Care Personnel Registry. Nurse Investigator Powell is charged with investigating allegations against health care personnel in the western part of North Carolina. Accordingly, she received and investigated the allegations that Petitioner had abused and neglected Resident DS at Handi-Care. (R. Exs. 9-10, 15)
11. Nurse Investigator Powell reviewed the facility documents and conducted her own investigation, which included interviewing people involved with the incidents. (T. pp. 14-15, 35-36; R. Ex. 15)
12. Based on Petitioner's admissions about writing the signs at Resident DS' request, and taking Resident DS out of the facility, Nurse Investigator Powell substantiated the allegations of abuse and neglect against Petitioner. (T. pp. 36-37; R. Exs. 6, 15)
13. Following the conclusions of her investigation, Nurse Investigator Powell notified Petitioner of her decision to substantiate the allegations of abuse and neglect. (T. pp. 37-38; R. Ex. 16).
14. Abuse is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish." (T. p. 36; R. Ex. 15)

15. Neglect is the “failure to provide goods and services necessary to prevent physical harm, mental anguish and mental illness.” (T. p. 37; 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 Nurse Aide II working in a residential facility, Petitioner is a nurse aide and a health care personnel and therefore is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.
4. On or about March 30, 2012, Brenda Triplett Andrews, a Health Care Personnel, neglected a resident (DS) by failing to follow facility policy when she took the resident out without permission.
5. Respondent did not act erroneously because there is sufficient evidence to support Respondent’s conclusion that Petitioner neglected Resident DS.
6. Petitioner displayed poor judgment in posting the signs above Resident DS’ bed, even upon request by Resident DS. Under the circumstances of this single occurrence, there is insufficient evidence to support Respondent’s conclusion that Petitioner abused Resident DS by posting the offending signs.

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 by Petitioner’s name on the Nurse Aide Registry and the Health Care Personnel Registry is supported by the evidence and is **AFFIRMED**. Respondent’s decision to place a finding of abuse by Petitioner’s name on the Nurse Aide Registry and the Health Care Personnel Registry is not supported by the evidence and is **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 10th day of May, 2013.

Beecher R. Gray
Administrative Law Judge