

STATE OF NORTH CAROLINA
COUNTY OF LENOIR

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR09352

<p>EDDIE CANNON, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH SERVICE REGULATION, HEALTH CARE PERSONNEL REGISTRY, Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER came on for hearing before Beecher Gray, Administrative Law Judge, on February 21, 2013, in New Bern, North Carolina. Assistant Attorney General Josephine N. Tetteh submitted a Proposed Decision on April 01, 2013.

APPEARANCES

For Petitioner: Eddie Cannon, appearing pro se
2805 Murray Hill Rd.,
Kinston, North Carolina 28504

For Respondent: Josephine N. Tetteh
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 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 of neglect of a resident of Caswell Center by Petitioner and entered a finding of 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

WITNESSES

Eddie Cannon (Petitioner)
Peggy Brittain (Facility Advocate)
Penny Owen-Keiper (Health Care Personnel Registry Nurse Investigator)

EXHIBITS

Respondent's exhibits ("R. Exs.") 1-8 and 10-15 were admitted into the record.

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 documents admitted, 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 Eddie Cannon was a health care personnel at Caswell Center ("Caswell") in Kinston, North Carolina. Caswell is a health care facility and therefore subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. p. 6)
3. Petitioner was trained on client rights, including neglect. Petitioner received client-specific training for Resident JA. (T. pp. 7-8; R. Exs. 1-2)

4. Petitioner was working as a caregiver with Client JA on November 22, 2011. At all times relevant to this proceeding, Client JA has been a client of Caswell in Kinston, North Carolina. (T. pp. 8-9; R. Exs. 4, 10-12)
5. During Petitioner's shift on November 22, 2011, Resident JA became aggressive toward Petitioner after JA began to throw items, including his plate of food. Petitioner walked Client JA to Client JA's room. (T. pp. 9-10; R. Ex. 4)
6. Petitioner put Client JA in a NCI hold in order to walk JA back to JA's room. Petitioner placed JA on Client JA's bed in a prone position. Client JA's care plan specifies that Client JA is to be kept in a standing position when placed in a hold. At the time of the incident, Petitioner was aware that he was not supposed to place Client JA in a prone position during a hold. (T. pp. 9-10, 14, 21; R. Exs. 4, 10-12)
7. After putting Client JA in a prone position, Petitioner left the room to cool off, after his struggle with JA. Petitioner returned to the room a few minutes later to find that JA had vomited on his bed and was unresponsive. Petitioner called his supervisor and a RN for assistance. It was discovered that JA had aspirated material into his lungs, producing asphyxiation and death. (T. p. 10; R. Exs. 3-4)
8. Caswell Center conducted an investigation into the cause of Client JA's death. The investigation was led by Patient Advocate Peggy Brittain ("Advocate Brittain"). At all times relevant to this proceeding, Advocate Brittain was an advocate at Caswell. Advocate Brittain obtained statements from staff members, including Petitioner. Based on her investigation, Advocate Brittain substantiated the allegation of neglect against Petitioner. (T. pp. 12-13, 17-18; R. Exs. 3, 7)
9. At all times relevant to this matter, Penny Owen-Keiper ("Nurse Investigator Owen-Keiper") was an investigator with the Health Care Personnel Registry. Nurse Investigator Owen-Keiper received the 24-hour and 5-Day reports from Caswell and conducted an investigation. As part of her investigation, Nurse Investigator Owen-Keiper interviewed various staff members, including Petitioner. (T. pp. 26-28; R. Ex. 13)
10. Based on her review of all the information, including Petitioner's admission that he had laid Client JA on the bed instead of in an upright position, Nurse Investigator Owen-Keiper concluded that Petitioner had failed to follow Client JA's behavior plan. Nurse Investigator Owen-Keiper also documented her conclusions in an investigation conclusion report. (T. pp. 28-29; R. Exs. 4, 14)
11. Following the conclusions of her investigation, Nurse Investigator Owen-Keiper notified Petitioner of her decision to substantiate the allegation of neglect. (T. p. 29; R. Ex. 15)
12. "Neglect" is defined as "a failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness." 10A NCAC 130.0101, 42 CFR §488.30

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 November 22, 2011, Eddie Cannon, a Health Care Personnel, neglected client JA by failing to follow JA's behavior plan and habilitation plan, resulting in physical harm to JA.
5. Respondent did not act erroneously because there is sufficient evidence to support Respondent's conclusion that Petitioner neglected Client JA.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's decision to place a finding of neglect by Petitioner's name on the Health Care Personnel Registry is supported by 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 21 day of July, 2013.

Beecher R. Gray
Administrative Law Judge