

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 09953

FINAL DECISION

THIS MATTER came on for hearing before the Undersigned, Selina M. Brooks, Administrative Law Judge, on July 25, 2013, in High Point, North Carolina.

APPEARANCES

For Petitioner: Gina Lynne Gilmore Lipscomb
Pro se
 2310 Newton Street
 Greensboro, NC 27406

For Respondent: Thomas E. Kelly
Assistant Attorney General
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 abused a resident of Greensboro Treatment Center in Greensboro, NC 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. 130 .0101

EXHIBITS

Respondent's Exhibits 5, 7, and 9-13 were admitted into the record.

WITNESSES

Gina Lynne Gilmore Lipscomb (Petitioner)
Marcia Smith-Fischer (Greensboro Treatment Center Program Director)
Jenny Baxter (HCPR 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.

The Proposed Decision was submitted by Respondent. The Undersigned has reviewed the Proposed Decision, made corrections and edits, and where she is in agreement she has incorporated it into the following:

FINDINGS OF FACT

1. At all times relevant to this matter, Gina Lynne Gilmore Lipscomb ("Petitioner") was employed as a Counselor at Greensboro Treatment Center ("GTC") in Greensboro, North Carolina. GTC is a mid-sized outpatient treatment clinic that treats people who have a chemical dependency on opioids with methadone. (Tr. pp. 10 & 44; Pet. Ex. 1; R. Ex. 9) Petitioner is a certified substance abuse counselor and has taken courses in substance abuse counseling. (Tr. p. 45)

2. Petitioner completed all required training related to her job responsibilities at GTC, including the North Carolina Intervention Training Part A. (Tr. pp. 30-31; R. Ex. 10) This training covers how to nonviolently deal with a client who is enraged and to prevent the situation from escalating without restraining a client. Part B training covers restraint but it is not given to GTC employees because restraint is against the policy of GTC. (Tr. p. 35)

3. At the times relevant to this proceeding, H.H. was a client of the GTC, receiving daily outpatient treatment. (Resp. Ex. 11)

4. Marcia Warren Smith-Fischer is employed as the Program Director at GTC. (Tr. pp. 9-10)

5. On February 6, 2012, Ms. Smith-Fischer was in the pharmacy when she heard a noise. She went out of the pharmacy and saw H.H. at the pharmacy window with another client, B.B. B.B. was holding H.H. and Petitioner was trying to reach H.H. Ms. Smith-Fischer witnessed Petitioner “yelling...screaming...grabbing...hitting [B.B.], trying to get to [H.H.].” (Tr. p. 15) She stepped between Petitioner and the clients, and backed Petitioner up about five feet while Petitioner continued yelling at Ms. Smith-Fischer and trying to get around her. Petitioner physically moved Ms. Smith-Fischer out of the way and tried to reach the client again. Petitioner knocked over the desk and attempted to throw the telephone at the client. (Tr. pp. 15-16)

6. Petitioner testified to “yelling” at H.H. and that after H.H. hit her then Petitioner “hit her on the back.” (Tr. pp. 49-50; Resp. Ex. 5)

7. Ms. Smith-Fischer brought Petitioner back into her office, made sure that H.H. had left the premises and immediately terminated Petitioner’s employment. (Tr. pp. 16-17; Resp. Exs. 5 & 7) The termination was based on Petitioner’s behavior toward H.H. and her failure to follow facility policy. (Tr. p. 17; Resp. Ex. 5)

8. Ms. Smith-Fischer notified the Health Care Personnel Registry (“HCPR”) by filing an IRIS report. (Tr. pp. 18-19; Resp. Ex. 5)

9. The HCPR investigates allegations of abuse, neglect, exploitation, and misappropriation of resident property involving health care personnel that are employed by health care facilities. If an allegation is substantiated, the employee will be listed in the HCPR. (Tr. pp. 23-24)

10. At all times relevant to this matter, Jennifer Baxter worked as an investigator for the HCPR. Ms. Baxter reviewed the facility reports and independently conducted her own investigation. As part of her investigation Ms. Baxter made an on-site visit, reviewed documents, and conducted interviews with witnesses. (Tr. pp. 25-27, 34-36; Resp. Exs. 5, 7 & 8)

11. Ms. Baxter interviewed Petitioner after which she completed an Interview form. Petitioner edited the Interview Narrative section and then signed the form. In her written answers, Petitioner conceded that she “may have yelled” and that she did not hit H.H. “with intention to hurt her, but trying to get back there was contact I am sure.” (Resp. Ex. 9)

12. Ms. Baxter interviewed Ms. Smith-Fischer and two other counselors who responded to the incident. (Tr. pp. 28-29) All three witnessed the incident and gave statements that were consistent with each other. (Resp. Ex. 12)

13. Based upon the findings of her investigation, Ms. Baxter substantiated the allegation of abuse against Petitioner and notified Petitioner of her conclusion. (Tr. pp. 32-33; Resp. Exs. 12 & 13)

14. At the contested case hearing, Petitioner testified that “I was trying to protect myself. I did not physically go after her or try to hurt her. I was just trying to protect myself.” (Tr. p. 43) She denied her co-workers saw the incident and stated that it was an “isolated” incident. (Tr. pp. 43 & 53)

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 pursuant to chapters 131E and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. Greensboro Treatment Center is a health care facility as defined by N.C. Gen. Stat. § 131E-256; therefore, its employees are subject to the jurisdiction of the Health Care Personnel Registry.

4. As a counselor working in an outpatient methadone clinic, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.

5. “Abuse” is defined as “the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.” 10A N.C.A.C. 130 .0101, 42 C.F.R. § 488.301.

6. On February 6, 2013, Gina Lynne Gilmore Lipscomb, a counselor, abused Resident H.H. by becoming aggressive outside the clinic pharmacy, yelling at H.H., throwing a telephone at H.H., and hitting H.H. on the back.

7. Respondent's decision to substantiate this allegation of abuse against Petitioner is supported by a preponderance of the evidence. Therefore, Respondent did not substantially prejudice Petitioner's rights, act erroneously, arbitrarily or capriciously by placing a substantiated finding of abuse against Petitioner's name on the Health Care Personnel Registry.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

The Undersigned hereby determines that Respondent's decision to place a finding of abuse by Petitioner's name on the Health Care Personnel Registry should be **UPHELD**.

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 13th day of September, 2013.

Selina M. Brooks
Administrative Law Judge