

STATE OF NORTH CAROLINA  
COUNTY OF

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DHR 06127

<p>Martha Greene Petitioner,</p> <p>v.</p> <p>Department Of Health And Human Services, Division Of Health Service Regulation Respondent.</p>	<p><b>FINAL DECISION</b></p>
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This matter coming on to be heard and being heard December 31, 2015, and appearing with the Petitioner is attorney Mr. Daniel C. Nash, and the Respondent is represented by Assistant Attorney General Ms. Candace A. Hoffman.

Based upon 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 these 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 by a preponderance of the evidence:

1. Petitioner is a citizen and resident of North Carolina. She was employed as a qualified professional working for Mt. Gilead Children's Home Monarch, and at all relevant times herein subject to N.C. Gen. Stat. § 131E-256.
2. Respondent is an agency of the State of North Carolina, responsible for maintaining and overseeing the Health Care Personnel Registry, and administering the laws related thereto.
3. Petitioner completed all required training related to her job responsibilities. Her training included instruction on Competency for Prevention of Abuse, Neglect, and Exploitation for those Receiving Services.
4. Petitioner knew and understood that employees were required to report all information immediately to their supervisor if they witness or hear about an incident of abuse, neglect, or exploitation. (T. pp. 11-14, 61; Resp. Exs. 1, 11)

5. Ms. Jennifer Smith is the Program Director at Mt. Gilead, and was Petitioner's supervisor.

6. Ms. Smith testified that employees do not have discretion in deciding which allegations should be reported to the supervisors; all allegations must be reported and investigations are to be started immediately. (T. pp. 14-15; Resp. Ex. 8)

7. Petitioner acknowledged that she does not have any discretion on which allegations should be reported to the Health Care Personnel Registry.

8. Resident T.V. is a 15 year old male who resides at Mt. Gilead.

9. T.V. has Moderate MR, ADHD, and Autism Spectrum Disorder. He is verbal and capable of expressing his wants and needs. He can complete his activities of daily living with independence and some verbal prompting. (Resp. Ex. 4)

10. On March 17, 2015, T.V. was the subject of an involuntary commitment proceeding in Stanly County, North Carolina.

11. After the involuntary commitment proceeding, T.V.'s grandmother became upset.

12. That same day, Petitioner was a participant on a conference call concerning T.V. with Ms. Smith, Christy Shaver, Tara Sellers, and Brian Stone.

13. Ms. Christy Shaver was the Regional Director for Mt. Gilead Monarch at all relevant times herein.

14. Ms. Tara Sellers served as the Home Manager for Mt. Gilead Monarch at all relevant times herein.

15. Mr. Brian Stone was the Operations Director for Mt. Gilead Monarch at all relevant times herein.

16. T.V. had been having behavioral issues and the group discussed different services he could receive if he was returned to their care. (T. pp. 29-30, 70)

17. During this conference call, Petitioner informed her superiors that T.V.'s family was upset, and that T.V.'s grandmother would be contacting the Department of Social Services.

18. Petitioner did not know the specifics of why T.V.'s grandmother was going to call the Department of Social Services. (T. p.69)

19. When asked by the undersigned if any action was taken by the individuals on the conference call after being informed that T.V.'s grandmother would be contacting social services, Ms. Smith replied, "No, because there was no actual allegation." (T. p.31)

20. No evidence was presented by Respondent that Petitioner had any additional information or insight to the allegation T.V.'s grandmother intended to make.

21. No evidence was presented by Respondent that Petitioner knew what the grandmother would conjure up as the basis for the complaint to the Department of Social Services.

22. None of Petitioner's superiors took any action to follow up on her statement that T.V.'s grandmother would be contacting social services.

23. Petitioner was not asked any questions about her statement that T.V.'s grandmother would be contacting social services. (T. p.31)

24. Petitioner was not given any instruction from her superiors about her statement that T.V.'s grandmother would be contacting social services.

25. Petitioner notified her superiors all of the information she had about the grandmother's phone call to social services.

26. Petitioner had no information to report about an alleged incident of abuse or neglect to T.V. based upon the grandmother's outburst at the Stanly County Courthouse.

27. T.V. never told Petitioner that he had been assaulted by a staff member.

28. T.V. did not show signs of abuse or neglect.

29. The Montgomery County Department of Social Services received a complaint from T.V.'s grandmother on March 18, 2015, and they began their investigation.

30. The complaint concerned an employee other than Petitioner who had allegedly slapped T.V. approximately one month prior to the complaint. (T. p.71; Resp. Exs. 3, 4)

31. Social Worker Bobbi McLaughlin spoke with Petitioner about the complaint on Sunday, March 20, 2015. It was at this time that Petitioner first became aware of the details of the allegations by T.V.'s grandmother. (T. p.72-73)

32. On Wednesday, March 23, 2015, Petitioner informed Ms. Smith of the information she had received from the Department of Social Services. Petitioner believed Ms. Smith was on vacation when she received information from Ms. McLaughlin earlier that week.

33. Perhaps coincidentally, T.V.'s grandmother had previously complained about an incident that allegedly occurred in February, 2015, roughly the same time frame as the incident Ms. McLaughlin was investigating. (T. pp. 25-26, 66)

34. Petitioner reported this allegation, and her superiors determined that this purported incident could not be investigated because the allegation was vague and lacked sufficient specificity.

35. On April 22, 2015, Petitioner was terminated from her employment at Mt. Gilead.

36. The HCPR investigates allegations of abuse, neglect and other allegations against health care personnel in health care facilities.

37. Upon substantiation of allegations, an employee will be listed on the Registry.

38. The HCPR covers most licensed facilities in North Carolina that provide patient care. Accordingly, health care personnel at Mt. Gilead are covered by the Registry. (T. pp. 41-42)

39. At all times relevant to this incident, Sherri Clark was employed as an investigator for the HCPR.

40. Ms. Clark investigates allegations against health care personnel in the south central region of North Carolina. Accordingly, Mt. Gilead was in her region and she received and investigated the complaint that Petitioner had neglected Resident TV. (T. pp. 40-41)

41. Clark made the determination that, “[o]n or about March 18, 2015, Martha Greene, a Health Care Personnel, neglected a resident (TV) by failing to report or follow up on an allegation of abuse of resident (TV) by another staff member resulting in potential risk for further abuse.” (T. pp. 50-51; Resp. Ex. 12)

42. Petitioner was notified by letter that a finding of neglect would be listed against her name in the Health Care Personnel Registry. Petitioner was further notified of her right to appeal. (T. p. 51; Resp. Ex. 13)

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. As a Qualified Professional working for a mental health group home, Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-256.

3. Mt. Gilead Children’s Home Monarch is a health care facility as defined in N.C. Gen. Stat. § 131E-255(c) and N.C. Gen. Stat. § 131E-256(b).

4. “Neglect” means a failure to provide goods or services necessary to avoid physical harm, mental anguish or mental illness. 10A N.C.A.C. 130.0101(10); 42 CFR § 488.301.

5. There is no evidence that Petitioner neglected resident T.V. on March 18, 2015. To the contrary, the evidence from both Petitioner and Respondent proves by a preponderance of the evidence that Petitioner, on March 17, 2015, informed her superiors of the information she had regarding a potential complaint to social services by T.V.’s grandmother. Petitioner cannot have

knowledge of facts that she had not been made aware, and cannot have knowledge of those purported facts imputed to her.

6. Further, Petitioner's superiors failed to act on this information when supplied by Petitioner. For whatever reason, legitimate or otherwise, upon being informed by the Petitioner that a resident's relative was displeased to the point of contacting social services, Mt. Gilead's management took no action.

7. Respondent's decision to substantiate this allegation of neglect against the Petitioner is not supported by a preponderance of the evidence.

8. Respondent has substantially prejudiced Petitioner's rights by placing a finding of neglect against Petitioner's name of the Health Care Personnel Registry.

9. Respondent has acted erroneously by placing a finding of neglect against Petitioner's name on the Health Care Personnel Registry.

Based upon the foregoing findings of fact and conclusions of law, giving due regard to the demonstrated knowledge and expertise of the agency, the finding of neglect against the Petitioner shall be removed from the Health Care Personnel Registry.

### **NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 1st day of June, 2016.

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Philip E Berger Jr.  
Administrative Law Judge