

STATE OF NORTH CAROLINA  
COUNTY OF CRAVEN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DHR 00140

Nicole Lovick, Petitioner,  v.  N.C. Department of Health and Human Services, Division of Health Service Regulation, Respondent.	<b>FINAL DECISION</b>
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THIS MATTER was heard before Linda F. Nelson, Administrative Law Judge, on May 18, 2022, in New Bern, North Carolina.

**PROTECTIVE ORDER**

Any information related to residents mentioned in this proceeding, including their names, shall be considered confidential and is used for the sole purpose of findings in this proceeding alone and is not properly disclosed in any other setting or hearing.

**APPEARANCES**

For Petitioner:       Ralph T. Bryant, Jr.  
Ralph Bryant Law Firm  
P.O. Box 723  
Newport, North Carolina 28570

For Respondent:       Farrah R. Raja  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602

**APPLICABLE STATUTES AND RULES**

N.C. Gen. Stat. § 131E-136(2), § 131E-256, §150B-1, *et seq.* and 10A N.C.A.C. 130.0101(5)

**EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner had no exhibits admitted into evidence. Respondent's Exhibits A-S were admitted into evidence.

## WITNESSES

For Petitioner: Linn Henson  
Kimberly Bessey

For Respondent: Nicole Lovick  
Susan Thomas  
Kimberly Bessey  
Linn Henson

## ISSUE

Whether Respondent deprived Petitioner of property or otherwise substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule, when it substantiated the allegation that, on or about multiple dates between November 2, 2021 and November 10, 2021, Petitioner committed fraud against Home Life Care, a facility located in New Bern, North Carolina.

## FINDINGS OF FACT

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, 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 the evidence presented 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 witnesses, any interest, 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.

### Witnesses and Credibility

1. Respondent, the Division of Health Service Regulation, is a division of the North Carolina Department of Health and Human Services and an administrative agency of North Carolina state government operating under the laws of North Carolina. Respondent is statutorily required to maintain the health care personnel registry ("Registry"), which contains the names of all health care personnel working in health care facilities in North Carolina against whom Respondent has substantiated neglect, abuse, misappropriation, diversion of drugs, or fraud. N.C. Gen. Stat. § 131E-256(a)(1).

2. Petitioner, at all times relevant to this matter, was employed as an in-home aide, also known as a personal care aide, at Home Life Care (the "Facility"), a health care facility subject to the provisions of N.C. Gen. Stat. § 131E-256. N.C. Gen. Stat. § 131E-256(b)(3). Petitioner made assertions during her testimony, which she later contradicted or failed to defend when questioned

on the plausibility of her assertions or following conflicting testimony from other witnesses. Petitioner's testimony was not generally credible.

3. At all times relevant to this matter, Susan Thomas was the Staffing Coordinator at the Facility. (T. p. 102). Ms. Thomas' job duties included conducting orientations, hiring, and staffing for the Facility. (T. p. 103). Ms. Thomas conducted the Facility's trainings on its electronic systems, including Telephony, and provided trainings to staff on time sheets. (T. p. 103). Ms. Thomas has worked at the Facility since August 2015 and has served as the Staffing Coordinator since the summer of 2019. (T. p. 103). Ms. Thomas' testimony was very credible.

4. At all times relevant to this matter, Kimberly Bessey was an In-Home Aide Supervisor for the Facility. She is the nurse on staff at the Facility. (T. p. 149). Ms. Bessey's job duties include doing visits with every client served by the Facility, admitting new clients, conducting quarterly and yearly assessments of the clients in their homes, and supervising the in-home aides that provide care to clients. (T. p. 149). Ms. Bessey has worked at the Facility for approximately two years. (T. p. 150). Ms. Bessey's testimony was very credible.

5. At all times relevant to this matter, Linn Henson was a Nurse Consultant for Respondent. She performed health care personnel investigations for the State. (T. pp. 179–80). Ms. Henson has been with Respondent for almost six years. (T. p. 179). Ms. Henson has a bachelor's degree in nursing and has been a nurse for over thirty years. (T. p. 179). Ms. Henson has professional work experience in nursing, including in the hospital setting, home health, hospice, private duty care, and in performing assessments for recipients of personal care services. (T. pp. 179–180). Ms. Henson's duties as a Nurse Consultant include investigating allegations of abuse, neglect, misappropriation, fraud, and diversion of drugs for Respondent. (T. p. 180). Ms. Henson's testimony was credible.

## **Background**

1. Petitioner was hired by the Facility in November of 2019 as an in-home aide (or "aide"). She worked in that capacity for the Facility for about two years at the time of the incident precipitating this contested case. (Resp't Ex. G).

2. Petitioner's job responsibilities included taking care of the Facility's clients, which included tasks such as bathing, washing clothes, feeding, and cleaning. (T. p. 47).

3. Petitioner was required to provide in-home aide services to the clients in the clients' homes. (T. p. 47).

4. Petitioner's job description specified her job duties. (Resp't Ex. F). On November 18, 2019, Petitioner placed her signature under the section of this job description that states that she had read the job description and agreed to fulfill the position's responsibilities to meet the defined standards. (Resp't Ex. F).

5. On November 18, 2019, Petitioner signed another document, which notified Petitioner of her duty to notify her Registered Nurse Supervisor if her client experienced a change in his health status. (Resp't Ex. F).

6. At the time of orientation for new aides, the Facility provides the aides with training and the Facility's employee handbook. The in-home aides also watch instructional videos. (T. pp. 104–105). Respondent presented excerpts from the Facility's handbook at hearing, which among other things, cover the policies and procedures for in-home aides. (Resp't Ex. J). The excerpts include how to fill out a time sheet and how to follow a client's plan of care. (Resp't Ex. J). The employee handbook notified in-home aides that the time sheet is a legal document, and that falsifying time worked is fraud. (Resp't Ex. J). The employee handbook also informs in-home aides the time sheet reflects the plan of care that is created for the client, and that each task must be performed exactly as indicated. (Resp't Ex. J).

7. Respondent's Exhibit H reflected a transcript of the video that new aides watch during orientation. (T. p. 105; Resp't Ex. H). Among other things, the video informs aides that (1) the Facility is an agency that provides personal care services to clients in their homes, (2) services cannot be provided if a client is in the hospital, (3) aides cannot be in a client's home when the client is not home, (4) if a client goes to the hospital, aides must notify the Facility, (5) an aide can work only in accordance with the client's allotted hours set by Medicaid, and (6) how to complete time sheets. (Resp't Ex. H).

8. The Facility provides training to its employees on the Facility's fraud policies. (T. pp. 103–104; Resp't Ex. K).

9. The Facility relies on the time sheet to determine the hours an aide has reported working, which determines how many hours the Facility pays the aide for. (T. p. 106).

10. The time sheet served as the basis for the Facility to determine how much to pay Petitioner. (T. p. 61). Petitioner knew the time sheet constituted a legal document. (T. p. 66). However, she testified that she was not told that falsifying a time sheet constituted fraud. (T. pp. 71-72).

11. Aides could work only the allotted number of hours that Medicaid sets for a client, which are also on the time sheet. (T. pp. 40–41, 106). Aides cannot work limitless hours for the Facility, and an aide is not supposed to be in a client's residence over the set number of hours that Medicaid allows. (T. pp. 40–41).

12. There is no circumstance where the Facility would pay an in-home aide to provide services while the aide's assigned client is in the hospital. (T. p. 35). In-home aides cannot provide services to a client while the client is in the hospital because, (1) it is not possible for the aide to perform those tasks if the client is not at home, and (2) Medicaid does not pay for both hospital care of the client and simultaneous care by an in-home aide. Attempts to bill Medicaid for in-home care services while a client is in the hospital is known as "double billing." (T. p. 152).

13. Aides cannot provide in-home aide services via telephone because it was not possible to do things like toilet a person over the phone, do a client's laundry over the phone, or prepare a client's meal over the phone. (T. pp. 35–36). The Facility has no form on which a staff member could report the staff member provided services to a client by telephone. (T. p. 36). The Facility cannot bill Medicaid for in-home aides taking and receiving telephone calls from clients, and aides are told this during their orientation. (T. pp. 42–43).

14. In addition to submitting a time sheet to document their time worked for clients, at the time of this incident, the Facility required its aides to use an electronic system named Telephony. The aides used Telephony to clock in and out during their shifts with a client. (T. p. 63). Petitioner used Telephony at the time of this incident. (T. p. 63).

15. Telephony required an aide to clock in and out from the client's home. (T. pp. 108–109). To clock in using Telephony, an aide calls the number for Telephony and clocks in by verbally stating the aide's name and reporting that he is clocking in. (T. p. 108). At the end of the shift, the aide calls the Telephony number again to begin the clock out process, which includes the system asking the aide if the client had a safe shift. (T. pp. 108–109). At the end, the client and aide are both required to provide their verbal electronic signatures to complete the clock-out process. (T. pp. 108–109).

16. Aides receive a Telephony training guide, which Respondent presented at hearing. (T. p. 110; Resp't Ex. I). Petitioner received this guide from the Facility. (T. p. 68). The Telephony training guide notes that as part of this process, the Telephony system will read out the tasks that the aide is required to complete, and the aide must report if each task was completed or not. (Resp't Ex. I). The guide also informs aides that they can leave comments regarding a change in the client's condition. (Resp't Ex. I).

17. Petitioner served as in-home aide to client D.E, who was receiving home care services due to issues with tremors in his hands, limited use in his hands, lack of balance, and chronic pain. (T. pp. 47, 153; Resp't Ex. P). The Facility required Petitioner to provide these home care services to D.E. in his home. (T. p. 48). Petitioner had served as D.E.'s aide for two years while she was employed by the Facility. (T. p. 47).

18. Petitioner's signature is on the documents contained in Respondent's Exhibit G. Respondent's Exhibit G is comprised of documents containing Petitioner's acknowledgements of the Facility's policies and notifications that covered Medicaid guidelines for personal care services, an orientation acknowledgement, the Facility's code of ethics, the Facility's general policies, and Telephony. (T. pp. 49–52; Resp't Ex. G).

19. Petitioner maintained that she had never read any of the documents in Respondent's Exhibit G prior to testifying. She asserted that she was shown where to sign, and she did so without reading anything. (T. pp. 49-51, 54).

20. Petitioner initially testified that she did not receiving any orientation, training, or instructions from the Facility on how to perform her job. (T. pp. 50, 52, 54-61).

21. Petitioner contradicted her specific assertion that she had not received training from the Facility on how to submit time sheets after a follow up question on how she submitted time sheets without training. She named Susan Thomas as the Facility employee who instructed her on time sheet submission (T. pp. 56-57, 60-61, 65). Contradicting the testimony of Ms. Thomas, Petitioner testified that she was trained to check the form indicating that she had performed all services on the form, even if she had not performed the service. (T. p. 84). This Tribunal does not find Petitioner's testimony on this matter credible.

22. Petitioner testified that she never received an employee handbook. (T. pp. 59, 64-65). Petitioner acknowledged signing an employee handbook indicating that she had read it but said she did so only after an employee of the Facility told her to sign it. Petitioner said that she did not know the employee's name who told her to sign without reading and she did not know if that employee still worked at the Facility. (T. pp. 59). This Tribunal does not find Petitioner's testimony on this matter credible.

23. Petitioner testified that she signed a test on time sheets, but she did not take the test and did not know who filled in the correct answers on the test, two of which indicated that falsifying a time sheet would be reported as fraud and constituted lying about time worked. (T. pp. 72-73). This Tribunal does not find Petitioner's testimony on this matter credible.

24. The Facility's office is set up in way with dividers, and Ms. Bessey is able to hear all the orientations that take place. (T. pp. 168-169). Neither Ms. Thomas or Ms. Bessey were aware of any situation like Petitioner described at hearing where an employee came in and the Facility informed that employee to just sign documents and leave. (T. pp. 127, 169).

25. Ms. Thomas provided training to Petitioner on proper completion of time sheets. (T. p. 112).

26. The proper way to complete a time sheet is to fill it out daily and to check off the tasks as they are completed. (T. p. 116). The tasks listed on a time sheet for a client are predetermined by the Facility nurse who does annual client assessments. (T. p. 107). If a task is not listed on the time sheet, the aide cannot do that task for the client. (T. p. 107). Upon completion of the time sheet, the aide and client both sign the time sheet. (T. pp. 106- 107).

27. Ms. Thomas explained to Petitioner, during her training with Petitioner on time sheets, that Petitioner could not provide services to a client other than at that client's primary location. (T. p. 118).

28. Ms. Thomas told Petitioner the procedure to follow if a client goes into the hospital. (T. p. 118). The procedure is to notify the Facility of the hospitalization. (T. p. 111).

29. During the time sheet training Ms. Thomas did with Petitioner, Ms. Thomas went over all of the tasks and what it means to complete those tasks that were listed on D.E.'s time sheet. (T. pp. 112-116). Ms. Thomas explained to Petitioner that every task, including toileting bladder/bowel, kitchen, eating/meal preparation, bathing/personal hygiene, dressing, mobility, and bed area, were hands-on assist type of tasks. (T. pp. 112-116).

30. At hearing, Ms. Thomas meticulously explained to the Tribunal each task that was on D.E.'s time sheet and what an in-home aide would need to do to constitute completion of that task. (T. pp. 112–116). Ms. Thomas exhibited fluent recall of the detailed instructions during her testimony.

31. At no point during Petitioner's time sheet training did Ms. Thomas tell Petitioner that talking about these tasks would constitute completion of the task. (T. p. 117). Ms. Thomas testified aides are not to check off a task if they have not completed it. (T. p. 116). Petitioner testified that she was trained by Ms. Thomas to check off all the tasks even if she did not provide them. (T. p. 84). The Tribunal does not find Petitioner's testimony on this point credible.

32. Ms. Bessey and Ms. Thomas both testified that aide training is more than a one-time occurrence at the Facility. (T. pp. 126, 163–164). Ms. Thomas and Ms. Bessey both testified that in-home aides also are given an annual refresher training on time sheets. (T. pp. 126, 163). As part of this training, in-home aides take a test that checks their knowledge on completing time sheets and documentation. (Resp't Ex. G). Petitioner testified the Facility did not make her take any test on time sheets. (T. p. 73; Resp't Ex. G). The Tribunal does not find Petitioner's testimony on this point credible.

33. On October 29, 2021, which was a few days prior to D.E. hospital admission, Petitioner completed her annual time sheet test. (Resp't Ex. G). The score on the time sheet indicates Petitioner received a 100% and answered all questions correctly. (Resp't Ex. G). Although Petitioner denied that she took the test, she testified the signature at the end of the test is hers. (T. p. 72). Ms. Thomas testified that the person who takes this test is the aide. (T. p. 125). The Tribunal does not find credible Petitioner's testimony that she was not the one who completed the test.

34. Despite Petitioner's testimony that she did not receive the Facility's employee handbook, Ms. Thomas testified that she provided the handbook to Petitioner. Ms. Thomas made a contemporaneous recording of giving Petitioner the employee handbook on November 18, 2019, in the Facility's handwritten training log for Petitioner. The log, which shows a note written and signed by Ms. Thomas, and was testified to by Ms. Thomas at hearing, reveals that the Facility's employee handbook was given to Petitioner prior to orientation and that all of the Facility's policies and procedures had been explained to Petitioner. (Resp't Ex. G). Employees are not able to sign any of the orientation acknowledgements and documents until they have been given the handbook. (T. p. 127). The Tribunal does not find Petitioner's testimony that she did not receive the Facility's handbook credible.

### **Facility Investigation**

35. On November 29, 2021, Ms. Bessey conducted a routine supervisory home visit with D.E. Petitioner was present for Ms. Bessey's visit. During the visit, Ms. Bessey asked D.E. the routine question in her supervisory visit about hospital stays. (T. pp. 154–155; Resp't Ex. N). D.E. told her that he had been hospitalized recently for a lung operation after collapsing at home. He then showed her his surgical scar. (T. pp. 154–155; Resp't Ex. N).

36. Ms. Bessey was surprised to learn D.E. had been hospitalized. The Facility had no record of D.E.'s hospitalization. Petitioner had not informed the Facility of D.E.'s hospitalization. (T. pp. 155, 157).

37. Upon D.E. revealing to Ms. Bessey that he had been in the hospital for some time in November, Petitioner, who had been sitting next to D.E., changed demeanor. She became quiet and then got up from her seat, walked out of the room and then walked in and out of the room where Ms. Bessey and D.E. continued to sit. Ms. Bessey testified that Petitioner appeared angry. (T. p. 156).

38. Petitioner testified at hearing that she told Ms. Bessey during that home visit with D.E. that she had provided services to D.E. in the hospital after he told Ms. Bessey of the hospital stay. (T. pp. 94). Ms. Bessey contradicted Petitioner by testifying that she did not discuss D.E.'s hospital stay with Petitioner while on the home visit. Ms. Bessey testified that she wanted to get confirmation from D.E.'s hospital discharge records and from Petitioner's clock in and clock out information from those dates before she asked Petitioner about the matter. (T. pp. 156–157). The Tribunal does not find Petitioner's testimony that she informed Ms. Bessey at the time of the home visit that Petitioner provided services to D.E. while he was in the hospital credible.

39. When a client goes into the hospital, once the aide notifies the Facility, the Facility follows the client's hospitalization course until that client returns home from the hospital. (T. pp. 152–153).

40. After learning of the hospitalization from D.E., Ms. Bessey began her Facility investigation into the incident by obtaining D.E.'s discharge records from CarolinaEast Medical Center, which indicated D.E. had in fact been in the hospital from November 1, 2021 to November 10, 2021 for a pneumothorax, for which he had surgery. (T. pp. 157–158; Resp't Ex. R).

41. As part of her investigation into this incident, Ms. Bessey also reviewed Petitioner's Telephony documentation. (Resp't Ex. L). Ms. Bessey learned that for each day of D.E.'s hospital stay, Petitioner clocked in and out using Telephony, however Ms. Bessey learned that Petitioner had not done it correctly. (T. p. 160; Resp't Ex. L). In her review of the Telephony documentation, Ms. Bessey noted missing electronic signatures from D.E. and Petitioner. (T. pp. 160–161; Resp't Ex. L). Petitioner had not done it correctly because she did not call Telephony from the client's home and the call was missing electronic signatures from the client. (T. pp. 121–122; Resp't Ex. L).

42. At hearing, Petitioner testified she had issues with Telephony and reported those to Ms. Thomas and someone else who answered the telephone when she called. She could not confirm that these issues existed at the time of this incident. (T. pp. 70–71, 92). Ms. Thomas testified that if Petitioner had any Telephony issues, she was to notify the Facility, and if she had notified the Facility, it would have been documented. (T. p. 122). Ms. Thomas was not aware of any problems with the Telephony system and that there was no documentation of any reported issues with Telephony from Petitioner. (T. p. 122). The Tribunal does not find Petitioner's testimony that she had technical issues using Telephony credible.



43. Despite acknowledging having received Telephony training and testifying that she clocked in and out from places other than the client's home and did not provide the required electronic signatures, Petitioner testified that she followed all the right procedures for Telephony during this incident. (T. p. 91). This contradicted Petitioner's prior testimony that she was trained by the Facility to clock in and out from the client's home. (T. p. 69).

44. During her investigation, Ms. Bessey also reviewed the time sheets that Petitioner submitted for the dates of D.E.'s hospital stay. (T. p. 158; Resp't Ex. D). Ms. Bessey found that the time sheets were improper for many reasons, including because the Facility had time sheets submitted by Petitioner for the days D.E. was hospitalized, and because tasks were checked off on these time sheets. (T. p. 160; Resp't Ex. D).

45. On Petitioner's time sheets for dates when D.E. was hospitalized, November 2, 2021, through November 10, 2021, Petitioner checked off every task. These tasks were bathing/personal hygiene, toileting bladder/bowel, eating/meal preparation, kitchen, bathroom, dressing, mobility, and bed area. (Resp't Ex. D). On these time sheets, Petitioner signed her name above the statement "I certify that I worked the time documented above, completed tasks checked, and follow all the health care precautions during care." (Resp't Ex. D). The top of the time sheets instructed Petitioner to place check marks next to each task once completed. (Resp't Ex. D).

46. Petitioner admitted at hearing that completing the task of bathing that was on the time sheet meant the act of giving the client a bath. (T. pp. 81-82). Petitioner admitted that she checked that task off for D.E. on her time sheets during the time he was in the hospital. (T. p. 82). When asked how she could give the client a bath if he were in the hospital, Petitioner admitted she did not do the task of bathing D.E. (T. p. 82). Petitioner testified that she talked to the client about baths, however, this was not the correct way to complete that task. (T. p. 82). Petitioner admitted that she could not provide the service of bed area to D.E. when he was in the hospital but checked it off on the time sheet. (T. p. 84). When asked about how she provided toileting services and bed services to a patient in the hospital, Petitioner had no direct answer to these questions. (T. pp. 81-84).

47. Petitioner testified that she spent time on the telephone with D.E. while D.E. was in the hospital. However, during the Facility investigation, she told Ms. Bessey that she was with D.E. in the hospital, providing all services for him. (T. p. 162; Resp't Ex. D). At hearing, Petitioner testified that she was not allowed to see D.E. because another visitor was with him. (T. p. 75). Petitioner seemed to contradict herself when she later testified that she was allowed into his room when he was moved from the Emergency Room. (T. p. 83). Yet, at other points in her testimony Petitioner admitted that she could not do hands-on tasks while D.E. was in the hospital and seemed to agree that she was not allowed into his hospital room. (T. pp. 82-84).

48. Petitioner testified that she ran errands for D.E. while he was in the hospital. (T. p. 78). Errands are not a service listed on D.E.'s time sheet, and D.E. does not receive errand services from the Facility. (Resp't Ex. D; T. p. 136).

49. Petitioner was paid for the time worked recorded on the time sheets for the period of D.E.'s hospitalization. (T. p. 161).

50. After obtaining and reviewing the documentation, Ms. Bessey corrected the hours on the time sheets that Petitioner submitted for the dates of D.E.'s hospital stay. (Resp't Ex. D).

51. Petitioner was terminated from the Facility for falsifying and submitting time sheets for the time that D.E. was in the hospital. The Facility determined she was not eligible for rehire. (Resp't Ex. O).

52. At the hearing, Petitioner testified that she told the Facility not to pay her for the time D.E. was in the hospital. (T. pp. 95, 96). This statement is false. At the time the Facility discovered D.E. had been hospitalized, approximately one month after his initial hospitalization, the Facility had already paid Petitioner for that time. (T. p. 128).

53. Petitioner testified that no Facility employee asked her to pay back the wages she received for the time she submitted while D.E. was in the hospital. (T. p. 95). Ms. Bessey informed Petitioner that Petitioner was responsible for paying that money back to the Facility. (T. p. 164). Ms. Thomas, who was present when this conversation between Ms. Bessey and Petitioner occurred, confirmed that Ms. Bessey told Petitioner she must make repayment. (T. p. 128).

54. On January 13, 2021, after Ms. Bessey told Petitioner she must make repayment, and after Respondent had notified Petitioner that it was investigating the incident, Petitioner sent a check to the Facility in the amount of \$173.15. It was not determined at the hearing whether Petitioner had remitted the entire amount of money. (Resp't Ex. M).

55. The Facility can choose to pursue legal action to recoup wages that an employee has received for services that were not provided. (T. pp. 130–131). The issues surrounding Petitioner's repayment of the Facility are relevant to this case only in that Petitioner's false statements in this regard support the finding of her lack of credibility.

56. At the hearing, Petitioner admitted that, according to the time sheets for D.E., telephone services were not a service that she could provide as a part of her job as an in-home aide. (T. pp. 80–81).

### **Registry Investigation**

57. State and federal law require health care facilities to submit reports to various agencies, including Respondent, of allegations or incidents occurring within the facility.

58. The Facility submitted initial and investigation reports concerning this incident to Respondent, and the investigation was assigned to Linn Henson. (Resp't Ex. D).

59. After the Health Care Personnel Complaint Intake Unit received the reports from the Facility, Ms. Henson reviewed the allegation of fraud against Petitioner and determined that the allegation warranted an investigation. (T. p. 182).

60. Respondent notified Petitioner via certified letter dated December 13, 2021, that it would be investigating the allegation of fraud against her. (Resp't Ex. E).

61. Petitioner filed a Petition for a Contested Case Hearing on January 12, 2022, challenging Respondent's decision to investigate the pending allegation of fraud.

62. Ms. Henson conducted an investigation of the incident and allegation. (Resp't Ex. A). As part of her investigation, Ms. Henson requested documents from the Facility. (T. pp. 183–184; Resp't Ex. A). Ms. Henson personally reviewed Petitioner's personnel file which included her Facility trainings, the Facility's policies and procedures, D.E.'s medical records, and the Facility's investigation documents, including the time sheets Petitioner submitted. (T. p. 173; Resp't Ex. A). Ms. Henson also requested documents from CarolinaEast Medical Center, which included D.E.'s discharge records for his November 2021 hospitalization along with the hospital's visitation policy for the dates in question. (T. p. 184; Resp't Ex. A).

63. Ms. Henson conducted transcribed interviews with both Ms. Bessey and Ms. Thomas. (Resp't Ex. B; Resp't Ex. C). Ms. Bessey and Ms. Thomas's testimony at hearing was consistent with what they reported to Ms. Henson during their interviews with her.

64. During her interview with Ms. Henson, Ms. Thomas informed Ms. Henson that Petitioner and D.E. knew each other before Petitioner started working for the Facility. (Resp't Ex. C, p. 3).

65. Ms. Henson contacted Petitioner numerous times via letters, phone calls, text message, and email during the Registry's investigation. Petitioner never responded to Ms. Henson's communications to provide her account of the incident. (T. p. 184; Resp't Ex. A, p. 21).

66. Ms. Henson learned from the hospital's visitation policy for the dates in question, that a patient could only have one designated visitor, and only the designated visitor would be allowed to visit during the entire hospital stay. (T. pp. 188–189; Resp't Ex. S).

67. Petitioner testified that she could not see D.E. when she first went to the hospital "because someone else was in the back with him" which the Tribunal infers is the sole designated visitor allow D.E. for his stay. (T. p. 75). Petitioner further testified that she brought food to Petitioner which was taken from her to D.E. by "whoever was in the hospital with him," apparently the same designated visitor. (T. p. 82). The Tribunal finds that testimony by Petitioner that she was in D.E.'s presence at any time during his hospital stay is not credible.

68. After completing her investigation, Ms. Henson concluded that, on or about multiple dates between November 2, 2021, and November 10, 2021, Petitioner committed fraud against the Facility, with the intent to deceive, and with the knowledge that the deception could result in an unauthorized benefit to Petitioner, by documenting on time sheets and Telephony that she provided personal care services to D.E. while he was in the hospital. (Resp't Ex. A).

69. The fraud in this case was Petitioner documenting services that she did not actually provide, knowing that she would be paid for these services. (T. p. 195).

70. Ms. Henson testified that, in concluding Petitioner committed fraud, it did not matter here that Petitioner might have remitted all or some part of the money after the Facility discovered what happened. (T. p. 195).

71. Ms. Henson also testified the Facility did not pay for any personal relationships a client would have with an in-home aide, that Petitioner was only to provide in-home aide personal care services, and that even if the allegation were true that Petitioner helped D.E. while he was in the hospital by taking phone calls from him, Petitioner was not entitled to be paid for whatever help she alleges she provided while D.E. was in the hospital because that was not part of her job. (T. pp. 20–21).

72. Ms. Henson testified that if an employee decides to perform services on his own volition that are not part of his job, he is not entitled to payment by the Facility. (T. p. 30). The Facility in-home aide orientation includes encourages the in-home aides not to give their telephone numbers to Facility clients. (T. pp. 36. 136–137).

73. Facility policy requires aides to report hospitalization of Facility clients. By not reporting this, Petitioner endangered D.E.'s health. D.E. returned from the hospital with open wounds from his surgery, which required an adjustment of his care plan. The Facility nurse could not make this adjustment because the Facility was not informed of the hospitalization until after the wounds had healed. (T. p. 188).

74. Ms. Henson testified that considering the evidence presented at hearing, she would not change her decision. (T. p. 196).

75. Respondent notified Petitioner, by certified letter dated February 28, 2022, that it had substantiated the finding of fraud against her and would be placing the finding next to Petitioner's name in the Health Care Personnel Registry. (Resp't Ex. E).

### **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 designated correctly, and there is no question as to misjoinder or nonjoinder.

3. Respondent's health care personnel registry Section is required by N.C. Gen. Stat. § 131E-256 to maintain a Registry that contains the names of all health care personnel working in health care facilities who have been subject to a finding by Respondent that they committed fraud against a health care facility.

4. As health care personnel working in a health care facility, Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-256.

5. The Facility is a health care facility as defined in N.C. Gen. Stat. § 131E-256(b).

6. “‘Fraud’ means an 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. It includes any act that constitutes fraud under applicable Federal or State Law.” 10A NCAC 130 .0101(5).

7. In the instant case, Petitioner knowingly submitted falsified time sheets and Telephony documentation, in which she represented that she provided in-home personal care services, including bathing/personal hygiene, toileting, eating/meal preparation, kitchen, bathroom, dressing, mobility, and bed area services, to D.E. at his home. It was not possible for Petitioner to have performed these tasks on the dates claimed on the time sheets and Telephony documentation, as D.E. was in the hospital during those days.

8. Petitioner was never physically with D.E. during his hospitalization. Yet Petitioner was trained by Ms. Thomas on what constituted completion of the tasks, which were all hands-on assist tasks, that Petitioner checked off for days when D.E. was hospitalized, and Petitioner was trained on what to do if a client went into the hospital. Telephone services were not a covered service, were not listed on D.E.’s timesheet, and were not part of Petitioner’s job. Petitioner’s original assertion at the hearing that she received no training from the Facility, which she later contradicted to some extent and which this Tribunal found not credible to the extent she did not contradict, indicates that Petitioner was aware that she was not entitled to compensation by the Facility during the period of D.E.’s hospitalization.

9. Petitioner’s statement that she thought she should have been compensated for the time she spent on the telephone with D.E. is contradicted not only by her training about the limited services for which she would be compensated, but also the recommendation in training that aides not provide their telephone number to Facility clients.

10. Petitioner submitted false time sheets and falsified Telephony documentation with the knowledge that the false time sheets and false Telephony documentation would result in her receiving a benefit in the form of wages from the Facility. Petitioner received wages from the Facility for her falsified time reflected in her time sheets and Telephony documentation.

11. The Tribunal does not accept Petitioner’s testimony on not having received any trainings from the Facility as credible. The greater weight of the evidence and the competent and credible testimony at hearing shows that Petitioner received all necessary trainings from the Facility on completing and submitting time sheets, Telephony, and the Facility’s policies and procedures.

12. Petitioner’s testimony at hearing about this incident, her knowledge of the Facility’s policies and procedures, and her trainings contained many inconsistencies. The hearing record further reflects that Petitioner failed, on occasion, to provide direct answers to questions. Petitioner’s testimony at the hearing about the incident is also inconsistent with what Petitioner initially reported to the Facility. These factors indicate a lack of trustworthiness as to Petitioner’s testimony at hearing, and Petitioner’s testimony thus was not credible.

13. On the dates between November 2, 2021, and November 10, 2021, Petitioner committed fraud against the Facility with the intent to deceive, and with the knowledge that the deception could result in an unauthorized benefit to Petitioner, by documenting on time sheets and Telephony that she provided personal care services to D.E. while D.E. was in the hospital.

14. Petitioner had the burden to show by a preponderance of the evidence that Respondent deprived her of property or otherwise substantially prejudiced her rights and failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it substantiated one allegation of fraud against Petitioner and listed her on the Registry. N.C. Gen. Stat. § 150B-25.1(a).

15. Petitioner did not meet her burden to show by a preponderance of the evidence that Respondent substantially prejudiced her rights and failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when Respondent substantiated one allegation of fraud and listed this finding next to Petitioner's name on the Registry.

### **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 fraud next to Petitioner's name on the Health Care Personnel Registry should be **AFFIRMED**.

### **NOTICE OF APPEAL**

**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 as indicated by 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 to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 5th day of August, 2022.

Linda F. Nelson

Linda F. Nelson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which subsequently will place the foregoing document into an official depository of the United States Postal Service.

Ralph Thomas Bryant Jr.  
Ralph Bryant Law Firm  
attorneyralphbryantjr@gmail.com  
Attorney For Petitioner

Farrah R. Raja  
N.C. Department of Justice  
fraja@ncdoj.gov  
Attorney For Respondent

This the 5th day of August, 2022.



Christine E. Cline  
Law Clerk  
N.C. Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609-6285  
Phone: 984-236-1850