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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DHR 03527

Seth Sarkwa Acheampong Petitioner, v. Department of Health and Human Services, Division of Health Service Regulation Respondent.	**FINAL DECISION**

This contested case was heard before Michael C. Byrne, Administrative Law Judge, on September 26, 2022 at the North Carolina Office of Administrative Hearings in Raleigh, North Carolina.

APPEARANCES

Seth Sarkwa Acheampong
Petitioner, Pro Se

Ms. Kerry Boehm
Assistant Attorney General
N.C. Department of Justice P.O.
Box 629 Raleigh, N.C. 27602
Attorney for Respondent

EXHIBITS

Admitted For Petitioner:
None

Admitted For Respondent:
Respondent's Exhibits C, D, E, F, H, I, J, K, L, M (statement of Petitioner only), N, and O

WITNESSES

For Petitioner: Seth Sarkwa Acheampong

For Respondent: Shannon Boughton

ISSUE

Whether Respondent correctly substantiated and entered on the Health Care Personnel Registry an allegation that Petitioner abused and neglected a resident at WakeMed Hospital on July 13, 2021.

BURDEN OF PROOF

By operation of N.C.G.S. 150B-25.1, the burden of proof in this contested case is on the Petitioner.

PREHEARING MOTIONS

Prior to this case being assigned to the Tribunal, Petitioner made a request, which was treated as a motion, for an interpreter's assistance. This request was allowed.

At the start of the hearing, for which notice issued July 12, 2022, counsel for Respondent told the Tribunal that Shannon Boughton, Respondent's sole witness, would not appear due to a "scheduling error." In its discretion under N.C.G.S. 150B-33, the Tribunal granted a motion by Respondent's counsel to have Boughton testify by telephone, despite the motion not being timely under 26 N.C.A.C. 3.0120(g).

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 and conclusions of law. 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 witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Based on the above, the undersigned makes the following:

FINDINGS OF FACT

1. This contested case arose from Petitioner Seth Sarkwa Acheampong's ("Petitioner") appeal of Respondent NC Department of Health and Human Services, Division of Health Service Regulation ("Respondent") investigating and substantiating an allegation that Petitioner abused and neglected a resident of WakeMed Hospital ("WakeMed") in Raleigh, NC on July 13, 2021 ("the Incident") (Res. Ex. D, F) and listing a substantiated finding of neglect against Petitioner on the North Carolina Health Care Personnel Registry (Res. Ex. O). As discussed further below, no evidence of a substantiated listing of abuse (as opposed to neglect) against Petitioner was received in evidence.

2. N.C.G.S. § 131E-256(a)(1) and Federal law requires Respondent to maintain a registry ("Health Care Personnel Registry") containing the names of all unlicensed health care personnel working in health care facilities in North Carolina who have substantiated

findings that they abused, neglected, or exploited a resident in those facilities. Gail T Taylor v. Nurse Aid Registry, 20 DHR 03636 (2020).

3. Initially, Petitioner's Petition for a Contested case ("Petition"), filed August 16, 2021, appealed Respondent's formal investigation of allegations of abuse and neglect arising from the Incident. By order dated February 22, 2022, the ALJ then assigned to this case upheld Respondent's formal investigation of Respondent's abuse and neglect allegations against Petitioner. By statute, Petitioner's petition challenging the investigation decision also operates as an appeal of Respondent's substantiation of those allegations. See N.C.G.S. 131E-256(d1).

4. In July 2021, Petitioner was employed with a medical staffing group that provided services to WakeMed hospital in Wake County, North Carolina ("WakeMed"). Petitioner's job was a "constant observer" of patients to protect them from harming themselves or others. (Res. Ex. I). Petitioner was a credible witness in all respects.

5. WakeMed is a "health care facility" for purposes of the North Carolina Health Care Personnel Registry. N.C.G.S. 131E-256(b)(2); N.C.G.S. 131E-76.

6. Petitioner at the time of the Incident was "health care personnel," in that Petitioner was unlicensed staff of a health care facility having direct access to a resident or client of WakeMed. N.C.G.S. 131E-256(c).

7. Shannon Boughton ("Boughton") is an investigator employed by Respondent. As Boughton did not appear in the hearing in person (see "Prehearing Motions"), the Tribunal was unable to discern her demeanor or other attributes associated with a personal appearance in court. "There is but one fact-finding hearing of record when witness demeanor may be directly observed." N. Carolina Dep't of Env't & Nat. Res. v. Carroll, 358 N.C. 649, 662, 599 S.E.2d 888, 896 (2004), citing Julian Mann III, Administrative Justice: No Longer Just a Recommendation, 79 N.C. L.Rev. 1639, 1653 (2001). Boughton was Respondent's only witness.

8. While Boughton was generally credible, the great bulk of her testimony was either inadmissible hearsay or supported by documents that were themselves hearsay or contained large amounts of uncorroborated (and thus inadmissible) hearsay within the documents themselves. Respondent established no hearsay exception allowing the Tribunal's consideration of this evidence. Bolick v. Sunbird Airlines, Inc., 96 N.C. App. 443, 447, 386 S.E.2d 76, 78 (1989), aff'd, 327 N.C. 464, 396 S.E.2d 323 (1990)

9. There is no evidence of any prior allegations of abuse, neglect, or exploitation against Petitioner.

10. Respondent learned of the allegations against Petitioner through 24 Hour and Five Working Day Reports (Res. Ex. C.) from WakeMed. These reports indicate they were prepared by, respectively, one Dana Glinka, RN and one Kim Perdue, listed as "Manager, Staffing

Resources." Id. Neither of these individuals testified at the contested case hearing. Neither individual indicates in the reports that they personally witnessed Petitioner do anything.

11. The Exhibit C reports contain allegations from a "K. Warren" regarding purported video of the Incident. However, no video was admitted into evidence in this case and "K. Warren" did not testify. The Exhibit C reports consist almost exclusively of hearsay, double hearsay, or triple hearsay, for which no exception was established. The Tribunal may not consider such evidence. See N.C.G.S. 150B-29, see also N. Carolina Dep't of Env't & Nat. Res. v. Carroll, 358 N.C. 649, 657, 599 S.E.2d 888, 893 (2004)" "The ALJ must decide the case only on the basis of the evidence presented and facts officially noticed, all of which are made part of the official record for purposes of administrative and judicial review." The "evidence presented" must be admissible evidence.

12. Respondent assigned Boughton to investigate allegations of abuse and neglect against Petitioner. She did, and she summarized her findings in a report (Res. Ex. N). As with Exhibit C, the great majority of Respondent's Exhibit N is uncorroborated hearsay, sometimes of the multiple variety. Like Exhibit C, Exhibit N makes repeated reference to a purported video of the Incident that was not introduced into evidence. Exhibit N also contains what appear to be "stills" from that video that are likewise inadmissible and, if they were admissible, are both blurry and inconclusive.

13. Boughton's report, and her testimony, demonstrate that the Incident involved a ten-year-old child, identified here out of privacy considerations as "CH" ("CH"), "who was voluntarily admitted to WakeMed Hospital in Raleigh on 7/8/2021 for aggression." (Res. Ex. N. at 4). CH did not testify at the contested case hearing.

14. For purposes of the Health Care Personnel Registry, "Resident" means all the individuals residing in **or being served by** a health care facility as defined in G.S. 131E-256(b). 10A N.C. Admin. Code 13O.0101 (emphasis supplied). CH, at the time of the Incident, was being served by WakeMed.

15. Petitioner, employed by Cross County Staffing, was assigned to CH as a "Constant Observer." (Petitioner testimony). In summary, Petitioner was employed to help keep CH safe and was provided with a whistle to summon staff if he needed assistance. Petitioner was made aware when he reported for work on 7/13/2021 that CH had been running in the halls and failing to remain in his room. (Petitioner Testimony). At some point prior CH had been placed in restraints (Res. Ex. N, p. 10, corroborated by Petitioner testimony)

16. While Petitioner was observing CH, CH once again attempted to exit his room. Petitioner told CH that he needed to remain in the room for his safety. (Petitioner testimony).

17. CH then suddenly attacked Petitioner, striking Petitioner with a pillow and leaving Petitioner, who was wearing a mask and face shield, unable to see. (Res. Ex. N, p. 10, as corroborated by Petitioner's testimony). "At that moment all I thought was to defend myself and make sure he [CH] is also safe because I did not know what to expect from him [CH] next." (Id. at p. 11, as corroborated by Petitioner).

18. CH's attack on Petitioner happened very quickly and Petitioner "couldn't get hold of the whistle" or blow it due to inability to remove his protective equipment. (Id. at p. 10, as corroborated by Petitioner testimony). Petitioner moved his arm out with the intention of making CH "go back," and CH "fell on the bed." Id.

19. Shortly afterwards, additional WakeMed staff intervened, and Petitioner was removed from supervising CH to another assignment (Id. at 12, corroborated by Petitioner testimony). Thus, no person testified at the contested case hearing who was actually present and able to make any evaluation of CH's condition after the Incident.

20. While Exhibit N contains claims from WakeMed staff that Petitioner "hit" CH, none of these persons testified at the contested case hearing. Further, there is no evidence that any of these persons were in the room at the time of the Incident, thus witnessing it personally. No person testifying at the hearing, other than Petitioner, actually witnessed the Incident as it happened. Not all WakeMed staff members present in the area at the time of the Incident were interviewed. (Res. Ex. N, p. 21)

21. While Exhibit N contains statements from a WakeMed staff member about an alleged video of the Incident and what that video supposedly shows, this video, as discussed, was not admitted into evidence. The Tribunal cannot accept testimony from Boughton about what someone (who themselves did not testify) said regarding a video that was itself never admitted into evidence.

22. For the same reason, the Tribunal cannot accept testimony from Boughton about the video. See N.C.G.S. 150B-29. This includes several pages of Boughton's report in which she attempts to parse the unadmitted video and describe what she contends to be occurring therein, as well as stills apparently taken from the video. The Tribunal may not consider this information due to the video not being admitted into evidence.

23. Moreover, in part due to Petitioner being removed from the scene just after the Incident, there is no non-hearsay evidence of any actual injury, harm, distress, or anguish CH may have experienced because of Petitioner's actions. Hearsay evidence, even if relevant, is generally inadmissible unless it is covered by a statutory exception. There is little question that CH was already in a considerable degree of distress or emotional upset, to the extent that CH, who again was admitted to WakeMed for "aggression," had at one point been physically restrained. Petitioner's handwritten statement (Res. Ex. M.) contains a statement that CH said Petitioner "have beat him" [sic], but (a) CH did not testify, (b) there is no admissible evidence of CH's claims, and (c) Petitioner credibly testified otherwise.

24. Subsequent to the Incident, Petitioner was interviewed by WakeMed Campus police, who prepared a report (Res. Ex. M). No WakeMed Campus police testified at the contested case hearing, and no hearsay exception was established for admission of the police report. Accordingly, the Tribunal declined to admit the police report other than Petitioner's handwritten statement attached to it, which Petitioner confirmed as his statement in his testimony.

25. The Tribunal finds as a fact that Petitioner's version of the Incident included in his handwritten statement, dated July 13, 2021, is consistent with his description of his actions in his testimony before the Tribunal.

26. Following his interaction with the WakeMed Campus police, Petitioner was charged with the criminal offense of "assault on a child under 12." (Petitioner testimony). Due to the absence of any admissible evidence from the WakeMed Campus police, including their report, the Tribunal has no way to determine what facts caused WakeMed Campus police to take this action, other than that they took it. "[W]ithin the context of an administrative hearing, a hearing officer's observation alone, without supporting competent evidence, "does not constitute evidence and cannot provide the basis for any finding of fact." Carrington v. Hous. Auth. of City of Durham, 54 N.C. App. 158, 160, 282 S.E.2d 541, 542 (1981); see also Weidle v. Cloverdale Ford, 50 N.C. App. 555, 557, 274 S.E.2d 263, 264 (1981) ("The finding based on the Commissioner's personal observation, standing alone, is inadequate; for it affords the appellate court no basis for review.")

27. Petitioner went to court on the assault charge several times, with a lawyer, to face the criminal charge, only to find the matter continued multiple times. (Petitioner testimony). While at court for the fourth time, Petitioner did not want the matter continued again, so, per Petitioner, "my lawyer pleaded guilty." (Petitioner testimony).

28. Exactly how and to what Petitioner pleaded guilty is unknown. No copy, certified or otherwise, of any judgment, plea, or order was admitted into evidence. Thus, the Tribunal lacks any substantiated factual basis of the details of Petitioner's guilty plea, including identification of the specific statutory criminal offense to which Petitioner pleaded guilty.

29. Upon questioning by the Tribunal, Petitioner showed limited understanding that he had pleaded guilty, as opposed to his lawyer, thus accepting responsibility for a criminal offense. On this issue, it is found that Petitioner speaks limited English, and during the contested case hearing employed the services of an interpreter at various points. However, before the Tribunal, Petitioner clearly and consistently testified that he did not intend to hit CH, but rather was solely trying to defend himself.

30. Despite the various evidentiary omissions on this issue, the Tribunal has sufficient evidence from Petitioner's own testimony to find as a fact that Petitioner pleaded guilty to a misdemeanor level assault on CH from the Incident.

31. The Tribunal, as discussed further below, does not find as a fact that Petitioner's guilty plea establishes anything other than Petitioner pleaded guilty to assault. This plea, standing alone, does not establish that Petitioner's action was either (a) willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish, or (b) failure to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

32. Following her investigation, Boughton concluded that, in the Incident, Petitioner both abused and neglected CH. (Res. Ex. N.).

33. For her abuse conclusion summary, Boughton wrote that Petitioner "abused a resident (CH) when [Petitioner] willfully hit resident CH in the head which resulted in pain." (Res. Ex. N, p. 21).

34. The admissible evidence before the Tribunal does not support this conclusion. As has been explained to the agency before, while Respondent is free to rely upon hearsay to establish various things, the Tribunal is not. "The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes shall govern in all contested case proceedings, except as provided otherwise in these Rules and G.S. 150B-29; 26 N.C.A.C. 3.0122." Sierra Perry v. Department of Health and Human Services, Division of Health Service Regulation, 2022 WL 1201804, 21 DHR 03246, citing James E Best v. North Carolina State Health Plan, 17 INS 01910 (2018); see also Albert Vass v. NC Department of Health and Human Services, Division of Health Service Regulation, 21 DHR 03302.

35. Petitioner testified that at no time had he willfully hit CH, in the head or otherwise. This, as found, is consistent with Petitioner's written statement as of the date of the Incident. Petitioner consistently stated that he acted merely to defend himself from CH's physical attack. However, as noted, Petitioner did plead guilty to some level of assault on CH.

36. There is no admissible evidence before the Tribunal that Petitioner's actions resulted in pain to CH.

37. Moreover, there is no conclusive evidence before the Tribunal that Respondent actually entered a finding of abuse against the Petitioner in the Health Care Personnel Registry. While Boughton testified that Respondent's Exhibit O was Respondent's entry of a substantiated abuse and neglect finding against Petitioner, Exhibit O makes no reference to any act of abuse. No other document purporting to show a formal abuse entry against Petitioner on the Health Care Personnel Registry was put into evidence in this case, though given Respondent notified Petitioner of such a finding and (Res. Ex. F) Boughton testified to that effect, such an entry may be reasonably inferred.

38. In Boughton's neglect conclusion summary (Res. Ex. N, p. 45) she wrote, "There was (sufficient or insufficient) evidence to substantiate the allegation that on or about 7/13/2021, [Petitioner], a Health Care Personnel, neglected a resident (CH) when [Petitioner] failed to report CH's behaviors that escalated into aggressive actions by CH which resulted in physical harm to CH." Despite this confusing wording, it is clear that Boughton concluded, and Respondent entered a finding substantiating (Res. Ex. O.), that Petitioner neglected CH.

39. In response to Petitioner's question as to how he neglected CH, Boughton stated that Petitioner failed to keep CH from escalating the incident and failed to report the incident. This statement is somewhat different from Respondent's Entry of Finding (Res. Ex. O),

which states only that Petitioner "failed to report CH's behaviors that escalated into aggressive actions by CH which resulted in physical harm to CH." Id.

40. It is found as a fact, by Petitioner's testimony corroborating otherwise hearsay statements in Respondent's Exhibit N, that WakeMed supervisory personnel were made aware of CH's attack on Petitioner moments, indeed almost simultaneously with, that Incident. Further, as shown by Exhibit M, Petitioner made a detailed handwritten statement about the Incident the day it occurred. Respondent in essence faults Petitioner for not reporting an incident WakeMed already knew about.

41. The admissible evidence before the Tribunal does not support Boughton/Respondent's conclusion that Petitioner failed to report the Incident.

42. The admissible evidence before the Tribunal does not support Boughton/Respondent's conclusion that Petitioner, rather than CH himself, was responsible for CH's aggressive actions. The uncontradicted testimony is that CH engaged in a sudden and unprovoked act of physical aggression against Petitioner. It is unclear to the Tribunal what Petitioner could have done to prevent this conduct, under the admissible evidence.

Based on these Findings of Fact, the Tribunal makes the following:

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case. N.C.G.S. 131E and 150B.

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

3. Notice of Hearing was provided to all parties in accordance with N.C.G.S. 150B-23(b).

4. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946). A court or other hearing authority need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

5. The ALJ must decide the case only on the basis of the evidence presented and facts officially noticed, all of which are made part of the official record for purposes of administrative and judicial review. N. Carolina Dep't of Env't & Nat. Res. v. Carroll, 358 N.C. 649, 657, 599 S.E.2d 888, 893 (2004)

6. N.C.G.S. 131E-256(a)(1) requires Respondent to maintain a registry containing the names of all health care personnel working in health care facilities in North Carolina who have substantiated findings that they abused, neglected, or exploited a resident in those facilities. Respondent is required to list the names of the health care personnel committing those actions in the Health Care Personnel Registry.

7. Boughton's report, to the extent the information therein was admissible, is not determinative of whether Petitioner abused or neglected CH. Roberts v. DHHS, 17 DHR 0291 (2018).

8. "Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish." 42 C.F.R. 488.301. This definition is incorporated into North Carolina rules at 10 N.C.A.C. 3B.1001(1).

9. "Assault" is generally defined as "an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm." State v. Floyd, 369 N.C. 329, 334, 794 S.E.2d 460, 464 (2016).

10. By plain reading, an "assault" conviction, by guilty plea or otherwise, does not require physical injury to the victim or even physical contact with the victim – only a "show of force" sufficient to put a person of reasonable firmness in fear. Putting aside that there is zero admissible evidence before the Tribunal that Petitioner's conduct put CH in fear, a conviction for assault fails to establish, in itself, that Petitioner even made physical contact with CH – especially given the complete lack of evidence regarding the factual basis of Petitioner's plea.

11. Thus, Petitioner's conviction via guilty plea of an assault on CH does not demonstrate, in itself, that Petitioner caused "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish" to CH. Indeed, there is no admissible evidence before the Tribunal of harm, pain, or anguish of any kind caused by Petitioner's actions.

12. Moreover, there is no admissible evidence before the Tribunal of any threatening comments or behaviors on Petitioner's part that could cause mental anguish to CH, such as the conduct seen in Allen v. Dep't of Health & Hum. Servs., 155 N.C. App. 77, 88, 573 S.E.2d 565, 572 (2002) (threat to do violence to an elderly Alzheimer's patient). While a mere threat to someone with severely diminished capacity is enough to cause that resident mental anguish (Legrand v. DHHS, 13 DHR 18668 (2014); Webster v. DHHS, 14 DHR 05566 (2015), there is no admissible evidence before the Tribunal that (a) CH had severely diminished capacity, or (b) that Petitioner threatened CH in any way.

13. Under the plain language of 42 C.F.R. 488.01, "instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish." However, the admissible evidence must show an actual "instance of abuse."

Here, it did not. Petitioner testified credibly that his actions were to fend off a sudden attack by CH. Respondent's case, by contrast, was almost exclusively hearsay.

14. Moreover, "conviction" of a crime via a guilty plea does not in itself establish commission of that crime for hearings held under the Administrative Procedure Act. Tommy Keith Lymon v. North Carolina Criminal Justice Education and Training Standards Commission, 2012 WL 3548148, 09 DOJ 03751 (2012) ("Although Petitioner was convicted of two (2) Class B misdemeanors, the preponderance of the evidence demonstrates that Petitioner did not 'commit' either of the crimes as a matter of law.").

15. Accordingly, the admissible evidence in this case does not support Respondent's conclusion that Petitioner abused CH in the Incident. Petitioner met his burden of proof by providing the only credible, admissible, first-hand evidence of the facts of the Incident through his testimony. Bolick v. Sunbird Airlines, Inc., 96 N.C. App. 443, 447, 386 S.E.2d 76, 78 (1989), aff'd, 327 N.C. 464, 396 S.E.2d 323 (1990)

16. "Neglect" is "the failure of the facility, its employees, or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress." 42 C.F.R. 488.301. This definition is incorporated into North Carolina rules at 10 N.C.A.C. 13O.0101. This definition requires evidence that the services that were not provided by the accused health care personnel were necessary "to avoid physical harm" and the other consequences referenced in the rule. Pamela Byrd v. North Carolina Department of Health and Human Services, 13 DHR 12691 (2013)

17. As with abuse, the admissible evidence in this case does not demonstrate that Petitioner neglected CH in the Incident. As found above, WakeMed staff were almost immediately aware of the Incident, thus raising the question what Petitioner would be reasonably expected to report. Further, Petitioner provided a detailed written statement about the Incident the same day it occurred – an action he could have lawfully refused, given the statement was, per the evidence, requested by the campus police.

18. It remains unclear to the Tribunal what Petitioner could have done to prevent or de-escalate a sudden and unprovoked physical attack on his person by CH. By contrast, it is quite clear that Petitioner's failure to prevent this attack did not constitute neglect.

19. Finally, as with the abuse allegation, there is zero admissible evidence that any act or omission on Petitioner's part either caused or would have avoided physical harm, pain, mental anguish, or emotional distress to CH.

20. Accordingly, the admissible evidence in this case does not support Respondent's conclusion that Petitioner neglected CH in the Incident. Petitioner met his burden of proof by providing the only credible, admissible, first-hand evidence of the facts of the Incident through his testimony. See Bolick, above.

21. Petitioner satisfied the burden of proving that Respondent substantially prejudiced Petitioner's rights, failed to act as required by law or rule, exceeded its authority and failed

to use proper procedure when Respondent substantiated the allegations of abuse and neglect against Petitioner arising from the Incident of July 13, 2021.

22. Petitioner's name must be removed from the Health Care Personnel Registry. Pamela Byrd v. North Carolina Department of Health and Human Services, 13 DHR 12691 (2013).

FINAL DECISION

The agency action is **REVERSED**. Respondent shall remove Petitioner's name from the North Carolina Health Care Personnel Registry and the records of the North Carolina Health Care Personnel Registry shall reflect that the allegation of abuse and neglect by Petitioner was not established.

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 in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 29th day of September, 2022.

Michael C. Byrne
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 who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 29th day of September, 2022.

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