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12-17-2009

Amy Greer

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**BEFORE THE COMMISSIONER OF THE DEPARTMENT OF HEALTH  
STATE OF TENNESSEE**

**IN THE MATTER OF:**

**Amy Greer**

**DOCKET NO: 17.38-103049J**

**INITIAL ORDER**

This matter came to be heard on December 17, 2009 and January 13, 2010, before Joyce Carter-Ball, Administrative Judge, sitting for the Commissioner of the Tennessee Department of Health, Bureau of Health Licensure and Regulation, Division of Health Care Facilities (hereinafter referred to as the “Department”), in Nashville, Tennessee. Maryam Kassae, Assistant General Counsel for the Tennessee Department of Health, represented the Department. Amy L. Greer, (hereinafter referred to as the “Respondent”), was represented by her legal counsel, Garrett E. Asher.

The subject of this hearing is whether Respondent’s name should be placed on the “Abuse Registry,” i.e. the registry of those persons who have been determined to have abused, neglected or misappropriated the property of vulnerable individuals.

After consideration of the record and arguments of the parties, it is determined that the Respondent’s name **SHALL NOT BE** placed on the Abuse Registry. This decision is based upon the following Findings of Fact and Conclusions of Law:

## PROCEDURAL HISTORY

Respondent was employed as a licensed practical nurse (L.P.N.) at Hardin County Nursing Home in Savannah, Tennessee. Respondent assisted with the daily care of the residents at Hardin County Nursing Home. Her employment was terminated on or about March 5, 2009.

The State alleges that on or about February 22, 2009, Respondent unnecessarily administered laxatives to several residents, causing the residents to have numerous bowel movements (“BM”) later that evening and continuing on to February 23, 2009.

## FINDINGS OF FACT

1. Respondent is an L.P.N. and has worked at Hardin County Nursing Home since 2005. Respondent has been an L.P.N. since 2001.
2. On or about February 22, 2009, Respondent was working as a nurse at the Hardin County Nursing Home. During the shift of February 22 – February 23, 2009, Respondent gave laxatives to some patients.
3. The Department alleges that Respondent gave laxatives unnecessarily to nine (9) residents of the nursing home in order to cause a C.N.A. to “work her ass off.”
4. It is undisputed that Respondent, in her duties as a nurse, is allowed to administer laxatives to residents as long as there is a physician’s order for such.
5. During the relevant time period in this matter, **there were physician orders that allowed Respondent to administer laxatives to nursing home residents when needed.**
6. The laxative policy of Hardin County Nursing Home states that residents “who have not had an adequate bowel movement in three (3) days” shall be given a laxative. **There is nothing**

**in that policy that requires that there be three days without a bowel movement prior to a laxative being given.**

7. **Patients are given laxatives at Hardin County Nursing Home based on the nurse's assessment.** The bowel movement policy does not prevent a nurse from giving laxatives if a patient has had a bowel movement within the prior three (3) days.

8. At Hardin County Nursing Home, the nurses did not chart when they assessed to see if a patient required a laxative.

9. The investigation did not disclose any note from any nurse in any of the patient charts concerning documentation for the need of laxatives or that laxatives had been administered.

10. Respondent was never trained at Hardin County Nursing Home to chart when she assessed a patient about the need for a laxative.

11. Respondent did not chart when she assessed a patient for the need of a laxative, nor did she chart that one was given.

12. **Respondent was never disciplined, while she worked at Hardin County Nursing Home, for not charting anything about laxatives, either the assessment of the patient or the fact that laxatives were given.**

13. Respondent was never told that she needed to chart her assessment of a patient prior to giving laxatives.

### **ANALYSIS**

Respondent testified that when she gave laxatives to patients, she was giving them pursuant to doctors' orders. Respondent further testified that, prior to giving laxatives to the

patients on the night of February 22 or early morning of February 23, 2009, she had assessed each patient.

Betty Franks, R.N., Director of Nursing at the Hardin County Nursing Home, testified that there is nothing written in the policy on bowel movements that states a patient can not have a laxative unless they have not had a bowel movement in three days. Ms. Franks testified that there is nothing in writing at the nursing home that says you can not give a laxative unless they have not had a bowel movement within three days.

Ms. Franks further testified that pursuant to standing orders, a nurse is allowed to give a Dulcolax suppository to residents, one rectally daily when needed. To determine if it is needed, the nurse can assess the patient. If the nurse determines through that nurse's assessment that it's needed, pursuant to standing orders, the nurse can give the laxative.

The results of the investigation were reported to the State on the unusual event report, and Respondent was terminated. Ms. Franks had no first hand knowledge about the incident concerning laxatives in residents that occurred on February 22, 2009. She learned of the incident through what she heard from other people. Ms. Franks admitted that she had been told by L.P.N.s, in her capacity as Director of Nursing, that C.N.A.s have charted on the ADL sheet that a resident had had a bowel movement when the resident had not had one.

Ms. Franks acknowledged that she is aware that nurses at Hardin will give laxatives to patients after they assess the patients, even if there is documentation by a C.N.A. that the patient had had a bowel movement within the last three days.

Ms. Franks further acknowledged that a nurse is not violating the policy if the nurse gives a laxative to a resident if there is a note from a C.N.A. that the resident had had a bowel

movement within the last three days, as long as the nurse assesses the patient. The determination is based on the **assessment the nurse performs and the opinion of that nurse.** Ms. Franks **agreed that the rectal exam and the assessment of the nurse takes precedence over what might be charted on the ADL chart by the C.N.A.s.**

There was no investigation to determine what the patients had eaten that night, nor were any cultures done on any of the patients' stools to determine why they had multiple stools. There was never any lab work drawn on any of the patients whom the Department claims received laxatives inappropriately to determine whether there was any reason for patients having multiple stools. There is no proof that any **physicians** were notified, **prior to the investigation,** regarding the patients who had multiple stools on February 22 and 23.

There was **contradictory testimony** from the witnesses as to what Respondent said in the morning meeting, and as to what transpired with the residents at Hardin County Nursing Home.

### **CONCLUSIONS OF LAW**

1. The Tennessee Department of Health has the burden of proving, by a preponderance of the evidence, that abuse and neglect occurred as those terms are defined in T.C.A. §33-2-402(1).

2. T.C.A. § 68-11-1001(a) provides that an Abuse Registry shall be maintained that contains the names of individuals who have been determined to have abused, neglected, or misappropriated the property of vulnerable individuals.

(b) the names and information contained in this registry shall be available for public inspection.

3. Tenn. Code Ann. § 33-2-402(1) defines "**abuse**" as:

“...the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;”

4. Tenn. Code Ann. §33-2-402(5) defines “**neglect**” as:

“...failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm;

5. Tenn. Code Ann. § 68-11-1004(a)(3) defines “**vulnerable person**” as:

“...anyone who is under eighteen (18) years of age, or who, by reason of advanced age or other physical or mental condition, is vulnerable to or who has been determined to have suffered from abuse, neglect, or misappropriation of property, and who was, at the time of the commission of an alleged offense, receiving protective services from a state agency pursuant to law, or in the care of either a state agency, or an entity that is licensed or regulated by a state agency, or an entity providing services under the provisions of a contract between that entity and a state agency.

6. The Division has proven that the patients at Hardin County Nursing Home are vulnerable persons pursuant to Tenn. Code Ann. § 68-11-1004(a)(3). This case then turns on the definition of “abuse” and “neglect” as found in Tenn. Code Ann. § 33-2-402(1) and (5).

7. The Division has **not** met its burden of proving, by a preponderance of the evidence, that Respondent physically and emotionally abused vulnerable individuals at Hardin County Nursing Home.

8. It is not clear from the proof presented that Respondent intentionally injured vulnerable individuals by administering laxatives to several residents inappropriately and when none were needed, causing the residents to have numerous bowel movements during the time period February 22, 2009 through February 23, 2009.

9. The Department has not satisfied its burden of proving, by preponderance of the evidence, that Respondent administered the laxatives inappropriately and for purposes other than patient care.

10. The Department **did not** establish that the **Respondent’s actions** resulted in the physical harm, pain and mental anguish of vulnerable individuals at Hardin County Nursing Home.

Based upon the above, it is hereby **ORDERED** that the Respondent's name **SHALL NOT BE** placed on the registry of persons who have abused or neglected a vulnerable person.

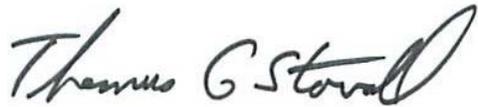
**IT IS SO ORDERED.**

This Initial Order entered and effective this 23rd day of September, 2010.

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Joyce Carter-Ball  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 23rd day of September, 2010.



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Thomas G. Stovall, Director  
Administrative Procedures Division