



9-21-2012

Alcoholic Beverage Commission vs. GREGORY HOLMES, Respondent, Memphis Tennessee Certificate # 26564

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

IN THE MATTER OF:]	
]	
GREGORY HOLMES,]	DOCKET # 17.38-117746J
<i>Respondent</i>]	
]	ABUSE REGISTRY
Memphis, Tennessee]	
Certificate # 26564]	

INITIAL ORDER

This matter was convened as a contested case hearing in Somerville, Tennessee, on September 21, 2012, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Health (the“Division”). Ms. Diona Layden, Assistant General Counsel for the Department of Health/Division of Health Care Facilities, represented the Petitioner/Division. The Respondent appeared *pro se*.

The Petitioner alleged that the Respondent engaged in acts constituting abuse or neglect of a vulnerable adult, and proposed that the Respondent’s name should therefore be placed upon the registry of persons who have been determined to have abused or neglected vulnerable persons (“Abuse Registry”) as prescribed by TENN. CODE ANN. § 68-11-1001, et seq. Upon consideration of the entire record in this case, it is concluded that the Respondent engaged in acts constituting abuse or neglect of a vulnerable adult, and that his name should be placed on the Abuse Registry. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Respondent was employed as a Certified Nurse’s Aide (“CNA”) at Allenbrooke Nursing and Rehabilitation Center, a state-licensed skilled nursing home in Memphis, Tennessee (“the facility”).

2. In the course of his duties as a CNA at the facility, the Respondent assisted with the daily care of the facility's residents.
3. Resident W.H. was a frail, vulnerable 86-year-old female resident of the facility who suffered from multiple medical conditions, including congestive heart failure, hypertension, diabetes, and anxiety. She relied upon facility staff for her daily treatment and well-being.
4. On January 7, 2012, the Respondent was working at the facility, and was assigned to care for T.W. While in the resident's room, the Respondent picked up an apple from a bedside table, squeezed the apple in his hands, and said, "This is what I do to old people."¹
5. The resident became frightened by the Respondent's statement, heightening her level of anxiety. After he left her room, she reported the incident to another staff member.
6. Following an investigation of the incident, during which the Respondent admitted making the statement to the resident, the Respondent was terminated from his employment.

CONCLUSIONS OF LAW

1. Tennessee Code Annotated § 68-11-1001(a) provides that "the Department of Health shall establish and maintain a registry containing the names of any persons who have been determined to have abused, neglected, or misappropriated the property of vulnerable individuals." *See also*, 42 U.S.C.A § 1396(r): 42 C.F.R. §§ 483.13, 488.301, 488.332 & 488.335.
2. "Vulnerable Person" is defined in TENN. CODE ANN. § 68-11-1002(6) as "anyone . . . 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 . . ." and who was, at the time of the commission of an alleged offense, "In the care of . . . an entity which is licensed or regulated by a state agency. . ." *See also*, definitions in TENN. CODE ANN. § 71-6-102.

¹ It was reported to the facility staff that the Respondent said, "This is what I do to old ladies' heads;" or "This is what I'm going to do to your head;" or "This is what I like to do to old people." The Respondent denied those specific statements, but admitted that he did say, "This is what I do to old people."

3. A person “has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.” 42 C.F.R. § 483.13(b)

4. “Abuse” is defined as “the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.” 42 C.F.R. § 488.301. *See also*, definitions in TENN. CODE ANN. § 71-6-102. [Underlined emphasis added.]

5. “Neglect” is defined as “failure to provide . . . services necessary to avoid . . . mental anguish, [etc]” to a vulnerable person. 42 C.F.R. § 488.301. *See also*, definitions in TENN. CODE ANN. § 71-6-102.

6. “Abuse or neglect” is further defined as “the infliction of . . . mental anguish, or the deprivation of services by a caretaker . . .” TENN. CODE ANN. § 71-6-102(1).

7. The Tennessee Department of Health/Division of Health Care Facilities is the Petitioner in this matter, the party that initiated the proceedings, and as such, it is assigned the “burden of proof.” The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the “greater weight of the evidence,” or “the more probable conclusion, based on the evidence presented.” The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Division must prove, by a preponderance of the evidence, that the Respondent mentally abused or neglected a vulnerable individual, as defined by the laws of this State.

8. The Division has met its burden. The record clearly established, by a preponderance of the evidence, that, on January 7, 2012, the Respondent caused a frail, vulnerable nursing home patient in his care to suffer anxiety and mental anguish through his threatening gesture and statement. As an elderly person with serious medical conditions, relying upon caregivers for her medical treatment and well-being, the resident meets the definition of a vulnerable person. The facts of this case clearly prove the Respondent’s mental abuse and neglect of a vulnerable individual, as defined and prohibited by State and Federal laws. The law therefore requires the Respondent’s name to be added to the State’s Abuse Registry.

Accordingly, it is hereby ORDERED that the Respondent's name shall be placed on the Abuse Registry as prescribed by TENN. CODE ANN. § 68-11-1003.

This Initial Order is entered and effective this 27 day of September, 2012

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 27 day of September, 2012



Thomas G. Stovall, Director
Administrative Procedures Division