



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

12-6-2013

Aderemi Osinloye vs. Mental Health & Developmental Disabilities

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

**BEFORE THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND SUBSTANCE ABUSE SERVICES**

IN THE MATTER OF:

ADEREMI OSINLOYE,

Nashville, TN

Respondent.

DOCKET NO: 15.04-122077J

INITIAL ORDER

This contested case was heard in person in Nashville on October 21, 2013, by Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Mental Health and Substance Abuse Services. Nathan Mauer, Assistant General Counsel, represented the Department in this matter. The Respondent was present and represented himself, waiving the right to be represented by an attorney.

The issue in this matter is whether to uphold the Department's decision to place Respondent's name on the Department of Health's Abuse Registry pursuant to Tenn. Code Ann. § 68-11-1004. After consideration of the evidence and argument of the Parties, it is determined that the Respondent's name is appropriately placed on the Abuse Registry. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

The Respondent presented the following testimony on his own behalf – he got caught up in the moment and made a mistake; he believed at the time that his life was at stake; and, during the incident, he failed to consider his patient's ability to breathe.

Three witnesses testified on behalf of the Petitioner: Bob Micinski, CEO, Middle Tennessee Mental Health Institute (MTMHI); Brad Owen, Security Guard, MTMHI; and Karen Hunter, Facility Investigator, MTMHI.

The following five exhibits were entered into evidence: EXHIBIT 1, March 14, 2013 notice of dismissal; EXHIBIT 2, Policy Number 11-2; EXHIBIT 3, Policy Number 09-1; EXHIBIT 4, CD of Incident; EXHIBIT 5, Policy Number 0212.01.

FINDINGS OF FACT

1. The Respondent is a Psychiatric Technician who had been employed by MTMHI since 2001. His employment with MTMHI was terminated on March 25, 2013.
2. On February 23, 2013, the Respondent was involved with several other MTMHI employees in restraining EW, a patient at MTMHI with schizo-affective disorder.
3. The Respondent was positioned near EW's head when the patient began spitting.
4. The Respondent was handed a pillow which he placed over EW's face. The Respondent pressed the pillow down on EW's face for thirty seconds while other MTMHI employees proceeded to place EW in restraints.
5. When the pillow was removed, there were drops of blood on both the pillow and the mattress.
6. During the investigation of the incident, the Respondent initially denied the severity of his actions.
7. All employees receive annual training on the appropriate use of force – essentially the least amount of restraint necessary in order to preserve the safety and dignity of the patient.
8. Employees are trained to use a spit mask when a patient is spitting or, in the alternative, a pillow or towel can be held above the patient's face so long as no contact is made.
9. During his employment, the Respondent would have been trained approximately a dozen times on the appropriate use of force.
10. The Respondent has previously been spit on by a patient and required subsequent testing for HIV infection.

11. The incident was referred to the Department’s Abuse Registry Committee (ARC) which substantiated a finding of abuse and determined that the Respondent should be placed on the Abuse Registry.

APPLICABLE LAW

1. RULE 1360–4–1–.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

The “petitioner” in a contested case proceeding is the “moving” party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. The Department of Health maintains an Abuse Registry pursuant to Tenn. Code Ann. § 68-11-1001(a) that contains the names of individuals who have been determined to have abused, neglected, misappropriated or exploited the property of vulnerable individuals.

3. Tenn. Code Ann. § 68-11-1002(6) defines a “vulnerable person” as someone who:

- (A) Is under eighteen (18) years of age; or
- (B) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect or misappropriation or exploitation of property and is or has been:
 - (i) The subject of any report of harm, abuse, neglect, or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to title 37, chapter 1, parts 1 or 6, title 71, chapter 6, part 1, or pursuant to any other provision of law or regulation;
 - (ii) Receiving protective services from a state agency pursuant to law;
 - (iii) The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property;
 - (iv) In the care of either a state agency, an entity that is licensed or regulated by a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or
 - (v) Receiving services in the person's home from any agency licensed or regulated by or contracted to a state agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.

4. Pursuant to Tenn. Code Ann. § 68-11-1003:

The department of health shall include the name of an individual on the registry when it receives notification from an agency of Tennessee state government that the individual has been found by that agency, **pursuant to that agency's procedures and definitions**, to have committed abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person. (Emphasis added)

5. Pursuant to Tenn. Code Ann. § 33-2-402(1), "abuse" is defined as "the knowing infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish." (Emphasis added)

6. The Department's Policy Number 11-2 provides the following pertinent definitions –

3.1 – Abuse – the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

3.1.2 – Physical Abuse – harmful or painful physical contact, including, but not limited to, the intentional striking, shoving, or pushing of a service recipient by anyone, including another service recipient. Also included is the use of excessive force when restraining a service recipient.

3.6 – Mistreatment – failure to treat a service recipient with dignity and respect, including, but not limited to, misappropriation of belongings or money; touching a service recipient in an offensive manner; violating a service recipient's human dignity; causing or encouraging a service recipient to violate the law; or making derogatory comments about a service recipient in front of the service recipient or another person.

7. Pursuant to Policy Number 09-1, the Department has established an Abuse Registry Committee to determine when an individual with the purview of the Department is appropriately placed on the Abuse Registry.

ANALYSIS and CONCLUSIONS OF LAW

1. EW is a vulnerable person as defined by Tenn. Code Ann. § 68-11-1004(6).
2. The Respondent has been sufficiently trained on proper and acceptable techniques for dealing with a difficult patient, including a patient that is spitting.
3. When faced with this difficult situation, the Respondent did not rely on his training but, instead, took excessive action in defense of himself without consideration of the safety of his patient.

4. Contrary to the requirements of his training, the Respondent pushed a pillow into EW's face for a full thirty seconds. This inappropriate and unapproved technique amounts to excessive force that could have caused serious harm to EW.

5. The situation could have easily been handled in a manner consistent with MTMHI policy since hovering a towel or pillow over EW's face would have appropriately addressed the situation without harm to either EW or to the Respondent.

6. The Respondent's failure to treat EW with dignity and respect, the excessive use of force, and harmful physical contact amount to mistreatment and physical abuse in violation of the law and Policy Number 11-2.

7. The Department followed its internal procedure, and the subsequent decision of the ARC to place Respondent on the Abuse Registry is supported by a preponderance of the evidence.

8. Based upon the foregoing, the Department's decision to place Respondent's name on the Abuse Registry is **AFFIRMED**, and Respondent's appeal of this decision is **DENIED**.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for its citizens.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2013.

JK Summers

KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2014.

J. Richard Collier

J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE