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11-21-2008

MARY BOYD, Respondent

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**BEFORE THE DEPUTY COMMISSIONER  
STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES**

**IN THE MATTER OF:**

**MARY BOYD,  
Respondent**

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**DOCKET NO. 09.10-100348J**

**INITIAL ORDER,  
PLACING RESPONDENT’S NAME on ABUSE REGISTRY**

The hearing in this matter was held in Nashville, Tennessee, on November 21, 2008, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Deputy Commissioner of the Tennessee Department of Finance and Administration, Division of Mental Retardation Services. Mr. Fredrick Zimmermann, Assistant General Counsel, Tennessee Department of Finance and Administration, Division of Mental Retardation Services, represented the State. Ms. Eleanor Brantley served as the State’s party representative. Respondent Mary Boyd represented herself.

The subject of this appeal is whether or not Respondent Mary Boyd’s name should be placed on the “Abuse Registry,” i.e. the registry of those persons who have abused, neglected, or misappropriated the property of vulnerable individuals. Placement on the Abuse Registry bars an individual from future employment as a caregiver for such persons.

After due consideration of the record and arguments of the parties, it is **DETERMINED** that the evidence was **SUFFICIENT** to show that the Respondent neglected a vulnerable person, such that Respondent Mary Boyd's name should be **PLACED** on the **ABUSE REGISTRY**.

This decision is based on the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent appealed the Department of Mental Retardation Services' (DMRS) intention to have her name placed on the Abuse Registry. Such intention was based on DMRS' investigation into a Complaint alleging that, on August 18, 2007, the Respondent neglected "CW", a twenty-five (25) year old vulnerable person, who is mentally retarded, manipulative, has bipolar depression, a history of aggression, history of sexually inappropriate behavior, history of elopement, and who smokes, despite a serious respiratory condition, and other conditions, according to CW's Individual Support Plan (ISP) and Behavioral Support Plan (BSP).

2. Witness Becky Lynn Brown, CW's mother, testified that CW is not legally competent and that the Court has appointed her as CW's Conservator. Ms. Brown noted that CW engaged in an episode of elopement in June 2008, just a few months prior to the incident which is the subject of the Complaint. CW traveled from the Cookeville or Crossville area, some one hundred (100) miles to Nashville, during that incident.

3. Respondent was employed as CW's House Manager, by Hilltoppers, Inc., in Crossville, Tennessee, which provides care for vulnerable persons. Prior to being employed as House Manager, Respondent had served as Direct Care Staff for CW.

4. The night of August 18, 2007, Respondent drove CW to her Aunt Jan Penick's (Aunt Jan) house. Aunt Jan told the Respondent that she would not be able to bring the Respondent home. Respondent permitted CW to take a taxi home. Respondent provided CW a telephone number to call, when she was en route, so that a Hilltoppers' staff member could meet her (CW) at her (CW) home.

5. Although some clients of Hilltoppers work outside the home and are permitted to take taxis alone, through their ISPs, CW's ISP does not permit such. Respondent candidly admitted that she was aware that CW's ISP did not permit such, but, that she elected to rely on her own personal knowledge and assessment of CW's capabilities in making the decision to permit CW to take a cab alone. Respondent agreed that she was aware that elopement had been a problem behavior for CW in the past.

6. Respondent knew that CW was planning to attend the County Fair with her boyfriend, after she was dropped off at Aunt Jan's. Respondent admitted that she was aware that Aunt Jan had out-of-town company, the evening of August 18, 2007.

7. There was a minor discrepancy in the record regarding whether or not Respondent knew that Aunt Jan planned to simply drop CW off at the County Fair, for several hours with a male friend, versus whether or not Respondent thought that Aunt Jan would be present with CW throughout the entirety of the County Fair, but was just

declining to drive CW home, versus whether or not Respondent thought that Aunt Jan would be present with CW only for part of the time at the County Fair.

8. In order to resolve this discrepancy, it is **DETERMINED** that Respondent Boyd's testimony that she did not have actual knowledge that Aunt Jan was simply going to drop CW and her boyfriend off at the County Fair is **CREDIBLE** and is **CREDITED**.

9. CW's staffing requirements mandated that a staff member be with her at all times, for her own safety (See Exhibit 5). Just a week before the incident which is the subject of the Complaint, a staff meeting had been held during which the need to keep CW in line-of-sight was emphasized.

10. Fortunately, that particular evening, CW did arrive home, without incident, at which time she called a new employee of the agency, who was due to report for the next shift, and told her that she (CW) was home, alone. The new employee, Ms. Amanda Plancarte, rushed over to CW's home, arriving around midnight. CW, apparently, either forgot or declined to call Ms. Plancarte, prior to getting in the taxi.

11. Ms. Plancarte thought, earlier, that Respondent Boyd was going to be with CW at the County Fair. Ms. Plancarte continued that Respondent phoned her, the evening in question, and indicated that CW was going to the County Fair with Aunt Jan and that CW and Aunt Jan would call her (Plancarte) when leaving the Fair for CW's home.

12. When Ms. Plancarte phoned the Respondent that evening to express surprise that CW was alone, Respondent told her that she (Respondent) considered Aunt Jan to be the one responsible for CW. When Ms. Plancarte arrived at CW's home, CW

told her that Aunt Jan took her to the Fair and then drove her home. It was only later that Ms. Plancarte learned that CW had taken a taxi.

13. Ms. Plancarte testified that it was her recollection that the policy about phoning CW's mother, prior to trips, was only instituted after this incident. Ms. Plancarte has had subsequent conversations with Aunt Jan and reported that Aunt Jan recognizes, in hindsight, that she did not make a good decision in dropping CW and her boyfriend off at the Fair.

14. Ms. Plancarte testified that she knew that the incident needed to be reported, but that Respondent attempted to thwart her efforts to do so. Nevertheless, Ms. Plancarte did report the incident to Frances Beard of Hilltoppers; an investigation resulted.

15. Social Worker/Agency Investigator for Hilltoppers Beard testified that she is not certain, after her investigation, that Respondent Boyd knew that CW would be alone at the Fair. Beard continued that Ms. Brown had approved CW attending the County Fair with Respondent Boyd and CW's boyfriend. Ms. Brown had approved CW and her boyfriend riding rides at the Fair, as long as Respondent Boyd was in sight, and as long as the rides did not involve enclosed places, like haunted houses.

16. Ms. Beard further testified that Respondent did not consider herself to be on duty that night, although no prior arrangements had been made for Respondent to be off duty that night. Ms. Beard continued that she did not consider it to be a reportable incident that Respondent dropped CW off at Aunt Jan's that night, but did consider it a violation and reportable incident if Respondent Boyd knew that Aunt Jan would not be

staying with CW at the Fair and if Respondent knew that a solo taxi ride would be CW's mechanism for returning home.

17. Ms. Beard testified that Respondent should have called a Supervisor when there was (or should have been) "uncertainty" about how CW would return home.

18. Respondent explained that at the meeting, a week before this incident, it was emphasized that CW was to spend more time with her Aunt Jan. Respondent saw herself as fulfilling this objective.

19. Respondent believed that Aunt Jan became legally responsible for CW, once the Respondent left CW at Aunt Jan's home. Respondent testified that she thought Hilltoppers was released from responsibility by Aunt Jan making the verbal statement, "She's a Big Girl. She'll be alright." That statement was made in response to the Respondent's concern, expressed to Aunt Jan, that Aunt Jan would not be driving CW home that night.

20. Respondent admitted that Hilltoppers has Release Forms, for those occasions when a client is left in the custody of others, in which those other persons assume responsibility for the client. Respondent admitted that one of these forms was not completed when she left CW with Aunt Jan on August 18, 2007.

21. Respondent continued that it was Hilltoppers' staff's practice not to stay, when a client was visiting their relatives. Witness Linda Gordon also testified that it was Hilltoppers' policy that when a client is left with family members, the staff member is to leave. Respondent also testified that it was Policy to leave the client with their relatives,

but to also know, before departure, when the staffer should return to transport the client home, if the relative is not going to transport the client.

22. Respondent admits that she violated this Policy/procedure by leaving without a staff member being arranged for CW's transport back home.

23. Respondent admits that she was aware that Aunt Jan would not be driving CW home and that CW would be taking a taxi. Respondent testified that she felt that "CW was proficient with the telephone, directions, and in giving addresses."

24. Ms. Brown testified that Hilltoppers' staff was supposed to telephone her for approval, prior to taking CW to others' homes. Respondent admitted that she did not telephone Ms. Brown prior to taking CW to Aunt Jan's on August 18<sup>th</sup>.

25. Respondent admitted, upon reflection, that she should have phoned Ms. Brown, once Aunt Jan told her that a solo taxi ride home was envisioned. On the other hand, Respondent also testified that Hilltoppers' staff is encouraged not to question family members' decisions.

26. Respondent admits that, with hindsight, she should have inquired as to why Aunt Jan could not drive CW back home, since the Fair is located only five (5) miles from CW's home.

27. Respondent has fourteen (14) years of experience in caring for vulnerable persons professionally. Respondent also has an Associates Degree in Business and 128 hours towards a Bachelor's Degree in Education.

28. Respondent was also aware that CW would be with her boyfriend at the County Fair that night and that Aunt Jan would be transporting both of them to the fair.

With hindsight, Respondent admitted at the hearing that it was particularly improper for CW to have been alone with her boyfriend at the Fair.

29. Respondent agreed that she had received training on CW's ISP and was aware of her medical conditions, as a result.

30. Executive Director of Hilltoppers for twenty-six (26) years, Mr. Stephen Cox, was a character witness for the Respondent. Unlike in many Abuse Complaint matters wherein the firm terminates or suspends the employee until the DMRS Complaint is fully resolved, Mr. Cox testified that he elected to continue to employ Respondent Boyd because he considers her to be "valuable and competent," "dependable, available," "a person who works lots of overtime," "loyal, a person with pure intentions," that he has great confidence in her abilities, considers her to be in the "top 20% of the over 1,000" staffers he has employed, and "wishes he had a lot more staffers like her (Respondent Boyd)."

31. Mr. Cox described this incident as a "lapse in judgment" that resulted in "no harm" to the client.

32. Respondent admitted that she had been the subject of an earlier DMRS Abuse Investigation. As shown in Exhibit 6, that earlier matter was resolved by Agreed Order on April 25, 2006, indicating that "Mary Boyd is not admitting to any of the charges contained in the Complaint, she, however, understands and acknowledges that the allegations for which the Complaint was issued remain substantiated."

### **CONCLUSIONS OF LAW**

1. Residents of homes for vulnerable persons have the right to be free from physical, mental, sexual and verbal abuse, neglect, corporal punishment and involuntary seclusion. Pursuant to T.C.A. Section 68-11-1001 et seq., the Tennessee Department of Health maintains a Registry of individuals who have been proven to have abused or neglected vulnerable persons and therefore may never again be employed to work with such persons.

2. As the petitioning party, the State bears the burden of proof, by a preponderance of the evidence, to show that the Respondent's name should be placed on the Abuse Registry. Respondent does not have the burden of proving herself innocent.

3. Based on Respondent's overall demeanor and Mr. Cox's testimony, it is **CONCLUDED** that Respondent has value, some level of competence in the field of caring for vulnerable others, is "dependable, available," "a person who works lots of overtime," "loyal," and "a person with pure intentions."

4. However, it is also **CONCLUDED** that Respondent lacks critical judgment and ability to foresee danger, on behalf of vulnerable persons. This conclusion is based on:

A. Respondent's decision to consider herself off-duty without obtaining coverage for her shift.

B. Respondent's failure to realize that a client with a history of elopement may well utilize a solo cab ride to be taken far from the state of Tennessee, to places unknown, or, within the state of Tennessee, to places unknown by Hilltoppers, Aunt Jan, or Ms.

Brown, CW's Conservator and mother. It is **DETERMINED** that a reasonably prudent person would have realized this danger and risk of probable harm to a client.

C. Respondent's failure to know when to call a Supervisor as a sounding board for contemplated decisions.

D. Respondent's failure to confirm with Aunt Jan that Aunt Jan would be present the entirety of the Fair, so that Aunt Jan could assist in the calling of and instructions given to a taxi driver, as well as to ensure that CW would not be alone with her boyfriend at any point, given CW's history of sexually inappropriate behavior.

E. Respondent's decision to trust that CW would in fact both call a taxi and call Ms. Plancarte when she (CW) was on her way home.

F. Respondent's decision not to self-report this incident and her efforts to deter Ms. Plancarte from reporting the incident.

G. Respondent's fourteen (14) years of experience, somehow, suggesting to her that the August 18, 2007 incident need not be reported, once Ms. Plancarte, a young woman of far less experience in the field of caring for vulnerable others, suggested that it should be reported.

H. Respondent's failure to contact a Hilltoppers Supervisor when she and Ms. Plancarte were in disagreement as to whether or not the incident should or must be reported.

I. Respondent's awareness of the importance of following a client's ISP, drafted by family, caretakers, and mental health/MR professionals, yet, electing to follow her own judgment concerning CW's capabilities.

J. If CW's ISP was incorrect or not current, Respondent's failure to take the necessary steps to have CW's ISP revised, to reflect CW's genuine capabilities.

K. Respondent's failure to use a Release Form when CW was dropped off and, as Respondent saw it, was placed in the custody and care of Aunt Jan Penick.

L. Respondent's lack of judgment and foresight, in the entirety of this incident, as well as in her conduct that resulted in the earlier Agreed Order (failure to ask Supervisors about the proper manner in which to address a payment issue).

M. Respondent's apparent inability to learn from her own mistakes.

5. Multiple incidents of abuse or neglect are not required for placement of a person's name on the Abuse Registry. Actual harm is not required.

6. Based on the above, it is **CONCLUDED** that the misconduct by Respondent constitutes abuse [T.C.A. § 33-2-402(1)] by neglect [T.C.A. § 33-2-402(5)] of a "vulnerable person", as defined in T.C.A. § 68-11-1004(a)(3). It is **NOTED** that though Respondent's conduct constitutes neglect, there is no evidence that Respondent engaged in intentional misconduct. Intentional neglect or misconduct is not required.

7. Thus, DMRS' earlier investigation is found to be **SUBSTANTIATED**; the State **MET** its burden of proof

8. Therefore, based on the above, in order to protect vulnerable persons, such as CW, some of whom may be very capable and responsible on some occasions, but may not be on all, and in light of the State's duty of protect vulnerable individuals, it is hereby **ORDERED** that the **NAME** of Respondent **MARY BOYD** be **PLACED** on the **ABUSE**

**REGISTRY**, maintained by the Tennessee Department of Health, pursuant to T.C.A. § 68-11-1001, *et seq.*

9. It is also **NOTED** that such misconduct also violates the provisions of Chapter 18 of the DMRS Provider Manual “Protection from Harm” and/or applicable service plan(s) for the vulnerable person.

This Initial Order entered and effective this the \_\_17th\_\_ day of \_\_December\_\_, 2008.

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Mattielyn B. Williams  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State  
this 17th day of December, 2008.

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Thomas G. Stovall, Director  
Administrative Procedures Division