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10-28-2008

TAMIRIYO BUFFORD, 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:)
)
)
TAMIRIYO BUFFORD,) **DOCKET NO. 09.10-099553J**
Respondent)
)
)

INITIAL ORDER,
PLACING RESPONDENT’S NAME on ABUSE REGISTRY

The hearing in this matter was held in Memphis, Tennessee, on October 28, 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. Mr. Larry Anderson served as the State’s party representative. Respondent Tamiriyo Bufford represented himself.

The subject of this appeal is whether or not Respondent Bufford’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 abused a vulnerable person, such that Respondent Tamiriyo Bufford'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 his name placed on the Abuse Registry. Such intention was based on DMRS' investigation into allegations that the Respondent abused "J", a vulnerable person, who is mentally retarded, physically aggressive, disruptive, self-injurious, manipulative, and who elopes, on occasion, according to J's Individual Support Plan (ISP) and Behavioral Support Plan (BSP). J's BSP is Exhibit 1.

2. It was undisputed that Respondent Tamiriyo Bufford worked as a Direct Care staff member at the Supportive Living home where J resides, on June 6, 2007, the date in question. Support Solutions of the Mid-South (Support Solutions) operates the Supportive Living home where J resides.

3. Witness Tawanna Rhodes, Program Director for Support Solutions, testified that she was at home when she received a telephone call from Support Solutions' Direct Care staff member Freda McKinney, asking her to report to J's home. When Rhodes arrived, Respondent told Rhodes that he "had to defend himself." Rhodes responded that, "There's nothing in crisis management about grabbing a client by the neck. Why didn't you grab him by the arm?" Rhodes further testified that the

Respondent “admitted he had his hand or hands around J’s throat.” Rhodes, then, instructed the Respondent to leave J’s home.

4. Exhibit 3 are the color photographs, taken one to three (1- 3) days later, by State Investigator Johnny Hurt, showing deep, red bruises on the front, back, and sides of J’s neck.

5. Rhodes continued that Support Solutions staff members never “do take-downs” or “back arm bends, ... never strike a client,” but rather are taught “less restrictive techniques ... as part of the training that staff members receive.” Exhibit 4 is Support Solutions’ policy on abuse, neglect, exploitation, etc.; Exhibit 5 is Support Solutions’ policy on abuse and neglect. Rhodes continued that she has worked with J extensively, personally, and that there is nothing in his BSP about locking away knives.

6. Rhodes further testified that it was her impression that:

- A. J had learned to use a butter knife to access his cigarettes, from a locked cabinet,
- B. When confronted, J aimed the knife at Direct Care staff,
- C. Respondent was able to remove the knife from J’s hands,
- D. J then approached the Respondent with a hole puncher,
- E. Rather than using defensive maneuvers and covering his (Respondent’s own) face with his hands, upset Respondent put his arms around J’s neck, nearly choking him.

7. Exhibit 6 is Respondent’s written statement to Investigator Hurt.

8. Respondent testified that his training demands that he never use a weapon, force, or otherwise abuse a client, but rather use defensive techniques. Respondent testified that he does not know how the deep, red bruises were placed on J’s neck, but

theorizes that he (Respondent) had a key on a chain, the night in question, and that the key made the impressions.

9. Respondent denies that he admitted to either Rhodes or Hurt that he had placed his hands around J's neck. Respondent continued that J is a large, strong, man.

10. Investigator Johnny Hurt agreed that he had taken the photographs that constitute Exhibit 3. Investigator Hurt testified that the Respondent both admitted to him orally and demonstrated to him physically, how he (Respondent) had both his (Respondent's) hands around J's neck, in a choking position.

11. Witness Barry Brown, a professional colleague of the Respondent's, testified that he had known the Respondent for years and that the Respondent would never mistreat anyone, in his opinion. Brown described J as having an "explosive temper." Brown continued that J has never "attacked" him, but if J did, Brown would use "blocking."

12. Respondent Bufford testified that he would never abuse anyone, has ten (10) or more years experience in caring for vulnerable persons, that the keys made the red marks, that he acted in self-defense, that if he were guilty he'd admit it, and that he only became involved because McKinney was assigned to J, but J had lost control, so he (Bufford) was trying to protect both McKinney and himself.

13. Respondent further testified that he only used his open hand and could not run because J had cornered him in the kitchen. Respondent was firm that J was trying to hurt him and had threatened to bust the windows in his (Bufford's) car.

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 himself innocent.

3. Respondent's theory of this matter is that he only used defensive maneuvers and that the deep, red marks on J's neck, in Exhibit 3, were made by the rubbing or other contact with a key, attached to Respondent's wrist.

4. Witness Rhodes testified that the Respondent admitted nearly choking the Respondent, when she confronted him, shortly after the act. Investigator Hurt testified that the Respondent not only admitted placing his hands, in a choking position, around J's neck, but physically demonstrated the choke hold for the Investigator.

5. In judging the testimony of witnesses, one should bear in mind any interest a witness may have in providing a particular line of testimony. By the date of the hearing, only Respondent Bufford himself denied having placed his hands in a choking position around J's neck. Based on the consistency of the testimony of Rhodes and Hurt, the photographs in Exhibit 3, Respondent's demonstration of the choke hold in front of Hurt, and the weakness of Respondent's "Key Must Have Done It" contention, it is

CONCLUDED, by a preponderance of the evidence, that Respondent did place his hands around J's neck, in a choking position, resulting in the injuries shown in Exhibit 3.

6. Based on Respondent's overall demeanor, it is **CONCLUDED** that Respondent simply became angry with J, ignored his training, lost his temper, and would rather risk sanction for perjury than admit to abusive behavior.

7. Some persons are able to follow their training, despite anger, whereas other persons are not. Multiple incidents of abuse or neglect are not required for placement of a person's name on the Abuse Registry.

8. It is further **CONCLUDED** that Respondent's conduct constitutes abuse of a vulnerable person, as such terms are defined in TCA Section 68-11-1004(a)(3) and constitutes violation of Chapter 18, "Protection from Harm," of the DMRS' Provider Manual. Thus, the State **MET** its burden of proof. Further, DMRS' earlier determination is found to be **SUBSTANTIATED**.

9. Therefore, based on the above, it is hereby **ORDERED** that the **NAME** of Respondent **TAMIRIYO BUFFORD** be **PLACED** on the **ABUSE REGISTRY**, maintained by the Tennessee Department of Health, for the protection of vulnerable individuals.

This Initial Order entered and effective this the _____ day of __November__, 2008.

Mattielyn B. Williams

Administrative Judge

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

Thomas G. Stovall, Director
Administrative Procedures Division