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LaTONYA THOMAS

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BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:
LaTONYA THOMAS

DOCKET NO: 17.38-065396J

INITIAL ORDER

This matter was heard by Todd R. Kelley, Administrative Law Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Health. The State was represented by Brandi Bozart, Assistant General Counsel, Department of Health. The Respondent, LaTonya Thomas, represented herself.

After consideration of the record, the testimony of the witnesses, and the arguments of the parties, it is ORDERED that the Respondent shall not be placed on the Abuse Registry. This determination is based on the following:

SUMMARY OF EVIDENCE

The Claimant, LaTonya Thomas, testified that she was employed at the Milan Health Care Center from February to April 2004, as a Certified Nursing Assistant (“CNA”). Her duties included giving patients’ baths, combing their hair, and feeding them. Thomas stated that on April 1, 2004, she visited the room of patient D.S., in
response to seeing his call light. According to Thomas, when she arrived, the patient raised his hands, which had feces on them, and began hitting at her. In response, she blocked his hands. Following the incident, she cleaned him up.

Patsy Myers, a Registered Nurse and consultant for the State of Tennessee, testified that she investigated the complaint by patient D.S. that led to the instant action against Thomas. According to Myers, D.S. is unable to talk and communicates by a “communication board at his side and . . . pictures.” Myers stated that when she spoke to D.S. she explained to him what she was doing, and he “started making gestures with his hands like spraying and slapping his face.” Myers testified that she asked him if anybody ever hurt him and he “slapped his face.”

Myers admitted she did not interview Thomas regarding the incident, and that she interviewed the patient on May 24, 2004, almost two months after the complaint at issue. Additionally, Meyers acknowledged that she did not bring Thomas to D.S. or show him a picture of Thomas, in order to assist in determining if D.S. was referring to Thomas.

Sandra Foster testified that she was employed at Milan Health Care as a Social Worker at the time of the complaint by D.S. Foster declared that D.S. has a brain injury, is in a wheelchair, and needs assistance with all of his activities of daily living including bathing, dressing, and grooming. She stated that D.S. “told” her about the incident at issue by pointing to letters in his communication book, and symbols.

Foster testified that the complaint originated when, during a “speak out,” D.S. tried to communicate something to the Activities Director. The Activities Director referred him to a Social Worker, who filled out a grievance form and passed the form on
to her. Foster stated that the “speak out” was on March 31, 2004, and the form was given to her on April 1, around 9 a.m. Foster stated that D.S. indicated that “he was in bed and the aid slapped him in the eye.” According to Foster, D.S. indicated that the event occurred on a weekend but “it wasn’t the past weekend.” Foster asserted that she asked D.S. to describe the individual who harmed him, and he indicated that she was “small, black, and she had taken care of him before, but she wasn’t here today and didn’t work yesterday.” Foster declared that, following her discussion with D.S., she gave the grievance to the Administrator to follow up with. According to Foster, patient D.S. has reported many similar problems with CNAs. Additionally, Foster added that D.S. has episodes of “combative ness,” as he’s “a very frustrated person because of his condition, and when he wants something he wants it right now.”

Calamity Anderson was employed as Director of Nursing in April of 2004, when the complaint at issue occurred. According to Anderson D.S. “communicated with the book that he had and would point out the letters or spell out the words. He would use some hand gestures, sometimes pointing at different things.” According to Anderson, when she spoke to patient D.S. he “described the incident by spelling out.” She stated that “he also told me the person that had came in to do that [sic], or claimed happened, was not working and when she came back that he would let us know who he was saying had done that. And he indicated with the spray bottle, you know, the spray and he used hand gestures in what went on in that nature of spelling it out. He didn’t - -he could mumble but some words are is [sic] not real clear where you can understand what he was saying.” Anderson admitted that she never took Thomas into D.S.’s room to see if he
could identify her. Further, Anderson reaffirmed that the patient had a reputation for being a combative patient.

**FINDING OF FACT**

1. Milan Health Care Center is licensed and regulated by the Tennessee Department of Health pursuant to Tenn. Code Annotated §68-11-201, *et. seq.*

2. The Respondent, LaTonya Thomas, was employed at Milan Health Care Center from February 24, 2004, until her termination, as a result of the complaint at issue, in April, 2004.

3. D.S. was a patient at Milan when the alleged incident occurred. He suffers from a brain injury, is wheelchair bound, unable to communicate verbally, and needs assistance with all of his activities of daily life. D.S. is often combative and has had many physical altercations with CNAs.

4. In late March 2004, Thomas responded to D.S.’s call light and went to his room. When she arrived, D.S. was distraught, and was swinging his arms. His hands were covered with feces. Thomas approached D.S., and he attempted to strike her with his hands. In an effort to protect herself, she raised her arms and blocked his hands.

3. Following the incident, D.S regained control, and Thomas cleaned him up.

4. D.S. later indicated that somebody had hit him and sprayed him with Peri-Wash; however, D.S., who is unable to speak, never identified Thomas as the perpetrator, and the State presented no evidence that those investigating the incident brought Thomas

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1 Anderson testified that D.S. “told us” that Thomas was the perpetrator; however, she conceded that she did not know who D.S. “told,” and that she did not take Thomas to D.S. to allow him to identify her.
to D.S, or showed him a picture of Thomas, in order to determine if Thomas was the individual to whom he was referring.

**APPLICABLE LAW**

1. “The Department of Health shall include the name of an individual on the [abuse] registry when it receives notification from an agency of Tennessee state government that the individual has been found by the agency, pursuant to that agency’s procedures and definitions,\(^2\) to have abused, neglected or misappropriated the property of a vulnerable person who is under eighteen (18) years of age, or who, by reason of advanced age or other physical or mental condition, is vulnerable to abuse, neglect, or misappropriation of property, and who was at the time of such determination, in the care of:

   (A) A state agency

   (B) An entity which is licensed or regulated by a state agency; or

   (C) An entity under the provisions of a contract between that entity and a state agency.


2. “Vulnerable Person” means 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

\(^2\) The Department of Health does not appear to have officially adopted any procedures and definitions, but has apparently unofficially adopted the definitions of abuse and neglect in Tennessee Code Annotated Section 71-6-102.
offense against him or her, receiving protective services from a state agency pursuant to law, or in the care of either a state agency, or an entity which 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.

3. “‘Abuse or neglect’ means the infliction of physical pain, injury or mental anguish, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services which are necessary to maintain that person’s health or welfare.” Tenn. Code Ann. § 71-6-102.

4. The State is required to prove by a preponderance of the evidence that the allegations are true, and that the Respondent is deserving of being placed on the abuse registry. Rule 1360-4-1-.02(3) & (7).

CONCLUSIONS OF LAW AND ANALYSIS

1. In this case, the State failed to prove by a preponderance of the evidence that Thomas abused or neglected patient D.S. According to Thomas, who testimony this Judge accredits, in late March 2004, she was called to D.S.’s room. He was agitated,

2. and began swinging his arms at her in an attempt to hit her. In order to protect herself, Thomas raised her arms and blocked D.S.’s strikes.

The State presented evidence that patient D.S. “communicated” to at least three individuals that someone had hit him and sprayed Peri-Wash on him. However, even if
the allegations by D.S. are true, and there was evidence that D.S. is extremely combative, and has had numerous altercations with his caregivers, there is no evidence that the perpetrator was Thomas, or that D.S. was referring to the same incident to which Thomas referred. The State did not present any evidence that those who investigated D.S.’s complaint ever showed him a picture of Thomas or brought her to D.S.’s room to allow him to identify her. Further, all of the “evidence,” that the State presented in support of its position that Thomas abused or neglected patient D.S. was hearsay (i.e. the testimony of witnesses that patient D.S. had communicated to them that he had been abused), and it is well settled that, if admitted in an administrative hearing, uncorroborated hearsay alone is not sufficient to support the State’s action. *Goodwin v. Metro Board of Health*, 656 S.W.2d 383, 388 (Tenn. Ct. App. 1982).

2. Consequently, it is **ORDERED** that the Respondent shall not be placed on the Department of Health Abuse Registry.

Entered and effective this 24th day of January 2006.

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Todd R. Kelley
Administrative Law Judge
Filed in the Administrative Procedures Division, Office of the Secretary of State, this 24th day of January 2006.

Charles C. Sullivan II, Director
Administrative Procedures Division