12-26-2013

Sharon Boothe vs. Department of Health

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IN THE MATTER OF:

SHARON BOOTH
CNA Certificate No: 00144721,
Reagan, TN
Respondent.

DOCKET NO: 17.38-122634J

INITIAL ORDER

This contested case was heard in person in Adamsville, Tennessee, on October 24, 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 Health. Caroline Tippens, Assistant General Counsel, represented the Department in this matter. The Respondent was present and represented herself, 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 her own behalf – she did not intend to push resident AM but was only attempting to prevent him from falling because she did not think he should be standing up; she has chosen to work with the elderly; she loved her job and the individuals to whom she provided care.
Five witnesses testified on behalf of the Petitioner: Martha Johnson, Administrator, Adamsville Healthcare and Rehabilitation Center (AHRC); Tina Ayers, Certified Nursing Assistant (CNA) with AHRC; Brandy Stanfield, CNA with AHRC; Brandi Wood, Licensed Practical Nurse (LPN) with AHRC; Susan Hendrix, Public Health Nurse Consultant with the Department of Health.

The following five exhibits were entered into evidence: EXHIBIT 1, Respondent’s Personnel File; EXHIBIT 2, Medical Records for AM, entered into evidence under a Protective Order; EXHIBIT 3, Investigative Report; Collective EXHIBIT 4, Documents submitted by the Respondent; EXHIBIT 5, Letter from Tina Rayborn.

**FINDINGS OF FACT**

1. The Respondent began her employment with AHRC as a CNA in March 2011. Her employment was terminated by AHRC in March 2013.

2. The CNAs are responsible for assisting the residents with their activities of daily living (ADLs). The CNAs are trained in providing appropriate care and in avoiding conduct that could be classified as abuse.

3. The Respondent has been trained on the appropriate method for placing a resident into a wheelchair.

4. On March 18, 2013, the Respondent approached AM as he was standing up and pushed him back in his wheelchair by applying pressure to both of his shoulders.

5. In order to properly place AM back in his wheelchair, the Respondent should have clasped her hands behind AM’s back and slowly lowered AM to the seat.

6. AM was an 86 year old resident of AHRC with dementia who had suffered a right femoral neck fracture as well as a hip fracture in January 2013.

7. AM was not required to remain in his wheelchair, and there is no evidence in the record that AM was in any way acting inappropriately.
8. Respondent was terminated by AHRC on March 25, 2013, for conduct in violation of facility policy, and the incident was referred to the Department of Health to determine whether 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. The Department has adopted the following definition for “abuse” from 42 C.F.R. § 488.301 – “the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.”

6. The Department has adopted the following definition for “abuse” from Tenn. Code Ann. § 71-6-102(1) – “the infliction of physical pain, injury, or mental anguish.”

**ANALYSIS and CONCLUSIONS OF LAW**

1. AM was a vulnerable person as defined by Tenn. Code Ann. § 68-11-1004(6).

2. The Respondent has been sufficiently trained on providing proper and acceptable care to vulnerable persons in the AHRC facility.

3. The Respondent, apparently, decided that AM was too frail to stand on his own and should remain seated in his wheelchair. However, notwithstanding this frailty, the Respondent pushed AM back into his wheelchair rather than placing him gently in his wheelchair as required by facility policy.

4. If AM was truly in danger and required immediate intervention, the Respondent should have addressed the situation pursuant to the requirements of facility policy.

5. There is no evidence in the record that the Respondent either willfully or maliciously intended to inflict harm on AM. However, if the Respondent truly intended to protect AM from injury, her initial instinct for doing so was contrary to policy and, itself, placed AM in jeopardy of harm. If the Respondent is not guided by her training to properly address a potentially dangerous situation, she may not be well-suited to care for vulnerable persons.
6. By disregarding her training, the actions of Respondent placed AM at even greater risk of harm than the speculative risk that has been alleged by the Respondent.

7. Based upon AM’s physical condition at the time of the incident, it is more probable than not that the Respondent’s actions caused harm and pain to AM.

8. The Department’s decision to place the Respondent on the Abuse Registry is supported by a preponderance of the evidence and the governing law.

9. 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.

__________________________________
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
DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE