

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

LISA COLES,
Petitioner,

v.

**DCH, HEALTHCARE FACILITY
REGULATION,**
Respondent.



Docket No.: 2303021
2303021-OSAH-DCH-HFR-NAR-25-Teate

09/30/2022

A handwritten signature in black ink, appearing to read "Lindsey Pugh", is written over a horizontal blue line.

Lindsey Pugh, Legal Assistant

INITIAL DECISION

I. Introduction

Petitioner Lisa Coles appeals the decision of the Department of Community Health, Healthcare Facility Regulation Division (hereinafter “DCH” or “Respondent”) to enter into the State Nurse Aide Registry a finding that she verbally and physically abused a resident. The hearing on this matter was held on September 7, 2022, before the undersigned Administrative Law Judge of the Office of State Administrative Hearings (OSAH). Ms. Coles represented herself at the hearing and Sophia Clark-Leslie, Esq., represented Respondent. For the reasons indicated herein, Respondent’s proposed action is **AFFIRMED IN PART** and **REVERSED IN PART**. Respondent is authorized to enter a finding that Petitioner verbally abused a resident into the Nurse Aide Registry.

II. Findings of Fact

1. Ms. Coles is a Certified Nurse Aide (CNA). She worked in this capacity for Azalealand Nursing and Rehab (hereinafter “Azalealand”), a long-term care facility, beginning in October 2014, until she was terminated on March 10, 2022, following the incident at issue in this Decision. (Exhibit R-8; Testimony of Leigh Thigpen, Director of Nursing).
2. R.B., an elderly resident whose age and diagnoses are not indicated in the record, was

one of the residents under Ms. Cole's care at Azalealand. She was reported to have a Brief Interview for Mental Status (BIMS) score of 12. Raven Prescott, a CNA at Azalealand, described R.B. as difficult. (Exhibit R-5, Testimony of Leigh Thigpen; Testimony of Ms. Prescott).

3. On or about March 10, 2022, R.B.'s care was assigned to Ms. Prescott, but R.B. was on Ms. Coles' "get up and dress list." Per Ms. Prescott, as she and Ms. Coles were reviewing the assignment, Ms. Coles said of R.B., "I don't like that old bitch—I can't stand her." Ms. Coles denied that she made the statement. Ms. Prescott later reported that as the CNAs were getting residents ready to get up, she was assisting another resident in Room 26 when she overheard Ms. Coles in Room 22 (R.B.'s room) talking so loudly that you could hear it in the halls. Reportedly, Ms. Coles said "this is a nasty old bitch, NASTY." Although there is no indication that Ms. Prescott ever entered R.B.'s room or could actually see inside it, she further reported that Ms. Coles helped R.B. to the toilet and let her sit there naked while she got the bed ready. Ms. Prescott reportedly heard Ms. Coles say "Hurry up! You are not the only one got to use the bathroom," and then, "I can't stand this bitch, need to go back to Iran." R.B. is an immigrant from Iraq. (Testimony of Raven Prescott; Exhibit R-6).

4. On March 9, 2022, Selena Nelson-Loya, a new CNA at the facility, was working with Ms. Coles on the 11 p.m. to 7 a.m. shift as she provided residential care. The next morning, Ms. Nelson-Loya reported multiple incidents of potential abuse and/or neglect. As her report related to R.B., Ms. Nelson-Loya reported to Ms. Thigpen, the Director of Nursing, that: (1) Ms. Coles told R.B. that she had to get out of bed and proceeded to take her there with the main door and the bathroom door wide open; (2) R.B. fussed, whereupon Ms. Coles yelled at R.B. that she needed to stop fussing because she was Iraqi and that "we fought for your freedom to come to America and if she didn't want to stop fussing, she would be sent back to be killed off"; (3) R.B.

asked what she did wrong and Ms. Coles told her, “shut up, you bitch”; and (4) R.B. did not get in her bed as Ms. Coles directed so Ms. Coles picked R.B. up and dropped her in the middle of the bed, hurting R.B.’s arm. Shortly after this incident, Ms. Nelson-Loya resigned. She was not present to give testimony. Although Ms. Coles did not object on the basis of hearsay, she did respond that it was a lie. (Testimony of Ms. Thigpen; Exhibit R-7).

5. Based on Ms. Nelson-Loya’s report, Ms. Thigpen initiated an investigation. As part of this investigation, she interviewed and obtained statements from Ms. Nelson-Loya and Ms. Prescott. (Testimony of Ms. Thigpen).

6. In her written statement, Ms. Prescott alleged that Ms. Coles stated “This a nasty old bitch, NASTY,” “Hurry up, you’re no the only one got to use the bathroom,” and kept saying “I can’t stand this bitch, go back to Iran” during the incident. She further wrote that she heard Ms. Coles say “I’m done, I’m done with you. Go back to Iran.” (Exhibit R-6).

7. R.B., who is alert and oriented, reported to Ms. Thigpen that she was not mistreated. R.B.’s daughter reported to Ms. Thigpen that R.B.’s denial was “probably because of [her] paranoid thoughts” that there might be retaliation. R.B. was medically evaluated, with no injury observed. Ms. Coles declined to provide a written statement, stating only that the allegations were false. Ms. Thigpen filed the appropriate initial and follow-up reports with DCH. Ms. Thigpen concluded that Ms. Cole committed abuse as alleged and terminated her employment with Azalealand. (Testimony of Ms. Thigpen; Exhibits R-4, -5, -6, -7, -8, -9, and -10).

8. Ms. Coles testified that she was never interviewed and that she never received a report of the investigation before termination. She also reported that she only received the investigation statements in the evidentiary packet she received the day before this hearing. Although she did not object to Ms. Nelson-Loya’s statements as inadmissible hearsay, Ms. Coles consistently

maintained that the statements were false. Ms. Coles offered no conflicting narrative of the events of March 9 or March 10, 2022, but summarily denied the allegations without going into detail. (Testimony of Ms. Coles).

9. Respondent issued its adverse action letter on June 7, 2022, alleging that on or about March 10, 2022, Ms. Coles verbally abused R.B. by calling her a “Nasty Bitch” and telling her “I hope you go back to Iraq where you came from. . . . We fought for you to be here in America, and we can send you back to have you killed off.” DCH further alleged that Ms. Coles rushed R.B. from the bathroom and when she didn’t get into bed fast enough, that Ms. Coles “picked her up and dropped her on to the center of the bed causing pain to her shoulder.”

III. Conclusions of Law

1. DCH has the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

Nurse Aide Registry

2. Each state participating in the Medicaid program must establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program. 42 U.S.C. § 1396r(e)(2)(A). The registry must include “specific documented findings by a state . . . of resident neglect or abuse, or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings.” *Id.* § 1396r(e)(2)(B).

3. Each state is required to have a process for the receipt, timely review, and investigation of allegations against a nurse aide accused of neglect, abuse, or misappropriation of resident property of those individuals who are residents of a nursing facility. 42 U.S.C. § 1396r(g)(1)(c);

42 C.F.R. § 483.156(c)(iv). The Department of Community Health is the state entity responsible for the administration of this process and does so through its Healthcare Facility Regulation Division. The federal act further requires that a nurse aide has the right to rebut any such allegations of neglect, abuse, or misappropriation of resident property at a hearing. *Id.*

Investigations

4. The state must investigate every allegation of resident abuse, neglect, or misappropriation of property. Then, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut the allegations, the state must make a finding as to the accuracy of the allegations. If the state substantiates the allegation, the state must notify the nurse aide and the registry of such finding. 42 U.S.C. § 1396r(g)(1)(C); 42 C.F.R. § 488.335(a)(1), (2). As applied, DCH conducted an investigation in conjunction with Azalealand and determined that Ms. Coles' name should be placed on the state's Nurse Aide Registry with a finding of abuse for her conduct toward resident R.B.

Allegations of Abuse

5. Abuse is defined as "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish." 42 C.F.R. § 488.301. The regulatory definition includes verbal abuse. *Id.* "Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish." *Id.*

6. Weighing the record as a whole, the Court concludes that Ms. Coles verbally abused R.B. Ms. Prescott testified credibly and persuasively that she heard Ms. Coles direct derogatory and abusive language toward R.B. The Court does not find her testimony to be rebutted by Ms. Coles' blanket denial of wrongdoing. Based on the language used and the manner in which the words were spoken, the Court infers that Ms. Coles' statements caused mental anguish. *See*


Allen v. North Carolina Dep't of Health and Human Servs., 573 S.E. 2d 565 (N.C. App. 2002).

7. Respondent's allegations of physical abuse are unsupported by competent evidence. Its finding of physical abuse is predicated on the written statement of Ms. Nelson-Loya, who did not testify at the hearing. Although Ms. Coles did not object to the hearsay nature of Ms. Nelson-Loya's statements at the hearing, the Court nonetheless gives the statements minimal evidentiary weight, and finds them insufficient to prove Ms. Coles actually committed physical abuse. Accordingly, DCH's entry into the Nurse Aide Registry regarding Ms. Coles may not reference the allegation of physical abuse.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to place Ms. Coles' name, a finding of verbal abuse, and a written description of the incident in the Nurse Aide Registry is hereby **AFFIRMED**. However, its finding of physical abuse is **REVERSED** and it is not authorized to place such finding or a written description thereof in the Nurse Aide Registry.

SO ORDERED, this 30th day of September, 2022.



Steven W. Teate
Administrative Law Judge

