THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

Department of Public Health,

 Petitioner

 v. Docket No. PHNA-15-300

 DATED: July 28, 2017

Stacy Sumner Wilds,

 Respondent

**Appearance for Petitioner:**

Joel Buenaventura, Esquire

Deputy General Counsel

Department of Public Health, 2nd FL

250 Washington Street

Boston, MA 02108-4619

**Appearance for Respondent:**

*Pro Se*

P.O. Box 326

Hinsdale, MA 02135

**Administrative Magistrate:**

Judithann Burke

 **DECISION**

 Pursuant to G.L. c. 111, §§ 72F-l, 14 U.S.C. 1496(R), and 105 C.M.R. 1.55, the Petitioner, Department of Public Health (DPH), issued a Complaint Investigation Report that included a valid finding of patient abuse against the Respondent, Stacy Sumner Wilds, on February 12, 2015. (Exhibit 1.) The DPH Notice of Agency Action was issued on April 30, 2015. (Exhibit 2.) The Respondent’s claim for a hearing was received on June 1, 2015. (Exhibits 3 & 4.)

 I held a hearing on May 22, 2017 in Room 307 at 436 Dwight Street, Springfield, MA. I marked sixteen (16) exhibits. The Petitioner presented the testimony of the following witnesses: Angela William, Director of Nurses (DON) at Cranville Place Rehabilitation and Skilled Nursing in Dalton, MA (Cranville); Stephanie McNulty, Certified Nurse Aide (CNA) at Cranville; Kayla Gatani, former R.N. at Cranville; Cathleen Herforth, former CNA at Cranville; and, Jodi Ouimette, Administrator at Cranville. The Respondent testified in her own behalf. Both sides made oral closing arguments. The hearing was digitally recorded.

**FINDINGS OF FACT**

Based upon the testimony and documents presented at the hearing in the above entitled matter, I hereby render the following Findings of Fact:

1. The Respondent, Stacy Sumner Wilds, was employed as a Certified Nurse Aide (CNA)

at Cranville Place Rehabilitation and Skilled Nursing in Dalton, MA (Cranville) for several years prior to her termination in January 2014. She was terminated from the position for failure to fulfill her per diem commitment. (Exhibit 16 & Williams Testimony.)

1. G.H., an elderly female with dementia, resided at Cranville in 2013. She was known to be overanxious, easily startled, and physically combative with caregivers on a daily basis. She often yelled out randomly. She was wheelchair bound and had heart disease. She passed away on February 10, 2014. (Exhibits 5 & 6 &Williams, McNulty, Herford, Gatani, Ouimette & Respondent Testimony.)
2. Kayla Gatani was a Registered Nurse (R.N.) at Cranville in 2013. She and the Respondent worked on the same shift on Unit 3 at Cranville on nine (9) separate days between August 18, 2013 and December 30, 2013. (Exhibit 15 & Ouimette Testimony.)
3. While in the break room at Cranville on January 14, 2015, CNA Stephanie McNulty happened upon a video on the social media site Facebook. It had been posted on the wall of Kayla Gatanii. The video depicted the Respondent sitting next to G.H. in the Unit 3 corridor elbowing her in the arm and poking her on the leg.

G.H. was looking toward the camera and saying “stop, leave me alone.”

The Respondent was laughing. She continued the poking. G.H. was crying and appeared very distressed.

The Respondent said, “You know you love me.”

At one point, G.H. asked, do you think this is funny?”

At another point, G.H. became agitated and began to strike out at the Respondent.

 McNulty recognized Gatani’s voice in the background and heard her egging the Respondent on trying to continue the taunting. (McNulty, Williams, Herford, Ouimette Testimony & Exhibits 7-11.)

1. McNulty immediately sent a messenger feed to Gatani. Gatani responded. The exchange was as follows:

9:50 AM

M-Get that video off here now! U can get in so much trouble for that

G-Whose going to see it? I’m not friends with anyone And she’s dead.

M-Just get it off. Send it to Stacy. Don’t put it on here.

G-You people and your paranoia. I smoke all the weed I should be the paranoid one. I

 deleted it.

(Exhibit 12.)

1. During her testimony at the May 22, 2017 hearing, Gatani insisted that the comment “I deleted it” did not refer to the comments immediately preceding it. (Gatani Testimony.)
2. McNulty showed the video to fellow CNAs Rodda and Kathy Herforth. Shortly after the CNAs viewed the video, Herford and McNulty showed it to DON Williams and Administrator Ouimette. After the supervisors viewed the video, they attempted to forward and/or save it. They were unsuccessful. It had been deleted by Gatani. (Williams and Ouimette Testimony and Exhibits 6 & 7.)
3. Ouimette telephoned Gatani and asked her to come in for an interview and write a statement. Gatani denied the allegations. Gatani was suspended and terminated shortly thereafter. (Ouimette Testimony & Exhibits 7, 13 &14.)
4. Both Gatani and the Respondent have pending criminal cases in the Pittsfield District Court related to this matter. (Gatani & Respondent Testimony.)

 **CONCLUSION**

G.L. c. 111, § 72F defines “abuse” as follows:

The willful infliction of injury, unreasonable confinement, intimidation, including verbal or mental abuse, or punishment with resulting physical harm, pain or mental anguish or assault and battery; provided, however, that verbal or mental abuse shall require a knowing and willful act directed at a specific person.

After a careful review of all of the testimony and documents in this case, I have concluded that the Petitioner has met its burden of proof in establishing that the Respondent was physically and emotionally abusive toward G.H. at some point between August and December 2013. A preponderance of the evidence supports this conclusion.

 In reaching this conclusion, I have credited the testimony of: McNulty, Herford, Williams, & Ouimette. I have discredited the self-serving and incredulous statements made by both Gatani and the Respondent. Gatani proffered that her comment “it’s been deleted” was unrelated to this matter. The Respondent expended much energy professing that G.H. did not like to be touched or have anyone close to her. Yet, the Respondent is seen violating those boundaries in the video and laughing about it. The obvious jabbings in or about the elbow and arm areas as well as the upper leg area, and, the blatant taunting, as reported by those who saw the video, are all tantamount to physical and mental abuse under these circumstances.

Gatani and the Respondent both displayed coldness and lack of remorse in the aftermath. Gatani messaged “she’s dead anyway.” The Respondent repeatedly stated what a difficult, violent and cognitively detached resident that G.H. was. All in all, this narrative is a “blame the victim” red herring.

The bottom line is that G.H.’s physical space was invaded on the day in question and she was teased and taunted to the point that she was observed to be crying in the video. While the video no longer exists, the events depicted thereon were seen by several credible witnesses and their respective accounts represent witness accounts of the actual event. That the Respondent never viewed the video herself is inconsequential. She was observed as an actual participant in the event.

The allegation of “abuse” has been proven. The Respondent’s behavior toward GH was both cruel and derogatory as well as possibly criminal.

 In conclusion, DPH has established, by a preponderance of credible evidence, including its witnesses and documents, that the Respondent was both physically and mentally abusive toward G.H. in late 2013. Based on the forgoing findings, DPH shall take such action as is required pursuant to 42 U.S.C. §1396r and G.L. c. 111, 72 J.

So ordered.

 Division of Administrative Law Appeals,

 BY:

 Judithann Burke

 Administrative Magistrate

DATED: July 28, 2017