

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**TIFFANY POUST,
Defendant**

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CR-322-2016

RECONSIDERATION

OPINION AND ORDER

On October 13, 2016, Defendant Tiffany Poust (Poust) filed a Motion for Reconsideration Motion requesting the Court reconsider its denial of Habeas Corpus relief with respect to Count 2, Failure to Report or Refer.¹ On November 22, 2016, the Court heard argument and testimony. Defense Counsel submitted, as its only exhibit, with no objection by the Commonwealth, a Photocopy of a Certification from the Pennsylvania Department of Health stating that the [Defendant] has successfully completed a NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM OR A COMPETENCY EVALUATION PROGRAM [sic] And [sic] has been enrolled in the Pennsylvania Department of Health Division of Nursing Care Facilities NURSE AIDE REGISTRY [sic].²

Testimony of Tiffany Poust

Poust testified that she was not required to take classes regarding child abuse to become a member of the nurse aide registry. Her current employer (a rehabilitation and nursing home facility licensed by the Department of Health) does not require child abuse training. Poust testified that she provides certified nurse aide services to geriatric residents at her facility. She testified that none of the abuse training she had

¹ 23 Pa. C.S. § 6319(a)(1).

² Defendant's Exhibit A.

received at the residential facility where employed was in regards to the pediatric population.

Discussion

Defense Counsel argues that Defendant is not a mandated reporter under Title 23 Section 6311(a)(1) as she is not licensed or certified to practice in a health related field under the jurisdiction of the Department of State. The Department of State has jurisdiction over professional and occupational licenses. PURDON'S STATUTES: 71 P.S. §279.1. The Department of State acts through the Commissioner of Professional and Occupational Affairs. ID. 63 P.S. §9.2. Certified Nurse Aides are not an occupation under its purview with regard to licensing. SEE PURDON'S STATUTES TITLE 63 P.S. SECTION 1 *ET SEQ.*

Title 63 does regulate Certified Nurse Aides, however, through the Nurse Aide Resident Abuse Prevention Training Act (Title 63 Chapter 20A (Sections 671 through 680)). Though from the plain meaning of the title of the Act one would infer it only addresses protecting nursing home residents from abuse, the definition of abuse in the Act defines abuse in three ways. The third definition includes the abuse at issue in instant matter i.e. "Abuse" as defined in Pa.C.S. Chapter 61 (relating to Protection from Abuse). The definition of abuse from the Protection from Abuse Act, 23 Pa.C.S. § 6101 et seq. includes physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services). The abuse defined in the Act does include the abuse defined in the Child Protective Services Law (CPSL). Though the Department of State might not issue licenses or certifications to Certified Nurse Aides, that group of workers is regulated by the Department of State

through the Nurse Aide Resident Abuse Prevention Act. The Department of State has not, however, developed training materials for Certified Nurse Aides in conformity with the law change of Act 31 of 2014, which amended the CPSL to require the Department of State to train those mandatory reporters, which it licenses, in child abuse recognition and reporting. SEE ACT OF APR. 15, 2015, P.L. 411, NO.31 AMENDING TITLE 23 § 6383(B) DUTIES OF DEPARTMENT OF STATE. Not having a formal training program for CNA's militates against a finding that CNAs are under the jurisdiction of the department of state.

Even if a Certified Nurse's Aide is not under the jurisdiction of the Department of the State as envisioned by the Legislature in amending the CPSL, the Court still finds that she is a mandated reporter. The Defendant testified that she is an employee of a health care facility...licensed by the Department of Health, who is engaged in the ...care...of individuals. Health Care Facility is defined at 35 Pa. Stat. Ann. § 448.103 and does include long-term care nursing facilities. Thus, if not a mandated reporter under (a)(1), the Defendant is a mandated reporter under (a)(3):

§ 6311. Persons required to report suspected child abuse.

(a) Mandated reporters. --

The following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse:

(1) A person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State.

...

(3) An employee of a health care facility or provider licensed by the Department of Health, who is engaged in the admission, examination, care or treatment of individuals.

...

PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED: 23 PA.C.S.A. § 6311.

The Court notes many changes to the CPSL since 2014, especially to those deemed to be mandated reporters via Section 6311. SEE ACT 2014-32, ACT 2014-33. The latest amendments to the CPSL, in Act 2015-15, did amend the mandated reporters described in (7), (12), (16) of part (a) but left parts (1) and (3), the sections that apply to Defendant intact. The amendment to Section 6303 “Definitions” changed the definition of Child Care Services and said “The Term does not apply to services provide by the administrative or other support personnel unless the administrative or other supports personnel has direct contact with children”. But the Legislature did not in its latest amendment refine the law in such a way that it would no longer encompass individuals on the Nurse Aide Registry.

Additionally, there was no change to Part (b) Basis to Report: A mandated reporter shall make a report of suspected child abuse under any of the following circumstances. ID. 23 PA.C.S.A. § 6311. The statute goes on to list four circumstances. The third circumstance reads in its entirety “A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.” In the pre-2014 version of the Child Protective Services Law it was only persons who in the course of their employment, occupation or practice of their profession came into contact with children that were mandated to report.³ The CPSL in place on the date of the start of criminal proceedings in the instant matter,

³ 23 Pa.C.S.A. § 6311. (a) General rule. – A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when the person has reasonable cause to suspect on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator. Effective May 29, 2007, through December 30, 2014.

1/10/2016, does encompass a Certified Nurse Aide even outside of their place of employment:

(b) Basis to report.

(1) A mandated reporter enumerated in subsection (a) shall make a report of suspected child abuse in accordance with section 6313 (relating to reporting procedure), if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

- (i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service.
- (ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.
- (iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.
- (iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

...

PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED: 23 PA.C.S.A. § 6311.

Only (i) above references, course of employment. By leaving out “course of employment” language in circumstance (i), (ii), and (iii), the Court believes it was the intent of the Legislature to require that mandated reporters report child abuse within or outside of the reporter’s professional role. As such, if a mandated reporter learns that an identifiable child might have been abused or an abuser over the age of 14 makes a disclosure regarding the abuse to the reporter, he/she must report.

ORDER

AND NOW, this 26th day of January, 2017, based upon the foregoing Opinion, the Motion for Reconsideration is DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Melissa Kalas, ADA
John Gummo, Esq. Counsel to Tiffany Poust
Gary Weber, Esq. Lycoming Law Reporter
Susan Roinick, Law Clerk