

**STATE OF NEW YORK  
JUSTICE CENTER FOR THE PROTECTION OF PEOPLE  
WITH SPECIAL NEEDS**

---

In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

---

**FINAL  
DETERMINATION  
AND ORDER  
AFTER HEARING**

**Adjud. Case #:**

[REDACTED]

Vulnerable Persons' Central Register  
New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
Appearance Waived

New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
By: Christopher Mirabella, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

By: Nicole Murphy, Esq.  
Fine, Olin & Anderman LLP  
39 Broadway, Suite 1910  
New York, New York 10006

██████████

The Findings of Fact and Conclusions of law are incorporated from the Recommendations of the presiding Administrative Law Judge's Recommended Decision.

**ORDERED:** The request of ██████████ that the substantiated report dated ██████████  
██ be amended and sealed is  
denied. The Subject has been shown by a preponderance of the evidence to  
have committed abuse.

The substantiated report is properly categorized as a Category 3 act.

NOW, THEREFORE, IT IS DETERMINED that the record of this report  
shall be retained by the Vulnerable Persons' Central Register, and will be  
sealed after five years pursuant to SSL § 493(4)(c).

This decision is ordered by David Molik, Director of the Administrative  
Hearings Unit, who has been designated by the Executive Director to make  
such decisions.

**DATED:** September 8, 2016  
Schenectady, New York

  
\_\_\_\_\_  
David Molik  
Administrative Hearings Unit

**STATE OF NEW YORK  
JUSTICE CENTER FOR THE PROTECTION OF PEOPLE  
WITH SPECIAL NEEDS**

---

In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

---

**RECOMMENDED  
DECISION  
AFTER  
HEARING**

**Adjud. Case #:**

[REDACTED]

Before:

Christopher R. Riano  
Administrative Law Judge

Held at:

New York State Justice Center for the Protection  
of People with Special Needs  
9 Bond Street, 3<sup>rd</sup> Floor  
Brooklyn, New York 11201  
On: [REDACTED]

Parties:

Vulnerable Persons' Central Register  
New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
Appearance Waived

New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
By: Christopher Mirabella, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

By: Nicole Murphy, Esq.  
Fine, Olin & Anderman LLP  
39 Broadway, Suite 1910  
New York, New York 10006

### **JURISDICTION**

The New York State Vulnerable Persons' Central Register (the "VPCR") maintains a report substantiating [REDACTED] (the "Subject") for abuse. The Subject requested that the VPCR amend the report to reflect that the Subject is not a subject of the substantiated report. The VPCR did not do so, and a hearing was then scheduled in accordance with the requirements of Social Services Law ("SSL") § 494 and Part 700 of 14 NYCRR.

### **FINDINGS OF FACT**

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. The VPCR contains a "substantiated" report dated [REDACTED] [REDACTED] of abuse by the Subject of a Service Recipient.

2. The Justice Center substantiated the report against the Subject. The Justice Center concluded that:

#### **Allegation 1**

It was alleged that on [REDACTED] at the [REDACTED], located at [REDACTED] while acting as a custodian, you committed abuse (obstruction of reports of reportable incidents) when you falsified documents regarding a reportable incident that occurred between two service recipients, during which injuries were sustained.

This allegation has been SUBSTANTIATED as Category 3 abuse (obstruction of reports of reportable incidents) pursuant to Social Services Law § 493(4)(c).

3. An Administrative Review was conducted and as a result the substantiated report was retained.

4. [REDACTED] located at [REDACTED], [REDACTED], is an Intermediate Care Facility, and is operated by Office for People With Developmental Disabilities, which is a facility or provider agency that is subject to the jurisdiction

of the Justice Center. (Justice Center Exhibit 1)

5. At the time of the alleged abuse, the Subject was employed by the [REDACTED] for over 13 years. The Subject worked as a Developmental Disabilities Secure Case Treatment Aide I ("DDSCTA I"). (Hearing Testimony of Subject)

6. At the time of the alleged abuse, the Service Recipient was 31 years of age, and had been a resident of the facility for approximately 15 years. The Service Recipient is an adult with a mild range of intellectual disabilities, and a diagnosis of schizoaffective disorder, along with symptoms of schizophrenia and a mood disorder. (Justice Center Exhibits 6, 12 and 17)

7. On [REDACTED], the Service Recipient was involved in an altercation with a second Service Recipient, after the second Service Recipient attacked a fellow aide, DDSCTA [REDACTED] at the [REDACTED]. The altercation occurred at around 9:00 a.m. (Justice Center Exhibits 6 and 7)

8. Following the altercation, which was partially observed by the Subject, the Subject took the Service Recipient for medical attention. (Hearing Testimony of Subject and Justice Center Exhibit 6)

9. Both DDSCTA [REDACTED] and the Subject completed 'Minor Occurrence' forms in order to document the incident and report their respective observations. Both DDSCTA [REDACTED] and the Subject documented that any injury to the Service Recipient must have occurred when the Service Recipient ran into a wall. The reports were completed at around 10 a.m., approximately 45 minutes after the incident occurred. (Justice Center Exhibits 6, 7 and 17)

10. During the course of the investigation, DDSCTA [REDACTED] later admitted that he did not see the Service Recipient run into wall. DDSCTA [REDACTED], when confronted with the contradiction, stated that his supervisor told him to make the false report. (Justice Center Exhibit

6)

11. The Subject was interrogated on [REDACTED] During the course of the interrogation, the Subject initially stated that the Service Recipient did not run into any wall. The Subject only changed his story, with some noted confusion, after being confronted with his previous written 'Minor Occurrence' statement. (Justice Center Exhibit 6)

### **ISSUES**

- Whether the Subject has been shown by a preponderance of the evidence to have committed the act or acts giving rise to the substantiated report.
- Whether the substantiated allegations constitute abuse and/or neglect.
- Pursuant to Social Services Law § 493(4), the category of abuse and/or neglect that such act or acts constitute.

### **APPLICABLE LAW**

The Justice Center is responsible for investigating allegations of abuse in a facility or provider agency. (SSL § 492(3)(c) and 493(1) and (3)) Pursuant to SSL § 493(3), the Justice Center determined that the initial report of abuse and neglect presently under review was substantiated. A "substantiated report" means a report "...wherein a determination has been made as a result of an investigation that there is a preponderance of the evidence that the alleged act or acts of abuse or neglect occurred..." (Title 14 NYCRR 700.3(f))

The abuse of a person in a facility or provider agency is defined by SSL § 488. Obstruction of reports of reportable incidents is defined by SSL § 488 (1)(f) to include:

"Obstruction of reports of reportable incidents," which shall mean conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment or supervision of a service recipient, actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding

material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing state agency regulations, policies or procedures; or, for a mandated reporter who is a custodian as defined in subdivision two of this section, failing to report a reportable incident upon discovery.

Substantiated reports of abuse shall be categorized into categories pursuant to SSL § 493(4)(c), including Category 3 which is defined as follows:

Category three is abuse or neglect by custodians that is not otherwise described in categories one and two. Reports that result in a category three finding shall be sealed after five years.

The Justice Center has the burden of proving at a hearing by a preponderance of the evidence that the Subject(s) committed the act or acts of abuse alleged in the substantiated report that is the subject of the proceeding and that such act or acts constitute the category of abuse as set forth in the substantiated report. (Title 14 NYCRR § 700.10(d))

If the Justice Center proves the alleged abuse, the report will not be amended and sealed. Pursuant to SSL § 493(4) and Title 14 NYCRR 700.10(d), it must then be determined whether the act of abuse cited in the substantiated report constitutes the category of abuse as set forth in the substantiated report.

If the Justice Center did not prove the abuse by a preponderance of the evidence, the substantiated report must be amended and sealed.

### **DISCUSSION**

The Justice Center has established by a preponderance of the evidence that the Subject committed an act, described as “Allegation 1” in the substantiated report.

In support of its substantiated findings, the Justice Center presented a number of documents obtained during the investigation. (Justice Center Exhibits 1-10, 12-18 and 21-23) The investigation underlying the substantiated report was conducted by Consultant Investigator [REDACTED]

██████████ of the Office of People With Developmental Disabilities, who was the only witness who testified at the hearing on behalf of the Justice Center.

The Subject testified in his own behalf and provided no additional evidence.

The Justice Center alleges that, as a legal custodian, the Subject made intentionally false statements which directly impeded the Office of People with Developmental Disabilities investigation of a report of abuse on behalf of the Service Recipient. Specifically, the Justice Center contends that the Subject made material false written statements on a 'Minor Occurrence' report, statements that later were inconsistent with his interrogation testimony as well as other statements made by others during the course of the investigation. (Justice Center Exhibits 6 and 17) These false statements directly impeded the Service Recipient's medical treatment, as the medical staff was unaware of how the Service Recipient actually sustained the injuries.

The Subject contends that his statements were not false. The Subject maintained this assertion during the entirety of his hearing testimony.

To prove abuse (obstruction of reports of reportable incidents), the Justice Center must first establish that the Subject is a custodian as that term is defined in SSL § 488(2). There is no contention between the parties that, at the time of the incident, the Subject was acting in his official capacity as a DDSCTA I. As such, the Justice Center has established that the Subject was a custodian as described by law.

The Justice Center must next establish by a preponderance of the evidence that there was a reportable incident which was alleged to have been obstructed. The record reflects that the statements of the Subject during the course of the incident were made during an official investigation. The record also establishes that those same statements were explicitly made during the course of an investigation triggered by the injury sustained by the Service Recipient during a



series of events between [REDACTED] staff members and Service Recipients. It is undisputed that the Service Recipient was injured during the course of those events. (Justice Center Exhibit 6) The Justice Center has shown by a preponderance of the evidence that there was a prerequisite reportable incident.

The Justice Center must next establish by a preponderance of the evidence that the Subject intentionally made false statements, or intentionally withheld material information, during the course of the investigation. The Justice Center contends that the Subject intentionally falsified his report dated [REDACTED] primarily based on the “noted delays in the reporting and completion of the incident reports written by [REDACTED] and on the Subject’s admission during his interrogation that he did not observe the Service Recipient run into a wall. (Hearing Testimony of Consultant Investigator [REDACTED] and Justice Center Exhibit 6)

The Justice Center alleges that the Subject either intentionally lied, or intentionally withheld material information, when he stated that he saw the Service Recipient injure himself by “accidentally running into the dining area wall entrance.” (Hearing Testimony of Consultant Investigator [REDACTED] and Justice Center Exhibit 17) The Subject himself specifically stated, on a signed ‘Minor Occurrence’ report dated [REDACTED], that the Service Recipient “was running to see if DDSCTA [REDACTED] was ok, and accidentally ran into the [dining] area wall entrance.” (Justice Center Exhibit 17)

However, a review of the testimony and evidence supports the Justice Center’s contention that it is more likely than not true that the Subject intentionally falsified or withheld material information. Aside from any admissions made by the Subject during the course of the investigation, it is of particular interest that the Subject did not complete an incident report until 45 minutes after the incident occurred, a fact not in contention between the parties. (Hearing

Testimony of Consultant Investigator [REDACTED], Hearing Testimony of Subject and Justice Center Exhibits 6 and 17) Furthermore, it was particularly revealing that, during the course of the Subject's testimony, when asked again to describe the incident, the Subject made no mention of the Service Recipient being injured by running into a wall. (Hearing Testimony of the Subject) Consequently, it is determined that it is more likely than not true that the Subject's written statement is false to the extent that it describes the Service Recipient receiving an injury as the result of running into a wall. Given the inconsistency between the Subject's written statement, his oral statements made during the course of the investigation, and the Subject's testimony, the Subject intentionally falsified or withheld material information when making his written statement. (Justice Center Exhibit 17)

Finally, the Justice Center must establish by a preponderance of the evidence that the false statements made by the Subject impeded the investigation. OPWDD Consultant Investigator [REDACTED] testified that the Subject's statements inhibited the ability of the medical staff on site to properly treat the injuries of the Service Recipient. (Hearing Testimony of Consultant Investigator [REDACTED]) This is particularly troubling, given how important it was that the Service Recipient receive proper medical treatment tailored to the actual injuries sustained, and not to the fabricated injuries as described by the Subject. The Subject offered no evidence in rebuttal of this portion of the Consultant Investigator's testimony. Consequently, the Justice Center has sufficiently proven that the obstructive statements made by the Subject impeded the ability of the OWPDD to properly investigate this incident, as well as impeded the availability of proper and timely medical treatment for the Service Recipient.

Accordingly, it is determined that the Justice Center has met its burden of proving by a preponderance of the evidence that the Subject committed the abuse alleged. The substantiated

report will not be amended or sealed.

Although the report will remain substantiated, the next question to be decided is whether the substantiated report constitutes the category of abuse set forth in the substantiated report. Based upon the totality of the circumstances, the evidence presented and the witnesses' statements, it is determined that the substantiated report is properly categorized as a Category 3 act.

**DECISION:**

The request of [REDACTED] that the substantiated report dated [REDACTED] [REDACTED] be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed abuse.

The substantiated report is properly categorized as a Category 3 act.

This decision is recommended by Christopher R. Riano, Administrative Hearings Unit.

**DATED:** August 29, 2016  
Brooklyn, New York

  
 Christopher R. Riano, ALJ