

2.

Petitioner is fifty-three years old and has resided in the Facility since December 2013. In the year prior to his admission to the Facility, Petitioner was diagnosed with multiple sclerosis. Shortly after his diagnosis, Petitioner had a stroke and went to live with his elderly father. These medical conditions affected Petitioner's cognitive functioning and speech, and also caused muscle weakness, lack of coordination, and an abnormal gait, making him prone to falls. Petitioner was admitted to the Facility for rehabilitative care, with the goal of regaining enough strength and independence to return to his father's home.¹ *Testimony of Coleman, Stokes, Petitioner, ██████ Facility Exhibit 4.*

3.

Currently, Petitioner gets up every day, but because of intermittent muscle weakness, he needs stand-by assistance to ambulate and to transfer to his wheelchair, the toilet, and shower. He can feed himself and take his medications independently if they are first prepared for him. Petitioner can also dress himself, although he needs assistance with buttons and laying out his clothing. *Testimony of Coleman, Stokes, Petitioner.*

4.

Dr. Jeremy Goodwin is the Medical Director at the Facility and is Petitioner's attending physician. According to Dr. Goodwin and the Facility's Director of Health Services, Jeanetta Stokes, Petitioner is a candidate for discharge to a home health setting. Although Petitioner

¹ Petitioner's father passed away in February 2015 at the age of eighty-one. Prior to his father's illness, the Facility was developing a discharge plan with Petitioner's family to have Petitioner transitioned back to his father's home. Petitioner's "responsible party" is his sister, ██████. *Testimony of Stokes, Buckner, Coleman.*

would continue to require “24-7 monitoring” to ensure that he does not fall or otherwise hurt himself or others, he does not require skilled nursing care on a daily basis. This monitoring, according to Dr. Goodwin, could be done by a trained lay-person. *Testimony of Goodwin; Stokes.*

B. January 6, 2015 Incident

5.

Prior to January 6, 2015, Petitioner shared a room at the Facility with [REDACTED], a sixty-six-year-old man who has been a resident of the Facility for over five years. [REDACTED] has multiple medical conditions, including aphasia. He is unable to speak, but communicates with staff at the Facility by shaking his head to yes/no questions. *Testimony of Coleman; Facility Exhibit #4.*

6.

On the evening of January 6, 2015, the Facility’s staff notified Mr. Coleman that [REDACTED] was very upset and was refusing to return to the room he shared with Petitioner. This behavior was unusual for [REDACTED]. The next morning, January 7, 2015, Mr. Coleman met with [REDACTED] and then met with Petitioner. Petitioner became agitated when Mr. Coleman asked him questions about [REDACTED], and Petitioner left Mr. Coleman’s office. Petitioner returned approximately fifteen minutes later. Mr. Coleman questioned him regarding whether anything had occurred between Petitioner and [REDACTED]. Petitioner admitted kissing [REDACTED] on the cheek and touching [REDACTED]’s penis with his hands and mouth. *Testimony of Coleman, Stokes; Facility Exhibit #4.*

7.

Both Mr. Coleman and Petitioner testified at the hearing regarding the events of January 6, 2015 and the interview on January 7, 2015. At the hearing, Petitioner denied having any

inappropriate contact with [REDACTED], but stated that he told both Mr. Coleman and later the police that he had done something to [REDACTED] just “so [they] would leave him alone.” The Court carefully observed Mr. Coleman and Petitioner and considered their demeanor and manner of testifying. The Court further considered the wording, timing and context of Mr. Coleman’s questions during the interview, as well as Petitioner’s responses and his contradictory testimony at the hearing. Having weighed these considerations, the Court finds by a preponderance of the credible evidence that Petitioner had inappropriate sexual contact with [REDACTED] on January 6, 2015.

C. Events Following January 6, 2015 Incident

8.

Since January 6, 2015, [REDACTED] has resided in a separate room from Petitioner. Given the nature of the allegations and to ensure the safety of the other residents, the Facility arranged for continuous, one-on-one staff observation of Petitioner immediately following the incident. Once Petitioner was placed in a private room, the Facility changed from continuous supervision of Petitioner to fifteen-minute checks. According to Petitioner, his private room has no television, and the Facility does not allow other residents to visit him in his room. The Facility also has made efforts to keep [REDACTED] and Petitioner in separate parts of the building because [REDACTED] becomes upset and cries when he sees Petitioner or passes by the room where the January 6, 2015 incident occurred. *Testimony of Stokes, Coleman, Petitioner.*

9.

On January 8, 2015, the Facility issued a thirty-day notice of discharge to Petitioner, which was received and signed for by Ms. [REDACTED]. The basis for the discharge was that Petitioner “presents and [sic] endangerment to other residents and staff members of PruittHealth-Monroe.”

The letter stated that the Facility intended to discharge him to 4068 Alexander Road, Monticello, Georgia, which is Ms. [REDACTED]'s home address. *Testimony of Coleman, Stokes, [REDACTED]; Exhibit P-1.*

10.

Sometime following the January 6, 2015 incident, Dr. Goodwin made a written notation, which he directed the Facility to include in Petitioner's medical records. Based on his review of Petitioner's medical chart and the Facility's investigative file relating to the January 6, 2015 incident, Dr. Goodwin determined that Petitioner "poses and will continue to pose a serious threat and danger to the health and safety of the other residents and staff at the facility—including but not limited to the psychological and behavioral health of those individuals." Dr. Goodwin further opined that because the threat posed by Petitioner was not "manageable or treatable through medication or treatment[,] . . . the failure to transfer [Petitioner] out of the PruittHealth-Monroe facility will threaten the health and safety of other residents and the staff." *Testimony of Goodwin, Stokes; Facility Exhibit #5.*

11.

Following the issuance of the discharge notice, the Facility's staff began speaking to Petitioner's family regarding discharge options. Petitioner's family only wanted to consider discharge to another skilled nursing facility, so Kowhanna Buckner, the Facility's Social Services Director, began contacting several different skilled nursing and other facilities and provided his records to some of these facilities. Although Buckner identified one facility that indicated a willingness to accept Petitioner, at Dr. Goodwin's insistence she specifically notified that facility of the results of the Facility's investigation into the January 6, 2015 incident and the

notations in his medical record.² That facility rescinded its acceptance. In February 2015, Buckner contacted ██████ regarding her unsuccessful efforts to locate an appropriate alternative nursing facility. In response, ██████ requested that Adult Protective Services (“APS”) be contacted, and Buckner made a referral to APS. *Testimony of Buckner, Coleman, Stokes.*

12.

At the hearing, ██████ testified that she is a nurse and works full-time. She lives in a three-bedroom home with her husband, her adult daughter and son-in-law, and their baby. According to ██████ her husband also works full-time, and her daughter is a full-time nursing student, who is scheduled to graduate in 2016. ██████ testified that she cannot physically accommodate Petitioner in her home and that there is no adult at home during the day to provide care or monitoring for him. *Testimony of ██████.*

III. Conclusions of Law

1.

Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.7(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Under Georgia law, after exhausting other reasonable alternatives, a long-term care facility is authorized to transfer a resident when “[a] physician determines that failure to transfer the resident will threaten the health or safety of the resident or others and documents that determination in the resident’s medical record.” O.C.G.A. § 31-8-116(a)(1). See Ga. Comp. R.

² In addition to Dr. Goodwin’s notation, Petitioner’s medical record contains a January 20, 2015 progress note that indicates a diagnosis of “hypersexualization.” *Testimony of Stokes.*

& Regs. 111-8-50-.11(2)(a).³ In this case, Dr. Goodwin documented his determination in Petitioner's medical record that Petitioner poses a continuing threat to the health and safety of other patients and staff at the Facility. He confirmed this finding at the administrative hearing and the evidence in the record supports his finding. Although the Court concludes that Respondent has reasonably instituted temporary safety precautions in the form of isolating Petitioner in a private room, away from [REDACTED] and other residents, and frequently monitoring Petitioner's whereabouts and activities, these precautions are not reasonable long-term options to protect the health and safety of others. Accordingly, Respondent has met the statutory requirements for involuntary discharge identified Code Section 31-8-116(a).

3.

The statute further provides that the Facility must "assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge. The plan for transfer or discharge shall be designed to mitigate the effects of transfer stress to the resident." O.C.G.A. § 31-8-116(c). The Facility is also obligated to counsel

³ The title of the statutory provision at issue is "Involuntary transfer of residents discharged from facility; return to facility after transfer." O.C.G.A. § 31-8-116. The terms "transfer" and "discharge" are not defined in the statute or in the administrative regulations adopted by the Department of Community Health ("DCH"), and they are used haphazardly, and sometimes, interchangeably, in the statute. Generally, it appears that the word "transfer" implies the resident will move from one facility to another facility, whereas "discharge" is used more broadly to refer to any resident departure. However, that is not always the case. See O.C.G.A. § 31-8-116(i)(discussing when a resident can return to a facility after being "transferred from a facility to a hospital, other health care facility, or trial alternative living placement"). Having considered the statute as a whole, the Court concludes that Code Section 31-8-116(a)(1) and DCH's Rule 111-8-50-.11(2)(a) allow a long-term care facility to involuntarily discharge a resident from the facility and transfer them to another placement, including an alternative home placement, if the failure to do so would threaten the health or safety of the resident or others. See generally Allison v. Domain, 158 Ga. App. 542, 544 (1981) ("[A] statute must be construed with reference to the whole system of which it is a part. . .") (citations omitted).

Petitioner's representative regarding community resources and inform the appropriate state or social services organization. Id.

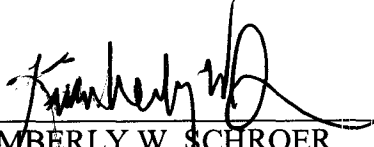
4.

The Court concludes that Respondent also fulfilled this statutory requirement. At Petitioner's sister's request, the Facility made reasonable and appropriate efforts to assist her in locating another skilled nursing facility that would be an appropriate alternative placement for Petitioner. When they were unable to identify a facility that would accept Petitioner, the Facility identified the home of his sister, a registered nurse and Petitioner's responsible party and authorized representative, as a reasonably appropriate alternative placement. Although Ms. [REDACTED] is reluctant to take in Petitioner due to her family's space and time constraints, the Court concludes that her home is a reasonably appropriate alternative placement. Moreover, the Facility, as required by the statute, informed APS of the discharge plan for Petitioner. The statute does not require the Facility to keep a resident indefinitely who has been found to be a threat to the health and safety of others at the Facility. Rather, the Facility's statutory duty is to provide assistance in locating a reasonably appropriate alternative placement and timely and proper notice of the involuntary transfer, which it has done.

IV. Decision

Respondent's decision to discharge Petitioner from its facility as proposed in the discharge notice dated January 8, 2015 is **AFFIRMED**.

SO ORDERED, this 1st day of May, 2015.


KIMBERLY W. SCHROER
Administrative Law Judge