



STATE OF NEW JERSEY

In the Matter of Ketline Charlot,
Department of Human Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-1281

Request for Reconsideration

ISSUED: AUG 18 2017 (JET)

Ketline Charlot, a former Human Services Technician with Greystone Park Psychiatric Hospital, Department of Human Services, represented by Nancy Mahony, Esq., requests reconsideration of the attached initial decision of the Administrative Law Judge (ALJ), which was deemed adopted as the final decision on September 19, 2016, which upheld her removal.

Initially, it is noted that the ALJ's initial decision was rendered on June 20, 2016, and the time frame for the Civil Service Commission (Commission) to make its final decision was to expire on August 4, 2016. See N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.6. Prior to that date, the Commission secured a 45-day extension of time to render its final decision no later than September 18, 2016. See N.J.A.C. 1:1-18.8. Since the Commission's next scheduled meeting was October 19, 2016, it sought consent from the parties, as required, to secure a second 45-day extension. However, the appointing authority did not provide consent for an additional extension. Therefore, the ALJ's recommended decision was deemed adopted as the final decision per N.J.S.A. 52:14B-10(c).

By way of background, Charlot was served with an amended Final Notice of Disciplinary Action (FNDA) dated June 10, 2015, which sought her removal on charges of physical abuse of a patient, violation of hospital policy, falsification, conduct unbecoming an employee, and other sufficient cause. Specifically, the appointing authority alleged that Charlot pushed a patient and secluded him in his room in violation of its policies and operating procedures. It also alleged that she falsified her statements during the investigation of the incident. Upon Charlot's

appeal to the Commission, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

As set forth in the initial decision, the ALJ found that on the date of the incident, May 20, 2015, Charlot was assigned one-to-one supervision for B.R., a patient with a history of aggressive behavior. The ALJ explained that, at some point during Charlot's shift, E.D., a Human Services Technician, stated that she perceived that Charlot and B.R. were involved in an altercation. The ALJ indicated that E.D. screamed for help, and in response, T.F., a Residential Living Specialist, entered B.R.'s room. When T.F. entered the room, she observed Charlot and B.R. standing close to each other, and Charlot pushed B.R. onto the bed. T.F. also heard Charlot say "she got this." Thereafter, T.F. left the room and continued her duties, and when she returned to B.R.'s room, she observed Charlot coming out of the room. The ALJ found that T.F. observed Charlot close the door with B.R. inside, and at that point T.F. reminded Charlot that secluding a patient was not permitted. In response, Charlot told T.F. to mind her own business, and in response T.F. referenced the security cameras in the unit. The ALJ explained that, at some point, Charlot hurled obscenities and repeatedly indicated that B.R. grabbed her shirt collar. The ALJ found that, although Charlot testified that B.R.'s assaultive conduct necessitated her actions, several witnesses testified that such behavior required one-to-one care. The ALJ found that Charlot provided several disparate explanations pertaining to B.R.'s behavior, and she did not claim that B.R. frightened her until after T.F. suggested that Charlot's conduct was captured on surveillance cameras. Moreover, the witnesses and a video tape of the incident confirmed that B.R.'s door was closed, which is unacceptable on a one-to-one supervision of a patient.

Based on the foregoing, the ALJ determined that, while some of B.R.'s conduct precipitated Charlot's action of pushing B.R. onto the bed, E.D. was the only employee who requested help. The ALJ determined that Charlot told T.F. that everything was under control and sent T.F. away. The ALJ determined that Charlot was not fearful for her safety and she left B.R. in the room and closed the door after pushing him on the bed. Accordingly, the ALJ determined that the appointing authority met its burden of proof that Charlot's behavior constituted abuse in violation of the appointing authority's policies and procedures and recommended upholding the removal.

In her request for reconsideration, Charlot asserts that she did not physically abuse B.R. Rather, she maintains that she removed B.R.'s grip on her blouse, seated him down on his bed, and ran out of his room into the hallway. She explains that, once she was outside of B.R.'s room, she used the door as a shield to protect herself as she was fearful of B.R., and for a matter of seconds, she remained in the hallway, repeatedly opening and closing the door to B.R.'s room in order to observe him. Further, Charlot contends that she was attempting to protect herself from B.R., and she yelled for help as B.R. would not release his grip on her blouse.

Charlot explains that she pried his hands open, placed her hands on B.R.'s shoulders, gently forced him down to a seated position on the bed, and he did not fall or lose his balance. As such, she maintains that her actions do not constitute physical abuse of a patient.

Additionally, Charlot maintains that the ALJ improperly determined that she physically abused B.R. by pushing him onto his bed, as the ALJ's findings do not comport with the appointing authority's policies pertaining to physical abuse.¹ In this regard, Charlot contends that pushing B.R. into a seated position is not an action that reasonably causes pain, harm or injury as indicated by the appointing authority's policies pertaining to physical abuse. Charlot states that the ALJ simply relied on examples of physical abuse rather than the appointing authority's definition that includes causing pain, harm or injury. As such, Charlot asserts that her actions were in self-defense. Charlot adds that the video tape of the incident does not confirm that B.R.'s door was closed. Moreover, Charlot argues that, in accordance with prior Commission decisions, the facts presented in this matter, and her satisfactory six-year employment, the charges pertaining to physical abuse should be dismissed. In this regard, the appellant asserts that *In re Taylor*, 158 N.J. 644 (1999), *In the Matter of Nicholas Manla*, North Jersey Developmental Center, Dkt. No. A-6118-11T3 (App. Div., decided April 11, 2014), *In the Matter of Isaiah Knowlden*, Dkt. No. A-4963-11T2 (App. Div., decided April 30, 2014), *In the Matter of Brad Wittje*, Department of Human Services (CSC, decided November 25, 2011), *In the Matter of Kevin Wesby*, Department of Human Services (CSC, decided January 9, 2013), and *In the Matter of Kareem Turbeville*, Department of Human Services (CSC, decided February 4, 2015) support her appeal.

In response, the appointing authority, represented by Marolhin D. Mendez, Deputy Attorney General, maintains that Charlot should be removed. Specifically, the appointing authority contends that the ALJ clearly articulated the reasons for not finding the appellant credible and the witnesses clearly confirmed their observations of Charlot's behavior. In this regard, E.D. and T.F. had unobstructed views of B.R.'s room and Charlot at the time of the incident, and Charlot's version of the events was inconsistent with prior written statements. Further, Charlot admitted to pushing B.R. onto a bed and video evidence establishes that she secluded B.R. in his room when she closed the door to his room. She also rejected help that was offered by T.F. The appointing authority adds that Charlot failed in

¹ Charlot notes that the appointing authority's policies define physical abuse as a physical act directed at a client, patient or resident of a type that could tend to cause pain, injury, anguish and/or suffering. Such acts include but are limited to the client, patient or resident being kicked, punched, bitten, pinched, slapped, hit, pushed, dragged and/or struck with a thrown or held object. Additionally, she states that the appointing authority's manual indicates that physical abuse is any willful act or omission which causes or may cause physical pain, harm or injury to a patient or where it is reasonable to believe that pain, harm or injury would result. Such examples include slapping or kicking, pushing or rough handling, and failing to intervene in a patient fight that results in physical harm to a patient.

her duty to conduct one-to-one observation of B.R. As such, she clearly violated the appointing authority's policies and procedures when she closed the door to B.R.'s room. The appointing authority maintains that pushing B.R. and secluding him in his room constitutes pain, harm or physical injury pursuant to its policies and procedures. The appointing authority states that Charlot was specifically trained to deal with fragile patients such as B.R. who require gentle care, and she did not call for help as consistent with her training. Moreover, the appointing authority states that the cases cited by Charlot do not apply to this matter.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, the appointing authority did not consent to an additional extension of time for the Commission to review the record in this matter. Consequently, the ALJ's recommended decision was deemed adopted as the Commission's final decision. Regardless, as set forth more fully below, the Commission agrees with the ALJ's credibility determinations, and her determinations regarding the charges and the penalty.

In the present matter, Charlot has not met the standard for reconsideration. Upon a review of Charlot's submissions in this matter, she has not shown that a material error has occurred nor has she provided any new information that would change the outcome of the case. A review of the record shows that there is sufficient evidence to sustain Charlot's removal. The Commission agrees with the ALJ's credibility determinations. In that regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. See *Matter of J.W.D.*, 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." See *In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by the credible evidence. See *N.J.S.A.* 52:14B-10(c); *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). Nevertheless, upon its review of the entire record, the Commission finds that there is sufficient evidence in the record to support the

ALJ's credibility determinations which are reasonable, supported in the record and based on the ALJ's direct observation of the witnesses.

The record indicates that, at the time of the incident, Charlot was assigned to conduct one-to-one supervision of B.R. Although she argues that her actions did not constitute physical abuse of a patient, were in self-defense, and she was fearful of B.R., the Commission disagrees. As found by the ALJ, her testimony that she was frightened by B.R. is not credible. There is no substantive information in this matter to confirm that Charlot was fearful of B.R. at the time of the incident. Even if she was fearful, the information she provides on the appeal does not refute the ALJ's findings. Charlot's argument that she left B.R.'s door open after she left the room because she wanted to observe him is not persuasive. Although she states that she opened and closed the door for a matter of seconds in order to observe B.R., such information is contrary to witness testimony and a video of the incident. In this regard, the witnesses and the video tape confirmed that Charlot closed the door to B.R.'s room. The witnesses also confirmed that the proper practice is never to close a door on a one-to-one supervision, as even partially closing a door could block the view of the patient. Such behavior is inappropriate on a one-to-one supervision and cannot be ignored. Additionally, the credible evidence indicates that E.D. was the only employee who requested help, and it cannot be excused that Charlot told T.F. that she had the incident under control. Nonetheless, Charlot did not claim that she was fearful of B.R. until after she was informed that the incident was recorded by video cameras. Even if, *arguendo*, she was fearful of B.R. at the time of the incident, given that she closed the door on a one-to-one supervision, in conjunction with her physical interaction with the patient, clearly supports the charges against her.

With respect to the argument that Charlot did not physically abuse B.R. when she pushed him on the bed, the Commission disagrees. Although B.R.'s behavior at the time of the incident was aggressive, Charlot acknowledges in this matter that she pushed B.R. on the bed. However, Charlot initially stated that B.R. hit her in the breast and that he pushed her, and she later stated that he grabbed her shift collar, pried him off, and pushed him away toward the bed. Thus, she provided inconsistent statement pertaining to how the incident occurred. As such, the Commission agrees with the ALJ's assessment that she was not credible. Since she provided inconsistent statements pertaining to how the incident occurred, and fails to explain the disparate statements on appeal, she cannot now argue that her actions were in self-defense. The appointing authority's definition of physical abuse of a patient, as confirmed by the witnesses, is a physical act directed at a client, patient or resident of a type that could tend to cause pain, injury, anguish, and/or suffering. The appointing authority maintains a zero tolerance policy pertaining to physical abuse of a patient. Charlot acknowledged that she pushed a patient with a history of aggressive behavior and she was tasked with a one-to-one supervision of that patient. The appellant is an employee who is assigned to work with individuals in a vulnerable population, *i.e.*, clients who have mental disabilities, and

her inappropriate action of pushing a patient cannot be minimized. Such behavior upsets the work environment and disrupts the performance of the employees assigned to care for such patients. Additionally, as noted above, Charlot failed in her duty to maintain a one-to-one observation of B.R. Accordingly, the record clearly demonstrates that the charge of physical abuse of a patient is sustained.

Additionally, the cases cited by Charlot are factually distinguishable and do not change the outcome of this matter. In *Manla, supra*, the appellant's unblemished prior disciplinary record was taken into account. However, as discussed more fully below, Charlot does not have an unblemished disciplinary history. In *Knowlden, supra*, it was determined that a six-month suspension was appropriate as the appellant's actions in that matter constituted a reflexive response to the attack. In this matter, Charlot presented several inconsistencies with her statement that diminished her credibility. Thus, her argument that her response to B.R. was reactionary was not credited. In *Wesby, supra*, the appellant in that matter was acting under direct orders in an emergency situation, and as such, the behavior did not warrant his removal. In this matter, Charlot was not acting under direct orders when she pushed B.R. and secluded him in his room. Therefore, the above cited cases are not sufficient to establish or support Charlot's claims.

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. Moreover, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the principle of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In this case, it is clear that removal is the proper penalty. An individual in Charlot's position is entrusted with the health care of mentally disabled individuals. Such inappropriate behavior of pushing a patient on the bed and closing the door to his room while on one-to-one supervision cannot be tolerated and is worthy of severe sanction. As noted above, some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter, supra*. Closing a door and leaving a patient unsupervised in a room would clearly be the type of action which would tend to destroy public respect in the delivery of

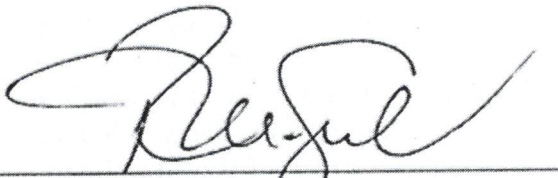
governmental services. As such, Charlot's actions are sufficiently egregious and warrant her removal. Moreover, Charlot's prior disciplinary record includes a suspension following an arrest for stealing a cell phone on duty, and falsification of time sheets. Accordingly, the Commission finds that the penalty imposed by the appointing authority was neither unduly harsh nor disproportionate to the offense and should be upheld.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF AUGUST, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

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and
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Attachment

c: Ketline Charlot
Nancy Mahony, Esq.
Marolhin D. Mendez, DAG
Christina Mongon
Records Center



CHRIS CHRISTIE
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ROBERT M. CZECH
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September 19, 2016

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Re: *Ketline Charlot, Greystone Park Psychiatric Hospital, Department of Human Services*
(CSC Docket No. 2016-2704 and OAL Docket No. CSV 2906-16)

Dear Ms. Mahoney and DAG Mendez:

The appeal of Ketline Charlot, a Human Services Technician with Greystone Park Psychiatric Hospital, Department of Human Services, of her removal, on charges, was before Administrative Law Judge Ellen S. Bass (ALJ), who rendered her initial decision on June 20, 2016, recommending upholding the removal. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

The time frame for the Commission to make its final decision was to initially expire on August 4, 2016. See *N.J.S.A. 52:14B-10(c)* and *N.J.A.C. 1:1-18.6*. Prior to that date the Commission secured a 45-day extension of time to render its final decision no later than September 18, 2016.¹ See *N.J.A.C. 1:1-18.8*. Since the Commission does not currently have a quorum, it sought consent from the parties, as required, to secure a second 45-day extension. However, the appointing authority declined to provide consent for an additional extension. Under these circumstances, the ALJ's recommended decision will be deemed adopted as the final decision in this matter per *N.J.S.A. 52:14B-10(c)*.

Sincerely,

Henry Maurer
Director

Attachment

c: The Honorable Ellen S. Bass, ALJ
Kelly Glenn
Records Center

¹ While the extension order indicates the expiration date as September 18, 2016, since that date was a Saturday, the expiration date was actually September 19, 2016 pursuant to *N.J.A.C. 1:1-1.4*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02906-16

AGENCY DKT. NO. 2016-2704

**IN THE MATTER OF KETLINE CHARLOT,
DEPARTMENT OF HUMAN SERVICES,
GREYSTONE PARK PSYCHIATRIC HOSPITAL**

Nancy Mahoney, Esq., for appellant, Ketline Charlot (Law Offices of Nancy Mahoney, attorneys)

Marolhin Mendez, Deputy Attorney General, and **Christopher Hamner**, Deputy Attorney General, appearing for respondent (Robert Lougy, Acting Attorney General of New Jersey, attorney)

Record Closed: June 9, 2016

Decided: June 20, 2016

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Respondent, the Department of Human Services, Greystone Park Psychiatric Hospital, (Greystone), seeks to remove Ketline Charlot (Charlot), a Human Services Technician (HST). It is alleged that Charlot pushed a patient and secluded him in his room, in violation of Greystone rules and operating procedures. Charlot denies any wrongdoing and seeks reinstatement.

PROCEDURAL HISTORY

An amended final notice of disciplinary action (FNDA), charging Charlot with physical abuse of a patient, violation of hospital policy, falsification, conduct unbecoming and other just cause, was served by Greystone on June 11, 2015. A local hearing was scheduled to take place on January 5, 2016, but was converted to an administrative review when Charlot failed to appear. The charges were upheld, and an appeal to the Civil Service Commission was filed by Charlot on or about February 2, 2016. The case was transmitted to the Office of Administrative Law (OAL) as a contested case on February 19, 2016.

On May 16, 2016, I entered a consent confidentiality order, prohibiting the release or disclosure of any information protected by the Health Insurance Portability Protection Act (HIPPA) and Department of Human Services Regulations, and providing that any confidential information will be filed with me under seal. See 42 U.S.C.A. § 1320d; 45 C.F.R. § 164.412; 45 C.F.R. § 164.512; N.J.A.C. 10:41-1.1 et seq.

A hearing was conducted on June 8 and 9, 2016, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Greystone is a State psychiatric hospital and home to patients who have transitioned from other facilities, typically upon involuntary commitment. Greystone is a locked institution and its patients are a danger to themselves or others. Some suffer from dementia. They are extremely vulnerable; often challenging to work with; and accordingly, must be cared for in a manner that is sensitive and compliant with specific procedures. At the hearing, I heard from administrators, nurses, and aides who serve the Greystone population. Their message was consistent and clear; that is, the residents of Greystone are entitled to kind and compassionate care, and that at all times, patient safety is the paramount consideration. Relative specifically to patients with dementia, all the witnesses urged that these patients are often frightened and

confused. Although a dementia patient sometimes can appear belligerent, it is the staff member's obligation to calmly assess his behavior; and attempt always, at first, to offer the kindness and reassurance that could diffuse aggression.

Doreen Sperber-Weiss is the Chief Nursing Officer, and she holds a Doctorate in psychology and a Master's degree in nursing. She explained that each patient has an individualized treatment plan, but that additionally there are general protocols that must be followed in caring for aggressive patients. First and foremost, a staff member should give such a patient physical space. Redirection should be verbal, whenever possible. If a patient does strike a staff member, Dr. Sperber-Weiss confirmed that the staff member may protect herself using accepted restraint techniques, but she may never strike back. Dr. Sperber-Weiss confirmed that pushing a patient would never be appropriate, under any circumstances. Patients with dementia typically have an unsteady gait, many are elderly, and a push could result in a fall and broken bones. Dr. Sperber-Weiss acknowledged that at times a patient must be temporarily placed in seclusion. But this may be implemented initially only by a nurse, who must then immediately obtain orders from a physician. Her testimony was consistent with written Greystone policy (R-32).

Thomas Schaffer is Greystone's Director of Staff Development and Training. He confirmed that new hires are comprehensively trained over the course of some eight days on the procedures and protocols for working with Greystone's population. This training includes mental health awareness training, behavior management, and protocols for staff and patient interaction. Restraint and seclusion are well covered in the training. Documentation maintained by Greystone confirms Charlot's participation. Training at Greystone is ongoing, and annual updates are conducted. Charlot has received this ongoing training as well.

Relative to behavioral management, Schaffer echoed Sperber-Weiss's testimony that patient safety is the first consideration. Equally importantly, where a patient becomes belligerent, staff and other patients are entitled to feel safe at Greystone. But Schaffer emphasized that there are specific ways to deal with the aggressive patient.

He reiterated that the first thing to do is to distance oneself physically; assess the situation; and if needed, call for help. Co-workers are obliged to respond. If the staff member is unable to keep a safe distance until help can arrive, she has been trained to use a side-body hold to restrain the patient, described by Schaffer as a hug that restricts the patient's arms. Like the other staff members who testified, Schaffer was firm that pushing a patient is never, under any circumstances, the appropriate response.

The charges against Charlot must be considered against this backdrop. On May 20, 2015, Charlot had been employed as an HST at Greystone for over six years. At approximately 5:30 p.m. she was assigned as a "one-to-one" for B.R., a patient with dementia and a history of aggressive behaviors. A "one-to-one" is assigned to supervise a patient, and attend to all of his needs, generally for a one hour shift. HST Emma Dicks was the first to become aware of trouble between Charlot and B.R. Dicks was a "one-to-one" for the patient across the hall. She did not recall entirely why, but something drew Dicks to B.R.'s room. She observed Charlot and B.R. standing very close together, face-to-face. Dicks described them as being in "each other's personal space," and she perceived that they were on the cusp of some kind of altercation. Dicks ran from the room, calling for help. Twanna Floyd responded.

Floyd is a Resident Living Specialist (RLS). She was performing a "face check," which required that she survey the unit and visually account for all the patients every fifteen minutes. Floyd entered B.R.'s room and saw Charlot and B.R. standing very close. Charlot pushed B.R. onto the bed, and when Floyd asked what was going on, Charlot repeated, "I got this." Concerned, but feeling that she needed to continue to attend to her duties, Floyd returned to her face-checking rounds, and then came back to B.R.'s room. Charlot was now coming out of the room, and she closed the door with B.R. inside. Floyd chastised her; she reminded Charlot that secluding a patient is not permitted, and that she could "get us in trouble." Charlot advised Floyd to mind her own business, to which Floyd replied "look at the camera and say cheese," a reference to the surveillance cameras on the unit. At some point during their exchange, Charlot hurled an obscenity. Despite urging by me, Floyd could not utter the obscenity, but

indicated that it started with the letter "F." Floyd was adamant that Charlot did not tell her that B.R. had struck her, or that he had threatened her in any way. Quite the opposite; rather than express distress and seek Floyd's help or intervention, Charlot rather brusquely sent Floyd on her way.

Our courts have held that "credibility findings . . . are often influenced by matters such as observations of the character and demeanor of witnesses . . . that are not transmitted by the record." State v. Lourito, 157 N.J. 463, 474 (1998). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Dicks and Floyd were believable witnesses. Their testimony was consistent in each retelling, both on direct examination, cross-examination, and in written statements supplied during an internal investigation conducted by Greystone Investigator Cornelius Doyle. Their demeanor at hearing revealed some tension and discomfort, but each question asked of them was answered directly, firmly, and with no hesitation. As to the discomfort that I detected, it is readily explained by Floyd's comment to Charlot that she would "get us in trouble." Peers in the workplace understandably tend to stand together, with an "us versus them" attitude. And it is not an easy thing to offer information that might cause a co-worker to lose her job. But these witnesses, although clearly not entirely at ease doing so, told me what they saw that day. Their testimonial tone reflected that difficult as it was, they were going to tell the truth.

Charlot's counsel suggested that the credibility of these witnesses was diminished by the fact that they did not promptly inform their supervisor, Nurse Josephine Bonnah, about Charlot's interactions with B.R., notwithstanding their obligation to do so. I disagree, but it matters little. Charlot admitted the conduct in question. Counsel urged that English is Charlot's second language, and that statements made by her must be received with this in mind. While I detected some gaps in Charlot's facility with English, and noted that she spoke with a heavy accent, a request for assistance by an interpreter was never made on her behalf. But more importantly, when asked what happened that day, she repeatedly showed me by using

explicit gestures. Charlot repeatedly demonstrated via gestures that B.R. grabbed her shirt collar and that she forcefully propelled B.R. onto the bed. In an effort to create a record, I described with words what was gestured, and assiduously attempted to avoid the use of the word "pushed." But ultimately I could not find a better descriptive of what the witness was continually showing me than the word "pushed," and I said so. I **FIND** that Charlot pushed B.R., a patient in her care, onto a bed.

Charlot urged that B.R.'s assaultive conduct necessitated her actions. Several witnesses attested to that fact that he could be assaultive, and that indeed, this is why he was assigned a "one-to-one." But I did not hear a credible description of what precipitated Charlot's actions in pushing him. Charlot testified that he grabbed her shirt collar, and that she pried him off and pushed him away toward the bed. But in statements she gave earlier, she related alternatively that B.R. hit her in the breast and that he pushed her. When questioned about the disparity in her stories, Charlot could not offer a satisfactory explanation. She was not a credible witness. I did not believe that she cried out for help; that no one came to her assistance; or that she was breathing heavily and was fearful for her life, as Charlot claimed at hearing.¹

Rather, I **FIND** that while some inadequately explained conduct by B.R. precipitated Charlot's actions in pushing him onto the bed, Dicks was the only one to cry out for help. And when Floyd arrived to offer help, I **FIND** that Charlot told her all was under control and sent her away. I **FIND** that Charlot was not, as she claimed, fearful for her safety. Only after Floyd had suggested that Charlot's conduct was inappropriate and had been captured on the surveillance cameras, did Charlot begin to tell others that she had been frightened by B.R. and had needed help. She first suggested to an LPN that he needed medication; hours later Charlot alerted Nurse Bonnah that she allegedly had been assaulted.

¹ Charlot's testimony did not hold together. She claimed that a co-worker named Joseph replied when she cried out for help, but that she told him she was ok. If she was panting and fearful for her life, Charlot would have urged him to hurry, not reassured him that she was alright. Likewise, after an earlier incident where B.R. allegedly hit her, Charlot sought medical attention at the suggestion of her supervisor. She declined such assistance on May 20, 2015, a reaction inconsistent with her claims that B.R. grabbed and hit her.

Likewise, Charlot admitted, and I **FIND**, that after pushing B.R. onto the bed, she left him in the room and closed the door. Charlot urges that she did not close the door all the way. Using our hearing room door, Charlot demonstrated that she stood outside of the room, and kept opening and closing the door, never closing it entirely. Charlot urged that she still had B.R. in view, but her testimony was not credible and was inconsistent of her description of herself as fearful for her life. Indeed, if she was really as frightened as she contended, and thought closing the door was an appropriate option to contain B.R., she surely would have closed it all the way. I believed Floyd's testimony that the door was closed. Likewise, Doyle recounted in his report that Charlot admitted closing the door. And a videotape of the incident, although a bit grainy, appears to confirm that the door was closed. But once again, in the end it matters little, because several witnesses, to include Sperber-Weiss and Bonnah, confirmed that the proper practice is to never close a door on a "one-to-one." Importantly, even a partially closed door is unacceptable, as it could partially block the HST's view of the patient. Even if the HST feels she is in danger, she must leave the door open and call for help.

Sperber-Weiss and Melissa Ballard-Cabra, a representative of the Human Resources Department at Greystone, confirmed that Charlot's conduct is considered patient abuse. Ballard-Cabra reviewed a Disciplinary Action Program document issued by the Department of Human Service. Abuse of patients is strictly prohibited, and is defined as follows:

Physical abuse is a physical act directed at a client, patient or resident of a type that could time to cause pain, injury, anguish, and/or suffering. Such acts include but are not limited to the client, patient, or resident being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged, and/or struck with a thrown or held object.

[R-29 at page 18.]

Greystone has a zero tolerance policy for abuse. A table of penalties in the Disciplinary Action Program document confirms that removal is the penalty for the first infraction of "physical or mental abuse of a patient, client, resident, or employee." Ballard-Cabra

thus emphasized that the personnel file of an active Greystone employee would never reflect a prior disciplinary record for abuse.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

I **CONCLUDE** that the appointing authority has met its burden of proof by a preponderance of the credible evidence. Charlot pushed B.R., and left him in his room with the door closed. Greystone personnel offered persuasive evidence that such conduct violates the facility's operating procedures, and falls within the definition of abuse. Charlot's conduct clearly rose to conduct unbecoming a staff member per N.J.A.C. 4A:2-2.3(a)(6); constituted abuse as that term is defined by Greystone and the Department of Human Services; and constituted sufficient cause for the charges against her. N.J.A.C. 4A:2-2.3(a)(11).

PENALTY

In this de novo review of Greystone's disciplinary action I am required to reevaluate the penalty on appeal. N.J.S.A. 11A:2-19; Henry, supra, 81 N.J. 571; Bock,

supra, 38 N.J. 500. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, suspension or a fine of no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. But where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate regardless of an individual's disciplinary history. Progressive discipline is not "a fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 531 (2007). The question to be answered is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Ibid.

Greystone's zero tolerance for patient abuse is completely reasonable, and accordingly, I **CONCLUDE** that the removal of Charlot must be upheld. After some six years of working with this very vulnerable population, and after being trained repeatedly, it appears that Charlot does not understand the proper protocols for handling an assaultive patient with dementia, like B.R. She so clearly does not understand what is expected of her that she repeatedly denied abusing B.R., all the while conceding the very conduct that constitutes abuse in a setting like Greystone.

ORDER

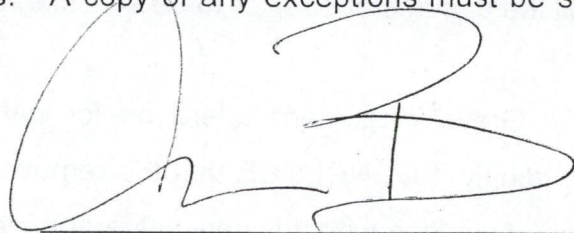
It is **ORDERED** that the charges against Charlot are **AFFIRMED**, as is the penalty of removal. In accordance with the consent confidentiality order previously entered, all documents relating to B.R. are being transmitted to the Civil Service Commission with identifying information redacted, and under seal.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 20, 2016



DATE

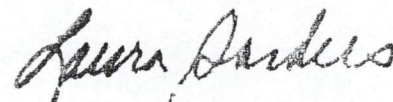
ELLEN S. BASS, ALJ

Date Received at Agency:

June 20, 2016

Date Mailed to Parties:

JUN 22 2016



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

WITNESSES

For Appellant:

Ketline Charlot

For Respondent:

Emma Dicks

Twanna Floyd

Josephine Bonnah

Cornelius Doyle

Thomas Schaffer

Doreen Sperber-Weiss

Melissa Ballard-Cabra

EXHIBITS

For Appellant:

None

For the Department:

- R-1 Preliminary Notice of Disciplinary Action
- R-2 Amended Preliminary Notice of Disciplinary Action
- R-3 Amended PNDA
- R-4 Disciplinary hearing
- R-5 Hearing officer report
- R-6 Hearing sign in sheet
- R-7 Appeal dated June 11, 2015

- R-8 Charlot Statement
- R-9 Charlot Interview
- R-10 Bonnah Statement
- R-11 Bonnah Interview
- R-12 Floyd Statement
- R-13 Floyd Interview
- R-14 Dicks Interview
- R-15 Patient Interview
- R-16 Charlot training history
- R-17 Training course detail report
- R-18 Patient Bill of Rights
- R-19 Prior incidents
- R-20 PAR ending 2013
- R-21 PAR ending 2012
- R-22 PAR ending 2011
- R-23 Incident report
- R-24 Incident report
- R-25 Incident report
- R-26 Investigative summary
- R-27 Photos-angle one
- R-28 Photos-angle two
- R-29 Disciplinary Action Program
- R-30 Policy: Special Treatment
- R-31 Policy: Abuse and Neglect
- R-32 Policy: Seclusion and Restraint
- R-33 Policy: Employee Competency
- R-34 Policy: Employee Competency 2
- R-35 Report
- R-36 Assault Precaution
- R-37 Psychiatric evaluation form
- R-38 Progress notes
- R-39 Patient overview information

OAL DKT. NO. CSV 02906-16

R-40 Video

