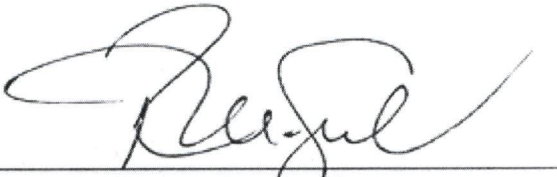


This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
SEPTEMBER 20, 2017

A handwritten signature in black ink, appearing to read 'R. Czedo', written over a horizontal line.

Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

**IN THE MATTER OF SHIRLEY SAVAGE,
DEPARTMENT OF HUMAN SERVICES,
ANCORA PSYCHIATRIC HOSPITAL.**

OAL DKT. NO. CSV 11496-13
AGENCY DKT. NO. 2013-2274

AND

**IN THE MATTER OF SHIRLEY SAVAGE,
DEPARTMENT OF HUMAN SERVICES,
ANCORA PSYCHIATRIC HOSPITAL.**

OAL DKT. NO. CSV 11497-13
AGENCY DKT. NO. 2013-2273

William B. Hildebrand, Esq., for appellant (Law Offices of William B. Hildebrand,
LLC)

Peter Jenkins, Deputy Attorney General, for respondent (Christopher S. Porrino,
Attorney General of New Jersey, attorney)

Record Closed: March 1, 2017

Decided: August 24, 2017

BEFORE **LAURA SANDERS**, Acting Director & Chief ALJ:

STATEMENT OF THE FACTS

Appellant Shirley Savage appeals the action by Ancora Psychiatric Hospital, effective January 22, 2013, terminating her from her position as a human services assistant on grounds of insubordination, conduct unbecoming, and violation of policies related to allegations she left her work assignment without authorization in October 2012. A second set of termination charges alleges that she left her assignment early and uncompleted on January 11, 2013. Ms. Savage contends that on both occasions other staff members failed to act in accordance with the hospital's relief protocols, and that in both instances she sincerely believed she had been relieved of duty.

PROCEDURAL HISTORY

On January 17, 2013, Savage was served with a Preliminary Notice of Disciplinary Action. She requested a departmental hearing, which was held on June 24, 2013. On July 8, 2013, a Final Notice of Disciplinary Action sustaining the charges was issued. She timely appealed the action to the Civil Service Commission (CSC), which determined to transmit the contested case to the Office of Administrative Law (OAL), where it was filed on August 13, 2013, and docketed as CSV 11496-13. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A second PNDA related to the January 2013 allegations was served on January 17, 2013. Following a departmental hearing on June 5, 2013, a second FNDA removing her effective January 22, 2013, was issued. She again appealed the termination to the CSC, which transmitted the matter to the OAL. It was filed on August 13, 2013, and docketed as CSV 11497-13. Administrative Law Judge Patricia M. Kerins consolidated the matters by order dated December 19, 2013, and heard them on June 30, 2014, October 22, 2014, and September 1, 2015, and the record was left open to March 1, 2017, for closing statements. The record then closed. Following numerous extensions, an additional extension was granted to allow time to contact the parties pursuant to N.J.A.C. 1:1-14.13 to determine if the parties could settle or wished to relitigate the matter upon transfer to a new judge. The answer having been in the negative, the undersigned was assigned the case. An additional extension was granted to allow time to review the record, and write the initial decision.

FACTUAL DISCUSSION

The parties agree on some of the facts. Ancora Psychiatric Hospital is a facility of the New Jersey Department of Human Services that provides psychiatric, medical, and rehabilitation services to mentally ill patients. Patients who are at risk of harming themselves or others are sometimes placed on what is known as "one-to-one" monitoring, which involves continuous observation by a staff member placed from one to six feet away, depending on what the doctor has instructed. In such instances, the staff member is assigned solely to that one patient, and is expected to remain with that patient until another staff person relieves them of duty. They also are expected to periodically record their observations of the patient during the assignment. Ancora Psychiatric Hospital Nursing Policy and Procedure, Change of Shift, reviewed and revised July 10, 2012, includes in paragraph sixteen a statement that, "[S]taff working a double shift are relieved first." (R-2.) The initial disputed instance occurred on October 13, 2012, when Savage, who was completing a double shift, was assigned to one-to-one monitoring of a patient. The second contested incident happened on January 11, 2013. Beyond these limited facts, there is significant disagreement as to what exactly occurred on both evenings.

Respondent offered three witnesses to the October 13, 2012, incident. Remi Etokhana, who is a human services assistant, testified that she was working the 11:30-p.m.-to-7:30-a.m. shift on October 13, 2012. The charge nurse assigned Etokhana to relieve a staff member who had been monitoring a patient during the prior shift. Etokhana was not assigned to relieve Savage, but saw her sitting nearby with a patient to whom she was assigned. Although Etokhana said, "No I was not supposed to relieve you," (Tr. June 30, 2014, at 13) she saw Savage walk away from her patient. Etokhana proceeded to relieve the person she was assigned to replace, and did not see anyone come to relieve Savage. (Id. at 14.) A couple of seconds later, an aide named Patricia Greer appeared and took responsibility for Savage's patient. (Id. at 43.) Initially, Etokhana said nothing about an empty soda can sitting next to Savage's chair, but later said she did see one, and that soda is not permissible. (Id. at 43, 44.) Although she was aware that soda should not be there, because it was considered contraband, she

did not pick it up, because, in her view, the can was the responsibility of the staff member who had left it.

Patricia Greer testified that she had arrived for the third shift and was coming out of the break room when she saw Savage leave through the exit door of the ward. (Id. at 52.) This was around 11:40–11:45 p.m. That particular night, she had no special assignment, so her job was to relieve whichever staff member she reached first. When she arrived in the ward for her one-to-one assignment, she saw that a clipboard holding the monitoring sheet for the patient had been left in front of the patient, but no one was there. (Id. at 57.) Greer immediately got another staff member named James to stand there, then went to locate the charge nurse. (Id. at 58.) At the time, the patient who was supposed to be monitored was snoring loudly. (Id. at 96.) Greer said her understanding of the priority for staff working double shifts meant that they are the first relieved after patient census was done. (Id. at 99.)

Adetutu Ogunleye,¹ who at the time of the OAL hearing had been a charge nurse at Ancora for about four years, testified that she worked with Savage from 7 p.m. to about 11 to 11:30 p.m. on some days. She described Savage as “aggressive verbally,” given to arguing about assignments or arguing with other staff members. (Tr. October 22, 2014, at 8.) At the shift change, the outgoing charge nurse generally told Ogunleye what patients or staff needed to be relieved first, and then “you approach the one-to-one if you are going to relieve a one-to-one.” (Id. at 9.) Responsibility for a patient is actually transferred from one employee to another when the incoming staff person takes the keyboard from the outgoing staff member, and both sign off. (Id. at 10.) When the entire formal transfer process fails to occur, it is a “big risk to the patient’s safety.” (Id. at 25.) Ogunleye’s practice is always to ask the outgoing charge nurse which staff members should be relieved first. (Id. at 31.)

On October 13, 2012, Ogunleye assigned Remi Etokhana to relieve a pool nurse that had been working sixteen hours. Shortly afterward, she heard Etokhana yelling to

¹ It is not clear whether Ms. Ogunleye’s first name is Adecutu, as it says in the transcript of October 22, 2014, or Adetutu, as it is spelled on her statement of October 13, 2012. (R-8.) Given that various staff member referred to her as “Tutu,” the t form has been utilized here.

her down the hall. When Ogunleye left the nurses' station and went to see why Etokhana was yelling, Etokhana said that Savage had just walked away from a one-to-one. (Id. at 11.) At that point, Ogunleye was able to reach Savage and ask that she please return because she had not been relieved, but "she looked at me and just ignored me and walked away." (Ibid.) Savage did mumble something, Ogunleye said, but she could not recall what it was. (Id. at 12.) Ogunleye checked on the one-to-one, then assigned another staff member, Patricia Greer, to watch him, returned to the nurses' station, and made a call to the nursing supervisor. She was certain that Savage had left the one-to-one patient alone, because when she arrived no one was watching him, and she had not yet assigned anyone to relieve Savage. (Id. at 13.)

Shirley Savage testified on her own behalf. She started employment at Ancora in November 2004 as a temporary employee, before becoming a full-time human services assistant. She said that sixteen-hour workers are supposed to be relieved first, both because they go into double-time payment after sixteen hours, and because they are generally expected to return to work eight hours later for their regular shifts. (Id. at 81.) She had previously experienced favoritism when it came to being relieved. "I never had a problem with anybody, . . . but soon as someone knows that I'm 16 hours, they'll go and relieve another staff because of favoritism . . . , that's my girl over there, that's my best friend over there, that's my cousin over there" (Id. at 82.) She said she filed complaints with the charge nurses about it, as well as complained to the supervisor, who told her to put it in writing. Once she had done so, she said, "all of them deliberately, intentionally started not relieving me on purpose" (Id. at 84.)

Savage said that Remi Etokhana "had this thing about linen," and would always go get linen first before relieving her. (The term "linen" here is used to describe a sheet or blanket.) In October 2012, Savage told Etokhana about the patient, who was sleeping, and that there was no other information to exchange. Savage said, "Here's the clipboard" and "See you later" to Etokhana, who came after her as she walked away, saying she was supposed to relieve the pool nurse (who had not been working sixteen hours). So Savage went to the supervisor's office, where the supervisor told her to go back and check. She did so, finding Patricia Greer sitting with the patient. (Id. at 92.) Savage said she knows full well that just walking away would endanger a patient's

life, which is why she would not have left had she not thought Etokhana was relieving her. "I never left the patient unattended, because I left staff sitting there." (Id. at 93.) She also asked, "why are we having a conversation about the patient if she's not going to relieve me?" (Id. at 110.) Savage then returned to the supervisor's office, to complain about Etokhana. She asked that the camera recording for that night in the corridor be downloaded, because she felt that the camera would support her story that Etokhana was right there with the patient, and was aware that she, not one of the nurses, had worked sixteen hours and should be relieved.² (Id. at 106.) At the point at which Savage walked away, Etokhana had told her she was not there to relieve Savage, she intended to relieve a nurse named Norayda. That nurse, who was located next to Savage, had not worked sixteen hours, and told Etokhana that Savage was first. (Id. at 146.) From Savage's viewpoint, Etokhana was standing next to the patient to whom Savage was assigned, Savage was entitled to be relieved, she had signed off in front of Etokhana, and Etokhana was now responsible for the patient. (Id. at 147.)

With regard to the January 11, 2013, incident, respondent offered testimony from four staff members, along with identification of a video. (R-33.) On that January night, Etokhana testified, when she started work, she was assigned to relieve a nurse named James, who was preparing to leave after working the second shift. When she approached Savage, the appellant said she had been a working double, and wanted to go home. (Tr. October 22, 2014, at 34.) Etokhana said she had cleaned up after Savage on some other occasions, so she asked Savage whether she was going to remove the used linen from her chair when she left. To this, Savage replied, "No, that [sheet] doesn't matter," so Etokhana refused to sign Savage out because, as far as she was concerned, Savage was supposed to clean up before she left and had not done so. (Tr. June 30, 2014, at 20 and 34.) Asked why she did not just put her fresh linen right over the top of the sheet Savage had been sitting upon, Etokhana said it was not hygienic enough. (Id. at 35.) Although Savage walked away, Etokhana said she already had signed out another staff member, James, so even though this left Savage's patient with no coverage, she could not sign Savage out. (Id. at 36.) She

² Counsel for respondent stated that the facility does not permanently save video. Rather, after thirty days it records over the old video. He said more than thirty days passed before the investigative process related to the first incident reached the point of seeking the video, which by then had been recorded over. (Tr. October 22, 2014, at 70.)

acknowledged that she could have signed Savage out instead of James, but chose not to do so because she did not want to sit on the sheet on which Savage had been seated. (Id. at 37–38.)

James Ronchetti had been a nurse at Ancora for nine years at the time of the June 30, 2014, hearing date. He recalled being assigned to a one-to-one on January 11, 2013, on second shift between 3:15 p.m. and 11:45 p.m. (Id. at 102, 103.) He testified that he saw the one employee come to relieve Savage, then refuse because of the blankets on the chair. “Ms. Savage refused to take the blankets and then just left.” Ronchetti said he yelled out to her, saying, “They’re not signing you off,” but the appellant continued to walk out. (Id. at 104.) He said Ms. Savage’s exit was improper because staff are not supposed to leave one-to-one assignments, especially those like her patient, who were there on suicide concerns, because such patients “can hurt themselves at any time.” (Id. at 104.) Ronchetti did not recall seeing Savage drink from a soda can, nor did he recall seeing a soda can anywhere near Savage or the patient. (Id. at 110.)

Ronchetti said that when Remi Etokhana approached Savage, she had no clean linen with her. (Id. at 111.) To Ronchetti’s knowledge, Etokhana could have removed Savage’s linen. Instead, she relieved him, and just sat on his chair, which had no linen upon it. (Id. at 113.)

Adetutu Ogunleye, the charge nurse, also testified in relation to the January 2013 incident. She recalled hearing Patricia Greer calling that she was needed to assess a patient. When she arrived in the hallway, a one-to-one patient who was a suicide risk was there, unsupervised. (Tr. October 22, 2014, at 17.) She determined that Shirley Savage was assigned to watch the patient, although she was not present. Etokhana told her that Savage had walked away. The outgoing-shift nurse also told her that Savage was not watching the one-to-one when she made the rounds at 11:30 p.m. (Id. at 18.) Ogunleye said the relief procedure was to start with relieving temporary staff members first, followed by those who had been working sixteen hours. (Id. at 19.) On this date, on realizing the patient was without supervision, she assigned another staff member, then returned to the nurses’ station and called the nursing supervisor, the

medical officer, and the psychiatrist on duty. Ogunleye acknowledged that she had no evidence of harm to the patient. (Id. at 39.)

Patricia Greer said that following a short in-service training, she arrived in the corridor off which the patients' bedrooms are located around 11:45 p.m. and saw an empty chair. On it was a clipboard and an empty can. (Tr. June 30, 2014, at 87.) She did not know where the can came from, and she saw no one monitoring the patient. (Ibid.) She removed the linen from the chair, placing it on the floor, and put the can in her case for disposal later. (Id. at 88.) Greer said that at some point she had received a memo directing staff not to put linen on the chairs. (Id. at 88–89.) A sign-in sheet from that night has a note she identified as hers stating that she signed off on the patient at 11:53, which she said means she took responsibility for him at that time. (Id. at 95.) On her arrival in the hallway, she saw Savage going out of the exit door in the hallway leading toward the supervisor's office. That particular corridor does not include either of the two hallways where patients are housed. (Id. at 64.) She did not speak to Savage at all. Rather, she notified Ogunleye. Greer also testified in relation to a video offered by respondent. (R-33.) The video, which carried a date of January 11, 2013, at a time identified as 11:42 through 11:43 p.m., shows Savage exiting through a rear door. It also shows Greer arriving at 11:44 p.m. Greer testified that when she signed in at twelve, which is shown on the official monitoring sheet (R-22, APH 40), no one was present. She would have received the prior sheet, APH 39 within R-22, which had Savage's name on it, at the time she was coming on. All of the time slots—11 p.m. through 11:45 p.m.—had information filled in.

Savage also testified about the January 2013 incident. On that particular evening, Remi Etokhana again was coming down that hall with linens, approaching a staff member named Oscar first, and then Jim. (Tr. October 22, 2014, at 111.) Savage asked why Etokhana “would deliberately not want to relieve me after [she] just left the nurses' station with . . . a report that says I'm 16 hours.” (Id. at 112.) First, Etokhana put linen on the back of Oscar's chair, causing Oscar to point out that Savage had been working sixteen hours. Then, because Oscar is directing her, Etokhana approached Savage. The appellant recalled telling her, “The patient is fine, the patient is asleep. There is no incident. Here is the clipboard,” because Etokhana's hands were full of

linens. With this, Savage said, she initialed the form, and signed off. "They said I had not signed off and left at 11:45. That never happened. They said I left the patient unattended. That never happened." (Ibid.) She added that while she and Etokhana were standing there, Jim told her, "Shirley, she doesn't want to relieve you because of linen." (Ibid.) She also recalled him saying, "Shirley, just help her out by removing the linen. That's all she wants you to do." (Tr. October 22, 2014, at 153.) Savage contended that the relief procedure had nothing to do with linen, and that by allowing Etokhana to relieve him instead of her, Jim was violating the procedure mandating that sixteen-hour employees had priority for relief. (Id. at 113.)

Savage said she again asked for the camera record to be pulled because she was tired of being accused of doing something she had not. However, she said the video offered by the respondent could not actually be the one from that date because it shows her and Jim coming from the break room, which is not in the area of the dorms where the incident occurred. Rather, she and the patient were stationed across from Oscar, as was Jim. (Id. at 116.) Having re-reviewed it with another staff member on August 31, 2015, Savage amplified the reasons she did not believe the tape to be accurate. Both she and Jim had patients that night, and the tape shows them coming from an area in which it is not possible for both to have been watching patients, in part because one side has a fire door and the day room. (Tr. September 1, 2015, at 11.) Further, she and Jim were sitting across the hall from Oscar, who is shown sitting alone on the tape. (Id. at 13.) Savage also says one of the patients on the tape was not present at the facility in 2013; he was there in 2012. (Tr. October 22, 2014, at 117.) As regards to Savage drinking soda, Savage said that she did not have any, and that earlier in the evening another staff member had been drinking soda, but it was nowhere near where the can was supposed to have been located by her chair. (Id. at 120-21.)

Edmund Dillon, section chief at Ancora Hospital for twenty-nine years, was working in the office of employee relations at the time of both incidents. He explained that at shift change, staff members who are not on one-to-one assignments meet at the nurses' station to discuss what happened in the shift leaving and what might be expected during the coming shift. (Id. at 49.) If a staff person is assigned to relieve someone doing a one-to-one, that person goes to the patient and employee, briefly asks

about what he or she should know, then takes a clipboard and signs off the outgoing person. "The person who is now going home signs the final time," and the incoming person signs the bottom of the sheet showing they've taken on that responsibility, and then the other person leaves. (Id. at 49, 50.) Dillon explained that the reason staff members cannot leave a one-to-one is that a patient left unattended could do anything. In one instance, an aggressive patient was left unguarded, and an employee was stabbed as a result. (Id. at 50.) He said that under the shift-change policy, outgoing staff will advise the incoming staff as to who has worked a double shift, because they should be relieved first. (Id. at 62.)

As the parties offer divergent views of what occurred during the two evenings, the determination of factual findings requires a weighing of the credibility of the witnesses, i.e., an overall assessment of the story of a witness "in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (citation omitted), certif. denied, 10 N.J. 316 (1952).

Adetutu Ogunleye, the charge nurse, testified credibly that on the disputed October 13, 2012, night, she assigned Remi Etokhana to relieve a pool nurse that had been working sixteen hours. As it happened, Ogunleye was in error regarding the pool nurse, who I **FIND** was at that point starting the first portion of a two-shift night. So, Savage was correct in asserting that under the shift relief policy, she was the person who should have been relieved. The testimony from various parties made clear that there was some fluidity in the assignments, as staff members often took responsibility for the first person they saw. I **FIND** that Etokhana told Savage she was not assigned to relieve her, but Savage forced the issue by leaving anyway. I **FIND** that when Savage was told to go back and check the patient, she did so, and that by the time of her arrival, Greer had assumed responsibility for the patient.

With regard to January 11, 2013, I **FIND** that the fluidity in assignments was even more in play. Etokhana testified credibly both that she had been assigned to relieve Jim, and that she had a conversation with Savage about relieving her instead, due to the fact that Savage had worked sixteen hours. The various comments regarding whether linen did or did not belong on chairs and who was supposed to do what in relation to it remains somewhat confused, except for the obvious fact that some staff members attached more significance to it than others did. Jim Ronchetti testified credibly that Etokhana gave the impression that she would have relieved Savage if Savage had pulled the cover off the chair, but Savage instead left. This harmonizes with Savage's recollection that she recalled him telling her, "Shirley, just help her out by removing the linen. That's all she wants you to do." I **FIND** that Savage left, that Etokhana did not relieve her, and that no one was assigned to the patient when Greer arrived. I also find credible Ronchetti's testimony that he yelled after Savage that no one had relieved her.

The facility also charged Savage with neglect of duty in relation to signing a sheet up to 11:45 p.m. when she left at 11:40 p.m. As the time on the video (11:43) speaks for itself, the notation made beside the 11:45 time slot on the monitoring schedule must have been made earlier. Therefore, I **FIND** that the entry was not accurate.

LEGAL ANALYSIS AND CONCLUSION

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).

Here, the appellant is charged with conduct unbecoming and other sufficient cause, namely, violating various administrative policies and orders. Conduct

unbecoming is a term that encompasses actions adversely affecting the morale or efficiency of a governmental unit or having a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). While Savage's frustration with not getting relieved promptly after sixteen hours of work is understandable, it does not negate her duty to ensure that patients who are a threat to their own safety and to others are being watched in accordance with a physician's orders. The time to take the error up with higher level staff was after Savage had been relieved. In October 2012, Remi Etokhana had been directed to relieve someone else. While the fluidity suggested that Etokhana did have some latitude to relieve Savage first, Savage walked away without confirming that this had occurred. There is some truth in Savage's argument that Etokhana is the one that opened the possibility of harm coming to the patient by deciding to go ahead and relieve the other nurse, thereby creating the gap in coverage. But two failures do not create a positive result. Therefore, I **CONCLUDE** that Savage violated the policy against leaving a one-on-one patient before another has signed onto the responsibility for that patient, and that in doing so she also exhibited conduct unbecoming by opening the patient and others to a risk of harm.

The January 2013 incident is worse because not one but two people—Etokhana and James Ronchetti—told Savage she had not been relieved. Further, even if Etokhana's linen-removal demand was unreasonable (which is not clear), it involved a minor effort that would not have significantly delayed Savage's departure. For whatever reason, Savage again placed her right to first relief above the patients' and other staff members' rights to a safe environment. Thus, I **CONCLUDE** that this action also amounted to conduct unbecoming and other sufficient cause in the form of violating facility-safety policies.

The facility also charged her with neglect of duty in relation to signing a sheet up to 11:45 p.m. when she left at 11:40 p.m. Since she left before 11:45 p.m., the entry was not accurate, and this action also amounted to conduct unbecoming.

The remaining issue is penalty. In her ten-year history at Ancora Psychiatric Hospital, Savage has received a three-day suspension in May 2008, a five-day suspension in April 2009, a reprimand in September 2010, a thirty-day suspension in 2010, and a five-day suspension in July 2012. The general rule for civil service cases is progressive discipline. W. New York v. Bock, 38 N.J. 500 (1962). Typically, the Civil Service Commission considers numerous factors, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Nonetheless, progressive discipline is not a fixed and immutable rule to be followed without question. Carter v. Bordentown, 191 N.J. 474, 484 (2007). Some infractions are serious enough on their own to warrant termination. In re Herrmann, 192 N.J. 19, 33 (2007).

In Herrmann, our Supreme Court affirmed the removal of a worker from the Division of Youth and Family Services (now known as the Division of Child Protection and Permanency) who had waved a lit lighter in front of a child's face while asking about how the child set a fire. The Court noted the Division's need to rely on the demonstrated good judgment of its workers to protect the integrity of its system. Here, although Savage was correct in believing that the facility's policy prescribed relieving people who had worked sixteen hours first, her elevation of that right above the safety of the patients and staff marked a very serious lapse in judgment. For that reason, I **CONCLUDE** that termination is the appropriate penalty.

ORDER

The appointing authority's action terminating appellant is hereby **AFFIRMED** and her appeal **DISMISSED** with **PREJUDICE**.

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.

August 24, 2017
DATE

Laura Sanders

LAURA SANDERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency:

August 24, 2017

Date Mailed to Parties:

August 24, 2017

/caa

WITNESSES

For Appellant:

Shirley Savage

For Respondent:

Edmund Dillon

Remi Etokhana

Patricia Greer

Adetutu Ogunleye

James Ronchetti

EXHIBITS

Joint Exhibits

J-1 Stipulated documents showing disciplinary history of Shirley Savage

For Appellant, Shirley Savage

P-1 Employee Statement Form, signed by Shirley Savage, dated September 18, 2012; Employee Statement Form, signed by Shirley Savage, dated September 20, 2012; and Employee Statement Form, signed by Shirley Savage, dated September 26, 2012

P-2 Employee Statement Form signed by Shirley Savage, dated October 13, 2012

P-3 Employee Statement Form, signed by Shirley Savage, dated January 11, 2013

For Respondent, Department of Human Services, Ancora Psychiatric Hospital

R-1 Final Notice of Disciplinary Action dated July 8, 2013

R-2 Ancora Psychiatric Hospital Nursing Policy and Procedure, Change of Shift, reviewed and revised July 10, 2012

- R-3 Ancora Psychiatric Hospital Executive Policy and Procedure Manual, Special Observation, approved February 18, 2011
- R-4 Ancora Psychiatric Hospital Nursing Policy and Procedure, Special Observation Monitoring, revised and reviewed May 21, 2012
- R-5 Ancora Psychiatric Hospital Confidential Unusual Incident Report Form, dated October 13, 2012
- R-6 Ancora Psychiatric Hospital Employee Statement Form, signed by Remi Etokhana, dated October 14, 2012
- R-7 No exhibit
- R-8 Ancora Psychiatric Hospital Employee Statement Form signed October 14, 2012, by Adetutu Ogunleye
- R-9 Special Observation Monitoring log dated October 13, 2012
- R-10 Special Observation Monitoring log dated October 14, 2012
- R-11 No exhibit
- R-12 No exhibit
- R-13 No exhibit
- R-14 Third-shift sign-in sheet for October 14, 2012
- R-15 No exhibit
- R-16 No exhibit
- R-17 No exhibit
- R-18 Final Notice of Disciplinary Action dated July 23, 2013
- R-19 No exhibit
- R-20 No exhibit
- R-21 No exhibit
- R-22 Sign-in sheets for January 11, 2013
- R-23 No exhibit
- R-24 Employee Statement Form signed by James Ronchetti, dated January 12, 2013
- R-25 Employee Statement Form signed by Remi Etokhana, dated January 11, 2013
- R-26 Employee Statement Form signed by Adetutu Ogunleye, dated January 12, 2013
- R-27 Employee Statement Form signed by Patricia Greer, dated January 11, 2013
- R-28 Confidential Unusual Incident Report Form dated January 11, 2013
- R-29 No exhibit
- R-30 No exhibit

R-31 No exhibit

R-32 Employee Disciplinary History for Shirley Savage

R-33 Surveillance video of January 11, 2013