BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CAMERON WHEELOCK, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)))))))))))	Case No. RED-98-0010 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and NATHAN S. FORD, JR., Member. The hearing was held on September 28, 1999, in the Hearing Conference Room at Western State Hospital in Steilacoom, Washington.

1.2 **Appearances.** Appellant Cameron Wheelock was present and was represented by Anita L. Hunter, Attorney at Law, Parr and Younglove, P.L.LC. Respondent Department of Social and Health Services was represented by El Shon Richmond, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a reduction in salary for neglect of duty, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleges that Appellant violated the department's medication incident report policy when he found medications in a patient's drawer that did not belong to the patient, placed the medications in his pocket, and failed to appropriately document his discovery.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.

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School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Cameron Wheelock was a Mental Health Licensed Practical Nurse (MHLPN) 2 and a permanent employee of Respondent Department of Social and Health Services (DSHS) in the Geropsychiatric Medical Unit at Western State Hospital (WSH). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal of his reduction in salary on February 26, 1998.

2.2 Appellant began employment with DSHS on March 14, 1988. Appellant had no history of previous informal or formal disciplinary actions and his performance evaluations show that he met the normal performance requirements for his position.

2.3 By letter dated February 10, 1998, Dr. Jerry L. Dennis, Chief Executive Officer for Western State Hospital, informed Appellant of his reduction in salary of six steps for one month. Appellant's reduction in salary equated to $339 and was effective from March 1, 1998 through March 31, 1998. Dr. Dennis alleged that on October 29, 1997, Appellant failed to follow procedures for reporting a medication incident.

2.4 At the time of this incident, Appellant was a medication nurse and was responsible for appropriately administering and documenting medications given to the patients on Ward E7. Patient medications are stored in a medication cart. Each patient on the ward is assigned a drawer. Each drawer contains the appropriate medications for the patient assigned to the drawer. Because Appellant was the medication nurse, he was familiar with which patients receive which medications.

2.5 On October 29, 1997, Appellant found two tablets of Prednisone 20 mg and one tablet of Cogentin 1 mg in a drawer for a patient that he knew was not prescribed these medications. Appellant placed the tablets on the top of the medication cart. However, Appellant realized that the medications were accessible to patients, so he secured the drugs by placing them in his vest pocket.

2.6 Appellant and the charge nurse had a disagreement about a particular assignment given to Appellant. As a result, before Appellant could take care of the erroneous medications, he was summoned to the office to meet with Registered Nurse 4 Tessie Cueva. Subsequently, Appellant forgot about the medications and did not complete a Medication Incident Report prior to completing his shift.

2.7 Because the medications were in his vest pocket, Appellant inadvertently removed the medications from WSH when he left the institution at the end of his shift. Appellant did not remember that he had the medications until the following day when he found them in his vest pocket. Appellant intended to return the medications to WSH as soon as possible, however, they were confiscated by a Thurston County Sheriff's officer before Appellant could return them to WSH.

2.8 After confiscating the medications, the Thurston County Sheriff's officer contacted WSH. As a result, a Personnel Conduct Report (PCR) was initiated against Appellant. Appellant participated in the PCR process, however, he stated that he was not receptive to the process and he did not feel that the process was fair and impartial.

2.9 Steven E. Brockel, the Chief Executive Officer's desginee, completed the Administrative Comments portion of the PCR. Mr. Brockel concluded that Appellant's possession of the medications while he was not performing his duties at WSH constituted misconduct. Mr. Brockel forwarded the PCR and all the attachments to Dr. Dennis.

2.10 Dr. Dennis concluded that because of the serious breach of professional ethics and judgment demonstrated by Appellant's actions, disciplinary action was necessary. Dr. Dennis considered the fact that Appellant had removed the medications from WSH, but he stated that the most serious issue was Appellant's mishandling of the medications and his failure to complete a Medication Incident Report (MIR). Dr. Dennis determined that Appellant was aware of the MIR policy yet he willfully violated the policy when he removed the medications without following the policy and failed to appropriately secure the medication prior to the end of his shift. Dr. Dennis determined that Appellant's actions were negligent, lax and inattentive, constituted a neglect of duty and rose to the level of gross misconduct. Dr. Dennis hoped that formal discipline would demonstrate to Appellant the seriousness of his misconduct, would cause Appellant to pay close attention to his duties and would deter future incidents of this nature. To accomplish this goal, Dr. Dennis determined that a reduction in salary was appropriate.

2.11 WSH policy defines a medication incident, in part, as "any instance in which a medication order dosage is not . . . filled . . . correctly. A medication inconsistency that is detected and corrected before the drug is administered is also considered a medication incident and requires documentation on the Medication Incident Report (MIR)." The policy further sets forth the steps to be followed when a medication incident occurs. The policy requires the person discovering the medication incident to follow the MIR process as soon as possible after a medication incident and before the end of the shift. (Ex. R-8).

2.12 When wrong medications were discovered on Ward E7, the practice was to return the medications to the correct patient or to the pharmacy and to notify the supervisor. On Ward E7, the practice was to write a MIR when wrong medication was administered or when the time frames for administering medications was missed. Staff on Ward E7 did not consistently complete MIRs for

all medication errors. However, it was never appropriate for staff to remove medications from WSH.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that misconduct occurred, that Appellant engaged in inappropriate action and that rather than showing remorse, he was resentful of the PCR process. Respondent contends that WSH must ensure that the hospital functions within its policies and procedures and that employees abide by the policies and procedures. Respondent asserts that Appellant willfully violated WSH policy and exhibited a lack of awareness of his responsibility to abide by WSH policies. Respondent contends that Appellant admitted he mishandled the medications and that given the seriousness of Appellant's misconduct, the disciplinary sanction is not too severe.

3.2 Appellant argues that he made an inadvertent mistake and that the disciplinary sanction is too severe. Appellant contends that the disciplinary letter did not address his attitude during the PCR process, but specifically alleged that he failed to follow the MIR procedures. However, Appellant asserts that the discipline was a result of his attitude during the PCR process. Appellant further contends that he intended to return the medications to WSH, but was prevented from doing so. Appellant asserts that his actions did not constitute gross misconduct, that all of the patients on Ward E7 on October 29, 1997, received the proper medications, and that there was no adverse impact to the agency because of his forgetfulness. While Appellant admits that he forgot to follow the MIR policy, he argues that on Ward E7, the policy was not consistently followed. Appellant contends that if Dr. Dennis's goal was to correct his behavior, he could have taken a lesser disciplinary sanction or a corrective action which would have had the effect of correcting Appellant's behavior. Appellant asserts that he owned up to his mistake but he was never offered an opportunity to correct his behavior before formal disciplinary action was imposed.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Respondent has met its burden of proof that Appellant's actions constituted a neglect of duty. Appellant was responsible for properly handling and documenting medications prescribed to and intended for administration to patients on Ward E7. Appellant failed to fulfill this duty when he failed to properly handle and document the unprescribed medications he found in a patient's drawer on October 29, 1997.

4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.6 Respondent has failed to prove that Appellant's actions rose to the level of gross misconduct. On October 29, 1997, the proper medications were administered to the appropriate patients on Ward E7 at WSH. Appellant did not intentionally remove the extra medications from WSH. Appellant's actions were negligent, but they were not flagrant and did not adversely impact the agency or WSH.

4.7 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.8 Respondent has met its burden of proof that Appellant was aware of the WSH MIR policy and that he technically violated the MIR policy. However, staff on Ward E7 did not consistently follow the policy. While corrective action may be appropriate for a violation under these circumstances, formal disciplinary action is not appropriate when strict adherence to the policy is not enforced.

4.9 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances including the seriousness and circumstances of the offense. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one charge is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

4.10 Under the facts and circumstances and in light of the proven charges, the disciplinary sanction of a six step, one month reduction in salary is too severe. However, Appellant was negligent and lax in his handling of the medications he found on October 29, 1997. Such behavior cannot be tolerated. The purpose of discipline is to correct the unwanted behavior. In this case, we conclude that a two step, one month reduction in salary would serve this purpose. Therefore, the disciplinary sanction should be modified.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Cameron Wheelock is granted in part and the disciplinary sanction is modified to a two step, one month reduction in salary.

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Nathan S. Ford Jr., Member

DISSENT

I disagree with the majority opinion in this matter.

Based on the testimony and the evidence, the appointing authority imposed discipline on three bases. The first was the finding during the Personnel Conduct Report process that Appellant was in possession of controlled legend drugs while not performing his duties. The second was Appellant's demeanor and attitude during the investigation process. The third was that Appellant failed to appropriately follow procedures for dealing with a medication incident. Of the three, only the third was specifically referenced in the disciplinary letter. The merit system rules require, and the Board has consistently held, that the disciplinary notice to the employee must contain specific charges. In this case, I believe that the appointing authority made his determination on the appropriate level of sanction considering two charges that were not identified in the disciplinary letter.

While I agree that Appellant may have technically violated the Medication Incident Report (MIR) Policy, the testimony from three witnesses that the MIR Policy did not apply and was not used in this type of situation was credible. The testimony was clear that in this type of situation, the practice was to simply return the medications to the pharmacy without doing an MIR.

Appellant was a Mental Health Licensed Practical Nurse 2 with responsibilities as the medication nurse. As such, he had a duty ensure the proper handling of these legend drugs. He neglected that duty.

However, in light of his experience and performance record, the totality of the circumstances and the inconsistent application and use of the MIR Policy, I believe that Respondent has failed to meet its burden of proving that the sanction was appropriate. I believe that the appointing authority took

into consideration charges that were not specified in the disciplinary letter, that the disciplinary action should be reversed and that corrective action would have been appropriate under these circumstances.

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Gerald L. Morgen, Vice Chair

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