BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DOROTHY POLK, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RED-02-0032 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, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held in the Hearings Conference Room at the Western State Hospital in Steilacoom, Washington, on May 29, 2003. WATER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Dorothy Polk was present and was represented by Rick Polintan, Union Representative, Northwest Service Employees International Union, District 1199. Paige Dietrich, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of 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 interacted inappropriately with a Western State Hospital patient.

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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. School for the Deaf, PAB No. D89-004 (1989); Harper v. WSU, PAB No. RULE-00-0040 (2002); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant is a permanent employee of Respondent Department of Social and Health Services. 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 with the Personnel Appeals Board on June 25, 2002.

2.2 Appellant is a Registered Nurse 2 at the Western State Hospital, which provides care to patients with mental illness, developmental disabilities, and brain injury. Appellant began working for the Department of Social and Health Services in 1985.

2.3 By letter dated May 14, 2002, Jan Gregg, Chief Executive Officer, informed Appellant of her reduction in salary from 47N, Step R to Range 47N, Step P, effective June 1, 2002 and continuing through August 31, 2002. Ms. Gregg charged Appellant with neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules and regulations. Respondent alleged that on February 14, 2002, Appellant rushed toward a patient and yelled at him, grabbed the patient by the arm, pulled him away from the nurse's station counter, and yelled at him again. The interaction between Appellant and the patient occurred in front of other staff members and patients.

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2.4 Appellant has been the subject of prior formal disciplinary actions. Appellant's salary was reduced for one day effective August 16, 1992 for being absent from work without authorization. Appellant's salary was again reduced for three months effective December 16, 2001 through March 16, 2002 for altering/falsifying a physician's written order. Appellant's performance evaluations from 1997 through 2002 indicate that Appellant was a very good psychiatric nurse. However, Appellant had been instructed on several occasions to improve her abrupt communication style.

2.5 Western State Hospital Policy No. 3.4.4, Patient Abuse, states in relevant part:

> … All patients have the right to treatment in an environment free of neglect, abuse and of abusive procedures. All employees are to diligently avoid both the substance and appearance of patient abuse while maintaining firm adherence to those principles of respect for the dignity of patients and their families. PATIENT RIGHTS ARE PARAMOUNT. AS SUCH, ALL EMPLOYEES ARE TO ASSURE THAT THOSE RIGHTS ARE HONORED TO THE FULL EXTENT OF THIS POLICY.
>
> DEFINITIONS OF PATIENT ABUSE:
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> B. Psychological Patient Abuse
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> Any communication or interaction with a patient that is patently antitherapeutic, dehumanizing, or that places the patient under excessive duress. Psychological abuse may include, but is not limited to, the following: name calling, use of derogatory or uninvited nicknames, racial slurs, demeaning remarks, inappropriate shouting at patient, imitating or mocking patient's behavior, making lewd suggestions to patient, threatening patients with physical abuse, supporting patient's delusional systems, and establishing antitherapeutic involvement with patients.
>
> E. Misconduct Abuse of Patients
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> Any staff behavior that does not conform to prevailing DSHS standards and that results in any form of patient abuse.

2.6 Western State Hospital Policy No. 3.3.1, Employee Rights/Responsibilities, states in relevant part:

> RESPONSIBILITIES:
>
> 7. To maintain personal conduct within accepted standards of behavior.

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8. To work in accordance with the published directives of Western State Hospital and of the Washington State Department of Personnel.

2.7 The Department of Social and Health Services Administrative Policy No. 6.04, Standards of Ethical Conduct for Employees, states in relevant part:

Policy: DSHS requires employees to perform duties and responsibilities in a manner that maintains standards of behavior that promote public trust, faith, and confidence. Specifically, employees shall:

1. Strengthen public confidence in the integrity of state government by demonstrating the highest standard of personal integrity, fairness, honesty, and compliance with laws, rules, regulations and department policies.
3. Serve the public with respect, concern, courtesy, and responsiveness, recognizing that service to the public is the primary mission of state government.

2.8 Western State Hospital Nursing Service Standard Policy 106, Professional Behavior, Personal Conduct, states in relevant part:

5. Personal Conduct:

All nursing staff members are expected to conduct themselves in a manner which maintains a good role model for others and is conducive to maintaining a therapeutic environment for patients, family and friends.

15. Any abuse of patients will not be tolerated. Review Hospital Policy 3.4.4 "Patient Abuse." Incidents involving the occurrence or suspected occurrence of any forms of patient abuse warrant completion of a Conduct Investigation Report. The first supervisor to become aware of alleged or suspected patient abuse has the obligation to ensure initiation of a Conduct Investigation Report and must report the incident to the responsible supervisor.

2.9 On July 26, 1999, Appellant signed the "Nursing Orientation to Duty Station Checklist" and acknowledged her awareness of her responsibility to be familiar with the Standards of Performance for Nurses and Professional Behavior, Personal Conduct (Nursing Policy 106) and the patient abuse

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policy. Appellant also signed an orientation checklist on October 6, 1985 and August 8, 1988, and received ethics training on April 15, 1998.

2.10 In making a determination of the above allegations, we carefully weighed the testimony of the witnesses and reviewed the documentary evidence in this case. Appellant did not remember the event on February 14, 2002, however; she contended that her interaction with the patient must have been in correlation with his treatment care plan and misinterpreted by the witnesses. The testimony of Appellant's co-workers was consistent. Based on a preponderance of the credible testimony, we find that the following occurred:

2.11 At approximately 6:58 a.m. on February 14, 2002, a shift change was occurring on Western State Hospital's E1 Ward. The day shift staff was preparing to begin their work shift, while the night shift staff was preparing to leave the ward.

2.12 Patient Joe, who was temporarily reassigned to E1 Ward, often greeted people. He was standing by the nurses' station greeting the staff and shaking their hands as they arrived. Patient Joe began to greet Rosemary Beaulieu, Ward Clerk, when Appellant rushed over and yelled, "Don't you touch her! Don't touch anyone!" Appellant grabbed Patient Joe by the arm, pulled him away from the nurses' station, pointed her finger at him, and yelled, "You think you've died and gone to heaven being on this ward, don't you? Well you haven't!"

2.13 Patient Joe became visibly upset and began to cry. Patient Joe stated to Appellant, "I don't deserve your disrespect."

2.14 Approximately seven of Appellant's co-workers witnessed the event and were shocked by Appellant's unwarranted behavior toward Patient Joe. All seven co-workers submitted to Zahra

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Angell, Nurse Manager, written statements that were fundamentally consistent in the descriptions of what they observed.

2.15 On February 15, 2002, Ms. Angell initiated a Conduct Investigation Report. Ms. Angell interviewed the seven witnesses. Each of the witnesses reported that Patient Joe was not behaving in an inappropriate or intrusive manner when Appellant rushed at him and yelled at him. Ms. Angell spoke to other staff members who were at work on February 14, 2002, but she was unable to find any additional witnesses to Appellant's interaction with Patient Joe. Appellant declined to be interviewed and stated, "I don't remember it, I don't have anything to say or to add." Ms. Angell concluded that Appellant's behavior toward Patient Joe was completely inappropriate.

2.16 On March 14 2002, Ms. Angell spoke to Patient Joe. Patient Joe said, "I don't get along with head nurse Dorothy. I didn't like her demeanor, she gave me evil looks and yelled at me. On Valentines Day, she yelled at me, hurt my feelings, and made me cry." Patient Joe also stated that Appellant said things to him like, "I know all about you. I'm not going to put up with your shit" and "Joe, you got AIDS, you are not going to make it."

2.17 Jan Gregg, Chief Executive Officer, assigned Robert Detamore, Labor Relations Specialist, as her designee to conduct an administrative review and make a determination as to whether misconduct occurred. On April 4, 2002, Mr. Detamore conducted the administrative review and met with Appellant to discuss the allegations. Appellant stated that she did not remember the incident, but she believed her actions were therapeutic because Patient Joe has AIDS and his treatment plan instructs that he is not to be excessively intrusive in social situations.

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2.18 Mr. Detamore determined that Appellant did not provide any mitigating circumstances for her behavior. Based on the information he gathered during his review, Mr. Detamore concluded that Appellant had engaged in misconduct.

2.19 In making a final determination as to whether Appellant's behavior constituted misconduct, Ms. Gregg reviewed the Conduct Investigation Report, the witness statements, Appellant's responses to the allegations, Mr. Detamore's report, and the relevant agency policies.

2.20 Ms. Gregg also reviewed Patient Joe's treatment plan, which indicated that he was to avoid intrusive touching and that "during offward outings he will refrain from excessive hand-shaking." Ms. Gregg was not convinced by Appellant's assertion that her actions were therapeutic and followed Patient Joe's treatment plan because she determined that Patient Joe was not engaging in intrusive touching or excessive hand-shaking on the morning of February 14, 2002. Further, if Patient Joe had been acting inappropriately, the proper method to stop the unwanted behavior would have been to talk to Patient Joe in a normal tone of voice, refocus his attention, and distract him. Ms. Gregg considered Appellant's interaction with Patient Joe to be serious and concluded that Appellant had engaged in psychological/verbal patient abuse as described in the Western State Hospital Patient Abuse Policy.

2.21 Ms. Gregg considered that Appellant failed in her responsibility as a Registered Nurse 2 to conduct her job duties in a professional manner, show respect and care to the patients, and provide direction as a role model to other staff. Ms. Gregg agreed with the conclusion of Mr. Detamore and determined that Appellant had neglected her duty, engaged in gross misconduct, and willfully violated published employing agency rules and regulations.

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2.22 To determine the appropriate discipline, Ms. Gregg reviewed Appellant's personnel file, including her performance evaluations and previous disciplinary actions. Since Ms. Gregg considered Appellant's behavior to be serious and unacceptable, she determined that substantial disciplinary action was necessary. Ms. Gregg concluded that a three-month reduction in salary was the appropriate discipline to change Appellant's behavior and prevent a recurrence.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argued that Patient Joe's treatment plan did not prohibit him from greeting people and shaking hands, unless he was being excessive and intrusive. Respondent asserted that if Patient Joe had been prohibited from touching others, the treatment plan would have specified that expectation. Respondent contended that each of the witnesses were consistent with their statements that Patient Joe was not being excessive or intrusive in his behavior. Respondent argued that even if Patient Joe had been acting in an excessive or intrusive manner, Appellant should have calmly re-focused his attention. Respondent asserted that Appellant, as a Registered Nurse 2, had a responsibility to act in a professional manner, act as a role model, and follow the hospital policies during her interactions with patients. Respondent contended that Appellant engaged in psychological/verbal patient abuse, which could not be tolerated and warranted disciplinary action. Respondent argued that a three-month reduction in pay was not too severe and should be affirmed by the Board.

3.2 Appellant argued that the investigation was flawed and incomplete because not all the witnesses were interviewed. Appellant asserted that even though she could not recall her alleged interaction with Patient Joe, she is certain that her actions were therapeutic and in alignment with his treatment plan and hospital policies. Appellant contended that she has worked on Patient Joe's home ward, was familiar with Patient Joe and his treatment plan, and even assisted in writing his

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plan. Appellant argued that Patient Joe had a communicable disease, did not keep his hands clean, usually had bodily fluids on his hands, and therefore posed a danger to others by touching them. Appellant asserted that she normally talked in a loud voice and may have raised her voice in an authoritative manner to be heard over the noise that occurred during the ward's shift change. Appellant contended that her co-workers misinterpreted her interaction with Patient Joe. Appellant argued that she was a good psychiatric nurse and had never abused a patient. Appellant admitted that she was loud and opinionated, but the problems with her communication style involved only her co-workers and never her patients.

IV. CONCLUSIONS OF LAW

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

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 Appellant's interaction with Patient Joe was completely unacceptable and intolerable and clearly constitutes patient abuse. Further, the hospital clearly put her on notice that her inappropriate communication style was not acceptable.

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4.5 Respondent has met its burden of proving that Appellant neglected her duty when she behaved in an abusive manner towards Patient Joe, failed to use good judgment in assessing Patient Joe's interaction with other staff, failed to model professional behavior, failed to treat a patient with dignity and respect, and failed to provide patient care in a therapeutic manner.

4.6 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

4.7 Respondent has met its burden of proving that Appellant engaged in gross misconduct by her disregard for Western State Hospital's mission of providing therapeutic patient care. Appellant's egregious interaction with Patient Joe demonstrates a lack of consideration for the patient, was disrespectful, verbally abusive, disruptive, and unprofessional.

4.8 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. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.9 Respondent has met its burden of proving that Appellant had knowledge of and willfully violated Western State Hospital Policy No. 3.4.4, Western State Hospital Policy No. 3.3.1, Department of Social and Health Services Administrative Policy No. 6.04, and Western State Hospital Nursing Service Standard Policy 106.

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4.10 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

4.11 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.12 Based on Appellant's egregious actions and her past work history, Respondent has established that the disciplinary action of a three-month reduction in salary was not too severe and was appropriate under the circumstances presented here. In light of the totality of Appellant's behavior, we consider the three-month reduction in pay to be quite lenient. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dorothy Polk is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Busse Nutley, Member

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