BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DANUTE (DONNA) SLAPSYS, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. R-DISM-13-004 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Vice Chair, and NANCY HOLLAND YOUNG, Member. The hearing was held on April 2 and 3, 2014, in the Personnel Resources Board hearing room in Olympia, Washington. Written closing arguments were submitted in May and responsive briefs were submitted on June 3, 2014. Subsequent to this hearing but prior to issuing this decision, the Board's titles changed. The signatures on this document reflect the Board's current titles.

1.2 **Appearances.** Appellant Danute (Donna) Slapsys was present and was represented by Mark McCarty, Attorney at Law. Lawrence Paulson, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal of a dismissal. Respondent alleged that Appellant made numerous errors in processing prescriptions which created patient safety concerns and she removed medical records containing protected health information from the medical center.

II. FINDINGS

2.1 Appellant Danute Slapsys was a permanent employee for Respondent University of Washington (University). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on June 25, 2013.

2.2 The University's corrective disciplinary process includes informal counseling followed by formal counseling, then final counseling and ultimately dismissal. Prior to the concerns giving rise to this appeal, Appellant had no history of receiving disciplinary action. In addition, she was aware of the laws and UW policies regarding the dispensing of pharmaceuticals and she was aware of the requirement to maintain patient confidentiality included protected health information.

2.3 Appellant began her employment as a Pharmacist at UW in November 2005. At the time of her dismissal, Appellant was a Pharmacist 3 at the University of Washington Medical Center (UWMC) and was responsible for clinical pharmacist duties including, in part, accurately dispensing prescriptions, reviewing and verifying prescriptions filled by other pharmacy staff, obtaining clarification of prescriptions from the provider when needed, evaluating and making recommendations on drug therapies and counseling patients on the use of their prescribed drug therapies. Pharmacists have a legal obligation under RCWs 18.64.246 and 69.41.050 to dispense prescriptions with, among other things, the correct drug, accurate dosage and clear and accurate directions.

2.4 UWMC uses an automated patient medication record system called Etreby. WAC 246-875-020 describes the information that must be documented in the system such as the number of authorized refills and a patient's allergies and chronic conditions. WAC 246-875-040 describes the procedures for using the patient medication record system and requires pharmacists to examine a prescription or drug order to:

> . . . determine the possibility of a clinically significant drug interaction, reaction or therapeutic duplication, and to determine improper utilization of the drug and to consult with the prescriber if needed. . . . . Any change in drug name, dose, route, dose form or directions for use which occurs after an initial dose has been given requires that a new order be entered into the system and the old order be discontinued, or that the changes be accurately documented in the record system, without destroying the original record or its audit trail.

2.5 Dr. Jennifer Beach and Dr. Nancy Driesner became Appellant's co-supervisors in 2008. While Appellant received no formal counseling at that time, her supervisors noted some concerns in her performance evaluations. For example, Appellant's 2008 evaluation noted that Appellant needed to improve her consistency in communication while under pressure. In addition, in her performance evaluation dated March 29, 2011, Appellant was rated Meets Standards in all categories even though the evaluation noted that she was sometimes "nonchalant." Specifically, the evaluator comments stated: "Donna can act a bit nonchalant which can be intimidating to coworkers who prefer to be more cautious. Donna's clinical base is not as expansive as other clinical pharmacists, she has a tendency to pass off complicated clinical problems to other pharmacists."

2.6 Between August 2011 and March 2013, Appellant experienced a number of family and personal issues that required her to periodically use Family Medical Leave. Respondent granted Appellant's use of leave and told her that she was expected to use leave if she was unable to be 100 percent focused on her job.

2.7 Dr. Beach and Dr. Driesner continued to have concerns about Appellant's performance particularly in processing prescriptions. In September 2011, Appellant was given informal counseling and an action plan to help her accurately track, enter and check prescriptions. In March 2012, Appellant's performance evaluation noted that Appellant had been counseled about her failure to detect errors in prescriptions. Because of continuing concerns about Appellant's work in regard to the accuracy, entry and checking of prescriptions, on March 23, 2012 she was given formal counseling. She was also given an action plan to help her accurately enter data in the Eterby system.

2.8 A follow-up memo dated April 4, 2012 memorialized the March 23, 2012 formal counseling meeting and indicated that Appellant's supervisors would conduct weekly audits of Appellant's work. Because of concerns about the errors Appellant was making with prescriptions, Dr. Driesner and Dr. Beach, performed random audits of prescriptions that

Appellant either entered or verified in the Eterby system. Dr. Driesner testified that the goal was to randomly check ten prescriptions per week.

2.9 Throughout the audit process, Appellant's supervisors gave Appellant feedback and counseling. The audits revealed a number of significant and insignificant errors that Appellant had made in processing prescriptions. Significant errors are those that could potentially cause harm to a patient.

2.10 Following the audits, Appellant's supervisors would place the audit notes in Appellant's UWMC mail box so that she could review them and seek clarification if necessary. Appellant would retrieve the audit notes and take them home to review. The audit notes contained Protected Health Information (PHI). While Appellant had received training and knew that PHI was not to be removed from the medical facility, she was not specifically told that the audit notes could not be removed.

2.11 After reviewing 10 weeks of audit results, Appellant's supervisors continued to have concerns about Appellant's work related to the accuracy, entry and checking of prescriptions. On June 26, 2012, Appellant met with her supervisors for a final counseling and Appellant was told that it was important for her performance to improve and that the random audits would continue. Appellant was also informed that if there was not an immediate and sustained improvement in the quality of her work, the next step in the process would be a recommendation for her dismissal.

2.12 Following the final counseling and in order to give Appellant every opportunity to be successful, Appellant's supervisors arranged for her to be shadowed by a Lead Pharmacist and receive one-on-one feedback from him. The shadowing took place on August 8, 2012. Immediately following the shadowing, Appellant's performance showed some improvement. But further auditing of Appellant's work found that Appellant continued to make significant errors as well as insignificant errors in regard to prescriptions. Her supervisors determined that between

the final counseling and shadowing and the recommendation for dismissal, Appellant made 12 significant errors out of 255 prescriptions.

2.13 A preponderance of the credible testimony establishes that pharmacists rarely make significant errors and that the only acceptable significant error rate on prescriptions is zero. The credible testimony also establishes that the rate of errors Appellant made was unacceptable and was not up to UWMC's unwritten expectations or standards.

2.14 Even though Appellant showed some improvement following the shadowing, she did not sustain her improvement. Between October 29, 2012 and March 1, 2013 (excluding the month of January 2013 when Appellant was on leave), Appellant made five significant errors out of the 121 prescriptions that were audited during that approximately three month period. Appellant acknowledges she made four of the errors. But, while Appellant disputes one of the five errors attributed to her during this time period, the Board finds that even an error rate of four significant errors in 121 prescriptions, as opposed to five in 121 prescriptions, is unacceptable particularly since significant errors could potential cause harm to a patient.

2.15 After determining that Appellant was continuing to make significant errors, by memo dated April 4, 2013, Appellant's supervisors recommended Appellant's dismissal. Her supervisors alleged that Appellant failed to meet expectations, neglected her duty and failed to meet the legal and professional standards for a pharmacist.

2.16 At the time of the recommendation, Grace Parker was the Interim Chief Nursing Officer and Appellant's Appointing Authority. Dr. Steve Fijalka, Director of Operations, conducted the pre-determination meeting with Appellant on Ms. Parker's behalf. The meeting was held on April 17, 2013. Appellant attended the meeting with her attorney. During the meeting she presented over 50 documents for review. Among the documents Appellant presented at the meeting were unredacted audit notes that contained PHI.

2.17 At the pre-determination meeting, Appellant was given an opportunity to respond to issues raised in the memo recommending her dismissal. Dr. Fijalka credibly testified that Appellant did not deny the errors though she may have questioned their severity. Dr. Fijalka considered Appellant's suggestion that she be demoted rather than dismissed. However, he felt that Appellant was not able to do the basic functions of the Pharmacist II which is to be able to fill and check prescriptions correctly and accurately; therefore, there were no lower level pharmacist positions to which to demote her.

2.18 Dr. Fijalka discussed with Ms. Parker the disciplinary steps that had been taken to help support Appellant in her work and the responsive information Appellant provided during the pre-determination meeting. After she reviewed the information provided by Dr. Fijalka, Ms. Parker met with Dr. Driesner to assure that she had a full understanding of the details and the audits that had been performed. Ms. Parker wanted to assure that they were proceeding in the best possible way and that she understood the seriousness of the situation and impact to patients. She also discussed the situation with UWMC human resources staff and the administrator for the pharmacy. Ms. Parker testified that UWMC receives some of the sickest patients in the five-state region and has some of the highest acuity in the United States. She explained that part of her role is to minimize errors and to ensure that patients have the best possible chance for recovery. Ms. Parker was concerned that PHI was not handled properly but testified that it was not the primary reason for the dismissal. Ms. Parker determined that dismissal was necessary based on the number significant errors Appellant made processing prescriptions.

2.19 By letter dated May 10, 2013, Ms. Parker notified Appellant of her dismissal effective May 28, 2013. In the letter Ms. Parker noted that the dismissal was for Appellant's "ongoing failure to meet position expectations, neglect of duty and not meeting the legal and professional standards for a Pharmacist."

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that Appellant's work performance began to suffer in 2011 and as a result, UWMC began a course of corrective action to help Appellant address her performance issues. Respondent argues that after final counseling, Appellant's rate of significant errors continued to be unacceptable and continued to put patients at risk of potential harm. Respondent recognizes that Appellant's rate of errors improved following shadowing by the lead but argues that she did not maintain this improvement. Respondent further recognizes that Appellant was dealing with personal issues but asserts that her personal challenges cannot be an excuse for the errors. Respondent argues that while the dismissal is mostly about the significant prescription errors, additionally Appellant removed PHI from UWMC which further supports the necessity for her dismissal. Respondent contends that the decision to dismiss Appellant was made following thorough review and deliberation. Respondent further contends that to prevent Appellant from putting patients at risk and in order to maintain UWMC's mission to protect and promote patient health and safety, dismissal was the appropriate sanction.

3.2 Appellant acknowledges that she made errors but argues that her supervisors never told her what an acceptable error rate would be so that she could improve her performance to meet the acceptable standard. Appellant argues that following the job shadowing, her performance increased and her rate of significant errors dropped dramatically. Appellant contends that she was showing steady improvement and that dismissal was not warranted. Appellant further contends that one of the five significant errors that occurred following the successful shadowing was not an error that should have been attributed to her because she did not check the prescription. Therefore, Appellant alleges that in the 211 prescriptions audited following the job shadowing, she made only four significant errors which was a marked improvement from previous audits. Appellant asserts that the issue should not be whether she made significant errors following the final counseling but whether she decreased her rate of significant errors in response to the corrective action plan. Appellant argues that her error rate was decreasing and that dismissal was not warranted. In regard to the audit reports containing the PHI, Appellant admits that she took the PHI home and asserts that she took precautions to protect the information so that she could review it and ultimately bring it to the pre-

determination hearing. Appellant asserts that her supervisors never told her not to remove the audits from the pharmacy. Appellant contends that Respondent did not have just cause to terminate her employment and that a more appropriate remedy would be to provide her with more job shadowing.

IV. CONCLUSIONS

4.1 The Personnel Resources Board has jurisdiction over the parties 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 357-52-110.

4.3 When considering whether there was just cause for a disciplinary action, we consider factors such as whether the employee was aware of the expectations, rules, or policies allegedly violated, whether the employee was aware of the need to comply with the rule or policy or to improve performance, whether the employee had an opportunity to demonstrate compliance or improvement, whether the discipline was imposed for good reason, whether the disciplinary process and procedures followed were appropriate, and whether the sanction imposed was sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. Gill v. University of Washington, PRB Case No. R-DISM-10-008 (2011) and Oliver v. Employment Security Department, PRB Case No. R-DEMO-08-006 (2009).

4.4 Respondent has met its burden proof and established just cause for Appellant's dismissal based on the prescription errors alone. Appellant was aware of the expectations of her position and of the statutes and rules governing dispensing prescriptions, including tracking, entering and checking prescriptions using Etreby. Appellant was aware of the need to comply with expectations, statutes and rules, and she was given an opportunity to demonstrate improvement. While she showed some improvement immediately following the job shadowing, she was unable to sustain her improvement and during the few months prior to the recommendation for dismissal, her rate of significant errors was once again unacceptable. Respondent had good reason to discipline Appellant

and they followed an appropriate course of corrective and disciplinary action. Because of the frequency and severity of the errors Appellant made and the potential for serious harm to patients, dismissal was the appropriate remedy to prevent recurrence and to maintain the integrity of the pharmacy program at UWMC.

4.5 While we note the dispute in regard to PHI, this issue carries no weight in our decision to uphold the sanction of dismissal.

4.6 Therefore, under the totality of the proven facts and circumstances, the disciplinary sanction of dismissal is appropriate. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Danute Slapsys is denied.

DATED this _____ day of _____, 2014.

WASHINGTON PERSONNEL RESOURCES BOARD

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NANCY HOLLAND YOUNG, Chair

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DJ MARK, Vice Chair