BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

WAYNE COLLIE, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-05-0025 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on January 18 and January 27, 2006.

1.2 **Appearances.** Appellant was present and was represented by Christopher J. Coker, of Younglove, Lyman & Coker, P.L.L.C. Franklin Plaistowe, Assistant Attorney General, represented Respondent Department of Social and Health Services (DSHS), Western State Hospital (WSH).

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of the published employing agency or department of personnel rules or regulations. Respondent alleges Appellant brought marijuana onto a ward at Western State Hospital, gave the marijuana to a patient, concealed the marijuana during a search for

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contraband, and telephoned the patient who reported his actions, contrary to a directive not to contact patients or staff.

II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent Department of Social and Health Services, Western State Hospital. 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 April 7, 2005.

2.2 Appellant began his employment with Western State Hospital in 1994 and had worked as a Psychiatric Security Attendant (PSA) since 1998. As a PSA, Appellant worked on Ward F-7 and provided basic personal care and services to patients with criminal histories. Appellant had a positive performance record with no previous disciplinary actions.

2.3 Over the weekend of March 13 and 14, 2004, Appellant, while off duty, went to Ward F-7. Some of Appellant's co-workers interacted with him while he was on the ward, but none spent the entire time with him. Appellant told his co-workers he was on a break from working in the Program for Adaptive Living Skills (PALS) unit, which was untrue. Appellant testified he had been joking with his co-workers about working for PALS and claimed he was on the ward to retrieve medication from his locker.

2.4 On March 17, 2004, during the 3:00 p.m. to 11:00 p.m. shift, Appellant was assigned to "constant monitoring" of patient Sheila V., who was a relatively new patient on the ward and was considered at risk for suicide. During the evening hours of March 17, Appellant was in the television (TV) room on the ward with Sheila V. and patient Sonia R. PSA Joseph Bravo went to

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the TV room to relieve Appellant for a break, and when he reached the doorway, he saw Sheila V. and Sonia R. passing an item back and forth. According to Mr. Bravo, it appeared as if Sonia R. was attempting to hand something to Sheila V. but that Sheila V. seemed resistant.

2.5 Mr. Bravo told Appellant what he had witnessed, and Appellant said he would take care of it. Mr. Bravo also reported the incident to his supervisor. As a result, a search for contraband ensued; however, no contraband was discovered. Patient Sheila V. testified that Appellant agreed to hold a tin containing marijuana during the search conducted by a security guard. Appellant denied concealing marijuana.

2.6 Early the next morning, March 18, 2004, Sheila V. was visibly upset and confided to PSA Donna Caldwell that Sonia R. had marijuana on the ward, which she said had been brought in by Appellant the previous weekend on his day off. Sheila V. also expressed fear of retaliation by Appellant, Sonia R., and Cricket M., another patient on the ward, who Sheila V. claimed initially received the marijuana from Appellant. Both Sonia R. and Cricket M. admitted to having marijuana on the ward but denied any involvement with Appellant relating to the marijuana. Appellant also denied bringing marijuana onto the ward.

2.7 In light of Sheila V.'s allegations, Ms. Caldwell reported Sheila V.'s statements to her supervisor, and a second search for contraband commenced around 6:45 a.m. on March 18. At that time, a tin containing marijuana was found in Sonia R.'s closet, just as Sheila V. had described to Ms. Caldwell. Consequently, WSH's Chief Executive Officer, Dr. Andrew Phillips, placed Appellant on home assignment and directed him not to have any contact with patients or staff assigned to Ward F-7. Despite Dr. Phillips's directive, Appellant placed a phone call to Ward F-7 and asked to speak with Sheila V., who perceived his call as a threat.

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2.8 In his response to the Conduct Investigation Report (CIR) regarding the phone call to Sheila V., Appellant denied that he made the call. Appellant also denied making the phone call when initially interviewed by the Washington State Patrol as part of the investigative process. Appellant, however, eventually admitted that he called Sheila V. In addition, Registered Nurse 2 Susan Cho listened to part of the telephone conversation at Sheila V.'s request, and she recognized Appellant's voice.

2.9 Dr. Phillips, Appellant's appointing authority, ordered an investigation into the allegations. However, WSH's internal investigation was suspended for a period of time due to the Washington State Patrol's extensive investigation. By letter dated December 21, 2004, Dr. Phillips notified Appellant of the alleged misconduct and offered him an opportunity to meet with him in a pre-determination meeting. Appellant, however, failed to present any information that convinced Dr. Phillips to take a lesser disciplinary action.

2.10 Specifically, Dr. Phillips was concerned about the seriousness of the misconduct and the enormous safety risks Appellant's actions posed. Dr. Phillips believed that bringing marijuana into a psychiatric hospital was highly problematic because many of the patients were on a variety of medications that, if mixed with marijuana, could have produced serious side effects. Dr. Phillips was also concerned that a patient had felt threatened and intimidated as a result of Appellant's actions. Additionally, Dr. Phillips concluded Appellant had not been truthful during the investigative process because he first denied making a call to patient Sheila V., later changing his story, and because he lied to his co-workers about the reason he went to Ward F-7 on his off time. Therefore, Dr. Phillips determined Appellant's serious misconduct and lack of credibility warranted termination.

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2.11 By letter dated March 2, 2005, Dr. Phillips notified Appellant of his dismissal, effective March 18, 2005. Dr. Phillips charged Appellant with neglect of duty, gross misconduct, and willful violation of published employing agency or department of personnel rules or regulations as follows:

1. On March 13, 2004, Appellant's scheduled day off, he allegedly brought marijuana onto Ward F-7 and provided it to patient Cricket M.

2. On March 14, 2004, Appellant's scheduled day off, he was on the ward and was untruthful about his reasons for being on the ward, stating that he was on a break from working for PALS.

3. On March 17, 2004, Appellant concealed a tin containing marijuana during a search for contraband.

4. On March 18, 2004, Appellant telephoned patient Sheila V. on Ward F-7, after being assigned to home and directed not to have contact with patients or staff.

2.12 DSHS Personnel Policy 550, Alcohol and Drug Free Workplace, prohibits employees from unlawfully possessing, soliciting, using, selling, or distributing drugs while on official business or on a state-owned premises. Likewise, WSH Policy 3.4.2, Possession and/or use of Intoxicating Beverages, Drugs, Firearms, Explosives and Weapons, prohibits employees from possessing or using drugs within the boundaries of WSH and states that such behavior will lead to disciplinary action. Furthermore, DSHS Administrative Policy 6.04, Standards of Ethical conduct for Employees, states that employees shall "[p]romote an environment of public trust free from . . .abuse of authority" and shall not "[c]reate the appearance of using the employee's position for personal gain or advantage or benefit of others." Appellant was familiar with DSHS and WSH policies and procedures.

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2.13 In his defense, Appellant claimed Sheila V. was not credible and that her husband was the person responsible for bringing marijuana onto the ward during a visit. Although two of Appellant's co-workers testified they heard rumors about Sheila V.'s husband providing marijuana, we find no evidence to support those rumors. In addition, Sheila V. was constantly monitored by staff on the ward due to her suicidal tendencies, making it even less likely for her to possess marijuana. The only time Sheila V. was suspected of having contraband was when Mr. Bravo witnessed Sonia R. trying to pass something to Sheila V. in the TV room, when Appellant had been assigned to monitor her. Since Mr. Bravo alerted Appellant about his suspicions prior to the evening search on March 17, and no contraband was found until a subsequent search was conducted the following morning, after Appellant's shift had ended, we find Appellant more likely than not hid the marijuana during the initial search.

2.14 In determining credibility, we find Sheila V.'s testimony to be convincing and further supported by her accurate description of the marijuana tin and its location to Ms. Caldwell, as well as Mr. Bravo's portrayal of her reluctance to accept the item being passed to her from Sonia R. in the TV room. Appellant, on the other hand, was untruthful about his reasons for being on the ward on his off day, and he was inconsistent when questioned about his phone call to Sheila V., which he clearly knew was prohibited. Based on a preponderance of the evidence, we also give little weight to Sonia R.'s and Cricket M.'s claims that Appellant had no knowledge of their marijuana possessions.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts Appellant brought marijuana on the ward where he worked, gave the marijuana to a patient, concealed the marijuana during a search, and then inappropriately contacted the patient who reported his behavior. Respondent asserts it is uncontested that Appellant was on

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Ward F-7, while off duty, the weekend prior to the marijuana being discovered and contends patient Sheila V. credibly described the marijuana container, which she said Appellant brought to the ward. Respondent argues Sheila V.'s testimony was consistent and in line with the events that occurred, including Mr. Bravo's account of the incident in the TV room. Respondent contends Appellant acted deceptively about his reason for being on Ward F-7 while off duty, which calls into question his credibility. Respondent further contends Appellant's explanation regarding his phone call to Sheila V. changed over time and adds to his lack of credibility. Respondent asserts Appellant's actions were egregious and created a safety risk and argues termination was the proper sanction.

3.2 Appellant argues Patient Sheila V. had the tendency to seek attention and was not believable. Appellant further argues that Sheila V. had a motive for fabricating the allegations against him because he asserts the marijuana on Ward F-7 was provided to her during a visit from her husband. Appellant asserts it is simply not logical that he would draw attention to himself by bringing marijuana into the workplace on his day off. Appellant contends he is a ten-year employee with no prior discipline and, as a result, argues there is no possible motive for him to jeopardize his career by bringing marijuana onto Ward F-7. Appellant asserts he only admitted to making the phone call to Sheila V. due to the pressure he felt during the investigative interview with the Washington State Patrol. Appellant asserts he was a long-term employee with a positive work record and argues termination was unwarranted.

IV. CONCLUSIONS OF LAW

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

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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 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). 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).

4.5 Respondent has proven that Appellant neglected his duty to properly care for the patients at Western State Hospital when he brought marijuana into the hospital, provided the marijuana to patients, and then concealed the marijuana during a search for contraband. In addition, Appellant worked on a ward housing patients with criminal backgrounds, and he neglected his duty to model appropriate behavior. Appellant's actions rose to the level of gross misconduct because he jeopardized the hospital's ability to provide adequate care and services to patients. Appellant's lack of judgment and failure to act responsibly also created an enormous safety risk and liability for Western State Hospital.

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4.6 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).

4.7 Appellant clearly violated DSHS Policy 550 and WSH Policy 3.4.2 when he failed to keep the workplace free from drugs by bringing marijuana onto the grounds of Western State Hospital. Appellant also violated DSHS Policy 6.04 when he failed to act ethically and failed to promote an environment of public trust that was free from abuse of his authority. Appellant's actions caused patient Sheila V. to feel intimidated and threatened not only by her knowledge of Appellant's involvement with the marijuana but also as a result of his phone call to her on the ward.

4.8 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness 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).

4.9 In this case, the seriousness of Appellant bringing marijuana into a psychiatric hospital and providing it to the patients he was charged with caring for alone warrants termination. Furthermore, Appellant contacted the patient who reported his behavior after specifically being directed not to have contact with patients or staff. Appellant's explanations for what occurred lacked credibility, and his actions undermined the department and Western State Hospital and threatened the integrity of the hospital's mission to provide professional and therapeutic care to patients. Under the facts

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and circumstances, Respondent has proven that dismissal is the appropriate sanction for Appellant's misconduct.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Wayne Collie is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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