BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARGO LOGAN, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. SUSP-05-0031 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Transportation, Southwest Region Office, NE 51st Circle, Vancouver, Washington, on April 6 and 14, 2006.

1.2 **Appearances.** Appellant Margo Logan was present and was represented by Christopher J. Coker, of Younglove, Lyman & Coker, P.L.L.C. Janetta Sheehan, 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 a 15-day suspension without pay for neglect of duty, inefficiency, insubordination, gross misconduct, and willful violation of the published employing agency or Department of Personnel rules or regulations. Respondent alleges Appellant demonstrated threatening behavior toward a licensed child care

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provider and sent a certified letter to that provider after being directed not to have contact with any child care providers. Respondent further alleges Appellant failed to comply with supervisory directives and departmental procedures when documenting Service Episode Records (SERs).

II. FINDINGS OF FACT

2.1 Appellant is a Social Worker 3 and permanent employee for Respondent Department of Social and Health Services (DSHS). 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 17, 2005.

2.2 Appellant began her employment with DSHS in the Division of Children and Family Services on June 16, 1983. In July 2001, Appellant transferred to the Economic Services Administration; however, she has worked in the Vancouver office for approximately 16 years and in the Division of Child Care Early Learning as a Child Care Licensor since 1993.

2.3 Appellant's duties include providing technical assistance to licensed family home child care providers; monitoring providers for compliance and initiating and completing legal actions; reviewing and investigating licensing issues; assessing risks to children; and training providers who operate licensed child care homes. Appellant is also required to document the work completed on each case in a Service Episode Record (SER) in the department's computer system, the Case and Management Information System (CAMIS).

2.4 Appellant has received the following guidance and corrective action:

- Appellant's Employee Development and Performance Plans (EDPPs) for the period of July 1997 through December 2004 indicated Appellant's need for "an inordinate amount of direct supervision" and her overall disregard for management's authority and proper file documentation.

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- On August 7, 1998, Appellant received a letter of reprimand for failing to seek and receive prior supervisory approval before flexing her work hours.

- On August 19, 2004, in response to a question from Appellant, Rachael Langen, Director of the Child Care and Early Learning Division, issued Appellant a letter clarifying that service episode records should include only accurate, relevant, appropriate, and proper licensing activity.

- On September 7, 2004, Appellant received a corrective action memo outlining performance expectations, including keeping provider files current and complete, not asking providers questions about issues like domestic violence and sexual abuse, and staffing serious issues with her supervisor in a more timely manner.

- On October 19, 2004, in response to Appellant's letter to DSHS Secretary Dennis Braddock, Deb Bingaman, Assistant Secretary for the Economics Services Administration, issued Appellant a letter that referenced Ms. Langen's August 19, 2004 letter and reiterated to Appellant that service episode records should include only accurate, relevant, appropriate, and proper licensing activity.

- On February 2, 2005, Appellant received a letter of reprimand for insubordination and failure to follow written directives to create service episode records that were appropriate, relevant, and accurate documentation of licensing activities.

- On April 1, 2005, Appellant received a letter of reprimand for two acts of insubordination: 1) when she failed to follow a directive concerning established chain of command and 2) her behavior on March 25, 2005, when she refused to follow her supervisor's directive to remove video taping equipment at her performance evaluation.

- On April 18, 2005, Appellant received a letter of reprimand for not following performance expectations and for not following division protocol in informing her supervisor and discussing with her concerns about family child care providers with her supervisor.

2.5 By letter dated May 31, 2005, Ms. Langen notified Appellant of her suspension without pay from her Social Worker 3 position for fifteen days, effective May 31, 2005, through June 14, 2005. A follow-up amendment letter was issued to Appellant on June 1, 2005, which amended typographical errors to the May 31, 2005 letter. Ms. Langen charged Appellant with neglect of

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duty, inefficiency, insubordination, gross misconduct, and willful violation of the published employing agency or Department of Personnel rules or regulations for the following allegations of misconduct:

1. On Tuesday, January 18, 2005, Appellant demonstrated threatening behavior toward a family home child care provider, M. D., during a monitoring visit.

2. On Tuesday, November 23, 2004, Appellant was given a supervisory directive to delete SER # 8219786 and # SER 8219779 and create new SERs that detailed her work on those cases. Appellant had also inserted copies of emails into the SERs that contained inappropriate information. Appellant failed to comply with the supervisory directive to delete the SERs and detail the work she had done on the cases, and she did not notify her supervisor of her reason for not complying with the directive.

3. On Tuesday, December 28, 2004, Appellant wrote SER # [8341492], SER # 8342152, and SER # 8344033 for provider C. B. and used an official document to record unsubstantiated personal judgments and opinions about the work performed by prior licensors, which were inappropriate.

4. On Tuesday, February 8, 2005, Appellant sent a certified letter to provider M. D. to request an interview, following a February 1, 2005 directive from Ms. Langen not to go into the field or have any contact with licensed child care providers.

<u>Allegations # 1 and # 4 regarding child care provider M. D.</u>

2.6 On January 18, 2005, Appellant made an unannounced visit to the home of child care provider M. D. that lasted nearly three hours. The visit occurred because provider M. D. appeared on a list of high-risk home child care providers targeted for special monitoring. It is undisputed that provider M. D. had received a number of compliance violations over the approximately ten years Appellant had been her licensor. It is also undisputed that Appellant and provider M. D. had a good working relationship until the January 18 visit.

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2.7 Provider M. D. described Appellant's January 18 visit as very different than previous visits she experienced with Appellant. M. D. testified that Appellant's demeanor changed when she noticed Appellant's license information was not properly posted on the wall. M. D. testified that she tried to explain to Appellant that she removed the posting for Appellant's convenience but that Appellant kept making condescending remarks about not posting the information correctly. M. D. also testified that she felt intimidated by Appellant's actions because she was backed up against the refrigerator in a small kitchen as Appellant berated her in a raised voice and pointed her finger at her. M. D. testified she felt very uncomfortable in the confined area and that she had to "wedge herself out of the kitchen" to get past Appellant.

2.8 M. D. testified that her discomfort with Appellant continued throughout the visit as she followed her around and quizzed her on rules and regulations and then corrected her in front of the children when she momentarily forgot one of the answers. M. D. testified that around 5:00 p.m., Appellant directed her to sign a Family Licensing Compliance Agreement (FLCA) without allowing her the opportunity to read the document. M. D. testified Appellant paced back and forth and said, "I don't get paid for overtime," while M. D. attempted to read the document. M. D. described Appellant's behavior as controlling and intimidating and said she signed the document because she knew Appellant had the authority to close her home child care.

2.9 Appellant denied intimidating M. D. Rather, Appellant testified that as a licensor, it was her duty to ask questions and point out violations so that provider M. D. was operating her home child care in compliance with laws and regulations. Appellant testified that she followed M. D. from room to room because M. D. typically continued her normal routine, such as preparing snacks and caring for the children's specific needs, throughout Appellant's visits. Appellant testified that because M. D. was busy caring for children and she tended to speak in a soft, quiet voice, she would occasionally need to repeat a question to M. D. or speak loudly if she were in another room.

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2.10 Appellant further denied forcing M. D. to sign the FLCA document and testified that M. D. also had to complete a portion of the document and that she had an opportunity to request a supervisory review. Appellant also testified that M. D. had a long history of non-compliance with licensing regulations and stated it was her responsibility to provide M. D. with technical assistance and ensure she understood the laws and regulations.

2.11 On January 21, 2005, M. D. requested a meeting with Appellant's supervisor, Darcy Taylor, to report Appellant's behavior during the January 18 home visit. Ms. Taylor documented M. D.'s concerns, stating, in part, that M. D. "appeared to be distressed and was often tearful during the meeting." On January 28, 2005, M. D. emailed a written account of her interaction with Appellant and stated she did not have issues with becoming compliant, but she did have concerns about Appellant's disrespectful treatment of her in front of her child care clients. M. D. also expressed her concerns about having to put up with Appellant's behavior for fear of losing her child care license. At that time, M. D. suggested to Ms. Taylor that mediation with Appellant might be worthwhile.

2.12 After meeting with M. D. on January 18, Ms. Taylor initiated a Conduct Investigation Report (CIR) against Appellant for exhibiting threatening behavior toward M. D. and directing her to sign the FLCA form without first allowing her to read it. Although Ms. Taylor offered to meet with Appellant to discuss the allegations, Appellant declined to meet with her. By letter dated February 1, 2005, Ms. Langen informed Appellant that she was being reassigned to alternate duties pending an investigation. Ms. Langen also wrote, "[y]ou are not to go into the field or have any contact with licensed child care providers or applicants for child care licenses."

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2.13 On February 8, 2005, despite Ms. Langen's directive, Appellant sent a certified letter from her home to provider M. D. requesting to interview her regarding "hearsay documentation" that was reported from M. D., and she asked to meet with M. D. outside normal working hours. Also on February 8, 2005, Appellant sent M. D. an official letter on department letterhead that restated license renewal information from a previous letter Appellant sent to M. D. prior to the January 18 home visit. M. D. testified that because the two letters arrived on the same day, she perceived Appellant's request to meet with her as threatening, because the official letter talked about closing her home child care, if M. D. did not submit renewal materials.

2.14 In considering the charges related to provider M. D., we find that while Appellant's curt mannerisms were upsetting to M. D., who appeared to be very soft spoken, the evidence does not support Appellant purposely threatened or intimidated M. D. in her home on January 18. Rather, a preponderance of the evidence suggests M. D.'s kitchen area was compact, making it difficult for Appellant to avoid being in close contact with M. D. In addition, M. D. signed the FLCA agreement without requesting a supervisory review, and she was willing to mediate her issues with Appellant, whom she had known for ten years. At the same time, we find Appellant could have been more professional in her efforts to enforce compliance issues with M. D.

2.15 However, when Appellant corresponded with M. D. in a certified, personal letter, after explicitly being told by her division director not to have any contact with child care providers, we find she clearly committed misconduct. Furthermore, we find Appellant meant to intimidate M. D. when she sent the personal letter requesting that M. D. meet with her outside of normal working hours to discuss the information M. D. reported to Ms. Taylor.

<u>Allegation # 2 - SERs # 8219786 and # 8219779</u>

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2.16 On November 18, 2004, Appellant included email communications in the body of SERs # 8219786 and # 8219779. On November 23, 2004, Ms. Taylor directed Appellant to delete those SERs and create new ones that did not include copies of emails and included appropriate documentation to reflect Appellant's work on the cases. It had been the practice in Appellant's work unit to sometimes include emails in SERs. On January 23, 2005, Ms. Taylor sent an email to all staff directing them not to incorporate copies of emails into the body of SERs. Since Appellant became aware of Ms. Taylor's specific directive regarding emails in SERs after she processed the November 18 SERs, we find misconduct did not occur with regard to copying emails into SERs.

2.17 However, the content of the email text included in SER # 8219786 was inappropriate because Appellant made a judgment about a licensee's anger and frustration. Similarly, Appellant inappropriately expressed an opinion in SER # 8219779 about the licensee's husband needing a psycho/sexual evaluation. Appellant also referenced two Child Protective Services (CPS) referrals regarding allegations of sexual abuse. It was especially inappropriate for Appellant to include comments about sexual abuse in this case because the allegations were never investigated by CPS and were, therefore, unfounded. The purpose of an SER is to document case activity, not to express opinions or make judgments. Further, serious allegations, including abuse, should be made to CPS so the information can be appropriately handled by Children's Administration Services and documented in that division's computer records, as they deem appropriate.

Allegation # 3 - SERs # 8341492, # 8342152, and # 8344033

2.18 On December 28, 2004, Appellant wrote the above SERs regarding provider C. B. Appellant had been reviewing old SERs and entering them into the new computer filing system. Appellant inappropriately included judgments and criticisms of other social workers in the SER. For example, SER # 8453152 details Appellant's opinions about an investigation performed by her current supervisor, Ms. Taylor, during a previous time period. In SER # 8344033 Appellant talks

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about a 1997 complaint regarding a licensee's husband stating, "[he] could be an increased risk to children . . ." Ms. Taylor testified that Appellant's notations were factually incorrect. SER # 8341492 reads, "[i]nformation that should have been in the Licensing SERs was not there." Appellant then details a DLR/CPS allegation that was in a sealed envelope marked "confidential." SERs are official documents that are subject to public disclosure and possible litigation.

2.19 Ms. Taylor directed Appellant to delete inappropriate information. Appellant testified that Ms. Taylor previously highlighted the information she wanted deleted and that in these instances, Ms. Taylor did not do that, so she was uncertain as to what information Ms. Taylor considered relevant. We find, however, that Appellant had received a number of previous directives and ample training to be able to decide what information was appropriate.

2.20 Appellant's training included proper use of the department's computer system, CAMIS, and SER documentation. Appellant also acknowledged her familiarity with DSHS Administrative Policy 6.04, Standards of Ethical Conduct for Employees, which requires employees to perform duties and responsibilities in a manner that "promote[s] public trust, faith, and confidence" and an environment free from abuse of authority.

2.21 Ms. Langen was Appellant's appointing authority when the discipline was imposed. In determining the level of discipline, Ms. Langen considered Appellant's length of service and employment record, including her extensive history of corrective action. Ms. Langen was particularly concerned that a child care provider felt threatened in her home and fearful of her license being revoked. Ms. Langen was also concerned about Appellant's blatant and continuing pattern of disregarding supervisory directives regarding the appropriate content of SERs. Ms. Langen believed it was very inappropriate for Appellant to disclose sensitive CPS records in her SERs because it created a liability for the department when allegations of abuse had not been

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investigated or were unsubstantiated. Ms. Langen emphasized that serious allegations regarding children should be referred to the Children's Administration Division and that it was not within Appellant's purview to record personal opinions about cases.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts Appellant was unprofessional and exhibited threatening and intimidating behavior when she visited child care provider M. D.'s home. Respondent contends Appellant's forceful and intimidating behavior continued when she sent M. D. a certified letter after being directed not to have any contact with child care providers. Respondent argues Appellant's tactics were "power on" and that she intended to be intimidating. Respondent contends Appellant's actions were not motivated by her concern for children but rather were driven by her need to be in control. Respondent asserts Appellant further demonstrated her need for control by her outright defiance to supervisory directives and her unprofessional and inappropriate comments about other staff. Respondent argues Appellant exhibited a pattern of forcing her own opinions and judgments in SERs, which created a liability for the department when facts were unsubstantiated and undermined management's authority. Respondent argues a 15-day suspension is the appropriate level of discipline to point out the seriousness of Appellant's behavior.

3.2 Appellant argues that her paramount duty is to ensure the safety and health of children in the homes she licenses. Appellant contends she was disciplined for performing the key duties of her job. Appellant denies that she intimidated child care provider M. D. Appellant asserts that M. D. was a high-risk provider with a number of compliance issues and violations and contends she was trying to provide technical assistance to M. D. to ensure she was following polices. Appellant asserts the "hearsay document" of M. D.'s complaints, as written by her supervisor, was not a clear depiction of the events. Appellant further asserts she was unfairly disciplined for sending a letter to

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M. D. on her own time in an effort to assess what was happening with M. D. Appellant argues she received conflicting and unclear directions from her supervisor regarding SER documentation and contends the information she included was relevant and created a clear record that identified important issues regarding the welfare of children. Therefore, Appellant argues discipline is unwarranted.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals 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 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

Allegations # 1 and # 4 regarding child care provider M. D.

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).

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4.5 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).

4.6 Appellant had a duty to make sure provider M. D. was in compliance with licensing regulations for family home child care providers. Although Appellant could have handled her home monitoring visit with M. D. in a more tactful manner, Respondent has not proven that Appellant neglected her duty, committed gross misconduct or willfully violated policies when she visited M. D.'s home on January 18, 2005.

4.7 Appellant, however, negelected her duty as a social worker when she deliberately sent a certified letter to provider M. D., requesting a meeting with her, after M. D. made complaints about Appellant to Appellant's supervisor. Even if Appellant did not understand the scope of M. D.'s complaints at that time, her division director and appointing authority, clearly directed her not to go into the field or have any contact with child care providers. Although Appellant sent the letter from home, her actions directly related to her social worker role as M. D.'s licensor, and she clearly meant to exert power over M. D. As a result, we conclude Appellant's actions were deliberately threatening and rose to the level of gross misconduct. We further conclude Appellant's actions violated DSHS Administrative Policy 6.04 because she abused her authority by trying to intimidate M. D. Therefore, Respondent has proven the above charges of misconduct regarding Appellant's certified letter to M. D.

4.8 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

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4.9 Respondent has further proven that Appellant was insubordinate when she refused to comply with Ms. Langen's directive not to have contact with child care providers.

Allegation # 2 - SERs # 8219786 and # 8219779

4.10 Respondent has proven that Appellant neglected her duty to properly document case work in service episode records. The credible evidence has established that Appellant was reminded on numerous occasions not to include personal judgments or opinions in SER documentation, yet she commented on a licensee's anger and suggested a psycho/sexual evaluation for another licensee's husband in the above SERs. While those issues might be appropriately documented in Children's Administration records, Appellant works in the Economic Services Administration within the agency, and her role is to ensure child care homes are in compliance with licensing issues. Furthermore, unproven allegations cited in SERs can potentially create a liability for the department.

Allegation # 3 - SERs # 8341492, # 8342152, and # 8344033

4.11 Respondent has proven that Appellant neglected her duty to appropriately document SERs when she continued to include personal judgments and opinions on case work previously handled by other social workers. Appellant's task in the above referenced SERs was to enter a record of work already completed, yet she inappropriately entered her personal thoughts on the work performed by others.

4.12 Respondent has proven that Appellant was insubordinate when she refused to delete and rewrite SERs with appropriate documentation and to include appropriate documentation in the first place, after being instructed to do so. Further, Appellant's continual refusal to comply with supervisory directives rises to the level of gross misconduct.

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4.13 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as measured by a comparison of production with use of resources, using some objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

4.14 Respondent has not proven that Appellant's refusal to properly document SERs resulted in a significant loss of productivity. Therefore, Respondent has not proven the charge of inefficiency.

4.15 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).

4.16 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. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.17 Appellant was given a clear directive not to contact child care providers in the field. However, she chose to undermine management's authority and send a personal, certified letter to a child care provider she had been directly responsible for licensing. Appellant exhibited the same disregard for management's authority when she refused to document service episode records with

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"accurate, relevant, appropriate, and proper licensing activity," as she had been directed to do on several occasions. Consequently, Respondent has proven that the 15-day suspension was an appropriate level of discipline to impress upon Appellant the seriousness of her actions and to maintain the integrity of the program.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Margo Logan is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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