STATE OF NEW JERSEY

In the Matter of Grace Njokanma
Ancora Psychiatric Hospital,
Department of Health

CSC DKT. NO. 2019-2038
OAL DKT. NO. CSV 02842-19

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: JUNE 4, 2021 BW

The appeal of Grace Njokanma, Human Services Technician, Ancora Psychiatric Hospital, Department of Health, removal effective September 14, 2018, on charges, was heard by Administrative Law Judge Susan L. Olgiati, who rendered her initial decision on April 27, 2021. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of June 2, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Grace Njokanma

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF JUNE, 2021

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02842-19

AGENCY DKT. NO. 2019-2038

IN THE MATTER OF GRACE NJOKANMA, DEPARTMENT OF HEALTH, ANCORA PSYCHIATRIC HOSPITAL.

William A. Nash, Esq., for Grace Njokanma, appellant (Nash Law Firm, LLC, attorneys)

Sean Havern, Deputy Attorney General, for Department of Health, Ancora Psychiatric Hospital, respondent (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: November 9, 2020 Decided: April 27, 2021

BEFORE **SUSAN L. OLGIATI**, ALJ:

STATEMENT OF THE CASE

Appellant, Grace Njokanma, appeals the action of the respondent, Department of Health, Ancora Psychiatric Hospital (Ancora), removing her from her position as a human services technician (HST) based on disciplinary charges arising out of a June 5, 2018, incident involving patient D.V. Appellant denies the charges and argues that her actions were appropriate and necessary to prevent the patient from self-harm.

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PROCEDURAL HISTORY

By Preliminary Notice of Disciplinary Action, dated September 13, 2018, appellant was advised of charges and proposed discipline relating to the June 2018 incident. Following a departmental hearing, appellant was served with a Final Notice of Disciplinary Action (FNDA), dated January 7, 2019, substantiating the following charges: conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12) consisting of; physical or mental abuse of a patient, client, resident, or employee, in violation of Administrative Order (A.O.) 4:08, C-3.1; inappropriate physical contact or mistreatment of a patient, client, resident, or employee, in violation of A.O. 4:08, C-5.1; falsification, intentional misstatement of material facts in connections with work, employment, application, attendance, record, report, investigation or other proceeding in violation of A.O. 4:08, C-8.1; and violation of a rule, regulation, policy, procedure, order, or administrative decision, in violation of A.O. 4:08, E-1.3.

Appellant timely filed a notice of appeal, and on February 27, 2019, this matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The OAL hearing was conducted on February 7, 12, 14, and 18, 2020. On the final date of hearing, the parties placed legal arguments on the record regarding the completeness of the respondents' response to appellant's discovery requests relating to progress notes of patient D.V.[1] This ALJ directed respondent to produce additional records, if any, dating back to the date of D.V.'s readmission in March 2018. I further directed that once the documents were produced, we would determine an appropriate

[1] Appellant's attorney, Mr. Nash, questioned whether he received complete discovery regarding patient D.V.'s progress notes which might corroborate her alleged history of swallowing objects. The issue of the completeness of respondent's discovery was initially raised at the end of appellant's testimony when the DAG attempted to introduce in rebuttal, appellant's signed statement of her investigative interview—a document which was not produced in discovery. Respondent's request to admit the document was denied. At the conclusion of the hearing, Mr. Nash advised that he only received seven pages of progress notes for D.V. The DAG advised that he produced the documents that had been provided by his client and emphasized that he received no deficiency notice from appellant's counsel. While appellant raised no further arguments regarding respondent's discovery response, I caution respondent and its counsel to take greater care to ensure the completeness of its responses. As appellant was given ample opportunity to review the numerous additional documents produced post-hearing and to further address the issue in summation, I find no prejudice to appellant caused by the belated production.

course of action, including whether additional, earlier progress notes might be required and/or whether the record would have to be reopened for additional testimony.

By letter, dated March 3, 2020, respondent produced additional records, bates stamped number APH 190-617, consisting of patient D.V.'s admission records and progress notes from April 3, 2018, [the correct date of her then most recent readmission], through the date of her release from Ancora on November 29, 2018.

A status conference was held on March 12, 2020, to address the newly produced documents. Appellant's attorney, Mr. Nash confirmed that he received the documents, but had not yet had an opportunity to fully review same. Thereafter, on or about March 16, 2020, Governor Murphy issued an Executive Order regarding the COVID-19 pandemic. Due to the Executive Order and resulting state closures, a status conference scheduled for March 27, 2020, was rescheduled. The next status conference was scheduled for May 28, 2020. At that time, Mr. Nash advised that he had not yet been able to review the post-hearing documents with his client in person due to the pandemic. At the next status conference on June 29, 2020, Mr. Nash again advised that due to the pandemic, he had not yet been able to speak with his client in person regarding the documents. On August 10, 2020, another status conference was held. No further arguments were made regarding the additional documents produced post hearing and the parties agreed to admit the documents into evidence as a joint exhibit. The parties also advised that receipt of the transcripts had been delayed by the pandemic. On or about September 10, 2020, the parties confirmed receipt of the transcripts and agreed to submit post hearing written summations. Written summations were filed on November 2, 2020. The record then closed on November 9, 2020, following a review of the record and the summations.

FACTUAL DISCUSSION AND FINDINGS

Testimony

The following is intended to be an overview of the relevant and material testimony given at hearing:

For respondent:

Shelly Ayers is an Investigator/Quality Assurance Specialist with Ancora. She has been in this position for over two years. She investigated the charges against appellant arising out of the June 5, 2018 incident. She testified that as part of the investigation, she reviewed the surveillance video and interviewed appellant and several witnesses.

During the investigative interview, the appellant told Ayers that patient D.V. pulled out a chunk of her hair. Appellant said that once they separated and D.V. was on the floor, she made no further physical contact with D.V. Appellant said she asked D.V. for her hair. When D.V. refused, appellant walked away. Ayers then showed appellant the video and the appellant explained that she went back to D.V. to calm her down and to try to take her hair back.

Ayers explained there were discrepancies between appellant's written statement and the video. The statement did not provide the full account of the incident. It did not account for when D.V. was on the floor and how she got there. Additionally, appellant's statement that D.V. tried to bite her was not corroborated by any other witness nor the video.

At hearing, Ayers again viewed the video and gave her impressions of same. Ayers substantiated the charge of abuse against appellant because D.V. was on the floor and not posing a threat to anyone. D.V. described appellant as angry. Additionally, appellant's account of the incident was not consistent with the video. Ayers' substantiation of the charges was also based on the guidelines of A.O. 2:05, which defines physical abuse. Ayers found there was sufficient distance between appellant and D.V., but appellant went back at D.V. She found that appellant moved in an aggressive manner towards D.V., and pressed her body against D.V. and the door. Ayers also found that appellant put her body weight on D.V. while she was on all fours and that she was bent over top of D.V. while attempting to get her hair from D.V.'s

hand. She found that appellant had D.V. on the ground for approximately twenty-four seconds.

Ayers testified that D.V.'s Master Treatment Plan does not include a reference to the term "pica".[2]

On cross-examination, Ayers acknowledged that D.V. was a "large" woman. Ayers found D.V. to be forthcoming as she admitted to grabbing appellant's hair.

Ayers acknowledged that during the incident appellant appeared to be trying to get D.V. to release her hair.

After watching the video at hearing several times, Ayers acknowledged that the video was "inconclusive" as to how D.V. got the floor and that it was difficult to tell whether she was pushed or became off balanced. Ayers acknowledged that while watching the video, she could not always tell what appellant was doing with her hands. Ayers also acknowledged that she could not tell if D.V. was trying to bite appellant.

D.V.'s progress/treatment notes document that she has a history of aggressive behaviors. Her long-term goal was to maintain self-control and not have any incident of self-harm or aggression towards peers and staff. A March 29, 2018, treatment note reflects that D.V. "exhibited aggression and self-injury."

Following the June 5,2018, incident, D.V. was placed in two-point restraints.

Michael Voll, is the Director of Nursing at Ancora. He has been in this position for two years but has worked at Ancora for twenty-three years. Voll provided testimony relating to various Ancora policies including the policy on reporting and investigating patient abuse and the definition of abuse, reporting of unusual incidents, the Therapeutic Milieu nursing policy, the policy on ethical interactions with patients and the code of conduct. These policies set guidelines for treating all patients with respect and dignity, and maintaining a safe and therapeutic environment between staff and patients.

The policies prohibit abuse. Even patients with a history of aggressive behavior deserve to be treated with dignity and respect. Voll also testified to the range of penalties to be imposed for violation of the policies.

Voll watched the video of the incident and concluded that appellant's actions constituted abuse. He considered appellant's action to be unacceptable because it is harming to the patient, tears down the therapeutic relationship with the patient and could set back treatment.

When D.V. attempted to sit on appellant, the appellant should have verbally redirected D.V., or redirect her to another seat. Appellant pushed D.V. away. Once D.V. was on the floor and they were separated, appellant should have yelled for help. She should have stayed back from D.V. Appellant could have used less intrusive means to get the hair. There were other staff present who could have attempted to remove the object from D.V.'s hand.

On cross-examination, Voll acknowledged that the video of the incident has no sound, so he does not know if appellant called for help. He agreed with the hypothetical posed by appellant's attorney, that if appellant's goal was reaching for the hair to prevent D.V. from swallowing it and choking, such action would be therapeutic. He also acknowledged that staff are obligated to prevent someone from choking.

Kathleen Engstrom is the Director of Program Development and Training. She has worked at Ancora for thirty-three years. She is also a licensed registered nurse but has not worked as a nurse in twenty years. Ancora staff initially receive a two-day training in Therapeutic Options (T.O.). On the first day, they receive lecture training on de-escalation techniques, the "crisis cycle," and how to respond when a patient starts to escalate a situation. The second day of training is "hands on" where staff are taught escorts and holds. After the initial training, staff receive yearly refreshers.

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[2] The Merriam-Webster dictionary defines "pica" as an abnormal desire to eat substances (such as chalk or ashes) not normally eaten.

Appellant's most recent training, prior to the June 2018 incident, was "crisis cycle" T.O. training in March 2018. Appellant had hands on T.O. training in 2017 and she had a T.O. review in 2016.

Engstrom reviewed the video of the incident and observed actions inconsistent with Ancora training. She characterized appellant's actions as "inappropriate," "abuse," and "conduct unbecoming." Appellant's actions "goes against everything that the Therapeutic Milieu policy stands for." When the patient tried to sit in her lap, the appellant should have tried to get out of the way. Once D.V. grabbed appellant's hair, the appellant should have held D.V.'s hand to her head. Staff are trained to help a patient up if they fall. They are taught to keep their distance from a patient to keep themselves safe. Staff are taught to give patients time and space. Pushing a patient down to the ground is not consistent with training. Holding a patient down is not consistent with training. If staff were trying to retrieve an object from a patient's hands, the correct way to do so would be to go to the patient's hand, not to her back and over top of the patient as appellant did to D.V. The position that appellant was in was not an effective means of preventing someone from swallowing something, because one could not see what one was trying to grab.

On cross-examination, Engrstrom testified that if the patient was attempting to swallow something dangerous, staff would be required to try to get it. However, she disagreed with the hypothetical presented by petitioner's counsel that it would be appropriate to use "some type of restraint against the wall" to prevent an aggressive patient from further harm. She disagreed with the "whole narrative of the video" presented in the hypothetical suggested by appellant's counsel. She reiterated that staff are not taught to take a patient down to the floor. Engstrom did not witness the incident but concluded from her review of the video that appellant's actions were inappropriate. Appellant had ample opportunity to get up and out of D.V.'s way to avoid being sat on.by D.V.

Engstrom agreed that the video of the incident was "grainy."

For appellant

Tanya Samuels is an HST at Ancora. She testified that she was working on Cedar Hall D on the date of the June 2018 incident. Samuels worked with D.V. for approximately one year and was familiar with her. D.V. was discharged and re-admitted to Ancora several times. D.V's behaviors were verbally and physically assaultive to herself, the staff, and her peers. She was "known for head banging," she threatened to swallow things and threatened to hang herself. Aside for witnessing D.V. attempt to sit on appellant, Samuels heard stories of D.V. attempting to sit on others. D.V. weighs approximately 300 pounds.

Samuels was standing approximately two feet away from where the June 2018 incident occurred. D.V. was angry and upset on that date. She was complaining about her clothes. D.V. grabbed appellant's hair. Samuels placed her hand on D.V.'s back to break her fall. In Samuels' experience, D.V. has put herself on the ground and "makes herself fall on the floor."

At hearing, Samuels reviewed the video of the incident and testified as to same. The chair that appellant was sitting on at the start of the incident was heavy. D.V. backed up and said to appellant, "Bitch, I'm going to sit on you." Appellant put her hand up to put space between herself and D.V. Appellant could not move her chair back because it was against the wall.

The appellant said that D.V. pulled her hair out and had the hair in her hand. Appellant wanted to get her hair because we were "told" that D.V. was "known for swallowing stuff" and appellant did not want D.V. to swallow her hair. Appellant asked D.V. for her hair.

Staff are trained to approach patients from the side or the back. Samuels tried to help appellant or "tap her out." Staff are taught to take over when they have a better rapport with the patient and attempt to de-escalate the situation. Samuels may have been able to talk D.V. into giving her the hair because, "at the time [D.V.'s] anger was towards [appellant], so she was not going to listen to [appellant] in any shape form or fashion because she was angry with [appellant] at that moment." Samuels told D.V. to give her the hair but she refused. Samuels offered to help D.V. up, she told her they

would figure this out. Samuels shared appellant's concern that D.V. would swallow the hair. Samuels later testified on re-direct examination that she never saw the hair in D.V.'s hand, but she knew she had something in her hand because it was in a 'tight fist."

When a patient is agitated like D.V. was, staff are trained to get the nurse if they cannot verbally re-direct or calm the patient down. Alice Draper, another staff member, tried to redirect D.V. D.V. also refused the nurse's efforts to assess her. At one point, Samuels walked away from the incident. Thereafter, D.V. got up and attempted to hit the nurse. Following the incident, the nurse requested a restraint chair for D.V.

On cross-examination, Samuels acknowledged that she did not indicate in her investigative interview that D.V. had called appellant "bitch" while attempting to sit on her. She explained that she did not tell the investigator about D.V. using the word "bitch" because she did not think it was relevant at the time. She testified about it at hearing because she remembered it then.

Samuels acknowledged that appellant was over top of D.V. and remained there, and that she had her leg "over" and "against" D.V. She acknowledged that appellant held D.V. for an extended period. Additionally, she acknowledged that it would not be appropriate from appellant to re-engage with D.V. once D.V. fell to ground and they were separated from each other.

Samuels further acknowledged that she never saw D.V. attempt to ingest the hair. She explained that they were going off of what they had been previously told about D.V. being assaultive and having self-injurious behavior. Finally, she acknowledged that "pica" was not in D.V.'s master treatment plan.

Alice Draper is an HST at Ancora. She has worked there for ten years. At the time of the incident, Draper was working on Cedar Hall D. She testified she was stationed at another area of the hallway. She was seated and talking with another patient.

D.V. was upset on the day of the incident. D.V. is generally aggressive and lashes out. She sometimes threatens to harm herself. Draper did not recall D.V. ever threatening to swallow anything.

Draper heard a commotion "down the hall." She heard appellant yelling and screaming "she pulled my hair." Prior to this, she heard D.V. say that she was going to sit on appellant. Draper remained in her area until she heard the commotion. She then got up to see if she could assist. She tried to get D.V. up off of the floor.

Draper stood up and saw "the hair pull" and saw appellant trying to release her hair. D.V. fell after that. Appellant tried to get her hair back from D.V. because "most patients on the floor try to swallow things." She acknowledged that her statement does not mention any concern about the patient choking on hair. She did not recall what she told the investigator.

Draper told the nurses that D.V. had fallen, but did not tell them about D.V. trying to swallow the hair, "that was [appellant's] concern." She heard appellant tell the nurses that she was concerned about D.V. swallowing hair. Appellant showed her the bald spot where her hair had been pulled out. Everything happened quickly.

On cross-examination, Draper confirmed that she was seated and could not see what was going on, but explained that she heard it. After she stood up, she could see and walked toward D.V. She acknowledged that appellant was leaning over the patient, but she could not tell if appellant was holding D.V. to the floor.

The appellant told Draper after Draper had written her statement, that D.V. was trying to eat her hair.

Tiffany McClinton, is the vice president of the union and an HST at Ancora. She has worked at Ancora since 2001. She testified that she worked on "Cedar D" for seventeen years and was familiar with D.V. She described D.V. as aggressive and violent. She has tantrum like behaviors, she disrobes, picks things up and puts them in her mouth, she engages in head banging and says things like she wants to die. She weighs approximately 300 pounds and has "backed up" onto a few clients.

McClinton was not a witness to the incident, she reviewed the video at hearing and gave her impressions of same. The hallway in which the incident took place was about five feet wide--the floor tiles are approximately eighteen inches square. She did not believe that appellant's actions constituted abuse.

The term "pica" has not been used at Ancora for years, it was put under the umbrella term of self-injurious behavior (SIB).

On cross-examination, McClinton acknowledged that as union vice president her role is to advocate on behalf of her members. The first time she saw the video of the incident was when appellant's counsel showed it to her just before her testimony at hearing.

McClinton acknowledged that at the point when D.V. was on the ground and was separated from appellant, appellant could have gotten away if that had been her goal. McClinton did not agree that D.V. was trapped by appellant. If she wanted, D.V. could have gotten up during the incident. She does not believe the appellant abused D.V. It was D.V. who abused appellant.

Appellant, Grace Njokanma, testified that she is forty-nine years old. She was a full-time employee, working forty hours per week. Since 2009, she has worked on Cedar Hall D.

She has worked with D.V. for approximately two years and is familiar with her. D.V. weighs approximately 300 pounds. She is able to walk well and is not a fall risk. She uses a walker because of her weight. D.V. is very aggressive, assaultive, and destructive. She is very unpredictable and can attack at any time. She bangs her head and has a helmet because of it. She bites herself and "always says" she wants to kill herself. She is known to strip. When she does, she puts her breast in her mouth and bites it. She can pick up things and swallow anything.

Pica is a term that is no longer used because it is a "minute" aspect of self-injurious behavior. Self-injurious behavior is an umbrella term that covers everything. Appellant knew a girl in her high school who swallowed hair and she understood this to be very dangerous.

Appellant was trained on the special observation policy. D.V. was placed on one-to-one observation most of the time because she was self-injurious. Staff are trained to take objects away from patients. D.V. has nothing in her room. She is not allowed to have clothing with buttons or zippers. She has Velcro instead of shoe-strings because she could harm herself.

Appellant reviewed the video and testified about the incident. She was seated in a heavy plastic chair conducting the census of the patients. The chair was placed up against the wall. D.V. attempted to sit on her. Appellant could not move out of the way. She was concerned that she would be crushed or harmed by D.V. She told D.V. that it was not appropriate to sit on her. Appellant put her arm up to stop her, but D.V. already had her arm on appellant's shoulder. Appellant did not push D.V. She would not be able to push her because D.V. is so heavy. D.V. grabbed appellant's hair while she was trying to pin appellant down. D.V. pulled appellant's hair and some of it came out. Appellant was in a lot of pain, "I had been scalped. I was not angry at her. I was angry at the damage she did to me." Appellant would not harm a patient, because she is not allowed do so, and because she "is a child of God."

Appellant had training on how to react when a patient grabs your hair. You are to try to hold the patient's hand close to your head to minimize the damage. You are trained to move in the direction of the hair pull. Appellant grabbed D.V.'s wrist because she was trying to hold it to her head. She was not trying to harm D.V. she was trying to minimize the pull. She was not able to verbally re-direct D.V.

Appellant was able to free herself from D.V.'s grip and D.V. tried to swing at her. Appellant put her hand up to block D.V. D.V. was on the ground and appellant was about a foot away from her. Appellant noticed that D.V. had her hair in her hand. She was concerned because D.V. has a history of "swallowing stuff" and she did not want

her to choke. She acted on "impulse" and went for her hair to take it from D.V. so she did not harm herself.

Appellant leaned toward D.V. and asked for her hair. She refused. Appellant told D.V., "You can't have it. I don't want you to swallow it." Appellant bent her knee and leaned forward. She had to go from the side of D.V. instead of the front because D.V. could spit at her or hit her. She was "extremely careful" not to hurt D.V. She went up on her tip-toes to keep her weight away from D.V. "I did everything possible not to hurt her." She was not trying to push or restrain D.V. She was trying to get her hair, but D.V.'s hand was clenched tight.

No one tried to relieve appellant. Samuels tried talking to D.V. to get her to release the hair. D.V. moved her hand when appellant reached for it. Appellant was not holding D.V. down, there were several inches between their bodies. Her left leg was to the side of D.V. and her right leg and body was over D.V. but not touching.

Other people including Eza Abouna and Alice Draper and another patient came to the area. While D.V. was pulling her hair, appellant called for help. D.V. refused to give anyone the hair. After a while, Samuels said it was "okay, we have tried." Appellant recalled saying "no one will accuse me tomorrow of not helping or say I did not try to get it out." She also said, "okay, I have tried, I have done my best," so she stepped back. As appellant stepped back, D.V. tried to attack her with her right arm. D.V. was cursing and saying she was going to send them on "FMLA." Appellant understood this to refer to injury leave from work. D.V. also tried to hit Draper.

Appellant pointed to others that D.V. still had her hair. The male charge nurse asked D.V. for the hair. Appellant left the area. She returned and saw her hair on the ground and picked it up.

Appellant was trained on the abuse policy. It does not relate to her actions towards D.V. If she had not acted, D.V. could have swallowed the hair. Her failure to act would have been abuse. She did not take any actions prohibited by the policy. She

did not commit an act that could have caused D.V. harm. D.V. was examined after the incident and there was no injury.

She had to prepare a report after the incident. She described D.V.'s attack on her in pulling her hair off of her scalp. She wrote the report from the viewpoint of the victim. She was not given any instructions on how to complete the report. She was in pain when she prepared her report. She did not include any information about her concern that D.V. could swallow the hair. She included only what she thought was necessary.

The appellant told the investigator that she did not want D.V. to swallow the hair, but it was not in the investigation report.

On cross-examination, appellant acknowledged that she prepared her report/statement within eight hours of the incident. She did not include anything about D.V. falling because she did not know how D.V. got to the floor. Everything happened so fast, she could not remember that. She remembered at hearing after watching the video. She did not mention in her report anything about trying to get her hair back from D.V. because she was not asked. She reported her concern about D.V. swallowing the hair to the charge nurse. She never claimed that D.V. actually attempted to ingest the hair.

In her interview statement, she denied touching D.V. because she did not hit, kick, beat or do anything "inhumane" to her. There was physical contact because they were struggling. During her investigative interview she watched the video several times. She did not walk away once D.V. was on the ground because D.V. had a dangerous object in her hand. When asked if she believed her action in standing over D.V. for approximately twenty-five seconds was calming to D.V., she responded, "It was less than thirty seconds. I went to get the hair. Everything happened so fast. She has the hair. My goal was to save life. It was my duty to save life." She further explained that you should not wait to act until a person eats the hair.

Upon questioning by this ALJ about how she was aware of D.V. having a history of swallowing things, and/or where that information was documented, she explained only that D.V. was self-injurious which includes swallowing objects.

Eza Abouna is an HST at Ancora. He has worked there since 2017. He was a co-worker with appellant. He described appellant as a good person who tries to help the patients. He worked with D.V. for two years and was familiar with her. She has self-injurious behaviors that include "swallowing stuff" and hitting patients. He described generally that when patients are on special precautions for self-injurious behaviors their rooms are cleared out and there is nothing in them. He estimated that "eighty percent" of the time, D.V.'s room was cleared out. He did not think that Ancora used the term "pica." He thought they used the term "self-injurious behavior" because it covers everything.

The video of the incident was played at hearing and Mr. Abouna testified regarding same. He was working on the night of the incident. He was wearing a dark blue shirt. He recalled seeing D.V. with appellant's hair in her hand. He also saw some hair on the floor. When he arrived at the incident, there were already a lot of people there, so he was controlling the crowd. Appellant had her hand on her head, she wanted to get her hair back. He understood the reason for this to be because of D.V.'s past behavior of swallowing things. He tried to calm appellant down and have her stay away from D.V. He let the other staff handle the situation. He asked D.V. for the hair. The other male staff member who responded to the incident was Nurse Gabriel. Gabriel asked D.V. for the hair. Alice Draper pleaded with D.V. to give the hair back.

At one point, D.V. picked up hair that was on the ground. She refused staff requests to release the hair. Abouna could not recall how long the entire incident with D.V. took, but it was not short.

Abouna continued to observe D.V. for self-injurious behavior. He did not want her to swallow any hair that she may still have had in her possession. When he was in the hallway with D.V. and the others, he was approximately three feet from her. Following the incident, D.V. was placed in a restraint chair.

On cross-examination, Abouna acknowledged that he was not present when the incident between appellant and D.V. began. Appellant was upset because her hair had been "pulled out of her scalp" but she was not angry. She was in "shock" and he told her it was ok. He stepped in front of appellant to keep D.V. away from her because D.V. was not calm. Appellant was pointing saying that D.V. had her hair, he and the charge nurse were telling her it was ok, that they would take care of it. They were not telling her to go away.

Rebuttal testimony

At the conclusion of the appellant's case, the respondent recalled Michael Voll, Director of Nursing, as a rebuttal witness regarding Ancora's use of the term "pica." Voll testified that the master treatment plan for D.V. did not include a diagnosis of pica. He further confirmed that if a patient had a history of pica, it would be listed in his/her master treatment plan. The term pica is included in other master treatment plans at Ancora. He has seen it included in other plans within the past year. The treatment teams want to be as specific as possible regarding a diagnosis so they came develop a workable treatment plan with the patient and staff. Treatment plans for a patient with one type of self-injurious behavior is different from a patient with another type of self-injurious behavior.

On cross-examination, Voll confirmed that staff would be made aware if a patient had pica and would be counseled on how to prevent it.

Credibility

I accept the testimony of Shelly Ayers as credible. Her testimony regarding her investigation and the conclusions she reached regarding appellant's action during the June 5, 2018, incident were reasonable and rational.

I also accept the testimony of Michael Voll as credible. His testimony concerning Ancora's policies and procedures and his conclusions regarding appellant's actions

were reasonable and rational. Additionally, his rebuttal testimony concerning Ancora's continued use of the term pica and the need for specificity in diagnosing patients to develop a workable treatment plan was logical and extremely reasonable. Moreover, as the Director of Nursing, Voll would be in a position to know of Ancora's policy and practice regarding use of this term.

Additionally, I accept the testimony of Kathleen Engstrom as credible. Her testimony concerning the training at Ancora and her conclusions regarding appellant's actions during the June 5, 2018, incident were straight forward and rational.

As to the testimony of appellant's witnesses, as an initial matter, I do not accept as credible any of the testimony regarding Ancora's discontinued use of the term "pica" and its replacement of the term with the general or umbrella term "self-injurious behavior." This testimony repeated by appellant and several of her witnesses appeared to be rehearsed, was without support of any credible evidence in the record, and overcome by the more reasonable and credible testimony of Michael Voll, the Director of Nursing.

Similarly, I do not accept as credible the testimony of any of appellant's witnesses that they believed that appellant acted to prevent D.V. from swallowing the hair or that they shared appellant's claimed belief that D.V. might attempt to engage in this specific type of self-injurious behavior. Draper testified that appellant tried to get her hair back because she believed most patients on the floor try to swallow things. Samuels and Abouna testified that D.V. was "known" to have a history of swallowing things and/or that they were "told" of this behavior. Tiffany McClinton also testified that D.V.'s behavior included putting things in her mouth. Yet none of the witnesses testified that they had actually witnessed any such behavior by D.V. or had knowledge of any specific instances in which D.V. engaged in this specific type of self-injurious behavior. Additionally, they provided no information regarding, when, how, or by whom they were advised of D.V.'s alleged history of this specific self-injurious behavior. Moreover, neither Samuels nor Draper included any of these concerns in their written statements or during their investigative interviews. Finally, Draper testified that it was the appellant who told her, at some point *after* Draper had given her statement, that

appellant acted to prevent D.V. from harming herself by "eating" the hair. Thus, it appears that appellant's concern about D.V. swallowing her hair and/or her claimed efforts to prevent D.V. for this self-harm was something she shared with others after the fact.

As to the remaining other testimony of appellant's witnesses, I accept the following:

As to Tanya Samuels, I accept as credible her testimony that D.V. was known for aggressive behavior and that her history of self-injurious behavior included head banging. This testimony is consistent with the other testimony and the documentary evidence in the record. I also accept as credible her testimony that she attempted to assist appellant and "tap her out" during the June 2018 incident, as it is consistent with the video. I accept as reasonable and credible that she thought she might be able to get D.V. to respond to her redirection efforts because D.V. was angry with appellant. However, I do not accept as credible her testimony regarding D.V.'s claimed use of the word "bitch" in connection with her threat to sit on appellant. During her July 2018 investigative interview, Samuel reported only that she heard D.V. say to appellant, "I am going to sit on you." Samuel's explanation on cross-examination that she did not previously recall the word "bitch," or did not think it important until her testimony at hearing does not ring true and appears to be an attempt to bolster appellant's case.

As to Alice Draper, I accept as credible her testimony that appellant told her she acted to prevent D.V. from harming herself *after* Draper gave her statements. I also accept as credible that she was not aware of D.V. attempting to swallowing things. However, the remainder of Draper's testimony was confusing, self-contradictory, and contradictory to the evidence in the record. Additionally, Draper's location, seated at the other end of the hallway, while talking with a patient who was standing in between her and the incident, raises serious questions of her ability to hear or see any of the initial interaction between the appellant and D.V. Further, Draper's explanation that she believed appellant was trying to get the hair from D.V. because "most patients try to swallow things" is without support of credible evidence in the record. Thus, I do not accept her testimony as reliable.

As to Tiffany McClinton, I accept as credible her testimony regarding D.V.'s general aggressive and violent behavior. However, as she was not a witness to the incident, played no role in the investigation, and has no role in policy making or training at Ancora, her opinions as to the appropriateness of appellant's actions are of little value.

As to Eza Abouna, I accept as credible his testimony that appellant was upset after her hair had been pulled out, that she was in shock, and that he attempted to calm her down after the incident and keep her away from D.V. His testimony that Draper pleaded with D.V. to give her the hair back is in with Draper's statement and her albeit confusing and contradictory testimony hearing. Additionally, on cross-examination he appeared to attempt to re-characterize or minimize his testimony regarding appellant's reaction to the incident and his efforts to calm her. His testimony on cross-examination suggests a general bias in favor of appellant and motivation to bolster her case.

As to appellant, Grace Njokanma, I accept as credible her testimony that D.V. attempted to sit on her and that D.V. grabbed and pulled out a piece of her hair. I also accept as credible her testimony that she was in a lot of pain after D.V. pulled out her hair and that she was angry at the damage that D.V. had done to her. I further accept as credible that the incident happened very quickly and that she acted on impulse to take her hair back. However, I do not accept as reasonable or rational appellant's testimony, and indeed, the overall theme of her defense that D.V.'s history of other self-injurious behavior reasonably equated to a concern that D.V. would swallow appellant's hair. Similarly, as previously set forth herein, I do not accept as credible, reasonable or rational, appellant's claim that she acted to prevent D.V. from swallowing her hair/harming herself. Like the witnesses who testified on her behalf, appellant had no first-hand knowledge of D.V's claimed history of pica or of swallowing things. She provided no information as to when, how, or by whom she was made aware of this alleged history.

Appellant testified that her concern that D.V. would swallow the hair and harm herself was so central in her thoughts, that she recalled saying, on the date of the

incident, "no one will accuse me tomorrow of not helping or say I didn't not try to get it out." Yet, she did not include these concerns in any of her reports, statements, or interviews. Even if appellant did not include this information in her employee statement because she wrote that report from the perspective of the victim of D.V.'s attack, it does not stand to reason why she left this important information out of the progress note written on the same date. See APH 365. Further, even if I were to accept that appellant left out this information from the two reports authored on the date of incident, due to the pain of having a piece of her hair pulled out, it makes no sense as to why she would leave this key information out of her investigate interview which was conducted over one month after the incident. I do not accept as credible appellant's claim that she shared her concerns about D.V. swallowing her hair with the investigator but that the investigator failed to include in her report this important information relating to patient safety.

Additionally, I do not accept as credible appellant's testimony that she acted in an effort to calm D.V. and that she was extremely careful not to hurt D.V. and intentionally tried to keep her weight off her. This testimony simply does not ring true and is contradictory to the video, and to appellant's testimony that everything happened so quickly and that she acted out of impulse. In short, I do not accept appellant's version of the events as credible.

FINDINGS OF FACT

Having had an opportunity to listen to the testimony and to observe the demeanor of the witnesses as well as having had the opportunity to review the documentary evidence, including the surveillance video of the June 2018 incident, I **Find** the following as **FACT**:

Patient D.V. was admitted to Ancora on several occasions. On April 3, 2018, D.V. was readmitted to Ancora, following her then most recent discharge on March 29, 2018.

Psychiatric progress notes and patient records for D.V. reflect that she engaged in self-injurious behaviors including head banging (for which she had a protective helmet) and self-biting.[3]

Patient records for D.V. reflect that she had several psychiatric diagnoses and a cognitive impairment/intellectual disability. See for example, APH 191, APH 211.

On June 5, 2018, appellant was employed by Ancora and working on the night shift in Cedar Hall.[4]

In her June 5, 2018, employee statement form, written at approximately 4:50a.m. appellant states:

> After I finished my 4:45 a.m. rounds as I was about to sit down and do my paperwork, patient attacked me pulling me by my hair, saying that she will bite me. She pulled off my hair from my scalp, and some chunk of my hair was in her hand by the time other staff got her off me.
> See J-3.

A June 5, 2018, a progress note written by appellant at approximately 5:15 a.m. indicates that:

> [D.V.] was acting up, complaining about her medication being taken away. She said she was going to strip naked. Staff tried to calm her down. I did my rounds, as I was about to sit down to do [illegible] paperwork. Patient grabs on my hair and pulled some chunk of my hair. She said she knows what FMLA means that she is going to send us to FMLA, that according to Ms. Jocelyn patients is [sic] always right.
> See APH 365

Appellant makes no mention of her concern that D.V. might swallow her hair or her efforts to prevent such behavior in her June 5, 2018, progress note, June 5, 2018, employee statement, or during her July 2018 investigative interview.

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[3] For examples of various self-injurious behaviors in which D.V. engaged prior to the June 2018 incident. See, among other records, APH 191, 201,217, 227,249,255,257,273, 291-294,336, 352-355.
[4] See stipulations of facts #1 and #2.

Tanya Samuels makes no mention in either her June 5, 2018, employee statement or in her July 12, 2018, investigative interview, of any concern that D.V. might swallow appellant's hair or appellant's efforts to prevent such behavior.

Alice Draper, makes no mention in her June 2018, employee statement or in her July 12, 2018, investigative interview, of any concern that D.V. might swallow appellant's hair or appellant's efforts to prevent such behavior.

Having reviewed the video of the June 5, 2018, incident during and after the hearing, at both regular and slow speeds, I make the following **ADDITIONAL FINDINGS of FACT:**

The surveillance video contains no sounds. The relevant portion of the video begins at approximately 4:49:17a.m. Patient D.V. backs up towards appellant, who is seated in a chair that is partially out of view of the surveillance camera, and attempts to sit on appellant. Appellant raises her right arm out onto appellant's back in an attempt to prevent D.V. from sitting on her. Appellant uses her right arm and elbow to attempt to push D.V. off of her. D.V. grabs appellant by the hair. Tanya Samuels, who is standing nearby, places her hand on D.V.'s back. Appellant moves toward D.V. and grabs D.V's hand/wrist and attempts to free herself from the hair pull. D.V. falls to the ground and the two women separate. They are approximately one foot apart. At approximately 4:49:22, the appellant reaches out and moves towards D.V. while D.V. is on her hands and knees. Appellant uses her body to push D.V. against the hallway door. She leans her right knee towards D.V. and her left leg is on/over top of D.V.

Samuels places her hand on appellant. Appellant remains on/over top of D.V. Alice Draper and others arrive. Appellant gets up off of D.V. at approximately 4:49:47. D.V. swipes her hand towards appellant as she moves away. Appellant points to the floor. Two male staff members arrive. They hold out their arms toward appellant and appear to be directing her to stay away and/or back up from the area. Alice Draper tries to assist D.V. in getting up from the floor. D.V. returns to the area. She leans down and appears to pick up something off of the floor. At approximately 4:52:00, one of the

male staff members walks appellant from the area. D.V. is placed in a restraint chair and removed from the area.

D.V. remained in restraints for approximately forty-five minutes. APH 367.

Based on her positioning, appellants hands are not always visible during the video but while re-engaging with D.V., she appeared to be reaching towards the front of D.V.

LEGAL ANALYSIS AND CONCLUSIONS

Appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6 through 2-20; N.J.A.C. 4A:2-2.2 through 2.3. Major discipline includes removal, or fine, or suspension for more than five working days. N.J.A.C. 4A:2-2.2.

The appointing authority has the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Conduct Unbecoming a Public Employee

The appellant is charged with "conduct unbecoming a public employee" in violation of N.J.A.C. 4A:2-2.3(a)(6). Conduct unbecoming a public employee is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In

re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Here, appellant contends that she acted to prevent patient D.V. from harming herself. As set forth herein, I reject these claims and find them not credible. Appellant's action in re-engaging with D.V. after she had freed herself from D.V.'s grip was an angry and impulsive reaction to D.V. pulling out a piece of her hair. Appellant's action in re-engaging with D.V. while she was on her hands and knees and no longer posing a threat, pushing her towards the door, and leaning on and over her for approximately twenty-five seconds, were improper and without justification. Additionally, appellant continued to engage with D.V. even after Tanya Samuels attempted to de-escalate the situation by intervening or tapping appellant out. Appellant's response, re-engagement, and continued actions served only to further escalate the situation, they prevented D.V. from getting up, and contributed to D.V. ultimately being placed in restraints. D.V.'s initiation of the incident by pulling out a piece of appellant's hair, does not in any way justify or excuse appellant's response. Appellant was well aware of D.V.'s behavior in general as well as her particular agitated behavior on the date of the incident. Appellant should has exercised greater care in initially responding to D.V's attempt to sit on her. Thereafter, if appellant truly believed that D.V. was in danger of harming herself, she should have let Samuels intervene and attempt to address the alleged threat, alternatively she could have monitored D.V. and or continue to attempt to verbally re-direct D.V. as did the other staff who responded to the incident. Appellant admitted that D.V. did not actually attempt to swallow the hair. Thus, there was no legitimate need for appellant's aggressive and continued actions.

D.V. was a patient at a psychiatric hospital. She, along with all other patients at Ancora, are entitled to be treated with dignity and respect, and to be free from abuse or

mistreatment from staff members. For these reasons, appellant's actions offend our publicly accepted standards of decency and good behavior.

Accordingly, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant's conduct towards patient D.V. constitutes conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6).

Other Sufficient Cause

Appellant is also charged with other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, Mercer Cty. Corr. Ctr., CSR 9803-13, Initial Decision (May 19, 2014), adopted, Civ. Serv. Comm'n (September 3, 2014), https://njlaw.rutgers.edu/collections/oal/.

Here, as other sufficient cause, appellant is charged with physical or mental abuse of a patient, client, resident, or employee in violation of A.O. 4:08, C-3.1; inappropriate physical contact or mistreatment of a patient, client, resident, or employee in violation of A.O. 4:08, C-5.1; falsification; intentional misstatement of material fact in connection with work, employment, application, attendance, in any record, report or other proceeding, in violation of A.O. 4:08, C-8.1; and violation of a rule, regulation, policy, procedure, order or administrative decision in violation of A.O. 4:08, E-1.3.

Physical or mental abuse of a patient

Ancora's policy on reporting and investigating allegations of patient abuse, defines abuse as:

> Any act, omission or non-action in which an employee engages with service recipients, that does not have as its legitimate goal the healthful, proper and humane care and treatment of the service recipient, which causes or may cause physical or emotional harm or injury to a service

> recipient, or deprives a service recipient of his/her rights, as defined by law or Departmental policy.
>
> See R-9, Executive Policy and Procedure Manual AD LD 0401.

Here, for the reasons previously set forth herein, appellant's action in re-engaging with D.V. after they had separated and while D.V. was on her hands and knees and no longer posed a threat, as well as her continued actions of pushing D.V. towards the door, and leaning on and over her for approximately twenty-five seconds, had no legitimate goal in the healthful, proper, and humane care and treatment of a service recipient. While D.V. suffered no actual physical harm during the incident, the actions taken by appellant could very likely have caused physical harm to D.V. Further, based on the testimony and a review of the video, it is evident that appellant's actions further aggravated D.V., caused her additional emotional distress, and contributed to D.V. being placed in restraints following the incident.

Accordingly, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant's actions also constitute physical abuse of a patient in violation of A.O. 4:08, C-3.1.

Falsification, intentional misstatement of material facts, in connection with work, employment, application, attendance in any record, report, investigation or other proceeding

The Executive Policy on Reporting and Investigating Allegations of Patient Abuse and Professional Conduct provides that disciplinary action will result for actions including, making deliberately false and/or misleading statements to investigating officials regarding an incident of actual or suspected abuse and failure and/or refusal to truthfully answer questions during an investigation or to provide through written statements regarding an incident of actual or suspected abuse. See R-9 at APH 52.

Here, appellant failed to mention in her witness statement, anything relating to her action in re-engaging with D.V. once she had freed herself from D.V.'s grip.

Additionally, she indicated that other staff members had to get D.V. off of her. The video demonstrates, however, that it was appellant who re-engaged with and remained on top of D.V. During her investigative interview, appellant also denied touching D.V. during the incident. Then after reviewing the video, appellant claimed she acted in an effort to calm D.V. Thus, appellant failed to give a thorough and accurate account of the incident in her employee statement and she provided false and misleading responses in her investigative interview.

Accordingly, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence the appellant's actions constitute falsification.

Inappropriate physical contact or mistreatment of a patient, client, resident, or employee

Ancora and the Department of Human Services Disciplinary Action Program also prohibit inappropriate physical contact or mistreatment of a patient, while this behavior is not specifically defined, for the reasons set forth herein and having concluded that appellant's actions constitute physical abuse in violation of A.O. 4:08, C-1.3, I further **CONCLUDE** that respondent has proven by a preponderance of the credible evidence the appellant's actions also constitute inappropriate physical contact or mistreatment of a patient in violation of A.O. 4:08, C-5.1.

Violation of a rule, regulation, policy procedure, order, or administrative decision

The FNDA provides that appellant's actions constituted conduct unbecoming, physical abuse, inappropriate physical contact and falsification and were in violation of Executive Policy AD LD 0401 Reporting and Investigating Allegations of Patient Abuse, AD HR 0500 Ethical Interactions, AD HR Code of Conduct, NURS 1.05 Therapeutic Milieu and Administrative Order 2:05 (Unusual Incident Reporting and Management System (UIRMS).

For the reasons preciously set forth herein and having concluded that appellant's actions constituted conduct unbecoming, and other sufficient cause including abuse, in appropriate physical contact or mistreatment, and falsification, it is plain that her

conduct also violate the above referenced policies, procedures, and administrative orders. Accordingly, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant's conduct constitutes a violation of A.O. 4:08 E.-1.3

Accordingly, for the reasons set forth above, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant's conduct constitutes other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12).

PENALTY

A civil service employee who commits a wrongful act related to his or her duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). This requires a de novo review of appellant's disciplinary action. In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523–24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983).

However, "[p]rogressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position . . . ." In re Herrmann, 192 N.J. 19, 33 (2007).

Despite appellant's limited disciplinary history, consisting of a 2018, five-day discipline relating to excessive absenteeism, two official written reprimands, a written warning, and a counseling also relating to absenteeism/lateness, and a 2017 official reprimand for conduct unbecoming relating to excessive delay in carrying out an order and insubordination, the seriousness of the current charges warrants imposition of the penalty of removal. As an HST, at a psychiatric hospital, appellant was required to treat all patients with dignity and respect and was prohibited from engaging in acts of abuse, neglect, or

other mistreatment. Appellant's actions fell short of her responsibilities. Moreover, her failure to thoroughly and accurately report the incident and her repeated misleading and false statements made during the investigation, and at hearing, demonstrate a lack of acceptance of responsibility for her conduct and improper response to having a piece of her hair pulled out by a psychiatric patient. Therefore, no mitigation of the penalty is warranted. Thus, the penalty of removal, which is consistent with the table of offenses outlined in the Department of Human Services, Disciplinary Action Program, is warranted.

Accordingly, I **CONCLUDE** that removal is the appropriate penalty and should be **AFFIRMED**.

ORDER

I hereby **ORDER** that the charges against appellant are **SUSTAINED**. I further **ORDER** that respondent's action removing appellant from her position of employment is **AFFIRMED** and appellant's appeal is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 27, 2021
DATE

SUSAN L. OLGIATI, ALJ

Date Received at Agency: ______________________

Mailed to Parties: ______________________

/lam

APPENDIX

For respondent:

Shelly Ayers

Michael Voll

Kathleen Engstrom

For appellant:

Tanya Samuels

Alice Draper

Tiffany McClinton

Grace Njokanma

Eza Abouna

LIST OF EXHIBITS

Joint

J-1 FNDA January 7, 2019

J-2 Employee Statement Form, Grace Njokanma

J-3 Employee Statement Form, Tanya Samuels

J-4 Employee Statement Form, Alice Draper

J-5 Record of past discipline

J-6 Admission history and progress notes of D.V., dated April 3, 2018 - November 29, 2018, bates stamped #APH190-617

For respondent:

R-1 Admitted as J-1

R-2 Not admitted

R-3 Admitted as J-2

R-4 Admitted as J-3

R-5 Admitted as J-4

R-6 Surveillance video June 5, 2018

R-7 Admitted as J-5

R-8 DHS Disciplinary Action Program

R-9 Executive Policy AD LD 0401

R-10 Executive Policy AD HR 0500

R-11 Executive Policy AD HR 0503

R-12 Therapeutic Milieu

R-13 Administrative Order 2:05

R-14 Training Record, Grace Njokanma

R-15 Not admitted

R-16 Investigator's Report

For appellant:

P-1 Confidential Unusual Incident Report Form

P-2 Ancora Special Observation Policy