



STATE OF NEW JERSEY

In the Matter of Christine Chieffe,
Hudson County, Department of
Health and Human Services,
Meadowview Psychiatric Hospital

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2022-452
OAL DKT. NO. CSV 07972-21

ISSUED: MARCH 24, 2022

The appeal of Christine Chieffe, Graduate Nurse, Hudson County, Department of Health and Human Services, Meadowview Psychiatric Hospital, removal effective August 2, 2021, on charges, was heard by Administrative Law Judge Susana E. Guerrero (ALJ), who rendered her initial decision on February 15, 2022, modifying the removal to a five-month suspension. Exceptions were filed on behalf of the appellant and the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on March 23, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

The Commission makes only the following comments. The ALJ's initial decision was thorough and well-reasoned and after a review of the exceptions, the Commission finds no basis to discount the findings and conclusions made by the ALJ. Moreover, regarding the penalty, the Commission's review is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In assessing the penalty in relation to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and

including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 N.J. 474 (2007).

In this case, the appellant's actions are clearly serious, especially in a psychiatric hospital setting. The appellant's failure to properly account for dangerous narcotics clearly justifies a major disciplinary suspension. Nevertheless, given the circumstances and the fact that the appellant has no prior discipline, the Commission finds that the five-month suspension recommended by the ALJ is the appropriate penalty. This penalty should serve as sufficient warning that any future infractions could lead to a more severe disciplinary sanction, including removal from employment.

As the appellant's removal has been modified, she is entitled to mitigated back pay, seniority and benefits five-months from her separation from employment until her actual reinstatement. See *N.J.A.C. 4A:2-2.10*. However, she is not entitled to counsel fees. *N.J.A.C. 4A:2-2.12(a)* provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. However, under no circumstances should the appellant's reinstatement be delayed due to any back pay dispute.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modified the removal to a five-month suspension. The appellant is entitled to backpay, benefits and seniority as provided for in *N.J.A.C. 4A:2-2.10*. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned, or could have been earned, by the appellant during this period. Proof of income earned, and an affidavit

of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF MARCH, 2022



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 07972-21

AGENCY DKT. NO. 2022-452

**IN THE MATTER OF CHRISTINE CHIEFFE,
HUDSON COUNTY, DEPARTMENT OF HEALTH
AND HUMAN SERVICES, MEADOWVIEW
PSYCHIATRIC HOSPITAL.**

R. Leigh Adelman, Esq., for appellant Christine Chieffe (Oxford Cohen,
attorneys)

Sarah E. Tornetta, Esq., for respondent Hudson County (Scarinci & Hollenbeck,
attorneys)

Record Closed: January 28, 2022

Decided: February 15, 2022

BEFORE **SUSANA E. GUERRERO, ALJ**:

STATEMENT OF THE CASE

Appellant Christine Chieffe (Chieffe or appellant) appeals the determination of the respondent Hudson County, Department of Health and Human Services, Meadowview Psychiatric Hospital (respondent or Meadowview) to terminate appellant

for mishandling and diverting a controlled dangerous substance during her shift. Appellant denies taking the medication.

PROCEDURAL HISTORY

Respondent served Chieffe with a Preliminary Notice of Disciplinary Action (PNDA), dated May 13, 2021, informing her of the charges made against her for improperly diverting medication. An internal disciplinary hearing took place, and Chieffe was subsequently served with a Final Notice of Disciplinary Action (FNDA), dated August 10, 2021, which sustained all charges set forth in the PNDA. The disciplinary action taken against Chieffe was removal, effective August 2, 2021.

On or around September 23, 2021, the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. This matter was assigned to the undersigned and the hearing was initially scheduled for January 11, 2022, but adjourned at the request of the appellant. The hearing was rescheduled and held on January 28, 2022, via Zoom. The record closed at the conclusion of the hearing.

FACTUAL DISCUSSION AND FINDINGS

Based on the testimony the witnesses provided, and my assessment of its credibility, together with the documents and video footage the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

Chieffe was employed as a nurse with Meadowview Psychiatric Hospital from May 2019, until she was terminated in or around August 2021. She was assigned as a medication nurse, responsible in part for counting and confirming narcotic medication at the start and end of her shift, managing medications on the unit, receiving medication deliveries, and ensuring that discontinued or expired medications are returned to a nursing supervisor for handling.

On March 26, 2021, Chieffe was assigned to work the 11:00 p.m. shift, which ended at 7:00 a.m. on March 27, 2021. During her shift, she counted and handled several medications in the medication room, and the area outside the medication room.

About a month later, on April 26, 2021, Lois Pinta (Pinta), the Director of Nursing, was informed that during a routine CDS audit by a pharmacy consultant, three medications could not be accounted for. An investigation ensued and two of the three missing medications were ultimately accounted for. The third medication, which consisted of a bingo card of Lorazepam 2mg tablets, a narcotic medication, which had been prescribed PRN for patient S.B.T., was not found. The investigation into the missing Lorazepam bingo card revealed that on March 13, 2021, an order for Lorazepam PRN was faxed and that on that night, a new bingo card with 28 tablets of Lorazepam was received by the facility. S.B.T. received two doses of the medication from this bingo card on March 19, 2021 and on March 21, 2021, leaving 26 pills in the bingo card. Since the order for the medication ended on March 21, 2021, and the medication was therefore no longer deemed active, it should have been returned to a nursing supervisor. There is no evidence, however, that this medication was ever returned to any nursing supervisor, and Pinta and her Assistant Director proceeded with their investigation by reviewing surveillance footage taken at the facility. They reviewed surveillance footage from the medication room for the unit where S.B.T. was assigned, the chart room that is just outside the medication room, and the nurses' station, and they observed what they considered to be suspicious activity involving Chieffe. This led to their questioning of Chieffe, other employees, and ultimately Chieffe's suspension and termination.

Video footage taken at approximately 11:24 p.m. on March 26, 2021 shows Chieffe in the medication room handling and counting a number of bingo cards. She did so without having another nurse present. A male nurse had been in the medication room when Chieffe first arrived in the medication room, but he left the room while she handled and was counting the bingo cards that had been stored in the narcotics lock box. Meadowview policy requires that two nurses be present when counting and verifying the controlled medication. Chieffe testified that she was aware of this but that

it was not always possible. On this particular evening, she did not ask another nurse or supervisor to assist in the counting and verifying of the medications. Chieffe unconvincingly testified that she had been told by a supervisor (who she could not recall) that it was acceptable for her to count the medications without having another nurse present. I **FIND** that Chieffe did not offer a reasonable explanation as to why she failed to count and handle the narcotics medication in the presence of another nurse, and her actions in handling and counting the medication alone violated Meadowview's policy.

Later in her shift, at about 4:16 a.m., Chieffe removed three bingo cards from the narcotics lock box, and took them out of the medication room and to the nurses' station. She then placed the bingo cards into a brown paper bag and left them unattended at the nurses' station. Chieffe does not contest this, and she was aware of Meadowview's policy requiring that narcotics be kept in the locked medication room.

Meadowview policy governing medication management for controlled medications requires that all controlled medications be stored under double lock. (J-16.) Here, there was a lock on the medication lock box, and one for the medication room where the lock box was kept. Policy also allows the medication to be stored in a secured location in the nursing supervisor's office. Meadowview's policy also dictates that when a physician discontinues a patient's controlled medication, the unit nurse returns the declining inventory sheet, along with the corresponding bingo card, to the nursing supervisor's office. (J-16.)

At about 4:29 a.m., Chieffe returned two of the bingo cards back to the medication lock box from the nurses' station, while the brown paper bag remained on a desk in the chart room, and next to Chieffe's personal backpack. Respondent asserts that Chieffe may have placed the third, and missing, bingo card into her backpack because the brown bag and bingo card could no longer be seen on video, a brown bag is seen in her backpack, and Chieffe is observed rummaging through her backpack. While Chieffe is clearly seen rummaging through her bag, placing something in her bag, looking inside the brown bag and shuffling through her papers and bags, the video

footage does not clearly show her place medication into her backpack. Chieffe leaves the unit with her backpack at about 5:17 a.m., goes to her car, and returns to her unit at about 5:45 a.m. without the backpack.

Chieffe does not deny handling, or mishandling, the missing bingo card of Lorazepam, or following proper protocol, but she does deny placing it into her backpack and taking it. She testified that she was distracted that evening and does not know what happened to the missing medication. Chieffe did not testify clearly about what transpired that evening, was visibly nervous and did not present as a very credible witness.

As part of the investigation, Chieffe provided a statement in which she indicated that she recalled that there was an expired medication when she was doing the count and that she was not sure whether the doctor intended to keep it in his medication administration record list, so she placed it into a paper bag to then follow up with her supervisor, but she was now sure what happened to the paper bag. Chieffe testified that when she had a question about a bingo card, such as when she was unsure what to do with a discontinued medication found in the lock box, she would place it in a brown paper bag and take it to the nursing supervisor. On this day, however, if she did place the medication in a bag with the intention of taking it to the nursing supervisor, she failed to do so. Chieffe never took any medications to the nursing supervisor and did not speak with a nursing supervisor concerning the medication at issue during her shift. She also made no written record of her handling of the Lorazepam bingo card.

Based on my review of the video footage and consideration of the testimony, I **FIND** that Chieffe mishandled the Lorazepam bingo card during her shift; that she improperly removed it with other narcotics medication, from the medication lock box and the secured medication room; and improperly left the medication unattended in an unsecured location for several minutes. I also **FIND** that the bingo card for the Lorazepam was never found or accounted for due to Chieffe's mishandling, but that the evidence is inconclusive as to whether Chieffe intentionally diverted the medication from the facility.

There is no record of any prior disciplinary history involving Chieffe.

Charges

The charges in the PNDA and FNDA include violations of: N.J.A.C. 4A:2-2.3(A)1, Inefficiency; N.J.A.C. 4A:2-2.3(a)(2), Insubordination; N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), Neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause.

The September 13, 2021 PNDA contains three typed pages summarizing the incident(s) giving rise to the charges. (J-1.) Below are the relevant excerpts:

On Monday April 26, 2021, Lois Pinta, Director of Nursing, was contacted by Pharmacy Consultant Chris Poppe, RPh, CCP, in reference to 3 medications that could not be accounted for during his routine monthly CDS audit . . . Ms. Pinta was able to account for 2 of the 3 medications and began to investigate the whereabouts of the third. . . .The medication in question was 28 tablets of Lorazepam 2mg with RX# 473359 for patient SBT. . . . A bingo card for Lorazepam 2mg, 28 tabs, RX#04732862 was delivered on 3/7/21 and has been accounted for; it was returned to the nursing office on 3/17/21 with 20 tablets remaining and was logged in per protocol The last dose given for this particular bingo card was dated 3/14/21 12:50pm. On 3/14/21, the order for the PRN was renewed and faxed, and on the night of 3/14/21, a new bingo card with 28 tabs of Lorazepam was received as noted above. The patient received two subsequent PRN doses of medication on 3/19/21 at 1:21pm and 3/21/21 at 2:54pm, which Ms. Pinta confirmed were not utilized from the hospitals back-up stock of medications. This indicates that the medication was utilized from the bingo card received on 3/14/21, and that the bingo card should have had 26 tablets remaining. Since the PRN order auto-stopped or ended on 3/21/21, the medication was not renewed and should have been returned once the order was no longer active. However, in review of the log kept by the nursing supervisor which tracks when a bingo card is returned, by whom, how many tablets remains, and the prescription number, it was found that there was no

medication returned that matched the prescription number for the medication in question.

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Upon review of footage from the 11pm-7am shift on 3/26/21 through 3/27/21, suspicious activity was observed. Nurse Christine Chieffe is seen on CCTV footage receiving 10 bingo cards 3/26/21 at approximately 11:24pm at the beginning of her shift. Although she does appear to count, she is doing so without another nurse present. Later in the shift, she is seen removing 3 bingo cards from the narcotic lock box on 3/27/21 at approximately 4:16am, bringing them to the front of the nurses' station and placing them on a desk and shuffling them around in different areas of the nurses' station and after some time, placing them in a brown paper bag. It is then clearly noted that she returned 2 bingo cards to the lock box on 3/27/21 at approximately 4:29am, as a brown paper bag remained atop a desk in the back chart room. Upon exiting the medication room, she then returned to the back chart room at approximately 4:38am. It was noted that Ms. Chieffe's personal belongings bag was placed on a chair immediately in front of where she placed the brown bag she had been handling in the back chart room. Although unclear whether Ms. Chieffe placed the bingo card into her bag, the brown bag and the narcotic card are no longer visible on the video and Ms. Chieffe is seen clearly on CCTV handling her personal bag, appearing to slide something inside. . . . She is seen leaving the unit with her personal bag at approximately 5:17am, exits the building at approximately 5:19am with the bag and returns through the front door at approximately 5:19am with the bag and returns through the front door at approximately 5:45am without the personal bag in tow. . . . At the end of her shift, Ms. Chieffe is seen counting the narcotics with the incoming nurse, with only 9 bingo cards present. There is also nothing mentioned in the patient medical record nor on the nurse's 24 hour report about a special endorsement, a narcotic issue or question, etc.

...

Ms. Chieffe reported that she does not remember specifically what happened on the night in question but adamantly denied having taken the bingo card. She admitted at the very least to mishandling the drug and failing to follow proper protocol in the counting, handling, and storage of controlled drugs, which are not only MPH policy but are standards in Nursing practice.

At this time, it can only be concluded that this medication has been diverted. Whether Ms. Chieffe mishandled the drug and lost it or took it intentionally, the medication is not present in the facility and cannot be accounted for due to the negligence in their handling.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(11).

In disciplinary cases, the appointing authority has both the burden of persuasion and production, and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (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 a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

Given the findings of fact, and specifically the determination that Chieffe mishandled narcotic medication at Meadowview by counting and handling the medication outside the presence of another nurse, failing to properly store the medication, and causing the medication to go unaccounted for, the first issue to be addressed in this proceeding is whether a preponderance of the credible evidence supports the charges set forth in the PNDA. If so, the second issue to be addressed is whether termination is the appropriate discipline.

Chieffe is charged with inefficiency pursuant to N.J.A.C. 4A:2-2.3(A)1. In this type of breach, an employee performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980), <http://njlegallib.rutgers.edu/njar/>. Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. Rivera v. Hudson Cty. Dep't of Corr., CSR 6456-16, Initial Decision (October 24, 2016), <http://njlaw.rutgers.edu/collections/oal/>. Here, Chieffe's mishandling of the medications which ultimately resulted in the loss of several tablets of Lorazepam, a narcotic medication, reflects an insufficient, and substandard, quality of performance.

Chieffe is also charged with insubordination, pursuant to N.J.A.C. 4A:2-2.3(a)(2). The Civil Service Act does not provide a definition for this charge. The term, however, is generally interpreted to mean the refusal to obey an order of a supervisor. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), <https://njlaw.rutgers.edu/collections/oal/>. According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit Sys. Bd. (December 18, 2000), <http://njlaw.rutgers.edu/collections/oal/>, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to complete an assignment. Chieffe was familiar with Meadowview's policy governing the handling of controlled substances, but she acted in a manner that she knew was contrary to that policy, without any reasonable explanation. This noncompliance with a directive constitutes insubordination.

Chieffe is also charged with conduct unbecoming a public employee, pursuant to N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming" is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of a governmental unit . . . [or] which 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) (citing In

re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). 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)). Chieffe not only acted in an unbecoming manner by failing to follow Meadowview policy, but by leaving the narcotics medication unattended in an unsecured location where any other employee or resident could have taken it. By doing so, Chieffe created a dangerous situation that could have easily resulted in an overdose or other serious harm.

Appellant is also charged with neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). “Neglect of duty” has been interpreted to mean that an employee “neglected to perform an act required by his or her job title or was negligent in its discharge.” In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. The term “neglect” means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” means conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. Chieffe clearly neglected her duties as a nurse by the manner in which she mishandled narcotic medication on March 26 and 27, 2021. Contrary to her nursing duties, she counted the medication alone, and removed medication from the secured lock box and locked medication room and left it unattended in a brown paper bag where others had access to it.

Finally, Chieffe is charged with violating N.J.A.C. 4A:2-2.3(a)(12), “other sufficient cause.” Since Chieffe was found to have violated Meadowview’s policy on the

medication management of controlled medications (Policy Number MM-003), this constitutes a violation of "other sufficient cause."

Chieffe's actions on the evening of March 26 and early morning of March 27, 2021 clearly constitute inefficiency, insubordination, neglect of duty, conduct unbecoming and "other sufficient cause." While the evidence is inconclusive as to whether Chieffe intentionally took the missing narcotic medication, she does not dispute her mishandling of the medication, and she was unable to account for its disappearance. Had she handled the narcotics medication in a fashion consistent with Meadowview's policy and proper nursing practice, it would not have gone missing. Chieffe's actions were irresponsible, negligent and dangerous. She left the medication unattended and in an unsecured location for several minutes. It could have easily been picked up and ingested by anyone at the facility, including any one of the Meadowview's psychiatric residents.

Based on my findings, I **CONCLUDE** that respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(1) (Inefficiency), N.J.A.C. 4A:2-2.3(a)(2) (Insubordination), N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a Public Employee), N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty), and N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause), and that such charges must be **SUSTAINED**.

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). 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., 1996 N.J. AGEN LEXIS 467 (April 16, 1996). Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the

employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

Progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention. Rotundi v. Dep't of Health and Human Services, OAL Dkt. No. CSV 385-88 (Sept. 29, 1988)

Here, Chieffe has no history of prior discipline at Meadowview, and there is no evidence that she was ever terminated or disciplined as a nurse prior to her employment at Meadowview. Appellant argues that, at most, mistakes were made, and that progressive discipline, not removal, is the appropriate penalty. The respondent, on the other hand, maintains that Chieffe's actions that led to the diversion of a narcotic medication were sufficiently egregious to fall outside of progressive discipline, and that removal is the appropriate remedy.

Chieffe's actions were irresponsible, negligent and dangerous. I could not find by the preponderance of the evidence, however, that she intentionally removed the medication from the facility, and while she created a dangerous situation in her handling of the narcotic medication, luckily, nobody was harmed. Given the nature of the misconduct here, and the absence of any prior discipline, and taking into account the concept of progressive discipline, I **CONCLUDE** that a more appropriate penalty here is a five-month suspension, not removal.

ORDER

Accordingly, I **ORDER** that the charges against Christine Chieffe be and are hereby **SUSTAINED**.

It is also **ORDERED** that the determination of respondent to remove Chieffe from her employment at Meadowview Hospital is hereby **REVERSED**; and it is further **ORDERED** that Chieffe be reinstated to her position at Meadowview and serve a five-month suspension.

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.

February 15, 2022
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____
jb

APPENDIX

WITNESSES

For Appellant:

Christine Chieffe

For Respondent:

Lois Pinta

EXHIBITS

Joint:

- J-1 Preliminary Notice of Disciplinary Action dated May 13, 2021
- J-2 Final Notice of Disciplinary Action dated August 10, 2021
- J-3 Notice of Immediate Suspension dated May 13, 2021
- J-4 Investigation Summary of Suspected Diversion of Medication
- J-5 Recommendation for Disciplinary Action dated April 30, 2021
- J-6 Written Statement by Christine Chieffe dated April 30, 2021
- J-7 Incident/Witness Statement by Chinwe Okeke dated May 3, 2021
- J-8 Written Statement by Vilma Sagan dated May 3, 2021
- J-9 Incident/Witness Statement by Raul Castillo dated May 4, 2021
- J-10 Emails
- J-11 Nursing Assignment Sheet dated March 26, 2021
- J-12 Shift Change Report
- J-13 Progress Notes
- J-14 Medicine Card
- J-15 Disposition of Unused Drugs
- J-16 Policy and Procedure Manual
- J-17 CV of Christine Chieffe
- J-18 Nursing Staffing Acuity Sheet

- J-19 Attendance Record for Calendar Year 2019
- J-20 Controlled Substances Count for March 2021
- J-21 Video footage of medication room
- J-22 Video footage of medication room
- J-23 Video footage of medication room
- J-24 Video footage of 4th Floor south hall
- J-25 Video footage of 4th Floor south hall
- J-26 Video footage of hospital main entrance
- J-27 Video footage of hospital main entrance
- J-28 Not in evidence
- J-29 Video footage nurses' station
- J-30 Not in evidence
- J-31 Video footage 1st floor lobby
- J-32 Not in evidence
- J-33 Not in evidence
- J-34 Video footage 4th floor chart room
- J-35 Not in evidence
- J-36 Video footage 1st floor lobby waiting room
- J-37 Not in evidence
- J-38 Video footage of nurses' station

For Appellant:

None

For Respondent:

None