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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. CSV 06734-19

AGENCY DKT NO. ~~516/49~~

2019-2538

**IN THE MATTER OF MOHAMMED HAMIDU,
DEPARTMENT OF HEALTH, GREYSTONE
PARK PSYCHIATRIC HOSPITAL,**

Edward A. Berger, Esq. appearing on behalf of appellant

Andy Jong, Esq., appearing on behalf of respondent, (Matthew J. Platkin,
Attorney General, New Jersey)

BEFORE KIMBERLY A. MOSS, ALJ:

Record Closed: June 9, 2022

Decided: June 22, 2022

STATEMENT OF THE CASE

Appellant, Mohammed Hamidu (Hamidu), appeals removal by respondent, Department of Health, Greystone Park Psychiatric Hospital (Greystone), on charges of conduct unbecoming a public employee, other sufficient cause, physical abuse of a patient, inappropriate physical contact, mistreatment of a patient and violation of policy and procedure.

On May 9, 2017, Greystone served Hamidu with a Preliminary Notice of Disciplinary Action. A departmental hearing was held on February 21, 2019. Greystone served Hamidu with a Final Notice of Disciplinary Action dated March 5, 2019, sustaining charges of conduct unbecoming a public employee, other sufficient cause, physical abuse of a patient, inappropriate physical contact, mistreatment of a patient and violation of policy and procedure. The discipline imposed was removal.

At issue is whether Hamidu engaged in the alleged conduct, and, if so, whether it constitutes conduct unbecoming a public employee, other sufficient cause, physical abuse of a patient, inappropriate physical contact, mistreatment of a patient and violation of policy and procedure that warrants removal.

Hamidu requested an appeal. The appeal was filed with the OAL on May 14, 2019. Respondent filed a motion to for summary decision on January 7, 2020. Petitioner filed opposition to the motion on April 8, 2020. Respondent filed a reply brief on April 30, 2020. Oral Arguments were held on May 21, 2020. I denied the motion for summary decision on May 27, 2020. On July 29, 2021, respondent filed a second motion for summary decision. Appellant filed opposition to the motion on September 8, 2021. The motion was denied on October 1, 2021. The matter was heard on January 12, 2022, February 15, 2022, and March 1, 2022. Appellant filed a motion to dismiss for failure to provide a timely hearing on May 10, 2022. He had been advised to file his motion with his closing brief. Appellant filed a closing brief on May 16, 2022. Respondent filed a closing brief on June 9, 2022, which addressed appellant's motion of May 10, 2022. The record closed on June 9, 2022.

TESTIMONY

Melissa Ballard-Cabra

Melissa Ballard-Cabra has been the manager of Human Resources (HR) at Greystone since November 2021. She has been employed at Greystone for twenty years. She is responsible for overseeing employee relations. At the time of the incident, she was a personnel assistant three. She was a personal assistant for twelve years. As a

personnel assistant three she worked in employee relations, grievances, and discipline. She worked for Jane Frey (Frey) in employee relations. Frey is the employee relations coordinator. He oversees grievances and discipline.

Greystone is an adult psychiatric facility for people with mental health issues that are a danger to themselves or others. An unusual incident report (UIR) form is used when abuse, neglect or exploitation of patients is suspected. UIR's are kept in the normal course of business. She received a UIR in this matter due to an assault. In the UIR, Hamidu wrote that he was doing a face check and a patient snatched the face check clipboard from him. The patient attacked and assaulted him. They ended up in the hallway. Risk management investigated the UIR. Videos of unusual incidents are not released to anyone. They can be reviewed at Greystone.

Order 4:08 is the disciplinary action program. It states the infractions and a guide for the infractions that Greystone use. It was in effect 2017-2019 and states that there is a prohibition against abuse on patients from employees. Abuse is defined as act directed at a client that can cause injury, pain, or anguish.

Hamidu was given a Lauderhill hearing. He appealed that and requested a departmental hearing. The union agreed to verbally extend the time for a hearing. Hamidu timely requested the appeals. Ballard-Cabra does not recall the date of Hamidu's suspension or appeal. When a hearing is requested, discovery is provided to the union and dates are scheduled. She cannot recall what discovery was provided. The hearing was not held within sixty days of his request.

Stephanie Streletz

Stephanie Streletz (Streletz) is employed by the New Jersey Department of Health. She oversees investigations for the Division of Health Facility Service and Field Operation. She works in the Office of Investigation. She is a quality assurance coordinator. In 2017, she worked at Greystone as a quality assurance coordinator.

Streletz interviewed Hamidu on May 10, 2017. It was alleged that he perpetrated abuse at Greystone. In the interview there were pre-typed questions. She typed the answers on her laptop. Question eleven states that Hamidu stated that he was attacked and assaulted. Hamidu explained that the patient snatched the clipboard from him. Hamidu got the clipboard back and the patient grabbed him with an arm around his neck, putting Hamidu in a chokehold. The patient pulled Hamidu back and did not release him. He stated that his response was to lift the patient up and put him down on the ground with care by supporting his neck. When he was asked if he acted in accordance with his training, he said training techniques are different for different situations. He stated that the only thing that he would do differently is state that he was disorientated at the time of the incident.

Streletz did not give Hamidu a copy of the questionnaire or ask him to sign it.

Thomas Shaffer

Thomas Shaffer (Shaffer) has been employed by Greystone for approximately seventeen years. He has been the Director of Staff development and Training for fifteen years. Greystone is a psychiatric hospital with long-term and short-term care. It treats people with psychiatric diagnosis. The patients are committed because they are a danger to themselves or a danger to others. Greystone has approximately 300 patients and a staff of 1321 employees. The employees are trained to interact with the patients. Greystone has a significant and extensive training program. There is an employee orientation based on legal mandates and clinical skills. Orientation is seven days. After the orientation, they go to the training. The first day of the training is about patient safety. They are trained to deal with difficult patients. The second day of the training is called therapeutic options. It includes de-escalation, self-protection, and supportive techniques. The therapeutic options instruction manual was created in 2009.

Physical skills are taught to keep the patient and the staff safe when working with an aggressive patient. A ready posture is a secure and stable stance with your feet between the staff member and the patient. Retreating reduces the chance of injury or assault. Retreating is always the first option. If a situation with a patient escalates the

employee should maintain a safe distance and raise hands to signal the patient to stop advancing.

The response for pushes, punches and slaps is first to move out of the attack range and not to overreact. The employee can pivot to get out of the line of attack. Do not have hands fisted. The hands should be cupped. When the wrist is grabbed, it could be the patient trying to communicate. If the grabbing is a prelude to biting, evade or release. The response to kicking is to move back or shuffle step to give the person more space. When the wrist is grabbed with both hands, the employee should drop elbow for leverage and reach between the patient's hands and grab your hand back.

Physical skills for managing aggression are when the employee initiates the skill when it is judged that the safety of the person or others is at risk. A supportive escort moves the patient along with minimal physical contact. The body shield serves as a containment or restraint. The hold is open. The employee can intercept or redirect using the body shield technique. A body control restraint is used to manage a person who is harming himself or others. The arm control restraint is the preferred method for managing a person who has become a danger to himself. This usually requires two employees.

If a patient begins to drop to the floor, allow him to do so but guide him safely. A supine restraint is used when a person is on the floor.

The therapeutic options technique are the only approved methods use at Greystone since May 2011. Employees cannot put their hands around a patient's neck or flip a patient to the ground.

The verbal component of the technique is observation, assist, de-escalate, understand what you are seeing and be aware of the warning signs. The training is a two-day program. The verbal component is taught on the first day and the physical component is taught on the second day. There is a teacher's guideline for the instructors on how they should teach the class.

During the second day of training when the physical part of the training is taught, the skills are demonstrated to the employees. There is a video of each technique and physical instruction. After the skill is shown, employees are partnered to practice the skill. The employees must pass the class at or above 70% on the physical techniques before they can work with the patients. When the employees attend the training class, their attendance is documented.

Hamidu took the therapeutic options training on June 16, 2014, and June 17, 2017. He passed both days of training. Elizabeth Ranke was the instructor. There was not an instructor named David but there was a trainee named David. Octoberfest is a yearly event reviewing competency and training. An injury is not required for patient abuse to be determined.

Shaffer does not know the number of assaults that occurred at Greystone in 2017. There was a high level of assaults. Safety is the number one priority. Dr Thazi is a psychiatrist at Greystone who was assaulted on numerous occasions at Greystone.

The introductory training class for employees is for two days. The second day of the training course is seven hours. Twenty techniques are taught. The first skill is taught other skills are added to the first skill. A refresher training course is given yearly. The employees train in skills in their area. Some classes are for the entire staff. The refresher training is called Octoberfest.

In the physical skills for managing aggression, the employees are taught never to put their hands on a patient to control the patient unless the situation is so dangerous that it would be negligent not to put your hands on the patient. The techniques are not micromanaged. Employees are taught what to do when under physical threat. The use of weapons by the patient is not specifically addressed. The response to a chokehold is in the manual. The techniques do not guarantee safety. There is no guarantee of safety in a physical encounter with a patient. The purpose of the training course is to give basic competency in the techniques.

The therapeutic option techniques are the only one approved by the Department of Health. If other techniques are used, Greystone will not support the employee. Shaffer is not familiar with the patient who had an altercation with Hamidu.

If an employee is choked from the front by a patient, the employee should put his arms around the back of the neck of the patient and put his face in the patient's chest. The patient in the incident with Hamidu appears to be slightly bigger than Hamidu. Employees can request refresher training courses.

Donna Morrison

Donna Morrison (Morrison) has been employed by Greystone as a Quality Assurance Coordinator for eighteen years. She reviews incidents that occur in Greystone. Greystone uses surveillance cameras. There are approximately 300 cameras at Greystone. The cameras cover the common areas. The cameras are constantly recording. The footage lasts for thirty days and then it is recorded over.

UIR's describe incidents. Morrison follows up on the incidents. There are levels of severity of incidents in UIR's. The levels are A+, A, B and C. A+ is the highest level of severity. She reviews footage when the UIR states there was abuse, neglect, exploitation, or an unusual circumstance. Abuse means patient abuse either physical, psychological, or verbal. Abuse is a higher level of severity. If an occurrence does not fall in line with the report, Morrison thinks it is unusual.

Morrison can pull the footage that was recorded. She goes to the UIR and uses the date, time, and location of the incident. She starts where the incident occurred and goes outward to see all the angles.

Morrison is familiar with the incident between Hamidu and the patient A.I. She reviewed the incident report which said that there had been patient and staff contact and that they ended up on the floor. She looked at the footage from where the incident

occurred and the footage from the hallways connected to that area. She burned a DVD of the footage. She did not make any edits to the footage.

The video top left view is from the hall to the Patient Information Center (PIC) and nurse's station. The view from the middle top is of the patient information center facing the hallway. The view from the third top to the right is of the socialization room. The bottom left view is the patient corridor facing the main entrance. The final view is of the patient corridor coming from the PIC. The date of the incident is April 30, 2017, at 8:06 a.m. The footage was burned from Greystone's surveillance system.

Grey has four surveillance systems each of which services a certain amount of cameras. The recording equipment is in the basement at Greystone. She can access the surveillance system from her desk. She can view the system from her office. The surveillance system retains recordings for thirty days. The recording is overwritten after thirty days. Morrison made a master copy DVD of the incident with Hamidu and the patient. The movements of the people in the DVD can be considered choppy. The recording was done at normal speed. The recording was burned at natural time.

Morrison does not recall when she made the DVD. She did not record it in a log. If there is an abuse or neglect report, the records are kept. Morrison was asked to review other incidents involving A.I., all of which were minor C level matters.

In this matter after Morrison copied the DVD, she gave it to the Office of Investigation, which was conducting an abuse investigation. Morrison hand delivered the DVD to Stephanie Streletz who was given the master disc. She returned the master disc to Morrison. Morrison recalls making two copies of from the master disc.

Morrison codes all of the UIR's at Greystone. In this matter there was staff/patient contact where they ended up on the floor which was unusual. She looked at the level of injury in this matter, but that was not the reason she reviewed the incident. There were no injuries. After reviewing the recording of the incident, she coded it as B. When she sees abuse or neglect, she copies the recording. A code A or A+ is for severe or abuse.

Morison did not burn DVDs of the other incidents with A.I. they were all coded as C incidents and A.I. was the victim in three out of the four incidents.

The bulletin 3:19 electronic surveillance mentions video cassette recording. The bulletin is dated October 23, 1988. It was updated on August 3, 2000. Greystone no longer uses a VCR to record surveillance, it makes DVD's

Elizabeth Rank

Elizabeth Rank (Rank) was a trainer at Greystone for ten to fifteen years. She retired from Greystone on November 30, 2016. She trained employees in whatever was mandated. She taught and was a trainer in therapeutic options in 2004. Therapeutic options were employed to help the employees communicate with the patients. Therapeutic options was a two day course. The course hours were 8:00 a.m. to 4:00 p.m. The first day was lectures. The second day was hands on instruction on when an employee encountered an upset client and how to de-escalate the situation without violence. Hands on the client is the last resort.

Rank began teaching therapeutic options in approximately 2010 or 2012. She taught therapeutic options for approximately seven years. She recalls that she taught therapeutic options on June 16 and June 17, 2014. She knew the instruction manual. She trained in physical skills for protection including ready posture, retreat, pushes, punches, and slaps, grab release, wrist release and choke releases. She taught consistent with the manual. She also taught physical skills for managing aggression consistent with the manual. There is a one-hour lunch break and two fifteen minutes breaks each day of the training. The average class had twenty to thirty students.

Therapeutic Options is the only class she taught at Greystone. She never taught employees to put their hands on patients, pick up patients or take patients to the ground. Rank incorporated techniques from the teacher's manual. She demonstrated the skills to the employees. The trainers would enact a situation. One would act as the employee,

and one would act as the patient. The trainers would enact the skill as often as it was needed. Once each skill was shown, the employees would have to perform the skills. The employees were paired where one would be the patient and the other would be the staff member and they would enact the skills. Feedback was provided for the employees. They were told that they would only be protected by Greystone if they followed therapeutic options. She watched the employees to access their skills. There were more than ten skills done.

Rank does not remember meeting all the people she trained by name. She remembers a training on a warm day. She does not recall training Hamidu. She does not remember how many students were in the class or where exactly it was taught.

There were always two to four trainers in a training session. The training was never separated by gender. In a prior certification Rank stated that "According to Greystone records, she trained Hamidu.

The training was to protect the staff and the clients. It was designed for the safety of the staff. Some patients were taught therapeutic options. Therapeutic options do not guarantee safety. Done correctly, the skills should help. The best hope for safety is practicing prevention skills. Learning the physical skills requires sustained practice over time.

Mohammed Hamidu

Hamidu testified that he began working for the State of New Jersey in 2005. At that time, he worked at the North Jersey Developmental Center (NJDC) in Totowa, New Jersey. He was a Human Service Assistant. His position entailed helping the patients with day-to-day activities and taking them to activities. Sometimes he worked one to one with the patients and other times he worked in a group setting. He worked at NJDC from 2005 to 2014. He was never assaulted or injured by a patient while he worked at NJDC.

While at NJDC, he was given a course in patient protection called Handle With Care it was taught to protect the patients and the staff. There was a refresher course every four months.

In 2014, Hamidu was transferred to Greystone as a Human Service Technician. The patients at NJDC were less violent than the patients at Greystone. Hamidu was assaulted at Greystone in 2015. He was trained in therapeutic options at Totowa. He was not personally trained by Rank. On the first day of the course there was no physical training. They watched videos. The physical portion of the course was one day and taught by a man named David. He was taught thirty techniques in six- and one-half hours. They were again shown video and after which they were broke into groups to demonstrate. The instructor would demonstrate the technique, then call up two staff members to imitate what the instructor had done. Less than five minutes was spent on each technique. The therapeutic options was about self-defense.

During the therapeutic options course a discussion about if the staff member's life was in danger came up. They were told do anything you can to save yourself. The Octoberfest training was done by computer. It included therapeutic options and other aspects of Greystone activities.

On April 30, 2017, Hamidu reported for work at 7:45 a.m. His first assignment was one on one with a patient from eight to ten. From ten to twelve he was assigned to do face check. When doing face check he is given a list and pictures of the patients. He checks on them every fifteen minutes. Hamidu worked in unit A-1, which is the admission unit. New patients are received in A-1. B1 is also an admission unit. The patient stays in the admission unit until a bed is available.

Hamidu does not know when patient A.I. was admitted to Greystone. A.I. was in B-1. Hamidu had seen A.I. in B.1. On April 30, 2017, A.I. was in A-1. When a patient is changed from admission units it is due to violence. Hamidu had to do a face check on thirty patients. The face check paper is attached to a clip board. He started the face check in the socialization room. He saw A.I. Hamidu was at that time five feet five inches,

one hundred and eighty pounds and fifty-six years old. A.I. was five feet eight inches, two hundred pounds in his twenties and in good physical condition.

Hamidu testified that he sat at the table in the socialization room to do the face check. One woman staff member was present in the socialization room. A.I. was sitting watching television. Hamidu did a face check of A.I. and went back to the table. A.I. approached Hamidu and snatched the clipboard and said, "*Give it to me bitch*" The clipboard was on the table, not in Hamidu's hand Hamidu was concerned with how to get the clip board back. The clip board can be used as a weapon. Hamidu tried to get the clipboard back. A.I. did not want to return the clipboard. Hamidu took the clipboard out of A.I.'s hand and placed it on the table. A.I. then stated, "*I will kill you bitch.*" As A.I. raised his hand to Hamidu, Hamidu attempted to pivot. A.I. attacked him and grabbed his neck. They were face to face. Hamidu's face was on A.I.'s body. A.I. had his elbow around Hamidu's neck and was dragging him. Both of A.I.'s arms were around Hamidu's neck. Hamidu and A.I. grabbed each other. Hamidu did not push A.I. out of the socialization room.

Hamidu could not breathe. He tried to get out of the hold at the PIC in the hallway in front of the nurse's station. Hamidu was concerned for his life because he could not breathe. Hamidu let go of A.I. thinking A.I. would let go of him but A.I. did not. At the PIC Hamidu was holding the PIC to maintain his balance. A.I.'s hands were on Hamidu's neck. Hamidu was being choked. His face was in A.I.'s chest. He lifted A.I. up and put him on the floor. This technique is from the handle with care course. Hamidu knew that staff members had previously been assaulted. Hamidu lifted A.I.'s leg and placed his hand on A.I.'s neck and put him on the floor. A.I. was not injured.

Hamidu was suspended on May 9, 2017. He was not given a hearing. He appeared with the union representative at the investigative hearing. He was not shown the video. He asked for a hearing and filed an appeal. His hearing was held nineteen months later.

Therapeutic options do not teach how to escape when patient has your neck. He was not trained how to respond when a patient has a weapon. The training he received does not work in real life. Hamidu's life was in danger, he needed to protect himself. Hamidu was never taught to lift a patient off his feet in therapeutic options.

Hamidu was interviewed by the investigator. He stated that A.I. did not say anything. Hamidu says that some of the answers in the interview are not accurate. If he could have gotten away, he would have. Hamidu stated that he had previously saw A.I. attack two people.

FACTUAL DISCUSSION

In light of the contradictory testimony presented by respondent's witnesses and appellant and his witness, the resolution of the charges against Hamidu requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-522 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** Ballard- Cabra, Streletz, Shaffer Morrison and Rank to be credible. Their testimony was clear and concise. I did not find Hamidu to be credible. His testimony was contradicted

by what was shown on the tape. In addition, when he was interviewed, he stated that A.I. did not say anything to him, but in his testimony, he stated that A.I. said "Give it to me bitch" and "I will kill you bitch."

I **FIND** the following **FACTS** in this case.

Greystone is a psychiatric hospital that treats dangerous mentally ill patients in New Jersey. Hamidu worked at Greystone as a Human Services Technician. His job entailed safely supervising the patients at Greystone. He had worked at Greystone for twelve years prior to April 2017. Prior to working at Greystone, Hamidu worked at NJDC as a Human Service Assistant. While he was at NJDC he was given a course in patient protection called Handle with Care.

There are approximately 300 cameras at Greystone. The cameras cover the common areas. The cameras are constantly recording. The footage lasts for thirty days and then it is recorded over. Morrison, the quality assurance coordinator at Greystone, reviews incidents that occur at Greystone.

UIR's describe incidents. Morrison follows up on the incidents. There are levels of severity of incidents in UIR's. The levels are A+, A, B and C. A+ is the highest level of severity. She reviews footage when the UIR's states there was abuse, neglect, exploitation, or an unusual circumstance. Abuse means patient abuse either physical, psychological, or verbal. Abuse is a higher level of severity. If an occurrence does not fall in line with the report, Morrison thinks it is unusual.

Hamidu transferred to Greystone in 2014. He was trained in the therapeutic options techniques by Greystone. Therapeutic option techniques include de-escalation, self-protection, and supportive techniques. The therapeutic options instruction manual was created in 2009.

Physical skills are taught to keep the patient and the staff safe when working with an aggressive patient. A ready posture is a secure and stable stance with your feet

between the staff member and the patient. There are various responses to when a patient attempts to choke the employee. When being choked from the front, assume a ready position, place your palm against the persons inside wrist, thrust the patients, hand away and pivot. If it is a forearm choke, as the persons arm is encircling your throat, drop your chin into the crook of his elbow, insert both hands deep into the patient's grip pull the patient's arm away from your throat and pull it into your chest. There is only ten seconds to execute the forearm choke release.

The Therapeutic Options is a two-day course. The first day of the course is the verbal component of the technique which is observation, assist, de-escalate, understand what you are seeing and be aware of the warning signs. The physical component of therapeutic options is taught on the second day of training. Therapeutic Options is designed for safety of the staff. Staff are required to take therapeutic options every year. The Octoberfest of training done at Greystone can be done by computer,

On April 30, 2017, Hamidu was assigned to work on Unit A-1 at Greystone. This is the admissions unit. Patients do not stay in this unit for longer than thirty days. Hamidu previously saw A.I. on unit B-1. On that date Hamidu was assigned to do face check of all of the patients. He entered the socialization room to do the face check. Hamidu was at the desk. The clipboard was on the table. A.I. grabbed the clipboard, Hamidu also grabbed the clipboard. They both held the clipboard, then Hamidu got the clipboard away from A.I. and put it back on the table. Hamidu then approached and pushed A.I. At this point there is space between them. Hamidu could have retreated at this time but failed to do so. Hamidu and A.I had their arms around the other's upper body. While they are struggling, Hamidu pushes A.I. out of the socialization room and into the hallway. They get to the hallway. At that time A.I. has a hand around Hamidu's neck and Hamidu pushes A.I into the PIC. Hamidu is holding onto the PIC. He then lifts A.I. by the leg and puts him onto the floor. There is a video of the altercation.

Hamidu says that he was attacked by A.I. and reacted to protect himself and others. Hamidu contends that A.I. had him in a choke hold. The video does not show that A.I had him in a choke hold.

Hamidu passed the therapeutic options classes at Greystone on June 16, 2014, and June 17, 2014. Shaffer, the Director of Staff Development and Training at Greystone states that there are only five de-escalation methods used at Greystone, none of which include lifting the patient and bringing him down on the floor. Shaffer was not Hamidu's instructor for the therapeutic options class. Shaffer did not train Hamidu on the policies and procedures at Greystone. Elizabeth Rank taught behavioral management systems including therapeutic options at Greystone. On June 16, 2014, and June 17, 2014, she personally taught therapeutic options. According to Greystone records, Hamidu was in those training sessions.

Rank list techniques she taught when approaching a combative patient. She states that the techniques she listed were not the only techniques. Hamidu states that the course he took consisted of watching a video with others and performing physical movements. He states that he worked with a male named David. He states that he did not work with Banks (sp) and Banks(sp) did not teach him any techniques. Hamidu was terminated without pay from Greystone on May 9, 2017. On May 1, 2017, Hamidu was immediately suspended from employment at Greystone. He had a preliminary hearing on May 9, 2017. On that date Hamidu was placed on indefinite suspension without pay as of May 9, 2017. Hamidu requested a departmental hearing on the same date, which could have been held within thirty days. Hamidu was represented by the union. The union and Greystone extended the time for the departmental hearing to take place. On May 15, 2018, Hamidu retained counsel, who requested a hearing be held. There were letters and email between Hamidu's counsel and Frey from May 15, 2018, through January 19, 2019. The departmental hearing was held on February 21, 2019.

LEGAL ANALYSIS AND CONCLUSION

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

“Unbecoming conduct” is broadly defined as any conduct which adversely affects the morale or efficiency of the governmental unit, or which has a tendency to destroy public respect and confidences in the delivery of governmental services. The conduct need not 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. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

In this matter, the charges of conduct unbecoming a public employed, physical abuse of a patient, inappropriate physical contact/mistreatment of a patient and violation of policy and procedure can be merged. After A.I. attempted to take the clipboard from him, Hamidu maintained the clipboard. At that time, Hamidu advanced upon A.I. and pushed him. They then began struggling with their arms around each other's upper bodies. Hamidu then pushed A.I. out of the socialization room and into the hall. Once in

the hall A.I.'s hand goes around Hamidu's neck and Hamidu lifts A.I. and puts him on the floor. Hamidu was the aggressor. He could have retreated once he regained the clipboard, but he did not. He chose to approach A.I. and push him. Hamidu had been trained in therapeutic options prior to this incident on how to handle situations that could become physical with patients. He did not use any of the therapeutic options training during this encounter. Hamidu put his hands on A.I., pushing him before A.I. even touched him.

I **CONCLUDE** that charges of conduct unbecoming a public employed, physical abuse of a patient, inappropriate physical contact/mistreatment of a patient and violation of policy and procedure are **SUSTAINED**.

N.J.A.C. 4A:2-2.5(d) provides:

A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties.

In this matter, Hamidu did not have a departmental hearing within thirty days. The Union who he was initially represented by, and Greystone agreed to delay the preliminary hearing. In Ensslin v. Township of North Bergen 275 N.J. Super 352, 361 (App.Div.1994) the court stated.

In any event, procedural irregularities at the departmental level are considered "cured" by a subsequent plenary hearing at the agency level. See Appeal of Darcy, 114 N.J. Super. 454, 461, 277 A.2d 226 (App.Div.1971) (holding that a plenary hearing before the Civil Service Commission cured any deficiencies in the procedural aspects of a prior departmental hearing).

In this matter, Hamidu had a De Novo hearing at OAL. The delay did not cause significant prejudice to petitioner.

I **CONCLUDE** that appellant's Motion to Dismiss must be **DENIED**.

ORDER

Accordingly, it is **ORDERED** that the discipline of removal be and is hereby **AFFIRMED**.

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.

June 22, 2022



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Date Mailed to Parties:

ljb

WITNESSES

For Appellant

None

For Respondent

Melissa Ballard-Cabra

Stephanie Streletz

Thomas Shaffer

Donna Morrison

Elizabeth Rank

EXHIBITS

For Appellant

- A-1 Not in Evidence
- A-2 Bodily injury Chart of Patients
- A-3 Not in Evidence
- A-4 Not in Evidence
- A-5 Not in Evidence
- A-6 Request for Hearing on Behalf of Hamidu
- A-7 Letters to Frey Regarding Departmental Hearing

For Respondent

- R-1 Final Notice of Disciplinary Action Dated March 5, 2019
- R-2 Unusual Incident Report Dated April 30, 2017
- R-3 Mohammed Hamidu Statement Dated May 10, 2017
- R-4 Instruction Manuel for Therapeutic Options Dated December 2009
- R-5 Teaching Guide Physical Intervention Skills Dated December 2009
- R-6 Mohammed Hamidu Employee Class History Dated August 15, 2019
- R-7 Disciplinary Action Program, Administrative Order 4:08
- R-8 Video