



**PHILIP D.
MURPHY**
Governor

**SHEILA Y.
OLIVER**
Lt. Governor

State of New Jersey
Department of Human Services

Office of Program Integrity and Accountability
P.O. Box 700
Trenton, NJ 08625-0700

SARAH ADELMAN

Commissioner

**DEBORAH
ROBINSON**
Director

FINAL AGENCY DECISION

OAL DKT. NO. HSL 05135-18

AGENCY DKT. NO. DRA #18- 006

RECORD UNSEALED

G.E.

Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES,

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY,

Respondent.

Jeffrey C. Zucker, Esq., appearing for petitioner (Zucker Steinberg & Wixted, PA, attorneys)

Francis Baker, Deputy Attorney General, appearing for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: April 24, 2023

Decided: August 14, 2023

BEFORE: **SUSAN M. SCAROLA**, ALJ (Ret., on recall)

INITIAL DECISION

STATEMENT OF THE CASE

The petitioner, G.E., a program associate at Bancroft Neurohealth (Bancroft), appeals his placement on the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry), pursuant to N.J.S.A. 30:6D-73 et seq., on charges that he physically abused a developmentally disabled patient during the course of his employment. The petitioner denies the allegations.

PROCEDURAL HISTORY

On March 2, 2018, the petitioner was notified by the respondent of its intention to place his name on the Central Registry, due to his involvement in an incident at Bancroft on June 22, 2017. The petitioner appealed this decision, and the matter was transmitted for hearing as a contested case to the Office of Administrative Law (OAL), where it was filed on April 11, 2018. An order to seal was entered on May 17, 2018.¹

At the request of the parties, the matter was placed on the inactive list on July 30, 2018, pending the resolution of related criminal charges pending in Salem County, New Jersey. Following the resolution of those charges, the matter proceeded. Pursuant to a prehearing order entered on November 15, 2019, the matter was scheduled for hearing, with the first hearing date being February 19, 2020. On January 16, 2020, the respondent filed a motion for summary decision. The parties submitted their respective briefings on the motion, and the motion was denied in an order dated February 6, 2020.

Following the denial of the motion for summary decision, the matter was delayed because the petitioner wanted to have an in-person hearing, and in-person hearings were suspended at the OAL due to the COVID-19 pandemic. After the restrictions on in-person hearings at the OAL were lifted, the matter was heard on September 29, and October 6, 2022. The record remained open for the parties to provide post-hearing summations and briefs. However, on November 25, 2022, Judge Fritch was appointed to the Superior Court. The matter was then re-assigned pursuant to N.J.A.C. 1:1-14.13.² The record was re-opened, and a telephone conference was held with counsel. The record closed on April 24, 2023.³

TESTIMONY AND FACTUAL DISCUSSION

For respondent:

Shaylynn Lattie is a program director for Bancroft's Lakeside Program in Mullica Hill,

¹ The continued sealing of the hearing is rescinded by this Final Agency Decision. In Central Registry Act, N.J.S.A. 30:6D-77 to 82, matters; Initial and Final Agency Decisions initials are used in place of full names, a practice which adequately safeguards the identities of victims and petitioners. Having decisions available in Central Registry cases stimulates transparency in the adjudicatory process, educates the public and members of the bar on this developing area of the law. The availability of these decisions provides an invaluable precedential resource for use in the Office of Administrative Law.

² N.J.A.C. 1:1-14.13(b) provides, in pertinent part, that another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided: The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties."

³ This Initial Decision is based on reading the transcripts of the hearings before Judge Fritch and reviewing the video and documentary evidence admitted at the hearing. An extension of time was granted for the filing of this Initial Decision.

New Jersey. In that role, Lattie oversees seven residential group homes and their direct-care staff. In 2017, Lattie was working for Bancroft as an investigator in its legal and compliance department; she investigated allegations of abuse and conducted audits to ensure compliance. Lattie reviewed close to 1,000 cases and had investigated approximately 120 allegations. In 2017, Lattie investigated an allegation of physical abuse at one of Bancroft's group homes in Mullica Hill, New Jersey.

When an Unusual Incident Report is submitted from any of Bancroft's facilities, the report is assigned to an investigator. Lattie was assigned an investigation alleging abuse against a Bancroft patient, L.D. Once she was assigned to the case, Lattie reviewed the report, and identified relevant evidence, such as the patient's individual habilitation plan (IHP), and video records, etc. Lattie reviewed the patient's records to determine if she would require support to interview the patient. Lattie attempted to interview L.D.; however, he had limited verbal capacity; the interview was unsuccessful. Lattie conducted multiple interviews in her investigation, including an interview of Shatana Wallace, the individual who had reported the incident; and day program staff at Bancroft; Maurice Evans; and G.E.

Shatana Wallace was a program assistant (PA) who worked in the Day Program at Bancroft's Lakeside facility. (See R-3.) When Wallace arrived at work on the morning of June 22, 2017, she was preparing breakfast for the patients and noted that one of the patients, L.D., had a bleeding lip. (See R-6.) When she asked another staff member who was on duty that day, G.E., if she should call a nurse. G.E. said she should not, because L.D. "always does that." (R-3.) Wallace reported the incident to her manager, Leonore Robinson. (R-3; see also R-4.) Lattie said that it raised a "red flag" for her when G.E. told Wallace not to call for a nurse, because any injury to a patient should be treated and reported. (Sept. 29, 2022, Tr. at 31:2-10.)

Later that morning, Wallace brought another patient to the Day Program. There, she saw G.E. bringing patient L.D. to drop him off at the Day Program. When G.E. dropped him off, L.D.'s lip was still bleeding. (R-3.) Another staff member went to get G.E. to take L.D. back and clean him up because L.D. had soiled himself. When G.E. returned to pick L.D. up, L.D. was upset and began grabbing other staff. (Ibid.) In her written statement to Lattie, Wallace noted that L.D.'s behaviors "can be very unexpected, he swats, he bites and also throw[s] air punches." (Ibid.)

Lattie also interviewed G.E. and obtained a hand-written statement from him. (See R-6.) G.E. said that when he started work that evening, he was warned by the prior shift that L.D. was having a "difficult day." L.D. had already required physical restraints, earlier that day. G.E. was the only staff member on duty, in that building, for the overnight shift. The early part of G.E.'s shift that day was uneventful, with everything going smoothly, until L.D. woke up. L.D. then began engaging in aggressive behavior. G.E. tried to call for additional staff, using Bancroft's "response system," but his walkie-talkie either was not charged or its batteries were dead. G.E. acknowledged noticing an injury to L.D.'s lip, but he said he had tried cleaning it up. When he took L.D. over to the Day Program, he reported to the staff there that L.D. had blood on his lip.

G.E.'s written statement to Lattie dated June 28, 2017, reported:

In the morning when [L.D.] woke up and decided to take care of him first by taking him to bathroom. He tried to grab me and I raised my voice to him and asked him to calm down. I was able to him shower [sic] and dressed him up. I then went to take care of one person [sic] served [R.]. At this time, [L.D.] had started making the kind of noise he makes when agitated [sic]. Meanwhile, another person served [J.W.] was lying down in his couch in the living room and the fourth person served [J.B.] was in his room.

I started hearing [J.W.] screaming. I rushed out and found that [L.D.] was attacking him. The walkie-talkie in the house was not working. I tried to talk [L.D.] into leaving [J.W.] alone. Suddenly, [L.D.] grabbed me. That was the first day I experienced that. His grab on me was so hard that I struggled to free myself with great difficulty. At this point I became very scared and afraid. No help for me from nobody. I was alone. Fear got hold of greater part of me. I struggled and some point, panting for breath. I used my last energy to free myself. At this point I am not able to recollect or give graphic details of what happened but I know that I might have swung on him in process to release myself and self-defense. After some time, characteristic of [L.D.] he calmed down. I had to put him back to shower to clean him up because his pants was soaked with urine. In the shower I discovered that there was bleeding on his lip. I cleaned it up. By the time other staff arrived every situation was under control and calm.

I took [L.D.] to Day Program and informed them that he had bleed on his lip. After I left Day Program within a minute and half they called me back to inform me that [L.D.] had defecated in his diaper that I needed to take him back to clean. I took [L.D.] back. On our way back to house [L.D.] stopped and started fight up again. At this point he started going back to Day Program, I decided to follow him back to clean him up at Day Program where he started fight with everybody. He grabbed one staff twice and he was restrained. [R-6.]

As part of her investigation, Lattie also reviewed L.D.'s IHP (R-16), which identifies his placement, behavioral presentation, support needs, community involvement, likes and dislikes, health issues, and trauma history. L.D. was diagnosed with intellectual disabilities, seizure disorders, and autism. L.D. was non-verbal. Lattie also reviewed L.D.'s behavioral support or intervention plan. (R-17.) These plans outline a patient's history of behaviors and what the patient hopes to achieve with these behaviors. The plan also gives information, specific to the individual patient, on how to intervene for specific behaviors.

Under L.D.'s behavior plan, when L.D. engages in an act of aggression, staff should be "using Safe and Positive Approaches [SPA] to pivot and parry out of [L.D.'s] danger zone and have a neutral demeanor." (*Id.* at DHS261.) These are agency-approved techniques to de-escalate a situation and ensure the safety of patients served.

Staff is instructed to utilize a chair or area of the room to redirect L.D. to regain his composure. (*Ibid.*) Staff should also remove other persons served from the room and remain between L.D. and his peers. (*Ibid.*) These Safe and Positive Approaches are a de-escalation technique, with different levels. The first level is to "pivot and parry," which means, essentially, to move yourself out of the "danger zone." (Sept. 22, 2022, Tr. at 42:6–9.) The danger zone is anything directly in front of the person "within squatting or kicking range." (*Id.* at 42:9–11.) With the pivot-and-parry technique, you are essentially "taking things away, so you're redirecting that person or you're moving other hazards out of the area or creating safety." (*Id.* at 42:15–20.)

If L.D.'s peers cannot be safely protected, or if L.D.'s behavior becomes dangerous to others, staff should "implement SPA-approved restraint techniques." (R-17 at DHS261.) Lattie also reviewed G.E.'s training records (R-18) to confirm that G.E. was properly trained in these techniques and how to avoid patient exploitation and abuse.

Lattie also reviewed a set of photographs she received from one of L.D.'s guardians that

depicted L.D.'s face with a cut on his lower lip. (R-12.) These photographs were taken after L.D.'s guardian received notification of the allegations of abuse. (*Ibid.*) Lattie also reviewed nursing documents that detailed L.D.'s injuries (R-14) and Bancroft's applicable policies and procedures (R-15). Bancroft's policies required staff to document any behavioral incidents on the shift log sheet. Bancroft's policies define physical abuse as actions such as striking a patient. (*Id.* at DHS166–170.) The shift log sheet from Bancroft showed that G.E. did not log any behavioral incidents or critical issues for his shift on the date at issue. (R-10.)

During her testimony, Lattie was shown video surveillance footage taken at the Bancroft facility on the morning of June 22, 2017. (R-22.) A viewing of the first video file, included as part of the footage marked as R-22, showed the following:

- The video clip is dated June 22, 2017, and shows a starting time stamp of 06:33:03. The video is stamped "Rear Hall." There is no sound to accompany the video footage, and the camera is pointing at what appears to be a hallway. On the right-hand side of the video, there are two open doors leading off the hallway. The second of these open doors opens to a bathroom, and a shower stall can be seen with a closed shower curtain. As the video plays, L.D. can be seen taking a shower in the shower stall behind the closed shower curtain. L.D. is holding a shower sprayer in his hand as he is showering.
- At time stamp 06:33:52, G.E. enters the view of the camera, entering from the left-hand side of the scene. G.E. appears to be hurrying into the area and runs directly into the bathroom where L.D. is showering.
- G.E. does not pause upon entering the bathroom, and he proceeds to pull back the shower curtain and, at time stamp 06:33:55, G.E. steps up onto the lip on the floor at the entrance to the shower. G.E.'s back is to the camera and G.E. is facing L.D., who remains in the shower.
- At time stamp 06:33:58, with his left hand, G.E. grabs the shower sprayer out of L.D.'s hands and G.E. further forces open the shower curtain with his right hand. L.D. appears to retreat towards the back of the shower.
- At time stamp 06:33:59, G.E. steps back out of the shower. The shower sprayer remains in G.E.'s left hand and he further pulls the shower curtain open with his right hand as he takes a step back out of the shower. L.D. is standing in the rear of the shower in the far corner and his arms are crossed over his chest in what appears to be a defensive posture.
- At time stamp 06:34:01, L.D. reaches out to grab the shower curtain with his left hand. As he does so, G.E. uses his right hand to strike L.D.'s outreached hand and pulls L.D.'s hand downward before letting go. L.D. withdraws his hand and, at time stamp 06:34:05, G.E. steps back onto the lip at the entrance to the shower. As he steps up to re-enter the shower, G.E.'s right hand is extended into the shower towards L.D. and G.E.'s left hand continues to hold the shower sprayer.
- At time stamp 06:34:05, G.E.'s right hand strikes forward towards L.D., who is still in the back of the shower out of sight of the camera (blocked by G.E.'s presence in the shower entrance). G.E. is leaning his body forward towards L.D. on his right foot as he lifts his left foot, and he strikes at L.D. with his right hand.
- At time stamp 06:34:08, G.E. can be seen stepping backwards, removing his right foot from the shower ledge and placing that foot back on the bathroom floor.
- At time stamp 06:34:09, G.E. moves his right foot back onto the shower ledge. With both of his feet now back on the ledge, G.E. raises his right arm and uses his right hand to strike

at L.D.

- At time stamp 06:34:12, G.E. steps back out of the shower. L.D. remains standing in the back of the shower with his arms raised across his body in what appears to be a defensive posture.
- At time stamp 06:34:14, G.E. drops the shower sprayer and leaves the bathroom.
- At time stamp 06:34:39, G.E. has left the area and L.D. resumes taking a shower. At time stamp 06:34:40, L.D. can be seen holding the shower sprayer up to his mouth. L.D. continues taking a shower until the video clip ends at time stamp 06:35:05.

Lattie received this video footage from Bancroft as part of her investigation. She commented that seeing the footage again “hurts.” (Sept. 29, 2022, Tr. at 50:18.) Viewing this footage, Lattie concluded that L.D. was at the home taking a shower when he was approached by G.E. G.E. “enter[ed] into his space” and physically engaged him. (*Id.* at 50:20–22.) L.D. “didn’t appear to be an imminent threat to himself or others.” (*Id.* at 50:23–24). Although G.E., in his statement, said that he was responding to L.D. making “sounds of aggression” (*id.* at 60:24–61:4), the video shows that L.D. was in the shower by himself, and there “was no other party to aggress on” (*id.* at 61:4–6).

G.E. can be seen in this footage punching L.D. in the shower (*id.* at 88:3–12). Lattie did not see anything provoking G.E. to retaliate against L.D. in the manner shown in the video. From her review of the video footage, Lattie concluded that G.E. is seen punching and pushing L.D., which constitutes physical abuse. Lattie first viewed this video footage before interviewing G.E. Lattie did not find that G.E.’s statement that L.D. was aggressive or that G.E. was acting in self-defense was consistent with what Lattie had seen in the video. (See R-6.)

Lattie was also shown the second video file, included as part of the footage marked as R-22. This video footage showed the following:

- The video clip is dated June 22, 2017, and shows a starting time stamp of 07:10:01. The video is stamped “Rear Hall” and appears to be footage from the same camera as the video in the first clip contained in R-22 was created from, showing a hallway outside a bathroom. Like the first clip, there is no sound to accompany the video footage.
- At time stamp 7:10:01, G.E. is in the hallway outside the bathroom. The bathroom door is open, and the unidentified patient is still in the shower in the bathroom with the curtain pulled back. L.D. is standing in the hallway outside the bathroom, facing the bathroom door with his back to the wall as G.E. moves towards him waving his right hand with an extended pointer finger in L.D.’s face. L.D. turns and begins to back down the hallway retreating from G.E. when, at time stamp 7:10:05, G.E. uses his right hand to shove L.D. as L.D. is retreating back down the hallway away from the bathroom door.
- At time stamp 7:10:12, L.D. begins to spin in circles as he is standing, and raises his left hand. L.D. uses his left hand to swipe at G.E.’s shirt, but misses, as G.E. uses his right hand to knock L.D.’s hand away from him. After swiping L.D.’s hand, G.E. brings his right hand back and strikes towards L.D.’s shoulder with a backhand motion, although it is unclear from the video if G.E.’s hand made contact with L.D. as L.D. turns away from G.E.
- At time stamp 7:10:19, G.E. backs down the hallway, leaving the area observed by the camera as L.D. remains in the hallway standing and spinning in circles. The unidentified patient remains in the shower.
- At time stamp 7:10:26, G.E. re-enters the hallway within sight of the camera. G.E. enters

the bathroom and appears to be assisting the unidentified patient, who has now left the shower. L.D. remains in the hallway outside the bathroom, standing and spinning in circles in the bathroom doorway. The video ends at time stamp 7:10:40 as the unidentified patient is leaving the bathroom, passing L.D. in the hallway.

Lattie was also shown the third video file, included as part of the footage marked as R-22. This video footage showed the following:

- The video clip is dated June 22, 2017, and shows a starting time stamp of 07:11:16. The video is stamped “Living” and appears to be footage showing a living room and kitchen area. As in the first two clips, there is no sound to accompany the video footage. The area shows a living-room area with couches, chairs, tables, and a television set mounted on a wall. Just off this living-room area is a kitchenette with a partial half wall with a counter on it separating the kitchenette area from the living-room area.
- At the start of the video clip, L.D. can be seen in the kitchen area in the upper left-hand side of the video shot wearing a light-colored blue or green shirt. L.D. appears to be pushing items off the counter and onto the floor in the kitchen area. There is another patient, whom Lattie identified as J.W., visible lying on a couch on the left-hand side of the scene. There is also a coffee table between two chairs on the left side of the scene and a walkie-talkie is visible on that table. G.E. can be seen entering the scene at time stamp 7:11:22 wearing a yellow shirt and black hat.
- G.E. walks around the counter and into the kitchen area, where L.D. is standing and spinning in place. At time stamp 7:11:30, G.E. reaches out with his left hand for L.D., grabs L.D.’s shoulder, and shoves L.D., whose back is facing G.E. L.D. turns and begins moving towards G.E., who begins backing out of the kitchen area.
- At time stamp 7:11:35, G.E. walks out of the kitchen area and leaves the area of the camera’s view, followed by L.D. G.E. moves to the left, going behind the kitchen area, and L.D. moves to the right behind a wall and is no longer visible to the camera. At time stamp 7:11:43, G.E. can be seen walking behind the kitchen and moving behind the wall that L.D. exited the area behind.
- At time stamp 7:12:13, G.E. is visible walking back into the scene. G.E. is wearing a white undershirt and holding his yellow shirt in his hand. G.E. goes into the kitchen area and, at time stamp 7:12:16, L.D. re-enters the area and begins pushing items off the kitchen counter and spinning in circles as he walks. G.E. can be seen putting his yellow shirt back on while in the kitchen and G.E. appears to be picking items up off the floor in the kitchen.
- At time stamp 7:12:41, L.D. walks over to J.W., who has been lying on the couch throughout this time, while G.E. is picking items up in the kitchen. L.D. appears to grab J.W. by the arm and starts pulling him up off the couch. J.W., now on his feet, can be seen trying to break L.D.’s grip on his arm.
- At time stamp 7:12:56, L.D. and J.W. are struggling, with J.W. trying to break free from L.D.’s grip on his arm. J.W. falls back down onto the couch and pulls L.D. down on the couch with him. The two stand up again and move together towards G.E., who is still in the kitchen area.
- At time stamp 7:13:08, J.W. breaks free of L.D.’s grip on his arm and returns to the couch. L.D. is standing at the kitchen counter. G.E. remains in the kitchen and L.D. begins to spin as he stands between the kitchen counter and the couch, where J.W. has resumed lying

down. G.E. leaves the area at time stamp 7:13:25, exiting behind the kitchen and out of view of the camera. L.D. continues to stand while spinning by J.W. on the couch, occasionally reaching down to try to grab J.W. again. At time stamp 7:14:08, L.D. grabs J.W. by the arm and pulls him up. The two are standing by the couch as J.W. struggles to get his arm free from L.D., and they are moving around the living room area together, with J.W. trying to get free from L.D.

- At time stamp 7:14:48, J.W. gets free from L.D., and L.D. begins swinging his arms through the air towards J.W., hitting him with open hands as J.W. retreats back towards the couch.
- At time stamp 7:14:54, G.E. re-enters the area from behind the kitchen. G.E. runs through the kitchen area towards L.D. and shoves L.D. down onto the couch. G.E. then grabs L.D.'s legs and pulls them, pulling L.D. off the couch and onto the floor. G.E. lets go of L.D., who stands and pursues G.E., who leaves the area. J.W. is seen pushing the couch back against the wall (it was pulled away from the wall after G.E. pulled L.D. off the couch), and he resumes lying on the couch.
- At time stamp 7:15:24, G.E. enters the area again from behind the kitchen. G.E. walks around the half wall and enters the kitchen area. L.D. can be seen following G.E., but continues walking behind the wall where the television is mounted and out of the camera view. G.E. walks back and follows L.D. out of the camera's view.
- At time stamp 7:15:39, another unidentified patient walks into the kitchen area. G.E. can be seen entering the area from behind the wall where the television is mounted, and he is pulling L.D. back into the area and throws L.D. against a wall that borders the kitchen area. G.E. and L.D. can be seen struggling as L.D. is holding G.E.'s shirt and G.E. is attempting to break free.
- At time stamp 7:16:03, G.E. removes his yellow shirt and breaks free of L.D. L.D. throws down G.E.'s shirt and follows G.E. as he moves back into the kitchen area. At time stamp 7:16:13, G.E. leaves the area and L.D. remains in the kitchen area standing and spinning. J.W. remains lying on the couch in the living room area. L.D. begins to walk while spinning in circles around the half wall in the kitchen and follows G.E. out of the area.
- At time stamp 7:16:32, G.E. is behind the wall in the kitchen area where the stove is located and out of camera view. L.D. can be seen standing in the area behind the kitchen, spinning in circles as he stands. At time stamp 7:16:32, G.E. can be seen through the door opening next to the stove reaching for an item by the stove. At time stamp 7:16:42 it appears that G.E. is utilizing something to strike at L.D., who can be seen reacting as something swipes at him from behind the wall area where G.E. is. L.D. stops spinning and stands with his hands up near his chest as he faces G.E., who remains behind the wall and out of visibility from the camera. At time stamp 7:16:53, L.D. walks out of the area, exiting to the right, behind the wall where the TV is mounted.
- At time stamp 7:18:15, G.E. is seen moving out from behind the wall where the TV is mounted, moving behind the wall in the kitchen area. G.E. is shirtless at this time and appears to be holding one end of his shirt while L.D. follows behind him holding the other end of the shirt. L.D. lets go of the shirt and exits the view to the right, while G.E. returns to the kitchen area holding his shirt and undershirt. At time stamp 7:18:35, G.E. puts his shirt back on and leaves the area.
- At time stamp 7:19:01, G.E. can be seen emerging from the area behind the wall where the TV is mounted, holding onto L.D.'s shirt as he leads L.D. across to behind the kitchen wall

and out of view of the camera.

- G.E. returns to the kitchen, alone, at time stamp 7:19:32. The video footage ends at time stamp 7:19:37.

Lattie noted that she was “hurt” for L.D. and his peers after watching this footage. (Sept. 29, 2022, Tr. at 53:10–11.) Twice during the footage, L.D. was observed acting aggressively towards J.W. G.E. did not act to “create space” and ensure safety for J.W. (Id. at 53:10–15.) G.E. left L.D. alone in a room with J.W. After time lapses, J.D. gets aggressive with J.W. before G.E. intervenes by pushing L.D. and pulling him by the legs. The walkie-talkie that is used for code responses can be seen unused in the area, and not reached for. There was some struggle where L.D. was engaging in aggression in the form of shirt-pulling with G.E.

The struggle at one point appeared to result in G.E. body slamming L.D. against a wall. A Safe and Positive Approach tells you to grab your clothes and try to attempt “finger peeling.” (Id. at 54:14–16.) If you cannot successfully complete finger peeling, you should remove the shirt, which G.E. did here, as an appropriate response. (Id. at 54:16–18.) It can also be seen that, at times, G.E. was in the back hallway pulling L.D. by his shirt from one side of the home to the other side - pushing, pulling, grabbing, and not creating a safe space. (Id. at 54:19–24.) This is not consistent with appropriate safe and positive responses to L.D.’s aggression.

Lattie’s investigation report (R-9) concluded, based on a preponderance of the evidence available (which included: the video footage, statements, and training records) that the allegations of abuse were substantiated. Lattie’s report noted a concern that the facility was understaffed during G.E.’s shift. This, however, did not affect the overall conclusion because G.E. did not attempt to use the techniques he had been trained on for behavioral intervention nor did he utilize the system available to call for assistance. Once Lattie’s report was completed, it was sent to the manager or director of the risk management team to review and then sent to the Human Resources Department for a determination of employment status based on the report’s findings.

Lattie felt that G.E. was not honest and forthcoming during the investigation. Lattie based this on G.E.’s witness statement as to what was identified in the video footage of the incident. In G.E.’s written statement, he begins by saying that he helped L.D. to shower and get dressed. G.E. wrote that L.D. tried to grab G.E., which required G.E. to calm him down, before he left L.D. to assist another patient. L.D. began making noise indicating he was going to act in an aggressive manner. (R-6.) The video (R-22) shows that L.D. was in the shower, by himself, when G.E. approached him and initiated the physical contact, in contrast to what G.E. relayed in his written statement.

When L.D. becomes aggressive, he makes certain noises. G.E. has been working with L.D. for some time and is aware of noises L.D. may make before becoming aggressive. G.E. mentioned this in his statement; the video (which has no sound) showed that L.D. was in the shower, by himself. There was no one else present in the area for L.D. to be aggressive towards. G.E. was working alone that evening, and ordinarily additional staff was assigned to the house. When L.D. began attacking J.W. on the couch that morning, G.E. intervened. That intervention, however, should have complied with L.D.’s behavior plan. L.D.’s behavior plan states that staff should use Safe and Positive Approaches in intervening with L.D., including removing other persons from the room for their safety. (R-17.)

G.E. should have utilized the walkie-talkie to “call in a code” for assistance with L.D. G.E., however, claimed in prior statements that either the battery was not in the walkie-talkie or the walkie-talkie was not working. However, more than one walkie-talkie is provided in the house,

and part of the duty of the overnight shift is to ensure that the provided walkie-talkies are functioning and turned to the correct channel at the start of the shift. Staff can also utilize a telephone to call for assistance. Although G.E. was the only person on the shift that night, he noted in his statement that at the start of his shift there were no unusual incidents, which would have given him time and opportunity to check the functioning of the walkie-talkies in the house before the incidents at issue. A review of the video footage further does not show G.E. attempting to utilize the walkie-talkie to call for assistance, even though a walkie-talkie is visible and unused on the table in the living-room area.

In his statement to Lattie, G.E. reported that L.D. had had an incident with the Day Program staff leading to him being restrained while he was at the Day Program that day. (R-6 at DHS76.) G.E. also reported that a member of the Day Program staff hit L.D. in the face that morning. (Ibid.; see also R-3 at DHS57 (statement of Shatana Wallace noting that L.D. was grabbing staff and patients in the Day Program, requiring patients to be removed from the area for their safety). In that same statement, however, G.E. stated that he noticed that L.D.'s lip was bleeding before he took L.D. to the Day Program (R-6 at DHS76), indicating that L.D.'s visible injuries were not attributable to any actions at the Day Program that morning. (See also R-3 at DHS57 (statement of Wallace noting that L.D.'s lip was bleeding when G.E. dropped L.D. off at the Day Program); id. at DHS56 (Wallace's statement that she noted that L.D.'s lip was bleeding and she attempted to clean the lip when she saw L.D. at the house before G.E. took L.D. over to the Day Program the morning of June 22, 2017).

G.E. gave a statement to Carol Dowd, of the Department of Human Services Office of Program Integrity & Accountability regarding the incident. (R-6.) In that statement, G.E. described the incident in the shower as follows:

While in the bathroom, he was lifting his hand. I was really really scared. So while he was in the shower, I said [L.D.] don't do that and I pointed my finger toward his face, I was afraid and I hit him on the left side of his face with my right hand, it was open, but I did not mean to. It was a spontaneous reaction, and then I jumped back. I did not hit him hard. I jumped back and watched him. I said relax let me give you a shower. I was able to rush through and give him the shower and then took him to his room and got him dressed. [R-6 at DHS76.]

Lattie acknowledged that she saw L.D. raise his hand in the video of this exchange consistent with what was described in G.E.'s statement. (R-22.)

G.E. also described the incident in the kitchen in this statement, detailing it as follows:

While I was in the kitchen, I saw [L.D.] grabbing [J.W.] on his shirt near his neck and [J.W.] was making noise. The walkie-talkie had no battery in it, so it was not functioning. I went to [L.D.] and [J.W.] and tried to separate them. [R-6 at DHS76.]

G.E. clarified that he attempted to separate L.D. and J.W. by standing "beside them and us[ing his] hands to try to rescue [J.W.] from his grip." (Id. at DHS77.) Lattie did not find this account consistent with what she viewed on the corresponding video. (R-22.) G.E. also stated that "when [L.D.] grabbed [J.W.]," he attempted to utilize the walkie-talkie, but it did not work. (R-6 at DHS78.) Lattie found this was also inconsistent with what was visible on the corresponding video of the incident. (R-22.) Lattie saw nothing in the video evidence indicating that G.E. was in jeopardy of his life or safety, and G.E. is not seen attempting to utilize the walkie-talkie to call for help, even though the device is visible, sitting on a table.

Dana Szymanski works for Bancroft as a behavior analyst at their Lakeside facility,

overseeing the treatment of patients in Bancroft's care and their behavior. Szymanski was board certified in 2019 as a behavior analyst. Szymanski has worked for Bancroft for the past seven years, first as a clinical associate, then as an applied behavior analyst (ABA) specialist assisting a board-certified analyst, then a behavior specialist pending her certification and, after receiving her certification in 2019, as a behavior analyst.

Bancroft's Lakeside facility consists of two homes housing eleven individuals. Each patient in the Bancroft program has their behavior evaluated and certain behaviors are tracked for either challenged behaviors (that should be decreased) or adaptive behaviors (that should be encouraged and increased). Szymanski investigated the allegation of abuse and neglect of patient L.D. by G.E. while she was working at Bancroft in June 2017 as an ABA specialist. Her job at that time was case management and assisting the certified behavior analyst in performing their functions to ensure the day-to-day administration of behavioral plans for her assigned patients.

The two homes Szymanski covered at that time were Sawmill I and Sawmill II, which are located next to each other. The Day Program is operated on the same campus, in a different building within walking distance, of Sawmill I and II. On the morning of June 22, 2017, Szymanski was assisting a patient from Sawmill I to get to their Day Program. She saw G.E. and L.D. walking to the Day Program. L.D. was "swinging and swatting" as he walked, which Szymanski noted was normal behavior for L.D. (Sept. 29, 2022, Tr. at 100:15–18.) Szymanski checked in with G.E. to see if there was anything wrong, but was told everything was okay, so Szymanski continued on to her destination.

Szymanski checked in later in the morning at Sawmill II to see how G.E. and L.D. were doing. There were no significant instances reported, but Szymanski knew that L.D. had had a "difficult day" the day before due to aggression that L.D. had shown to staff and other patients, which required the use of restraints. (*Id.* at 101:1–7.) Szymanski went to the Day Program to check on L.D. and saw that he had several scratches on his face and leg, as well as a cut on his lip. Szymanski followed up with nursing and documented her observations in a report. Szymanski asked for details from the Day Program staff and was told that L.D. arrived at the program with a cut on his lip and became soiled (L.D. is incontinent and wears adult diapers). Following that, Szymanski spoke to Day Program manager, Leonore Robinson, assisted in filling out an incident report, and contacted Bancroft's Risk Management Department. Knowing that L.D. had multiple restraints applied the day before, Szymanski knew that L.D. underwent "body checks" at that time. (*Id.* at 102:24–103:11.) Whenever a physical restraint is applied, Bancroft requires a reporting of the incident, as well as documentation of any injuries sustained in that incident. Body checks of the patient are performed to identify and document any injury sustained. Szymanski reviewed the information filed from those prior restraint incidents involving L.D. and noted that there were no documented injuries from those prior restraints.

Szymanski spoke to Robinson in an effort to narrow the time of injury. The Risk Management Department became involved to help identify when and how L.D. was injured. L.D. is not known to engage in self-injurious conduct, so it was not believed that L.D. caused his own injuries. Szymanski believed that someone else caused these injuries to L.D. Szymanski provided a statement to Bancroft's Risk Management Department (R-7), but did not engage in any additional follow-up.

Szymanski was familiar with L.D., as he was one of the patients on Szymanski's case load as an ABA specialist. Szymanski had started as an ABA specialist in February 2017, so L.D. had been on her case load for at least four months at the time of the incident. L.D. was a non-vocal patient, he communicated through use of signs, gestures, and reaching for items. His tracked

behaviors included aggression and disruption such as “swiping things off of counters [and] things like that.” (Sept. 29, 2022, Tr. at 110:3–4.)

L.D. was incontinent and needed assistance with personal hygiene. L.D. had things he liked, such as showers, but there were also things he did not like, such as having his hands washed. L.D. could be very affectionate and would show signs such as laughter and smiling when he was doing things he liked, but he could quickly undergo a visible affect change if things were not going as he would like. He would show a visibly “upset face,” which might precede trouble behaviors. (*Id.* at 110:22–25.) L.D. was prone to constant motion, including spinning and bumping into walls, which may have been a side effect of some of the medications he was taking. This sometimes made it difficult to transition him, moving him from place to place. L.D. had been aggressive with Szymanski in the past. L.D.’s aggression was “pretty consistent” with him swatting with his arms and grabbing onto your shirt, his holding onto you would be a large part of his aggression. (*Id.* at 112:2–5.) L.D. sometimes engaged in biting, but that was not something that Szymanski personally experienced or observed. When L.D. would grab your clothes, in a typical aggression for L.D., it was difficult to get away, requiring “finger peels” to get out of his grasp. (*Id.* at 112:9–13.)

L.D. sometimes required restraints when his aggression became “too intense” (*id.* at 112:13–14), but there were strategies that could be used to counter L.D.’s aggression. One of these strategies was to give L.D. space; moving out of his general area and beyond his arm reach would reduce L.D.’s aggression. Also, moving L.D. outside of the house to an area with more space helped to calm him down and avoid any unnecessary physical intervention.

L.D. had a documented behavioral plan (R-17) that documented these noted behaviors and responses to these behaviors. To respond to episodes of aggression, L.D.’s behavior plan calls for the following responses:

- Staff should be using Safe and Positive Approaches to pivot and parry out of [L.D.’s] danger zone and have a neutral demeanor.
- Use one chair or area of the room to redirect [L.D.] to regain his composure in the room. Staff should be pivoting and parrying around these objects until [L.D.] has stopped attempts to aggress.
- Staff will attempt to use other places where there are NO other person served OR staff will attempt to remove other persons served from the room. If other persons served are present, staff will remain between [L.D.] and his peers. If peers cannot safely be protected, or [L.D.’s] behavior becomes dangerous to others, implement *describe SPA-approved restraint techniques*[R-17 at DHS261.]

The SPA-approved restraint techniques referenced in this document varied. There could be a one or two-person standing or seated restraint, or a three-person supine restraint, which would involve holding a patient on the ground. It is up to the staff’s discretion to determine how unsafe the situation is. Staff should try to avoid the need for physical interaction whenever possible, but where a patient is in danger of hurting themselves or others, physical restraints may be appropriate.

Staff should always try to exhaust other options before resorting to using physical restraints. One-person holds are not recommended, because a patient could react with behavior that may endanger the staff member as well, such as head butting. If staff cannot redirect a patient or safely restrain them, they should seek assistance when it is known that a patient may be aggressive.

While restraints involve physical handling of patients, contact such as pushing, slapping,

or hitting a patient is never appropriate. (Sept. 29, 2022, Tr. at 116:8–15.) While L.D. has been aggressive with Szymanski in the past, L.D. was comfortable around her. Through her work with L.D., Szymanski was able to reinforce positive behaviors with L.D., such as utilizing picture cards to ask for snacks and enforce other preferred behaviors with him.

Lakeside is a campus with eleven homes in total, which are all walkable to each other. Staff can utilize their walkie-talkie system to call for assistance or a “code blue” to call staff at the other homes for assistance to respond to any crisis situations. (Sept. 29, 2022, Tr. at 118:17–20.) Bancroft policy requires critical issues, such as medication refusals, use of restraints, or other issues on a shift, to be documented and reported in an issue log. (R-15 at DHS166–170.) Bancroft also has a policy regarding protection from abuse, neglect, and/or exploitation, which specifically prohibits staff from engaging in physical abuse of a patient, including “striking with a closed or open hand; pushing to the ground or shoving aggressively.” (*Id.* at DHS171–173) G.E. and all Bancroft staff were trained on these policies.

G.E. worked on the overnight staff, so he likely had less “face-to-face” time than other staff had with the patients, since the patients were sleeping during a significant portion of his shift. (Sept. 29, 2022, Tr. at 122:12–15.) L.D. lived at Sawmill II with four other patients at the time of the incident. G.E. was a direct-care staff charged with working with patients in Sawmill II. Szymanski believed a normal overnight staff at Sawmill II was two persons, but that could vary up or down over time. Staff in each of the houses and the ratio of staff to patients can vary based on need. Certain patients may require one-on-one care, resulting in higher staffing levels at a given home.

Szymanski did not review the video recordings of the incident. Staff is given discretion to respond to acts of aggression as they see fit. The most involved or severe response to an act of aggression would be to apply a supine restraint on a patient. This requires at least three staff members, with one staff member on each arm holding the bicep or forearm on either side of the individual, laying them on their back, with the third staff member across the patient’s lap to secure the legs from moving. On the night in question, G.E. was the only staff member working at Sawmill II. Although G.E. stated that the walkie-talkie was not operative that evening, staff were trained and encouraged to check the functionality of the walkie-talkies at the start of their shifts.

Szymanski’s involvement with G.E. was limited to communications with him on challenging behaviors of patients and how to appropriately follow procedures to address those challenging behaviors. Szymanski never spoke directly to G.E. about L.D.’s injuries. Szymanski did not notice those injuries until seeing L.D. at the Day Program, after she had seen G.E. that morning. Szymanski was aware that there was an incident with L.D. and a female staff member at the Day Program, the day after being informed by staff at the Day Program that when L.D. was brought to the Day Program, he was soiled and had visible injuries. G.E. was called back to pick L.D. up at the Day Program to take him back to Sawmill II and clean him up.

Carol Fairhurst⁴ works as a supervisor in the Department of Human Services (DHS) Office of Investigations. Fairhurst investigates allegations of abuse and neglect of persons residing in community settings or institutions. Fairhurst has worked as a supervisor in that unit since 2018, supervising a team of investigators, coordinating their assignments, and reviewing reports to determine if conclusions are substantiated. Before being made a supervisor in 2018, Fairhurst had worked as an investigator for the DHS since 2008. Fairhurst is also a licensed professional nurse,

⁴ At hearing, it was clarified that Carol Fairhurst was formerly known as Carol Dowd.

obtaining her nursing license in 2005. Fairhurst has worked for the State of New Jersey since 2002.

In conducting investigations, Fairhurst receives assignments, reviews incident reports, schedules interviews, and gathers evidence. After conducting interviews, a finding is formulated based on the results of the investigation. When Fairhurst makes a finding that investigated charges are substantiated, those charges are forwarded for review by the Chief of Investigations and the Director. In 2017, Fairhurst was working as an investigator and was assigned to investigate an allegation of abuse with minor injury to a patient, L.D. The allegation was that L.D. was neglected by G.E. by not seeking a medical evaluation of L.D.

At the onset of her investigation, Fairhurst received a DHS Unusual Incident Report that was based on information from Bancroft. (R-1.) Fairhurst contacted Bancroft to arrange to get the available video footage, and reached out to the local police department to determine when she could begin interviewing witnesses without interfering with any ongoing criminal investigation. After she was cleared to begin interviewing in September 2017, Fairhurst tried to interview L.D. and other residents, but was unsuccessful in doing so. Fairhurst interviewed G.E., as well as other Bancroft staff members, including Shatana Wallace (R-3), who was the person who first reported L.D.'s injury.

Wallace told Fairhurst that when she arrived for her shift on June 22, 2017, she first reported to the Sawmill II residence. At the residence, Wallace met with G.E., who asked her to start making breakfast for the residents. While making breakfast, Wallace saw L.D., and she noted that L.D.'s lip was bleeding. Wallace asked G.E. about the injury to L.D. and if they should contact a nurse to attend to L.D. G.E. told her that L.D. "always does that" and not to contact nursing. (Oct. 6, 2022, Tr. at 21:23–24.) Wallace checked L.D.'s injury and put Neosporin⁵ on it. Wallace then took another patient over to the Day Program. While at the Day Program, Wallace saw G.E. bringing L.D. over to the program and noted that L.D.'s lip was still bleeding. Wallace then reported L.D.'s injury to her supervisor, Leonore Robinson.

Fairhurst also took a written statement from Robinson. (R-4.) Robinson confirmed that Wallace had reported to her that patient L.D. had "a busted lip." (*Id.* at DHS60.) Robinson confirmed L.D.'s injury and called nursing to check on L.D. Fairhurst also spoke to Maurice Evans, who was employed as a therapeutic-activities specialist at Bancroft. Evans saw L.D. at the residence on the morning of June 22, 2017, but did not notice any injury on him at that time. Fairhurst also spoke to and obtained a written statement from Szymanski. (R-7.) Szymanski told Fairhurst that L.D. had been put into restraints by staff working the earlier 3:00 p.m. to 11:00 p.m. shift that day; no injury was reported from that restraint. L.D. also had no history of self-injurious behavior.

Fairhurst was not able to get information directly from the residents of Sawmill II regarding the incident, but it is not unusual that patients with verbal communications impediments are unable to provide information in an investigation. Fairhurst also spoke to the overnight manager, Darius Humphries (R-5), as well as the nurse who treated L.D., Tawanna Morris (R-8). Morris did not have much information or details on the injuries she assessed on L.D. Morris reported that she was called by the employees at the Day Program to come and assess L.D. that day.

Fairhurst was able to interview G.E. in person at her office at the Vineland Developmental Center. G.E. reported that he was working the overnight shift at Sawmill II on that date from 11:00 p.m. to 9:00 a.m. (*See* R-6 at DHS74.) When he arrived for work, the outgoing shift mentioned

⁵ Neosporin is a topical antibiotic cream utilized to prevent infection in minor wounds. "First Aid Info," Neosporin.com, available at <https://www.neosporin.com/first-aid-info> (last visited July 20, 2023).

that L.D. had some issues during their shift and needed to be restrained. The outgoing shift warned G.E. that he was going to have a “busy night” with L.D. (Oct. 6, 2022, Tr. at 31:13–16; R-6 at DHS75.) G.E. was working that shift alone. (See R-13 at DHS132.) When L.D. woke up that morning, G.E. tried to give him a shower. L.D. was acting aggressively and G.E. was afraid. While in the shower, L.D. tried reaching up and G.E. thought that L.D. was trying to grab him. G.E. said that he reacted by hitting L.D. with an open hand in the face. (R-6 at DHS76.)

G.E. further reported that while he was attending to other patients that morning, L.D. was going after another patient, J.W., in the living room, forcing G.E. to intervene. G.E. stated that L.D. had grabbed hold of J.W., and G.E. had to act to break J.W. free from L.D.’s grip. G.E. said that he was sorry and did not intend to injure L.D. (id. at DHS78), but acknowledged that he struck L.D. in the face. Fairhurst wrote up the interview with G.E. G.E. reviewed and signed Fairhurst’s written record of the interview, acknowledging its accuracy. (Id. at DHS74–79.⁶) G.E. also provided a written statement to Fairhurst. (Id. at DHS71–72.)

As part of her interview with G.E., Fairhurst also discussed the status of the walkie-talkies at Sawmill II on the day at issue. Walkie-talkies are maintained at Sawmill II and are available for staff to use to call for help. G.E. told Fairhurst that the walkie-talkie in Sawmill II was not working, and G.E. realized this when he tried to use it to call for help when L.D. grabbed J.W. in the living room. (Id. at DHS78.)

Fairhurst reviewed L.D.’s behavior support plan (R-17) and other documents, including L.D.’s individual habilitation plan. (R-16.) L.D.’s IHP details his diagnosis of autistic disorder, intellectual disability, and seizure disorder. (Id. at DHS220.) L.D. resides in a group home on Bancroft’s Lakeside Campus with three other patients (Ibid.) and attends Bancroft’s Lakeside Day Program every Monday through Friday. (Ibid.) L.D. is non-verbal and requires staff assistance and supervision with most of the activities of daily living, including toileting and personal care. (Id. at DHS223.) L.D. has a history of engaging in aggressive behavior “in the form of grabbing and hitting,” and can also engage in disruptive behavior such as “throwing, pulling, or hitting objects.” (Id. at DHS226.)

L.D.’s behavior support plan details how to address L.D.’s aggressive behaviors. (R-17.) When L.D. engages in aggressive behavior, staff should respond with safe and positive techniques to pivot away from L.D.’s “danger zone.” (Oct. 6, 2022, Tr. at 38:12–17; R-6 at DHS75.) L.D.’s behavior plan calls for staff to de-escalate L.D.’s dangerous behaviors. G.E., as part of his employment with Bancroft, received specific training on L.D.’s behavior support plan, as well as Bancroft’s policies on prevention of abuse and neglect, and first aid. (R-18.)

Fairhurst received photographs from one of L.D.’s guardians showing L.D.’s face and the injury to L.D.’s lower lip. (R-12.) These pictures were taken some time after Bancroft was notified of the allegation of abuse. Fairhurst was unsure exactly when the photos were taken. L.D.’s injuries, however, were also confirmed by Bancroft’s nursing staff who examined L.D. on the day of the incident. (R-14.)

Bancroft’s policy requires certain critical issues to be documented by staff in a critical issue log. (R-15.) The issues requiring documentation include “unexpected behavioral outbursts,” “health concerns/complaints,” and “emergencies.” (Ibid.) The issue log from G.E.’s shift, on June 22, 2017, however, reported no issues. (R-10 at DHS284.) That log entry was signed by G.E. (Ibid.)

Bancroft’s internal investigation concluded that there was sufficient credible evidence to substantiate a finding of physical abuse. (R-9 at DHS95.) Fairhurst, however, conducted her own

⁶ The record of this interview documents that the interviewer was Carol Dowd. (R-6 at DHS74.)

investigation independent of the allegation on behalf of DHS. (Oct. 6, 2022, Tr. at 45:1–7.) This investigation included review of the available video footage. (R-22.) Reviewing the first video of G.E.’s encounter with L.D. in the shower, Fairhurst noted that G.E. rushed into the area in a hurried manner, and “drove his right arm back in a punching motion toward Mr. L.D.” Fairhurst did not note anything on the video showing L.D. doing anything to provoke G.E.’s actions. (Oct. 6, 2022, Tr. at 47:13–17.) That video footage showed that G.E. punched and pushed L.D., and that constitutes physical abuse. (Id. at 47:18–23.)

The second video showed G.E. assisting another patient in the shower when L.D. entered the area. (R-22.) L.D. was spinning and twirling, and G.E. appeared angry. (Oct. 6, 2022, Tr. at 49:3–9.) G.E. swatted at L.D. and made contact with L.D.’s upper body. (R-22.)

In the third video, L.D. is seen pulling, pushing, and hitting another patient, J.W., who is on the couch. (Oct. 6, 2022, Tr. at 50:12–15.) G.E. sees this and reacts by pushing L.D. down into a chair and pulling L.D.’s legs, pulling him off the chair. (Id. at 50:23– 51:4.) This kind of pushing and shoving is considered physical abuse. (Ibid.) Also, at the footage time stamped 7:16:28, it appears that G.E. grabs something off the wall near the stove and appears to strike L.D. with an object, possibly a towel or shirt, as L.D. can be seen flinching as G.E. strikes at him in the footage. (Id. at 53:20–54:4.)

Although G.E. reported that L.D. was aggressive and displaying aggressive behaviors with J.W. that day (R-6 at DHS76), G.E. made no mention that he shoved L.D. during this incident when Fairhurst interviewed him, although the video footage clearly documents that he did so. (R-22; Oct. 6, 2022, Tr. at 51:10–19.)

G.E. also reported that he attempted to utilize the walkie-talkie to call for assistance when L.D. grabbed J.W., but the device was not working. (R-6 at DHS78.) These devices can be utilized by staff to call a “code blue” to call in additional staff for assistance. (R-5 at DHS66–67.) The video, however, shows that there was a walkie-talkie visible on the table in the living room during this incident and G.E. is not attempting to utilize the device. (R-22; Oct. 6, 2022, Tr. at 52:8–15.) Fairhurst did not personally test the walkie-talkie at issue as part of her investigation; however, she believed the lack of functionality of this device would not otherwise negate the abuse she observed on the video footage.

Fairhurst’s investigation also noted a concern that G.E. was the only staff person on duty the evening of the incident. (R-2 at DHS51; see also R-2 at DHS24.) Fairhurst believed that two staff were usually assigned to Sawmill II, and G.E., in his interview, noted that he should not have been the only staff assigned to work that evening. There were four patients living in the house at that time. (R-13 at DHS132; R-6 at DHS75.) At least one of the patients had a condition known as PICA, where they attempt to ingest non-food items and require regular supervision to ensure their safety. (Ibid.)

Fairhurst interviewed Darius Humphries, the overnight program manager at Bancroft, who explained that there are ordinarily two staff assigned to the overnight shift at Sawmill II. (R-5 at DHS66.) On the night in question, there was not enough available staff, and one of the assigned staff was re-assigned to Sawmill I, leaving G.E. on the shift alone. (Ibid.) Fairhurst’s findings regarding abuse, however, were “based upon the fact that the action was performed. [G.E.’s] abusive action[s] of the punch, shoving, pushing, pulling [were] performed and captured on video evidence. Staffing had nothing to do with a physical abuse act that had occurred.” (Oct. 6, 2022, Tr. at 38:2–7.)

Fairhurst’s investigation confirmed that L.D. had been restrained while he was in the Day Program that day. Fairhurst attempted to get documents from Bancroft documenting this incident,

but none were produced. While it is possible that L.D. may have been injured, when he was restrained at the Day Program that morning; Wallace reported that she noted that L.D. had a bloody lip before L.D. was taken to the Day Program that morning. (R-3 at DHS56.) G.E. also reported that L.D. had a bloody lip before he took L.D. to the Day Program that morning. (R-6 at DHS76.)

Fairhurst prepared an investigation report of her findings and concluded that the allegation of physical abuse in this matter was substantiated. (R-2 at DHS48.) In her report, Fairhurst concluded:

Based on a preponderance of the testimonial and documentary evidence obtained, the allegation that [L.D.], an individual receiving services from the Division of Developmental Disabilities (DDD), was physically abused by [G.E.], Bancroft Program Associate, is substantiated. Specifically, on 6/22/17, morning video footage of the residence obtained by Bancroft Neurohealth, captured [G.E.] physically abusing [L.D.] multiple times during and after hygiene care. As a result of [G.E.'s] actions, [L.D.] sustained a cut to his lower lip and his lower lip was swollen. [G.E.] also sustained a scratch under his left eye. [*Ibid.*]

This charge was supported by the video evidence (R-22), as well as G.E.'s own admission that he struck L.D. on at least one occasion. (R-6 at DHS76.)

Fairhurst also substantiated an allegation that G.E. neglected L.D. by not having L.D.'s visible injury medically assessed and treated. (R-2 at DHS50.) This charge was supported by G.E.'s admission that he saw that L.D.'s lip was bleeding before taking him to the Day Program (R-6 at DHS77), but he did not report the injury (*see* R-10 at DHS284), and told Wallace not to call a nurse to address the injury.

Fairhurst also substantiated the allegation that G.E. "engaged in criminal activity" on June 22, 2017. (R-2 at DHS50.) This was supported by the police report, which documented that G.E. was arrested and charged with simple assault and endangering the welfare of a person unable to care for themselves. (R-11.) G.E. was subsequently indicted on criminal charges related to this incident and those charges were dismissed after G.E. successfully completed the Pretrial Intervention program (PTI). (*See* R-19.)

Before Fairhurst's investigation was closed, additional reviews took place. Fairhurst's conclusions were reviewed and approved by her supervisor, as well as by the director of the DHS Office of Investigations. The DHS regional director was also consulted in the determination before making the referral for the inclusion of G.E. on the Central Registry of Offenders Against Individuals with Developmental Disabilities. (*See* R-21.)

FOR PETITIONER

G.E. has worked for Bancroft since 2016. Prior to working for Bancroft, G.E. worked for other entities providing direct care to individuals with developmental disabilities. At the time of the incident, G.E. was assigned to work at Sawmill II. G.E. described Sawmill II as one of the hardest houses to work at, due to the diagnoses of the persons housed there. One of the patients, L.D., was always aggressive. G.E. described another patient at Sawmill II, R.S., as being "fragile" and needing "protection." (Oct. 6, 2022, Tr. at 122:2-4.) R.S. often leaves his room to get things to bring back into his room, and L.D., when he has any kind of escalation, can be dangerous.

When working the overnight shift, G.E. said, you “have to be on your toes.” (Id. at 124:12–15.) G.E. claimed that there were five patients in the home that night (id. at 124:19–22), although the records indicate that there were only four. (See R-13 at DHS132.) Usually the manager, Darius Humphries, visits Sawmill II during G.E.’s shift, but he did not visit on the night in question. That night, Humphrey called to tell him that his colleague was being pulled to work in another house and that G.E. would be working the shift alone. Ideally, you need three persons to staff the house, but there are usually two staff members assigned; G.E. was the only staff on duty in Sawmill II that night.

Reviewing the video footage (R-22), G.E. noted that the first clip of L.D. in the shower was possibly L.D.’s second shower that day. G.E. said that L.D. was “making noise” at the time, which indicated to G.E. that L.D. was about to “act up.” (Oct. 6, 2022, Tr. at 128:9–12.) G.E. was concerned that L.D. may do something to R.S. because R.S. was “very fragile.” (Id. at 129:17–22.)

G.E. was in the kitchen when he heard L.D. making noise, and he responded to “rescue” R.S. from L.D. (Id. at 129:22.) When working with L.D., G.E. would raise his voice when L.D. escalated because that would sometimes calm L.D. down. (Id. at 135:17–25.) Although R.S. was not in the room with L.D. at the time, G.E. was concerned that L.D. may go into R.S.’s room. G.E. tried raising his voice with L.D. that day, but it did not work. At the end of the video footage, G.E. noted that he walked away to give L.D. time to calm down. G.E. also had to check on other patients, so he could not remain in the bathroom with L.D. any longer. G.E. did not mean to strike L.D., but the situation he was placed in was “overwhelming.” (Id. at 134:22–23.)

L.D. is very strong and “very scary.” (Id. at 130:3–8.) When his shift started that day, G.E. heard from the prior shift that he was going to have a “rough night” and that L.D. had to be restrained during the previous shift. (Id. at 130:13–25.) Because he was working the shift alone, there was no way for G.E. to properly restrain L.D. himself. A proper restraint cannot be done with fewer than three persons. G.E. could not call for assistance that night because the walkie-talkie was not working and did not have a battery in it.

Although G.E. was trained on L.D.’s behavior, L.D.’s behavior plan was designed under the premise of the house being appropriately staffed. Because G.E. was the only staff member at the house at that time, he could not effectively implement L.D.’s behavior plan. For example, he could not effectively restrain L.D. by himself; it would require a minimum of three persons to effectuate a proper restraint. (Id. at 131:8–13.)

When G.E. was asked to make a statement, he did not remember everything from that shift. G.E. did not check the walkie-talkie at the start of his shift. He did not need it until later in the morning, when he then learned that the walkie-talkie was not working. There were two walkie-talkies in the residence that morning, but both of them were broken. G.E. admits he should have checked them earlier in his shift, but he never had problems before with batteries not being in the walkie-talkies provided.

Viewing the third video clip, G.E. noted that he was in the kitchen when he saw L.D. grabbing another patient, J.W. G.E. moved to “pull him out” to protect J.W. (Id. at 139:15–17.) L.D. also tried to hold G.E. by his shirt, and G.E. noted that he had to slip out of his shirt to escape L.D.’s grip in this footage.

That morning, G.E. took L.D. to the Day Program. Some Day Program staff start their shifts by helping out in the houses before going to the Day Program to work. The Day Program is on the same campus as Sawmill II. After G.E. took L.D. to the Day Program, L.D. started “acting up” and grabbed some of the Day Program staff. (Id. at 143:8–10.) The staff at the Day Program

hit L.D. in the face and restrained him. After G.E. returned to Sawmill II, the Day Program staff called him to come pick L.D. up because L.D. had soiled himself.

G.E. “never, ever, for any reason, tried to hurt L.D.” (Id. at 146:3–5.) After he struck L.D. in the shower, G.E. did not notice that L.D.’s lip was cut. (Id. at 146:10–13.) Another staff member pointed out the injury to him and G.E. cleaned L.D.’s lip. The other staff member did not regularly work with L.D. like G.E. did. G.E. told the staff member that it was “always the case with him” and she did not need to call for a nurse to address L.D.’s lip. (Id. at 148:4–6.) G.E. felt overwhelmed and was afraid that day because he was the only staff working that shift. G.E. did not log the incident involving L.D. G.E. stated that he would have logged the incident as required when he returned to work the following evening, but he received a call from Bancroft telling him to “stay away,” so he did not return to work and log the incidents.

G.E. was arrested by the State Police, who took him to the station and booked him before bringing him back home. G.E. was indicted in Salem County and applied for the PTI Program. G.E.’s application for PTI was initially rejected. After appealing that rejection, G.E. was allowed into the PTI Program, and after he completed the program the criminal charges were dismissed. (R-19.)

THE ALJ’S FACTUAL FINDINGS

Based upon the testimony and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, **THE ALJ FOUND AS FACT:**

- Bancroft is a provider of programs and services for individuals with autism and intellectual or developmental disabilities and those in need of neurological rehabilitation.
- In June 2017, the petitioner was employed by Bancroft as a program associate.
- On the morning of June 22, 2017, the petitioner was assigned to work the overnight shift from 11:00 p.m. to 9:00 a.m. at the Sawmill II group home at Bancroft’s Lakeside Program located in Upper Pittsgrove/Mullica Hill, New Jersey. (See R-10 at DHS284.)
- L.D. was a twenty-four-year-old male diagnosed with autistic disorder, intellectual disability, asthma, and seizure disorder. (R-16 at DHS220.) He was unable to communicate verbally and required assistance with the activities of daily living, including toileting, meal preparation, hygiene, communication, and social skills. (Id. at DHS221–23.)
- L.D. was a resident at Sawmill II on June 22, 2017, and has resided at the facility since moving there on June 29, 2015. (R-16 at DHS220.)
- L.D.’s placement at Bancroft’s Sawmill II facility is funded by the New Jersey Department (sic: Division) of Developmental Disabilities (“NJDDD”). (R-16 at DHS220.)
- On June 22, 2017, L.D. resided at Sawmill II with three other residents. (R- 10 at DHS284; R-16 at DHS220.)
- L.D. attends a Day Program at Bancroft every Monday through Friday from 9:00 a.m. to 2:30 p.m. (R-16 at DHS220.) June 22, 2017, was a Thursday, and L.D. attended the Day Program at Bancroft that day consistent with his individual habilitation plan. (Ibid.)
- L.D. was known to be aggressive and to engage in other maladaptive behaviors when upset. (See R-17 at DHS259.) When L.P. was upset or mad, he engaged in aggressions in the form of grabbing and hitting, as well as disruptive behavior such as throwing, pulling, or hitting objects. (R-16 at DHS226.)
- L.D. required direct support from staff at Bancroft, requiring staff to be able to see or hear

him at all times. (R-16 at DHS230.)

- Bancroft’s behavioral plan for L.D. instructed staff on how to deal with L.D.’s aggression, including directions to use “Safe and Positive Approaches to pivot and parry out of [L.D.’s] danger zone and have a neutral demeanor” and, only when L.D.’s behavior became dangerous to others, to implement “SPA-approved restraint techniques.” (R-17 at DHS261.)
- The petitioner received training on L.D.’s behavior plan in December 2016. (R-18 at DHS286; see also R-20 at Number 14.)
- The petitioner was initially scheduled to work with another staff member at Sawmill II on June 22, 2017, but that other staff member was reassigned to another house and the petitioner worked that shift at Sawmill II alone. (See R-5 at DHS66.)
- On June 22, 2017, G.E. worked his regular shift at Sawmill II, which began at 11:00 p.m. and ended at 9:00 a.m. (See R-6 at DHS74.)
- G.E. reported that he was able to complete the beginning part of his shift and got through the evening “with no incident.” (Id. at DHS75.) G.E. further reported that L.D. was the first patient to wake in the morning. (Ibid.)
- Video surveillance from Sawmill II captured the interactions between the petitioner and L.D. between 6:30 a.m. and 7:19 a.m. on the morning of June 22, 2017. (R-22.) The accuracy of this video surveillance is uncontested by the parties. (See R-20 at 4–13.) The video footage provided does not have any accompanying audio.
- The first video surveillance file (file name 172.16.4.61_02_2017062714361119_20170627144423.avi) is dated June 22, 2017, and shows a starting time stamp of 06:33:03. (R-22.) This footage shows the following:
 - The video is stamped “Rear Hall.” There is no sound to accompany the video footage, and the camera is pointing at a hallway in Sawmill II. On the right-hand side of the video, two open doors lead off the hallway. The second of these open doors opens to a bathroom, and a shower stall can be seen with a closed shower curtain. L.D. is taking a shower in the shower stall behind the closed shower curtain. L.D. is holding a shower sprayer in his hand as he is showering. At time-stamp 06:33:52, G.E. enters the view of the camera, entering from the left-hand side of the scene. G.E. moves into the area in a hurried manner and runs directly into the bathroom where L.D. is showering.
 - G.E. does not pause upon entering the bathroom, and he proceeds to pull back the shower curtain. At time stamp 06:33:55, G.E. steps up onto the lip on the floor at the entrance to the shower. G.E.’s back is to the camera and G.E. is facing L.D., who remains in the shower.
 - At time stamp 06:33:58, with his left hand, G.E. grabs the shower sprayer out of L.D.’s hands, and G.E. further forces open the shower curtain with his right hand. L.D. retreats towards the back of the shower.
 - At time stamp 06:33:59, G.E. steps back out of the shower. The shower sprayer remains in G.E.’s left hand and he further pulls the shower curtain open with his right hand as he takes a step back out of the shower. L.D. is standing in the rear of the shower in the far corner and his arms are crossed over his chest in a defensive posture.
 - At time stamp 06:34:01, L.D. reaches out to grab the shower curtain with his left hand. As he does so, G.E. uses his right hand to strike L.D.’s outreached hand and

pulls L.D.'s hand downward before letting go. L.D. withdraws his hand and, at time stamp 06:34:05, G.E. steps back onto the lip at the entrance to the shower. As he steps up to re-enter the shower, G.E.'s right hand is extended into the shower towards L.D. and G.E.'s left hand continues to hold the shower sprayer.

- At time stamp 06:34:05, G.E.'s right hand strikes forward towards L.D., who is still in the back of the shower out of sight of the camera (blocked by G.E.'s presence in the shower entrance). G.E. is leaning his body forward towards L.D. on his right foot as he lifts his left foot, and he strikes at L.D. with his right hand. At time stamp 06:34:08, G.E. steps backwards, removing his right foot from the shower ledge and placing that foot back on the bathroom floor.
- At time stamp 06:34:09, G.E. moves his right foot back onto the shower ledge. With both of his feet now back on the ledge, G.E. raises his right arm and uses his right hand to strike at L.D.
- At time stamp 06:34:12, G.E. steps back out of the shower. L.D. remains standing in the back of the shower with his arms raised across his body in a defensive posture.
- At time stamp 06:34:14, G.E. drops the shower sprayer and leaves the bathroom.
- At time stamp 06:34:39, G.E. has left the area and L.D. resumes taking a shower. At time stamp 06:34:40, L.D. is holding the shower sprayer up to his mouth. L.D. continues taking a shower until the video clip ends at time stamp 06:35:05.
- The second video surveillance file (file name 172.16.4.61 02 20170627143806227, 20170627144456.avi) is dated June 22, 2017, and shows a starting time stamp of 07:10:01. (R-22.) This footage shows the following:
 - The video is stamped "Rear Hall" and covers the same area as the video in the first surveillance clip contained in R-22 showing a hallway outside a bathroom in Sawmill II. No sound accompanies the video footage.
 - As the video plays, an unidentified patient can be seen taking a shower and L.D., who is now fully dressed in a green shirt and black pants, is in the hallway outside the bathroom. The door to the bathroom is open, and G.E. is moving quickly out of the bathroom into the hallway towards L.D. with his right arm extended and his finger pointing at L.D. as he leaves the bathroom. At time stamp 7:10:01, G.E. is in the hallway outside the bathroom. The bathroom door is open, and the unidentified patient is still in the shower in the bathroom with the curtain pulled back. L.D. is standing in the hallway outside the bathroom, facing the bathroom door with his back to the wall as G.E. moves towards him waving his right hand with an extended pointer finger in L.D.'s face. L.D. turns and begins to back down the hallway retreating from G.E. when, at time stamp 7:10:05, G.E. uses his right hand to shove L.D. as L.D. is retreating back down the hallway away from the bathroom door.
 - At time stamp 7:10:12, L.D. begins to spin in circles as he is standing, and raises his left hand. L.D. uses his left hand to swipe at G.E.'s shirt, but misses, as G.E. uses his right hand to knock L.D.'s hand away from him. After swiping L.D.'s hand, G.E. brings his right hand back and strikes towards L.D.'s shoulder with a backhand motion, although it is unclear from the video if G.E.'s hand made contact with L.D. as L.D. turns away from G.E.
 - At time stamp 7:10:19, G.E. backs down the hallway, leaving the area observed by the camera as L.D. remains in the hallway standing and spinning in circles. The

unidentified patient remains in the shower.

- At time stamp 7:10:26, G.E. re-enters the hallway within sight of the camera. G.E. enters the bathroom and appears to be assisting the unidentified patient, who has now left the shower. L.D. remains in the hallway outside the bathroom, standing and spinning in circles in the bathroom doorway. The video ends at time stamp 7:10:40 as the unidentified patient is leaving the bathroom, passing L.D. in the hallway.
- The third video surveillance file (file name 172.16.4.61 03 2017062714522082, 20170627145518.avi) is dated June 22, 2017, and shows a starting time stamp of 07:11:16. (R-22) This footage shows the following:
 - The video is stamped “Living” and shows a living room and kitchen area in Sawmill II. No sound accompanies the video footage. The area shown includes a living-room area with couches, chairs, tables, and a television set mounted on a wall. Just off this living-room area is a kitchenette with a partial half wall with a counter on it separating the kitchenette area from the living room area.
 - At the start of the video clip, L.D. is in the kitchen area in the upper left-hand side of the video shot wearing a light colored blue or green shirt. L.D. is pushing items off the counter and onto the floor in the kitchen area. There is another patient, J.W., who is lying on a couch on the left-hand side of the scene. There is also a coffee table between two chairs on the left side of the scene and a walkie-talkie is visible on that table. G.E. enters the scene at time stamp 7:11:22 wearing a yellow shirt and black hat.
 - G.E. walks around the counter and into the kitchen area where L.D. is standing and spinning in place. At time stamp 7:11:30, G.E. reaches out with his left hand for L.D., grabs L.D.’s shoulder, and shoves L.D., whose back is facing G.E. L.D. turns and begins moving towards G.E., who begins backing out of the kitchen area.
 - At time stamp 7:11:35, G.E. walks out of the kitchen area and leaves the area of the camera’s view, followed by L.D. G.E. moves to the left, going behind the kitchen area, and L.D. moves to the right behind a wall and is no longer visible to the camera. At time stamp 7:11:43, G.E. is walking behind the kitchen and moving behind the wall that L.D. exited the area behind.
 - At time stamp 7:12:13, G.E. walks back into the scene. G.E. is wearing a white undershirt and holding his yellow shirt in his hand. G.E. goes into the kitchen area and, at time stamp 7:12:16, L.D. re-enters the area and begins pushing items off the kitchen counter, spinning in circles as he walks. G.E. can be seen putting his yellow shirt back on while in the kitchen and G.E. begins picking items up off the floor in the kitchen.
 - At time stamp 7:12:41, L.D. walks over to J.W., who has been lying on the couch throughout this time, while G.E. is picking items up in the kitchen. L.D. grabs J.W. by the arm and starts pulling him up off the couch. J.W., now on his feet, is trying to break L.D.’s grip on his arm.
 - At time stamp 7:12:56, L.D. and J.W. are struggling, with J.W. trying to break free from L.D.’s grip on his arm. J.W. falls back down onto the couch and pulls L.D. down on the couch with him. The two stand up again and move together towards G.E., who is still in the kitchen area.
 - At time stamp 7:13:08, J.W. breaks free of L.D.’s grip on his arm and returns to the

- couch. L.D. is standing at the kitchen counter. G.E. remains in the kitchen and L.D. begins to spin as he stands between the kitchen counter and the couch, where J.W. has resumed lying down. G.E. leaves the area at time stamp 7:13:25, exiting behind the kitchen and out of view of the camera.
- L.D. continues to stand while spinning by J.W. on the couch, occasionally reaching down to try to grab J.W. again. At time stamp 7:14:08, L.D. grabs J.W. by the arm and pulls him up. The two are standing by the couch as J.W. struggles to get his arm free from L.D., and they are moving around the living-room area together, with J.W. trying to get free from L.D.
 - At time stamp 7:14:48, J.W. gets free from L.D., and L.D. begins swinging his arms through the air towards J.W., hitting him with open hands as J.W. retreats back towards the couch.
 - At time stamp 7:14:54, G.E. re-enters the area from behind the kitchen. G.E. runs through the kitchen area towards L.D. and shoves L.D. down onto the couch. G.E. then grabs L.D.'s legs and pulls them, pulling L.D. off the couch and onto the floor. G.E. lets go of L.D., who stands and pursues G.E. as G.E. leaves the area. J.W. pushes the couch back against the wall (it was pulled away from the wall after G.E. pulled L.D. off the couch), and resumes lying on the couch. At time stamp 7:15:24, G.E. enters the area again from behind the kitchen. G.E. walks around the half wall and enters the kitchen area. L.D. is following G.E., but continues walking behind the wall where the television is mounted and out of the camera view. G.E. walks back and follows L.D. out of the camera's view.
 - At time stamp 7:15:39, another unidentified patient walks into the kitchen area. G.E. entered the area from behind the wall where the television is mounted, and he is pulling L.D. back into the area before throwing L.D. against a wall that borders the kitchen area. G.E. and L.D. can be seen struggling as L.D. is holding G.E.'s shirt and G.E. is attempting to break free.
 - At time stamp 7:16:03, G.E. removes his yellow shirt and breaks free of L.D. L.D. throws down G.E.'s shirt and follows G.E. as he moves back into the kitchen area. At time stamp 7:16:13, G.E. leaves the area and L.D. remains in the kitchen area standing and spinning. J.W. remains lying on the couch in the living room area. L.D. begins to walk while spinning in circles around the half wall in the kitchen and follows G.E. out of the area.
 - At time stamp 7:16:32, G.E. is behind the wall in the kitchen area where the stove is located and out of camera view. L.D. is standing in the area behind the kitchen, spinning in circles as he stands. At time stamp 7:16:32, G.E. can be seen through the door opening next to the stove reaching for an item by the stove.
 - At time stamp 7:16:42 G.E. utilizes an unidentified object to strike at L.D., who is reacting as something swipes at him from behind the wall area where G.E. is at this time. L.D. stops spinning and stands with his hands up near his chest as he faces G.E., who remains behind the wall and out of visibility from the camera. At time stamp 7:16:53, L.D. walks out of the area, exiting to the right, behind the wall where the TV is mounted.
 - At time stamp 7:18:15, G.E. is seen moving out from behind the wall where the TV is mounted, moving behind the wall in the kitchen area. G.E. is shirtless at this time and appears to be holding one end of his shirt while L.D. follows behind him

holding the other end of the shirt. L.D. lets go of the shirt and exits the view to the right, while G.E. returns to the kitchen area holding his shirt and undershirt. At time stamp 7:18:35, G.E. puts his shirt back on and leaves the area.

- At time stamp 7:19:01, G.E. emerges from the area behind the wall where the TV is mounted, holding onto L.D.'s shirt as he leads L.D. across to behind the kitchen wall and out of view of the camera.
- G.E. returns to the kitchen, alone, at time stamp 7:19:32. The video footage ends at time stamp 7:19:37.
- Shatana Wallace reported to work at Bancroft on June 22, 2017, at approximately 7 a.m. (See R-3 at DHS56.) After reporting to work, Wallace was sent to Sawmill II, and she met with G.E. upon reporting to Sawmill II. (Ibid.) G.E. asked Wallace to begin making breakfast for the patients. (Ibid.)
- While Wallace was in the kitchen at Sawmill II preparing breakfast, she encountered L.D. (Ibid.) Wallace noted that L.D.'s lip was bleeding and asked G.E. if she should contact Bancroft's nursing staff to attend to L.D.'s lip.⁷ (Ibid.) G.E. told Wallace that this was "always the case" with L.D. and nursing did not need to be contacted. (Ibid.; Oct. 6, 2022, Tr. at 148:4–6.)
- Wallace escorted another Sawmill II patient to the Day Program and began work at the Bancroft Day Program. (R-3 at DHS56–57.)
- Soon after Wallace reported to the Day Program, G.E. dropped L.D. off at the Day Program. (R-3 at DHS57.) Wallace noted that L.D.'s lip was still bleeding (ibid.) and reported the injury to her manager, Leonore Robinson (R-4 at DHS60).
- Following an investigation by the New Jersey State Police (R-11), the petitioner was charged in a criminal complaint on August 15, 2017, as a result of his conduct on June 22, 2017. (R-11 at DHS117.)
- The summons complaint, 1709-S-2017-000127, charged G.E. with one count of simple assault, a disorderly persons offense, in violation of N.J.S.A. 2C:12-1A(1), and one count of endangerment, a fourth-degree crime in violation of N.J.S.A. 2C:24-7.1B(1). (Ibid.; see also P-2.) The complaint alleged that the petitioner committed simple assault and endangered L.D.'s welfare by the act of "striking [L.D.] in the face." (Ibid.)
- The petitioner was indicted on August 1, 2018, in Salem County Indictment No. 18-08-00281-3, on a charge of endangerment, in violation of N.J.S.A. 2C:24- 7B(1). (R-19; see also P-2.)
- The petitioner applied for admission into the Pretrial Intervention program. (R-19.) His application for PTI was rejected by the Salem County Prosecutor's Office. The petitioner appealed this determination on November 9, 2018. (Ibid.)
- The petitioner's PTI appeal was granted by the court; he was subsequently admitted into PTI and was ordered to serve twelve months in the PTI program. (Ibid.) As conditions of

⁷ Although G.E. asserted, in his response to requests for admission, that he lacked any personal knowledge of L.D.'s lip injury (R-20 at 15), he testified that he was made aware of L.D.'s lip injury by Wallace the morning of June 22, 2017 (Oct. 6, 2022, Tr. at 146:17–19) and, in his written statement to Lattie on June 28, 2017, G.E. averred that he informed staff at the Day Program of G.E.'s lip injury. (R-6 at DHS72.) Robinson verified that L.D.'s lip was visibly injured (see R-12) and contacted the nursing staff to attend to L.D.'s injury. (R-3 at DHS57; R-8 at DHS87.) Bancroft nursing staff documented that L.D.'s left-side lower lip was "busted" and the left side under his eye was "a little swollen." (R-14.) Nursing staff provided L.D. with an ice pack for his lip. (Ibid.)

his PTI program, the petitioner was also required to complete fifteen hours of community service and to attend anger management. (P- 3.) The petitioner successfully completed his participation in the PTI program and on August 1, 2019, the criminal charges against him were dismissed. (R-19.)

- On March 2, 2018, the petitioner was notified that, as a result of an investigation by the Office of Program Integrity and Accountability’s Office of Investigations, the DHS substantiated that he had “physically abused an individual receiving services from the Division of Developmental Disabilities” and his name would be placed on the Central Registry of Offenders Against Individuals with Developmental Disabilities. (R-21.)
- The stated reason for this action was: “On June 22, 2017, video footage captured you physically abusing the individual [L.D.] several times by punching, pushing and pulling him. As a result, he sustained a swollen and cut lower lip and a scratch under his eye.” (Ibid.)
- These factual findings are supported by a residuum of legal and competent evidence in the record.

THE ALJ’S CREDIBILITY FINDINGS

To fully evaluate the events of June 22, 2017, further requires a determination of credibility to make a determination of certain contested facts. Credibility is the value that a finder of the facts gives to a witness’ testimony. It requires an overall assessment of the witness’ story in light of its rationality or 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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep’t of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981). The determination of credibility must be made based upon the totality of the evidence, including an assessment of the witnesses by the trial judge who has had the opportunity to see and hear the witnesses at hearing. In re Tonner, E. Jersey State Prison, Dep’t of Corr., 2019 N.J. Super. Unpub. LEXIS 2653 (App. Div. December 30, 2019).

In an administrative proceeding, testimony may be disbelieved, but it may not be disregarded. Middleton Township v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). A fact finder “is free to weigh the evidence and to reject the testimony of a witness 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, 521–22 (1950); see also D’Amato by McPherson v. D’Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

In other words, a trier of fact may reject testimony as “inherently incredible” and may also reject testimony when “it is inconsistent with other testimony or with common experience” or “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.) (citation omitted), certif. denied, 10 N.J. 316 (1952).

G.E. does not deny that he struck L.D. in the face on the morning of June 22, 2017. (See Oct. 6, 2022, Tr. at 146:10–13; see also R-6 at DHS76 (G.E.’s statement where he admits that he “hit [L.D.] on the left side of his face with my right hand, it was open, but I did not mean to, it was

a spontaneous reaction”).) The uncontested video surveillance for that morning further bears out that G.E. struck L.D. in the face and pushed him against a wall, threw him down on a chair, pulled him off a chair by the legs, and utilized force on him multiple times. (R-22.)

G.E. claimed that his actions that morning were justifiable, as they were undertaken as acts of self-defense and defense of other patients residing at Sawmill II that morning. (Oct. 6, 2022, Tr. at 146:10–13 (G.E.’s testimony that when he struck L.D. in the shower, he was “potentially protecting himself and [R.W.]”); *Id.* at 139:6–25 (G.E.’s testimony that he had “no choice than to pull [L.D.] to suppress him” and protect J.W.); *Id.* at 155:14–17.)

Having had the opportunity to observe the appearance and demeanor of the witnesses, **THE ALJ FOUND**: that G.E.’s testimony on this point is self-serving, since to concede that he utilized unjustified force in his interactions with L.D. on June 22, 2017, would be to admit to committing an act of physical abuse against L.D. (See R-15 at DHS171 (Bancroft Policy on Protection from Abuse Neglect or Exploitation giving examples of abuse including “striking with a closed or open hand” and “pushing to the ground or shoving aggressively”).

Findings of abuse require a finding that the acts constituting the abuse are “wrongfully inflicted” upon a person with a developmental disability. N.J.A.C. 10:44D-1.2. A credible claim of self-defense may justify an otherwise wrongful act.⁸ *N.J. Div. of Youth & Family Servs. v. J.C.*, 2008 N.J. Super. Unpub. LEXIS 2790 (App. Div., June 4, 2008); *State v. Handy*, 421 N.J. Super. 559, 583 (App. Div. 2011) (recognizing “the individual’s prerogative, in appropriate circumstances, to ward off physical harm through permissible acts of self-defense”).

Using force, as G.E. did here, is justifiable in self-defense only when the actor reasonably believes that the use of force is “immediately necessary” for the purpose of protecting ones’ self against unlawful force by the other person, N.J.S.A. 2C:3-4(a), or protecting another person, N.J.S.A. 2C:3-5.

G.E. asserted that he confronted L.D. in the shower that morning because he heard L.D. making noises that indicated that L.D. was about to “act up” and harm R.S., another patient at Sawmill II, whom G.E. described as “very fragile.” (Oct. 6, 2022, Tr. at 129:17–22.) R.S. was not in the room, and the video surveillance clearly shows that when the incident began, L.D. was by himself taking a shower. (R-22.)

While G.E. testified that he responded to the bathroom in an effort to “rescue” R.S. from L.D. (Oct. 6, 2022, Tr. at 129:17–22), the video surveillance shows that R.S. was not present in the area at the time and was in no immediate danger, and G.E. was the aggressor in this instance, rushing into the bathroom, pulling back the shower curtain to confront L.D., and striking L.D. in the face. (R-22.)

Utilizing force to protect another requires a reasonable belief that the person sought to be protected would have been justified themselves in using such force in self-defense. See *Model Jury Charges (Criminal)*, “Justification—Use of Force in Protection of Others (N.J.S.A. 2C:3-5)” (approved October 17, 1988). A valid claim of self-defense requires the application of force to be “immediately necessary” to protect oneself against unlawful force. See *Model Jury Charges (Criminal)*, “Justification—Self Defense in Self-Protection (N.J.S.A. 2C:3-4)” (rev. June 13, 2011).

L.D. was alone in the shower, and **THE ALJ FOUND** that there was no immediate

⁸ In discussing the concept of “wrongfully inflicted,” the ALJ cites cases, jury instructions, and dicta that come from the New Jersey Criminal Code. The Central Registry statute is not part of the criminal code and not analogous to the criminal code.

necessity to forcibly intervene to protect R.S., or anyone else, from L.D.’s activities at the time G.E. ran into the bathroom at Sawmill II, confronted L.D., and struck him in the face on the morning of June 22, 2017. (See R-22.)

G.E.’s conduct in that instance further underscores the inapplicability of a justification for the force G.E. used that morning when he struck L.D. in the face. G.E. was working alone in Sawmill II that day and, while he was trained on proper use of restraints on patients like L.D. where circumstances warranted them (see R-17 at DHS261), G.E. knew that he could not effectuate a proper restraint on L.D. if needed without assistance. (Oct. 6, 2022, Tr. at 130:3–8 (G.E.’s testimony that it requires three persons to properly restrain L.D.).

Although G.E. contends that the walkie-talkies at Sawmill II were not functioning that morning, he did not attempt to utilize them to call for assistance and was unaware of whether the walkie-talkies were operating before making the decision to go into the bathroom to confront L.D. (Oct. 6, 2022, Tr. at 133:8–134:2 (G.E. explaining that he discovered that the battery was not in the walkie-talkie when the situation escalated and L.D. began grabbing J.W. and he attempted to utilize it.)

G.E. was familiar with L.D. and had been trained in the behavioral plan that Bancroft had developed for L.D. (See R-17; R-18.) L.D. was known to engage in aggressive and other “maladaptive behaviors” and required regular staff supervision. (R- 17 at DHS226–230.) When L.D. engaged in aggressive conduct, his behavior plan called for staff to use “Safe and Positive Approaches” and to “pivot and parry out of [L.D.’s] danger zone and have a neutral demeanor.” (R-17 at DHS261.) When G.E. went into the bathroom at Sawmill II and confronted L.D., his approach was neither positive nor neutral, and G.E. did not show any attempt to avoid L.D.’s “danger zone.” (Ibid.; R-22.) On the contrary, G.E. ran into the bathroom, stepped up into the shower, pulled back the shower curtain to expose L.D., and physically confronted him while L.D. was trying to take a shower. (R-22.)

Although G.E. testified that his confrontation with L.D. left him scared to “[his] bone marrow” because L.D. “could close up on [him] in that bathroom” (Oct. 6, 2022, Tr. at 129:23–130:2), G.E. can be seen in the video footage closing the distance between L.D. and him in an aggressive manner. (R-22.) Despite L.D.’s efforts to retreat to the back of the shower, G.E. continued to pursue him, leading to G.E. striking L.D. in the face during the confrontation. (Ibid.)

G.E.’s claims of self-defense or defense of others are similarly inapplicable to the exchange between G.E. and L.D. that occurred later that morning in the living-room area at Sawmill II. As the video surveillance showed in the second video file, L.D. was interacting with another patient, J.W. (R-22.) L.D. was engaging in aggressive behaviors such as trying to grab J.W.’s shirt and swinging his arms to hit J.W. with his open hands. (Ibid.)

When G.E. entered the area, L.D. was swinging his arms towards J.W., and J.W. was backing away from L.D. (Ibid.) Although L.D.’s behavioral plan calls for staff to remove other patients from the room or to remain between L.D. and his peers in situations of aggression like this, or to apply “SPA-approved restraint techniques” where L.D.’s behavior is dangerous to others (R-17 at DHS261), G.E. ran across the room and pushed L.D. down in a chair, grabbed him by the legs, pulled him off the chair causing him to fall to the floor, and left the area with L.D. following after him. (R-22.)

A proper claim of defense of others necessarily requires consideration of whether the party being protected had an opportunity or duty to retreat before applying force in their defense. See Model Jury Instructions, “Justification Use of Force in Protection of Others (N.J.S.A. 2C:3-5)” (approved October 17, 1988). Consistent with L.D.’s behavioral plan (R-17 at DHS261), G.E.

could have physically placed himself between L.D. and J.W., giving J.W. the opportunity to leave the area without further physical interaction with L.D. (R-22.) Rather than do this, G.E. pushed L.D. down onto a chair, and, further, pulled him by his legs off the chair onto the floor. (*Ibid.*)

Further evidence of G.E. engaging in unwarranted use of physical force against L.D. can be seen in other areas of the surveillance video from that morning. (R-22.) In the third video clip, at time stamp 7:15:41, G.E. can be seen pulling L.D. along into the sight of the camera and forcibly shoving L.D. face first into a wall as L.D. is grabbing G.E.'s shirt. (*Ibid.*) Rather than utilizing "finger peels" to break L.D.'s grip on the shirt (Sept. 29, 2022, Tr. at 112:9–13), or getting out of the shirt altogether (which is an appropriate technique that G.E. is seen utilizing in other portions of the surveillance footage), G.E. slams L.D. face first into a wall. (R-22.)

Szymanski testified as a person who was also familiar with L.D. and his conduct, and his testimony is accepted as fact. While L.D. was known to engage in aggressive behavior, and sometimes that behavior required the use of physical restraints when L.D.'s behavior became "too intense" (Sept. 29, 2022, Tr. at 112:13–14), other recognized strategies were available to be used to de-escalate L.D.'s behavior short of applying physical force.

Consistent with L.D.'s behavior plan (R-17), Szymanski noted that giving L.D. "space" moving out of his general area and beyond his arm reach generally reduced L.D.'s aggression towards you. Also, moving L.D. outside of the house to an area with more space also helped to calm him down and avoid any unnecessary physical intervention. G.E.'s repeated actions in this matter did not serve to de-escalate L.D.'s conduct by giving him necessary space to calm down, but rather G.E. quickly closed any physical distance with L.D. and directly applied force to him by hitting or shoving him. (R- 22.)

While physical restraints may sometimes be required and those restraints involve applying physical force to a patient, conduct like that seen in this video surveillance such as pushing, slapping, or hitting a patient as G.E. did here is never appropriate. (Sept. 29, 2022, Tr. at 116:8–15; see also R-15 at DHS171 (Bancroft Policy on Protection from Abuse Neglect or Exploitation, giving examples of abuse including "striking with a closed or open hand" and "pushing to the ground or shoving aggressively".)

THE ALJ FOUND, therefore, that G.E.'s use of force against L.D. on June 22, 2017, was not necessary to protect J.W. or any other person at the time of the action.

THE ALJ'S LEGAL ANALYSIS AND DISCUSSION

It is the policy of this State to provide for the protection of individuals with developmental disabilities. N.J.S.A. 30:6D-73(a). As the New Jersey Supreme Court has declared, "[t]he clear public policy of this State is to respect the right of self-determination of all people, including the developmentally disabled." *In re M.R.*, 135 N.J. 155, 166 (1993); see also *Fees v. Trow*, 105 N.J. 330, 338 (1987) (noting New Jersey's strong public policy of "protecting the mentally ill and developmentally disabled from abuse or mistreatment, to which they are particularly vulnerable, often being without the knowledge, ability, or resources to protect or vindicate their civil rights.").

Consistent with this policy, the Legislature, in enacting the Developmentally Disabled Rights Act, N.J.S.A. 30:6D-1, et seq., declared:

[T]he developmentally disabled are entitled to certain fundamental rights as citizens and that these rights shall not be abrogated solely by reason of admission to any facility or receipt of any service for developmentally disabled persons; that services which are offered

to the developmentally disabled shall be provided in a manner which respects the dignity, individuality and constitutional, civil and legal rights of each developmentally disabled person. [N.J.S.A. 30:6D-2.]

The New Jersey Legislature created the Central Registry to protect the legal rights and safety of individuals with developmental disabilities by identifying those caregivers who have wrongfully caused them injury, and then preventing such caregivers from again working with individuals with developmental disabilities. N.J.S.A. 30:6D-73; N.J.A.C. 10:44D-1.3. An individual will be listed on the Central Registry if he or she has committed an act of abuse, neglect, or exploitation of an individual with a developmental disability. N.J.S.A. 30:6D-77(b).

“Abuse” is defined in N.J.A.C. 10:44D-1.2. It is defined as “wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse or verbal or psychological abuse or mistreatment by a caregiver upon an individual with a developmental disability.” “Physical abuse” is further defined in N.J.A.C. 10:44D-1.2 as a physical act directed at an individual with a developmental disability by a caregiver of a type that causes one or more of the following: pain, injury, anguish or suffering. Such acts include, but are not limited to, the individual with developmental disability being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged or struck with a thrown or held object.

A “caregiver” includes any person “who receives State funding, directly or indirectly, in whole or in part, or who volunteers to provide services or supports, or both, to an individual with a developmental disability.” N.J.A.C. 10:44D-1.2. It is not factually disputed that L.D.’s care with Bancroft is funded through the NJDDD (R-16 at DHS220) and G.E. was an employee of Bancroft who was employed to provide direct care to L.D. and other residents of Sawmill II. (See R-13 at DHS132; R-6 at DHS74–75.) **THE ALJ CONCLUDED**, therefore, that G.E. was acting as a caregiver on June 22, 2017, as that term is defined in N.J.A.C. 10:44D-1.2.

In order to be included on the Central Registry, it must be determined whether the caregiver acted with intent, recklessness, or careless disregard to cause or potentially cause injury to an individual with a developmental disability. N.J.S.A. 30:6D-77(b)(1); N.J.A.C. 10:44D-4.1(b). The regulation defines each mental state in N.J.S.A. 10:44D- 4.1(b):

Acting intentionally is the mental resolution or determination to commit an act.

Acting recklessly is the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for that risk.

Acting with careless disregard is the lack of reasonableness and prudence in doing what a person ought not to do or not doing what ought to be done.

The burden of proof falls on the agency in enforcement proceedings to prove a violation. Cumberland Farms, Inc., v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). In this matter, the DHS bears 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). Precisely what is needed to satisfy this burden necessarily must be judged on a case-by-case basis.

The evidence shows that G.E. acted in an unprofessional manner with a patient in his care.

Although L.D. was a non-verbal patient with a known history of aggressive behaviors, G.E. was trained in dealing with patients such as L.D. and how to de-escalate tense situations with L.D. to avoid physical confrontation. Rather than de-escalate the tense situation with L.D. or get help from other staff so that he could safely address L.D. and the other patients in his care at the time, G.E. reacted to L.D. in a physically aggressive manner which directly led to G.E. striking L.D. in the face, forcibly shoving L.D. to the ground, shoving him face first into a wall, and striking at him with objects. (R- 22.)

THE ALJ therefore **CONCLUDED** that G.E.'s intentional conduct in his interactions with Bancroft patient L.D. on June 22, 2017, falls within the statutory definitions of physical abuse detailed in N.J.A.C. 10:44D-1.2. **THE ALJ** further **CONCLUDED** that the respondent DHS has met its burden of proof to demonstrate that G.E. committed an act of abuse against an individual with a developmental disability. **THE ALJ** further **CONCLUDED** that the determination of the DHS to place G.E. on the Central Registry of Offenders Against Individuals with Developmental Disabilities for his actions against Bancroft patient L.D. on June 22, 2017, was appropriate and should be **AFFIRMED**.

THE ALJ'S ORDER

For the reasons set forth above, **THE ALJ** hereby **ORDERED** that G.E.'s petition opposing the placement of his name on the Central Registry of Offenders Against Individuals with Developmental Disabilities is **DENIED**, and the respondent's action placing G.E. on the Central Registry of Offenders Against Individuals with Developmental Disabilities is **AFFIRMED**.

THE ALJ FILED her Initial Decision with the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY (OPIA)** for consideration. This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF OPIA**, who by law is authorized to make final decisions in this matter. 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 OF OPIA**, a copy of any exceptions must be sent to the judge and to the other parties.

FINAL AGENCY DECISION

EXCEPTIONS

No exceptions were filed by either party.

DECISION

Pursuant to N.J.A.C. 1:1-18.1(f) and based upon a review of the ALJ's Initial Decision and the entirety of the OAL file, I concur with the Administrative Law Judge's findings and conclusions. The ALJ had the opportunity to assess the credibility and veracity of the witnesses; I defer to the ALJ's opinions concerning these matters, based upon the extremely detailed and well-reasoned observations described in the Initial Decision. In particular, G.E. argued that his actions did not fall within the regulatory definition of abuse – "'Abuse' means wrongfully inflicting physical abuse or mistreatment by a caregiver upon an individual with a developmental disability." G.E. maintained that his actions were not "wrongfully inflicted," but were somehow "justified." The ALJ discussed this theory comprehensibly and demonstrated its inappropriateness.

G.E. does not deny that he struck L.D. in the face. He acknowledged doing so in his statement and at the hearing. The video shows G.E. struck L.D. in the face and pushed him against a wall, threw him down on a chair, pulled him off the chair by his legs, and utilized force on him multiple times. G.E. claimed that his actions that morning were justifiable, as they were undertaken as acts of self-defense and defense of other patients. Discussing the credibility of the witnesses, the ALJ found G.E.'s testimony on this point to be self-serving, since to concede that he utilized unjustified force would be an admission of committing an act of physical abuse. against L.D. G.E. testified that he confronted L.D. in the shower because he heard L.D. making noises that indicated that L.D. was about to "act up." R.S. was not in the room. The video surveillance showed L.D. by himself taking a shower. G.E. testified that he responded to the bathroom in an effort to "rescue" R.S. from L.D. The video shows that R.S. was not in the bathroom and was in no danger. G.E. was the aggressor. G.E. rushed into the bathroom, pulled back the shower curtain to confront L.D., and struck L.D. in the face.

The ALJ found no reason to forcibly intervene to protect R.S., or anyone else, from L.D.'s actions at the time G.E. struck L.D. in the face. G.E. was trained on proper use of restraints on patients like L.D. G.E. was familiar with L.D. and had been trained in L.D.'s behavioral plan. When L.D. engaged in aggressive conduct, his behavior plan called for staff to use "Safe and Positive Approaches." When G.E. went into the bathroom and confronted L.D., his approach was neither positive nor neutral. G.E. did not attempt to avoid L.D.'s "danger zone." G.E. ran into the bathroom, stepped up into the shower, pulled back the shower curtain, and physically confronted him. G.E. can be seen in the video footage closing the distance between L.D. and him in an aggressive manner. Despite L.D.'s efforts to retreat to the back of the shower, G.E. continued to pursue him, ending in G.E. striking L.D.

G.E.'s claims are similarly inapplicable to other exchanges between G.E. and L.D. The video surveillance showed L.D. interacting with another patient, J.W. L.D. was trying to grab J.W.'s shirt and swinging his arms to hit J.W. L.D.'s behavioral plan calls for staff to remove other patients from the room or to remain between L.D. and his peers. G.E. ran across the room, pushed L.D. into a chair, grabbed him by the legs, and pulled him off the chair causing him to fall to the floor. G.E. then left the area with L.D. following after him. Consistent with L.D.'s behavioral plan, G.E. should have physically placed himself between L.D. and J.W. Instead, G.E. pushed L.D. down into a chair and pulled him off the chair onto the floor. In another video, G.E. pulls L.D. into view and forcibly shoves L.D. face first into a wall, as L.D. is grabbing G.E.'s shirt. Rather than utilizing "finger peels" to break L.D.'s grip on the shirt or getting out of the shirt, G.E. slams L.D.'s face into a wall.

The ALJ specified that "conduct like that seen in this video surveillance such as pushing, slapping, or hitting a patient as G.E. did here is never appropriate." The ALJ's detailed analysis conclusively demonstrates that G.E.'s use of force against L.D. was wholly unnecessary to protect J.W. or any other person. The instances of abuse committed by G.E. were in no way justifiable as proper intervention techniques. G.E.'s actions were "wrongfully inflicted" upon L.D. as defined in the Central Registry rules at N.J.A.C. 10:44D-1.2.

I CONCLUDE and AFFIRM that the Department has met its burden of proving sufficiently that G.E.'s actions rise to the level of abuse; abuse is defined as "wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse, or verbal or psychological abuse or mistreatment by a caregiver upon an individual with a developmental disability." N.J.S.A. 30:6D-74; N.J.A.C. 10:44D-1.2. **I CONCLUDE and AFFIRM** that that G.E. acted with intention, when he struck L.D., pushed him against a wall, threw him down on a chair, pulled him off the chair

onto the floor, and used other unjustified force against L.D., an individual with developmental disabilities. I **CONCLUDE and AFFIRM** that E.G. acted intentionally against an individual protected by N.J.S.A. 30:6D-73. I **CONCLUDE and AFFIRM** that E.G.'s placement on the Central Registry is appropriate.

Pursuant to N.J.A.C 1:1-18.6(d), it is the Final Decision of the Department of Human Services that I **ORDER** the placement of E.G.'s name on the Central Registry of Offenders Against Individuals with Developmental Disabilities, having intentionally committed physically abusive acts against L.D.

9/18/2023

Date: _____



Deborah Robinson, Director
Office of Program Integrity and Accountability