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**SENT VIA ELECTRONIC MAIL  
AND FIRST CLASS MAIL**

Director Deborah Robinson  
NJ Department of Human Services  
DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY  
222 South Warren Street, 4th Floor  
PO Box 700  
Trenton, NJ 08625-0700

ATTN: Exceptions

**Re: D.L. v. DHS- AKFC  
OAL Docket Number: HSL 04079-2019S & CSV 04380-19 (Consolidated)  
Agency Ref Number: 2019-2468**

Dear Director Robinson:

This firm is counsel to Appellant D.L. in connection with the above-referenced action. Please accept this letter brief as Appellant's Exceptions to the Initial Decision.

These consolidated matters were transmitted to the Office of Administrative Law to determine whether the Respondent can prove the charge of physically and mentally abusing a patient (M.F.) against Appellant by the preponderance of the credible evidence, and if so, whether the penalty of removal was justified, and whether Appellant's name should remain on the central registry of offenders against individuals with developmental disabilities. However, the evidence at the hearing does not support the charges against Appellant and the Initial Decision should be rejected.

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By way of background, Appellant has served the citizens of the State of New Jersey for more than two decades. He was employed by the Ann Klein Forensics Center (“AKFC”) as a Medical Security Officer. Throughout his career at AKFC, Appellant worked with a very difficult patient population and was spit on, sprayed with urine, and has had blood and feces thrown at him by patients. Appellant accepted this type of behavior from patients as being part of the job and never retaliated.

On February 21, 2018, Respondent assigned Appellant to the Helene Fuld Medical Center (the “Hospital”) to participate in a 2:1 Special Observation of patient M.F. whose behaviors include self-injury (such as scratching himself) and PICA, the swallowing foreign objects. In fact, M.F. was admitted to the Hospital because he swallowed a pen. While there, M.F. became very aggressive to the point that doctors at the Hospital ordered staff to place M.F. into four-point restraints (i.e. M.F.’s two arms and two legs had to be tied to the bed). M.F. was in Room 12 of the Emergency Department

Appellant along with a co-worker and two Hospital security guards participated in restraining M.F. to his bed in Room 12. The next day, Alec Geramowicz (“A.G.”), one of the Hospital’s two security guards who participated in the four-points restraint made an informal complaint to a woman at “Registration” at the Hospital accusing Appellant of punching M.F. in the face.

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The Office of Investigations interviewed all present with M.F. in room 12. Appellant denied punching M.F.. Similarly, the other medical security officer (Dossous) and the other Hospital security guard (Moore), all of whom were present and touching M.F. at the time of the allegation denied observing Appellant punch M.F.. Importantly, M.F. has a history of self-injurious behavior and had no physical evidence consistent with being punched on the right side of the face.

The Quality Assurance Specialist who performed the investigation reflected that M.F. had scratches on the left side of his face but could not rule out that these were self-inflicted. M.F. refused to be interviewed by the investigators but had provided a statement to a doctor at the Hospital denying that Appellant had punched him.

The investigation also revealed that there was a camera inside of room 12, directly above the bed, but the video from this camera was never retrieved. Instead, Respondent presented a video from a camera which pointed into Room 12 from an outside area and which did not show that Appellant punched M.F.. For the reasons set forth below, the Initial Decision improperly relied on the testimony of A.G. to uphold the abuse allegations against Appellant. However, the testimony of A.G. is so flawed that it is unbelievable and contradicts the credible evidence in the record to the point that it cannot be considered

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probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)).

At the hearing, A.G. conceded that before he accused Appellant of punching M.F. on the right side of the face, A.G. engaged in “verbal combat” with Appellant to such a degree that A.G. believed Appellant had threatened his life. This admission of bias by A.G. is sufficient motive for A.G. to fabricate the false charges against Appellant. A.G. described in great detail how upset he was:

- a. A.G. had a verbal altercation and jousting with Appellant and Appellant was threatening him.<sup>1</sup> A.G. testifies from the video that at 11:02:57, Appellant was still threatening him although he could not recall the content of their conversation.<sup>2</sup>
- b. After the incident, A.G. sat down to gather himself and was angry to the point that he threw the walkie-talkie.<sup>3</sup>
- c. A.G. was so upset that his hands began sweating and he began to wipe his sweaty hands.<sup>4</sup>

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<sup>1</sup> Transcript of Alec Gerasimowicz, April 25, 2023, at 168-69.

<sup>2</sup> Id. at 169.

<sup>3</sup> Id. at 170-71.

<sup>4</sup> Id. at 171.

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- d. A.G. could not recall what was being said but at 11:04:09 on the video, he was still arguing with Appellant and still angry and wiping his hands.<sup>5</sup>
- e. At 11:06:09, the camera depicts A.G. still upset and rubbing his head with his hands.<sup>6</sup>
- f. While A.G. does not specifically recall what Appellant was saying to him, A.G. believes that Appellant was threatening because the video shows that he stood up.<sup>7</sup>
- g. A.G. claims that the verbal altercation he had with Appellant lasted at least ten minutes.<sup>8</sup>
- h. After the incident which A.G. alleges occurred at 10:54:50, A.G. engaged in verbal combat with Appellant<sup>9</sup> and had not yet reported the allegation to anyone.

Yet the Initial Decision disregarded this testimony and instead found that “There was no evidence, nor was any detected in the testimony, of any animosity between D.L. and [A.G.]” (Initial Decision, at Page 15). This finding simply ignores the words from A.G.’s

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<sup>5</sup> Id. at 172-73.

<sup>6</sup> Id. at 174.

<sup>7</sup> Id. at 175.

<sup>8</sup> Id. at 181.

<sup>9</sup> Id. at 194.

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own mouth admitting that Appellant threatened his life and this is just the beginning of A.G.'s problematic testimony which simply does not add up nor does it make sense.

A.G. testified that he developed an affinity for M.F. and they formed a "bond".<sup>10</sup> A.G. also testified that while assisting with placing M.F. into a 4-point restraint<sup>11</sup> he saw Appellant punch M.F. in the right side of the face.<sup>12</sup> During the incident and after the incident, there were a lot of medical staff around him, yet A.G. testified that did not alert any of the medical staff that M.F. had allegedly been punched in the face. This testimony defies logic and common sense because a reasonable person who just witnessed his developmentally disabled friend being punched in the face would immediately alert the medical team at minimum to assess M.F. for any serious injuries and render any necessary treatment. A.G. testified that he was extremely upset at the assault of M.F. with whom he had developed a relationship, yet A.G. does not recall reporting the incident to any of the medical staff in the room to make sure that M.F. was not injured.<sup>13</sup> A.G. does not recall asking the charge nurse to check M.F.'s face.<sup>14</sup> A.G. testified that others entered Room 12 to assist yet still he did not recall reporting the incident to any of them. The video shows

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<sup>10</sup> Id. at 139-140.

<sup>11</sup> Id. at 141.

<sup>12</sup> Id. at 142.

<sup>13</sup> Id. at 195.

<sup>14</sup> Id. at 197.

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that there were medical staff in and out of Room 12. The Initial Decision fails to explain this anomaly. But A.G.'s explanation for failing to immediately report that he witnessed M.F. get punched in the face was: "[a]t the time I didn't think it was something that needed to be taken care of that night, I didn't think anything would be resolved until the next day." However, this is simply false because a medical assessment could have taken place that night and the fact that A.G. did not report this to the medical staff leads to only one conclusion --the alleged punch to M.F.'s face never happened.

Importantly, while the Initial Decision correctly states that an injury is not needed to establish physical abuse, the Initial Decision fails to explain how a punch to the face could produce a "thwack" sound yet leave no mark. While this defies the laws of science, the investigator testified that there was no evidence of any bruise on the right side of M.F.'s face where he was allegedly punched. But this only one of many demonstrably false statements made by A.G.. By way of another example, A.G. testified that he did not refuse to provide the State investigators with a written statement he was simply "not asked" to give a statement to the investigator in direct contradiction to the investigative report documenting (R4, page 11) "[A.G.] would not provide a written statement based on the advice of the hospital attorney." A.G.'s refusal to provide a statement claiming at the

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direction of the Hospital's attorneys.<sup>15</sup> A.G.'s false statement further shows that A.G. is not only a biased witness he is also unreliable.

Respondent's video showed that there were four individuals inside of Room 12 during the process of restraining M.F.. At the time A.G. accuses Appellant of punching M.F. in the face, the three other individuals were touching M.F. and despite this close proximity to M.F. , unexplainably A.G. is the only person who witnessed the alleged punch. The Initial Decision does not explain how it could be possible that the other Hospital security guard (Moore) who was standing to the right of M.F.'s face in the exact area of where the alleged punch occurred did not observe this "punch".

The Initial Decision heavily relied on A.G.'s testimony to the exclusion of all other competent credible evidence in the record when A.G.'s own testimony demonstrated that he was unreliable and not trustworthy:

- a. A.G. testified that at 10:53:56, the video depicted him speaking with his co-worker (Moore) inside of Room 12, but A.G. had no recollection of the topic of their conversation.<sup>16</sup>

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<sup>15</sup> Id. at 144.

<sup>16</sup> Id. at 149.



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- b. When A.G. was shown Appellant's co-worker on the video, A.G. could not recall him.<sup>17</sup>
- c. A.G. testified that at 10:54:46, he was standing at the right foot of the bed<sup>18</sup>, Appellant was to A.G.'s left<sup>19</sup>, and A.G. could not identify the hospital staff in the maroon/burgundy uniform who was present.<sup>20</sup>

The Initial Decision made a finding that "When M.F. was struck his body went limp" (Initial Decision at page 17). This finding is based solely on A.G.'s testimony that M.F. became limp when he was allegedly punched by Appellant and completely shut down.<sup>21</sup> Yet, the Initial Decision does not explain how A.G. did not say anything at that time.<sup>22</sup> In other words, if M.F. was punched so hard that there was both a "thwack" sound produced from the punch and M.F. went "limp" and "shut down", how would it be possible that A.G. who describes himself as M.F.'s friend did not say anything -- and if this were in fact true, how is it possible that A.G. did not obtain medical assistance for M.F.. Also, the Initial Decision does not explain how it could be possible that while there were three others in Room 12 with A.G., all of whom were touching M.F., A.G. was the only one who saw

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<sup>17</sup> Id. at 150.

<sup>18</sup> Id. at 154.

<sup>19</sup> Id. at 155.

<sup>20</sup> Id. at 147.

<sup>21</sup> Id. at 156.

<sup>22</sup> Id.

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Appellant punch M.F. on the right side of the face<sup>23</sup> and when M.F. went “limp” and “shut down” none of the others in the room reacted.<sup>24</sup> The only logical explanation is that A.G.’s allegation was fabricated because A.G. felt that Appellant had threatened his life and A.G. wanted to get Appellant fired from his job. A.G. explains that he waited for the room to clear out and then asked Appellant “as a courtesy” not to do something like that again in the ER especially when he was working.<sup>25</sup> This incredible explanation further casts doubt on A.G. as a truthful witness.

The Initial Decision also makes an erroneous finding that “The strike was to M.F.’s face toward the top of his head. [A.G.] responded by yelling, “He hit him” (Initial Decision, Page 17). Yet, A.G. testified that he did not recall yelling “he hit him”.<sup>26</sup>

A.G.’s recollection was also flawed. By way of another example, A.G. testified that he worked at the Hospital for a year and a half, was inside of Room 12 at least twice a shift and testified that there is no camera inside of Room 12.<sup>27</sup> On cross-examination, A.G. was no longer ONE HUNDRED PERCENT certain if Room 12 contained a camera or not.<sup>28</sup>

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<sup>23</sup> Id. at 184-86.

<sup>24</sup> Id. at 188.

<sup>25</sup> Id. at 164.

<sup>26</sup> Id. at 159.

<sup>27</sup> Id. at 179.

<sup>28</sup> Id. at 183-84.

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A.G. was also unreliable in recalling his own past disciplinary history at Capital Health, omitting that he was disciplined for using a cell phone at work twice.<sup>29</sup> A.G. could not recall if M.F. was kicking and testified that M.F. did not kick him which is contradicted by the testimony of Appellant's co-worker (Dossous).<sup>30</sup>

A.G.'s testimony flip-flopped and was contradictory whenever it was self-serving to him. A.G. doesn't recall asking his supervisor to check M.F.'s face.<sup>31</sup> A.G. does not recall asking the other nurses or the physician's assistants to check M.F.'s face.<sup>32</sup> A.G. had access to a phone and a radio and still did not report the incident despite allegedly deeply caring for M.F.<sup>33</sup> But when pressed some more about his failure to report an assault that he allegedly observed of a patient whom he cared deeply about, A.G. miraculously changed his testimony to explain that "I don't recall saying it, the people in the room knew that it happened, yes".<sup>34</sup> This contradicts the investigative findings as the allegations were not reported until the next day. In fact, Danielle Gill, the Charge Nurse, informed Kylie Hanisak, the investigator, that she learned of the incident from a woman in "Registration" who A.G. told that he saw Appellant punch M.F. in the face. **(R4, at page 12)** A.G. then

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<sup>29</sup> Id. at 183.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id. at 198.

<sup>34</sup> Id.

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added that while he does not recall informing anyone “directly”, “A [sic] Made it known to whom and -- and at what Anybody that was listening in the ER.”<sup>35</sup> When pressed again, A.G. could not recall when he reported the incident to those people in the E.R. that he could not recall.<sup>36</sup> Capital Health requires its staff to immediately report any abuse yet A.G. did not do so.<sup>37</sup> When pressed more, A.G. changed his testimony again that he reported the incident to the “Lieutenant” before he left.<sup>38</sup> Importantly, A.G. could not recall the Lieutenant’s last name.<sup>39</sup>

Line 20 Q What’s the Lieutenant’s last name, Sir?

Line 21 A I couldn’t tell you.

In short, Appellant allegedly threatened A.G.’s life which caused A.G. to become extremely upset.<sup>40</sup> A.G. only accused Appellant of assaulting M.F. after he had “verbal combat” with Appellant.<sup>41</sup> A.G. changed his testimony again that he reported the assault to his “boss” before the “verbal combat” with Appellant but could not recall exactly when. <sup>42</sup>

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<sup>35</sup> Id. at 199.

<sup>36</sup> Id.

<sup>37</sup> Id. at 202.

<sup>38</sup> Id. at 203.

<sup>39</sup> Id.

<sup>40</sup> Id. at 204.

<sup>41</sup> Id. at 205.

<sup>42</sup> Id. at 207-08.

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A.G. could not recall his boss' last name despite working with him every shift for over a year.<sup>43</sup> A.G. watched the video of the incident that night or possibly the next day in the security office.<sup>44</sup> Yet, the video from Room 12 was never produced.

While it is the policy of the State of New Jersey to provide for the protection of individuals with developmental disabilities, the Central Registry is intended to prevent caregivers who become offenders against individuals with developmental disabilities from working with individuals with developmental disabilities. N.J.S.A. 30:6D-73(d). Here, it would be a complete travesty of justice to place an innocent person on the Central Registry when they are being falsely accused of abusing an individual with developmental disabilities by someone who has bias, motive and is an unreliable witness.

As stated above, A.G. is personally motivated to fabricate this charge against Appellant and to double down on his false allegations. A.G. admitted that he believed Appellant threatened his life. He is a biased witness and given that the Respondent bears the burden of proof, this burden cannot be sustained.

Because Appellant did not punch or otherwise abuse M.F., the remaining charges in the Final Notice of Disciplinary Action should likewise be dismissed.

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<sup>43</sup> Id. at 208-09.

<sup>44</sup> Id. at 216.



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**CONCLUSION**

Respondent has failed to show that Appellant committed any violations charged in the Final Notice of Discipline. Accordingly, Appellant should be removed from the Central Registry and reinstated with full seniority and awarded back pay.

Respectfully yours,  
Nash Law Firm LLC

*William A. Nash*

By: William A. Nash, Esquire

cc: DAG Caroline Gargione  
DAG Eric Zimmerman  
The Honorable Edward J. Delanoy, ALJ  
Mr. David Leonard