

**VIRGINIA: IN THE DEPARTMENT OF HUMAN RESOURCE  
MANAGEMENT, OFFICE OF EMPLOYMENT DISPUTE RESOLUTION  
CASE NUMBER 12031**

**DECISION OF HEARING OFFICER**

**I. INTRODUCTION**

The Virginia Department of Behavioral Health and Developmental Services (“the agency”) issued the grievant a Group III Written Notice and terminated her from employment on October 5, 2023. The disciplinary action cited the grievant for failing to follow policy and falsification of records during the month of July 2023. For the reasons hereinafter given, I uphold the actions of the agency.

**II. PROCEDURAL BACKGROUND**

The grievant filed her Form A on October 20, 2023. The matter, being a grievance arising from a disciplinary action, was qualified for hearing. The Department of Human Resource Management (DHRM), Office of Employment Dispute Resolution (EDR) appointed me as hearing officer on November 6, 2023. I conducted a prehearing conference call with the grievant and advocate for the agency on November 15. With the agreement of the parties I scheduled the matter for hearing to be held on January 18, 2024. At the request of the grievant, the matter was rescheduled to February 23. I conducted the hearing at the agency’s facility on that date. The agency proffered 104 pages of exhibits which were accepted into evidence without objection. The agency was represented by its advocate during the hearing and presented two witnesses. The grievant represented herself and presented two witnesses in addition to her testimony.

**III. ISSUE PRESENTED**

Whether the agency properly disciplined and terminated the grievant from employment on October 5, 2023 for multiple document errors during the month of July 2023?

#### **IV. FINDINGS OF FACT**

In July 2023, the grievant worked at the agency's facility in the position as a treatment care specialist. Among her duties were conducting group and individual therapy sessions with patients at the facility. She was required to observe and document the attendance of the patients to which she had been assigned. Additionally, she was to note any problematic behaviors or demeanor of a patient that might be of importance to other members of a treatment or discharge team.

During that month the workload of the grievant was heavy. She was often unable to prepare her notes on patients from the group sessions immediately after the session concluded. She prepared on July 19 her official notes regarding sessions stated to have conducted on July 3 with five patients. Also on July 19, she prepared a session note on one patient for a session stated to have been held on July 6. She prepared and submitted notes for a July 20 group on July 25.

One particular patient (hereinafter Patient N) was stated to have attended a session on July 17. One note from the grievant for that session was prepared on July 21, 2023. It described Patient N as being "derogatory toward peers requiring redirection several times to be respectful of everyone in the group." The grievant also filed a separate progress note for Patient N for that same July 17 session describing the behavior of the patient as being "appropriate." On her monthly report of services for Patient N the grievant did not reflect his attendance at a group session on July 17, but did show him present for one on July 20. Patient N had been discharged from the facility on July 18.

The session notes submitted by the grievant for July 3, July 6, and July 20 are not consistent with the monitoring sheets prepared by other employees for the times of the sessions. The other employees marked certain patients whom the grievant reported was being in a group session as being in other locations or asleep. One patient (Patient H) was reported by the grievant as being in a session when the "sign in sheet" maintained contemporaneously on the ward reflected that the patient was "on pass" for the first 45 minutes of the session. The progress note prepared by the grievant for patient H shows the patient attending "the first portion of group and was appropriate. Group ended early due to fresh air break."

The grievant began working at the facility in 2019. She started in a position that did not involve direct patient care or counseling. She took additional training and was able to take on different roles and positions, rising to the position she held in July 2023. She had no formal disciplinary actions taken against her prior to her termination.

#### **V. ANALYSIS**

The Commonwealth of Virginia provides protections to its employees in Chapter 30 of Title 2.2 of the Code of Virginia. Among these protections is the right to grieve formal disciplinary actions. The Department of Human Resource Management (DHRM) Office of Employment Dispute Resolution has developed a Grievance Procedure Manual (GPM) and Rules for Conducting Grievance Hearings (the Rules). The GPM sets the applicable standards for

this type of proceeding. Section 5.8 provides that in disciplinary grievance matters (such as this case) the agency has the burden of going forward with the evidence. It has the burden of proving, by a preponderance of evidence, that its actions were warranted and appropriate. The Rules state that in a disciplinary grievance a hearing officer shall review the facts de novo and determine:

- I. Whether the employee engaged in the behavior described in the Written Notice?
- II. Whether the behavior constituted misconduct?
- III. Whether the discipline was consistent with policy? and
- IV. Whether there were mitigating circumstances justifying the reduction or removal of the disciplinary action, and, if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

The grievant does not dispute that she created the records upon which the agency has relied for its disciplinary action against her. The much closer question is whether the agency has proven that the records submitted by the grievant supports a finding of misconduct. The agency gave two reasons or classifications of misconduct to support the disciplinary action. The first is a failure to follow established policy. The agency facility Policy Number 8031 specifies certain requirements for the documentation of activities. It states that “timely, accurate and complete entries are essential in the concurrent care of the individual we serve. Delays in recording or reporting can result in serious omission and untimely delays needed for care.” The policy further gives a weak instruction that “documenting more than seven days after an occurrence is strongly discouraged.”

Timeliness is a flexible consideration, depending on, among other factors, the nature of the information to be recorded. The policy gives a list of activities to be reported concurrently, such as physical vital signs, clinical or physical assessments, changes in a patient status and treatment, and other serious events. The events in question here, being group sessions, do not qualify as a serious occurrence requiring immediate reporting. The sooner something is noted, the less opportunity for the reporter’s memory to fail. The agency showed only a single event qualifying as untimely documentation giving rise to possible severe consequences; that was the late filing of the progress notes for Patient N prior to his being discharged. No evidence was presented that the grievant was aware that Patient N was likely to be discharged on July 18, making her delayed progress note not a violation of the policy.

Where the agency has met its burden of proof is in showing that the entries made by the grievant were inaccurate. The Standards of Conduct, DHRM Policy 1.60, state that discipline for failing to follow policy can be imposed regardless of whether the actions are intentional or unintentional. The grievant has argued that she, in fact, did conduct the group sessions as stated in the progress notes for the various patients. She has suggested that the monitoring notes of the other employees are inaccurate. This credibility issue requires me to weigh the live testimony of the grievant against the written records kept by other employees.

The agency did not call every person who made entries on the monitoring sheets. If I were being asked to resolve the difference between the grievant’s records and the other reports

based on the notations made by a single reporter, the conflict would be more difficult to resolve in favor of the agency. Because the monitoring notes were made by multiple employees and no evidence was presented to show that those employees had a reason to falsify the entries to the detriment of the grievant, whether collectively or individually, I find that the grievant did submit inaccurate progress notes for at least six patients. I am aware of the discrepancy between the evidence presented at the hearing of only twenty-five inaccurate documents and the recitation in the Written Notice that the agency had uncovered sixty-two such documents. The agency is not required, however, to establish each of the sixty-two instances when the evidence presented at the hearing is otherwise sufficient.

The agency has also relied upon an allegation of falsification of documents as prohibited by DHRM Policy 1.60. That policy allows discipline to be imposed for either intentional or unintentional failures to follow a directive. The actions of the grievant were not shown to be in bad faith. The number of inaccurate documents does support the finding that the grievant acted intentionally, but not necessarily maliciously. I find the evidence more than sufficient to find that the actions of the grievant were more than merely accidents.

I fully accept the argument of the grievant that during the month of July 2023 her workload was what caused her to delay in the preparation of the progress notes. I do not have the authority to determine whether an appropriate level of staffing would have solved some of the problems of the grievant. Under section 5.8 of the GPM, I am required to defer to the decisions of the agency to the extent that they are reasonable. This includes whether the level of discipline imposed was appropriate. Reasonable people can certainly disagree on whether each inaccurate or misleading document submitted by the grievant would be sufficient to justify her termination from employment and a Group III Written Notice. Viewing the documents collectively, I do not find that the agency acted beyond the bounds of reason.

I do not find that there is sufficient evidence to determine that the action of the agency is contrary to any established law or policy. The prior satisfactory work history of the grievant and her heavy workload are not sufficient reasons for me to mitigate the level of discipline. The grievant submitted substantial arguments on that issue to the agency prior to imposing the discipline, which evidence was considered by the agency. I decline not to defer to the agency's judgment as to the submitted arguments in favor of mitigation. I do not find them to be sufficiently persuasive.

## **VI. DECISION**

I uphold the Group III Written Notice dated October 6, 2023 and the termination of the grievant from employment with the agency.

## **VII. APPEAL RIGHTS**

The parties may file an administrative review request within fifteen calendar days from the date this decision is issued, if any of the following apply:

1. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resources Management to review the decision. You must state the specific policy and explain why you believe the decision is not consistent with that policy.

Please address the request to:

Director, Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or send by facsimile to (804) 371-7401, or by email.

2. If you believe the decision does not comply with the grievance procedure, or you have new evidence that could not have been discovered before the hearing you may request that EDR review the decision. You must state these specific portions of the grievance procedure with which you believe the decision does not comply. Please address your requests to:

Office of Employment Dispute Resolution  
Department of Human Resource Management  
101 N 14<sup>th</sup> street, 12<sup>th</sup> floor  
Richmond, VA 23219

or send by email to [EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov), or by facsimile to (804) 786-1606.

You may request more than one type of review. Your request must be in writing and must be received by the reviewer within fifteen calendar days of the date of the issuance of this decision. You must provide a copy of all your appeals to the other party, EDR, and the hearing officer. The decision becomes final when the 15-calendar day period has expired, or when requests for administrative review have been decided.

You may request a judicial review if you believe the decision is contrary to law. You must file a notice of appeal with the clerk of circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final.

See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or you may call EDR'S toll-free Advice Line at 888-232-3842 to learn more about appeal rights help from an EDR Consultant.

ORDERED this March 4 ,2024

/s/Thomas P. Walk  
Thomas P. Walk, Hearing Officer