

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA**  
**IN THE MATTER OF THE APPEAL OF**  
**VINCENT J. HAGLER**

**ORDER**

**April 20, 2016**

This matter came before the Board upon the dismissal of the Employee from his employment with the Alabama Department of Mental Health (“DMH”). The Employee was dismissed from his employment on December 14, 2015, based on charges contained in a letter to the Employee dated the same. This matter was assigned to Administrative Law Judge Randy C. Sallé and a hearing was held on February 5, 2016. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DMH charges that the Employee violated DMH’s Policy 19-10(III)(2)(a) – (Physical Abuse as defined in the DMH Incident Management Plan shall result in disciplinary action of termination.); DMH’s Incident Management Plan IV(B)(2)(i), which defines Physical Abuse as, “Any assault by an employee/agent upon a recipient and includes, but is not limited to, hitting, kicking, pinching, slapping, or otherwise striking a recipient or using excessive force regardless of whether an injury results. Assault as defined by this Policy implies intent;” and DMH’s Policy #70-5(II)(1)(a) – (Client abuse, mistreatment, neglect or exploitation.).

A review of the Employee's recent work history shows: two (2) Verbal Counselings in January 2015 and May 2015 for absenteeism and punctuality; eight (8) Written Reprimands from January 2015 to August 2015 for various infractions, including refusing to work overtime on a major holiday, insubordination, absenteeism, punctuality, and for sitting in a chair with his shoes off and covered in a blanket; three (3) Written Warnings in February 2015 and May 2015 for unacceptable job performance, absenteeism and punctuality; two (2) 1-Day Suspensions in July 2015 and August 2015 for absenteeism and refusing to work a mandatory overtime shift; and one (1) 3-Day Suspension in August 2015 for using a cell phone during 1:1 assignment.

The Employee was employed by DMH in the classification of Mental Health Worker I and assigned to Bryce Hospital. On October 18, 2015, the Employee was assigned to work a 1:1 assignment with a patient. A coworker was also working an assignment with another patient in the same room. At about 3:30 a.m., the Employee's patient woke up and asked the Employee's coworker for a Tylenol. The Employee's coworker reminded the patient that she was not his sitter and that he would need to ask the Employee for the Tylenol instead. When the patient asked the Employee for a Tylenol, the Employee told the patient to roll over and go back to sleep. The Employee's patient subsequently jumped out of bed and attacked the Employee. The Employee's coworker stated that the patient punched the Employee in the face. The Employee grappled with the patient and then placed him in a choke hold, which

the patient freed himself from this restraint. They continued to hit each other until the Employee placed the patient in another choke hold. At that point, other staff came in and separated the Employee and the patient. The Employee was then escorted out of the room and a nurse went to check the patient. The nurse saw that the patient had a swollen right jaw and redness on his chest and reported the injuries to the Director of Nursing. The nurse asked the patient about the incident, who stated the Employee hit him in the face twice with a closed fist. The Employee stated to the nurse that he did not touch the patient.

The Facility Director began an investigation into the incident as soon as the facts were brought to her attention. She concluded that the Employee placed the patient in a choke hold and hit the patient, which was supported by the coworker's eyewitness report and the patient's allegations. The Employee's actions were in violation of DMH's non-violent crisis intervention training.

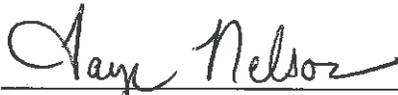
The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order as if fully set forth herein.

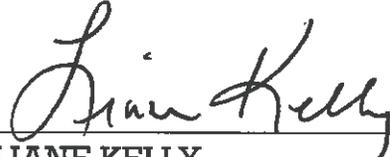
The Board has carefully considered the Administrative Law Judge's Recommended Order and is of the opinion that the decision of the appointing authority to dismiss the Employee is supported by the evidence and that the termination is warranted.

It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby affirmed.

  
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JACKIE GRAHAM  
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