

COMMONWEALTH OF PENNSYLVANIA

Cynthia M. Kist : State Civil Service Commission
: :
v. : :
: :
State Correctional Institution at :
Huntingdon, Department of Corrections : Appeal No. 31061

Cynthia M. Kist : Page Darney
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Cynthia M. Kist challenging her Suspension Pending Investigation and subsequent Removal¹ from regular Registered Nurse employment with the State Correctional Institution at Huntingdon, Department of Corrections (hereinafter “appointing authority”). A hearing was held on August 17, 2023, via video, before Commissioner Pamela M. Iovino.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority had just cause for the Removal.

¹ When an appointing authority suspends an employee pending investigation and subsequently removes the employee, the period of suspension will be deemed part of the removal action. *Woods v. State Civil Service Commission (New Castle Youth Development Center, Department of Public Welfare)*, 865 A.2d 272, 274 n. 3 (Pa. Commw. Ct. 2004); 4 Pa. Code § 101.21(b)(2). Appellant having been suspended, effective December 30, 2022, pending investigation, and having remained on suspension until her removal, effective March 9, 2023, we consider appellant’s removal, effective as of the date of suspension, to be the sole personnel action to be reviewed through this appeal.

FINDINGS OF FACT

1. By letter dated December 30, 2022 appellant was notified of her suspension without pay from her position of Registered Nurse, effective December 30, 2022. Comm. Ex. A.

2. The appointing authority's December 30, 2022 letter stated:

This suspension is pending completion of our investigation which is based upon an allegation of violations of the Department of Corrections, Code of Ethics and the Department of Corrections, Policy and Regulations. Specifically, not following a direct order nor following policy and procedures for refusing to issue insulin and record insulin refusals per policy.

Comm. Ex A.

3. By letter dated March 8, 2023, the appointing authority removed appellant from her Registered Nurse regular status position, effective close of business March 9, 2023. Comm. Ex. C.

4. The appointing authority's March 8, 2023 letter stated appellant violated the Registered Nurse Essential Job Function 1, and the Department of Corrections, Code of Ethics, Sections B-8, B-9, B-10, B-14, and B-22 as follows:

Specific charges allege you were aware of your assigned duty to go to the RHU and administer insulin to the inmates in the morning since January 2021. You were given orders from former RNS Lynch, RNS Davis, CHCSA McCorkle and Deputy Spyker to deliver insulin in the RHU in the mornings as the night shift RN. Superintendent Rivello also informed you to follow the last direction given. You refused the order to go to the RHU for the morning insulin in an email on December 4, 2022. You refused the order to go to the RHU for the morning insulin line again in the email at 2034 hours on December 19, 2022. You refused the order again at 2115 hours on December 19, 2022. During your fact finding, you admitted to refusing to follow the order of administering the morning insulin in the RHU. You claimed to be concerned that the inmates would not receive meal trays soon enough in the RHU and you would not be comfortable with leaving the institution with inmates not receiving a meal tray after being given

insulin. You were informed that insulin would be done in the RHU at 0545 hours and the trays would be in the RHU by 0615. You were informed that the time between receiving the insulin and receiving the meal trays was not excessive. This was confirmed with the Provider. You claimed to be worried about the inmates' safety; however, you admitted to not taking insulin medication and supplies to the Modular Housing Unit with the exception of one time. You also admitted to not providing an inmate with a chance to have his glucose checked. If there would have been an emergency, you would have had to go back inside the institution to retrieve the supplies before returning to the Modular Housing Unit to provide the medical treatment. You also claimed that your boyfriend would be late for work if you did not leave by 0555 hours. You were made aware that your shift did not end until 0600 hours and that all staff have other outside obligations. You claimed that you were worried about losing your license due to providing insulin to RHU inmates; however, you had no concerns about administering insulin to MOD inmates who received meal trays later than [sic] the RHU inmates. You also failed to ensure proper

documentation was completed when the MOD inmates refused to be treated. The DC-462 was not completed per policy. Since December 5, 2022, after Deputy Spyker directed you that your concerns had been addressed, you worked five days. You did not go to the RHU to administer insulin but had an LPN do it for four days and the other day you had another RN complete your duties. Additionally, even after being informed that your concerns were addressed, you still remained argumentative and refused to follow orders. You made a statement of looking for other employment on several occasions. At the end of your fact finding you stated, "they just need to fire me." This statement was witnessed by Captain Maxwell and Lt. Corley.

Comm. Ex. C; AA Ex. 1, 6.

5. The appeal was properly raised before the Commission and was heard under Section 3003(7)(i) of Act 71 of 2018.
6. Appellant has been employed as a registered nurse with the appointing authority for three years and has no prior discipline. N.T. pp. 99-100; AA Ex. 3, pp. 1, 13.

7. On December 9, 2019, appellant signed the DC-173 form acknowledging she received, read, and agreed to abide by the Commonwealth of Pennsylvania's Department of Corrections Code of Ethics. AA Exs. 3, 5.
8. Appellant was familiar with the Registered Nurse Essential Job Functions described in the Registered Nurse Position Description. AA Ex. 3, pp. 100-104.
9. At the time of appellant's removal, appellant was the night shift registered nurse, and her shift was from 5:30 p.m. to 6:00 a.m. N.T. pp. 40, 150; AA Ex. 3, p. 62.
10. Appellant's relevant duties as the night shift registered nurse included:
 - Transporting and administering insulin to inmates housed in the Restrictive Housing Unit (hereinafter, "RHU")² at approximately 5:30/5:45 a.m. N.T. pp. 43-45, 51, 71-72, 86-87, 99-100, 104-105; AA Ex. 3, pp. 98, 100-104.
 - Transporting a red lockbox (hereinafter, "the red box") containing needles sharps to deliver insulin to inmates housed on

² The Restricted Housing Unit holds inmates who are under disciplinary custody for failure to follow rules and regulations, or are being held under administrative custody for the inmates' own protection due to safety threats. N.T. p. 48.

the Modular Housing Unit (hereinafter, “MOD”)³. N.T. pp. 45-46; AA Ex. 3 pp. 36-37, 101.

- Document when an inmate refuses any or all medication(s) by having the inmate sign a DC-462 form and documenting the refusal in the eMAR system. N.T. pp. 45-48, 73-76; AA Exs. 3, 9.

11. On December 4, 2022, appellant sent the following email to Corrections Healthcare Administrator Sean McCorkle, Registered Nurse Supervisor Nicholas Davis (hereinafter, “RNS Davis”), and Union Representative Kerri Theuerl:

Just FYI I will not be doing the insulin in the RHU at 0530. I’ve already talked to officers that work daylight down there and these inmates aren’t getting trays until at least 630 sometimes later. In the hospital you don’t give R⁴ unless your patient already has a meal tray on the floor and I am not comfortable giving insulin that early then leaving before these inmates have meal trays. That’s my license and I’m not risking it. I will be going to our union and possibly further because asking this of someone is unethical. Also, I leave at 0555 giving my boyfriend just enough time to leave

³ The Modular Housing Unit is a facility outside of SCI Huntingdon, which holds inmates who are approved to be outside the walls, and are able to work outside the facility in the community. N.T. p. 48.

⁴ “R” is a type of insulin.

for work. I wouldn't even have time to do the insulin plus give report and count on the days that the lpn stays for 8 hours.

N.T. p. 83-86, 99-100; AA Ex. 3, p. 29.

12. Deputy Superintendent Jill Spyker reviewed appellant's December 4, 2022 email. N.T. pp. 78-79, 86.
13. On the morning of December 5, 2022, Deputy Superintendent Spyker held a meeting with RNS Davis, Captain James McCluskey, and Food Services Manager Charles Pittsinger⁵ to ensure the appointing authority was "providing insulin to the inmates in the RHU in a timely manner and that meals were being taken down there at the appropriate time." N.T. pp. 85-86; AA Ex. 3, pp. 30, 88, 93.
14. Following the meeting, Deputy Superintendent Spyker sent appellant the following email on December 5, 2022:

It is important to understand that we are not in the business of putting anyone's license on the line. If there is

⁵ This individual's last name was spelled "Pissinger" in the transcript, however, the personnel information provided in appointing authority's Exhibit 3 lists this individual's last name as "Pittsinger." The Commission believes the correct spelling is "Pittsinger" as provided in the personnel information. AA Ex. 3, p. 88.

an issue with the way something is being done and/or there is a better way for something to be completed we are open to the discussion. But to dictate that you are not going to do something without consulting with your direct supervisors is not how we do business. Your concerns were looked into and we will continue to dispense insulin the way we have been as this matter was reviewed and looked into by multiple staff to include RNS Davis and the Provider.

Just a friendly remind that we all have obligations outside work. You are to be ready and available to work your full shift and fulfill your obligations at the facility on a regular basis as your scheduled shift ends at 0600 hours. If you have any questions or concerns please reach out. Thank you – Jill

N.T. p. 72-73, 84-85, 99-100; AA Ex. 3, pp. 28-29.

15. On December 5, 2022, appellant sent an email response to Deputy Superintendent Spyker in which she again raises objections to administering insulin in the RHU. N.T. pp. 84-85; AA Ex. 3, p. 28.
16. On December 5, 2022, Superintendent John Rivello responded to appellant's email stating, "[y]ou are to follow the last direction given. If you would like to

disagree with the direction then I suggest you work through your chain of command as instructed by the deputy. A meeting can be scheduled to discuss. Thank you.” N.T. pp. 84-85; AA Ex. 3, p. 28.

17. On December 19, 2022, a series of email exchanges took place between appellant, RNS Davis, and Corrections Healthcare Administrator McCorkle during which appellant raised the same concerns regarding the timing of the RHU morning insulin administration she raised on December 4 and 5, 2022. N.T. pp. 72-73, 99-100; AA Ex. 3, pp. 36-39, 100-101.
18. During the December 19, 2022 email exchanges, appellant disclosed the following regarding Inmate M⁶ and her responsibility to take the red box to the MOD:

You can go back through all of [Inmate M’s] insulin administration. He has never checked in the a[.]m. I took the red box out 1 time. He didn’t show up I called him up and he said he doesn’t check in the morning and won’t ever check. I told him if he ever felt like he needed checked to let the officer know and we would bring it out. You can

⁶ The Commission has redacted the inmate’s name.

even ask the inmate. You still won't answer my question about the rhu insulin because you know that is wrong and like I said [Inmate M] isn't even the point.

AA Ex. 3, pp. 36-37, 100-101.

19. On December 19, 2022, Spyker sent appellant the following email response:

We held a meeting the last time you brought this matter up. All inmates are feed [sic] in the RHU at 6:15. You have plenty of time to go to the RHU at 5:45 to do insulin as the RN and the LPN will do the Mods. Operationally that's how it will be done. If this is not being done now it will go into effect immediately. The LPN that goes to the Mods is required to take all required needles and must complete all refusals by policy. This is not up for debate any more [sic]. If you have any further concerns we can schedule a meeting and we will discuss it.

N.T. pp. 100-101; AA Ex. 3, pp. 30-32, 101.

20. Security Lieutenant Joseph Corley was asked to investigate appellant based on allegations of insubordination towards her superiors and appellant not conducting her job duties. N.T. p. 40.

21. Corley conducted a fact-finding investigation concerning appellant from December 2022 to January 2023. N.T. p. 40.
22. As part of his investigation, Corley pulled a copy of appellant's biometric log. N.T. pp. 52-53.
23. The biometric log shows every time a staff member uses the appointing authority's electronic login system to check in and check out of the facility. N.T. pp. 52-53.
24. Appellant's biometric log showed appellant was at SCI Huntingdon from December 18, 2022 to December 19, 2022, from December 24, 2022 to December 25, 2022, and from December 29, 2022 to December 30, 2022. N.T. pp. 53-54; AA Ex. 3, pp. 47-48.
25. Corley also pulled both electronic medical documentation listing the staff members who issued insulin to inmates, and the Security Level Five Housing Visitor Login. N.T. pp. 54-57; AA Ex. 3 pp. 56-61.

26. The electronic medical documentation lists the staff members who issued insulin to inmates. N.T. pp. 54-57; AA Ex. 3 pp. 56-61.Ab
27. The Security Level Five Housing Visitor Login is a log every staff member, who is not assigned to the RHU, must sign when they enter and exit the RHU. N.T. p. 57; AA Ex. 3, pp. 66-70.
28. The electronic medical documentation showed LPN Courtney Ramper performed the insulin line in the RHU on December 19, 2022. N.T. pp. 55-56; AA Ex. 3 pp. 56-61.
29. The Security Level Five Housing Visitor Login showed appellant did not sign in or out of the RHU from December 6, 2022 to December 30, 2022. N.T. pp. 57-58; AA Ex. 3, pp. 66-70.
30. On December 29, 2022, Corley conducted a fact-finding interview with appellant. N.T. pp. 42-43; AA Ex. 3, pp. 100-104.

31. During the December 29, 2022 fact-finding interview appellant admitted the following:

- Appellant read and understood the Code of Ethics. N.T. pp. 42-46; AA Ex. 3, pp. 100-102.
- Appellant was familiar with the Essential Job Functions described in the Registered Nurse Position Description. N.T. pp. 42-46; AA Ex. 3, pp. 100-102.
- On December 19, 2022, appellant had an email communication with RNS Davis, where RNS Davis ordered appellant to go to the RHU in the morning to complete the insulin line. N.T. pp. 42-46; AA Ex. 3, pp. 100-102.
- On December 19, 2022, appellant refused RNS Davis's order by stating, "[s]0 I'm sorry I won't do it but maybe one of the new rns you hire will do this task." N.T. pp. 42-46; AA Ex. 3, pp. 100-102.
- On December 19, 2022, appellant refused the order a second time stating, "I won't do the task and if you would like to terminate my employment over it I will understand." N.T. pp. 42-46; AA Ex. 3, pp. 32, A100-102.
- On December 19, 2022, appellant was informed by Spyker that appellant's concerns were discussed at a previous meeting and the insulin line will be run as appellant was told. N.T. pp. 42-46; AA Ex. 3, pp. 100-102.
- Appellant only took the red box to the MOD one time stating, "the [inmate] doesn't check [his insulin]. I took it the first time when he went out. He said he

wouldn't check and if he needed it, he would let the officers know." N.T. pp. 42-46; AA Ex. 3, pp. 100-102.

- Appellant tries to leave her shift on time at 5:55 a.m. when she can. N.T. pp. 42-46; AA Ex. 3, pp. 100-102.

32. At the conclusion of the fact-finding interview everyone who attended to include appellant signed a transcript of the interview indicating, "I acknowledge that the above questions and answers are correct, as they were asked and answered during this meeting." AA Ex. 3, p. 102.
33. On February 2, 2023, a Pre-Disciplinary Hearing (hereinafter, "PDC") was held. N.T. pp. 62-63, 87-88, 93-96; AA Ex. 7.
34. In attendance at the PDC were Deputy Superintendent Joel S. Kohler, Major House, Human Resources Analyst 3 Edward McEwan, Deputy Superintendent Spyker, Major Loy, CCPM Strait, Clerical Supervisor 1 B. Koch, Lieutenant Corley, Union Representative Kerri Theuerl, Union Member Theresa Kinkaid, and appellant. N.T. pp. 62-63, 87-88, 93-96; AA Ex. 7.

DISCUSSION

The present appeal challenges the appointing authority's decision to remove appellant from regular status employment as a Registered Nurse. The issue before the Commission is whether the appointing authority has established just cause to remove appellant from her position. In an appeal challenging the removal of a regular status employee, the appointing authority has the burden of establishing just cause for the personnel action. *Mihok v. Department of Public Welfare, Woodville State Hospital*, 147 Pa. Commw. 344, 348, 607 A.2d 846, 848 (1992); 71 Pa.C.S.A. §§ 2607, 3003(7)(i). Just cause must be job related and, in some manner, rationally and logically touch upon the employee's competency and ability to perform. *Mihok*, 147 Pa. Commw. at 348, 607 A.2d at 848.

In support of its charge, the appointing authority presented the testimony of Human Resource Analyst Julie Lewis⁷, Corrections Officer 3 Joseph Corley⁸, Corrections Healthcare Administrator (hereinafter, "CHCA") Sean

⁷ Lewis is employed by the Office Administration but works for the Department of Corrections (hereinafter, "DOC"). N.T. p. 21. Currently, Lewis serves as a labor analyst for the appointing authority and SCI-Smithfield. N.T. p. 21. Lewis has held her current position for three months, has worked in Human Resources since January 2015, and has worked for the Commonwealth since July 1994. N.T. p. 22. As a labor analyst, Lewis handles disciplinary matters, employee grievances, unemployment compensation, and the EPDC system. N.T. pp. 21-22.

⁸ Corley is employed as a Security Lieutenant for the appointing authority. N.T. pp. 38-39. He has held that position since 2020 and has been employed by the Commonwealth at the DOC since 2005. N.T. pp. 38-40. As a Security Lieutenant, Corley's responsibilities include conducting investigations concerning workplace violence, allegations of abuse by inmates, and employee rules violations. N.T. p. 39. In the instant case, Corley was tasked to investigate allegations against appellant for insubordination towards superiors and failure to conduct job duties. N.T. pp. 40-41.

McCorkle⁹, Deputy Superintendent for Centralized Services Jill Spyker¹⁰, and Deputy Superintendent for Facilities Management Joel S. Kohler¹¹. Appellant testified on her own behalf. The evidence presented by the parties has been reviewed by the Commission and is summarized below.

Appellant was employed by the appointing authority as a Registered Nurse and worked for the appointing authority for three years. N.T. pp. 99-100; AA Ex. 3, pp. 1, 13. At the time of appellant's removal, she was the night shift Registered Nurse, and her shift ran from 5:30 p.m. to 6:00 a.m. N.T. pp. 40, 150; AA Ex. 3, p. 62. As the night shift Registered Nurse, appellant's relevant job duties included transporting and administering insulin to inmates housed in the Restrictive Housing Unit (hereinafter, "RHU") at approximately 5:30/5:45 a.m., transporting a red lockbox (hereinafter, "the red box") containing needles sharps to deliver insulin to inmates housed at the Modular Housing Unit (hereinafter, "MOD"), and recording when an inmate refused any or all medication(s) by having the inmate sign a DC-462 form and documenting the refusal in the eMAR system. N.T. pp. 43-48, 51, 71-76, 86-87, 99-100, 104-105; AA Exs. 3, 9.

⁹ McCorkle has been employed by the appointing authority as the CHCA for approximately one year and six months and has been employed by the Commonwealth at the DOC for 15 years. N.T. pp. 66-68. As the CHCA, McCorkle oversees the medical department, the dental department, and a small portion of the sight department. N.T. p. 67. Additionally, McCorkle has been an RN since 2006. N.T. pp. 67-68.

¹⁰ Spyker has held the position of Deputy Superintendent since 2020 and has worked for the DOC since 2001. N.T. pp. 78-80. As Deputy Superintendent, Spyker oversees the medical department and is McCorkle's direct supervisor. N.T. pp. 79-80.

¹¹ Kohler has held the position of Deputy Superintendent for a little over three years and has worked for the DOC for twenty-eight and a half years. N.T. pp. 92-93.

Appellant was removed following an investigation into allegations appellant engaged in insubordination towards her superiors and she was not carrying out her assigned job duties. N.T. p. 40. These allegations centered around a series of emails between appellant and her superiors in which appellant raised objections about administering insulin to inmates housed in the RHU. N.T. pp. 72-73, 83-86, 99-101; AA Ex. 3, pp. 28-32, 36-39, 88, 93, 100-101. The email exchanges in question took place between December 4, 2022 and December 19, 2022. N.T. pp. 72-73, 83-86, 99-101; AA Ex. 3, pp. 28-32, 36-39, 88, 93, 100-101.

Corley was assigned to investigate these allegations against appellant. N.T. p. 40. Corley's fact-finding investigation took place from December 2022 to January 2023. N.T. p. 40. As part of his investigation, Corley reviewed the December 2022 email exchanges, interviewed the parties to those emails, took witness statements, reviewed appellant's check-in and check-out biometrics information, reviewed the DOC Code of Ethics, and reviewed the Registered Nurse position description and Essential Job Functions. AA Ex. 3, pp. 2-9. We will begin by reviewing the December 2022 email exchanges and the undisputed facts resulting from those emails.

On December 4, 2022, appellant sent the following email to McCorkle, RNS Nicholas Davis, and Kerri Theuerl:

Just FYI I will not be doing the insulin in the RHU at 0530. I've already talked to officers that work daylight down there and these inmates aren't getting trays until at least 630 sometimes later. In the hospital you don't give R¹² unless your patient already has a meal tray on the floor and

¹² "R" is a type of insulin.

I am not comfortable giving insulin that early then leaving before these inmates have meal trays. That's my license and I'm not risking it. I will be going to our union and possibly further because asking this of someone is unethical. Also, I leave at 0555 giving my boyfriend just enough time to leave for work. I wouldn't even have time to do the insulin plus give report and count on the days that the lpn stays for 8 hours.

N.T. p. 83-86, 99-100; AA Ex. 3, p. 29. Spyker reviewed appellant's December 4, 2022 email. N.T. pp. 78-79, 86. On the morning of December 5, 2022, Spyker held a meeting with RNS Davis, Captain James McCluskey, and Food Services Manager Charles Pittsinger to ensure the appointing authority was "providing insulin to the inmates in the RHU in a timely manner and that meals were being taken down there at the appropriate time." N.T. pp. 85-86; AA Ex. 3, pp. 30, 88, 93.

Following the meeting, Spyker sent appellant the following email on December 5, 2022:

It is important to understand that we are not in the business of putting anyone's license on the line. If there is an issue with the way something is being done and/or there is a better way for something to be completed we are open to the discussion. But to dictate that you are not going to do something without consulting with your direct supervisors is not how we do business. Your concerns were looked into and we will continue to dispense insulin the way we have been as this matter was reviewed and looked into by multiple staff to include RNS Davis and the Provider.

Just a friendly remind that we all have obligations outside work. You are to be ready and available to work your full shift and fulfill your obligations at the facility on a regular

basis as your scheduled shift ends at 0600 hours. If you have any questions or concerns please reach out. Thank you – Jill

N.T. p. 72-73, 84-85, 99-100; AA Ex. 3, pp. 28-29. On December 5, 2022, appellant sent an email response to Spyker in which she again raised objections to doing the insulin in the RHU. N.T. pp. 84-85; AA Ex. 3, p. 28. On December 5, 2022, Superintendent John Rivello responded to appellant's email stating, "[y]ou are to follow the last direction given. If you would like to disagree with the direction then I suggest you work through your chain of command as instructed by the deputy. A meeting can be scheduled to discuss. Thank you." N.T. pp. 84-85; AA Ex. 3, p. 28.

On December 19, 2022, a series of email exchanges took place between appellant, RNS Davis, and CHCA McCorkle during which appellant raised the same concerns regarding the timing of the RHU morning insulin administration she raised on December 4 and 5, 2022. N.T. pp. 72-73, 99-100; AA Ex. 3, pp. 36-39, 100-101. During the December 19, 2022 email exchanges, appellant disclosed the following regarding Inmate M¹³ and her responsibility to take the red box to the MOD:

You can go back through all of [Inmate M's] insulin administration. He has never checked in the a[.]m. I took the red box out 1 time. He didn't show up I called him up and he said he doesn't check in the morning and won't ever check. I told him if he ever felt like he needed checked to let the officer know and we would bring it out. You can even ask the inmate. You still won't answer my question about the rhu insulin because you know that is wrong and like I said [Inmate M] isn't even the point.

¹³ The Commission has redacted the inmate's name.

AA Ex. 3, p. 36-37, 100-101. On December 19, 2022, Spyker sent appellant the following email response:

We held a meeting the last time you brought this matter up. All inmates are feed [sic] in the RHU at 6:15. You have plenty of time to go to the RHU at 5:45 to do insulin as the RN and the LPN will do the Mods. Operationally that's how it will be done. If this is not being done now it will go into effect immediately. The LPN that goes to the Mods is required to take all required needles and must complete all refusals by policy. This is not up for debate any more [sic]. If you have any further concerns we can schedule a meeting and we will discuss it.

N.T. pp. 100-101; AA Ex. 3, pp. 30-32, 101.

After reviewing the December 2022 email exchanges, Corley next obtained copies of appellant's biometric check-in and check-out logs. N.T. pp. 52-53. The biometric log tracked every time a staff member uses the appointing authority's electronic login system to check in and check out of the facility. N.T. pp. 52-53. Appellant's biometric log showed appellant was at SCI Huntingdon from December 18, 2022 to December 19, 2022, from December 24, 2022 to December 25, 2022, and from December 29, 2022 to December 30, 2022. N.T. pp. 53-54; AA Ex. 3, pp. 47-48.

Next, Corley obtained both electronic medical documentation listing the staff members who issued insulin to inmates, and the Security Level Five Housing Visitor Login. N.T. pp. 54-57; AA Ex. 3 pp. 56-61. The electronic medical documentation lists the staff members who issued insulin to inmates. N.T. pp. 54-57; AA Ex. 3 pp. 56-61. The Security Level Five Housing Visitor Login is a log of every staff member listing when they enter and exit the RHU. N.T. p. 57; AA Ex. 3,

pp. 66-70. The electronic medical documentation showed LPN Courtney Ramper performed the insulin line in the RHU on December 19, 2022. N.T. pp. 55-56; AA Ex. 3 pp. 56-61. Further, the Security Level Five Housing Visitor Login showed appellant did not sign in or out of the RHU from December 6, 2022 to December 30, 2022. N.T. pp. 57-58; AA Ex. 3, pp. 66-70.

On December 29, 2022, Corley conducted a fact-finding interview with appellant. N.T. pp. 42-43; AA Ex. 3, pp. 100-104. Also present at the fact-finding interview was Captain Maxwell and Registered Nurse Eisenberg. N.T. p. 42. During the December 29, 2022 fact-finding interview appellant made a number of statements. Appellant acknowledged she read and understood the DOC Code of Ethics and was familiar with the Essential Job Functions described in the Registered Nurse Position Description. N.T. pp. 42-46; AA Ex. 3, pp. 100-102. Appellant acknowledged on December 19, 2022 she refused two direct orders from RNS Davis to complete the RHU insulin administration stating, “I won’t do the task and if you would like to terminate my employment over it I will understand.” N.T. pp. 42-46; AA Ex. 3, pp. 100-102; *See* Finding of Fact 31. Appellant acknowledged she only took the red box to the MOD one time stating, “the [inmate] doesn’t check [his insulin]. I took it the first time when he went out. He said he wouldn’t check and if he needed it, he would let the officers know.” N.T. pp. 42-46; AA Ex. 3, pp. 100-102; *See* Finding of Fact 31. Appellant also acknowledged she tries to leave her shift on time at 5:55 a.m. when she can. N.T. pp. 42-46; AA Ex. 3, pp. 100-102; *See* Finding of Fact 31. At the conclusion of the fact-finding interview, the appellant and other participants all signed a transcript of the interview indicating, “I acknowledge that the above questions and answers are correct, as they were asked and answered during this meeting.” AA Ex. 3, p. 102.

By letter dated December 30, 2022, the appointing authority suspended appellant pending investigation based upon allegations “of violations of the Department of Corrections, Code of Ethics and the Department of Corrections, Policy and Regulations. Specifically, not following a direct order nor following policy and procedures for refusing to issue insulin and record insulin refusals per policy.” Comm. Ex. A. By letter dated January 25, 2023, the appointing authority notified appellant a Pre-Disciplinary Conference (hereinafter, “PDC”) was scheduled for February 2, 2023 at 0900 hours. AA Ex. 6. The January 25, 2023 PDC notice specifically charged appellant with violating DOC Code of Ethics Sections B-8, B-9, B-10, B-14, and B-22. AA Ex. 6; See Finding of Fact #4. Additionally, the PDC notice charged appellant with violating the Registered Nurse Essential Job Function 1. AA Ex. 6; *See* Finding of Fact 4.

The PDC was held on February 2, 2023. N.T. pp. 62-63, 87-88, 93-96; AA Ex. 7. The PDC was attended by Deputy Superintendent Kohler, Major House, Human Resources Analyst 3 Edward McEwan, Deputy Superintendent Spyker, Major Loy, CCPM Strait, Clerical Supervisor 1 B. Koch, Corley, Union Representative Kerri Theuerl, Union Member Theresa Kinkaid, and appellant. N.T. pp. 62-63, 87-88, 93-96; AA Ex. 7. Spyker testified while attending the PDC appellant apologized for her actions, and admitted she was wrong for doing what she did. N.T. pp. 87-88.

By letter dated March 8, 2023, the appointing authority removed appellant from her Registered Nurse regular status position citing the same violations and facts in the January 25, 2023 PDC notice. Comms. Ex. C; AA Ex. 1, 6; *See* Finding of Fact 4. Kohler, who was a member of the PDC committee, testified he agreed with the decision to remove appellant due to appellant’s failure to follow

directions. N.T. p. 94. Kohler explained all staff are taught to follow orders because things can go bad inside a prison facility real fast affecting the care, custody, and control of inmates. N.T. pp. 94-96.

Appellant provided testimony regarding her refusal to administer the morning RHU insulin. Appellant admitted she did refuse to administer the morning insulin in the RHU, and her refusal was due to her concerns about the timing of the morning RHU insulin administration and inmate mealtimes. N.T. pp. 100-103. Appellant presented an insert to a bottle of Novolin R Insulin stating a dose should be injected “approximately 30 minutes prior to the start of a meal.” Ap. Ex. 15. Appellant believed failure of an inmate to take a meal within thirty minutes could result in hypoglycemia a potentially life-threatening condition. N.T. p. 104. Appellant testified she was informed the RHU insulin would be administered at 5:45 a.m. and the meal trays would in the RHU by 6:15 a.m. N.T. p. 105. Appellant explained while the meal trays would be at the RHU by 6:15 a.m., she did not know when the inmates would actually receive the meal trays. N.T. p. 105. Consequently, appellant did not feel comfortable giving the insulin at 5:45 a.m., and then leaving at 6:00 a.m., the end of her shift, before verifying the inmates received their meal trays. N.T. pp. 105-106. Appellant testified that because she did not feel comfortable completing the morning insulin administration she delegated the task to her LPN. N.T. p. 106.

Having summarized the evidence presented by the parties, we will now turn to the specific charges lodged against appellant. The appointing authority’s PDC notice and removal letter outlined the specific charges against appellant and provided a summary of facts upon which appellant’s charges were based. AA Exs. 1, 6; *See* Finding of Fact 4. Neither the appointing authority’s PDC notice nor the

removal letter specified which facts supported which particular violations. AA Exs. 1, 6; *See* Finding of Fact 4. Consequently, the Commission determined which facts supported which charges based on the Commission's review of the charges and summary of facts presented in the PDC notice and removal letter, and the evidence presented by the parties at the hearing. The evidence pertaining to each of the charges as determined by the Commission is discussed in detail below, along with the Commission's findings pertaining to each charge. Before addressing the specific charges below, the Commission specifically finds appellant was aware of her responsibilities outlined in the DOC's Code of Ethics and the Registered Nurse Essential Job Functions.¹⁴

CODE OF ETHICS VIOLATION SECTION B-8

In the PDC notice and removal letter the appointing authority alleged appellant violated Section B-8 by leaving the facility prior to the end of her shift. Comm. Ex. C; AA Exs. 1, 6.¹⁵ The DOC Code of Ethics Section B-8 states, "No employee shall leave his/her assigned post or leave the institution or grounds without being properly relieved and receiving proper authorization from a supervisor. Proper

¹⁴ On December 9, 2019, appellant signed the DC-173 form acknowledging she received, read, and agreed to abide by the Commonwealth of Pennsylvania's Department of Corrections Code of Ethics. AA Exs. 3, 5. Additionally, at the December 29, 2022 fact-finding interview appellant acknowledged she read and understood the DOC Code of Ethics, and was familiar with the Essential Job Functions described in the Registered Nurse Position Description. N.T. pp. 42-46; AA Exs. 3, 5. Finally, at the hearing appellant neither contested nor denied she was aware of her responsibilities outlined in both the Code of Ethics and Registered Nurse Essential Job Functions.

¹⁵ Corley testified the Section B-8 violation was "based upon that Ms. Kist did not provide leave slips for dates whenever she had left early. Based on November 10th, 2022 when leaving at 05:37 hours, which was 23 minutes early, R.N. Kist basically abandoned her post without proper authorization." N.T. p. 60. The Commission did not consider the appointing authority's allegation appellant left 23 minutes early on November 10, 2022 when deciding if appellant violated Section B-8 because the November 10, 2022 allegation was not listed in either the summary of facts attached to the PDC notice or removal letter. Comm. Ex. C; AA Exs. 1, 6.

relief involving communicating any special observations or orders to the relief personnel.” AA Ex. 4. There is no dispute appellant’s shift was from 5:30 p.m. to 6:00 a.m. N.T. pp. 40, 150; AA Ex. 3, p. 62. Appellant’s job description states her shift is from 5:30 p.m. to 6:00 a.m., and appellant testified her shift ended at 6:00 a.m. AA Ex. 3, p. 62. There is also no dispute appellant would leave before the end of her shift. At the December 29, 2022 fact finding interview, appellant stated, “I try to leave on time at 0555 when I can.” Following the fact-finding interview, appellant signed the typed transcript of the Fact-Finding Hearing that included her statement she tried to leave on time at 0555. At the hearing, appellant did not contest that she made this statement, nor did she contest it was her signature on the transcript. Accordingly, we find the appointing authority presented sufficient evidence to find appellant knew her shift ended at 6:00 a.m. and she tried to leave her shift early when she could at 5:55 a.m. in violation of Section B-8.

CODE OF ETHICS VIOLATION SECTION B-9

In the PDC notice and removal letter the appointing authority alleged appellant violated Section B-9 by refusing to carry out her assigned duty of administering insulin to inmates in the RHU on multiple occasions even after being given direct orders to do so. Comm. Ex. C; AA Exs. 1, 6. The DOC Code of Ethics Section B-9 states:

Lawful orders by a supervisor to a subordinate must be executed promptly and faithfully by the subordinate even though the employee may question the wisdom of such order. The privilege of formally appealing the order may be done at a later date through either the supervisory command structure, civil service appeal, or grievance machinery.

AA Ex. 4. There is no dispute appellant refused to carry out her assigned duty to administer insulin to the RHU inmates. Appellant testified at the hearing “I do admit that I did refuse to do the insulin in the RHU,” but contends her refusal was justified due to her concerns for the health of the inmates. N.T. pp. 104-105. Specifically, appellant was concerned RHU inmates were not receiving meals within 30 minutes of the administration of insulin, which she believed could result in hypoglycemia. N.T. pp. 104-105.

We do not find appellant’s reasoning for her refusal either compelling or credible.¹⁶ After appellant informed the appointing authority of her concerns on December 4, 2022, Deputy Superintendent Spyker met with staff on the morning of December 5, 2022 and confirmed the RHU inmates were receiving meal trays at an appropriate time after being administered insulin. Deputy Superintendent Spyker informed appellant her concerns were reviewed and appellant was to administer insulin as previously instructed. Despite being told her concerns were addressed, appellant continued to object and was told a second time to administer insulin as previously instructed, this time by Superintendent Rivello. On December 19, 2022, appellant again refused to administer insulin to the RHU inmates and cited the same objections she previously raised. Again, Deputy Superintendent Spyker informed appellant her concerns had been previously addressed and she needed to administer the RHU insulin.

¹⁶ It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

Appellant was told on three separate occasions her concerns were addressed and ordered to administer the RHU insulin. Each time this order was given via email, and each one of those emails informed appellant if she had further concerns a meeting could be scheduled to discuss. *See* Findings of Fact 11, 16, 19. Appellant never took advantage of these offers to further discuss her concerns. Instead, appellant did not sign in or sign out of the RHU from December 6, 2022 until she was suspended on December 30, 2022, and she delegated her RHU insulin administration duty to an LPN. Had appellant truly been concerned about the medical needs of the inmates she could have further discussed her concerns through her supervisory command structure, as offered by her supervisors and allowed under Section B-9, and not pass off her duty to an LPN.

Upon review of the evidence presented at the hearing, we find the appointing authority presented sufficient evidence to prove appellant violated Section B-9. One of appellant's job duties was to administer insulin to RHU inmates. Appellant refused to carry out this job duty even after being ordered to do so and being told her concerns were addressed. Appellant did not follow up on offers to further discuss her concerns. We find this fact significant because Section B-9 allows a subordinate who questions the wisdom of an order to appeal it at a later date through the supervisory command structure. Instead of utilizing the appeal structure of Section B-9, appellant chose to ignore direct orders, stop going to the RHU all together, and passing off her RHU insulin administration duty to an LPN. Accordingly, appellant clearly violated Section B-9.

CODE OF ETHICS VIOLATION SECTION B-10

In the PDC notice and removal letter the appointing authority alleged appellant violated Section B-10 by being argumentative, refusing to follow orders, and making statements about looking for other employment. Comm. Ex. C; AA Exs. 1, 6. The DOC Code of Ethics, Section B-10 states, “[e]mployees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolence will not be tolerated.” Merriam-Webster’s Dictionary defines insolent behavior as that which is insulting or contemptuous.

The Commission does not find in the facts presented that appellant’s refusal of a direct order or her statements regarding her continued employment with the appointing authority as rising to the level of insolence as required under Section B-10. As outlined previously in this adjudication, appellant did on multiple occasions refuse direct orders to administer insulin to RHU inmates. We found appellant’s refusal violated Section B-9, but we do not find without more her refusal can be defined as insolence. Such a finding would result in all violations of B-9 to also result in a violation of B-10. Likewise, we do not find appellant’s statement of, “I won’t do the task [administer RHU insulin] and if you would like to terminate my employment over it I will understand” as rising to the level of insolence. N.T. pp. 42-46; AA Ex. 3, pp. 32, 100-102. We would note Appellant’s communications regarding both her refusal to follow orders and her continued employment did not include either profane, threatening, or insulting language. Appellant’s statements while argumentative were not insolent. Accordingly, we find the appointing authority did not present sufficient evidence to prove a violation of Section B-10.

CODE OF ETHIC VIOLATIONS SECTIONS B-14 AND B-22, AND
VIOLATION OF REGISTERED NURSE ESSENTIAL JOB FUNCTION 1

In the PDC notice and removal letter the appointing authority alleged appellant violated Sections B-14, B-22, and Essential Job Function 1 by failing to take the red box to the MOD and failing to document when inmates refused insulin or glucose checks. Comm. Ex. C; AA Exs. 1, 6. Section B-14 states, “[e]mployees will promptly report to their supervisor any information which comes to their attention and indicates violation of law, rules, and/or regulations of the Department of Corrections by either an employee or an inmate, and will maintain familiarity with the provisions of such directives.” AA Ex. 4. Section B-22 states:

An employee shall submit any necessary and/or requested work related reports in a timely manner and in accordance with the existing regulations. Reports submitted by employees shall be truthful and no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information or data, or misrepresent the facts in any Department record or report.

AA Ex. 4. Finally, Registered Nurse Essential Job Function 1 requires registered nurses “[p]rovide professional nursing services to inmates.” AA Ex. 3, p. 65.

We find appellant violated Section B-14, Section B-22, and Essential Job Function 1 by failing to take the red box to the MOD and failing to ensure documentation of when inmates refused insulin or glucose checks. DOC Policy Statement 13.2.1 (hereinafter, “Policy Statement”) states nursing staff shall, “notify the Medical Director/designee if an inmate with chronic medical illnesses misses

three consecutive doses of medication or 50% missed doses of medication occurs within a seven-day timeframe. A DC-462 shall be initiated.” AA Ex. 9, p. 24. The Policy Statement further directs nursing staff to “document non-compliance as a nurse’s note in the eMAR.” AA Ex. 9, p. 24. Appellant authored an email on December 19, 2022 stating she only took the red box out to the MOD one time because “[the inmate] didn’t show up I called him up and he said he doesn’t check in the morning and won’t ever check. I told him if he ever felt like he needed checked to let the officer know and we would bring it out.” AA Ex. 3, pp. 36-37, 100-101. At the December 29, 2022 fact-finding interview, appellant confirmed she authored this email. At the hearing on this matter, appellant never contested nor denied she only took the red box to the MOD one time. Appellant violated Section B-14 because she failed to notify her supervisors she was not taking the red box to MOD and documenting inmate refusals as required by the Policy Statement. Additionally, appellant violated Section B-22 by failing to initiate a DC-462, a necessary work-related report, documenting inmate insulin refusals as required by the Policy Statement. Finally, appellant failed to provide professional nursing services when she essentially ceded her nursing duty to conduct MOD insulin checks to the inmate/patient by telling him “if he ever felt like he needed checked to let the officer know and we would bring it out.” Accordingly, the appointing authority presented sufficient evidence to prove appellant violated Section B-14, Section B-22, and Essential Job Function 1.

Summary of Findings

Based on the evidence presented, we find the appointing authority presented sufficient evidence to establish appellant violated Sections B-8, B-9, B-14, B-22, and Essential Job Function 1. We find the appointing authority did not present sufficient evidence to substantiate appellant violated Section B-10.

We further find the behavior substantiated by the appointing authority provided just cause for appellant's removal. As Deputy Superintendent Kohler testified, all staff are taught to follow orders because things can go bad fast inside a correctional facility. In the present case, appellant failed to follow procedures put in place to ensure inmates are receiving proper medical care. Appellant's failure to follow the appointing authority's procedures regarding the administration of insulin placed inmates' lives at risk. This risk was especially apparent where appellant decided to stop offering insulin checks to the MOD inmate who refused checks and placed the responsibility on the MOD inmate to ask for insulin checks. Appellant's decision did not contemplate a situation where the MOD inmate could be unable make an insulin check request in time to prevent a medical emergency. Furthermore, appellant's failure to document inmate refusals exposed the appointing authority to potential legal liability if an inmate suffered a negative medical outcome due to an insulin related incident. In such a scenario, the appointing authority would lack documentation to demonstrate the negative medical outcome was caused by the inmate's refusal to take insulin, and not negligence on the part of the appointing authority for failure to offer insulin. Therefore, we find there was just cause for appellant's removal. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish just cause for appellant's removal under Section 2603(c) of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Cynthia M. Kist challenging her removal from regular Registered Nurse employment with the State Correctional Institution at Huntingdon, Department of Corrections, and sustains the action of the State Correctional Institution at Huntingdon, Department of Corrections, in the removal of Cynthia M. Kist from regular Registered Nurse employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Mailed: