



OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

GORDON L. WILSON, )
Appellant )
vs. )
DEPARTMENT OF MENTAL HEALTH )
AND SUBSTANCE ABUSE SERVICES, )
Appellee. )

CASE NO. MPC 05-256

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on October 13, 2005 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Gordon L. Wilson, appeared in person and was represented by Juan Pohocsucut. Appellee, Department of Mental Health and Substance Abuse Services (hereinafter referred to as "DMHSAS"), appeared by and through its counsel Durand Crosby, General Counsel, and Brecken Wagner, Assistant General Counsel, and agency representative Jim Regan, Executive Director of the Jim Taliaferro Community Mental Health Center in Lawton.

Appellant, a psychological assistant at the Jim Taliaferro Community Mental Health Center in Lawton, was discharged from his position for alleged falsification of records, violation of department policy, inefficiency, conduct unbecoming a state employee, and failure or inability to perform the duties of the position, in accordance with Merit Rules 455:10-11-4, 455:10-11-11, 455:10-11-14, and 455:10-11-17 and DMHSAS Progressive Discipline Policy 5.8.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits, which were admitted and are incorporated herein and made a part hereof. Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

### **FINDINGS OF FACT**

Appellant, Gordon L. Wilson, was a psychological assistant at the Jim Taliaferro Community Mental Health Center (sometimes referred to herein as "JTCMHC" or "the Center") in Lawton and has been employed with DMHSAS for approximately 24 years. As a psychological assistant, Appellant's position was unique at the Center. He served as the mental health liaison to the courts, to law enforcement agencies, to district attorneys, and to community mental health organizations; he was responsible for preparing and filing applications for petitions for involuntary treatment, assisting with competency evaluations and testifying at mental health hearings, monitoring patients admitted under emergency detention and other court orders, prescreening individuals to determine appropriateness for mental health detention, placement, and services, providing advocacy for clients involved in the criminal and civil justice systems, and he served as the mental health resource for individuals, organizations, and agencies in the community. (Joint Exhibits 8 and 9)

An important part of Appellant's responsibilities included timely and complete documentation of his work on prescribed Service Activity Sheets and in client progress notes and non-client contact sheets. Over nearly a two year period, the need for such

documentation was discussed with Appellant on numerous occasions by his supervisor, Staff Psychologist Dr. Jane Wahl, by Director of Inpatient Services Leah Price, and by Center Director Jim Regan. Leah Price testified that she talked with Appellant five or six times beginning in July 2003. To help Appellant address his documentation difficulties, Leah Price prepared an action plan to help him define his priorities (Joint Exhibit 14); a support staff member was assigned to receive his calls and help screen them (Joint Exhibits 8 and 9); he received verbal and written counseling to identify improvements needed in his work habits (Joint Exhibit 9); he was encouraged to set aside an hour at the beginning or end of each work day to complete his paperwork. On April 14, 2004 Appellant received Notice of Recommendation to Suspend Without Pay for five working days for failing to provide progress notes and contact sheets to support his reported services. (Joint Exhibit 4) All of these efforts made to assist Appellant in timely completing his required paperwork failed to correct the problem.

In July or August 2004 Cindy Copeland, Reimbursement Officer at the Center, contacted Mr. Regan with concerns that Appellant's documentation of progress notes may not match his activity sheets. Mr. Regan was concerned because of the potential problems such a situation might cause if the Center was audited by the federal Medicaid program or the Joint Commission on Accreditation of Hospitals or the State licensing board. Such improper documentation could potentially result in the Center having to repay tens of thousands of dollars of federally reimbursed Medicaid funds, or in the suspension or revocation of the facility license, or in stiff fines and penalties. Mr. Regan called the director of program evaluations, Glenn Mayes, to conduct an audit of Appellant's records to determine if a problem existed.

On October 14, 2004 Mr. Mayes audited five charts of clients Appellant reported as having provided services on August 4, 2004, August 10, 2004, August 30, 2004 and August 31, 2004. None of the five charts showed any documentation of services provided by Appellant. (Joint Exhibit 10)

On February 16, 2005 Mr. Mayes audited nine services reported on Appellant's Service Activity Sheets for December, 2004. Of the nine services reported, none were documented in the client charts. (Joint Exhibit 11) Again, on February 23 and 24, 2005 Mr. Mayes conducted audits of Appellant's Service Activity Sheets for January, 2005. Nineteen listed services were reviewed and no documentation was found in any client charts for the listed services. (Joint Exhibit 12) Additionally, Appellant apparently forgot he turned in an Activity Sheet for January 3 through 14, 2005 and attempted to recreate that sheet in March 2005. This resulted in two different Service Activity Sheets for the same period of time, raising possible questions of fraud by the agency if audited by the federal or state oversight agencies. (Joint Exhibit 12)

Unable to get Appellant to comply with the requirement to document his services, Center Director Regan discharged Appellant effective April 22, 2005.

Appellant does not argue that he was not guilty as charged. Rather, Appellant argues that discharge was too harsh. He points out that he was a 24 year employee with a good work history. He did a good job with his clients and as liaison with the courts, law enforcement, and the community. In fact, Appellant was awarded the Liberty Bell Award for his work by the local Bar Association. His supervisor, Dr. Wahl, testified that she did not agree with the decision to discharge Appellant and wanted to consider another position for him.

Admittedly no question was raised concerning Appellant's effectiveness with his clients and constituents, or whether Appellant provided the services listed on his Service Activity Sheets. Appellant did a commendable job responding to clients and their families and responding to the courts, law enforcement agencies, and the district attorneys. The issue here is not whether Appellant was loafing or slacking, but rather that he continually failed and refused to complete an important documentation requirement. His failure to document services performed in client records not only adversely affected the agency in the event of an audit, but likewise adversely affected client care and the continuity of that care. For two years Appellant was counseled concerning the need for him to document services provided. He received a suspension without pay for his failing to do so.

Center Director Regan testified that he attempted to find another position for Appellant, but there was no position available that did not require Appellant to document services provided to clients. In determining to discharge Appellant, Mr. Regan considered that (1) Appellant had two or more disciplines occurring within the prior twelve months; (2) Appellant apparently lacked the commitment to correct his deficient behavior; (3) Appellant committed two or more categories of infractions from the same occurrence; and (4) Appellant had a history of poor performance<sup>1</sup>. (Joint Exhibit 1)

Based on a preponderance of the evidence presented at the hearing, the undersigned Administrative Law Judge finds that just cause exists to support Appellee's allegations concerning Appellant Gordon Wilson's falsification of records, violation of

---

<sup>1</sup> Appellant argued that the Overall Performance Rating on his 2003 and 2004 PMP's were unfairly and wrongfully rated "Does Not Meet Standards" rather than "Needs Improvement" as provided by the PMP instructions. This Administrative Law Judge agrees with Appellant. Nonetheless, a rating of "Needs Improvement" would still qualify as poor performance.

department policy, inefficiency, conduct unbecoming a state employee, and failure or inability to perform the duties of the position, in accordance with Merit Rules 455:10-11-4, 455:10-11-11, 455:10-11-14, and 455:10-11-17 and DMHSAS Progressive Discipline Policy 5.8. The undersigned further finds that just cause exists to discipline Appellant and that the discipline imposed – discharge – was just under the circumstances.

### **CONCLUSIONS OF LAW**

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.

2. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

3. The burden of proof in this case was placed on Appellee pursuant to Merit Rule 455:10-9-2(f)(1) to show by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed was just.

4. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct, inefficiency, inability to perform the duties of his job, willful violation of Merit Rules, conduct unbecoming a public employee, and any other just cause.

5. Merit Rule 455:10-11-4 provides for progressive discipline to ensure impartiality, consistency, and predictability of discipline, and flexibility to vary penalties, and states that a single incident may justify a higher step without proceeding through lower steps of discipline.

6. Merit Rule 455:10-11-11 provides that the second phase of progressive discipline includes discharge.

7. JTCMHC Policy # II-G-1 provides that a clinician must complete written progress notes after each visit or transaction to record the course of treatment and ensure adequate documentation of such treatment.

8. JTCMHC Policy # III-C-4 provides that progress notes are required at each contact and must be documented by the end of the next working day.

9. Appellee Department of Mental Health and Substance Abuse Services has met its burden to prove, by a preponderance of the evidence, that Appellant, Gordon L. Wilson, violated agency policy and Merit Rules by continually failing to document client progress notes and provide documentation of non-client contacts, and that just cause exists for Appellant's discharge.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and his discharge is sustained.

DATED this 24<sup>th</sup> day of October, 2005.



Annita M. Bridges, OBA # 1119  
Administrative Law Judge

OKLAHOMA MERIT  
PROTECTION COMMISSION  
201 N. E. 38<sup>th</sup> Terrace, Suite 5  
Oklahoma City, Oklahoma 73105  
(405) 525-9144