

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ROCHA

Appellant,

v.

THE STATE OF NEVADA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH,

Respondent.

Case No.: 82485

District Court Case No.: A-19-804209-J

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Aug 17 2021 08:43 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX

VOLUME I of II

Appeal from the Eighth Judicial District Court
Case. No. A-19-804209-J

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///

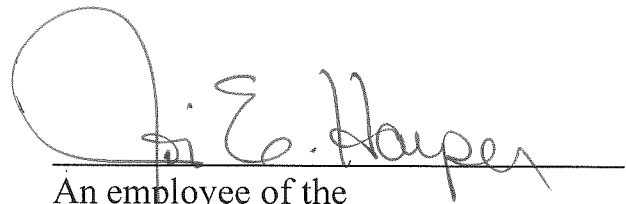
	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
1.	Register of Actions	I	ROCHA000001- ROCHA000002
2.	Petition for Judicial Review 10/23/2019	I	ROCHA000004- ROCHA000007
2A.	Petitioner's Motion to Stay	I	ROCHA000007A- ROCHA00007K
3.	Statement of Intent to Participate 11/11/2019	I	ROCHA000008- ROCHA000009
4.	Transmittal of Record on Appeal 02/04/2020	I-II	ROCHA000010- ROCHA000219
5.	Petitioner's Opening Brief 03/09/2020	II	ROCHA000228- ROCHA000292
6.	Respondent's Reply Memorandum of Points and Authorities 04/13/20	II	ROCHA000293- ROCHA000310
7.	Petitioner's Reply Brief 05/07/2020	II	ROCHA000311- ROCHA000318
8.	Findings of Facts, Conclusions of law, Decision and Order on Petition for Judicial Review 07/01/2020	II	ROCHA000319- ROCHA000320
9.	/Notice of Entry of Order 07/20/2020 /	II	ROCHA000321- ROCHA000325
10.	Substitution of Attorney 02/11/2021	II	ROCHA000326- ROCHA000328

	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
11.	Respondent Charles Rocha's Supplement to the Record Following Remand from District Court 02/11/2021	II	ROCHA000329-ROCHA000354
12.	Notice of Appeal 02/11/2021	II	ROCHA000355-ROCH000362

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 16th day of August 2021, I did serve the above and forgoing JOINT APPENDIX Volume I of II by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, upon the Respondents at the following:

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An employee of the
LAW OFFICE OF DANIEL MARKS

REGISTER OF ACTIONS

CASE NO. A-19-804209-J

State of Nevada, Department of Health and Human Services, Petitioner(s) §
 vs. Charles Rocha, Respondent(s) §
 §
 §
 §
 §
 §
 §

Case Type: Other Judicial Review/Appeal
 Date Filed: 10/23/2019
 Location: Department 25
 Cross-Reference Case Number: A804209
 Supreme Court No.: 82485

PARTY INFORMATION

Petitioner State of Nevada, Department of Health and
 Human Services

Lead Attorneys
 Susanne M Sliwa
 Retained
 702-486-3375(W)

Respondent Rocha, Charles

Daniel Marks
 Retained
 702-386-0536(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

07/01/2020 **Order Granting Judicial Review** (Judicial Officer: Delaney, Kathleen E.)
 Debtors: Charles Rocha (Respondent)
 Creditors: State of Nevada, Department of Health and Human Services (Petitioner)
 Judgment: 07/01/2020, Docketed: 07/02/2020
 Comment: In Part

07/01/2020 **Order Denying Judicial Review** (Judicial Officer: Delaney, Kathleen E.)
 Debtors: State of Nevada, Department of Health and Human Services (Petitioner)
 Creditors: Charles Rocha (Respondent)
 Judgment: 07/01/2020, Docketed: 07/02/2020
 Comment: In Part

OTHER EVENTS AND HEARINGS

10/23/2019 **Petition for Judicial Review** Doc ID# 1
 [1] *Petition for Judicial Review*

10/24/2019 **Motion to Stay** Doc ID# 2
 [2] *Petitioner's Motion for Stay*

10/24/2019 **Clerk's Notice of Hearing** Doc ID# 3
 [3] *Notice of Hearing*

11/07/2019 **Opposition to Motion** Doc ID# 4
 [4] *Opposition to Petitioner's Motion to Stay*

11/11/2019 **Statement of Intent to Participate in Petition for Judicial** Doc ID# 5
 [5] *Statement of Intent to Participate*

11/19/2019 **Reply to Opposition** Doc ID# 6
 [6] *Reply to Opposition to Petitioner's Motion for Stay*

11/26/2019 **Motion For Stay** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
 11/26/2019, 12/03/2019
 Petitioner's Motion to Stay
Parties Present
Minutes
 Result: Matter Continued

12/23/2019 **Order Granting Motion** Doc ID# 7
 [7] *Order Granting Petitioner's Motion for Stay*

12/23/2019 **Notice of Entry of Order** Doc ID# 8
 [8] *Notice of Entry of Order*

02/04/2020 **Transmittal of Record on Appeal** Doc ID# 9
 [9] *Transmittal of Record on Appeal*

02/04/2020 **Affidavit** Doc ID# 10
 [10] *Affidavit*

02/04/2020 **Certification of Transmittal** Doc ID# 11
 [11] *Certification of Transmittal*

02/11/2020 **Order Setting Hearing** Doc ID# 12
 [12] *Order Setting Briefing Schedule and Hearing on Petition for Judicial Review*

03/09/2020 **Petitioners Opening Brief** Doc ID# 13
 [13] *Petitioner's Opening Brief*

04/13/2020 **Respondent's Answering Brief** Doc ID# 14
 [14] *Respondent's Reply Brief*

05/07/2020 **Petitioner's Reply Brief** Doc ID# 15
 [15] *Petitioner's Reply Brief*

05/26/2020 **Petition for Judicial Review** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

ROCHA000001

[Parties Present](#)[Minutes](#)

Result: Granted

07/01/2020 **Findings of Fact, Conclusions of Law and Order** Doc ID# 16
 [16] Findings of Fact, Conclusions of Law, Decision and Order on Petition for Judicial Review

07/20/2020 **Notice** Doc ID# 17
 [17] Notice of Entry of Order

02/11/2021 **Substitution of Attorney** Doc ID# 18
 [18] Substitution of Attorney

02/11/2021 **Supplement** Doc ID# 19
 [19] Respondent Charles Rocha's Supplement to the Record Following Remand from District Court

02/11/2021 **Notice of Appeal** Doc ID# 20
 [20] Notice of Appeal

02/11/2021 **Case Appeal Statement** Doc ID# 21
 [21] Case Appeal Statement

02/26/2021 **Notice** Doc ID# 22
 [22] Notice of Cost Bond on Appeal

04/13/2021 **Request** Doc ID# 23
 [23] Request for Transcript of Proceedings

FINANCIAL INFORMATION

	Respondent Rocha, Charles		
	Total Financial Assessment		48.00
	Total Payments and Credits		48.00
	Balance Due as of 08/03/2021		0.00
02/11/2021	Transaction Assessment		48.00
02/11/2021	Efile Payment	Receipt # 2021-08525-CCCLK	Rocha, Charles (48.00)



CASE NO: A-19-804209-J
Department 25

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA ex. rel, its
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH

Petitioner.

Case No.:

Dept. No.:

vs.

CHARLES ROCHA: STATE OF NEVADA
ex rel., its DEPARTMENT OF
ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER

Respondents.

PETITION FOR JUDICIAL REVIEW

COMES NOW Petitioner. STATE OF NEVADA ex rel. its DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (hereinafter DPBH) by and through counsel, AARON D. FORD, Attorney General for the State of Nevada, and SUSANNE M. SLIWA, Senior Deputy Attorney General, hereby petitions this Court to review the decision of the State of Nevada Department of Administration, Personnel Commission, Hearing Officer on Petitioner's Petition for Reconsideration which was issued on October 8, 2019.

- 1 1. Petitioner requests judicial review of the final decision of the State of Nevada, Department of
2 Administration, Personnel Commission, Hearing Officer in the above mentioned case. The
3 Hearing Officer's decision is dated September 18, 2019, in Case No. 1914774-RZ. See
4 Exhibit 1, attached hereto.
- 5 2. Petitioner filed a Petition for Reconsideration on October 4, 2019. That Petition included
6 a request to reopen the record. The Hearing Officer granted the Petition but did not change
7 his ruling. He did not find justification to reopen the record. See Exhibit 2, attached hereto.
- 8 3. Pursuant to NRS 233B.130, the Hearing Officer's Decision on the Petition for
9 Reconsideration is the final determination and any Petition for Judicial Review must be
10 filed within 30 days after service of that October 8, 2019 decision.
- 11 4. This Court has jurisdiction pursuant to NRS 233B.130.
- 12 5. This Petition has been filed in accordance with NRS 233B.130 (1) and (2).
- 13 6. Petitioner has been aggrieved by the final decision of the Hearing Officer attached hereto as
14 Exhibit 1, and Petitioner's rights have been prejudiced because the final decision is:
- 15 a) In violation of constitutional or statutory provisions;
- 16 b) In excess of the statutory authority of the agency;
- 17 c) Made upon unlawful procedure;
- 18 d) Affected by other error of law;
- 19 e) Clearly erroneous in view of the reliable, probative and substantial evidence on the
20 whole record; and/or
- 21 f) Arbitrary or capricious, and characterized by abuse of discretion.
- 22 7. Petitioner will file a Memorandum of Points and Authorities after a copy of the entire
23 record on appeal has been transmitted to the Court in accordance with NRS 233B.133.
- 24 8. Petitioner reserves its right to request oral argument in this matter pursuant to NRS
25 233B.133(4).

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1 WHEREFORE, Petitioner prays as follows:

2 1. That this Court conduct a review of the final decision of the Nevada State Personnel
3 Administrative Hearing Officer pursuant to NRS 233B.135 and enter an Order reversing or setting aside
4 the decision; and

5 2. For such further and other relief as the Court deems legal, equitable and just.

6 Respectfully submitted this 23rd day of October, 2019.

7 AARON D. FORD
8 Attorney General

9 By: /s/ Susanne M. Sliwa
10 SUSANNE M. SLIWA
11 Senior Deputy Attorney General
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Office of the Attorney General and that on the 23rd day of October, 2019, I served a copy of the foregoing PETITION FOR JUDICIAL REVIEW by placing a copy of said document in the Nevada State Department of General Services for mailing addressed to:

Angela J. Lizada, Esq.
Lizada Law Firm, LTD.
711 S. 9th St.
Las Vegas, Nevada 89101

/s/ Lanette Davis
An Employee of the Office of the Attorney General



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13 Department of Health and Human
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15
16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 STATE OF NEVADA ex. rel. its
19 DEPARTMENT OF HEALTH AND
20 HUMAN SERVICES, DIVISION OF
21 PUBLIC AND BEHAVIORAL HEALTH

22 Petitioner,

23 vs.

24 CHARLES ROCHA; STATE OF NEVADA
25 ex rel., its DEPARTMENT OF
26 ADMINISTRATION, PERSONNEL
27 COMMISSION, HEARING OFFICER

28 Respondents.

Case No.: A-19-804209-J

Dept. No.: 25

HEARING REQUESTED

PETITIONER'S MOTION FOR STAY

29 COMES NOW Petitioner, STATE OF NEVADA ex rel. its DEPARTMENT OF HEALTH AND
30 HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (hereinafter DPBH) by
31 and through counsel, AARON D. FORD, Attorney General for the State of Nevada, and SUSANNE M.
32 SLIWA, Senior Deputy Attorney General. hereby submits its MOTION FOR STAY requesting a stay of
33 the enforcement of the final decision of the Nevada State Personnel Commission Hearing Officer dated
34 October 8, 2019, pending decision on the merits of DPBH's Petition for Judicial Review.

1 This Motion is made and based on upon the following memorandum of points and authorities, the
2 pleadings and papers on file herein. and oral argument to be presented by counsel at any hearing in this
3 matter.

4 Dated this 24th day of October, 2019.

5 AARON D. FORD
6 Attorney General

7 By: /s/ Susanne M. Sliwa
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18 of Public and Behavioral Health

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I. INTRODUCTION

21 DPBH terminated Respondent, Charles Rocha (Employee), from State service effective March 22,
22 2019. The Employee was terminated for twice punching a patient who was subdued on the floor by other
23 staff. On October 13, 2018, the Employee was involved in an altercation with a patient. The Employee
24 was attacked by a patient. However, the two punches to the patient's face occurred after the patient was
25 on the floor and had been subdued by four other staff.

26 At the time of his termination, the Employee was employed with DPBH as a Forensic Specialist
27 (technician) IV and was working at Southern Nevada Adult Mental Health Services (SNAMHS).
28 SNAMHS is a State Agency that provides both inpatient and outpatient services for persons with mental
illness. The Employee was working in SNAMHS' forensic unit. While the forensic unit is commonly
referred to as "Stein Hospital," it is a part of SNAMHS. It is not a separately licensed facility. SNAMHS'
mission is to provide treatment. All staff working at SNAMHS, including those working in the forensic
unit, must comply with hospital requirements for the provision of treatment.

1 The mission of the forensic unit at SNAMHS is to provide treatment to competency for criminal
2 defendants. Forensic Specialists are Category III Peace Officers pursuant to NRS 289.240. However,
3 Forensic Specialists are, first and foremost, Mental Health Technicians (MHTs). MHTs are an integral
4 part of the treatment teams at SNAMHS. Forensic Specialists are required to be certified MHTs.

5 The Employee appealed his dismissal to the Department of Administration Personnel Commission
6 pursuant to NRS 284.390. A hearing was held on August 23, 2019 before Hearing Officer Robert Zentz.
7 On September 18, 2019, the hearing officer entered his Findings of Fact, Conclusions of Law Decision and
8 Order (Decision) which reversed the Employee's dismissal and restored him to his prior position as a
9 Forensic Specialist IV with full back pay. See Exhibit 1, attached hereto.

10 The Employer, DPBH, filed a Petition for Reconsideration on October 4, 2019. That Petition also
11 contained a request to reopen the record due to the fact that the Hearing Officer applied a use of force
12 standard rather than a patient abuse standard and that further evidence on that issue was justified. The
13 Hearing Officer did grant the Petition but did not change his ruling. He also denied the request to reopen
14 the record. See Exhibit 2, attached hereto.

15 Pursuant to NRS 233B.130, the Hearing Officer's Decision on the Petition for Reconsideration is
16 the final determination for the purposes of judicial review. Any Petition for Judicial Review must be filed
17 within 30 days after service of that October 8, 2019 decision.

18 DPBH has filed a Petition for Judicial Review pursuant to NRS 284.390(9) and NRS 233B.010 et.
19 seq. DPBH now respectfully requests that this Court enter an order staying the reinstatement of Employee
20 and the reimbursement of back pay.

21 **II. STATEMENT OF FACTS**

22 **A. Patient Abuse**

23 The Employee was presented with a Specificity of Charges (NPD-41) for his termination on March
24 7, 2019. See Exhibit 3 and its attachments, attached hereto. At the time of his termination, the Employee
25 was working as a Forensic Specialist IV. This was a supervisory position and the Employee was expected
26 to set a positive example for other staff.

27 The Employee had worked for SNAMHS for since November 22, 2015. He was promoted to the
28 supervisory position of Forensic Specialist IV on September 11, 2017. As a supervisor, some of the

1 Employee's duties were to maintain overall security and safety in his unit, including the safety of patients
2 and staff. These are some of the elements listed in the Employee's Work Performance Standards. See
3 elements 2 and 3 Exhibit A, to Exhibit 3. Element 3 of these Work Performance Standards states that the
4 Employee will demonstrate the ability to control aggressive and maladaptive patient behavior by using
5 least restrictive measures. The Employee's punching of the patient violated all of these elements.

6 The Employee was terminated for punching a patient in the face. The patient in question had been
7 ordered to SNAMHS for treatment to competency and had been diagnosed with a psychiatric illness. The
8 patient had been ordered to SNAMHS specifically for treatment, not for punishment. SNAMHS, is a
9 psychiatric facility. It is neither a penal nor a detention facility.

10 On October 13, 2018, a patient came out of his room and began punching a post in the Day Room.
11 The Employee approached the patient to determine if he needed assistance and the patient hit the Employee
12 on the left side of his face. Immediately, other forensic staff responded and employed techniques, for
13 which they and the Employee had been trained, to subdue the patient. When the responding staff attempted
14 to separate the patient and the Employee, everyone involved fell to the floor. During this incident, the
15 patient sustained injuries to his left eyebrow, the third finger on his right hand and his left ear and required
16 further medical treatment.

17 The video of the above-described incident was reviewed by Sergeant Christopher Vasquez and
18 Stanley Cornell, both working at Stein. Sergeant Vasquez reported that the footage showed the Employee
19 striking the patient twice after the patient had been subdued on the floor. See Exhibit 4, attached hereto.¹
20 The Employee is seen on the video wearing sunglasses and dark pants. The patient can be seen attacking
21 the Employee at 3:32 into the video. The Employee is seen punching the patient in the face at 4:04 and
22 4:06.

23 The patient was not struggling or fighting staff at that point. Based on that reporting, the matter
24 was the subject of an internal investigation by the Division of Public and Behavioral Health (DPBH).

25 The investigators reviewed the incident footage several times and interviewed the staff involved.
26 During that investigation, the Employee admitted to the investigators that, while on the floor with the

27
28 ¹ The CD containing the video will be provided to chambers for review. The Exhibit filed electronically
will be a photocopy of the CD.

1 patient, he swung at and punched the patient "maybe once or twice." The investigators substantiated the
2 allegations of patient abuse and policy and procedure violations against the Employee and submitted their
3 report on February 7, 2019. See Exhibit 5, attached hereto.

4 Based upon the substantiated patient abuse, DPBH had no choice other than to terminate the
5 Employee. The Employee presents a danger to the patients served by SNAMHS. This inherent danger
6 justifies the need for a stay of the Hearing Officer's decision.

7 **B. Appeal Hearing and Decision**

8 The Employee appealed his dismissal pursuant to NRS 284.390 on March 28, 2019. During the
9 appeal hearing, significant testimony was obtained from several witnesses. DPBH Investigator Linda
10 Edwards testified regarding her investigation of the October 13, 2018 incident. She testified that the
11 Employee's punching of the patient constituted abuse and violated the DPBH Division Policy CCR-1.2
12 Prohibition of Abuse or Neglect of Consumers and Reporting Requirements. SNAMHS Personnel Officer
13 II Jackie Arellano testified that the substantiated violations charged in the NPD-41 warrant termination on
14 a first offense. Ms. Arellano testified that the Department of Health and Human Services Prohibitions and
15 Penalties mandate termination for a first offense in cases of patient abuse. SNAMHS Personnel Analyst I
16 Christine Mobius testified regarding the incident video. The Employee also testified. He admitted to
17 punching the patient twice while the patient was subdued on the floor and while other staff were assisting.

18 Although the Employer does have a use of force policy, the Employee was not charged with any
19 violation of that policy in the NPD-41. See Exhibit 3. The investigators did review the use of force policy,
20 but found that the Employee had abused the patient in violation of Policy CCR-1.2 Prohibition of Abuse
21 or Neglect of Consumers and Reporting Requirements. See Exhibit D to Exhibit 3. Despite the substantial
22 evidence in the record, the Hearing Officer found that the Employee's striking the patient was an acceptable
23 *use of force* and that the Employee was justified in his actions. See Exhibit 1, p. 16. Additionally, the
24 Hearing Officer found that "the dismissal here was unjustified and the action must be set aside, and the
25 Employee must be reinstated, with full back pay for the period of dismissal, demotion or suspension"
26 pursuant to NRS 284.390. See Exhibit 1, p. 16.

27 Significant documents and other items were admitted into evidence during the hearing. These
28 documents included: the investigative report, which included summary of witness interviews, the incident

1 video and the DPBH Division Policy CCR-1.2 Prohibition of Abuse or Neglect of Consumers and
2 Reporting Requirements. That policy defines abuse as any willful and unjustified infliction of pain, injury
3 or mental anguish. See Exhibit D to Exhibit 3. This policy mirrors the definition of "Abuse of Consumer"
4 found in NRS 433.554(5).

5 In his decision, the Hearing Officer did not view this as a patient abuse case. Instead, he analyzed
6 the evidence from a use of force perspective. See Exhibit 1. The Employee did not present a use of force
7 argument in his Prehearing Statement. He did not present any witnesses to testify on the use of force issue.
8 In fact, the only witness called by the Employee's counsel was the Employee himself.

9 DPBH filed a Petition for Reconsideration on October 4, 2019. That Petition requested that the
10 Hearing Officer reconsider his use of the use of force standard. The Petition also requested that, if the use
11 of force standard was utilized, the record be reopened to allow DPBH to present evidence regarding the
12 DPBH use of force policy and why this is a patient abuse case and not a use of force case.

13 The Hearing Officer issued a decision on the Petition for Reconsideration on October 8, 2019.
14 While the Petition was granted, the Hearing Officer did not change his ruling. The request to reopen the
15 record was denied. See Exhibit 2. Pursuant to NRS 233B.130, the decision on the Petition for
16 Reconsideration is the final determination for judicial review purposes.

17 **III. LEGAL STANDARD**

18 NRS 233B.140 governs the procedure for seeking a stay of a final administrative agency decision
19 in Nevada. It provides that, in determining whether to grant a stay, the court shall consider the same factors
20 as are considered for a preliminary injunction under NRCP 65. NRS 233B.140(2).

21 In ruling on a motion for stay, the court shall give deference to the trier of fact and consider the risk
22 to the public, in any, of staying the administrative decision. NRS 233B.140(3).

23 Generally, pursuant to NRS 233B.140, "the petitioner must provide security before the court may issue
24 a stay." However, the state or an agency of the state is not required to post security as a condition for filing
25 such a motion. See NRCP 65(2)(c).

26 The Nevada Supreme Court has adopted specific factors to consider in determining whether a
27 preliminary injunction (or in this case, a stay) should issue:

28 A party seeking the issuance of a preliminary injunction bears the burden of
establishing (1) a likelihood of success on the merits; and (2) a reasonable

1 probability that the non-moving party's conduct, if allowed to continue, will
2 cause irreparable harm for which compensatory damage is an inadequate
remedy.

3 *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001).

4 **IV. LEGAL ARGUMENT**

5 **A. Likelihood Of Success On The Merits**

6 In order for a stay to issue, the Employer will have to demonstrate a likelihood of success on the merits.
7 NRS 233B.135 provides the grounds for granting a Petition for Judicial Review. In considering a Petition
8 for Judicial Review, the court shall not substitute its judgment for that of the agency regarding weight of
9 evidence on a question of fact. NRS 233B.135(3). A final decision may be remanded, affirmed or set it
10 aside in whole or in part if substantial rights of the petitioner have been prejudiced due to several factors.
11 Those factors include clear error in view of the reliable, probative and substantial evidence on the whole
12 record. NRS 233B.135(3)(e). In this case, the Hearing Officer's application of a use of force standard in
13 what is clearly a patient abuse case constituted clear error.

14 As is stated above, the Employee was charged in the NPD-41 with patient abuse and not improper
15 use of force. The Hearing Officer considered and ruled on a violation that was not charged. This is clear
16 error.

17 The authority granted the Hearing Officer under NRS 284.390(6) is to determine whether the
18 agency had just cause for the discipline "as provided in NRS 284.385." A dismissal for "just cause is one
19 which is not for any arbitrary, capricious, or illegal reason and which is one based upon facts (1) supported by
20 substantial evidence and (2) reasonably believed by the employer to be true." *Sw. Gas Corp. v. Vargas*, 111
21 Nev. 1064, 1077, 901 P.2d 693, 701 (1995).

22 A hearing officer reviews de novo whether a classified employee committed the alleged violation.
23 but the Hearing Officer applies a deferential standard of review to the agency's decision to terminate.
24 *O'Keefe v. State, Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, 431 P.3d 350 (2018). That deferential
25 standard was not applied in this case. Instead, the Hearing Officer determined that the substantiated
26 allegation of patient abuse did not warrant termination. This is contrary to the Department of Health and
27 Human Services Prohibitions and Penalties (P&Ps) which call for termination for a first offense of client
28 abuse. This was clear error.

1 The timing of the Employee's punching of the patient is crucial in this matter. The Employee struck
2 the patient *after* the patient was on the floor and was being subdued by four other staff members. As is
3 stated previously, the Employee first punched the patient at 4:04. The patient, the Employee and other
4 SNAMHS staff fell to the floor at 3:45. The fact that the punches occurred once the attack was under
5 control was the reason that the Employer charged the Employee with patient abuse in the NPD-41 as
6 opposed to an improper use of force.

7 Policy FF-SP-28 is the Employer's Use of Force policy. See Exhibit 6, attached hereto. This policy
8 states that the use of force will be restricted to the minimum degree necessary to manage an attack or assault
9 by a patient. The Employee struck the patient twice while the two were on the floor and after the patient
10 had been subdued by several other staff. This was beyond the minimum degree of force needed to manage
11 the situation. The Employee was in no imminent danger when he struck the patient. DPBH submits that
12 the Employee's punching of the patient, not once but twice, was far beyond the minimum degree of force
13 necessary to manage the situation.

14 Even though the Employer has a use of force policy and Forensic Specialists are Category III Peace
15 Officers pursuant to statute, SNAMHS is not a prison. The people that they serve are patients, not inmates.
16 The patients are sent to SNAMHS for treatment. That is why the Employer charged the Employee with
17 patient abuse and not improper use of force. The punches thrown by the Employee were clearly abuse and
18 exceeded any use of force violation.

19 The Hearing Officer did not apply a deferential standard of review to the agency's decision to
20 terminate. In *O'Keefe*, the Nevada Supreme Court held that the Hearing Officer acted arbitrarily and
21 capriciously in holding that conduct of classified employee, who violated multiple regulations and four
22 Department of Motor Vehicle (DMV) prohibitions and penalties, did not constitute a serious violation of
23 law or regulation, so as to warrant immediate termination without imposing progressive discipline. In that
24 case, the DMV expressly delineated one of the prohibitions involving misuse of information technology as
25 an offense that warranted termination for a first violation, and Hearing Officer "second-guessed" DMV's
26 assessment as to the seriousness of the violation of its own regulations. See *O'Keefe* at 354.

27 ///

28 ///

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1 The *O'Keefe* case is directly on point. The Hearing Officer in this case improperly second guessed
2 the Employer's assessment as to the seriousness of the Employee's violations of the Employer's own
3 policies. The NPD-41 charged the Employee with several P&P violations. One of the violations was P&P
4 D8, which lists as a violation: "Any willful or reckless act of aggression directed towards a patient,
5 including, but not limited to, sexual exploitation of a patient, grabbing, pushing, tripping, hitting or striking
6 a patient in any manner; or willful misuse of physical or chemical restraints not in accordance with an
7 approved treatment plan or in violation of state or federal law." This P&P mandates termination on a first
8 offense.

9 At the hearing, the Employer proved the violation of P&P D8 and showed that the Employee
10 punched the patient twice after the patient had been subdued and while the patient was restrained by several
11 other employees. In fact, the Employee admitted to punching the patient after other staff had responded
12 and while he, the patient and the other staff were on the floor. This fact is reflected in the decision. See
13 Exhibit 1, page 14.

14 **B. Irreparable Harm**

15 The second element the Employer must establish is that it will face irreparable harm should it have
16 to reinstate Employee. Irreparable harm is an injury "for which compensatory damage is an inadequate
17 remedy." *Swarovski Retail Ventures Ltd. v. JGB Vegas Retail Lessee, LLC*, 416 P.3d 208 (2018).

18 The Employee was terminated for abusing a patient. As the appointing authority, the Employer,
19 DPBH, deemed that the Employee's conduct was serious and that his dismissal would serve the good of
20 the public service. The Employee has demonstrated an inability to properly handle a volatile situation.
21 Placing him back to work with patients would present a danger to the patients served by SNAMHS.

22 The Hearing Officer has ordered that the Employee be restored to his position as a Forensic
23 Specialist IV. The Petition for Judicial Review will take several months before the parties receive a final
24 decision. If a stay is not granted, the DPBH would be required to retain an employee who was found to
25 have abused a patient. By requiring the DPBH to reinstate the Employee, they are forced to retain an
26 employee that engaged in patient abuse and poses further danger to patients and other staff.

27 In determining that Employee should be terminated, DPBH looked to the seriousness of the offense
28 and its policies and procedures. It was determined that the Employee's striking a subdued patient, not once

1 but twice, mandated termination. As the Employer, DPBH is the appointing authority and is in the best
2 position to determine what is best for the agency and would best serve their patients, staff and ultimately
3 the public. Those interests require terminating the Employee from state service.

4 If a stay is not granted, it takes the deference that DPBH as the Employer should be given and
5 substitutes the Court's determination of whether or not DPBH, its patients, staff or the public would suffer
6 irreparable harm. If the DPBH is required to keep an employee that engaged in substantiated patient abuse,
7 they could be subject to civil liability should Employee engage in future abuse. If a stay is not granted and
8 the Employee, while working for DPBH, engages in patient abuse or other conduct that results in injury to
9 a patient, staff member or member of the public, the Employer could be subject to negligent retention
10 claims for retaining the Employee despite his history of patient abuse.

11 **V. CONCLUSION**

12 Based on the foregoing, the Employer, DPBH, has met the criteria for a stay of the enforcement of
13 the Hearing Officer's October 8, 2019, final determination reinstating Employee with full back pay. DPBH
14 requests that this Court grant the Motion so that the Hearing Officer's Decision is stayed until this Court
15 makes a final decision on the Employer's Petition for Judicial Review.

16 Dated this 24th day of October, 2019.

17 AARON D. FORD
18 Attorney General

19 By: /s/ Susanne M. Sliwa
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24 Las Vegas, NV 89101
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28 Attorneys for State of Nevada Department
of Health and Human Services, Division
of Public and Behavioral Health

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DISTRICT COURT
CLARK COUNTY, NEVADA

10 STATE OF NEVADA, ex. rel, its
11 DEPARTMENT OF HEALTH AND
12 HUMAN SERVICES, DIVISION OF
13 PUBLIC AND BEHAVIORAL HEALTH,

Petitioner,

v.

14 CHARLES ROCHA,

15 Respondent.

Case No.: A-19-804209-J

Dept. No.: 25

**STATEMENT OF INTENT TO
PARTICIPATE**

17 COMES NOW, Respondent CHARLES ROCHA, by and through ANGELA J.
18 LIZADA, ESQ. of LIZADA LAW FIRM, LTD., his attorney of record and hereby files his
19 Statement of Intent to Participate pursuant to NRS 233B.130(3).
20

21 DATED this 11th day of November, 2019.

22 LIZADA LAW FIRM, LTD.



23 ANGELA J. LIZADA, ESQ.
24 Nevada Bar No. 11637
25 711 S. 9th St.
26 Las Vegas, NV 89101
27 angela@lizardalaw.com
28

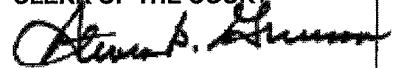
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day and pursuant to NRCP 5(b), I submitted a true and correct copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION TO STAY**, for e-service and/or sent by U.S. Mail to the following:

Susanne M. Sliwa, Esq.
555 E. Washington Ave.
Las Vegas, NV 89101

Dated this 11th day of November, 2019.

/s/ Angela J. Lizada, Esq.
An Employee of Lizada Law Firm, Ltd.



1 TROA
2 APPEALS OFFICE
3 2200 S. Rancho Drive Suite 220
4 Las Vegas NV 89102
5 (702) 486-2527

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 STATE OF NEVADA ex. rel, its,
9 DEPARTMENT OF HEALTH AND
10 HUMAN SERVICES, DIVISION OF
11 PUBLIC AND BEHAVIORAL HEALTH

) Case No.: A-19-804209-J
) Dept. No.: 25
) ROA No.: 2007969-RZ

12 Petitioner,

13 vs.
14 CHARLES ROCHA; STATE OF NEVADA
15 Ex rel., its DEPARTMENT OF
16 ADMINISTRATION, PERSONNEL
17 COMMISSION, HEARING OFFICER

18 Respondents.

19 TRANSMITTAL OF RECORD ON APPEAL

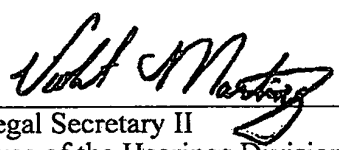
20 TO: STEVEN GRIERSON, Clerk of the above-captioned Court:

21 Pursuant to NRS 233B.131, the transmittal of the entire Record on Appeal, in accordance
22 with the Nevada Administrative Procedure Act (Chapter 233B of the Nevada Revised Statutes),
23 is hereby made as follows:

24 1. The entire Record herein, including each and every pleading, document, affidavit,
25 order, decision and exhibit now on file with the Appeal Office, at 2200 S. Rancho Drive Suite
26 220, Las Vegas, Nevada 89102, under the Nevada Industrial Insurance Act, in the above-
27 captioned action, including the court reporter's transcripts if available, of the testimony of the
28 Appeal Officer hearing.

2. This Transmittal.

DATED this 4th day of February, 2020.


Violeta, Legal Secretary II
An Employee of the Hearings Division

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00001

ROCHA000010

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Appeal No.: AO# 1914774-RZ

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Appeal No.: AO# 1914774-RZ

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NEVADA STATE PERSONNEL COMMISSION

BEFORE THE HEARINGS OFFICER

FILED

JAN 06 2020

HEARINGS DIVISION

In the Matter of:

CHARLES ROCHA,

Petitioner

vs.

Department of Health &
Human Services,

Respondent

Appeal No.: 1914774-RZ

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
HONORABLE ROBERT ZENTZ, ESQ.
APPEALS OFFICER

AUGUST 23, 2019

9:23 AM

2200 SOUTH RANCHO DRIVE, SUITE 220
LAS VEGAS, NEVADA 89102

Ordered by: Department of Administration
2200 South Rancho Drive, Suite 210
Las Vegas, NV 89102

Doc 003

Transcribed By: Jaime Caris, Always On Time

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A P P E A R A N C E S

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3 On behalf of the Petitioner:

4 Angela Lizada, Esq.

5 Lizada Law Firm, Ltd.

6 501 South Seventh Street

7 Las Vegas, Nevada 89101

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10 On behalf of the Respondent:

11 Susanne Sliwa, Esq.

12 Office of the Attorney General

13 555 East Washington Avenue, Suite 3900

14 Las Vegas, Nevada 89101

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EXAMINATIONDIRECTCROSSREDIRECTRECROSS

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Christine Moebius

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Charles Rocha

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Linda Edwards

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Jackie Arellano

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Charles Rocha

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E X H I B I T S

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EVIDENCE

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Employer's Exhibit 1

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Employer's Exhibit 2

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Employer's Exhibit 3

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Employer's Exhibit 4

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Employer's Exhibit 5

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Petitioner's Exhibit A

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Petitioner's Exhibit B

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Petitioner's Exhibit C

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Petitioner's Exhibit D

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P R O C E E D I N G S

1
2 HEARING OFFICER: --record on the Rocha v. DHHS
3 matter. Case #1914774-RZ. Sorry if I mispronounce your name,
4 I apologize.

5 CHARLES ROCHA: That's okay sir.

6 HEARING OFFICER: If I can, we need to go across
7 the room and have everybody state their name who is in the
8 room at this time. So, I'll start right to left.

9 JACKIE ARELLANO: Jackie Arellano, I'm the Human
10 Resource Director for SNAMHS.

11 SUSANNE SLIWA: Southern Nevada--oh, I'm sorry.
12 Please.

13 CHRISTINE MOEBIUS: Christine Moebius, Personnel
14 Analyst, [inaudible] Southern Nevada Adult Mental Health
15 Services, HR.

16 HEARING OFFICER: Okay, thank you.

17 SUSANNE SLIWA: Susanne Sliwa, AG's Office,
18 representing the Employer.

19 HEARING OFFICER: Thank you.

20 ANGELA LIZADA: Angela Lizada, Counsel for the
21 Employee, Charles Rocha.

22 CHARLES ROCHA: I'm Charles Rocha, I'm a
23 Forensic Supervisor, when I was there.

24 HEARING OFFICER: Okay. You're the Employee.

25 CHARLES ROCHA: Yes, I am.

1 HEARING OFFICER: All right. Prior to opening the
2 hearing this morning, Counsel and I discussed and for the
3 record, based on stipulation, the Employer's Exhibits 1-5 are
4 going to be admitted into evidence and the Employee's Exhibit
5 A-D will also be entered into evidence, would that be correct
6 Counsel?

7 SUSANNE SLIWA: Yes.

8 ANGELA LIZADA: Yes.

9 HEARING OFFICER: Okay, thank you. And, let's get
10 started. Ms. Sliwa.

11 SUSANNE SLIWA: Okay. As far as opening
12 statements, good morning Your Honor.

13 HEARING OFFICER: Yes.

14 SUSANNE SLIWA: Charles Rocha worked as a
15 Forensic Specialist at Southern Nevada Adult Mental Health
16 Services, Stein Hospital. Stein is a facility where people
17 who have been charged with crimes and have been found
18 incompetent to stand trial go for treatment to competency. It
19 is first and foremost a treatment facility. Now, Forensic
20 Specialists, pursuant to statute, are also Class III Peace
21 Officers. They're required to be POST Certified.

22 Mr. Rocha worked at Stein, in a capacity as a
23 Supervisor. On October 13, 2018, Mr. Rocha was involved in an
24 altercation with a client. Client being synonymous with
25

1 patient. Mr. Rocha struck the client in the head twice with a
2 closed fist.

3 At the time that Mr. Rocha hit the client, the
4 client was on the floor and was being restrained by several
5 staff members. At the time he hit the client, Mr. Rocha was
6 in absolutely no danger from the client. The client was not
7 struggling.

8 Mr. Rocha's actions were done in anger and in
9 retaliation of the client's previous attack on him. The
10 client, a few moments earlier, the client had come around a
11 corner and charged and threatened Mr. Rocha.

12 However, Mr. Rocha's actions were not only a use of
13 excessive force, they constituted client abuse. Mr. Rocha had
14 been trained in interventive techniques, also known as CPART.
15 He had been trained several times in that realm. He knew his
16 job duties.

17 He had worked at Stein for a while. He-it's our
18 understanding that he was familiar with this client and this
19 client having a propensity for violence and to on occasion,
20 attack staff.

21 Mr. Rocha lost his temper and hit the client with a
22 closed fist. Not once, but twice. He violated several
23 policies and engaged in client abuse. The P&Ps that were
24 charged in the NPD-41, several of them allow for termination
25

1 on a first offense. This was Mr. Rocha's first offense, but
2 client abuse is something that cannot be tolerated.

3 The termination should stand. Thank you.

4 HEARING OFFICER: Ms. Lizada?

5 ANGELA LIZADA: Yes. So, the Employee, Charles
6 Rocha, was an employee at Stein Forensic Unit for--since about
7 2011--or, with the State since 2011. He was prior to working
8 at Stein, actually a correctional officer with Nevada
9 Department of Corrections, before coming over to Stein at the
10 opening of the facility in November 2015.

11 He was designated as a Forensic Specialist. A
12 Forensic Specialist IV at the time of his termination, which
13 is a Category III Peace Officer, same as a Correctional
14 Officer.

15 The testimony and evidence presented today will show
16 that the patient in question has a history of unprovoked
17 attacks on staff and patients prior to this incident. The
18 video from the incident will show that this patient ran at, or
19 aggressively charged at my client. The testimony will show at
20 the time he was charging, he was stating, I'm going to kill
21 you. And proceeded to punch my client, in the head, knock him
22 to the ground. Other employees came to assist.

23 And, although, yes, this patient was on the ground
24 at the time, he was still actively aggressing. Actively
25 resisting. He was still using force to try to get his arms

1 free. He was spitting in the face of my client and you'll see
2 from the video that at the time, his leg was wrapped around my
3 client's leg, pulling it in a very painful manner as my client
4 was at this point only days away from having that hip
5 replaced.

6 The amount of force used was reasonable and
7 necessary because you'll notice in the video that he uses the
8 two strikes—they weren't closed fist punches. You'll be able
9 to review the video. To get his leg free.

10 So, it wasn't that this client was completely
11 already subdued, no way of causing further harm. He was
12 actually still injuring my client at the time of this conduct.
13 And, based on the amount of force being reasonable to get my
14 client out of the situation, an ongoing situation, not
15 something in retaliation for previous circumstances. This is
16 seconds removed from punching my client in the face. You
17 know, it's very reasonable and we'll see that from the
18 circumstances surrounding this, Mr. Rocha's conduct was
19 reasonable and would not justify a termination of his
20 employment.

21 HEARING OFFICER: Ms. Sliwa, do you want to call
22 your first witness?

23 SUSANNE SLIWA: Yes, we call Christi Moebius.
24 Come up here and have a seat please.

25 CHRISTINE MOEBIUS: Uh huh.

1 SUSANNE SLIWA: And the Hearing Officer will
2 swear you in. And, I'm going to be asking Ms. Moebius to talk
3 about and explain the incident video.

4 HEARING OFFICER: Okay. How do I spell your last
5 name ma'am, I'm sorry.

6 CHRISTINE MOEBIUS: M-O-E-B-I-U-S.

7 HEARING OFFICER: Okay, Ms. Moebius. I apologize.

8 CHRISTINE MOEBIUS: Moebius.

9 HEARING OFFICER: Raise your right hand. Do you
10 swear to tell the truth, the whole truth, nothing but the
11 truth in these proceedings?

12 CHRISTINE MOEBIUS: Yes, I do.

13 HEARING OFFICER: Thank you.

14 SUSANNE SLIWA: Excuse me. Ms. Moebius, where
15 are you employed?

16 CHRISTINE MOEBIUS: At Southern Nevada Adult Mental
17 Health Services, in the Human Resources Department as a
18 Personnel Analyst I.

19 SUSANNE SLIWA: What do you do as a Personnel
20 Analyst I?

21 CHRISTINE MOEBIUS: I handle all employee relations
22 matters. I supervise the lead liaison and I coordinate all
23 grievance meetings, complaint investigations and internal
24 investigations with the agency.

25

1 SUSANNE SLIWA: How long have you been with the
2 agency?

3 CHRISTINE MOEBIUS: Since June 2015.

4 SUSANNE SLIWA: Are you familiar with the
5 termination of Mr. Rocha?

6 CHRISTINE MOEBIUS: Yes.

7 SUSANNE SLIWA: When and how did you first
8 become aware of the incident that prompted the termination?

9 HEARING OFFICER: Excuse me just for a moment.
10 [phone ringing] I didn't want that to happen. I don't know
11 anyone else could hear, but my phone just rang.

12 SPEAKER: Only after you reached for it.

13 SUSANNE SLIWA: Yeah. [crosstalk] Yeah, then I
14 thought I heard something.

15 HEARING OFFICER: Okay. I apologize.

16 CHRISTINE MOEBIUS: No worries, can you repeat that
17 question?

18 SUSANNE SLIWA: When and how did you first
19 become of the aware of the incident that prompted Mr. Rocha's
20 termination?

21 CHRISTINE MOEBIUS: I was notified by Contract
22 Lieutenant, Michael Mason and Lieutenant Jay Barth on October
23 15, 2018.

24 SUSANNE SLIWA: Okay. Were you made aware that
25 there's a video of this incident?

1 CHRISTINE MOEBIUS: Yes, I was.

2 SUSANNE SLIWA: Did you view—have you viewed the
3 video?

4 CHRISTINE MOEBIUS: Yes, we viewed the video on
5 October 16th, the following day, after we were notified. And
6 then at Human Resources Department with Contract Lieutenant,
7 Michael Mason and Lieutenant Jay Barth along with HR Director,
8 Jackie Arellano.

9 SUSANNE SLIWA: Okay. Why were you viewing the
10 video?

11 CHRISTINE MOEBIUS: To determine if patient abuse
12 occurred and to take the proper precautions to protect the
13 employees, the patients and the agency.

14 SUSANNE SLIWA: What kind of incident was this?

15 CHRISTINE MOEBIUS: Patient restraint, is that what
16 you're referring to?

17 SUSANNE SLIWA: Yes.

18 CHRISTINE MOEBIUS: Okay.

19 SUSANNE SLIWA: Yes, thank you. And, I—at this
20 point, I would like to, and I'm not sure how to do this, first
21 time I'm using a video. If we could have the video cue up and
22 you could explain.

23 CHRISTINE MOEBIUS: Okay.

24 HEARING OFFICER: And if it does not work, I'll
25 contact the HR person.

1 SUSANNE SLIWA: Okay, thank you.

2 HEARING OFFICER: I was able to view it at my
3 office, but—

4 SUSANNE SLIWA: Thank you.

5 HEARING OFFICER: [pause] Okay. We're going to
6 need to take a break and contact HR.

7 SUSANNE SLIWA: Uh-oh.

8 OFF THE RECORD

9 ON THE RECORD

10 HEARING OFFICER: --on the record. The person
11 from IT came and set up the video. All right. Ms. Sliwa.

12 SUSANNE SLIWA: Thank you. Ms. Moebius, you
13 stated that you have viewed this video before, correct?

14 CHRISTINE MOEBIUS: Yes.

15 HEARING OFFICER: This is Exhibit 5, am I correct?

16 SUSANNE SLIWA: This is Exhibit 5, yes.

17 HEARING OFFICER: Okay.

18 CHRISTINE MOEBIUS: Yes.

19 ANGELA LIZADA: Exhibit 4.

20 SUSANNE SLIWA: Oh, it's 4?

21 ANGELA LIZADA: 4, Exhibit 4.

22 SUSANNE SLIWA: Let me—let me see what I've got
23 here. 5.

24 ANGELA LIZADA: Then—

25 HEARING OFFICER: What's Exhibit 4?

1 SUSANNE SLIWA: Exhibit 4, the DHHS Prohibitions
2 and Penalties.

3 HEARING OFFICER: Oh, it's the--

4 ANGELA LIZADA: Well then, what I-the Pre-
5 Hearing Statement that I got from you only has four Exhibits.

6 SUSANNE SLIWA: Okay.

7 HEARING OFFICER: Do you want to--

8 SUSANNE SLIWA: We sent the--the P&Ps were sent
9 separately, my assistant was out on the day that I needed to
10 submit this and my tech stupidity [sic] seems to have taken
11 over.

12 HEARING OFFICER: Okay. Exhibit 4 that I have is
13 the policy regarding incompatible activities, prohibitions and
14 penalties.

15 ANGELA LIZADA: I have one Specificity of
16 Charges and Exhibit 2, letter to employee from DPBH, three
17 investigative reports and Exhibit 4 video of incident. 5, any
18 and all documents produced by employee and 6, rebuttal
19 documents, as necessary.

20 HEARING OFFICER: I'm sorry, I didn't hear.

21 ANGELA LIZADA: It's all right, I--

22 SUSANNE SLIWA: And I--and I--I apologize, I
23 submit that I think I sent Ms. Lizada the incorrect version of
24 the list. The only one that you don't have on there are the
25 P&Ps, which I know your familiar--

1 ANGELA LIZADA: Do you have a copy of them?
2 SUSANNE SLIWA: Huh?
3 ANGELA LIZADA: Do you happen to have a copy of
4 them?
5 SUSANNE SLIWA: Yeah.
6 ANGELA LIZADA: Could you ask your assistant to
7 email me and I can [crosstalk]
8 HEARING OFFICER: Yeah, on the Pre-Hearing
9 Statement, it does show Exhibit 4 as the video.
10 SUSANNE SLIWA: Let's see what I've got here.
11 Yes, and I'm not really planning to refer to them, but here
12 you are.
13 ANGELA LIZADA: Thank you.
14 SUSANNE SLIWA: Certainly.
15 HEARING OFFICER: And so, shall we renumber the
16 Exhibits to have the video as 5?
17 SUSANNE SLIWA: The video is 5.
18 ANGELA LIZADA: Yeah, I'm fine with that, I just
19 needed to figure out why I was different so I could note
20 myself and not be completely confused. So, #5 is the video,
21 #4 is the Prohibitions and Penalties.
22 SUSANNE SLIWA: Correct.
23 HEARING OFFICER: Yeah.
24 ANGELA LIZADA: Okay.
25

1 SUSANNE SLIWA: Okay, thank you. Ms. Moebius,
2 do you recognize the--well, first, is that a hospital unit that
3 is on the video?

4 CHRISTINE MOEBIUS: That is correct.

5 SUSANNE SLIWA: You recognize it?

6 CHRISTINE MOEBIUS: The actual unit?

7 SUSANNE SLIWA: The actual unit.

8 CHRISTINE MOEBIUS: I've never actually been on that
9 unit, but it is a unit at Stein.

10 SUSANNE SLIWA: Okay. Why don't--why don't we
11 just play the video and I will ask you to kind of narrate what
12 is happening.

13 CHRISTINE MOEBIUS: Okay.

14 SUSANNE SLIWA: If we could.

15 HEARING OFFICER: Ms. Lizada, do you have any
16 objection?

17 ANGELA LIZADA: She can state what she's
18 observing.

19 SUSANNE SLIWA: What she's seeing.

20 HEARING OFFICER: Yeah.

21 ANGELA LIZADA: I'll object if there's anything
22 she says that I don't think is appropriate, but I'm fine with
23 it.

24 SUSANNE SLIWA: Thank you. First time, kind of
25 loosy-goosey. Who is that on the video right there?

1 CHRISTINE MOEBIUS: That's Mr. Charles Rocha.

2 SUSANNE SLIWA: Okay. And you're familiar with
3 Mr. Rocha, is that right?

4 CHRISTINE MOEBIUS: That is correct.

5 SUSANNE SLIWA: Okay. Had you met Mr. Rocha
6 prior to viewing this video.

7 CHRISTINE MOEBIUS: Yes.

8 SUSANNE SLIWA: Okay. And he appears to be
9 cleaning a table, is that right.

10 CHRISTINE MOEBIUS: That is correct.

11 SUSANNE SLIWA: Okay. And, we can wait a few
12 seconds because I think something may happen. Ha. So,
13 [pause] And at this point in time, Mr. Rocha was a Forensic
14 Specialist IV?

15 CHRISTINE MOEBIUS: Yes, that is correct.

16 SUSANNE SLIWA: Is that a supervisory position?

17 CHRISTINE MOEBIUS: Yes.

18 SUSANNE SLIWA: Okay. [pause] And now, Mr.
19 Rocha appears to have gone around the corner. Do you know
20 where he was going?

21 CHRISTINE MOEBIUS: He enters into the nursing
22 station.

23 SUSANNE SLIWA: Okay. [pause] There's a little
24 bit of downtime before we get to the action in the video.

25 [laughs] [pause] I seem to remember less downtime, but then

1 I think I may be fast-forwarding to find what I was viewing.
2 [pause] When we're waiting for something to happen it seems
3 like it takes a while. [pause] Do you know the—who the two
4 people in the nurse's station are?

5 CHRISTINE MOEBIUS: The one exiting is Mr. Charles
6 Rocha and the other—the nurse that was sitting in view was
7 [inaudible] she's a PN-2, a Psychiatric Nurse 2, at Stein.

8 SUSANNE SLIWA: Thank you. Is that Mr. Rocha
9 who just walked in the frame again?

10 CHRISTINE MOEBIUS: That is correct.

11 SUSANNE SLIWA: Okay. What does Mr. Rocha
12 appear to be doing now?

13 CHRISTINE MOEBIUS: He's holding the monitor board.
14 I believe he is eating a snack.

15 SUSANNE SLIWA: Okay. Is eating allowed on the
16 unit by forensic staff?

17 CHRISTINE MOEBIUS: No, it is not.

18 SUSANNE SLIWA: Okay. Do you know why?

19 CHRISTINE MOEBIUS: For sanitary reasons.

20 SUSANNE SLIWA: Would it also be for safety
21 reasons?

22 CHRISTINE MOEBIUS: That is correct. If they were
23 to have utensils and things like that on the unit, it would be
24 a safety hazard.

25

1 SUSANNE SLIWA: Okay. Mr. Rocha appears to be
2 getting up, is that correct?

3 CHRISTINE MOEBIUS: Yes.

4 SUSANNE SLIWA: Do you know who--there we go.
5 [pause] It appears that a client charged at Mr. Rocha. Is
6 that--is that what you see?

7 CHRISTINE MOEBIUS: Yes, that is correct.

8 SUSANNE SLIWA: And there appear to be a bunch
9 of people on the floor, do you recognize those people?

10 CHRISTINE MOEBIUS: Dwayne Lyons. We have Joshua
11 Beehick [phonetic], Chad Lombardo. I can't make out who the
12 person in the back of the video is.

13 SUSANNE SLIWA: Are they staff?

14 CHRISTINE MOEBIUS: They are staff, they are
15 Forensic Specialists.

16 SUSANNE SLIWA: How many clients do you see in
17 that fray?

18 CHRISTINE MOEBIUS: As of right now, only one.

19 SUSANNE SLIWA: Okay. [pause] Can you see Mr.
20 Rocha?

21 CHRISTINE MOEBIUS: Yes, I can. He's on the left
22 side of the patient.

23 SUSANNE SLIWA: Okay.

24 CHRISTINE MOEBIUS: And, we already passed the--
25

1 SUSANNE SLIWA: Okay, can you roll it back
2 please? As you—let me set this up, as you know, Ms. Moebius,
3 we are here dealing with Mr. Rocha's termination. He was
4 terminated for client abuse. He's alleged to have hit the
5 client—to have hit the client twice while the client was on
6 the floor. Can you let us know when that happens and what is
7 going on while it's happening?

8 CHRISTINE MOEBIUS: Okay. So, they all go to the
9 ground, after the patient attacks the employee. They're
10 trying to restrain him.

11 SUSANNE SLIWA: Yes.

12 CHRISTINE MOEBIUS: And, it's going to happen about
13 right here, after Mr. Rocha gets his arm free. [pause] The
14 client's face is towards—it's going to happen right there.
15 One, and two. The client's face was towards Mr. Rocha.

16 SUSANNE SLIWA: Was—based on your observation,
17 was the client's face or head bleeding before Mr. Rocha hit
18 him?

19 CHRISTINE MOEBIUS: No.

20 SUSANNE SLIWA: Was it bleeding after Mr. Rocha
21 hit him?

22 CHRISTINE MOEBIUS: After the first punch the client
23 started to bleed.

24 SUSANNE SLIWA: Thank you, I think we can stop
25 the video.

1 HEARING OFFICER: All right. If we can, I'd like
2 to roll this back just a bit.

3 SUSANNE SLIWA: Yes. Yes, of course.

4 ANGELA LIZADA: Do you mind if I just come a
5 little closer so I can-

6 HEARING OFFICER: Certainly.

7 SUSANNE SLIWA: I'm going to do the same, if you
8 don't mind.

9 HEARING OFFICER: I wish I could make this bigger,
10 I just don't want to risk anything with the video.

11 ANGELA LIZADA: It's just-it's so dark.

12 SUSANNE SLIWA: It is a little dark.

13 HEARING OFFICER: Okay. [crosstalk] I did not
14 get back, I wanted--once again, the--[pause] Now, is this Mr.
15 Rocha, is that what you're testifying to?

16 CHRISTINE MOEBIUS: The head?

17 SUSANNE SLIWA: With all due respect sir, the
18 one with thinning hair, it appears to be thinning hair?

19 ANGELA LIZADA: He is the one on this side.

20 CHARLES ROCHA: Can I go up there as well?

21 HEARING OFFICER: Here or there?

22 ANGELA LIZADA: This--no, the side towards you.

23 HEARING OFFICER: All right, am I not--is there a--

24 ANGELA LIZADA: It's just really--
25

1 HEARING OFFICER: Over here, is there a third
2 person?

3 ANGELA LIZADA: Yes, that is him. No, that's
4 Mr. Rocha right there.

5 CHRISTINE MOEBIUS: There should be two employees on
6 either side of the patient.

7 CHARLES ROCHA: Here, excuse me. That is me.

8 HEARING OFFICER: Where?

9 CHARLES ROCHA: Right there.

10 HEARING OFFICER: Here?

11 CHARLES ROCHA: Uh huh.

12 HEARING OFFICER: All right.

13 CHARLES ROCHA: So, I was on the left side of-of
14 the inmate, or the client-

15 HEARING OFFICER: You'll get a chance to testify.

16 CHARLES ROCHA: Sure. Okay.

17 HEARING OFFICER: All right, I just want to-

18 CHARLES ROCHA: Sure.

19 SUSANNE SLIWA: Get some--

20 CHRISTINE MOEBIUS: In that frame, I can't really-I
21 can't tell if that's Mr. Rocha's head or if that's the
22 client's head.

23 SUSANNE SLIWA: Okay, but it's one of the two?
24
25

1 CHRISTINE MOEBIUS: Yes, and so--yes, that's Mr.
2 Rocha's head, yes it was now, I see that the client's head did
3 come into frame now.

4 CHARLES ROCHA: Just kind of look at the bald
5 spot because I have a bald spot back there.

6 CHRISTINE MOEBIUS: Yeah. That is Mr. Rocha, that
7 is correct.

8 HEARING OFFICER: Okay. And, I believe this is
9 the point where we stopped it before?

10 SUSANNE SLIWA: Yes.

11 HEARING OFFICER: Okay. And, we stopped it at
12 4:18, four minutes, 18 seconds into the video.

13 SUSANNE SLIWA: Okay.

14 HEARING OFFICER: All right.

15 SUSANNE SLIWA: Ms. Moebius, are you a--do you
16 know how long the video is approximately?

17 CHRISTINE MOEBIUS: I think it's--

18 SUSANNE SLIWA: Is it much longer?

19 CHRISTINE MOEBIUS: Yes, it has--I think it's about a
20 total of like, six minutes long, but--

21 SUSANNE SLIWA: Okay.

22 CHRISTINE MOEBIUS: --Mr. Rocha is relieved of his
23 duties at around 5:14 and he leaves the unit. Around 5:14 or
24 5:18.

25

1 SUSANNE SLIWA: Okay. And, we can—we can take a
2 look at that if you'd like, I don't know that that's
3 necessary. When you say "relieved", what do you mean?

4 CHRISTINE MOEBIUS: So, other forensic specialists
5 come in and basically tap them out to leave the unit, to stop
6 what he's doing and obviously go get checked out. Medical,
7 see if he's injured, debriefing and things like that.

8 SUSANNE SLIWA: Okay. To step away from the
9 situation, is that fair?

10 CHRISTINE MOEBIUS: Yes, to leave the unit. At
11 5:14, I believe he does exit the unit. You can see the door
12 open at the end, when he leaves.

13 SUSANNE SLIWA: Okay. All right. Thank you,
14 Ms. Moebius, I think that's all that I have right now. Ms.
15 Lizada and Mr. Zentz may have some questions for you.

16 HEARING OFFICER: Yeah. I'm sorry, your passing
17 the witness at this time?

18 SUSANNE SLIWA: I am.

19 HEARING OFFICER: All right.

20 SUSANNE SLIWA: Sorry, I was mumbling. [laughs]

21 ANGELA LIZADA: Are you ready for me to proceed?

22 HEARING OFFICER: Ms. Lizada?

23 ANGELA LIZADA: All right. I don't have many
24 questions. So, you have never been on this unit.

25 CHRISTINE MOEBIUS: No.

1 ANGELA LIZADA: Okay. And, you weren't there
2 for this incident.

3 CHRISTINE MOEBIUS: No, I was not.

4 ANGELA LIZADA: Okay. And you can't actually
5 see the client's face or details on that video, is that
6 correct?

7 CHRISTINE MOEBIUS: I can—I can make out who the
8 client is, yes.

9 ANGELA LIZADA: You can make out who it is, but
10 you can't see the actual details of his face on that video, is
11 that correct?

12 CHRISTINE MOEBIUS: No, it's a little bit blurred.

13 ANGELA LIZADA: Okay.

14 CHRISTINE MOEBIUS: Yes.

15 ANGELA LIZADA: So, you—when you state that
16 there was blood after but not before, you're talking about on
17 the floor.

18 CHRISTINE MOEBIUS: I'm looking at the floor, yes.

19 ANGELA LIZADA: Okay. So, you don't actually
20 have any knowledge of whether or not there may or may not have
21 been blood present on the client prior, you're only able to
22 see because of the contrast of the blood on the floor.

23 CHRISTINE MOEBIUS: That is correct.

24 ANGELA LIZADA: Okay.

25 CHRISTINE MOEBIUS: And, the incident report after--

1 ANGELA LIZADA: But again, you weren't there for
2 that.

3 CHRISTINE MOEBIUS: That is correct.

4 ANGELA LIZADA: So, you cannot testify to that
5 personally.

6 CHRISTINE MOEBIUS: Yes.

7 ANGELA LIZADA: Okay. So, your testimony is
8 only based on the fact that the blood appeared on the floor at
9 that point.

10 CHRISTINE MOEBIUS: Yes.

11 ANGELA LIZADA: Okay. Okay. And there was no
12 allegation that Mr. Rocha had any eating utensils, on the
13 floor at this point.

14 CHRISTINE MOEBIUS: No, it looked like it was just
15 like a wrapper. You know, he was opening something. I didn't
16 see any utensils, it was just finger foods.

17 ANGELA LIZADA: And, do you have any training or
18 background as a peace officer?

19 CHRISTINE MOEBIUS: I do not.

20 ANGELA LIZADA: All right, I have nothing
21 further.

22 HEARING OFFICER: Ms. Sliwa?

23 SUSANNE SLIWA: No redirect.

24 HEARING OFFICER: All right, thank you ma'am.

25 Your free to-do you anticipate recalling this witness?

1 SUSANNE SLIWA: I don't think so.
2 HEARING OFFICER: Is she free to leave?
3 SUSANNE SLIWA: I think so, I think you can go,
4 unless you--
5 JACKIE ARELLANO: You all right?
6 CHRISTINE MOEBIUS: Yeah, I'm good.
7 JACKIE ARELLANO: Okay.
8 CHRISTINE MOEBIUS: Thank you.
9 SUSANNE SLIWA: Thank you so much.
10 HEARING OFFICER: Thank you.
11 SUSANNE SLIWA: Thank you, thank you.
12 CHRISTINE MOEBIUS: Uh huh.
13 SUSANNE SLIWA: Always appreciated.
14 HEARING OFFICER: And, Ms. Sliwa, your next
15 witness?
16 SUSANNE SLIWA: Yes, we'd like to call Charles
17 Rocha please.
18 HEARING OFFICER: Okay.
19 CHARLES ROCHA: I got to go up there?
20 ANGELA LIZADA: Which chair do you want him in?
21 That one?
22 HEARING OFFICER: Over here.
23 CHARLES ROCHA: Okay.
24 HEARING OFFICER: Oh yeah.
25

1 SUSANNE SLIWA: I-[crosstalk] that would be
2 mine--
3 HEARING OFFICER: Plus, this is my better ear.
4 SUSANNE SLIWA: Okay.
5 ANGELA LIZADA: Perfect.
6 SUSANNE SLIWA: That would be fine.
7 CHARLES ROCHA: How you doing sir.
8 HEARING OFFICER: Good.
9 CHARLES ROCHA: All right.
10 HEARING OFFICER: Sir, would you raise your right
11 hand? Do you swear to tell the truth, the whole truth and
12 nothing but the truth in these proceedings today?
13 CHARLES ROCHA: I do, sir.
14 HEARING OFFICER: Thank you.
15 SUSANNE SLIWA: Can you please state your name
16 and spell it for the record?
17 CHARLES ROCHA: Charles Rocha. You want me to
18 spell the whole name?
19 SUSANNE SLIWA: Sure. [laughs]
20 CHARLES ROCHA: Okay. First name is C-H-A-R-L-
21 E-S. The last name is spelled R-O-C-H-A.
22 SUSANNE SLIWA: Thank you. Are you currently
23 employed Mr. Rocha?
24 CHARLES ROCHA: No.
25

1 SUSANNE SLIWA: Did--were you formerly employed
2 with Southern Nevada Adult Mental Health Services?

3 CHARLES ROCHA: Yes, I was.

4 SUSANNE SLIWA: What was your position?

5 CHARLES ROCHA: My position was a Forensic IV
6 Supervisor.

7 HEARING OFFICER: I'm sorry sir, I'm going to need
8 you to speak up just a bit.

9 CHARLES ROCHA: Sorry. My position was a
10 Forensic IV Supervisor.

11 HEARING OFFICER: All right.

12 SUSANNE SLIWA: Would that be a Forensic
13 Specialist IV?

14 CHARLES ROCHA: Yes.

15 SUSANNE SLIWA: Okay. When did you start with
16 Southern Nevada Adult Mental Health?

17 CHARLES ROCHA: When it first opened, I was one
18 of the first groups who opened up Stein Forensic Hospital.

19 SUSANNE SLIWA: Okay. And Stein Forensic
20 Hospital is a treatment facility where folks accused of crimes
21 are treated to competency, is that correct?

22 CHARLES ROCHA: Yes.

23 SUSANNE SLIWA: Okay. What were your job duties
24 as a Forensic Specialist IV?

25

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ROCHA

Appellant,

v.

THE STATE OF NEVADA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH,

Respondent.

Case No.: 82485

District Court Case No.: A-19-804209-J

JOINT APPENDIX

VOLUME I of II

Part 2 of 4

Appeal from the Eighth Judicial District Court
Case. No. A-19-804209-J

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	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
1.	Register of Actions	I	ROCHA000001- ROCHA000002
2.	Petition for Judicial Review 10/23/2019	I	ROCHA000004- ROCHA000007
2A.	Petitioner's Motion to Stay	I	ROCHA000007A- ROCHA00007K
3.	Statement of Intent to Participate 11/11/2019	I	ROCHA000008- ROCHA000009
4.	Transmittal of Record on Appeal 02/04/2020	I-II	ROCHA000010- ROCHA000281
5.	Petitioner's Opening Brief 03/09/2020	II	ROCHA000282- ROCHA000292
6.	Respondent's Reply Memorandum of Points and Authorities 04/13/20	II	ROCHA000293- ROCHA000310
7.	Petitioner's Reply Brief 05/07/2020	II	ROCHA000311- ROCHA000318
8.	Findings of Facts, Conclusions of law, Decision and Order on Petition for Judicial Review 07/01/2020	II	ROCHA000319- ROCHA000320
9.	/Notice of Entry of Order 07/20/2020 /	II	ROCHA000321- ROCHA000325
10.	Substitution of Attorney 02/11/2021	II	ROCHA000326- ROCHA000328

	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
11.	Respondent Charles Rocha's Supplement to the Record Following Remand from District Court 02/11/2021	II	ROCHA000329-ROCHA000354
12.	Notice of Appeal 02/11/2021	II	ROCHA000355-ROCH000362

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 17th day of August 2021, I did serve the above and forgoing JOINT APPENDIX Volume I of II (Part 2 of 4) by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, upon the Respondents at the following:

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An employee of the
LAW OFFICE OF DANIEL MARKS

1 CHARLES ROCHA: To maintain safety in the
2 facility. To make sure there was order.

3 SUSANNE SLIWA: Okay. And you supervise other
4 forensic specialists?

5 CHARLES ROCHA: Yes, I did but not on that day.

6 SUSANNE SLIWA: Not on the day--the day being--

7 CHARLES ROCHA: The day of the incident.

8 SUSANNE SLIWA: --excuse me, October--October 13,
9 2018.

10 CHARLES ROCHA: Yes, October 13th, yes.

11 SUSANNE SLIWA: Okay.

12 CHARLES ROCHA: I was on the--I was on the floor
13 in the unit.

14 SUSANNE SLIWA: Why were you--why were you on the
15 floor on the unit on October 13, 2018 as opposed to, I guess
16 supervising folks that day?

17 CHARLES ROCHA: So, when scheduling department
18 schedules forensics for the day, they assign them either to
19 the units, or if you're a supervisor and there was no other
20 forensic supervisor assigned for that week, and then you are
21 assigned for that week. But, I was not assigned for the week.
22 On that week, I was assigned to work on the floor, on the
23 units.

24 SUSANNE SLIWA: Okay. Prior to working at--at
25 Stein, where had you worked?

1 CHARLES ROCHA: I've worked at Nevada Department
2 of Corrections as a Correction Officer.

3 SUSANNE SLIWA: Okay. How long were you a
4 correctional officer?

5 CHARLES ROCHA: About, almost four years.

6 SUSANNE SLIWA: Okay. When you started at
7 Southern Nevada Adult Mental Health, were you trained
8 regarding safety techniques?

9 CHARLES ROCHA: Yes.

10 SUSANNE SLIWA: Did you have training in
11 something called CPART?

12 CHARLES ROCHA: Yes.

13 SUSANNE SLIWA: Can you explain briefly what
14 CPART is?

15 CHARLES ROCHA: CPART is a way of training to
16 help avoid situations that may occur when you're working in
17 the unit, when you are in contact or near clients or patients
18 who are in the unit where you are assigned to work at.

19 SUSANNE SLIWA: Okay. Now, to your knowledge,
20 the clients or patients that you represent, have they been
21 adjudicated as being guilty of a crime?

22 CHARLES ROCHA: Um.

23 SUSANNE SLIWA: And, let me--let me back up a
24 little bit. That was a bad question. [laughs]

25 CHARLES ROCHA: Uh huh.

1 SUSANNE SLIWA: Are they--are the clients at--are
2 they ordered to Stein Hospital as the result of a conviction
3 of a crime or are they simply charged?

4 CHARLES ROCHA: They are ordered to--to go to
5 Stein for treatment because when they approach the Judge and
6 the District Attorney and when they feel that this inmate who
7 is there at CCDC--

8 SUSANNE SLIWA: And, I'll object to the term
9 "inmate", but please go on.

10 CHARLES ROCHA: Okay. So, when this patient is
11 confronted in court and when the Judge determines that he is
12 not competent to continue trial then they are placed on the
13 waiting list to go to our facility. We are the only facility
14 here in Southern Nevada.

15 SUSANNE SLIWA: Okay. Mr. Rocha, were you
16 involved in an altercation with a client on the day in
17 question, that's October 13, 2018?

18 CHARLES ROCHA: There was an incident that had
19 occurred and he attacked me.

20 SUSANNE SLIWA: Well, the client--the client
21 attacked you physically?

22 CHARLES ROCHA: Well, okay, that was an
23 altercation. Yes.

24 SUSANNE SLIWA: Okay.

25

1 CHARLES ROCHA: Yes, it was a physical
2 altercation.

3 SUSANNE SLIWA: Okay.

4 ANGELA LIZADA: Can I just make note real quick
5 because I don't know if we said it once everybody came in.
6 We're avoiding using the name, so please just the subject,
7 patient or something along those lines.

8 SUSANNE SLIWA: Just patient.

9 HEARING OFFICER: Yeah, for the record, let's
10 avoid either call the person patient-

11 CHARLES ROCHA: Yes sir.

12 SUSANNE SLIWA: Or client.

13 HEARING OFFICER: Or client.

14 ANGELA LIZADA: I just realized we didn't say
15 that once people came back, I apologize.

16 SUSANNE SLIWA: Thank you, Ms. Lizada.

17 ANGELA LIZADA: We're getting to the point, that
18 might accidentally come up.

19 HEARING OFFICER: Okay.

20 SUSANNE SLIWA: When you were [crosstalk]

21 HEARING OFFICER: Can you restate that just again,
22 because-you said there was an incident and the patient and-

23 SUSANNE SLIWA: Were you involved in a physical
24 altercation with a patient on that day?

25 CHARLES ROCHA: Yes, I was.

1 SUSANNE SLIWA: Okay. And on that day, were you
2 aware that there are video cameras on the unit recording
3 events?

4 CHARLES ROCHA: Yes, I was.

5 SUSANNE SLIWA: Okay. You, staff here, we all
6 viewed the video.

7 HEARING OFFICER: [phone ringing] Okay, we if we
8 could take just a moment.

9 SUSANNE SLIWA: You bet. You bet.

10 OFF THE RECORD

11 ON THE RECORD

12 HEARING OFFICER: --the record. I appreciate
13 your--

14 SUSANNE SLIWA: Certainly.

15 HEARING OFFICER: Go right ahead, I'm sorry.

16 SUSANNE SLIWA: So, during the physical
17 altercation with the client that we referenced, did you hit
18 the client while he was on the floor?

19 CHARLES ROCHA: I did.

20 SUSANNE SLIWA: Did you hit him more than once?

21 CHARLES ROCHA: I did.

22 SUSANNE SLIWA: What were you doing prior--just
23 prior to the altercation?

24

25

1 CHARLES ROCHA: Prior to the altercation, I was
2 monitoring the unit from the position to which where I was at,
3 in the bench area. And you can see the whole entire unit.

4 SUSANNE SLIWA: Okay. Were you eating while you
5 were on the unit?

6 CHARLES ROCHA: I had two small little cookies
7 and it was in my pocket.

8 SUSANNE SLIWA: Okay. Is eating permitted on
9 the unit, or was it at the time?

10 CHARLES ROCHA: It's not permitted.

11 SUSANNE SLIWA: Okay. Why did you strike the
12 client twice?

13 CHARLES ROCHA: I struck him twice because, as
14 you see in the video, I was trying to break free and trying to
15 gain compliance, along with the other forensic officers who
16 were assisting. And he was not compliant.

17 SUSANNE SLIWA: How many other forensic officers
18 were--were on the scene and for lack of a better term, on the
19 client? How many other--how many other forensic specialists
20 were holding the client at the time you hit him?

21 CHARLES ROCHA: There was myself and two or
22 three others.

23 SUSANNE SLIWA: Okay. So, there were--there were
24 at least two, possibly more other, forensic specialists who
25

1 were holding the client at the time you struck him, is that
2 right?

3 CHARLES ROCHA: Yes.

4 SUSANNE SLIWA: Thank you. I think that is all
5 I have for right now, Mr. Rocha. I'm sure Ms. Lizada has some
6 question.

7 ANGELA LIZADA: I actually am going to defer
8 until my case in chief.

9 SUSANNE SLIWA: Of course. Thank you Mr. Rocha.

10 CHARLES ROCHA: Thank you.

11 SUSANNE SLIWA: [crosstalk]

12 HEARING OFFICER: Thank you, you can have a seat
13 sir.

14 CHARLES ROCHA: Thank you sir.

15 HEARING OFFICER: Ms. Sliwa?

16 SUSANNE SLIWA: I have one more witness, that
17 would be Linda Edwards. She's right out here. Ms. Linda, you
18 are up. [pause]

19 LINDA EDWARDS: Thank you.

20 SUSANNE SLIWA: Thank you. I'll ask you to sit
21 right up here and the Hearing Officer will swear you in.

22 HEARING OFFICER: Please raise your right hand.
23 Do you swear to tell the truth, the whole truth and nothing
24 but the truth in these proceedings today?

25 LINDA EDWARDS: I do.

1 HEARING OFFICER: Thank you.

2 SUSANNE SLIWA: Thank you Ms. Edwards. And, Ms.
3 Edwards does have a copy of her report, that she brought with
4 her. I also have a copy. I don't know if your copy has notes
5 or anything on it that you made. That you don't want anybody
6 else to see or-

7 HEARING OFFICER: Is that report entered into
8 evidence?

9 SUSANNE SLIWA: It is. That is Exhibit 3.

10 HEARING OFFICER: Okay.

11 SUSANNE SLIWA: So, if there's no objection to
12 Ms. Edwards using her own copy.

13 ANGELA LIZADA: I don't believe so.

14 SUSANNE SLIWA: Okay, thank you.

15 HEARING OFFICER: Okay, Ms. Edwards, you were
16 asked if there were any notes or anything on your copy, I
17 didn't hear your answer.

18 LINDA EDWARDS: No, there is none.

19 HEARING OFFICER: All right, thank you.

20 SUSANNE SLIWA: Okay, thank you. Thank you.

21 And if there are any objections later, we can certainly
22 address them. Can you please state your name and spell your
23 name for the record?

24 LINDA EDWARDS: My name is Linda Edwards, that
25 is spelled, L-I-N-D-A, with the last name, E-D-W-A-R-D-S.

1 SUSANNE SLIWA: And, are you employed Ms.
2 Edwards?

3 LINDA EDWARDS: Yes, I am.

4 SUSANNE SLIWA: Where do you work?

5 LINDA EDWARDS: I work at Southern Nevada Adult
6 Mental Health Services, there at Rawson-Neal Hospital and I've
7 been employed there about 20 years.

8 SUSANNE SLIWA: Oh my goodness. What is your
9 position?

10 LINDA EDWARDS: I am--the official title is
11 called a Psych Nurse IV, which actually is a Program Manager
12 over one of the existing units in the hospital.

13 SUSANNE SLIWA: Okay. Do you supervise a
14 particular unit?

15 LINDA EDWARDS: Yes, I do.

16 SUSANNE SLIWA: Which one?

17 LINDA EDWARDS: It is the RSU, the Rapid
18 Stabilization Unit. And I currently have about 75 employees
19 that I'm responsible for.

20 SUSANNE SLIWA: Okay. Is the Rapid
21 Stabilization Unit where folks come in to be triaged
22 essentially for their mental health issues prior to being
23 formally admitted?

24 LINDA EDWARDS: Yes, they come here directly
25 from emergency rooms, they're unmedicated and at that time,

1 they're evaluated to determine if they need to be returned
2 back to the community or to go inpatient or if we need to keep
3 them a few days for medication stabilization.

4 SUSANNE SLIWA: And, when you--when you say
5 Rawson-Neal Hospital, that is a civil hospital that is
6 different from Stein Hospital, is that right?

7 LINDA EDWARDS: Correct. There's forensic and
8 then we're civil.

9 SUSANNE SLIWA: Okay. So, the--is it fair to say
10 that the folks who come to Rawson-Neal Hospital are not the
11 result of a court order from an underlying criminal case?

12 LINDA EDWARDS: We do accept misdemeanor. We
13 have a misdemeanor program, so we do have some forensic, but
14 that averages, I believe the last average was like 30% of our
15 patients are only [crosstalk]

16 SUSANNE SLIWA: And, I'd forgotten about that
17 until the question came out of my mouth. [laughs]

18 LINDA EDWARDS: Right. That's--

19 SUSANNE SLIWA: Thank you. Does Rawson-Neal
20 Hospital provide treatment to competency for criminal
21 defendants?

22 LINDA EDWARDS: I don't believe so.

23 SUSANNE SLIWA: Okay. [laughs] Thank you. And
24 I'll stop asking you hard questions. [laughs] Did you
25

1 investigate an incident involving Mr. Rocha that happened in
2 October of 2018?

3 LINDA EDWARDS: Yes, I did.

4 SUSANNE SLIWA: How—who assigned you to
5 investigate the matter?

6 LINDA EDWARDS: I was asked by the Human
7 Resources Department to conduct this investigation.

8 SUSANNE SLIWA: Had you been previously trained
9 in investigations?

10 LINDA EDWARDS: Yes. I've been trained with a
11 full course twice through the Division and then I've also been
12 recertified.

13 SUSANNE SLIWA: Okay. And, is that the Division
14 of Public and Behavioral Health?

15 LINDA EDWARDS: Yes, it is.

16 SUSANNE SLIWA: Okay. How did you first become
17 aware of the incident involving Mr. Rocha?

18 LINDA EDWARDS: As I was notified of being asked
19 to investigate that. I had no knowledge prior to that.

20 SUSANNE SLIWA: Okay. Do you work—do you work
21 at Stein Hospital at all?

22 LINDA EDWARDS: No, I never have.

23 SUSANNE SLIWA: Okay. Were you the lead
24 investigator in this matter?

25 LINDA EDWARDS: Yes, I was.

1 SUSANNE SLIWA: Who else investigated it with
2 you?

3 LINDA EDWARDS: Her name was Dolly Jones and
4 Dolly is from the Nevada Youth Parole Bureau, I believe she's
5 a manager position there.

6 SUSANNE SLIWA: Okay. Can you briefly explain-

7 HEARING OFFICER: I'm sorry, you said, Dolly
8 Jones, but I didn't hear past that.

9 LINDA EDWARDS: It's-she's from the Nevada Youth
10 Parole Bureau, Bureau Manager is her title.

11 HEARING OFFICER: Nevada Youth Parole-

12 LINDA EDWARDS: Nevada Youth Parole Bureau
13 Manager. I had-that's why I brought my notes because I didn't
14 know her title officially.

15 SUSANNE SLIWA: [laughs] Fair enough, thank
16 you.

17 HEARING OFFICER: Thank you. And if I didn't tell
18 you before, Ms. Edwards, I have a hearing problem, so if I
19 interrupt, that's why I'm interrupting.

20 LINDA EDWARDS: Not a problem.

21 HEARING OFFICER: Thank you.

22 SUSANNE SLIWA: Do you have a copy of your
23 investigative report, Ms. Edwards?

24 LINDA EDWARDS: It's right here.
25

1 SUSANNE SLIWA: Can you briefly explain your
2 investigative process? You're assigned the investigation and
3 then what happens?

4 LINDA EDWARDS: Okay. Upon receiving the
5 investigation where you're debriefed by the Human Resources
6 Department on the situation. Usually provided an incident
7 report of what happened and a list of potential witnesses.
8 From that point, then the--myself and the other investigator,
9 we went and pulled policies, so we would familiarize ourselves
10 with the procedures and the expectations of what is done in
11 the forensics hospital since we both do not work there or have
12 not worked there.

13 Then at that time, then we set up interviews with
14 each of the witnesses and we review the training records to
15 see what their status is, as far as their current training.
16 If there's anything that all of these witnesses are lacking.
17 We make sure that there was availability to have them come and
18 do their interviews. Then we conduct the interviews--or, no.
19 We sit down and make our questions, so that way we're
20 consistent to all. And then, we then conduct the interviews
21 and interview each one of them individually.

22 SUSANNE SLIWA: Okay. And that--was all of that
23 done in this particular case?

24 LINDA EDWARDS: Yes ma'am.
25

1 SUSANNE SLIWA: Okay. Did you have occasion to
2 review the incident video footage?

3 LINDA EDWARDS: Yes, we did. We reviewed it
4 prior to the interviews and we reviewed it after the
5 interviews and any time there was a question—we reviewed it a
6 number of times.

7 SUSANNE SLIWA: Okay. Your recollection of
8 looking at the video, did you conclude that Mr. Rocha hit the
9 client—let me back up a little. The incident that you were
10 investigation, involved a client—an altercation between a
11 client and stuff, correct?

12 LINDA EDWARDS: Correct.

13 SUSANNE SLIWA: Okay. Did your investigation
14 conclude that during that altercation, Mr. Rocha hit the
15 client while he was being restrained on the floor?

16 LINDA EDWARDS: Yes, two times.

17 SUSANNE SLIWA: Two times. To your knowledge,
18 and your review of policies, did that violate agency policy?

19 LINDA EDWARDS: Most definitely.

20 SUSANNE SLIWA: How so?

21 LINDA EDWARDS: Because it's excessive use of
22 force.

23 SUSANNE SLIWA: Okay. And, what—why—why do you
24 believe that it constituted excessive use of force?

25

1 LINDA EDWARDS: Because the patient was
2 restrained and was already subdued and that's then when the
3 patient was then struck by the employee. There would've been
4 no need at that time for that patient to have been hit at that
5 time because he was already restrained on the floor.

6 SUSANNE SLIWA: Okay. Who was restraining him?

7 LINDA EDWARDS: It was a number of people.

8 SUSANNE SLIWA: Other staff?

9 LINDA EDWARDS: Yes. Besides Mr. Rocha, it was
10 Sir John Hopkins and then there was a number of other
11 employees that they were to the backside and behind them.
12 And, they were taking different limbs and just holding him in
13 place.

14 SUSANNE SLIWA: Okay. Are you familiar with
15 CPART techniques?

16 LINDA EDWARDS: Yes, I am. I'm trained in that
17 also.

18 SUSANNE SLIWA: Okay. Were the staff that you
19 observed, with the exception of Mr. Rocha, were the staff
20 utilizing prior CPART techniques to restrain the patient?

21 LINDA EDWARDS: To the best that I could tell by
22 the video, yes.

23 SUSANNE SLIWA: Okay. Did Mr. Rocha's hitting
24 the patient, was that a proper CPART technique?

25 LINDA EDWARDS: No.

1 SUSANNE SLIWA: Okay. Based upon your review of
2 agency policies, did Mr. Rocha's hitting the client constitute
3 client abuse?

4 LINDA EDWARDS: Yes.

5 SUSANNE SLIWA: Did your investigation
6 substantiate both client abuse and policy violations against
7 Mr. Rocha?

8 LINDA EDWARDS: Yes.

9 SUSANNE SLIWA: I believe and I can look at-in
10 your investigation report and I can find the reference it
11 states that you and your coinvestigator found that Mr. Rocha's
12 hitting the client was for retaliation or punishment?

13 LINDA EDWARDS: Yes.

14 SUSANNE SLIWA: Was that your conclusion?

15 LINDA EDWARDS: Yes.

16 SUSANNE SLIWA: Why did you come to that
17 conclusion?

18 LINDA EDWARDS: The patient that was struck,
19 actually struck Mr. Rocha first.

20 SUSANNE SLIWA: Yes.

21 LINDA EDWARDS: And, then after he was
22 restrained to the floor, then that's when Mr. Rocha then hit
23 him. So, it appears to look like retaliation since the
24 patient was unable to defend themselves or fight back, should
25 I say.

1 SUSANNE SLIWA: Okay.

2 LINDA EDWARDS: But he actually struck him after
3 the patient was restrained and there was no need for that. It
4 was, like I say, not a part of the CPART. So, it appeared to
5 look like retaliation since that patient had struck him.

6 SUSANNE SLIWA: Okay. I think that is all I
7 have right now, Ms. Edwards. Ms. Lizada probably has some
8 questions for you.

9 LINDA EDWARDS: Thank you.

10 ANGELA LIZADA: Do you have any training in
11 forensic or peace officer training?

12 LINDA EDWARDS: No, but the person that
13 investigated with me, Ms. Dolly Jones, does.

14 ANGELA LIZADA: Or, you believe she does.

15 LINDA EDWARDS: And so, I was able--no, I know
16 she does.

17 ANGELA LIZADA: You have personal knowledge of
18 the training she has?

19 LINDA EDWARDS: Yes, she--she made that clear
20 during our investigation that she was a part of all of that.

21 ANGELA LIZADA: So, again, you're speculating
22 based on what you've been told. You don't have personal
23 knowledge of her training.

24 LINDA EDWARDS: I haven't witnessed her
25 training, no.

1 ANGELA LIZADA: Okay. I'm just--

2 LINDA EDWARDS: But she is a-a Unit Manager and
3 an upstanding employee, so I take her word as being true.

4 ANGELA LIZADA: Okay, I'm asking about your
5 personal knowledge.

6 LINDA EDWARDS: No, I have not seen credentials.

7 ANGELA LIZADA: Okay. In your position at
8 Rawson-Neal, do you ever deal with those who have been charged
9 with felonies?

10 LINDA EDWARDS: No.

11 ANGELA LIZADA: Or violent crimes?

12 LINDA EDWARDS: Only if they are found to be,
13 what is it, incompetent and then they are transferred to our
14 facility.

15 ANGELA LIZADA: Okay. And you stated that this
16 was an excessive use of force.

17 LINDA EDWARDS: Yes.

18 ANGELA LIZADA: Do you have any training on
19 excessive use of force by peace officers?

20 LINDA EDWARDS: All I was basing that on was on
21 the policy that's by the agency itself, that's what we follow.

22 ANGELA LIZADA: Okay, by-Department of Health
23 and Human Services.

24 LINDA EDWARDS: Also the agency, the Stein
25 Hospital. They have their policies too.

1 ANGELA LIZADA: Okay. Are their policies
2 separate from the other facilities or did they actually
3 incorporate the policies of existing facilities because they
4 did not have their own?

5 LINDA EDWARDS: There's different levels of
6 policies, there's procedures and there's policies that come
7 from the Division. And then there's procedures that is
8 designed for each individual agency, that support the policy
9 by the Division.

10 ANGELA LIZADA: Okay. And so, you stated that
11 this was excessive because the patient was restrained and
12 subdued on the floor.

13 LINDA EDWARDS: Yes.

14 ANGELA LIZADA: From your review of the video,
15 was the patient still resisting?

16 LINDA EDWARDS: No. In fact, he was putting his
17 hand up trying to prevent being hit.

18 ANGELA LIZADA: Okay. So, your opinion wa at
19 that point, he was not resisting.

20 LINDA EDWARDS: No.

21 ANGELA LIZADA: Okay. And so, isn't it true
22 that another one of the employees that you specifically name
23 also struck this patient while he was-

24 SUSANNE SLIWA: Objection, relevance. This is
25 about Mr. Rocha and what he may or may not have done.

1 ANGELA LIZADA: This is relevant because if
2 another trained person in this same situation obviously felt
3 there was a threat and acted in a similar manner, it goes to
4 show what a reasonable peace officer in this situation would
5 do.

6 HEARING OFFICER: I'm going to sustain the
7 objection and not allow that question.

8 ANGELA LIZADA: Okay. Can I mention the fact
9 that it's in the report and specifically mentioned?

10 HEARING OFFICER: I saw that in the report.

11 ANGELA LIZADA: [pause] And, your basis of the
12 retaliation is solely because this patient attacked my client
13 before this use of force?

14 LINDA EDWARDS: I don't understand why there
15 would've been any other reason to have hit this patient once
16 he was restrained.

17 ANGELA LIZADA: Okay. But you have no training
18 in peace officer techniques.

19 LINDA EDWARDS: No, not personally.

20 ANGELA LIZADA: All right, I have nothing
21 further.

22 HEARING OFFICER: Do you have any redirect?

23 SUSANNE SLIWA: No redirect.

24 HEARING OFFICER: All right. Thank you. Is there
25 any reason for Ms. Edwards to remain?

1 SUSANNE SLIWA: I don't believe so.

2 HEARING OFFICER: All right. Ma'am, you're free
3 to leave. Thank you.

4 LINDA EDWARDS: Thank you very much.

5 SUSANNE SLIWA: Thank you, I'll walk you out
6 real quick. Thanks Linda. [pause] Okay. I just have one
7 more witness.

8 HEARING OFFICER: Okay.

9 SUSANNE SLIWA: That would be Jackie Arellano.

10 HEARING OFFICER: Do you swear to tell the truth,
11 the whole truth and nothing but the truth in these proceedings
12 today?

13 JACKIE ARELLANO: Yes.

14 HEARING OFFICER: Thank you, have a seat.

15 SUSANNE SLIWA: Can you state your name and
16 spell your name for the record, please?

17 JACKIE ARELLANO: Jackie, J-A-C-K-I-E. Arellano,
18 A-R-E-L-L-A-N-O.

19 SUSANNE SLIWA: And, where are you employed?

20 JACKIE ARELLANO: Southern Nevada Adult Mental
21 Health Services.

22 SUSANNE SLIWA: What is your job title?

23 JACKIE ARELLANO: Official Title is Personnel
24 Officer II.

25 SUSANNE SLIWA: And, what do you do there?

1 JACKIE ARELLANO: I have oversight of the Human
2 Resource Department. That includes employee relations,
3 recruitment, credentialing, all HR stuff.

4 SUSANNE SLIWA: Okay. How long have you been
5 with Southern Nevada Adult Mental Health?

6 JACKIE ARELLANO: Almost 14 years.

7 SUSANNE SLIWA: Oh my goodness. [laughs] Are
8 you familiar with the termination of Mr. Rocha?

9 JACKIE ARELLANO: Yes.

10 SUSANNE SLIWA: When and where did you—or, when
11 and how, excuse me, did you first become aware of the incident
12 that prompted the termination?

13 JACKIE ARELLANO: So, I know the incident happened
14 on October 13, 2018. The HR Department was notified on the
15 15th of October because that's the date that Mr. Rocha was
16 reassigned away from patient care.

17 On the 16th of October, we had requested the video
18 and Lieutenant Barth and Lieutenant Mason brought it over and
19 Christine and I and the two Lieutenants viewed it.

20 SUSANNE SLIWA: Okay. And that would be
21 Christine Moebius, who testified earlier?

22 JACKIE ARELLANO: Yes. Yes and then, on the 18th,
23 we received the rest of the documents, incident reports and
24 that sort of thing.

25

1 SUSANNE SLIWA: Okay. When you first reviewed
2 the video, what-what were your observations, from what you
3 recall?

4 JACKIE ARELLANO: Well, so, I saw Mr. Rocha
5 cleaning the table. I saw him eating a snack. I saw a
6 patient run toward him and then, it's like, around a corner so
7 I couldn't really see much until staff started arriving and
8 then they were all on the floor.

9 So, when the staff came, the patient was restrained.
10 He was subdued on the floor and then I saw Mr. Rocha strike
11 the patient twice, with a closed fist. There was a lot of
12 commotion going on and then a few minutes later, Mr. Rocha
13 left the unit and I'm assuming that he was relieved.

14 SUSANNE SLIWA: Okay. When you say, relieved,
15 what exactly do you mean?

16 JACKIE ARELLANO: He-well, he probably needed
17 medical attention and I'm not sure what happened after that.
18 I don't know if he was at the debriefing, I don't have any
19 knowledge of what happened after that.

20 SUSANNE SLIWA: Okay. [pause] Are you familiar
21 with SAM's and the DPBH's client abuse policy?

22 JACKIE ARELLANO: Yes. I believe it's called the
23 CCRR-1.2 and it strictly prohibits patient abuse and neglect.
24 And, pretty much defines abuse as willful or unjustified
25 infliction of pain, injury or mental anguish. And it gives

1 examples of abuse as hitting, slapping, kicking, pinching,
2 bruising, shoving, anything that would inflict some sort of
3 pain.

4 SUSANNE SLIWA: Okay. Based upon your
5 observations of the incident--well, let me back up. Did you--
6 have you viewed the incident video more than once?

7 JACKIE ARELLANO: Yes.

8 SUSANNE SLIWA: Based upon your observations, do
9 you believe that Mr. Rocha violated the client abuse policy?

10 JACKIE ARELLANO: Yes.

11 SUSANNE SLIWA: How?

12 JACKIE ARELLANO: Because he struck a client in
13 the face two times and the client was on the floor restrained.
14 Even if the client hadn't been restrained, you still don't
15 strike the clients because it constitutes abuse.

16 SUSANNE SLIWA: Okay. Are you familiar with the
17 Department of Health and Human Services, Probation and
18 Penalties?

19 JACKIE ARELLANO: Yes. I don't know them all by
20 heart, but I am familiar with them.

21 SUSANNE SLIWA: Okay. Understood. Do you know
22 and if you don't that's okay, do you know if those
23 Prohibitions and Penalties allow for a termination on a first
24 offense for client abuse?

25 JACKIE ARELLANO: Yes.

1 SUSANNE SLIWA: Did you write up the Specificity
2 of Charges?

3 JACKIE ARELLANO: I drafted them, yes.

4 SUSANNE SLIWA: Okay. Were you involved in the
5 Pre-Disciplinary Hearing that was conducted on, it looks like
6 March 18, 2019?

7 JACKIE ARELLANO: Yes, I was present.

8 SUSANNE SLIWA: What was your involvement?

9 JACKIE ARELLANO: Basically support, HR support.
10 In case the Hearing Officer or the employee has any questions
11 and at the end, I explain if the discipline is upheld, what
12 the client--what the patient--I'm sorry, what the employee's
13 rights are as far as an appeal.

14 SUSANNE SLIWA: Okay. Who was the Pre-
15 Disciplinary Hearing Officer in this case?

16 JACKIE ARELLANO: Ellen Richardson-Adams.

17 SUSANNE SLIWA: And, who is Ms. Adams?

18 JACKIE ARELLANO: She's the Outpatient
19 Administrator for Southern Nevada Adult Mental Health
20 Services.

21 SUSANNE SLIWA: Okay. So, she is--would it be
22 fair to say, she's not directly in or she was not directly in
23 Mr. Rocha's chain of command.

24 JACKIE ARELLANO: Correct.

25 SUSANNE SLIWA: Was the termination upheld?

1 JACKIE ARELLANO: Yes.

2 SUSANNE SLIWA: Okay. Who was involved in the
3 decision to uphold the termination?

4 JACKIE ARELLANO: So, the Hearing Officer
5 conferred with the Administrator for the Division of Public
6 and Behavioral Health, so it would've been Julie Kotchevar and
7 Ellen Richardson-Adams.

8 SUSANNE SLIWA: Okay. What is your
9 understanding of why the decision was made to terminate Mr.
10 Rocha?

11 JACKIE ARELLANO: The investigative report
12 substantiated patient abuse and mistreatment, patient
13 endangerment and failure to follow policies and procedures.
14 Per the abuse policy, if an investigation is substantiated,
15 the recommended discipline is termination.

16 SUSANNE SLIWA: Okay. Do you agree with the-
17 with the agency's decision to terminate Mr. Rocha?

18 JACKIE ARELLANO: Yes.

19 SUSANNE SLIWA: Why is that?

20 JACKIE ARELLANO: Well, Mr. Rocha had violated
21 multiple laws and regulations and policies by striking the
22 patient in the face, twice with a closed fist. I agree with
23 Linda Edwards, as far as, it being retaliatory because the
24 patient was subdued and restrained on the ground. I don't
25 believe that Mr. Rocha hit the patient because he feared for

1 his life or self-defense. So, that's why I thought that
2 termination should be upheld.

3 SUSANNE SLIWA: Thank you, Ms. Arellano, that's
4 all I have right now.

5 HEARING OFFICER: Ms. Lizada?

6 ANGELA LIZADA: Does Stein have separate
7 policies or procedures that are different from the civil
8 facilities?

9 JACKIE ARELLANO: Yes. They do. Some are--some
10 mirror them, the same. Some were taken from Lakes Crossing,
11 who is pretty much like Stein.

12 ANGELA LIZADA: Is that--where's Lakes Crossing?

13 JACKIE ARELLANO: It's up in Carson City, Sparks,
14 Reno area.

15 SUSANNE SLIWA: Sparks.

16 ANGELA LIZADA: So, some parts have been taken
17 from that.

18 JACKIE ARELLANO: Yes.

19 ANGELA LIZADA: Okay. Do you have any separate
20 policies or procedures that deal with your employee's as peace
21 officers, as opposed to being mental health providers?

22 JACKIE ARELLANO: I don't think so. I think
23 they're just called Forensic Specialists in the policies,
24 they're not called Peace Officers in the policies.

25

1 ANGELA LIZADA: But you do agree that the
2 Forensic Specialists are designated as Category III Peace
3 Officers.

4 JACKIE ARELLANO: Once they pass POST, yes.

5 ANGELA LIZADA: And, Mr. Rocha had passed POST
6 already.

7 JACKIE ARELLANO: Yeah, well he was certified when
8 he came to work for us.

9 ANGELA LIZADA: Okay. And that was a
10 requirement for his position.

11 JACKIE ARELLANO: Yes, uh huh.

12 ANGELA LIZADA: Okay. And that's not a
13 requirement over at Rawson-Neal.

14 JACKIE ARELLANO: They don't have forensic
15 specialists at Rawson-Neal.

16 ANGELA LIZADA: And, when you state that Mr.
17 Rocha violated multiple laws, regulations and policies by
18 striking the client in the face, that is based on your opinion
19 of applying what you've seen to the laws and policies.

20 JACKIE ARELLANO: From researching the NRS, the
21 NAC, the Prohibitions and Penalties and our policies, yes.

22 ANGELA LIZADA: Okay. So, but there's been no
23 criminal charges filed against Mr. Rocha for breaking any law?

24 JACKIE ARELLANO: No, but the NRS, the Nevada
25 Revised Statutes.

1 ANGELA LIZADA: Right, and I'm just trying to
2 figure out, so it's your opinion based on what you see that
3 he's violated these. Not that there's been any sort of
4 conviction. Or legal finding otherwise, that he's violated
5 some law.

6 JACKIE ARELLANO: No.

7 ANGELA LIZADA: Okay. [pause] I have nothing
8 further.

9 HEARING OFFICER: Thank you.

10 SUSANNE SLIWA: No redirect.

11 HEARING OFFICER: All right, thank you.

12 SUSANNE SLIWA: And, we rest. And, if we could
13 take a short break.

14 ANGELA LIZADA: I was going to ask for the same
15 thing.

16 SUSANNE SLIWA: Chelsea used to say, bio-break.
17 [laughs]

18 HEARING OFFICER: Okay, we're going to go off the
19 record.

20 OFF THE RECORD

21 ON THE RECORD

22 HEARING OFFICER: On the record in the Charles
23 Rocha case, versus DHHS. The Employer has rested. So, Ms.
24 Lizada.

25

1 ANGELA LIZADA: All right. We will be calling
2 Charles Rocha. If you want to go back to the front.

3 CHARLES ROCHA: Yes.

4 HEARING OFFICER: Mr. Rocha, you were sworn
5 before, you are just required to maintain that.

6 CHARLES ROCHA: Yes sir.

7 HEARING OFFICER: All right, Ms. Lizada.

8 ANGELA LIZADA: Mr. Rocha, prior to coming to
9 Stein, you worked for the Nevada Department of Corrections, is
10 that correct?

11 CHARLES ROCHA: That's correct.

12 ANGELA LIZADA: Okay. And, through your prior
13 employment, did you receive certification as a correctional
14 officer or POST--can you explain to me what the actual training
15 you went through over at NDOC?

16 CHARLES ROCHA: So, when you're offered
17 employment at Nevada Department of Corrections, you have to
18 complete a POST Certification Training Academy.

19 ANGELA LIZADA: Okay. And is that POST
20 Certification Training Academy similar to what is required as
21 an employee at Stein?

22 CHARLES ROCHA: The Academy is different from
23 CPART.

24

25

1 ANGELA LIZADA: Okay. It's different from
2 CPART. So, you're required at Stein to do both types of
3 training.

4 CHARLES ROCHA: Yes.

5 ANGELA LIZADA: But the POST that you're talking
6 about, that training that you received at NDOC, is that the
7 same training that would be required for you at Stein?

8 CHARLES ROCHA: It's a requirement. If you come
9 in and you already have it, then you're good, but-but if
10 you're hired as a Forensic Specialist and you come into Stein,
11 you're not POST Certified. Which means, they give you a
12 certain amount of time, I believe it's within six months to a
13 year where-where they have you go to a POST Academy training.

14 ANGELA LIZADA: Okay. So, what I'm trying to
15 say, that POST Academy training, whether you went to it
16 through NDOC Or went to it through Stein, is it the same
17 training?

18 CHARLES ROCHA: Yes.

19 ANGELA LIZADA: And, you indicated that you have
20 two types of training, you have the POST Academy training and
21 you have the CPART training.

22 CHARLES ROCHA: Yes.

23 ANGELA LIZADA: Is that correct?

24 CHARLES ROCHA: Yes.

25

1 ANGELA LIZADA: Okay. And, I think we're all
2 aware of what the CPART training is, throughout SNAMHS.

3 CHARLES ROCHA: Yes.

4 ANGELA LIZADA: And you had indicated earlier
5 that it's essentially to deescalate situations, is that
6 correct?

7 CHARLES ROCHA: Yes.

8 ANGELA LIZADA: Okay. The POST Academy
9 training, does it contain the same information as CPART?

10 CHARLES ROCHA: No.

11 ANGELA LIZADA: How does it differ from CPART
12 training?

13 CHARLES ROCHA: You're essentially a Peace
14 Officer after you complete your POST Academy training.

15 ANGELA LIZADA: Okay. And what type of training
16 and techniques are taught with regards to a non-compliant or
17 aggressive individual through your POST Academy training?

18 CHARLES ROCHA: Well, from what I can still
19 remember because I had my POST Academy training back when I
20 worked at the prison. You have your defensive tactics and you
21 also are trained to also to try to deescalate, okay. But, a
22 lot of times, when you work in a prison as a correction
23 officer, you're going to try that at first but obviously, it
24 doesn't work that way.

25

1 ANGELA LIZADA: Okay. So, you're not always
2 able to deescalate.

3 CHARLES ROCHA: Correct.

4 ANGELA LIZADA: And when you say, you're trained
5 on defensive tactics, what type of tactics are considered
6 defensive tactics?

7 CHARLES ROCHA: Different ways to define
8 yourself and different ways to contain an inmate.

9 ANGELA LIZADA: Can you give me some examples of
10 those?

11 CHARLES ROCHA: So, if an inmate is not
12 compliant with your demands and he gets irate and then he
13 wants to threaten your life and then he uses physical force
14 and then of course, you have to defend yourself. And of
15 course, you call, you know, on the radio, you know, whatever
16 the code is there and then you get assistance. But, while
17 you're in the unit working there, usually there's another
18 officer or two that is assigned in that unit as well.

19 ANGELA LIZADA: Okay.

20 CHARLES ROCHA: So, they're also assisting you
21 to gain compliance to place him in restraints because in a
22 prison, we have restraints.

23 ANGELA LIZADA: Okay. So, when you're talking
24 about the gaining control and the actual tactics, what I'm
25 trying to see the difference, we know what the approved CPART

1 holds are, are those the same holds that are taught to you
2 through the POST Academy training?

3 CHARLES ROCHA: No. Not exactly, no.

4 ANGELA LIZADA: Through the POST Academy
5 training, are you taught tactics that are more in line with
6 law enforcement?

7 CHARLES ROCHA: Yes.

8 ANGELA LIZADA: Are you taught open handed
9 techniques and you know, those types of techniques that are
10 used by law enforcement--

11 CHARLES ROCHA: Yes.

12 ANGELA LIZADA: --up until aggressive behavior.

13 CHARLES ROCHA: Yes.

14 ANGELA LIZADA: And, sometimes the open handed
15 techniques can involve strikes and kicks and baton use and--

16 CHARLES ROCHA: Yes.

17 ANGELA LIZADA: --conduct such as that?

18 CHARLES ROCHA: Yes.

19 ANGELA LIZADA: And, those are to be used only
20 when reasonable and appropriate, is that correct?

21 CHARLES ROCHA: Yes.

22 ANGELA LIZADA: So, when you were hired and part
23 of your required training is through POST Academy training and
24 also CPART, were you ever provided anything to tell you not to
25 use your POST Academy training, as opposed to the CPART?

1 CHARLES ROCHA: No.

2 ANGELA LIZADA: Okay. And, Stein is a facility
3 under Department of Health and Human Services, is that
4 correct?

5 CHARLES ROCHA: Yes.

6 ANGELA LIZADA: But the patients come to you as
7 part of the court process, is that correct?

8 CHARLES ROCHA: Yes.

9 ANGELA LIZADA: Okay. So, they haven't been
10 convicted of anything.

11 CHARLES ROCHA: Correct.

12 ANGELA LIZADA: But it's still part of their
13 custody through the court system?

14 CHARLES ROCHA: Yes.

15 ANGELA LIZADA: Okay. What type of clients do
16 you see at Stein?

17 CHARLES ROCHA: Since I started working there,
18 since the place opened up in 2015, you get all kinds of
19 clients. Clients that are not cooperative. Clients that are
20 calm and cooperative. You get clients that just don't care
21 and have no respect for you. So, we get all kinds.

22 ANGELA LIZADA: Okay. So, you have the broad
23 gamut of individuals there.

24 CHARLES ROCHA: Yes. Yes.

25 ANGELA LIZADA: Okay.

1 CHARLES ROCHA: There's really no telling until-
2 until they're actually in our custody.

3 ANGELA LIZADA: All right. And so, this
4 incident that we're here to discuss today happened on October
5 13, 2018, correct?

6 CHARLES ROCHA: Yes.

7 ANGELA LIZADA: Okay. And, what month are we
8 in, August, that was about 10 months ago? Yeah, because we're
9 like two months shy of a year, does that seem about correct?

10 CHARLES ROCHA: Uh huh. Yes.

11 ANGELA LIZADA: Okay. What was your physical
12 condition at the time of that incident?

13 CHARLES ROCHA: So, before the incident even
14 happened, I advised my chain of command, the Sergeant, the
15 Lieutenant and-and the head of Forensic, can I say his name?

16 ANGELA LIZADA: That's fine, you can tell us who
17 you're notifying.

18 SUSANNE SLIWA: Yes.

19 CHARLES ROCHA: Stanley Cornell.

20 ANGELA LIZADA: Okay.

21 CHARLES ROCHA: That-that I was going to be
22 scheduled to do hip surgery, first one and then in the future,
23 the other one, because I had really bad hips and I take
24 medications for that every day.

25

1 ANGELA LIZADA: Okay. Which hip was it that you
2 were scheduled to have the surgery on?

3 CHARLES ROCHA: The worst one first which was
4 the left one.

5 ANGELA LIZADA: Your left side.

6 CHARLES ROCHA: Yes.

7 ANGELA LIZADA: Okay. And, what medication were
8 you on for your hip at that time?

9 CHARLES ROCHA: It's a medication called Duexis,
10 and I have a—I have pictures showing proof that it's a
11 prescribed medicine from the doctor that I had at the time.

12 ANGELA LIZADA: Okay. And, what is the
13 medication for?

14 CHARLES ROCHA: For people who are in
15 excruciating pain.

16 ANGELA LIZADA: Okay. So, it's for the pain
17 that was in your hip.

18 CHARLES ROCHA: It's for the pain on both hips.

19 ANGELA LIZADA: Okay. And you notified your
20 chain of command that you were on that medication?

21 CHARLES ROCHA: I did.

22 ANGELA LIZADA: And that you were scheduled for
23 surgery.

24 CHARLES ROCHA: I did.

25 ANGELA LIZADA: Okay.

1 CHARLES ROCHA: And I believe HR also was aware.
2 ANGELA LIZADA: Okay. And you have actually
3 since had the surgery on your left hip, is that correct?
4 CHARLES ROCHA: I did.
5 ANGELA LIZADA: Okay. And, the pain in that
6 side, it's better now?
7 CHARLES ROCHA: Oh, it's much better.
8 ANGELA LIZADA: At the time of the incident in
9 that video, what was the pain level in your hip?
10 CHARLES ROCHA: On a daily basis, out of 1 to
11 10, a 9, a 10.
12 ANGELA LIZADA: Okay. And what is it now?
13 CHARLES ROCHA: The left hip?
14 ANGELA LIZADA: Uh huh.
15 CHARLES ROCHA: It's maybe a 1 or 2.
16 ANGELA LIZADA: Okay. Now, the incident we're
17 talking about deals with a specific patient.
18 CHARLES ROCHA: Yes.
19 ANGELA LIZADA: Okay. What was the size of that
20 patient, I mean, because you're a fairly tall person. I guess
21 first, how tall are you?
22 CHARLES ROCHA: I'm 6'4".
23 ANGELA LIZADA: 6'4", okay, and how old are you?
24 CHARLES ROCHA: I'm 51.
25

1 ANGELA LIZADA: 51, okay. Do you know how old
2 this patient was? You can give me an estimate, I understand
3 you don't know his personal information.

4 CHARLES ROCHA: I'm estimating he was in his
5 mid-20s maybe.

6 ANGELA LIZADA: Okay, about mid-20s. And; do
7 you know about how tall he was?

8 CHARLES ROCHA: I want to estimate maybe-maybe
9 between 5'10" and maybe 6'0".

10 ANGELA LIZADA: Okay. Do you have any reason to
11 believe that this patient had any propensity to be violent?

12 CHARLES ROCHA: Yes.

13 ANGELA LIZADA: And, what makes you believe that
14 this patient would have such a propensity.

15 CHARLES ROCHA: Well, he has attacked other
16 staff before and patients.

17 ANGELA LIZADA: Okay. One time or multiple
18 times prior to yours?

19 CHARLES ROCHA: Up to my incident, I believe
20 there was three or four incidents.

21 ANGELA LIZADA: Okay. Now, the day of this
22 specific incident, were there—did you have any observations
23 regarding this client's behavior that day?

24 CHARLES ROCHA: I did.

25

1 ANGELA LIZADA: And, what did you observe
2 regarding his behavior that day?

3 CHARLES ROCHA: I and the other forensics who
4 were assigned in that unit, including the nurse, aware--were
5 aware that he--that he was--that he was on the jumpy side, you
6 know, he was on like the edgy side. He was irritated and so,
7 the nurse and the forensics and myself offered him
8 medications. At first, he didn't want to take it but then he
9 took it.

10 ANGELA LIZADA: Okay. And, what medication was
11 he offered?

12 CHARLES ROCHA: Some kind of medication to help
13 him relax.

14 ANGELA LIZADA: Okay.

15 CHARLES ROCHA: Yeah.

16 ANGELA LIZADA: You just can't recall--

17 CHARLES ROCHA: I don't know what the name was
18 or anything, yeah, I don't know. I'm sure the nurses would've
19 known but I wouldn't know.

20 ANGELA LIZADA: Okay. So, leading up to this
21 incident that day, he was already--seemed to be more on edge
22 than normal.

23 CHARLES ROCHA: Yes.

24 ANGELA LIZADA: Okay.

25 CHARLES ROCHA: Very much.

1 ANGELA LIZADA: Was this client on this day on
2 any sort of restrictions or protocols for his behaviors?

3 CHARLES ROCHA: Yes.

4 ANGELA LIZADA: What was he on that day?

5 CHARLES ROCHA: So, when incidents like this
6 occur often, there is an assigned forensic on a 1:1 basis with
7 him.

8 ANGELA LIZADA: Okay. And, what does it mean to
9 be on a 1:1 basis?

10 CHARLES ROCHA: That means, he has to be in arm
11 length away from him at all times.

12 ANGELA LIZADA: And, when you say, "in arm's
13 length", he needs to be within reach of--

14 CHARLES ROCHA: Correct.

15 ANGELA LIZADA: Okay. And that's for the
16 patient's safety?

17 CHARLES ROCHA: Correct.

18 ANGELA LIZADA: As well as the safety of others?

19 CHARLES ROCHA: Correct.

20 ANGELA LIZADA: Okay.

21 CHARLES ROCHA: Of all those who are assigned in
22 that particular unit.

23 ANGELA LIZADA: Okay. [pause] And, we've heard
24 multiple times, there'd be mention that you were eating on the
25 floor. Were you disciplined for eating on the floor?

1 CHARLES ROCHA: No.

2 ANGELA LIZADA: Was that included in your

3 Specificity of Charges?

4 CHARLES ROCHA: No.

5 ANGELA LIZADA: Okay. [pause] Now, I want to

6 ask you about the incident actually that occurred, would you

7 like to be able to watch the video to talk us through it or do

8 you want to be able to just discuss the video?

9 CHARLES ROCHA: Um.

10 ANGELA LIZADA: Do you want to pull up the

11 video, that way we can--

12 CHARLES ROCHA: I think I would like it, that

13 way we're all on the same page.

14 ANGELA LIZADA: Okay. That works perfectly for

15 me.

16 SUSANNE SLIWA: No objection, that's fine.

17 ANGELA LIZADA: While he's working on pulling

18 that up, we have no sound on this video, is that correct?

19 CHARLES ROCHA: Correct.

20 ANGELA LIZADA: Okay. So, we've already watched

21 the video once. Correct, so you were able to observe that?

22 CHARLES ROCHA: Uh huh. Yes.

23 ANGELA LIZADA: When the client was approaching

24 you in the video, what was he saying?

25 CHARLES ROCHA: Before he attacked me?

1 ANGELA LIZADA: Yes, before the actual contact.
2 CHARLES ROCHA: Can I say the actual words or
3 just say--
4 ANGELA LIZADA: You-you can say the actual
5 words.
6 SUSANNE SLIWA: It's okay.
7 CHARLES ROCHA: Okay. I'm going to--excuse me
8 for saying this, I'm going to fuckin' kill you.
9 ANGELA LIZADA: Okay. Had you had any
10 interaction with this patient earlier in the day?
11 CHARLES ROCHA: The only interactions that I had
12 with him that day was--was assisting the one on one and the
13 nurse giving him his medication.
14 ANGELA LIZADA: Okay, so nothing
15 confrontational?
16 CHARLES ROCHA: [crosstalk] No.
17 ANGELA LIZADA: No reason for any interaction.
18 CHARLES ROCHA: None at all.
19 ANGELA LIZADA: All right. So, after the
20 Hearing Officer is done taking some notes, then we will rewind
21 the video some.
22 CHARLES ROCHA: Okay.
23 ANGELA LIZADA: Can you rewind the video all the
24 way at first? Maybe go to like, 10 seconds or somewhere along
25 there.

1 HEARING OFFICER: Tell me where.

2 ANGELA LIZADA: Keep going, keep going. When-
3 all right, a little bit back, right there should be probably
4 good.

5 CHARLES ROCHA: Uh huh.

6 HEARING OFFICER: Okay.

7 ANGELA LIZADA: Okay. And you can play it.

8 HEARING OFFICER: Any objection?

9 SUSANNE SLIWA: No, that's fine.

10 CHARLES ROCHA: Do you want me to start talking
11 from here?

12 ANGELA LIZADA: Yeah, well I just-I want you to
13 watch this video and I noticed that your gait there is
14 different than what it is now, is that where you were talking
15 about the--

16 CHARLES ROCHA: Yes.

17 ANGELA LIZADA: --injuring the left knee or left
18 hip, I apologize.

19 CHARLES ROCHA: Yes.

20 ANGELA LIZADA: All right. So, I just-do you
21 mind if I come up, I just want to see the time stamp on this.

22 HEARING OFFICER: That's fine, thank you.

23 ANGELA LIZADA: Because I know where we stopped
24 the video earlier, but I can't remember where the altercation
25 actually occurs.

1 SUSANNE SLIWA: I don't remember either.

2 ANGELA LIZADA: Okay. If you want to fast-
3 forward it a little bit, we don't have to just sit here
4 through it, I just wanted to see the timestamp.

5 HEARING OFFICER: I'm not sure I want to hit the
6 fast-forward button.

7 ANGELA LIZADA: That's fine, we can sit
8 [crosstalk] I'm fine.

9 SUSANNE SLIWA: Yeah, I'm thinking--

10 ANGELA LIZADA: Yeah. That's fine if we want to
11 just sit here because it has the timer over to the left.

12 CHARLES ROCHA: Okay.

13 ANGELA LIZADA: So, actually here might be a
14 good, let's--

15 HEARING OFFICER: Okay.

16 ANGELA LIZADA: Let's play it from there because
17 I know it goes pretty quickly when it all of a sudden--

18 CHARLES ROCHA: Right.

19 ANGELA LIZADA: --does go. So, right now, we
20 are at 2:50. I don't know if you can see that far.

21 SUSANNE SLIWA: No. [laughs] Not at all.

22 ANGELA LIZADA: I see that, it looks like you're
23 talking to somebody. Do you know who you're talking to at
24 that point?

25

1 CHARLES ROCHA: I was talking to another
2 patient.

3 ANGELA LIZADA: Okay. So, not this associated
4 patient or the one-to-one person at that point.

5 CHARLES ROCHA: Correct.

6 ANGELA LIZADA: Okay. So, we're at 3:15.

7 [pause] So, here you stand up.

8 CHARLES ROCHA: Uh huh.

9 ANGELA LIZADA: This person putting on--

10 CHARLES ROCHA: Then I ask him if he's--if he
11 needs anything.

12 ANGELA LIZADA: Okay. All right. And so, we
13 kind of see the barrage there. Would you mind pausing it?

14 HEARING OFFICER: Certainly.

15 ANGELA LIZADA: So, in that exchange right
16 there, were you able to avoid being struck in any manner?

17 CHARLES ROCHA: No.

18 ANGELA LIZADA: Okay. So, where were you
19 actually struck by the patient?

20 CHARLES ROCHA: I was struck several times in my
21 face area, in my body area, that you can't really see because
22 it's on the other side there. He did hit me pretty good on my
23 left cheek and my jaw area. And, after this whole thing
24 happened, I did go to Concentra and I did--and I did get x-rays

25

1 of my jaw and I explained to the doctor there my situation and
2 everything.

3 ANGELA LIZADA: Okay.

4 CHARLES ROCHA: The problem I have and
5 everything.

6 ANGELA LIZADA: So, the main strike was the one
7 to your face, but it wasn't the only strike.

8 CHARLES ROCHA: Correct.

9 ANGELA LIZADA: Okay. And, at the time that
10 this patient started coming at you, was the person who was
11 responsible for the one-to-one within arms' reach?

12 CHARLES ROCHA: As you can see, he was not in
13 arms' reach.

14 ANGELA LIZADA: Okay. So--

15 CHARLES ROCHA: From--from this actual video, but
16 if you look a little more, I mean, well you can't see, but
17 based on this video, no he wasn't.

18 ANGELA LIZADA: Okay. And based on your
19 observation when you--

20 CHARLES ROCHA: Right.

21 ANGELA LIZADA: --was he within arms' reach?

22 CHARLES ROCHA: No.

23 ANGELA LIZADA: Okay. We--right now, we are
24 blocked, can you kind of explain to us what's going on behind
25 that wall, after he comes at you?

1 CHARLES ROCHA: Uh huh. So, he's still
2 attacking me and the two forensics that you seen [sic], that
3 was also there. The one-on-one and the other forensic that
4 was assigned to the floor, just like I was, we were trying to
5 gain compliance on him and he just kept resisting and
6 resisting.

7 ANGELA LIZADA: Okay.

8 CHARLES ROCHA: The patient also locked his legs
9 with my-the patient locked his, both of his legs, on my right
10 leg.

11 ANGELA LIZADA: Okay.

12 CHARLES ROCHA: Which was preventing me to try
13 to break away or push away or do anything.

14 ANGELA LIZADA: Okay. So, and when he locked
15 his leg around your leg, it remained that way when you fell to
16 the floor?

17 CHARLES ROCHA: Correct.

18 ANGELA LIZADA: Okay. And, we'll continue the
19 video and I'll let you point out some of this stuff, but I
20 know the video can move kind of fast, so.

21 CHARLES ROCHA: Yes.

22 ANGELA LIZADA: At the time when he was on the
23 ground, was he resisting in any manner?

24 CHARLES ROCHA: He was.

25 ANGELA LIZADA: In which ways?

1 CHARLES ROCHA: In the ways of not being
2 compliant.

3 ANGELA LIZADA: Was he--so, you say he had his
4 legs around your right leg.

5 CHARLES ROCHA: Correct.

6 ANGELA LIZADA: Okay. Was--were his hands down
7 to the floor or behind his back subdued?

8 CHARLES ROCHA: So, his left arm was on my back
9 and we were facing each other and he was--he was spitting in my
10 face and--and still threatening me, verbally. And the other
11 two forensics who were there was on top of him, which was on
12 top of me.

13 ANGELA LIZADA: Okay. All right. So, at that
14 time, he's on the floor when you first go down. He still had
15 an arm around you.

16 CHARLES ROCHA: Uh huh.

17 ANGELA LIZADA: Had his legs wrapped around your
18 leg.

19 CHARLES ROCHA: Uh huh.

20 ANGELA LIZADA: And was still verbally
21 threatening you and spitting in your face.

22 CHARLES ROCHA: Yes, you can't see--

23 ANGELA LIZADA: All while on--
24
25

1 CHARLES ROCHA: --because I had myself covered
2 and my face was facing him. So, you can't see him spitting at
3 me but he was spitting at me.

4 ANGELA LIZADA: And, we'll play the video here
5 and you can point out some of those incidents. Let me make
6 sure there's nothing else. Okay. So, if you want to play the
7 video and he can point out the-if you want to point out when
8 you see his leg is wrapped around yours, when you see the
9 arms.

10 CHARLES ROCHA: So, right there. So, he's
11 laying--

12 ANGELA LIZADA: It's so dark.

13 HEARING OFFICER: Now, I've stopped it--

14 ANGELA LIZADA: Perfect to pause.

15 HEARING OFFICER: --at 3:46.

16 CHARLES ROCHA: So, as you see--

17 HEARING OFFICER: Hold on just a second sir.

18 CHARLES ROCHA: Okay.

19 ANGELA LIZADA: Perfect, thank you. Perfect.

20 HEARING OFFICER: Okay, we'll go--

21 ANGELA LIZADA: Do you want to pause it here,
22 it's so dark, I wish I had better eyes.

23 CHARLES ROCHA: I know, I know.

24 ANGELA LIZADA: Okay. So--

25

1 CHARLES ROCHA: So, as you see, he's wearing
2 green smocks.

3 ANGELA LIZADA: Okay.

4 CHARLES ROCHA: So, as you see his green leg
5 right there--

6 HEARING OFFICER: Can you not--

7 CHARLES ROCHA: So, he had his legs locked with
8 my right leg.

9 ANGELA LIZADA: I don't know if there's a way
10 for me to point. Can you see this?

11 HEARING OFFICER: Ms. Sliwa, can you approach?

12 SUSANNE SLIWA: I'm--that's why I'm coming up
13 here, excuse me.

14 ANGELA LIZADA: I had to lean really close, but
15 you see this color right here, that lighter color.

16 CHARLES ROCHA: The green right over there.

17 SUSANNE SLIWA: Yes.

18 HEARING OFFICER: Now, can you point that out on
19 this screen?

20 ANGELA LIZADA: I've got to find it here. So,
21 under the white, there's a slightly lighter part that runs
22 right there, that--

23 HEARING OFFICER: So, under that employee's elbow,
24 would that be correct?

25 SUSANNE SLIWA: Right.

1 ANGELA LIZADA: It's hard to see here because of
2 the angle. I'm going to turn this one too, for just a second
3 and then I'll turn it back to him.

4 HEARING OFFICER: All right.

5 ANGELA LIZADA: So, on this one, there's that
6 slightly-you can see the lighter color running right there.

7 HEARING OFFICER: Okay.

8 ANGELA LIZADA: And then it looks to me, is this
9 your left leg?

10 CHARLES ROCHA: That is my left leg.

11 ANGELA LIZADA: So, and then we see--

12 CHARLES ROCHA: That's in a very uncomfortable,
13 bending position.

14 ANGELA LIZADA: Okay. And then, this is your
15 body down.

16 CHARLES ROCHA: Yes.

17 ANGELA LIZADA: And this is where you were
18 talking about, his arm is around you.

19 CHARLES ROCHA: That is his arm.

20 ANGELA LIZADA: Okay because it is fair where--
21 you have sleeves, all right.

22 CHARLES ROCHA: Yeah.

23 ANGELA LIZADA: I wish I had better eyes or
24 maybe a brighter video. Okay. So, that green is what you're
25

1 stating, so what is--where is his leg right now? Is it on the
2 employee behind you or what is his leg doing at that point?

3 CHARLES ROCHA: It's still locked against my
4 leg.

5 ANGELA LIZADA: Okay. And, with your body at
6 that point, so you're testifying that it's his arm over you
7 and that is his green scrubs locking your right leg.

8 CHARLES ROCHA: Correct.

9 ANGELA LIZADA: Okay. And with--

10 CHARLES ROCHA: And he was kind of facing me
11 with the other forensics on top of him.

12 ANGELA LIZADA: Okay. So, at that point, he's
13 still facing at you--

14 CHARLES ROCHA: Which were--which was kind of
15 like, on top of me too.

16 ANGELA LIZADA: Okay. At that point, did you
17 still feel that there was some risk for harm to you?

18 CHARLES ROCHA: Absolutely. I felt my life
19 threatened from the moment he attacked me for no apparent
20 reason.

21 ANGELA LIZADA: All right.

22 CHARLES ROCHA: Unprovokedly [sic].

23 ANGELA LIZADA: And, were you at any risk of any
24 physical injuries based on his conduct?

25 CHARLES ROCHA: Yes, I was.

1 ANGELA LIZADA: At this point, I mean, he's on
2 the floor. There's multiple people on him. What is the
3 ongoing risk of harm to you at that point?

4 CHARLES ROCHA: Well, me having bad hips, it
5 would've been--well, it got worse. And, I don't know if he had
6 any kind of disease or any kind of health issues because he
7 spit in my face several times. And he was still threatening
8 me.

9 ANGELA LIZADA: Okay.

10 CHARLES ROCHA: He was still verbally
11 threatening me.

12 ANGELA LIZADA: And--

13 CHARLES ROCHA: And, I couldn't break away. My
14 leg that was locked against his leg, not only because of him
15 but also because of the other forensics that couldn't see what
16 he was doing to me. Because they were trying to contain him,
17 like I was trying to do too.

18 ANGELA LIZADA: All right. At this point, was
19 he still resisting being placed in any sort of hold?

20 CHARLES ROCHA: He was still resisting.

21 ANGELA LIZADA: Okay. So, he was fighting
22 against when you are trying to move him certain directions.

23 CHARLES ROCHA: He was.

24 ANGELA LIZADA: Was he allowing your leg to be
25 let loose when you were trying to pull it out?

1 CHARLES ROCHA: He was not.

2 ANGELA LIZADA: Okay. And, do you want to go
3 ahead and play the video again?

4 HEARING OFFICER: Certainly.

5 ANGELA LIZADA: Okay. Now, at this point, we
6 can still see the scrub there.

7 CHARLES ROCHA: Uh huh.

8 ANGELA LIZADA: Okay, your leg's there.

9 CHARLES ROCHA: So, you see, they moved his arm
10 down but he still wasn't complying and he still was moving.

11 ANGELA LIZADA: [crosstalk] and there

12 [crosstalk]

13 CHARLES ROCHA: And my leg was still locked.

14 ANGELA LIZADA: And there's where you moved your
15 leg. Okay. So, now we no longer see the green scrub.

16 CHARLES ROCHA: Right.

17 ANGELA LIZADA: And we can see--okay.

18 CHARLES ROCHA: Right.

19 ANGELA LIZADA: Did you see, at the time he came
20 down--

21 HEARING OFFICER: Do you want this stopped, Ms.
22 Lizada?

23 ANGELA LIZADA: Yeah, you can pause it, that's
24 fine.

25 HEARING OFFICER: Okay.

1 ANGELA LIZADA: What is the time on there right
2 now?

3 HEARING OFFICER: 4:22.

4 ANGELA LIZADA: 4:22, okay. So, we've watched
5 from the time this started to the time where you finally got
6 your leg out. Is it fair to say that less than a minute had
7 passed?

8 CHARLES ROCHA: Yes.

9 ANGELA LIZADA: Okay.

10 CHARLES ROCHA: And, if you're in that
11 situation, 10 seconds, a minute, five seconds feels like it's
12 a whole lifetime. It's a whole eternity.

13 ANGELA LIZADA: When you struck him, was that to
14 punish him for attacking you?

15 CHARLES ROCHA: It was not to punish him.

16 ANGELA LIZADA: Have you been attacked by
17 inmates or patients in the past?

18 CHARLES ROCHA: I've been attacked by an inmate
19 when I worked in Nevada Department of Corrections, but it was
20 nothing like this.

21 ANGELA LIZADA: So, you've been attacked by--

22 CHARLES ROCHA: Yes.

23 ANGELA LIZADA: --you know, people in your
24 custody in the past.

25 CHARLES ROCHA: Yes, but nothing like that.

1 ANGELA LIZADA: I mean, but did you take it
2 personal that he attacked you?

3 CHARLES ROCHA: No, I mean, I feared for my
4 life, you know, so.

5 ANGELA LIZADA: Did you feel he needed to be
6 punished for that?

7 CHARLES ROCHA: No.

8 ANGELA LIZADA: Okay. And, your aware that he's
9 there because the fact that he's—his competency is being
10 tested.

11 CHARLES ROCHA: Yes.

12 ANGELA LIZADA: So, you're aware there's
13 psychological issues.

14 CHARLES ROCHA: Yes.

15 ANGELA LIZADA: Okay. So, your reaction to
16 this, was it in retaliation for his attack?

17 CHARLES ROCHA: It was not, nowhere in
18 retaliation for that attack.

19 ANGELA LIZADA: Okay.

20 CHARLES ROCHA: I have never done anything like
21 that before.

22 ANGELA LIZADA: [pause] Just one second. I'm
23 trying to see if I have anything else before I pass. [pause]
24 I have nothing further for you. Ms. Sliwa has anything
25 additionally?

1 HEARING OFFICER: Ms. Sliwa.

2 SUSANNE SLIWA: Just briefly. Mr. Rocha, you
3 had a—you mentioned that have had or had bad hips and that you
4 made your chain of command as well as HR aware of that.

5 CHARLES ROCHA: Yes.

6 SUSANNE SLIWA: Had you—were you on any kind of
7 light-duty at the time of this incident?

8 CHARLES ROCHA: No.

9 SUSANNE SLIWA: Had you requested any sort of
10 accommodation duty your hip pain?

11 CHARLES ROCHA: No.

12 SUSANNE SLIWA: Okay. So, is it fair to say
13 that you—you were—to your Employer's knowledge, you were able
14 to fulfill your job duties, despite the pain that you were
15 experiencing.

16 CHARLES ROCHA: To the best that I could.

17 SUSANNE SLIWA: Okay. And, just to be clear,
18 and I realize that you previously testified to this. You
19 struck the client, not once but twice, correct?

20 CHARLES ROCHA: Correct.

21 SUSANNE SLIWA: While he was on the floor,
22 correct?

23 CHARLES ROCHA: Yes, as you can see on the
24 video.

25

1 SUSANNE SLIWA: Okay. Thank you Mr. Rocha,
2 that's all I have.

3 ANGELA LIZADA: I just have a couple of things.
4 Were you able to complete your normal job duties with your hip
5 injuries?

6 CHARLES ROCHA: After this incident happened?

7 ANGELA LIZADA: No, prior.

8 CHARLES ROCHA: Yes.

9 ANGELA LIZADA: Okay. Did you foresee this
10 unique circumstance where there would be that strain placed on
11 your hip?

12 CHARLES ROCHA: No, not at all.

13 ANGELA LIZADA: Okay. Did you have any prior
14 disciplines, through the State of Nevada, prior to this?

15 CHARLES ROCHA: Never.

16 ANGELA LIZADA: Any written reprimands?

17 CHARLES ROCHA: Never.

18 ANGELA LIZADA: Just warnings, documentations?

19 CHARLES ROCHA: Never.

20 ANGELA LIZADA: Okay. And, I believe I forgot
21 to ask this, but Ms. Sliwa asked you about the two strikes,
22 why did you use those two strikes?

23 CHARLES ROCHA: To try to break away and try to
24 help the other forensics to help them to gain compliance and
25 control over the client or the patient because even though

1 they were on top of him and I was there too, I mean,
2 obviously, he wasn't in 100% control.

3 ANGELA LIZADA: Okay.

4 CHARLES ROCHA: By us.

5 ANGELA LIZADA: So, and it was because he was
6 still non-compliant and still not actually subdued at that.
7 point.

8 CHARLES ROCHA: Right. And still verbally
9 threatening.

10 ANGELA LIZADA: Okay. I have nothing further,
11 Your Honor.

12 HEARING OFFICER: Mr. Rocha, you step down,
13 thanks.

14 CHARLES ROCHA: Okay, thank you.

15 HEARING OFFICER: Ms. Lizada, anything?

16 ANGELA LIZADA: We rest.

17 HEARING OFFICER: All right. Okay. So, the
18 Employee rests. Did you have any rebuttal ma'am?

19 SUSANNE SLIWA: No.

20 HEARING OFFICER: All right. So, we'll move on to
21 closing arguments? Do you want to take a break first or-

22 SUSANNE SLIWA: No, I think we're-I think we're
23 ready to go. Your Honor, the testimony presented today by Mr.
24 Rocha himself and by the Employer's witnesses as well as the
25 evidence presented, most importantly the video, show that Mr.

1 Rocha struck a client. Not once, but twice. The client was
2 subdued on the floor by at least two, to me it looked like
3 more, staff members.

4 While the situation is unfortunate, we submit that
5 Mr. Rocha lost his temper and struck the client out of--in an
6 attempt to punish and retaliate against the client for
7 attacking him first. This matter was investigated. The video
8 was reviewed and policies were reviewed. Witnesses were
9 interviewed.

10 The investigators substantiate the client abuse and
11 policy violation charges. Based upon the State of Nevada,
12 Department of Health and Human Services, Prohibitions and
13 Penalties, the client abuse mandates termination. The
14 Employer had no choice but to terminate Mr. Rocha from his
15 employment after the incident of client abuse. Thank you.

16 HEARING OFFICER: Ms. Lizada?

17 ANGELA LIZADA: So, Stein's facility is very
18 different than the rest of the facilities that we deal with,
19 you know, in Southern Nevada, as far as the mental health
20 facilities. The other facilities are civil facilities.
21 People are there because they have mental illnesses that
22 needed to be addressed but the individuals that are admitted
23 to Stein are done so under statute. That statute is part of
24 the criminal code dealing with the incarceration of people and
25 whether they're competent to stand trial.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ROCHA

Appellant,

v.

THE STATE OF NEVADA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH,

Respondent.

Case No.: 82485

District Court Case No.: A-19-804209-J

JOINT APPENDIX

VOLUME I of II

Part 3 of 4

Appeal from the Eighth Judicial District Court
Case. No. A-19-804209-J

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///

<u>Description</u>		<u>Vol(s)</u>	<u>Pg(s)</u>
1.	Register of Actions	I	ROCHA000001- ROCHA000002
2.	Petition for Judicial Review 10/23/2019	I	ROCHA000004- ROCHA000007
2A.	Petitioner's Motion to Stay	I	ROCHA000007A- ROCHA00007K
3.	Statement of Intent to Participate 11/11/2019	I	ROCHA000008- ROCHA000009
4.	Transmittal of Record on Appeal 02/04/2020	I-II	ROCHA000010- ROCHA000281
5.	Petitioner's Opening Brief 03/09/2020	II	ROCHA000282- ROCHA000292
6.	Respondent's Reply Memorandum of Points and Authorities 04/13/20	II	ROCHA000293- ROCHA000310
7.	Petitioner's Reply Brief 05/07/2020	II	ROCHA000311- ROCHA000318
8.	Findings of Facts, Conclusions of law, Decision and Order on Petition for Judicial Review 07/01/2020	II	ROCHA000319- ROCHA000320
9.	/Notice of Entry of Order 07/20/2020 /	II	ROCHA000321- ROCHA000325
10.	Substitution of Attorney 02/11/2021	II	ROCHA000326- ROCHA000328

	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
11.	Respondent Charles Rocha's Supplement to the Record Following Remand from District Court 02/11/2021	II	ROCHA000329-ROCHA000354
12.	Notice of Appeal 02/11/2021	II	ROCHA000355-ROCH000362

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 17th day of August 2021, I did serve the above and forgoing JOINT APPENDIX Volume I of II (Part 3 of 4) by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, upon the Respondents at the following:

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/s/Joi E. Harper

An employee of the
LAW OFFICE OF DANIEL MARKS

1 So, as—even though the State wants to really
2 emphasize the fact that these are patients, and they are
3 patients, they're to be tested for their competence, they are
4 still there as part of their incarceration for a crime. That
5 is the reason, very obviously, while the people at Stein are
6 required to undergo the same training as they are to be a
7 correctional officer in the Department of Corrections.
8 They're required to do that. That's not required at any of
9 the other facilities.

10 Yet, the State wants to look at Stein and the
11 facility like there is no difference between that and Rawson-
12 Neal, but it is a different situation. The individuals are
13 there for a different reason and the employees are
14 specifically required to undergo the same training as if they
15 were working at a correctional department. So, while they do
16 receive CPART training, they're also required to go through
17 the same training to be a correctional officer.

18 When we're dealing with peace officers, which these
19 employees specifically—Mr. Rocha is, he's a Peace Officer III.
20 The United States Supreme Court and through other cases here
21 and I'll give you those specific cases: *Tennessee v. Garner*
22 and *Graham v. Conner*, deal with what is considered to be an
23 appropriate use of force by somebody who is designated as
24 either a Peace Officer or a law enforcement officer.

25

1 When we're dealing with those cases, the Supreme
2 Court has found that the amount of force is the force that is
3 reasonable and necessary to overcome resistance, affect an
4 arrest, prevent escape, subdue an offender, restore order to a
5 disruptive group, protect the public, protect the lives of
6 others when other measures are insufficient to accomplish
7 lawful objectives.

8 The Peace Officer is supposed to use the force that
9 is objectively reasonable under all of the circumstances. And
10 the reasonableness of that particular force must be from the
11 perspective of a reasonable officer on the scene, not with
12 20/20 vision of hindsight. And, the reasonableness must
13 account for the fact that the officers are often forced to
14 make split second judgments in circumstances that are tense,
15 uncertain and rapidly evolving.

16 When dealing with the reasonableness, the Supreme
17 Court has actually set forth multiple factors to consider.
18 One is the officer's perception at the time. And we've heard
19 the testimony that this particular client had attacked at
20 least on three other occasions, other patients and other
21 employees in an unprovoked manner.

22 The other factors that can be considered is whether
23 the subject poses an immediate threat, which obviously, he
24 struck my client multiple times and was still actively
25 resisting in this video. Whether he was on the floor doesn't

1 change the fact that you could see his arm around my client.
2 You can see his legs around my client. My client testified he
3 still verbally threatened him. He's still actively resisting
4 that restraint.

5 Factor 2, whether the subject is actively resisting.
6 Factor 3, the mental capacity of the subject. Factor 4, time
7 available to the officer to make a decision. 5, environment
8 factors and 6, other exigent circumstances.

9 It's clear that all those factors go to deal with
10 people in these specific types of circumstances and whether or
11 not in that circumstance they did something that was
12 excessive. Even more importantly, there's a recent Nevada
13 case dealing with two Nevada Department of Correction cases
14 where charges were brought alleging excessive use against a
15 client for taking down an inmate when he turned aggressively
16 towards them. A jury found and charges were dismissed because
17 in that situation, under the Supreme Court factors, they
18 perceived an imminent threat in that situation. That is very
19 important here.

20 As much as they want to say that this is a
21 psychiatric facility for competence, these are still, even if
22 they're patients, there's still active, open cases against
23 them. They're still part of a statute stating that they are
24 there just to determine whether they're competent.

25

1 His specific commitment order states that he is
2 still a potential danger and threat to himself and others.
3 So, this is not something that can be taken as just a patient
4 client situation because it's not. If this were just a
5 patient client situation, then Stein would be like Rawson-Neal
6 and not require their employees to have this specific
7 correctional officer training.

8 The biggest problem I see through all of this is
9 that, all the investigation is done, all the interviewing,
10 everything is done, the same as if this were a civil case and
11 only CPART is the appropriate way to restrain a client.

12 How can they terminate an employee for going to
13 required training, I get my client received the training
14 before being employed with them but they're not told when they
15 should act in their correctional officer, you know, role and
16 when they should be done as a psychiatric.

17 I can tell you, we heard no testimony, my client
18 doesn't have any experience as a mental health technician or
19 psychiatric nurse. His sole experience that got him this
20 position that he testified is as a correctional officer. He
21 testified his role is a role of safety and security. Not a
22 role of mental health.

23 So, the fact that none of those situations are even
24 taken into consideration shows that this is not reasonable.
25 This is not to benefit the public. My client doesn't have

1 some bone to pick with this client, but when he has his left
2 leg on the ground that he's about to have surgery on with the
3 right leg being pulled in a manner to open it and is still in
4 pain and the person is still an actual threat, physically
5 fighting, verbally and spitting. The guy was still a threat
6 whether he was on the floor or not. That's why they're
7 required to have the correctional officer training and not
8 just CPART training.

9 In this circumstance, we're not dealing with just a
10 patient abuse. We're dealing with a use of force. And
11 everything here under both Nevada Statute, US Supreme Court
12 Cases and Nevada Cases, show that this is, as a Peace Officer,
13 a reasonable use of force based on the factors presented.

14 HEARING OFFICER: Thank you.

15 ANGELA LIZADA: His termination should be
16 overturned. He should be reinstated with his backpay and
17 benefits.

18 HEARING OFFICER: You mentioned the *Garner* and you
19 said there were two Nevada Supreme Court cases.

20 ANGELA LIZADA: US Supreme Court Cases.

21 HEARING OFFICER: All right, can you give me those
22 citations?

23 ANGELA LIZADA: Let me pull the citations real
24 quick, because I just typed on my phone. I don't have
25 internet on this one.

1 HEARING OFFICER: I know *Garner* is an older case.

2 ANGELA LIZADA: So, one—I know one is the new
3 case and one updated. So, one is *Tennessee v. Garner*, let me
4 pull the citation for that. That is 471 US 1. And then for
5 *Graham, Graham v. Conner* is 490 US 386.

6 SUSANNE SLIWA: And what was the name of the
7 Nevada Case you mentioned?

8 ANGELA LIZADA: The Nevada is *Valdez*—

9 SUSANNE SLIWA: Okay.

10 ANGELA LIZADA: *State of Nevada v. Valdez* and
11 I'm sorry, the other name, I can never remember, *Navarette*, N-
12 A-V-A-R-E-T-T-E. And that's been within the last year.

13 HEARING OFFICER: So, that's just in the advanced
14 case?

15 ANGELA LIZADA: Yes. That's a Clark County
16 Case.

17 HEARING OFFICER: Is that Nevada Supreme Court?

18 ANGELA LIZADA: No, it was dismissed at trial
19 recently, within the last year.

20 HEARING OFFICER: Okay. Was there a written
21 ruling?

22 ANGELA LIZADA: You know, I didn't find—I didn't
23 look for the written ruling today.

24 SUSANNE SLIWA: There's no written ruling, I
25 would object to it as not being presidential.

1 ANGELA LIZADA: And, just because it's not
2 presidential doesn't mean you can't consider. Again, this is
3 an administrative hearing. You get to determine the weight
4 and reliability.

5 HEARING OFFICER: Well, to be considered under
6 those circumstances, the State and I would need copies.

7 ANGELA LIZADA: Yeah, I will—I can research and
8 send you copies of those two cases and the information that I
9 found regarding the other case which was from December.

10 HEARING OFFICER: And that was the Navarette?

11 ANGELA LIZADA: Correct, yes. The
12 Valdez/Navarette. So, I'll find what information I can on
13 that and submit to you guys.

14 HEARING OFFICER: All right. My decision has to
15 be written within 30 days, so—

16 ANGELA LIZADA: Well, I'll have it by—

17 HEARING OFFICER: --I'll need that as soon as
18 possible.

19 ANGELA LIZADA: --today or tomorrow. I work
20 Saturdays, so not a problem.

21 HEARING OFFICER: Very well. And, [inaudible] Ms.
22 Sliwa.

23 SUSANNE SLIWA: Your Honor has heard a lot of
24 argument about use of force and I invite you to look at the
25

1 use of force case law and factors and again, you will see that
2 Mr. Rocha's actions were excessive.

3 Looking at this from a purely use of force
4 standpoint, which it should not be. We have a client abuse
5 component that has been argued. Looking at this from a pure
6 use of force case, the client who by Mr. Rocha's own admission
7 was a lot smaller than he is, albeit younger, was on the
8 floor, was subdued by several other staff members.

9 Granted, the two--Mr. Rocha and the client may have
10 been intertwined in this scuffle, there may have been some
11 pain involved, however, Mr. Rocha's raising his fist and
12 hitting the client in the head, not once but twice by his own
13 admission, was clearly excessive. It was not done to save Mr.
14 Rocha from any kind of imminent danger. It was not done to
15 save anyone else from any kind of imminent danger.

16 I would argue that the only one who was in imminent
17 danger in that situation was the client, who was being hit in
18 the face. Thank you.

19 HEARING OFFICER: Well, thank you both. We'll
20 take this and like I said, the decision has to be written
21 within 30 days. I'm confident I can do that since I've done
22 it in all the other cases I've had.

23 SUSANNE SLIWA: You have. [laughs]

24 HEARING OFFICER: I appreciate your time and
25 efforts.

1 SUSANNE SLIWA: Thank you.

2 ANGELA LIZADA: Thank you.

3 HEARING OFFICER: And we will go off the record in
4 just a moment.

5 [end of proceeding]

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CERTIFICATE OF TRANSCRIPT

I, Jaime Caris, as the Official Transcriber, hereby
certify that the attached proceedings before the Judge,

In the Matter of:

CHARLES ROCHA,

Petitioner

vs.

Department of Health &
Human Services,

Respondent

Appeal No.: 1914774-RZ

were held as herein appears and that this is the
original transcript thereof and that the statements
that appear in this transcript were transcribed by me
to the best of my ability.

I further certify that this transcript is a true,
complete and accurate record of the proceeding that
took place in this matter on August 23, 2019 in Las
Vegas, Nevada.



Jaime Caris
Always On Time
January 6, 2020

1 **BEFORE THE NEVADA STATE PERSONNEL COMMISSION**

2 **HEARING OFFICER**

3
4 Charles Rocha,

5 Petitioner/Employee,

6 vs.

7
8 STATE OF NEVADA, ex rel. it's
9 DEPARTMENT OF HEALTH AND
10 HUMAN SERVICES.

11 Respondent/Employer

) Case No.: 1914774-RZ

) **DECISION AND ORDER**

) **EMPLOYER'S PETITION**

) **FOR RECONSIDERATION**

) **FILED**

) **OCT 10 2019**

) **APPEALS OFFICE**

12 On October 4, 2019 the Employer filed its Petition for Reconsideration by and
13 through its counsel, Aaron D. Ford, Attorney General, and Susanne M. Sliwa, Esq.,
14 Senior Deputy Attorney General. The Employer alleges that the Hearing Officer
15 committed clear error and requests leave to reopen the hearing for the introduction of
16 new evidence and has seeks to supplement the record in support of its Petition for
17 Reconsideration by attaching two (2) exhibits.
18
19

20 **I.**
21 **REQUEST TO REOPEN THE RECORD**

22 The Decision and Order issued in this matter was based solely by the weight of the
23 evidence and testimony presented at the hearing.

24 The hearing in this matter was initially scheduled for July 10, 2019, but the parties
25 were granted a 30-day continuance to resolve an evidentiary issue. The parties selected
26 the hearing date of August 23, 2019.
27
28

DOC004

1 During the hearing the attorneys were not rushed or restricted in their tactical decisions
2 regarding how best to present their client's position. Neither side requested a continuance or
3 stated that any witnesses identified in their pre-hearing statement were unavailable.
4

5 The Employer fails to present any justification to reopen the record.

6 **II.**
7 **RECONSIDERATION OF THE DECISION**

8 NRS 233B.130 (4), the Nevada Personnel Commission Hearing Officer Rules Of
9 Procedure Rule 11.7 provides that a party may request reconsideration of a decision within 15
10 days after the date of service of the final decision.

11 The Employer argues that the controlling standard of conduct is the agency's policy
12 prohibiting the abuse of patients rather than the use of excessive force by a peace officer. The
13 Employer further argues that the Hearing Officer failed to apply the deferential standard of
14 review of the agency's decision.
15

16 The Employer acknowledges that the hearing officer must review de novo whether in fact
17 the employee committed the alleged violation. That is the process followed here. The
18 standard of conduct for any public employee is that any willful and unjustified infliction of
19 pain, injury or mental anguish upon a consumer (client or patient) constitutes unlawful abuse.
20

21 Upon review of the record the Employee's action was clearly and admittedly willful. The
22 question was whether the Employee's action was unjustified.
23

24 The Employer contends that at the moment the Employee struck the patient after the
25 patient had been subdued by other employees. At the time the patient was struck several
26 employees were working to hold the patient on the floor. It must be noted that at the same
27 time the Employee was also being pinned to the floor by his co-workers. The patient did not
28

surrender or submit to their control at any point until he was placed in a restraint chair. The patient continued to resist and appeared to be attempting to escape their hold. At that time the Employee and patient were locked together. Neither was able to break free and escape the file. The video shows the Employee's right arm pinned between the patient and another employee. The patient had ahold of the Employee around his back. The patient had his leg wrapped around the Employee's leg. Their other arms were intertwined up until the moment the Employee was able to lift ½ way up and struck the patient. The Employee testified the patient was cursing, spitting in the Employee's face at that time and that he was afraid for his life. A reasonable person would believe the patient still posed a threat until the moment they were able to pull away. The Employee testified that he was in fear for his life and safety at the time he struck the patient. There was no substantial evidence contradicting that belief.

Reconsideration of the record confirms that no substantial evidence was presented which established by a preponderance of the evidence that the Employee's actions were unjustified. If Employee's actions were not unjustified it follows that the Employee did not violate policy or state law and could not be disciplined for his conduct and no further consideration is required.

VIII. DECISION

Reconsideration of the record was conducted. No evidence of clear error was found. No substantial evidence established by a preponderance of the evidence that Employee was unjustified in his action.

The Employer's request to Reopen the Record and accept new evidence was reviewed and no justification was found.

1 Based upon foregoing findings of fact, and conclusions of law and good cause appearing
2 therefore,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**
4

5 The Employer's Petition for Reconsideration is granted. After review and reconsideration
6 of the evidence, testimony and arguments of counsel no clear error was found and the decision
7 reinstating the Employee stands.

8 The Employer's Request to Re-open the record to submit further evidence is denied.

9 DATED this 8th day of October 2019.
10

11 
12
13 Robert Zentz, Esq.
14 Hearing Officer

15 **NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final**
16 **determination of the Hearing Officer a Petition for Judicial Review must be filed**
17 **with the District Court within 30 days after service by mail of this decision.**
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1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Appeals Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing **DECISION AND ORDER EMPLOYER'S PETITION FOR**
5 **RECONSIDERATION** was duly mailed, postage prepaid, **OR** transmitted via interoffice mail
6 to the following:

7 CHARLES ROCHA
8 3710 JULIUS COURT
9 LAS VEGAS NV 89129

10 ANGELA LIZADA ESQ
11 LIZADA LAW FIRM LTD
12 711 S 9TH STREET
13 LAS VEGAS NV 89101

14 RICHARD WHITLEY, DIRECTOR
15 DEPARTMENT OF HEALTH AND HUMAN SERVICES
16 4150 TECHNOLOGY WAY
17 CARSON CITY NV 89706

18 JACKIE ARELLANO, PERSONNEL OFFICER II
19 DEPARTMENT OF HEALTH AND HUMAN SERVICES
20 PUBLIC AND BEHAVIORAL HEALTH/SNAMHS
21 1321 JONES BLVD
22 LAS VEGAS NV 89146

23 SUSANNE M SLIWA ESQ
24 DEPUTY ATTORNEY GENERAL
25 OFFICE OF THE ATTORNEY GENERAL
26 555 E WASHINGTON AVE STE 3900
27 LAS VEGAS NV 89101

28 Dated this 10th day of October, 2019.

Zoe McGough
Zoe McGough, Legal Secretary II
Employee of the State of Nevada

BEFORE THE STATE OF NEVADA PERSONNEL COMMISSION

HEARING OFFICER

CHARLES ROCHA,

Petitioner,

vs.

STATE OF NEVADA, ex rel. its
DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Respondent.

Case No. 1914774-RZ

FILED

OCT - 3 2019

APPEALS OFFICE

RESPONDENT-EMPLOYER'S PETITION FOR RECONSIDERATION

COMES NOW, the STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES, (hereinafter Employer) by and through its counsel, AARON D. FORD, Attorney General, and SUSANNE M. SLIWA, Senior Deputy Attorney General and submits this Petition for Reconsideration of the Hearing Officer's Decision filed and served on September 18, 2019 pursuant to NRS 233B.130(4).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Employer requests reconsideration of the Hearing Officer's September 18, 2019 decision to set aside the Employer's termination of Charles Rocha and reinstating the Employee with full back pay. In that decision, the Hearing Officer found that the Employee was justified in punching a client who was subdued by other staff and was on the floor. The Employer submits that the Hearing Officer incorrectly viewed this as a use of force case based upon the fact that a client attacked the Employee. While it is true that the client did attack the Employee, the employee had been subdued on the floor *before* the Employee admittedly punched him. It is based on this fact that the Employer treated this as a case of client abuse and not as a case of use of force. The Employer submits that the Hearing Officer's decision was in error and respectfully requests that the Hearing Officer reconsider the decision.

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II. STATEMENT OF FACTS

The Employee was terminated as the result of an altercation with a client that occurred on October 13, 2018. The incident video clearly shows the Employee hitting the client twice. At the August 23, 2019 hearing, the Employee admitted that he hit the client twice. As a result of this altercation, an investigation was conducted by the Division of Public and Behavioral Health (DPBH) substantiated the allegations of client abuse and policy and procedure violations against the Employee. The Hearing Officer's decision, dated September 18, 2019, found that the termination was unjustified and that it should be set aside.

III. LEGAL ARGUMENT

A. Standard for Reconsideration

Petitions for reconsideration of administrative decisions are permitted pursuant to NRS 233B.130(4). The Nevada Personnel Commission's Hearing Officer Rule of Procedure 11.7 allows a petition for reconsideration to be filed with the Hearing Officer within 15 calendar days after the date of service of the decision. A Hearing Officer is required to grant or deny such a petition at least five days before the expiration of the time for filing a petition for judicial review. Thus, a decision on the instant petition must be submitted on or before October 13, 2019.

Reconsideration is appropriate where the Hearing Officer is presented with: (1) newly discovered evidence; (2) committed clear error; or (3) if there is an intervening change in controlling law. *See McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). In this case, the Employer submits that the Hearing Officer committed clear error in his decision to reinstate the Employee with full back pay.

B. The Hearing Officer Committed Clear Error

In his decision, the Hearing Officer concludes that the Employee's termination was without just cause and that this was proven by a preponderance of the evidence. However, the Hearing Officer incorrectly applied a use of force standard to this case when this is clearly a case of client abuse.

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1 In his decision, the Hearing Officer cites *Dep't of Motor Vehicles v. Adams*, Case No 68057 (filed
2 January 30, 2017) as authority for the reversal of the discipline. That case states that a Hearing Officer
3 should only reverse a dismissal if it is (1) not based on substantial evidence or (2) for a purpose other than
4 the good of the public service.

5 A hearing officer reviews de novo whether a classified employee committed the alleged violation, but the
6 hearing officer applies a deferential standard of review to the agency's decision to terminate. *O'Keefe v. State*,
7 *Dep't of Motor Vehicles*. 134 Nev. Adv. Op. 92, 431 P.3d 350 (2018). That deferential standard was not applied
8 in this case. Instead, the Hearing Officer determined that the substantiated allegation of client abuse did not
9 warrant termination contrary to the Department of Health and Human Services Prohibitions and Penalties
10 (P&Ps) that call for termination for a first offense.

11 The timing of the Employee's conduct is crucial in this matter. It is important to remember that
12 the Employee struck the client *after* the client was on the floor and was being subdued by four other staff
13 members. The fact that the punches occurred once the attack was under control was the reason that the
14 Employer charged the Employee with client abuse in the NPD-41. This was not treated as a use of force
15 case by the Employer. As such, a use of force standard should not have been applied by the Hearing
16 Officer. The Hearing Officer did not apply a deferential standard of review to the agency's decision to
17 terminate.

18 In *O'Keefe*, the Nevada Supreme Court held that the Hearing Officer acted arbitrarily and
19 capriciously in holding that conduct of classified employee, who violated multiple regulations and four
20 Department of Motor Vehicle (DMV) prohibitions and penalties, did not constitute a serious violation of
21 law or regulation, so as to warrant immediate termination without imposing progressive discipline. In
22 that case, the DMV expressly delineated one of the prohibitions involving misuse of information
23 technology as an offense that warranted termination for a first violation, and Hearing Officer basically
24 "second-guessed" DMV's assessment as to the seriousness of the violation of its own regulations. See
25 *O'Keefe* at 354.

26 The NPD-41 in this case does not allege a violation of the Employer's use of force policy. The
27 Employee was charged with client abuse. The Employee did not present any use of force argument in his
28 Prehearing Statement. The Employee did not include the agency use of force policy as an exhibit to his

1 prehearing statement or call any witnesses to address the issue. However, on page 16, line 28 of the
2 hearing decision, the Hearing Officer concluded that the Employee did not use excessive force. The
3 Employer submits that the Hearing Officer committed clear error by analyzing this as a use of force case.

4 The *O'Keefe* case is directly on point. The Hearing Officer in this case improperly second
5 guessed the Employer's assessment as to the seriousness of the Employee's violations of the Employer's
6 policies. The NPD-41 charged the Employee with several P&P violations. One of the violations was
7 P&P D8, which lists as a violation:

8 Any willful or reckless act of aggression directed towards a client, including, but not limited to,
9 sexual exploitation of a client, grabbing, pushing, tripping, hitting or striking a client in any
10 manner; or willful misuse of physical or chemical restraints not in accordance with an approved
11 treatment plan or in violation of state or federal law.

12 This P&P mandates termination on a first offense.

13 At the hearing, the Employer proved the violation of P&P D8 and showed that the
14 Employee hit the client twice after the client had been subdued and while he was being restrained by
15 several other employees. In fact, the Employee admitted to hitting the client after other staff had
16 responded and while he, the client and the other staff were on the floor. This fact is reflected in the
17 decision.

18 Additionally, the decision in this case cites several criminal statutes including NRS 200.200
19 which deals with killing in self-defense. The Employer submits that these citations are not relevant. This
20 is not a criminal matter. No criminal charges have been filed regarding the October 13, 2018 incident and
21 no one was killed. These citations imply that the Employee had been working in a correctional setting
22 and this was clearly not the case. This implication ties into the incorrect use of force standard used in the
23 hearing decision.

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1 **C. The Record Should Be Reopened**

2 Since the Hearing Officer did use a use of force analysis in his decision, the Employer submits
3 that he did not have all of the information needed to properly analyze this matter from the use of force
4 perspective. If the Hearing Officer is not inclined to reconsider his decision, the Employer respectfully
5 requests that the record in this matter be reopened to allow additional testimony and/or documentary
6 evidence that is relevant. The Employer submits that, even with a use of force analysis, the Employee's
7 actions were willful and unjustified.

8 The Employer does have a use of force policy. See Exhibit 1, attached hereto. This policy states
9 that the use of force will be restricted to the minimum degree necessary to manage an attack or assault by
10 a client. The Employee struck the client twice while the two were on the floor and after the client had
11 been subdued by several other staff. This was beyond the minimum degree of force needed to manage the
12 situation. The Employee was in no imminent danger when he struck the client.

13 It is true that clients are court ordered to SNAMHS' forensic unit. SNAMHS is the hospital that
14 is statutorily designated in NRS 433.233 to provide mental health services for the State of Nevada,
15 Division of Public and Behavioral Health. "Stein Hospital" is merely a nickname for SNAMHS' forensic
16 unit. The clients of SNAMHS' forensic unit are ordered there for treatment, not punishment. They are
17 pretrial detainees and have not been convicted on their current charges. The declaration of Dr. Elizabeth
18 Neighbors (attached hereto as Exhibit 2) details the fact that clients are ordered to state forensic units
19 receive the same types of psychiatric treatment that they would receive if they were not facing criminal
20 charges and were being treated in a civil psychiatric unit.

21 Dr. Neighbors was on the Employer's list of witnesses. She was not called to testify at the
22 hearing. Dr. Neighbors and other witnesses on the Employer's list are knowledgeable and qualified to
23 provide information regarding the use of force policy, the client abuse policy and the fact that the
24 Employee was a Forensic Specialist, not a correctional officer. In fact, Forensic Specialists are required
25 to be certified as Mental Health Technicians for the purpose of providing direct care to clients. Their
26 POST training is in addition to their training as Mental Health Technicians. The Employer again requests
27 that the record in this case be reopened.

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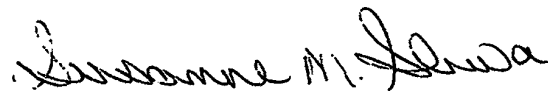
IV. CONCLUSION

For the foregoing reasons, Southern Nevada Adult Mental Health Services respectfully requests that the Hearing Officer reconsider his Decision of September 18, 2019 and find that there was just cause to terminate the Employee and that termination was for the good of the public service.

RESPECTFULLY SUBMITTED this 3rd day of October, 2019.

AARON D. FORD
Attorney General
State of Nevada

By:



Susanne M. Sliwa
Deputy Attorney General
Nevada Bar No.:4753
Susanne M. Sliwa
555 E. Washington Ave. #3900
Senior Deputy Attorney General
Nevada Bar No.:4753
Attorneys for Employer

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of Attorney General and that on the 3rd day of October, 2019, I served a copy of the foregoing **RESPONDENT-EMPLOYER'S PETITION FOR RECONSIDERATION** by mailing a copy via U.S. Mail, first class, postage pre-paid, to:

Angela L. Lizada, Esq.
Lizada Law Firm, Ltd.
800 N. Rainbow Blvd., Ste. 202
Las Vegas, NV 89107
angela@lizardalawfirm.com

Robert Zentz, Esq.
Hearing Officer
C/O Zoe McGough
2200 S. Rancho Drive
Las Vegas, NV 89102
zmcgough@admin.nv.gov

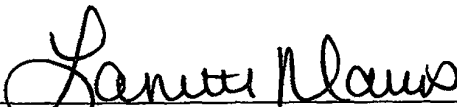

An Employee of the Attorney General's Office

EXHIBIT 1

EXHIBIT 1

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
SOUTHERN NEVADA ADULT MENTAL HEALTH SERVICES
SCOPE: FORENSIC SERVICES

SUBJECT: Use of Force

NUMBER: FF-SP-28

EFFECTIVE DATE: 12/17

NEXT REVIEW DATE: 12/19

APPROVED BY: /s/ Sharon Dollarhide, LCSW, LCADC
Agency Manager

SUPERSEDES: New

I. **PROTOCOL:**

This protocol provides guidelines for the use of force in forensic services units.

II. **PURPOSE:**

The use of force will be restricted to the minimum degree necessary to manage an attack or assault by a client. The use of force will elevate only to the point to gain control of a client or to defend a client or staff member during an attack by a client. The escalation of force will be used to prevent assaults, escapes, to prevent serious property damage, to gain control of disturbances or riots and to prevent serious bodily injury to staff and clients.

Restraint equipment will only be used to manage a client who presents the danger of injuring him/herself, other clients, or staff.

Restraints will never be used as form of punishment and will only be applied until the client is no longer a threat to self or others. A Denial of Rights form is to be filled out per policy PF-RRE-02.

III. **DEFINITIONS:**

- A. Force: Any action that requires physical contact with a client. Conflict Prevention and Response (CPART) control techniques will always be used first in all situations. POST approved defensive tactics will only be used if CPART techniques are ineffective or unable to control the situation.
- B. Use of Force: Involves use of manual or physical restraint to gain control of an unruly person or situation.
- C. Show of Force: A demonstration of the force at one's command and one's readiness to use them to prevent violent action.

- D. Excessive Force: Any physical act or action which is more than the amount necessary to manage the client or situation.
- E. Defensive Tactics: A system of controlled defensive and offensive body movements used by Forensic Specialists to respond to a client's aggression or resistance.
- F. Verbal Interventions: Verbal interventions will be used to de-escalate all situations prior to the use of force. Force will be used only as a last resort, and will always be the minimum amount necessary to control or contain the situation.

IV. PROCEDURE:

A. When force may be used:

1. All attempts will be made prior to use of force to have additional staff available and in all cases, assistance will be called for as soon as possible preferably prior to use of force situation.
2. Force may be used to protect oneself or another person from harm. The force will be equivalent to the threat and will cease upon the threat being reduced.
3. Force may be used to prevent escapes, within the facility, if no alternative means are effective.
4. Force may be used to prevent the destruction of state property if no alternative means are effective. The amount of force used will be only the amount needed to prevent the destruction of state property.
5. Force may be used to administer medication with a Doctor's order and only when necessary/required due to client(s) noncompliance with taking medications or when ordered due to safety concerns for client, staff, or others.
6. An incident report will be completed for any use of force, and must include the type of force used, all events leading up to the use of force, what alternatives were attempted, and the conclusion of the event i.e. client placed in restraints per Doctor's orders.
7. The shift supervisor and Correctional Lieutenant, or designee, will review all incident reports to determine if the force used was appropriate.
8. Any review of the use of force which is viewed as being excessive will result in having a formal investigation conducted, which could result in disciplinary action or prosecution, pursuant to NRS 433.554.

V. REFERENCES:

NRS 433.554,
NAC 289.230,
PF-RRE-02 Seclusion and Restraint

VI. ATTACHMENTS: N/A

EXHIBIT 2

EXHIBIT 2

1 **BEFORE THE STATE OF NEVADA PERSONNEL COMMISSION**
2 **HEARING OFFICER**

3
4 CHARLES ROCHA,

5 Petitioner,

6 vs.

Case No. 1914774-RZ

7 STATE OF NEVADA, ex rel. its
8 DEPARTMENT OF HEALTH AND
9 HUMAN SERVICES

10 Respondent.
11

12 **DECLARATION OF DR. ELIZABETH NEIGHBORS**

13 I, Dr. Elizabeth Neighbors do hereby swear under penalty of perjury that the assertions of this
14 affidavit are true.

15 I am the Statewide Forensic Services Director for the Department of Health and Human Services
16 of the State of Nevada. I assumed this position in May, 2016. I was the Agency Manager for Lakes
17 Crossing Center from August, 2000 through May, 2016.

18 My role as the Statewide Forensic Services Director is to coordinate the forensic mental health
19 services within the Division of Public and Behavioral Health, supervise the forensic psychologists at
20 Lake's Crossing Center as well as provide requested clinical services as a Board Certified Forensic
21 Psychologist as appropriate. I also consult with and supervise the Agency Directors of the forensic
22 hospitals as requested by the Administrator of the Division of Public and Behavioral Health. I participate
23 in writing policy for the forensic facilities and also testify in court and before the legislature on these
24 matters as appropriate.

25 As the Agency Manager at Lakes Crossing Center, I was responsible for overseeing that facility's
26 operations. Lakes Crossing Center is a forensic facility that provides treatment to competency for pretrial
27 detainees.

28 ...

1 Southern Nevada Adult Mental Health Services has a unit that provides treatment to competency
2 for pretrial detainees. This unit is referred to as "Stein Hospital," although it is actually a unit of Southern
3 Nevada Adult Mental Health Services that is designated in NRS 433.233 by the State of Nevada, Division
4 of Public and Behavioral Health to provide mental health services. Stein Hospital is not a free-standing
5 hospital facility, but rather a unit of Southern Nevada Adult Mental Health Services dedicated to
6 providing restoration to competency services and caring for forensic mental health patients committed
7 there for mental health treatment.

8 I am familiar with and knowledgeable regarding the policies and procedures applicable to
9 Southern Nevada Adult Mental Health Services' forensic unit.

10 The forensic unit at Southern Nevada Adult Mental Health Services is known as Stein Hospital.
11 Stein Hospital is the name of the unit. Southern Nevada Adult Mental Health Services is licensed as a
12 hospital. It is not licensed a correctional facility. Persons facing criminal charges are court ordered to
13 the forensic unit at Southern Nevada Adult Mental Health Services. The status of forensic patients at
14 Stein Hospital accords them the same rights and privileges as patients in a civil psychiatric hospital with
15 some additional security measures.

16 The mission of both Lakes Crossing Center and Southern Nevada Adult Mental Health Services'
17 forensic unit is treatment. They have a higher level of security than the civil psychiatric facilities that do
18 not provide treatment to competency, but the psychiatric treatment methods are the same as those used
19 at non-forensic psychiatric facilities.

20 Although the Forensic Specialists employed with these agencies and working at state forensic
21 facilities and units are Category III Peace Officers pursuant to NRS 289.240, they are not employed as
22 correctional officers. These employees are required to be certified as Mental Health Technicians for the
23 purpose of providing direct care to the patients that are served by the Division. Their POST training is in
24 addition to their training as Mental Health Technicians.

25 Southern Nevada Adult Mental Health Services policy number FF-SP-28 addresses use of force.
26 I am familiar with this policy, which mandates that the use of force will be restricted to the minimum
27 degree necessary to manage an attack or assault by a client. See Exhibit 1, attached hereto.

28 ...

1 I have reviewed the incident video in this matter. I agree with the agency's decision to treat this
2 as an abuse case as opposed to a use of force case. The video shows that Mr. Rocha punched the client
3 after the client had been subdued by other staff members and was on the floor.

4 Even if this had been treated as a use of force case, I believe that the force used by Charles Rocha
5 exceeded the minimum degree of force necessary. I base this opinion on the fact that, at the time of the
6 punches, the client was subdued on the floor by several staff members and did not appear to be resisting
7 or fighting.

8 Forensic Specialists must follow all applicable policies including the Department of Public and
9 Behavioral Health Policy CRR-1.2 Prohibition of Abuse and Neglect. I am familiar with the
10 aforementioned policy which defines abuse and any willful and unjustified infliction of pain, injury or
11 mental anguish upon a person served. That policy also cites hitting as an example of physical abuse.

12 Based upon my review of the incident video, Charles Rocha's actions of punching the client after
13 the client had been subdued were willful and unjustified.

14 Further your Declarant sayeth naught.

15 
16 DR. ELIZABETH NEIGHBORS
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1 **BEFORE THE NEVADA STATE PERSONNEL COMMISSION**
2 **HEARING OFFICER**

3
4 Charles Rocha,) Case No.: 1914774-RZ
5)
6 Petitioner/Employee,) **FINDINGS OF FACT**
7 vs.) **CONCLUSIONS OF LAW**
8) **DECISION AND ORDER**
9 STATE OF NEVADA, ex rel. it's
10 DEPARTMENT OF HEALTH AND
11 HUMAN SERVICES.
12 Respondent/Employer)

FILED
SEP 18 2019
APPEALS OFFICE

13 This matter having come for an administrative hearing before the
14 undersigned hearing officer on the 23rd day of August, 2019 in Las Vegas,
15 pursuant to an appeal by Charles Rocha, (Employee) of his dismissal from
16 employment with the State of Nevada, Department of Health and Human
17 Services (Employer).

18 The Employee appeared with counsel, Angela J. Lizada, Esq.,
19 Lizada Law Firm, Ltd. The Employer appeared with counsel, Aaron D.
20 Ford, Attorney General, and Susanne M. Sliwa, Esq., Senior Deputy
21 Attorney General.
22
23

24 **I.**
25 **STANDARD OF PROOF**

26 NRS 233B.121.9 requires a Hearing Officer to issue findings of fact
27 and decisions based exclusively on a preponderance of the evidence and
28 on matters officially noticed. (emphasis added). NRS 233B.0375 defines

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Page 1 of 17

1 a "preponderance of the evidence" as evidence that enables a trier of fact
2 to determine that the existence of the contested fact is more probable
3 than the nonexistence of the contested fact.
4

5 Review of an agency's decision to terminate an employee for a first
6 offense disciplinary action requires a three-step analysis process. First,
7 the hearing officer must review, de novo, whether the employee in fact
8 committed the alleged violation. Next it must be determined whether the
9 alleged violation is a serious violation of law or regulations such that the
10 most severe measure of termination is appropriate for a first disciplinary
11 action. Third and last a deferential standard of review is utilized with
12 respect to the agency's determination that termination serves 'the good of
13 the public service. See, *Nevada Department of Corrections v. Ludwick*,
14 135 Nev. Advance Opinion 12 (pg. 6, May 2, 2019), citing NRS 284.385;
15 NRS 284.390; NAC 284.798; *O'Keefe v. State, Department of Motor*
16 *Vehicles*, 134 Nev. Adv. Op. 92, 431 P. at 350 (2018).
17

18 "A Hearing Officers' role is to 'determine the reasonableness of a
19 dismissal, demotion, or suspension.'" NRS 284.390(1); *Taylor v. Dep't of*
20 *Health and Human Services*, 129 Nev. 928, 930, 314 P.3d 949, 150-151
21 (2013). However, a hearing officer should only reverse a disciplinary
22 decision if he or she concludes dismissal, demotion or suspension is not
23 (1) based upon substantial evidence, or (2) for a purpose other than the
24 good of the public service. See, *Dep't of Motor Vehicles v. Adams*, Case
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No. 68057 (filed Jan 30, 2017). See also, *Nassiri v. Chiropractic Physicians Board of Nevada*, 130 Nev. Adv. 27, 327 P.3d 487 (2014).

NRS 233B.0375 defines "'preponderance of the evidence' as evidence that enables a trier of fact to determine that the existence of the contested fact is more probable than the nonexistence of the contested fact.

Substantial evidence is that which" a reasonable mind might accept as adequate to support a conclusion.'" *State, Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 487, 498 (1986) (quoting *Richardson v. Perales*, 402 U.S. 389 (1971)).

II. STATUTES, REGULATIONS and POLICIES

NRS 200.200 Killing in self-defense.

If a person kills another in self-defense, it must appear that:

1. The danger was so urgent and pressing that, in order to save the person's own life, or to prevent the person from receiving great bodily harm, the killing of the other was absolutely necessary; and
2. The person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

NRS 200.275 Justifiable infliction or threat of bodily injury not punishable.

In addition to any other circumstances recognized as justification at common law, the infliction or threat of bodily injury is justifiable, and does not constitute mayhem, battery or assault, if done under circumstances which would justify homicide.

NRS 200.481 Battery: Definitions; penalties.

1. As used in this section:
 - (a) "Battery" means any willful and unlawful use of force or violence upon the person of another.

1 **NRS 281A.170 "Willful violation" defined.**

2 "Willful violation" means a violation where the public officer or employee:

- 3 1. Acted intentionally and knowingly

4 **NRS 284.383 Use of disciplinary measures**

5 The Commission shall adopt by regulation a system for administering
6 disciplinary measures against a state employee in which, except in cases of
7 serious violations of law or regulations, less severe measures are applied
8 first, after which more severe measures are applied only if less severe
9 measures have failed to correct the employee's deficiencies.

10 **NAC 284.385 Dismissals, demotions and suspensions; regulations**

- 11 1. An Appointing authority may:

12 (a) Dismiss or demote a permanent classified employee when the
13 appointing authority considers that the good of the public service
14 will be served thereby.

15 **NRS 284.390 Reinstatement**

16 7. If the hearing determines that the dismissal, demotion or suspension was
17 without just cause as provided in NRS 284.385 the action must be set aside
18 and the employee must be reinstated, with full backpay for the period of
19 dismissal, demotion or suspension.

20 **NAC 284.6562 Request for hearing to determine reasonableness of**
21 **dismissal, demotion or suspension.**

22 1. A permanent employee who has been dismissed, demoted or
23 suspended may request a hearing before the hearing officer of the
24 Commission, pursuant to NRS 284.390, within 10 working days after
25 the effective date of his or her dismissal, demotion or suspension. For
26 the purpose of determining the time limit for making such a request,
27 the effective date of the dismissal, demotion or suspension is the first
28 day that the disciplinary action takes effect.

29 **NRS 289.480 "Category III peace officer" defined.**

30 "Category III peace officer" means a peace officer whose authority is limited
31 to correctional services, including the superintendents and correctional
32 officers of the Department of Corrections. The term does not include a
33 person described in subsection 20 of NRS 289.470.

1 **NRS 289.240 Certain employees of Division of Public and Behavioral Health of**
2 **Department of Health and Human Services.**

3 Forensic technicians and correctional officers employed by the Division of
4 Public and Behavioral Health of the Department of Health and Human
5 Services at facilities for offenders with mental disorders have the powers of
6 peace officers when performing duties prescribed by the Administrator of the
7 Division.

8 **NRS 433.484 Rights concerning care, treatment and training.**

9 Each consumer admitted for evaluation, treatment or training to a facility has
10 the following rights concerning care, treatment and training, a list of which
11 must be prominently posted in all facilities providing those services and must
12 be otherwise brought to the attention of the consumer by such additional
13 means as prescribed by regulation:

14 ...
15 (b) To be free from abuse, neglect and aversive intervention.

16 **NRS 433.554 Abuse of consumer; failure to report abuse; possession or**
17 **use of intoxicating beverage or controlled substance; transaction with**
18 **consumer; aiding escape of consumer; penalties.**

19 2. In addition to any other penalties provided by law, an employee of a
20 public or private mental health facility or any other person, except a
21 consumer, who willfully abuses or neglects a consumer:

22 (a) For a first violation that does not result in substantial bodily harm to
23 the consumer, is guilty of a gross misdemeanor.

24 5. For the purposes of this section:

25 (a) "Abuse" means any willful and unjustified infliction of pain, injury or
26 mental anguish upon a consumer, including, but not limited to:

27 (1) The rape, sexual assault or sexual exploitation of the
28 consumer;

(2) The use of any type of aversive intervention;

(3) Except as otherwise provided in NRS 433.5486, a violation
of NRS 433.549; and

(4) The use of physical, chemical or mechanical restraints or the
use of seclusion in violation of federal law.

29 **DPBH Division Policy CRR-1.2 Prohibition of Abuse or Neglect**

30 **1.0 Policy:**

31 The Division of Public and Behavioral Health (DPBH) expressly prohibits the
32 abuse or neglect of any person receiving services.

Any DPBH staff or contract staff found to be abusive or negligent of a consumer shall be disciplined up to and including termination.

4.0 DEFINITIONS

4.1 Abuse is any willful and unjustified infliction of pain, injury or mental anguish upon a person served by DPBH or contract staff.

4.1.2 Physical Abuse: Examples include, but are not limited to: any act that causes physical pain or injury to the consumer, hitting, slapping, bruising, kicking, hair pulling, shoving, pinching, cutting, burning, or the use of arm bars or other holds to inflict pain.

SNAMHS Policy OF-LDR-20 Code of Ethics and Conduct

D. Unacceptable Conduct and Behavior – Any activity, behavior or conduct that may inhibit or interfere with the stated purpose of providing the highest quality client care, in a safe work environment that fosters teamwork and respect for the dignity of each client, visitor, and staff member. Unacceptable conduct may include, but is not limited to behavior such as:

1. Attacks verbal or physical – leveled at clients, families, visitors, or staff members that are personal, irrelevant, or beyond the bounds of reasonable or fair professional conduct.

III. OVERVIEW

On October 13, 2018 the Employee was on duty as a Forensic Specialist at the Stein Hospital, Las Vegas. The Patient involved here was in the custody of the Employer at the Stein Hospital in accordance with an Order of Recommitment from the 8th Judicial District Court.¹

The Court ordered the Patient to be held until such time as the Court order's his release or until he is returned to the court for trial. In it's order the Court found that the Patient was incompetent to stand trial for his alleged crimes. The Court further found that there is a substantial probability that the criminal

¹ The Employer contends that the identity of the involved individual should be held

1 defendant/patient will attain competency to stand trial in the foreseeable future.

2 Finally the Court held that criminal defendant/patient poses a possible danger to
3 the safety of his self and/or society if released.²
4

5 On shortly after 10:00 am on October 13, 2019 the Patient violently attacked
6 the Employee without provocation. Shortly thereafter several employees
7 became involved in subduing and controlling the Patient. During the events the
8 Employee struck the Patient twice in the face.
9

10 IV. 11 ISSUES

- 12 1. In hitting the Patient did the Employee act willfully and without justification?
13 2. Was the agency's decision to terminate the Employee for the good of the public
14 service?

15 V. 16 ANALYSIS

17 A. VIDEO REVIEW

18 The Stein Hospital has surveillance cameras monitoring the facility. The
19 video recording of the H Unit Nurses Station recorded beginning at 9:59:56 am
20 October 13, 2018 captured the events resulting in the Employee's dismissal
21 from State service.³
22 ...
23 ...
24 ...
25 ...

26 ² The individual's identity is part of the public record due to the Court's Recommitment
27 Order, (Case No. C-18-33319-1, issued March 22, 2019), however for the purposes of
28 this decision the hearing officer will refer to the individual only as "patient."

³ The parties have stipulated to keep confidential the actual recording.

Time on the Video	Action Observed
Initial	The Employee is in the unsecured area cleaning tables.
3:09 minutes	The Employee is seated on a bench in the unsecured area, making notes on a pad and eating snacks. The Employee is writing with his right hand.
3:32 minutes	The Patient punches and continues to advance aggressively toward the Employee.
3:33 minutes	The Employee retreats and holds hands up in self-defense. Two other employees rush to assist the Employee.
3:34 minutes	The altercation moves out of clear view of the camera.
3:44 minutes	The altercation returns into the camera view. The Patient and Employee are entangled with each other. Two other employees are attempting to gain control of the patient.
3:45 minutes	The Employee is pushed against a wall and bench. The participants fall to the floor. The Patient hits the floor with the right side of his face.
3:46 minutes	The Patient's right arm is grabbing or hitting the Employee's chest.
3:59 minutes	Two Employees pull the Patient's left arm from the Employee's back.
4:02 minutes	The Employee raises up, attempts to pull away but his right arm is pinned between the Patient and an employee.
4:04 minutes	The Patient's right arm is on the floor in the area of the Employee's chest. The Employee was holding the Patient's arm in place, releases the Patient's arm and hits him in the face with his left hand. The Employee again grabs the Patient's arm.
4:06 minutes	The Employee releases the Patient's arm a second time and hits the Patient in the face a second time again using his left hand.
5:36 minutes	The Employee pulls away from the situation and walks away.
7:17 minutes	The Patient is placed in a restraint chair by 5 employees.

B. HEARING TESTIMONY

1) The Employee testified:

He was previously employed as a Corrections Officer. The Employee is certified as a Category 3 Peace Officer by Nevada P.O.S.T.⁴ The Employee was aware of three (3) or four (4) prior incidents of violence perpetrated by the Patient.

⁴ The Nevada Commission on Peace Officer Standards and Training.

1 As he was walking toward him the Patient suddenly yelled, "I'm going to
2 fucking kill you" and punched him in the face and body several times. As he
3 continued his attack the Employee backed up and holds hands up in self-
4 defense.
5

6 While they were entangled the Patient locked his legs around the
7 Employee's leg while grabbing his upper body. Ultimately they and two other
8 employees went to the floor. While on the floor the Patient continued to resist.
9 The Patient was spitting and threatening him. The Employee testified he was in
10 fear for his life. The Employee testified that during the time on the floor the
11 Patient had grabbed him and he was pinned under other employees and the
12 Patient and he unable to escape the situation.
13

14 The Employee testified that he struck the Patient twice to break free from the
15 Patient and/or gain control, not to punish him.
16

17 While engaged on the floor the Patient was spitting and had locked his legs
18 with the Employee preventing him from withdrawing from the altercation.
19

20 P.O.S.T. defensive tactics training while different from C-Part Training
21 stresses use of non-violent techniques prior to using physical force. Only the
22 least amount of force is approved in law enforcement actions. While the training
23 programs maybe differ the Department C-Part training provides skills to
24 deescalate tense situation.
25

26 2) Linda Edwards testified:

27 She is the Site Nurse/Program Manager Rapid Stabilization Unit in the civil
28

1 hospital at the Rawson-Neal Psychiatric Hospital.⁵ Patients are not ordered to
2 Rawson-Neal by the District Court and it does not provide treatment for
3 purposes of competency. Ms. Edwards testified she and Dolly Jones conducted
4 the investigation of this incident. Ms. Edwards testified she reviewed the video
5 both before and after conducting interviews of employees. She reviewed
6 policies, as well as the training records when preparing for conducting
7 interviews. Based on the results of the investigation she determined that the
8 Employee struck the Patient in retaliation for the initial attack. She further
9 testified that the Patient appeared to be restrained at the time the Employee
10 administered the blows.
11

12
13 On cross-examination Ms. Edwards testified that neither she nor Ms. Jones
14 have peace officer training. Further, she has no personal knowledge of the
15 peace officer use of force training protocols, but she focused on the agency and
16 facility policies in making her decision. Ms. Edwards reiterated that in her
17 opinion the Patient was not resisting at the time he was struck by the Employee,
18 consequently she concluded that the blows were in retaliation for the attack.
19

20
21 3) Jackie Arellano testified:

22 She is a Supervisor Personnel Analyst for the Employer, SNAMS. She was
23 notified of the incident on October 15, 2018 and requested to see the video. Ms.
24 Arellano testified that she watched the video more than one time and concluded
25 that the patient was restrained at the time the Employee struck him. Ms.
26 Arellano testified that Department policies prohibit patient abuse and hitting falls
27

28 ⁵ The Employer operates both Rawson-Neal Psychiatric Hospital and the Stein Hospital
which are located on the same campus.

into that category. Hitting a patient is abuse in all situations in accordance with policy. Policy permits termination for a first offense. The investigation supported her opinion that the Employees actions were retaliatory and not self-defense. Policies at Rawson-Neal Psychiatric Hospital differ from those at the Stein Hospital due to the fact that Rawson-Neal is a civil not a forensic hospital, but in her opinion the Employee broke laws.

C. INVESTIGATION

The investigation consisted of reviews of the video footage, review of policies and procedures and interviews of employees present at the time of the incident.

The investigators concluded that the Employee's actions violated policy and law mandating dismissal from state service.

Numerous interviews were conducted during the investigation. Upon review of the summaries no employee reports any action constituting abuse or excessive force. In two employees directly involved in the altercation stated the following:

DeWayne Lyons stated that he responded after hearing the commotion. Upon arrival he saw the Patient and Employee on the floor facing each other. The patient had his left arm around the Employee's neck in a headlock. He removed the Patient's arm and held it until other employees arrived. At the time the Patient was spitting in the Employee's face. Mr. Lyons stated he was relieved by another employee and stood back until the Patient was placed in the restraint chair. Mr. Lyons stated that initially the Patient was struggling, but at some point became calm and laid there. He also stated that the Employee was

1 cursing the Patient when he got up off the floor, but he did not see the Patient
2 be hit by the staff.

3 Josue Behic was assigned to stay with the Patient. The Patient was acting
4 out, yelling, cursing and "going wild." Mr. Behic stated that the Patient went
5 directly to the Employee and hit him. Mr. Behic stated the Patient then wrapped
6 his legs around the Employee and they fell to the floor. Mr. Behic said by the
7 time he reached them the Patient had the Employee in a headlock. Mr. Behic
8 said he removed the Patient's left arm from around the Employee's neck and
9 noticed blood pouring out of the Patient's face. When other employees arrived
10 Mr. Behic said he moved to holding the Patient's leg. Mr. Behic said the Patient
11 is very strong and so all employees were holding him firmly.

14 D. ANALYSIS

15 Defusing a hostile situations with non-violent measures is preferable for
16 everyone, however, there will be situations such as this in which the patient
17 dictates how the event progresses. Employees are not required to be passive
18 victims to violent attacks.

19 However, employees must be mindful that willful and unjustified infliction of
20 pain, injury or mental anguish upon a patient is more than a simple policy
21 violation, it may be charged as a criminal offense.

22 To constitute abuse it must be proven by a preponderance of the evidence
23 that the use of force was both willfully and unjustified. Willful is defined as
24 acting intentionally and knowingly. Infliction of bodily injury may be justifiable if,
25 in good faith, the person believes that it's absolutely necessary to use force to
26

1 save one's own life, or to prevent great bodily harm. Similarly, peace officers
2 may use force however they are justified in only using the minimum amount of
3 force necessary to control the situation and protect themselves or others.
4

5 Here, the Employee testified and during his interview stated that during this
6 altercation he was in fear for his life. His right arm was pinned, he was unable
7 to break free from the Patient, he was being threatened and spit on. That
8 testimony was not contradicted. The review of the surveillance video and the
9 statements of fellow employees present at the time support the Employee's
10 contention that his belief that he was in danger of great bodily harm.
11

12 Contrary to the Employer's conclusion that the Employee struck the Patient
13 in retaliation for the attack there is ample evidence to conclude the Employee
14 was acting in self-defense at the time he struck the Patient. The altercation
15 between the Employee and Patient lasted approximately 2:04 minutes. The
16 alleged abuse and/or use of excessive force occurred at approximately 31
17 seconds after the attack on the Employee. Numerous employees were involved
18 at different times in attempting to gain control and restrain the Patient. The
19 video shows that the Patient was resisting and not cooperating while the
20 Employee was entangled with him on the floor. Multiple employees continued to
21 hold the Patient on the floor until it he was safely placed in a restraint chair. It is
22 clear that five employees were needed to safely secure the Patient in the
23 restraint chair.
24
25

26 The Employee hit the Patient while they were still entangled on the floor
27 struggling. The Employee's his right arm/hand was pinned between the
28

1 Patient's chest and another employee. The Employee used his left hand to hit
2 the Patient. The amount of force in those punches was minimal. The blood on
3 the floor was not visible until after the hitting occurred and Employee was free
4 from the altercation. That however does not establish that the blood and
5 Patient's injuries were caused by the punches and not the fall to the floor.⁶

7 The Hearing Officer made no assumptions of innocence or guilt but was
8 guided solely by the weight of the evidence and testimony presented at the
9 hearing in making these Findings of Fact, Conclusions of Law, Decision and
10 Order.⁷

12 **V.**
13 **FINDINGS OF FACT**

- 14 1) Stein Hospital is a secure forensic hospital facility operated by the
15 Employer in Las Vegas, NV.
- 16 2) The Employee was hired as a Forensic Specialist on November 2, 2015.
- 17 3) The Employee was served with a Specificity of Charges (NPD-41)
18 outlining the allegations, the investigation and the proposed disciplinary
19 action on March 3, 2019.
- 20 4) The discipline proposed was dismissal from State service.
- 21 5) A pre-disciplinary hearing was conducted on March 18, 2019.
- 22 6) The pre-discipline hearing officer and the Administrator concurred in the
23 proposed discipline and notified the Employee that he would be
24
25
26

27 ⁶ Immediately prior to the Employee striking the Patient there appears to be a dark spot
28 on the floor beneath the Patient's face. It is unclear if the dark spot is blood or simply
a shadow.

⁷ Nevada Personnel Commission, Hearing Officer Rules Of Procedure Rule 11.1.

- 1 terminated on March 22, 2019.
- 2 7) The Employee was dismissed from State service on March 22, 2019.
- 3 8) The Employee filed his Appeal of that decision on March 28, 2019.
- 4
- 5 9) Shortly after 10:00 am on October 13, 2018 the Patient violently attacked
- 6 the Employee.
- 7 10) Other employees immediately responded to aid in controlling the patient.
- 8 11) The Patient and the employees ultimately fell to the floor while struggling.
- 9
- 10 12) The Employee struck the patient twice in the face with his left hand while
- 11 entangled face to face on the floor.
- 12 13) The Patient's right arm was under the Employee's chest.
- 13 14) Immediately prior to being struck the patient was struggling with multiple
- 14 employees and had his left arm around the Employee's back holding him
- 15 on the floor.
- 16
- 17 15) Another employee removed the Patient's arm from the Employee's back.
- 18 16) The Patient had his leg locked around the Employee's leg holding him to
- 19 the floor.
- 20 17) The Patient was spitting in the Employee's face and threatening to kill
- 21 him during the struggle.
- 22
- 23 18) The Patient was continuing to resist and struggle when struck by the
- 24 Employee.
- 25 19) The Patient was spitting and cursing at the Employee when he was
- 26 struck.
- 27
- 28 ...

- 1 20) After the Employee struck the Patient he broke free from the dog-pile.
2 21) The patient continued to resist and was held on the floor after the
3 Employee left the area.
4 22) Five employees worked together to place the Patient in a restraint chair.
5 23) The Employee used force in self-defense in striking the Patient who was
6 resisting and spitting on him.
7 24) The Employee was justified in defending himself in this situation.
8 25) The Employee was not acting in retaliation or with malice toward the
9 Patient when he struck him.
10
11

12 **VI.**
13 **CONCLUSIONS OF LAW**

- 14 1) The Employer complied with NRS 284.385; NRS 284.387; NAC
15 284.655, and NAC 284.6555.
16 2) The Employee filed a timely appeal of his dismissal. NRS 284.390.
17 3) The dismissal here was unjustified and the action must be set aside
18 and the employee must be reinstated, with full back pay for the period
19 of dismissal, demotion or suspension. NRS 284.390
20

21 **VII.**
22 **DECISION**

23 The preponderance of the evidence establishes the following:

- 24 1. The Employee did not violate the SNAMHS Code of Ethics or DPBH
25 Division Policy CRR-1.2.
26 2. The Employee did not inflict unjustified pain upon the Patient.
27 3. The Employee did not use excessive force.
28

1 4. The Employer's decision to dismiss the Employee was without just cause
2 as provided in NRS 284.385.
3

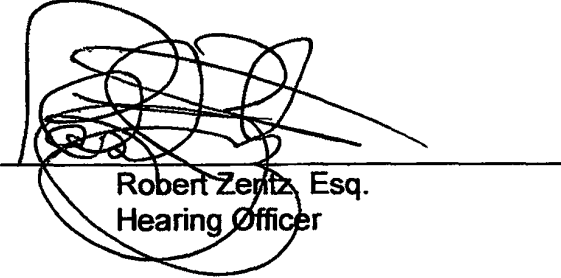
4 **VIII.**
ORDER

5 Based upon foregoing findings of fact, and conclusions of law and
6 good cause appearing therefore,
7

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

9 That the dismissal must be set aside and the employee reinstated,
10 with full back pay for the period of dismissal, demotion or suspension.

11 DATED this 16th day of September, 2019.
12

13
14 
15 Robert Zentz, Esq.
16 Hearing Officer
17

18 **NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal**
19 **this final determination of the Hearing Officer a Petition for Judicial Review**
20 **must be filed with the District Court within 30 days after service by mail of**
21 **this decision.**
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Appeals Division, does hereby certify that on the date shown below, a true and correct copy of
4 the foregoing **FINDINGS OF FACT CONCLUSIONS OF LAW DECISION AND ORDER**
was duly mailed, postage prepaid, **OR** transmitted via interoffice mail to the following:

5 CHARLES ROCHA
6 3710 JULIUS COURT
LAS VEGAS NV 89129

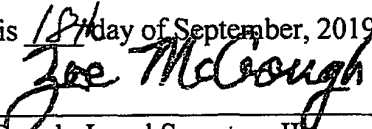
7 ANGELA LIZADA ESQ
8 LIZADA LAW FIRM LTD
9 711 S 9TH STREET
LAS VEGAS NV 89101

10 RICHARD WHITLEY, DIRECTOR
11 DEPARTMENT OF HEALTH AND HUMAN SERVICES
12 4150 TECHNOLOGY WAY
CARSON CITY NV 89706

13 JACKIE ARELLANO, PERSONNEL OFFICER II
14 DEPARTMENT OF HEALTH AND HUMAN SERVICES
15 PUBLIC AND BEHAVIORAL HEALTH/SNAMHS
1321 JONES BLVD
LAS VEGAS NV 89146

16 SUSANNE M SLIWA ESQ
17 DEPUTY ATTORNEY GENERAL
18 OFFICE OF THE ATTORNEY GENERAL
555 E WASHINGTON AVE STE 3900
19 LAS VEGAS NV 89101

20 Dated this 18th day of September, 2019.

21 
22 Zoe McGough, Legal Secretary II
23 Employee of the State of Nevada
24
25
26
27
28

1 ANGELA J. LIZADA, ESQ.
2 Nevada Bar No. 11637
3 LIZADA LAW FIRM, LTD.
4 711 S. 9th Street
5 Las Vegas, NV 89101
(702) 979-4676
Fax: (702) 979-4121
Attorney for Employee

FILED

AUG 14 2019

APPEALS OFFICE

6 **BEFORE THE NEVADA STATE PERSONNEL COMMISSION**
7 **HEARING OFFICER**
8
9
10

11 CHARLES ROCHA,
12

Case No.: 1914774-RZ

13 Employee,
14

v.

15 STATE OF NEVADA DEPARTMENT OF
16 CORRECTIONS,
17

Employer.
18
19

20 **EMPLOYEE'S PRE-HEARING STATEMENT**

21 COMES NOW, CHARLES ROCHA, by and through his attorney, ANGELA J.
22 LIZADA, ESQ. of LIZADA LAW FIRM, LTD., and submits his Pre-Hearing Statement.
23

24 **STATEMENT OF ADMITTED OR UNDISPUTED FACTS**

25 Charles Rocha ("Mr. Rocha") was been employed with the State of Nevada since
26 approximately 2011. Mr. Rocha worked with the Department of Corrections or approximately four
27

28 *DULOOT*

1 years prior to beginning to work at Stein commencing at the opening of the facility in November
2 2015.

3 **CLAIMED FACTS SUPPORTING EMPLOYEE'S CLAIMS AND DEFENSES**

4 Stein Forensic Unit ("Stein") is a psychiatric facility solely for the purpose of housing those
5 individuals who competency is in question for the legal process. Although Stein is part of the
6 Division of Health and Human Services, the individuals housed there would be standing trial for
7 serious crimes or incarcerated had their mental competency not been in question.
8

9 Mr. Rocha's position at Stein was as a forensic supervisor. At the time of the incident in
10 question, Mr. Rocha was preparing to undergo hip replacements and had difficult and painful
11 ambulatory motions while walking. On or around October 13, 2018, Mr. Rocha was working as a
12 Forensic Specialist IV. One of the "patients" was a Ryan Ratliff. Mr. Ratliff had been arrested and
13 charged with attempted murder with a deadly weapon and battery with a deadly weapon, in the
14 Eighth Judicial District Court Case C-18-333919-1. However, Mr. Ratliff's competency came into
15 question, and he has been held at Stein until he becomes competent to stand trial for his serious
16 crimes.
17

18 While at Stein, Mr. Ratliff has been a danger to employees, and this is not his first or even
19 second attack on an employee. Leading up to this incident, there had been requests to have Mr.
20 Ratliff be required to be in waist restraints anytime he was out of his room, and he was supposed
21 to be on a one-to-one, where a designated employee was supposed to be within arms reach of him
22 at all times. Mr. Ratliff had already been on edge that day and had been provided medications less
23 than an hour prior to this incident.
24

25 Mr. Ratliff was not being properly supervised by the one-to-one person, and Mr. Ratliff
26 yelled that he was going to kill Mr. Rocha and attacked Mr. Rocha in a fury of swinging fists.
27
28

1 making a clean strike to the left side of Mr. Rocha's face and landing on top of the already disabled
2 Mr. Rocha and continuing his attack. As other employees responded and pulled the patient off of
3 Mr. Rocha, Mr. Ratliff continued to hold Mr. Rocha and intertwined his legs around Mr. Rocha's
4 leg, causing excruciating pain to the hip that Mr. Rocha was less than two weeks away from having
5 surgery to replace. While Mr. Ratliff was still resisting and holding Mr. Rocha's leg, Mr. Rocha
6 used his forearm to push Mr. Ratliff's head enough to release his leg.
7

8 Mr. Rocha was terminated from his position based on this one incident, with no prior
9 documentations, incidents and/or discipline.

10 **ISSUES OF LAW WITH SUPPORTING CASE AND STATUTORY AUTHORITY AND**
11 **LEGAL ARGUMENT**

12 Mr. Rocha is being terminated for:

13 **NAC 284.646:**

14 Under NRS 284.646(1), an appointing authority may dismiss an employee for any cause set
15 forth in NAC 284.650 if:

- 16 • (a) The agency with which the employee is employed has adopted any rules or policies
17 which authorize the dismissal of an employee for such a cause; or
18 • (b) The seriousness of the offense or condition warrants such dismissal.

19 **NAC 284.650:**

20 Appropriate disciplinary or corrective action may be taken for:

- 21 • (1) Activity which is incompatible with an employee's conditions of employment
22 established by law or which violates a provision of NAC 284.653, or 284.738 to 284.771,
23 inclusive;
24 • (7) Inexcusable neglect of duty;
25 • (19) Violation of any safety rule adopted or enforced by the employee's appointing
26 authority;
27 • (21) Any act of violence which arises out of or in the course of the performance of the
28 employee's duties, including without limitation, stalking conduct that is threatening or
intimidating, assault or battery.

Department of Health and Human Services, Prohibitions and Penalties

B. 3. Failure of employee to maintain performance standards after a reasonable period of instruction.

B. 7. Endangering self, fellow employees, clients or public through careless or willful violation of agency policy as contained in performance standards, procedures and various federal and state laws, regulations and guidelines.

B.22. Deliberate failure to enforce or comply with laws and/or agency policies and regulations that directly relate to employee's work activities.

C. 1. Negligence in performing official duties including failure to follow instructions or regulations.

D. 1. Willfully abridging or denying the rights of a client as specified in NRS or agency policy.

D. 8. Any willful or reckless act of aggression directed towards a client, including but not limited to, sexual exploitation of a client, grabbing, pushing, tripping, hitting or striking a client in any manner; or willful misuse of physical or chemical restraints not in accordance with an approved treatment plan or in violations of state or federal law.

D. 9. Any act or omission to act which causes mental or physical injury to a client or which places the client at risk of injury, included but not limited to the failure to: establish or carry out an appropriate plan of treatment for the client; provide the client required health care; provide a safe environment.

Employer also lists violations of NRS 433.484 and 433.554, and DPBH Division Policies.

NAC 284.650 lays out the potential causes for disciplinary action, but allows for "appropriate disciplinary or corrective actions" for violations of the NAC 284.650 causes. The State of Nevada follows a process that encourages progressive discipline. NAC 284.638 allows for an oral warning prior to initiating disciplinary action, but in cases where oral warnings "do not cause a correction of the condition or where a more severe initial action is warranted, a written reprimand may be given." NAC 284.638. Further if oral and written warnings have proven ineffective, or if the seriousness of the offense or condition warrants, an employee may be

1 suspended up to thirty (30) days or demoted. NAC 284.642. NAC 284.646(1) allows for the
2 dismissal of an employee under NAC 284.650 if:

3 · The agency with which the employee is employed has adopted any rules of
4 policies which authorize the dismissal of an employee for such a cause, or

5 · The seriousness of the offense or condition warrants such a dismissal.
6

7 In this case, Mr. Rocha had no prior incidents of any kind. There is nothing in the record
8 that shows that a lesser degree of discipline would not have been effective. Further, in this case,
9 the state is going to argue "the severity" of the issue as their cause of terminating an employee
10 with no prior discipline, however, the facts and circumstances surrounding the case are very
11 important.

12 Mr. Rocha was an older physically disabled employee at the time of the incident, waiting
13 for hip replacements because he could not properly ambulate without severe pain. Mr. Ratliff,
14 on the other hand, was a dangerous and unstable individual. Mr. Ratliff had attacked multiple
15 other employees prior to this instance and it had been requested that he need to be in waist
16 restraints to leave his room due to his violent instability. The only reason Mr. Ratliff has not
17 been prosecuted for attempting to murder someone with a deadly weapon is because he has been
18 found to be incompetent to stand trial. Mr. Ratliff's finding of incompetency states that he is "1)
19 incompetent to stand trial at this time; 2) that there is substantial probability that Defendant will
20 attain competency to stand trial in the foreseeable future; and 3) the Court further finds that
21 Defendant would constitute a possible *danger to the safety of himself and/or society if released*
22 *from custody at this time*". (emphasis added)
23
24

25 Mr. Rocha was conducting his job in a reasonable and safe manner, when the failure of
26 other employees allowed him to be viciously attacked by a murderous patient yelling "I am going
27
28

to kill you” as he attacked Mr. Rocha and knocked him to the ground. Mr. Rocha continued to be tied up by the offender even once Mr. Ratliff was on the ground, and was pulling on Mr. Rocha’s leg at the hip. Mr. Rocha did not strike Mr. Ratliff with a closed fist. You can see in the video that he uses his forearm to push the head of Mr. Ratliff, which allowed him enough separation to pull his leg free. Although Mr. Ratliff was on the ground, the continued force and damage to Mr. Rocha’s hip in the process resulted in extreme pain and continuing urgency to pull free, until Mr. Rocha was finally able to pull his leg free.

The facts do not support the allegations that Mr. Rocha was abusive towards Mr. Ratliff. What the facts show is an older individual being viciously attacked by someone who had only four months earlier been arrested for attempting to murder another person with a deadly weapon, and Mr. Rocha reacting in an understandable fashion not only in the midst of literally having his life threatened, but also by having his very painful medical condition attacked during the process. Mr. Rocha suffered extreme pain from the confrontation, which was preventable if the Employer put proper protocols in place for Mr. Ratliff as had been requested. The facts in this situation would support the overturn of the decision by Employer, and the reinstatement of Mr. Rocha into his position with backpay.

EXHIBITS

1. Specificity of Charges (will use Employer's copy);
2. Video of Incident (will use Employer's copy);
3. Stein Schedule for 10/13/2018;
4. Criminal docket for Ryan Ratliff;
5. Order of Commitment for Ryan Ratliff;
6. Findings of Incompetence and Order Recommitting Defendant.

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WITNESSES

1. Charles Rocha
Petitioner
c/o Lizada Law Firm, Ltd.
711 S. 9th Street
Las Vegas, NV 89101

**ANY OTHER APPROPRIATE COMMENT, SUGGESTION, OR INFORMATION FOR
THE ASSISTANCE OF THE HEARING OFFICER IN THE HEARING OF THE CASE**

None other than outlined above.

CERTIFICATION THAT DISCOVERY HAS BEEN COMPLETED

I, Angela J. Lizada, Esq., certify that discovery has been completed to the best of my
knowledge.

DATED this 13th day of August, 2019.

LIZADA LAW FIRM, LTD.



ANGELA J. LIZADA, ESQ.
Nevada Bar No. 11637
711 S. 9th Street
Las Vegas, NV 89101
angela@lizardalaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2019, a true and correct copy of the foregoing Pre-Hearing Statement was emailed to the following, with a hard copy following by hand delivery on August 14, 2019:

Suzanne Sliwa, Esq.
Senior Deputy Attorney General
ssliwa@ag.nv.gov

Robert Zentz, Esq.
Hearing Officer
zmcgough@admin.nv.gov



An employee of Lizada Law Firm, Ltd.

Employee EXHIBIT # 1

Saturday, October 13, 2018

STEIN G/H UNITS		STEIN HOUSE SUPERVISOR	
DAY SHIFT 7AM-7:30PM		NIGHT 7PM-7:30AM	
NOTES	NURSE STAFF	NOTES	NURSE STAFF
	Carlos DeGuzman, PN II <i>G</i>		Reynaldo Go, PN II
DAY SHIFT 7AM-3:30PM		EVENING SHIFT 3PM-11:30PM	
	Sulekha Polaki, PN II <i>H</i>	OT 330P-1130P	Sulekha Polaki, PN II (DBL)
DAY SHIFT 7AM-3:30PM		EVENING SHIFT 3PM-11:30PM	
NOTES	MHT STAFF	NOTES	MHT STAFF
OT 7A-3P	Cynthia Gad, MHC II <i>G</i>		Pelumi Akinpelu, MHT
			Daniel Demissie, C.N.A.
FS STAFF		FS STAFF	
ADM	Brian Michaelson, PFS I	POST ACADEMY	Igor Dobsonovic, FS I
	Josue Benic, PFS I <i>H</i>	POST ACADEMY	John Joseph Rivera, FS I
	Chad Lombardo, FS I <i>H</i>		John McKay, PFS III
	Charles Rocha, PFS IV <i>H</i>		
OT 7A-330P	DeWayne Lyons, PFS I (DBL) <i>G</i>		
TRANSPORT/COBRA		TRANSPORT/COBRA	
FLEX/EXTRA		FLEX/EXTRA	

STEIN STAFFING:
 Jessica A., Michelle V., Vanessa P. 530A-4P
 (702) 486-6463 OR (702) 486-5809
 STEIN HOUSE SUPERVISOR: 4P-530A
 (702) 624-3308
 7am Census: 13M, 1CB, 1:1, 1M, Q5, 2M
 3pm Census: 1CB, 1:1, Q5
 11pm Census: 1CB, 1:1, Q5

Included 10-13-18 @ 10:07 AM
Iv mate
Ryan Ratliff
33 65 44
This is how I O # at Stein

00148

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ROCHA

Appellant,

v.

THE STATE OF NEVADA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH,

Respondent.

Case No.: 82485

District Court Case No.: A-19-804209-J

JOINT APPENDIX

VOLUME I of II

Part 4 of 4

Appeal from the Eighth Judicial District Court
Case. No. A-19-804209-J

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536: FAX (702) 386-6812
office@danielmarks.net
Attorneys for Petitioner Charles Rocha

AARON D. FORD, ESQ., Attorney General
SUSANNE M. SLIWA, ESQ.,
Deputy Attorney General
Nevada State Bar No. 4753
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT
OF HEALTH AND HUMAN SERVICES
555 E. Washington Ave., #3900
Las Vegas, Nevada 89101
ssliwa@ag.nv.gov
Attorneys for Respondent

///

	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
1.	Register of Actions	I	ROCHA000001- ROCHA000002
2.	Petition for Judicial Review 10/23/2019	I	ROCHA000004- ROCHA000007
2A.	Petitioner's Motion to Stay	I	ROCHA000007A- ROCHA00007K
3.	Statement of Intent to Participate 11/11/2019	I	ROCHA000008- ROCHA000009
4.	Transmittal of Record on Appeal 02/04/2020	I-II	ROCHA000010- ROCHA000281
5.	Petitioner's Opening Brief 03/09/2020	II	ROCHA000282- ROCHA000292
6.	Respondent's Reply Memorandum of Points and Authorities 04/13/20	II	ROCHA000293- ROCHA000310
7.	Petitioner's Reply Brief 05/07/2020	II	ROCHA000311- ROCHA000318
8.	Findings of Facts, Conclusions of law, Decision and Order on Petition for Judicial Review 07/01/2020	II	ROCHA000319- ROCHA000320
9.	/Notice of Entry of Order 07/20/2020 /	II	ROCHA000321- ROCHA000325
10.	Substitution of Attorney 02/11/2021	II	ROCHA000326- ROCHA000328

	<u>Description</u>	<u>Vol(s)</u>	<u>Pg(s)</u>
11.	Respondent Charles Rocha's Supplement to the Record Following Remand from District Court 02/11/2021	II	ROCHA000329-ROCHA000354
12.	Notice of Appeal 02/11/2021	II	ROCHA000355-ROCH000362

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 17th day of August 2021, I did serve the above and forgoing JOINT APPENDIX Volume I of II (Part 4 of 4) by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, upon the Respondents at the following:

AARON D. FORD, ESQ., Attorney General
SUSANNE M. SLIWA, ESQ., Deputy Attorney General
Nevada State Bar No. 4753
OFFICE OF THE ATTORNEY GENERAL DEPARTMENT
OF HEALTH AND HUMAN SERVICES
555 E. Washington Ave., #3900
Las Vegas, Nevada 89101
ssliwa@ag.nv.gov
Attorneys for Respondent

/s/Joi E. Harper

An employee of the
LAW OFFICE OF DANIEL MARKS

Employee EXHIBIT # B

8/12/2019

<https://ivjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12598835>[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New Criminal Search](#) [Petition Search](#) [Back](#)[Location: Justice Court](#) [Help](#)**REGISTER OF ACTIONS**
CASE NO. 18F11290X

State of Nevada vs. RATLIFF, RYAN

Case Type: Felony
Date Filed: 08/21/2018
Location: JC Department 10

PARTY INFORMATION			
Defendant	RATLIFF, RYAN	Lead Attorneys Robert L. Langford Retained 7024716565(W)	
State of Nevada	State of Nevada		
CHARGE INFORMATION			
Charges: RATLIFF, RYAN	Statute	Level	Date
1. Alt murder, e/dw [50031]	200.010	Felony	05/18/2018
2. Battery w/DW [50223]	200.481.2a1	Felony	06/18/2018
EVENTS & ORDERS OF THE COURT			
08/02/2018	DISPOSITIONS Disposition (Judicial Officer: Pro Tempore, Judge) 1. Alt murder, e/dw [50031] Competency Bindover 2. Battery w/DW [50223] Competency Bindover		
06/19/2018	OTHER EVENTS AND HEARINGS Bail Set - No Bail Ct1: \$0 Cash/\$0 Surety Set in Court		
06/19/2018	CTRACK Track Assignment JC10		
06/19/2018	CTRACK Case Modified Jurisdiction/DA:		
06/19/2018	Nevada Risk Assessment Tool		
06/19/2018	Not Released NPR		
06/20/2018	Initial Appearance Justice Court (PC Review) (9:00 AM) (Judicial Officer Toblissan, Melanie A.) Result: Signing Completed		
06/20/2018	Probable Cause Review Packet - Initial Appearance Court		
06/20/2018	Minute Order - Department 10		
06/20/2018	Probable Cause Found		
06/20/2018	Bail Reset - Cash or Surety Counts: 001: 002 - \$250,000.00/\$250,000.00 Total Bail		
06/20/2018	Release Order - Court Ordered Bail AND House Arrest Counts: 001; 002		
06/20/2018	Current Charges are not a Disqualifier For House Arrest Placement		
06/21/2018	Initial Appearance (9:00 AM) (Judicial Officers Pro Tempore, Judge, Jansen, William D.) In Custody Result: Matter Heard Criminal Complaint Filed in Open Court		
06/21/2018	Initial Appearance Completed Advised of Charges on Criminal Complaint. Waives Reading of Criminal Complaint		
06/21/2018	Public Defender Appointed		
06/21/2018	Bail Stands - Cash or Surety Counts: 001; 002 - \$250,000.00/\$250,000.00 Total Bail		
06/21/2018	Release Order - Court Ordered Bail AND House Arrest Counts: 001; 002		
06/21/2018	Current Charges are not a Disqualifier For House Arrest Placement		
06/21/2018	Minute Order - Department 10		
06/21/2018	Comment *** Case Recalled After Defendant left the courtroom per R. Langford Request ***		
06/21/2018	Counsel Substitutes In as Attorney of Record R. Langford, Esq		
06/21/2018	Court Continuance Matter continued per R. Langford, Esq. request to file motion to address custody status.		
06/27/2018	Status Check (9:00 AM) (Judicial Officers Pro Tempore, Judge, Jansen, William D.) In custody Result: Matter Heard Minute Order - Department 10		
06/27/2018	Bail Stands - Cash or Surety Counts: 001: 002 - \$250,000.00/\$250,000.00 Total Bail		
06/27/2018	Release Order - Court Ordered Bail AND House Arrest Counts: 001; 002		
06/27/2018	Current Charges are not a Disqualifier For House Arrest Placement		
07/03/2018	Ex Parte Motion and order for release of certified medical records.		
07/03/2018	Ex Parte Motion and order for release of medical records.		
07/03/2018	Ex Parte Motion and order for release of certified medical records.		
07/05/2018	CANCELED Preliminary Hearing (9:30 AM) (Judicial Officer Toblissan, Melanie A.) Vacated - per Judge In custody		
07/11/2018	Preliminary Hearing (9:30 AM) (Judicial Officer Toblissan, Melanie A.) In Custody Result: Matter Continued Minute Order - Department 10		
07/11/2018	Bail Stands - Cash or Surety Counts: 001: 002 - \$250,000.00/\$250,000.00 Total Bail		
07/11/2018	Release Order - Court Ordered Bail AND House Arrest Counts: 001: 002		
07/11/2018	Current Charges are not a Disqualifier For House Arrest Placement		
07/11/2018	Preliminary Hearing Date Reset		
08/02/2018	Preliminary Hearing (9:30 AM) (Judicial Officers Pro Tempore, Judge, Jansen, William D.) In Custody Result: Matter Heard Minute Order - Department 10		
08/02/2018	Competency Bind Over to District Court Defendant conditionally bound over to District Court, re: Competency. Defendant to appear in District Court Department 9.		
08/02/2018	Competency Court Date Set Aug 24 2018 9:00AM: In Custody		
08/02/2018	Bail Stands - Cash or Surety Counts: 001: 002 - \$250,000.00/\$250,000.00 Total Bail		
08/02/2018	Release Order - Court Ordered Bail AND House Arrest Counts: 001; 002		
08/02/2018	Request for Evaluation for Competency Request and Order filed in open Court		

ROCHA000008

ROCHA000008
00150<https://ivjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12598835>1/2
ROCHA000161

8/12/2019

<https://vicpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12598835>

08/02/2018 | Additional Information for Evaluating Doctor
Page two of Request and Order for Competency.

Employee EXHIBIT # C

00152

ROCHA000163

Steven B. Wolfson

1 OCNRS
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Assistant District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 RYAN RATLIFF, aka,
13 Ryan James Ratliff #8344011

14 Defendant.

CASE NO: C-18-333919-1

DEPT NO: IX

15 ORDER OF COMMITMENT

16 THIS MATTER came before the Court on the 24th day of August, 2018, when doubt
17 arose as to competence of the Defendant, the Defendant being present with counsel, ROBERT
18 L. LANGFORD, ESQ., the State being represented by STEVEN B. WOLFSON, District
19 Attorney, through GLEN O'BRIEN, his Deputy, and the Court having considered the reports
20 of Doctors C. Phillip Colosimo and Sunshine Collins, licensed and practicing psychologists
21 and/or psychiatrists in the State of Nevada, finds the Defendant incompetent, and that he is
22 dangerous to himself and to society and that commitment is required for a determination of his
23 ability to receive treatment to competency and to attain competence, and good cause appearing,
24 it is hereby

25 ORDERED that, pursuant to NRS 178.425(1), the Sheriff and/or a designee(s) of the
26 Division of Public and Behavioral Health of the Department of Health and Human Services,
27 shall convey the Defendant forthwith, together with a copy of the complaint, the commitment
28 and the physicians' certificate, if any, into the custody of the Administrator of the Division of

1 Public and Behavioral Health of the Department of Health and Human Services or his or her
2 designee for detention and treatment at a secure facility operated by that Division; and, it is

3 FURTHER ORDERED that, pursuant to NRS 433A.165, before the defendant may be
4 transported to a public or private mental health facility he must:

5 1. First be examined by a licensed physician or physician assistant or an
6 advanced practitioner of nursing to determine whether the person has a medical problem, other
7 than a psychiatric problem, which requires immediate treatment; and

8 2. If such treatment is required, be admitted to a hospital for the appropriate
9 medical care; and, it is

10 FURTHER ORDERED that the Defendant is required to submit to said medical
11 examination which may include, but is not limited to, chest x-rays and blood work; and, it is

12 FURTHER ORDERED that the cost of the examination must be paid by Clark County,
13 unless the cost is voluntarily paid by the Defendant or on his behalf, by his insurer or by a state
14 or federal program of medical assistance; and, it is

15 FURTHER ORDERED that, pursuant to NRS 178.425(2), the Defendant must be held
16 in such custody until a court orders his release or until he is returned for trial or judgment as
17 provided in NRS 178.450, 178.455 and 178.460; and, it is

18 FURTHER ORDERED that, pursuant to NRS 178.425(4), these proceedings against
19 the Defendant are suspended until the Administrator or his or her designee finds him capable
20 of standing trial as provided in NRS 178.400; and, it is

21 FURTHER ORDERED that, pursuant to NRS 178.435, the expenses of the examination
22 and of the transportation of the Defendant to and from the custody of the Administrator of the
23 Division of Public and Behavioral Health of the Department of Health and Human Services or
24 his or her designee are chargeable to Clark County; and, it is

25 FURTHER ORDERED that the Administrator of the Division of Public and Behavioral
26 Health of the Department of Health and Human Services or his or her designee shall keep the
27 Defendant under observation and evaluated periodically; and, it is

28 //

11 FURTHER ORDERED that the Administrator or his or her designee shall report in
12 writing to this Court and the Clark County District Attorney whether, in his opinion, upon
13 medical consultation, the Defendant is of sufficient mentality to be able to understand the
14 nature of the criminal charge against him and, by reason thereof, is able to aid and assist his
15 counsel in the defense interposed upon the trial or against the pronouncement of the judgment
16 thereafter. The administrator or his or her designee shall submit such a report within 6 months
17 after this order and at 6 month intervals thereafter. If the opinion of the Administrator or his
18 or her designee about the Defendant is that he is not of sufficient mentality to understand the
19 nature of the charge against him and assist his own defense, the Administrator or his or her
20 designee shall also include in the report his opinion whether

21 1. There is a substantial probability that the Defendant can receive treatment
22 to competency and will attain competency to stand trial or receive pronouncement of judgment
23 in the foreseeable future; and

24 2. The Defendant is at that time a danger to himself or to society.

25 DATED this 24th day of August 2018.

26
27
28
DISTRICT JUDGE

STEVEN B. WOLFSON
District Attorney
Nevada Bar #001565

BY

CHRISTOPHER J. LALLI
Assistant District Attorney
Nevada Bar #005398

mc

Employee EXHIBIT # B

8/12/2019

<https://ivjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12598835>[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New Criminal Search](#) [Petition Search](#) [Back](#)[Location: Justice Court](#) [Help](#)**REGISTER OF ACTIONS**
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State of Nevada vs. RATLIFF, RYAN

Case Type: Felony
Date Filed: 08/21/2018
Location: JC Department 10

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Defendant	RATLIFF, RYAN	Lead Attorneys Robert L. Langford Retained 7024716565(W)	
State of Nevada	State of Nevada		
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Charges: RATLIFF, RYAN	Statute	Level	Date
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08/02/2018	Competency Bind Over to District Court Defendant conditionally bound over to District Court, re: Competency. Defendant to appear in District Court Department 9.		
08/02/2018	Competency Court Date Set Aug 24 2018 9:00AM: In Custody		
08/02/2018	Bail Stands - Cash or Surety Counts: 001: 002 - \$250,000.00/\$250,000.00 Total Bail		
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ROCHA000008

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00150<https://ivjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12598835>1/2
ROCHA000161

8/12/2019

<https://vicpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=12598835>

08/02/2018 | Additional Information for Evaluating Doctor
Page two of Request and Order for Competency.

Employee EXHIBIT # C

00152

ROCHA000163

Steven B. Wolfson

1 OCNRS
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Assistant District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 RYAN RATLIFF, aka,
13 Ryan James Ratliff #8344011

14 Defendant.

CASE NO: C-18-333919-1

DEPT NO: IX

15 ORDER OF COMMITMENT

16 THIS MATTER came before the Court on the 24th day of August, 2018, when doubt
17 arose as to competence of the Defendant, the Defendant being present with counsel, ROBERT
18 L. LANGFORD, ESQ., the State being represented by STEVEN B. WOLFSON, District
19 Attorney, through GLEN O'BRIEN, his Deputy, and the Court having considered the reports
20 of Doctors C. Phillip Colosimo and Sunshine Collins, licensed and practicing psychologists
21 and/or psychiatrists in the State of Nevada, finds the Defendant incompetent, and that he is
22 dangerous to himself and to society and that commitment is required for a determination of his
23 ability to receive treatment to competency and to attain competence, and good cause appearing,
24 it is hereby

25 ORDERED that, pursuant to NRS 178.425(1), the Sheriff and/or a designee(s) of the
26 Division of Public and Behavioral Health of the Department of Health and Human Services,
27 shall convey the Defendant forthwith, together with a copy of the complaint, the commitment
28 and the physicians' certificate, if any, into the custody of the Administrator of the Division of

1 Public and Behavioral Health of the Department of Health and Human Services or his or her
2 designee for detention and treatment at a secure facility operated by that Division; and, it is

3 FURTHER ORDERED that, pursuant to NRS 433A.165, before the defendant may be
4 transported to a public or private mental health facility he must:

5 1. First be examined by a licensed physician or physician assistant or an
6 advanced practitioner of nursing to determine whether the person has a medical problem, other
7 than a psychiatric problem, which requires immediate treatment; and

8 2. If such treatment is required, be admitted to a hospital for the appropriate
9 medical care; and, it is

10 FURTHER ORDERED that the Defendant is required to submit to said medical
11 examination which may include, but is not limited to, chest x-rays and blood work; and, it is

12 FURTHER ORDERED that the cost of the examination must be paid by Clark County,
13 unless the cost is voluntarily paid by the Defendant or on his behalf, by his insurer or by a state
14 or federal program of medical assistance; and, it is

15 FURTHER ORDERED that, pursuant to NRS 178.425(2), the Defendant must be held
16 in such custody until a court orders his release or until he is returned for trial or judgment as
17 provided in NRS 178.450, 178.455 and 178.460; and, it is

18 FURTHER ORDERED that, pursuant to NRS 178.425(4), these proceedings against
19 the Defendant are suspended until the Administrator or his or her designee finds him capable
20 of standing trial as provided in NRS 178.400; and, it is

21 FURTHER ORDERED that, pursuant to NRS 178.435, the expenses of the examination
22 and of the transportation of the Defendant to and from the custody of the Administrator of the
23 Division of Public and Behavioral Health of the Department of Health and Human Services or
24 his or her designee are chargeable to Clark County; and, it is

25 FURTHER ORDERED that the Administrator of the Division of Public and Behavioral
26 Health of the Department of Health and Human Services or his or her designee shall keep the
27 Defendant under observation and evaluated periodically; and, it is

28 //

11 FURTHER ORDERED that the Administrator or his or her designee shall report in
12 writing to this Court and the Clark County District Attorney whether, in his opinion, upon
13 medical consultation, the Defendant is of sufficient mentality to be able to understand the
14 nature of the criminal charge against him and, by reason thereof, is able to aid and assist his
15 counsel in the defense interposed upon the trial or against the pronouncement of the judgment
16 thereafter. The administrator or his or her designee shall submit such a report within 6 months
17 after this order and at 6 month intervals thereafter. If the opinion of the Administrator or his
18 or her designee about the Defendant is that he is not of sufficient mentality to understand the
19 nature of the charge against him and assist his own defense, the Administrator or his or her
20 designee shall also include in the report his opinion whether

21 1. There is a substantial probability that the Defendant can receive treatment
22 to competency and will attain competency to stand trial or receive pronouncement of judgment
23 in the foreseeable future; and

24 2. The Defendant is at that time a danger to himself or to society.

25 DATED this 24th day of August 2018.

26
27
28
DISTRICT JUDGE

STEVEN B. WOLFSON
District Attorney
Nevada Bar #001565

BY

CHRISTOPHER J. LALLI
Assistant District Attorney
Nevada Bar #005398

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Employee 8
EXHIBIT D



1 **FIOR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar # 001565
5 CHRISTOPHER J. LALLI
6 Assistant District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 RYAN RATLIFF, aka,
13 Ryan James Ratliff #8344011

14 Defendant.

CASE NO: C-18-333919-1

DEPT NO: VII

15
16 **FINDINGS OF INCOMPETENCY AND
ORDER RECOMMITTING DEFENDANT**

17 WHEREAS, On August 24, 2018, pursuant to Order of the above-entitled Court, the
18 above-named Defendant, RYAN RATLIFF, aka, Ryan James Ratliff, was committed into the
19 custody of the Administrator of the Division of Public and Behavioral Health of the
20 Department of Health and Human Services or his or her designee to be examined at a secure
21 facility operated by the Division or his designee, and

22 WHEREAS, Defendant was examined pursuant to NRS 178.455 and the reports of that
23 examination having been forwarded to the Court for its review thereof; and the Court in a
24 hearing on March 22, 2019, having considered the reports of Doctors Rami Abukamil,
25 Mohammad Khan, and Vincent Brouwers, licensed and practicing physicians and/or
26 psychiatrists in the State of Nevada, the Court finds pursuant to NRS 178.460(4)(b) that the
27 said Defendant RYAN RATLIFF, aka, Ryan James Ratliff: 1) is incompetent to stand trial at
28 this time; 2) that there is substantial probability that Defendant will attain competency to stand

trial in the foreseeable future; and 3) the Court further finds that Defendant would constitute a possible danger to the safety of himself and/or society if released from custody at this time, and that the recommitment of Defendant is required for a further determination of his ability to attain competence.

WHEREFORE, the Court does hereby order pursuant to NRS 178.425 that the Defendant, RYAN RATLIFF, aka, Ryan James Ratliff, be readmitted into the custody of the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services or his or her designee for further evaluation, care and treatment and that said Defendant shall be, and he is hereby recommitted and remanded, together with a copy of this Order to the custody of the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services or his or her designee; and, it is

FURTHER ORDERED that the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services or his or her designee, shall, pursuant to the provisions and requirements of NRS 178.450, conduct periodic evaluations of Defendant to determine his future ability to attain competence and then report in writing to this Court, the Clark County District Attorney, and ROBERT L. LANGFORD whether, in his opinion, the defendant is of sufficient mentality to be able to assist his counsel in the defense interposed upon the trial; and, it is

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1 FURTHER ORDERED that said Defendant, RYAN RATLIFE, aka, Ryan James
2 Ratliff, is to be held in the custody of the Administrator of the Division of Public and
3 Behavioral Health of the Department of Health and Human Services or his or her designee,
4 until the Court orders his release or until he is returned for trial as provided in NRS 178.450
5 to 178.465, inclusive.

6 DATED this 22 day of March, 2019.

[Signature]
JUDGE

10 STEVEN B. WOLFSON
11 District Attorney
12 Nevada Bar #001565

13 BY

[Signature]
14 CHRISTOPHER J. LALE
15 Assistant District Attorney
16 Nevada Bar #005398

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BEFORE THE NEVADA STATE PERSONNEL COMMISSION
HEARING OFFICE

CHARLES ROCHA,

Petitioner,

vs.

STATE OF NEVADA, ex rel. its
DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Respondent.

Case No. 1914774-RZ

FILED

AUG 14 2019

APPEALS OFFICE

RESPONDENT-EMPLOYER'S PRE-HEARING STATEMENT

COMES NOW, the STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES, (hereinafter Employer) by and through its counsel, AARON D. FORD, Attorney General, and SUSANNE M. SLIWA, Senior Deputy Attorney General and submits this Pre-Hearing Statement.

I. STATEMENT OF THE CASE

Charles Rocha was employed with Southern Nevada Adult Mental Health Services from November 22, 2015 until the effective date of his dismissal on March 22, 2019. At the time of his termination he was employed as a Forensic Specialist (technician) IV and was working at Southern Nevada Adult Mental Health Services' Stein Hospital.

SNAMHS is a State Agency that provides both inpatient and outpatient services for persons with mental illness. Stein Hospital is a forensic facility that provides treatment to competency for criminal defendants. Forensic Specialists are Category III Peace Officers pursuant to NRS 289.240. Mr. Rocha was terminated for client abuse.

II. STATEMENT OF FACTS

The Employee was presented with a Specificity of Charges (NPD-41) for his termination on March 7, 2019. See Exhibit 1, attached hereto. A pre-disciplinary hearing was held on March 18, 2019. The

1 Employer upheld the termination. The Employee was notified of this in a letter dated March 19, 2019.
2 See Exhibit 2.

3 The Employee was promoted to the position of Forensic Specialist IV on September 11, 2017. This
4 was a supervisory position and the Employee was expected to set a positive example for other staff.

5 The Employee was terminated as the result of an altercation with a client that occurred on October
6 13, 2018. The details of the incident are documented in the NPD-41. The client in question had been
7 ordered to Stein Hospital for treatment to competency and had been diagnosed with a psychiatric illness.
8 The client had been ordered to Stein Hospital specifically for treatment, not punishment. Stein Hospital
9 is a psychiatric facility. It is neither a penal nor a detention facility.

10 On October 13, 2018, a client came out of his room and began punching a post in Stein Hospital's
11 Day Room on the H Unit. The Employee approached the client to determine if he needed assistance and
12 the punched the employee on the left side of his face. Immediately, other forensic staff responded. When
13 the responding staff attempted to separate the client and the Employee, everyone involved fell to the
14 floor. During this altercation, the client sustained injuries to his left eyebrow, the third finger on his right
15 hand and his left ear and required further medical treatment.

16 The video of the above described incident was reviewed by Sergeant Christopher Vasquez of
17 Stein Hospital. Sergeant Vasquez reported that the footage showed the Employee striking the client twice
18 after the client had been subdued on the floor. The client was not struggling or fighting staff at that point.
19 Based on that reporting, the matter was the subject of an internal investigation by the Division of Public
20 and Behavioral Health (DPBH). The investigators reviewed the incident footage and interviewed the
21 staff involved. During that investigation the Employee told the investigators that, while on the floor with
22 the client, he swung at and hit the client "maybe once or twice." The investigators substantiated the
23 allegations of client abuse and policy and procedure violations against the Employee and submitted their
24 report on February 7, 2019. See Exhibit 3, attached hereto.

25
26 **III. STATEMENT OF ADMITTED OR UNDISPUTED FACTS**

27 Upon information and belief, the following facts are admitted or undisputed by the parties: None
28 at this time.

IV. MEMORANDUM OF POINTS AND AUTHORITIES

Although the Employee was a Category III Peace Officer pursuant to 289.240, this is not a "use of force" case. It is not a self defense case. This is a case of client abuse.

Even if this were a use of force case, the Employee's actions were not reasonable. The incident video shows that the client was on the floor and was not struggling when the employee hit him. Other staff were involved and had subdued the client. Hitting the client was excessive and constituted abuse.

NRS Chapter 284 addresses the State Personnel System. NRS 284.020(2) states that Chapter 284 does not limit the authority of elective officers and heads of departments to conduct and manage the affairs of their departments as they see fit. NRS 284.385 permits an employer to dismiss or demote an employee when "[it] considers that the good of the public service will be served thereby." In this case the Employee struck a client. That action was excessive and unnecessary. Such actions constitute client abuse and cannot be tolerated by the Employer.

The authority granted to the Hearing Officer is to determine the reasonableness of the disciplinary action taken against an employee and to determine whether the agency had just cause for the discipline "as provided in NRS 284.385." See also NRS 284.390(1) and (6).

NAC 284.650 sets forth causes for which disciplinary action can be taken against a person legally holding a position in the public service. NAC 284.646(1) sets forth the basis for dismissing a person legally holding a position in the public service stating in part:

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

- (a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of any employee for such a cause; or
- (b) The seriousness of the offense or condition warrants such a dismissal.

In the NPD-41, Charles Rocha was charged with the following causes set forth in NRS 284.650:

NAC 284.650. Causes for disciplinary action:

- 1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
- 7. Inexcusable neglect of duty.
- 19. Violation of any safety rule adopted or enforced by the employee's appointing authority.

21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.

The Employee struck a client during an altercation. At the time he was struck, the client did not pose any threat to the Employee. At that point the client had been subdued by several staff and was on the ground. He was not fighting or struggling. See Exhibit 3. The Employee's actions were unsafe and violent.

The Employee violated the following Department of Health and Human Services Prohibitions and Penalties (hereinafter P&Ps). See Exhibit 4, attached hereto.

B. PERFORMANCE ON THE JOB

3. Failure of employee to maintain performance standards after reasonable period of instruction.
7. Endangering self, fellow employees, clients or public through careless or willful violation of agency policy as contained in performance standards, procedures and various federal and state laws, regulations and guidelines.
22. Deliberate failure to enforce or comply with laws and/or agency policies and regulations that directly relate to the employee's work activity.

C. NEGLECT OF, OR INEXCUSABLE ABSENCE FROM THE JOB

1. Negligence in performing official duties including failure to follow instructions or regulations.

D. RELATIONS WITH CLIENTS

1. Willfully abridging or denying the rights of a client as specified in NRS or agency policy.
8. Any willful or reckless act of aggression directed towards a client, including, but not limited to, sexual exploitation of a client, grabbing, pushing, tripping, hitting or striking a client in any manner; or willful misuse of physical or chemical restraints not in accordance with an approved treatment plan or in violation of state or federal law.
9. Any act or omission to act which causes mental or physical injury to a client or which places the client at risk of injury, including but not limited to the failure to: establish or carry out an appropriate plan of treatment for the client; provide the client required health care; provide a safe environment.

Many of the cited P&Ps allow for termination on a first offense. Specifically, B7, B22, D1, D8 and D9 all authorize termination on a first offense. In fact, the violation of D8 mandates termination. It is without question that the Employee violated all of the above P&Ps, including D8.

///

The Employee also violated the provisions of NRS Chapter 433.484(2) which states:

NRS 433.484 Rights concerning care, treatment and training. Each consumer admitted for evaluation, treatment or training to a facility has the following rights concerning care, treatment and training, a list of which must be prominently posted in all facilities providing those services and must be otherwise brought to the attention of the consumer by such additional means as prescribed by regulation:

2. To be free from abuse, neglect and aversive intervention.

The Employee's actions on October 13, 2018 meet the definition of "Abuse of Consumer" found in NRS 433.554(5). That statute defines abuse as any willful and unjustified infliction of pain, injury or mental anguish upon a consumer. Striking a subdued client meets this definition.

The Employer has a strict policy against client abuse. This is DPBH Division Policy CCR-1.2 Prohibition of Abuse or Neglect of Consumers and Reporting Requirements. See Exhibit D to Exhibit 1. SNAMHS and Stein Hospital are part of DPBH. The Employee's actions expressly violated that policy which provides that any staff found to be abusive or negligent to a client shall be disciplined up to and including termination. As is stated above, the P&Ps violated by the Employee not only allowed but mandated his termination.

Additionally, the Employee violated SNAMHS Policy OF-LDR-20 Code of Ethics and Conduct. See Exhibit E to Exhibit 1. Stein Hospital is part of SNAMHS. That policy requires all staff members to conduct themselves with the highest level of ethics. Verbal or physical attacks leveled at clients, other staff or members of the public are unacceptable. See Section D of Exhibit E to Exhibit 1.

Nothing that happened on October 13, 2018 warranted the Employee's hitting the client. There was no appropriate "use of force" in that situation. The client was at Stein Hospital for psychiatric treatment and had already been subdued when the Employee hit him. The client was on the ground and was not struggling or fighting. Several other staff had responded to the altercation and had properly managed the situation. The Employee did not. He instead struck the client in an angry response to the client's actions. His termination is warranted and for the good of the public service.

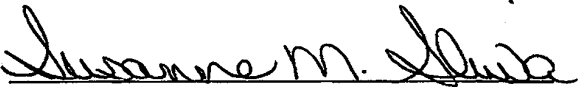
CONCLUSION

The substantial, reliable, and probative evidence will demonstrate that DHHS had just and legal cause to terminate Charles Rocha and that said termination was reasonable under the circumstances.

1 Based on the foregoing, DHHS respectfully requests that its decision to terminate Charles Rocha be
2 upheld.

3 RESPECTFULLY SUBMITTED this 13th day of August, 2019.

4 AARON D. FORD
5 Attorney General
6 State of Nevada

7 By: 

8 Susanne M. Sliwa
9 Deputy Attorney General
10 Nevada Bar No.:4753
11 Susanne M. Sliwa
12 555 E. Washington Ave. #3900
13 Senior Deputy Attorney General
14 Nevada Bar No.:4753
15 Attorneys for Employer
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LIST OF WITNESSES

1. Jackie Arellano, Personnel Analyst, Southern Nevada Adult Mental Health Services
2. Christine Moebius, Southern Nevada Adult Mental Health Services
3. Linda Edwards, Investigator
4. Dolly Jones, Investigator
5. Stan Cornell, CPM III, Stein Hospital
6. Sgt. Christopher Vasquez, Stein Hospital
7. Drew Cross, Lakes Crossing Center
8. Dr. Elizabeth Neighbors, DPBH
9. Charles Rocha, Petitioner/Employee
10. Any and all witnesses named by Employee
11. Rebuttal witnesses as necessary

LIST OF EXHIBITS

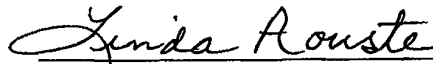
1. Specificity of Charges and its exhibits
2. Letter to Employee from DPBH
3. Investigation report and its exhibits
4. Video of Incident
5. Any and all documents produced or used by the Employee.
6. Rebuttal documents as necessary.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2019, a true and correct copy of the foregoing Pre-Hearing Statement was emailed to the following, with a hard copy following by delivery on August 14, 2019:

Angela L. Lizada, Esq.
Lizada Law Firm, Ltd.
800 N. Rainbow Blvd., Ste. 202
Las Vegas, NV 89107
angela@lizardalawfirm.com

Robert Zentz, Esq.
Hearing Officer
C/O Zoe McGough
2200 S. Rancho Drive
Las Vegas, NV 89102
zmcgough@admin.nv.gov



An Employee of the Attorney General's Office

EXHIBIT 1

Employer EXHIBIT # 1

STATE OF NEVADA
SPECIFICITY OF CHARGES

Name: Charles Rocha

Employee ID# 048299

Budget Account 3161

Current Class: Forensic Specialist IV

Grade: 34 Step, 10

Supervisor: Christopher Vasquez

Department: DHHS

Division: DPBH Section, SNAMHS

Date: 3/7/19 Time: 3:00pm

This is to inform you that you are alleged to have violated section 284.650 of the Nevada Administrative Code, as follows.

Date(s)	Violation(s)
See attached	See attached

A recommendation has been made by: Christopher Vasquez

Name

Correctional Lieutenant

Title

that it is in the best interest of the State of Nevada to take the following disciplinary action(s):

Termination

Proposed/Actual Effective Date.

3/22/19

[Signature]
Signature (Person recommending action)

☒ In accordance with NAC 284.656, a hearing has been scheduled on your behalf to determine whether such action is warranted following the hearing and prior to the proposed effective date, you will be given a copy of the finding(s) and recommendation(s), if any, resulting from the hearing and be informed in writing of the appointing authority's decision regarding the recommended action(s).

☐ In accordance with paragraph 2(b) of NAC 284.6563, the effective date of your discipline is immediate as noted above. A hearing in accordance with NAC 284.656 will follow as soon as practicable after the effective date of your discipline.

Note: If you wish to appeal your discipline, please be aware that pursuant to NRS 284.390, an appeal is deemed timely if it is postmarked within 10 working days after the effective date of the disciplinary action.

The hearing will be conducted by:

Ellen Richardson-Adams, Outpatient Administrator

at 9:00am

on 3/18/19

Name

Title

Time

Date

At 1321 S Jones Blvd., Las Vegas, NV 89146 - SNAMHS Human Resources Conference Room

Location (Include complete address)

Pursuant to NAC 284.656, the hearing process is an informal proceeding between you and the appointing authority or his or her designated representative. Witnesses are not permitted. Each party may be accompanied by a person of his or her choice. Please refer to NAC 284.656 or direct questions concerning this notice and hearing to the appointing authority, personnel officer, or other agency personnel familiar with the procedure. (For information regarding the hearing and your right to waive the hearing, you should refer to NAC 284.6561.)

[Signature]
Signature of Appointing Authority or Designated Representative

Signature of Employee: I understand that by acknowledging receipt of this Specificity of Charges, I am neither admitting guilt nor giving up any appeal rights I may have under NRS 284.390.

[Signature]
Employee's Signature

Date 3-7-19

Time 3:00

Witness' Signature (Required if employee refuses to sign)

[Signature]
Signature and Title (Person serving this notice)

HR Staff professional
Trainee

Copy: Division of Human Resource Management - Central Records Service Jacket; Department; Appointing Authority; Employee.

NPD-41 (Rev 7/14)

00169

ROCHA000180

Division of Public and Behavioral Health records and information on clients in its care are confidential; therefore, the names of all clients referenced in this personnel matter are withheld and will also be redacted from any exhibits and attachments.

Mr. Rocha, you have been employed by the State of Nevada, Division of Public and Behavioral Health (DPBH) since November 2, 2015 with Southern Nevada Adult Mental Health Services (SNAMHS). You promoted to your current position as a Forensic Specialist IV on September 11, 2017. Your duties and responsibilities are identified by Work Performance Standards (Exhibit A); Agency and Division policies; Nevada statutes and regulations; and Federal and State laws.

As a Forensic Specialist IV, you are essential to ensuring the agency meets its mission to protect, promote and improve the physical and behavioral health of the clients we serve. You are responsible for providing direct clinical care and services which involves but is not limited to: assisting clients with eating, bathing, shaving, oral hygiene, dressing, grooming, and other basic activities of daily living; facilitate/run groups, enforce use of Token Economy Program to reward observed positive client behavior; attend Treatment Team meetings to observe participation and provide feedback; meet with assigned clients weekly to assist with phone calls, walks, recreation, group referrals, and legal status. In addition, you supervise subordinate staff, and ensure safety of staff and clients by following DPBH policies and SNAMHS protocols.

On October 16, 2018, you were reassigned away from patient care due to an allegation of abuse. On November 2, 2018, you were provided with a Garrity Warning and an Employee Rights During an Internal Investigation (NPD-32) notifying you that you were the subject of an internal administrative investigation relevant to allegations of patient mistreatment and/or abuse, patient endangerment, and failure to follow policies and procedures. (Exhibit B).

Investigators met with you on January 15, 2019, to provide you the opportunity to respond to questions regarding these allegations and events. Upon completion of the investigation, the following facts and findings were substantiated through review of documents, written correspondence, and interview testimony:

Substantiated you engaged in patient mistreatment and/or abuse, patient endangerment and failed to follow policies and procedures.

On October 13, 2018, you reported to work for your regular scheduled day shift of 7:00am – 3:30pm (Exhibit C). Patient #336544 came out of his room and started punching the post in the Day Room in the Stein H-unit. You asked the patient if he was okay and if he needed anything. The patient yelled out, "I'm going to kill you!", and punched you on the left side of your face. Other forensic staff immediately responded, and when they attempted to pull the patient off you, everyone fell to the floor. The patient was pinned to the floor, then moved to the restraint chair. During this altercation, the patient sustained injuries to his left eye brow, right third (3rd) finger, and left ear that required further medical treatment at the UMC Hospital Emergency room. You went to Concentra Urgent Care to rule out facial injuries.

Your testimony to investigators was that the patient locked his leg around you and you both fell to the floor with the patient facing you and trying to hit and spit on you. You stated your right arm was sandwiched so you could not get it free. You admitted that while you were on the floor, you swung at the patient and hit the patient maybe once or twice with your left hand because you feared for your life.

Sergeant Christopher Vasquez reviewed the Incident Report and viewed the video footage. Sergeant Vasquez reported that the video footage showed you striking the patient two (2) times in an excessive manner while the patient was on the floor. The video footage of this incident was reviewed by the investigators multiple times. It was noted that while the patient was being held to the floor, he was not

struggling or trying to fight back. It was very clear in the video that you used excessive force and hit the patient two (2) times with a closed fist after the patient was on the floor and was being held by other forensic staff. You hitting the patient was not in self-defense or to gain control of the situation, rather for retaliation and/or punishment.

Your actions as described above are in violation of the following Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC), Department of Health and Human Services Division of Public and Behavioral Health Prohibitions and Penalties, and Division, and SNAMHS policies and procedures:

NAC 284.646, "Dismissals," (1), states:

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:
 - a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause, or
 - (b) The seriousness of the offense or condition warrants such dismissal

NAC 284.650, "Causes for Disciplinary Action" Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's condition of employment established by law or which violates provision of NAC 284.653 or NAC 284.738 to 284.771, inclusive.
7. Inexcusable neglect of duty.
19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.

Your actions also violated the conditions of your employment established by the **Department of Health and Human Services "Prohibitions and Penalties" adopted by the Personnel Commission on April 27, 2001**

B. PERFORMANCE ON THE JOB

3. Failure of employee to maintain performance standards after a reasonable period of instruction.
7. Endangering self, fellow employees, clients or public through careless or willful violation of agency policy as contained in performance standards, procedures and various federal and state laws, regulations and guidelines.
22. Deliberate failure to enforce or comply with laws and/or agency policies and regulations that directly relate to employee's work activities.

C. NEGLIGENCE OF, OR INEXCUSABLE ABSENCE FROM THE JOB

1. Negligence in performing official duties including failure to follow instructions or regulations.

D. RELATIONS WITH CLIENTS

1. Willfully abridging or denying the rights of a client as specified in NRS or agency policy.
8. Any willful or reckless act of aggression directed towards a client, including, but not limited to, sexual exploitation of a client, grabbing, pushing, tripping, hitting or striking a client in any manner; or willful misuse of physical or chemical restraints not in accordance with an approved treatment plan or in violation of state or federal law.
9. Any act or omission to act which causes mental or physical injury to a client or which places the client at risk of injury, including but not limited to the failure to: establish or carry out an appropriate plan of treatment for the client; provide the client required health care; provide a safe environment

Your actions were also in violation of the following laws and regulations:

NRS 433.484 Rights concerning care, treatment and training. Each consumer admitted for evaluation, treatment or training to a facility has the following rights concerning care, treatment and training, a list of which must be prominently posted in all facilities providing those services and must be otherwise brought to the attention of the consumer by such additional means as prescribed by regulation:

2. To be free from abuse, neglect and aversive intervention.

NRS 433.554 Abuse of Consumer.

5. For the purposes of this section:

- (a) "Abuse" means any willful and unjustified infliction of pain, injury or mental anguish upon a consumer, including, but not limited to:
 - (2) The use of any type of aversive intervention,
 - (3) Except as otherwise provided in NRS 433.5486, a violation of NRS 433.549; and
 - (4) The use of physical, chemical or mechanical restraints or the use of seclusion in violation of federal law.
- (b) "Consumer" includes any person who seeks, on the person's own or others' initiative, and can benefit from, care, treatment and training in a public or private institution or facility offering mental health services, or from treatment to competency in a public or private institution or facility offering mental health services.
- (c) "Neglect" means any omission to act which causes injury to a consumer or which places the consumer at risk of injury, including, but not limited to, the failure to follow:
 - (1) An appropriate plan of treatment to which the consumer has consented; and
 - (2) The policies of the facility for the care and treatment of consumers.

Your actions were in violation of the following Division and Agency policies:

DPBH Division Policy CRR-1.2 Prohibition of Abuse or Neglect of Consumers and Reporting Requirements: (Exhibit D)

1.0 POLICY:

The Division of Public and Behavioral Health (DPBH) expressly prohibits the abuse or neglect of any person receiving services. It is the policy of DPBH that DPBH agency and contract staff will receive training about abuse and neglect of consumers that will focus on abuse and neglect prevention, identification, and reporting requirements. This policy also requires that immediate steps shall be taken to ensure that consumers are protected.

Any DPBH staff or contract staff found to be abusive or negligent of a consumer shall be disciplined up to and including termination.

4.0 DEFINITIONS:

4.1 Abuse: is any willful and unjustified infliction of pain, injury or mental anguish upon a person served by a DPBH or contract staff. Abuse includes, but is not limited to:

4.1.2 Physical abuse: Examples of physical abuse include but are not limited to: any act that causes physical pain or injury to the consumer, hitting, slapping, bruising, kicking, hair pulling, shoving, pinching, cutting, burning, or the use of arm bars or other holds to inflict pain. An allegation of physical abuse may be substantiated without an observable injury.

4.1.5 Excessive force: The use of excessive force when placing a consumer in physical restraints or in seclusion.

5.0 PROCEDURE:

5.1 The Division of DPBH strictly prohibits abuse and neglect.

Any act of abuse or neglect of a consumer by a DPBH or contract provider staff shall result in disciplinary action up to and including termination.

Should the investigation indicate that abuse, as defined in NRS 433.554 has occurred, the agency director shall recommend termination of the employee and shall review all pertinent agency policies, treatment procedures, and staff orientation practices to determine if they need to be revised to reduce the likelihood of recurrence of similar incidents

SNAMHS Policy OF-LDR-20 Code of Ethics and Conduct: (Exhibit E)

A. Ethical Conduct – All SNAMHS staff members are expected to conduct themselves and behave with professionalism, courtesy, integrity, and with the highest level of ethics. Expected ethical conduct includes, but is not limited to:

1. Cooperating with other staff members and treating all clients, customers, visitors, other state employees, and vendors in a courteous and considerate manner, with dignity and empathy.

5. Upholding and complying with all ethical and legal standards that apply to our agency, and professional standards.

9. Upholding and complying with all state and federal laws, DPBH, SNAMHS policies, and Joint Commission and Center for Medicaid Services standards.

14. Performing the duties and responsibilities of their position in such a manner as to avoid even the appearance of misconduct or impropriety.

D. Unacceptable Conduct and Behavior – Any activity, behavior or conduct that may inhibit or interfere with the stated purpose of providing the highest quality client care, in a safe work environment that fosters teamwork and respect for the dignity of each client, visitor, and staff member. Unacceptable conduct may include, but is not limited to behavior such as:

1. Attacks – verbal or physical – leveled at clients, families, visitors, or staff members, that are personal, irrelevant, or beyond the bounds of reasonable or fair professional conduct.

4. Any conduct or action that is hostile or may reasonably be perceived as hostile, directed toward clients, families, visitors, staff members, or the agency.

5. Inappropriate physical contact with another individual that is threatening or intimidating.

SNAMHS is responsible for providing adults in the southern Nevada community with mental health services. Any violation of policies or unsatisfactory performance by staff that places a client's safety in jeopardy is unacceptable. These actions can place the entire agency's mission at risk, as well as place the southern Nevada community we serve at risk. Any violation of laws, regulations or policies by staff is unacceptable. Throughout your tenure with SNAMHS you have received guidance and training (Exhibit F) related to the agency's policies, procedures and standard of care. As such based upon your willful actions, the infractions cited and the seriousness of these actions, it has been determined to be in the best interest of the State of Nevada to terminate your employment.

EXHIBITS

- A. Employee Work Performance Standards (NPD-14) (12/26/17)
- B. Notice of Employee Rights During an Internal Investigation (NPD-32) (11/2/18)
- C. Stein G/H Units Shift Schedule (10/13/18)
- D. DPBH Policy CRR 1.2 Prohibition of Abuse or Neglect of Consumers and Reporting Requirements
- E. SNAMHS Policy OF-LDR-20 Code of Ethics and Conduct
- F. Documented Trainings (11/2/15 – 1/16/19)



**DIVISION OF HUMAN RESOURCE
MANAGEMENT
EMPLOYEE WORK PERFORMANCE
STANDARDS FORM**

Supervisors are responsible for establishing the initial standards, but standards must be reviewed annually and amended when appropriate. The employee must be given the opportunity to provide comment when the standards are revised (NAC 284.468)

Employee Name:	Last	Rocha	First	Charles	Ini		Employee ID #	48299
Class Title:	Forensic Specialist IV						Date Standards Est/Rev:	11 December 2017
Department/Division:	DHHS / DPBH / SNAMHS							
Agency # (3 digits):	406		Home Org # (4 digits):	3161		Position Control #:	2629 Various	
I have read and understand the work performance standards for this position. I understand these standards may be modified after discussion with my immediate supervisor and with the concurrence of the appointing authority								
Employee Signature: <i>[Signature]</i>						Date: 12-26-2017		
Supervisor Title & Signature: <i>[Signature]</i>						Date: 12-18-2017		
Reviewing Officer Title & Signature: <i>[Signature]</i>						Date: 1/11/18		
Appointing Authority Title & Signature: <i>[Signature]</i>						Date: 1/11/18		
Job Elements (Defined as principal assignments, goals, responsibilities and/or related factors)						*Weighted Value	Performance Standards	
Job Element #1: Staff Supervision Supervision: Plans, organizes, supervises, and directs all assigned Forensic Specialist I, II, III. Ensures safety of staff and clients by performing these responsibilities within the guidelines of DPBH policies and SNAMHS protocols, State personnel regulations and Nevada Revised Statutes. Assigns staff to daily duties in a fair and consistent manner, i.e. control room, monitor board, transports, response team, intakes, recreational activities and client supervision WPS: Reviews WPS for all Forensic Specialist. Ensures all subordinate employees have current WPS and have proficient knowledge of all elements. RECEIVED JAN 08 2018 SNAMHS HUMAN RESOURCES Evaluations: Provides and prepares all evaluations on the Forensic Specialist and employees supervised by this position. Uses current WPS to complete evaluations. Submits evaluations 30 days prior to due date EXHIBIT A						10%	Above Standard: No missed assignments, all staff knowledgeable in all areas of assignment and participate in each assignment. Staff have no formal complaints about assignment patterns or equality. Standard: Staff are assigned daily, policies are followed and no missed assignments that lead to Above Standard: Without prompting or instruction reviews all classes of WPS and submits to Sergeant for review/approval. All employees on shift are current with WPS and have signed copies in records. Standard: All WPS are up to date and all assigned employees have a signed copy on file. When prompted reviews WPS and assists in development. Below Standard: Employees do not have current WPS on record, and does not participate in review of WPS. Above Standard: All evaluations for staff supervised are submitted to Sergeant or CPM III for review 30 days prior to due date. Remains up to date with evaluations and evaluations are to the satisfaction of management. Standard: Evaluations are completed on time, two exceptions in year.	

<p>Policies: Is knowledgeable of all SNAMHS Security policies and reviews them with subordinate staff regularly. Ensures subordinate employees are following policy in daily practice.</p> <p>Investigations: Conducts preliminary internal investigations, in the event of a breach of policy. Presents detailed information to Sergeant or Agency Director for further review within the timelines established in SNAMHS protocols and DPBH policies.</p> <p>Performance issues: Under guidance of the Correctional Lieutenant. Monitors and identifies employee performance issues. Addresses issues by providing coaching or mentoring, written instruction or memorandums, and presenting written oral warnings as necessary. Seeks guidance from administration in dealing with performance issues. Composes and presents progressive disciplinary actions as assigned. Handles all disciplinary actions in a fair and consistent manner. Demonstrates ability to remain neutral when handling adverse actions.</p> <p>Training: Provides for complete and effective SNAMHS orientation training for all new hires assigned. Assists new hires with completing all state, agency and Division orientation trainings. Ensures all documentation is submitted to personnel.</p> <p>Work environment: Promotes a positive work environment. Addresses issues as they arise. Listens to employee concerns. Able to assist employees with conflict resolution. Is familiar with resources available to employees i.e. grievance process, mediation, FMLA, EAP, etc.</p>		<p>Evaluations only require minor modifications by management. Below Standard: Evaluations are not on time, and more than 2 a year. Evaluations are incomplete and do not fully address employee performance or concerns.</p> <p>No Exceptions</p> <p>Above Standard: All preliminary investigations are done at time notification of incident occurs. Sergeant or Agency Director have all information required and do not seek additional information. Standard: All preliminary investigations completed on time. no exceptions, only minor additional information needed, or sought. Below Standard: Preliminary investigations are not completed within timelines. Information is not complete and accurate</p> <p>No Exceptions</p> <p>No Exceptions</p> <p>No Exceptions</p>
<p>Job Element #2: Security Supervision</p> <p>Security: While on duty maintains overall security and safety of the facility. Provides guidance to subordinate staff; responds to emergency situations; addresses issues promptly; identifies needs and corrective action; and recommends updates or changes to policies or procedures as necessary. Ensures security policies and procedures are followed.</p>	<p>10%</p>	<p>Above Standard: No safety or security violations that are within scope of control. Actively reviews all policy and recommends updates or changes as needed. Issues are addressed promptly and to the satisfaction of supervision. Standard: No safety or security violations that are within the scope of control. Review and participate in policy review and update. Responds to emergencies and addresses issues promptly.</p>

EXHIBIT A

<p>Incidents: Ensures all incident reports are completed and submitted prior to the end of the shift. Reviews all reports for accuracy and completeness. Addresses and documents issues identified as needed. Notifies appropriate discipline of incident as directed by policy. Completes other reports as assigned by the Sergeant or Agency Manager.</p> <p>Equipment: Ensures security equipment is functional at all times, i.e., cameras, monitors, two-way radios, electric doors, fire alarm systems, intercom system. Reports irregularities to maintenance department and/or Sergeant in a timely manner. Coordinates with maintenance to effect repairs and preventative maintenance.</p>		<p>Below Standard: Any violations of safety or security (case by case) that was within the scope of control. Does not participate in policy review nor suggest policy review/revisions. Does not respond to emergencies nor take corrective actions</p> <p>Above Standard: All reports are submitted and complete prior to the end of shift for self and staff being supervised, without the use of overtime. Reports are accurate and require no changes for punctuation, completeness, wording, grammar, or other. All disciplines receive notification in accordance with policy for every incident. Extra assigned reports by supervision are completed to supervisory satisfaction and without complaint.</p> <p>Standard: Reports are submitted prior to the end of shift, for self and staff supervised. Reports are accurate and require little to no corrections for grammar, punctuation, completeness, or other. All disciplines are properly notified of incidents or issues. Accepts additional reporting requirements without argument.</p> <p>Below Standard: Reports not completed prior to end of shift for self or staff supervised on a frequent basis (more than twice in a 6 month period). Reports are not informative and require supervisors send back for resubmission more than once and for anything outside minor mistakes outlined above. Other disciplines not notified in accordance with policy. Other reports assigned not completed, or argumentative when assigned additional reports or duties</p> <p>No Exceptions</p>
<p>Job Element #3: Daily Security Duties</p> <p>Control room: Able to independently operate the control room, in accordance with Policy FF-SP-18. Maintains minimal distractions while in control. Able to operate/monitor all equipment appropriately. Maintains minimum coverage in the secure area unless directed by a supervisor.</p> <p>Monitor board: Completes, and reviews monitor boards in accordance with policy FF-SP-10 and Treatment team Orders. Demonstrates ability to identify all admitted clients assigned area at any given time. Stays knowledgeable of and enforces current program orders and changes</p> <p style="text-align: center;">EXHIBIT A</p>	20%	<p>For element #3 there are to be no exceptions to any of the security Cont. section for FS IV's. Any exceptions to this section has potential to become a security breach and as such could be a serious event.</p>

Client supervision: Supervises clients in all client occupied areas. Ensures safety and security of clients and staff. Reports any identified issues. Documents observed security or behavior issues daily in AVATAR.

Body searches: Conducts body searches as needed. Completes searches thoroughly, ensuring absence of contraband. Able to conduct both clothed and unclothed body searches effectively. Demonstrates sensitivity to both security concerns and client welfare.

Room and area searches: Conducts room and area searches as necessary or as directed by program orders. Completes searches in accordance with policy. Documents results of searches in Room by shift end and submits report on any findings to the Sergeant.

Policies: Demonstrates working knowledge of applicable policies. Reviews policies as changes occur and as directed by State, Division or Agency guidelines.

Visitation: Admits and monitors visitors. Ensures visitors are cleared and approved for entry into the facility. Ensures clients are permitted visitation rights. Completes all necessary forms appropriately before visitors are permitted in visiting area. Conducts appropriate searches of all visitors in a professional manner, ensuring absence of contraband. Complies with standards set forth in policy FF-SP-01 Visiting Policy.

Aggressive and Maladaptive Behaviors: Demonstrates ability to control aggressive and maladaptive behavior using least restrictive measures. Complies with agency protocols and ensures compliance with policy PF-RRE-02

Client Escorts: Able to participate in client escorts as assigned. Demonstrates understanding of potential security risks; appropriate use of mechanical restraints; and ability adapt to situational variances in accordance with FF-SP-02 Transporting Forensic Clients.

Job Element #4: Clinical Responsibilities

Groups: Facilitate/Run groups when assigned or as need is identified.

10%

Above Standard: Runs and facilitates all assigned groups. Suggests improvement for groups to appropriate administrator. Actively seeks out as time permits groups to assist with and trains other staff to facilitate and run groups as well. No absences from assigned groups without prior supervisory approval.

Standard: Runs and facilitates groups as assigned. Assists with implementing new groups, suggests improvement for existing groups. No absences from group without prior supervisory approval or designating replacement for that group.

Below Standard: Does not participate in groups assigned. No input offered for groups. More than one unexcused absence from assigned group.

EXHIBIT A

Token Economy: Enforces use of Token Economy program. Uses program to reward observed positive behavior. Initials Token Economy Sheet (point sheet) as behaviors are identified. Reviews assigned client's Token Economy Sheet and reports behaviors to the Treatment Team weekly. Applies points in accordance with FF-CC-02 "Forensic Token Economy Program."

Treatment Team: Attends all Treatment Team meeting on a random basis to observe subordinate participation and provide feedback. Reports normal and abnormal behavior as identified by Treatment Plan program list. Assists in identifying problematic or progressive behaviors and reports to Treatment Team. Actively participates in Treatment Team discussions as available.

Client Hygiene: Assists clients, as assigned, with eating, bathing, shaving, oral hygiene, grooming, dressing and other basic activities of daily living. Maintains or assists clients with maintaining appropriate cleanliness of room and living areas.

Sponsor: Meets with assigned clients weekly for no less than 30 minutes. Provides client with assistance on needs as identified. Areas of assistance may include but is not limited to: phone calls; walks; recreation; group referrals; legal status; updating token economy program. Enters sponsor notes into medical record once per week. When scheduled out of the facility, employee reassigns his/her clients to another Forensic employee.

Above Standard: Actively participates in the use of Token Economy. Brings suggestions to treatment team and token economy committee. Provides valuable input into individualized programs for clients participating in Token Economy. Engages and assists other staff with issuing rewards from token economy store. Is able to fill in for absence of regular token economy store operators.

Standard: Participates in token economy as outlined. Provides input to treatment team and token economy committee. Assists with the token economy store as assigned.

Below Standard: Does not or refuses to participate in Token Economy as outlined. Does not apply points in a timely manner. O input given to treatment teams or token economy committee. Does not participate in token economy store as assigned.

Above Standard: Actively participates in treatment teams. Encourages staff to participate in treatment team and educates staff so they provide appropriate feedback in treatment team sessions. Counsels subordinate staff who do not attend treatment teams and refuse to actively participate in treatment.

Standard: Attends at minimum one treatment team a week, or all assigned treatment teams. Remains knowledgeable of treatment team decisions for all units and all assigned clients. Encourages subordinate staff to participate in treatment team and provides valuable feedback to treatment teams.

Below Standard: Does not attend treatment teams as assigned, or has unexcused absences from assigned treatment teams. Does not encourage staff to participate in treatment teams and does not remain aware of treatment team changes, schedules, and client orders.

No exceptions

Above Standard: Meets with all assigned clients on a weekly basis for no less than 30 minutes. Uses Avatar to document all client interactions in a timely, thorough and objective manner. Actively engages clients in group and milieu activities, hygiene and treatment team.

		<p>Standard: Participates in assigned sponsorship activities. No more than one exception for rotation using Avatar. No exceptions to meeting with client 30 minutes per week.</p> <p>Below Standard: Failure to sponsor clients as assigned and per protocol. Failure to document client interactions.</p>
<p>Job Element #5: Training</p> <p>POST: Successfully completed 12 hours of POST approved CEU's in addition to an approved defensive tactics training (CPART), and annual use of force review within the last complete POST reporting period.</p> <p>Ensured compliance with CEU requirements for certification renewal in accordance with NAC 433.090.</p> <p>Training: Attends all agency and division training as needed to meet relevant training requirements.</p> <p>Committees: Attends and participates in assigned committees.</p> <p>Training (other staff): Provides training to subordinate staff as necessary or as assigned. Consults with the Sergeant regarding areas of concern. Demonstrates ability to conduct training in a professional and effective manner.</p> <p style="text-align: center;">EXHIBIT A</p>	10%	<p>No exceptions</p> <p>No Exceptions</p> <p>Above Standard: Actively seeks out training opportunities, not just for self but also for staff supervised. Assists and asks for advice in areas where training can be improved or needs are identified. Meets all department/division training requirements without prompting.</p> <p>Standard: Meets all training requirements and does not require prompting to stay current on department/division training requirements</p> <p>Below Standard: Does not meet training requirements. Requires supervisor reminder for mandatory trainings. Does not assist staff supervised in remaining current with training requirements.</p> <p>No Exceptions</p> <p>Above Standard: Actively provides training to staff and new employees. Training records are updated and complete. Provides input to Sergeant/Lieutenant about training concerns and suggests way to improve training.</p> <p>Standard: Provides all trainings assigned and ensures staff supervised receive proper training and orientation. Consults with Sergeant/Lieutenant about training concerns. Conducts training as outlined.</p> <p>Below Standard: Does not provide input or feedback or consult with Sergeant/Lieutenant about training concerns. Conducts training in any fashion other than outlined. Does not ensure staff supervised or new staff receive proper training and orientation.</p>
<p>Job Element #6: Safety</p> <p>Safety: Fulfills State's/agency's/department's safety program requirements. Observes applicable safety rules. Keeps work areas free of unnecessary hazards. Wears and uses, when appropriate, required</p>	10%	<p>There are to be no exceptions to any of the requirements in element #6. Any exceptions documented can result in below standard in this area. All safety</p>

<p>safety equipment. Maintains work habits and appropriate attitudes that will protect other employees and one's self.</p> <p>Equipment: Ensures subordinate personnel meet the State's/agency's/department's safety program requirements. Makes available protective equipment or clothing. Ensures equipment is safe and functional. Promotes a positive safety environment and attitude.</p> <p>Emergencies: Demonstrates extensive knowledge of emergency procedures and ability to supervise major incidents. Responds to all emergency situations within policy guidelines. Demonstrates ability to remain calm in unusual situations. Directs employees appropriately and in accordance with applicable agency policies.</p>		<p>concerns must be addressed and safety guidelines/policy is to be followed at all times. As an FS IV it is expected policy is enforced and at any time you could be tasked to supervise a major incident.</p>
<p>Job Element #7: Technology</p> <p>Technology: Able to use and competently operate all equipment and programs used within the facility. Able to input and retrieve information on agency computers. Inputs progress reports in electronic medical records (AVATAR). Checks email daily. Uses email as a method of communication. Responds timely to all emails.</p> <p>Policy Tech: Uses Policy Tech to review all policies and marks as understood or ask questions as appropriate. Uses Policy Tech to comment on and suggest policy reviews as they are needed. Ensures subordinate staff are using policy tech as well and reviewing policies assigned.</p> <p style="text-align: center;">EXHIBIT A</p>	<p>10%</p>	<p>Above Standard: Able to use all computer programs effectively and efficiently. Emails are checked and responded to daily. Progress notes are entered regularly and contain appropriate information.</p> <p>Standard: Uses all equipment and programs, enters progress notes regularly with appropriate content. Checks emails daily and uses email to communicate.</p> <p>Below Standard: Does not check email daily. Does not respond to emails in a timely manner. Progress notes are not entered or contain errors in content.</p> <p>Above Standard: Uses Policy Tech to review, comment, and/or question policy as appropriate. Has all assigned Policies read in timely manner. Ensures subordinates are able to access Policy Tech and have the knowledge required to navigate and use it. Contacts appropriate person(s) to get reports for staff supervised prior to evaluations being completed and ensure policies are being read and understood.</p> <p>Standard: Uses and accesses policy tech to review policy. Marks all policies assigned as read in a timely manner. Uses reports generated in policy tech to ensure subordinate staff are reading and understanding policies assigned.</p> <p>Below Standard: Does not assist staff in accessing and using policy tech. Does not mark policies as read or ask questions as appropriate within a reasonable amount of time. Does not provide input or suggestions as appropriate for policies assigned.</p>
<p>Job Element #8: Professionalism</p> <p>Professionalism: Adapts and adjusts well to assigned duties and/or changes in duties without a reduction in work performance. Able to utilize problem solving skills independently, does not require supervisory</p>	<p>20%</p>	<p>No exceptions.</p>

guidance. Demonstrates satisfactory learning ability and competent in skills and performance. Able to determine what needs to be done and accomplishes tasks easily and confidently.

Team Work: Able to work cooperatively with co-workers. Does not complain when under pressure. Remains calm, thoughtful and courteous when dealing with others. Does not respond impulsively, accepts authority and participates without supervisory prodding.

Decision Making: Able to visualize what effect decisions will have and is able to act appropriately after considering consequences. Willing to assume appropriate responsibility for making decisions. Logic is clear and concise, comes to sound conclusions quickly and acts decisively on them.

HIPAA: Complies with federally mandated HIPAA rules and regulations as they apply to DHHS/DBPH/SNAMHS.

No Exceptions.

No Exceptions

No Exceptions.

*If a weighted value is not designated, each job element has an equal weight.

Distribution: Original to Agency; Copy to Employee; Copy to Supervisor

NPD-14 Est. 1/03
Revised 3/12

EXHIBIT A

NOTICE OF EMPLOYEE RIGHTS
DURING AN INTERNAL INVESTIGATION

RECEIVED

NOV 02 2018

TO: Charles Rocha, Forensic Specialist IV
Division of Public and Behavioral Health, Stein Forensic Facility SNAMHS HUMAN RESOURCES

FROM: Jackie L. Arellano, Personnel Officer III
Division of Public and Behavioral Health, Southern Nevada Adult Mental Health Services

DATE: November 2, 2018

This notice is **REQUIRED BY NRS 284.387** and must be provided to the employee within 30 days after the appointing authority became aware, or reasonably should have become aware, of the allegations.

As of October 13, 2018, the appointing authority has become aware of alleged conduct that could lead to disciplinary action. This is to advise you that you are the subject of an internal administrative investigation relevant to the following allegation(s): Patient mistreatment and/or abuse, patient endangerment, and failure to follow policies and procedures.

This Notice is not intended to imply that disciplinary action will be taken in relation to these allegations; however, the result of the investigation may lead to disciplinary action.

- 1 You are scheduled for questioning regarding this/these allegation(s) in the SNAMHS Human Resources Conference Room located at 1321 S. Jones Blvd., Las Vegas, NV 89146. Due to your preapproved leave from 11/7/18 - 11/7/19, the date and time for questioning is scheduled at 11:00am on 11/8/19. 1-15-19
11-14-18 - 1-14-19 REVISED *

Pursuant to section 1 of NRS 284.387:

- You have the right to have an attorney or other representative present when you are questioned regarding this/these allegation(s), and
- You have up to two (2) business days to obtain an attorney or other representation, if you so choose.

☐ I waive my right to have a representative present.

☒ I wish to have a representative present

Employee Signature

Date

As you are aware, investigations are confidential. In order to protect your confidentiality, the rights of other employees and clients and the integrity of the investigation, you are requested not to communicate any information regarding this/these allegations(s) with other employees or persons who may have information pertinent to the investigation.

Thank you for your assistance and cooperation with this investigation.

CC:
NPD-32
07/2017

EXHIBIT B

00183

ROCHA000194

NOTICE OF EMPLOYEE RIGHTS
DURING AN INTERNAL INVESTIGATION

RECEIVED

NOV 02 2018

GARRITY WARNING

PROVIDED TO: Charles Rocha, Forensic Specialist IV SNAMHS HUMAN RESOURCES

DATE AND TIME: * REVISED 11-14-18 - 1-14-19
Due to your preapproved leave from 11/7/18 - 1/7/19, the date and
time for questioning is scheduled at 11:00am on 1/8/19, 1-15-19

PLACE: 1321 S. Jones Blvd, Las Vegas, NV 89146
SNAMHS HR Conference Room

INTERVIEWER: Linda Edwards, SNAMHS Psychiatric Nurse IV
Dolly Jones, Nevada Youth Parole Bureau Unit Manager

This questioning concerns administrative matters relating to the official business of the Division of Public and Behavioral Health. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement, nor its fruits, will be used against you in a criminal proceeding. Since this is an administrative matter within the Division of Public and Behavioral Health, you are required to answer questions truthfully and completely. If you refuse, you will be subject to discharge for insubordination.

Do you understand what I have just explained to you?

☒ Yes ☐ No

Do you have any questions concerning what I have just explained to you?

☒ Yes ☐ No

[Signature]
Signature of Employee

[Signature]
Signature of Witness

[Signature]
Signature of Witness

EXHIBIT B

Thank you for your assistance and cooperation with this investigation.

Saturday, October 13, 2018

STEIN G/H UNITS		STEIN HOUSE SUPERVISOR		STAFFING
DAY SHIFT 7AM-7:30PM		NIGHT 7PM-7:30AM		Jessica A., Michelle V., Vanessa P. 530A-4P (70) 485-5463 OR (702) 486-5809 STEIN HOUSE SUPERVISOR 4P-530A (702)-624-2308
NOTES	NURSE STAFF	NOTES	NURSE STAFF	7am Census 13M CB 1.1. 1M QS 2M 3pm Census CB 1.1. QS 11pm Census CB 1.1. QS
	Carlos DeGuzman, PN II		Reynold Go PN II	
DAY SHIFT 7AM-3:30PM		EVENING SHIFT 3PM-11:30PM		NIGHT SHIFT 11PM-7:30AM
	Sulekha Polaki, PN II	OT 3:30P-11:30P	Sulekha Polaki, PN II (DBL)	Jared Kluesner, PN II
DAY SHIFT 7AM-3:30PM		EVENING SHIFT 3PM-11:30PM		NIGHT SHIFT 11PM-7:30AM
NOTES	MHT STAFF	NOTES	MHT STAFF	NOTES
OT 7A-3P	Cynthia Gao, MHC II		Pelumi Akimpelu, MHT I Daniel Demissie, C.N.A.	
FS STAFF		FS STAFF		FS STAFF
ADM	Baba Mingshen, PFS I Josue Behic, PFS I Chad Lombardo, FS I Charles Roche, PFS IV DeWayne Lyons, PFS I (DBL)	POST ACADEMY	Igor Dobsonov, FS I John Joseph Rivers, FS I John McKay, PFS III	Rodel Santos, PFS III Ian Apostol, PFS I Michael Vils, PFS I Jared Cephos, FS I
TRANSPORT / COBRA		TRANSPORT / COBRA		TRANSPORT / COBRA
FLEX/ EXTRA		FLEX/ EXTRA		FLEX/ EXTRA

10/13/2018 8:58

EXHIBIT C



DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
CLINICAL SERVICES

Control #	Rev. Date:	Title:	Effective Date: 7/1998
CRR 1.2	3/2017	PROHIBITION OF ABUSE OR NEGLECT OF CONSUMERS AND REPORTING REQUIREMENTS	Next Review Date: 3/2019

1.0 POLICY:

The Division of Public And Behavioral Health (DPBH) expressly prohibits the abuse or neglect of any person receiving services. It is the policy of DPBH that DPBH agency and contract staff will receive training about abuse and neglect of consumers that will focus on abuse and neglect prevention, identification, and reporting requirements. This policy also requires that immediate steps shall be taken to ensure that consumers are protected.

Any DPBH staff or contract staff found to be abusive or negligent of a consumer shall be disciplined up to and including termination.

2.0 PURPOSE:

The purpose of this policy is to prevent the abuse and/or neglect of consumers receiving Division services and to provide a process for reporting all allegations of abuse and/or neglect by Division or contract staff.

3.0 SCOPE:

Division wide, including contract providers and their staff

4.0 DEFINITIONS:

- 4.1 Abuse: is any willful and unjustified infliction of pain, injury or mental anguish upon a person served by a DPBH or contract staff. Abuse includes, but is not limited to:

- 4.1.1 Sexual abuse: Examples of sexual abuse include but are not limited to: rape, sexual assault, sexual exploitation, sexually degrading language or gestures, sexual molestation, attempts to engage a person in sexual conduct, intimate touching or fondling, encouraging a person to sexually touch a staff member, other consumer, or himself, exposing one's sexual parts to a person, encouraging a person to expose his sexual parts to others, encouraging a social or romantic attachment or relationship outside

EXHIBIT 1



DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
CLINICAL SERVICES

Control #	Rev. Date:	Title:	Effective Date: 7/1998
CRR 1.2	3/2017	PROHIBITION OF ABUSE OR NEGLECT OF CONSUMERS AND REPORTING REQUIREMENTS	Next Review Date: 3/2019

of boundaries, encouraging the consumer to solicit for or engage in prostitution, or encouraging or allowing the viewing or production of pornographic material by minors.

- 4.1.2 Physical abuse: Examples of physical abuse include but are not limited to: any act that causes physical pain or injury to the consumer, hitting, slapping, bruising, kicking, hair pulling, shoving, pinching, cutting, burning, or the use of arm bars or other holds to inflict pain. An allegation of physical abuse may be substantiated without an observable injury.
- 4.1.3 Verbal abuse: Examples of verbal abuse include but are not limited to: verbal intimidation or coercion of a person without a redeeming purpose, name-calling, cursing, mocking, swearing, ridiculing, yelling, or using words or gestures that frighten, humiliate, intimidate, threaten or insult the person.
- 4.1.4 Emotional/Psychological Abuse: Examples include but are not limited to: actions or utterances that cause mental distress such as making obscene gestures to the person, or using other non-verbal gestures that frighten, humiliate, intimidate, threaten or insult the person, harassment, threats of punishment or deprivation, including threats to deny or withdraw services, sexual coercion, intimidation whereby a person would suffer psychological harm or trauma, and social isolation of an individual from family and friends or from normal activities.
- 4.1.5 Excessive force: The use of excessive force when placing a consumer in physical restraints or in seclusion.
- 4.1.6 Restraint: The use of physical, chemical or mechanical restraints or use of *seclusion in violation of state and/or federal law*
- 4.1.7 Exploitation: Exploitation is any illegal or improper use of a consumer's funds, property, or assets resulting in monetary, personal, or other benefit, gain, or profit for the perpetrator, or resulting in monetary, personal, or

EXHIBIT D



DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
CLINICAL SERVICES

Control #	Rev. Date:	Title:	Effective Date: 7/1998
CRR 1.2	3/2017	PROHIBITION OF ABUSE OR NEGLECT OF CONSUMERS AND REPORTING REQUIREMENTS	Next Review Date: 3/2019

property loss by the consumer. Examples include but are not limited to: borrowing a consumer's money, taking a consumer's medication, accepting or coercing gifts from consumers, a consumer doing work for a staff (i.e. wash car) with or without compensation, consumer paying for items or activities that are for the benefit of staff, improper use of a consumer's Social Security number or funds, improper use of funds belonging to the consumer or diversion of state funds intended for consumer use, and those examples stated in Division Policy #4.037 Professional Behavior of Division Employees.

- 4.2 Neglect: is any act or omission to act that causes injury or mental anguish to a consumer or that places the consumer at risk of injury whether due to indifference, carelessness or intention. Neglect includes but is not limited to:
- 4.2.1 Failure to establish or carry out an appropriate plan of treatment for which the person has consented, failure to follow the agency policies and procedures, failure to provide for basic needs (adequate nutrition, clothing, personal hygiene, shelter, supervision, education, or appropriate and timely health care including treatment and medication), failure to provide a safe environment, failure to respond to aggression between consumers served or to consumers engaging in self abusive behavior, and failure to act to stop abuse as defined above.
- 4.3 Staff: is any Division of DPBH or contract service provider staff, employee, or volunteer, unless stated otherwise.
- 4.4 Supervisor: is any Division of DPBH or contract service provider supervisor, unless stated otherwise.

5.0 PROCEDURE:

- 5.1 The Division of DPBH strictly prohibits abuse and neglect.

Any act of abuse or neglect of a consumer by a DPBH or contract provider staff shall result in disciplinary action up to and including termination.

EXHIBIT D



DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
CLINICAL SERVICES

Control #	Rev. Date:	Title:	Effective Date: 7/1998
CRR 1.2	3/2017	PROHIBITION OF ABUSE OR NEGLECT OF CONSUMERS AND REPORTING REQUIREMENTS	Next Review Date: 3/2019

Should the investigation indicate that abuse, as defined in NRS 433.554 has occurred, the agency director shall recommend termination of the employee and shall review all pertinent agency policies, treatment procedures, and staff orientation practices to determine if they need to be revised to reduce the likelihood of recurrence of similar incidents.

- 5.2 DPBH and contract staff shall receive training about abuse and neglect of consumers
 - 5.2.1 Each DPBH agency director shall ensure that training is provided to all staff on abuse and neglect prevention, identification, and reporting requirements in accordance with agency policies.
 - 5.2.2 Training shall be provided for new staff prior to their working independently with consumers receiving services.
 - 5.2.3 Training will be required a minimum of biannually for all staff.
 - 5.2.4 DPBH and contract agencies will document training for each staff member and will provide additional training as needed.
- 5.3 All allegations of abuse and/or neglect shall be reported by following the requirements below, which will be repeated in Policy CRR-1.4, Reporting Serious Incidents and Denials of Rights:
 - 5.3.1 Any staff, upon observing, hearing of, or suspecting abuse and/or neglect of a person served by the Division will:
 - 5.3.2 Make a verbal report to his supervisor immediately and in all instances within a maximum of one (1) hour from becoming aware of the suspected abuse and/or neglect. The report must be made through person-to-person contact; voice messages do not meet the reporting requirements;
 - 5.3.3 Complete an Incident Report to their supervisor, or designee, detailing the information as soon as possible following the verbal report, and in all instances by the end of the staff's workday, or if off duty within 16 hours;
 - 5.3.3.1 Make all verbal and written reports to the supervisor's supervisor if the direct supervisor is suspected of abuse or neglect;



DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
CLINICAL SERVICES

Control #	Rev. Date:	Title:	Effective Date: 7/1998
CRR 1.2	3/2017	PROHIBITION OF ABUSE OR NEGLECT OF CONSUMERS AND REPORTING REQUIREMENTS	Next Review Date: 3/2019

- 5.3.3.2 Notify other applicable entities as appropriate or required (i.e. Child Protective Services, Aging Protective Services, law enforcement) within 24 hours, or discuss with their supervisor if the notification(s) is to be made by the supervisor; and
- 5.3.3.3 The DPBH or contract agency will ensure the immediate notification by agency staff of the person's parents (if a minor) or guardian (if legally appointed).
- 5.3.4 The supervisor on receiving a report will:
 - 5.3.4.1 Take immediate action to ensure the victim has received appropriate medical treatment and follow-up as applicable, and take prompt action to provide for the person's welfare and safety;
 - 5.3.4.2 Make a verbal report to the DPBH agency director, or designee, immediately, and in all instances within a maximum of one (1) hour from becoming aware of the suspected abuse and/or neglect; and
 - 5.3.4.3 Within twenty-four (24) hours of being apprised of suspected abuse and/or neglect, ensure that the written Serious Incident Report is submitted to the DPBH agency director or designee.
- 5.3.5 The DPBH agency director, or designee, on receiving a report of alleged abuse and/or neglect will:
 - 5.3.5.1 Immediately, and in all instances within 24 hours, ensure submission of the written Serious Incident Report to the Division Administrator, or designee;
 - 5.3.5.2 Provide protection of the person, when determined necessary, by restricting access to the person by the alleged perpetrator;
 - 5.3.5.3 If the alleged perpetrator is a staff of a contractor, the DPBH agency director, or designee, will ensure the contractor has taken prompt action to restrict access to the person by the alleged perpetrator.
- 5.4 Reporting abuse and/or neglect is absolutely required.
 - 5.4.1 A staff that fails to report abuse or neglect shall be subject to disciplinary action, up to and including termination.

EXHIBIT D



DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
CLINICAL SERVICES

Control #	Rev. Date:	Title:	Effective Date: 7/1998
CRR 1.2	3/2017	PROHIBITION OF ABUSE OR NEGLECT OF CONSUMERS AND REPORTING REQUIREMENTS	Next Review Date: 3/2019

5.4.2 A staff that reports suspected abuse or neglect shall not be disciplined or receive any retaliation for making such a report, per NRS 433.536.

6.0 ATTACHMENTS:

N/A

7.0 REFERENCES

7.1 Nevada Revised Statutes (NRS): 433.464; 433.482; 433.484; 433.504; 433.524; 433.554; 443A.360, 433A.460; 435.340; Division Policy #4.037, Professional Behavior of Division Employees.

8.0 IMPLEMENTATION OF POLICY:

Each Division agency within the scope of this policy shall implement this policy and may develop specific written procedures as necessary to do so effectively.

EFFECTIVE DATE: 07/17/98

REVIEWED / REVISED DATE: 2/04/99; 07/18/01; 03/10/05; 05/09/07; 09/08/10

SUPERSEDES: Policy #2.003 Abuse or Neglect of Clients

APPROVED BY DPBH ADMINISTRATOR: 08/06/10

APPROVED BY DPBH COMMISSION: 09/17/10; 3/17/2017

EXHIBIT D



Division of Public and Behavioral Health Policy

Control #	Review	Title	Effective Date	Page
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1.0 POLICY

The expectation for all SNAMHS staff members is that SNAMHS will promote the highest standards of professionalism, honesty and integrity, and ensure the highest quality of client care through adherence to ethical principles. The purpose of this policy is to identify standards of professional, ethical, legal, and socially responsible behavior expected of all SNAMHS staff members so as to preserve the public's confidence and trust.

In addition SNAMHS is strongly committed to providing the highest quality client care in a safe work environment that fosters teamwork and respect for the dignity of each client, visitor, and staff member. The purpose of the code of conduct is to define expectations for staff interactions and conduct that promotes a safe, positive, professional and therapeutic health care environment.

2.0 PURPOSE

This protocol provides the initial foundation and principles for conduct and ethical expectations. As stewards of the public trust, SNAMHS staff members are expected to uphold the highest standard of ethical behavior at all times since an individual employee's actions will be viewed and regarded by our clients, our customers, the community and fellow staff members, as a reflection of the agency.

3.0 SCOPE

All Southern Nevada Adult Mental Health (SNAMHS) Staff

4.0 PROCEDURE

- A. Ethical Conduct - All SNAMHS staff members are expected to conduct themselves and behave with professionalism, courtesy, integrity, and with the highest level of ethics. Expected ethical conduct includes, but is not limited to:
 - 1. Cooperating with other staff members and treating all clients, customers, visitors, other state employees, and vendors in a courteous and considerate manner, with dignity and empathy.
 - 2. A responsibility and duty to properly and immediately report any unethical or illegal conduct, or conduct suspected to be unethical or illegal.

EXHIBIT E



Division of Public and Behavioral Health Policy

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3. Maintaining the highest standards of personal integrity, professionalism, truthfulness and fairness, free from personal considerations, bias, or favoritism.
4. Being honest and honorable in all encounters, principles, intentions, and actions with all clients, staff, colleagues, visitors and others encountered.
5. Upholding and complying with all ethical and legal standards that apply to our agency, and professional standards.
6. Respecting the privacy and confidentiality of clients and their protected health information, as is contained in the client's medical record while in clinical and public areas.
7. Ensuring that all verbal, nonverbal, and written communication will be conducted in a mutually respectful and professional manner that promotes a positive environment.
8. Caring for clients when called upon to do so without regard to ethnicity, gender or financial status.
9. Upholding and complying with all state and federal laws, DPBHS, SNAMHS policies, and the Joint Commission and Center for Medicaid Services standards.
10. Placing the interests of the patient, the State, the Agency, the community and its citizens before personal or private interests, in situations in which they may be in conflict.
11. Promoting impartiality, fairness and equality under the law towards all with whom you have contact.
12. Supporting, implementing and following the policy decisions, directions, rules, and regulations established by the SNAMHS Senior Leadership team.
13. Understanding and complying with all State, DPBHS and SNAMHS policies related to confidentiality, conflicts of interest, outside employment, and gifts or gratuities including DPBHS 309 Employee Conduct, NAC 284.754, and NAC 284.738. Consult with a Supervisor, Department Head, the Human Resource Department, or the Agency Director before proceeding if there is a question or concern regarding conflict of interest.
14. Performing the duties and responsibilities of their position in such a manner as to avoid even the appearance of misconduct or impropriety.
15. Using SNAMHS funds, assets, property and equipment solely for Agency purposes, except for such limited personal uses as are expressly permitted.

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Division of Public and Behavioral Health
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16. Maintaining the confidentiality of information acquired in the performance of duties and not disclosing it for any unauthorized purpose, including but not limited to personal, professional or political benefactor gain.
17. Promoting, maintaining and ensuring a safe work environment free from discrimination and harassment.
18. Complying with requirements and intent of the Governor's Executive Order 2011-02 Establishing Ethics Requirements for Certain Public Officers and Employees

B. Unethical Conduct - All SNAMHS staff members are expected to refrain from and report any behavior or conduct that is, or could be viewed as, unethical. Unethical conduct includes, but is not limited to:

1. Soliciting gifts, gratuities, fees, services, discounts, purchases, entertainment, or other benefits or items of value for the performance of their duties, or otherwise for personal benefit.
2. Accepting monetary gratuities, tips, honoraria, or other payments for services rendered for performing official duties.
3. Accepting any gifts, gratuities, fees, services, purchases, entertainment, or other personal benefit or items of value, if the acceptance could reasonably be construed as an attempt to exert improper influence on any decision or action, or as a reward for any official action, including those related to hiring, appointment or promotion.
4. Soliciting SNAMHS employees for non-work related products and services on behalf of outside vendors during regular work hours. Solicitation for charitable, non-profit fund raising events are permissible only with the prior approval by the Appointing Authority, or equivalent position, and shall not disrupt or negatively impact normal business activities.
5. Engaging in political activities, in violation of the NRS, NAC or our policies
6. Engaging in conduct, either during or outside of regular duty hours, which is of such a nature that causes or may cause discredit to the State or our Agency.
7. Using State or Agency resources not available to the public in general, such as staff time, funds, equipment, supplies or facilities, for private or personal gain or purposes.

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8. Participating in any business or contract, when doing so constitutes a conflict of interest.
9. Engaging in outside employment, including self-employment or family businesses when to do so conflicts with your duties and/or responsibilities, or is otherwise in conflict with State or Agency policies relating to outside employment.
10. Failing to provide timely or proper notice of employment outside the Agency.
11. Engaging in prohibited acts and conduct that constitute or contribute to discrimination.
12. Any violation of the Governor's Executive Order 2011-02 Establishing Ethics Requirements for Certain Public Officers and Employees.

C. Expected Conduct and Behavior - All SNAMHS staff members are expected to communicate, conduct themselves and interact in a safe, positive and professional manner that allows for quality client care. This includes, but is not limited to:

1. Collaboration, communication, and collegiality essential for the provision of safe and competent client care. As such, all staff members must treat others with respect, courtesy, and dignity and conduct themselves in a professional and cooperative manner.
2. Reporting occurrences of suboptimal care of a client and documenting and reporting the occurrence through their chain of command.
3. Refraining from disruptive behavior that does not contribute to a professional, positive, and therapeutic environment.
4. Reviewing, understanding and abiding by the Bylaws, Rules, Regulations, Policies, Directives and Procedure manuals, which have been adopted by our agency.
5. Staff members will follow mandated guidelines as defined by HIPAA and EMTALA.
6. Actively participate in peer review, quality improvement and assigned committees if requested.
7. Understanding that timely, regular, professional, positive communication is essential to client care and SNAMHS' success. As a 24/7 operation, E-mail is the primary source of communication within our agency, and staff members are responsible to check their assigned e-mail account regularly.

EXHIBIT E



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8. Bringing concerns regarding peer behavior to the attention of a Supervisor in order to promote a timely investigation and when appropriate collegial intervention. The principle of confidentiality and client safety are paramount concerns governing this reporting.
 9. Documenting in writing the date, description, client name, witnesses (if any) of any occurrence and submit this documentation to one of the following individuals: Supervisor; Manager; Department Head; Human Resources Department; Agency Director.
- D. Unacceptable Conduct and Behavior - Any activity, behavior or conduct that may inhibit or interfere with the stated purpose of providing the highest quality client care, in a safe work environment that fosters teamwork and respect for the dignity of each client, visitor, and staff member. Unacceptable conduct may include, but is not limited to behavior such as:
1. Attacks – verbal or physical – leveled at clients, families, visitors, or staff members, that are personal, irrelevant, or beyond the bounds of reasonable or fair professional conduct.
 2. Degrading or demeaning comments regarding clients, families, visitors, staff members, or the agency.
 3. Profanity or similarly offensive language, or offensive gestures, while in the agency and/or while speaking with staff members, clients, or visitors.
 4. Any conduct or action that is hostile or may reasonably be perceived as hostile, directed toward clients, families, visitors, staff members, or the agency.
 5. Inappropriate physical contact with another individual that is threatening or intimidating.
 6. Unfocused non-constructive derogatory comments about the quality of care being provided by the agency, another staff member, or any other individual outside of appropriate staff.
 7. Inappropriate or inaccurate medical record entries impugning the quality of care being provided by the agency, staff or any other individual.
 8. Imposing onerous requirements on staff members or others.
 9. Failing to abide by staff requirements as delineated in the NRS, NAC, Policies, Bylaws, Rules and Regulations.
 10. Unwillingness to work cooperatively and harmoniously with other staff members.

EXHIBIT E



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11. Any conduct or behavior that can be may be considered a violation or in conflict with the "Governor's Policy Against Sexual Harassment and Discrimination".

II. STAFF RESPONSIBILITIES

- A. All SNAMHS staff members, contract workers and volunteers are responsible for complying with this policy, and the intent of this policy. In addition all staff, contract workers and volunteers have the following duties and responsibilities.
 1. Reporting incidents of potential ethics violations or inappropriate conduct and/or behavior. Protecting clients, staff members, and others in the agency, and the promotion of orderly operation of the clinics and hospital are paramount concerns.
 2. Any staff member who experiences, observes, or has knowledge of a potential violation of this policy has a duty and responsibility to immediately report the violation in writing to their Supervisor, Manager, Department Head, the Human Resource Department, or the Agency Director.
 3. Reporting information relating to a possible violation of this policy must be in writing. The written document must contain the date, factual description, client name, witnesses (if any) of any occurrence and be submitted to one of the following individuals: Supervisor, Manager, Department Head, Human Resources Department, Agency Director.
 4. SNAMHS Supervisors, Managers and Department Heads are expected to exhibit behavior that upholds excellence in personal and professional ethics and conduct. Additionally, all Supervisors, Managers, and Department Heads, with the advice and assistance of the Human Resource Department, have a duty and responsibility for enforcing this policy.
 5. Any staff member who is or may be called upon to participate in a decision-making process, in which their participation would constitute a conflict of interest, or the appearance of a conflict of interest, or impropriety, must immediately notify their Supervisor.

III. PENALTIES FOR VIOLATIONS

- A. Staff found in violation of this policy may be subject to disciplinary action up to and including dismissal as authorized by: NRS. Nevada Administrative Code 284.650 - Causes for disciplinary action and/or Prohibitions and Penalties of the Division of Public and Behavioral Health or SNAMHS policies.

EXHIBIT E



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- B. Retaliation against any person(s) who reports and/or participates in the reporting or investigation of a violation of this policy is prohibited. Retaliation includes, but is not limited to: unlawful discrimination, refusing to recommend an employee for an opportunity for which they qualify, spreading rumors about the employee, encouraging hostility from co-workers, or any other negative, tangible action done intentionally. Any staff member engaging in retaliation will be subject to disciplinary action, up to and including dismissal.

5.0 RELATED DOCUMENTS

N/A

6.0 REFERENCES

- A. Nevada Administrative Code (NAC) 284.650 Causes for disciplinary action
- B. NAC 284.738
- C. NAC 284.754
- D. Prohibitions and Penalties of the Department of Health and Human Services as approved by the Personnel Commission on April 27, 2001.
- E. Governor's Policy Against Sexual Harassment and Discrimination.
<http://hr.nv.gov/uploadedFiles/hrnvgov/Content/Sections/EEO/Discrimination/PERD42-11-GovernorsPolicySHD.pdf>
- F. MHDS Policy #5.007 – Employment, Business or Other Financial Interests Outside of the Division.
- G. Governors Executive Order 2011-02 Establishing Ethics Requirements for Certain Public Officers and Employees. http://gov.nv.gov/News-and-Media/Executive-Orders/2011/EO_2011-02---Establishing-Ethics-Requirements-for-Certain-Public-Officers-and-Employees.

EXHIBIT E

CERTIFICATE of ACHIEVEMENT

This is to certify that

CHARLES ROCHA

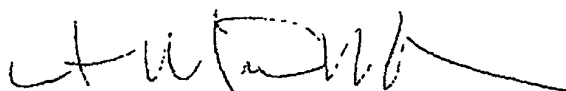
has completed the course

2018 ANNUAL COMPETENCY EXAMS / CLINICAL & DIRECT CARE STAFF

January 16, 2019

CLINICAL/DIRECT CARE EMPLOYEES ONLY Grade 100.00 %

RECEIVED



Supervisor's Signature below indicates that the employee has demonstrated/simulated appropriate knowledge to the supervisor

EXHIBIT F

REQUIRED TRAINING FOR SNAMHS – Direct Care and Clinical

Employee CHARLES ROCHA

If there are any discrepancies, please contact Matthew Taylor at 486-4540

SPECIAL NOTE If the Annual Competency Assessment Packet is complete, the employee is current with all trainings included in that packet. Individual dates listed for the trainings included in the packet reflect the date last taken prior to the initiation of the Annual Competency Assessment Packet.

Training	Date Completed	Comments/Plan for Completion
Annual Competency Assessment Packet	1/16/2019	Requirement: Annually Trainings Included in Packet: <ul style="list-style-type: none">Professional BehaviorDPBH Internet and Email UseWorkplace Violence/Dealing With Difficult PeopleEmergency Evacuation and PreparednessClient Rights/Abuse and NeglectStandard Precautions / Infection ControlSeclusion & RestraintSuicide and Risk AssessmentTreatment PlanningMedical Record Standards/Progress NotationHIPAA Awareness & ConfidentialityHIPAA PoliciesCultural CompetencyNational Patient Safety GoalsPharmacy Annual In-Service
Pharmacy Annual In-service		Requirement: Within 30 days of hire and annually for all RNs, MDs, and APNs.
SNAMHS Agency Orientation	11/6/2015	Requirement: New Employee Orientation
Departmental Orientation	5/8/2016	Requirement: Completed within 30 days.
New Employee Personnel Policies	11/2/2015	Requirement: New Employee Orientation.
Professional Behavior	11/2/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
Internet and Email Use Policy	11/4/2015	Requirement: New Employee Orientation; Then: Annual Competency Assessment Packet
Information Security Awareness		Requirement: Completion within 30 days of hire, then annually.
Sexual Harassment Prevention	1/17/2019	Requirement: Initial in-service through D O P within 6 months of hire. Then: Complete through D.O.P. online every 2 years.
SNAMHS' Functioning Teams/Accred Standards	11/6/2015	Requirement: New Employee Orientation ..
Workplace Violence/Dealing With Difficult People	11/4/2015	Requirement: New Employee Orientation; Then: Annual Competency Assessment Packet
Emergency Evacuation and Preparedness	11/3/2015	Requirement: New Employee Orientation; Then: Annual Competency Assessment Packet
Fire Extinguisher Training	1/17/2018	Requirement: New Employee Orientation; Then: Every 2 years
Client Rights/Abuse and Neglect	11/3/2015	Requirement: New Employee Orientation; Then: Annual Competency Assessment Packet
Standard Precautions / Infection Prevention and Control	11/6/2015	Requirement: New Employee Orientation; Then: Annual Competency Assessment Packet
CPR Completion Date	12/28/2017	Requirement: Every 2 years Inpatient: All RNs, MHTs, and MDs Outpatient: All Clinical and Direct- Care staff

EXHIBIT F

Training	Date Completed	Comments/Plan for Completion
CPART -- Part A	2/14/2019	Requirement: New Employee Orientation Then: Annually for all inpatient RN's and MHT's.
CPART -- Part B	2/14/2019	Requirement: New Employee Orientation Then: Annually for all inpatient RN's and MHT's.
Seclusion & Restraint	11/3/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
Suicide and Risk Assessment	11/3/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
Treatment Planning	11/6/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
Medical Record Standards/Progress Notation	11/6/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
HIPAA Awareness & Confidentiality	11/6/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
HIPAA Policies	11/2/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
National Patient Safety Goals	11/4/2015	Requirement: New Employee Orientation, Then: Annual Competency Assessment Packet
Cultural Competency	11/3/2015	Requirement: New Employee Orientation; Then: Annual Competency Assessment Packet
Defensive Driving		Requirement: In-class completion within 1 year of hire Then: Completion every 4 years online.

Employee Signature: _____ Date _____

Supervisor Signature _____ Date _____

EXHIBIT F

**SOUTHERN NEVADA ADULT MENTAL HEALTH SERVICES
EMPLOYEE TRAINING/EDUCATION RECORDS**

ROCHA, CHARLES

<u>Date</u>	<u>Title Training</u>	<u>Instructor</u>	<u>Hours</u>
2/14/2019	CPART - Part B	Training Dept	4
2/14/2019	CPART - Part A	Training Dept	4
1/17/2019	Sexual Harassment Prevention - Revisted	Dept of Personnel	1.5
1/16/2019	Competencies Annual		13
10/30/2018	Forensic Training - Skills Fair	Multiple Clinical Staff	6
10/30/2018	Forensic Training - Skills Fair	Multiple Clinical Staff	6
10/24/2018	Emergency Management Training	Rose Park	1
9/22/2018	Progressive Disciplinary Procedures for Supervisors	Dept of Personnel	4
9/18/2018	Work Performance Standards	Dept of Personnel	7
9/15/2018	Alcohol & Drug Testing Program	Dept of Personnel	3.5
9/15/2018	Handling Grievances	Dept of Personnel	3.5
9/15/2018	Equal Employment Opportunity	Dept of Personnel	3.5
5/22/2018	MHT Re-Certification		
5/18/2018	Token Economy	SNAMHS Staff	1.5
2/10/2018	Information Security Awareness	DOIT Online	
1/17/2018	Evaluating Employee Performance	Dept of Personnel	7
1/17/2018	Fire Extinguisher Training	Training Dept	1
12/28/2017	CPR/AED	Training Dept	4
11/28/2017	CPART - Part A	Training Dept	4
11/28/2017	CPART - Part B	Training Dept	4
10/31/2017	Competencies Annual		13
9/7/2017	Forensic Training - Skills Fair	Multiple Clinical Staff	6
5/22/2017	MHT Initial Certification		0
2/1/2017	Administrative Investigations	DPS	
1/31/2017	Information Security Awareness	DOIT Online	
1/11/2017	Sexual Harassment Prevention - New Employees	Dept of Personnel	3
11/28/2016	CPART - Part B	Training Dept	4
11/28/2016	CPART - Part A	Training Dept	4
10/21/2016	Competencies Annual		13
8/29/2016	Forensic Training - Skills Fair	Multiple Clinical Staff	6
7/11/2016	DPBH 2016 HIPAA and Confidentiality Awareness	E-Learning / Division	
5/8/2016	Department Orientation	Supervisor	
4/1/2016	Token Economy	SNAMHS Staff	1.5
11/6/2015	CPR/AED	Training Dept	4

EXHIBIT F

SOUTHERN NEVADA ADULT MENTAL HEALTH SERVICES
EMPLOYEE TRAINING/EDUCATION RECORDS

ROCHA, CHARLES

<u>Date</u>	<u>Title Training</u>	<u>Instructor</u>	<u>Hours</u>
11/6/2015	Medical Records Documentation, Progress Notation, HIPAA Awareness	HIS Staff	1
11/6/2015	HIPAA Awareness	HIS Staff	1
11/6/2015	Standard Precautions - Infection Control Policy	A Policy	1
11/8/2015	Treatment Planning at SNAMHS	Staff	1
11/6/2015	Agency Orientation	Training Dept	
11/6/2015	SNAMHS Functioning Teams and Accreditation Standards	Staff	1
11/5/2015	CPART - Part A	Training Dept	4
11/5/2015	CPART - Part B	Training Dept	4
11/4/2015	National Patient Safety Goals	Training Dept	1
11/4/2015	POSITIVE BEHAVIOR SUPPORT	Psychology Dept.	1
11/4/2015	Hearing Voices Simulation	Dr Amy Chaffin	1.5
11/4/2015	Computer Systems - New Employee	IT Department	
11/4/2015	Internet and Email Usage	Staff	
11/4/2015	Workplace Violence/Dealing with Difficult People	Risk Mgmt	7
11/3/2015	Seclusion & Restraint	Training Dept	1
11/3/2015	Client Rights/Abuse & Neglect	Training Dept	1
11/3/2015	Emergency Evacuation and Preparedness	Training Dept	1
11/3/2015	Fire Extinguisher Training	Training Dept	1
11/3/2015	Stigma Training	Training Dept	2
11/3/2015	Suicide and Risk Assessment	Training Dept	1
11/3/2015	Internet and Email Usage	Staff	
11/3/2015	Cultural Competency Training	Training Dept	1
11/2/2015	Personnel Orientation, Key Policies, OSHA Rights & Responsibilities	Personnel	1
11/2/2015	HIPAA Security Rule		
11/2/2015	HIPAA Policies	Policy	1
11/2/2015	HIPAA Awareness & Confidentiality	Staff	1
11/2/2015	Forensics Training - Security Training	Lt. Mike Mason	1.5
11/2/2015	Forensics Training - Transport and Restraint Training	Lt Mike Mason	2
10/23/2015	Respirator Fit Test Training	Training Dept	1

EXHIBIT F

CPART Physical Skills Checklist

This skills checklist is used to identify the student's ability to accurately demonstrate all CPART techniques as instructed per the approved curriculum

Employee Name (PRINT): Charles Rocha

Date of Class: 11-28-17

Position Title (PRINT) Forensic TV

Instructor(s) Name (PRINT) Fred B / Tyson A.

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Verbal Techniques / Scenario Activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Wrist Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Wrist Escape #2 (GATE)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Palm/Block Technique	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Clothing Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Biting	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Hair Pull Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Assisted Hair Pull Escape (Finger Weave)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Choke Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Head Lock Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:		

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
One Person Escort	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Two Person Escort and Chair Escort	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Wall Containment (2) Person	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Separating Combatants	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Throwing Heavy Objects	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Arm Position (3) Person Containment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Leg Position (3) Person Containment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor Comments			

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor Comments			

My signature below is an acknowledgment of understanding of all the verbal and physical (if required) techniques taught in this CPART class, and that I agree to comply with the approved techniques

Employee Signature: Charles Rocha

Date: 11-28-17

Trainer's Signature: Fred B / Tyson A.

Date: 11-28-17

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Written Exam: ☐ Pass ☐ Fail

Revised 3-2016

00204

ROCHA000215

CPART Physical Skills Checklist

This skills checklist is used to identify the student's ability to accurately demonstrate all CPART techniques as instructed per the approved curriculum

Employee Name (PRINT): Charles Rocha

Date of Class: 11-28-16

Position Title (PRINT): Forensic Specialist II

Instructor(s) Name (PRINT): Fred / Tyson

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Verbal Techniques / Scenario Activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Wrist Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Wrist Escape #2 (GATE)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Parry/Block Technique	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Clothing Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Biting	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Hair Pull Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Assisted Hair Pull Escape (Finger Weave)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Choke Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor Comments:		

TECHNIQUE	YES	NO
Head Lock Escape	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:		

TECHNIQUE	IF STAFF NOT REQUIRED TO COMPLETE TECHNIQUE, MARK N/A.		
	YES	NO	N/A
One Person Escort	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Two Person Escort and Chair Escort	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Wall Containment (2) Person	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Separating Combatants	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Throwing Heavy Objects	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Arm Position (3) Person Containment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Leg Position (3) Person Containment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor's Comments:			

TECHNIQUE	YES	NO	N/A
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor Comments			

TECHNIQUE	YES	NO	N/A
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructor Comments			

My signature below is an acknowledgment of understanding of all the verbal and physical (if required) techniques taught in this CPART class, and that I agree to comply with the approved techniques.

Employee Signature: Charles Rocha

Date: 11-28-16

Instructor's Signature: Fred and Tyson

Date: 11-28-16

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Revised 3-2016

CPART Physical Skills Checklist

This skills checklist is used to identify the student's ability to accurately demonstrate all CPART techniques as instructed per the approved curriculum.

Employee Name (PRINT) Charles Rocha

Date of Class: 11-5-15

Position Title (PRINT) Forensic Specialist

Instructor(s) Name (PRINT): Fred Barker, Tyson A.

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Verbal Techniques / Scenario Activity	<u>13</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Wrist Escape	<u>13</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Wrist Escape #2 (GATE)	<u>13</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Parry/Block Technique	<u>13</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Clothing Escape	<u>12</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Biting	<u>12</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Hair Pull Escape	<u>13</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Assisted Hair Pull Escape (Finger Weave)	<u>12</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Choke Escape	<u>17</u>	
Instructor Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Head Lock Escape	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
One Person Escort	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Two Person Escort and Chair Escort	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Wall Containment (2) Person	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Separating Combatants	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Throwing Heavy Objects	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Arm Position (3) Person Containment	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Leg Position (3) Person Containment	<u>13</u>	
Instructor's Comments:		

TECHNIQUE	COMPETENCY DEMONSTRATED	
	YES	NO
Other:		
Instructor Comments		

My signature below is an acknowledgment of understanding of all the verbal and physical techniques taught in this CPART class, and that I agree to comply with the approved techniques. My signature also represents an understanding of the annual recertification requirement being an expected condition of my continued employment.

Employee Signature: Charles Rocha

Date: 11-5-15

Trainer's Signature: Fred Barker

Date: 11-5-15

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Written Exam: ☒ Pass ☐ Fail

Revised 2-2014

00206

ROCHA000217

