

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Deborah Taylor-Jones,

*Appellant,*

v.

Case No. 08-REM-07-0459

Montgomery County Public Health-Dayton,

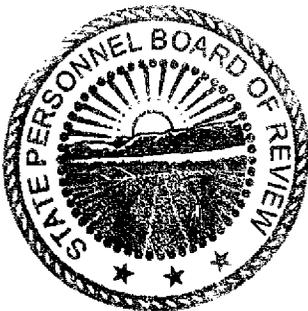
*Appellee.*

**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's removal be **AFFIRMED**, pursuant to O.R.C. § 124.34 and 124.03 (A).



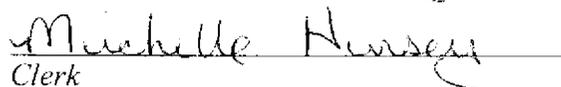
Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

  
J. Richard Lumpe, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, January 13, 2010.

  
Michelle Hunsger  
*Clerk*

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Deborah Taylor-Jones,

Case No. 08-REM-07-0459

*Appellant*

v.

November 24, 2009

Montgomery County Public Health-Dayton,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her July 18, 2008, removal from employment with Appellee. A record hearing was held in the instant matter on May 14, 2009. Appellant was present at record hearing and was represented by Jeffrey M. Silverstein, attorney at law. Appellee was present at record hearing through its designee, Michael M. Matis, and was represented by Robert L. Guehl, Assistant Prosecuting Attorney.

The R.C. 124.34 Order of Removal provided to Appellant listed as grounds for her removal:

You have failed to maintain CDCA credentials per the requirements of your position's classification specification and are unable to perform the essential functions of your job. You were previously informed by your supervisor and the State of Ohio\* that your credentials would lapse if appropriate action was not taken by you to renew your credentials/certification. You are removed from your position July 18, 2008. . . ."

\*Refers to Ohio Chemical Dependency Professionals Board

Jurisdiction of the Board was established pursuant to R.C. 124.03(A) and 124.34.

## STATEMENT OF THE CASE

Appellant testified that at the time of her removal she was employed by Appellee as a Chemical Dependency Counselor and that her immediate supervisor was Jerry Newport. She confirmed that her position required her to be certified as a Certified Chemical Dependency Counselor I or Chemical Dependency Counselor Assistant (CDCA) by the Ohio Chemical Dependency Professionals Board (OCDPB); Appellant further confirmed that she was aware of the continuing education requirement imposed by the OCDPB to maintain her licensure.

Appellant acknowledged that she received an email from Mr. Newport, on June 24, 2008, reminding her that her CDCA certification would expire on July 7, 2008 (Appellee's Exhibit 6). She confirmed that her CDCA licensure did lapse from July 7, 2008, through August 9, 2008 (Appellee's Exhibit 11), due to her failure to timely submit the required number of hours of continuing education for renewal, but testified that it was renewed as of August 10, 2008 (Appellant's Exhibit C).

Appellant recalled that she received a memorandum from Clinical Supervisor Carole Huddleston on or about July 8, 2008, informing her that she had violated Appellee's standards of conduct by allowing her certification to lapse and advising her that she was no longer allowed to counsel clients (Appellee's Exhibit 15). She testified that she did not provide any counseling services after being advised not to do so.

Appellant testified that she applied for FMLA on July 10, 2008; she noted that she did not have an anticipated return date at that time. She recalled that she hand-carried the FMLA paperwork to Jennifer Smith in Human Resources on July 15, 2008. Appellant confirmed that she requested FMLA leave for the period of July 10 through July 28, 2008.

She indicated that she was originally scheduled to attend a pre-disciplinary conference on July 11, 2008; the conference was rescheduled at her request for July 14, and then rescheduled again at her request for July 15, 2008. Appellant recalled that she did not attend the pre-disciplinary conference on July 15, per her doctor's orders, although she did come to the office that day to give her FMLA paperwork to Ms. Smith. She testified that she did not discuss with Ms. Smith the pre-disciplinary conference that had been rescheduled for that day, and heard nothing further from Appellee until she received her notice of removal. Appellant

noted that she never signed any document stating that she had waived her pre-disciplinary conference.

Appellant acknowledged that her position also required her to obtain licensure as a Licensed Chemical Dependency Counselor II (LCDC II) or higher prior to December 23, 2008. She noted that she is not licensed as a LCDC II and confirmed that, as of the date of record hearing, she was not scheduled to take the test required for that certification.

Appellant explained that the need to renew her certification slipped her mind due to a number of family issues that were occurring at the time. She recalled that after she was removed, she completed some continuing education units online and found out that she was able to apply her college credit hours toward the certification requirements. Appellant acknowledged that she could have taken steps earlier to determine how much additional continuing education credit was necessary for her licensure renewal and admitted that she allowed her certification to lapse. She confirmed that she did not submit her renewal request to ODCPB until after she was terminated and did not notify Appellee when her certification was renewed.

Leslie Lyszak testified that she is presently employed by Appellee as Director of the Center for Alcoholism & Drug Addiction Services (CADAS). She noted that the Ohio Department of Alcoholism & Drug Addiction Services (ODADAS) requires that a current copy of an employee's certifications and licensures be kept in his or her personnel file. The witness stated that it was standard practice for Appellant's supervisor to send Appellant a reminder that he needed a copy of her renewal letter. Ms. Lyszak noted that it was a basic requirement of Appellant's position that she maintain appropriate licensure and/or certification.

Ms. Lyszak recalled that when she became aware that Appellant's licensure had lapsed, she instructed Human Resources to begin the pre-disciplinary procedure. She explained that because Appellant did not possess a current certification, ODADAS regulations prohibited her from providing counseling services.

The witness indicated that Appellant was scheduled to participate in a pre-disciplinary conference on July 10, 2008, and observed that the first pre-disciplinary notice (Appellee's Exhibit 9, page 1) provided to Appellant indicated that Mr. Newport's intent was to recommend disciplinary action up to and including her suspension.

Ms. Liszak stated that Appellant requested that the July 10, 2008, pre-disciplinary conference be rescheduled; the second pre-disciplinary conference was scheduled for July 14, 2008. She noted that the second pre-disciplinary notice (Appellee's Exhibit 9, page 2) reflected additional information that had come to light and Mr. Newport indicated that the disciplinary action then being considered was a three-day suspension, followed by vacation leave with or without pay until Appellant submitted documentation of certification renewal; if such documentation was not submitted within a forty-five day time period, further disciplinary action up to and including termination would be considered. On rebuttal, Ms. Liszak confirmed that two pre-disciplinary notices were provided to Appellant for the conference scheduled for July 14, 2008, but indicated that the second notice (Appellee's Exhibit 20) also provided for disciplinary action ranging from a suspension without pay to termination.

The witness confirmed that Appellant requested that the second pre-disciplinary conference be rescheduled and the conference was reset for the following day -- July 15, 2008. She testified that the third pre-disciplinary notice (Appellee's Exhibit 9, page 3) stated only that Mr. Newport intended to recommend appropriate disciplinary action. Ms. Liszak further testified that the pre-disciplinary notice provided to Appellant for the July 15, 2008, conference stated that if Appellant chose not to attend the meeting, she was required to provide Human Resources with a doctor's order indicating that she was unable to attend. The witness noted that Appellant never provided Appellee with the information requested, either on July 15, 2008, or at any time prior to her termination.

Ms. Liszak recalled that Appellant did not attend the pre-disciplinary conference scheduled for July 15, 2008, and indicated that she did not call Appellant or take any steps to reschedule the conference because Human Resources advised her that it was up to Appellant to take the next action. She confirmed that Appellant never notified her that she wished to waive her pre-disciplinary conference, although all three of the pre-disciplinary notices indicated that Appellant could do so. The witness indicated that when she spoke with Jennifer Smith in Human Resources around noon on July 15, 2008, Ms. Smith told her that Appellant had submitted an FMLA request. Ms. Liszak noted, however, that Ms. Smith also informed her that the pre-disciplinary conference could still be held during the time period covered by the FMLA request.

Ms. Lyszak observed that following discussions over the next several days, the Board of Health ultimately made the decision to remove Appellant and she was instructed by them to proceed with the discipline. The witness noted that Health Commissioner James Gross is Appellee's final appointing authority.

The witness confirmed that other employees had been disciplined for licensure-related issues. She recalled that William Scales allowed his credentials to lapse in December 2007 and received a short suspension and rescission of a pay raise as a result of his actions. Ms. Lyszak explained that Mr. Scales' situation was different from Appellant's in that he had fulfilled the certification requirements and submitted his renewal request prior to Appellee becoming aware of his lapse and was able to return to work with full certification after a brief, previously-scheduled vacation. She recalled that Mildred Arnold also allowed her certification to lapse and received only a level 2 reprimand as a result of her actions because she had completed the necessary certification requirements and was able to return to work with full certification, with only two days of client care being interrupted.

Ms. Lyszak observed that the State of Ohio was in the process of phasing out the CDCA certification Appellant possessed, and that incumbent employees were required to obtain LCDC II licensure prior to December 23, 2008. She indicated that subsequent to Appellant's removal, two other employees were removed because they did not obtain their LCDC II licensure within the time period outlined by the State of Ohio and were prohibited from delivering services.

Ms. Lyszak testified that Appellant told her during their discussions prior to Appellant's removal that she had not completed the continuing education requirements to have her licensure renewed. She stated that Appellant never informed her either that she had submitted her renewal application or that her CDCA certification had been renewed. She further stated that, to her knowledge, Appellant never obtained her LCDC II licensure.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant was employed by Appellee as a Chemical Dependency Counselor at the time of her removal; her immediate supervisor was Jerry Newport. Appellant was aware that she was required to maintain certification as a Certified Chemical Dependency Counselor I or Chemical Dependency Counselor Assistant (CDCA) by the Ohio Chemical Dependency Professionals Board (OCDPB), in order to perform the duties required of her position. Appellee is required by the Ohio Department of Alcoholism & Drug Addiction Services (ODADAS) to maintain a current copy of each employee's certifications and licensures in his or her personnel file.

On June 24, 2008, Appellee reminded Appellant that her CDCA certification would expire on July 7, 2008. Appellant's licensure did, in fact, lapse from July 7, 2008, through August 9, 2008, due to her failure to timely submit her renewal application to OCDPB demonstrating that she had completed the required number of hours of continuing education. Appellant was aware of OCDPB's continuing education requirement.

Because Appellant did not possess a current certification, ODADAS regulations prohibited her from providing counseling services. Appellee advised Appellant on or about July 8, 2008, that she was not to counsel clients until her license had been renewed.

As a result of Appellant's lapse in licensure, Appellee scheduled a pre-disciplinary conference on July 11, 2008; the conference was rescheduled at Appellant's request for July 14, and rescheduled a second time at Appellant's request for July 15, 2008. Appellant received notice of each of the schedule pre-disciplinary conferences. Appellant was informed in the pre-disciplinary conference notice that if she chose not to attend the July 15, 2008, meeting, she was required to provide Human Resources with a doctor's order indicating that she was unable to attend. Appellant did not attend the July 15, 2008, pre-disciplinary conference.

Appellant applied for FMLA on July 10, 2008, for the time period of July 10 through July 28, 2008. She personally delivered the paperwork to Jennifer Smith in Human Resources on July 15, 2008. Appellant did not provide Appellee with a doctor's order, as requested in the notice of pre-disciplinary conference, either on July 15, 2008, or at any time prior to her termination.

Appellant did not call Appellee or take any steps to reschedule the pre-disciplinary conference. She never notified Appellee that she wished to waive her

pre-disciplinary conference, although all three of the pre-disciplinary notices indicated that Appellant could do so. Appellee did not contact Appellant prior to notifying her of her removal from employment.

After her removal, Appellant submitted her renewal request and proof of compliance with continuing education requirements to OCDPB, and her license was reinstated effective August 10, 2008. Appellant did not notify Appellee either that she had completed the continuing education requirements and applied for her license renewal, or that her certification had been renewed.

Because the State of Ohio was phasing out the certification held by Appellant, OCDPB licensure requirements required her, and other individuals holding the same position, to obtain licensure as a Licensed Chemical Dependency Counselor II (LCDC II) or higher prior to December 23, 2008. Appellant is not licensed as a LCDC II and, as of the date of record hearing, she was not scheduled to take the test required for that certification.

Appellee has disciplined other employees for licensure-related issues. William Scales allowed his credentials to lapse in December 2007 and received a short suspension and rescission of a pay raise as a result of his actions. Mildred Arnold allowed her certification to lapse and received a level 2 reprimand as a result of her actions. Two additional employees were removed subsequent to Appellant's termination because they did not obtain the LCDC II licensure within the time period outlined by the State of Ohio.

### **CONCLUSIONS OF LAW**

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one of the enumerated infractions listed in R.C. 124.34 and on the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was

communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Information contained in the record indicates that the pre-disciplinary conference notices that were provided to Appellant enumerated the charges that were being made against her. The pre-disciplinary conference notices also informed Appellant that she had the option of responding to those charges either at the pre-disciplinary conference or in writing. Appellee rescheduled the pre-disciplinary conference twice at Appellant's request, but Appellant did not attend on any of the three scheduled dates or request another pre-disciplinary conference date. Accordingly, I find that Appellant had written notice of the charges against her and an adequate opportunity to be heard prior to the imposition of discipline; therefore, I find that her due process rights were observed. I further find that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant.

This Board's scrutiny may, therefore, proceed to the merits of the charges made against Appellant. Appellant's removal was based upon her failure to maintain CDCA credentials per the requirements of her position's classification specification and her subsequent inability to perform the essential functions of her job. Appellant acknowledged that she was aware that she was required to maintain her licensure as part of her employment. She further acknowledged that she was aware that she was not permitted to provide services without the proper licensure. Accordingly, I find that Appellee had an established standard of conduct that was communicated to Appellant, and that Appellant violated that standard of conduct.

Appellant argues that the discipline imposed upon her was not appropriate, and presented evidence regarding two other employees, William Scales and Mildred

Arnold, who were disciplined for their failure to maintain a current professional license. In both instances, however, I find that the circumstances surrounding Mr. Scales' and Ms. Arnold's lapses were sufficiently different from Appellant's to merit a different level of response. Both Mr. Scales and Ms. Arnold completed the necessary continuing education requirements for renewal of their professional licenses – the information provided by Appellant to Appellee was that she had not obtained any of her required continuing education credits. While it was later discovered that Appellant had actually completed sufficient continuing education credits to support a renewal request, Appellant failed to relay that information to Appellee. Both Mr. Scales and Ms. Arnold took positive action to correct the problems that had resulted in their respective lapses in licensure; Appellant did not.

Appellant argued that the R.C. 124.34 Order of Removal provided to Appellant was insufficient because it failed to state with specificity which statutory reason contained in R.C. 124.34 formed the basis for Appellant's removal. Omission of such a reference is not grounds for disaffirmance where the R.C. 124.34 Order contains adequate information to apprise Appellant of the reason(s) for the discipline imposed and to allow Appellant to make an explanation at hearing. *Williams v. Ohio Dept. of Transportation* (Sept. 25, 1985), Madison Co., No. 85CV-02-022, unreported. In this instance, the R.C. 124.34 Order provided to Appellant clearly stated the underlying grounds for Appellant's discipline. I find that the circumstances described by Appellee are sufficient to constitute a neglect of duty and/or failure of good behavior, as set forth in R.C. 124.34.

Finally, Appellant argued that the R.C. 124.34 Order of Removal provided to Appellant was defective and invalid because it was not signed by the appointing authority. Ms. Lyszak's unchallenged testimony at record hearing was that Health Commissioner James Gross is Appellee's final appointing authority. The R.C. 124.34 Order of Removal provided to Appellant (Appellee's Exhibit 10) is signed by Board of Health President Gary L. LeRoy, and countersigned by Commissioner Gross, and I find that the document complies with the requirements of Ohio Administrative Code Section 124-3-01.

Therefore, upon a review of all of the information contained in the record, I find that Appellant has demonstrated by a preponderance of the evidence that it had an established standard of conduct that was communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon

Deborah Taylor-Jones  
Case No. 08-REM-07-0459  
Page 10

Appellant was an appropriate response. Accordingly, I respectfully **RECOMMEND** that Appellant's removal from employment be **AFFIRMED**.



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Jeannette E. Gunn  
Administrative Law Judge

JEG: