

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**BAY AREA MEDICAL CENTER EMPLOYEES' UNION,
LOCAL 3305, AFSCME, AFL-CIO**

and

BAY AREA MEDICAL CENTER

Case 23
No. 70237
A-6549

Appearances:

Mr. John Spiegelhoff, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9th Street, Merrill, Wisconsin 54452, on behalf of the Union.

von Briessen & Roper, S.C., by **Attorney Daniel T. Dennehy**, 411 East Wisconsin Avenue, Suite 1000, P.O. Box 3262, Milwaukee, Wisconsin 53201-3262, on behalf of the Employer.

ARBITRATION AWARD

At all times material, Bay Area Medical Center Employees' Union, Local 3305, AFSCME, AFL-CIO (herein the Union) and Bay Area Medical Center (herein the Employer) were parties to a collective bargaining agreement covering the period from October 1, 2010 to September 30, 2013. On January 18, 2013, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the discharge of bargaining unit member Diane Lynch (herein the Grievant). The parties jointly requested the undersigned to be appointed to hear the dispute and a hearing was conducted on April 16, 2013. The proceedings were not transcribed. The parties filed initial briefs by May 31, 2013, and the Employer filed a reply brief on June 14, 2013. The Union declined to file a reply brief, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issue. The Union would frame the issues as follows:

Did the Employer violate the collective bargaining agreement when it discharged the Grievant on November 6, 2012?

If so, what is the appropriate remedy?

The Employer would frame the issues as follows:

Did Bay Area Medical Center terminate Ms. Lynch for just cause under the collective bargaining agreement?

If not, what is the appropriate remedy?

I characterize the issues as follows:

Did the Employer have just cause to terminate the Grievant on November 6, 2012?

If not, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 5 - DISCIPLINARY ACTION

Employees shall not be disciplined, except for just cause.

5.01 **Dismissal:** Employees may be discharged without warning or notice for the following offenses:

- a) Unauthorized and deliberate disclosure of any confidential information pertaining to the patients' personal, medical or financial records;
- b) Deliberate refusal or failure to perform work assigned by a supervisor, or to comply with supervisor's verbal or written instructions.
- c) Falsifying, or assisting in falsifying, personnel and/or other records, including medical records, employment applications, and time cards;
- d) Reporting to work or working while under the influence of alcohol or drugs;
- e) Unauthorized use or, or unauthorized possession of, drugs;

- f) Stealing any property belonging to the Center, employees, or patients;
- g) Malicious conduct, including damaging or destroying any property belonging to the Center, employees, or patients;
- h) Fighting on Center premises;
- i) Abuse of patients, employees, or visitors;
- j) Sexual harassment of patients, employees, or visitors;
- k) Unauthorized absence from work on any three (3) days within a 365-day period. Unauthorized absences are those absences which do not comply with 9.08 or 10.01a.
- l) Use of threatening language toward another person while on duty.
- m) As a participant in federal healthcare programs the Center will immediately terminate any employee if he/she is excluded by the Office of Inspector General (OIG) from program participation subsequent to a conviction and notice of conviction.

Discharged employees, with the exception of probationary employees, will receive written notice of the reasons for discharge. A copy of the notice will become part of the employee's personnel record. A copy will also be sent to the Union.

Discharged employees, with the exception of probationary employees, may appeal the action by presenting written notice to their steward and their department director within fourteen (14) calendar days after their dismissal. Such appeals shall go directly to arbitration as per Article 14.01.

5.01 **Other Offenses:** For all other offenses, the progression of disciplinary action will be:

- a) Documented Verbal Warning
- b) Written reprimand
- c) Suspension, not to exceed five (5) scheduled working days
- d) Dismissal.

The order of this progression may be altered depending on the severity of the offense. Generally, however, an employee will not be subject to suspension without having received a written warning on a prior occasion. Also, an employee will not be subject to dismissal without having been suspended on a prior occasion, with the exception of the offenses identified on Article 5.01. These do not have to be for the same reason.

Progressive disciplinary action taken by the Center against an employee will be reduced to writing, with the document stating the reason for the disciplinary action. Discipline for patterns of unauthorized overtime, or patterns of excess absenteeism or tardiness will be preceded with a counseling session with the employee and the Director/Supervisor will call to the employee's attention that a counseling session is occurring. The individual employee and the Union shall be given copies of the document and a copy will be placed in the employee's personnel file. Documentation will not be used for disciplinary matters after the passage of two (2) years.

The union has the right to have any disciplinary matter placed in arbitration on behalf of an employee.

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ARTICLE 6 – COOPERATION

Employees will individually and collectively render loyal, efficient, courteous and safe service to the Center and to the patients. They will cooperate with the Center and with each other in advancing the welfare of the Center, providing the proper service to patients at all times.

BACKGROUND

Diane Lynch, the Grievant herein, worked for Bay Area Medical Center (BAMC) as a Patient Care Technician from 1997 until her discharge on November 6, 2012. Her job duties included, without limitation, understanding BAMC's mission and values, working with and disseminating information in patient charts, answering the telephone and providing information to callers according to Center policies, greeting and assisting customers, facilitating patient transfers, working cooperatively as a team member, communicating pertinent patient information to the Charge Nurse, maintaining a good working relationship with other staff and promoting and maintaining confidentiality. She was also required to internalize and exemplify BAMC's Seven Standards of Service Care: 1) Make positive first impressions our first priority, 2) Treat others as guests, 3) Develop service recovery, 4) Communicate effectively,

5) Serve others from a team-centered approach, 6) Project a positive attitude, and 7) make excellence the goal of everything we do. She received regular training on fulfilling these standards, including six different training sessions in her final year of employment.

During the term of her employment, Lynch received regular performance evaluations. Generally, her reviews were positive, but there were ongoing concerns about her attitude, communication skills and relationships with other staff. On February 23, 2012, Lynch received a written reprimand as a result of her displaying a negative attitude at a staff meeting after having been advised by her Supervisor to refrain from negative comments and for refusing a directive from a Supervisor to work an additional shift. She was advised that continued misbehavior would result in further discipline, including possible termination. She did not grieve the discipline. On August 16, 2012, Lynch was suspended for three days for five separate violations of the Seven Standards between July 22, 2012 and August 7, 2012. Again, she did not grieve the discipline.

On October 17, 2012, Erin Young and Kim Dedemos, two staff members from Northland Lutheran Retirement Community, a local nursing home came to BAMC at the Center's request to arrange for the transfer of a patient. Young and Dedemos met with Lynch to obtain the patient's information and to meet with the patient. According to Young, Lynch treated her rudely, refused to provide the requested information and, when Young personally checked for the room number and took the patient's file for review, acted in an angry and disrespectful manner. Young filed a formal complaint with BAMC's Clinical Director and Lynch's overall supervisor, Thomas Hodges. Hodges conducted an investigation, including meeting with a co-worker who confirmed Lynch's conduct, and met with Lynch on October 18, who denied behaving rudely to Young. Hodges advised Lynch that any additional failure to adhere to the Seven Standards would not be tolerated. On November 1, 2012, Allison Kostreva, a Social Worker from New Care Convalescent Center, called BAMC and spoke to Lynch, requesting medication information about a patient who was to be transferred to New Care the next day. Lynch looked in the patient file, claimed she could find no transfer information and refused to provide the information to Kostreva, stating that she could not be sure of Kostreva's identity and citing HIPPA confidentiality restrictions. Kostreva was upset by Lynch's behavior and asked for the Lynch's name and the number of Lisa Wingender, a Discharge Planner with BAMC with whom she had been working on the transfer, to make a complaint. Kostreva later filed a complaint with Wingender, who passed it along to Hodges. Lynch did not discuss the request with any supervisory staff, but later stated that she discussed the matter with other nurses, although this could not be confirmed. Lynch also took no steps to confirm Kostreva's identity. Later that evening, Lynch sent an email to Hodges explaining her actions and asking for guidance.

On November 6, 2012, Lynch was called to a meeting with Hodges, Clinical Documentation Manager Nicole Tebow, Employee and Labor Relations Specialist Jill Kakuk and Union Representative Tina Smith, at which time she was informed of her immediate termination and given a written notice of termination stating, in pertinent part:

You have failed to sustain an acceptable level of performance in regards to professional communication and demeanor in accordance with the standards and expectations of the unit and organization. On 10-19-12 and 11-02-12, I was informed that you were rude and discourteous to an external customer as well as unprofessional when she asked for your assistance. You should have contacted the charge nurse to assist in these matters; however, you did not. This is representative of failure to effectively communicate patient and customer needs in a professional manner.

This behavior is unacceptable; therefore, you are hereby terminated immediately.

On November 14, 2012, the Union filed a grievance on Lynch's behalf and demanded a make whole remedy. The grievance was denied and the matter proceeded to arbitration. Additional facts will be referenced, as necessary, in the DISCUSSION section of this award.

POSITIONS OF THE PARTIES

The Employer

The Employer asserts that it had just cause for terminating the Grievant. The contract calls for progressive discipline in most cases and there is no question that progressive discipline was utilized here. Ms. Lynch had received a written reprimand and a three-day suspension in the year prior to her termination. In neither previous case did she file a grievance. After her violations of the Seven Standards on October 17, 2012 and November 1, 2012, the only step left in the progression was termination. Arbitrators have consistently held that where repeated progressive discipline fails to bring about a change in conduct and the employee is on notice that termination is a possible result for further misconduct, termination is justified. Here, the Grievant was aware of the consequences and failed to amend her conduct.

Throughout the period of progressive discipline the Grievant was warned that she needed to improve her attitude and work with patients, staff and customers from a team-centered approach. Nevertheless, she consistently under-performed, complained, put herself above co-workers and had a poor attitude. Her poor attitude was the cause of both the October 17 and November 1 incidents, both of which were verified by outside sources. BAMC investigated the incidents and confirmed the allegations. In the case of Allison Kostreva, the Grievant tried to argue that she could not provide the requested information due to HIPPA restrictions, but BAMC witnesses testified that Ms Lynch was trained in HIPPA rules and should have known that providing the information would not violate HIPPA and that the patient's chart contained the information necessary to release the records without patient authorization. Ms Lynch claimed she consulted other nurses before denying Ms. Kostreva's request. BAMC could not identify any such personnel, however, and none were produced to testify at the hearing. Further, Ms. Lynch could have consulted with a House Supervisor and

failed to do so. Finally, whether the denial was or was not appropriate, there is no excuse for Ms. Lynch to have treated Ms. Kostreva in an unprofessional manner.

In the past, Ms. Lynch has typically responded to allegations of misconduct by denying the incidents occurred. As before, with the October 17 incident Ms. Lynch denied the event occurred and at hearing even denied having ever seen Erin Young before. To the contrary, Ms. Young testified to the incident in detail and stated she had dealt with Ms. Lynch on at least four or five previous occasions. Both Ms. Young and Ms. Kostreva worked for outside agencies and neither had anything to gain by filing complaints against Ms. Lynch. In a discharge case, the Grievant's testimony is inherently suspect because he or she has the most to gain or lose from the decision. Thus, where a Grievant's testimony is contradicted by that of witnesses who have no stake in the outcome, the contradicting testimony is deemed to be more reliable. As to the October 17 incident, Ms. Lynch told Mr. Hodges that she was not rude, but Ms. Young's complaint was verified by the R.N. on duty that night. Ms. Lynch's testimony at hearing was uncorroborated, but BAMC produced several witnesses who had no interest in the outcome, but who confirmed the incidents. BAMC has produced credible evidence supporting the charges and no outcome short of termination is appropriate. The grievance should be denied.

The Union

The Union argues that in terminating Ms. Lynch BAMC exposed her to double jeopardy. Thomas Hodges's notes of his meeting with Ms. Lynch after the October 17 incident state: "I reminded Diane that I would not tolerate any more incidences of failure to adhere to service care standards and that she should remain helpful and courteous to all customers." Hodges clearly took tangible, concrete and definitive action to resolve the matter in engaging in an informal counseling session, which should have disposed of the issue. He did not state that he was conducting further investigation that could result in discipline. Nevertheless, Hodges later used this incident as a basis for discharge. Arbitrators have typically held that once a penalty is imposed it cannot later be increased. Waupaca County, MA-11316 (Morrison, 11/11/80); Wood County Courthouse, MA-12665 (Emery, 3/3/05). By adding to the discipline issued on October 19, BAMC violated the just cause provision against double jeopardy.

BAMC also failed to conduct a thorough investigation of the complaints against Ms. Lynch. In the October incident, Ms. Young's email to Hodges reveals that there was another co-worker on the scene, but the record shows that Hodges never bothered to identify the other co-worker or verify the complaint. Just cause requires that a complete and thorough investigation be conducted and Hodges failed in this regard.

In the November incident, Ms. Lynch exercised due diligence in the conduct of her duties. She consulted with co-workers about the appropriate action to take and emailed Hodges immediately thereafter to explain her actions and obtain advice about the proper course to take. Nevertheless, Hodges never spoke to the other employees she claimed she consulted. Just

cause requires that the employer conduct a full investigation, but what was done was perfunctory and haphazard. Hodges did not ask Lynch who the other employees were. Her email was sent shortly after the event, when her memory was still fresh, so it must be deemed credible. On the other hand, the employer's failure to find and question these witnesses permits an inference that BAMC's decision to terminate was already made and they did not want evidence in the record that other employees agreed with Lynch's actions.

The Employer's case is based on sweeping generalizations, characterizing Lynch's action as "rude and discourteous," and "failure to effectively communicate patient and customer service needs in a professional manner." These generalities are easy to state, but are not supported by the record. As to the November incident, Ms. Lynch firmly believed that the chart did not contain the appropriate paperwork to release the information to New Care. Ms. Kostreva admitted that she was frustrated, probably due to her own deadlines, but the fact that Ms. Lynch did not provide the requested information does not constitute being rude and discourteous. The Employer, however, did not take Kostreva's admitted frustration and annoyance into account, but accepted uncritically the complaint of rude and discourteous behavior and failed to question the other employees whom Lynch consulted. The Employer suggests after the fact a number of alternatives Lynch might have pursued, but produced no policy or protocol to support its argument.

The Employer also mischaracterizes Ms. Lynch's past job performance, by cherry-picking job evaluations and peer reviews to emphasize only those with negative comments. The Union has supplied additional evaluations and peer reviews which contain glowing comments about her performance. While peer reviews are subjective, it is noteworthy that the 2010, 2011 and 2012 evaluations all indicate Ms. Lynch "meets standards." There is nothing in the record to suggest that she was ever on notice that her employment was tenuous. She was a diligent, conscientious employee with a long record of service. The Employer has failed to prove just cause and the grievance should be upheld.

The Employer in Reply

The Employer disputes a number of the Union's representations of fact and asserts that the Grievant had adequate information to provide the requested documents to both Ms. Young and Ms. Kostreva. Further, Ms. Young was asked by BAMC to facilitate the patient transfer and Ms. Lynch could have asked any of the caseworkers to confirm the situation. The Union also erroneously states that the Luther Home employees were in violation of HIPAA, but both HIPAA and BAMC policy permitted the disclosure of the requested information. The, point, however, is not the legitimacy of the requests, but the Grievant's unprofessional behavior. The Union is simply trying to deflect blame from Ms. Lynch and place it on the Luther Home employees. There is also no merit in Ms. Lynch's claim that she could not access the records electronically, since the record reveals that she did examine the patient's records before denying the request.

BAMC denies that it engaged in double jeopardy. Hodges' conversation with Lynch on October 19 was not a counseling session tantamount to discipline and, further, Ms. Lynch was terminated under the progressive discipline policy for additional violations. A conversation with an employee reminding her of her obligations, and devoid of the typical indicia of discipline, is not a disciplinary act such that it closes the issue. Here, Hodges had an informal conversation with Ms. Lynch that was not documented in her personnel file. Thus, the cases cited by the Union are not on point because they only apply to situations where discipline for the alleged act has been issued and then is later increased. Also, after the October incident, Ms. Lynch engaged in further misconduct in her interaction with Ms. Kostreva on November 1. This action, alone, justifies her termination, because she was at the end of the disciplinary progression and knew any further misconduct would result in discharge.

BAMC denies that it did not conduct a full and fair investigation. After receiving Ms. Young's email on October 19, Hodges spoke to Ms. Lynch, who merely stated, "I was not rude to her," without further explanation. She did not identify anyone who could confirm her story. Hodges then spoke to Shauna Cooley, the BAMC charge nurse on duty at the time, who confirmed Ms. Young's account. Hodges attempted to identify other witnesses, but could find none. On November 1, Lisa Wingender received a complaint from Ms. Kostreva about her encounter with Ms. Lynch, which was referred to Hodges. Ms. Kostreva had stated that Ms. Lynch would not release information she needed for a patient transfer. Ms. Lynch claimed she had spoken with numerous other employees who supported her action and that she was unaware of the patient transfer. Again, Hodges investigated the incident, but was unable to identify the other employees Ms. Lynch had allegedly spoken to, and, again, she did not disclose their names. He also examined the chart and discovered the care plan that permitted the transfer of information. It is also noteworthy that both complainants were employees of other facilities who had no reason to fabricate false allegations

By behaving unprofessionally to Ms. Young and Ms. Kostreva, and by refusing a legitimate request for information, Ms. Lynch committed two violations of BAMC policy. She had been thoroughly trained as to appropriate procedures and could have consulted management at any time for clarification. She could have consulted the chart to find the appropriate authorization and she could have taken steps to confirm Ms. Kostreva's identity. She did neither. She was neither diligent nor professional in her conduct.

BAMC also provided detailed evidence of Ms. Lynch's misconduct, contrary to the Union's allegations of vague and ambiguous allegations. Ms. Lynch had several exchanges with Hodges and knew specifically the actions for which she was discharged. She was at the end of the disciplinary progression and had been previously disciplined for numerous violations of service standards. She knew that further violations would result in discharge. There is no merit to the claim that she was not on notice of her situation or unaware of the reasons for BAMC's actions. The record is replete with examples of Ms. Lynch's poor job performance over an extended period of time, but the Union ignores the total record and, instead, relies on three performance appraisals that were issued before the sequence of progressive discipline began. She had been repeatedly warned about her conduct and did not grieve the previous

disciplines. By her own admission on her self-assessment, she needed to improve in her team-centered approach and attitude.

Finally, the Union asserts that BAMC has the burden of establishing that Ms. Lynch did not have the conversations that she alleges supported her actions. This mischaracterizes the burden of proof. Under just cause principles, the employer is required to make a *prima facie* case supporting the discipline by a preponderance of the evidence. It is not required to prove the Union's case by determining the merit of the Grievant's affirmative defenses. Ms. Lynch claimed there were other witnesses who would confirm her version of events, but neither identified these witnesses, nor produced them at hearing. Hodges questioned the witnesses of whom he was aware. No other witnesses came forward to support Ms. Lynch. Management confirmed the allegations of her misconduct and responded accordingly. The grievance should be denied.

DISCUSSION

In this case, the Grievant was terminated from her employment after management received two separate complaints from staff at two different area nursing home facilities alleging that the Grievant had dealt with them in a rude and unprofessional manner and had failed to provide necessary transfer information. One incident occurred on October 17, 2012 and the other occurred on November 1, 2012. Management investigated the incidents and, upon being satisfied that the complaints were valid, discharged the Grievant on November 6, 2012. The Union asserts that there was not just cause for termination in that the grievant behaved appropriately in both instances and that the complaints were exaggerated. The Union further asserts that management failed to conduct an adequate investigation and subjected the Grievant to double jeopardy.

In a discipline case such as this the burden is on management to establish by a preponderance of the evidence that just cause exists for the discipline. Various formulae have been employed by arbitrators to establish just cause, but essentially management's duty is to establish that the Grievant committed acts for which discipline is justified and that the discipline imposed was not excessive. In such an analysis, one important factor is whether the contract provides for progressive discipline and, if so, whether progressive discipline was followed. In this case, there is language in the contract providing for progressive discipline and the record reveals that it was followed in this case. The Grievant received a written reprimand in February 2012 and a three day suspension in August 2012. She was, therefore, at the termination stage of the disciplinary progression and the previous disciplines clearly noted that future infractions would lead to further discipline up to and including termination.

The first incident occurred on October 17, 2012. Erin Young, the Business Development Manager at Northland Lutheran Retreat Community, and Rehab Unit Nurse Manager Kim Dedemos, came to BAMC on that day at the Center's request to coordinate a transfer for a patient from BAMC to Northland. The Grievant was manning the nurse's station. Young testified that she had dealt with the Grievant on several past occasions and was known

to her. According to Young, the Grievant refused to share the patient's information when requested and treated her rudely when Young accessed the information herself. She stated she sent an email reporting the incident to Thomas Hodges, BAMC's Nursing Director, because she had never been treated so rudely before and wanted the matter addressed. Hodges investigated the incident. He spoke to Shauna Cooley, another employee who was on duty at the time, and Cooley confirmed the Grievant's rude conduct toward Young. Hodges also spoke to the Grievant, who denied that she behaved rudely and Hodge's told her further such behavior would not be tolerated.

The second incident occurred on November 1, 2012, when Allison Kostreva, a Social Work Designee from New Care Convalescent Center, called BAMC about another patient transfer in order to obtain the patient's medical information and spoke to the Grievant. The Grievant checked the patient's records and was unable to find information about the transfer or authorization to release the information. She called Kostreva back and said she could not release the information because she could not find information about the transfer and could not verify Kostreva's identity, thus she was concerned that a release would violate HIPAA. Kostreva was frustrated because the transfer was imminent and she needed the information. She later contacted Lisa Wingender, a Social Worker at BAMC, to complain about the Grievant's conduct and Wingender, in turn, passed the complaint on to Hodges. Wingender testified that this was the first time any such problem had occurred with New Care. Hodges also received an email from the Grievant the same night giving the Grievant's version of the incident and stating that the Grievant was acting on advice from several other nurses she consulted about Kostreva's request. Hodges again investigated the incident and discovered that the patient's record did contain the necessary documentation to release the information to Kostreva. He also attempted to identify the other nurses the Grievant claimed to have spoken to, but could not identify any such.

The Grievant, for her part, testified that she had acted according to BAMC policy. As to the Young incident, she stated that she had no recall of the event or of ever having met Young prior to the hearing. She further stated that Hodges never spoke to her about the incident and the first she heard of it was at her termination meeting. As to the Kostreva Incident, she stated that the patient file did not contain the documentation necessary to transfer the requested information and that she consulted with other nurses about what to do because there were no management staff on duty. She identified the other nurses she supposedly spoke to as Becky Moile, Jamie Sundberg and Susie LaFortune. None of these persons came forward, however, to testify on her behalf and the Grievant admitted she did not previously share the names with Hodges. She further stated that when she called Kostreva back to explain that she could not release the information, Kostreva became upset and wanted her name so she could register a complaint.

Hodges discussed the two incidents with several of BAMC's management staff and it was determined to terminate the Grievant. On November 6, 2012, she was summoned to a meeting with Hodges, several other managers and a Union representative, whereupon she was summarily terminated.

At the outset, I note that if the events upon which the termination was founded occurred as described by Young and Kostreva, they would constitute violations of several of BAMC's Seven Standards of Service Care outlined in BAMC's Mission Statement, to wit, 1) Make positive first impressions our first priority, 2) Treat others as guests, 3) Develop service recovery, 4) Communicate effectively, 5) Serve others from a team-centered approach, 6) Project a positive attitude and 7) Make excellence a goal of everything we do. This is the basis upon which the termination was grounded.

What is before me is a record containing multiple disparate accounts of two events. Essentially, Young and Kostreva, separately and with no apparent connection between the two, complained to BAMC about their interactions with the Grievant and her failure to provide necessary information in a polite and prompt fashion on two separate occasions roughly two weeks apart. In each case, the complaints were unsolicited and both complaining witnesses stated that they had never received such treatment from BAMC staff in the past. In Young's case, the complaint was verified to management by another BAMC staff member who witnessed the exchange. The Grievant, for her part, testified that in each case she behaved politely and properly.

Given the wide disparity in accounts, it is not possible to reconcile them into one coherent narrative and, so, credibility becomes a critical factor because I am faced with a decision as to which accounts to believe. BAMC argues, with force, that in such a case the Grievant's version is inherently suspect because she has a vested interest in the outcome of the case, whereas the two chief complainants have none. Further, BAMC did not go to Young and Kostreva to solicit their complaints, rather the complainants came forward on their own, precipitating the resulting investigations. The Union has offered no explanation for why either Young or Kostreva would fabricate their stories and I am at a loss to find one, as well. Rather, the Union argues that the complaints were exaggerated accounts and suggests that management over-emphasized them in an effort to justify the termination of an unwanted employee. This is mere speculation, however, and I can find no basis to disbelieve the testimony of Young and Kostreva, or to find that management improperly mischaracterized their complaints in investigating the incidents and deciding the proper course thereafter.

In the Young incident, Hodges spoke to another employee who confirmed Young's story. Further, he made a contemporaneous note regarding his conversation with the Grievant on October 19, in which he stated they spoke about the incident and the Grievant did not deny the event, but only stated that she was not rude. This note predated the termination by several weeks. This undercuts the credibility of the Grievant's subsequent claim that she had never met Young before and that Hodges never spoke to her about the incident. As to the Kostreva incident, although the Grievant stated her actions were supported by other nurses on staff, she did not produce them to support her testimony. Further, Hodges testified that he personally examined the chart of the patient in question and that the necessary documentation to permit the release of information was present. Given the preponderance of evidence produced by BAMC in support of its action, countered only by the Grievant's unsupported denials, therefore, I have no alternative to find that the preponderance of the evidence supports

BAMC's version of the events in dispute. Given that the Grievant's actions on these occasions violated BAMC's standards of service care, and that the Grievant had two recent disciplines in her record for other violations, I find that just cause for the termination did exist. For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

AWARD

The Employer had just cause to terminate the Grievant on November 6, 2012. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 12th day of August, 2013.

John R. Emery /s/

John R. Emery, Arbitrator