

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JAMIE SALINAS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0542

Case Type: PA

DECISION NO. 39752

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**Appearances:**

Jamie Salinas, 59712 North Buck Creek Road, Ferryville, Wisconsin, appearing on her own behalf.

Nicole Porter, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On July 20, 2022, Jamie Salinas filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections.

A Zoom hearing was held on September 22, 2022, by Commission Examiner Katherine Scott. The parties submitted written arguments on September 29, 2022. On October 26, 2022, Examiner Scott issued a Proposed Decision and Order affirming the three-day suspension by the Department of Corrections. No objections were filed by the parties by the deadline given of October 31, 2022.

Being fully advised on the premises, the Commission makes and issues the following:

**FINDINGS OF FACT**

1. Jamie Salinas (Salinas) is employed by the State of Wisconsin Department of Corrections (DOC), Division of Adult Institutions, as a Nurse Clinician 2 at Prairie du Chien Correctional Institution (PDCI) and had permanent status in class when she was suspended.

2. On or between February 2019 and June 2021, Salinas entered at least 86 patients' electronic medical records without an identifiable patient care-related reason to do so.

3. Salinas did not obtain appropriate authorization to access these patient files outside of a patient care-related reason.

4. DOC suspended Salinas for three days for unauthorized access to confidential information or records.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

### **CONCLUSIONS OF LAW**

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Corrections had just cause within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Jamie Salinas for three days.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

The three-day suspension of Jamie Salinas by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 10<sup>th</sup> day of November, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Jamie Salinas had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Salinas was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

As a Nurse Clinician 2, Salinas was responsible for keeping patient health records confidential, under both departmental policy and state and federal laws, including the Health Insurance Portability and Accountability Act (HIPAA). Salinas is required to attend annual HIPAA training. At the hearing, multiple DOC employees credibly testified that nurses are clearly told not to go into patient files in the electronic medical record system without a patient-care related reason to do so.

In June 2021, as a result of a WERC hearing on another suspension, Health Services Nursing Coordinator Holly Gunderson discovered that Salinas had accessed patient files without a patient care-related reason to do so. Gunderson made a report to the institution's HIPAA officer, who started an investigation into Salinas's patient chart access. As part of the investigation, DOC performed an audit of Salinas's access to patient charts. They discovered that Salinas had entered the charts of over 700 patients with whom she had no provider relationship or job-related need to know their medical information. Many of the patients were never at Salinas's institution or had been transferred or released prior to the date she accessed their files. After accounting for some data entry work that Salinas performed for other institutions in 2019, the total number of breaches was reduced to 331. Further, during the hearing, the parties stipulated that approximately 245 entries on Sunday, April 14, 2019 were due to a computer glitch. The evidence presented at the hearing establishes that Salinas entered the files of at least 86 patients with whom she had no provider relationship.

Salinas argued that the data entry didn't end in February 2019 but continued until September 2019. She argued that she had to enter patients' files to reschedule appointments without canceling them after the patients had been transferred. Salinas further argued that some of

the breaches are because she made errors when looking up patients with whom she was providing care.

However, in her closing argument, Salinas admits that she entered the charts of patients with whom she did not have a provider relationship to defend herself at a WERC hearing concerning a prior suspension: “I have entered Patients [sic] charts who were patients at PDCI for information I needed for a WERC hearing.” Appellant Closing Argument, pg. 2.

Under DOC Executive Directive #35, DOC employees “shall only request, use or disclose offender PHI [protected health information] in compliance with Wisconsin and federal law, and DOC policies.” Under DAI policy #500.50.01(II)(C), “only employees with a job-related need to know PHI shall request, access, use or disclose PHI in any format, including verbal, hard copy and electronic. The employee shall be able to explain why he or she cannot perform an assigned job duty without the PHI.” Further, under DAI policy #500.50.01(I)(B), employees “shall not share PHI in any format, including verbal, hard copy and electronic with any person outside of the DOC without clear legal authorization.” Salinas accessed PHI to defend herself in a WERC hearing, which had nothing to do with performing an assigned job duty. She shared PHI with persons outside the DOC during her WERC hearing without clear legal authorization.

Salinas claimed that she had her supervisor Mary Bartels’s permission to enter patient files to defend herself at the WERC hearing. However, Bartels had retired at the time Salinas asked her for permission and was, therefore, no longer Salinas’s supervisor at the time she gave “permission.” Bartels declined to participate in the investigation and did not testify at the hearing. Exhibit R-11, pg. 2. Further, Warden Pete Jaeger testified that if Bartels had given Salinas permission, Bartels would have been investigated as well, because the underlying request was not appropriate.

Salinas entered patient records for personal reasons unrelated to patient care. In doing so, she did not simply violate departmental policies: she may have violated federal laws governing patients’ health records. Her actions violated patients’ privacy rights and could have resulted in a fine, audit, or investigation of her employer by the Office of Civil Rights. This constitutes serious misconduct and warrants a skip in progressive discipline. There was just cause for the three-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 10<sup>th</sup> day of November, 2022.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman