

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KONSTANTIN MIKHEYEV, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0185

Case Type: PA

DECISION NO. 41238-A

Appearances:

Colin B. Good, Attorney, Hawks Quindel, S.C., 409 East Main Street, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Konstantin Mikheyev.

William H. Ramsey, Deputy Chief Legal Counsel, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On July 24, 2025, Konstantin Mikheyev (Mikheyev) filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Health Services. The appeal was assigned to Commission Examiner Anfin J. Wise.

A Zoom hearing was held on October 21, 2025, by Examiner Wise. The parties submitted written closing arguments on October 27, 2025; Mikheyev requested reimbursement of attorney's fees in his closing; and the record was closed.

On October 30, 2025, Examiner Wise issued a Proposed Decision and Order, affirming the discharge of Konstantin Mikheyev by the DHS and denying reimbursement of attorney's fees. On November 4, 2025, Mikheyev filed objections to the Proposed Decision. On November 11, 2025, DHS filed a response to the objections and the matter became ripe for Commission consideration.

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

FINDINGS OF FACT

1. Konstantin Mikheyev (Mikheyev) was employed by the State of Wisconsin Department of Health Services (DHS), as a Psychiatrist at the Wisconsin Resource Center (WRC) and had permanent status in class when he was discharged.

2. The DHS is a state agency responsible for the administration of WRC, a maximum-security treatment facility for inmates in need of specialized mental health services, located in Oshkosh, Wisconsin.

3. On February 28, 2025, Mikheyev signed and submitted an affidavit stating “[T]his affidavit is based upon my personal assessment of (inmate/patient) L.D., as well as my review of the facility’s records...Based upon my observations...it is my opinion to a reasonable degree of medical certainty that L.D. is suffering from a self-imposed hunger strike...”

4. The sworn statements in the affidavit were false as Mikheyev did not observe, visit, or personally assess L.D. prior to completing the affidavit.

5. Mikheyev was negligent in his treatment of L.D. when he delayed treating L.D. after being notified of L.D.’s condition two days earlier.

5. Mikheyev was also negligent in his treatment of L.D. when he failed to respect L.D.’s autonomy, prior to signing an affidavit seeking a court order to involuntary evaluate, medically treat, hydrate, and feed.

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 Health Services had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Konstantin Mikheyev.

3. Konstantin Mikheyev is not a prevailing party within the meaning of Wis. Stat. § 227.485(3).

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

ORDER

1. The discharge of Konstantin Mikheyev by the State of Wisconsin Department of Health Services is affirmed.

2. Konstantin Mikheyev's request for reimbursement of attorney's fees is denied.

Issued at Madison, Wisconsin, this 21st day of November 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, 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.

Konstantin Mikheyev had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Konstantin Mikheyev 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).

Konstantin Mikheyev was a Psychiatrist at the WRC, a maximum-security treatment facility for inmates in need of specialized mental health services. On February 17, 2025, inmate/patient L.D. began a hunger strike. On February 24, a WRC dietician noted in L.D.'s electronic health record (EHR) that he continues to be on a hunger strike and that he was at significant risk for refeeding syndrome. She suggested pursuing a court order for involuntary treatment. On February 26, after returning from vacation, L.D.'s Attending Psychiatric Nurse Practitioner (APNP) notified Mikheyev of L.D.'s condition. On February 26, the dietician noted again that L.D. continues to be on a hunger strike and that he was at significant risk for refeeding syndrome. She yet again noted her suggestion to pursue a court order to treat. On February 27, Mikheyev was reminded again of the patient's health condition.

On Friday, February 28, at 11:34am, Mikheyev accessed L.D.'s EHR for the first time for review. Then at 12:29pm, Mikheyev signed and submitted an affidavit in support of a court order to compel treatment stating, "[T]his affidavit is based upon my personal assessment of L.D., as well as my review of the facility's records...Based upon my observations...it is my opinion to a reasonable degree of medical certainty that L.D. is suffering from a self-imposed hunger strike..."

Konstantin Mikheyev and Melissa Kavanaugh, WRC's Clinical Coordinator for court-ordered services, happened to be on the phone with each other when the signed affidavit arrived in Ms. Kavanaugh's email inbox. Kavanaugh told Mikheyev that she would get it filed with the court asap. Shortly thereafter, Mikheyev followed up with a seven-minute in-person assessment of L.D. At 4:51pm, WRC received the court order for involuntary treatment.

Based upon previous concerns related to not seeing patients, as well as the timeline of the day, Kavanagh suspected that Mikheyev did not see L.D. prior to signing the affidavit and reported her concerns to management. The Department initiated an investigation and discovered that Mikheyev visited L.D. after he had signed and submitted the affidavit. On March 7, 2025, WRC notified the Winnebago County Judge, who issued the treatment order, of its findings. Ultimately, DHS's investigation concluded that Mikheyev falsified the affidavit and was negligent in his treatment of L.D. and discharged him on June 9, 2025.

State of Wisconsin Work Rule #1 prohibits falsification of records and knowingly giving false information. Work Rule #3 prohibits inattentiveness, negligence, or failure to carry out written or verbal assignments, directions, or instructions.

The Department contends that Mikheyev falsified the affidavit when he stated that he performed a personal assessment of L.D., in violation of the work rule #1. The Commission agrees.

The purpose of an affidavit is to be a written, sworn statement of fact used to support a legal or official process. It serves as a formal declaration that is legally attested to be true by the person making the statement. Therefore, when an affiant signs and completes the affidavit, they are affirming that the statements contained in the affidavit are true.

When Konstantin Mikheyev signed and submitted the affidavit to be filed with Winnebago County Circuit Court, he had yet to observe or personally assess L.D. Therefore, the sworn statements in the affidavit were false as Mikheyev did not observe, visit, or personally assess L.D. prior to completing the affidavit. Credible testimony and evidence at the hearing established that the term "personal assessment" means an in-person assessment. Additionally, Mikheyev admitted that he was aware of the need to assess L.D. in person.

The Department also contends that Konstantin Mikheyev was negligent in his treatment of L.D. because he failed to assess L.D. or speak to the medical provider until February 28, after being notified of the patient's deteriorating health on February 26. The Commission also agrees.

At WRC, if there is a need for a petition to seek court-ordered treatment, the psychiatrist is responsible for completing the necessary affidavit. At the hearing, Mikheyev admitted that he understood that it was his responsibility to complete the affidavit. No explanation was provided as to why he did not review L.D.'s EHR or visit with him until late Friday, February 28.

Moreover, credible testimony at the hearing established that an in-person assessment is essential, prior to seeking an order for involuntary treatment, including force-feeding. Not only is the physician able to get a full picture of the patient's condition, but the personal assessment is the patient's final opportunity to comply with treatment voluntarily. The physician is also able to explain the consequences of a continued hunger strike, as well as answer any questions the patient may have. Seeking a court order for involuntary treatment is extremely serious. The inmates at WRC have been stripped of most of their liberties. They only have control of their body and their actions. A court order to treat involuntarily strips away the remainder of their liberties. Thus, not only was Konstantin Mikheyev negligent in his treatment of L.D. for failing to see him sooner,

Mikheyev was also negligent in his duties as a psychiatrist when he failed to respect L.D.'s autonomy prior to signing and submitting the affidavit for involuntary treatment, including force-feeding. It is important to note that the United Nations (UN) considers force-feeding hunger-striking prisoners to be a form of cruel and inhumane ill-treatment that can be equivalent to torture.

Here, there is no doubt that Konstantin Mikheyev's actions constituted serious misconduct. Accordingly, we find that DHS had just cause to issue formal discipline with a skip in progression for his serious misconduct.

The focus now turns to the level of discipline imposed here. DHS notes that Konstantin Mikheyev had been previously counselled on the need for in-person patient interaction just a few months prior to this incident following concerns about patient interaction and poor or unclear documentation. After an investigation, Dr. Marley Kercher, Mikheyev's direct supervisor, relayed to Mikheyev that his work did not meet the generally expected standards for a psychiatrist practicing at WRC. Mikheyev was told specifically:

"that his provider notes were at times based solely on chart reviews and not on...actual interaction with the patient...it was not always clear why such an encounter was conducted this way...*this type of "chart review" visit should be rare...every effort should be made to have an actual patient encounter as a routine part of patient care*, and in the rare instances where this is not possible, the reasons for this and the efforts made to meet personally with the patient should be clearly documented." *Emphasis added.*

Thus, while Mikheyev did not have any prior discipline, his failure to carry out his supervisor's directions or instructions is an aggravating factor to consider. Finally, DHS determined that falsifying records is a serious act of misconduct for which normal progressive disciplinary action is inappropriate. Therefore, a "skip" to termination was warranted due to the serious nature of Mikheyev's misconduct.

Turning now to Konstantin Mikheyev's defenses. Mikheyev claims that "personal assessment" does not necessarily mean an in-person assessment. Mikheyev argues that physicians are not always required to conduct an in-person assessment of a patient in forming a medical opinion. Instead, they exercise independent and individualized decision-making based on consultation with a care team and chart review.

In this case, Konstantin Mikheyev maintains that he dutifully followed DHS's hunger strike policy, which empowered him to collaborate with the dietician and internist, as well as to review the patient's medical records, to form an opinion based on a degree of medical certainty that the patient would need compelled care. While there certainly are circumstances where a physician's clinical judgment is appropriately based on a review of records and consultation with a care team, what occurred on February 28 was not one of those times. Mikheyev himself knew he had to visit L.D. in person, as evidenced by his in-person visit immediately after he submitted the affidavit. If review of records and consultation with the care team was sufficient, there would have been no reason to follow up with an in-person assessment. And as stated previously, the record established

that “personal assessment” means an in-person assessment. Furthermore, it is clear that in-person interaction with patients was the expectation from his supervisor.

Given the foregoing, the Commission concludes that Konstantin Mikheyev engaged in serious misconduct when he falsely stated in an affidavit that he had personally assessed and observed the patient, when he had yet to do so. We also find that Mikheyev engaged in misconduct and was negligent in his duties as a psychiatrist for his delay in treating L.D. and his failure to respect L.D.’s autonomy. Therefore, it is concluded that there was just cause for Konstantin Mikheyev’s discharge, and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 21st day of November 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman