

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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STEPHEN McCULLEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0880

Case Type: PA

DECISION NO. 41462

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Appearances:

Stephen McCullen, c/o Racine Correctional Institution, 2019 Wisconsin Street, Sturtevant, Wisconsin, appearing on his own behalf.

Eric Muellenbach, Attorney, Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On January 20, 2026, Stephen McCullen filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Anfin J. Wise.

On September 16, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Wise was given final authority to issue the Commission's decision.

A Zoom hearing was held on April 2, 2026, by Examiner Wise. The DOC submitted written closing argument on April 15, 2026. McCullen filed written closing argument on April 16, 2026, whereupon the record was closed.

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

**FINDINGS OF FACT**

1. Stephen McCullen (McCullen) is employed by the State of Wisconsin Department of Corrections (DOC), as a Nurse Clinician 4 at Racine Correctional Institution (RCI) and had permanent status in class when he was suspended for one day.

2. The DOC is a state agency responsible for the operation of various corrections facilities including RCI, a medium-security facility located in Sturtevant, Wisconsin.

3. On July 31, 2025, McCullen disclosed an inmate's personal health information (PHI) while on a three-way phone call with the inmate and a third party without authorization, in violation of DOC's policies on confidentiality and security of inmate PHI.

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 Stephen McCullen for one day.

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

### **ORDER**

The one-day suspension of Stephen McCullen by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 20<sup>th</sup> day of May 2026.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

**Electronically signed by Anfin J. Wise**

Anfin J. Wise, Hearing Examiner

**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.

Stephen McCullen had permanent status in class at the time of his suspension, and his appeal alleges that the suspension was not based on just cause.

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

On July 31, 2025, McCullen was on a three-way phone call with an inmate and the inmate's girlfriend when he disclosed the inmate's protected health information (PHI). During the recorded phone call, McCullen informed the inmate that the call was not "legal," but continued the conversation. Before ending the phone call, McCullen also informed the inmate "to keep both of us out of trouble again, don't make a direct call." At the hearing, McCullen admitted that he disclosed the PHI to the inmate on the three-way call and acknowledged that he should have been more protective of the inmate's information. No evidence was presented that McCullen had written legal authorization to disclose the inmate's PHI.

The Department of Corrections (DOC) has specific policies and procedures that govern the confidentiality and security of PHI for inmates. Executive Directive #35 instructs that DOC employees shall only disclose PHI in compliance with Wisconsin and federal law, and DOC policies. PHI may be disclosed "with written authorization or a court order." An inmate can provide written authorization to share their PHI with third parties "by signing a valid authorization form" or by making a "right of access" request. Furthermore, DAI Policy No. 500.50.01 emphasizes that employees shall not share PHI in any format, including verbal, with any person outside of the DOC without clear legal authorization.

Given McCullen's admission and clear policies prohibiting the release of PHI without explicit written authorization, misconduct has been established.

Turning now to a just cause consideration of the level of discipline McCullen received. The Commission finds that McCullen's misconduct does provide just cause for progressive discipline

and the imposition of a one-day suspension. It is expressly noted that a one-day is the first step in the progressive disciplinary schedule. Therefore, the one-day suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 20<sup>th</sup> day of May 2026.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

**Electronically signed by Anfin J. Wise**

Anfin J. Wise, Hearing Examiner