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5-17-2012

TENNESSEE BOARD OF PROBATION AND  
PAROLE, Petitioner, vs. LARISSA HUCHINGS,  
Grievant

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE  
STATE OF TENNESSEE**

**IN THE MATTER OF:**

**TENNESSEE BOARD OF  
PROBATION AND PAROLE,**  
*Petitioner,*

**DOCKET NO: 26.41-114897J**

v.

**LARISSA HUTCHINGS,**  
*Grievant.*

**INITIAL ORDER**

This matter was heard in Nashville, Tennessee, on May 17, 2012, before Ann M. Johnson, Administrative Judge. The State was represented by Karen D. Tolbert, Staff Attorney with the Board of Probation and Parole.<sup>1</sup> Phillip L. Davidson, of the Nashville bar, represented the Grievant.

The issue in this matter concerned the Grievant's appeal of her 30-day suspension without pay by the Board of Probation and Parole (BOPP). After consideration of the entire record, including the pleadings, transcript, exhibits, and post-hearing written argument of the parties, it is determined that the Grievant's suspension should be upheld. This decision is based upon the following.

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<sup>1</sup> The Board of Probation and Parole was the original Petitioner in this matter. Pursuant to Public Chapter 727, the supervision of offenders on parole and probation transferred from the Board to the Department of Correction, effective July 1, 2012. Employees involved in the supervision of offenders were transferred to the Department of Correction. Consequently, pending civil service cases of those employees were also transferred to the Department of Correction, including Forensic Social Workers such as the Grievant in this matter.

## SUMMARY OF THE EVIDENCE

Three witnesses were called to testify: Helen Ford, Deputy State Director of the BOPP; Janet Page, Deputy of District Director of District Four, and the Grievant Larissa Hutchings.

Documents admitted into evidence include the following:

- EXHIBIT 1 Intent to Suspend Letters;
- EXHIBIT 2 Disciplinary Action Request;
- EXHIBIT 3 Administrative Policy 202.01, Code of Ethics;
- EXHIBIT 4 Forensic Social Work Program Manual;
- EXHIBIT 5 Community Treatment Collaborative Guidelines;
- EXHIBIT 6 Manager Evaluations;
- EXHIBIT 7 Minutes of Meeting of District Directors;
- EXHIBIT 8 Case File, #475909;
- EXHIBIT 9 Case File, #486903;
- EXHIBIT 10 Case File, #457338;
- EXHIBIT 11 Case File, #103582;
- EXHIBIT 12 Case File, #476374;
- EXHIBIT 13 Case File, #327001;
- EXHIBIT 14 Case File, #319044;
- EXHIBIT 15 Case File, #361556;
- EXHIBIT 16 Case File, #402555;
- EXHIBIT 17 Case File, #444649;
- EXHIBIT 18 Case File, #386598;
- EXHIBIT 19 Case File, #478057;
- EXHIBIT 20 Case File, #476788;
- EXHIBIT 21 Case File, #459748;
- EXHIBIT 22 Case File, #332485;
- EXHIBIT 23 Case File, #482613;
- EXHIBIT 24 Case File, #382232;
- EXHIBIT 25 Case File, #107762;
- EXHIBIT 26 Case File, #360628;
- EXHIBIT 27 Case File, #077752;
- EXHIBIT 28 Case File, #483130;
- EXHIBIT 29 Case File, #367866;
- EXHIBIT 30 Compilation of BOPP Offender Files;
- EXHIBIT 31 Case Load List;
- EXHIBIT 32 NASW Code of Ethics;
- EXHIBIT 33 Case File, #475909, Grievant's Copy;
- EXHIBIT 34 Case File, #486903, Grievant's Copy;
- EXHIBIT 35 Case File, #457338, Grievant's Copy;
- EXHIBIT 36 Case File, #103592, Grievant's Copy;
- EXHIBIT 37 Case File, #476374, Grievant's Copy;
- EXHIBIT 38 Case File, #319044, Grievant's Copy;

EXHIBIT 39 Case File, #361556, Grievant's Copy;  
EXHIBIT 40 Case File, #402555, Grievant's Copy;  
EXHIBIT 41 Case File, #444649, Grievant's Copy;  
EXHIBIT 42 Case File, #386598, Grievant's Copy;  
EXHIBIT 43 Case File, #476788, Grievant's Copy;  
EXHIBIT 44 Case File, #459748, Grievant's Copy;  
EXHIBIT 45 Case File, #332485, Grievant's Copy;  
EXHIBIT 46 Case File, #482613, Grievant's Copy;  
EXHIBIT 47 Case File, #382232, Grievant's Copy;  
EXHIBIT 48 Case File, #107762, Grievant's Copy;  
EXHIBIT 49 Case File, #360628, Grievant's Copy;  
EXHIBIT 50 Case File, #077752, Grievant's Copy;  
EXHIBIT 51 Case File, #483130, Grievant's Copy; and  
EXHIBIT 52 Case File, #367866, Grievant's Copy.

### **FINDINGS OF FACT**

1. The Grievant Larissa Hutchings was employed as a Forensic Social Worker (FSW) with the Tennessee Board of Probation and Parole (BOPP) from April of 2008 through November of 2011.

2. Prior to this case, the Grievant had received no disciplinary actions.

3. The duties of a FSW include providing individual and group counseling, providing assessments, making referrals to the treatment network or in the community, and following up on client cases.

4. After an audit of the Grievant's files in May of 2011, the Grievant's supervisor recommended disciplinary action against her. In August of 2011, the Grievant was charged with multiple disciplinary offenses under Rule 1120-10-.06 of the Department of Human Resources: Section (1), Inefficiency or incompetency in the performance of duties; Section (2), Negligence in the performance of duties; Section (4), Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; Section (8), conduct unbecoming an employee in the State service; Section (11), Falsification of an official document related to or

affecting employment; Section (12), Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage; Section (15), Acts that would endanger the lives and property of others; and Section (18), Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

5. The Grievant was also charged with violation of the Board's Policy #202.01 – Code of Ethics.

6. For these violations, the Grievant was given a 30-day suspension without pay.

7. The Grievant was accorded appropriate due process protections. After a Level IV hearing, the Grievant's 30-day suspension was upheld.

8. Helen Ford, Deputy State Director of Probation and Parole, currently supervises the eight District Directors across the state and, through the District Directors, the forensic social workers (FSWs). Ms. Ford also reviews disciplinary requests from the District Directors. Ms. Ford explained that the function of the BOPP is to supervise offenders who are placed on parole and probation.

9. An offender may be referred to a FSW to assess the need for additional services and to provide referrals for needed care for clients with mental health or substance abuse problems. The process begins with a referral by the Probation and Parole Officer (PPO). After assessing the offender, the FSW provides referrals for the appropriate treatment. FSWs commonly use the alcohol and drug simple screening instrument, the biopsychosocial assessment, and mental health status exams.

10. The FSW records all interactions with the client through contact notes in Tennessee Offender Management Information System (TOMIS), which the Board uses as an official record to document all contacts with the offender while on probation or parole.

11. The FSW maintains a file for each client that contains all contacts and information about each client. The file should contain the PPO referral form, contact notes, biopsychosocial assessment, treatment plan, mental status exam, and discharge summary. The method of organization and maintenance of offender files is specified by BOPP policy.

12. FSW job requirements and duties are specified in the Forensic Social Work Program Manual. In addition to descriptions of procedures, the Manual contains template forms used by the FSWs, including the PPO referral form, contact note form, biopsychosocial assessment, treatment plan, mental status exam, and discharge summary.

13. The Grievant helped to compile the Forensic Social Work Program Manual; she was responsible for drafting two chapters. This Manual was completed in 2010.

14. Documentation is particularly important for the BOPP because many offenders have complex issues, including mental health and substance abuse problems; the social worker's documentation provides a record and allows the Board to follow an offender's treatment. This information is extremely significant in determining whether an arrest warrant for an offender should be issued and whether an offender should be deprived of freedom or released into the community.

15. According to Ms. Ford, one of the major factual issues involved in the Grievant's discipline was the problem with documentation in her case files. There were many missing documents and the files were not in order; some files were in complete disarray and could not be used by others to track an offender's progress or needs.

16. Furthermore, there were no records of follow-up activities with many of the Grievant's clients, indicating that some offenders may not have been followed properly. This activity is especially important for social workers because of the frequency with which they see clients with mental health and substance abuse issues. Unless the social worker follows progress with treatment, an offender may be unsuccessful with probation or parole.

17. In addition to documentation and follow-up problems, Ms. Ford also identified other issues with the Grievant's performance, including improperly advising a client to undergo a tubal ligation, insubordination, and disrespect of supervisors.

18. Janet Page is the Deputy Director for District Four, which includes Nashville. Ms. Page performs several duties in this role, including preparation of disciplinary requests, approval of interim reviews, and performance evaluations.

19. Ms. Page prepared the memorandum requesting disciplinary action against the Grievant for infractions that led to the 30-day suspension. According to Ms. Page's memo, an audit of the Grievant's files revealed significant problems with missing and incomplete records. These issues included problems with documentation, which is essential to the role of the BOPP's ability to supervise offenders. The audit disclosed that many files did not contain the required PPO referral form, documentation of biopsychosocial assessments or mental status exams, or discharge summaries.

20. According to the audit of 152 case files assigned to the Grievant, all of them revealed deficiencies: 102 files did not contain the PPO referral form, so the actual referral date could not be determined; 148 files did not contain completed biopsychosocial assessments or mental status exams, so the offender's needs could not be assessed; 152 files contained progress/contact notes only on the initial face-to-face contact with the offender, indicating that

required weekly documented contact with the offender was not done; 152 files did not contain discharge summaries, so the current status of the offender was unavailable; and 152 files were not organized as required by the Social Work Program Manual, so the BOPP would be unable to ascertain the progress and status of the offenders.

21. Ms. Page stated that the Grievant failed to complete contact notes for many cases beyond the initial contact with the offender, indicating that required and essential follow-up duties were not done. According to the files, the Grievant failed to make weekly contact with treatment providers as required by the treatment collaborative guidelines.

22. Furthermore, the Grievant's client files were not organized, and documents were loose in the files. The memorandum also listed 22 files that provided examples of case files demonstrating the issues discovered in the audit.

23. For example, the file of Offender #457338 indicated that this client was referred to the Grievant for crisis intervention because of suicidal thoughts. The file did not contain a biopsychosocial assessment, a mental status exam, or a treatment plan. The absence of any contact notes after the date of the initial contact on the date of the referral indicates that there was no follow-up, which was particularly crucial because the offender was a suicide risk. Dire consequences could have resulted from the Grievant's failure to complete essential evaluations and contacts.

24. In another instance, Offender #103592 was released from incarceration after 21 years. After such a long period of confinement, it is reasonable to expect that this client had multiple treatment and rehabilitation needs. However, the file shows that the Grievant did not perform an alcohol and drug screening or a biopsychosocial assessment to determine the offender's needs. Furthermore, the Grievant did not have any contact with this offender after

the initial meeting to monitor and assess the offender's progress and continuing readjustment needs.

25. In another case, Offender #476374 was initially given an alcohol and drug screening which identified treatment needs and resulted in a referral by the Grievant to a treatment center. Instead of taking an active role to insure that the offender entered and completed treatment, the Grievant merely provided the offender with the telephone number for the treatment center: the offender's file did not contain any treatment progress information or a discharge summary.

26. Offender #361556 shows another egregious example. The initial contact notes indicate that this offender was hearing voices, was diagnosed as a paranoid schizophrenic, and described bipolar symptoms with mania. There was no biopsychosocial assessment or mental status exam in spite of the crucial nature of the client's problems. The Grievant indicated that the offender had an appointment with Siloam Clinic for a later date, but there was no indication that the Grievant ever performed any follow-up on this seriously ill patient.

27. Other evidence presented through multiple files at the hearing shows that the Grievant frequently did not follow up on offenders after the initial interview, even though some of these patients had critical and potentially dangerous conditions. These failures endangered the offenders assigned to the Grievant's supervision and also placed the public at risk.

28. Additional cases provide examples of the Grievant's inappropriate interaction with several offenders as, for example, a case in which the Grievant suggested that a client should undergo a tubal ligation, offering advice regarding a medical facility and encouraging the client to obtain the procedure. In another case the Grievant referenced an offender as "my boy." Similarly, the Grievant was observed in during an interview where she allowed the offender to

make lengthy inappropriate comments about Board members rather than redirecting the offender in a more positive direction. When the supervisor intervened after about an hour of listening to the exchange, the Grievant interrupted the supervisor in a sharp manner, showing insubordination and unprofessionalism toward the supervisor in front of the client.

29. The Grievant was also insubordinate to her supervisor when she was instructed to provide more direction during sessions and to shorten the length of counseling sessions to the allotted time. The Grievant refused, stating that she would see clients for longer periods if the client wanted to talk.

30. In multiple additional cases, the Grievant initially met with an offender and failed to appropriately assess the offender's needs through the evaluation instruments provided by the BOPP. Even more significantly, she frequently met with offenders in an initial interview and then failed to follow up, even though these offenders presented with serious problems such as substance abuse, suicidal ideation and other mental health issues, and domestic violence. This neglect of critical problems repeatedly placed offenders and the public at risk, and may have drastically reduced the offender's ability to successfully complete probation or parole.

31. The Grievant contended that she was not provided with sufficient training and therefore she was unaware of the specific employment responsibilities expected of her. This assertion is not credible in light of the fact that the Grievant was an experienced FSW and contributed to the compilation of the FSW Manual. Additionally, the Grievant admitted that she had referenced the Manual when she had questions. Further help was available to the Grievant if she had questions since both the Grievant and her supervisor worked in Nashville, but she refused to accept counseling or constructive criticism regarding her job duties. Rather than

asking for help from her clinical supervisor Ms. Hanna, the Grievant was disrespectful when Ms. Hanna attempted to counsel her.

32. Furthermore, in a meeting with her supervisors, the Grievant admitted that her caseload would not pass an audit. In the same meeting she also admitted that her files were not organized, that she failed to complete biopsychosocial assessments or treatment plans, and that she failed to follow up on referrals for the treatment network.

33. The BOPP is responsible for the supervision of felons, and its mission is to minimize the public risk and promote lawful behavior by the orderly release and community supervision of adult offenders. The FSW is a critical component in the system, providing treatment and counseling sessions that have significant consequences for offenders, victims, and members of the general public. The failure of a FSW to adequately handle assigned cases could create liability concerns for the Department and inhibit productivity and effectiveness of the BOPP.

### **RELEVANT LAW**

1. The BOPP, as the party “seeking to change the present state of affairs,” has the burden of proof under Rule 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the Grievant committed the violations with which she was charged, and that the discipline imposed was appropriate under state law and regulations.

2. The BOPP charged that the Grievant violated the following rules of the Tennessee Department of Human Resources:

1120-10-.06 **EXAMPLES OF DISCIPLINARY OFFENSES.** The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

- (1) Inefficiency or incompetency in the performance of duties.
- (2) Negligence in the performance of duties.
- . . .
- (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
- . . .
- (8) . . . conduct unbecoming an employee in the State service.
- . . .
- (11) Falsification of an official document related to or affecting employment.
- (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the Sate service or that would interfere with the ability of management to manage.
- . . .
- (15) Acts that would endanger the lives and property of others.
- . . .
- (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

3. The BOPP Code of Ethics, Policy 202.01, Section IV, includes the following:

A. Standards of Conduct.

- 1. This policy shall be interpreted and enforced to protect the public interest.... It is further intended that the public trust in the conduct of the Board and its employees be ensured by conduct being above reproach....
- (b) Any conduct that would create a justifiable impression in the public mind that the public trust is being violated is prohibited.

. . .

C. Mandates for Compliance.

- 4. An employee found to be deliberately violating or carelessly failing to adhere to the standards and code set forth in this policy and or otherwise engaging in conduct unbecoming an employee of the Board, shall be subject to disciplinary procedures established in accordance with the rules of the TN Department of Personnel<sup>2</sup>....

4. T.C.A. Section 8-30-330 contains the following relevant provisions:

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<sup>2</sup> Now the Tennessee Department of Human Resources.

(a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.

. . .  
(c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

5. Progressive discipline steps are outlined and described in Department of Human Resources Rule 1120-10-.07, which states, in relevant part:

- (1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.
- (2) Oral Warning.
- (3) Written Warning.
- (4) Suspension Without Pay.
- (5) Dismissal.

6. The Rules of the Tennessee Department of Human Services provide the overall policy for imposing disciplinary action in Rule 1120-10-.02:

POLICY. A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. . . .

#### **ANALYSIS and CONCLUSIONS OF LAW**

The Department has carried its burden of proof, to show by a preponderance of the evidence that the 30-day suspension is warranted in this case. It is concluded that the Grievant violated most of the Department of Human Services rules with which she was charged, as well as the BOPP Code of Ethics, as determined in the following.

Specifically, the Grievant failed to perform necessary job functions in several respects. First, her case files were woefully inadequate in their failure to provide documentation vital to the function of the BOPP. Many of the files did not contain the required documentation to show that the Grievant had assessed clients properly or followed up with them to monitor essential treatment or other necessary services. Documentation, in the form of various assessments and contact notes, is critical to the Board's supervision of offenders. Many of the Grievant's case files did not contain the PPO referral form, necessary assessments, treatment plans, and contact notes or discharge summaries to show follow-up activities. Assessments are critical, because without them the BOPP cannot determine offender needs and services to truly assist clients under their supervision. Contact notes, which are entered into TOMIS as the official record, are also essential to document the needs and progress of offenders.

Even more concerning than the failure to properly document and maintain complete files is the failure to provide the essential services that the documentation represents. The Grievant works with a vulnerable clientele that frequently has mental health, violence, and drug abuse issues. The success of an offender on probation or parole often depends upon the Board's ability to provide services to that offender; the FSW is vital to the function of the BOPP. The Grievant's case files indicate that in many cases she failed to provide the assessments and follow up services necessary for the success of offenders assigned to her caseload. The evidence shows that she failed to properly evaluate the need for services in many cases.

When the Grievant did perform assessments and then referred a client for treatment, in many cases she failed to follow up with the treatment provider and the offender, which is necessary to insure the safety of the offender and the public. Regular contact after the initial visit and evaluation is vital; multiple case files show that the Grievant did not meet with an offender

again after the initial interview and that she did not maintain regular contact with the offender, in spite of the fact that many clients presented with mental health, substance abuse, or crisis situations.

The Grievant is an experienced FSW and is aware of her job duties and responsibilities. She had access to the FSW Manual, which she helped to write. She admitted that she referenced it at times when she had questions. The Manual contains detailed descriptions of FSW procedures as well as template forms for various assessments and other documents, including the alcohol and drug simple screening instrument, biopsychosocial assessment, mental status exam, contact note, and discharge summary. The Grievant was well aware of the detailed Manual and of the functions she needed to perform to adequately carry out her responsibilities to offenders on her caseload.

In addition to the Manual, the Grievant had the opportunity for one-on-one mentoring sessions with her clinical supervisor since they were both located in Nashville. Also, on at least one occasion the Grievant's clinical supervisor attended sessions the Grievant conducted with clients to provide advice to the Grievant. The Grievant also refused to follow her supervisor's instructions to structure client sessions so that time limitations were observed and other clients could also be served. Instead of taking advantage of these opportunities for guidance, the Grievant acted disrespectfully toward the supervisor.

The Grievant also acted inappropriately toward her clients on occasion, by providing medical advice regarding a tubal ligation, referring to a client with an informal and disrespectful term, and failing to redirect a client who was criticizing Board members.

The Grievant's claim that her poor performance resulted from a lack of training and resources is not credible light of the opportunities presented by the Manual, which she helped to write, as well as supervisory mentoring and instruction.

In summary, the Grievant failed to perform her job responsibilities as a forensic social worker, thereby endangering the offenders under her supervision and the public at large. Her conduct violated the public trust placed in the BOPP and impaired its ability to carry out its mission. At times the Grievant's actions showed unprofessionalism and disrespect to both her clients and other BOPP employees. Her failure to accept supervisory guidance constitutes insubordination.

Based upon these facts, it is **concluded** that the preponderance of the evidence shows that the Grievant's conduct violated Department of Human Resources Rule 1120-10-.06 (1) Inefficiency or incompetency in the performance of duties; (2) Negligence in the performance of duties; (4) Failure to maintain satisfactory and harmonious working relations with the public and fellow employees; (8) ...conduct unbecoming an employee in State service; (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the State service or that would interfere with the ability of management to manage; (15) Acts that would endanger the lives and property of others; and (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

It is further **concluded** that the preponderance of the evidence shows that the Grievant violated Board of Probation and Parole Policy 202.01 Code of Ethics, Section VI, A(1) and C(4).

It is further **concluded** that the proof failed to show that the Grievant violated Department of Human Resources Rule 1120-10-.06 (11) Falsification of an official document related to or affecting employment.

In light of the serious nature of the Grievant's violations and the possible harm that could have resulted from these infractions, it is determined that the disciplinary action imposed by the BOPP is the lowest appropriate step that is appropriate, even though the Grievant has received no prior discipline.

Based upon the foregoing, it is **ordered** that the Grievant's 30-day suspension is hereby **upheld**.

This Initial Order entered and effective this 15 day of February, 2013

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Ann M. Johnson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 15 day of February, 2013



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Thomas G. Stovall, Director  
Administrative Procedures Division