

***Health & Hospitals Corp.***  
***(Queens Hospital Ctr.) v. Whitaker***  
OATH Index No. 0486/18 (May 11, 2018)

Service aide committed misconduct by being discourteous to two patients and by instigating a disruptive altercation with another co-worker. Termination is recommended.

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**NEW YORK CITY OFFICE OF  
ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**HEALTH AND HOSPITALS CORPORATION  
(QUEENS HOSPITAL CENTER)**  
*Petitioner*  
*-against-*  
**YVONNE WHITAKER**  
*Respondent*

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**REPORT AND RECOMMENDATION**

**JOYCELYN McGEACHY-KULS**, *Administrative Law Judge*

This employee disciplinary proceeding was referred by petitioner, the Health and Hospitals Corporation (“HHC”), pursuant to section 7.5 of the Personnel Rules of the Corporation. Petitioner alleges that respondent, a service aide, engaged in misconduct on four occasions: when she used an inappropriate tone and was disrespectful to her supervisor; when she left her work assignment and instigated an altercation with a co-worker; when she failed to provide considerate and respectful care by removing food from a patient before the patient had finished eating and by making a rude and inappropriate comment to the patient; and when she used an aggressive tone and made an inappropriate comment to a second patient.

At a three-day trial, petitioner presented documentary evidence and nine witnesses. Respondent testified on her own behalf and presented four witnesses and documentary evidence.

As set forth, I find that the charges are sustained and recommend that respondent be terminated from her employment.

## ANALYSIS

### *Misconduct Involving Statements Made to a Supervisor*

Respondent has been employed as a service aide at Queens Hospital Center since 2007. Her regular shift is 6:30 a.m. to 2:30 p.m. (Tr. 455-56). D. Henry, food service operations manager, has three direct reports who supervise respondent and the other service aides. Mr. Henry testified that managers kept a “community key” to the main office in a container on top of a refrigerator in the kitchen. The key was for managers’ use only. The managers noticed that items were missing from the office and decided to move the key in order to restrict access to the main office (Tr. 19-20). On the morning of February 16, 2016, respondent reported to work early and looked for the key but it was not on top of the refrigerator. Respondent asked Mr. Henry for the key to the office and Mr. Henry told respondent that the managers had moved it (Tr. 457-58). Mr. Henry testified that the conversation with respondent was “awkward” and respondent became insistent about the key. Respondent asked why they moved the key and said that the “[managers] are playing God” (Tr. 21). Respondent told Mr. Henry “that’s why [he] didn’t get the position” of general manager that he applied for (Tr. 458). Respondent also stated that she hoped that another supervisor, J. Simmons would “get a flat blowout” so she would not be able to let people in the office (Tr. 21). Mr. Henry related that respondent was very rude and disrespectful. He advised respondent that he was going to document their conversation and subsequently drafted a memo for his files (Pet. Ex. 7; Tr. 21-22).

N. Kaston, general manager at Sodexo, testified that he was working at that time and heard yelling coming from the kitchen area. He heard respondent tell Mr. Henry that “this is why you’re not sitting in Gary’s seat,” referring to the promotion opportunity. Mr. Kaston also heard Mr. Henry tell respondent that he was going to document their conversation. Mr. Kaston characterized respondent as “[a]ntagonistic, argumentative, disruptive [and] loud” during the exchange with Mr. Henry and stated that Mr. Henry did not raise his voice but remained calm when speaking to respondent (Tr. 180).

Respondent offered a different account of her conversation with Mr. Henry. Respondent testified that she asked Mr. Henry where the key was and why it was moved. She told him that she disagreed with the key being moved and “never got to voice [her] opinion” about that (Tr. 461-62). Respondent acknowledged that she brought up the fact that Mr. Henry did not get a recent promotion. Respondent denied raising her voice with Mr. Henry and denied making any

statements about Ms. Simmons (Tr. 461). However, she conceded that she could have used a better choice of words with Mr. Henry (Tr. 458-60).

Given that descriptions of the incident from respondent and Mr. Henry vary in significant respects, it is necessary to assess the credibility of the witnesses to determine the reliability of their respective descriptions. When analyzing witness credibility, this tribunal may consider such factors as witness demeanor, consistency of witness' testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998); *see also Admin. for Children's Services v. Yu*, OATH Index No. 269/13 at 4 (Apr. 4, 2013).

I credit Mr. Henry's testimony. Mr. Henry offered a reasonable account of events and testified in a direct and straightforward manner. There was no suggestion that he would have any reason to be untruthful about what had transpired. Mr. Henry's testimony is consistent with the contemporaneous memorandum he drafted to document his exchange with respondent. This tribunal has held that contemporaneous writings evince reliability. *See Transit Auth. v. Victor*, OATH Index No. 799/11 at 4 (Mar. 3, 2011), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD-11-52-A (Aug. 9, 2011); *Human Resources Admin. v. Ali*, OATH Index No 2380/09 at 16 (July 20, 2009), *adopted*, Comm'r Dec. (Sept. 22, 2009); *Dep't of Sanitation v. Sanders*, OATH Index No. 558/09 at 4 (Jan. 5, 2009); *Dep't of Correction v. Boyce*, OATH Index No. 789/97 at 14 (July 9, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 99-75-SA (July 19, 1999). Further, Mr. Henry's version of events was corroborated by Mr. Kaston who testified that he heard respondent yelling and that respondent was antagonistic and disruptive while Mr. Henry remained calm. Despite testimony from two witnesses to the contrary, respondent denied raising her voice and denied making disrespectful comments conceding only fault in her choice of words.

As this proceeding could result in a finding against her, I find that respondent has motivation to be untruthful and to misrepresent her conduct, as well as the volume and content of her statements, during her interaction with Mr. Henry.

Although an employee may disagree with a supervisor or a co-worker without committing misconduct, the disagreement must remain within the bounds of decorum and

discretion. Factors to be considered include whether the disagreement disrupted operations or whether the employee was loud or used profanity. *Health & Hospitals Corp. (Kings Co. Hospital Ctr.) v. Anatua-Bichotte*, OATH Index No. 1947/11 at 6 (Oct. 13, 2011); *Health & Hospitals Corp. (Lincoln Medical & Mental Health Ctr.) v. Thomas*, OATH Index No. 531/04 at 6 (May 4, 2004). Factors to be considered in determining whether a disagreement rises to the level of misconduct include whether the respondent was disruptive, threatening, or using profanity. *Anatua-Bichotte*, OATH 1947/11 at 6; *Thomas*, OATH 531/04 at 5; *Human Resources Admin. v. Bichai*, OATH Index No. 211/90 at 13-14 (Nov. 21, 1989), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 90-54 (June 15, 1990) (noting, “[A] subordinate may disagree with his superior, even vehemently . . . provided that he does so decorously and discreetly”). Such disagreement is disruptive if it is done within the earshot of other co-workers. *Health & Hospitals Corp. (Kings Co. Hospital Ctr.) v. Gathers*, OATH Index No. 236/08 at 6 (Oct. 22, 2007) (respondent’s conduct disrupted office functions where other workers who were present stopped to listen to respondent’s inappropriate comments).

Petitioner established that respondent engaged in misconduct by speaking loudly and in a disrespectful manner to Mr. Henry. This conduct went beyond the bounds of decorum and was inappropriate and disruptive to the workplace. Charges related to this conduct are sustained.

#### ***Misconduct Involving Altercation with a Co-Worker***

B. Brown is a service aide at Queens Hospital Center and has worked with respondent for three years. Respondent testified that she is a lesbian and that she has filed several EEO/HR complaints against Ms. Brown for derogatory comments she made to respondent regarding her appearance and sexual orientation (Tr. 463). Ms. Simmons testified that it is known that respondent and Ms. Brown do not get along and stated that there was a “long-standing history” between them (Tr. 226). For this reason Ms. Simmons does not schedule respondent and Ms. Brown to work together on the same shift. However, on October 18, 2016, Ms. Simmons mistakenly assigned respondent and Ms. Brown to work in the kitchen area during their shifts (Tr. 227-28, 238-39, 249-50).

Ms. Brown testified that on October 18, 2016, at the beginning of her shift, she “bumped into” respondent as she was going in and respondent was coming out. During lunchtime, Ms. Brown entered the breakroom to retrieve supplies and overheard respondent say something about

her. Although she did not remember the words, Ms. Brown recalled that “it wasn’t no compliment” (Tr. 145-46). Later in the break room, Ms. Brown testified that while respondent was speaking to A. Hunter, respondent referred to Ms. Brown as a “ho” twice (Tr. 148). Respondent denies making this statement. In addition to Ms. Hunter, service aides D. Melendez and I. Ruiz were in the break room at that time but no one heard respondent make this comment (Tr. 271, 401, 427). Ms. Brown admitted to calling respondent an “ugly bulldagger” and testified that the term was a reference to respondent being gay (Tr. 148, 156).

Ms. Hunter is a service aide and has worked with respondent for over 11 years. According to Ms. Hunter, respondent did not say anything to Ms. Brown and did not refer to Ms. Brown as a “ho.” She testified that she was in the break room with respondent on October 18 and Ms. Brown walked in and said “fuck this ugly bulldagger bitch” referring to respondent (Tr. 266-67). Ms. Hunter further testified that this was not the first time that she had heard Ms. Brown speak to respondent in this way and she encouraged respondent to report the incident to Mr. Henry. Respondent spoke to Mr. Henry and called labor relations to report this incident. Ms. Hunter stayed with respondent while she called labor relations (Tr. 266, 268-69, 272). Ms. Brown testified that she observed respondent on the phone and heard respondent say that there was “gonna to be a fight” when respondent got off the phone. She also heard respondent say “no more Mr. Nice Guy,” “enough is enough” and other things (Tr. 149-50).

S. Isaac, a food service supervisor, was working in the kitchen on October 18. Respondent was assigned to be a starter on the tray line and Ms. Brown was assigned to the dish room, which is a separate area from the tray line (Pet. Ex. 14). Respondent reported late for the assignment and told Mr. Isaac that she was on the phone with human resources because, “there was an emergency” (Tr. 107). Ms. Simmons, who was also in the kitchen area, testified that respondent said that she needed to call HR because there was going to be a fight (Tr. 223). Mr. Isaac testified that when respondent reported to the tray line she was “obviously agitated.” He heard respondent say “no more Nice Guy, this has to stop” (Tr. 114) and saw respondent then leave the tray line with a bread bin and walk toward the pot room where Ms. Brown was working (Tr. 109-10). According to Mr. Isaac, there was no reason for respondent to leave the tray line. Mr. Isaac further stated that workers are not supposed to leave the line without permission and that he did not give respondent permission to leave (Tr. 108).

Mr. Kaston testified that he heard respondent tell Ms. Brown to “take that shit off [her] lips.” He believed that comment “instigated an argument between Ms. Brown and [respondent]” (Tr. 182). Mr. Kaston, Mr. Henry, and Mr. Isaac reported that they heard shouting and went directly to the kitchen. They observed respondent walking away from the pot room with Ms. Brown following closely behind her reaching for respondent and shouting at her (Tr. 25-26, 109-110, 182). Ms. Brown testified that she shouted to respondent that “if [she was] not trying to be a man, [she] could have been a better mother to [her] children” (Tr. 225). Mr. Isaac and Mr. Melendez, testified that they tried to restrain Ms. Brown (Tr. 111, 403). Ms. Brown admitted that she was going to “physically engage” respondent if she had not been restrained (Tr. 158). Mr. Isaac did not observe respondent speaking to or engaging Ms. Brown at this time (Tr. 111). Ms. Brown testified that respondent told her to take that red shit off [her] lips because it was not doing anything for [her]”. She understood this comment to be a reference to the red lipstick that Ms. Brown was wearing. Ms. Brown said that she called respondent a motherfucker and started cursing at her (Tr. 150). Ms. Brown also admitted that she told respondent that if she had not been “wearing the pants in the family and had been more of a mother [respondent’s] mother wouldn’t have been having to raise [her] children” (Tr. 151). The altercation ended when hospital police arrived and Ms. Brown and respondent were separated (Tr. 151).

M. Simpson, a labor relations specialist, testified that she was assigned to investigate the altercation between respondent and Ms. Brown on October 18, 2016 and filed an investigation report with her findings (Pet. Ex. 20; Tr. 297). Ms. Simpson interviewed 13 witnesses including department heads and witnesses identified by respondent and Ms. Brown. Ms. Simpson was not able to review video of the events because the videos were prematurely deleted by hospital police due to “technical issues” (Tr. 298-99).

Respondent asked that the court draw a negative inference from petitioner’s failure to preserve video recordings. “[T]he taking of an adverse inference for one party’s failure to provide evidence is an extreme remedy which requires a showing of bad faith, intentional destruction of the evidence, or its willful non-production.” *See Dep’t of Correction v. Finch*, OATH Index No. 652/07 at 12 (Nov. 28, 2006), *modified on penalty*, Comm’r Dec. (May 24, 2007), *modified on appeal*, NYC Civ. Serv. Comm’n Item No. CD08-19-M (Mar. 19, 2008). While under New York Law, sanctions for spoliation or the destruction of evidence are appropriate where a litigant, intentionally or negligently, disposes of crucial items of evidence

before the adversary has an opportunity to inspect them (*Kirkland v. New York City Housing Auth.*, 236 A.D.2d 170, 173 (1st Dep't 1997)), this tribunal has declined to sanction parties for loss of evidence in the absence of a showing of bad faith or deliberate destruction. *Dep't of Correction v. Strother*, OATH Index No. 2160/00 at 20-21 (July 27, 2001). Respondent did not allege that this deletion was intentional.

In considering respondent's request, this court also reviewed several factors such as whether respondent alleged that she suffered any prejudice as a result of the deletion of the video or whether respondent's version of the events in the kitchen differed from the versions offered by petitioner's witnesses. See *Dep't of Correction v. Stepney*, OATH Index Nos. 390/13, 391/13, 392/13 at 2-3 (Mar. 4, 2013), *aff'd*, NYC Civ. Serv. Comm'n Case Nos. 35373, 35459, 35374 (Dec. 20, 2013); *Health & Hospitals Corp. (Kings Co. Hospital Center) v. George*, OATH Index No. 829/04 at 3 n.1 (May 17, 2004). As respondent has offered no facts in support of this request, other than the fact of the deletion itself, I find no basis on which to draw a negative inference.

Just as it is permissible for an employee to disagree with a supervisor, co-workers may also disagree so long as the disagreement remains within the bounds of decorum and discretion. See *Thomas*, 531/04 at 6. Whether conduct or remarks are insubordinate or disrespectful is a factual question to be decided by the totality of the circumstances. See *Dep't of Correction v. Martin*, OATH Index No. 431/95 at 15 (Jan. 17, 1995). Even though the "manner, tone and content" of the language used is important in making a determination of misconduct, *Health & Hospitals Corp. (North Bronx Healthcare Network) v. Wolfe*, OATH Index No. 2844/08 at 6 (Sept. 8, 2008) (citing *Dep't of Correction v. Bond*, OATH Index No. 1589/97 at 4 (Oct. 16, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 99-59-SA (June 3, 1999)), the use of profanity generally constitutes *per se* discourtesy and disrespect, *Wolfe*, OATH 2844/08 at 6-7 (citing *Dep't of Correction v. Shark*, OATH Index Nos. 1668/02, 1828/02 at 20 (July 3, 2003)). See also *Admin. for Children's Services v. Goldman*, OATH Index No. 985/12 at 6 (July 3, 2012), *adopted*, Comm'r Dec. (July 13, 2012).

Petitioner established that respondent engaged in disruptive behavior. The fact that Ms. Brown participated in this altercation and appeared to go after respondent does not abate the fact that respondent announced that there was going to be a fight, and then left her assigned work area to confront Ms. Brown. Given the animus displayed between respondent and Ms. Brown

earlier in the day, and respondent's statements it is reasonable to conclude that respondent intended to instigate the altercation and cause disruption in the workplace. Charges related to this conduct are sustained.

***Misconduct Involving Inappropriate and Unprofessional Conduct in Patient Care***

***Patient A***

On January 20, 2017, respondent was assigned to collect trays in the B5 East area of the hospital. J. Armantrading, head nurse in B5 East, testified that during the morning, an alert was sounded indicating that a patient needed assistance. When Ms. Armantrading reported to Patient A's room, the patient informed her that she had made a special dietary request but the tray that was delivered did not have the requested meal so she did not eat the food. A service aide later identified as respondent, came to remove the tray and snatched the tray and was very rude to her. Patient A told Ms. Armantrading that the service aide also used profanity before she left the room but Ms. Armantrading did not recall what the patient reported to her (Tr. 87). Ms. Armantrading apologized to Patient A and notified J. Simmons in the food and nutrition department.

Ms. Simmons met with Patient A who related the events in more detail stating that the tray passer appeared to be agitated and told Patient A that she did not have time to come back and "pick up this fucking tray"(Tr. 232). Ms. Simmons documented her conversation with Patient A as well as Patient A's experience with the service aide. Patient A also told Ms. Simmons that she did not want the service aide to serve her meals in the future (Pet. Ex. 11). Ms. Simmons testified that she and Mr. Kaston then spoke with respondent who said that there were no problems with Patient A. Ms. Simmons asked respondent to leave Patient A's lunch tray at the nurses' station and not to deliver lunch to Patient A. Later that day respondent advised Ms. Simmons that a nurse told her to deliver the tray to Patient A. Respondent told her that she delivered lunch to Patient A and there were no problems (Tr. 233-34).

Respondent testified that Patient A told her that she did not like the food and respondent told her that she was not able to give her another tray. Respondent stated that if a patient does not eat their food, it does not have any impact on respondent or respondent's job. Respondent's responsibility is to make sure that the tray matches the patient's armband. Respondent denied cursing at Patient A or making a derogatory to her for not eating her food (Tr. 510-12).

***Patient B***

Ms. Armantrading testified that shortly after lunch, another alert was sounded for a patient in the unit. Ms. Armantrading went to the patient's room where Patient B was very upset. He told Ms. Armantrading that the service aide, later identified as respondent, took his tray from him before he finished eating his meal. When Patient B told respondent that he was not finished with his meal, respondent told him that she needed the tray for other patients. Respondent then took some food items from the tray to give back to the patient but he did not want the food that respondent had touched. Ms. Armantrading testified that Patient B used his urinal before respondent came to the room and did not cover himself properly. Respondent told him to cover himself and that nobody wanted to see his private parts. Patient B told Ms. Armantrading that he did not want respondent serving his meals again and questioned why the hospital would have someone like that working there. Ms. Armantrading apologized and notified Ms. Simmons of this complaint. Ms. Simmons advised Mr. Kaston of this complaint and he called Patient B to discuss his interaction with respondent (Tr. 89-91).

Ms. Simmons went to Patient B's room to speak with him in person. Ms. Simmons testified that he was visibly upset as he recounted what happened with respondent. Ms. Simmons documented her conversation with Patient B who told her that he felt abused, hurt, and disrespected by respondent and did not want respondent to serve him again (Pet. Ex. 10; Tr. 234-36). Ms. Simmons apologized to Patient B and assured him that respondent would not serve the patients on his floor (Tr. 236).

Mr. Kaston notified G. Pacheco, manager of clinical nutrition, and D. Weisman, director of patient relations and patient experience, of this incident and the three of them met with Patient A and Patient B separately. Mr. Weisman testified that Mr. Kaston gave him the statements that Ms. Simmons drafted for each incident. Mr. Weisman reviewed the events in the statement with each patient; each acknowledged the accuracy of their respective statements but declined to sign the written accounts. Mr. Weisman testified that the patients' primary concern was to be comfortable while they remained in the hospital and not "have that person return to [their] room[s]." Mr. Weisman, Mr. Kaston, and Ms. Pacheco signed the statements to acknowledge that they had discussed them with each patient. (Pet. Ex. 10; Pet. Ex. 11; Tr. 65).

Respondent testified that when she entered Patient B's room to remove his lunch tray, his penis was exposed and that she told him in a joking way to "put that away [y]ou're scaring me"

(Tr. 507). Patient B was not using his urinal at the time. Respondent also explained that she asked Patient B if he had finished eating and told him that she was going to take the tray. According to respondent, a patient will sometimes “form an attachment to trays, even though there’s no food on the tray. They just want the tray to sit there and hold on to the tray” (Tr. 507). She continued that it is her responsibility as tray passer to collect the trays and return them to the kitchen. When a patient wants to keep their tray respondent would sometimes leave it there or she tries to talk to the patient, but “[she] need[s] to retrieve the trays” (Tr. 508). She took the fruit cup off of the tray but he had eaten all of the other food. When respondent was informed about Patient B’s complaint, she wanted to find out what she did wrong and apologize. She stated that she did not realize that she offended him (Tr. 508-10).

Petitioner established that respondent engaged in inappropriate and unprofessional behavior in her encounters with Patient A and Patient B. Each patient contacted the nursing staff immediately after their encounters with respondent and offered consistent accounts of their interactions to managers who investigated their complaints. The fact that Patients A and B declined to sign the statements that Ms. Simmons wrote summarizing their allegations does not diminish their accuracy or reliability. Both patients stated that the purpose in bringing the offensive encounters to the attention of the staff was to ensure that respondent would not serve them while they continued their respective convalescences. Charges related to this conduct are sustained.

### **FINDINGS AND CONCLUSIONS**

1. Petitioner proved that on February 16, 2016, respondent engaged in misconduct when she made loud and disrespectful comments to her supervisor and taunted him about a promotion opportunity.
2. Petitioner proved that respondent engaged in misconduct and was disruptive on October 18, 2016, when she said that there was going to be a fight and approached her co-worker and engaged in a loud verbal altercation with her.
3. Petitioner proved that on January 20, 2017, respondent engaged in inappropriate and unprofessional conduct by snatching a tray from a patient and using profanity while clearing the tray.

4. Petitioner proved that on January 20, 2017, respondent engaged in inappropriate and unprofessional conduct when she took a meal tray from a patient before he was finished eating and when she told the patient to fix his clothing because he was exposed.

### **RECOMMENDATION**

Upon making the above findings and conclusions, I obtained and reviewed an abstract of respondent's personnel record provided to me by HHC. Respondent has been employed at Queens Hospital Center since 2007. She has received no commendations and her performance evaluations have ranged from satisfactory to needs improvement. Respondent has three prior instances of discipline. Respondent was disciplined twice for excessive absenteeism: in 2012 respondent received a 10-day suspension and in 2014, respondent received a 15-day suspension. In 2013, respondent accepted a penalty of a 25-day suspension to settle charges that included cursing at a supervisor on April 20, 2013 stating "get the fuck out of here," and stating that she "[understood] why people lose it." Respondent also made threatening statements in the workplace and stated that she would "go postal." Petitioner now seeks termination of employment. I believe that penalty is appropriate.

Where applicable, this tribunal has applied the principles of progressive discipline. *Dep't of Transportation v. Jackson*, OATH Index No. 299/90 at 12 (Feb. 6, 1990) ("It is a well-established principle in employment law that employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employer views their misconduct and to give them a chance to correct it."). The concept underlying progressive discipline is employee behavior modification through increasing penalties for repeated or similar misconduct. *See Health & Hospitals Corp. (Woodhull Medical & Mental Health Center) v. Ford*, OATH Index No. 2383/09 at 11 (July 10, 2009) ("The theory of progressive discipline is to modify employee behavior through increasing penalties for the same or similar misconduct, and to give employees full notice that if they do not modify their conduct, they risk termination."); *Dep't of Sanitation v. Parker*, OATH Index No. 1049/04 at 9 (Aug. 3, 2004) ("[T]he theory of progressive discipline assumes that, once an employee is disciplined for *particular* behavior, that behavior should subsequently be corrected." (emphasis added)).

A fair penalty must take into account the particular circumstances of the incident and individual mitigating factors, where appropriate. *Dep't of Correction v. Phoenix*, OATH Index

No. 1543/08 at 10 (Apr. 14, 2008), *aff'd*, NYC Civ. Serv. Comm'n Hem No. CD 08-55-SA (Oct. 30, 2008); *Transit Auth. v. Madsen*, OATH Index No. 121/98 at 7 (Sept. 5, 1997), *modified on penalty*, Auth. Dec. (Sept. 30, 1997); *see also Admin. for Children's Services v. Goodman*, OATH Index Nos. 986/05, 1082/05 at 15 (Aug. 12, 2005) (respondent's lack of a prior disciplinary record is a mitigating factor); *Dep't of Correction v. Winniczek*, OATH Index No. 890/04 at 3-4 (May 7, 2004), (misconduct mitigated by respondent's personnel record and evidence that it was caused by stress related to a death in the family).

Petitioner has established that respondent disrupted the workplace by instigating a confrontation with a co-worker and by being disrespectful to a supervisor. This misconduct is remarkably similar to previous misconduct for which respondent received a significant suspension. Despite the previous penalty, respondent has not demonstrated the behavior modification anticipated by progressive discipline.

Respondent's treatment of two patients is even more disturbing. Hospital patients are generally in a compromised state of health and are therefore vulnerable. They should be able to recuperate and convalesce in a secure environment where they are not subjected to foul language or other inappropriate behavior of hospital staff. Respondent's display of intemperance and inappropriate statements put the health and recovery of patients at risk and cannot be tolerated. This misconduct is of the same nature as the misconduct that respondent displayed among her colleagues in the past. Respondent's persistent bad behavior is now directed at patients as well as co-workers despite the efforts of progressive discipline.

Accordingly, I find termination of respondent from her position is appropriate. *See Health & Hospitals Corp. (Kings County Hospital Ctr.) v. Gordon*, OATH Index No. 483/05 (June 24, 2005), *modified*, Exec. Dir. Dec. (July 22, 2005) (housekeeping aide with significant disciplinary history and a prior 40-day suspension, terminated by HHC for one instance of refusing to obey a supervisor's order).

Joycelyn McGeachy-Kuls  
Administrative Law Judge

May 11, 2018

SUBMITTED TO:

**CHRISTOPHER ROKER**

*Chief Executive Officer*

APPEARANCES:

**ANDREA CHILAKA, ESQ.**

*Attorney for Petitioner*

**RICHARD WASHINGTON, ESQ.**

*Attorney for Respondent*