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Recent Decisions

The following is a summary of some recent OATH decisions decided in September 2016. To ascertain whether the OATH judges' recommendations were adopted by the referring agency, please call OATH's calendar unit at 1-844-628-4692.

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Personnel

A juvenile counselor was charged with unauthorized use of force against four different juvenile residents, making false and misleading statements and using profane and threatening language towards a supervisor. Petitioner offered video that showed the exchange between respondent and the juveniles. ALJ Noel Garcia found that respondent consistently exhibited a pattern of behavior that violated agency rules, and that respondent's testimony was not credible. ALJ Garcia recommended termination of employment. *Admin. for Children's Servs. v. Patterson*, OATH Index No. 904/16 (Sept. 2, 2016), adopted, Comm'r Dec. (Sept. 22, 2016).

ALJ Alessandra F. Zoragniotti found that respondent, a graphic artist, engaged in disrespectful conduct and disruptive and threatening behavior that caused other employees to feel unsafe. Throughout respondent's eight year tenure, respondent had been formally disciplined on five prior occasions for similar misconduct. ALJ Zoragniotti recommended termination of employment. *Admin. for Children's Servs. v. Yu*, OATH Index No. 1924/16 (Sept. 1, 2016).

ALJ Garcia found that petitioner failed to prove that respondent, a licensed practical nurse, used profane language or was verbally and physically abusive towards a patient. Petitioner did not present reliable evidence as to the patient's injury or that respondent was the person who committed the misconduct alleged. In contrast, respondent credibly testified about her interactions with the patient in which she denied any wrongdoing. The uncorroborated and unreliable double hearsay was insufficient to establish that respondent made threatening remarks towards an employee and a potential witness. ALJ Garcia recommended the charges be dismissed and respondent's pay for pre-hearing suspension be restored. *Health & Hospitals Corp. (Henry J. Carter Specialty Hospital & Nursing Facility) v. Johnson*, OATH Index No. 1415/16 (Sept. 20, 2016), adopted, Hosp. Determination (Oct. 19, 2016).

Contracts

A contract to rehabilitate a prisoner transit tunnel was cancelled by the Department of Correction before work commenced. The contractor sought \$64,561 under the liquidated damages clause in the contract for cancelled lump sum contracts. The Contract Dispute Resolution Board, with ALJ John B. Spooner sitting as Chair, found the claim was waived based on a waiver signed by company president waiving "any and all claims" except those from the bond reimbursement. *Varied Construction Corp. v. Dep't of Correction*, OATH Index No. 2077/16, mem. dec. (Sept. 19, 2016).

Licensing

The Business Integrity Commission alleged that respondents failed to comply with a Commission Directive mandating each respondent to provide the Commission with an

email address, in violation of Commission rule 1-09. ALJ Susan J. Pogoda found that the Commission failed to establish proper service of the charges, the Commission Directive and the Notice of Hearing on each respondent. Due to these procedural defects, ALJ Pogoda dismissed the charges without prejudice. [Business Integrity Comm'n v. All Boro Trucking Corp.](#), OATH Index Nos. 2156/16, 2165/16 & 2171/16, mem. dec. (Sept. 14, 2016).

The Office of the City Clerk denied respondent's application for a marriage license based upon a prior marriage license to someone with the same name and date of birth as respondent, which had not been dissolved. Evidence supported respondent's claim that though she was married and divorced twice, the open marriage in the City Clerk's records resulted from respondent being a victim of identity theft. ALJ Ingrid M. Addison recommended that respondent's application for a marriage license be processed. [Office of the City Clerk v. Vargas](#), OATH Index No. 0050/17 (Sept. 19, 2016), adopted, City Clerk's Dec. (Oct. 14, 2016).