

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
**Case No. 2025B072**

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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**DANIEL PARKER,**  
**Complainant,**

**v.**

**DEPARTMENT OF HUMAN SERVICES,**  
**Respondent.**

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The State Personnel Board conducted an evidentiary hearing on August 20-21, 2025. Complainant appeared by video conference with counsel, Alex Pass, Esq. Respondent appeared by video conference, by and through counsel, Assistant Attorney General Kerry Ferrel, Esq. and Legal Fellow Alexandra Lopez, Esq. Respondent's advisory witness, Christine Tafoya, Chief Nursing Officer, was also present. The record closed on September 3, 2025. A list of the exhibits admitted into evidence and the witnesses who testified during the hearing is attached as an appendix.

**MATTER APPEALED**

Complainant contends that Respondent's decision to terminate his employment was arbitrary, capricious, or contrary to rule or law. As relief, he requests reinstatement, back pay, and benefits.

Respondent, Colorado Department of Human Services (CDHS), contends that Complainant committed the act for which he was disciplined. CDHS further contends that the discipline imposed was not arbitrary, capricious, or contrary to rule or law.

As a preliminary issue, Complainant's Motion for Sanctions is denied in part and granted in part. Complaint's request for judgement in his favor and attorney's fees is denied. Respondent may not present evidence that was not timely disclosed.

For the reasons discussed below, Respondent's action is **affirmed**.

**ISSUES TO BE DETERMINED**

- Did Complainant commit the act for which he was disciplined?
- Was CDHS' decision to terminate Complainant's employment arbitrary, capricious, or contrary to rule or law?

## **FINDINGS OF FACT**

### **Background**

1. Complainant was employed by CDHS for over seventeen years. He was a certified state employee. Christine Tafoya was Complainant's appointing authority.
2. Complainant worked at the Colorado Mental Health Hospital in Pueblo (CMHHIP).
3. CMHHIP is an acute care psychiatric hospital that provides inpatient behavioral health services for adults, adolescents, and geriatric patients. CMHHIP also operates as a forensic hospital, treating individuals who have been deemed incompetent to proceed and individuals found to be not guilty by reason of insanity in Colorado criminal courts.
4. Complainant's most recent job title was Clinical Safety Specialist II. Complainant's job duties included assisting with safety checks, providing immediate intervention in crisis situations and responding to verbally threatening or physically violent patients. Complainant's position required sound judgment and emotional control.
5. During his seventeen years of employment, Complainant was trained to use Continuum of Therapeutic Intervention and Verbal De-escalation Intervention (CTI/VDI) techniques.
6. In November of 2022, Complainant was required to take a CTI refresher class due to an incident in which he was involved in an "improper takedown." CDHS did not issue a formal corrective or disciplinary action regarding this incident.
7. In February of 2024, Complainant was trained in the Mandt Verbal and Physical Behavior Intervention System (Mandt), which replaced CTI/VDI.
8. Mandt emphasizes a non-confrontational approach. Physical restraint is used only as a last resort.
9. In the Mandt class, Complainant asked whether it was okay to continue to use the personal restraint techniques (PRT) that were previously taught under CTI/VDI. His instructor informed Complainant that a reversion to PRT techniques was to be expected during the transition period.
10. Prior to September 7, 2024, Complainant did not have any corrective or disciplinary actions. He received satisfactory performance evaluations.

## CDHS Clinical Risk Management Policy No. 6.45

11. CDHS' Clinical Risk Management Policy No. 6.45 defines a restraint as any method that "immobilizes or reduces a patient's ability to move his/her arms, legs, body, or head freely."
12. Physical/manual restraints may be used "only in emergency situations for the safety of the patient and others when less restrictive interventions have been ineffective in protecting the patient or others from harm . . . . A trained staff member may initiate and assist during a physical/manual hold, seclusion, or restraint if an emergency presents."
13. An emergency is any "situation where the patient's behavior is violent, aggressive, or self-injurious, and where the behavior presents an immediate danger to the safety of the patient, staff, or others."
14. "[A]ll patients have the right to be free from seclusion and restraint of any form that is imposed as a means of coercion, discipline, convenience, or retaliation by staff."

### September 7, 2024 Incident

15. JM<sup>1</sup> is a patient of CMHHIP. He has intellectual and medical disabilities, as well as a psychiatric condition. His various intellectual and mental health conditions may prevent him from acting rationally.
16. JM has a history of assaultive behavior.
17. On September 7, 2024, JM was involved in an incident where he punched the Charge Nurse, James Barnes. JM was not placed in seclusion because he voluntarily returned to his room.
18. After returning to his room, JM remained agitated. As a result, Barnes requested Complainant to accompany Nurse Susan Gitonga who was conducting patient Wellness Checks. Wellness checks are conducted every 15 minutes.
19. At approximately 9:30 PM, Complainant and Gitonga checked JM's room. JM was in his bed but was making verbal threats to "knock everybody . . . out."
20. At approximately 9:45 PM, the surveillance video shows Complainant and Gitonga conducting the next wellness check. Complainant was using the toilet, and Gitonga and Complainant passed JM's room. They continued walking down to the end of the hallway.

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<sup>1</sup> JM is identified by his initials to protect his privacy.

21. At the end of the hallway Gitonga and Complainant turned around and walked back towards JM's room.
22. Complainant walked ahead of Gitonga and paused at JM's doorway. JM was in the middle of the room "shadow boxing" and making threats. Complainant began speaking to JM to redirect him.
23. In the meantime, Gitonga checked the room across the hall. She then passed JM's room and continued walking forward until she was no longer in camera range, while Complainant remained in front of JM's door.
24. JM slowly approached the doorway and stepped into the hall. He swung a closed fist in Complainant's direction but missed by a wide margin.
25. Complainant then suddenly rushed towards JM with both arms raised. The surveillance video shows Complainant's blue gloved hands contacting JM's head and neck/throat. Complainant's momentum pushed them both into JM's room where they were no longer visible on the surveillance video.
26. The contact was not an authorized technique under either CTI/VDI or Mandt.
27. Subsequently, Gitonga and other staff members entered the room and observed Complainant and JM struggling partially on the bed. Gitonga immediately noticed that JM's eye was injured. Ultimately, JM was restrained and placed into seclusion.
28. A medical check showed superficial scratches on JM's forehead and neck, as well as a bruise under his right eye. These scratches and bruises were not present during a medical check before the incident. JM stated that he had hit his eye on the bed during the restraint.

#### CDHS Investigation

29. Tafoya ordered an investigation, and Complainant was placed on administrative leave pending the outcome.
30. Carla Dasher, Director of Administrative Investigations, conducted the investigation. Dasher interviewed witnesses and reviewed the surveillance video, incident reports, police report, JM's medical records, Complainant's training history, and the relevant statutes, rules and policies.
31. As part of her investigation, Dasher interviewed Complainant. When told that the surveillance video looked as if Complainant lunged at JM and placed his hands on JM's neck, Complainant stated: "I can see why it looks that way, yes."
32. As part of her investigation, Dasher interviewed Jeremy Lujan, Training Specialist, regarding whether Complainant's contact with JM utilized an approved technique.

Mr. Lujan stated, “his stance, it looks good. But his hands look too high. We don’t teach that.”

33. After reviewing the evidence, Dasher concluded that Complainant had used an unauthorized restraint and physically abused JM. Dasher completed a report and submitted it to Tafoya.

#### Disciplinary Action

34. On November 5, 2024, Respondent notified Complainant of a Rule 6-10 meeting.
35. Complainant and his counsel were allowed to review the surveillance video and the documentary evidence prior to the meeting.
36. The Rule 6-10 meeting occurred on November 20, 2024. Complainant attended with counsel. During the meeting, Complainant had an opportunity to present additional information and mitigating factors.
37. After the Rule 6-10 meeting, Complainant was provided seven days to submit additional information but did not do so.
38. Tafoya considered the surveillance video of the incident, Complainant’s performance history, Dasher’s investigative report, the applicable policies concerning appropriate engagement with patients, Complainant’s training on those policies, and the information and arguments provided by Complainant, as required by Board Rule 6-11. Tafoya also considered her own training as a former CTI/VDI master instructor.
39. Tafoya additionally considered the Vulnerable Persons Act, C.R.S. § 27-90-111(15)(a), which requires her to place the safety of vulnerable persons above any other interest.
40. After considering the evidence, Tafoya concluded that Complainant’s restraint of JM was unnecessary, and that Complainant’s technique was unauthorized under either CTI/VDI or Mandt.
41. Tafoya further concluded that the unnecessary and unauthorized restraint was in violation of CDHS policy and the Code of Conduct.
42. Tafoya was concerned that Complainant did not take any accountability for his actions. Tafoya considered lesser discipline but ultimately decided that she could not trust Complainant to remain in a position that was responsible for caring for vulnerable patients.
43. Tafoya terminated Complainant’s employment by letter dated April 30, 2025, and Complainant timely appealed.

## **ANALYSIS**

### **A. Respondent's Decision to Terminate Complainant's Employment Was Not Arbitrary and Capricious, or Contrary to Rule or Law**

The Colorado Constitution states that certified state employees "shall hold their respective positions during efficient service. . ." Colo. Const. Art. XII, § 13(8). A certified state employee may be disciplined for "failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties." *Id.* Respondent has the burden to prove by a preponderance of the evidence that the employee committed the conduct for which he was disciplined. *Dep't of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994).

#### **I. Complainant Committed the Acts for Which He Was Disciplined**

Here, Complainant was disciplined for physically abusing JM. It is undisputed that Complainant initiated a physical restraint of JM on September 7, 2024. Complainant testified that the restraint was necessary for his safety, and that he was attempting to contain JM's hands in order to prevent JM from punching Complainant.

However, the surveillance video contradicts Complainant's testimony. The surveillance video shows that Complainant stopped at JM's room and engaged JM in a verbal interaction when it was not necessary to do so. Complainant continued to engage with JM even after Gitonga moved past JM's room. JM then exited his room and swung his fist in Complainant's direction. The punch missed Complainant by a wide margin, and JM appeared to be continuing to shadow box, rather than attempting to hit Complainant. At this point, the situation was not an emergency, and JM was not an immediate threat to himself or others. There was still an opportunity for Complainant to back away and attempt further verbal de-escalation. Complainant's testimony that he was trying to protect himself is simply not credible as it is contradicted by the surveillance video showing that JM was not an imminent threat.

Even if a physical restraint was necessary, Complainant did not use an authorized technique. Complainant put his hands on JM's neck/throat with considerable force and momentum. Complainant's testimony that he was attempting to guide JM's wrists and/or that he made the initial contact with JM's shoulders is not credible as it is contradicted by a slow-motion review of the surveillance video, which clearly shows Complainant's blue gloved hands contacting JM's head and neck. The surveillance video does not show that Complainant was trying to control JM's hands, which were by his side. Complainant's testimony is further contradicted by the medical records indicating that JM had new scratches on his forehead and neck.

Complainant's conduct violated CDHS Clinical Risk Management Policy No. 6.45 because he used an unnecessary and unauthorized restraint in a situation that was not an emergency.

## **II. Respondent's Decision to Terminate Complainant's Employment was Not Arbitrary and Capricious or Contrary to Rule or Law**

If an employee commits the acts for which he was disciplined, the Administrative Law Judge must then determine “whether the appointing authority’s disciplinary action in response to that misconduct was arbitrary, capricious, or contrary to rule or law.” *Dep’t of Corrections v. Stiles*, 477 P.3d 709, 717 (Colo. 2020). See also C.R.S. § 24-50-103(6) (a disciplinary action “may be reversed or modified on appeal to the board only if at least three members of the board find the action to have been arbitrary, capricious, or contrary to rule or law”).

A disciplinary action is arbitrary and capricious if the appointing authority has: (1) neglected or refused to use reasonable diligence and care to procure the relevant evidence; (2) failed to give candid and honest consideration of the evidence; or (3) reached a conclusion that reasonable persons fairly and honestly considering the evidence must reach a contrary conclusion. *Lawley v. Dep’t of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).

In considering discipline of an employee who has engaged in mistreatment, abuse, neglect, or exploitation (MANE) against a vulnerable person, the statute requires an appointing authority to “give weight to the safety of vulnerable persons over the interests of any other person.” C.R.S. § 27-90-111(15)(a). A vulnerable person is defined as “any individual served by the department who is susceptible to abuse or mistreatment because of the individual’s circumstances, including but not limited to the individual’s . . . behavioral or mental health.” C.R.S. § 27-90-111(2)(e). Abuse is defined as “[c]onfinement or restraint that is unreasonable under generally accepted caretaking standards.” C.R.S. 18-6.5-102. If the appointing authority finds that the employee has engaged in mistreatment, abuse, neglect, or exploitation against a vulnerable person, the appointing authority may take such disciplinary action as the appointing authority deems appropriate, up to and including termination, taking into consideration the harm or risk of harm to vulnerable persons created by the employee’s actions. C.R.S. § 27-90-111(15)(b).

### Tafoya Used Reasonable Diligence and Care to Procure the Relevant Evidence

In this case, Tafoya reviewed the investigative report, which included interviews of witnesses and a review of the surveillance video, the incident reports, and JM’s medical records. Tafoya also obtained the surveillance video, Complainant’s personnel file, and Complainant’s training history. Complainant was given the opportunity to present additional information and mitigating factors during and after the Rule 6-10 meeting. As a result, Tafoya used reasonable diligence and care to procure the relevant evidence.

### Tafoya Gave Candid and Honest Consideration of the Evidence

Tafoya considered all the evidence. She reviewed the surveillance video, Dasher’s investigative report, and Complainant’s personnel file. Tafoya also listened to Complainant’s explanation of the incident. The disciplinary letter shows that Tafoya

thoroughly discussed and carefully weighed Complainant's statements during the Rule 6-10 meeting, the video, and the documentation of the incident. Tafoya therefore gave candid and honest consideration of the evidence.

The Decision to Terminate Complainant's Employment Was Not Such That a Reasonable Person Must Reach a Contrary Conclusion

This is not a case where a reasonable person, fairly and honestly considering the evidence, must reach a contrary conclusion. The purpose of the CMHHIP is to give care and treatment to people with mental health issues. While patients may sometimes act in a threatening or violent manner due to their illnesses, they deserve to be treated with compassion and respect. This includes using physical restraints only in an emergency to protect the patient and others. Here, there was no reason for Complainant to stop and engage JM in conversation. Complainant could have avoided the incident by simply walking past JM's room. Furthermore, JM was not an immediate threat at the time Complainant initiated physical contact. The restraint was unnecessary and violated CDHS' policies that prohibit restraints except in emergencies.

In addition to its being unnecessary, Complainant did not use an authorized restraint under either CTI/VDI or Mandt. His sudden and violent contact with JM's head and neck with enough momentum to push them both into JM's room constituted excessive force in violation of the CDHS' policies.

The Termination Was Not Contrary to Rule or Law

The termination of Complainant's employment was not contrary to rule or law. Tafoya followed the requirements of the Board Rules. Tafoya also followed C.R.S. § 27-90-111(15)(a). and Board Rule 6-11(B) which require her to give weight to the safety of JM, a vulnerable person, over any other interests of any other person. Thus, the preponderance of the evidence establishes that Respondent's termination of Complainant's employment was not contrary to rule or law.

**CONCLUSION OF LAW**

Based on the above analysis, CDHS' decision to terminate Complainant's employment was not arbitrary, capricious, or contrary to rule or law.

**ORDER**

**IT IS THEREFORE ORDERED:** that CDHS' decision to terminate Complainant's employment is affirmed, and his appeal is dismissed with prejudice.



Dated October 3, 2025 by:

/s/ [REDACTED]  
Charlotte A. Veaux  
Administrative Law Judge  
State Personnel Board  
1525 Sherman Street, 4th Floor  
Denver, CO 80203

**CERTIFICATE OF SERVICE**

This is to certify that on the 3<sup>rd</sup> day of October, 2025, I electronically served a true and correct copy of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** as follows:

Sean J. Lane, Esq.  
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Dominick Schumacher  
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[REDACTED]

## **APPENDIX**

### **Respondent's Witnesses:**

- Carla Dasher, Director of Administrative Investigations
- Christine Tafoya, Chief Nursing Officer

### **Complainant's Witness:**

- Jack Sandoval, Training Specialist IV
- Daniel Parker, Complainant

### **Respondent's Admitted Exhibits:**

1-14 (Exhibits 2 and 14 are confidential and admitted under seal).

### **Complainant's Admitted Exhibits:**

A-E, H (Exhibit H is confidential and admitted under seal).

## **NOTICE OF APPEAL RIGHTS**

### **EACH PARTY HAS THE FOLLOWING RIGHTS:**

To abide by the decision of the Administrative Law Judge ("ALJ").

To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2). Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. *Vendetti v. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.

### **RECORD ON APPEAL**

The cost to prepare the electronic record on appeal in this case is \$5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. Board Rule 8-53(C). That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5) – (7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at: [dpa\\_state.personnelboard@state.co.us](mailto:dpa_state.personnelboard@state.co.us).

### **BRIEFS ON APPEAL**

When the Certificate of Record of Hearing Proceedings is served to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

### **ORAL ARGUMENT ON APPEAL TO THE BOARD**

In general, no oral argument is permitted. Board Rule 8-55(C).

### **MOTION FOR RECONSIDERATION**

Motions for reconsideration are discouraged. See Board Rule 8-47(K).