

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE HENNEPIN COUNTY MEDICAL EXAMINER'S OFFICE

In the Matter of the Proposed Discharge of  
Peter Palmer from the Hennepin County  
Medical Examiner's Office

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

The above matter came on for hearing before the undersigned Administrative Law Judge on March 12-15, 2012. Following hearing, the parties submitted post-hearing briefs, proposed findings, and reply briefs. The hearing record closed on May 18, 2012, upon receipt of the Parties' reply briefs.

Cheri Sudit, Assistant Hennepin County Attorney, appeared on behalf of the Hennepin County Medical Examiner's Office (the MEO). Lawrence P. Schaefer and Darren M. Sharp, Schaefer Law Firm, LLC, appeared with and on behalf of Peter Palmer (the Employee).

**STATEMENT OF THE ISSUES**

1. Has the MEO shown just cause to discharge or discipline the Employee?
2. Has the Employee shown extenuating circumstances justifying modification of the discipline?
3. If extenuating circumstances are shown, what discipline is appropriate?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

***Background: The MEO***

1. The MEO for Hennepin County (the County) is located in downtown Minneapolis near Hennepin County Medical Center (HCMC). The MEO investigates and provides forensic autopsy services for deaths that occur in the County. Deaths that are sudden, unexpected, or occur from other than natural causes must be reported to the MEO. The MEO determines cause and manner of death using unbiased investigation methods. The results of an MEO investigation may be used in criminal or

civil court cases.<sup>1</sup> Accordingly, chain of custody is fundamental to the work of the office.<sup>2</sup>

2. MEO conducts approximately 700-800 autopsies a year at its facility, which also serves as a morgue for HCMC.<sup>3</sup> The Medical Examiner heads the MEO. The current medical examiner is Dr. Andrew Baker. He is assisted in the work of the office by Assistant Medical Examiners and Medical Examiner Investigators. The Medical Examiner and the Assistant Medical Examiners are all licensed physicians. Medical Examiner Investigators are highly trained to conduct death investigations.<sup>4</sup>

3. MEO is a 24/7 facility.<sup>5</sup> At night, staff consists of one investigator and a health care trainee. The trainee performs routine cleaning and helps the investigator at the death scene if a call comes in.<sup>6</sup>

4. The building that houses MEO is a secure facility. On the first floor, just inside the building entrance, is a waiting room for members of the public. The room is secured with bullet-proof glass and bullet-proof walls.<sup>7</sup> Offices for the Medical Examiner and the Assistant Medical Examiners are on this floor as well. The physicians all keep some confidential files in their offices. Others are stored in a large evidence vault located on the first floor.<sup>8</sup> The lower level houses several rooms, including the investigator's work area; an evidence room for property and secured evidence; a processing room; a large body cooler; and the autopsy and radiology suites.<sup>9</sup>

5. The MEO is secure because it contains a wide variety of evidence. This includes confidential medical examiner data in the form of documents. The office also holds, at any given time, one or more dead bodies. In addition, evidence such as bullets, tissue samples and legal and illegal drugs collected during an investigation may be stored there.<sup>10</sup>

### ***Background: The Employee***

6. The Employee had worked for the MEO for nearly 20 years when the MEO terminated his employment as a medical examiner investigator in November 2011. Before working at the MEO, the Employee worked for the County Sheriff's office beginning in 1986 as a senior clerk typist. That position was an intermittent employee position.<sup>11</sup> In January 1992, the Employee began working as an intermittent employee

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<sup>1</sup> Ex. 1.

<sup>2</sup> Transcript (T.) 173.

<sup>3</sup> T. 35-38.

<sup>4</sup> Ex. 2.

<sup>5</sup> T. 171.

<sup>6</sup> T. 155.

<sup>7</sup> T. 60-1. The building is secure because of the wide variety of evidence and confidential matter stored there. T. 57-58.

<sup>8</sup> Ex. 5; T. 62-64.

<sup>9</sup> Ex. 5.

<sup>10</sup> T. 57-58; 63-67.

<sup>11</sup> Ex. 101.

for the MEO. His job title was medical examiner assistant.<sup>12</sup> This was a position to train as a medical examiner investigator. In January 1998, the Employee was hired as a medical examiner investigator on an intermittent basis.<sup>13</sup>

7. On October 31, 2006, Dr. Baker wrote a letter to the Employee congratulating him on achieving 20 years of service to the County. In the letter, Dr. Baker noted that the Employee's "stellar commitment to both our department and the organization as a whole has been highly evident over the past 20 years...."<sup>14</sup>

8. The Employee continued in his position as an intermittent medical examiner investigator until May 27, 2007, when the Employee began as a medical examiner investigator on a permanent basis.<sup>15</sup> Generally, the Employee worked the overnight shift, from 7:00 p.m. to 7:00 a.m.<sup>16</sup>

9. The Employee holds an associate of arts degree from Normandale Community College. His medical investigator training includes attendance at a number of MEO training courses. In addition, he has twice attended the St. Louis University School of Medicine masters program for advance medical examiner investigators. He has also attended the International Association of Homicide Investigators' week-long program on two occasions. The American Board of Medical/Legal Death Investigators has certified the Employee as a death investigator.<sup>17</sup>

10. On October 2, 2011, around 2:00 a.m., the Employee rolled over the MEO phones so that he could go outside to have a cigarette.<sup>18</sup> Two Dutch tourists approached him and asked for help because they were lost. Only one of the two spoke much English, but the Employee learned that the two were dairy farmers. They were in Minneapolis as part of a trade mission in which they were to learn dairy-farming techniques used in the United States. They told the Employee that they were staying at a hostel on Stevens Street, but they had become lost when they went for a walk. They asked the Employee for help getting back to the hostel. The farmers were friendly, but they were frightened about being lost.<sup>19</sup> During the five-minute period the three spoke outside, the Employee determined that the Dutch farmers were not dangerous.<sup>20</sup>

11. The Employee did not know where the Dutch farmers might be staying. He knew of a Stevens Avenue, but not a Stevens Street. When they had gone out for their walk, the Dutch farmers had not brought money with them. The Employee looked in his wallet, but found that he did not have enough cash to give the farmers for cab fare. The Employee thought he might be able to do a Google search for the hostel, so he took the two into the building where they could affirmatively identify their hostel.

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<sup>12</sup> Ex. 7.

<sup>13</sup> T. 714.

<sup>14</sup> Ex. 111.

<sup>15</sup> Ex. 7.

<sup>16</sup> T. 196.

<sup>17</sup> T. 708-10.

<sup>18</sup> T. 831.

<sup>19</sup> T. 784-5.

<sup>20</sup> T. 864-65.

Also, the Employee intended to call the police to see if they could transport the men, and his phone was in the office.<sup>21</sup>

12. The MEO has security cameras that record activity in the facility. The Employee and the Dutch farmers entered the secured portion of the building at 2:04:18. The Employee took them to the lower level and the investigator desk area, where he conducted a Google search for “Minneapolis, hostel, Stevens.”<sup>22</sup> He immediately found a photo of a hostel on Stevens Avenue, which the farmers identified as their hostel.<sup>23</sup>

13. The Employee called the police and spoke to Officer Ryan Johnson. Officer Johnson explained that the police, as a matter of policy, will not transport private persons.<sup>24</sup> The Employee, seeing no alternative,<sup>25</sup> then decided to transport the farmers himself. This meant leaving Raschelle Ellering, a health care trainee, alone at the MEO. At 2:08:10, the Employee left the building with the Dutch farmers and got into his car, which was parked behind the building. He took the sheriff’s radio with him to ensure he would receive any emergency calls.<sup>26</sup> He then took the Dutch farmers to the hostel on Stevens Avenue and returned to the building at 2:23:14.<sup>27</sup> He cancelled the rollover of the phones on his return.<sup>28</sup>

14. During the four minutes the Dutch farmers had been in the facility, there were no dead bodies in sight and all confidential paperwork had been completed and stacked in the middle of the investigators’ desk area where the data could not be seen.<sup>29</sup>

15. Ellering had been asleep when the Dutch farmers were in the building. The Employee told her about the incident later when she woke up.<sup>30</sup> Three days after the incident, Ellering told Roberta Geiselhart, the Employee’s supervisor, about the incident.<sup>31</sup> On October 26, 2011, the MEO terminated the Employee from his position, citing the October 2<sup>nd</sup> incident as a major reason for the termination.<sup>32</sup> The termination was upheld following an administrative appeal hearing before Dr. Baker.<sup>33</sup> From this action, the Employee appealed, resulting in this hearing.

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<sup>21</sup> T. 785-7.

<sup>22</sup> T. 789; Ex. 10.

<sup>23</sup> T. 792; Ex. 125.

<sup>24</sup> Ex. 125; T. 792.

<sup>25</sup> The Employee regarded the walk between the MEO and the hostel as a dangerous walk for the Dutch farmers at 2:00 in the morning. T. 793.

<sup>26</sup> T. 831.

<sup>27</sup> Ex. 10; T. 102.

<sup>28</sup> T. 831.

<sup>29</sup> T. 805; 807; 832.

<sup>30</sup> T. 157-58.

<sup>31</sup> T. 163.

<sup>32</sup> Ex. 9.

<sup>33</sup> Ex. 11.

## ***The Employee's Performance History***

### **Two-Month Appraisal Period: May 2007 to August 2007**

16. In June 2007, approximately three weeks after the Employee began working on a permanent basis, the employee called Geiselhart at home in the evening.<sup>34</sup> When a body comes into the MEO, the office informs the next of kin. The MEO had misidentified a body,<sup>35</sup> and the Employee wanted to inform his supervisor right away. Geiselhart was not the on-call supervisor that night, and she became angry with the Employee for calling her. Geiselhart misinterpreted the Employee's statement that she would have "a mess to clean up" in the morning. She believed the Employee did not intend to call the erroneous next of kin to inform them of the error. The Employee in fact thought the issue was significant, and he wanted supervisor input into how to handle the problem. He also intended to give Geiselhart a "heads up" because there might be problems the following morning because of the mix-up. The next morning, Geiselhart berated the Employee, in front of other employees, for calling her at home.<sup>36</sup>

17. In August 2007, Geiselhart conducted the Employee's first performance appraisal as a permanent medical examiner investigator. It is customary with the County to do a two-month appraisal for a new employee, and the Employee had been a permanent employee since May 2007.<sup>37</sup> Geiselhart rated the Employee as a 2+ on a performance scale of 1-5, a rating of 1 being unsatisfactory and 5 being outstanding. The rating of 2+ was expected of a new employee. The issue about the June body misidentification was not mentioned in the performance review.<sup>38</sup>

### **Six-Month Appraisal: May 2007 to November 2007**

18. On November 27, 2007, the Employee had his six-month performance appraisal. He achieved a rating of 3, which is described on the appraisal form as "fully capable." Since the two-month appraisal, the Employee had improved in eight of the eleven performance factors and had remained the same on the other three.<sup>39</sup>

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<sup>34</sup> Two supervisors rotate two-week shifts of being on-call for the investigative staff. Geiselhart was not on-call that evening. T. 176. The Employee called her by mistake, believing her to be the on-call supervisor that evening. T. 722.

<sup>35</sup> It appears that it was not the Employee who misidentified the body. Initial identification may occur during the day shift, and an employee on the night shift will learn of the error when, for example, fingerprint identification becomes available. T. 482-84.

<sup>36</sup> T. 722-24.

<sup>37</sup> T. 180-81.

<sup>38</sup> T. 182; Ex. 13.

<sup>39</sup> Ex. 15.

### **First-Year Appraisal Period: November 2007-November 2008**

19. On February 20, 2008, Geiselhart sent the Employee an email reminding him that medications found at the scene of an investigation must be secured. The Employee had failed to secure medications on case 08-535.<sup>40</sup>

20. On October 21, 2008, Geiselhart issued the Employee a Written Reprimand. HCMC had sent a body to the MEO without proper paperwork. The Employee refused to accept the body, and HCMC employees had to return the body to HCMC to collect the paperwork that should have accompanied the body to begin with. The Employee told his supervisor that he wanted to “teach them a lesson.” Geiselhart thought the incident an embarrassment to the MEO, which carefully protects its relationship with HCMC.<sup>41</sup>

21. On November 30, 2008, the Employee had his one-year performance appraisal. He achieved a rating of 3, or “fully capable.” Since the six-month appraisal, the Employee had improved in three of the eleven performance factors, remained the same in six areas, and decreased performance in two areas. In the areas of decrease, the Employee’s performance was a 3, but was one-half step below the prior rating of 3+.<sup>42</sup>

### **Second-Year Appraisal Period: November 2008-November 2009**

22. On March 2, 2009, Geiselhart issued an Oral Reprimand to the Employee because he and another investigator, Carrie Notch, had left a body bag at a death scene.<sup>43</sup> Notch had been the lead on the case, and the Employee was assisting her.<sup>44</sup> The death scene had been very difficult for the Employee and Notch. They reported to an apartment where a very large man had died some days earlier. The apartment was hot, and the body had begun to decompose. As a body decomposes, it excretes a viscous liquid that MEO employees refer to as “decomp juice.” The Employee and Notch struggled to move the large body into a body bag for removal to their rig. In this process, decomp juice was released into the bag and onto the Employee and Notch. The body bag tore before they could remove the body, so they retrieved a second bag from the rig. A police officer then assisted them to place the body into the bag and remove it from the apartment.<sup>45</sup>

23. The Employee and Notch returned to the MEO, forgetting about the first bag. The apartment manger of the building found the body bag, and called the MEO about it. On March 2, 2009, Geiselhart issued the Employee an oral reprimand about forgetting the body bag at the scene.<sup>46</sup> When the Employee learned about the

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<sup>40</sup> Ex. 16.

<sup>41</sup> T. 217-19; Ex. 17.

<sup>42</sup> Ex. 15.

<sup>43</sup> Ex. 19.

<sup>44</sup> T. 731.

<sup>45</sup> T. 730-31.

<sup>46</sup> Ex. 19.

apartment manager's call, he felt badly that someone else had found the bag, which it was his responsibility to remove from the scene.<sup>47</sup> At hearing, Geiselhart testified on direct examination that the decedent's family had found the body bag with decomp juice in it. She testified that the family should not have had to deal with such an experience.<sup>48</sup> This testimony was incorrect. It was the manager, not the family, who discovered the body.<sup>49</sup> On cross-examination, Geiselhart admitted she did not know who called about the forgotten body bag.<sup>50</sup>

24. Sometime in the fall of 2009, the County implemented a new computer system called APEX. Employees at the MEO were required to enter their pay-period times, which entries were used for payroll purposes. Many employees had difficulty with APEX. In particular, APEX was not suitable for employees with irregular hours, such as those at the MEO.<sup>51</sup> The Employee became frustrated with the system and, on October 31, 2009, the Employee sent an email to Richard P. Johnson, the Hennepin County Administrator, expressing his frustration.<sup>52</sup>

25. Geiselhart was shocked that the Employee would go over the heads of his supervisors and send an email to a County employee who was so far above the Employee's level in the chain of command.<sup>53</sup> The Employee had sent the email to Johnson because Johnson had sent out an email to all County employees about APEX. In his email to Johnson, the Employee, knowing that Johnson was not the person to deal with his questions, asked Johnson to refer the email to the appropriate person.<sup>54</sup> Michael Rossman, the MEO Office Administrator, coached the Employee about the incident.<sup>55</sup>

26. In Geiselhart's view, the email was a clear violation of County policy, although it did not involve safety or security.<sup>56</sup> On December 29, 2009, she completed the Employee's second-year appraisal for the year ending in November 2009. She again rated the Employee as "fully capable." Since the first-year appraisal, the Employee had improved in one of the eleven performance factors, remained the same in seven areas, and decreased performance in three areas. In the areas of decrease, the Employee's performance was a 2+, or one-half step below the prior rating of 3.

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<sup>47</sup> T. 732.

<sup>48</sup> T. 227-28.

<sup>49</sup> T. 732; Ex. 148. Exhibit 148 is a contemporaneous email from Carrie Notch to fellow employees informing them about the error of leaving the body bag where the apartment manager found it. The ALJ finds the email, sent at the time of the incident, is the reliable evidence about who called MEO to report the forgotten body bag. This evidence also accords with the Employee's testimony that it was the apartment manager who called, not the family.

<sup>50</sup> T. 390.

<sup>51</sup> T. 230-32.

<sup>52</sup> Ex. 20.

<sup>53</sup> T. 233-34.

<sup>54</sup> T. 734-35; Ex. 20.

<sup>55</sup> Ex. 24. In its brief, the County described the email as "extremely disrespectful." Brief of Hennepin County, Proposed Finding no. 33. The ALJ finds that the Employee used appropriate language in the email, but should not have sent it to Johnson. Instead, the Employee should have continued to consult with his immediate supervisor about problems with APEX.

<sup>56</sup> T. 123.

### Third-Year Appraisal Period: November 2009-November 2010

27. Problems with APEX continued into 2010. On January 23, 2010, the Employee sent an email to Rafe Viscasillas, the Hennepin County Human Resources Director. In the email, the Employee referred to APEX's inability to delete "crap" from entries.<sup>57</sup>

28. On February 1, 2010, Geiselhart issued the Employee a Written Reprimand about his inappropriate use of email. Geiselhart cited the Employee for violating the County's Diversity, Non-Discrimination and Respectful Workplace policy.<sup>58</sup> In addition, she cited him for violating the County's Internet, E-Mail and Telecommunications Systems Usage policy.<sup>59</sup> Geiselhart also cited the Employee for violating Human Resource Rule 16.3 g, which prohibits employees from engaging in conduct that reflects negatively on the County. Geiselhart stated that the Employee's recent emails about APEX reflected negatively on the MEO. The Employee also spoke with Rossman about the inappropriate email. The Employee offered to send a letter of apology to Viscasillas, but Rossman told the Employee that it was unnecessary to do so.<sup>60</sup> At hearing, the Employee acknowledged that the email to Viscasillas was inappropriate, and the ALJ finds that it was inappropriate.<sup>61</sup>

29. On February 23, 2010, Geiselhart wrote an email to the Employee noting that the Employee had failed to document medications on decedent #614. The Employee responded that he had not visited the scene, and that the officer collected no medications, and no medications were observed.<sup>62</sup>

30. On April 5, 2010, Geiselhart spoke with the Employee about some buttons that had been found on the floor of the processing room<sup>63</sup> the morning of March 12, 2010. The buttons appeared to have been torn from the clothing of a decedent. The Employee discussed the buttons with Geiselhart, but denied having ripped them from the clothing of a decedent.<sup>64</sup> Geiselhart investigated and found the buttons to have belonged to decedent 10-822, who had died outside and had been brought to MEO sometime later. His shirt had been cut from his body, which was probably frozen when brought into the MEO. It is difficult to remove clothing from a frozen body, but it is important to inventory all clothing removed from a body.<sup>65</sup>

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<sup>57</sup> Ex. 24.

<sup>58</sup> Ex. 21; Ex. 24.

<sup>59</sup> Ex. 25.

<sup>60</sup> T. 738; Ex. 147-B.

<sup>61</sup> T. 738.

<sup>62</sup> Ex. 16.

<sup>63</sup> The processing room is the area where bodies are taken when they first come into MEO. In this room, the investigator weighs and measures the body, inventories clothing, and applies a toe tag. T. 72.

<sup>64</sup> Ex. 29.

<sup>65</sup> T. 262-64; Ex. 31.

31. On May 5, 2010, the Employee removed a brassiere from the body of a decedent. Clothing is to be inventoried and placed in a bag when it is removed in the processing room.<sup>66</sup> The Employee did not inventory the article, but threw it into a biohazard container instead. Another employee found the brassiere in the biohazard container and reported it to Geiselhart. She determined that the article may have been removed during the Employee's shift. She spoke to the Employee who said that he may have thrown the article out with some resuscitation equipment.<sup>67</sup> Proper inventorying of personal effects is important to the MEO because of cultural and religious issues, among other reasons.<sup>68</sup>

32. Geiselhart reviewed the videotape of the Employee processing the body. The videotape shows the Employee removing the brassiere and depositing it into the biohazard container. In accordance with MEO procedures, the resuscitation equipment remained on the body.<sup>69</sup> At hearing, the Employee testified that the brassiere was the decedent's only article of clothing. It was bloody, so he put it into the biohazard container. He acknowledged that he was in error to do so; he should have inventoried the item instead.<sup>70</sup>

33. On June 29, 2010, Geiselhart issued a Written Reprimand to the Employee regarding the brassiere and button incidents. She noted that the Employee had been coached following the button episode. Geiselhart cautioned the Employee that the breach of procedure was serious and future infractions might result in more serious discipline, including termination of employment.<sup>71</sup>

34. On October 18, 2010, Geiselhart completed the Employee's third-year appraisal for the year ending in November 2010. This time, she rated the Employee as a 2+, indicating the Employee needed improvement. Since the second-year appraisal, the Employee had improved in two of the eleven performance factors, remained the same in five areas, and decreased performance in four areas. In the areas of decrease, the Employee's performance was rated a 2 in only one area. The other three areas of decrease were rated 2+.

#### **Fourth-Year Appraisal Period: November 2010-November 2011**

35. On December 28, 2010, Carrie Notch was working with the Employee when he had a medical episode. During the episode, he appeared to stare into space and be unable to speak. Notch encouraged the Employee to go to the emergency room, but he went home instead. The following day, the Employee went to the hospital for tests. His treating certified nurse practitioner wrote a letter to MEO indicating he was able to return to work. Geiselhart and Rossman were concerned about the episode,

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<sup>66</sup> Ex. 31.

<sup>67</sup> Ex. 30.

<sup>68</sup> T. 276.

<sup>69</sup> Ex. 30; Ex. 32.

<sup>70</sup> T. 753.

<sup>71</sup> Ex. 30.

however. On December 30, 2010, the Employee was placed on a paid administrative leave so that he could undergo further testing to satisfy the County that he was fit to perform his job duties, including driving the rig.<sup>72</sup> The Employee returned to work on February 22, 2011, following a medical evaluation that confirmed his fitness for duty.<sup>73</sup>

36. The October 2, 2011, events involving the Dutch farmers have been discussed above in Findings of Fact 10-15. One other event of note occurred that night. The Employee and Ellering were called to remove a body to the Veterans Hospital. The Employee had never encountered that experience before, and he was somewhat unsure of the protocol involved in it.<sup>74</sup>

37. On October 20, 2011, the Employee was working the night shift. At some point, he left the MEO and drove an MEO rig to the site where Occupy Minnesota protestors had gathered. He handed out tootsie-pops to the protestors. Later, the protestors thanked the MEO over a live, on-line news feed. On October 28, 2011, Megan Turak, who had been working with the Employee that evening, reported the event to Geiselhart.<sup>75</sup> When Rossman learned of the incident, he reported it to Dr. Baker, who was shocked. The MEO does not wish publicity or controversy of any kind. In Dr. Baker's view, the Employee's actions potentially subjected it to controversy when he used a County vehicle to distribute treats at a political event.<sup>76</sup>

### ***The MEO Process in Terminating the Employee's***

38. On October 5, 2011, Ellering recounted to Geiselhart the incident involving the Dutch farmers whom the Employee had helped get to their hostel on October 2, 2011. Ellering had hesitated to report the incident, in part because she herself was violating MEO policy by sleeping on the job that night.<sup>77</sup> Geiselhart, Rossman, and Dr. Baker consulted about the incident. They concluded it was an important enough event to warrant obtaining the security video from that night. Five or six days later, Geiselhart and Rossman viewed the video.<sup>78</sup> Rossman was struck by the Employee's lack of judgment in bringing the Dutch farmers into the building.<sup>79</sup>

39. Rossman was also concerned that the Dutch farmers may have seen confidential paperwork on the investigators' desks, although that is not shown on the video. He has further concerned that Ellering was the only other person there that night, and that she was sleeping when the Dutch farmers came in. He felt that the Employee had placed Ellering's safety at risk. Finally, he was concerned that the Employee had left the office unattended, so that no one was available to take calls.<sup>80</sup>

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<sup>72</sup> Ex. 34; Ex. 38; Ex. 39; T. 522-24.

<sup>73</sup> T. 328.

<sup>74</sup> T. 838-39.

<sup>75</sup> Ex. 46; T. 586.

<sup>76</sup> T. 592-93.

<sup>77</sup> T. 164.

<sup>78</sup> The video is in evidence as Exhibit 10.

<sup>79</sup> T. 550-53.

<sup>80</sup> T. 554. At the time, Ellering was a healthcare trainee and was not allowed to answer the telephone.

Rossman thought that, at most, the Employee could have brought the Dutch farmers into the secure waiting room and no more.<sup>81</sup> The Employee could then have accessed the reception area computers to show the farmers the results of his internet search.<sup>82</sup>

40. On October 20, 2011, Rossman wrote an email to Dr. Baker asking Baker to concur in Rossman's conclusion that the Dutch-farmers incident justified terminating the Employee's position. Dr. Baker responded that he concurred.<sup>83</sup>

41. On October 21, 2011, at the end of a 12-hour shift, the Employee was summoned to meet with Rossman and Geiselhart.<sup>84</sup> It was just before 7:00 a.m., and the Employee had been up for 20 hours at that point.<sup>85</sup>

42. Rossman had worked with the County's Human Resources department to guide the interview with the Employee. Rossman began by admonishing the Employee that he would be asked to respond to issues for which MEO was considering disciplining the Employee.<sup>86</sup> At the urging of Human Resources, Rossman never explained to the Employee what the issue was. Instead, he attempted to jog the Employee's memory about the Dutch farmers by reminding him that he had returned a body to the VAMC on that shift. Thereafter during the interview, the Employee assumed he had done something incorrect in returning the body to the VAMC. He never knew, from the questions he was asked, that MEO was concerned about his assisting the Dutch farmers. The Employee asked Rossman at least twice to explain what the issue was so that he could respond, but Rossman did not explain. Rossman told the Employee he would have a further opportunity to clarify, but he was not interviewed again.<sup>87</sup>

43. At the conclusion of the interview, Rossman handed the Employee a letter dated October 21, 2011. The letter, which had been prepared in advance of the interview, informed the Employee that he was being placed on paid administrative leave pending the outcome of an investigation.<sup>88</sup> Rossman took the Employee's identification and access cards. The Employee left the building, drove a short distance, and stopped to cry. He called Carrie Notch and told her that he had just been fired, and he did not know why.<sup>89</sup>

44. The following day, the Employee sent an email to Rossman objecting to a process in which he was not being told what was being investigated. The Employee asked Rossman to "man up" and specify the charges against the Employee. Rossman responded to the email by requesting that the Employee be available the following week

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<sup>81</sup> T. 556.

<sup>82</sup> T. 560.

<sup>83</sup> Ex. 127.

<sup>84</sup> T. 877; T. 880.

<sup>85</sup> Ex. 129; T. 697.

<sup>86</sup> Ex. 40.

<sup>87</sup> T. 838-41.

<sup>88</sup> Ex. 39.

<sup>89</sup> T. 843.

for a further interview. On October 25, 2011, Rossman sent the Employee an email asking him to be at the Government Center the next day at 3:00 in the afternoon.<sup>90</sup>

45. On October 26, 2011, Rossman and Geiselhart met with the Employee at the Government Center. Rossman handed the Employee a Notice of Intent to Dismiss (NOID) and explained that the purpose of the meeting was to serve the Employee with the NOID. Rossman went through the NOID with the Employee. This was the first time the Employee knew what incident had given rise to the termination of his employment.<sup>91</sup>

46. The NOID cited the Employee's violation of the following six County and MEO policies with respect to his actions in aiding the Dutch farmers on October 2, 2011:

- Human Resources Rule 16.3g (acting in a manner that reflects negatively on the County).
- Human Resources Rule 12.4 (being absent from work without authorized leave).
- Workplace Violence Policy (failing to provide a safe and secure workplace environment).
- Diversity, Non-Discrimination and Respectful Workplace (disrespecting a fellow employee)
- Unusual Circumstances (requiring contact with the lead investigator before taking action in unusual circumstances).
- Tour Policy (conducting a facility tour without prior authorization).

47. As further basis for the dismissal, the NOID noted the October 2008 written reprimand for returning a body to HCMC to obtain proper paperwork; the March 2009 oral reprimand about the forgotten body bag; the January 2010 written reprimand for emailing Johnson; and the June 2010 written reprimand for the brassiere and button incidents. The NOID cited the Employee for "blatant disregard for the safety and security of fellow employees and medical examiner data...." The NOID described the Employee's appeal rights, and he appealed.<sup>92</sup>

48. Before the administrative appeal hearing, the Employee prepared a one-page bulleted narrative about the Dutch farmer incident. He explained that he had given the Dutch farmers a ride to the hostel because they could not understand directions to walk there and because the walk would have taken them through an unsafe area of town in the middle of the night. He further explained that he is entitled to a 15-minute break, and he did not exceed this allotted time when he was absent from the building. He also stated his belief that his treatment of the strangers reflected well on the County and did not impair or compromise the MEO.<sup>93</sup>

49. On November 1, 2011, Dr. Baker presided over the Employee's administrative appeal. The Employee handed Dr. Baker the one-page narrative and

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<sup>90</sup> Ex. 129; T. 844-45.

<sup>91</sup> T. 847-48.

<sup>92</sup> Ex. 9; T. 846-48.

<sup>93</sup> Ex. 11.

asked Dr. Baker to read it. After Dr. Baker had read the document, the Employee asked whether Dr. Baker had any questions about it. Dr. Baker had none, and the meeting ended after a few minutes.<sup>94</sup>

50. By a letter dated November 2, 2011, Dr. Baker informed the Employee that Dr. Baker found no reason not to uphold the termination of employment.<sup>95</sup> As a result of the termination, the Employee is banned from any further County employment for a period of 30 years.<sup>96</sup>

### ***MEO Tour Policy***

51. The County has had a “tour” policy since January 2012. The policy permits individuals and groups to visit the MEO during office hours on weekdays. An employee who plans to conduct a tour must complete an authorization form and obtain a supervisor’s approval for the tour.<sup>97</sup>

52. Prior to January 2012, the County had no written policy, but it did have a form for employees to fill out if they wished to give a facility tour. The form required the employee to obtain approval for any tour.<sup>98</sup>

53. Family members of MEO employees came to the facility from time to time without prior approval. A family member might come to deliver something to an MEO employee, for example. This was allowed without prior approval and was not considered a facility tour.<sup>99</sup> Geiselhart allowed her two daughters to enter the facility unaccompanied. One of them liked to encounter dead bodies in the facility, and the other did not, so they came down to the lower level on different elevators.<sup>100</sup> On at least two occasions, Geiselhart also gave facility tours to friends. She did not seek approval for any of these visits, but believes that Dr. Baker would not have had an objection.<sup>101</sup>

54. When the Employee allowed the Dutch farmers into the facility on October 2, 2011, he was not conducting a facility tour as that term had been used and observed prior to January 2012.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 383B.38.

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<sup>94</sup> T. 849-50.

<sup>95</sup> Ex. 11.

<sup>96</sup> Ex. 141.

<sup>97</sup> Ex. 45,

<sup>98</sup> Ex. 44.

<sup>99</sup> T. 412-14.

<sup>100</sup> T. 473-74.

<sup>101</sup> T. 473-4; T. 497.

2. In initiating the hearing herein, the MEO has complied with all relevant substantive and procedural requirements of statute and rule.

3. Minn. Stat. § 383B.38, subd. 1 provides, in part, that: “[n]o permanent employee in the classified service shall be suspended, demoted, or discharged except for just cause.” Hennepin County Human Resources Rule 17.3 provides in relevant part that “[a]n employee who has permanent status . . . shall be dismissed or involuntarily demoted only for just cause based on incompetency/failure to meet job performance requirements, misconduct and/or gross misconduct.”

4. The MEO must prove by a preponderance of the evidence that there is just cause for taking disciplinary action against the employee.<sup>102</sup> Just cause may be demonstrated by showing that the reasons for the Employee’s dismissal are substantial and relate to the manner in which the Employee performed his or her job duties.<sup>103</sup>

5. Human Resources Rule 16.3 describes general rules of conduct with which employees must comply. Subpart g of the rule provides that “no employee shall conduct himself/herself in any manner which shall reflect negatively on the County.” An employee who fails to comply with the County’s Rules of Conduct is subject to disciplinary action “unless the employee can prove . . . the existence of significant mitigating circumstances sufficient to modify or eliminate the disciplinary action.”<sup>104</sup>

6. The MEO has failed to show by a preponderance of the evidence that the Employee conducted himself in a manner to negatively reflect on the County when he assisted the Dutch farmers in locating and returning to their hostel.

7. If the MEO has shown a violation of Rule 16.3g, then the Employee has shown the existence of significant mitigating circumstances sufficient to modify or eliminate the disciplinary action regarding the Dutch tourists.

8. Hennepin County Human Resources Rule 12.4 regards hours of work and leaves of absence. The rule requires all leaves to be approved. Any leave without approval is deemed an absence without leave. An employee who is absent without leave is subject to disciplinary action.<sup>105</sup>

9. The MEO has failed to show by a preponderance of the evidence that the Employee violated Rule 12.4 inasmuch as he is entitled to breaks during his shift and his absence from the facility on October 2, 2011, did not exceed the allowed break time.

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<sup>102</sup> Minn. R. 1400.7300, subp. 5.

<sup>103</sup> *Hagen v. Civil Service Board*, 164 N.W.2d 631-32 (Minn. 1969).

<sup>104</sup> Ex. 27.

<sup>105</sup> Ex. 41.

10. The Hennepin County Workplace Violence Policy “seeks to provide a safe and secure workplace environment for employees, employee organizations, clients, volunteers and citizens.”<sup>106</sup>

11. The MEO has failed to show by a preponderance of the evidence that the Employee violated the Workplace Violence Policy.

12. The County Diversity, Non-Discrimination, and Respectful Workplace Policy requires employees to treat one another with respect.<sup>107</sup>

13. The MEO has failed to show by a preponderance of the evidence that the Employee violated the Diversity, Non-Discrimination, and Respectful Workplace policy with respect to the Johnson or Viscasillas e-mails.

14. The Hennepin County “Unusual Circumstances” Policy requires employees to consult the lead investigator before taking action when unusual circumstances arise. The lead investigator may then consult the supervisor to determine a course of action.<sup>108</sup>

15. The MEO has failed to show by a preponderance of the evidence that the Employee violated its Unusual Circumstances policy.

16. MEO has had a “tour” policy since January 2012. The policy permits individuals and groups to visit the MEO during office hours on weekdays. An employee who plans to conduct a tour must complete an authorization form and obtain a supervisor’s approval for the tour. Prior to January 2012, the County had no written policy.

17. MEO has failed to show by a preponderance of the evidence that the Employee violated its tour policy.

18. The County has an Internet, E-Mail and Telecommunications Use policy. The policy restricts use to job-related functions. Users must not use inflammatory language in emails.<sup>109</sup>

19. The MEO has failed to prove by a preponderance of the evidence that the Employee violated the Internet, E-Mail and Telecommunications Use policy in his communication with Johnson. The MEO has shown by a preponderance of the evidence that the Employee violated this policy in communicating with Viscasillas.

20. The Employee’s violation of the Internet, E-Mail and Telecommunications Use policy in communicating with Viscasillas does not constitute just cause for termination of employment.

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<sup>106</sup> Ex. 42.

<sup>107</sup> Ex. 25.

<sup>108</sup> Ex. 43.

<sup>109</sup> Ex. 26.

21. MEO has proved by a preponderance of the evidence some past disciplinary history, but that history does not constitute just cause for termination of employment.

22. The Employee's past disciplinary history, the Occupy Minnesota incident, and aspects of the Dutch farmer incident justify discipline, but do not constitute just cause to terminate the Employee from his position.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **ORDER**

IT IS ORDERED that:

1. The Employee's discharge by the MEO from his position as a medical examiner investigator is **REVERSED**.
2. MEO shall reinstate the Employee in his position as a medical examiner investigator effective on the date of this Order.

Dated: May 30, 2012

s/Linda F. Close

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LINDA F. CLOSE

Administrative Law Judge

Reported: Transcript Prepared (4 volumes).  
Kirby A. Kennedy & Associates, Court Reporter.

### **NOTICE**

Pursuant to Minn. Stat. § 383B.38, subd. 1a(e), this Order is the final administrative decision in this case. This Order may be appealed to the Minnesota Court of Appeals by the Employee, or by the Employer upon approval of the Hennepin County Board, as set forth in Minn. Stat. §§ 14.63 through 14.68 and 383B.38, subd. 1a(e).

### **MEMORANDUM**

#### ***The Just Cause Standard***

MEO seeks to dismiss the Employee from his position as a medical examiner investigator, a position he held intermittently from 1992 until being offered a permanent position in 2007. Under Rule 17.3 of the County's Human Resources Rules, the

Employee can be dismissed only upon “just cause.” The Supreme Court has said the following about this standard:

‘Cause,’ or ‘sufficient cause,’ means ‘legal cause,’ and not any cause which the council may think sufficient. The cause must be one which specially relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office. An attempt to remove an officer for any cause not affecting his competency or fitness would be an excess of power, and equivalent to an arbitrary removal. In the absence of any statutory specification, the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it.<sup>110</sup>

In *Hagen v. Civil Service Board*, the Court explained that the cause must relate to how the employee performs his or her duties, and the reasons justifying dismissal must be substantial.<sup>111</sup> In *Leininger v. City of Bloomington*, the Supreme Court, again relying on *Hart* and *Hagen*, said that just cause exists when it is shown that the employee improperly discharged duties, failed to perform required duties, and failed “to adhere to significant departmental rules and regulations which rendered the person unfit to perform the required duties of his or her position.”<sup>112</sup>

This office has decided cases involving employee misconduct, and these shed light on the nature and extent of the evidence required in a dismissal case. In *Izela Gayle v. Hennepin County Medical Center*,<sup>113</sup> the evidence revealed more than ten verbal or written warnings that did not produce improved conduct. The employee persisted in violating work rules; verbally harassing coworkers; and interacting inappropriately with coworkers, supervisors, and customers.<sup>114</sup> The employee ignored supervisor and team leader instructions. The employee’s misconduct may have related to a bipolar disorder, but she refused to take medication. Over a three-year period, the County attempted to improve the employee’s behavior through progressive discipline, which culminated in dismissal. The incidents, the ALJ found, constituted substantial reasons for the dismissal.

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<sup>110</sup> *State ex rel. Hart v. Common Council*, 53 Minn. 283, 284, 55 N.W. 118, 120 (1893).

<sup>111</sup> *Hagen v. Civil Service*, 164 N. W. 2d 631, 632 (Minn. 1969). *Hagen* deals with the just cause standard under Minn. Stat. § 43A.33, not the standard found in the Hennepin County rules, but the discussion of the standard in *Hagen* is consistent with that found in *Hart*.

<sup>112</sup> *Leininger*, 299 N.W.2d 723, 727 (Minn. 1980).

<sup>113</sup> OAH Dkt. No. 6020-14060-3 (May 18, 2001).

<sup>114</sup> The employee, for example, called fellow employees names like “Hitler,” “bitch,” “man whore” and “little shit”).

The evidence of misconduct in *Christy v. Hennepin County Personnel Board*,<sup>115</sup> is similarly substantial. The employee screamed at a supervisor and made derogatory remarks about employees working on a project to help disabled employees, deriding their intellect and using racial slurs. He used profane language in speaking to a supervisor and called another “stupid.” When the employee was counseled about his conduct, he rebuked the supervisor for being stupid, and he told her he hated her. When his conduct did not improve, he was dismissed.

Finally, *In the Matter of the Dismissal of Judith Wryk*,<sup>116</sup> the evidence established that the employee, who was a supervisor, failed to perform the basic duties of her job; insulted others; made inappropriate comments to her employees; and failed to respond to repeated attempts to rectify her conduct.

These cases all involved egregious and repeated misconduct by the employees involved. As more fully discussed below, the ALJ concludes that the Employee’s conduct in this case does not come close to the substantiality and frequency of the misconduct in decisions such as these.

### ***Arguments of the Parties***

MEO has cited a number of County or MEO policies as the reason for the dismissal. In addition, it has argued that there is a growing pattern of conduct that shows a lack of judgment and common sense, as well as a disregard for the safety of fellow employees and protection of confidential data. This pattern culminated in the Dutch farmer incident, the MEO argues. In the MEO’s view, the incident constitutes such egregious conduct that the Employee should lose his job.

The Employee argues that MEO has justified the dismissal based on the Dutch farmers incident, and that the incident is not substantial and does not demonstrate the Employee’s lack of fitness to be employed. Moreover, the Employee contends that the recitation of other, non-similar events giving rise to oral or written reprimands does not convert the Dutch farmers incident into a just cause one.

### ***Conclusions of the ALJ***

The ALJ agrees with the Employee for a variety of reasons. First, the MEO has, in the ALJ’s view, grossly exaggerated the Dutch farmers incident. Contrary to the MEO’s assertions, bringing the farmers into the facility did not violate a clear MEO policy. The MEO had a form to fill out for those conducting tours. In no sense, however, was the Employee conducting a tour when he brought the farmers into the facility. Other employees, including the Employee’s

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<sup>115</sup> CX-95-2021 (Minn. App. July 1996).

<sup>116</sup> 2009 WL 2499151 (Minn. Ct. App. August 18, 2009)

supervisor, were allowed to have family members and others on the premises. These were not considered tours, and it is overstatement on the MEO's part to so argue. Because there was no clear policy to prevent an employee doing as the Employee did, it is patently unfair to accuse him of violating the tour policy.

The MEO also asserts that it was bad judgment on the Employee's part to have brought the farmers into the facility. This argument rests entirely on a what-could-have-happened view of the incident. The Employee spoke with the farmers and made a judgment call that they did not pose a risk. They needed help, and the Employee rendered it quickly in a four-minute stop at the Employee's computer to locate the address of the hostel. The MEO, as the employer, was not present to make the judgment call the Employee made that night. The employer didn't have the conversation or observe the Dutch farmers to determine whether they were dangerous. The MEO's argument seems inflated given that the Employee actually spoke with the police while the farmers were with him.

Having made the determination that the farmers were harmless, the Employee should, nevertheless, have done the prudent thing and had them remain in the waiting room while he went to his computer. No untoward circumstances occurred, but it would have demonstrated better judgment not to have taken any chance at all.<sup>117</sup> But the Employee had no idea he had access to the reception-area computer, which is why he did not use it.<sup>118</sup>

The MEO also contends that the presence of the Dutch farmers exposed confidential data, in violation of statute. That contention is contrary to the facts. The Employee was with the farmers during the four-minute visit. The Employee had, by then, completed his casework, closed the files, and stacked them at the center of the investigators' shared workspace. No bodies were present in any space the farmers saw. They simply did not have any access to confidential data.<sup>119</sup>

The ALJ is concerned about the MEO's failure to afford the Employee a meaningful opportunity to explain what happened on October 2, 2011. On the contrary, the MEO misled the Employee to believe that it was investigating an entirely different event—returning a body to the VAMC—rather than the Dutch farmers incident. The interview method of secreting the real purpose of the interview from the Employee strikes the ALJ as misguided and a denial of a fair process.

It is also troubling that the decision to dismiss the Employee apparently occurred before any interview with or input from the Employee. Prior to

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<sup>117</sup> T. 560.

<sup>118</sup> T. 789.

<sup>119</sup> MEO's argument on this point seems disproportional, given that the Employee's supervisor allowed one of her daughters to view bodies when she visited the facility.

Rossman interviewing the Employee, Rossman emailed Dr. Baker asking whether Dr. Baker considered the Dutch farmers incident one that was termination-worthy. Dr. Baker responded that the Employee's "breach of judgment safety, and security" justified termination.<sup>120</sup> This exchange occurred one day before Rossman and Geiselhart conducted their misleading interview with the Employee.

Dr. Baker testified that the Employee had been given the opportunity, before the issuance of the NOID, to address the Dutch farmers incident,<sup>121</sup> but in fact the Employee was in the dark about the reason for the interview with Rossman and Geiselhart. Dr. Baker was not aware, at the time of hearing the appeal, that the Employee had gone so far as to call the police in the presence of the Dutch farmers. He also recognized that it could have posed a danger to the farmers had they been left on their own to get back to their hostel.<sup>122</sup> From Dr. Baker's testimony, it is clear that he had little knowledge of the actual facts, from the Employee's perspective, on which to base a fair decision.

For these reasons, the ALJ concludes that, while the Employee could have used better judgment in assisting the Dutch farmers by using the reception area computer, the way in which he handled the event is not grounds for dismissal.

Another reason the ALJ has rejected the MEO's dismissal of the Employee relates to the four reprimands the Employee received. The Employee was dismissed in November 2011. The most recent of the reprimands had occurred one and one-half years earlier. Of the four reprimands, one—the body bag event—clearly resulted from an innocent mistake during a very difficult case.

Another of the reprimands—for contacting County Administrator Johnson in violation of the County electronic communication policy—seems petty. Granted the Employee, in sending the email, went outside the chain of command. But the email was polite and acknowledged the Employee's understanding that the email needed to be routed elsewhere. The email to Viscasillas does offend the policy by using inappropriate language. It may be noted, however, that the APEX system was not at all suited to time entry for MEO employees who worked irregular shifts and hours. Others were frustrated by it too. The Employee sent the email to Viscasillas at least two months after APEX had been introduced and was still difficult to work with.<sup>123</sup>

The remaining two incidents—returning a body to HCMC for proper paperwork and discarding a bloodied brassiere into the biohazard container rather than inventorying it—were legitimate bases for reprimands. The HCMC

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<sup>120</sup> Ex. 127.

<sup>121</sup> T. 132.

<sup>122</sup> T. 134-35.

<sup>123</sup> T. 309.

incident showed poor judgment on the Employee's part. But that incident occurred in 2008. The brassiere incident, as shown on the security camera video, suggested distracted, unthinking behavior on the Employee's part, not intentional disregard of MEO procedures, however.

Taken together, these incidents come nowhere near the repetitive, gross misconduct found in other cases where dismissal has been upheld. The Employee holds a demanding, stressful position. During twenty years, his work has given rise to four reprimands. In the context of the case law, this disciplinary history is not substantial enough to justify dismissal. Rather, it appears the MEO has attempted to conflate the Dutch-farmers incident with a fairly insignificant history that is not even contemporaneous with the Dutch-farmers event.

For all of these reasons, the ALJ has determined that dismissal is not appropriate, and the Employee should be reinstated.

**L. F. C.**