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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

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| <hr/>                           | ) |                                      |
| In the Matter of:               | ) |                                      |
|                                 | ) |                                      |
| EMPLOYEE <sup>1</sup>           | ) |                                      |
|                                 | ) | OEA Matter No. 1601-0022-25R26       |
| v.                              | ) |                                      |
| D.C. FIRE and EMERGENCY MEDICAL | ) | Date of Issuance: September 24, 2026 |
| SERVICES,                       | ) |                                      |
| Agency                          | ) |                                      |
| <hr/>                           | ) |                                      |

OPINION AND ORDER  
ON REMAND

This matter was previously before this Board. Employee worked as a Firefighter/Paramedic with the D.C. Fire and Emergency Medical Services Department (“Agency”). On January 3, 2025, Agency served Employee with a Final Agency Decision charging him with neglect of duty – violating the Department’s protocols and making false statements during a Departmental investigation. According to Agency, on October 30, 2023, Employee was observed administering an intramuscular Narcan<sup>2</sup> injection through multiple layers of the patient’s clothing without conducting an assessment. Another Firefighter/Emergency Medical Technician filed a complaint with Agency regarding Employee’s misconduct. During the investigation, Agency secured footage of a body-worn camera showing Employee’s actions.

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<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

<sup>2</sup> Narcan is a medication that rapidly reverses an opioid overdose.

Subsequently, he was terminated.<sup>3</sup>

On January 31, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He acknowledged administering the Narcan injection through the patient’s clothing. However, Employee argued that administering Narcan through clothing was a common practice among paramedics at Agency. Additionally, he claimed that the patient suffered no adverse effects from the injection. Employee contended that he should have gone through retraining instead of being charged with the adverse action brought before the Fire Trial Board (“FTB”). He explained that when Agency considered its penalty, his adverse action was compared with two other cases that were not similarly situated to his. As a result, Employee requested that he be reinstated to his previous position.<sup>4</sup>

Agency filed its Answer to Employee’s Petition for Appeal on February 26, 2025. It argued that Employee’s admission of misconduct warranted termination. Agency contended that Employee’s gross negligence of administering Narcan injections through clothing violated its written policies and protocols in paramedic training. Additionally, it noted that Agency’s FTB considered the *Douglas*<sup>5</sup> factors before reaching its decision to terminate Employee. As a result,

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<sup>3</sup> *Petition for Appeal*, p. 1-2 and 7 (January 31, 2025).

<sup>4</sup> *Id.*, p. 1-2 and 7.

<sup>5</sup> The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board (“MSPB”) in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee’s past disciplinary record;
- 4) the employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) the effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in employee’s ability to perform assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- 7) consistency of the penalty with any applicable agency table of penalties;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;

Agency requested that Employee's removal action be upheld.<sup>6</sup>

On June 25, 2025, the matter was decided by the OEA Administrative Judge ("AJ") on procedural grounds.<sup>7</sup> Employee's appeal was dismissed by the AJ. However, the OEA Board

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- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
  - 10) potential for the employee's rehabilitation;
  - 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
  - 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

<sup>6</sup> *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, p. 10-17 (February 26, 2025).

<sup>7</sup> Before rendering her decision, the AJ issued a Post-Status Conference Order on April 1, 2025. The order requested that the parties submit briefs addressing (1) whether the adverse action taken against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations. *Post-Status Conference Order* (April 1, 2025). In its brief, Agency argued that it had cause to terminate Employee for violating its procedures when administering the Narcan injections. It explained that Narcan injections are only approved for specific sites, so by failing to visualize the muscle, Employee created a risk that he would miss the proper injection site. Additionally, it argued that injecting a patient through clothing creates a significant risk of the patient contracting an infectious disease. Agency asserted that Employee's recorded statement and testimony, the video evidence, and the FTB's findings demonstrated that he intentionally provided false statements. Moreover, it provided that the FTB found that the *Douglas* factors were properly considered; thus, Agency opined that its removal action was within the range of the Table of Penalties. *Agency's Brief*, p. 14-18 (May 6, 2025). However, Employee failed to provide a timely submission. Consequently, the AJ issued an Order for Good Cause Statement, in which Employee was required to submit his brief, along with a statement for good cause by June 23, 2025. *Order for Statement of Good Cause* (June 9, 2025).

The AJ held that in accordance with OEA Rule 624.3, an Administrative Judge has the authority to impose sanctions upon parties as necessary to serve the ends of justice. She noted that the failure to take reasonable steps to prosecute or defend an appeal includes failure to submit required documents after being provided with a deadline for such submission. The AJ concluded that Employee failed to submit his brief by the prescribed deadline and failed to provide a written response to the Order for Statement of Good Cause, to her June 9, 2025, Order. She opined that Employee did not exercise the diligence expectant of an appellant pursuing an appeal before this Office. Consequently, the AJ dismissed the matter for Employee's failure to prosecute his appeal. *Initial Decision*, p. 2-3 (June 25, 2025).

Employee filed a Petition for Review on July 25, 2025. He asserted that he did not intentionally fail to submit his brief on time. Employee explained that on May 30, 2025, he emailed an Unopposed Motion for Modification of Briefing Schedule, requesting an extension of the filing deadline to July 7, 2025, instead of the original June 3, 2025, deadline. According to Employee, he intended to file his brief by July 7<sup>th</sup>. He argued that Agency filed its brief and consented to him modifying the deadline for him to file his brief. Thus, Employee asserted that Agency would not be prejudiced if he was allowed to file his brief. However, he contended that he would suffer prejudice if this appeal was dismissed. As a result, Employee requested that the Board grant his Petition for Review. *Employee's Petition for Review*, p. 2-5 (July 25, 2025).

In response, Agency asserted that Employee failed to respond to the AJ's order to show cause. It also claimed that Employee's email to the AJ failed to comply with OEA's filing requirements under Chapter 6-B District of Columbia Municipal Regulation ("DCMR") § 608.8. Agency contended that if the Board granted the Petition for Review and remanded the matter, it would be prejudicial to Agency because if Agency prevailed on the merits it would have to expend the resources to defend its adverse action. However, if Employee prevailed Agency claimed it would be required to reinstate him with backpay. As a result, it requested that Employee's Petition for Review be denied. *Agency's Answer to Petition for Review*, p. 4-8 (October 28, 2025).

remanded the case to the AJ for consideration on the merits of the appeal.<sup>8</sup>

On remand, the AJ requested that the parties submit briefs addressing (1) whether Agency's adverse action against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations.<sup>9</sup> In his brief, Employee asserted that the adverse action was not supported by substantial evidence. He maintained that he did not contest the misconduct related to his failure to follow protocol to remove the patient's clothing before administering Narcan. However, Employee argued that he did not willfully provide misleading statements but rather, misremembered that the patient's sleeve was rolled up, when that was not the case. Employee also contended that the FTB committed harmful procedural error by not considering his potential for rehabilitation and failing to consider relevant testimony related to his character and intentions. Additionally, he claimed that Agency misapplied the *Douglas* factors and abused its discretion in recommending termination.<sup>10</sup>

In response, Agency contended that Employee did not contest that he violated the Patient's Bill of Rights, Departmental Order Book Article VII, and District Personnel Manual ("DPM") § 1603.3(f)(3) by injecting the patient with Narcan through his clothes and not using the aseptic technique. It explained that this violation amounted to serious misconduct. Additionally, Agency argued that Employee made false statements that were inconsistent with what was recorded on the

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<sup>8</sup> The OEA Board found that Employee submitted an email prior to the June 3, 2025, deadline seeking to modify the briefing schedule and requesting an extension until July 7, 2025, to file his response brief. The Board acknowledged Agency's assertion that Employee's email submission did not comply with the filing requirements provided in OEA Rule 608.8 which provides that "a party must submit two (2) hard copies of . . . any . . . motion, either by mail or hand-delivery." However, it considered Employee's email attempt to request an unopposed extension of time to file his response brief; that there was no pattern of dereliction by Employee; that Employee did not engage in bad faith; and that Employee did not willfully or deliberately ignore the filings deadline completely. As a result, in the interest of justice and fairness, the Board remanded the matter to the AJ to consider the merits of Employee's appeal

<sup>9</sup> *Order for Briefs* (January 5, 2026).

<sup>10</sup> *Employee's Brief*, p. 8-21 (February 13, 2026).

body-worn camera depicting his actions during the incident. It maintained that the FTB's determination that termination was warranted, was supported by substantial evidence and constituted a reasonable exercise of Agency's managerial discretion. Moreover, Agency asserted that the FTB conducted a reasoned analysis of the relevant aggravating and mitigating *Douglas* factors in determining the appropriate penalty.<sup>11</sup>

The AJ issued a decision on May 26, 2026. She held that the FTB met its burden of proof for Charge No. 1, Specification No. 1 because Employee violated the Patient Bill of Rights and the Department's Mission Statement, Vision Statement, and Core Values by administering the Narcan injection through the patient's clothing.<sup>12</sup> The AJ noted that Employee admitted that he engaged in the conduct alleged. Accordingly, she ruled that there was substantial evidence to support the FTB's finding that Employee was guilty of violating Agency's protocol.<sup>13</sup>

However, as for Charge No. 2, Specification No. 1, the AJ found that Agency failed to prove that Employee knowingly made contradictory statements. She determined that even if she assumed that Employee made contradictory statements during the investigation, Agency did not establish that the statements were made with the intent to willfully mislead the investigator. Accordingly, the AJ ruled that Agency could not rely on Charge 2, Specification 1 to discipline Employee.<sup>14</sup>

As for the appropriateness of Agency's penalty, the AJ determined that the range of penalty for the first offense of Charge 1, Specification 1 was counseling to removal. However, she opined that Agency exceeded the exercise of its managerial discretion. The AJ also found that Agency failed to consider the testimony of several witnesses and the growing trend of paramedics

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<sup>11</sup> *Agency's Sur-Reply Brief*, p. 2-10 (February 26, 2026).

<sup>12</sup> *Initial Decision on Remand*, p. 31 (May 26, 2026).

<sup>13</sup> *Id.*, 30-32.

<sup>14</sup> *Id.* at 32.

administering Narcan through a patient's clothing. As a result, she ruled that Agency's penalty determination did not balance the *Douglas* factors and was based on an unreasonable assessment of the record. Therefore, she provided her own assessment of *Douglas* Factors 1, 3, 4, 6, 9, 10, and 12. As a result, she ordered that Employee be reinstated with all backpay and benefits lost as a result of the termination.<sup>15</sup>

Agency filed a Petition for Review with the OEA Board on June 29, 2026. It agrees with the AJ's finding that it had cause for Charge No. 1, Specification No. 1 that Employee failed to follow protocol when treating a patient.<sup>16</sup> As it relates to Charge No. 2, Specification No. 1, Agency argues that the AJ failed to give deference to the FTB's factual and credibility findings that Employee made statements that were contradicted by the video evidence.<sup>17</sup> Agency reasons that it was statutorily within its discretion to discharge Employee for cause. It contends that OEA improperly substituted its judgement for that of Agency by disagreeing with its consideration of the *Douglas* factors. Agency also opines that because termination was within the range of penalty, there was no need for OEA to mitigate its penalty.<sup>18</sup> It maintained that it engaged in a reasoned consideration of the *Douglas* factors. Therefore, it requests that the Petition for Review be granted and that Employee's termination be affirmed.<sup>19</sup>

On August 24, 2026, Employee filed his response to Agency's Petition for Review. He argues that Agency lacked substantial evidence to support Charge No. 2, Specification No. 1, concerning him willfully and knowingly making false statements and that the AJ's decision was not based on an erroneous interpretation of statute, regulation, or policy. As for Charge No. 1,

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<sup>15</sup> *Id.* 32-42.

<sup>16</sup> It also explains that the body-worn camera video showed that Employee failed to assess the patient and failed to obtain consent before treatment.

<sup>17</sup> *Agency's Petition for Review*, p. 15-17 (June 29, 2026).

<sup>18</sup> Agency argued that the cases that the AJ cited to related to penalties were all distinguishable from the current matter.

<sup>19</sup> *Id.*, 17-29.

Specification 1, he maintains that the AJ correctly determined that although termination was within the range of penalties permitted by law, Agency failed to conduct a balanced consideration of the *Douglas* factors. Therefore, Employee requests that the Petition for Review be denied.<sup>20</sup>

### Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.<sup>21</sup>

### Cause

As it relates to Charge No. 1, Specification No. 1, Employee does not contest that he violated Article VI, § 6, the Patient's Bill of Rights, Departmental Order Book Article VII, and DPM § 1605.4(e) by injecting the patient with Narcan through his clothes and not using the aseptic technique. The AJ ruled that there was substantial evidence to support this cause of action.<sup>22</sup> This Board agrees. Therefore, the only issue to be addressed is Agency's penalty.

### Penalty

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<sup>20</sup> *Employee's Opposition to Agency's Petition for Review* (August 24, 2026).

<sup>21</sup> *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

<sup>22</sup> *Initial Decision on Remand*, p. 30-32 (May 26, 2026). This Board agrees with the AJ's ruling that there was not substantial evidence to prove Charge No. 2, Specification No. 2. The charge provided that "... [Employee] was willfully misleading, contradictory, and untruthful in most of his statements to investigators." *Petition for Review*, p. 13-14 (January 31, 2025). Although there were several documents and testimonial evidence that Employee provided contradicting statements during the investigation, the record does not offer proof that those false statements were willfully misleading. The Court of Appeals in *Hager v. D.C. Department of Consumer and Regulatory Affairs*, 475 A.2d 367 (D.C. Mar. 9, 1984), held that in administrative proceedings, willful conduct is most often defined simply as that which is intentional, rather than inadvertent or accidental. Agency offered no evidence that Employee intentionally made the untruthful statements. Employee was questioned months after the incident occurred and could have easily not recalled the details alleged in the complaint.

In determining the appropriateness of an agency's penalty, OEA has relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).<sup>23</sup> In *Stokes*, the D.C. Court of Appeal reasoned that when assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of the Agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised." As a result, OEA has repeatedly held that the primary responsibility for managing and disciplining an agency's workforce is a matter entrusted to the agency, not this Office.<sup>24</sup>

### ***Penalty Within the Range of Applicable Table of Penalties***

In accordance with *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency. Pursuant to DPM § 1607.2(e), the range for a first offense of neglect of duty is counseling to removal. Therefore, removal was within the range of penalties allowed.

### ***Penalty Based on Relevant Factors***

In *Tameka Garner Barry v. Department of Public Works*, OEA Matter No. 1601-0083-14, *Opinion and Order on Petition for Review* (July 11, 2017) (citing *Holland v. Department of Corrections*, OEA Matter No. 1601-0062-08, *Opinion and Order on Petition for Review*

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<sup>23</sup> *Anthony Payne v. D.C. Metropolitan*, OEA Matter No. 1601-00540-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

<sup>24</sup> *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department and Emergency Medical Services*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011); and *Holland v. D.C. Department of Corrections*, OEA Matter No. 1601-0062-08 (April 25, 2011).

(September 17, 2012), the OEA Board held that an Agency's penalty decision will not be reversed unless it failed to consider relevant factors or the imposed penalty constitutes an abuse of discretion. Moreover, in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011)(citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981), OEA provided the following:

[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.

Accordingly, OEA has consistently relied on the analysis of the *Douglas* factors to determine if Agency conscientiously considered the relevant factors when imposing a penalty.

In its Findings of Fact and Recommendations, the FTB outlined its consideration of certain *Douglas* factors.<sup>25</sup> However, the AJ ruled that Agency exceeded the exercise of its managerial discretion; failed to consider the testimony of several witnesses; and ignored the growing trend of paramedics administering Narcan through a patient's clothing. As a result, she ruled that Agency's penalty determination did not balance the *Douglas* factors and was based on an unreasonable assessment of the record.<sup>26</sup> Agency disagrees with the AJ's holding and contends that OEA improperly substituted its judgement for that of Agency by disagreeing with its consideration of

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<sup>25</sup> *Petition for Appeal*, p. 17-21 (January 31, 2025).

<sup>26</sup> *Initial Decision on Remand*, p. 32-42 (May 26, 2026).

the *Douglas* factors.<sup>27</sup> Therefore, this Board will go through each of the *Douglas* factors relied on by Agency and analyzed by the AJ, to determine if there was substantial evidence in the record to support the AJ's findings.

*Douglas Factor #1*

**The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.**

The FTB found this factor to be aggravating and explained that the offense was very serious and directly related to Employee's duties. It held that Employee's actions were intentional, and as a First Responder with more than ten years of experience, Employee knew or should have known that the way he administered medication to his patient was inconsistent with both Departmental policy and his training.<sup>28</sup> Contrary to Agency's assessment, the AJ found that although Employee admitted that he violated Agency's protocol, he did so in good faith because of the emergent situation of the patient. She also explained that administering the Narcan through the patient's clothing did not harm him.<sup>29</sup>

Seven witnesses testified that Agency's protocol requires paramedics to expose the area and cleanse it before administering Narcan into the muscle.<sup>30</sup> None of these witnesses provided that they were trained to inject Narcan through a patient's clothing during emergencies. The requirement was to expose, cleanse, and administer in every scenario an employee may encounter. According to testimony by Agency's Medical Director, the purpose of exposing and cleansing was

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<sup>27</sup> *Agency's Petition for Review*, p. 23-29 (June 29, 2026).

<sup>28</sup> *Petition for Appeal*, p. 17 (January 31, 2025).

<sup>29</sup> *Initial Decision*, p. 37 (May 26, 2026).

<sup>30</sup> *Agency's Response to Employee's Appeal*, Exhibit 21 (August 20, 2024) – *Fire Trial Board Hearing*, Volume 1, p. 19-20, 65, 91-92, (August 20, 2024); *Agency's Response to Employee's Appeal*, Exhibit 22 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 2, p. 70-71, (August 21, 2024); and *Agency's Response to Employee's Appeal*, Exhibit 26 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 3, p. 44, 164, 221-222 (October 24, 2024).

to avoid hitting a blood vessel and to reduce the potential for infection, which could make the patient septic.<sup>31</sup> The AJ's ruling disregards Agency's protocol and introduces a "good faith" exception to its protocol that does not exist. Moreover, there is no evidence in the record to support the AJ's holding that the patient was not harmed. The patient refused to be transported to the hospital, and there was no follow-up with the patient by Agency.<sup>32</sup>

The Merit Systems Protection Board, OEA's federal counterpart, held in *Singh v. U.S. Postal Service*, 2022 M.S.P.R. 15 (2022), that "the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibility, is the most important factor in assessing the reasonableness of a penalty."<sup>33</sup> There is substantial evidence in the record to support the FTB's holding that the offense was very serious and was directly related to Employee's duties. Employee admitted that the way he administered Narcan to the patient was inconsistent with his training. His actions were intentional. Thus, the AJ's ruling related to this factor is not based on substantial evidence.

#### Douglas Factor #2

**The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.**

The FTB reasoned that *Douglas* factor #2 was aggravating because Employee's job required constant contact with the public who need advanced life support services.<sup>34</sup> The AJ did not provide an analysis of this factor. One of the duties of a paramedic is to help administer aid to members of the public. This Board notes that Employee's conduct was witnessed by other

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<sup>31</sup> *Agency's Response to Employee's Appeal*, Exhibit 26 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 3, p. 225 (October 24, 2024).

<sup>32</sup> *Agency's Response to Employee's Appeal*, p. 798-799, 823-826 (February 26, 2025).

<sup>33</sup> See also *Batara v. Department of the Navy*, 123 M.S.P.R. 278 (2016) and *Spencer v. U.S. Postal Service*, 112 M.S.P.R. 132 (2009).

<sup>34</sup> *Petition for Appeal*, p. 18 (January 31, 2025).

emergency medical personnel and a sergeant with the Amtrak Police Department. Amtrak Sergeant Dauphin testified that he witnessed Employee walk up, touch the patient's arm, and give him a shot through all the layers of his clothes. He noted that he had never seen anyone administer medicine through someone's clothes before.<sup>35</sup> Thus, there is substantial evidence to support Agency's determination that Employee's job did involve contact with the public.

*Douglas Factor #3*

**The employee's past disciplinary record.**

As for *Douglas* factor #3, the FTB considered this factor neutral because Employee had no prior history of disciplinary action.<sup>36</sup> The AJ similarly found that there were no prior adverse actions against Employee. She also offered that Employee testified that in the future he would not administer Narcan through clothing and that he plans to follow Agency's rules and not violate them.<sup>37</sup> The AJ's reasoning is unpersuasive because Agency's protocol on how to administer Narcan was in effect when Employee violated it. Despite his training that he expose, cleanse, and then administer Narcan, Employee chose to disregard Agency's rules. Therefore, there is not substantial evidence to support the AJ's reasoning related to her review of this factor.

*Douglas Factors #4 and #5*

**The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.**

**The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties.**

For *Douglas* factors numbers 4 and 5, the FTB found that although Employee worked at Agency since March of 2022 and offered several character witnesses who spoke favorably of him,

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<sup>35</sup> *Agency's Response to Employee's Appeal*, Exhibit 21 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 3, p. 53 and 60 (October 24, 2024).

<sup>36</sup> *Petition for Appeal*, p. 18 (January 31, 2025).

<sup>37</sup> *Initial Decision*, p. 39 (May 26, 2026).

his violation of Agency's policies was severe, blatant, and rendered him undependable.<sup>38</sup> In her review of *Douglas* factor #4, the OEA Administrative Judge ruled that Agency exceeded the exercise of its managerial discretion and failed to consider the testimony of several character witnesses. The AJ offered no review of factor #5.<sup>39</sup>

The record does reflect that there were several character witnesses who believed that Agency should have considered a lesser penalty than termination against Employee.<sup>40</sup> However, the Superior Court for the District of Columbia in *Bryant v. Office of Employee Appeals, et al.*, Case No. 2009 CA 006180 P(MPA)(D.C. Super. Ct. August 2, 2012)(citing *Von Muller v. Department of Energy*, 101 M.S.P.R. 91, 101 (M.S.P.B. 2006)) held that even "significant mitigating factors . . . do not offset the seriousness of the . . . misconduct and make the penalty of removal outside the bounds of reasonableness and impermissible." Therefore, the AJ's mitigation determinations that Employee is dependable and receptive to correction are not sufficient to outweigh the seriousness of his misconduct or to make Employee's termination unreasonable. Accordingly, I do not believe that there is substantial evidence to support the AJ's rulings on these factors.

#### *Douglas Factors #6 and #7*

**Consistency of the penalty with those imposed upon other employees for the same or similar offenses.**

**Consistency of the penalty with any applicable agency table of penalties.**

This OEA Board held in *Employee v. Metropolitan Police Department*, OEA Matter No.

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<sup>38</sup> *Id.*

<sup>39</sup> *Initial Decision*, p. 38-39 (May 29, 2026).

<sup>40</sup> *Agency's Response to Employee's Appeal*, Exhibit 21 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 1, p. 46-47 (August 20, 2024); *Agency's Response to Employee's Appeal*, Exhibit 22 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 2, p. 170-171, (August 21, 2024); and *Agency's Response to Employee's Appeal*, Exhibit 26 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 3, p. 161 (October 24, 2024).

1601-0035-25, *Opinion and Order on Petition for Review* (April 23, 2026) that the consistency of the penalty with those imposed on other employees for the same or similar offenses is only one of twelve *Douglas* factors to be considered by an agency in determining the reasonableness of a penalty. The FTB found that the penalty was consistent with those imposed on others committing similar infractions and is, likewise, consistent with the seriousness of Employee's infractions. It also found that the penalty was consistent with the Table of Penalties outlined in Chapter 16 of the DPM.<sup>41</sup> The AJ held that the FTB failed to consider the growing trend of paramedics administering Narcan through a patient's clothing within Agency. She also ruled that because this appears to be the first time Agency took adverse action against an employee for administering Narcan through clothing, *Douglas* factor #6 is not applicable. The AJ did not offer an analysis of *Douglas* factor #7.<sup>42</sup>

This Board agrees with the AJ that the record reflects that this was likely the first time Agency received a complaint that an employee administered Narcan through a patient's clothing.<sup>43</sup> Witness Brooks Woitas explained that he had no reason to believe that Agency management knew of the practice that some employees were administering Narcan through clothing.<sup>44</sup> Amtrak Sergeant Dauphin testified that he had never seen anyone administer medicine through someone's clothes before.<sup>45</sup> Similarly, Captain Lammert stated that besides Employee, he did not know of any other employee administering Narcan through a patient's clothes. Finally, Paramedic Busch testified that to his knowledge, he did not believe that the Medical Director knew of the practice

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<sup>41</sup> *Petition for Appeal*, p. 19 (January 31, 2025).

<sup>42</sup> *Initial Decision*, p. 40 (May 29, 2026).

<sup>43</sup> *Agency's Response to Employee's Appeal*, p. 1151-1153 (February 26, 2025).

<sup>44</sup> *Id.*, Exhibit 21 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 1, p. 95 (August 20, 2024).

<sup>45</sup> *Id.*, Exhibit 26 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 3, p. 53 and 60 (October 24, 2024).

of employees injecting Narcan through clothing.<sup>46</sup>

Agency's analysis of this factor was that the penalty was consistent with those committing "similar infractions . . . and with the seriousness of [Employee's] infractions."<sup>47</sup> Agency did not claim to consider penalties for the same violation; its analysis compared the seriousness of Employee's violation to similar infractions. Thus, the AJ's decision to dismiss this factor is not based on substantial evidence. The FTB was not required to consider trends, of which it was clearly unaware, prior to the complaint lodged against Employee. Agency had to assess the penalty based on the complaint filed against Employee. Additionally, pursuant to DPM § 1607.2(e), the range for a first offense of neglect of duty is counseling to removal. Therefore, as Agency contends, removal was within the range of penalties allowed in the Table of Penalties.

*Douglas Factor #8*

**The notoriety of the offense or its impact upon the reputation of the agency.**

The FTB provided that Employee's actions were witnessed by Amtrak police and captured on body-worn camera which significantly tarnished Agency's reputation. The AJ offered no analysis of this factor. As this Board previously provided in our analysis of Douglas factor 2, Amtrak Sergeant Dauphin testified that he had never seen anyone administer medicine through someone's clothes. He also provided that he does not recall Employee even speaking with the patient before the injection of Narcan was administered.<sup>48</sup> It is reasonable to believe that witnessing this incident had an impact on Sergeant Dauphin and on Agency's reputation. Therefore, there is substantial evidence to support Agency's consideration of this factor.

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<sup>46</sup> *Agency's Response to Employee's Appeal*, Exhibit 21 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 1, p. 27 (August 20, 2024).

<sup>47</sup> *Petition for Appeal*, p. 19 (January 31, 2025).

<sup>48</sup> *Agency's Response to Employee's Appeal*, Exhibit 26 (February 26, 2025) – *Fire Trial Board Hearing*, Volume 3, p. 54-55 (October 24, 2024).

Douglas Factor #9

**The clarity with which the employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question.**

The FTB found this factor to be aggravating because Employee knew that he was responsible for providing care in a manner consistent with Department's standards. It noted that Employee completed his probationary period and received on-going training on Agency's expectations and core values. Agency opined that Employee was nationally registered and had ample opportunities to pose questions to his supervisors, the Medical Director, or other senior employees about aseptic techniques when administering medications.<sup>49</sup> However, the AJ found that administering Narcan through clothing was nuanced and noted that other paramedics were injecting Narcan through patient's clothing.<sup>50</sup>

This Board believes that the AJ's assessment is misguided. As outlined in factor #1, several witnesses testified to Agency's protocol. Moreover, Employee was aware that his actions were inconsistent with his training. The record also establishes that Employee's complaint was the first time Agency learned of any employee administering Narcan through clothing. It was during Agency's investigation that it discovered that other employees utilized this unauthorized practice of administering Narcan. As a result, the Agency's Medical Director released a memo on February 24, 2024, informing all employees that this violated Agency's protocol.<sup>51</sup> However, Agency learning about subsequent violations did not prevent it from moving forward with its adverse action against Employee.

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<sup>49</sup> *Petition for Appeal*, p. 19 (January 31, 2025).

<sup>50</sup> *Initial Decision*, p. 40-41 (May 29, 2026).

<sup>51</sup> The incident giving rise to this matter occurred on October 30, 2023. The Medical Director's email addressing the trend of paramedics giving Narcan injections through clothing was sent on February 24, 2024. *Agency's Response to Employee's Appeal*, p. 903 (February 26, 2025).

Douglas Factor #10

**Potential for the employee's rehabilitation.**

The FTB found that Employee's action of administering medication through the patient's clothing was negligent; showed a lack of compassion/empathy for his patient; and was in gross disregard of his training. According to Agency, Employee willfully and knowingly failed to comply with Department policy and blatantly violated the Patient Bill of Rights.<sup>52</sup> However, the AJ held that Employee was not the only Agency employee who administered Narcan through a patient's clothing. Moreover, she was persuaded by Employee's testimony that he now knows that administering Narcan through a patient's clothing is a violation of Agency's protocol and that he would not do so again.<sup>53</sup>

As previously provided, Agency's protocol was in effect when Employee violated it. Despite his training on how to administer Narcan, Employee chose to disregard Agency's protocol. In accordance with *Love*, Agency was within its discretion to decide that the seriousness of the violation outweighed Employee's potential for rehabilitation.

Douglas Factor #11

**Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.**

As for factor #11, Agency provided that it considered this factor but found no mitigating circumstances.<sup>54</sup> The AJ did not address this factor. This Board agrees with Agency. There is no evidence in the record of unusual job tension, personality problems, mental impairment, or harassment from others reflected in the record.

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<sup>52</sup> *Petition for Appeal*, p. 19-20 (January 31, 2025).

<sup>53</sup> *Initial Decision*, p. 41 (May 29, 2026).

<sup>54</sup> *Petition for Appeal*, p. 20 (January 31, 2025).

Douglas Factor #12

**The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.**

The FTB considered this factor neutral and offered no further analysis.<sup>55</sup> In contrast, the AJ found that Agency's neutral finding was a basis to believe that an alternative sanction could be appropriate.<sup>56</sup> This Board does not believe that because Agency considered this factor neutral that it equates to proof that there is an alternative sanction. As provided in *Eugene Goforth v. Office of Employee Appeals, et. al.*, Case No. 2020 CA 005084 (D.C. Super. Ct. July 9, 2021), the Superior Court for the District of Columbia held that “. . . *Douglas* . . . outlines the factors that must be considered[,] but it does not require a certain level of consideration be devoted to each factor.” Thus, it was within Agency's discretion to consider this factor neutral and still arrive at its decision to terminate Employee.

Conclusion

Agency had cause that Employee neglected his duty to properly administer Narcan to his patient. Pursuant to DPM § 1607.2(e), the range for a first offense of neglect of duty is counseling to removal. Agency considered whether the penalty was based on relevant factors, and there was no clear error of judgment by Agency. Therefore, Agency's Petition for Review is granted. The Initial Decision is reversed, and Employee's removal action is upheld.

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<sup>55</sup> *Id.*

<sup>56</sup> *Initial Decision*, p. 41-42 (May 29, 2026).

**ORDER**

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**. The Initial Decision is **REVERSED**, and Employee's termination is **UPHELD**.

**FOR THE BOARD:**

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Pia Winston, Chair

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LaShon Adams

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Jeanne Moorehead

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Lafayette Barnes

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.