



D [REDACTED] G [REDACTED]
v.
CALIFORNIA DEPARTMENT OF HIGHWAY
PATROL

Appeal from Dismissal

SPB Case No. 24-02
Case No. 22-1367

**BOARD DESIGNATING
ADOPTED DECISION AS A
PRECEDENTIAL DECISION**

BEFORE: Shawnda Westly, President; Kathy Baldree, Vice President; Gail Willis, Kimiko Burton, and Ana Matosantos, Members

On November 9, 2023, the State Personnel Board (Board) adopted the Proposed Decision filed by the Administrative Law Judge in the appeal by D [REDACTED] G [REDACTED] (Appellant), from dismissal imposed by California Department of Highway Patrol. On January 3, 2024, the Office of the Attorney General (OAG), which represented Respondent California Department of Highway Patrol, in this appeal submitted a request for the Board to designate the adopted Proposed Decision as a precedential decision under Government Code, section 19582.5.

The OAG represented that the adopted Proposed Decision provided a thoughtful and well-reasoned analysis of the meaning of the term “immorality” as used under Government Code section 19572, subdivision (l). Moreover, there are no other precedential decisions providing a thorough discussion of the type of conduct constituting immorality under this subdivision.

The Board finds it appropriate to designate the adopted Proposed Decision issued on November 9, 2023, as precedential under Government Code section 19582.5.

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IT IS RESOLVED AND ORDERED THAT:

1. The Board designates the attached adopted Proposed Decision as a precedential decision under Government Code section 19582.5;
3. The precedential decision shall be designated as SPB Dec. No. 24-02 in the Board's precedential decision numbering system; and
4. The precedential decision shall be uploaded and maintained in the Board's records, website, and other legal online publications as may be available or applicable.

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STATE PERSONNEL BOARD

The foregoing Board Resolution and Order was made and adopted by the State Personnel Board during its meeting on February 7, 2024, as reflected in the record of the meeting and Board minutes.

Suzanne M. Ambrose

SUZANNE M. AMBROSE
Executive Officer

D ■ G ■
v.
DEPARTMENT OF CALIFORNIA
HIGHWAY PATROL

Appeal from Dismissal

Case No. 22-1367

Proposed Decision

STATEMENT OF THE CASE

This matter came on regularly for hearing before State Personnel Board (SPB) Administrative Law Judge John G. Johnson on July 10–14, 2023, via videoconference. The case was submitted at the conclusion of the hearing July 14, 2023.¹

Appellant, D ■ G ■ (Appellant), was present and represented by Sean D. Currin, Attorney, Mastagni Holstedt.

Respondent, Department of California Highway Patrol (Respondent or CHP), was present and represented by Karen Kiyo Lowhurst, Deputy Attorney General (DAG), California Department of Justice (DOJ), and Hima Raviprakash, DAG, DOJ. Sergeant Kari Lane, CHP, was present as Respondent's party representative

Respondent dismissed Appellant from his position as a CHP Officer effective December 7, 2022. Respondent alleged that on June 14, 2021, while off-duty, Appellant physically assaulted his wife during an argument about Appellant's extramarital affair, and then followed her to their bedroom and forced his wife to engage in oral and vaginal sexual relations. Respondent also alleged that Appellant was dishonest about those events during his administrative interrogation.

¹ This matter was originally set for a 5-day hearing beginning on April 17, 2023. The hearing began at that time; however, before the conclusion of the first witness, a discovery issue arose necessitating the continuation of the hearing. The hearing began anew on July 10, 2023, and, as a result, the evidentiary record begins from that point.

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Appellant admits to the extramarital affair, and to engaging in an argument with his wife, but denies the remaining charges. Appellant asserts that his wife fabricated the alleged misconduct that evening in retaliation for Appellant having an affair, and in order to extort money from him.

ISSUES

The issues to be resolved are:

1. Did Respondent prove the charges by a preponderance of the evidence?
2. If Respondent proved the charges by a preponderance of the evidence, does the Appellant's conduct constitute a violation of Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (l) immorality, (r) violation of the prohibitions set forth in accordance with Government Code section 19990, and/or (t) other failure of good behavior on or off duty causing discredit to Appellant's employer or to Appellant?
3. If Appellant's conduct violates Government Code section 19572, what is the appropriate penalty?

FINDINGS OF FACT

A preponderance of the evidence proves the following facts:

1. Appellant entered the CHP academy on October 2, 2017, as a Cadet, and became a CHP Officer on April 20, 2018. Appellant remained in that position until his dismissal.

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Policies

2. CHP's General Order 0.1, Departmental Mission Statement and Organizational Values, requires CHP employees to treat others with respect, maintain ethical practices, and treat all people equitably.
3. CHP's General Order 0.8, Professional Values, requires CHP Employees to be honest, treat others with respect, and to adhere to the highest standard of conduct.
4. CHP Officers are required to act in a manner to maintain the trust and confidence placed upon them by the citizens of California.
5. CHP's Incompatible and Inconsistent Activities policy prohibits CHP employees from engaging in any activities which are clearly inconsistent, incompatible, in conflict with, or inimical to their duties as a CHP employee.

Prior Discipline

6. On October 14, 2019, Appellant received a Memorandum of Direction for engaging in a pursuit while transporting a civilian in his vehicle, and for turning off his vehicle's Mobile Video Audio Recording System (MVARs) during the pursuit.
7. On March 30, 2020, Appellant received a second Memorandum of Direction for driving recklessly during a pursuit in an urban area.
8. On March 30, 2022, Appellant received an adverse action in which he was suspended for 30 days for failing to report the use of excessive force by another CHP Officer, and for subsequently failing to document the excessive force in his

supplemental report about the incident.

Events

9. Appellant and his wife ■ were married in 2012 after having dated for approximately three years.
10. Appellant and ■ had three children, who in June 2021 were 7 years old, 4 years old, and 11 months old.
11. Around October 2020, Appellant began having an affair with another CHP Officer with whom he worked, ■ lived in Oakland. At that time, Appellant and his wife and children lived in Sacramento, and Appellant worked for Respondent out of Oakland. Appellant had to commute to and from Oakland for work. Because of the distance, Appellant would sometimes sleep in his car in Oakland rather than commute. After Appellant began having an affair, Appellant would sometimes spend the night with ■.
12. In late 2020, ■ began to suspect Appellant was having an affair and confronted Appellant about it, but Appellant denied it. In early 2021, ■ confirmed that Appellant was having an affair, and Appellant eventually admitted to it.
13. After that, Appellant's and ■ relations became contentious. ■ wanted to work on her marriage with Appellant and wanted him to end his affair. Appellant would tell his wife that he wanted to work on their marriage and that he would end the affair. However, Appellant did not end the affair, and as a result, he and his wife would argue from time to time.
14. Late on the evening of June 13, 2021, ■ was upstairs in their

bedroom. Appellant was downstairs drinking Hennessy, an alcoholic beverage, and becoming intoxicated. At some point in the early hours of June 14, 2021, [REDACTED] went downstairs and found Appellant on his phone talking to [REDACTED]. [REDACTED] became angry, and began to argue with Appellant. As the argument ensued, Appellant and his wife moved to their attached garage in order not to wake their children.

15. The argument became very heated with the two shouting at each other. Appellant pushed his wife in the chest, and [REDACTED] pushed him back. Appellant then grabbed his wife's arms and pushed her to the ground. Appellant placed his hands on his wife's neck and began to choke her until she saw black spots. Using her feet to push him away, [REDACTED] managed to get Appellant off of her, and was able to get up. [REDACTED] told Appellant to "get the fuck out," exited the garage, and entered their dining room. Appellant followed his wife into the house and the argument continued, with Appellant telling his wife to "shut the fuck up," as the two argued. Appellant went after his wife, who ran into the kitchen to get away from him. Appellant chased [REDACTED] around the kitchen island until his wife threatened to call the police. When [REDACTED] threatened to call the police, Appellant stopped chasing her.

16. [REDACTED] started to go upstairs. As she was going upstairs, she encountered her mother, Maria Martinez (Maria Martinez), who lived with the couple. The noise from Appellant and [REDACTED] argument had woken up [REDACTED] mother. Maria Martinez, who knew about Appellant's affair,

asked her daughter and son-in-law what was going on. Appellant responded, “tell your daughter to leave me alone.”

17. Maria Martinez spoke briefly with Appellant, and then followed her daughter up to Appellant’s and ■■■■■ bedroom. ■■■■■ began packing Appellant’s clothes in trash bags. Maria Martinez told her daughter to calm down, and let Appellant do it. ■■■■■ sat on the bed and responded that she wanted Appellant out of the house. ■■■■■ was in shock and embarrassed by what had just occurred, and did not tell her mother at that time that Appellant had physically assaulted her in the garage.
18. Appellant went upstairs and into the bedroom where ■■■■■ was talking to her mother. Appellant said he wanted to speak with his wife, and Maria Martinez left the room. Appellant shut the door as she left. Appellant, who had calmed down, again told his wife he wanted to talk things out. ■■■■■ said she did not want to, and that she wanted his things out of the house.
19. Appellant moved towards his wife and started to get on top of her. ■■■■■ told Appellant to get off of her. Appellant ignored his wife and placed his knees on her arms, pinning her to the bed. Appellant then pulled his wife’s hair in an attempt to force her to perform oral sex on him. ■■■■■ repeatedly told her husband “no,” and told him she was disgusted with him. Appellant, however, forced his wife to perform oral sex. Appellant then pulled off his wife’s leggings and underwear, and forced her to have vaginal intercourse.

20. [REDACTED] went to sleep after the incident because she had to work that day.
21. Appellant left sometime thereafter that morning, and went to his mother's residence.
22. As a result of Appellant's actions on June 14, 2021, [REDACTED] suffered bruising on various parts of her body.
23. The next day after [REDACTED] got off from work, she went to the gym with Joanna Muniz. Joanna Muniz's husband was Appellant's first cousin. At that time, [REDACTED] and Joanna Muniz worked out together three times a week. [REDACTED] was wearing a turtleneck when they went to work out, which Joanna Muniz thought was strange because it was the summer and hot out. At the gym, Joanna Muniz noticed that [REDACTED] was having difficulty doing the exercises and appeared to be in pain. This had never been the case before when they worked out. After they worked out, Joanna Muniz asked [REDACTED] if she was okay. [REDACTED] then told Joanna Muniz what had occurred between her and her husband. [REDACTED] showed Joanna Muniz her arms and neck, where Joanna Muniz observed what appeared to be recent bruising.
24. Appellant lived with his mother for approximately two weeks after the June 14, 2021, incident.
25. Shortly after he moved out, Appellant apologized to Maria Martinez for hitting [REDACTED] on June 14, 2021, and asked for her forgiveness.

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26. Appellant wanted to work out things with his wife, and told her that he would end

his affair with ■. ■ wanted to work out matters as well, and Appellant moved back into their Sacramento home in early July. However, ■ discovered that Appellant did not end his affair with ■, and, as a result, Appellant moved out for good on July 22, 2021.

27. After Appellant moved out in July, he and his wife began to discuss separation and the division of their assets. ■ told Appellant that she wanted him to return \$7,500.00 to their joint savings account that he had withdrawn the previous month to buy a Camaro for himself. Additionally, Appellant calculated the future value of his CHP retirement, and told ■ that she would be entitled to half of it, an amount he determined to be \$2,000,000.00.
28. Shortly after that, Appellant and his wife exchanged texts further discussing the division of assets. ■ discussed the money Appellant agreed to pay her as they separated their assets. In the texts, ■ says, "Pay back what you said you were going to agree to . . . the 7500 and also the 2 million [of] your retirement." Appellant began to back away from that agreement in his texts. ■ reiterated her understanding of the agreement and then stated, "Ok cause we don't want to have [a] DV case do we d ■,"² and demanded the money again. In response, Appellant texted, "Please send me the Golden One information" so he could make some of the payments. Later in the same text chain, ■ wrote, "my mom doesn't know you put hands on me cause then she would respond differently"

² The original text read "another DV case." ■ testified that was a typographical error, and it should have read "a DV case." "DV" stands for domestic violence.

29. On Monday, August 9, 2021, [REDACTED] went to the Sacramento Police Department and reported the June 14, 2021, incident to Sacramento Police Department Officer Christine Lakin (Officer Lakin).
30. On February 8, 2022, Respondent conducted an administrative interrogation of Appellant. During the administrative interrogation, Appellant stated that: he did not physically or sexually assault [REDACTED]; he left the house immediately after exiting the garage, and did not go upstairs to the bedroom; he did not know about [REDACTED] injuries until he read it in the police report; and he did not have any discussions with [REDACTED] on June 14, 2021.
31. Prior to the SPB hearing, Joanna Muniz's husband told her not to get involved in the matter.
32. At the time of the hearing, Maria Martinez believed that Appellant had changed since the incident. Appellant still helped both [REDACTED] and her mother financially. Appellant helped pay for their rent, food, and insurance. Appellant gave Maria Martinez his car, and paid for her clothes. Maria Martinez loves her grandchildren and wants to make sure that they can spend time with Appellant. Maria Martinez believes that if Appellant gets his job back, he will have more money to spend on her grandchildren.

CREDIBILITY DETERMINATION

Respondent presented evidence that [REDACTED] and her mother told the police and CHP investigators near the time of the charged events that Appellant had committed domestic violence in the early morning hours of June 14, 2021. Respondent also presented evidence of Joanna Muniz's statements to CHP investigators, corroborating

that the day after Appellant assaulted ■■■■■, she appeared to be sore and had visible signs of bruising. At the hearing, Appellant denied the charges against him. Similarly, at the hearing, ■■■■■ and her mother recanted their prior statements to the police and investigators that Appellant had assaulted ■■■■■, and claimed they lied when they made them. Finally, at the hearing Joanna Muniz equivocated on her prior statements and denied others. As a result, a credibility determination is required.³

Appellant

Appellant's testimony about the evening did not present as credible. In broad scope, Appellant's story about what occurred was that he and ■■■■■ went to the garage in the early morning hours of June 14, 2021. Appellant testified that they had a brief argument in which ■■■■■ was yelling, and he left immediately, spending less than a minute in the dining room after they exited the garage and then exiting the house. He then went to his aunt's house, where his mother was living. Appellant testified that he could not recall what started the argument. Appellant's description of the argument gave the impression that it was a relatively minor argument in which he was calm, and ■■■■■ ■■■■■ was upset and yelling, and he decided to leave the house in order to end it.

At hearing, Appellant's version of events did not match with his actions after the

³ Evidence Code section 780 provides: Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including, but not limited to, any of the following: (a) His demeanor while testifying and the manner in which he testifies; (b) The character of his testimony; (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies; (d) The extent of his opportunity to perceive any matter about which he testifies; (e) His character for honesty or veracity or their opposites; (f) The existence or nonexistence of a bias, interest, or other motive; (g) A statement previously made by him that is consistent with his testimony at the hearing; (h) A statement made by him that is inconsistent with any part of his testimony at the hearing; (i) The existence or nonexistence of any fact testified to by him; (j) His attitude toward the action in which he testifies or toward the giving of testimony; and (k) His admission of untruthfulness.

argument, or other parts of his testimony. With respect to the latter, at one point, Appellant testified that he and ■■■■■ had engaged in many arguments, but none to the scale of this one. Yet, his testimony at the hearing described a relatively brief and otherwise routine argument, not a large-scale argument. Similarly, Appellant testified that he stayed with his mother for one to two weeks after the argument. But it is unlikely that a routine disagreement would cause him to move out of his house and away from his children for one to two weeks. He also testified that he did not remember what started the argument. One would think, however, that Appellant would remember what started an incident that caused him to move out of his house for one to two weeks and which led to the end of his marriage.

At other key points, Appellant likewise did not present as credible. For example, Appellant argued at hearing that his wife bruised herself. Appellant testified he was concerned about the bruises. Yet, he testified he never asked his wife how she got her bruises. Appellant also testified that he believed a person who would bruise them self was unstable. Even though he testified about his concerns for his wife bruising herself and his belief that someone who harmed them self was an unstable person, Appellant testified he had no concerns about his wife taking care of their children. When asked how this could be, Appellant testified that he could always ask his children how they were being cared for. Appellant did not explain why he thought an 11-month-old would be a reliable communicator of the care they were being given by a parent Appellant believed to be unstable. It was not credible that a parent of three small children ages 7, 4, and 11 months would not be concerned that his children were being cared for by a person who had purposefully harmed herself. Appellant's lack of expressed concern more likely

suggests that he knew [REDACTED] had not bruised herself.

Similarly, in text messages submitted by Appellant, Appellant's silence is more telling than his words. Appellant attempted to discredit his wife's credibility at the time of the incident, by contending that she made up the events of June 14 in an effort to extort money from him. As evidence of this, Appellant presented texts between himself and his wife in July 2021 after the incident, and before she filed her police report. At that point in time, Appellant and his wife were separating and were discussing the division of assets. In the texts, [REDACTED] was clearly angry. She called [REDACTED] a "bitch" and a "whore," and called Appellant "fucking disgusting," among other things. The texts concerned money that [REDACTED] contended Appellant agreed to pay her as they separated their assets. In the texts, [REDACTED] says, "Pay back what you said you were going to agree to . . . the 7500 and also the 2 million [of] your retirement." Appellant appeared to back away from the agreement in his texts. [REDACTED] became angry and reiterated her understanding of the agreement and then stated, "Ok cause we don't want to have [a] DV case do we o [REDACTED],"⁴ and demanded the money again. In response, Appellant texted, "Please send me the Golden One information" so
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he could make some of the payments. In his texts, Appellant did not dispute [REDACTED] [REDACTED] assertion in her texts that he committed domestic violence.

Appellant contends this was evidence of [REDACTED] trying to extort an outrageous, fanciful amount of money from him. At the hearing, Appellant was

⁴ The original text read "another DV case." [REDACTED] testified that was a typographical error, and it should have read "a DV case." "DV" stands for domestic violence.

circumspect about what the \$7,500.00 and \$2,000,000.00 represented, and where the figures came from. Appellant initially equivocated on what the \$7,500.00 was for, but ultimately admitted it was money he had taken from the family savings in June 2021 to buy himself a Camaro. With respect to the \$2,000,000.00, Appellant testified that [REDACTED] asked for it based on “a huge misunderstanding” about what his retirement savings would be. Appellant did not identify himself as the source of that misunderstanding, but implied that his wife invented this amount. In response to this implication, Respondent’s counsel asked Appellant if he was in fact the source of that figure. Appellant dodged the question, and had to be asked three times before he flatly stated that he was not the source of that figure. On further questioning, Appellant continued to deny he was the source of the figure, and suggested his wife’s lawyers came up with it. Taken as a whole, Appellant’s testimony indicated that the \$2,000,000.00 his wife sought was a baseless and outrageous demand for money that she was trying to extort from him with fabricated claims of spousal abuse.

But Appellant knew he was the source of that figure, and knew why his wife was asking for it. In a document Appellant signed under penalty of perjury and filed with Sacramento County Superior Court in connection with his and [REDACTED] divorce proceedings, Appellant informed the court of what the amounts were. Appellant averred that the \$7,500.00 was for money he had taken to purchase a Chevrolet Camaro for himself in June 2021, and the \$2,000,000.00 was a figure he had calculated as being [REDACTED] community property share of his future retirement with CHP. Thus, rather than being exorbitant and baseless, these were amounts derived from objective circumstances that Appellant had discussed with his wife. The \$7,500.00 was money

Appellant had taken from their joint savings to spend on himself. The \$2,000,000.00 was an amount that Appellant had calculated, not his wife, and he told her she was entitled to it. They were not amounts that [REDACTED] pulled out of thin air, nor were they amounts that [REDACTED] or her lawyers came up with as Appellant contended at the hearing. The money that Appellant claimed his wife was trying to “extort” from him, was to restore the family savings and what Appellant told her would be her community property share of his retirement—an amount which, if accurate, she could be entitled.

What is most telling about the texts is that while Appellant disputed in the texts the amounts he owed, he never disputed [REDACTED] claim that he committed domestic violence. Nor did Appellant question why she mentioned a DV case. Rather, Appellant simply asked for their bank account information so he could make some of the payments he had agreed to make in the division of assets. If [REDACTED] were making up her domestic violence claim, one would think Appellant would have said something in the text messages. He did not. Later in the same text chain, [REDACTED] wrote, “my mom doesn’t know you put hands on me cause then she would respond differently”

Appellant did not deny this claim either. Thus, the texts bolster [REDACTED] credibility. They are consistent with all of her statements at the
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time about the events. They indicate that Appellant knew that [REDACTED] was referring to Appellant’s violent assault in the texts, and he did not dispute its truth.

Finally, Appellant frequently gave the impression that he was avoiding taking responsibility for his own actions. This was true with his testimony concerning the- source of the \$2,000,000.00 retirement figure. Similarly, when asked whether his infidelity

caused issues in his marriage, Appellant quickly turned his response away from his own actions to blaming his wife, stating “my main issue was ■ would get really loud sometimes and we would have to get away from the kids to a more secluded area.” Appellant’s testimony as a whole showed an unwillingness to take responsibility for his own actions, and a deliberate effort to downplay any personal culpability for anything that occurred. Appellant did not present as a credible witness.

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■ police report to the Sacramento Police Department was captured on Officer Lakin’s body camera video. As ■ related the events to Officer Lakin, she was at times emotional. Her emotions were consistent with what she was explaining to Officer Lakin about the traumatic events she had just experienced. She appeared sincere throughout. ■ was able to mimic Appellant’s actions towards her. She provided details, but did not embellish. For example, ■ denied that Appellant was generally physical with her, stating that he had only gotten physical once before, many years prior to this incident, and not to the same extent. Her accounts and her ability to provide details to the Sacramento Police and to CHP investigators are consistent both internally, and between the two.

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In contrast, ■ testimony at the hearing denying her original account of events came across as wooden and insincere. In response to almost every question about what she had previously told the police, ■ volunteered, “That is the story I made up,” or words to similar effect. ■ repeated response of “That is the story I made up,” was delivered in a mechanical manner. Her testimony gave the

sense of a memorized and practiced response.

Appellant contended that ■■■■■ was not credible because she told both Officer Lakin and the CHP investigator that Appellant left their house in the morning after the incident. To begin with, at the hearing no one could recall a specific time of the event or when Appellant left. Everyone testified that the argument occurred in the morning hours of June 14, 2021, and testified to a range of time. For example, Appellant could not say exactly when he left, but believed it to be somewhere between 2:00 a.m. to 3:00 a.m. However, the certainty of that estimate is suspect. Appellant generally had difficulty while testifying in remembering dates and times with respect to other events. Nevertheless, all of the varying time ranges occurred sometime in the morning hours of June 14, 2021. No time for Appellant's departure was established conclusively in the record. Thus, ■■■■■ statement that Appellant left sometime in the morning is consistent with the other statements and testimony on record, and does not lessen her credibility.

Martinez

At hearing, Maria Martinez recanted her prior statements to CHP investigators that she believed Appellant assaulted ■■■■■. However, she presented as biased in Appellant's favor. She made it clear that she wanted Appellant to get his job back with CHP. She seemed very happy with the role Appellant was now playing in her and her grandchildren's lives, and believed that if he got his job back, he would have more money to spend on her grandchildren. In addition, her responses were at times confused, and she did not always answer questions directly. In short, Maria Martinez did not present as credible while testifying.

Muniz

[REDACTED] went to the gym the day after the events of June 14, 2021, with Joanna Muniz. Joanna Muniz witnessed some of the bruising on [REDACTED], and told CHP investigators that [REDACTED] appeared to be sore on that day. Joanna Muniz's statement to CHP investigators was consistent with what [REDACTED] told the Sacramento Police and CHP investigators. Joanna Muniz appeared at the hearing by subpoena, and stated that she did not want to testify. Joanna Muniz's husband is Appellant's first cousin. Her husband's mother and Appellant's mother are sisters. Joanna Muniz's husband told his wife not to get involved in the matter. Joanna Muniz's testimony at the hearing gave the impression that she was following the direction of her husband. She testified in a hesitant and reluctant manner, and gave the impression that she was coloring her testimony to support Appellant and [REDACTED] position at the time of the hearing. For example, she denied that [REDACTED] wore a turtleneck and walked back some of her prior statements to investigators. Additionally, she testified that the event was a long time ago, and that she was having trouble remembering what occurred. Taking everything in consideration, the more reliable account of events from Joanna Muniz is her prior statement to CHP investigators, which was closer in time to the events.

Conclusion

[REDACTED] prior statements to Joanna Muniz, her mother, the Sacramento Police, and CHP investigators were all consistent. Similarly, Joanna Muniz's and Maria Martinez's prior statements closer in time to the events were also consistent with [REDACTED] [REDACTED] prior statements. As a result, the most reliable statements about what occurred

on June 14, 2021, are [REDACTED], Maria Martinez's, and Joanna Muniz's statements closer in time to the event.

PRINCIPLES OF LAW AND ANALYSIS

In an appeal to the SPB from disciplinary action taken pursuant to Government Code section 19574, the appointing authority bears the burden of proving by a preponderance of the evidence that the employee engaged in the conduct on which the disciplinary action is based, and that such conduct constitutes a cause for discipline under the State Civil Service Act. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153; *Lyle Q. Guidry* (1995) SPB Dec. No. 95-09, pp. 8–9; Evid. Code, § 115.) A preponderance of the evidence is generally defined as evidence that “when weighed with that opposed to it, has more convincing force and the greater probability of truth.” (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482–483.)

In deciding whether the appointing authority has met its burden of proof, the SPB will consider “both direct and circumstantial evidence, and all reasonable inferences to be drawn from both kinds of evidence, giving full consideration to the negative and affirmative inferences to be drawn from all of the evidence, including that which has been produced by the [appellant].” (*Leslie G. v. Perry & Associates, supra*, p. 483.)

Inexcusable Neglect of Duty

Inexcusable neglect of duty is the intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty. (*E.W.* (1999) SPB Dec. No. 99-09, p. 19.) To establish that an employee inexcusably neglected a duty by violating a policy, the employer must show that: (1) it had a clear policy, (2) the employee had notice

of the policy, and (3) it intended to enforce the policy. (*E.D.* (1993) SPB Dec. No. 93-32, p. 9.) Notice of a clear policy, however, is unnecessary for conduct that is obviously wrong. (*J.A./M.L.* (1996) SPB Dec. No. 96-17, 8–11; see also *Merle E. Betz, Jr.* (1996) SPB Dec. No. 96-10, pp. 15–16.) Thus, unless Appellant’s conduct is so clearly wrong that notice is unnecessary, Respondent must prove Appellant had actual knowledge or constructive notice of expected standards of conduct, and that he failed to exercise due diligence in performing his duties.

Generally, in order to establish cause for discipline for conduct, the alleged misconduct “must bear some rational relationship to [the employee’s] employment.” (*Stanton v. State Personnel Bd.* (1980) 105 Cal.App.3d 729, 739–740. See also *Douglas Durham* (1995) SPB Case No. 95-18, p. 9 [Gov. Code, § 19572, subd. (f), dishonesty, and subd. (t). other failure of good behavior, require a nexus, but subd. (k), conviction of a felony or conviction of a misdemeanor involving moral turpitude, does not].) Because of the special role peace officers play in society, it is well established that a department may dismiss a peace officer based on off-duty conduct when the officer’s conduct discredits the department, or causes the department to lose confidence

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in the officer’s good judgment. (*Anderson v. State Personnel Bd.* (1987) 194 Cal.App.3d 761; *Gray v. State Personnel Bd.* (1985) 166 Cal.App.3d 1229; *Bautista v. County of Los Angeles* (2010) 190 Cal.App.4th 869.)

CHP’s General Order 0.8, Professional Values, require that CHP employees be honest, treat others with respect, and to adhere to the highest standard of conduct. CHP’s

Incompatible and Inconsistent Activities policy prohibited Appellant from engaging in any activities which were clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a CHP employee.

As a CHP Officer, Appellant was required to exhibit a level of conduct which promoted CHP's moral and ethical ideals. As a CHP Officer, Appellant was required to enforce the laws of the State of California. Under the laws of California, it is illegal to physically and sexually assault another. "Peace officers may be disciplined for violating laws they are employed to enforce." (*J.G. (1998) SPB Dec. No. 98-03, p. 8.*) Here, Appellant physically assaulted his wife causing visible bruising to her body. He then forced her to perform oral and vaginal sexual relations against her will. Appellant was also required to be honest. However, Appellant was dishonest in his administrative interrogation about his actions, denying that he physically and sexually assaulted his wife on June 14, 2021.

Appellant's physical and sexual assault of his wife violated the law and was inimical to the standards by which peace officers are held. Appellant's subsequent dishonesty in his administrative interrogation in which he denied his actions violated policy and was likewise inimical to Appellant's role as a peace officer. Accordingly,
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Appellant's conduct constitutes inexcusable neglect of duty in violation of Government Code section 19572, subdivision (d), and that charge is sustained.

Dishonesty

Dishonesty is the intentional misrepresentation of known facts, or a willful omission of pertinent facts. (*Eliette Sandoval (1995) SPB Dec. No. 95-15, pp. 4-5; M.S. (1994)*)

SPB Dec. No. 94-19, p. 20.) Here, Appellant was dishonest in his administrative interrogation when he denied that he physically and sexually assaulted his wife. Appellant was likewise dishonest when he stated that he left the house immediately after exiting the garage, and did not go upstairs to the bedroom; he did not know about ■■■■■ injuries until he read it in the police report; and he did not have any discussions with ■■■■■ on June 14, 2021. Accordingly, Appellant's conduct constitutes dishonesty in violation of Government Code section 19572, subdivision (f), and that charge is sustained.

Immorality

There is scant law analyzing a charge of immorality under Government Code, section 19572, subdivision (l). The SPB has issued no precedential decisions clearly defining immorality. The dictionary defines "immoral" as "conflicting with generally or traditionally held moral principles." (Merriam-Webster's Collegiate Dictionary (10 ed. 1999) p. 2580.) Courts have defined immorality as behavior involving moral turpitude. (*Fout v. State Personnel Bd.* (1982) 136 Cal.App.3d 817, 821.) "'Moral turpitude' means a general 'readiness to do evil' [Citations.], i.e., 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.'" (*People v. Foster* (1994) 29 Cal.App.4th 1746, 1756, quoting *In re Craig* (1938) 12 Cal.2d 93, 97.) Among other things, courts have found sexual battery to involve moral turpitude. (See *People v. Chavez* (2000) 84 Cal.App.4th 25, 28–29.)

A finding of immorality under Government Code, section 19572, subdivision (l) requires a nexus between the employee's misconduct and the employee's job

establishing that the conduct rendered the employee unfit to perform his or her job. (See *Brewer v. Department of Motor Vehicles* (1979) 93 Cal.App.3d 358, 364–365.) In *Brewer v. Department of Motor Vehicles*, the First District Court of Appeal addressed moral turpitude and good moral character standards under regulatory licensing schemes. The court of appeal reasoned:

[T]he purpose of the moral turpitude and good moral character standards in license regulatory statutes is not to punish [the appellant]. Presumably the penal law has adequately attended to that task. The paramount purpose of the standards is to protect members of the public when they deal with [the appellant] in his occupation.

(*Brewer, supra*, 93 Cal. App.3d at pp. 365-66.) Accordingly, courts appear to suggest there should be some rational connection between the immoral conduct and the appellant's employment in order to impose discipline under Section 19752, subdivision (l). (See e.g., *Brewer, supra*, at p. 365 [finding one-time sexual offender with abnormal sexual interest in children was not unfit to sell vehicles to the public].)

It is the nature of a peace officer's duties that they are employed to enforce the law. Here, Appellant admitted at hearing that, if true, physically and sexually assaulting his wife were acts in violation of criminal law. As a result, there was a rational relationship between Appellant's violating the law and his job duties as a CHP Officer. A peace officer who breaks the law and commits physical and sexual assault is unfit to perform their law enforcement duties. Accordingly, Appellant's conduct constitutes immorality in violation of Government Code section 19572, subdivision (l), and that charge is sustained.

Violation of the Prohibitions Set Forth in Accordance with Section 19990

Government Code section 19990 (Section 19990) provides in part that “[a] state officer or employee shall not engage in any employment, activity, or enterprise which is

clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties.” (See *Ruth M. Houseman* (1993) SPB Dec. No. 93-33.) CHP’s Incompatible and Inconsistent Activities policy also prohibits CHP employees from engaging in activities inconsistent with their duties. As noted above, the actions of a peace officer who physically and sexually assaults his wife are inimical to that peace officer’s duty to uphold and enforce the law and to maintain the highest standard of conduct. Accordingly, Appellant’s conduct constitutes violation of the prohibitions set forth in accordance with Section 19990 in violation of Government Code section 19572, subdivision (r), and that charge is sustained.

Other Failure of Good Behavior

Other failure of good behavior is conduct that discredits the appointing authority or the appellant’s employment, so long as there is a rational relationship between the conduct and the appellant’s employment. (*D.M.* (1995) SPB Dec. No. 95-10.) The misconduct must be of such a nature as to reflect upon the employee’s job. In other words, [1] the “misconduct must bear some rational relationship to [the employee’s] employment and [2] must be of such character that it can easily result in the impairment or disruption of the public service.” (*D.M., supra*, SPB Dec. No. 95-10 at p. 9 (quoting *Yancey v. State Personnel Board* (1985) 167 Cal.App.3d 478, 483).) As with causes of action arising under Inexcusable Neglect of Duty, a charge of Other Failure of Good Behavior for off-duty conduct requires that there be a nexus between the appellant’s conduct and his or her employment. (*Douglas Durham. supra*, SPB Case No. 95-18 at p. 9.)

For the reasons more fully discussed above under Other Failure of Good Behavior,

Appellant's actions in physically and sexually assaulting his wife bore a rational relationship to his employment as a peace officer with CHP. Such an assault is inimical to a peace officer's duty to protect the public, and discredits the officer's department. Indeed, it is well-established that off-duty physical attacks by a peace officer constitute other failure of good behavior. (*R.N.* (1998) SPB Dec. No. 98-10.) The same is true of off-duty sexual attacks. Accordingly, Appellant's conduct constitutes other failure of good behavior in violation of Government Code section 19572, subdivision (t), and that charge is sustained.

PENALTY

Factors to be considered by the SPB in determination of penalty were specifically identified by the Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194:

[W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in [h]arm to the public service. [Citations.] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

Harm occurs to the public service when a peace officer's off-duty misconduct is of such a nature that it causes discredit to the employer as well as the employee. The SPB, following California law, has consistently held that peace officers are held to a higher standard of conduct than non-peace officers. (*Paulino v. Civil Service Commission* (1985) 175 Cal.App.3d 962; *J.R.* (1993) SPB Dec. No. 93-04.)

Because of the special role peace officers play in society, it is well established that a department may dismiss a peace officer based on off-duty conduct when the officer's conduct discredits the department, or causes the department to lose confidence in the officer's good judgment. In *Anderson v. State Personnel Bd.* (1987) 194 Cal.App.3d 761,

the court sustained the dismissal of a CHP Officer for conduct that brought discredit and embarrassment to the CHP. Even though the misconduct by the CHP Officer was off-duty, and did not result in a criminal conviction, his “actions harmed the reputation of the CHP and undermined the effectiveness of his relations with fellow officers.” (*Id.* at p. 772.) Here, there is no doubt that Appellant’s physical and sexual assault of his wife discredited the CHP and caused it to lose confidence in his judgment.

Additionally, honesty in law enforcement is of paramount importance. (*Ackerman v. State Personnel Bd.* (1983) 145 Cal.App.3d 395, 399–400; *J.R.*, *supra*, SPB Dec. No. 93-04; *J.A.* (1995) SPB Dec. No. 95-17.) A peace officer’s job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. “Honesty, credibility and temperament are crucial to the proper performance of an officer's duties. Dishonesty is incompatible with the public trust.” (*Talmo v. Civil Service Commission* (1991) 231 Cal.App.3d 210.) Dishonesty is not an isolated act; it is more a continuing trait of character. (*Paulino v. Civil Service Commission* (1985) 175 Cal.App.3d 962, 972.) Here, because Appellant was dishonest to CHP investigators, the CHP cannot rely on Appellant to perform his duties in an ethical manner.

Appellant presented no facts warranting mitigation of the penalty. Finally, the likelihood of recurrence is great. At multiple times during the hearing, Appellant showed an unwillingness to take responsibility for his own actions. In this matter, Appellant continues to deny any misconduct. Appellant’s failure to accept and admit responsibility for his misconduct evidences a strong likelihood that similar conduct could recur. Any further recurrence could result in even graver consequences, as well as further discredit

Appellant and CHP. Accordingly, the penalty of dismissal is just and proper.

CONCLUSIONS OF LAW

1. Respondent proved the charges by a preponderance of the evidence.
2. Appellant's conduct constitutes a violation of Government Code section 19572, subdivisions (d) inexcusable neglect of duty, (f) dishonesty, (l) immorality, (r) violation of the prohibitions set forth in accordance with Government Code section 19990, and (t) other failure of good behavior on or off duty causing discredit to Appellant's employer or to Appellant.
3. The penalty of dismissal is appropriate.

ORDER

The action of the Department of California Highway Patrol dismissing D [REDACTED] G [REDACTED] from his position as a CHP Officer is **SUSTAINED**.

DATED: September 20, 2023



John G. Johnson
Administrative Law Judge
State Personnel Board