BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by **M[redacted]. M[redacted]** From dismissal from the position of State Traffic Officer with the Department of California Highway Patrol at San Juan Capistrano	)	SPB Case No. 33914 **BOARD DECISION** (Precedential) **NO. 95-01** January 4, 1995

Appearances: Matt Kirilich, Attorney and Kevin S. Hutcheson, Attorney, representing appellant, M[redacted]. M[redacted]; Daniel E. Lungren, Attorney General, by Dana T. Cartozian, Deputy Attorney General representing respondent, Department of California Highway Patrol.

Before Carpenter, President; Lorrie Ward, Vice President; Alice Stoner, Member.

DECISION

This case is before the State Personnel Board (SPB or Board) for determination after the Board rejected the Proposed Decision of the Administrative Law Judge (ALJ) in the appeal of M[redacted]. M[redacted] (appellant or M[redacted]) from dismissal from his position as State Traffic Officer with the California Highway Patrol (CHP or Department). The ALJ found that the Department proved a number of charges against appellant but, nonetheless, reduced the dismissal to a ten month suspension on grounds that dismissal was too harsh a penalty under the circumstances.

After a review of the entire record, including the transcript, exhibits, and the oral and written arguments of the parties, the Board sustains the Department's dismissal of appellant for the reasons set forth below.

FACTUAL SUMMARY

Appellant has been a State Traffic Officer since December of 1981. This is appellant's fourth adverse action.[1]

On July 10, 1992, while appellant was on duty at the CHP Exhibit at the Orange County Fair, he met Bonnie Smith. Thereafter, appellant and Smith engaged in an off-duty sexual relationship. Over the next several months, on days he was working, appellant visited Smith at her place of business, a plant store that was outside of appellant's assigned beat, beat 3.

CHP's current standard operating procedure (SOP) provides that state traffic officers must "Remain on assigned beat during [their] entire tour of duty except for absences due to duty requirements. Any prolonged absence for other than official duty requires supervisor notification." Appellant claimed that he did not get a copy of the current SOP. Instead, he claimed to rely on an out of date SOP which said, "Officers are permitted to take lunch breaks at their residence or other locations provided that it is within a 10 minute response time of their assigned beat."

At the hearing, appellant claimed without contradiction that he was on his lunch breaks during the times he visited Smith. The ALJ found no evidence that appellant received the new SOP or what was meant by "prolonged absence." Appellant claimed, and other

[1]Appellant's prior adverse actions will be discussed below in conjunction with the penalty section.

officers acknowledged, that an officer assigned beat three also had discretion to cover beat four whenever he or she felt it appropriate to do so. The ALJ found that Smith's place of business was within 10 minutes of beat 4.

During one of appellant's visits, Smith handcuffed herself using appellant's handcuffs. Appellant then placed her in the back of his patrol car and drove her, still handcuffed, to a location some two miles away. He later transported her back to her work place. The Department presented evidence that Highway Patrol Manual section 70.6 provides: "Members shall advise radio whenever they transport female prisoners, and should notify radio whenever any females, other than government employees on official business, are transported."

Smith came to the attention of the CHP after a number of Irvine City Police Officers were found to have been involved with her under unfavorable circumstances. When appellant's relationship with Smith became known to the Department, the Department sought to determine if there were any untoward implications for the CHP. During an investigatory interview, appellant denied having a sexual relationship with Smith until confronted with a motel receipt. During the same interview, appellant asserted that he had called Smith once when he returned a call she had made to him. When confronted with telephone records that appeared to contradict his claim to have called Smith only once, appellant agreed that he may

have called as many as forty times. At the hearing, the Department failed to prove that appellant called Smith anything like forty times. Appellant admitted, however, to having called Smith five or six times or as often as once a month.

On August 7, 1993, Sergeant J[redacted] ordered appellant not to contact Smith or discuss the investigation with anyone except his legal counsel or the union. This order was reiterated to appellant by Captain Driver.

In contravention of those orders, on August 8 and again on August 12, 1993, appellant met with Smith and discussed the information she had furnished to the CHP. In addition, when asked at the August 16, 1993 administrative interrogation if he had contacted Smith, appellant denied contacting her until he was confronted with information that the meeting had been observed by CHP investigators. He also denied that he tried to influence her.

Finally, appellant admitted the allegation that he kept several documents in his locker (two California drivers licenses, one Arizona identification card, and one California registration tab) which should have been logged into the evidence locker in accordance with the CHP's standard procedures. Appellant explained that he kept these documents handy for court appearances. A senior retired officer testified at the hearing before the ALJ that officers often kept documents such as these in their lockers.

After the investigation, appellant was charged with using state time on June 10, 1992 "to foster a social relationship with a female [Smith];" using the state telephone and state time to make at least fifty personal calls to Smith; lying about the calls during an investigatory interview; leaving his beat without authorization and visiting Smith on at least five occasions in 1993; lying about the number of times he visited Smith; visiting Smith on one occasion when he placed her in the back of his patrol car in handcuffs and drove her some two miles away without advising the Area Communications Center, as required; contacting Smith twice after being ordered not to contact her or otherwise discuss the investigation with anyone except legal counsel or the union; and lying about contacting Smith. In addition, appellant was charged with failing to place certain documents in the evidence locker, placing them instead in his own locker.[2]

The Department alleged these acts constituted violations of Government Code section 19572, subdivisions (c) inefficiency, (d) inexcusable neglect of duty, (e) insubordination, (f) dishonesty, (o) willful disobedience, (p) misuse of state property, and (t) other failure of good behavior.

[2]A number of other charges were dismissed by the ALJ because no evidence to support them was presented at the hearing.

ISSUE

This case presents the following issues for discussion:

1. What charges were proven by a preponderance of the evidence?
2. What is the appropriate penalty under all the circumstances?

DISCUSSION

Except as noted below, the Department proved the facts set out above by a preponderance of evidence. It remains for the Board to determine if these facts constitute cause for discipline.

Use of State Time and Resources

The Department failed to show that on June 10, 1992 when appellant first met Smith that he inappropriately used state time or his state position to foster a social relationship with Smith. There was no showing that appellant used his position to coerce or pressure Smith into a relationship with him. A number of officers who testified at the hearing before the ALJ acknowledged meeting women while on duty who later became their wives. Without more, the allegation that appellant first met Smith on state time does not constitute misconduct.

The charge that appellant used state time and state property to make telephone calls, given the circumstances, is, likewise, insufficient to constitute actionable misconduct. Even if it were proven that appellant made forty phone calls over a period of more than a year, this conduct would not, by itself, constitute misconduct. Appellant testified that he did not know the calls

were toll calls. Although the CHP has a policy against personal phone calls, testimony at the hearing made clear that this policy was not enforced. Reimbursement to the state for any toll charges is appropriate but, absent an enforced policy against personal phone calls or proof that the length and number of calls were excessive, the phone calls do not constitute misuse of state property or time.

Visits to Smith

The Department charged appellant with violating its SOP by visiting Smith while on duty without notifying his supervisor. Appellant admitted the allegation that on at least five occasions he left his beat to visit Smith at her place of employment. Appellant claimed, however, that he had no notice of the current SOP and that he had complied with the SOP he believed was in force. The Department did not present any evidence that appellant had been given a copy of the current SOP.

The ALJ, who heard the testimony of the witnesses, found appellant credible when he testified that the plant shop was within ten minutes of his beat (meaning beats three and four) and that appellant was on his lunch breaks when these visits occurred. While credibility determinations by an ALJ are not conclusively binding on the Board, (see Karen Johnson (1992) SPB Dec. 92-02, at p. 4), the Board gives great weight to credibility determinations by the ALJ absent evidence in the record that contradicts these

determinations. (Linda Mayberry (1994) SPB Dec. 94-25, at p. 6.) Given the failure of proof that appellant had notice of the current SOP and the lack of evidence to contradict appellant's assertion that the visits took place on his lunch breaks, the record does not support the Department's charge that appellant disobeyed Standard Operating Procedure by being off his beat without notifying his supervisor.

April 20, 1993 Incident

Appellant admitted that on April 20, 1993, he visited Smith at her place of employment, allowed Smith to handcuff herself and, while she was handcuffed, placed her in the back of his patrol car and drove her to a location some two miles away. Thereafter, appellant drove Smith back to her place of work and uncuffed her. Appellant asserted that his action was stupid, but insisted it violated no policy.

The Board rejects appellant's contention that to charge misconduct, the CHP must promulgate written policies concerning every possible permutation of "other failure of good behavior. . . which is of such a nature that it causes discredit to the appointing authority or the person's employment." We find that

public knowledge of this incident would cause discredit to the CHP and to State Traffic Officers.[3]

Appellant arrived at Smith's place of business in uniform in a state patrol vehicle. He allowed Smith to handcuff herself. He led her out of the plant shop and placed her in the back of his state vehicle. He drove to some undisclosed location and parked. Smith remained in handcuffs. He drove her back to her work place before uncuffing her.

We do not believe that the CHP has to write in its manuals that officers are not permitted to drive handcuffed women friends around in their patrol cars. We think that a reasonable officer would understand that he could and should be disciplined for this behavior. Appellant's conduct constitutes other failure of good behavior.[4]

Appellant's use of state handcuffs and a patrol car, under the circumstances, also constitutes misuse of state property. The

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[3]In Nightingale v. State Personnel Board (1972) 7 Cal.3d 507, the Supreme Court held that an employer need not prove that an employee's misconduct was known to the public in order to cause discredit to his agency or his employment within the meaning of subdivision (t). Id. at 513. It is enough that, should the misconduct become known, it would discredit his agency or his employment.

[4]As noted above, appellant claims to have been conducting himself in compliance with an out of date SOP which permitted him to travel out of his beat if he remained within a ten minute response time. Although no call came while appellant was driving Ms. Smith around in the back of his patrol car, the possibility that such a call could have come greatly concerns this Board.

Board defined misuse of state property in R[redacted] E[redacted] (1993) SPB Dec. No. 93-21 at p. 11 as:

> generally imply[ing] either the theft of state property or the intentional use of state property or state time for an improper or non-state purpose often, but not always, involving personal gain.

We also noted that misuse of state property "may also connote improper or incorrect use, or mistreatment or abuse of state property." Id. at p. 12. Whether used for seduction or silliness, appellant's use of a state vehicle and handcuffs on April 20, 1992, constitutes an intentional use of state property for an improper, non-state purpose.

The Department did not prove that appellant violated the SOP by transporting Smith without notifying radio dispatch. The manual section mandates notification of "radio" only when transporting a female prisoner. Smith was not a prisoner. The section advises an officer that he or she "should" notify radio when other females are transported, but notification is not required. Testimony established that the word "should," as used in the manual, indicates that officers may use discretion.

Contact with Smith after First Interview

The Department also proved that appellant disobeyed his superiors' orders not to contact Smith or discuss the investigation with her. After the first investigatory interview, appellant was ordered twice, once by Sergeant J[redacted] and later by Captain

Driver, not to contact Smith or discuss the investigation with anyone but his union representative or an attorney.

Appellant disobeyed these direct orders. He contacted Smith on two occasions before the second interview. This conduct constitutes willful disobedience pursuant to Government Code § 19572, subdivision (o). Willful disobedience requires that one knowingly and intentionally violate a direct command or prohibition. R[redacted] [redacted]. H[redacted] (1993) SPB Dec. 93-22, p.6.; Coomes v. State Personnel Board (1963) 215 Cal.App.2d 770, 775. Here, not one but two specific commands were directed to appellant by his superiors. Appellant intentionally violated these commands.

Appellant's intentional violation of his superior's direct orders also constitutes insubordination. As noted in Richard Stanton SPB Dec. 95-XX at page 10,

> to support a charge of insubordination, an employer must show mutinous, disrespectful or contumacious conduct by an employee, under circumstances where the employee has intentionally or willfully refused to obey an order a supervisor is entitled to give and entitled to have obeyed. (citations omitted).

Appellant's conduct in contacting Smith after being ordered not to do so also constitutes insubordination.

In his brief before the Board, appellant argues, without citation, that it was unconstitutional for the Department to order appellant not to see Smith. To preclude the Department from issuing such orders would destroy the Department's ability to thoroughly investigate matters of misconduct. We are unwilling to

find the Department's conduct to be unconstitutional based solely on appellant's bare assertion of unconstitutionality.

At the hearing, appellant claimed in mitigation that he did not know what charges were being levied against him and felt the only way to get information about the charges was to ask Smith. Even if appellant sincerely believed he did not know what charges were being made against him, appellant is a veteran police officer who could not help but understand the importance of a direct order. If he needed more information there were numerous sources from which to seek information other than Smith.

In his brief before the Board, appellant also asserts in mitigation that he contacted Smith because he was afraid he would be accused of rape or some other criminal act. (Appellant's Affidavit attached to his Argument before the Board).[5] At the hearing, however, appellant never testified that he was fearful of criminal charges, only that he wanted to know what Smith was telling the officers. Appellant also fails to explain why, if he was in fact fearful of criminal charges, he met twice with Smith. Surely one meeting would have assuaged his fear that the Department secretly intended to charge him with criminal misconduct. As noted

[5]Government Code § 3303 (c) requires that a "public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation." Nothing in the record suggests that a violation of section 3303 (c) occurred during or after the interrogation.

below, appellant demonstrates a commitment to expediency and little regard for truth.

Charges of Lying to Investigators

Appellant was charged with numerous instances of dishonesty. He was charged with lying about his relationship with Smith, lying about the number of telephone calls he made to Smith, lying about the number of visits he made to Smith during work hours and lying about contacting Smith after being ordered not to.

Appellant denied having a sexual relationship with Smith until he was confronted with a motel receipt. In his brief before the Board, appellant claims that this lie should be suppressed because the investigators had no right to ask him a question which might reveal that he had an off-duty sexual relationship with Smith. Appellant bases this claim on both federal and state constitutional rights to sexual privacy. Appellant claims that the investigators' questions about his sexual relations with Smith infringed on his right to sexual privacy.

There may be certain instances where an employer's request for information of a sexual nature may be overly intrusive. [See e.g. Thorne v. City of El Segundo (9th Cir. 1983) 726 F.2d 459 (applicant improperly forced to disclose personal sexual information); Fults v. Superior Court of Sonoma County (1979) 88 Cal.App.3d 899 (in paternity suit, discovery of mother's sex partners should be limited to her partners during period of

conception); Boler v. Solano County Superior Court (1987) 201 Cal.App.3d 467 (in sexual harassment case, discovery order was overly broad in seeking identities of all coworkers who were also sex partners of alleged harasser). However, we need not reach the question of whether a right to sexual privacy could have been asserted by appellant. There is no evidence that appellant refused to answer the question at his investigatory interview on grounds that the question was too intrusive or violated a privacy right. Rather appellant lied outright. No case presented by appellant supports his claim that he had a constitutional right to lie. We find appellant was dishonest when he denied having a sexual relationship with Bonnie Smith.

Appellant also lied about the number of telephone calls he made to Smith. At the administrative interview, appellant claimed to have made one telephone call returning a call initiated by Smith. When confronted with the telephone bill he agreed that he made more than one and perhaps as many as forty. At the hearing, appellant agreed to having called Smith five or six times or possibly once a month. The ALJ found that appellant was tricked by the interviewers into agreeing that he called Smith as many as forty times and refused to find that appellant was dishonest. We disagree. At the interview, appellant claimed to have called Smith one time. At the hearing, appellant admitted to calling five or six times or as often as once a month. Thus, appellant's first

claim to have called Smith only once was a lie. We find that appellant was dishonest when he told CHP investigators that he had called Smith only once.

The Department also charged appellant with lying about the number of times he visited Smith. The Department originally alleged that appellant visited Smith at her place of employment on at least ten occasions. At the hearing, the charge was amended to allege five visits. At the interrogation on August 7, 1993, appellant stated that he believed he visited Smith at work "maybe two or three times." On August 16, 1993 he said he went there, "at least five times, yes." When the question was asked again, he said, "Most likely" he went there at least five times. The ALJ found, and we agree, that appellant was merely estimating and, thus, it is unproven appellant lied about the number of visits.

The final and most serious charge of dishonesty concerns appellant's denial that he contacted Smith after being ordered by his superiors not to do so. Only after being confronted with the information that he had been observed meeting Smith, did appellant agree that he met with her. We find appellant's denials to constitute dishonesty pursuant to Government Code § 19572 subdivision (f).

Failure to Log Evidence

Appellant had a known duty to preserve evidence by properly depositing it in the Department's evidence locker. Appellant

failed to properly book evidence into the evidence locker. Instead, he placed seized driver's licenses in his own locker. Appellant presented evidence that at least one other officer followed this same practice. Under most circumstances, another officer's violation of Departmental policy does not excuse an officer from performing the known duties of his position. Appellant's failure to properly book evidence constituted a violation of Government Code § 19572, subdivision (d) inexcusable neglect of duty.

PENALTY

Having found the evidence supports the findings of fact and conclusions of law set forth above, the only question left for determination is the appropriate level of penalty.

When performing its constitutional responsibility to review disciplinary actions [Cal. Const. Art. VII, section 3(a)], the Board is charged with rendering a decision which is "just and proper". (Government Code section 19582.) In determining what is a "just and proper" penalty for a particular offense, under a given set of circumstances, the Board has broad discretion. (See Wylie v. State Personnel Board (1949) 93 Cal.App.2d 838.) The Board's discretion, however, is not unlimited. In the seminal case of Skelly v. State Personnel Board (Skelly) (1975) 15 Cal.3d 194, the California Supreme Court noted:

> While the administrative body has a broad discretion in respect to the imposition of a penalty or discipline, it

> does not have absolute and unlimited power. It is bound to exercise legal discretion which is, in the circumstances, judicial discretion. (Citations) 15 Cal.3d at 217-218.

In exercising its judicial discretion in such a way as to render a decision that is "just and proper," the Board considers a number of factors it deems relevant in assessing the propriety of the imposed discipline. Among the factors the Board considers are those specifically identified by the Court in Skelly as follows:

> ...[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. (Id.)

Appellant's dismissal is appropriate on a number of separate grounds. Courts have repeatedly found, and the Board has concurred, that peace officers may be held to higher standards of conduct than employees who are not peace officers. (See J[redacted] [redacted]. R[redacted] (1993) SPB Dec. No. 93-04). As discussed in David E. Gillespy (1992) SPB Dec. No. 92-08, dishonesty by law enforcement personnel is to be treated harshly. (Gillespy at 10 and 11).

As noted in Ackerman v. State Personnel Board (1983) 145 Cal.App.3d 395:

> 'The CHP as a law enforcement agency charged with the public safety and welfare must be above reproach.' [Citation]....
>
> ...CHP officers are held to the highest standard of behavior: the credibility and honesty of an officer are the essence of the function; his duties include frequent testifying in court proceedings....

> ...The position of a CHP officer by its nature is such that very little direct supervision over the performance can be maintained. The CHP necessarily must totally rely on the accuracy and honesty of the oral and written reports of its officers as to their use of state time and equipment. 'Any breach of trust must therefore be looked upon with deep concern. Dishonesty in such matters of public trust is intolerable.' (emphasis in original) [Citation]...

By his conduct, appellant has demonstrated a complete disregard for the truth. He lied about his relationship with Smith until he was confronted with a motel receipt. He lied about the number of telephone calls he made to Smith until he was confronted with the telephone records. He lied about meeting Smith until the investigators demonstrated that he had been observed meeting her.

As courts have observed: "[H]onesty is not considered an isolated or transient behavioral act; it is more of a continuing trait of character." (Gee v. State Personnel Board (1970) 5 Cal.App.3d 713, 719; G[redacted] J[redacted] SPB Dec. No. 92-01.) Each incident of dishonest conduct strengthens the conclusion that appellant is incapable of telling the truth.

As noted above, a CHP officer is often required to testify in a court of law. Harm to the public service could result if the state were required to rely on appellant's credibility in the presentation of evidence. Appellant has demonstrated that he has no credibility and is, therefore, unfit to be a CHP officer.

Dismissal is also appropriate based on the conduct underlying our finding of insubordination and willful disobedience.

(Government Code § 19572, subdivisions (e) and (o)). Two superiors gave direct orders prohibiting appellant from contacting Smith during the course of the investigation. Appellant disregarded these orders. In mitigation, appellant asserts that he only contacted Smith because he was afraid he would be accused of rape or some other criminal act. Appellant's claim that he was somehow justified in disobeying a direct order not to contact Smith only serves to strengthen our belief that appellant is unfit to serve as a CHP officer.

Likewise, dismissal is appropriate based on the separate ground of "other failure of good behavior." (Government Code § 19572, subdivision (t)). The harm to the public service is evident. Appellant's action of transporting Smith, handcuffed in the back of his patrol car, reflects adversely on appellant and the CHP. Whether silliness or seduction, this behavior, if known to the public, could only subject the CHP to discredit. An additional separate ground for appellant's dismissal is his misuse of the handcuffs and improper use of the state vehicle to transport Smith. (Government Code § 19572, subdivision (p)).

One of the primary Skelly factors in determining penalty is the likelihood of recurrence. Through progressive discipline, an employee is informed of the need for improvement and given the opportunity to improve his or her behavior. (Robert Watson (1994) SPB Dec. No. 94-10.) A review of appellant's prior adverse actions

indicates that two of the three prior adverse actions concerned appellant's on duty relationships with women. One prior adverse action involved misuse of state property, a state patrol vehicle used to transport a female acquaintance.

The prior adverse actions are summarized by the ALJ as follows[6]:

> 1. On May 1, 1985, appellant received an adverse action for inefficiency, inexcusable neglect of duty, and other failure of good behavior for detaining a female motorist (while issuing to her a traffic citation) for one and one-quarter hours and becoming overly interested in her personal problems.
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> 2. On November 12, 1987, appellant was suspended for five working days for inefficiency, inexcusable neglect of duty, misuse of state property, violation of Board Rule 172, and other failure of good behavior. That suspension was based on unauthorized visits appellant made in his patrol car to a female acquaintance at her residence while he was on duty. These visits lasted from ten minutes to one hour and were in addition to his break times. The Board found that on three occasions, while on duty, appellant transported this female acquaintance in his patrol vehicle without specific authorization and without notifying the dispatch center, as required. The Board warned appellant that he "is put on notice that a future sustained adverse action may result in a stronger discipline or a dismissal."
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> 3. On September 26, 1988, appellant was suspended for ten working days for inexcusable neglect of duty. The suspension was based on appellant's intentional failure to enter his proper identification number on several citations with the hoped for result of compelling his attendance in court at times when overtime pay would

[6]On his own motion, the ALJ took official notice of SPB's files concerning appellant. (SPB No. 23348 and SPB No. 24718.) The file for appellant's first adverse action was not available but a factual summary of the first adverse action was included in the Board's decision, SPB No. 23348.

become due. The erroneous number would have resulted in appellant's appearance for the afternoon court sessions, instead of the morning sessions.

Appellant was disciplined twice for misconduct concerning his relationships with women while on duty. After one of these adverse actions, the Board put appellant "on notice that a future sustained adverse action may result in a stronger discipline or a dismissal." By repeating similar behavior, appellant demonstrates an inability to learn from his mistakes.

Likewise, appellant's affidavit provided in his argument to the Board indicates that he does not see his part in any of the three adverse actions that preceded this one. He claims in all three instances that he committed no wrongdoing. In addition, he believes that his conduct described in the present adverse action should result in little or no discipline. When an employee does not understand the basis of the complaints against him, he has no incentive to amend his behavior. Dismissal is the only appropriate penalty under the circumstances.

CONCLUSION

Appellant's misconduct of lying to the investigating officers at his administrative interview constitutes dishonesty within the meaning of Government Code section 19572, subdivision (f). His transportation of Smith on April 20, 1993 constitutes misuse of state property and other failure of good behavior within the meaning of Government Code section 19572, subdivisions (p) and (t).

Appellant's refusal to obey his superiors' orders not to contact Smith constitutes insubordination and willful disobedience within the meaning of Government Code § 19572, subdivision (e) and (o). Appellant's failure to properly book evidence constitutes inexcusable neglect of duty within the meaning of Government Code section 19572 (c). Dismissal is warranted.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby ORDERED that:

1. The dismissal of appellant M[redacted]. M[redacted] is sustained;

2. This opinion is certified for publication as a Precedential Decision (Government Code § 19582.5).

THE STATE PERSONNEL BOARD*

Richard Carpenter, President
Lorrie Ward, Vice President
Alice Stoner, Member

*Members Floss Bos and Alfred R. Villalobos were not present and therefore did not participate in this decision.

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on January 4, 1995.

GLORIA HARMON

Gloria Harmon, Executive Officer
State Personnel Board