

**CERTIFICATION OF PERSONNEL BOARD RECORDS**

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **MICHAEL LYNN VS. JUSTICE AND PUBLIC SAFETY CABINET DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-171)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 12<sup>th</sup> day of August, 2014.

  
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**MARK A. SIPEK, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-171

MICHAEL LYNN

APPELLANT

VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

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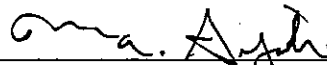
The Board at its regular August 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 10, 2014, having noted Appellee's exceptions, oral arguments and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED to the extent** therein.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 12<sup>th</sup> day of August, 2014.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amber Arnett  
Michael Lynn  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-171**

**MICHAEL LYNN**

**APPELLANT**

**VS.**

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

**JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on April 9, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

Appellant, Michael Lynn, was present and not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Amber Arnett. Also present as Agency representative was Commissioner LaDonna Thompson.

The issue in this matter concerns the suspension of the Appellant from duty and pay, from his position as Corrections Program Administrator, for a period of three working days effective beginning of business July 15, 2013, through the close of business July 17, 2013, due to poor work performance and lack of good behavior. The burden of proof was on the Appellee to show by a preponderance of the evidence that the disciplinary action instituted against the Appellant was taken with just cause and was neither excessive nor erroneous.

The rule separating witnesses was invoked and employed throughout the course of the proceedings. Each party presented their respective opening statement.

**BACKGROUND**

1. The first witness for the Appellee was **Jonathan Hall**. Mr. Hall is employed by the Department of Corrections as an Administrative Coordinator over the Offender Information Services Branch. The Community Placement office, in which the Appellant is employed, is a part of this Branch. The Community Placement office is responsible for securing community placements for all offenders who are released to supervision, such as parole or mandatory reentry supervision. Mr. Hall has been the Appellant's supervisor since June of 2013.

2. Offenders who are released through this program must first have a residential place to live, either in a halfway house or a community residence.

3. Michael Lynn is and has been the supervisor of the Community Placement Office with two subordinate staff members. He manages the operations of the Placement Office and coordinates the activities of his staff. His primary duty includes handling inmate placements to halfway houses for substance abuse treatment. There exist several Recovery Kentucky Centers throughout the state which administer substance abuse treatments. There is also a Parole Upon Completion (PUC) program in which the Parole Board mandates a specific offender complete substance abuse treatment as a condition of release on parole.

4. There were several meetings held among Department of Corrections administrators prior to March 2013. The discussions centered on how to maximize the use of available beds at halfway houses and better implement outpatient treatment. Those in attendance discussed these issues and were directed to utilize the chain of command and communicate any problems encountered in implementation so it could be addressed. If additional resources or staff were needed, that would have been allocated once the problem was identified.

5. It was very important that an inmate scheduled for release, be released on his eligibility date. The eligibility date is set by the Parole Board.

6. House Bill 463, passed by the Kentucky Legislature, mandated that the Parole Board meet at least sixty days prior to a parole eligibility date, to determine each inmate's direction. In the past, the Parole Board met on or about the parole eligibility date and made its recommendation then and there. Even with the passage of HB 463, there still existed the problem of some inmates not having been seen by the Parole Board sixty days prior, and some inmates not being released on their eligibility date. Ultimately, all such releases are processed through Mr. Lynn's office.

7. At one meeting, when Appellant was present, all in attendance were given a March 7, 2013 deadline to release inmates who were backlogged for release. The deadline was given by Commissioner Thompson, once she had consulted with those in attendance. That deadline was not met.

8. The first of each month is a recurring eligibility release date for inmates. It was clear from the meetings that going forward, every inmate eligible for release on the first of the month should be released at that time. Subsequent to March 7, the next release deadline date was April 1. The April 1 deadline was not fully met.

9. Mr. Hall identified Appellee's Exhibit 1, page 1, as a list he generated showing the inmates who should have been released on April 1, 2013. The exhibit shows that many of these inmates were released after April 1.

10. The following pages of Appellee's Exhibit 1 are a general list of other inmates who were eligible for release on April 1. It was the responsibility of the Placement Office and, therefore, Mr. Lynn to process such releases. The document shows the status of such inmates as of April 2, the date the list was generated. Those qualified for release had not been released as of April 2. One hundred and six (106) inmates should have been released on April 1. All inmates designated with a "Y" are ready for release, except those designated with "pending" status.

11. He identified Appellee's Exhibit 2 as a list of the daily count of discharge plans approved by the Appellant for the period of January 2, 2013, through May 1, 2013. These were plans signed off by the Appellant and not his two subordinate employees.

12. Appellee's Exhibit 2 shows that, between March 1 and March 7, Mr. Lynn had approved twenty discharge plans. Approval of the discharge plan is the final step before someone may be released on parole. The review of each case and approval of plans takes approximately ten minutes per case without difficulties.

13. It was the responsibility of Probation and Parole (P&P) to conduct a review prior to release. There is nothing Appellant could have done about the P&P review delays except to inquire why the review had not been completed. He was responsible to follow-up to ensure releases occurred in a timely manner.

14. There are many more tools available today to the Appellant to help him perform his job, than were available in April 2013. As of today, there are no problems meeting placement deadlines.

15. **Paula Holden**, Deputy Commissioner of the Division of Local Facilities and Division of Population Management, was the next witness. The Division of Population Management reviews any inmates that may be released to open beds. There were a lot of meetings from February to April 2013 where this issue was discussed, particularly as a result of passage of HB 463. Before the Bill passed, an offender had a parole hearing. The Department did not know until the parole hearing if such parole for the inmate would be granted. This then started the release process and, in some instances, home placement.

16. With passage of the Bill, an offender now has a parole hearing sixty days before his eligibility date, which in-turn gives the Department more lead time to prepare for the offender's release.

17. In one of the meetings attended by a consultant, the Department was advised that subsequent to the passage of HB 463, it was taking longer than sixty days to secure inmate release. Several meetings were held to correct that problem. The meetings involved employees from P&P Officers, the SAP program, and others.

18. At a February 28, 2013 meeting, the Commissioner assembled all interested parties including the Appellant in one place. She communicated her expectations and the importance of getting prisoners released on time, as well as the fiscal impact on the Department in delaying such releases; that it was important all available beds be filled. A deadline of March 7 was set for the next release.

19. The following day, Deputy Commissioner Erwin followed up the staff meeting by generating meeting minutes and distributing same to all involved, setting out the expectations. The Commissioner said that if there were inmates not released who should have been, disciplinary action was possible. The participants were told to do whatever they needed to do, including working overtime and asking for assistance from wherever, and to use whatever resources to get this task accomplished.

20. The witness had several discussions with Tim Carman, the Director of P&P. A list was generated on March 6 identifying the inmates who could have been, but were not, released March 1. Ms. Holden sent the list to Carman. The Commissioner wanted to know why available beds had not been filled. There were a number of reasons why the inmates had not been assigned to the vacant beds.

21. She identified Appellee's Exhibit 3 as a Request for CSC Beds from Contract Management.<sup>1</sup> Each halfway house sends in a request to fill the number of beds it has vacant. This Exhibit shows the requests made on March 4 and 25, as well as April 1 and 2, of 2013. At that time, the Department received the list once each week. The process has changed and the Department now receives a daily report. The report shows the number of vacant beds available each of the reported days.

22. She identified Appellee's Exhibit 4 as a report showing the number of available beds for halfway houses for April 2 and 15, 2013. This Exhibit is an expansion of Appellee's Exhibit 3. The witness' handwriting appears on the first page where she noted the dates the e-mails had been sent to the facilities to notify them that inmates would be sent to fill their specified beds. These e-mails had been sent by the Appellant. There were open beds on these dates.

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<sup>1</sup> CSC is the Community Services Center.

23. She identified Appellee's Exhibit 5 as a series of e-mails from April 12 through 16, 2013, between herself and the Appellant. The issue was a discussion of open beds. Ms. Holden believed a liberty interest was involved when an inmate who had been paroled, had not yet been released. These people were going into the SAP program which was very important to reduce recidivism with substance abuse. Failure to release on time had a fiscal impact not only on the Cabinet, but on the parolees.

24. She had inquired of Appellant whether there were any inmates who could go to the Kentucky Recovery Center beds. Appellant responded that Kathy Taylor told him the Care Centers had sent a request with the wrong number of vacant beds; the only place with available beds at that time was Owensboro Regional Recovery, where Appellant had assigned two parolees to fill those beds.

25. On April 16, the witness noticed there were open beds on the count sheet and asked Appellant if those beds had been filled. Appellant replied he had filled all the SAP beds the prior Friday; that those now listed were new beds.

26. She identified Appellee's Exhibit 6 as a series of e-mails dated April 16, 2013, between herself and Appellant. Some offenders had been assigned to CTS Russell on April 8, but on the Offenders Management System it showed that these individuals were still in custody at the jail. She asked Appellant to check on their status. She also wanted a clarification of why specific beds they had discussed on the entire count sheet did not have a corresponding placement e-mail. Appellant responded that all beds had been assigned except for Westcare. Ms. Holden requested Mr. Lynn locate all the e-mails for the placements he had made, as well as the e-mail showing he had sent Westcare a list of names. Appellant did not send such e-mails to her.

27. She identified Appellee's Exhibit 7 as a copy of e-mails Kiernyn Fannin had sent to her pertaining to events of April 16, 2013. These are e-mails Appellant sent out when he placed offenders to specific beds. The handwritten numbers shown at the top right of each page of Appellee's Exhibit 7 correspond to the handwritten notes she made on p. 1 of Appellee's Exhibit 4. It shows that in each instance (1), (2) and (3), such inmates had been assigned on April 16.

28. She identified Appellee's Exhibit 8 as a series of e-mails between herself and Director Carman for the period March 23 through April 16, 2013. She had expressed concerns about erroneous information she received from the Appellant about vacant beds, specifically those shown on Appellee's Exhibit 6, p. 2. Appellant told her these beds had already been filled and that Westcare had to receive names prior to approval. However, none of the inmates had been sent. The e-mails also discussed possible disciplinary action due to offenders not being released on time.

29. She spoke with Mr. Carman about the subject. Carman was not sure if such beds were filled or why they were not. At that time he believed Appellant had told him 73 inmates had not been released as there were no available halfway house beds for them. Appellee's Exhibit 3 shows quite a few beds available on April 2, the day after the April 1 release deadline date.

30. The next witness for the Appellee was **LaDonna Thompson**, Commissioner for the Department of Corrections. She is the Department's Appointing Authority.

31. She identified Appellee's Exhibit 9 as two e-mails, dated February 26 and March 1, 2013. The February 26 e-mail she sent to a group of staff responsible for the release of inmates, scheduling a meeting for February 28. She was concerned about the lack of placement of inmates once they were recommended for parole and substance abuse treatment. In the past, she had discussions with individuals from different areas and received conflicting information about where the problems lay. She decided to get everyone together in one room at the same time to review this.

32. In the past, inmates had not been reviewed for parole until their parole eligibility date. It then took the Department an average of sixty days to complete a home placement or release. The law then changed and the Department could start the reviews sixty days prior to the parole eligibility date so an inmate could leave on time. Subsequent to passage of the law a report came out showing the Department took longer than sixty days to release inmates. Upon review of such report, she saw that some inmates were still incarcerated six to eight months to one year beyond their eligible dates.

33. At the February 28 meeting, she asked each area what they needed to get this job done. She told them all resources needed would be made available. If for some reason they could not get inmates out, and needed a push for some other area to cooperate, they should come and tell her directly. She would make sure they got the resources they needed. She also told the group that failure to comply would lead to disciplinary action.

34. The first working day of each month is the normal release date used by the Department. They also wanted to use this date for parolees. At the February 28 meeting, all knew that the March 1 deadline would not be met. She asked for an alternative date and the consensus agreed to March 7. March 7 was the next deadline set for release. Appellant was present during that meeting.

35. Deputy Commissioner Erwin took notes during the February 28 meeting and reduced same to the March 1 e-mail he sent out to all interested parties. (Appellee's Exhibit 9, p. 2.)

36. The Commissioner did not hear anything from any individual that any problems existed or that the deadline could not be met, until she attended a March 6 Warden's meeting. Several of the Wardens were supposed to have been informed by that time about the number of inmates to be released by their respective institutions on March 7. They had not yet received such information.

37. She identified Appellee's Exhibit 10 as the Annual Employee Performance Evaluation, including the Performance Planning section, which set out the expectations of Appellant's duties in his job for 2013. Appellant had signed this document on January 24, 2013.

38. She identified Appellee's Exhibit 11 as a series of e-mails for the period of March 1 through March 7, 2013, between and among Commissioner Thompson, Kimberly Potter-Blair (Deputy Commissioner of Support Services), and Timothy Carman.

39. The next release date was April 1, 2013. The Commissioner on April 2 pulled a list and saw there were still beds available that had not been filled. She telephoned the Deputy Commissioner over that area. She also called the Appellant to request he come to her office. She met with the Appellant, Deputy Commissioner Holden, and Deputy Commissioner Erwin. She required an explanation why inmates had not been released on April 1. Appellant indicated one of his subordinates had not done the paperwork assigned to him. The Commissioner called that person to her office. She mentioned there would be discipline for those who failed to accomplish the task. As a result of all the events, several individuals including the Appellant received discipline.

40. She identified Appellee's Exhibit 13 as an e-mail with attached lists pertaining to statistics she had requested. Among the information she wanted was the financial burden on the state for the delay in the release of inmates. She sent these statistics out to all the deputies and to the Appellant. It showed that for jail inmates, the Department had reached a 50 percent on-time release rate during the year. In April 2013, the release rate was 55 percent. Delays had cost the Department more than \$677,000 for the year just because the Department was not timely processing the paperwork.

41. She identified Appellee's Exhibit 14 as the May 28, 2013 letter advising Appellant of an intent to suspend him for five days, as well as the June 28, 2013 three-day suspension letter also sent to the Appellant. After the intent to suspend letter had been delivered, she met with the Appellant. From that meeting she believed a reduction in the suspension was justified, but that a three-day suspension would still be issued. She had told everyone previously that if there were issues they should come directly to her. Appellant did not do this, nor did he complete the processes as required. She believes, from her discussion with the Appellant, that he may have reported some concerns to his superiors; however, such issues were not passed along to the Commissioner.

42. She identified Appellee's Exhibit 15 as Kentucky Corrections Policies and Procedures, Policy Number 28-03-01, Parole Plan Investigation, Halfway Houses, and Sponsorship. She explained the bracketed parts shown on pp. 1 and 2.

43. Several disciplinary actions were issued to Department employees, including P&P officers out in the field. Some discipline was issued to institutional people, as well as one or two staff members in Records. Brady Smith, a subordinate employee in Appellant's office, was also disciplined for failure to process the request.

44. It had been absolutely spelled out what needed to be done and what resources were available, as well as who was assigned to which task. "This is very egregious. It was hugely costly." Everyone had the information that if the job did not get done there would be discipline and it would be serious. Many inmates had employment lined up as part of their reentry plan. A delay in release impacted them directly. The Commissioner felt that issuing a three-day suspension to the Appellant was "generous." She noted that after discipline had been issued to several employees, all inmates scheduled for release were released in a timely manner.

45. In her opinion, it took no more than ten minutes to review each case on average, minus any unforeseen circumstances. All involved had more than a month to meet the March 7 deadline. In issuing this discipline to the Appellant, the Commissioner also reviewed his evaluations and spoke to his supervisors. The Appellant had no prior disciplinary action issued against him.

46. The Appellee's case was closed and the Appellant began presentation of his case.

47. The sole witness for the Appellant was the Appellant, **Michael Lynn**. Mr. Lynn has been an employee of the Department of Corrections for fourteen and a half years and has served in Central Office as Correctional Program Administrator in charge of the Community Placement Office for more than nine years.

48. With reference to the discipline he received (Appellee's Exhibit 14) he addressed each of the three listed grounds.

49. With reference to the March 1 deadline, it was clear that inmates were to be released by March 7. That deadline was met at the last minute. Appellant stated that Appellee's Exhibit 11 shows that the communications in those e-mails prove that his own Director admitted he had misunderstood what they were supposed to have done. The March 6 e-mail shows that Appellant had told Mr. Carman he had merely been doing what he had been told to do by Mr. Carman; that he could stay late and still get the inmates released by the deadline. On March 6 when it was brought to his attention that there was a problem, Appellant still got the job done on

the 6<sup>th</sup> to meet the deadline. All placements had been approved for offenders that needed to be released on the 7<sup>th</sup>. Although the jails and prisons did not get a "multi-day" prior notice, they were so notified one-day ahead of time.

50. With reference to April 1, Appellant stated Mr. Hall testified that the number of beds was 105 and not 111; a number of inmates had been moved. The list shows Appellant had twenty available beds he did not use. Appellant had directed Brady Smith, a subordinate to assign those beds. It is normally Brady Smith or Leah Beasley who approved such plans. As part of Appellant's job he physically does not approve that many plans (See Appellee's Exhibit 2.) He designated each house to which an offender would be assigned. Smith and Beasley thereafter were to approve and enter the plans. Mr. Smith received discipline for not filling these twenty beds.

51. With reference to the e-mails between Appellant and Deputy Commissioner Holden, Appellant stated that on Appellee's Exhibit 4, the first column of "RKC" shows available beds. At that time one house had one available bed which he filled on Friday. It is not uncommon for offenders to leave the facility over the weekend, thereby requiring Appellant to fill that bed again the following Monday.

52. Appellant had no prior disciplinary actions. He scored a "4" or a "5" on his annual employee evaluations.

53. The entirety of the project was a work in progress. Things were not going well in March 2013. A lot of changes were made in April. They started to get a lot more cooperation from people they do not directly supervise. Once discipline was issued to several individuals in the field, they were a lot more cooperative. On April 1 there were still a lot of problems being identified.

54. The discipline issued to employees was the reason the May release went so well. P&P officers who were disciplined became a lot more cooperative.

55. Another change involved the halfway houses now reporting their available beds directly to the Appellant. In the past, Appellant had to get this information second or third-hand. His office has gone from two to five staff members under his supervision. He did not have the tools or guidelines to meet the March or April release dates.

56. Appellant never felt comfortable going directly to the Commissioner with any problems. However, with such problems he went up the chain of command. He did go to his Assistant Director, the Director and the Deputy Commissioner. The Assistant Director would respond, "Just get it done." Appellant earned a lot of comp time during that period. By July he was told to take a week off from work because he was well above 200 hours in comp time.

57. He had advised that they had 70 people to be released for whom they did not have enough halfway house beds. Twenty beds were available. Those 20 beds were to be filled by Mr. Smith in his job. When Appellant got the report that the 20 beds had not been filled, he immediately met with Smith, and they immediately got the beds filled.

58. Under the circumstances, Appellant believes he should not have received any discipline.

59. Appellant reviewed Appellee's Exhibit 3 and compared it to Appellee's Exhibit 4. Exhibit 4 is the newer version of reporting that is currently being used by the halfway houses. That document shows scheduled admissions where Exhibit 3 does not show that statistic. Exhibit 3 shows the number of empty beds, but it fails to show the number of such beds which had already been scheduled to be filled. Under Exhibit 3, Appellant had to keep his own separate lists so they did not double-book the beds.

60. Currently, when the scheduled admissions number listed by the halfway house does not match the Appellant's number, they call the halfway house to double check. This has been an on-going daily issue with the halfway houses, keeping their numbers correct for scheduled admissions.

61. Previously, Appellee's Exhibit 3 had been reported to the Contract Management Office, and thereafter sent down to Appellant's office. This problem had been discussed with the Commissioner in a number of meetings. It was Deputy Commissioner Erwin who came up with the idea of the new, longer report to show scheduled admissions.

62. With reference to Appellee's Exhibit 4, if a house had 11 beds, with 11 scheduled admissions, then the house should report that there are zero available beds. Appellant pointed out that as of April 15, CTS Russell reported net beds of 20, scheduled admissions of 13, and the number of requested beds as 13. This was error and the number of requested beds should have been 7. This is still a work in progress. Each day the Appellant would e-mail the houses to double check the available beds that had not been scheduled for a booking. He would also e-mail a report of the problem to Contract Management.

**FINDINGS OF FACTS**

1. The Appellant, Michael Lynn, is and has been employed by the Justice and Public Safety Cabinet, Department of Corrections, as Corrections Program Administrator. He is the supervisor of the Community Placement Office whose primary duty is to process inmate placement to halfway houses for substance abuse treatment. His duties include oversight of distribution of home placements for persons recommended for parole, and for persons preparing to meet the Parole Board; enters parole plan to community center bed no later than following business day for eligible inmate that does not have an approved home placement; said inmate to be released within one day from institutions and three days from jails; compliance with directive to ensure all inmates without special conditions will be released no later than three working days after parole recommended; coordinates movement of offenders referred to community based SAP programs with Mental Health and institutions. (Appellee's Exhibit 10.)

2. The Parole Board sets an inmate's eligibility date for parole. House Bill 463 passed by the Kentucky Legislature, mandates that the Parole Board meet at least sixty days in advance of such release in order to set a parole eligibility date. This gives the Department of Corrections adequate time to make arrangements for the timely release of an inmate. The first working day of each month is the normal release date for eligible inmates and parolees.

3. Even after passage of HB 463, it was discovered by the Department that there still existed a backlog of inmates who had not been timely released on their eligibility date. Commissioner LaDonna Thompson was aware of the problem and conducted discussions with several individuals from several areas within the Department. When she received conflicting information as a result, she called a February 28, 2013 meeting to have everyone present in one room.

4. At the February 28 meeting the problem was discussed in detail. The Commissioner made clear she required timely releases and that all resources necessary would be made available to accomplish this task. She made known that if there existed unresolved problems, these problems were to be brought directly to her attention. Failure to accomplish the task would result in issuance of employee disciplinary action.

5. All agreed at that meeting that the March 1 release date could not be met. A consensus was reached and agreed upon that the next release date would be March 7<sup>th</sup>. A series of e-mails produced by the Cabinet shows that Director Timothy Carman had a misunderstanding about the Commissioner's February 28 directive. He admits as much in his March 6, 2013 e-mail to Kimberly Potter-Blair. (Appellee's Exhibit 11.) Mr. Lynn sent an earlier e-mail that day to Director Carman advising that he was assigning people that day to fill

the beds. He testified that the March 7 deadline was indeed met, although the affected institutions did not get a multi-day prior notice.

6. The next release date after March was April 1, 2013. As of April 2, a number of available beds had not been filled. The number of available beds over which Appellant had responsibility at that date was twenty.

7. The task of filling these beds had been assigned by Appellant to his subordinate, Brady Smith. Mr. Smith failed to meet the release deadline. Upon discovery of this situation, Appellant and Mr. Smith immediately set to work to fill these beds.

8. Prior to the incidents which gave rise to discipline for the Appellant, Mr. Lynn had no disciplinary action issued against him. He regularly received scores of four or five on his Annual Employee Performance Evaluations.

9. Several changes were made in March and April of 2013 to improve the process. The Appellant's staff was increased from two to five employees. Halfway houses began to report their available beds directly to Appellant. Such reports, previously issued once a week, are now issued on a daily basis. The daily reports showed some of the halfway houses had still incorrectly reported their number of available beds by failing to deduct from such number the number of beds already assigned. Appellant telephones the respective halfway house to clarify the number of available beds.

10. There are many more tools available today to the Appellant to help him perform his job than had been available in April 2013. Once discipline had been issued to several employees, all inmate releases from and after May 1, 2013, had been timely.

11. On May 28, 2013, Commissioner Thompson issued to Appellant a letter advising him of the intent to suspend him for five days (Appellee's Exhibit 14). Appellant requested a meeting with the Commissioner.

12. After the meeting, the Commissioner decided a suspension was still justified, but as it appeared Appellant had reported problems to his chain of command, and the problems had not reached her, and as releases at that time had still been delayed in March and April, the suspension would be reduced to three days. Appellant was notified of the three-day suspension by letter dated June 28, 2013 (Appellee's Exhibit 14).

13. Appellant timely filed his appeal of the disciplinary action, with the Kentucky Personnel Board.

**CONCLUSIONS OF LAW**

1. A classified employee with status shall not be suspended except for cause. KRS 18A.095(1). Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed thirty days. 101 KAR 1:345, Section 4(1). Michael Lynn, the Appellant, is a classified employee in his position as Corrections Program Administrator. He is the supervisor of the Community Placement Office with primary duty to process inmate placement to halfway houses for substance abuse treatment.

2. The evidence shows that prior to this disciplinary action, Appellant had a spotless disciplinary record.

3. On May 28, 2013, Commissioner LaDonna Thompson issued an intent to suspend for five days letter to the Appellant (Appellee's Exhibit 14.) After meeting with the Appellant, she decided to reduce the suspension to three days. On June 28, 2013, Commissioner Thompson issued a suspension letter to the Appellant notifying him of a three-day suspension.

4. It is noted that while the duration of the suspension was decreased, the specific allegations contained in each letter remained identical; that is, poor work performance and lack of good behavior. Each element of these allegations, then, is examined herein below.

5. It is clear from the evidence that the Appellant understood that a March 7, 2013 release deadline had been agreed to by all principals in this matter. This is not only admitted by the Appellant, but shown in the March 1, 2013 e-mail from James Erwin, wherein it was specifically stated,

Mike Lynn to immediately obtain approved placement plans for all on PUC waiting list. Deadline of 3-7-13 for completion of placement plans and release to treatment beds.

(Appellee's Exhibit 9, p. 2.)

6. Commissioner Thompson, in a March 6 Wardens' meeting, discovered from the Wardens they had not yet been notified about potential inmate releases. She thereafter made inquiry with her subordinates.

7. Director Timothy Carman, in his e-mail to Kimberly Potter-Blair of March 6, 2013, admitted that with regard to such deadline, “. . . that apparently I may have screwed up;” that his area started the day before on meeting the placement deadline. Mr. Lynn also testified that once the misunderstanding was corrected, he and his subordinates worked on the matter and that all placements had been approved for offenders that needed to be released on the 7<sup>th</sup>; although the jails and prisons did not get a multi-day prior notice they were so notified one day ahead of time.

8. Mr. Lynn’s testimony is consistent with the last sentence of the suspension letter on this allegation wherein it is stated, “The last minute releases created undue burden on the local jails and the prisons tasked with the physical release.” (Appellee’s Exhibit 14, p. 6.)<sup>2</sup>

9. The Appellant in his testimony admitted that his subordinate, Brady Smith, did not timely process the release of inmates to the 20 available community bed spaces by the April 1 deadline. He and Brady Smith thereafter immediately worked to fill those beds. However, Appellant’s admission shows his poor work performance on this matter.

10. It is also clear from the evidence that on April 12, 2013, the West Care Treatment Program had 23 open beds. Appellant’s responses to inquiry and his e-mails were not convincing that he did all he could possibly do to have these beds filled by the April 1 deadline.

11. The sole allegation pertaining to lack of good behavior involves the alleged provision of false information by Appellant to Director Carman. It is alleged that he advised Carman it would be impossible to release at least 70 parole eligible offenders on April 1, 2013, due to the lack of halfway house beds. And that even though there were a number of beds available, the entire 70 could not be moved.

12. The only evidence of Appellant allegedly having given false information to Director Carman, was hearsay through the testimony of Paula Holden. Deputy Commissioner Holden spoke with Director Carman on the subject. There was no other evidence of alleged false information provided by Appellant to Mr. Carman.

13. “Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support an agency’s findings of fact unless it would be admissible over objections in civil actions.” [KRS 13B.090(1).]

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<sup>2</sup> The allegation in that paragraph that Commissioner Thompson discovered on March 7 that the inmates had not been placed, is in conflict with her testimony that she learned that information at the Wardens’ meeting of March 6. Nevertheless, the Hearing Officer believes Commissioner Thompson discovered the issue prior to the close of the release date, acted accordingly, and that the Appellant, once notified of same, met the release date of March 7 albeit only due to the Commissioner’s intervention.

14. As the only evidence pertaining to this allegation of lack of good behavior comes through the hearsay conversation Deputy Commissioner Holden had with Director Carman, such is insufficient to support a finding of fact based on same. Therefore, the Appellee failed to show by a preponderance of the evidence, sufficient admissible evidence supporting the allegation of lack of good behavior.

15. The Agency has shown by a preponderance of the evidence sufficient evidence supporting allegations of the three incidents of poor work performance set out against Appellant in its June 28, 2013 suspension letter.

### **RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **MICHAEL LYNN VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-171)** be **SUSTAINED to the extent** that the allegation of lack of good behavior, not having been sustained by a preponderance of the evidence, but that the Appellee, having demonstrated a suspension was taken against Appellant with just cause on the allegations of poor work performance that the duration of the suspension be reduced from three days to two days, and that Appellant be reinstated all benefits associated with the reduction in his suspension. **Further**, the Appellee shall reimburse Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and otherwise make Appellant whole. KRS 18A.105, 18A.095(25), and 200 KAR 12:030.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

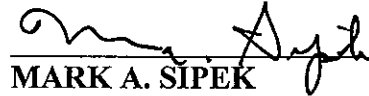
Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Roland Merkel** this 10<sup>th</sup> day of June, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Amber Arnett  
Michael Lynn