

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Thomas Brillon,
Petitioner

v.

Docket No. CR-22-0150

State Board of Retirement,
Respondent

Appearance for Petitioner:

Thomas Brillon, *pro se*

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner appeals the denial of his request to classify his position as a Registered Nurse IV at the Corrigan Mental Health Hospital as Group 2. Although the Petitioner had important duties, several of which constituted “care” for purposes of grounding a Group 2 classification, he has not met his burden of demonstrating that these responsibilities occupied more than 50% of his workday. The decision by the State Board of Retirement is affirmed.

DECISION

The Petitioner, Thomas Brillon, appeals the decision by the State Board of Retirement to classify his position as a Registered Nurse IV (“RN IV”) as Group 1 rather than Group 2. I held an in-person hearing on May 15, 2024. Mr. Brillon was the only

witness. The hearing was recorded. I admitted into evidence Petitioner's Exhibits 1-3 and Respondent's Exhibits 1-9.

Mr. Brillon provided an oral closing statement. On June 14, 2024, the Board submitted a post-hearing memorandum, whereupon the record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. In the year prior to his March 2022 retirement, Mr. Brillon was employed by the Department of Mental Health as an RN IV at the Corrigan Mental Health Center. (Testimony).
2. Mr. Brillon worked on a locked inpatient unit. He worked the second shift, from 2:45 pm to 11:15 pm. (Testimony).
3. Mr. Brillon did not have a separate office; his deskwork was performed at or by the Nurse's Station. (Testimony).
4. The patients on this unit had severe mental health issues, such as schizophrenia and suicidality. The goal of Mr. Brillon and the other medical and mental health professionals on the unit was to help stabilize these individuals. Some of these individuals would return to the community; others would transition to long-term care. (Testimony).
5. Mr. Brillon supervised three to four Mental Health Workers ("MHW") and a Licensed Practical Nurse ("LPN"). Shift staff also included per diem and temporary nurses after one Registered Nurse ("RN") under Mr. Brillon's

supervision died and another went out on industrial accident leave.

(Testimony).¹

6. At the start of each shift, Mr. Brillon received the shift report from the first shift's charge nurse and then assigned duties for the second shift staff.

(Testimony).

7. Many of these assignments concerned the observation and monitoring of patients. Staff members performed five-minute rounds wherein they circulated around the unit, ensuring that each patient was observed at least every five minutes. (These five-minute rounds were distinct from the times during the shift when staff would distribute medications and take patient vitals.) At times, staff members were also assigned to provide constant one-on-one monitoring for a patient when necessary. Some staff would be positioned at a location that provided a vantage point from which a section of the unit could be continuously monitored. The purpose of these five-minute rounds and the monitoring included enabling staff to detect, prevent, and intervene in mental health crises, including those that might lead to self-injurious behavior. (Testimony).

8. Between 3:30 pm and 5:00 pm each shift, Mr. Brillon dealt with phone calls. He would also deal with phone calls at various points throughout his shift

¹ The per diem and temporary nurses seldom spent enough days working in the unit to gain sufficient familiarity with the position. This, among other factors, made things more difficult for Mr. Brillon during the already challenging period of the COVID-19 pandemic. (Testimony).

because the Corrigan Mental Health Center's operator left around 4:00 pm or 4:30 pm and there was no operator on duty on the weekends. Calls therefore were forwarded to the Nurse's Station. (Testimony).

9. The LPN would administer medication in three "passes": at 4:00 pm or 5:00 pm, 8:00 pm, and 9:00 pm or 10:00 pm. Vital signs were taken by the MHWs. (Testimony).

10. Around 4:00 pm to 4:30 pm, some of the patients had a recreation break off the unit. Campus police officers, MHWs, and the LPN accompanied them. Mr. Brillon would remain at the nurse's station, along with an MHW (or more than one MHW, depending on how many patients remained on the unit). The five-minute rounds would continue for the remaining patients, generally performed by the MHW. Mr. Brillon would do a walk-through at this time to ascertain the remaining patients' physical and psychological conditions and to clinically engage with them for the purpose of promoting trust and therapeutic rapport, modeling healthy interactions, and helping orient them to reality. (Testimony).

11. Patients went to dinner sometime thereafter. Mr. Brillon stayed on the unit, making and receiving telephone calls related to patient care. (Testimony).

12. Around 5:00 pm or 5:30 pm, Mr. Brillon handled patient admissions, a process that would take between one and one-half hours and two hours. Mr. Brillon did about five admissions per week. (Testimony).

13. Admissions had several components. One component involved hands-on

tasks. Mr. Brillon would take the patient's vital signs, perform a skin assessment, and search for contraband. These duties would take about fifteen minutes. (Testimony).

14. As part of the admissions process, Mr. Brillon would also conduct an interview that centered on performing a psycho-social assessment, but included other components as well. That interview would take approximately fifteen minutes to one hour. The interview would help guide the care the patient would receive from Mr. Brillon and the other staff on the unit, including the type of monitoring the patient would receive, effective modes of therapeutic engagement, and baselines with which in-unit behaviors could be compared. The patients had different conditions with different clinical presentations, different medications, different potential post-discharge trajectories, *etc.* – all of which were relevant to how they should be cared for by Mr. Brillon and his co-workers on the unit in a therapeutically effective and humane manner (Testimony).

15. The admissions process also involved a preliminary data entry phase, which included confirming or obtaining, and then entering: background and contact information, how the patient came to be admitted to the facility, and other such details. This took between 10 minutes to one hour and was performed in the patient's presence. (Testimony).

16. Another data entry admissions task was entering information into an electronic health record system, which took between 30 minutes to an hour.

This task was performed after the interview, outside of the patient's presence. (Testimony).²

17. At some point, after the admissions process was completed, Mr. Brillon would later follow up and check in on the new admittee to determine how he or she was acclimating to their new environment. The stress of adjusting to a new environment made new admittees particularly vulnerable to mental health crises. Mr. Brillon would monitor their condition and, if needed, intervene in and deescalate emerging mental health crises. (Testimony).
18. Mr. Brillon generally conducted one discharge per day, which typically involved a fifteen-minute interview and fifteen minutes of work on the computer. (Testimony).
19. Around 7:00 pm, the patients would typically have group sessions, which would usually last between 45 minutes and one hour. Mr. Brillon ran about four group sessions a week; sometimes he would run one group session in a single day, sometimes two. In some of these sessions, the participants would discuss medications. Others involved arts or games. (Testimony).
20. Mr. Brillon conducted five-minute rounds for half an hour to provide coverage for staff dinner breaks. (Testimony).
21. Mr. Brillon would administer medications when he was covering for the

² Mr. Brillon recognized that it could be tedious for the patient to have to sit through this process. Because of Mr. Brillon's experience and knowledge, he was able to elicit the information he needed from the patient in advance and then return to the nurse's station to input the necessary information into the system. (Testimony).

LPN's break or when the assigned per diem or temporary nurse asked him to. (Testimony).

22. Mr. Brillon was generally the primary person responsible for intervening in crisis situations – particularly if the intervention involved physically restraining a patient. Mr. Brillon took the lead in physically restraining patients when necessary both because of his clinical experience and because he felt it was appropriate for him to accept responsibility and accountability for the application of physical restraints rather than one of his subordinates. Physical restraint would be required about once every three weeks. Other crisis interventions, requiring Mr. Brillon to use verbal de-escalation techniques, occurred on an almost daily basis. (Testimony).³

23. From 9:30 pm onward, Mr. Brillon completed paperwork, such as progress reports and the shift report. (Testimony).

24. Mr. Brillon would frequently complete paperwork relating to his supervisory and administrative responsibilities, such as staff meeting minutes or employee performance reviews, at home because he did not have enough time to complete those tasks during the course of his shift. (Testimony).

25. On April 4, 2022, the Board denied Mr. Brillon's request to classify his RN IV position as Group 2. (Respondent's Exhibit 1).⁴

³ The record does not indicate how long the process of physically restraining a patient or engaging in de-escalation methods would generally take.

⁴ Prior positions held by Mr. Brillon – Mental Health Worker, RN II, and RN III – not at issue in this appeal, were classified as Group 2. (Respondent's Exhibit 9).

26. Mr. Brillon timely appealed to DALA. (Respondent's Exhibit 2).

CONCLUSION AND ORDER

The retirement benefits of a Massachusetts public employee are determined in part by the employee's classification into one of four "groups." G.L. c. 32, § 3(2)(g). For purposes of this decision, the two pertinent groups are Group 1 and Group 2. Group 1 is a catch-all group: "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." *Id.* Group 2 includes employees "whose regular and major duties require them to have the care, custody, instruction or other supervision" of, among others, "persons who are mentally ill." *Id.*

Group 2 classification is "properly based on the sole consideration of [the member's] duties." *Maddocks v. Contrib. Ret. App. Bd.*, 369 Mass. 488, 494 (1975). It is Mr. Brillon's burden to establish that his regular and major job duties – that is, those he spent more than 50% of his working hours performing – required "the care, custody, instruction or other supervision" of "persons who are mentally ill." *England v. State Bd. of Ret.*, CR-17-653, at *6-7 (Div. Admin. Law App. Nov. 2, 2018). The Board does not dispute here that Mr. Brillon's patients belonged to this cohort. Instead, the focus is on whether his regular and major job duties constituted "care" within the meaning of G.L. c. 32, § 3.

Care "for purposes of group 2 does not include administrative or technical duties." *Larose v. State Bd. of Ret.*, CR-20-357, 2023 WL 4548411, at *2 (Div. Admin. Law App. Jan. 27, 2023, *aff'd*, Contrib. Ret. App. Bd. Sept. 4, 2024). Moreover, although

supervisors are not necessarily excluded from Group 2 classification, *see, e.g., Harrington v. State Bd. of Ret.*, CR-17-826, at *12 (Div. Admin. Law App. April 2, 2021), “care” for purposes of the statute must be direct care – that is, the care must be provided through direct interactions with members of the Group 2 population. *See Desautel v. State Bd. of Ret.*, CR-18-0080, 2023 WL 11806157, at *2 (Contrib. Ret. App. Bd. Aug. 2, 2023); *Morreale v. State Bd. of Ret.*, CR-15-332, 2017 WL 3440540, at *8 (Div. Admin. Law App. March 10, 2017). Although Group 2-eligible care requires interaction with members of a Group 2 population, merely interacting with members of a Group-2 population will not suffice – the interactions must amount to Group 2-qualifying care. *Zoghopoulos-Brown v. State Bd. of Ret.*, CR-22-0024, 2025 WL 509463, at *3 (Mass. Div. Admin. Law App. Feb. 7, 2025).

As explained in greater detail below, although Mr. Brillon had many work responsibilities that fall within the scope of Group 2, the record does not establish that such duties took up more than 50% of his workday.

I note first that the Board acknowledges – and I so conclude – that certain of Mr. Brillon’s work duties were direct care activities: the group sessions he ran, the five-minute rounds he performed to provide coverage for staff dinner breaks, and his crisis interventions.

It is not clear what position the Board takes on the following work responsibilities: administering medications when covering for the LPN’s break or if asked to do so by the per diem/temporary nurse; performing a walk-through to monitor and clinically engage with patients who remained on the unit during the recreation break;

and following up with new admittees after the admissions process was finished. These are direct care activities.

First, administering medication is care for purposes of Group 2. *Popp v. State Bd. of Ret.*, CR-17-848, 2023 WL 11806173, at *2 (Contrib. Ret. App. Bd. Nov. 16, 2023).

Second, I conclude from the record that when Mr. Brillon performed walk-throughs during the recreation breaks, he was providing direct care. Mr. Brillon explained that the purpose of the engagement was not only to gauge a patient's mental state (including how that mental state may change over time or in relation to some baseline), but, as indicated above, to model appropriate interactions, help ground patients to reality, and promote therapeutic rapport.

Third, when Mr. Brillon checked in on new admittees, he was providing direct care. These encounters served observational and therapeutic purposes. These were individuals, as Mr. Brillon put it, "whose lives have shattered," and they found themselves in a new and perhaps disorienting or frightening environment. By following up with new admittees, Mr. Brillon was able to see how they were responding to this new environment, help build therapeutic rapport, and to provide him with an opportunity to identify and address incipient mental health crises during this vulnerable time.

Turning to Mr. Brillon's admissions duties, the Board describes these as administrative tasks that cannot ground a Group 2 claim. This is an accurate characterization with respect to the 30-to-60 minutes Mr. Brillon spent entering information into the health record system outside the patient's presence. While

important, this was not direct care.

Mr. Brillon also obtained background information from new admittees. Eliciting background information from a member of a Group 2 population in order to complete administrative forms is not a Group 2 task. *Long v. State Bd. of Ret.*, Docket Nos. CR-20-0440, CR-21-0287, 2023 WL 6900305, at *6 (Div. Admin. Law App. Oct. 13, 2023).

Mr. Brillon's interviews of new admittees, through which Mr. Brillon performed a psycho-social assessment of these patients, stand on a different footing. Several decisions from this Division have concluded that performing assessments does not constitute direct care where "the assessments were performed either to determine eligibility for care or to determine what care would be provided by a third party," *Potter v. State Bd. of Ret.*, CR-19-0519, at *9 (Div. Admin. Law App. Dec. 16, 2022) (collecting cases). However, assessments may constitute direct care where they will be used to determine the care provided by the member and those with whom he or she works. *Potter, supra*, at *9; *Hurwitz v. State Bd. of Ret.*, CR-20-0642, 2024 WL 4345187, at *11 (Div. Admin. Law App. Sept. 13, 2024). Here, Mr. Brillon's assessments helped determine the care that he and the other medical/mental health professionals on the unit would provide to their patients.

The final piece of Mr. Brillon's admissions duties was the hands-on evaluations he performed, which included examining patients' skin and checking them for contraband. There is insufficient evidence in the record to determine whether these activities constituted direct care within the meaning of the statute. I conclude that Mr. Brillon has not shown that these duties were Group-2 eligible.

One final duty bears mention – it is not clear from the record that Mr. Brillon’s patient discharge responsibilities constituted direct care. Prior decisional law has generally concluded that discharge planning is not direct care. *See, e.g., Potter v. State Bd. of Ret.*, CR-19-0519, at *9 (DALA Dec. 16, 2022) (concluding that member’s responsibilities relating to ensuring patients had access to medicine and insurance upon discharge was facilitating or planning for future care rather than the direct provision of care). The record provides no reason to reach a different conclusion in this case.

As the foregoing discussion indicates, many of Mr. Brillon’s work responsibilities are Group 2-eligible duties. However, the record does not demonstrate that those duties, collectively, occupied more than 50% of his workday.

I start with the work responsibilities for which a reasonable time estimate is available. The eligible portion of his admissions duties took about 45 minutes per day. Mr. Brillon’s group sessions occupied, on average, about 45 minutes per day.⁵ Mr. Brillon covered daily rounds for 30 minutes. These tasks add up to two hours per day.

The record does not provide enough information to gauge how much time, on average, Mr. Brillon spent on the other Group 2-qualifying work duties: crisis interventions (the verbal de-escalations that occurred almost daily and the physical restraints that occurred far less often), administering medications, checking in on new admittees, and therapeutically engaging with patients who remained on the unit during the recreation break period. It would cross the line between reasonable inference and

⁵ The group sessions took between 45 minutes to one hour, but occurred about four times per week, thus averaging a little less than 45 minutes over the course of a five-day workweek.

unsupported speculation to conclude that the amount of time devoted to these activities collectively brought the total tally of Mr. Brillon's eligible work activities to greater than 50% of his working hours.

Mr. Brillon performed an important job during a challenging time. And I readily conclude from the record that he performed his duties with admirable dedication and skill. But I do not find, on this record, that he performed Group 2-eligible activities for more than 50% of his working hours. The decision of the State Board of Retirement is **affirmed.**

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: October 17, 2025