COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JULIE MCKINNON *Petitioner*	:	Docket No. CR-22-0225
	:	Date: August 2, 2024
v.	:	
STATE BOARD OF RETIREMENT *Respondent*	:	

Appearances:

For Petitioner: Sarah Farrell, Esq.
For Respondent: Yande Lombe, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a Physical Therapist II at the Lemuel Shattuck Hospital. She provided direct care to both prisoners and mentally ill patients for more than half her time. She is entitled to Group 2 status.

INTRODUCTION

The Petitioner, Julie McKinnon, timely appeals a decision by the State Board of Retirement ("Board") denying her application for reclassification to Group 2. On July 24, 2024, I held an in-person hearing. The Petitioner was the only witness. I admitted Exhibits 1-9 at the hearing. The parties made their closing statements at the end of the hearing at which time I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner worked as a Physical Therapist II at the Lemuel Shattuck Hospital ("the Shattuck") from 2006 until her retirement in 2022. (Ex. 3; Testimony.)

2. There is no dispute as to what the Petitioner did: she worked directly with patients who required some form of physical therapy, first by evaluating their needs and then by treating them. She provided orthopedic care, working with patients who had endocarditis, septic joints, balance problems, fractures, neurological issues and more. (Ex. 5; Testimony.)

3. There is also no dispute that her work constitutes direct care for purposes of Group 2. What is in dispute is whether she provided this direct care to Group 2 populations more than half the time.

4. The Shattuck is run by the Department of Public Health ("DPH") and provides care to patients who are economically and socially disadvantaged. Patients come from state prisons and county correctional facilities, Department of Mental Health ("DMH") facilities, and from the community. (Ex. 8; Testimony.)

5. There are inpatient and outpatient units dedicated to these different populations: the Department of Correction ("DOC"),[1] DMH, and DPH. (Testimony.)

6. The Petitioner was not assigned to one unit. Rather, each day, she was assigned to patients who were spread out throughout the hospital in different units. Additionally, on certain Tuesdays and Thursdays, she would be assigned to work with patients from one of the physical therapy clinics, which in turn treated every patient population. And from time to time, she would

[1] The DOC is only in charge of state prisons. It is a bit of a misnomer to say the Shattuck had a DOC unit, because that implies it treats only state prisoners because the Shattuck also treats county prisoners. *See* < https://www.mass.gov/locations/lemuel-shattuck-hospital-correctional-unit >. However, because the parties referred to it here as the DOC unit, that is what I will call it.

be asked to work with a post-operative patient. Throughout these duties, she treated a combination of prisoners, DMH clients, and others. (Testimony.)

7. While it is clear which populations were in the DOC unit (prisoners) and the DMH units (mentally ill individuals), there was no set population in the DPH units. Some patients in these units came directly from the community; others come from an acute hospital or facility.

8. Sometimes, DMH patients were sent to the DPH units because the DMH unit could not handle their medical problems. DMH patients in DMH units were expected to be mobile and independent. When a DMH patient could not be, they were transferred to a DPH unit for therapy to help them regain that independence. In the DMH units, the DMH patients were supervised. But when a DMH patient was transferred to a DPH unit, they were not supervised. (Testimony.)

9. In any event, most patients regardless of unit—the Petitioner estimated 80-90%—had mental health diagnoses, even if they were not a formal DMH client. (Testimony.)

10. The physical therapy clinics likewise treated all the different types of patients at the Shattuck, although most were DOC prisoners. DOC clinic patients were seen in the DOC holding area. There was a physical therapy "gym" where the non-prisoner patients would be brought for treatment. And when the patient could not be brought to the gym or holding area for some reason, the Petitioner would treat them in their unit. (Testimony.)

11. The Petitioner worked with 6 to 9 patients a day, about 30-60 minutes each. She worked with some DOC patients every day; the rest of the day varied. Additionally, if it were a clinic day, she was usually asked to work with clinic patients. Thus, on clinic days, she might work with 12 to 13 patients (6 to 9 daily patients and 4 to 6 clinic patients). (Testimony.)

12. She constantly worked with patients who had mental health diagnoses and whose mental illness and negative behaviors directly impacted their care. She explained that their mental illness

would prolong their stay because treatment took longer. She had to be cognizant of how she approached these patients. She could not approach them the same way as someone without these problems. Moreover, the patients were often hostile, and she had to account for that in formulating a treatment plan. The Petitioner often worked, and consulted, with a DMH patient's treating psychiatrist when available. (Testimony.)

13. Patients with these issues were not limited to the DMH units, and many were in DPH units. The Petitioner gave some examples of the kinds of DMH patients she might treat in a DPH unit. She recalled one patient who had a conversion disorder: she believed she could not move. There, the Petitioner had to co-treat her with her psychiatrists because she was extremely difficult to work with. In another example, a patient changed medications, which resulted in a severe loss of balance. The Petitioner had to help her regain her balance so she could return to the DMH unit. Then there was COVID. Any DMH patient who was infected with COVID was transferred to the DPH units, and the Petitioner treated them there (Testimony.)

14. The Petitioner also had some administrative duties, but they were minimal. Most of the time, she was treating patients. (Testimony.)

15. The Petitioner estimated that 20-25% of her daily patient load was from DMH units and 30-35% was from DOC units. The rest were patients in the DPH units or from the clinics, who, again, also consisted of a mix of all the patients in the hospital. (Testimony.)

16. Based on these estimates, which I credit, I find the Petitioner treated prisoners and DMH patients over half her time in the DOC and DMH units as part of her daily caseload.

17. In addition to that constant patient load, she also treated DMH and DOC patients on clinic days; she treated some DMH patients on DPH units; and she treated non-DMH patients on DPH units who nevertheless had a mental illness that impacted their treatment.

18. The Petitioner applied for Group 2 status. The Board denied the Petitioner's application without explanation (but seemingly because it did not find she worked with a Group 2 population more than half the time). (Exs. 1 & 9.)

DISCUSSION

A member's retirement compensation is based, in part, on their group classification. Members are classified into four groups. G.L. c. 32, § 3(2)(g). Group 2 includes, but is not limited to, employees whose "regular and major duties require them to have the care, custody, instruction or other supervision of" prisoners and persons who are mentally ill. G.L. c. 32, § 3(2)(g); *Burke v. State Bd. of Ret.*, CR-19-0394, 2023 WL 528742 (DALA Aug. 18, 2023). "[A]n employee who spends more than half of his or her time 'engaged in care, custody, instruction, or other supervision' of a population included in Group 2 engages in these responsibilities as part of his or her 'regular and major duties.'" *Desautel v. State Bd. of Ret.*, CR-18-0080, *3, 2023 WL 11806157 (CRAB Aug. 2, 2023).

There is no dispute that the DOC clients the Petitioner cared for are a population included in Group 2--prisoners. However, because that alone did not take up over half the Petitioner's time, the question remains whether she also treated persons who were "mentally ill." And, if she did, the final question is whether she provided direct care to these two populations over half the time.

Whether someone works with persons who are "mentally ill" has long been determined by the "primary diagnosis test." *Popp v. State Bd. of Ret.*, CR-17-848 (CRAB Nov. 16, 2023). CRAB recently clarified the scope of the "primary diagnosis test": "Diagnoses are 'primary' in the pertinent sense if they 'truly drive the patients' care' or 'govern the care a patient receives.'

Diagnoses are 'secondary' if they are 'merely incidental or derivative." *Zelten v. State Bd. of Ret.*, CR-22-0457, 2024 WL 664422 (DALA Feb. 9, 2024), *quoting Popp* at *6.

Prior to *Popp*, a patient's primary diagnosis was often determined by the treatment they were receiving or the reason for their admission to a given facility. *See e.g. Burnes v. State Bd. of Ret.*, CR-21-0084, 2023 WL 7018527 (DALA Oct. 20, 2023), *citing cases; Micle v. State Bd. of Ret.*, CR-18-657 (DALA Dec. 23, 2022) ("[P]atients were admitted to E-3 for other purposes namely, rehabilitative care or a heightened degree of medical supervision—and only secondarily received mental health care. Because their primary diagnosis was not related to mental illness, Ms. Micle's appeal for reclassification must be denied."); *Hong v. State Bd. of Ret.*, CR-17-843, 2022 WL 16921455 (DALA May 6, 2022); *Richard v. State Bd. of Ret.*, CR-16-72 and CR-16-226 (DALA Feb. 7, 2020). *Popp*, however, refocuses the inquiry away from the reason for admission or type of treatment provided back to the patient's overarching issues. Patients whose treatment is informed and influenced by a diagnosable mental condition are considered "mentally ill," i.e. their condition "drives" their care. *Greenwood v. State Bd. of Ret.*, CR-22-0066, 2024 WL 3326226 (June 7, 2024).

This new formulation has been applied recently to an occupational therapist at Tewksbury Hospital. *See Zelten*, *supra*. Relying on *Popp's* new formulation, DALA held that Zelten merited Group 2 status:

> Her patients' psychiatric and developmental conditions are not derivative of or incidental to their physical diagnoses. The patients' medical care is driven by the interrelated demands of their physical, psychiatric, and developmental issues. Their programs of treatment are designed to address the problems with impulse control, agitation, and aggression that make them unsuited to ordinary hospitals. Techniques focused on stress management and de-escalation are integral to their care. The hospital staff treats mental health symptoms as key elements of the patients' conditions.

Id.

That reasoning is consistent with my understanding of *Popp,* and it leads me to the same result as in *Zelten*. The Petitioner here held a similar job, physical therapist, and worked in a similar facility, the Shattuck. At least for the DMH patients she treated, and even for some non-DMH patients she treated in the DPH units, she could not just treat their medical conditions. She had to accommodate their mental health needs. For many, she had to accommodate their hostile tendencies on account of their mental illness in formulating a treatment plan. *Greenwood, supra*. There is no doubt that the DMH patients she treated throughout the hospital were "mentally ill" for Group 2 purposes as were some, if not most, of the non-DMH patients she treated in the DPH units.

Based on her own estimates, which I credit, she provided direct care during her daily rounds to patients on the DOC and DMH units over half her time. And even if her estimate were off, she also treated some DMH patients in the DPH units and DOC and DMH patients in the clinics. This work was not instead of her daily rounds on the DOC and DMH units, but in addition to. Thus, she clearly treated prisoners and mentally ill patients over half the time.

CONCLUSION AND ORDER

The Board's decision denying the Petitioner's request for reclassification is **reversed**.

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate