IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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TYLER FERNANDES,
Appellant Below, Petitioner,

v. No. 26-ICA-93

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES,
BUREAU FOR SOCIAL SERVICES,
Respondent Below, Respondent.

PETITIONER'S BRIEF

Appeal from the West Virginia Office of Inspector General, Board of Review
Action No. 25-BOR-2872 - Decision entered January 30, 2026

CONFIDENTIAL MATERIAL INCLUDED

Filed pursuant to W. Va. R. App. P. 40(c); juvenile initials are used under Rule 40(e).

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TABLE OF CONTENTS

INDEX i

TABLE OF AUTHORITIES ..... i i

ASSIGNMENTS OF ERROR.....1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT.....6

STATEMENT REGARDING ORAL ARGUMENT.....6

STANDARD OF REVIEW 7

ARGUMENT.....8

A. The Board erred as a matter of law when it upheld a substantiated physical abuse finding under W. Va. Code § 49-1-201 based on alleged deficiencies in de-escalation and room-entry procedure rather than reliable evidence that Petitioner knowingly or intentionally inflicting injury outside lawful control or self-defense 8

B. The Board improperly substituted speculation for evidence in finding intent based on pre-incident conduct and therefore upheld the substantiation of physical abuse against the Petitioner 10

C. The Board's decision is arbitrary and capricious because it disregards material undisputed findings and imposes an abuse finding based on hindsight 11

D. The Board misapplied the statutory definition of "abuse" under W. Va. Code § 49-1-201 when it upheld the decision of the Respondent to substantiate an abuse finding against the Petitioner 12

CONCLUSION 14

TABLE OF AUTHORITIES

Case Law

Syl. Pt. 3, *In Re Queen*, 196 W.Va. 442, 474 S.E.2d 483 (1996) 7

Cahill v. Mercer Cnty. Bd. of Educ., 208 W.Va. 177, 539 S.E.2d 437 (2000) 7

Statutes

W. Va. Code § 49-1-201 .....1, 6, 8, 12, 14

W. Va. Code § 29A-5-4 7

W. Va. Code § 51-11-4(b)(4) 7

I. ASSIGNMENTS OF ERROR

1. The Board erred as a matter of law when it upheld a substantiated physical abuse finding under W. Va. Code § 49-1-201 based on alleged deficiencies in de-escalation and room-entry procedure rather than reliable evidence that Petitioner knowingly or intentionally inflicting injury outside lawful control or self-defense.

2. The Board improperly substituted speculation for evidence in finding intent based on pre-incident conduct and therefore upheld the substantiation of physical abuse against the Petitioner.

3. The Board's decision is arbitrary and capricious because it disregards material undisputed findings and imposes an abuse finding based on hindsight.

4. The Board misapplied the statutory definition of "abuse" under W. Va. Code § 49-1-201 when it upheld the decision of the Respondent to substantiate an abuse finding against the Petitioner.

II. STATEMENT OF THE CASE

This appeal is taken on questions of law and fact from the January 30, 2026 Decision of the West Virginia Office of Inspector General, Board of Review, Action No. 25-BOR-2872. The Board upheld Respondent's substantiated Institutional Investigative Unit (IIU) finding of physical abuse against Petitioner, a correctional officer at Gene Spadaro Juvenile Center. (D.R. 067-074). This Court has ordered that the appeal proceed on the designated administrative record; no appendix record is required.

After a review of the record, including testimony, exhibits, and stipulations into evidence at the administrative hearing, the Board issued its Decision on January 30, 2025 concluding that the Petitioner "knowingly and intentionally inflicted physical injury" upon Gene Spadaro Juvenile Center resident as demonstrated by the Petitioner profanely instigating C.B., failing to contact staff professional, not requesting officer assistance prior to entry, and failing to act with immediacy. (D.R. 073.)

From the beginning, the Petitioner preserved the issue that the incident involved self-defense and trained use of force. His hearing request stated that the resident was the aggressor/self-defense issue and that his actions fell within WVDOC use-of-force training. (D.R. 076.) At the December 8, 2025 administrative hearing, the Petitioner appeared self-represented; IIU Supervisor Matthew Cutright appeared for the Respondent; IIU Supervisor Cutright testified on behalf of the Respondent; and Gene Spadaro Juvenile Center Superintendent Ricky Scarbro, Jr. testified on behalf of the Petitioner. (D.R. 067.)

The relevant facts found by the Board are largely undisputed. The Petitioner, Tyler Fernandes, was employed as a correctional officer at the Gene Spadaro Juvenile Center. (D.R. 068.) C.B. was a seventeen-year-old juvenile resident who on January 22, 2025, became disruptive, refused instructions, was placed in his room for cool down, kicked and hit the door, and taunted Petitioner. (D.R. 068-069.) The Petitioner moved the other residents to their rooms before entering C.B.'s room. (D.R. 069.) The Board found that, once the Petitioner entered, he was inside approximately nine seconds before the fight began. *Id.* The Board further found that C.B. punched Petitioner twice, including in the left eye, causing injury; that C.B. continued fighting; and that Petitioner and C.B. traded punches. (D.R. 069-070.)

On January 23, 2025, the West Virginia Department of Human Services Bureau for Social Services (hereinafter "WVDHS") received an intake referral regarding Gene Spadaro Juvenile Center involving juvenile resident C.B. and the Petitioner. (D.R. 089.) The Department opened an investigation against the Petitioner because it was alleged that there was a restraint that Petitioner had put C.B. in a chokehold in which was a use of force and that C.B. had received injuries from this restraint. *Id.* Matthew Cutright, the IIU Supervisor for the WVDHS, appeared at the administrative

hearing for the Respondent and offered testimony. (D.R. 089-096.) He testified that he was not the one that investigated the case and that it was investigated by Andrew Bragg, Jr. (D.R. 089.) He did testify, however, that he supervised the investigation. *Id.*

Mr. Cutright testified that through the investigation, it was determined that the major course of events that happened to lead to the substantiation of abuse was that the Petitioner had C.B. locked down, and then he ultimately locked down the other residents and then decided to enter C.B.'s cell, after C.B. was already agitated, and then led to a restrained-use force in which C.B. received injuries. (D.R. 089-090.) Mr. Cutwright testified that the investigator had gotten some statements from other residents that appear to have consistent comments that Petitioner said some inappropriate or spiteful things either during or after the restraint and had gone into the cell of somebody he already knew was agitated without getting assistance. (D.R. 090.) He testified that Mr. Bragg investigated the subject referral with the Division of Corrections investigator in which he believes that the outcome of the investigation was unsubstantiated. *Id.* He testified that regardless of that outcome, however, the Department's stance was that the child was agitated, acting inappropriately, already in a possible violent manner, and was secured in a cell and the Petitioner secured other residents and went in the cell without any other assistance or any kind of de-escalation techniques from any other counselors, therapists, supervisors, or anything of that nature. *Id.*

Mr. Cutwright testified that he is not an expert on the Division of Corrections protocol but that it is his understanding that you have a juvenile in a cell and they are agitated like that, then you first start with de-escalation technique with like a counselor or therapist. (D.R. 091.) He testified that the active abuse by the Petitioner in the Department's opinion was that the Petitioner was in an agitated state, didn't seek any additional staff to help him and he entered the cell with a knowingly

agitated juvenile, which resulted in a restraint and the juvenile's injuries. (D.R. 093.) Mr. Cutwright confirmed that it was in the reports that the juvenile was banging his head off the door and kicking the door. (D.R. 094.)

When questioned concerning the incident, Petitioner testified: "So, it all began with [C.B.]. He was refusing direct orders to return to the room. Doors were going to be on lock and once they're on lock, they're supposed to be in their rooms. So, I placed him on the staff alert cool down, which is only like 15 minutes. So, after that he started kicking the door and hitting his head against the door window like I said earlier. And after he did that, I secured all the residents so I could go de-escalate the situation, and when I went to talk to resident [C.B.], told him to step way from the door. Just like I explained to him about there's lock and he's going to follow the rules to his lock and he seemed calm at the moment I was talking to him. After then without any warning, he struck a left hook, and hit me in the eye - - I mean, right hook hit me in the left eye. I stepped back for a second, then he struck another one and hit me in my head. So, after that I redirected [C.B.] to the ground and I was trying to maintain - - like he was fighting and resisting so I was trying to grab his arm so I can - - and I lost my radio (inaudible) too, so had to reach back where the bed was. My radio was over there. So, I had to call for assistance and until assistance arrived, he was kicking me and hitting me several times till they arrived at the scene." (D.R. 096-097.) Petitioner testified that the restraints that he employed fell within the acceptable restraint policy. (D.R. 099.) When asked whether it was accurate that he used some pretty colorful language to C.B., Petitioner testified that he did not say anything during the event but for C.B. to stop resisting. (D.R. 099.)

Gene Spadaro Juvenile Center Superintendent Ricky Scarbro, Jr. testified on behalf of the Petitioner. (D.R.0101-0106.) Mr. Scarbro testified that he was a defensive tactics instructor for six

years and that he is fairly qualified with use of force. (D.R. 0101.) He testified that after watching the video, he could understand Mr. Cutwright's concerns but that when you have a kid that is actively injuring himself then he does not tell his people to wait on that. *Id.* He testified that he tells his officers to open the door and stop them from hurting themselves. *Id* He testified that he would have done the same thing that Petitioner did if confronted with that situation and that Petitioner responded with appropriate force authorized under WVDOC policy during active aggression. (D.R. 0102.) Mr. Scarbro further testified that their own investigation was conducted, Institutional File-File Number 25-003 and that after gathering evidence in that investigation it was substantiated that juvenile resident [C.B.] assaulted the Petitioner and that the juvenile resident admitted to hitting Petitioner after Petitioner entered the room. (D.R. 0103.) He further testified that their investigation revealed that the Petitioner did not break any policy and that abuse was not substantiated. Id. He testified that all of the Petitioner's actions were covered by their policy and that he did not believe that there was any malicious intent by Petitioner and watching the videos, he cannot see anywhere where DCR policy was broken or that the Petitioner did anything wrong. (D.R. 0104-0105.)

The Board found that because C.B. was engaged in active aggression, WVDOC policy allowed the Petitioner to use empty-hand hard responses, including straight punches, counter strikes, and front thrust kicks. (D.R. 069.) The Board also found that Petitioner radioed for assistance during the fight, that eight officers responded, and that approximately thirty-four seconds elapsed from the beginning of the fight to the first assisting officers' arrival. (D.R. 070.) State police further brought no criminal charges against the Petitioner, criminal charges were filed against C.B., and the WVDOC did not cite Petitioner for excessive force. *Id.* However, despite these facts, the Board concluded that the Petitioner intend to harm the juvenile and upheld a finding of abuse against the

Petitioner.

The Petitioner now appeals this Decision, and respectfully requests that this Honorable Court, after reviewing the record below, reverse the Board of Review's Decision and vacate the substantiated finding of abuse against the Petitioner.

III. SUMMARY OF THE ARGUMENT

The Board's Decision should be reversed. W. Va. Code § 49-1-201 requires proof that the custodian knowingly or intentionally inflicted, attempted to inflict, or allowed physical injury. The Board did not find that the force used after C.B. attacked the Petitioner was excessive or unauthorized. Instead, it relied on a but-for theory: that the event would not have happened if the Petitioner had called other staff or waived longer. That theory may describe a training, supervision, or employment-policy dispute; it does not prove intentional child abuse. In making its Decision, the Board improperly conflated poor judgment of the Petitioner with intentional abuse.

The Board's intent finding further rests on speculation. Its statement that entering without assistance was not prudent, unless trying to start a fight, is not substantial evidence. The reliable record shows an active-aggression event, an assault on the Petitioner initiated by the juvenile, immediate use-of-force authorization under WVDOC policy, a prompt radio call, no criminal charge against the Petitioner, and no WVDOC excessive-force finding.

IV. STATEMENT REGARDING ORAL ARGUMENT

Petitioner requests Rule 19 oral argument. This appeal presents a focused issue of statutory application to a confidential administrative record with video evidence maintained by the Clerk. If the Court concludes oral argument is unnecessary, the case may be resolved by memorandum decision.

V. STANDARD OF REVIEW

Pursuant to W. Va. Code § 29A-5-4(g), "The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

1. In violation of constitutional or statutory provisions;

2. In excess of the statutory authority or jurisdiction of the agency;

3. Made upon unlawful procedures;

4. Affected by other error of law;

5. Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

"[A]ny party adversely affected by a final order or decision of the Board has the right to appeal such order or decision to the Intermediate Court of Appeals in accordance with W. Va. Code § 29A-5-4 and W. Va. Code § 51-11-4(b)(4)."). In reviewing decisions by administrative agencies, "[t]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In Re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). An appeal of a decision as to the conclusions of law and application of law to the facts, is reviewed de novo. *Cahill v. Mercer Cnty. Bd. of Educ.*, 208 W. Va. 177, 539 S.E.2d 437 (2000).

VI. ARGUMENT

A. The Board erred as a matter of law when it upheld a substantiated physical abuse finding under W. Va. Code § 49-1-201 based on alleged deficiencies in de-escalation and room-entry procedure rather than reliable evidence that Petitioner knowingly or intentionally inflicting injury outside lawful control or self-defense.

W. Va. Code § 49-1-201 defines "Abused Child" as (1) "A child whose health or welfare is being harmed or threatened by:

> (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;
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> . . .

The controlling definition requires more than hindsight criticism. Under W. Va. Code § 49-1-201, the relevant question is whether the Petitioner knowingly or intentionally inflicted, attempted to inflict, or allowed physical injury. The Board's own analysis moved away from that statutory question. It acknowledged that the punches thrown by the Petitioner may have been authorized by facility policy, but concluded that the injuries would not have occurred but for his alleged instigating actions. (D.R. 072.) That is a causation or negligence theory and not the mens rea required for an abuse finding.

The Board's findings noted that C.B. struck the Petitioner first. The Board's findings show that the physical force occurred after C.B. punched the Petitioner twice and continued to fight. (D.R. 069-070.) The Board also found that WVDOC policy allowed the very category of control responses used once C.B. became actively aggressive. (D.R. 069.) A finding that an officer could have made a better tactical choice before entering the room does not establish that the later authorized response

to active aggression was child abuse.

The Board further improperly analyzed the facts in inferring intent to inflict injury upon the juvenile. Petitioner testified that C.B. was refusing direct orders to return to the room so he put C.B. on a cool down period and placed C.B. in his room. (D.R. 096-097.) He testified that after C.B. started kicking the door and hitting his head against the door window, he secured all the residents so that he could de-escalate the situation. (D.R. 097.) At the administrative hearing, Mr. Cutright, the IIU Supervisor, further confirmed that it was in his reports that the juvenile was banging his head off the door and kicking the door. (D.R. 094.) In making its determination, however, the Board failed to include this testimony and consider this fact in inferring intent upon the Petitioner.

Additionally, the Board noted in its findings that Petitioner instructed the other residents to go their respective rooms and walked around Unit A assisting the residents to their room. (D.R. 069.) This is confirmed through surveillance footage in which was entered as an exhibit and noted in the Board's Decision in this matter. (D.R.069.) Despite finding that all residents were placed in their respective rooms and that the juvenile was placed in his room by himself, the Board included in its Findings, comments that other juveniles had allegedly reported that the Petitioner said during the event although there were no witnesses in the room as to the subject occurrence. (D.R. 070.) When Petitioner was asked whether it was accurate that he used some pretty colorful language to C.B., Petitioner testified that he did not say anything during the event but for C.B. to stop resisting. (D.R. 099.)

From the above, the Board improperly inferred intent from the surrounding circumstance in which is an approach insufficient under the statute. Therefore, because the Board applied the wrong standard in equating an alleged failure to de-escalate with intentional physical abuse, the Board's

upholding the abuse finding against the Petitioner should respectfully be reversed.

B. The Board improperly substituted speculation for evidence in finding intent based on pre-incident conduct and therefore upheld the substantiation of physical abuse against the Petitioner.

The Board inferred intent from the absence of a pre-entry call for assistance, the time spent moving other residents, and alleged profanity. (D.R. 071-073). But the same facts support non-abusive explanations: The Petitioner first secured other residents, entered to address an escalating resident, was assaulted within seconds, and radioed for help once the fight began. (D.R. 069-070). The Board's statement that entering without assistance was not prudent, unless trying to start a fight, is conjecture and not evidence. Conjecture cannot substitute for substantial evidence of knowing or intentional injury.

Furthermore, the record below is also weaker than the Board's conclusion suggests. The videos of the subject incident are preserved separately on DVD, and the administrative record reflects that the available footage did not capture every material part of the interaction inside the room. (D.R. 065, 083-085.) The Board relief heavily on reported statements attributed to residents and C.B. while rejecting Petitioner's testimony. Even accepting disputed profanity, poor language does not prove an intent to inflict physical injury after the juvenile resident initiated a physical attack. Verbal exchanges that are even unprofessional ones do not establish intent to injure, and tactical decisions, such as entering without backup do not equal intent to commit abuse.

Because the Board's conclusions that entry "indicates intent to instigate" is pure speculation and not evidence, the Board's decision upholding a abuse finding against the Petitioner must respectfully be reversed.

C. The Board's decision is arbitrary and capricious because it disregards material undisputed findings and imposes an abuse finding based on hindsight.

An agency acts arbitrarily when it ignores key evidence, relies on unsupported inferences, or reaches a conclusion inconsistent with the record. Here, the Board accepted that force was authorized, accepted that the juvenile initiated violence, and yet despite these findings, still concluded intentional abuse against the Petitioner. This internal contradiction demonstrates a failure of rational decision-making that resulted in a conclusion inconsistent with the record in this case.

The Board further recognized that the State Police filed no criminal charges against the Petitioner, that criminal charges were filed against C.B., and that the WVDOC did not cite the Petitioner for excessive force (D.R. 070.) Those determinations do not mechanically control the Board's decision, but they are material evidence on whether the conduct was abusive or an authorized response to aggression. The Board gave them no meaningful weight.

The remaining basis for the substantiation is that the Petitioner should have called other staff or waited. Superintendent Scarbro, however, testified that he encourages assistance from room-entry de-escalation; the Board did not identify a mandatory rule whose violation constitutes abuse. (D.R. 070.) Administrative disagreement with tactics is not enough to impose a substantiated child abuse finding with serious collateral consequences.

In making its Decision, the Board improperly reasoned that while the punches thrown by the Petitioner may have been authorized by facility policy, the event and injuries sustained by C.B. would not have occurred but for the Petitioner's instigating actions. The Board improperly found that the Petitioner intended to inflict injury to C.B. as demonstrated by the Petitioner profanely instigating C.B., failing to contact staff professionals, not requesting officer assistance prior to entry,

and failing to act with immediacy.

In conducting such reasoning, the Board ignored material evidence supporting justified use of force. The record below contained critical findings that contradict the abuse determination in which include: (1) the juvenile initiated violence; (2) the Petitioner's use of force was policy-authorized; (3) no excessive force violation was found against the Petitioner; and (4) Law enforcement declined criminal charges against the Petitioner relating to the subject incident. The Board acknowledged these facts but dismissed them without meaningful analysis. This selective reasoning renders the Board's decision arbitrary and capricious, and therefore, should respectfully be reversed.

D. The Board misapplied the statutory definition of "abuse" under W. Va. Code § 49-1-201 when it upheld the decision of the Respondent to substantiate an abuse finding against the Petitioner.

Even if the Court finds that Petitioner should have called for backup, or his conduct was not ideal, such findings amount to policy or judgment concerns and not statutory abuse. The Board's finding that the Petitioner committed "physical abuse" under W. Va. Code § 49-1-201 is not supported by a proper application of the statutory standard and is clearly erroneous in light of the record.

Under the governing statute, an Abuse Child is "[one] whose health or welfare is being harmed or threatened by:

> (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;"
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> . . .

Critically, the statute requires more than poor judgment or procedural missteps; the statute requires intentional or knowing infliction of injury rising to the level of abuse.

Here, the undisputed facts establish that the juvenile was the initial aggressor and struck the officer first. The Petitioner's conduct occurred in direct response to that physical aggression. Thus, the interaction was, at its core, a defensive response to an immediate threat and not an intentional effort to inflict harm. The record further reflects that the Petitioner used force against the juvenile that was policy-authorized; no excessive force was used against the juvenile; and law enforcement declined criminal charges against the Petitioner relating to the subject incident.

The Board nonetheless concluded that intent could be inferred from surrounding conduct, including (1) alleged verbal provocation, (2) failure to contact staff professionals, (3) failure to request assistance prior to entry, and (4) failure to act with immediacy. Even if accepted as true, these findings do not satisfy the statutory definition of abuse.

First, alleged verbal provocation, even if inappropriate, does not equate to an intent to inflict physical injury. Words alone, particularly in a tense and rapidly evolving situation, cannot substitute for the statutory requirement of intentional harm. Second, the failure to follow preferred protocols, such as contacting staff or requesting backup may constitute a departure from best practices, but it does not transform a defensive physical response into statutory abuse. The statute does not criminalize or administratively punish procedural errors under the label of "abuse." Third, the Board's reliance on a purported lack of immediacy is internally inconsistent with its conclusion. If the Petitioner failed to act with immediacy, that finding undermines rather than supports any inference that he acted with a formed intent to injure. At most, it suggests hesitation or misjudgment and not deliberate harm.

Importantly, there is no finding that Petitioner used force disproportionate to the threat posed, nor that he continued the use of force after the threat subsided. Absent such evidence, the record does not support a conclusion that the Petitioner's actions were anything other than reactive and defensive. West Virginia law requires that findings of abuse be grounded in clear evidence of intentional or knowing harm and not speculation derived from ancillary conduct. The Board's conclusion improperly conflates poor decision-making with statutory abuse, thereby expanding the definition beyond its legislative limits.

At most, the record reflects a judgment error in handling a volatile encounter with a juvenile aggressor. Such conduct, while potentially subject to internal discipline or corrective training, does not meet the legal threshold for a finding of "physical abuse" under West Virginia Code § 49-1-201.

Accordingly, the Board's finding should be reversed.

VII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the Board of Review's Decision, vacate the substantiated finding of abuse against the Petitioner, and grant any further relief that the Court deems just and proper.

Respectfully submitted,

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By Counsel

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West Virginia Department of Human Services,
Bureau for Social Services,
Respondent Below, Respondent.

CERTIFICATE OF SERVICE

I, Matthew A. Bradford and the law firm of Bradford & Gray, PLLC, Counsel for the Petitioner, Tyler Fernandes, do hereby certify that on the 30th day of April, 2026, I electronically filed the foregoing "**PETITIONER'S BRIEF**" with the Clerk of the Intermediate Court of Appeals of West Virginia using the E-Filing System, which will serve all registered counsel of record, including Respondent's counsel of recor, Angela Alexander, Assistant Attorney General.

/s/ Matthew A. Bradford, Esq.
Matthew A. Bradford (WVSB No.: 11323)