NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4567-12T3

MARGARET GIBSON,

Plaintiff-Appellant,

v.

11 HISTORY LANE OPERATING
COMPANY, F/K/A CAREONE AT
JACKSON and CAREONE LLC,

Defendants-Respondents.

Argued January 27, 2014 – Decided February 25, 2014

Before Judges Parrillo, Harris, and Kennedy.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-0554-10.

Stephan T. Mashel argued the cause for appellant (Mashel Law, L.L.C., attorneys; Mr. Mashel, of counsel and on the brief; Anthony S. Almeida, on the brief).

Sandra S. Moran argued the cause for respondents (Buchanan, Ingersoll & Rooney, PC, attorneys; Ms. Moran and Lauren Adornetto Woods, of counsel and on the brief).

PER CURIAM

Plaintiff Margaret Gibson appeals the April 29, 2013 summary judgment dismissal of her common law wrongful discharge

claim under Pierce v. Ortho Pharm. Corp., 84 N.J. 58 (1980), and her statutory retaliation claim pursuant to the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14. We affirm.

I.

The motion court granted summary judgment against Gibson, the non-moving party, finding that she failed to prove a prima facie case for either of her legal theories. Accordingly, in reciting the factual backdrop of the parties' dispute, we "view the evidence in the light most favorable" to Gibson. Nicholas v. Mynster, 213 N.J. 463, 478 (2013) (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012)).

A.

Gibson is a licensed practicing nurse (LPN). Prior to her termination on July 16, 2009, Gibson was employed as an LPN at CareOne at Jackson, a licensed sub-acute rehabilitation and skilled long-term care facility, which is owned by defendant 11 History Lane Operating Company, LLC (CareOne).[1]

Gibson worked the 11:00 p.m. until 7:00 a.m. night shift. Among Gibson's (and all night nurses') responsibilities was to perform twenty-four hour chart checks, which, according to Gibson, are "checks [of] the orders that were written for that

[1] CareOne is a subsidiary of defendant CareOne, LLC.

day [at specific times to make sure] . . . it was transcribed onto the proper documents, either the med sheet or the treatment sheet, and if it wasn't, we were instructed to put it on the 24-hour report to be followed up, flag it."

Qualified nurses were permitted to accept telephonic instructions from physicians, after which they were required to enter the physician's order onto a physician's order sheet, and then transcribe (or "plot") those orders onto either a Medication Administration Record (MAR) or a Treatment Administration Record (TAR), which were maintained in three-ring binders. It was Gibson's responsibility, as a night nurse, to review and make sure the MARs and TARs within a physician's order book were fully and accurately transcribed. If an order were not properly transcribed, Gibson verbally reported any discordance, but later she (and all other nurses) were required to record the discrepancy in a twenty-four hour report book for another nurse to review.

Mary Rodriguez, a registered nurse, was CareOne's Director of Nursing, and Gibson's supervisor. On or about March 24, 2009, Rodriguez called Gibson to her office and, after informing Gibson that she had neglected to complete a twenty-four hour chart check, Rodriguez issued Gibson an "employee warning notice" for failing to plot a physician's telephonic medication

order taken by another nurse and entered into a physician's order sheet. Gibson readily admitted that she did not plot the nurse's note, but certified that she told Rodriguez that she did, in fact, "not[e] for the next shift" (or "flag") the chart to highlight the un-transcribed order on the patient's TAR.

At this meeting, Gibson explained to Rodriguez that over the course of her career, she never transcribed telephonic physician's orders taken by another nurse because she does not know to a certainty if the nurse recording the order, dosage, or treatment recorded that information accurately. At her deposition, Rodriguez recognized that Gibson verbalized her concern of transcribing another nurse's telephonic physician's order because not only "could [it] be an error and she would be responsible then for it," but it could result in medication, dosage, or treatment errors. Nevertheless, Rodriguez directed Gibson that she must correct and plot all written physician's orders as part of her chart-checking duties, and if she failed to do so on two more occasions, Gibson would be terminated. Gibson objected to the policy, responding that she was going to contact the New Jersey Board of Nursing (Board of Nursing) and "clarify it." Gibson said, "I will do it when the Board of Nursing tells me to do it that way."

A few days later, in early April, Gibson called the Board of Nursing and explained the situation to employee Mary Peterson. Gibson testified at her deposition as follows:

> Q. Tell me what you told [Peterson].
>
> A. I told [Peterson] that Mary Rodriguez, my [supervisor], wanted me to correct and plot another nurse's telephone order from 7:00 to 3:00, I worked 11:00 to 7:00, without clarification from the doctor. And Mary Peterson told me, "Yes, you can [correct and plot another nurse's telephone order], as long as you're willing to put your license on the line."
>
> Q. So what she said was —— did you understand her to say it's not illegal?
>
> A. It's not —— she specifically said, "It's not recommended by the Board of Nursing."
>
> Q. It's not prohibited?
>
> A. No. It's not recommended. There's no law specifically that says you can't do it, but you will risk your license if the documentation is wrong.
>
> Q. Okay. What did you understand that to mean?
>
> A. I wasn't gonna do it. Because if it's wrong, it's my error, my license on the line, no longer the nurse that took the order.

After speaking with Peterson, Gibson told Rodriguez that she had "called the Board of Nursing and they didn't recommend it."

Rodriguez reportedly responded, "Two more times and you're terminated."

Soon thereafter, Rodriguez contacted the Board of Nursing herself. Rodriguez testified that the representative that she briefly spoke with never confirmed Gibson's account, but did say "that as long as the physician['s] order was written, as opposed to being verbally communicated, . . . it was okay to complete the plot," so long as CareOne had a policy in place that specifically provided for that practice.

After the events of late March and early April 2009, Rodriguez became "unapproachable, hostile," and, according to Gibson, later "unfairly wrote [her] up on bogus disciplinary charges and ultimately orchestrated [her] wrongful discharge."

CareOne alleges that it maintained a nursing policy entitled "Daily Review of Physician's Orders" to better ensure that its patients would get the treatments and medications ordered by their physicians. The policy's purposes were "to reduce the risk of physician order errors through the use of the quality improvement process" and "the [p]revention of medication, lab, or other errors relating to incorrect noting or incomplete follow through of MD orders."

Paragraph 2.3 of the policy states "For any [physician] orders found to be incompletely or incorrectly noted, the night

shift nurse should attempt to correct or complete the notation at the time of discovery." Furthermore, Paragraph 2.5 states, "If an order cannot be corrected or completed on the night shift, the nurse must communicate the finding to the Unit Manager/designee at morning report."

Gibson challenges the existence of this written policy, contending that at the time of her and Rodriguez's conversations in March and April 2009, there was no such written chart-checking policy in place. In fact, Gibson contends that she did not become aware of the written policy until after her return to work from medical leave at the end of June 2009. Moreover, Gibson argues that the language of the policy does not require her, as a night nurse, to plot un-transcribed physician's orders, but rather, it permitted her to flag such un-transcribed orders on the twenty-four hour chart check, and verbally communicate that to the nurses on the next shift.

At her deposition, Rodriguez testified that her understanding of the written policy was that it afforded the night nurse the option of either plotting another nurse's physician's order or, if a nurse was strongly against plotting another nurse's written order, that nurse could, in the alternative, flag the un-plotted order. Rodriguez testified that she reviewed this policy with Gibson.

Gibson also contends that her academic training, continuing education, and professional experiences as an LPN instructed her that she cannot plot another nurse's telephonic physician's order when performing a twenty-four hour chart check. Gibson further certified that she did not possess "the education skill or experience of a [r]egistered [n]urse to make an assessment of whether a particular mediation, at a particular dose and frequency, is medically appropriate for a given patient."

Gibson presented several certifications from other LPNs who worked at CareOne that echoed Gibson's understanding that an LPN should not plot another nurse's entry of a physician's order. Contrariwise, CareOne's facility educator testified that that during her employment with CareOne, it was custom and practice amongst the nursing staff to plot another nurse's written physician's order.[2]

On March 24, 2009, the same day that Rodriguez issued Gibson the employee warning notice for failing to complete the twenty-four hour chart check, Rodriguez issued Gibson another employee warning notice for unsatisfactory work that allegedly occurred on March 19, 2009, due to Gibson's "failing to ensure that a resident was properly cleaned and dressed prior to going

[2] This factual dispute about the nursing practices and procedures at CareOne is immaterial to the CEPA and Pierce theories of liability.

out for dialysis." Gibson denied the accuracy of the warning notice. On May 27, 2009, Rodriguez issued Gibson an "employee warning record" for "substandard work" performed on April 19, 2009, relating to an alleged "fail[ure] to complete chart check on admission of resident leading to a medication error." As a result, Gibson was suspended for two days.

On June 23, 2009, Rodriguez issued Gibson a "final warning" for her alleged "[f]ailure to complete chart check resulting in the resident not receiving Coumadin for one week."

Finally, on July 8, 2009, Rodriguez issued Gibson another employee warning record —— again, for "substandard work" —— for Gibson's alleged "fail[ure] to note an order during turnover resulting in the order not being transcribed on the new month MAR." The recommended disciplinary action was discharge. Subsequently, on July 16, 2009, Gibson's employment with CareOne was terminated.

B.

On January 27, 2010, Gibson filed a complaint against CareOne seeking remedies for her employment termination. On September 28, 2012, after discovery was concluded, CareOne moved for summary judgment seeking to dismiss all claims asserted in Gibson's complaint.

At oral argument of the summary judgment motion, Gibson voluntarily withdrew her breach of contract claim. On April 29, 2013, the motion judge issued an oral decision granting CareOne's motion. The memorializing order was filed on the same date, with a rider that clarified the judge's final order dismissing Gibson's claims.

The motion judge concluded that Gibson did not make a prima facie showing on her CEPA claim, specifically that she had an objectively reasonable belief that CareOne's conduct was violative of "either a law, rule, or regulation promulgated pursuant to law or a clear mandate of public policy, or that she reasonably believed that its conduct constituted improper quality of patient care." The judge discounted Gibson's "exception to the direction that she was to enter orders taken by other nurses into the MAR or TAR because it did not comport with the practices and procedures she had followed throughout her career" and that "another nurse's error might be imputed to her, because she was the one who would be entering it into the MAR or TAR" as "subjective beliefs regarding the reliability and completeness of an order dictated by a physician to another nurse."

Moreover, the judge held that Gibson "failed to identify any rule, regulation, Professional Code of Ethics which

specifically prohibits an LPN from plotting a physician's order unless one, the order is written by a physician or two, the physician personally conveyed the order to the person plotting the order." The judge highlighted that Gibson was informed by the Board of Nursing that there was no law that directly prohibited CareOne's "policy of having an LPN plot a physician's order that was verbally conveyed to and written down by another nurse." Significantly, the risk, as identified by the Board of Nursing, was to the LPN, and not to the patient, because any error entered by the LPN would be the LPN's mistake, and thereby jeopardize the LPN's license.

The judge further concluded that improper quality of patient care "is not a subjective standard that can be based upon [Gibson's] own beliefs or preferences, but must be a violation of . . . law or any rule, regulation or declaratory ruling adopted pursuant to law, or any Professional Code of Ethics." Additionally, the judge found Gibson's claim under the Patient Safety Act, N.J.S.A. 26:2H-12.24(d), to be unavailing:

> Since there is no allegation in this matter of any identified errors or near misses, but only [Gibson's] concern that another nurse might write down an order incorrectly, and that [Gibson] might in turn plot that error, the statute is inapplicable, and is at best a reiteration of the general policy favoring high quality healthcare which was rejected in Klein [v. Univ. of Med. & Dentistry of

> N.J., 377 N.J. Super. 28, 38 (App. Div.), certif. denied, 185 N.J. 39 (2005)].
>
> Similarly, references to the patient safety goals issued by the Joint Commission of Accreditation of Healthcare Organizations regarding the goal of maintaining and communicating accurate patient medication information, or the administrative code definition of a medication error, fail to articulate the clear public policy which [Gibson] could reasonably believe was being violated by CareOne's policy that she plot physicians' orders communicated to another nurse.

Ultimately, while recognizing New Jersey's indisputable, yet general, public policy favoring the avoidance of any healthcare mistakes, the judge noted that this "general goal or aspiration cannot form the basis for a CEPA claim whenever an employee feels that a practice poses a potential risk to a patient no matter how remote." Judge Perri also found Gibson's attempt to establish the necessary clear public policy mandate through the New Jersey Administrative Code and the American Nursing Association Code of Ethics similarly unavailing and without "support in the record or in the law." This appeal followed.

II.

"An appellate court reviews an order granting summary judgment in accordance with the same standard as the motion judge." Bhagat v. Bhagat, ___ N.J. ___, ___ (2014) (slip op. at

19) (citing W.J.A. v. D.A., 210 N.J. 229, 237-38 (2012); Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010)). Therefore, we review the competent evidential materials submitted by the parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c). As we have already noted, we accept the facts as presented by Gibson, as we must in this posture of the case.

Pursuant to N.J.S.A. 34:19-3(a)(1), employers are prohibited from retaliating against an employee because the employee "discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer . . . that the employee reasonably believes is in violation of a law or rule or regulation . . . ." The Legislature enacted the CEPA to "protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct." Dzwonar v. McDevitt, 177 N.J. 451, 461 (2003) (internal citations omitted). In furtherance of that goal, an "employer shall not take any retaliatory action against an employee" if the employee "objects to, or refuses" to participate in activity that the employee believes is "in violation of the law," is

"fraudulent or criminal," or "incompatible with a clear mandate or public policy. . . ." N.J.S.A. 34:19-3(c)(1) to –3(c)(3).

> A plaintiff who brings a cause of action pursuant to N.J.S.A. 34:19-3[(c)] must demonstrate that: (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy; (2) he or she performed a "whistle-blowing" activity described in N.J.S.A. 34:19-3[(c)]; (3) an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.
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> [Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 556 (2013) (quoting Dzwonar, supra, 177 N.J. at 462 (citations omitted).]

A plaintiff's evidentiary burden for presenting a prima facie case is modest. Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 80-81 (1978).

Similarly, a common law claim may lie under Pierce, supra, 84 N.J. at 72,[3] where an employee has a cause of action for wrongful discharge "when the discharge is contrary to a clear mandate of public policy. The sources of public policy include legislation; administrative rules, regulations or decisions; and judicial decisions." The Supreme Court has held that "the trial court must identify a statute, regulation, rule, or public

[3] CEPA is recognized as a codification of principles articulated in Pierce. Hitesman v. Bridgeway Inc., 430 N.J. Super. 198, 209 n.5 (App. Div. 2013).

policy that closely relates to the complained-of conduct," but the plaintiff does not need to "allege facts that, if true, actually would violate that statute, rule, or public policy." Dzwonar, supra, 177 N.J. at 463. A plaintiff need only "set forth facts that would support an objectively reasonable belief that a violation has occurred." Id. at 464. Pierce does not apply "where discharge resulted from disputes which were internal and implicated only private interests." Devries v. McNeil Consumer Prods. Co., 250 N.J. Super. 159, 171 (App. Div. 1991).

Under the CEPA, the existence of a clear mandate of public policy is an issue of law to be decided by the court. Mehlman v. Mobil Oil Corp., 153 N.J. 163, 187 (1998).

> Proof of such a factual basis begins with the identification of the relevant legal authority or public policy the plaintiff believes his or her employer violated. Before a CEPA claim may be submitted to a jury, the court must identify a legal authority recognized in the statute "that closely relates to the complained-of conduct[,]" [Dzwonar, supra, 177 N.J. at] 463 (emphasis added), and "make a threshold determination that there is a substantial nexus between the complained-of conduct and a law or public policy identified. . . ." Id. at 464 (emphasis added). "The trial court can and should enter judgment for a defendant when no such law or policy is forthcoming."[] Id. at 463. If the court finds a substantial nexus, the CEPA claim is submitted to the jury. The jury must then decide "whether the plaintiff actually held

> such a belief and, if so, whether that belief was objectively reasonable." Id. at 464.
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> [Hitesman, supra, 430 N.J. Super. at 211-12.]

A plaintiff is not required to show the relevant legal authority or clear mandate of public policy "'actually would be violated if all the facts he or she alleges are true.'" Id. at 211 (quoting Dzwonar, supra, 177 N.J. at 464). Rather, a plaintiff must "'set forth facts that would support an objectively reasonable belief that a violation has occurred."' Ibid.

In examining whether a plaintiff identified a cognizable legal authority or public policy that her employer violated, it is not enough for the employee to "rest upon a sincerely held —— and perhaps even correct —— belief that the employer has failed to follow the most appropriate course of action, even when patient safety is involved." Id. at 212. Furthermore, "[a] plaintiff cannot rely upon 'a broad-brush allegation of a threat to patients' safety[,]' because CEPA affords no protection for the employee who simply disagrees with lawful policies, procedures or priorities of the employer." Ibid. (quoting Klein, supra, 377 N.J. Super. at 42-43; see also Warthen v. Toms River Cmty. Mem'l Hosp., 199 N.J. Super. 18, 28 (App. Div.) (ruling the discharge of a nurse for refusing to administer kidney dialysis to a terminally ill patient did not violate a

clear mandate of public policy where the employee was motivated by "her own personal morals"), certif. denied, 101 N.J. 255 (1985). Ultimately, the employee "must have an 'objectively reasonable belief' that a violation of the relevant legal authority occurred, rather than an objection based on some other principle, no matter how deeply believed[.]" Hitesman, supra, 430 N.J. Super. at 212-13 (quoting McLelland v. Moore, 343 N.J. Super. 589, 600 (App. Div. 2001), certif. denied, 171 N.J. 43 (2002)).

In analyzing whether a plaintiff sufficiently established a clear mandate of public policy, the Court in Maw v. Advanced Clinical Communs., Inc., 179 N.J. 439, 444 (2004) interpreted the "clear mandate of public policy" language in N.J.S.A. 34:19-3(c)(3) to

> convey[] a legislative preference for a readily discernible course of action that is recognized to be in the public interest. A clear mandate of public policy suggests an analog to a constitutional provision, statute, and rule or regulation promulgated pursuant to law such that, under Section [3(c)(3)], there should be a high degree of public certitude in respect of acceptable verses unacceptable conduct.
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> [Ibid. (internal quotation marks omitted).]

For a plaintiff to establish a clear mandate of public policy bespeaks a legislative desire "not to have CEPA actions devolve

into arguments between employees and employers over what is, and is not, correct public policy." Ibid.

In this context, "the offensive activity must pose a threat of public harm, not merely private harm or harm only to the aggrieved employee." Mehlman, supra, 153 N.J. at 188. Here, Gibson relies, in part, on the Patient Safety Act, N.J.S.A. 26:2H-12.23 to -12.25 (PSA), to establish the requisite clear mandate of public policy. Despite Gibson's efforts, the PSA does not provide a reasonable basis for her contentions that adhering to CareOne's chart check policy would perpetuate medical errors and thus compromise patient safety.

According to the PSA, "[t]o enhance patient safety, the goal is to craft a health care delivery system that minimizes, to the greatest extent feasible, the harm to patients that results from the delivery system itself." N.J.S.A. 26:2H-12.24(c). To accomplish this, the PSA specifically noted the importance of a "feedback mechanism that allows detection and analysis not only of adverse events, but also of 'near-misses.'" N.J.S.A. 26:2H-12.24(d).[4]

[4] Gibson cites at length the PSA's legislative history, as well as the PSA's regulations, N.J.A.C. 8:43E-10.1 to -10.11, in an attempt to define acceptable and unacceptable conduct to support her refusal to plot. Gibson's attempt to distinguish the goals outlined in the PSA and its regulations with the conclusions in Klein, supra, 377 N.J. Super. at 42, is unavailing.

Nothing in the PSA, or its regulations, addresses chart checking, the appropriateness of plotting written physician's orders, or even flagging those orders for further review. Rather, the PSA affirms that New Jersey has a longstanding policy favoring high quality healthcare delivery and patient protection. However, merely couching her complaints in terms of a broad-brush allegation that patient safety is at risk is insufficient to satisfy a CEPA claim. Klein, supra, 377 N.J. Super. at 42. Although the CEPA was legislated to be flexible, Donelson v. DuPont Chambers Works, 206 N.J. 243, 256 (2011), the statute does not have the play in the joints as construed by Gibson.

Although Gibson's concerns raise a legitimate difference of opinion, it merely represents her idiosyncratic disagreement with CareOne's chart-checking policy. Gibson called the Board of Nursing to inquire about the legality of the policy, and was told the practice was both legal and not prohibited. Although the Board of Nursing indicated Gibson had a reasonable concern that following the policy could jeopardize her license if she made a transcription error, Gibson also acknowledged she was clearly told there is "no law specifically that says" CareOne's policy is contrary to law. Thus, Gibson's decision not to follow what Rodriguez instructed her to do was not rooted in

public policy, but rather, her disagreement with the policy itself. "[A] difference of professional opinion between an employee and those with the corporate decision making power is not a sufficient basis for a wrongful discharge cause of action . . . even [when] . . . the dispute arises from the employee's well-intended and conscientious concern for potential harm to those who might be affected by the corporate conduct of which the employee objects." Chelly v. Knoll Pharms., 295 N.J. Super. 478, 488-89 (App. Div. 1996).

Gibson offers a list of statutory, regulatory, and legislative statements to establish the requisite mandate of public policy, and to support that claim, she seeks to elevate her subjective beliefs —— and that of her witnesses —— to objectively reasonable status. Specifically, Gibson contends that she was taught in nursing school, and then, throughout her professional employment was instructed, not to plot another nurse's written telephonic physician's order onto a MAR or TAR. Yet, Gibson was clearly told by the Board of Nursing that the practice was not prohibited, and the only proffered downside was to the nurse. A CEPA analysis ignores an employee's subjective beliefs and instead focuses on whether she had an objectively reasonable belief that an employer's conduct violated a clear mandate of public policy. Whether analyzed cumulatively or

individually, these instances merely represent experiences and closely-held beliefs offered to support Gibson's opinion that flagging an un-transcribed nurse's written physician's order is an adequate mechanism and alternative to plotting that information on a MAR or TAR. Because Gibson's contentions are merely disagreements with the internal procedures and priorities of CareOne, they do not represent an objectively reasonable belief that her employer was violating any public safety mandate. Klein, supra, 377 N.J. Super. at 44.

Furthermore, Gibson seeks to disguise her personal interest in her job security with a concern for patient safety. Even the most generous readings of Gibson's deposition testimony, and that of her witnesses, fails to reveal any semblance of fact or legal basis for Gibson's claim that the plotting of an order conveyed to and written by a nurse at a doctor's direction, as opposed to being written down by the doctor, poses any recognized threat to the patient or violates any rule, statute, regulation, or other legal authority. Indeed, Gibson's only objection to plotting a physician's orders is limited to those instances where that physician's orders were conveyed to and written down by any nurse other than herself. These contentions merely reinforce Gibson's disagreement with and subjective belief that CareOne's policy was wrong, and her trumpeting of

custom, practice, education, and experience without reference to an objective standard, is conclusory, and does not create genuine disputes of material fact.

Gibson further alleges that she had an objectively reasonable belief that Rodriguez's order constituted an "improper quality of patient care," N.J.S.A. 34:19-3(a)(1), and violated or, at the very least, was incompatible with the American Nursing Association Code of Ethics (ANA Code) and the New Jersey Administrative Code. Our review of those strictures through the lens of the record does not confirm Gibson's claim that transcribing another nurse's written physician's order constitutes an "improper quality of patient care" nor does it establish an applicable clear mandate of public policy.

A licensed or certified health care professional may assert a claim against his or her employer pursuant to the CEPA based upon a reasonable belief the employer's conduct "constitutes improper quality of patient care[.]" N.J.S.A. 34:19-3(a)(1) and (c)(1). The statutory definition of "improper quality of patient care" includes the violation of "any professional code of ethics." N.J.S.A. 34:19-2(f). In analyzing Gibson's arguments, the decision in Hitesman, which considered whether a plaintiff's reliance upon a professional code of ethics that was

not applicable to his employer but was nevertheless sufficient to support a CEPA claim, is highly instructive.

Section 3.5 of the ANA Code cited by Gibson, and relied upon by the plaintiff in Hitesman, provides guidance to nurses who become aware of "instances of incompetent, unethical, illegal, or impaired practice" by any member of the health care team or the health care system. Hitesman, supra, 430 N.J. Super. at 216-17. Hitesman concluded the provision's purpose is to "inform nurses on the proper discharge of their responsibility as patient advocates under such circumstances, [and as such,] . . . the ANA Code of Ethics provided standards for employees to follow," not employers. Id. at 217. Moreover, because Gibson, like the plaintiff in Hitesman, questioned the quality of care provided by her employer,

> [this] section of the ANA Code of Ethics may provide guidance for a determination of whether plaintiff acted in compliance in expressing his concerns, but the question of his own compliance is irrelevant. Even if he had complied with the Code, such compliance would shed no light on whether his concerns were based upon a purely subjective disagreement or an objectively reasonable belief that his employer engaged in misconduct. More important, the ANA Code of Ethics establishes no standard regarding the patient care [the employer] was required to provide to its patients. As a result,

> plaintiff's belief that [his employer] acted in violation of the ANA Code of Ethics was not objectively reasonable as a matter of law.
>
> [Ibid.]

In Hitesman, the Court held the ANA Code did not apply to the defendant long-term care facility. Id. at 215-16. Here, the ANA Code is similarly inapplicable. Because "the ANA Code of Ethics establishes no standard regarding the patient care" CareOne was required to provide its patients, Gibson's belief that her employer violated the ANA Code is not objectively reasonable as a matter of law. Id. at 217. Thus, because the ANA Code does not apply to the facility nor does it establish a standard regarding patient care that CareOne was required to provide its patients, the ANA Code does not adequately define "improper quality of patient care" to bolster a CEPA claim.

Gibson's further argument, that requiring an LPN to interpret another nurse's handwriting violates the ANA Code's Provision 4,[5] is similarly misplaced. Gibson also cites, in part, the regulatory analog in N.J.A.C. 13:37-6.2(b):

> (b) In delegating selected nursing tasks to licensed practical nurses or ancillary

[5] Provision 4 reads: "The nurse is responsible and accountable for individual nursing practice and determines the appropriate delegation of tasks consistent with the nurse's obligation to provide optimum patient care." Gibson also references Interpretative Statement 4.4 in support of her claim.

> nursing personnel, the registered professional nurse shall be responsible for exercising that degree of judgment and knowledge reasonably expected to assure that a proper delegation has been made. A registered professional nurse may not delegate the performance of a nursing task to persons who have not been adequately prepared by verifiable training and education. No task may be delegated which is within the scope of nursing practice and requires:
>
> 1. The substantial knowledge and skill derived from completion of a nursing education program and the specialized skill, judgment and knowledge of a registered nurse;
>
> 2. An understanding of nursing principles necessary to recognize and manage complications which may result in harm to the health and safety of the patient.

Gibson's claim that the plotting of any order, even if it is complete, legible, and coherent, is a violation of the above obligations is without merit. In addition to her nursing education, Gibson has held both LPN and charge nurse positions. In fact, during her employment as a staff nurse, charge nurse, and LPN, Gibson signed and acknowledged her duties —— including the performance of "administrative duties such as completing medical forms, reports, evaluations, studies, charting, etc., as necessary . . . . [as well as r]eview medication cards for completeness of information, accuracy in the transcription of the physician's order, and adherence to stop order policies."

As such, her employer's order that she transcribe another nurse's written physician's order is in no way an improper delegation. Gibson's attempt to read a clear mandate of public policy into a regulation that addresses the delegation of nursing tasks is unpersuasive.

The motion record clearly shows that Gibson knew the chart-checking policy was legal and did not compromise patient safety or care based upon her conversation with the Board of Nursing; thereafter, she purposely decided not to follow the policy because she disagreed with it, believing her position was, among other things, "morally correct," and that the circumstances of following the policy would adversely impact her nursing license as opposed to implicate patient safety. Gibson's proffered reasons for her objections support only one conclusion: her disagreement with the chart-checking policy was personal, and not for the public good. Accordingly, the dismissal of her CEPA and Pierce claims was proper.

Affirmed.