STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008SF3003
	)	ALS NO.: 09-0123
RICHARD E. BLUNK ,	)	EEOC NO.: 21BA81824
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008SF3003, Richard E. Blunk, Complainant, and Springfield Clinic, LLP., Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant initially filed a charge of discrimination with the Department in October of 2007 against the Respondent. On April 23, 2008, the Complainant filed a new charge of discrimination with the Department (the "April 2008 Charge"), in which he alleged that the Respondent had retaliated against him for filing the October 2007 charge of discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). On February 19, 2009, the Department dismissed the April 2008 Charge upon finding that there was no substantial evidence of discrimination. The Complainant thereafter filed a timely Request on March 26, 2009, in which he sought review of the dismissal of the April 2008 Charge.

2. The undisputed evidence in the investigation file shows that since 1973, the Complainant has worked for the Respondent, a multi-specialty medical health facility, as an Optometrist. In October of 2007, the Complainant filed a charge of discrimination against the Respondent.

3. On March 10, 2008, the Respondent received a complaint from one of its patients. The patient complained that during an appointment with the Complainant, the Complainant had behaved unprofessionally, in part by speaking very negatively to the

patient about the Respondent. The patient's complaint was memorialized in writing by the Respondent's Quality Management Department staff on March 10, 2008. The patient wished to remain anonymous.

4. On April 21, 2008, the Respondent's Chief Executive Officer ("CEO") met with the Complainant to discuss the patient's complaint. On April 21, 2008, the CEO issued the Complainant a written warning. The CEO warned the Complainant that if he engaged in any further unprofessional behavior or if he brought personal grievances into the patient care environment, then the Complainant would be subject to further discipline up to, and including, suspension or discharge. The Complainant had not received any prior discipline from the Respondent.

5. At the time that the Respondent issued the written warning to the Complainant, the Respondent had in place a Progressive Discipline Policy. Under this Policy, a written warning is usually the second step of discipline; the first step is usually a verbal warning. However the Policy provides that exceptions to the Policy may be made with the approval of the CEO. Further, the Policy provides that a written warning is appropriate discipline to be used when an employee is "[e]ngaging in any act of disorderly conduct to an extent that interferes with patient care or employee relations," or when the employee is insubordinate.

6. There is undisputed evidence in the file which demonstrates that the Respondent had previously given written warnings to employees who had not received prior discipline; in at least one of these situations, the employee had engaged in unprofessional behavior. The Respondent had also previously disciplined other employees because of patients' complaints.

7. In his Request, the Complainant states that he denies making the negative remarks. He argues that an anonymous source can be used by any employer to defeat a claim. He contends that other than the allegations of the CEO, there was no other information or supporting documentation that would support the written warning, and that there is evidence that would suggest retaliation. The Complainant does not specify what this evidence is, however.

8. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for lack of substantial evidence because the Complainant did not establish a *prima facie* case of retaliation. Further, even assuming *arguendo* that the Complainant could establish a *prima facie* case, the Respondent articulated a legitimate, non-discriminatory reason for issuing the written warning to the Complainant, and there is no evidence in the file to suggest that the Respondent's reason was a mere pretext for discrimination or retaliation.

9. In order to establish a *prima facie* case of retaliation under the Act, the Complainant most present evidence which demonstrates: (1) that he engaged in a protected act; (2) that the Respondent took an adverse action against him, and (3) that there is a causal connection or nexus between the protected activity and the adverse act. *See* Carter Coal Co. v. Human Rights Commission, 261 Ill.App.3d 1, 7, 633 N.E.2d 202 (5th Dist. 1994).

10. In this case, the Commission finds that the Complainant has failed to present evidence of a nexus between his having filed the charge of discrimination in October of 2007 and his having received the written warning on April 21, 2008, approximately six months later. In the first place, we find that too much time elapsed between the protected act and the adverse act to raise an inference of a retaliatory motive on the part of the Respondent. *See* Mitchell and Local Union 146, 20 Ill. HRC. Rep. 101, 110-11 (1985).

11. Further, there is no evidence in the file which suggests that the Respondent's stated reason for issuing the written warning was a pretext for a retaliatory or discriminatory motive. The discipline followed less than one month after the patient's complaint was memorialized by the Respondent. Further, the Respondent followed its Progressive Discipline Policy when it "skipped steps" in issuing the Complainant the written warning based on a complaint about his interactions with a patient. The Complainant presents no other evidence from which the Commission could find substantial evidence of retaliation.

12. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Complainant's charge is hereby **SUSTAINED.**

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondent Springfield Clinic, LLP, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) Entered this 23rd day of June 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini