

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF1933
	)	
CONSTANCE R. MCKEOGH	)	ALS NO.: 09-0334
	)	
Complainant.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Greg 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. 2008CF1933, Constance R. McKeogh, Complainant, and Alexian Brothers Behavioral Hospital, 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, the Complainant's Reply to the Department's Response, and the Commission being fully advised upon 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 filed a charge of discrimination with the Department on January 29, 2008, alleging that the Respondent subjected her to sexual harassment (Count A) and discharged her in retaliation for engaging in protected activity (Count B), in violation of Section 2-102(D) and 6-101(A) of the Illinois Human Rights Act (the "Act"). After its investigation, the Department entered a finding of Substantial Evidence as to Count A. On May 11, 2009, the Department dismissed Count B for Lack of Substantial Evidence. On June 25, 2009, the Complainant filed a Request in which she seeks review of the Department's dismissal of Count B.

2. The Complainant worked for the Respondent as a Licensed Clinical Worker. The Complainant reported to Gregory Teas ("Teas"), Medical Director, and Christopher Novak ("Novak"), Group Practice Director.
3. The Respondent has a Corrective Action policy. The steps involved in a corrective action may include some or all of the following: First or Verbal Warning; Second or Written Warning; Third Warning and Possible Suspension, and Termination. Furthermore, the Policy states that there are some performance issues and/or incidents/offenses that could result in immediate termination without recourse to the above outlined progressive corrective action system, including dishonesty and unsatisfactory job performance.
4. In October 2007, Novak inspected the Complainant's patient charts. Novak discovered that the Complainant had failed to properly complete the Clinical Assessments, do documented diagnoses and create treatment plans. The Complainant also failed to put notes on the Respondent's proper forms. As a result of the inspection, the Complainant was issued a Corrective Notice on October 31, 2007, which was her first warning.
5. On December 26, 2007, Novak reviewed two more of the Complainant's patient charts only to find that the patient charts did not contain the necessary documentation. On this same date Novak issued the Complainant a second warning for failing to properly maintain patient charts.
6. As a result of receiving her second warning the Complainant was placed on an improvement plan. Under the improvement plan, the Complainant was required to allow Novak to review and complete all of her initial patient assessments for a period of four weeks. Subsequent to that four week period, Novak would continue to monitor the Complainant's patient charts.
7. On January 14, 2008, Novak received a request from the Billing Manager to change one of the Complainant's patient diagnoses. Novak denied the request because the Complainant did not have documentation in the chart to support the diagnosis.
8. On January 16, 2008, the Complainant resubmitted the chart with insufficient supporting documentation, and she had changed the initial diagnosis. Additionally, Novak observed that all the progress notes for service rendered in 2007 had been re-written, placed on the Respondent's present forms and dated as if they had been written in 2007. Novak determined that the Complainant was guilty of falsification of the progress note.
9. Also on January 16, 2008, the Complainant informed Teas that the Respondent's staff believed that she and Teas were having an affair because they had the same cough. On this same date, Novak asked the Complainant if she told Teas that the staff thought that she and Teas were having an affair.

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10. On January 17, 2008, the Respondent discharged the Complainant. The Respondent's stated reason for the Complainant's discharge was that she falsified medical records.

11. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for Lack of Substantial Evidence.

12. In order to establish a prima facie case of retaliation, there must be some evidence that: 1) The Complainant engaged in a protected activity; 2) The Respondent committed an adverse action against the Complainant; and 3) a causal connection existed between the protected activity and the adverse action of the Respondent. Welch v. Hoeh, 314 Ill.App.3d 1027, 733 N.E.2d 410, 416 (3<sup>rd</sup> Dist. 2000). Assuming in this case that the prima facie case has been established, because the Respondent has articulated a legitimate, non-discriminatory reason for terminating the Complainant, there must be substantial evidence in the record that this reason was a pretext for retaliation. In this case, the Commission finds that there is no substantial evidence of pretext.

13. The Respondent is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The correctness of the reason is not important as long as there was a good faith belief by the Respondent in its decision. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May 6, 1996), citing Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986). Furthermore, in the absence of any evidence that the business consideration relied upon by the Respondent is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (December 10, 1997).

14. The Respondent used a corrective and progressive discipline, in accord with its policy, prior to terminating the Complainant's employment. The evidence shows that prior to her termination, the Complainant already had a history of failing to maintain her patient charts, and had been twice disciplined for this behavior. The Complainant does not dispute that, prior to her termination; Novak determined that she had attempted to submit a patient chart that contained falsified information. The Complainant instead argues that pretext is demonstrated by the fact that the Respondent did not follow its disciplinary steps when it terminated her. However, as previously stated in this Order, the Respondent's Corrective Action policy permits it to "skip steps" in certain instances, such as in the case of dishonesty. Falsifying patient charts would seem to fit the rubric of dishonesty. The Complainant has not submitted any additional evidence to demonstrate that her termination was the result of anything other than her falsification of patient charts.

15. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of her 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 Alexian Brothers Behavioral Hospital, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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  )  
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Entered this 24<sup>th</sup> day of November 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Greg Simoncini