

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
NANCY PAPPALARDO,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1997CF2400
)	EEOC NO: 21B971940
)	ALS NO: 10370
)	
DR. ROBERT A. RYAN, M.D.,S.C.,)	
PLASTIC & RECONSTRUCTIVE)	
SURGERY,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

Introduction

On April 2, 1997, Complainant Nancy Pappalardo filed a charge of employment discrimination against her employer, Respondent Dr. Robert A. Ryan, M.D., S.C. Plastic and Reconstructive Surgery. On February 23, 1998, the Illinois Department of Human Rights filed a Complaint of Civil Rights Violation with the Illinois Human Rights Commission which alleged Respondent discriminated against Complainant on the basis of sexual harassment that created a hostile work environment at her place of employment by her employer Dr. Ryan. Further, Ms. Pappalardo claims she was constructively discharged as a result of the hostile work environment.

On December 7, 1999, former Administrative Law Judge Jennifer Levine conducted a hearing in this matter. Administrative Law Judge Levine left the employ of the Commission before issuing a Recommended Order and Decision in this matter and the case was reassigned to former Administrative Law Judge James Blunk to conduct a rehearing. On May 2, 2000, the parties retried the case before former Administrative Law Judge James Blunk. James Blunk also left the employ of the Commission before issuing a Recommended Order and Decision in

this matter and the case was reassigned to me to conduct a second rehearing. On October 19, 2000, a third hearing was conducted. Attorney Zachary Leonard represented Complainant and Attorney John J. Lynch represented Respondent.

During the hearing the parties waived opening arguments and agreed to introduce the transcripts of the initial hearing as joint evidentiary exhibits. Additionally, the parties entered as exhibits prior closing briefs and responses thereto. Thus, this matter is ripe for decision.

Complainant's case

Complainant Nancy Pappalardo testified on her own behalf. According to Ms. Pappalardo, she was employed by Respondent as a surgical technician from October 7, 1996 through January 9, 1997. Ms. Pappalardo maintained that during her three month employment she was sexually harassed by Dr. Ryan. Ms. Pappalardo testified to many of Dr. Ryan's actions that she interpreted to be sexually harassing in nature.

First, Ms. Pappalardo testified Dr. Ryan invited her to lunch alone on many occasions to which she only accepted twice. According to Ms. Pappalardo, the first time she and Dr. Ryan lunched together he asked her to follow him in her own car to a local restaurant and she complied. Upon arrival to the restaurant Dr. Ryan acted in a suspicious manner because he asked her to leave her car in a different parking lot than that of the restaurant.

Ms. Pappalardo testified Dr. Ryan's behavior during lunch was benign, but upon return from lunch he then requested they walk into the office separately so the other staff members would not get the impression she was receiving special treatment. According to Ms. Pappalardo, this behavior made her uncomfortable and was a foundation for Dr. Ryan "to be more personal and sexual with [her]" *Tr. p. 30*.

The second time the two lunched together, Ms. Pappalardo testified that they were accompanied by another employee. She reported Dr. Ryan's behavior was again benign though she never accepted another lunch offer from him.

Second, Ms. Pappalardo testified that Dr. Ryan invited her to accompany him to a medical conference scheduled in Dallas, Texas. According to Ms. Pappalardo, Dr. Ryan asked her if she had a friend in Dallas whom she could stay with so that others attending the conference would not suspect the two were romantically involved.

Third, Ms. Pappalardo testified Dr. Ryan asked to view scars on her chest resulting from a breast lift performed by another surgeon. Ms. Pappalardo showed Dr. Ryan her scars while the two were alone in an exam room and he offered to redo the procedure at cost. Complainant refused his offer. Shortly thereafter, Dr. Ryan stuck Complainant with a needle during surgery. Complainant testified she felt intimidated as result of Dr. Ryan's actions.

Fourth, Ms. Pappalardo also testified to instances where Dr. Ryan told her she had a rash on her neck from having too much sex and that Dr. Ryan would make her drive male patients to local hotels because she was "available." Finally, Ms. Pappalardo testified Dr. Ryan made lewd jokes using her name during surgery.

Ms. Pappalardo confronted the office manager and Dr. Ryan about the incidents where she felt she was being sexually harassed, finally left Dr. Ryan's employ on January 9, 1997 and accepted a position with the Cook County Sheriff's Office as a deputy sheriff.

Respondent's case

Dr. Ryan testified on his own behalf and presented the testimony of four witnesses: Cynthia Ackman, Pat Ryan, Michelle Elliot and David Hansen. Each witness testified that Dr. Ryan always maintained a professional relationship with the office staff, including Ms. Pappalardo. Dr. Ryan testified he treated all office employees equally.

According to Dr. Ryan, he often took employees to lunch or brought lunch to the entire office. He acknowledged he had lunch with Ms. Pappalardo on two occasions. Dr. Ryan testified he and Ms. Pappalardo traveled to a local restaurant together in his car on her first day at work. On the second lunch outing the two were accompanied by office manager, Michelle Elliot.

Further, Dr. Ryan acknowledged that he invited Ms. Pappalardo to attend a medical conference in Dallas; however, the conference was also open to surgical technicians. He explained that the invitation was his wife's idea and that she planned to accompany them. Pat Ryan, Dr. Ryan's wife, corroborated his testimony and explained she insisted Dr. Ryan ask Ms. Pappalardo to attend well in advance so that she could make necessary child care arrangements for her son. However, in the end, Ms. Pappalardo did not attend the conference because Mrs. Ryan was unable to attend. Office employees Ms. Elliot and Ms. Ackman testified they too had attended medical conferences with one or both of the Ryans in the past and that Dr. Ryan behaved professionally.

Dr. Ryan acknowledged that he examined Ms. Pappalardo's breast lift at her request. According to Dr. Ryan, Ms. Pappalardo was displeased with her prior surgery because it left visible scars on her chest. She asked if Dr. Ryan could redo the surgery after she observed the procedure he used while assisting him with a patient's breast lift. Dr. Ryan examined Ms. Pappalardo's breasts, offered to redo the surgery at a reduced rate and deduct the cost from her paycheck.

Dr. Ryan testified he warned Ms. Pappalardo he intended to terminate her in thirty days for poor job performance. According to Dr. Ryan, Ms. Pappalardo performed poorly by consistently failing to keep the surgery suite clean and sterile, and by committing an egregious error of not having necessary equipment available during surgery. Ms. Elliot and Ms. Ackman corroborated his testimony. Dr. Ryan gave Ms. Pappalardo a thirty-day termination notice because of the upcoming holiday season and the fact that she was a single mother. However, Ms. Pappalardo left of her own volition before the thirty day deadline tolled. Dr. Ryan stopped Ms. Pappalardo's final paycheck to use it to pay for unnecessary supplies Ms. Pappalardo ordered. Shortly thereafter, Complainant phoned Dr. Ryan and told him "[she] knew how to make this very hostile for [him]" and that he would regret that he stopped her paycheck. (Tr. P. 187, Resp. Ex. 10.)

Findings of Fact

Those facts marked with asterisks are facts to which the parties stipulated. The remaining facts are those, after having considered all of the evidence in the record, I found were proved by a preponderance of the evidence. Assertions made in the record which are not addressed in this decision were determined to be unproven or immaterial to this determination.

1. Complainant, Nancy Pappalardo, filed Charge No. 1997CF2400 with the Department of Human Rights on April 2, 1997, alleging to have been aggrieved by practices of sexual harassment prohibited by section 2-102(D) of the Act.*

2. On February 23, 1998, the Department of Human Rights filed a Complaint of Civil Rights Violation on behalf of Nancy Pappalardo. Dr. Robert A. Ryan, M.D., S.C. Plastic and Reconstructive Surgery timely filed an Answer to the Complaint. As such, the parties are subject to the jurisdiction of the Illinois Human Rights Commission and this administrative law judge pursuant to the Human Rights Act, 775 ILCS 5/8-101 *et seq.*

4. Respondent Dr. Robert A. Ryan, M.D., S.C. Plastic and Reconstructive Surgery is a medical practice that employs four employees not including Dr. Ryan. Dr. Robert Ryan is a managerial employee.*

5. From October 7, 1996 to January 9, 1997, Complainant Nancy Pappalardo was employed and paid for her work as a surgical technician by Respondent Dr. Robert A. Ryan, M.D., S.C. Plastic and Reconstructive Surgery.

6. Ms. Pappalardo's surgical job duties were to prepare the operating room for surgery, assist Dr. Ryan during surgery and care for patients in recovery after surgery. Her non-surgical job duties were to aid Dr. Ryan with patient examinations and inform patients about medical procedures employed in the office. In addition, Ms. Pappalardo was charged with ensuring the office was in compliance with OSHA rules.

7. During the workday Dr. Ryan regularly took office staff to lunch. Ms. Pappalardo ate lunch twice with Dr. Ryan.

8. The first time Ms. Pappalardo ate lunch with Dr. Ryan was during her first day at work. The two rode to a restaurant in Dr. Ryan's vehicle. The conversation was strictly professional in nature during lunch.

9. Ms. Pappalardo and Dr. Ryan ate lunch together again on the second day of her employment and were accompanied by office manager Michelle Elliot. The conversation during this lunch was also strictly professional in nature.

10. Early in her employment Dr. Ryan asked Ms. Pappalardo to attend a medical conference open to surgeons and surgical technicians in Dallas, Texas on November 9-13, 1996. He explained to Ms. Pappalardo that the invitation was his wife's idea and that she planned to accompany them. Dr. Ryan also informed Ms. Pappalardo the invitation was contingent upon his wife's attendance as well.

11. Dr. Ryan attended the Dallas conference alone because Mrs. Ryan was unable to attend. Ms. Pappalardo did not attend.

12. Office manager Michelle Elliot and employee Cindy Ackman attended medical conferences with one or both of the Ryans in the past and the atmosphere was strictly professional.

13. During her time of employment Ms. Pappalardo asked Dr. Ryan to examine her breasts. Ms. Pappalardo had a breast mastopexy (breast lift) preformed by her former employer, Dr. Stein. Ms. Pappalardo was displeased with her prior surgery because it left visible scars on her chest. She asked if Dr. Ryan could redo the surgery after she observed the procedure he used while assisting him with a patient's breast lift.

14. Dr. Ryan agreed to examine Ms. Pappalardo so she voluntarily exposed her breasts to him in an exam room at the office. Dr. Ryan performed an assessment of her prior breast mastopexy and evaluated whether or not he could eliminate the scar tissue.

15. Dr. Ryan determined he could eliminate some of the scar tissue and offered to redo the breast mastopexy at cost and deduct the fees from Ms. Pappalardo's paycheck. Ms. Pappalardo declined Dr. Ryan's offer.

16. One evening as the four employees were leaving the office Ms. Pappalardo pulled down her collar and asked Dr. Ryan to look at a rash that had formed on her neck. Dr. Ryan looked at the rash and told Ms. Pappalardo to retrieve antihistamine cream from the supply cabinet and apply it to her neck.

17. Dr. Ryan and his office staff periodically drove out-of-town patients to a local hotel to recover overnight for their follow-up appointments in the office the next day. During her employment, Dr. Ryan asked Ms. Pappalardo to drive a patient to the hotel because she was the only staff member "available" at the time.

18. Dr. Ryan used the term “available” to mean the only staff member who had time to drive the patient to the hotel that day.

19. During surgery on one occasion Dr. Ryan nicked Ms. Pappalardo with a needle. The needle stick did not puncture the skin but was treated immediately. Ms. Pappalardo was offered an AIDS test but she refused.

20. Others in the office have been accidentally nicked with needles because of the close proximity of nurses and assistants to Dr. Ryan and his surgical tools during surgery.

21. Around November 1996, office manager Michelle Elliot became dissatisfied with Ms. Pappalardo's work performance because, among other things, Ms. Pappalardo did not prepare the surgical suite on time for scheduled surgeries.

22. Ms. Pappalardo did not order necessary supplies on time and did not do the surgical laundry as required.

23. Ms. Pappalardo failed to determine if the office was in compliance with OSHA standards as she was asked to do by Dr. Ryan as part of her job duties.

24. On December 13, 1996, Dr. Ryan counseled Ms. Pappalardo on her work performance. Dr. Ryan told Ms. Pappalardo she was not performing the necessary duties of her job and that he intended to terminate her for poor work performance. Dr. Ryan gave Ms. Pappalardo thirty days notice of termination because of the upcoming holiday season and the fact she was a single mother.

25. On January 9, 1997 the area received a large snowfall so Ms. Pappalardo called into the office and inquired if her services were needed for a scheduled rhinoplasty surgery that day. She was informed that her services were needed. Ms. Pappalardo arrived at the office over an hour late.

26. Due to Ms. Pappalardo's tardiness, Dr. Ryan's office contacted a contract nurse, Cindy Ackman, to set up the surgical suite and help with the surgery. Ms. Pappalardo assisted with the surgical preparation once she arrived at the office.

27. As Ms. Ackman and Ms. Pappalardo were setting up the suite for surgery, Ms. Ackman asked where the sterile bovies were kept for surgery. A bovie is a cauterizing tool used to stop excessive bleeding during surgery.

28. Ms. Pappalardo informed Ms. Ackman that Dr. Ryan did not use bovies during rhinoplasty. Dr. Ryan began the rhinoplasty and needed a sterile bovie to stop a patient's excessive bleeding.

29. Ms. Pappalardo told Dr. Ryan there were no sterile bovies because another office staff member failed to obtain them from the hospital where they had been sterilized. An argument ensued and Dr. Ryan stopped the patient's bleeding by using a non-sterile bovie.

30. Ms. Pappalardo voluntarily resigned her employment immediately following the January 9th rhinoplasty procedure without recovering the patient after surgery. She told office manager Michelle Eliot that she was quitting and would not return.

31. After Ms. Pappalardo left Dr. Ryan's employ, he discovered she had ordered an excessive amount of surgical supplies and held her last paycheck to pay for the supplies.

32. When Ms. Pappalardo discovered Dr. Ryan intended to withhold her last paycheck, she phoned the office and stated she "[knew] how to make this very hostile for [him]" and that he would "regret this." Tr. p. 187.

Conclusion of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.

2. Complainant is an "employee" within the meaning of section 2-101(A)(1) Illinois Human Rights Act.

3. At the time of the alleged incidents, Respondent was an "employer" within the meaning of section 2-101(B)(1)(b) and was subject to the provisions of the Act.

4. Complainant failed to establish a prima facie case of sexual harassment in that complainant failed to prove by a preponderance of the evidence that Respondent's conduct was sexual in nature and had the purpose and effect of creating an intimidating, hostile or offensive work environment.

5. Complainant was terminated by Respondent and then voluntarily left her job for reasons unrelated to allegations of sexual harassment.

Determination

Complainant failed to establish a prima facie case of hostile work environment sexual harassment and constructive discharge under section 2-102(D) of the Illinois Human Rights Act.

Discussion

The Illinois Human Rights Act, section 1-102 was enacted in part to ensure that citizens of the State of Illinois are protected from sexual harassment in employment. 775 ILCS 5/1-102(b). The Act defines sexual harassment as follows:

“Sexual harassment” means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment. 775 ILCS 5/2-101(E).

By definition then, liability only attaches where the complained of conduct consists of "unwelcome sexual advances," "requests for sexual favors" or "any conduct of a sexual nature." **Robinson and Jewel Food Stores**, 29 Ill HRC Rep. 198, 219 (1986). In this case Ms. Pappalardo did not complain of "unwelcome sexual advances" or "requests for sexual favors." Therefore, it must be determined that Dr. Ryan's conduct was sexual in nature in order for him to be liable for sexual harassment.

Ms. Pappalardo maintained that during her three month employment she was a victim of sexual harassment that created a hostile work environment by her employer, Dr. Ryan. Further, Ms. Pappalardo claimed she was constructively discharged. In order to prevail in this action Ms. Pappalardo must prove by a preponderance of the evidence that Dr. Ryan’s *conduct* was severe or pervasive enough to alter the conditions of her employment thereby creating an abusive work environment. (See, **Meritor Savings Bank, FSB v. Vinson**, 477 U.S. 57, 91 L. Ed. 2d. 49, 106 S.Ct. 2399 (1978)).

The Commission has ruled there is no bright line test for determining a type of behavior or conduct leads to liability for sexual harassment. Instead, the Commission has charged the administrative law judge to consider not only what actions arose in the workplace, but how the

actions were done in relationship to the "specific behavior of the individuals involved to the total working environment." **Robinson and Jewel Food Stores**, 29 Ill HRC Rep. 198, 204 (1986). The seminal case in determining how actions affect the workplace environment as a whole was decided by the United States Supreme court in the matter of **Harris v. Forklift Sys., Inc.**, 510 U.S. 17, 126 L. Ed. 2d 295, 114 S.Ct. 367, 370 (1993). In **Harris**, the Supreme Court reaffirmed its holding in **Meritor** and further ruled that Respondent's conduct must be viewed objectively and subjectively. In other words, in order to prevail Complainant must show Dr. Ryan's conduct created a workplace environment that *she* found abusive and that *a reasonable person* would find abusive. If both standards are not met then the Act has not been violated. *Id at 21, 22.*, see also **Barlow and Cook County Dep't of Corrections & Michael Figliulo**, _____ Ill. HRC Rep. _____, slip op. at 19. (1993CF2498, April 30, 1998).

However, initially Complainant must show that Respondent's alleged conduct was sexual in nature and rises to a level of hostility so as to be considered actionable conduct **Scott v. Sears, Roebuck & Co.**, 798 F.2d 210 (7th Cir. 1986). Ms. Pappalardo complains she was sexually harassed at the hands of Dr. Ryan because she felt "uncomfortable" going to lunch with him, he invited her to attend a medical conference alone with him, he asked to see her breasts, he asked her to drive male patients to a hotel to recover from surgery, and stuck her with a needle during surgery. While all of these things may be true, we must examine deeper into the manner in which these actions were conducted and what impressions a reasonable person should gather from them.

First, it is important to note that Ms. Pappalardo's testimony was rebutted by each and every witness whom she claimed had personal knowledge of the incidents she complained of. In fact, the witnesses testified to just the opposite of Ms. Pappalardo's testimony and corroborated Dr. Ryan's testimony thereby lending credence to his version of events.

Furthermore, Ms. Pappalardo entered into evidence a diary that allegedly contained an accurate depiction of sexually harassing events as they occurred at the office. The diary was

sketchy at best and contained hand writing discrepancies. Some entries allegedly entered on the same day were written in both pencil and ink and appeared to be two different forms of penmanship. When questioned about the diary, Ms. Pappalardo could not explain the handwriting and the discrepancies in the type of writing instruments used to make the entries, thus diminishing the weight afforded to the diary.

In determining Dr. Ryan's behavior toward Ms. Pappalardo and others in the office it is necessary to examine his conduct beginning on Ms. Pappalardo's first day at work. On her first day Ms. Pappalardo accepted an invitation to lunch with Dr. Ryan at local restaurant and while she felt uncomfortable, she also testified Dr. Ryan's behavior was professional and "nothing unusual." The two ate lunch a second time within the first few days of her employment. The second lunch encounter was also benign. In fact, the office manager accompanied the two to lunch that day at a local hot dog stand.

Second, Dr. Ryan invited Ms. Pappalardo to a surgical conference in Dallas that made Ms. Pappalardo "uncomfortable" because Dr. Ryan asked her if she knew anyone in Dallas who she could stay with in order to avoid the appearance of impropriety. It is difficult to credit Ms. Pappalardo's claimed level of discomfort with this request given the fact that Dr. Ryan's wife would accompany them to the conference. It was even made clear to Ms. Pappalardo that the invitation to the conference was contingent upon Mrs. Ryan's company. This is evidenced by the fact that Dr. Ryan attended the conference alone because Mrs. Ryan had to stay home to care for her ailing parents during the time of the conference. Finally, the record in this case was clear that the other members of the staff had accompanied Dr. Ryan to conferences in the past and his behavior was strictly professional.

Third, Dr. Ryan examined Ms. Pappalardo's breasts. While this is true, it is also true that Ms. Pappalardo insisted he do so to make an assessment of them for another breast mastopexy procedure. Nothing in the record indicates that the examination was anything less than clinical

and professional. Further, the fact that Ms. Pappalardo exposed her breasts to her alleged harasser does not fit the actions of a woman who is uncomfortable in her working environment.

Fourth, Dr. Ryan asked Ms. Pappalardo to drive a male patient to a hotel because she was "available." Ms. Pappalardo attempted to make this request suspicious, but further examination points to a harmless request from Dr. Ryan to drive the patient to the hotel because others in the office were busy and Ms. Pappalardo was not. The record in this case shows it was a common practice for staff members to drive out of town patients to a designated hotel to recover until a follow-up appointment the next day.

Fifth, Ms. Pappalardo claimed to be uncomfortable at Dr. Ryan's office because she asked him to examine a rash on her neck which he allegedly determined was attributed to an excessive amount of sex. In reviewing the record, I find this allegation simply unbelievable. Others present at the office that evening testified Dr. Ryan made no such comment. Instead, Dr. Ryan instructed Ms. Pappalardo to retrieve antihistamine cream from the medicine cabinet and apply it to her neck.

Finally, Ms. Pappalardo claimed Dr. Ryan stuck her with a needle intentionally during surgery because she repeatedly refused his sexual advances. However, other staff members testified that receiving a needle stick was common to those assisting with surgery because of the close proximity to needles and other tools. It is clear from the record that the stick was accidental and had nothing to do with being rebuffed by Ms. Pappalardo. There is even evidence that Ms. Pappalardo was not concerned with the stick because she refused an AIDS test which was offered immediately after the accident.

None of the actions described above, taken in part or as a whole, can be described as actionable conduct of a sexual nature. In fact, it appears from the record that precautions were taken to ensure a professional environment. Ms. Pappalardo testified herself that nothing out of the ordinary happened during lunch with Dr. Ryan. In addition, Dr. Ryan made clear clinical notes of the examination of her breasts as would be expected of any patient exam.

The invitation to the Dallas also was painstakingly made to ensure professionalism by telling Ms. Pappalardo she could only attend if his wife went along. Even if we take as true Ms. Pappalardo's allegation that Dr. Ryan asked her if there was anyone she could stay with in Dallas, it still does not demonstrate that Dr. Ryan had any sort of sexual rendezvous in mind with Ms. Pappalardo while the two were out of town together. Dr. Ryan merely attempted to protect them from assumptions of others while they were together at the hotel where the conference was being held.

Finally, no one who was allegedly present during the other incidents complained of could corroborate Ms. Pappalardo's testimony. While it is obvious that conduct that is sexually harassing in nature does not necessarily take place in front of others, the conduct alleged here did so according to Ms. Pappalardo.

Because the actions of Dr. Ryan were not proven to be sexual in nature, they cannot be said to create an intimidating or hostile work environment. However, even if it could be argued that Respondent's conduct was somehow sexual in nature, a reasonable person would not conclude the conduct described in this decision was abusive enough to compel Ms. Pappalardo to leave her position of employment and therefore fails to meet the objective standard in determining if Dr. Ryan's conduct created an abusive environment.

Dr. Ryan eventually terminated Ms. Pappalardo for very poor work performance. She was given a thirty-day notice of termination which would allow her to procure other employment. However, tempers flared the day Dr. Ryan performed a rhinoplasty surgery without the use of a sterile cauterizer. No doubt Ms. Pappalardo assumed whatever was left of her working relationship with Dr. Ryan had been severed by the gross actions of the day and she left of her own accord.

In this case, the conduct and actions of Dr. Ryan, as described by Ms. Pappalardo and taken in part or as a whole, do not form a prima facie case of sexual harassment. Therefore, the allegation of constructive discharge does not need to be addressed. It is clear that after Ms.

Pappalardo left the employ of Dr. Ryan she was at odds with him over the type and amount of supplies she ordered for the office. While the manner that Dr. Ryan chose to recover the cost of the supplies may not have been the most professional, it incensed Ms. Pappalardo to the point she threatened to make him regret his actions. Her comment that fateful day is a clear indication of the motive in filing this cause of action and does not demonstrate constructive discharge.

Respondent's attorney in his closing brief requests attorneys fees as a sanction for Ms. Pappalardo filing a frivolous claim. While it is true that Ms. Pappalardo did not prevail in her claim, that type of requested relief is rare. I do agree Ms. Pappalardo's comment to Dr. Ryan that he would regret stopping her paycheck is suspect, however I do not find the frivolity of this claim well supported by the record. Therefore, Respondent's request for attorney's fees is denied.

RECOMMENDATION

Based on the above findings of fact and conclusion of law, I recommend that that the Illinois Human Rights Commission dismiss with prejudice the complaint, together with underlying Charge number 1997CF2400 against Respondent Dr. Robert A. Ryan, M.D., S.C. Plastic and Reconstructive Surgery.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THIS 31st DAY OF MAY, 2001