

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GAYLE STEVENSON, M. D.,                    )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 02-0240  
  )  
JACKSON MEMORIAL HOSPITAL,            )  
  )  
      Respondent.                         )  
\_\_\_\_\_                                      )

RECOMMENDED ORDER

Pursuant to notice, this cause came on for final hearing before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, in Miami, Florida, on July 12, 2002.

APPEARANCES

For Petitioner: Gayle Stevenson, M.D., pro se  
1080 Runnymede Street  
East Palo Alto, California 94303

For Respondent: William X. Candela, Esquire  
Dade County Attorney's Office  
Stephen P. Clark Center  
111 Northwest 1st Street, Suite 2810  
Miami, Florida 33128

STATEMENT OF THE ISSUE

Whether Respondent committed an unlawful employment practice against Petitioner in violation of Section 760.10 et. seq., Florida Statutes, as set forth in Petitioner's Petition

for Relief filed with the Florida Commission on Human Relations (FCHR) and, if so, the penalties that should be imposed.

PRELIMINARY STATEMENT

Prior to June 29, 1998, Respondent accepted Petitioner's application for employment to work in its clinical anesthesia program, which is operated in conjunction with the Public Health Trust. By letter dated June 29, 1998, Respondent's program director advised Petitioner that her employment was terminated because she had made false statements on her application and related documents. Thereafter, Petitioner timely exercised her right to have the termination decision reviewed by Respondent's senior vice president for medical affairs, who upheld the termination decision on July 21, 1998. Next, Petitioner exercised her right to a hearing on whether there was just cause to terminate her employment before a peer review committee, which upheld the termination decision on December 1, 1998. On December 23, 1998, the president of the Public Health Trust upheld the termination of Petitioner's employment following his review of the decision of the peer review committee. Petitioner filed a grievance as a member of a collective bargaining union known as the Committee of Interns and Residents, alleging that the termination of her employment was without cause. An arbitration hearing was conducted October 21, 1999, with both parties being represented by counsel. The Opinion and Award of

the arbitrator, entered November 1, 1999, found that Petitioner's employment was terminated for just cause and denied the grievance.

Petitioner filed a Charge of Discrimination with the FCHR against Respondent in March 2000. Following an investigation, the FCHR issued a determination of no cause on December 10, 2001. Petitioner filed a Petition for Relief with the FCHR on January 14, 2002, in which Petitioner alleged that her termination was in retaliation for complaints she had made pertaining to racial discrimination.

Thereafter the cause came on for hearing as noticed. At the beginning of the hearing, Respondent moved to dismiss the proceeding on the grounds that the Petition for Relief was not timely and, consequently, the Division of Administrative Hearings lacked jurisdiction. Because the motion was not timely filed, the undersigned reserved ruling on the motion and proceeded with the final hearing. Respondent has not pursued its motion to dismiss, and the undersigned hereby denies the motion as being moot.

At the final hearing, Petitioner testified on her own behalf and presented four sequentially numbered exhibits, each of which was admitted into evidence. Respondent presented the testimony of one witness and offered 18 sequentially numbered exhibits, each of which was admitted into evidence.

A Transcript of the proceeding was filed July 24, 2002. Petitioner filed a post-hearing pleading styled "Request for Final Order." That pleading has been construed as being a proposed recommended order, and it has been duly considered by the undersigned in the preparation of this Recommended Order. Respondent did not file a post-hearing submittal.

FINDINGS OF FACT

1. Petitioner is a female African-American who has completed medical school.
2. On March 19, 1997, Petitioner completed an "Application for Residency," seeking to participate in Respondent's clinical anesthesiology residency program. That program is operated in conjunction with the Public Health Trust. Applicants selected to participate in the residency program become employees of Respondent. The terms and conditions of employment are subject to the policies of both Respondent and the Public Health Trust.
3. Petitioner's application to participate in the residency program related that she had completed an internship at University of Maryland/Harbor Hospital (Harbor) and two years of anesthesiology residency at King/Drew University, Los Angeles (King). Petitioner signed the application on March 19, 1997.
4. On April 30, 1997, Petitioner submitted an "Application for Graduate Medical Education at the Jackson Memorial Medical Center" that required her to "list chronologically your

activities from time of graduation from Medical School to present. Specify type of post graduate training if any."

Petitioner listed the internship at Harbor and the residency at King. She signed the application under the declaration: "I hereby declare that I have examined this application; and to the best of my knowledge and belief, it is true, correct, and complete."

5. Petitioner was accepted into Respondent's clinical anesthesiology residency program based, in part, on the information reflected in the foregoing applications. That acceptance created an employee/employer relationship between Petitioner and Respondent.

6. On July 17, 1997, Petitioner submitted a completed "Personnel Form" to Respondent. The Personnel Form required her to disclose all her activities since her completion of medical school. On that form Petitioner listed her previous internship at Harbor and her previous residency training at King. She verified it was correct to the best of her knowledge and signed the form.

7. At the times pertinent to this proceeding, Dr. Brian Craythorne was a Professor of Medicine at the University of Miami and the Chairman of Respondent's Department of Anesthesiology. Dr. Craythorne had supervisory responsibility

for Petitioner and was instrumental in selecting her to participate in the residency program.

8. In April 1998, Dr. Craythorne received routine information from the American Board of Anesthesiology (ABA) setting forth the number of hours of training from other anesthesiology residency programs for which each resident participating in Respondent's residency program had received credit. The information from the ABA also set forth the number of hours of training for which each resident had received no credit.

9. From that information, Dr. Craythorne learned that Petitioner had a total of 39 hours of residency training in anesthesiology from other programs for which she had received no credit.

10. Three of the 39 hours of training for which she had no training were at King, which was reflected on her application and related paperwork. The training at King is not an issue in this proceeding.

11. The additional 36 hours of residency training for which she received no credit was from Howard Hospital. 1/ The program at Howard, which was equivalent to a three-year program, was not reflected on any application or related document Petitioner submitted to Respondent before April 1998. Petitioner's failure to disclose her participation in the

residency program at Howard was intentional. Petitioner's failure to disclose her participation in the residency program at Howard violated the clear policies of both Respondent and the Public Health Trust that require applications and related documents to be truthful, correct, and complete.

12. Dr. Craythorne confronted Petitioner about the foregoing omissions in her applications and associated paperwork. In response, Petitioner submitted a letter dated May 27, 1998, in which she tried to explain why she did not obtain credit at Howard and why she had not divulged that information to Respondent. Petitioner asserted that she had sued Howard and had subsequently settled the litigation with instructions from her attorney that she could not discuss the litigation. 2/

13. Petitioner's letter of May 27, 1998, was not satisfactory to Dr. Craythorne.

14. On June 3, 1998, Dr. Craythorne issued to Petitioner a "Disciplinary Action Report" (DAR) advising he was recommending that Petitioner be dismissed from the residency program (thereby terminating her employment with Respondent). The grounds for the action were her violation of Respondent's policies by making a false statement or statements on her application for employment and related documents and her violation of Public

Health Trust Policy #305 pertaining to falsifying records or any other record of the Trust.

15. Referencing Respondent's Department of Anesthesiology, the DAR also contained the following:

Our department's recruiting and hiring practices . . . includes a policy/practice not to accept residents [sic] who have had more than one prior anesthesia residency experience for the clinical anesthesia years 1 through 3. [3/]<sup>1</sup>

16. On June 29, 1998, Dr. Craythorne wrote a letter to Petitioner terminating her employment on the grounds set forth in the DAR. The termination letter advised Petitioner that she could request the Senior Vice President for Medical Affairs (Dr. Gerard A. Kaiser) to review the decision to terminate her participation. The letter also advised Petitioner that "[u]nless the Senior Vice President rescinds the proposed action, it will become effective following his review and decision."

17. On July 21, 1998, Dr. Kaiser advised Petitioner that he had reviewed the facts surrounding her termination and agreed with the termination decision.

18. Consistent with her rights pursuant to the applicable collective bargaining agreement, Petitioner requested and received a hearing before the Peer Review Committee, which was composed of other participants in the anesthesiology residency



program. On December 1, 1998, the Peer Review Committee issued its report upholding Petitioner's termination for the reasons cited by Dr. Craythorne.

19. On December 23, 1998, Ira C. Clark, president of the Public Health Trust, advised Petitioner that he had upheld her dismissal based on his review of the Peer Review Committee's findings and recommendation.

20. Petitioner thereafter filed a grievance pursuant to her collective bargaining rights. On October 21, 1999, an evidentiary hearing was conducted before an arbitrator. On November 1, 1999, the arbitrator entered his Opinion and Award upholding Petitioner's termination of employment.

21. Petitioner thereafter filed a complaint of discrimination with the FCHR on or about March 27, 2000. The gravamen of the complaint was that Respondent fired her in retaliation for her complaint to Dr. Craythorne that another resident had made a derogatory racial comment towards her.

22. On December 10, 2001, the FCHR entered a determination of "no cause," determining that there was no cause to believe that an unlawful employment practice had occurred.

23. On January 14, 2002, Petitioner filed a Petition for Relief from an unlawful employment practice with the FCHR. The Petition alleged the following facts in support of her claim of discrimination:

On April 1, 1998, a racial remark was made to me by Dr. Kirsten O'Neal, which was, "we know how lazy you Blacks are." I reported it (the statement) to Dr. Craythorne and Dr. Brindle, as well as in writing (copies are in my file). Dr. Craythorne asked me if I had any witnesses, I said yes. The following month they decided to investigate my application, and terminated me on July 1998 (sic).

24. The Petition described the disputed issues of fact as follows:

I was terminated because I did not put on my application that I had worked for Howard Hospital in Washington, D. C. They stated the reason I was terminated is because the ABA (American Board of Anesthesiology) requires that you only attend two programs if you have received credit. I did not receive any credit. Please see the enclosed pamphlet from the ABA at page 9.

25. The Petition set forth the following ultimate facts entitling Petitioner to relief:

When JMH terminated me, it was because I made a claim of racial discrimination, which I reported prior to investigation of my application. Had I not complained of racial remarks that was made to me by the above Dr. Kirsten O'Neal, it would not have come up about my application.

26. The evidence established that Petitioner complained to Dr. Craythorne that Dr. O'Neal had made the derogatory, racial remark set forth in the Petition. 4/

27. There was no evidence to establish a link between the complaint made by Petitioner to Dr. Craythorne pertaining to

Dr. O'Neal and the decision to terminate her participation in the residency program.

28. Respondent established that Petitioner was terminated because she failed to adhere to Respondent's and the Public Health Trust's clear policies requiring applications and other employment documents to be truthful, correct, and complete.

#### CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes.

30. Section 760.10, Florida Statutes, provides that it is an unlawful employment practice for an employer:

(1)(a) to discharge or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

31. Petitioner has the burden of establishing by preponderance of the evidence a prima facie case of discrimination. If that prima facie case is established, the defending Respondent must articulate a legitimate, non-discriminatory reason for the action taken against the Petitioner. The burden then shifts back to the Petitioner to go forward with evidence to demonstrate that the offered reason is

merely a pretext for unlawful discrimination. See McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

32. Petitioner presented no credible evidence that would establish a prima facie case of discrimination against Respondent.

33. The overwhelming evidence presented in this proceeding is that Respondent had legitimate, non-discriminatory reasons for terminating Petitioner's participation in the residency program.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief filed in this case.

DONE AND ENTERED this 16th day of August, 2002, in  
Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of August, 2002.

ENDNOTES

1/ Howard Hospital is operated in conjunction with Howard University, Washington, D.C.

2/ There was no competent evidence as to the terms of any settlement agreement with Howard. Even if one were to accept Petitioner's statement that her attorney told her not to discuss the settlement, that does not explain her failure to disclose the fact that she had participated in the Howard residency program.

3/ The DAR stated that one reason for the department's policy is that the ABA allows a total of two anesthesia programs for the clinical anesthesiology 1 through 3 residency years. Based on the department's policy, Petitioner clearly would not have been accepted into Respondent's residency program had Respondent known of her participation in two prior residency programs. Petitioner's Exhibit 1 is an attempt to refute the department's policy by introducing a letter from the ABA dated July 10, 2002, that appears to conflict with Respondent's description of the ABA policy. It should be noted that the letter is not competent evidence because it is uncorroborated hearsay and it does not speak to the ABA's policy at the times pertinent to this proceeding. More importantly, Petitioner has missed the point. She was fired because she failed to disclose her participation

in the Howard residency program and because she submitted falsified documents to Respondent. Whether she would have been discharged for having participated in two prior residency programs is not in issue because such participation was not the reason for her termination.

4/ There was no evidence, other than Petitioner's self-serving, uncorroborated testimony that Dr. O'Neal actually made the derogatory remark attributed to her.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.