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EEOC v. Lutheran Medical Center and Conrado Ponio, M.D.

Judge Leonard Sand

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EEOC v. Lutheran Medical Center and Conrado Ponio, M.D.

Keywords

EEOC, Lutheran Medical Center, Conrado Ponio M.D., 01 Civ. 5494 (LBS) (MDG), Consent Decree, Hostile Work Environment, Sexual Harassment, Sex, Female, Healthcare, Employment Law, Title VII

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

01 Civ. 5494 (LBS) (MDG)

LUTHERAN MEDICAL CENTER,

Defendant.
-----X

-----X
ANNA GIVANT, SHEILA LINZ, PHYLLIS
EMMA, IRINA LARINA, IYA DUBSON,
ISABELA FIDALA, DENISE GATTO, and
KATHLEEN ROONEY,

Plaintiffs-Intervenors,

v.

LUTHERAN MEDICAL CENTER and
CONRADO PONIO, M.D.,

Defendants.
-----X

CONSENT DECREE

1. The United States Equal Employment Opportunity Commission ("EEOC"), Plaintiffs-Intervenors, and Lutheran Medical Center ("LMC") are the parties (collectively "the Parties") to this Consent Decree ("Decree").

BACKGROUND

2. On August 15, 2001, EEOC filed, and subsequently amended, the complaint commencing this Action, alleging that LMC engaged in unlawful employment practices on the basis of sex in

violation of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.* (“Title VII”).

3. The Amended Complaint was based on charges by Iya Dubson, Phyllis Emma, Isabella Fidala, Anna Givant, Denise Gatto, Irina Larina, Sheila Linz, Kathleen Rooney (collectively “Charging Parties” or “Plaintiffs-Intervenors”). EEOC alleged that Dr. Ponio, an employee of LMC, acting through actual or apparent authority as a supervisor, had subjected Charging Parties and other similarly situated female employees to sexual harassment during their medical examinations. Further, the Amended Complaint alleged that LMC knew or should have known of the sexual harassment and failed to take adequate measures to prevent such sexual harassment.

4. Charging Parties, through counsel, intervened as Plaintiffs in this action. The claims by Plaintiffs-Intervenors have been resolved in a Settlement Agreement and General Release between LMC and Plaintiffs-Intervenors (“Settlement Agreement”).

5. LMC denies the allegations made in the complaints of EEOC and Plaintiffs-Intervenors. This Decree does not constitute an adjudication or finding by this Court on the merits of the allegations of the complaints. Nothing contained in this Decree shall be construed as an admission of liability on the part of LMC. Other than this Decree, all documents and communications exchanged in the course of settlement negotiations shall be inadmissible in any legal proceeding except in actions to enforce this Decree.

GENERAL PROVISIONS

6. In order to avoid the uncertainties and expense of litigation, and in consideration of the mutual promises, agreements and consideration contained herein, EEOC, Plaintiffs-Intervenors, and LMC do hereby stipulate and consent to the entry of this Decree as final and binding between the Parties.

Resolution

7. This Decree resolves all issues raised in EEOC Charge Numbers 160-AO-1848 through 160-AO-1855, all claims presented by EEOC's Amended Complaint, and all claims presented by Plaintiffs-Intervenors' Complaint. The Decree in no way affects EEOC's right, in accordance with EEOC procedures, to process any future charges that may be filed against LMC, and to commence civil actions on any such charges, so long as such charges do not include the claims contained in EEOC Charge Numbers 160-AO-1848 through 160-AO-1855 and EEOC's Amended Complaint.

Jurisdiction

8. The Parties agree that this Court has jurisdiction over the subject matter of this action and the Parties for the duration of this Decree, that venue is proper, and that all administrative prerequisites have been met. No party shall contest the validity of this Decree or the jurisdiction of this Court to enforce this Decree and its terms.

MONETARY RELIEF

9. In settlement of this action and in exchange for Release Agreements duly executed by Claimants (as defined in paragraph ten (10) below) and by Charging Parties, LMC shall pay a total of five million four hundred twenty-five thousand dollars (\$5,425,000) to be distributed amongst Claimants, Charging Parties, and Charging Parties' attorneys. (The Release Agreements for Claimants shall be in the form attached as Exhibit A.) No part of this monetary amount will be spent on the costs of implementing this Decree or for any other injunctive relief put forth in this Decree.

Claim Fund

10. Of this total monetary amount, three million four hundred fifty two thousand dollars (\$3,452,000) will be distributed to Claimants ("Claim Fund"). Claimants are those individuals, other than Charging Parties but including the forty-three (43) individuals known to EEOC and LMC, who have contacted EEOC in the course of this action and EEOC believes to have experienced sexual harassment by Dr. Ponio. EEOC shall have complete discretion over the allocation of the Claim Fund.

11. Within thirty (30) days of the entry of this Consent Decree, EEOC shall inform each Claimant (in the form attached as Exhibit B) of the amount that she would receive from the Claim Fund ("Notification Letter"). Claimants wanting to receive from the Claim Fund must return a duly executed Release Agreement and completed Form W-9 to EEOC within thirty (30) days of the date of EEOC's Notification Letter.

12. If any releases are not returned to EEOC within the deadline prescribed in paragraph eleven (11) above, then EEOC will reallocate pro rata the amounts that have not been released and follow the procedures provided in this paragraph. Within fourteen (14) days after the deadline for receipt of executed releases, EEOC will notify those Claimants who have returned duly executed Release Agreements within the deadline, of the pro rata increase to their initial allocation and forward to them a revised Release Agreement reflecting the total amount reallocated to that Claimant. Within thirty (30) days of the date of this notification letter, EEOC must receive from these Claimants their duly executed Release Agreements.

13. Within fourteen (14) days of the deadline for receipt of duly executed Release Agreements, EEOC will forward all such duly executed Release Agreements and fully completed and executed

Form W-9s from each Claimant to LMC's counsel, Bettina B. Plevan, Esq., Proskauer Rose LLP, 1585 Broadway, New York, New York 10036-8299 ("LMC's Attorneys"). If there is a reallocation of the Claim Fund pursuant to paragraph twelve (12) above, only the duly executed Release Agreements received pursuant to paragraph twelve (12) must be forwarded to LMC's Attorneys. Within ten (10) days of receipt of both duly executed releases and fully completed and executed Form W-9s from each Claimant forwarded by EEOC, LMC or its attorneys or its insurers on its behalf shall distribute to Claimants the portion of the Claim Fund specified by EEOC and referenced in the release agreements. The total amount allocated by EEOC shall be exactly equal to the total Claim Fund of the three million four hundred fifty two thousand dollars (\$3,452,000) specified in paragraph ten (10), above. This payment to Claimants is for compensatory damages for pain and suffering and emotional distress. This payment does not in any way constitute backpay. In or about January or February 2004, Forms 1099 shall be mailed to Claimants. The payment and Forms 1099 will be mailed to the addresses provided by Claimants in their duly executed Release Agreements. A copy of the checks and Forms 1099 shall be sent to EEOC at the same time when they are sent to Claimants.

Charging Parties

14. The remaining one million nine hundred seventy three thousand dollars (\$1,973,000) will be distributed in accordance with, and under the terms of, the Settlement Agreement between LMC and Plaintiffs-Intervenors. Pursuant to the terms of the Settlement Agreement, LMC or its attorneys or its insurers on its behalf will pay three hundred sixty five thousand seven hundred fifty dollars (\$365,750) to Beldock Levine & Hoffman and two hundred ninety-nine thousand two hundred fifty dollars (\$299,250) to Wolf Haldenstein Adler Freeman & Herz as attorneys' fees

and attorneys' expenses. LMC or its attorneys or its insurers on its behalf will pay the remaining one million three hundred and eight thousand dollars (\$1,308,000) to the eight Charging Parties according to the terms and conditions of the Settlement Agreement. This payment to Charging Parties is for compensatory damages for pain and suffering and emotional distress. This payment does not in any way constitute backpay.

NOTICE POSTING

15. LMC acknowledges that it is committed as a matter of medical center policy and is required as a matter of law to conduct all of its operations in compliance with the requirements of Title VII regarding the prohibition of sexual harassment and retaliation against employees for exercising their rights under Title VII. In furtherance of this commitment, LMC shall post and maintain in Occupational Health Services offices, for the duration of this Decree, the notice of non-discrimination (in the form attached as Exhibit C), in places where employee notices are generally posted in such offices.

ANTI-HARASSMENT POLICY

16. LMC represents that it will maintain, and cause to be published in LMC's Employee Handbook, the Policy Prohibiting Discrimination, Harassment and Retaliation (the "Policy") (in the form attached as Exhibit D), which includes provisions regarding sexual harassment and retaliation and complaints and investigations regarding the same. These provisions shall not be deemed to prohibit any employee from filing a charge of discrimination with the EEOC or any other administrative agency. The Policy shall be distributed to all LMC current employees within thirty (30) days following the Court's entry of this Decree and all new LMC employees at the time when LMC makes its employment offer before the earlier of their pre-employment physical

assessments or orientation sessions. The Policy shall apply to every LMC current employee regardless of whether such employee may also avail herself of a collectively bargained grievance procedure. During the term of this Decree, changes initiated by LMC to the Policy shall be subject to approval by EEOC, which shall not be unreasonably withheld.

ANTI-DISCRIMINATION TRAINING

17. LMC shall provide mandatory training on the anti-discrimination requirements of federal, state and local law, including sexual harassment, to all current employees. During the term of this Decree, changes initiated by LMC to such training shall be subject to approval by EEOC, which shall not be unreasonably withheld. The training shall be substantially in the following format:

18. MANAGEMENT TRAINING

(a) Within six (6) months of the entry of this Decree, management-level employees (defined as employees holding the title of supervisor and above) will be given a live training session of approximately two (2) hours and attended by approximately thirty-five (35) participants per session.

(b) Management training sessions shall include the viewing and discussion of the "Sexual Harassment: Is It or Isn't It," videotape provided by Provant Media and designed specifically for medical centers like LMC and a presentation covering, without limitation: (i) a summary of the laws governing sexual harassment, discrimination and retaliation; (ii) examples of conduct prohibited under the applicable laws and LMC's anti-discrimination policies; and (iii) a summary of the procedures and policies that LMC has instituted to prevent all forms of harassment and discrimination, including procedures regarding receiving, documenting and investigating claims of sexual harassment. In addition, LMC's management training sessions will

include case studies covering a variety of scenarios and a question/answer session. Copies of LMC's Policy Prohibiting Discrimination, Harassment and Retaliation will be distributed at all management training sessions.

(c) Management-level employees who are unable to attend a live training session due to patient care responsibilities will be required to view a videotape of such a training session within six (6) months of the entry of this Decree.

(d) Within twenty (20) days of completing the above program of management training, LMC will notify the EEOC of its completion of the program and will provide the EEOC with a list of attendees.

(e) In the third (3rd) year after entry of this Decree, all management-level employees will be required to complete an interactive web-based refresher training of approximately one (1) hour provided by WeComply, Inc. and designed to ensure their familiarity with and understanding of LMC's Policy Prohibiting Discrimination, Harassment and Retaliation.

19. NON-MANAGEMENT TRAINING

(a) Within six (6) months of the entry of this Decree, non-management employees (defined as all bargaining unit employees and all other employees below the level of supervisor) will be given one (1) training session of approximately one-and-a-half (1.5) hours and attended by no more than seventy (70) participants per session.

(b) Non-management training shall include the viewing and discussion of the "Sexual Harassment: Is It or Isn't It" videotape from Provant Media and designed specifically for medical centers like LMC and a presentation covering, without limitation: (i) a summary of the laws governing sexual harassment, discrimination and retaliation; (ii) examples of conduct

prohibited under the applicable laws and LMC's anti-discrimination policies; and (iii) a summary of the procedures and policies that LMC has instituted to prevent all forms of harassment and discrimination, including procedures regarding reporting complaints of sexual harassment. In addition, non-management training will include case studies covering a variety of scenarios and a question/answer session. Copies of LMC's Policy Prohibiting Discrimination, Harassment and Retaliation will be distributed at all non-management training sessions.

(c) Non-management employees who are unable to attend a live training session due to patient care responsibilities will be required to view a videotape of such a training session within six (6) months of the entry of this Decree.

(d) Within twenty (20) days of completing the above program of non-management training, LMC will notify the EEOC of its completion of the program and will provide the EEOC with a list of attendees.

(e) In the third (3rd) year after the entry of this Decree, all non-management employees will be required to complete an interactive web-based refresher training of approximately one (1) hour provided by WeComply, Inc. and designed to ensure their familiarity with and understanding of LMC's Policy Prohibiting Discrimination, Harassment and Retaliation.

MISCELLANEOUS

20. Any Claimant desiring reinstatement to the same position she previously held with LMC must provide EEOC notice by the same deadline when she is to return her duly executed Release Agreement. Within five (5) days of receipt of such notice, EEOC will forward the name of any such Claimant desiring reinstatement to LMC's Attorneys. LMC shall reinstate any such Claimant to the same position she previously held with LMC if (i) a job opening for that position

becomes available during the period when this Decree is in effect; (ii) such Claimant had left LMC due to a sexually inappropriate medical exam; (iii) such Claimant had not been terminated by any subsequent employer due to performance problems; and (iv) the reinstatement would not cause a violation of any collective bargaining agreement applicable to LMC. If more Claimants express a desire for reinstatement to their prior positions than there are openings, then the order of reinstatement will be prioritized by the date when the Claimant left her employment at LMC with those departing earlier being reinstated first. For the purposes of this paragraph only, the term "Claimant" includes Charging Parties.

21. LMC will implement the new policy (in the form attached as Exhibit E), for the conduct by Occupational Health Services of medical examinations of LMC employees.

22. LMC agrees that it will neither rehire nor grant attending privileges to Conrado Ponio, M.D.

23. Except as specified in the "Relief" section of this Decree, each party shall bear its own attorneys' fees and costs incurred in this action; provided, however, that no claimant taking money referred to in this Decree shall be deemed to be a prevailing party under the law with respect to this case.

24. This Decree constitutes the complete understanding among the parties hereto. No other promises or agreements shall be binding unless agreed to in writing and signed by these parties. No waiver, modification or amendment or any provision of the Consent Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court, except that the parties may mutually agree to modify the procedures in paragraphs 15-20 above without the approval of the Court.

25. All parties hereto have participated, through their respective counsel, in

the drafting of this Decree, and this Decree shall not be construed more strictly against any party.

Paragraph headings have been added for convenience only, and shall not affect the construction of this Decree.

26. This Decree will remain in effect for a period of three years from the date of entry of this Decree by the Court. The Court shall retain jurisdiction during this period solely for the purpose of enforcement of any provision of the Consent Decree.

Dated: New York, New York
April 7, 2003

Dated: New York, New York
April 6, 2003

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

PROSKAUER ROSE LLP

By Katherine E. Bissell
Katherine E. Bissell
Regional Attorney

By Bettina B. Plevan
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(212) 969-3065

Elizabeth Grossman
Supervisory Trial Attorney

Kam S. Wong
Trial Attorney
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004-2112
(212) 336-3703

Dated: New York, New York
April 3, 2003

BELDOCK, LEVINE, & HOFFMAN

By: Robert L. Herbst
Robert L. Herbst
Attorneys for Plaintiffs-Intervenors
99 Park Avenue, 16th Floor
New York, New York 10016
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Dated: New York, New York
April 3, 2003

FARUQI & FARUQI LLP

By: Adam R. Gonnelli
Adam R. Gonnelli
Attorneys for Plaintiffs-Intervenors
Faruqi & Faruqi LLP
320 East 39 Street, 3rd Floor
New York, New York 10016
(212) 983-9330

SO ORDERED:

Leonard Sand
Leonard Sand, U.S.D.J.

4/21/03
Date:

4.

EXHIBIT A

RELEASE AGREEMENT

In consideration for \$ _____ paid to me by Lutheran Medical Center, in connection with the resolution of *EEOC v. Lutheran Medical Center*, 01 CV 5494, I agree to the following:

1. I, on behalf of myself and my heirs, executors, administrators and assigns, hereby release and discharge LMC, and its parent, subsidiary and affiliated corporations and entities, insurers, all unions with a collective bargaining relationship with LMC, and all of its or their respective current or former directors, officers, employees, agents, attorneys, benefit plans, predecessors, affiliates, successors and assigns, including, but not limited to, Conrado Ponio, M.D. (collectively "Releases"), whether acting in their representative capacities or otherwise, from any and all claims that were raised in EEOC's Amended Complaint in *EEOC v. Lutheran Medical Center*, 01 CV 5494.

2. I agree to pay any and all additional amounts that may be determined to be due and owing as taxes, interest and penalties arising out of the payment made by LMC pursuant to this Agreement.

3. This Agreement is not intended, and shall not be construed, as an admission that any of the Releasees has violated any federal, state or local law (statutory or decisional), ordinance or regulation, or committed any wrong whatsoever. I agree that this Agreement may only be used as evidence in a subsequent proceeding in which the parties allege a breach of this Agreement.

4. This Agreement replaces any prior Release Agreement that I may have signed in connection with the resolution of *EEOC v. Lutheran Medical Center*, 01 CV 5494.

Name: _____ Mailing Address: _____

Signature: _____ Date: _____

STATE OF NEW YORK)

COUNTY OF _____) ss.:

On this ____ day of _____, before me personally came _____, known to me to be the person described in and who executed the foregoing Release, and she duly acknowledged to me that she executed the same.

Notary Public

B



EXHIBIT B

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

Kam S. Wong
Trial Attorney
Phone (212) 336-3703
Fax (212) 336-3623

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
Phone: (212) 336-3620
TTY: (212) 336-3622

[date]

[Name]
[Address]
[Address]

Re: EEOC v. Lutheran Medical Center

Dear Ms. [Last Name]:

The United States Equal Employment Opportunity Commission ("EEOC") is the federal government agency charged with enforcing employment discrimination laws, including Title VII of the Civil Rights Act of 1964 ("Title VII"). As you may be aware, EEOC filed a lawsuit against Lutheran Medical Center ("LMC"), in case number CV 01 5494 in the United States District Court for the Eastern District of New York. The lawsuit alleged that LMC discriminated against a class of female employees by subjecting them to sexual harassment. Specifically, EEOC alleged that Dr. Conrado Ponio, during his employment at LMC, abused his authority and sexually harassed female employees when conducting employment related medical examinations.

EEOC and LMC recently resolved the lawsuit by entering into a Consent Decree. As part of the settlement, LMC has agreed to pay a total of five million four hundred twenty five thousand dollars (\$5,425,000) in monetary damages. Three million four hundred fifty-two thousand dollars (\$3,452,000) has been set aside as a Claim Fund to compensate female employees who were sexually harassed by Dr. Ponio during their medical examinations. Under the Consent Decree, EEOC is to allocate the Claim Fund amongst those known to EEOC to have been sexually harassed by Dr. Ponio. EEOC has sole and complete discretion over the allocation of the Claim Fund.

Based on the information that you have previously provided EEOC, EEOC has determined that you are a Claimant and should receive \$ _____ from the Claim Fund. *If you accept EEOC's allocation of the Claim Fund, you must complete the enclosed Form W-9, execute (sign and date before a notary public) the enclosed Release Agreement, and return both documents to EEOC to be received no later than [30 days from date of letter]. If EEOC does not receive by [30 days from date of letter] your executed Release Agreement and completed Form W-9, you will be forever barred from receiving any monetary award from the Claim Fund, pursuant to the Consent Decree.*

You should understand that by signing the Release Agreement, that you are waiving all claims of

sexual harassment under Title VII of the Civil Rights Act of 1964 as alleged in EEOC's complaint in *EEOC v. Lutheran Medical Center*, 01 CV 5494. If you have any questions about the legal effect of signing the release, you may contact me at (212) 336-3703.

Additionally, as part of the Consent Decree, LMC has agreed, subject to collective bargaining agreements, to reinstate those employees who left LMC due to a sexually inappropriate medical exam and have not been terminated by any subsequent employer due to performance problems. The reinstatement is subject to the availability of a job opening and would be effective for a period of three years from [date of entry of Decree]. If more Claimants express a desire for reinstatement to their prior positions than there are openings, then the order of reinstatement will be prioritized by the date when the Claimant left her employment at LMC, with those departing earlier being reinstated first. If you are interested in reinstatement of your employment at LMC, please contact me no later than [30 days from date of letter].

If you have any questions, please feel free to contact me.

Sincerely,

Kam S. Wong
Trial Attorney



C



EXHIBIT C

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION New York District Office

33 Whitehall Street, 11th Floor
New York, New York 10004-2112
Telephone: (212) 336-3620
TDD: (212) 336-3622
General FAX: (212) 336-3625

NOTICE TO EMPLOYEES OF LUTHERAN MEDICAL CENTER

This notice is being posted pursuant to a Consent Decree entered into between Lutheran Medical Center and the United States Equal Employment Opportunity Commission ("EEOC"), in resolution of Case No. 01 5494 in the Eastern District Court of New York. In that lawsuit, EEOC alleged that Lutheran Medical Center violated Title VII of the Civil Rights Act of 1964, as amended, by engaging in sex harassment against a class of female employees.

Federal law and the Consent Decree prohibit sexual harassment or other discrimination against any individual because of his or her sex in any and all aspects of the employment relationship, including necessary medical examinations. Sexual harassment is any unwanted verbal or physical conduct of a sexual nature.

Federal law also prohibits retaliation against any individual by an employer because the individual complains of discrimination, cooperates with the government's investigation of a charge of discrimination, participates as a witness or potential witness in litigation, or otherwise exercises his or her rights under the law.

Should you have any complaints of discrimination, you may contact the

Equal Employment Opportunity Commission
33 Whitehall Street, 11th Floor
New York, New York 10004-2112
(212) 336-3620

THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED BY ANYONE.

This notice must remain posted until three years from the date of posting and may not be altered, defaced or covered by any other material.

4,

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POLICY PROHIBITING DISCRIMINATION, HARASSMENT AND RETALIATION

LMC is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment. Therefore, LMC expects that all relationships among persons in the workplace will be business-like and free of discrimination, harassment, bias, or prejudice.

Equal Employment Opportunity and Prohibition of Discrimination and Harassment

Equal Employment Opportunity has been, and will continue to be, a fundamental principle at LMC. It is the policy of LMC that employment be based upon personal capabilities and qualifications without discrimination or harassment because of race, color, national origin, religion, sex, age, disability, alienage or citizenship status, marital status, creed, genetic predisposition or carrier status, sexual orientation, or any other characteristic protected by law. LMC prohibits and will not tolerate any such discrimination or harassment.

This prohibition of discrimination and harassment applies to all policies and procedures relating to recruitment and hiring, application, orientation, compensation, benefits, termination, and all other terms and conditions of employment.

The Human Resources Department has overall responsibility for this policy and maintains reporting and monitoring procedures. Employees' questions or concerns should be referred to the Human Resources Department.

The phrase "Equal Opportunity Employer" will be used in all advertisements or solicitations for employees placed by or on behalf of the Medical Center. All recruitment sources will be advised of the Medical Center's policy. The Human Resources Department will inform Union Locals of the Medical Center's policy. The Medical Center will include a nondiscrimination clause in all collective bargaining agreements.

Appropriate disciplinary action, up to and including termination, may be taken for any violation of this policy.

Definitions of Harassment

- a. Sexual harassment constitutes discrimination and is illegal under federal, state, and local laws. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with

an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual Harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: (i) unwanted sexual advances or requests for sexual favors; (ii) sexual jokes and innuendo; (iii) verbal abuse of a sexual nature; (iv) commentary about an individual's body, sexual prowess, or sexual deficiencies; (v) leering, catcalls, or touching; (vi) insulting or obscene comments or gestures; (vii) display or circulation in the workplace of sexually suggestive objects or pictures (including e-mail); and other physical, verbal, or visual conduct of a sexual nature. Such conduct may result in disciplinary action up to and including discharge.

b. Sex-based harassment -- that is, harassment not involving sexual activity or language (e.g., male manager yells only at female employees) -- may also constitute discrimination if it is severe or pervasive and directed at employees because of their sex. Such conduct may result in disciplinary action up to and including discharge.

c. Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, national origin, religion, age, disability, alienage or citizenship status, marital status, creed, genetic predisposition or carrier status, sexual orientation, or any other characteristic protected by law, and that: (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or (iii) otherwise adversely affects an individual's employment opportunities. Such conduct may result in disciplinary action up to and including discharge.

Harassing conduct includes, but is not limited to: epithets, slurs, or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail).

Individuals and Conduct Covered

This policy applies to all applicants and employees, and prohibits harassment, discrimination, and retaliation whether engaged in by or towards employees, supervisors, managers, or persons otherwise connected to LMC (e.g., physicians, patients, visitors, consultants, vendors, etc.).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events.

Retaliation is Prohibited

LMC prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports. Retaliation against an individual for reporting harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action.

Complaint Procedure

LMC strongly urges the reporting of all incidents of discrimination, harassment or retaliation regardless of the offender's identity or position.

All individuals who believe they have experienced conduct contrary to this policy or who have concerns about such matters should immediately contact their Department Head, Vice President of Human Resources, Director of Employee Labor Relations, Compliance Officer, or, in their absence, their designees, or call the 24-hour, toll-free, Compliance HelpLine (1-877-77-COMPLY) before the conduct becomes severe or pervasive. Individuals are not obligated to complain to their Department Head first before bringing the matter to the attention of one of the other designated LMC representatives identified above. Individuals may also use the Medical Center's Compliance HelpLine.

Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment. Therefore while no fixed reporting period has been established, LMC strongly urges the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. LMC will make every effort to stop alleged harassment before it becomes severe or pervasive, but can only do so with the cooperation of its staff/employees.

The availability of this complaint procedure does not preclude individuals who believe they are being subjected to harassing conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that it be discontinued.

The Investigation

Any reported allegations of harassment, discrimination, or retaliation will be investigated promptly, thoroughly, and impartially. The Investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action. Except as required by law and as

reasonably necessary to conduct an investigation. LMC will not release any information regarding its investigation, the complainant, the alleged target of the harassment, or the alleged harasser.

Responsive Action

Misconduct constituting harassment, discrimination, or retaliation will be dealt with promptly and appropriately. Responsive action may include, for example, training, referral to counseling, monitoring of the offender and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reduction of wages, demotion, reassignment, temporary suspension without pay or termination, as LMC believes appropriate under the circumstances.

Individuals who have questions or concerns about these policies should talk with the Vice-President of Human Resources, --or-- a designated member of the Human Resources Department, or the Office of the General Counsel.



4.

1

LUTHERAN MEDICAL CENTER
Personnel Policies and Procedures Manual

P-P 2-10

SUBJECT: Employment - Pre-Placement Physical

POLICY:

Candidates for employment are required to successfully complete a physical examination given by Occupational Health Services as a condition of employment, including a drug screening. Candidates are also required to authorize Lutheran Medical Center's Human Resources Department to use his/her protected health information for the employment determination.

PROCEDURE:

1. The Recruiter shall make the appointment for the Pre-Placement physical with Occupational Health Services.
2. In order to provide prospective employees privacy and to ensure professional conduct, it is a mandatory requirement of Occupational Health Services that a female chaperon is present during the physical examination of all females who present for their pre-placement health examination, mandatory annual health assessments and/or clearance to return to work.
3. The Pre-Placement physical for all employees consists of the following:
 - a. The OHS physician's routine physical will include examination of:
 - Head
 - Neck
 - Eyes
 - Ears, Nose, Throat
 - Respiratory

Prepared by: <i>Roy Colley</i> Approved: WAM	Approved by: <i>W. J. [Signature]</i>	Date Issued: 3/80	Last Date Revised: 3/2003
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P-P 2-10 (continued)

- Heart
- Extremities
- Musculoskeletal
- Skin
- Neurological
- Other areas in accordance with Section 405(b)(3)(10) of the N.Y.C.R.R. and other applicable laws and regulations

The OHS physician shall not conduct a gynecological or breast examination. If the OHS physician believes that such pre-employment examination is advisable to comply with applicable laws and regulations, a specialist mutually agreeable to LMC and the applicant shall conduct such examination.

- b. Two-Step Tuberculin Skin Test – PPD (Mantoux) of all whose previous Reactions are unknown or negative
- c. Chest X-Ray (only if PPD positive)
- d. Mumps titre
- e. Rubella titre
- f. Rubeola titre
- g. Varicella titre

Prepared by: <i>Ring C. [Signature]</i> Approved: WRM	Approved by: <i>[Signature]</i>	Date Issued: 3/80	Last Date Revised: 3/2003
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LUTHERAN MEDICAL CENTER

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P-P 2-10 (continued)

Employees with direct patient contact and/or at risk for blood borne pathogens and other infectious agents will also have the following tests:

- a. Serology
- b. Hepatitis B surface antigen
- c. Hepatitis B core antibody
- d. Hepatitis B surface antibody

If the examining physician determines that the individual is physically unable to perform the essential functions of the position for which he or she has been selected, the Human Resources Department will be notified. *The Human Resources Department will advise the individual and determine if any reasonable accommodation can be made. If an accommodation cannot be made, the individual will not be hired.*

4. *In order to determine whether a reasonable accommodation can be made, Human Resources may share health information about an individual on a need to know basis with the manager(s) familiar with the job requirements for the position in question.*

Prepared by: <i>P. C. Long</i> Approved: <i>WHR</i>	Approved by: <i>[Signature]</i>	Date Issued: 3/80	Last Date Revised: 3 2003
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