



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT PA14-0139

September 25, 2015

**Frank Woodard (Lincoln)**

v.

**Penobscot Valley Hospital (Lincoln)**

### **I. Complaint:**

Complainant Frank Woodard alleged that Respondent Penobscot Valley Hospital discriminated against him on the basis of disability by asking unlawful questions about his service animal, and by denying him the full and equal enjoyment of a place of public accommodation by refusing to allow him to use his service animal.

### **II. Respondent's Answer:**

Respondent did not deny that Complainant was asked unlawful questions about his service animal and was initially told that he was not allowed to have his service animal with him. Respondent alleged that the inappropriate statements were made by a contract nurse and did not reflect company policy, and stated that Complainant left the hospital before the situation could be rectified.

### **III. Jurisdictional Data:**

- 1) Date of alleged discrimination: January 10, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): March 21, 2014.
- 3) Respondent is a place of public accommodation and is subject to the Maine Human Rights Act ("MHRA").
- 4) Respondent is represented by Anne-Marie Storey, Esq. Complainant is not represented by counsel.
- 5) Investigative methods used: A thorough review of the materials submitted by the parties, an Issues and Resolution Conference. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

### **IV. Development of Facts:**

- 1) The relevant parties, issues, and facts in this case are as follows:

- a) Complainant has mental disabilities for which he has a service animal.<sup>1</sup> Complainant attempted to receive services from Respondent in the emergency room on January 10, 2014 and alleged that he was denied services and asked impermissible questions regarding his service animal.
  - b) Respondent is a hospital open to the public.
  - c) "Nurse" was a contract nurse employed by Respondent. She interacted with Complainant on the day he came in for treatment.
  - d) "Director" was the Surgical Services Director for Respondent at the time Complainant came into the hospital for treatment.
  - e) On January 15, 2014, Complainant filed a complaint with Director regarding his treatment by Nurse on January 10, 2014.
  - f) On January 10, 2014, Nurse filled out a Clinical Report regarding the incident with Complainant that day. Nurse stated in this report that she told Complainant he could not come into the hospital with his dog, and asked Complainant to show paperwork to show that his dog was a service animal. Nurse also stated that she called Director and that Director told her that the dog was not allowed in. Nurse stated that while she was on the phone with Director, Complainant was swearing and yelling at her, and then left the hospital.
- 2) Complainant provided the following:
- a) One of the symptoms of Complainant's mental disabilities is that he becomes enraged when he feels threatened. He can become verbally abusive and physically threatening when this occurs. His service dog is trained to anticipate when this is about to happen and to alert Complainant so that he can retreat to a safe place.
  - b) On January 10, 2014, Complainant arrived at the emergency room of the hospital in a state of crisis. He had been referred to the hospital by his healthcare provider. His healthcare provider had called ahead and explained the situation to Respondent, so Respondent was expecting him.
  - c) After Complainant registered, Nurse immediately came up to him shaking her head and pointing at his service animal. Nurse told him "no dogs". Complainant told Nurse that it was a service dog, and Nurse demanded papers to prove it. Complainant told Nurse that he did not need papers to prove it, and attempted to cite the relevant law, but could not speak clearly. He was angry and upset.
  - d) Nurse immediately got on her phone and started talking loudly to someone stating that Complainant should not be allowed in the emergency room with his service animal. Nurse was loudly stating personal information about Complainant's mental disabilities within earshot of others in the room. Nurse said, "you can't let this mental patient in our hospital with a dog." Complainant became angrier and stuck his service dog's "fake ID" in Nurse's face and stated that it was for "ignorant people" who think that service dogs need papers. Complainant also called nurse an idiot and a moron.

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<sup>1</sup> The fact that Complainant has a service animal for a disability is undisputed by Respondent and is supported by medical documents provided to the Commission.

- e) At this point Complainant became frightened while Nurse continued talking on the phone. He backed away from her and left while she was still on the phone. Due to Nurse's treatment of Complainant and her failure to let him stay at the hospital with his service animal, Complainant was forced to leave and did not receive the services he needed.
  - f) Respondent alleges that Nurse acted alone in violating hospital policy regarding service animals, but Nurse's Clinical Report acknowledges that Director also denied his entry to the hospital with his service animal. He believes Respondent did this because of his mental disability.
  - g) Respondent also falsified his medical records and the account of the incident that day because of his mental disability. He believes Respondent did this because no one would believe a "mental patient" over the word of a nurse. He did not swear or scream at Nurse. He believes his behavior was exaggerated to make his denial of access to a public accommodation seem as though it was necessary due to his behavior.
- 3) Respondent provided the following:
- a) Nurse's behavior toward Complainant on January 10, 2014 was inappropriate and did not reflect the hospital's policy or practice regarding service animals. Respondent has a liberal policy which allows support and comfort animals to enter the hospital, even if they are not qualified as service animals. Nurse did not follow company policy when interacting with Complainant.
  - b) On January 15, 2014, Director received a phone call from Complainant about his January 10, 2014 interaction with Nurse. Complainant stated that Nurse had given him a hard time about his service dog and that the incident caused him to be frightened and leave the hospital. Director thanked Complainant for reporting the incident and apologized to him. Director asked Complainant if there was anything else Respondent could do for him, and he stated that he was returning for treatment the following week and wished to be treated with respect. Director assured him that he would be.
  - c) Director then spoke with Nurse, and as a result of the incident with Complainant and another unrelated patient complaint, Respondent decided not to renew Nurse's contract, which was due to end on January 25, 2014. Complainant was sent a letter informing him that Nurse was counseled and would no longer be employed at the hospital.
  - d) Respondent took appropriate action once Complainant complained about Nurse: it did not renew Nurse's contract, apologized to Complainant, and reinforced the hospital's current training and policies regarding service animals with hospital staff.
  - e) Nurse did not violate Complainant's confidentiality by communicating his personal medical information inappropriately. Nurse also denied stating that Complainant was a "mental patient".
  - f) Nurse claimed that she spoke to Director the day of the incident and that Director told her not to allow Complainant in with his service animal, but Director and Respondent deny this allegation. Nurse did call Director during the incident, and Director told Nurse that someone would be down to assist her. Complainant left before anyone could respond.
  - g) No one employed by Respondent falsified any medical documents regarding Complainant. Complainant did not provide any evidence to support this allegation.

**V. Analysis:**

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA prohibits discrimination on the basis of disability by any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation or public entity. 5 M.R.S. §4592(1).
- 3) Complainant alleged that Respondent discriminated against him by asking unlawful questions about his service animal, and by denying him the use of his service animal in accessing Respondent's services.

Disability Discrimination - Illegal Inquiry

- 4) A public accommodation is limited in the information it can request in determining whether an animal qualifies as a service animal under the MHRA:

A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

Me. Hum. Rights Comm'n Reg., 94-348 Code of Maine Regulations ("C.M.R.") Ch. 7, § 7.16(C)(6).

- 5) Here, it is undisputed that Complainant had a service animal, and that Nurse made an unlawful inquiry by asking Complainant for documentation to show that his dog was a service animal. As stated above, this inquiry was itself a violation of the MHRA. Regardless of whether Nurse's inquiry was in violation of Respondent's standard policy or practice, it is undisputed that the inquiry occurred, and that Nurse was acting as an employee of Respondent at the time.
- 6) It is found that Respondent discriminated against Complainant by subjecting him to an unlawful inquiry based on disability.

Disability Discrimination - Refusal to Allow Use of Service Animal

- 7) The MHRA makes it unlawful:

For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the public accommodation

unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the public accommodation by others....

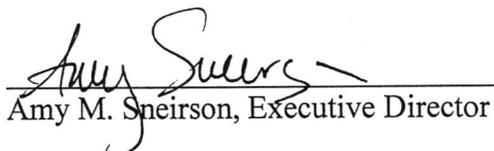
5 M.R.S. § 4592(8). Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. Me. Hum. Rights Comm'n Reg., 94-348 C.M.R. Ch.7, § 7.16(C)(1).

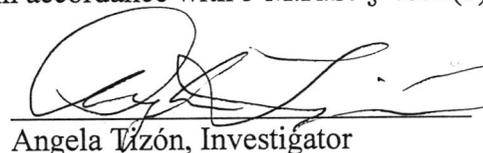
- 8) Here, it is undisputed that Complainant had a service animal, and that he was told by Nurse that he could not remain at the hospital for treatment with that service animal. As stated above, refusal to permit the use of a service animal is a violation of the MHRA.
- 9) Respondent argued that Complainant left the hospital before it could act to resolve the situation. Complainant acknowledged that he left while Nurse was still on the phone with Director, stating that he became agitated and fearful due to the situation, and was forced to leave without receiving the treatment he came for. Complainant's reasons for leaving are plausible given his mental disabilities and records of past behavior.
- 10) Regardless of Complainant's reasons for leaving, it is undisputed that he initially was denied access to Respondent's services when Nurse told him he could not remain at the hospital with his service animal. Furthermore, while Respondent alleges that Nurse acted alone in denying him access, Nurse's Clinical Report recorded the day of the incident contradicts this. Nurse stated in the report that she called Director during the incident and that Director confirmed that she should not allow Complainant's service animal in the hospital.
- 11) While Respondent may have taken appropriate action after Complainant reported the incident with Nurse, any remedial action taken does not change the fact that Complainant was denied access to services on January 10, 2014 due to his service animal.
- 12) It is found that Respondent discriminated against Complainant on the basis of disability by refusing to allow the use of his service animal.

#### **VI. Recommendation:**

For the reasons stated above, it is recommended that the Commission issue the following findings:

- 1) There are **Reasonable Grounds** to believe that Penobscot Valley Hospital discriminated against Frank Woodard by subjecting him to an unlawful inquiry based on disability.
- 2) There are **Reasonable Grounds** to believe that Penobscot Valley Hospital discriminated against Frank Woodard on the basis of disability by denying him access to the full and equal enjoyment of a place of public accommodation.
- 3) Conciliation of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).

  
Amy M. Sneirson, Executive Director

  
Angela Tizon, Investigator