

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff

v.

CHAMPLAIN VALLEY PHYSICIANS  
HOSPITAL MEDICAL CENTER,

Defendant.  
-----X

CIVIL ACTION NO. 5:04MC92

DNH / DRH

CONSENT DECREE

This cause of action was initiated on September \_\_\_\_, 2004 by the Equal Employment Opportunity Commission (hereinafter "EEOC"), an Agency of the United States Government, alleging that Champlain Valley Physicians Hospital Medical Center (hereinafter "CVPH") violated the Americans with Disabilities Act ("ADA") and Title I of the Civil Rights Act of 1991 by failing to provide reasonable accommodations for Charging Parties Ray Hawksby and Beth Kissell. EEOC also alleged CVPH's discrimination included maintaining a policy prohibiting disabled employees from returning to work with medical restrictions.

In light of the disputed issues of fact and law presented by this action, the parties agree that it is in their mutual interest to fully resolve the matter without further litigation. By entering into this Consent Decree, CVPH shall not be deemed to admit or agree that it has violated the ADA.

EEOC and CVPH do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and their successors or assigns.

This Decree resolves all matters raised in the Complaint filed herein. The parties have agreed

that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court. The Parties agree and understand that this Decree in no way affects the EEOC's right to process any pending or future charges that may be filed against CVPH in accordance with standard EEOC procedures, and to commence civil actions on any such charges.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. This Decree resolves all of the issues raised by EEOC Charge Numbers 165-99-0654 and 165-99-0171 and the EEOC Complaint in this case.
2. The parties agree that this Court has jurisdiction over the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.
3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Breach of any term of this Decree should be deemed to be a substantive breach of this Decree. Nothing in this Decree shall be construed to preclude EEOC from bringing proceedings to enforce this Decree in the event that CVPH fails to perform any of the promises and representations contained herein.
4. CVPH and its agents agree to comply fully with the ADA.
5. CVPH and its agents agree not to retaliate against Beth Kissel or Ray Hawksby, or any other individual for asserting her or his rights under the ADA, or for participating in this matter.
6. CVPH has agreed to adopt the "Equal Employment Opportunity/Reasonable Accommodation" policy (Policy No. 203.1), attached as Exhibit A.

7. CVPH has agreed to adopt the "Transitional Return-to-Work Policy" (Policy No. 417.1), attached as Exhibit B.
8. CVPH agrees to provide a two (2) hour training session regarding discrimination and reasonable accommodation for all supervisory, management and human resources staff, to be conducted by an outside agency approved by EEOC, within four (4) months of the entry of this Decree. CVPH will forward to EEOC in advance a summary of the topics to be covered. Within ten (10) days of the completion of each training session, CVPH will forward to EEOC a copy of the attendance sheet for that training session.
9. CVPH agrees to provide a ninety (90) minute training session regarding discrimination and reasonable accommodation for all other staff, to be conducted by an outside agency approved by EEOC, within four (4) months of the entry of this Decree. CVPH will forward to EEOC in advance a summary of the topics to be covered. Within ten (10) days of the completion of each training session, CVPH will forward to EEOC a copy of the attendance sheet for that training session.
10. Within five (5) days of the entry of this Decree, CVPH will post in a place in the Medical Center, conspicuous to its employees, a copy of Policy 203.1.
11. Within five (5) days of the entry of this Decree, CVPH will post in a conspicuous place in the Medical Center the Notice of non-discrimination attached as Exhibit C.
12. Should Charging Party, Ray Hawksby require a reasonable accommodation, CVPH will permit him to follow its procedures under Policy 203.1 towards obtaining said accommodation.
13. Should Beth Kissell require a reasonable accommodation, CVPH will permit her to follow its procedures under Policy 203.1 towards obtaining said accommodation.
14. CVPH agrees to pay Ray Hawksby \$27,500 and Beth Kissell, \$27,500, in compensatory

damages within ten (10) days of the entry of this Decree. CVPH agrees to forward to the EEOC a copy of the checks sent to each party within five (5) days of issuance and to issue an IRS Form 1099 to each individual for the appropriate tax year.

15. Ms. Kissell represents that she intends to complete her R.N. degree no later than June 30, 2006, and that it is her intention to continue working at CVPH in the capacity of an R.N. after she obtains her degree. Given this representation, CVPH agrees to hold any and all claims of re-payment of her outstanding debt to its CAP program until she completes her R.N. degree and obtains her R.N. license, so long as she obtains the license no later than October 30, 2006. If Ms. Kissell obtains her R.N. licence on or before October 30, 2006, CVPH agrees to allow Ms. Kissell to work full-time as an R.N. for a period of two years in exchange for the forgiveness of her debt to the CAP program. In all other respects, the usual and customary terms of the CAP program shall apply.

16. Each party shall bear its own attorney fees and costs incurred in this action.

17. This Decree constitutes the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.

18. This Decree will remain in effect for three (3) years from the date of entry.

SO ORDERED, ADJUDGED AND DECREED.

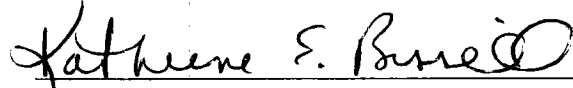
Signed this \_\_\_\_ day of \_\_\_\_\_, 2004

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The Honorable Judge

Dated: \_\_\_\_\_  
Albany, New York

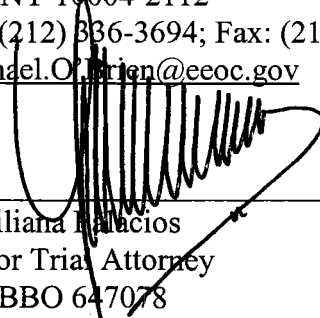
FOR PLAINTIFF EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION



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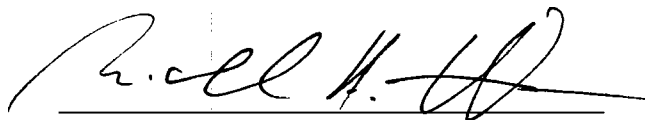


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Dated: Sept 2, 2009  
New York, New York

FOR DEFENDANT CHAMPLAIN VALLEY  
PHYSICIANS HOSPITAL MEDICAL  
CENTER

NIXON PEABODY LLP



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(585) 263-1000

Dated: August 20, 2004  
Rochester, New York

**EXHIBIT A**

CHAMPLAIN VALLEY PHYSICIANS HOSPITAL MEDICAL CENTER

HUMAN RESOURCES POLICY/PROCEDURE

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<b>Subject: Equal Employment Opportunity/Reasonable Accommodation</b>		<b>Number: 203.1</b>
<b>Applies to: All Employees</b>		
<b>Responsible Department: Human Resources</b>		
<b>Written by: Noreen Brady Vice President of Human Resources</b>		
<b>Administrative Approval:</b>		<b>Effective Date: 3/1/03</b>
<b>New:</b>		<b>Supersedes: 5/1/01</b>
<b>Other Related Policies: 213.1 – Sexual Harassment; 804.1 – Progressive Discipline; 801.0 – Administrative Leave and Immediate Discharge</b>		

I. **POLICY:**

CVPH Medical Center is an equal employment opportunity employer which complies with local, state, and federal regulations prohibiting discriminatory practices based on race, religion, color, national origin, age, sex, sexual orientation, military status, marital status, citizenship status, ex-offender status, disability, or any other protected status.

II. **PURPOSE:**

The purpose of this policy is to comply with the law as a responsible, responsive employer and to treat all employees with dignity and respect.

III. **REQUIREMENTS:**

- A. **Equal Employment Opportunity (EEO)** – New York State and federal law prohibit discrimination in all aspects of employment, including, but not limited to, hiring, firing, promotion, transfer, assignment of work, compensation, and admission to training programs on the basis of race, color, sex, religion, national origin, citizenship, sexual orientation, arrest record, pregnancy, age, veteran status and disability.
- B. **Reasonable Accommodation** – New York State and federal law mandate that reasonable accommodation be provided to applicants and employees with disabilities. Reasonable accommodation includes making the Medical Center accessible and usable by individuals with disabilities. It may also include job restructuring; part-time or modified work schedules; reassignment to a vacant position; the purchase or modification of equipment and devices; modification of examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation must be provided unless it results in "undue hardship." Undue hardship is defined as a significant expense or difficulty in, or resulting from, the provision of the accommodation. While it can mean a significant cost, it is not limited to financial hardship. An accommodation can cause undue hardship if it is extensive, substantial, disruptive or requires a fundamental alteration of the nature of our operations.



**IV. PROCEDURE:**

- A. Management staff will make decisions pertaining to all terms, conditions and privileges of employment including, but not limited to, hiring, probation, training, placement, development, promotion, transfer, assignment of work, compensation, benefits, educational assistance, lay-off, recall, social and recreation programs, employee facilities, termination and retirement on the basis of individual qualifications and in accordance with the guidelines of Medical Center policies and procedures and the collective bargaining agreements. In making such decisions, management staff will not take into consideration any of the factors listed under III.A., or the cost or inconvenience of providing reasonable accommodation under III.B.
- B. The Vice President of Human Resources or designee(s) will be responsible for formulating, implementing, coordinating and monitoring all efforts in the area of Equal Employment Opportunity and Reasonable Accommodation. These duties may include, but are not limited to:
  - 1. Assisting management in:
    - (a) Defining and reviewing job requirements, duties, and essential functions;
    - (b) Selecting qualified applicants based on job-related qualifications and ability to perform the essential functions of the job;
    - (c) Providing reasonable accommodation for qualified individuals with disabilities.
  - 2. Developing policy and recruitment/transfer/promotion strategies designed to comply with this and other policies of the Medical Center.
  - 3. Complying with statutory recordkeeping and notice requirements to ensure compliance with all employment-related statutes and regulations.
  - 4. Assisting management staff in developing and implementing solutions to specific human resource issues consistent with this policy.
  - 5. Serving as a liaison between the Medical Center and government agencies.
  - 6. Keeping management informed of the latest developments relevant to this policy.
- C. Any communication from an applicant for employment, an employee, a government agency or an attorney concerning any equal employment opportunity matter will be referred to the Vice President of Human Resources.
- D. The Vice President of Human Resources or a designee is responsible for monitoring this policy.

Violations of this policy by management staff will be dealt with seriously. Suspected violations will be investigated by the Vice President of Human Resources or designee who will present their findings and a recommendation for action to the appropriate Vice President, COO/EVP or the President.

- E. Individuals who suspect violations of this policy should bring their concerns **directly** to the attention of the Vice President of Human Resources or to any management staff in Human Resources. The Human Resources management staff will advise the Vice President of Human Resources immediately so that investigation of the issue can begin.
- F. Violations of this policy are subject to the full range of CVPH Medical Center disciplinary measures up to and including termination.

**V. REASONABLE ACCOMMODATION PROCEDURE:**

- A. Job applicants with disabilities may request reasonable accommodation necessary to their participation in the pre-employment process. Reasonable accommodation requests may be directed to Human Resources or the hiring manager. Questions or concerns about reasonable accommodation in the pre-employment process should be directed to the Vice President of Human Resources or designee(s).
- B. Employees with disabilities may request reasonable accommodation necessary to allow them to perform their jobs and to enjoy all of the privileges and benefits of employment at the Medical Center. Reasonable accommodation requests may be directed to Human Resources, Employee Health, or to the employee's Department Manager or supervisor. Questions or concerns about reasonable accommodation of employees should be directed to the Vice President of Human Resources or designee(s).
  - 1. Employee Health Services will obtain all necessary information from the employee's physician(s) or other medical personnel to evaluate the employee's need for reasonable accommodation, and to determine what type(s) of accommodation may be appropriate. Employee Health Services may also question and examine the employee. Employee Health Services will identify the nature and likely duration of the employee's restrictions, if any, and provide this information to the employee's Department Manager and Human Resources.
  - 2. The Department Manager, Human Resources, and Employee Health Services will work with the employee to identify suitable reasonable accommodation. Bargaining unit employees may, at their option, have union representation in this process. Department Managers should not implement any accommodation without authorization from Human Resources and Employee Health Services.
  - 3. Reasonable accommodation will be provided first, where possible, in the employee's regular position. If there is no reasonable accommodation possible in the employee's regular position, reasonable accommodation will be explored in any vacant positions for which the employee is

qualified. If reasonable accommodation is not possible in the employee's regular position or in any vacant position, a leave of absence will be considered as a reasonable accommodation. The Medical Center shall determine whether to offer an employee reasonable accommodation, and the type of reasonable accommodation to be offered, consistent with this policy and state and federal law.

**VI. DISTRIBUTION:**

This policy must be distributed to all Administrative Staff members, Department Directors and Unit Directors by their immediate supervisor.

All recipients of this policy must acknowledge their receipt and understanding of the policy by referring any questions or problems with the policy within ten days of the issue date to their immediate supervisor. If no questions or problems are stated, it will be assumed that the policy has been read and understood.

All questions regarding this policy or its implementation may be referred to your immediate Administrative Supervisor or Vice President of Human Resources.

**EXHIBIT B**

## TRANSITIONAL DUTY RETURN TO WORK PROGRAM

### **1. PURPOSE:**

To assist the employee with a work-related injury or illness who is unable to perform the essential functions of his/her job or another available position to return to work as soon as medically approved by assigning tasks consistent with the employee's skills, experience, and capabilities.

### **POLICY:**

Employees with disabilities, including those arising from work-related injury or illness, are entitled to reasonable accommodation under the Medical Center's Equal Employment Opportunity/Reasonable Accommodation Policy. In all cases, reasonable accommodation of an employee with injury or illness-related limitations must be considered first under the Equal Employment Opportunity/Reasonable Accommodation Policy, before return to work under this Policy is considered. Where reasonable accommodation would not allow an employee cleared to return to work with restrictions to perform his/her job or an available, suitable position, the employee may qualify for participation in the Transitional Duty Return to Work Program ("Program") as an alternative to a leave of absence.

If selected for participation in the Program, an employee cleared to return to work with restrictions will be assigned duties in an appropriate position in his/her department, if possible. In the event that sufficient duties in an appropriate position cannot be found in their current department, efforts will be made to find duties in an appropriate position within his/her division. If the division is unable to provide sufficient suitable duties in an appropriate position, the VP of Human Resources will attempt to identify suitable duties for the employee in an appropriate position in another division.

Participation in the Program is intended to be for a limited time only. Generally, participation in the Program shall be limited to 60 calendar days with physician re-evaluation at 30 and 60 calendar days. Individual extensions beyond 60 calendar days will be considered on a case-by-case basis and with administrative review. If an employee cannot be returned to work with or without reasonable accommodation under the Medical Center's Equal Employment Opportunity/Reasonable Accommodation Policy following participation in the Program, the employee shall be placed on a leave of absence.

If an employee's limitations become less restrictive while the employee is participating in the Program, reasonable accommodation under the Medical

Center's Equal Employment Opportunity/Reasonable Accommodation Policy will be re-evaluated.

An "appropriate position" under the Program is a position with some tasks or duties for which the employee is qualified and able to perform consistent with his/her limitations. Such a position should only require brief orientation or instruction by a supervisor or manager. The employee will not be placed in a position that constitutes a promotion for the employee.

**PROCEDURE:**

1. Employee Health Services will obtain any necessary information from physicians or other medical personnel related to the employee's return to work. Employee Health Services may also examine the employee, if appropriate.
2. Employee Health Services will notify the Department Manager when an employee has been cleared to return to work with limitations. Employee Health Services will describe to the Manager the nature and duration of the employee's restrictions. In accordance with the Medical Center's Equal Employment Opportunity/Reasonable Accommodation Policy, reasonable accommodation in the employee's regular position and in suitable, vacant positions will be considered first. If reasonable accommodation would not allow the employee to return to work, the Department Manager will determine whether an employee can perform one or more duties from his/her regular job or another job within his/her department.
3. Participation in the Program is conditional on full compliance with the recommended medical treatment and limitations recommended by the employee's physician.
4. Each department may define transitional job tasks available. The Department Manager will attempt to return the employee to work through one or more of the following:
  - a. Job Modification: temporary elimination or modification of specific job tasks consistent with the employee's limitations. The need for modification will be re-evaluated within a 30/60 calendar day period by the physicians group, which oversees Employee Health Services and/or by the Rehabilitation Department.
  - b. Transitional Work Schedule: temporary reduction of work hours in anticipation of return to pre-injury or pre-illness scheduled hours. The need for transitional work schedule will be re-evaluated within a 30/60 calendar day period by the physician group, which oversees

Employee Health Services, and/or by the Rehabilitation Department.

- c. Temporary assignment to another position in the employee's Department better suited to the employee's limitations.
5. If the Department Manager is unable to place the employee in an appropriate position within the Department, the matter will be referred to the divisional VP for attempted placement in the Division.
6. If the issue is not resolved within the Division, it will be referred to the VP of Human Resources. The VP of Human Resources will work with other Divisional VPs to attempt to place the employee in another Division.
7. Any job modification must be authorized by Employee Health Services and Human Resources.
8. For purposes of claims experience, the employee will remain on payroll in the Department where he/she was employed at the time of injury or illness. This cost will be allocated to a centralized cost center (8890).
9. During the time the employee is in a transitional duty position, the employee's rate of pay will remain the same as the pre-injury rate of pay.
10. A permanent change in work activities or schedule will require administrative approval. The rate of pay will be determined by the job description, Human Resources Policies and Procedures and the appropriate Collective Bargaining Agreement.

**DISTRIBUTION:**

This policy must be distributed to all Administrative Staff members, Department Directors and Unit Directors by their immediate supervisor.

Any recipients of this policy must acknowledge their receipt and understanding of the policy by referring any questions or problems with the policy within 10 days of the issue date to their immediate supervisor. If no questions or problems are stated, it will be assumed that the policy has been read and understood.

All questions regarding this policy or its implementation may be referred to your immediate administrative supervisor.

**EXHIBIT C**

**NOTICE TO EMPLOYEES OF CHAMPLAIN VALLEY  
PHYSICIANS HOSPITAL MEDICAL CENTER**

1. This NOTICE to all employees of Champlain Valley Physicians Hospital Medical Center ("CVPH") is being posted pursuant to Consent Decree between CVPH and The U.S. Equal Employment Opportunity Commission ("EEOC") in the case of EEOC v. Champlain Valley Physicians Hospital Medical Center, Civil Action No. \_\_\_\_\_ (N.D.N.Y.).

2. In that lawsuit, the EEOC alleged that CVPH violated the Americans with Disabilities Act by failing to accommodate qualified individuals with disabilities, including, for example, maintaining the policy that employees could not return to work following illness or injury unless they could return without medical restrictions. CVPH has revised its Equal Employment Opportunity/Reasonable Accommodation policy, and the current policy has been approved by the EEOC.

3. Federal law, the Americans with Disabilities Act ("ADA"), prohibits employers from discriminating against applicants and employees in the terms and conditions of their employment based on employees' disabilities.

4. Consistent with its Equal Employment Opportunity/Reasonable Accommodation policy, CVPH agrees that neither it nor its managers, officers, agents, successors, or assigns will discriminate against any individual because of the individual's disability. CVPH and its managers, officers and agents further agree to provide reasonable accommodations for qualified applicants and employees with disabilities who request them, when required under the ADA. CVPH and its managers, officers and agents also agree not to retaliate against any individual who has participated in this matter in some way, given testimony in this matter, or asserted his or her rights under the ADA.

5. The Equal Employment Opportunity Commission maintains offices throughout the United States, including in Buffalo, NY. Its Buffalo Local Office is located at:

Equal Employment Opportunity Commission  
Buffalo Local Office  
6 Fountain Plaza, Suite 350  
Buffalo, NY 14202  
Telephone: (716) 551-4441

6. This NOTICE will remain posted until \_\_\_\_\_, 2007.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004

Champlain Valley Physicians Hospital Medical Center

By: \_\_\_\_\_  
(APPROPRIATE SIGNATORY/CEO)