

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

APRIA HEALTHCARE GROUP, INC.,)

Defendant.)

Civil Action No. 04CV00443CAS

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (EEOC) has instituted this action alleging that Defendant Apria Healthcare Group, Inc. (Apria Healthcare Group) terminated Dawn Ayers because of her disability, bi-polar disorder, in violation of Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (ADA). Apria Healthcare Group has filed an answer to this action denying the allegations of EEOC's complaint. For purposes of settlement and compromise only, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay and burden of further litigation;

THEREFORE, it is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action, (ii) the requirements of the ADA will be carried out by the implementation of this Decree, (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among the parties, and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. NON-DISCRIMINATION

1. In all matters arising from or relating to employment, Apria Healthcare Group and its officers, agents, employees, successors, and assigns, and all of those in active concert or participation with them, or any of them, shall not engage in any employment practice which unlawfully discriminates against an employee or applicant under the ADA. Prohibited discrimination includes, but is not limited to:

- a. refusing to hire or rehire a qualified individual with a disability because of his/her disability;
- b. refusing to provide a reasonable accommodation to a qualified individual with a disability;
- c. discharging a qualified individual with a disability because of his/her disability;
- d. maintaining any practice or policy that violates the ADA by depriving or tending to deprive any individual of employment opportunities because of such individual's disability;
- e. discriminating against persons on the basis of their disabilities in the terms and conditions of their employment; and,
- f. making disability related pre-employment inquiries.

II. NON-RETALIATION

2. Apria Healthcare Group, its officers, agents, employees, successors, assigns, and all those in active concert or participation with them, or any of them, shall not engage in reprisal

or retaliation of any kind against any person because such person:

- a. opposed any practice made unlawful under the ADA;
- b. filed a charge of discrimination with the Commission or a state agency or testified or participated in any manner in any investigation, proceeding, or hearing under the ADA;
- c. requested and/or received relief in accordance with this Consent Decree;
- d. participated in any manner in this action or in the investigation giving rise to this action; or
- e. asserted any rights under this Consent Decree.

III. PAYMENT TO CHARGING PARTY DAWN AYERS

3. Within fifteen (15) days after this Decree is approved by the Court, Apria Healthcare Group will forward to Dawn Ayers payments in the total sum of \$60,000.00 (sixty thousand dollars and no cents) as follows:

- a. A payment in the gross amount of \$5,000.00 (five thousand dollars and no cents) on the Commission's claim for Dawn Ayers' backpay, less only any mandatory deductions for the employee's portion of FICA and her applicable federal and state income tax withholdings in accordance with Dawn Ayers' most current Form W-4 provided to Apria Healthcare, and for which payment Apria Healthcare Group shall issue to Dawn Ayers a Form W-2; and
- b. A payment in the gross amount of \$55,000.00 (fifty five thousand dollars and no cents) on the Commission's claims for Dawn Ayers' emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, and for which payment

Apria Healthcare Group shall issue to Dawn Ayers a Form 1099.

4. Apria Healthcare Group will forward to Dawn Ayers, with the checks described in paragraph 3 above, an itemized statement of withholdings for each amount withheld, including the employee share of FICA and the applicable federal and state income withholdings from the amount allocated as backpay.

IV. INJUNCTIVE RELIEF

5. Within 30 days after entry of this Decree, Apria Healthcare Group will send Dawn Ayers a letter of apology in the form attached as Exhibit 1, signed by Ms. Ayers' former supervisor and Apria Healthcare Group's present Region Infusion Manager, Tricia Lacavich.

6. Within 30 days after entry of this Decree, Apria Healthcare Group will send Dawn Ayers a letter of reference in the form attached as Exhibit 2, signed by Ms. Ayers' former supervisor and Apria's present Region Infusion Manager, Tricia Lacavich.

7. Within 30 days after entry of this Decree, Apria Healthcare Group will remove from any file bearing Dawn Ayers' name, and from any file retrievable by her name, any document reflecting that she filed a charge of discrimination, gave testimony or otherwise assisted the government in the prosecution of this lawsuit. In addition, Apria Healthcare Group shall remove all documents that contain any information concerning Ms. Ayers' disability and any discussion thereof, along with all documents that contradict in any way Exhibits 1 and/or 2. All documents removed shall be placed in a sealed file that will held for as long as the current document retention policies of Apria Healthcare Group require, or for the term of this Decree plus 2 months, whichever is longer, and then destroyed.

V. POSTING AND NOTICES

8. Apria Healthcare Group will post and cause to remain posted the posters required to be displayed in the workplace by Commission Regulations, 29 C.F.R. § 1601.30.

9. Apria Healthcare Group will post and cause to remain posted copies of the notice attached as Exhibit 3 in locations publicly visible to all employees in the Greater St. Louis Metropolitan Area, during the term of this Decree.

VI. MONITORING AND REPORTING

10. Within thirty (30) days after this Decree is approved by the Court, Apria Healthcare Group will forward to the Commission's Regional Attorney in its St. Louis District Office copies of the checks and statement of withholdings forwarded to Dawn Ayers as described in paragraphs 3 and 4 above.

11. Within sixty (60) days after this Decree is approved by the Court, Apria Healthcare Group will forward to the Commission's Regional Attorney in its St. Louis District Office a letter signed by or on behalf of its Director of Employee Relations, Kathy Klein, stating that it has complied with the requirements of paragraphs 5, 6 and 7, describing the manner and dates on which such compliance was effected, and attaching copies of Exhibits 1 and 2.

12. Within forty-five (45) days after this Decree is approved by the Court, Apria Healthcare Group will prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a letter signed by its Director of Employee Relations, Kathy Klein, stating that the notices have been posted as required by paragraphs 8 and 9 above.

13. On a semi-annual basis, Apria Healthcare Group will prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a list of all individuals who claim

a disability who have been terminated or denied an accommodation sought under the ADA at locations in the Greater St. Louis Metropolitan Area during the preceding 6 (six) months. This list will include a brief description of the circumstances, including the position held by the employee at issue, any job action taken or denied, including any accommodation sought and denied; date of job action taken or denied; reason for job action taken; and name of each manager or supervisor involved in relevant job action decision. If no individuals have been terminated or denied an accommodation sought under the ADA, Apria Healthcare Group will affirmatively inform the Commission's Regional Attorney in its St. Louis District Office that no person has been affected as described in this paragraph.

14 At any time during the term of this Decree, the Commission's Regional Attorney in its St. Louis District Office may request from Apria Healthcare Group a report, including supporting documentation, regarding Apria Healthcare Group's continued compliance with any term of this Decree. Apria Healthcare Group will provide such reports, as requested, within a reasonable amount of time, not to exceed thirty (30) days after the request is made.

VII. GEOGRAPHICAL SCOPE OF DECREE

15 Except as otherwise specified in this Decree, the terms of this Decree apply to all Apria Healthcare Group locations in the Greater St. Louis Metropolitan Area.

VIII. TERM AND EFFECT OF DECREE

16 By entering into this Decree the parties do not intend to resolve any charges of discrimination currently pending before the Commission other than the charge that created the procedural foundation for the complaint in this case.

17 This Decree will be binding upon the parties hereto, their successors and assigns.

18. This Decree will be for a period of two (2) years and can be extended for good cause. During the Decree's term the Court will retain jurisdiction of this cause for purposes of compliance.

19. This Consent Decree shall not be deemed as an admission by Apria Healthcare Group of any liability or unlawful conduct.

20. Each party will bear its own attorneys' fees and costs.

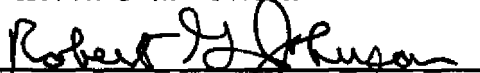
BY CONSENT:

FOR PLAINTIFF:

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel



ROBERT G. JOHNSON
Regional Attorney



DONNA L. HARPER
Supervisory Trial Attorney



BARBARA A. SEELY
Supervisory Trial Attorney


EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

St. Louis District Office
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(314) 539-7914 (phone)
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FOR DEFENDANT:



KATHY KLEIN
Director of Employee Relations and Risk Management
Apria Healthcare Group



ROBERT E. ARROYO
Attorney for Apria Healthcare Group



PAUL PATTEN
Attorney for Apria Healthcare Group

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(312) 787-4949 (phone)
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Arroyor@jacksonlewis.com
Pattenp@jacksonlewis.com

SO ORDERED:

3/31/05
Date



UNITED STATES DISTRICT JUDGE

ON COMPANY LETTERHEAD EXHIBIT 1

Date

Ms. Dawn Ayers
1370 Dartmouth Ct.
St. Charles, MO 63303

Dear Ms. Ayers:

Apria Healthcare Group, Inc. regrets the circumstances under which your employment with the Company ended. You performed your assignments well. We wish you success in your future endeavors.

Sincerely,

Tricia L. Lacavich, RN BSN
Region Infusion Manager

ON COMPANY LETTERHEAD

EXHIBIT 2

Date

To Whom it May Concern:

Dawn Ayers was hired by Apria Healthcare Group, Inc. on June 14, 2001, as a temporary employee in the position of Insurance Verification Clerk at the Company's St. Louis, Missouri facility. Her job performance was very good and, as a result, we hired her as a regular full-time employee on September 28, 2001 in the position of Quality Assurance Coordinator in the Infusion Department. She held that position until she left the Company in February 2002.

As Quality Assurance Coordinator, Ms. Ayers was responsible for ensuring that paperwork and data entry was completed accurately, that payment for services and equipment was guaranteed prior to delivery and that revenue was recorded appropriately. Her job duties required her to prepare reports, communicate with clients and insurance companies, review and prepare paperwork and enter data into the computer. Ms. Ayers performed her assignments well.

We wish Ms. Ayers well in her future endeavors.

Sincerely,

Tricia L. Lacavich, RN BSN
Region Infusion Manager

ON COMPANY LETTERHEAD EXHIBIT 3

NOTICE REGARDING FEDERAL ANTI-DISCRIMINATION LAWS

This Notice is posted by agreement between Apria Healthcare Group, Inc. (Apria Healthcare Group) and the Equal Employment Opportunity Commission (EEOC).

Federal law prohibits discrimination against any employee because of race, national origin, color, religion, sex, disability or age (forty and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment.

Federal law also prohibits retaliation against persons who complain of or oppose practices they believe are discriminatory on the basis of race, national origin, color, religion, sex, disability or age (forty and over), and it prohibits retaliation against persons who file charges with the EEOC, or who participate in or cooperate with an EEOC investigation.

Apria Healthcare Group is committed to supporting and complying with such federal law in all respects and will not take any action against employees because they have exercised their rights under the law. Specifically, Apria Healthcare Group will not tolerate discrimination in employment, nor will it tolerate retaliation against any employee for exercising rights under law.

Employees and job applicants should feel free to report instances of discriminatory treatment to their supervisor, a manager, or Apria Healthcare Group's employee hotline [877-COMPLY9] at any time. Apria Healthcare Group has established policies and procedures to promptly investigate any such reports and to protect the person making the reports from retaliation, including retaliation by the person allegedly committing acts of the discrimination.

Employees and job applicants are also free to make complaints about employment discrimination to the Office of the Regional Attorney, United States Equal Employment Opportunity Commission, St. Louis District Office, 1222 Spruce St., Room 8.100, St. Louis, MO 63103 (Attention: Donna L. Harper, Supervisory Trial Attorney) or by telephone to (314) 539-7914 or e-mail to donna.harper@eoc.gov.