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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

|                              |   |                          |
|------------------------------|---|--------------------------|
| EQUAL EMPLOYMENT OPPORTUNITY | ) |                          |
| COMMISSION,                  | ) |                          |
|                              | ) |                          |
| Plaintiff,                   | ) |                          |
|                              | ) | Case No. AO-06-146 (RRB) |
| vs.                          | ) |                          |
|                              | ) | CONSENT DECREE           |
| PROVIDENCE HEALTH SYSTEM -   | ) |                          |
| WASHINGTON dba PROVIDENCE    | ) |                          |
| ALASKA MEDICAL CENTER,       | ) |                          |
|                              | ) |                          |
| Defendant.                   | ) |                          |
| _____                        | ) |                          |

**I. INTRODUCTION**

On June 14, 2006, Plaintiff, Equal Employment Opportunity Commission (“EEOC”), filed this action pursuant to the Age Discrimination in Employment Act of 1967 (“ADEA”), 29 U.S.C. §626(b). Plaintiff alleged that Defendant discriminated against Rebecca Petrie, Gola

Anderson, Milagros Lopez, Lawrence Harris and Canije Sadiku (collectively, “the claimants”) because of their ages by failing to rehire them after a layoff.

Defendant, Providence Health System – Washington dba Providence Alaska Medical Center (“PAMC”) answered the complaint and denied liability on all claims asserted by the EEOC.

The EEOC and PAMC want to conclude fully and finally all claims arising out of the above action without the expenditure of further resources and expenses in contested litigation. They enter into this Consent Decree to further the objectives of equal employment opportunity as set forth in the ADEA.

## **II. NON-ADMISSION OF LIABILITY**

1. This consent decree is not an adjudication or finding on the merits of this case and shall not be construed as an admission of a violation of the ADEA by Defendant.
2. The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record herein, and the applicable law, and now approves the Consent Decree in its entirety.

Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

## **III. GENERAL PROVISIONS**

1. This Court has jurisdiction over the subject matter and the parties to this action.

2. This Consent Decree constitutes a full resolution of Plaintiff's complaint in Civil Action No. AO-06-146 (RRB) and the charges of discrimination filed with the EEOC by each of the claimants alleging discrimination on the basis of age.
3. This Consent Decree shall become effective upon its entry by the Court.
4. Each party shall bear its own costs and attorney fees.

#### IV. SCOPE OF CONSENT DECREE

1. The duration of the Consent Decree shall be three (3) years from the date of its entry, provided that PAMC has complied substantially with the terms of this Consent Decree. PAMC will be deemed to have complied substantially if the Court has not made any findings or orders during the term of the Consent Decree that PAMC has failed to comply with any term of this decree. During the three-year term of this Consent Decree, this Court shall retain jurisdiction over this matter and the parties for the purpose of enforcing compliance with the Consent Decree, including issuing such orders as may be required to effectuate its purposes.

#### V. INJUNCTIVE RELIEF

1. *Age Discrimination*: Defendant, its officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them will comply with all requirements of the ADEA with respect to providing a work environment free from discrimination on the basis age.

2. *Retaliation*: Consistent with 29 U.S.C. §623(d), Defendant, its officers, agents, management (including supervisory employees), successors or assigns, and all those in active concert or participation with them, agree not to engage in, implement or permit any action, policy or practice with the purpose of retaliating against any current or former employee of Defendant because he or she opposed any practice of age discrimination made unlawful under the ADEA; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Defendant), proceeding or hearing in connection with this case and/or relating to any claim of age discrimination; or was identified as a possible witness in this action.

## **VI. MONETARY RELIEF**

In settlement of the EEOC's claims of employment discrimination alleged in the Complaint, Defendant shall pay relief to the Claimants in the total gross amount of \$220,000.00 (Two Hundred Twenty Thousand Dollars and No Cents), hereinafter "Settlement Sum." The EEOC will inform Defendant how the Settlement Sum shall be apportioned between the Claimants no later than thirty (30) days after entry of this Consent Decree.

2. Payment to the Claimants shall be made no later than forty-five (45) days of the entry of this Consent Decree.

3. The payments to Claimants shall be treated as wages for tax purposes, and the payments accordingly shall be subject to income tax, Federal Insurance Contributions Act ("FICA") and other applicable tax withholding. Defendant shall issue each Claimant a check in

the amount designated by the EEOC. Defendant also will issue a United States Internal Revenue Service W-2 Form to each Claimant.

(a) Defendant will mail the check directly to each Claimant with a photocopy of the checks, IRS W-2 Forms and related correspondence to the EEOC's counsel of record, Marcia Mitchell, Senior Trial Attorney for the EEOC, at 350 The Embarcadero, San Francisco, CA 94105 simultaneously with the mailing of the checks.

## VII. SPECIFIC INJUNCTIVE RELIEF

1. **Zero Tolerance.** PAMC affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives":

PAMC is firmly committed to maintaining a zero-tolerance policy concerning discrimination and retaliation against individuals who report discrimination in the company's workplace; to swiftly and firmly responding to any acts of discrimination and retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of discrimination or retaliation; and to actively monitoring its workplace in order to ensure tolerance, respect and dignity for all people.

This paragraph does not create any individual or common law causes of action or other rights that would not otherwise exist under statute.

2. **Equal Employment Opportunity and Discrimination Policies**

a. **Content of Policy.** Within thirty (30) days of entry of this Decree, PAMC shall adopt a Non-Discrimination policy which (a) expressly prohibits discrimination on the basis of

age, (b) states that violation of the Non-Discrimination policy may result in disciplinary action, (c) and: (i) includes definitions of age discrimination, with specific reference to discrimination in hiring; (ii) includes examples to supplement the definitions of age discrimination; (iii) provides for substantial and progressive discipline and/or corrective action for employees who engage in age discrimination; (iv) prohibits retaliation against employees who seek information about their rights or who complain that they may or are facing discrimination based on their age; (v) provides for substantial and progressive discipline for incidents of retaliation; (vi) provides that complaints of discrimination and/or retaliation will be accepted irrespective of whether they are made verbally or in writing or whether they are made by applicants or employees; (vii) provides a timetable for commencing an investigation after a complaint is made or received and for remedial action to be taken upon conclusion of an investigation; and (viii) explains that PAMC will communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any.

b. **Complaint Procedure.** Within thirty (30) days of entry of this Decree, PAMC will adopt policies and procedures relating to complaints of discrimination and retaliation (the “Complaint Policies”) are designed to encourage employees to come forward with complaints about violations of its anti-discrimination policies. PAMC’s Complaint Policies will, throughout the duration of this Decree, provide PAMC’s employees with convenient, confidential and reliable mechanisms for reporting incidents of discrimination and retaliation. The Complaint Policies will notify employees that they can lodge a complaint with their immediate supervisor and will provide information regarding how to report allegations of discrimination to someone

other than the immediate supervisor, including the identities, job titles and phone numbers of the employees responsible for receiving such complaint. PAMC shall ensure that contact information for employees responsible for receiving complaints is also continuously posted in a prominent place in its facility during the term of the Consent Decree.

c. **Implementation.** The EEOC will consider that PAMC has complied with the requirements of paragraphs VII(2)(a) and (b) if it amends Policies Nos. R600.008 and R630.002 and adopts age discrimination materials as set forth in Attachment A hereto.

d. **Distribution of Policy.** PAMC shall disseminate the amendments to Policies Nos. R600.008 and R630.002 and age discrimination materials adopted pursuant to paragraphs VII(2)(a) and (b) in a manner consistent with its current practices which, at minimum, provides:

- (1) Distribution of a copy of the amended policies to PAMC managers with instructions to (a) notify subordinates of such amendments within thirty (30) days of the entry of this Consent Decree, (b) post copies of the amended policies in their unit in the place(s) where other such similar information is posted, (c) remind subordinate employees that Providence policies are always available on the Providence intranet, and (d) reply back to PAMC's Human Resources department electronically when they have performed steps(a) through (c);
- (2) Intranet access to copies of the revised policies to and reviewing the policies with all new employees upon the employee's hire;

(3) Intranet access to copies of the revised policies for each employee throughout the duration of the Consent Decree.

3. *Anti-Discrimination Training.* Within ninety (90) days of entry of this decree, PAMC will develop a training program lasting at least two hours for managers employed in the Operating Room on the date of entry of this decree and at least one hour for non-managerial employees employed in the Operating Room on the date of entry of this decree. The cost of the training will be borne by PAMC.

(a) The training described in the preceding paragraph shall be provided by individual(s) with established experience in area of employment discrimination and the applicable laws and regulations and particularly, the ADEA. The training shall not be conducted by any individual who served as a witness in this litigation. The training will include examples of hiring practices that violate the ADEA and will inform each participant that he or she is responsible for knowing and complying with the contents of PAMC's Anti-Discrimination policy.

(b) PAMC shall provide to the EEOC thirty (30) days in advance of the training a copy of the course syllabus for the training. Following the training session, all participants shall be given a questionnaire through which they will be asked to critique the training and to provide suggestions to improve future trainings.

(c) PAMC will retain records of the training session, listing the date on which it held the training and identifying the persons who attended and those who did not attend.



PAMC will provide a copy of these records, the training materials and the completed post-training questionnaires to the EEOC within thirty (30) days of completion of the training.

(d) For the duration of the Decree, PAMC shall provide this same training to all newly hired officers, managers and supervisors within sixty (60) days of hire.

4. ***Use of the Select Interview Guide:*** PAMC shall only use interview guides developed by Select International, Inc. to assist in hiring for job positions which fall within job families for which interview guides have been created. Currently, interview guides have been created for the following job families: Clerical, Leadership, Professional, Sales & Marketing, Service, and Technologist. In addition, PAMC will require all employees who use the Select Interview guide to receive training from a certified Select International trainer before they use the interview guide.

5. ***Posting Regarding Consent Decree.*** The Notice of the Consent Decree, attached hereto as Exhibit A, shall be posted within five (5) days of entry of this Decree, and shall remain posted in a clearly visible location frequented by employees at PAMC during the term of this Consent Decree. Should the Notice become defaced, marred, or otherwise made unreadable, PAMC will ensure that new readable copies of the Notice are posted in the same manner as specified herein. PAMC will send the EEOC certification that the Notice has been posted within ten (10) days of entry of this Decree.

## VIII. REPORTS TO THE COMMISSION

1. **Training Report.** Within thirty (30) days of completion of the training required by section VII(3) of this Consent Decree, PAMC will send the EEOC appropriate verification of its completion of harassment training.

2. **Discrimination Complaint Reports.** PAMC shall file the following reports relating to complaints of age discrimination and/or retaliation made by PAMC's employees.

a. **Initial Complaint Report.** Six (6) months after the entry of this Consent Decree, PAMC will mail to counsel for the EEOC a report containing the following information and documentation (the "Initial Complaint Report"):

(1) A summary of all age discrimination and retaliation complaints made at PAMC since the entry of the Consent Decree. This summary shall contain a brief description of the type of complaint and a statement as to each as to the result of the investigation of such complaint.

(2) Copies of the documents generated as part of the complaint and PAMC's investigation and resolution of such complaint.

(3) Certification, in the form of a sworn statement from an employee with authority to speak on behalf of PAMC, detailing the extent to which PAMC's revised policies have been distributed in accordance with paragraph VII.2(d)(1), above, and setting forth the name of departments and corresponding managers which have completed

the requirements and the name of departments and corresponding managers which have not completed the requirements.

b. **Subsequent Complaint Reports.** On the first day of the sixth month following entry of this decree and every six months thereafter throughout the duration of this Consent Decree, PAMC will mail to counsel for the Commission a report containing the above documentation and information listed in paragraph 2(a) above.

**IX. RETENTION OF JURISDICTION AND  
EXPIRATION OF CONSENT DECREE**

1. This Consent Decree shall terminate within three (3) years from the date of entry by the court, unless the EEOC petitions this court for an extension of the Decree because of noncompliance by PAMC. If the EEOC determines that PAMC has not complied with the Consent Decree, the EEOC will provide written notification of the alleged breach to PAMC and will not petition the court for enforcement sooner than thirty (30) days after providing written notification. The thirty-day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If the EEOC petitions the court and the court finds PAMC to be in substantial violation of the terms of the Decree, the court may extend this Consent Decree.

2. This Court shall retain jurisdiction over this action for the purposes of enforcing the provisions of this Consent Decree.

*\*\*\* Signatures on following page\*\*\**

On behalf of Plaintiff:

On behalf of Providence  
DAVIS WRIGHT TREMAINE

/s/ William R. Tamayo  
WILLIAM R. TAMAYO  
Regional Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

/s/ Robert Stewart 5/27/09  
ROBERT STEWART

/s/ Jonathan T. Peck  
JONATHAN T. PECK  
Supervisory Trial Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

/s/ Marcia L. Mitchell 6/02/09  
MARCIA L. MITCHELL  
Senior Trial Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

I attest that I received confirmation via e-mail that counsel for Defendant, Robert Stewart had signed and consented to the filing of this Consent Decree

/s/ Marcia L. Mitchell 6/02/09  
MARCIA L. MITCHELL  
Senior Trial Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

IT IS SO ORDERED:

DATED: 6/3/09

S/RRB  
HONORABLE RALPH BEISTLINE  
UNITED STATES DISTRICT COURT JUDGE



**UNITED STATES  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

This Notice is being posted as part of an agreement between the Equal Employment Opportunity Commission (EEOC) and Providence Anchorage Medical Center (PAMC). Under Section 4(a) of the Age Discrimination in Employment Act of 1967, as amended (ADEA), it is unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s age.” 29 U.S.C. §623(a). The ADEA covers individuals over the age of forty (40).

Under Section 4(d) of the ADEA, it is unlawful for an employer “to discriminate against any of his employees or applicants for employment. . . because such individual . . . has opposed any practice made unlawful by this section.” 29 U.S.C. §623(d).

Therefore, in accordance with the applicable law:

**PAMC WILL NOT** engage in any acts or practices made unlawful by the ADEA as set forth above.

**PAMC WILL NOT** retaliate against employees for complaining about discrimination.

If you have a complaint of employment discrimination or questions regarding laws prohibiting employment discrimination, you may seek assistance from the EEOC’s Seattle Field Office, 909 First Street, Suite 400, Seattle, WA 98104 or by calling (206) 220-6885. General information may be obtained on the Internet at [www.eeoc.gov](http://www.eeoc.gov) or by calling 1-800-699-4000 (TDD 1-800-669-6820).

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[Name of posting official]

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Date Posted:

ATTACHMENT A

A. Policy No. R600.008 Equal Employment Opportunity

1. Add in Section III. Scope the following language in subsection (A):

PH&SA will comply will all applicable federal, state and local laws governing non-discrimination in employment. ...

B. Policy No. R630.002, Employee Grievance Process

1. Add in Section I. Purpose/Scope the following language:

The purpose of this policy is to provide guidelines for the timely and equitable review of employee grievances that cannot be resolved informally at the departmental level. Nothing in this policy is intended to restrict or prohibit employees from taking allegations of discrimination to the U.S. Equal Employment Opportunity Commission or the Anchorage Equal Rights Commission.

2. Add in Section II. Policy the following language:

In keeping . . . Therefore, this policy establishes an internal process for the timely and equitable review and resolution of employee work-related grievances.

3. Add in Section IV. General Instructions the following language at the end of subsection (F):

A formal grievance may be verbal or is in writing and includes the following:

...

Providence will provide assistance, as necessary, to employees with limited English proficiency or writing skills to memorialize their grievance in writing as soon as practicable. Providence will nevertheless maintain a written record of the grievance in the event that the employee does not memorialize the grievance in writing.

4. Add in Section IV. General Instructions the following language in subsection (G)(1)(a):

If the informal discussion with the employee's immediate supervisor is unsatisfactory, the employee's ~~must submit a~~ written grievance, or in the absence of a written grievance, the written record of the grievance, must be submitted to the employee's Director/Manager within seven (7) business days of the occurrence. Different deadlines apply to complaints of discrimination filed with the U.S. Equal Employment Opportunity Commission or the Anchorage Equal Rights Commission. Contact these agencies directly to find out the timelines for filing a complaint with them.

5. Add in Section IV. General Instructions the following language in subsection K:

The employee grievance process is the exclusive internal remedy for all disputes or work-related concerns arising from an employee's employment that cannot be resolved within the management chain. This process does not affect your rights to take concerns regarding employment discrimination to government agencies.

6. Add in Section IV. General Instructions the following language in subsection N:

Attorneys or their representatives are not permitted to serve as advocates on behalf of Providence Health & Services Alaska or employees. Attorneys may not appear on behalf of employees or submit letters directly to Providence Health & Services Alaska on behalf of employees in the grievance process. This policy does not, however, prohibit employees from consulting with attorneys regarding the issue that caused the employee to file a grievance.

C. Age Discrimination

1. Providence will add the substance of the following at an appropriate location in its policies/training materials:

**Age Discrimination in Employment Act of 1967**

The Age Discrimination in Employment Act protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. It is also unlawful to retaliate against an

individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA. The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and labor organizations, as well as to the federal government.

#### **Benefits Workers Benefit Protection Act**

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs would create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.