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Attorney for New Jersey Division on Civil Rights

By: Beverley A. Lapsley
Deputy Attorney General
(973) 693-5055

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
DCR DOCKET NO: EL11HB-62843

Nicole Fitchett,	:	
	:	<u>ADMINISTRATIVE ACTION</u>
Complainant,	:	
	:	
v.	:	CONSENT ORDER AND DECREE
	:	
Horizon NJ Health,	:	
	:	
Respondent.	:	

WHEREAS, this matter was commenced on December 14, 2011, when Complainant, Nicole Fitchett (“Complainant” or “Fitchett”) filed a verified complaint (“Verified Complaint”) with the New Jersey Division on Civil Rights (“DCR”) against Horizon New Jersey Health (“Respondent”), alleging that Respondent violated the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10: 5-1 et seq. when Respondent denied her a reasonable disability accommodation and terminated her employment; and

WHEREAS, DCR conducted an investigation into the allegations in the Verified Complaint and issued a Finding of Probable Cause (“FPC”) on the Verified Complaint on December 29, 2015; and

WHEREAS, Respondent denied, and continues to deny, all allegations of discrimination as alleged in the Verified Complaint and FPC; and

WHEREAS, a conciliation conference took place and the parties reached agreement on terms of settlement that have been set forth in this Agreement; and

WHEREAS, it is now the intention of the parties to amicably settle, compromise and resolve in good faith, the differences and disputes that exist or may exist between them, and the parties desire to avoid the time and expense of a public hearing;

NOW, THEREFORE, it is on this 7th day of APRIL, 2017, ORDERED and AGREED as follows:

1. It is expressly understood that neither the execution of this Agreement, nor any other action taken by Respondent in conjunction with Fitchett’s alleged claims or this settlement, constitute an admission by the Respondent of any violation of any law, duty, or obligation. The parties agree that they have entered into this Agreement to avoid the time and cost of further legal action.

2. Respondent agrees that it shall continue to comply with the LAD, N.J.S.A. 10:5-1 et seq., and shall not engage in any retaliatory conduct against Fitchett, Fitchett’s

family, or against any witness or participant in these proceedings, or allow any of its employees or agents to engage in any such conduct.

3. This Consent Decree shall not be considered an adjudication of a violation under the LAD, nor shall any finding by DCR in any subsequent complaint against Respondent be deemed a violation of this Consent Decree.

MONETARY RELIEF

4. Respondent shall pay the total sum of eighty thousand dollars (\$ 80,000) to Complainant in settlement of all claims and damages arising from the allegations set forth in the Verified Complaint and Finding of Probable Cause. The parties agree that the settlement amount shall be allocated as follows:

a. The sum of sixteen thousand dollars (\$16,000) shall represent compensation for alleged pain and suffering; and

b. The sum of sixty-four thousand dollars (\$64,000) shall represent damages for lost wages.

The sum representing compensation for alleged pain suffering will not be subject to withholdings and deductions, and shall be reported using IRS Form 1099. The sum representing damages for lost wages may be subject to applicable wage withholdings and deductions as required by law and shall be reported on IRS Form W-2.

5. Fitchett shall be solely responsible for paying any and all federal, state or local taxes that may be due on the Settlement Amount. Additionally, Fitchett is solely

responsible for any penalties or interest relating to any State, Federal or local taxes or tax liens that may be required by law to be paid by Fitchett with respect to the Settlement Amount.

6. Respondent shall pay the settlement payment(s) set forth in paragraph 4 within thirty (30) days of the latter of: (a) the complete execution of this agreement; or (b) its receipt of the fully-executed Agreement and all documents necessary to effectuate the payments described in paragraph 4. Respondent shall make the payment by check(s) made payable to Nicole Fitchett. The check(s) shall be mailed to Carlos Bellido, Chief of Staff, (“Chief of Staff Bellido”) Division on Civil Rights, 31 Clinton Street, 3rd floor, P.O. Box 46001, Newark, New Jersey 07102, for delivery to Complainant.

POLICIES AND TRAINING

7. DCR acknowledges that as part of the resolution of this matter Respondent has reviewed and revised its policy pertaining to reasonable accommodations for disability (hereinafter “the Policy”). Respondent has provided DCR with a copy of the Policy, which now recognizes that the LAD may provide broader protections than afforded by federal law. Respondent represents that the breath of the LAD’s protections are now incorporated in Respondent’s policy.

8. The Policy developed pursuant to paragraph 7 shall be disseminated to Respondent’s employees and contractors working in an employment setting within ninety (90) days of the execution of this agreement. The Policy developed, and as may be modified, shall be included with all compilations of Respondent’s employee policies.

Respondent shall maintain the Policy along with other employee policies in a readily accessible location in each of its offices, consistent with its normal business practices.

9. Respondent agrees to continue to train its supervisors, managers, human resource personnel, and any individuals designated by Respondent to process requests for reasonable accommodations on the requirements of the LAD, as well as the Policy outlined in Paragraph 7, supra.

10. It is recognized that Respondent provides EEO training on an ongoing basis and Respondent represents that it is committed to continuing to providing such training on an ongoing basis. Such training shall be consistent with the Policy outlined in paragraph 7.

COMPLIANCE AND RELEASES

11. Respondent shall display conspicuous notice of an employee's rights and obligations pursuant to the LAD, consistent with the posting and notice requirements for employers pursuant to N.J.A.C. 13:8-1.2, N.J.A.C. 13:8-1.4 and N.J.A.C. 13:8-2.2. The parties agree that any violation of this paragraph may only be enforced by the Division on Civil Rights and shall not provide a basis for Fitchett in her individual capacity to allege such a violation.

12. Where a dispute arises regarding the Respondent's compliance with this Agreement, DCR and Respondent shall first attempt in good faith to resolve the dispute before seeking the Court's intervention. DCR shall provide Respondent with the specific

details of the alleged noncompliance and provide Respondent at least a forty-five (45) day period within which to cure any noncompliance.

13. In the event that Respondent defaults with respect to any provision herein, following an opportunity to cure the default, Respondent hereby consents to the entry of this Consent Order and Decree in the Chancery Division of the Superior Court of New Jersey, thereby making this Consent Order and Decree an order of the Court for purposes of enforcement therein. If the Superior Court finds that Respondent is in default, all costs associated with the enforcement of this Agreement shall be paid by Respondent.

14. Should Respondent be found in default or fail to timely pay the sums set forth in this agreement, it shall pay, in addition to the sums outlined in paragraph 3, any interest on the award as well as all reasonable costs, expenses and attorney fees incurred in any further proceedings or steps necessary to collect or enforce the sum set forth in this Consent Order.

15. This Consent Order shall be binding upon the parties to this agreement and their successors and their assigns. In no event shall assignment of any right, power or authority avoid compliance with the terms of this Consent Order.

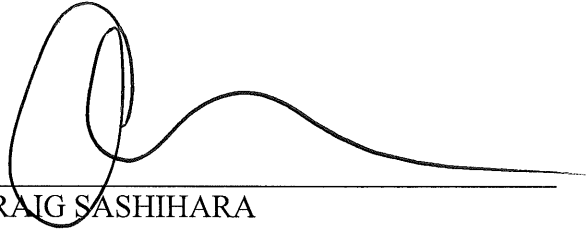
16. The parties agree that, if any Court declares any portion of this Agreement unenforceable, the remaining portions shall be fully enforceable.

17. This Agreement contains the sole and entire Agreement between the parties hereto. Each party represents and acknowledges that, prior to executing this Agreement, they have had ample time to consult with legal counsel prior to making the

decision to execute this agreement, and that no party has relied upon any representation or statement not set forth in this Agreement, made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this agreement. Fitchett expressly recognizes and understands that the Deputy Attorney General, Beverley A. Lapsley (“DAG Lapsley”) represents the Director of the Division on Civil Rights in this matter and does not represent her. Fitchett acknowledges that she has not relied upon any advice from Respondent or DAG Lapsley concerning this matter including but not limited to the taxability of the amounts to be paid under this Consent Order. Fitchett acknowledges that she had the opportunity to retain counsel to review this Agreement prior to its execution and has chosen not to do same.

18. This agreement shall operate as a complete and final disposition of the aforesaid verified Complaint, subject only to the fulfillment of all the foregoing provisions. In consideration for the execution of this agreement and payment as set forth in paragraph 3, Fitchett expressly waives releases and gives up any claims that have been asserted or could have been asserted in the DCR Action, DCR Docket No: EL11HB-62843, and in the EEOC Action, EEOC Docket No: 17E -2012-00234 which include but are not limited to any claims for disability discrimination or retaliation under the New Jersey Law Against Discrimination and any Violations of Title VII of the Federal Civil Rights Act. Execution of this Agreement shall result in dismissal of the DCR complaint with prejudice, subject to the fulfillment of the requirements of this Agreement.

19. Any signature for the entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Consent Order.



CRAIG SASHIHARA
DIRECTOR, NEW JERSEY DIVISION ON
CIVIL RIGHTS

Jointly Approved and Submitted for Entry:

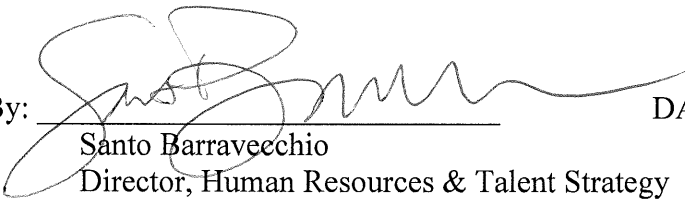
For Complainant:

By: 
Nicole Fitchett

DATED:

For Respondent:

Horizon NJ Health.

By: 
Santo Barravecchio
Director, Human Resources & Talent Strategy

DATED: