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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M.)
HALEY, EXECUTIVE DIRECTOR,)
ex rel. NINA DAVIDSON,)

Complainant,)

v.)

ASCHR No. J-08-097

MAT-SU VALLEY MEDICAL)
CENTER, LLC, d/b/a MAT-SU)
REGIONAL MEDICAL CENTER,)
HOSPICE,)

Respondent.)

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Nina Davidson, hereby alleges the following against Respondent Mat-Su Valley Medical Center, LLC, d/b/a Mat-Su Regional Medical Center, Hospice:

1. Respondent Mat-Su Valley Medical Center, LLC, d/b/a Mat-Su Regional Medical Center, Hospice (“Mat-Su Regional”) is a corporation doing business in Alaska that owns and operates a hospital located at 2500 South Woodworth Loop in Palmer.
2. Mat-Su Regional hired Nina Davidson to work as a registered nurse and a pool employee in September 2006 in its Hospice Division.
3. Ms. Davidson has fibromyalgia, a disease that causes long-term, body-wide pain and tenderness in the joints, muscles, tendons, and other soft tissues, and fatigue.

1 4. Upon hire, Ms. Davidson notified Mat-Su Regional of her medical
2 condition and requested that Mat-Su Regional schedule her for no more than two eight-
3 hour shifts per week. Mat-Su Regional accommodated Ms. Davidson's request through
4 June 2007.

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6 5. In January 2007, Barbara Mistler, Mat-Su Regional's then supervisor for
7 its Hospice Division, told Ms. Davidson that she wanted Ms. Davidson to work more
8 frequently than two shifts per week. Ms. Davidson explained to Ms. Mistler that she is
9 not able to work more often than two shifts per week because of her disability.

10
11 6. In June 2007, Ms. Mistler scheduled Ms. Davidson to work two
12 consecutive days each week. Ms. Davidson explained to Ms. Mistler that she is not able
13 to work two consecutive days during any week because of her disability. Ms. Mistler
14 told Ms. Davidson that she would have to work two consecutive days each week
15 because that is "unit practice."

16
17 7. Ms. Davidson went to Mat-Su Regional's Human Resources Department
18 and again requested that she not be forced to work two consecutive days during
19 workweeks as an accommodation for her disability. Mat-Su Regional granted Ms.
20 Davidson's request for an accommodation.

21
22 8. In December 2007, Ms. Davidson complained to Ms. Mistler and to an
23 employee of Mat-Su Regional's Human Resources Division that Ms. Mistler had
24 discriminated against her because of her disability and because she had asked for an
25 accommodation. Specifically, Ms. Davidson alleged that Ms. Mistler was biased against
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1 her and treated her differently and less favorably than she treated the other pool nurses.

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3 9. In January 2008, Ms. Davidson took medical leave and was off work until
4 her physician released her to return to work on February 13, 2008.

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6 10. After February 13, 2008, despite the medical release, Ms. Mistler refused
7 to schedule Ms. Davidson for any shifts, but instead told Ms. Davidson, “You’re pool
8 and I don’t have to allow you to work.”

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10 11. Ms. Davidson continued to request to be scheduled for work assignments.
11 Ms. Mistler continued to schedule for work assignments other pool nurses who were not
12 disabled and who had not complained about discrimination.

13
14 12. In March 2008, Ms. Davidson went to Mat-Su Regional to check the
15 schedule. She noted that some workdays in April were available, including April 1,
16 2008, and requested to be assigned to work on those days.

17
18 13. Prior to starting work again, Mat-Su Regional’s Hospice policy required
19 that Ms. Davidson attend a staff meeting. During the last week of March, Ms. Davidson
20 traveled to work to attend a meeting. Upon arrival, Ms. Mistler ordered Ms. Davidson to
21 leave and said that “someone will be in touch.”

22
23 14. On March 31, 2008, Ms. Mistler called Ms. Davidson and told Ms.
24 Davidson that her cardiopulmonary resuscitation (“CPR”) certification was out of date
25 which rendered Ms. Davidson ineligible for work on April 1, and said that Ms.
26 Davidson would not be permitted to work until the certification was renewed.

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28 15. On March 31, 2008, Ms. Davidson complained in writing to Mat-Su

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1 Regional that Ms. Mistler was “singl[ing me] out,” including that Ms. Mistler was not
2 allowing Ms. Davidson to work any shifts despite the fact that the other pool nurses
3 were being scheduled. Ms. Davidson provided Ms. Mistler with a copy of her
4 complaint.
5

6
7 16. On April 12, 2008, Ms. Davidson contacted Ms. Mistler by telephone to
8 tell her that she had obtained her CPR certification and requested that Ms. Mistler allow
9 her to work. Ms. Mistler told Ms. Davidson to come down to the office and sign up for
10 work assignments on the schedule, and asked Ms. Davidson to also bring the
11 documentation of her CPR certification.
12

13 17. On April 13, 2008, Ms. Davidson came to the worksite to check the work
14 schedule and to deliver documentation that her CPR certification had been renewed. Ms.
15 Mistler accepted the certification, then told Ms. Davidson for the first time that Ms.
16 Davidson was ineligible for work assignments because Ms. Davidson had an unresolved
17 issue from her September 2007 evaluation. Ms. Mistler told Ms. Davidson to go home.
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20 18. On April 13, 2008, after Ms. Davidson had left, Ms. Mistler sent another
21 Mat-Su Regional employee an electronic mail that said, “I do not intend to use [Ms.
22 Davidson] in this agency again, ever.”
23

24 19. On April 15, 2008, Mat-Su Regional suspended Ms. Davidson pending an
25 investigation into whether Ms. Davidson had disobeyed an order to not come to the
26 worksite when she was not scheduled to work.
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28 20. Mat-Su Regional permitted other pool nurses who were not disabled and

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1 who had not complained of discrimination to come to the worksite during their non-
2 worktime without penalty.

3
4 21. On April 15, 2008, Ms. Davidson contested the suspension, and again
5 complained in writing to Mat-Su Regional that Ms. Mistler had discriminated against
6 her because she had asked for an accommodation. Specifically, Ms. Davidson
7 complained that Ms. Mistler unfairly disciplined her because Ms. Mistler “found it
8 irritating that I could not work all hours to fill her schedul[ing] needs.” Ms. Davidson
9 provided Ms. Mistler with a copy of the complaint.

10
11
12 22. Without making any findings regarding Ms. Davidson’s complaint or
13 suspension, Mat-Su Regional reinstated Ms. Davidson.

14
15 23. Ms. Mistler continued to refuse to schedule Ms. Davidson for any work
16 assignments until July 28, 2008.

17 24. Ms. Davidson left Mat-Su Regional’s employ on October 24, 2008.

18
19 **FIRST CAUSE OF ACTION:**
20 **DISCRIMINATION BECAUSE OF DISABILITY,**
21 **A VIOLATION OF AS 18.80.220(a)(1)**

22 25. Paragraphs 1-24 above are realleged and incorporated herein.

23 26. Because Ms. Davidson suffers from fibromyalgia, she is a person with a
24 disability as that term is defined in AS 18.80.300(14)(A).

25 27. In September 2006, Ms. Davidson provided actual notice of her disability
26 to Mat-Su Regional and requested that Mat-Su Regional schedule her for no more than
27 two eight-hour shifts per week as an accommodation for her disability.
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1 28. In June and July 2007, Ms. Davidson again notified Mat-Su Regional of
2 her disability and requested that Mat-Su Regional not schedule her to work any two
3 consecutive days as an accommodation for her disability.
4

5 29. Throughout her employment at Mat-Su Regional, Ms. Davidson could
6 perform the essential functions of her position with an accommodation.
7

8 30. Between February 13 and July 28, 2008, Ms. Mistler refused to schedule
9 Ms. Davidson for work assignments, but continued to schedule other pool nurses who
10 were not disabled.
11

12 31. Ms. Mistler refused to schedule Ms. Davidson for work assignments
13 because Ms. Davidson has a disability.
14

15 32. On April 15, 2008, Mat-Su Regional suspended Ms. Davidson for visiting
16 the worksite during Ms. Davidson's non-worktime, but did not discipline other pool
17 nurses who were not disabled for visiting the worksite during non-working hours.
18

19 33. Mat-Su Regional suspended Ms. Davidson because Ms. Davidson has a
20 disability.
21

22 34. Mat-Su Regional violated AS 18.80.220(a)(1) when it refused to
23 schedule Ms. Davidson for work assignments and when it suspended her.
24

25 35. As a result of Mat-Su Regional's unlawful refusal to schedule Ms.
26 Davidson for work assignments because of her disability, Ms. Davidson has suffered
27 harm in the form of lost wages and other benefits.
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1 assignments and its suspension of Ms. Davidson for visiting the worksite during her
2 non-worktime hours constitutes illegal retaliation as described in AS 18.80.220(a)(4).

3
4 44. As a result of Mat Su Regional's retaliatory action, Ms. Davidson has
5 suffered harm in the form of lost wages and other remuneration.

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7 **PRAYER FOR RELIEF**

8 Wherefore the Executive Director asks for the following relief:

9 1. That the Commission issue an order declaring that Respondent Mat-Su
10 Valley Medical Center, LLC, d/b/a Mat-Su Regional Medical Center, Hospice violated
11 AS 18.80.220 by discriminating against Nina Davidson because of her disability.

12 2. That the Commission issue an order declaring that Respondent violated
13 AS 18.80.220(a)(4) by retaliating against Ms. Davidson because Ms. Davidson
14 complained about discrimination.

15 3. That the Commission order Respondent to adopt, disseminate, and post
16 in a conspicuous place a policy of nondiscrimination under the Alaska Human Rights
17 Law that includes a policy prohibiting discrimination against employees on the basis
18 of disability and retaliation.

19 4. That the Commission order Respondent to obtain at least three hours of
20 training for its managers, supervisors, and employees on the provisions of the Alaska
21 Human Rights Law that prohibit discrimination in employment, with emphases on the
22 prohibition against discrimination based on disability and retaliation.

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28 **ACCUSATION—Page 8**

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5. That the Commission order Respondent to eliminate from Ms. Davidson's personnel records all documents and entries relating to the facts and circumstances that led to her filing of the above-captioned charge of discrimination and the related events occurring thereafter, and that Respondent shall refrain from notifying any other employer or potential employer of Ms. Davidson of the facts or circumstances involved in this case.

6. That the Commission order Respondent to pay back wages to, and other out of pocket expenses incurred by, Ms. Davidson because of Respondent's discrimination, plus interest at the applicable legal rate, the exact amount of which will be proven at hearing.

Dated this 6th day of October 2011 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

_____/s/
Lauri J Owen
Human Rights Attorney
Alaska Bar No. 0705032