



Maine Human Rights Commission
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INVESTIGATOR'S REPORT
E11—0495

July 8, 2013

[REDACTED] | [REDACTED] [REDACTED]

v.

[REDACTED] [REDACTED]

I. Complaint:

Complainant alleges that due to his protected whistleblower activity (filing a complaint with the Maine Board of Dental Examiners), Respondent [REDACTED] (" [REDACTED] " subjected him to retaliation and was terminated him for pretextual reasons.

II. Respondent's Answer:

Respondent denies that any discrimination or retaliation occurred and states that the Complainant was terminated due to unsatisfactory patient care and attitude.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: 7/11/2011.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 8/3/2011.
- 3) Respondent [REDACTED] employs less than 15 individuals in and it is required to abide by the non-discrimination provisions of the Maine Human Rights Act, the Whistleblower Protection Act, and state and employment regulations.
- 4) The case was investigated by thorough review of the written materials provided by the parties and a Fact Finding Conference. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds".
- 5) Complainant is represented by Attorney [REDACTED]. Respondent is represented by Attorney [REDACTED].

IV. Development of Facts:

- 1) The parties and undisputed issues in this case are as follows:

- a) Respondent [REDACTED] is a nonprofit organization that provides dental services to the underserved and indigent population in the Augusta area. [REDACTED] is governed by a Board of Directors, to whom [REDACTED] Executive Director (“NY”) directly reports. Aside from NY, the office consists of a dentist, Dr. “DE, two dental hygienists, one office manager, and one receptionist.
- b) [REDACTED] employed Complainant as a dental hygienist from September 1, 2009 to July 11, 2011, when his employment was terminated.
- c) On or about 3/30/2011, the Complainant filed written complaints with the Maine Board of Dental Examiners (“MBDE”) concerning both Executive Director NY and Dr. DE.

Complainant’s MHRC Claims

- 2) (Complainant, hereinafter “C”) I was employed by [REDACTED] as a Dental Hygienist from September 1, 2009 until July 11, 2011, when I was terminated. I believe I performed my job duties satisfactorily.
- 3) (C) On March 30, 2011, I reported [REDACTED] to the Maine Board of Dental Examiners, in writing, specifically naming Dr. DE and Executive Director NY.¹ I reported Dr. DE for poor quality of care and infection control violations, along with some other concerns about his dental practices. I reported NY for possible OSHA violations and other concerns, including allowing dogs in the workplace and possible embezzlement of company funds. I also wrote that NY had been notified of some of these problems by other employees, but did not take any action to remedy the situation. I believed that some of these incidents put our patients' health and safety in jeopardy.
- 4) (C) On July 11, 2011, I was terminated from employment by NY, with the reasons given as derogatory comments about patients, not doing my job correctly, OSHA violation and too much socializing in the office or inappropriate office huddles with other workers.
- 5) (C) I believe the reasons given by the employer for my termination are a pretext. I believe the real reason for my termination is retaliation for informing an outside agency that my employer would not address illegal and/or unsafe activity in the workplace.

Respondent’s Answer to Complainant’s MHRC Complaint

- 6) (Respondent, hereinafter “R”) The Complainant's allegations of whistleblower retaliation are unfounded. He was terminated because of his unsatisfactory patient care and attitude, not because he filed licensure complaints with the Maine Board of Dental Examiners against [REDACTED] Executive Director and [REDACTED] former dentist, Dr. DE. Instead, Respondent takes concerns raised by its employees seriously. Accordingly, the issues raised by the Complainant having some merit were promptly satisfactorily addressed by [REDACTED]
- 7) (R) On September 1, 2009, [REDACTED] hired Complainant to work as a dental hygienist. After three months working at [REDACTED] he received a \$1 per hour raise. Complainant began with [REDACTED] on positive terms, and was initially thought to be a good employee who wanted to learn and grow. Unfortunately, the initial rosy period ended quickly. His care for patients as well as his attitude

¹ Complainant’s MBDE complaints against Dr. DE and NY are as Exhibits “A” and “B” to this report, respectively.

toward staff and patients declined to the point that his employment had to be terminated. Toward the end of his employment, the following incidents occurred:

- On several occasions, Complainant made derogatory comments about patients regarding odor, appearance, and speech. He also engaged in patient name calling. Specific instances of this behavior were documented on May 24 and 26 and June 8 and 9. On June 8, he stated that a female patient "looks like a man" and was a "weirdo." On the next day, he called a patient a "weirdo" and complained that he could not understand what she said. In addition, Complainant stated to staff members that he did not like working in a public health environment and desired to work in private practice. He also stated to staff that he had continually applied for dental hygienist positions in other dental offices. ██████ found his behavior and attitude unacceptable for a care provider at a nonprofit dental center with a mission to treat uninsured and indigent patients. A desire to help these patients is vital to ██████ mission, and a lack of empathy and sensitivity to the issues facing its patients impairs ██████ ability to serve its mission.
 - On May 25, ██████ saw an adult patient who presented with an oral infection. When the patient arrived, NY explained to Complainant that the patient needed to be evaluated for periodontal therapy. The evaluation involves perio probing to assess bone height around the teeth and documenting in the patient's chart gum recession and areas of bleeding or discharge. Despite NY's specific instruction, Complainant failed to conduct the perio probe, which is the standard of care for any adult patient and is especially important where the goal is to reduce oral infection.
 - On June 27, Complainant was seen in ██████ sterilization area delivering contaminated instruments without wearing proper personal protective equipment ("PPE"). This is despite the fact that, on June 10, ██████ staff had received thorough OSHA training from ██████ staff OSHA trainer witnessed and documented Complainant's failure to wear PPE that day.
 - Complainant and the rest of ██████ staff had been instructed by NY that excessive socializing and huddling together whispering needed to end, because it made other staff members uncomfortable and is not professional behavior. Nonetheless, Complainant continued to engage in this behavior, which was witnessed by NY and other staff members.
 - Complainant's dental hygiene skills were not up to the standards ██████ NY addressed his shortcomings, and even had him practice his skills on her to give him "hands on" practice and immediate feedback.
 - Lastly, Complainant actively undermined the ability ██████ to operate effectively. He would regularly engage in speaking poorly of Dr. DE, his clinical supervisor, and constantly insist that NY was treating staff poorly. His behavior poisoned ██████ working environment, making it very challenging to properly run a nonprofit dental center.
- 8) (R) Based on the build-up of issues concerning his attitude, behavior, desire to work at ██████ and clinical skills, Complainant's employment with ██████ was terminated on 7/11/2011.

Complainant's Licensure Complaints to the Maine Board of Dental Examiners

- 9) (R) On 3/30/2011, Complainant filed licensure complaints against NY and Dr. DE with the MBDE. NY was aware that the Complainant had filed a complaint about Dr. DE but the first time that NY

saw the substance of the complaint materials was when it was received from the Commission. Further, Dr. DE voluntarily separated from [REDACTED] as of 9/1/2011 and this parting of the ways was in the works months before the Complainant's termination. The Complainant's and Respondent's thoughts on the future of Dr. DE were very similar, which is why [REDACTED] would have any reason to retaliate against him for filing a complaint against Dr. DE, and indeed, it did not.

- 10) (R) Regarding the complaint against NY, Complainant made a number of wide-ranging allegations, only a few of which were brought to [REDACTED] attention prior to Complainant filing his complaint with the MBDE. After receiving the complaint against NY, [REDACTED] addressed the issues raised that merited attention. Although Respondent would have preferred the Complainant had brought his concerns to Executive Director NY prior to making a complaint to the MBDE, Respondent did not terminate him on the basis that he made these complaints.
- 11) (R) On the contrary, Respondent took seriously most of his complaints that had merit and acted accordingly. In a meeting with Executive Director NY on 5/18/2011 to discuss his complaint his complaints to the MBDE, the Complainant admitted that he had complaints that had not been brought to NY's attention, and he admitted that she was working to resolve the issues of which [REDACTED] was aware. Of the remaining complaints he made about NY, many were without any basis in fact and/or did not constitute a violation of the Dental Board's statutes or regulations. Instead, the Complainant report to the MBDE appears to be largely based on his personal belief that NY's personnel and managerial decisions were somehow unfair.
- 12) (R) Without individually addressing each of the large number of allegations that Complainant made in his MBDE complaint, Respondent again notes that most of the allegations were unfounded and that they acted appropriately on those issues that required attention. Both Dr. DE and Executive Director NY submitted detailed written responses [in Commission file] to the MBDE.
- 13) (R) In conclusion, Respondent terminated Complainant's employment for legitimate, performance-based reasons (poor behavior, attitude, and clinical skills), not because he filed complaints against Dr. DE and Executive Director NY with the MBDE. NY never threatened the Complainant with termination because he had filed these complaints. On the contrary, NY sat down with him to discuss his concerns and she acted quickly and appropriately on concerns of Complainant's that did have some merit. As the Complainant himself admits, once NY was aware of a concern, she would act, such as her handling of Dr. DE's infection control practices and use of latex gloves, the issue of dogs in the clinic, and OSHA training and compliance.

Complainant's Reply to Respondent's Answer

- 14) (C) This is the rare case with a "smoking gun." Less than one month after Respondent's Executive Director, NY, learned that the Complainant had filed two complaints against [REDACTED] with the Board of Dental Examiners, NY revealed in an internal email that she had already decided to terminate the Complainant because, "*I believe he would continue to cause problems.*" She had already picked out his replacement and was planning to fire him when "*all is settled with the Board complaint.*" NY had in fact begun advertising for the Complainant's replacement less than 10 days after she learned of his complaint to the MBDE. As part of the MBDE's investigation, Complainant filed additional information with the MBDE on June 12 and June 20. That was the end of his involvement in the complaint process. He was terminated by Executive Director NY on July 11.

- 15) (C) In addition to the direct evidence of retaliatory intent from NY herself and the suspicious timing of events, Complainant also has strong circumstantial evidence of pretext. For example, the internal email in which NY explained her intention to terminate Complainant for being a troublemaker was dated May 16, 2011. The top three reasons NY gave (in writing) for the termination, however, all occurred **after** May 16. Events occurring after the decision to terminate could not have been the real reasons for termination.
- 16) (C) After Complainant had been employed by ██████ for 10 months, NY gave him an excellent performance evaluation [in Commission file], rating him as "Excellent" (98/100) in all nine categories, including "Attitude," "Work Quality," and "Knowledge of Job. Specifically, NY noted his "[k]ey strengths:"
1. Great attitude and willingness to work hard
 2. Excellent skills for a new graduate
 3. Dependable and enthusiastic
- See id.* She recognized him as an "[e]xcellent team player" who "[g]oes above and beyond," and she was "[v]ery glad to have you as part of [KVDC's] team." *See id.*
- 17) (C) The Complainant received positive feedback during his employment and did not receive any written warnings, counselings or coachings when he was employed at ██████. Under ██████ policy, any "performance" coachings would have been noted in Complainant's personnel file. Likewise, any written reprimand for "behavior" would have been kept by ██████. Complainant states that he did not receive any such warnings, none have been provided to the Commission, and none were included in the personnel file provided by ██████ to the Complainant.
- 18) (C) Complainant cleaned NY's teeth on more than one occasion. She did not have any criticisms of his work on her or on any of the patients he worked on. She did, however, criticize Dr. DE's work. On one occasion, NY asked Complainant to photograph crowns that Dr. DE had made for her. She complained to Complainant that the crowns were substandard and that she would need to see another dentist to replace them.
- 19) (C) Complainant repeatedly reported to NY the issues he was observing at ██████ and she did not act to correct them. Complainant had numerous conversations with NY about Dr. DE's safety violations, about safety issues in the office, and about possible violations of state law and regulations. NY did not take action to remedy the problems. For example, Dr. DE's sloppy handling of a patient's crown occurred in November 2010.² He continued working at ██████ until the following September and even then he was not terminated. He left voluntarily. Finally, in NY's response to the MBDE, she makes it clear that ██████ began making some changes only after receiving the formal complaint from the MBDE.
- 20) (C) NY was immediately upset at Complainant for filing his complaints with the MBDE. On the same day that ██████ received notice of the complaints Complainant filed with the MBDE,

² Complainant believes that the patient who had the crown inserted after it had been dropped on the floor also filed a complaint against Dr. DE with the MBDE. The Complainant bases his belief on a conversation he had with NY, who told him Dr. DE could be in serious trouble and that if they saw anything that he did wrong they should not say anything to anyone.

Complainant received a call from "RC," a member of the [REDACTED] Board of Directors. RC told Complainant that NY was very upset about the complaint.

21) (C) Within 10 days after she became aware of Complainant's complaints to the MBDE, NY began advertising for a dental hygienist to replace the Complainant. NY learned about the Complainant's complaints to the MBDE on 4/23/2011. On May 2nd, Complainant learned that NY was advertising in the newspaper for two new dental hygienist employees. On May 5, NY toured the office with two dental hygienists.

22) (C) On 5/8/2011, the Complainant reported to a member [REDACTED] Board that he believed he was being retaliated against by NY. Complainant sent an email ("Exhibit C") to Ms. "VB", a member of [REDACTED] Board explaining that he had complained to NY about problems at [REDACTED] and that when she did not address the problems, he complained to the MBDE. He also reported to Ms. VB that NY was advertising for a dental hygienist to replace Complainant and that he felt "she is doing it out of retaliation and revenge."

23) (C) On 5/16/2011, NY revealed in an email (Exhibit D to this report) to a member of [REDACTED] Board Of Directors, Ms. VB, that she has decided to terminate the Complainant. Ms. VB had forwarded Complainant's email to NY, and NY responded that she had decided to fire the Complainant:

"I have not let [REDACTED] go and won't until all is settled with the board complaint. "

"I still hold true to [REDACTED] needs to be replaced and I have found a wonderful hygienist to do so when the time comes "

24) (C) NY admitted her frustration with Complainant's report that she had done nothing about his concerns:

*"He still insists I do nothing about his concerns, what concerns? Finding a new dentist? Does he think you can just pull one out of a hat? Perhaps he should reflect on his own behavior and how it has impacted others and **he continues to try to create unrest**, this makes it a challenge for any employee to do their job effectively. I am moving the office in a better direction, and I have a right to do this. I believe he would continue to cause problems no matter who was there. (emphasis added)*

25) (C) Absent from NY's email is any criticism of the quality of Complainant's dental hygiene work. Also absent is any mention that Complainant had problems interacting with patients.

26) (C) In her email to Board member Ms. VB, NY also admitted to the poor quality of Dr. DE's work:

"Dr [DE] is really not doing very good work, people refuse to come back to see him and he has very poor chair-side manner, especially with children. He told a young child if he didn't let him place a filling he would send him to a place where they would tie him down and do it, that is not acceptable. "

27) Shortly after Complainant filed his final submission to the MBDE, NY terminated his employment. The top three stated reasons for termination occurred **after** she had informed Ms. VB on May 16 that she had decided to terminate Complainant's employment. The events NY relied on in her

termination memo allegedly occurred May 24, 25, & 26 and June 8, 9, & 27. NY did not explain the reasons to Complainant or give any more detail than was listed on his termination notice.

- 28) (C) In this case, the Complainant has direct evidence of discrimination. NY admitted in her email to Ms. VB (written only three weeks after she learned about Complainant's complaints to the Dental Board) that she planned on terminating his employment. Moreover, NY directly linked her termination decision to Complainant's complaints that "he insists I do nothing about his concerns" and his complaints about Dr. DE.
- 29) (C) The Complainant has additional strong evidence of discrimination. First, this is the rare case when the employer reveals that it made the decision to fire someone and **then** went looking for reasons it could use to cover up the real reason. NY made up her mind to terminate Complainant sometime before 5/16/2011 (she admitted her decision on May 16, but started advertising for Complainant replacement as early as May 2nd). Accordingly, she could not have taken into account any of the top three reasons she gave for firing Complainant because they all occurred after May 16.
- 30) (C) Second, the timing of Complainant's termination is strong evidence of retaliatory intent. NY became aware of Complainant complaints to the Dental Board on 4/23/2011. Complainant received a call from a member of the Board of Directors (Mr. RC) that night saying that NY was upset about the complaint. Less than ten days later, NY was advertising for Complainant's replacement.
- 31) (C) Third, the first three allegations in the termination memo are not true. Concerning one of the allegations, Complainant did not make rude comments about patients' appearance. Complainant was very fond of the "Chinese lady" referred to in that co-worker's statement. That patient did request to be seen by Complainant and they exchanged friendly greetings when meeting in public. Complainant also did not try to sue Hannaford and Wal-Mart. He left Hannaford on good terms and is eligible to reapply. He was automatically included in a class action lawsuit against Wal-Mart for systemic pay violations by the company. Concerning one witness's statement, she was hired to replace the Complainant and her allegation that on her fifth day of employment she saw the Complainant violate PPE rules is inaccurate. Complainant used the proper PPE equipment when in the sterilization area. Finally, concerning another witnesses' allegation, Complainant applied sealants according to Dr. DE's direction. In the final few months of Complainant's employment, Dr. DE insisted on using a new sealant. He instructed Complainant how to use it as directed by Dr. DE.
- 32) (C) Fourth, NY's allegations about Complainant's skills are false. If there were any genuine concerns about his skills, she would have noted them on his performance evaluation or given him some sort of written warning. She also would certainly have identified those in her email to Board member Ms. VB to justify her decision to terminate the Complainant. Finally, on the same day that NY explained to Ms. VB that she planned to terminate Complainant, she lied to him and told him his job was secure. *See Exhibit D ("He also wanted to know if his job was secure, response-all are secure for now.")*. If NY planned on terminating the Complainant for legitimate reasons, it is highly unlikely that she would have told him that his job was secure less than two months before he was terminated.

V. Analysis and Conclusions

- 1) The Maine Human Rights Act requires the Commission in this investigation to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B).

- 2) The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action. More particularly, “reasonable grounds” exists when there is enough admissible evidence, or there is reason to believe that formal litigation discovery will lead to enough admissible evidence, so that there is at least an even chance of Complainant proving in court that unlawful discrimination occurred. Complainant must prove unlawful discrimination in a civil action by a “fair preponderance of the evidence.” 5 M.R.S. § 4631.
- 3) In this case, the Complainant alleged that due to his protected whistleblower activity (filing a complaint with the Maine Board of Dental Examiners) he was subjected to retaliation and was terminated for pretextual reasons. The Respondent denies that any discrimination or retaliation occurred and states that the Complainant was terminated due to unsatisfactory patient care and attitude.
- 4) The Maine Human Rights Act provides, in part, as follows: “It is unlawful employment discrimination, in violation of this Act . . . for any employer to . . . because of . . . previous actions taken under Title 26, chapter 7, subchapter 5-B...to... discharge an employee or discriminate with respect to . . . hire, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment. . . .” 5 M.R.S. § 4572(1) (A).
- 5) The Maine Human Rights Act prohibits termination because of previous actions that are protected under the Whistleblowers’ Protection Act (“WPA”). See 5 M.R.S. § 4572(1)(A). The WPA protects an employee who “acting in good faith . . . reports orally or in writing to the employer . . . what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States [or] what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual.” 26 M.R.S. § 833(1)(A, B).
- 6) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that he engaged in activity protected by the WPA, he was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. See *DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). One method of proving the causal link is if the adverse job action happens in “close proximity” to the protected conduct. See *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-515.
- 7) The prima-facie retaliation case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. See *Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then “produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action.” *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that showing, the Complainant must carry her overall burden of proving that “there was, in fact, a causal connection between the protected activity and the adverse employment action.” *Id.*
- 8) In order to prevail, Complainant must show that Respondent would not have taken the adverse employment action but for Complainant’s protected activity, although protected activity need not be the only reason for the decision. See *Maine Human Rights Comm’n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).

- 9) The issue in this claim is whether it is at least as likely as not - the Commission's "reasonable grounds" standard – that the Complainant would have been terminated even if he had never reported any activity that might be reasonably characterized as whistleblowing.
- 10) Complainant did establish a prima-facie claim of WPA-retaliation. He filed written complaints with the MBDE on 3/30/2011 that concerned Respondent's dentist and its Executive Director. The Complainant also filed additional materials with the MBDE as part of the investigation on or about June 12th and June 20th. Therefore, the Complainant was terminated just slightly over three months after he filed his initial report and less than three weeks after he filed his final information concerning the case with the MBDE. The relatively short time frame between these events could provide a causal link between the protected activity and the adverse employment action(s).
- 11) Respondent did provide probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action, namely statements from multiple witnesses (including co-workers, Executive Director NY, and Dr. DE) who stated that Complainant was in fact terminated for conduct such as not wearing proper PPE, poor performance (sealants that needed to be replaced, failure to do a perio probe on a patient after being directed to do so, excessive socializing, speaking rudely about patients, etc.)
- 12) In the final analysis, Complainant did sustain his burden to show that but for his protected activity he would not have been terminated and would have been rehired. Respondent's explanation for the Complainant's termination is not found to be credible. In making this recommendation the following facts are noted:
 - a) An initial point of contention is Respondent's argument that Complainant was not acting in "good faith" in making his report about Dr. DE and Executive Director NY to the MBDE.
 - i) Respondent believes that Complainant only made the MBDE complaints to get back at the two individuals responsible for the prior temporary termination of a certain dental hygienist with whom he was friendly. While that employee was subsequently rehired, Respondent believes that the Complainant was still upset about this and specifically mentioned this incident in his report to the MBDE about NY. Given that Complainant was still working for Respondent, and therefore was putting his job on the line by making the MBDE report, making the report to get revenge on behalf of a colleague who had been rehired seems unlikely.
 - ii) It is true that Complainant's seemingly altruistic motive to report Dr. DE's substandard care is somewhat undermined by the Complainant's significant delay in reporting certain events months after they initially occurred, despite his own conclusion that such actions may have been endangering the health or safety of patients. Even so, an employee reporting his supervisors to a state licensing board puts his or her job in extreme jeopardy, as is clearly seen here; Complainant's delay in deciding to go forward does not seem so unreasonable as to affect the good faith nature of his report.
 - b) Indeed, Complainant's fear of proceeding with his MBDE complaint seems to have been well-founded. Less than one month after Respondent's Executive Director, NY, learned that the Complainant had filed two complaints against ██████ with the MBDE, NY revealed in an internal email that she had already decided to terminate the Complainant because, "*I believe he would continue to cause problems.*" She had already picked out his replacement and was planning to fire him when "*all is settled with the Board complaint.*"

- c) The internal email in which NY explained her intention to terminate Complainant for being a troublemaker was dated May 16, 2011. The top three reasons NY gave (in writing) for the termination, however, all occurred *after* May 16. Events occurring after the decision to terminate could not have been the real reasons for termination.
- d) Even if the reasons cited by NY were not a pretext, her criticisms of Complainant are not supported by evidence:
- i) The sole evaluation the Complainant's received from the Respondent was scored a 98 out of 100 possible points. It was noted by Executive Director NY that his "[k]ey strengths" were "great attitude and willingness to work hard; excellent skills for a new graduate;" and "dependable and enthusiastic." NY recognized him as an "[e]xcellent team player" who "[g]oes above and beyond," and that she was "[v]ery glad to have [him] as part of [REDACTED] team." While it is true that this evaluation was given nearly a year prior to the Complainant's eventual termination, it was given 10 months into the Complainant's period of employment, so Respondent's claim that he "began with [REDACTED] on positive terms" but that this "initial rosy period ended quickly," does not appear to be accurate in that he was obviously still considered to be an exceptional employee at the time that the evaluation was given.
 - ii) Although it is possible that his performance and/or attitude did deteriorate dramatically during his final year of employment, Respondent did not provide any objective evidence of that. Complainant never received any written warnings, counselings or coachings when he was employed at [REDACTED]
- e) Immediately upon learning of Complainant's MBDE complaints, NY set in motion a plan to terminate Complainant:
- i) NY learned about the Complainant's complaints to the Dental Board on 4/23/2011. On the same day Complainant received a call from RC, a member of the [REDACTED] Board of Directors. RC told Complainant that NY was very upset about the complaint.
 - ii) Within 10 days after she became aware of Complainant's complaints to the Dental Board, NY began advertising for a dental hygienist to replace the Complainant. On May 2nd, Complainant learned that NY was advertising in the newspaper for two new dental hygienist employees. On May 5, NY toured the office with two dental hygienists.
 - iii) On 5/16/2011, three weeks after receiving the MBDE complaint, NY revealed in an email to a member [REDACTED] Board of Directors, Ms. VB, that she has decided to terminate the Complainant. Ms. VB had forwarded Complainant's email to NY, and NY responded that she had decided to fire the Complainant:

"I have not let [REDACTED] go and won't until all is settled with the board complaint."

"I still hold true to [REDACTED] needs to be replaced and I have found a wonderful hygienist to do so when the time comes "

NY admitted her frustration with Complainant's report that she had done nothing about his concerns:

"He still insists I do nothing about his concerns, what concerns? Finding a new dentist? Does he think you can just pull one out of a hat? Perhaps he should reflect on his own behavior and how it has impacted others and he continues to try to create unrest, this makes it a challenge for any employee to do their job effectively. I am moving the office in a better direction, and I have a right to do this. I believe he would continue to cause problems no matter who was there.


- iv) NY directly linked her termination decision to Complainant's complaints that "he insists I do nothing about his concerns" and his complaints about Dr. DE. Absent from NY's 5/16/2011 email is any criticism of the quality of Complainant's dental hygiene work, as well as any mention that Complainant had problems interacting with patients.
- v) Shortly after Complainant filed his final MBDE submission, NY terminated his employment. The top three stated reasons for termination occurred *after* she had informed Ms. VB on May 16 that she had decided to terminate Complainant's employment. The events NY relied on in her termination memo allegedly occurred May 24, 25, & 26 and June 8, 9, & 27.
- vi) Lastly, on the same day that NY explained to Ms. VB that she planned to terminate Complainant, she lied to Complainant and told him his job was "secure for now." As Complainant noted, If NY planned on terminating the Complainant for legitimate reasons, it is highly unlikely that she would have told him that his job was secure less than two months before he was terminated.

13) For the above reasons it is found that the Complainant has met his burden of establishing that his alleged protected whistleblower activity was, as least as likely as not - the MHRA's reasonable ground standard - a factor in his termination. Retaliation for protected whistleblower activity is found.

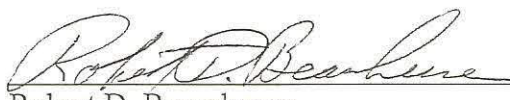
VI. Recommendations

Based upon the information contained herein, the following recommendation is made to the Maine Human Rights Commission:

1. There are **REASONABLE GROUNDS** to believe that Complainant [REDACTED] was subjected to unlawful retaliation in employment for protected whistleblower activity by Respondent [REDACTED] and;
2. That the conciliation should be attempted in keeping with 5 M.R.S. § 4612.



Amy M. Sneirson
Executive Director



Robert D. Beauchesne
MHRC Investigator



STATE BRIEFLY THE FACTS OF YOUR COMPLAINT:

Please print or type the nature of your complaint including dates, names and addresses of other persons who may be involved. Include any copies of all other relevant material.

11/29/10 1:40 apt Dr. [REDACTED] drop temp crown on the floor. The crown was picked up and put directly into the patients mouth without disinfection.

2/1/11 9:10apt- Dr. [REDACTED] came in operative appointment with blood on his mask from previous patient. After apt [REDACTED] (dental assistant) confronted [REDACTED] (office manager) about the situation stating action needs to be taken to avoid cross contamination. No action was taken.

2/8/11 10:40apt- Was an extraction patient. After dental assistant looked inside the patient mouth with a mirror and explorer Dr. [REDACTED] came into the room and grabbed the contaminated instruments bare handed and proceeded to touch them on the computer screen to show the patient decay on the radiograph.

2/8/11 1:20apt- After Dr. [REDACTED] completed a periodic exam the patients parents felt that their questions went unanswered. Dr. [REDACTED] came back into the room and proceeded back into the patients mouth bare handed and didn't wash his hands after the incident or before he left the room.

3/9/11 9:30apt- Tooth number 2 was extracted with no radiographs by Dr. [REDACTED]

3/21/11 10:10apt- Restorative filling B-do went into nerve. Bitewings were taken on patient 1/18/11

3/22/11 2:00apt- Dr. [REDACTED] punctured hole in his glove with the slow speed drill. He announced aloud in front of patient and proceeded to work with blood in and around the hole. He proceeded to work until his assistant told him to stop. Dr. [REDACTED] did not wash or disinfect his hands before leaving the room.

3/22/11 10:10apt- During prophy apt root tip K was still ^{recent} while permanent tooth (20) was fully erupted. It was noticed by the hygienist. The root tip was extracted on 7/21/10.

Use Additional Forms as Necessary

PRINT FORM

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RESET FORM

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2/9/2011. [redacted] was out all day. When asked by the staff she was on the clock dealing with personal house mortgage/buying arrangements.

3/2/2011 (Around 8:30) [redacted] dog was in the dental office and up the hall in the break room [redacted] and [redacted] were shaving the dogs hair.

3/18/2011 [redacted] dog was in the dental office. I have mentioned in the past to [redacted] and [redacted] that I do not think dogs are allowed in the office. This date is not documented but once [redacted] brought a litter of puppies in the dental office and we had to clean up feces off the floor.

3/30/2011 While all of the staff was at lunch including [redacted]e), [redacted], [redacted], [redacted], [redacted], and Dr. [redacted] made it very clear that she does not have to provide employees with Hep B vaccines or litters of any kind that is work related. She stated that is why we have health insurance. She proceeded to state in a rude manner that if nobody like what she had to say then they can leave practice. She then left the break room slamming the door. She then returned from down stairs still very made and slammed her office door as she went through the breakroom into her office. [redacted] was crying. I was shaking. I wanted to cry. I was in fear of losing my job. Other people may have been in fear of losing their jobs. I stated to [redacted], [redacted], [redacted], [redacted] and [redacted] that what [redacted] did in the break room was unprofessional and that the executive director should never act like that. I also stated that she should be replaced in my opinion because she was threatening us. Her actions are very unprofessional.

Note our office does not have a sanitary eye wash station. Our eye wash station is located in the contaminate ultra sonic/sterilization area. That whole areas is considered bio hazard. Bloody instruments are rinsed in the sink, where the eye was station is. Contaminated instruments are in that area. When have mentioned to [redacted] we need an eyewash station. I don't have the dates to document.

[redacted] fired [redacted] for a week then rehired her. I feel that this is unethical. I feel she had no reason to do this.

During last summer [redacted] cut [redacted]'s hours to two days a week, while having another hygienist see her patients. [redacted] was working in the office two days a week and then seeing patients the other two. [redacted] cut [redacted]'s hours to two days a week. [redacted] stopped working office and just saw patients two days week. She now sees patients four days week like myself.

I feel that [redacted] the office manager and [redacted] take alot of time off and get paid for it unlike us. I think there is a conflict of interest since [redacted] is [redacted] niece. We get two sick days a year. [redacted] and [redacted] get paid even if they are out the whole week. I don't know if that is ethical.

I am always wondering how [redacted] is going to react. I feel she is abusing her executive directors position. She leaves early, not in the office much, and threatens us (stated above).

[redacted] and [redacted] may be taken money from the offices cash box. I am not sure on this and I have not proof. Embezzlement may be taking place. Last year [redacted] when [redacted] had her own apartment she stated that she had to take money out of the cash box to pay her rent for the month. I have no proof but am concerned about miss management of funds.

Please note! am afraid of getting fired. I had to ethically report these issues.

Use Additional Forms as Necessary



Date: Sun, 8 May 2011 19:03:36 -0700

Subject: Update on [REDACTED]

From: wesley.danforth [REDACTED]

To: [REDACTED]



Dear [REDACTED]

I am writing this email to inform you about my concerns at [REDACTED]. After contemplating for many months, I felt that I ethically had to report the actions of Dr. [REDACTED] and [REDACTED] to the Maine Board of Dental Examiners. I filed the complaint with the Maine Board of Dental Examiners on 3/30/2011. If you want all the topics in the complaint I can email them to you tomorrow. On April 23, 2011 at 7:48pm [REDACTED] called my cellphone and left a message stating how upset [REDACTED] was that I reported her and that I should have handle it in a different way. I stated to him over the phone that I am not going to talk about it. He was suppose to meet with me on that following Monday and have a meeting but he never did. I am unsure why and never asked [REDACTED]. I have mentioned my concerns to [REDACTED] on several occasions, but she has done nothing about them.

On May 2, 2011 [REDACTED] and myself realized that [REDACTED] is looking to replace both of us. [REDACTED] is advertizing in the Kennebec Journal for dental hygienists. I am unsure of my legal options but I feel she is acting unprofessionally. On May 5, 2011 [REDACTED] had two hygienist walk through the office during an interview while [REDACTED] and myself were seeing patients. I felt cornered and felt physically sick while she was showing the hygienists our rooms. Note we were seeing patients at the same time. I know in Maine that she can terminate anybody for any reason but I feel she is doing it out of retaliation and revenge.

A couple weeks ago [REDACTED] terminated [REDACTED] and [REDACTED]. [REDACTED] is a dental assistant and is currently working on her expanded function certification. [REDACTED] was the front office receptionist. They were both terminated together on the same Monday morning. What I think is wrong is that if [REDACTED] had to terminate [REDACTED] because production was not higher having two assistants, then why is [REDACTED] having her daughter work doing dental assisting for [REDACTED].

I think [REDACTED] is doing the right thing by finding a new dentist and we should all be grateful. What [REDACTED] is doing to the rest of the staff is not acceptable. [REDACTED] the office manager who is [REDACTED] niece and has been very distant and rood to all of us. In my report to the Maine Board of Dental Examiners there were specific complaints that had some ties to [REDACTED]. [REDACTED] is using her executive authority to basically start from scratch because she has let things go way to long.

[REDACTED] and myself are very disturbed by what actions [REDACTED] has taken. We are pretty sure [REDACTED] is terminating our positions at [REDACTED]. I am wondering if she terminates our positions are we allowed to request a meeting by the board of [REDACTED]. I wish the board could have some say on what is taking place at the office.

If you need anymore information please feel free to contact me. If you would like to speak over the phone I will be available anytime after 5 pm because that is when I get out of the office.

Sincerely,

[REDACTED] RDH
[REDACTED]

From: [REDACTED]
Subject: Re: FW: Update on Kennebec Valley Dental Center
To: [REDACTED] <bssvaughan@msn.com>
Date: Monday, May 16, 2011, 10:16 AM



Hi [REDACTED]

No I had not seen this. My daughter filling in is old news, this week she will be filling in due to [REDACTED] being on vacation. After this the schedule will be down to a one assistant schedule and she won't be there. It was actually [REDACTED] who asked if she could be available to help out a little temporarily, on occasion it has only been for a few hours.

I have not let [REDACTED] go and won't until all is settled with the board complaint, I have replaced [REDACTED], not out of "revenge" as Wes likes to put it. I feel I need to work with experienced staff that is on board with what I am trying to accomplish. Of course [REDACTED] has been quiet, not rude, but also she is much busier and does not have time for socializing. [REDACTED] and [REDACTED] took to verbally bashing the dentist at the break room table so badly [REDACTED] had to leave, perhaps they should take their own behavior into account when it comes to being rude, it is getting out of hand. It has calmed down since [REDACTED] has gone which tells me I am on the right path. She expressed she was hoping to be let go.

[REDACTED] did contact [REDACTED] to see if he wanted to sit down and talk to the board and expressed that should have been his first contact, if Wes did not want to talk about it there was no point in meeting. This is not new news. I still hold true to Wes needs to be replaced and I have found a wonderful hygienist to do so when the time comes, she is also an OSHA trainer, has worked with [REDACTED] whom stated I will be working with the best.

The new dentist will be working alone, Dr. [REDACTED] is really not doing very good work, people refuse to come back to see him and he has very poor chairside manner, especially with children. He told a young child if he didn't let him place a filling he would send him to a place where they would tie him down and do it, that is not acceptable.

In closing I will say I am really tired of Wes's insisting how I treat staff is unacceptable, they are all treated well, this is the problem of working with people who have never worked anyplace else, and a public health setting is a lot different than private practice. He still insists I do nothing about his concerns, what concerns? Finding a new dentist? Does he think you can just pull one out of a hat? Perhaps he should reflect on his own behavior and how it has impacted others and he continues to try to create unrest, this makes it a challenge for any employee to do their job effectively. I am moving the office in a better direction, and I have a right to do this. I believe he would continue to cause problems no matter who was there.

Best,
[REDACTED]

--- On Mon, 5/16/11, [REDACTED] wrote:

From: [REDACTED]
Subject: FW: Update on Kennebec Valley Dental Center
To: [REDACTED]
Date: Monday, May 16, 2011, 2:24 AM

FYI,
let me know if you have seen this?
[REDACTED]