

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

TRINITY CONTINUING CARE SERVICES,
d/b/a SANCTUARY AT MCAULEY

Employer,

Case: 7-RC-23402
7-RC-23403

and

SEIU HEALTHCARE MICHIGAN, SERVICE
EMPLOYEES INTERNATIONAL UNION, CTW,

Petitioner.

MOTION TO SUPPLEMENT EMPLOYER'S MOTION TO REOPEN THE RECORD

NOW COMES Trinity Continuing Care Services, d/b/a Sanctuary at McAuley ("Employer"), by and through its attorneys, Varnum LLP, and for its Motion to Supplement Employer's Motion to Reopen the Record, states:

I BACKGROUND

1. On April 22, 2011, the Employer filed a Motion to Reopen the Record based on a written discipline issued by Unit Manager Rachel Jones on March 29, 2011, and a subsequent grievance filed by the union challenging that discipline. These documents were created after the underlying representation hearing and, therefore, were not available at the time of the hearing. The Employer presented these documents to the Board in its Motion to Reopen the Record because they directly refute Unit Manager Jones's hearing testimony in which she denied exercising supervisory authority.

2. Subsequent to filing the Motion to Reopen, an unfair labor practice charge alleging 8(a)(1), (3), and (4) charges involving a Unit Manager was filed against the Employer in Case No. 7-CA-53715.

3. The Employer brought evidence of supervisory status of the Unit Manager to the attention of the Board agent investigating the matter and suggested the Board consider it in its review of the Regional Director's decision in this matter. On June 28, 2011, the agent advised the Employer to present it to the Board directly.

4. Accordingly, attached in further support of its Motion to Reopen the record is an additional discipline issued by Unit Manager Jones on June 1, 2011, attached at Tab 1, and an affidavit of Unit Manager Carolyn Clanton describing her supervisory activities, attached at Tab 2. Both of these documents were presented to the Board agent in support of the Employer's response in Case No. 7-CA-53715.

5. The June 1 discipline by Unit Manager Jones was not presented until now because it was only recently issued and was not available when the Employer filed its Motion to Reopen the Record. Unit Manager Jones's most recent discipline is relevant and should be considered by the Board for the same reasons the Employer articulated in its Motion to Reopen the Record with respect to her March 29, 2011 discipline. Both of these disciplines contradict Unit Manager Jones' testimony at the hearing and are consistent with the documentary evidence and testimony presented by the Employer.

6. Unit Manager Clanton had just begun maternity leave during the representation hearing and, therefore, she was not available to either party to testify during those proceedings. Her affidavit was not presented until now because it was only created in connection with the investigation of the unfair labor practice charge in Case No. 7-CA-53715.

TAB 1

**TRINITY CONTINUING CARE SERVICES
CORRECTIVE ACTION NOTICE**

Action Is: Verbal Counseling (complete Sections 1, 2, 3, 4, and 5)
 Written Counseling (complete Sections 1, 2, 3, 4, and 5)
 Final Written Warning (complete Sections 1, 2, 3, 4, and 5)
 Termination (complete Sections 1, 2, 3, 5 and Consult Human Resources Before Termination)

Section 1:
Employee's Name: Ashton Levandoski Date of Infraction: 6/1/11
Department: Nursing Job Title: CENA
Business Unit: 500 Supervisor's Name: Rachel J.

Section 2:
Nature of the infraction (describe the problem, indicate specifics - who, what, when, where, location, time, witnesses, behavior exhibited):
Inappropriate conduct/behavior yelling in hallway and walking away from unit manager during conversation in front of visitors, residents and other staff. Conduct is harmful to the reputation and purpose of TSLC.
Indicate the specific date and nature of any previous, relevant counseling:

Section 3:
Employee Comments:
See reverse side for Employee Problem Solving Process and/or Employee Assistance Program (EAP).

Section 4:
Improvement Plan (and possible consequences if expectations are not met): If disagreements are noted, discuss issues in private professional manner. If behavior persists advance to written, final, and termination.

Section 5:
Signatures:
Date 6/1/11 Employee's Signature R. Jones RN (Signature does not necessarily indicate agreement, rather an acknowledgment that this report was discussed.)
Date _____ Supervisor's Signature _____
Date 6/1/11 Witness(es) (Only if employee refuses to sign) ee refused to sign [Signature]

TAB 2

CAROLYN CLANTON AFFIDAVIT

STATE OF MICHIGAN)
) ss.
COUNTY OF MUSKEGON)

I, Carolyn Clanton, being duly sworn, state as follows:

1. I am a resident of Muskegon County, Michigan. The statements made in this affidavit are, to the best of my knowledge, true and, if called upon as a witness, I can testify competently as to the truth of the statements made in this affidavit.

2. Sanctuary at McAuley is a residential long-term care nursing facility located in Muskegon, Michigan.

3. I currently work as a Licensed Practical Nurse ("LPN") Unit Manager for Sanctuary at McAuley and have held this position since 2005.

4. As an LPN Unit Manager, I supervise Certified Nursing Assistants ("CNAs") assigned to my shift each day.

5. As part of my supervisory duties, I impose discipline when I feel it is appropriate.

6. When I present discipline to a CNA, I ask the CNA if he or she wants a union representative present. CNAs often request union representation at that time.

7. When I issue discipline, I do not discuss it with my supervisor first, nor do I discuss the discipline with the Director of Nursing ("DON"), the Administrator, or any other management employee.

8. To my knowledge, no other management employee of Sanctuary at McAuley has investigated any of the disciplines issued by me.

9. I believe I have the authority to issue any level of discipline short of discharge without prior approval from any other level of management at Sanctuary at McAuley.

10. After I issue the discipline, I give it to Sanctuary at McAuley's Human Resources Department to include in the CNA's personnel file.

11. Disciplines affect future discipline because Sanctuary at McAuley uses a progressive disciplinary system.

12. On May 25, 2009, I issued a written verbal counseling discipline to CNA Amy Hollis because she returned late from her break. Although I do not impose discipline every time a CNA comes back late from a break, several incidents occurred that required her assistance during the time she was absent beyond the end of her break. As a result, I felt a written verbal warning was appropriate.

13. I did not seek approval from any member of Sanctuary and McAuley's management team prior to issuing Ms. Hollis's discipline, nor to my knowledge was there any investigation of this discipline by any other manager or employee.

14. On June 14, 2009, I issued a written verbal counseling discipline to CNA Margaret Visser because she failed to obtain a resident's weight as written on the daily assignment sheet. It is important for CNAs to complete their daily tasks and part of my job requires ensuring that those tasks are complete. Therefore, I issued this warning to CNA Visser to encourage compliance in the future.

15. I did not seek approval from any member of Sanctuary and McAuley's management team prior to issuing CNA Visser's discipline, nor to my knowledge was there any investigation of this discipline by any other manager or employee.

16. On October 3, 2009, I issued a written counseling discipline to CNA Tina Garber because she failed to change a soiled resident. Although it is not uncommon for residents to become soiled, it was my belief that CNA Garber had allowed the resident to remain soiled for too long and that

proper and timely positioning of the resident would have avoided the saturation I found. I decided to issue a written warning, and skip the verbal warning step, because CNA Garber had previously received a verbal warning dealing with this same issue.

17. I did not seek approval from any member of Sanctuary and McAuley's management team prior to issuing CNA Garber's discipline, nor to my knowledge was there any investigation of this discipline by any other manager or employee.

18. On October 9, 2009, I issued a written verbal counseling discipline to CNA Rikki Crosby because she had failed to timely change a soiled resident. Again, I believed the level of saturation to be unacceptable and avoidable had CNA Crosby repositioned the resident on a timely basis.

19. I did not seek approval from any member of Sanctuary and McAuley's management team prior to issuing CNA Crosby's discipline, nor to my knowledge was there any investigation of this discipline by any other manager or employee.

20. On August 22, 2010, I issued a verbal written counseling discipline to CNA Tammy Hickman because she failed to timely change a soiled resident. While CNA Hickman maintained that the CNA coming off the previous shift told her that the resident had been changed just prior to the start of CNA Hickman's shift, I rejected that argument because CNA Hickman still should have repositioned the resident within two hours of the start of her shift, which she did not do. I issued this written verbal counseling because, in my estimation, CNA Hickman had not fulfilled her duties.

21. I did not seek approval from any member of Sanctuary and McAuley's management team prior to issuing CNA Hickman's discipline, nor to my knowledge was there any investigation of this discipline by any other manager or employee.

22. On May 11, 2011, I issued a written verbal counseling to CNA Kelly Anderson because she tried to lift a resident without using a mechanical lift. This was dangerous for the resident and I believed a written verbal warning was appropriate.

23. I did not seek approval from any member of Sanctuary and McAuley's management team prior to issuing CNA Anderson's discipline, nor to my knowledge was there any investigation of this discipline by any other manager or employee.

24. In my capacity as LPN Unit Manager, I exercise discretion and independent judgment in determining whether to issue discipline and what level of discipline to impose. I am unaware of any policy or manual that tells me when I should or should not issue discipline.

25. In addition to the above examples of discipline, I have on occasion decided not to issue discipline when it might otherwise have been appropriate.

26. For example, during the week of June 6, 2010, two CNAs took breaks during the resident lunch hour period. Such breaks are not allowed without prior approval because the lunch hour period is a busy time for residents. After discussing the matter with these two CNAs, however, I decided not to issue any discipline.

27. In addition to the disciplines listed above, during my employment I have issued a variety of other disciplines to CNAs for various performance failings.

28. I direct CNAs in their daily tasks and ensure they complete their assignments (such as taking vital signs) with respect to each resident.

29. It is my responsibility to ensure that my shift is adequately staffed. If a CNA calls off work or the resident census is higher than expected, I attempt to call CNAs in to work. If no CNA is available, I make the decision whether to call in a Unit Manager to work, temporarily transfer a CNA from a different hall, or mandate that a CNA stay beyond the end of his or her shift.

30. In the past, I have had to temporarily transfer a CNA from a different hall to cover a short staff situation. I did this on my own accord without the involvement of my supervisor, the DON, or any other management employee.

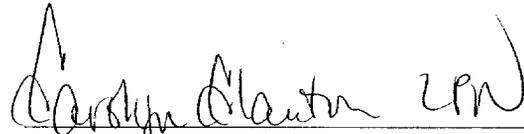
31. I have also required CNAs to stay beyond the end of their shift to finish attending to a resident or to finish resident assignments. I do this when I believe it is necessary without prior approval from my supervisor, the DON, or any other management employee.

32. It is my understanding that if CNA does not complete his or her assignments, I could be held responsible as a result.

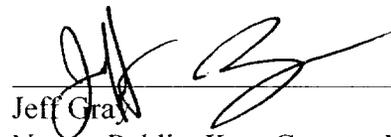
33. I have reviewed the LPN Unit Manager Job Description and I believe the "Personnel Functions" listed in that job description are accurate.

Further Affiant sayeth not.

Dated: June 14, 2011


Carolyn Clanton

Subscribed and sworn to before me this 14th day of June, 2011.


Jeff Gray
Notary Public, Kent County, Michigan
Acting in Muskegon County
My commission expires: 4/1/13

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PROOF OF SERVICE

I, Jodi L. Johnson, of the law firm of Varnum, hereby certify that on the 29th day of June, 2011, a copy of Trinity Continuing Care Services, d/b/a Sanctuary at McAuley's Motion to Supplement Employer's Motion to Reopen the Record was electronically filed with the Executive Secretary and the Regional Director, and was served by e-mail upon the following:

Brenda Robinson
SEIU Healthcare Michigan
Brenda.robinson@seiuhealthcaremi.org

Dated: June 29, 2011

By: /s/ Jodi L. Johnson
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