Testimony of Dr. Deborah Pierce,
Associate Director of Emergency Medicine, Einstein at Elkins Park Hospital
on "Arbitration: Is It Fair When Forced?"
Before the Senate Committee on the Judiciary
United States Senate
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Chairman Leahy, Chairman Franken, Ranking Member Grassley, and distinguished Members of the Senate Judiciary Committee, thank you for the invitation to speak to you today about my experience with mandatory arbitration.

I would like to express my strong support of S.987, the "Arbitration Fairness Act," a bill that would prevent companies from inserting mandatory pre-dispute arbitration clauses in their consumer and employment contracts. I would also like to thank Senator Franken for introducing the bill and Senators Blumenthal and Whitehouse for cosponsoring this important legislation.

My name is Deborah Pierce. I currently am the Associate Director of Emergency Medicine at Einstein at Elkins Park Hospital, and the Assistant Residency Director of the Emergency Medicine Residency at Albert Einstein Medical Center in Philadelphia, Pennsylvania. I received my undergraduate degree in chemical engineering from Lehigh University and my medical degree from Philadelphia College of Osteopathic Medicine. I also have a masters degree in biochemistry. After my internship, I did a residency in emergency medicine. Upon completion of my residency, I started my academic career at Cooper Hospital/University Medical Center, where I spent seven years as the Associate Residency Director and as an Assistant Professor of Emergency Medicine at Robert Wood Johnson Medical School. After leaving Cooper, I started working for Albert Einstein Medical Center as the Associate Director Emergency Medicine Residency, where I worked for two years.

In June of 2004, during my second year at Einstein, I began working on a part-time basis with a physician practice group in a large, suburban-Philadelphia community hospital's emergency department. This private practice group manages the medical care of all of the patients in the hospital's emergency department. After working successfully on a part-time basis for the

practice for one year, I was offered a full-time position. The salary offered to me by the practice was $40,000 less than I currently was making at Einstein, but the chairman of the practice assured me that the pay cut would be more than made up when I made partner two years after my hire. Based on the assurance of partnership, I accepted the position and left my full-time position at Einstein.

When I signed my employment agreement, I was unaware that it contained a mandatory arbitration clause. Even if I had known to look for such a provision, it would have meant nothing to me at that time. I consider myself an educated person, but I am not a lawyer and would not have known to recognize that the forced arbitration clause meant that I could never bring any future claims against the practice in a court of law. I also had no information about what the arbitration would involve. Further, even if I had understood the provision, I could not have removed it from the agreement. I had a choice: either accept the terms of the agreement, including the mandatory arbitration provision, or refuse to sign it and not get the job.

During my two full-time years with the practice, my job performance was never questioned and I consistently demonstrated that I was able to efficiently and successfully diagnose and treat patients as well as lead a team of medical providers under the stressful and chaotic working conditions of a busy emergency department. At no time during those two years was I told that there were any concerns about me being voted into partnership status, as <u>every</u> male physician before me had been made partner at the conclusion of their first two years. Yet at the end of 2006, to my shock and dismay, the chairman of the practice called me into his office, told me that the partners had voted to deny me partnership status and informed me that when my two-year employment agreement expired in June of 2007, I would be terminated. When I asked him for the reason why I was denied, he told me that he did not have to give me one.

Four months later, it is my understanding that a male physician with substantially less experience and whose two-year history with the practice apparently included performance problems, came up for partnership consideration. Instead of terminating his employment agreement and firing him, the practice voted to extend this male physician's agreement for an additional nine months in order to provide him a "probationary period" of time to improve what the chairman of the

practice testified were "serious" problems with this physician's clinical medical practice. At the end of the nine-month period, the partners unanimously agreed to grant him partnership status. No such contract extension or probationary period was ever extended to me.

Two days after I was denied partnership, a partner in the practice handed me the phone number of a female physician who used to work for the practice, whom I did not know, and suggested that I reach out to her. He asked that I not tell anyone about him having given me her number. When I spoke with this female physician, she told me that despite her excellent job performance, she had been forced out of the practice prior to the partners taking a partnership vote on her and that she firmly believed that she too had been the victim of gender discrimination. Because she moved out of state immediately after being terminated, she had decided not to pursue action against the practice. She testified on my behalf at the arbitration. I subsequently learned of the practice's differential treatment of another female physician applicant, and presented evidence during the arbitration regarding that female physician as well.

At the time I worked for the practice, it was a virtually all-male partnership where seventeen out of the eighteen partners were men and the practice had already forced the resignation of a female founding member. This pattern has not changed since I was denied a position as partner. Since I left in 2007, the token woman partner remaining in the practice left and the practice has terminated the employment of highly qualified female physicians prior to their becoming eligible for partnership. To this day, the practice remains an all-male partnership.

Shortly after my termination, I brought my gender discrimination claim before the Equal Employment Opportunity Commission (EEOC). After an investigation, the EEOC determined that the practice violated Title VII in not affording me the same treatment as it did my male counterpart. I have attached to this Statement a copy of the EEOC's August 16, 2007 Determination for your review.

If I had not been forced to arbitrate my gender discrimination claim, I would have filed suit in federal court following receipt of the EEOC's Determination and Right to Sue letter. Instead, my only option for recourse at that point was, as required in my agreement, to arbitrate my

employment discrimination claim before the American Health Lawyers Association (AHLA). Though extremely disappointed that I would not get an opportunity to have a jury of my peers determine the validity of my claim, both my attorneys and I expected the arbitration process to be fair and assumed my case would be presided over by an unbiased arbitrator with employment discrimination experience and a strong, working knowledge of the applicable evidentiary and employment discrimination laws. What I experienced, however, was exactly the opposite.

From the very first day of the arbitration, I had serious doubts that my arbitrator would be unbiased and fair. The arbitrator's law firm where the arbitration was held had rows of binders on display which were labeled with the name of the hospital whose emergency room was staffed by the doctors who denied me partnership. This indicated to me that he or his firm had previously represented the hospital. It was extremely troubling to me throughout the process to know that the hospital could be a repeat client and continued source of income for the arbitrator, whereas I was not and would never be. In addition, I was outraged to see, upon arriving early to the arbitrator's office one morning, the chairman of the practice walking out of the arbitrator's office carrying a cup of coffee. How can an arbitrator possibly be neutral and fair in administering justice in my case when part of his income depends on repeat business and he appears to be engaging in ex parte communications with the very person who was primarily responsible for the partnership's conduct?

I also had serious doubts about the knowledge and employment discrimination experience of the arbitrator, a health law attorney. Because I was forced to arbitrate my claims through the American Health Lawyers Association, I was severely limited as to the types of arbitrators available to preside over my claim. Despite having represented on his arbitration profile that he had thirty-four years of experience in resolving employment disputes, it seemed to me during the arbitration that the arbitrator had very little experience with employment law disputes and the applicable burdens of proof and standards of the law.

In terms of the costs, arbitration was far more costly than I could have ever anticipated. The arbitration provision in my employment agreement required me to pay half of the arbitrator's hourly fee of $450. The entire process cost me more than $200,000 and forced my husband and

me to take out a home equity loan which to this day, more than three years later, we are still paying off. My law firm, which took my case on a partial contingent fee, spent and lost close to $500,000 in arbitrating my case. As a medical professional who earns a good salary, I had to go into debt in order to pay the fees and costs of my arbitration. Had I not found a law firm willing to take my case on a partial contingent fee, even I would not have been able to afford to arbitrate my claim. I don't know how anyone who earns what would be considered an average salary would ever be able to afford to arbitrate his or her discrimination claims. After my experience, it is simply unbelievable to me that one could claim that arbitration is a low-cost alternative to the court system.

The costs of the arbitrator were also driven up by the fact that the arbitrator let the practice get away with behavior that, in my understanding, would have been severely sanctioned and more importantly, not tolerated, in a courtroom setting. One of the major cost drivers of the arbitration was that the practice withheld and destroyed evidence that was responsive to my attorneys' discovery requests and critical to proving my claim. It was not discovered until several days into the 13-day arbitration that the practice had destroyed and withheld documents, when several questions elicited answers from the witnesses that demonstrated that many critical documents had not been turned over to my attorneys. My attorneys demanded that the documents be produced. This occurred several times over the course of the witnesses' testimony and, each time, the arbitration had to be stopped so that my attorneys could cull through and review the previously withheld documents and incorporate the hundreds of pages of new documents into the presentation of my case. Eventually, my attorneys were forced to request that the arbitration be suspended for several days because there were so many responsive documents dumped on them in the middle of the arbitration. By the time this additional discovery was completed, the practice had turned over more than 600 pages of critical documents, constituting 26% of the documents produced over the eight-month period of the arbitration process. It is my understanding that this behavior would never have been countenanced by a federal court, which has the power to sanction both a party and its attorneys for such egregious conduct.

During the course of the arbitration, my attorneys repeatedly made motions seeking a dismissal of the proceeding so that we could file my claim in a court of law. Each time, the arbitrator

summarily denied the motion. In addition, my attorneys filed three different sanctions motions, one of which was for the practice's deliberate delay of the proceedings. The violations complained of in this motion were so outrageous, involving both significant delay and deliberate destruction of responsive documents, that the arbitrator granted the motion. However, despite finding in my favor and ordering the practice to pay me $1000.00 in sanctions, he turned around and charged me more than $2000.00 in fees for his time in deciding the motion! It is my understanding that in a court of law, I would not have been penalized for having brought a meritorious motion that the court granted in my favor. So when all was said and done, I was forced to pay the arbitrator more than double what I recovered for the practice's sanctioned misconduct.

When the arbitrator finally ruled on my case, he of course found that the other side had not treated me in a discriminatory fashion, despite the clear and overwhelming evidence to the contrary and the intentional misconduct on the practice's part throughout the arbitration. The content of his ruling demonstrated that he neither applied the applicable law to the facts of my case nor considered the majority of my substantial evidence presented over the course of the 13-day arbitration. In one particularly demonstrative example, one of the witnesses when testifying during the arbitration unequivocally contradicted her earlier deposition testimony on a critical issue -- whether or not the practice ever voted to give me a probationary period like it did my male counterpart. When cross-examined about the contradictory testimony, the witness unbelievably testified that since her deposition, her memory had been "clarified" after (1) speaking to her attorneys; (2) reviewing some unspecified documents; and (3) meeting with her fellow partners to "re-establish[] the chronology of events" related to the meeting in which the partners voted on my partnership. Despite the vehement objections of my attorneys, the arbitrator not only permitted this witness' testimony into the record, but relied on it in rendering his decision against me. What he clearly did not rely on in reaching his decision, was any of the evidence presented by me regarding the practice's differential treatment of other female physicians. Unbelievably, he failed to so much as mention that evidence in his opinion.

Because of the additional substantial expense both I and my law firm would have had to incur, and my understanding that my chances of convincing a judge to overturn the arbitrator's decision

were not great, I felt I had no viable option to appeal following his decision. On September 8, 2008, my attorneys submitted a lengthy letter to the President and Executive Vice President/Chief Executive Officer of the American Health Lawyers Association (AHLA), arguing that AHLA failed to provide to me the services for which I paid significant sums under the arbitration contract and that AHLA and the arbitrator failed to meet their obligations as described in AHLA's Rules of Procedure for Arbitration and Code of Ethics for Arbitrators. AHLA virtually ignored my attorneys' arguments and instead responded by repeatedly asserting that it does not certify or attest to the abilities, competence or performance of its arbitrators and does not make any "warranties about the ability of the arbitrator to weigh facts and law." I have attached to my Statement copies of both my attorneys' letter to AHLA and AHLA's response.

I interpreted AHLA's response to mean that it refused, and will continue in the future to refuse, to police the actions of its arbitrators and that despite how egregiously unfair the result of an AHLA arbitration may be, there is nothing that can be done about it.

Even as an educated physician, I never could have navigated the legally intricate arbitration system without the help of my attorneys. Yet because of the astronomical costs associated with my arbitration and the losses it incurred, it is my understanding that the law firm that represented me is no longer representing employees who have been forced to sign mandatory arbitration agreements as a condition of their employment. What that says to me is that until this bill gets enacted into law, there will be countless numbers of employees with no recourse whatsoever to pursue a remedy for their employment discrimination claims. In my opinion that is an absolute travesty of justice.

For me, the mandated arbitration process was unbelievably expensive, unfair and biased. It took away my faith in a fair and honorable legal system which is supposed to protect the civil rights of its citizens. I am hoping that this process today results in a much needed change in the law so that no one who follows me has to endure what I experienced. The mandatory arbitration system must be repaired to ensure that it truly is a voluntary system whereby people can fairly seek justice for the wrongs committed against them. Congress provided in the employment discrimination laws the right of an aggrieved employee to have her claims heard in federal court.

Employers are unilaterally denying that right to employees with impunity. Congress should restore employees' access to the courts in discrimination cases by passing the Arbitration Fairness Act.

Thank you for the opportunity to share my story.

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September 8, 2008
Via Federal Express

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Re: Dr. Deborah L. Pierce v. Abington Emergency Physician Associates, P.C.: A-020907-497

Dear Messrs. Hamme and Leibold:

On behalf of our client, Dr. Deborah L. Pierce, we are writing this letter to inform the American Health Lawyers Association ("AHLA") of several very serious issues concerning the handling of the above-referenced employment discrimination case by Vasilios J. Kalogredis, the AHLA arbitrator, and to request an investigation of this matter. We have performed our due diligence before writing to you by reviewing the case in depth. We believe that the arbitrator's Opinion was so deeply flawed and his failure to consider the evidence so substantial, that Dr. Pierce's civil rights claims were not properly heard; moreover, we believe that some of the billing for the arbitrator's work was inappropriate and excessive. Simply put, we believe that AHLA failed to provide to Dr. Pierce the services for which she paid significant sums under the arbitration contract. As set out below, it is our contention and belief that AHLA and Mr. Kalogredis failed to meet their obligations and our rightful expectations in this matter as described in AHLA's Code of Ethics for Arbitrators and AHLA's Rules of Procedure for Arbitration. Specifically, we maintain that AHLA and Mr. Kalogredis fell short of meeting the following qualifications set forth in the Code of Ethics for Arbitrators:

1.01 Honesty, Fairness and Impartiality
1.02 Competency
1.03 Knowledge
1.05 Timeliness

I. The Requirements for an Arbitrator in this Matter

An arbitration clause in her employment contract with Abington Emergency Physician Associates, P.C. ("AEPA") required that Dr. Pierce arbitrate her employment discrimination claims, civil rights claims, before an AHLA arbitrator. Pursuant to AHLA's rules, we submitted a Request for Dispute Resolver List, an AHLA form, (Exhibit 1) on which we made clear that this was an employment discrimination case based on sex.[1]

Essential in this case, as in all cases of employment discrimination, is that the arbitrator be well versed in the intricacies and nuances of employment discrimination law. This is an area of law that absolutely requires a fact-finder to undertake an extremely fact-intensive analysis before reaching a decision as to the merits of the claims. Any practitioner who is experienced, knowledgeable and competent in the field of employment discrimination law knows and understands the central importance of a careful and full consideration of the relevant facts of a case. Fact-finders must obtain the entire picture of the workplace in order to understand the often subtle and hidden forms of discrimination that now exist. The days of "smoking-gun" evidence are generally in the past. It is for this reason that the outcome of discrimination cases, perhaps more than any other type of case, turns on ensuring that the fact-finder has a comprehensive understanding of the facts and then performs a thorough legal analysis by applying the law to the facts. A fact-finder who fails to undertake a thorough analysis of all the relevant facts of an employment discrimination case raises questions about his fairness, competency and knowledge in this area of the law, deficiencies which could cause him to fall short of meeting the requirements of AHLA Code of Ethics Rules 1.01, 1.02 and 1.03.

The profile of Mr. Kalogredis, (Exhibit 2) provided to us by AHLA at the commencement of this case states that he has thirty-four (34) years of experience resolving labor and employment disputes. We relied on that profile in selecting him and based our selection on the representation that he was knowledgeable, experienced and competent to preside over Dr. Pierce's gender discrimination claims and, ultimately, to issue a decision in the case that meets the requirements of the AHLA arbitration contract. It now appears that our justifiable reliance on AHLA's profile was misplaced.

II. AHLA's Contractual Obligations to Dr. Pierce Were Not Met Because Mr. Kalogredis' Opinion Failed to Consider Her Evidence

In our view, the Opinion issued by Mr. Kalogredis on June 25, 2008 demonstrated a fundamental lack of knowledge and experience in considering and deciding employment discrimination claims, demonstrated by his disturbing failure to consider the

[1] Paragraph 4 of the Request states that Dr. Pierce was denied shareholder status on the basis of her gender; Paragraph 5 states that Dr. Pierce had filed an employment discrimination charge with federal and state agencies; and Paragraph 6 requests all relief available pursuant to Title VII and the Pennsylvania Human Relations Act.

plaintiff's evidence and legal arguments and culminating in his failure to apply the law to the facts of the case. The most important skill necessary to the analysis of any employment discrimination case is the ability to apply the law to the evidence in the case. We believe that Mr. Kalogredis failed to do that in his Opinion, substantially ignoring the majority of Dr. Pierce's evidence to the material detriment of her case. Mr. Kalogredis' Opinion consisted of a regurgitation of the law set forth by the parties in their post-arbitration briefs, and a handful of conclusory statements. Incredibly, he failed to address or analyze almost all of Dr. Pierce's evidence set forth in detail in (1) her Pre-Hearing Statement (Exhibit 3); (2) at the lengthy hearing which ran 13 hearing days from February 25, 2008 to March 19, 2008; or (3) in her Post-Hearing Brief (Exhibit 4); regarding AEPA's discriminatory conduct, its differential treatment of other female employees, and the inconsistent testimony of several of AEPA's witnesses.

A critical part of the shifting burden analysis applied to employment discrimination cases is the plaintiff's opportunity to prove that the employer's "legitimate business reasons" for her termination are pretextual. Significantly, Mr. Kalogredis' Opinion virtually ignored the vast majority of Plaintiff's evidence that AEPA's articulated reasons for its actions were pretextual; such an oversight undermines the very legitimacy of the decision. Failure to properly analyze and weigh our client's evidence may be indicative of a lack of fairness and impartiality, both of which are required under Rule 1.01 of AHLA's Code of Ethics.

As arbitrator, Mr. Kalogredis had the discretion to conclude that the evidence did not prove pretext, but that discretion requires that the arbitrator actually consider, and base his decision on, the evidence. The case law unequivocally required that Mr. Kalogredis, as fact-finder, review each of AEPA's articulated reasons for not granting Dr. Pierce shareholder status and then analyze whether each reason was credible, taking into account the evidence presented by Dr. Pierce refuting those reasons. (*See* Plaintiff's Pre-Hearing Statement, Exhibit 3, and Plaintiff's Post-Hearing Brief, Ex. 4). An arbitrator who is competent and knowledgeable, (as required under AHLA Code of Ethics 1.02 and 1.03) would have undertaken this very analysis. We believe that by failing to do so, Mr. Kalogredis abrogated the weighty responsibility he had to fairly judge Dr. Pierce's civil rights claims, and AHLA therefore breached its arbitration contract with Dr. Pierce.

a. <u>A Comparison of Mr. Kalogredis' Opinion and Dr. Pierce's Post-Hearing Brief Demonstrates that Mr. Kalogredis Failed to Consider the Majority of Dr. Pierce's Evidence</u>

A comparison of Dr. Pierce's evidence adduced at the hearing (set forth in her Post-Hearing Brief which is replete with cites to the record (Ex. 4)), with the Opinion and Order issued by Mr. Kalogredis (Ex. 5), demonstrates that he gave little to no consideration to Dr. Pierce's substantial proof. Dr. Pierce produced significant evidence of pretext to refute AEPA's proferred business reasons for not promoting her to shareholder: that (1) Dr. Pierce did not "work harmoniously with others;" (2) was "unlikely to contribute in a positive way to the overall success of AEPA;" and (3) that her

productivity was insufficient for shareholder status. As shown below, Mr. Kalogredis almost uniformly failed to consider, let alone analyze, Dr. Pierce's evidence.

1. **Working harmoniously with others" and "contributing in a positive way to the overall success of AEPA."**

- Evidence introduced by Dr. Pierce showing that there was no complaint about her working harmoniously with others or contributing positively to the overall success of the corporation in the two years prior to her shareholdership vote **was completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 32).
- Evidence introduced by Dr. Pierce showing a dearth of factual testimony about these three alleged complaints prior to and even during the meeting at which her shareholder candidacy was discussed **was completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 33). Similarly, evidence introduced by Dr. Pierce showing that she was never told of any problems regarding her "interaction with co-workers" **was completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 36).
- Evidence introduced by Dr. Pierce showing that AEPA witnesses were not credible as they had at best a vague recollection of facts surrounding AEPA's "legitimate business reasons" **was completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 37).
- Evidence introduced by Dr. Pierce showing that AEPA witnesses were not credible as they lacked specifics to support their conclusory allegations **was completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 37).
- When Dr. Pierce introduced evidence that it was AEPA's own shareholders, and not Dr. Pierce, who were "failing to contribute to the best interests of the corporation," and that male physicians were held to a lower standard than she, Mr. Kalogredis analyzed the matter by conclusorily stating that the AEPA shareholders **were "fine with this" and that the "process has been properly and consistently handled."** (Plaintiff's Post-Hearing Brief, Ex. 4, p. 40; Opinion, Ex. 5, p. 11).

2. **Productivity**

Mr. Kalogredis completely ignored Dr. Pierce's evidence of pretext in response to AEPA's position that Dr. Pierce's productivity was insufficient for shareholder status.

- Evidence introduced by Dr. Pierce that contrary to AEPA's claims, Dr. Pierce's productivity increased while a male doctor's (who also was a shareholder candidate) productivity decreased prior to their respective shareholder candidacy votes, was **completely ignored** by Mr. Kalogredis, who merely accepted AEPA's pretextual claim at face value. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 42).

- Evidence introduced by Dr. Pierce that male doctors slowed down the volume of patients being treated, but that she did not, **was similarly completely ignored** by Mr. Kalogredis. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 45).
- Evidence that AEPA managing physicians Kidwell and Ball manipulated AEPA shareholders regarding the primary reason given for not selecting Dr. Pierce for partnership (productivity) was **completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 49).
- Evidence introduced by Dr. Pierce that AEPA's own doctors admitted that they did not understand productivity data at the time they voted on Dr. Pierce's shareholder status was **again completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 50).
- Finally, evidence proffered by Dr. Pierce that Dr. Kidwell clearly intentionally misrepresented to AEPA shareholders and to Dr. Pierce that productivity was listed as a job requirement in her contract was **also completely ignored** by Mr. Kalogredis in his Opinion. (Plaintiff's Post-Hearing Brief, Ex. 4, p. 53).

3. Evidence of preferential treatment of a male doctor

Discrimination can be proven by evidence showing that the employer gives preferential treatment to a similarly situated employee not in the plaintiff's protected class. When Dr. Pierce showed that AEPA voted to give preferential treatment to a male doctor in substantially similar circumstances, Mr. Kalogredis merely concluded "I do not see disparate treatment here. All shareholders were given the opportunity to express their opinions pro and con . . ." as to the male doctor's candidacy as well as Dr. Pierce's. (*See* Plaintiff's Post-Hearing Brief, Ex. 4, p. 39; Opinion, Ex. 5, p. 7). Instead of considering Dr. Pierce's evidence of differential treatment and analyzing whether it demonstrated pretext or discrimination, Mr. Kalogredis **essentially held that as long as AEPA chose to treat them differently there was no 'disparate treatment.'** *Id.* With respect to Dr. Pierce's probation vote, the shareholders' testimony was nowhere close to consistent as to whether or not Dr. Pierce passed a probation vote. (*See* Plaintiff's Post-Hearing Brief, Ex. 4, pp.19-22). Four shareholders testified that they were certain that Dr. Pierce **had passed** the vote. *Id.* One shareholder completely changed her testimony on the subject between her deposition and her hearing testimony. *Id.* at 57-59. Another shareholder testified that no probation vote was ever taken for Dr. Pierce. *Id.* at 21. With seemingly no analysis whatsoever, and ignoring the blatant, transparent contradictions in the testimony of the AEPA shareholders, Mr. Kalogredis' blithely concludes that "[i]n spite of what may have been some confusion at the time, she was not offered that one-year probationary period." (*See* Ex. 5). This conclusory statement is false – there were many shareholders who were not confused at all about the results of the probation vote for Dr. Pierce and were certain that Dr. Pierce had passed the vote.

4. Evidence of differential treatment of other female employees and defendants' contradictory testimony

In addition, Mr. Kalogredis made no mention in his Opinion of the evidence that Dr. Pierce presented of AEPA's differential treatment of other female employees – direct evidence of differential treatment of at least one other female physician, Dr. Susan Nowak -- (Plaintiff's Post-Hearing Brief, Ex. 4, pp. 54-56); nor did he mention the blatant evidence of contradictory testimony by AEPA witnesses during the hearing which, Dr. Pierce argued in her Post-Hearing Brief, rendered their testimony unworthy of belief (Ex. 4, pp. 57-59). Again, the arbitrator may reject any of the plaintiff's evidence as not probative of discrimination, **but his Opinion lacks any indication that he even considered the evidence.** As stated above, it is absolutely essential that a fact-finder in an employment discrimination case give full and fair consideration to evidence of pretext, and a failure to do so strongly suggests a lack of impartiality, competence or knowledge of employment discrimination law. (AHLA Rules 1.01, 1.02 and 1.03).

b. Mr. Kalogredis Ignored and Failed to Consider his own Findings Issued In Deciding Plaintiff's Motions for Sanctions

Credibility determinations are central to rendering decisions in employment law cases where the issue of pretext is in dispute because evidence of dishonesty goes to the very essence of whether an employer is telling the truth about its reasons for the adverse employment action. During this litigation Dr. Pierce filed not one, not two, but three motions for sanctions due to AEPA's misconduct, all of which were granted. Mr. Kalogredis' Opinion ignores the evidence of AEPA's lack of credibility which he himself had found in deciding those compelling motions for sanctions. The first was a Motion for Assessment of Fees and Costs necessitated by AEPA's refusal to arbitrate in this arbitration that AEPA, not Dr. Pierce, had mandated, until a court could decide AEPA's motion to compel arbitration! Mr. Kalogredis found that AEPA "continually failed to comply with [his] orders and the contractually agreed to process," and "continually ignored this Arbitrator's communications and caused delays and disruptions." (*See* Mr. Kalogredis' July 25, 2007 letter Opinion and Order, Exhibit 6). In granting Dr. Pierce's motion Mr. Kalogredis stated that AEPA's "total disregard of the process [was] unacceptable." *Id.* Plaintiff's second Motion for Sanctions requested an adverse evidentiary inference necessitated by AEPA's destruction of tape recordings of two AEPA shareholders' meetings. Mr. Kalogredis granted the Motion, finding that AEPA **intentionally** destroyed the tapes which contained information relative to the shareholder candidacies of both Dr. Pierce and her nearest comparator. (*See* Kalogredis January 21, 2008 letter opinion, Ex. 7). Plaintiff's third Motion for Costs and Fees arose out of AEPA's withholding, until after the start of the arbitration hearing, twenty-five percent of the documents responsive to Plaintiff's document requests necessitating the extraordinary adjournments of the hearing for a number of days to take depositions, review documents and for Plaintiff's counsel to prepare a second time for the testimony of virtually all the witnesses. Mr. Kalogredis found that "AEPA had possession of the documents in question, had knowledge of their existence, and had a responsibility to have all of its shareholders turn over the documents they had. Also, AEPA was represented by

experienced, able and employment law specialty legal counsel." (*See* Kalogredis Opinion and Order of May 19, 2008, Ex. 8). He found that Dr. Pierce had in fact been prejudiced and that nothing could be done to completely obviate the effect of AEPA's conduct, *Id.* at p. 4, which resulted in multiple "elements of prejudice." *Id.* at 4-5. Although Mr. Kalogredis found that AEPA had engaged in prejudicial conduct which could not be cured, he did not consider this conduct whatsoever in his limited review of the evidence adduced at the hearing. His failure to take into account such a significant finding in his weighing of the evidence suggests a lack of impartiality, competency and knowledge of procedure. (AHLA Rules 1.01, 1.02 and 1.03).

III. The Billing for the Arbitrators' Time in Rendering His Opinion and Decision was Excessive

In total, Dr. Pierce paid Mr. Kalogredis **$58,521.51, one-half of his $117,000 fee,** for his services in this case. From very early on in the process, Dr. Pierce and this firm were concerned about the billing practices of Mr. Kalogredis, yet because the case was pending we were not in any position to complain to him or AHLA about it.

We believe that the records show that Mr. Kalogredis overbilled for the work performed in deciding the matter and writing his Opinion; the Opinion issued ignores significant amounts of evidence presented, fails to apply the law to the facts adduced by Plaintiff, has no cites to the record and lifts entire sections from the parties' own briefs. It appears clear to us that the Opinion issued by Mr. Kalogredis could not possibly have taken him the approximately fifty (50) hours of work he billed after the hearing. This raises the possibility of two significant breach of contract claims on behalf of Dr. Pierce: first, that the services contracted for were not provided (the Opinion being of significantly substandard quality) and second, that the services billed for were not provided (the time billed not reasonably bearing a relation to the services provided).

IV. Mr. Kalogredis Did Not Properly Assess the Costs of Plaintiff's Sanctions Motions

Similarly, Mr. Kalogredis' treatment of the onerous financial burden visited upon Dr. Pierce by Defendant's misconduct suggests a cavalier attitude toward his responsibility to properly assess sanctions. In his July 25, 2007 Order granting Plaintiff's first Motion for Sanctions for Delay of Proceedings he ordered AEPA to pay her $1,000.00 in sanctions, but he charged Dr. Pierce more than $2,000 for his time in deciding the Motion rather than assess his fees entirely to AEPA, which not only wiped out the entire $1000.00 but ended up costing her a significant amount. Although she prevailed on the Motion, she had to pay Mr. Kalogredis more than double what she recovered from AEPA for its egregious conduct. (*See* Ex. 6 and Mr. Kalogredis' bill for the period June 27, 2007 (when Plaintiff filed her Motion) to July 25, 2007, when Mr. Kalogredis ruled on the Motion, Ex. 9).

As set forth above, in his finding regarding Dr. Pierce's second Motion, Mr. Kalogredis found that AEPA intentionally destroyed evidence, but inexplicably denied

Dr. Pierce's request for attorney's fees for having to file the Motion due to AEPA's wrongdoing. No explanation or justification was given by Mr. Kalogredis. (*See* Ex. 7).

With respect to Dr. Pierce's third motion for sanctions for AEPA's intentional failure to produce evidence, although Mr. Kalogredis found that AEPA's conduct prejudiced Dr. Pierce, and that such **prejudice could not be cured**, he granted only one-half of the attorney fees the prejudicial conduct cost Dr. Pierce, and denied all of the court reporter's fees, without explanation. (*See* Ex. 8). Moreover, he charged Dr. Pierce for his time in finding that AEPA had caused uncurable prejudice to Dr. Pierce, refusing Dr. Pierce's request to shift such fees to AEPA stating his original decision was meant to be 'final.' *Id.* at 2. Again, no explanation or justification for his arbitrary decision was set forth.

V. The Arbitrator Delivered an Opinion That is Untimely, in Violation of Rule 6.04, AHLA's Rules of Procedure for Arbitration

Pursuant to AHLA's Rules of Procedure for Arbitration, Rule 6.04, Mr. Kalogredis was required to issue his Opinion "no later than thirty days from the date of the closing of the hearing." The parties and he agreed that the closing of the hearing would be on the date that he received the parties' post-hearing briefs, which was May 12, 2008. Thirty days from May 12th was June 11th, decision day. To put things in perspective, June 11 was close to three (3) months after the hearing had concluded and close to two (2) months after Mr. Kalogredis had received all of the arbitration transcripts. Mr. Kalogredis had nearly ninety (90) days – after having already heard the evidence during the arbitration hearing – to issue his Opinion.

On June 11, however, after having not received any Opinion, Plaintiff's counsel emailed Mr. Kalogredis that it was her understanding that his Opinion was due that day and to ask when we could expect it. It was not until the next day that he responded to the email and notified the parties that he would not be adhering to AHLA's thirty-day rule. At no time did Mr. Kalogredis seek the parties' consent to violate Rule 6.04's thirty-day mandate. He did not issue his Opinion until June 25, 2008, forty-four (44) days after the close of the hearing. In that time period between June 11 and June 25, he charged $6,401.00 for his services (he charged a total of $18,315 to the parties from the date the hearing ended until the date he issued his Opinion). (*See* Kalogredis bills for the time period March 19, 2008 through June 25, 2008, Ex. 10). Mr. Kalogredis breached AHLA's Rules of Procedure and Dr. Pierce should not have had to pay for any of his services past June 11, 2008.

VI. AHLA Should Investigate the Provision of Arbitration Services in this Matter.

For the above reasons, Dr. Pierce and we request that AHLA undertake an investigation of the services provided in this matter by Mr. Kalogredis, including his compliance with the requirements of AHLA's Code of Ethics, its Rules of Procedure for Arbitration and his billing practices.

This plaintiff was forced to use AHLA's arbitrators to decide issues that are not even remotely related to health law. Although Mr. Kalogredis might be knowledgeable regarding health law matters, our experience in this costly case was that he lacks the requisite experience when it comes to hearing and deciding statutory claims of employment discrimination. We question whether AHLA engages in a certification process adequate to insure that its arbitrators are competent to issue binding decisions on very serious, fact-intensive and subtle civil rights cases of employment discrimination. If AHLA is failing to engage in such a process, it puts at risk the integrity and protection of the civil rights of the thousands of employees, like Dr. Pierce, who must rely upon the quality and fairness of AHLA's approved arbitrators.

Very Truly Yours,

Nancy O'Mara Ezold

Jacqueline M. Woolley

cc: Dr. Deborah L. Pierce (w/o encl.)(via email)
Vasilios J. Kalogredis, Esquire (w/o encl.)(via First Class Mail)

AMERICAN
HEALTH LAWYERS
ASSOCIATION

AHLA ADR SERVICE

1025 Connecticut Avenue, NW, Suite 600, Washington, DC 20036-5405 • (202) 833-1100 • Fax (202) 833-1105

September 18, 2008

VIA UPS

Nancy O'Mara Ezold, Esq.
Jacqueline M. Woolley, Esq.
Nancy O'Mara Ezold, P.C.
One Belmont Avenue, Suite 501
Bala Cynwyd, PA 19004

Re: Dr. Deborah L. Pierce v. Abington Emergency Physician Associates, P.C.; A-020907-497

Dear Counsel:

Thank you for your letter of September 8, 2008 regarding the above-referenced matter as it relates to the arbitrator's qualifications, his handling of the dispute, the arbitrator's opinion, and his billing practices. You not only expressed disappointment in the arbitrator's handling of the case, you "believe that AHLA failed to provide to your client the services for which she paid significant sums under the arbitration contract." You write that both "AHLA and Mr. Kalogredis failed to meet their obligations and our rightful expectations in this matter as described in AHLA's Code of Ethics for Arbitrators ("Code of Ethics") and AHLA's Rules for Procedure for Arbitration ("Arbitration Rules")."

While Mr. Kalogredis can respond for himself if he so chooses, we disagree with your analysis that the American Health Lawyers Association's Alternative Dispute Resolution Service ("the AHLA ADR Service" or "the Service") did not meet its obligations under the Code of Ethics and Arbitration Rules. In brief, you make the following allegations against the American Health Lawyers Association (AHLA):

1) Mr. Kalogredis somehow misled you in his resolver profile by saying that he had thirty-four (34) years of experience in resolving labor and employment disputes. You relied on this representation in choosing him, and you were injured by this reliance on "AHLA's profile" of Mr. Kalogredis.
2) AHLA did not meet its "contractual obligations" because Mr. Kalogredis failed to consider the plaintiff's evidence and legal arguments, culminating in his failure to apply the law to the facts of the case.
3) AHLA failed to engage in a "certification" process adequate to insure that its arbitrators are competent, as shown by Mr. Kalogredis' alleged overbilling for his work, misallocation of costs on plaintiff's sanctions motions, and failure to file his opinion and order within the thirty (30) days required by the Arbitration Rules.

1) **Allegation of misleading information in Mr. Kalogredis' profile.**

In your letter, you imply without offering any evidence that Mr. Kalogredis inflated his years of experience in resolving labor and employment issues. Based on the fact that he has been selected in numerous other cases and no complaints have ever been filed against him for lack of experience or for mishandling a case, we have every reason to believe that his profile is accurate. However, the Service has not independently investigated whether the profile is accurate because the Arbitration Rules and the Request for Dispute Resolver List are crystal clear that the Service does not certify the information placed in the resolver profile:

> By invoking these Rules of arbitration by the Service, all parties acknowledge that the Service does not verify the information submitted to the Service by prospective arbitrators nor does the Service certify or in any way attest to the abilities or competence of such persons. *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Introduction, A-6 (Revised July 2008)[1].

The Arbitration Rules are not limited to a solitary mention of this disclaimer:

> The Service has not investigated, and makes no representation or warranty with respect to the accuracy or completeness of any information furnished or required to be furnished in any Application Form or with respect to the competence or training of any such arbitrator. *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Section 2.02, A-8-A-9 (Revised July 2008).

This disclaimer not only appears in two places in the Arbitration Rules, it is squarely and clearly disclosed on the form signed by Dr. Pierce on February 8, 2007, which was used to request a dispute resolver list.

> Each requesting party … (iv) recognizes that neither the Health Lawyers nor the Service certifies or verifies the qualifications or the experience of the dispute resolver(s)… Request for Dispute Resolver List, clause 13, signed by Deborah L. Pierce, February 8, 2007.

In agreeing to use the AHLA ADR Service, your client selected an appointing authority that in no way certifies or investigates representations by potential arbitrators in their resolver profile. Therefore, the claim that alleged misleading information on Mr. Kalogredis' resolver profile contributed to AHLA or the AHLA ADR Service failing to live up to its contractual obligations is completely without merit.

2) **Allegation that Mr. Kalogredis' failure to consider your client's legal and factual arguments contributed to AHLA's failure to meet its contractual obligations.**

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[1] The Arbitration Rules were last amended July 1, 2008, but the language of the rules cited in this letter were not changed in any material respect.

In this portion of the letter, you essentially re-argue your legal theory and factual analysis in an effort to demonstrate that AHLA "breached its arbitration contract" because Mr. Kalogredis failed to "apply the law to the facts of the case."

Your argument reveals a fundamental misunderstanding of the role of the AHLA ADR Service in the arbitration process. The Arbitration Rules make clear that the AHLA ADR Service is the appointing authority for each case that comes before the Service. Pursuant to the Arbitration Rules' introduction, "[w]hen parties agree to arbitrate under these Rules, they thereby accept the terms of these Rules and authorize the Service to assist in the process of selecting an arbitrator..." *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Section 1.01, A-7 (Revised July 2008).

By assisting in the process of selecting an arbitrator, the AHLA ADR Service makes no warranties about the ability of the arbitrator to weigh facts and law and certainly does not vouchsafe for the outcome of a particular proceeding. The Arbitration Rules clearly delineate the Service's lack of involvement in the substantive legal analysis of this or any other case through this broad indemnification clause:

> All parties using these Rules or the Service indemnifies, holds harmless and releases the American Health Lawyers and the Service, their directors and members of their governing boards, and their officers, employees, agents, attorneys, consultants and representatives from any and all liability to the party or to a person or entity claiming through the party by reason of or in any way related to the Service, the arbitrator, the Rules, including the applicable Code of Ethics, or of any action taken or not taken with respect thereto. *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Introduction, A-6 (Revised July 2008).

Your client had ample opportunity to make her factual and legal case to the arbitrator. The arbitrator held against you, and we understand your frustration with the outcome. Your disappointment in the result or in the arbitrator's handling of the case, however, cannot be transformed into a colorable breach of contract argument against the AHLA ADR Service when the Arbitration Rules clearly delineate that the Service is an appointing authority that must be indemnified by all parties for any claims "by reason of or in any way related to ... the arbitrator." Id.

Your effort to transform a request for a dispute resolver list into a breach of contract claim against the AHLA ADR Service also lacks merit. You paid a modest administrative fee for the AHLA ADR Service to facilitate your selection of an arbitrator consistent with the Service's Arbitration Rules. You paid this fee because your client signed a contract with Abington Emergency Physician Associates, P.C. on July 1, 2006 and in that agreement, your client agreed to settle "[a]ny controversy, dispute or disagreement arising out of or relating to this Agreement, or the breach thereof" by arbitration in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration. *Physician Employment Agreement*, Section 16, p. 13 (July 1, 2006). The Arbitration Rules provide a method by

which the AHLA ADR Service facilitates the selection of an arbitrator, and the Service fulfilled its limited role as outlined in the Arbitration Rules. Your client has no breach of contract claim against the AHLA ADR Service.

3) **Allegation that the arbitrator's failures related to billing, misassessment of costs, and untimely filing of his order means that AHLA failed to certify the competence of its arbitrators adequately.**

The issues of whether the arbitrator overbilled you and misassessed costs on your motions for sanctions are once again issues between you and the arbitrator. The AHLA ADR Service facilitates your selection of an arbitrator, but is not in a position to micromanage the arbitrator's billings nor his decisions related to the allocation of costs on motions. The Arbitration Rules are clear that arbitrators, unimpeded or overseen by the Service, have complete discretion over remedies and the assessments of costs and expenses to the prevailing party. See *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Rule 6.06, A-16 (Revised July 2008).

According to your letter, the arbitrator chose to issue his opinion and order forty-four (44) days after the close of the hearing, instead of the thirty (30) calendar days from the date of closing of the hearing or proceeding as required in the Arbitration Rules. See *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Rule 6.04, A-15 (Revised July 2008). If true, this would be inconsistent with the Arbitration Rules, and such rules provide recourse to a party when a dispute arises among the parties concerning the mental or physical competence of the arbitrator or any similar matter in which the propriety of continued service by the arbitrator is challenged. Under Rule 7.05,

> [i]f …the competence of the arbitrator or any similar matter in which the propriety of continued service by the arbitrator is challenged and such dispute cannot be resolved among the parties and the arbitrator, the Service, at its sole discretion, may resolve such issue, may remove the arbitrator and may make another appointment based on the parties' stated preferences with respect to any list submitted to them…". *American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration,* Rule 7.05, A-18 (Revised July 2008)

This is the only remedy that is given to the AHLA ADR Service under the Arbitration Rules if one or both parties feel that an arbitrator is unqualified or failing to abide by the Arbitration Rules. This discretionary remedy is a last resort and will only be granted if the equitable benefit to the parties outweighs the cost, expense and time of replacing the arbitrator. Since no such motion was made under Rule 7.05 and the case is completed, the issue is moot.

Finally, we note that - other than what we have already described under Rule 7.05 – there is a vehicle for seeking redress of the types of claims made in your September 8th letter, and it involves making a timely request under the Arbitration Rules to the arbitrator to

reconsider his determination under Rule 6.08, A-16 of the Arbitration Rules (Revised July 2008).

Ultimately, all of your claims against AHLA and the AHLA ADR Service hinge on a misapprehension of the services provided by the AHLA ADR Service and a misunderstanding of the relationship that exists between your client and the AHLA ADR Service. The AHLA ADR Service facilitated your selection of an arbitrator under the Arbitration Rules. It did not and does not certify its arbitrators' qualifications or his or her performance of his arbitration duties. Therefore, your disappointment in the outcome and in the arbitrator's performance simply cannot amount to any credible claim that AHLA or the AHLA ADR Service failed to live up to its obligations under the Arbitration Rules.

Sincerely,

Peter M. Leibold

Peter M. Leibold
EVP/CEO

cc: Vasilios J. Kalogredis, Esq.
Thomas J. Bender, Esq.
Joel Hamme, Esq.
Rita Brinley, Manager, ADR Service

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Philadelphia District Office

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PH: (215) 440-2602
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Charge Number: 530-2007-01826

Dr. Deborah Pierce
417 Militia Hill Rd.
Fort Washington, PA 10934

Charging Party,

v.

Abington Emergency Physician Associates
1200 Old York Rd.
Abington, PA 19001

Respondent.

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the above cited charge.

Timeliness and all other jurisdictional issues for coverage have been met. Charging Party alleges that she was discriminated against based upon her sex (female) when her Employment Agreement was terminated effective June 30, 2007, in violation of Title VII of the Civil Rights Act of 1964, as amended (Title VII).

Charging Party began working for Respondent as a part-time physician in July of 2004. In July of 2005, Charging Party began to work a full-time schedule. Charging Party states that per the Employment Agreement, she was to become eligible for shareholder status on July 1, 2007. Respondent considers the following factors when determining if an associate physician is eligible for shareholder status: (1) commitment to employment; (2) ability to work harmoniously with other employees of and sources of business to the Employer; (3) likelihood of contributing in a positive way to the overall success of the Employer; and (4) compliance with the Employer's Corporate Bylaws, standards and polices.

Charging Party contends that during her employment, she successfully met each of these standards. Charging Party denies that she was ever told that her medical skills or job performance were unsatisfactory or not shareholder material. Charging Party alleges that all of

the male associate physicians who have become eligible for consideration for shareholder status have been elected to such status.

Charging Party contends that on November 9, 2006, she was informed by Dr. Kendel Kidwell (President) that the shareholders had voted not to elect her to shareholder status in the practice. Charging Party alleges that when she asked for the reasons for this decision, Dr. Kidwell refused to tell her and told her that for confidentiality reasons, he was not at liberty to provide her with any specific reasons.

In March of 2007, Respondent voted on the candidacy of a male associate physician, Dr. Michael Nelson, who had less experience. Charging Party alleges that instead of terminating his employment, Respondent extended Dr. Nelson's Employment Agreement for a probationary period of nine months. Charging Party alleges that this allowed him to improve certain areas of his performance before being reconsidered for shareholder status at the end of 2007. Charging Party was not offered any contract extensions or probationary periods prior to terminating her Employment Agreement in November 2006. Charging Party alleges that after her Employment Agreement was terminated, she was replaced by a part-time male associate physician.

Respondent claims that Charging Party was terminated for low productivity and poor interaction with her co-workers. However, Respondent failed to provide any disciplinary documentation which would show that Charging Party exhibited these deficiencies. In addition, Charging Party's evaluation dated October of 2005, indicated that she received a "satisfactory" rating in her "ability to work well with others." The evidence showed that other male associate physicians consistently had low productivity but were not discharged. Charging Party did not have the lowest productivity of the associate physicians; however, none of the male associate physicians were terminated.

The investigation further revealed that Dr. Michael Nelson was offered an additional nine month probationary period after he was initially denied shareholder status. Respondent indicates that he was not offered shareholder status at that time due to his productivity statistics and his method of providing medical services. Respondent admitted that it had no problems with the quality of care that Charging Party provided, yet she was not offered the same opportunity. Respondent contends that it was not be in the "best interest" of Charging Party or the practice to offer a probationary period because it would not resolve concerns about Charging Party's interactions with co-workers. Respondent failed to provide a substantive explanation or evidence to show why Charging Party was not offered a probationary period. Further, there is no evidence to show that Charging Party's performance deficiencies were any worse than her male counterpart. After Charging Party's Employment Contract was terminated, she was replaced by a male part-time associate physician.

Based on this analysis, I have determined that the evidence obtained during the investigation establishes violations of Title VII in that Charging Party was not afforded the same opportunity as her male counterpart to extend her contract and was instead discharged from her position.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation.

In this regard, conciliation of this matter has now begun. Please be advised that any reasonable offer to resolve this matter will be considered. The Commission can seek an amount inclusive of full backpay (total wage loss) with interest, plus compensatory and/or punitive damages, benefits and actual monetary costs incurred by the Charging Party. The attached Conciliation Agreement provides more details concerning proposed relief. Again, the Commission is postured to consider any reasonable offer during this period. If an offer has not previously been submitted, Respondent is requested to accept, reject, or submit a counteroffer to the conciliation proposal within fifteen (15) days of the date of this Determination.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the EEOC is not obtained, the Respondent will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

On Behalf of the Commission,

August 16, 2007
Date

William S. Cook
for Marie M. Tomasso
District Director

cc: Jacqueline Woolley, Esq. (for Charging Party)
Christina Winston, Esq. (for Respondent)

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CONCILIATION AGREEMENT

In the Matter of:

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

and

DR. DEBORAH PIERCE

Charging Party

and

ABINGTON EMERGENCY PHYSICIAN ASSOCIATES, PC

Respondent

Charge Number 530-2007-01826

*****

A charge having been filed under Title VII of the Civil Rights Act of 1964 (Title VII), as and the U.S. Equal Employment Opportunity Commission (EEOC), by the Charging Party against the Respondent, the charge having been investigated and reasonable cause having been found, the parties do resolve and conciliate this matter as follows:

I. GENERAL PROVISIONS

1. EEOC May Review Compliance With Agreement - The Respondent agrees that the EEOC, on request of any Charging Party or on its own motion, may review compliance with this Agreement. As a part of such review the EEOC may require written reports concerning compliance, may inspect the premises, examine witnesses and examine and copy documents.

2. Agreement Does Not Constitute Admission of Violation - It is understood that this Agreement does not constitute an admission by any Respondent of any violation of any statute administered by the EEOC.

3. Charging Party's Covenant Not to Sue - The Charging Party hereby waives, releases and covenants not to sue Respondent with respect to the matters which were alleged in this charge on file with the EEOC, subject to performance by the Respondent of the promises and representations contained herein. The EEOC shall determine whether the Respondent has complied with the terms of this Agreement.

4. All Employment Practices are to be Conducted in a Non-Discriminatory Manner - All hiring, promotion practices, and other terms and conditions of employment shall be maintained and conducted in a manner which does not discriminate on the basis of race, color, sex, religion, national origin, age or disability in violation of any statute administered by the EEOC.

5. Retaliation Prohibited - The Parties agree that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under any statute administered by the EEOC or because of the filing of a charge; giving of testimony or assistance or participation in any manner in any investigation, proceeding or hearing under any statute administered by the EEOC.

6. Reporting Provisions - The Respondent agrees to retain the records and to provide the written reports under the subsequent section of this Agreement entitled "Reporting Provisions." Reports will be furnished to the Office of the EEOC which has signified final approval of this Agreement.

7. Enforcement of Agreement - The parties agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement.

8. Impact Upon EEOC's Processing - EEOC agrees not to use the subject charge as the jurisdictional basis for a civil action under the ADA, but does not waive or in any manner limit its right to process or seek relief in any other charge or investigation including, but not limited to, a charge filed by a member of the Commission against the Respondent.

II RELIEF

1. Compensatory (Nonpecuniary) and Punitive Losses or Damages - [To Be Determined]

2. Retaliation Prohibited - Respondent agrees to refrain from retaliation of any kind against Charging Party because of her opposition to any practice declared unlawful under ADA or Title VII, or because of the filing of a charge; giving of testimony or assistance; or participation in any manner in any investigation, proceeding or hearing under Title VII or ADEA.

3. Notice Requirement - The Respondent agrees to sign, circulate to its employees and conspicuously post an Anti-Discrimination Policy in both English and Spanish languages. Respondent will post copies of the Anti-Discrimination Policy on all employee bulletin boards for a period of six (6) months from the date of receipt of the signed agreement.

4. Training Requirements - The Respondent agrees to provide, at its own expense, eight hours of EEOC Technical Assistance Training to its managers and supervisors regarding their obligations under and provisions of Title VII and the ADEA.

III REPORTING PROVISIONS

The Respondent agrees to provide written notice to this office within thirty (30) days of satisfying each obligations under the ADA.

SIGNATURES

I have read the foregoing Conciliation Agreement and accept and agree to the provisions contained therein:

_____ _____

Date For Respondent

_____ _____

Date Deborah Pierce
Charging Party

Approved on behalf of the Commission:

_____ _____

Date Marie M. Tomasso
District Director