

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

5

MURRAY A. SNOOK, M.D., P.A.,
d/b/a FAMILY MEDICAL CENTER
OF GEORGETOWN

10

and

CASE 16-CA-22865

SHERYL HARRIS, an Individual

15

Jamal M. Allen, Esq., for the Government.¹
Regina C. Williams, Esq., for the Medical
Center.²
David Van Os, Esq., for the Charging Party.³

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DECISION

Statement of the Case

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WILLIAM N. CATES, Administrative Law Judge. The Government alleges the Medical Center discharged Charging Party Harris because she discussed wages with her coworkers in violation of the Medical Center's written policy prohibiting such discussions. The Government also alleges the Medical Center's written prohibition on the discussion of wages, as well as Harris' discharge, violates Section 8(a)(1) of the
30 National Labor Relations Act.⁴

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On the entire record, including my observation of the demeanor of the witnesses,⁵ and after considering the briefs filed by Government, Charging Party and Medical Center counsel, I make the following:

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¹ I shall refer to Counsel for the General Counsel as Government Counsel and the position he advocates as the Government's position.

² I shall refer to the Respondent as the Medical Center.

³ I shall refer to Charging Party Harris as the Charging Party or Harris.

⁴ Harris filed the original charge on June 10, and amended her charge on June 11, 2003. The Regional Director for Region 16 of the National Labor Relations Board (Board), on behalf of the General Counsel of the Board, issued a Complaint and Notice of Hearing on July 31, 2003. This case was tried in Austin, Texas on August 28 and 29, 2003.

⁵ Credibility resolutions have been made upon the entire record including all exhibits in the proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited, on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

Findings of Fact

I. Jurisdiction

5 The Medical Center is a sole proprietorship, owned by Doctor Murray A. Snook,
with an office and place of business in Georgetown, Texas,⁶ where it operates a medical
clinic providing medical services to the public. During the 12 months preceding July 31,
2003, the Medical Center derived gross revenues in excess of \$1,000,000 and purchased
10 and received goods and services valued in excess of \$50,000 directly from enterprises
outside the State of Texas. The Medical Center admits and I find it has been, at all
material times herein, an employer within the meaning of Section 2(2), (6) and (7) of the
Act.

II. Management Officials

15 As noted Doctor Snook is the owner of the Medical Center. Rhonda Morrison is
the Billing Office Manager and Tracy Yardley is one of its Certified Medical Assistants.

III. Alleged Unfair Labor Practices

20 **A. The Rule on Salary and Bonuses**

The Medical Center operates two facilities, one in Georgetown, Texas and the
other in Bertram, Texas. The Medical Center employs approximately 16 employees at its
25 Georgetown facility and approximately 3 employees at its Bertram, Texas, facility. The
Medical Center was established in approximately 1998.

It is undisputed that since December 11, 2002, and at all times material herein, the
Medical Center maintained the following rule in its employee Handbook at “General
30 Personnel Policies:”

Salary figures are confidential and should not be discussed
with others.

35 The physicians and office manager will evaluate your
performance at regular intervals.

Should you receive a bonus, the amount is confidential and
should not be discussed with others. Discussion of bonus amounts
with others is grounds for dismissal.

40 It appears the Medical Center does not defend the above rule but asserts it was not
enforced and is no longer in effect. The Medical Center seemed, at trial, to suggest it
would cause conflict or resentment between or among its employees if the employees
discussed their wages or bonuses.

⁶ The Medical Center also operates a small branch facility in Bertram, Texas.

Section 7 of the Act guarantees employees the right to engage in concerted activity for the purpose of mutual aid and protection. It is essential for the full exercise of those rights that employees be able to discuss wages. The Board has consistently held that rules prohibiting employees from discussing their wages with each other is unlawful in the absence of a business justification for the rule. *Waco, Inc.*, 273 NLRB 746, 748 (1984); *Corporate Express Delivery Systems*, 332 NLRB 1522, 1530 (2000). The mere maintenance of such a rule even without evidence of enforcement violates the Act. *Fredericksburg Glass & Mirror*, 323 NLRB 165, 174 (1997). The Board in *Medione of Greater Florida, Inc.*, 340 NLRB No. 39 sl. op. p. 3 (Sept. 19, 2003) recognized the principle that “discussion of wages is part of organizational activity and employers may not prohibit employees from discussing their wages or attempting to determine what other employees are paid [footnote omitted].” The Board noted in *Waco, Inc.* at 748:

There can be little question that the Respondent’s rule prohibiting employees from discussing their wages constitutes a clear restraint on employees’ Section 7 right to engage in concerted activities for mutual aid and protection concerning an undeniably significant term of employment. Since the Respondent has failed to establish any business justification for this restraint, it follows that its rule is unlawful.

The Medical Center’s rule herein, without exception, prohibited employees from discussing their salary and/or bonuses with each other and noted that to do so was “grounds for dismissal.” It is difficult to imagine what kind of business justification could be advanced that would warrant such a complete prohibition against employees discussing their wages and bonuses. It is clear the only justification for the rule suggested by the Medical Center, that such discussions might cause resentment among employees, is not a sufficient justification that outweighs employees interest in freely discussing wages and bonuses. Stated differently, the possibility or even probability of friction or conflict between employees should salary and/or bonus differences be disclosed, is insufficient to outweigh employees’ Section 7 rights concerning wages, probably the most critical element in employment. See *Scientific-Atlanta, Inc.*, 278 NLRB 622, 625 (1986).

I find the Medical Center violated Section 8(a)(1) of the Act by maintaining its rule prohibiting employees from discussing salary and/or bonuses which has a chilling effect on the exercise of Section 7 rights.

B. The Discharge of Harris

1. The Government’s Factual Account

Charging Party Harris worked for the Medical Center from July 2001, until April 2003,⁷ in the Billing Department collecting overdue payments and doing patient

⁷ Harris resigned her employment with the Medical Center on April 10, 2003, but shortly thereafter changed her mind and was reemployed by Doctor Snook. Harris also previously worked for Doctor Snook before her most recent employment with the Medical Center.

insurance verifications. Harris resides in Bertram, Texas, but works in the Medical Center's Georgetown, Texas, facility. As a result of Harris living in Bertram, Texas, she was often called upon to deliver supplies and payroll checks to the Bertram facility from the Georgetown facility. Harris' immediate supervisor was her friend of 20 years, Billing Office Manager Rhonda Morrison.

On April 25, 2003, Harris delivered payroll checks to the three Bertram, Texas, facility employees. The payroll checks are in sealed envelopes with each employees' name thereon. Harris personally delivered checks to Certified Medical Assistant Trish Voight and Receptionist Beatrice Daniel.⁸ While the three of them visited, Voight opened her payroll envelope and discovered an unexplained increase in the amount of her pay check. Harris suggested Voight telephone Georgetown facility Physician Assistant Tony Ganntt for an explanation of the increase.⁹ Voight did so and reported she had "cool" news that the employees had been given a pay raise. According to Harris, Daniel looked at her pay check and stated she also had received a wage increase. Harris had not, at that point, examined her pay envelope but did so and discovered she had not received a wage increase. Harris telephoned her cubical and co-worker at Georgetown, Debra Dry, and told Dry she thought the employees had gotten a pay raise and asked Dry to look at her pay check to see if she had received a raise. Dry told Harris her pay envelope was out in her truck unopened and she could not go to her truck at that time.

Harris then telephoned Billing Office Manager Morrison to ascertain if employees had gotten a pay raise. According to Harris, Morrison wanted to know how she knew and asked who told her about the raises. Harris told Morrison it did not matter but later told Morrison, Voight had brought the raise to her attention. Morrison told Harris, she and Dry had not received raises because they had received raises in August. Harris testified Morrison told her not to call anyone about the raises and specifically directed that she not speak with her co-worker Dry. Harris agreed not to telephone Dry but failed to mention to Morrison she had earlier telephone Dry about the raise.

Harris was not scheduled for and did not work on Saturday, April 26 or Sunday, April 27, 2003. Harris reported, as usual, for work at her regular time on Monday April 28, 2003. Billing Office Manager Morrison came to Harris' and Dry's work area but only spoke with Dry. Harris found that unusual and went later that morning to Morrison's office and asked if everything was okay. Morrison told Harris she was very upset and asked Harris why she had not told her earlier that she had already spoken with co-worker Dry about the pay raise. Morrison accused Harris of lying to her and stated she would never be able to trust Harris again. Morrison informed Harris she had already notified Doctor Snook and Certified Medical Assistant Tracy Yardley about the situation and if Harris did not like it to leave her office. Harris testified she did not raise her voice nor did she accuse Morrison or the office of being unprofessional.

⁸ The third Bertram employee, Physician's Assistant Lanny Stone was not in his office. Harris left his check on his desk.

⁹ Physician Assistant Ganntt's duties included administrating payroll for all Medical Center employees.

Harris returned to her duty station at which time co-worker Dry told Harris that Billing Office Manager Morrison had telephoned her over the weekend to talk about the pay raise. Dry informed Harris, she told Morrison that Harris had already spoken with her about the pay raise. Later that morning Harris observed Morrison and Certified Medical Assistant Yardley talking in Morrison's office. Harris asked if they were talking about her and that if they were she wanted to be included. Harris said both managers agreed they were discussing her and both began to speak to her at the same time. Harris stated both were upset she had telephoned co-worker Dry about the pay raise. At that time Doctor Snook walked up and Harris complained they were "ganging up" on her. Doctor Snook excused the others and spoke with Harris alone. Doctor Snook explained he was very upset because of the telephone calls he had received from both Morrison and Yardley that Harris had telephoned co-worker Dry about the pay raise. Doctor Snook told Harris he had done some research over the weekend and what he was about to do was legal. He then told Harris he was letting her go. Doctor Snook told Harris he was letting her go because she was in direct violation of the Medical Center's policy against talking about wages with a co-worker. Harris was shocked and in disbelief that she was being fired. Harris asked Doctor Snook for a letter of termination and said she would return the next day for it. Harris turned in her office keys, retrieved personal items and left.

Harris testified she received a telephone call later that afternoon, April 28, 2003, from Certified Medical Assistant Yardley who told her she wanted to tell her why she was terminated. Harris protested that Yardley was not her "boss." Yardley told Harris she was speaking on Doctor Snook's behalf and told Harris she was being fired for being in direct violation of the Medical Center's policy against discussing wages. Yardley also informed Harris she would not be getting a termination letter from Doctor Snook. Harris told Yardley she would not "kiss ass" or "suck dick" to keep a job. Yardley asked if Harris was referring to Billing Office Manager Morrison. Harris responded that Morrison could "go to hell."

Harris received a performance appraisal from Doctor Snook on June 3, 2002, in which she was given the second highest overall appraisal rating of "very good." Doctor Snook specifically rated Harris as "very good" in productivity, reliability, attendance, creativity, and initiative. Doctor Snook specifically noted in a hand written comment that Harris was "always suggesting new ideas" for finding new and better ways of doing things at the Medical Center. Harris testified her immediate supervisor, Billing Office Manager Morrison, never mentioned to her any patient or employee complaints or problems and never at any time disciplined her.

2. The Medical Center's Factual Account

Medical Center Billing Office Manager Morrison testified she received a telephone call on her cell telephone from Harris on Friday April 25, 2003 at around 5 p.m. as she arrived at home. According to Morrison, Harris had learned some pay raises had been given and asked Morrison if she, Morrison, had gotten a raise. Morrison asked how Harris knew about the raise. Harris, first reluctant to say, told Morrison employee Voight had opened her pay envelope in Harris' presence and stated there was extra

5 money on her payroll check. Harris told Morrison, Voight checked with payroll and learned the extra money was a pay raise. According to Morrison, Harris told her she asked Bertram employee Daniel if she had received a raise but that Daniel did not respond. Harris then decided to contact Morrison. Morrison told Harris that Harris had not received a raise because she had received one in August. Morrison told Harris she did not want Harris talking to her co-worker Dry about the raise. Morrison testified she asked Harris to allow her, Morrison, to be the one to talk with Dry about the pay raise. Harris assured Morrison she would not talk to Dry about the raise.

10 Employee Dry testified she and Harris were co-workers who shared the same “cubbyhole” space at the Medical Center in Georgetown. Dry testified Harris telephoned her on Friday, August 25, 2003, and asked if she had reviewed her pay check. Dry explained to Harris she had not, that her wages were deposited directly into her bank account and the paperwork for her check was in her gym bag in her truck. Dry wanted to know why Harris was asking. Harris told Dry she thought pay raises may have been given. Harris told Dry not to worry about it that she would contact their supervisor, Morrison.

20 Morrison testified she telephoned Dry on Saturday, April 26, 2003. Morrison was concerned that Harris would call Dry about the pay raise. Morrison wanted to be the one to speak with Dry about the raise and explain to her why some employees, who received a raise in August, did not get a raise this time. Morrison was not certain whether Dry had received the current raise.¹⁰ Dry told Morrison Harris had already spoken with her about the raise.

25 Morrison testified she spoke via telephone with Doctor Snook on Saturday, April 26, 2003. Morrison informed Doctor Snook that Harris had spoken with certain of the Bertram, Texas, facility employees, namely, Trish Voight and Beatrice Daniel, about the wage increase and had also spoken with employee Dry, as well as Morrison, about the raise. Morrison informed Doctor Snook that Harris had either lied to, or at least misled, her about not speaking with employee Dry in that Harris had assured her she would not speak with Dry but had in fact done so.

30 Morrison said she told Doctor Snook of other “irrational behavior” by Harris as well as patient and co-worker complaints against Harris. Morrison explained that Harris’ irrational behavior for a period of time consisted of “yelling loudly in the office” “yelling loudly on the telephone” and “snapping at other employees.” Morrison told Doctor Snook she was “tired of messing” with Harris especially “after finding out that [Harris] had lied to [her] about talking with co-worker Dry concerning wage increases for the employees.” Doctor Snook indicated he would look into the matter on Monday, April 28, 2003, that he wanted to hear from the others involved in the wage discussions.

40 Doctor Snook testified that what Morrison told him on Saturday, April 26, 2003, about Harris having talked to other employees about their raise “bothered” him because he not only thought it was wrong but the Medical Center had a written policy that

¹⁰ Dry in fact received a raise.

5 employees could not discuss wages, bonuses or raises with each other. Doctor Snook was also concerned because Morrison was bothered and upset with Harris for lying to her and Morrison wanted to know what Doctor Snook was going to do about it. Doctor Snook described Morrison as at her “wits end and could not handle ... Harris anymore and didn’t know what to do.”

10 On Monday, April 28, 2003, when Doctor Snook arrived at work he first spoke with Certified Medical Assistant Yardley,¹¹ who had already heard of the events surrounding Harris. Yardley wanted to know what Doctor Snook was going to do about Harris.¹² Doctor Snook had no idea but told Yardley he needed to speak with employees Beatrice Daniel, Trish Voight, Debra Dry and Harris that day.

15 Doctor Snook spoke first with Bertram employee Beatrice Daniel who told Doctor Snook that Harris dropped off the Bertram employees’ paychecks on Friday, April 25, 2003, and asked if she had received a raise. Daniel told Doctor Snook she felt uncomfortable about Harris’ questioning and added Harris looked over her shoulder and said she made more than Daniel.

20 Doctor Snook thereafter spoke with Debra Dry who told him Harris had asked her on Friday if she received a raise. Dry said she told Harris it was not her place to ask or for Dry to respond to such a question.

25 Medical Center Billing Office Manager Morrison testified Harris came to her office on Monday morning April 28, 2003, and asked if Morrison had a problem. Morrison told Harris she did and asked why Harris had lied to her about talking to Dry about the raise after she had promised not to do so. Instead of responding Harris accused Morrison of having lied to her in the past. Morrison asked Harris three times to lower her voice that she was afraid patients could hear them. Morrison described Harris as “basically she was very loud and didn’t want to answer my question in regard to [Dry].”
 30 Morrison testified Harris told her she was not professional nor was the office professional, and said she thought they had everything settled back on Friday. According to Morrison, Certified Medical Assistant Yardley came to Morrison’s office door and stated the loud discussion would have to stop. Harris left Morrison’s office.

35 After Harris left, Certified Medical Assistant Yardley and Morrison talked a few minutes in Morrison’s office and Harris came back. Harris asked if they were discussing her. Yardley explained they could not have a loud “commotion” going on in the office as Doctor Snook would be upset. Doctor Snook then came to the office. Harris asked if they were “ganging” up on her. Doctor Snook asked Morrison and Yardley to leave and
 40 spoke with Harris alone. Doctor Snook told Harris he could not have her yelling in his office and told Harris to “punch out and go home.” Doctor Snook told Harris her conduct over the past weekend “bothered” him, that she had discussed wages with other employees in “a threatening manner.” Doctor Snook was specifically upset because she had bothered Bertram employees Daniel and Voight and Georgetown employee Dry as

¹¹ Doctor Snook stated Yardley, who is an admitted supervisor and agent of the Medical Center, acted as office manager without actually having the title.

¹² Morrison also asked Doctor Snook early that morning what he was going to do about Harris.

well as Morrison. Doctor Snook told Harris she had lied to, as well as upset, Morrison. Doctor Snook said Harris was “shocked” at being fired and “asked ... for a letter stating the reasons why she was being let go.” Doctor Snook was “taken aback” by Harris’ request for a letter of dismissal because “[n]o one ... ever asked me for a letter ... why they were let go.” Doctor Snook collected Harris’ office key and she left slamming the door behind her.

Doctor Snook testified he discussed with Certified Medical Assistant Yardley, Harris’ request for a dismissal letter. The two of them concluded he did not need to provide a dismissal letter. Yardley, at Doctor Snook’s direction, telephoned Harris at home and told her she would not be getting a dismissal letter and told her not to come back to the office. Doctor Snook learned, as a result of Yardley’s call, that Harris said she would not “kiss and suck” to keep a job so he decided “[t]here was no way in hell” she could ever return to the Medical Center.

Certified Medical Assistant Yardley testified that when she informed Harris she would not be getting a dismissal letter they discussed her discharge. Yardley told Harris she had violated the Medical Center’s rule against discussing wages. According to Yardley, Harris insisted the rule did not call for dismissal. Yardley said she directed Harris to the second part of the rule where it stated one could be dismissed for violating the rule. It was at this point Harris told Yardley she did not “suck dick or kiss ass to keep a job.” An angry Yardley ask if Harris was insinuating Yardley would. Harris told Yardley, not her, to which Yardley responded if she meant Morrison. Harris told Yardley that Morrison could “go to hell.”

On Monday morning April 28, 2003, before Doctor Snook terminated Harris he had Billing Office Manager Morrison seek advice from the Texas Medical Association regarding his options as well as what repercussions he might expect by terminating Harris. Morrison was told Doctor Snook could fire Harris “with little or no reason.”

Doctor Snook testified he discharged Harris basically because of “her temper tantrum in [his] office” on Monday morning April 28, 2003. Doctor Snook acknowledged her violation of the Medical Center’s policy against discussing wages and bonuses started the discussions about terminating Harris and was part of his reason for terminating her. Doctor Snook acknowledged that after his conversation with Billing Office Manager Morrison on Saturday morning April 26, 2003, but before Harris’ “outburst” in his office on Monday morning April 28, 2003, he had already decided he was going to discipline her and that it “was a good probability” he was going to discharge her.

Harris filed a claim for unemployment compensation with the Texas Workforce Commission on or about April 29, 2003. On June 1, 2003, Doctor Snook signed the Medical Center’s Response in Opposition to Harris’ claim. In the response Doctor Snook set forth Harris was “fired for violation of company policy, see attached page from employee handbook, questioned four employees regarding their pay raise 2 on the job 2 were called @ home.” The attachment to Doctor Snook’s response was the Medical Center’s rule prohibiting employees from discussing wages or bonuses. Doctor Snook,

5 Billing Office Manager Morrison and Certified Medical Assistant Yardley discussed the Medical Center’s response before submitting it to the Texas Workforce Commission. Doctor Snook explained that although he signed the response he thought he only needed to provide “a” reason for Harris’ termination, not all reasons. Morrison and Yardley held the same view.

10 Doctor Snook and Billing Office Manager Morrison both testified in the Texas Workforce Commission hearing. Morrison did not say anything in that hearing about Harris having complaints from front office personnel about insurance verifications or complaints against Harris by employees, patients or managers or that Harris’ problems had exhausted her. Morrison acknowledged saying at the hearing the reason for Harris’ discharge was that she violated Medical Center policies prohibiting employees from discussing wages and/or bonuses with each other. Doctor Snook acknowledged he testified at the Texas Workforce Commission hearing about giving Harris a salary bonus in August 2002 because she was a satisfactory employee.

3. Credibility

20 I listened to and carefully observed Harris as she testified and I am persuaded she did so truthfully. I credit her testimony and observe certain undisputed facts. It is undisputed Harris delivered payroll checks to the Bertram facility where Voight noticed an increase in her pay check. It was at that point Harris first learned a pay raise might have been given. Harris sought to ascertain from employees Daniel and Dry, as well as, from her supervisor Morrison, if pay raises actually had been given. It is likewise 25 undisputed Harris’ inquires about wages caused concern for her supervisor, Morrison, and her co-worker, Dry. It is also undisputed Morrison perceived Harris either lied to or misled her regarding whether Harris had violated Morrison’s instructions not to talk about the wage increase with her co-workers. It is undisputed Medical Center Billing Office Manager Morrison reported Harris’ actions to Doctor Snook. With this backdrop 30 of undisputed facts I credit Harris’ testimony that Doctor Snook told her on Monday, following her discussions with employees about wages on Friday and Saturday, that he was upset with her because she had done so. I specifically credit Harris’ testimony that Doctor Snook told her he was terminating her because she was in direct violation of Medical Center policies prohibiting employees from talking about wages. I note Doctor 35 Snook and his management staff sought advice from the Texas Medical Association before terminating Harris. I credit Harris’ testimony that Doctor Snook told her at the time he terminated her he had done some research over the weekend and had concluded he was on sound legal ground terminating her.

40 It is acknowledged that Certified Medical Assistant Yardley, at Doctor Snook’s direction, telephoned Harris and, as testified to by Harris, told her she was terminated because she violated the Medical Center’s rule against discussing wages. Yardley even pointed out to Harris, after Harris contended otherwise, that a violation of the rule specifically called for dismissal. I note Harris’ testimony that she was specifically told 45 she was being terminated for violating the Medical Center’s rule against discussing wages, is consistent with the position taken by the Medical Center before the Texas Workforce Commission. Doctor Snook informed the Texas Workforce Commission that

Harris was discharged because she violated the Medical Center’s rule against discussing wages even pointing out that Harris’ offense was she had spoken with “four employees regarding their pay raise.” I specifically reject and discredit Doctor Snook’s testimony he terminated Harris because of a “temper tantrum” in his office just before he terminated her. Doctor Snook acknowledged he had already decided, prior to his office meeting with Harris, that he was going to discipline her and there was a good probability he would discharge her. Doctor Snook acknowledged Harris’ conversations with her co-workers concerning wages set in motion the discussions and triggered the decision to discipline Harris. I note, in crediting Harris and discrediting Doctor Snook regarding her termination, that Doctor Snook acknowledged “part” of his reason for discharging Harris was her speaking with her co-workers about wage increases.

4. Discussion, Analysis and Conclusions

I find the sole reason for Harris’ discharge was she discussed wage rates and pay raises with her co-workers in violation of the Medical Center’s published policy prohibiting such discussions. I find other reasons advanced by the Medical Center for her termination were simply post hoc rationalizations. I concluded earlier in this decision that the Medical Center’s published rule prohibiting employees from discussing wages and bonuses violated the Act. As it has been established Harris was discharged as a direct consequence of her discussing wages, I find her discharge violated Section 8(a)(1) of the Act.

I find Harris did not conduct herself in any manner that would result in a loss of the Act’s protection. I note communications occurring during the course of other-wise protected activity remains protected, unless found to be so violent or of such serious character, as to render the employee unfit for further service. Neither the tone, volume or content of Harris’ statements, made in response to being told she was terminated, caused her to lose the protection of the Act. I specifically credit Harris’ denial she told Morrison she was unprofessional or that the office was unprofessional. Harris telling Certified Medical Assistant Yardley, when Yardley telephoned to tell her why she was terminated, that she would not “kiss ass” or “suck dick” to keep her job, while crude, are not so serious comments as to cause her to lose the protection of the Act. Harris’ telling Yardley that Billing Office Manager Morrison could “go to hell” is not so egregious as to remove the protection of the Act from Harris. Furthermore, even if Harris raised her voice in Doctor Snook’s office when she was discharged, there is no showing it actually disrupted medical care to patients or others in the facility.

Even if I concluded, which I do not, that this case required a “mixed motive” analysis, I would conclude the Government established a prima facie case. I would also conclude the Medical Center failed to meet its burden of establishing it would have discharged Harris even in the absence of any protected conduct on her part. The Government clearly established: Harris engaged in the protected conduct of discussing wages with her co-workers; the Medical Center knew of the discussions; and, as acknowledged by Doctor Snook, those discussions played a motivating role in her discharge. The Medical Center’s other stated reasons for discharging Harris do not withstand careful scrutiny. The Medical Center’s contention Harris was not a satisfactory

employee is not borne out by the evidence. Doctor Snook concluded, in an employee appraisal, on June 3, 2002, that Harris was a very good employee. No documentation was presented of any discipline given Harris prior to her discharge. Harris credibly denied receiving any discipline. Harris voluntarily resigned her employment with the Medical Center but was rehired almost immediately thereafter by Doctor Snook. Her rehiring took place just a few days before her termination at issue herein. If Harris was, as contended by the Medical Center, such a disruptive, loud, counterproductive employee with an attitude and attendance problem over an extended time, I am persuaded Doctor Snook would not have rehired her. While some may have had concerns with Harris, such as patient Dummer who did not like her, or employee Dry who had received complaints about her, such concerns played no part in her termination. I would conclude, if a mixed motive analysis was required, the Medical Center failed to meet its burden of establishing it would have discharged Harris even in the absence of any protected conduct on her part.

REMEDY

Having found the Medical Center has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Medical Center having discriminatorily discharged its employee Sheryl Harris, I shall recommend she, within 14 days from the date of the Board's Order, be offered full reinstatement to her former job, or if her former job no longer exists to a substantially equivalent position, without prejudice to her seniority, or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings or other benefits suffered as a result of the discrimination against her with interest. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), and interest shall be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:¹³

ORDER

The Medical Center, Murray A. Snook, M.D., P.A., d/b/a Family Medical Center of Georgetown, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discharging employees because they engage in activities protected by the Act including discussing wages with co-workers and in order to discourage employees from engaging in such concerted protected activities.

(b) Maintaining a rule that prohibits employees from discussing wages with their co-workers.

¹³ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind its rule that prohibits employees from discussing wages with their co-workers.

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(b) Within 14 days of the date of the Board's Order offer Sheryl Harris reinstatement to her former position or if her former position no longer exists to a substantially equivalent position without prejudice to her seniority or other rights or privileges.

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(c) Within 14 days of the Board's Order remove from its files any reference to Harris' unlawful discharge and within 3 days thereafter notify her in writing this has been done and that her discharge will not be used against her in any manner.

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(d) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, Social Security payment records, time cards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of any back pay due under the terms of this Order.

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(e) Within 14 days after service by the Regional Director of Region 16 of the National Labor Relations Board, post at its Georgetown, Texas, facility copies of the attached notice marked "Appendix."¹⁴ Copies of the Notice, on forms provided by the Regional Director for Region 16 after being signed by the Medical Center's authorized representative shall be posted by the Medical Center and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings the Medical Center has gone out of business or closed the facility involved in these proceedings, the Medical Center shall duplicate and mail, at its own expense, a copy of the Notice to Employees, to all employees employed by the Medical Center on or at any time since December 11, 2002.

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(f) Within 21 days after service by the Region, file with the Regional Director for Region 16 of the National Labor Relations Board sworn certification of a

¹⁴ If this order is enforced by a Judgement of the United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD." shall read: "POSTED PURSUANT TO A JUDGEMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

responsible official on a form provided by the Region attesting to the steps that the Medical Center has taken to comply.

5 Dated at Washington, DC

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 William N. Cates
Associate Chief Judge

APPENDIX

NOTICE TO EMPLOYEES

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Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated Federal labor law
and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- 15 Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

20 WE WILL NOT maintain a rule prohibiting employees from discussing wages
with co-workers.

WE WILL NOT discharge employees because they have engaged in activities
protected by the Act, including discussing wages with co-workers.

25 WE WILL NOT in any like or related manner interfere with, restrain or coerce
employees in the exercise of the rights guaranteed them by Section 7 of the Act.

30 WE WILL rescind our work rule prohibiting employees from discussing wages
with co-workers.

35 WE WILL offer Sheryl Harris full reinstatement to her former job or if her
former job no longer exists to a substantially equivalent position without prejudice to her
seniority or other rights or privileges previously enjoyed; and, WE WILL make her
whole for any loss of earnings and other benefits resulting from her discharge less any net
interim earnings, plus interest.

40 WE WILL remove from our files any reference to our discharge of Sheryl Harris,
and WE WILL notify her in writing that her discharge will not be used against her in any
manner.

MURRAY A. SNOOK, M.D., P.A., d/b/a
FAMILY MEDICAL CENTER OF GEORGETOWN
(Employer)

45 Dated: _____ By: _____
(Representative) (Title)

5 The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

10 819 Taylor Street, Room 8A24, Fort Worth, TX 76102-6178
(817) 978-2921, Hours: 8:15 a.m. to 4:45 p.m.

15 THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM
THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR
COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS
NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE
ABOVE REGION'S COMPLIANCE OFFICER, (817) 978-2925