

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

R. ALEXANDER ACOSTA, Secretary of Labor,	:	
United States Department of Labor,	:	
	:	OSHRC DOCKET
Complainant,	:	
	:	NO. 15-1584
v.	:	
	:	
BERGEN REGIONAL MEDICAL CENTER, L.P.,	:	
	:	
Respondent,	:	
	:	
HPAE LOCAL UNION #5091,	:	
	:	
Authorized representative.	:	

STIPULATED SETTLEMENT

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STIPULATED SETTLEMENT

Wherefore, on February 20, 2015, OSHA commenced an inspection at Respondent Bergen Regional Medical Center, L.P.'s (BRMC) facility; and

Wherefore, BRMC has made substantial improvements to its Workplace Violence Prevention (WPV) Program since a prior inspection in 2014 and continuing throughout 2015 to the present; and

Wherefore the Parties agree that an effective and comprehensive WPV Program includes management commitment, union and employee involvement, worksite analysis, hazard identification and prevention and/or control, incident reporting and review, safety and health training, recordkeeping and program evaluation.

Wherefore, BRMC represents that its WPV Program includes each of those elements, and that it has taken and will continue to take the specific steps enumerated in paragraph 5 below to maintain an effective and comprehensive WPV Program.

Wherefore, OSHA relies on BRMC's representations and, pending the verification described in paragraphs 4b and 4c below, does not dispute those representations in entering into this agreement.

Now therefore, the Complainant and the Respondent herein agree to the following as a conclusion of this matter:

1. The Secretary hereby withdraws Citation 1, Item 1.
2. The Secretary hereby amends the proposed penalty for Citation 2, Item 1 to \$14,000.
3. Based upon the above, the Respondent withdraws its notice of contest as to the citations and proposed penalties as amended.
4. Respondent affirmatively states that:
 - a. The recordkeeping violation alleged in Citation 2, Item 1 has been abated.
 - b. On or before July 1, 2017, BRMC will provide verification to OSHA of all actions described below in paragraph 5.
 - c. Respondent will consent to and cooperate with OSHA inspections of its facility, without requiring OSHA to obtain warrants or subpoenas, for the sole and limited purpose of monitoring compliance with Para. 5 of this stipulated settlement through September 30, 2017. This cooperation will include making all documents created pursuant to Para. 5 below, including but not limited to WPV committee and subcommittee reports, minutes, and recommendations, hazard assessments, incident reports, and post-incident reviews and recommendations, available to OSHA upon request.
 - d. Respondent will continue to comply with the Occupational Safety and Health Act and the regulations promulgated thereunder.

5. Respondent represents that it developed and implemented, and that it will continue to implement, a WPV Program which includes, but is not limited to, the following elements:

I. Workplace Violence Prevention Committee

A Workplace Violence Prevention Committee (WPVPC) comprised of standing members of management and direct care staff. Staff members are released to attend WPVPC meetings.

a. Alternate staff members are designated, in case standing staff member(s) are unable to attend a particular WPVPC meeting.

b. Co-Chair position for the WPVPC is filled by a non-management employee who provides direct patient care or otherwise has contact with patients.

c. All WPVPC members and alternates receive WPV training that addresses such topics as regulatory requirements for workplace violence prevention programs, methods for enhancing workplace violence prevention programs, incident investigations, and incident reporting.

d. Official minutes are prepared following each WPVPC meeting, and these minutes are reviewed and approved by WPVPC members.

e. Subcommittees of the WPVPC regularly report back on their activities to the WPVPC during meetings of the WPVPC.

f. The Walk Through Survey subcommittee of the WPVPC oversees follow-up/follow-through of workplace violence action items identified during walk throughs of the Hospital.

g. The Workplace Violence Incident Analysis Subcommittee of the WPVPC conducts weekly post-incident/root cause analysis of workplace violence events.

h. The WPVPC will conduct a review of the Hospital's WPV Program before July 30, 2017. As part of its review, the WPVPC will consider all reports and recommendations regarding workplace violence at the hospital from the past two years, including reports and recommendations from internal sources as well as from outside consultants and governmental entities.

i. The WPVPC has provided a copy of the third party consultant's report and recommendations to the Bergen County Improvement Authority (BCIA), but will collate and provide two copies of a compilation of the third-party consultant's report and recommendations, as well as all policies and procedures related to workplace violence prevention at the hospital from the past two years, to the BCIA, one of which BCIA can make available to the next entity managing the hospital. A copy of such documentation, or subsets thereof, will also be made available to OSHA upon request.

II. Employee Participation

Employees participate in various aspects of the Hospital's WPV Program, including post-incident investigations, site hazard assessments, the WPVPC, and the WPV training program.

III. Hazard Analysis

Hazard analyses of WPV hazards are conducted through such methods as: BRMC's completion of its annual risk assessment, walk-through surveys conducted by the Walk Through Survey subcommittee of the WPVPC, incident analyses conducted by the Workplace Violence Incident Analysis subcommittee of the WPVPC, and data analyses conducted by the Environment of Care Committee, Performance Improvement Steering Committee, and Employee Survey Subcommittee. Recommendations resulting from the hazard analysis review process are addressed in a timely manner.

IV. Incident Reporting

BRMC requires WPV mandatory incident reporting and maintains a system to identify, track and address WPV incidents.

a. BRMC maintains a policy for all employees to complete the Workplace Violence Incident Investigation Report.

b. BRMC maintains a policy to explain the nature of reporting, and identify all of the available methods of reporting, including the anonymous hotline. BRMC consults with direct care staff regarding effectiveness of the injury and illness recordkeeping program, including the promotion and solicitation of feedback about the methods of reporting incidents of workplace violence.

c. BRMC reminds all staff that retaliation for reporting incidents continues to be prohibited.

V. Post-Incident Review

Post-incident review procedures thoroughly consider factors associated with incidents of workplace violence, including patient behavior, timing and staffing, physical layout, clinician input about medication and treatment, and the efficacy of existing engineering and administrative controls. When appropriate, a site visit to the location/unit of the incident are part of review process. Recommendations resulting from the post-incident review process are addressed in a timely manner.

VI. Patient Tracking System

BRMC implements a system to track patients with a history of violence and ensures all affected staff are trained on this system, including:

- a. A computerized physician order entry system for use with patients known to exhibit agitated or violent behavior.
- b. A policy for the identification on patient charts and in a Cardex System of patients known to have violent tendencies. The Cardex System provides staff with access to information captured about a patient's violent tendencies.

VII. Engineering Controls

BRMC solicits feedback from local direct care staff during walk-through evaluations of the physical facility, and evaluates the need for further engineering controls. Engineering controls which are already in place and will be maintained include:

- a. Existing mirrors, cameras and lighting controls in each unit/area of the hospital.
- b. Existing panic buttons in units with potentially violent patients.
- c. Automatic spring loaded door closing mechanisms at nursing stations in units with potentially violent patients.
- d. Augmented barriers around nursing stations in units with potentially violent patients, that took into consideration the daily needs of nurses and patients.
- e. Reconfigured social worker offices.
- f. Door locks in units with potentially violent patients.
- g. Panic buttons in dining areas in units with potentially violent patients.

h. The use of forensic pens (points that retract on contact) by employees working in units with potentially violent patients.

VIII. Administrative and Work Practice Controls

a. BRMC utilizes trained security staff members and/or a response team in the Hospital to render assistance in the event of an incident of workplace violence.

b. BRMC evaluates effective use of Staff, including Security Staff, in units with heightened risk of workplace violence.

c. BRMC restricts patient access to pens, pencils, paper clips and other sharp objects in units with potentially violent patients.

d. BRMC maintains an anonymous hotline for employees to report any safety or security concerns.

IX. Training

a. Annual training for all affected staff includes: what workplace violence is; where workplace violence most often occurs in a hospital setting; the risk factors for workplace violence incidents; how to report workplace violence incidents; how to assess the potential for a workplace violence incident; de-escalation techniques and restraint tactics; and live, hands-on sessions to practice workplace violence related skills.

b. BRMC offers additional training sessions throughout the year focused on strategies and techniques for the care of violent and/or agitated patients. Training includes some live, interactive workplace prevention training sessions.

X. Follow-up, Evaluation and Continuous Improvement

a. BRMC maintains an Employee Assistance Program with a 24-hour hotline for employees to access free, confidential counseling and referral services.

b. BRMC's policy requires mandatory referral to the Emergency Department for all incidents of workplace violence.

XI. Employee Notification

On or before June 1, 2017, BRMC will remind every employee, in writing, of the WPV policies and procedures in effect at the hospital, including: definition of WPV, procedures for reporting WPV incidents, information on how WPV incidents are investigated and reviewed, and the planned actions and timelines agreed upon in this stipulated settlement. A copy of the settlement agreement will be posted at the hospital and will be available for distribution upon request to all employees.

6. Respondent shall pay the amended proposed penalty of \$14,000 within 30 calendar days of the Final Order Date by forwarding a check made payable to "Occupational Safety and Health Administration – Labor" to the following address: U.S. Department of Labor, Occupational Safety and Health Administration, Hasbrouck Heights Area Office, 500 Route 17 South, 2nd Floor, Hasbrouck Heights, New Jersey 07604.

7. If OSHA determines that Respondent is not or may not be in compliance with any portion of this stipulated settlement, OSHA shall promptly notify Respondent of its findings. Respondent shall have 21 days from receipt of OSHA's notification to resolve the issue and/or provide a written response to OSHA. If the Parties are unable to resolve the issue, the Parties shall discuss the appropriate course of action.

8. Respondent certifies that on May 8, 2017, this stipulation will be posted where affected employees may see it.

9. This Stipulated Settlement has been shared with HPAE Local Union #5091 for their review.

10. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

11. None of the foregoing agreements, statements, stipulations, representations or actions described by the Respondent in this Agreement shall be deemed an admission by the Respondent of the allegations contained within the Citations, Notifications of Penalty and/or the Complaint as issued or as amended herein. The agreements, statements, stipulations, representations, findings and actions described herein are made for the purpose of settling this matter amicably, and they shall not be admissible or used for any purpose or in any proceeding, except for proceedings and matters arising under the Occupational Safety and Health Act.

DATED: 5/5, 2017

New York, New York

NICHOLAS C. GEALE
Acting Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor


ERIC J. CONN
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Center, L.P.

1st SLDC
KATHRYN STEWART
Senior Trial Attorney


SUZANNE DEMITRIO CAMPBELL
Senior Trial Attorney

Attorneys for Complainant
U.S. Department of Labor
R. ALEXANDER ACOSTA,
Acting Secretary of Labor

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Carlton Levine, the authorized employee representative at the following address:

Health Professionals and Allied Employees

110 Kinderkamack Road

Emerson, NJ 07630

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Steve Tully, the authorized employee representative at the following address:

American Federation of State, County, and Municipal Employees

516 Johnston Avenue

Jersey City, NJ 07304

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Meredith Larson, the authorized employee representative at the following address:

JNESO
1225 Livingston Avenue
North Brunswick, NJ 07902

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Kevin Collins, the authorized employee representative at the following address:

Doctors Council
50 Broadway, Suite 1101
New York, NY 10004

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Sharome Wiggins, the authorized employee representative at the following address:

Committee of Interns and Residents
520 Eighth Avenue, Suite 1200
New York, NY 10018

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Salvatore Costanza, the authorized employee representative at the following address:

Local 68 (International Union of Operating Engineers)
11 Fairfield Place
West Caldwell, NJ 07006

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, I served a copy of the attached Stipulated Settlement on Chris Dempsey, the authorized employee representative at the following address:

Local 74 (Security Guards)
36-36 33rd Street, Suite 202
Long Island City, NY 11106

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Roy Park

TITLE: VP of Human Resources

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ORDER APPROVING SETTLEMENT

In OSHRC Docket No. 15-1584, Respondent, by a letter dated September 11, 2015, contested the citations issued to Respondent by Complainant dated August 18, 2015. In its letter, Respondent also contested the penalties proposed by Complainant.

An executed Stipulated Settlement has been received from the parties, and this stipulation addresses all matters at issue between the parties in this proceeding. The Stipulation having been read and considered, it is

ORDERED: (1) That the terms of the Stipulated Settlement are approved and incorporated as part of this Order; and

(2) That this Order, pursuant to Section 12(j) of the Act, 29 U.S.C. § 661(j), will become the final order of the Commission at the expiration of thirty (30) days from the date of docketing by the Executive Secretary, unless within that time a member of the Commission directs that it be reviewed.

Dated: this _____ day of _____, 2017

SO ORDERED:

HONORABLE COVETTE ROONEY
Chief Judge, Occupational Safety
& Health Review Commission