

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. PR14HB-66041

Nicole Perkins, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Atrium Post Acute Care of WayneView, )  
 )  
 )  
 Respondent. )

Administrative Action  
**FINDING OF PROBABLE CAUSE**

On July 26 2016, Nicole Perkins (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Atrium Post Acute Care of WayneView (Respondent) violated the New Jersey Law Against Discrimination (LAD) N.J.S.A. 10:5-1 to -49, by refusing to accept a business telephone call that she placed through a video relay service. The DCR investigation found as follows.

**Summary of Investigation**

Respondent is a 170-bed for-profit nursing home located at 2020 Route 23, Wayne, New Jersey 07470.

Complainant is a deaf woman who, during the relevant time, worked as a caseworker/advocate for St. Joseph's Health Care System in Paterson, New Jersey (St. Joseph's). Complainant alleged that on May 25, 2016, at 1:35 p.m., she attempted to contact Respondent to obtain medical records on behalf of her client, who is also deaf.

Complainant alleged that she placed the telephone call using a video relay service called Purple Communications, Inc. (Purple). As a general matter, a caller using Purple may elect to communicate with the Purple operator by text message or FaceTime using American Sign Language (ASL). The Purple operator places the call, announces that it is a relay call made on behalf of a caller who is deaf or hard of hearing, communicates verbally with the person on the other end, and relays the conversation to the caller through text message or ASL.

Complainant alleged that when she tried to place the business call, the Purple operator reported that the male who answered the phone refused to accept the call and simply said, "I'm not responsible" and hung up. Complainant alleged that at her request, the operator called back a number of times. Complainant alleged that the male repeatedly refused to accept the telephone

call stating, “I won’t take this call, I don’t have to.” She alleged that what ensued was a “heated argument” in which the person “bluntly refused to give me his name.”

Complainant stated that at one point, a female answered the telephone. Complainant noted, “I . . . asked her what was the name of the person who had just left, she said, ‘Joseph.’”

Complainant told DCR that she reported the matter to her supervisor—St. Joseph’s Director of Deaf Mental Health Services Carol Uecker—and explained that she was unable to obtain the medical records for her deaf client. She contends that the male agent’s repeated refusal to accept the call amounted to disability discrimination.

Respondent denied the allegations in their entirety. It stated that there was no male staff member named Joseph working on that date. It stated that it employs a female worker whose surname is Joseph. It stated that she is a certified nursing assistant (CNA) and does not answer the telephones. Respondent produced a signed statement from Ms. Joseph confirming that she works as a CNA and does not answer phones.

Respondent stated that it employs two receptionists—P.L. (a minor) and Linda Laspada—to answer incoming phone calls and that receptionists are instructed to answer the phone using a script, i.e., “Good morning, thank you for calling Atrium Post Acute Care of WayneView. My name is [first name].” See Letter Luke P. Breslin, General Counsel to DCR, Oct. 6, 2016, p. 2. During the course of the investigation, Respondent’s attorney told DCR that St. Joseph’s indicated that it had no caseworker by the name of Nicole Perkins.

Respondent argued that it does not have anyone residents or employees who would need video relay services for telephonic communications. Therefore, it argued, “it would be unlikely that any video relay service would be made for a deaf individual either residing or working at Atrium because the only deaf individual at the center does not utilize these services.” *Id.* at 3.

Respondent assured DCR that “all of its programs and activities are accessible to and useable by disabled persons, including persons who are deaf, hard of hearing, or blind, or who have other sensory impairments.” It produced a written policy that states in part:

Access features include . . . A full range of assistive and communication aids provided to persons who are deaf, hard of hearing, or blind, or with sensory impairments. There is no additional charge for such aids. Some of these aids include:

- Qualified sign language interpreters for persons who are deaf or hard-of-hearing.
- A twenty-four hour (24) telecommunication device (TTY/TDD) which can connect the caller to all extensions within the facility and/or portable

(TTY/TDD) units, for use by persons who are deaf, hard of hearing, or speech impaired.

- Readers and taped material for the blind and large print materials for the visually impaired.
- Flash cards, alphabet boards and other communication boards.
- Assistive devices for persons with impaired manual skills.

Respondent told DCR that receptionist P.L. is a high school student who works part-time from 4:30 p.m. to 8 p.m., and therefore would not have been on duty at the time Complainant claims to have placed the call. P.L.'s parents did not grant DCR permission to interview her.

The other receptionist, Linda Laspada, told DCR that she has worked for Respondent for twenty three years. She said that for the past three years, she has worked full-time as the day shift receptionist (i.e., from 8:30 a.m. to 4:30 p.m.). She stated that she was on duty on the day in question but had no recollection of receiving an incoming call from a relay operator. Laspada stated that she was unfamiliar with relay calls and had never heard of Purple Communications. She noted that others could have answered the phone. She stated that if she is occupied, an incoming call could be "flipped" to one of the nurses' stations. She stated that the nurses will answer by giving their particular location, e.g., "B-1" or "B-2," and not follow the script. She stated that Respondent's concierge—Francis Quintano—also answers the telephone when she is at lunch or away from her desk. She stated that she takes a thirty minute lunch break usually around 1 p.m.

Quintana told DCR that he has worked for Respondent about sixteen years. He stated that he spent the first two years as a receptionist and has been the concierge for the past fourteen years. He said that he works Monday through Friday, usually from about 12:30 or 1 p.m., until about 9 p.m. He acknowledged that he answers the telephone during Laspada's lunch breaks or whenever she is away from her desk. When asked if he had any recollection of an incoming call from a person who announced it as a relay call, Quintana replied, "We get that around here but cannot remember, do not know if you are pointing to a specific call." He stated, "Ever since I started working here, we get a lot of calls like that." When asked if he meant calls from relay operators, he replied, "From automated." The investigator attempted to clarify that a relay call was placed by a live operator and was not an automated "robo call." Quintana stated, "I don't remember. I may vaguely remember getting calls like that. I get automated calls."

St. Joseph's Director of Deaf Mental Health Services Carol Uecker confirmed that Complainant was employed during the relevant time and that she was tasked to call Respondent on behalf of a deaf client. She recalled Complainant reporting that she could not obtain the records because Respondent refused to accept her relay call.

DCR reviewed records from Purple, which confirmed that on May 25, 2016, its relay operator called Respondent five times between 1:35 and 1:44 p.m. EST. The first call lasted 30

seconds. The second call lasted 36 seconds. The third call lasted 12 seconds. The fourth call lasted 6 minutes and 42 seconds. The fifth call lasted 12 seconds. DCR was unable to confirm the content of any verbal exchange. Purple told DCR that except for rare exceptions, Federal Communications Commission regulations prohibit the operators from divulging this information.

### Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” See N.J.A.C. 13:4-10.2. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” *Ibid.* If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. See N.J.A.C. 13:4-11.1(b).

A finding of probable cause is not an adjudication on the merits. It is merely an initial “culling-out process” in which the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” *Frank v. Ivy Club*, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), *cert. den.*, 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” *Ibid.*

The LAD makes it unlawful to “[f]or any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of . . . disability.” N.J.S.A. 10:5-12(l). The LAD also makes it unlawful for a place of public accommodation to “refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof,” based on that person’s disability. N.J.S.A. 10:5-12(f). The LAD requires a business or other public accommodation to make “reasonable accommodations” to the limitations of a person with a disability, including making such reasonable modifications in policies, practices or procedures that are required to enable the person to use the services offered to the public, unless the business shows that making the needed accommodations would impose an “undue burden” on its operations. N.J.A.C. 13:13-4.11.

Here, Laspada told DCR that she worked on the day in question but did not receive any calls from a video relay service. However, she indicated that she could have been away from desk and someone else may have answered the phone.

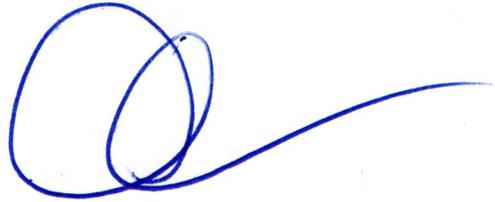
Quintana confirmed that he covers the telephone during Laspada’s lunch breaks (which coincide somewhat with the timing of the alleged call) or when she is away from the desk. Quintana suggested that he may have hung up on what he believed to be an “automated” call.

Based on those statements—but more particularly on Purple’s telephone records and the corroborating statement of Complainant’s former supervisor—the Director is satisfied for purposes of this disposition that on May 25, 2016, at 1:35 p.m., Complainant placed—and Respondent refused to accept—a series of telephone calls through a video relay service and thus, “refuse[d] to . . . otherwise do business with any other person on the basis of . . . disability,” N.J.S.A. 10:5-12(l).

Although encouraged by Respondent’s assurance that it offers assistive and communication aids to persons who are deaf, hard of hearing, blind or have other sensory impairments, the Director is concerned by the seeming lack of familiarity with the nature of relay calls. For instance, Respondent noted that because no residents or employees had a need for the service, it was unlikely that such a call occurred. That assertion ignores the reality that assistance may be needed by the initiator of the call, not the recipient. And there is no indication that Respondent made its staff aware that deaf or hearing-impaired patrons may communicate using relay or alternate call services. Laspada and Quintana were unfamiliar with operator assisted calls despite years processing incoming telephone calls for Respondent. A healthcare provider that routinely receives telephone inquiries from the public and professionals is expected to accommodate deaf or hard of hearing callers by adjusting its telephone protocols to ensure that communications received by a relay service are not mistakenly identified as automated calls.

In light of the above, and for purposes of this preliminary disposition only, the Director finds that there is probable cause to credit the allegation that Respondent violated N.J.S.A. 10:5-12(l) and/or N.J.S.A. 10:5-12(f) when its agent repeatedly refused to accept a telephone call from a deaf hospital case worker/advocate who was calling on behalf of a deaf patient. Such conduct prevented Complainant from performing her job and frustrated her client’s ability to obtain requested medical information. Accordingly, the Director finds that this matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, 228 N.J. Super. at 56. Should this matter not be resolved during the required conciliation process, N.J.S.A. 10:5-14, the matter will proceed to the Office of Administrative Law for an evidentiary hearing where an administrative law judge will hear live testimony and evaluate the evidence. N.J.A.C. 13:4-11.1(b).

DATE: 4-17-18



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Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS