



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

Case No.: 470-2013-03513

[REDACTED],  
Complainant,

v.

SUGAR CREEK GROUP, LLC, d/b/a SUGAR CREEK NURSING AND REHABILITATION,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On September 24, 2013, Samantha Marshall (“Complainant”) filed a Complaint with the Commission against Sugar Creek Group, LLC d/b/a Sugar Creek Nursing and Rehabilitation (“Respondent”) alleging discrimination on the basis of race in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to disparate discipline because of her race. In order to prevail, Complainant must show that 1) she engaged in prohibited conduct similar to that of another co-worker of another race and 2) the disciplinary measures enforced against her were more severe than those levied against the co-worker of another race.

It is evident that Complainant, African-American, engaged in prohibited conduct similar to that of a similarly-situated Caucasian employee; however, Respondent terminated Complainant while it merely issued a written reprimand to the Caucasian employee.

By way of background, Respondent hired Complainant as a Certified Nurse Aide (“CNA”) on or about June 24, 2008. At all times relevant to the Complaint, Respondent maintained an



employment handbook that enumerated various policies including those addressing discrimination, a Code of Conduct, Resident Rights, Safety Violations, and Resident Neglect, Abuse, and Misappropriation of Property. Specifically, the policies related to patient abuse and neglect stated that all employees were obligated to report incidents of resident abuse or neglect to a supervisor immediately and those violations of the aforementioned policies would result in disciplinary action up to and including termination. Similarly, Respondent's code of conduct provided that instances of misconduct were to be reported and could result in disciplinary action up to and including termination. Moreover, Respondent maintained a progressive disciplinary policy involving the use of verbal warnings, written warnings, probation, suspension, and/or termination; however, the policy provided that the discipline levied depended on the severity or frequency of the offense and that Respondent maintained the discretion to skip steps. Complainant was aware of this policy and signed an acknowledgment of such on or about June 24, 2008.

During the course of Complainant's employment, she received several corrective actions including a written warning on or about May 23, 2012 for failing to attend a scheduled in-service meeting and a verbal warning on or about December 6, 2012 for calling into work on four separate occasions. On or about September 18, 2013, a resident's family member reported to Respondent that Complainant was "rude, bossy, and intimidating" to the resident, dictated meal and bath times, and refused to care for the resident. Pursuant to policy and procedure, Respondent investigated the matter and suspended Complainant from September 18, 2013 through September 20, 2013, pending the outcome of the investigation. Ultimately, Respondent terminated Complainant on or about September 20, 2013 for resident abuse and violation of resident's rights.

Despite Respondent's assertions, evidence reveals that a similarly-situated Caucasian CNA named Heidi (Hauser) Shouse was treated more favorably under similar circumstances. Specifically, Shouse received a written warning on or about November 21, 2011 for failing to lock a patient's bed, resulting in the patient falling between the wall and the bed. Later, on or about April 18, 2012, the same CNA received another written warning for refusing to assist a patient that was located elsewhere. Lastly, on or about August 20, 2012, the Caucasian CNA was issued another verbal warning after the Director of Nursing received a complaint from a resident's family member asserting that the CNA was "short and rude" while assisting the resident and appeared to be annoyed by providing care. Yet, no evidence has been submitted or uncovered by Respondent to show that the Caucasian CNA was suspended pending an investigation or terminated for violating Respondent's policies in procedures. Simply stated, there is sufficient evidence to show that the Caucasian CNA was treated more favorably under similar circumstances; as such, Respondent's rationale for terminating Complainant is unworthy of credence and appears to be pretext for unlawful discrimination on the basis of race. Thus, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

July 14, 2014

Date

*Akia A. Haynes*

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission