

MINNESOTA DEPARTMENT OF HUMAN SERVICES

INVESTIGATION REPORT

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INVESTIGATION REPORT

INTRODUCTION

Barbara Holmes, Assistant Commissioner of the Labor Relations Division of the office of Minnesota Management and Budget, contacted Ratwik, Roszak & Maloney, P.A., on or about January 4, 2012, to conduct an investigation into complaints of harassment and hostile work environment made by several Department of Human Services employees against the CEO of State Forensics Services, David Proffitt. Trevor Helmers conducted the investigation pursuant to a contract with the State of Minnesota. This report is the product of that investigation and is based on interviews as well as a review of relevant documents.

INVESTIGATIVE PLAN

Investigation Scope

On January 11, 2012, Trevor Helmers attended a meeting with Connie Jones, DHS Human Resources; Anne Barry, Deputy Commissioner; Maureen O'Connell, Assistant Commissioner; and Mike Turpin, DHS Legal Counsel. During that meeting, and in communications following that meeting, Ms. Jones provided the following information:

Several current and former employees of the St. Peter Regional Treatment Facility filed complaints of a hostile work environment against Mr. Proffitt. These employees all claimed that Mr. Proffitt created a hostile work environment or violated state policies or practices since he became the CEO of State Forensic Services in late August 2011.

The investigation focused on whether Mr. Proffitt harassed the employees and whether Mr. Proffitt created a hostile work environment at the St. Peter Regional Treatment Facility.

Investigative Plan

- 1) Interview the complainants to determine the scope and extent of their complaints.
- 2) Interview any other individuals who may possess relevant information, as determined during the interviews.
- 3) Interview Mr. Proffitt.

- 4) Review all relevant documents.
- 5) Prepare an investigation report summarizing the investigative findings.

REPORT SYNOPSIS

The facts do not support a finding that Mr. Proffitt engaged in any harassment, retaliation, or created a hostile work environment for DHS employees. The facts support a finding that Mr. Proffitt engaged in inappropriate behaviors when dealing with some staff members.

INTERVIEW LIST

During the course of the investigation, the following individuals were interviewed:

- [REDACTED]—Complainant #1
- [REDACTED]—Complainant #2
- [REDACTED]—Complainant #3
- [REDACTED]—Complainant #4
- [REDACTED]—Complainant #5
- [REDACTED]—Complainant #6
- [REDACTED]—Complainant #7
- [REDACTED]—Complainant #8
- [REDACTED]—Complainant #9 (refused interview)
- [REDACTED]—Complainant #10
- [REDACTED]—Witness #1
- [REDACTED]—Witness #2
- [REDACTED]—Witness #3
- [REDACTED]—Witness #4
- [REDACTED]—Witness #5
- [REDACTED]—Witness #6
- [REDACTED]—Witness #7
- [REDACTED]—Witness #8
- [REDACTED]—Witness #9
- [REDACTED]—Witness #10
- [REDACTED]—Witness #11
- [REDACTED]—Witness #12
- [REDACTED]

DOCUMENT SUMMARY

As part of his investigation, Mr. Helmers reviewed the following relevant documents:

- Investigation Exhibit A—Interview Summaries;
- The DHS General Harassment Policy;
- The written hostile work environment complaint from Complainant #7;
- The written hostile work environment complaint from Complainant #5;
- The written violation of workplace relations policy complaint from Complainant #1;
- The written hostile work environment complaint from Complainant #9;
- The written hostile work environment complaint from Complainant #2;
- The notes prepared by Witness #2 during the meeting with Mr. Proffitt and Complainant #5;
- Complainant #1's notes given to DHS Commissioner Lucinda Jesson during their meeting on December 30, 2011;
- The litigation hold e-mail received by Complainant #10 from Jessica Kennedy, DHS Attorney; and
- DHS Administrative Policy regarding Employee Investigation and Discipline Administration.

FINDINGS

I. The complaints that Mr. Proffitt harassed or created a hostile work environment for Complainant #8 were not substantiated.

1. The complaints that Mr. Proffitt harassed or created a hostile work environment for Complainant #8 during a meeting on October 4, 2011, were not substantiated.

Basis for this finding:

- 1.01 The DHS General Harassment Policy defines "General Harassment" as: "[a]n egregious, repeated or persistent pattern of verbal, psychological, social, or physical action, which results in intimidation, ridicule, entrapment, degradation, coercion or harm with the purpose or the effect of unreasonably and substantially interfering with and/or jeopardizing an individual's employment, or unreasonably creating an intimidating, hostile or offensive work environment, providing the harassment is not based on any protected characteristics." No witnesses alleged that they were harassed based on any "protected characteristic," as defined in the Policy.

- 1.02 A general claim of a "Hostile Work Environment" is not specifically defined in the Policy or in the Minnesota Human Rights Act. Thus, to validate a claim of hostile work environment, the actions must meet the DHS definition of harassment.
 - 1.03 Complainant #8 alleged that during a meeting on October 4, 2011, Mr. Proffitt was intense, upset, yelled, and pounded on the table. Complainant #8 alleged that Mr. Proffitt called Complainant #8 disrespectful, unprofessional, and insubordinate. Complainant #8 told Mr. Proffitt that he had to stop yelling.
 - 1.04 Witnesses stated that both Mr. Proffitt and Complainant #8 were raising their voices during that meeting, although neither of them were yelling, and Mr. Proffitt banged his hand on the table while emphasizing a point.
 - 1.05 Mr. Proffitt is expressive and loud, and Complainant #8 is sensitive to that kind of behavior.
 - 1.06 Mr. Proffitt's denial that he became upset or yelled during this meeting was not credible as the witnesses stated that he was upset and raised his voice.
 - 1.07 Mr. Proffitt's actions in using a raised voice and pounding on the table during this meeting were not sufficiently egregious to rise to the level of harassment, especially due to the fact that Complainant #8 similarly used a raised voice.
2. The complaint that Mr. Proffitt created a hostile working environment which led to Complainant #8's resignation was not substantiated.

Basis for this finding:

- 2.01 Mr. Proffitt was upset that Complainant #8 did not report to him.
- 2.02 Mr. Proffitt admitted that he wanted to change the organizational structure so that medical staff would report to him since he was ultimately responsible for the facility.
- 2.03 Complainant #8 and Mr. Proffitt clashed almost immediately due to their differing leadership styles and failure to communicate.

- 2.04 Complainant #8 had a low opinion of Mr. Proffitt as an administrator, thought that he was stupid, and thought that his personal habits were disgusting.
- 2.05 Complainant #8 had been planning to resign for a long time due to problems that Complainant #8 had with supervisors in the past.
- 2.06 Complainant #8 stated that Mr. Proffitt's behavior, along with the DHS receiving an anonymous complaint about Complainant #8, led to Complainant #8's decision to resign.
- 2.07 Mr. Proffitt stated that Complainant #8 was uncomfortable around him, was indirect, and was sensitive to remarks which Complainant #8 interpreted to be criticisms when Mr. Proffitt was simply asking questions.
- 2.08 Complainant #8 felt that Mr. Proffitt was attempting to practice medicine by questioning medical decisions. Mr. Proffitt stated that he was merely asking questions about medical care and the provision of services, for which he was responsible.
- 2.09 Despite their disagreements and the fact that they did not get along, Mr. Proffitt's actions did not rise to the level of harassment. The fact that his behavior was one of the reasons why Complainant #8 left does not constitute harassment or a hostile work environment.

II. The complaints that Mr. Proffitt harassed, created a hostile work environment, and retaliated against Complainant #5 in investigating and terminating Complainant #5 were not substantiated.

1. The complaints that Mr. Proffitt harassed or retaliated against Complainant #5 by terminating Complainant #5's employment were not substantiated.

Basis for this finding:

- 1.01 Mr. Proffitt terminated Complainant #5 because of Complainant #5's actions toward a patient on November 15, 2011, and also because Complainant #5 did not believe that the patient care that Complainant #5 provided during that incident was inadequate or fell below the acceptable standard of care.
- 1.02 Mr. Proffitt had the delegated authority to hire and fire employees, but he wanted staff input, so he convened the Work Incident Review Committee ("WIRC") to review the findings of the investigation report.

- 1.03 During the WIRC review, witnesses agreed that Complainant #5's behavior had been below the acceptable standard of care and supported the decision to terminate Complainant #5. Witnesses indicated that Complainant #5 also had problems with work performance in the past.
- 1.04 Mr. Proffitt consulted with his direct supervisor, Witness #3, prior to deciding whether to terminate Complainant #5, and Witness #3 approved the termination due to Complainant #5's actions.
- 1.05 Mr. Proffitt stated that during the WIRC meeting, everyone was outraged by Complainant #5's conduct. Everyone supported termination. At the conclusion of that meeting, Mr. Proffitt said he would make his final decision after meeting with Complainant #5.
- 1.06 Mr. Proffitt had a conference call with several of the WIRC members after the meeting to discuss potential termination and all of them were on board with the plan to meet with and terminate Complainant #5 if Complainant #5 was unable to recognize and acknowledge the problems with the care that Complainant #5 provided to the patient.
- 1.07 Complainant #5 alleged that the care that Complainant #5 provided to the patient during the November 15, 2011, incident had been appropriate.
- 1.08 Mr. Proffitt stated that in the meeting, Complainant #5 claimed to have done everything correctly, so Mr. Proffitt determined that termination was necessary.
- 1.09 Complainant #5 claimed to have a plan to take Family and Medical Leave Act ("FMLA") leave and alleged that Mr. Proffitt pursued termination in order to prevent Complainant #5 from taking this leave, but Complainant #5 did not know whether Mr. Proffitt knew about the plan to request leave.
- 1.10 Mr. Proffitt stated that he did not know that Complainant #5 wanted to take FMLA leave, and this statement was credible.
- 1.11 Complainant #5 alleged that the termination was an attempt to prevent Complainant #5 from cooperating with the Office of Special Investigation's ("OSI") investigation of the incident, but there was no evidence to support this claim.

- 1.12 Mr. Proffitt stated that he was not directly involved in the OSI investigation and did not attempt to interfere with Complainant #5's participation, and this statement was credible.
2. The complaints that Mr. Proffitt harassed Complainant #5 by his conduct surrounding the termination of Complainant #5 were not substantiated.

Basis for this finding:

- 2.01 Complainant #5 alleged to have heard that Mr. Proffitt attempted to make other employees change Complainant #5's performance evaluation.
- 2.02 Mr. Proffitt did not tell any employees to change Complainant #5's performance evaluation.
- 2.03 The termination letter for Complainant #5 was prepared prior to the meeting with Complainant #5 in case Mr. Proffitt decided to pursue termination.
- 2.04 Mr. Proffitt had the ultimate authority to hire and fire all employees.
- 2.05 Mr. Proffitt denied that he had ever told anyone that he wanted to fire Complainant #5 as an example or as a scapegoat.
- 2.06 Another employee admitted that she told Complainant #5 that Mr. Proffitt may try to use him as a scapegoat and make an example out of him. This conduct caused harm to the working environment which was not directly caused by Mr. Proffitt.

III. The complaints that Mr. Proffitt harassed or created a hostile work environment for Complainant #6 were not substantiated.

1. The complaints that Mr. Proffitt created a hostile working environment or harassed Complainant #6 during a labor management meeting on December 27, 2011, were not substantiated.

Basis for this finding:

- 1.01 Complainant #6 alleged that Mr. Proffitt yelled and created a hostile working environment during a labor management meeting on December 27, 2011.

- 1.02 During this meeting, Complainant #6 said that the nurses were upset because Mr. Proffitt fired a nurse for doing what any of them would have done, and that Mr. Proffitt yelled, "You don't know," and "Have you read the report?" Mr. Proffitt's outburst caused Complainant #6 to cry and leave the meeting.
- 1.03 Mr. Proffitt was angry, leaned forward in his chair, and pointed at Complainant #6, saying, "You don't know." Witnesses stated that Mr. Proffitt's comments were inappropriate and disproportionate to the things that Complainant #6 said, but did not constitute harassment.
- 1.04 Mr. Proffitt did not yell at Complainant #6, but he aggressively challenged Complainant #6 when he should have simply listened to Complainant #6's concerns.
- 1.05 Mr. Proffitt admitted that he was not as sensitive as he should have been. Mr. Proffitt stated that he did a bad job managing that situation, and should have listened to Complainant #6.
- 1.06 Mr. Proffitt admitted that he was upset, and that he was too intense and his tone was too harsh. He admitted that he said that Complainant #6 did not know what happened and asked if Complainant #6 had read the report.
- 1.07 Mr. Proffitt's behavior was inappropriate, but did not rise to the level of harassment.

IV. The complaints that Mr. Proffitt harassed or created a hostile work environment for DHS staff were not substantiated.

1. The complaints that Mr. Proffitt created a hostile working environment when he terminated Complainant #5 and a nurse for their actions related to the November 15, 2011, incident were not substantiated.

Basis for this finding:

- 1.01 The atmosphere on the St. Peter campus was bad after the terminations.
- 1.02 Several witnesses stated that Complainant #5 met with staff after the termination and told them Complainant #5's side of the story, which led them to believe that the care had been adequate and that Mr. Proffitt had unjustly terminated the employees. However, none of these individuals were involved in the investigation or the WIRC. This led to problems with the working environment and was not due to any actions of Mr. Proffitt.

- 1.03 The fact that some witnesses stated that they would have done the same things that Complainant #5 did during the November 15, 2011, incident shows that there were people who thought that Complainant #5 had acted appropriately.
 - 1.04 Several witnesses stated that high ranking medical staff told them that they were not involved in the termination of Complainant #5 and that they did not know that Complainant #5 was going to be terminated. This led to problems with the working environment and was not due to any actions of Mr. Proffitt.
 - 1.05 Several witnesses stated that they heard that a nurse was fired for following a doctor's orders.
 - 1.06 Several witnesses reported that Mr. Proffitt said that Complainant #5 had been fired for being in the wrong place at the wrong time, but Mr. Proffitt did not make those comments.
 - 1.07 Mr. Proffitt admitted that he spoke to at least one doctor about the termination to see what he had heard about it, but this behavior does not rise to the level of harassment.
 - 1.08 Mr. Proffitt stated that he was concerned about the potential fallout from the terminations, but that he felt it was best to let his department heads communicate with staff about the incident.
2. The complaints that Mr. Proffitt created a hostile working environment for or harassed staff when discussing erections or bathing suits during a presentation to nursing staff were not substantiated.

Basis for this finding:

- 2.01 A witness alleged that, during the presentation, Mr. Proffitt seemed pleased with himself when he was talking about erections and that his comments were inappropriate.
- 2.02 A witness said that during the presentation, Mr. Proffitt commented about looking at "chicks" in bathing suits while in college.
- 2.03 Mr. Proffitt was asked to deliver the presentation on January 5, 2012, regarding person-centered care and he mentioned that erections were

important to men in the context of discussing a case study of a former patient who went off his medications in order to maintain erections.

- 2.04 Mr. Proffitt made comments about women in swimsuits to describe the way that he entered the field of therapy.
 - 2.05 Several witnesses felt that both comments were appropriate and professional in the context of the presentation.
 - 2.06 Mr. Proffitt admitted to making the comments as part of his presentation on treating the whole individual and talking about how goals can change. He believed that both of these comments were appropriate to make in front of a group of medical professionals.
 - 2.07 Mr. Proffitt's comments during the presentation were appropriate.
3. The complaints that Mr. Proffitt created a hostile working environment for or harassed the doctors were not substantiated.

Basis for this finding:

- 3.01 There was no evidence discovered which showed that Mr. Proffitt engaged in any behavior towards the doctors which constituted harassment.
- 3.02 Several staff members believed that Mr. Proffitt was trying to practice medicine and that it was inappropriate for him to review ER visits and question staff about the reasons behind the visits. However, ensuring that resources are used efficiently is one of Mr. Proffitt's duties.
- 3.03 Mr. Proffitt stated that he reviewed ER situations when he received incident reports, and that he questioned staff members about potential care issues which arose because he was ultimately responsible if the facility were sued.
- 3.04 Mr. Proffitt stated that better controls had to be put on ER visits because they were very expensive.
- 3.05 Several witnesses reported that Mr. Proffitt had threatened to fire people if they did not release a patient from a personal living suite when Mr. Proffitt first started at the facility, but several witnesses confirmed that he simply asked that the furniture outside the patient's room be moved so that the patient could get out quickly if there were a fire.

- 3.06 Several staff members stated that they believed it was inappropriate for Mr. Proffitt to ask them questions about patient medications and medication levels. However, asking a professional to explain the reasoning behind a decision does not rise to the level of harassment and ensuring that patients receive appropriate care is one of Mr. Proffitt's duties.
- 3.07 Several psychiatrists stated that Mr. Proffitt wanted them to turn in a schedule for rounds. These witnesses also alleged that high ranking medical staff did not support turning in a rounding schedule, but this claim was directly contradicted by other witnesses.
- 3.08 The psychiatrists were not regularly attending rounds and were not on campus for the full 40 hours a week that they were required to work.
- 3.09 The medical leadership felt that the doctors needed to have a rounding schedule, even though they may not always be able to strictly follow it.
- 3.10 Statements by doctors that being asked for a schedule of rounds is insulting and unprofessional ignores the realities of the need to schedule other employees based on the doctors' schedules.
- 3.11 Several staff members believed that Mr. Proffitt's involvement in an Electroconvulsive Therapy ("ECT") issue over the week between Christmas and New Year's was inappropriate, but ensuring that adequate patient care is delivered is one of Mr. Proffitt's duties and he was acting in response to a complaint from a staff member.
- 3.12 Mr. Proffitt's statement that he was there to help make them better doctors did not rise to the level of harassment.

V. The complaints that there was a poor working atmosphere at the St. Peter facility were substantiated.

1. The St. Peter facility was a tough situation for Mr. Proffitt to enter due to long-standing issues and problems facing the facility.

Basis for this finding:

- 1.01 There were problems at the St. Peter facility before Mr. Proffitt arrived due to the inclusion of the sex offender population on campus. This caused the facility to become more corrections-oriented, and Mr. Proffitt was instructed to move away from the corrections mindset of using restraints and seclusions.

- 1.02 The facility was put on a conditional license for restraint and seclusion incidents which occurred before Mr. Proffitt arrived.
 - 1.03 Mr. Proffitt was hired to make changes, including reducing the use of restraints and seclusions.
 - 1.04 Witnesses stated that any changes would be met with resistance from employees.
 - 1.05 Some psychiatrists on campus claimed that no one could supervise their work or check to see whether they were putting in their hours.
 - 1.06 There were longstanding issues at the facility for the psychiatrists and it did not take much from Mr. Proffitt in order to cause the psychiatrists to leave because they already had one foot out the door.
 - 1.07 Mr. Proffitt stated that there was no accountability for the psychiatrists before he came, and that they did not like to be challenged on their bad behavior.
2. The staff wanted training or leadership on the new direction for restraints and seclusions, and the leadership team failed to provide sufficient leadership.

Basis for this finding:

- 2.01 Mr. Proffitt outlined in broad terms to staff that he wanted to reduce restraints and seclusions, but never discussed any details regarding the reduction of the use of these techniques.
- 2.02 Several witnesses alleged that they were not sure what restraint and seclusion procedures were acceptable after the termination of Complainant #5.
- 2.03 Mr. Proffitt stated that Complainant #5's actions were clear violations of policy, so no new restraint and seclusion policies were necessary.
- 2.04 Mr. Proffitt stated that he told staff that they were not allowed to use the blanket wraps due to the risks of injury or death for the patient. After the conditional license, he told staff that they had to avoid using mesh wraps and handcuffs.¹

- 2.05 Mr. Proffitt held town hall meetings where he told staff not to use the security blankets anymore.
- 2.06 The nurses were fearful and wanted someone to explain the new direction of the hospital for them.
- 2.07 Mr. Proffitt attended nursing meetings in December and January to tell them that they were still guided by the same procedures, and repeated this during a January 2012 town hall meeting.
- 2.08 Mr. Proffitt said that a new organizational structure would be coming on January 1, 2012, but it did not come out at that time.
- 2.09 Things have calmed down on campus and many of the problems that occurred with staff were due to a lack of training and the rumors that were going around about the terminations.
- 2.10 The general under-medication of patients and poor communication on campus led to an increased need for restraints and seclusions.
- 2.11 Mr. Proffitt stated that he counted on his department heads to communicate with staff about acceptable policies and procedures.
- 2.12 While Mr. Proffitt attempted to communicate with staff through attending meetings and holding town halls, he and his department heads were ultimately not successful in maintaining adequate communication with staff.

VI. The complaints that Mr. Proffitt engaged in inappropriate behavior in some of his interactions with DHS employees were substantiated.

1. The complaints that Mr. Proffitt engaged in inappropriate behavior during the meeting on December 27, 2011, was substantiated.

Basis for this finding:

- 1.01 The basis for this finding is fully outlined above in the finding that Mr. Proffitt's behavior in that instance was not harassment, but was inappropriate.
2. The complaints that Mr. Proffitt made inappropriate comments related to security counselors in a December 15, 2011, medical staff meeting were substantiated.

Basis for this finding:

- 2.01 Several witnesses alleged that during a December 15, 2011, meeting, Mr. Proffitt said that the security counselors had been hired based on the size of their necks, and that the security counselors should be afraid to tell him that they do not like to be second-guessed by licensed staff.
 - 2.02 Mr. Proffitt admitted that he made the comment about the size of the security counselors' necks as a joke and that it was probably not appropriate. He admitted that he made both of these comments because they illustrated the problem with the corrections-style mindset at the facility, which needed to change.
 - 2.03 Mr. Proffitt's comments regarding the size of the security counselors' necks were inappropriate, even though made as a joke.
 - 2.04 Mr. Proffitt's comments at that meeting that staff members who do not believe in the new direction of the facility should leave and that security counselors should be afraid to tell him that they do not like to be second-guessed by licensed staff do not rise to the level of inappropriate conduct.
3. The complaints that Mr. Proffitt was loud and intense with staff during meetings to the point of making staff members uncomfortable were substantiated.

Basis for this finding:

- 3.01 Mr. Proffitt has a loud voice and a tendency to talk over people in meetings. He also leans over the table and is dismissive of other people's opinions.
- 3.02 Mr. Proffitt interrupted during meetings if he did not believe that the person talking was getting to the point.
- 3.03 Mr. Proffitt stated that he was not dismissive, but that he was not interested in long backgrounds and histories that do not have anything to do with current treatment issues.
- 3.04 Mr. Proffitt is intense, direct, and passionate, and this behavior is off-putting and bothers some employees.
- 3.05 Mr. Proffitt's intensity is not always productive, and sometimes causes him to handle situations poorly.

4. The complaints that Mr. Proffitt made comments which staff members considered threatening were substantiated.

Basis for this finding:

- 4.01 Mr. Proffitt made employees feel threatened and uncomfortable when he discussed how loyalty would be rewarded.
- 4.02 Mr. Proffitt admitted that he told employees that he would reward loyalty.
- 4.03 Mr. Proffitt made employees uncomfortable when he threatened to call the Attorney General's office if they took certain actions.
- 4.04 Mr. Proffitt's comments to staff carry an implicit threat that they are doing something wrong for which they will be punished.
- 4.05 Mr. Proffitt admitted that he made a comment to a staff member that someone would be going to jail if there were a fire and a patient who was in a personal living suite died. This type of comment carries an implicit threat to employees.
- 4.06 Mr. Proffitt admitted that he asked several individuals whether the psychiatrists who had resigned could be reported to the medical board for abandoning their patients. While he stated that this was intended to protect the facility, it clearly contained an implied threat.

VII. The complaint that the litigation hold letter received by some employees was retaliation was not substantiated.

1. The complaints that the litigation hold letter constituted retaliation were not substantiated.

Basis for this finding:

- 1.01 Staff members claimed that the litigation hold letter was an attempt to intimidate the employees who had complained of the hostile work environment.
- 1.02 A review of the email prepared and sent by Jessica Kennedy, DHS Attorney, shows that this was a standard litigation hold letter and thus does not constitute retaliation or an attempt to intimidate employees.

CONCLUSIONS

There is a lack of evidence to support the complaints that Mr. Proffitt harassed any DHS employees or created a hostile working environment for those employees. No evidence was discovered during the course of the investigation which showed that Mr. Proffitt engaged in “[a]n egregious, repeated or persistent pattern of verbal, psychological, social, or physical action, which results in intimidation, ridicule, entrapment, degradation, coercion or harm with the purpose or the effect of unreasonably and substantially interfering with and/or jeopardizing an individual’s employment, or unreasonably creating an intimidating, hostile or offensive work environment, providing the harassment is not based on any protected characteristics.”

There was sufficient evidence discovered during the investigation to substantiate the complaints that Mr. Proffitt engaged in inappropriate behavior. Several witnesses confirmed that Mr. Proffitt is loud and intense during staff meetings. He admitted that he gets intense and will interrupt staff if he feels that they are not getting to the point quickly enough for him. This behavior puts some staff members on edge and leads them to believe that their opinions are being dismissed. Several staff members also stated that Mr. Proffitt is intimidating and that his comments carry implicit threats. While there were some staff who stated that they do not have a problem with Mr. Proffitt’s direct style, it is clear that this style is not always conducive to the best interests of the facility.

Mr. Proffitt was hired to come to the St. Peter facility and make changes. He was specifically tasked with reducing the number of restraints and seclusions on campus and was coming into a difficult situation because there were long-standing problems with the St. Peter facility. Mr. Proffitt also had to deal with staff members who were not interested in change and a psychiatry staff that harbored a deep resentment for a non-doctor administrator who asked questions about care and medication issues. It appeared that the doctors had been allowed unfettered autonomy over many aspects of their work performance, including how many hours a week they spent on campus, and were resistant to change. Further, witnesses confirmed that it did not take much to set off the psychiatrists because they already had one foot out the door when Mr. Proffitt arrived.

There was also a poor working atmosphere on campus after Mr. Proffitt’s arrival. Many witnesses described that they felt as though they worked in an atmosphere of fear and medical staff was afraid that they would be second-guessed if they acted. However, Mr. Proffitt was not solely responsible for this atmosphere. There were a lot of untrue rumors on campus. There were also articles in the newspaper which questioned the hiring of Mr. Proffitt and claimed that he had been charged with several crimes. Staff members read these articles and it clearly made them nervous about Mr. Proffitt.

After Complainant #5 and a nurse were terminated, the poor working atmosphere on campus became worse because of gossip by other employees. Complainant #5 and

other witnesses talked with many staff members and told them Complainant #5's version of the events and that Complainant #5's direct supervisors had not supported the termination. Those supervisors also told witnesses that they did not support the termination or know that it was coming, which was clearly untrue based on the weight of the evidence. These actions in attempting to turn staff against Mr. Proffitt clearly caused many staff members to be uneasy and fearful for their jobs.

In addition, these actions led to mass confusion amongst staff who believed that the policies and procedures were being changed. However, the policies had not been changed and Complainant #5's termination was due to Complainant #5's violation of existing policies and procedures, as well as acceptable standards of patient care.

Mr. Proffitt attended meetings with staff and held town hall forums to discuss the move away from the use of restraints and seclusions. Mr. Proffitt stated that he wanted his department heads to help institute the changes and communicate with staff. However, it was clear that there was not sufficient communication with staff regarding their concerns and questions about care. This failure falls on Mr. Proffitt, but it also falls to the department heads. However, this failure to adequately communicate policies and procedures did not create a hostile work environment.

The complaints of harassment and hostile work environment made by Complainant #8 were not substantiated. Complainant #8 claimed that Mr. Proffitt created a hostile work environment by yelling at Complainant #8 and slamming his hand on the desk during an October 4, 2011, meeting. However, witnesses stated that Mr. Proffitt did not harass Complainant #8 during the October 4, 2011, meeting. It is clear that Complainant #8 and Mr. Proffitt did not get along well with one another and that both of them were upset during this October 4, 2011, meeting. Complainant #8 was also using a raised voice during this meeting. The fact that Mr. Proffitt was a part of the reason Complainant #8 resigned does not establish a hostile work environment. The weight of the evidence does not support Complainant #8's complaints of hostile work environment.

The complaints of harassment, retaliation, and hostile work environment against Mr. Proffitt by Complainant #5 were not substantiated. There was no evidence that Mr. Proffitt terminated Complainant #5 for any reason other than Complainant #5's conduct during the November 15, 2011, restraint and seclusion incident. Complainant #5 was terminated after Complainant #5's conduct was reviewed by a Work Incident Review Committee. Mr. Proffitt sought the opinions of his department heads and Complainant #5's direct supervisors. They all agreed with the decision to terminate Complainant #5 during the meeting, although some supervisors later claimed that they did not support the termination. The final decision on termination rested solely with Mr. Proffitt, as he had the authority to hire and fire employees, and he discussed the termination with his direct supervisor prior to issuing the termination.

In addition, Complainant #5 failed to produce any support for his allegations of retaliation. There was also no evidentiary support for the claims that Mr. Proffitt ordered that Complainant #5's performance review be changed or that Mr. Proffitt said that Complainant #5 was being used as a scapegoat or as an example for other employees. As such, there was no support for the complaints of retaliation, harassment, or hostile work environment.

There was sufficient evidence to substantiate that Mr. Proffitt engaged in inappropriate behavior during a medical staff meeting on December 15, 2011, where he made a joke about hiring security counselors based on the size of their necks. While Mr. Proffitt explained that this was meant to illustrate that the staff had been hired with a correctional mentality in mind, his comment offended several witnesses. Mr. Proffitt also admitted that the comment could be construed as inappropriate and that he misjudged his audience. Disparaging a group of employees to the medical staff in this manner is inappropriate, but does not constitute harassment or create a hostile work environment. His other statements made during this meeting were appropriate.

The complaints of harassment and hostile work environment against Mr. Proffitt for his conduct related to Complainant #6 were not substantiated. Several witnesses stated that Mr. Proffitt behaved inappropriately in his response to Complainant #6 during the meeting on December 27, 2011. Mr. Proffitt was angry and intense when he challenged Complainant #6 during the meeting. His behavior towards Complainant #6 was inappropriate. Mr. Proffitt admitted that he should have handled this interaction better. However, the evidence does not support a finding of harassment because his actions were not sufficiently egregious.

The evidence also fails to support the claims of harassment against Mr. Proffitt for the comments made during his presentation to the nursing staff on January 5, 2012. He made the comment about erections being important to men in a clinical review of a patient while attempting to show that medical professionals must treat the "whole" patient. His comment was appropriate for the setting, and it is likely that the claims regarding this incident actually stemmed from the fear and anger over the termination of a nurse instead of the comments themselves.

During that presentation, Mr. Proffitt also made a comment about looking at women in bathing suits while he was in college. He made this comment as an illustration of how goals can change, and stated that he signed up to help disabled children swim in college because he thought it would be an easy credit, and as a young male, he would be able to look at women in swimsuits. He then discovered a passion for rehabilitation work and patient care. The comment was made as an illustration during his presentation and was appropriate for the context and setting. Again, it appears that the angst over this comment stemmed from the fear and anger over the termination of a nurse.

The complaints of harassment and hostile work environment raised by the doctors were also not substantiated. Mr. Proffitt's duties included making sure that adequate medical care was being provided, along with budgetary concerns. Emergency room visits were very expensive and several witnesses confirmed that such visits were too common. Mr. Proffitt had the duty to review ER visits and ask the medical staff whether such visits were necessary. Similarly, reviewing the adequacy of medical care through asking staff questions about that care is not harassment.

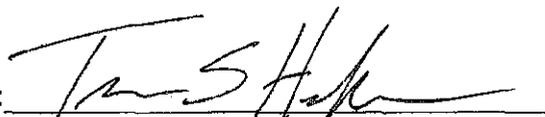
The remainder of the complaints against Mr. Proffitt were clearly based on second-hand information. Several witnesses confirmed that Mr. Proffitt did not order a patient to be taken out of his personal living suite or threaten to send staff to jail if they failed to get the patient out. Department heads also confirmed that they were involved in seeking a schedule of rounds for the psychiatrists to help rectify a long-standing problem of the psychiatrists not having established rounding schedules. Most of the witnesses who complained of these issues admitted that they had never actually met Mr. Proffitt, so it was clear that the only information that they were getting about Mr. Proffitt was second-hand. There was no support for these complaints of harassment or hostile work environment.

This report is based upon information received during the course of the investigation. Information not contained and the issues not discussed in this report were either deemed irrelevant or outside the scope of the investigation. The investigator reserves the right to augment or modify this report in the event other information becomes available.

Respectfully submitted,

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