



PORTER FOSTER RORICK LLP

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May 7, 2018

Ms. Sarah Hale
Summit Law Group
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104-2682

Re: Executive summary of investigative findings regarding Dr. Mark Beatty

Dear Sarah:

At your request, I investigated allegations that Dr. Mark Beatty, Health Officer for the Snohomish Health District, has created a hostile work environment. I initiated the investigation after a District epidemiologist, [REDACTED] filed an incident report alleging physical intimidation by Dr. Beatty on April 2 and further alleged in an email to Board members dated April 4 that Dr. Beatty berated, degraded, intimidated, and bullied subordinates.

This letter summarizes my findings and conclusions based on evidence gathered during the investigation. It is not a comprehensive recitation of all documents I reviewed or everything I was told by witnesses. My findings are based on a preponderance of the evidence standard, which means that according to the credible evidence gathered, it is "more likely than not" that a particular event occurred or did not occur as alleged.

I. Investigation & Findings

I interviewed fifteen witnesses at the Snohomish Health District offices on April 14 and 17 and one additional witnesses by phone on May 3. I also reviewed numerous emails and other relevant documents provided by witnesses and by the District's HR department. In the course of the investigation, twelve witnesses requested an appointment with me through HR to voice their concerns regarding Dr. Beatty's behavior and treatment of staff. These witnesses included staff at every level of management in the District's Communicable Disease, Assessment, and HIV/STD programs – and it is my understanding that staff in these programs interact more directly and more frequently with Dr. Beatty than staff in other programs. Two themes surfaced during the witness interviews: Dr. Beatty's personal interactions with staff have been antagonistic and unprofessional; Dr. Beatty has indiscriminately threatened staff with insubordination charges when they have voiced concerns or asked questions. I briefly address each finding below.

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A. Dr. Beatty's personal interactions with staff have been antagonistic and unprofessional.

Dr. Beatty has been heard yelling at staff on multiple occasions. In one instance, after a miscommunication regarding the processing of a routine case, Dr. Beatty entered a nurse's cubicle unannounced and raised his voice loudly as he demanded that she stop what she was doing and comply with his authority. The nurse reportedly did not raise her voice and told Dr. Beatty that she was trying to comply. Dr. Beatty immediately reported to administration that the nurse had been insubordinate. Before an investigation into the situation was conducted, Jeff Ketchel informed the nurse's supervisor via email that the nurse had been insubordinate.

Dr. Beatty has also behaved disrespectfully during meetings and conversations with staff. In one instance, for example, Dr. Beatty put his hand in front of a female colleague's face during a meeting while she was speaking and instructed her to stop talking. In another meeting, he became visibly angry and "stopped the conversation with a slap on the table" before disruptively leaving the room. Other examples of unprofessional behavior include having made a sexually inappropriate joke during a meeting that upset several staff members. On two separate occasions, Dr. Beatty instructed female staff members to babysit his young children at the workplace while he attended to other matters.

B. Dr. Beatty has indiscriminately threatened staff with insubordination charges if they voice concerns or raise questions.

Witnesses described multiple situations in which Dr. Beatty asked staff to perform a task they believed to be inconsistent with state/federal guidelines and then threatened insubordination charges when the staff member asked clarifying questions. In one instance, Dr. Beatty notified a supervisory staff member that a nurse had displayed incorrect information on an educational display in the District's public lobby. The supervisor verified that the display contained up-to-date CDC data and informed Dr. Beatty that she needed to review the display with the nurse to determine what had happened. Before any further discussion or investigation occurred, Dr. Beatty verbally complained to administration that the supervisory staff had defied his authority. District Administrator Jeff Ketchel advised the staff member that she would be reprimanded because Dr. Beatty was angered by her response.

In the incident giving rise to this investigation, Dr. Beatty asked [REDACTED] to provide him certain patient information. The information was not available to [REDACTED] and she reasonably believed in good faith that she would risk violating HIPAA if she complied with Dr. Beatty's request to obtain it. [REDACTED] met with the District's Privacy Officer to express her concerns

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that Dr. Beatty was overstepping his authority and that he may be asking her to violate federal law. The next business day, Dr. Beatty announced that he was physically relocating his office from an upper floor to a small space near [REDACTED]. Emotions were high, and Dr. Beatty proceeded to sit near [REDACTED]'s workspace for the afternoon without offering any reason for his presence. She filed an incident report with HR in response. That same day, Dr. Beatty paid a visit to the Privacy Officer and instructed her not to answer any HIPAA questions for the individuals he perceived to be insubordinate. He gave the Privacy Officer a verbal directive not to answer HIPAA questions in the future but to refer such questions exclusively to him.

The day after [REDACTED] filed her incident report, Mr. Ketchel informed her via email that she must begin reporting directly to Dr. Beatty and that her current supervisor, [REDACTED] was being reassigned. [REDACTED] had repeatedly voiced concerns in the preceding months about Dr. Beatty to Mr. Ketchel and felt that the reassignment was retaliatory. Mr. Ketchel offered convincing evidence that the District had been considering the reassignment for months, but the timing and circumstances of the reassignment reflected poor judgment and were devastating to staff morale. Nearly every witness I interviewed expressed concerns about potential retaliation for speaking with me about Dr. Beatty.

II. Conclusions

A. Dr. Beatty violated District personnel policies.

I find that Dr. Beatty has violated District personnel policies. Section 3.14 of the District's Employee Health Handbook ("Standards of Conduct") and Section 2.05 ("Workplace Violence") expressly prohibit employees from: failing to treat co-workers in a courteous and respectful manner; intimidating fellow employees; engaging in any form of bullying toward other employees; using offensive language; raising voices in a threatening manner, e.g. yelling or screaming. While the policy does not define "intimidation" or "bullying," I find that Dr. Beatty's actions of raising his voice angrily to staff members, slamming his hands on tables, and physically positioning himself near [REDACTED]'s physical space after a heated disagreement with her likely meet the intended definition of the terms. I do not, however, find that Dr. Beatty threatened physical violence or bodily harm against [REDACTED] or any other staff member.

Additionally, Dr. Beatty's directive to the Privacy Officer against discussing HIPAA with "insubordinate" employees creates a potential conflict with Section 2.09 of the District's Employee Health Handbook ("Whistleblower Protection"), which encourages employees to report improper government action without fear of retaliation. While I do not find that Dr. Beatty directly violated this provision, his threats of insubordination charges and his behavior toward [REDACTED] and [REDACTED] have discouraged staff from bringing any type of complaint.

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B. Dr. Beatty did not create a hostile work environment.

I do not find that, as a matter of law, that Dr. Beatty created a hostile work environment on the basis of a protected class. His actions, taken as a whole, do not rise to the level of actionable harassment or retaliation claims under Washington or federal law. There is insufficient evidence that Dr. Betty's actions were motivated by a protected class characteristic. Nor do I find that the District's decisions to reassign [REDACTED] and [REDACTED] constitute retaliation under state or federal law because such decisions were not motivated by staff's exercise of a protected right.

If you have any questions or require additional information, please let me know.

Sincerely,

PORTER FOSTER RORICK LLP



Leilani N. Fisher