

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
Northeast Region
JFK Federal Building Room E-235
Boston, MA 02203 Phone #: 617-624-6780
Fax #: 617-624-6702



Reply to the Attention of:

Conciliation Agreement
Between The U.S. Department Of Labor
Office of Federal Contract Compliance Programs
and
Children's Hospital Boston
300 Longwood Avenue
Boston, MA 02115
OFCCP Case No. R00108809

PART I: GENERAL PROVISIONS

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Children's Hospital Boston, 300 Longwood Avenue, Boston, MA 02115 (hereinafter Children's).
2. The violations identified in this Agreement were found during a compliance evaluation of Children's, that began on June 25, 2003, and they were specified in a Notice of Violations issued June 26, 2006. OFCCP alleges that Children's has violated the Executive Order 11246, as amended, and implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Children's of any violation of Executive Order 11246, as amended and implementing regulations.
4. The provisions of this Agreement will become part of Children's AAP. Subject to the performance by Children's of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of Children's with all OFCCP programs will be deemed resolved. However, Children's is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

5. Children's agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Children's compliance. Children's shall permit access to its premises during normal business hours for these purposes.

6. Nothing herein is intended to relieve Children's from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.

7. Children's agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceeding under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the Regional Director for the Office of Federal Contract Compliance Programs, unless the Deputy Assistant Secretary, for the Office of Federal Contract Compliance Programs, indicates otherwise within forty-five (45) days of the Regional Director's signature of this Agreement.

9. If at anytime in the future, OFCCP believes that Children's has violated any portion of this Agreement during the term of this Agreement, Children's will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Children's with 15 days from the receipt of the notification to respond in writing, except where OFCCP alleges that such delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that Children's has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject Children's to sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief.

PART II: SPECIFIC PROVISIONS

1. Violation: During the compliance evaluation of Children's, which began on June 25, 2003, OFCCP concluded that minority applicants who qualified for Registered Nurse (hereinafter Nurse) positions were discriminated against on the basis of race/ethnicity in the selection process. Consequently, Children's violated 41 CFR 60-1.4(a)(1).

Specifically, in personnel activity data provided by Children's for the period January 1, 2002 through December 31, 2002, Children's reported 416 applicants and 210 hires in its 2002 Affirmative Action Plan. Our investigation revealed there were at least 400 additional applicants. OFCCP expanded its investigation to include applicant records for the subsequent year, and obtained an additional 900 applications for 2003. Race was not available for most of the additional applications and race data provided for the originally reported applicants was incomplete.

As a part of the investigation, OFCCP combined and refined all of the records for the review period. For the two-year period, there were 1,738 total applicants. OFCCP identified 111 minorities, of whom 28 were hired, 816 non-minorities, of whom 349 were hired and 811 applicants whose race could not be determined. Our analysis revealed that the ratio of minorities being offered Nurse positions versus non-minorities was 0.57, resulting in a shortfall of 18 with a standard deviation indicator of 3.76. OFCCP identified 43 minority class members impacted by Children's hiring practices. OFCCP determined this statistically significant disparity occurred at the initial screening and interviewing stage of the selection process. OFCCP's analysis of the components related to initial screening and interviewing showed that substantially more non-minorities than minorities passed the initial phone or in-person screen, were scheduled for interviews, and ultimately hired. The same analysis further showed a disproportionate number of qualified minority applicants did not make it past the initial screen and on

to the interview stage in the selection process. The disparities found in the initial screening and interviewing stages of the selection process were not explained by the qualifications of the minority applicants.

While Children's acknowledged it appears disparate impact may have occurred, Children's maintains this was not due to intentional discriminatory actions, but was the result of poor data collection, documentation, and record keeping. Prior to issuance of OFCCP's Notice of Violations, Children's voluntarily developed and instituted a new electronic applicant tracking system which fully documents all criteria used at each step of the hiring process for Nurses. Children's changed and enhanced its personnel documentation system to capture, record, and retain information and comments throughout the entire application process. Children's also stated its goal is to ensure that any such system functions effectively to avoid the possibility that the applicant process could create disparate impact in the consideration of jobseekers or applicants.

Remedy: Children's shall:

a. Immediately evaluate and modify its selection procedures for Nurse positions to ensure this violation does not continue. Within 75 days from the Effective Date of a Conciliation Agreement (the Effective Date being the date of the Regional Director's signature), Children's must develop, implement, and maintain documentation of the criteria to be used for each step of the hiring process for Nurses. Within the same timeframe, Children's must train its managers and other employees that participate in the selection process in the use of the selection criteria and the requirements for documentation for each applicant.

We note that prior to issuance of OFCCP's Notice of Violations, Children's Hospital voluntarily undertook a complete internal review of its documentation system and practices. Children's invited suggestions of DOL with respect to best practices. Children's has expressed its commitment to a collaborative effort with DOL, and a goal of ensuring fair consideration of minority applicants.

b. Notification: Within 30 calendar days of the Effective Date of a Conciliation Agreement, Children's will notify the 43¹ minority

¹ Of 111 minority applicants, 28 were hired and 19 applied more than once; 3 withdrew their applications late in the process; 5 not qualified for positions applied for; 6 lacking degree or experience required; 4 requested delay time in hiring (subsequently hired); and 3 applied for non-nursing positions.

class members listed on Attachment A (hereinafter "List") of the terms of the Conciliation Agreement by distributing Attachment B (hereinafter "Notice") and Attachment C (hereinafter "Release"). Children's will mail these documents to the last known address of each person on the List. The minority applicants on the List shall be given thirty (30) calendar days from receipt of the Notice (as evidenced by return receipt) to respond. Within seventy (70) days after the Effective Date of a Conciliation Agreement, Children's must provide OFCCP a copy of the List identifying those minorities who did not respond to the Notice during the 30-day period. OFCCP will initiate efforts to locate those minorities and have them respond to the Notice. Children's must mail a second Notice, and Release to any additional minorities from the List OFCCP may locate. If any minority applicant on the List has not returned a signed Release within one hundred and twenty (120) calendar days of the Effective Date of a Conciliation Agreement, that applicant will no longer be entitled to any relief. Copies of executed Releases will be provided to OFCCP by Children's upon request. Any original Releases received by OFCCP will be sent to Children's.

All minority applicants on the List who sign and return the Release within 120 days of the Effective Date of a Conciliation Agreement will share in the monetary settlement. Monetary relief is not contingent upon accepting a job offer.

c. Offers of Employment: Children's will extend job offers as vacancies occur, until 18 qualified minorities from the List have accepted the offer or until the List is exhausted, whichever comes first. All decisions are subject to review by OFCCP. All minorities who are placed into Nurse positions shall be paid the hourly wage associated with that job. Children's Hospital will offer employment to candidates based upon their meeting the qualifications for the position. Offers will be made in chronological order by response date. Those minority applicants from the List who are hired under this Agreement will receive relief including retroactive seniority, retroactive benefits, and salary adjustments, and provided with an acceptable time to report to work, at least two (2) weeks.

d. Monetary Settlement: In settlement of this matter, Children's agrees to pay \$171,907.07 in back pay, plus benefits and interest in the amount of \$91,787.48 for a total of \$263,694.55. Children's agrees to distribute this sum as indicated in this Conciliation Agreement. Interest will be calculated from January 1, 2002 through actual disbursement, using the Internal Revenue Service's underpayment formula. This amount, \$171,907.07, takes into account average salary and

tenure rates of non-minorities hired into Nurse positions between January 1, 2002 through December 31, 2003, and continuing through their termination or the present, whichever is later. The \$263,694.55, less legal deductions required by law, will be distributed among the affected class members on the List. All class members who have signed and returned the Release within one hundred and twenty (120) days of the Effective Date of this Conciliation Agreement will constitute the eligible class members and will proportionately share the monetary settlement. Children's will provide a W-2 form to each individual along with the check. The W-2 form will cover actual back wages, not interest on the back wages. All minorities on the List who sign and return the Release will share proportionately in the monetary settlement. Monetary relief is not contingent upon accepting a job offer.

No disbursement of the monetary settlement covered by this Conciliation Agreement is to be made prior to 45 days following the Effective Date of this Agreement. The monetary settlement will be disbursed by Children's within one hundred eighty (180) days of the Effective Date of this Conciliation Agreement.

The total payment amount of \$263,694.55, will not be reduced, even if any of the 43 minority class members cannot be located. If any of these class members cannot be located, the remaining monies will revert to an escrow account. Patrick Taylor, will be the contact for the escrow account. Monies will be held in the escrow account until all monies are expended or until the termination date of this Conciliation Agreement, whichever is earlier. Monies remaining in the escrow account at the termination date of this Agreement will be evenly distributed amongst each located class member. The distribution will occur within thirty (30) days of the termination date of this Agreement.

2. Violation: Children's failed to comply with 41 CFR 60-1.12 (a), (c). Specifically, Children's failed to retain and preserve employment records as required by 41 CFR 60-1.12 (a), (c), (d). During the compliance evaluation, OFCCP requested that Children's provide all records pertaining to the hiring of Nurses such as employment applications, resumes, tests, interview notes, telephone screens, and credit and background check results for the period of January 1, 2002 to December 31, 2003. Children's provided some records for that period. However, an official representative of Children's stated during the investigation that some application records and interview notes had been destroyed. In addition, a nurse recruiter stated

that any notes made during her telephone screens were discarded and not retained with applications.

Remedy: Children's agrees to retain and preserve employment records for a period of not less than two years from the date the record is made or the personnel action occurs, whichever is later, for as long as it is subject to the requirements of Executive Order 11246, as amended. Within seventy-five (75) days from the Effective Date of this Conciliation Agreement (the Effective Date being the date of the Regional Director's signature), Children's shall develop, implement, and maintain documentation of the criteria used for each step in the hiring process for positions in the Nurses job group. Within the same timeframe, Children's will train its managers and other employees that participate in the selection process in the use of the selection criteria and the requirements for documentation for each applicant.

Prior to issuance of OFCCP's Notice of Violations, Children's voluntarily developed and instituted a new electronic applicant tracking system which fully documents all criteria used at each step of the hiring process for Nurses. Children's changed and enhanced its personnel documentation system to capture, record, and retain information and comments throughout the entire application process. Children's also expressed its goal of ensuring that any such system functions effectively to avoid the possibility that the applicant process could create disparate impact in the consideration of jobseekers or applicants.

3. Violation: Children's failed to comply with 41 CFR 60-3.4A. Specifically, Children's failed to maintain complete and accurate records of applicants by race, gender and ethnicity. For the period of January 1, 2002 to December 31, 2002, Children's reported the race of 416 applicants, and 210 hires. The results of our investigation revealed there were 407 applicants for whom Children's had not acquired or maintained race information.

Remedy: Children's shall maintain complete and accurate records of applicants by race, gender and ethnicity to allow Children's to analyze its pool of applicants for: a) Affirmative Action purposes to monitor whether the process is yielding an adequate pool of qualified minority applicants and, b) Nondiscrimination purposes to monitor for disparate treatment or unlawful adverse impact in the selection process.

Prior to receipt of OFCCP's Notice of Violations, Children's undertook specific and targeted initiatives to enhance outreach

by and for Minorities. Specifically, Children's made extensive outreach to potential applicants through 1) small media outlets in Minority Communities, 2) increased advertising in additional minority based newspapers and on-line associations such as NAACP.org and Hispaniconline.com, and 3) more visible and active attendance at special recruitment events in minority communities such as job fairs, in collaboration with various groups and organizations including Latino, Asian-American, National and Regional Black Nurses Associations, National Hispanic Nurses Association, and the New England Philippine Nurses Association.

Children's also enhanced its recruitment efforts at colleges and universities with known substantial minority enrollment, and instituted an internship program for minority students to encourage them to consider a Nursing career at Children's. Children's provided education, internship, and mentoring programs for more than 1,000 high school and other students that might otherwise face obstacles obtaining a nursing career. Children's created a new mentoring program for new nursing graduates, resulting in minority level participation several times the current Minority Nursing employment of 14.% among Boston's teaching hospitals². Prior to notice of OFCCP's findings, Children's new electronic applicant tracking system was initiated, which fully documents and retains all criteria used at each step of the hiring process for Nurses.

Children's will ensure that the above three (3) violations do not recur.

PART III. REPORTING

In order for OFCCP to monitor Children's progress toward fulfilling the provisions of this Agreement, Children's will submit two (2) reports. The first report shall be due February 15, 2008, and shall cover the twelve (12) month period beginning January 1, 2007 through December 31, 2007. The second report shall be due February 15, 2009, and will cover the twelve (12) month period beginning January 1, 2008 through December 31, 2008. Children's shall send each report to: U.S. Department of Labor, OFCCP, JFK Federal Building, Room E-235, Boston, MA. 02203.

Future reporting will exclude counting of new hires as a part of this Agreement in the company AAP. This Agreement brings

² In fulfilling its obligations to remedy this violation, Children's costs expended to date exceed \$266,715.00 for programs and actions.

Children's into compliance, and remedies under this Agreement cannot be used against future reviews.

The Report due February 15, 2008, shall contain:

1. Documentation of the criteria used to screen applicants, to include the names and job titles of the screener(s) for each step in the selection process for all positions in the Nurses job group. Documentation that managers have been trained to uniformly apply the criteria to applicants and document the application of the criteria to each applicant. This documentation is to include the name and job title of each person who attended the training, and the date and location of the training, and the identity of the trainer(s).
2. Documentation of monetary benefits provided to all Class Members as specified in subparagraph "d" of the Remedy to Violation 1. The documentation should include copies of all signed releases and canceled checks disbursed by the company to the Class Members, or other equivalent documentation verifying the Class Members were paid.
3. Documentation of specific hiring activity of the minority Class Members who were hired into all positions within the Nurses job group, including the class member's name, date of hire, job title, rate of pay, and documentation of retroactive seniority.

In addition to the above, both the reports shall contain:

1. A copy of Children's applicant flow log, to include the applicant's name, gender, race and/or ethnicity, method of application (i.e. walk-in, fax, mail, e-mail, online or other) date applied, position applied for by job title, whether the applicant was interviewed, and disposition of the interview, i.e., a statement as to whether the applicant was hired or rejected. If hired, indicate the date of this action and the position he/she filled; and if rejected indicate the reason for rejection. Additionally, Children's will provide documentation describing its implementation of the self-identification of race and gender information process for the applicants who express an interest in available employment opportunities.
2. Copy of Children's adverse impact analysis for Nurses covering each of the 12 month periods beginning January 1, 2007 and ending December 31, 2008.

3. If the total selection process for the Nurse positions has an adverse impact as defined in 41 CFR 60-3.4D, the results of Children's review/examination of the individual selection components of the total selection process and the actions taken by Children's, as a result.

4. Documentation describing methods implemented to determine whether there are barriers to the selection of qualified minorities for Nursing positions. Where Children's has identified barriers to the selection process, provide documentation of actions taken to correct identified barriers.

5. Documentation of semi-annual assessments of selecting officials' efforts to place qualified minorities into Nurse positions. Where selecting officials' efforts are unsatisfactory, provide documentation of recommendations made to top management.

Children's agrees to maintain, during the life of this Agreement, all records pertinent to the violations resolved by this Agreement and reports submitted under it, including the underlying information on which the reports are based, until the expiration date of the Agreement or consistent with regulatory requirements, whichever is first.


Termination Date:

The termination date of this Conciliation Agreement is sixty (60) days after receipt of the final progress report or if compliance is not accomplished by that date, then this Agreement shall remain in full force and effect until compliance is achieved.


PART IV: SIGNATURES

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Children's Hospital Boston, 300 Longwood Avenue, Boston MA 02115.


DATE 1/16/07


Stuart Novick
SR VP and General Council
Legal Services
Children's Hospital Boston

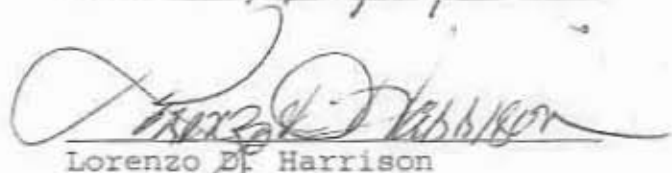
DATE 1/17/07


Harold J. Randolph
Compliance Officer
OFCCP, Boston District Office

DATE 1/17/07


Reba J. Beatty
District Director
OFCCP, Boston District Office

DATE 1/18/07


Lorenzo D. Harrison
Regional Director
OFCCP, Northeast Region

ATTACHMENT A

VICTIM LIST

	Ms./Mr.	First Name	Last Name	Date of App.
1				03/14/2002
2				02/14/2003
3				Unk
4				04/12/2002
5				07/09/2002
6				03/28/2002
7				09/12/2003
8				02/25/2002
9				09/26/2003
10				04/23/2002
11				11/21/2003
12				03/25/2003
13				10/22/2002
14				11/25/2002
15				02/21/2003
16				10/13/2003
17				06/23/2003
18				06/17/2003
19				08/28/2003
20				06/05/2002
21				04/04/2002
22				03/17/2003
23				06/27/2002
24				Unk
25				05/07/2002
26				05/16/2002
27				09/18/2003
28				05/01/2003
29				01/08/2002
30				03/10/2003
31				Unk
32				Unk
33				12/16/2003
34				06/20/2003

35
36
37
38
39
40
41
42
43

EXEMPTION 7(c)

+

EXEMPTION 7(c)

+

EXEMPTION 7(c)

03/25/2002
Unk
Unk
Unk
Unk
04/05/2002
04/03/2002
12/03/02
10/23/2003

ATTACHMENT B

NOTICE TO CLASS MEMBERS

Children's Hospital and the Department of Labor's Office of Federal Contract Compliance Programs have entered into a Conciliation Agreement (CA) to resolve alleged disparities in selecting applicants for Nursing positions from the period of January 1, 2002 through December 31, 2003. You have been identified as one of the individuals who may have been eligible for these positions during that time period.

As part of this Conciliation Agreement, you are eligible to receive a distribution of a least \$5,000.00, subject to lawful payroll deductions. Under the terms of this Conciliation Agreement, you may receive the award up to six months from the date of this letter. In order to be initially eligible for this distribution, you must send the completed Release of Claims Form to the following address:

Children's Hospital
Attn: Patrick Taylor
Deputy General Council
300 Longwood Avenue
Boston, MA 02115

In addition to the monetary distribution, Children's Hospital may be extending Nursing position job offers to the people who are receiving this notification. The enclosed application and Employment Interest Form should be completed and returned to the above address by _____. Children's Hospital will offer employment to candidates based upon their meeting the qualifications for the position. Offers will be made in chronological order by response date. Those minority applicants from the List who are hired under this Agreement will receive relief including retroactive seniority, retroactive benefits, salary adjustments, and provided with an acceptable time to report to work, at least two (2) weeks.

Monetary relief which is part of the Conciliation Agreement is not contingent upon accepting a job offer.

By entering into this Conciliation Agreement, Children's Hospital has not admitted nor has there been any adjudicated finding that Children's Hospital violated any laws when it did not select you for the position for which you were eligible. Children's Hospital has entered into this Conciliation Agreement to resolve the matter without further legal proceeding.

If you have any questions, you may call E. Daniel Gonzales, Assistant District Director, OFCCP Boston District Office at 617-624-6780. Your call will be returned as soon as possible.

Sincerely,

Enclosure: Release of Claims

RELEASE OF CLAIMS UNDER THE EXECUTIVE ORDER

In consideration of the payment at least \$5,000.00 (Less deductions required by law) by Children's Hospital Boston (Children's) to me, which I agree is acceptable, and also in consideration of the Conciliation Agreement between Children's and the Office of Federal Contract Compliance Programs (OFCCP), I _____ agree to the following:

I.

I hereby waive, release and forever discharge Children's, its predecessors, related entities, subsidiaries, and organizations, and its directors, officers, employees, agents, successors, and assigns, of and from any all and all action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to being selected for employment at any time prior to the effective date of this Release.

II.

I understand that if I am concerned about how the process described in this Release applies to me, I may contact OFCCP for assistance at:

EXEMPTION 7(c) Compliance Officer
U.S. Department of Labor, ESA/OFCCP
JFK Federal Building, Room E-235
Boston, MA 02203

III.

I understand that Children's denies that it treated me unlawfully or unfairly in any way and that Children's entered into the above-referenced Conciliation Agreement with OFCCP in the spirit of conciliation and to bring closure to the compliance evaluation initiated by OFCCP on 25 June 2003. I further agree that the payment of the aforesaid sum by Children's to me is not to be construed as an admission of any liability by Children's.

IV.

I declare that I have read this Release and that I have a full opportunity to consider and understand its terms and to consult with my advisors. I further declare that I have decided of my own free will to sign this Release.

V.

I understand that if I do not sign this Release, provide my social security number, and return it to Children's within thirty (30) days from the date I receive this Release, I will not be entitled to receive the payment (less deductions required by law) from Children's Hospital Boston.

IN WITNESS WHEREOF, I have set my hand to this _____ day of _____, 2006.

_____(Signature) _____(Print Name)

_____(Social Security Number)