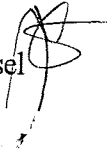


Memo

Date: March 31, 2010
To: Barbara Lelli, Chief Investigator
From: John P. Gause, Commission Counsel 
Re: PA09-0076, v.

Complainant alleges that he was denied access to Respondent's volunteer Chaplaincy program because of his religion (Spiritualist). He alleges public accommodations discrimination on the basis of religion. You asked whether volunteering for a public accommodation is covered by the MHRA public accommodations provisions. For the following reasons, I do not think volunteering is covered.

The Maine Human Rights Act provides, in relevant part, as follows:

It is unlawful public accommodations discrimination, in violation of this Act: . . . For any public accommodation . . . to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of . . . religion, . . . any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.

5 M.R.S.A. § 4592(1).

"Public accommodation" is defined as "a public or private entity that owns, leases, leases to or operates a place of public accommodation." 5 M.R.S.A. § 4553(8-B). "Place of public accommodation" means a facility, operated by a public or private entity, whose operations fall within at least one of the following categories: . . . hospital . . ." 5 M.R.S.A. § 4553(8)(F).

Here, although Respondent is a "public accommodation" and a hospital is a "place of public accommodation," Complainant may only assert a public accommodations claim to the extent that he was seeking to enjoy "the accommodations, advantages, facilities, goods, services or privileges of public accommodation." Complainant alleges that he was denied the opportunity to perform services for Respondent as a volunteer, not simply that he was denied the opportunity to enjoy Respondent's facilities to minister to patients. The opportunity to perform volunteer work for a public accommodation is not properly construed as one of the accommodations, advantages, facilities, goods, services or privileges of a public accommodation. See *Bauer v. Muscular Dystrophy Ass'n*, 268 F. Supp. 2d 1281, 1291 (D. Kan. 2003) (volunteer camp counselor not covered by public accommodation provisions of Title III of ADA or Kansas Law Against Discrimination); *Quinnipiac*

Council, Boy Scouts of America, Inc. v. Commission on Human Rights and Opportunities, 528 A.2d 352, 354 - 355 (Conn. 1987) (service as a scoutmaster for a Boy Scout troop not covered under public accommodations law).

This case is different from those involving doctors seeking staff privileges at hospitals, in which several courts have found coverage under public accommodations anti-discrimination laws. See *Menkowitz v. Pottstown Memorial Medical Center*, 154 F.3d 113, 122 (3rd Cir. 1998) (holding that a doctor performing medical staff privileges at a hospital is covered under Title III of ADA); *Haynes v. Neshewat*, 729 N.W.2d 488, 493 (Mich. 2007); *Hetz v. Aurora Medical Center of Manitowoc County*, 2007 WL 1753428, *11-12 (E.D. Wis. 2007). In those cases, the doctors sought to use hospital facilities to pursue their own businesses. See *id. Compare Hetz*, 2007 WL 1753428, * 12 (noting that “[i]t is unclear whether an individual who seeks to provide services for a place of public accommodation is seeking the ‘enjoyment’ of that entity's privileges or facilities.”). Here, as a volunteer for the hospital, Complainant’s interests would have merged with the Respondent’s, and he would have become Respondent’s agent. As such, Complainant sought to provide Respondent’s “accommodations, advantages, facilities, goods, services or privileges” to others, not to receive them.

If Complainant had alleged that he was denied an equal opportunity to independently minister to patients at the hospital, as opposed to volunteering for the hospital, the outcome might have been different. As it is, he was denied the opportunity to give something to—not to receive something from—a public accommodation, which is not covered by the Act.

Cc: Patricia E. Ryan, Executive Director