BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

DONITA DUER,	)	
	)	
Appellant,	)	
	)	
vs.	)	MPC 16-111
	)	
OKLAHOMA DEPARTMENT OF HUMAN SERVICES,	)	
	)	
Appellee.	)	

APPELLEE'S FIRST REQUESTS FOR DISCOVERY TO APPELLANT

Pursuant to the Prehearing Conference Order entered herein, the Appellee, the Oklahoma Department of Human Services ("DHS"), respectfully requests that Appellant separately answer in writing and under oath each of the following interrogatories within ten (10) calendar days of service hereof, as required by OAC 455:10-13-7 and 455:10-13-8.

DEFINITIONS

In addition to any definition set forth in any of the discovery requests herein, the following definitions shall apply to all discovery requests:

1. When used in these Interrogatories, Request for Production of Documents, and request for Admissions, the pronouns "you," "your," and "yours" and the term "Appellant" is intended to mean Donita Duer ("Appellant"), the Appellant in this Merit Protection Commission appeal, any other person or entity acting or purporting to act on her behalf, including without limitation her counsel and all of her agents, servants, representatives, and any and all others who are in possession of or may have

obtained information for or on behalf of the party to whom these discovery requests are directed.

2. The words "person" and "persons" shall mean and include without limitation individuals, associations, partnerships, corporations, and limited liability companies.

3. The terms "document" and "writing" are used herein in its customary broad sense and have the same meaning as used in the Federal Rules of Evidence, Rule 1001. Those terms shall include without limitation: any kind of written, printed, recorded, written, drawn or diagramed graphic or photographic material and/or matter (including tape recordings), however printed, produced, reproduced, coded or stored, of any kind of description, whether sent or received or not, including originals, drafts, copies, non-identical copies or reproductions, and it also includes without limitation: summaries, reports, data compilations and tabulations, whether stored by mechanical, photographic, computer or electronic means (including electronic data storage media of all types), audio or video reproduction tapes, disks or other devices, magnetic impulses, mechanical or electronic recordings, however produced or reproduced, including: agreements, communications, books, records, invoices, ledgers, journals, accounts, memoranda, stenographic or handwritten notes, letters, notices, telegrams, transcripts, diaries, calendars, contracts, minutes, opinions, studies, publications analysis, summaries, messages, correspondence, reports, surveys, statistical compilations, records of telephone conversations, records of personal conversations or interviews, notes and other records of meetings or conferences, graphs, charts, notebooks, plans, drawings, sketches, maps, reports of investigations or negotiations, photographs, tapes,

motion picture film, video tapes, brochures, pamphlets, advertisements, circulars, phonographic recordings, tapes, electronic mail (e-mail), instant messages (1M), data contained on computer hard drives, floppy drives or microfiche, CD-ROMs, DVDs, electronic mail, data processing cards, computer tapes, diskettes, printouts or data, press releases, drafts, work papers, marginal comments appearing on any document or copy thereof and all other writings and recordings of any kind.

The terms "document" and "writing" shall also include, without limitation, each note, memorandum, letter, electronic mail, work paper, minutes, book, diary, forecast, blueprints, index, microfilm, account, opinion, appraisal, brochure, pamphlet, circular, telegram, release, article, analysis, transcript, agreement, deposit slip, bank statement, check, front and back, check stub, receipt, stock certificate, bond, bond coupon statement, confirmation, magnetic tape data sheet, data processing card or disk, computer diskette and any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and any other document or writing of whatever description, including, but not limited to, any information contained in any computer although not yet printed out.

4. The term "identify" when used with respect to an individual, shall mean to state each and all of the following: such individual's (a) name, (b) last known address, (c) last known telephone number, (d) last known occupation or profession and job title, and (e) the name, address and telephone number of such individual's current or last known employer. The term "identify" when used with respect to an organization (e.g., a corporation, partnership, association or the like), shall mean to state each and all of the following: (a) the name of such organization, (b) the type of such organization, and (c)

the last known address and telephone number of such organization's principal place of business.

The term "identify" when used with respect to a document, shall mean to describe such document with sufficient particularity in order to enable one to describe it adequately in a Request for Production of Documents pursuant to Oklahoma Merit Rules 455:10-13-2, 7, 8, 9 and 11. In each such document identification you are required to provide each and all of the following: (a) the nature of the document (e.g., letter, memorandum, telegram, etc.), (b) the date such document was signed, prepared, sent and/or received, (c) the identities of the sender and the receipt(s) or addressee(s), and (d) the present location and custodian of such document. In lieu of such document identification, you may produce with your responses to these Interrogatories a legible copy of the document you are asked to Identify and describe, indicating the Interrogatory to which the document is responsive.

The term "identify" when used with respect to a fact or facts, shall include in addition to the recitation of such specific fact or facts, each and all of the following: (a) the identification of all documents which substantiate the fact or from which the fact is drawn, and (b) the identification of any oral communication upon which your knowledge of the fact is founded, or which supports the fact, including between whom the oral communication occurred, when and the substance of the communication. In lieu of identifying documents, you may produce the specific fact subject to discovery request and identify the particular document produced as responsive to certain discovery requests.

5. The term "describe," when used with respect to any statement or communication, shall mean to state all of the following: (a) the person making the statement or communication, (b) the date it was made, (c) the person or persons to whom it was made and who witnessed the same, (d) the contents of the statement or communication, and (e) the place where it was made.

The term "describe," when used in connection with an act, shall mean to state all of the following: (a) the identity of the actor, (b) the specific nature of the act, (c) the date and place of the act, (d) the identities of the individuals present, and (e) a complete description of the act.

In all other cases, the term "describe" shall mean to provide all of the foregoing information and in addition all facts, acts, omissions, admissions, communications, documents, detail or the like which are known by you, at the time of making the response, concerning the subject of the particular discovery request.

6. The term "communication" shall mean any oral, written, mechanical, electronic or other transmission of words , symbols, numbers or depictions, to a person, entity, file or repository, of data or information, including without limitation "documents" or "writing," as herein defined, and correspondence, memoranda, telephone conversations, or notes, recordings, transcriptions of meetings or of telephone conversations, or any other document or memorandum that recorded or reflected such communication.

7. The term "person" shall refer to any natural person, firm, association, partnership, corporation, municipal corporation, or other form of business entity or association.

8. The terms "and" and "or" shall be construed both disjunctively and conjunctively.

9. Persons or documents upon which you "rely" for an answer to a discovery request shall mean any and all of the following: (a) persons who or documents which are the source of the information upon which the answer is based and (b) persons who or documents which have information to support the answer.

10. The terms "concerning" or "refer" or "relate to" shall be construed to mean constituting, referring to, concerning, containing, supporting, modifying, contradicting, criticizing, discussing, mentioning or describing, embodying, constituting, arising from, recording, reporting, reflecting or pertaining to, prepared in connection with or has been collected, recorded, examined or considered by, for or on behalf of any present or former agent, representative, officer, director, employee, attorney or other person acting or purporting to act on your behalf, in relation to the subject matter so specified.

11. Whenever used herein, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine, and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and that conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the functional words ("each", "every", "any", and "all") shall be deemed to include each of the other functional words.

INSTRUCTIONS

1. The following Discovery Requests, which include Interrogatories, and Requests for Production of Documents, extend to all information and documents in the

possession, custody or control of the Appellant and any person acting or purporting to act on her behalf, including any agent, employee, representative, or attorney of Appellant.

2. In producing documents responsive to the following Request for Production of Documents, you are requested to produce all documents in your custody, control or possession, including documents in the custody, control or possession of your attorneys, agents or other representatives.

3. You are also requested to produce any document which is no longer in your immediate physical possession, but in regard to which you have a right to compel production from a third person or which is otherwise subject to your control.

4. If any document subject to any discovery request herein has been destroyed, cannot be located, or is no longer thought to be in existence, please so indicate and state the reason for the destruction or said document, its last known location, by whom it was destroyed, when it was destroyed, and the description of the document in a fashion sufficient to identify and describe it.

5. If any document is withheld from production for any reason, concurrently with your response to these requests please so indicate in writing and state the nature and the basis for withholding such document and identify and describe the document with particularity.

6. Pursuant to 12 O.S. Supp. 2013 § 3226(E), these Discovery Requests are continuing in nature. Consequently, if, after serving a response hereto and producing the requested documents, you obtain or become aware of additional information or

documents responsive hereto, you should supplement your response and provide such additional information or documents in accordance with § 3226(E).

7. Unless specifically stated otherwise, none of the following Discovery Requests shall be construed to limit the scope or generality of any other request.

8. In answering the following Interrogatories, you are requested to furnish all information which is in your possession, custody or control, including information in the possession of your attorneys or other persons directly or indirectly employed or retained by you, or anyone else acting in your behalf or otherwise subject to your control.

9. In requesting the identity of individuals, persons, or experts, you are requested to include your employees, agents, contractors, subcontractors or consultants.

10. If any of the following Interrogatories cannot be answered in full, please answer them to the fullest extent possible, explaining why you cannot answer the remainder, and stating any information or knowledge which you have concerning the unanswered portion.

11. If you currently lack information to answer any of the following Interrogatories, then completely state:

a. The responsive information currently available;

b. The responsive information currently unavailable;

c. The efforts which you intend to make to secure the information currently unavailable; and

d. When you anticipate receiving the information currently unavailable.

12. Unless otherwise specified, the period of time pertaining to the Discovery Requests is from December 2012 to February 24, 2016.

INTERROGATORIES

INTERROGATORY NO. 1: Identify and describe any and all facts, evidence or reasons that support any argument that Appellant intends to make at trial that Appellant's alleged disability was a factor in the decision to terminate her.

INTERROGATORY NO. 2: Identify and describe any and all facts, evidence or reasons that support any argument that Appellant intends to make at trial that Appellee's actions violated the American's with Disabilities Act (ADA) .

INTERROGATORY NO. 3: Provide the names and addresses of all medical providers who have treated Appellant since December 2012 for any condition which Appellant claims is a disability. Please also indicate the name(s) of the condition(s) for which each provider treated Appellant.

INTERROGATORY NO. 4: Provide the details of any request for an accommodation under the ADA that Appellant has ever made to Appellee. In responding to this request, please be specific as to:

a. To whom the request was made;

b. The date of the request;

c. Identification of Appellant's disability which resulted in the need for accommodation;

d. What specific accommodation was sought;

e. Identification of any documents that were exchanged as part of the request, including, but not limited to, forms, medical records, correspondence;

f. How the requested accommodation would have allowed Appellant to continue performance of her job.

INTERROGATORY NO. 5: With regard to the Notice of Final Formal Disciplinary Action – Discharge, dated February 24, 2016, please identify each and every fact stated in support of Appellant's discharge which Appellant believes to be false. For any such fact identified as false, state what is false about the alleged fact.

INTERROGATORY NO. 6: Identify any medication(s) which have been prescribed by any medical provider for Appellant based upon her alleged disabilities and indicate whether or not Appellant was taking the prescribed medications during the time period of December 2012 to February 24, 2016.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO.1: Produce any and all records, including but not limited to notes, journals, calendars, chronologies, emails, or medical records in your possession related to the facts and allegations contained in your Prehearing Conference Statement.

REQUEST FOR PRODUCTION NO. 2: Produce any and all records, including but not limited to notes, journals, calendars, chronologies, emails, or medical records in your possession relating to any of the matters discussed in the Notice of Final Formal Disciplinary Action – Discharge, dated February 24, 2016.

REQUEST FOR PRODUCTION NO. 3: Produce any and all documents which you relied upon or referred to while preparing your answers to the above interrogatories.

REQUEST FOR PRODUCTION NO. 4: Produce all medical records of any/all of the medical providers identified in response to Interrogatory No.3, above, regarding treatment of Appellant between December 2012 and February 24, 2016.

REQUEST FOR PRODUCTION NO. 5: Appellant is asked to execute the enclosed Authorizations for Release of Medical Records for the records of:

a. Dr. Catherine Abbott, PhD
b. Dr. John Pittman
c. Paula Stanford, LPC LMFT
d. Patricia Taylor, PT CHT

The signed Authorizations for Release of Medical Records should be returned to counsel for Appellee.

REQUEST FOR PRODUCTION NO. 6: Appellant is asked to execute Authorizations for Release of Medical Records for all medical providers:

a. listed in response to Interrogatory No. 3, above;
b. who have treated Appellant regarding the disabilities which she alleges in this appeal; and/or
c. who may be called by Appellant to testify in the trial of this case.

The signed Authorizations for Release of Medical Records should be returned to counsel for Appellee. (Note: a generic copy of the Authorization for Release of Medical Records is being provided as an attachment to these discovery requests. Appellant should sign

additional copies of the Authorization such that she has signed an Authorization which is directed to each different medical provider.)

REQUEST FOR PRODUCTION NO. 7: Produce copies of any all documents which you intend to introduce into evidence or otherwise use at trial.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO 1: Admit that Appellant did not make a request for a reasonable accommodation consistent with the Americans with Disabilities Act (ADA) regarding her alleged disabilities of attention deficit hyperactivity disorder (ADHD) or depression.

Respectfully submitted,

s/ Anastasia Pederson

Anastasia (Stacy) Pederson, OBA #17118
John E. Douglas, OBA # 2447
Assistant General Counsel
Department of Human Services
P.O. Box 25352
Oklahoma City, OK 73125-0352
stacy.pederson@okdhs.org
(405) 522-3530

CERTIFICATE OF SERVICE

This is to certify that on this 10th day of June, 2016, a true and correct copy of the foregoing was filed by Merit Protection Commission's electronic filing system and also emailed to kwatson1308@yahoo.com :

Kenneth C. Watson
210 Park Ave., Suite 2550
Oklahoma City, OK 73102
Attorney for Appellant

s/ Anastasia Pederson
Anastasia Pederson

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

TO: _____, Donita Duer SSN _____
(name of medical provider of Donita Duer)

You are hereby authorized to permit Anastasia Pederson, Assistant General Counsel, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125-0352 telephone (405) 522-3530, attorney for *Oklahoma Department of Human Services* to examine, copy, or otherwise reproduce all or any portion of the following:

(a) Medical, psychiatric or mental health hospital records, x-rays, CT scans, MRI scans, myelograms and films, readings and reports thereof, laboratory records and reports, all tests of any type or character and reports thereof, and all documents pertaining to my hospitalization, medical history, condition, treatment, diagnosis, prognosis, etiology, or expenses; and

(b) Medical, psychiatric or mental health records, and all documents pertaining to my medical care, history, condition, treatment, diagnosis, prognosis, etiology, or expenses.

This consent will expire on December 31, 2016, or 6 months after the date of signature. **I UNDERSTAND THAT MY MEDICAL RECORDS MAY CONTAIN INFORMATION THAT INDICATES THAT I HAVE A COMMUNICABLE OR VENEREAL DISEASE WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, DISEASES SUCH AS HEPATITIS, SYPHILIS, GONORRHEA OR THE HUMAN IMMUNODEFICIENCY VIRUS, ALSO KNOWN AS ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS).** With this knowledge, I give my consent to the release of all information in my medical records, including any information concerning my identity and release said health care providers, their agents and employees from any liability in connection with the release of the information contained therein.

Notice to Patients: Information in your medical records that you have or may have a communicable or venereal disease is made confidential by law and cannot be released without your permission except in limited circumstances including release to persons who have had risk exposures release pursuant to an order of the court of the Department of health, release among health care providers or release for statistical or epidemiological purposes. When such information is released, it cannot contain information from which you could be identified unless release of that identifying information is authorized by you, by an order of the court of the Department of Health or by law.

THIS AUTHORIZATION IS LIMITED TO THE FURNISHING OF THE RECORDS DESCRIBED ABOVE.

A copy of this Authorization will have the same validity as the original.

_____
_____
S.S. # _____

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 2016.

_____
Notary Public

My Commission Expires:

_____
(Seal)

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

TO: Catherine Abbott, Ph.D _____, Donita Duer SSN _____
(name of medical provider of Donita Duer)

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_____
S.S. # _____

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_____
Notary Public

My Commission Expires:

_____
(Seal)

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

TO: John Pittman, M.D. _____, Donita Duer SSN _____
(name of medical provider of Donita Duer)

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_____
_____
S.S. # _____

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 2016.

_____
Notary Public

My Commission Expires:

_____
(Seal)

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

TO: Paula Stanford, LPC LMFT_____, Donita Duer SSN _____
(name of medical provider of Donita Duer)

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_____
S.S. # _____

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 2016.

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Notary Public

My Commission Expires:

_____
(Seal)