

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR BENTON COUNTY

SETH JAGGER KAESER,
Plaintiff

vs.

**THE CORVALLIS CLINIC, P.C. (an
entity),
Defendant**

Case No. 21CV19927

**COMPLAINT FOR UNLAWFUL
EMPLOYMENT PRACTICES**

1. Whistleblower Retaliation
2. Wrongful Discharge in Contravention of Public Policy

(Not Subject to Mandatory Arbitration)

**Request for Jury Trial & Attorney Fees
ORS 659A.885 and ORCP 68**

Requested relief: \$ 182,000.00.

Filing Fee: \$594.00 ORS 21.160(1)(c)

Plaintiff Seth Jagger Kaeser, by and through counsel Luke J. Kuzava, hereby appears and alleges as follows:

1. At all material times herein, Plaintiff Seth Jagger Kaeser (herein "Plaintiff") has been a resident of Benton County, Oregon. At all material times herein, Plaintiff was an employee of Defendant the Corvallis Clinic, P.C (herein "Defendant").
2. At all material times herein, Defendant The Corvallis Clinic, P.C. (herein "Defendant") was and remains a professional corporation registered to do business in the State of Oregon, with its principal place of business located in Benton County, Oregon. At all material times herein, Defendant was Plaintiff's employer.
3. This Court has jurisdiction pursuant to ORS § 14.030, and ORCP 4 A(4), 4C, 4F, and/or 4L.
4. Benton County is the proper venue pursuant to ORS § 14.050.

1 5. Plaintiff is a licensed physical therapist. He began working for Defendant in or about
2 February of 2013, and remained employed by Defendant until on or about May 20,
3 2020.

4 6. In the course and scope of his employment, Plaintiff provided physical therapy services
5 at a community health clinic operated by Defendant in Corvallis, Oregon.

6 7. In March of 2020, as the Covid-19 pandemic rapidly spread across the world, many
7 states, including Oregon, responded by enacting emergency public health measures. On
8 or about March 19, 2020, Governor Kate Brown enacted a statewide executive order,
9 EO 20-10, that ordered the postponement of non-urgent in-person healthcare
10 procedures, in order to conserve personal protective equipment and hospital beds for
11 the State's Covid-19 emergency response efforts. That Executive Order provided, in
12 relevant part: "No later than March 23, 2020, all elective and non-urgent procedure
13 across all care settings that utilize PPE, including but not limited to, hospitals,
14 ambulatory surgery centers, outpatient clinics (including community health clinics and
15 student health centers), dental clinics, and veterinary clinics, shall be cancelled, or
16 rescheduled no earlier than June 15, 2020, for the purpose of conserving and redirecting
17 PPE for the state's COVID-19 Emergency Response."

18 8. Several days later, on March 23, Governor Brown also enacted EO 20-12, the general
19 statewide "stay at home" order, which provided in relevant part as follows: "Pursuant to
20 ORS 433.441(3)(a),(b),(d) and (f), ORS 401.169(1), and ORS 401.188(1) to (4), and
21 effective March 25, 2020, all business and non-profit entities with offices in Oregon
22 shall facilitate telework and work-at-home by employees, to the maximum extent
23 possible. Work in offices is prohibited whenever telework and work-at-home options

1 are available, in light of position duties, availability of teleworking equipment, and
2 network adequacy. When telework and work-at-home options are not available,
3 businesses and nonprofits must designate an employee or officer to establish,
4 implement, and enforce social distancing policies, consistent with guidance from the
5 Oregon Health Authority. Such policies also must address how the business or non-
6 profit will maintain social distancing protocols for business-critical visitors.” EO 20-12
7 expressly stated that failure to comply with any of its terms “constitutes an imminent
8 threat and creates an immediate danger to public health.”

9 **9.** At the time that EO 20-12 went into effect, Plaintiff was away from the office, on a
10 camping trip. When he returned to work, he found that virtually none of the employees
11 were physically distancing or wearing masks. The workstations for physical therapists
12 in the clinic’s back office were set up so that the therapists worked closely together,
13 almost elbow-to-elbow, and no one had attempted to modify the layout of the
14 workstations to allow for physical distancing, or to take any other measure to adhere to
15 social distancing or remote work. In short, Defendant had not taken any apparent
16 measures at all to comply with EO 20-12.

17 **10.** More concerning to Plaintiff, on or about April 1, 2020, Defendant’s director of
18 physical therapy (and Plaintiff’s supervisor), Gary Michael Gray, called an “all-staff”
19 meeting with the physical therapy staff and senior support staff, to discuss the Covid-19
20 related policies and practices that the Corvallis Clinic would be implementing. At that
21 meeting, Mr. Gray stated that the Clinic was experiencing a financial hardship due to a
22 massive drop-off in in-person patient visits. Mr. Gray told the physical therapists that,
23 contrary to EO 20-10, they needed to do everything they could do to assure their

1 patients that in-person visits did not pose a significant risk for Covid-19 transmission
2 (although that was not in fact true), and to encourage in-person physical therapy. Mr.
3 Gray also told the physical therapists that, although they should use their professional
4 judgment as to whether an in-person patient visit was necessary or appropriate under
5 the circumstances, the continued employment of the physical therapists would also be
6 directly tied to their success in bringing in patients for billable in-person visits. The
7 clear subtext to Mr. Gray's statements was that the Corvallis Clinic expected the
8 physical therapists to maximize in-person services, regardless of the Covid-19 risk, to
9 increase revenue for the Clinic.

10 **11.** Plaintiff took strong exception to this new policy, and spoke out against that policy at
11 the meeting in a clear and direct manner. He also reported, to Mr. Gray, that he was
12 concerned that the back office layout was making physical distancing impossible, that
13 the workstations were still set-up in a way that required the physical therapists to work
14 in close proximity to one another, and that Defendant had not undertaken any efforts to
15 promote increased physical distancing among the physical therapy staff. Mr. Gray was
16 not aware of that information regarding the physical distancing issues, and stated that
17 that issue had not previously been brought to his attention.

18 **12.** At the time that Plaintiff made that report and voiced his opposition to the new policy,
19 he believed in good faith that Defendant's practices that he was reporting and opposing
20 were violations of EO 20-10 and EO 20-12, and that as such, they were unlawful
21 practices, and practices that contravened public policy.

22 **13.** Mr. Gray expressed that any physical therapist that did not wish to participate in the
23 new policy that he had articulated could go on temporary furlough. Plaintiff stated that

1 he was uncomfortable encouraging his patients to come into the clinic for in-person
2 physical therapy, and requested that he go on furlough. Mr. Gray agreed, and placed
3 Plaintiff on what was expected, at the time, to be a temporary furlough.

4 **14.** On or about May 20, 2020, however, Defendant terminated Plaintiff's employment.

5 Defendant formally notified Plaintiff of his termination in a letter, dated May 21, 2020,
6 from Sandra Speer, Defendant's Director of Human Resources. That letter explained
7 that the termination of Plaintiff's employment was because of Plaintiff's expressions of
8 opposition and concerns regarding Defendant's Covid-19 policies that occurred during
9 the above-described meeting that occurred on or about April 1, 2020.

10 **15.** At all times material to the claims and allegations herein, Mr. Gray and Ms. Speer were
11 acting in the course and scope of their duty as agents, employees, and/or apparent
12 agents or employees of Defendant.

13 **FIRST CLAIM FOR RELIEF**
14 **(Retaliation, ORS 659A.199)**

15 **16.** Plaintiff realleges and reincorporates all paragraphs above, and further alleges as
16 follows:

17 **17.** Defendant violated ORS 659A.199 by discharging Plaintiff because he reported and
18 disclosed, in good faith, information that he believed to be evidence of a violation of a
19 state or federal law, rule, or regulation.

20 **18.** As a result of Defendant's unlawful violation of ORS 659A.199, Plaintiff has and will
21 continue to incur lost income, benefits, and consequential economic damages. Those
22 economic damages are to be proven to a jury at trial, but do not currently exceed
23 \$41,000.00. Plaintiff's economic damages resulting from Defendant's unlawful conduct

1 are still accruing, and Plaintiff reserves the right to seek to amend this complaint at a
2 later time to update his claim for economic damages, if appropriate.

3 **19.** As a direct and proximate result of Defendant's unlawful violation of ORS 659A.199,
4 Plaintiff has suffered mental and emotional distress. Plaintiff is accordingly entitled to
5 compensatory damages in an amount to be proven at trial, but not to exceed
6 \$50,000.00.

7 **20.** Plaintiff is entitled to an award in his favor of reasonable attorney fees, costs, and
8 disbursements, pursuant to ORS 659A.885 and ORCP 68.

9 **SECOND CLAIM FOR RELIEF**
10 **(Wrongful Discharge)**

11 **21.** Plaintiff realleges and reincorporates all paragraphs above, and further alleges:

12 **22.** Defendant unlawfully terminated Plaintiff because he performed a public duty and/or
13 fulfilling a societal obligation, by opposing the Defendant's intended practice of urging
14 its patients to engage in as much billable in-person physical therapy treatments as
15 possible, in violation of EO 20-10 and in contravention of the public policy established
16 by EO 20-10.

17 **23.** As a result of Defendant's unlawful violation of ORS 659A.199, Plaintiff has and will
18 continue to incur lost income, benefits, and consequential economic damages. Those
19 economic damages are to be proven to a jury at trial, but do not currently exceed
20 \$41,000.00. Plaintiff's economic damages resulting from Defendant's unlawful conduct
21 are still accruing, and Plaintiff reserves the right to seek to amend this complaint at a
22 later time to update his claim for economic damages, if appropriate.

23 **24.** As a direct and proximate result of Defendant's unlawful and wrongful conduct,
Plaintiff has suffered mental and emotional distress. Plaintiff is accordingly entitled to

