

FILED

14 JUN 19 AM 9:06

CIRCUIT COURT
FOR MULTNOMAH COUNTY

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

14CV07136

CHRISTOPHER MODIC,

Plaintiff,

v.

LEGACY HEALTH SYSTEM, an Oregon
domestic nonprofit company, doing business
as LEGACY MT. HOOD MEDICAL
CENTER and METROPOLITAN HOSPITAL
INC.,

Defendant.

) Case No.:
)
) **PLAINTIFF'S COMPLAINT**
) **Retaliation Whistleblower ORS 659A.199;**
) **Anti-health Care Retaliation 441.176;**
) **Unlawful Employment Practices 659A.233;**
) **Wrongful Discharge**
)
) **[CLAIMS ARE NOT SUBJECT TO**
) **MANDATORY ARBITRATION]**
)
) **REQUEST FOR JURY TRIAL**
)
) **Filing Fee Pursuant to ORS 21.160(c):**
) **\$531.00**
)
) **Prayer Amount Not Greater Than**
) **\$800,000.00**

Plaintiff CHRISTOPHER MODIC (hereinafter "Plaintiff") brings this action for damages
and other relief for violation of his rights under the laws of the State of Oregon.

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1. Complaint - Modic

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5.

Plaintiff was trained by Defendant to fill out Patient Safety Alerts (PSAs), also called Patient Safety Reports (PSRs) or Incident Reports (hereafter collectively referred to as PSAs), to document dangerous, hazardous, unanticipated, or adverse clinical outcomes or situations. The PSAs were a critical part of the job performed by Plaintiff to monitor the safe performance of duties in patient care.

6.

In February 2012, Plaintiff was promoted to Emergency Department Nurse Supervisor.

7.

In August 2013 and thereafter while he was employed by Defendant, Plaintiff was supervised by Heather Moon, the Emergency Department Manager.

8.

In August 2013, Plaintiff, as Emergency Department Nurse Supervisor, expressed concern to Heather Moon that Ms. Moon instructed nurses in the Emergency Department not to fill out a PSA for an incident in the Emergency Department wherein a doctor allowed a scribe, an unqualified lay person, to suture a patient. Plaintiff noted that allowing an untrained scribe to suture a patient violated hospital policies and presented a safety risk to the patient. Plaintiff told Ms. Moon that a PSA should be completed for the incident. Ms. Moon advised Plaintiff that it was within the doctor's scope of practice to allow the scribe to suture patients and ordered Plaintiff not to fill out a PSA.

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31 3. Complaint - Modic

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9.

In September 2013, Heather Moon as Emergency Department Manager told Plaintiff and a Charge Nurse, Stefanie Smith, not to fill out a PSA for an incident when a doctor's hands were shaking while suturing a patient. Later that day the same doctor's shaky hands caused an intubation procedure to fail. Stefanie Smith as Charge Nurse filled out a PSA for that incident. The same day Heather Moon discovered that Stefanie Smith had filled out a PSA for the incident of the failed intubation due the doctor's hands shaking. Heather Moon then orally reprimanded Stefanie Smith for having filled out a PSA. Heather Moon also threatened to Stefanie Smith that she would have Plaintiff terminated for a violation of health care confidentiality laws for having discussed the matter of the doctor's shaking hands with them while Plaintiff was not technically on duty.

10.

On or about October 16, 2013, Plaintiff learned a patient brought a handgun in to the Emergency Department on October 14, 2013. An Emergency Department nurse, Carla Wallace, had to take the gun away from the patient. Ms. Wallace spoke to Heather Moon about the incident and Ms. Moon advised Ms. Wallace not to file a PSA. Plaintiff, upon learning of the incident, called the Nurse Executive, Marcia Soderling, to see if she knew about the incident. Ms. Soderling was not available but Mr. Modic was transferred to one of the hospital's Vice Presidents, Gretchen Nichols. Mr. Modic and Stefanie Smith spoke with Ms. Nichols. Mr. Modic expressed concerns to Ms. Nichols about the gun incident and the general lack of documentation

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1 of dangerous events and conditions in the Emergency Department, including his concern about
2 Heather Moon's attempts to discourage nursing staff from filing PSAs.
3

4 11.

5 On or about October 16, 2013, Plaintiff and Heather Moon met with a staff member
6 about a disciplinary issue. One of the disciplinary issues was whether the staff member had been
7 texting instead of helping a patient.
8

9 12.

10
11 On or about October 17, 2013, Plaintiff received a text from a staff member, Kim Potter,
12 notifying him that Heather Moon yelled at her and interrogated her about a meeting Plaintiff
13 allegedly had and who Plaintiff met with.
14

15 13.

16
17 On October 24, 2013, Plaintiff received a call from the Human Resources Department.
18 Plaintiff went to Human Resources where he was met by Marcia Soderling, the Nurse Executive,
19 and Sue Girvan, a Human Resources specialist. Plaintiff discussed with Ms. Soderling and Ms.
20 Girvan his meeting with Gretchen Nichols and his concern about Heather Moon's attempts to
21 discourage staff members from filing PSAs.
22

23 14.

24
25 Rather than address the safety issue of a supervisor ordering personnel to ignore safety
26 issues and instructing personnel not to file PSAs, the HR personnel criticized Plaintiff for
27 wanting to file PSAs. The managers also criticized Plaintiff for not being supportive of
28 management.
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31 5. Complaint - Modic
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15.

During the October 24, 2013 meeting, Plaintiff denied the allegations made by Marcia Soderling and Sue Girvan. Plaintiff was given written discipline after the meeting with Human Resources and Marcia Soderling.

16.

Plaintiff was demoted from Emergency Department Supervisor to Charge Nurse. Plaintiff was encouraged to accept the demotion following the discipline in retaliation for Plaintiff expressing concern for the safety issues posed by the refusal to allow filing of PSAs.

17.

Between February 6 and 9, 2014, the City of Portland had a severe episode of inclement winter weather. The inclement weather triggered a surge of patients requiring care at the Legacy Emergency Department.

18.

The patient to nurse staff ratio was extremely high in the Emergency Department due to the surge in patients on February 9, 2014. Plaintiff was in charge of the Emergency Department on that day in his role as Charge Nurse.

19.

Plaintiff spoke with his supervisor, Heather Moon, on the telephone on February 9, 2014, at the time he had assumed responsibility for the 13 patients. Plaintiff told Ms. Moon he had 13 patients and the Emergency Department was understaffed. Ms. Moon refused to call in more

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1 nurses or go on Divert, which would mean fewer ambulances would come to the hospitals.

2 Heather Moon told Plaintiff he was doing a good job.

3
4 20.

5 Plaintiff did not have the authority to call in more staff on February 9, 2014 and there was
6 no procedure for him to call in more staff.

7
8 21.

9 Supervisor Moon commended Plaintiff on the job he did on February 9, 2014. Ms. Moon
10 told Plaintiff other Charge Nurses would not have taken the patient load he took, that staff and
11 physicians were very complimentary of his work, and that the patients had all received great
12 care. Plaintiff told Ms. Moon the hospital should have a procedure for emergency understaffing
13 of nurses and suggested the hospital develop such a plan.

14
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17 22.

18 On February 27, 2014, Ms. Moon and a Human Resources representative confronted
19 Plaintiff and accused Plaintiff that he falsified a chart note of one of his mental health patients he
20 was charged with caring for when the emergency department was understaffed. Plaintiff was
21 placed on administrative leave and terminated on March 6, 2014.

22
23
24 23.

25 Plaintiff alleges the Defendant falsely accused Plaintiff of intentionally fabricating a chart
26 note as a pretext for suspending him and in retaliation for reporting safety violations of
27 Defendant and concerns regarding understaffing of the department. Plaintiff denies he at any
28 time altered or fabricated chart notes during the understaffing crisis.

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31 7. Complaint - Modic

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24.

Plaintiff alleges he was fired in retaliation for complaining to management about Heather Moon's attempts to discourage nurses from filing PSAs (safety concerns), so hospital management would not have to deal with situations documented in them and for expressing concern about the understaffing of the hospital during the period of February 9 and 10, 2014.

FIRST CAUSE OF ACTION

Unlawful Retaliation for Whistleblowing – ORS 659A.199

25.

Plaintiff re-alleges and incorporates paragraphs one (1) through twenty-four (24).

26.

Defendant is required by ORS 441 to follow its established reporting procedures for incidents of inappropriate care.

27.

Employer violated ORS 441 by discouraging nurses from filing PSAs in the above alleged incidents of August and September 2013. Defendant violated the Oregon Whistleblower law by demoting and terminating Plaintiff for complaining in good faith to Defendant about Defendant's attempts to discourage nurses from filing PSAs and failing to address staffing issues.

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28.

Defendant violated the Oregon Whistleblower law (ORS 659.199) by suspending Plaintiff for complaining in good faith to Defendant about Defendant's attempts to discourage nurses from filing PSAs.

29.

Defendant violated the Oregon Whistleblower law by terminating Plaintiff for complaining in good faith to Defendant about Defendant's attempts to discourage nurses from filing PSAs and complaining of staffing issues.

30.

As a result of Defendant's retaliatory conduct, Plaintiff is entitled to full relief available under ORS 659A.199.

31.

Specifically, as a direct and proximate result of Defendant's conduct, Plaintiff has and will continue to suffer lost income, insurance, and benefits that he would otherwise receive, in an amount to be determined by the jury at trial, but not to exceed \$350,000, all to his economic detriment in an amount to be determined more precisely at trial.

32.

Also, as a direct result of the Defendant's actions, Plaintiff has suffered emotional distress, embarrassment, humiliation, damages to his personal and professional reputation, and loss of self-esteem and is entitled to compensatory damages in an amount to be determined by a jury at trial, but not to exceed \$450,000.

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33.

Defendant's conduct demonstrated an outrageous indifference to a risk of harm to others and a conscious indifference to the health and safety of others. Plaintiff reserves the right to allege punitive damages.

34.

Plaintiff has incurred attorney fees and costs in bringing this case and is entitled to reasonable reimbursement of reasonable attorney fees and costs as provided under ORS 659A.885 and ORS 20.107.

SECOND CAUSE OF ACTION

Anti-nurse Retaliation Law – ORS 441.172 - 176

35.

Plaintiff re-alleges and incorporates paragraphs one (1) through thirty-four (34).

36.

Defendant at all times relevant is a hospital.

37.

Heather Moon is a manager for Defendant.

38.

Marcia Soderling is a manager for Defendant.

39.

Gretchen Nichols is a manager for Defendant.

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40.

Plaintiff is a nurse.

41.

Plaintiff disclosed to managers of Defendant activities, policies, or practices of the hospital that he reasonably believed was a violation of law, rule or professional standard of practice that Plaintiff reasonably believed posed a risk to the health, safety, or welfare of patients or the public, as alleged in paragraphs seven (7) through thirty-four (34).

42.

Defendant engaged in a prohibited retaliatory action by demoting Plaintiff for his complaints to management about Defendant's attempts to prohibit or discourage nurses from filing PSAs regarding unsafe conditions or substandard care, as alleged in paragraphs seven (7) through thirty-four (34), and for his complaints about staffing as alleged in paragraphs nineteen (19) and twenty-one (21), when Marcia Soderling demoted claimant on October 24, 2013 as alleged in paragraph sixteen (16).

43.

Defendant engaged in a prohibited retaliatory action by reprimanding Plaintiff on November 8, 2013 with a Written Corrective Action for complaining to management about Defendant's resistance to filing PSAs as alleged in paragraphs one (1) through thirty-four (34) above.

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44.

Defendant engaged in a prohibited retaliatory action by suspending Plaintiff on February 27, 2014 for complaining to management about Defendant's resistance to filing PSAs and understaffing as alleged in paragraphs one (1) through thirty-four (34) above.

45.

Defendant engaged in a prohibited retaliatory action by terminating Plaintiff on March 6, 2014 for complaining to management about Defendant's resistance to filing PSAs and understaffing as alleged in paragraphs one (1) through thirty-four (34) above.

46.

As a result of Defendant's conduct, Defendant is liable for the injuries to Plaintiff under ORS 441.174 and Plaintiff is entitled to full relief available under ORS 441.176.

47.

Specifically, as a direct and proximate result of Defendant's conduct, Plaintiff has and will continue to suffer lost income and benefits that he would otherwise receive, in an amount to be determined by the jury at trial, but not to exceed \$350,000, all to his economic detriment in an amount to be determined more precisely at trial.

48.

Also, as a direct result of the Defendant's actions, Plaintiff has suffered emotional distress, embarrassment, humiliation, damages to his personal and professional reputation, and loss of self-esteem and is entitled to compensatory damages in an amount not to exceed \$450,000.

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4 Defendant's conduct demonstrated an outrageous indifference to a risk of harm to others
5 and a conscious indifference to the health and safety of others. Plaintiff reserves the right to
6 allege punitive damages.
7

8 50.

9
10 Plaintiff has incurred attorney fees and costs in bringing this case and is entitled to
11 reasonable reimbursement of reasonable attorney fees and costs as provided under ORS
12 659A.885 and ORS 20.107.
13

14 **THIRD CAUSE OF ACTION**

15 **Unlawful Employment Practices – ORS 659A.233**

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17 51.

18 Plaintiff re-alleges and incorporates paragraphs one (1) through fifty (50) above.
19

20 52.

21 Plaintiff disclosed to managers of Defendant activities, policies, or practices of the hospital
22 that he reasonably believed was a violation of law, rule or professional standard of practice that
23 Plaintiff reasonably believed posed a risk to the health, safety, or welfare of a patient or the
24 public, as alleged in paragraphs seven (7) through fifty (50) above, as defined by ORS Chapter
25 441.
26

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31 13. Complaint - Modic

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2 53.

3
4 Defendant engaged in a prohibited retaliatory action by demoting Plaintiff for his
5 complaints to management about Defendant's attempts to prohibit or discourage nurses from
6 filing PSAs regarding unsafe conditions or substandard care and about understaffing, as alleged
7 in paragraphs seven (7) through fifty (50), above when Marcia Soderling demoted claimant on
8 October 24, 2013.
9

10
11 54.

12 Defendant engaged in a prohibited retaliatory action by reprimanding Plaintiff on
13 November 8, 2013 with a Written Corrective Action for complaining to management about
14 Defendant's resistance to filing PSAs and understaffing as alleged in paragraphs eight (8)
15 through fifty (50) above.
16

17
18 55.

19 Defendant engaged in a prohibited retaliatory action by suspending Plaintiff on February
20 27, 2014 for complaining to management about Defendant's resistance to filing PSAs and
21 understaffing as alleged in paragraphs eight (8) through fifty (50) above.
22

23
24 56.

25 Defendant engaged in a prohibited retaliatory action by terminating Plaintiff on March 6,
26 2014 for complaining to management about Defendant's resistance to filing PSAs and
27 understaffing as alleged in paragraphs eight (8) through fifty (50) above.
28

29
30 57.

31 14. Complaint - Modic

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1 As a result of Defendant's conduct, Defendant is liable for the injuries to Plaintiff under
2 ORS 659A.233 and Plaintiff is entitled to full relief available under ORS 659A.885.

3
4 58.

5 Specifically, as a direct and proximate result of Defendant's conduct, Plaintiff has and
6 will continue to suffer lost income and benefits that he would otherwise receive, in an amount to
7 be determined by the jury at trial, but not to exceed \$350,000, all to his economic detriment in an
8 amount to be determined more precisely at trial.
9

10
11 59.

12 Also, as a direct result of the Defendant's actions, Plaintiff has suffered emotional
13 distress, embarrassment, humiliation, damages to his personal and professional reputation, and
14 loss of self-esteem and is entitled to compensatory damages in an amount not to exceed
15 \$450,000.
16

17
18 60.

19 Defendant's conduct demonstrated an outrageous indifference to a risk of harm to others
20 and a conscious indifference to the health and safety of others. Plaintiff reserves the right to
21 allege punitive damages.
22

23
24 61.

25 Plaintiff has incurred attorney fees and costs in bringing this case and is entitled to
26 reasonable reimbursement of reasonable attorney fees and costs as provided under ORS
27 659A.885.
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31 15. Complaint - Modic

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2 **FOURTH CAUSE OF ACTION**

3
4 **Wrongful Discharge**

5 62.

6
7 Plaintiff re-alleges and incorporates paragraphs one (1) through sixty-one (61) above.

8 64.

9
10 Plaintiff was exercising in good faith a job-related right that reflects an important public
11 policy when he complained to Heather Moon, Marcia Soderling, and Gretchen Nichols about the
12 Defendant's resistance to nurses filing PSAs for unsafe conditions or substandard care provided
13 at Defendant's hospitals, and for complaining to Heather Moon about staffing shortages, as
14 alleged in paragraphs one (1) through sixty-one (61) above.

15
16 65.

17
18 Plaintiff was exercising in good faith an important public duty, to wit: documenting
19 substandard care and potentially dangerous conditions at Defendant's hospital Legacy Mt. Hood
20 Medical Center by filing PSAs; or complaining to management for its resistance to nurses filing
21 PSAs for the same substandard care or potentially dangerous conditions; or for complaining
22 about nurse staffing shortages.
23
24

25 66.

26
27 The important public duty Plaintiff was exercising as alleged in paragraph 65 is found in
28 Oregon Law in ORS Chapter 441; and in *Huber v. Oregon Department of Education*, 235 Or
29 App 230 (2010); *McQuary v. Bel Air Convalescent Home, Inc*, 69 Or App 107 (1984); *Hirobescu*

1 v. *Shangri-La Corp.*, 113 Or App 145 (1992); and *Dalby v. Sisters of Providence*, 125 Or App
2 149 (1993).

3
4 67.

5 Defendant wrongfully discharged Plaintiff for exercising in good faith a job related right
6 or exercising in good faith an important public duty as alleged in paragraphs one (1) through
7 sixty-one (61) above.
8

9 68.

10
11 As a result of Defendant's conduct they are liable for economic and compensatory
12 damages to Plaintiff as alleged in paragraphs fifty-eight (58) through sixty-one (61) above.
13

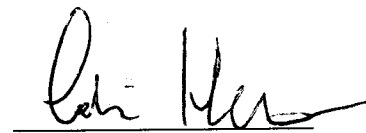
14 **PLAINTIFF'S PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 16
17 (a) Economic damages for past and future wage loss and lost benefits in an amount to be
18 determined at trial, but not more than \$350,000;
19
20 (b) Economic damages for emotional distress and interference with enjoyment of life in
21 an amount to be determined at trial, but not to exceed \$450,000
22
23 (c) Upon motion, punitive damages as alleged;
24
25 (d) Reasonable attorney fees, costs, and expert fees; and
26
27 (e) Such other relief as this court deems just and necessary

28 Dated this 19th day of June, 2014.

29 By:


Colin Hackett, OSB 074066

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31 17. Complaint - Modic

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of Attorneys for Plaintiff;

A JURY TRIAL IS HEREBY DEMANDED

Colin Hackett, OSB 074066
of Attorneys for Plaintiff

18. Complaint - Modic

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