

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

KIMBERLY J. SCOGGINS, BRYAN	)	
K. SCOGGINS,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION FILE
vs.	)	
	)	NO.:
FLOYD HEALTHCARE MANAGEMENT	)	
INC, DR. KEVIN HARDWELL, KURT	)	
STUENKEL, and DR. JOSEPH BIUSO	)	TRIAL BY JURY
	)	DEMANDED
Defendants	)	

COMPLAINT FOR DAMAGES

Comes now Plaintiff, KIMBERLY J. SCOGGINS (“Plaintiff”) and BRYAN K. SCOGGINS (“Plaintiff Husband”), and files this their complaint against Defendants FLOYD HEALTHCARE MANAGEMENT, INC., DR. KEVIN HARDWELL, KURT STUENKEL, AND DR. JOSEPH BIUSO (hereinafter collectively “Defendants”).

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff is a female citizen residing in Floyd County, Georgia, in the United States. At all relevant times hereto, Plaintiff was employed by Defendant Floyd

Healthcare Management, Inc. (hereinafter “Floyd Hospital”) and served as the Administrator of Polk Medical Center located in Polk County, Georgia, which hospital is operated and managed by Floyd Hospital.

2.

Plaintiff Husband is the retired husband of Plaintiff, and is a citizen residing in Floyd County, Georgia.

3.

Defendant Floyd Healthcare Management, Inc. is a Georgia corporation created under the laws of the State of Georgia, with its principal place of business located in Floyd County, Georgia. This Defendant is subject to the jurisdiction and venue of this Court.

4.

Dr. Kevin Hardwell (“Hardwell”) at all times relevant hereto was an employee of Floyd Hospital and served as the Emergency Room Director of Floyd Hospital. This Defendant is subject to the jurisdiction and venue of this Court.

5.

Dr. Joseph Biuso (“Biuso”) at all times relevant hereto was an employee of Floyd Hospital and served as the Chief Medical Director of Floyd Hospital. This Defendant is subject to the jurisdiction and venue of this Court.

6.

Mr. Kurt Stuenkel (“Stuenkel”) all times relevant hereto was an employee and member of Floyd Hospital and also serves as President and CEO. This Defendant is subject to the jurisdiction and venue of this Court.

7.

Each of the named Defendants have been properly served with summons and process are each subject to the jurisdiction and venue of this Court.

8.

At all times relevant hereto Biuso, Hardwell, and Stuenkel were acting in the course and scope of their employment, and Floyd Hospital is vicariously liable for the conduct and actions of the individually-named Defendants under a theory of respondeat superior.

9.

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 & 1343(4).

10.

Venue in this district is proper pursuant to 28 U.S.C. §1391(b) and (c), because this is a district in which the Plaintiff and the Defendants reside, and this is a district in which a substantial part of the alleged events or omissions giving rise to the claims

occurred.

11.

This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 & 1343(4) relative to federal claims being brought pursuant to the FMLA, to wit: 29 U.S.C. § 2601-2654, and this Court also has jurisdiction over Plaintiff's accompanying state law claims.

12.

At all times while Plaintiff was employed with Defendant Floyd Hospital, Floyd Hospital employed more than 500 full-time persons, and Floyd Hospital currently employs more than 500 full-time employees.

13.

Defendant Floyd Hospital is an employer within the meaning of Title I of the Americans with Disabilities Act of 1990, as amended ("ADA"), within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and within the meaning of the Family Medical Leave Act ("FMLA"): 29 U.S.C. § 2611(4)(A)(ii)(I).

14.

Plaintiff is an "employee" as defined under Title VII and under the ADA, and is an "eligible employee" under the FMLA, 29 U.S.C. § 2611(2)(A).

15.

Plaintiff is a “person claiming to be aggrieved” as that term is used and defined in Title VII. See 49 U.S.C. §§ 2000e(a) and 2000e-5(f).

16.

Plaintiff is a “qualified individual with a disability” as the term is used and defined in the ADA inasmuch as Defendants regarded, perceived, or considered Plaintiff to be disabled.

17.

At all times while Plaintiff was employed by Defendant Floyd Hospital, Defendant Floyd Hospital employed fifty (50) or more employees within 75 miles of Plaintiff’s primary worksite in located Polk County, Georgia. *See* 29 U.S.C. § 2611(2)(B)(ii).

18.

Plaintiff has completely fulfilled and satisfied all conditions precedent required to institute this action in that Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) and filed this Complaint within ninety (90) days of the receipt of her “Notice of Right to Sue” letter from the Civil Rights Division of the United States Department of Justice.

19.

A true and accurate copy of Plaintiff's Charge of Discrimination, filed with the EEOC, is attached hereto as Exhibit A.

20.

Plaintiff incorporates by reference each of the facts and statements set forth in the EEOC Charge of Discrimination, attached hereto as Exhibit A.

21.

A true and accurate copy of Plaintiff's Amended Charge of Discrimination, filed with the EEOC, is attached hereto as Exhibit B.

22.

Plaintiff incorporates by reference the facts and statements set forth in the Amended EEOC Charge of Discrimination, attached hereto as Exhibit B.

23.

A true and accurate copy of Plaintiff's "Notice of Right To Sue Within 90 Days" letter, received from the U.S. Department of Justice and sent to Plaintiff via U.S. Mail on August 5, 2014, is attached hereto as Exhibit C.

FACTS

24.

Plaintiff was employed by Defendant under a written contract of employment

from February 2, 2012 through the date of her separation on March 21, 2014.

25.

A true and correct copy of Plaintiff's written contract of employment with Floyd Hospital is attached hereto as Exhibit D.

26.

In terminating Plaintiff, Floyd Hospital failed to provide Plaintiff with a Georgia Department of Labor Separation Notice, as required by Georgia law, which separation notice must state or explain the reasons Plaintiff was terminated.

27.

Defendant Floyd Hospital neither filed a response to nor any objection to Plaintiff's claim with the Georgia Department of Labor for unemployment benefits, which unemployment benefits were awarded to Plaintiff by the Georgia Department of Labor.

28.

Under Mrs. Scoggins' leadership, in June of 2013, Polk Medical Center was one of only 11 hospitals named to Georgia Hospital Association's Hospital Engagement Network's Chairman's Circle, the second-highest recognizable category.

29.

Under Plaintiff's direction and leadership Polk Medical Center experienced a \$1.4 million increase in net assets for fiscal year ending June 30, 2013, and Polk Medical Center experienced an 9.75% operating margin, markedly higher than that of Floyd Medical Center's operating margin of 0.61% during the same time period.

30.

Polk Medical Center's in-patient census also improved under Plaintiff's direction and leadership, and while Plaintiff served as Administrator of Polk Medical Center, the hospital enjoyed a strong history of patient satisfaction, quality care and outstanding employee satisfaction.

31.

In October of 2012, Floyd Hospital awarded Mrs. Scoggins a \$53,000 bonus and a raise of \$20,000, and at the time of her termination, Plaintiff was making \$160,000 annually, plus bonuses and benefits.

32.

Beginning in January of 2013, some or all of the Defendants had knowledge that Plaintiff underwent an MRI for low back pain and thereafter began an ongoing treatment for back pain, which treatment involved her undergoing three epidurals in 2013-2014.

33.

Some or all of the Defendants had knowledge that during 2013-2014, Plaintiff also underwent one dental surgery and two separate surgeries to address her bi-lateral carpal tunnel condition, the last surgery occurring in February of 2014.

34.

Plaintiff was never impaired or under the influence of drugs while on the job, and never was Plaintiff's job performance an issue of critique, counseling, or criticism of any kind from Defendants.

35.

Before commencing work for Floyd Hospital, Plaintiff's treating physicians prescribed Ambien (Zolpidem), which Plaintiff had been taking as prescribed before becoming employed with Floyd Hospital.

36.

Ambien is classified as a Schedule IV drug.

37.

As Administrator of Polk Hospital, Plaintiff was not responsible for any direct patient care.

38.

At no time prior to Plaintiff's termination on or about March 21, 2014, had Defendants received any reports that Plaintiff was ever impaired on the job, impaired by any medical condition while on the job, or that Plaintiff posed a direct threat to herself or to her co-workers if allowed to remain in the workplace.

39.

Prior to her termination, on March 13, 2014, Plaintiff was telephoned by Dr. Kevin Hardwell (ER Director) who requested to meet with Plaintiff.

40.

Upon arriving, Dr. Hardwell asked Mrs. Scoggins if she had asked any of Floyd's ER physicians for Ambien, and Plaintiff acknowledged that she had but not while any physician was on duty in the emergency room.

41.

Dr. Hardwell stated to Plaintiff that this matter was serious and that he was walking Plaintiff over to the third floor of the administration building for a meeting in the board room at Floyd Hospital.

42.

Waiting for her in the third -floor board room on March 13, 2014, was Dr. Joseph Biuso (Chief Medical Officer) and Mr. Kurt Stuenkel, President and CEO.

43.

After introductions or pleasantries were completed, Dr. Hardwell then left the board room, leaving Plaintiff with Dr. Biuso and Mr. Stuenkel.

44.

Unbeknownst to Plaintiff, prior to her meeting with Dr. Hardwell, Dr. Hardwell had unlawfully gained access to Plaintiff's pharmacy records and had shared Plaintiff's pharmacy records and privacy-protected patient and health information with Defendants.

45.

In the board room on March 13, 2014, Plaintiff was confronted by both Dr. Biuso and Mr. Stuenkel in a harsh, and, intimidating manner and in a tone she had never experienced before in the workplace.

46.

Dr. Biuso and Mr. Stuenkel immediately accused Plaintiff of being addicted to Ambien and told her that she must be admitted to Ridgeview Hospital in Smyrna, Georgia, immediately if she wanted to keep her job.

47.

During the meeting, Dr. Biuso was holding a folder or record containing Plaintiff's pharmacy records, which had been illegally accessed and printed off by

Dr. Kevin Hardwell from the State's Prescription Drug Monitoring Program's (PDMP)¹ website.

48.

Dr. Hardwell unlawfully gained access to and then unlawfully shared Plaintiff's private and protected health and pharmacy information with Dr. Biuso, and Dr. Biuso proceeded to question Mrs. Scoggins about the prescriptions listed and specifically asked her about different doctors who had prescribed Plaintiff her medications.

49.

Attached hereto as Exhibit E is a true and correct copy of an e-mail from Floyd Hospital's in-house general counsel, Wade Monk, which admits Hardwell and Biuso gained access to Plaintiff's private and protected health (pharmacy) records.

50.

Plaintiff was never a patient of Dr. Biuso or of Dr. Hardwell, and Plaintiff had never sought any kind of medical treatment or prescriptions from either Dr. Biuso or from Dr. Hardwell.

51.

During the meeting on March 13, 2014, Plaintiff objected to Defendants'

¹ See O.C.G.A. §16-13-64.

accusations, explaining that she had been prescribed Ambien by her doctors and that she suffered from no addiction.

52.

Upon being questioned by Dr. Biuso and Mr. Stuenkel about her health and medical conditions, Mrs. Scoggins explained that she had undergone three surgeries and that her medications were prescribed by treating physicians.

53.

During the meeting on March 13, 2014, Plaintiff became visibly upset, was crying, and protested that she was not addicted to anything and did not need to be forced to go to Ridgeview Hospital.

54.

During the meeting on March 13, 2014, Plaintiff asked Dr. Biuso and Mr. Stuenkel if there had been any performance or work-related behavioral issues with her work, and their response was “no.”

55.

Then, Dr. Biuso and Mr. Stuenkel told Plaintiff that her condition could eventually cause her to begin having work-related problems.

56.

Dr. Biuso and Mr. Stuenkel persisted, insisting that Plaintiff was an addict, that

Plaintiff must be taken out of work, and that Plaintiff must seek immediate help at Ridgeview Hospital to ensure that she did not have any future problems.

57.

During this meeting on March 13, 2014, Dr. Biuso and Mr. Stuenkel explained that Floyd Hospital had a long, successful history of sending doctors and nurses to Ridgeview Hospital for addictions.

58.

While Plaintiff was crying and emotionally distraught during the meeting on March 13, 2014, Mr. Stuenkel stated that Plaintiff had six (6) months of sick leave and twelve (12) weeks of FMLA, and that Plaintiff would be going out of work on FMLA leave.

59.

During the March 13, 2014, meeting, Mrs. Scoggins was again directed that she was to immediately report to Ridgeview Hospital that very day.

60.

On March 13, 2014, Plaintiff was told by Defendants that she could not leave Floyd Hospital to pack her own bags, that she was to call a friend or her husband to pack her bags and pick her up, and that she was to then to drive directly to Ridgeview Hospital if she wanted to keep her job.

61.

Plaintiff objected to going to Ridgeview Hospital, became even more emotionally distraught and pleaded that she be permitted to go home to pack her own bags and also pleaded that she be allowed to wait to go until the following Monday (March 17, 2014) because Plaintiff's family had planned a birthday party for Plaintiff's 84-year old mother-in-law and also a birthday party for her mother that weekend.

62.

Dr. Biuso and Mr. Stuenkel denied Plaintiff's request and, over Plaintiff's objections, told her she was to go to Ridgeview Hospital right then and was to participate in an intensive in-patient program if she wanted to keep her job.

63.

Plaintiff then telephoned her husband, who packed her bags and personal effects, and drove to Floyd to pick her up. Plaintiff's husband drove her to Smyrna, Georgia where she waited and was finally admitted into Ridgeview Hospital at approximately 9:00 p.m. on March 13, 2014.

64.

Upon being admitted, Plaintiff was forced to share a room with another patient, unknown to her, who had suffered a horrible head-on collision and who had sustained

devastating injuries.

65.

As a result of Defendants having unlawfully forced, coerced, and intimidated Mrs. Scoggins into submitting to a course of unwanted and unnecessary medical treatment at Ridgeview, Plaintiff was placed in the company with heroin addicts, methamphetamine addicts, and others with histories of drug abuse.

66.

Plaintiff was devastated and in severe emotional distress as a direct result of the illegal and unlawful actions of Defendants in forcing her from work and as a direct and proximate result of her being forced to immediately leave work and be admitted in an in-patient addiction program at Ridgeview Hospital.

67.

Attached hereto as Exhibit F is a true and correct copy of a letter dated March 17, 2014, signed by Kurt Stuenkel, sent out to all of Plaintiff's co-workers which confirms that Floyd Hospital placed Plaintiff out on a medical leave of absence.

68.

Attached hereto as Exhibit G is a true and correct copy of an e-mail dated March 17, 2014, to Floyd Hospital's HR Director from Matt Gorman, inquiring about whether the HR Director's team will "be handling Kim's FMLA given that she is an

executive.”

69.

On March 17, 2014, Plaintiff’s treating physician at Ridgeview Hospital discharged Plaintiff to go home.

70.

On March 13, 2014, and at no time after March 13, 2014, did Defendants ever notify Plaintiff of her rights and obligations under the FMLA.

71.

At no time on March 13, 2014 or at any time thereafter did Defendants ever provide Plaintiff with any FMLA medical certification form or otherwise request Plaintiff to supply Floyd Hospital with a FMLA medical certification or request form used by employees seeking or requesting leave under the FMLA.

72.

Because Plaintiff was afraid that Dr. Biuso and Mr. Stuenkel would be upset with her for being discharged from Ridgeview’s in-patient program, since they insisted that Plaintiff undergo an inpatient treatment plan at Ridgeview, upon being discharged Plaintiff decided to enroll in Floyd Hospital’s out-patient Behavioral Health program in an effort to appease Dr. Biuso and Mr. Stuenkel.

73.

On March 21, 2014, Plaintiff presented herself to Floyd Behavioral Health for admission into their out-patient program. Mrs. Scoggins left Floyd Behavioral Health at approximately 2:45 p.m. on March 21, 2014.

74.

Upon checking her voice messages on March 21, 2014, Plaintiff discovered that Mr. Stuenkel had left her a message directing her to return his call.

75.

Plaintiff returned Mr. Stuenkel's call at approximately 3:00 p.m. Mr. Stuenkel answered the phone while he was in Dr. Biuso's office, and they both berated Plaintiff telling her that she had "betrayed their trust," and they admonished Plaintiff for refusing to sign a consent form to allow them to gain access to her personal and protected medical and psychological records from Ridgeview Hospital. They stated that Plaintiff's conduct was "unacceptable."

76.

On March 21, 2014, Mr. Stuenkel stated, "You didn't call us to ask permission to leave [Ridgeview]." Stuenkel repeated that Plaintiff's actions were "unacceptable" and that she had "betrayed their trust."

77.

Mr. Stuenkel and Dr. Biuso again admonished Plaintiff for refusing to sign a medical consent and waiver to allow them access to her protected health information and psychological records.

78.

Dr. Biuso told Plaintiff he could not believe she left Ridgeview, that they had never had anyone refuse to stay at Ridgeview Hospital's in-patient program.

79.

Plaintiff told them that she did not leave Ridgeview against medical advice and that she was discharged by the doctors at Ridgeview Hospital.

80.

Plaintiff pleaded stating that she was so homesick, that she need to check in on her 84-year-old mother-in-law, and her 94-year-old grandfather was very sick.

81.

On March 21, 2014, Plaintiff also communicated to Mr. Stuenkel that she did not think it was legal that they had obtained her pharmacy records without her permission or consent and that she would not sign a consent form allowing them access to all of her protected health information, medical or psychological records.

82.

On March 21, 2014, Defendant Stuenkel told Plaintiff she was terminated, and Plaintiff objected to her being terminated stating that she was out on medical leave under the FMLA.

83.

Over Plaintiff's voiced objections, Defendant Stuenkel told Plaintiff she was terminated anyway - over Plaintiff's voiced objections.

84.

Thereafter, Defendant Stuenkel sent an e-mail, to Floyd Hospital's Human Resources Director, admitting he terminated Plaintiff on March 21, 2014, and that he terminated Plaintiff despite her objecting to being terminated due to her having been out on FMLA leave.

85.

Defendant Stuenkel's e-mail to the HR Director dated March 21, 2014, states:

"I told Kim she is terminated. She raised the FMLA issue and I told her she failed to communicate and follow our direction in her treatment plan so our relationship is terminated. So, no leave. I told her termination. We can make it without cause I suppose."

86.

A true and correct copy of Mr. Stuenkel's e-mail to HR Director, Beth Bradford, dated March 21, 2014, is attached hereto as Exhibit H.

87.

After Plaintiff was told she was terminated, Mr. Stuenkel instructed Plaintiff to go meet with Floyd Hospital's HR Director (Beth Bradford) on March 24, 2014, at 3:30 p.m.

88.

Upon reporting, Mrs. Bradford confirmed that Plaintiff was terminated and handed her a severance agreement offering Plaintiff only \$36,923.00, despite the fact that her written employment contract provides for a 1-year severance, since she was terminated not for cause.

89.

Neither Defendant Stuenkel nor Defendant Floyd Hospital has ever explained or disclosed to Plaintiff the existence of a "for cause" basis for terminating Plaintiff.

90.

Evidence of retaliation includes Floyd Hospital's refusal to honor its own employment contract to pay Mrs. Scoggins a 12-month severance, despite Mr. Stuenkel's e-mail to Mrs. Bradford stating Mrs. Scoggins was to be terminated

without cause.

91.

In response to an inquiry about Plaintiff's termination, Floyd Hospital's HR Director wrote on March 23, 2014:

"It just happened very late Friday...not sure he should have terminated her vs. FMLA, but he told her she was...."

92.

A true and correct copy of Beth Bradford's March 23, 2014, e-mail to Sonny Rigas is attached hereto as Exhibit I.

93.

A true and correct copy of the Georgia Department of Labor's determination to award Plaintiff unemployment benefits is attached hereto as Exhibit J.

94.

As a direct and proximate result of Defendants collective outrageous and illegal acts of misconduct, as set forth above, Plaintiff has suffered extreme and severe emotional distress, and both Mr. and Mrs. Scoggins are being treated by health-care professionals for severe emotional distress and post-traumatic stress disorder (PTSD) directly caused by and solely arising from Floyd Hospital's conduct.

95.

Because Defendants' collective actions were intentional, knowing and willful, Plaintiffs are entitled to and Defendants are liable to Plaintiff for punitive damages.

FAMILY & MEDICAL LEAVE ACT

96.

Plaintiff was eligible for the protections of the FMLA and Defendant Floyd Hospital's actions, as described above, were malicious in nature and were geared to intentionally and willfully violate Plaintiff's rights under the FMLA.

97.

Defendant Floyd Hospital improperly denied Plaintiff medical leave under the FMLA, interfered with Plaintiff's FMLA rights, and retaliated against and wrongfully terminated Plaintiff in violation of the FMLA, which actions constitute adverse employment actions and willful violations of the FMLA.

98.

Defendant Floyd Hospital unlawfully denied Plaintiff benefits under the FMLA by interfering with Plaintiff's ability to exercise her rights, by refusing to provide Plaintiff with any notice of her rights under the FMLA, by retaliating against Plaintiff for trying to exercise her rights under the FMLA, and for objecting to being terminated while she had been placed out on medical leave to Ridgeview Hospital

under the FMLA.

99.

Defendant violated Plaintiff's rights under the FMLA by, *inter alia*:

- (1) failing to provide Plaintiff with adequate notice of her rights;
- (2) failing to provide Plaintiff with adequate written notice explaining the specific expectations and obligations and consequences of a failure to meet these obligations;
- (3) discouraging Plaintiff from exercising her rights under the FMLA and requiring Plaintiff to limit her rights under the FMLA;
- (4) failing to confer with and engage in the interactive process with Plaintiff once it believed Plaintiff suffered from a serious health condition;
- (5) willfully discriminating against Plaintiff and/or willfully violating her rights on the basis of her alleged serious health condition; and
- (6) wrongfully terminating Plaintiff and refusing to restore Plaintiff to her position or to a comparable position, in violation of the FMLA.

100.

Defendant Floyd Hospital actions were the direct and proximate cause of the

adverse employment action and the Plaintiff's exercise of her rights under the FMLA which has resulted in and caused Plaintiff substantial damages, in an amount to be proven at trial.

101.

Defendant Floyd Hospital is liable to Plaintiff for willfully violating her rights under the FMLA.

102.

Plaintiff has previously demanded and again demands reinstatement to her former position of employment or to a comparable position of employment.

103.

Defendant Floyd Hospital is liable to Plaintiff for damages equal to the amount loss of wages/income and all other actual monetary damages proven by Plaintiff at the trial of this case, including liquidated damages equal to the sum of the actual losses or lost wages, plus interest.

104.

Defendant Floyd Hospital is liable to Plaintiff for her reasonable costs and attorney fees for having to pursue this action. *See* 29 U.S.C. § 2617(2)(3).

AMERICANS WITH DISABILITIES ACT

105.

Defendant Floyd Hospital violated the Plaintiff's rights under the ADA by intentionally discriminating against Plaintiff with respect to her employment in that Plaintiff suffered an adverse employment action (termination) because of Plaintiff's perceived disability and as a proximate result of Floyd Hospital's violating Plaintiff's rights under the ADA.

106.

At the time of Plaintiff's termination, Defendant Floyd Hospital perceived or regarded Plaintiff as being disabled.

107.

At the time of Plaintiff's termination, Defendant Floyd Hospital also perceived or regarded Plaintiff as having a mental or psychological disability.

108.

On or about March 13, 2014, Defendant Floyd Hospital violated the ADA and 42 U.S.C. § 12112(d)(4) by placing Plaintiff on involuntary leave and by requiring Plaintiff to undergo medical examinations and by making unlawful medical inquiries of Plaintiff not shown to be job-related and consistent with business necessity, and by later terminating and retaliating against Plaintiff.

109.

Defendant Floyd Hospital violated the ADA and 42 U.S.C. § 12112(d)(4) by placing Plaintiff on involuntary leave and by directing as a condition of her continued employment a medical course of treatment not job-related, and which was neither consistent with nor in furtherance of a business necessity.

110.

On March 13, 2014, Defendant Floyd Hospital did not have the necessary or sufficient information to ascertain whether Plaintiff was addicted to prescription drugs or to determine her level of ability one way or the other, yet Floyd Hospital completely removed Plaintiff from work, from all positions of employment, and directed Plaintiff to immediately enroll in an in-patient drug-addiction hospital. *See E.E.O.C. v. American Tool & Mold, Inc.* , ___F.Supp.2d.___, 2014 WL 2185013 (M.D. Fla.) (finding as a matter of law that employer regarded employee as being disabled due to having insufficient information to determine level of employee's abilities); *see also Rodriguez v. ConAgra Grocery Products, Co.*, 436 F.3d 468 (5th Cir. 2006) (finding as a matter of law that employer regarded employee as being disabled in the major life activity of working).

111.

Again, Plaintiff had no prior job performance issues or work-related deficiencies, and Plaintiff had been properly and satisfactorily performing and living up to all of her employer's performance and job expectations.

112.

Prior to Plaintiff's being called in to meet with Defendants on March 13, 2014, in the 3rd floor board room, Defendants had received no performance or work-related complaints about Plaintiff.

113.

Prior to Plaintiff's being terminated by Mr. Stuenkel on March 21, 2014, Defendants had received no performance or work-related complaints about Plaintiff.

114.

Defendant Floyd Hospital engaged in unlawful employment practices and violated Plaintiff's rights under the ADA by impairing or by taking adverse action relative to the terms, conditions, rights, and privileges of employment as protected by the ADA, and Defendant Floyd Hospital further violated the ADA by failing to engage in an interactive dialog with Plaintiff regarding any reasonable accommodations that would allow Plaintiff to perform the essential functions of her job.

115.

Floyd Hospital terminated and retaliated against Plaintiff in violation of the ADA because Plaintiff exercised her rights under the ADA by, *inter alia*, objecting to being forced to seek in-patient treatment for addiction at Ridgeview Hospital, in an effort to be free from such discriminatory misconduct; by objecting to Defendants' attempts to gain unfettered access to her psychological and protected health information; and by objecting to Defendants' having unlawfully and illegally gained access to Plaintiff's protected pharmacy records.

116.

Defendant Floyd Hospital is also liable to Plaintiff under the ADA for wrongfully making disability-related inquiries and for the wrongful disclosure of Plaintiff's protected, confidential, and private medical and health information, which directly and proximately caused Plaintiff to suffer damages of a tangible nature as a result of these violations and wrongful disclosures. 42 U.S.C. § 12112(d)(4).

117.

Defendant Floyd Hospital unlawfully terminated and retaliated against Plaintiff because it regarded Plaintiff as having a disability despite the fact that Plaintiff was able to perform the essential functions of her job, either with or without an accommodation, and because Plaintiff refused to sign documents releasing or

impairing her rights.

118.

Defendant Floyd Hospital committed the acts herein alleged maliciously, willfully, and oppressively, with the wrongful intention of injuring and discriminating against Plaintiff and acted with an improper and illegal motive amount to malice and conscious disregard of Plaintiff's protected rights.

119.

As a direct, natural, proximate and foreseeable cause of Defendant Floyd Hospital's actions, Plaintiff has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of dignity, humiliation, and other non-pecuniary losses, and Floyd Hospital is liable to Plaintiff for all such damages.

120.

Because Defendant Floyd Hospital's actions were intentional, knowing and willful, Plaintiff is also entitled to and Floyd Hospital is liable to Plaintiff for punitive damages.

CLAIMS FOR NEGLIGENCE PER SE

121.

Georgia law provides that negligence per se arises when a statute or ordinance is violated, and the violation of mandatory regulations may also amount to negligence

per se if the regulations impose a legal duty. *Womack v. Oasis Goodtime Emporium I, Inc.*, 307 Ga.App. 323, 328-29 (2010).

122.

O.C.G.A. § 51-1-6 provides:

When the law requires another person to perform an act for the benefit of another or to refrain from doing an act which may injure another, although no cause of action is given in express terms, the injured party may recover for breach of such legal duty if he suffers damage thereby.

123.

The Health Insurance Portability and Accountability Act (hereafter “HIPAA”) includes a “privacy rule” codified at 45 C.F.R. §§ 160 and 164, which was intended to protect Plaintiff and which provides national standards to protect the confidentiality of an individual’s personal health information. HIPAA thus “restricts and defines the ability of health plans, health care clearinghouses, and most health care providers to divulge patient medical records.” 194 A.L.R. Fed. 133. *See also* 42 U.S.C. § 1320-6(a)(3), (b)(1), (3) (providing that “[a] person who knowingly ... discloses individually identifiable health information to another person, shall be punished” by fine of not more than \$50,000 or imprisonment of not more than one year, or both, and if the offense is committed with intent to ... use individually

identifiable health information for ... *malicious harm*, be fined not more than \$250,000, imprisoned not more than 10 years, or both).

124.

HIPAA was intended to protect Plaintiff and does not preempt common-law claims, and state negligence per se claims, based on wrongful disclosure of medical information.

125.

Georgia law pertaining to Georgia's Prescription Drug Monitoring Program (PDMP), which was intended to protect Plaintiff from the harms complained of herein, strictly limits access to one's prescription records, and a violation of Georgia law imposes strict penalties, both civil and criminal, including a direct cause of action.

126.

O.C.G.A. §16-13-64 provides, in pertinent part:

Any person who is injured by reason of any violation of this part shall have a cause of action for the actual damages sustained and, where appropriate, *punitive damages*. Such person may also recover attorney's fees in the trial and appellate courts and the costs of investigation and litigation reasonably incurred.

O.C.G.A. § 16-13-64(d)(emphasis added).

127.

Defendant Floyd Hospital's employee and in-house general counsel has admitted that Floyd Hospital's ER Director, Dr. Hardwell, gained access to Plaintiff's pharmacy records and then shared Plaintiff's protected health-care information with Dr. Biuso, which unlawful misconduct comprise violations of both HIPAA and Georgia's Prescription Drug Monitoring Program.

128.

Defendants are jointly and severally liable to Plaintiff, under theories of negligence per se as stated above, which negligence is the proximate cause and direct cause of Plaintiff's actual and consequential damages in all amounts to be proven at trial.

129.

Defendants' conduct in violating clearly-established Federal and Georgia laws intended to protect Plaintiff from the harms complained of herein, (i.e., HIPAA and Georgia's PDMP), were done with a willful and knowing disregard of Plaintiff's rights, which malicious misconduct warrants an award of punitive damages against Defendants in favor of Plaintiff.

BREACH OF CONTRACT AND STUBBORNLY LITIGIOUS

130.

Plaintiff had a vested contractual right and property interest in her continued employment in that she had a contract of employment with Floyd Hospital which was entered into February 2, 2012, with an initial five (5) year term.

131.

Plaintiff's employment contract provides that in the event Plaintiff is terminated without cause she will be paid a 12-month severance.

132.

Despite Mr. Stuenkel's e-mail stating Mrs. Scoggins was to be terminated "without cause," Floyd Hospital has breached Plaintiff's employment contract by refusing to honor its own contract and by refusing to pay Mrs. Scoggins a 1 year severance.

133.

Defendant Floyd Hospital had no "for cause" basis or reason for terminating Plaintiff's employment.

134.

Instead, Floyd Hospital presented Mrs. Scoggins with a severance agreement and release of all claims which only provided Mrs. Scoggins with a three (3) month

severance.

135.

Plaintiff has been damaged as a direct and proximate cause of Floyd Hospital's breach of Plaintiff's employment contract in all amounts proven at trial.

136.

Floyd's conduct in refusing to honor its own contract despite Mr. Stuenkel's acknowledgement Mrs. Scoggins should be terminated "without cause" evidences Floyd Hospital's bad faith and stubborn litigiousness, thus warranting an award of costs and attorney fees. O.C.G.A. §13-6-11.

INVASION OF PRIVACY & WRONGFUL DISCLOSURE

137.

Georgia law recognizes four separate torts under the common name of invasion of privacy, which torts include: intrusion upon the Plaintiff's seclusion or solitude, or into her private affairs. Georgia also recognizes claims for wrongful disclosure of private or confidential medical/pharmacy information.

138.

Defendants are liable to Plaintiff for their conduct in unlawfully accessing and inquiring into Plaintiff's medical history and pharmacy records, without Plaintiff's knowledge or consent, and then wrongfully disclosing and sharing Plaintiff's

protected and private health information and pharmacy records with others which proximately caused Plaintiff to suffer immensely by being, *inter alia*, traumatized in being forced into Ridgeview Hospital, which was the direct and proximate cause of Plaintiff's unlawful terminated and resulting damages.

139.

Defendants' actions constitute a reckless, malicious, and knowing intrusion upon Plaintiff's seclusion and private affairs, thus giving rise to claims against Defendants for invasion of privacy, along with an award of punitive damages.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

140.

Georgia courts have recognized that employers are especially prone to liability for the tort of intentional infliction of emotional distress because at work a special relationship exists where "one person has control over another" and conduct "may produce a character of outrageousness that otherwise might not exist." *See Lighting v. Roadway Express, Inc.*, 60 F.3e 1551, 1558 (11th Cir. 1995)(applying Georgia law).

141.

Plaintiff was subjected to reckless and intentional conduct by Defendants that was extreme and outrageous in nature, which conduct was also criminal in nature, and which interfered with Plaintiff's ability to lawfully function in her job and which has

caused her severe pain and suffering.

142.

Defendants' intentional and reckless acts of outrageous misconduct, and malicious violations of various federal laws as alleged above, was the direct and proximate cause of Plaintiff's incurring severe emotional distress.

143.

Defendants are liable to Plaintiff for intentional infliction of emotional distress and are also liable for punitive damages due to their reckless, wanton, malicious, and intentional misconduct.

TITLE VII

144.

Defendant Floyd Hospital has treated one or more other male employees more favorable than Plaintiff with respect to rights afforded under practices and policies administered by Defendants, and Plaintiff was intentionally denied such favorable treatment. Instead, Defendant Floyd Hospital intentionally treated Plaintiff differently and less favorably than other male employees similarly situated and interfered with and changed the terms, rights, and conditions of her employment without any rational or legitimate basis for the differences in treatment.

145.

In addition, Defendant Floyd Hospital recklessly and unlawfully terminated Plaintiff and replaced her with a less-qualified male, without having any legitimate basis and based upon discriminatory reasons.

146.

The adverse employment action taken by Defendant Floyd Hospital in terminating and in retaliating against Plaintiff, constituted unlawful discrimination against Plaintiff which deprived Plaintiff of employment opportunities and otherwise adversely affected her status as an employee because of her gender in violation of the Title VII of the Civil Rights Act of 1964, as amended.

147.

As a further result of Defendant Floyd Hospital's adverse employment actions involving Plaintiff, Plaintiff has been deprived of prestige, responsibility, and future opportunities for advancement, in violation of Title VII, FMLA, and ADA, in all amounts to be proven at trial.

148.

Defendant Floyd Hospital has unlawfully and intentionally discriminated against and retaliated again Plaintiff on the basis of her gender and is, accordingly, liable to Plaintiff for such discrimination.

149.

As a proximate result of the unlawful acts of Defendants, Plaintiff has sustained damages, the exact amount of which shall be proven at trial; Plaintiff is entitled to back pay, front pay, reinstatement, damages for pain and suffering, and other compensatory damages, plus all accrued prejudgment interest due thereon, and attorney fees and expenses.

150.

Because Defendant Floyd Hospital's actions were intentional, knowing, malicious, and willful, Plaintiff is also entitled to and Defendant Floyd Hospital is liable to Plaintiff for punitive damages.

LOSS OF CONSORTIUM

151.

At the time of the unlawful and malicious acts complained of by Plaintiff, Plaintiff and Plaintiff Husband were married and continue to be married.

152.

As a direct and proximate result of the wrongful, negligent, and unlawful acts of the Defendants as set forth above, the Plaintiff Husband was caused to suffer damages, and will continue to suffer in the future loss of consortium, loss of society, assistance, and conjugal fellowship, all to the detriment of their marital

relationship.

WHEREFORE, Plaintiff respectfully hereby demands a trial by jury and prays that this Court:

- (a) Afford her a trial by jury;
- (b) Convene a hearing and enter an Order enjoining Defendants from engaging in unlawful employment practices and reinstating Plaintiff to her former position and rank of employment, with back pay, liquidated damages, and all other damages allowed by law;
- (c) Order Defendants to pay Plaintiff damages, including but not limited to liquidated and punitive damages, for violating clearly established laws, for damaging and stigmatizing her professional reputation, for causing her pain and for, suffering, and emotional distress, and for violating her rights under, *inter alia*, Title VII, FMLA, and the ADA;
- (d) Award Plaintiffs damages, in all amounts proven, for violations of each of the state-law claims asserted, including but not limited to Plaintiff's claim for breach of contract;
- (e) Order Defendants to be taxed with the costs and expenses of this action, including reasonable costs and attorney fees; and
- (f) Grant such other and further relief as this Court deems proper under

the circumstances.

This 3rd day of November, 2014.

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