

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINNA SIKON, *an individual*,

Plaintiff,

vs.

Case No.: 17-cv-
Hon.

**PHC OF MICHIGAN, LLC, A
MASSACHUSETTS COMPANY d/b/a
HARBOR OAKS HOSPITAL, a
Massachusetts limited liability company,
PHC OF MICHIGAN, INC., A
MASSACHUSETTS COMPANY d/b/a
HARBOR OAKS HOSPITAL, a
Massachusetts corporation; and
ACADIA HEALTHCARE COMPANY,
INC. d/b/a HARBOR OAKS
HOSPITAL, a Delaware corporation,
jointly and severally;**

Defendants.

DEBORAH GORDON LAW
Deborah L. Gordon (P27058)
Benjamin I. Shipper (P77558)
Attorneys for Plaintiff
33 Bloomfield Hills Parkway, Suite 220
Bloomfield Hills, Michigan 48304
(248) 258-2500
dgordon@deborahgordonlaw.com
bshipper@deborahgordonlaw.com

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff **Linna Sikon**, by and through her attorneys, **Deborah Gordon Law**, complains against Defendants PHC of Michigan, LLC, A Massachusetts Company d/b/a Harbor Oaks Hospital, PHC of Michigan, Inc., A Massachusetts Company d/b/a Harbor Oaks Hospital,, and Acadia Healthcare Company, Inc. d/b/a Harbor Oaks Hospital, as follows:

Jurisdiction and Parties

1. This is an action by Plaintiff Linna Sikon against Defendants for their violations of the Michigan Whistleblowers' Protection Act, MCL 15.361 *et seq.*

2. Plaintiff Linna Sikon ("Plaintiff") is an individual domiciled in the State of Michigan. Her sole residence is in Michigan.

3. Defendant PHC of Michigan, LLC, A Massachusetts Company d/b/a Harbor Oaks Hospital ("PHC of Michigan, LLC") is a limited liability company doing business in this District, but which is incorporated and with its principal place of business in the State of Massachusetts.

4. Defendant PHC of Michigan, Inc., A Massachusetts Company d/b/a Harbor Oaks Hospital ("PHC of Michigan, Inc.") is a corporation doing business in this District, but which is incorporated and with its principal place of business in the State of Massachusetts.

5. Defendant Acadia Healthcare Company, Inc. d/b/a Harbor Oaks Hospital (“Acadia”) is a corporation doing business in this District, but which is incorporated and with its principal place of business in the State of Delaware.

6. Defendants PHC of Michigan, LLC, PHC of Michigan, Inc., and Acadia will hereinafter be collectively referred to as “Defendants” or “Harbor Oaks Hospital” unless more specifically stated herein.

7. The events underlying this action occurred in this District.

8. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship amongst the parties and the amount in controversy is greater than \$75,000.

9. This Court has personal jurisdiction over Defendant because it does business and can be found within this District.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants may be found within this District, and the events giving rise to this Complaint occurred in this District; namely, Plaintiff was employed and terminated, as well as mitigated, in this District.

Background Facts

11. Plaintiff began her employment with Defendants in October 2013 and was employed at Harbor Oak Hospital’s Psychiatric Treatment Center as a Registered Nurse.

12. Plaintiff's performance was at all times satisfactory or better, and she was eventually promoted to a nurse Team Lead position.

13. In or about January 2017, Plaintiff complained to Sari Abromovich, the CEO of Harbor Oaks Hospital, that the Psychiatric Treatment Center, where Plaintiff worked, had insufficient staffing levels such that working in the Psychiatric Treatment Center created hazardous working conditions.

14. However, at this time, Abromovich ignored Plaintiff's safety complaint, and instructed Plaintiff not to vocalize her concerns about the safety issues.

15. Shortly thereafter, in preparation for an audit of Harbor Oaks Hospital by JACHO (the Joint Commission on Accreditation of Healthcare Organizations), Defendant promised Plaintiff and other employees in the Psychiatric Treatment Center that if they began working 12 hour shifts, Defendants would increase the staffing levels.

16. Thereafter, Staffing did increase for a couple of months; however, once the JACHO audit was completed on or about April 14, 2017, the number of staffing levels working in the Psychiatric Treatment Center was reduced to the pre-JACHO audit levels, which again created hazardous working conditions for Plaintiff and other hospital staff.

17. At one point during this post-JACHO audit staff reduction, only one Registered Nurse worked with the 32 patients in the Psychiatric Treatment Center.

18. This number is especially concerning given that the patients admitted to the Psychiatrist Treatment Center can be and often are physically violent, dangerous, and unpredictable.

19. Plaintiff later complained to Jennifer Michalcuk, Harbor Oaks Hospital's Assistant Director of Nursing, about her concerns regarding the dangerously low staffing levels, and inquired as to what had happened to the extra staffing the employees had been promised before the JACHO audit began and provided while the JACHO audit was being conducted.

20. During this conversation, Michalcuk told Plaintiff that the Psychiatric Treatment Center was staffed according to "the matrix" and reprimanded Plaintiff for voicing her concerns.

21. The following day, Plaintiff was called into a meeting with the Director of Nursing, Leanne Duncan, and Michalcuk, where they both reiterated to Plaintiff that she should not openly vocalize her concerns.

22. On or about April 24, 2017, it became abundantly clear that the staffing levels Plaintiff had previously complained about were unsafely low given the nature of the high number of patients admitted, and the physically violent, dangerous, and unpredictable nature of working with psychiatric patients.

23. That day, Plaintiff was the only employee on duty working as a Registered Nurse, and was working in the psychiatric unit with Nichole (a Licensed Practical Nurse), and Chevy, an aide, when a large patient began having a psychotic episode and acting extremely aggressively.

24. When Chevy was working in one patient's room, the large patient, now agitated and aggressive as a result of his psychotic episode, entered that room and punched Chevy three times on her face, neck, and head, causing cuts and abrasions.

25. When additional staff entered that room to assist, the large patient struck and scratched one employee, shoved a second employee, and punched a third employee in the back of the head.

26. Plaintiff, in responding to the altercation, physically caught one employee before she fell to the floor as a result of that employee's altercation with the large patient.

27. In addition to these aforementioned employees, Michalcuk and several other staff members responded to the altercation in order to restrain the large patient and administer an injection to subdue her.

28. In total, it took eight employees to safely subdue the large patient.

29. Once the large patient was subdued, Plaintiff advised Chevy that Chevy needed to see a doctor for her injuries; Michalcuk, though, shouted that

“nobody needs to go to Concentra” (an occupational healthcare and medical treatment provider), and told Chevy to complete her shift so other patients in the Psychiatrist Treatment Center would not become agitated knowing Chevy had been injured.

30. Given the injuries that Chevy sustained, Plaintiff attempted to fill out the proper paperwork to report the injury, but Michalcuk assured Plaintiff that Michalcuk would fill the paperwork out herself.

31. Eventually, Chevy received medical treatment and had to take several days off of work because of her injuries, and was initially denied compensation for it because Michalcuk had failed to fill out the required paperwork.

32. The following day, on or about April 27, 2017, Plaintiff filed a complaint with MIOSHA regarding the insufficient staffing numbers and the clear safety issues caused by not having enough staff members on duty.

33. Plaintiff cited the previously referenced altercation with the large patient and pointed out the dangers caused by only having three or fewer employees working on a particular floor of the Psychiatrist Treatment Center given that the patients were known to be violent, and that such low staffing levels caused the employees to be unable to maintain staff and patient safety.

34. As part of the MIOSHA complaint, Plaintiff specifically named Abromovich and Michalcuk as members of management involved in the incident complained about.

35. Because Plaintiff feared retaliation for reporting her concerns to MIOHSA, Plaintiff indicated in her MIOSHA complaint that she wished to remain anonymous.

36. On or about Friday, May 5, 2017, MIOSHA conducted a site visit of Harbor Oaks Hospital to investigate Plaintiff's MIOSHA complaint about the Psychiatric Treatment Center.

37. Plaintiff was not working on May 5, 2017.

38. On or about Monday, May 8, 2017, Abromovich held a secret meeting, attended by approximately ten staff members selected for their loyalty to Harbor Oaks Hospital, where she questioned them about the anonymous MIOSHA complaint.

39. Tim Kane, Defendants' Risk Manager, also began "investigating" the MIOSHA complaint by conducting one-on-one interviews with employees in the Psychiatric Treatment Center, including Plaintiff, in an attempt to figure out who had filed it. This type of "investigation" had never been previously conducted.

40. In addition, Kane asked Plaintiff follow-up questions on a separate occasion regarding allegations in the MIOSHA complaint that Michalcuk

discouraged staff from seeking medical attention, which only Plaintiff had objected to at the time of the altercation underlying the MIOSHA complaint.

41. On or about May 9, 2017, Plaintiff called MIOSHA and expressed concern that she was being retaliated against for making her complaint to the agency.

42. On or about May 12, 2017, upon her arrival to the Hospital to work her scheduled shift, Plaintiff noticed that her name had been crossed out on the posted schedule, but had been handwritten back in.

43. Later that day, after completing 8 hours of her shift, Plaintiff was called into Defendants' Human Resources office for a meeting with Megan, an HR Representative; Michalcuk; and Duncan.

44. At this meeting Plaintiff saw her completed termination paperwork sitting on a table, and was told that she was being terminated for an alleged negative comment Defendants claim she made about a patient.

45. Plaintiff was told that she could either be terminated and have Defendants report her termination to the Board of Nursing and prospective employers, or she could resign.

46. Fearful for her future career and having already seen the completed termination paperwork, Plaintiff resigned.

47. On July 6, 2017, as a result of Plaintiff's MIOSHA complaint, MIOSHA issued multiple citations to Harbor Oaks Hospital, a number of which were categorized as "Serious" for violations of workplace safety regulations, which included (among others) violations of the Michigan Occupational Safety and Health Act, M.C.L. § 408.1011(a).

COUNT I
Violation of the Whistleblowers' Protection Act

48. Plaintiff realleges all prior paragraphs as if they were fully set forth herein.

49. Plaintiff was an employee and Defendants were her employer covered by and within the meaning of the Whistleblowers' Protection Act, MCL 15.361 *et seq.*

50. Plaintiff was discharged because she reported Defendants' unlawful actions, as described above, to a state agency.

51. Defendants knew that Plaintiff reported these unlawful actions to a state agency.

52. The violations of the laws Plaintiff reported included violations related to the Michigan Occupational Safety and Health Act, M.C.L. § 408.1001, *et seq.*, as well as other civil and criminal laws of the State of Michigan and of the United States.

53. Plaintiff reported Defendants' violations to the respective state agency responsible for overseeing the laws that Defendants violated, and was terminated on May 12, 2017, after doing so.

54. The retaliatory conduct of Defendants, their agents, representatives, and employees violated the Whistleblowers' Protection Act.

55. The actions of Defendants, their agents, representatives, and employees were intentional, wanton, willful, malicious and taken in bad faith, in deliberate disregard of and with reckless indifference to the rights and sensibilities of the Plaintiff.

56. As a further direct and proximate result of Defendants' wrongful acts, Plaintiff has sustained injuries and damages including but not limited to: loss of earnings and earning capacity; loss of career opportunities; loss of fringe benefits; mental anguish; anxiety about her future, physical and emotional distress, humiliation and embarrassment; loss of professional reputation; damage to her good name and reputation; and loss of the ordinary pleasures of everyday life, including the right to pursue gainful employment of her choice.

COUNT II
WRONGFUL DISCHARGE IN VIOLATION OF
MICHIGAN PUBLIC POLICY

57. Plaintiff realleges all prior paragraphs as if they were fully set forth herein.

58. During her employment with Defendants, Plaintiff failed to and refused to violate laws, statutes, regulations, and/or rules promulgated pursuant to law, and refused to acquiesce in Defendants' violations of laws, statutes, regulations, and/or rules promulgated pursuant to law.

59. In particular, Plaintiff failed to and refused to violate or acquiesce in, or reported, violations of the Michigan Occupational Safety and Health Act, M.C.L. § 408.1001, *et seq.*, and the Worker's Disability Compensation Act, M.C.L. § 418.101, *et seq.*, as well as other civil and criminal laws of the State of Michigan and of the United States.

60. Plaintiff's termination was in retaliation for her failure and refusal to violate or acquiesce in, or report, violations of law and her protected internal reporting of violations of law and regulations.

61. Plaintiff's treatment and termination violated the clearly established public policy of the State of Michigan, i.e., that an employer may not discharge an employee because she fails or refuses to violate the law, or reports violations of the law, in the course of her employment.

62. The actions of Defendants, their agents, representatives, and employees were intentional, wanton, willful, malicious and taken in bad faith, in deliberate disregard of and with reckless indifference to the rights and sensibilities of Plaintiff.

63. As a direct and proximate result of Defendants' actions, the terms, conditions, and privileges of Plaintiff's employment were adversely affected, and Plaintiff was unlawfully terminated.

64. As a direct and proximate result of Defendants Brightwing and Chrysler's wrongful conduct, Plaintiff has suffered injuries and damages including but not limited to: loss of career opportunities; loss of fringe and pension benefits; mental anguish; anxiety about her future; physical and emotional distress; humiliation and embarrassment; loss of professional reputation; damage to her good name and reputation; and loss of the ordinary pleasures of everyday life, including the right to pursue gainful employment of her choice.

RELIEF REQUESTED

Plaintiff demands judgment against Defendant as follows:

A. Legal Relief

1. Compensatory damages in whatever amount Plaintiff is found to be entitled;
2. Exemplary damages in whatever amount Plaintiff is found to be entitled;
3. Statutory damages;
4. Statutory attorneys' fees;
5. Liquidated damages;
6. Punitive damages;

7. Any civil fine or penalty available under law;
8. Interest; and
9. Costs.

B. Equitable Relief

1. A declaratory judgment establishing that Defendants violated Plaintiff's rights;
2. Restitution;
3. Disgorgement of profits;
4. An injunction prohibiting further unlawful acts;
5. Interest;
6. Costs and reasonable attorneys' fees; and
7. Any other equitable relief that appears appropriate.

Dated: August 9, 2017

DEBORAH GORDON LAW
/s/Deborah L. Gordon (P27058)
Benjamin I. Shipper (P77558)
Attorneys for Plaintiff
33 Bloomfield Hills Parkway, Suite 220
Bloomfield Hills, Michigan 48304-2909
(248) 258-2500
dgordon@deborahgordonlaw.com
bshipper@deborahgordonlaw.com

JURY DEMAND

Plaintiff **Linna Sikon**, by and through her attorneys, **Deborah Gordon Law**, demands a trial by jury of all the issues in this cause.

Dated: August 9, 2017

DEBORAH GORDON LAW
/s/Deborah L. Gordon (P27058)
Benjamin I. Shipper (P77558)
Attorneys for Plaintiff
33 Bloomfield Hills Parkway, Suite 220
Bloomfield Hills, Michigan 48304-2909
(248) 258-2500
dgordon@deborahgordonlaw.com
bshipper@deborahgordonlaw.com