

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

YVONNE DOWNS	§	
	§	Civil Case No. <u>7:13-CV-129</u>
v.	§	
	§	JURY TRIAL DEMANDED
RED RIVER HOSPITAL, LLC	§	

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW YVONNE DOWNS (“Plaintiff” or “Downs”) filing her *Original Complaint*, complaining of RED RIVER HOSPITAL, LLC (“Defendant” or “RRH”), and would respectfully show the Court as follows:

I. INTRODUCTION

1. This is an employment action alleging wrongful termination and retaliation under TEXAS HEALTH & SAFETY CODE § 161.134, *et seq.*, wherein Plaintiff seeks to recover actual damages, mental anguish, exemplary damages, attorney’s fees, compensation for lost wages, reinstatement of lost fringe benefits or seniority rights, taxable costs of court, and prejudgment and post-judgment interest from Defendant.

2. Plaintiff demands a jury on all issues triable to a jury.

II. PARTIES

3. Plaintiff YVONNE DOWNS is a citizen of the State of Texas residing in Wichita County, Texas.

4. Defendant RED RIVER HOSPITAL, LLC is a foreign limited liability company organized and existing under the laws of Delaware. Defendant RRH maintains its principal place of business in the State of Tennessee. Defendant RRH may be served with process by

serving its registered agent, THE CORPORATION TRUST COMPANY, CORPORATION TRUST CENTER, 1209 ORANGE STREET, WILMINGTON, DE 19801.

5. Whenever in this Petition it is alleged the Defendant committed any act or omission, it is meant the Defendant's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, owners, operators, managers, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendant or was done in the routine normal course and scope of their agency and employment as Defendant's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, owners, operators, managers, or employees.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a) because Plaintiff and Defendant are citizens of different U.S. states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

7. The Court has personal jurisdiction over Defendant since it maintains and operates business in the State of Texas and it purposefully availed itself to the protections of the State of Texas.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

9. This Court has jurisdiction over all claims in this action.

10. The amount in controversy is within the jurisdictional limits of this Court.

IV. FACTUAL BACKGROUND

11. Plaintiff Downs was hired by Defendant RRH on or about October 1, 1997.

12. Downs was a Marketing Representative during the first 5-6 years of her employment with Defendant RRH.

13. In approximately 2003, Plaintiff Downs was promoted to Director of Business Development in the Marketing Department at RRH.

14. On or about September 30, 2013, Defendant RRH terminated Plaintiff's employment after approximately sixteen (16) years of service.

15. Plaintiff Downs was terminated by Defendant RRH in retaliation for reporting a violation of law.

A. DEFENDANT RED RIVER HOSPITAL, LLC

16. Defendant RRH is a 74-bed inpatient psychiatric facility located in Wichita Falls, Texas providing behavioral healthcare services and substance abuse treatment.

17. Defendant RRH is a rural hospital owned and operated by ACADIA HEALTHCARE COMPANY, INC.

18. Rob Marsh ("Marsh") is the CEO of Defendant RRH.

19. Marsh was responsible for the direct supervision of Plaintiff Downs during her employment with Defendant RRH.

20. Tracy Fehr is the Executive Assistant to Rob Marsh & Director of HR at Defendant RRH.

21. Lee Mitchell is the CFO of Defendant RRH.

B. ACADIA HEALTHCARE COMPANY, INC.

22. ACADIA HEALTHCARE COMPANY, INC. ("Acadia") is a publically traded company (NASDAQ: ACHC) and provider of inpatient behavioral healthcare services.

23. Acadia operates a network of 48 behavioral health facilities with over 3,700 licensed beds in 21 states and Puerto Rico. Acadia provides psychiatric and chemical dependency services to its patients in a variety of settings, including inpatient psychiatric hospitals, residential treatment centers, outpatient clinics and therapeutic school-based programs.

24. On or about January 5, 2012, Acadia announced it had signed a definitive agreement to acquire three inpatient psychiatric hospitals from Haven Behavioral Healthcare for \$91 million in cash, including Defendant RRH.

25. In March of 2012, Acadia finalized its purchase and acquired Defendant RRH as a wholly-owned subsidiary.

26. Acadia currently owns, operates and manages Defendant RRH.

27. Ron Fincher is the COO of Acadia.

28. Jerri Le Clair is the executive Administrative Assistant to COO Fincher.

29. Jon O'Shaughnessy is the Vice President of Operations for Acadia, and the direct supervisor of Rob Marsh. Mr. O'Shaughnessy is responsible for the management and operations of approximately 18 Acadia hospitals, including Defendant RRH.

30. Beverly Rikal is the Executive Assistant to Acadia's CEO, President, and Chief Development Officer.

31. Joey A. Jacobs is the Chairman and CEO of Acadia.

32. Brent Turner is the President of Acadia.

33. Steve Davidson is the Chief Development Officer of Acadia

C. PLAINTIFF'S EMPLOYMENT

34. Plaintiff Yvonne Downs was employed as a Director of Business Development by Defendant RRH from approximately October 1, 1997 to September 30, 2013.

35. Plaintiff Downs was responsible for RRH's comprehensive marketing strategy, the implementation and analysis of marketing tactics, and the identification and development new lines of hospital business.

36. In addition, Plaintiff Downs was also responsible for the supervision, scheduling, and coordination of the Business Development Representatives (marketing staff) and their related marketing activities throughout the "catchment area" (the geographical area and population surrounding Wichita Falls from which RRH sought to acquire new patients).

37. Plaintiff Downs received a performance bonus in the first quarter of 2013.

38. On or about July 17, 2013, Downs received a positive annual employee evaluation from Marsh, commending her for "frequently exceeding expected levels of achievement" and "above average performance" with an average total rating of 3.2 out of a possible 4.0.

39. In approximately August of 2013, Marsh asked Plaintiff to draft a "Senior Strategic Plan" to target the Medicare population and get more Medicare patients admitted into RRH.

40. Plaintiff Downs responded, stating RRH did not have the resources or facilities in place to safely and properly treat the Medicare patients. Marsh admitted RRH did not have a Progressive Care Unit (PCU), but insisted Plaintiff launch the marketing campaign targeting elderly Medicare patients anyway.

D. PLAINTIFF'S REPORT ABOUT POTENTIAL MEDICARE FRAUD IN AUGUST, 2013

41. During Plaintiff's employment, Defendant RRH implemented a Partial Hospitalization Program (PHP) which provided an additional level of care to assist patients in their transition from hospitalization to outpatient services. The PHP program was conducted at a different physical location separate from the Defendant's hospital.

42. Medicare beneficiaries may participate in PHPs only if services are reasonable and necessary for the diagnosis or active treatment of the individuals' conditions and are reasonably expected to improve or maintain the individuals' conditions.

43. However, CMS, *Medicare Benefit Policy Manual*, Pub. No. 100-02, ch. 6, § 70.3 requires participating beneficiaries receive a minimum of 20 hours of services each week.

44. Physicians must supervise PHP services and periodically evaluate beneficiaries to ensure that their treatment goals are being met.

45. Physicians are required to recertify Medicare beneficiaries' need for PHP services 18 days after their admissions and at least every 30 days thereafter.

46. Medicare will not pay or reimburse the PHP provider for treatments unless the participating beneficiaries received a minimum of 20 hours of services each week.

47. Plaintiff Downs noticed the PHP office at Defendant RRH was completely empty, yet Defendant RRH was receiving Medicare payments and reimbursements for PHP services. In approximately August of 2013, Plaintiff Downs reported her concerns of Medicare fraud in good faith to Marsh and other executives of Defendant RRH.

E. PLAINTIFF'S REPORT OF PATIENT SAFETY VIOLATIONS IN AUGUST, 2013

48. Defendant RRH monitors its employees, patients, and visitors through the use of surveillance cameras and security cameras installed throughout its hospital. Film and video footage is recorded and saved pursuant to Acadia's data retention policies. The video footage is periodically reviewed by Defendant's Risk Management department in an effort to improve patient care and prevent future adverse events.

49. Orrilea W. Bolf, R.N. ("Bolf") is a Risk Manager at Defendant RRH.

50. In approximately August of 2013, Plaintiff Downs and Bolf reviewed video footage of an elderly male patient in the Senior Progressive Care Unit (PCU) at Defendant RRH.

51. The recording started at the beginning of a 12-hour shift in the PCU, and showed an elderly patient who appeared sedated strapped to a “Broda Chair” in the corner of the room. Throughout the entire duration of the 12-hour shift on the video, the elderly patient was ignored and neglected by nurses and medical staff. After 12 continuous hours of neglect, without receiving any treatment, care, or attention, the elderly patient tried to raise his hand for help. Shortly thereafter, a nurse walks directly toward the patient, lifts his gown, and gives him a shot (which apparently further sedated him) causing the patient to fall asleep and/or become unconscious again strapped to the chair.

52. In approximately August of 2013, Plaintiff reported this patient safety violation and video footage in good faith to Marsh and other executives at RRH concerning the Medicare patient in the Senior Progressive Care Unit (PCU) at Defendant RRH.

53. After Plaintiff’s report, and around the same time Plaintiff was fired in September 2013, Acadia allegedly implemented a new video retention policy at RRH, which only requires the hospital to retain the most recent fourteen (14) days of film and video footage.

F. PLAINTIFF’S ATTEMPT TO CONTACT ACADIA

54. In September of 2013, Defendant RRH and Marsh had failed to take any corrective action(s) or respond to Plaintiff Downs’ above-mentioned reports of legal violations.

55. On or about Wednesday, September 11, 2013, Plaintiff Downs sent an email to Beverly Rikal, the Executive Assistant to the Jon O’Shaughnessy (Marsh’s boss), and requested information about how to report the above-mentioned violations of law to Acadia.

56. On or about Thursday, September 12, 2013, Plaintiff received an email from Jerri LeClair, the Executive Assistant to Acadia's COO Ron Fincher, providing Plaintiff with instructions about the procedure for scheduling an appointment with Acadia's COO.

G. DEFENDANT RRH RETALIATES AND TERMINATES PLAINTIFF'S EMPLOYMENT

57. On or about Monday, September 16, 2013, Marsh called a meeting with Plaintiff and Tracy Fehr (Director of HR & Executive Assistant to Rob Marsh) to discuss why Downs was trying to contact Jon O'Shaughnessy at Acadia.

58. Tracy Fehr was advised by Marsh that she was in charge of taking notes during the meeting.

59. During the meeting Marsh retaliated against Plaintiff Downs for attempting to report the above-mentioned violations of law to Acadia.

60. Marsh advised Plaintiff Downs that he did not care "who Yvonne Downs was," that he is "Rob Marsh, CEO," and he can run the hospital any way he wants.

61. Plaintiff Downs felt intimidated and humiliated by Marsh's comments.

62. Marsh advised Plaintiff Downs she had two choices, either "get on board" or "get off." Marsh was very hostile, and was using humiliating slurs directed at Plaintiff during the meeting.

63. Marsh told Plaintiff Downs she was a "contaminator" and negative person for making the above-mentioned reports of legal violations.

64. At the end of the meeting Plaintiff Downs advised Marsh she has never had never been told those degrading words in the work place during her sixteen years of employment with Defendant RRH.

65. Marsh advised Plaintiff to go have a "few margaritas" and wash the words out.

66. On or about Monday, September 30, 2013 at 3:00 pm, a meeting was called with Plaintiff Downs, Rob Marsh (CEO), Lee Mitchell (CFO), and Tracy Fehr (HR Director & Administrative Assistant to CEO).

67. Lee Mitchell & Tracy Fehr took notes during the meeting.

68. Marsh terminated Plaintiff Downs during the meeting because she was “not a good fit” for the company.

69. Marsh instructed Plaintiff Downs to surrender her keys and phone; and told Plaintiff her personal items would be boxed up and mailed to her.

70. In the process of terminating Downs, Defendant’s actions resulted in damages and injury to Downs’ professional reputation, personal humiliation, mental anguish, suffering and damaging Downs’ future potential employment opportunities.

V. CAUSES OF ACTION

A. COUNT ONE: RETALIATION UNDER TEXAS HEALTH & SAFETY CODE § 161.134

71. Plaintiff adopts and incorporates by reference each preceding paragraph of this Complaint as if fully and completely set forth herein.

72. Pursuant to TEXAS HEALTH & SAFETY CODE § 161.134(f), there is a rebuttable presumption Defendant RRH terminated, disciplined or discriminated against Plaintiff for making a report related to a legal violation because the Plaintiff’s termination, discipline, or discrimination occurred before the 60th day after the date on which Plaintiff made her report in good faith.

73. Plaintiff reported legal violations, including patient safety violations, to her supervisors, and other administrators of Defendant RRH. After Plaintiff reported the legal

violations, including patient safety violations noted above, Defendant RRH retaliated against Plaintiff and terminated Plaintiff's employment.

74. Defendant's actions, retaliation, and termination of Plaintiff's employment violated the TEXAS HEALTH AND SAFETY CODE, including, but not limited to § 161.134 of the TEXAS HEALTH AND SAFETY CODE.

75. As a direct and proximate result of Defendant's retaliatory conduct, Plaintiff has suffered actual damages, mental anguish, lost wages, reinstatement of lost fringe benefits, bonuses, both in the past and in the future, as well as court costs, inconvenience, loss of enjoyment of life in the past and in all probability will continue to suffer in the future.

76. Furthermore, Plaintiff is entitled to recover exemplary damages and reasonable attorney's fees pursuant to TEXAS HEALTH AND SAFETY CODE § 161.134(d)

VI. DAMAGES APPLICABLE TO ALL COUNTS

77. Plaintiff adopts and incorporates by reference each preceding paragraph of this Complaint as if fully and completely set forth herein.

78. Defendant's conduct and actions discussed above proximately caused injury to Plaintiff, which resulted in the following damages:

- a. Actual damages;
- b. Mental anguish in the past;
- c. Mental anguish in the future;
- d. Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;
- e. Future pay including future bonuses, lost earnings and benefits;
- f. Loss of employment;
- g. Loss of employment benefits;

- h. Prejudgment interest;
- i. Post-judgment interest;
- j. Costs of court; and
- k. Attorney's fees.

79. Plaintiff also seeks unliquidated damages within the jurisdictional limits of this Court.

VII. EXEMPLARY DAMAGES

80. Plaintiff adopts and incorporates by reference each preceding paragraph of this Complaint as if fully and completely set forth herein.

81. Plaintiff also seeks exemplary damages caused by the gross negligence and/or malice of Defendant RRH for damages and losses relating to its actions listed above.

82. Plaintiff's injuries resulted from Defendant's gross negligence or malice which entitles Plaintiff to exemplary damages under TEXAS CIVIL PRACTICE & REMEDIES CODE § 41.003(a) and TEXAS HEALTH AND SAFETY CODE § 161.134(d).

83. The conduct of Defendant's actions or omissions described above, when viewed from the standpoint of Defendant at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendant had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.

84. Plaintiff intends to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

- a. the nature of the wrong committed by Defendant;

- b. the character of Defendant's conduct;
- c. the degree of culpability of Defendant;
- d. the situation and sensibilities of the parties concerned; and
- e. the extent to which Defendant's conduct offends a public sense of justice and propriety.

85. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendant.

VIII. ATTORNEY'S FEES

86. Plaintiff adopts and incorporates by reference each preceding paragraph of this Complaint as if fully and completely set forth herein.

87. In addition, as a result of the acts and omissions of Defendant, as specifically set forth herein, it was necessary for Plaintiff to secure counsel to present and prosecute this matter on her behalf.

88. Plaintiff has retained the services of the undersigned counsel of record, and accordingly, Plaintiff sues for reasonable attorney's fees pursuant to TEXAS HEALTH AND SAFETY CODE § 161.134(d).

IX. JURY DEMAND

89. Plaintiff demands a jury trial and tendered the appropriate fee.

X. PLAINTIFF'S DEMAND FOR PRESERVATION OF EVIDENCE AND ESI

90. Plaintiff adopts and incorporates by reference each preceding paragraph of this Complaint as if fully and completely set forth herein.

91. Plaintiff hereby requests and demands Defendant RRH and its parent, Acadia Healthcare Company, Inc., preserve and maintain all evidence pertaining to any claim or defense related to the facts and allegations making the basis of this lawsuit, or damages resulting

therefrom. On October 3, 2013, Plaintiff mailed a Demand Letter for Preservation of Evidence to Defendant and the following entities as follows:

Via FedEx #7968-3013-2373
CM #7011-2000-0001-1177-6947
W. Page Barnes, CFO
RED RIVER HOSPITAL, LLC
HAVEN BEHAVIORAL HEALTHCARE, INC.
652 West Iris Drive
Nashville, TN 37204

Via FedEx #7968-3027-3387
CM #7011-2000-0001-1177-6978
RED RIVER HOSPITAL, LLC
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Via FedEx #7968-3023-9017
CM #7011-2000-0001-1177-6961
RED RIVER HOSPITAL, LLC
ATTN: Rob Marsh, CEO
1505 Eighth Street
Wichita Falls, TX 76301

92. The demand letter provided written notice to Defendant and its affiliated entities they must immediately take the necessary steps to issue a litigation hold and preserve all “electronically stored information” (“ESI”) and other documents, on whatever storage media, device or location, in their possession or control (including third parties) that contain potential ESI relating to the claims and defenses contained in this Petition, and that Defendant avoid spoliation of this ESI. The letter also includes a demand for Defendant to suspend all document retention or destruction policies, including but not limited to video surveillance footage, video security footage, backup, restoration, deletion, destruction, and tape recycling.

CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff YVONNE DOWNS respectfully prays Defendant RED RIVER HOSPITAL, LLC be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for:

- (1) Actual damages and injuries specifically pled herein;
- (2) Unliquidated damages within the jurisdictional limits of this Court;
- (3) Mental anguish in the past;

- (4) Mental anguish in the future;
- (5) Back pay including lost wages and benefits that would have been paid from the date of the retaliation until the trial date;
- (6) Future pay including future bonuses, lost earnings and benefits;
- (7) Loss of employment;
- (8) Loss of employment benefits;
- (9) Prejudgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law;
- (10) Post-judgment interest;
- (11) Costs of court;
- (12) Exemplary damages excluding interest;
- (13) Reasonable attorney's fees; and
- (14) Such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully Submitted,

HUGHES ELLZEY, LLP

/s/ W. Craft Hughes

W. Craft Hughes

Attorney-in-Charge

Texas Bar No. 24046123

E-Mail: craft@hughesellzey.com

Jarrett L. Ellzey

Texas Bar No. 24040864

E-Mail: jarrett@hughesellzey.com

Brian B. Kilpatrick

Texas Bar No. 24074533

E-Mail: brian@hughesellzey.com

2700 Post Oak Blvd., Ste. 1120

Galleria Tower I

Houston, TX 77056

Phone: (713) 554-2377

Fax: (888) 995-3335

ATTORNEYS FOR PLAINTIFF

YVONNE DOWNS