

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

John Doe,) C.A. No.: 22- CP-32-
)

Plaintiff,)

vs.)

SUMMONS
(JURY TRIAL DEMANDED)

Lexington County Health Services)
District, Inc., Lexington Family Practice,)
and Dr. Kimberley Hawkes,)
Defendant.)

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office at 1539 Health Care Drive, Rock Hill, South Carolina, 29732, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to Answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MCGOWAN, HOOD & FELDER, LLC

s/ S. Randall Hood
S. Randall Hood (S.C. Bar No.: 65360)
Whitney B. Harrison (S.C. Bar No. 100111)
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
(803) 324-1483 Facsimile
rhod@mcgowanhood.com
wharrison@mcgowanhood.com

LAW OFFICE OF BILL NETTLES

s/ John L. Warren III
John L. Warren III (S.C. Bar No.: 101414)
2008 Lincoln Street
Columbia, SC 29201
(803) 814-2826
SC Bar: 101414
jw@billnettleslaw.com

SALUDA LAW

s/ Judah VanSyckel
Judah VanSyckel, Esq. (S.C. Bar No. 79114)
137 E. Butler Street, Office 1
Lexington, SC 29072
803-939-6927
judah@saludalaw.com

WALKER LAW

s/ Paul J. Coyle
Paul J. Coyle (S.C. Bar No. 104884)
135 E. Main Street
Lexington, SC 29072
(803) 359-6194
Paul@walkerlaw.org

Rock Hill, South Carolina

February 2, 2022

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COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
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Plaintiff,)	
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Lexington County Health Services)	
District, Inc., Lexington Family Practice,)	
and Dr. Kimberly Hawkes,)	
)	
Defendant.)	
_____)	

Plaintiff, by and through his undersigned counsel, does hereby respectfully show unto the Court and allege as follows:

SUMMARY OF ACTION

1. This action involves recklessness on behalf of all Defendants in failing to maintain patient confidentiality.
2. Kimberly Hawkes worked as a family-practice physician at Lexington Family Practice (which is owned by Lexington County Health Services District, Inc.), for at least six years prior to the events described herein.
3. In this role, she came to meet and treat Plaintiff John Doe as a patient.
4. Sometime in 2021, Dr. Hawkes began an illicit affair with another (female) patient.
5. Prior to, and during, this affair, Dr. Hawkes shared confidential patient information with her paramour.
6. This confidential patient information included medical records and information

concerning the Plaintiff.

7. Upon information and belief, this Jane Doe paramour (“paramour”) has text messages and other communications indicating outrageous conduct by Dr. Hawkes.

8. Upon information and belief, Dr. Hawkes ignored proper patient/physician boundaries and in so doing, engaged in an improper relationship with a patient, mismanaged medications for other patients, and shared other patients’ confidences with her paramour.

9. Dr. Hawkes’ actions occurred while she was supposedly under the watchful eye of Lexington Family Medicine and the Lexington County Health Services District, Inc. (“LHSD”)

10. Upon information and belief, LHSD and Lexington Family Practice employees and agents knew about Dr. Hawkes’ improper behavior referenced above and did nothing.

11. Over the course of Dr. Hawkes’ relationship with the female paramour described above, she communicated confidential information about John Doe on many occasions to her paramour.

12. Dr. Hawkes also disparaged John Doe to the paramour and made fun of his grief over the death of his wife.

13. Dr. Hawkes’ actions, along with those of Lexington Family Practice and LHSD caused John Doe harms and losses.

PARTIES

Plaintiff

14. Plaintiff, a citizen and resident of Lexington County, South Carolina, is filing this Complaint anonymously under the pseudonym John Doe (hereinafter “Doe” or “John Doe”).

15. The facts and circumstances underlying this lawsuit could bring embarrassment and

unwanted publicity to Plaintiff and/or his family.

16. Plaintiff is vulnerable to the harms of disclosure.

17. The allegations herein concern harms suffered by John Doe while under Defendant Hawkes' care.

18. Plaintiff risks humiliation and embarrassment if the details underlying this suit are published and proceeding with a pseudonym brings some comfort to him.

19. If the ability to proceed with a pseudonym is not allowed, Plaintiff will experience further harm simply by exercising his legal rights.

20. Identification also poses a risk of further retaliation and further mental, or even physical harm.

21. If Plaintiff is forced to disclose his identity, said disclosure will increase the very injuries at issue in this litigation.

22. The public interest in the disclosure of Plaintiff's identity is minimal.

23. Once Defendants are served and retain counsel, Plaintiff's identity will be revealed to Defendants in a confidential manner.

24. Defendants are not prejudiced by allowing Plaintiff to proceed anonymously, or alternatively, any prejudice will be mitigated by the confidential disclosure of Plaintiff's identity.

25. Justice will not be furthered by requiring Plaintiff's identity to be published.

Defendants

26. Defendant, Lexington County Health Services District, Inc. (hereinafter "LHSD"), is an entity that owns Lexington Medical Center ("LMC") and is located and providing medical and non-medical services to patients in Lexington County, South Carolina.

27. LHSD also owns different medical practices and employs different physicians in Lexington County, South Carolina.

28. Lexington Family Practice is a medical practice in Lexington County owned and operated by LHSD and was staffed in September–December 2021 by Dr. Kimberly Hawkes (“Hawkes”).

29. Dr. Hawkes is a family physician who was employed by Lexington Family Practice and LHSD and given responsibility and duties to treat patients and maintain their patient confidentiality.

30. At all times relevant, Dr. Hawkes delivered medical and non-medical care for a fee in Lexington County, South Carolina.

31. LHSD has authority, express or implied, to control the means and agencies employed to provide services at Lexington Family Practice through its employee physicians, including Dr. Hawkes.

32. LHSD, Lexington Family Practice, and Hawkes maintained dominion and control over the confidentiality of patient medical records and information, including all medical records and information of John Doe while he was a patient of Dr. Hawkes at Lexington Family Practice.

JURISDICTION AND VENUE

33. This Court has personal jurisdiction over Defendants pursuant to S.C. Code Ann. § 36-2-802, because they reside in, conduct business in, or have an enduring relationship with the State of South Carolina.

34. Venue is proper in Lexington County, South Carolina, pursuant to S.C. Code Ann. § 15-7-30, because it is the county in which the most substantial part of the acts giving rise to these

claims took place.

NON-MEDICAL MALPRACTICE ACTION

35. The causes of actions in this case are grounded under non-medical malpractice standards of care.

36. “[N]ot every action taken by a medical professional in a hospital or doctor’s office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] Section 15-79-125.” Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

37. “However, at all times, the medical professional must ‘exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.’” Id. at 178, 758 S.E.2d at 504 (further citations omitted).

38. “The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers’ ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.” Id.

39. Non-medical care would include the maintenance and provision of patient confidentiality by defendants.

40. LHSD is run by a board of directors who formulate policies, procedures, and strategy.

41. These board members create, or allow the creation of, certain committees within their infrastructure to formulate policies, procedures, rules, and/or regulations for specific situations (i.e., improper dissemination of confidential patient information).

42. These committees are many times composed of medical staff.

43. The medical staff include physicians credentialed to perform various procedures.
44. The creation of these policies and procedures, rules, and regulations is fundamental to the LHSD and LMC medical system.
45. To create a safe system for patients, LHSD must utilize these different committee(s) to investigate incidents in their owned medical practices (such as Lexington Family Practice) and the actions/inactions of physician employees.
46. These investigations can expose preventable harm to patients or reveal continued harm.
47. Awareness of potential patient harm comes from historical data, experience, literature, and information within the industry.
48. Awareness of known hazards or potential hazards (i.e., improper dissemination of confidential patient information, etc.) doesn't require medical training.
49. Awareness of patient harm and ways to mitigate or eliminate potential patient harm is in the purview of LHSD committees and covers medical practices owned or operated by LHSD and physicians they employ.
50. The actions or inactions of executive and/or safety committees are not medical care.
51. They are administrative in nature and most involve the goal of protecting patients, including the maintenance of patient confidentiality.
52. If a medical provider has deficient patient confidentiality policies, procedures, rules and/or regulations because of a staff-oriented committee's failure to recognize, enact and/or implement such policies, procedures, rules, and/or regulations, there is a \$1,200,000.00 cap for each such deficient occurrence.

53. Medical malpractice covers all types of procedures and medical judgment calls which physicians and nurses must make when treating patients with ailments or injuries.

54. Breaching patient confidentiality is not medical malpractice.

55. But again, “not every injury sustained by a patient in a hospital results from medical malpractice.” Dawkins v. Union Hosp. Dist., 408 S.C. 171, 177, 758 S.E.2d 501, 504 (2014).

56. Dawkins stands for the proposition that doctors and nurses acting in their professional capacity and their professional setting can commit errors grounded in ordinary negligence, administrative negligence, or ministerial negligence rather than medical malpractice.

57. When Dr. Hawkes discharged duties to John Doe in this matter, any actions or inactions involving the improper dissemination of his confidential records or information was non-medical in nature.

58. A \$1,200,000.00 cap exists for **each** time Dr. Hawkes disseminated confidential information to her paramour, mocked John Doe, or took other improper actions with respect to John Doe’s privacy (each text, phone call, in-person discussion, etc.)

DAMAGES ALLEGATIONS AS TO DEFENDANTS - OCCURRENCES

59. LHSD claims to be a charitable entity which would subject it to charitable immunity caps.

60. The Charitable Immunity Act (“CIA”) references the South Carolina Tort Claims act as the predicate statutory authority for the number of caps to be imposed by any person or entity against a CIA entity.

61. In relevant part, regarding limitations of liability under the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-120, provides as follows:

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

- (1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.
- (2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.
- (3) No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

62. Under S.C. Code Ann. Section 15-78-30: "Occurrence" is defined as "an unfolding sequence of events which proximately flow from a single act of negligence."

63. Each act of negligence, gross negligence, recklessness, and/or willful and wanton conduct by any medical professional employed by, or an agent of, LHSD and/or Lexington Family Practice is an act or occurrence under the South Carolina Tort Claims Act/CIA.

64. The cap for any occurrence of a negligent action/inaction by a physician by any of the Defendants is \$1,200,000.00.

65. Due to the number of times that Dr. Hawkes texted, called or shared patient confidences with her paramour and others, there is a limitless number of occurrences in this case.

GENERAL ALLEGATIONS APPLICABLE TO ALL PARTIES

Doctor/Patient Relationship Between John Doe and Defendants

66. John Doe has been a medical patient of Dr. Hawkes and Lexington Family Practice since 2015.

67. During that time, LHSD, Lexington Family Practice, and Dr. Hawkes maintained and controlled his pain management for various health issues.

68. In her capacity as John Doe's primary care physician, Dr. Hawkes was his conduit for pharmaceutical maintenance therapy for pain, which included the use of opiate medications.

69. It is well known that when a patient undertakes long term opiate use, it can cause certain neurological changes.

70. Thus, when weaning someone off opiates, it should not be done without titration or closely managing their withdrawal.

71. The U.S. Food and Drug Administration (FDA) has received reports of serious harm in patients (who are physically dependent on opioid pain medicines) suddenly having these medicines discontinued or the dose rapidly decreased. These include serious withdrawal symptoms, uncontrolled pain, psychological distress, and suicide.¹

Confidentiality Of Medical Records And Patient Information Under State And Federal Law

72. Patients in South Carolina have an expectation of privacy for their personal information and medical records – an expectation supported by both State and Federal Law.

73. Confidentiality and privacy in health care is important for protecting patients, maintaining trust between doctors and patients, and for ensuring the best quality of care for

¹ <https://www.fda.gov/drugs/drug-safety-and-availability/fda-identifies-harm-reported-sudden-discontinuation-opioid-pain-medicines-and-requires-label-changes>.

patients.

74. The law recognizes each person has an interest in preventing certain facets of their personal life from exposure.

75. This interest in “privacy” is a distinct aspect of human dignity and moral autonomy.

76. The belief that physicians should respect the confidences revealed by their patients in the course of treatment is a concept that has its genesis in the Hippocratic Oath, which states in pertinent part: “Whatever, in connection with my professional practice, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge as reckoning that all such should be kept secret.”²

77. Patient confidentiality has been a standard of medical ethics for hundreds of years.

78. The federal law referred to as HIPAA was passed in 1996 to make sure that there would be one nationwide law to protect patient privacy.

79. The law includes provisions that recognize patient health information and records are confidential between a medical provider and patient.

80. HIPAA also requires express consent by the patient in order for the medical provider to share any patient health information or records.

81. South Carolina also recognizes patient confidentiality as a right.

82. In Hodge v. Shea, 252 S.C. 601, 168 S.E.2d 82 (1969), the South Carolina Supreme Court stated that the physician-patient relationship is a confidential relationship.

83. Further, South Carolina’s legislature has recognized a physician’s duty to maintain confidences gained in the course of treatment and has empowered the State Board of Medical

² Taber’s Cyclopedic Medical Dictionary 902 (17th ed. 1993).

Examiners to discipline physicians for the unauthorized disclosure of patient confidences. See S.C. Code Ann. § 40-47-200 (Supp. 1996).

84. In South Carolina State Bd. of Medical Examiners v. Hedgepath, 325 S.C. 166, 480 S.E.2d 724 (1997) the South Carolina Supreme Court ruled that South Carolina Reg. 81-60 (D) required a physician to maintain patient confidences within the limits of the law.

85. Although Reg. 81-60 (D) does not in itself create civil liability for an unauthorized disclosure, it establishes a physician's duty of confidentiality.

86. The South Carolina legislature has also enacted the Physicians' Patient Records Act, S.C. Code Ann. §§ 44-115-10 to -150 (Supp. 1996), which prohibits a physician's disclosure of a patient's medical records without the patient's consent.

87. The Plaintiff is not bringing a private right of action under any legislative patient confidentiality authority, but merely cites the law as it sets forth the standard of care for medical providers regarding patient confidentiality.

Dr. Hawkes' Breach of Patient Confidentiality

88. On October 24, 2021, John Doe emailed Dr. Hawkes at 6:11 p.m. through LMC MyChart with a request to refill his Oxycodone and to send it to the Publix Pharmacy at Hendrix Crossing in Lexington, SC.

89. It appeared Dr. Hawkes approved his medication request and sent it to Publix at 9:21 p.m. that same day/evening.

90. Unbeknownst to John Doe, Dr. Hawkes actively violated his confidentiality as to this prescription request and in other ways on multiple occasions.

91. Although he didn't know it at the time, Dr. Hawkes had begun an illicit relationship

with a female patient sometime in 2021.

92. Dr. Hawkes' engaged in this intimate relationship with her female patient though the patient was married with a husband at the time.

93. Upon information and belief, Dr. Hawkes gave her female paramour access to patients' medical records, the ability to access patient records through LHSD MyChart, and allowed her paramour to approve patients' requests for opiate medications.

94. Dr. Hawkes also disparaged Plaintiff to her paramour during this time.

95. Upon information and belief, Dr. Hawkes also disclosed confidential information about how Plaintiff was dealing with his wife's death.

96. Upon information and belief, Dr. Hawkes sent her paramour text messages disclosing that John Doe was her patient and mocking him for grieving over the death of his wife in an appointment on September 9, 2021.

97. The female paramour and John Doe shared a mutual friend ("the friend"), who provided emotional support to John Doe after the loss of his wife.

98. After learning about this, Dr. Hawkes told her female paramour she had to listen to John Doe whining and crying about his deceased wife and commented that he would probably "off himself" without the support of the friend.

99. Dr. Hawkes also told her female paramour that John Doe was "completely pathetic."

100. Upon information and belief, Dr. Hawkes allowed her paramour access to all of her LHSD patients' MyChart requests from October 23 until October 28, 2021.

101. On November 10, 2021, Plaintiff learned that the female paramour (who was not a

medical doctor) approved his Oxycodone request on October 24, 2021 and sent it to Publix.

102. On November 10, 2021, Plaintiff also found out that he, the friend, and the female paramour, were all patients of Dr. Hawkes.

103. He found all this out after Dr. Hawkes filed check-fraud charges against her paramour.

104. Dr. Hawkes' paramour went on to inform Plaintiff that Dr Hawkes handed her a manilla envelope of documents Plaintiff dropped off for Dr Hawkes on October 23, 2021, about the transfer of a Schedule II pharmaceutical drug from one DEA approved pharmacy to another.

105. The paramour also shared with Plaintiff the contents of a flash drive containing text messages between her and Dr. Hawkes.

106. On December 8, 2021, John Doe took copies of the text messages between the paramour and Dr Hawkes to the office manager at Lexington Family Practice.

107. The office manager advised John Doe that he could contact the LMC (Lexington Medical Center) Action Line.

108. As instructed, John Doe called the LMC Action Line and sent copies of the text messages to prove Dr. Hawkes breached the duty of patient confidentiality by disclosing confidential medical records and information to a stranger without his permission.

109. On December 13, 2021, Dr. Hawkes resigned from Lexington Family Practice.

110. Also on December 13, 2021, John Doe scheduled an appointment for a follow-up on his pain management with Dr. Askins (supposedly the physician who was taking on Dr. Hawkes' patients).

111. Plaintiff was worried about retaliation and getting his medication cut off.

112. As such, he called the LMC Action Line and received a call back from the office manager for Lexington Family Practice.

113. Plaintiff was told that Dr. Askins was the only one who could prescribe the pain medication.

114. Dr. Askins then proceeded to change Plaintiff's pain medication dosage, wrote prescriptions for Adderall, took Plaintiff off an antidepressant medication, referred Plaintiff to a pain management physician and physiatrist, and diagnosed him with PTSD.

115. Dr. Askins also told Plaintiff he would continue prescribing Oxycodone but would be tapering it off 10mg per month and that hopefully Plaintiff was getting a new pain management doctor to manage his pain and medication.

LHSD's Prior Knowledge of Dr. Hawkes Improper Conduct with Patient Records

116. When the paramour's mother was hospitalized with COVID-19 in August and September 2021, Dr. Hawkes logged into the mother's MyChart, designated herself as the mother's primary care physician, and then prescribed medication without disclosing to LMC.

117. Among the medications she prescribed was Ivermectin, which is a parasite dewormer.

118. Recently, Ivermectin has become popular among individuals who believe that it can cure COVID-19.

119. The FDA has not authorized or approved Ivermectin for use in preventing or treating COVID-19 in humans or animals, and the FDA advises against its use.

120. Ivermectin is not used by infectious disease physicians or the COVID-19 treatment teams at LMC.

121. Dr. Hawkes' access to, and alteration of, the paramount mother's MyChart profile, as well as Dr. Hawkes' unusual prescriptions written without an established physician-patient relationship, should have been flagged by LMC.

122. The paramour provided John Doe with approximately 451 pages of texts between the paramour and Dr. Hawkes.

123. On page 18 of the PDF file, Dr. Hawkes advised the paramour: "I can go in computer and change PCP to me, then look through everything if she is ok with that. . . . Ok. Logging on now.

124. On page 20, Dr. Hawkes states: "I can't send meds in yet bc someone at hospital still fucking around in her chart."

125. On page 40, Dr. Hawkes states that someone at LMC went into the mother's MyChart and changed her primary care provider back to the provider listed before Dr. Hawkes' incursion into the mother's medical records and treatment.

126. This demonstrates that LMC had actual knowledge that Dr. Hawkes was improperly accessing patient medical records and information through MyChart.

127. At this point in time—which predates Dr. Hawkes dissemination of John Doe's personal health information—LMC was charged with a duty and responsibility to investigate this situation and rectify the fact that Dr. Hawkes was improperly accessing and utilizing patient records and information.

128. LHSD and LMC did nothing.

129. Also, in the text messages, on page 16, the paramour tells Dr. Hawkes that she'll forge the signature on her mother's medical authorization to make Dr. Hawkes' access appear

legitimate.

130. The paramour noted: “What needs to happen for you to be able to see moms stuff or be able to do anything for my mom or is it too late. I’ll forge any and all documents and dare them to take me to jail. I’ve been forging their name with their consent since I was 17.

131. Then, after Dr. Hawkes obtained the login information from paramour, the paramour asked Dr. Hawkes: “Do I need to come over and sign anything to make this legal[?]”

132. Dr. Hawkes responded: “No, it’s fine”.

133. These are actions by a medical provider which involves improper patient chart access and is conduct known to LHSD and LMC.

134. Why didn’t LHSD and/or LMC do something, anything, to ensure that its patients were safe from Dr. Hawkes when it knew she was improperly accessing patient medical charts and health information?

The Actions By LHSD and Askins after the Plaintiff reported Dr. Hawkes

135. On January 6, 2022, Dr. Askins discharged Plaintiff from Lexington Family Practice and Plaintiff was denied refills for the pain medication he had been prescribed since 2015.

136. In January 2022, after Plaintiff was discharged from Lexington Family Practice, he was refused medication and denied treatment at Lexington Medical Center Emergency Room and Urgent Care.

137. This retaliatory conduct, the breaches of patient confidentiality by Dr Hawkes, and the lack of training about confidentiality of patient medical records and information by LHSD and Lexington Family Practice were all non-medical acts.

138. Plaintiff’s retaliatory discharge and the subsequent retaliatory treatment by another

physician at Lexington Family Practice were all non-medical in nature.

139. Dr. Askins' withdrawal of pain medications was not based on medical rationale and was, instead, retaliatory.

140. Dr. Hawkes' actions breached Plaintiff's confidentiality and recklessly inflicted emotional distress on Plaintiff.

141. The actions of LHSD, Lexington Family Practice, and Dr. Askins were retaliation for Plaintiff's reporting Dr. Hawkes' actions.

142. Retaliatory conduct is not the practice of medicine.

143. Plaintiff is not claiming damages from any medical act or conduct associated with medical care.

144. The actions or inactions of LHSD, Lexington Family Practice, and their employees were committed or performed with reckless disregard for Plaintiff.

145. These actions lead to emotional injury issues for John Doe and other harms and losses.

FOR A FIRST CAUSE OF ACTION
(Negligence)

146. Plaintiff hereby incorporates by reference and realleges every allegation of Paragraphs 1 through 145 of this Complaint as if fully set forth herein verbatim.

147. All Defendants and their physicians, agents, and/or employees, undertook the duty to render administrative, routine, ministerial, non-medical care, and maintaining the confidentiality of John Doe's patient records and information.

148. The acts of Defendant Hawkes, previously described in this Complaint, were undertaken in the course and scope of her employment with Defendant LHSD and Lexington

Family Practice.

149. The acts of Dr. Askins, previously described in this complaint, were undertaken in the course and scope of his employment with Defendant LHSD and Lexington Family Practice.

150. By and through the acts of its employee, Defendant Hawkes, Defendants LHSD and Lexington Family Practice breached their statutory and common law duties of confidentiality and privacy to Plaintiff.

151. LHSD and Lexington Family Practice had non-delegable duties to provide physicians and other staff with adequate training so that they could maintain confidentiality of patient records and/or information and not undertake retaliatory conduct against a patient.

152. If the actions of Dr. Askins, LHSD, and Lexington Family Practice are determined to be within the practice of medicine, their actions are subject to the common knowledge exception under South Carolina law since retaliatory conduct and cutting a patient off opiate medication cold turkey is inappropriate as known in the general lay community.

153. Upon information and belief, LHSD, Lexington Family Practice, and Dr. Hawkes have the right or power to direct and control the manner in which their employees and/or agents provide administrative, routine, ministerial, or non-medical care, maintain the confidentiality of patients records and information, and operate the business of delivering administrative, routine, ministerial, non-medical care and/or maintain the confidentiality of patients records and information.

154. Each act of negligence detailed in the following paragraph is a separate and independent unfolding sequence of events denoting one specific occurrence separate and apart from all other occurrences.

155. Notwithstanding said undertaking, and while Plaintiff was under the care of Defendants, and their agents and/or employees, said Defendants, and their agents and/or employees departed from prevailing and acceptable standards of administrative, routine, ministerial, non-medical and confidentiality of patients records and information to Plaintiff and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Plaintiff and are therefore liable for one or more of the following acts of omission or commission:

- a. In LHSD failing to prevent the communication of confidential information by Dr. Hawkes to a paramour for a first occurrence;
- b. In Lexington Family Practice failing to prevent communication of confidential information by Dr. Hawkes to a paramour for a second occurrence;
- c. In Dr. Hawkes texting Plaintiff's confidential information to her paramour. The first text is a third occurrence, and each subsequent text was a wholly separate occurrence causing damages to Plaintiff;
- d. In Dr. Hawkes communicating Plaintiff's confidential information to her paramour by phone call or in person dialogue. The first act of phone or personal communication is a fourth occurrence and each subsequent act of communication was a wholly separate occurrence causing damages to Plaintiff;
- e. In acting or failing to act in a way that would be appropriate to a member of the public for a fifth occurrence;
- f. In failing to implement proper policies and procedures for a sixth occurrence;
- g. In failing to follow any policies and procedures enacted for patient confidentiality for a seventh occurrence;
- h. In failing to train their employees, nurses, physicians, and/or agents in an appropriate manner for an eighth occurrence;
- i. In retaliating against the Plaintiff for a ninth occurrence;
- j. For discharging the patient from any of Defendants' practices or facilities

for a tenth occurrence;

- k. In continuing to employ certain employees when Defendants knew or should have known that doing so would result in a patient's harm for an eleventh occurrence; and,
- l. In such other particulars as may be ascertained through discovery undertaken pursuant to the South Carolina Rules of Civil Procedure.

156. As a direct and proximate result of Defendants' negligence, gross negligence, recklessness, and departures from proper administrative, routine, ministerial, non-medical care and breaches of confidentiality as noted above, Plaintiff suffered severe harms and losses and is entitled to recover from Defendants a sum of money to compensate him for all damages. Furthermore, Plaintiff is also entitled to recover a sum of punitive damages from all Defendants not subject to the CIA found to be grossly negligent or reckless. All damages should be in an amount determined by a jury in this action.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence – Abrogation of CIA Immunity)

157. Plaintiff hereby incorporates by reference and realleges every allegation of Paragraphs 1 through 156 as if fully set forth herein.

158. Under South Carolina Code Section 33-56-180, "A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner."

159. In this case, at the time of the events alleged herein, Defendant Hawkes, was an employee of a charitable organization.

160. LHSD and Lexington Family Practice can be held liable for Defendant Hawkes' negligent actions under a respondeat superior action, but if Plaintiff proves Defendant Hawkes was

grossly negligent, then she is personally liable to Plaintiff and is not protected by any caps on damages.

161. Defendant Hawkes was grossly negligent in failing to preserve the confidential nature of John Doe's medical record and patient information.

162. As a direct and proximate result of Defendant Hawkes' gross negligence, recklessness, and departures from proper administrative, routine, ministerial, non-medical care and breach of confidentiality as noted above, Plaintiff suffered severe harms and losses and is entitled to recover from Defendants a sum of money to compensate him for all damages. Furthermore, Plaintiff is also entitled to recover a sum of punitive damages from Defendant Hawkes if she is found to be grossly negligent or reckless. All damages should be in an amount determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Invasion of Privacy – Wrongful Publication of Private Affairs)

163. Plaintiff hereby incorporates by reference and realleges every allegation of Paragraphs 1 through 162 as if fully set forth herein.

164. The disclosure of John Doe's private health information was highly offensive.

165. Dr. Hawkes' actions involved the wrongful publicizing of John Doe's private affairs.

166. She publicly exposed Plaintiff's private facts.

167. Defendant Hawkes intentionally disclosed facts in which there is no legitimate public interest.

168. The act of the disclosure itself is highly offensive and likely to cause serious mental injury to a person of ordinary sensibilities.

169. Plaintiff is aware his private information was shared with the paramour and other people.

170. Upon information and belief, Dr. Hawkes had no reason to share John Doe's confidential records and information for any reason other than to embarrass and/or harm him.

171. Defendant Hawkes is directly responsible for disclosing this information.

172. Defendants LHSD and Lexington Family Practice are vicariously responsible for this disclosure.

173. Defendants LHSD and Lexington Family Practice are also independently responsible for the improper disclosure of Plaintiffs medical records and information by virtue of negligent supervision, training and entrustment of an employee

174. As a direct and proximate result of Defendant Hawkes' invasion of privacy by virtue of wrongful publicizing of Doe's private affairs, Plaintiff suffered severe harms and losses. Plaintiff is entitled to recover from Defendants a sum of money to compensate him for all damages. Furthermore, Plaintiff is also entitled to recover a sum of punitive damages from all Defendants not subject to the CIA found to be liable for invasion of privacy. All damages should be in an amount determined by a jury.

FOR A FOURTH CAUSE OF ACTION
(Breach of Duty of Confidentiality)

175. Plaintiff hereby incorporates by reference and realleges every allegation of Paragraphs 1 through 174 as if fully set forth herein.

176. United States statutory law and South Carolina statutory and common law forbids a physician from disclosing confidential information about a patient's health.

177. It is well-known that healthcare professionals owe a duty to their patients not to

release or share protected health information for unauthorized purposes or to unauthorized persons.

178. Defendant Hawkes, acting in the course and scope of her employment with Defendants LHSD and/or Lexington Family Practice, wrongfully publicized and shared Plaintiff's confidential medical records and information with unauthorized people.

179. Defendant Hawkes owed a duty to Plaintiff to protect the confidentiality and privacy of his medical information.

180. Defendants LHSD and/or Lexington Family Practice owed a duty to Plaintiff to protect the confidentiality and privacy of his medical information.

181. Defendants LHSD and/or Lexington Family Practice owed a duty to all of its patients, including the Plaintiff, to have removed Dr. Hawkes' ability to access patient records when it became aware in September 2021, she was improperly accessing patient records and information

182. Defendants' actions, directly and vicariously, violated duties to Plaintiff and caused harms and losses.

183. As a direct and proximate result of Defendant Hawkes' breach of confidentiality, Plaintiff suffered severe harms and losses. Plaintiff is entitled to recover from Defendants a sum of money to compensate him for all damages. Furthermore, Plaintiff is also entitled to recover a sum of punitive damages from all Defendants not subject to the CIA found to be liable for breach of confidentiality for acts that were grossly negligent or reckless. All damages should be in an amount determined by a jury.

FOR A FIFTH CAUSE OF ACTION
(Reckless/Intentional Inflection of Emotional Distress)

184. Plaintiff hereby incorporates by reference and realleges every allegation of

Paragraphs 1 through 183 as if fully set forth herein:

185. Plaintiff is aware his treating physician shared his personal confidential information with her paramour and others.

186. Plaintiff is aware the information he shared with Dr. Kimberly Hawkes and his medical records were supposed to be confidential.

187. Defendant Hawkes' conduct was extreme and outrageous.

188. Defendant Hawkes' conduct was so extreme in degree as to go beyond all bounds of decency and is utterly intolerable in a civilized society.

189. Defendant Hawkes' conduct was intentional and/or reckless.

190. Defendant Hawkes consciously disregarded her statutory duty to Plaintiff to keep his medical information and records confidential.

191. Defendant Hawkes intentionally and/or recklessly published and/or broadcasted Plaintiff's confidential medical information to unauthorized people.

192. Defendant Hawkes knew or should have known that such conduct would cause severe emotional distress.

193. As a result of Defendant Hawkes' conduct, Plaintiff suffered severe emotional distress as well as physical manifestations, and/or injury arising from that severe emotional distress.

194. Defendants' conduct was outrageous and exhibited flagrant disregard for Plaintiff's interests and warrants the imposition of punitive damages.

195. The result of Defendants' (and/or their physicians and/or employees) conduct was the foreseeable injuries to Plaintiff.

196. Due to Defendants' actions, Plaintiff suffered physical symptoms capable of objective diagnosis.

197. As a direct and proximate result of Defendants' reckless and/or intentional infliction of emotional distress, Plaintiff suffered severe harms and losses. Plaintiff is entitled to recover from Defendants a sum of money to compensate him for all damages. Plaintiff is also entitled to recover a sum of punitive damages from all Defendants not subject to the CIA found to be liable for reckless or intentional infliction of emotional distress. All damages should be in an amount determined by a jury.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy)

198. Plaintiff hereby incorporates by reference and realleges every allegation of Paragraphs 1 through 197 as if fully set forth herein:

199. Upon information and belief, PRIOR TO Dr. Hawkes breach of Plaintiff's confidentiality, Defendants LHSD and LMC knew she had improperly accessed patient medical records and information.

200. This knowledge imputed a duty upon LHSD and/or Lexington Family Practice to properly investigate Dr. Kim Hawkes and take appropriate action regarding her breach of patient confidentiality.

201. Defendants were all aware Dr. Hawkes breached multiple patients' confidentiality and yet maintained her as an employee until December 13, 2021.

202. Defendants awareness of this grossly negligent conduct by Hawkes while allowing her to continue violating patient confidences was wrongful

203. There is no explanation as to why LHSD continued to allow Dr. Hawkes to violate patient confidences when they first became aware of it in September 2021.

204. Dr. Hawkes was obviously aware that she was violating patient confidences.

205. LHSD, Lexington Family Medicine and Dr, Kimberly Hawkes all conspired to hide her conduct from her patients.

206. The only reason for all defendants to enter into and continue this conspiracy is that Dr. Hawkes' presence made them all money.

207. Defendants did nothing to inform Plaintiff of Dr. Hawkes or LHSD's actions.

208. Not only did all Defendants conspire together for a nefarious reason, but they did it while purporting to promote an environment of patient safety at their facilities.

209. Defendants' active concealment of their knowledge about Hawkers violation of patient confidentiality, along with their concerted actions and failure to do anything to stop the continued violation of patient confidentiality is reckless and/or grossly negligent.

210. This conspiracy constitutes a failure to protect patients, including Plaintiff, from a medical provider's breach of confidentiality concerning patients' medical records and information and subsequent active concealment by failing to do anything to stop the continued violations by Dr. Hawkes.

211. The predicate acts necessary to constitute a conspiracy includes failure to stop known violations of patient confidentiality by Hawkes and active concealment of wrongdoing.

212. As a direct and proximate result of Defendants' conspiratorial actions regarding Plaintiff, he suffered severe harms and losses. Plaintiff is entitled to recover from Defendants a sum of money to compensate him for all damages. Plaintiff is also entitled to recover a sum of

punitive damages from all Defendants not subject to the CIA found to be liable for conspiracy. All damages should be in an amount determined by a jury.

FOR A SEVENTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

213. Plaintiff hereby incorporates by reference and realleges every allegation of Paragraphs 1 through 212 as if fully set forth herein.

214. As set forth above, Defendants failed to ensure that they would maintain and preserve the Plaintiff's medical records and information in a confidential manner.

215. LHSD, Lexington Family Medicine and Hawkes actively failed and/or concealed the repeated breaches of confidentiality by Dr. Hawkes.

216. The commission of repeated violation of patients confidentiality and active concealment of such actions by Defendants constitutes an act or practice that is unfair or deceptive and impacts the public within the meaning of the South Carolina Unfair Trade Practices Act.

217. The committing of such violative and concealing actions by defendants is evidence that these types of actions are capable of repeatedly harming the public.

218. These types of violative and concealing actions have occurred in the past.

219. These types of violative and concealing actions are likely to continue to occur without deterrence, and LHSD's and Lexington Family Practice's lack of policies and procedures create a potential for repetition of the unfair and deceptive acts.

220. Upon information and belief, all Defendants are aware of a number of instances where Hawkes or other medical providers in their network violated patient confidentiality and then they actively concealed it.

221. Upon information and belief, Defendant LHSD are or were in actual possession of electronic evidence that Hawkes was violating patient confidentiality.

222. The actions of LHSD in discharging the Plaintiff as a patient and failing to take action against one of their employees until her improper acts was common knowledge is evidence that there is little likelihood that the same conduct will cease or be deterred in any way without a substantial civil judgment against a company that, upon information and belief, grosses hundreds of millions of dollars a year.

223. Upon information and belief, Defendants willfully violated the South Carolina Unfair Trade Practices Act.

224. As a result of same, Plaintiff has suffered and continues to suffer damages.

225. Plaintiff is informed and believes that he is entitled to judgment against Defendants, jointly and severally, for unfair trade practices in an amount to be determined at trial, such amount to be trebled in accordance with the South Carolina Unfair Trade Practices Act, consequential damages, and the costs, expenses, and attorneys' fees of this action.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants for actual damages, consequential damages, and punitive damages (except against any entity/person whose actions are subject to the CIA) in an amount to be determined by the jury at trial, treble damages pursuant to the SCUTPA, attorneys fees, the costs and disbursements of this action, and for such other and further relief as this Court deems just and proper.

SIGNATURE PAGE TO FOLLOW

MCGOWAN, HOOD & FELDER, LLC

s/ S. Randall Hood
S. Randall Hood (S.C. Bar No.: 65360)
Whitney B. Harrison (S.C. Bar No. 100111)
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
(803) 324-1483 Facsimile
rhood@mcgowanhood.com
wharrison@mcgowanhood.com

LAW OFFICE OF BILL NETTLES

s/ John L. Warren III
John L. Warren III (S.C. Bar No.: 101414)
2008 Lincoln Street
Columbia, SC 29201
(803) 814-2826
SC Bar: 101414
jw@billnettleslaw.com

SALUDA LAW

s/ Judah VanSyckel
Judah VanSyckel, Esq. (S.C. Bar No. 79114)
137 E. Butler Street, Office 1
Lexington, SC 29072
803-939-6927
judah@saludalaw.com

WALKER LAW

s/ Paul J. Coyle
Paul J. Coyle (S.C. Bar No. 104884)
135 E. Main Street
Lexington, SC 29072
(803) 359-6194
Paul@walkerlaw.org

Rock Hill, South Carolina

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