

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 09-cv-01506-PAB-MEH

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**SONJA MORRIS,**

Plaintiff,

v.

**CITY OF COLORADO SPRINGS, doing business as MEMORIAL HEALTH SYSTEM,**

Defendant.

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**First Amended Complaint**

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COMES NOW Plaintiff, Sonja Morris, and for her Complaint against the Defendant, alleges the following:

**I. INTRODUCTION**

This case is about a nurse's right to complain about a surgeon who threw a 4" by 6" piece of bloody human tissue at her during open heart surgery. It is a proceeding for damages to redress the violation of the nurse's First Amendment right to petition and for damages resulting from sexual harassment.

**II. JURISDICTION**

1. This Court has jurisdiction pursuant to 28 U.S.C. §1331 & 1343 and 42 U.S.C. § 2000e-5(f)(3).

**III. VENUE**

2. The unlawful actions described below were committed in the state of Colorado. Venue is proper in the United States District Court for the District of Colorado under 28 U.S.C. § 1391(b).

#### **IV. PARTIES**

3. Sonja Morris is a female registered professional nurse. She was a member of the Heart Team at Memorial Hospital until she was wrongfully removed from the Team for complaining about the behavior of Dr. Mahan.

4. Memorial Health System operates Memorial Hospital and is an enterprise owned by the City of Colorado Springs. Memorial Health System provides comprehensive health services, including surgical services and inpatient hospital care at Memorial Hospital.

#### **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5. On December 10, 2008, Plaintiff filed a Charge of Discrimination against Defendant with the U.S. Equal Employment Opportunity Commission alleging discrimination on the basis of her gender and that she had been subjected to a hostile work environment because of her gender.

6. Plaintiff received a Right to Sue letter on June 23, 2009, allowing her ninety days within which to bring an action under Title VII.

7. This action was commenced within that ninety day period.

#### **VI. FACTUAL ALLEGATIONS**

8. Paragraphs 1 through 7 are incorporated herein.

9. Dr. Brian Mahan is currently the Chairman of the Department of Cardiac

and Thoracic Surgery at Memorial Hospital and a Member of the Memorial Hospital Heart Team.

10. Sonja Morris has been licensed as a registered professional nurse in Colorado since June 24, 1999, and has worked for Memorial Hospital since January, 2000.

11. In October, 2007, Ms. Morris started working as nurse on the Memorial Hospital Heart Team.

12. Performing as a member of the Heart Team is widely recognized within the hospital as a prestigious position for employees of Memorial, in addition to enhanced professional status serving on the Heart Team provides substantial amounts of paid overtime.

13. In June, 2008, Dr. Mahan approached Plaintiff from behind and hit her in the back of the head. Plaintiff told Dr. Mahan to stop.

14. Approximately two weeks later, Dr. Mahan again approached Plaintiff from behind and hit her in the back of the head. Plaintiff again told Dr. Mahan to stop.

15. On August 28, 2008, Plaintiff was assigned to assist Dr. Mahan with a pericardiectomy being performed after normal business hours.

16. With the exception of Plaintiff, all of heart team employees working during this procedure were male.

17. A pericardiectomy is the surgical removal of all or part of the patient's pericardium, the protective layer of tissue surrounding the heart.

18. During the operation on August 28, 2008, Plaintiff was at a work station

approximately fifteen feet away from the operating table where Dr. Mahan was performing the pericardiectomy.

19. Dr. Mahan cut and removed the pericardium from the patient.

20. The pericardial tissue Dr. Mahan removed from the patient was approximately four inches long and six inches wide, and covered with blood and other bodily fluids.

21. After removing the patient's pericardium, Dr. Mahan threw the patient's bloody pericardium at Plaintiff.

22. After the pericardium hit Plaintiff's leg and landed on the floor, Dr. Mahan jokingly said "Oh shit, I hit her. Can we get cultures on that?"

23. Dr. Mahan and other members of the heart team chuckled after seeing that Plaintiff had been struck by the pericardium.

24. As the heart team was in the middle of an after-hours procedure, Plaintiff could not leave the operating room to scrub the patient's blood and other fluids from her leg.

25. Plaintiff suffered humiliation as a result of Dr. Mahan's decision to make her the target for the thrown pericardium, and his callous reaction to striking her with bloody human tissue.

26. The incidents described above were reported to Memorial Hospital's Human Resources Department, no corrective action at all, such as an apology, was ever taken by Dr. Mahan or Memorial Hospital in relation to Plaintiff.

27. On December 10, 2008, Plaintiff sought to redress her grievance by

submitting a Notice of Claim to Defendants, claiming damages for being intentionally struck with bloody human tissue.

28. On December 17, 2008, Plaintiff received a letter from Carlene Crall, Defendant's Chief Human Resources Officer, informing Plaintiff that she was being removed from the Heart Team and transferred to the main operating room.

29. Plaintiff was transferred from the Heart Team because she filed a Notice of Claim against Memorial Health System and Dr. Mahan,

30. The decision to transfer Plaintiff from the Heart Team to the main operating room was made pursuant to a policy or custom of Memorial Health System to transfer or otherwise discipline employees who file Notices of Claim.

31. The transfer from the Heart Team to the main operating room because of the filing of the Notice of Claim caused Plaintiff to suffer present and future pecuniary losses, humiliation and emotional distress.

## **VII. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION (42 U.S.C. § 1983-VIOLATION OF FIRST AMENDMENT RIGHT TO PETITION)**

32. Plaintiff realleges all prior paragraphs and incorporates them herein.

33. Ms. Morris' filing of the Notice of Claim constituted a petition to the government for redress of grievances, a right guaranteed by the First Amendment of the United States Constitution.

34. Ms. Morris was not acting pursuant to her job duties when she engaged in her petitioning activity.

35. Ms. Morris' petition was on a matter of public concern.

36. Defendant Memorial Health System punished Ms. Morris for exercising her constitutional rights and deprived her of her rights, privileges and immunities secured by the Constitution, particularly her right of petition for the redress of grievances as guaranteed under the First Amendment.

37. Ms. Morris is entitled to a remedy for Defendant's violation of her right to petition pursuant to 42 U.S.C. § 1983.

**SECOND CAUSE OF ACTION  
(VIOLATION OF TITLE VII)**

38. Plaintiff realleges all prior paragraphs and incorporates them herein.

39. Defendant discriminated against Plaintiff because of her gender in violation of Title VII, 42 U.S.C. § 2000e-(2)(a), by engaging in, tolerating or failing to prevent the gender-based harassment alleged herein and by failing to take affirmative action to correct and redress these unlawful employment practices.

40. During Plaintiff's employment Dr. Mahan, acting without Plaintiff's consent and contrary to her stated wishes, touched her in a harmful and offensive manner on more than one occasion.

41. Plaintiff clearly indicated that the conduct was unwelcome. Plaintiff did not solicit or incite the conduct and she perceived the conduct to be offensive and/or undesirable.

42. This conduct and other incidents of harassment describe above were because of Plaintiff's gender.

43. The conduct suffered by Plaintiff was sufficiently pervasive and/or severe

to alter and did alter a condition of Plaintiff's employment and created an abusive working environment.

44. Plaintiff was detrimentally affected by the conduct and such conduct would have detrimentally affected a reasonable woman in Plaintiff's position.

45. The Defendant knew or should have known of the harassment described herein and Dr. Mahan's propensity to engage in such gender-based harassment and failed to implement prompt and appropriate corrective action.

46. The harassment directed at Plaintiff was either intended to cause her severe emotional distress or was perpetrated with malice or reckless indifference to the likelihood that it would cause such distress. Defendant is, therefore, liable to Plaintiff for all damages proximately resulting from the distress she has suffered relating to the conduct of Defendant.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

1. Damages for past and future emotional distress;
2. Past and future pecuniary damages;
3. Nominal damages;
4. Consequential damages;
5. Pre- and post- judgment interest at the highest statutory rate;
6. Costs and attorneys fees pursuant to Fed. R. Civ. P. 54 and 42 U.S.C. § 1988; and
7. All other legal or equitable relief the court deems appropriate.

**DEMAND FOR A JURY TRIAL**

Plaintiff demands a jury trial for all issues triable by jury.

Respectfully submitted on this 30th day of June, 2009.

CORNISH & DELL'OLIO

s/Ian D. Kalmanowitz

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