

**IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____
_____ DIVISION**

| | | |
|-----------------------------------|---|------------------|
| NAME OF PLAINTIFF _____ |) | |
| |) | |
| V. |) | NO. _____ |
| |) | |
| NAME OF DEFENDANT _____ |) | |
| |) | |
| |) | |

JURY TRIAL DEMANDED

COMPLAINT

This is an action to recover actual and punitive damages for discharge in violation of public policy, breach of contract, and malicious interference with contract. Plaintiff shows the Court the following facts to support this action:

I.

Plaintiff, _____, is an adult resident citizen of the state of _____. His address is _____.

Defendant, _____, is a corporation, which has its principle place of business and state of incorporation in _____, and may be served with process by service upon its registered agent, _____, at _____.

Defendant, _____, is an adult resident citizen of _____, _____ and may be served with process by service upon him at his place of employment at _____, _____.

II.

This Court has diversity jurisdiction under 28 U.S.C. Section 1332. Plaintiff is a citizen of the state of _____ and not of _____. Defendant has its principle place of business and state of incorporation in _____. There is more than \$_____ in controversy.

III.

Defendant, _____, under the employment contract attached hereto as Exhibit "A", employed plaintiff.

IV.

On _____, Defendant advised Plaintiff, by letter, of termination of his contract effective _____. See letter attached hereto as Exhibit B.

V.

On _____, Defendant removed Plaintiff from the clinic and declined to allow him to see patients any further. See letter attached hereto as Exhibit "C."

VI.

Defendant, _____, was guilty of breach of contract in its termination of Plaintiff. Specifically, the contract with Plaintiff states, in paragraph 4(b):

Employer and employee acknowledge and agree that employee has the sole responsibility and authority to direct and perform the medical, professional, and ethical aspects of employee's medical practice and employee agrees that employee has the sole responsibility to obey laws and regulations as they pertain to employees' practice of medicine.

Defendant, _____, breached this aspect of the contract because it terminated the contract because it was unwilling to allow Plaintiff to "perform the medical, professional, and ethical aspects" of Plaintiff's medical practice and to give him "sole responsibility" for these areas as required by the contract. Specifically, the employer insisted, through its agent or agents, upon Plaintiff's performing the medical practice so as to maximize income, rather than according to the professional and ethical aspect of the profession. In the specialty of rheumatology, Plaintiff was an expert, but Defendant, _____, insisted upon ignoring Plaintiff's ability to practice this profession in favor of carrying on the practice in such a way that would maximize income, notwithstanding the fact that this method jeopardized patient care and was not in keeping with the high standards of the profession.

VII.

While Plaintiff recognizes that contract clause 5a.v. allows termination upon ninety days notice, this provision must be read in light of paragraph 4(b) which disallows termination when it would be for reasons interfering with Plaintiff's ability to have the "sole responsibility" and authority to direct and perform the medical, professional, and ethical aspects of Plaintiff's medical practice. For a description of the ways Defendants so acted to interfere with Plaintiff's sole responsibility for conducting his practice, see paragraph X, A,B,C and paragraph XI.

VIII.

Terminating Plaintiff before the end of the contract for reasons based upon the refusal of Defendant, _____, to allow Plaintiff to "perform the medical, professional, and ethical aspects of employee's medical practice" was a breach of contract entitling Plaintiff to

damages for lost income in the amount he would have earned from the date he was improperly removed from the medical practice until the termination date of the contract which was through _____.

IX.

Defendant, _____, violated the ethics of the medical profession and its obligation of good faith by writing the letter, Exhibit "C." Through Exhibit "C," Defendant, _____, decided to take Plaintiff's patients for itself without giving the patients a choice as to the physician whom they wish to have perform medical services for him. Defendant, _____, further carried out this scheme to obtain patients from Plaintiff without giving patients the choice as to their medical provider through the letters it wrote to all of Plaintiff's patients, an example is attached hereto as Exhibit "D." Under established principles of medical ethics, a patient must be given the choice of physicians and not arbitrarily directed to see a physician employed by _____. Except for Exhibits "C" and "D," Plaintiff would have been able to retain a patient base and would have been able to continue his practice of medicine in the _____ area. Because Defendant, _____, through Exhibits "C" and "D," in violation of medical ethics and good faith obligation of contract, took Plaintiff's patient base, Plaintiff was unable to continue a practice in the _____ area and unable to obtain employment until _____ when he obtained employment in _____.

X.

Additionally, Plaintiff's termination violated the public policy of the state of _____ and represented a refusal of Defendant, _____, to carry out its contractual obligation with Plaintiff in good faith. Specifically, Defendant violated public policy and failed to carry out its contractual obligation in good faith by terminating Plaintiff because he insisted upon proper medical care for his patients, rather than basing medical decisions solely upon maximization of income. Plaintiff insisted upon refraining from practices which jeopardize the patients' interest, such as excessive prescriptions of pain medications, including narcotics, and insisted upon taking those steps that were in the best medical interest of the patient, notwithstanding that this would not necessarily maximize income for the clinic. Specific examples of occurrences which proximately resulted in Plaintiff's discharge and which constitutes interference in Plaintiff's sole responsibility to conduct his practice are:

A. A patient, _____, desired Plaintiff to continue narcotics treatment, which had been prescribed by another physician. Plaintiff declined to prescribe further narcotics for this treatment because it was not medically indicated and this further prescription would be in violation of medical ethics and would not be in the best interest of the patient. The patient, who was not a physician, became angry at Plaintiff and refused referral to physical therapy, which was medically indicated. Agents of Defendant desired that Plaintiff give the patient whatever would "please her," so as to assure that she remain a patient of Defendant, _____, since this would tend to maximize the income of Defendant and would hold down patient complaints.

B. A patient, _____, desired to obtain medication from Plaintiff, which, in Plaintiff's opinion, was not medically indicated. It was Plaintiff's opinion, based upon his

medical experience and his training as a rheumatologist, that the patient should be examined by a psychologist. If Defendant, _____, was upset about Plaintiff's failure to please _____, and desired that the patient be "pleased," so that she would remain a patient, even though it was in the patient's best medical interest not to be treated by medication, but to obtain a psychological examination.

C. A patient, _____, became distressed at Plaintiff because he recommended psychological counseling for the patient, and delayed agreeing to assist _____ in obtaining her social security disability, in lieu of psychological treatment designed to alleviate her symptoms. Defendant, _____, desired that Plaintiff please _____, so as to keep her as a patient, rather than afford the medical advice, which Plaintiff believed was medically indicated. Referring _____, or other patients, for psychological treatment generates no income for Defendant, _____, since _____, does not employ a psychologist or psychiatrist.

It is, thus, in the financial interest of Defendant, _____, to retain patients through prescribing medications, rather than referring them for needed psychological or psychiatric treatment, or physical therapy services, which are not provided by Defendant, _____.

XI.

Defendant, _____, and particularly, Defendant _____, became angry with Plaintiff because of Plaintiff's reluctance to retain a hospital patient by _____ in lieu of transferring this patient to a psychiatrist, which would be in the best interest of the patient, but would not be in the best interest of Defendant, _____, and its desires to maximize income. Defendants were distressed at Plaintiff because of his hesitancy to see this suicidal patient in lieu of transferring the patient to the psychiatric service. The specific anger of Defendants over this patient, who had produced probable evidence that she ingested rat poison, was Plaintiff's hesitancy to see this patient over a weekend rather than attend to this patient's immediate needs by seeing that the patient was transferred to the psychiatric service. Defendants desired that Plaintiff continue to see this patient and delay the need that the patient be transferred to the Behavioral Medicine Unit, for which Defendant, _____, would receive no income.

XII.

In summary, Plaintiff's discharge was caused by Plaintiff's recommendations that certain patients obtain services from entities other than Defendant, _____, including psychiatric and psychological treatment and physical therapy in lieu of treatment by medication, which was the service that Defendant, _____, provided. Plaintiff's advice in this regard was consistent with the _____ public policy, which is to minimize the excessive use of narcotics and consistent with the contract and public policy that patients be treated in the manner which the physician deems medically indicated, whether or not such treatment would maximize income of the physician.

XIII.

Defendant _____ is a rheumatologist employed by Defendant, _____, as Plaintiff was. Defendant _____'s opinion of the operation of medical practice differed from Plaintiff's in that it was _____'s opinion that patients should be "kept happy," and not referred to other specialists who could more appropriately care for them, especially within the mental health field. In other words, it was Defendant _____'s philosophy that those steps should be taken which would maximize the income of Defendant, _____. Defendant _____ desired to operate the practice with an emphasis mostly on maximizing income, whereas Plaintiff believed in operating the medical practice in a manner, which maximized the interest of the patient, even if this did not maximize the income of Defendant, _____.

XIV.

Defendant _____ and Plaintiff had numerous disagreements based upon the essential differences between them as to the proper carrying on of medical practice. Defendant _____ became so distressed during these disagreements that he notified Defendant, _____, that he or Plaintiff would have to be discharged. Thereafter, Defendant, _____, determined to discharge Plaintiff because Defendant _____ was more lucrative to them than was Plaintiff. Defendant _____'s medical philosophy resulted in maximization of income to Defendant, _____.

XV.

Defendant _____ desired to be rid of Plaintiff, not for any reasons related to proper medical care, but because of malicious reasons arising from his desires to maximize the income of Defendant, _____, and desire to maximize income, rather than referring patient for needed outside services. Defendant _____'s actions in insisting that either he or Plaintiff be discharged represented a malicious interference with contract and render Defendant _____ liable for actual and punitive damage for causing Defendant, _____, to breach its contract with Plaintiff.

XVI.

Plaintiff has suffered lost income, mental anxiety and stress and embarrassment as a result of his discharge.

XVII.

Defendant _____ is liable to Plaintiff for malicious interference with contract and Defendant, _____, is liable to Plaintiff for breach of contract. Both Defendants are liable to Plaintiff for the tort of bad faith and for violation of medical ethics by infringing upon patient's choice in choosing a physician.

PRAYER

Plaintiff prays for actual and punitive damages in an amount to be determined by a jury and for reasonable attorney's fees.

Respectfully submitted,
