

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2022-CP-07-01079

JERILYN JEAN VOGELSANG, an )  
Individual, )  
 )  
Plaintiff, )  
 )  
v. )

AMENDED ORDER

CHATHAM CHIROPRACTIC & )  
INTEGRATED HEALTH SERVICES LLC, )  
a South Carolina Limited Liability )  
Company; d/b/a KALENSKY )  
CHIROPRACTIC, ROBERT KALENSKY, )  
as individual and officer of CHATHAM )  
CHIROPRACTIC & HEALTH )  
INTEGRATED SERVICES LLC; NICOLE )  
TODD, an individual; and DOES 1-50, )  
inclusive, whose true names are unknown, )  
 )  
Defendants. )

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SC Court of Appeals

These matters came before me for a virtual hearing on July 11, 2025, pursuant to the defendants' Motion to Compel and for Sanctions and their Motion for Partial Summary Judgment both filed May 16, 2025, the plaintiff's Motion to Compel filed June 9, 2025, and Motion "Regarding" Deposition filed June 19, 2025. Present at the hearing were Allen W. Johnson, Esquire, counsel for plaintiff, the plaintiff Jerilyn Jean Vogelsang, John R.C. Bowen, Esquire, counsel for the defendants, and Dr. Robert Kalensky, as an individual defendant and as representative of the corporate defendants.

The defendants' Motion to Compel and for Sanctions seek compliance with the Court's Order of March 14, 2025, for the plaintiff's failure to "fully respond" to the defendants' Interrogatories and to produce the materials sought by defendant, and to "fully comply" with the

deposition subpoena to plaintiff requiring her to produce certain material. This Order further allowed defendants to seek sanctions should plaintiff not comply. The defendant's Motion for Partial Summary Judgment seeks Summary Judgment on numerous causes of action asserted by plaintiff.

Plaintiff's Motion to Compel seeks to require the defendant to produce material in written form rather than by the "Zip" drive which the defendants provided to the plaintiff in response to plaintiff's Requests for Production. The plaintiff's Motion Regarding Deposition seeks an Order of this Court allowing the plaintiff to depose a Mr. Brian Cornwell (who the plaintiff acknowledges is not a resident of South Carolina) in the Beaufort County Courthouse.

Having considered the Court's file on this case, the Memoranda and Affidavit of Brian Cornwell submitted by defendants' counsel, the plaintiff's Response to Defendants' Motion to Compel, the arguments of counsel, the excerpts of the deposition transcripts of the plaintiff, and the applicable law and procedural rules, I find and conclude as follows:<sup>1</sup>

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Honorable Marvin H. Dukes, III in his Order filed March 14, 2025, ordered the plaintiff to fully respond to defendants' Interrogatories and produce the materials sought by defendants' Requests for Production no later than thirty (30) days from that date. The Order further provided that plaintiff must fully comply with the subpoena issued for her deposition, and that should she fail to comply, the defendants may apply to this Court for appropriate sanctions.

2. The plaintiff failed to fully respond to defendants' Interrogatories or to produce

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<sup>1</sup>No opposing or supporting Memoranda or any affidavits were submitted to the court by plaintiff's counsel regarding plaintiff's motions or defendants' Motion for Partial Summary Judgment.

the materials sought by defendants' Requests for Production.

3. The plaintiff failed to bring any documents to her deposition in response to the subpoena requiring her to do so.

4. Mr. Brian Cornwell's sworn affidavit attests to the fact that he is not a resident of the State of South Carolina and is, thus, not subject to this court's personal jurisdiction.

5. The deposition transcript excerpts submitted to this court show that during the re-convened deposition of plaintiff held on April 29, 2025, plaintiff and her counsel improperly disrupted the examination of the plaintiff by making "speaking objections" suggesting to plaintiff responses, engaged in frequent improper conversations, interjected insulting and demeaning comments concerning defendants' counsel, refused to answer questions, interposed improper objections, and refused to respond to counsel's questions or interposed impermissible objections.

6. The plaintiff acknowledged under oath that there was no publication to third parties of any defamatory material.

7. The plaintiff acknowledged under oath that during the times relevant to this action, she was not an employee of defendants but was an independent contractor.

8. The plaintiff acknowledged under oath that at no time has she sought any medical or psychological treatment nor been prescribed any medications for any alleged emotional distress and has no bills or expenses related to emotional distress.

9. Plaintiff's counsel acknowledged during the hearing that there is no private cause of action for the unauthorized practice of medicine in South Carolina.

10. In South Carolina, a claim for breach of the implied covenant of good faith and fair dealing is not a separate cause of action from a breach of contract claim.

11. Under well settled case law in South Carolina, some proof of medical or psychological treatment as well as damages are required to support a claim for a claim of Negligent or Intentional Infliction of Emotional Distress or Outrage. Since there is no dispute that plaintiff has neither sought nor has had any medical or psychological treatment, has no diagnosis, has not been prescribed any medication, or has any ascertainable damages resulting from any alleged intentional or negligent infliction of emotional distress, the defendants are entitled to summary judgment as a matter of law on these claims.

12. In order to maintain an action for defamation there must be a publication to a third party of the defamatory material. Here the plaintiff admits under oath that there has been no publication of any defamatory statement to any third party. Since there has been no publication of any alleged defamatory material, defendants are entitled to summary judgment as a matter of law on the defamation cause of action.

13. South Carolina law, and specifically Title 40, does not provide for a private right of action for the unauthorized practice of medicine. Defendant Nicole Todd is entitled to summary judgment on this claim as a matter of law.

14. Independent contractors are not covered by the South Carolina Wage Payment Act (S.C. Code Ann. " 41-10-10 to 41-10-110). Plaintiff has testified under oath that she was not an employee of the defendants but was rather an independent contractor. For this reason, defendants are entitled to summary judgment on the wage claim as a matter of law.

**WHEREFORE, IT IS ORDERED ADJUDGED AND DECREED** that:

1. Defendants' Motion for Partial Summary Judgment should be, and is hereby granted as to Plaintiff's Sixth Cause of Action for Negligent Infliction of Emotional Distress.

2. Defendants' Motion for Partial Summary Judgment should be, and is hereby granted as to Plaintiff's Seventh Cause of Action for Defamation.

3. Defendants' Motion for Partial Summary Judgment should be, and is hereby granted as to Plaintiff's Ninth Cause of Action for Unpaid Wages.

4. Defendants' Motion for Partial Summary Judgment should be, and is hereby granted as to Plaintiff's Eighth Cause of Action for Unauthorized Practice of Medicine.

5. Defendants' Motion for Partial Summary Judgment should be, and is hereby granted as to Plaintiff's Eleventh Cause of Action for Intentional Infliction of Emotional Distress.

6. Defendants' Motion for Partial Summary Judgment should be, and is hereby denied as to the remaining causes of action.

7. The Defendants' Motion to Compel is granted as to Interrogatory #1 (Plaintiff must fully respond regarding witnesses), Interrogatory #2 (Plaintiff must fully respond regarding insurance policies), Interrogatory #6 (Plaintiff must fully respond regarding the medical treatment she has received), Interrogatory #7 (Plaintiff must fully respond regarding any prior criminal record), Interrogatory #9 (Plaintiff must fully respond regarding her employment record), Interrogatory #10 (Plaintiff must fully respond regarding any prior civil cases), Interrogatory #13 (Plaintiff must fully respond regarding her phone numbers from cell phones she owned or used in 2016), and Interrogatories #14, 15, 21, and 23 (Plaintiff must fully respond regarding electronic media). Interrogatory #12 is moot based on the prior ruling for the Motion for Partial Summary Judgment.

8. Defendants' Motion to Compel is granted as to Requests for Production numbered 1-5 and 7.

9. Plaintiff has thirty (30) days to fully and completely respond to these interrogatories and requests for production or appropriately prepare a privilege log. Failure to do so shall result in sanctions under Rule 37 SCRPC shall fully and completely respond to these interrogatories and Requests for Production or prepare and submit a privilege log to defendants' counsel within thirty (30) days of the date hereof. Plaintiff's failure to comply shall result in Sanctions under Rule 37, SCRPC.

10. Plaintiff's Motion to Compel is denied.

11. As to the Plaintiff's Motion Regarding Deposition, the court invites the parties to research the procedure for taking the deposition.

**AND IT IS SO ORDERED.**

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Lawton McIntosh  
Judge, 14<sup>th</sup> Judicial Circuit

\_\_\_\_\_, South Carolina  
July \_\_\_\_, 2025



Beaufort Common Pleas

**Case Caption:** Jerilyn Jean Vogelsang VS Chatham Chiropractic & Integrated Health Services Llc , defendant, et al  
**Case Number:** 2022CP0701079  
**Type:** Amended/Other

S/R. LAWTON McINTOSH

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