

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-26-01907

Jami Lee Gray,

Appellant,

v.

McLeod Health, Inc.,

Respondent.

**MOTION TO AMEND NOTICE OF APPEAL AND  
SUBSTITUTE EXHIBIT TO NOTICE OF APPEAL**

Appellant filed her Notice of Appeal on July 20, 2017, appealing the Order of the Honorable Larry B. Hyman, Jr., dated and filed June 23, 2017. When the Notice was filed, however, Appellant filed the incorrect Order in error and referenced the earlier Order. In fact, Appellant consented to the June 23, 2017 Order dismissing her Whistleblower claim, which was inadvertently attached, instead of the June 27, 2017 Order dismissing her claim for wrongful termination in violation of public policy. Appellant, therefore, respectfully moves this Court to amend the Notice of Appeal to reflect the June 27, 2017 Order, and to substitute the Order originally attached and filed with the Notice of Appeal with the enclosed Order.

Counsel for Respondent does not consent to this Motion.

*[Signature Block on Following Page]*

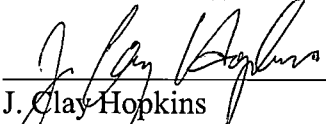
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SC Court of Appeals

August 2, 2017

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IN THE STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Jami Lee Gray,

Plaintiff,

v.

McLeod Health, Inc.,

Defendant.

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2017-CP-26-01907

) **PROPOSED ORDER GRANTING**  
) **DEFENDANT'S PARTIAL MOTION**  
) **TO DISMISS AS TO PLAINTIFF'S**  
) **PUBLIC POLICY DISCHARGE**  
) **CLAIM**

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Plaintiff Jami Lee Gray (hereafter "Plaintiff") filed her Complaint in this case on March 22, 2017, asserting causes of action which allegedly arose out of her employment with and separation from Defendant. (*See generally* Pl. Compl.) Defendant McLeod Health, Inc. (hereafter "Defendant") filed its Answer on April 24, 2017.

On April 24, 2017, Defendant also filed its Notice of Motion and Partial Motion to Dismiss based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. In particular, Defendant's Motion asked the Court to dismiss Plaintiff's cause of action under the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, *et seq.* and wrongful discharge in violation of public policy claim. Defendant's motion came before the Court for a hearing on June 5, 2017. Both parties were represented by counsel. During the hearing, the Court granted Defendant's motion as to Plaintiff's South Carolina Whistleblower Act claim.<sup>1</sup> Having considered the parties' submissions and arguments presented, the Court hereby grants Defendant's Motion as to Plaintiff's claim for wrongful discharge in violation of public policy.

<sup>1</sup> The Court has previously issued a written order as to the dismissal of Plaintiff's claim under the South Carolina Whistleblower Act.

### SUMMARY OF RELEVANT FACTS

Plaintiff alleges that she was Practice Manager at Defendant's McLeod Neurology Seacoast located in Horry County, South Carolina. (*Id.* at ¶ 3.) Plaintiff alleges that during her employment she became aware of unlawful practices occurring at the Practice. (*Id.* at 7.) In particular, Plaintiff contends that during her employment that she became of aware of fraudulent accounting and unlawful prescription dissemination practices occurring at the Practice. (*Id.* at ¶ 22.) Plaintiff further contends that she reported the allegedly unlawful practices to Defendant. (*Id.*) Plaintiff also alleges that during a work meeting, two of her supervisors asked Plaintiff to review documents containing private patient information. (*Id.* at ¶ 14.) Plaintiff alleges that she was required to review the documents over her objections. (*Id.*) Plaintiff contends that she was terminated in retaliation for opposing and disclosing to Defendant the allegedly unlawful practices. (*Id.* at ¶ 22.)

### MOTION TO DIMISS STANDARD

In ruling on a motion to dismiss, the circuit court should consider the facts alleged in the pleadings in the light most favorable to the nonmoving party, but should grant the motion when such facts and the reasonable inferences therefrom do not support recovery under any theory. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (S.C. 1999). While the "well-pleaded facts in the complaint" are deemed admitted, conclusions of law set forth in the pleadings are not deemed admitted. *Carolina Winds v. Joe Harden Builder*, 297 S.C. 74, 374 S.E.2d 897, 899 (S.C. App. 1988). Likewise, while all reasonable inferences are to be drawn in the light most favorable to the non-moving party, inferences arising from such party's pleadings are not binding upon the Court. *Id.*

South Carolina is a “fact pleading” jurisdiction, rather than a “notice pleading” jurisdiction. S.C. R. Civ. P. 8(a)(2); *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (distinguishing pleading standards under the SCRCF from the “more lenient” standards under federal rules). Rather than merely pleading conclusions of law, a party seeking relief must set forth assertions of fact that give rise to relief. *Charleston County School District v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 365 (Ct. App. 2001).

### DISCUSSION

Plaintiff contends that her wrongful discharge in violation of public policy claim should survive Defendant’s motion because the Complaint contains allegations that Plaintiff was terminated for “reporting” and “opposing” purportedly unlawful conduct. On the other hand, Defendant argues that the public policy exception to the at-will employment doctrine is inapplicable to the factual scenario set forth in Plaintiff’s Complaint. This Court agrees with Defendant.

In South Carolina, the default employment status is at-will, meaning that an employee may be terminated at any time, for any reason, with or without cause. *See e.g. Hessenthaler v. Tri-County Sister Help, Inc.*, 365 S.C. 101, 616 S.E.2d 694, 697 (S.C.2005)(citations omitted). Nevertheless, South Carolina Supreme Court has held that an employee who otherwise may be terminated for any reason or no reason at all may assert a cause of action where there has been a retaliatory discharge in violation of a clear mandate of public policy. *See Barron v. Labor Finders of South Carolina*, 393 S.C. 609, 614 (2011).

It is well-settled that the public policy exception to at-will employment applies in situations where either: (1) the employer requires the employee to violate the law; or (2) the reason for the termination itself is a violation of criminal law. *Id.* And while the Supreme Court of South

Carolina has stated that the public policy exception is not limited to those two situations, it has stressed that the exception has not been recognized in any other scenario. *See Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 243, 768 S.E.2d 385, 387 (2015)(“[w]hile we have made clear that the exception “is not limited to these situations,” we have specifically recognized no others”).

Plaintiff contends that the Complaint’s allegation of retaliatory discharge for reporting unlawful conduct creates an actionable claim under the public policy exception sufficient to survive a motion to dismiss. But as Defendant correctly points out in its supporting memorandum, the Supreme Court has expressly declined to extend the public policy exception to such scenarios. (Def. Supp. Memo. at pp. 4-6.)

The South Carolina Supreme Court addressed this issue directly in *Taghivand*. In that case, a former employee, who was terminated for reporting a suspected crime, brought a public policy discharge claim against his former employer in federal court. 411 S.C. at 242. In answering the federal court’s certified question on the matter, the South Carolina Supreme Court held that the public policy exception to at-will employment is inapplicable in scenarios where an employee is terminated for reporting suspected unlawful conduct. *Id.* at 248. The Supreme Court reasoned that the State Legislature has not articulated a clear mandate of public policy extending protection to employees who report suspected crimes from retaliatory discharge. The Court further provided that “[a]bsent a more clear and articulable definition of policy from the General Assembly regarding those who report suspected crimes, we refuse to broaden the exception to the at-will employment doctrine.” *Id.*

The Supreme Court’s reasoning in *Taghivand* is further supported by the Legislature’s decision to statutorily limit the types of whistleblower retaliation claims prohibited by law. The South Carolina Whistleblower Act—which prohibits retaliation claims against employees who

report violations of the law—only protects *public sector employees* and employees who work for state-sponsored entities. The Legislature’s decision to expressly exclude private sector employee’s (like Plaintiff) from the Whistleblower Act’s protections shows there is no mandate of public policy for protecting individuals who report suspected crimes from a retaliatory discharge.<sup>2</sup>

Construing all facts in the light most favorable to Plaintiff, her allegations of retaliatory discharge based on the reporting of suspected unlawful conduct is insufficient to overcome Defendant’s motion. The highest court in this State has considered and rejected the exact premise put forth by Plaintiff.<sup>3</sup>

### CONCLUSION

For the forgoing reasons, Defendant’s Partial Motion to Dismiss as to Plaintiff’s Public Policy Discharge claim is GRANTED.

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<sup>2</sup> Notably, among the many forms of retaliatory discharge prohibited by the Legislature via statute, there is no law protecting employees from wrongful discharge or retaliation based on reporting suspected violations of the law. *See e.g.* S.C. Code Ann. § 1-13-80 (employment discrimination); S.C. Code § 41-1-20(union membership); S.C. Code § 41-1-70(jury duty) S.C. Code. § 41-1-80(worker’s compensation); S.C. Code § 41-1-85 (use of tobacco products).

<sup>3</sup> The Court notes that Plaintiff has insinuated that she was required to violate the HIPPA Privacy Rule when two of her supervisors requested that she review documents containing sensitive patient information during a work meeting. (Pl. Compl. at 14.) But this argument does nothing to save this claim from dismissal. The HIPPA Privacy Rule prohibits covered entities from making certain *third-party disclosures* of patient information; it does not prohibit *internal disclosures* of protected patient information for operational purposes (including general administrative or business purposes). *See* 45 C.F.R. § 164.506(excluding internal disclosures for internal healthcare operational purposes); *and* 45 C.F.R. § 164.501(defining “healthcare operations” including general administrative and business management purposes). Even if Plaintiff’s allegations were true—and she was asked to review sensitive patient information by her supervisors in her capacity as Practice Manager—there was no third party disclosure sufficient to violate the Privacy Rule. Thus, HIPAA fails to provide the public policy mandate Plaintiff needs to ungird her claim.

**IT IS SO ORDERED.**

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The Honorable Larry B. Hyman  
Circuit Court Judge, 15<sup>th</sup> Circuit

This \_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_, South Carolina

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Horry Common Pleas

**Case Caption:** Jami Lee Gray VS Mcleod Health Inc

**Case Number:** 2017CP2601907

**Type:** Order/Other

So Ordered

s/ Larry B. Hyman 2152

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-26-01907

Jami Lee Gray,

Appellant,

v.

McLeod Health, Inc.,

Respondent.

**PROOF OF SERVICE**

I certify that I have served the Motion to Amend Notice of Appeal and Substitute Exhibit to Notice of Appeal on Respondent's counsel via United States Mail, postage prepaid, on August 2, 2017, addressed to their attorney of record as follows:

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•ALSO ADMITTED IN  
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†SOUTH CAROLINA  
CERTIFIED MEDIATOR

August 2, 2017

## VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Jami Lee Gray v. McLeod Health, Inc.  
Civil Case No.: 2017-CP-26-01907

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Appellant's Motion to Amend Notice of Appeal and Substitute Exhibit to Notice of Appeal in the above referenced matter. Also enclosed is our firm's check in the amount of \$25.00 for the filing fee. Please file the Motion and return a clocked copy to me in the enclosed self-addressed envelope.

By copy of this letter, I am serving the Motion on counsel for the Respondent.

Thank you for your assistance and I stand ready to answer any questions you or the Court may have.

Sincerely,

HOPKINS LAW FIRM, LLC



Kathryn Y. Roberts  
Litigation Paralegal

/kyr  
Enclosures

cc: Michael Montgomery Shetterly, Esquire  
David Lee Harris, Jr., Esquire  
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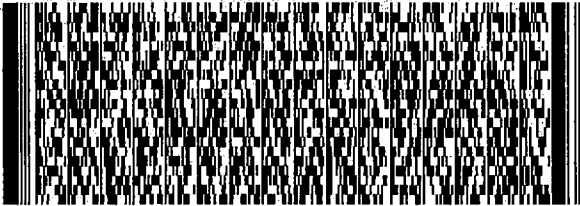
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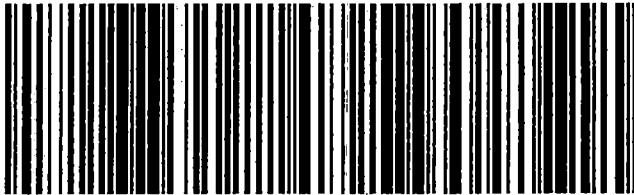
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