

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

Appellate Case No. 2017-001578
Case No. 2017-CP-26-01907

RECEIVED

AUG 17 2017

SC Court of Appeals

Jami Lee Gray, Appellant,

v.

McLeod Health, Inc., Respondent.

**RESPONDENT'S RETURN IN OPPOSITION TO
APPELLANT'S MOTION TO AMEND NOTICE OF APPEAL
AND SUBSTITUTE EXHIBIT TO NOTICE OF APPEAL**

Introduction and Background

This Return in Opposition to Appellant's Motion to Amend Notice of Appeal and Substitute Exhibit to Notice of Appeal is submitted by Respondent McLeod Health, Inc. (hereafter "McLeod"). Appellant Jami Lee Gray (hereafter "Gray") requests that the Court amend the Notice of Appeal filed in this action on July 20, 2017, and substitute the exhibit attached thereto.¹

Gray seeks to revise the subject of this appeal, which is currently the Honorable Larry B. Hyman's June 23, 2017 order dismissing her S.C. Whistleblower Act claim, to address Judge

¹ See Gray's Motion to Amend Notice of Appeal and Substitute Exhibit to Notice of Appeal, dated August 2, 2017, attached hereto as Exhibit A.

Hyman's June 27, 2017 order dismissing her cause of action for wrongful discharge in violation of public policy.²

A. Judge Hyman's orders dismissing Gray's employment law claims.

On March 22, 2017, Gray filed the Complaint in this action in the Court of Common Pleas, Fifteenth Judicial Circuit, County of Horry. The Complaint alleges four causes of action arising from Gray's employment with and separation from McLeod, including: (1) violations of the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, *et seq.*; (2) wrongful discharge in violation of public policy; (3) libel; and (4) slander *per se*.³

On April 24, 2017, McLeod filed its Notice of Motion and Partial Motion to Dismiss based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.⁴ McLeod's Motion asked the Circuit Court to dismiss Gray's claim based on the S.C. Whistleblower Act and her claim of wrongful discharge in violation of public policy.⁵

McLeod's Motion came before the Honorable Larry B. Hyman, Jr. for a hearing on June 5, 2017. Both parties were represented by counsel. During the hearing, Judge Hyman granted McLeod's Motion as to Plaintiff's S.C. Whistleblower Act claim. A written order dismissing Gray's S.C. Whistleblower Act claim was issued June 23, 2017 ("June 23 Order").⁶ Judge

² *Id.*

³ *See generally* Gray's Complaint dated March 22, 2017, attached hereto as Exhibit B.

⁴ McLeod's Notice of Motion and Partial Motion to Dismiss dated April 24, 2017, attached hereto as Exhibit C.

⁵ *Id.*

⁶ Judge Hyman's Order dismissing Gray's S.C. Whistleblower Act Claim, dated June 23, 2017 attached hereto as Exhibit D.

Hyman issued an order dismissing Gray's claim of wrongful discharge in violation of public policy on June 27, 2017 ("June 27 Order").⁷

B. Gray's Notice of Appeal.

Pursuant to South Carolina Appellate Court Rule ("SCACR") 203(b), Gray had until July 24, 2017, to appeal the June 23 Order.⁸ Gray had until July 27, 2017, to file a timely appeal of the June 27 Order.⁹

On July 19, 2017, Gray filed the Notice of Appeal in this action.¹⁰ The Notice of Appeal states that the subject of this appeal is "the order of the Honorable Larry B. Hyman, Jr. dated **June 23, 2017.**"¹¹ The Notice further provides that Gray received written entry of the Order on June 23, 2017.¹² Gray attached a copy of the June 23 Order as an exhibit to the Notice filed with this Court.¹³ Gray's Motion acknowledges that Gray did not reference or attach the June 27 Order to the Notice.¹⁴

⁷ Judge Hyman's Order dismissing Gray's Wrongful Discharge in Violation of Public Policy Claim, dated July 27, 2017, attached hereto as Exhibit E.

⁸ See SCACR 203(b)(1) ("[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment").

⁹ *Id.*

¹⁰ Gray's Notice of Appeal filed with the Circuit Court was dated July 18, but filed July 19, 2017, without the order being appealed as an attachment (Attached as Exhibit F). The copy of the Notice of Appeal filed with the South Carolina Court of Appeals was similarly dated July 18, but mailed July 19, and included a copy of the June 23, 2017 Order. (Attached as Exhibit G).

¹¹ See Exhibit F; *and* Exhibit G (emphasis added).

¹² See Exhibit G.

¹³ See Exhibit F; *and* Exhibit G.

¹⁴ See Exhibit A.

Argument and Authorities

The Court should deny Gray's Motion on the grounds that: (a) her motion does not comply with the Court's requirements for the submission of written motions; and (b) she has failed to file a timely notice of appeal as to the June 27 Order. Additionally, the Court should be not swayed by any attempt by Gray to mask her jurisdictional failures as mere clerical errors.

A. Gray's Motion should be denied because it does not comply with SCACR 240.

Rule 240(c) of the SCACR sets forth requirements relating to the form and content of motions and petitions filed with this Court.¹⁵ In particular, SCACR 240(c)(2) requires that any motion filed with the Court be accompanied by "a memorandum with citation of authorities in support of the motion."¹⁶ Rule 240(c)(3) further contemplates that the moving party cite to the Record on Appeal, the Appendix, or other documents to support the motion.¹⁷ Rule 240(g) provides that a moving party's failure to comply with any part of the Rule 240 may be deemed abandonment of the subject motion.¹⁸ Moreover, SCACR 260(a) states that an appellant's failure to comply with any provision of the SCACR shall result in an order of dismissal from the Court Clerk.¹⁹

¹⁵ See SCACR 240(c)(titled "Form and Content of Motions and Petitions").

¹⁶ SCACR 240(c)(2).

¹⁷ SCACR 240(c)(3).

¹⁸ SCACR 240(g)("[f]ailure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition").

¹⁹ SCACR 260(a)("[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court").

The Court should deny Gray's Motion based on its failure to conform to SCACR 240(c). Grey's Motion was not filed with an accompanying memorandum citing relevant authorities in support of Gray's position.²⁰ It also fails to cite any record evidence to support its factual assertions.²¹ Gray's Motion merely consists of factual assertions unsupported by any record evidence or legal authorities.²² Indeed, Gray's Motion fails to cite a single legal authority in support of Gray's position.²³ Because Gray's Motion fails to conform to jurisdictional requirements set forth in Rule 240(c), it should be denied in its entirety.

B. The Court should also deny Gray's Motion because she did not file a timely notice of appeal of the June 27 Order.

In order to file a timely appeal from the Court of Common Pleas, the appealing party must file and serve a notice of appeal as to the subject order within thirty days of receiving written notice of the order's entry.²⁴ It is well-settled that the time period to file a notice of appeal is a jurisdictional requirement that this Court has no authority to extend or expand.²⁵

²⁰ See Exhibit A.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See SCACR 203(a)-(b).

²⁵ See e.g., *Conner v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002)("[s]ervice of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served"); and *Mason v. Mason*, 412 S.C. 28, 59, 770 S.E.2d 405, 421 (Ct. App. 2015), *reh'g denied* (Apr. 24, 2015), *cert. dismissed* (July 31, 2015)(citing *Conner*).

Gray did not file a timely appeal of the June 27 Order. Written notice of the June 27 Order's entry was on June 27, 2017.²⁶ Based on the electronic notification provided to the parties, Gray had until July 27, 2017, to file a notice of appeal on the June 27 Order. As Gray acknowledges in her own motion, she failed to do so.²⁷ The Notice filed in this action only references the June 23 Order.²⁸ And the only order attached to the Notice is the June 23 Order.²⁹ There can be no dispute that the only appeal perfected in this action relates to the June 23 Order. Gray did not file a notice of appeal on the June 27 Order by the July 27, 2017 deadline. As a matter of law, Gray's time for appealing the June 27 Order has expired. Gray is now jurisdictionally barred from appealing the June 27 Order.

C. The "clerical error" exception does not provide a safe harbor for Gray's jurisdictional failures.

Although technical compliance with SCACR 203 is required, South Carolina courts have stated that mere "[c]lerical errors in a notice of appeal do not destroy the appeal."³⁰ While Gray's Motion lacks citation to supporting authorities, it is expected that Gray will attempt to recast her motion as seeking relief under this safe harbor. But this exception cannot save Gray from the result of her jurisdictional failings.

²⁶ Electronic Notification E-mail Regarding June 27 Order, dated June 27, 2017 at 8:53:42 a.m., attached hereto as Exhibit H.

²⁷ See Exhibit A.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct. App. 1995); *quoted at Mason*, 412 S.C. at 59.

South Carolina courts have applied the clerical error exception to SCACR 203's technical requirements in situations where an otherwise perfected notice of appeal would be invalidated by a defect of a clerical nature. But the relief requested by Gray's Motion would require the Court to do much more than overlook a simple clerical mistake. Gray's Motion seeks to cure a complete jurisdictional defect (her failure to file a timely appeal as to the June 27 Order) by replacing the current Notice and attached order with untimely replacements. In essence, Gray seeks to cover up her jurisdictional failings by swapping the Notice and attached order originally filed.

Three decisions from this Court are instructive on the inapplicability of the clerical error exception to the present case:

- *Charleston Lumber Co. v. Miller Hous. Corp.*: Finding that the appellant's failure to list one of five companion cases in its notice of appeal was a clerical error because the notice of appeal referenced the lower court's single order addressing all companion cases which was also attached to the notice of appeal;³¹
- *Mason v. Mason*: Reasoning that the appellant's failure to attach the challenged order to the notice of appeal was a clerical error on the basis that only a single order had been issued by the lower court as to the respondent;³² and
- *Weatherford v. Price*: Holding that a notice of appeal's reference to the wrong order was a mere clerical error on the grounds that the appellant had attached a copy of the correct order to his notice of appeal.³³

In each of the above cases, the appellant's appeal would have been perfected but for a single technical defect. This Court permitted the appellants' appeals to go forward based on the fact that either the notice of appeal *or* the attached order sufficiently indicated the appellant's intention to appeal the specific order at issue.

³¹ *Id.*

³² *Mason*, 412 S.C. at 61.

³³ 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000).

The relief sought by Gray's Motion is distinguishable from the relief granted in this Court's previous decisions. Unlike the appellants in the above-cited cases, Gray does not seek to cure a single technical defect relating to either her Notice *or* the attached order. Gray's Motion seeks the wholesale replacement of both her Notice *and* the attached order. The fact that the June 27 Order is not attached or referenced in Gray's Notice of Appeal is more than a mere technical defect; it is a jurisdictional failure. Further, unlike the above cases, there is absolutely nothing in the Notice or attached order to indicate that Gray intended to appeal the June 27 Order. Gray cannot circumvent the clear jurisdiction requirements set forth in SCACR 203 by recasting her failures as mere clerical mistakes.

Additionally, any argument by Gray that McLeod was on notice of her intent to appeal the June 27 Order based on her alleged "consent" to the June 23 Order is misplaced.³⁴ Gray did not consent the June 23 Order. This is evidenced by Judge Hymn's *non-consent* order dismissing Gray's S.C. Whistleblower Act claim.³⁵ The unavoidable truth is this: Gray has only appealed the June 23 Order and her time to appeal the June 27 Order has expired. The Court should not be misled by any attempt by Gray to avoid the consequences of her jurisdictional failures by invoking the clerical error exception.

Conclusion

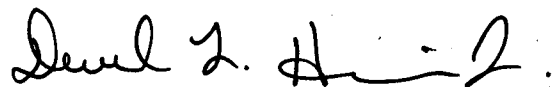
The outcome of Gray's Motion rests squarely on the Court's jurisdictional requirements. And based on those requirements, Gray's Motion fails in both form and substance. Gray's Motion disregards the form required for motions under SCACR 240 by failing to provide an accompanying memorandum or any supporting authorities for her position. The substance of

³⁴ See Exhibit A.

³⁵ See Exhibit D.

Gray's Motion is also lacking. As a matter of law, Gray cannot amend or substitute her Notice because the time period to appeal the June 27 Order has expired. Further, Gray cannot avoid the result of her jurisdictional failings by seeking safe harbor in the clerical error exception recognized by this Court. Accordingly, McLeod requests that the Court reject Gray's attempt to file an untimely appeal as to the June 27 Order and deny Gray's Motion in its entirety.

August 14, 2017



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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McLeod Health, Inc. Respondent,

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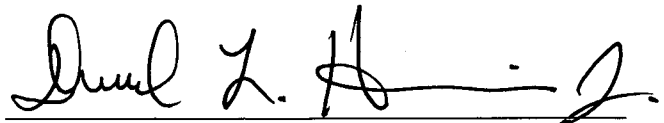
Jami Lee Gray, Appellant.

PROOF OF SERVICE

I hereby certify that on this 14th day of August, 2017, I served a copy of the forgoing *Respondent's Return in Opposition to Appellant's Motion to Amend Notice of Appeal and Substitute Exhibit to Notice of Appeal* in the above-styled cause upon the following by first class U. S. Mail, postage pre-paid at the addresses set forth below:

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David L. Harris, Jr.

Exhibit A

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]

August 2, 2017

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Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
Jami Lee Gray,)	
)	CIVIL ACTION NO.: 2017-CP-26-01907
)	
Plaintiff,)	
)	
v.)	PROPOSED ORDER GRANTING
)	DEFENDANT'S PARTIAL MOTION
McLeod Health, Inc.,)	TO DISMISS AS TO PLAINTIFF'S
)	PUBLIC POLICY DISCHARGE
)	CLAIM
Defendant.)	

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.¹ 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.

¹ 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 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.²

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.³

CONCLUSION

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

² 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).

³ 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.

The Honorable Larry B. Hyman
Circuit Court Judge, 15th 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

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ELECTRONICALLY FILED - 2017 Jun 27 8:53 AM - HORRY - COMMON PLEAS - CASE#2017CP2601907

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
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Appellant,

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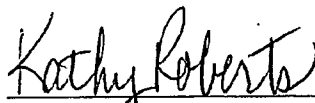
McLeod Health, Inc.,

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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Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) Docket No.: 2017-CP-26-

Jami Lee Gray,

Plaintiff,

v.

McLeod Health, Inc.,

Defendant.

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SUMMONS

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 12019 Ocean Highway, P.O. Box 1885, Pawleys Island, South Carolina 29585.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

[Signature Block on Following Page]

HOPKINS LAW FIRM, LLC

s/ J. Clay Hopkins

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March 22, 2017

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) Docket No.: 2017-CP-26-

Jami Lee Gray,

Plaintiff,

v.

McLeod Health, Inc.,

Defendant.

**COMPLAINT
(JURY TRIAL DEMANDED)**

Jamie Lee Gray (hereinafter "Plaintiff"), complaining of McLeod Health, Inc. ("Defendant"), would respectfully show unto the Court the following:

PARTIES

1. Plaintiff is a citizen and resident of Horry County, South Carolina.
2. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of South Carolina, and is authorized to conduct business in South Carolina, and at all pertinent times herein, was doing business as "McLeod Neurology Seacoast" located at 3980 Hwy 9 E #340, Little River, in Horry County, South Carolina.
3. Defendant employed Plaintiff as a Practice Manager at its McLeod Neurology Seacoast location in Horry County, South Carolina.

VENUE AND JURISDICTION

4. Venue and jurisdiction is proper because the most substantial part of the acts or omissions giving rise to Plaintiff's cause(s) of action occurred in Horry County, South Carolina.
5. Plaintiff's claims arise under South Carolina law.

FACTS

6. Plaintiff was employed by Defendant as Practice Manager. Plaintiff performed her job successfully and was at all times a qualified, if not exceptional, employee of Defendant.

7. Beginning in November 2016, Defendant, through its agents, servants, staff, and employees began a campaign of harassment and retaliation that ultimately resulted in Plaintiff's wrongful termination. This harassment and retaliation was the direct result of Plaintiff's disclosure of fraudulent accounting practices, violations of patient confidentiality, and gifts of prescription medication to people who were not properly prescribed.

8. On or around November 22, 2016, Plaintiff learned that her director, Melanie Jones, had been telling people that Plaintiff was "her biggest problem."

9. Thereafter, Plaintiff contacted her Associate Vice President, Sarah Carpenter, to inform her of what she had learned. On this phone call, Plaintiff informed Ms. Carpenter that Ms. Jones had been engaging in fraudulent accounting practices surrounding construction in Plaintiff's practice, and that Ms. Jones had asked for Botox without a prescription.

10. Dr. Michael McCaffrey, the physician at McLeod Seacoast Neurology, was, and upon information and belief, still is giving away Botox to his friends and family, which includes not only giving prescription medication to patients without a prescription, but requires him to take Defendant's property and use it for his own benefit.

11. On or around November 30, 2016, Ms. Carpenter forced Plaintiff to attend a meeting where Plaintiff was on speaker phone with Ms. Jones, as well as another director, regarding Plaintiff's allegations. Ms. Jones and the other director indicated that everything was a misunderstanding and that they had not done anything improper.

12. After that meeting, Plaintiff went to Defendant's Human Resources ("HR") department to inform them of her reservations with the previous meeting, and to inform HR about her discomfort with the meeting, too. Plaintiff also informed HR that she felt like she was being attacked, and was now a "target."

13. In the meantime, in December 2016, a Director position with Defendant became available. This position required a Bachelor's degree and five (5) or more years of progressive practice management experience to be hired. Plaintiff applied but was ultimately passed over for Crystal Rivers, an employee with no progressive practice management experience and an Associate's degree. Plaintiff is informed and believes that she was passed over for this position in direct retaliation for bringing her complaints to Defendant's attention.

14. Thereafter, on Friday, January 13, 2017, Ms. Carpenter and Ms. Rivers, now a director, approached Plaintiff in her office and confronted her. They forced her to look at private patient documents in direct violation of Defendant's confidentiality practices, policies, procedures, and protocols, as well as HIPAA. Ms. Carpenter forced Ms. Rivers to stand directly behind Plaintiff to make sure that she did so. Plaintiff repeatedly told Ms. Carpenter how uncomfortable she felt and that she was breaking the law by following her instructions. Ms. Carpenter told Plaintiff to do what she said.

15. On Saturday, January 14, 2017, Plaintiff sent an email to Dr. McCaffrey outlining Ms. Carpenter's, Ms. Jones's, and Ms. Rivers's harassment and retaliation and the reasons for such conduct.

16. Upon information and belief, around the same time, Ms. Carpenter, Ms. Jones, and Ms. Rivers began sending emails to other employees of Defendant wherein they made statements that Plaintiff was "stealing" Botox from Defendant and accessing patient medical information. These statements were also, upon information and belief, made orally.

17. The next Monday, January 16, 2017, Plaintiff sent an anonymous tip to Defendant's Compliance officer regarding the incident where she was forced to access patient records.

18. That same day, Ms. Carpenter placed Plaintiff on administrative leave.

19. On January 18, 2017, Defendant terminated Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy)

20. Plaintiff realleges and restates all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

21. Defendant's actions constitute wrongful termination in violation of public policy.

22. Specifically, Defendant retaliated against Plaintiff and terminated her while she was pursuing important rights related to her roles as an employee, including, but not limited to the following:

- a. Opposing violations of patient confidentiality;
- b. Reporting the unlawful prescription of medication; and
- c. Reporting the unlawful dissemination of prescription medication to people without prescriptions.

23. As a result of the intentional, willful and wanton acts complained of herein, Plaintiff has suffered and will continue to suffer the loss of a better, more productive long-term career with Defendant and the loss of better wages, bonuses, benefits, and other compensation with such employment entails. Plaintiff has also suffered future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Plaintiff has further experienced severe emotional and physical distress. Plaintiff seeks back pay, front pay, actual damages, liquidated damages, compensatory damages, punitive damages, prejudgment interest, attorneys' fees, and costs under this cause of action.

FOR A SECOND CAUSE OF ACTION
(Slander Per Se)

24. Plaintiff realleges and restates all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

25. The actions and conduct of Defendant, by and through its owners, employees, agents and/or servants, in publishing to third persons that Plaintiff was "stealing" Botox from Defendant and accessing patient medical information constitutes defamatory statements and, thus, constitutes defamation and slander per se.

26. In fact, Plaintiff has never stolen Botox from Defendant or accessed patient medical information and at all times has been a good employee while working for Defendant and is still eligible for rehire.

27. Defendant's publications to the third persons are not, and were not, privileged.

28. As a direct and proximate result of Defendant's defamatory statements, Plaintiff has suffered, and continues to suffer, actual damages.

29. Plaintiff is entitled to judgement against Defendant for actual and punitive damages for slander per se.

FOR A THIRD CAUSE OF ACTION
(Libel)

30. Plaintiff realleges and restates all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

31. As stated above, the statements by Defendant's employees, agents, and/or servants were false.

32. The aforementioned statements were defamatory on their face, and, because they were written, printed, or typed, they constitute libel.

33. The statements were actionable per se because they degrade Plaintiff, that is, they reduce her character or reputation in the estimation of her employer, friends, and/or acquaintances, as well as in the eyes of the public at large, thereby disgracing Plaintiff, and rendering her odious or contemptible.

34. Because the statements are actionable per se, at common law actual malice by the Defendant is implied, and general damages to Plaintiff are presumed.

35. As an alternative to the implied malice and presumed damages described above, the Defendant was motivated by actual malice, its conduct constituted negligence, if not greater fault, and Plaintiff, as a consequence, has sustained actual injury, including both general damages and special damages.

36. As the direct and proximate result of the libel of Defendant, Plaintiff has sustained and is entitled to recover actual damages in the amount determined by the jury, including, without limitation, general damages for injury to Plaintiff's reputation, her shock, humiliation, distress, mental anguish, pain and suffering, and also special damages for Plaintiff's out-of-pocket expenses incurred as a consequence of Plaintiff's injuries and the treatment thereof, including, without limitation, the cost of medical treatment, psychological counseling, medication, lost sick days from work, as well as attorney's fees to vindicate Plaintiff's reputation.

37. The conduct of Defendant was willful, wanton, reckless and malicious, amounting to a conscious disregard for the rights of Plaintiff, who is, therefore, entitled to recover punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of South Carolina Whistleblower Law)

38. Plaintiff realleges and restates all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

39. That Plaintiff reported serious waste and wrongdoing, in writing as well as orally, as to the matters here in alleged and reported the same to the proper authorities; that the same constitutes protected activity under the South Carolina Whistleblower Act (S.C. Code Ann. § 8-27-10, *et. seq.*).

40. That these were internal violations of the law, regulations, public policy, and standards of conduct.

41. That Plaintiff was terminated on January 18, 2017, and this action is timely brought.

42. That Defendant has violated the Whistleblower Act and Plaintiff is entitled to receive actual damages as provided therein in the amount of \$15,000 and attorney's fees not to exceed \$10,000. Plaintiff is further entitled to reinstatement to her position as well as back pay, front pay and benefits.

WHEREFORE, Plaintiff seeks an Order or Orders granting the following relief:

- a. Declaring that Defendant wrongfully terminated Plaintiff in violation of public policy;
- b. Declaring that Defendant's conduct constitutes slander per se;
- c. Declaring that Defendant's conduct constitutes libel;
- d. Declaring that Defendant violated the South Carolina Whistleblower Law;
- e. Declaring that Defendant's actions were willful and wanton;
- f. Actual and compensatory damages for back pay, back benefits, front pay, and front benefits;
- g. Actual and compensatory damages for mental pain and suffering and emotional distress;
- h. Punitive damages;
- i. Pre-judgment interest and post-judgment interest, as provided by law;
- j. Reasonable attorneys' fees and costs of the action; and

- k. Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Plaintiffs request a jury trial on all counts so triable.

HOPKINS LAW FIRM, LLC

s/ J. Clay Hopkins

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Attorneys for the Plaintiff

March 22, 2017

Pawleys Island, South Carolina

Exhibit C

may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.”).

3. Further, Plaintiff’s cause of action for wrongful discharge in violation of public policy should also be dismissed pursuant to Rule 12(b)(6) of the SCRCP on the grounds that Plaintiff has failed to state facts sufficient create an actionable claim. *See McNeil v. S.C. Dep’t of Corr.*, 404 S.C. 186, 193, 743 S.E.2d 843, 847 (Ct. App. 2013)(affirming dismissal former employee’s public policy discharge claim on the basis that the allegations were insufficient to state a violation of the public policy of South Carolina).

4. Accordingly, McLeod respectfully requests that aforementioned claims asserted by Plaintiff against McLeod be dismissed with prejudice and that it be awarded reasonable attorney’s fees and costs for defending the same.

This motion is further based on the statutory and case law of the State of South Carolina, the South Carolina Rules of Civil Procedure, and any memoranda of law, affidavits or other evidence which may be submitted prior to any hearing on this motion, as well as any oral argument that might be submitted by counsel at such hearing.

[Signatures on Following Page]

Dated this 24st day of April, 2017.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

s/David L. Harris, Jr.

Michael M. Shetterly, SC Bar #12059
David L. Harris, Jr., SC Bar #101748

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Exhibit D

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

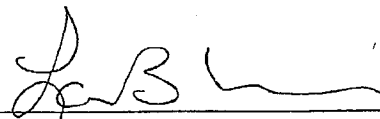
CIVIL ACTION NO.: 2017-CP-26-01907

**PROPOSED ORDER GRANTING IN
PART DEFENDANT MCLEOD
HEALTH, INC.'S PARTIAL MOTION
TO DISMISS COMPLAINT**

This matter comes before the Court pursuant to Defendant's Partial Motion to Dismiss Complaint ("Motion"). After considering Defendant's Motion, the applicable case law, and the parties' arguments, this Court finds that the Plaintiff's claim under the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, et seq., fails to state facts sufficient to constitute a cause of action, and therefore, should be dismissed pursuant to Rule 12(b)(6) of the SCRCPP. In particular, Defendant does not constitute a public employer or a state-sponsored entity. This Court, therefore, dismisses the aforementioned claim with prejudice.

It is hereby ORDERED, ADJUDGED and DECREED that Defendants' Partial Motion to Dismiss is GRANTED as to Plaintiff's claim under the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, et seq. and Plaintiff's claims against Defendant for alleged violations of the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, et seq., are DISMISSED.

IT IS SO ORDERED.



The Honorable Larry B. Hyman
Circuit Court Judge, 15th Circuit

, South Carolina

This 21 day of June 2017.

Exhibit E

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**

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.¹ 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.

¹ 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.²

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.³

CONCLUSION

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

² 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).

³ 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.

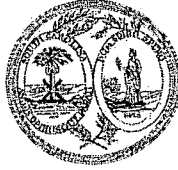
IT IS SO ORDERED.

The Honorable Larry B. Hyman
Circuit Court Judge, 15th 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

Electronically signed on 2017-06-26 12:04:26 page 7 of 7

ELECTRONICALLY FILED - 2017 Jun 27 8:53 AM - HORRY - COMMON PLEAS - CASE#2017CP2601907

Exhibit F

The Notice below is AMENDED: Not all documents within the filing were approved.



Document(s) Filed: Appeal/Notice of Appeal to Court of Appeals
Service/Certificate Of Service

***** IMPORTANT NOTICE - READ THIS INFORMATION ***** NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2017CP2601907

Official File Stamp: 07-19-2017 02:48:25 PM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Jami Lee Gray VS Mcleod Health Inc
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
Service/Certificate Of Service
Filed by or on behalf of: Joseph Clay Hopkins

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

Michael Montgomery Shetterty for Mcleod Health Inc
William E. Hopkins, Jr. for Jami Lee Gray
Kathy Price Elmore for Jami Lee Gray
Joseph Clay Hopkins for Jami Lee Gray
David Lee Harris, Jr. for Mcleod Health Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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.

NOTICE OF APPEAL

Appellant Jami Lee Gray appeals the order of the Honorable Larry B. Hyman, Jr. dated June 23, 2017. Appellant received written notice of entry of this order on June 23, 2017.

[Signature Block on Following Page]

July 18, 2017

HOPKINS LAW FIRM, LLC

s/ J. Clay Hopkins

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William E. Hopkins, Jr. (SC Bar #66474)

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Attorneys for the Appellant

Other Counsel of Record:

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David Lee Harris, Jr., Esq.

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Attorneys for Respondent

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,

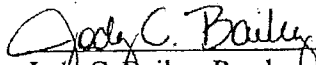
v.

McLeod Health, Inc.,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent's counsel by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2015, addressed to their attorney of record, Michael Montgomery Shetterly, Esquire and David L. Harris, Jr., Esquire, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., The Ogletree Building, 300 North Main Street, Suite 500, Greenville, SC 29601.



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Exhibit G

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WILLIAM E. HOPKINS JR. †
J. CLAY HOPKINS

†ALSO ADMITTED IN
DISTRICT OF COLUMBIA

†SOUTH CAROLINA
CERTIFIED MEDIATOR

July 19, 2017

VIA FEDERAL EXPRESS-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 292101

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

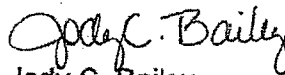
Dear Ms. Kitchings:

Enclosed for filing is an Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on counsel for Respondents;
- (2) A copy of the Order Granting In Part Defendant McLeod Health, Inc.'s Partial Motion to Dismiss Complaint which is to be challenged on appeal;

Please file and return a clocked copy to me in the enclosed self-addressed, stamped envelope provided.

Sincerely,



Jody C. Bailey

Paralegal for J. Clay Hopkins, Esq.

JCH/jcb

cc: Michael Montgomery Shetterly, Esquire
David Lee Harris, Jr., Esquire
Kathy P. Elmore, Esquire
Jami Lee Gray

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,

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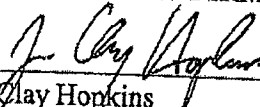
NOTICE OF APPEAL

Appellant Jami Lee Gray appeals the order of the Honorable Larry B. Hyman, Jr. dated June 23, 2017. Appellant received written notice of entry of this order on June 23, 2017.

[Signature Block on Following Page]

July 18, 2017

HOPKINS LAW FIRM, LLC



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Attorneys for Respondent

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,

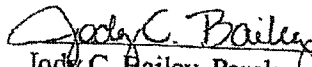
v.

McLeod Health, Inc.,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent's counsel by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2015, addressed to their attorney of record, Michael Montgomery Shetterly, Esquire and David L. Harris, Jr., Esquire, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., The Ogletree Building, 300 North Main Street, Suite 500, Greenville, SC 29601.



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ELECTRONICALLY FILED - 2017 Jun 23 9:05 AM - HORRY - COMMON PLEAS - CASE#2017CP2601907

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

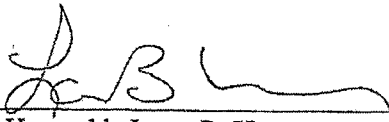
CIVIL ACTION NO.: 2017-CP-26-01907

**PROPOSED ORDER GRANTING IN
PART DEFENDANT MCLEOD
HEALTH, INC.'S PARTIAL MOTION
TO DISMISS COMPLAINT**

This matter comes before the Court pursuant to Defendant's Partial Motion to Dismiss Complaint ("Motion"). After considering Defendant's Motion, the applicable case law, and the parties' arguments, this Court finds that the Plaintiff's claim under the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, et seq., fails to state facts sufficient to constitute a cause of action, and therefore, should be dismissed pursuant to Rule 12(b)(6) of the SCRCF. In particular, Defendant does not constitute a public employer or a state-sponsored entity. This Court, therefore, dismisses the aforementioned claim with prejudice.

It is hereby ORDERED, ADJUDGED and DECREED that Defendants' Partial Motion to Dismiss is GRANTED as to Plaintiff's claim under the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, et seq. and Plaintiff's claims against Defendant for alleged violations of the South Carolina Whistleblower Act, S.C Code Ann. § 8-27-10, et seq., are DISMISSED.

IT IS SO ORDERED.



The Honorable Larry B. Hyman
Circuit Court Judge, 15th Circuit

This 21 day of June 2017.

_____, South Carolina

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.

NOTICE OF APPEAL

Appellant Jami Lee Gray appeals the order of the Honorable Larry B. Hyman, Jr. dated June 23, 2017. Appellant received written notice of entry of this order on June 23, 2017.

[Signature Block on Following Page]

July 18, 2017

HOPKINS LAW FIRM, LLC

s/ J. Clay Hopkins

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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
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Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-26-01907

Jami Lee Gray,

Appellant,

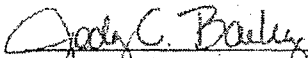
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Exhibit H



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2017CP2601907

Official File Stamp: 06-27-2017 08:53:42 AM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Jami Lee Gray VS Mcleod Health Inc
Document(s) Submitted: Order/Other
Filed by or on behalf of: Larry B. Hyman

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

Michael Montgomery Shetterly for Mcleod Health Inc
William E. Hopkins, Jr. for Jami Lee Gray
Kathy Price Eimore for Jami Lee Gray
Joseph Clay Hopkins for Jami Lee Gray
David Lee Harris, Jr. for Mcleod Health Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Ogletree Deakins

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Attorneys at Law

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David (DJ) L. Harris, Jr.
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August 14, 2017

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

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AUG 17 2017

SC Court of Appeals

RE: *Jami Lee Gray v. McLeod Health, Inc.*
S.C. Court of Appeals No. 2017-001578

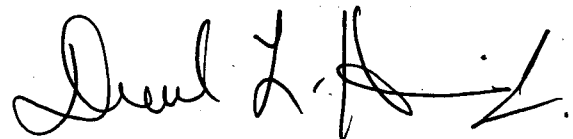
Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return in Opposition to Appellant's Motion to Amend Notice of Appeal and Substitute Exhibit to Notice of Appeal for filing relative to the above-referenced case. Also enclosed is the Proof Service regarding the same.

Please file the original and return a time-stamped copy to me in the enclosed self-addressed, stamped envelope. Should you have any questions with regard to the enclosed, please feel free to contact me.

Thank you for your attention to this filing.

Sincerely,



David L. Harris, Jr.

DLH/rls
Enclosures

cc. J. Clay Hopkins, Esq.
Kathy P. Elmore, Esq.

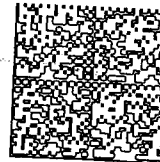
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**Ogletree
Deakins**

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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Greenville, SC 29601

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201



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SC Court of Appeals