

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WILLIAM F. EMLICH, JR., D.O.

**COMPLAINT
WITH JURY DEMAND
ENDORSED HEREIN**

ASSOCIATES IN
GASTROENTEROLOGY
AND HEPATOLOGY, INC.
4930 West Broad Street, Suite 1
Columbus, OH 43228

CASE NO. 2:14CV1697

Plaintiffs,

v.

OHIOHEALTH CORPORATION
c/o Earl J. Barnes II, Esq., Statutory Agent
180 E. Broad Street – 34th Floor
Columbus, OH 43215

and Defendant(s).

DOCTORS HOSPITAL
c/o George W. Hairston, Statutory Agent
65 East State Street #2100
Columbus, OH 43215

and

DOCTORS HEALTH CORPORATION
OF NELSONVILLE
c/o Earl J. Barnes II, Esq., Statutory Agent
180 E. Broad Street – 34th Floor
Columbus, OH 43215

and

MEDCENTRAL HEALTH SYSTEM
c/o Joseph Chamberlain, Statutory Agent
335 Glessner Avenue
Mansfield, OH 44903

and

THE SHELTERING ARMS HOSPITAL
FOUNDATION, INC.
c/o MGSS Statutory Agent Services, Inc., Statutory Agent
35 North College Street
PO Box 958
Athens, OH 45701

and

GRADY MEMORIAL HOSPITAL
c/o Earl J. Barnes II, Esq., Statutory Agent
180 E. Broad Street – 34th Floor
Columbus, OH 43215

and

HARDIN MEMORIAL HOSPITAL
c/o Earl J. Barnes II, Esq., Statutory Agent
180 E. Broad Street – 34th Floor
Columbus, OH 43215

and

MARION GENERAL HOSPITAL
c/o Earl J. Barnes II, Esq., Statutory Agent
180 E. Broad Street – 34th Floor
Columbus, OH 43215

and

ESTATE OF FRANCIS V. DONO, D.O., individually
and in his official capacity with Doctors Hospital
1837 Lake Shore Drive
Columbus, OH 43204

and

DEAN L. COLWELL, D.O., individually
and in his official capacity with Doctors Hospital
4181 Bowmansroot Court
Hilliard, OH 43026

and

GREGORY GIBBONS, M.D., individually
and in his official capacity with Doctors Hospital
3400 Olentangy River Road
Columbus, OH 43202

and

REBECCA DEVILLERS, D.O., individually
and in her official capacity with Doctors Hospital
4343 All Seasons Drive
Hilliard, OH 43026

and

ROBERT PALMA, D.O. individually
and in his official capacity with Doctors Hospital
104 North Murray Hill Road
Columbus, OH 43228

and

ROBERT A. LOWE, M.D., individually
and in his official capacity with Doctors Hospital
5100 West Broad Street
Columbus, OH 43228

and

THOMAS WANKO, D.O., individually
and in his official capacity with Doctors Hospital
104 North Murray Hill Road
Columbus, OH 43228

and

CLIFTON HOOD, D.O., individually
and in his official capacity with Doctors Hospital
2160 Ewing Crawfis Circle
Bellefontaine, OH 43311

and

HOWARD LEVIN, D.O. individually
and in his official capacity with Doctors Hospital
5131 Beacon Hill Road, Suite 120
Columbus, OH 43228

and

GAVIN BAUMGARDNER, D.O., individually
and in his official capacity with Doctors Hospital
5100 West Broad Street
Columbus, OH 43228

and

KREG GRUBER, individually and in his official
capacity with Doctors Hospital
615 North Michigan Street
South Bend, IN 46601

and

MICHAEL REICHFIELD, individually and in
his official capacity with Doctors Hospital
180 East Broad Street
Columbus, Ohio 43215

and

BRUCE VANDERHOFF, M.D., MBA, individually
and in his official capacity with OhioHealth
180 East Broad Street – 34th Floor
Columbus, OH 43215

and

JOHN DOE CORPORATIONS
Identity Unknown
Address Unknown

and

JOHN DOE INDIVIDUALS
Individually and in their official capacity
Identity Unknown
Address Unknown

Plaintiffs, William F. Emlich, Jr., D.O. and Associates in Gastroenterology and
Hepatology, Inc, for their Complaint against Defendants, states as follows:

PARTIES

1. Dr. Emlich is a triple board certified physician who resides in Delaware, Ohio.
2. OhioHealth Corporation (“OhioHealth”) is a not for profit Ohio corporation authorized to
conduct business within the State of Ohio. OhioHealth’s principal place of business is
Columbus, Franklin County, Ohio.

3. Doctors Hospital (“Doctors”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. Doctors’ principal place of business is Columbus, Franklin County, Ohio.
4. Doctors Health Corporation of Nelsonville (“Doctors Nelsonville”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. Doctors Nelsonville’s principal place of business is Columbus, Franklin County, Ohio.
5. MedCentral Health System (“MedCentral”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. MedCentral’s principal place of business is Mansfield, Richland County, Ohio.
6. The Sheltering Arms Hospital Foundation, Inc. (“Sheltering Arms”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. Sheltering Arms’ principal place of business is Athens, Athens County, Ohio.
7. Grady Memorial Hospital (“Grady”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. Grady’s principal place of business is Delaware, Delaware County, Ohio.
8. Hardin Memorial Hospital (“Hardin”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. Hardin’s principal place of business is Kenton, Hardin County, Ohio.
9. Marion General Hospital, Inc. (“Marion”) is a not for profit Ohio corporation authorized to conduct business within the State of Ohio. Marion’s principal place of business is Marion, Marion County, Ohio.
10. Francis V. Dono, D.O., Dean L. Colwell, D.O., Gregory Gibbons, M.D., Rebecca Devillers, D.O., Robert Palma, D.O., Robert A. Lowe, M.D., Thomas Wanko, D.O.,

Clifton Hood, D.O., Howard Levin, D.O., Gavin Baumgardner, D.O., and Bruce Vanderhoff, M.D. are duly licensed physicians with their principal places of business in Columbus, Franklin County, Ohio at the time the acts complained of in this Complaint occurred.

11. Kreg Gruber and Michael Reichfield are business executives with their principal place of business in Columbus, Franklin County, Ohio at the time the acts complained of in this Complaint occurred.

12. John Doe Corporations are entities that the Plaintiffs have not been able to identify through reasonable diligence and investigation. Further stating that these Defendants are corporation(s) authorized to conduct business within the State of Ohio and either, as a corporation itself or by its employees, committed the acts referenced herein.

13. John Doe Individuals are individuals whom acted either individually or in their official capacity on behalf of corporations named herein or corporations not named herein. The Plaintiffs have conducted a reasonable investigation but still have not been able to discover the identities of these Defendants.

JURISDICTION AND VENUE

14. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.

15. This action is authorized and instituted pursuant to 31 U.S.C. § 3730; 15 U.S.C. §§ 1-2; and the Common Laws of the State of Ohio.

16. Original jurisdiction over the action is conferred pursuant to 28 U.S.C. § 1331 because the action arises under the laws of the United States. Supplemental jurisdiction over Plaintiff's state law claims arises under 28 U.S.C. § 1367.

17. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. § 1391(b) because Defendants have their principal place of business in Columbus, Franklin County, Ohio. Additionally, the claims complained of in the Plaintiff's Complaint all arose, in whole or in part, in Columbus, Franklin County, Ohio.

FACTS RELEVANT TO ALL CLAIMS AND PARTIES

18. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
19. Dr. Emlich has been practicing medicine in Ohio for over twenty (20) years. He is an accomplished and talented physician, becoming triple board certified in gastroenterology, hepatology, and internal medicine.
20. Dr. Emlich is credentialed at numerous hospitals throughout Ohio. In fact, due to his accomplishments, he serves as a tertiary referral physician for most hospitals in southern Ohio. His status has brought him patients from West Virginia and Pennsylvania, as well. Due to Plaintiff's expertise in Endoscopic Retrograde Cholangiopancreatography ("ERCP"), he has been sought as a reference by the Ohio Attorney General's office on matters involving hepatology, and served as a consultant for the Ohio Department of Rehabilitation and Correction.
21. Dr. Emlich has also spent time teaching as a clinical professor of gastroenterology at Ohio University Heritage College of Osteopathic Medicine, an adjunct faculty member of The Ohio State University, an adjunct faculty member at A.T. Still University, which is the Kirksville College of Osteopathic Medicine, and as an adjunct faculty member at Des Moines University College of Osteopathic Medicine.
22. Dr. Emlich first obtained privileges at Doctors on July 1, 1989.

23. During his tenure at Doctors, Dr. Emlich served multiple terms as Chair of the Department of Medicine, Vice-Chair of the Department of Medicine, Medical Executive Committee (“MEC”), and Clinical Quality Committee. Additionally, he was a member of Credentials Committee, Utilization Management Committee, Critical Care Committee, and was Vice President of Medical Records Committee. Dr. Emlich and Dr. Richard Bracken, D.O. were selected to represent Doctors at the conjoined board of OhioHealth after the purchase of Doctors by OhioHealth leadership in 1998. In the course of effectuating those roles, Dr. Emlich was privy to the inner workings of Doctors.
24. The catalyst for Doctors’ pursuit of terminating Dr. Emlich, and subsequently all OhioHealth subsidiaries, stemmed from Dr. Emlich’s opposition to Doctor’s proposal concerning course of treatment in the Intensive Care Unit in 2004. During this time frame, Dr. Emlich was the Chair of Doctor’s Department of Medicine, as such, he was the primary spokesperson against the proposal. Although fellow colleagues supported his position, Dr. Emlich was individually berated by the Vice President of Medical Affairs, Dr. Francis V. Dono, and his successor, Dr. Dean L. Colwell, for his resistance.
25. On June 10, 2004, the first instance of quality concern was raised against Dr. Emlich. This occasion was the first time in fifteen (15) years at Doctors that Dr. Emlich’s care was questioned. At no other point, and at no other hospital, had Dr. Emlich’s care been subject to review. This specific review was based on unfounded claims, and utilized by Doctors to intimidate and manipulate Dr. Emlich. Moreover, Dr. Emlich was not afforded the ability to defend his care through expert witnesses.
26. On September 1, 2005, Dr. Emlich reported Dr. Dono to the State Medical Board of Ohio because of his abusive utilization of the peer review process. As a member of the above

referenced committees, Dr. Emlich observed firsthand the vindictive behavior of Doctor's review boards. Doctors targeted physicians who did not comply with their mandate, and used the statutory peer review privilege to shield their adverse actions from disclosure. Behavior that Dr. Emlich experienced himself following his disapproval of the proposed course of treatment in the Intensive Care Unit.

27. In 2006, Doctors again targeted Dr. Emlich by subjecting him to peer review. This time, Dr. Emlich was not afforded the ability to proffer any evidence regarding the patient or evidence defending his actions regarding her care. The MEC once again used the peer review process to intimidate and manipulate Dr. Emlich.

28. The following year, Dr. Emlich's care was called into question again. Yet again, Dr. Emlich was unable to respond to the allegations with expert testimony. With this patient, the MEC incorrectly proceeded under the assumption that Dr. Emlich was her attending physician, which in actuality was untrue. Dr. Emlich was the consulting physician, who happened to perform the ERCP. The critique stemmed from the care following the procedure, which as a consulting physician, was not the responsibility of Dr. Emlich, but that of the patient's attending physician.

29. On February 16, 2007, the State Medical Board of Ohio responded to Dr. Emlich's complaint regarding Dr. Dono, stating that they felt formal disciplinary charges were not warranted at the time.

30. Starting in 2009, Dr. Emlich voiced his opposition to the fraudulent billing practices engaged in by Defendants. On more than one occasion, Dr. Emlich confronted Dr. Colwell about said practices, and even told him that he would not perform procedures at the overly elevated cost. The overbilling was systematically engaged in at Doctors.

31. On three separate occasions in 2012, Dr. Emlich's care was once again questioned. Three more occasions intended to manipulate and intimidate Dr. Emlich through incomplete and bad faith investigations. External review indicated that Dr. Emlich deviated from the standard of care, but the investigation that led to that determination was based upon an incomplete record. Moreover, Dr. Emlich was able to provide one of the foremost experts in the world in gastroenterology to support his care in one of the cases.
32. By letter dated September 17, 2012, and under duress from the threat of immediate/permanent suspension, Dr. Emlich consented not to exercise his clinical privileges at Doctors or any other OhioHealth hospital. Dr. Emlich was offered a day to decide whether to relinquish his privileges, but before the decision was ultimately reached, Doctors informed all referring physicians that Dr. Emlich's privileges were suspended. Following his forced decision to relinquish said privileges, Dr. Emlich came to an agreement with Doctors to have them refer all of his patients to another hospital. Instead of complying with what they agreed upon, Doctors instead referred Dr. Emlich's patients to physicians that were employed by OhioHealth or were direct competitors of Dr. Emlich's
33. Shortly thereafter, an Ad Hoc Committee was convened to weigh in on the care rendered by Dr. Emlich. Said committee acted as prosecutors and allowed themselves to reach a decision without full charts or other records, knowing, or should have known, that complete records would have provided answers to the criticisms. Additionally, the committee was comprised of physicians who were in direct competition with Dr. Emlich, who was an independent physician, not employed by OhioHealth.

34. On December 4, 2012, the Ad Hoc Committee, without an appropriate investigation, issued its report and recommendation to the MEC recommending that Dr. Emlich's medical staff appointment and clinical privileges be terminated.
35. On December 5, 2012, the MEC considered the report proffered by the Ad Hoc Committee. The MEC notified Dr. Emlich that his privileges were to be terminated on December 7, 2012.
36. Dr. Emlich requested a hearing on January 3, 2013. A hearing took place on April 5, 2013, May 5, 6, 7, and 13, and June 5, 2013. The hearing officer was chosen by Doctors, which Dr. Emlich had no opportunity to object. Moreover, the hearing officer had previously done work for OhioHealth. Through an incomplete and biased investigation, the hearing officer affirmed the decision of the MEC on August 22, 2013. The reasonable basis standard of review was not adhered to by the hearing officer, and his judgment was arbitrary and capricious, and entirely unreasonable, based on the record. An appeal of the hearing was affirmed by the MEC on September 25, 2013.
37. Defendants engaged in a systematic pursuit by OhioHealth to rid their entities of independent physicians and/or competitors. OhioHealth has initiated a scheme to monopolize the health care system in Ohio in an effort to control pricing, access to medical care, and to intimidate physicians.
38. Throughout the entirety of the foregoing, Dr. Emlich had no other problems with any other hospital he was affiliated with. Until he voiced his opposition to a proposed course of treatment, he had maintained a pristine record at Doctors.

39. In acquiring privileges at each OhioHealth hospital, Dr. Emlich was required to undergo separate credentialing. However, when his privileges were terminated at Doctors, he lost them at every other OhioHealth hospital as well.
40. As of the date of this Complaint, Dr. Emlich's privileges at OhioHealth hospitals to practice medicine remain wrongfully terminated.
41. The actions taken by the Defendants were not taken in or with a reasonable belief that the actions were in furtherance of providing or promoting quality health care, rather, were taken and/or motivated with the intent to discriminate against Dr. Emlich because he, as Chair of Doctor's Department of Medicine, raised independent concerns regarding practices, and was an independent physician.
42. The Defendants' actions were taken without making a reasonable effort to obtain the facts and or truth in this matter as the Defendants failed to review adequate medical records and/or afford Dr. Emlich a fair chance to respond to the alleged wrongdoing.
43. None of the Defendants' actions in this matter were reasonable in light of the facts and/or circumstances in this matter.

FIRST CLAIM FOR RELIEF
31 U.S.C. § 3730

44. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
45. The Defendants, acting both in their capacities as agents, employees, and/or officers, conspired to terminate Dr. Emlich's privileges at all OhioHealth hospitals following his repeated attempts to try and stifle fraudulent billing practices that Defendants required him, and other similarly situated physicians, to engage in. Said attempts were in furtherance of action under the above referenced statutory section.

46. As a direct and proximate result of the aforementioned acts and conduct set forth above, the Plaintiffs' ability to provide medical care to patients and/or ability to enter into contracts with medical facilities has been interfered with and, as a result, the Plaintiffs have suffered loss to their reputation and standing in the medical community, have suffered a loss of patients and income, have suffered severe emotional and physical distress and humiliation, and have incurred a significant amount of legal fees and expenses. Further stating, Dr. Emlich's privileges at all OhioHealth hospitals have been terminated.

SECOND CLAIM FOR RELIEF
DUE PROCESS

47. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.

48. Defendants had an obligation, through their bylaws, policies, rules, and regulations (attached hereto as an exhibit), to provide Dr. Emlich with procedural due process before terminating his privileges.

49. Defendants violated Dr. Emlich's right to due process, because the peer review action was not originated and maintained in the reasonable belief that the action was in the furtherance of quality health care.

50. Defendants violated Dr. Emlich's right to due process by failing to make a reasonable effort to obtain the facts of the matter.

51. Defendants violated Dr. Emlich's right to due process by failing to provide adequate notice and hearing procedures.

52. Defendants violated Dr. Emlich's right to due process, because their actions were not taken with the reasonable belief that termination of his privileges was warranted by the facts known at the time of the termination.

53. As a direct and proximate result of the aforementioned acts, conduct and/or failure to act by Defendants, Plaintiffs have suffered loss to their reputations and standing in the medical community, have suffered a loss of patients and income well in excess of jurisdictional limits. Dr. Emlich has suffered the loss of his clinical privileges and suffered severe emotional and physical distress and humiliation and has suffered a significant amount of legal fees and expenses.

THIRD CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

54. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.

55. Plaintiffs had and/or have past, present, and prospective business relationships involving their provision of medical care to patients.

56. Defendants knew of the existence of said relationships.

57. Defendants acted with the purpose of interfering with said relationships.

58. Defendants' actions were improper, wrongful, illegal, and/or malicious, and financially motivated.

59. Defendants' wrongful actions caused termination of, or interference with, said relationships.

60. Plaintiffs have suffered injury and damages as a result of Defendants' interference with said relationships.

FOURTH CLAIM FOR RELIEF

CIVIL CONSPIRACY

61. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
62. The Defendants acting both individually and in their capacities as agents, employees, and/or officers, conspired together maliciously to injure Plaintiffs' person and/or property, and/or to monopolize or interfere with free trade. Defendants took steps in furtherance of this conspiracy in a way not competent for one acting alone, resulting in significant damage to the Plaintiffs.
63. As a direct and proximate result of the aforementioned acts and conduct set forth above, the Plaintiffs ability to provide medical care to patients and/or ability to enter into contracts with medical facilities has been interfered with and, as a result, the Plaintiffs have suffered loss to their reputation and standing in the medical community, have suffered a loss of patients and income, have suffered severe emotional and physical distress and humiliation, and have incurred a significant amount of legal fees and expenses.

FIFTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

64. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
65. The Defendants by extreme and outrageous conduct intentionally or recklessly caused severe emotional distress to Dr. Emlich and are subject to liability for such emotional distress, along with any bodily harm that resulted from it.
66. As a direct and proximate result of the aforementioned acts and conduct set forth above, Dr. Emlich has suffered mental, emotional and physical injury. Additionally, the

Plaintiffs ability to provide medical care to patients and/or ability to enter into contracts with medical facilities has been interfered with and, as a result, the Plaintiffs have suffered significant loss to their reputation, which has crippled their income, and has caused severe emotional distress and physical injury to Dr. Emlich. Moreover, as a direct result of the Defendants conduct, Dr. Emlich's familial relations have been significantly impaired.

SIXTH CLAIM FOR RELIEF
15 U.S.C. §§ 1-2

67. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
68. The Defendants, in their individual and/or representative capacities, conspired and/or recklessly acted, with intent to restrain or limit Dr. Emlich's trade as a physician and/or competition from Plaintiffs, through improper use of the peer review process.
69. The Defendants, in their individual and/or representative capacities, attempted to monopolize and/or conspired or combined to attempt to monopolize the trade or commerce of the practice of medicine, and/or the hospitalization and treatment of patients, through targeted use of the peer review process.
70. Said wrongful acts directly interfered with Plaintiffs' business relationships with patients and/or their ability to provide medical care to patients. Further, Defendants were aware of these relationships and the impact their actions would have.
71. As a direct and proximate result of the aforementioned acts, conduct and/or failure to act by Defendants, Plaintiffs have suffered loss to their reputation and standing in the medical community, have suffered a loss of patients and income, and Dr. Emlich has suffered the loss of his clinical privileges, and has suffered severe emotional and physical

distress and humiliation, and has incurred a significant amount of legal fees and expenses.

SEVENTH CLAIM FOR RELIEF
DEFAMATION

72. Plaintiffs hereby reallege each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.

73. The Defendants intentionally, recklessly, and/or negligently uttered and/or published, with malice, to third parties false statements and/or false information concerning the Plaintiffs that are/is defamatory to Plaintiffs, in that they put Plaintiffs in a negative light regarding the fitness to their business and profession.

74. As a direct and proximate result of the aforementioned acts and conduct set forth above, the Plaintiffs ability to provide medical care to patients and/or ability to enter into contracts with medical facilities has been interfered with and, as a result, the Plaintiffs have suffered loss to their reputation and standing in the medical community, have suffered a loss of patients and income, have suffered severe emotional and physical distress and humiliation, and have incurred a significant amount of legal fees and expenses.

WHEREFORE, Plaintiffs demand judgment against all Defendants, jointly and/or severally, on all the foregoing claims as follows:

1. Compensatory damages against each defendant in an amount in excess of the jurisdictional limits of the Court;
2. Punitive damages against each defendant in an amount in excess of the jurisdictional limits of the Court;

3. Damages, and multiples thereof, provided for under any applicable Federal and/or state statute or regulation.
4. Injunctive and equitable relief including, but not limited to, all privileges being restored and retraction, correction, or amendment of any communications made by Defendants regarding Plaintiffs' fitness as health care providers.
5. Actual costs, reasonable attorney's fees, and expenses of this action;
6. Granting the Defendants any and all other legal and equitable relief as may be deemed appropriate by the Court.

Respectfully submitted,

s/ David A. Zika

David A. Zika (0085732)
WHONSETLER & JOHNSON, PLLC
11901 Brinley Avenue
Louisville, KY 40243
Telephone: (502) 895-2297
Fax: (502) 895-8764
dzika@whonsetler.com
Counsel for Plaintiff
William F. Emlich, Jr., D.O.

JURY DEMAND

Plaintiff hereby demands a jury trial for all issues contained in this Complaint.

s/ David A. Zika

David A. Zika

VERIFICATION

STATE OF OHIO

COUNTY OF FRANKLIN

Now comes the affiant, first being duly sworn and cautioned, and hereby states that he has read the foregoing Complaint and that the averments contained therein are true and accurate to the best of his knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

William F. Emlich, Jr., D.O.

Sworn to me and subscribed in my presence this _____ day of September, 2014.

Notary Public, State of Ohio