

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MACK MANDRELL LOYDE,)	
)	
PLAINTIFF,)	
)	
vs.)	No. _____
)	
CORIZON HEALTH, INC; CAROLYNN)	
KOLESNIKOFF; ELLIOT GARRETT;)	
MOLLY O'TOOLE; KEISHA BEAN;)	
CHRISTOPHER SMITH; and)	JURY DEMAND
BROOKE EDWARDS,)	
)	
DEFENDANTS.)	

COMPLAINT

Comes the Plaintiff, Mack Mandrell Loyde, by and through his attorneys, and for his cause of action against the Defendants would respectfully show to the Court and Jury as follows:

I. The Parties

1.1 The Plaintiff, Mack Mandrell Loyde, is a prisoner in the custody of the Tennessee Department of Corrections.

1.2 The Defendant, Corizon Health, Inc. ("Defendant Corizon"), is, upon information and belief, a foreign, for-profit corporation organized in the state of Delaware with its principal address located at 103 Powell Court, Brentwood, Tennessee and doing business in Davidson County, Tennessee, and may be served with process through its registered agent, C T Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919.

1.3 The Defendant,Carolynn Kolesnikoff, is, upon information and belief, a resident of Wilson County, Tennessee, and at all times relevant to this Complaint was acting under color of state law as a mental health counselor employed by Defendant Corizon under contract with the Tennessee Department of Corrections. Defendant Kolesnikoff is being sued in her individual capacity for her deliberate indifference to her duties as a mental health counselor for the Tennessee Department of Corrections.

1.4 The Defendant, Elliot Garrett, is, upon information and belief, a resident of Davidson County, Tennessee, and at all time relevant to this Complaint was acting under color of state law as the behavioral health administrator employed by Defendant Corizon under contract with the Tennessee Department of Corrections. Defendant Garrett is being sued in his individual capacity for his deliberate indifference to his duties as a behavioral health administrator for the Tennessee Department of Corrections.

1.5 The Defendant, Molly O'Toole, is, upon information and belief, a resident of Davidson County, Tennessee, and at all times relevant to this Complaint was acting under color of state law as a psychiatrist employed by Defendant Corizon under contract with the Tennessee Department of Corrections. Defendant O'Toole is being sued in her individual capacity for her failure to perform, neglect of, and deliberate indifference to her duties as a psychiatrist for the Tennessee Department of Corrections.

1.6 The Defendant, Keisha Bean, is, upon information and belief, a resident of Davidson County, Tennessee, and at all times relevant to this Complaint was acting under color of state law as a psychologist employed by Defendant Corizon under contract with the Tennessee Department of Corrections. Defendant Bean is being sued in her individual

capacity for her failure to perform, neglect of, and deliberate indifference to her duties as a psychologist for the Tennessee Department of Corrections.

1.7 The Defendant, Christopher Smith, is, upon information and belief, a resident of Davidson County, Tennessee, and at all times relevant to this Complaint was acting under color of state law as a mental health counselor employed by Defendant Corizon under contract with the Tennessee Department of Corrections. Defendant Smith is being sued in his individual capacity for his failure to perform, neglect of, and deliberate indifference to his duties as a mental health counselor for the Tennessee Department of Corrections.

1.8 The Defendant, Brooke Edwards, is, upon information and belief, a resident of Davidson County, Tennessee, and at all times relevant to this Complaint was acting under color of state law as a grievance corrections officer with the Tennessee Department of Corrections. Defendant Edwards is being sued in her individual capacity for her failure to perform, neglect of, and deliberate indifference to her duties as a corrections officer with the Tennessee Department of Corrections.

II. Jurisdiction

2.1 This Court has jurisdiction over the Federal claims asserted in this action pursuant to 28 U.S.C.A. § 1331 (Federal Question) and § 1343 (Civil Rights), as well as 42 U.S.C.A. § 1983. This Court has jurisdiction over the State claims asserted in this action pursuant to 28 U.S.C.A. § 1367 (Supplemental).

III. Venue

3.1 Venue of this action is proper pursuant to 28 U.S.C.A. 1391(b) in that the events giving rise to the action occurred in the Middle District of Tennessee.

IV. NATURE OF THE CASE

4.1 This action arises under the **Eighth** Amendment to the United States Constitution and under federal law, specifically, the Civil Rights Act of 1964 as (amended), 42 U.S.C.A § 1983 *et seq.* for violations of the Constitutional Rights of Mr. Loyde. It also arises under Tennessee Common Law.

V. FACTS

5.1 Mr. Loyde is presently an inmate in the custody of the Tennessee Department of Corrections.

5.2 In 2019, Mr. Loyde was housed at the DeBerry Special Needs Facility in Davidson County, Tennessee.

5.3 This facility is managed by the Tennessee Department of Corrections which contracts with Defendant Corizon to provide mental health services to inmates housed at this facility.

5.4 Mr. Loyde was being treated for various mental health conditions while at the facility.

5.5 During the time Mr. Loyde was at this facility, he began to be treated by Defendant Kolesnifkoff, who was a mental health counselor working for Defendant Corizon in contract with the State of Tennessee.

5.6 Mr. Loyde also received mental health services from Defendants O'Toole, Bean, and Smith as well as other employees of Defendant Corizon.

5.7 Although Defendant Kolesnikoff started providing mental health counseling to Mr. Loyde, her conduct became sexual despite knowing that it was unlawful for corrections staff to have sexual contact with prisoners and inmates pursuant to Tenn. Code Ann. § 39-16-408 as well as being a violation of state and federal policies, standards, and procedures.

5.8 Mr. Loyde and others reported Defendant Kolesnikoff's conduct to Defendant Corizon and its employees as well as to TDOC officials, including Defendant Edwards.

5.9 Upon information and belief, Defendants Corizon, Garrett, O'Toole, Bean, Edwards, and Smith were actually aware of Defendant Kolesnikoff's unlawful sexual contact with Mr. Loyde.

5.10 Despite Defendants Corizon, Garrett, O'Toole, Bean, Edwards, and Smith having knowledge of Defendant Kolesnikoff's unlawful conduct, none of the Defendants stopped Defendant Kolesnikoff from continuing in her unlawful conduct towards Mr. Loyde.

5.11 Defendant Corizon was informed of Defendant Kolesnikoff's unlawful conduct towards Mr. Loyde through complaints made directly to it by Mr. Loyde and his family and was also aware of this conduct through its employees.

5.12 Despite its knowledge of the unlawful conduct, Defendant Corizon disregarded that conduct and permitted Defendant Kolesnikoff to continue to sexually abuse Mr. Loyde.

5.13 Defendants Garrett, O'Toole, Bean, and Smith, as employees of Defendant Corizon, were also made aware of Defendant Kolesnikoff's unlawful conduct towards Mr. Loyde through complaints made by Mr. Loyde and other prisoners as well as the circumstances under which Defendant Kolesnikoff engaged in her unlawful conduct.

5.14 Despite their knowledge of the unlawful conduct, Defendants Garrett, O'Toole, Bean, and Smith disregarded that conduct and permitted Defendant Kolesnikoff to continue to sexually abuse Mr. Loyde.

5.15 Defendant Edwards was made aware of Defendant Kolesnikoff's unlawful conduct towards Mr. Loyde through her role as grievance chairperson by Mr. Loyde filing a grievance complaining of Defendant Kolesnikoff's conduct.

5.16 Despite her knowledge of the unlawful conduct, Defendant Edwards disregarded that conduct and permitted Defendant Kolesnikoff to continue to sexually abuse Mr. Loyde.

5.17 Because the Defendants failed to stop Defendant Kolesnikoff's conduct towards Mr. Loyde, he continued to repeatedly be subjected to Defendant Kolesnikoff's unlawful sexual conduct.

5.18 Eventually, on November 25, 2019, Defendant Kolesnikoff was confronted by TDOC officials after Defendant Kolesnikoff had again subjected Mr. Loyde to unlawful sexual conduct.

5.19 Following that event, a Prison Rape Elimination Act investigation was conducted which established that the allegations against Defendant Kolesnikoff were substantiated.

5.20 Because the Defendants failed to prevent Defendant Kolesnikoff's unlawful conduct despite knowing about it happening, Mr. Loyde was subjected to repeated unlawful sexual abuse by Defendant Kolesnikoff.

5.21 Mr. Loyde, as an inmate and mental health patient, was unable to give consent for sexual contact with corrections staff.

5.22 Defendant Kolesnikoff knew that Mr. Loyde could not give consent for sexual contact with her.

5.23 Defendant Kolesnikoff knew that there was no penological purpose in engaging in unlawful sexual conduct with Mr. Loyde.

5.24 Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards were aware of their duty to protect prisoners, including Mr. Loyde, from unlawful sexual conduct by other prisoners and corrections staff.

5.25 Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards were aware of the substantial risk of harm to Mr. Loyde posed by the unlawful sexual conduct of Defendant Kolesnikoff.

5.26 Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards disregarded the substantial risk of harm to Mr. Loyde and failed to stop Defendant Kolesnikoff's unlawful conduct towards Mr. Loyde.

5.27 Defendant Corizon continued to employ Defendant Kolesnikoff despite being made aware of her unlawful sexual conduct towards Mr. Loyde.

5.28 Defendant Corizon failed to take steps to protect Mr. Loyde from Defendant Kolesnikoff.

5.29 Defendant Corizon failed to properly supervise Defendant Kolesnikoff to prevent unlawful sexual conduct by her towards Mr. Loyde.

5.30 In doing the acts alleged in this complaint, the Defendants were acting under the color of the statutes, ordinances, regulations, customs, and usages of the State of Tennessee and under the authority of their office as employees, contractors, and/or correctional employees in the State of Tennessee.

5.31 In addition to being subjected to unlawful sexual conduct by Defendant Kolesnikoff, as a result of the Defendants' deliberate indifference to Mr. Loyde's civil rights, Mr. Loyde was subjected to retaliation.

5.32 Defendant Corizon knew or, in the exercise of reasonable care in hiring, retaining, and supervising its employees, should have known about the unlawful conduct performed by Defendant Kolesnikoff against Mr. Loyde.

COUNT I
(EIGHTH AMENDMENT - SEXUAL ABUSE)

6.1 Defendant Kolesnikoff, under color of law, deprived Mr. Loyde of rights secured by the Eighth Amendment to the United States Constitution, including his right to be free from unlawful sexual conduct by a correctional employee.

6.2 Defendant Kolesnikoff knew that Mr. Loyde could not give consent to sexual conduct and knew there was no penological purpose for her sexual conduct towards Mr. Loyde.

6.3 Mr. Loyde's right to be free from unlawful sexual conduct by correctional employees was clearly established at the time of Defendant Kolesnikoff's conduct towards him.

6.4 Defendant Kolesnikoff deliberately engaged in unlawfully sexual conduct with Mr. Loyde.

6.5 Pursuant to statute, Defendant Kolesnikoff is liable to Plaintiff for special and general compensatory damages, including but not limited to, emotional, physical, economic, and pecuniary damages, punitive damages, and reasonable attorney's fees and costs.

COUNT II
(EIGHTH AMENDMENT - FAILURE TO PROTECT)

7.1 The conduct of Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards described above deprived Mr. Loyde of his right to be free from sexual abuse by a correctional employee as guaranteed under the Eighth Amendment to the United States Constitution.

7.2 Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards had a duty to protect Mr. Loyde from sexual abuse by other correctional employees.

7.3 Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards were aware of the excessive risk that Defendant Kolesnikoff posed to Mr. Loyde through continued sexual abuse.

7.4 Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards deliberately disregarded that excessive risk and failed to protect Mr. Loyde from continued sexual abuse by Defendant Kolesnikoff.

7.5 Pursuant to statute, Defendants Corizon, Garrett, O'Toole, Bean, Smith, and Edwards are liable to Plaintiff for special and general compensatory damages, including but not limited to, emotional, physical, economic, and pecuniary damages, punitive damages, and reasonable attorney's fees and costs.

COUNT III
(STATE LAW CLAIMS - NEGLIGENT HIRING AND SUPERVISION)

8.1 Defendant Corizon owed Mr. Loyde a duty of reasonable care to hire, retain, and supervise its employees charged with providing mental health treatment to Mr. Loyde.

8.2 Defendant Corizon breached those duties to Mr. Loyde by failing to hire someone who would not sexually abuse him, continuing to retain Defendant Kolesnikoff

after it became aware of her sexual abuse of Mr. Loyde, and failing to properly supervise the interactions between Defendant Kolesnikoff and Mr. Loyde.

8.3 The breach by Defendant Corizon was the cause in fact and proximate cause of the damages and injuries Mr. Loyde suffered and constitutes negligence on the part of Defendant Corizon.

8.4 As a direct a proximate result of Defendant Corizon's breach of its duty of care, Mr. Loyde suffered physical and emotional harm.

DAMAGES

9.1 As a direct and proximate result of the improper conduct of the Defendants as described above, Mack Loyde experienced emotional and physical harm and trauma.

9.2 As a direct and proximate result of the improper conduct of the Defendants as described above, Mack Loyde experienced mental anguish.

9.3 As a direct and proximate result of the improper conduct of the Defendants as described above, Mack Loyde experienced retaliation against him in response to the sexual abuse he suffered.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully demands judgment against Defendants, and each of them, jointly and severally as follows:

1. That proper process issue and be served upon the Defendants, requiring them to answer this Complaint within the time required by law;
2. That Plaintiff be awarded a judgment for compensatory damages in an amount to be determined by the trier of fact not to exceed the maximum amount allowed by law;

3. That the Plaintiff be awarded a judgment for punitive damages in an amount that is necessary to punish the Defendants and to deter others from committing similar wrongs in the future;

4. That the Plaintiff be awarded his costs, litigation costs, discretionary costs, pre- and post judgment interest, and attorney's fees pursuant to 42 U.S.C. §1988; and

5. That Plaintiff be granted such other, further, and general relief as to which she is entitled.

Respectfully Submitted,

/s/ Raymond T. Throckmorton, III
Raymond T. Throckmorton, III, No. 016313
2016 8th Ave. South
Nashville, TN 37203
615/ 297-1009
Fax: 615/ 297-9007

MOSELEY & MOSELEY
Attorneys at Law

BY: /s/ James Bryan Moseley
James Bryan Moseley, No. 021236
Attorneys for Plaintiff
237 Castlewood Drive, Suite D
Murfreesboro, Tennessee 37129
615/ 254-0140
Fax: 615/ 244-2270

THORNE LAW

BY: /s/ Leanne A. Thorne
Leanne A. Thorne, No. 023481
P. O. Box 262
Lexington, TN 38351
(731) 968-9810
thornelaw@hotmail.com