

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO. 2014CA006701 DIV AJ

DAWN MARIE BASHAM,

Plaintiff,

vs.

DR. MANUEL ABREU and PERSONAL
PHYSICIAN CARE, P.A., INC., a Florida
corporation,

Defendants.

_____ /

AMENDED COMPLAINT

Plaintiff, DAWN MARIE BASHAM, by and through her undersigned counsel, brings this Amended Complaint against Defendants, DR. MANUEL ABREU and PERSONAL PHYSICIAN CARE, P.A., INC., a Florida corporation (hereinafter “PERSONAL PHYSICIAN CARE”), and states as follows:

JURISDICTION AND PARTIES

1. Plaintiff DAWN MARIE BASHAM is an adult female who resides in Broward County, Florida. She is employed as an anti-bullying motivational speaker and singer.

2. Defendant DR. MANUEL ABREU (“DR. ABREU”) is a physician licensed and practicing medicine in Florida as an internist with a specialty in dermatological skin care aesthetics. At all materials times, DR. ABREU was the employee and/or agent of PERSONAL PHYSICIAN CARE.

3. DR. ABREU has a lengthy history since 2012 of sexually inappropriate touching and unwanted sexual advance toward women whom he met through his responsibilities at PERSONAL PHYSICIAN CARE. These actions by DR. ABREU were reported by the female

victims to management at PERSONAL PHYSICIAN CARE prior to DR. ABREU's sexual assault of Plaintiff.

4. Defendant PERSONAL PHYSICIAN CARE is a Florida corporation of medical professionals organized and existing under the laws of the State of Florida, and doing business providing medical services in Palm Beach County at a principal address of 4800 Linton Boulevard, Suite F-108, Delray Beach, Florida. PERSONAL PHYSICIAN CARE is one of the largest primary care medical practices in Palm Beach County.

5. At all relevant times, PERSONAL PHYSICIAN CARE operated a medical practice and had DR. MANUEL ABREU working as a medical doctor under its supervision in Palm Beach County.

6. Defendants engage in substantial and not isolated activity in the State of Florida and Palm Beach County.

7. This lawsuit seeks damages far exceeding the jurisdictional minimum of this Court of \$15,000.00, exclusive of interest, costs, and attorney's fees.

INTRODUCTION

8. This is an action for sexual battery and negligence arising from the sexual assault of DAWN MARIE BASHAM (hereinafter "DAWN") by DR. MANUEL ABREU during her medical appointment with DR. ABREU at the office of Defendant PERSONAL PHYSICIAN CARE. This is not a case of medical malpractice. The tortious conduct alleged herein did not arise out of any legitimate diagnosis, treatment or care of Plaintiff. In particular, Plaintiff does not allege in this action that Defendant violated any *professional* standard of care, but rather that she was sexually assaulted by DR. MANUEL ABREU while on PERSONAL PHYSICIAN CARE's premises.

9. A medical practice which employs physicians to render medical treatment to patients must enforce safety rules to prevent harm to the patients in its care.

10. A safety rule that must be enforced by the medical practice is that persons who have a history of sexual misconduct with women should not be hired, retained, and/or given unsupervised access to female patients.

11. A foreseeable harm of a medical practice hiring, retaining, and/or failing to adequately supervise or discipline a doctor with a history of sexual misconduct with females is that the doctor will sexually assault a female patient.

FACTUAL ALLEGATIONS

12. PERSONAL PHYSICIAN CARE is a primary care medical practice specializing in Internal Medicine and Family Practice. To that end, it employs medical doctors and other healthcare practitioners to provide “state of the art” healthcare to its patients.

13. On its website, PERSONAL PHYSICIAN CARE advertises that it is devoted to the well-being of its patients and pledges to ensure excellent care with respect and dignity.

14. On or about April 17, 2014, DAWN contacted PERSONAL PHYSICIAN CARE to schedule an appointment because she had an infected cyst on the side of her leg above the knee that needed immediate attention. She was prescribed medication and told to come back to PERSONAL PHYSICIAN CARE in one week if it did not heal.

15. On April 23, 2014, DAWN went to an appointment with a doctor at PERSONAL PHYSICIAN CARE who examined the cyst and prescribed DAWN different antibiotics. The doctor said the cyst might need to be surgically drained, but that surgery was not in her area of expertise. The doctor said she was going to call her colleague, DR. MANUEL ABREU, in to look at the cyst because he specialized in such matters. DR. ABREU looked at the cyst on April

23rd and told DAWN to come in the following Monday morning at 9:45am at which time he would decide to either drain the cyst or allow it to heal on its own.

16. On April 28, 2014, DAWN went to PERSONAL PHYSICAN CARE for a medical appointment as requested by DR. ABREU to examine and treat her cyst. The cyst was still very painful, made walking or bending difficult, and seemed to have swelled in size. DR. ABREU examined the cyst and decided it would have to be drained.

17. DAWN was then brought into a different room where they perform surgeries. DAWN was wearing a cotton knee length skirt which she raised just above her knee to expose the cyst. When DR. ABREU came in, he readjusted DAWN's skirt pushing it between her inner thighs from behind. DR. ABREU then told the nurse what things he needed for the surgery. Laying on her side, DAWN's back was to the cabinets being used by the nurse.

18. During the surgery, DR. ABREU said he would have to wait a month or so and do another surgery on it. DR. ABREU also said DAWN would need to come back on Wednesday for a follow up visit, but that he would not charge her.

19. DR. ABREU asked if DAWN was off that day and what she was planning to do. DAWN said she would be working, that she was a singer and was concerned about having to be on her feet, bending and lifting equipment and aggravating the cyst. DR. ABREU said he would prescribe pain medicine if DAWN needed it. He then asked more personal questions about her singing career and where he could see her perform.

20. DR. ABREU finished the procedure and asked the nurse to get waterproof bandages. When the nurse left the room, DR. ABREU began to "wipe" the area around the cyst (with what DAWN understood to be gauze or cloth) while talking to her at the same time.

21. DR. ABREU then lifted her skirt and "wiped" DAWN's upper thigh, inner thigh,

up her buttock, and penetrated her vagina with his fingers over her underwear.

22. There was no medical reason for DR. ABREU to touch DAWN buttocks and penetrate her vagina. The intentional, unpermitted, harmful, and offensive contact with DAWN on that day was unrelated to any diagnosis or treatment.

23. Prior to the assault, DAWN's mind had been on getting herself through the procedure. She did not expect DR. ABREU to touch her genitals as it was completely unnecessary to the medical procedure. When DR. ABREU made contact with her vagina and buttocks, DAWN was completely shocked, frozen and in disbelief. DR. ABREU stopped touching DAWN right before the nurse came back in.

24. DR. ABREU then applied the bandages and rubbed DAWN's knee and said he would see her Wednesday. DAWN thought that meant he would be leaving the room, but he then waited as DAWN got up and walked with her to the nurses' desk and wrote a prescription for pain medicine. DR. ABREU tried to make eye contact with DAWN and say good-bye but DAWN kept her head facing the nurse at the desk.

25. As soon as DR. ABREU walked away, DAWN told the nurse something bad had just happened and that she needed to speak to the office manager. The office manager asked DAWN what had happened. DAWN told her the doctor had just fondled her. DAWN then reported the assault to the Delray Beach Police Department.

26. As a result of the sexual assault, DAWN has suffered, and will continue to suffer, emotional and psychological injuries, and other debilitating injuries that are continuous and ongoing in nature.

27. Prior to DAWN's sexual assault by DR. ABREU, PERSONAL PHYSICIAN CARE, P.A., INC. was already on notice that DR. ABREU was sexually inappropriate and had

physical boundary issue with women

COUNT I
(SEXUAL BATTERY)
(as to Defendant Dr. Manuel Abreu)

28. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 27 above.

29. DR. ABREU committed sexual battery upon DAWN consisting of intentional, harmful, unwanted and offensive sexual contact upon her person of her vagina and buttocks.

30. As a direct and proximate cause of the foregoing, Plaintiff has suffered psychological and emotional injury, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, DAWN MARIE BASHAM, demands judgment against Defendant DR. MANUEL ABREU for compensatory damages, costs and such other and further relief as this Court deems proper.

COUNT II
(RESPONDEAT SUPERIOR / VICARIOUS LIABILITY)
(As to Defendant PERSONAL PHYSICIAN CARE)

31. Plaintiff repeats and re-alleges Paragraphs 1 through 27 above.

32. DR. ABREU was at all material times an employee, appointee and/or agent of PERSONAL PHYSICIAN CARE.

33. DR. ABREU committed acts of sexual battery on DAWN by offensively touching DAWN's vaginal area in a sexual manner without DAWN's consent.

34. DR. ABREU was authorized by PERSONAL PHYSICIAN CARE to be alone with DAWN and other patients, and to have unfettered and unsupervised control and access to DAWN while DAWN was there for dermatological exam.

35. The acts of battery and offensive touching in a sexual manner perpetrated by DR. ABREU on DAWN occurred in a PERSONAL PHYSICAL CARE patient room where DR.

ABREU was required to perform his employment duties, and his contact with DAWN was initiated within the course and scope of DR. ABREU's performance of those duties.

36. The acts of battery described above occurred during DR. ABREU's working hours while he was there to examine a patient at PERSONAL PHYSICIAN CARE.

37. DR. ABREU's initial contact and relationship with DAWN was in furtherance of PERSONAL PHYSICIAN CARE's business interests.

38. In addition, DR. ABREU was authorized by PERSONAL PHYSICIAN CARE to touch DAWN. DR. ABREU extended and converted this authorized touching into acts of sexual assault and battery of DAWN as described above.

39. The acts engaged in by DR. ABREU were in the apparent course and scope of his employment or agency with PERSONAL PHYSICIAN CARE.

40. As a result of the sexual assault described herein, DAWN has suffered psychological, emotional and physical injuries, as well as shame, humiliation and the inability to lead a normal life.

41. Under the doctrine of respondeat superior, PERSONAL PHYSICIAN CARE is responsible for the negligent, reckless and intentional actions of its servant, DR. ABREU, committed in the apparent scope of his duties.

WHEREFORE, Plaintiff, DAWN MARIE BASHAM, demands judgment against Defendant, PERSONAL PHYSICIAN CARE, P.A., for compensatory damages, costs and such other and further relief as this Court deems just and proper.

COUNT III
(NEGLIGENCE)
(As to Defendant PERSONAL PHYSICIAN CARE)

42. Plaintiff repeats and re-alleges Paragraphs 1 through 27 above.

43. At all material times, PERSONAL PHYSICIAN CARE owed a duty to DAWN to use reasonable care to ensure her safety, care and well-being while she was obtaining medical services from its physicians.

44. These duties encompassed the hiring, retention and supervision of DR. ABREU.

45. DR. ABREU sexually assaulted other women whom he came into contact with as a result of his employment by PERSONAL PHYSICIAN CARE.

46. DR. ABREU sexually assaulted female medical assistants, other employees, vendors, and other females whom he came into contact with at PERSONAL PHYSICIAN CARE. This sexual misconduct included, but was not limited to, grabbing at genitalia, putting his down their blouses, rubbing and caressing shoulders and backs, and pulling on bra strings.

47. PERSONAL PHYSICIAN CARE breached its duty of care to DAWN by failing to protect her from sexual battery and lewd and lascivious acts committed by their agent, DR. ABREU.

48. Prior to the sexual battery perpetrated on DAWN, PERSONAL PHYSICIAN CARE knew or in the exercise of reasonable care should have known that DR. ABREU was unfit for the duties assigned, did not exhibit appropriate boundaries with women, was sexually inappropriate with females, and/or posed a risk of perpetrating unwanted sexual contact on DAWN.

49. Despite having such information, PERSONAL PHYSICIAN CARE retained DR.

ABREU without any limitations on his employment, failed to provide additional supervision of DR. ABREU, and took no action to protect any of his female patients.

50. At all relevant times, PERSONAL PHYSICIAN CARE knew or in the exercise of reasonable care should have known that DR. ABREU was unfit, dangerous, and a threat to the safety and welfare of women entrusted to him for medical services.

51. Despite such actual or constructive knowledge, PERSONAL PHYSICIAN CARE retained DR. ABREU and failed to exercise adequate supervision.

52. As a direct and proximate cause of the foregoing, DAWN has suffered psychological and emotional injuries, mental anguish and the loss of enjoyment of life.

WHEREFORE, Plaintiff, DAWN MARIE BASHAM, demands judgment against Defendant, PERSONAL PHYSICIAN CARE, P.A., for compensatory damages, costs and such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury and all issues so triable as a matter of right.

CERTIFICATE RE: E-FILING AND E-SERVICE

I HEREBY CERTIFY that this Amended Complaint was filed electronically in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(e).

I FURTHER CERTIFY for purposes of service of any documents after initial process that staff.efile@pathtojustice.com is primary.

Dated: June 10, 2014

FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.
Attorneys for Plaintiff
425 North Andrews Avenue, Suite 2
FORT LAUDERDALE, FL 33301
(954)524-2820 TELEPHONE
(954)524-2822 Fax

BY: /s/ Adam D. Horowitz
ADAM D. HOROWITZ
Florida Bar No.: 376980