

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT

IN AND FOR ALACHUA COUNTY, FLORIDA

LORI K. BATTAILE, individually

Plaintiff

v.

SHANDS TEACHING HOSPITAL AND CLINICS,

INC. a Florida non-profit corporation, and

UNIVERSITY OF FLORIDA by and through its

BOARD OF TRUSTEES , together d/b/a UF Shands ,

UF ShandsAcademic Health Center and UF Shands

Health Science Center; WALGREENS Co., d/b/a/

Walgreens 24 hour pharmacy, and John Does 1-10.

Defendants.

CASE NO. _____

DEMAND FOR JURY TRIAL

TO:

**Shand's Teaching Hospital and Clinics
Inc, UF Shands**

**RA: Boyarshinov, Andrei
720 SW 2nd Avenue, Suite 360a
Gainesville Fl 32601
boyara@shands.ufl.edu**

**University of Florida, College of
Medicine, UF Shands
University of Florida Board of Trustees
PO Box 113125, 123 Tigert Hall
Gainesville, Fl 32611
chancellor@flbog.org**

Walgreens

and John Does

**RA: Prentice-Hall Corporation System,
Inc.
1201 Hays Street, Suite 105
Tallahassee, Fl 32301**

Dr. Umar Ghaffar

**University of Florida, College of
Medicine, UF Shands
University of Florida Board of Trustees
PO Box 113125, 123 Tigert Hall
Gainesville, Fl 32611
chancellor@flbog.org**

COMPLAINT FOR INJUNTIVE RELIEF AND DAMAGES

(for DEFAMATION and NEGLIGENCE), and to

TAX ATTORNEYS FEES

Comes Now, Plaintiff Lori K. BATTAILE, to sue Defendants alleges as follows:

GENERAL ALLEGATIONS

1. At all relevant times, Plaintiff Lori Battaile has been and is an individual residing in Alachua County, Florida.
2. Plaintiff is informed and believes and thereon alleges that at all relevant times Defendant Ghaffar (“Ghaffar”) is a physician licensed to practice medicine in Florida and does so within the “UF Shands” healthcare system.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times Defendant Shand’s Teaching Hospital and Clinics Inc. (“Shands”), has been and is a corporation duly organized and existing under the laws of the State of Florida, with its principal place of business in Gainesville, Alachua County, Florida.
4. Defendant University of Florida (“UF”), through the Board of Trustee’s as the governing agency of UF, together with Shands, developed a healthcare group, d/b/a UF Shands (“UF Shands”), which regularly conducts business in Alachua County, FL.
5. Defendant Walgreens Co. is a Florida corporation doing business in Alachua County, FL.
6. Defendants DOES 1 through 10, inclusive, are sued herein under fictitious names. Their true names and capacities are presently unknown to Plaintiff. When said true names and capacities are ascertained, Plaintiff will amend this Complaint by inserting such information. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences alleged herein and Plaintiffs damages were proximately caused by said Defendants.
7. Plaintiff is informed and believes and thereon alleges that at all times relevant, each individual Defendant, including the DOE Defendants, was the agent, servant, representative

and/or employee of each of the other Defendants, and that in doing the things hereinafter alleged, each Defendant was acting within the course and scope of his, her or its authority as such agent, servant, representative and/or employee, with the permission, knowledge, consent and ratification of each of the other Defendants.

8. Unless otherwise indicated, all Defendants, including DOES defendants, are collectively referred to herein as the "Defendants".

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

9. Plaintiff is a consumer protection attorney, volunteer, mother active in her children's school and upstanding citizen of Gainesville, Fl., small, tight knit community.
10. Plaintiff is informed and believes and thereon alleges Defendants initiated a gossip campaign against her.
11. At all relevant times, Plaintiff was a patient of and designated as her primary care physician, the UF Shands Eastside Community Practice ("Eastside Clinic"), specifically, Defendant Dr. Ghaffar. Eastside clinic is listed as a clinic within the UF Shands healthcare group.
12. At all relevant times, Plaintiff's children were patients of and designated as their primary care physician, the UF Shands Eastside Community Practice.
13. On information and belief, Eastside clinic is a small practice, sharing one- half of a building and consisting of 4 (four) physicians.
14. Defendant Dr. Ghaffar and other physicians in the practice have examined both the Plaintiff and the plaintiff's children.
15. Plaintiff was referred to Eastside by friends in the community, including her children's teacher and another attorney.
16. Plaintiff is informed and believes and thereon alleges that Defendants made false and malicious statements with regard to Plaintiff and her character.

17. In approximately February, 2012, the individual Defendants Ghaffar and DOE 1 verbalized to each other that Plaintiff was abusing narcotics and using different pharmacies around town to do so. The statements are commonly understood as a crime and thus are actionable *per se*. (See Restatement (Second) of Torts §§ 570-74).
18. Defendants then republished the slanderous statements to and in front of several other individuals including those within their employ and industry.
19. Defendant Walgreens “flagged” Plaintiff’s account as problematic for all to see.
20. Defendant Walgreens imposed an ID approval on Plaintiff’s account for all prescription pickups.
21. Defendant Walgreens announced the “flagging” and ID requirement to the Plaintiff both over the phone while others were present and again in person with others in line next to and behind her.
22. For no reason except to embarrass and intimidate her, Defendant Walgreens imposed the restriction on her children’s account, announcing such restriction in front of others.
23. Prior to this time, Defendant Walgreens had, with little exception, ordered all refills and filled all prescriptions for both the Plaintiff and her children. At no time did Defendant Walgreens suggest or make Plaintiff aware that there were any issues, conflicts or any other matter of concern.
24. On February 13, 2013, Plaintiff requested a refill for her prescriptions of tramadol and toparimate.
25. On February 15, 2013, Plaintiff received a certified letter from Defendants Ghaffar and UF Shands, stating in pertinent part:

... “your medical care at UF Shands...will be terminated...we will provide you with emergency care only...”

“We are taking this action because of **problematic behaviors associated with narcotics...**”

No further information was given and no opportunity for recourse was provided.

26. Neither topiramate nor tramadol are “narcotics”. Therefore, the published statement that the Plaintiff has warranted termination from the UF Shand’s practice “because of problematic behaviors associated with *narcotics*” is completely libelous, defames Plaintiff and is clearly suggestive of a crime.
27. As medical professionals, Defendants knew or should have known that Plaintiff’s prescriptions were not narcotics.
28. Several persons and agencies were copied on the letter, including Plaintiffs’ insurance, and it was submitted into Plaintiff’s permanent medical file.
29. These statements were understood by those who heard them and expressly identified the Plaintiff, in a way that defamed the reputation of Plaintiff as a respected professional, a mother and primary care-giver, and a responsible member of the community.
30. Gainesville is a small, tight knit community. It is obvious and foreseeable that these libelous accusations would cause severe harm not just to Plaintiff’s character, but also professionally in the small circle of attorneys, whose financial survival depends almost entirely on reputation; and medically within a small community whose health care is run predominately by UF Shand’s.
31. All Defendants were aware that at the time the libelous statements were made and Plaintiff was shunned and banned from Eastside Clinic, Plaintiff’s child whose primary care was also Eastside Clinic, was extremely ill, requiring monitoring, emergency treatment, labs and scans, and several follow up appointments with Eastside Clinic and various UF Shands medical departments including nephrology, neurology, and urology, radiology, orthopedics and lab.

32. Plaintiff was extremely distressed, frantic and overcome with fear that her very ill child was not going to receive medical attention.
33. The defamatory statements made and as described herein could affect not only Plaintiff's reputation and ability to retain clients, but also her license to practice, and, as an only parent, impact her and her children's only source of livelihood, if not retracted.
34. Despite Defendants knowledge of the falsity of their statements and Plaintiff's requests for retraction, Defendants have refused to do so.
35. Plaintiff has been "terminated" from Eastside Clinic, expressly denied by at least two other physician practices, as well as any associated with UF Shands, as a direct result of Defendants slander and libel. Plaintiff has been unable to secure a new primary doctor, and has, for several months, gone untreated for her existing, persistent and chronic medical conditions, as well as being refused treatment for an urgent request.
36. Because of the aforementioned actions, Plaintiff has endured humiliation, restrictive access and express denial to healthcare, embarrassment, depression, severe anxiety, weight loss, severe headaches, extreme emotional and mental anguish physical debilitation.
37. Plaintiff has also incurred damages and expenses related to the loss of healthcare, the duress, and the affect on her reputation.
38. Defendants UF Shands is by far the dominating medical practice in Gainesville, and all of Alachua County, reaching into Jacksonville and throughout Florida.
39. On information and belief, UF Shands has an electronic centralized patient care system for use by all or many of its members and affiliates in which the aforementioned defamatory remarks could be seen by all who use it.
40. Walgreens is a dominating pharmacy in Gainesville, Alachua County, and, in fact, a leading pharmacy in all the country.

41. On information and belief, Walgreens has an electronic centralized patient care system for use by all or many of its members and affiliates in which the aforementioned defamatory remarks could be seen by all who use it.
42. Plaintiff is informed and believes and thereon alleges that Defendants and each of them, made the foregoing statements recklessly, negligently, and in some cases, with the specific intent to discredit, shun and injure Plaintiff in her profession, her community, in her ability to receive adequate health and other medical care, and to her children.
43. Simialr to *Slander per se*, damages are presumed in libel. Where, however, proof of intent, malice or careless disregard is shown, exemplary or punitive damages may be awarded.

FIRST CAUSE OF ACTION

SLANDER PER SE

[against All Defendants]

Plaintiff repeats and re-pleads Paragraphs 1 through 43, inclusive, and incorporates the same herein by reference.

44. Defendants made the defamatory statements concerning Plaintiff as described herein to professionals in the medical services industry and recklessly and negligently republished the defamatory statements to and in front of other individuals.
45. The statements made by Defendants, and each of them, had the tendency to injure Plaintiff's veracity and further, indicated that Plaintiff had committed a crime. In fact, the Defendants individually and collectively *took actions* against Plaintiff which were indicative of a crime.
46. These statements were understood by those who heard them to be of , concerning, and expressly identifying the Plaintiff , in a way that defamed the reputation of Plaintiff as a respected professional, a mother and primary care-giver, and a responsible member of the community.

47. These statements were made to members of the local medical, insurance, healthcare and pharmaceutical community and were as far reaching as all of the county, state and even outside the state of Florida.
48. All statements are entirely false as they pertain to Plaintiff, and are defamatory, slanderous on their face, and have subjected Plaintiff to being treated with contempt, shunning and humiliation.
49. Defendants, as healthcare professionals, knew or should have known that the statements were false.
50. In addition to the harm presumed by law, the wrongful conduct of Defendants, and each of them, was a substantial factor in causing harm, including but not limited to harm to Plaintiff's business, profession, expenses Plaintiff had to pay as a result of the defamatory statements, harm to Plaintiff's reputation, her ability to get appropriate and necessary treatment and medical care, and mental and emotional anguish.
51. As a proximate result of the above-described statements, Plaintiff has suffered loss to her reputation, shame, mortification, and hurt feelings, all to general damages.
52. Upon information and belief, by engaging in the above conduct, Defendants, and each of them, acted with actual knowledge, intent, oppression, and/or fraud, entitling Plaintiff to exemplary and punitive damages.

SECOND CAUSE OF ACTION

LIBEL

[against All Defendants]

Plaintiff repeats and re-pleads Paragraphs 1 through 43, inclusive, and incorporates the same herein by reference.

53. Defendants made the defamatory statements concerning Plaintiff as described herein of the

February 15, 2013 letter and recklessly and negligently republished the defamatory statements to others by copy and by notes input into their computer network.

54. The statements made by Defendants had the tendency to injure Plaintiff's veracity and indicated that Plaintiff had committed a crime.
55. These statements were made to members of the local medical, insurance, healthcare and pharmaceutical community and were as far reaching as all of the county, state and even outside the state of Florida.
56. All statements are entirely false as they pertain to Plaintiff, and are libelous, defamatory on their face, and have subjected Plaintiff to being treated with contempt, shunning and humiliation.
57. These statements were understood by those who heard them to be of, concerning and expressly identifying the Plaintiff, in a way that defamed the reputation of Plaintiff as a respected professional, a mother and primary care-giver, a responsible member of the community.
58. Defendants, as healthcare professionals, knew or should have known that the statements were false.
59. In addition to the harm presumed by law, the wrongful conduct of Defendants, and each of them, was a substantial factor in causing harm, including but not limited to harm to Plaintiff's business, profession, expenses Plaintiff had to pay as a result of the defamatory statements, harm to Plaintiff's reputation, ability to get appropriate and necessary treatment and medical care, and mental and emotional anguish.
60. As a proximate result of the above-described statements, Plaintiff has suffered loss to her reputation, shame, mortification, and hurt feelings, all to general damages.

61. Upon information and belief, by engaging in the above conduct, Defendants, and each of them, acted with actual knowledge, intent, oppression, and/or fraud, entitling Plaintiff to exemplary and punitive damages.

THIRD CAUSE OF ACTION
DEFAMATION
[Against All Defendants]

Plaintiff repeats and re-pleads Paragraphs 1 through 43, inclusive, and incorporates the same herein by reference.

62. Defendants made the aforementioned defamatory statements concerning Plaintiff to each other and to professionals in the medical services industry and recklessly and negligently republished the defamatory statements to and in front of other individuals, and are as far reaching as all of the county, state and even outside the state of Florida.
63. The statements made by Defendants were false and Defendants knew or should have known that the statements were false.
64. Upon information and belief, members of the community understood that the statements were about Plaintiff as the statements were made of, concerning, and mentioned Plaintiff expressly and understood them in a way that injured Plaintiff and defamed the reputation of Plaintiff as a respected professional, mother, care-giver and responsible member of the community.
65. As a proximate result of the above-described statements, Plaintiff has suffered loss to her reputation, shame, shunning, mortification, and hurt feelings, all to general damages.
66. Upon information and belief, by engaging in the above conduct, Defendants, and each of them, acted with malice, oppression, and/or fraud, entitling Plaintiff to exemplary and punitive damages.

FOURTH CAUSE OF ACTION

NEGLIGENCE: Professional Malpractice and Breach of Duty

[against Defendant Walgreens and Does]

Plaintiff repeats and re-pleads Paragraphs 1 through 43, inclusive, and incorporates the same herein by reference.

67. Defendant Walgreens and Does (“Defendants WD”) acted as agent, provider and facilitator for and on behalf of Plaintiff with respect to her prescriptions.
68. Whether voluntarily or by their advertisement and ensuing contract principals, Defendants assumed a duty of care in addition to that owed under Section 465.003 (6), Florida Statutes, as amended.
69. Defendant Walgreens, by and through its pharmacists’ Defendant Does, negligently performed its assumed and/or agreed to responsibilities and breached their duty of care by:
 - i. Failing to inform and/or label Plaintiff’s prescription tramadol or topiramate as to its compound as a narcotic;
 - ii. Failing to inform Plaintiff of any issues with refill ordering, if there be any, despite being in control of the (re)ordering and, in fact, submitting all reorder requests;
 - iii. Failing to properly inform Plaintiff’s insurer of any issues with refill ordering, as is required by Medicaid, which, had they done so, would have provided a secondary preventative measure against early refills, if there be any, by their refusal to insure;
 - iv. Failing to counsel Plaintiff despite, on information and belief, counselling with her physician;
 - v. Negligently submitting, reordering, filling and/or dispensing prescriptions.
70. Defendant negligently carried out its duty to dispense, label and inform Plaintiff and make orders on her behalf, the direct and proximate result of which has caused Plaintiff injury as

previously described herein.

71. Plaintiff is entitled to and therefore respectfully requests actual and punitive damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

EMOTIONAL DURESS

(against All Defendants)

Plaintiff repeats and re-pleads Paragraphs 1 through 43, inclusive, and incorporates the same herein by reference.

72. Defendants had provided health care to the Plaintiff and her children.
73. The actions or failure to act on part of the Defendants together and individually caused severe anguish and alarm including, but not limited to Plaintiff's fear that her children could not receive health care during a time when one was extremely ill;
74. The uncertainty of receiving prescriptions, health care, and treatment is emotionally draining and physically damaging.
75. Defendants' actions or failure to act as described herein, including, but not limited to:
- a. Defendants failure to retract the knowingly false statements;
 - b. Restricting and/or refusing to provide healthcare despite knowing its accusations to be false;
 - c. "Flagging" Plaintiff's files, restricting access, and banning treatment despite knowledge of her persistent medical conditions; and
 - d. other actions which are tantamount to those taken against someone who would abuse narcotics or act criminally,
- were outrageous, intentional and beyond decency.
76. Plaintiff suffered damages as a direct and proximate result of Defendants actions/inaction

including, but not limited to induced depression, paranoia, severe anxiety, and mental, emotional and physical suffering.

77. Plaintiff is entitled to and therefore respectfully requests judgment and damages.

SIXTH CAUSE OF ACTION
MULTIPLE VIOLATIONS OF HIPPA
(As to All Defendants)

Plaintiff repeats and re-pleads Paragraphs 1 through 43, inclusive, and incorporates the same herein by reference.

78. 45 C.F.R. § 164.502 (a) states that “A covered entity may not use or disclose protected health information, except as permitted or required by this subpart ...” (“HIPPA”)
79. Defendants are “covered entities” under 45 C.F.R. 164.502.
80. Defendants used and disclosed Plaintiff’s individually identifiable protected health information, without authorization or privilege to do so, in violation of 45 C.F.R. 164.502(a).
81. In releasing false information recklessly and negligently, and which was not retracted despite pleas to do so, Defendants failed to comply with the “minimum necessary” standard as required by 45 C.F.R. 502(b).
82. Defendants failed to inform Plaintiff of their use of her individually identifiable protected health information, in violation of 45 C.F.R. 164.520(1).
83. Defendants failed to allow Plaintiff to contest her protected health information, and when Plaintiff did so, Defendants failed to make corrections or amendments to her file, in violation of 45 C.F.R. 164.526
84. Defendants failed to keep communications confidential and minimize Plaintiff’s harm despite Plaintiff’s reasonable requests, in violation of 45 CFR 164.522(b).

85. Plaintiff is entitled to and therefore respectfully requests judgment and damages in an amount to be determined at trial.

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

- i. For all general damages, in a sum to be proven at trial, but in an amount no less than \$200,000;
- ii. For all special damages, in a sum to be proven at trial; and
- iii. For exemplary and punitive damages as allowed by law and in a sum to be proven at trial.
- iv. That Defendants be enjoined from continuing the defamatory comments and that they be mandated to retract them;
- v. For costs and fees incurred herein;
- vi. Attorneys' fees, as permitted by law;
- vii. For such other and further relief as is allowable by law or that this honorable Court may deem just and proper.

Dated: April 26, 2013

Plaintiff hereby demands trial by jury.

Respectfully submitted

LAW OFFICE OF LORI KELLERMANN, PL

LORI KELLERMANN, ESQ.

Bar No. 977276

LAW OFFICE OF LORI KELLERMANN, PL

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