

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

Matthew G. Friederichs, M.D.,

Case No. _____

Plaintiff,

v.

COMPLAINT

Sanford Health,

JURY TRIAL DEMANDED

Defendant.

Plaintiff Matthew G. Friederichs, M.D. ("Plaintiff"), as and for his Complaint against Defendant Sanford Health ("Defendant"), states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is an individual residing in Cass County, North Dakota.
2. Defendant is a South Dakota corporation with its principal office located at 1305 West 18th Street, Sioux Falls, South Dakota 57015.
3. This Court has federal question jurisdiction over the claims brought by Plaintiff under the Lanham Act, 15 U.S.C. § 1125, and has supplemental jurisdiction over the remainder of Plaintiff's claims pursuant to 28 U.S.C. § 1367, in that the remaining claims are so related to Plaintiff's Lanham Act claim that they form part of the same case or controversy.
4. This Court also has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332, in that the parties are citizens of different states and the amount in controversy exceeds \$75,000.
5. Venue is proper in this Court because the causes of action arose primarily in North Dakota.

FACTUAL BACKGROUND

6. Plaintiff is an orthopedic surgeon. Plaintiff is a graduate of the University of North Dakota School of Medicine. Plaintiff completed a residency in orthopedic surgery at the University of Utah School of Medicine and a fellowship in sports medicine at the University of Utah School of Medicine. Plaintiff is certified by the American Board of Orthopedic Surgery.

7. Defendant is a health system that owns and operates numerous affiliated hospitals and clinics in the Upper Midwest, primarily in North Dakota, South Dakota, and Minnesota.

8. In 2003, Plaintiff began employment as an orthopedic surgeon at MeritCare Medical Group (“MeritCare”) in Fargo, North Dakota.

9. Plaintiff and MeritCare were parties to an Employment Agreement (the “Agreement”).

10. As is relevant here, the Agreement provided that either party could terminate the Agreement, without cause, on 90 days’ written notice.

11. The Agreement further provided that unless otherwise agreed to by MeritCare, Plaintiff was to continue to provide full-time services until the effective date of termination.

12. In 2009, MeritCare merged with Defendant, resulting in Defendant becoming Plaintiff’s employer and Defendant becoming the assignee of or a party-in-interest to the Agreement. Plaintiff then worked as an orthopedic surgeon for Defendant in Fargo for over a decade.

13. On November 29, 2021, Plaintiff provided 90 days’ written notice to Defendant that he was terminating the Agreement effective February 28, 2022.

14. On November 30, 2021, Defendant informed Plaintiff that his last day would be February 25, 2022.

15. At this time, Defendant also informed Plaintiff that he would not be allowed to see any new patients six weeks before his last day. However, mere days later, Defendant unilaterally

decided that Plaintiff would not be allowed to see any new patients effective immediately, meaning Defendant prevented Plaintiff from seeing new patients for approximately 83 of the 90 days in the notice period. These new patients were reassigned to other surgeons employed by Defendant.

16. Defendant also unilaterally decided that Plaintiff would not be allowed to perform surgeries on existing patients after February 10, 2022, despite his last date of employment not being until February 25, 2022.

17. These unilateral decisions by Defendant caused Plaintiff to lose compensation and further caused damage to his reputation with patients.

18. On December 13, 2021, Plaintiff sent a letter to Defendant regarding these issues, but received no response.

19. On or about January 5, 2022, Defendant sent letters to an unknown number of Plaintiff's patients. This letter (the "January 5 Letter") provided as follows:

Dear Susan,

It has been my honor and pleasure to serve patients at Sanford Orthopedics & Sports Medicine Clinic in Fargo, N.D. It's with mixed emotions that I am announcing I will be leaving my position effective February 25, 2022.

If you have an appointment after that day, our clinic will contact you to reschedule with another highly skilled surgeon on the Sanford Orthopedic Team. All of Sanford's Orthopedic Surgeons who are highly trained and skilled. I trust them and our team of advanced practice providers to continue providing you with expert care for your orthopedic needs. They will have access to all of your medical records and history, ensuring a seamless transition.

More information about these providers can be found at sanfordhealth.org.

If you need medication refills or changes, have lab or X-ray follow-up orders, or have any other questions, please call (701) 417-6000 to discuss your options for continuing treatment. Sanford Health will give you at least a 30-day notice if we are unable to meet your ongoing medical needs.

I greatly value our relationship and thank you for entrusting me to care for you over the years. It's been truly rewarding and humbling to have you as my patient. Best wishes for your future health.

CLINIC LOCATION CHANGE: All of Sanford Orthopedics and Sports Medicine Clinic, Hospital, Surgery Center and Walk-In Clinic services are now all under one roof at 1720 University Drive South. The new main entrance and parking lot are on the East side of the building on 11th Street S. in Fargo.

Sincerely,

Matthew Friederichs, MD

20. Plaintiff did not author the January 5 Letter or its contents. Nor did Plaintiff otherwise authorize any such communication to be sent on his behalf.
21. This January 5 Letter is a misrepresentation in its entirety, in that it purports to have been sent by Plaintiff and/or authorized by Plaintiff, neither of which is true.
22. The January 5 Letter contains further misrepresentations and false endorsements, including:
 - a. That Plaintiff had "mixed emotions" about leaving Defendant;
 - b. That Plaintiff believed "[a]ll of Sanford's Orthopedic Surgeons" are "highly trained and skilled";

- c. That Plaintiff “trust[s] them and our team of advanced practice providers to continue providing you with expert care for your orthopedic needs”;
 - d. That Plaintiff believed it would be a “seamless transition” to a new surgeon;
 - e. The implication that Plaintiff no longer wished to have a relationship with his existing patients at his new clinic, such as the statements that “[i]t’s been truly rewarding and humbling to have you as my patient” and “[b]est wishes for your future health;” and
 - f. The implication that Plaintiff believed it was in the best interests of his patients to continue their care with Defendant, and that Plaintiff desired for them to do so.
23. Plaintiff has learned that Defendant sent this letter to multiple patients and, upon information and belief, likely sent this letter to hundreds of patients, if not thousands.
24. From the contents of the January 5 Letter, it is apparent that Defendant sent it in order to transfer Plaintiff’s patients to other surgeons employed by Defendant, so that the patients would not reschedule their surgeries with Plaintiff at his new clinic.
25. On January 12, 2022, Plaintiff sent a letter to Defendant demanding that Defendant cease all such communications with Plaintiff’s patients and that Defendant disclose the names of all patients who received such communications so that Plaintiff could provide a corrective communication to said patients. Plaintiff requested a response by noon on January 18, 2022.
26. On January 17, 2022, Plaintiff returned to work following a vacation. On his first day back at Defendant following the January 5 Letter, approximately 10 of Plaintiff’s patients either cancelled their appointments or failed to show, an unusually high number that could be attributed only to the January 5 Letter.

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