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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CHRISTINE GETMAN, an individual,

Plaintiff,

v.

**OREGON HEALTH AND SCIENCE
UNIVERSITY**, a public corporation of the
State of Oregon;

Defendant.

Case No.: 3:21-cv-1408

COMPLAINT

Disability Discrimination
(29 U.S.C. § 794(a); 42 U.S.C. § 12132; 42
U.S.C. § 18116)

DEMAND FOR JURY TRIAL

Plaintiff alleges as follows:

INTRODUCTION

1. Anti-discrimination and other civil rights laws are not suspended or waived in times of emergencies or disaster, such as the COVID-19 pandemic. This is particularly true with respect to the treatment of persons with disabilities during medical emergencies as they possess the same

dignity and worth as everyone else.¹ Civil rights protections and responsibilities cannot be waived and health-care providers and governments, such as defendant, must comply with the Americans with Disabilities Act as Amended, Section 504 of the Rehabilitation Act, and Section 1557 of the Patient Protection and Affordable Care Act, even during a crisis. This includes crafting and implementing policies such as crisis standards of care, visitation rules, and vaccine distribution plans.²

2. Unfortunately, defendant Oregon Health and Science University failed to comply with federal laws prohibiting discrimination against persons with disabilities in providing medical treatment and care to plaintiff Christine Getman, a woman living with Spinal Muscular Atrophy. Defendant strictly enforced its COVID-19 no-visitor policy, despite having knowledge of Ms. Getman's disability and her disability-related need to have a support person present to assist plaintiff with the activities of daily living. Defendant's refusal to modify its policy resulted in Ms. Getman's inability to take full, equal advantage of defendant's healthcare services and constituted unlawful discrimination in violation of Section 504 of the Rehabilitation Act (Section 504), Title II of the Americans with Disabilities Act as Amended (ADA), and Section 1557 of the Patient Protection and Affordable Care Act (ACA).

¹ United States Dep't for Human Health Services Office for Civil Rights, *Civil Rights, HIPAA, and the Coronavirus Disease 2019* (Apr 3, 2020), available at <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>.

² United States Dep't of Justice, *Statement by the Principle Deputy Assistant Attorney General for Civil Rights Leading a Coordinated Civil Rights Response to Coronavirus (COVID-19)* (Apr 2, 2021), available at <https://www.justice.gov/opa/pr/statement-principal-deputy-assistant-attorney-general-civil-rights-leading-coordinated-civil>.

PARTIES

3. Plaintiff Christine Getman is a natural person who at all relevant times was a resident of Portland, Oregon and a patient of defendant Oregon Health and Science University.

4. Defendant Oregon Health and Science University (OHSU) is a public corporation of the state of Oregon. Defendant is an academic health center with several facilities in Oregon, including a hospital campus in Portland, Oregon that serves as its principle place of business.

JURISDICTION AND VENUE

5. This Court has jurisdiction of plaintiff's claims under 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2). Defendant resides in this District and the events giving rise to this Complaint occurred in this district.

FACTUAL ALLEGATIONS

Plaintiff's Medical Condition

7. Plaintiff lives with Type II Spinal Muscular Atrophy (SMA), a rare neurological disorder and a progressive disease that causes quadriparesis (severe weakness in her muscles). Ms. Getman uses a ventilator for support, requires the use of a mobility device, has decreased lung capacity, and has severe limited functioning of her gross and fine motor functions. Other than use of her index finger, Ms. Getman has severely limited use of the muscles below her neck.

8. Due to her medical condition, Ms. Getman requires 24-hour support from a caregiver to perform the activities of daily living that she cannot perform due to her limited motor functions, including but not limited to eating, bathing, toileting, and other daily needs.

9. Due to plaintiff's quadriparesis, plaintiff requires the use of a tracheostomy tube to clean and remove secretions from the airway and to more easily and safely deliver oxygen to her

lungs. Ms. Getman's tracheostomy tube must be suctioned and cleaned regularly so that it functions properly, allowing Ms. Getman to breath comfortably and safely. Due to her quadriparesis, Ms. Getman cannot independently suction or clean her own tube, requiring the assistance of a support person / caregiver to ensure proper and safe breathing.

10. Due to her motor impairments, plaintiff depends on 24-hour support from a caregiver to communicate effectively. If she is positioned incorrectly or her tracheostomy is suctioned incorrectly, she can become unable to speak due to her muscle weakness. Furthermore, she is unable to use her cell phone or other communication devices independently. Rather, her support person is necessary to set up her technology devices and position her body so that she can communicate efficiently and adequately.

11. Although plaintiff's motor functioning is impaired, she has full sensation throughout her body. Ms. Getman's medical condition prevents her from sitting up, rising, or turning over independently. Ms. Getman requires 24-hour support from a caregiver or support person to reposition her every 15 minutes in order to avoid significant pain from remaining in one position for too long. Repositioning also is necessary to prevent bedsores or other types of pressure injuries, which are painful and can result in dangerous infections.

**OHSU's Prior Notice of Plaintiff's
Medical Condition and Need for Accommodation**

12. Plaintiff's disability and need for a 24-hour caregiver and/or support person is obvious.

13. Plaintiff is a long-time patient of OHSU hospital and medical clinics. Ms. Getman has been treated by several OHSU clinics, including but not limited to the OHSU hospital, OHSU

Family Medicine clinic, the Women's Health Clinic at OHSU's Kohler Pavilion, and the Neurology Neuromuscular Clinic at OHSU's Center for Health and Healing.

14. Defendant has specifically treated plaintiff's SMA and the details of plaintiff's medical condition are known to defendant and reflected in the medical records defendant maintains. At all relevant times defendant knew or should have known of plaintiff's medical history and disability-related needs.

15. Beginning in or around 2017, defendant started treated plaintiff's SMA with monthly infusion therapy, involving injections of a medication known as Spinraza, directly into the spinal canal. Because this method of administration involves a lumbar puncture, it increases the risk of an individual developing serious infections, such as bacterial meningitis.

16. After receiving such a treatment in 2017, plaintiff developed bacterial meningitis and was admitted to the OHSU hospital for treatment. She responded positively to antibiotic treatment and recovered quickly.

17. During her 2017 stay at the OHSU hospital, Ms. Getman was accompanied by her support person(s) and/or caregiver(s) to provide 24-hour care and assist with disability-related needs, including Ms. Getman's communication and daily living activities.

The Global Coronavirus Pandemic Reaches Oregon

18. On March 8, 2020, with confirmed coronavirus cases rising in Oregon, Washington, and California, the Oregon Governor declared a State of Emergency in regards to the coronavirus pandemic. That week, restrictions were announced to slow to the spread of the virus, including limits on gathering size and a two-week closure of K-12 schools.

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