

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

JOHN DOE,

Plaintiff,

v.

UNIVERSITY OF NORTH TEXAS
HEALTH SCIENCE CENTER, DR.
FRANK FILIPETTO, *in both his official
capacity and his individual/personal
capacity*, DR. EMILY MIRE, *in both her
official capacity and her individual/personal
capacity*, and DR. THOMAS MOORMAN,
*in both his official capacity and his
individual/personal capacity*.

Defendants.

Case No.

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff John Doe ("Doe") files this Original Complaint against the University of North Texas Health Science Center, Dr. Frank Filipetto, and Dr. Emily Mire ("Defendants") and would respectfully show the Court the following:

I. PARTIES

1. Plaintiff, John Doe is an individual residing in the State of Texas. For privacy reasons involved in this matter, Doe hereby exercises his right to proceed with this matter anonymously. Defendants' unlawful and intentional conduct has harmed Doe's reputation and his ability to complete his education and pursue his chosen profession. If Doe were not permitted to proceed anonymously, then Doe would have no effective way to obtain redress for Defendants'

unlawful conduct through the use of government power without amplifying the harm caused by Defendants and further damaging Doe's career prospects. The need to protect the identity of Doe does not hinder the defense of this matter because the facts are well known to Defendants. When balancing the need to protect Doe's privacy against any inconvenience to Defendants, the protection of Doe's privacy is paramount and prevails.

2. Defendant University of North Texas Health Science Center ("UNTHSC") is an institution of higher education pursuant to Chapter 105 of the Texas Education Code. UNTHSC may be served with process through its President; Michal R. Williams, DO, MD, MBA; at the University of North Texas Health Science Center, 3500 Camp Bowie Blvd. EAD-840, Fort Worth, Texas 76107.

3. Defendant Dr. Frank Filipetto is a resident of the State of Texas and is the Interim Dean and was the Assistant Vice Dean for the Texas College of Osteopathic Medicine which is part of UNTHSC at all relevant times herein and may be served with process at the University of North Texas Health Science Center, 3500 Camp Bowie Blvd. EAD-840, Fort Worth, Texas 76107, or wherever he may be found.

4. Defendant Dr. Emily Mire is a resident of the State of Texas and is the Executive Director, Student & Academic Success for UNTHSC's Division of Student & Academic Affairs Executive Team at all relevant time herein and may be served with process at the University of North Texas Health Science Center, 3500 Camp Bowie Blvd. EAD-840, Fort Worth, Texas 76107, or wherever she may be found.

5. Defendant Dr. Thomas Moorman is a resident of the State of Texas and is the Vice President for Student Affairs at UNTHSC at all relevant time herein and may be served with

process at the University of North Texas Health Science Center, 3500 Camp Bowie Blvd. EAD-840, Fort Worth, Texas 76107, or wherever he may be found.

II. JURISDICTION AND VENUE

6. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 because this matter involves a federal question, specifically claims and causes of action that arise under 42 U.S.C. §§ 12131–12134 and 29 U.S.C. § 794, as amended by the ADA Amendments Act and amendments to the Rehabilitation act; 42 U.S.C. § 1983, and the U.S. Constitution.

7. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391 because one or more of the Defendants reside in this district, and this is the district in which a substantial part of the events or omissions giving rise to the claim occurred.

III. FACTS

A. Background

8. Doe began attending medical school in the fall of 2014 in the Texas College of Osteopathic Medicine (“TCOM”) and at UNTHSC.¹ Doe’s first three years at TCOM were uneventful as Doe worked successfully to complete his medical degree. However, during Doe’s intensive fourth-year rotations, Doe began experiencing difficulties with the TCOM administration. Defendants had repeatedly failed to submit the necessary documentation to Doe’s fourth-year medical rotation sites.

9. Defendants disputed the reasons for repeatedly failing their duty to submit the required paperwork and attempted to blame Doe. Doe had raised several complaints with the administration about failing to complete his paperwork, and, in response, Defendants’ Director of Student Services summoned Doe to appear before TCOM’s Student Performance Committee

¹See Tex. Educ. Code Ann. § 105.401.

(“SPC”). Doe was interrogated by the SPC as to why Doe failed to finalize his position with his fourth rotation site. In response, Doe explained that the failure to finalize his position with the fourth rotation site was not due to a lack of effort on his part but was due to the failure of Defendants to meet their obligation to submit the necessary paperwork.

10. The SPC initially was called for a claim of unprofessional conduct initiated by Katy Kemp, who was the Director of clinical rotations. To Doe’s knowledge, the SPC did not issue or rule on any unprofessional conduct; the unprofessional conduct was never investigated or findings presented to the SPC, so no action was taken. Doe had passed the COMPLEX exam within three attempts, as permitted by TCOM’s policy, and the SPC interrogated Doe for complaining about the administration’s failures to submit the proper documentation for his rotations. However, Doe informed the SPC about his sleep deprivation related to airway issues and side effects from sleeping pills that had been prescribed by UNTHSC physicians. The sleeping pills prescribed for insomnia dramatically worsened Doe’s sleep apnea and led to at least one aspiration event while sleeping. This event pushed Doe to exhaustion. The SPC ultimately characterized the disputed issues as being related to Doe’s health condition.

11. Because of his health complications caused by sleep apnea, the dispute with TCOM, and the unexpected inquisition from the SPC, Doe requested a one-year medical leave of absence, as was recommended to Doe by the Student Health Physician because of his sleep deprivation. Doe’s request for a medical leave of absence was made on a signed university form that contained the conditions for such medical leave. Doe submitted the request for a medical leave of absence to Assistant Vice Dean Dr. Frank Filipetto, and Filipetto granted the request and returned the form signed by Filipetto on November 9, 2016 (the “medical LOA”). The SPC

accepted the medical LOA and, to Doe's knowledge, there were no academic sanctions issued or voted on by the SPC.

B. The State Due Process Action

12. According to the terms of Doe's medical LOA, Doe was required to notify UNTHSC of his intention to re-enroll at TCOM by July 2017 (the "Re-enrollment Deadline"). However, before Doe had an opportunity to re-enroll, Doe was formally dismissed by Defendants. Defendants dismissed Doe in violation of the medical LOA, prior to the expiration of the Re-enrollment Deadline, and without any notice or opportunity to participate by Doe. Doe properly appealed the decision; however, Doe's request was immediately denied without any meaningful opportunity for Doe to be heard.

13. Because Doe understood that he was supposed to comply with the terms of the medical LOA that he had received from Dr. Filipetto, Doe believed that Defendants had acted arbitrarily in dismissing him in failing to follow UNTHSC's policies and conditions set forth in the medical LOA without notice or a hearing. Thus, Doe sued Defendant UNTHSC and the official capacity defendants for depriving Doe of due process by arbitrarily dismissing him from TCOM prior to the time in which Doe was allowed to re-enroll in classes under the terms of the medical LOA. This action will be referred to as the "State Due Process Action."

14. The 153rd Judicial District Court granted a plea to the jurisdiction filed UNTHSC and the official capacity defendants on the ground that the state court petition failed to state sufficient facts to establish jurisdiction over UNTHSC, given that the dismissal was non-disciplinary and considered to be "academic" in nature.

15. The Second District Court of Appeals affirmed, and the Supreme Court of Texas has initially denied Doe's petition for review. The State Due Process Action is currently pending a motion for rehearing before the Supreme Court of Texas.

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