SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

Cheryl Riley, an individual, Plaintiff, v. Douglas P. Robinson, an individual and The Department of Labor and Industry, a Washington State agency, Joel Sacks as Director of the Department of Labor and Industry, and Defendant Doe 1-10, and Corporations XYZ 1-10. Defendants.	Case No. **23-2-09437-9 SEA** **COMPLAINT FOR DAMAGES** [JURY TRIAL DEMANDED]

Plaintiff Cheryl Riley by and through her attorney of record, Nicole G. Gainey, of Gainey Law, PLLC alleges as follows:

I. INTRODUCTION

1. This is a civil action for damages brought by Cheryl Riley against Dr. Douglas P. Robertson a medical examiner for the Washington State Department of Labor and Industry and the Department of Labor and Industry (LNI) for damages caused by the medical exam of Plaintiff conducted by Dr. Robinson on February 10, 2021. Defendants have violated Washington State law and caused Plaintiff compensable harm.

II. JURISDICTION

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1. The Court has jurisdiction over this action under the Washington Constitution art. IV § 6, and RCW 2.08.010.

III. VENUE

1. Defendant Robinson was present in King County Washington at all relevant times and that is where the cause of action arose.

2. Defendant LNI was at all relevant times a Washington state agency conducting business throughout the state.

3. Venue is proper in this court pursuant to RCW 4.92.010(2)

IV. PARTIES

1. Plaintiff Cheryl Riley is a resident of Inchelium, Ferry County, Washington.

2. Defendant Department of Labor and Industry is a Washington state agency, empowered by RCW 49.17 to assure safe and healthful working conditions for every man and woman working in the state of Washington. The department's mission is, " to keep Washington safe and working."[1]

3. Defendant Dr. Robinson is now, and at all times relevant hereto was a paid provider of the Washington Department of Labor and Industry and therefore an employee of that Defendant for purposes of this complaint.

4. Dr. Robinson was acting within the course and scope of his employment with the Department of Labor and Industry when he committed the actions complained of herein.

5. Defendant Joel Sacks serves in his professional capacity as the Director of the Department of Labor and Industry.

[1] https://lni.wa.gov/agency/#leadership-team (last visited May 16, 2023, 2:30pm).

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6. Defendant "Doe(s) 1-10" and "Corporations XYZ 1-10" are persons and entities, respectively, who were involved in the unlawful, negligent, reckless, outrageous, and intentional acts described herein. These persons and entities are currently unknown to Plaintiff. Upon discovery of their identities, Plaintiff reserves the right to amend this pleading and join Defendants in this cause of action.

7. Each Defendant is, and at all times herein mentioned was, an agent of the other and acting within the course and scope of that agency in causing the harm as herein alleged.

V. PROCEDURAL REQUIREMENTS

1. On or about January 19, 2023, Plaintiff filed Tort Claim No. 1009195 ("Tort Claim") with the Washington State Office of Risk Management.

2. More than 60 days have elapsed since service of the Tort Claim, to which the State has not provided a response. Therefore, Plaintiffs have met the statutory requirements for filing this lawsuit.

VI. STATEMENT OF FACTS

1. Over the years, Defendant LNI received numerous complaints against Defendant Robinson in his role as a medical examiner conducting Independent Medical Exams (IMEs) for LNI.[2] Many complaints relate to the product Dr. Robinson creates for Defendant LNI – IME reports that, much more often than not, deny worker's further treatment: On February 4, 2018, LNI logged a complaint related to "multiple diagnosis errors," on November 16 of the same year they logged a complaint for "confusing conclusions," on May 2, 2019, a complaint for "numerous factual errors" in the report, March 12, 2020, a complaint alleging the doctor failed to meet LNI standards for an IME.

[2] See documents provided by Susannah Frame as part of her coverage for King 5, https://www.documentcloud.org/documents/23227681-log-of-complaints-002 (last visited May 16. 2023, 3pm).

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2. There are more.

3. Defendant LNI also received multiple complaints about Defendant Robinson, that were similar to Plaintiff's, prior to her exam.

4. A complaint logged on December 30, 2019, was from an attorney requesting that "his female client not be examined by this specific examiner [Dr. Robinson] based on his belief that the examiner asked extremely inappropriate questions and the female 'IW' felt extremely uncomfortable in his presence, which happened on more than one occasion, in his opinion".

5. A complaint logged, the very next day, on December 31, 2019, contends that Dr. Robinson asked the patient "intrusive questions unrelated to his condition."

6. A complaint logged on June 9, 2021, for an IME conducted January 27, 2021, "contends inappropriate and unprofessional conduct by the examiner,"

7. Another complaint by an attorney is undated, but may be from 2017, and echoes other's concerns, "Att[or]n[e]y refuses to have client seen by Dr. Robinson – '*inappropriate*"'

8. Despite these complaints no action was taken by Defendant LNI to determine the nature and degree of Dr. Robinson's inappropriate behavior, or to curb it.

9. LNI closed all such complaints and told the complainants that their claims were unsubstantiated.

10. On February 10, 2021, Ms. Riley was required to attend an IME by Dr. Robinson.

11. The exam was conducted over video conference.

12. During the exam, Dr. Robinson conducted himself in a bizarre and abusive manner.

13. He asked Ms. Riley most of the questions in a bored, dismissive manner.

14. During the exam, Dr. Robinson asked Ms. Riley nothing about the workplace injury that had led to her LNI injury claim.

15. Dr. Robinson mainly looked away from Ms. Riley while questioning her except

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when he was asking questions of a sexual nature. While he asked these questions, he would either side-eye her, or when he asked her if she was sexually abused as a child, he looked intently at her - directly into the camera.

16. Dr. Robinson seemed not to believe Ms. Riley's answer, that she had not been sexually molested as a child and repeated the question two or three more times throughout the interview. Each time he did so, he looked at her intently in a bizarre manner that Ms. Riley could not clearly read – was it disbelief? Disapproval? Disdain? Arousal?

17. Then the exam pace changed, and the Doctor asked rapid fire questions, "do you have a boyfriend?" And then staring again, "when was the last time you had sex?" When Ms. Riley didn't readily respond, he asked again with emphasis, "**when was. the. last. time. you. had. sexual. relations. with. someone**." Ms. Riley answered. The doctor smirked and made a strange noise (grunt?) and continued to stare at her with the same creepy, harsh expression.

18. Ms. Riley was extremely uncomfortable under the doctor's gaze. She felt sick to her stomach. She wanted to leave – get off the videocall – but the exam was required by LNI.

19. To Ms. Riley, the doctor seemed angry, and his demeanor indicated that either he did not like or perhaps did not believe her answers.

20. After Dr. Robinson asked the sexually explicit questions for the last time, he grunted again, mumbled something like "this is over" and abruptly ended the video conference call.

21. Ms. Riley was upset, embarrassed, humiliated, and confused by the doctor's exam questions and by the way he asked them, and by how he reacted to her answers.

22. She was afraid and couldn't process why he had been so intent to ask about her private sex life – why was he so interested? Why was LNI? What did the strange noises indicate?

23. Ms. Riley remained confused until she eventually found support from RAINN an anti-sexual violence organization.

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24. Ms. Riley filed a complaint against Dr. Robinson to Defendant LNI.

25. She related the facts above to Defendant LNI stating that she felt that she had been sexually harassed by Dr. Robinson.

26. Defendant LNI purported to investigate – reviewing, "*all available evidence and testimony*" yet in a letter dated November 19, 2021, told Ms. Riley that her allegations of disparate treatment and sexual harassment could not be substantiated.

27. Defendant LNI took no action to sanction Dr. Robinson regarding his behavior in the IME session with Ms. Riley.

28. He continued doing IMEs on Washington workers for LNI.

29. The next year, in November of 2022, King 5 reporter Susannah Frame covered the complaints against Dr. Robinson. In her report, she noted that he is the psychiatrist most often hired by LNI to conduct its IMEs.

30. During an interview with the reporter, LNI admitted they never considered prior complaints when "investigating" subsequent complaints agaisnt Dr. Robinson (or presumably any of its doctors).[3]

31. Despite assurances that the department would change the way it conducted its investigations there was no follow-up to review complaints against Dr. Robinson.

32. LNI did not revise its finding as to Ms. Riley's complaint of disparate treatment and sexual harassment.

33. To date, Dr. Robinson has not been admonished, reprimanded or censured in any way by Defendant LNI.

[3] King 5: *State Paid psychiatrist never held accountable despite pattern of alleged 'sexually intrusive' questions,* Video at 2:17 – 2:33. https://www.king5.com/article/news/investigations/washington-state-psychiatrist-robinson-accountability-alleged-sexually-intrusive-questions/281-faca4dde-5c9f-41a5-be27-6329539f7849 (last visited 5/16/2023 6pm).

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34. Dr. Robinson's Washington state medical license remains active.

35. Dr. Robinson continues to conduct exams on injured Washington state workers.

36. Ms. Riley continues to suffer from unpleasant memories and flash backs of Dr. Robinson's invasive questions, creepy stare, accusatory manner and disturbing vocalizations.

37. Ms. Riley is still suffering from the humiliation of knowing she was sexually harassed by LNI's doctor and then ignored and gaslit by their investigative department - even after LNI admitted that their investigative procedures are flawed.

VII. NATURE OF ACTIONS

1. All Defendants: Violation of the Washington Law Against Discrimination (WLAD) Chapter 49.60 RCW

1. Ms. Riley re-alleges the preceding paragraphs.

2. The conduct of defendants constituted violations of the WLAD which prohibits discrimination in public accommodation.

3. Entities that provide medical services are places of public accommodation.

4. Ms. Riley suffered harm as a proximate result of Defendants' actions and omissions.

5. Ms. Riley suffered legally compensable damages as a proximate result of Defendants' acts and omissions.

2. All Defendants: Negligence

1. Defendants had a duty to conform to the law and protect workers and patients from unlawful gender-based discrimination and sexual harassment.

2. Defendants Robinson and LNI breached their duties of care by failing to follow the law and thereby protect Ms. Riley from harm, discrimination, and sexual harassment.

3. Ms. Riley was directly harmed by Defendants' negligent acts and omissions.

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4. Ms. Riley suffered legally compensable damages as a proximate result of Defendants' acts and omissions.

3. All Defendants: Medical Negligence (RCW 7.70.040)

1. Dr. Robinson failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances.

2. Defendants' violations of the standard of care caused Plaintiff's injuries.

3. Ms. Riley suffered legally compensable damages as a proximate result of Defendants' violations of the standard of care.

4. All Defendants: Intentional Infliction of Emotional Harm / Outrage

1. Defendant Robinson, by acting in a manner to satiate his own prurient desires and interests or for other unknown reasons, and Defendant LNI for knowingly allowing the doctor's behavior to go unabated, subjected Plaintiff to obscene, invasive, and inappropriate questioning of a nature and in a manner sufficient to cause – and did cause - severe emotional distress to Plaintiff and has thereby engaged in the tort of intentional infliction of emotional distress ("IIED") or outrage.

5. Defendant Department of Labor and Industry: Negligent hiring and supervision / failure to train, censure or admonish

1. Defendant LNI knew, or in the exercise of reasonable diligence should have known, that Defendant Robinson posed an unreasonable risk of harm to Washington's workers.

2. Defendant LNI failed to use the information it had to censure, train, admonish or otherwise mitigate the risk of harm Defendant Dr. Robinson posed to workers ordered to undergo his psychological exams.

3. Defendant LNI is vicariously liable for the acts of Dr. Robinson.

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4. The direct and proximate result of Defendants' acts and omissions is that Plaintiff, Ms. Riley, was forced to suffer and continues to suffer personal injury and damage, embarrassment, confusion, humiliation, distress, loss of benefits, emotional harm, and other damages past, present, and future that will be determined at trial.

6. **Respondeat Superior**

1. In doing the things alleged herein, Defendant Robinson was acting within the course and scope of his employment with the Department of Labor and Industry. Defendant LNI is therefore jointly and severally liable for the conduct of Defendant Robinson for damages.

VIII. Relief Requested

Plaintiff prays for judgment against all Defendants on her behalf as follows:

1. Special damages;
2. General damages, including physical, mental, and emotional injury resulting from the acts and omissions complained of herein in an amount according to proof at trial.
3. Compensation for fees and costs required to recover any judgment.
4. Attorney's fees and costs
5. All applicable interest on the judgment, including pre-judgment interest;
6. Compensation for any tax penalty associated with any recovery;
7. Should a judgment be entered against Defendant LNI, Plaintiff requests injunctive relief so that the policies, practices, and customs of the Department of Labor and Industry that led to the harm suffered by Plaintiff can be reformed to prevent further damage to Washington's injured workers in the future; including,
    a. Training of its medical providers and complaint investigators related to discrimination and sexual harassment;
    b. Amendments to its civil rights complaints policy and procedures

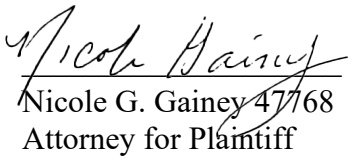
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c. Amendments to its hiring, supervising, and censuring policies and practices

8. For such other and further relief as this Court deems just and equitable.

DATED May 23, 2023.

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