

STATE OF VERMONT

SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
DOCKET No. _____

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|----------------------------|---|
| ROGER SPEID, |] |
| |] |
| Plaintiff, |] |
| |] |
| v. |] |
| |] |
| THE RUTLAND HOSPITAL, INC. |] |
| d/b/a RUTLAND REGIONAL |] |
| MEDICAL CENTER, |] |
| |] |
| Defendant. |] |

COMPLAINT and DEMAND FOR JURY TRIAL

Now comes Roger Speid, Plaintiff in the above-captioned matter, by and through his attorneys, Witten, Woolmington, Campbell & Bernal, P.C., and brings the following Complaint against Defendant The Rutland Hospital, Inc. d/b/a Rutland Regional Medical Center.

SUMMARY

Roger Speid an African-American man of Jamaican origin and a former Licensed Nursing Assistant - Secretary Technician (LNA) at Rutland Regional Medical Center (RRMC), alleges racial harassment and retaliatory termination, in violation of the Fair Employment Practices Act, (21 V.S.A. § 495 *et seq.*) (FEPA). In addition, Mr. Speid asserts causes of action for negligent retention, hiring and training, and for the intentional infliction of emotional distress.

Mr. Speid was employed at RPMC from approximately July 10, 2010 until November 25, 2015, and received glowing reviews and near-unanimous praise from his co-workers and superiors until the very end of his employment period.

Throughout his employment with RPMC, Mr. Speid was subjected to a recurring “joke” by a supervisor (laughed at by other supervisors and co-workers) that if he went hunting in the woods in Vermont, he would be mistaken for a bear or a buck and shot and that no one would care. After Donald Trump announced he was running for president, a number of Mr. Speid’s co-workers, including supervising nurses, would talk favorably—and conspicuously in Mr. Speid’s presence—about Mr. Trump’s views on “Muslims and Mexicans” and would also talk of their disdain for “Obamacare.” Even before that, these individuals would frequently voice their support for Mr. Trump’s instigation of the so-called “birther” controversy, which questioned President Obama’s legitimacy to serve as President, and which many people believe had racial undertones.

Events came to a head when a co-worker or supervisor hung a noose from a door in Mr. Speid’s work area. Mr. Speid photographed this noose (below; and appended as Ex. A to the Complaint) and it remained for all to see for approximately one month before a co-worker finally took it down:



Mr. Speid still does not know who put up this noose, in large part because his employer refused his requests to perform an investigation.

Soon after the noose was displayed, two white, female employees at the hospital made allegations of “threatening” behavior against Mr. Speid, which “threats” were investigated and ultimately not substantiated by the hospital. On the night that his co-workers made their allegations, Mr. Speid’s supervisor directed hospital security guards to escort Mr. Speid away from the hospital. This response was wholly unnecessary, and—Mr. Speid believes—motivated by racial animus. Adding insult to injury, Mr. Speid was not so much as given an opportunity to respond to the allegations made against him.

The next day, RRMC placed Mr. Speid on administrative leave to investigate the complaints made against him. Approximately three weeks later, and despite the fact that RRMC did not substantiate the allegations made against Mr. Speid, RRMC told Mr. Speid that he was fired.

PARTIES

1. Mr. Speid is an individual residing in Rutland, Vermont.
2. Mr. Speid was at all relevant times an “employee,” as defined by 21 V.S.A. § 495d(2), of the Defendant.
3. Defendant is a Vermont non-profit corporation, licensed to conduct business in the State of Vermont. The majority or all of the wrongful acts complained of occurred in Rutland County.

4. Defendant is, and was at all relevant times, an “employer” as defined by 21 V.S.A. § 495d(1).

EMPLOYMENT AT RRMC

5. Mr. Speid worked as an LNA at RRMC’s Progressive Care and Intensive Care Units from on or about July 10, 2010 until November 25, 2015.

6. At all time relevant, Mr. Speid was qualified for his job position and satisfactorily performed all duties of his job position—in many cases exceeding his supervisors’ expectations—and received excellent performance reviews.

7. He consistently received excellent feedback, including in writing, from patients in his care.

8. His direct supervisor, Heather McRae, wrote in Mr. Speid’s 2014 evaluation: “Roger is a valuable member of the team who is regarded as a role model. . . . Roger has completed the AIDET training through RRMC and demonstrates excellent technique.”

9. Ms. McRae provided the following additional description of Mr. Speid’s character and job performance in a letter of July 4, 2014, recommending him for admission to nursing school:

Roger [] has been under my supervision as an LNA since he began working at RRMC in 2010. During the past four years his attendance record has remained in good standing, and he often picks up shifts or rearranges his schedule to accommodate the needs of the unit. His co-workers frequently comment on his positive work ethics and attitude. He is dependable, hard-working, organized, honest, and

courteous. He is a valuable member of the team.

NOOSE HUNG IN MR. SPEID'S WORK AREA

10. In or about September of 2015, Mr. Speid discovered a rope noose hanging from a door in his work area, the centralized monitoring station for telemetry strips, which hospital employees refer to as the "War Room" or the "Tele Room."¹ Mr. Speid took a photograph of the noose, which photograph is set forth above.

11. A noose, such as the one hung in Mr. Speid's work area, "is among the most repugnant of all racist symbols, because it is itself an instrument of violence,' specifically 'this nation's opprobrious legacy of violence against African-Americans.'" *Burkes v. Holder*, 953 F. Supp. 2d 167, 178-79 (D.D.C. 2013) (quoting *Williams v. N.Y. City Hous. Auth.*, 154 F.Supp.2d. 820, 824 (S.D.N.Y. 2001)).

12. Likewise, Louisiana's anti-noose law, enacted in 2008, criminalizes hanging a noose with intent to intimidate and defines a "noose" as a "rope tied in a slip knot, which binds closer the more it is drawn, which historically has been used in execution by hanging, and which symbolizes racism and intimidation." La. Stat. Ann. § 14:40.5.

13. Mr. Speid initially asked his co-workers who had put up the noose, and why. No one took responsibility for hanging it, and no one professed any knowledge of

¹Telemetry strips, also known as EKG strips, are used to monitor patients' heart rates. At RRMC, telemetry strips are monitored by hospital staff on a 24-hour basis, remotely on monitors located in the War Room.

who had.

14. Mr. Speid's new supervisor, Nurse Manager Jessica Ollis, as well as other managers and staff, were aware of the noose, as it was displayed openly in the Tele Room for a period of approximately one month, and those individuals were required to enter the Tele Room as part of their job responsibilities.

15. Specifically, the noose was hung from the back of the door from a hospital hallway into the War Room, which opened inwards (into the War Room). The door was generally left open. However, the hospital stored pulse oximeters² behind the door, so that employees—and supervisors, such as Ms. Ollis—were required to open the door, and come face to face with the noose, on each of the frequent occasions that they needed a pulse oximeter.

16. Therefore, it defies credulity and commonsense that hospital supervisors were unaware of the noose while it was up.

17. On or about October 13, 2015, Mr. Speid asked Ms. Ollis to investigate why the noose had been put up, and to find out who had put it there. Mr. Speid also texted a photograph of the noose to Ms. Ollis on that date.

18. At that time, Mr. Speid informed Ms. Ollis that he felt intimidated and scared by the presence of the noose in his work area.

² A pulse oximeter is a medical device that indirectly monitors the oxygen saturation of a patient's blood and changes in blood volume in the skin, producing a photoplethysmogram, which LNA's such as Mr. Speid were charged with monitoring remotely from the War Room.

19. Ms. Ollis never again addressed the noose with Mr. Speid, nor did she take it down.

20. The employee who eventually took it down was one Christopher Andrews, who did so following a discussion he had with Mr. Speid (*i.e.*, there is no indication that Ms. Ollis, or any other supervisor, directed Mr. Andrews to remove the noose).

CONFLICT WITH CO-WORKERS

21. Around the time of the noose placement, relations between Mr. Speid and two of his co-workers, Marcy Grace and Danielle Gray—both white recent college graduates—began to break down. Ms. Grace and Ms. Gray were close friends at that time, and likely still are today.

22. This represented the first time during his more-than-five-year tenure at RRMC that Mr. Speid had experienced any significant conflict with any of his coworkers.

23. In or about October 2015, Mr. Speid reported to work for his night-shift feeling under the weather. As the night progressed, his condition deteriorated. By approximately 3 a.m., Mr. Speid felt very sick and knelt down momentarily on the floor of the War Room, closing his eyes. Ms. Gray took a photograph of Mr. Speid at that moment and shared this photograph with Ms. Ollis and another supervisor, Pamela Brooks, apparently so that Mr. Speid would be disciplined by Ms. Ollis and/or Ms. Brooks.

24. On his next day at work, Ms. Ollis met with Mr. Speid in the War Room and reprimanded him for “sleeping on the job.”

25. Mr. Speid explained that his eyes had only been closed for a very short period of time, and that a much greater problem was that his co-workers, Ms. Gray and Ms. Grace, spent the majority of their time in the War Room paying attention to their smartphones, and *not* to the telemetry monitors. Mr. Speid expressed his concerns that these individuals' inattention to the monitors, which often went on for long periods of time, could present a health risk to patients. Ms. Ollis did not indicate that the other employees' inattention concerned her in any way, and upon information and belief she did not discipline them.

26. During his meeting with Ms. Ollis, Mr. Speid noticed a security guard stationed just outside of the door, which struck him as unusual.

27. During the night-shift spanning November 5 & 6, 2015, Mr. Speid worked in the War Room with Ms. Grace and Ms. Gray, who again spent most of their time looking at their smartphones.

28. At approximately 3 a.m., Ms. Gray took a break and walked out of the room. Ms. Grace then told Mr. Speid something to the effect of: "You need to do Danielle's strips."³ Mr. Speid protested that Ms. Gray had spent her shift looking at her phone, she could have, instead, done the strips herself.

29. Mr. Speid felt aggrieved because these employees had also frequently asked him to do their work in the past, and this request seemed especially egregious

³ One job responsibility of workers stationed in the War Room is to periodically measure and interpret the telemetry strips, and to then save them to the Phillips System: "Doing strips."

because Ms. Gray could so easily have done this work herself. A heated argument ensued, but Mr. Speid eventually did agree to do Ms. Gray's strips himself.

30. Mr. Speid had considered the matter closed when he acquiesced and agreed to perform Ms. Gray's work. Ms. Grace and Ms. Gray, however, both filed "complaints" about Mr. Speid with Ms. Ollis that night, apparently alleging that he had "threatened" them (which allegations Mr. Speid strongly denies).

RRMC DIRECTS SECURITY PERSONNEL TO ESCORT MR. SPEID FROM HOSPITAL

31. After taking statements from those two employees, but not from Mr. Speid, Ms. Ollis came to the War Room and instructed Mr. Speid to leave the hospital immediately. Although he agreed to leave on his own accord, Ms. Ollis directed two security guards to escort Mr. Speid out of the hospital.

32. Mr. Speid protested that none of his alleged conduct warranted being asked to leave the hospital, and that being escorted by security guards was unnecessary.

33. Mr. Speid believed, and believes, that RRMC assigned security personnel to escort him away from the hospital that night, based on the stereotypical belief that black men have a propensity for violence. His feelings and pride were hurt, and Mr. Speid was stunned that his employer for over five years would treat him that way.

34. Before he was escorted away, Mr. Speid told Ms. Ollis that he felt as if he was being treated like "the big scary black guy in the Tele Room."

INVESTIGATION INTO "THREATENING" BEHAVIOR

35. On November 6, 2015, Mr. Speid met with Brian Kerns, RRMC's Vice President of Human Resources, at the human resources office of the hospital. Mr. Kerns told Mr. Speid that he was being put on indefinite administrative leave, during which time RRMC would investigate Ms. Grace and Ms. Gray's allegations of "threatening behavior."

36. During that meeting, Mr. Speid told Mr. Kerns about the noose that had been placed in Mr. Speid's work area, and asked him to please investigate.

37. Neither Mr. Kerns, nor any other representative of RRMC, ever told Mr. Speid that RRMC had taken any action to investigate the placement of a noose in Mr. Speid's work area.

38. During the meeting of November 6, 2015, Mr. Speid also complained to Mr. Kerns that he had been unnecessarily escorted out of the hospital by security.

INVESTIGATION INTO "THREATENING" BEHAVIOR UNSUBSTANTIATED, BUT MR. SPEID FIRED ANYWAY

39. Mr. Speid received a letter from RRMC on November 25, 2015, terminating his more-than-five-year tenure at the hospital.

40. The November 25, 2015 letter states that the investigation into Mr. Speid's allegedly "inappropriate & threatening behavior towards your coworker in the Telemetry Room" is "complete."

41. Remarkably, however, the letter does not actually provide any conclusion about the substance of the alleged "investigation." Instead, the only specific misconduct

listed is that Mr. Speid allegedly did not tell the truth, in a meeting of November 11, 2015, about whether one of his coworkers left the War Room, after one of their conversations during the night in question: A fact of exactly no consequence to the merits of the “investigation.”

42. The Vermont Department of Labor granted Mr. Speid unemployment compensation, by written Determination of December 16, 2015.

43. In its Determination, the Department of Labor concluded: “You were discharged by your employment unit but not for misconduct connected with your work when no evidence of misconduct has been presented.”

**COUNT I: VIOLATION OF THE VERMONT FAIR
EMPLOYMENT PRACTICES ACT: HOSTILE WORK ENVIRONMENT**

44. Plaintiff incorporates the foregoing paragraphs by reference.

45. The facts alleged above constitute violations of the Vermont Fair Employment Practices Act in the nature of race discrimination and racial harassment rising to the level of creating a hostile work environment.

46. As an African-American employee, Mr. Speid is entitled to the protections provided by the Vermont Fair Employment Practices Act.

47. The harassment was sufficiently severe and pervasive to alter the conditions of Plaintiff’s employment and to create an abusive working environment.

48. Defendant was aware of the discrimination and harassment to which Plaintiff was subjected and failed to take any remedial actions.

49. Plaintiff has suffered damages of lost past and future earnings, lost benefits, and emotional and physical distress, including embarrassment, discomfort, insecurity, mental anguish, and being stigmatized as a result of Defendant's violations of the Vermont Fair Employment Practices Act.

50. As Defendant's actions were willful, wanton, or, at the very least, in reckless disregard of Plaintiff's rights, Plaintiff is further entitled to punitive damages as provided by the Vermont Fair Employment Practices Act.

**COUNT II: VIOLATION OF THE VERMONT FAIR EMPLOYMENT
PRACTICES ACT: UNLAWFUL RETALIATION**

51. Plaintiff incorporates the foregoing paragraphs by reference.

52. As an African-American employee, Mr. Speid is entitled to the protections provided by the Vermont Fair Employment Practices Act.

53. Defendant unlawfully retaliated against Plaintiff, by terminating his employment, because he made a good-faith complaint of workplace harassment, in violation of the Vermont Fair Employment Practices Act.

54. Defendant's termination of Plaintiff's employment was intentional and performed in violation of his rights.

55. Plaintiff has suffered damages of lost past and future earnings, lost benefits, and emotional and physical distress, including embarrassment, discomfort, insecurity, mental anguish, and being stigmatized as a result of his termination.

56. As Defendant's actions were willful, wanton, or, at the very least, in

reckless disregard of Plaintiff's rights, Plaintiff is further entitled to punitive damages as provided by the Vermont Fair Employment Practices Act.

COUNT III: NEGLIGENT SUPERVISION, TRAINING, AND RETENTION

57. Plaintiff incorporates the foregoing paragraphs by reference.

58. Under Vermont common law, Defendant owed Plaintiff the duty to use reasonable care to avoid harming him. Defendant further had a duty to anticipate and to guard against the "human traits" of its employees which, unregulated, are likely to harm others.

59. Defendant negligently and inappropriately failed to supervise and train its employees, such that they displayed a noose in Mr. Speid's work space for a period of approximately one month, and failed to investigate the display of the noose even after Mr. Speid had asked them to do so. Further, Defendant negligently retained said employee or employees following Plaintiff's complaints.

60. Defendant negligently and inappropriately failed to supervise and train Ms. Ollis, such that she deemed it appropriate to have Mr. Speid escorted away from hospital premises by security personnel based on racial animus, despite the fact that Mr. Speid did not pose any security threat.

61. Defendant's negligent training, supervision, and retention of those employees proximately caused Plaintiff to endure a hostile work environment and caused Plaintiff great emotional and physical distress for which he is entitled to damages pursuant to Vermont common law.

COUNT IV: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

62. Plaintiff incorporates the foregoing paragraphs by reference.

63. The foregoing conduct by Defendant was performed intentionally or with reckless disregard of the probability of causing emotional distress, and it resulted in Plaintiff suffering extreme emotional distress, actually or proximately caused by the outrageous conduct.

64. The foregoing conduct constitutes the tort of intentional infliction of emotional distress.

WHEREFORE, Plaintiff prays for relief against Defendant as follows:

- A. Award Plaintiff damages in the form of past and future pecuniary losses resulting from his unlawful termination by Defendant, including but not limited to appropriate back-pay with prejudgment interest, liquidated damages pursuant to 21 V.S.A. § 495B(c), lost benefits provided by Defendant during his employment period, job-search expenses and front-pay, in amounts to be determined at trial;
- B. Award Plaintiff damages to compensate him for past and future nonpecuniary losses resulting from Defendant's discriminatory and tortious conduct, and violations of FEPA, including but not limited to emotional and physical pain, suffering and inconvenience, in amounts to be determined at trial;
- C. Order Defendant to pay Plaintiff punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial;
- D. Award Plaintiff his reasonable attorneys' fees and costs incurred since his

unlawful termination and in bringing and pursuing this action; and

E. Grant such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Date: March 17, 2016

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Exhibit A

