

treatment she received by Defendant following her admission on or about February 14, 2019. Specifically, upon admission at Lakeview for suicidal ideation, Ms. Jolley experienced repeated mocking by Lakeview staff regarding her transgender status, denial of medication for a diagnosed medical condition or access to a physician who would administer effective medication, an invasive strip search performed by male nurses, despite her protests of identifying as a woman, and other forms of discriminatory treatment on the basis of her sex, specifically, her status as a transgender individual.

Jurisdiction and Venue

2. Plaintiff's ACA claim presents a federal question over which this court has jurisdiction pursuant to 28 U.S.C. § 1331. The Court also has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

3. Venue is proper in this District under 28 U.S.C. § 1391 because the unlawful actions and practices occurred in this District.

THE PARTIES

4. Plaintiff is a citizen of the United States and resident of the state of Georgia. She presently resides in Kennesaw, Georgia.

5. Defendant Lakeview is a behavioral health group doing business at 1 Technology Pkwy S, Norcross, GA 30092. Defendant admitted Plaintiff to its facility at this address during the time period relevant to the Complaint.

6. Defendant may be served with process by delivering a copy of the summons and complaint on its registered agent, CT Corporation, 1201 Peachtree Street, N.E., Atlanta, GA, 30361, USA.

FACTUAL BACKGROUND

7. Defendant Lakeview receives federal funding in the operation of its business.

8. Ms. Jolley is a twenty-year-old transgender woman. She has suffered from Chronic Daily Headache (“CDH”) since the age of thirteen.

9. Ms. Jolley’s CDH is a chronic condition which causes her to suffer near-constant painful migraines.

10. The persistence of Ms. Jolley’s CDH has led to bouts of depression and suicidal ideation.

11. Plaintiff has also been diagnosed with gender dysphoria.

12. On or about February 13, 2019, Ms. Jolley disclosed to her psychiatrist that she was experiencing acute suicidal ideation and needed urgent help.

13. She was taken to the Laurelwood Psychiatric admitting unit of Northeast Georgia Medical Center, where a physician signed a Form 1013 requiring involuntary treatment for Ms. Jolley.

14. Defendant Lakeview was designated as Ms. Jolley's emergency receiving facility and, at 2:00am on or about Thursday, February 14, 2019, Ms. Jolley was admitted at Lakeview.

15. At the time of her intake, while dressed in her hospital gown, Ms. Jolley was escorted into a room by two male nurses who told her that they needed to strip search her.

16. Ms. Jolley told them that she was a transgender female and that she was very uncomfortable being naked in front of them. She asked to be searched by females.

17. The attendants laughed and mockingly asked, "you have a penis, right?" They made her strip completely.

18. Ms. Jolley had been receiving hormone treatment for two years at the time of her admission to Defendant's facility. She has breasts and sought to cover her breasts with her arms while enduring this invasive search.

19. The attendants instructed her to drop her arms and visually inspected her entire body without her clothes.

20. They permitted her to put her clothes back on, but then performed a pat-down search over her breasts, on her arms, down her sides, and on the outside and inside of her legs, including on her inner thighs near her genitals.

21. Ms. Jolley, who had been molested as a child, was traumatized by the entire search.

22. Ms. Jolley was then brought to a nurses' station. She explained that she was in severe pain from her CDH and begged for her prescribed medications.

23. The nurse denied her any medication and repeatedly told Ms. Jolley that Lakeview could deny her access to a doctor for up to forty-eight (48) hours.

24. The two male nurses and the female nurse at the station joked and alternatively referring to her as "Mr." and "Mrs."

25. She was brought to a room to sleep but was unable to because of her pain and another patient snoring loudly in her room.

26. She returned to the nurses' station and asked for an additional pillow or earplug. The nurses denied her requests. Lakeview also denied Ms. Jolley her daily estrogen medication.

27. The next morning, Ms. Jolley was in agonizing pain. She returned to the nurses' station and begged for pain medication. Again, she was told that they had forty-eight hours before she was entitled to see a doctor or get any medication.

28. Throughout the morning and day, staff members loudly joked about Ms. Jolley's gender identification.

29. In a conversation between the floor manager and two employees, one of the male employees who had mocked Ms. Jolley earlier at the nurses' station called Ms. Jolley a "pill-seeking tranny" and a "guy who thinks he's a girl."

30. Shortly after breakfast, a female patient approached Ms. Jolley and asked what gender she was. The patient explained that some of the patients had heard staff talking about Ms. Jolley's transgender identity and were curious about Ms. Jolley's gender.

31. Later that morning, one of Defendant's staff members saw Ms. Jolley crying and hyperventilating in her room. She brought Ms. Jolley to the nurses' station and said, "we need to get this man something for pain." They offered her acetaminophen or Amitrex, but she explained that neither of those helps her CDH migraines. They responded that there was nothing else they could do for her and that they had forty-eight (48) hours before they were required to provide her a doctor.

32. At lunch that day, Sami was with approximately nineteen (19) other patients, including the more severe patients from the third floor of the facility.

33. One of those patients, a man with gold teeth, came up to Ms. Jolley and barked and acted as if he was going to bite her. She complained to a staff member, who told her to “sit down and eat” and that he would take care of it. The staff member continued to eat his own meal and did nothing to stop the other patient’s harassment of Ms. Jolley.

34. That afternoon, Ms. Jolley met with a patient advocate and complained about Defendant’s denial of pain medication and strip search practice that fails to account for transgender individuals. The patient advocate dismissively asked Ms. Jolley, “well, you’ve got a penis don’t you? That’s why you were strip searched by male employees.”

35. Ms. Jolley said that the search was harmful to her and that she wanted to talk to someone who could address the problem. The patient advocate told her she could not. Ms. Jolley asked for a copy of her patient rights, but Defendant denied her one.

36. Ms. Jolley’s father called Lakeview that day and spoke to a nurse about Ms. Jolley’s treatment. When he raised the issue of Ms. Jolley’s strip search, the nurse echoed the patient advocate’s dismissive attitude, asking, “you would prefer to have someone with the opposite sexual organs do a search?”

37. After dinner Ms. Jolley asked to see the patient advocate again about her pain and exposure to patients who were harassing her.

38. She was told the patient advocate was no longer available. Ms. Jolley did see the patient advocate walking through the unit and tried to speak with her, but the patient advocate dismissed her complaints.

39. The following day, Ms. Jolley's father spoke to Dr. Corey S. Greenwald. Ms. Jolley's father told Dr. Greenwald about the discriminatory mistreatment Ms. Jolley had experienced, including Lakeview's complete disregard for Ms. Jolley's transgender status and its refusal to provide her with medical care for her migraines.

40. Dr. Greenwald said he was appalled by Lakeview's treatment of Ms. Jolley and he agreed with Ms. Jolley's father that Ms. Jolley was not being served by staying at the facility.

41. Again on Friday, Ms. Jolley heard employees at the nurses' station loudly mocking her. One employee said, "people like Sami are why I hate trannies." Another employee said Ms. Jolley is "just disgusting and delusional."

42. Ms. Jolley was discharged the following morning, February 16, 2019, at 10:00am.

COUNT I
Sex Discrimination in Violation of 42 U.S.C. § 18116

43. The ACA prohibits medical providers receiving federal funds from “exclud[ing] from participation in[,] den[ying] the benefits of, or [subjecting] to discrimination” any individual in “any health program or activity” on the basis of their sex. 42 U.S.C.A. § 18116.

44. The enforcement provisions of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) apply to Defendant’s violations of 42 U.S.C. § 18116 for sex discrimination. 42 U.S.C.A. § 18116(a).

45. Discrimination against an individual on the basis of transgender status is a violation of Title IX. *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty.*, 968 F.3d 1286, 1305 (11th Cir. 2020).

46. Defendant is a behavioral health facility that receives federal funding in the form of federal grants for services provided to its patients. Defendant therefore meets the requirement of being a “health program or activity, any part of which is receiving Federal financial assistance.” 42 U.S.C. § 18116(a).

47. As a transgender individual, Ms. Jolley had a right under the ACA to receive health care services free from discrimination based upon sex.

48. Non-transgender individuals or individuals without a diagnosis of gender dysphoria would not have been subjected to this discrimination or isolation by Defendant. Plaintiff has been aggrieved by this violation of the ACA.

49. Lakeview violated the ACA by subjecting Ms. Jolley to a hostile medical environment because she is transgender, including but not limited to the following conduct: despite knowing that Ms. Jolley identifies as a woman, Lakeview forced her into the traumatic experience of being strip-searched by opposite-sex nurses; purposely used the wrong gender pronouns with her; denied her estrogen medication; denied her effective pain medication for her migraines or access to a doctor to treat her for a diagnosed medical condition, and allowed her to remain in pain for more than twenty-four hours because of her transgender status; permitted its staff to make sexually derogatory comments toward Ms. Jolley; refused to provide her with an appropriate patient advocate based on her transgender status; disclosed confidential health information about her to other patients without Ms. Jolley's consent; and ignored her complaints of being taunted inappropriately by other patients based on her transgender status.

COUNT II
Negligence

50. Defendant had a statutory duty to administer treatment in a manner that did not discriminate against individuals on the basis of sex, including transgender status, under the ACA.

51. Defendant also had a statutory duty not to share Plaintiff's confidential health information with third parties under the Health Information Portability and Accountability Act ("HIPAA").

52. Nevertheless, Defendant breached these duties in multiple ways, including but not limited to: failing to take into account Plaintiff's transgender status in administering treatment to Plaintiff; assigning Plaintiff to an opposite-sex nurse to be strip-searched; denying Plaintiff effective medication or access to a physician or facility that could administer the proper medicine; denying Plaintiff access to an effective patient advocate because of her transgender status; sharing Plaintiff's confidential health information protected by the Health Information Portability and Accountability Act with other patients; taunting Plaintiff based on her transgender status, and permitting a hostile medical environment whereby employees were permitted to taunt Plaintiff on account of her transgender status.

53. As a result of Defendant's unlawful actions, Plaintiff suffered emotional distress, physical pain, humiliation, and other indignities.

COUNT III
Invasion of Privacy

54. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully stated herein.

55. The tort of Invasion of Privacy is actionable under Georgia law upon proof that an individual unreasonably intruded into another person's private concerns in a manner that "would be offensive or objectionable to a reasonable person." *Troncalli v. Jones*, 237 Ga. App. 10, 14, 514 S.E.2d 478, 482 (1999).

56. Defendant's policy is to assign same-sex nurses to patients for strip searches. In Plaintiff's case, however, Defendant assigned opposite-sex, male nurses to strip-search her despite her request for a female nurse because she is transgender and had breasts. As Defendant's male employees proceeded to strip search her despite her request for a same-sex *female* nurse, their actions involved unwanted and inappropriate touching of Plaintiff's breasts over her clothes, as well as her inner thighs close to her genitals.

57. At all relevant times, these nurses were acting in the course and scope of their employment with Defendant and performed the strip search at Defendant's direction.

58. As a result of Defendant's unlawful actions, Plaintiff suffered emotional distress, physical pain, humiliation, and other indignities.

COUNT IV
Assault

59. Plaintiff incorporates by reference the preceding paragraphs as if fully stated herein.

60. Defendant's male nurses' misconduct and actions against Plaintiff as described above constitute assault. Such actions were at the direction of Defendant and based on Defendant's standard practices of strip-searches based on gender assignment that fail to consider and appropriately accommodate transgender individuals who possess sex organs from both sexes.

61. Defendant condoned, authorized, and directed the conduct of these male nurses.

62. At all times, Defendant's employees who performed the strip search were acting in the course and scope of their employment.

63. As a result of Defendant's unlawful actions, Plaintiff suffered emotional distress, humiliation, and other indignities.

COUNT V
Battery

64. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully stated herein.

65. Defendant's male nurses' conduct and actions alleged herein toward Plaintiff amounted to the unwanted and offensive touching of Plaintiff by Defendant's employees, at Defendant's direction, constituting a battery.

66. At all relevant times, Defendant's male nurses were acting in the course and scope of their employment with Defendant.

67. As a result of Defendant's unlawful actions, Plaintiff suffered emotional distress, humiliation, and other indignities.

COUNT VI
Intentional Infliction of Emotional Distress

68. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully stated herein.

69. Defendant, a mental health facility that knew or should have known the risks entailed therein, intentionally, maliciously, wantonly, and in gross and reckless disregard for Plaintiff's health and safety, engaged in extreme and outrageous conduct when it, *inter alia*, subjected Plaintiff to embarrassment, humiliation, degradation, and ridicule by allowing its employees to harass Plaintiff on the basis of her transgender status, invade her privacy, commit assault and battery, deny her medication or access to a physician or facility who could treat her effectively, share her confidential health information, and taunt her for being

transgender in the two to three days of her admission at this facility before she felt forced to leave due to this mistreatment.

70. The invasion of privacy, harassment, assault, battery, and intentional infliction of emotional distress to which Plaintiff was subjected culminated in her departure from the facility because of the inability to tolerate the medical environment.

71. At all relevant times, Defendant's employees were acting in the course and scope of their employment, making Defendant directly, as well as vicariously liable for the actions of their employees under a theory of *respondeat superior*.

72. As a result of Defendant's unlawful actions, Plaintiff suffered emotional distress, pain, humiliation, and other indignities.

73. Defendant's conduct was objectively malicious, wanton, and wholly incompatible with the standards of society.

74. Based on their actual and constructive knowledge of this conduct, coupled with the failure to intercede on Plaintiff's behalf, Defendant directed and authorized its employees' conduct, making it liable for intentional infliction of emotional distress upon Plaintiff.

COUNT VII
Punitive Damages under O.C.G.A. § 51-12-5.1

75. Plaintiff incorporates the preceding paragraphs of the Complaint by reference as if fully stated herein.

76. Defendant's unlawful conduct set forth herein was intentional, willful, malicious, and conducted with the deliberate intent to harm Plaintiff, or was done with reckless disregard for Plaintiff and her rights.

77. Accordingly, Defendant is liable to Plaintiff for punitive damages.

COUNT VIII
Attorneys' Fees and Costs under O.C.G.A. § 13-6-11

78. Plaintiff incorporates the preceding paragraphs of the Complaint by reference as if fully stated herein.

79. By its actions described above, Defendant engaged in intentional torts, which by their very nature, evidence that species of bad faith which entitle Plaintiff to an award of attorney's fees and the cost of litigation.

80. By its stubborn litigiousness prior to this lawsuit, Defendant acted in bad faith and put Plaintiff to unnecessary trouble and expense. Thus, under O.C.G.A. § 13-6-11, Plaintiff is entitled to recover her attorneys' fees and expenses incurred in prosecuting this action.

WHEREFORE, Plaintiffs demand a TRIAL BY JURY and, as follows:

- a. A declaratory judgment that Defendant engaged in unlawful discrimination on the basis of sex in violation of the ACA;
- b. An injunction prohibiting Defendant from engaging in unlawful discrimination on the basis of sex in violation of the ACA;
- c. Compensatory damages, in an amount to be determined by the enlightened conscience of the jury, for Plaintiff's emotional distress, pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and special damages;
- d. Punitive damages in an amount to be determined by the enlightened conscience of the jury to be sufficient to punish Defendant for their conduct toward Plaintiff and deter Defendant from similar conduct in the future;
- e. Reasonable attorneys' fees and costs; and
- f. Other and further relief as the Court deems just and proper.

Respectfully submitted on February 5, 2021.

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