

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

To: CASE NO. 2009-CA-019445-O

MOLESKI, PATRICIA L.

Plaintiff

VS

**ADVENTIST HEALTH SYSTEM
SUNBELT HEALTHCARE
CORPORATION**

Defendant

Case Type: **BC - Injunction**

Date Filed: **06/18/2009**

Location: **Div 43**

Judicial

Officer: **Lauten, Frederick J**

Uniform Case **482009CA019445A001OX**

Number:

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Counter Claim/Counter Petition

- I. **Defendant is a listed Whistleblower against Adventist Health System – Disclosure of information to the Federal Bureau of Investigation in 10 States and Washington and The Governor’s office of the Attorney General**

WHISTLE BLOWER STATUTE

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief

6) TO WHOM INFORMATION DISCLOSED.--The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. [112.3189](#)(1) or inspectors general under s. [20.055](#), the Florida Commission on Human Relations, and the whistle-blower's hotline created under s. [112.3189](#). However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. [447.203](#)(9) or other appropriate local official.

(7) EMPLOYEES AND PERSONS PROTECTED.--This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as

agency inspector general under s. [112.3189](#)(1), or to the Florida Commission on Human Relations. The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system or, after release from the care, custody, or control of the state correctional system, with respect to circumstances that occurred during any period of incarceration. No remedy or other protection under ss. [112.3187](#)-[112.31895](#) applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under ss. [112.3187](#)-[112.31895](#) is being sought.

(8) REMEDIES.--

(a) Any employee of or applicant for employment with any state agency, as the term "state agency" is defined in s. [216.011](#), who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint must be made in accordance with s. [112.31895](#). Upon receipt of notice from the Florida Commission on Human Relations of termination of the investigation, the complainant may elect to pursue the administrative remedy available under s. [112.31895](#) or bring a civil action within 180 days after receipt of the notice.

Patricia L. Moleski was employed by AHS Risk Management for five years and reported fraudulent activity by AHS Risk Management to the FBI Maitland Office April of 2009. Patricia L. Moleski had no access to patient medical records and denies this allegation and notifies the court of her discovery that AHS Risk Management personnel were illegally accessing/deleting/altering the medical/claim records of patients within the AHS Healthcare System. The defendant reported this to the FBI. Defendant Patricia L. Moleski was, in good faith, doing her job as System Support Technician with merit, and was working in full scope of her title at all times while in the department of AHS Risk Management for five years. **Defendant Patricia L. Moleski reported to AHS Compliance Hotline # AH--09-03-0001 (Filed on Tuesday, March 17, 2009 at 11:45 am), that she was told to delete claim records regarding patient death and that they were duplicate claim records. Defendant Patricia L. Moleski, found on February 18, 2009 that a deletion regarding a suicide was fraudulently altered and was told to "get rid of it."** Shortly after her report to AHS Global Compliance Hotline, Patricia L. Moleski called the offices of Maitland FBI and worked with an agent from their offices. On May 29, 2009, Patricia L. Moleski was suspended with pay and retaliated against for her report to Federal Agencies. AHS then filed an injunction against Defendant and changed her suspension status to without pay July of 2009. On January 19, 2010, AHS retaliated again, terminating her employment. Defendant, Patricia L. Moleski is listed as a whistleblower at the Governor's office of the Attorney General, and pending investigations continue regarding Adventist Health Systems' activities by State/Federal agencies.

II. ACTIONS PROHIBITED by Adventist Health System and it's Counsel

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.--

- (a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.
- (b) *An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.*
- (c) The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false.
- (5) NATURE OF INFORMATION DISCLOSED.--The information disclosed under this section must include:
 - (a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
 - (b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

Defendant Patricia L. Moleski did not receive Interrogatories served to her address and did not agree to any stipulations/agreements that occurred between Brad Conway and AHS counsel, Jim Kizziar/Ms. Vilmos, regarding the Interrogatories. Patricia L. Moleski received the Interrogatories via email and in good faith answered those without full knowledge of the agreement made between her attorney and AHS' counsel and all information within her answers are to be submitted to the courts. She has terminated her attorney for breach of contract, as she was not notified of hearings/dates of hearings, and documents were signed by her attorney without her consent or permission. All information is filed with the Florida Bar Association complaint services. AHS counsel is harassing and manipulating all Federal/State investigations and Defendant Patricia L. Moleski seeks to file a restraining order against AHS and its counsel, as the company is harassing a federal witness. AHS' counsel has submitted inaccurate Interrogatories and filed their Motion to compel concealing the complete answers, as redactions are made to Defendant's answers not to conceal medical information, but to conceal her complete testimony, as AHS does not want their activities released to the media. These Interrogatories are her sworn statement and Patricia L. Moleski has

the right to submit her answers wholly, as they contain no patient names and are fully under her rights and privilege to do so. Defendant seeks the court to honor all her rights to seek new counsel in order to file a motion to dissolve this injunction, which was granted by default. This shows the court that her rights were not considered, as she did not have knowledge of the injunction hearing or, any other hearings/motions against her. In addition, her counsel, Brad Conway, did not show for the injunction hearing and, therefore, her rights to representation were not acknowledged and a breach of contract occurred. The defendant brings to the attention of the court that nothing was signed with her signature and that all agreements/stipulations are null and void, since her counsel took right of her signature without her consent. The defendant will attach all emails sent to counsel, pertaining to her signature. She has notified AHS' counsel in these emails, that no signature is contractual unless it is her notarized, original signature, witnessed by her husband, Brad J. Moroney.

III. Defendant is a listed Whistleblower and protected by State and Federal Whistleblower

Statutes – All information within a Federal/State investigation is confidential

112.3188 Confidentiality of information given to the Chief Inspector General and agency inspectors general.--

- The identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to anyone other than a member of the Chief Inspector General's or agency inspector general's staff without the written consent of the individual, unless the Chief Inspector General or agency inspector general determines that:
 1. The disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, provided that such information is disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime;
 2. The disclosure of the individual's identity is unavoidable and absolutely necessary during the course of the inquiry or investigation; or
 3. The disclosure of the individual's identity is authorized as a result of the individual consenting in writing to attach general comments signed by such individual to the final report required pursuant to s. 112.3189(6)(b).
- (2)(a) Except as specifically authorized by s. 112.3189 and except as provided in subsection (1), all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Department of Legal Affairs, the Office of the Public Counsel, or the Department of Law Enforcement is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution for an initial period

of not more than 30 days during which time a determination is made whether an investigation is required pursuant to s. 112.3189(5)(a) and, if an investigation is determined to be required, until the investigation is closed or ceases to be active. For the purposes of this subsection, an investigation is active while such investigation is being conducted with a reasonable good faith belief that it may lead to the filing of administrative, civil, or criminal charges. An investigation does not cease to be active so long as the Chief Inspector General or the agency inspector general is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the Chief Inspector General or agency inspector general or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information as defined in s. 119.011, and except as otherwise provided in this section, all information obtained pursuant to this subsection shall become available to the public when the investigation is closed or ceases to be active. An investigation is closed or ceases to be active when the final report required pursuant to s. 112.3189(9) has been sent by the Chief Inspector General to the recipients specified in s. 112.3189(9)(c).

- (b) Information deemed confidential under this subsection may be *disclosed by the Chief Inspector General or agency inspector general receiving the information if the Chief Inspector General or agency inspector general determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, and such information may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.*
- **Information or records obtained under this section which are otherwise confidential under law or exempt from disclosure shall retain their confidentiality or exemption.**
- **Any person who willfully and knowingly discloses information or records made confidential under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.**

Patricia L. Moleski respectfully notifies the court that she is a witness in a criminal investigation against AHS and all Whistleblower protections are to be acknowledged by AHS and its acting counsel. These statutes are listed within AHS' own employee guidelines manual and under Federal and State law.

IV. Defendant is protected under Whistleblower Statutes and by The Florida Commission on Human Relations FCA No. Charge Number – 201002425 and The Office of the Governor Chief Inspector General and The Florida Agency for Health Care Administration and the Attorney General

- **112.31895 Investigative procedures in response to prohibited personnel actions.--**
- (1)(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

- (7) EMPLOYEES AND PERSONS PROTECTED.--This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s. [112.3189\(1\)](#), or to the Florida Commission on Human Relations. The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system or, after release from the care, custody, or control of the state correctional system, with respect to circumstances that occurred during any period of incarceration. No remedy or other protection under ss. [112.3187](#)-112.31895 applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under ss. [112.3187](#)-112.31895 is being sought.

All attorney/client information and all information pertaining to State/Federal investigations are to be placed under seal until Defendant retains new counsel and, therefore, since the contract between Brad Conway and Patricia L. Moleski-Moroney has been breached, all agreements between AHS and its counsel are null and void. Defendant Patricia L. Moleski has been told by State/Federal agencies not to discuss information regarding the investigation of AHS and its counsel and has been told to retain counsel to protect her rights. Until defendant Whistleblower, Defendant, Patricia L. Moleski requests the Court award her ongoing attorneys' costs for preparation and argument against this motion to compel, and to initiate counteraction in an amount to be determined by the court in a separate hearing and such other relief to which she will show herself to be justly entitled as a whistleblower in this case.

Signed,

Patricia L. Moleski-Moroney _____

Date: _____

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 2010, to certify which witness my hand and official seal.

Witnessed By: _____

State/Federal Laws that protect Whistleblowers, including Patricia L. Moleski

False Claims Act -31 U.S.C. § 3730(h)

30 U.S.C. § 3730(h) and states:

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

FLORIDA (State Law) 112.3187 - State Code Section Prohibited Activity Public or Private Employees - Cannot dismiss, discipline, or **other adverse personnel action against employee for disclosing information of any violation or suspected violation of law or regulation or act by independent contractor which creates a substantial and specific danger to the public's health, safety, and welfare or act of gross management malfeasance, gross public waste of funds or gross neglect of duty**

Florida State Whistleblower Law

§448.102

To:Public and Private employers

An employer may not take retaliatory personnel action against an employee because the employee has disclosed or threatened to disclose to a government agency an activity, policy or practice that is in violation of a law; or testified before an entity conducting an investigation into possible violations; or refused to participate in an activity, policy or practice that is in violation of a law, rule or regulation. Public employees cannot be discharged, disciplined, or subjected to adverse personnel action for making disclosures involving a violation of state or federal law that creates a substantial and specific danger to the public's health, safety or welfare.

SECTION III: FLORIDA'S WHISTLEBLOWER ACT: F.S. 448.102

An employer may not take any retaliatory personnel action against an employee because the employee has:

- (1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice
- (2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer
- (3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation. (no written notice by employee required)

Florida's Whistleblower Act has two separate causes of action, **one of which does not require as a condition precedent, the Employee having actually reported the improper action suspected.**

An Employer **CAN NOT** fire an employee who has disclosed or threatened to disclose to any appropriate governmental agency, under oath, in writing an activity policy or practice of the employer that is in violation of a **law, rule or regulation.**

Condition Precedent to subsection (1): The Employee **MUST** provide written notice to the supervisor or employer in advance of any action (lawsuit) to provide the employer an opportunity to remedy the situation.

F.S. 448.102(2): protects an employee who provided information to or testified before any appropriate government agency, person, or entity conducting an investigation, hearing or inquiry into an alleged violation of any law, rule or regulation by the employer.

1) FHA Florida Hospital Association Laws:456.0575- Duty to Notify Patients Every licensed health care practitioner shall inform each patient, or an individual identified pursuant to s. 765.401 (1), in person about adverse incidents that result in serious harm to the patient.

39.201 -Mandatory reporting of child abuse, abandonment, or neglect; mandatory reports of death.

415.1034- Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.

397.501 -Rights of Clients – Patient Right to Know

395.1012 -Patient Safety- Report of any Patient Safety Issue

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395.1012 -Patient Safety- Report of any Patient Safety Issue

395.10975 -Grounds for denial, suspension, or revocation of a health care risk manager's license; administrative fine.

HIPPA

164.512(j) includes a broadly worded exception for disclosures “to avert a serious threat to health or safety.” Covered entities may disclose information, consistent with legal and ethical standards, when necessary “to prevent or lessen a serious and imminent threat to the health or safety of a person or the public” when the disclosure is to those who can help prevent or lessen the threat. This is consistent with the “duty to warn” principal stated in *Tarasoff v. Regents of the University of California*, 551 P.2d 334 (1976). It also

establishes a presumption that those who make disclosures under this section are acting in good faith.

Howard Davidson, J.D.

Director, American Bar Association Center on Children and the Law

HIPAA does not inhibit reporting of child abuse and neglect;

HIPAA supports disclosures of health information for public health prevention,

Surveillance, investigation, and intervention activities;

HIPAA provides protections for child victim health information, but disclosures can still

be made with victim consent or where necessary to prevent serious harm to them or other potential child victims;

HIPAA gives courts, law enforcement agencies, and those determining the cause of child

deaths the ability to access relevant health information; and

HIPAA protects child victim health information from being disclosed to parents or other

adult representatives when disclosure would be contrary to the child's best interests.
