

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

BIANCA MCDERMOTT,)	
)	
Plaintiff,)	
)	
v.)	No. <u>D-101-CV-2017-00871</u>
)	
NEW MEXICO CORRECTIONS)	Case assigned to Ortiz, Raymond Z.
DEPARTMENT,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR VIOLATION OF THE WHISTLEBLOWER PROTECTION ACT

COMES NOW Plaintiff, DR. BIANCA MCDERMOTT, by and through her attorneys, JONES, SNEAD, WERTHEIM & CLIFFORD, P.A., and for her Complaint for Violation of the Whistleblower Protection Act states as follows:

PARTIES, VENUE, AND JURISDICTION

1. At all times pertinent hereto, Dr. McDermott was a citizen of the State of New Mexico and a resident of Santa Fe County.
2. At all times pertinent hereto, Dr. McDermott was employed by the New Mexico Corrections Department (“NMCD”).
3. Dr. McDermott is a public employee, as defined at NMSA 1978, Section 10-16C-2(B) of the New Mexico Whistleblower Protection Act (“WPA”).
4. NMCD is a public employer as defined at NMSA 1978, Section 10-16E-2(C).
5. Dr. McDermott’s cause of action arises directly out of her employment with NMCD.
6. Venue and jurisdiction are proper in this court.

COURSE OF CASE AND PROCEDURAL MATTERS

7. Dr. Bianca McDermott was employed as the Bureau Chief for Behavioral Health at the New Mexico Department of Corrections beginning in 2003.
8. Dr. McDermott was placed on administrative leave on May 13, 2015.
9. Dr. McDermott was dismissed from her position as Behavioral Health Bureau Chief from NMCD on November 23, 2015.
10. Dr. McDermott timely appealed her termination to the State Personnel Office. A hearing was held through the New Mexico State Personnel Office (“SPO”) on August 25 and 26, 2016.
11. SPO requested that the parties provide Requested Findings of Fact and Conclusions of Law by September 19, 2016. NMCD requested that deadline to be changed to October 7, 2016.
12. Dr. McDermott and NMCD each submitted their Requested Findings of Fact and Conclusions of Law to SPO on October 7, 2016.
13. As of the filing of this Complaint, no decision has ever been received from SPO, although over seven months have elapsed since the hearing and nearly six months since the parties submitted their Requested Findings and Conclusions.
14. Although the New Mexico Whistleblower Protection Act has no requirement of exhaustion of administrative remedies, Dr. McDermott made all reasonable efforts to resolve her dispute with NMCD through such administrative remedies.

FACTUAL BACKGROUND

15. Beginning in 2009, Dr. McDermott began raising concerns with her supervisors at NMCD regarding a contract between NMCD and Corizon, a corporation that provided medical care to inmates at NMCD’s various prisons.

16. The contract between NMCD and Corizon required that NMCD audit Corizon's provision of healthcare and mental health care to inmates in order to verify that all necessary and appropriate care was being provided.
17. In 2013, NMCD was paying Corizon approximately \$3,125,000 monthly for medical care provided to inmates. As of approximately May 1, 2013, it was estimated that NMCD had paid Corizon over two hundred million dollars for medical care to have been provided to inmates.
18. Dr. McDermott was personally aware that Corizon was not providing all mental health care required under the contract, which meant that some portion of the two hundred million dollars NMCD paid to Corizon had not been earned.
19. Believing that NMCD's failure to properly audit the contract was an unlawful or improper act, Dr. McDermott communicated her concerns to her supervisors at NMCD.
20. Dr. McDermott also communicated her belief that NMCD's failure to properly audit the contract was unlawful or improper to third parties through filing a *Qui Tam* action. The New Mexico Attorney General's office investigated the matter.
21. Through counsel, Dr. McDermott filed various requests for public information ("IPRA requests").
22. Following these actions, Dr. McDermott faced retaliation at NMCD.
23. Most significantly, Dr. McDermott was accused of having acted with discriminatory intent in making a hiring decision, of having violated HIPAA, and of having been insubordinate.

24. Dr. McDermott was placed on administrative leave on May 13, 2015, and was left on administrative leave for over six months before NMCD made the decision to terminate her.
25. The investigations cited by NMCD regarding Dr. McDermott's alleged wrongdoing were not handled in a timely fashion, did not follow ordinary protocol, and did not support the findings of NMCD.
26. Based on those flawed investigations NMCD terminated Dr. McDermott.
27. On information and belief NMCD's purported reasons for terminating Dr. McDermott were pretextual, with the actual reason being retaliation for her various whistleblowing activities.
28. As a direct result of NMCD's improper actions and violations of the New Mexico Whistleblower Protection Act, Dr. McDermott has suffered significant damages including, but not limited to, loss of income, back pay, front pay, loss of retirement benefits, attorneys' fees, and other damages.

COUNT I: FOR VIOLATION OF THE WPA

29. Plaintiff incorporates by reference the foregoing paragraphs as though fully restated herein.
30. Dr. McDermott believed in good faith that the acts and failures committed by employees or agents of Defendant as described above were improper and unlawful.
31. As herein alleged, Dr. McDermott's reporting of such actions were protected under NMSA 1978, Section 10-16C-3.
32. As herein alleged, Dr. McDermott engaged in protected activity by:
 - a. Reporting unethical conduct;

- b. Reporting improper failures to act by NMCD employees;
 - c. Reporting her concerns of unethical conduct and failures to act to her supervisors and other NMCD staff, and by reporting such concerns to third parties;
 - d. Refusing to participate in practices she believed in good faith constituted unlawful or improper acts.
33. Such conduct constitutes protected activity under NMSA 1978, Section, 10-16C-3.
34. NMCD retaliated against, harassed, and ultimately terminated Dr. McDermott because she had reported her good faith belief regarding unethical and improper behavior, and/or because she refused to participate in practices she believed in good faith constituted unlawful or improper acts.
35. Dr. McDermott was punished for speaking the truth and behaving in an ethical fashion.

PRAYER FOR RELIEF

WHEREAS, Plaintiff Dr. Bianca McDermott prays for judgment against Defendant NMCD, that she be granted trial by jury, and that:

- a. Judgment be entered in her favor and against NMCD;
- b. Judgment be entered finding that NMCD violated the WPA, that Defendant did so willfully, and that such violation harmed Dr. McDermott;
- c. An Order be entered requiring NMCD to reinstate Dr. McDermott to her former position;
- d. An Order be entered requiring NMCD to pay Dr. McDermott all wages not paid since her termination on November 23, 2015;

- e. An Order be entered requiring NMCD to pay Dr. McDermott an amount equal to two times the amount of back pay;
- f. An Order be entered requiring NMCD to pay interest on her back pay;
- g. An Order be entered requiring NMCD to pay Dr. McDermott compensation for all special damages sustained as a result of its violations;
- h. An Order be entered requiring NMCD to pay all of Dr. McDermott's litigation costs and reasonable attorney fees;
- i. An Order be entered granting Dr. McDermott all such other and further relief as is deemed fair and just by this Court and as is merited by the facts of this case.

Respectfully Submitted,

JONES, SNEAD, WERTHEIM &
CLIFFORD, P.A.

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