

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 COUNTY OF MECKLENBURG SUPERIOR COURT DIVISION
 NO. 11 CVS 16682

2011 SEP -6 PM 3:45
 MECKLENBURG COUNTY, C.S.C.

ALISON CRABTREE,)
)
 Plaintiff)
)
 v.)
)
 PHILIP FEATHERSTONE,)
)
 and)
)
 FEATHERSTONE CHIROPRACTIC)
 CLINIC, PLLC)
)
 Defendants.)

COMPLAINT
 (Jury Trial Requested)

PARTIES AND JURISDICTION

1. This is a claim for chiropractic malpractice arising out of the negligent care and treatment provided to plaintiff Alison Crabtree while she was a patient of the defendants on January 14, 2010.
2. Plaintiff Alison Crabtree is a resident of Mecklenburg County, North Carolina.
3. Defendant Philip Featherstone is a resident of Mecklenburg County, North Carolina.
4. Defendant Featherstone Chiropractic Clinic PLLC is an Ohio limited liability corporation with its principal place of business in Mecklenburg County, North Carolina.

FACTUAL ALLEGATIONS

5. At all times relevant to this Complaint, defendant Philip Featherstone (hereinafter “Featherstone”) was licensed as a chiropractic physician in the State of North Carolina, and held himself out to be a specialist and expert in the field of chiropractic care, having the special

knowledge and skills possessed by chiropractors with the same or similar training in Mecklenburg County, or similar communities. Defendant Featherstone is a health care provider within the meaning of N.C.Gen. Stat. § 90-21.11. At all times relevant to this action, plaintiff was a patient of defendant Featherstone.

6. At all times relevant to this action, defendant Featherstone was also an owner, manager, employee and agent of defendant Featherstone Chiropractic Clinic, PLLC (hereinafter “Clinic”). The offices of defendant Clinic, in which defendant Featherstone practiced chiropractic care, were located at 8035 Providence Road in Charlotte, North Carolina. Defendant Clinic was and is a health care provider within the meaning of N.C.Gen. Stat. § 90-21.11. At all times relevant to this action, plaintiff was a patient of defendant Clinic, and defendant Featherstone was acting within the scope of his employment with defendant Clinic.

7. All of the treatment provided to plaintiff and complained of below took place in the offices of defendant Clinic described in the foregoing paragraph.

8. Defendant Clinic is liable for the actions of defendant Featherstone under the doctrine of *respondeat superior*.

9. On or about September 16, 2009, plaintiff presented herself to defendant Featherstone's office at the location of defendant Clinic for chiropractic care, due to low back pain and right hip pain.

10. Defendant Featherstone directed plaintiff to fill out a detailed Patient History Form, which included her present medications, major illnesses, and information about her condition. She listed post-traumatic stress disorder (PTSD) as a condition from which she suffered.

11. Defendant Featherstone reviewed the patient history form with plaintiff before he began treating her. Defendant was aware that plaintiff suffered from PTSD and that abuse had caused that condition.

12. During the initial office visit, defendant Featherstone took an x-ray and physically examined plaintiff.

13. On September 18, 2009 plaintiff returned to defendant Featherstone's office for treatment.

14. When plaintiff went to defendant Clinic for treatment, the standard procedure was that she scan into the computer in the reception area a card that she had been provided, in order to show the date and time of her arrival. Defendant Clinic always had at least one female employee working at the times that plaintiff went there for treatment, except as noted below.

15. Plaintiff began a series of chiropractic treatments from defendant Featherstone for her low back and hip pain. The initial course of treatment continued through November 2, 2009.

16. During every treatment session that plaintiff had with defendant Featherstone during this period, plaintiff remained fully clothed.

17. All the treatment sessions that plaintiff received from defendant Featherstone during the September 2009 through November 2009 time period were during the normal business hours of defendants. When defendant Featherstone conducted his initial examination or took x-rays of plaintiff, the plaintiff was in a private room with the door closed. All other treatments, except as described below, were provided in an area that had an approximately four feet high partition around it that allowed other patients to see the plaintiff.

18. On or about January 4, 2010, plaintiff returned to defendant Featherstone at the location of defendant Clinic for additional treatment, because of increased back problems. After this visit, defendant Featherstone initiated a second series of chiropractic visits.

19. When defendant Featherstone treated plaintiff on January 13, 2010, he told her that he performed pressure point treatment on her. This entailed his pressing on the deep muscles, buttocks, upper thigh, and hip region. Plaintiff was fully clothed during this treatment session, but the session was conducted in a private room with the door closed and only defendant Featherstone and plaintiff were present in the room.

20. When defendant Featherstone treated plaintiff on January 13, 2020, he told plaintiff that he wanted her to return the next afternoon after normal business hours. Defendant Featherstone informed plaintiff that he needed a longer treatment session with her in order to perform in-depth pressure point treatment for her back.

21. Plaintiff followed defendant Featherstone's instructions, and returned to his office on January 14, 2010 at approximately 1:30 p.m. When she arrived at the location of the defendant Clinic, the computer in the reception area was turned off and she could not swipe the card she customarily used to check in. This appointment was after the normal business hours of defendant Clinic, and when plaintiff arrived none of the clinic support staff was present.

22. Defendant Featherstone led plaintiff to a private room, instructed her to remove all of her clothes and to put on a hospital gown. This was the only treatment session in which defendant Featherstone had plaintiff remove her clothes and don a hospital gown.

23. No female staff, any other staff or other patients were present in the office during the entire time that defendant Featherstone treated plaintiff on January 14, 2010.

24. After plaintiff put on the hospital gown, defendant Featherstone told plaintiff to lie prone on an examining table. He pushed his hands deeply into her buttocks, as he had done the day before.

25. Defendant Featherstone then told plaintiff to untie her gown and turn onto her back. He then pressed his hands into her stomach, and also into her thighs.

26. Defendant Featherstone then moved his hands in a stroking motion towards the inside of plaintiff's thigh near the groin area

27. Defendant Featherstone then placed plaintiff's leg at a 45-degree angle and asked her to move closer to the edge of the table. When she did so, her entire pubic area was exposed to the defendant Featherstone.

28. As defendant Featherstone leaned against plaintiff's left side as he worked on her right thigh, plaintiff became aware that defendant Featherstone was sexually aroused.

29. The Defendant Featherstone then moved his stroking hand from plaintiff's thigh to her vaginal area. Defendant then stroked plaintiff's genitalia, while the other hand pressed against her pubic bone.

30. When defendant Featherstone's hand almost penetrated the Plaintiff's vagina, plaintiff grabbed defendant Featherstone's hand. Defendant Featherstone then began working on other areas while asking plaintiff about sexual positions she and her husband enjoyed.

31. Defendant Featherstone then told plaintiff that the session had been a "success", and asked her to schedule an appointment for the following Tuesday at the same time. This appointment would also occur at a time when defendant Featherstone's office would be closed and there would be no one else present.

32. Despite defendant Featherstone having told plaintiff that he had needed a special, longer session to perform deep pressure point work, the January 14, 2010 session was of the same duration as her prior treatment sessions.

33. Almost immediately upon leaving defendant Featherstone's office, plaintiff made several telephone calls to report the improper conduct by defendant Featherstone.

34. All of defendant Featherstone's treatment notes for January 2010 are identical for every session in which he treated plaintiff and all are inaccurate and do not reflect the actual treatment defendant Featherstone provided..

35. Defendant Featherstone's records for January 14, 2010 falsely indicate that plaintiff arrived in the morning.

36. Plaintiff objects to the prefiling requirements of N.C. Rule Civ. Pro. 9(j) as unconstitutional. Rule 9(j) effectively requires plaintiffs to prove their case before factual discovery is even begun, denies medical malpractice plaintiffs their rights of due process of law, of equal protection under the law, of the right to open courts, and of the right to a jury trial, in violation of the United States and North Carolina Constitutions. Rule 9(j) is an unconstitutional violation of the Seventh and Fourteenth Amendments of the United States Constitution and Article I, sections 6, 18, 19, 25 and 32 and Article IV, sections 1 and 13 of the North Carolina Constitution. Without waiving these objections, counsel for plaintiff provide the following information to comply with the requirements of Rule 9(j): the medical care rendered by defendants has been reviewed by a person prior to the filing of this complaint who is reasonably expected to qualify as an expert witness under Rule 702 of the North Carolina Rules of Evidence and is willing to testify that the care provided by defendants did not comply with the applicable standard of care.

CLAIMS FOR RELIEF

I. Breach of Standard of Care

37. Plaintiff adopts and incorporates by reference the allegations of the preceding paragraphs.

38. Defendant Featherstone's treatment of plaintiff on January 14, 2010, was below the accepted standards of practice for chiropractors practicing chiropractic medicine in Charlotte, North Carolina, or in similar communities.

39. Defendant's departures from accepted standards of practice included, but were not limited to:

- a. Seeing plaintiff for treatment without a female employee observing the treatment;
- b. Treating plaintiff while she was improperly gowned and was completely exposed to defendant Featherstone;
- c. Touching plaintiff's vaginal and/or pubic areas;
- d. Leaning into plaintiff while he was sexually aroused;
- e. Falsely representing to plaintiff that he was treating her on January 14, 2010;
- f. Falsely representing to plaintiff that he needed her to come to his office on January 14, 2010 for a longer session for deep pressure work;

- g. Failing to take into account plaintiff's pre-existing condition when he met with her for an after-hours appointment, with no employees or other patients in the office;
- h. Failing to take into account plaintiff's pre-existing condition when he treated her;
- i. Failing to have plaintiff wear clothing during his treatment that would have covered her private areas;
- j. Performing procedures on plaintiff to which she had not given her informed consent;
- k. Misrepresenting to plaintiff the nature of the "treatment" that he was performing on her.
- l. Not keeping accurate records of his treatment of plaintiff; and
- m. In other ways not specifically alleged, but to be identified through discovery and proven at trial.

40. Defendant Featherstone was negligent in his treatment of plaintiff due to his departures from the accepted standards of practice enumerated above.

41. At all times relevant to this action, defendant Featherstone was acting as an owner, officer and agent of defendant Clinic. Defendant Clinic is responsible for defendant Featherstone's actions.

42. As a result of the negligence of defendant Featherstone, plaintiff suffered physical injury, tremendous emotional distress and psychological injury, some of which is likely permanent, incurred significant medical expenses and will continue to incur significant medical

expenses, pain and suffering, lost income, diminution of future income, diminution in the enjoyment of life, and damage to her marriage.

43. As a direct and proximate result of the negligence of defendants, defendants are jointly and severally liable to plaintiff for damages in the amount of at least Ten Thousand Dollars (\$10,000.00).

II. Negligent Infliction of Emotional Distress

44. Plaintiff adopts and incorporates herein all previous allegations of this complaint.

45. Defendant Featherstone intended the conduct to which he exposed plaintiff and such conduct was extreme and outrageous so as to exceed all bounds of civilized society;

46. It was reasonably foreseeable that the conduct of defendant Featherstone would cause plaintiff severe emotional distress and said conduct did in fact cause severe emotional distress.

47. As a result of the negligent infliction of emotional distress of defendant Featherstone, plaintiff suffered physical injury, tremendous emotional distress and psychological injury, some of which is likely permanent, incurred significant medical expenses and will continue to incur significant medical expenses, pain and suffering, lost income, diminution of future income, a diminution in the enjoyment of life, and damage to her marriage.

48. At all times relevant to this action, defendant Featherstone was acting as an owner, officer and agent of defendant Clinic. Defendant Clinic is responsible for defendant Featherstone's actions.

49. As a direct and proximate result of the negligent infliction of emotional distress by defendant Featherstone, plaintiff is entitled to an award of compensatory damages from defendants, jointly and severally, in an amount in excess of Ten Thousand Dollars (\$10,000.00).

ALTERNATIVE COUNT

III. Intentional Infliction of Emotional Distress

50. Plaintiff realleges and incorporates herein all previous allegations of this complaint.

51. Defendant Featherstone intended the conduct to which he exposed plaintiff and such conduct was extreme and outrageous so as to exceed all bounds of civilized society.

52. It was reasonably foreseeable that such conduct of defendant Featherstone would cause the plaintiff emotional distress, and said conduct did in fact cause severe emotional distress.

53. Defendant Featherstone's conduct was willful, wanton and malicious.

54. As a result of the intentional infliction of emotional distress, the plaintiff suffered physical injury, tremendous emotional distress and psychological injury, some of which is likely permanent, incurred significant medical expenses and will continue to incur significant medical expenses, pain and suffering, lost income, diminution of future income, a diminution in the enjoyment of life, and damage to her marriage.

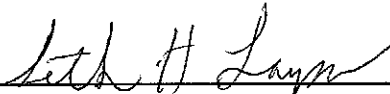
55. As a direct and proximate result of the intentional infliction of emotional distress by defendant Featherstone, the Plaintiff is entitled to an award of compensatory damages from the defendants, jointly and severally, in an amount in excess of Ten Thousand Dollars (\$10,000.00).

56. As a result of the intentional infliction of emotional distress by defendant Featherstone, plaintiff is entitled to an award of punitive damages from defendants in an amount in excess of Ten Thousand Dollars (\$10,000.00).

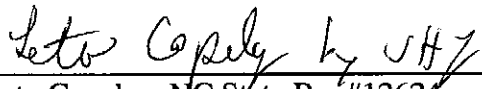
WHEREFORE, plaintiff prays for the following relief.

1. That plaintiff be granted a trial by jury;
2. That defendants be held jointly and severally liable;
3. That plaintiff recover from defendants compensatory damages in excess of Ten Thousand Dollars (\$10,000.00);
4. That plaintiff recover from defendants punitive damages in excess of Ten Thousand Dollars (\$10,000.00);
5. That the costs incurred by plaintiff in prosecuting this action be assessed against defendants;
6. That the court award such other and further relief to plaintiff as it deems just and proper.

This the _____ day of September, 2011.



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