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AMERICAN ARBITRATION ASSOCIATION

CHARLES GRAHAM,

Plaintiff,

v.

HNI MEDICAL SERVICES OF IDAHO,
LLC,

Defendant.

NO.

COMPLAINT

Dr. Charles Graham alleges as follows.

PARTIES

1. Plaintiff CHARLES GRAHAM is a Critical Care Hospitalist and Medical Director for St. Joseph Regional Medical Center in Lewiston, Idaho during the timeframe relevant to this lawsuit.

2. Defendant HNI MEDICAL SERVICES OF IDAHO, LLC, is a Texas based company that, upon information and believe, is a subcontractor of St. Joseph Regional Medical Center in Lewiston, Idaho.

JURISDICTION AND VENUE

3. HNI has its employees, like Dr. Graham, sign arbitration agreements so as to keep cases like these from being tried before juries and public courts. Accordingly, given federal and

1 state law precedent that favors arbitration, Dr. Graham has no choice but to bring this case before
2 the American Arbitration Association (AAA) per the employment contract HNI had him sign.

3 4. On May 6, 2021, Plaintiff certified mailed a charge of discrimination to the EEOC
4 as it relates to his below-referenced ADA claims. When Plaintiff receives his right to sue letter
5 he will amend his complaint to include ADA failure to accommodate, disability discrimination,
6 and retaliation claims. However, for the sake of time and to hopefully avoid unnecessary
7 expenses associated with bringing a motion to amend after the right to sue letter is issued, Dr.
8 Graham identifies the legal theories and facts germane to his ADA claims.
9

10 **FACTS**

11 5. HNI hired Dr. Graham as a contract Critical Care Hospitalist and Medical
12 Director for St. Joseph Regional Medical Center in Lewiston, Idaho. He began working full time
13 under his current contract at St. Joseph's on January 10, 2020.

14 6. Dr. Graham executed two employment contracts with HNI – a physician's
15 contract (in which he received a base compensation [REDACTED] per shift) and a medical
16 director's contract (in which he was to be compensated [REDACTED] per year). Under his physician's
17 employment contract, Dr. Graham was also eligible for and/or received [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] Both contracts made clear that if HNI wanted to
22 terminate Dr. Graham's employment it must do so "for cause."

23 7. In the mid-2020 timeframe Dr. Graham told HNI's Chief Medical Officer
24 (Reuben Tovar) and its Vice President of Operations (Dr. Craig Menard, who works in
25 Louisiana) that he suffered from alcoholism and intended to undergo medically necessary

1 residential treatment for a substance abuse disorder. Dr. Graham also disclosed his disability
2 (alcoholism) to Tim Trottier, St. Joseph's CEO. Mr. Trottier thanked Dr. Graham for his candor.

3 8. From August 24, 2020 to October 9, 2020 Dr. Graham left the workplace to
4 receive medical treatment for a substance abuse disorder.¹

5 9. During the November 2 – 5, 2020 timeframe, Dr. Graham participated in a HNI
6 leadership retreat in Austin, Texas. Dr. Graham's leadership previously selected him to attend
7 the leadership retreat because management desired to "solidify" Dr. Graham as a leader of HNI.

8 10. Although Dr. Graham completed some administrative duties remotely while on
9 medical leave for alcoholism treatment, his absence resulted in additional work for HNI co-
10 workers Program Director Meshell Ward and Program Coordinator administrator Heather
11 Cleveland.

12 11. Dr. Graham's disability-related absence coupled with his post-treatment disability
13 related accommodation requirement that he work no more than three 12-hours shifts/week,²
14 increased the workload of his peers and potentiated additional cost to HNI since Dr. Graham
15 could no longer stay after shift for additional unpaid hours.

16 12. Like so many front-line health care workers, Dr. Graham contracted COVID-19
17 during the November 2020 leadership conference and was on a quarantined leave from
18 November 9 to November 22. Following his recovery, Dr. Graham returned to work on or about
19 November 23.
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24 ¹ He has now successfully completed treatment and is fully compliant with his program's
25 aftercare recommendations.

² The amount would increase to 4x12s after Dr. Graham's first month back at work.

1 13. From late November through January, Dr. Graham continued to work anywhere
2 from 70 - 90 hours per week, as he relentlessly continued to battle the surge of COVID-19 cases
3 while working as a physician and directing the critical care unit. This work schedule greatly
4 exceeded his 3x12s work week disability accommodation requirement. Dr. Graham continued to
5 request additional staffing to help keep him in compliance with this accommodation but was
6 persistently refused due to budgetary concerns.

7
8 14. Shortly after his return to work on November 23, Ward and Cleveland began
9 ostracizing Dr. Graham from department matters, effectively precluding him from performing
10 his job duties as Medical Director. To illustrate, Ward and Cleveland would shut their shared
11 office door to exclude Dr. Graham from day-to-day communications; made business decisions
12 without Dr. Graham's knowledge or input; scheduled meetings with hospital administration
13 without extending an invitation to Dr. Graham or apprising Dr. Graham of what had transpired
14 during meetings; and scheduled meetings about equipment only Dr. Graham used without
15 consulting him.

16 15. On January 21, 2021, Dr. Graham emailed Dr. Menard to describe Cleveland and
17 Ward's continued unprofessionalism a la:

18 I am continuing to have boundary concerns with our program coordinator similar
19 to what we have discussed on prior occasions. Specifically, she has raised her
20 voice and pointed her finger at me in my office because I disagreed with her
21 assessment of a patient's discharge. She has loudly disagreed with me about my
22 decisions regarding hospital policy, berated me in front of my significant other
(can we really trust him to drive) even going so far as to directly contradict me in
meetings with other directors by first name ("no Charles, you can't ask them to do
that).

23 16. The issues Dr. Graham and Dr. Menard discussed "on prior occasions" related to
24 patient safety including an instance where [REDACTED]
25 [REDACTED] transferred a patient to [REDACTED] but refused [REDACTED]
[REDACTED]

1 [REDACTED]. Dr. Graham had become
2 increasingly concerned over multiple patient safety issues with [REDACTED] and began directing
3 patients to other local facilities.

4 17. When Dr. Graham told Ward and Cleveland that [REDACTED] should be held
5 accountable for refusing to retrieve the patient and that discharges should be sent to other
6 qualified facilities until [REDACTED] could improve their safety and patient care standard, this was
7 met with hostility and even shouting. Ward said words to the effect of “this post-acute
8 relationship is important and very profitable.”

9 18. Another issue Dr. Graham raised with Dr. Menard “on prior occasions” was
10 concerns Dr. Graham had about [REDACTED] acting outside the scope of her expertise in providing
11 patient care in her influence of patient disposition.

12 19. Dr. Graham’s email went on to protest the odd protocol of having his annual
13 review completed by a non-clinical staff member ([REDACTED]) who was merely his lateral (not his
14 superior).

15 20. To be clear, [REDACTED] had no clinical training whatsoever, and a significant portion of
16 the evaluation discussed Dr. Graham’s acumen as a physician.

17 21. In contrast, CEO Tim Trottier never gave any indication of concern about Dr.
18 Graham’s performance, and instead was consistently very encouraging and positive on the
19 numerous occasions Dr. Graham approached him for advice. When Trottier and Dr. Graham met
20 on January 18, 2021, one week before his abrupt termination, Trottier told Dr. Graham he was
21 doing great and should keep up the good work.

22 22. Indeed, on January 25, 2021, Trottier asked Dr. Graham to give a hospital tour to
23 a physician candidate and told him he was looking forward to a next meeting; indicating he was
24 not “in the loop” on HNI’s scheme to fire him.

25 23. On January 26, 2021, HNI fired Dr. Graham. Dr. Menard said, "I'll be brief. You
do not meet expectations for an HNI medical director and we need to part ways today. You are

1 just not a good fit for us. You can resign effective immediately, or we will terminate you. Protect
2 yourself Charles, this will follow you."

3 24. This came as a shock to Dr. Graham, who had never had a negative interaction or
4 corrective direction from HNI leadership throughout his career with HNI. During that meeting
5 Dr. Menard also said words to the effect of, "you are due a [REDACTED] and unpaid
6 PTO which I think you've earned and we will pay." But when Dr. Graham refused to resign, HNI
7 flip flopped on its promise to pay the [REDACTED] and PTO.

8 CLAIMS

9 BREACH OF CONTRACT (Count 1)

10 25. "The elements for a claim for breach of contract are: (a) the existence of the
11 contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of
12 those damages." *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241
13 (2013).

14 26. Dr. Graham had two contracts with HNI, both contracts required HNI to establish
15 "good cause" before terminating Dr. Graham's employment, and HNI breached that contract by
16 failing to establish "good cause."

17 27. In order to determine whether an employer establishes "good cause" Idaho
18 utilizes an adopt the same objective, good faith, standard as follows:

19 We conclude the objective standard exemplified by *Cotran* is the better approach
20 for assessing an employer's decision about whether an employee actually
21 committed the acts leading to discharge, and, if so, whether the act constituted
22 cause for termination. We adopt the objective good-faith standard under which an
23 employer is justified in terminating an employee for good cause for fair and
24 honest reasons, regulated by good faith on the part of the employer, that are not
25 trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual.
A reasoned conclusion, in short, supported by substantial evidence gathered
through an adequate investigation that includes notice of the claimed misconduct
and a chance for the employee to respond. *Lunneborg v. My Fun Life*, 163 Idaho
856, 865 (2018).

28. Here HNI simply cannot establish "good cause".

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2 29. *First*, Dr. Graham was never given notice of the claimed misconduct. He was
3 summoned to a meeting on January 26, 2021, and told by Dr. Menard (who conferenced in from
4 his location in Louisiana) that he was “not a good fit” and “did not meet expectations” as the
5 Director. That’s it.

6 30. *Second*, Dr. Graham was never given a chance to respond to the claimed
7 misconduct. On January 26, 2021, he was given the opportunity to resign (an offer that is
8 inconsistent with “good cause” termination) or be fired. During that meeting Dr. Graham was
9 given a box and told to pack his belongings.

10 31. *Third*, there is no evidence HNI investigated any of the claimed misconduct. For
11 if it had then specific examples of misconduct, they would have been provided to Dr. Graham on
12 January 26, 2021.

13 32. Defendant’s actions have caused Dr. Graham damages in an amount to be proven
14 at arbitration.

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16 **WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY (Count 2)**

17 33. Idaho law protects employees from discharge when those employees, for
18 example, “report[] the falsification of medical records and the performance of unnecessary
19 operations to bolster a physician's income.” *Thomas v. Med. Ctr. Physicians, P.A.*, 138 Idaho
20 200, 208 (2002).

21 34. In this instance, Dr. Graham (first orally and then in writing on January 21, 2021)
22 reported, to Dr. Menard, that [REDACTED] was prioritizing profits
23 over patient safety and that [REDACTED] was providing medical care outside of her area of expertise.

24 35. Defendant’s actions have caused Dr. Graham damages in an amount to be proven
25 at arbitration.

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2 **VIOLATION OF THE ADA – DISABILITY DISCRIMINATION, FAILURE TO**
3 **ACCOMMODATE, AND RETALIATION (Counts 2, 3, & 4)**

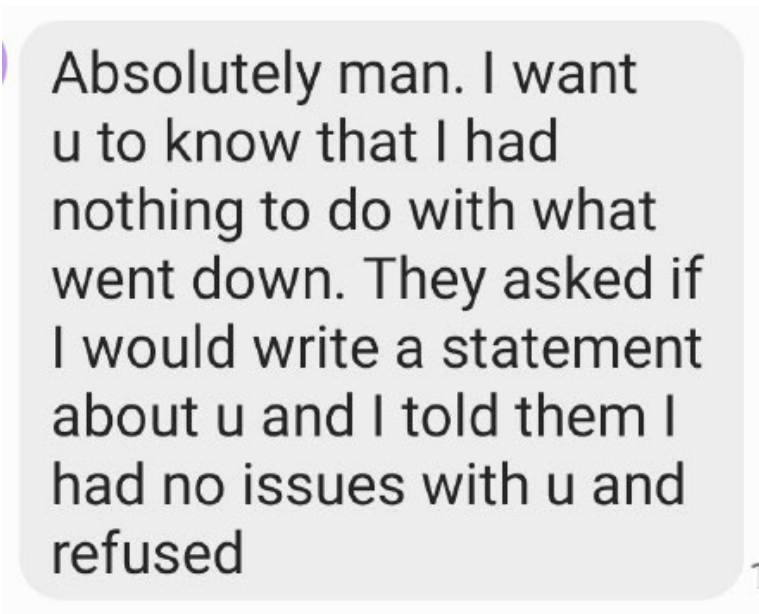
4 36. To prove an ADA discrimination claim the plaintiff must prove that he: (1) is
5 disabled; (2) is qualified; and (3) suffered an adverse employment action because of her
6 disability. *Pardi v. Kaiser Found. Hosps.*, 389 F.3d 840, 849 (9th Cir. 2004).

7 37. To prove an ADA retaliation claim the plaintiff must show
8 (1) he or she engaged in a protected activity; (2) suffered an adverse employment action; and (3)
9 there was a causal link between the two. *Garity v. APWU Nat'l Lab. Org.*, 828 F.3d 848, 863 n.
10 16 (9th Cir. 2016). Requesting an accommodation is protected activity under the ADA as is
11 trying to get one's employer to adhere to those accommodation requirements. *See,*
12 *e.g., McAlindin v. County of San Diego*, 192 F.3d 1226, 1238 (9th Cir. 1999) (explaining that
13 plaintiff engaged in protected activity by “vigorously asserting his rights under the ADA” and
14 state law, including requesting accommodations and complaining of inadequate training).

15 38. Regarding the ADA discrimination claim, Dr. Graham is an alcoholic and that is a
16 disability. *Siring v. Oregon State Bd. of Higher Educ. ex rel. E. Oregon Univ.*, 927 F. Supp. 2d
17 1030, 1067 (D. Or. 2012)(“Alcoholism is a recognized disability under the ADA.”).

18 39. HNI cannot dispute that Dr. Graham was qualified to serve both as a physician
19 and Director. Indeed, text messages exchanged with Dr. Graham following his without cause
20 termination make clear that many of his co-workers were shocked. Weeks before his without
21 cause termination St. Joseph's CEO, Tim Trottier, told Dr. Graham “you're doing great work,
22 keep it up.” Indeed, Mr. Trottier agreed to write a letter of recommendation for Dr. Graham's
23 application to a MBA program. Dr. Graham received the second highest “chart to audit” score
24 out of ten co-workers as part of his early-January performance evaluation. Dr. Graham's team
25 received the highest patient satisfaction score. The list goes on.

1 40. In fact, it appears that HNI tried to have Dr. Graham's fellow workers write
2 statements against Dr. Graham but at least one refused.



Absolutely man. I want u to know that I had nothing to do with what went down. They asked if I would write a statement about u and I told them I had no issues with u and refused

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13 41. Dr. Graham suffered an adverse action. He was fired. His
14 disability/accommodation requests were a but for cause of the termination as his repeated
15 attempts to enforce his accommodation, which included limiting his shifts to 12 hours, occurred
16 within weeks of his without cause termination. Further, his status as having been “involuntarily
17 terminated” serves to make subsequent employment more difficult, effectively providing
18 ongoing damage to his reputation and employability.

19 42. Defendant's actions have caused Dr. Graham damages in an amount to be proven
20 at arbitration.

21 PRAYER FOR RELIEF

22 Wherefore, Plaintiff prays for judgment and relief against Defendant, as follows:

23 1. For special damages including back pay, front pay, pre- and post-judgment
24 interest, relocation expenses, lost benefits of employment, adverse tax consequences of any
25 award for economic damages;

