

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BONNIE JONES,

Plaintiff,

v.

OSS ORTHOPAEDIC HOSPITAL,
LLC, d/b/a OSS HEALTH, DRAYER
PHYSICAL THERAPY INSTITUTE,
and TIMOTHY BURCH,

Defendants.

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COMPLAINT

INTRODUCTION AND BACKGROUND STATEMENT

1. Plaintiff Bonnie Jones,¹ through her undersigned counsel, respectfully files this complaint against Defendants OSS Orthopaedic Hospital, LLC d/b/a OSS Health, Drayer Physical Therapy Institute, and Timothy Burch (collectively “Defendants”), seeking all available relief under Title III of the Americans with

¹ A pseudonym has been used in place of Plaintiff’s full name due to privacy concerns. Plaintiff will file a motion requesting that she be permitted to proceed under pseudonym because she has a reasonable fear of severe harm should her HIV status be revealed. *See Doe v. Megless*, 654 F.3d 404, 408-9 (3d. Cir. 2011) (endorsing a non-comprehensive balancing test, which balances, “...whether a litigant has a reasonable fear of severe harm that outweighs the public’s interest in open litigation,” and including AIDS as an example of an area where courts have permitted plaintiffs to proceed with pseudonyms).

Disabilities Act of 1990, 42 U.S.C. §§ 12181, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, and applicable state law.²

2. As explained more fully below, this action stems from Defendants' discriminatory denial of access to their aquatic therapy pool because of Plaintiff Jones' disability, HIV, and the unlawful disclosure of her HIV status.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over the subject matter of Plaintiff's claims under the Americans with Disabilities Act and the Rehabilitation Act of 1973, pursuant to 28 U.S.C. § 1331.

4. This action is authorized by 42 U.S.C. § 12188 and 29 U.S.C. §794a(2).

5. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to Plaintiff's federal claims they form part of the same case or controversy.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district, and because a substantial part of the events giving rise to the claims alleged herein occurred in this judicial district.

² Plaintiff has filed an administrative charge against Defendants with the Pennsylvania Human Relations Commission ("PHRC"), asserting violations under the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963 ("PHRA"). Plaintiff will amend this Complaint to include the PHRA causes of action upon proper exhaustion of administrative remedies.

PARTIES

7. Plaintiff Bonnie Jones (“Jones”) is an adult individual and resides in York County in this Judicial District.

8. Defendant OSS Orthopaedic Hospital, LLC d/b/a OSS Health (“OSS Health”) is an orthopedic care specialist medical practice with five locations in York, Adams, and Cumberland counties. Plaintiff Jones received healthcare at the OSS Health facility located at 1855 Powder Mill Road, York, Pennsylvania. OSS Health provides medical and clinical services to members of the public at this address. This facility is a place of public accommodation within the meaning of the ADA, as it is “a professional office of a healthcare provider.” See 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.

9. Defendant Drayer Physical Therapy Institute (“Drayer”) is owner and operator of 130 physical therapy clinics in sixteen states. Their headquarters are located at 8205 Presidents Drive, Hummelstown, Pennsylvania. Upon information and belief, Drayer owns and/or operates the physical therapy program, and supervises, manages and staffs the physical therapy program at the OSS Health facility located at 1855 Powder Mill Road, York, Pennsylvania. This facility is a place of public accommodation within the meaning of the ADA, as it is “a professional office of a healthcare provider.” See 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104

10. Defendant, Timothy Burch (“Burch”) is a Physical Therapist based at OSS Health’s 1855 Powder Mill Road facility. Upon information and belief, Mr. Burch is a joint employee of OSS Health and Drayer, and provides physical therapy services on behalf of OSS and its patients

FACTS

11. Jones is an individual living with HIV, a physical impairment that substantially limits one or more major life activities, including but not limited to her immune system, reproductive system, and normal cell growth. Accordingly, she has a disability as defined by 42 U.S.C. §12102 and 28 C.F.R. § 36.104.

12. Jones was diagnosed with HIV in 2012.

13. Jones served two active tours of duty in Iraq in 2005-2006 and 2009-2010.

14. Jones suffers from chronic pain in her spine and limited range of motion, caused by wearing a bullet proof vest for an extended period of time while on active duty.

15. Jones’ Primary Care Provider at the Veteran’s Administration (“VA”) recommended Jones consult with an orthopedic specialist regarding her chronic pain.

16. Jones researched local orthopedic specialist medical providers, and made an intake appointment for June 18, 2015 with OSS Health at the 1855 Powder Mill Road facility.

17. At the appointment, Jones completed paperwork, which included her medical history, HIV diagnosis and medication, and was evaluated by Dr. Steven J, Triantafyllou and Physician's Assistant ("PA") Brian Koons.

18. Dr. Triantafyllou and PA Koons recommended Physical Therapy for management of Jones' chronic pain. She scheduled an appointment at the same facility for June 26, 2015.

19. On June 26, 2015, Jones met with Defendant Timothy Burch in his role as a Physical Therapist for OSS Health.

20. Jones and Burch met in a large gymnasium at OSS Health's 1855 Powder Mill Road facility, in which 20-30 people were using the various pieces of physical therapy equipment.

21. At the time of their meeting, Burch was wearing a T-shirt bearing the OSS Health logo.

22. After evaluating Jones' range of motion, Burch informed Jones that aquatic therapy at the facility would be the most appropriate course of treatment for her injuries.

23. As Burch explained the benefits of aquatic therapy, he reviewed Jones' medical history on a laptop.

24. Burch stopped talking abruptly and said "I have to check because of your health status if you can go in the pool."

25. Burch walked away through a door off the gymnasium, and was gone for several minutes.

26. When Burch returned, he stated "Because of your HIV/AIDS you're not allowed to go in the pool. It's our policy."

27. Several of the 20-30 people present in the gymnasium looked up at the mention of HIV and stared at Jones.

28. Jones was embarrassed by Burch's disclosure of her health status and offended at the discriminatory policy.

29. Jones finished her session with Burch.

30. Jones was too embarrassed and offended to return for any further treatment.

31. As a result of Defendants' denial of access to the pool and breach of confidentiality, Jones suffered humiliation, emotional distress, frustration, and anxiety.

32. Prior to Burch's disclosure, Jones had disclosed her HIV status only to her medical providers and her closest friends.

33. Jones currently receives Physical Therapy at the VA, although it does not offer aquatic therapy, which had been determined by Defendant Burch to be the appropriate treatment for her.

COUNT I
**UNLAWFUL DISCRIMINATION IN PUBLIC ACCOMODATIONS BASED
ON DISABILITY IN VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT, 42 U.S.C. § 12182 *ET SEQ.*; 28 C.F.R. § 36.102 *ET
SEQ.***
(Against OSS Health and Drayer Physical Therapy Institute)

34. All previous paragraphs are incorporated as though fully set forth herein.

35. Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against individuals on the basis of disability in the full and equal enjoyment of the services of any place of public accommodation. 42 U.S.C. § 12182, *et seq.*; 28 C.F.R. § 36.102, *et seq.*

36. At all relevant times, Jones has had a physical impairment (HIV) that substantially limits the operation of her major bodily functions, such as her immune system, reproductive system, and normal cell growth, as well as substantially limiting other major life activities, such that she is an individual with a disability within the meaning of the ADA, 42 U.S.C. §12102; 28 C.F.R. § 36.104.

37. In addition, Defendants regarded Jones as an individual with a disability within the meaning of the ADA, 42 U.S.C. § 12102; 28 C.F.R. § 36.104.

38. Jones was denied “the goods, services, facilities, privileges, advantages, or accommodations” of a public accommodation when she was denied access to the OSS therapy pool on the basis of her disability, HIV, in violation of 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a).

39. Jones was denied “the opportunity ... to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation” on the basis of her disability, HIV, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.202(a).

40. Defendant Burch was acting as an employee and agent of Drayer when he denied Jones access to the 1855 Powder Mill Road aquatic therapy pool because of her disability, specifically her HIV infection, in violation of 42 U.S.C. §12102 *et seq.* and 28 C.F.R. § 36.102 *et seq.*

41. Defendant Burch was acting as an employee and agent of Defendant OSS Health when he denied Jones access to the 1855 Powder Mill Road aquatic therapy pool because of her disability, specifically her HIV infection, in violation of 42 U.S.C. §12102 *et seq.* and 28 C.F.R. § 36.102 *et seq.*

42. Defendants’ discrimination directly and proximately caused Jones to sustain severe and lasting emotional and psychological harm.

43. Plaintiff seeks immediate injunctive relief pursuant to 42 U.S.C.A. § 12188(a)(2), as well as payment of attorneys’ fees and costs.

COUNT II
**UNLAWFUL DISABILITY DISCRIMINATION BY A RECIPIENT
OF FEDERAL FUNDS IN VIOLATION OF SECTION 504 OF THE
REHABILITATION ACT OF 1973; 29 U.S.C. § 701 *ET SEQ.***
(Against OSS Health and Drayer Physical Therapy Institute)

44. All previous paragraphs are incorporated as though fully set forth herein.

45. Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act) prohibits discrimination based on disability under any program or activity receiving Federal financial assistance. 29 U.S.C. § 701 *et seq.*

46. OSS Health and Drayer qualify as “program[s] or activit[ies] receiving federal funds” because they are “an entire corporation, partnership, or other private organization, or an entire sole proprietorship ... which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation.” 29 U.S.C. § 794(b)(3)(A)(ii).

47. At all relevant times, Jones has had a physical impairment (HIV) that substantially limits the operation of her major bodily functions, such as her immune system, reproductive system, and normal cell growth, as well as substantially limiting other major life activities, such that she is an individual with a disability within the meaning of the Rehabilitation Act, 29 U.S.C. § 705(20).

48. Jones was “excluded from the participation in” and “denied the benefits of” a program or activity receiving Federal financial assistance when she

was denied access to the 1855 Powder Mill Road aquatic therapy pool on the basis of her disability, HIV, in violation of 29 U.S.C. § 794.

49. Defendants' discrimination directly and proximately caused Jones to sustain severe and lasting emotional and psychological harm.

50. Jones seeks immediate injunctive relief pursuant to 29 U.S.C. § 794(a), as well as payment of attorneys' fees and costs.

COUNT III
**BREACH OF CONFIDENTIALITY UNDER THE CONFIDENTIALITY OF
HIV-RELATED INFORMATION ACT, 35 P.S. §7601 *ET SEQ.* (KNOWN AS
"ACT 148")**
(Against All Defendants)

51. All previous paragraphs are incorporated as though fully set forth herein.

52. Defendants impermissibly disclosed Jones' HIV-related information, in violation of Pennsylvania law.

53. Under Pennsylvania's Confidentiality of HIV-related Information Act (known as "Act 148"), 35 Pa.C.S.A. § 7601, *et seq.*, certain covered individuals and entities are prohibited from disclosing HIV-related information, without the consent of the subject.

54. Pursuant to 35 Pa.C.S.A. § 7603, an institutional health care provider is defined as "a hospital, nursing home, hospice, clinic, blood bank, plasmapheresis or other blood product center, organ or tissue bank, sperm bank, clinical

laboratory, residential or outpatient drug and alcohol rehabilitation service, mental health facility, mental retardation facility, home care agency as defined in this act, or any health care institution required to be licensed in this Commonwealth whether privately or publicly operated.”

55. Pursuant to 35 Pa.C.S.A § 7603, an individual healthcare provider is defined as “[a] physician, nurse, emergency medical services, worker, chiropractor, optometrist, psychologist, nurse-midwife, physician assistant, dentist or other person, including a professional corporation or partnership, providing medical, nursing, drug or alcohol rehabilitation services, mental health services, other health care services or an employee or agent of such individual or an institutional health care provider.”

56. Defendant Drayer is an “institutional health care provider” as defined by 35 Pa.C.S.A. § 7603 and is subject to the disclosure laws of HIV-related information.

57. Defendant OSS Health is an “institutional health care provider” as defined by 35 Pa.C.S.A. § 7603 and is subject to the disclosure laws of HIV-related information.

58. Defendant Burch is an “individual health care provider” as defined by 35 Pa.C.S.A. § 7603 and is subject to the disclosure laws of HIV-related information.

59. Under Section 7603, “confidential HIV-related information” is defined as “any information which is in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV-related information and which concerns whether an individual has been the subject of an HIV-related test, or has HIV, HIV-related illness or AIDS; or any information which identifies or reasonably could identify an individual as having one or more of these conditions, including information to the individual's contacts.”

60. Jones’ HIV status is confidential HIV-related information covered by 35 Pa.C.S.A. § 7603.

61. Defendant Burch violated 35 Pa.C.S.A. § 7601, *et seq.* when he disclosed Jones’ HIV in the presence of 20-30 people in the gymnasium at OSS Health As a result of his disclosure, several people looked up and stared at Jones.

62. Defendants Drayer and OSS Health are liable for the conduct of their agents and/or employees.

63. Defendants Drayer and OSS Health failed to assure that their employees and/or agents adhere to statutorily mandated privacy procedures regarding confidentiality and disclosure of an individual’s HIV status.

64. As a direct and proximate result of this unlawful and insensitive breach of confidentiality, Jones’ HIV status was impermissibly disclosed.

65. Prior to Defendants' impermissible disclosure, Jones had disclosed her HIV status only to her medical providers and her closest friends.

66. As a further proximate result of this unlawful breach of confidentiality, Jones has experienced emotional pain and suffering.

67. Jones continues to experience emotional pain and suffering because she no longer knows who is privy to information she had previously kept closely guarded.

68. Jones seeks compensatory damages pursuant to 35 Pa.C.S.A § 7610.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests the following relief:

- a. A declaratory judgment that the practices complained of herein are unlawful discrimination under the ADA;
- b. Defendants, their agents and employees, cease and desist unlawful discriminatory practices;
- c. Defendants, their agents and employees, develop and implement a written anti-discrimination policy, insuring that they will not discriminate against any patient with HIV in the future;
- d. Defendants, their agents and employees conduct mandatory training for all staff regarding HIV disease, transmission and universal precautions;
- e. Defendants, their agents and employees, develop and implement a written confidentiality policy, insuring that they will not unlawfully disclose patients' private health information in the future;

- f. Defendants, their agents and employees, conduct mandatory training for all staff regarding patient confidentiality requirements;
- g. Compensatory and actual damages to Plaintiff, including those caused by humiliation and embarrassment, in an amount to be determined at trial;
- h. Costs and reasonable attorney's fees; and
- i. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: June 23, 2016

s/ Sarah R. Schalman-Bergen
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**Pro Hac Vice to be filed*

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