CAUSE NO. CC-12-04630-D

CORTEZ MILLS,	§	**IN THE COUNTY COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
TEXAS VASCULAR ASSOCIATES, PA,	§	
GREGORY J. PEARL, M.D.,	§	
WILLIAM P. SHUTZE, M.D.,	§	**AT LAW NO.** 4
DENNIS R. GABLE, M.D.,	§	
BRAD R. GRIMSLEY, M.D.,	§	
TOBY J. DUNN, M.D.,	§	
STEPHEN E. HOHMANN, M.D.,	§	
JOHN C. KEDORA, M.D.,	§	
TAYLOR D. HICKS, M.D., AND	§	
BERTRAM L. SMITH, M.D.,	§	
	§	
Defendants.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION

I.

INTRODUCTION

Plaintiff Cortez Mills files this Original Petition against Defendants Texas Vascular Associates, PA, Gregory J. Pearl, M.D., William P. Shutze, M.D., Dennis R. Gable, M.D., Brad R. Grimsley, M.D., Toby J. Dunn, M.D., Stephen E. Hohmann, M.D., John C. Kedora, M.D., Taylor D. Hicks, M.D., and Bertram Smith, M.D., and respectfully shows the following:

II.

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

III.

PARTIES

2. Plaintiff Cortez Mills (Plaintiff) is an individual.

3. Defendant Texas Vascular Associates, PA (TVA) is a professional association organized under the laws of the state of Texas with its principle place of business at 621 North Hall Street, Suite 100, Dallas, Texas 75226. TVA may be served with process, including citation and a copy of this lawsuit, by serving TVA's registered agent for service of process, Bertram L. Smith, at 621 North Hall Street, Suite 100, Dallas, Texas 75226.

4. Defendant Gregory J. Pearl, M.D. (Dr. Pearl), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

5. William P. Shutze, M.D. (Dr. Shutze), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

6. Dennis R. Gable, M.D. (Dr. Gable), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

7. Brad R. Grimsley, M.D. (Dr. Grimsley), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

8. Toby J. Dunn, M.D. (Dr. Dunn), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

9. Stephen E. Hohmann, M.D. (Dr. Hohmann), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

10. John C. Kedora, M.D. (Dr. Kedora), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

11. Taylor D. Hicks, M.D. (Dr. Hicks), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

12. Bertram L. Smith, M.D. (Dr. Smith), is an individual and may be served with process, including citation and copy of this lawsuit, by serving him at his work address, 621 North Hall Street, Suite 100, Dallas, Texas 75226.

IV.

JURISDICTION

13. The Court has jurisdiction over this action because the amount in controversy, exclusive of interest and costs, is within the jurisdictional limits of the Court.

V.

VENUE

14. Venue is proper in Dallas County because (a) all or a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in Dallas County,[1] and (b) Defendants' principle place of business is in Dallas County.[2]

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[1] TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

[2] TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2).

VI.

BACKGROUND FACTS

15. Dr. Pearl, Dr. Shutze, Dr. Gable, Dr. Grimsley, Dr. Dunn, Dr. Hohmann, Dr. Kedora, Dr. Hicks, and Dr. Smith are sometimes collectively referred to as the Physicians.

16. The Physicians and TVA are sometimes collectively referred to as Defendants.

A. TVA's Business and General Medical Billing Practices and Guidelines

17. TVA is a professional association of vascular surgeons.

18. The Physicians are medical doctors and either owners or employees of TVA.

19. Each Physician is licensed by the Texas Medical Board and is subject to the Board's continuing jurisdiction.

20. The Physicians perform certain medical procedures, including vascular surgeries, for individuals seeking and in need of medical treatment.

21. Approximately 70% of TVA's patients are covered by Medicare.

22. Private insurance products (Insurance) cover many of TVA's patients, either as a supplement to Medicare or instead of Medicare.

23. Medicare is administered by the United States Department of Health and Human Services (HHS), through its agency, the Centers for Medicare and Medicaid Services (CMS).

24. Medicare follows what is known as Local Coverage Determination (LCD).

25. LCD Medicare guidelines require surgical codes for each particular surgery the Physicians perform.

26. When the Physicians treat patients, they create medical records and/or notes that set forth, among other things, a summary of the patient's status, as well as what, if any, treatment is provided or prescribed.

27. TVA uses Netpractice, a computer software program designed for the healthcare industry.

28. Netpractice allows the Physicians to input medical notes from their care and treatment of patients.

29. Netpractice also allows TVA's staff to review the Physicians' notes as part of their preparation for generating bills for submission to Medicare and Insurance.

30. In addition to entering notes using Netpractice, the Physicians use what is commonly referred to as a "Superbill," which is a document that contains most of the vascular codes the Physicians use to establish charges for the services they render.

31. Using the Superbill, the Physicians establish the charges they want billed to Medicare and Insurance for the services they perform.

32. These documents, and in particular the medical notes and the stated reasons for treatment, must comply with CMS and Insurance guidelines.

33. To obtain reimbursement from CMS, a Medicare claim must set forth, among other things, the patient's name, the patient's Medicare number, the service(s) that were performed, the date(s) service(s) were performed, the cost of service(s), and the name and identification number of the physician or healthcare provider that ordered or performed the service(s).

34. Medicare and Insurance require the surgical code to match or otherwise support the medical records diagnosis codes completed by the physician, as well as the medical notes and records generated by the Physicians.

35. It is a crime to submit documents to Medicare or Insurance that are known to contain false information.

36. Some of the federal criminal statutes that cover Medicare fraud include, but are not limited to, 18 U.S.C. § 1349 (conspiracy to commit healthcare fraud), 18 U.S.C. § 1347 (healthcare fraud), 42 U.S.C. § 1320a-7b(a)(2) (making false statements for use in determining rights for benefit and payment by Medicare), 18 U.S.C. § 1035 (making false statements relating to health care matters), all felonies providing for substantial prison time upon conviction. Additionally, submitting false documents to Medicare or Insurance violates 18 U.S.C. § 1341 (mail fraud).

37. It is also a violation of Texas state law to submit fraudulent documents to Insurance, including but not limited to Texas Penal Code section 31.03 (theft) and Texas Penal Code section 35.02 (insurance fraud).

38. Insurance carriers are required to report fraud to the Texas Department of Insurance.

B. Plaintiff's Position With TVA

39. Plaintiff has worked in medical billing and collections for over twenty-two years.

40. Prior to working for TVA, Plaintiff held certificates from the State of Texas in oncology billing and orthopedic billing.

41. On December 31, 2008, Plaintiff obtained her Certified Medical Coder license from the Practice Management Institute (PMI).

42. PMI provides continuing education for medical office professionals.

43. TVA hired Plaintiff in or around June 2010.

44. While she worked for Defendants, Plaintiff was the only person at TVA with a coding license.

45. When Plaintiff started working for TVA, she was not given a job description.

46. Shortly after she started working for TVA, Plaintiff recognized numerous improper and illegal billing practices that TVA engaged in.

47. Because of this, Plaintiff pressed TVA to provide her with a formal job description.

48. Plaintiff and TVA created a job description for Plaintiff of Account Resolution Specialist.

49. While Plaintiff worked for TVA, TVA never had a compliance officer or a compliance plan.

50. As Account Resolution Specialist, Plaintiff was responsible for, among other things, reviewing and releasing bills to Medicare and Insurance seeking payment for the treatment provided by the Physicians.

51. Part of Plaintiff's job required reviewing medical bills before submission to Medicare or Insurance to ensure that the charges were supported by the Physicians' actual chart notes in Netpractice.

52. Another part of Plaintiff's job required her to respond to requests from Medicare or its representative for supporting documentation for certain charges that had already been submitted for payment.

53. Plaintiff therefore routinely used Netpractice and MD Dictate to access and review the Physicians' medical notes to ensure that the medical records and notes supported the charges the Physicians were requesting be billed to Medicare and Insurance.

54. Because the Physicians had privileges at Baylor University Medical Center and all related Baylor facilities (Baylor), the Physicians would perform procedures at Baylor.

55. Plaintiff thus used the Baylor Portal, which is a web based electronic medical record resource, to access and review the Physicians' medical notes to ensure that the medical records and notes supported the charges the Physicians were requesting be billed to Medicare and Insurance.

56. Another aspect of Plaintiff's position required her to determine the applicable modifier for charges, if any, which was input into Netpractice and then submitted for payment; applying these modifiers would result in Defendants obtaining higher reimbursement amounts.

57. Modifiers are descriptors that are sometimes applied to codes to further explain the medical treatment or justify a claim for reimbursement.

58. For example, Modifier 59 informs Medicare and/or Insurance not to "bundle" different yet related procedures for billing purposes. This results in more payment for services to Defendants.

59. Modifiers 78 and 79 inform Medicare and/or Insurance not to "bundle" a particular surgery to a prior surgery. This results in more payment for services to Defendants.

60. Modifiers 24 and 25 inform Medicare and/or Insurance that the patient was seen for a different complaint than the surgery that was performed. This results in more payment for services to Defendants.

61. Modifier 22 informs Medicare and/or Insurance that a particular surgery was complicated. This results in more payment for services to Defendants.

C. Defendants' Fraudulent Plans, Schemes, and Activities

62. Over time, Plaintiff began to see Defendants' fraudulent billing practices and schemes.

63. The various modifiers and codes at issue can be found at the CMS web site.

64. Below are just a few examples of the extensive and pervasive fraudulent practices and schemes.

a. Fraudulently Medicare Billing for Physician Without a Medicare Billing Number

65. Before any physician can bill Medicare for services rendered to patients covered by Medicare, that physician must have his or her own Medicare billing number.

66. When Dr. Hicks first joined TVA, he did not have a Medicare billing number.

67. When Dr. Hicks first joined TVA, however, he saw patients covered by Medicare.

68. Because Dr. Hicks did not have his own Medicare billing number, TVA fraudulently billed for the services Dr. Hicks rendered to Medicare patients by submitting bills to Medicare using the Medicare numbers of the other Physicians, who had not seen the patients.

69. When Plaintiff refused to bill Medicare in this fraudulent manner as ordered by TVA and Dr. Gable, TVA and Dr. Gable instructed TVA employees Liza Gustafson and Kimberly Jolivette-Williams to engage in this fraudulent activity, and they complied.

b. Fraudulent Double Billing

70. From time to time, patients under Defendants' care are covered by one insurance carrier during one phase of treatment, but become covered by a different insurance carrier at a different phase of treatment.

71. For example, on at least one such occasion, one TVA patient was covered by insurance carrier A when he received certain TVA medical services.

72. One of the Physicians prescribed a prosthetic device for this patient, and the bill for this device was submitted to insurance carrier A.

73. "Insurance carrier A" paid the claim in full.

74. When this patient became covered by insurance carrier B two days later, TVA, Dr. Gable, and Dr. Smith demanded Plaintiff bill insurance carrier B for the same prosthetic device.

75. When Plaintiff refused to double bill Insurance in this fraudulent manner as ordered by TVA, Dr. Gable, and Dr. Smith, TVA, Dr. Gable, and Dr. Smith ordered TVA employee Jolivette-Williams to bill insurance carrier B for the same the prosthetic device, and Jolivette-Williams complied.

76. "Insurance carrier B" then also paid for this prosthetic device.

77. Defendants did not refund the money insurance carrier A paid for this prosthetic device until after the patient discovered the fraudulent double billing and Defendants held several meetings to discuss the issue.

78. For her willingness to engage in this fraud, Defendants rewarded Jolivette-Williams and promoted her to a supervisor position.

c. Improper "Balance Billing" of Medicaid Patients

79. Many times, the Defendants' charges for services are higher than what Medicaid will pay for those services.

80. When the Physicians treat a patient covered by Medicaid, Defendants accept Medicaid's contracted rates for reimbursement for those services.

81. By agreeing to accept Medicaid's contracted rates, Defendants are then prohibited from billing Medicaid patients for the "balance," or difference, between what TVA charges for the service and what Medicaid will actually pay for that service.

82. TVA and Dr. Gable routinely demanded "balance billing" of Medicaid patients.

83. When Plaintiff refused to illegally "balance bill" Medicaid patients as ordered by TVA and Dr. Gable, TVA and Dr. Gable instructed others within TVA to "balance bill" Dr. Gable's Medicaid patients, and they complied.

84. Furthermore, TVA and Dr. Gable in particular, routinely sent these outstanding balance bills to collection agencies when not paid, which is also prohibited by Medicaid and is unlawful.

85. When Plaintiff refused to send these fraudulent outstanding balances to collection agencies as demanded by TVA and Dr. Gable, TVA and Dr. Gable ordered others within TVA to send these bills to collection agencies, and they complied.

d. Fraudulent Application of Modifiers Unsupported by Physician Notes

86. Modifier 22 allows for a higher than usual reimbursement for a procedure because it denotes a complicated procedure.

87. Dr. Grimsley would routinely demand that Modifier 22 be applied to his procedures because he "felt" he had done a "complicated" procedure or had done "more work," when there was no corresponding notation in his medical notes.

88. Although Dr. Grimsley would demand Modifier 22 be placed on his files, on those occasions when Medicare pushed back and questioned its application, rather than justify the modifier to Medicare, Dr. Grimsley would simply abandon the claim.

89. When Plaintiff refused to apply Modifier 22 in a fraudulent manner as demanded by TVA and Dr. Grimsley, Dr. Grimsley ordered others within TVA to do so, and they complied.

e. Fraudulent Billing Within the "Global Period"

90. The "global period" is either the ten- or ninety-day period following a surgery when Medicare and Insurance do not permit billing for follow-up office visits after a surgical procedure, in the absence of additional symptoms.

91. TVA and Dr. Dunn, Dr. Gable, and Dr. Grimsley routinely demanded that their patients be billed for follow up office visits within the "global period" when the patient failed to present with any new symptoms.

92. When Plaintiff refused to bill patients in the global period as demanded by TVA and Dr. Dunn, Dr. Gable, and Dr. Grimsley, TVA and Dr. Dunn, Dr. Gable, and Dr. Grimsley ordered others within TVA to do so, and they complied.

f. Fraudulent Upcharging or Upcoding

93. "Upcharging" or "upcoding" occurs when an office visit is improperly coded as a level four or level five procedure, as this results in a higher payment to Defendants for services not rendered.

94. TVA and Dr. Gable, Dr. Dunn, and Dr. Grimsley routinely "upcharged" patients, resulting in fraudulent overpayment by Medicare and Insurance.

95. When Plaintiff refused to "upcharge" patients as demanded by TVA and Dr. Gable, Dr. Dunn, and Dr. Grimsley, TVA and Dr. Gable, Dr. Dunn, and Dr. Grimsley ordered others within TVA to do so, and they complied.

96. Furthermore, while there is no requirement of contemporaneous documentations or notes, and set period in which a physician must document his work, Dr. Pearl would routinely "create" patient notes at one time, long after treatment, and in some cases three months after treatment.

97. Dr. Gable would randomly "pick" codes to bill for services, with little or no regard to the actual services he performed.

98. This post-hoc creation of notes justifying payment and random selection of codes resulted in TVA and Dr. Pearl and Dr. Gable routinely upcoding, thus defrauding Medicare and Insurance, as well as their own patients.

99. At one time, the practice of "upcoding" was so rampant, Defendants established a "policy" that if the Physicians initialed the Superbill, the TVA billing department was supposed to bill for it without regard to the propriety of the billing.

100. When Plaintiff refused to "upcharge" patients based on the fraudulent coding by TVA and Dr. Grimsley, Dr. Dunn, Dr. Kedora, and Dr. Pearl, TVA and Dr. Grimsley, Dr. Dunn, Dr. Kedora, and Dr. Pearl ordered others within TVA to do so, and they complied.

g. Fraudulent "Drive By" Billing

101. Obviously, for a physician to bill for services, the physician must actually render services.

102. Yet Defendants actually billed for services never performed.

103. The Physicians in general, and Dr. Dunn and Dr. Kedora in particular, would engage in "drive by" billing at Baylor's cath lab.

104. "Drive by" billing occurs when a physician is present in the cath lab while services are performed by another physician, but the "drive by" billing physician performs no actual services.

105. The "drive by" billing physician bills simply for being in the cath lab when the patient is being treated by another physician.

106. When Plaintiff refused to support the fraudulent "drive by" billing as demanded by TVA and Dr. Dunn and Dr. Kedora, TVA and Dr. Dunn and Dr. Kedora ordered others within TVA to do so, and they complied.

h. Advance Billing of Medicare Patients

107. Medicare does not allow Defendants to bill Medicare patients in advance of being seen for services.

108. Defendants would routinely advance bill Medicare patients for sclerotherapy services.

109. After a patient complained to Medicare about this unlawful practice, Defendants ceased doing so—for a short time.

110. After about two weeks had passed, Gustafson told Plaintiff that Dr. Shutze instructed her to instruct Plaintiff and other employees to resume this unlawful practice.

111. When Plaintiff refused to advance bill Medicare patients as demanded by Defendants, Gustafson ordered others within TVA to do so, and they complied.

i. Fraudulent Use of ABN Modifiers

112. Medicare requires Defendants obtain from Medicare patients a signed Advanced Beneficiary Notice of Noncoverage (ABN).

113. The ABN tells the Medicare patient that certain services may not be covered by Medicare and, if not covered, the patient may be responsible for the charges incurred.

114. There are four ABN Modifiers that Defendants can submit to Medicare. Two modifiers in particular are relevant here: Modifiers GA and GZ.

115. Modifier GA is used by a practitioner to report to Medicare that a required ABN was issued to a patient for a service and is on file with Defendants.

116. When Medicare receives a bill with Modifier GA, Medicare will automatically deny payment for this service and send the Medicare patient an Explanation of Benefits (EOB) stating the patient ***is*** personally financially responsible for the service/charge.

117. In such case, because the practitioner obtained a signed ABN, the practitioner ***can*** bill the patient for this service.

118. By contrast, Modifier GZ is used to report to Medicare that ***no*** ABN was issued to a patient for a service, and the practitioner expects that Medicare will deny payment for this service as not reasonable and necessary.

119. When Medicare receives Modifier GZ, it will automatically deny payment for this service and send the Medicare patient an EOB stating the patient is ***not*** personally financially responsible for the service/charge.

120. In this case, because the provider did ***not*** obtain a signed ABN, the practitioner ***cannot*** bill the patient for this service.

121. Defendants routinely demanded that Plaintiff fraudulently bill Medicare using Modifier GA despite the fact that there was no signed ABN from the patient.

122. When Plaintiff refused to illegally apply Modifier GA as demanded by Defendants, TVA employee Gustafson fraudulently applied the modifier and billed Medicare patients anyway.

j. Ongoing Plan and Scheme

123. In all these instances, Defendants would demand fraudulent billing be done to Medicare and Insurance, as well as Defendants' own patients.

124. From time to time, Defendants' fraudulent billing practices on a few claims would be challenged by Medicare. Defendants would essentially concede the impropriety of their

conduct, and refund the money in question (if already received) or abandon the claim for additional money (if not already received).

125. If not challenged by Medicare, as was the case in the vast majority of Medicare claims, Defendants would keep the money.

126. If forced to refund money to Medicare, Defendants, and in particular Dr. Grimsley, readily acknowledged that they had had the free use of the government's money and earned interest on it.

127. Thus, Defendants engaged in the practice of "begging forgiveness rather than asking permission" to their financial advantage.

128. Yet on some occasions, Defendants, in particular Dr. Grimsley, would go back into Netpractice and "create" the necessary notes to support the application of the particular bill or modifier that was challenged by Medicare.

129. This was done despite the complete absence of any factual basis for the new notes and was done simply in furtherance of the crimes of Defendants.

D. Defendants' Demands for Plaintiff to Engage in Conduct That Subjected Her to Criminal Liability

130. When Defendants demanded that Plaintiff engage in their ongoing healthcare billing fraud, Plaintiff refused.

131. Defendants in general, and Dr. Dunn and Dr. Gable in particular, would routinely cuss at Plaintiff when she refused to accede to their demands to commit fraud.

132. Defendants in general, and Dr. Dunn and Dr. Gable in particular, would tell Plaintiff, "I pay your fucking salary," and "just fucking do what I tell you to do," or words to similar effect, to try to coerce Plaintiff into joining their fraudulent scheme.

133. Defendants in general, and Dr. Gable in particular, assisted by TVA employees Gustafson and Jolivette-Williams, demanded Plaintiff fraudulently bill Medicare under the Medicare billing number of other physicians for services rendered by Dr. Hicks when Dr. Hicks had no Medicare billing number. Plaintiff refused to perform this criminally illegal act.

134. Defendants in general, and Dr. Gable and Dr. Smith in particular, demanded Plaintiff fraudulently bill an insurance carrier for the same prosthetic device already paid for by another insurance carrier. Plaintiff refused to perform this criminally illegal act.

135. Defendants in general, and Dr. Gable in particular, demanded Plaintiff unlawfully "balance bill" Medicaid patients. Plaintiff refused to perform this criminally illegal act.

136. Defendants in general, and Dr. Grimsley in particular, demanded Plaintiff fraudulently apply Modifier 22 to procedures when the medical records and notes did not support its application. Plaintiff refused to perform this criminally illegal act.

137. Defendants in general, and Dr. Dunn, Dr. Gable, and Dr. Grimsley in particular, demanded Plaintiff unlawfully bill their patients for follow up office visits within the "global period" when the patient failed to present with any new symptoms. Plaintiff refused to perform this criminally illegal act.

138. Defendants in general, and Dr. Gable, Dr. Dunn, Dr. Pearl, Dr. Kedora, and Dr. Grimsley in particular, demanded Plaintiff fraudulently "upcharge" and/or "upcode" their bills when the medical records and notes did not support these charges or application of these codes. Plaintiff refused to perform this criminally illegal act.

139. Defendants in general, and Dr. Dunn and Dr. Kedora in particular, demanded Plaintiff fraudulently "drive by" bill for services neither Dr. Dunn nor Dr. Kedora provided. Plaintiff refused to perform this criminally illegal act.

140. Defendants demanded Plaintiff fraudulently apply Modifier GA or GZ to the Physicians' billing, indicating that Defendants had obtained a signed ABN from Medicare patients when there was no signed ABN. Plaintiff refused to perform this criminally illegal act.

141. Defendants in general, and Dr. Dunn, Dr. Gable, and Dr. Grimsley in particular, demanded Plaintiff fraudulently change diagnoses codes for the purpose of billing Medicare and Insurance in violation of numerous state and federal criminal statutes. Plaintiff refused to perform these criminally illegal acts.

142. Defendants in general, and Dr. Dunn, Dr. Gable, and Dr. Grimsley in particular, demanded Plaintiff fraudulently enter codes and modifiers for billing purposes that were not supported by the respective physician's previously generated medical records. Plaintiff refused to perform these criminally illegal acts.

143. Defendants in general, and Dr. Dunn, Dr. Gable, and Dr. Grimsley in particular, demanded Plaintiff fraudulently apply Modifier 59 when the physicians' previously generated medical records did not support application of Modifier 59. Plaintiff refused to perform this criminally illegal act.

144. Defendants in general, and Dr. Dunn, Dr. Gable, and Dr. Grimsley in particular, demanded Plaintiff fraudulently apply Modifiers 78 and 79 when the physicians' previously generated medical records did not support application of Modifiers 78 and 79. Plaintiff refused to perform this criminally illegal act.

145. Defendants in general, and Dr. Dunn, Dr. Gable, and Dr. Grimsley in particular, demanded Plaintiff fraudulently apply Modifiers 24 and 25 when the physicians' previously generated medical records did not support application of Modifiers 24 and 25. Plaintiff refused to perform this criminally illegal act.

146. Defendants in general, and Dr. Grimsley in particular, demanded Plaintiff fraudulently apply Modifier 22 when the physicians' previously generated medical records did not support application of Modifier 22. Plaintiff refused to perform this criminally illegal act.

147. Finally, Defendants demanded that Plaintiff commit perjury by falsely swearing to facts in an affidavit that were untrue, for the sole purpose of creating documentation to support the termination of another employee. Plaintiff refused to perform this criminally illegal act.

148. On one occasion, when Plaintiff told Gustafson that she would not commit fraud as demanded by Dr. Gable, Gustafson told Plaintiff, "I don't care if he cusses at you. He pays your salary, do what he says."

149. When Defendants finally realized that, no matter how much pressure and coercion they applied to Plaintiff, she would not comply with their continued and repeated demands to conspire and engage in this massive and pervasive healthcare fraud scheme with them, as well as commit perjury, which would have subjected Plaintiff to extensive criminal liability under both state law and federal criminal law, Defendants conspired to, and did, terminate Plaintiff's employment solely because she refused to perform these criminally illegal acts.

VII.

CAUSES OF ACTION

A. First Cause of Action—Discriminatory Discharge—Sabine Pilot—TVA

150. Plaintiff incorporates each of the foregoing paragraphs.

151. TVA terminated Plaintiff's employment for the sole reason that she refused to perform illegal acts that would subject her to criminal penalties, including long periods of prison time under both state and federal law (as set forth in the United States Code, the Federal Sentencing Guidelines, the Texas Insurance Code, and the Texas Penal Code).

152. TVA's actions violated the common law *Sabine Pilot* doctrine.

B. Second Cause of Action—Intentional Infliction of Emotional Distress—The Physicians

153. Plaintiff incorporates each of the foregoing paragraphs.

154. The actions of the Physicians, in threatening and attempting to coerce Plaintiff into performing illegal acts that would subject her to enormous criminal liability, constitute the intentional infliction of emotional distress.

155. When Plaintiff refused to commit these illegal acts, she was subjected to threatening and demeaning conduct, yelling, cursing, etc.

156. The Physicians' actions were designed not only to compel Plaintiff to commit health care fraud, but to cause emotional distress.

157. The Physicians' conduct was extreme and outrageous and totally intolerable in a civilized society.

158. The Physicians' conduct did, in fact, cause Plaintiff serious and extreme emotional distress and anguish.

VIII.

DAMAGES

159. Plaintiff incorporates each of the foregoing paragraphs.

160. TVA's actions violated the common law *Sabine Pilot* doctrine, which allows Plaintiff to recover back pay, compensatory damages, as well as pre-judgment and post-judgment interest.

161. Because TVA's actions were done with actual malice to cause Plaintiff harm, Plaintiff is entitled to recover punitive damages from TVA.

162. The Physicians' conduct caused Plaintiff serious and extreme emotional distress and anguish. Plaintiff seeks to recover from the Physicians damages for their intentional infliction of emotional distress on her.

163. Plaintiff seeks all damages available to her under Texas law.

IX.

JOINT AND SEVERAL LIABILITY

164. TVA and the Physicians act as agents for each other, and did act as agents for each other with respect to the allegations in this Petition.

165. TVA and each of the Physicians is therefore jointly and severally responsible for Plaintiff's damages.

X.

JURY DEMAND

166. Plaintiff demands a trial by jury.

XI.

CONCLUSION AND PRAYER

167. Plaintiff respectfully requests that Defendants be cited to appear and answer, and that upon final trial of this matter, the Court enter judgment against Defendants jointly and severally, awarding Plaintiff:

A. Back pay as determined by the jury;

B. Compensatory damages as determined by the jury;

C. Punitive damages as determined by the jury;

D. Courts costs;

E. Pre-judgment and post-judgment interest at the rate set by law; and

F. All legal or equitable relief this Court deems proper.

Respectfully submitted,

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