

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

SCHYLER Z. GRODMAN, M.D., <i>Plaintiff,</i>	§ § § § § § § § §	Civil Action No. 5:23-cv-00210
v.		
TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER, <i>Defendant.</i>		

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S
FIRST AMENDED COMPLAINT**

TO THE HONORABLE JAMES WESLEY HENDRIX:

Defendant Texas Tech University Health Sciences Center (“Defendant” or “TTUHSC”) files this Answer and Affirmative Defenses to Plaintiff’s First Amended Complaint (ECF No. 21).

The Defendant respectfully states the following:

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant denies each and every allegation contained in the Complaint except for those expressly admitted herein. The headings and numbered paragraphs below directly correlate to the sections and numbered paragraphs of the Complaint. Those titles and headings are reproduced in this Answer for organizational purposes only, and Defendant does not admit any matter contained therein.

Defendant responds to the specifically numbered allegations of the Amended Complaint as follows:

I. JURISDICTION AND VENUE

1. In this paragraph, Plaintiff makes reference to statutes that involve the jurisdiction of this Court, and as such, requires no response except that Defendant denies that they have

violated any statutes with regard to Plaintiff.

2. In this paragraph, Plaintiff makes reference to venue that involve the jurisdiction of this Court, and as such, requires no response except that Defendant admits that the majority of the acts alleged in this Complaint took place within the boundaries of this district.

3. Defendant does not have enough information to admit or deny this paragraph, and therefore, denies.

II. THE PARTIES

4. Defendant denies knowledge sufficient to admit or deny the allegations.

5. Admit.

6. This paragraph includes a dismissed defendant, and therefore requires no response.

III. PERTINENT TEXAS TECH OPERATING POLICIES AND PROCEDURES

7. Admit.

8. Admit.

9. Admit paragraphs a through c of paragraph 9 are accurate quotations from the TTUHSC Operating Policy and Procedure (“TTUHSC OP”) 51.04. As to the remainder of paragraph 9, Defendant denies knowledge sufficient to admit or deny the allegations.

10. As to the allegations in paragraph 10, TTUHSC OP 51.04 speaks for itself. Defendant denies any allegations in paragraph 11 that misquote or mischaracterize the published document.

11. As to the allegations in paragraph 11, TTUHSC OP 51.04 speaks for itself. Defendant denies any allegations in paragraph 11 that misquote or mischaracterize the published document.

IV. VICARIOUS LIABILITY – RESPONDEAT SUPERIOR

12. This paragraph alleges legal theories regarding a dismissed claim, and needs no

response.

13. This paragraph alleges legal theories regarding a dismissed claim, and needs no response.

V. FACTS

A. Grodman's Disabilities and Symptoms.

14. Defendant denies knowledge sufficient to admit or deny the allegations.

15. Defendant denies knowledge sufficient to admit or deny the allegations.

16. Defendant denies knowledge sufficient to admit or deny the allegations.

17. Defendant denies knowledge sufficient to admit or deny the allegations.

18. Defendant denies knowledge sufficient to admit or deny the allegations.

B. Relevant Employment and Time Period.

19. Defendant admits that Defendant operates an education Pediatric Residency Program, and that Plaintiff Grodman was hired by Defendant in 2019 to work in the Program as a Resident. Defendant further admits that Defendant provided Plaintiff Grodman a Notice of Recommendation for Dismissal on or around January 7, 2022. Defendant denies any and all allegations of discrimination, retaliation, or wrongful termination. Defendant denies an Appeal Review Subcommittee reviewed Plaintiff Grodman's termination on or around April 2022. Defendant admits that Dr. Kaylani was the Program Director at all times relevant to the allegations made the basis of this lawsuit.

20. Defendant admits to the Resident duties Plaintiff listed, but denies any and all allegations of discrimination.

C. Defendant's Awareness of Grodman's Disability.

21. Defendant denies knowledge sufficient to admit or deny the allegations.

22. Defendant denies knowledge sufficient to admit or deny the allegations.

23. Defendant denies knowledge sufficient to admit or deny the allegations.

24. Defendant denies knowledge sufficient to admit or deny the allegations.

25. Defendant denies knowledge sufficient to admit or deny the allegations.

26. Deny.

27. Defendant denies knowledge sufficient to admit or deny the allegations.

D. Grodman's Final Year of Residency.

28. Defendant denies knowledge sufficient to admit or deny the allegations.

29. Defendant denies knowledge sufficient to admit or deny the allegations.

30. Defendant admits to the extent Dr. Kaylani and Dr. Herrick authored the respective quotes in paragraph 30. Defendant denies knowledge sufficient to admit or deny the remaining allegations.

E. Defendant Discontinues Successful Accommodations.

31. Defendant denies knowledge sufficient to admit or deny the allegations.

32. Deny.

33. Deny.

34. Deny.

F. Defendant's Pretextual Plan to Suspend Grodman Based on His Disabilities.

35. Defendant denies that Plaintiff Grodman's termination was "predetermined, without any notice of hearing to Grodman, beginning with the decision to withdraw all accommodations." Defendant denies any discriminatory actions occurred or "culminated" in any way. As to the remainder of the paragraph 35, Defendant denies knowledge sufficient to admit or deny the allegations.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

40. Deny.

41. Deny.

42. Deny.

G. Grodman Formally Requested Reasonable Accommodation Before Termination.

43. Defendant denies knowledge sufficient to admit or deny the allegations.

H. Defendant's Plan to Terminate Dr. Grodman was Discriminatory.

44. Admit Plaintiff Grodman was placed on suspension on December 23, 2021. As to the remainder of the paragraph 44, Defendant denies knowledge sufficient to admit or deny the allegations.

45. Defendant denies knowledge sufficient to admit or deny the allegations.

46. Deny.

47. Deny.

48. Defendant denies knowledge sufficient to admit or deny the allegations.

49. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegation that Defendant did not provide Plaintiff with the forms to submit a formal request for accommodations until four days prior to termination, and therefore denies. Defendant denies the remainder of the allegations made in paragraph 49.

50. Deny.

51. Deny.

52. Deny.

53. Deny to the extent Plaintiff alleges Dr. Kaylani's comments were improper.

54. Defendant denies knowledge sufficient to admit or deny the allegations.

55. Deny.

56. Defendant admits that Plaintiff was provided a Notice of Recommendation for Dismissal on or around January 7, 2022. Defendant denies that Plaintiff was terminated due to his disabilities or any alleged complaints about discrimination, and as such, denies the remainder of paragraph 56.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

I. Texas Tech's Discrimination Continues Even After Grodman's Termination.

61. Defendant denies knowledge sufficient to admit or deny the allegations.

62. Defendant denies knowledge sufficient to admit or deny the allegations.

63. Defendant denies knowledge sufficient to admit or deny the allegations.

VI. FIRST CAUSE OF ACTION FOR DISCRIMINATION AND RETALIATION IN VIOLATION OF THE REHABILITATION ACT (Against Texas Tech)

64. Defendant need not admit nor deny Plaintiff's incorporation of foregoing paragraphs by reference.

65. Plaintiff makes reference to statutes, and as such, requires no response except that Defendant denies that they have violated any statutes with regard to Plaintiff. Defendant admits it is a recipient of federal financial assistance.

66. In this paragraph, Plaintiff makes reference to statutes, and as such, requires no response except that Defendant denies that they have violated any statutes with regard to Plaintiff.

67. In this paragraph, Plaintiff makes reference to caselaw, and as such, requires no response except that Defendant denies that they have violated any statutes with regard to Plaintiff.

68. In this paragraph, Plaintiff makes reference to statutes, and as such, requires no response except that Defendant denies that they have violated any statutes with regard to Plaintiff.

69. In this paragraph, Plaintiff makes reference to statutes, and as such, requires no response except that Defendant denies that they have violated any statutes with regard to Plaintiff.

70. Deny.

71. Defendant denies knowledge sufficient to admit or deny the allegations.

72. Deny.

73. Defendant admits that Defendant provided Plaintiff a Notice of Recommendation for Dismissal on or around January 7, 2022. As to the remainder of the paragraph 73, Defendant denies knowledge sufficient to admit or deny the allegations.

74. Deny.

75. Defendant denies knowledge sufficient to admit or deny the allegations.

76. Defendant admits Plaintiff submitted a request for accommodations after he was suspended and removed from his clinical duties for violating the terms of his Probation and performance of his duties that seriously compromised or constituted a danger to patients. Defendant denies the remaining allegations in paragraph 76.

77. Deny.

78. In the first sentence of this paragraph, Plaintiff makes reference to statutes, and as such, requires no response except that Defendant denies that they have violated any statutes with regard to Plaintiff. Defendant denies that Plaintiff is entitled to entitled to injunctive and equitable relief, including reinstatement, to prevent continued violation of the Rehabilitation Act.

**VII. SECOND CAUSE OF ACTION FOR VIOLATION OF PROCEDURAL DUE
PROCESS PURSUANT TO 42 U.S.C. § 1983
(Against Texas Tech and Kaylani, Individually)**

- 79. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 80. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 81. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 82. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 83. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 84. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 85. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 86. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 87. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 88. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 89. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 90. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 91. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 92. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 93. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 94. This paragraph alleges facts regarding a dismissed claim, and needs no response.
- 95. This paragraph alleges facts regarding a dismissed claim, and needs no response.

VIII. REQUEST FOR JURY TRIAL

- 96. This paragraph is a request for a jury trial, and needs no response.

IX. ATTORNEY'S FEES UNDER TITLE VII

- 97. Defendant denies that Plaintiff is entitled to any damages or award in this case.

X. REQUESTED RELIEF

98. Defendant denies that Plaintiff is entitled to any relief requested in this paragraph.

99. Defendant denies that Plaintiff is entitled to any relief requested in this paragraph.

100. Defendant denies that Plaintiff is entitled to any relief requested in this paragraph.

XI. PRAYER

Defendant denies that Plaintiff is entitled to any damages or award in this case.

AFFIRMATIVE DEFENSES

Pleading further, Defendant asserts the following affirmative defenses to Plaintiff's causes of action:

1. Defendant asserts the affirmative defense of sovereign immunity or Eleventh Amendment immunity as to any of Plaintiff's claims or requests for damages for which there has been no statutory or express waiver.

2. Defendant asserts the affirmative defense of limitations to the extent that any of Plaintiff's claims are based upon acts or events which occurred outside of the applicable statute of limitations.

3. Defendant asserts that any and all decisions regarding Plaintiff were wholly appropriate and would have been taken regardless of Plaintiff's alleged protected activity.

4. Defendant asserts that any actions taken against Plaintiff were based on legitimate, non-discriminatory, and non-retaliatory reasons and were taken without discriminatory or retaliatory animus;

5. Defendant asserts that Plaintiff's own acts or omissions caused or contributed to Plaintiff's injuries, if any;

6. Defendant asserts that Plaintiff failed to mitigate damages, if any;

7. Defendant asserts the defense of after-acquired evidence;

8. Defendant reserves the right to assert additional defenses as they may become apparent in the factual development of this case.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by his suit and that all costs be taxed against him. Defendant further prays that this Court grant it any other further relief to which it may be justly entitled both in law and in equity.

Respectfully submitted,

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Attorney General

BRENT WEBSTER
First Assistant Attorney General

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/s/ Joseph Keeney
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served through the electronic case manager on all parties who have entered an appearance using the CM/ECF system on August 8, 2024.

/s/ Joseph Keeney
JOSEPH KEENEY
Assistant Attorney General