

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

SANDRA LIVELY,

*Plaintiff,*

v.

FLETCHER HOSPITAL, INC., DBA PARK  
RIDGE HEALTH,

*Defendant.*

No. \_\_\_\_\_

**COMPLAINT**

**INTRODUCTION**

1. This case arises from a hospital's refusal to provide its employees with health coverage for a same-sex spouse, which the hospital restricted instead to employees with a different-sex spouse. Until Plaintiff Sandra Lively ("Plaintiff" or "Ms. Lively") filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"), Defendant Fletcher Hospital, Inc., doing business as Park Ridge Health ("Defendant" or "Park Ridge Health") denied employees with a same-sex spouse the same family health coverage that it offered as a matter of course to employees with a different-sex spouse. In May 2015, Defendant changed its discriminatory policy after Ms. Lively filed her EEOC charge, but not before Ms. Lively had sustained thousands of dollars in damages because of Defendant's refusal to insure her spouse.

2. Defendant's discriminatory denial of spousal health coverage to the wife of Ms. Lively before May 2015, while making spousal coverage available to the wives of similarly-

situated male employees, violated Title VII of the federal Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. (“Title VII”), and the Equal Pay Act, 29 U.S.C. § 206(d) (“Equal Pay Act”).

### **PARTIES**

3. Plaintiff Sandra Lively, age 52, resides with her spouse, Catherine Hipwell, age 62, in Leicester, North Carolina.

4. Ms. Lively is an employee of Defendant Park Ridge Health within the meanings of 42 U.S.C. § 2000e(f) and 29 U.S.C. § 203(e)(1).

5. Defendant Park Ridge Health is a non-profit hospital in Hendersonville, North Carolina, and is incorporated under the laws of North Carolina. Defendant describes itself as a faith-based hospital, and one of 44 facilities that form the Adventist Health System. Defendant has more than 700 employees, and reported more than \$146,000,000 in total revenue in 2013, with a net gain of more than \$6,819,000 after expenses.

6. Defendant is an employer within the meaning of 42 U.S.C. §§ 2000e(b), 2000e-2; and 29 U.S.C. §§ 203(d), 206(d).

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over Plaintiff’s federal claims pursuant to 42 U.S.C. § 2000e-5(f)(3); 29 U.S.C. § 216(b); and 28 U.S.C. §§ 1331, 1343, and 2201.

8. Venue is proper in this Court under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b) because both Plaintiff and Defendant reside within the Western District in the State of North Carolina, and a substantial part of the events that gave rise to Plaintiff’s claims took place within the Asheville Division of the Western District, including the unlawful employment practices alleged herein. Plaintiff and Defendant reside in Buncombe and Henderson Counties,

respectively, both of which are within the Asheville Division of this Court.

9. This Court has personal jurisdiction over Defendant because Defendant is domiciled in the State of North Carolina.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10. Ms. Lively filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”) on April 14, 2015, alleging that Defendant’s refusal to provide her wife with spousal coverage, while making spousal coverage available to the wives of similarly-situated male employees, discriminated against Ms. Lively based on her sex, and based on her failure to conform to Defendant’s religious views, in violation of Title VII.

11. The EEOC transmitted a Right to Sue letter to Ms. Lively’s counsel on November 19, 2015. A true and correct copy of the Right to Sue letter is attached as Exhibit A.

12. This complaint is filed within 90 days of receipt of the Right to Sue letter, in compliance with 42 U.S.C. § 2000e-5(f)(1).

### **FACTUAL ALLEGATIONS**

13. Ms. Lively was hired in September 2012 as a Registered Nurse in the Telemetry Department at Park Ridge Health. She currently works as a Registered Nurse in the Emergency Department. Working in the Emergency Department is a stressful, high-pressure job, but Ms. Lively enjoys the work and finds it rewarding.

14. Ms. Lively and Ms. Hipwell are both lesbian women. They met in 1999 and have been a loving, committed couple since 2001. They weathered a significant challenge together when Ms. Hipwell was diagnosed with stage three uterine cancer in 2005. Ms. Lively was by Ms. Hipwell’s side through every step of her treatment and recovery, helping to care for her through her surgery, radiation, and chemotherapy treatments. In fact, the couple’s experience

with Ms. Hipwell's treatment played a significant role in Ms. Lively's decision to leave her career in construction material sales at the time, and pursue her registered nursing degree.

15. Ms. Hipwell survived her cancer treatment and has been in remission since her treatment ended, but Ms. Hipwell's medical history means that ongoing access to health coverage is essential for her.

16. Ms. Lively and Ms. Hipwell were legally married in Asheville, North Carolina on October 17, 2014, seven days after the state began permitting same-sex couples to marry.

17. Ms. Lively was eager to enroll Ms. Hipwell for spousal health coverage because, as a self-employed accountant, Ms. Hipwell has no access to health coverage through her employment. Ms. Hipwell qualified, and continues to qualify, for spousal health coverage in every respect under Defendant's policies, except for—as Ms. Lively would soon learn—the fact that they are same-sex spouses.

18. On or around October 20, 2014, Ms. Lively went to the Park Ridge Health employee website and attempted to enroll Ms. Hipwell for coverage. During that process, Ms. Lively received a red pop-up message stating that same-sex spouses are not eligible for coverage. Ms. Lively called Defendant's Human Resources department for clarification, and they referred her to the administrator of the health plan. When Ms. Lively called the administrator, she was informed that her employer would not permit same-sex spouses to be enrolled in the plan.

19. On November 21, 2014, Ms. Lively sent an email to Park Ridge Health President and CEO, Jimm Bunch, urging him to address the issue and ensure that equal treatment is provided to employees with a same-sex spouse. Mr. Bunch met with Ms. Lively on November 26, 2014, and said that he did not control the decision about health coverage. Mr. Bunch explained that he had spoken with "Corporate" several times to ask whether same-sex spouses

could be enrolled in the plan, but was told he would not receive an answer for two to three more weeks.

20. Ms. Lively sent a follow-up email to Mr. Bunch on or around January 7, 2015 asking if he had heard from Corporate, and she met with him again on January 9, 2015. Mr. Bunch explained that Corporate had given him an answer about same-sex spousal coverage, and the answer was “No.”

21. Because Ms. Hipwell is a uterine cancer survivor, ongoing access to health insurance is essential for her. Before the couple’s marriage, Ms. Hipwell qualified for a subsidy of her health plan through the Affordable Care Act (“ACA”) exchange. After Defendant’s denial of spousal coverage, Ms. Lively and Ms. Hipwell were forced to maintain private insurance coverage for Ms. Hipwell.

22. Although the couple’s marriage was not recognized by Defendant for health benefits purposes, the federal government did recognize their marriage for purpose of eliminating the subsidy Ms. Hipwell previously received through the Affordable Care Act. After Ms. Hipwell lost that subsidy, the couple was forced to pay premiums ranging between approximately \$650.00 to \$750.00 a month for her private coverage, until Defendant changed its policy and allowed Ms. Hipwell to enroll in May 2015. The couple thus spent thousands of dollars out-of-pocket over the first seven months of their marriage—a burden that no employee with a different-sex spouse was forced to shoulder.

23. Having to pay these significant monthly premiums felt demeaning and stressful for the couple. Ms. Lively was also subjected to the hurtful message that her employer valued her less as an employee than her co-workers with different-sex spouses, and that her employer viewed her spouse as a legal stranger.

24. Park Ridge Health is one of 44 hospitals that comprise the Adventist Health System, which is the largest, not-for-profit Protestant health care system in the nation. Upon information and belief, Park Ridge Health subscribes to the religious views of the Seventh-day Adventist Church, as it has since it was first incorporated under the laws of North Carolina.

25. The Seventh-day Adventist Church objects to marriage being available to same-sex couples. For example, the Seventh-day Adventist Church's official statement on "Same-Sex Unions" states that being in a same-sex relationship "is a manifestation of the disturbance and brokenness in human inclinations and relations caused by the entrance of sin into the world," and that "God's Word . . . does not permit a homosexual lifestyle." On the day the U.S. Supreme Court ruled that states must allow same-sex couples to marry and must recognize their valid marriages from other jurisdictions, in *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015), the Church's General Conference and North American Division issued a statement entitled, "Supreme Court Rules on Same-Sex Marriage, Seventh-day Adventist Church Maintains Biblical Stance." The statement re-affirmed that the Church "will continue to teach and promote its biblically based belief of marriage between a man and a woman."

26. Defendant subsequently changed its policy and allowed Ms. Hipwell to enroll in family coverage beginning in May 2015—after Ms. Lively filed her EEOC charge on April 14, 2015. However, Defendant continues to refuse to compensate Ms. Lively for the damages incurred to purchase Ms. Hipwell's private coverage before Ms. Hipwell was permitted to enroll.

27. As a result of Defendant's discriminatory conduct in refusing spousal coverage to Ms. Lively before May 2015, Ms. Lively has been denied compensation to which she would have been entitled absent discrimination.

## CLAIMS FOR RELIEF

### COUNT I VIOLATION OF THE CIVIL RIGHTS ACT OF 1964, TITLE VII 42 U.S.C. § 2000e, et seq.

28. Plaintiff incorporates paragraphs 1 through 27 as though fully set forth herein.

29. Defendant's policy of denying spousal health coverage to Ms. Lively's wife before May 2015, while making spousal coverage available to the wives of similarly-situated male employees, discriminated against Ms. Lively on the basis of sex and religion in violation of Title VII of the federal Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.

30. Title 29 of the Code of Federal Regulations, Part 1604.9 confirms that an employer may not discriminate based on sex or religion with respect to fringe benefits, such as health coverage, pursuant to Title VII.

31. **Sex discrimination:** Defendant's refusal to provide Ms. Lively with health coverage for her same-sex spouse before May 2015, while making spousal coverage available to the wives of similarly-situated male employees, discriminated against Ms. Lively with respect to the compensation, terms, conditions, or privileges of her employment, because of her sex, and classified Ms. Lively in a way that deprived her of employment opportunities because of her sex.

(a) Formal sex discrimination: Defendant's denial of spousal coverage to Ms. Lively discriminated against her because she is a woman rather than a man. If Ms. Lively were a male employee married to a woman, she would have qualified for spousal coverage. But because Ms. Lively was a female employee married to a woman, she was denied coverage.

(b) Associational discrimination based on sex: Defendant's denial of spousal coverage discriminated against Ms. Lively based on her sex in relation to, and in association with, the sex of Ms. Lively's spouse.

(c) Gender stereotyping: Defendant's denial of spousal coverage was based on impermissible sex stereotypes that women should marry only a man, not another woman.

(d) Sexual orientation discrimination: To the extent that Defendant also denied spousal coverage to Ms. Lively based on her sexual orientation, that constitutes unlawful sex discrimination. Sexual orientation inherently is a sex-based consideration because sexual orientation cannot be defined or understood without reference to sex. Ms. Lively's sexual orientation as a lesbian is inseparable from, and inescapably linked to, the fact that she is a woman who fell in love with and married another woman. Accordingly, denying spousal coverage to Ms. Lively based on her sexual orientation denies her spousal coverage based on her sex.

32. **Religious discrimination**: Defendant's denial of spousal health coverage was motivated at least in part by the fact that Ms. Lively's marriage to a same-sex spouse does not conform to Defendant's religious view that employees should not marry a same-sex spouse, and that a woman should marry a man instead of another woman. For example, Ms. Lively's request for spousal health coverage for a same-sex spouse was denied at least in part because it conflicted with the "biblically based belief" of Defendant and the Seventh-day Adventist Church that, notwithstanding the Supreme Court's ruling in *Obergefell*, a woman should marry only a man, not another woman.

33. Employees who abided by, and married consistently with, Defendant's religious views that only different-sex couples should marry were provided access to spousal coverage between before May 2015. Because Ms. Lively's marriage was inconsistent with Defendant's religious views, she was denied spousal coverage before May 2015, in violation of Title VII's prohibition on discrimination based on religion.

34. Defendant's intentional actions to deny Ms. Lively spousal coverage before May 2015 were taken either with malice or with reckless indifference to the rights guaranteed by Title VII.

35. As a result of Defendant's violation of the Title VII, Ms. Lively suffered harm, including the out-of-pocket cost to purchase private coverage for Ms. Hipwell, and other compensable damages.

**COUNT II**  
**VIOLATION OF THE EQUAL PAY ACT**  
**29 U.S.C. § 206(d)**

36. Plaintiff incorporates paragraphs 1 through 27 as though fully set forth herein.

37. Defendant's policy of denying spousal health coverage to Ms. Lively's wife before May 2015, while making spousal coverage available to the wives of similarly-situated male employees, denied Ms. Lively equal pay in violation of the Equal Pay Act, 29 U.S.C. § 206(d).

38. Title 29 of the Code of Federal Regulations, Part 1620.11 confirms that an employer may not discriminate based on sex with respect to fringe benefits, such as health coverage, pursuant to the Equal Pay Act.

39. Defendant provided Ms. Lively lower compensation by denying health coverage for her female spouse, when other male employees had access to health coverage for their female spouses. Under Defendant's discriminatory policy, male employees performing the same Registered Nurse job as Ms. Lively—that is, male employees performing work substantially equal in skill, effort, and responsibility under similar working conditions—were eligible for spousal coverage for a female spouse, while Ms. Lively was not.

40. Defendant's violation of the Equal Pay Act was willful, and Defendant knew or

showed reckless disregard for the fact that its conduct violated the Equal Pay Act.

41. As a result of Defendant's violation of the Equal Pay Act, Ms. Lively suffered harm, including the out-of-pocket cost of purchasing necessary private insurance coverage for Ms. Hipwell, and other compensable damages.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

- A. Declaring that Defendant's denial of same-sex spousal coverage before May 2015 violates (1) Title VII of the federal Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; and (2) the Equal Pay Act, 29 U.S.C. § 206(d);
- B. Awarding compensatory and consequential damages to Plaintiff under Title VII;
- C. Awarding actual and liquidated damages under the Equal Pay Act;
- D. Awarding punitive damages to Plaintiff;
- E. Awarding Plaintiff her costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 2000e-5(k), 29 U.S.C. § 216(b), and any other applicable laws;
- F. Awarding Plaintiff pre-judgment and post-judgment interest;
- G. Granting such other and further relief as the Court deems just and proper.

Dated: February 10, 2016

Respectfully submitted,

s/ Meghann Burke  
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