

THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

ERIC GREENBERG, M.D.,
Plaintiff

CIVIL ACTION NO. 19-cv-00137

VERSUS

JUDGE LANCE M. AFRICK

**LOUISIANA STATE UNIVERSITY
HEALTH SCIENCES CENTER NEW
ORLEANS, a department of LOUISIANA
STATE UNIVERSITY SCHOOL OF
MEDICINE,**
Defendant

**MAGISTRATE JUDGE JOSEPH C.
WILKINSON, JR.**

DECLARATION OF ERIC GREENBERG, M.D. UNDER 28 U.S.C. § 1746

Pursuant to 28 U.S.C. § 1746, I, Eric Greenberg, M.D., hereby declare as follows:

1. I am the Plaintiff in the above-captioned case, a person of the full age of majority, and a citizen of the United States and the State of Michigan.
2. In 2012, I was awarded the degree of Doctor of Medicine by Mt. Sinai School of Medicine.
3. I became employed by the Defendant in the above-captioned case, Louisiana Health Sciences Center – New Orleans (“LSU”) as an Emergency Medicine resident on July 1, 2013.
4. I was raised in a conservative Jewish household and remain a practicing member of the Jewish faith.
5. Prior to my employment, during my second interview with LSU, Dr. Luke Lebas (“Lebas”), M.D., an LSU employee, informed me that I should have gone to “Jewlane” because I was Jewish. I took great offense to this comment.

6. On September 18, 2015, I submitted a formal complaint to Dr. Salvador Suau (“Suau”) of harassment by Dr. Lebas. On October 1, 2015, I verbally complained to Dr. Suau about continued harassment by Dr. Lebas. Neither Dr. Suau nor LSU took any action in response to these complaints.
7. On February 12, 2016, I sent an email to Dr. Peter DeBlieux (“DeBlieux”) of harassment by Dr. Suau. This harassment included accusing me of lying on multiple occasions and criticizing me for missing a presentation that took place while I was in Michigan visiting a sick family member, which trip was planned in advance and approved by Dr. Suau.
8. On March 25, 2016, I emailed Dr. DeBlieux to discuss a text message I received from Dr. Suau stating informing me that Dr. Suau would like to discuss alleged faculty concerns about my “interpersonal interactions in the last few weeks/months.” I was surprised by this message, since, prior to that date, I had never received any negative feedback regarding my interpersonal interactions.
9. On March 30, 2016, I met with Dr. Suau, who presented me with a letter informing me that I was on probation. Dr. Suau assured me that the letter would not be placed in my file and would remain confidential, and that I was not actually on probation. Dr. Suau did not inform me of the reasons for this probation beyond stating that LSU faculty had a “perception” of me. At this meeting, Dr. DeBlieux agreed to not include comments by Dr. Tracy LeGros (“LeGros”) in my future evaluations due to her having unfairly criticized and targeted me.

10. Despite telling me that I was not actually on probation, LSU proceeded to treat me as though I were on probation, and Dr. Suau cited this probation in his letter recommending my termination.¹
11. Dr. Suau continued to harass me after this meeting, including calling me “fat” and refusing to schedule a required elective.
12. On April 21, 2016, Dr. Mackey instructed me to administer a dose of ketamine to a patient as anesthesia. I had previously been taught to titrate anesthetics by first administering a small dose, gauging the patient’s reaction, then administering a higher dose if necessary, and then further gauging the patient’s reaction, and repeating this process until a clinical response was observed. Accordingly, I understood Dr. Mackey’s instruction to mean titrating up to the stated dose, which I did. I first gave a smaller dose than the one he advised. As the patient lost consciousness at that dose, I did not administer a higher dose. I informed Dr. Mackey of this and he accused me of disobeying an order by giving a smaller dose, despite me informing him that I had been taught to titrate this medication.
13. On April 19, 2016, a patient submitted a complaint to LSU regarding a Caucasian physician in a vest who treated her unprofessionally.² During the patient’s stay at the hospital, she was treated both by me and by the intern. Dr. Suau assumed that I was the physician to whom she was referring, and confronted me about it. However, I informed Dr. Suau that she was not referring to me, but to the intern who treated her. Dr. Micelle Haydel (“Haydel”) later informed Dr. Greenberg that Dr. Keith Van Meter (“Van Meter”) informed Dr. Haydel that Dr. Van Meter had also informed Dr. Suau that the

¹ See Ex. 4 at 5.

² See Ex. 4 at 13.

patient was referring to the intern. Despite this, Dr. Suau continued to discuss this incident as an alleged professional failure on my part, later informed the Louisiana Physician's Health Program ("PHP") that I was the subject of this complaint as a reason for referring me for treatment, and included this incident as a reason for termination in his March 14, 2017 recommendation of termination.³

14. On May 4, 2016, I received an email from Dr. Heather Murphy-Lavoie informing me that my probation would continue and that "[a]ny further serious lapses in professionalism or interpersonal skills could result in termination."
15. On May 8, 2016, during a meeting with Dr. Suau, Dr. Suau instructed me to stop making complaints against him and other faculty.
16. On May 9, 2016, I met with Dr. DeBlieux and explained to him that I confused about my academic standing after meeting with Dr. Suau. Dr. DeBlieux agreed to accompany me to an upcoming meeting with the Emergency Medicine Residency Clinical Competency Committee ("CCC").
17. On May 13, 2016, I met with Dr. Van Meter, who informed me that he felt that Dr. Suau, Dr. Legros, and Dr. Murphy had been "bullying" me.
18. On June 29, 2016, Dr. Suau informed me that my unofficial probation had ended.
19. On July 1, 2016, Dr. Suau, upon learning that I had been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"), sent me a text message that read: "*what's with this ADHD, are you a little retarded . . . a little 'Dee Dee Dee'?*" Dr. Suau later explained that "dee dee dee" was a reference to a comedy routine by comedian Carlos

³ Ex. 4 at 2 (item no. 5), 5 (item no. 17). See also Ex. 4 at 13.

Mencia which referenced mentally challenged individuals. Dr. Suau continued to repeat the phrase “dee dee dee” to me throughout the remainder of the shift.

20. On July 1, 2016, I asked Dr. Suau for time off of work for the Jewish High Holidays.

Dr. Suau responded that I was not actually Jewish but “reform” because I “eat bacon.”

I met with Dr. Haydel the same day and informed her that I was offended by Dr. Suau’s antisemitic comments.

21. On July 7, 2016, during a conversation with Dr. Suau, Dr. Suau said to me: “Hey, I’m Jewish too.” When I asked what he meant by this, he stated: “My dick is cut.” I informed Dr. Suau that the statement was offensive and insulting.

22. On July 20, 2016, during a conversation with Dr. Lebas and Dr. Matthew Carlisle, Dr. Lebas pulled out a hunting knife in a threatening manner and told Carlisle that “no one would care” if he “cut” me. On July 23, 2016, I submitted a formal complaint regarding this incident to Dr. Suau by email. I also reported this incident to Dr. Haydel, Dr. Jorge Martinez, and Dr. DeBlieux. LSU did not ever take any action in response to these complaints.

23. On August 8, 2016, I sent a text message to Dr. Suau asking if he had time to talk. His response was: “Depends. You complaining about something?”

24. On August 10, 2016, during a conversation with Dr. Suau, I discussed Dr. Lebas’ discriminatory treatment of me. Dr. Suau referred to Dr. Lebas as a “racist asshole” and stated that Dr. Suau would fire Dr. Lebas if he had the authority to do so, but did not. Dr. Suau then, again, told me that he was “Jewish” because his “dick is cut.” I again told Dr. Suau that this statement was offensive and not funny.

25. On August 10, 2016, I met with Dr. Haydel and informed her of Dr. Suau's comments about circumcision and that I considered these comments antisemitic and harassing.
26. On August 22, 2016, I received an email from Dr. Suau in which Dr. Suau criticized me for scheduling an elective through the chief residents of my section instead of through Dr. Suau. Electives are typically scheduled with chief residents, and Dr. Suau had previously told me (during a text exchange on July 5, 2016) "talk to ur chiefs" when I asked him about the elective.
27. On September 3, 2016, I treated a large, mentally disabled patient who was in need of a central line catheter. When I opened the catheter kit for the procedure, I found that the kit did not contain lidocaine. A nurse (Ms. Kristen Lohr) then offered to go retrieve lidocaine for the procedure. I told the nurse not to do so, as I believed that the line needed to be placed immediately in order to save the patient's life. I then attempted to place the line without lidocaine, but was only able to poke the patient (without breaking the skin) before he became agitated and out of control. I then asked the nurse to go retrieve lidocaine. I then applied lidocaine and attempted, again, unsuccessfully, to place the line.
28. On September 7, 2016, Ms. Lohr, Dr. Scott Mackey (who was not present for the September 3, 2016 incident), and a PGY-1 student who was present for the September 3, 2016 incident submitted complaints to Dr. Suau regarding the September 3, 2016 incident.⁴
29. On September 8, 2016, I met with Dr. Suau regarding the September 3, 2016 incident. I informed Dr. Suau that I had been feeling depressed and sometimes felt nothing.

⁴ Ex. 4 at 10-12.

However, I informed him that this was **not** the case during the September 3, 2016 incident but, rather, I attempted to place the line without analgesia because I believed it was necessary to save the patient's life. I told Dr. Suau that I felt that the environment at LSU was hostile to me. I did not tell Dr. Suau: (i) that I believed my actions on September 3, 2016 were wrong; (ii) that I did not trust myself around patients; or (iii) that I felt nothing for patients.

30. Dr. Suau then reported the September 3, 2016 incident and our September 8, 2016 conversation to LSU's Campus Assistance Program ("CAP"). Dr. Suau reported to CAP that: (i) I admitted to him that the actions I took on September 3, 2016 were wrong; (ii) that I told him that I did not trust myself around patients; and (iii) that I told him that I felt nothing for patients.

31. After reporting to CAP, I was cleared for duty by Dr. Peter Goertz after a fitness-for-duty exam.

32. On September 14, 2016, I reported to Dr. DeBlieux that I received a call from Dr. Wade Estopinal regarding my leave of absence (for the time during which I was being evaluated by CAP) and a mass email sent by Dr. Suau regarding my leave of absence. The reason that I reported this to Dr. DeBlieux is that it was my understanding that the leave of absence would be confidential.

33. On September 14, 2016, Dr. Scott Embley ("Embley") informed me that I would be required to submit to the PHP for further assessment based on other concerns about my performance raised by Dr. Suau. I subsequently submitted to the PHP for further assessment and received treatment at the Elmhurst Professionals Program in Elmhurst, Illinois ("Elmhurst"). During my time at Elmhurst, I was informed that Dr. Suau

informed the PHP that: (i) I travelled to Austin, Texas against Dr. Suau's orders; (ii) that I had been the subject of a patient complaint; (iii) that I scheduled electives against Dr. Suau's orders; and (iv) that I intentionally missed a lecture that I was required to attend. None of these statements by Dr. Suau were true.

34. On October 10, 2016, I received a Comprehensive Assessment from Elmhurst, which recommended that I take a leave of absence for full-time treatment for a period of at least two (2) months.

35. On October 11, 2016, I received an email from Dr. Suau instructing me to take a 6-8 week leave of absence and to attend treatment provided by the American College of Emergency Physicians ("ACEP") during this time.

36. After my return to work, Dr. Suau repeatedly told me that I did not have a scheduled graduation date and that it was unclear if or when I would ever graduate, including on December 28, 2016 and February 14, 2017.

37. On February 21, 2017, I met with Dr. Pierre Detiege and Dr. Suau. Dr. Suau informed me that I was on probation. I was not given any list of requirements, timeline, or other paperwork. Despite several requests for information regarding my expectations while on probation, Dr. Suau never provided me with a clear list of such expectations. I was not provided with any information about my right to appeal the probation.

38. On February 2, 2017, I met with Dr. Haydel and informed her that I felt harassed by Dr. Suau during a recent ABEM Inservice Exam, during which he accused me of "typing too loudly."

39. On March 2, 2017 I reported harassment by Dr. Suau to Dr. DeBlieux and Dr. Embley.

40. On March 9, 2017, Dr. Suau confronted me and accused me of: (i) complaining about him to Dean Charles Hilton; (ii) trying to make him “look bad” to other attending physicians at LSU; (iii) telling others that I had a “case” against him; and (iv) lying to other residents and staff. The same day, I met with Dean Hilton and informed him of continued harassment and intimidation by Dr. Suau. I informed him that I believed the harassment and intimidation were a result of my Jewish religion, and informed him of past antisemitic remarks by Dr. Suau and Dr. Lebas.
41. On March 10, 2017, Dr. Suau informed me that I would not be allowed to use my cell phone, laptop, or dictation device while working. I reported this to Dr. Becky Odinet-Frey, then ombudsman of LSU, and Dr. DeBlieux by email the same day.
42. On March 10, 2017, I received notice by email from Dr. Suau that I was being placed on a “summary suspension” because of “long-standing unprofessional conduct, dishonesty, unsatisfactory clinical performance, and conduct that is detrimental to patient care.” I was not informed of any specific or recent incident that served as the basis for this suspension.
43. On March 14, 2017, I received a Request for Adverse Action/Termination from Dr. Suau.⁵ The letter stated that the CCC met on March 13, 2017 and recommended my termination. Included in Dr. Suau’s letter was:
- a. A statement that I disobeyed a direct order from Dr. Mackey on April 21, 2016 by giving a lower dose of medication than instructed (as discussed above). This incident was listed twice in the letter.⁶

⁵ Ex. 4.

⁶ Ex. 4 at 2 (item no. 6), 4 (item no. 18). See also Ex. 4 at 14.

- b. A statement that I treated a patient as drug-seeking, leading to a delay in pain medication. This incident was listed twice in the letter.⁷ This incident refers to the April 19, 2016 incident described above in which Dr. Suau mistook me for another physician. Dr. Suau had been made aware, on numerous occasions prior to this letter, that I was not the resident to which the patient was referring.
- c. A statement that I “wanted to give the wrong antibiotic to an infected febrile ortho patient,”⁸ based on an email from Dr. LeGros to Dr. DeBlieux.⁹ The incident to which Dr. LeGros referred did not involve an actual patient but, rather, me giving an incorrect answer in response to a hypothetical question.
- d. A reference to a complaint submitted by Laura Freitag, RN, which stated that I left a room occupied by a trauma patient while I was still needed in the room.¹⁰ On March 20, 2017, Dr. Haydel reported to me that she was informed by Ms. Freitag that Dr. Suau coerced her into submitting the complaint, and that she did not believe I acted improperly during the incident in question.

44. On March 20, 2019, my attorney, Todd Flood, sent an email to Dean Hilton and Dr. Charles Sanders (Chair of the Department of Emergency Medicine) informing them that I had retained him to investigate and potentially prosecute my claims against LSU regarding a hostile work environment based on my Jewish religion.

45. On March 29, 2017, I received a decision letter terminating my employment from Dr. Sanders.

⁷ Ex. 4 at 2 (item no. 5), 5 (item no. 17). See also Ex. 4 at 13.

⁸ Ex. 4 at 3 (item no. 8). See also Ex. 4 at 16-17.

⁹ Ex. 4 at 16-17.

¹⁰ Ex. 43 at 2 (item no. 3). See also Ex. 4 at 9.

46. On April 4, 2017, I sent, via email, a “Notice of Discriminatory Practices”¹¹ to LSU’s Human Resources Director, Rosalynn Martin (“Martin”), and Dean Hilton alleging discrimination by Dr. Suau.
47. On April 4, 2017, I submitted to Dean Hilton a Challenge to Request for Adverse Action and Request for Ad Hoc Committee to Conduct Hearing.
48. On April 5, 2017, I received an email from Ms. Martin confirming that she had received the Notice of Discriminatory Practices.
49. On April 19, 2017, I met with Terrilyn Cunningham (LSU’s Assistant Director of Human Resource Management), Ms. Martin, and faculty member Dr. Scott Delacroix regarding my Notice of Discriminatory Practices.
50. On August 9, 2017, an Ad Hoc Committee Hearing was conducted to review my termination.
51. On August 24, 2017, my termination was upheld by Dean Hilton.
52. Prior to the termination of my employment with LSU, I received offers for post-residency employment from St. David’s South Austin Medical Center in Austin, Texas (as shown by the sample agreement filed in the record herein as R.Doc. 52-9) and Metroplex Adventist Hospital in Killeen, Texas (as shown by R.Doc. 52-8).

I declare under penalty of perjury that the foregoing is true and correct. I have personal knowledge of all statements of fact in this declaration.

¹¹ Ex. 5; Ex. 6.

Executed this 15 day of October, 2019.

A handwritten signature in black ink, appearing to be 'E. Greenberg', written over a horizontal line.

ERIC J. GREENBERG, M.D.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2019, a copy of the foregoing was filed electronically with the Clerk of Court for the Eastern District of Louisiana using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the court's electronic filing system.

/s/ Robert Moseley Schmidt
Robert Moseley Schmidt