

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
Civil Division

LEROY CARHART,
1002 W. Mission Ave.
Bellevue, NE 68005

Plaintiff

v.

**NANCY SAMUELS AND TODD STAVE as
successors in interest to GERMANTOWN
REPRODUCTIVE HEALTH SERVICES**
13233 Executive Park Terrace
Germantown, MD 20874

Case No. _____

SERVE: Bruce Stern
Stern & Associates
20 Courthouse Square, Suite 213
Rockville, MD 20850

Defendants

Case# 436570
NEW CASE
BY CLERK FEE- 38.00
NO LEGAL SERV 35.00
REF-NEW CASE 38.00
TOTAL 111.00
Rept # 43746
Date # 882
Sep 14, 2017 3:50 PM

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CLERK OF COURT
CLERK'S OFFICE
MONTGOMERY CO. MD.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff LeRoy H. Carhart (“Dr. Carhart”), by and through undersigned counsel, files this Complaint for Declaratory Judgment against Defendants Nancy Samuels and Todd Stave as successors in interests to Germantown Reproductive Health Services (“GRHS”), and alleges as follows:

PARTIES

1. Plaintiff Dr. Carhart is a medical professional licensed (License No. D71127) and domiciled in Maryland.
2. Upon information and belief, Defendant GRHS is a medical clinic organized under the laws of Maryland, with its principal place of business located at 13233 Executive Park Terrace,

Germantown, and Montgomery County, Maryland 20874.

3. Defendants Nancy Samuels and Todd Stave are successors in interest to GRHS.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this dispute pursuant to Maryland Code Annotated, Courts and Judicial Proceedings § 1-501 (general jurisdiction) and § 3-403 (civil action seeking a declaratory judgment).

5. Jurisdiction over Defendant GRHS is proper pursuant to Maryland Code Annotated, Courts and Judicial Proceedings, § 6-102 and § 6-103(b)(1) because GRHS transacts business in the State.

6. Moreover, this Court is the proper venue for adjudication of this matter because Defendant GRHS carries on regular business in this circuit. *See id.* § 6-201(a).

STATEMENT OF FACTS OR FACTUAL BACKGROUND

7. From December 4, 2010 to August 24, 2017, Dr. Carhart provided medical services, primarily consisting of abortion services (including advanced gestation abortions), to patients at GRHS as an independent contractor.

8. While providing medical services out of the GRHS facilities, Dr. Carhart stored patient medical records as well as personal and professional files on GRHS grounds.

9. As of the date of this complaint, the medical records of Dr. Carhart's patients remain in GRHS's custody.

10. On August 25, 2017, Nancy Samuels, the owner of GRHS, informed Dr. Carhart that the GRHS facility was being sold to Maryland Coalition for Life, an anti-abortion group with a documented history of targeting Dr. Carhart as well GRHS patients and staff, seeking to prevent GRHS patients from obtaining reproductive services.

11. On information and belief, the sale of the GRHS facility to Maryland Coalition for Life is to be finalized on or around October 24, 2017.

12. Over the past seven years, Maryland Coalition for Life, Germantown Pregnancy Choices, and their associated organizations have repeatedly harassed and targeted Dr. Carhart personally, as well as GRHS patients and staff.¹ As a result of this ongoing harassment, GRHS and Dr. Carhart were forced to hire off-duty police officers to serve as security (often escorting Dr. Carhart to and from his vehicle) and install a costly video surveillance system outside.

Request for Custody of Patient Medical Records

13. Upon notice of the sale of GRHS, Dr. Carhart requested that he be granted access to the facility to retrieve the confidential records of his patients. GRHS has refused to provide the patient records to Dr. Carhart without a court order.

14. Under Maryland law Dr. Carhart is required to maintain patient medical records for a period of at least five years. *See* Annotated Code of Maryland §4-403(b) (“a health care provider may not destroy a medical record or laboratory or X-ray reports about a patient for 5 years after the report was made.”) *See also* 45 CFR 164.36(b)(2) (HIPAA regulation requiring retention of patient records for at least six years where the physician has billed Centers for Medicare/Medicaid).

15. As the physician of record, Dr. Carhart qualifies as a “health care provider,” under Maryland Law. *See* Annotated Code of Maryland §4-403(a)(1)(xv).

16. Moreover, HIPAA regulations require that “covered entities”, which include providers of medical or health services, enact “appropriate administrative, technical, and physical

¹ In 2016, protesters associated with Maryland Coalition for Life and “Germantown Pregnancy Choices” have vandalized the GRHS offices and threatened arson (resulting in a 120-day jail sentence); threatened contractors and delivery personnel attempting to gain access to GRHS; vandalized vehicles owned by Dr. Carhart and other members of GRHS staff, including the smearing of feces under the door handles; photographed the license plates of GRHS patients; videotaped and photographed patients and staff entering and leaving GRHS and posted these images online; and obtained the personal information of GRHS staff—threatening violence against their families.

safeguards to protect the privacy of protected health information.” 45 CFR 164.530(c).

17. Dr. Carhart’s patient medical records—which include many records of abortion procedures, some of which were advanced gestation procedures necessitated by extraordinarily difficult circumstances for the patients, such as after discovery of severe fetal abnormalities or in cases of rape or incest—are particularly sensitive and confidential medical records. The potential harm to the patients if these medical records were to fall into the wrong hands either purposely or inadvertently would be severe and irreparable.

18. Dr. Carhart seeks to take custody of all such records and assume responsibility for the legal confidentiality and preservation requirements of these records, thereby relieving GHRS of this responsibility.

COUNT I

(Declaratory Judgment)

19. Plaintiff hereby realleges and incorporates by reference herein each of the allegations contained in Paragraphs 1 through 18.

20. Dr. Carhart seeks declaratory relief that he, as the physician of record, should be granted exclusive custody of all of his patients’ medical records.

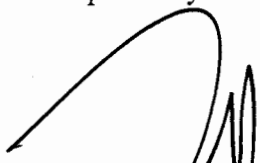
PRAYER FOR RELIEF

21. WHEREFORE, Plaintiff Carhart respectfully requests the following relief against Defendants Nancy Samuels, Todd Stave, and GRHS: Nancy Samuels, Todd Stave, and GRHS be ordered to turn over to Dr. Carhart, and he be permitted to take custody of, all patient medical

records currently in the possession, custody or control of GRHS, so that Dr. Carhart may maintain them in accordance with the applicable state and federal laws.

Dated: September 14, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas C. Hill', written over a horizontal line.

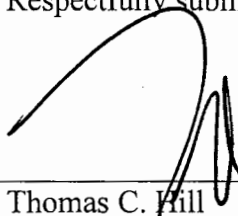
✓ Thomas C. Hill
Deborah B. Baum
Adya S. Baker
PILLSBURY WINTHROP SHAW PITTMAN
LLP
1200 Seventeenth Street NW
Washington, DC 20036-3006
202.663.8000

RULE 1-313 CERTIFICATE

In accordance with Rule 1-313 of the Maryland Rules, I certify that I am a member in good standing of the Bar of the State of Maryland.

Dated: September 14, 2017

Respectfully submitted,



Thomas C. Hill
PILLSBURY WINTHROP SHAW PITTMAN
LLP
1200 Seventeenth Street NW
Washington, DC 20036-3006
202.663.8000

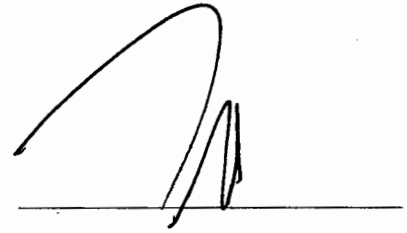
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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2017, I caused a copy of the forgoing to be service by first class mail and email on the following:

Bruce Stern
Stern & Associates
20 Courthouse Square, Suite 213
Rockville, MD 20850
*Counsel for Defendants Nancy Samuels, Todd Stave, and
Germantown Reproductive Health Services*

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

Thomas C. Hill