COPY

STATE OF WISCONSIN CIRCUIT COURT BRANCH ____ DANE COUNTY

UNIVERSITY OF WISCONSIN MEDICAL FOUNDATION, INC.
7974 UW Health Court
Middleton, WI 53562

Plaintiff,

v.

11CV5005

Case No.:
Case Code: 30106
30301
30704

MERITER HOSPITAL, INC.
202 South Park Street
Madison, WI 53715

MERITER HEALTH SERVICES, INC.
202 South Park Street
Madison, WI 53715

MERITER MEDICAL GROUP, INC.
202 South Park Street
Madison, WI 53715

Defendants.

COMPLAINT

Plaintiff, University of Wisconsin Medical Foundation, Inc. ("UWMF"), brings this complaint against Defendants Meriter Hospital, Inc. ("Meriter Hospital"), Meriter Health Services, Inc. ("Meriter Health"), and Meriter Medical Group, Inc. ("Meriter Medical Group") (collectively "Defendants") and alleges as follows:

INTRODUCTION

This Complaint challenges Defendants' ongoing efforts to wrongfully interfere with the right of UWMF to provide and manage the care and treatment of its family medicine patients at

Meriter Hospital. In particular, Defendants have (a) withdrawn from UWMF Family Medicine Physicians any night time coverage that they otherwise provide to every other physician practice group in the area and (b) refused to extend hospital privileges to any UWMF physicians needed to provide the very same night time coverage Defendants are unwilling to provide.

UWMF's repeated efforts to work with Defendants to develop a collaborative model of care have failed. Defendants, through their actions, have effectively required that they assume 24-hour care for any UWMF Family Medicine patients admitted to Meriter Hospital. The law and the policy of this State do not permit this result. Accordingly, UWMF has no alternative but to initiate this lawsuit so as to honor the model of care it established with its patients and to ensure its physicians remain in control of who provides and manages patient care regardless of where those patients may be hospitalized.

It is also worth noting that well over one-hundred UWMF physicians have deep roots in the community they serve and began their careers practicing at Meriter Hospital as well as the institutions (Jackson Clinic, Quisling Clinic, Madison General Hospital) that eventually became Meriter Health Systems. These UWMF physicians want nothing more than to continue to care for their patients at Meriter Hospital, the institution that they worked so hard over the years to support. UWMF must meet its responsibility to these physicians.

PARTIES

I. UWMF

1. UWMF is the non-profit clinic practice organization established by and for the faculty physicians at the University of Wisconsin School of Medicine and Public Health ("Medical School"). Its principal place of business is located at 7974 UW Health Court, Middleton, Wisconsin 53562.

2. UWMF is organized and exists exclusively for the benefit of the University of Wisconsin and the Medical School. To that end, UWMF is tasked with, among other things, (a) attracting sufficient levels of patients to support the missions of the Medical School; (b) developing the administrative capacity to organize the efficient delivery of medical care and coordinating with hospitals providing such care; (c) generating, negotiating and managing relationships between the physicians within the organization and hospitals; and (d) collecting and distributing clinical revenues in ways that enhance the Medical School's mission.

3. UWMF operates pursuant to an "Agreement Between the Board of Regents of the University of Wisconsin System and the University of Wisconsin Medical Foundation" ("Regents Agreement").

4. Under the Regents Agreement, all faculty physicians who engage in the practice of medicine in a clinic or hospital setting ("UWMF Physicians") must have dual employment with the State of Wisconsin and UWMF and assign all of their professional income to UWMF.

5. The revenue UWMF collects is used to provide all of the clinic sites, facilities, support staff, and administrative services necessary for UWMF Physicians to engage in the practice of medicine. UWMF also uses the revenue to supplement the physicians' income from their state employment. Significant revenues are also used to make direct transfers of funds to the University of Wisconsin School of Medicine and Public Health to support the research and teaching endeavors of the school, all in support of UWMF's not-for-profit corporate mission.

6. UWMF has invested millions of dollars in acquiring state of the art equipment and developing policies, systems and procedures that will assist its physicians and staff in providing a superior level of medical care for its patients.

7. The development of these policies, systems and procedures is mandated by and

necessary to further UWMF's obligation to ensure a sufficient patient base to support the Medical School's mission to educate and train physicians.

8. Upon information and belief, the patients served by UWMF Physicians choose their physicians based, to a large extent, upon the high quality of service provided by those physicians. This goodwill is the result of UWMF's substantial investment in such valuable resources, staff, and physicians.

II. DEFENDANTS

9. Meriter Health is a non-stock corporation organized under the laws of the State of Wisconsin with its principal place of business located at 202 South Park Street, Madison, Wisconsin 53715.

10. Meriter Medical Group is a non-stock corporation organized under the laws of the State of Wisconsin. Its principal place of business is located at 202 South Park Street, Madison, Wisconsin 53715. It is a physician practice group that consists of physicians who have ambulatory clinic practices as well as physicians who have hospital-based practices at Meriter Hospital.

11. Meriter Hospital is a non-stock corporation organized under the laws of the State of Wisconsin with its principal place of business located at 202 South Park Street, Madison, Wisconsin 53715.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over Defendants pursuant to Wis. Stat. § 801.05 because they are all domestic corporations.

13. Venue before this Court is appropriate pursuant to Wis. Stat. §§ 801.50(2)(a) and (d) because this is the county where the claim arose, where all Defendants currently reside and where they resided at all times relevant to this litigation.

FACTUAL BACKGROUND

I. GENERAL BACKGROUND

A. The Relationship Between Meriter Hospital And Its Medical Staff.

14. No physician may admit patients to or provide care and treatment at Meriter Hospital unless that physician is a member of the Meriter Hospital Active Medical Staff ("Medical Staff") and has obtained privileges at Meriter Hospital.

15. Privileges are the authority a hospital's governing body grants to physicians that define the physician's scope of practice at that hospital.

16. The relationship between the Medical Staff and Meriter Hospital is governed by and subject to the "Bylaws and Rules and Regulations of the Medical Staff" ("Bylaws").

17. The current Bylaws were revised and adopted by Meriter Hospital's Board of Directors ("Board"), effective January 2011.

B. Obtaining Medical Staff Membership And Privileges At Meriter Hospital.

18. The Bylaws set forth the process and procedure by which a physician may apply for Medical Staff membership and privileges at Meriter Hospital.

19. To qualify for privileges at Meriter Hospital, a physician must be board certified or eligible for board certification in the area of specialty for which he or she is seeking privileges.

20. Physicians seeking Medical Staff membership and privileges at Meriter Hospital must first submit a privileges application to the United Credentials Committee ("UCC"), which

is the joint endeavor of the three Madison-area hospitals. The UCC was established so that all paperwork involved in requesting hospital privileges at any Madison hospital, including Meriter Hospital, is handled by one office.

21. The UCC reviews completed applications for Medical Staff membership and privileges to verify medical education and training, hospital appointments, and work history. In addition, the UCC verifies clinical competency to perform the requested privileges. It then makes a recommendation to the hospital to grant or deny Medical Staff membership and privileges.

22. Following the UCC's review and recommendation, the applicant's request for Medical Staff membership and privileges at Meriter Hospital is submitted to the Meriter Hospital Credentials Committee ("Credentials Committee"). Members of Meriter Medical Group and Meriter Health are on the Credentials Committee.

23. Upon receipt and review of the application, the Credentials Committee makes a recommendation regarding approval or disapproval to the Meriter Hospital Medical Executive Committee ("Medical Executive Committee"). Members of Meriter Medical Group and Meriter Health are on the Medical Executive Committee.

24. The Medical Executive Committee then reviews the application and makes a recommendation to the Board on behalf of the Medical Staff to approve or disapprove the request for Medical Staff membership and privileges.

25. The Board has final authority to approve or deny a request for membership to the Medical Staff and request for privileges.

26. The Bylaws authorize Meriter Hospital to enter into exclusive contracts with physician practice groups for the performance of clinical and/or administrative services at

Meriter Hospital.

27. Further, the Bylaws mandate that any requests for Medical Staff membership and privileges that are the subject of an exclusive contract will not be processed.

28. However, the Bylaws also provide that "Membership on the Medical Staff shall not be based upon sex, race, age, creed, color, or national origin ...." Moreover, the Bylaws do not provide Meriter Hospital any authority to deny a request for Medical Staff membership or a request for privileges for purely economic reasons.

29. This is consistent with applicable state regulations governing medical staff membership and privileges, which provide: "[c]riteria for appointment shall include individual character, competence training, experience and judgment." Wis. Admin. Code. § DHS 124.12(4)(c)1.

II. SPECIFIC FACTUAL BACKGROUND

A. Meriter Medical Group Agrees To Provide Nocturnal Admission Coverage For UWMF Family Medicine Physicians At Meriter Hospital.

30. Prior to March 7, 2011, Meriter Hospital had granted inpatient care privileges to a large group of UWMF Physicians within the Medical School's Department of Family Medicine who practice at community clinics in and around the Madison area ("UWMF Family Medicine Physicians").

31. Because the UWMF Family Medicine Physicians had clinic obligations in addition to their inpatient care at Meriter Hospital, and to help alleviate the workload associated with those dual responsibilities, UWMF authorized its Family Medicine Physicians to utilize the services of a hospitalist program Meriter Hospital claims to have developed and implemented on or before 2003 with the assistance of UWMF ("Hospitalist Program").

32. The Hospitalist Program is available to all physicians who admit patients to

Meriter Hospital. It is staffed primarily with physicians at Meriter Medical Group who allegedly work exclusively in Meriter Hospital and who specialize in the care of hospitalized patients ("Meriter Hospitalists").

33. The scope of the UWMF Family Medicine Physicians' use of the Hospitalist Program was the subject of extensive negotiations in 2008 through 2009. At no time during those negotiations did Defendants ever suggest that the use of their Hospitalist Program was mandatory or that the services provided were the subject of an existing or anticipated exclusive contract.

34. Meriter Hospital represented to UWMF Family Medicine Physicians that use of its Hospitalist Program was voluntary.

35. Pursuant to the negotiations, the parties agreed to a voluntary coverage model whereby UWMF Family Medicine Physicians were given complete control over and management of the care and treatment of their inpatients at Meriter Hospital. By agreement, the role of the Meriter Hospitalists was limited to admitting the patients of UWMF Family Medicine Physicians between 7:00 p.m. and 7:00 a.m. The care and treatment of those newly admitted inpatients was then transferred back to UWMF Family Medicine Physicians at 7:00 a.m. and remained with the UWMF Family Medicine Physicians through to discharge.

36. It was also agreed that Meriter Hospitalists could insist that the UWMF Family Medicine Physicians assist with nocturnal admissions and treatment if the number of patients exceeded the Meriter Hospitalists ability to admit and care for them.

37. While the voluntary coverage model was in place, the Meriter Hospitalists frequently requested that the UWMF Family Medicine Physicians assist with nocturnal admissions and the ensuing care and treatment of the admitted patients.

38. Meriter Hospitalists also used physicians from other practice groups in and around the Madison area to provide nocturnal treatment and care to the newly admitted UWMF inpatients because the need for services exceeded the capacity of the Meriter Hospitalists.

39. The voluntary coverage model was consistent with the applicable definition of the physician-patient relationship set forth in the Bylaws, in relevant part, as follows:

> A physician/patient relationship is assumed to occur between any patient admitted to the hospital and their admitting physician. For primary care physicians, the relationship is assumed to exist if a patient who has seen a physician identifies that physician as their provider, or the patient has been admitted to Meriter by the physician within the previous twelve months ...

B. Defendants Abandon The Nocturnal Admission Coverage They Provided To UWMF Family Medicine Physicians Unless Those Physicians Agree To Surrender All Inpatient Care and Treatment to Meriter Medical Group.

40. The voluntary coverage model remained in effect from at least January 2010 until July 2011. During that time, UWMF Family Medicine Physicians referred or admitted patients to Meriter Hospital. UWMF patients understood that inpatient treatment would be provided at Meriter Hospital, and that UWMF Family Medicine Physicians would continue to have primary responsibility for care and treatment during hospitalization.

41. During this time, none of the Defendants ever identified a single or specific instance of compromised patient care arising from this model of coverage or partnership.

42. Likewise, none of the Defendants ever suggested that the voluntary nature of the Hospitalist Program had changed and did not identify any impediment to UWMF Family Medicine Physicians providing and managing the care of their inpatients at Meriter Hospital.

43. Nevertheless, on March 7, 2011, citing a "failed model of care", Meriter Health's Chief Medical Officer, Geoff Priest, M.D., and its Chief Operating Officer, Lynne Meyers, sent a memorandum to UWMF, advising that, effective July 1, 2011, the Meriter Hospitalists would no

longer adhere to the voluntary coverage model and provide nocturnal coverage for patients of UWMF Family Medicine Physicians.

44. Instead, Dr. Priest and Ms. Meyers stated that Meriter Medical Group was unwilling to provide any admissions, care or treatment at any time of the day to UWMF Family Medicine patients unless UWMF Family Medicine Physicians agreed to let the Meriter Hospitalists provide any and all care and treatment to the UWMF Family Medicine patients at Meriter Hospital from admission through discharge.

C. Defendants Work Together To Encourage UWMF To Hire Additional Hospital-Based Physicians To Fill The Coverage Gap Created By Defendants' Decision To Withdraw Nocturnal Admission Coverage.

45. Despite their decision to withdraw nocturnal admissions coverage from UWMF and their attendant offer to assume all inpatient care, Defendants continued to assure UWMF and the UWMF Family Medicine Physicians that use of the Hospitalist Program remained voluntary, and that use of the Hospitalist Program was at the choice of the individual primary care physician. In particular, the March 7, 2011 correspondence from Ms. Meyers and Dr. Priest stressed:

> [The Meriter Hospitalists] would continue to work with any PCP who desires to have them manage the inpatient care from admission to discharge.

46. This assurance was consistent with Dr. Priest's May 19, 2011 correspondence to UWMF, which again stated:

> Our Hospitalist Program is voluntary and our intent is keep it that way – meaning UWMF physicians who choose to use the program to manage their patients are free to do so and physicians who desire to admit and follow their own patients are free to do so.

47. In fact, in the March 7, 2011 correspondence from Meriter Health to UWMF, Meriter Health encouraged UWMF to develop a model of coverage that relied on physicians with a hospital-based practice:

> We acknowledge that Family medicine has a philosophy of the patient's primary physician staying very close to all the care the patients receive, which is at the heart of the specialty's appeal to both physicians and patients. The current model (both of Hospitalist admissions at night and the emerging practice with [the Department of Family Medicine] for daytime coverage does not deliver on these goals ... It would seem that DFM does recognize this gap by hiring Family Physicians who are focused on just hospitalized patients and this may be the model for your Department to develop further.

48. Relying on Defendants' repeated representations that the Hospitalist Program was voluntary, UWMF reasonably understood that its Family Medicine Physicians were free to provide and manage their own inpatient care at Meriter Hospital through the Hospital's open staffing model. This is the treatment model UWMF and its Family Medicine Physicians elected to pursue, all the while still developing a patient base that understood it would receive any inpatient care at Meriter Hospital through their primary care physicians.

49. UWMF's decision not to utilize the Hospitalist Program for all inpatient care was motivated, in significant part, by the desire to adhere to the treatment model agreed upon with their patients, i.e. the primary care physician following the patient from admission to discharge.

50. The decision was also motivated by a fear that Defendants would continue to engage in ongoing and inappropriate efforts to interfere with the physician-patient relationship existing between the UWMF Family Medicine Physicians and their patients. Examples of this misconduct include:

- Defendants have engaged in repeated efforts to solicit UWMF patients, including Defendants' employees advising UWMF patients that they are receiving poor care from UWMF Physicians, and that the same patients would receive better care from Meriter Medical Group because, unlike UW Faculty Physicians, they do not have the responsibilities of educating medical students and residents.

- Additionally, upon discharge from Meriter Hospital, Defendants' employees are advising UWMF patients that follow-up care with a primary care provider should be done immediately. Meriter Health employees are then wrongly advising UWMF patients that they cannot obtain a timely follow-up appointment with a primary care

giver at UWMF. Those patients who believed immediate follow-up care was necessary to their health and well-being, were then encouraged to make appointments with Meriter Medical Group physicians.

- Upon information and belief, Meriter Hospital and Emergency Medicine Associates of Madison have agreed to divert all UWMF patients admitted to Meriter Hospital to Meriter Medical Group, regardless of the patient's previous relationship with a UWMF physician and regardless of whether UWMF physicians are facilitating the transfer of care from a primary care clinic. In doing so, Meriter Hospital failed to enforce or otherwise adhere to the Bylaws and other policies that prohibit this practice.

- Following nocturnal admission of UWMF patients by a Meriter Hospitalist, those Hospitalists left fliers in the patients' rooms featuring a picture of the Hospitalist that admitted them. Such fliers, where applicable, identified the Hospitalists' prior relationship with UWMF, and also provided a quote that wrongfully and incorrectly suggested UWMF Physicians could not devote sufficient time to quality inpatient care.

- Upon information and belief, in or about September 2011, Meriter Medical Group wrongfully obtained from Physicians Plus Insurance Corporation ("PPIC") UWMF patient information. Specifically, PPIC provided Defendants with the names and addresses of patients who were insured through PPIC and who saw any of the UWMF Physicians that Defendants subsequently hired to staff its new Monona Clinic. Defendants used that information to issue bulk mailings to those patients, identifying Dr. Wendland as one of the providers at the new Monona Clinic and encouraging patients to come and meet her at a clinic open house even though Dr. Wendland remains an employee of and physician with UWMF until December 2011.

- Upon information and belief, in or about October 2011, Meriter Medical Group used the patient information it obtained from PPIC to issue individual letters to each patient that erroneously suggested (a) the physicians at the new Meriter Monona Clinic were the patients' primary care physicians; (b) failed to reveal that the physician had changed practice groups; and (c) implied that the patient had been receiving treatment thought Meriter Medical Group in the past.

D. Defendants Wrongfully Refuse To Grant Privileges To UWMF Physicians Willing To Provide Nocturnal Admission Coverage Abandoned By Meriter Hospitalists.

51. With Defendants' express authorization to treat and manage its own patients at Meriter Hospital through hospital-based physicians, UWMF recruited and hired one physician for the sole purpose of providing coverage assistance for the UWMF Family Medicine patients at Meriter Hospital. It also identified other existing UWMF Physicians willing to provide such coverage and split their time between other facilities and Meriter Hospital.

52. UWMF had 16 physicians willing to provide the fill the coverage gap created by the Meriter Hospitalists.

53. None of these medical providers were members of the Medical Staff with current privileges at Meriter Hospital. Thus, UWMF worked with them to submit applications for Medical Staff membership and privileges to UCC.

54. The UWMF Physicians requesting Medical Staff membership and privileges were either eligible for board certification or already board certified in internal medicine and applied for privileges at Meriter Hospital in the area of internal medicine utilizing a form entitled "Privileges Form for Internal Medicine."

55. The UWMF physicians seeking Medical Staff membership and privileges at Meriter Hospital intended to provide the identical services provided by the UWMF Family Medicine Physicians with existing Medical Staff membership and privileges at Meriter Hospital.

56. The UCC processed all of the applications, forwarded them to Meriter Hospital and recommended that Meriter Hospital grant Medical Staff membership and the requested privileges. Then, after approval by the UCC, each application was presented to and unanimously approved by the Credentialing Committee and the Medical Executive Committee.

57. Nevertheless, on April 29, 2011, after some of the applications had already been approved by the Medical Executive Committee but prior to any Board action, Defendants advised UWMF that the Board would likely deny those physician applications because of an exclusive contract between Meriter Hospital and Meriter Medical Group for the provision of "hospitalist services."

58. This was the first time any of the Defendants had mentioned the existence of an exclusive contract for "hospitalist services" or suggested that use of the Hospitalist Program was mandatory. In fact, this was the very first time any of the Defendants had suggested Meriter Hospital had anything other than an open staffing model, at least with regard to inpatient care.

59. In direct contravention of prior representations to UWMF about the Meriter Hospital staffing model and its Hospitalist Program, Defendants claimed that the exclusive contract prohibited anyone other than Meriter Hospitalists from providing "hospitalist services" to patients admitted to Meriter Hospital.

60. Upon information and belief, the exclusive contract between Meriter Hospital and Meriter Medical Group for hospitalist services did not go into effect until after the majority of UWMF Physicians submitted their requests for privileges.

61. To date, Defendants have refused to provide UWMF with a copy of the exclusive contract for "hospitalist services." Moreover, upon information and belief, and in direct contravention of the Bylaws, Meriter Hospital has never alerted any member of its Medical Staff to its decision to enter any such exclusive arrangement. To date, UWMF has not identified a single member of the Medical Staff that has seen a copy of the so-called exclusive contract.

62. In an effort to alleviate any concerns of running afoul of any so-called exclusive contract, UWMF attempted to clarify the anticipated scope of practice for those seeking Medical Staff membership and privileges by letter dated May 6, 2011:

> What we do seek is the routine privileging of Board eligible internists ... who will be added to our call schedule so that we may provide around the clock "in house" direct and consultative care for UWMF patients who are hospitalized at Meriter Hospital.

63. Upon receipt of that correspondence, Defendants changed their position, and by email response dated May 19, 2011, Meriter Health's Chief Medical Officer, Dr. Priest, assured UWMF any requests for privileges at Meriter Hospital would be processed and approved in the ordinary course. Dr. Priest stated that approval by the Credentials Committee, which had been unanimous for all the UWMF providers, authorized the providers to practice at Meriter Hospital:

> Jeff-I told Shawn in our Medical Staff Office that she should process those requests for privileges in Internal Medicine and Family Medicine as we always do, so these should come to the Committee for approval June 14 at our standing Credentials Committee (assuming that the applications are complete – and I believe they are if they have been forwarded from UCC). This is our usual timeline and workflow. Once the Committee approves, the Board has an approval step that is a required formality. That would be at the June 29 meeting. We consider them to be ready for activity once the Committee has approved ...

64. Based on these assurances, UWMF began to develop coverage schedules at Meriter Hospital that included the applicant providers. In so doing, UWMF was also forced to alter prior coverage models in place at other facilities where its providers were previously on staff full-time.

65. On June 15, 2011, Defendants reneged on their written promises to UWMF and advised UWMF that it was "highly unlikely" the Board would approve the applicants that had been unanimously recommended by both the Credentialing Committee and the Medical Executive Committee.

66. None of the committees tasked with reviewing the applications identified any issue with the education, character or competency of the individual applicants from whom the

Defendants were withholding privileges. Rather, the sole basis for withholding privileges was the existence of the so-called exclusive contract.

E. Defendants Work Together To Recruit And Hire Several UWMF Family Medicine Physicians Burdened By The Increased Workload Defendants Created By Withdrawing Nocturnal Admission Coverage And Withholding Privileges For Those Physicians Seeking To Assist With Coverage.

67. As a result, the UWMF Family Medicine Physicians were left with no option but to try and secure coverage for nocturnal admissions coverage from within the ranks of UWMF Physicians who already had Medical Staff membership and privileges at Meriter Hospital.

68. While UWMF was scrambling to identify individuals willing to relieve the increased workload to its Family Medicine Physicians, Meriter Health continued its own recruitment efforts to beef up the primary care physician ranks of Meriter Medical Group. Specifically, Meriter Health recruited UWMF Family Medicine Physicians who had Medical Staff membership at and privileges from Meriter Hospital – in some cases, the very same physicians for whom they had refused to provide nocturnal admission coverage and who were now facing the prospect of a significantly increased workload because Meriter Hospital would not privilege those physicians willing to help with nocturnal coverage.

69. As an incentive to join Meriter Medical Group, Defendants promised UWMF Family Medicine Physicians that they would not have to provide call coverage for any patients they admitted or who required admission to Meriter Hospital – some of the same services the Defendants refused to provide to the same physicians solely by virtue of their affiliation with UWMF. On information and belief, Defendants promised these physicians that nocturnal admission coverage would be provided by the Meriter Hospitalists.

70. Meriter Health has been able to recruit and hire at least seven (7) UWMF Family Medicine Physicians to date, further exacerbating the already increased workload for the remaining UWMF Family Medicine Physicians.

71. In particular, upon information and belief, Defendants are providing their newly hired physicians with the names and addresses of all patients those physicians may have seen at Meriter Hospital while working with UWMF and then providing the resources for the departing physicians to send mass-mailings to those patients.

72. In numerous instances, those mailings have been sent to UWMF patients prior to the last day of employment for the departing UWMF Family Medicine Physician and in direct and knowing violation of the anti-solicitation policy UWMF has in place with each of its physicians.

73. Presently, to cover the gap in nocturnal admission coverage, UWMF is required to pay approximately $1,100 per shift to each UWMF Physician willing to cover nocturnal shifts because the additional coverage is not currently the subject of the UWMF Physicians' appointment with the Medical School.

74. Defendants have not withdrawn the nocturnal admission coverage provided by their Hospitalist Program for any other physician practice groups admitting patients to Meriter Hospital and continue to provide nocturnal admission coverage for those practice groups. They have not demanded full care and control of those patients through discharge like they have for UWMF's patients.

75. Additionally, other physician practice groups continue to provide the types of services for which Meriter Hospital claims it has an exclusive contract with Meriter Hospitalists.

76. Further, Defendants have actually hired other physician practice groups to moonlight and provide hospitalist services otherwise subject to the exclusivity contract with Meriter Medical Group.

77. Accordingly, to the extent any such exclusive arrangement actually exists between Meriter Medical Group and Meriter Health and/or Meriter Hospital, that exclusivity contract is being used solely as a means to: (a) eliminate UWMF from providing care and treatment at Meriter Hospital; and (b) misappropriate the patient base UWMF developed based on false and misleading representations from Meriter Hospital.

F. Defendants Convene A Meeting Of The Medical Executive Committee And Adopt A Resolution Prohibiting Any Further Processing Of The Pending Requests For Medical Staff Membership And Privileges.

78. On September 22, 2011, at the express direction of the Board, and in direct contravention of the Bylaws, seventeen (17) members of the Medical Executive Committee voted in favor to halt any "further" processing of the pending applications for Medical Staff membership and privileges submitted by UWMF Physicians and staff. That same majority also voted not to process similar applications in the future from other UWMF Physicians and staff. They did so relying on information other than what was contained in the applications and that they have not shared with UWMF or the applicants. Further, none of the applicants have been given opportunity for any hearing and/or appeal of the decision.

79. Thus, with the exception of the already strained UWMF Family Medicine Physicians being required to absorb additional shifts, UWMF has no other physicians to cover the gap created by Defendants' decision to withdraw nocturnal admission coverage. Defendants are forcing UWMF to choose between (a) continuing a current model of coverage that is not sustainable or (b) turning over its inpatients to Defendants.

CAUSES OF ACTION

COUNT I
(UNFAIR COMPETITION)

80. UWMF restates and realleges the allegations set forth in paragraphs 1-79 as if fully set forth herein.

81. Plaintiff and Defendants are competitors.

82. Through their actions, Defendants seek to (a) force UWMF Family Medicine Physicians to turn over their entire inpatient family medicine base to Meriter Medical Group and (b) appropriate the goodwill UWMF has generated through its hard work and enormous investment.

83. Defendants' conduct is without legal justification or privilege.

84. As set forth above, UWMF's goodwill and business have been and will continue to be directly and proximately injured by Defendants' unlawful conduct.

85. As a result, UWMF has and will continue to suffer damages.

86. Accordingly, under Wisconsin common law, UWMF is entitled to recover damages in an amount to be determined at trial.

87. Defendants have acted maliciously toward UWMF or in an intentional disregard for UWMF's rights. As a result, UWMF is entitled to recover punitive damages.

COUNT II
(DECEPTIVE TRADE PRACTICES – WIS. STAT. §100.18)

88. UWMF restates and realleges the allegations set forth in paragraphs 1-87 as if fully set forth herein.

89. Defendants made a number of untrue, deceptive, and misleading representations of fact to UWMF regarding Meriter Hospital's staffing model and the Hospitalist Program, and

failed to disclose the existence of the exclusive contract for "hospitalist services."

90. The existence of the exclusive contract is a material fact and Defendants had a duty to disclose that fact to UWMF.

91. Defendants made these factual misrepresentations and withheld material facts to induce UWMF into (a) growing a large family medicine patient base at Meriter Hospital and (b) pursuing an alternate nocturnal admission coverage model that included recruiting and hiring medical providers that Defendants had no intention of privileging so that UWMF eventually would have no choice but to turn over its family medicine patients to Defendants because of insufficient coverage.

92. UWMF reasonably relied on Defendants' untrue deceptive and misleading representations and material omissions to its detriment.

93. As a direct and proximate result, UWMF has been damaged in an amount to be determined at trial.

COUNT III
(INTENTIONAL MISREPRESENTATION)

94. UWMF restates and realleges the allegations set forth in paragraphs 1-93 as if fully set forth herein.

95. Defendants made a number of untrue representations of fact to UWMF regarding Meriter Hospital's staffing model and the Hospitalist Program and failed to disclose the existence of the exclusive contract for "hospitalist services."

96. The existence of the exclusive contract is a material fact and Defendants had a duty to disclose that fact to UWMF.

97. Defendants made the representations of fact either knowing that they were untrue or with recklessly disregard for whether they were true or false.

98. Defendants made these factual misrepresentations and withheld material facts to deceive UWMF and to induce it into (a) growing a large family medicine patient base at Meriter Hospital and (b) pursuing an alternate nocturnal admission coverage model that included recruiting and hiring medical providers that Defendants had no intention of privileging so that UWMF eventually would have no choice but to turn over its family medicine patients to Defendants because of insufficient coverage.

99. UWMF reasonably believed the untrue representations of fact and relied on such representations and omissions to its detriment.

100. As a direct and proximate result of Defendants' wrongful conduct, UWMF has been damaged in an amount to be determined at trial.

101. Defendants acted maliciously toward UWMF or in an intentional disregard of UWMF's rights, and as a result, UWMF is entitled to recover punitive damages.

COUNT IV
(STRICT RESPONSIBILITY MISREPRESENTATION)

102. UWMF restates and realleges the allegations set forth in paragraphs 1-101 as if fully set forth herein.

103. Defendants made a number of untrue representations of fact to UWMF regarding Meriter Hospital's staffing model and the Hospitalist Program, and failed to disclose the existence of the exclusive contract for "hospitalist services."

104. The existence of the exclusive contract is a material fact and Defendants had a duty to disclose that fact to UWMF.

105. Defendants made these representations of fact and withheld material facts based on their own personal knowledge, or in circumstances in which they ought to have known the truth or untruth of the statement.

106. Defendants made these factual misrepresentations and withheld material information for the purpose of economic gain and to induce UWMF into (a) growing a large family medicine patient base at Meriter Hospital and (b) pursuing an alternate nocturnal admission coverage model that included recruiting and hiring medical providers that Defendants had no intention of privileging so that UWMF eventually would have no choice but to turn over its family medicine patients to Defendants because of insufficient coverage.

107. UWMF reasonably believed the factual misrepresentations and relied on such factual misrepresentations to its detriment.

108. As a direct and proximate result of the Defendants' wrongful conduct, UWMF has been damaged in an amount to be determined at trial.

109. Defendants acted maliciously toward UWMF or in an intentional disregard of UWMF's rights, and as a result, UWMF is entitled to recover punitive damages.

COUNT V
(INJURY TO UWMF'S BUSINESS – WIS. STAT. §134.01)

110. UWMF restates and realleges the allegations set forth in paragraphs 1-109 as if fully set forth herein.

111. Defendants have combined and agreed to act in concert with each other, as well as with Meriter Hospital emergency room physicians, newly hired physicians, staff at Meriter Hospital and PPIC for the common purpose of injuring the reputation, trade and business of UWMF.

112. Defendants and the other physicians and individuals acted maliciously in carrying out their common purpose to injure the reputation, trade and business of UWMF.

113. As a direct and proximate result, UWMF has been damaged in an amount to be determined at trial.

COUNT VI
(COMMON LAW CONSPIRACY)

114. UWMF restates and realleges the allegations set forth in paragraphs 1-113 as if fully set forth herein.

115. Defendants have combined and agreed to act in concert with each other, as well as with Meriter Hospital emergency room physicians, newly hired physicians, staff at Meriter Hospital and PPIC for the common purpose of injuring the reputation, trade and business of UWMF.

116. As a direct and proximate result, UWMF has been damaged in an amount to be determined at trial.

117. Defendants acted maliciously toward UWMF or in an intentional disregard of UWMF's rights, and as a result, UWMF is entitled to recover punitive damages.

COUNT VII
(PROMISSORY ESTOPPEL)

118. UWMF restates and realleges the allegations set forth in paragraphs 1-117 as if fully set forth herein.

119. Defendants made a number of promises and assurances to UWMF regarding Meriter Hospital's staffing model and its Hospitalist Program, together with intentionally concealing information regarding the existence of the alleged exclusive contract for "hospitalist services" when they had a duty to disclose it.

120. Defendants made these promises and assurances and withheld material information intentionally and knowing that the promises or assurances were untrue or recklessly not caring whether the promises and assurances were true or false.

121. Defendants reasonably expected that their factual misrepresentations and material

omissions would induce UWMF to (a) growing a large family medicine patient base at Meriter Hospital and (b) pursuing an alternate nocturnal admission coverage model that included recruiting and hiring medical providers that Defendants had no intention of privileging so that UWMF eventually would have no choice but to turn over its family medicine patients to Defendants because of insufficient coverage.

122. UWMF reasonably relied on Defendants' promises and assurances to its detriment.

123. Injustice to UWMF can be avoided only by enforcement of Defendants' promises to maintain an open staffing model and voluntary hospitalist program at Meriter Hospital, and by granting UWMF Physicians the necessary privileges to provide nocturnal admissions coverage for UWMF inpatients.

COUNT VIII
(DECLARATORY JUDGMENT)

124. UWMF restates and realleges the allegations set forth in paragraphs 1-123 as if fully set forth herein.

125. Defendants have refused to "further" process UWMF Physicians' and staff requests Medical Staff membership and general internal medicine privileges because of a an alleged exclusive contract for "hospitalist services."

126. However, the services those physicians and staff are seeking to provide are identical to the services currently provided by other physicians with active Medical Staff memberships and privileges at Meriter Hospital and who are not associated with Meriter Medical Group

127. UWMF's business is directly harmed by the Defendants' refusal to grant these privileges to UWMF Physicians.

128. A justiciable controversy exists in that UWMF believes the so-called exclusive contract for "hospitalist services" does not prohibit Meriter Hospital from granting Medical Staff membership and privileges and is simply being used as a pretext to interfere with UWMF's business.

129. This controversy is ripe for judicial determination.

COUNT IX
(INJUNCTIVE RELIEF)

130. UWMF restates and realleges the allegations set forth in paragraphs 1-129 as if fully set forth herein.

131. If UWMF succeeds on any of the above claims, it has a right to also receive an order from this Court permanently enjoining Defendants' from continuing their unfair competition, deceptive practices or otherwise relying on an alleged hospitalist exclusive contract in denying privileges to UWMF Physicians.

132. The Defendants' conduct has caused UWMF to suffer substantial and irreparable harm for which there is no other adequate or complete remedy at law.

133. There is a substantial public interest in protecting the physician-patient relationship, quality of patient care and to ensure that physicians are not wrongfully denied privileges to practice medicine in a hospital setting where there is no question as to their skill, competency or character to do so.

WHEREFORE, UWMF demands judgment against the Defendants:

1) For compensatory damages in an amount to be determined at trial;

2) For treble damages and fees pursuant to Wis. Stat. §100.18;

3) For punitive damages;

4) For a declaration that the alleged exclusive contract for "hospitalist services" does not bar the extension of privileges to UWMF Physicians seeking to provide coverage for the UWMF Family Medicine Physicians

5) For an injunction permanently enjoining Defendants from continuing their unfair competition, deceptive practices or otherwise relying on an alleged hospitalist exclusive contract to deny privileges to UWMF Physicians.

6) For fees, costs, and any further relief that the Court deems is just and equitable.

PLAINTIFF HEREBY DEMANDS A TRIAL BY A JURY OF TWELVE ON ALL ISSUES PROPERLY TRIABLE BY A JURY

Dated this 11th day of November, 2011.

Respectfully submitted,

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