

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

THERESA GABANA, M.D.,

Plaintiff,

v.

**TUFTS MEDICINE, INC., TUFTS
MEDICAL CENTER, INC. and TUFTS
MEDICAL CENTER E.P., LLC a/k/a
TUFTS MEDICAL CENTER
EMERGENCY PHYSICIANS, LLC.,**

Defendants.

COMPLAINT AND JURY TRIAL DEMAND

Now comes the Plaintiff, Theresa Gabana, M.D., by and through undersigned counsel, and for her Complaint of discrimination against Tufts Medicine, Inc., Tufts Medical Center, Inc., and Tufts Medical Center E.P., LLC a/k/a Tufts Medical Center Emergency Physicians, LLC, states and avers as follows:

INTRODUCTION

1. Plaintiff Theresa Gabana, M.D. (hereinafter, "Dr. Gabana"), a Licensed Physician and practicing Christian, seeks damages against Defendants for discrimination and the wrongful termination of her employment in violation of Title VII of the Civil Rights Act of 1964 and M.G.L. c. 151B, § 4(1A) for objecting to receiving a Covid-19 vaccine on the basis of her sincerely held religious beliefs.

I. PARTIES

2. Plaintiff, Theresa Gabana, M.D. (hereinafter, “Dr. Gabana” or “Plaintiff”) is a Licensed Physician who was employed by Defendants for twenty-nine (29) years as an Emergency Room Physician until she was unlawfully and wrongly terminated on or about December 5, 2021.
3. Defendant Tufts Medical Center, Inc. is a Massachusetts Corporation with its principal offices at 800 Washington Street, Boston, Massachusetts 02111 (hereinafter, the “Hospital”).
4. Tufts Medicine, Inc. is a healthcare system comprised of the Hospital, other community hospitals and a physician network and has as its principal offices 800 District Avenue, Burlington, Massachusetts 01803 (hereafter, “Tufts Medicine”).
5. Defendant Tufts Medical Center E.P., LLC, a/k/a Tufts Medical Center Emergency Physicians, LLC, is a Limited Liability Company with its offices at 905B South Main Street, Unit 104, Mansfield, Massachusetts 02048 (hereinafter, “TuftsEP”).
6. The Hospital maintains an agreement with TuftsEP, wherein TuftsEP supplies Emergency Physicians to staff the Hospital’s Department of Emergency Medicine.
7. Plaintiff was an employee of TuftsEP and deployed at all relevant times by TuftsEP as an Emergency Physician at the Hospital.
8. Upon information and belief, the Hospital, Tufts Medicine and TuftsEP had input, responsibility and culpability for the allegations contained in, and incorporated by reference in, this Complaint.

9. Collectively and presumably, Tufts Medicine, TuftsEP and the Hospital are employers within the meaning of 42 U.S.C. Sec 2000e (b) and M.G.L. c 151B, Sec1(5), with more than fifteen (15) employees.
10. Collectively, Tufts Medicine, Tufts Ep and the Hospital are the Defendants in this matter.
11. The Defendants negligently, unlawfully, and wrongly terminated Dr. Gabana, when they denied her request for a Religious Exemption and Accommodation, causing Dr. Gabana to suffer a significant loss of her future earnings and retirement.
12. The Defendants summarily and wrongly terminated Dr. Gabana's employment on December 5, 2021.

II. MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION
("MCAD") CHARGE

13. Dr. Gabana filed timely charges with the Massachusetts Commission Against Discrimination (hereinafter, "MCAD"), who then notified the United States Equal Employment Opportunity Commission (hereinafter, "EEOC").
14. The EEOC issued Dr. Gabana her "Right-to-Sue" notice, a copy of which is attached as "**Exhibit A**".
15. Dr. Gabana brings this lawsuit within ninety (90) days of receipt of her EEOC "Right-to-Sue" notice. All preconditions for filing this lawsuit have been performed or have occurred.

III. FACTS

16. Dr. Gabana was employed by Defendants for twenty-nine (29) years when she was unlawfully and wrongly terminated from Defendants' employment because of her sincerely held religious beliefs.
17. Dr. Gabana alleges that the Defendants' unconstitutional Mandatory Covid-19 Vaccine Policy, and the rejection of her religious exemption based on her sincerely held religious beliefs was a tactic to terminate her employment and prevent her from eventually collecting her full retirement benefits.
18. As of June 15, 2021, the former Massachusetts Governor, Charles D. Baker, (hereinafter, "Baker"), terminated the "Covid-19 State of Emergency." As a matter of law and fact, **after June 15, 2021**, the Commonwealth of Massachusetts declared there was no longer any "Covid-19 Emergency" in existence.
19. On June 24, 2021, Tufts Medicine, inclusive of the Hospital, announced, and on August 10, 2021, implemented their own Mandatory Covid-19 Vaccine Policy, (hereinafter, the "Vaccine Policy") and informed employees that a deadline for meeting this new Vaccine Policy requirement, would be "October 18, 2021, barring an approved religious or medical exemption which were both offered as an integral part of Defendants Covid-19 policy.
20. On September 3, 2021, Dr Gabana submitted her request for a Religious Exemption and Accommodation to Defendants, a copy of which is attached as "**Exhibit B**" and incorporated herein by reference in its entirety.
21. Dr. Gabana followed the Defendants' protocol for applying for a Religious Exemption and Accommodation.

22. In her request for a Religious Exemption and Accommodation, Dr. Gabana explained her sincerely held religious beliefs were based in Christianity which precluded her from taking any Covid-19 vaccine and specifying the fact that then current Covid-19 vaccines “developed with or tested upon aborted fetal cell lines” and further stated that “The sanctity of human life, including the unborn, is a major tenet of my faith. Using this vaccine is a violation of my faith”.
23. On December 5, 2021, after an initial denial by Defendants of Plaintiff’s exemption request, and after an unsuccessful appeal by Plaintiff on such determination, the Defendants wrongfully terminated Dr. Gabana’s employment with Defendants based on her refusal to take the Covid-19 vaccine for reason of her sincerely held religious beliefs.
24. The denial of Dr. Gabana’s Religious Exemption and Accommodation caused her extreme anguish, an enormous amount of stress, anxiety, sleepless nights, and deep, unrelenting sadness as she realized she would have to choose between her sincerely held religious beliefs and a job she loved
25. To reiterate, Dr. Gabana was sixty-one (61) years old at the time of her unlawful, negligent, and wrongful termination due to her sincerely held religious beliefs that were not granted an Accommodation.
26. Essentially, Dr. Gabana was given a ‘Hobson's Choice’, when she was forced to “choose between her sincerely held Christian religious beliefs and her family’s livelihood”.
27. Dr. Gabana believed she was being unjustly coerced and was traumatized by the prospect of not having a job.

28. Dr. Gabana's service during this crisis greatly benefited the Defendants by enabling them to keep its doors open and continue serving the community as it was tasked to do.
29. Defendants' summarily denied Plaintiff **any** Accommodation.
30. As a result of Dr. Gabana's unlawful and wrongful termination by the Defendants, she was unable to secure another job in her field and suffered great financial harm and extreme stress.
31. Defendants should have and could have accommodated Dr. Gabana.
32. Instead, Dr. Gabana was denied her request for a Religious Exemption and Accommodation because of her sincerely held religious beliefs.
33. Dr. Gabana worked hard for nearly three (3) decades as an Emergency Room Physician with deep ties to her patients and community
34. Dr. Gabana's termination from TuftsEP resulted in her feeling harassed, violated, and discriminated against because she asserted her sincerely held religious beliefs.
35. Dr. Gabana was and still is devastated by her termination from TuftsEP and has suffered damages as a result of Defendants' actions including, but not limited to, lost wages, lost pension, lost benefits, costs related to survival without income, as well as extreme and severe emotional stress to her and her family.

THE COVID-19 VACCINES ARE NOT EFFECTIVE AT STOPPING THE SPREAD OF THE DISEASE

36. Following an announcement by the Food and Drug Administration (hereinafter, "FDA") on August 2, 2021, claiming that vaccines were ninety-one percent (91%) effective in preventing Covid-19 (Pfizer), it became immediately clear that was not true.

37. Illustrating by example are the following list of visible persons that became infected by Covid-19 despite having been injected with a Covid-19 vaccine along with the date their infection was announced:

08-19-2021 U.S. Senator John Hickenlooper
U.S. Senator Angus King
U.S. Senator Roger Wicker

10-19-2021 Dept Homeland Security Secretary Alejandro Mayorkas

12-19-2021 U.S. Senator Elizabeth Warren

01-02-2022 Dept of Justice Secretary Lloyd Austin

03-13-2022 U.S. President Barack Obama

03-31-2022 CIA Director William Burns

04-05-2022 U.S. Attorney General Merrick Garland

04-07-2022 U.S. House Speaker Nancy Pelosi

04-09-2022 U.S. Dept of Agriculture Secretary Tim Vilsack

04-26-2022 U.S. Vice-President Kamala Harris

05-04-2022 U.S. Secretary of State Anthony Blinken

06-01-2022 U.S. Labor Secretary Marty Walsh

06-15-2022 Dr. Anthony Fauci

06-2022 U.S. Senator Wicker for 3rd time (02-2022)

07-10-2022 U.S. Senate Majority Leader CPHC/ CHA rles Schumer

07-21-2022 U.S. President Joseph Biden

10-22-2022 CDC Director Rochelle Walensky

38. Public Health Officials now acknowledge the fallacy of claims of protection afforded by vaccines against Covid-19.

a. Dr. Deborah Birx: (Former White House Coronavirus Response Coordinator):

“I knew these vaccines were not going to protect against infection and I think we overplayed the vaccines”. <https://youtu.be/8aYqTlg1A>

b. Dr. Anthony Fauci:

“We know that people get infected and then get reinfected and people get vaccinated, and they get infected. So, immunity isn’t measured in decades or lifetimes. It’s measured in several months.”

<https://www.marketwatch.com/articles/Anthony-fauci-covid-19-biden-immunity-51658437525?shtied=nf-rss>

39. As of August 2020, the Centers for Disease Control and Prevention (hereinafter, “CDC”) guidance on Covid-19 protection changed to eliminate differentiation based on whether a person received vaccination and now concede that so-called Covid-19 vaccines do not prevent those injected with same from contracting, suffering and/or spreading the Covid-19 disease.

40. The majority of people now hospitalized for Covid-19 related issues have received vaccinations and caught the Covid-19 virus anyway.

41. Defendants’ “Vaccine Policy” was based on false and deceptive claims that the vaccine was required to prevent employees from contracting the virus and spreading it to others, all of which was known by them.

42. Increasingly, it is becoming clear that Covid-19 vaccines did not afford the protection to the person injected or those they came into contact with and, in fact, have both short and long-term adverse effects on the injected person.
43. Defendants terminated/coerced retirement on Dr. Gabana for resisting being injected due to her sincerely held religious beliefs; and Defendants refused an accommodation to Dr. Gabana by not affording the use of masks and periodic testing, stating same to be inferior to the vaccine.
44. Defendants' instant degradation of masks and periodic testing by labeling them as "inferior" and unacceptable accommodation, along with Defendants' unrealistic reliance on **experimental** vaccines, place Defendants' historical position in question and now expose serious liberties taken by Defendants with the lives and well-being of Dr. Gabana, her family, and her contacts.
45. As a result of Defendants' negligence and intentional acts, Dr. Gabana suffered damages financially, emotionally, psychologically, and lost reputation.

CLAIM FOR RELIEF

COUNT I

VIOLATION OF M.G.L. CHAPTER 151B RELIGIOUS DISCRIMINATION AND VIOLATION OF TITLE VII

46. Dr. Gabana re-alleges the foregoing Paragraphs 1-45 as if set forth again here.
47. Dr. Gabana was very specific, honest and conveyed her sincerely held religious beliefs to Defendants.
48. Dr. Gabana explained her sincerely held religious beliefs were based in Christianity which precluded her from taking any Covid-19 vaccine and specifying the fact that then current Covid-19 vaccines "developed with or tested

upon aborted fetal cell lines” and further stated that “The sanctity of human life, including the unborn, is a major tenet of my faith. Using this vaccine is a violation of my faith”.

49. Dr. Gabana at all relevant times was engaged in protected activity under M.G.L. Chapter 151 and 42 USC § 2000e *et seq.*
50. Under Title VII, it is unlawful for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of” that individual’s religion. 42 U.S.C. § 2000e-2(a)(1). An employer must “reasonably accommodate” an employee’s **religious** practice unless such accommodation would impose “undue hardship on the conduct of the employer’s business.” *Id.* § 2000e(j). To reiterate: the means to accommodate Dr. Gabana would not have cost additionally, as the policies, procedures and equipment were already in place since the beginning of the Covid-19 pandemic.
51. Upon information and belief, Defendants granted one (1) or more exemption due to religious or medical reasons.
52. Discrimination is defined as prejudiced, unfair, or unequal treatment of people based on their personal characteristics such as race, **religion**, disability, age, nation of origin, or gender.
53. Dr. Gabana was sixty-one (61) years old when she was unlawfully, negligently, and wrongly terminated because her sincerely held religious beliefs.

54. The discriminatory actions of the Defendants resulted in the deterioration of skills, morale, and employer acceptability, placing Dr. Gabana in her older age, in a disadvantaged position within the work force.

55. Defendants wrongly, arbitrarily, and capriciously denied Dr. Gabana's request for a Religious Exemption **and** Accommodation from having to inject herself with the Covid-19 vaccine due to her sincerely held religious beliefs.

56. Defendants at all times knew, or should have known, that the Covid-19 vaccine did not prevent contracting nor spreading of the disease.

WHEREFORE, PLAINTIFF PRAYS THAT THIS HONORABLE COURT:

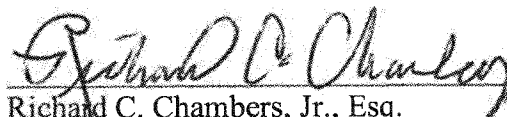
Enter Judgment against Defendants finding that their conduct was knowingly and negligently in bad faith, with knowledge or reason to know that their acts violated Dr. Gabana's Constitutional rights, and caused substantial hardships to her, against public policy and Federal law, for damages as follows:

- A. A declaration that Dr. Gabana's statutory rights were violated and an order requiring just, proper, and equitable relief.
- B. A finding for Dr. Gabana for the Count set forth herein and an order for an amount to be determined at the trial of this matter.
- C. Compensatory damages in the amount of Five Million Dollars ("\$5,000,000.00").
- D. Punitive damages in the amount of One Million Dollars ("\$1,000,000.00").
- E. Award reasonable attorneys' fees and costs of this action to Dr. Gabana; and
- F. Such other and further relief that this Honorable Court finds meet, just, proper, and equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES AND COUNTS.

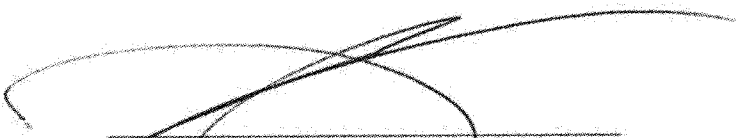
Respectfully submitted,
The Plaintiff,
Theresa Gabana, M.D.
By her attorneys,

DATED: October 8, 2024



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EXHIBIT A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office
33 Whitehall St. 5th Floor
New York, NY 10004
(929) 506-5270
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161, 161-A & 161-B)

Issued On: 10/02/2024

To: Theresa Gabana

Lwarhold@comcast.net

Cc: TUFTS MEDICAL CENTER

Charge No: 16C-2022-00705

EEOC Representative and email: MARIANNE MONTLER
Supervisory Investigator
marianne.montler@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge. The EEOC has adopted the findings of the state or local fair employment practices agency that investigated your charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission,

Digitally Signed By: Yaw Gyebi, Jr.
10/02/2024

Yaw Gyebi, Jr.
District Director

EXHIBIT B



Religious Accommodation Request Form

Tufts Medical Center is committed to providing equal employment opportunities without regard to any protected status, including religious beliefs, practices, and/or affiliation. Tufts Medical Center prohibits discrimination against employees and applicants for employment based on religious beliefs, practices, and/or affiliation. When requested, Tufts Medical Center will provide reasonable accommodations for employees' and applicants' sincerely held religious beliefs or practices unless doing so would impose an undue hardship on Tufts Medical Center or pose a direct threat to the health or safety of patients, others in the workplace, and/or to the requesting employee.

To request a religious accommodation, please complete this form and submit it to the Human Resources Department (Farnsworth first floor) to allow us to work together to address your request. In some cases, Human Resources will need to obtain additional information and/or documentation about your religious practice(s) or belief(s). This may include discussing and/or obtaining documentation about the nature of your religious belief(s), practice(s) and accommodation with/from you, your religion's spiritual leader (if applicable), or others to address your request. Materials related to an employee's religious accommodation request, including the written request for accommodation and any other documentation/information, will be kept confidential, except as reasonably necessary for business reasons and/or to effectuate the accommodation. Should you have any questions, you may contact the Human Resources Department at 617-636-7983.

Part 1: To be completed by Employee (additional pages may be attached):

Name: THERESA M. GABANA, MD
Title/Position: Emergency Medicine
Contractor: Tufts Emergency Physicians, LLC.
Employee ID: 7 Work/Cell 508-820-5230
Phone Number: 802-649-2222

Home:

Email: LWARHOLD@comcast.net Department: Emergency Medicine

* Work: tgabana@tuftsmedicalcenter.org

Manager: Dr. Brian Barnewolt Manager Ext. 4721

Please specify the sincerely held religious belief, practice or observance obligation that is the basis for your request for an accommodation.

Although I am not opposed to vaccinations as a general principle, my sincere and deeply held Christian faith prevents me from receiving the current Covid vaccine because they were developed with, or tested upon, aborted human fetal tissue cell lines.

Please specify the work requirement that conflicts with the sincerely held religious belief, practice or observance obligation described above and explain the nature of the conflict.

The sanctity of human life, including the unborn, is a major tenet of my faith. Using this vaccine is in violation of my faith.

Please describe the specific accommodation that you are requesting at this time.

I am respectfully asking for a religious exemption from the required Covid 19 vaccination.

Please describe any alternate accommodations that might address your needs.

None are available currently.

Please specify the length of time for the accommodation.

Until an ethically acceptable
version of the COVID19 vaccination
is available.

I have read and understand the policy on religious accommodations. My religious beliefs and practices, which result in this request for a religious accommodation, are sincerely held. I understand that Tufts Medical Center will attempt to provide a reasonable accommodation unless it creates an undue hardship on Tufts Medical Center and/or poses a direct threat to the safety of others or myself. I understand that in some cases, Tufts Medical Center will need to obtain additional information and/or documentation about my religious practice(s) or belief(s).

Theresa M. Sabara, MD
9/3/21

Employee's/

Applicant's
Date

Signature

Part 2: To Be Completed by Human Resources/Decision Maker (additional pages may be attached):

Date of Request: _____ Date of Discussion(s) (if any): _____

Was additional information/documentation requested?
_____ Yes _____ No

Was additional information/documentation provided?
_____ Yes _____ No

Reasonable accommodation: _____ Approved
_____ Denied

Date reasonable accommodation effective:

Duration period of reasonable accommodation:

If accommodation was denied, please explain the reason:

Alternative accommodations offered (and, if applicable, accepted):

1.

2.

3.

Human Resources Signature:

Date:
