

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CASSANDRA SAMPSON )  
Plaintiff, )  
v. ) CIVIL ACTION NO.  
BETH ISRAEL DEACONESS MEDICAL CENTER )  
and HEATHER A. RICHTER, )  
Defendants. )

**COMPLAINT**

**I. Introduction**

1. This case is brought against Beth Israel Deaconess Medical Center (“the Hospital”) and Heather Richter (“Richter”), a nurse at the Hospital, arising out of the physical assault and forced stripping of the plaintiff, Cassandra Sampson, a woman with a history of severe sexual abuse. This forced stripping was done by five male Hospital security guards on the order of defendant Richter, pursuant to the Hospital’s mandatory disrobing policy, which permits forcible stripping of patients who refuse a request to disrobe.

2. Ms. Sampson was physically bruised, emotionally devastated, and became suicidal as a result of being forcibly stripped. Although Ms. Sampson went to the Hospital’s Emergency Department voluntarily for treatment of cluster migraines, she was involuntarily detained and forcibly stripped, despite her pleas that she be allowed to retain her pants due to a history of sexual abuse, her willingness to remove the rest of her clothes, and her agreement to undergo a pat-down search. In addition, Richter refused to honor Ms. Sampson’s repeated requests for a hospital advocate to inform her of her legal rights and to help resolve the situation.

3. This action is brought against defendant Hospital for 1) injunctive and declaratory relief under Title III of the Americans with Disabilities Act; 2) injunctive and declaratory relief and compensatory damages under Section 504 of the Rehabilitation Act of 1973; 3) injunctive and declaratory relief and compensatory damages under M.G.L. §272, Sec. 98 and MGL Chapter 12, Section 11H and 11I (Massachusetts Civil Rights Act); and 4) compensatory damages under

state tort actions for negligence, assault, battery, and intentional or reckless infliction of emotional distress.

4. This action is brought against defendant Richter for interference with the plaintiff's civil rights under the Massachusetts Civil Rights Act, as well as negligence, assault, battery, and intentional or reckless infliction of emotional distress. Plaintiff seeks compensatory damages.

## **II. Parties**

5. Ms. Cassandra Sampson. is a citizen of the State of Massachusetts. She lives at 13-25 Warren Ave., Somerville, Massachusetts. Ms. Sampson. has a long history of psychiatric and physical disabilities.

6. Beth Israel Deaconess Medical Center is located at 330 Brookline Ave., Boston, Massachusetts.

7. Defendant Heather A. Richter worked at Beth Israel Deaconess Medical Center on March 25, 2005, as a nurse in the Emergency Department, and, on information and belief, currently resides at 30 Curtis Lane in Edgartown, Duke's County, Massachusetts.

## **III. Jurisdiction**

8. This court has jurisdiction pursuant to 42 U.S.C. §12188(a), 29 U.S.C. §794a, and 28 U.S.C. §1331. It has supplemental jurisdiction over the state claims under 28 U.S.C. §1367.

## **IV. Facts**

9. Ms. Sampson is a 50 year old African-American woman with psychiatric disabilities stemming from years of extreme emotional and sexual abuse as a child, worsened by the death of her son shortly after he was born. Ms. Sampson. has a history of self-injury stemming from these experiences.

10. Ms. Sampson is an individual with a disability under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act because her psychiatric impairments substantially limit major life activities, including caring for herself, working, and interacting with others. Ms. Sampson was also regarded by defendants Richter and Beth Israel Deaconess

Medical Center as being substantially limited in her ability to care for herself, and has a history of psychiatric disabilities.

11. Ms. Sampson also has a number of life-threatening physical disabilities, such as respiratory problems and Type II diabetes, as well as other painful physical conditions, including cluster migraines.

12. Ms. Sampson has used the clinical and emergency services of defendant Hospital to treat these conditions for over two decades. Because Beth Israel Deaconess Medical Center is where many of Ms. Sampson's medical doctors practice, she often seeks both medical and emergency care at defendant Hospital. The Hospital is well aware of Ms. Sampson's history of severe childhood sexual abuse and her history of disability. The Hospital regarded Ms. Sampson as an individual who was substantially limited in her ability to care for herself.

13. In two decades and hundreds of visits to many Emergency Departments, including defendant Hospital's Emergency Department, Ms. Sampson has never injured or threatened to injure herself while in an Emergency Department setting. In two decades and hundreds of visits to many Emergency Departments, Ms. Sampson has never been forcibly stripped of her clothing in any other Emergency Department, despite her history of serious self-injury and her reluctance to remove her pants.

14. On or around March 22, 2005, Ms. Sampson began experiencing extremely severe migraines. She took her prescribed medication, Toradol, and the headaches did not improve. She called the office of her migraine doctor, Dr. Bajwa, on March 24, 2005, and the office told her to reduce the dosage of Toradol she had been taking, which she did.

### **The Events of March 25, 2005**

15. On March 25, 2005, Ms. Sampson again called Dr. Bajwa's office because her migraines were interfering with her ability to sleep and function. He was not available, and his office advised her to see her primary care physician, Dr. Gila Kriegel, at Beth Israel Deaconess Medical Center. Upon arriving at the hospital, Ms. Sampson learned that Dr. Kriegel was also unavailable. She spoke briefly to Dr. Kriegel by telephone, and the doctor advised her to go to the Hospital's Emergency Department for treatment of her migraines.

16. There is no evidence in the Ms. Sampson's emergency department records that Dr. Kriegel contacted the Emergency Department prior to Ms. Sampson's admission or that Emergency Department staff relied upon information from Dr. Kriegel in deciding to strip and search Ms. Sampson.

17. Ms. Sampson proceeded to defendant Hospital's Emergency Department, expecting to receive treatment for her migraines.

18. As part of the routine triage procedures, the triage nurse asked Ms. Sampson to identify the medications that she was taking. Ms. Sampson told him that she took psychiatric medications and Toradol for her migraines. After learning that she took psychiatric medications, the triage nurse asked Ms. Sampson if she was feeling safe. Ms. Sampson told him that she had been struggling with safety issues. At the time of her admission to the Hospital, Ms. Sampson was not suicidal nor did she have any desires to injure herself.

19. The triage nurse did not ask Ms. Sampson any further questions, but told her that on the basis of this response she needed a psychiatric evaluation, and that her migraines would also be treated. He then transferred Ms. Sampson to the psychiatric portion of the Emergency Department for assessment.

20. Upon Ms. Sampson's arrival in the psychiatric portion of the Emergency Department, defendant Richter assigned Ms. Sampson to a room and, pursuant to hospital policy, assigned a "sitter," (an aide who sat outside the door of the room) to provide continuous one-on-one monitoring of Ms. Sampson.

21. Based on stereotypes and misperceptions about the level of risk that people with mental illness pose to themselves, and also to prevent any patient, including voluntary patients such as Ms. Sampson, from leaving the Emergency Department, the Hospital requires patients on the psychiatric portion of the Emergency Department to disrobe or be forcibly stripped if they refuse. The Hospital does not require an individualized assessment of the patient's risk by a psychiatric professional prior being stripped. Nor does it consider any request for accommodation, or the use of less intrusive means such as pat-downs or wands. Patients on the medical portion of the Emergency Department are not routinely asked to disrobe for reasons unrelated to the assessment being performed, or to prevent them from leaving the Emergency Department, and are not forcibly stripped.

22. Consistent with this policy, after Ms. Sampson was assigned a sitter, Ms. Richter informed her that she was required to completely disrobe prior to her psychiatric evaluation. Defendant Richter made no attempt to evaluate Ms. Sampson's current safety risk before asking her to disrobe by asking her any questions about her current thoughts with regard to self-injury or whether she was carrying anything she might use to hurt herself or others.

23. Ms. Sampson explained to defendant Richter that she had a history of sexual abuse, and explained that she was willing to take off most of her clothes, but requested to retain her pants.

24. Ms. Sampson willingly and promptly surrendered all of her belongings and took off her blouse, bra, shoes and socks, and put a hospital johnny (a thin smock which extends to her knees and ties in the back) over her pants.

25. Defendant Richter continued to insist that hospital policy required Ms. Sampson to remove her pants. Ms. Sampson refused and explained that her refusal was due to her history of traumatic sexual abuse. Ms. Sampson asked Defendant Richter to allow her to see a patient advocate to clarify this issue.

26. A female physician came to assess Ms. Sampson's physical condition. Ms. Sampson again requested to keep her pants on due to her history of sexual abuse. The physician considered Ms. Sampson's objections and asked whether Ms. Sampson would consent to a clothed pat-down, to which Ms. Sampson readily agreed. With Ms. Sampson's consent, in the presence of a security guard, the physician conducted the pat-down herself, which included reaching under the legs of Ms. Sampson's pants to search for contraband.

27. After conducting the pat-down, the doctor reported that there was no evidence of any unsafe object or threat to safety. She evaluated Ms. Sampson's medical condition and told Ms. Sampson she was ordering medication for her migraines.

28. Ms. Sampson believed that the pat-down had resolved the matter. She was sitting calmly in the room waiting for a psychiatric evaluation. She remained under one-on-one observation with a sitter outside her door.

29. However, after the physician left, defendant Richter once again demanded that Ms. Sampson remove her pants, even though Ms. Sampson was calm. Defendant Richter made

this demand without documenting the need for an intrusive personal search, or obtaining a clinical determination that one was necessary from a psychiatric professional.

30. At some point during these events, the designated clinician arrived to perform Ms. Sampson's psychiatric assessment. Defendant Richter told her that the evaluation could not proceed until Ms. Sampson took off her pants.

31. The clinician left, and defendant Richter threatened Ms. Sampson that if she did not immediately accede to removal of her pants, they would be forcibly removed by security guards.

32. Ms. Sampson became extremely afraid, and tried to leave the Emergency Department.

33. A group of male security guards massed together to forcibly return Ms. Sampson to her room. One security guard asked Ms. Sampson to immediately return to her room to avoid being forcibly returned. Ms. Sampson felt she had no choice but to accede. When she returned to the room, she once again asked Defendant Richter to allow her to speak with a patient advocate.

34. Defendant Richter brought in another nurse, and they jointly insisted that Ms. Sampson remove her pants. Defendant Richter again threatened Ms. Sampson that if she did not remove her pants, Richter would have them forcibly removed by security guards.

35. During this entire time, defendant Richter did not call for a mental health consultation. Ms. Richter did not call Beverly Zaluk, Ms. Sampson's therapist for a consultation, even though Zaluk's phone number was readily available.

36. At no time during this entire episode did Ms. Sampson state, imply, or otherwise indicate that she had any current thoughts or intention to hurt herself or anyone else. At no time during this entire period did Ms. Sampson act in a manner which would have led a reasonable health care professional to believe that there was any immediate risk of harm to Ms. Sampson or to others.

37. Although mental health professionals were available at the Hospital, no one evaluated Ms. Sampson's current safety risk by asking her any questions about her current thoughts regarding self-injury or whether she was carrying anything that she might use to hurt herself before ordering that she be forcibly stripped.

38. Instead, Defendant Richter called in five male security guards and instructed them to hold Ms. Sampson down and forcibly strip off her pants.

39. The security guards held down Ms. Sampson's arms and legs, pulled Ms. Sampson's johnny up above her waist and unbuckled her pants while she struggled and screamed, bruising her in the process

40. The security guards then unzipped Ms. Sampson's pants, continuing to hold her arms and legs down despite her twisting and crying out in pain. Finally, the security guards forcibly pulled off Ms. Sampson's pants.

41. As she was being assaulted and stripped, Ms. Sampson struggled and screamed and was physically injured in the process. She cried out that she was being raped and sobbed.

42. Defendant Richter told Ms. Sampson she had only herself to blame for the use of force.

43. Neither Defendant Richter nor any clinical staff at the Hospital comforted Ms. Sampson or tried to help her as she lay curled up and sobbing after being stripped. The sitter whispered a few words of consolation.

44. Several hours later, a mental health clinician assessed Ms. Sampson for the first time. Ms. Sampson, who was profoundly traumatized by being forcibly stripped, explained what had happened.

45. Ms. Sampson was found to not be a threat to herself or others and to not meet the commitment standard. She was transferred to the medical portion of the Emergency Department and discharged the following morning.

### **Injuries to Ms. Sampson**

46. As a result of the March 25, 2005 assault and stripping by security guards, Ms S experienced nightmares and flashbacks and greatly increased urges to harm and kill herself. Although she had not experienced a lengthy hospitalization in years, shortly after the security guards' assault on her, she was hospitalized at several facilities for lengthy periods of time. These hospitalizations were a direct result of the events at Beth Israel Deaconess Medical Center Emergency Department on March 25, 2005.

47. Ms. Sampson has not returned to the Hospital's Emergency Department. She is afraid that current Hospital policies and practices will lead to her being forcibly stripped. Indeed, after the events of March 25, 2005, she required extensive therapeutic intervention to enable her to enter any hospital Emergency Department. Because the doctors for her serious medical conditions are affiliated with the Hospital, its policy practice requiring mandatory stripping of psychiatric patients who refuse to remove their clothing forces her to choose between risking her physical health or preserving her emotional health.

### **The Hospital's Policy and Practice Related to Forced Stripping of Psychiatric Patients**

48. Shortly after Ms. Sampson's discharge, she took photographs of her extensive and discolored bruises and wrote a letter to the Hospital complaining about her abusive treatment by defendant Richter and the security guards, the assault by male security guards, and the denial of her repeated requests for a patient advocate. She attached photographs of the bruises.

49. In response, she received a phone call from the patient advocate stating that Emergency Department and Hospital staff had met about her complaint and determined that no mistakes had been made in her treatment. When Ms. Sampson reiterated how traumatized she was after being forcibly stripped, the patient advocate advised her to "just let it go."

50. In early May 2005, Ms. Sampson received a written response from Beth Israel Deaconess Medical Center. The letter (attached as Exhibit A) confirmed the hospital policy requiring mandatory disrobing and forcible stripping:

In the future, if you come to the emergency room for a purely medical—not a psychiatric—reason, you would not be taken to the area reserved for psychiatric patients, and you would not be asked to remove your clothing. However, if your reason for coming involved a psychiatric issue, you would be asked to remove your clothing. This is now a strict emergency room policy which is designed to protect both patients and staff. As there have been several incidents in which patients concealed harmful items or substances, we cannot make any exceptions. (emphasis in letter).



51. At the end of the letter, the Hospital reiterated that, although they were aware of Ms. Sampson's disability and "how difficult" the clothing removal requirement was for her, she would still be asked to remove her clothes if she came to the Emergency Department for psychiatric reasons. The Hospital took this unequivocal position, refusing to make any accommodations to Ms. Sampson's disability, despite the fact that in all her trips to the Hospital's Emergency Department over two decades, Ms. Sampson had never hidden anything unsafe on her person, had never injured herself in the Emergency Department, and had never before been forcibly stripped of her clothing.

52. A year later, Defendant Hospital produced a written clothing removal policy that, on its face, creates a number of categories including "patient on suicide/self harm precautions," and requires all patients who fall into those categories be searched, including forcible searches and stripping if patients refuse. However, even that policy fails to provide for any exception, waiver or accommodation, and fails to require a contemporaneous, individualized assessment by a psychiatric professional of the immediate need for a personal search or forcible stripping.

53. As a practical matter, due to stereotypes and misperceptions about the level of risk posed by people with mental illness, and to keep all patients in the psychiatric portion of the Emergency Department from leaving, the Hospital's practice results in all patients in the psychiatric portion of the Emergency Department falling into one of the categories listed in the written policy, all of which involve mandatory searches, including forcible searches if the patient refuses.

54. Because of her history of self-injury and because the Hospital regards Ms. Sampson as a person who is substantially limited in her ability to care for herself, when Ms. Sampson is on the psychiatric portion of the Emergency Department, the Hospital will always place her into the category "patient on suicide/self harm precautions" and she will, as the Hospital's letter stated, always be required to remove her clothing if she finds herself in the psychiatric portion of the Emergency Department, regardless of whether she is at actual risk of suicide or self-harm. If she refuses, she will be forcibly stripped, regardless of her request for accommodation and the availability of less intrusive means to ensure safety.

55. The Hospital's policy and practice of requiring patients to disrobe and forcibly stripping patients who refuse to remove their clothing applies to all psychiatric patients,

regardless of the lack of any assessment of immediate level of risk by a mental health professional, imminence of risk, availability of less intrusive means to ensure safety, history of sexual abuse or trauma, or any other individual contraindications to requiring or forcing a patient to remove her clothes.

56. Fifty to seventy percent of women with chronic mental illness have histories of childhood sexual or physical abuse, or both. This history has been recognized by the psychiatric community to cause life-long trauma and disability in some women, for whom it is a priority to never again be involuntarily touched, forced, or held down. The practice in some Emergency Departments of requiring psychiatric patients to disrobe can cause patients severe anxiety because it triggers memories of prior rapes and sexual abuse. Forced stripping by security guards when a patient refuses to remove her clothing is even more traumatic and can greatly exacerbate existing psychiatric disabilities. Forcible stripping by male security guards of a female patient with a history of sexual abuse is the most traumatizing and damaging of all.

57. It is well recognized in the psychiatric profession that in the absence of an emergency, an individualized assessment should be made by a mental health professional before forcibly stripping a patient of her clothing. It is also well recognized in the psychiatric profession that for some patients, requests or requirements that they remove their clothing can cause such emotional turmoil that it causes extreme agitation and panic, and exacerbates existing psychiatric conditions including anxiety, depression, and post-traumatic stress disorder.

58. The Hospital's policy and practice do not require contemporaneous assessment of clinical necessity and a written order by a licensed mental health professional prior to the physical restraint and forcible stripping of an individual with a psychiatric disability in non-emergency situations.

59. The Hospital's policy and practice do not permit reasonable accommodation, exception, or waiver of the most intrusive and forcible searches including reasonable accommodation of a disabled patient's disability-related reluctance to remove her clothing.

60. The Hospital's policy and practice preclude the use of less-intrusive means such as wands or pat-down searches. This policy and practice is at odds with the practices in other hospital Emergency Departments, where pat-downs are considered sufficient to ensure safety for the patient and others.

61. The Hospital's policies and practices, described above, violate current standards of medical practice, as well as applicable legal and regulatory requirements.

**V. Legal Claims**

**CLAIMS AGAINST BETH ISRAEL DEACONESS MEDICAL CENTER**

**A. Title III of the Americans with Disabilities Act**

62. Plaintiff realleges and incorporates by reference paragraphs 1-61.

63. The Americans with Disabilities Act was passed in 1990 to “provide a clear and comprehensive national mandate for the elimination of discrimination against people with disabilities,” 42 U.S.C. §12101(b)(1). Congress explicitly defined discrimination to include “over-protective rules and policies,” “failure to make modifications to existing ... practices,” and “segregation, and relegation to lesser services,” 42 U.S.C. §12101(a)(5).

64. When Congress passed the ADA, it intended to “invoke the sweep of Congressional authority...in order to address the major areas of discrimination faced day to day by people with disabilities,” 42 U.S.C. §12101(b)(4), including in the area of “health services,” 42 U.S.C. 12101(a)(3).

65. Beth Israel Deaconess Medical Center is a “place of public accommodation” as that term is defined in Title III of the Americans with Disabilities Act, 42 U.S.C. 12181(7)(F), 28 C.F.R. 36.104. The ADA prohibits discrimination by a public accommodation against any individual on the basis of disability. 28 C.F.R. 36.201(a).

66. Ms. Sampson is an individual with a disability under the Americans with Disabilities Act because (a) her psychiatric impairments substantially limit major life activities, including caring for herself, working, and interacting with others; (b) Ms. Sampson was also regarded by defendants Richter and Hospital as being substantially limited in the ability to care for herself; and (c) Ms. Sampson has a history of psychiatric disabilities.

67. Because Ms. Sampson has received treatment at defendant Hospital for her chronic respiratory, migraine, and other medical difficulties for over two decades, it is virtually certain that she will continue to need the services of the Hospital's Emergency Department in the future. Because of her psychiatric difficulties, she is forced to risk being forcibly stripped when she seeks needed services at the Hospital.

### **Failure to Provide Reasonable Accommodations**

68. Title III of the ADA prohibits public accommodations from discriminating against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodations, 42 U.S.C. 12182(a). The definition of discrimination includes “failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.” 42 U.S.C. 12182(b)(2)(A)(ii).

69. The Hospital discriminated against Plaintiff on the basis of her disability in violation of 42 U.S.C. 12182(b)(2)(A)(ii) by failing to grant her the reasonable accommodation of waiving its requirement of removal of all clothing, despite Plaintiff’s willingness to remove most of her clothing, her consent to a pat-down, and the presence of a one-on-one observer.

70. Numerous other methods exist for meeting the Hospital’s legitimate safety concerns besides forcible removal of clothing, including using a wand, or pat-down or other methods of determining whether a patient is carrying objects to harm him or herself. In the absence of an individualized determination by a qualified mental health professional that a patient is so currently dangerous to him or herself that complete clothing removal was required, and forcible removal justified, defendant Hospital fails to meet the ADA’s requirement to make reasonable accommodations or modifications of policies.

71. The Hospital discriminated against Plaintiff on the basis of her disability in violation of 42 U.S.C. 12182(a) by requiring her to disrobe and by forcibly stripping her when she refused without an individualized determination of immediate necessity by a mental health professional, and without provision for reconsideration, reasonable accommodation or waiver because she was seen on the psychiatric side of the emergency room. Patients on the medical portion of the emergency room are not *required* to disrobe. They are asked to disrobe only upon a medical determination of a clear medical necessity and are not forcibly stripped if they refuse to disrobe.

### **Unequal Access to Services**

72. Title III of the ADA requires public accommodations to provide equal access to their services to people with disabilities, 42 U.S.C. § 12182(a), 28 C.F.R. 36.201(a). Defendant Hospital's policy and practice of requiring mandatory disrobing of patients in the psychiatric portion of the Emergency Department, including the removal of clothing by force, without an individualized determination of immediate necessity by a mental health professional, and without provision for reconsideration, reasonable accommodation or waiver, limits Ms. Sampson's access to defendant Hospital's services, as it forces Ms. Sampson to risk being forcibly stripped when she seeks needed services at the Hospital.

### **Discriminatory Eligibility Criteria**

73. Title III of the ADA prohibits public accommodations from applying eligibility criteria that single out individuals with disabilities and prevent them from fully and equally enjoying the services and advantages of the facility, unless those criteria are necessary for the provision of services offered by the facility, 42 U.S.C. 12182(b)(2)(A)(i), 28 C.F.R. 36.301(a).

74. In order to be eligible to receive psychiatric services at Beth Israel Deaconess Medical Center, patients in the psychiatric portion of the Emergency Department are subject to a search. The Hospital's policy and practice of requiring mandatory disrobing, including the removal of clothing by force, without an individualized determination of necessity by a mental health professional and without provision for reconsideration, reasonable accommodation or waiver screens out the Plaintiff from fully and equally enjoying the Hospital's services and advantages on the basis of her disability.

75. The policy and practice violate the ADA by placing an additional and unnecessary burden on patients in the psychiatric portion of the emergency room in order to receive the services of the Hospital.

76. While a public accommodation may impose "legitimate safety requirements" that are necessary for the safe operation of the facility, these requirements must be "based on actual risk and not on mere speculation, stereotypes, or generalizations about people with disabilities," 28 C.F.R. 36.301(b). The Hospital's practice violates the ADA because it requires mandatory

disrobing and forcible stripping without an individualized assessment by a mental health professional that the risk of harm to the individual's mental health from forcibly stripping her is outweighed by the risk of harm in permitting her to keep some or all of her clothing.

### **Discriminatory Methods of Administration**

77. The Americans with Disabilities Act prohibits public accommodations from adopting methods of administration that have the effect of discriminating on the basis of disability. 42 U.S.C. § 12182(b)(1)(D), 42 U.S.C. § 12182(b)(2)(A)(i), 28 C.F.R. 36. 204.

78. Beth Israel Deaconess Medical Center's policy and practice of requiring mandatory disrobing, including the removal of clothing by force, without an individualized clinical determination of necessity by a mental health professional, and without provision for reconsideration, reasonable accommodation or waiver, constitutes a method of administration that has the effect of discriminating on the basis of disability in violation of the ADA. 42 U.S.C. § 12182(b)(1)(D), 42 U.S.C. § 12182(b)(2)(A)(i), 28 C.F.R. 36.204.

### **B. Section 504 of the Rehabilitation Act**

79. Plaintiff realleges and incorporates by reference paragraphs 1-78.

80. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) provides that "no otherwise qualified individual with a disability... shall, solely by reason of his or her disability, be ...denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

81. Defendant Hospital receives federal funds for the purposes of the Rehabilitation Act through the Medicaid and Medicare programs. In order to receive Medicare and Medicaid reimbursements, defendant Beth Israel Deaconess Medical Center is required to assure the federal government in writing that it complies with the requirements of Section 504 of the Rehabilitation Act, and, upon information and belief, it has made these assurances.

82. Ms. Sampson is an individual with a disability under 504 of the Rehabilitation Act because her psychiatric impairments substantially limit major life activities, including caring for herself, working, and interacting with others. Ms. Sampson was also regarded by defendants Richter and Beth Israel Deaconess Medical Center as being substantially limited in the ability to

care for herself. Ms. Sampson also qualifies as an individual with a disability under Section 504 because of her history of psychiatric disabilities.

83. As a person in physical pain seeking medical attention, and a regular patient at Beth Israel Deaconess Medical Center, she was otherwise qualified to receive its services. Because Ms. Sampson has received treatment at Beth Israel Deaconess Medical Center for her respiratory, migraine, and psychiatric conditions for over two decades, it is virtually certain that she will continue to visit the Emergency Department at Beth Israel Deaconess Medical Center in the future; because of her psychiatric difficulties, she would be likely to use the services of the psychiatric portion of the Emergency Department in the future, but for the policy and practices of the defendant Hospital with regard to mandatory disrobing and forcibly stripping patients.

#### **Less Effective Services**

84. Regulations applicable to hospitals under Section 504 of the Rehabilitation Act prohibit affording a qualified handicapped person less effective or unequal services than those received by others, 45 C.F.R. 84.4(b)(1)(ii) and (iii). In addition, the regulations forbid limiting a qualified handicapped person in the enjoyment of any advantage or opportunity enjoyed by others receiving the services of the facility, 45 C.F.R. 84.4(b)(1)(vii).

85. By adopting a policy and practice requiring mandatory disrobing, including the removal of clothing by force, of any individual in the psychiatric emergency room, without an individualized determination of clinical necessity and with no provision for reasonable accommodations or modifications, the Hospital interferes with the trust needed to establish an effective doctor patient relationship, inflicts harm on patients with mental illness, and provides less effective treatment services.

86. When she was stripped of her clothing forcibly while being held down by male security guards, Ms. Sampson received less effective treatment services from the Hospital than medical patients who could receive treatment services without being subject to the Hospital policy of mandatory disrobement.

### **Failure to Provide Reasonable Accommodations**

87. Beth Israel Deaconess Medical Center's policy and practice of requiring mandatory disrobing, including the removal of clothing by force, without a determination of clinical necessity and without provision for reconsideration, reasonable accommodation or waiver, denies the reasonable accommodations required by Section 504 of the Rehabilitation Act to Ms. Sampson. Numerous other methods exist for meeting the Hospital's legitimate safety concerns besides forcible removal of clothing, including using a wand, pat-down, or other methods of determining if she is carrying objects to harm herself.

88. The Hospital's conduct in rejecting Ms. Sampson's request for the reasonable accommodation of considering the pat-down, despite the removal of most of her clothing, and the presence of the one-on-one as sufficient to ensure her safety on March 25, 2005 violated the requirements of Section 504 of the Rehabilitation Act to make reasonable accommodations or modifications of policies to afford individuals with disabilities access to their services.

89. The Hospital discriminated against Plaintiff on the basis of her disability in violation of 29 U.S.C. § 794(a) by requiring her to disrobe and forcibly stripping her when she refused without an individualized determination of immediate necessity by a mental health professional, and without provision for reconsideration, reasonable accommodation or waiver because she was seen on the psychiatric portion of the emergency room. Patients without psychiatric disabilities are not routinely required to disrobe, and are not forcibly stripped if they refuse.

### **Limiting the Participation of Qualified Handicapped Persons**

90. Section 504 of the Rehabilitation Act prohibits health care entities receiving federal funds from "providing benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons," 45 C.F.R. 84.52(a)(4). Beth Israel Deaconess Medical Center's policy and practice requiring mandatory disrobing and forcible removal of clothing without determination of clinical necessity or provision for reconsideration, reasonable accommodation or waiver, limits or has the effect of limiting the participation of Ms. Sampson in its services as it forces Ms. Sampson to risk being forcibly stripped when she seeks needed services at the Hospital.



### **Discriminatory Methods of Administration**

91. The regulations to Section 504 of the Rehabilitation Act specifically prohibit the use of criteria or methods of administration that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to handicapped persons, 45 C.F.R. 84.4(b)(4).

92. The “objectives of the program” of Beth Israel Deaconess Medical Center for purposes of 45 C.F.R. 84.4(b)(4) are to provide treatment to those in need of care, including individuals in psychiatric crisis. These objectives are “defeated or substantially impaired” when, Ms. Sampson is dissuaded from seeking care and treatment at the Hospital and has to choose between obtaining services or taking the risk that she will be forcibly stripped because of the Hospital’s policy and practice requiring mandatory disrobing and forcible removal of clothing without determination of clinical necessity or provision for reconsideration, reasonable accommodation or waiver in violation of 45 C.F.R. 84.4(b)(4).

93. Defendant Hospital’s policy and practice of requiring mandatory disrobing, including the removal of clothing by force, without an individualized clinical determination of necessity, and without provision for reconsideration, reasonable accommodation or waiver, violates the prohibition in Section 504 on methods of administration that have the effect of subjecting Ms. Sampson to discrimination on the basis of handicap. 45 C.F.R. 84.4(b)(4).

#### **C. Chapter 272, Section 98 of Massachusetts General Laws**

94. Plaintiff realleges and incorporates by reference paragraphs 1-93.

95. M.G.L. Ch. 272, Section 98, prohibits a place of public accommodation from making any distinction, discrimination or restriction on account of mental disability, and requires that all persons shall have the right to full and equal accommodations and facilities of any place of public accommodation. The Hospital is a place of public accommodation pursuant to M.G.L. Ch. 272, Section 92A(10). Ms. Sampson is a person with a mental disability under the statute. The Hospital discriminated against and imposed restrictions on Ms. Sampson on the basis of her mental disability in violation of her right to full and equal accommodations under this statute.

Ms. Sampson filed a timely complaint with the Massachusetts Commission Against Discrimination on Dec. 23, 2005, and has removed the action to this court, in fulfillment of statutory requirements necessary to bring an action under this statute.

96. Defendant Hospital violated M.G.L. Ch. 272, Section 98, by refusing her request for a reasonable accommodation to keep her pants, especially in light of the presence of a full-time sitter, her removal of most of her clothing, and her voluntary submission to a pat-down search. The Hospital also violated her rights by failing to make accommodations to her known psychiatric disability and history of severe sexual trauma when five male security guards held her down while she was stripped on the order of a Hospital nurse.

97. Plaintiff seeks declaratory and injunctive relief enjoining defendant Beth Israel Deaconess Medical Center from policies and practices that discriminate on the basis of psychiatric disability, including but not limited to: 1) requiring Ms. Sampson to disrobe completely without considering requests for reasonable accommodation to these requirements as a matter of both policy and practice; and 2) requiring Ms. Sampson to disrobe, and forcibly stripping her, without an individualized assessment and finding of clinical necessity by a mental health professional, taking into consideration her history of sexual and physical abuse.

98. Plaintiff also seeks compensatory damages from defendant Hospital.

#### **CLAIMS AGAINST BETH ISRAEL DEACONESS MEDICAL CENTER AND HEATHER RICHTER**

##### **D. Chapter 12, Section 11H and I of Massachusetts General Laws**

99. Plaintiff realleges and incorporates by reference paragraphs 1-98.

100. Beth Israel Deaconess Medical Center, by its policies and through its agent Ms. Heather Richter, interfered with Ms. Sampson's exercise and enjoyment of her statutory rights under both federal law and the law of the Commonwealth through threats, intimidation and coercion. As discussed above, Ms. Richter directly interfered with Ms. Sampson's exercise and enjoyment of her rights under both federal and state law.

101. When Nurse Richter repeatedly threatened Ms. Sampson with forcible stripping by male security guards, she used threats, intimidation and coercion to interfere with Ms. Sampson's rights, including her right to privacy when receiving medical treatment under MGL

Chapter 111, Section 70E(j), as well as her federal and state rights to receive medical treatment free from discrimination on the basis of disability. To condition her right to receive medical treatment on removal of her clothing, by force if necessary, violated Ms. Sampson's rights, and when she attempted to assert these rights, she was threatened, intimidated, and coerced.

102. Plaintiff seeks declaratory and injunctive relief enjoining defendant Beth Israel Deaconess Medical Center from policies and practices that discriminate on the basis of psychiatric disability, including but not limited to: 1) requiring Ms. Sampson to disrobe completely without considering requests for reasonable accommodation to these requirements as a matter of both policy and practice; and 2) requiring Ms. Sampson to disrobe, and forcibly stripping her, without an individualized assessment and finding of clinical necessity by a mental health professional, taking into consideration her history of sexual and physical abuse.

103. Ms. Sampson also seeks compensatory damages from both defendants.

**E. Negligence**

104. Plaintiff realleges and incorporates paragraphs 1-103.

105. On or about March 25, 2005, defendants Beth Israel Deaconess Medical Center and Heather Richter, undertook for compensation to provide care, treatment, and advice to Cassandra S. At all times relevant herein, Heather Richter was acting an agent, servant, and/or employee of Beth Israel Deaconess Medical Center, acting within the scope of that employment.

106. Beth Israel Deaconess Medical Center and Heather Richter owed Ms. Sampson a duty of care as a patient at the Hospital on the day of March 25, 2005.

107. In attending to Ms. Sampson, the defendant, Heather Richter, was negligent in failing to provide acceptable medical care and in failing to exercise that degree of skill, care, and diligence that is exercised by the average qualified practitioner engaged in practice at a professional level such as that in which the defendant was then engaged.

108. Defendants further breached their duty to the plaintiff when, among other things, they forced her to comply with Beth Israel Deaconess Medical Center's policy requiring her to take her pants off, when they knew or should have known on the basis of her past history that requiring Ms. Sampson to take off her clothing would cause her substantial emotional and potential physical harm, and which in fact did cause her substantial emotional and physical harm.

109. Defendants further breached their duty to the plaintiff when, among other things, they allowed security guards to assault and forcibly strip Ms. Sampson of her pants, leaving her bruised and crying in pain, and causing her substantial emotional and physical harm.

110. Defendant Heather Richter owed Ms. Sampson a duty of care as her nurse. By, among other things, insisting that Ms. Sampson remove her clothing even when told of Ms. Sampson's sexual abuse history; failing to consult Ms. Sampson's therapist when such consultation was readily available; refusing Ms. Sampson's request for a patient advocate, and ordering the forcible stripping of Ms. Sampson by male security guards, Nurse Richter violated her duty of care to Ms. Sampson, causing Ms. Sampson substantial emotional and physical harm.

111. As a direct and proximate consequence of the defendants' conduct, Ms. Sampson suffered, and continues to suffer severe physical and emotional injuries, including, but not limited to, bruising, increased migraines, and a greatly deteriorated psychiatric condition. As a direct result of the defendants' conduct, Ms. Sampson attempted suicide. Ms. Sampson has suffered terrifying nightmares and increased flashbacks of her childhood sexual abuse and was hospitalized for months at several different facilities. She was unable to return to Emergency Departments for any kind of treatment for months after her forcible stripping by male guards, and required substantial treatment to enable her to do so.

**F. Intentional or Reckless Infliction of Emotional Distress**

112. Plaintiff realleges and incorporates by reference paragraphs 1-111.

113. Nurse Richter and Beth Israel Deaconess Medical Center knew or should have known that its conduct, including, but not limited to, ordering four or more male security guards to forcibly strip a female patient with a psychiatric disability stemming from severe sexual abuse as a child was likely to cause emotional distress. Both Beth Israel Deaconess Medical Center and Nurse Richter were on notice that Ms. Sampson had a history of severe sexual abuse when Nurse Richter ordered security guards to forcibly strip Ms. Sampson.

114. The defendants' conduct, including, but not limited to, gang-stripping of a woman known to have a history of severe sexual abuse by a group of male security guards was extreme and outrageous, and beyond all possible bounds of decency in a hospital setting where patients

can expect to receive care and treatment. The defendants' conduct is utterly intolerable in a civilized community.

115. As a direct and proximate cause of the defendants' conduct the plaintiff suffered, and continues to suffer, severe emotional distress. Further, as a direct and proximate cause of the defendants' conduct, the plaintiff attempted suicide, and required inpatient hospitalization for months.

**G. Assault and Battery**

116. Plaintiff realleges and incorporates by reference paragraphs 1-115.

117. The defendants placed Ms. Sampson in reasonable fear of imminent physical harm when, among other things, Nurse Richter and another hospital nurse repeatedly threatened that the security guards would strip her forcibly.

118. Despite being on notice that Ms. Sampson was a patient with a severe history of sexual abuse, and despite Ms. Sampson's attempts in good faith to meet the Hospital and Ms. Richter's requirements by taking off her blouse, socks and shoes, and by submitting to a pat-down, the defendants caused and allowed security guards to forcibly restrain and strip the plaintiff.

119. As a result of defendants' conduct the plaintiff suffered, and continues to suffer, severe emotional and physical injuries.

**VI. Relief**

Because plaintiff will suffer irreparable harm in the absence of permanent injunctive relief, and respectfully requests this Court to:

1. Assume jurisdiction over this action.
2. Enter a declaratory judgment finding that defendant Hospital violates the ADA, Section 504 of the Rehabilitation Act, and M.G.L. Chapter 272, Section 98, because it discriminates against persons with psychiatric disabilities by: 1) requiring them, but not medical patients, to disrobe for reasons unrelated to the assessment to be performed; 2) by enforcing the disrobing requirement by force on psychiatric patients, but not on medical patients who refuse to disrobe; 3) by

not ensuring that there is an individualized assessment by a psychiatric professional prior to forcibly stripping a psychiatric patient; 4) by failing to make any provision for reasonable accommodation on the basis of an individual's psychiatric disability; and 5) by not permitting waiver of the requirement for complete clothing removal on the basis of disability.

3. Issue injunctive relief ordering the Hospital to 1) treat Ms. Sampson the same whether she seeks medical or psychiatric care; 2) require an individualized assessment of Ms. Sampson by a psychiatric professional with written findings before she is required to disrobe or be forcibly stripped, except in immediate emergencies; 3) allow for reasonable accommodations for Ms. Sampson's psychiatric disability; and 4) permit a waiver of the disrobing and forced stripping policy for Ms. Sampson.
4. Award plaintiff her costs and reasonable attorney's fees, as permitted under 42 U.S.C. §2205, 29 U.S.C. §794a(b), M.G.L. Chapter 272, Section 98 (by reference to M.G.L. Chapter 151B, Section 5) and M.G.L. Chapter 12, Section 11I.
5. Award plaintiff compensatory damages of over one million dollars under 29 U.S.C. 794, M.G.L. Chapter 272, Section 98 (by reference to M.G.L. Chapter 151B, Section 5), M.G.L. Chapter 12, Section 11H and I, and state tort claims.
6. Award plaintiff such other and further relief as the Court may deem just and appropriate.

Plaintiff demands a jury trial on all claims for which she is entitled to a jury, including her claim for damages under Section 504 of the Rehabilitation Act, M.G.L. Ch. 272, Sec. 98, M.G.L. Ch. 12, Section 11H and I, and under the state claims of negligence, intentional or reckless infliction of emotional distress, and assault and battery for compensatory and punitive damages.

Respectfully Submitted,

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