

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CASSANDRA SAMPSON
Plaintiff,

v.

BETH ISRAEL DEACONESS MEDICAL CENTER,
HEATHER A. RICHTER,
and Dr. KELLY CORRIGAN
Defendants.

CIVIL ACTION NO.
06-10973 DPW

SECOND AMENDED COMPLAINT

I. Introduction

1. This case is brought against Beth Israel Deaconess Medical Center (“the Hospital”), Dr. Kelly Corrigan (“Corrigan”), a physician at the Hospital, and Heather Richter (“Richter”), who worked as a nurse at the Hospital, arising out of the physical restraint, assault, and forced stripping of the plaintiff, Cassandra Sampson, a woman with a history of severe sexual abuse. This restraint and forced stripping was done by five male Hospital security guards on the orders of defendants Corrigan and Richter, pursuant to the Hospital’s mandatory disrobing policy, which permits restraint and 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 restrained and forcibly stripped. Although Ms. Sampson went to the Hospital’s Emergency Department voluntarily for treatment of cluster migraines, she was involuntarily detained, then physically restrained 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. Defendant Richter ordered and Defendant Corrigan authorized the forcible restraint and stripping of Ms. Sampson in violation of federal and state regulations and without mental health consultation about the need to forcibly strip Ms. Sampson. In addition, neither defendant considered the use of available less intrusive methods of meeting any alleged safety concerns. Finally, 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 without the use of force.

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 Corrigan for damages for interference with the plaintiff's civil rights under the Massachusetts Civil Rights Act, as well as for malpractice, assault, battery, and intentional or reckless infliction of emotional distress.

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

II. Parties

6. 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.

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

8. Defendant Kelly Corrigan is a physician who works at the Beth Israel Deaconess Medical Center. She is a citizen of the Commonwealth of Massachusetts.

9. Defendant Heather A. Richter is a citizen of the State of California. She worked at Beth Israel Deaconess Medical Center on March 25, 2005, as a nurse in the Emergency Department.

III. Jurisdiction

10. 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 diversity jurisdiction over the state claims against defendant Richter under 28 U.S.C. §1332, and supplemental jurisdiction over state claims against defendants Beth Israel Deaconess Medical Center and Corrigan under 28 U.S.C. §1367.

IV. Facts

11. 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.

12. 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 also has a record of psychiatric disabilities that were substantially limiting and was regarded by defendants Corrigan, Richter and Beth Israel Deaconess Medical Center as being substantially limited in her ability to care for herself.

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

14. Ms. Sampson has used the clinical and emergency services of defendant Hospital to treat these conditions for over two decades. Because Ms. Sampson's medical doctors practiced at Beth Israel Deaconess Medical Center, she has often sought 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.

15. 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 physically restrained and forcibly stripped of her clothing in any other Emergency Department, despite her history of serious self-injury and her reluctance to remove her pants.

16. 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. On

March 24, 2005, she called the office of her neurologist, Dr. Bajwa, who treated her migraines. Dr. Bajwa's assistant told her to reduce the dosage of Toradol she had been taking, which she did.

The Events of March 25, 2005

17. 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 assistant 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. Kreigel by telephone, and the doctor advised her to go to the Hospital's Emergency Department for treatment of her migraines.

18. There is no evidence in the Ms. Sampson's medical 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 restrain and forcibly strip and search Ms. Sampson.

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

20. During her admission to the Hospital, Ms. Sampson was calm. She was not suicidal nor did she have any desires to injure herself. During the routine triage procedures, Ms. Sampson told the triage nurse that she had been struggling with safety issues.

21. The triage nurse did not ask Ms. Sampson any further questions about her psychiatric condition, but told her that 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 (called “the Yellow Zone” at Beth Israel Deaconess Medical Center) for assessment.

22. Upon Ms. Sampson’s arrival in the Yellow Zone, defendant Richter assigned Ms. Sampson to a room, where, pursuant to hospital policy, she was watched by one or more “sitters” (aides who sit outside the door of the room) to provide continuous one-on-one monitoring of Ms. Sampson.

23. 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 (the “Yellow Zone”) to disrobe or be restrained and forcibly stripped if they refuse. The Hospital does not require an individualized assessment of the patient’s risk by a mental health professional prior being restrained and forcibly stripped. Nor does it consider any request for accommodation, or the use of less intrusive means such as pat-downs or wands. Although the Hospital has wands for this purpose, they have never been used. Patients on the *medical* portion of the Emergency Department are not routinely asked to disrobe for reasons unrelated to their medical assessment or to prevent them from leaving the Emergency Department, and they are not restrained or forcibly stripped.

24. Consistent with this policy, Ms. Richter informed Ms. Sampson 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 a risk of self-injury or whether she was carrying anything she might use to hurt herself or others.

25. 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 that she be permitted to keep her pants. Similar requests h to staff at the Emergency Department of the Hospital as well as to emergency departments of other hospitals had always been honored, and had never resulted in restraint and forcible stripping.

26. 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.

27. 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.

28. Dr. Tarina Kang, a medical resident assigned to the Emergency Department,, arrived to assess Ms. Sampson's condition. Ms. Sampson again requested to keep her pants on due to her history of sexual abuse. Dr. Kang 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, Dr. Kang conducted the pat-down herself, which included reaching under the legs of Ms. Sampson's pants to search for contraband.

29. After conducting the pat-down, Dr. Kang found no evidence of any unsafe object or threat to safety.

30. 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.

31. However, after Dr. Kang left, defendant Richter once again demanded that Ms. Sampson remove her pants, even though Ms. Sampson was calm. Defendant Richter made this demand without asking Ms. Sampson whether she felt safe, without determining that Ms. Sampson presented any immediate risk to herself or others, without documenting the need for an intrusive personal search, and without obtaining a clinical determination that one was necessary from a mental health professional.

32. At some point during these events, the designated clinician, Jean Christofferson, 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.

33. Ms. Christofferson 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.

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

35. 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.

36. Defendant Richter brought in another nurse, Deb Melia, 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.

37. During this entire time, defendant Richter did not ask for a mental health consultation. Ms. Richter did not call Beverly Zalek, Ms. Sampson's psychotherapist for a consultation, even though Zalek's phone number was readily available. She made no effort to contact Dr. Kriegel, Ms. Sampson's primary care physician who had referred her to the Emergency Department. Nor did she contact the patient advocate.

38. 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.

39. 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.

40. Instead, Defendant Richter called five male security guards and instructed them to physically restrain Ms. Sampson and forcibly strip off her pants.

41. After the security guards began to restrain Ms. Sampson, Ms. Richter stepped into the hallway and told Dr. Kelly Corrigan, Ms. Sampson's attending physician, that Ms. Sampson

needed to be restrained because she refused to remove her clothing. Ms. Richter asked Dr. Corrigan to authorize the restraint.

42. Dr. Corrigan, who was outside the room, authorized the restraint without first examining Ms. Sampson, even though she was only several feet away from Ms. Sampson's room. Dr. Corrigan did not ask Nurse Richter whether Ms. Sampson was calm or agitated, whether she presented any immediate risk to herself or others, whether she had any medical or psychiatric contraindications to restraint, whether there were any less restrictive alternatives to the restraint, whether Nurse Richter had attempted to obtain a mental health consultation, or whether Richter had attempted to call Beverly Zalek, Ms. Sampson's therapist, or Dr. Kriegel, her primary care physician. Nor did Dr. Corrigan herself speak with Ms. Sampson to ask if she had any thoughts of self-injury, had any items which could be used to injure herself or others, or assess Ms. Sampson's condition. In fact, Dr. Corrigan did not ask Richter or Sampson anything relating to the need to remove Ms. Sampson's pants by force but simply orally authorized the restraint.

43. Neither Nurse Richter nor Dr. Corrigan ever documented their conversation. Nor did Dr. Corrigan ever sign a written order authorizing or documenting the restraint. In fact, Dr. Corrigan was unaware of any Beth Israel Deaconess Medical Center protocol or policy regarding the use of restraint at the time.

44. On Nurse Richter's order, the security guards physically restrained 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.

45. 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.

46. As she was being restrained, 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.

47. After the restraint and forcible stripping, Defendant Richter told Ms. Sampson she had only herself to blame for the use of force.

48. 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.

49. Several hours later, Ms. Jean Christofferson assessed Ms. Sampson. This was the first time that anyone with mental health training had even met Ms. Sampson, let alone conducted a clinical mental health evaluation. Ms. Sampson, who was profoundly traumatized by being restrained and forcibly stripped, explained what had happened. Ms. Christofferson sought to obtain a patient advocate for Ms. Sampson, but no patient advocate ever came to speak to Ms. Sampson.

50. Ms. Sampson was found to not be a threat to herself or others and to not meet the commitment standard by the independent evaluators that determine whether a patient qualifies for inpatient admission (the BEST team). She was transferred to the medical portion of the Emergency Department and discharged the following morning.

Injuries to Ms. Sampson

51. As a result of the March 25, 2005 restraint, assault and stripping by security guards, Ms Sampson 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.

52. 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 and 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

53. 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.

54. 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 restrained and forcibly stripped, the patient advocate advised her to “just let it go.”

55. 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).

56. 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 restrained and forcibly stripped of her clothing. The Hospital has never retreated from nor rescinded this letter to Ms. Sampson.

57. 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 to be searched, including forcible searches

and stripping if patients refuse. However, even that policy fails to provide for any exception, waiver or accommodation for a patient's disability, and fails to require a contemporaneous, individualized assessment by a mental health professional of the immediate need for a personal search, restraint, or forcible stripping in the absence of a clear emergency.

58. Because forcible stripping involves physical restraint, it can only take place in response to a clear emergency, when less restrictive methods are not effective. It must be authorized in writing by a licensed independent professional. Under state law and accepted professional standards, the fact that a patient is on suicidal or self-harm precautions does not, by itself, constitute sufficient reason for forcible restraint.

59. 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 most or 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 restraint and forcible stripping if the patient refuses.

60. The Hospital's policy and practice of requiring psychiatric patients to disrobe, and restraining and forcibly stripping patients who refuse to remove their clothing, is applied on the basis of a three to five-minute triage interview by a busy nurse who may have little or no mental health training. The policy is applied without seeking any assessment of immediate level of risk by a mental health professional, even though an office staffed with psychiatric professionals is immediately adjacent to the emergency department. It is applied without consideration of imminence of risk, availability of less intrusive means to ensure safety, history

of sexual abuse or trauma, or any other individual medical or psychiatric contraindications to physically restraining and forcing a patient to remove her clothes.

61. Because of her history of self-injury, 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, regardless of whether she is at any actual risk of suicide or self-harm. If she refuses, she will be restrained and forcibly stripped, regardless of whether she is calm, regardless of whether she presents any risk of self injury, regardless of whether she requests an accommodation because of her disability, and regardless of the availability of less intrusive means to ensure safety.

62. 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 involuntary or forcible restraint by others brings flashbacks, renewed trauma, and destroys any trust they may have built with their treaters. 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. Physical restraint and 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.

63. It is well recognized in the mental health profession that in the absence of an emergency, an individualized assessment should be made by a mental health professional before

restraining and 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 results in extreme agitation and panic, and exacerbates existing psychiatric conditions including anxiety, depression, and post-traumatic stress disorder.

64. The Hospital's policy and practice, both on March 25, 2005, and today, do not require a contemporaneous mental health assessment, a determination of clinical necessity, and a written order by a licensed independent professional prior to the physical restraint and forcible stripping of an individual with a psychiatric disability in nonemergency situations.

65. The Hospital's policy and practice, both on March 25, 2005 and today, 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 refusal to remove her clothing.

66. The Hospital's policy and practice, both on March 25, 2005 and today, preclude the use of less intrusive means to ensure safety 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.

67. The Hospital's policies and practices, both on March 25, 2005 and today, permit the forcible physical restraint of patients to remove their clothing without meeting criteria for restraint, without the written order of a licensed independent practitioner, and without the patient being assessed within an hour by the licensed independent practitioner, as required by current state, federal, and professional standards.

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

V. Legal Claims

CLAIMS AGAINST BETH ISRAEL DEACONESS MEDICAL CENTER

A. Title III of the Americans with Disabilities Act

69. Plaintiff realleges and incorporates by reference paragraphs 1-68.

70. 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).

71. 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).

72. 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).

73. 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.

74. 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 restrained and forcibly stripped when she seeks needed services at the Hospital.

Failure to Provide Reasonable Accommodations

75. 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).

76. 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.

77. Numerous other methods exist for meeting the Hospital's legitimate safety concerns besides physical restraint and 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 presently dangerous to him or herself that complete clothing removal is required, that restraint is necessary and legally authorized, and that forcible removal of clothing is justified, defendant Hospital fails to meet the ADA's requirement to make reasonable accommodations or modifications of policies.

78. 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, using physical restraint to hold her down, and by forcibly stripping her when she refused to disrobe without an individualized clinical determination of immediate necessity by a mental health professional. The Hospital further discriminated against Plaintiff by not affording her any reconsideration, reasonable accommodation or waiver, solely because she was seen on the psychiatric side of the Emergency Department. Patients on the medical portion of the Emergency Department are not *required* to disrobe. They are asked to disrobe only upon a medical determination of a medical necessity and are not restrained and forcibly stripped if they refuse to disrobe.

Unequal Access to Services

79. 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 use of physical restraint and removal of

clothing by force, without an individualized clinical 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. It also forces Ms. Sampson to risk being physically restrained and forcibly stripped when she seeks needed services at the Hospital.

Discriminatory Eligibility Criteria

80. 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).

81. In order to be eligible to receive psychiatric services at Beth Israel Deaconess Medical Center, most if not all 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 physical restraint and 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, screens out the Plaintiff from fully and equally enjoying the Hospital's services and advantages on the basis of her disability.

82. The policy and practice violate the ADA by placing an additional and unnecessary burden on patients with psychiatric disabilities, such as Ms. Sampson, that result in great pain and suffering from having to remove clothing in order to receive the services offered Defendant's Emergency Department and Hospital.

83. 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 that disrobing is necessary and that the risk of harm to the individual’s mental health from physically restraining and forcibly stripping her is outweighed by the risk of harm in permitting her to keep some or all of her clothing. Even if the Hospital policy allowing physical restraint and forcible stripping only applies to people with suicidal ideation who refuse to disrobe, this category is broader than necessary to fulfill legitimate safety requirements. In fact, the Hospital’s policy increases rather than decreases the risk to safety for patients and staff.

Discriminatory Methods of Administration

84. 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.

85. Beth Israel Deaconess Medical Center’s policy and practice of requiring mandatory disrobing, including physical restraint and 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. This

method conditions the availability of its services on compliance with a rule that places an unnecessary burden on plaintiff by reason of her disability.

B. Section 504 of the Rehabilitation Act

86. Plaintiff realleges and incorporates by reference paragraphs 1-85.

87. 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.”

88. 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.

89. 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.

90. 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 physically restraining and forcibly stripping patients.

Less Effective Services

91. 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).

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

93. When she was restrained and forcibly stripped 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 restraint and mandatory disrobement.

Failure to Provide Reasonable Accommodations

94. Beth Israel Deaconess Medical Center's policy and practice of requiring mandatory disrobing, including physical restraint and 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 the use of physical restraint and forcible removal of clothing, including using a wand, pat-down, or other methods of determining if she is carrying objects to harm herself.

95. The Hospital's conduct in rejecting Ms. Sampson's request for the reasonable accommodation through the use of a pat-down, the removal of most of her clothing, and the presence of the one-on-one sitter 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.

96. 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 physically restraining 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 Department. Patients without psychiatric disabilities are not routinely required to disrobe, and are not physically restrained and forcibly stripped if they refuse.

Limiting the Participation of Qualified Handicapped Persons

97. 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 a 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, since it forces Ms. Sampson to risk being physically restrained and forcibly stripped when she seeks needed services at the Hospital.

Discriminatory Methods of Administration

98. 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).

99. 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 restrained and forcibly stripped if she requires a psychiatric evaluation. As a result, the Hospital’s policy and practice requiring mandatory disrobing and forcible removal of clothing without a determination of clinical

necessity or provision for reconsideration, reasonable accommodation or waiver violates 45 C.F.R. 84.4(b)(4).

100. Defendant Hospital's policy and practice of requiring mandatory disrobing, through physical restraint and 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

101. Plaintiff realleges and incorporates by reference paragraphs 1-100.

102. 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.

103. Defendant Hospital violated M.G.L. Ch. 272, Section 98, by refusing her request for a reasonable accommodation to keep her pants on, especially in light of the presence of a full-

time sitter, the 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 physically restrained while she was forcibly stripped on the order of a Hospital doctor.

104. Plaintiff seeks declaratory and injunctive relief enjoining defendant Beth Israel Deaconess Medical Center from continuing its 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 physically restraining 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.

105. Plaintiff also seeks compensatory damages from defendant Hospital.

**CLAIMS AGAINST BETH ISRAEL DEACONESS MEDICAL CENTER,
DR. CORRIGAN, AND HEATHER RICHTER**

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

106. Plaintiff realleges and incorporates by reference paragraphs 1-105.

107. Beth Israel Deaconess Medical Center, by its policies and through its agents Dr. Kelly Corrigan and 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, Dr. Corrigan and Ms. Richter directly interfered with Ms. Sampson's exercise and enjoyment of her rights under both federal and state law.

108. When Nurse Richter repeatedly threatened Ms. Sampson with physical restraint and 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 and her right under state law to be free from physical assault and restraint in the absence of an emergency. 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.

109. When Dr. Kelly Corrigan authorized the restraint of Ms. Sampson without examining her or considering less restrictive alternatives, without a determination of an imminent risk of harm to self or others, and without even observing Ms. Sampson, she interfered with Ms. Sampson's rights to be free from unnecessary restraint under federal regulations and state law, as well as her right to be free from restraint used as a means of coercion.

110. Plaintiff seeks declaratory and injunctive relief enjoining defendant Beth Israel Deaconess Medical Center from continuing its 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 restraining 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.

111. Ms. Sampson also seeks compensatory damages from the Hospital, Dr. Corrigan, and Ms. Richter for these illegal actions.

F. Negligence

112. Plaintiff realleges and incorporates paragraphs 1-111.

113. On or about March 25, 2005, defendants Beth Israel Deaconess Medical Center, Dr. Kelly Corrigan, and Heather Richter, undertook for compensation to provide care, treatment, and advice to Cassandra Sampson. At all times relevant herein, Dr. Kelly Corrigan and Heather Richter were acting as agents, servants, and/or employees of Beth Israel Deaconess Medical Center, acting within the scope of that employment.

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

115. 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 Nurse Richter was then engaged.

116. In attending to Ms. Sampson, defendant Kelly Corrigan 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 Dr. Corrigan was then engaged.

117. Defendants further breached their duty to the plaintiff when, among other things, they physically restrained and forcibly stripped her in compliance with Beth Israel Deaconess Medical Center's policy requiring her to remove her pants when they knew or should have

known on the basis of her past history that restraining her and removing her pants by force would cause her substantial emotional and potential physical harm, and which in fact did cause her substantial emotional and physical harm.

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

119. 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; failing to inquire about the potential for use of less restrictive alternatives; refusing Ms. Sampson's request for a patient advocate, and ordering the physical restraint and forcible stripping of Ms. Sampson by male security guards without ever independently determining whether Ms. Sampson presented any kind of safety risk, Nurse Richter violated her duty of care to Ms. Sampson, causing Ms. Sampson substantial emotional and physical harm.

120. Dr. Kelly Corrigan owed Ms. Sampson a duty of care as her attending physician. By, among other things, orally authorizing a physical restraint without first examining and assessing Ms. Sampson, who was in a room a few feet away, without seeking consultation from knowledgeable and available mental health professionals, without inquiring about the existence of less restrictive alternatives, without making a determination that Ms. Sampson presented an imminent risk of harm, and without taking the responsibility for determining the existence of an

emergency sufficient to justify restraint, Dr. Corrigan violated her duty of care to Ms. Sampson, causing Ms. Sampson substantial emotion and physical harm.

121. Defendant Beth Israel Deaconess Medical Center was also negligent in developing, implementing and enforcing a policy requiring forcible removal of psychiatric patients' clothing without any opportunity for waiver, exceptions, or individual mental health examinations, when it knew or should have known that many psychiatric patients have traumatic sexual abuse histories such that forcible clothing removal would foreseeably cause substantial psychiatric and potential physical harm.

122. 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.

G. Intentional or Reckless Infliction of Emotional Distress

123. Plaintiff realleges and incorporates by reference paragraphs 1-122.

124. Nurse Richter, Dr. Corrigan, and Beth Israel Deaconess Medical Center knew or should have known that their conduct, including, but not limited to, ordering five male security guards to physically restrain and forcibly strip a female patient with a psychiatric disability stemming from severe sexual abuse as a child was likely to cause emotional distress. Beth Israel

Deaconess Medical Center, Dr. Corrigan, and Nurse Richter were on notice or should have been on notice that Ms. Sampson had a history of severe sexual abuse when Nurse Richter ordered security guards to forcibly strip Ms. Sampson and Dr. Corrigan authorized such restraint without examining Ms. Sampson.

125. The defendants' conduct, including, but not limited to, 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.

126. 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.

H. Assault and Battery

127. Plaintiff realleges and incorporates by reference paragraphs 1-126.

128. 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.

129. 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. Nurse Richter and Dr. Corrigan are jointly responsible in that the assault was instigated by Richter and approved by Corrigan without investigation.

130. 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 Ms. Sampson's rights under the ADA, Section 504 of the Rehabilitation Act, and M.G.L. Chapter 272, Section 98, by discriminating against her in the following ways: 1) promulgating over-protective rules and policies applicable to patients with psychiatric disabilities such as Ms. Sampson regarding required clothing removal, leading to the unnecessary use of force and restraint on Ms. Sampson and other patients with psychiatric disabilities; 2) informing Ms. Sampson that she would always be required to remove her clothing whenever she went to the psychiatric portion of the Emergency Department in the future, regardless of her mental condition or emotional state; 3) refusing to make reasonable modifications to its practices and policies regarding clothing removal, when Ms. Sampson requested those modifications on March 25, in its subsequent letter to her, and up to the current day;; 4) failing to require an individualized assessment by a mental health professional prior to restraining and forcibly stripping Ms.

Sampson; 5) restraining and stripping Ms. Sampson in a situation that is not an emergency.

3. Issue injunctive relief enjoining the Hospital 1) from applying its current search/disrobing policy to Ms. Sampson; 2) to modify its search/disrobing policy to permit consideration of requests for reasonable accommodations on the basis of disability, including reasonable accommodations for people with psychiatric disabilities such as wandering, two-on-one observation, or immediate assessment by a mental health professional; 3) to conduct an individualized assessment of Ms. Sampson by a mental health professional and written findings prior to initiating any requirement of clothing removal unless Ms. Sampson meets current professional standards for immediate restraint; and 4) from restraining Ms. Sampson in the future unless she meets the current professional standards for restraint as set forth in current law and regulations.
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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