

## FOURTH CIRCUIT UPHOLDS DISMISSAL OF RACE DISCRIMINATION CLAIM BROUGHT AFTER PHYSICIAN'S MEDICAL STAFF PRIVILEGES WERE NOT RENEWED

The Plaintiff, a board-certified obstetrician and gynecologist, was initially granted clinical privileges at a North Carolina Hospital (the "Hospital") in 2010. Privileges were granted according to the Medical Staff Bylaws. Notably, in this jurisdiction, the Bylaws "formed a contract" between Plaintiff and the Hospital.

In May 2017, Plaintiff was informed that she would not be reappointed clinical privileges, which would expire the following month. Pursuant to the Bylaws, Plaintiff requested a hearing in disagreement with the Hospital's decision. Plaintiff argued that the Hospital had not followed the Bylaws and that the decision to not renew her privileges "exhibited an abject lack of fairness" and deprived her of adequate process in contravention of the Bylaws. During the hearing, Plaintiff presented evidence that contradicted the clinical concerns that were raised.

The Hospital, on the other hand, did not present witnesses with "actual knowledge" of the claimed events demonstrating improper patient care. Further, the Hospital did not produce a witness who reviewed the relevant medical records nor did the Hospital conduct interviews with any of the patients or medical providers involved in the claimed events. The Hospital solely relied on a three-page summary of the events prepared by a physician from another Hospital. This physician was also not called to testify at the hearing.

The Plaintiff also took issue with the physicians on the Hearing Panel. One physician was a surgeon without any experience in obstetrics and gynecology and the other two were direct competitors of Plaintiff who stood to benefit from the suspension of Plaintiff's privileges. At the conclusion of the hearing, the Hospital affirmed its original decision to deny Plaintiff's appeal for reinstatement of clinical privileges. Subsequently, Plaintiff brought suit in federal court alleging race discrimination in violation of 42 U.S.C. §1981 together with certain state law claims.

By way of background, in *Comcast Corp. v. National Ass'n of African American-Owned Media*, 140 S. Ct. 1009 (2020), the Supreme Court articulated a new standard required of discrimination claims brought under Section 1981. Specifically, the Court ruled that the plaintiff must be able to show that any interference with "a contractual interest would not have happened but for the plaintiff's race."

Initially, in the physician's lawsuit, the District Court denied the Hospital's motion to dismiss Plaintiff's Section 1981 claim applying an incorrect standard - that Plaintiff properly alleged that race was merely a factor in the Hospital's decision. After being alerted that the incorrect standard was applied, the District Court revisited its prior order, applied the correct "but-for" causation standard and granted the Hospital's motion to dismiss Plaintiff's §1981 claim.

On appeal, the Fourth Circuit Court of Appeals **held** the District Court had discretion to revisit its Order and apply the correct standard, resulting in a different decision. Plaintiff's complaint contained "extensive and specific allegations regarding [the Hospital's] failure to abide by the Bylaws during the hearing process" but "conspicuously absent" were "factual details regarding race." Thus, Plaintiff's §1981 claim was properly dismissed because she failed to meet the correct standard.

### PRACTICAL TAKEAWAYS

This case is a reminder of the standard required for litigants making Section 1981 race discrimination claims. No longer may § 1981 claims be proved if race is merely a factor in the employer's decision. Allegations must include this higher "but-for" standard, and litigants failing to make this type of but-for allegation will find their claims subject to early dismissal.

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