

Clapp, Peterson, Van Flein,
Tiemessen & Thorsness, LLC
711 H Street, Suite 620
Anchorage, Alaska 99501-3454
(907) 272-9272 fax (907) 272-9586

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARILYN A. COPPE,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL A. BLEICHER, M.D.)
)
 Defendant.)
) Case No. 3AN-05-6006 CI

ANSWER TO THIRD AMENDED COMPLAINT

Comes now Michael A. Bleicher, M.D. by and through his attorneys, Clapp, Peterson, Van Flein, Tiemessen & Thorsness, LLC, hereby admits, denies, states and alleges as follows in response to the third amended complaint of Marilyn A. Coppe.

JURISDICTION AND VENUE

1. Admit.

DEMAND JURY TRIAL

2. Dr. Bleicher incorporates by reference all answers set forth in paragraph 1.

3. In paragraph 3 of her third amended complaint, Plaintiff demanded a jury trial. Defendant joins in that demand.

SUMMARY OF GENERAL ALLEGATIONS

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2 4. Dr. Bleicher incorporates by reference all answers set forth in
3 paragraphs 1-3.

4 5. Admit.

5 6. Deny that Dr. Bleicher was “responsible for precipitating this action” or
6 that it was “perpetrated.” Admit that Dr. Bleicher is a surgeon who practiced at
7 4001 Laurel Street in Anchorage Alaska and that Dr. Bleicher co-owned the condo
8 unit designated therein as Suite 209. All other allegations in paragraph 6 of
9 Plaintiff’s third amended complaint are denied
10

11 7. Admit that Plaintiff was employed from November 28, 1994 to October
12 10, 2003 by Dr. Bleicher, as a secretary. All other allegations in paragraph 7 of
13 Plaintiff’s third amended complaint are denied

14 8. Deny.

15 9. Deny.

16 10. Deny allegations in paragraph 10 of Plaintiff’s third amended
17 complaint in general, and specifically deny that Dr. Michael Bleicher ever
18 prescribed Plaintiff any medication.
19

20 11 Deny allegations in paragraph 11 of Plaintiff’s third amended
21 complaint in general, and specifically deny that Dr. Michael Bleicher ever evaluated
22 Plaintiff or referred her to other doctors. Further, Dr. Michael specifically denies
23 that he was required to provide general employee health insurance to Plaintiff.
24

25 12. Deny.

1 13. Admit that Nortech drafted a report dated June 16, 2003. All other
2 allegations in paragraph 13 of Plaintiff's third amended complaint are denied.

3 14. Deny.

4 15. Admit that in 2003, either Plaintiff or her husband reported concerns
5 to Alaska Division of Occupational Safety and Health. Admit that Plaintiff was
6 placed on unpaid leave as of October 3, 2003. All other allegations in paragraph
7 15 of Plaintiff's third amended complaint are denied.

8 16. Deny.

9 17. Deny allegations in paragraph 17 in general, and specifically object to
10 the mention of the letter of reference, which was offered as part of a mediated
11 settlement that Plaintiff accepted and then repudiated. Use of the letter of
12 reference by Plaintiff would be contrary to her repudiation of the settlement and
13 would be actionable.
14

15
16 **COUNT ONE**
17 **COMPLAINT FOR NEGLIGENT EXPOSURE OF TOXINS,**
18 **BIO-HAZARDS, AND AIR-BORN CONTAMINANTS.**

19 18 Dr. Bleicher incorporates by reference all answers set forth in
20 paragraphs 1-17.

21 19. Deny allegations in paragraph 19 of Plaintiff's third amended
22 complaint in general, and specifically deny that Plaintiff is entitled to bring any
23 claims against Dr. Bleicher for workers compensation related remedies, given the
24 exclusive remedy afforded her in the Alaska Statutes.

25 20. Deny.

1 21. Deny.

2 22. Deny.

3 **COUNT TWO**
4 **COMPLAINT FOR WRONGFUL DISCHARGE**

5 23. Dr. Bleicher incorporates by reference all answers set forth in
6 paragraphs 1-22.

7 24. Deny.

8 25. The statement made in paragraph 25 of Plaintiff's third amended
9 complaint purports to be a statement of law and no response is necessary. Any
10 inference other than a statement of law is denied.

11 26. Deny that the statement is an accurate interpretation of the law, and
12 therefore the allegations in paragraph 26 of Plaintiff's third amended complaint are
13 denied.

14 27. Deny.

15 28. Deny.

16 29. Deny that temporal proximity alone can establish a prima facie case. All
17 allegations in paragraph 29 of Plaintiff's third amended complaint are denied.
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19 30. Deny.
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1 38. Deny.

2 39. Deny.

3 40. Deny.

4 41. Deny.

5 **AFFIRMATIVE DEFENSES**

6 By way of further answer and affirmative defenses:

7
8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff's third amended complaint, in whole or in part, fails to state a claim
10 upon which relief may be granted.

11
12 **SECOND AFFIRMATIVE DEFENSE**

13 Plaintiff resigned, she was not terminated. However, since Plaintiff was an
14 at-will employee, no cause would have been necessary to terminate Plaintiff.
15 Further, and alternatively, good cause for termination existed to terminate Plaintiff.

16
17 **THIRD AFFIRMATIVE DEFENSE**

18 Plaintiff has failed to exhaust her administrative remedies.

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20 **FOURTH AFFIRMATIVE DEFENSE**

21 Punitive damages are not available for an action premised upon negligence.

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23 **FIFTH AFFIRMATIVE DEFENSE**

24 Employers are not required to provide general health insurance to
25 employees.

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SIXTH AFFIRMATIVE DEFENSE

Claims by Plaintiff, if any, are barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is entitled to the benefits of AS 09.17.010 *et seq.*

EIGHTH AFFIRMATIVE DEFENSE

The damages alleged by Plaintiff, if any, were directly and legally caused by her own conduct constituting comparative negligence, and damages, if any, must be proportionately reduced according to the percentage of fault of the comparative negligence.

NINTH AFFIRMATIVE DEFENSE

Defendant exercised reasonable care to prevent and correct any alleged discriminatory behavior, if any.

TENTH AFFIRMATIVE DEFENSE

Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Dr. Bleicher to avoid harm.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to name the proper party in interest or failed to join a party needed for just adjudication.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were directly and legally caused by persons or parties other than Dr. Bleicher for whom Dr. Bleicher bears no legal responsibility.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her damages as required by law.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged claims, injuries and damages are barred by the workers compensation exclusive remedy.

FIFTEENTH AFFIRMATIVE DEFENSE

The discovery of evidence after Plaintiff left her employment with Dr. Bleicher of employee wrongdoing is of such severity that it is sufficient to justify termination on those grounds alone. Therefore if any wrongdoing is proven, the application of the after acquired evidence doctrine serves to cut off damages and bar recovery for front pay and benefits or reinstatement from the date of this answer.

Dr. Bleicher reserves the right to add any and all other affirmative defenses as may be revealed by further investigation and discovery.

WHEREFORE, having fully answered the third amended complaint of Plaintiff herein, Dr. Bleicher requests that the third amended complaint in its entirety be dismissed with prejudice, that he be awarded his costs and attorney fees incurred in the defense of the third amended complaint, and that the Court

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award such other and further relief as is just and appropriate under the
circumstances.

DATED at Anchorage, Alaska, this ____ day of July, 2008.

CLAPP, PETERSON, VAN FLEIN,
TIEMESSEN & THORSNESS LLC
Attorneys for Defendant

By: _____
Linda J. Johnson #8911070

Certificate of Service

I certify that a copy of this document was
 mailed, faxed, hand delivered on
July _____, 2008, to the following:

David Schlerf
3600 W. 40th Ave., Unit B
Anchorage, Alaska 99517

By: _____