

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**DR. PRESTON BOLES**

**Plaintiff**

**v.**

**No.** 4:21-CV-088-DMB-JMV

**GREENWOOD LEFLORE HOSPITAL**

**Defendant**

**(JURY TRIAL DEMANDED)**

**COMPLAINT**

\_\_\_\_\_ COMES NOW THE PLAINTIFF, Dr. Preston Boles, by and through his attorney,  
and alleges as follows:

**JURISDICTION, VENUE, AND JURY DEMAND**

1. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.
2. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because the events giving rise to this claim occurred in LeFlore County, Mississippi.
3. Plaintiff respectfully demands a jury trial on all issues so triable.

**PARTIES**

4. Plaintiff Dr. Preston Boles is an adult resident of Mississippi and an employee of Defendant.
5. Dr. Boles is Black.
6. Dr. Boles is an employee and person protected by Title VII of the Civil Rights Act of 1964.
7. Dr. Boles is a person protected by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

8. Dr. Boles is a person who has entered contracts with the Defendant covered by 42 U.S.C. 1981.
9. Defendant Greenwood LeFlore Hospital (“Hospital”) is an employer subject to Title VII.
10. Defendant is a person subject to Section 1981.
11. Defendant is a person as defined by Section 1983, but a state as defined by the Fourteenth Amendment, and therefore subject to a 1983 action for violations of the Fourteenth Amendment under color of law.
12. Sovereign immunity has been waived pursuant to Section 5 of the Fourteenth Amendment, and by entering a contract with the Plaintiff.

### **FACTS**

13. In 1992, Dr. Boles opened a private practice in podiatry in Greenwood, Mississippi.
14. Over the years this practice grew and prospered.
15. In 2006, the administrative burdens of the practice were significant, and Dr. Boles sought help in addressing these burdens by entering a partnership with the Hospital.
16. In 2006, Dr. Boles entered a contract with the Hospital in which he agreed to work for the Hospital and bring his profitable practice with him, and the Hospital would address the administrative and business side of the practice.
17. Dr. Boles’s practice at the Hospital continued to grow.
18. This growth was driven by Dr. Boles’s excellent reputation in the community.
19. In 2012, the practice had grown to the point that patients had lengthy waits to see the doctor.

20. The Hospital decided to hire an additional podiatrist.
21. In October 2012, the Hospital hired Dr. Joseph Assini.
22. Dr. Assini was a White podiatrist from New York.
23. Dr. Assini did not bring any local practice with him to the Hospital.
24. Dr. Assini saw the patients of the practice built up by Dr. Boles.
25. The Hospital took steps to keep the compensation paid to its doctor's secret.
26. The Hospital's contracts forbid the doctors from disclosing their compensation to "third parties" - including each other.
27. Although no cause of action is presented in this matter concerning this prohibition specifically, it should be noted that it is unlawful under Section 7 of the NLRA and Title VII of the Civil Rights Act to prohibit the doctors from disclosing their compensation to each other and to other third parties and law enforcement. It is also a violation of the Open Records Act in Mississippi state law, which makes the expenditures in salaries of a covered government entity public information.
28. In this way, the Hospital unlawfully kept the pay of Dr. Assini secret from Dr. Boles.
29. On or about September 3, 2019, however, Dr. Boles learned that Dr. Assini was making significantly more money.
30. Specifically, the two doctors were compensated based on the RVUs they worked.
31. "RVU" stands for Relative Value Units, and is a standard measure used by Medicare to determine the value of the work performed by a physician, and thus the payments made by Medicare for that work.

32. Medicare payments are determined by simply multiplying the RVUs by a geographic practice cost index for the location of the Hospital.
33. Thus, as it concerns the profitability of a physician's work for the Hospital, there is no reason that one RVU worked by one physician should be of more economic value to the Hospital than another RVU worked by another physician. Each RVU worked results in the same Medicare reimbursement.
34. Nonetheless, Dr. Assini was consistently paid \$52 per RVU for each RVU he worked, while Dr. Boles was paid rates ranging from \$44.05 to \$45 per RVU.
35. In fiscal year 2013, Dr. Boles worked 3153.4 RVUs.
36. Dr. Boles was paid \$138,907.27 for this year.
37. Dr. Boles' rate of pay was \$44.05 per RVU for this year.
38. In fiscal year 2014, Dr. Boles worked 2827.93 RVUs.
39. Dr. Boles was paid \$124,570.32 for this year.
40. Dr. Boles' rate of pay was \$44.05 per RVU for this year.
41. In fiscal year 2015, Dr. Boles worked 2804.21 RVUs.
42. Dr. Boles was paid \$123,525.45 for this year.
43. Dr. Boles's rate of pay was \$44.05 per RVU for this year.
44. In fiscal year 2016, Dr. Boles worked 3225.85 RVUs.
45. Dr. Boles was paid \$145,163.25 for this year.
46. Dr. Boles's rate of pay was \$45 per RVU for this year.
47. In fiscal year 2017, Dr. Boles worked 4982.03 RVUs.
48. Dr. Boles was paid \$224,191.35 for this year.
49. Dr. Boles's rate of pay was \$45 per RVU for this year.
50. In fiscal year 2018, Dr. Boles worked 5653.8 RVUs.

51. Dr. Boles was paid \$254,421 for this year.
52. Dr. Boles's rate of pay was \$45 per RVU for this year
53. In fiscal year 2019, Dr. Boles worked 6422.55 RVUs.
54. Dr. Boles was paid \$289,014.75 for this year.
55. Dr. Boles's rate of pay was \$45 per RVU for this year.
56. Meanwhile, throughout this time, Dr. Assini was paid \$52 per RVU for every RVU he worked.
57. If Dr. Boles had been paid at a rate of \$52 per RVU during this time, he would have made an additional \$25,069.53 in FY 2013, \$22,482.04 in FY 2014, \$22,293.47 in FY 2015, \$22,580.95 in FY 2016, \$34,874.21 in FY 2017, \$39,576.60 in FY 2018, and \$44,957.85 in FY 2019.
58. On September 17, 2019, Dr. Boles asked the Hospital's then CEO, Gary Marchand, to explain the difference in pay between himself and Dr. Assini.
59. Mr. Marchand stated that the difference in pay was because of a difference in "productivity" between Dr. Boles and Dr. Assini.
60. This statement was untrue.
61. "Productivity" did not and does not explain the difference in the rate of pay between \$45/RVU and \$52/RVU.
62. On November 2, 2020, Dr. Boles filed an "inquiry" with the EEOC.
63. On February 23, 2020, Dr. Boles filed an EEOC charge alleging race discrimination in pay.
64. The charge was timely filed as to the pay discrimination described above.

65. On March 11, 2020, the Hospital, through its attorneys, submitted a “position statement” to the EEOC in which the Hospital alleged that Dr. Boles was paid less because he worked fewer RVUs.
66. This explanation did not address why the rate of compensation per RVU was different.
67. In addressing this specific issue, the only explanation presented by the Hospital was that Dr. Assini was “Board certified” and that this allows him to perform “ankle and foot surgery.” The Hospital claimed that this meant that he was “coded differently for billing purposes.”
68. This explanation is also untrue.
69. Although Dr. Assini has a slightly different kind of certification and his practice is therefore not identical in every respect, when he engages in general podiatry he is “coded” for “billing purposes” the same way as Dr. Boles.
70. An RVU earned by Dr. Assini is worth exactly the same to the Hospital as an RVU earned by Dr. Boles.
71. The difference in certification does not explain the difference in rate of pay per RVU by the Hospital.
72. These explanations offered by the Hospital are a pretext for race discrimination.
73. The discrimination continued and intensified thereafter.
74. Under Dr. Boles’s contract covering FY2020 and FY 2021, he was guaranteed a base salary of \$215,000, and would earn a bonus of \$45 per RVU above 4285 for the year.
75. In FY2020, Dr. Boles worked 5205.33 RVUs.

76. According to the contract, Dr. Boles's pay should have been \$256,414.85 for this year.

77. Dr. Boles was paid \$234,239.85 for this year.

78. This is \$22,175 less than was promised in the contract for this year.

79. This is also \$36,437.31 less than would have been earned at Dr. Assini's rate of \$52 per RVU for this year.

80. In FY 2021, Dr. Boles worked 4746.39 RVUs.

81. According to the contract, Dr. Boles's pay should have been \$235,762.55 for this year.

82. Dr. Boles was paid \$213,587.55 for this year.

83. This is less than the contractual "guarantee" in the contract.

84. This is also \$22,175 less than was promised in the contract for this year.

85. This is also \$33,224.73 less than would have been earned at Dr. Assini's rate of \$52 per RVU for this year.

86. (Dr. Assini died in May 2021.)

87. The EEOC investigated these claims and issued a right-to-sue letter dated May 14, 2021.

88. Dr. Boles has therefore exhausted administrative remedies.

89. This Complaint has been filed within 90 days of the right-to-sue letter.

90. This matter is timely under Title VII, Section 1983, Section 1981, and state-law breach of a written contract statutes of limitations.

## CAUSES OF ACTION

### COUNT I: TITLE VII: RACE

91. Plaintiff incorporates all allegations set forth in all other sections of this Complaint.
92. Defendant has discriminated in pay based on race.
93. Specifically, Defendant has paid the African American Plaintiff at rates of \$45 per RVU or less for performing the same essential work as a White comparator who was making \$52 per RVU.
94. Defendant has no lawful explanation for its failure to pay Plaintiff what comparable whites were paid.
95. Defendant has also violated its own agreements and paid Plaintiff less than was promised, while complying with its agreements with the White comparator.
96. This was also discrimination based on race.
97. Under Title VII of the Civil Rights Act, it is unlawful for an employer to discriminate against an employee based on race.
98. By discriminating against Plaintiff based on race, Defendant violated the Act and harmed Plaintiff.
99. Such violations were willful, knowing, and intentional.
100. Plaintiff is entitled to the remedies requested below.

### COUNT II: 42 U.S.C. 1981: RACE

101. Plaintiff incorporates all allegations set forth in all other sections of this Complaint.
102. Defendant has discriminated in pay based on race.



103. Specifically, Defendant has paid the African American Plaintiff at rates of \$45 per RVU or less for performing the same essential work as a White comparator who was making \$52 per RVU.
104. Defendant has no lawful explanation for its failure to pay Plaintiff what comparable whites were paid.
105. Defendant has also violated its own agreements and paid Plaintiff less than was promised, while complying with its agreements with the White comparator.
106. This was also discrimination based on race.
107. Under Section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1981), it is unlawful to discriminate in the “mak[ing] and enforc[ing of] contracts” based on race.
108. By discriminating against Plaintiff based on race, Defendant violated the Act and harmed Plaintiff.
109. Such violations were willful, knowing, and intentional.
110. Plaintiff is entitled to the remedies requested below.

**COUNT III: Section 1983, Equal Protection, Fourteenth Amendment**

111. Plaintiff incorporates all allegations set forth in all other sections of this Complaint.
112. Defendant has discriminated in pay based on race.
113. Specifically, Defendant has paid the African American Plaintiff at rates of \$45 per RVU or less for performing the same essential work as a White comparator who was making \$52 per RVU.
114. Defendant has no lawful explanation for its failure to pay Plaintiff what comparable whites were paid.

115. Defendant has also violated its own agreements and paid Plaintiff less than was promised, while complying with its agreements with the White comparator.
116. This was also discrimination based on race.
117. Under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, it is unlawful for a state or subdivision to discriminate based on race.
118. Under 42 U.S.C. 1983, this action can be brought against the Defendant to enforce the Fourteenth Amendment.
119. By discriminating against Plaintiff based on race, Defendant violated the law and harmed Plaintiff.
120. Such violations were willful, knowing, and intentional.
121. Plaintiff is entitled to the remedies requested below.

#### **COUNT IV: BREACH OF CONTRACT**

122. Plaintiff incorporates all allegations set forth in all other sections of this Complaint.
123. Defendant entered into a contract with the Plaintiff promising to pay a base salary of \$215,000 per year and a bonus of \$45 per RVU over 4285 in fiscal year 2020 and 2021.
124. In each of those two years, Defendant paid the Plaintiff \$22,175 less than was promised in this contract.
125. Defendant thereby breached the contract.
126. Such violations were willful, knowing, and intentional.
127. Plaintiff is entitled to the remedies requested below.

## **REMEDIES**

128. Wherefore, Plaintiff requests that this honorable Court award all available legal and equitable relief, including the following:
- a. Back pay;
  - b. Lost employment benefits;
  - c. Consequential damages for any other pecuniary harms flowing from Defendant's unlawful conduct;
  - d. Compensatory damages for emotional distress and any other non-pecuniary harms flowing from Defendant's unlawful conduct;
  - e. Punitive damages commensurate with Defendant's misconduct and necessary to deter it from violating the law in the future;
  - f. Pre-judgment interest;
  - g. Post-judgment interest;
  - h. Attorney fees;
  - i. Costs;
  - j. An injunction curing Defendant's unlawful conduct and prohibiting it from engaging in any similar misconduct in the future;
  - k. Notice given to all employees regarding the violations found by this Court and notifying such employees of their legal rights and the order entered proscribing any similar misconduct in the future;
  - l. A final judgment declaring Defendant violated the law as described above;
  - m. And, any other relief available under any applicable principle in law or equity.

The foregoing Complaint is respectfully submitted on behalf of Plaintiff by and through  
counsel:

/s/Joel Dillard      Date: July 31, 2021

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