

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

**GEORGE CANSLER, on his own behalf,)
and on behalf of a class of those similarly)
situated,)**

Plaintiff,)

v.)

**UNIVERSITY HEALTH SYSTEMS OF)
EASTERN CAROLINA, INC., EAST)
CAROLINA HEALTH-CHOWAN, INC.,)
HALIFAX REGIONAL MEDICAL)
CENTER, INC., ROANOKE VALLEY)
HEALTH SERVICES, INC., PITT)
COUNTY MEMORIAL HOSPITAL,)
INC., DUPLIN GENERAL HOSPITAL,)
INC., EAST CAROLINA HEALTH-)
BEAUFORT, INC., EAST CAROLINA)
HEALTH-BERTIE, INC., EAST)
CAROLINA HEALTH-HERITAGE,)
INC., THE OUTER BANKS HOSPITAL,)
INC., VIDANT MEDICAL GROUP)
AFFILIATES, LLC, VIDANT MEDICAL)
GROUP, LLC, VIDANT INTEGRATED)
CARE, LLC, and FIRSTPOINT)
COLLECTION RESOURCES, INC.,)**

Defendants.)

**Case No. 4:22-CV-14-FL
JURY DEMAND**

THE VIDANT DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), University Health Systems of Eastern Carolina, Inc., East Carolina Health-Chowan, Inc., Halifax Regional Medical Center, Inc., Roanoke Valley Health Services, Inc., Pitt County Memorial Hospital, Inc., Duplin General Hospital, Inc., East Carolina Health-Beaufort, Inc., East Carolina Health-Bertie, Inc., East Carolina Health-Heritage, Inc., The Outer Banks Hospital, Inc., Vidant Medical Group Affiliates,

Inc., Vidant Medical Group, LLC, and Vidant Integrated Care, LLC (the “Vidant Defendants”) respectfully move the Court to dismiss Plaintiff George Cansler’s (“Cansler”) Complaint.

In June 2018, Cansler sought emergency medical treatment at Vidant Chowan Hospital. Prior to treatment, he signed a standard consent document wherein he agreed to pay for any portion of the hospital’s charges that were not paid by his commercial insurance carrier, Blue Cross Blue Shield of North Carolina (“Blue Cross”). Cansler does not contend that he asked any questions regarding how much his medical treatment would cost when he agreed to these terms. And, consistent with its obligations under the Emergency Medical Treatment and Active Labor Act (“EMTALA”) to provide a medical screening without taking actions that might discourage such care, Vidant Chowan did not affirmatively volunteer the potential costs of Cansler’s treatment. *See* 42 U.S.C. § 1395dd; 26 C.F.R. § 1.501(r)-4(c)(2); 42 C.F.R. 489.24(d)(4)(iv).

After the medical services had been rendered on an “in network” basis, Cansler and Blue Cross were charged the agreed-upon, discounted amounts that had been negotiated on Cansler’s behalf by Blue Cross. Despite Vidant Chowan’s compliance with its contractual obligations, Cansler has refused to pay the portion of the charges to which he is obligated under the terms of his high deductible plan with Blue Cross because, according to Cansler, the CT scan he received is too expensive. Cansler claims his refusal to pay the pre-negotiated, discounted amounts is justified by his contention that Vidant Chowan’s alleged failure to disclose the potential costs of his treatment in the emergency room represents a violation of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”). *See* § 75-1.1. Further, in an attempt to transform this matter into something that it is not, Cansler attempts to assert his claims as a class action on behalf of every patient who crossed the threshold of any of the Vidant Defendants’ emergency

departments, signed a consent, and had to pay *any price*, whether insurer-negotiated or the hospital's standard charges.

At their core, Cansler's claims effectively ask the Court to find that commercially insured patients simply can ignore the contractual, discounted rates that were negotiated on their behalf by their insurers, and instead can choose to pay whatever amount they deem reasonable. He also asks the Court to create an impossible dilemma for emergency departments regarding the disclosure of prices during the consent process, forcing them to choose between committing a purportedly unfair and deceptive act or violating EMTALA.

As described in the Vidant Defendants' Memorandum of Law that is being filed simultaneously herewith, Cansler's attempts to upend the healthcare system in this regard are directly contrary to well-settled law in North Carolina. Indeed, multiple courts have considered virtually identical circumstances and have concluded that no theory of liability -- be it a UDTPA violation, breach of contract, or other similar theory -- exists. Pursuant to this well-settled authority and Federal Rule of Civil Procedure 12(b)(6), the Court should dismiss Cansler's claims against the Vidant Defendants with prejudice for the following independent reasons:

- **First**, Cansler cannot show that the Vidant Defendants' alleged acts were in or affecting commerce -- a necessary element of a UDTPA claim -- because the UDTPA specifically exempts "professional services rendered by a member of a learned profession" from its definition of commerce. N.C.G.S. § 75-1.1(b). In a virtually identical case, the North Carolina Court of Appeals held that a hospital's alleged failure to disclose the cost of its services until after the services had been rendered came squarely within the learned profession exemption, meaning the plaintiff could not state claim under the UDTPA. *See Shelton v. Duke Univ. Health Sys., Inc.*, 179 N.C. App. 120, 633 S.E.2d 113 (2006).
- **Second**, the Vidant Defendants' alleged actions and omissions do not constitute unfair or deceptive acts under the UDTPA. Because Cansler's claims are all premised upon the existence or interpretation of the consent that Cansler signed at Vidant Chowan, his claims sound in contract, and applicable law is clear that mere breaches of contract, even if intentional, do not come within the prohibitions of the UDTPA. *Elrod v. WakeMed*, 2021 WL 4312557, *14 (E.D.N.C. Sep. 22, 2021).

Further, to the extent the Court finds Cansler's claims are premised on fraudulent concealment, Cansler -- who does not alleged that he asked about the cost of services -- has not adequately alleged that Vidant Chowan owed him a duty to disclose its prices.

- **Third**, Cansler has failed to plead that the Vidant Defendants' alleged actions proximately caused his alleged damages. In particular, while Cansler alleges that the Vidant Defendants' maintained a policy whereby they do not disclose prices to patients who ask for such information, Cansler never alleges that he himself actually asked about the cost of his medical services. As such, he cannot establish actual reliance on Vidant Chowan's purported fraudulent concealment.

Alternatively, pursuant to Federal Rule of Civil Procedure 12(b)(1), Cansler's Complaint should be dismissed as to all of the Vidant Defendants other than Vidant Chowan because Cansler lacks individual standing as to those other entities. In particular, the wrongdoing alleged by Cansler -- the failure to disclose medical costs -- only took place during his visit to the emergency department at Vidant Chowan. As such, none of the other Vidant Defendants had anything to do with the harm Cansler claims to have suffered. Thus, Cansler does not have standing to assert his individual or class claims against any of the Vidant Defendants other than Vidant Chowan, meaning that such claims should be dismissed based on a lack of subject matter jurisdiction.

Respectfully submitted,

/s/ Erin Palmer Polly

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon all counsel of record via the Clerk of Court's ECF system, this May 20, 2022.

/s/ Erin Palmer Polly