UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 25-CV-80526-MIDDLEBROOKS

GOOD SAMARITAN MEDICAL CENTER, INC., DELRAY MEDICAL CENTER, INC., PALM BEACH GARDENS COMMUNITY HOSPITAL, INC. D/B/A PALM BEACH GARDENS MEDICAL CENTER, ST. MARY'S MEDICAL CENTER, INC., AND WEST BOCA MEDICAL CENTER, INC.,

Plaintiff,

v.

THE LEAPFROG GROUP,

Defendant.
_____/

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE comes before me on the Parties' respective Motions for Summary Judgment. (DE 86; DE 99). The Motions are fully briefed. For the following reasons, I will deny both Motions.

I. UNDISPUTED FACTS[1]

Plaintiffs—Good Samaritan Medical Center, Inc., Delray Medical Center, Inc., Palm Beach Gardens Community Hospital, Inc., St. Mary's Medical Center, Inc., and West Boca Medical Center, Inc.—are five South Florida hospitals (the "Community Hospitals"). Defendant The Leapfrog Group ("Leapfrog") is a non-profit hospital ratings "watchdog" based in Washington, DC. As Leapfrog claims, it was founded to address what it views as severe dysfunction in the healthcare marketplace by advocating for more transparency to allow consumers to compare

[1] The facts here are derived from the Parties' respective Statement of Material Facts, as well as their attached exhibits. The facts provided here are undisputed unless otherwise indicated.

among hospitals their safety record before choosing where to seek care. (DE 100 at ¶ 1, 2). In support of its mission, Defendant established the Hospital Survey in 2001. (DE 100 at ¶ 5). Defendant characterizes this Survey as a "free, voluntary benchmarking tool" whereas Plaintiffs suggest that although hospitals do not pay a fee to Defendant to submit the Survey, it nevertheless requires hospitals to expend significant financial resources and personnel time to complete it, sign over rights to their data, and face marketing blackmail. (DE 116 at ¶ 6). Meanwhile, in 2012, the Defendant introduced a Hospital Safety Grade program, assigning an A, B, C, D, or F grade to hospitals—regardless of whether they participated in the Defendant's Survey. (DE 100 at ¶ 15). Among other hospitals, Plaintiff Hospitals had been receiving Safety Grades for multiple years. (*Id.* at ¶ 18).

At issue in this case is Defendant's hospital grading system, specifically following a change to the methodology in Fall 2024. (DE 116 at ¶ 19). The methodology change involves the two-step imputation model implemented when scoring a non-reporting hospital. (DE 100 at ¶ 23).[2] To be sure, Defendant utilized the model both before and after the Fall 2024 change—the significant difference, however, is whether a non-reporting hospital would be assigned a score that mirrored partner hospitals or otherwise gave a static score purely based on non-response. As described by the Defendant, when a hospital did not complete the survey, the model would "impute" a score to four of the 22 measures used to calculate the safety grades. (*Id.*). The measures were Computerized Physician Order Entry, Bar Code Medication Administration, ICU Physician Staffing, and Hand

[2] A central dispute here is whether imputation is a well-settled and reliable methodology in circumstances where the Hospital does not provide data itself through the Survey. (DE 100 at ¶ 31, DE 116 at ¶ 31).

Hygiene. (*Id.*).[3] Before the Fall 2024 change, Defendant describes the methodology as Step 1, using the hospital's historical data if it had participated in a Survey within the last 4 rounds; where no historical data was available for that hospital, Defendant applied Step 2, assigning the mean score for those measures achieved by similar "cohort" hospitals. (*Id.*). Plaintiffs dispute that the hospitals were assigned "the mean score" of similar, cohort hospitals under Step 2, clarifying instead that hospitals were "assigned the lower of two possible mean scores." (DE 116 at ¶ 23; DE 101-30 at 16).

Defendant, however, claims that Step 2 – imputing cohort scores – "incentivized hospitals to not report to the [S]urvey, and instead, to take the imputed score." (DE 100 at ¶ 28 (internal quotation and citation omitted)). To address this concern, the Defendant introduced a new two-step methodology. (*Id.* at ¶ 29). Defendant describes this model as follows:

> Step (1) if a (non-reporting) hospital "had a score assigned by Leapfrog in the previous two rounds of grades…excluding imputed scores…the hospital is assigned the most recent score on that measure in the current Hospital Safety Grade," and if Step 1 is not applicable, the: Step (2) proscribes that if a hospital "does not have historical data from the last two rounds…of the safety grade, the hospital is assigned a point value that is equivalent to receiving Limited Achievement for this measure on the Leapfrog Hospital Survey."

(*Id.*). "Limited Achievement" is the lowest score available for each measure. (DE 100 at ¶ 29).

With regards to transparency, the change in methodology was disclosed to both the public and hospitals. Defendant's scoring methodology document is publicly available online. (DE 30). The Plaintiffs also were aware of and informed of the proposed Fall 2024 Grade methodology change. (DE 116 at ¶ 35). Moreover, when viewing a score under the relevant categories, the tab includes the following language "Declined to Report" with a large question mark and a footnote.

[3] Plaintiffs dispute whether the two-step imputation applied to the ICU Physician Staffing measure. (DE 116 at ¶ 23).

(DE 100 at ¶ 38; DE 101-38 at 2). The footnote, in red bolded text, states "Declined to Report: The hospital was asked to provide this information to the public, but did not." (DE 100 at ¶ 38; DE 101-38 at 3). Once one of the scores' sub-categories is selected, for example Computerized Physician Order Entry, additional text indicated with an asterisk – also in red bolded text – appears, stating "[t]he hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available." (DE 116 at ¶ 38; DE 101-38 at 3). On the Defendant's website, there is also an "About the Grade" page which explains that "[i]n some cases where a hospital's information is not available for a certain measure, Leapfrog uses a supplemental data source. In cases where a hospital's information is not available from any data source, Leapfrog has outlined a methodology for dealing with the missing data." (DE 100 at ¶ 43).

Following this change to the Methodology, Plaintiffs represented that they have suffered various harms. One of Plaintiffs' CEOs attested that the "Medical Center has received reports from patients that they decided to not use our facility because of [Defendant's] misleading grades" and that Defendant's grades "have also damage[d] the Medical Center's relationships with physicians." (DE 100 at ¶ 55). The same CEO, however, did not identify those patients by name. (*Id.* at ¶ 57; DE 116 at ¶ 57). Several other representatives of the Plaintiffs similarly attested that they have fielded concerns from patients and physicians and have experienced reputational damage and loss of goodwill, and will further lose patients, practices, revenue, and other business opportunities. (DE 100 at ¶¶ 60-73).

Thus, on April 30, 2025, Plaintiffs filed suit against Defendant in this Court, bringing two counts. Count I alleges a violation of Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Fla. Stat. § 501.201 *et seq*. Count II requests relief under the Declaratory Judgment Act, 28 U.S.C. § 2201. (DE 1 at 49, 51). Plaintiffs request that I enjoin the Defendant from including Plaintiffs in

its Hospital Safety Grades and award damages. On August 28, 2025, Plaintiffs filed an Amended Complaint, removing their request for damages and incorporating a request for equitable relief under FDUTPA. (DE 74).

II. LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is material for the purposes of summary judgment only if it 'might affect the outcome of the suit under the governing law.'" *Kerr v. McDonald's Corp.*, 427 F.3d 947, 951 (11th Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant. For factual issues to be considered genuine, they must have a real basis in the record." *Ellis v. England*, 432 F.3d 1321, 1325–26 (11th Cir. 2005) (citation omitted). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge at summary judgment. Thus, [the Court] do[es] not determine the truth of the matter, but instead decide[s] only whether there is a genuine issue for trial." *Barnett v. PA Consulting Group, Inc*., 715 F.3d 354, 358 (D.C. Cir. 2013) (citation omitted).

Under the summary judgment standard, the moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In response, the non-moving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'"

Id. at 324. If the non-moving party fails to "establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial[,]" summary judgment is warranted. *Id.* at 322. The party moving for summary judgment bears the burden of establishing that there is insufficient evidence to support the non-moving party's case. *Id.* at 325. Moreover, "[t]he court must view all evidence in the light most favorable to the non-movant and must resolve all reasonable doubts about the facts in favor of the non-movant." *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1557–58 (11th Cir. 1990) (citation omitted).

III. DISCUSSION

FDUTPA prohibits "[u]nfair competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1). Fla. Stat. 501.211 sets out the individual remedies available against a party that has been shown to violate FDUTPA. The remedies include actual damages and equitable relief, albeit requiring different elements.

Fla. Stat. 501.211(2) permits any person "who has suffered a loss" to recover actual damages. The Eleventh Circuit has explained that to obtain damages under FDUTPA, a plaintiff must prove "(1) a deceptive act or unfair practice; (2) causation; and (3) actual damages."[4] *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983 (11th Cir. 2016); *accord Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2d DCA 2006). Relevant for purposes of this Order is the third element, actual damages, and under applicable caselaw, the requirement has been explicit: "to satisfy all of the elements of a FDUPTA claim [for actual damages] it must show that a consumer was injured

[4] "Actual damages" under the FDUTPA is a term of art meaning "the difference in the market value of the product or service in the condition in which it was delivered and its market value in the condition in which it should have been delivered according to the contract of the parties." *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 986 (11th Cir. 2016) (citing *Rollins, Inc. v. Heller*, 454 So.2d 580, 585 (Fla. Dist. Ct. App. 1984)).

or suffered a detriment." *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cnty., Inc.*, 169 So. 3d 164 (Fla. Dist. Ct. App. 2015). It is therefore a fairly straightforward proposition that consumers are the ones who must be harmed, and that harm must have already occurred.

Fla. Stat. 501.211(1), on the other hand, permits "anyone aggrieved" to seek injunctive relief against "a person who has violated, is violating, or is otherwise likely to violate this part." Caselaw expounding the requirements for equitable relief explains that an entity must show (1) that it is aggrieved, in that its rights have been, are being, or will be adversely affected, by (2) a violation of FDUTPA, meaning an unfair or deceptive practice which is injurious to consumers. Further, "for someone to be aggrieved, the injury claimed to have been suffered cannot be merely speculative*." Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207 (Fla. 4th DCA 2019). For our purposes, the relevant inquiry to obtain equitable relief is two-fold, and in my view less straightforward than to obtain actual damages or than the Parties seem to suggest. The inquiry here is whether a consumer must nevertheless be harmed, and, if so, whether that injury may be not yet have occurred.

The Parties propose different answers. Defendant primarily relies upon *Novo Nordisk, Inc. v. Brooksville Pharmaceuticals Inc.*, for the proposition that actual patient harm – rather than likely harm - is the proper standard at summary judgment. 785 F.Supp.3d 1123, 1145 (2025). Plaintiffs argue that the Defendant's practices are "unfair" as a matter of law, and critically, do not "definitively requir[e] consumer injury." (DE 115 at 21). Both are incorrect.

To begin, it is important to assess the terms "unfair" and "deceptive" as analytically distinct concepts. Relevant caselaw has offered distinct definitions of "unfair practice" and "deception" in conjunction with a FDUTPA claim. The Florida Supreme Court has defined "unfair practice" as "one that offends established public policy and one that is immoral, unethical, oppressive,

unscrupulous or substantially injurious to consumers." *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So.2d 773, 777 (Fla.2003) (emphasis added) (citations omitted) (internal quotation marks omitted). Conversely, it has defined "deception" as "a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the *consumer's detriment." Id.* (emphasis added).

Defendant's reliance on *Novo Nordisk* is misplaced. To be sure *Novo Nordisk* does make reference to the distinction between an "unfair" practice and a "deceptive" practice. 785 F.Supp.3d at 1145-46. But as I see it, *Novo Nordisk* simultaneously quashes the significance of that distinction. An "unfair" practice requires substantial injury to consumers—i.e., actual patient harm. A "deceptive" act, on the other hand, incorporates the "likely to mislead" standard. *Novo Nordisk* does away with this distinction and finds that the plaintiffs in that case failed to advance a FDUPTA claim because under either an unfair practice or deception claim, the plaintiff failed to "show[] any evidence that a Florida consumer suffered actual harm from Brooksville's misbranded semaglutide." It is for that same reason that I find the argument that summary judgment requires actual harm unavailing. *See Novo Nordisk*, 785 F.Supp.3d at 1145. (stating that "while Plaintiff is correct that under a *motion to dismiss* standard, a plaintiff only needs to allege that the conduct in question is 'likely to cause consumer harm,' under a *motion for summary judgment* standard, Florida law requires" proof of actual harm "on at least one Florida consumer, that is, committed an unfair or deceptive trade practice that injured a consumer").

In a similar vein, Defendant's broader argument that Florida law requires proof of harm to a consumer is misguided. Defendant relies on *State Farm Mut. Auto. Ins. Co. v. At Home Auto Glass LLC*, 2024 WL 4349246 at *4 (M.D. Fla. Sept. 30, 2024) for the following statement: "While a plaintiff need not be a consumer to pursue a claim under FDUTPA, Florida case law requires a

plaintiff to prove harm to a consumer or consumers." This language is taken from *Ounjian v. Globoforce, Inc.*, 89 F.4th 852, 860 (11th Cir. 2023), which draws on *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cty., Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015). The key issue with this principle is that, across all of the cited cases, it is applied in the context of actual damages, rendering its applicability questionable in the context of equitable relief under FDUTPA. To hold otherwise would diminish the significance between the two remedies.

Altogether, a deception claim under FDUTPA need not require actual harm and instead requires "deceptions that are likely to cause injury to a reasonable relying consumer." *Millennium Commc'ns & Fulfillment, Inc. v. Off. of Att'y Gen., Dep't of Legal Affs., State of Fla.*, 761 So. 2d 1256, 1263 (Fla. Dist. Ct. App. 2000).

As it relates to an "unfair" practice, Plaintiffs advance a similarly problematic interpretation. Plaintiffs argue that an "unfair" practice need not require consumer injury because of the disjunctive: "or substantially injurious to consumers." (DE 115 at 21) (*contra SMS Audio, LLC v. Belson*, 2017 WL 11631378 at *3 (S.D. Fla. Apr. 25, 2017) (adopting the newer definition of an "unfair practice," issued by the FTC in its 1980 policy statement, which more definitively requires consumer injury). Plaintiffs misread my opinion in *SMS Audio*. In saying that the newer definition definitively requires consumer injury, that does not lead to a conclusion that the definition adopted in *PNR* therefore does not require consumer injury. The plain text of the *PNR* definition still includes "or substantially injurious to consumers" and I decline to read this "disjunctive" as creating a standard where consumer harm is a supplemental showing rather than a required one to advance a FDUTPA claim.[5]

[5] On this point, it is unclear how they intend to present evidence to support an unfair practice, given the dearth of evidence of actual consumer harm. I also see potential hearsay issues underlying some of the proffered testimony. (DE 115 at ¶ 13; DE 116 at ¶ 57). Plaintiffs argue that "the CEOs

Plaintiff also advances the argument that "hospitals are 'consumers' under FDUTPA" because the term broadly includes any "individual," "business," "corporation," "or any other group or combination." (DE 115 at 20, 23) (citing Fla. Stat. 501.203(7)). This argument is misplaced given the facts of the case. Of course, any of these entities *can* be consumers for purposes of FDUTPA, but that determination is dependent on who the unfair practice or deception is aimed at misleading. Given Defendant's patient-facing Hospital Safety Grades, it is not clear to me that the hospitals would be "consumers" of the Safety Grades; nor does it seem that insurers who may have implored Plaintiffs to address the safety grades can be considered "consumers" of the grades.[6]

Taking this preliminary understanding of the law, it becomes evident that the factual disputes at hand are material and, consequently, summary judgment is not warranted for either party. First, the Parties' factual disputes about the reliability of the methodology are, alone, enough to warrant denial of their cross motions for summary judgment. The Parties disagree about whether imputation is a well-settled and reliable methodology, the relevant measures in dispute, the free nature of the Survey, the scope of public comment, the accessibility of the scoring methodology, whether the methodology change constituted a penalty or an incentive, the existence of consumer harm, among others. Each of these material issues animate the relevant inquiries under a FDUTPA claim. On the record before me, I cannot decide the truth of these matters or the weight to ascribe to any piece of evidence in favor of the Plaintiff or the Defendant.

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also directly testified that … patients were voicing complaints about the hospital's low safety score," and this testimony does not go towards the truth of the matter asserted that the hospital actually performs poorly on patient safety. (DE 107 at 12) (internal quotations omitted). But a statement can be offered for multiple assertions, and the key assertion here is that it is being offered for the truth of the matter that patients were voicing complaints or cancelling appointments.

[6] I need not reach a determinative finding here, as the facts asserted at trial may color the nature of the insurer's claims.

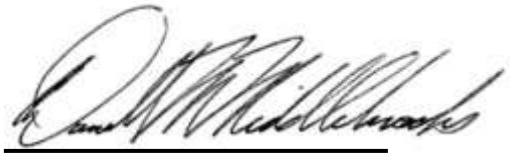
IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that:

1) Plaintiffs' Motion for Summary Judgement (DE 86) is **DENIED.**

2) Defendant, The Leapfrog Group's Motion for Summary Judgment (DE 99) is **DENIED.**

SIGNED in Chambers in West Palm Beach, Florida, this 6th day of January, 2026.



Donald M. Middlebrooks
United States District Judge

cc.

Counsel of Record