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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF DESCHUTES

6 ST. CHARLES HEALTH SYSTEM, INC., an
7 Oregon corporation,

8 Plaintiff,

9 v.

10 LA PINE RURAL FIRE PROTECTION
DISTRICT, a municipal corporation.

11 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF**

**CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION**

Filed Under ORS 21.135(f)

Filing Fee: \$281

12 Plaintiff alleges as follows:

13 **PARTIES**

14 1.

15 Plaintiff St. Charles Health System, Inc. (“St. Charles”) is an Oregon non-profit
16 corporation, headquartered in Bend, Oregon. St. Charles owns and operates several hospitals
17 and medical facilities in Deschutes County, including a hospital in Bend called the St. Charles
18 Medical Center – Bend (“St. Charles Bend”).

19 2.

20 St. Charles also operates two clinics in La Pine, Oregon, called the La Pine Immediate
21 Care Clinic and the La Pine Family Care Clinic (collectively, “St. Charles La Pine”).

22 3.

23 Defendant La Pine Rural Protection Fire District (“La Pine Fire”) is a special rural fire
24 protection district and municipal corporation established pursuant to ORS Chapter 478 *et seq.*
25

1 **BACKGROUND**

2 4.

3 When a person in Deschutes County calls 911, the Deschutes County Communications
4 Center assesses the call and coordinates dispatch of an emergency service provider (“EMS
5 provider”). For potential medical emergencies, the dispatcher notifies an EMS provider to assess
6 the patient. After evaluation, the EMS provider may recommend transport to a hospital
7 emergency department. The patient can accept or decline the recommendation.

8 5.

9 Prehospital care, including ambulance transport services, are regulated by, and subject to,
10 various statutes and administrative rules. This includes, but is not limited to, laws governing
11 Medicare, Medicaid, and private insurance.

12 6.

13 Oregon law requires counties to adopt an “Ambulance Service Area Plan.” Deschutes
14 County has adopted the Ambulance Service Area Plan for Deschutes County, Oregon (the
15 “Deschutes County Plan”). The Deschutes County Plan splits Deschutes County into eight
16 individual “Ambulance Service Areas,” or “ASAs,” which are geographic areas serviced by an
17 exclusive ambulance service provider called a “franchisee.” One ASA is La Pine.

18 7.

19 A franchisee subject to the Deschutes County Plan must employ “emergency medical
20 services providers” (“EMS providers”) who are trained in pre-hospital and emergency care and
21 are state-licensed to attend to any ill, injured, or disabled person. A franchisee also must
22 associate with a “supervising physician,” who is a licensed physician actively registered and in
23 good standing with the Oregon Medical Board. The supervising physician provides direction of
24 emergency or nonemergency care provided by EMS providers.

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8 8.

La Pine Fire bid for and received a franchise for the La Pine ASA from the Deschutes County Board of Commissioners. This means La Pine Fire is the exclusive emergency ambulance service provider in the La Pine ASA. By agreeing to be an ASA franchisee, La Pine Fire agreed to respond to and provide emergency transportation under the direction of Deschutes County EMS dispatchers. La Pine Fire also has a right of first refusal for nonemergency transports.

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12 9.

“Emergency care,” “nonemergency care” and “stable patient” are defined under the Deschutes County Plan and Oregon statutes and rules. They set forth criteria for a medical professional to consider when determining whether the patient needs emergency transport.

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17 10.

Patients have no obligation to agree to be transported by La Pine Fire. Oregon administrative rules set forth patient rights for medical transports, and protect patients from being surprised by the exorbitant fees charged by some EMS providers. Oregon law requires EMS providers, like La Pine Fire, to provide certain information to patients before being transported.

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22 11.

Because La Pine Fire is the exclusive franchisee for the La Pine ASA, a patient who suffers a medical emergency and is the subject of a 911 call will be assessed and then potentially transported by La Pine Fire. Pursuant to the Deschutes County Plan and Oregon statutes and rules, La Pine Fire must transport patients who are suffering a medical emergency, if the patient expressly or impliedly consents to the transport.

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1 *La Pine Fire*

2 12.

3 In 2010, La Pine Fire enacted Board Policy # 02-03. Its “purpose” is to set a rate
4 schedule for ambulance services and to ensure that “ambulance users shall bear the majority
5 burden of the service cost in order to minimize the general property tax burden as possible while
6 maintaining a Paramedic level service.”

7 13.

8 La Pine Fire has had difficulty making sure that patients bear the “majority burden” of
9 the cost of having EMS services available to the community of La Pine. One reason is that many
10 patients are covered by Medicare and/or Medicaid, which pays a set amount for transport
11 services, and not what La Pine Fire would like to charge. La Pine Fire is prohibited from balance
12 billing for the difference between what it receives from the government and what it would like to
13 charge. On information and belief, many insurance companies also refuse to pay the rates
14 charged by La Pine Fire. Oregon law regulates balance billing in the private insurance context.

15 14.

16 In 2013, La Pine Fire complained to the Deschutes County ASA Committee that “local
17 residents are utilizing the Fire Department as a catch all for all kinds of services.” La Pine Fire
18 claimed to have had “one of the highest overhead rates in the state, mainly due to lack of patient
19 access to health care facilities.”

20 15.

21 Since then, two health care clinics now serve the La Pine community with non-emergent
22 health care needs – St. Charles’ La Pine and La Pine Community Health Center. As with any
23 clinic, some small percentage of patients present with conditions that, in the judgment of the
24 medical provider, cannot be treated at the clinic and require evaluation by physicians trained in
25 emergent care at a hospital emergency department. At times, the patient, the clinic, or a patient’s
26

1 family member calls 911 for transport from the clinic to St. Charles Bend, the closest hospital
2 with an emergency department.

3 16.

4 La Pine Fire believes that its resources are being used for non-emergent calls by non-
5 residents. The Fire District has started to lobby patients not to utilize the transport services that
6 they are required to provide under the ASA and Oregon law.

7 17.

8 La Pine Fire’s website tells the La Pine community that it “highly recommends” that for
9 “minor emergencies” and “urgent care type events that are not life threatening,” citizens should
10 not call 911, and instead should “utilize their own primary health care provider, the local health
11 clinic, or urgent care facility options.” Thus, La Pine Fire encourages individuals suffering from
12 medical emergencies and with urgent care needs to go to St. Charles Clinic, a non-emergent,
13 family care clinic.

14 18.

15 On information and belief, EMS providers are consulting with non-medical personnel on
16 whether a patient needs emergent transport.

17 ***The Ordinance***

18 19.

19 In August 2019, La Pine Fire, now acting in its legislative capacity, passed Ordinance
20 No. 2019-03. The stated authority for the Ordinance is ORS 478.410(4). The Ordinance gives
21 the Fire Chief of La Pine Fire unilateral authority to impose two type of “fees” on various
22 facilities in La Pine: (1) a non-emergency facility fee and (2) an ambulance transport fee.

23 20.

24 The Fire Chief may impose a “non-emergency facility fee” for certain “non-emergency
25 requests for assistance from residential care, assisted living, nursing facilities, medical offices,
26 medical clinics, immediate care, urgent care, and hospitals.” The Fire Chief has “sole discretion”

1 to impose the fee, after considering whether “the response was: 1) a result of a non-emergent
2 situation, 2) caused by or related to a lack of adequate staffing or lack of adequate facility
3 resources necessary to meet the patients or residents non-emergent needs, or 3) requested by a
4 facility who has repeatedly requested non-emergency assistance.”

5 21.

6 The Fire Chief also has discretion to impose an “ambulance transport fee,” for “certain
7 ambulance transports as provided in this section,” after the Fire Chief considers “whether the
8 response was: 1) a result of a non-emergent situation, 2) caused by or related to a lack of
9 adequate staffing or lack of adequate facility or transportation resources necessary to meet the
10 patients or residents non-emergent needs, or 3) requested by a facility who has repeatedly
11 requested non-emergency transportation assistance.”

12 22.

13 It is unknown whether the “non-emergency facility fee” and the “ambulance transport
14 fee” are fees for different things or whether they give the Fire Chief discretion to impose two
15 fees for the same conduct.

16 23.

17 The “non-emergency facility fee” and the “ambulance transport fee” vest “sole
18 discretion” in the Fire Chief to determine the medical question of what constitutes a medical
19 emergency. The Fire Chief is not a medical doctor.

20 24.

21 The “non-emergency facility fee” and the “ambulance transport fee” allow the Fire Chief
22 to impose a fee if he determines that a facility lacks the staffing or “transportation resources” to
23 meet the universe of “non-emergent” needs of the La Pine community.

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1 25.

2 The “non-emergency facility fee” and the “ambulance transport fee” allow the Fire Chief
3 to impose a fee for medical emergencies, if the Fire Chief determines that a facility has requested
4 non-emergency transports in the past.

5 *The Dispute*

6 26.

7 Since January 1, 2020, to the present date, La Pine Fire has submitted at least 50 invoices
8 to St. Charles Clinics. A redacted spreadsheet listing the invoices at issue is attached to this
9 Complaint as Exhibit A. St. Charles is not providing identifying information to preserve the
10 privacy of the patients whose medical conditions La Pine Fire put at issue.

11 27.

12 The invoices represent most of the 911 calls originating from the clinic since January 1,
13 2020. None of the invoices reference Ordinance No. 2019-03. None explain whether La Pine
14 Fire imposed a non-emergency facility response fee or an ambulance transport fee. None
15 provide any reasoning for the charge. None say anything about any right to appeal.

16 28.

17 Each invoices represents a specific patient who presented at the St. Charles Clinic with a
18 specific medical condition. In many cases, a medical provider determined that the patient needed
19 emergency care that the clinic could not provide. In many cases, a representative of St. Charles
20 called 911. In others, the patient or a family member may have called 911.

21 29.

22 On information and belief, in each case, an EMS provider assessed the patient, and made
23 a determination of whether the patient needed emergency transport. If the patient did not require
24 emergency transport, the EMS provider made a decision about whether to transport the patient
25 pursuant to its right of first refusal to provide non-emergent transport. On information and
26 belief, La Pine Fire provided the patient information required by Oregon law. On information

1 and belief, La Pine Fire did not tell each patient that it intended to shift the cost of transport to St.
2 Charles Clinic because the patient purportedly was not suffering a medical emergency. La Pine
3 Fire did not tell St. Charles Clinic that they intended to shift the cost of transport to St. Charles
4 Clinic because the patient purportedly was not suffering a medical emergency.

5 30.

6 In each case, the patient made a decision about whether to accept the transport services
7 being offered by the La Pine Fire.

8 31.

9 Other than providing a medical diagnosis in good faith, St. Charles Clinic had no
10 involvement in the transaction between La Pine Fire and the patient. St. Charles could not
11 prohibit or require La Pine to transport the patient.

12 32.

13 On information and belief, La Pine Fire did not charge the patient, Medicare, Medicaid,
14 or private insurance for these transports.

15 33.

16 La Pine Fire sent the invoices to a collection agency, Credit Associates, which sent a
17 demand letter requiring payment of disputed invoices. La Pine Fire and Credit Associates then
18 sent a draft complaint to St. Charles Clinic, which included a claim for payment exceeding
19 \$300,000 for transports that predate the Ordinance. Both Credit Associates and La Pine falsely
20 claimed that St. Charles's medical providers made knowingly false statements about the medical
21 conditions its patients.

22 34.

23 La Pine Fire's and Credit Associates' demand for over \$300,000, along with an over 35%
24 collection fee, for invoices that pre-date the Ordinance, and for which La Pine Fire already has
25 been compensated, has no basis in the law and is illegal.

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1 **FIRST CLAIM FOR RELIEF**

2 **(Declaratory Relief-ORS 28.010)**

3 ***Construction and Validity of Ordinance***

4 35.

5 Plaintiff adopts and incorporates by reference paragraphs 1-34.

6 36.

7 Defendant purports to act under authority of Ordinance 2019-03. Plaintiff is affected by
8 that Ordinance and has a concrete, tangible interest in a judicial determination of its construction
9 and validity.

10 37.

11 There is an actual controversy between plaintiff and defendant because defendant has
12 imposed fees on plaintiff pursuant to the Ordinance, and made repeated threats of filing an
13 enforcement and collection action to recover those fees.

14 38.

15 The Ordinance is unlawful because it is not a proper exercise of La Pine Fire’s statutory
16 authority to impose fees. The Ordinance is unlawful because it imposes fees on persons or
17 entities other than those receiving services, in violation of ORS 478.410(4).

18 39.

19 The Ordinance is unlawful because it conflicts with and is preempted by Oregon statutes
20 and rules that govern ASA franchisees, and the Deschutes County Plan.

21 40.

22 The Ordinance is unlawful because it interferes with the physician-patient relationship,
23 and allows the Fire Chief to override a medical provider’s determination about whether
24 emergency transport is necessary, when the Fire Chief is not qualified to make such a
25 determination. It also seeks to regulate staffing and resources of local clinics without any
26 authority to do so.

1 41.

2 The Ordinance is unconstitutionally vague because, among other reasons, it gives the Fire
3 Chief unfettered discretion to impose fees for unknown conduct, and it invites arbitrary and
4 discriminatory enforcement designed to benefit an EMS provider that La Pine Fire controls. It
5 allows the Fire Chief to impose a fee on a medical facility when the medical facility did not call
6 911. It treats medical facilities different than other uses of the 911 system. It benefits one EMS
7 provider over other potential providers. The Ordinance is arbitrary and unreasonable under the
8 United States Constitution and the Oregon Constitution.

9 42.

10 The Ordinance conflicts with and is preempted by laws that govern Medicare and
11 Medicaid billing. On information and belief, La Pine Fire failed to bill Medicare, Medicaid, or
12 private insurance for these transports. To the extent the Ordinance allows the Fire Chief to shift
13 costs from Medicare/Medicaid or private insurance to a third party, it is illegal.

14 43.

15 The Ordinance is harmful for patients and the community of La Pine. Plaintiff therefore
16 seeks recovery of its attorney fees under the court's equitable power because plaintiff is also
17 protecting the rights of patients and the community of La Pine.

18 **SECOND CLAIM FOR RELIEF**

19 **(Declaratory Relief-ORS 28.010)**

20 ***Each Invoice in Exhibit A did not Violate Ordinance***

21 44.

22 Plaintiff adopts and incorporates by reference paragraphs 1-43.

23 45.

24 Defendant has sought to impose fees of over \$100,000 under the Ordinance on plaintiff.

25 46.

26 The Ordinance does not authorize a fee for any of the invoices on Exhibit A.

1 47.

2 Plaintiff did not call 911 for some of the invoices on Exhibit A. For some invoices, on
3 information and belief, the patients or a third party called 911. For some invoices, the patient
4 was not treated at St. Charles Clinic.

5 48.

6 For each invoice where St. Charles Clinic called 911, the call was made after a medical
7 provider determined that a potential emergent situation was present. The medical provider's
8 determination was consistent with the standard of care and was reasonable under the
9 circumstances. The Fire Chief's determination that these were not emergency transports is
10 incorrect. Further, the fee for service being charged by La Pine Fire was incurred by the patient,
11 not by plaintiff.

12 **THIRD CLAIM FOR RELIEF**

13 **(Declaratory Relief)**

14 ***Pre-Ordinance Charges Are Invalid***

15 49.

16 Plaintiff adopts and incorporates by reference paragraphs 1-48.

17 50.

18 Defendant has threatened to sue plaintiff for services that it claims to have provided
19 plaintiff for plaintiff's benefit, before enactment of the Ordinance, under theories of quasi-
20 contract, quantum meruit, and fraud.

21 51.

22 There is an actual controversy between the parties on the lawfulness of fees imposed by
23 plaintiff for pre-Ordinance transports.

24 52.

25 There is no basis for defendant to impose fees on plaintiff for pre-Ordinance transports.
26

1 53.

2 There is no contract, express or implied, between plaintiff and defendant related to pre-
3 Ordinance transports.

4 54.

5 Defendant provided no services to plaintiff, and plaintiff received no benefit from any
6 pre-Ordinance transports.

7 55.

8 If plaintiff said anything to defendant about the patients, those statements were based on
9 a good faith diagnosis of the patient under the circumstances that existed at the time of the
10 diagnosis. Plaintiff made no knowingly false statements to defendant about whether transports
11 were medically necessary.

12 56.

13 On information and belief, La Pine Fire billed, and recovered from, Medicare, Medicaid,
14 and private insurance for pre-Ordinance transports they are now seeking recovery from plaintiff.

15 57.

16 Plaintiff is entitled to a declaration that the pre-Ordinance charges are unlawful.

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1 **PRAYER**

2 WHEREFORE, plaintiff prays for:

- 3 1. A judgment declaring that Ordinance 2019-03 is invalid.
- 4 2. A judgment declaring that the invoices identified on Exhibit A are unlawful and invalid.
- 5 3. A judgment declaring that the pre-Ordinance charges are unlawful and invalid.
- 6 4. An award of costs and attorney fees under the court’s equitable authority to award fees.
- 7 5. Such further relief as the court deems proper.

8

9 DATED this 12th day of November, 2020.

10

11 HART WAGNER LLP

12

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