

**CAUSE NO. 2015-23764**

**TOMAS G. RIOS, M.D.**

**(PLAINTIFF)**

**VS.**

**THE UNIVERSITY OF TEXAS  
HEALTH SCIENCE CENTER AT  
HOUSTON, BELLA PATEL, M.D.  
F.C.C.P., RICHARD W. SMALLING,  
M.D. PH.D., RACKSHUNDA MAJID,  
M.D., AND FRANCISCO FUENTES,  
M.D.**

**(DEFENDANT)**

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**IN THE DISTRICT COURT**

**HARRIS COUNTY, TEXAS**

**165TH JUDICIAL DISTRICT**

**PLAINTIFF’S FIRST AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Tomas G. Rios, M.D. (“Dr. Rios”) and files this his First Amended Petition and would respectfully show unto the Court as follows:

**I. DISCOVERY**

Dr. Rios intends that discovery be conducted under Level 3 and requests that the Court implement a docket control or scheduling order.

**II. PARTIES**

Plaintiff, Tomas G. Rios, M.D. is a resident of Harris County, Texas.

Defendant, The University of Texas Health Science Center at Houston, (“UT Health Science Center”) is a medical school and/or other business entity that is licensed to do business in Texas and it may be served with process by serving its President, Dr. Giuseppe Colasurdo at 7000 Fannin Street, Suite 1460, Houston, Texas 77030, at the Office of Legal Affairs, or by serving any Vice President.

Defendant, Richard W. Smalling, M.D. PhD, (“Dr. Smalling”) is an individual who may be served with process at his usual place of business at 6410 Fannin Street, Suite 600, Houston, Texas 77030.

Defendant, Bela Patel, M.D. F.C.C.P., (“Dr. Patel”) is an individual who may be served with process at her usual place of business at 6431 Fannin Street, MSB 1.150, Houston, Texas 77030.

Defendant, Ruckshanda Majid, M.D., (“Dr. Majid”) is an individual who may be served with process at her usual place of business at 6431 Fannin Street, MSB 1.150, Houston, Texas 77030.

Defendant, Francisco Fuentes, M.D., (“Dr. Fuentes”) is an individual who may be served with process at his usual place of business at 6410 Fannin Street, Suite 600, Houston, Texas 77030.

Collectively Dr. Smalling, Dr. Patel, Dr. Majid and Dr. Fuentes are referred to as “Doctor Defendants.”

### **III. JURISDICTION**

This Court has jurisdiction over the lawsuit because the amount in controversy exceeds this Court’s minimum jurisdictional requirements. Plaintiff seeks monetary relief over \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

Venue is proper in Harris County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events giving rise to the claim occurred.

#### **IV. FACTS**

On or about March 2013, Dr. Rios accepted an appointment with UT Health Science Center for the year of July 1, 2013 through June 30, 2014. Dr. Rios is a native Texan who grew up in El Paso, Texas. He is the youngest of four children. Dr. Rios has an intimate appreciation for the opportunities afforded to himself and others by the University of Texas System. In total, over 14 members of his family including himself, have been recipients of an educational degree by a UT System School. It was because of this pride that Dr. Rios accepted the appointment with UT Health Science Center.

Acting on his duty as a physician, on February 10, 2014, Dr. Rios wrote a complaint to the UT Health Science Center compliance office reporting issues relating to patient endangerment, quality improvement, and other issues that were present during his overnight calls. It is his requirement by law to report illegal, unprofessional, or unethical conduct.

Following the letter, the individual Doctor Defendants began taking steps to discredit Dr. Rios' reputation and harm his future as a medical doctor. The Doctor Defendants published false statements in an effort to have his contract terminated, and in an effort to interfere with his professional career. Subsequently, the Doctor Defendants published false and misleading statements about him to the Texas Medical Board which resulted in a substantial delay in his receiving his license, and hindered his ability to make a living in his chosen profession.

#### **V. CAUSE OF ACTION 1 – Breach of Contract**

Dr. Rios repeats and re-alleges the facts and allegations set forth in the foregoing paragraphs as if fully set forth herein.

Dr. Rios contracted with UT Health Science Center on July 1, 2013. Dr. Rios performed all of his obligations under the agreement and was ready, willing, and able to continue doing so.

After reporting the issues described above to the compliance office, UT Health Science Center thereafter rescinded his appointment for a following year. As a direct, proximate, and consequential result, Dr. Rios was deprived of his salary for the following year. As such, Dr. Rios seeks damages as a result of the breach, plus reasonable attorneys' fees and costs of suit.

UT Health Science Center is a local government entity under Section 271.152 of the Texas Local Government Code. Section 271.152 was enacted "to loosen the immunity bar so that all local governmental entities that have been given or are given the statutory authority to enter contracts shall not be immune from suits arising from those contracts." A "local governmental entity" is defined as "a political subdivision of this state, other than a county or a unit of state government, as that term is defined by Section 2260.001, Government Code. Tex. Loc. Gov't Code Ann. Section 271.151(3)(C). Since UT Health Science Center is a local government entity, the legislature clearly and unambiguously intended to waive their immunity from suit for contractual claims covered under Local Government Code Section 271.152.

## **VI. CAUSE OF ACTION 2**

### **Tortious Interference with an Existing Contract against Doctor Defendants**

Dr. Rios has a valid contract with UT Health Science Center. Dr. Smalling, Dr. Majid, and Dr. Patel willfully and intentionally interfered with that contract by making false statements about Dr. Rios. As a result of the interference, Dr. Rios was injured and incurred actual damages through the loss of employment and future employment

## **VII. CAUSE OF ACTION 3**

### **Tortious Interference with Future Relations against Doctor Defendants**

Based on Dr. Rios's academic and work history, there was a reasonable probability that he would have entered into a business relationship with a hospital following receipt of his medical license. Dr. Smalling, Dr. Majid, Dr. Patel, and Dr. Fuentes individually, intentionally

interfered with Dr. Rios's relationship by submitting false information to the Texas Medical Board. The Doctor Defendants' conduct as independently tortious or unlawful, and as a result of Dr. Rios's complaints of wrongdoing at the hospital. Dr. Rios was injured as a result of the Doctor Defendants' actions and suffered actual damage and loss of future income. In addition, Dr. Rios was not given proper credit for his time at UT Health Science and is therefore inhibited in his abilities to obtain privileges at certain hospitals in make additional income.

#### **VIII. CAUSE OF ACTION 4 – Defamation against Doctor Defendants**

The Doctor Defendants published a statement of fact to the Texas Medical Board on or about June 23, 2014. The statements referred to Dr. Rios in a defamatory manner and were patently false. The Doctor Defendants were acting with actual malice and negligence with regard to the truth of the statements, and were doing so in retaliation for Dr. Rios raising concerns regarding patient welfare etc. as required by law. As a result of the Doctor Defendants' actions, Dr. Rios was substantially delayed in obtaining his medical license and as a result lost out on income and spent time trying to clear his good name and reputation.

#### **IX. CAUSE OF ACTION 5 – Violations of 42 U.S.C. 1983 by Doctor Defendants**

The Doctor Defendants, in their individual capacities, violated Dr. Rios' first amendment rights for exercising his free speech to report a wrongdoing which is a protected right under the First Amendment of the United States Constitution and the Texas Constitution, Article 1, Section 8. Thereafter, the Doctor Defendants retaliated against Dr. Rios for engaging in his protected activity by making false statements that eventually led to his contract being terminated. These actions violated his free speech rights and were not conduct for which his employment contract could be legally terminated. The Doctor Defendants concocted fraudulent and false statements against Dr. Rios in retaliation for him engaging in protected activity. The Doctor Defendants

were personally involved in the constitutional deprivation and there was a sufficient causal connection between their wrongful conduct and the constitutional violation. The Doctor Defendants should be made to pay for their violation of Dr. Rios' Civil Rights.

#### **X. Conditions Precedent**

All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

#### **XI. CONCLUSION AND PRAYER**

Dr. Rios asks for Defendant to pay it damages for the money paid for services described above, that were not rendered, and the consequential damages that arose from Defendants' acts.

For the reasons set forth in this Original Petition and Request for Disclosure, Dr. Rios asks that the Court issue citation for Defendants to appear and answer, and that Dr. Rios be awarded a judgment against Defendant for the following:

- a. Actual damages.
- b. Prejudgment and postjudgment interest.
- c. Court costs.
- d. Attorney fees.
- e. All other relief to which Plaintiff is entitled.

Respectfully submitted,

**WAGNER SÁENZ DORITY, L.L.P.**

By: /s/ Jeremy D. Saenz

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**ATTORNEYS FOR PLAINTIFF**  
**Tomas G. Rios, M.D.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the aforementioned document has been sent in accordance with the law, on this the 24<sup>th</sup> day of July, 2015, to:

Frank A. King  
Assistant Attorney General  
General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
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Attorneys for Defendants

/s/ Jeremy Saenz

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