

CAUSE NO. 2016-03350

TOMAS G. RIOS, M.D.

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IN THE DISTRICT COURT

(PLAINTIFF)

VS.

HARRIS COUNTY, TEXAS

**CHI ST. LUKE'S HEALTH BAYLOR
COLLEGE OF MEDICINE MEDICAL
CENTER**

(DEFENDANT)

55TH JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

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

I. DISCOVERY

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

II. PARTIES

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

3. Defendant, CHI St. Luke's Health Baylor College of Medicine Medical Center, doing business as St. Luke's Medical Center ("St. Luke's" or "Defendant") is a domestic nonprofit corporation that is licensed to do business in Texas and it may be served with process by serving its registered agent for service of process, CT Corporation System, at 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.

III. JURISDICTION

4. 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.

5. Venue is proper in Harris County under the Texas Health and Safety Code as it is the District Court in the County where Defendant conducts business.

IV. FACTS

6. On or about September 14, 2015, Dr. Rios, adhering to both his legal and ethical obligations, reported wrongdoings and violations of the law made by other Doctors working for Defendant and in particular the RRT system. Subsequent to Dr. Rios reporting the violations, Dr. Rios became the victim of retaliatory actions by Defendant and its supervising physicians. False accusations were made against Dr. Rios through sham peer reviews designed to inhibit Dr. Rios's ability to practice medicine in the State of Texas.

7. In particular, Dr. Narcisse, a representative of Defendant, asked for a conference with Dr. Rios. In that conference, Dr. Rios was told that things may not turn out good for him and that he may get suspended pending a peer review completion. Dr. Narcisse was basing his information on conversations he had with the Chief Operating Officer, David Berger, Chief of Staff, Michael Wilson, and Director of ICU, James Herlihy. Dr. Narcisse said that in the last 24 hours, he been made to feel like he needs to fix the problem immediately. Dr. Narcisse said that he was called by Dr. Wilson and that Dr. Wilson said that had he heard about matters (those accusations made by Dr. Herlihy) within 24 hours of occurrence, Dr. Rios would have been summarily suspended.

8. Dr. Narcisse said that the hospital's political climate must be considered. and that the politics of everything were on Dr. Herlihy's side. He said that when peers look at it, they were

going to give a level 4 adjudication (an intent to harm). Dr. Narcisse said that people had already made up their mind about how they would find. They had just imposed that finding on another doctor because of two adverse malpractice claims that were settled. Dr. Narcisse said that Dr. Rios could be suspended without Dr. Wilson even hearing one side. They sent a clear message that they were going to evaluate everything the Dr. Rios had ever done.

9. Dr. Narcisse said he was certain the outcomes of the review would be against him, just didn't know how severe. Dr. Narcisse indicated that if Dr. Rios left the medical staff, that the peer review would not take place. Dr. Narcisse said that if, Dr. Rios manages to get out of the situation, Dr. Rios will have to be even better than everyone else in the future to avoid any future complaints. Dr. Narcisse indicated that he admired Dr. Rios' passion, but that he should have waited for "air cover" before acting. He indicated that he would be comfortable with Dr. Rios caring for his mother. Dr. Wilson told Plaintiff that if he resigned his privileges it would all go away.

10. A transcript of the recorded conversation is attached hereto as Exhibit "A" and incorporated herein by reference. The gist of Plaintiff's conversations was that a peer review would be conducted, but that everyone had already made up their mind to issue a level 4 finding. As such, Defendant recommended that Dr. Rios resign rather than be subjected to a review.

11. Such acts by the Defendant were in clear retaliation for Dr. Rios voicing his opinion and raising concerns regarding the RRT System. In particular, Dr. Rios had informed Defendant that by not following the proper procedures, including speaking with attending physicians prior to any rapid response treatment, that the Defendant was violating Texas Occupations Code 162.0021, 162.0022, and 157.054. Defendant's response was to guarantee the worst possible peer review before one even began, this too is a violation of Texas Health and Safety Code Section 241.101, by not affording Dr. Rios due process as required by federal law.

12. On November 17, 2015 and again on December 9, 2015, Dr. Rios, through his counsel, informed St. Luke's management of the wrongdoings.

13. Defendant's actions have not stopped, even with the filing of the original lawsuit. On June 13, 2018, Dr. Rios again raised concerns regarding the RRT and the Intensive Care Unit. In this instance, Dr. Rios complained that instructions regarding his patients were disregarded by the ICU team, leaving the patients in harm's way.

14. After making the complaint, Dr. Rios received a message from Gay Nord's office, Market President of Defendant, requesting a meeting on June 29, 2018. In the meeting, Defendant once again informed Dr. Rios that some of his cases went to peer review that raised concern. Defendant informed Dr. Rios that he was not to interfere with the care of patients in the intensive care units, and that if he did, he would be summarily suspended. They claimed, that this decision was approved by a professional practice evaluation committee, and that the medical executive committee agreed. At the conclusion of the meeting, Dr. Rios iterated that his number one priority is to his patients, and it always will be. He stated that if the rapid response or critical care jeopardizes his patient care, then he will act accordingly.

15. On that same day, June 29, 2018, Dr. Rios was hand delivered a letter raising concerns related to "unprofessional behavior, patient safety, quality, outcomes, and medical judgment." Thereafter, on July 10, 2018, while Dr. Rios was on vacation, Defendant sent Dr. Rios a Confidential Certified Letter questioning his actions with respect to a patient. Subsequently, in undoubtedly a self-serving attempt to Defendant to discredit Dr. Rios, Defendant sent additional Certified Letters inquiring into his medical decisions. On August 3, 2018, Dr. Rios received noticed that an evaluation of his practitioner performance was done on June 22, 2018. He also received another letter that day questioning his actions on a July 6, 2018 visit. Then on August

31, 2018, Dr. Rios received two separate certified letters one regarding a May 3, 2018 “evaluation” and the other on a separate July 6, 2018 “evaluation.” In both, Dr. Rios was alleged to have a significant deviation from the standard of care.

16. Additionally, if the commenced vendetta against Dr. Rios’s medical performance was not enough, Defendant also felt the need to send a letter on June 28, 2018 asking him not to leave business cards advertising his private practice. Something that is done by several physicians working at the hospital.

17. It is apparent that Defendant, or those in a position of influence at the Hospital, do not like criticism, or being informed that their policies in practice fail to adhere to the requirements imposed by law. As such, they have chosen instead not to change their practices, but to do what they can to discredit Dr. Rios. This has been seen in practice with the nursing staff at Defendant’s facility. In June, the Director, Margaret Diano told the nursing staff make sure that Dr. Rios is performing time out procedures, and if not to file an incident report. It is apparent that Defendant is targeting Dr. Rios to build a case for dismissal of privileges. Furthermore, one of the Registered Nurses overheard various physicians commenting that they don’t want Dr. Rios working on their patients saying, “do not get me in trouble” ... “you must be trying to get me fired.”

18. The message Defendant sends its staff and physicians is keep quite or you will lose your job.

V. CAUSE OF ACTION 1 – Violations of Texas Health & Safety Code

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

20. St. Luke’s, through its supervisors and other personnel, violated Texas Health and Safety Code Section 161.135 by retaliating against Dr. Rios, through threats, discipline, additional

oversight, false accusations, and sham peer reviews who reported wrongdoings and violations of the law.

21. Furthermore, Defendant's actions in threatening peer review, and guaranteeing the results, are a violation of Section 241.101 of the Texas Health & Safety Code. In particular, Defendant must afford physicians due process that meets the requirements of 42 U.S.C. Section 11101 et seq., as amended. 42 U.S.C. Section 11112 requires among other things, that adequate notice and a hearing procedure be afforded a physician. Furthermore, if action is to be taken, a physician must be afforded proper notice.

22. Defendant's Rapid Response Team, and Intensive Care unit, violate their own policies, and the law, by not contacting the attending physician prior to treatment. Furthermore, Defendant, makes note that physicians are called, but they don't actually contact them. Defendant's recent actions emphasize this practice, when they threatened Dr. Rios from "interfering" with the care of his patients in the intensive care unit.

IX. Conditions Precedent

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

X. Application for Injunctive Relief

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

25. The actions of Defendant, including the most recent actions from Friday June 29, 2018, threaten Dr. Rios's ability to work in his chosen profession, and are clear violations of the law. Texas Civil Practice & Remedies Code Section 65.0011 authorizes injunctive relief when a party is entitled to the relief demanded, and all or part of the relief requires the restraint of some act

prejudicial to the applicant. Injunctive relief is also granted when a party performs or is about to perform, or is procuring or allowing the performance of, an act relating to the subject litigation, in violation of the applicant's rights, and the act would tend to render judgment in that litigation ineffectual.

26. An applicant must show it has a probable right to relief, that he will suffer a probable injury, which is imminent and irreparable, and that there is no adequate remedy at law. In the present case, Dr. Rios has plead a case for retaliation under the Texas Occupations Code and reported violation of the Texas Health and Safety Code. Defendant has told Dr. Rios, that it will summarily suspend him if he involves himself in his own patients' care in the intensive care unit, a clear violation of law. As such, harm is imminent, as Dr. Rios will have to neglect his patients should he choose to follow Defendant's unlawful mandate. Should Defendant summarily suspend and revoke Dr. Rios' privileges, Dr. Rios will be irreparably harmed, not only with the suspension, but with the reportable occurrence appearing on his record, that could prevent Dr. Rios from renewing his medical license and obtaining future employment. There is no adequate remedy at law to prevent Defendant from taking this action, and as such, Dr. Rios seeks a temporary restraining order to prevent Defendant from acting on this unlawful course of action.

27. Following receipt of a Temporary Restraining Order, Dr. Rios requests a hearing and the implementation of a temporary injunction to preserve the status quo, and after a trial on the merits a permanent injunction. Dr. Rios will pay a reasonable bond if necessary to secure a temporary restraining order.

VII. CONCLUSION AND PRAYER

28. Dr. Rios asks this Court to grant the injunctive relief he request, and 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.

29. 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. Temporary Restraining Order, Temporary Injunction, and Permanent Injunction;
- b. Actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.
- c. Exemplary damages.
- d. Prejudgment and post judgment interest.
- e. Court costs.
- f. Reasonable Attorney fees.
- g. All other relief to which Plaintiff is entitled.

Respectfully submitted,

WAGNER & SÁENZ, L.L.P.

By: /s/ Jeremy D. Saenz

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ATTORNEY FOR PLAINTIFF

Tomas G. Rios, M.D.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Plaintiff's Second Amended Petition** was served, pursuant to Texas Rules of Civil Procedure 21 and 21a, via electronic service, on this the 9th day of October, 2018 to:

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/s/ Jeremy Saenz

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Unofficial Copy Office of Chris Danna District Clerk