

PARTIES

2. Plaintiff ALBERT J. TURK, M.D. is an individual and a citizen of the State of Texas and the United States of America. He resides and is domiciled in Somervell County Texas. His present address is [REDACTED]. Plaintiff Albert J. Turk is a medical doctor licensed in the State of Texas. At all pertinent times he has been employed by Defendant Somervell County Hospital District and by an affiliated corporation, Glen Rose Healthcare, Inc.

3. Plaintiff SHELLEY TURK, R.N. is an individual and a citizen of the State of Texas and the United States of America. She resides and is domiciled in Somervell County Texas. Her present address is [REDACTED]. Plaintiff Shelley Turk is a registered nurse licensed in the State of Texas.

4. Defendant SOMERVELL COUNTY HOSPITAL DISTRICT is a governmental entity doing business in both the State of Texas and the United States of America. Defendant Somervell County Hospital District maintains its principal place of business at Glen Rose Medical Center and is an entity domiciled in Somervell County. Somervell County Hospital District owns and runs the Glen Rose Medical Center. Defendant Somervell County Hospital District may be served by serving its Chief Executive Officer, Ray Reynolds, at 1021 Holden Street, Suite 500, Glen Rose, Texas 76043.

5. Defendant RAY REYNOLDS is an individual and a citizen of the State of Texas. His official capacity is that of Chief Executive Officer of Glen Rose Medical Center-Somervell County Hospital District, and he may be served at his place of business at 1021 Holden Street, Suite 500, Glen Rose, Texas 76043.

PERSONAL JURISDICTION

6. Defendants have systemic and continuous contacts with the State of Texas. Further, Defendants have purposefully directed their activities at Plaintiffs, residents of the State of Texas, and this civil action results from damages that arise out of or relate to those activities. Therefore, this Court has “general jurisdiction” over Defendants for all matters in which they are a party and “specific jurisdiction” over Defendants for the claims raised in this civil action. In sum, this Court has personal jurisdiction over the parties in this civil action.

SUBJECT MATTER JURISDICTION

7. In this civil action, Plaintiffs, Albert J. Turk, M.D. and Shelley Turk, R.N., are suing Defendants, Somervell County Hospital District and Ray Reynolds, Individually and in his Official Capacity, in part under federal law - jurisdiction provided for in Section 1983 of Title 42 of the United States Code, for violating the Plaintiffs’ substantive rights guaranteed them by the First Amendment Freedom of Speech clause to the United States Constitution. Plaintiff Albert J. Turk, M.D. is also suing Defendants for violation of his Fourteenth Amendment Due Process rights. Plaintiffs are also suing for violation of their federal First Amendment right to Petition the Government for Redress of Grievances. To the extent this civil action arises under federal law, this Court has subject matter jurisdiction pursuant to Section 1331 of Title 28 of the United States Code (federal question jurisdiction).

SUMMARY OF FACTS

8. Plaintiff Albert J. Turk, M.D. is a physician working at the Glen Rose Medical Center. He is employed by Defendant Somervell County Hospital District and an affiliated corporation, Glen Rose Healthcare, Inc.

9. Plaintiff Shelley Turk, R.N. is a registered nurse who was employed by Defendant Somervell County Hospital District at Glen Rose Medical Center until she was fired on June 26, 2015.

10. Plaintiffs have repeatedly spoken out about urgent matters of public interest in regard to the operation of the public hospital facility known as Glen Rose Medical Center. Their outcries were made to numerous persons and entities, starting first with a substantial history of verbal presentations to management and otherwise internally seeking corrections to unsafe and dangerous practices at Glen Rose Medical Center, as well as seeking implementation of new and better practices, especially where instances of neglect or lack of training resulted in adverse patient outcomes, including what appeared to Plaintiffs and others to be premature deaths. When the history of speaking out internally to management did not result in any substantial improvements, Plaintiffs began to make written and verbal outcries to a number of additional persons and entities, including but not limited to elected members of the Board of Trustees of the Somervell County Hospital District, the Glen Rose Medical Center Hospital Medical Staff Committee, the Texas Department of State Health Services, and the media. When the Joint Commission on Hospital Accreditation investigated Glen Rose Medical Center as a result of the report of another healthcare professional, Shelley Turk also spoke to the Joint Commission's investigator at length.

11. The issues Plaintiffs have addressed include:

- inadequate clinical training of nurses, especially in regard to patient emergencies occurring outside of the Emergency Department;
- Patient neglect, especially by floor nursing staff and management; specifically "standing by" during code blues, not providing emergency services.

- Specific adverse patient outcomes, including deaths;
- Indifference by management to ongoing patient related issues;
- Placing unqualified or inadequately oriented staff in positions of responsibility. (For example, the Glen Rose Medical Center Quality Officer is not a licensed medical professional. Another example, inexperienced nurses are at times assigned to charge nurse positions without proper orientation);
- Short staffing;
- Delays in patient care, including responses to code blue emergency situations;
- Ordering employees not to document “patient safety” issues as such; and
- Inadequate investigations, glossing over or falsely describing adverse patient related events and outcomes.

After its investigation, the Texas Department of State Health Services advised Plaintiffs in writing that, “*At least, some of your claims were validated.*” The Texas Department of State Health Services as a matter of policy and practice does not advise reporting persons of its detailed findings and restricts its comments to reporting persons as alleged above.

12. The retaliation against Plaintiffs for speaking out about these and other issues escalated after Plaintiffs turned to external reporting. Plaintiffs’ work environment became openly hostile. Plaintiffs have been repeatedly told that they never should have advised Somervell County Hospital District Board members or the Texas Department of State Health Services of their concerns. To give an example, in response to a verbal outcry about retaliation, Plaintiff Shelley Turk was told by the Hospital Committee Chief of the Medical Staff that she and Dr. Turk brought the retaliation “upon themselves.”

13. Prior to the May 28, 2015, meeting of the Board of Trustees of the Defendant Somervell County Hospital District agenda item was posted as follows:

“Executive Closed Session- Physician Employment Agreement

The Somervell County Hospital District will convene in Executive Session pursuant to Section 551.074 of the Texas Government Code to discuss personnel matters related to the possible termination of an employment agreement under Glen Rose Healthcare, Inc. and pursuant to Section 551.071 of the Texas Government Code to discuss with its attorney, either in person or by telephone, the same matters and pursuant to Section 161.032 of the Texas Health and Safety Code to discuss quality of care related issues.”

14. No Defendant notified Plaintiff Jay Turk, M.D., that the posted personnel matter related to him. Despite the stealthy nature of the posting, Dr. Turk became aware of it, and inquired through counsel if the personnel item posted for consideration by the Somervell County Hospital District Board of Trustees involved that entity considering authorizing his termination. Defendants, through their counsel, ultimately admitted that the subject matter of the posted personnel item was the potential termination of Dr. Turk from his practice at Glen Rose Medical Center and loss of his job. Dr. Turk responded through his counsel specifically pursuant to Section 551.074 of the Texas Government Code, that a closed meeting was not allowed by this public Board of Trustees, if the subject of deliberation (in this case Dr. Turk) requested a public hearing. He also advised that he wanted any and all deliberations about personnel matters involving himself, to be held only in open session, and further that the agenda item involving consideration of his termination, in executive session must be reposted as an open session, in accordance with Texas law and his election in favor of a public hearing.

15. Further, Dr. Turk insisted, pursuant to federal Due Process and Texas Due Course of Law constitutional principles, that if his termination was to be considered by the highest policymaking

officials of Defendant Somervell County Hospital District, as posted, he was entitled to constitutionally required fundamentals of due process and due course of law, including access to any alleged evidence against him with regard to the purported "quality of care" issues involving himself, an opportunity to respond to any such evidence, neutral decision-makers, an opportunity to cross-examine witnesses, and, in this case, a public proceeding.

16. Despite Dr. Turk's insistence, the Board of Trustees of the Somervell County Hospital District convened in executive session on May 28, 2015, to consider the posted personnel item, now under the guise or pretense that the matter was not a personnel matter, as posted, but instead it was only a "medical peer review." In the executive session, the Board of Trustees of the Somervell County Hospital District, only one of whom was a physician-peer, entertained statements from several physicians practicing at Glen Rose Medical Center who were known to be hostile to Dr. Turk because of his above-alleged history of patient advocacy and advocacy against unsafe and dangerous conditions at Glen Rose Medical Center. Ultimately, when the Board of Trustees of the Somervell County Hospital District returned to open session on the evening of May 28, 2015, the public announcement, based upon no public debate at all, was that the Board of Trustees would take "no action" on this item. This decision had obviously already been made in the executive session. Since that meeting, Defendant Ray Reynolds has announced in open session to the Board of Trustees of the Defendant Somervell County Hospital District, words to the effect that Dr. Turk will be leaving medical practice at Glen Rose Medical Center in the near future. For example, Defendant Reynolds said in an open Board session specifically on June 23, 2015, that Dr. Turk is "not a long-term player." Defendant Ray Reynolds has also mentioned firing Dr. Turk.

17. False reports of alleged professional misconduct have been filed by Defendants against both Nurse Turk and Dr. Turk with the Texas Board of Nursing and the Texas Medical Board. Further, Dr. Turk has been removed from the Executive Committee of the medical staff of Glen Rose Medical Center. He also lost wages and benefits as a result of his advocacy. Reasonable accommodations made necessary by a congenital defect to all five digits of his right hand have also been denied to Dr. Turk in an effort to hinder his ability to provide medical services and find a means to discipline him or remove him from practice at Glen Rose Medical Center.

18. Despite the fact that the Emergency Department was grossly under budgeted and understaffed as compared to the Medical Surgical Unit, Shelley Turk, R.N. (who was, until June 26, 2015, the Hospital's Emergency Services Director and Trauma Coordinator), was ordered not to allow overtime work for her nursing staff. Further, Shelley Turk's staffing requests to fill Emergency Department vacancies were consistently delayed or denied. As a result, Plaintiff Shelley Turk was burdened with working the additional hours that her staff was not allowed to work due to overtime limitations. In addition, Plaintiff Shelley Turk was disciplined and threatened with termination for raising questions and concerns about the competency or appropriateness of care rendered by visiting emergency room physicians and patient neglect by nurses from the medical surgical unit. This is despite the fact that a core requirement of Plaintiff Shelley Turk's Texas nursing license requires her to advocate fully and promptly to assure competent, safe, and appropriate patient care.

19. On June 26, 2015, Plaintiff Shelley Turk was terminated from employment based upon a trumped up charge, not related to her nursing skills or practices. Specifically, Plaintiff Shelley Turk was accused of referring to Kelly VanZandt (the Glen Rose Medical Center Quality Director) in the medical records office on June 24, 2015, as a "camel toe and an idiot." Shelley

Turk made no such comments. In fact, the only remark Shelley Turk made on that date in the medical records office, was in reference to the loud laughter of another person, Susan Price, the Clinic Administrator, whose laughter can often be overheard, echoing in the hall by many people, including patients. Plaintiff Shelley Turk said something needed to be done about that. Everyone to whom Shelley Turk was speaking on June 24, 2015 *agreed* that this was a problem that needed to be addressed.

20. Ironically, less than one month before, on May 28, 2015, in the meeting of the Board of Trustees of Somervell County Hospital District, the public was advised that Shelley Turk, R.N. had been awarded the Board President's award as the most outstanding employee of the Glen Rose Medical Center. The President of the Board of Trustees of Somervell County Hospital District, also spoke at some length at that meeting about how well the Emergency Department was providing services to the community, specifically under Shelley Turk's direction.

21. In 2014 and 2015, Plaintiffs Jay Turk, M.D. and Shelley Turk, R.N. presented Defendant Somervell County Hospital District, through Defendant Ray Reynolds, a series of grievances. The first grievance, dated on or about September 5, 2014, addressed an ongoing retaliatory effort to terminate Shelley Turk after she advocated extensively for patient safety, better training especially for nurses, and other needed changes at Glen Rose Medical Center. The second grievance dated on or about January 6, 2015, addressed the retaliatory action of removing Dr. Turk from the Medical Executive Committee at Glen Rose Medical Center after he documented patient safety issues and numerous other matters of public concern. The third grievance dated on or about January 18, 2015, addressed presenting false charges of exceeding her license to practice nursing against Shelley Turk to the Texas Board of Nursing, in response to her history of advocacy. In each case, the grievance was not answered at all, or summarily rejected by

Defendant Ray Reynolds. The grievances were never presented for any form of hearing to the Board of Trustees of the Defendant Somervell County Hospital District. The Trustees and the public never had a chance to hear about any of these serious and substantial grievances.

Defendants Ray Reynolds and Somervell County Hospital District stopped the grievance process before its Board of Trustees, the entity vested with final authority to resolve grievances, had any opportunity to consider the grievances properly presented by Plaintiffs.

CLAIMS

FIRST AMENDMENT (Freedom of Speech)

22. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 21. As alleged above in detail, Defendants have terminated Plaintiff Shelley Turk's employment, have taken steps to terminate Albert J. Turk's employment and are still intent on terminating Dr. Turk in the near future, all in violation of the First Amendment to the United States Constitution and Title 42 USC §1983. This claim arises both directly under 42 USC §1983 and under the United States Constitution. Plaintiffs' protected speech (their numerous reports regarding patient safety concerns, and safe and efficient operations of a public hospital) motivated Defendants' imposition of the adverse personal and employment actions alleged above.

SECOND CLAIM FOR RELIEF (Due Process of Law and Due Course of Law)

23. Plaintiff Albert J. Turk incorporates by reference and re-alleges paragraphs 1 through 21. As alleged above in detail, on May 28, 2015, Defendants Ray Reynolds and Somervell County Hospital District, acting under color of the authority vested in them by the State of Texas, and despite Dr. Turk's insistence on his right to due course of law and due process, took steps to terminate Albert J. Turk's employment, providing him none of the fundamental elements of due

process, in violation of the Fourteenth Amendment to the United States Constitution and Article I Section 19 of the Texas Constitution.

**THIRD CLAIM FOR RELIEF
(Violation of the Texas Open Meetings Act)**

24. Plaintiff Albert J. Turk incorporates by reference and re-alleges paragraphs 1 through 21. As alleged above in detail on May 28, 2015, Defendant Somervell County Hospital District violated Plaintiff Albert J. Turk's rights under Section 551.074 of the Texas Government Code by holding an executive closed session involving termination of Dr. Turk's medical practice at Glen Rose Medical Center, and loss of his job over Dr. Turk's objection and despite his insistence on a properly noticed fully public hearing.

**FOURTH CLAIM FOR RELIEF (Systematically Denying Plaintiffs
the Right to Petition the Government Redress for Grievances)**

25. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 21. As alleged above in detail, every effort of the Plaintiffs to obtain redress of their written grievances was ignored or simply rejected by Defendants. This calculated frustration of Plaintiffs' efforts to present grievances, violates the First Amendment of the Constitution of the United States of America, as well as Article I Section 27 of the Texas Constitution.

JURY DEMAND

In accordance with Federal Rule of Civil Procedure 38, Plaintiffs, Albert J. Turk, M.D. and Shelley Turk, R.N., demand a trial by jury of all issues raised in this civil action that are triable of right (or choice) by a jury.

DEMAND FOR JUDGMENT- PRAYER FOR RELIEF

In accordance with Federal Rule of Civil Procedure 8(a), Plaintiffs make the following demand that judgment be issued in the favor of each of their claims and respectfully request that this Court:

- A. Issue a declaratory judgment with regard to each of the above-alleged constitutional and statutory claims.
- B. Permanently enjoin the Defendants, their agents, and those acting in concert with them from any further acts of retaliation under federal or state law.
- C. Issue a monetary judgment for tangible damages.
- D. Issue a monetary judgment for intangible damages.
- E. Order Defendants to reinstate Plaintiff Shelley Turk to her former positions with all concomitant wages and benefits and seniority, or in lieu thereof, issue a monetary judgment in an amount sufficient to reimburse Plaintiff, Shelley Turk, for losses she is likely to suffer in the form of future pay and benefits and loss of seniority (reinstatement or front pay);
- F. Award Plaintiffs, Albert J. Turk and Shelley J. Turk, reasonable attorneys' fees and costs;
- G. To the extent not otherwise requested herein, issue a monetary judgment in favor of Plaintiffs, Albert J. Turk and Shelley Turk, for all back pay, front pay (in lieu of reinstatement), actual damages, compensatory damages, punitive damages, exemplary damages, pre-judgment interest, post-judgment interest, attorneys' fees, and costs, to which each is entitled; and

H. Award Plaintiffs such additional legal or equitable relief as this Court deems proper and just and to which Plaintiffs are entitled.

Respectfully submitted,

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