

I. BACKGROUND

Plaintiffs' Second Amended Original Complaint¹ asserts the following:

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 by 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:

¹Plaintiffs filed a Second Amended Original Complaint after Defendants' Motion to Dismiss was filed. The Motion to Dismiss applies equally to the Second Amended Original Complaint as no substantive changes were made in the amendment.

- 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 another example, in response to a verbal outcry about retaliation, Plaintiff Shelley Turk was told by the then 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 18, 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 the above-alleged history of patient advocacy and advocacy against unsafe and dangerous practices 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 historically threatened in no uncertain terms to fire Dr. Turk. To give one example, in September 2014, Defendant Ray Reynolds said to Plaintiff Jay Turk words to the effect that he had "five minutes" to sign a new contract, "take it or leave it." Also, "If you refuse to sign it, we will start the proceedings to terminate your practice here at Glen Rose Medical Center." The contract presented to Dr. Turk with that threat of termination was substantially less advantageous financially to Dr. Turk than a previous draft contract which had been

verbally presented by Defendant Reynolds to Dr. Turk. That previous draft included a substantial raise in pay for Dr. Turk, with additional time off. However, the previous draft was presented with Defendant Reynolds stating that he expected Dr. Turk would now be a “*team player*.” Because Dr. Turk understood that this was a demand that he should terminate his patient advocacy and other advocacies for the benefit of the hospital and the public, Dr. Turk *did not agree that he would be a “team player” going forward*. Even during the September 2014 meeting, while Dr. Turk was being threatened, he tried to bring up his ongoing concerns about health and safety issues at Glen Rose Medical Center and his concerns about patients who had in the past suffered adverse outcomes because of poor conditions including deaths. Defendant Reynolds refused to answer Dr. Turk when he attempted to address those public health and safety concerns.

17. False reports of alleged professional misconduct have been filed by Defendants against both Nurse Turk and Dr. Turk and Donna Anderson, L.V.N., another nurse who practiced regularly with Dr. Turk, with the Texas Board of Nursing and the Texas Medical Board. Both authorities rejected Defendant’s efforts to obtain actions against Plaintiffs’ licenses and Nurse Anderson’s license. The letter from the Texas Medical Board dated August 28, 2015, to Plaintiff Jay Turk, M.D. declining to take any action against his license is attached to this [Second] Amended Complaint, labeled **Exhibit “A** and incorporated by reference. Plaintiffs attach and incorporate that exhibit by reference into this Second Amended Complaint. The letter from the Texas Board of Nursing dated August 24, 2015 declining to take action against Nurse Turk’s license is attached to this [Second] Amended Complaint, labeled **Exhibit “B”** and incorporated by reference. Plaintiffs attach and incorporate that exhibit by reference into this Second Amended Complaint. The letter in [sic] from the Texas Board of Nursing dated July 27, 2015 declining to take action against Nurse Anderson’s license is attached to this [Second] Amended Complaint, labeled **Exhibit “C”** and incorporated by reference. Plaintiffs attach and incorporate that exhibit by reference into this Second Amended Complaint.

18. Further, Dr. Turk has been removed from the Executive Committee of the medical staff of Glen Rose Medical Center. Further, Dr. Turk’s practice was and is in substantial part carried out at the clinic affiliated with Glen Rose Medical Center, whose manager until recently was Ms. Susan Price. On numerous occasions, Manager Price, who

at all pertinent times was managed by Defendant Reynolds, put pressure on the staff in the clinic not to assist either Plaintiff, and even not to talk to them. For example, on several occasions, she told clinic nurses not to talk to, "*Dr. Satan or his wife.*"

19. 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, 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.

20. 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.

21. 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 referencing Shelley Turk's direction.

22. 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 retaliator 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. On or about September 10, 2015, Dr. Turk presented a grievance about Defendant Reynolds pressuring him to move his practice across the street to a medical suite without a treatment room. In each case, the grievance was not answered at all, or summarily rejected by Defendant Ray Reynolds. These grievances have been 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.

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24. The Original Complaint in this lawsuit was filed on August 6, 2015. Since that date, the pattern or retaliation against Plaintiff Jay Turk, M.D. has continued. To give one example, Defendants have failed and refused to fully process Dr. Turk's Medicare credentialing, which has had an adverse financial impact on Dr. Turk. Dr. Turk has also been excluded from several meetings pertinent to his practice at Glen Rose Medical Center. Further, Defendant Reynolds has

pressured Dr. Turk to move his practice across the street to a medical suite which does not even contain a treatment room. Further, Dr. Turk's on-call schedule has been changed to be as personally inconvenient as possible, including the Thanksgiving and Christmas holidays. These are just examples.

Plaintiffs' Second Amended Complaint, pp. 3-12 (emphasis in original). Plaintiffs seek monetary, injunctive and declaratory relief.

II. MOTION TO DISMISS

When considering a dismissal under 12(b)(6) for failure to state a claim upon which relief may be granted, the Court accepts as true "all well-pleaded facts" and views them in the light most favorable to the plaintiff. See *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004). However, a plaintiff must allege specific facts, not conclusory allegations. *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir.1989). Conclusory allegations, as well as unwarranted deductions of fact, are not admitted as true. *Guidry v. Bank of LaPlace*, 954 F.2d 278, 281 (5th Cir.1992). To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007) (emphasis added); see also *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009).

The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

Id., quoting *Twombly*.

“Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *In re Katrina*, 495 F.3d at 205 (quoting *Twombly*). However, the Court need not accept as true legal conclusions. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*, at 678. Only those complaints which state a plausible claim for relief survive a motion to dismiss. *Id.* at 679. In making this determination, the reviewing court must “draw on its judicial experience and common sense.” *Id.*

“The issue is not whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim. Thus, the court should not dismiss the claim unless the plaintiff would not be entitled to relief under any set of facts or any possible theory that he could prove consistent with the allegations in the complaint.” *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 313 (5th Cir. 2002) (quoting *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999) (*per curiam*)).

III. DISCUSSION

A. Texas Open Meetings Act. The Texas Open Meetings Act requires that “Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.” Tex. Gov’t. Code § 551.002. While the Act provides for some criminal and civil penalties for violations, there is no provision for a private cause of action for damages. An action may be initiated to void any actions taken in violation of the Act or to enjoin any proposed violations. Even assuming there was a violation of the Open Meetings Act, Dr. Turk’s claim for damages does not fall into either of the acceptable remedies. While Dr. Turk has requested injunctive relief, there was no action detrimental to him taken by the Hospital Board which could be enjoined. His request for future injunctive relief is too broad to be permissible. Accordingly, Defendants’ Partial Motion to Dismiss will be granted as to Dr. Turk’s claim under the Open Meetings Act.

B. § 1983. Dr. Turk seeks relief under 42 U.S.C. § 1983 based upon his claim that Defendants violated his rights under the First and Fourteenth Amendments under the United States Constitution. He contends that the acts of the Defendants violated his rights to free speech, to petition the government, and for due process. Defendants assert that Dr. Turk’s claims for relief against the Hospital District are improper because he was employed by Glen Rose Healthcare, Inc. not the Hospital District. However, at this stage in the proceedings, as Dr. Turk notes, the Court must accept as true the factual allegations contained in his complaint. The

second amended complaint asserts that Dr. Turk's employer is Somervell County Hospital District. A review of cases from courts in the Fifth Circuit reveals that the appropriate employer in cases such as this a hospital district rather than a hospital or clinic. This is true of cases involving Title VII and other employment-related claims, as well as claims under § 1983. See *Aguiar v. Whiteley*, 2016 WL 502199, Civil No. SA-15-CV-14-DAE (HWB) (W.D.Tex. – San Antonio Div., Feb. 8, 2016) (inmate sued hospital under § 1983 and hospital district appeared and moved to dismiss on behalf of hospital); *Okon v. Harris County Hosp. Dist.*, 426 Fed.Appx. 312 (5th Cir. 2011) (employee sued under §§ 1981 and 1983); *Konnethu v. Harris County Hosp. Dist.*, 669 F.Supp.2d 781 (S.D. Tex. – Houston Div. 2009). In a factually similar en banc Fifth Circuit opinion, an employee alleged violations of his First Amendment rights while an employee at the Medical Center Hospital in Odessa, Texas but sued the Ector County Hospital District. *Communications Workers of America v. Ector County Hosp. Dist.*, 467 F.3d 427 (5th Cir. 2006) (*en banc*). The Court cannot say that at this step in the proceedings Dr. Turk has no claim against the Somervell County Hospital District. In light of the foregoing, it is

ORDERED that Defendants' Motion to Dismiss is partially **GRANTED** as to Dr. Turk's claims under the Texas Open Meetings Act and partially **DENIED** as to his § 1983 claims against Defendant Somervell County Hospital District. It is further

ORDERED that the Motion to Quash or for Protective Order and Motion to Stay filed by Defendants Somervell County Hospital District and Ray Reynolds is **DENIED** as moot.

SIGNED this 4th day of May, 2016.



WALTER S. SMITH, JR.
United States District Judge