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THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DR. GAVIN SHUMATE, an Oregon resident,)	Case No.
)	
Plaintiff,	)	COMPLAINT
)	
vs.)	
	)	(INTENTIONAL INTERFERENCE WITH
SAMARITAN HEALTH SERVICES, INC., an	)	ECONOMIC RELATIONS, BREACH OF
Oregon nonprofit corporation, and	)	CONTRACT, DECLARATORY
SAMARITAN PACIFIC HEALTH SERVICES,	)	JUDGMENT, AND ORS 659A.030(1)(A)
INC, an Oregon nonprofit corporation,	)	DISCRIMINATION)
)	
Defendants.	)	CLAIMS EXCEED \$19 MILLION AND ARE
	)	NOT SUBJECT TO MANDATORY
	)	ARBITRATION
)	
	)	JURY TRIAL REQUESTED

Plaintiff Dr. Gavin Shumate (“Plaintiff”) for his Complaint against Defendants Samaritan Health Services, Inc. (“SHS”) and Samaritan Pacific Health Services Inc., dba Samaritan Pacific Communities Hospital (“SPCH”) (collectively “SHS/SPCH” or “Defendants”), alleges as follows:

1.

SHS is a hospital system providing health care services and residency training programs in four Oregon counties, including Multnomah County. SHS maintains contracts with hospitals and hospital organizations for the provision of medical treatments in Multnomah County, including Legacy Emanuel Hospital. As part of SHS’s residency and fellowship training programs, SHS doctors perform rotations in Multnomah County hospitals.

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BREACH OF CONTRACT; DECLARATORY JUDGMENT; AND ORS 659A.030(1)(A)
DISCRIMINATION)

1 2.

2 SHS is the parent corporation of SPCH, a 25-bed hospital located in Newport, Oregon.

3 Both SHS and SPCH are employers pursuant to ORS 659A.001(4).

4 3.

5 Plaintiff is and has been at all material times a resident of Newport, Oregon.

6 4.

7 In his capacity as a Board-Certified OB/GYN, on March 14, 2011, Plaintiff was contracted
8 to serve SPCH, a hospital owned by its parent corporation SHS. The Women's Health Clinic of
9 SPCH is owned by SHS. During the relevant period, SHS and SPCH were joint employers of
10 Plaintiff.

11 5.

12 In order to execute his employment duties with SHS, Plaintiff applied for and was
13 granted OB/GYN privileges as a member of the SPCH Professional Staff. SHS established the
14 SPCH Professional Staff pursuant to Oregon law as a separate legal entity from SHS and SPCH
15 to, among other things, give the medical professionals on the SPCH Professional Staff autonomy
16 to oversee the quality of care provided by medical professionals working at SPCH, and to
17 recommend actions to SHS to take on the privileges of medical professionals working at SPCH.

18 6.

19 Over the following eight years, Plaintiff provided skilled and compassionate OB/GYN
20 care to the patients of SPCH. Plaintiff served as Chair of the Surgical Services Committee
21 (2014), Chair of the Obstetrics & Pediatrics Committee (2015), and as a member of the Medical
22 Executive Credentials Committee (2014-2016). In 2012, he was a founding provider in the first

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DECLARATORY JUDGMENT; BREACH OF CONTRACT; ORS 659A.030(1)(A)
DISCRIMINATION)

1 annual Newport Women’s Cancer Screening, in partnership with the Women’s Cancer Coalition.
2 In 2012, Plaintiff was appointed Clinical Assistant Professor of Obstetrics & Gynecology by the
3 College of Osteopathic Medicine of the Pacific, Western University of Health Sciences.

4 7.

5 In 2016, SPCH awarded Plaintiff the patient-nominated “Shining Star Award” for
6 “demonstrating outstanding customer service, dependability, initiative, and a positive attitude in
7 Samaritan Health Services.”

8 8.

9 On or around November 7, 2018, SPCH’s incoming Chief of Staff invited Plaintiff to
10 serve as Vice Chief of Staff and, thereafter, as Chair of the obstetrics and pediatrics department.
11 Plaintiff declined both appointments.

12 9.

13 Since the commencement of his employment in June 2011, on an annual basis, all
14 SHS/SPCH physicians are subject to a review by SPCH’s Medical Executive Credentials
15 Committee (MECC). Per the mandate of the SPCH Bylaws, Article III, Section 2, the SPCH
16 MECC regularly reviews each physician’s qualifications and competency for re-approval of their
17 hospital privileges no less frequently than every two years. In accordance with the Bylaws
18 mandate, the SPCH MECC regularly conducted full reviews of the competency and
19 professionalism of Plaintiff and did so on November 20, 2018, with SPCH Board approving the
20 reappointment of his hospital privileges. The review and approval of Plaintiff’s skills and
21 competency in November 2018 resulted in an unrestricted continuation of all of Plaintiff’s
22 hospital privileges through December 2020. Further, at no time orally or in writing did any

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DECLARATORY JUDGMENT; BREACH OF CONTRACT; ORS 659A.030(1)(A)
DISCRIMINATION)

1 representative of SHS/SPCH ever present to Plaintiff any concerns regarding his competency, or
2 professionalism.

3 10.

4 As of May 2019, Plaintiff's personnel file reflected zero oral or written warnings,
5 disciplinary actions, complaints, or corrective actions of any type or kind.

6 11.

7 Throughout his employment at SPCH, Plaintiff was a physician advocate for sexual
8 orientation and gender identity minorities, including providing medical care to transgender
9 patients. Beginning in January 2017, Plaintiff began advocating for a Trans Health Clinic to the
10 SPCH administration, among others, including the SPCH Director of Medical Clinics, and the
11 SPCH Director of Operations. Plaintiff's proposal was not supported.

12 12.

13 Plaintiff persevered in providing care to all his patients, including his trans patients. On
14 information and belief, since Plaintiff's separation from employment, SPCH ceased providing any
15 medical care to the trans patients that Plaintiff had been treating.

16 13.

17 It was periodically brought to Plaintiff's attention by certain SPCH RNs that SPCH hospital
18 and clinic members and physicians had discovered that Plaintiff was not a "man," could not be the
19 "husband" of his wife, could not be the "father" of his children, and that his name is "Jessica."

20 14.

21 In or about July 2015, the then SPCH CEO, Dr. David Bigelow ("Bigelow") called Plaintiff
22 to a meeting and informed Plaintiff that he had been provided a copy of an email authored by a

23

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DECLARATORY JUDGMENT; BREACH OF CONTRACT; ORS 659A.030(1)(A)
DISCRIMINATION)

1 SPCH OB/GYN physician’s wife that was sent to Brenda Woods (“Woods”), a SPCH Certified
2 Nurse Midwife. The email stated that “the public deserves to know” that Plaintiff is trans. After
3 informing Plaintiff of the malicious transphobic email, the CEO, Bigelow, gave Plaintiff his
4 personal assurance that he would do his best to protect Plaintiff from further discrimination, and
5 that he would inform SPCH’s Legal Department to do the same.

6 15.

7 Believing that he had the support of hospital leadership, Plaintiff then communicated
8 himself his transgender identity to his fellow SPCH practice partners, including Dr. Lindsay Kern,
9 a SPCH OB/GYN physician, Dr. John Wichert, a SPCH OB/GYN physician, Woods, a SPCH
10 Certified Nurse Midwife (CNM) and Sarah Cole, a SPCH RN, Office Manager, and Manager of
11 Labor and Delivery. Woods relayed to Plaintiff that the community had already found out about
12 his transgender status.

13 16.

14 In the summer of 2017, following Bigelow’s retirement, a new SPCH CEO, Dr. Lesley
15 Ogden (“Ogden”), took over managing the operations and physicians of the SPCH Newport
16 hospital. Ogden received her medical degree from a medical college in South Carolina and
17 received her MBA from The Citadel, a military college also in South Carolina. During the winter
18 holiday of 2017, Ogden delivered an address to the physicians, nurse practitioners, midwives and
19 physician assistants stating that under her regime: “You are either with me, or you can leave.” The
20 clear message that physicians and providers were expected to conform to her expectations and
21 agendas or leave was disconcerting to a number of physicians and providers. In the months that

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DISCRIMINATION)

1 ensued, Plaintiff and other physicians and providers communicated about their dissatisfaction with
2 Ogden’s leadership.

3 17.

4 On April 5, 2018, Plaintiff was then called into a meeting with Ogden, attended by a SPCH
5 officer, and two SPCH physicians. Ogden stated that she had “heard in the community” that there
6 was a lack of access to OB/GYN care at the Newport hospital, stating that she was considering
7 requiring SPCH OB/GYN physicians to start hospital clinic work one hour earlier at 8:00 a.m. in
8 order to treat as high a number of patients as possible. Signaling her disapproval of physician
9 complaints, Ogden further stated falsely that Plaintiff, along with the two other physicians present
10 at this meeting, had been in her office complaining about work-life balance. Ogden stated that
11 SPCH’s Tuesday Operating Room schedule needed to be filled to capacity with as many surgeries
12 as possible. Ogden characterized anything less as “stealing” from the hospital fueled by “laziness.”
13 Plaintiff spoke up at the meeting and objected to Ogden’s theft accusation stating, as he had stated
14 on prior occasions following her take over, that if Ogden focused more on marketing the small
15 Newport hospital to the local community, perhaps the SPCH hospital could find more patients in
16 need of a surgery. Ogden gave no response to Plaintiff’s objections to her message and ended the
17 meeting.

18 18.

19 In or about April 26, 2018, Plaintiff advised the administration that he was scheduled for
20 a vacation beginning June 25, 2018 through July 13, 2018. The vacation was to accommodate an
21 additional gender transition surgery. SPCH Certified Nurse Midwife (“CNM”) Woods, who
22 worked with Plaintiff, knew that the “vacation” Plaintiff scheduled was for an additional gender
23

1 transition surgery. Woods had day to day contact with Cole and they both reported to Ogden.
2 SPCH OB/GYN Dr. Lindsay Kern, who reported to Ogden, knew that Plaintiff was planning a
3 gender transition surgery.

4 19.

5 The SPCH call schedule for the months of June through August 2018 was challenged by
6 the number of available SPCH OB/GYN physicians. Plaintiff's responsibilities included
7 managing, with Cole, the OB call schedule challenge for the summer. On April 26, 2018, Cole
8 circulated an email describing the OB/GYN call shortage during the summer months.

9 20.

10 On April 27, 2018, the SPCH COO, who reports to Ogden, sent an email to Plaintiff, cc'ing
11 Ogden and Boysen, pressuring Plaintiff to give up his scheduled summer vacation in order to
12 assure that all OB/GYN calls are covered with existing employees rather than incurring the
13 expense of hiring a temp OB/GYN physician. By cc'ing the highest levels of leadership of the
14 entire SHS hospital system, Ogden and Boysen, the SPCH COO made transparent the fact that
15 hospital leadership intended to, or would, pressure Plaintiff to give up his vacation that summer,
16 while simultaneously expressing "best wishes" to SPCH's OB/GYN Dr. Lindsay Kern for her
17 maternity leave that summer.

18 21.

19 As a consequence of the tone and content of the SPCH COO's April 27, 2018 email, copied
20 to Ogden and Boysen, Plaintiff then submitted to SPCH HR a FMLA protected leave request
21 disclosing that his scheduled vacation was for a surgery in Arizona, requesting protected leave
22 from June 26, 2018 through July 12, 2018.

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DISCRIMINATION)

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22.

On May 2, 2018, Plaintiff proposed to Cole, who reports to Ogden, that a SPCH Trans Health Clinic should be formed. Cole did not support Plaintiff’s proposal for a SPCH Trans Health Clinic.

23.

Plaintiff’s gender transition surgery on June 28, 2018 in Arizona resulted in a complication, necessitating Plaintiff to submit to SPCH HR an additional FMLA protected leave request, returning to work on July 24, 2018, as stated in the release signed by Plaintiff’s gender transition surgeon.

24.

On August 6, 2018, Cole circulated an email notification that the GYN operating room block time was to be decreased to one day, every other week. Plaintiff then circulated an email to Cole objecting to the proposed operating room availability including remarks that challenged the decision making of the SPCH CEO, Ogden, to whom Cole reported.

25.

On August 19, 2018, Plaintiff disclosed to SPCH’s CNM, who reports to Ogden, that Plaintiff intended to register for and attend a training program jointly sponsored by the World Professional Association for Transgender Health and Mt. Sinai Hospital in New York City entitled Second Annual Live Surgery Training Course For Gender Affirmation Procedures. The program was scheduled for February 28, 2019 through March 2, 2019. Plaintiff told that SPCH CNM that if Plaintiff was trained in gender transition surgery, then he would be able to perform such surgeries at SPCH.

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26.

Plaintiff then submitted to the SPCH Director of Operations a Continuing Medical Education request for funds to pay for the registration for the Second Annual Live Surgery Training Course For Gender Affirmation Procedures to commence February 28, 2019.

27.

On November 6, 2018, Plaintiff was called into the SPCH COO’s office, with the SPCH Medical Director and SPCH Director of Operations present, both of whom report to Ogden. Plaintiff was informed that his call schedule responsibilities that he had been performing since 2013 were being removed. These were the call schedule responsibilities that were made the subject of the SPCH COO’s earlier and critical April 27, 2018 email sent to Plaintiff about his scheduled vacation that summer, copied to Ogden and Boysen.

28.

On November 7, 2018, Plaintiff informed Dr. Kelly Hewitt (“Hewitt”), the SPCH Chief of Staff, that because of Ogden’s dissatisfaction with Plaintiff, and Ogden’s contentious relationship with him, he could not accept a proposal that he serve as the Vice Chief of Staff.

29.

On November 20, 2018, Plaintiff’s credentials and hospital privileges were reviewed and then approved by the SPCH MECC without reservation, comment or restriction. The SPCH Board then reviewed and adopted the SPCH MECC’s November 2018 review of Plaintiff’s care and recommendation for re-appointment of all of his hospital privileges.

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1 30.

2 In the fall of 2018, Plaintiff began orally advocating a number of times for a SPCH
3 physician’s union including presenting his union proposal to Hewitt, the SPCH Chief of Staff, who
4 succeeded Dr. Hale after his separation from employment in October 2018. Plaintiff made this
5 union presentation to Hewitt in November 2018. Ogden was Hewitt’s direct supervisor. Hewitt did
6 not support Plaintiff’s proposal.

7 31.

8 Plaintiff additionally presented to the SPCH General Surgeon, Dr. David Larsen (“Larsen”)
9 his proposal that a SPCH physician union be formed. Like Hewitt, Ogden was also Larsen’s direct
10 supervisor. Larsen did not support Plaintiff’s proposal.

11 32.

12 In December 2018, Plaintiff disclosed to at least two hospital employees, who reported to
13 Ogden, that he would be traveling to Arizona during his vacation to observe and learn about gender
14 transition surgery techniques and procedures.

15 33.

16 On January 24, 2019, Plaintiff received from the SPCH Medical Director, who reports to
17 Ogden, a questionnaire intended to solicit SPCH physicians to convey any comments or
18 complaints they have concerning the administration and management of the hospital. Plaintiff
19 expressed to Hewitt, the SPCH Chief of Staff, that he did not feel valued. Plaintiff further
20 expressed to the Chief of Staff, who reported to Ogden, that if he answered the questionnaire
21 honestly, he would be “branded a troublemaker.” The Chief of Staff communicated to Plaintiff
22 that although the opportunities for positive change at SPCH were “dwindling,” there were still
23

1 opportunities. Plaintiff communicated to Hewitt, the Chief of Staff, who reported to Ogden, that
2 in fact opportunities for positive change were “all but gone.”

3 34.

4 On February 5, 2019, the SPCH Director of Medical Clinics, whose job performance was
5 supervised by Ogden, called Plaintiff into a meeting with the SPCH Director of Operations
6 present. In the meeting, Plaintiff again raised the need for SPCH to establish a Trans Health
7 Clinic. The SPCH Medical Director did not show support for Plaintiff’s proposal, and then
8 informed Plaintiff that he was not seeing an adequate number of patients, and needed to increase
9 the number of patients seen per day.

10 35.

11 Also on February 5, 2019, like Ogden’s message she personally delivered to Plaintiff on
12 April 5, 2018 that he was failing to schedule the maximum number of patients for Tuesday
13 surgeries, the SPCH Medical Director told plaintiff that he doubted Plaintiff was honoring the
14 commitment made in his SPCH contract of employment, implying that Plaintiff’s employment
15 was at risk.

16 36.

17 On February 11, 2019, Plaintiff attended a nulliparous obstetric patient with chronic
18 hypertension, intrauterine growth restriction, and morbid obesity, weighing 310 pounds. After
19 many hours of induced labor, the mother began developing life threatening vital signs, exposing
20 the mother to an imminent stroke, cardiac arrest or seizure. At the same time, the fetus’ vitals
21 demonstrated unstable cardiac patterns. Faced with the management of two life threatening patient
22 emergencies, Plaintiff utilized a vacuum to deliver the baby. Following delivery, the baby went

23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
ORS 659A.030(1)(A) DISCRIMINATION)

1 into cardiac arrest, was resuscitated after much effort, and then flown to OHSU in Multnomah
2 County where its care was continued. The baby suffered oxygen deprivation and is permanently
3 disabled. Plaintiff's care decisions on February 11, 2019 in the face of two simultaneous medical
4 emergencies, mother and baby, were defensible.

5 37.

6 From time to time, competent SHS physicians throughout its hospital system suffer very
7 poor and sometimes catastrophic patient outcomes for reasons that do or may implicate
8 substandard care in that instance. Some of these SHS physicians have been sued in the Oregon
9 courts in connection with very poor and sometimes catastrophic patient outcomes. On information
10 and belief, these cisgender physicians were not, like Plaintiff, summarily suspended from all
11 hospital privileges, subjected to investigation by a hired outside physician investigator, and
12 subjected to a malicious peer review process resulting in a recommendation for a total and
13 permanent revocation of all hospital privileges.

14 38.

15 On the morning of February 18, 2019, Plaintiff was requested to attend a root cause analysis
16 meeting with certain SPCH physicians and nurses. On the same day, Plaintiff was additionally told
17 he was to meet with two SHS risk managers that same day, who spent approximately 40 minutes
18 asking general questions about the February 11, 2019 delivery.

19 39.

20 On February 20, 2018, six business days following the February 11, 2019 birth, Plaintiff
21 was summoned to Ogden's office, where Ogden and Hewitt were present. A hard copy of a letter
22 was then pushed across the desk for Plaintiff to read while the two watched him read it. The letter,
23

1 signed by Ogden, summarily suspended all of Plaintiff’s hospital privileges due to being a “threat”
2 to “the life or well-being” of patients. Plaintiff was then informed that he would be sent a list of
3 all patients at issue going back in time, and that he was not allowed on hospital premises.

4 40.

5 Ogden’s February 20, 2019 letter indicated that it was at her request to suspend all
6 privileges for the alleged reason that Plaintiff’s care on February 11, 2019 “may” have deviated
7 from the standard of care; that Plaintiff’s care for a different patient in October 2018 “may” have
8 deviated from the standard of care; an ambiguous unspecified statement regarding a “patient
9 complaint;” and an ambiguous unspecified statement regarding a “concerning pattern of case
10 outcomes” over the prior two years.

11 41.

12 On that day, February 20, 2019, Plaintiff was then emailed a list of eleven cases going back
13 6 years where SHS/SPCH was going to contend that Plaintiff deviated from the standard of care.
14 Ogden’s summary suspension letter set in motion a sham investigatory process that violated
15 multiple SPCH Bylaws in place to protect physicians from malicious peer review.

16 42.

17 Following Ogden’s February 20, 2019 summary suspension of all of Plaintiff’s hospital
18 privileges, Cole, who reports to Ogden, informed the two other OB/GYN physicians of SPCH, the
19 SPCH Certified Midwife, and the SPCH Women’s Health Clinic staff members not to have any
20 contact with or otherwise communicate with Plaintiff.

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
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43.

On February 22, 2019, following Ogden’s summary suspension, Plaintiff requested access to items in a box located in his small office. Plaintiff was told to meet an SHS HR representative in the hospital lobby to be escorted under supervision to his office. Plaintiff and HR reviewed the contents of the box to assure SHS that Plaintiff would not remove “proprietary” information. Plaintiff was then escorted out of the premises to the lobby door exit. Plaintiff experienced significant shaming and humiliation in front of his peers.

44.

On February 28, 2019, before any SHS/SPCH MECC review, among other actions supported by Ogden, Plaintiff’s OB/GYN position was advertised as available. Plaintiff was then contacted by a third party maternal fetal medicine specialist asking “Who’s leaving?” The die was cast against Plaintiff and foretold the predetermined outcome of Plaintiff’s ouster from the Professional Staff that SHS/SPCH desired, succinctly put by their hired investigator out of Colorado, Dr. Lynn Barta, in her July 19 investigative report expressing the view of key members of SPCH in February and March 2019 that “the situation is not salvageable.”

45.

On March 3, 2019, Sunday afternoon, Plaintiff was given notice of a next day, 6:30 am, SPCH MECC Monday morning review to take place. However, when Plaintiff appeared at 6:30 am the following morning, he was instructed that he could not attend the meeting while, ostensibly, eleven patient cases dating back to 2013 were being discussed and, as a consequence, could not confront adverse witnesses during that review. One hour later, Plaintiff was allowed into the MECC review room, but no one on the MECC had any questions for him. Plaintiff then read a

1 prepared statement about the deeply unfair review process and violations of SPCH Bylaws, not
2 the least of which included repeated violations for recredentialing, per Bylaws Article III, Section
3 5.2 and Article X, Section 2.4. Plaintiff’s total time at the SPCH MECC March 4, 2019 review
4 meeting was approximately 15 minutes.

5 46.

6 On March 6, 2019, the SPCH MECC met again and, per his request, Plaintiff attended.
7 The MECC asked Plaintiff only one question. Plaintiff read a prepared statement addressing his
8 care of several of his patients, and was then dismissed after approximately 12 minutes.

9 47.

10 On March 7, 2019, Plaintiff was informed by the SPCH MECC that Ogden’s decision to
11 summarily suspend all of his hospital privileges would be continued indefinitely in order to
12 “protect” the “well-being” of patients.

13 48.

14 In a letter dated March 8, 2019, and received March 12, 2019, the SPCH MECC then
15 informed Plaintiff that it would additionally initiate a Bylaws Article V investigation of Plaintiff’s
16 alleged incompetency as well as alleged “aggressive” behavior extending back in time.

17 49.

18 On March 11, 2019, Plaintiff requested a hearing under Bylaws Article XIV as a result of
19 the SPCH MECC's decision to continue the summary suspension issued by Ogden of all of his
20 hospital privileges. No hearing took place within 30 days of the request as required by Bylaws
21 Article XIV, Section 3.1.

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50.

On March 13, 2019, Plaintiff’s Tonkon Torp legal counsel formally requested in writing that SHS/SPCH comply with Bylaws Article V, Section 2, that grants Plaintiff the right to receive in writing “substantial detail” concerning the “conduct at issue.” SHS/SPCH retained legal counsel, Davis Wright, to defend its actions against Plaintiff. SHS/SPCH, through its legal counsel, never complied with Bylaws Article V, Section 2.

51.

On March 22, 2019, SPCH reported Plaintiff to the National Practitioner Data Bank (“NPDB”) that his privileges were suspended due to being an “immediate threat” to the “health or safety” of patients. The NPDB is an online national databank which prospective physician employers, hospitals, and health plans throughout the United States are required to query pursuant to federal law in order to determine the qualifications of a physician for employment, privileging, and participation in health plans. Adverse action reports submitted to the NPDB concerning a physician’s clinical competence and conduct can prevent reported physicians from practicing medicine ever again and destroy their medical careers.

52.

On or about March 26, 2019, Plaintiff through his legal counsel, requested all records relevant to the contentions of SPCH. SPCH delayed its response to the request for the records.

53.

On April 1, 2019, the Oregon Medical Board in Multnomah County notified Plaintiff that SPCH reported Plaintiff’s summary suspension of all hospital privileges due to allegedly being an “immediate” threat to patient “health and safety.” The Oregon Medical Board members are

1 appointed by the Governor of the State of Oregon, and confirmed by the Senate. Its primary role
2 is to protect the public by assuring that only competent physicians are allowed to practice in the
3 state of Oregon. The Oregon Medical Board requested Plaintiff to provide records, but did not
4 specify for which patient or patients.

5 54.

6 On April 12, 2019, in response to the Oregon Medical Board's April 1, 2019 request for
7 records, Plaintiff submitted a response to the OMB addressing the two patients treated in October
8 2018 and in February 2019.

9 55.

10 On April 16, 2019, for the first time and after repeated requests, SPCH provided to
11 Plaintiff's legal counsel records for the patients Plaintiff served on February 11, 2019 and on
12 October 26, 2018. Other than the two births in February 2019 and in October 2018, despite
13 repeated request, SPCH never provided any other records in support of all of their contentions,
14 including the February 20, 2019 list of eleven patient cases going back to 2013.

15 56.

16 On May 20, 2019, Plaintiff learned that the Oregon Medical Board had been provided by
17 SPCH a list of eight patients going back in time for whom SPCH contended or would contend
18 received substandard care from Plaintiff, despite SPCH's regular and periodic review of all
19 hospital physicians and their competency. Plaintiff was further informed by a patient that they
20 were told by SPCH Women's Health Clinic that Plaintiff is not returning to his practice.

21

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1 57.

2 On June 11, 2019, after two months of delay by SPCH, it finally provided patient records
3 to the Oregon Medical Board. The records SPCH submitted related to three patients, not only the
4 two patients treated in February 2019 and in October 2018. SPCH's submission to the Oregon
5 Medical Board further included a list of additional patient names where alleged substandard care
6 going back in time should additionally be investigated. The SPCH record submission and an
7 additional patient list given the Oregon Medical Board in June 2019 was never shared with Plaintiff
8 or his legal counsel at any time, and was done to bias the OMB against Plaintiff.

9 58.

10 On June 17, 2019, the SPCH MECC informed Plaintiff that it had hired Dr. Lynn Barta
11 ("Barta"), a Colorado OB/GYN physician, to investigate Plaintiff. SHS/SPCH controlled all
12 communications and the flow of information to Barta and would not allow Plaintiff to propose to
13 Barta any witnesses to be interviewed.

14 59.

15 On July 10, 2019, the Colorado investigator that SPCH retained issued a report condemning
16 Plaintiff's medical care given on February 11, 2019 and on October 26, 2018, describing the care
17 as significantly below the applicable standard of care. Barta concluded her findings, and a brief
18 "interview" of Plaintiff, in a report dated July 23, 2019, describing the care delivered as
19 incompetent.

20 60.

21 In July 2019, Barta, the investigator hired by SPCH, granted Plaintiff a brief "interview."
22 In the course of the interview, Plaintiff disclosed to Barta his trans status, and the covertly hostile
23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
ORS 659A.030(1)(A) DISCRIMINATION)

1 attitude shown toward his status. Barta displayed no surprise to this disclosure or otherwise
2 communicated to Plaintiff that this was a fact she did not previously know. Further, Barta showed
3 no interest in and did not ask Plaintiff any questions about what impact he believed his trans status
4 had on decision makers and leadership in the SHS/SPCH hospital system. In fact, in Barta's
5 concluding report issued July 23, 2019, she speculated that -- were further evaluations performed
6 of Plaintiff -- it is possible that Plaintiff's alleged incompetency could be due to "substance abuse,"
7 "addiction tendencies," "untreated physical ailments" or "undiagnosed psychological conditions."

8 61.

9 In her signed July 23, 2019 report, SPCH's hired investigator, Barta, further wrote that in
10 contrast to Plaintiff's "very poor outcomes," "there are no reports of these types of outcomes with
11 any of the other providers" referring to other providers in the SHS hospital system.

12 62.

13 On August 12, 2019, the SPCH MECC took its next step following submission of its hired
14 investigator's report, to recommend that the SPCH Board of Directors revoke permanently all of
15 Plaintiff's hospital privileges, essentially ending his OB/GYN career. The SPCH MECC further
16 determined that Plaintiff was incapable of being "remediated" per the false and inflammatory
17 conclusions of Barta, SHS/SPCH's retained Colorado investigator.

18 63.

19 On August 15, 2019, Plaintiff's legal counsel requested a Bylaws Article XIV hearing.

20 64.

21 On August 18, 2019, it was communicated to Plaintiff that none of the SPCH Women's
22 Clinic medical assistants or its office staff were interviewed by SHS/SPCH's hired investigator,

23

1 Barta, despite Barta’s scathing report asserting that Plaintiff’s interactions with office staff was
2 “intimidating” and that the office staff expressed “fear” of him.

3 65.

4 In the meantime, on August 24, 2019, while SHS/SPCH subjected Plaintiff to malicious
5 peer review, a trans woman was attacked and beaten in a Newport parking lot near a public
6 restroom. Plaintiff posted publicly on Facebook that the trans attack should be condemned. A
7 medical assistant employed by SPCH’s Women’s Health Clinic, that Plaintiff worked with, posted
8 several public Facebook comments responding to Plaintiff’s post. The SPCH medical assistant did
9 not join or otherwise communicate support for the view expressed by Plaintiff that the trans assault
10 should be condemned. Instead, the SPCH assistant posted that had she been in the women’s
11 bathroom that day, and seen the “beard” on the trans woman’s face, she would have threatened the
12 person with her handgun. On information and belief, that SPCH Women’s Health Clinic medical
13 assistant is still employed by SPCH despite multiple community complaints about her implicit
14 message condoning threats against a trans woman using the women’s restroom.

15 66.

16 On November 8, 2019, Plaintiff was informed that the OMB reviewed his October 2018
17 and February 2019 patient care, and came to the conclusion that the matter should be closed
18 “immediately” without any adverse findings against Plaintiff, remarking as to why Plaintiff’s
19 privileges were suspended, such as a “personality conflict” with leadership.

20 67.

21 On December 2, 2019, Plaintiff contacted the Oregon Medical Board investigator. Plaintiff
22 was told this his case went to an outside non SHS/SPCH OB/GYN physician who found that

23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
ORS 659A.030(1)(A) DISCRIMINATION)

1 Plaintiffs' care decisions on February 11, 2019 and on October 26, 2018 met the standard of
2 care.

3 68.

4 On January 9, 2020, the Oregon Medical Board investigative committee assigned to
5 Plaintiff closed their investigation of Plaintiff.

6 69.

7 On January 24, 2020, the Chief Investigator of the Oregon Medical Board informed
8 Plaintiff that a vote of the OMB Board resulted in a decision to close the investigation with zero
9 disciplinary action against Plaintiff.

10 70.

11 Throughout Plaintiff's employment at SPCH, the hospital never had more than three
12 OB/GYN physicians, including Plaintiff. The two other OB/GYN physicians at SPCH complied
13 fully with hospital leadership's instruction, supported by Ogden, to have no contact with and never
14 to communicate with Plaintiff. Nevertheless, Plaintiff was able to develop 15 witness statements
15 supporting his care, including a Sacred Heart River Bend Board Certified OB/GYN and Maternal
16 Fetal Medicine physician, two current SPCH and two former SPCH physicians in the practice areas
17 of Internal Medicine and Family Practice, along with seven SPCH RNs in labor and delivery,
18 employee health, one CMA, one CRNA, and one staff person.

19 71.

20 Plaintiff felt demonized, shamed and defamed by SHS/SPCH given the SPCH summary
21 suspension of all of his hospital privileges by the hospital's CEO, Ogden, the scathing
22 condemnations of the hired investigator out of Colorado, and then the SPCH MECC

23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
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1 recommendation to revoke permanently all of his privileges. Plaintiff’s legal counsel had further
2 been told by the lead lawyer for SHS/SPCH that the “fair” hearing scheduled before three SHS
3 hospital employees would culminate in an official revocation of Plaintiff’s hospital privileges, as
4 the hospital had previously asserted on August 12, 2019. Following consultation with his legal
5 counsel, Plaintiff submitted his resignation on January 28, 2020.

6 72.

7 On March 5, 2020, the Oregon Employment Department following its own investigation,
8 concluded that Plaintiff resigned his employment “with good cause.”

9 73.

10 SHS and SPCH treated Plaintiff differently than other cisgender physicians with negative
11 or highly negative patient outcomes. On information and belief, SHS and SPCH have continued
12 to employ many cisgender heterosexual physicians after those physicians were involved in
13 negative and sometimes catastrophic patient outcomes. On information and belief, those other
14 cisgender SHS/SPCH physicians were not subjected to summary suspensions of their hospital
15 privileges, or made the subject of an Article V investigation of patient case in the years preceding
16 that physician’s most recent re-appointment of privileges, subjected to malicious peer review, or
17 subjected to a recommendation that all hospital privileges be revoked permanently.

18 **FIRST CLAIM FOR RELIEF**

19 **(Intentional Interference with Economic Relations)**

20 74.

21 Defendants played an active and substantial part in causing Plaintiff to lose his economic
22 relationship with SPCH Professional Staff and Plaintiff’s patients by unlawfully suspending

23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
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1 Plaintiff's privileges at SPCH and then causing him to resign his privileges at SPCH in lieu of
2 facing a sham hearing before biased SHS-employed physicians and further reporting these
3 adverse actions to the NPDB.

4 75.

5 Defendants had no justification or privilege to interfere with Plaintiff's economic
6 relationship with SPCH Professional Staff and Plaintiff's patients.

7 76.

8 Defendants had improper motives and used improper means to interfere with Plaintiff's
9 economic relationship with SPCH Professional Staff and Plaintiff's patients including but not
10 limited to:

- 11 a. Defendants' summary suspension of Plaintiff's privileges at SPCH in violation of the
12 Bylaws Article IV, Section 1.
- 13 c. Defendants' failure to set a fair hearing within 30 days of Plaintiff's formal request in
14 violation of Bylaws Article XIV, Section 3.1.
- 15 d. Defendants' failure to provide Plaintiff with substantial detail concerning the "conduct
16 at issue" in writing in violation of Bylaws Article V, Section 2.
- 17 e. Defendants' failure to provide Plaintiff with patient information and medical records
18 related to many of the cases of concern that Defendants used as a basis to recommend
19 revocation of Plaintiff's privileges at SPCH in violation of Bylaws Article V, Section 3.4.
- 20 f. Defendants' failure to provide Plaintiff with an opportunity to present information in
21 response to concerns about Plaintiff's patient care in violation of Bylaws Article XIII,
22 Section 25.9.

23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
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1 g. Defendants' failure to empanel independent physicians for the "fair "hearing in
2 violation of Bylaws Article XIV, Section 3.4.1

3 h. Defendants acted with the improper motive of discriminating against Plaintiff as
4 transgender in violation of ORS 659A.030(1)(a).

5 77.

6 Defendants are liable to Plaintiffs for their respective employees' and agents' conduct
7 under the doctrine of *respondeat superior*.

8 78.

9 Plaintiff's economic and significant non-economic damages as a result of Defendants'
10 conduct are set forth more fully below. Plaintiff is further entitled to recover pre-judgment
11 interest at the applicable statutory rate.

12 **SECOND CLAIM FOR RELIEF**

13 **(Breach of Contract)**

14 79.

15 The Bylaws constitute a contract between Plaintiff and Defendants.

16 80.

17 Defendants breached its obligations to Plaintiff as set forth in the Bylaws, including but
18 not limited to:

19 a. Defendants' summary suspension of Plaintiff's privileges at SPCH in violation of the
20 Bylaws Article IV, Section 1.

21 b. Defendants' failure to set a fair hearing within 30 days of Plaintiff's formal request in
22 violation of Bylaws Article XIV, Section 3.1.

1 c. Defendants' failure to provide Plaintiff with "substantial detail" concerning the
2 "conduct at issue" in writing in violation of Bylaws Article V, Section 2.

3 d. Defendants' failure to provide Plaintiff with patient information and medical records
4 related to many of the cases of concern that Defendants used as a basis to recommend
5 revocation of Plaintiff's privileges at SPCH in violation of Bylaws Article V, Section 3.4.

6 e. Defendants' failure to provide Plaintiff with an opportunity to present information in
7 response to concerns about Plaintiff's patient care in violation of Bylaws Article XIII,
8 Section 25.9.

9 f. Defendants' failure to empanel independent physicians for the fair hearing in violation
10 of Bylaws Article XIV, Section 3.4.1.

11 81.

12 Defendants are liable to Plaintiff for their respective employees' and agents' conduct
13 under the doctrine of *respondeat superior*.

14 82.

15 As a result of Defendants' conduct, Plaintiff suffered economic and non-economic
16 damages as more fully set forth below.

17 **THIRD CLAIM FOR RELIEF**

18 **(Declaratory Judgment)**

19 83.

20 There are disputes between Plaintiff and Defendants concerning whether Defendants had
21 the basis to summarily suspend and recommend revocation of Plaintiff's privileges at SPCH and
22 submit the adverse action reports to the NPDB and whether Defendants must withdraw those
23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
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1 adverse action reports.

2 84.

3 Resolution of the foregoing disputes calls for construction of the laws of Oregon and the
4 United States and interpretation of the Bylaws pursuant to the Oregon Declaratory Judgment Act,
5 ORS 28.010, *et seq.*

6 85.

7 Plaintiffs also seek supplemental injunctive relief pursuant to ORS 28.080 requiring
8 Defendants to lift the summary suspension of Plaintiff’s privileges at SPCH and withdraw the
9 adverse action reports with the NPDB.

10 **FOURTH CLAIM FOR RELIEF**

11 **ORS 659A.030(1(a) Employment Discrimination**

12 86.

13 Defendants are employers subject to ORS 659A.030.

14 87.

15 Under ORS 659A.030(1)(a), it is an unlawful employment practice “for an employer,
16 because of an individual’s race, color, religion, sex, sexual orientation, national origin, marital
17 status or age if the individual is 18 years of age or older ... to ... discharge the individual from
18 employment ... [or] to discriminate against the individual in compensation or in terms, conditions
19 or privileges of employment.”

20 88.

21 The term “sex” in ORS 659A.030(1)(a) includes gender identity and specifically applies to
22 protect transgender persons like Plaintiff. OAR 839-005-0003(9) and (16).

1 89.

2 Defendants' summary suspension and ultimate recommendation to revoke permanently all
3 of Plaintiff's hospital privileges was due in significant part to his transgender status and/or his
4 advocacy for the rights of trans persons to utilize SPCH as provider for trans health care.
5 Defendants treated Plaintiff differently than other similarly situated cisgender SHS/SPCH
6 physicians whose patient outcomes were poor or catastrophic.

7 90.

8 Defendants constructively terminated Plaintiff's employment, and effectively ended
9 Plaintiff's 12-year career as a Board Eligible and then Board-Certified OB/GYN, making it largely
10 impossible for Plaintiff to obtain future employment with a hospital system and gain admitting
11 privileges in any accredited hospital where OB/GYN physicians perform gynecological surgeries
12 and provide obstetric services that routinely require in-hospital care, including but not limited to
13 deliveries.

14 91.

15 The adverse employment actions Plaintiff suffered were substantially the result of
16 Plaintiff's statutorily protected class.

17 92.

18 As a result of Defendants' unlawful conduct, Plaintiff has suffered and continues to suffer
19 significant economic damages in the form of lost compensation, and severe emotional distress and
20 psychological injury damages in the form of embarrassment, humiliation, stress, and a loss of
21 enjoyment of life.

22 93.

23

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RELATIONS; DECLARATORY JUDGMENT; BREACH OF CONTRACT;
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1 Because of Defendants' unlawful conduct, Plaintiff has suffered economic damages of not
2 less than:

Loss Period	Lost Wages and Benefits	Past + Future	Damages for Excess Taxes	Total
Back Pay	\$680,200	\$680,200	\$92,000	\$772,200
+ 5 Years	\$1,751,500	\$2,431,700	\$654,500	\$3,086,200
+ 10 Years	\$3,508,800	\$4,189,000	\$1,231,500	\$5,420,500
+ 15 Years	\$5,185,700	\$5,865,900	\$1,783,700	\$7,649,600
To WLE	\$6,777,400	\$7,457,600	\$2,308,400	\$9,766,000

3
4
5
6
7
8 Plaintiff is further entitled to recover pre-judgment interest at the applicable statutory
9 rate. Plaintiff's non-economic damages are not less than \$10,000,000, along with all reasonable
10 attorney fees, costs, and disbursements incurred herein.

11 PRAYER FOR RELIEF

12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 1. Issue a declaration that Defendants have violated Plaintiff's legally protected rights, and
14 an order requiring Defendants to correct the violation;
- 15 2. Grant equitable relief including but not limited to voiding or expunging all negative
16 references or allegations regarding Plaintiff on the National Practitioner Data Bank,
17 including any performance deficiencies appearing in Plaintiff's personnel file;
- 18 3. Order Defendants to make Plaintiff whole by compensating Plaintiff for past and future
19 pecuniary losses, including expenses, impairment of earning capacity, lost past and future
20 earning and benefits of employment, and such other losses as are awarded by a jury or
21 otherwise established at trial;

- 1 4. Order Defendants to pay Plaintiff an award of compensatory damages for non-economic
2 losses, including psychological injury, pain and suffering, mental anguish, humiliation,
3 embarrassment, and loss of enjoyment of life in an amount to be determined by a jury;
- 4 5. Award Plaintiff's reasonable costs of suit and reasonable attorney fees and costs,
5 including but not limited to expert witness fees, and including all legal fees and cost
6 incurred in 2019 and early 2020 in response to SPCH's summary suspension and
7 recommendation of permanent revocation of all hospital privileges.
- 8 6. Award Plaintiff his economic damages of up to \$9,766,00 and his non-economic damages
9 of not less than \$10,000,000.
- 10 7. Order Defendants to pay prejudgment and post-judgment interest, as appropriate, on all
11 amounts due to Plaintiff; and
- 12 8. Any other relief the Court deems just and equitable.

13 DATED: December 23, 2021.

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