

5 IN THE CIRCUIT COURT FOR THE STATE OF OREGON

6 FOR THE COUNTY OF LANE

7 **CLINTON J. PETIT,**

8 Plaintiff,

9 v.

10 **PEACEHEALTH dba PEACEHEALTH
11 COTTAGE GROVE COMMUNITY
12 MEDICAL CENTER, TIM HERRMANN,
13 LANA SHERWIN, KRISTY MEYER,
14 ALICIA BEYMER, and MARGIE
15 COOPER,**

16 Defendants.

17 CASE NO.

18 **COMPLAINT**

19 (Unlawful Employment Practices)

20 Filing Fee: \$594.00 (ORS 21.160(1)(c))

21 **DEMAND: \$500,000**

22 **NOT SUBJECT TO MANDATORY
23 ARBITRATION**

24 **JURY TRIAL REQUESTED**

25 Plaintiff Clinton Petit (“Plaintiff”) brings this complaint against Defendant PeaceHealth
Plaintiff Clinton Petit (“Plaintiff”) brings this complaint against Defendant PeaceHealth
dba PeaceHealth Cottage Grove Community Medical Center (“Defendant” or “PeaceHealth”) for retaliation based on his to the Oregon Health Authority and other agencies regarding unsafe staffing levels at Defendant’s hospital. He also brings this complaint against Tim Herrmann, and Lana Sherwin, Kristy Meyer, Alicia Beymer, and Margie Cooper for aiding and abetting discrimination and unlawful employment practices. Plaintiff alleges as follows:

///

COMPLAINT - 1

Macke Law Offices LLC
2455 NW Marshall St., Suite 6
Portland, OR 97210
Tel (503) 282-0863
Fax (503) 886-8918

VENUE, JURISDICTION, AND PARTIES

1.

Plaintiff is an individual and former employee of Defendant PeaceHealth. At all relevant times he resided in Lane County, Oregon.

2.

At all times material herein, Defendant PeaceHealth was and is licensed and authorized to do business in the State of Oregon and is engaged in the business of providing in-patient and out-patient medical care and consultation in various locations, including in Lane County, Oregon.

3.

At all relevant times Defendant PeaceHealth employed over 40 employees.

4.

Defendant PeaceHealth is an “employer” for the purpose of ORS 659A.

5.

Defendant PeaceHealth is vicariously liable for the acts and conduct of its employees and all agents (actual and/or apparent) acting within the scope of their employment.

6.

Tim Herrmann was the Chief Administrative Officer for PeaceHealth (“CAO Herrmann”) until his retirement in July 2020. Based on information and belief, he was and is a resident of Lane County, Oregon.

7.

At times relevant to this Complaint, Lana Sherwin was the Director of Nursing or “Chief Nursing Officer” at PeaceHealth (“Director Sherwin”). Based on information and

belief, she was and is a resident of Lane County, Oregon.

8.

At times relevant to this Complaint, Kristy Meyer (“Meyer”) was the Medical Floor Manager and Plaintiff’s supervisor at PeaceHealth. Based on information and belief, she was and is a resident of Lane County, Oregon.

9.

At times relevant to this Complaint, Alicia Beymer (“CAO Beymer”) is the Hospital Administrator and current Chief Administrative Officer for Defendant PeaceHealth in Cottage Grove. Based on information and belief, she was and is a resident of Lane County, Oregon.

10.

At times relevant to this Complaint, Margie Cooper (“Cooper”) was Defendant PeaceHealth’s Human Resources Partner.

FACTS

11.

Plaintiff began his employment with Defendant PeaceHealth on or about March 9, 2012, as a Certified Nurse Assistant (“CNA”).

12.

Plaintiff performed his job exceedingly well and received positive reviews and promotions during his first eight years of employment.

13.

In 2020, PeaceHealth changed its staffing policies, which resulted in an unsafe ratio of patients to care providers. Plaintiff opposed this change and informed his supervisors that it was a violation of Oregon law.

14.

On or about July 22, 2020, Plaintiff refused to work his shift, opposing low staffing levels that he believed violated state laws and rules including those in ORS Chapter 441 and/or ORS 443.400-.455 governing health care facilities. Plaintiff notified Director Sherwin of this.

15.

In response, CAO Herrmann and Director Sherwin expressed that his refusal to work his shift would endanger patients. CAO Herrmann threatened to strip Plaintiff's CNA license for "patient abandonment."

16.

Plaintiff returned to work on July 23, 2020.

17.

On August 17, 2020, nearly a month later, Defendant issued Plaintiff a written “Corrective Action Notice” for his absence on July 22, 2020, and for reporting his concerns of unsafe staffing levels through “inappropriate channels.”

18.

On September 15, 2020, Plaintiff reported Defendant to the Oregon Health Authority (“OHA”) for continuing violations of Oregon nursing staffing rules.

19.

On November 30, 2020, Plaintiff's supervisor Meyer conducted a telephone evaluation of Plaintiff. She did not mention the Corrective Action Notice. Plaintiff informed Meyer during that meeting that he was still fearful of retaliation by Defendant for opposing their unsafe staffing levels. She acknowledged that CAO Herrmann had threatened Plaintiff's license. She stated, "I cannot change the past."

20.

That same day, OHA sent Plaintiff an email regarding the complaint he submitted to Health Care Regulation and Quality Improvement regarding nurse staffing concerns.

21.

Several days later, on December 4, 2020, Plaintiff forwarded this email to Meyer. He informed her he would be coming into work early so that he could send information to OHA.

22.

Meyer responded that Plaintiff was not allowed to come in early because of the COVID visitation policy, but that he could “work during his breaks.”

23.

On January 16, 2021, Plaintiff filed another complaint with the OHA regarding unsafe staffing levels. Plaintiff informed Meyer of this on January 23, 2021.

24.

Meyer responded that Plaintiff could not complain to OHA without first bringing the issue to the attention of herself or Director Sherwin.

25.

On February 5, 2021, Plaintiff met with CAO Beymer and Cooper from Human Resources in person. All parties signed a written consent for the conversation to be recorded.

26.

During that meeting, Defendant asked Plaintiff a number of questions, which Plaintiff declined to answer out of fear of retaliation.

111

111

27.

On February 17, 2021, OHA informed Plaintiff they would be conducting an unannounced investigation of the hospital concerning potential violation of nurse staffing rules. Plaintiff informed them that his managers knew he was the employee who submitted a complaint and that he was being threatened and harassed in retaliation. OHA referred Plaintiff to BOLI.

28.

On February 24, 2021, Plaintiff met with Cooper and Meyer to “provide [Plaintiff] coaching on his communication with colleagues.” Plaintiff requested to record the conversation, either electronically or with a witness present. Defendant denied this request.

29.

After this meeting, Plaintiff returned to work for over an hour. He cared for five patients during this time.

30.

Defendant then informed Plaintiff they were placing him on administrative leave due to his behavior in the meeting earlier that day.

31.

On March 2, 2021, Plaintiff spoke with CAO Beymer and Cooper on the phone. When asked why he did not want to speak during the meeting on February 24, 2021, he stated he was intimidated and scared as he believed Defendant was retaliating against him based on his complaints to OHA.

32.

During that call, Plaintiff again disclosed he had filed complaints with OHA, the Oregon State Board of Nursing (“OSBN”) regarding staffing levels and contacted BOLI regarding the retaliation he was experiencing. He also disclosed he had recorded several conversations with management that were of concern, and offered to share them with CAO Beymer and Cooper for their review.

33.

Plaintiff contacted the BOLI Civil Rights Division on March 2, 2021, regarding his allegations of retaliation.

34.

On March 5, 2021, CAO Beymer and Cooper called Plaintiff and informed him he was terminated. They informed Plaintiff, “we understand that the influx of the swing bed patients has created new approaches to our care delivery and we recognize this has been difficult for you.” They also stated that he was being terminated due to his continued insistence on recording meetings and “angry behavior.”

35.

Plaintiff asked how recording calls was one of the bases for his termination given that Oregon is a one-way consent state and recording calls is legal. Defendant acknowledged that recording phone calls is not illegal.

36.

Defendant then accused Plaintiff of sitting in a car on his day off and watching PeaceHealth. They said specifically he was: "sitting there in the bowling alley parking lot ... you were in a different vehicle than you normally drive." Plaintiff adamantly denied this. He only has one vehicle and did not borrow a car to come and spy on PeaceHealth.

37.

On March 9, 2021, Plaintiff again contacted the Civil Rights Division regarding this retaliation.

38.

Plaintiff filed his BOLI complaint on May 27, 2021, alleging retaliation.

39.

On or about August 20, 2021, OHA completed its investigation of PeaceHealth and found numerous violations of Oregon Administrative Code for Nurse Staffing Services. PeaceHealth was required to draft and comply with a Plan of Correction.

40.

BOLI issued its finding on May 27, 2022, finding substantial evidence of unlawful employment practices in the form of retaliation. Therefore, this Complaint is being filed within the 90-day right-to-sue period.

41.

Plaintiff has suffered economic damages in the form of lost wages and lost benefits.

42.

Plaintiff has mitigated his economic damages. Despite Plaintiff's efforts to secure comparable employment, he is now making just over minimum wage although at PeaceHealth he was compensated at \$19.50/hour and was on the verge of receiving a raise to \$20/hour.

43.

Defendant's retaliation has caused Plaintiff emotional distress in the form of frustration, worry, concern, anger, embarrassment, fear, and the loss of his career.

**PLAINTIFF'S FIRST CLAIM FOR RELIEF
DEFENDANT PEACEHEALTH
(Retaliation– ORS 659A.199)**

44.

Plaintiff realleges and incorporates the other paragraphs in this Complaint as though set forth fully herein.

45.

ORS 659A.199 provides that, "It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation."

46.

Plaintiff reported information in good faith he believed was evidence of a violation of state law, rule, or regulation governing healthcare facilities. He reported the ratio of providers to patients and, in an act of opposition, refused to clock in for his regularly scheduled shift on July 22, 2020, unless Defendant increased the staffing levels. He also reported the issue to OHA, OSBN, and BOLI.

47.

In response, Defendant subjected Plaintiff to the following retaliatory employment acts:

- a. accused Plaintiff of patient abandonment and threatened his license;
- b. disciplined Plaintiff by way of Corrective Action for his refusal to work in unsafe conditions and for reporting evidence of potential violations of law through the improper chain of command or designated committees;

- c. Acting hostile toward Plaintiff in an attempt to pressure him to resign from his position;
- d. Placing Plaintiff on administrative leave; and/or
- e. Terminating Plaintiff.

48.

Defendant's actions towards Plaintiff were taken in whole or part due to Plaintiff's good faith report of evidence of violation of state laws or rules, including ORS 443.400-.455, as described herein.

49.

As a result, Plaintiff has suffered economic damages in the amount of \$100,000, and non-economic damages in the amount of \$400,000.

50.

Plaintiff is entitled to a prevailing party fee, costs, and reasonable attorney fees under ORS 659A.885.

**PLAINTIFF'S SECOND CLAIM FOR RELIEF
DEFENDANT PEACEHEALTH
(Retaliation – ORS 659A.233)**

51.

Plaintiff realleges and incorporates the other paragraphs in this Complaint as though set forth fully herein.

52

Under Oregon, it is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason

1 that the employee has in good faith reported possible violations of ORS chapter 441 or of ORS
2 443.400 (Definitions for ORS 443.400 to 443.455) to 443.455 (Civil penalties).

3 **53.**

4 Plaintiff reported information in good faith he believed was evidence of a violation of
5 state law, rule, or regulation governing healthcare facilities. He reported the ratio of providers
6 to patients and, in an act of opposition, refused to clock in for his regularly scheduled shift on
7 July 22, 2020, unless Defendant increased the staffing levels. He also reported the issue to
8 OHA, OSBN, and BOLI.

9 **54.**

10 In response, Defendant subjected Plaintiff to the following retaliatory employment acts:

11 a. Accusing Plaintiff of patient abandonment and threatening his license;
12 b. Disciplining Plaintiff by way of Corrective Action for his refusal to work in
13 unsafe conditions and for reporting evidence of potential violations of law
14 through the improper chain of command or designated committees;
15 c. Exhibiting hostility toward Plaintiff in an attempt to pressure him to resign from
16 his position;
17 d. Placing Plaintiff on administrative leave; and/or
18 e. Terminating Plaintiff.

19 **55.**

20 As a result of Defendant's discriminatory conduct as described herein, Plaintiff suffered
21 and continues to suffer from frustration, embarrassment, humiliation, distress, and impairment
22 of personal dignity.

23 **56.**

As a result, Plaintiff has suffered economic damages in the amount of \$100,000, and non-economic damages in the amount of \$400,000.

57.

Plaintiff is entitled to attorney fees and costs, and prevailing party fees pursuant to ORS 659A.885.

PLAINTIFF'S THIRD CLAIM FOR RELIEF
All Defendants
(Retaliation – ORS 659A.030(f))

58.

Plaintiff realleges and incorporates the other paragraphs in this Complaint as though set forth fully herein.

59.

Under Oregon, it is an unlawful employment practice for any person to discharge, expel or otherwise discriminate against any other person because that other person has opposed any unlawful practice, or because that other person has filed a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so.

60.

Plaintiff reported information in good faith he believed was evidence of a violation of state law, rule, or regulation governing healthcare facilities. He reported the ratio of providers to patients and, in an act of opposition, refused to clock in for his regularly scheduled shift on July 22, 2020, unless Defendants increased the staffing levels. He also reported the issue to OHA, OSBN, and BOLI.

61.

In response, Defendants subjected Plaintiff to the following retaliatory employment acts:

- a. Accusing Plaintiff of patient abandonment and threatening his license;
- b. Disciplining Plaintiff by way of Corrective Action for his refusal to work in unsafe conditions and for reporting evidence of potential violations of law through the improper chain of command or designated committees;
- c. Exhibiting hostility toward Plaintiff in an attempt to pressure him to resign from his position;
- d. Placing Plaintiff on administrative leave; and/or
- e. Terminating Plaintiff.

62.

As a result of Defendants' discriminatory conduct as described herein, Plaintiff suffered and continues to suffer from frustration, embarrassment, humiliation, distress, and impairment of personal dignity.

63.

As a result, Plaintiff has suffered economic damages in the amount of \$100,000, and non-economic damages in the amount of \$400,000.

64

Plaintiff is entitled to attorney fees and costs, and prevailing party fees pursuant to ORS 659A.885

PLAINTIFF'S FOURTH CLAIM FOR RELIEF

DEFENDANTS HERRMANN, SHERWIN, BEYMER, MEYER, and COOPER

(Aiding and Abetting – ORS 659A.030(g))

1 Plaintiff realleges and incorporates the other paragraphs in this Complaint as though set
2 forth fully herein.

3 **65.**

4 Under Oregon, it is an unlawful employment practice for any person, whether an
5 employer or an employee, to aid, abet, incite, compel, or coerce the doing of any of the acts
6 forbidden under Chapter 659A, or to attempt to do so.

7 **66.**

8 Plaintiff reported information in good faith he believed was evidence of a violation of
9 state law, rule, or regulation governing healthcare facilities. He reported the ratio of providers
10 to patients and, in an act of opposition, refused to clock in for his regularly scheduled shift on
11 July 22, 2020, unless Defendant PeaceHealth increased the staffing levels. He also reported
12 the issue to OHA, OSBN, and BOLI.

14 **67.**

15 In response, individual Defendants CAO Herrmann, Director Sherwin, Meyer, CAO
16 Beymer, and Cooper subjected Plaintiff to the following retaliatory employment acts as
17 described in this Complaint including but not limited to:

18 f. Accusing Plaintiff of patient abandonment and threatened his license;

19 g. Disciplining Plaintiff by way of Corrective Action for his refusal to work in
20 unsafe conditions and for reporting evidence of potential violations of law
21 through the improper chain of command or designated committees;

22 h. Exhibiting hostility toward Plaintiff in an attempt to pressure him to resign from
23 his position;

24 i. Placing Plaintiff on administrative leave; and/or

j. Terminating Plaintiff.

111

68.

As a result of Defendants' discriminatory conduct as described herein, Plaintiff suffered and continues to suffer from frustration, embarrassment, humiliation, distress, and impairment of personal dignity.

69.

As a result, Plaintiff has suffered economic damages in the amount of \$100,000, and non-economic damages in the amount of \$400,000.

70.

Plaintiff is entitled to attorney fees and costs, and prevailing party fees pursuant to ORS 659A.885.

NOTICE OF LEAVE TO AMEND TO ADD PUNITIVE DAMAGES

71.

Plaintiff puts Defendants on notice of his intention to amend his Complaint to add a claim for punitive damages.

PRAYER

Based on the foregoing, Plaintiff requests the following judgments against and relief from Defendants:

- (a) Economic damages, including lost wages, not to exceed \$100,000;
- (b) Non-economic damages not to exceed \$400 000;

- (c) Prevailing party fees, reasonable costs, and attorney fees, including as authorized by ORS 659A.885, and ORS 20.107;
- (d) Equitable relief including an injunction enjoining Defendants from engaging in any employment practice which discriminates on the bases as alleged in this Complaint;
- (e) Prejudgment and post-judgment interest as appropriate and allowed by law;
- (f) On subsequent motion, punitive damages, which Plaintiff hereby expressly places Defendants on notice of his intention to so move;
- (g) On all claims, as applicable, amounts necessary to offset the income tax consequences of receiving a lump sum payment, rather than receiving payment of wages over the applicable time frame; and
- (h) All such other relief as this Court may deem just and proper.

Dated: July 13, 2022

Respectfully submitted,

/s/ Tracy J. Frazier
Tracy J. Frazier, OSB #107125
Of Attorneys for Plaintiff
tracy.j.frazier@gmail.com