

UNITED STATES DISTRICT COURT

for the

Western District of Texas

ALBERT J. TURK, M.D. and SHELLEY TURK, R.N

Plaintiff

v.

SOMERVELL COUNTY HOSPITAL DISTRICT et al

Defendant

Civil Action No. 6:15-cv-00231

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Paul Harper, 1502 County Road 2018, Glen Rose TX 76043

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Exhibit A

Table with 2 columns: Place (Ogletree Deakins, 8117 Preston Road, Suite 500, Dallas TX 75225) and Date and Time (03/15/2017 1:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/23/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Shafeeqa W. Giarratani Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) , who issues or requests this subpoena, are:

Civil Action No. 6:15-cv-00231

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A
TO SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION,
OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

Paul Harper is directed to produce the categories of documents, items, and things in his custody on March 15, 2017:

1. All documents or communications received by Shelley Turk, R.N., and Albert Turk, M.D., and any and all representatives, including their attorneys, (referred to from here forward as “the Turks”) from June 2011 to present.
2. All text messages between Paul Harper and the Turks from June 2011 to the present.
3. All email messages between Paul Harper and the Turks from June 2011 to the present.
4. All communications, regardless of conduit, between Paul Harper and the Turks from June 2011 to the present.
5. All posts on the Somervell County Salon blog (to be defined as salon.glenrose.net and associated pages, posts or subpages, whether still posted online or not) that relate to the Somervell County Hospital District, including but not limited to its board members, from June 2011 to present.
6. All posts on the Somervell County Salon blog that relate to Glen Rose Medical Center from June 2011 to present.
7. All posts on the Somervell County Salon blog that relate to Ray Reynolds from June 2011 to present.
8. All documents received, from any source, that relate to any investigations, audits, inspections, reviews, or surveys conducted by any Texas state entity at Glen Rose Medical Center.
9. All posts on the Somervell County Salon blog relating to the Turks from June 2011 to the present.
10. All posts on the Somervell County Salon blog relating to Glen Rose Medical Center from June 2011 to the present.
11. All posts on the Somervell County Salon blog relating to Somervell County Hospital District, including but not limited to its Board members, from June 2011 to the present.
12. All posts on the Somervell County Salon blog relating to Kelly Van Zandt, including any accompanying documents.
13. All posts on the Somervell County Salon blog relating to Liz Morgan, including any accompanying documents.

14. All documents relating to any communications with the Turks that relates in any way to the allegations in Plaintiffs' Third Amended Complaint in Civil Action No. 6:15-cv-00231.
15. Any video or audio recordings related to the Turks, any Somervell County Hospital District board member, Kelly Van Zandt, Liz Morgan, Ray Reynolds, from June 2011 to present.
16. Any social media communications, including but not limited to posts, photos, or messages, related to the Turks, any Somervell County Hospital District board member, Kelly Van Zandt, Liz Morgan, Ray Reynolds, from June 2011 to present.
17. All documents provided to the Somervell County Salon blog that relate to Glen Rose Medical Center from June 2011 to present.
18. All documents provided to the Somervell County Salon blog that relate to Somervell County Hospital District, including board members, from June 2011 to present.
19. All documents provided to the Somervell County Salon blog that relate to Ray Reynolds, from June 2011 to present.
20. All documents provided to the Somervell County Salon blog that relate to the Turks from June 2011 to present.

28585302.1

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. Plaintiff Albert J. Turk is a medical doctor licensed in the State of Texas. At all pertinent times through September 1, 2016 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. Plaintiff Shelley Turk is a registered nurse licensed in the State of Texas. She was formerly employed by Defendant Somervell County Hospital District.

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 has answered and appeared in this lawsuit.

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. Ryan Reynolds has answered in both of his capacities and appeared in this lawsuit.

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. He has been given a notice of non-renewal effective September 1, 2016.

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 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 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

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 Third Amended Complaint, labeled **Exhibit “A”** and incorporated by reference. Plaintiffs attach and incorporate

that exhibit by reference into this Third 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 Third Amended Complaint, labeled **Exhibit "B"** and incorporated by reference. Plaintiffs attach and incorporate that exhibit by reference into this Third Amended Complaint. The letter in from the Texas Board of Nursing dated July 27, 2015 declining to take action against Nurse Anderson's license is attached to this Third Amended Complaint, labeled **Exhibit "C"** and incorporated by reference. Plaintiffs attach and incorporate that exhibit by reference into this Third 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, 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.

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 Van Zandt (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 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. 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 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.

INCORPORATION OF THE SWORN DECLARATION OF JUSTUS PETERS, M.D.

23. Plaintiffs incorporate by reference into this Third Amended Complaint, the Sworn Declaration of Justus Peters, M.D. dated September 29, 2015, labeled as **Exhibit "D."** That Sworn Declaration includes attached a letter about poor conditions at Glen Rose Medical Center, signed by Dr. Turk and countersigned by Dr. Peters, who was at the time the Chief of Staff of Glen Rose Medical Center. Plaintiffs attach and incorporate that exhibit by reference into this Third Amended Complaint.

CONTINUED RETALIATION SINCE THIS LAWSUIT WAS FILED

24. The Original Complaint in this lawsuit was filed on August 6, 2015. Since that date, the pattern of 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 pressured Dr. Turk to move his practice across the street to a medical suite which did not even contain a treatment room. Further, Dr. Turk's on-call schedule was changed to be as personally inconvenient as possible, including the Thanksgiving and Christmas holidays. These are just examples. Further, untrue and medically unformed criticism of Dr. Turk's practice at Glen Rose Medical Center have been made and encouraged by Defendants, in part through persons not holding any form of medical license. Further, Dr. Turk has been non-renewed as a Physician practicing at Glen Rose Medical Center effective September 1, 2016, although he has been one of the most productive doctors practicing at Glen Rose Medical Center in terms of service to patients and generating revenue. The non-renewal of Dr. Turk was irrational and retaliatory.

CLAIMS

FIRST CLAIM FOR RELIEF

(Freedom of Speech)

25. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 24. 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. The same conduct also violated the Freedom of Speech clause in the Texas Constitution, Texas Bill of Rights, Article I Section 8.

SECOND CLAIM FOR RELIEF

(Due Process of Law and Due Course of Law)

26. Plaintiff Albert J. Turk incorporates by reference and re-alleges paragraphs 1 through 24. 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

**(Systematically Denying Plaintiffs the Right to Petition
the Government Redress for Grievances)**

28. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 24. 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

29. 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

30. 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. Order Defendants to reinstate Plaintiff Albert J. Turk to his 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, Albert J. Turk, for losses he is likely to suffer in the form of future pay and benefits (reinstatement or front pay);
- G. Award Plaintiffs, Albert J. Turk and Shelley J. Turk, reasonable attorneys' fees and costs;
- H. 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
- I. Award Plaintiffs such additional legal or equitable relief as this Court deems proper and just and to which Plaintiffs are entitled.

Respectfully submitted,

By: /s/ John E. Schulman
John E. Schulman, Esq.
State Bar No. 17833500
jschulman@schulmanlaw.com
THE SCHULMAN LAW FIRM P.C.
6440 N. Central Expressway, Suite 210
Dallas, Texas 75206
Tel: 214-361-2580
Fax: 214-361-6580

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record in accordance with F.R.C.P. 5(b) on the 31st day of August, 2016, as follows:

Shafeeqa Watkins Giarratani
Derek T. Rollins
Meredith Mills
Norton, Rose, Fulbright US L.L.P.
98 San Jacinto, Suite 1100
Austin, TX 78701
Tel. 512-474-5201
Fax 512-536-4598

VIA ELECTRONIC FILING

/s/ John E. Schulman

John E. Schulman

Exhibit A



Texas Medical Board

Mailing Address: P.O. Box 2018 • Austin, TX 78768-2018 • Location Address: 333 Guadalupe Tower 3 Suite 610 Austin TX 78701
Phone (512) 305-7100 • Fax (512) 305-7123

August 28, 2015

ALBERT JACKSON TURK JR, MD
1494 SOMERVELL CR 314
CLEBURNE TX 76033

Re: File # 15-2722

Dear Doctor TURK:

The investigation referenced above has been dismissed because the Board determined there was insufficient evidence to prove that a violation of the Medical Practice Act occurred. Specifically, the investigation determined Dr. Turk provided appropriate orders for transfusion and a paracentesis procedure for MA. There was no evidence to support that the procedure was performed by a nurse. There was no evidence to support that Dr. Turk did not follow universal precautions. The standard of care was met; therefore, no further action will be taken.

As such, this complaint has been dismissed without prejudice. No further action will be taken concerning this complaint.

A record of this matter will become a historical part of our files and remains statutorily confidential.

If you have any questions, please contact the Investigations Department at (512) 305-7100.

Sincerely,

The Texas Medical Board

cc: JORDAN M PARKER

CLSUB03.doc

Exhibit B



Texas Board of Nursing

333 Guadalupe Street, Ste. 3-460, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 www.bon.texas.gov
Katherine A. Thomas, MN, RN, FAAN
Executive Director

August 24, 2015

SHELLEY RAYLENE TURK
c/o NANCY ROPER WILLSON, ATTORNEY AT LAW
408 WEST EIGHTH ST., #206
DALLAS, TX 75208

Dear SHELLEY RAYLENE TURK:

The investigation conducted by this office into the allegations against your license(s) to practice nursing in the State of Texas has been completed.

The investigation conducted by this office has been closed without prejudice.

If further information or evidence in this matter is forthcoming at a later time, we may re-open the investigation.

If you have any questions, please contact me at (512) 305-6861.

Sincerely,

Carolyn Schooley, RN
Investigator

/079

11/95 B50

Members of the Board

Keithlee Sblpy, MSN, RN, FNP
Lubbock, President

Nina Almsry, MSN, RN Austin	Deborah Bell, CLU, ChFC Arlene	Nelisa Brown Springmann Austin	Patricia Clapp, BA Dallas	Tamara Cowan, MSN, RN Harlingen	Sheri Crosby, JD, SPHR Dallas
Marilyn Davis, MPA, BSN, RN Sagar Land	Monica Hamby, LVN Amarillo	Kathy Lader-Horn, LVN Groesbury	Mary M. LeBeck, MSN, RN Weatherford	Josefina Lujan, PhD, RN El Paso	Beverly Jean Nutall, LVN Bryan

Exhibit C



Texas Board of Nursing

333 Guadalupe Street, Ste. 3-460, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 www.tbn.texas.gov
Katherine A. Thomas, MN, RN, FAAN
Executive Director

July 27, 2015

Donna Marie Anderson
c/o Nancy Roper Willson, Attorney at Law
408 West 8th Street, Ste. 206
Dallas, Texas 75208

Dear Ms. Anderson:

The investigation conducted by this office has been completed. Based upon the information we have received, there is not sufficient evidence to prove a violation of the Nursing Practice Act.

The investigation is closed, and no action will be taken by the Texas Board of Nursing in this matter. The investigative file has been expunged from your record.

If you have any questions, please contact me at (512) 305-8314.

Sincerely,

Becky Schwab RN
Becky Schwab, RN
Investigator

/188

11/95-B5

Members of the Board

Kathleen Shipp, MSN, RN, FNP
Lubbock, President

Nina Almsay, MSN, RN Austin Deborah Bell, CLU, C&FC Abilene Melissa Brown Spelgmann, PhD, RN, FAAN Austin Patricia Clapp, BA Dallas Tamara Cowan, MSN, RN Harlingen Sheri Crosby, JD, SPHR Dallas

Marilyn Davis, MPA, BSN, RN Sugar Land Nooten Hamby, LVN Amarillo Kathy Leszler-Hora, LVN Granbury Mary M. LeBeck, MSN, RN Weatherford Josephina Lujan, PhD, RN El Paso Beverly Jean Nutall, LVN Bryan

Exhibit D

State of Texas

County of Tarrant

Sworn Declaration of Justus Peters, M.D.

Justus Peters being first duly sworn upon his oath states:

1. My name is Justus Peters. I am a licensed medical doctor in the state of Texas. I reside at 9304 Ravenswood Rd., Granbury, TX, 76049. I understand that I am under oath and subject to the penalties for perjury. All the statements made in this Sworn Declaration are true to my personal knowledge, except where it states that I learned or was told something, in which case it is true that I learned or was told the matter stated.
2. I attended medical school at Creighton University, in Overton, Nebraska. I graduated from medical school in 2005. Afterwards, I interned at the Texas Tech Health Science Center, in El Paso, Texas. I completed a residency in family practice at John Peter Smith Hospital, in Fort Worth, Texas. Prior to attending medical school, I was a registered nurse licensed in the states of Oklahoma and Nebraska, largely practicing in emergency departments and intensive care units.
3. I began to work part time, through a business known as EmCare, "moonlighting" at Glen Rose Medical Center, beginning in 2007. Glen Rose Medical Center is a public hospital operated by the Somervell County Hospital District. I began to work full time at Glen Rose Medical Center starting in 2009. At that time, I joined the medical staff and a contract was issued to me by an entity known as Glenrose Healthcare Inc. On June 5, 2015, I gave 60 days notice of my departure from employment at Glen Rose Medical Center. One reason I gave that notice, was that a series of administrative practices and decisions at Glen Rose Medical Center that were no longer tolerable. Another important reason was to spend more time with my children.
4. Since they came to practice at Glen Rose Medical Center, I have become very familiar with Jay Turk, M.D. and Shelley Turk, R.N.. Based upon my personal knowledge and observations, it is fair to say that they both push hard and consistently for the right things to happen in hospital practice, particularly with regard to patient care and patient safety. Doctor Turk is a fine and skilled physician, one of the best on the Glen Rose medical staff. Shelley Turk was undoubtedly the best nurse at Glen Rose Medical Center until she was terminated in late June 2015.
5. Doctor Turk wrote a detailed letter to the administration of Glen Rose Medical Center dated June 15, 2014, detailing deficiencies and needed areas of improvement at the hospital. His letter was directed to the issues of patient care, patient safety, or both. I signed that letter myself because I agreed with him. A copy is attached. At the time, I was the Chief of the Medical Staff at Glen Rose Medical Center. Unfortunately, the letter was largely ignored. I have personally described the reaction to the sending of this letter

about urgently needed changes as, "hitting a stone wall".

6. Another effort to improve patient care and patient safety at Glen Rose Medical Center, which Doctor and Mrs. Turk were squarely behind, was reflected in a hospital survey and report by the Texas Organization for Rural and Community Hospitals (TORCH). The TORCH report included recommendations that were similar to the changes advocated by Doctor and Mrs. Turk. I was present in 2014 when the Board of Trustees of the Somervell County Hospital District voted in 2014, not to implement the TORCH recommendations.

7. I was told, and I also know by some personal knowledge, that Doctor and Mrs. Turk, after running into "stone walls" about urgently needed patient safety and patient care improvements at Glen Rose Medical Center, responded by expanding the scope of their advocacy to political efforts with members of the Somervell County Hospital District, reporting to multiple governmental agencies, and generally trying to draw public attention to patient care and patient safety issues at this public hospital. As Doctor and Mrs. Turk's actions, speaking out about these issues, moved from internal efforts, which were being largely ignored, to external efforts, the administration responded hostilely, and the attitude of much of the medical staff changed. For example, a series of meetings were set up in 2015 by the Clinic Administrator to talk about Jay Turk and the problems he was causing. When I found out about the subject matter for discussion, I refused to attend the meetings. By 2015 it was clear that the administration and the majority of the medical staff wanted Doctor Turk to be gone.

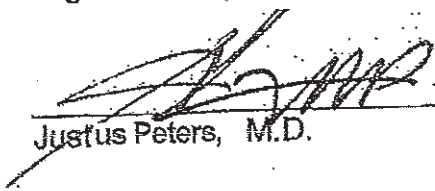
8. The Glen Rose Medical Center is administratively run and managed substantially by people who have very little, if any, medical training. For example, I learned that the Quality Director Kelly Van Zandt, is not a nurse, doctor, or any other kind of licensed healthcare professional. Yet she has been given the special responsibility of judging medical quality issues and making public statements about the quality of the Glen Rose Medical Center in multiple venues including to the public and the Board of Trustees of the Somervell County Hospital District. Based upon my personal observations of her, she does not have the requisite skill, training or experience to hold that job or exercise those responsibilities.

9. I also learned that the Glen Rose Medical Center Executive Director, Ray Reynolds, has a Masters Degree in Business Administration. He is not a nurse, doctor, or any other kind of trained healthcare professional. Overall, it is regrettably obvious that the administration of the Glen Rose Medical Center is more focused upon "numbers", especially "dollars", than patient care and patient safety.

10. Based upon my years of professional experience with them, I can testify that Doctor and Mrs. Turk are people of very high integrity, and very high medical competence. The retaliation against them for speaking out about patient care and quality issues has been open and obvious.

11. This was a complex and developing situation. I may well be able to give additional

testimony, if called upon to do so in the future. I understand that the Sworn Declaration may be used by attorneys for Doctor and Mrs. Turk in administrative proceedings, or in litigation. They have my permission to do so.



Justus Peters, M.D.

9/29/15

Date

Dear Mr. Reynolds

The last time I wrote you I pointed out that for over two years I and several of the other doctors have been reporting to you that there were serious problems with the nursing leadership on the med-surg floor. For the first several months after I arrived I would frequently bring you my concerns. I would invariably be assured that it would be addressed, corrected, looked into etc. Nothing ever changed, so I stopped wasting my time bringing my concerns to you. After several patients died as a result of these problems, I wrote you the letter pointing out that since administration was notified of these problems, all of administration shares in the responsibility of these deaths. Apparently the letter spurred some action because one of the nurse leaders that were part of the problem left shortly thereafter. However, that alone was only a small step towards solving the problems. You have pointed out on several occasions that the ER and radiology departments work very well. Both of those departments work well because they have working leaders. We still need clinically strong leaders, who are willing to work!, for med-surg, the CNO, and the OR.

The current director of the OR has been there several months and is still not oriented to her department. Not only does she not work in her department she doesn't even know how to work in her department. You have repeatedly admitted that she was a poor choice and wasn't working out. Yet, unbelievably, you appointed her as interim CNO. She has failed to orient to the OR, the floor, the ER, or the omnice!l so essentially she can't provide significant help anywhere in the hospital.


There have also been several surgeons who have either stopped coming here or have significantly decreased their case load here because of the poor performance of the OR. I have personally spoken to four of them and they all gave poor comments concerning the OR director. I subsequently passed this information on to you. Again, nothing was done. When we discussed this last, you said that you only needed her to be in the CNO position until the hospital went through the joint commission inspection and that as soon as we were through that she would be let go. Once again you have not followed through with your word. Instead, you have promoted someone that not only performed poorly in their department but actually cost this hospital money because of decreased procedures in the OR. But she is still here, espousing the same nursing leadership philosophy that I have been fighting against ever since I arrived here.

The Interim CNO believes that a manager shouldn't have to work in their department, or work hard at all. That may be so in a large hospital, but in a small hospital it is wasteful of resources, provides a poor example to others and leads to poor nursing care. As I have mentioned before the hospital in Bowie provided excellent medical and nursing care, but when they changed to CNOs that didn't have strong clinical skills and didn't stay involved with patient care, our nursing care declined noticeably. This brings me to the current med-surg director. He does have the clinical skills to perform well in this department but I believe he has been influenced by the CNO to not directly work in his department. But we desperately need someone to actually work in the med-surg department in order to improve patient care. Due to the influence of this CNO there was a significant delay in his orienting to the floor and gaining access to the omnice!l. I was beginning to believe that he would be as worthless as the CNO until this past weekend. Once again there was a problem with the care of patients on the floor.

This involved a patient I admitted on 6/7/14. The family of my patient complained to the ER nurse concerning the lack of care by the floor nurses. This was written up by the ER nurse and given to her manager and to the chief-of-staff, both of whom happened to be working that night. They both wrote responses reporting the continued problems on the floor. The good news is that after those reports went out, I saw a remarkable improvement in the med-surg director. He came in and worked Sunday and assisted me in rounds and taking care of the patients. This improvement has continued this week so far, making me pleasantly surprised. Hopefully, he will stop being influenced by the CNO and this improvement will continue. Now if we can get him and his staff to cross-train in the ER where we can expose the floor nurses to more acute patients and to codes in particular, I believe we will finally see some of the improvements that I have been trying to get you to do for almost three years now. The bad news is that on Monday morning, because she sent out that memo, you called the ER director to your office to reprimand her for not getting along with CNO and the med-surg director. She was even threatened with being fired and told to not report any more complaints, even though she was doing exactly what she was supposed to. Are you are trying to hide the fact that the problems still haven't been fixed under your watch? I, and I believe the other doctors, will continue to insist that everyone continue to bring problems to our attention and to yours so that we can improve our hospital into a facility that provides excellent care of our patients.

I should be able to focus the majority of my efforts directly on medicine, but I am spending way too much time trying to protect my hospital patients from your decisions and your management team. Might I make a simple suggestion? Rather than reprimand an employee for reporting problems, why not just fix the problem? I might also add that the ER manager has been working under direct orders from some of the physicians, me included. I have instructed her, since I have not seen any interest for improvement from upper management, if you see a problem on the med-surg unit correct it if you can and if not write it up and report it. This appeared to be the best option, since the physician complaints were being ignored, and, I might add, this option was beginning to show signs of slight improvement on the floor.

As you well know, I have declined to sign a new contract despite being offered more vacation time and a significant increase in salary. As much as I would appreciate these perks, I place improvement of our patient care of utmost importance. I ask you to perform your duty to protect the patients in our hospital. The results to date are unacceptable. You have had more than two and a half years to address these problems.


J. Turk M.D.

As of today, Dr. Peters reports hope in the nursing leaders getting involved in the patient care more. This would be turn for the better.


6/15/14