

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 4741

FILED

SOLIANNY D. KENNERLY, M.D.)
2016 APR 25 P 2:57)
Plaintiff,)
GUILFORD CO., C.S.C.)
v.)
BY Jm)

THE MOSES H. CONE MEMORIAL HOSPITAL)
OPERATING CORPORATION; THE MOSES H.)
CONE MEMORIAL HOSPITAL OPERATING)
CORPORATION d/b/a CONE HEALTH; THE)
MOSES H. CONE MEMORIAL HOSPITAL)
OPERATING CORPORATION d/b/a CONE)
HEALTH INTERNAL MEDICINE TEACHING)
PROGRAM; THE MOSES H. CONE MEMORIAL)
HOSPITAL; THE MOSES H. CONE MEMORIAL)
HOSPITAL d/b/a CONE HEALTH; THE)
MOSES H. CONE MEMORIAL HOSPITAL)
d/b/a CONE HEALTH INTERNAL MEDICINE)
TEACHING PROGRAM; THE UNIVERSITY OF)
NORTH CAROLINA HEALTH CARE SYSTEM,)
by and through its Board of)
Directors; THE UNIVERSITY OF NORTH)
CAROLINA HEALTH CARE SYSTEM d/b/a)
CONE HEALTH INTERNAL MEDICINE)
TEACHING PROGRAM, by and through the)
Board of Directors of THE UNIVERSITY)
OF NORTH CAROLINA HEALTH CARE)
SYSTEM; THE GREENSBORO AREA HEALTH)
EDUCATION CENTER; THE GREENSBORO)
AREA HEALTH EDUCATION CENTER d/b/a)
CONE HEALTH INTERNAL MEDICINE)
TEACHING PROGRAM; CARMELA MEYER,)
Ed.D., in her individual and her)
official capacity; LAWRENCE D.)
KLIMA, M.D., in his individual and)
his official capacity; EMILY B.)
MULLEN, M.D., in her individual and)
her official capacity; and ELIZABETH)
BUTCHER, M.D.;)
Defendants.)

COMPLAINT AND MOTION FOR
PRELIMINARY INJUNCTION

PARTIES

1. The plaintiff is a physician, and a citizen and resident of Guilford County, North Carolina. Dr. Kennerly is a physician and a pregnant mother of two children. She is originally from Brazil, and is a naturalized citizen of the United States of America. She is in the third year of her residency program in internal medicine managed and operated by the defendants. As a member of the Program, she is an employee of Cone Health (see Exhibit 1 attached hereto).

2. The Moses H. Cone Memorial Hospital Operating Corporation is a nonprofit corporation organized and existing under the laws of the state of North Carolina with its principal place of operations in Guilford County, North Carolina. The Moses H. Cone Memorial Hospital is a nonprofit corporation organized and existing under the laws of the state of North Carolina with its principal place of operations in Guilford County, North Carolina. Both of these organizations do business as, and represent themselves to the public as, "Cone Health," and both together will be referred to as such herein.

3. Cone Health operates and does business as the graduate medical training program known as the Cone Health Internal Medicine Teaching Program (herein the "Program"). Cone Health

has final authority over the daily operations of the Program (see Exhibit 2 attached hereto).

4. The University of North Carolina Health Care System (herein "UNCHCS") is an affiliated enterprise of the University of North Carolina at Chapel Hill, established by G.S. §116-37. Complete authority to operate UNCHCS is vested in its Board of Directors by G.S. §116-37(a)(2). Although Cone Health retains final authority over the daily operations of the Program, it represents to the public, and in fact does, operate the Program in affiliation with UNCHCS (see Exhibit 3 and 4 attached hereto).

5. The Greensboro Area Health Education Center (herein "GAHEC"), upon information and belief is an agency of UNCHCS operated by the latter under the authority of G.S. §116-37(a)(1). In the alternative, GAHEC is an agency of Cone Health. Although Cone Health retains final authority over the daily operations of the Program, it represents to the public, and in fact does, operate the Program in affiliation with GAHEC (see Exhibits 5 and 6-10 attached hereto).

6. Lawrence D. Klima, M.D., is a citizen and resident of Orange County, North Carolina, a physician and teacher within the Program, serving as its director. He is an employee, agent and servant of Cone Health, acting within the course and scope of his agency and employment. At the same time, he is a

clinical assistant professor of medicine and part-time employee, agent and servant of UNCCHS, acting within the course and scope of such limited employment and agency (see Exhibits 11 and 12-17 attached hereto).

7. Emily B. Mullen, M.D., is a citizen and resident of Guilford County, North Carolina, a physician and teacher within the Program, serving its assistant director. She is an employee, agent and servant of Cone Health, acting within the course and scope of her agency and employment. At the same time, she is a clinical assistant professor of medicine and part-time employee, agent and servant of UNCCHS, acting within the course and scope of such limited employment and agency (see Exhibits 18 and 12-17 attached hereto).

8. Elizabeth Butcher, M.D., is a citizen and resident of Guilford County, North Carolina, a physician and a teacher within the Program, serving as the Cone Health Internal Medicine Clinic Medical Director. She is an employee, agent and servant of Cone Health, acting within the course and scope of her agency and employment. Dr. Butcher was Dr. Kennerly's assigned mentor and preceptor in the Program.

9. Carmela Meyer, Ed.D., is GAHEC's director of education. Upon information and belief, she is an employee, agent and servant of Cone Health, acting within the course and scope of her agency and employment. At the same time, upon

further information and belief, she is a part-time employee, agent and servant of UNCCHS, acting within the course and scope of her employment and agency, implementing GAHEC's share of the Program.

JURISDICTION AND VENUE

10. The events complained of in this action occurred in Guilford County, North Carolina. Therefore, venue is proper in the Superior Court of Guilford County.

11. As to UNCHCS and GAHEC, prospective relief only is sought in this action. Therefore, the Superior Court of Guilford County has jurisdiction over their person and this subject matter. UNCHCS and GAHEC have no governmental immunity as to the issues raised in this action for prospective relief.

12. As to the individual defendants, the issues in this case are directed against them in their individual capacities. To the extent that the issues are deemed to affect their official capacities, each of the individual defendants is a public employee rather than a public officer, each exercised a proprietary rather than a governmental function, and each has no governmental immunity in this action for prospective relief. Therefore, the Superior Court of Guilford County has jurisdiction over their person and the subject matter of this action.

13. On or about February 26, 2016, Dr. Kennerly filed an internal grievance with the Program. There is no appeal from the decision of the panel deciding the grievance. Therefore, Dr. Kennerly has exhausted all internal administrative remedies before filing this action.

14. On or about March 31 and April 5, 2016, Dr. Kennerly filed charges of sex and national origin discrimination against the defendants with the federal Equal Opportunity Employment Commission (herein "EEOC") (See Exhibits 19-24 attached hereto). These charges are still pending with the EEOC. Because this action seeks prospective relief, Dr. Kennerly may proceed to seek prospective relief without the need to wait for the EEOC to act, and therefore, she has exhausted all administrative remedies before filing this action.

FACTS

15. Dr. Kennerly began her residency training in internal medicine with the Program in July 2013. She is scheduled to graduate on or about June 30, 2016. She has signed an employment contract with Carolinas Healthcare System (herein "CHS") to work as a primary care internist, subject to her successfully graduating from the Program and being licensed to practice medicine in North Carolina.

16. Throughout her residency with the Program, Dr. Kennerly has been subjected to sexual harassment. She has been

the victim of an intimidating, hostile or offensive work environment, being forced to listen to sexual jokes and comments. She has been touched in an inappropriate and unwelcome manner. Much, but not all, of this conduct was done by Dr. Chris Pribula, at the time a senior resident and an individual with authority over Dr. Kennerly.

17. Dr. Kennerly properly reported Dr. Pribula's conduct to her and his superiors, but no corrective action was taken. Dr. Pribula retaliated against Dr. Kennerly's rejection of his unwelcome behavior and her reporting of his actions to their superiors by falsely reporting to their superiors that she was unprofessional, inefficient and difficult to work with. Dr. Kennerly continued to report his retaliatory actions, but she was persistently disciplined, and Dr. Pribula praised for his actions against her. He was allowed to participate in a formal academic evaluation of Dr. Kennerly by sitting in a Clinical Competency Committee ("CCC") review of her, which is a violation of the policies set out by the organization that accredits the Program, the American College of Graduate Medical Education ("ACGME"). His report in turn was used by the Program in its several decisions to discipline Dr. Kennerly. In fact, despite having completed the Program, he has continued to retaliate against her. Dr. Pribula recently provided a letter with false

accusations against her that was used against her in her grievance committee hearing on March 14, 2016 (see Exhibit 25).

18. Dr. Kennerly complained to Dr. Klima that she was being singled out for additional work beyond that of her peers, and she was exhausted. Instead of putting a stop to the discrimination, Dr. Klima made it clear that he and the Program believed the problem was that she was female: he made a statement to the effect that the problem was that she was a wife and mother (see Exhibits 26-27).

19. Dr. Kennerly became pregnant for the third time, but the first time during her residency training, in the fall of 2015. Her superiors, including those named herein, reacted negatively to her pregnancy and increased the already undue and improper pressure on her. These acts included, but were not limited to, Dr. Mullen screaming at her for "an exact due date" or her maternity leave would not be approved, an increased workload beyond that of her non-pregnant peers, and excessive and undue scrutiny of her work beyond that of her non-pregnant peers. Dr. Kennerly was also called "unprofessional" by Dr. Klima and disciplined for allegedly not reporting her maternity leave plans, which is a false accusation. Dr. Kennerly informed the Program of her pregnancy in November 2015 and took steps to arrange her schedule to avoid any scheduling conflicts during her maternity leave. Dr. Kennerly reported these episodes of

discrimination in regards to her pregnancy to her superior but she received no help and the acts of discrimination against her for being pregnant continued (see Exhibits 28, 29, and 123-125).

20. Dr. Kennerly properly complained to her superiors of her unequal and unwelcome treatment, and a superior told her that it was true she was being "bullied," but she was "an attractive and successful woman and there was a lot of jealousy." The superior refused to report the harassment to the ACGME. No corrective action was taken, the harassers were not disciplined, and the harassment continued (see Exhibits 26-29).

21. Dr. Kennerly is originally from Brazil, and Portuguese is her native language. She also speaks English and Spanish fluently. Despite not being Hispanic, her superiors mistook her for someone of Hispanic origin and discriminated against her on the basis of her national origin, and further, discriminated against her on the basis of their mistaken belief she was Hispanic.

22. On many occasions, Dr. Kennerly has discussed with Dr. Mullen a clinical decision regarding a patient. This is entirely proper and is part of the residency training process. However, for the reasons stated herein, Dr. Mullen has rejected Dr. Kennerly's inputs, often with discriminatory and condescending statements, for example, she has often addressed Dr. Kennerly in

words to the effect that "this is how black-haired people think."

23. Similarly, Dr. Mullen has responded to Dr. Kennerly's inputs with the word "excelente," ironically making it clear that in her opinion Dr. Kennerly's inputs were both unwelcome and not excellent at all, but pronouncing the word as if it were Spanish, and not using the very different Portuguese pronunciation.

24. In December 2013, Dr. Kennerly was disciplined by being placed in internal Remediation with the Program. This decision was based on the improper factors stated above, and because of these improper factors, the individual defendants accepted improper rumor and innuendo in lieu of verifying those things reported to them. These improper rumors and innuendo included, but were not limited to:

a. A false report that Dr. Kennerly had abandoned patients, the accuser being "on vacation and not being able to confirm this". Dr. Mullen later admitted Dr. Kennerly had, in fact, seen the patients in question, but this fact did not stop her and the Program from using these specious allegations as foundations for discipline (see Exhibits 32 and 121).

b. A false report that Dr. Kennerly had refused to see patients assigned to her even though the patient should

have been properly assigned to her senior resident per the regulations of the Program (see Exhibits 32 and 35-37).

c. A false report that Dr. Kennerly was trying to change the rules in the Program applicable to assignment of patients to residents. Dr. Kennerly had a number of patients assigned to her in excess of the number stated by the Program and in excess of the number assigned to her peers. She had appropriately discussed this with her Program director, Dr. Klima, for further clarification but he refused to help her (see Exhibit 26).

d. A false report that Dr. Kennerly had indulged an outburst of anger and raised her voice in a meeting with peers in November 2013 when she objected to the unfair excess number of patient's assigned to her (see Exhibit 32).

e. A false report that Dr. Kennerly was unprofessional and had a lack of integrity in connection with a patient in December 2013 because she had received help from her senior resident to file an admission note in the patient's chart. This has always been an acceptable practice among residents (see Exhibit 32).

25. In December 2013, Dr. Kennerly sent her then-assigned mentor and preceptor, Dr. Mullen, a line-by-line refutation of the false allegations that led to the decision to place her on

Remediation. Instead of attempting to verify Dr. Kennerly's statements, and because of the improper factors set out above, Dr. Mullen stated Dr. Kennerly was being defensive, thought she was always right, and did not accept feedback (see Exhibits 38-39).

26. In April 2014, Dr. Kennerly was placed on probation and told she would be terminated as of June 30, 2014. This decision was based on the events leading to the decision to place her on Remediation, as well as the improper factors stated above, and because of these improper factors, the individual defendants accepted improper rumor and innuendo in lieu of verifying those things reported to them. These improper rumors and innuendo included, but were not limited to:

a. A false report from Dr. Shilpa Bhardwaj, one of four newly hired teachers to the Program with limited experience. Dr. Bhardwaj falsely accused Dr. Kennerly of a lack of medical knowledge and always needing to be right. By contrast, several teachers with tenure and years of clinical experience praised Dr. Kennerly's medical knowledge and clinical skills (see Exhibits 40-71).

b. A false report from Dr. Ankit Garg, also one of the four inexperienced teachers. He falsely accused Dr. Kennerly of being insubordinate, not accepting feedback, and of interrupting presentations at rounds. Dr. Garg

later asked Dr. Kennerly not to ask him questions because all interns were supposed to "just do as they were told," which was contrary to the objectives of the Program to promote discussions among physicians. Dr. Kennerly reported Dr. Garg to Dr. Klima, but his false accusations persisted with support from Dr. Mullen, who was also one of the four inexperienced teachers (see Exhibits 72-73).

c. False reports from Drs. Garg and Bhardwaj that Dr. Kennerly was unable to work in a team environment and inserted herself into the complaining doctors' presentations at rounds. This report was contrary to the comments and evaluations of several other more experienced teachers who had directly observed and supervised Dr. Kennerly. One attending in particular, who had worked with Dr. Kennerly during her ICU month even recommended her to be one of the rising Chief Residents for her excellent team work (see Exhibit 47).

d. False reports from residents, including Dr. Megah Swaheney, who was Dr. Garg's wife, that Dr. Kennerly interpreted feedback as a personal attack and interrupted her presentations. In fact, Dr. Swaheney yelled at Dr. Kennerly in the middle of the ICU. When her actions were reported her superiors did not discipline her, but decided

to retaliate against Dr. Kennerly for reporting her behavior (see Exhibit 80).

e. False reports that Dr. Kennerly had not checked Amion, the Program's scheduling system, prior to making plans for her holiday vacation. In fact, Dr. Kennerly had received confirmation from her superiors at the outset for the entire academic year. Dr. Kennerly did confirm her days off with her superior in September 2013, prior to making final arrangements to participate in her church's missions. Unfortunately, her superior did not update Amion correctly. Dr. Kennerly sought help from Dr. Pribula, who was in charge of the schedule. Instead of correcting his own mistake, he continued his pattern of retaliation against Dr. Kennerly by requiring that she work the days reflected in Amion and reported her to Dr. Klima as unprofessional. Dr. Klima did eventually correct the error, but warned Dr. Kennerly that planning not to work during the holidays and be with her family and her church was unprofessional. To further impose his distorted view of professionalism in medicine he sent an email to the entire Program emphasizing that true medical professionals should be seeing patients on holidays (see Exhibits 84-88).

27. In February 2014, Dr. Kennerly refused to prescribe narcotic pain medication to a patient who had clinical warning

signs for drug-seeking behavior and who failed a urine drug screen. The patient complained about Dr. Kennerly. Dr. Butcher responded by issuing a letter of apology to the patient, discrediting Dr. Kennerly's correct decision to not prescribe opioids. Dr. Mullen later told Dr. Kennerly words to the effect that the salary of a teacher (such as Dr. Butcher and Dr. Mullen) depended on keeping patients happy. Dr. Kennerly replied she would not prescribe narcotics inappropriately. Dr. Mullen retaliated against Dr. Kennerly for this and similar interactions by stating she would recommend Dr. Kennerly for termination. This event was part of the decision for probation and termination cited in paragraph 26, above, and was based on the improper factors previously cited.

28. In June 2014, Dr. Klima removed Dr. Kennerly's probation and allowed her to progress to her second year of residency, but put her back on internal Remediation. While the decisions to remove the probation and to promote Dr. Kennerly were appropriate, the decision to place her on Remediation was inappropriate and based on the improper factors cited above, compounded by the failure of Dr. Klima, Dr. Mullen, and the other teachers within the Program to verify the rumor and innuendo reported to them about Dr. Kennerly (see Exhibits 74-82).

29. In July 2015, Dr. Kennerly progressed to her third year of residency with the Program. Immediately afterward, Dr. Klima provided a negative performance evaluation of Dr. Kennerly. The evaluation violated ACGME standards by being based entirely on rumor, innuendo, and hearsay, and not on Dr. Klima's direct observation. To make matters worse, at the time of this evaluation, Dr. Klima screamed at Dr. Kennerly in what he later falsely described as "detailed feedback" regarding these false accusations. Dr. Kennerly reported Dr. Klima's abusive behavior to her superiors, but they took no corrective action and Dr. Klima's discriminatory, abusive behavior continued. As with the previous episodes of discipline, the decision to place her on probation was based on the improper factors cited above, compounded by the failure of Dr. Klima, Dr. Mullen, and the other teachers in the Program to verify unfounded and false accusations made against Dr. Kennerly. The false accusations to support her probation included, but were not limited to:

a. Misleading reports from her supervisee first-year residents that she was not doing enough of their work. In order to cultivate positive evaluations, Dr. Kennerly's peers stayed late to do medical record documentation and other work that was properly the function of the first-year residents. Dr. Kennerly refused to give in to this

pressure and do others' work in order to cultivate a better evaluation from her supervisees. Dr. Kennerly worked with five interns during her second year with an undisclosed number of them turning in the same falsely negative evaluations multiple times, but this was falsely reported as a systemic problem (see Exhibits 92, 93, 106 and 126).

b. False reports from teacher Dr. Alejandro Paya, also one of the four inexperienced teachers. He falsely reported that Dr. Kennerly lacked medical knowledge. In fact, Dr. Kennerly disagreed with Dr. Paya in several of his clinical decisions. For example, in March 2015, Dr. Paya ordered a patient involuntarily committed despite the fact that the patient posed no danger to self or others, making the detention both unethical and illegal. When Dr. Kennerly remonstrated against this conduct, Dr. Paya refused to cancel the commitment and retaliated against Dr. Kennerly for this and similar interactions by stating she was being "passive-aggressive." To this day, "passive-aggressive" is one of several false and defamatory labels applied to Dr. Kennerly that remain in her permanent record with the Program and have been used as part of the discipline imposed on her (see Exhibit 80).

c. False reports from teacher Dr. Bhardwaj that Dr. Kennerly lacked medical knowledge. In fact, Dr. Kennerly

disagreed with Dr. Bhardwaj in several of her clinical decisions. As one example, in June 2015, Dr. Bhardwaj ordered calcium channel blockers, a drug widely known to cause edema, in a patient with significant preexisting edema. When Dr. Kennerly remonstrated, Dr. Bhardwaj insisted on using the medication and retaliated against Dr. Kennerly for this and similar interactions by assigning her hours of reading medical articles. Dr. Bhardwaj on another occasion ordered an antibiotic that would be potentially fatal to a patient. Dr. Kennerly appropriately disagreed with Dr. Bhardwaj's decision, but the latter ordered the intern to place the patient on the medication.

Fortunately, after much insistence from Dr. Kennerly, Dr. Bhardwaj correctly advised the intern not to order the medication. Dr. Bhardwaj has not forgiven Dr. Kennerly and has retaliated against her ever since (see Exhibit 94).

d. False reports from Dr. Klima that Dr. Kennerly lacked clinical competency because she did not meet clinical milestones in the areas of communication, professionalism, and interpersonal skills. In fact, Dr. Kennerly disagreed with Dr. Klima in several of his clinical decisions, and these disagreements were misconstrued to support his claims. As one example, in August 2015, a patient in a Sickle Cell crisis called and

Dr. Klima wanted her seen in the clinic, despite the fact that her hematologist was on vacation and it was past the time of day where the clinic could receive STAT lab results timely. Dr. Kennerly properly told the patient she could elect to come to the clinic, or could elect to go to the emergency department. The patient exercised her right to choose the latter. Dr. Klima retaliated against Dr. Kennerly for this and similar interactions by reprimanding her for countermanding his wishes, despite the fact that her order was clinically correct and ethically appropriate, that is, it properly gave the patient the right to choose her place of treatment. On the day of this incident Dr. Klima confronted Dr. Kennerly by screaming at her. When Dr. Kennerly asked him to stop screaming, she asked him why he was so disrespectful towards her. He replied, "Take a look at yourself. It is because of who you are?" Dr. Kennerly asked him to clarify what he meant, but he did not reply. Because Dr. Klima appeared to be referring to her appearance, she properly suggested to him not to give the impression that he was racist, and to listen to her. However, he later falsely reported to several faculty and residents that Dr. Kennerly had directly called him a "racist" and used this information to support his

retaliatory decision to place her on probation (see Exhibits 98-99).

e. False reports by Dr. Klima to several tenured faculty members that Dr. Kennerly had turned a patient away from clinic. This action hinders Dr. Kennerly's ability to request a letter of recommendation for her upcoming licensure application, which is required for the fulfillment of her contract with her future employer, CHS. Dr. Klima also retaliated against Dr. Kennerly by sending a letter to the North Carolina Medical Board stating that Dr. Kennerly had been placed on probation and would likely not finish her residency training due to lack of communication and interpersonal skills, and lack of professionalism. Consequently, the North Carolina Medical Board has decided not to issue a medical license, and has required Dr. Kennerly to appear before them on May 18, 2016 (see Exhibits 99-102).

30. On or about February 26, 2016, Dr. Kennerly filed an internal grievance with the Program for the purpose of having the probation removed. The Probation was not removed, due to the fact that the hearing committee relied on those matters stated above, and additional improper factors. These included, but were not limited to, retaliation by Dr. Klima and Dr. Mullen, including the following:

a. False reports from Dr. Mullen that Dr. Kennerly lacked clinical competency because she did not meet clinical milestones in the areas of communication, professionalism, and interpersonal skills. In fact, Dr. Kennerly disagreed with Dr. Mullen in several of her clinical decisions, and these disagreements were misconstrued to support her false claims. As one example, in January 2016, Dr. Kennerly was called on to evaluate a patient being seen regularly by Dr. Mullen. Dr. Kennerly properly determined the patient had dry gangrene, a disease that takes days to develop. To cover up her negligence, Dr. Mullen insisted the patient had acute limb ischemia, which could form in less than one day. In fact, the vascular surgeon noted in the record that the patient had an occluded graft, "probably present for several days." The patient underwent an amputation and died a few days later. In another occasion, Dr. Mullen refused to listen to Dr. Kennerly's recommendation to start treatment for possible pneumonia for a patient with an atypical presentation. The patient, who was free of chronic illness, eventually died of pneumonia and septic shock (see Exhibit 103).

b. False and defamatory characterizations of Dr. Kennerly's job performance. In January 2015, Dr. Kennerly

was on rounds and a patient became unstable and required an urgent response. At the same time, she was due to attend a tour with new residency candidates. Dr. Kennerly properly and ethically stayed with the unstable patient. By the time the team finally stabilized the patient, Dr. Kennerly had missed the tour. Rather than congratulate her for helping save a patient's life, Dr. Klima reprimanded Dr. Kennerly for missing the tour. He characterized this as "unprofessional" conduct. To this day, "unprofessional" is one of several false and defamatory labels applied to Dr. Kennerly that remain in her permanent record with the Program and have been used as part of the discipline imposed on her (see Exhibits 32, 73 and 79).

c. A false report from Dr. Mullen that Dr. Kennerly had been disrespectful towards her in front of medical students, had forcefully removed equipment out of her hands, and had pushed a medical student to perform a medical exam. The witnesses provided a written statement refuting Dr. Mullen's false claim, but the grievance committee did not review this information (see Exhibits 104 and 112).

d. A false report by Dr. Mullen that Dr. Kennerly had misled a neurologist resulting in inappropriate patient care. The neurologist provided a written statement to the

grievance committee refuting this claim did not review this evidence (see Exhibits 105 and 112).

e. A false report by Dr. Mullen that Dr. Kennerly had abandoned an intern to do admissions on her own. It is the accepted practice within the Program to allow interns to see low acuity patients on their own from time to time to promote clinical development and autonomy. Dr. Kennerly had been specifically instructed by Dr. Mullen on several occasions to allow interns to see patients on their own if circumstances permitted. The intern misinformed several residents and teacher Dr. Narenda that she had called Dr. Kennerly for help and Dr. Kennerly would not answer. The intern later apologized to Dr. Kennerly but did not clarify her false report to Dr. Narenda and to the other residents. Although known to be false, Dr. Mullen continued to use this claim to accuse Dr. Kennerly of being unprofessional (see Exhibits 106-109).

f. False reports that Dr. Kennerly had sent several emails to staff and residents that were "rude" and "passive-aggressive." One individual provided an email of Dr. Kennerly to the hearing committee stating that she was polite, cordial, and addressed important changes within the Program. In a follow up email, Dr. Kennerly shared with resident Dr. Qureshi that she was concerned about the Dr.

Mullen's retaliatory behavior and did not feel comfortable discussing her concerns about the new changes with the administration (see Exhibit 110).

31. In March 2016, Dr. Butcher replaced Dr. Mullen as Dr. Kennerly's mentor and preceptor. In their first meeting as such, Dr. Butcher was condescending and disrespectful. She reiterated false accusations as listed above, despite the fact she had witnessed none of them and had verified none of them. She gave Dr. Kennerly an extensive reading assignment, and when asked the reason, replied, "[b]ecause I said so." In a second meeting, after the EEOC charges were filed, Dr. Butcher displayed a vengeful, retaliatory attitude towards Dr. Kennerly. Dr. Butcher stated Dr. Kennerly was "labeling and being inflammatory". In this meeting Dr. Butcher also revealed a disturbing view of medical ethics, stating that a good patient advocate is one who does not give choices to patients, but rather "forces" patients to undergo the physician's choice of medical treatment, because patients are not qualified to make their own medical decisions. Dr. Kennerly refuted this unethical position by Dr. Butcher but her superiors immediately retaliated against her for it and accused her of being "inflammatory." Dr. Butcher's false claim was used to place Dr. Kennerly on probation again. As of the filing of this complaint, Dr. Kennerly remains on probation and has been informed that she

may not be allowed to graduate from the Program and may not be allowed to complete her residency. She was informed a decision would be made on or about May 31, 2016 (see Exhibits 113-120).

FIRST CLAIM FOR RELIEF

32. The above allegations contained in paragraphs one through thirty-one of the complaint are realleged and incorporated by reference.

33. Each defendant is a "person" as defined in 42 U.S.C. § 2000e(a). Each defendant is an "employer" as defined in 42 U.S.C. § 2000e(b), in that each organizational defendant has had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and has been and is engaged in an industry affecting commerce. Each individual defendant is an agent of such "person" and "employer."

34. Dr. Kennerly is an "employee" as defined in 42 U.S.C. § 2000e(f) with respect to Cone Health. Dr. Kennerly is an "individual" as that term is used in 42 U.S.C. § 2000e-2(d) with respect to the Program.

35. The defendants, and each of them, have threatened to terminate Dr. Kennerly's employment because of her race, color, and/or national origin, in violation of 42 U.S.C. § 2000e-2(a)(1).

36. The defendants, and each of them, have limited, segregated, classified, and otherwise discriminated against Dr. Kennerly because of her race, color, and/or national origin, in violation of 42 U.S.C. § 2000e-2(a)(1) and (2). The defendants, and each of them, have threatened to continue to do so.

SECOND CLAIM FOR RELIEF

37. The above allegations contained in paragraphs one through thirty-six of the complaint are realleged and incorporated by reference.

38. In violation of 42 U.S.C. § 2000e-2(d), the defendants, and each of them, have discriminated against Dr. Kennerly's admission to and/or employment in the Program, which was established to provide apprenticeship or other training, because of her race, color, and/or national origin. The defendants, and each of them, have threatened to continue to do so.

THIRD CLAIM FOR RELIEF

39. The above allegations contained in paragraphs one through thirty-eight of the complaint are realleged and incorporated by reference.

40. The defendants, and each of them, have permitted and refused to stop an intimidating, hostile or offensive work environment, including, but not limited to, sexual jokes, sexual comments, and unwelcome and unconsented touching.

41. The defendants, and each of them, have used, or permitted and refused to stop, discrimination against Dr. Kennerly on the basis of her pregnancy.

42. The defendants, and each of them, have threatened to terminate Dr. Kennerly's employment on the basis of sex, in violation of 42 U.S.C. § 2000e-2(a)(1).

43. The defendants, and each of them, have limited, segregated, classified, and otherwise discriminated against Dr. Kennerly on the basis of sex, in violation of 42 U.S.C. § 2000e-2(a)(1) and (2). The defendants, and each of them, have threatened to continue to do so.

FOURTH CLAIM FOR RELIEF

44. The above allegations contained in paragraphs one through forty-three of the complaint are realleged and incorporated by reference.

45. In violation of 42 U.S.C. § 2000e-2(d), the defendants, and each of them, have discriminated against Dr. Kennerly's admission to and/or employment in the Program, which was established to provide apprenticeship or other training, on the basis of sex. The defendants, and each of them, have threatened to continue to do so.

FIFTH CLAIM FOR RELIEF

46. The above allegations contained in paragraphs one through forty-five of the complaint are realleged and incorporated by reference.

47. The defendants, and each of them, have engaged in acts of retaliation against Dr. Kennerly because she has opposed unlawful employment practices committed by the defendants, in violation of 42 U.S.C. § 2000e-3(a).

SIXTH CLAIM FOR RELIEF

48. The above allegations contained in paragraphs one through forty-seven of the complaint are realleged and incorporated by reference.

49. The defendants, and each of them, were negligent and their negligence was the proximate cause of the discipline set out above. Their negligence, prospectively, has threatened to be the proximate cause of her termination from employment.

SEVENTH CLAIM FOR RELIEF

50. The above allegations contained in paragraphs one through forty-nine of the complaint are realleged and incorporated by reference.

51. The defendants, and each of them, were negligent. Their negligence, prospectively, has threatened to be the proximate cause of Dr. Kennerly's termination from the Program.

EIGHTH CLAIM FOR RELIEF

52. The above allegations contained in paragraphs one through fifty-one of the complaint are realleged and incorporated by reference.

53. The defendants, and each of them, were willful or wanton in their conduct, and this conduct was the proximate cause of the discipline set out above. Their conduct, prospectively, has threatened to be the proximate cause of Dr. Kennerly's termination from employment.

NINTH CLAIM FOR RELIEF

54. The above allegations contained in paragraphs one through fifty-three of the complaint are realleged and incorporated by reference.

55. The defendants, and each of them, were willful or wanton in their conduct. Their conduct, prospectively, has threatened to be the proximate cause of Dr. Kennerly's termination from the Program.

MOTION FOR PRELIMINARY INJUNCTION

56. The above allegations contained in paragraphs one through fifty-five of the complaint are realleged and incorporated by reference.

57. The events described herein establish that the defendants have threatened, and continue to threaten, irreparable harm against the plaintiff, including the threat to

terminate her employment. The plaintiff moves for a preliminary injunction in order to prevent such irreparable harm by allowing her to continue her in employment with Cone Health through graduation. The plaintiff specifically moves the Court to enter a preliminary injunction requiring the defendants, and each of them, to:

a. Cease and desist all acts of discrimination on the basis of sex, including both the acts of discrimination for her pregnancy as well as the acts creating an intimidating, hostile or offensive work environment.

b. Cease and desist all acts of discrimination on the basis of race, color and/or national origin.

c. Cease and desist all acts of retaliation.

d. Cease and desist all acts of negligence, and willful or wanton conduct.

58. The events described herein establish that the defendants have threatened, and continue to threaten, irreparable harm against the plaintiff, including the threat to terminate her participation in the Program. The plaintiff moves for a preliminary injunction in order to prevent such irreparable harm by allowing her to continue her in the Program through completion. The plaintiff specifically moves the Court to enter a preliminary injunction requiring the defendants, and each of them, to:

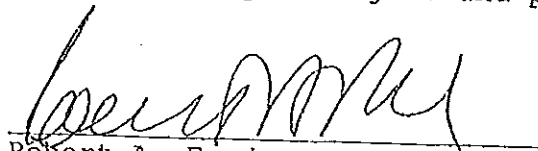
a. Cease and desist all acts of discrimination on the basis of sex, including both the acts of discrimination for her pregnancy as well as the acts creating an intimidating, hostile or offensive work environment.

b. Cease and desist all acts of discrimination on the basis of race, color and/or national origin.

c. Cease and desist all acts of retaliation.

d. Cease and desist all acts of negligence, and willful or wanton conduct.

WHEREFORE, the plaintiff prays that she have a preliminary injunction permitting her to continue in employment with Cone Health through graduation; that she have a preliminary injunction permitting her to continue in the Program through completion; that she have a permanent injunction preventing the defendants from exercising further harm against her; that she have costs and attorneys' fees as allowed by statute; and that she have such other and further relief as to the Court may seem just and proper.

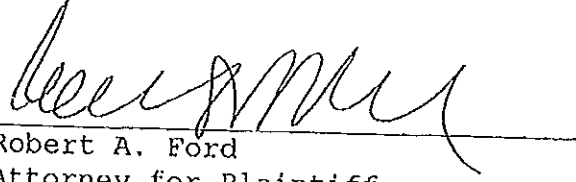

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DEMAND FOR A JURY TRIAL

The plaintiff demands a trial by jury on all issues so triable.

A handwritten signature in cursive script, appearing to read "Robert A. Ford", is written over a horizontal line.

Robert A. Ford
Attorney for Plaintiff