

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

FILED
SECOND JUDICIAL DISTRICT
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DAWNA M. MARTIN

ANNE MARIE WALLACE, M.D.,

Plaintiff,

v.

No. ~~CV~~ 201102403

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO,
JOHN RUSSELL, M.D., AND ASHWANI RAJPUT, M.D.,

SUMMONS (ES) ISSUED

THERESA BACA

Defendants.

**COMPLAINT FOR BREACH OF CONTRACT AND VIOLATION OF THE NEW
MEXICO WHISTLEBLOWER PROTECTION ACT**

Plaintiff Anne Marie Wallace, M.D., through her attorneys, Freedman Boyd Hollander Goldberg Ives & Duncan, P.A. (John W. Boyd and Molly Schmidt-Nowara) brings this complaint for damages against defendants for their breach of contract and violation of the New Mexico Whistleblower Protection Act (NMSA 1978, §§ 10-16C-1 through 10-16C-6). The grounds for this complaint are as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction and venue is proper pursuant to common law, and NMSA 1978, § 38-3-1(A) (1988).
2. All parties reside in New Mexico.

II. PARTIES

3. Dr. Anne Marie Wallace is a resident of Bernalillo County, New Mexico.
4. By statute, NMSA 1978, § 21-7-4, the Defendant Regents of the University of New Mexico is the body corporate of the University of New Mexico and, as such, is the proper

institutional defendant in this suit against the University of New Mexico, with whom plaintiff Wallace contracted and whose employees, in the course and scope of their employment at the University, committed the wrongful acts complained of herein.

5. Defendants Russell and Rajput are physicians employed by the Regents of the University of New Mexico. At all times material to the allegations in the complaint, the physician defendants were acting in the course and scope of their employment and supervised the plaintiff.

III. FACTUAL BACKGROUND

6. Dr. Wallace is a highly trained and skilled breast surgical oncologist who specializes in treating patients with breast cancer. In addition to a five-year surgical residency and board-certification in General Surgery, Dr. Wallace completed a fellowship in breast surgery at Stanford University Medical Center where she was selected as the 2003-2004 Susan G. Komen Fellow. She enjoys an excellent reputation throughout the New Mexico medical community and elsewhere as a surgeon with excellent outcomes, a strong sense of collegiality, excellent teaching skills, a clinical research focus, and a history of dedicated patient care.

7. Dr. Wallace began her employment at the University of New Mexico Health Sciences Center (UNMHSC) and Cancer Research and Treatment Center (CRTC) in September, 2004.

8. Dr. Wallace was employed by UNMHSC/CRTC until she was notified of termination on July 22, 2010 with a termination date of August 19 after she refused to accept radical, punitive changes to her employment status and breaches by the defendants of her contract.

9. When Dr. Wallace and UNMHSC/CRTC negotiated the terms of her work and employment at UNMHSC/CRTC, Dr. Wallace agreed to come to New Mexico and the

UNMHSC/CRTC only if she could work exclusively in the area of breast surgery and not be on general surgery “call.” Dr. Jorge Wernly, who negotiated the terms with her, who solicited her to make her career at UNMHSC, and who was at the time Chief of the Department of Surgery, agreed to this except that he asked that she agree to being on general surgery call twice per week for the first year. Dr. Wernly explained to her that this would be a “one-time” event that was necessitated by the hospital being temporarily short-handed. Dr. Wallace agreed to this in the spirit of collegiality, and their agreement is reflected in the offer letter sent to Dr. Wallace by Dr. Wernley, which explicates and memorializes the parties’ agreement. *See* Exhibit A. Dr. Wallace took general surgery call for more than one year.

10. Dr. Wallace accomplished much during her time at UNMHSC and the CRTC. For nearly six years, Dr. Wallace was the Associate Director of the Breast Multidisciplinary Program at the CRTC. She also worked to establish the High Risk Screening program at the CRTC for patients with breast diseases. Dr. Wallace also devoted a great deal of time and effort to clinical trials and research. She was involved insignificant collaborations with colleagues on National Institute of Health (NIH)-funded grants and her own investigator-initiated protocol which was funded by the state legislature in an overall joint collaboration with MD Anderson Medical Center in Houston, Texas. As Associate Director of the breast program, Dr. Wallace was also one of the lead members of the CRTC’s Breast Multidisciplinary Working Group Committee and the chair of the Clinical Pathways Subcommittee, which is a committee assigned to reviewing and improving quality care measures and institutional clinical care standards within the Breast Program at CRTC.

11. In addition to her duty as a leading member and subcommittee chair of the Working Group Committee to review and improve breast cancer treatment, Dr. Wallace’s other

duties, as Associate Director of the Breast Multidisciplinary Program and as a participant in regular "breast tumor board" meetings, put Dr. Wallace in the position of being duty-bound by medical ethics to confront incidents of surgical care of breast cancer patients that fell beneath accepted standards of care. As a consequence of these responsibilities, Dr. Wallace confronted instances in which breast surgeries performed by her colleagues and even her superiors, including Dr. John Russell, fell beneath accepted standards of care. In addition to bringing instances of substandard care to the attention of her colleagues and to the attention of the participants, she also complained about the substandard care to her superiors within the cancer center and to members of the hospital administration. It was these complaints regarding substandard care that caused the retaliation against her that forms the basis for this complaint.

12. Despite Dr. Wallace's excellent reputation, consistently excellent surgical outcomes, and significant productivity in both her clinical practice and academic research, she was retaliated against for reporting the professional misconduct of her direct supervisors, Dr. John Russell and Dr. Ashwani Rajput. The systematic retaliation culminated in the constructive termination and/or termination of her employment in violation of her employment contract. Others in the administration were aware of the retaliation and failed to take any action to prevent it, to protect Dr. Wallace, or to protect the patients who would be negatively affected by Defendant Russell's decision to require the plaintiff to leave the institution immediately. These same administrators also did nothing to investigate Dr. Wallace's complaints of substandard care by Defendant Russell.

13. When UNMHSC/CRTC hired Dr. Wallace, it was explicitly agreed that her job was to expand the scope and quality of breast care at the CRTC. As alleged above, this responsibility and her duties as a physician put Dr. Wallace in the often difficult position of

having to confront and report problems with substandard patient care by colleagues, including her superiors. This responsibility became particularly difficult when, in late 2006, Defendant Russell, Dr. Wallace's colleague in the Department of Surgery, became Chairman of the Department of Surgery.

14. Defendant Russell holds himself out to the medical community as a specialist in breast surgery but has had no specialized training in that field. On information and belief, Defendant Russell's patients experience higher-than-usual rates of complications following his surgical procedures. Dr. Wallace and others have observed that he frequently deviates from the accepted standards of care in his breast surgeries, resulting in unnecessary complications and poor outcomes.

15. In late 2006, the Administration appointed Defendant Russell to be the Chairman of the Department of Surgery at UNMHSC.

16. Before Defendant Russell's appointment as Chairman, he generally followed the standards established by the Breast Multidisciplinary Working Group, but after his appointment, he became less and less willing to follow the Group's recommendations. Dr. Wallace, however, continued to attempt to impress on Defendant Russell, despite the fact that he had become her superior, the importance of adhering to accepted standards of care. This resulted in bristling hostility on the part of Dr. Russell toward Dr. Wallace.

17. Throughout her time at the CRTC and UNMHSC, Dr. Wallace complained to the administration about Defendant Russell's substandard outcomes, disregard for patient care, and unprofessional conduct. Dr. Wallace raised these issues to individual administrators, including Dr. Cheryl Willman, (Director and CEO of CRTC) and later Dr. Warren Laskey (Chief of Staff). She also raised these issues to Dr. Robert Bailey (Associate Dean of Clinical Affairs) and Dr.

Carolyn Voss (Vice President of Clinical Affairs), and in professional review settings such as Tumor Board meetings (a multidisciplinary meeting of medical, surgical, and radiation oncologists, pathologists, radiologists, and support staff to review cases).

18. In spite of Dr. Wallace's repeated articulation and documentation of specific concerns about Defendant Russell's substandard patient care, no member of the hospital administration ever meaningfully addressed her complaints. Instead, as alleged in greater detail below, the administration did nothing and later acquiesced in the retaliation against the plaintiff by Defendants Russell and Rajput as a result of her complaints regarding Defendant Russell's surgical performance and, later, her complaints about Dr. Rajput's conduct.

19. After Defendant Russell was appointed Chairman of the Department of Surgery, members of the administration and Defendant Russell began retaliating against Dr. Wallace because of her complaints about Defendant Russell's patient care. The retaliation took different forms, including dismissive and rude treatment in professional settings and the imposition of new and difficult conditions on her employment, including radical changes in her responsibilities and productivity benchmarks and including manipulating how those benchmarks would be calculated.

20. The Defendants' retaliation against Dr. Wallace was punishment for reporting Defendant Russell's substandard patient care. It also became clear that the administration and Defendant Russell were attempting to force Dr. Wallace out of UNMHSC/CRTC for the same reason. Despite the retaliation, Dr. Wallace continued to alert her colleagues, superiors and the administration about Dr. Russell's substandard patient care until she was placed on administrative leave on July 22, 2010 and finally terminated on August 19 or 20, 2010.

21. In late March, 2009, UNMHSC/CRTC hired Dr. Ashwani Rajput as Chief of the Division of Surgical Oncology, a new division within the Department of Surgery. Dr. Wallace was one of three other physicians who were members of the division.

22. From the time he was hired, Defendant Rajput demonstrated substandard patient care and unprofessional behavior. For example, as described in greater detail below, shortly after Defendant Rajput was hired, Dr. Wallace observed him falsifying medical records. She also witnessed an extraordinary act of professional misconduct by Defendant Rajput in which he withdrew medical care from a patient without the patient's consent. When Dr. Wallace reported Defendant Rajput's unethical and unlawful behavior to administrators at UNMHSC and the CRTC, she experienced immediate and harsh retaliation by the Defendants.

23. On April 13, 2009, Dr. Wallace overheard Defendant Russell ask Defendant Rajput to see and examine a clinic patient of Defendant Russell's because the patient had a colorectal problem and Defendant Russell thought Defendant Rajput should handle the case. At the time, Defendant Rajput did not have a license to practice medicine in New Mexico and was not privileged to practice at UNMHSC/CRTC. Defendant Rajput examined the patient at Defendant Russell's request. According to a witness who was present to chaperone the examination of the female patient, it was Defendant Rajput who examined the patient, not Defendant Russell, including performing a rectal examination. After the examination, Dr. Wallace observed Defendant Russell sign Defendant Rajput into the telephone dictation system by using Dr. Russell's sign in code. Defendant Rajput proceeded to dictate, stating that he was Defendant Russell on the dictation, which violates both UNMHSC/CRTC policy and federal law. He laughed about it afterwards, saying that he was "...impersonating Dr. Russell for the day."

24. Dr. Wallace informed the Deputy Director of the CRTC and the Clinical Director of the CRTC of Defendant Rajput's and Dr. Russell's misconduct. Both directors told Dr. Wallace to ignore it. Dr. Wallace also reported the incident to Dr. Robert Bailey. On information and belief, Dr. Bailey never investigated the complaint and no action was taken against Defendants Russell and Rajput. Instead, Dr. Bailey did nothing, allowing the dictation to be destroyed automatically, as happens over time. Dr. Bailey had intimate knowledge of these details, since it is his job to oversee the compliance issues for the UNMHSC. After several months of inaction by Dr. Bailey, and progressive retaliation by Defendants Russell and Rajput, Dr. Wallace then reported the incident to the compliance officer at the CRTC who attempted to investigate it, but had only limited success given the timeframe and limited resources allowed for the investigation by Dr. Bailey.

25. In the weeks after the medical record incident, Defendant Rajput began retaliating against Dr. Wallace as punishment for reporting his misconduct. He made threatening comments in front of Dr. Wallace, such as the statement "People had better watch out. They're going to learn how important I am." Defendant Rajput used a threatening tone when he made this statement to Dr. Wallace. Defendant Rajput also began exhibiting extremely passive-aggressive and disruptive behavior toward Dr. Wallace.

26. For example, in July, 2009, Defendant Rajput ambushed Dr. Wallace with new "on call" rules, giving her less than twenty-four hours notice of the new call schedule. Defendant Rajput informed Dr. Wallace that she would be required to be on call for his patients every other weekend. Defendant Rajput's practice is General Surgical Oncology with a focus on complex gastro-intestinal cancers which require abdominal surgeries, which is not Dr. Wallace's

area of expertise or surgical oncology training. The new call schedule also breached the terms of the agreement under which Dr. Wallace was hired.

27. Dr. Wallace expressed serious concern about the new call schedule, since she is not trained in General Surgical Oncology and does not perform abdominal surgery as part of her practice. Dr. Wallace informed Defendant Rajput that she was concerned about covering patients outside of her area of expertise, as she did not feel that this assignment promoted high quality patient care. Defendant Rajput told Dr. Wallace he had approval from all necessary members of the administration, including Drs. Bailey and Russell specifically, and refused to discuss the matter further with her.

28. Dr. Wallace, still deeply troubled by Defendant Rajput's capricious change to the call schedule, expressed her concerns to the Assistant Dean for Clinical Affairs/Medical Director for Inpatient Services, Dr. David Pitcher on July 10, 2010. He told her that while he personally agreed with her concerns, he could not intervene on her behalf, but referred her to Defendant Robert Bailey, the Associate Dean for Clinical Affairs.

29. Dr. Wallace next talked to Dr. Bailey. She told him about the medical records incident and the abrupt change in her call schedule. She told him that she believed the change in call schedule was retaliation for reporting the medical records incident to administration at the CRTC.

30. Dr. Wallace also spoke multiple times to Dr. Warren Laskey, the Chief of Staff at UNMHSC, to inform him of her concerns about the falsification of records and her belief that she was a target of retaliation for her complaints. They had an initial meeting, in which Dr. Laskey told her to formalize her complaint in a written document. When Dr. Laskey met with Dr. Wallace a second time, he told her to omit mention of the medical records incident in the

complaint she was drafting to submit to the Dean via the Medical Executive Committee, of which Dr. Laskey was chairman. Dr. Laskey told her that she should focus on Defendant Rajput's lack of professionalism in his behavior towards her, instead of the unlawful activity, and asked her to remove the statements about the falsification of records from her written document.

31. Although Defendant Russell initially refused to speak to plaintiff Wallace, he finally agreed to speak with her by telephone, but only after she called him through the hospital paging system, about her concerns with the call schedule. Defendant Russell told her that Defendant Rajput's unexpected and dramatic change to the schedule was "no big deal" because "no one is expecting [her] to operate on these patients." In response to her renewed concerns, Defendant Russell said "this conversation is over" and hung up on her abruptly.

32. Dr. Wallace went back to Dr. Bailey and told him about Defendant Russell's response. She expressed again her belief that the new call schedule was retaliation against her for expressing complaints about Defendants Russell and Rajput's patient care. She also explained the other ways in which Defendant Russell had retaliated against her. Dr. Bailey said, "Maybe you should just consider leaving. When your Chairman feels that way about you, you may have to." Dr. Bailey then said "I'll go to work on this." On information and belief, Dr. Bailey did nothing other than, ultimately, to approve the retaliatory conduct described in this complaint and assist in covering it up.

33. The second significant incident involving Defendant Rajput occurred on August 14, 2009, when Defendant Rajput ordered Dr. Wallace to check on Dr. Rajput's patients the following morning, explaining that he was considering taking a weekend trip to Taos. One of the patients was an indigent Spanish-speaking only man who apparently had asked Defendant Rajput to try any treatment options available.

34. During Dr. Rajput's telephone conversation with Dr. Wallace, he briefed her on the patient's status. Defendant Rajput told Dr. Wallace that the patient was a "full code" (meaning that all life-saving measures should be employed) and was "stable and doing well." On information and belief, as soon as Dr. Rajput hung up the telephone after speaking with Dr. Wallace, Defendant Rajput told a medical oncologist who was not on call and had no relationship with the patient to see to it that the patient was placed on "do not resuscitate" ("DNR") status and to stop all treatment of the patient's condition beyond minimum palliative pain medicine.

35. On information and belief, the medical oncologist switched the orders on the patient's chart from "full code" to "DNR", or "Do Not Resuscitate" (meaning do not treat the patient per routine guidelines if he has cardiopulmonary arrest) after consulting with Defendant Rajput. The doctor also stopped all treatment of the patient, placing him only on pain medication and minimal intravenous fluids. Up until then, the patient had been receiving life-saving blood transfusions to reverse a medication-caused iatrogenic bleeding disorder. Care was also stopped without the patient's knowledge or consent, leaving the patient to bleed to death from a preventable cause, and against his wishes to be treated.

36. Dr. Rajput never told Dr. Wallace that he was about to drastically change the orders or status of the patient, despite the fact that the patient was now checked out to Dr. Wallace's care. Another medical oncologist - who was actually the oncologist on call at the time - was also not informed. Nor was the patient's regular medical oncologist notified that the patient was in the hospital.

37. The decision to change the patient's orders was a unilateral decision made by Defendant Rajput without input from other physicians caring for the patient, and without the

patient or his family being informed of what was happening or given the opportunity to disagree or have any discussion at all.

38. When Dr. Wallace rounded on the patient the following morning, one of the residents told her “the patient is going to die” and had a DNR order. Dr. Wallace was confused and troubled, since Defendant Rajput told her just the day before that the patient was stable and “full code.” Once the resident realized Defendant Rajput had given Dr. Wallace incorrect information about the patient’s status, the resident, who had overheard Defendant Rajput’s conversation in which he changed the patient’s orders, told Dr. Wallace about the changed orders.

39. The resident, who speaks Spanish, also told Dr. Wallace that he translated for the physician who changed the order and confirmed that the patient and his family had not been accurately informed of Defendant Rajput’s changes to his treatment. Dr. Wallace then spoke directly with the patient and the patient’s son and later with his wife and additional family members when they arrived at the hospital. The patient told Dr. Wallace that he wanted everything done to prolong his life, including medication and surgery if necessary. The patient and his family confirmed that this had always been his request, and that no changes to this plan had been discussed with any of them. Dr. Wallace determined that the patient had no idea that he was receiving only pain medication and minimal IV fluids. The patient told her that he was wondering “why they stopped bringing in blood.” The patient begged Dr. Wallace to change the orders and treat him. Dr. Wallace followed the patient’s wishes and immediately began treating the patient.

40. When Defendant Rajput arrived at the hospital on August 17, 2009, he was extremely angry when he discovered that Dr. Wallace had changed the patient’s orders and cared

for the patient. He did not offer the patient continued surgical evaluation and he did not arrange for him to have a second surgical opinion. He instead simply refused to see the patient. The patient died a few weeks later from a potentially surgically treatable bowel obstruction related to his intra-abdominal hematoma that was caused by Dr. Rajput's inadequate treatment of his bleeding condition.

41. Dr. Wallace submitted a formal complaint in connection with these serious incidents to the Chief of Staff, Dr. Laskey. Despite repeated conversations with Dr. Laskey and other high-level administrators, neither UNMHSC nor the CRTC completed any meaningful investigation into the incident.

42. When Dr. Wallace formally submitted her written complaint on or about August 18, 2009, Dr. Laskey told Dr. Wallace that he would formally transfer her complaint to Dr. Bailey to investigate. Dr. Wallace also specifically gave this information to Dr. Bailey in a telephone conversation on August 28, 2009 during which he confirmed that he had received the information from Dr. Laskey. However, when Dr. Wallace followed up with Dr. Laskey and Dr. Bailey a few weeks later, Dr. Bailey stated that he "lost" the information and again asked Dr. Wallace to give him the patient's information, which she did by email on September 15, 2009.

43. On October 19, 2009, Dr. Bailey again asked Dr. Wallace for a written version of her complaint, which she had already submitted two months prior. He then later assigned the case to the Department of Surgery to review even though the case involved Defendants Rajput and Russell, the Chief of the Division of Surgical Oncology and the Chairman of Surgery, respectively. Dr. Wallace was finally interviewed regarding the incident nearly a year after it occurred, at which time it was noted that the medical chart had since been tampered with by

person or persons unknown. Dr. Wallace notified the investigators of this new problem, but the investigation was never completed. Instead, Dr. Wallace's position was terminated.

44. Dr. Wallace also complained to Dr. Voss. Dr. Wallace told Dr. Voss about Defendant Rajput's mistreatment of the patient and also expressed concern that Defendants Russell and Rajput were retaliating against her and would continue to do so as a result of her complaints about their patient care. Dr. Wallace gave Dr. Voss extensive documentation to support her allegations, and also referred Dr. Voss to witnesses who could corroborate the events. Dr. Voss promised she would personally look into the incident involving the patient and the retaliation, as she felt that the case was very serious. She even expressed to Dr. Wallace that she thought the family of the indigent patient who died should receive a formal apology from the UNMHSC, and that she would look into getting this done. However, Dr. Voss failed to do any of these things. When Dr. Wallace asked Dr. Voss about her investigation, Dr. Voss tacitly conceded that nothing would be done, telling Dr. Wallace she, Dr. Voss, had to act in the "best interest" of the hospital and that, instead, moving Dr. Wallace out of the Department of Surgical Oncology was the answer to Defendant Rajput's retaliatory behavior rather than holding Defendant Rajput accountable for his behavior as outlined by UNMHSC policies. She had no solution whatsoever to protect Dr. Wallace from Defendant Russell's longstanding retaliation, and when Dr. Wallace specifically asked her how she planned to address this issue, Dr. Voss said Dr. Wallace might have to leave UNMHSC because there was no solution when a Chairman behaved this way.

45. After Dr. Wallace submitted formal complaints regarding the conduct of Defendants Russell and Rajput, she became the focus of increasingly harsh retaliation by both Defendants. The retaliation included the Defendants exhibiting openly hostile behavior, bad-

mouthed Dr. Wallace's personality and skills to residents and colleagues, changing her conditions of employment punitively, including changing her duties in ways that violated her contract, and excluding her from the day-to-day workings of both the Division of Surgical Oncology and the Department of Surgery.

46. Despite the Defendants' escalating hostile behavior, Dr. Wallace's primary concern continued to be for appropriate and safe coverage of patient care. From August, 2009 until she was terminated on August 19, 2010, Dr. Wallace observed poor care and the unethical treatment of patients on multiple occasions by Defendants Russell and Rajput. Dr. Wallace continued to report her concerns to her supervisors and different administrators, including Dr. Voss, but never received acknowledgement of her concerns or solutions to these issues. Dr. Wallace went so far as to even report these issues to the main campus internal audit department on July 13, 2010, given the lack of response from the UNMHSC administration. She still has not received a notice to date of completion of investigation of the allegations she presented. Dr. Wallace was told that Dr. Voss would be notified of her formal complaint through the internal audit department. Despite this, Dr. Voss still permitted the retaliation against Dr. Wallace.

47. The Defendants' retaliation against Dr. Wallace culminated in June, 2010, when she was presented with her annual contract renewal. Without warning, on June 3, 2010, Defendant Russell notified her in writing that he was going to make the following, dramatic and unwarranted changes to her contract with UNMHSC, including, without limitation, the following: (a) a fifteen percent (15%) decrease in her salary, despite Dr. Wallace meeting the onerous clinical benchmarks previously established by Defendant Russell; (b) an increase in her clinical workload to include all breast referrals within the entire UNM system, which had previously been distributed between three to four physicians; (c) an increase in her percentage of

clinical distribution which would have made her productivity benchmarks nearly impossible to achieve;(d) a decrease in her allocated research time, even though she was involved in two separate projects that recently had been awarded collectively almost three million dollars in National Institute of Health funding as a Co-Principle Investigator and Co-Investigator, as well as recently opening her own investigator-initiated trial; (e) a requirement that she physically move her office out of the CRTC building where she worked and saw patients; (f) requiring her to change her hospital privileges in a way that would harm her career, and (g) and the removal of her title and position at the CRTC in the breast program that she had helped to build from its genesis.

48. Defendant Russell claimed these demotions were “in exchange” for agreeing to remove Dr. Wallace from the inappropriately assigned General Surgical Oncology call schedule she had been forced to cover for a year, in breach of her contract.

49. In response to Defendant Russell’s letter, Dr. Wallace met with Defendant Russell and Dr. Cheryl Willman, Director and CEO of the CRTC, on June 24, 2010 to discuss the changes in her position, title, and salary. At the meeting, Dr. Russell and Dr. Willman agreed to make only the most minor of modifications, leaving most of the retaliatory and offensive provisions intact.

50. At the same time Defendant Russell informed Dr. Wallace of her demotion in title and position, Defendant Rajput submitted his annual review of the plaintiff’s performance to the administration. Defendant Rajput refused to meet with Dr. Wallace to discuss the review, contrary to accepted, standard procedure at UNMHSC. Defendant Rajput filled the review with false and slanderous statements and conclusions intended to destroy her academic career. For example, Defendant Rajput wrote that Dr. Wallace was not qualified to be promoted to Associate

Professor, despite her excellent academic credentials, glowing reviews from surgical residents and medical students, significant productivity in research and despite UNMHSC's history of promotions of others with equal or inferior credentials. Defendant Rajput wrote the review knowing that it would represent the end of her academic career at UNM and would likely eliminate any chance of an academic career at another institution.

51. Despite knowing that Defendants Rajput and Russell were systematically retaliating against Dr. Wallace, and despite her knowledge that statements in the review were false and having possession of evidence supporting Defendant Rajput and Russell's retaliation, Dr. Voss approved Defendant Rajput's review of Dr. Wallace and also approved Defendant Russell's dismissal of Dr. Wallace, as well as placing her on administrative leave as of July 22, 2010. Administrative leave is something that is usually assigned by the Medical Executive Committee (the organizational body overseeing the functions and duties of the medical staff) when there are allegations of wrong-doing against a physician. There were no allegations against Dr. Wallace, and the chair of the Medical Executive Committee, Dr. Laskey, was unaware that Dr. Wallace had been placed on administrative leave and told Dr. Wallace that this was done outside of the usual rules and regulations that governed UNMHSC. He expressed to Dr. Wallace that he thought this was inappropriate to treat her this way.

52. Dr. Gerald Demarest and Dr. Branwyn Wilson presented Dr. Wallace with Defendant Russell's proposed contract and Defendant Rajput's review on June 30, 2010. Dr. Demarest and Dr. Wilson told Dr. Wallace at 4:45 p.m. that she needed to sign the contract by the end of business that day (5:00 p.m.), or else her insurance would run out at midnight and she would be unable to see patients the following day. These threats proved to be untrue.

53. Dr. Wallace refused to sign both the proposed contract and Defendant Rajput's review, stating that she believed both documents represented retaliation against her for her filing of formal complaints against Defendants Russell and Rajput. Despite requests for an immediate and timely answer, two days later, Defendant Russell admitted that the information given to her by Dr. Demarest was incorrect and that her insurance coverage and hospital privileges continued by default until July 20, 2010, which would allow more time for "negotiations" over her contract.

54. On July 16, 2010, Dr. Wallace provided a written rebuttal to Dr. Rajput's defamatory review, including documentation of the retaliation, which was never acknowledged by Defendant Russell or Dr. Voss, other than receipt of the document.

55. Despite Defendant Russell's representations, the Defendants refused to modify the offending provisions in the revised contract. Plaintiff was informed that she would be terminated as an employee on July 20, 2010. In a last minute meeting on July 20, 2010, Dr. Wallace was told that UNMHSC would extend her contract until August 20, 2010 to allow her to transition patient care, for the sake of the patients. Defendant Russell also told Dr. Wallace that they could continue to negotiate her contract.

56. On July 22, 2010, however, Defendant Russell informed Dr. Wallace that she was being placed on administrative leave and that she would not be permitted to see her patients that day or complete surgeries that were already scheduled with patients. This decision had serious, negative consequences to the transition of patient care and gave the false impression to her patients, colleagues, and the larger medical community that she had done something to cause the UNMHSC/CRTC administration to act in such a drastic manner towards her. Defendant Russell also ordered Dr. Wallace to clean out her office and leave UNMHSC that same day. Her access to electronic mail and the electronic medical record system was terminated a few hours later on

July 22, 2010 without any notice to her and with no opportunity to provide forwarding information or complete routine medical charts. She lost emails that contained important information regarding her research proposals as well as professional contacts.

57. On July 24, 2010, Dr. Wallace received a letter informing her that her involvement was not necessary for the safe transition of patient care

58. Dr. Wallace's termination became effective August 19 or 20, 2010.

59. As the result of the Defendants' actions, Dr. Wallace has lost years worth of academic research and her professional standing. She has suffered reputational harm, economic loss, and emotional distress as a direct consequence of the Defendants' conduct. Plaintiff will prove at trial the value of these losses and the harm she experienced.

COUNT I

VIOLATION OF NMSA 1978, §§ 10-16C-1 through 10-16C-6 (Whistleblower Protection Act)

60. Plaintiff incorporates by reference the preceding allegations of this complaint.

61. Defendants Russell, Rajput and the Regents are public employers within the meaning of NMSA 1978, § 10-16C-2 (C).

62. All acts of the Defendants Russell and Rajput were performed in the course and scope of their employment at the UNMHSC by the Defendant Regents.

63. In addition to the direct retaliation by Defendants Russell and Rajput against the plaintiff, other members of the UNMHSC administration, who are also public employers within the meaning of the New Mexico Whistleblower Protection Act ("the Act"), participated in, ratified or approved the retaliation against the Plaintiff by Defendants Russell and Rajput, knowing or having reason to know that the retaliation was occurring or neglected to take any action to protect the plaintiff despite their knowledge that the retaliation was occurring. Those in

this category include, but are not limited to, Dr. Carolyn Voss, Dr. Robert Bailey, Dr. Cheryl Willman, Dean Paul Roth, and Dr. Warren Laskey. In the course of their conduct in relation to the retaliatory actions taken against the plaintiff, all of the foregoing physicians were acting in the course and scope of their employment at UNMHSC.

64. The conduct by Defendants Russell and Rajput about which Dr. Wallace complained involved unlawful and/or improper acts within the meaning of the Act, NMSA 1978, § 10-16C-2 (E).

65. The actions taken by the defendants and the University, including the UNMHSC, against the plaintiff were “retaliatory action” within the meaning of NMSA 1978, § 10-16C-2 (D).

66. At all times material hereto, plaintiff was a public employee within the meaning of the Act and she lodged the complaints described in this complaint in good faith.

COUNT II

BREACH OF CONTRACT

67. Plaintiff incorporates by reference the foregoing allegations of this complaint.

68. Defendant Regents, through their agents at UNMHSC, recruited the plaintiff to come to New Mexico and to perform the tasks previously alleged, under the terms previously alleged. Through Dr. Wernley, the head of the Department of Surgery, Plaintiff was invited to make her career at UNMHSC/CRTC and was informed, in writing, that her duties would be as described in paragraphs 9 and 13 of this complaint and that her contract would be routinely renewed provided she performed as anticipated, which she did.

69. Plaintiff’s relationship with UNMHSC and the University was contractual, the terms of which were generally set forth in the letter attached hereto as Exhibit A to this

complaint. Pursuant to that letter, and pursuant to the policy of UNMHSC to routinely renew formal, yearly contracts, plaintiff was entitled to continued employment provided that she met expectations identified in the letter, which she did.

70. In addition to the foregoing, part of plaintiff's contract with UNMHSC was that she would be considered for associate professorship on the same terms and conditions that others would be so considered.

71. It was implicit in plaintiff's contract with the University through UNMHSC that plaintiff would not be retaliated against should she report issues and incidents that negatively impacted patient care.

72. As a consequence of the facts alleged above, the Defendant Regents, acting through UNMHSC, breached their employment contract with the plaintiff in the following respects, among others:

- a. UNMHSC materially altered plaintiff's terms and conditions of employment, contrary to the parties' agreement, in the respects alleged in this complaint;
- b. UNMHSC, through plaintiff's supervisors and members of the UNMHSC administration, retaliated against the plaintiff because she complained about and/or reported incidents of substandard and abusive patient care;
- c. UNMHSC, through plaintiff's supervisor, informed the plaintiff that she would not be considered for promotion to associate professor, even though she was fully qualified for the promotion and even though others less qualified than she were so promoted; and
- d. UNMHSC breached its contract with the plaintiff by violating the covenant of good faith and fair dealing implicit in the contract by taking steps intended to make it impossible for the plaintiff to remain on staff at UNMHSC, thereby denying plaintiff the benefits of the contract between her and the University of New Mexico.

WHEREFORE, Plaintiff respectfully requests the following relief:

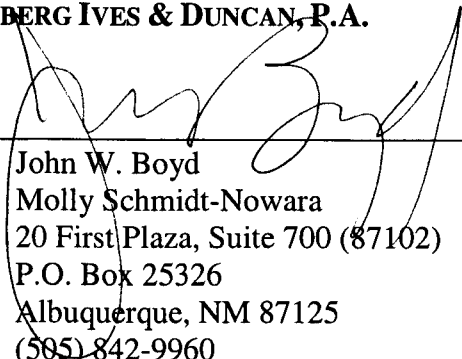
- A. An award of damages in the amount proved at trial;

B. An award of costs and attorneys' fees pursuant to the applicable provisions of the New Mexico Whistle-Blower Protection Act, and

C. Whatever other and further relief the Court considers appropriate.

**FREEDMAN BOYD HOLLANDER
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By: _____


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