

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT - ____ DIVISION
CIVIL ACTION NO. 03-CI-____

AMY E. HERRINGTON

PLAINTIFF

v.

**VERIFIED COMPLAINT
JURY TRIAL DEMANDED**

BAPTIST HEALTHCARE SYSTEM, INC.,
a Kentucky Corporation, d/b/a,
Central Baptist Hospital

DEFENDANT

Plaintiff Amy E. Herrington for her Complaint against defendant Baptist Healthcare System, Inc., d/b/a Central Baptist Hospital states as follows:

I

Nature of the Case

1. This is an action pursuant to the common law of Kentucky and KRS 446.010 seeking recovery of lost wages and benefits, damages for diminished future earning capacity, compensatory and punitive damages, for the unlawful, tortious and wrongful actions taken by defendant in terminating plaintiff's employment.

II

Jurisdiction and Venue

2. This Court has jurisdiction over this matter under KRS 23A.010. Venue is proper in this Court because the claims asserted herein accrued in Fayette County.

III

Parties

3. Amy E. Herrington is a female citizen of the United States. She is currently resident of Scott County, Kentucky.

4. Defendant Baptist Healthcare Systems, Inc., is a Kentucky corporation whose agent for service of process is Janet Norton, BHI Corporate Complex, 4007 Kresge Way, Louisville, KY 40207. This defendant does business under the assumed name of Central Baptist Hospital (hereinafter referred to as "CBH") at 1740 South Limestone Street, Lexington, KY 40503.

IV

Facts Giving Rise to Lawsuit

5. Herrington is a Registered Nurse so licensed by the Kentucky Board of Nursing.

6. Herrington is certified as a Certified Emergency Nurse (CEN) by the Emergency Nurses Association.

7. Herrington is a member of the Emergency Nurses Association, a professional organization which provides monthly and/or quarterly updates to its members regarding evolving and developing standards of nursing practice for the purposes of enhancing their nursing skills and improving the quality of nursing care provided to their patients.

8. Herrington is a member of the Kentucky Nursing Association, an affiliate of the American Nursing Association.

9. The Kentucky Nursing Association is a professional organization dedicated to promoting the professional development of its members, enhancing the standards of nursing practice, improving nursing skills and the quality of nursing care provided to patients.

10. Herrington is also certified as a National Registered Emergency Medical Technician (NREMT).

11. Herrington's certification as an NREMT is recognition of her highly developed skills and expertise in the field of emergency medical treatment and care.

12. Herrington is certified as an instructor by the American Heart Association on the topics of Cardio-Pulmonary Resuscitation (CPR), Advanced Cardiac Life Support (ACLS), and Pediatric Advance Life Support (PALS).

13. Herrington has instructed staff in the fields of CPR, ACLS, and PALS at the following health care institutions and facilities: CBH, University of Kentucky Medical Center, Woodford Hospital and Health Services, Georgetown Community Hospital and the Harrodsburg hospital.

14. In August 2000, Herrington began employment as a Registered Nurse for defendant at CBH in Lexington, Fayette County, Kentucky.

15. Herrington's employment with defendant was terminated by defendant on March 7, 2003.

16. While employed by defendant Herrington was assigned to the Critical Care Transport department at CBH.

17. Herrington served, while employed by defendant, as her department's glucometer instructor/trainer.

18. Herrington served, while employed by defendant, on numerous occasions as the Charge Nurse for the Emergency Department.

19. As Charge Nurse for the Emergency Department, Herrington was responsible for overseeing and supervising staff, directing patient flow, and addressing whatever issues arose or occurred during the shift.

20. Herrington served, while employed by defendant, as her department's educator on treatment and care of high-risk obstetric transfers.

21. Herrington created, while employed by defendant, the OB check sheet for her department for use during delivery of children.

22. Herrington's creation of the OB check sheet enhanced the quality of care defendant was able to provide to high-risk obstetric patients it transported.

23. Herrington created, while employed by defendant, its validation sheet regarding the care and treatment provided to high-risk obstetric patients.

24. Herrington's creation of the validation sheet regarding the care and treatment provided to high-risk obstetric patients enhanced the quality of care defendant was able to provide to high-risk obstetric patients it transported.

25. Herrington instructed defendant's staff, while employed by defendant, on the use of neo-natal resuscitation bags.

26. The instruction Herrington provided to defendant's staff regarding the use of neo-natal resuscitation bags improved the quality of care that defendant was able to provide its patients.

27. Herrington performed, while employed by defendant, on behalf of defendant and in conjunction with the Georgetown/Scott County Emergency Medical Service voluntary community education in the Scott County school system on CPR.

28. Herrington compiled, while employed by defendant and in addition to her other duties, the biweekly statistics for the Critical Care Transport department.

29. Herrington created, while employed by defendant and in addition to her other duties and on her own time, the weekly work schedules for the Critical Care Transport department.

30. Herrington in conjunction with others and while employed by defendant directed the creation of the inventory

compliance system for defendant's Critical Care Transport (CCT) units.

31. The inventory compliance system created for defendant's CCT units enhanced the quality of care defendant was able to provide to its patients.

32. Herrington created, while employed by defendant, the medication reference sheets for pharmacological agents carried in defendant's CCT units.

33. Herrington's creation of the medication reference sheets for pharmacological agents carried in defendant's CCT units enhanced the quality of care defendant was able to provide to its patients.

34. Herrington performed, while employed by defendant, the Medicare certifications for physicians for all defendant's CCT Medicare patients.

35. Herrington's performance of the Medicare certifications for physicians for all defendant's CCT Medicare patients enhanced the efficiency of defendant's business operations.

36. Herrington purchased with her own money, while employed by defendant, education materials that were available to patients and their families.

37. Herrington instructed and trained defendant's employees, while employed by defendant, on use of the Educodes program.

38. Herrington developed, while employed by defendant, its audit tools for Quality Assurance (QA) and Quality Inspection (QI) for both defendant's CCT and Emergency departments.

39. Herrington compiled, while employed by defendant, the monthly statistics for the CCT department based on the QA and QI audit tools.

40. Herrington, while employed by defendant, developed and served as the primary instructor in a Kentucky Board of Nursing-certified continuing education course for all departments at CBH on identification and treatment of children victimized by physical, emotional or sexual abuse.

41. Herrington was the only nurse employed by defendant in the CCT department that completed the mandatory 36 hours obstetrics rotation in the time period 12/1/02 to 2/1/03.

42. Because of her professional expertise Herrington had, prior to commencing employment with defendant, established herself as a legal-nurse consultant.

43. As a legal-nurse consultant, Herrington reviews incidents where a patient has been injured or has died to determine whether deficient nursing care and/or a deviation from

applicable standards of nursing care caused or contributed to the patient's injury or death.

44. Also as a legal-nurse consultant, Herrington on occasion serves as an expert witness in lawsuits regarding the issues of whether deficient nursing care and/or a deviation from applicable standards of nursing care caused or contributed to an injured patient's injury or a deceased patient's death.

45. Herrington has been recognized as an expert witness in the fields of emergency medicine nursing and critical care nursing by state and/or federal courts in Kentucky, Ohio and Maryland.

46. Herrington advised Pat Lewis, who was then manager of defendant's Critical Care Department, of her work as a legal-nurse consultant prior to commencing employment with defendant.

47. Lewis congratulated Herrington on her work as a legal-nurse consultant upon being informed of it by Herrington.

48. About six months after beginning work for defendant Herrington discussed with Todd Jones, who was then and at all times pertinent hereto defendant's risk manager at CBH, her work as a legal-nurse consultant.

49. Herrington informed Jones of her willingness and availability to serve as a legal-nurse consultant on behalf of defendant should the need arise.

50. Jones informed Herrington that defendant would not be needing her services as a legal-nurse consultant.

51. Jones encouraged Herrington to continue her work as a legal-nurse consultant.

52. Jones advised Herrington that defendant's policy regarding her work as a legal-nurse consultant prohibited her from working as a nurse-consultant on any matter alleging deficient care and/or a deviation from established standards of nursing practice by defendant or any of its affiliates.

53. Jones also advised Herrington that defendant's policy regarding her work as a legal-nurse consultant prohibited her from utilizing defendant's standards or protocols as a basis for her expert testimony that a particular incident constituted a deviation from established standards of nursing practice.

54. Herrington's work as a legal-nurse consultant offers her the opportunity to review patient care situations and to analyze the methods and procedures by which a patient was provided care.

55. Herrington's professional skill and expertise is enhanced by the opportunities made available to her as a legal-nurse consultant to review and analyze patient care situations.

56. Herrington's ability to provide better care for her patients is enhanced by her work as a legal-nurse consultant.

57. During the time that Herrington was employed by defendant, defendant encouraged members of its nursing staff to develop their skills as a legal-nurse consultant by paying for training classes as a legal-nurse consultant for interested nursing staff members.

58. Herrington provided training and instruction to members of defendant's nursing staff at CBH regarding applicable standards of nursing care and the legal liabilities that could arise from deviation from such standards.

59. On or about January 9, 2003, Herrington was summoned to meet with Todd Jones.

60. Jones informed Herrington at a meeting on or about January 13, 2003, that defendant had received a letter request from an attorney in Cincinnati, Ohio, Bill J. Paliobeis, who, according to Jones, had written a letter requesting that defendant provide him with a copy of Herrington's personnel file.

61. Jones did not indicate that defendant had received a subpoena or other legal process demanding production of Herrington's personnel file.

62. The presumed reason that Paliobeis had requested Herrington's personnel file from defendant is that Herrington had been identified as an expert witness by the estate of a deceased patient in a lawsuit pending in federal district court

in Cincinnati, Ohio styled Poynter v. University Hospital, No. 00-CV-962, U.S. District Court for the Southern District of Ohio.

63. Herrington's deposition as an expert witness in the Poynter case was taken by Paliobeis on November 19, 2002.

64. Herrington's testimony and expert opinions in the Poynter case support the claims of the deceased patient's estate that deficient nursing care and/or a deviation from applicable standards of nursing care caused and/or contributed to the patient's death.

65. Herrington's testimony and expert opinions in the Poynter case are adverse to the interests and position of the hospital that is alleged to have caused the patient's death by deficient care.

66. Another nurse, Kim Mobley, employed by defendant at CBH has also been identified as an expert witness by the estate of the deceased patient in the Poynter case.

67. Mobley's deposition as an expert witness in the Poynter case was taken by Paliobeis on December 9, 2002.

68. Mobley's testimony and expert opinions in the Poynter case support the claims of the deceased patient's estate that deficient nursing care and/or a deviation from applicable standards of nursing care caused and/or contributed to the patient's death.

69. Mobley's testimony and expert opinions in the Poynter case are adverse to the interests and position of the hospital that is alleged to have caused the patient's death by deficient care.

70. Jones questioned Herrington at the January 13 meeting regarding her knowledge of a lawyer in Manchester, Kentucky, Annette Morgan, and informed Herrington that she should not have suggested an expert witness to Morgan in a medical negligence case where Morgan represented the family of a deceased woman in a lawsuit against defendant's subsidiary, Baptist Regional Medical Center.

71. Jones, however, assured Herrington that she had done "nothing wrong" and had complied with defendant's policies.

72. Also at the January 13 meeting, Jones suggested to Herrington that she terminate her involvement as an expert witness in a lawsuit against St. Joseph's Hospital, which arose from the events also subject of the lawsuit claims against Baptist Regional Medical Center.

73. Jones explained that Herrington should terminate her involvement because "it doesn't look good."

74. Herrington responded to Jones' suggestion that she terminate her involvement with the medical negligence lawsuit against St. Joseph's Hospital by observing that her involvement was consistent with defendant's policy, that it was a very bad

situation and the deceased victim's family deserved her assistance.

75. Jones did not push his suggestion that Herrington terminate her involvement in the St. Joseph's medical negligence lawsuit and agreed that she was acting consistent with defendant's policy.

76. Herrington's testimony and expert opinions in the case against St. Joseph Hospital are adverse to the interest and position of that hospital.

77. Herrington contacted Jones the following day and informed him that she would get in contact with defendant's corporation counsel with regard to the request from Paliobeis for her personnel file.

78. Jones informed her that such measure would not be necessary, that the matter had been resolved and Herrington need not be concerned with it further.

79. Jones further informed Herrington that he believed Paliobeis' request for the personnel file was part of any attempt by Paliobeis to intimidate Herrington.

80. On February 17, 2003, Ernest Skinner, Herrington's grandfather, passed away while a patient at Central Baptist Hospital.

81. The nursing staff on Mr. Skinner's unit failed to treat his congestive heart failure.

82. On February 19, 2003, Herrington met with Larry Gray, who was a member of defendant's senior administration at CBH, regarding her grandfather's death.

83. Herrington informed Gray at the February 19 meeting that she had concerns regarding her grandfather's death, particularly the failure to administer any medication to him and the absence of deference and consideration allowed to his family.

84. Herrington also informed Gray at the February 19 meeting that her grandfather's death represented the fourth incident of questionable if not deficient nursing care in the unit in the last six months.

85. Gray informed Herrington that he would cause Todd Jones to investigate the matter thoroughly and quickly.

86. Gray also informed Herrington that all nurses on the unit would be required to take mandatory palliative care training classes.

87. Gray also informed Herrington that someone would be in contact with her in a couple of days or so regarding the investigation into the circumstances surrounding her grandfather's death.

88. Contrary to Gray's representation, Herrington was not contacted by anyone on behalf of defendant regarding the investigation into the circumstances surrounding her

grandfather's death until several weeks later, after Herrington had again reported it along with other matters and after defendant had initiated termination of Herrington's employment.

89. On Friday, February 28, 2003, Gayle Turner, who works in the risk management department at CBH, left a message on Herrington's answering machine to meet with Todd Jones the following Monday, March 3, 2003, at 2:30 p.m.

90. Herrington called Turner later on February 28 to inquire about the purpose of the meeting with Jones on March 3.

91. Turner informed Herrington that defendant had issued a statement that applied to Herrington's work as a legal-nurse consultant and as an expert witness in lawsuits where individuals and families had been injured or killed by, harmed by and were suffering from the deficient care provided by health care institutions and/or members of their staffs.

92. Because Herrington was concerned that defendant's statement regarding her work as a legal-nurse consultant and as an expert witness in lawsuits where the deficient care provided by health care institutions and/or their staff caused or contributed to injury or death of a patient was motivated by retaliation for her reports about the deficient care provided her grand-father and because Herrington feared meeting alone with defendant's senior administration in an intimidating

environment, Herrington informed Turner that she wished to have legal counsel accompany her to the meeting with Jones.

93. Herrington was informed by Jones on Friday, February 28, by phone that she would not be permitted to have benefit of her attorney's counsel and presence when meeting with him and other members of defendant's senior administration on March 3.

94. Herrington informed Jones that she felt very uncomfortable with the situation and would consult her attorney and follow back up with Jones.

95. Herrington subsequently informed defendant that she felt bullied, railroaded and intimidated by defendant's demand that she be denied the assistance and counsel of her lawyer at the meeting and that defendant could communicate its message in one of three ways: (1) meeting with her and her attorney; (2) conference call; or (3) certified letter.

96. Herrington was subsequently called by Cindy Baxter and informed that there was a letter on her desk in the CCT department that she needed to pick up.

97. By letter dated February 28, 2003, a true copy of which is attached hereto and marked "Exhibit 1" defendant informed Herrington in part most pertinent here:

Please see the enclosed Conflicts of Interest Policy and Explanation. It has come to our attention that you have on occasion engaged in outside work reviewing and serving as an expert witness in legal proceedings involving patient care disputes. As

outlined in the enclosed Policy and Explanation, this is a conflict of interest and adverse to the interest of Central Baptist Hospital and Baptist Healthcare System.

Pursuant to this policy, we expect you and other employees to refrain from engaging in any outside work in this regard. Please contact me and confirm in writing to me prior to reporting to work your regularly scheduled shift on March 5, 2003 that you agree to remove yourself from any outside work in this regard and not engage in such work in the future. You are excused from working your shift on March 2, 2003 and you should not report to work until contacting me prior to your regularly scheduled shift on March 5, 2003.

98. Attached hereto and marked "Exhibit 2" is the "Conflicts of Interest Policy" referenced in defendant's February 28 letter suspending Herrington from her job on condition of her terminating all involvement in any matter in which she was already engaged as a legal-nurse consultant and/or expert witness.

99. Attached hereto and marked "Exhibit 3" is the "Explanation" for defendant's "Conflicts of Interest Policy" referenced in defendant's February 28 letter suspending Herrington from her job on condition of her terminating all involvement in any matter in which she was already engaged as a legal-nurse consultant and/or expert witness.

100. On Monday, March 3, 2003, Herrington telephoned Walker and asked her if she was suspended from her employment with defendant.

101. Walker informed Herrington that she was suspended for refusing to meet with Jones.

102. Herrington responded that she had not refused to meet with Jones and that defendant was creating an intimidating environment for the meeting, that she feared being bullied and therefore wanted a lawyer to accompany her.

103. Herrington informed Walker that if she abruptly terminated her involvement as a legal-nurse consultant that she could be subject to being held in contempt of court.

104. Walker again informed Herrington that defendant was requiring her to terminate all her involvement as a legal-nurse consultant on any ongoing matter and to refrain from accepting work on other matters as a condition of continuing her employment with defendant.

105. Walker also acknowledged that the "Conflicts of Interest Policy" had not yet been posted for the hospital but same was in the process.

106. The following day, March 4, 2003, Herrington delivered to defendant the letter dated March 3, 2003, a true copy of which is attached hereto and marked "Exhibit 4."

107. Herrington informed defendant by her March 3 letter/Exhibit 4 that she had "entered into moral, ethical and legal contracts with multiple attorneys and families throughout the state and into other states."

108. Herrington was and remains morally obligated to fulfill her responsibilities and duties as a legal-nurse consultant on those matters pending as of March 1, 2003, for which she had already been engaged.

109. Herrington was and remains ethically obligated, as an individual and as a licensed registered nurse, to fulfill her responsibilities and duties as a legal-nurse consultant on those matters pending as of March 1, 2003, for which she had already been engaged.

110. Herrington was and remains legally obligated to fulfill her responsibilities and duties as a legal-nurse consultant on those matters pending as of March 1, 2003, for which she had already been engaged.

111. Herrington also informed defendant by her March 3/Exhibit 4 letter that "to step away from [her moral, ethical and legal] obligations would lead to contempt of court and I would personally face legal ramifications and potential risks to my nursing license."

112. For Herrington to refuse to testify under subpoena would subject her to contempt of court penalties.

113. For Herrington to step away from the moral, ethical and legal obligations she had assumed as a legal-nurse consultant could subject her to professional discipline and endanger the status of her nursing license.

114. Defendant accepted Herrington's assertions as set forth in her March 3/Exhibit 4 letter by letter dated March 5, 2003, a copy of which is attached hereto and marked "Exhibit 5."

115. By its March 5/Exhibit 5 letter defendant informed Herrington that it accepted her March 3/Exhibit 4 letter as her "formal resignation of employment."

116. Because there had been no follow-up by defendant to her report to Gray on February 19 regarding the deficient care provided her grandfather, Ernest Skinner, Herrington also delivered to defendant on March 4, 2003, another letter, a true copy of which (excepting the date) is attached hereto and marked "Exhibit 6."

117. By letter dated March 5, 2003, defendant advised Herrington that it "will initiate a complete and thorough investigation of the items set forth in your letter." A true copy of this letter is attached hereto and marked "Exhibit 7."

118. By letter dated March 6, 2003, Herrington informed defendant that she had not resigned her employment. A true copy of the letter is attached hereto and marked "Exhibit 8."

119. Herrington reiterated to defendant in her March 6/Exhibit 8 letter that she had "followed the policies and procedures set forth by Central Baptist Hospital and Baptist Healthcare Systems," that her work as a legal-nurse consultant had been "approved upon my employment by Todd Jones and

reconfirmed to be within those policies on January 13, 2003," and that Jones "was fully aware of how many outside cases I had pending."

120. Herrington had complied in all respects with all of defendant's policies in place up to February 28, 2003, in the matter in which she had been engaged as a legal-nurse consultant.

121. Defendant had approved Herrington's work as a legal-nurse consultant upon her commencement of work for defendant.

122. Jones had reconfirmed Herrington's compliance with all of defendant's policies with regard to the matters in which she was engaged as a legal-nurse consultant in January 2003.

123. Defendant responded to Herrington's March 6/Exhibit 8 letter with a letter dated March 7, 2003, a true copy of which is attached hereto and marked "Exhibit 9."

124. Defendant did not deny in its March 7, 2003, letter that Herrington had complied in all respects with all of defendant's policies in place up to February 28, 2003, in the matters in which she had been engaged as a legal-nurse consultant.

125. Defendant did not deny in its March 7, 2003, letter that Jones on behalf of defendant had approved Herrington's work as a legal-nurse consultant upon her commencement of work for defendant.

126. Defendant did not deny in its March 7, 2003, letter that Jones had reconfirmed Herrington's compliance with all of defendant's policies with regard to the matters in which she was engaged as a legal-nurse consultant in January 2003.

127. Defendant responded to Herrington's report made to Gray on February 19 and in her March 4 letter explicitly invoking KRS 216B.165 with a letter dated March 12, 2003, a true copy of which is attached hereto and marked "Exhibit 10."

128. Defendant thanked Herrington in Exhibit 10 for her correspondence regarding "the care rendered at Central Baptist Hospital to Mr. Ernest Skinner on February 17, 2003[.]"

129. Defendant informed Herrington in Exhibit 10 that her correspondence regarding the care rendered at CBH to Mr. Skinner on February 17, 2003, had been "investigated by legal counsel."

130. Although Herrington had reported to defendant deficient care provided to Mr. Skinner, defendant represented that her criticism had been taken "seriously" and been "investigated by legal counsel," defendant's letter Exhibit 10 said nothing about the conclusions reached by defendant, its investigating legal counsel or anyone on its behalf regarding the care rendered Mr. Skinner.

131. Instead of addressing Herrington's complaint about the deficient care provided to Mr. Skinner at CBH, and despite the

claim of investigation by legal counsel, defendant instead limited its response to "Mr. Skinner's admission[.]"

132. Defendant also represented that its legal counsel had investigated Herrington's complaint regarding "the care and attitude of the Hospital's Emergency Room Nursing Staff."

133. Defendant reported that its investigation by legal counsel had "found no indication of any specific deficiencies in patient care[.]"

134. The investigation by defendant's legal counsel regarding Herrington's complaint about CBH's Emergency Room Nursing Staff was deficient and inadequate.

135. Defendant coerced Mobley to terminate her involvement as an expert witness in the Poynter case.

136. Defendant has represented that it will move on Mobley's behalf to quash any subpoena served on her to testify in the Poynter case. See Exhibit 11 attached hereto.

137. Defendant intends to prevent the deceased patient's estate from presenting Mobley's testimony in support of its claims that the defendant-hospital's deficient care caused or contributed to the patient's death.

138. Defendant intended to prevent and attempted to prevent the deceased patient's estate from presenting Herrington's testimony in support of its claims that the defendant-hospital's deficient care caused or contributed to the patient's death.

139. As a direct and proximate result of defendant's wrongful and tortious conduct, Herrington has suffered, is suffering and is reasonably certain to suffer in the future, loss of income and other employment benefits, emotional distress and mental anguish by defendant's betrayal, impairment to her future earning capacity and other damages.

140. Defendant's actions have been taken in intentional and reckless disregard for Herrington's rights, for her legal, ethical and moral obligations as a nurse and in violation of Kentucky public policy.

V

CAUSES OF ACTION

**Count 1 - Wrongful Discharge In Violation of Public Policy
Violating KRS 524.030 As a Condition of and in the Course of
Employment**

141. Herrington incorporates paragraphs 1 through 140 of this complaint as if fully set forth herein.

142. As a Registered Nurse licensed by the Commonwealth of Kentucky through its Board of Nursing, Herrington is subject to ethical duties and standards of conduct with regard to all matters involving her professional skills, expertise and knowledge.

143. As a Registered Nurse, Herrington is compelled by Kentucky law, as provided in Chapter 314 of the Kentucky Revised

Statutes, to conform her conduct as a nurse to applicable standards of nursing practice.

144. The practice of nursing includes all roles the nurse fulfills, including direct patient care provider, educator, administrator, researcher, policy developer or other, including as a legal-nurse consultant and/or expert witness.

145. Herrington gained pecuniary benefits from her employment by defendant.

146. If Herrington had continued her employment with defendant, she would have continued to gain pecuniary benefits from it.

147. If Herrington had continued her employment with defendant in consideration for her agreeing to terminate her involvement in all pending cases as an expert witness, including the Poynter case, and attempting to avoid legal process summoning her to testify, she would have violated KRS 524.030.

148. A substantial and motivating factor for defendant's termination of Herrington's employment was her refusal to violate KRS 524.030 in the course of and as a condition of her continued employment with defendant and receipt of pecuniary benefits from defendant attendant thereto.

149. Defendant's termination of Herrington's employment was contrary to and in violation of the public policy of Kentucky.

150. As a direct and proximate result of defendant's wrongful and tortious conduct, Herrington has suffered, is suffering and is reasonably certain to suffer in the future, loss of income and other employment benefits, emotional distress and mental anguish by defendant's betrayal, impairment to her future earning capacity and other damages.

151. Defendant's actions have been taken in intentional and reckless disregard for Herrington's rights, for her legal, ethical and moral obligations as a nurse and in violation of Kentucky public policy.

**Count 2 - Wrongful Discharge In Violation of Public Policy
Violating KRS 314.091 As a Condition of and in the Course of
Employment**

152. Herrington incorporates paragraphs 1 through 151 of this complaint as if fully set forth herein.

153. As a Registered Nurse licensed by the Commonwealth of Kentucky through its Board of Nursing, Herrington is subject to ethical duties and standards of conduct with regard to all matters involving her professional skills, expertise and knowledge.

154. As a Registered Nurse, Herrington is compelled by Kentucky law, as provided in Chapter 314 of the Kentucky Revised Statutes, to conform her conduct as a nurse to applicable standards of nursing practice.

155. The practice of nursing includes all roles the nurse fulfills, including direct patient care provider, educator, administrator, researcher, policy developer or other, including as a legal-nurse consultant and/or expert witness.

156. The practice of nursing and the public policy of Kentucky is enhanced by a nurse's participation in the development of policies and review mechanisms designed to promote patient safety, reduce the likelihood of errors, and address both environmental system factors and human factors that present increased risk to patients.

157. The practice of nursing and the public policy of Kentucky expects nurses to assure the responsible disclosure of errors to patients and/or their families.

158. The practice of nursing and the public policy of Kentucky prohibits a nurse to participate in or condone by silence either an attempt to hide an error or a punitive response that serves only to fix blame rather than correct the conditions that led to the error.

159. The practice of nursing and the public policy of Kentucky requires a nurse to resist threats and challenges to her personal and professional integrity including requests to deceive a patient, to withhold information, to falsify records, and expectations or requests that the nurse act in a way that is inconsistent with the values or ethics of the profession.

160. The practice of nursing and the public policy of Kentucky requires a nurse to resist and decline to undertake an action or practice that is morally objectionable to the nurse whether intrinsically or because it is inappropriate for a particular patient or where it may jeopardize patients or nursing practice.

161. The practice of nursing and the public policy of Kentucky requires nurses to resist and seek to change activities, expectations or policies that are morally objectionable to nurses and jeopardize either patient or nurse well-being.

162. Herrington's use of her professional skills, expertise and knowledge toward promoting the provision of quality care for patients constitute a core part of nursing practice.

163. The quality of care provided to patients is enhanced and the legal liability of health care institutions is best minimized by improving the training and education of providers' employees not by impeding or interfering with the ability of families injured and harmed by negligent medical care to obtain expert assistance and justice.

164. The potential for legal liability for injuries caused by medical negligence is a strong and positive influence on health care institutions and facilities to improve and enhance the quality of care provided to patients.

165. The potential for legal liability is the strongest incentive and influence for health care institutions and facilities to improve and enhance the quality of care provided to patients.

166. The practice of nursing and the public policy of Kentucky require that Herrington honor obligations that she has undertaken as a legal-nurse consultant and/or expert witness.

167. Herrington's work as a legal-nurse consultant and/or expert witness in cases not involving defendant where deficient nursing care or a deviation from standards of nursing care caused or contributed to a patient's injury or death is not adverse to defendant's interests.

168. Herrington's work as a legal-nurse consultant and/or expert witness in cases not involving defendant where deficient nursing care or a deviation from standards of nursing care caused or contributed to a patient's injury or death is not adverse to the healthcare industry generally.

169. Herrington's resistance and refusal to accede to defendant's demand that she immediately abandon all cases where she had ongoing engagements as a legal-nurse consultant was required of her in the practice of nursing and the public policy of Kentucky.

170. The violation by Herrington of KRS 524.030 as a term and condition of her continued employment would also violate KRS 314.091.

171. A substantial and motivating factor for defendant's termination of Herrington's employment was her resistance and refusal to accede to defendant's demand that she immediately abandon all cases where she had ongoing engagements as a legal-nurse consultant as required of her in the practice of nursing and the public policy of Kentucky.

172. A substantial and motivating factor for defendant's termination of Herrington's employment was her refusal to violate both KRS 524.030 and KRS 314.091 as a condition of and in the course of her employment with defendant.

173. Defendant's termination of Herrington's employment was contrary to and in violation of the public policy of Kentucky.

174. As a direct and proximate result of defendant's wrongful and tortious conduct, Herrington has suffered, is suffering and is reasonably certain to suffer in the future, loss of income and other employment benefits, emotional distress and mental anguish by defendant's betrayal, impairment to her future earning capacity and other damages.

175. Defendant's actions have been taken in intentional and reckless disregard for Herrington's rights, for her legal,

ethical and moral obligations as a nurse and in violation of Kentucky public policy.

Count 3 - Retaliation In Violation of KRS 216B.165

176. Herrington incorporates herein paragraphs 1 through 175 as if fully set forth.

177. CBH is a health care facility licensed under KRS Chapter 216.

178. Herrington orally reported to Gray what she had reasonable cause to believe a situation, condition and/or circumstance that posed jeopardy to the quality of care of a patient and/or patient safety within the meaning of KRS 216B.165(1).

179. A substantial and motivating factor but for which Herrington's employment with defendant would not have been terminated was her reporting to Gray what she had reasonable cause to believe a situation, condition and/or circumstance that posed jeopardy to the quality of care of a patient and/or patient safety within the meaning of KRS 216B.165(1).

180. Defendant's termination of Herrington violated KRS 216B.165(3).

181. As a direct and proximate result of defendant's wrongful and tortious conduct, Herrington has suffered, is suffering and is reasonably certain to suffer in the future, loss of income and other employment benefits, emotional distress

and mental anguish by defendant's betrayal, impairment to her future earning capacity and other damages.

182. Defendant's actions have been taken in intentional and reckless disregard for Herrington's rights, for her legal, ethical and moral obligations as a nurse and in violation of Kentucky public policy.

VI

DEMAND FOR RELIEF

WHEREFORE, Herrington demands as follows:

(1) that the Court enter a judgment against defendant awarding her monetary and compensatory damages in such fair amount as the jury determines at trial;

(2) that the Court enter a judgment against defendant awarding her punitive damages in such amount as the jury fairly assesses against defendant to punish its misconduct and deter its repetition;

(3) that the Court enter a judgment against defendant awarding her costs herein expended pursuant to CR 54;

(4) that defendant respond and answer fully and timely the interrogatories and document requests attached hereto and marked respectively as exhibits A and B hereto;

(5) that her causes of action herein be tried by jury;
and,

