

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-00986-CNS-STV

DONQUENICK YVONNE JOPPY,

Plaintiff,

v.

HCA-HEALTHONE LLC d/b/a THE MEDICAL CENTER OF
AURORA, BONNIE ANDREWS, BREANNE BURLEY, and
LINDSAY JORDAN,

Defendants.

**DEFENDANTS HCA-HEALTHONE LLC D/B/A THE MEDICAL CENTER OF AURORA
AND BONNIE ANDREWS' ANSWER TO PLAINTIFF'S THIRD AMENDED
COMPLAINT AND JURY DEMAND [ECF #167]**

Defendants HCA-HealthONE LLC d/b/a The Medical Center of Aurora ("TMCA" or "Hospital") and Bonnie Andrews ("Ms. Andrews") (collectively, "Defendants"¹), through undersigned counsel, hereby submit this Answer to Plaintiff's Third Amended Complaint and Jury Demand ("Amended Complaint"), filed December 19, 2023 (ECF #167), and state the following:

¹ As used herein, the term "Defendants" refers to the Hospital and Ms. Andrews. Although their interests are entirely aligned, this Answer is not filed on behalf of the new co-defendants, who are nurses and who worked at the Hospital at the time of the investigation into Plaintiff's conduct: Ms. Breanne Burley (former Interim ICU Director) and Ms. Lindsay Jordan (former ICU Charge Nurse). They were added to the Second Amended Complaint on April 11, 2023. (ECF #96.) Collectively, they are referred to herein as "Co-Defendant Nurses." Additionally, Plaintiff previously named Ms. Katie Weihe (former Vice President of Human Resources) and Ms. Kathryn Schoolcraft (former Interim ICU Supervisor) as defendants in this action on April 22, 2022, ECF #1, and April 11, 2023, ECF #96, respectively. Ms. Weihe and Ms. Schoolcraft are referred to herein as "Former Defendants." On July 13, 2023, the Court dismissed the Former Defendants from the case. (See ECF #136.)

NATURE OF THE ACTION

1. Defendants deny the allegations set forth in Paragraph 1 of Plaintiff's Third Amended Complaint.

2. Defendants deny the allegations set forth in Paragraph 2 of Plaintiff's Third Amended Complaint and affirmatively state that Plaintiff was terminated for her failure to follow policies and protocols designed to provide patients with dignity, safety, and comfort during end-of-life care, and for practicing outside the scope of her practice.

3. In response to Paragraph 3 of Plaintiff's Third Amended Complaint, Defendants deny that the Hospital or its employees had any authority to or actually did take any steps designed to end Plaintiff's nursing career, or to cause criminal charges to be brought against her. Specifically, Defendants, and upon information and belief, the Co-Defendant Nurses, never asked the Colorado Attorney General's office ("AG") to bring criminal charges against Plaintiff, nor did the AG consult with Defendants on its decision. Defendants also deny that the AG's independent decision to investigate and ultimately file charges against Plaintiff can be in any way attributed to Defendants or the Co-Defendant Nurses and deny that any actions taken by any of the Defendants or the Co-Defendant Nurses were undertaken with malice. Rather, Defendants' interactions with the state arose from the Hospital's independent statutory obligation to report to the state any concerning patient-related situations, such as this patient's end-of-life care. See C.R.S. § 25-1-124(2)(e). Defendants affirmatively state that they were not aware that the Hospital's statutorily-required report to the state would give rise to the AG exercising its independent prosecutorial discretion to file criminal charges against

Plaintiff. Defendants did not, and do not, support the criminal prosecution of care-givers for mistakes made in the course of their care. Defendants deny that the patient death was at issue in its statutory report to the state. Defendants deny any remaining allegations contained in Paragraph 3 not specifically addressed herein.

4. Defendants are without specific knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 4 as to the actions of the AG or the reasons therefor, but upon information and belief, admit that the charges brought by the AG against Plaintiff were ultimately dismissed. Defendants deny any remaining allegations contained in Paragraph 4 not specifically addressed herein.

5. Defendants deny that Defendants or Co-Defendant Nurses undertook any malicious conduct, fostered a racially hostile work environment, or engaged in discriminatory and/or retaliatory practices. Defendants are without sufficient knowledge or information as to the reasons Plaintiff brings this action, and therefore deny the same and deny all remaining allegations contained in Paragraph 5 not specifically addressed herein.

JURISDICTION AND VENUE

6. In response to Paragraph 6 of Plaintiff's Third Amended Complaint, Defendants deny that they participated in any unlawful or inappropriate actions that would give rise to the claims articulated by Plaintiff but admit that jurisdiction is appropriate in this Court.

7. In response to Paragraph 7 of Plaintiff's Third Amended Complaint, Defendants deny that they participated in any unlawful or inappropriate actions that

would give rise to the claims articulated by Plaintiff but admit that venue is appropriate in this judicial district.

8. In response to Paragraph 8 of Plaintiff's Third Amended Complaint, Defendants deny that they participated in any unlawful or inappropriate actions that would give rise to the claims articulated by Plaintiff and affirmatively state that Plaintiff has no facts whatsoever to support her claims. Defendants deny that Plaintiff has met any "prerequisites" to filing this action.

PARTIES

9. In response to Paragraph 9 of Plaintiff's Third Amended Complaint, Defendants are without sufficient knowledge or information as to Plaintiff's residence, and therefore deny the same, but admit the remaining allegations set forth therein.

10. In response to Paragraph 10 of Plaintiff's Third Amended Complaint, Defendants state that TMCA is a trade name for HCA-HealthONE LLC, which has a principal office street address of 4900 S. Monaco St., Suite 380, Denver, CO, 80237. Defendants deny all remaining allegations.

11. Defendants deny the allegations set forth in Paragraph 11 of Plaintiff's Third Amended Complaint.

12. Defendants admit that, during the time period at issue (which Defendants construe to mean between May through June 2019), Andrews was the Director of Risk Management at TMCA and is a Colorado resident.

13. Defendants admit that during the relevant timeframe (which Defendants construe to mean between May through June 2019), Weihe was employed as the Vice President of Human Resources and is a Colorado resident.

14. Defendants admit that during the relevant timeframe (which Defendants construe to mean between May through June 2019), Burley was the Interim Director of the Hospital's ICU and is a Colorado resident.

15. Defendants admit that during the relevant timeframe (which Defendants construe to mean between May through June 2019), Schoolcraft was the Interim Supervisor of the Hospital's ICU and is a Colorado resident.

16. Defendants admit that during the relevant timeframe (which Defendants construe to mean between May through June 2019), Jordan was a day-shift Charge Nurse in the Hospital's ICU and is a Colorado resident.

FACTUAL ALLEGATIONS

17. Defendants admit the first sentence of Paragraph 17 of Plaintiff's Third Amended Complaint, and admit, based upon information and belief, that the Colorado Department of Regulatory Agencies shows that Plaintiff's nursing license is active and shows no publicly-available Discipline or Board Actions.

18. Defendants admit that Plaintiff was terminated by the Hospital on June 4, 2019.

19. In response to Paragraph 19 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff had all the technical requirements for her position; however, Defendants affirmatively state that Plaintiff's performance, culminating in her

actions and decisions on May 24, 2019, caused TMCA to conclude she was not qualified for her position, and therefore Defendants deny any remaining allegation inconsistent therewith.

20. In response to Paragraph 20 of Plaintiff's Third Amended Complaint, Defendants admit that on many occasions Plaintiff performed her duties in a satisfactory manner and received positive feedback; however, Defendants affirmatively state that Plaintiff also had notable performance deficiencies and received negative feedback from patients and co-workers. Defendants deny all remaining allegations inconsistent therewith.

21. Defendants are without sufficient knowledge or information regarding the allegations contained in Paragraph 21 of Plaintiff's Third Amended Complaint and therefore deny the same.

22. Defendants are aware that Plaintiff has never received a Daisy Award, but was nominated for one, and affirmatively state that anyone can nominate any nurse for such an award but are without sufficient knowledge or information to allow them to admit or deny the allegations contained in Paragraph 22 of Plaintiff's Third Amended Complaint and therefore deny the same.

23. In response to Paragraph 23 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of what the Daisy Award rewards and celebrates as there exist written guidelines that are self-evident and Defendants deny any allegation inconsistent therewith.

24. In response to Paragraph 24, Defendants object to any characterization of written documents, the content of which are self-evident and, insofar as any such reviews are not in writing, Defendants are without sufficient knowledge or information to allow them to admit or deny the allegations and therefore deny the same.

25. In response to Paragraph 25, Defendants object to any characterization of written documents, the content of which are self-evident and deny any allegations inconsistent therewith.

26. Defendants deny the allegations contained in Paragraph 26 of Plaintiff's Third Amended Complaint and object to the characterization of any comments that are self-evident.

27. In response to Paragraph 27 of Plaintiff's Third Amended Complaint, Defendants object to the characterization of any news story as such story is self-evident. Defendants deny any remaining allegations.

28. In response to Paragraph 28, Defendants admit that Plaintiff received one annual formal performance evaluation during her two years of employment with TMCA, but affirmatively state that she received additional feedback and coaching regarding her performance, including a performance improvement plan. Defendants deny any remaining allegations.

29. In response to Paragraph 29 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the referenced performance evaluation as the contents thereof are self-evident. Defendants deny all remaining allegations.

30. In response to Paragraph 30 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the referenced performance evaluation as the contents thereof are self-evident. Defendants deny all remaining allegations.

MS. JOPPY'S COMPLAINTS ABOUT DISCRIMINATION

31. Defendants deny the allegations contained in Paragraph 31 of Plaintiff's Third Amended Complaint.

32. Defendants admit that charge nurses in TMCA's ICU may, at times, bear responsibility for some of the tasks listed in Paragraph 32 of Plaintiff's Third Amended Complaint but affirmatively state that there is a written job description for this position, the content of which is self-evident and object to any characterization inconsistent thereof.

33. Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Third Amended Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Third Amended Complaint.

35. Defendants admit the allegations contained in the first two sentences of Paragraph 35 of Plaintiff's Third Amended Complaint but deny the allegations contained in the third sentence thereof.

36. Defendants deny the allegations contained in Paragraph 36 of Plaintiff's Third Amended Complaint.

37. Defendants deny that Plaintiff complained as described to Page and therefore deny all allegations contained in Paragraph 37 of Plaintiff's Third Amended Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of Plaintiff's Third Amended Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of Plaintiff's Third Amended Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of Plaintiff's Third Amended Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of Plaintiff's Third Amended Complaint.

42. In response to Paragraph 42 of Plaintiff's Third Amended Complaint, Defendants state that Michael Oleszczuk started as a Clinical Nurse Coordinator in TMCA's ICU in July of 2018. Defendants deny any inconsistent allegations contained in Paragraph 42 of Plaintiff's Third Amended Complaint.

43. Defendants object to any characterization of a written document, the recipients and contents of which would be self-evident, and therefore deny any allegations contained in Paragraph 43 of Plaintiff's Third Amended Complaint inconsistent therewith.

44. Defendants object to any characterization of written communications between Plaintiff and Olsezczuk, the contents of which are self-evident, and therefore

deny any allegations contained in Paragraph 44 of Plaintiff's Third Amended Complaint inconsistent therewith.

45. Defendants deny the allegations set forth in Paragraph 45 of Plaintiff's Third Amended Complaint.

46. Defendants deny the allegations set forth in Paragraph 46 of Plaintiff's Third Amended Complaint.

47. Defendants deny the allegations set forth in Paragraph 47 of Plaintiff's Third Amended Complaint.

48. Defendants deny the allegations set forth in Paragraph 48 of Plaintiff's Third Amended Complaint.

49. Defendants admit that Plaintiff and Page exchanged text messages, the terms of which are self-evident, but deny any remaining or inconsistent allegations contained in Paragraph 49 of Plaintiff's Third Amended Complaint.

50. In response to Paragraph 50 of Plaintiff's Third Amended Complaint, Defendants admit that a patient's family accused Plaintiff of a possible theft but deny the remaining allegations.

MS. JOPPY ATTEMPTS TO TRANSFER OUT OF THE ICU

51. Defendants deny that Plaintiff was subjected to abusive and discriminatory treatment and therefore deny the allegations in Paragraph 51 of the Plaintiff's Third Amended Complaint related to Plaintiff's alleged motivation for applying for a transfer. Defendants admit that Plaintiff applied for a new position in the RN Critical Care Float Pool.

52. Defendants admit the allegations contained in Paragraph 52 of Plaintiff's Third Amended Complaint.

53. Defendants admit the allegations contained in Paragraph 53 of Plaintiff's Third Amended Complaint.

54. In response to Paragraph 54 of Plaintiff's Third Amended Complaint, Defendants admit that Ms. Joppy was scheduled for an interview and then was not selected for the role but are without sufficient knowledge or information to determine any remaining or inconsistent allegations, and therefore, deny the same.

55. Defendants deny the allegations contained in Paragraph 55 of Plaintiff's Third Amended Complaint.

56. In response to Paragraph 56 of Plaintiff's Third Amended Complaint, Defendants are without sufficient knowledge or information to determine specifically when Plaintiff was notified that her application was rejected but admit that she was determined to be ineligible for a transfer due to a PIP. Defendants deny all remaining allegations contained in Paragraph 56 of Plaintiff's Third Amended Complaint

57. In response to Paragraph 57 of Plaintiff's Third Amended Complaint, Defendants deny that Plaintiff's supervisor had not raised any concerns about her performance that warranted placing her on a PIP. Defendants are without sufficient knowledge or information regarding Plaintiff's state of mind. Defendants deny any remaining allegations not specifically admitted herein.

58. In response to Paragraph 58 of Plaintiff's Third Amended Complaint, Defendants admit that Page told Plaintiff he would talk to management but deny any remaining or inconsistent allegations.

59. Defendants object to the characterization of any "normal" practice with regard to PIP decisions and therefore deny the allegations contained in Paragraph 59 of Plaintiff's Third Amended Complaint.

60. Defendants deny that Page was unaware of Plaintiff's PIP and deny all remaining allegations contained in Paragraph 60 of Plaintiff's Third Amended Complaint.

61. Defendants object to the allegations contained in Paragraph 61 of Plaintiff's Third Amended Complaint as it is vague and ambiguous as to the "previously" timeframe referenced and therefore deny the same. Defendants deny any remaining allegations not specifically admitted herein.

62. Defendants deny the allegations contained in Paragraph 62 of Plaintiff's Third Amended Complaint.

63. Defendants admit that Plaintiff and Page exchanged text messages, the terms of which are self-evident, but deny any remaining or inconsistent allegations in Paragraph 63 of Plaintiff's Third Amended Complaint.

64. Defendants admit that on the evening of May 30, 2019, which was two days after Plaintiff had been suspended (on May 28, 2019), she called HR Answers and lodged a variety of complaints, which are memorialized in an email message, the terms

of which are self-evident. Defendants object to and deny any allegations contained in Paragraph 64 of Plaintiff's Third Amended Complaint which are inconsistent therewith.

65. Defendants deny that Plaintiff made complaints of discrimination that were not appropriately reviewed and deny all remaining or inconsistent allegations contained in Paragraph 65 of Plaintiff's Third Amended Complaint.

THE PERFORMANCE IMPROVEMENT PLAN

66. Defendants admit the allegations set forth in Paragraph 66 of Plaintiff's Third Amended Complaint.

67. Defendants deny the allegations set forth in Paragraph 67 of Plaintiff's Third Amended Complaint.

68. Defendants admit that after Plaintiff was observed making an obscene gesture towards a physician, she was coached to be respectful towards TMCA employees. Further responding, Defendants object to any characterization of the referenced document as the contents thereof are self-evident and therefore deny the allegations set forth in Paragraph 68 of Plaintiff's Third Amended Complaint.

69. Defendants deny that the PIP demanded unattainable objectives. Further responding, Defendants object to any characterization of the referenced document as the contents thereof are self-evident and therefore deny the allegations set forth in Paragraph 69 of Plaintiff's Third Amended Complaint.

70. Defendants deny that Plaintiff was "falsely reprimanded" or that there were "unsubstantiated complaints from the charge nurses." Further responding, Defendants object to any characterization of the referenced document as the contents thereof are

self-evident and therefore deny the allegations set forth in Paragraph 70 of Plaintiff's Third Amended Complaint.

71. Defendants deny that Plaintiff was subject to discrimination or harassment and deny all remaining allegations set forth in Paragraph 71 of Plaintiff's Third Amended Complaint.

72. Defendants object to any characterization of the referenced document as the contents thereof are self-evident and therefore deny the allegations set forth in Paragraph 72 of Plaintiff's Third Amended Complaint.

73. Defendants deny the allegations set forth in Paragraph 73 of Plaintiff's Third Amended Complaint.

74. In response to Paragraph 74 of Plaintiff's Third Amended Complaint, Defendants admit that at some time after the Hospital issued the PIP, Schoolcraft supervised Plaintiff. Defendants deny any remaining or inconsistent allegations.

75. Defendants deny that Plaintiff was subjected to discriminatory and abusive treatment and deny all remaining allegations contained in Paragraph 75 of Plaintiff's Third Amended Complaint.

PATIENT X'S DEATH WHILE UNDER TMCA'S CARE

76. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny the allegations set forth in Paragraph 76 of Plaintiff's Third Amended Complaint that are inconsistent with the records.

77. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny the allegations set forth in Paragraph 77 of Plaintiff's Third Amended Complaint that are inconsistent with the written records.

78. Defendants admit the allegations set forth in Paragraph 78 of Plaintiff's Third Amended Complaint, but expressly note that it is common practice to intubate an unresponsive patient without medication. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny any allegations set forth in Paragraph 78 of Plaintiff's Third Amended Complaint that are inconsistent with the records and that are not specifically admitted herein.

79. Defendants admit that the patient's confidential medical records indicate that the patient's relative was told this was a non-survival event and, at some point later, the relative decided she did not want to continue with the current intervention, and it was decided that the patient would receive comfort care. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny any allegations set forth in Paragraph 79 of Plaintiff's Third Amended Complaint that are inconsistent with the records and that are not specifically admitted herein.

80. Defendants admit that on May 24, 2019, Plaintiff worked the night shift in the ICU at TMCA as a critical care nurse and that the patient's confidential medical records indicate that the patient was transferred from the Emergency Department to the

ICU but deny Plaintiff's characterization that the patient was "dying" in the Emergency Department. Defendants deny all remaining allegations contained in Paragraph 80 of Plaintiff's Third Amended Complaint not specifically admitted herein.

81. Upon information and belief, Defendants admit the allegations set forth in Paragraph 81 of Plaintiff's Third Amended Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of Plaintiff's Third Amended Complaint.

83. Upon information and belief, Defendants admit that the patient's confidential medical records indicate that, around 5:06 AM, Plaintiff went to the ER to take the patient to the ICU for comfort care and that the patient was unresponsive at that time. Defendants deny all remaining allegations contained in Paragraph 83 of Plaintiff's Third Amended Complaint not specifically admitted herein.

84. In response to Paragraph 84 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff's shift ended at 7:00 a.m. Defendants deny that Plaintiff provided compassionate and extraordinary care during her shift and deny that she acted within the scope of and pursuant to the standard of practice for an ICU critical care nurse. Defendants deny the remaining allegations set forth in Paragraph 81 of Plaintiff's Third Amended Complaint.

85. Defendants admit the allegations contained in Paragraph 85 of Plaintiff's Third Amended Complaint.

86. In response to Paragraph 86 of Plaintiff's Third Amended Complaint, Defendants admit that Jordan was the Charge Nurse on the day shift on May 24, 2019, and her shift started around 7:00 a.m.

87. In response to Paragraph 87 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff did not clock out timely at the end of her shift and that this was a common practice for her, but deny that the ICU was understaffed and deny all remaining allegations contained in Paragraph 87 of Plaintiff's Third Amended Complaint not specifically admitted herein.

88. Defendants object to any characterization of what Welter stated in interviews with the AG, as the AG's notes are self-evident and therefore deny any allegations inconsistent therewith. Defendants lack sufficient knowledge or information that would allow them to admit or deny any remaining allegations contained in Paragraph 88 of the Third Amended Complaint and therefore deny the same.

89. Defendants admit the allegations set forth in Paragraph 89 of Plaintiff's Third Amended Complaint.

90. Defendants admit that the nurses notes, and the patient's confidential medical record indicate that Welter called Dr. Forrester at 7:15 AM to notify him that the patient's family member wanted to withdraw care and awaited a return call. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny any remaining allegations set forth in Paragraph 90 of Plaintiff's Third Amended Complaint that are inconsistent therewith or not otherwise admitted herein.

91. Defendants are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 91 of Plaintiff's Third Amended Complaint and therefore deny the same.

92. Defendants are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 92 of Plaintiff's Third Amended Complaint and therefore deny the same.

93. Defendants admit that the nurses notes and the patient's confidential medical record indicate that Dr. Forrester was in the patient's room around 7:55 a.m. and met with the patient's family member to confirm the patient's wishes per the patient's will. To the extent the conversation between Dr. Forrester and the patient's family member was documented, the terms of such documentation would be self-evident and, therefore, Defendants deny any remaining or inconsistent allegations contained in Paragraph 93 of Plaintiff's Third Amended Complaint therewith.

94. Defendants admit that Forrester gave verbal orders to Welter, which Welter documented in both the nurses notes and the patient's confidential medical records stating: "verbal orders for versed and morphine from Dr. Forrester, and to assume end of life measures, per MD stop all pressors. Dr. Forrester also states 'POA does not want hospice for this pt.'" Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny any allegations set forth in Paragraph 94 of Plaintiff's Third Amended Complaint that are inconsistent with the records and that are not specifically admitted herein.

95. Defendants admit that nurses may be responsible for documenting doctors' verbal orders in written format in patient charts. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny any allegations set forth in Paragraph 95 of Plaintiff's Third Amended Complaint that are inconsistent with the records and that are not specifically admitted herein.

96. The terms of the patient's medical records and nurses notes are self-evident and, therefore, Defendants deny any allegations set forth in Paragraph 96 of Plaintiff's Third Amended Complaint are inconsistent therewith.

97. Defendants admit that the patient's confidential medical records do not indicate that Welter contacted or notified a respiratory therapist after receiving Dr. Forrester's verbal order. Defendants deny all remaining allegations contained in Paragraph 97 of Plaintiff's Third Amended Complaint not specifically admitted herein.

98. Based on information and belief, Defendants admit that Welter accepted Nurse Joppy's offer to help with the patient. The terms of the patient's medical records and nurses notes are self-evident and, therefore, Defendants deny any allegations set forth in Paragraph 98 of Plaintiff's Third Amended Complaint are inconsistent therewith.

99. In response to the allegations set forth in Paragraph 96 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff contacted TMCA respiratory therapist Darryl Shafer by phone, but object to the characterization of her purpose and affirmatively state that Plaintiff hung up on Shafer when she learned he was not able to

come immediately to the patient's room. Defendants deny all remaining allegations not specifically admitted herein.

100. Defendants object to the allegations as set forth in Paragraph 100 of Plaintiff's Third Amended Complaint as there is no reference to any specific conversation or context and therefore deny the same.

101. Defendants admit that Shafer advised Plaintiff he was on rounds and would come to PATIENT X's room as soon as he could but deny the characterization of the remaining conversation and deny any remaining allegations contained in Paragraph 101 of Plaintiff's Third Amended Complaint not specifically admitted herein. Further, Defendants affirmatively deny that Shafer instructed Plaintiff to turn off the ventilator of an intubated and connected living patient.

102. Defendants deny that Shafer delegated or instructed Plaintiff to turn off the ventilator of an intubated and connected living patient and affirmatively state that it is outside the scope of a nurse's license to accept orders from a respiratory therapist or to manage a ventilator. Defendants deny all remaining allegations set forth in Paragraph 102 of Plaintiff's Third Amended Complaint and affirmatively state that it is against policy and outside the scope of a nurse's practice, as well as the ICU standard of care, to turn off a ventilator, much less on an intubated and connected living patient.

103. Defendants deny the allegations set forth in Paragraph 103 of Plaintiff's Third Amended Complaint.

104. Defendants deny the allegations as characterized in Paragraph 104 of Plaintiff's Third Amended Complaint and affirmatively state that Plaintiff was not trained

to manage a ventilator as ventilator management is outside the scope of a nurse's practice.

105. Defendants deny the allegations set forth in Paragraph 105 of Plaintiff's Third Amended Complaint and affirmatively state that Plaintiff falsely informed Shafer that the patient was no longer alive; it is against policy and outside the scope of a nurse's practice to turn off a ventilator on an intubated and connected living patient; and further deny that Shafer ever instructed Plaintiff to turn off the ventilator of a living, intubated patient.

106. Defendants admit that the patient's confidential medical records indicate that, after the patient was deceased, and after Shafer had arrived in the patient's room, Shafer disconnected the patient from the ventilator. Defendants are without information or knowledge that would allow them to admit or deny the allegations remaining in Paragraph 106 of Plaintiff's Third Amended Complaint regarding whether Plaintiff and Shafer had a brief conversation before Ms. Shafer disconnected the patient from the ventilator. Defendants deny all remaining allegations not specifically admitted herein.

107. Defendants deny the allegations contained in Paragraph 107 of Plaintiff's Third Amended Complaint.

108. Defendants admit the allegations set forth in Paragraph 108 of Plaintiff's Third Amended Complaint.

109. Defendants admit that with respect to the allegations set forth in Paragraph 109 of Plaintiff's Third Amended Complaint, respiratory therapists have primary responsibility for managing the ventilator and all related actions, in accordance

with orders issued by physicians. Defendants deny any remaining or inconsistent allegations.

110. Defendants deny that it was the practice of TMCA to turn off the ventilator of an intubated and connected living patient. The remaining allegations set forth in Paragraph 110 of Plaintiff's Third Amended Complaint are vague and ambiguous and not susceptible to a meaningful admission or denial and therefore Defendants deny the same.

111. Defendants admit the allegations set forth in Paragraph 111 of Plaintiff's Third Amended Complaint to the extent that at the time Shafer arrived in the patient's room, the patient's time of death had already been announced, as such, the tube must remain in until the coroner arrives to examine the decedent. Except as otherwise admitted herein, all remaining allegations are denied.

112. In response to Paragraph 112 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff remained in the patient's room but deny the characterization of providing meaningful assistance and comfort to the family and affirmatively state that she was acting outside the scope of her practice and outside the standard of practice for ICU end-of-life care by taking the actions that she did during the patient's end of life transition.

113. In response to Paragraph 113 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff remained in the patient's room and in part monitored the patient but deny the characterization that she properly evaluated or conducted the appropriate tests to assess PATIENT X's breathing ability, pain and discomfort level,

and related assessments. Defendants deny that Plaintiff was present when the patient was intubated and, therefore, deny that she made any assessment regarding his intubation. Defendants affirmatively deny that Plaintiff's observations of the patient were not sufficient to justify Plaintiff's actions of turning off the ventilator on an intubated and connected living patient. Defendants deny all remaining allegations not specifically admitted herein.

114. Defendants admit that Burley testified ICU nurses "would have a clinical understanding of" the patient's drive to breathe and that "nurses have an ability to look for signs of distress." Defendants deny all remaining allegations contained in Paragraph 114 of Plaintiff's Third Amended Complaint not specifically admitted herein.

115. Defendants admit that a family member of the patient was present with the patient, and that at the time of care, the patient's family voiced no concerns regarding Plaintiff. However, upon information and belief, in discussions with the AG, the family member later voiced significant concerns with respect to Plaintiff, including "I think she should definitely be reprimanded, yes, I think she should lose her license, you know...." "And of course, yes, she should be prosecuted, and she shouldn't have a license, definitely, especially if she wasn't following protocol." Defendants deny all remaining allegations contained in Paragraph 115 of Plaintiff's Third Amended Complaint not specifically admitted herein.

116. In response to the allegations set forth in Paragraph 116 of Plaintiff's Third Amended Complaint, Defendants are without sufficient information based on the terms of the medical record, the terms of which are self-evident, to admit or deny, and

therefore deny the same. Defendants object to any recitation or characterization of the patient's confidential medical records as the contents thereof are self-evident and therefore deny any allegations set forth in Paragraph 116 of Plaintiff's Third Amended Complaint that are inconsistent with the records and that are not specifically admitted herein.

117. Defendants deny the allegations set forth in Paragraph 117 of Plaintiff's Third Amended Complaint.

118. In response to Paragraph 118 of Plaintiff's Third Amended Complaint, Defendants admit that Welter signed the pronouncement of death but object to any characterization of the written document as its contents are self-evident and deny all remaining inconsistent allegations.

119. In response to Paragraph 119 of Plaintiff's Third Amended Complaint, Defendants admit that Dr. Forrester signed the Certificate of Death but object to any characterization of the written document as its contents are self-evident and deny all remaining inconsistent allegations.

120. Defendants object to any characterization of the written document referenced in Paragraph 120 of Plaintiff's Third Amended Complaint as the contents are self-evident and deny any allegations inconsistent therewith.

121. Defendants object to any characterization of the written document referenced in Paragraph 121 of Plaintiff's Third Amended Complaint as the contents are self-evident and deny any allegations inconsistent therewith.

122. Defendants object to any characterization of what the patient's family member stated in one of three interviews with the AG, as the notes of the interviews are self-evident and contain many additional statements inconsistent with those in Paragraph 122 of Plaintiff's Third Amended Complaint, as restated in part in Defendants' response to Paragraph 115 of the Third Amended Complaint, and therefore, Defendants deny any allegations inconsistent therewith.

THE BIASED INVESTIGATION AND MS. JOPPY'S TERMINATION

123. Defendants admit that Jordan was working at the Hospital during the day-shift of the patient's end-of-life care. Defendants further admit that the Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Jordan. Defendants object to any characterization of Ulrich's notes, as referenced in Paragraph 123 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

124. Defendants admit that the Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Jordan and one with Welter. Defendants object to any characterization of Ulrich's notes, as referenced in Paragraph 124 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

125. Defendants admit that the Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Jordan and one with Welter. Defendants object to any characterization of Ulrich's notes,

as referenced in Paragraph 125 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

126. In response to Paragraph 126 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of Welter's nursing or charting notes referenced, as the contents are self-evident and therefore deny any allegations inconsistent therewith.

127. Defendants admit that that the Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Jordan and one with Welter. Defendants object to any characterization of Ulrich's notes, as referenced in Paragraph 127 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

128. Defendants admit that the Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Jordan and one with Welter. Defendants object to any characterization of Ulrich's notes, as referenced in Paragraph 128 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

129. Defendants admit that the Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Jordan and one with Welter. Defendants object to any characterization of Ulrich's notes, as referenced in Paragraph 129 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

130. Defendants deny the allegations set forth in Paragraph 130 of Plaintiff's Third Amended Complaint.

131. Defendants admit that Jordan testified that she believes she told Schoolcraft that if the patient's "ventilator is turned off, the patient can't breathe. It's like breathing through a straw. There's no PEEP, so you don't have any positive pressure in the tube which would be miserable." Defendants deny any remaining or inconsistent allegations set forth in Paragraph 131 of Plaintiff's Third Amended Complaint.

132. Defendants admit that Jordan testified that she "did not take [the patient's medical condition] into consideration, because if a ventilator is turned off, that does – I mean, that's like A plus B equals C. That's a fact." Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations set forth in Paragraph 132 of Plaintiff's Third Amended Complaint.

133. Upon information and belief, Defendants deny the allegations set forth in Paragraph 133 of Plaintiff's Third Amended Complaint.

134. Defendants deny the allegations set forth in Paragraph 134 of Plaintiff's Third Amended Complaint.

135. In response to Paragraph 135 of Plaintiff's Third Amended Complaint, upon information and belief, Defendants admit that Jordan testified that Welter raised concerns about Plaintiff's conduct with respect to PATIENT X to Jordan and then Jordan decided that she "needed management involved, because if this is the case, we have a big problem." Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations not specifically admitted herein.

136. Defendants admit that TMCA began an investigation into the circumstances surrounding the end-of-life transition process at issue and Plaintiff's action of turning off the ventilator on a still-living and connected patient. Defendants deny all remaining or inconsistent allegations set forth in Paragraph 136 of Plaintiff's Third Amended Complaint.

137. Upon information and belief, Defendants admit that Schoolcraft and Burley spoke with Plaintiff on May 28, 2019, regarding the circumstances surrounding PATIENT X's end-of-life transition and care. Defendants deny that there was confusion about whether there were "end of life orders" in place and affirmatively state that the actions taken by Plaintiff did not comport with "end of life" orders, were outside the scope of Plaintiff's practice, were outside the standard of care in the ICU for the end-of-life setting and deny all remaining or inconsistent allegations set forth in Paragraph 137 of Plaintiff's Third Amended Complaint.

138. Defendants object to any characterization of the chart referenced in Paragraph 138 of Plaintiff's Third Amended Complaint as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

139. In response to Paragraph 139 of the Third Amended Complaint, upon information and belief, Defendants admit that Plaintiff and Schoolcraft discussed the department, including that there were some cliques and mean people who were mean to "a lot of people," and that leadership was working to change the "culture of the department," but deny any remaining or inconsistent allegations.

140. Defendants deny the allegations set forth in Paragraph 140 of Plaintiff's Third Amended Complaint.

141. Defendants admit that the Hospital suspended Plaintiff on May 28, 2019, until further notice, while TMCA investigated Plaintiff's conduct that did not comport with "end of life" orders, was outside the scope of her practice, and was outside the standard of practice for end-of-life care in the ICU. Defendants deny all remaining or inconsistent allegations set forth in Paragraph 141 of Plaintiff's Third Amended Complaint.

142. In response to Paragraph 142 of Plaintiff's Third Amended Complaint, Defendants state that the Hospital did not suspend other employees who were involved in the patient's end-of-life care, and affirmatively state that no other employee turned off a ventilator of an intubated and still-living patient and, therefore, deny any remaining allegations inconsistent therewith.

143. Defendants admit that the Hospital's Senior HR Business Partner, April Ulrich, typed contemporaneous notes of some of the investigation interviews, including one with Plaintiff, for which Schoolcraft was present and participated in the discussion. Defendants object to any characterization of Ulrich's notes, as referenced in Paragraph 143 of Plaintiff's Third Amended Complaint, as the contents thereof are self-evident and therefore deny all allegations inconsistent therewith.

144. Upon information and belief, Defendants admit that Schoolcraft was not at the patient's bedside when he died but based on her training and tenure as an ICU nurse, deny the remaining inconsistent allegations set forth in Paragraph 144 of Plaintiff's Third Amended Complaint.

145. Upon information and belief, Defendants admit that Schoolcraft was not at the patient's bedside when he died but based on her training and tenure as an ICU nurse, deny the remaining inconsistent allegations set forth in Paragraph 145 of Plaintiff's Third Amended Complaint.

146. Upon information and belief, Defendants admit that Schoolcraft was not at the patient's bedside when he died but based on her training and tenure as an ICU nurse, deny the remaining inconsistent allegations set forth in Paragraph 146 of Plaintiff's Third Amended Complaint.

147. Upon information and belief, Defendants deny the allegations set forth in Paragraph 147 of Plaintiff's Third Amended Complaint.

148. Upon information and belief, Defendants deny the allegations set forth in Paragraph 148 of Plaintiff's Third Amended Complaint.

149. Upon information and belief, Defendants admit that Schoolcraft reviewed a medical record showing the patient's cause of death but deny the remaining or inconsistent allegations set forth in Paragraph 149 of Plaintiff's Third Amended Complaint because, as she testified, it is not her responsibility or within her scope of practice to identify a patient's cause of death.

150. Upon information and belief, Defendants deny the allegations set forth in Paragraph 150 of Plaintiff's Third Amended Complaint.

151. Defendants admit the allegations set forth in Paragraph 151 of Plaintiff's Third Amended Complaint.

152. Defendants deny the allegations set forth in Paragraph 152 of Plaintiff's Third Amended Complaint.

153. Defendants admit that Plaintiff was terminated by the Hospital on June 4, 2019. Defendants deny the remaining allegations set forth in Paragraph 153 of Plaintiff's Third Amended Complaint.

154. In response to Paragraph 154 of Plaintiff's Third Amended Complaint, Defendants admit that the Hospital did not terminate other employees as a result of the end-of-life care that the patient received and affirmatively state that no other employee was determined to have practiced outside the scope of their practice in connection therewith and deny any remaining allegations inconsistent therewith.

155. Defendants deny the allegations set forth in Paragraph 155 of Plaintiff's Third Amended Complaint.

156. Defendants object to the allegations contained in Paragraph 156 of Plaintiff's Third Amended Complaint as, without context, including who allegedly made the statements and when, they are vague and ambiguous and not susceptible to a meaningful admission or denial and therefore deny the same.

157. In response to Paragraph 157 of Plaintiff's Third Amended Complaint, Defendants admit that there were verbal "end of life orders" documented in the nurses' notes prior to the patient's death, but affirmatively state that the actions taken by Plaintiff did not comport with "end of life" orders and were outside the scope of her practice and deny all remaining allegations set forth in Paragraph 157 of Plaintiff's Third Amended Complaint.

158. Defendants admit that Plaintiff did not wait for the respiratory therapist to arrive prior to taking the actions that she did. Defendants deny that Plaintiff's act of turning off a ventilator of an intubated and connected living patient can properly be characterized as "ventilator discontinuation." Defendants object to the remaining allegation contained in Paragraph 158 of Plaintiff's Third Amended Complaint as, without context, including who allegedly made the statement and when, it is vague and ambiguous and not susceptible to a meaningful admission or denial and therefore deny any remaining or inconsistent allegations.

159. Defendants deny the allegation set forth in Paragraph 159 of Plaintiff's Third Amended Complaint.

160. Defendants admit that Shafer arrived in the patient's room after the patient was pronounced deceased and proceeded to extubate the patient at that time. Defendants admit that the patient's confidential medical records indicate that, after the was deceased, and after he had arrived in the patient's room, Shafer disconnected the patient from the ventilator. Defendants deny all remaining allegations contained in Paragraph 160 of Plaintiff's Third Amended Complaint not specifically admitted herein.

161. Defendants object to the allegation set forth in Paragraph 161 of Plaintiff's Third Amended Complaint as, without context, it is vague and ambiguous and not susceptible to an admission or denial and therefore deny the same.

162. In response to the allegations contained in Paragraph 162 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the referenced

documentation as the content thereof is self-evident and therefore deny all allegations inconsistent therewith.

163. Defendants deny the allegations set forth in Paragraph 163 of Plaintiff's Third Amended Complaint.

164. In response to Paragraph 164 of Plaintiff's Third Amended Complaint, Defendants deny the characterization of the actions described therein as "customary and common practice" and therefore deny the same.

165. Defendants object to the allegation set forth in Paragraph 165 of Plaintiff's Third Amended Complaint on the grounds that, without context, it is vague and ambiguous and not susceptible to a meaningful admission or denial and therefore deny the same.

166. Defendants admit the allegations contained in Paragraph 166 of Plaintiff's Third Amended Complaint.

167. In response to Paragraph 167 of Plaintiff's Third Amended Complaint, Defendants admit that they believed Plaintiff had all the technical requirements for her position; however, Defendants affirmatively state that Plaintiff's performance, culminating in her actions and decisions on May 24, 2019, caused TMCA to conclude she was not qualified for her position, and therefore Defendants deny any remaining allegation inconsistent therewith.

168. Defendants deny the allegations set forth in Paragraph 168 of Plaintiff's Third Amended Complaint.

169. Defendants deny the allegations set forth in Paragraph 169 of Plaintiff's Third Amended Complaint.

THE GROUNDLESS CRIMINAL CHARGES AGAINST MS. JOPPY

170. Defendants deny the allegations set forth in Paragraph 170 of Plaintiff's Third Amended Complaint and affirmatively state that Andrews, who never met Plaintiff, pursuant to the Hospital's statutory reporting obligations, submitted on behalf of the Hospital, required reports to the Colorado Department of Public Health and Environment (CDPHE) (which subsequently conducted its own independent investigation). Upon information and belief, the reports were subsequently referred to and reviewed by a nurse analyst at the AG's Medicaid Fraud Control Unit (MFCU), which investigates Medicaid Fraud and Patient Abuse. The AG's MFCU made the independent decision to further investigate Plaintiff's conduct. Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations.

171. In response to Paragraph 171 of Plaintiff's Third Amended Complaint, Defendants admit that Burley was asked by the Hospital, as a member of the team investigating Plaintiff's conduct, to provide some discrete pieces of information for the Hospital's statutorily-mandated final report the Hospital submitted to the CDPHE. Except as specifically admitted herein, Defendants lack sufficient knowledge or information to admit or deny the remaining allegations and therefore deny the same.

172. Defendants deny the allegations set forth in Paragraph 172 of Plaintiff's Third Amended Complaint.

173. In response to Paragraph 173 of Plaintiff's Third Amended Complaint, Defendants admit in Burley's role terminating Plaintiff, (due to Plaintiff's actions in turning off the ventilator which may have caused harm to the end-of-life patient), that Burley testified about the Termination Corrective Action, stating: "...yes, the language that I put in the termination letter has language in it that isn't 100 percent clinically accurate, but the intentionality of the write-up is still that this patient may or may not have suffered in those last 13 minutes of life from breathing." Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations.

174. In response to Paragraph 174 of Plaintiff's Third Amended Complaint, Defendants admit that Burley testified that "...but the way that I speak to my understanding of the situation is very similar to his next statement of 'like breathing through a long straw.' That was also described to me, so it's not a comfortable feeling for someone if they have an ability to – or drive to breathe." Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations.

175. In response to Paragraph 175 of Plaintiff's Third Amended Complaint, Defendants admit that Burley testified that she did not know if the patient had a drive to breathe or was struggling or in pain. Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations.

176. In response to Paragraph 176 of Plaintiff's Third Amended Complaint, Defendants admit that Burley testified that she did not find evidence that the patient ever regained consciousness enough to breathe on his own. Except as specifically admitted herein, Defendants deny any remaining or inconsistent allegations.

177. Defendants deny the allegations set forth in Paragraph 177 of Plaintiff's Third Amended Complaint.

178. Defendants object to the allegations contained in Paragraph 178 of Plaintiff's Third Amended Complaint as vague and ambiguous because it is unclear what report is referred to and affirmatively state that Andrews made reports to CDPHE in the timeframes required by statutory and CDPHE guidelines and deny all remaining or inconsistent allegations.

179. Defendants deny the allegations set forth in Paragraph 179 of Plaintiff's Third Amended Complaint.

180. In response to Paragraph 180 of Plaintiff's Third Amended Complaint, Defendants admit that it responded to an unsolicited request made to the Hospital, requesting information, made by the AG's investigator from the MFCU in connection with that unit's independent decision to investigate the circumstances of the death of a TMCA patient, the response to which is self-evident and therefore deny any allegations inconsistent with any characterization thereof.

181. Defendants are without sufficient knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 181 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent investigation and therefore deny the same, while noting that it appears from the AG's and the Investigator's file that a very thorough and impartial investigation was conducted, which spanned nearly two years, and involved multiple interviews, including of the patient's family member, and the AG's retention of two medical experts to review the file.

182. Defendants are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 182 of Plaintiff's Third Amended Complaint as they relate to what the AG's MFCU's independent investigator had access to and therefore deny that aspect of the allegation and object to any characterization of the Certificate of Death, as the content thereof is self-evident. Defendants further object to the allegation that Weihe and Andrews "had access" to same, as it is without context and therefore vague, ambiguous, and not susceptible to a meaningful admission or denial and therefore deny the same.

183. Defendants are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 183 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent decision to charge Plaintiff and/or serve her with a summons and complaint and therefore deny the same, however, admit that Ms. Joppy was served with criminal charges on November 12, 2020.

184. In response to Paragraph 184 of Plaintiff's Third Amended Complaint, Defendants admit that Weihe sent an email to Flageolle, the content of which is self-evident and therefore deny any allegations inconsistent with any characterization thereof.

185. In response to Paragraph 185 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the attachments to the referenced email as the contents thereof are self-evident and therefore deny any allegations inconsistent therewith.

186. In response to Paragraph 186 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the attachments to the referenced email as the contents thereof are self-evident and therefore deny any allegations inconsistent therewith.

187. In response to Paragraph 187 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the referenced email as the content thereof is self-evident and therefore deny any allegations inconsistent therewith.

188. Upon information and belief, Defendants admit the allegations contained in Paragraph 188 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent investigation and therefore deny the same.

189. Defendants admit that, upon information and belief, Assistant Attorney General Edwards and the patient's family member spoke together but are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 189 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent investigation and therefore deny any remaining or inconstant allegations.

190. Defendants admit that, upon information and belief, Assistant Attorney General Edwards and the patient's family member spoke together but are without sufficient knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 190 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent investigation and therefore deny any remaining or inconsistent allegations. Defendants admit the allegations in the second sentence

set forth in Paragraph 190 of Plaintiff's Third Amended Complaint insofar as a subpoena was issued on the Hospital requesting documents related to the patient but deny any remaining or inconsistent allegations.

191. In response to Paragraph 191 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the subpoena as the content thereof is self-evident and therefore deny any allegations inconsistent therewith.

192. Defendants deny the allegations set forth in Paragraph 192 of Plaintiff's Third Amended Complaint.

193. In response to Paragraph 193 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of any filing made by Plaintiff as the content thereof is self-evident and therefore deny any allegations inconsistent therewith.

194. Defendants are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 194 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent investigation and decision to charge and handle the matter but, upon information and belief, admit that the charges against Plaintiff were dismissed on September 21, 2021.

195. Defendants are without knowledge or information that would allow them to admit or deny the allegations contained in Paragraph 195 of Plaintiff's Third Amended Complaint as they relate to the AG's MFCU's independent investigation and decision to charge and handle the matter but, upon information and belief, admit that the charges against Plaintiff were dismissed on September 22, 2021.

196. Defendants deny the allegations set forth in Paragraph 196 of Plaintiff's Third Amended Complaint.

197. Defendants deny the allegations set forth in Paragraph 197 of Plaintiff's Third Amended Complaint.

FIRST CLAIM FOR RELIEF
(42 USC § 1981: Race Discrimination against TMCA)

198. Defendants hereby incorporate their responses to the foregoing Paragraphs as if fully set forth herein.

199. Defendants deny the allegations set forth in Paragraph 199 of Plaintiff's Third Amended Complaint.

200. Defendants deny the allegations set forth in Paragraph 200 of Plaintiff's Third Amended Complaint.

201. Defendants deny the allegations set forth in Paragraph 201 of Plaintiff's Third Amended Complaint.

SECOND CLAIM FOR RELIEF
(42 USC § 1981: Retaliation against TMCA)

202. Defendants hereby incorporate their responses to the foregoing Paragraphs as if fully set forth herein.

203. Defendants hereby incorporate their responses to the foregoing Paragraphs as if fully set forth herein.

204. Defendants deny the allegations set forth in Paragraph 204 of Plaintiff's Third Amended Complaint.

205. Defendants deny the allegations set forth in Paragraph 205 of Plaintiff's Third Amended Complaint.

206. Defendants deny the allegations set forth in Paragraph 206 of Plaintiff's Third Amended Complaint.

207. Defendants deny the allegations set forth in Paragraph 207 of Plaintiff's Third Amended Complaint.

208. Defendants deny the allegations set forth in Paragraph 208 of Plaintiff's Third Amended Complaint.

209. Defendants deny the allegations set forth in Paragraph 209 of Plaintiff's Third Amended Complaint.

THIRD CLAIM FOR RELIEF
(Malicious Prosecution: against TMCA, Andrews, Burley, and Jordan)

210. Defendants hereby incorporate their responses to the foregoing Paragraphs as if fully set forth herein.

211. Defendants deny the allegations set forth in Paragraph 211 of Plaintiff's Third Amended Complaint.

212. In response to Paragraph 212 of Plaintiff's Third Amended Complaint, Defendants object to any characterization of the case independently brought by the AG and therefore deny the same.

213. Defendants are without sufficient knowledge or information that would allow them to admit or deny the allegations set forth in Paragraph 213 of Plaintiff's Third Amended Complaint. Defendants were not involved in the AG's criminal case, object to

any characterization of the criminal case independently brought by the AG, and therefore, deny the same.

214. Defendants deny the allegations set forth in Paragraph 214 of Plaintiff's Third Amended Complaint.

215. Defendants deny the allegations set forth in Paragraph 215 of Plaintiff's Third Amended Complaint.

The Paragraphs and Subparagraphs following Paragraph 215 of the Third Amended Complaint constitute Plaintiff's prayer for relief to which no response is required. To the extent the requests in the Paragraphs and Subparagraphs following Paragraph 215 of the Third Amended Complaint are construed to require a response, Defendants deny them and further deny Plaintiff is entitled to any relief.

JURY TRIAL DEMAND

Plaintiff's jury demand contained in Plaintiff's Third Amended Complaint requires no response.

GENERAL DENIAL

Except as specifically admitted herein, each and every allegation and statement set forth in Plaintiff's Third Amended Complaint is further denied.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state claims upon which relief can be granted.
2. Plaintiff's claims fail with respect to her discrimination claim because she cannot demonstrate that the circumstances surrounding her employment with and termination from the Hospital gives rise to an inference of discrimination.

3. Plaintiff's retaliation claim fails because she cannot demonstrate that she engaged in good faith opposition to racial discrimination or protected activity, in whole or in part.

4. Plaintiff's retaliation claim fails because she cannot demonstrate that her allegedly protected activity was the but for cause or most important cause of the Hospital's employment decisions.

5. Plaintiff's claim for retaliation fails because she cannot demonstrate a causal connection between the allegedly protected activity and any allegedly adverse action.

6. Plaintiff's claims for discrimination and retaliation fail because she cannot show that race was a motivating factor with respect to the Hospital's employment actions.

7. Plaintiff's claims for discrimination and retaliation fail because at all times, there were legitimate, non-discriminatory reasons for the employment actions the Hospital took with respect to Plaintiff.

8. Plaintiff's claims for discrimination and retaliation fail because she cannot demonstrate pretext.

9. Plaintiff's malicious prosecution claims fail because she cannot establish that Defendants or Co-Defendant Nurses, or any of the Hospital's employees, contributed to bringing a criminal proceeding against Plaintiff.

10. Plaintiff's malicious prosecution claims fail because Defendants and Co-Defendant Nurses had probable cause to believe that Plaintiff had acted improperly with respect to her treatment of the patient on May 24, 2019.

11. Plaintiff's malicious prosecution claims and any claim for punitive damages fail because she cannot demonstrate that Defendants or Co-Defendant Nurses acted with malice or reckless indifference.

12. Plaintiff's malicious prosecution claims fail because she cannot demonstrate that she incurred damages caused by Defendants or the Co-Defendant Nurses.

13. Plaintiff's malicious prosecution claims fail because Defendants and Co-Defendant Nurses were involuntary witnesses.

14. Plaintiff's claims fail because at all times relevant to the matters alleged in the Plaintiff's Third Amended Complaint, Defendants and Co-Defendant Nurses acted in good faith and in a reasonable manner.

15. Without admitting that Plaintiff suffered any damages, Plaintiff's claims for damages, if any, must be reduced to the extent Plaintiff failed to mitigate her damages, if any.

16. Without admitting that Plaintiff suffered any damages, Plaintiff's claims for damages must be dismissed or limited due to after-acquired evidence of wrongdoing by Plaintiff for which she would have been terminated, particularly given her admitted and ongoing daily marijuana use throughout her employment with the Hospital.

17. At all times, Defendants did not knowingly or willfully violate any law.

18. At all times, the Defendants' actions and the Hospital's actions with respect to Plaintiff's employment were based on lawful reasons.

19. Plaintiff's malicious prosecution claims fail because to the extent there were any disclosures to law enforcement, at all times, Defendants made full, fair, and honest disclosures to the prosecuting attorney of all the facts they knew or reasonably should have known concerning the guilt or innocence of the Plaintiff, the prosecuting attorney advised and/or determined that there were reasonable grounds to believe that the Plaintiff may have committed a crime on the basis of these facts, and the prosecuting attorney brought the criminal case against the Plaintiff.

Defendants reserve the right to plead any and all additional affirmative defenses, including but not limited to those enumerated in Rule 8(c) of the Federal Rules of Civil Procedure, and to likewise withdraw any affirmative defense alleged, as may be justified by evidence produced through disclosure and discovery.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, having fully answered and responded to the allegations of Plaintiff's Third Amended Complaint, Defendants hereby pray that:

1. Plaintiff's claims be dismissed with prejudice in their entirety;
2. Each and every prayer for relief contained in Plaintiff's Third Amended Complaint be denied;
3. Judgment be entered in favor of Defendants and Co-Defendant Nurses on all claims;

4. All costs, including reasonable attorney's fees and expenses, be awarded to Defendants and Co-Defendant Nurses and against Plaintiff pursuant to applicable law; and

5. Defendants be granted such other and further relief as this Court may deem just and proper.

Dated: January 2, 2024.

Respectfully submitted,

s/ Martine T. Wells

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LLC d/b/a The Medical Center of Aurora
and Bonnie Andrews*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 2, 2024, I electronically filed a true and correct copy of the foregoing **DEFENDANTS HCA-HEALTHONE LLC D/B/A THE MEDICAL CENTER OF AURORA AND BONNIE ANDREWS' ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT AND JURY DEMAND [ECF #167]** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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