

DOCUMENT

PM

NO. 20-CI-6143

05/08/2023 09:12:19  
JEFFERSON CIRCUIT COURT  
DIVISION TWELVE (12)  
HONORABLE SUSAN SCHULTZ GIBSON  
MEDIA3022

**ELECTRONICALLY FILED**

JOHN MITCHELL FARMER, M.D.

PLAINTIFF

v.

**PLAINTIFF’S TRIAL BRIEF**

BAPTIST HEALTH MEDICAL GROUP, INC.  
BAPTIST HEALTH MADISONVILLE, INC.

DEFENDANTS

\*\*\* \*\*

**I. INTRODUCTION**

Plaintiff John Mitchell Farmer, M.D. (“Dr. Farmer” or “Plaintiff”) alleges claims for tortious interference with prospective business advantage against Baptist Health Madisonville, Inc. (“BHM”) and Baptist Health Medical Group, Inc. (“BHMG”) (collectively, “Defendants”) and breach of contract against BHM. His claims for damages arise from Defendants’ referral of Dr. Farmer to the Kentucky Physicians Health Foundation (“KPHF”) shortly after a patient’s mother made an unsubstantiated allegation that Dr. Farmer “was on something” while providing patient care on November 4, 2019.

**II. ANTICIPATED EVIDENCE**

Plaintiff anticipates that the evidence at trial will reveal the following facts:

Dr. Farmer is a licensed physician who practices family medicine. Dr. Farmer was diagnosed with ADHD in 2005, which he managed through prescribed medication and regular meetings with his doctor. Dr. Farmer was previously employed by BHM as a resident physician, and Dr. Farmer completed his medical residency at BHM. BHM and BHMG are related entities under the Baptist Health hospital system and work in concert—BHM operates a hospital; BHMG

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

employs physicians and other personnel who work at the hospital. At the relevant time, Dr. Wayne Lipson was the Chief Medical Officer of BHM, Dr. Diana Nims was the Residency Program Director and Dr. Farmer's direct supervisor, and Dr. James Armstrong was the President of BHM Medical Staff. Dr. Lipson, Dr. Nims, and Dr. Armstrong were also employees of BHM.

MEDIA5022

Dr. Farmer attended the University of Kentucky School of Medicine and graduated in June 2017. Dr. Farmer "matched" with BHM's residency program in family medicine in Madisonville, Kentucky, and Dr. Farmer and BHM entered into and signed a Family Medicine Resident Agreement in March 2017. Dr. Farmer began his residency with BHM in July 2017.

Dr. Farmer and BHM renewed the Family Medicine Resident Agreement on an annual basis, including in June 2019 ("2019 Agreement"). In the 2019 Agreement, BHM agreed to provide (1) "a suitable environment for medical education experience," (2) "an Employee Assistance Program that provides confidential help in coping with problems such as marital and family conflicts, depression, work-related stress, grief and loss, chemical dependency, or legal/financial difficulties," and (3) "educational conferences regarding physician impairment, including substance abuse, and shall inform the resident, via written policies, of Baptist's policies for handling physician impairment, including impairment related to substance abuse." The 2019 Agreement also incorporates by reference certain BHM policies, including: (1) written policies for handling physician impairment, including impairment related to substance abuse; (2) BHM Family Practice Residency Program Residents Manual; (3) Employee Handbook; and (4) GME and Residency Policies and Procedures. Additionally, the 2019 Agreement provides that "[i]nformation regarding other conditions of appointment, resident participation in educational/professional activities, resident work environment, [etc.] . . . may be found in either the Resident Manual or Baptist Health Madisonville, Inc's Employee Handbook." The 2019

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

Agreement provided a URL link to “[a]ll GME and Residency policies and procedures” at <https://www.new-innov.com/Login/>.

MEDIA5022

Among the policies incorporated in the 2019 Agreement, the Residents Manual requires immediate drug or alcohol testing in the event that a BHM resident is alleged to be impaired while working at the hospital. Specifically, the Resident Manual states: “If the question of impairment is determined by the staff responding to the allegation of impairment to potentially be the result of substance abuse, then the provider in question will be asked to give urine and blood samples, under appropriate supervision, for analysis.”

Certain of BHM’s other policies provide more detail on this topic, including the “Fitness for Duty & Drug Testing” policy (the “Drug Testing Policy”) and the “Medical Staff/Allied Health Practitioner Policy.” Under the Drug Testing Policy, if an employee is suspected of being under the influence of alcohol or drugs, a manager must observe the employee and/or engage in conversation “in order to deduce whether there is a reasonable suspicion” the employee is currently impaired. “If there is a reasonable suspicion,” the Drug Testing Policy continues, “the manager will remove the employee from the immediate work area to a private place and inform the employee of the concerns[,]” escort the employee to the appropriate location, “obtain the employee’s consent for an alcohol or drug test,”<sup>1</sup> and order collection of a specimen by a health care professional.

Under the Medical Staff/Allied Health Petitioner Policy, if BHM personnel “have a reasonable suspicion that a *Physician appointed to the Medical Staff* is impaired,” they “shall immediately report the suspected impairment to Hospital Administration, the House Manager, or a Medical Staff Officer.” (emphasis added). Any of these individuals may take action as they deem

---

<sup>1</sup> If an employee refuses to provide such consent, the refusal “will be considered insubordination and may result in disciplinary action up to, and including, immediate termination.”

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

reasonably necessary, including, but not limited to, “requesting the physician to voluntarily submit to alcohol and/or drug testing.” If warranted, these individuals can also “direct that an investigation be conducted and that a report thereof be made to the Hospital President or Medical Staff President.” Any such investigation and report must be made by “an outside consultant.” After the investigation has been completed, the Hospital President or Medical Staff President may take certain remedial measures “depending upon the severity of the problem and the nature of the impairment,” including requiring the physician “to undergo physical or mental evaluation,” by the KPHF. As a resident, Dr. Farmer was not considered to be a fully appointed member of the Medical Staff. Residents are considered “House Staff” and their work must be supervised by members of the Medical Staff.

MEDIA5022

On November 4, 2019, Dr. Farmer worked at the BHM residency clinic. That day, Dr. Kenneth Hargrove and Dr. Douglas Hatler, both of whom worked frequently with Dr. Farmer during his residency and were aware of Dr. Farmer’s ADHD diagnosis, were the attending physicians supervising Dr. Farmer. Dr. Farmer’s last appointment was a routine follow-up with two children (accompanied by their mother and their mother’s boyfriend) who he had seen before on more than one occasion for treatment of ADHD. During the appointment, Dr. Farmer reduced the ADHD medicine that was being presented because he determined it might be adversely affecting the child’s growth according to the growth curve. After the appointment ended, Dr. Farmer discussed his patients with his attending physicians, got food at the hospital cafeteria and went home. As required, Dr. Farmer kept his pager on until 5:00 p.m., but did not receive any calls to return to the clinic or for any other reason.

At 4:15 p.m., practice manager Stephanie Crick told Dr. Nims that she had received a patient complaint about Dr. Farmer. The complaint was from the mother of the two children in Dr.

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

Farmer's last appointment. The patient's mother "reported [that] she felt like Dr. Farmer was on something and that he was touching his nose a lot and constantly moving side to side." Dr. Nims called her supervisor, Lori Oglesby, but Oglesby did not answer. Dr. Nims then spoke with Dr. Hatler and Dr. Hargrove. Dr. Nims told them about the patients' mother's concern and asked whether Dr. Farmer was impaired. Dr. Hargrove said that Dr. Farmer was not impaired—he said that Dr. Farmer was twitchy, but that was normal for him. Dr. Hatler told Crick and Dr. Nims that Dr. Farmer was not impaired, and that he was just being his usual self. Dr. Hatler was with Dr. Farmer during part of the patient appointment with the two children and did not observe Dr. Farmer behaving unusually.

MEDIA5022

Despite being told by Dr. Hargrove and Dr. Hatler that Dr. Farmer's behavior was normal, Dr. Nims then spoke with Oglesby, who told Dr. Nims to call Dr. Lipson and to follow the Medical Staff Policy. Dr. Nims did not review the Drug Testing Policy. Dr. Hargrove, who sat on the committee that reviewed and updated BHM's policies in 2018, testified at deposition that the Drug Testing Policy applied to Dr. Farmer and that it was not followed.

Dr. Nims notified Dr. Lipson and Dr. Armstrong of the patient's mother's complaint. The evening of November 4, 2019, the three of them convened a meeting, along with Robert Ramey, president of the hospital, and Rhonda Florida, the head of the medical staff office. Dr. Nims did not tell Dr. Lipson or Dr. Armstrong that multiple doctors who worked with Dr. Farmer that day had already told her that Dr. Farmer was not impaired. At the meeting, they considered whether to call Dr. Farmer back to the hospital to get tested for alcohol and/or drugs and ultimately decided not to test Dr. Farmer immediately and not to immediately inform Dr. Farmer of the complaint.

On the evening of November 4, 2019, before anyone had discussed the patient complaint with Dr. Farmer, Dr. Lipson contacted Greg Jones, the KPHF Medical Director, by email message

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

at 6:53 p.m. Dr. Lipson wrote to Dr. Jones, “Patient felt like the MD was under the influence of a [sic] unknown substance. The MD has a history of alcohol abuse and had suicidal ideation about a year ago,” and “We would like your assistance ASAP in regards to referral to the [KPHF] program and appropriate testing.” Dr. Jones replied by email at 8:04 p.m. stating that the physician was someone KPHF “ought to be working with,” and recommended that the doctor be taken off “any further clinical duty[.]” Dr. Jones asked, “Was this person asked to do a urine drug screen or breathalyzer? And have they been spoken to about this incident?” Neither of those things had been done. Neither of those things were done after Dr. Jones raised the questions.

MEDIA5022

Dr. Nims called Dr. Farmer’s cell phone early on November 5, 2019. Dr. Farmer met with Dr. Lipson and Dr. Nims at around 8:45 am on November 5, 2019. Dr. Nims told Dr. Farmer that he had been accused of being impaired the day before. Dr. Farmer said that he was not impaired. Dr. Farmer asked to go to the lab 15 feet outside of Dr. Nims’ office to get drug tested immediately. Dr. Nims denied Dr. Farmer’s request, citing privacy concerns. Dr. Farmer responded that he didn’t care about his privacy, and that he wanted to go to the lab. Dr. Farmer asked to be drug tested at the BHM facility at least five times during that meeting, and each request was denied. Dr. Lipson and Dr. Nims told Dr. Farmer that he had an appointment with the KPHF. Dr. Farmer was not given any further opportunity to explain himself or respond to the allegations during that meeting. Dr. Farmer believed that Dr. Lipson and Dr. Nims, as his superiors, were directing him to go to the KPHF and that he had no choice other than to comply.

On November 15, 2019, Dr. Lipson wrote a letter to the KBML reporting Dr. Farmer. Dr. Lipson said that he was reporting to the KBML “on the recommendation of Dr. Jones.” Dr. Lipson also said that Dr. Farmer had “been removed from any clinical responsibilities” since the date of

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

the “anonymous complaint.” Dr. Lipson’s letter to the KBML omits mention that Dr. Hatler and Dr. Hargrove ruled out any impairment of Dr. Farmer on November 4, 2019.

MEDIA5022

On or about November 22, 2019, an investigator from the KBML came to BHM and presented Dr. Farmer with an Interim Agreed Order for signature. The investigator said that Dr. Farmer needed to sign the Order, or the KBML would take emergency action against him. Dr. Lipson advised Dr. Farmer to sign it. Dr. Farmer signed the Interim Agreed Order. The investigator asked Dr. Farmer questions about the events of November 4, 2019, with Dr. Lipson present. The investigator asked Dr. Farmer if there was anyone that Dr. Farmer wanted the investigator to speak with. Dr. Farmer said yes, but Dr. Lipson cut him off and would not let Dr. Farmer provide the investigator with the names of witnesses. Dr. Farmer wanted the investigator to speak with the attending physicians (Dr. Hargrove and Dr. Hatler), and others who worked with him that day, who would corroborate that he was not impaired on November 4, 2019.

The KBML Interim Agreed Order prevented Dr. Farmer from practicing medicine “until approved to do so by the Inquiry Panel.” The Interim Agreed Order was a reportable event, required to be reported to the National Practitioner’s Data Bank (“NPDB”). Dr. Farmer’s NPDB report states “UNABLE TO PRACTICE SAFELY BY REASON OF ALCOHOL OR OTHER SUBSTANCE ABUSE”.

KPHF required Dr. Farmer to attend a 96-hour inpatient program at Metro Atlanta Recovery Residences (“MARR”). MARR assigned Dr. Farmer a diagnosis of alcohol use disorder – mild. MARR informed KBML of Dr. Farmer’s diagnosis. Dr. Farmer disputes the diagnosis assigned to him by MARR.

On December 11, 2019, Dr. Farmer and Dr. Jones of KPHF executed a two-year “Contract Letter.” The Contract Letter required (among other things) Dr. Farmer to abstain completely from

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

alcohol and mood-altering drugs, and submit to random drug screens, individual group therapy, and appointments with a psychiatrist. Any “relapse” or other noncompliance would result in a report to the KBML. Since Dr. Farmer needed to return to his residency program, he had no choice but to sign the Contract Letter in order to return to work.

MEDIA5022

On or about February 18, 2020, Dr. Farmer signed a “Letter of Agreement” from the KBML, as a condition of resolving the KBML’s investigation. The Letter of Agreement extended the monitoring and abstinence period to three to five years. It required him to submit to periodic and unannounced drug screens (breathalyzer, blood and urine), and continue to comply with all requirements of the Contract Letter with KPHF. Any violation by Dr. Farmer of the Contract Letter would constitute grounds for the KBML to initiate formal disciplinary charges against his medical license. Dr. Farmer was required to sign the Letter of Agreement in order to be cleared to return to clinical practice and complete his residency program.

Dr. Farmer’s restrictions with the KPHF and KBML remain ongoing. Every day, he must check in on a phone app and find out if he is going to be drug tested that day (whether through blood sample, urine, or otherwise). Testing disrupts his work schedule, and he has to ask his colleagues to cover for him while he gets tested. It is a source of embarrassment, humiliation, stress and anxiety, a financial strain (he has to pay for the drug testing), and a time constraint. He has never failed a drug test or otherwise violated the Letter of Agreement.

### **III. ANTICIPATED LEGAL AND EVIDENTIARY ISSUES**

#### **A. Tortious Interference with Prospective Business Advantage Against BHM and BHMG.**

Kentucky law recognizes the tort of tortious interference with prospective business advantage. Its elements are: “(1) the existence of a valid business relationship or expectancy; (2) that [defendant] was aware of this relationship or expectancy; (3) that [defendant] intentionally



NOT ORIGINAL

DOCUMENT

PM

05/08/2023 09:12:19

interfered; (4) that the motive behind the interference was improper; (5) causation; and (6) special damages.” *PBI Bank, Inc. v. Signature Point Condos. LLC*, 535 S.W.3d 700, 715 (Ky. App. 2016); *Snow Pallet, Inc. v. Monticello Banking Co.*, 367 S.W.3d 1, 6 (Ky. App. 2012). “Tortious interference does not require the existence of a contract.” *Id.* Kentucky follows the RESTATEMENT (SECOND) OF TORTS, §§ 766B, 767, and 773 on tortious interference claims. *National Collegiate Athletic Asso. V. Hornung*, 754 S.W.2d 855, 857 (Ky. 1988) (“Upon examination of our decisions, we conclude that the foregoing sections of the *Restatement* fairly reflect the prevailing law of Kentucky.”).

MEDIA5022

BHM and BHMGM, intentionally and with improper motive, interfered with Dr. Farmer’s business relationship with the KBML and Dr. Farmer’s prospective business relationships with potential future employers.

**1. A Valid Business Relationship or Expectancy Existed Between Dr. Farmer and the KBML, and Prospective Future Employers.**

“The relations protected against international interference . . . include any prospective contractual relations . . . if the potential contract would be of pecuniary value to the plaintiff. Included are interferences with the prospect of obtaining employment or employees . . . and any other relations leading to potentially profitable contracts.” RESTATEMENT (SECOND) OF TORTS, § 766B cmt. c; *see also Musselman Bros., Inc. v. Dial-Huff & Assoc., Inc.*, 826 S.W.2d 838, 840 (Ky. App. 1992) (citing Restatement (Second) of Torts § 766B cmt. c). “A valid business expectancy exists when there is ‘a reasonable likelihood or a probability, not mere wishful thinking’ that a business relationship will come about.” *Ventas, Inc. v. Health Care Prop. Investors, Inc.*, 635 F. Supp. 2d 612, 622 (W.D. Ky. 2009) (applying Kentucky law) (citations omitted). “To demonstrate such a reasonable expectation, [the plaintiff] must prove an anticipated business relationship with an identifiable class of third parties.” *Id.* (citations omitted).

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

Dr. Farmer had a valid business relationship with the KBML. As this Court stated in its April 13, 2023, Order on Defendant's Motion in Limine No. 3, Defendants have not, nor has the Court found, "case law . . . [that] would indicate that Plaintiff did not have a 'valid business relationship' with the KBML, or that the KBML would not come under the definition of 'business.'" On November 4, 2019, Dr. Farmer held a medical license regulated by the KBML. Dr. Farmer needed to maintain his license in good standing in order to practice medicine in Kentucky, so the KBML controlled Dr. Farmer's ability to conduct business as a physician in Kentucky. Regulatory bodies have business relationships with license holders, and those relationships are of pecuniary value to the licensees. Applying the logic of the Restatement (Second) of Torts § 766B cmt. c, this relationship qualifies as a valid business relationship. Dr. Farmer reasonably expected his relationship with the KBML to provide pecuniary value to him by allowing him to earn a living by practicing medicine.

MEDIA5022

Dr. Farmer also had valid prospective business relationships with potential future employers. Dr. Farmer's future employment was not "mere wishful thinking"—he was participating in residency training at BHM precisely so that he could secure employment as a physician after completing the three-year program. Kentucky law does not require that the identity of individual, prospective employers have been known in November 2019—only that the prospective employers belong to an "identifiable class." Given Dr. Farmer's education, training, experience, and readiness for the normal and anticipated transition from resident to full-time employed physician, his future employers belonged to an identifiable class—health care providers that employ licensed and trained physicians.

Included in this identifiable class is BHMG. BHMG is a medical group that employs the physicians that staff BHM and other Baptist Health hospitals. Testimony will show that BHMG

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

routinely offered full-time physician employment to residents who completed BHM's residency program. But for BHM's intentional interference with Dr. Farmer's prospective employment relationship with BHMG, it would have been reasonably likely that BHMG would have offered full-time post-residency employment to Dr. Farmer.

MEDIA5022

**2. BHM and BHMG Were Aware of and Intentionally Interfered with Dr. Farmer's Business Relationships or Expectancies.**

As the Restatement (Second) of Torts § 766B cmt. d explains, "The interference with the other's prospective contractual [or business] relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action." Defendants have argued that Dr. Farmer "cannot show any intentional interference with any relationship he had with the KBML." Defendants are wrong. Record evidence confirms that Dr. Lipson wrote a letter to the KBML on November 15, 2019, about Dr. Farmer. Even if Defendants initially contacted the KPHF, rather than the KBML, they set into motion the chain of events that ultimately triggered the KBML's involvement. Although Defendants may not have directly restricted Dr. Farmer's license, generated the NPDB report, or participated in the KBML proceedings, they cannot reasonably argue—as organizations that have regular and continuing contact with the KBML—that they were not substantially certain these things would occur as a result of their actions.

Plaintiff anticipates that Defendants will argue that they were not sufficiently aware of Dr. Farmer's prospective business relationships or expectancies to incur liability. Defendants are highly sophisticated health care organizations, and BHM hired Dr. Farmer as a resident physician. Defendants cannot reasonably claim that they were unaware of Dr. Farmer's relationship with KBML or the prospective business relationships Dr. Farmer had with an identifiable class of future employers. Additionally, the evidence will show that BHMG routinely offered physicians

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

positions with BHMG following their completing of BHM's residency program, and that BHMG did not offer a position to Dr. Farmer. BHM cannot reasonably claim that it was unaware of BHMG's custom and practice of offering positions to its former resident physicians, and the evidence will show that BHMG did, in fact, offer many such positions to Dr. Farmer's resident colleagues.

MEDIA5022

### 3. BHM and BHMG Acted with Improper Motives.

“Showing malice or some significantly wrongful conduct is evidence of improper conduct.” *Ventas*, 365 F. Supp. 2d at 622 (applying Kentucky law). “[A]ctual malice is not required and the tort may be established by demonstrating ‘some significantly wrongful conduct.’” *PBI Bank, Inc.*, 535 S.W.3d at 723 (internal citation omitted). “As the Restatement explains, ‘the real question is whether the actor’s conduct was fair and reasonable under the circumstances.’” *Ventas*, 365 F. Supp. 2d at 622 (quoting RESTATEMENT (SECOND) OF TORTS § 767 cmt. j.).

Defendants’ failure to conduct a reasonable investigation of the patients’ mother’s allegation of impairment, with adequate safeguards or protections for the accused physician, and their failure to follow their own written policies, provides strong evidence of malice. Defendants’ failure to provide Dr. Farmer with an opportunity to submit to immediate drug and alcohol testing, and their refusal to grant Dr. Farmer’s repeated requests to get tested, deprived Dr. Farmer of any opportunity to refute the unsubstantiated complaint and was neither fair nor reasonable. Dr. Bojko’s expert testimony will further address how Defendants’ actions were objectively unreasonable under the circumstances.

### 4. Defendants’ Tortious Interference Proximately Caused Dr. Farmer’s Recoverable Compensatory Damages.

Dr. Farmer anticipates that Defendants will argue that their tortious actions were not the proximate cause of Dr. Farmer’s injuries. “The proximate cause of an event must be understood to

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

be that which in a natural and continuous sequence, unbroken by any new independent cause produces that event, and without which that event would not have occurred. Proximity in point of time or space however is no part of the definition.” *City of Louisville v. Hart’s Admr.*, 143 Ky. 171, 178 (Ky. App. 1911). “[P]roximately caused’ damages, whether direct or consequential, would be those which would be reasonably foreseeable by the parties as the natural and probable cause of the breach.” *Arete Ventures, Inc. v. Univ. of Kentucky*, 619 S.W.3d 906, 915 (Ky. App. 2020). *See also Ventas*, 635 F. Supp. 2d at 624-625 (explaining that, although proximate cause can be interrupted by a superseding or intervening cause, such a superseding cause must be “an independent force,” “unassociated with the original act,” and “extraordinary and unforeseeable”).

MEDIA5022

Defendants’ actions proximately caused all of Dr. Farmer’s damages. But for Defendants’ precipitous and improper decision and immediate referral of Dr. Farmer to the KPHF without talking to or testing him first, Dr. Farmer would not have suffered any of the harms he later experienced. Defendants’ actions set the entire chain of events in motion. The decisions of the KBML and KPHF to take specific action do not break the causal chain or link, and these actions were the natural, foreseeable, and probable results of the decisions and actions of Defendants.

Defendants’ attempts to break this causal chain are unavailing. As the Court has already ruled on Plaintiff’s Motion in Limine No. 12, Defendants cannot present evidence or argue to the jury that KPHF and KBML are responsible for causing damages claimed by Dr. Farmer. Defendants never asserted third-party claims against KPHF or KBML under CR 14.01. Neither KPHF nor KBML qualify as proper entities which Defendants can cast blame upon as an “empty chair.”

Defendants argue that Dr. Farmer’s “KPHF Contract was required under the Letter of Agreement which Plaintiff negotiated and agreed to with the KBML.” *Defendants’ Motion in*

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

*Limine No. 14.* Defendants ignore the obvious—that the fundamental prerequisite to the KPHF Contract, the Letter of Agreement, would not exist absent Defendants’ wrongful report. Defendants’ argument that they were “not a party to [the Letter of Agreement], nor the KPHF contract . . . , did not require Plaintiff to sign the contract as a condition of his continued participation in the residency program . . . , [and] did not have any part in deciding the terms of the contract nor any of its requirements” *id.*, similarly miss the mark. It is not the terms and conditions of these agreements that form the basis of Dr. Farmer’s claim, but the existence of the agreements themselves, which were the natural, probable, and foreseeable result of Defendants’ actions. Dr. Farmer was forced to go to KPHF if he wanted to continue his residency and ultimately forced to do what the KBML required if he wanted to keep his medical license.

Defendants next argue that Dr. Farmer should be foreclosed from collecting damages Dr. Farmer incurred from finishing the residency program late because “Kentucky law did not permit Defendants to allow Plaintiff to engage in clinical care and treatment of patients . . . without a valid, unrestricted medical license.” *Id.* That the KBML determined, based on Defendants’ unsubstantiated report, that Dr. Farmer’s license should be restricted does not change the basic fact that Dr. Farmer held, and would have continued to hold, a valid, unrestricted medical license *but for Defendants’ wrongful conduct.* It is further directly contrary to the record evidence that KBML made its determination based on “the KPHF’s own independent testing and recommendations based on the KPHF’s own determination that Plaintiff had an alcohol dependency program.” *Id.* at *Motion in Limine No. 3.* The NPDB report, and the restrictions the KBML placed on Dr. Farmer’s license, were based on Defendants’ erroneous report that Dr. Farmer was allegedly *providing patient care* while impaired—not that he was ever impaired at any other time.

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

Defendants did not allow Dr. Farmer to properly defend himself or to present witnesses to the KBML investigator to corroborate his denial of the allegation. Having only been allowed to hear Defendants' side of the story, it was natural, probable, and foreseeable that KBML would determine that Dr. Farmer's license should be restricted, that he should have been temporarily removed from clinical duties, and that the allegation should be reported on the NPDB.

MEDIA5022

The damages Dr. Farmer continues to incur in fulfilling his obligations under the agreements also directly flow from Defendants' wrongful report. It was natural, probable, and foreseeable, that a KPHF referral would result in an evaluation for drug or alcohol use disorder (as well as a KBML investigation and NPDB report). Testimony will show that it was natural, probable, and foreseeable that an evaluation would result in a diagnosis. It was natural, probable, and foreseeable that a diagnosis would result in a multi-year monitoring contract. There is no gap in the causal chain, and Defendants are liable for all of Dr. Farmer's damages.

Kentucky law allows tort victims to recover compensatory damages. *See Schwartz v. Hasty*, 175 S.W.3d 621, 629 (Ky. App. 2005) ("Section 54 of the Kentucky Constitution . . . prohibits legislative encroachment on compensatory damages due tort victims."). "Compensatory damages 'are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct.'" *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). The Restatement (Second) of Torts § 774A provides:

- (1) One who is liable to another for interference with a contract or prospective contractual relation is liable for damages for
  - a. The pecuniary loss of the benefits of the contract or the prospective relation;
  - b. Consequential losses for which the interference is a legal cause; and
  - c. Emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.

§ 774A cmt. a explains further that "[t]his section states only the rules applicable to the recovery of compensatory damages."

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

Dr. Farmer has suffered each of the categories of damage described in § 774A and is entitled to recovery for all of them. Dr. Farmer lost the pecuniary benefits (including lost wages and salary) of prospective business relationships. Dr. Farmer has and continues to suffer consequential damages, including the cost of the MARR assessment, KPHF administrative fees, Tennessee Medical Foundation administrative fees, drug testing fees, counseling fees, and attorneys' fees related to the KBML proceeding. Finally, Dr. Farmer has suffered, and continues to suffer, from significant emotional distress from the anxiety, stress, embarrassment, and humiliation that have directly resulted from the KPHF and KBML restrictions; and will continue to suffer severe reputational harm for the rest of his professional career from the publicly-available NPDB report.

MEDIA5022

#### **B. Breach of Contract Against BHM.**

“To prove a breach of contract, the complainant must establish three things: (1) existence of a contract; (2) breach of that contract; and (3) damages flowing from the breach of contract.” *Metro Louisville/Jefferson County Gov't v. Abma*, 326 S.W.3d 1, 8 (Ky. App. 2009) (citing *Barnett v. Mercy Health Partners-Lourdes, Inc.*, 233 S.W.3d 723, 727 (Ky. App. 2007)). “Generally . . . in construing contracts courts endeavor to give effect to the parties' intent as expressed by the ordinary meaning of the language they employed.” *Mostert v. Mostert Grp., LLC*, 606 S.W.3d 87, 91 (Ky. 2020).

The parties agree that the 2019 Agreement was a valid and enforceable contract. BHM breached the 2019 Agreement between it and Dr. Farmer, and Dr. Farmer has and continues to suffer damages flowing from those breaches.



NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

**1. BHM Breached the 2019 Agreement by Failing to Provide Dr. Farmer with a Suitable Environment for Medical Education Experience.**

MEDIA5022

BHM failed to provide Dr. Farmer with a “suitable environment for medical education experience.” As a direct and proximate result of BHM’s wrongful conduct, Dr. Farmer was and remains obligated to comply with the KBML and KPHF restrictions.

A suitable medical education experience includes institutional and academic support, fair treatment, and professionalism. When confronted with the patient’s mother’s complaint, Defendants rushed to judgment and reported Dr. Farmer to the KPHF without talking to or testing Dr. Farmer. They did not notify Dr. Farmer about the allegation, or give him an opportunity to rebut the allegation of impairment. They did not provide him with an opportunity to be tested immediately for alcohol or drugs, which would have either confirmed or refuted any allegation of impairment based on alcohol or drugs. Dr. Nims disregarded the exculpatory statements of the two attending physicians who observed Dr. Farmer that day, and she did not report those statements to the other decision-makers involved at the meeting on November 4, 2019. They were aware that Dr. Farmer had ADHD and had jittery mannerisms, yet still decided to get the KPHF involved without any testing. This is entirely inconsistent with the suitable medical education environment BHM agreed to provide. Because BHM’s actions deprived Dr. Farmer of the suitable medical education environment for which he contracted, BHM breached the 2019 Agreement and caused Dr. Farmer damage.

Further, while Dr. Farmer was barred from returning to his residency work, BHM failed to provide Dr. Farmer with an educational environment at all. This breach delayed Dr. Farmer’s completion of his residency program, and Dr. Farmer was forced to continue his residency past his planned completion date—depriving Dr. Farmer of the opportunity to earn wages as a practicing physician.

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

That Dr. Farmer finished his residency in spite of these restrictions does not change the fact that BHM breached the 2019 Agreement when it failed to provide a suitable (or, for some time, any) environment for Dr. Farmer to learn to practice medicine, or that Dr. Farmer suffered monetary damage as a result of that breach.

MEDIA5022

**2. BHM Breached the 2019 Agreement by Failing to Follow BHM Policies.**

BHM also breached its own written policies that were applicable to the situation at hand, and were incorporated by reference into the 2019 Agreement.

“Kentucky recognizes the common law doctrine of incorporation by reference. ‘For a contract validly to incorporate other terms, “it must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms.’” In addition, there must be ‘clear language [] express[ing] the incorporation of other terms and conditions.’” *Britt v. Univ of Louisville*, 628 S.W.3d 1, 8 (Ky. 2021) (quoting *Dixon v. Daymar Colls. Grp., LLC*, 483 S.W.3d 332, 644 (Ky. 2015) (quoting 11 WILLISTON ON CONTRACTS § 30.25 (4th ed. 2014))). For example, in *Britt*, the Supreme Court of Kentucky analyzed the following two paragraphs contained in the parties’ contracts:

[T]he conditions governing employment at the University of Louisville are contained in the University’s governance document, *The Redbook*. Specific terms applicable to your appointment in the College of Arts and Sciences are contained in the College’s constitution and By-Laws, in the College’s Personnel Policy and Procedures and in the Constitution and By-laws of the Department.

[T]he terms and conditions of employment in the University of Louisville herein specified include all rules and regulations promulgated on the authority of the University of Louisville Board of Trustees and the governance document known as *The Redbook*. The appointment as Assistant Professor of Fine Arts is subject to the tenure policy of the University of Louisville. Under the policy of *The Redbook*, tenure in this position would be awarded July 1, 2011 should it be mutually agreeable to make renewals of this appointment beyond this date.

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

*Id.* The *Britt* court determined that this language “indicates that the parties intend for the provisions of the *Redbook* relevant to Dr. Britt’s position as Assistant Professor to be a part of the employment agreement of the parties.” *Id.*

MEDIA5022

Like the contracts in *Britt*, the 2019 Agreement evidences the parties’ intent to incorporate by reference a number of BHM policies and procedures. For example, the 2019 Agreement provides, in relevant part:

WHEREAS, various policies and procedures are referenced herein and may be revised, amended or newly issued from time to time for notice and compliance by all Residents, and may be accessed from the Residency Program Director or Baptist Office of Graduate Medical Education.

[ . . . ]

Baptist agrees to provide the Resident with educational conferences regarding physician impairment, including substance abuse, and shall inform the resident, via written policies, of Baptist’s policies for handling physician impairment, including impairment related to substance abuse.

[ . . . ]

Resident agrees to . . . conform to Baptist policies, procedures and medical staff rules and regulations as such pertain to residents.

[ . . . ]

Information regarding other conditions of appointment, resident participation in educational/professional activities, resident work environment, moonlighting, grievance process, termination, etc., may be found in either the Resident Manual or Baptist Health Madisonville, Inc’s Employee Handbook. **All GME and Residency policies and procedures are available on New Innovations at: [website URL].**

*See generally* 2019 Agreement (emphasis in original). The parties intended to incorporate the terms of, *inter alia*, the Resident Manual and Employee Handbook—which the 2019 Agreement identifies as containing “other conditions of [Dr. Farmer’s] appointment” to the BHM residency program—into their agreement. Further, BHM promised to “inform” Dr. Farmer of its “policies for handling physician impairment” “via written policies.” BHM’s anticipated argument that

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

BHM's was not obligated to comply with the policies it promised to provide to Dr. Farmer in writing defies common sense—especially considering BHM's expectation that Dr. Farmer himself "conform to Baptist policies, procedures and medical staff rules and regulations."

MEDIA5022

The record evidence clearly establishes that BHM failed to follow its own policies. The Resident Manual states: "If the question of impairment is determined by the staff responding to the allegation of impairment to potentially be the result of substance abuse, then the provider in question will be asked to give urine and blood samples, under appropriate supervision, for analysis." BHM Family Residency Program Residency Manual, p. 7. It is undisputed that Dr. Farmer was not asked to provide a urine or blood sample, and that he was denied the opportunity to provide a blood or urine sample when he asked to do so. The Drug Testing Policy contains similar testing requirements, and requires "the manager," upon reasonable suspicion, to "remove the employee from the immediate work area to a private place and inform the employee of the concerns[,] escort the employee to the appropriate location, "obtain the employee's consent for an alcohol or drug test,"<sup>2</sup> and order collection of a specimen by a health care professional. It is undisputed that BHM took none of these steps with Dr. Farmer.

BHM concedes that it did not apply, review or consult either the Drug Testing Policy or the provisions in the Residency Manual relating to "impaired providers." BHM's decisionmakers have consistently testified that they followed the Medical Staff Policy instead. But, since Dr. Farmer was not a full member of the medical staff, nor was he appointed to the Medical Staff, that policy did not apply to him. Even if it did apply to him, Dr. Farmer will present evidence, testimony and argument at trial that BHM did not follow this policy correctly, either. The threshold for an investigation under the Medical Staff Policy was "reasonable suspicion," which was not present

---

<sup>2</sup> If an employee refuses to provide such consent, the refusal "will be considered insubordination and may result in disciplinary action up to, and including, immediate termination."

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

based on a single, uncorroborated, and refuted complaint of a layperson. Furthermore, BHM referred Dr. Farmer to the KPHF without conducting any investigation, or determining Dr. Farmer to be impaired, which conflicts with the policy. A referral to the KPHF for an evaluation is a “remedial measure,” to be taken after the investigation has concluded. It is not a method of conducting the investigation through an “outside consultant.”

MEDIA5022

Dr. Farmer’s damages flow naturally from BHM’s breaches. As a result of BHM’s improper report to KPHF, Dr. Farmer has lost wages, was forced to incur the cost of the MARR assessment, paid KPHF and Tennessee Medical Foundation administrative fees, paid drug testing fees, and paid counseling fees. None of these expenditures would have been necessary absent BHM’s wrongful report, and compensation for these losses is necessary to place Dr. Farmer in the position he would have been in had BHM fulfilled its obligations under the 2019 Agreement.

#### IV. CONCLUSION

Plaintiff John Mitchell Farmer, M.D., will seek the entry of verdicts in his favor, and against Defendants BHM and BHMG on his claims for tortious interference with a prospective business advantage and breach of contract.

Respectfully submitted,

/s/ Kathleen A. DeLaney

Kathleen A. DeLaney

(Indiana Atty. #18604-49, PH#23244569)

Christopher S. Stake

(Indiana Atty. #27356-53, PH# 30534273)

DELANEY & DELANEY LLC

3646 N. Washington Blvd.

Indianapolis, IN 46205

317-920-0400

[kathleen@delaneylaw.net](mailto:kathleen@delaneylaw.net)

[cstake@delaneylaw.net](mailto:cstake@delaneylaw.net)

Marvin L. Coan (KBA 12910)

Hummel Coan & Sage LLC

NOT ORIGINAL

DOCUMENT

05/08/2023 09:12:19

PM

American Life Building  
471 West Main Street, Suite 200  
Louisville, KY 40202  
Phone: (502) 585-3084  
[mcoan@hcslegal.com](mailto:mcoan@hcslegal.com)

MEDIA5022

*Counsel for Plaintiff John Mitchell Farmer, M.D.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed with the Clerk of the Jefferson Circuit Court electronically by the Kentucky Courtnet 2.0 e-filing system on this 18<sup>th</sup> day of April 2023, which will send electronic notice of filing to ECF counsel of record.

Robert J. Benvenuti III  
Jeffery T. Barnett  
Holly R. Iaccarino  
Barnett Benvenuti & Butler, PLLC  
489 E. Main Street, Suite 300  
Lexington, KY 40507  
[Robert.benvenuti@bbb-law.com](mailto:Robert.benvenuti@bbb-law.com)  
[Jeff.Barnett@bbb-law.com](mailto:Jeff.Barnett@bbb-law.com)  
[Holly.iaccarino@bbb-law.com](mailto:Holly.iaccarino@bbb-law.com)  
*Counsel for Defendants, Baptist Health  
Medical Group, Inc. and Baptist Health  
Madisonville, Inc.*

*/s/ Kathleen A. DeLaney*  
Kathleen A. DeLaney