

O'CONNOR, PARSONS & LANE, LLC
435 E. Broad Street
Westfield, New Jersey 07090
(908) 928-9200
Attorneys for Plaintiff

FERNANDO ALMEIDA, JR.,

Plaintiff,

v.

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY;
BRANDON MBUAKOTO, individually
and in his capacity as
Director of Radiology at the
University of Medicine and
Dentistry of New Jersey;
LANCELOT COLTHIRST,
individually and in his
capacity as an employee of the
University of Medicine and
Dentistry of New Jersey; and
JOHN DOE I-V (these names
being fictitious as their true
identities are presently
unknown),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.:

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, Fernando Almeida, Jr., ("plaintiff" or
"Mr. Almeida"), residing at 45 East Midland Avenue, Kearny,
Hudson County, New Jersey 07032, by way of complaint against
the above-captioned defendants complains and says:

FACTUAL ALLEGATIONS - THE PARTIES

1. The plaintiff resides at 45 East Midland Avenue, Kearny, New Jersey 07032, is a citizen of the State of New Jersey, and as detailed below, plaintiff suffered damages and injuries as a result of defendant's unlawful conduct.

2. At all times relevant hereto, plaintiff was an employee of the University of Medicine and Dentistry of New Jersey ("UMDNJ") as a radiology technician. Plaintiff served as a radiology technician from July 1, 2008 until September 5, 2008.

3. At all times relevant hereto, the defendant UMDNJ had, and continues to have, its principle place of business at 150 Bergen Street, Newark, New Jersey 07103.

4. At all times relevant hereto, the defendant Brandon Mbuakato was the Director of Radiology at UMDNJ and supervisory authority over plaintiff. Defendant Mbuakato resides at 104 Connor Court, Burlington, New Jersey.

5. At all times relevant hereto, defendant Lancelot Colthirst was a radiology technician, residing at 506 Boyden Avenue, Maplewood, New Jersey.

6. At all times relevant hereto, the defendants John Doe I-V are fictitious names used to identify those individuals whose names are presently unknown but include

employees, managers, directors, supervisors and co-workers responsible for damages set forth herein.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. Plaintiff commenced working with UMDNJ as a radiology technician in July 2008. For the three preceding years, he worked for UMDNJ as a patient transporter.

8. On Friday, August 29, 2008, Mr. Almeida was working his usual midnight shift. Near the end of his shift, he was approached by an unidentified individual in street clothes who asked him to perform a chest x-ray for a patient on the H-Blue Floor.

9. This individual did not identify himself.

10. Mr. Almeida asked the individual if he had an x-ray requisition and was told that he did not have one.

11. At that point, plaintiff advised the individual that he had emergent x-rays on the floor that needed to be done and that he also had to pick up additional films.

12. Plaintiff advised this unidentified individual to fill out the appropriate requisition paperwork and when he was finished with his emergent x-rays, he would then conduct this requested x-ray.

13. Mr. Almeida's response was consistent with the Radiology Department's policies and procedures, as well as the

New Jersey Administrative Code, which prohibits unauthorized x-rays.

14. Mr. Almeida obtained more film and performed the aforementioned emergent x-rays.

15. Before plaintiff went home for the day, he checked whether or not there had been any requisitions for the H-Blue Floor x-ray requested by the unidentified individual.

16. At that point, there was no evidence that the x-ray was requested in writing and there was no other evidence that anyone was seeking this x-ray.

17. At that time, plaintiff proceeded home as his shift was over.

18. On or about September 2, 2008, plaintiff was called by the Director of Radiology, defendant Mbaokoto, who informed him that a patient had apparently died in H-Blue and never got a chest x-ray, implying that the patient's death was Mr. Almeida's fault.

19. Subsequently, on September 5, 2008, Mr. Almeida was terminated for failing to perform the chest x-ray.

20. Upon information and belief, defendant Mbaokoto and defendant Colthirst made false and defamatory statements about plaintiff to the effect that this patient's death in H-Blue was Mr. Almeida's fault and that Mr. Almeida "killed the

patient." These statements have damaged plaintiff's reputation and prospects of career advancement.

21. As a result of the unlawful termination of plaintiff, he has suffered, and continues to suffer, grievous economic injury, emotional distress and other damages.

FIRST COUNT

Conscientious Employee Protection Act

22. Plaintiff hereby incorporates each and every allegation of the within paragraphs of this Complaint as if they were fully set forth at length herein.

23. By and through the aforementioned actions, defendants violated the Conscientious Employee Protection Act ("CEPA") by retaliating against plaintiff for, among other things:

- a. disclosing or threatening to disclose to a supervisor or a public body and activity, policy or practice of the employer or another employer, with whom there is a business relationship, that he reasonably believed was in violation of a law, or rule or regulation promulgated pursuant to law, and/or
- b. providing information to, or testifying before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer or another employer, with whom there is a business relationship and/or
- c. objecting to or refusing to participate in any activity, policy or practice which he reasonably believed was (1) in violation of a

law, or rule, or regulation promulgated pursuant to law and/or (2) fraudulent or criminal, and/or (3) incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

24. As a result of defendants' retaliation for plaintiff's refusal to perform an unauthorized x-ray contrary to hospital policy and administrative regulations, plaintiff has suffered, and continues to suffer, economic loss, harm to career, harm to reputation, bodily injury with physical manifestations, severe emotional distress, and physical pain and suffering, as well as all other such damages compensable under CEPA.

WHEREFORE, plaintiff, Fernando Almeida, Jr., demands judgment against defendants, University of Medicine and Dentistry of New Jersey, Brandon Mbaukoto, Lancelot Colthirst, and John Doe I-V, jointly and severally, for harm suffered as a result of defendants' violation of CEPA as follows:

(a) full compensation with back pay and benefits with full remuneration, with interest;

(b) full compensation for front paying benefits with full remuneration, with interest;

(c) compensatory damages;

(d) consequential damages;

(e) punitive damages;

(f) his attorneys' fees with appropriate enhancement under *Rendine v. Pantzer*, 141 N.J. 292 (1995);

(g) costs of suit;

(h) interest; and

(i) such other relief the court may deem equitable and just.

SECOND COUNT

Violation of Public Policy

25. Plaintiff hereby incorporates each and every allegation of the within paragraphs of this Complaint as if they were fully set forth at length herein.

26. By and through the actions described above, defendants terminated plaintiff in violation of the clear mandate of public policy, thereby violating New Jersey common law.

27. As a result of defendants' illegal retaliation, plaintiff has suffered, and continues to suffer, economic loss, harm to career, harm to reputation, bodily injury with physical manifestations, severe emotional distress, and physical pain and suffering, as well as all other such damages compensable at law.

WHEREFORE, plaintiff, Fernando Almeida, Jr., demands judgment against defendants, University of Medicine and

Dentistry of New Jersey, Brandon Mbaukoto, Lancelot Colthirst, and John Doe I-V, jointly and severally, for harm suffered as a result of defendants' violation of public policy as follows:

- (a) full compensation with back pay and benefits with full remuneration, with interest;
- (b) full compensation for front paying benefits with full remuneration, with interest;
- (c) compensatory damages;
- (d) consequential damages;
- (e) punitive damages;
- (f) his attorneys' fees with appropriate enhancement under Rendine v. Pantzer, 141 N.J. 292 (1995);
- (g) costs of suit;
- (h) interest; and
- (i) such other relief the court may deem equitable and just.

THIRD COUNT

Defamation

28. Plaintiff hereby incorporates each and every allegation of the within paragraphs of this Complaint as if they were fully set forth at length herein.

29. Defendants made defamatory statements of fact concerning plaintiff which were false and communicated to persons other than plaintiff.

30. Defendants Mbaukoto and Colthirst have made false statement to others that plaintiff "killed" the patient who expired at the hospital in September 2008.

31. Said comments by defendants were knowingly false and caused plaintiff economic injury, embarrassment, career disruption, and other related injuries.

32. As a result of defendants' actions, plaintiff has been severely injured as a result of such conduct and has suffered, and continues to suffer, economic loss, harm to career, harm to reputation, bodily injury with physical manifestations, severe emotional distress, and physical pain and suffering, as well as all other such damages compensable at law.

WHEREFORE, plaintiff, Fernando Almeida, Jr., demands judgment against defendants, University of Medicine and Dentistry of New Jersey, Brandon Mbaukoto, Lancelot Colthirst, and John Doe I-V, jointly and severally, for harm suffered as a result of defendants' violation of public policy as follows:

(a) full compensation with back pay and benefits with full remuneration, with interest;

(b) full compensation for front paying benefits with full remuneration, with interest;

(c) compensatory damages;

(d) consequential damages;

(e) punitive damages;

(f) his attorneys' fees with appropriate enhancement under Rendine v. Pantzer, 141 N.J. 292 (1995);

(g) costs of suit;

(h) interest; and

(i) such other relief the court may deem equitable and just.

O'CONNOR, PARSONS & LANE, LLC
Attorneys for Plaintiff

By: _____
GREGORY B. NOBLE

DATED: July 13, 2009

JURY DEMAND

Plaintiff demands a trial by jury as to all issues.

O'CONNOR, PARSONS & LANE, LLC
Attorneys for Plaintiff

By: _____
GREGORY B. NOBLE

DATED: July 13, 2009

DESIGNATION OF TRIAL COUNSEL

Please take notice that pursuant to Rule 4:25-4, Gregory B. Noble, Esq. is hereby designated as trial counsel in the within matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, Gregory B. Noble, certifies on behalf of the plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, counsel for the above-named plaintiff in the subject action.

2. The matter in controversy in this case is not, to my knowledge, the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

3. There are no other parties who should be joined in this action that we are aware of at the present time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

O'CONNOR, PARSONS & LANE, LLC
Attorneys for Plaintiff

By: _____
GREGORY B. NOBLE

DATED: July 13, 2009