

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Laura Hamilton,

Complainant,

v.

Newport Hospital and Health Services,

Respondent.

Docket No. 01-2023-GOV-00038

FINAL ORDER

Agency: Newport Hospital & Health Services

Program: Local Government Whistleblower

1. ISSUES:

- 1.1. Did Laura Hamilton report alleged improper governmental action protected by Chapter 42.41 Revised Code of Washington (RCW) 'Local Government Whistleblower Protection' Act and/or Newport Hospital and Health Services (NHHS) Whistleblower Protection Policy #302?
- 1.2. Was Laura Hamilton the subject of retaliation prohibited by Chapter 42.41 RCW and/or Newport Hospital and Health Services Whistleblower Protection Policy #302?

2. FINAL ORDER SUMMARY:

- 2.1. Laura Hamilton **reported alleged improper governmental action** protected by Chapter 42.41 RCW 'Local Government Whistleblower Protection' Act and Newport Hospital and Health Services Whistleblower Protection Policy #302.
- 2.2. Newport Hospital and Health Services **retaliated** against Laura Hamilton in violation of Chapter 41.41 RCW and Newport Hospital and Health Services Policy #302.
- 2.3. Since Newport Hospital and Health Services took retaliatory action against a local government employee, Laura Hamilton, who reported alleged improper governmental action, damages to the Complainant are **APPROPRIATE**.
- 2.4. 'Front Pay' or 'Future Damages', per this Administrative Tribunal's granting of the 'Respondent's Motion in Limine' is **NOT APPROPRIATE**.
- 2.5. Based on RCW 42.41.040(7), 'back pay', as requested by the Complainant, in the amount of **\$38,856.00**, is **APPROPRIATE**.
- 2.6. Based on RCW 42.41.040(8), a civil penalty of **\$3,000** shall be assessed personally against **Tom Wilbur**, a civil penalty of **\$3,000** shall be assessed personally against **Merry-Anne Keane**, and a civil penalty of **\$1,000** shall be assessed personally against Newport Hospital and Health Services Chairperson **Lois Robertson**. Such civil penalties personally upon each retaliator is **APPROPRIATE**.

2.7. Reinstatement of the Complainant at the Newport Hospital and Health Services is **NOT APPROPRIATE**.

2.8. Based on RCW 42.41.040(7), the Complainant's Costs and Reasonable Attorneys' fees, paid by Newport Hospital and Health Services, is **APPROPRIATE**.

2.9. Based on RCW 34.12.039 and RCW 42.41.040(7), the Respondent, Newport Hospital and Health Services, will pay 100% of costs for services provided by the Office of Administrative Hearings (OAH), in excess of twenty-four (24) hours, which was **89.3 hours**, as **APPROPRIATE**.

3. EVIDENTIARY HEARING:

3.1. Evidentiary Hearing: Monday, April 24, 2023 to Friday, April 28, 2023
with Closing Arguments submitted on May 5, 2023

3.2. Complainant: Laura Hamilton

3.2.1. Representatives: Matthew Z. Crotty and Matthew A. Mensik, Attorneys
Riverside Law Group, PLLC

3.2.2. Witnesses: Tom Wilbur, Former Newport Hospital CEO
(in order) Merry-Anne Keane, Current Newport Hospital CEO
Laura Hamilton, Complainant
Erick West, CPA, Economics Expert, West Economics

3.3. Respondent: Newport Hospital & Health Services

3.3.1. Representatives: Janae M. Ball and Aaron Goforth, Attorneys,
Randall Danskin, P.S.

3.3.2. Witnesses: Christina Wagar, Newport Hospital COO
(in order) Jenny Smith, Newport Hospital Director of Strategic
& Community Engagement
Candance Abraham, Former EPIC Application Analyst
Kim Manus, Newport Hospital Chief Financial Officer
Carol O'Leary, Newport Hospital Director of IT
& Compliance
Lisa Fisher, Newport Hospital Recruitment
& Onboarding Specialist
Casey Scott, Newport Hospital H.R. Manager
Melanie Endicott Kiss, Newport Hospital Board Member
Lois Robertson, Newport Hospital Board Chairperson

3.4. Observer: Joseph Clouse, Newport Hospital Representative

3.5. Exhibits: Complainant's Exhibits A to S, U to Y, AA to KK were admitted.
Exhibits T and Z were withdrawn.
Respondent's Exhibits 1 to 18, 20 to 27, 29 to 32, 34 to 43, 47 to 51, 53 to 54, and 57 to 62, with Ex. 61 is listed as Ex. 50, were admitted.
Exhibits 19, 28, 33, 44, 45, 46, 52, 55, 56 were withdrawn.

4. FINDINGS OF FACT:

The following facts are established by a 'preponderance of the evidence':

OAH Jurisdiction-

- 4.1. On December 13, 2022, Laura Hamilton (Complainant/Hamilton) filed a Whistleblower Complaint (Complaint) with the Newport Hospital and Health Services (Newport Hospital/NHHS), alleging she was retaliated against for reporting improper governmental action, based on RCW 42.41.040(5) and the Newport Hospital's Whistleblower Protection Policy #302,
- 4.2. On January 10, 2023, Newport Hospital denied Hamilton's Complaint.
- 4.3. On January 13, 2023, based on RCW 42.41.040(5), Newport Hospital forwarded Hamilton's Complaint to the Office of Administrative Hearings (OAH) for an adjudicative proceeding.

Parties' Waiver of 45-day Hearing Deadline Requirement-

- 4.4. RCW 42.41.040(6) requires a decision be issued within 45 days after the request for hearing was delivered to the local government.
- 4.5. In the present case, on December 13, 2022, Hamilton filed a Whistleblower Complaint (Complaint) with the Newport Hospital and Health Services. As a result, the decision was to be issued on or before January 28, 2023.
- 4.6. However, at the Prehearing Conference, held on January 26, 2023, the Complainant, Laura Hamilton, represented by Matthew Crotty, Attorney, and Newport Hospital and Health Services, represented by Janae Ball, Attorney, mutually agreed, with no objection to delay, to a waiver of the 45-day deadline. RCW 42.41.040(6).

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Newport Hospital's Motion in Limine-

4.7. On April 18, 2023, Newport Hospital filed 'Respondent's Motion in Limine', seeking to prohibit any evidence relating to any possible emotional distress suffered by Hamilton. The Respondent also requested to prohibit any evidence relating to any award of future wage loss or damages.

Citing RCW 41.41.040, the Respondent argued emotional distress damages were not available under RCW 42.41.040 and 'any other remedy' is limited to reinstatement with or without back pay, injunctive relief to return the employee to his/her previous position before the retaliatory action occurred, and costs and reasonable attorney's fees to the prevailing party. The Respondent cited *Woodbury v. City of Seattle*, 172 Wn. App. 747, 754, 292 P.3d 134, 137 (2013), as controlling in the present case.

4.8. On April 20, 2023, Hamilton filed 'Complainant's Response to Respondent's Motions in Limine'. In her 'Response', the Complainant argued the Local Whistleblower Protection Statute affords this administrative tribunal vast discretion allowing for 'any other remedy' in the event liability is established.

4.9. On April 21, 2023, Newport Hospital filed 'Respondent's Reply in Support of Motion in Limine', contending emotional distress damages and future wage loss are not expressly allowed under the State's 'Local Government Whistleblower Protection' and/or Newport Hospital's Whistleblower Protection Policy #302.

4.10. At the evidentiary hearing, the undersigned administrative law judge heard argument on the 'Respondent's Motion in Limine'. After hearing argument and reviewing Chapter 42.41 RCW and Newport Hospital's Whistleblower Protection Policy #302, and applicable case law, including *Woodbury v. City of Seattle*, 172 Wn. App. 747, 754, 292 P.3d 134, 137 (2013), this administrative tribunal determined the applicable remedies included, but were limited to: (1) Reinstatement with or without back pay; (2) Injunctive relief to return the employee to her previous position before the retaliatory action occurred; and (3) Costs and reasonable attorney's fees to the prevailing party. No emotional distress or future wage loss and damages are expressly allowed by RCW 42.41.040.

4.11. As a result, the 'Respondent's Motion in Limine' was **GRANTED**.

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Critical Persons-

- 4.12. Laura Hamilton- Former Newport Hospital CHRO (Chief Human Resources Officer)
- 4.13. Tom Wilbur- Former Newport Hospital CEO (Chief Executive Officer)
- 4.14. Merry-Anne Keane- Current Newport Hospital CEO
- 4.15. Christina Wagar- Newport Hospital Chief Operations Officer (COO)
- 4.16. Kim Manus- Newport Hospital Chief Financial Officer (CFO)
- 4.17. Commissioner Lois Robertson- Hospital Board of Commissioner Chairperson
- 4.18. Commissioner Melanie Endicott Kiss- Hospital Board of Commissioner Member
- 4.19. Casey Scott- H.R. Manager and former direct report to Hamilton
- 4.20. Lisa Fisher- Newport Hospital Recruitment & Onboarding Specialist
and former direct report to Hamilton
- 4.21. Jenny Smith- Newport Hospital Direct of Strategic & Community Development
- 4.22. Candance Abraham- Former Newport Hospital EPIC Application Analyst

Credibility Finding-

- 4.23. The present case involved conflicting testimony regarding the disputed events. As a result, a credibility finding is warranted:
- 4.24. This administrative tribunal found Complainant Hamilton's (Hamilton) testimony, regarding the series of events from her filing of her Whistleblower Complaint to her termination, credible. Besides documenting her interactions with many of the persons involved, the majority of witnesses also confirmed her version of events.
- 4.25. This administrative tribunal did not find Newport Hospital CEO Merry-Anne Keane's (Keane) testimony credible. Keane denied 'soliciting' statements from employees, as a part of her 'objective' investigation into the 'culture check', which focused solely on Hamilton. As the evidence established, she had employees review the Hospital's 'Bullying' Policy before asking for written statements of Hamilton's treatment towards them. She essentially 'coached' them into writing statements critical of Hamilton. In preparation for Hamilton's termination, Keane only gathered negative complaints about Hamilton. She also admitted to not reviewing any of Newport Hospital's critical policies including its HIPAA rules and policies nor its 'Progressive Discipline' Policy, before terminating Hamilton. *Testimony of Keane.*

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- 4.26. This administrative tribunal also did not find Tom Wilbur's (Wilbur) testimony credible. At the evidentiary hearing, Wilbur asserted he did not 'advocate' for Wagar, during the series of events which unfolded. However, as the evidence established, upon finding out Wagar had been placed on administrative leave and deducing Hamilton had been the Whistleblower, he began a behind the scenes, 'off the record' telephone call and text messaging campaign, advocating for Wagar and pushing for the retaliatory punishment of Hamilton. If the present matter had been a criminal investigation, Wilbur could have been investigated for witness tampering and obstructing an investigation, if an actual, 'good faith' investigation of Hamilton's Whistleblower Complaint had actually occurred.
- 4.27. Further, Wilbur stated the Hospital 'never' puts someone on administrative leave pending an investigation, which was why he was 'not happy' about Wagar being placed on leave. Not true. Hamilton and Casey Scott (Scott), H.R. Manager, noted Kim Backstreet and Lori Munson had been placed on administrative leave while the investigation was conducted. Wilbur either did not know about his own Hospital placing employees on administrative leave or else he allowed his long-time friendship and mentoring of Wagar to cloud his judgment. The administrative tribunal finds the latter to be the truth, especially when viewed in light of the extensive behind the scenes, 'off the record' conversations and text messaging he had with others when he found out Wagar had been placed on leave.
- 4.28. In addition, Wilbur repeatedly disregarded Hamilton's HIPAA violation concerns and Wagar's failure to take leave when she interviewed on Hospital time in Western Washington. He asserted Wagar had worked well over 40 hours each week during Covid as well as had 'already worked 40 hours in the week', despite Wagar going to the interview on a Monday and Tuesday. He refused to hold Wagar accountable, which appears to be a reoccurring theme.
- 4.29. This administrative tribunal also has reservations regarding the truthfulness of Hospital Board of Commission Chairperson Lois Robertson's testimony. Chairperson Robertson is a long-time friend of Wilbur. She claimed on Thursday, November 17, 2022, the Board of Commissioners had not agreed to bring in the Hospital's Insurance Provider to investigate Wagar's potential violations, referenced in Hamilton's Whistleblower Complaint. However, other witnesses, including other Board members, testified to the contrary. She also allowed her friendship with Wilbur to cloud her judgment, when viewed in light of all of her 'off the record', text messaging activities with Wilbur and others after Wagar was placed on administrative leave.

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- 4.30. The administrative tribunal did not find much of Christina Wagar's (Wagar) testimony credible. She denied socializing with Wilbur outside of work. However, a review of the flurry of text messages between Wagar and Wilbur, while she was on administrative leave, says otherwise as evidence in Exhibit DD. She also claimed to not be aware of who the Whistleblower was until February 14, 2023. Once again, Exhibit DD demonstrates otherwise.
- 4.31. The administrative tribunal found Commissioner Melanie Endicott Kiss' testimony credible. She works in the healthcare industry, is HIPAA trained, and is a new to the Board member since 2021. Her testimony aligned with much of the documented evidence, and she did not appear swayed or influenced by Wilbur or others during the course of events.
- 4.32. Based on this credibility finding, the undersigned administrative law judge finds the following events occurred:

Newport Hospital and Health Services (NHHS)-

- 4.33. Pend Oreille County Hospital District No. 1 operates Newport Hospital and Health Services referred to as Newport Hospital, which has over 350 employees and is located in Newport, Washington, one hour north of Spokane. *Exhibit (Ex.) C.*
- 4.34. Newport Hospital is a 'Critical Access Hospital', a federally recognized classification for rural hospitals with 25 or fewer patient beds. *Testimony of Jenny Smith (Testimony of Smith).*
- 4.35. Newport Hospital's Strategic Plan emphasizes, 'We ARE the owners of our Healthcare community. We ARE the reputation of Newport Hospital and Health Services. We ARE accountable to our community and to each other'. *Ex. 38.*
- 4.36. Newport Hospital is governed by a Board of Commissioners, consisting of five, elected members. These board members include: Chairperson Lois Robertson, Vice Chairperson Lynnette Elswick, Secretary Susan Johnson, Becky Walruth and Melanie Kiss. *Ex. C.*
- 4.37. The Board of Commissioners is not involved in the Hospital's day-to-day operations. Rather, the Hospital's CEO (Chief Executive Officer) oversees daily operations and reports directly to the Board of Commissioner. *Testimony of Lois Robertson (Testimony of Robertson).*

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Newport Hospital's Relevant Policies and Procedures-

- 4.38. Newport Hospital maintains a 'HIPAA Security Policy' to '[C]reate standards to ensure the privacy and security of health information that is transmitted or stored electronically with NHHS'. *Ex. F (same as Ex. 24)*.
- 4.39. Newport Hospital also has policies regarding: 'Uses and Disclosures of Protected Health Information – Minimum Necessary and Incidental Disclosure', 'Health Information Management' and 'Information Systems Minimum Necessary Policy' to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). *Exs. E (same as Ex. 26) and Exs. G & H (same as Ex. 25)*.
- 4.40. Newport Hospital also adheres to a 'Harassment Free Facility' policy and 'Healthcare Safety Zone Incident Reporting Policy'. *Ex. 47 and Ex. I*.
- 4.41. Finally, Newport Hospital maintains 'Whistleblower Protection Policy #302', which is intended to:
- 'Encourage the reporting by NHHS employees of improper governmental actions taken by District Officers and/or employees; and Protect NHHS employees who have reported improper governmental actions in accordance with NHHS policies and procedures'.

NHHS Whistleblower Protection Policy #302
(listed as *Ex. V and Ex. 53*).

Hamilton's Newport Hospital Employment-

- 4.42. On March 3, 2022, Hamilton entered into a three-year employment contract with Newport Hospital, to serve as its Chief Human Resources Officer (CHRO). The contract commenced on April 4, 2022 and extended to December 31, 2024. It could be extended by joint agreement of the parties. Hamilton's salary would start at \$155,000.00, then increase to \$162,000.00, beginning in April 2023. The contract also stipulated Newport Hospital would pay Hamilton a six-month severance, if she was terminated. *Testimony of Laura Hamilton (Testimony of Hamilton) and Ex. D (same as Ex. 23)*.
- 4.43. The Chief HR/Administration Officer (CHRO) position and its roles and responsibilities were articulated in its Job Description, which Hamilton also signed on March 3, 2023. *Testimony of Hamilton and Ex. 27*.
- 4.44. On April 4, 2022, Hamilton began work as Newport Hospital's CHRO. *Testimony of Hamilton*.

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- 4.45. At the time of her hire, Hamilton signed: The Hospital's 'Acknowledgment of Professional Ethics'; 'Acknowledgment of NHHS Behavior Standards'; 'Acknowledgment of HIPAA Policy'; 'Progressive Discipline Policy'; 'Information System Policy'; 'HIPAA Policy'; and 'Whistleblower Policy'. *Testimony of Hamilton, Exs. 6, 7, 8, 48 & 49 and Exs. A, F, H, I & V.*
- 4.46. Prior to becoming Newport Hospital's CHRO, Hamilton had over 12 years of working in Human Resources in the Healthcare industry. She had never been disciplined or discharged from any of her previous jobs. *Testimony of Hamilton and Ex. 9.*
- 4.47. As the Hospital's CHRO, Hamilton reported to Tom Wilbur, the Hospital's Chief Executive Officer (CEO), who had served as Newport Hospital's CEO/Superintended for the past 18 years. Hamilton and Wilbur spoke almost daily. *Testimony of Hamilton and Testimony of Tom Wilbur (Testimony of Wilbur).*
- 4.48. As the CHRO, Hamilton also supervised several employees: Casey Scott, Lisa Fisher, Kristi Wall, and Robert 'Todd' Balatine. *Testimony of Hamilton.*
- 4.49. During her employment, Hamilton lived in Spokane, Washington, commuting one hour each way every day, Monday through Friday, to the Newport Hospital. *Testimony of Hamilton.*

Hamilton Raises Potential HIPAA Violation(s)-

- 4.50. In May 2022, Christina Wagar (Wagar), the Hospital's Chief Operating Officer (COO) sent out an email message to Hospital employees regarding the passing of longtime Hospital employee, Rita Little (Little), due to COVID-19. Wagar had worked with Little for more than 20 years. Little was a patient at another medical facility at the time of her passing. *Testimony of Christina Wagar (Testimony of Wagar).*
- 4.51. Wagar, a 28-year employee of the Hospital, was trained in HIPAA, and also is in charge of the Hospital's Medical Clinic, Clinic Lab and Rehabilitation Center. She also sends out regular Covid Reports to the County Health District. *Testimony of Wagar and Ex. 40*
- 4.52. Hamilton had taken issue with Wagar's email to all Hospital employees since she had 'exceeded her authority'. *Testimony of Wagar.*
- 4.53. Wilbur had told Wagar to send out the message. The Hospital's past practice was for Wagar to send out such notices. *Testimony of Christina Wagar.*
- 4.54. Hamilton brought the matter to her direct supervisor, CEO Wilbur. She believed Wagar's announcement of Little's passing was inappropriate and should have been done through the Hospital's HR Department after obtaining a HIPAA waiver from Little's family. Hamilton was unsure if Wagar had obtained such waiver. *Testimony of Hamilton.*

- 4.55. Wilbur, who had no HIPAA training, responded that Wagar was 'connected in the community' and 'that's how she is'. He did express concern about the possible lack of authorization for Wagar to notify the Hospital employees about Little's passing. *Testimony of Hamilton.*
- 4.56. CEO Wilbur had known Wager for more than 25 years. Both live in Newport *Testimony of Wilbur.*
- 4.57. Wagar, a long-time mentee and friend of Wilbur, had been appointed the Hospital's COO by Wilbur without the job opening up to other applicants and without a formal interview process. *Testimony of Wilbur.*
- 4.58. Wilbur had hoped Wagar would one day take over as the Hospital's CEO. *Testimony of Wagar.*
- 4.59. Jenny Smith (Smith), a direct report to Hamilton, recalled Wagar sending out the notification about Little's passing. Smith discussed the situation with Hamilton. Smith didn't think Wagar sending out such a notice was a HIPAA violation, since Wagar was in COVID-19 Incident Command and also the Disaster Management Supervisor and was responsible for acute care reporting, including daily reporting including Medicare and Medicaid funding. However, Smith did not direct Hamilton to a specific policy. *Testimony of Jenny Smith (Testimony of Smith).*
- 4.60. Shortly after, Hamilton also learned Wagar may have accessed additional confidential patient information including the medical records of her husband, Robert Wagar, and another employee, Elaine Myer. *Testimony of Hamilton.*
- 4.61. Hamilton was unsure if Wagar, even as the Hospital's COO, was authorized to review and disclose such confidential, HIPAA-protected patient medical records. *Testimony of Hamilton.*
- 4.62. HIPAA-protected medical records should only be accessed by those who need to view them. *Testimony of Wilbur.*
- 4.63. A former employee (Burchal) had been terminated for unauthorized access of HIPAA medical records. *Testimony of Wilbur.*
- 4.64. Hamilton decided to look into the matter. Hamilton reviewed Wagar's Chief Operating Officer job description, the Hospital Organization Chart and COVID-19 Incident Command Structure. Hamilton found nothing in any of the documents expressly authorizing Wagar to access such HIPAA-protected medical records. *Testimony of Hamilton, Ex. B and Ex. 40.*
- 4.65. Neither the term 'PHI' (Protected Health Information) nor 'HIPAA' is referenced appeared in Wagar's COO job description. *Testimonies of Hamilton and Wagar.*

- 4.66. Next, Hamilton reviewed the Hospital's 'Minimum Use Policy', which limited access to confidential medical records and required justification and approval from a supervisor, who was Wilbur. *Testimony of Hamilton and Ex. E.*
- 4.67. Hamilton approached Wilbur again about her concerns. Once again, Wilbur was dismissive of her concerns stating, 'It's just Chris'. During their conversation, he never told Hamilton to take her concerns to the Hospital's Privacy Officer or ever reference a Hospital Privacy Policy regarding the potentially unauthorized disclosure of HIPAA-protected information. *Testimony of Hamilton Exs. L & N.*
- 4.68. Wagar denied accessing her husband's medical record through Hospital's EPIC medical record system, but did access them through his patient access. She denied using his records for training purposes, but did openly speak about his condition and treatment during a Senior Team Meeting. *Testimony of Wagar.*
- 4.69. In small hospitals, it is not uncommon for employees to work outside their job descriptions. *Testimony of Melanie Endicott Kiss (Testimony of Kiss).*
- 4.70. Wagar 'wears many hats' for the Hospital, including working in the Hospital's COVID-19 Incident Command, from March 2020 to October 2020, which Jenny Smith took over in October 2020. Her responsibilities included delegating duties including access to medical records and running clinical reports. Smith does not have access to clinical records and has no experience in the area, since she comes from a marketing background. *Testimony of Smith.*
- 4.71. During COVID-19, Wagar ran weekly reports which included reviewing patient medical records for COVID-19 death reporting. Wagar would also discuss if an employee was not up-to-date on immunization. *Testimony of Wagar.*
- 4.72. Wagar was responsible for the various clinical departments of the Hospital so there was a need to access patient records. *Testimony of Smith.*

Issues Between Hamilton and Wagar-

- 4.73. In June and August of 2022, Hamilton voiced concerns to Wilbur regarding Wagar's behavior in the workplace including: Stomping around, slamming doors and aggressive hand gestures. Wilbur did nothing. *Testimonies of Hamilton and Wilbur.*
- 4.74. Wagar often found herself at odds with Hamilton on several instances where their duties overlapped. Wagar and Hamilton, who were peers and did not report to one another, did not work well together. She often viewed Hamilton's management approach to handling issues as 'excessive'. *Testimony of Wagar.*
- 4.75. Wagar reported Hamilton to Wilbur regarding an instance of Hamilton accessing security cameras to review footage of the nurses due to a recent incident, which required H.R. involvement. Wagar though Hamilton was 'spying' on the nurses. *Testimony of Hamilton.*

Conversations with Jenny Smith-

- 4.76. Jenny Smith (Smith), an 11-year Hospital employee, serves as the Hospital's Director of Strategic and Community Engagement and reported directly to Hamilton. She also serves on the Hospital's Medical Ethics Advisory Committee. *Testimony of Smith.*
- 4.77. Prior to becoming the Hospital's Director of Strategic and Community Engagement, Smith served as the Hospital's Marketing & Foundation Director, responsible for overseeing the Hospital's marketing operations. *Testimony of Smith.*
- 4.78. Smith's job description was revised in February 2022, but still 'pending', since her responsibilities in COVID-19 Incident Command were only temporary and not listed in her job description. *Testimony of Smith.*
- 4.79. It was not unusual for Smith, and other hospital employees, to have duties outside of their job descriptions. *Testimony of Smith.*
- 4.80. She also worked in COVID-19 Incident Command, overseeing the daily COVID-19 reporting, which did not require access to patient medical records. Wagar took over the position. *Testimony of Smith and Ex. 41.*
- 4.81. Smith is Hospital Chief Financial Officer (CFO) Kim Manus' stepdaughter. *Testimony of Smith and Testimony of Kim Manus (Testimony of Manus).*
- 4.82. Smith and Hamilton often discussed Wagar slamming doors and other upsetting behaviors. *Testimonies of Hamilton and Smith and Ex. X.*
- 4.83. Smith had known Wagar for over 11 years. The two did not work well together. *Testimony of Smith.*
- 4.84. Smith was aware Wilbur and Wagar were close, and that he was grooming her to become CEO. She viewed Wagar as 'untouchable' since Wilbur rarely held her accountable. Smith was unaware of Wagar ever being disciplined for anything in her 11 years of working with Wagar. *Testimony of Smith.*
- 4.85. Smith recalled going to Wilbur at least three times during her employment to complain about Wagar's behavior. Wilbur never did anything. Smith also went to Commissioner Robertson regarding Wagar's behavior and was seeking other employment because of it. *Testimony of Smith.*
- 4.86. When Smith learned Hamilton was looking into possible HIPAA violations by Wagar, she urged Hamilton to 'thread lightly', due to Wagar and Wilbur's relationship. *Testimonies of Hamilton and Smith.*

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- 4.87. Hamilton had asked Smith if Wagar had any need to access patient charts. Smith responded 'yes' since she was the Hospital's Infection Prevention and Employee Health and Safety, including compiling all of the lab results, including COVID Incident Commander. *Testimony of Smith and Ex. 34.*
- 4.88. Previously, Smith had often asked Wagar to look up Critical Care Data to clear up inconsistencies for Critical Care Unit reporting. *Testimony of Smith and Ex. 34.*
- 4.89. Smith told Hamilton, 'If it's about Wagar's unprofessional behavior, then address it. If it's about HIPAA, she [Hamilton] was wrong'. Hamilton responded that if Wagar was no longer in COVID-19 Incident Command, she shouldn't have access to patient records'. *Testimony of Smith and Ex. 34.*
- 4.90. Smith felt like Hamilton was on a 'witch hunt' regarding Wagar. *Testimony of Smith.*
- 4.91. Smith acknowledged she was not authorized to determine who should have access to confidential patient information and didn't know if Wagar was authorized to access such information. Her job description makes no mention of investigating HIPAA violations or references HIPAA at all. *Testimony of Smith and Ex. J.*
- 4.92. Smith never told Hamilton not to report Wagar's access of HIPAA-protected records. *Testimony of Hamilton.*

Wagar's 'Those People' Comment-

- 4.93. Hamilton also had concerns when Wagar made a comment to the Senior Team, with Hamilton and Smith present, regarding Hospital brochures being printed in Spanish, saying 'None of those people are in this community', referring to Spanish-speaking people. *Testimonies of Hamilton and Smith.*
- 4.94. At the evidentiary hearing, Wagar denied the claim, asserting she has family members who are Hispanic. *Testimony of Wagar.*

Wagar's Interview on Hospital Time-

- 4.95. On Sunday, October 23, 2022, Hamilton checked Wagar's work calendar, to see about her availability for scheduling a meeting to discuss upcoming union collective bargaining negotiations. Wagar's calendar listed she would be gone on Monday, October 24, 2022 and Tuesday, October 25, 2022, for a 'site visit'. Hamilton soon learned Wagar was actually going to a job interview in Elma, Washington, west of Olympia, Washington. *Testimony of Hamilton.*
- 4.96. Wagar later changed her Outlook calendar from 'site visit' to 'Leave of Olympia'. *Testimony of Wagar.*
- 4.97. Hamilton inquired of Wilbur if Wagar had put submitted leave for her job interview. Wilbur told Hamilton, 'Don't worry about it. She will'. *Testimony of Hamilton.*

- 4.98. At the evidentiary hearing, Wilbur then testified he had approved Wagar's job interview, and since she was an exempt employee who had 'worked a ridiculous amount of hours during COVID-19' and had 'already worked 40 hours week for that week', no leave needed to be taken. *Testimony of Wilbur.*
- 4.99. However, on Monday, October 24, 2022 and Tuesday, October 25, 2022, when Wagar went to her job interview without taking leave, she could not have already worked 40 hours that week. *Testimony of Hamilton.*
- 4.100. Wagar interviewed at Summit Pacific, in Elma, Washington, on Monday for a half day and all of Tuesday. She is an 'Exempt' employee, so she didn't take Paid Time Off (PTO). *Testimony of Wagar.*
- 4.101. Wagar submitted her timesheet for the period and did not take any time off for her job interview on Monday October 24, 2022 and Tuesday, October 25, 2022. *Ex. EE.*

October 27, 2022 Executive Session-

- 4.102. After going to Wilbur and repeatedly being dismissed regarding her concerns, Hamilton, on the third instance, Wagar's failure to take leave for a job interview, realized it was a 'pattern that could no longer be ignored'. *Testimony of Hamilton.*
- 4.103. On October 27, 2022, Hamilton brought her concerns to the Hospital's Board of Commissioners during an Executive Session, regarding Wagar's: (1) Potential HIPAA and Hospital violations; (2) Interviewing for a job while on hospital time without taking leave; and (3) Making discriminatory comments based on National Origin. *Testimony of Hamilton and Exs. 35 & 36.*
- 4.104. Hamilton had drafted a Whistleblower Report, outlining the potential violations. However, Commissioner Walruth had concerns about it being provided to the Board since it might be disclosable as a public record. *Testimony of Hamilton and Ex. Y.*
- 4.105. Hamilton identified herself as a 'whistleblower', since she believed the disclosure of HIPAA-protected medical records was improper and had been repeatedly dismissed by her supervisor, Hospital CEO Wilbur. *Testimony of Hamilton.*
- 4.106. During the Executive Session, Hamilton also presented the Board with Wagar's COO job description, Covid Incident Command Structure and various, applicable Hospital policies. *Testimony of Hamilton and Testimony of Lois Robertson (Testimony of Robertson).*
- 4.107. Hamilton believed every potential HIPAA violation warranted investigation to protect the Hospital from a lawsuit. *Testimony of Hamilton.*
- 4.108. While none of policies cited by Hamilton referenced a need to access medical records, the 'language is loose and can be interpreted either way'. *Testimony of Robertson.*

- 4.109. The Board requested Hamilton investigate the issues, most notably, the potential HIPAA violations. While Hamilton had conducted a 'couple of dozen' HIPAA investigations in her previous employments, she declined since she was the complaining party. She recommended an independent third-party conduct the investigation. *Testimony of Hamilton and Ex. 9.*
- 4.110. At the conclusion of the Executive Session, the Board asked Hamilton to continue to 'gather information', not conduct an 'investigation'. The Board requested she obtain the medical record audit log and report back to the Board. *Testimonies of Kiss and Hamilton.*

Keane's Arrival-

- 4.111. On October 31, 2022, Merry-Anne Keane (Keane) became the Hospital's CEO. *Testimony of Merry-Anne Keane (Testimony of Keane).*
- 4.112. Wilbur's last day as the Hospital's CEO was October 31, 2022. However, he remained employed at the Hospital in an 'advisory' role, until December 31, 2022. Between October 31, 2022 and December 31, 2022, Wilbur helped to train and get Keane 'up to speed' with the CEO job. *Testimony of Wilbur.*
- 4.113. Keane has 32 years of health care service, including 11 years of experience as an administrator. *Testimony of Keane.*
- 4.114. Keane knew Wilbur from their previous work on several healthcare committees. *Testimony of Keane.*

Fact-Finding EPIC Records Review-

- 4.115. In order to obtain a record of the HIPAA-protected patient files potentially accessed by Wagar, Hamilton went to Kim Manus (Manus), the Hospital's Chief Financial Officer (CFO) and also the current Privacy Officer's, Carol O'Leary (O'Leary), boss. *Testimony of Hamilton.*
- 4.116. Regarding obtaining the records, Manus told Hamilton that O'Leary might contact Wagar, since they were friends. Manus suggested going to Candance Abraham (Abraham), [former] EPIC Application Analyst and previous Privacy Officer. *Testimony of Kim Manus (Testimony of Manus) and Testimony of Hamilton.*
- 4.117. Manus has only a professional relationship with Wagar. *Testimony of Manus.*
- 4.118. Manus, also a former Hospital Privacy Officer, never told Hamilton she had to go to the current Privacy Officer, O'Leary, regarding the potential HIPAA violations. *Testimony of Hamilton.*

[Continued]

- 4.119. On October 31, 2022, Hamilton obtained the EPIC User Access log, a log detailing the access by Hospital employees of HIPAA-protected patient medical records. She obtained the log from Abraham, who assisted Hamilton in understanding the report. *Testimony of Hamilton, Testimony of Candance Abraham (Testimony of Abraham) and Exs. 3 & 43.*
- 4.120. Abraham never told Hamilton she needed to go to the current Hospital Privacy Officer, Carol O’Leary, regarding her concerns. *Testimony of Hamilton.*
- 4.121. The EPIC program allows for access to administrative data (contact addresses, etc.) and a patient’s clinical data (HIPAA-protected). *Testimony of Abraham.*
- 4.122. Several years earlier, the Hospital had implemented the EPIC medical record system which is widely used in the region for sharing patient information between hospitals. *Testimony of Abraham.*
- 4.123. Access to the EPIC system is based on an employee’s job, a ‘role-based access’, since ‘functionality’ determines access to the system. *Testimony of Abraham.*
- 4.124. Providence Health Services, through Tegria, oversees the EPIC system and decides who gets access, based on the employee’s role, not necessarily based on an employee’s job description. *Testimony of Abraham.*
- 4.125. The EPIC audit limits the search based on: (1) Selecting a patient; (2) Selecting the ‘end user’; then (3) Establishing the time period. *Testimony of Abraham.*
- 4.126. The EPIC Report did not show both the Administrative and Clinical accesses by Wagar. *Testimony of Hamilton.*
- 4.127. Abraham determined Wagar had not accessed her husband’s clinical medical record. *Testimony of Abraham.*
- 4.128. Abraham determined Wagar had accessed Rita Little’s medical record as a ‘specimen inquiry touch’, which ‘doesn’t necessarily mean lab access’. *Testimony of Abraham.*
- 4.129. Abraham suggested a person had to look at Wagar’s patient file ‘touches’ and look at her job roles to determine whether such ‘touches’ were ‘appropriate’ or ‘inappropriate’. *Testimony of Abraham.*
- 4.130. Any HIPAA violations were to be reported. *Testimony of Abraham.*
- 4.131. Hamilton learned from Manus that an EPIC record ‘touch’ did not necessarily mean ‘access’. Further, in intensive review would be needed to determine which, if any, clinical information Wagar may have accessed in each patient file. *Testimony of Hamilton.*

- 4.132. On the same day, Hamilton provided Commissioner Robertson with the EPIC log report. Hamilton disclosed to Robertson the EPIC log did not show any contact by Wagar of her spouse, Robert Wagar's medical records. *Testimony of Hamilton.*
- 4.133. Manus later learned Abraham could not provide a full report of 'touches' by Wagar, since there needed to be more specific names. Manus thought it was 'b.s.' since she had previous EPIC access and was able to pull such 'user' reports. *Testimony of Manus and Ex. 50.*
- 4.134. Hamilton told Manus she didn't want to go back to IT and Abraham, due to a concern about disclosure to Wagar. Manus agreed to run the full EPIC report. *Testimony of Manus and Exs. 50 & Ex. 61.*
- 4.135. Once Manus was granted EPIC access, she was able to look up Wagar's user number and focus the search on a one-year period. Due to the voluminous number of 'touches' by Wagar on the various patient files, the computer repeatedly 'froze'. Manus had to schedule to run the report at night, when there was less traffic on the sever. *Testimony of Manus.*
- 4.136. On November 15, 2022, Manus obtained the 7,843-page EPIC Report. She saved it on the Hospital's hard drive then notified Hamilton. *Testimonies of Hamilton and Manus.*
- 4.137. The 7,800-page EPIC report had nearly 76,000 'events' of Wagar accessing Hospital patient medical records. *Testimony of Manus and Ex. D.*
- 4.138. However, Manus cautioned Hamilton the EPIC report may not be useful since someone would need to look at each patient's 'history scene' to determine the extent of access. *Testimony of Manus.*
- 4.139. Manus speculated Wagar may have 'touched' the various patient files as a part of her job running the Hospital's monthly COVID-19 monthly reports for state and federal reporting purposes. *Testimony of Manus and Exs. 58-60.*

Keane Support-

- 4.140. On November 4, 2022, Hamilton met with Keane to discuss the Wagar fact finding. Keane requested to be updated on the investigation going forward. Keane did not record the meeting in her journal. *Testimony of Keane.*
- 4.141. Keane thought Hamilton's fact finding was important and showed support to Hamilton for her to continue to look into the matter. *Testimony of Keane.*
- 4.142. A single instance could constitute a HIPAA violation. *Testimony of Keane.*
- 4.143. Between November 4, 2022 to November 17, 2022, Hamilton reported her activities to Keane who voiced no concern. *Testimony of Hamilton.*

- 4.144. While Keane was not involved in any of Hamilton's investigations, Keane and Hamilton met almost daily to discuss current HR activities, including a lab LGBTQ complaint and the Wagar fact-finding. *Testimonies of Hamilton and Keane.*
- 4.145. Keane found Hamilton's investigation regarding the lab complaint and her recommendation of 'training' to be 'appropriate'. *Testimony of Keane.*

Thursday, November 17, 2022 Executive Session-

- 4.146. Prior to the Executive Session on November 17, 2022, Hamilton met with Keane and Commissioner Robertson to discuss her fact finding. Hamilton brought her computer to show them the 7,800-page report, with 99 unique patients in clinical files, including some employees, which Wagar had accessed. *Testimony of Hamilton.*
- 4.147. Commissioner Robertson recalled being 'shocked'. She took Hamilton's statements as 'fact'. *Testimony of Roberson.*
- 4.148. During the pre-Executive Session meeting, Hamilton expressed concern about Wilbur finding out she was the whistleblower since she feared retaliation from Wilbur, due to his close relationship with Wagar. *Testimony of Keane.*
- 4.149. During the Executive Session, Hamilton noted to the Hospital Board of Commissioners, Wagar had at least 99 accesses of medical records protected by HIPAA. However, Wagar's COO position description, the Incident Command Structure for COVID and the Positive COVID Reporting Policy for the Hospital did not expressly authorize such access. *Testimony of Hamilton.*
- 4.150. Commissioner Melanie Endicott Kiss found it 'astounding to me'. However, Commissioner Kiss, who works in healthcare and has been HIPAA trained, suspected Wagar's access may have to do with COVID-19 reporting and 'may be a part of her job duties', despite it not being listed in her job description. *Testimony of Kiss.*
- 4.151. Hamilton did not convey Smith's opinion to the Board since Smith was not HIPAA trained nor was it clear how the Hospital's Public Information Officer would be aware of who was and was not authorized to access HIPAA-protected medical records. In addition, Hamilton did not think there was any requirement for a whistleblower to disclose the opinions of others. *Testimony of Hamilton.*
- 4.152. Hamilton also did not inform the Board regarding her conversation's with Abraham and Manus regarding Wagar's access to medical records. *Testimony of Keane.*
- 4.153. Hamilton offered if Wagar had accessed medical records she was not authorized to review, she should be terminated. However, the Board decided an investigation was needed before such immediate termination. *Testimony of Kiss.*

- 4.154. Commissioner Elsewick offered if Wagar had accessed the patient records without authorization, she should be discharged. Keane agreed. *Testimony of Hamilton.*
- 4.155. During the Executive Session, no mention was ever made by anyone about taking the matter to the Hospital's Privacy Officer, Carol O'Leary. *Testimonies of Keane and Hamilton.*
- 4.156. At the time, less than one month into the job, Keane was not familiar with the Hospital's Privacy Officer, Privacy Policy, or the Hospital's 'culture'. *Testimony of Keane.*
- 4.157. Hamilton also raised her concerns about Wagar's failure to put in leave to go a job interview in Western Washington. *Testimonies of Hamilton and Keane.*
- 4.158. Hamilton did not mention she had gone to Wilbur, who said he had approved Wagar interviewing on work time. Hamilton believed Wilbur was part of the problem. *Testimony of Kiss.*
- 4.159. Commissioner Kiss found Hamilton's concerns to be 'valid' regarding Wagar's potentially, unauthorized access of HIPAA-protected medical records and a possible ethics violation for going to a job interview without taking personal leave time. *Testimony of Kiss.*
- 4.160. Keane also believed the issues Hamilton raised before the Board 'warranted an investigation'. *Testimony of Keane.*
- 4.161. Commissioner Robertson, a licensed massage therapist and long-time friend of Wilbur, believed a more thorough investigation was needed and wanted an 'unbiased investigation'. However, she was concerned about the cost. *Testimony of Robertson.*
- 4.162. Commissioner Robertson expressed concern that if the HIPAA information had been inappropriately disclosed, the Hospital could face possible litigation. *Testimony of Hamilton.*
- 4.163. Once again, Hamilton declined to investigate the issues since she was the Whistleblower. *Testimony of Hamilton.*
- 4.164. Hamilton suggested a third-party investigator be hired from the Hospital's insurance, Physician's Insurance, and be brought in to investigate. The Board agreed. *Testimonies of Hamilton and Kiss.*
- 4.165. Commissioner Johnson inquired as to whether Wagar should be interviewed before being placed on administrative leave. Hamilton suggested she should not be interviewed at the time, only by the third-party investigator. *Testimony of Hamilton.*

- 4.166. At the conclusion of the Executive Session, the Board understood Hamilton would be contacting the Hospital's insurance, Physician's Assistance, to get an outside party to conduct the investigation. The Board understood Hamilton would make the call to the Hospital's insurance to 'get the ball rolling'. *Testimony of Hamilton and Kiss.*
- 4.167. Hamilton did not offer the Board documents to review, but would turn over the documents to the third-party investigator. *Testimony of Robertson.*
- 4.168. The Executive Session concluded with the Board in agreement to place Wagar on administrative leave, pending an investigation. The Board asked Hamilton if Wagar knew about the matter. Hamilton responded with 'No'. Hamilton asked the Board not to inform anyone, especially Wilbur, she was the 'whistleblower'. *Testimonies of Hamilton and Keane.*
- 4.169. Commissioner Robertson did not recall Hamilton mentioning being a 'whistleblower' until the November 27, 2022 Executive Session. *Testimony of Robertson.*
- 4.170. During the Executive Session, Hamilton was visibly upset, including crying, during the Executive Session. *Testimonies of Keane and Hamilton.*
- 4.171. Hamilton had never filed a whistleblower complaint before. *Testimony of Hamilton.*
- 4.172. No legal counsel was present for the November 17, 2022, Executive Session. *Testimonies of Hamilton, Keane and Robertson.*
- 4.173. Wilbur was not present at the Executive Session. *Testimonies of Hamilton, Keane and Wilbur.*
- 4.174. Later, Commissioner Robertson emailed the other commissioners cautioning them not to speak to anyone regarding the pending investigation, 'since it is an HR issue, we are not at liberty to speak about it'. *Testimony of Robertson and Ex. JJ.*
- 4.175. Following the Executive Session, after seeing how difficult of time Hamilton was having bringing her Whistleblower complaint forward, Keane texted Hamilton saying, 'I will always have your back'. She followed her text up by telling Hamilton she was a 'core' part of the team *Testimony of Keane and Ex. 39.*
- 4.176. On Friday, November 18, 2022, Hamilton notified Wagar of being placed on administrative leave and directed her not to speak with anyone about the pending investigation, except to Keane, Commissioner Lois Robertson or Hamilton. Wilbur would call her later that day to discuss the matter. *Testimony of Wagar.*
- 4.177. On the same day, Keane, Hamilton, and Manus met. Keane and Manus both agreed the Board's decision to place Wagar on administrative leave, pending a third-party investigation was 'wise'. *Testimony of Hamilton.*

- 4.178. Hamilton then contacted the Hospital's insurance, Physician's Insurance, so an independent, third-party investigator could conduct the investigation. *Testimony of Keane.*
- 4.179. Later, Theresa Hollinger (Hollinger), Newport Hospital's Chief Nursing Officer, emailed Hamilton regarding her investigation of Kim Backstreet (Backsreet). Hollinger recommended Backstreet remain employed while the matter was investigated further. Hollinger thanked Hamilton for her help and concluded her email with, 'I am very glad to have help working on the professional environment we need'. *Testimony of Hamilton and Ex. BB.*

Wilbur's Activities Immediately Following Executive Session-

- 4.180. Immediately following the Hospital Board of Commissioners' Executive Session on November 17, 2022, Commissioner Robertson, Keane, and Wilbur, as an 'advisor' to Keane, met. When Wilbur learned the Board had placed Wagar on administrative leave, pending an investigation. He was 'not happy'. *Testimonies of Keane and Wilbur.*
- 4.181. Wilbur said Wagar had accessed medical records for COVID-19 incident reporting, even if her job description did not mention it. He also stated he had approved Wagar to interview without taking leave, since Wagar 'had always put in her 40 hours of work' and had 'already worked 40 hours that week'. *Testimonies of Keane, Robertson and Wilbur.*
- 4.182. Wilbur was angry the Board was 'not being told the truth' by Hamilton'. *Testimony of Keane, Robertson and Wilbur.*
- 4.183. Wilbur also suggested any investigation be done internally, declaring, 'We can resolve this matter in four to five hours'. *Testimonies of Keane and Robertson.*
- 4.184. Wilbur admitted, if the violations by Wagar were 'egregious', then an outside investigator would be useful, but urged the matter first be investigated internally so it could be expediated. *Testimony of Keane.*
- 4.185. He thought the Hospital's Privacy Officer, Carol O'Leary, should conduct the investigation 'in house' and did not believe Wagar should be suspended while O'Leary investigated. *Testimonies of Wilbur and Keane and Ex. C.*
- 4.186. Anyone having concerns with a possible HIPAA violation must go to the HIPAA Privacy Officer. However, the Privacy Officer was not listed on the Hospital's Organization chart. *Testimony of Wilbur and Ex. A.*
- 4.187. Wilbur also argued the Hospital never suspends employees until after a full investigation and doesn't bring in third parties to investigate. *Testimony of Wilbur.*

- 4.188. Casey Scott, H.R. Manager, has conducted the Kimberley Backstreet HIPAA violation investigation, not the Privacy Officer. During the investigation, Backstreet was placed on administrative leave. No HIPAA violation was found. *Testimony of Scott.*
- 4.189. However, Wilbur had previously placed another employee, Lori Munson, on administrative leave during her investigation. She was later terminated. *Testimony of Hamilton.*
- 4.190. Commissioner Robertson, a long-time friend of Wilbur, did not believe Wagar was 'in Tom's [Wilbur] pocket'. *Testimony of Robertson.*
- 4.191. Prior to the November 17, 2022 meeting, Wilbur had never spoken with Keane regarding Hamilton. *Testimony of Keane.*
- 4.192. Since Wilbur was advocating for an internal investigation, Keane, who had been on the job for only 18 days, offered to do the investigation, with the assistance of Hospital Privacy Officer, Carol O'Leary. *Testimony of Keane.*
- 4.193. At the evidentiary hearing, Keane offered she had never done a HIPAA investigation of 'this magnitude'. However, in reality, Keane admitted she had never led a HIPAA investigation and hadn't even read the Hospital's HIPAA policy at the time. *Testimony of Keane.*
- 4.194. Commissioner Robertson 'jumped at the chance' for Keane to do the investigation, due to the Hospital's 'financial concerns' and since Keane was new and believed she'd do an 'in-depth, thorough and extensive job'. *Testimony of Robertson.*
- 4.195. Commissioner Robertson allowed Keane to do the internal investigation. She then called the other Board members with the decision. *Testimony of Robertson.*
- 4.196. Commissioner Kiss believed a third-party investigator would still be coming in, despite Keane conducting her own investigation. *Testimony of Kiss and Ex. R.*
- 4.197. During the post Executive Session meeting, neither Keane nor Commissioner Robertson mentioned who the whistleblower was, but it 'wasn't hard to figure out' it was Hamilton. *Testimony of Wilbur.*
- 4.198. The meeting concluded with Keane, not an outside party, now being in charge of conducting the investigation of Wagar's potential HIPAA violations and ethics violation. *Testimony of Keane.*
- 4.199. Between Thursday, November 17, 2022 and Monday, November 21, 2022, Wilbur communicated, via text message, with Commissioner Sue Johnson. In his text message, Wilbur said, 'We need to talk...'. Commissioner Johnson responded, 'I would also tell Chris [Wagar] not to talk to them without a lawyer'. *Ex. S.*

- 4.200. On Friday, November 18, 2022, at 5:34 a.m., Wilbur texted Commissioner Johnson requesting to talk. He also texted Dr. Reinke, the Hospital's Chief of Staff, and shared Commissioner Robertson's phone number with Reinke. Later, Wilbur bragged about earning his cocktails for his behind-the-scenes work. *Ex. DD.*
- 4.201. Wilbur then called Keane and asked her to expediate the HIPAA investigation. Next, he called Wagar to give her an update. *Testimony of Wilbur.*
- 4.202. Between Thursday, November 17, 2022 and Sunday, November 20, 2022, Wilbur and Wagar communicated at least once on Friday, twice on Saturday and twice on Sunday. *Testimony of Wagar.*
- 4.203. Commissioner Kiss did not have any conversations with Wilbur between November 18, 2022 and November 20, 2022. *Testimony of Kiss and Ex. RR.*
- 4.204. Keane was not aware of Wilbur's actions 'behind the scenes', between Thursday, November 17, 2022 to Monday, November 21, 2022, which included calling and texting the various persons involved the investigation. *Testimony of Keane.*
- 4.205. At the evidentiary hearing, Wilbur admitted, despite no longer being the Hospital's CEO, between November 17, 2022 and November 21, 2022, he texted and called Commissioner Robertson, Commissioner Johnson, Dr. Reinke and Wagar regarding Hamilton's Whistleblower Complaint. Wilbur also requested an 'off the record' conversation with Commissioner Robertson. *Testimony of Wilbur and Ex. DD.*
- 4.206. Later, on Saturday, November 19, 2022, Keane contacted Hamilton asking for all the documentation she had. Hamilton sensed Keane was using a 'terse tone' with her at the time. Keane told Hamilton she would be doing the 'unbiased investigation' regarding Wagar accessing patient records. *Testimony of Hamilton and Ex. 39.*
- 4.207. On the evening of Saturday, November 19, 2022, Keane called O'Leary to request her assistance to do an EPIC records access review regarding Wagar. *Testimonies of Keane, O'Leary and Ex. 2.*

Keane's Two Call Ethics Violation Investigation-

- 4.208. On Saturday, November 19, 2022, Keane called Wilbur, who said he approved Wagar interviewing on Hospital work time. *Testimony of Keane.*
- 4.209. Next, Keane called Wagar, who confirmed Wilbur knew of her job interview in Western Washington and had approved it. *Testimony of Keane.*
- 4.210. No evidence exists in the record Keane reviewed Hospital policies and/or federal or state Wage and Hour laws and regulations as a part of her investigation.
- 4.211. Keane issued no 'findings' regarding the ethics allegation. She did not issue a report of her investigation. *Testimony of Keane.*

Keane's Sunday Morning HIPAA Investigation-

- 4.212. On Sunday, November 20, 2022, at 10:00 a.m., Keane, with the assistant of the Hospital's Privacy Officer, Carol O'Leary, began investigating of Wagar's access to medical records. Keane needed assistance deciphering the EPIC access report. *Testimony of Keane and Testimony of Carol O'Leary (Testimony of O'Leary) and Exs. 1, 58-60.*
- 4.213. Carol O'Leary serves as the Hospital's Privacy Officer and wrote the Hospital's HIPAA Security Policy. *Testimony of O'Leary and Ex. F.*
- 4.214. Failure to report of HIPAA violation is a federal offense. *Testimony of O'Leary.*
- 4.215. O'Leary understood there was a 7,800 page document, with 75,987 'events'. Initially, she was 'overwhelmed' by the amount of information provided, which included over a hundred patients and employees. *Testimony of Keane.*
- 4.216. O'Leary initially could not believe the number of 'touches' of medical records by Wagar. *Testimony of Keane and Ex. F.*
- 4.217. O'Leary believed she did not have any bias in the case since she and Wagar only maintain a professional relationship and do not associate outside of work. *Testimony of O'Leary.*
- 4.218. Due to the volume of the report, Keane decided to do a 'random audit' of the 100 plus patient and employee files. She suggested reviewing just five. *Testimony of Keane and Ex. 2*
- 4.219. Based on Keane's directive, O'Leary looked up three patients, including Rita Little and two other patients, and two employees. *Testimonies of O'Leary.*
- 4.220. O'Leary knew Wagar ran monthly COVID-19 reports for the Board and for state and federal reporting purposed which could show thousands of 'touches', when she pulled the reports, even though such running of reports was not listed in her job description, which pre-dated COVID-19. *Testimony of O'Leary.*
- 4.221. O'Leary had previously worked with Wagar on such COVID-19 reporting. *Testimony of O'Leary.*
- 4.222. O'Leary determined Wagar had accessed her patient file, via the EPIC 'My Chart' feature. However, she hadn't 'touched' any other 'Wagar files', including her spouse's clinical file. *Testimony of O'Leary and Ex. 2.*
- 4.223. O'Leary determined Wagar had made no improper patient health record 'touches', meaning she had not accessed any patient clinical files. *Testimony of O'Leary.*
- 4.224. Keane concurred with O'Leary's view that Wagar's access to medical records was 'appropriate', though Keane cited Wagar's job description as a reason for her accessing the records. *Testimony of Keane.*

- 4.225. At 11:38 a.m., after completing a ninety-eight-minute investigation, Keane sent a text message to Commissioner Robertson, Wilbur and Wagar, requesting a meeting the next day, on Monday, November 21, 2022, at 7:30 a.m., to discuss her findings. *Testimony of Keane and Ex. DD.*
- 4.226. She then called Wagar to inform her she had been 'cleared of all of the things'. *Testimonies of Keane and Wagar.*
- 4.227. No evidence exists in the record Keane reviewed Hospital policies and/or federal and state HIPAA laws and regulations, as a part of her investigation.
- 4.228. Keane issued no 'findings' regarding the potential HIPAA violation. She only made a page and a half of handwritten notes. She did not issue a report of her investigation. *Testimony of Keane and Ex. Q.*

Keane Places Hamilton on 'Home Assignment'-

- 4.229. The following day, Monday, November 21, 2022, at 7:30 a.m., Keane met with Commissioner Robertson, Wilbur, Dr. Reinke and Wagar. Keane reinstated Wagar. While Keane kept a journal for work, she kept no notes regarding the meeting. *Testimony of Keane and Ex. J.*
- 4.230. Wagar had been on administrative leave two days, Thursday, November 17, 2022, and Friday, November 18, 2022. Wagar never received any discipline. *Testimony of Keane.*
- 4.231. Keane claims she 'coached' Wagar regarding her conduct. However, Wagar denied the claim. *Testimonies of Keane and Wagar.*
- 4.232. Immediately following the meeting, Keane called Hamilton into her office. Keane offered Hamilton the option to either take paid administrative leave, since it was Thanksgiving week or else to be placed on 'home assignment'. Keane ordered Hamilton not to work from the office. Keane stated she wanted 'space' to 'figure things out'. Hamilton's objected to the two options as retaliation since she was a 'Whistleblower'. *Testimony of Keane.*
- 4.233. Keane told Hamilton the ethics violation of Wagar going to a job interview while on work time was 'unsubstantiated' since Hamilton had allowed one of her employees, Kristin Wall, to previously take 1.5 hours of 'flex time'. *Testimony of Hamilton.*
- 4.234. During the meeting. Keane questioned Hamilton why she had not disclosed to the Board that Wilbur had approved Wagar's job interview. Hamilton responded that she had. *Testimony of Hamilton.*
- 4.235. During her meeting with Hamilton, Keane also made no mention of Hamilton 'withholding information' or receiving a salary increase. She did not note either in her journal. *Testimony of Keane and Ex. J.*

- 4.236. When Keane sent Hamilton on 'home assignment', she did not provide a written notice to regarding the reason for 'home assignment'. *Testimony of Hamilton.*
- 4.237. Keane claimed she was familiar with the Hospital's 'Whistleblower Policy' at the time. *Testimony of Keane.*
- 4.238. Wilbur agreed with Keane sending Hamilton home. *Testimony of Wilbur.*
- 4.239. The following day, November 22, 2022, Hamilton emailed Keane and the Hospital Board of Commissioners, requesting information as to why she was placed on 'home assignment', without any written notice of charges or specific reason. *Testimony of Hamilton and Ex. AA.*
- 4.240. Afterward, November 21, 2022, Keane met with Casey Scott, H.R. Manager, for him to research: (1) Policy on HIPAA, who is notified of potential breach and what the process is for investigation; (2) Policy on Administrative Leave and the process for putting someone on leave; (3) Process for COVID screening on employees; and (4) Provide synopsis of event for the past 7 months'. *Testimony of Scott and Ex. 51.*

Keane Conducts a 'Culture Check' Directed on Hamilton-

- 4.241. Once Hamilton was placed on 'Home Assignment', Keane began a 'culture check', focused on Hamilton's interactions with other employees. *Testimony of Keane.*
- 4.242. As a part of the Hamilton 'culture check', Keane interviewed employees, asking them, 'tell me about your time working with Laura?' She then asked them to write up statements. *Testimony of Keane.*
- 4.243. During Keane's 'culture check', she received 11 complaints/statements from: Tim Rumph, Brian Burkhead, Lisa Fisher, Casey Scott, Christine Wagar, Christie Wall, Kimberley Bradstreet, Buzz Price, who didn't even work with Hamilton but emailed Kim Manus, and Derek Dubois, a former Hospital vendor, who submitted a complaint, which Wagar forwarded to Keane. Many of the complaints also came from employees who were either under investigation or had been investigated by Hamilton, including: Tina Batsch, Loren Munson and Dana Homan. *Testimony of Keane and Exs 5, 10-16, 22, 29-32, and 37.*
- 4.244. Upon returning from Administrative Leave, Wagar had even met with each of her direct reports and asked each one to 'document their concerns regarding Hamilton and to give them to Keane'. Her direct reports included: Kimberley Bradsteet, Brian Burkhead, John Furman, and Tina Batsch. *Testimony of Wagar.*
- 4.245. Wagar, who never voiced any complaints about Hamilton to anyone, prior to November 21, 2022, also provided her own six-page complaint, regarding Hamilton. *Testimony of Keane and Ex. J.*

- 4.246. Loraine Stevens did not want to submit a statement regarding Hamilton to avoid getting on Hamilton's 'bad side'. *Testimony of Keane.*
- 4.247. Keane never investigated any of the employees' complaints. *Testimony of Keane.*
- 4.248. Complaints against Hamilton: 11. Statements in Support of Hamilton: 0.
- 4.249. Between April 2022 and October 31, 2022, when Wilbur served as Hamilton's supervisor, Wilbur never received any complaints about Hamilton. *Testimony of Wilbur.*
- 4.250. From October 31, 2022 to November 21, 2022, prior to her 'culture check', Keane did not receive any employee complaints regarding Hamilton. *Testimony of Keane.*

Workplace Bullying and Creating a Bad Environment-

- 4.251. During Keane's 'culture check' of Hamilton, Keane also met with Casey Scott (Scott), a sixteen-year Newport Hospital employee and H.R. Manager. Scott discussed Hamilton's previous 'bullying' of Lisa Fisher, Newport Hospital's Recruitment & Onboarding Specialist. Scott also expressed he was looking for other work, due to Hamilton. *Testimony of Keane and Testimony of Casey Scott (Testimony of Scott) and Ex. J.*
- 4.252. Upon Hamilton's arrival to Newport Hospital, Scott had immediately noticed some 'cultural differences' between how Hamilton conducted the H.R. Department and how it had been run prior under CHRO Joseph Crouse. *Testimony of Scott.*
- 4.253. Scott understood Human Resources' job is to 'balance what's right for the organization and what's right for the employee. It's about serving the public'. *Testimony of Scott.*
- 4.254. Soon after April 2022, when Hamilton began working, Scott became aware of Hamilton's issue with Lisa Fisher, including the timely posting of job openings at the Hospital. *Testimony of Scott.*
- 4.255. On August 11, 2022, Hamilton emailed Scott regarding his 'workplace bullying' concerns involving Lisa Fisher. Hamilton expressed concerns about any NHHS employee who feel he/she is the subject to bullying. Hamilton suggested Scott report such bullying to Tom Wilbur, Hamilton's supervisor, or to the Board of Commissioners. He never did. *Ex. CC.*
- 4.256. However, Scott wanted to be involved in any future interactions between Hamilton and Fisher, so it didn't become a 'he said/she said' kind of situation. *Testimony of Scott.*
- 4.257. While Scott did not think he was being 'bullied' by Hamilton, he did believe he was the subject of 'harassment'. *Testimony of Scott.*

- 4.258. Keane asked Scott to write up a seven-month synopsis of his interactions with Hamilton. *Testimony of Scott and Ex. 22.*
- 4.259. Several employees told Scott, 'Hamilton won't last', implying she would be fired soon enough. *Testimony of Scott.*
- 4.260. Hamilton didn't align with the organization [Hospital]. *Testimony of Scott.*
- 4.261. As a part of her 'culture check' of Hamilton, Keane also met with Lisa Fisher, Newport Hospital's Recruitment & Onboarding Specialist. *Testimony of Lisa Fisher (Testimony of Fisher) and Ex. C.*
- 4.262. Like Scott, Fisher noticed the hospital 'culture' change when Hamilton began working as the CHRO. *Testimony of Fisher and Ex. 10.*
- 4.263. In May 2022, Hamilton had concerns regarding Fisher's handling of 'Hospital Week'. Fisher always felt like she was 'walking on eggshells' around Hamilton, who's management style made her difficult to work with. *Testimony of Fisher.*
- 4.264. At one point, Hamilton had a 'closed door meeting' with Fisher. During the meeting, Hamilton 'ranted and raved about the mishandling and purchase of expensive items for 'Hospital Week'. *Testimony of Fisher.*
- 4.265. Fisher admitted many of Hamilton's 'rants' related to Fisher's job performance. *Testimony of Fisher.*
- 4.266. On May 8, 2022, Fisher broke her shoulder and was out on leave in July. She believed it 'saved her job' since she felt it was just a matter of time until Hamilton terminated her. *Testimony of Fisher.*
- 4.267. Fisher also recalled Hamilton calling her out in a staff meeting regarding her pronunciation of 'bagel'. Hamilton believed if Fisher could not pronounce the common word properly, Fisher, as the Hospital's recruiter, might not present the Hospital in the best light. *Testimony of Keane and Ex. 15.*
- 4.268. Fisher informed Keane she was looking for other work due to Hamilton. *Testimony of Keane.*
- 4.269. Fisher felt 'belittled, targeted and humiliated' by Hamilton. *Testimony of Fisher.*
- 4.270. At one point, Casey Scott told Fisher, 'I'm tired of her [Hamilton] bullying you'. *Testimony of Fisher.*
- 4.271. When Keane interviewed Fisher regarding her experiences with Hamilton, she asked about whether Hamilton had 'bullied her'. Keane asked Fisher to look over the Hospital's 'Bullying Policy' and 'Code of Ethics' to see if they apply. Keane stated, 'I strongly encourage you to review this' as she handed Fisher the 'Bullying Policy'. Keane then requested a statement from Fisher. *Testimony of Fisher and Exs. 10, 15, 16 and J.*

- 4.272. Prior to her meeting with Keane, Fisher had never used the term ‘bully’ to refer to Hamilton and she had not reviewed the Hospital’s ‘Bullying Policy’ before then. *Testimony of Fisher.*
- 4.273. Keane also asked Brian Burkhead to do the same. *Testimony of Keane. Ex. 11.*
- 4.274. Keane never interviewed Hamilton to get ‘her side’ regarding the ‘bullying’ and ‘bad work environment’ complainants, nor provide her with the statements so she could refute them. *Testimony of Keane.*
- 4.275. During her employment, Hamilton had received cards, including a Boss’s Day card on October 16, 2022, and Birthday card, on August 23, 2022, and notes of appreciation regarding her work, including one from Chris Wagar. *Testimony of Hamilton and Ex. W.*
- 4.276. Based on her H.R. experience, Hamilton believed it was not uncommon for employees to believe they were being ‘bullied’ when they were held accountable. *Testimony of Hamilton.*
- 4.277. If Scott had believed he was being ‘bullied’, he could have gone to Hamilton’s supervisor, Tom Wilbur, but never did. *Testimony of Hamilton.*
- 4.278. Prior to Hamilton bringing her Whistleblower complaint, no allegations had ever been made regarding her ‘bullying’ others in the workplace. After November 21, 2022, Fisher, among others, at the request of Keane, came forward. *Testimony of Keane, Exs. U, 15 & 16.*
- 4.279. In addition, Hamilton impacted the Hospital’s ‘culture’. Abraham left the Hospital on December 16, 2022, after giving a one-month notice, due, in part to Hamilton. *Testimony of Abraham.*
- 4.280. Manus was not aware of any concerns regarding Hamilton or any problem with the Hospital’s ‘culture’. *Testimony of Manus.*
- 4.281. Commissioner Kiss, from her experience in healthcare, knows small hospital cultures are hard to change and are sometimes not being taken well by the employees. *Testimony of Kiss.*

[Continued]

November 23, 2022 Meeting-

- 4.282. On November 23, 2022, Keane, with Commissioners Lois Robertson and Melanie Kiss, met with Hamilton and asked, "How do you see this playing out?" Hamilton responded, "Separation", but refused to resign. *Testimonies of Hamilton, Keane and Kiss and Exs. L & DD.*
- 4.283. During the meeting, Keane showed Hamilton the Hospital's HIPAA Reporting Policy, which required alleged violations be reported to the Hospital's Privacy Officer, Carol O'Leary. Hamilton responded she had been following the Hospital's 2016 policy, since it was the one posted on the Hospital's website, which is now outdated. The Hospital's 2016 policy requires reporting to the CEO (Wilbur), which Hamilton claimed she had done on two previous occasions. *Testimony of Hamilton and Ex. 24 (same as Ex. F).*
- 4.284. During the meeting, it was the first time Keane had ever mentioned going to the Privacy Officer. *Testimony of Hamilton.*
- 4.285. During the meeting, besides citing a failure to follow the current Hospital HIPAA Reporting Policy, Keane also referenced the employee complaints, but did not provide the complaints for Hamilton to review and respond to. *Testimony of Keane.*
- 4.286. During the meeting, Commissioner Kiss was unaware what a 'whistleblower' was. *Testimony of Kiss.*
- 4.287. Commissioner Robertson inquired as to the culture at the Hospital. Hamilton conveyed that no one is held accountable. *Testimony of Hamilton.*
- 4.288. Keane asked Hamilton about how she was perceived by others. Hamilton responded she is used to not being liked due to enforcing policies and rules. Hamilton also expressed her frustration with Wilbur being repeatedly dismissive of her concerns regarding Wagar. *Testimony of Hamilton.*
- 4.289. Keane then told Hamilton her collective bargaining duties would be turned over to Casey Scott and she was asked for a list of her outstanding projects, but wanted her to still screen candidates for the Controller position. *Testimony of Hamilton.*
- 4.290. Keane concluded the meeting by suggesting Hamilton pursue the Controller position in the Hospital's Finance Department, as an alternative to job separation. *Testimony of Keane.*
- 4.291. Hamilton asked Keane if she could clear out her office on Sunday, November 27, 2022. The incident had been the 'Most embarrassing event of my career'. *Testimony of Hamilton.*
- 4.292. After the meeting with Hamilton, Keane stopped obtaining employees statements. *Testimony of Keane.*

Hamilton's Follow-Up November 23, 2022 Email to Keane-

4.293. Following the November 23, 2022 meeting with Commissioners Lois Robertson and Melanie Kiss and Keane, Hamilton sent an email with an attached proposed settlement agreement, which included a confidentiality clause and waiver of future damages. Keane acknowledged receipt of the email and proposed settlement and told Hamilton she would need to review with legal counsel within a few days. *Testimony of Hamilton and Exs. 17 & 18.*

Thanksgiving Holiday Break-

4.294. Commissioner Robertson, Keane and Wilbur continued to communicate constantly over the Thanksgiving holiday regarding the on-going situation. *Ex. DD.*

November 27, 2022-

4.295. On Sunday, November 27, 2022, Hamilton cleared out her office, though an official job separation had not occurred. *Testimony of Hamilton.*

November 28, 2022-

4.296. On Monday, November 28, 2022, O'Leary completed the 'in-depth audit' of Wagar's access to medical records, seven days after Hamilton had been placed on home assignment. *Testimony of Keane and Ex. 1.*

4.297. O'Leary emailed Keane after determining Wager had accessed 125 medical charts. However, she found:

'Findings: The charts accessed with the most audit events are related to Health Care Safety Zone patient complaints, family concerns, and HIPAA issued such as patient id mismatch and Infection Control Issues. I did not find any outliers in her access'.

Ex. 1 (same as Ex. 58).

4.298. O'Leary created a spreadsheet with her findings. *Testimony of O'Leary and Ex. 59.*

4.299. Around this time, Commissioner Robertson called each Board member, outside of any public meeting or executive session, to discuss whether Hamilton should be terminated. The Board's decision to terminate Hamilton was 'unanimous'. *Testimony of Robertson.*

[Continued]

November 29, 2022 Executive Session-

4.300. On the evening of Tuesday, November 29, 2022, the Board of Commissioners held a 'Special Meeting' to address Hamilton's employment status. All five members, along with Keane and outside counsel, Attorney Jeane Ball, were present. During the executive session, the Board decided to terminate Hamilton's employment. *Testimony of Kiss and Ex. HH.*

Proposed Severance and Release-

4.301. The following day, on Wednesday, November 30, 2022, Keane sent an email to Hamilton, about the relationship between the Hospital and Hamilton being 'irretrievably broken'. Keane provided a severance and release agreement for Hamilton to sign. The job separation would be termed 'without cause'. *Testimonies of Keane and Hamilton and Ex. M.*

4.302. Keane had stopped actively gathering employee complaints since a decision had already been made to separate Hamilton's employment. However, Hamilton complaints continued to come in. *Testimony of Keane and Exs. 11, 15 & 16.*

December 5, 2022 Board Meeting-

4.303. On Monday, December 5, 2022, Keane recommended the immediate termination of Hamilton to the Newport Hospital Board of Commissioners. The Board took the matter under advisement. *Testimony of Kiss.*

4.304. While the Hospital Board of Commissioners has oversight of the Hospital, the CEO has oversight of the Hospital's day-to-day operations. The CEO does not require Board approval for terminations. *Testimonies of Keane and Wilbur.*

Hamilton's Termination-

4.305. On Thursday, December 8, 2022, Keane and Commissioner Robertson had a telephone conversation regarding the upcoming termination meeting with Hamilton. Keane recorded it in her work journal, citing: Downplay Chris [Wagar], Term- employee complaints, Where she showed poor judgment, and with Mtg w/ Laura, "Not a good fit". *Ex. J at page 46.*

4.306. On Friday, December 9, 2022, at 11:22 a.m., Hamilton sent an email to the Board, which included her Whistleblower Complaint, including:

'[M]y actions taken in an effort to do the right thing, protect the District, and engage with a high level of integrity and ethical conduct has resulted in retaliation by the Superintendent/CEO with direct awareness of the Board of Commissioners'.

Ex. Y.

- 4.307. On December 9, 2022, at 3:00 p.m., CEO Keane, Commissioners Robertson and Kiss met with Hamilton to terminate her employment. *Testimonies of Hamilton, Keane, Kiss and Robertson and Ex. N.*
- 4.308. Keane's decision to terminate Hamilton was made 'with the collaboration of the Board'. *Testimony of Keane.*
- 4.309. During the termination meeting, Keane's reasons for terminating Hamilton included: (1) Botched HIPAA Investigation involving Wagar; (2) Withholding Information, in particular, Wilbur's approval of Wagar to interview on Hospital time; (3) 'Bullying' of employees; and (4) Creating a 'toxic work environment'. *Testimony of Keane and Exs. O & P (same as Ex. 4).*
- 4.310. During the meeting, not every reason for Hamilton's termination was discussed. *Testimonies of Robertson and Keane.*
- 4.311. During the meeting, Keane noted in her work journal, she told Hamilton that 'Chris [Wagar] is cleared of the HIPAA violation allegation' and 'Laura's ethics complaint against Chris [Wagar] to be unsubstantiated'. *Ex. P (same as Ex. 4).*
- 4.312. Keane told Hamilton the ethics violation of Wagar going to a job interview while on work time was 'unsubstantiated' based on Hamilton previously allowing one of her employees, Kristin Wall, to take 1.5 hours of 'flex time'. *Testimony of Hamilton.*
- 4.313. During the meeting, Keane questioned Hamilton why she had not disclosed to the Board that Wilbur had approved Wagar's job interview. Hamilton responded she had. *Testimony of Hamilton.*
- 4.314. Keane noted Hamilton was terminated for her 'mishandling of the Wagar investigation', not for 'lying to the Board'. *Testimony of Keane and Ex. O.*
- 4.315. Commissioner Kiss understood Hamilton's termination was due to her mishandling of the HIPAA allegations involving Wagar and a 'mistrust of her'. *Testimony of Kiss and Ex. 21.*
- 4.316. Keane also cited Hamilton not disclosing her conversation with Smith about patient medical records. Hamilton was unclear why Smith and Wilbur believed Wagar had rightful access to medical records since her job description made no mention of it. *Testimony of Hamilton.*
- 4.317. Keane also cited Hamilton's pay raise, effective January 2023, as another one of the reasons she terminated Hamilton. *Testimony of Keane.*
- 4.318. However, Wilbur supported the employee's wage increase, including Hamilton's, scheduled to begin in January 2023. Wilbur had never disclosed such information to Keane or the Board. *Testimony of Hamilton.*

- 4.319. Commissioner Kiss understood Wilbur, or the current CEO, had to approve any wage increases. Employees, such as Hamilton, could not unilaterally do it on their own. *Testimony of Kiss.*
- 4.320. Keane discussed generally the employee complaints and ‘toxic work environment’ as other reasons for Hamilton’s termination. *Testimony of Keane.*
- 4.321. Hamilton asked to review the complaints. Keane said ‘No’. *Testimonies of Hamilton and Keane and Ex. N.*
- 4.322. The Newport Hospital has a ‘Progressive Discipline Process Policy #412, adopted on March 1, 2016, and revised July 12, 2022, which progresses from an ‘oral reminder, verbal warning, written warning, suspension up to termination’. *Ex. A.*
- 4.323. Keane did not review the Hospital’s ‘Progressive Discipline Process Policy #412’, prior to terminating Hamilton. *Testimony of Keane.*
- 4.324. Keane admitted she had not read the Hospital’s ‘Progressive Discipline Policy’, until February 2023, in preparation for the hearing. *Testimony of Keane and Ex. A.*
- 4.325. Keane, Robertson and Kiss denied Hamilton’s Whistleblower complaint as a ‘factor’ or even a ‘significant motivating factor’ in the decision to terminate her. *Testimonies of Keane, Robertson and Kiss.*
- 4.326. The Hospital terminated Hamilton ‘without cause’. However, Scott, on behalf of the Hospital’s H.R. Department, cited Hamilton’s termination for ‘misconduct’ to the Department of Employment Security. *Exs. N, O & P.*
- 4.327. Keane cited Hamilton failing to go to the Privacy Officer regarding her concerns regarding Wagar. However, Keane did not take issue with it on November 17, 2022. *Testimony of Keane and Ex. N.*
- 4.328. Commissioner Kiss noted Casey Scott had investigated the HIPAA violation allegations of Kimberly Bradstreet without ever going to the Hospital’s Privacy Officer, Carol O’Leary. *Testimony of Kiss.*
- 4.329. The ‘HIPAA Security Policy’ does not require a person to only go to the Privacy Officer with HIPAA concerns. *Testimony of O’Leary and Ex. F.*
- 4.330. Keane, among other employees, had not read or were aware of the Hospital’s HIPAA rules and regulations, prior to the present case. *Testimony of Keane.*
- 4.331. In January 2023, Hamilton obtained a job at Washington State University in Spokane, Washington. *Testimony of Hamilton.*

Hamilton's Requested Damages-

- 4.332. Hamilton requested a payout of her salary for 2023 and 2024, with continued medical and dental insurance coverage. *Testimony of Hamilton.*
- 4.333. Eric West (West) of West Economics, a forensic economist, calculated Hamilton's damages at \$38,856 in back pay, the difference in lost wages, between Hamilton's termination, on December 9, 2023, and the evidentiary hearing beginning on April 24, 2023, and included 12% pre-judgment interest. *Testimony of Eric West (Testimony of West) and Ex. GG.*
- 4.334. West's calculations were mitigated by Hamilton's current employment with Washington State University, which began on January 17, 2023. *Testimony of West.*
- 4.335. West derived Hamilton's damages, using previous tax returns, payroll records and employment contract, with a base salary of \$155,000.00, until April 1, 2023, when her salary was scheduled to go up to \$162,500 per year with NHHS. *Testimony of West.*
- 4.336. Newport Hospital's expert, Lenore Rommey, did not testify, but did calculate Hamilton's' backpay wages, through April 30, 2023, less her six-month severance, to be \$21,404, in favor of the Hospital. *Ex. 61.*
- 4.337. 'Front pay', including 'emotional distress damages' was not included in West's damages calculation, based on this Administrative Tribunal's 'Motion in Limine' ruling in favor of Newport Hospital.

Personal Liability Penalty-

- 4.338. Hamilton also requested an assessment of a \$3,000 penalty against each member of the Newport Hospital Board of Commissioners, Tom Wilbur, and Merry-Anne Keane for their retaliatory roles against her as a Whistleblower. *Testimony of Hamilton.*

Reinstatement-

- 4.339. Hamilton is willing to return to Newport Hospital, pending on this case's outcome. *Testimony of Hamilton.*
- 4.340. Keane believes Hamilton's reinstatement at the Hospital would be retaliatory to all the employees who came forward with complaints. *Testimony of Keane.*
- 4.341. If Hamilton were to return to Newport Hospital, Fisher, Manus, Scott, and Wagar would seek other employment. *Testimonies of Fisher, Manus, Scott and Wagar.*

[Continued]

OAH Hearing Costs-

4.342. The undersigned OAH Administrative law judge spent a total of 113.3 hours on the present case, including prehearing and status conferences, the evidentiary hearing, from April 24, 2023 to April 28, 2023, and the issuance of this 'Final Order'.

5. CONCLUSIONS OF LAW:

Based upon the above 'Findings of Fact', the following 'Conclusions of Law' are made:

Office of Administrative Hearings Jurisdiction-

5.1. The Office of Administrative Hearings (OAH) has jurisdiction to hear the present matter based on Revised Code of Washington (RCW) 42.41.040.

5.2. In particular, R.C.W. 42.41.040(5) provides the opportunity for a local government employee to request an administrative hearing:

[T]he local government shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge.

R.C.W. 42.41.040(5).

Whistleblower Protection under Chapter 42.41 RCW and NHHS Policy #302-

5.3. Chapter 42.41 RCW 'Local Government Whistleblower Protection' establishes the State of Washington's laws and regulations relating to local government whistleblower complaints.

5.4. RCW 42.41.010 'Policy' establishes:

It is the policy of the legislature that local government employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions of local government officials and employees. The purpose of this chapter is to protect local government employees who make good-faith reports to appropriate governmental bodies and to provide remedies for such individuals who are subjected to retaliation for having made such reports.

RCW 42.41.010.

5.5. The 'Local Government Whistleblower Protection Act', Chapter 42.41 R.C.W., is intended to protect local government employees who make good faith reports of improper action by government officials and employees and to provide remedies for whistleblowers who are subjected to retaliation for making such reports. *Seattle City Light v. Swanson*, 193 Wn. App. 795 (2016).

5.6. 'Improper governmental action' means any action by a local government officer or employee: (i) that is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's

employment; and (ii) that is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. RCW 42.41.020(1)(a).

5.7. RCW 42.41.020 'Definitions' provides:

(1)(a) "Improper governmental action" means any action by a local government officer or employee:

(i) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) That is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.

RCW 42.41.020(1).

5.8. Based on RCW 42.41.020, 'Retaliatory action' includes:

(a) Any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

RCW 42.41.020(3).

5.9. Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action. RCW 42.41.030(1).

5.10. RCW 42.41.040 'Retaliatory action unlawful- Relief by whistleblower-Penalty, established, in relevant part:

(1) It is unlawful for any local government official or employee to take retaliatory action against a local government employee because the employee provided information in good faith in accordance with the provisions of this chapter that an improper governmental action occurred.

RCW 42.41.040(1).

5.11. The identity of the reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing. RCW 42.41.030(7).

5.12. Newport Hospital and Health Services' 'Whistleblower Protection Policy' mirrors Chapter 42.41 R.C.W. with the intent to:

'Encourage the reporting by NHHS employees of improper governmental actions taken by District Officers and/or employees; and Protect NHHS employees who have reported improper governmental actions in accordance with NHHS policies and procedures'.

NHHS Whistleblower Policy #302.

Burden and Standard of Proof-

5.13. RCW 42.41.040(6) places the burden of proof on the employee, as the initiating party, to establish his/her claim by a 'preponderance of the evidence' ('more likely than not') standard of proof.

5.14. In the present case, the claimant/employee, Laura Hamilton, has the burden of proof to establish, by a 'preponderance of the evidence', she reported an alleged improper governmental action and Newport Hospital and Health Services retaliated against her after she reported the alleged improper governmental conduct.

5.15. RCW 42.41.040 does not require the employee to prove the improper governmental action, only to the reporting, in 'good faith', of such improper governmental action.

'Good Faith' Reporting of Alleged Improper Government Action-

5.16. RCW 42.41.030(1) establishes:

Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

RCW 42.41.030(1).

5.17. In the present case, on October 27, 2022, during a Newport Hospital and Health Services Board of Commissioner Executive Session, Hamilton reported alleged improper governmental action regarding Newport Hospital COO, Christine Wagar: (1) Potentially disclosing HIPAA-protected patient information; (2) Going to a job interview while on hospital time without taking leave; and (3) Making discriminatory comments based on National Origin.

5.18. On November 17, 2022, during another Newport Hospital and Health Services Board of Commissioner Executive Session, Hamilton recited her previous concerns about Wagar, most notably, improperly accessing and disclosing HIPAA-protected medical records.

- 5.19. Hamilton, as the Hospital's CHRO, was responsible for all rules and regulations applicable to the Newport Hospital and its employees.
- 5.20. Human Resources' roles include recruitment and retention of employees and protecting the Hospital, by the enforcement of its rules and regulations. HR's role is to help prevent and minimize risk to the hospital, including protecting it from the improper disclosure of confidential patient information as well as reporting any potential Wage and Hour law violations and discrimination relating to National Origin.
- 5.21. If, as the CHRO, Hamilton had ignored her concerns and not disclosed them, she, along with the hospital, would have been legally 'on the hook' if such actions had been inappropriate and/or unlawful.
- 5.22. Everyone should have a safe haven to report possible wrongdoing, especially if your job, as CHRO, includes reporting such wrongdoing. Organizations should want to protect such safe havens, not punish them.
- 5.23. The previous CEO Tom Wilbur, twice dismissed Hamilton's concerns regarding Wagar. Only when Hamilton realized his refusal to hold her accountable was a 'pattern that could no longer be ignored', did she come forward and force the issue. By bringing the potential Wagar violations forward and Wilbur's refusal to address them to the Board's attention on October 27, 2022, did Hamilton knock over the first domino in the unfortunate series of events which lead to her termination.
- 5.24. Hamilton did not report 'false accusations' to the Board. Rather, Hamilton, after reviewing Wagar's job description and other supporting documentation, found no written or express language in Wagar's COO job description, Covid Incident Command Structure or the Hospital's Organizational Chart, expressly authorizing the access to such medical records. Just because everyone at the Hospital knew Wagar historically accessed such medical records, did not make necessarily make it proper or lawful.
- 5.25. Hamilton conducted appropriate due diligence by reviewing applicable hospital procedures and policies, relating to Wagar's job and the applicable HIPPA policies before coming forward to the Board of Commissioners.
- 5.26. Newport Hospital only presented Lisa Fisher's testimony that she believed Hamilton was on a 'witch hunt' regarding the alleged HIPPA access and disclosures by Wagar. No other evidence of any 'bad faith' was presented.
- 5.27. Laura Hamilton **reported alleged improper governmental action** protected by Chapter 42.41 RCW 'Location Government Whistleblower Protection' Act and Newport Hospital and Health Services Whistleblower Protection Policy #302.

Newport Hospital's Retaliation Against Hamilton-

5.28. As referenced earlier, "Retaliatory action" means: (a) Any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

RCW 42.41.020(3).

5.29. In the present case, this administrative tribunal finds Newport Hospital retaliated against Hamilton for reporting, in 'good faith', alleged improper governmental action. This retaliation included prohibiting Hamilton from working at the Hospital, requiring her to be on 'home assignment'. In addition, CEO Keane also removed Hamilton from further involvement in the on-going union collective bargaining and finally, Hamilton's termination.

5.30. The timing of Hamilton's termination following on the immediate heels of her reporting potential misconduct is egregious at the most, eyebrow-raising at the very least. On November 17, 2023, Wilbur 'deduced' Hamilton had made the complaint against Wagar. Within four days, Hamilton was out.

5.31. 'But for' Hamilton reporting alleged improper governmental action, on October 27, 2022 and November 17, 2022, the events which followed would not have happened.

5.32. During the termination meeting, Keane's reasons for terminating Hamilton included: (1) Botched HIPAA Investigation involving Wagar; (2) Withholding Information, in particular, Wilbur's approval of Wagar to interview on Hospital time; (3) 'Bullying' of employees; and (4) Creating a 'toxic work environment'. *Testimony of Keane and Exs. O & P (same as Ex. 4).*

5.33. The present matter is a 'case study' of how a local government agency should NOT handle a Whistleblower Complaint. For a Hospital, Hamilton's Whistleblower Complaint was handled with any but sterile and surgical-like precision, as listed below:

[Continued]

Botched HIPAA Investigation-

- 5.34. At Hamilton's termination, Keane referenced Hamilton's failure to disclose her conversations with Abraham, Manus, and Smith. However, their views as to whether Wagar had authority to access HIPAA records was based on past practice, not any express written authorization, as Hamilton had searched for and could not find.
- 5.35. Hamilton suggested an independent, third party from the Hospital's Insurer conduct the investigation. Keane, new to the CEO position, deferred to the long-time, former CEO Wilbur, whose personal relationship with Wagar clouded his professional judgment; he was 'not happy' when he found out Wagar had been placed on administrative leave, pending an investigation.
- 5.36. After speaking with Wilbur following the November 17, 2022 Executive Session, Keane not only allowed the investigation to stay 'in house', but she also offered to conduct the investigation, which she was not equipped to do.
- 5.37. At the evidentiary hearing, CEO Keane testified she had never done a HIPAA investigation 'of that magnitude'. Fact was, she had never led a HIPAA investigation. She also admitted she hadn't even reviewed the Hospital's HIPAA policies at that time.
- 5.38. Following the Executive Session on November 17, 2022, Wilbur suggested the investigation of Hamilton's allegations could be resolved in 'four to five hours'. Keane was able to perform the feat in less than 90 minutes.
- 5.39. Keane, during her Sunday morning investigation of HIPAA files with Privacy Officer Carol O'Leary, looked at just 5 out of over 100 patient files and found nothing.
- 5.40. In addition, one of the reasons Keane cited for terminating Hamilton was her failure to go to the Hospital's Privacy Officer, Carol O'Leary, regarding her HIPAA violation concerns relating to Wagar.
- 5.41. However, Casey Scott testified he investigated the Kim Backstreet potential HIPAA violation without ever going to the Privacy Officer, Carol O'Leary.
- 5.42. In fact, during Hamilton's 'fact finding', between the executive sessions on October 27, 2022 and November 17, 2022, no one ever told her to go to the Hospital's Privacy Officer, Carol O'Leary, including Smith, Manus, Abraham and even Wilbur. Hamilton had relied on the HIPAA Protection Policy which was still posted online and made no mention of a Privacy Officer.

[Continued]

Withholding of Information on Leave Approval-

- 5.43. Keane's investigation of Wagar interviewing on Hospital time solely involved calling Wilbur then Wagar, the two people who were the problem Hamilton were reporting about. No evidence exists in the record Keane looked at any of the Hospital's policies or federal and state Wage and Hour laws and regulations. She just took their words for it and it was enough.
- 5.44. Further, at the time of Hamilton's termination, Keane also cited Hamilton had allowed an employee to take 1.5 hours of 'flex time', so Wilbur was justified for allowing Wagar to take a day and half off to interview in Western Washington while on Hospital time. Keane's 'you did it, so can he' defense is not grounded in any statutory or case law, or any reasonable basis. Such justification for any action sets a bad precedent. In their respective instances, both Hamilton and Wilbur should have been held accountable.
- 5.45. Further, Wilbur chose to look the other way regarding Wagar's timesheet and interviewing on Hospital time, despite the 'public optics' of someone being paid by the Hospital to go to a job interview across the state.

Keane's 'Culture Check' regarding Hamilton a.k.a. 'Pretext for a Termination'-

- 5.46. After Keane's two-hour investigation on Sunday, Keane's investigation suddenly veered from Wagar to Hamilton. At the evidentiary hearing Keane termed it as a 'culture check'. Keane's 'culture check' was really a 'Hamilton culture check', since it focused solely on Hamilton.
- 5.47. No previous 'culture check' had ever been brought up or concerns raised. In fact, up until November 17, 2022, no complaint had been made against Hamilton. The timeliness of such a 'culture check' is beyond a skeptical eyebrow-raising, to say the least.
- 5.48. Keane's 'culture check' consisted primarily of asking employees what they really thought of Hamilton, then asking them to look at the Hospital's 'Bullying' Policy, and then asking them if it sounded like Hamilton. Keane received 11 complaints against Hamilton. Zero in her support.
- 5.49. Complaints continued to come in even after Keane stopped asking for them on November 23, 2022. The administrative tribunal suspects Wilbur, a long-time Newport area resident and familiar with the players involved, is likely the person responsible for requesting such 'complaints', as a part of his extensive 'off the record', telephone call and text messaging campaign to get Wagar back and Hamilton gone.

- 5.50. Anytime a government agency turns the investigation back on the Whistleblower, and the accuser then becomes the accused, red flags should immediately be raised and loud, emergency sirens should go off. The 'Break Only in Case of Emergency' glass to the red callbox to legal counsel should have been broken and the call to made. It was not.
- 5.51. Keane 'soliciting' employee complaints was just the Hospital 'showing the math' to the answer it already had: Hamilton had to go.
- 5.52. Keane's 'culture check' and investigation did not include: (1) Interviewing Hamilton regarding her allegations relating to Wagar; (2) Reviewing applicable statues, regulations and Hospital policies, including its HIPAA policies as well as federal and state Wage and Hour law regarding exempt, salaried positions; (3) Basing the termination on employee complaints then not allowing Hamilton to respond to them or even look at them; and (4) The termination decision was based on Keane's investigation which included no written findings, an opportunity for Hamilton to respond, or even any written investigatory report.
- 5.53. Keane's investigation did not include reviewing Hospital policies, including the Hospital's Whistleblower and Progressive Discipline Policies and State Wage and Hour laws and regulations, since she admitted she didn't even review the policies until preparing for the present administrative hearing.
- 5.54. To date, neither Newport Hospital nor Keane have conducted any investigation regarding Hamilton's Whistleblower Complaint and issued a written report, nor has Newport Hospital and Keane issued a written report regarding Wagar's numerous potential violations of HIPAA and Hospital policies.

Bullying, Toxic Work Environment and the Hospital's 'Culture'-

- 5.55. A Business' culture, such as in the case of Newport Hospital, is not unlike a large ship at sea, it cannot change course quickly.
- 5.56. Hamilton, as the Hospital's new HR Director, rubbed an institution steeped in 'past practice' the wrong way. Her approach rubbed those versed in the previous ways the wrong way, and she paid for it.
- 5.57. When it comes to the seriousness of a Whistleblower Complaint, a third-party investigator is needed in order to ensure any investigation is free from bias and internal interference, which is glaringly obvious in the present case.

[Continued]

5.58. The present, unfortunate case was avoidable. No one single event lead to the present case, aside from Hamilton filing her Whistleblower compliant. Rather, in response, Newport Hospital made one misstep, compounded by another, then another, leading to the spiraling, free-fall which resulted:

- (1) Lack of Updated Job Descriptions- The Hospital's failure to keep up-to-date job descriptions, including which employees had HIPAA-protected patient file access, started the initial avalanche. This administrative tribunal understands that amid the COVID-19 pandemic, keeping updated job descriptions would have been like trying to build an airplane while trying to fly it at the same time. However, many employee job descriptions, including Wagar's, were last updated well-before the pandemic. This lack of express, written clarity lead to the initial issue as to whether Wagar had authorized access to HIPAA-protected medical records in the first place. Job descriptions, not 'well, she's always had access', grounded in past practice, should not be the justification for access;
- (2) Failure to Train Employees on HIPAA Policies and the Hospital's Privacy Officer- During the evidentiary hearing, it became glaringly obvious not everyone is on the same page regarding IF an employee needs to go the Privacy Officer for a potential HIPAA violation, WHEN such a potential violation needs to go to the Privacy Officer, and WHAT the Privacy Officer does. Based on the testimony, the answers to these questions varied widely;
- (3) Manager Training on 'Exempt' & 'Non-Exempt' Wage and Hour Laws- Another event which lead to the present case resolved around what 'exempt' employees can and cannot do. Wilbur failed to see how the 'optics' of Wagar interviewing while on Hospital work time might not be viewed well by the Newport Community. Then, Keane's justification to Hamilton of 'Well, you did it, so can he [Wilbur]', only compounded the problem.
- (4) Legal Counsel Guidance- This administrative tribunal is not suggesting legal counsel be hired to monitor the hospital in every waking moment. However, the present issue may have been avoided if legal counsel had been brought in during the October 27, 2022 and November 17, 2022 Executive Sessions. Unfortunately, legal counsel was brought after it was all too late. By then, the 'genie was already out of the bottle'. If the Board had been able to consult with legal counsel during these executive sessions, it is possible a more cautioned (especially when dealing with a Whistleblower Complaint), reasoned, and legally defensible approach could have been taken. It was not;

[Continued]

- (5) Open Public Meeting Act Refresher- During the evidentiary hearing, it became obvious once Wagar was placed on administrative leave, it was 'all hands on deck' in the campaign to get Wagar back and Hamilton out. The amount of 'off the record' communications, including phone calls and text messaging, between Wilbur and several Board of Commissioners and between the Board Members themselves, especially when Chairperson Robertson, over the Thanksgiving Holiday weekend, called each Board Member regarding Hamilton's continued employment. She testified the decision, after calling each member, to terminate Hamilton was 'unanimous', which is troubling. More campaigning was done via text and telephone calls between November 17-23, 2022, then Keane's actual investigation of the potential violations, as alleged by Hamilton. These off-the-record telephone calls and text messages to get Wagar off the hook and turn the tables on Hamilton, all occurred outside any Public Meeting or Executive Session. The boundaries of what the Board of Commissioner can and cannot do outside an Open Public Meeting and Executive Session should be revisited. The Board serves the public and transparency is the key to public trust;
- (6) 'Bullying', Hostile Work Environment, Job Performance Accountability or Bad Management- During the evidentiary hearing, this administrative tribunal found itself in the middle of hotly contested testimony regarding the proper pronunciation of the word 'bagel'. Yes, the pronunciation of the common breakfast item. It marked an historic first for this tribunal. Hamilton, as Fisher's manager, could have obviously handled the 'bagel debate' better. An 'aside conversation' may have received a better response than by calling out an employee in front of others. However, the 'bagel debate' did make it clear, both managers and employees could use a refresher as to what is and is not appropriate conduct in the workplace, as it relates to the treatment of others. Managers demanding employees perform better walks a fine line between maximizing job performance and employee-perceived 'bullying'. Unfortunately, for many managers, who's only tool is a hammer, every problem looks like a nail. Conversely, holding employees accountable does not constitute a 'hostile work environment'. Revisiting these differences might have helped in this situation so that complaints about such issues did not cloud the present Whistleblower matter;
- (7) Accountability- Finally, the administrative tribunal understands Newport Hospital is a small hospital, located in a rural community. It is made up of co-workers who may also be friends. While the relationships between the employees may be friendly, there still exist duties and responsibilities. In this case, the final and most-decisive factor in this case was certain individuals allowing their long-time friendships to cloud their professional duties and judgment.

Managers can still be friendly AND hold their employees, even their long-time friends and even their mentees, accountable. In the present case, several individuals failed to do so.

- 5.59. Newport Hospital, notably Wilbur, did not want to look for a problem, because they didn't want to find one. Wagar was a longtime employee, under Wilbur's tutelage, and too valued as an employee for the Hospital to want to hold accountable. Hamilton blew the whistle and she paid the price.
- 5.60. If Hamilton, as the Hospital's Chief Human Resources Officer, had just kept her head down, did her work, didn't blow the whistle, and didn't do anything to upset the long-time Newport Hospital Establishment, most notably, not offending former CEO, Tom Wilbur, it is highly likely she would still be working there to this day.
- 5.61. Newport Hospital and Health Services **retaliated** against Laura Hamilton in violation of Chapter 41.41 RCW and Newport Hospital and Health Services Policy #302.

Damages-

- 5.62. RCW 42.41.040(7) provides:

Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The administrative law judge may award costs and reasonable attorneys' fees to the prevailing party.

RCW 42.41.040(7).

- 5.63. Since Newport Hospital and Health Services took retaliatory action against a local government employee, Laura Hamilton, who reported alleged, improper governmental action, damages to the Complainant are **APPROPRIATE**.

Front Pay and Emotional Distress Damages-

- 5.64. While RCW 42.41.040(8) does allow the administrative law judge to order 'any other remedy' as appropriate, the case law is well-settled prohibiting such a remedy. As a result, 'Front Pay' Damages, per this Administrative Tribunal's granting of the 'Respondent's Motion in Limine', are **NOT APPROPRIATE**.

[Continued]

Back Pay Damages-

- 5.65. RCW 42.41.040(7) allows this administrative tribunal to award back pay.
- 5.66. Based on the above 'Findings of Fact' and 'Conclusions of Law', the Complainant's request for 'back pay' based on the calculations provided by the expert witness are reasonable, under the circumstances.
- 5.67. Based on RCW 42.41.040(7), 'back pay', as requested by the Complainant, in the amount of **\$38,856**, is **APPROPRIATE**.

Personal Civil Penalty-

- 5.68. RCW 42.41.040(8) provides:

If a determination is made that retaliatory action has been taken against the employee, the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend to the local government that any person found to have retaliated against the employee be suspended with or without pay or dismissed. All penalties recovered shall be paid to the local government administrative hearings account created in RCW 42.41.060.

RCW 42.41.040(8).

- 5.69. Based on the above 'Findings of Fact', this administrative tribunal has no doubt after Wilbur found out, on November 17, 2022, that Wagar, his long-time friend and mentee, had been placed on administrative leave, due to Hamilton, he began an extensive 'off the record' telephone and text messaging campaign to get Wagar back at work and Hamilton out of a job. His long-time friend, Board of Commissioner Chairperson Lois Robertson also played a critical, behind the scenes, role in getting Hamilton gone, making calls as needed. See *Ex. DD*. Finally, Keane, new to the CEO position, did her part to make sure Hamilton was gone as well. She conducted the 90 minute, two phone call investigation into Hamilton's Whistleblower Complaint, then 'coached' employees to write complaints against Hamilton. She concluded by terminating Hamilton without so much as allowing Hamilton to respond to the complaints or even issuing an investigative report.
- 5.70. Based on RCW 42.41.040(8), a civil penalty of **\$3,000** shall be assessed personally against **Tom Wilbur**, a civil penalty of **\$3,000** shall be assessed personally against **Merry-Anne Keane**, and a civil penalty of **\$1,000** shall be assessed personally against Newport Hospital and Health Services Chairperson **Lois Robertson**. Such civil penalties personally upon each retaliator is **APPROPRIATE**.

Reinstatement-

- 5.71. RCW 42.41.040(7) allows for the reinstatement to 'return the employee to the position she held before the retaliatory action and to prevent any recurrence of retaliatory action'.
- 5.72. However, the Complainant has obtained other employment. And while she is agreeable to returning back to the Hospital, for the sake of everyone involved, it's a bad idea.
- 5.73. Therefore, Reinstatement of the Complainant at the Newport Hospital and Health Services is **NOT APPROPRIATE**.

Costs and Reasonable Attorney's Fees-

- 5.74. RCW 42.41.040(7) also allows 'The administrative law judge may award costs and reasonable attorney's fees to the prevailing party'.
- 5.75. Based on the 'Findings of Fact' and Conclusions of Law' and to ensure the prevailing Whistleblower is not harmed further, an award of 'costs and reasonable attorney's fees', paid by Newport Hospital and Health Services, is **APPROPRIATE**.

OAH Services Cost-

- 5.76. RCW 34.12.039 provides for the costs for OAH services for the initial twenty-four (24) hours of service on a local government whistleblower hearing under Chapter 42.41 RCW shall be billed to the local government administrative hearings account.
- 5.77. OAH Costs for services beyond the initial twenty-four (24) hours of services provided by OAH with regard to local government whistleblower proceedings shall be allocated to the parties by the administrative law judge, the portion to be borne by each party at the discretion of the administrative law judge. The charges for these costs shall be billed to the affected local government that shall recover payment from any other party specified by the administrative law judge. RCW 34.12.039.
- 5.78. The undersigned OAH Administrative law judge spent a total of 113.3 hours on the present case, including prehearing and status conferences, the evidentiary hearing, from April 24, 2023 to April 28, 2023, and the issuance of this 'Final Order'.
- 5.79. Based on RCW 34.12.039 and RCW 42.41.040(7), the Respondent, Newport Hospital and Health Services, will pay 100% of costs for services provided by the Office of Administrative Hearings (OAH), in excess of twenty-four (24) hours, which was **89.3 hours**, is **APPROPRIATE**.

[Continued]

6. FINAL ORDER:

THIS ADMINISTRATIVE TRIBUNAL ORDERS;

- 6.1. Laura Hamilton **reported alleged improper governmental action** protected by Chapter 42.41 RCW 'Location Government Whistleblower Protection' Act and Newport Hospital and Health Services Whistleblower Protection Policy #302.
- 6.2. Newport Hospital and Health Services **retaliated** against Laura Hamilton in violation of Chapter 41.41 RCW and Newport Hospital and Health Services Policy #302.
- 6.3. Since Newport Hospital and Health Services took retaliatory action against a local government employee, Laura Hamilton, who reported alleged, improper governmental action, damages to the Complainant are **APPROPRIATE**.
- 6.4. 'Front Pay' or 'Future Damages', per this Administrative Tribunal's granting of the 'Respondent's Motion in Limine', are **NOT APPROPRIATE**.
- 6.5. Based on RCW 42.41.040(7), 'back pay', as requested by the Complainant, in the amount of **\$38,856.00**, is **APPROPRIATE**.
- 6.6. Based on RCW 42.41.040(8), a civil penalty of **\$3,000** shall be assessed personally against **Tom Wilbur**, a civil penalty of **\$3,000** shall be assessed personally against **Merry-Anne Keane**, and a civil penalty of **\$1,000** shall be assessed personally against Newport Hospital and Health Services Chairperson **Lois Robertson**. Such civil penalties personally upon each retaliator is **APPROPRIATE**.
- 6.7. Reinstatement of the Complainant at the Newport Hospital and Health Services is **NOT APPROPRIATE**.
- 6.8. Based on RCW 42.41.040(7), the Complainant's 'Costs and Reasonable Attorneys' fees, paid by Newport Hospital and Health Services, is **APPROPRIATE**.
- 6.9. Based on RCW 34.12.039 and RCW 42.41.040(7), the Respondent, Newport Hospital and Health Services, will pay 100% of costs for services provided by the Office of Administrative Hearings (OAH), in excess of twenty-four (24) hours, which was **89.3 hours**, is **APPROPRIATE**.

Issued from Spokane, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

APPEAL RIGHTS

PETITION FOR RECONSIDERATION

Within 10 days of the service of this order, any party may file a Petition for Reconsideration with the Office of Administrative Hearings at:

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98406
253-476-6888 (phone)
253-593-2200 (fax)

A Petition for Reconsideration must be actually received during office hours at the Office of Administrative Hearings at the above address within ten days from the date the order was mailed to the parties. WAC 10-08-110(1)(a). Filing papers with the Office of Administrative Hearings by fax, or electronically via the participant portal, is also permitted under the conditions set forth in WAC 10-08-110. You must serve a copy of any Petition for Reconsideration by delivery or mail to the other parties within the same time periods listed above.

The Petition for Reconsideration must state the specific grounds upon which relief is requested. RCW 34.05.470(1); WAC 10-08-215.

The Petition for Reconsideration will not stay the effectiveness of this order. RCW 34.05.470(2).

PETITION FOR JUDICIAL REVIEW

This order becomes final on the date of mailing unless within thirty (30) days of mailing, a party files a petition for judicial review with the Superior Court. RCW 34.05.542(2). The petition for judicial review may be filed in the Superior Court of Thurston County, of the county where petitioner resides, or of the county where the property owned by the petitioner and affected by the contested decision is located. RCW 34.05.514(1). The petition for judicial review must be served on all parties of record within thirty (30) days of mailing of the final order. Service of the petition for judicial review on opposing parties is completed when deposited in the U.S. Mail, as evidenced by the postmark. RCW 34.05.542(4).

The petition for judicial review must include the following: (1) the name and mailing address of the petitioner; (2) the name and mailing address of the petitioner's attorney, if any; (3) facts that demonstrate that the petitioner is entitled to obtain judicial review; (4) the petitioner's reasons for believing that relief should be granted; and (5) a request for relief, specifying the type and extent of relief requested. RCW 34.05.546.

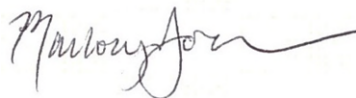
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 01-2023-GOV-00038

I certify that true copies of this document were served on those listed below, from Tacoma, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by email.

<p>Laura Hamilton 3829 E 18th Ave Spokane, WA 99223 Complainant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail: lhamldg@me.com</p>
<p>Matthew Crotty & Matthew Mensik Riverside Law Group, PLLC 905 W Riverside Ste 404 Spokane, WA 99201 Complainant Representatives</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: mzc@riverside-law.com mam@riverside-law.com</p>
<p>Newport Hospital & Health Services 714 W Pine Street Newport, WA 99156 Respondent</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
<p>Jenae M. Ball Randall Danskin PS 601 W Riverside Ave Ste 1500 Spokane, WA, 99201 Respondent Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: jmb@randalldanskin.com</p>

Date: Wednesday, July 05, 2023

OFFICE OF ADMINISTRATIVE HEARINGS



Mallory Jordan
Legal Assistant 2