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IN THE  
**Supreme Court of Virginia**

AT RICHMOND

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Record No. 020628

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ROSA FUSTE, M.D.  
and  
TIEN L. VANDEN HOEK, M.D.,

*Appellants,*

— v. —

RIVERSIDE HEALTHCARE ASSOCIATION, INC.  
and  
RIVERSIDE HOSPITAL, INC., et al,

*Appellees.*

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**SUPPLEMENTAL JOINT APPENDIX**

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ROBYN HYLTON HANSEN  
LEONARD C. HEATH, JR.  
GARY A. MILLS  
JONES, BLECHMAN, WOLTZ  
& KELLY, P.C.  
600 Thimble Shoals Boulevard,  
Second Floor  
Newport News, Virginia 23612  
(757) 873-8074

*Counsel for Appellees*

JAMES H. SHOEMAKER, JR.  
DUNCAN GARNETT  
DOUGLAS E. MILLER  
PATTEN, WORNOM, HATTEN  
& DIAMONSTEIN, L.C.  
12350 Jefferson Avenue,  
Suite 360  
Newport News, Virginia 23602  
(757) 223-4500

*Counsel for Appellants*

*Additional Counsel listed on inside cover.*



JOHN FRANKLIN, III  
TAYLOR AND WALKER  
1300 First Virginia Tower  
555 Main Street  
Norfolk, Virginia 23514  
757-625-7300

*Counsel for Appellees*



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**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS**

**ROSA FUSTE, M.D. and  
TIEN L. VANDEN HOEK, M.D.,**

**Plaintiffs,**

**v.**

**AT LAW NO.: 29743-VC**

**RIVERSIDE HEALTHCARE ASSOCIATION, INC.,  
RIVERSIDE HOSPITAL, INC., RIVERSIDE PHYSICIAN  
SERVICES, INC., PENINSULA HEALTHCARE, INC. and  
HEALTHKEEPERS, INC.,**

**Defendants.**

**MOTION TO DROP**

The defendants, Peninsula Healthcare, Inc. and Healthkeepers, Inc., move the Court for an order dropping them from this action on the grounds that plaintiffs' Second Amended Motion for Judgment constitutes an improper misjoinder of plaintiffs and parties defendant and alleges separate causes of action as to each so as to preclude a joint and several verdict in favor of all plaintiffs against all defendants.

PENINSULA HEALTHCARE, INC. and  
HEALTHKEEPERS, INC.

By Christopher J. Wink  
Of Counsel

John Franklin, III, Esquire  
TAYLOR & WALKER, P.C.  
Post Office Box 3490  
Norfolk, Virginia 23514-3490  
(757) 625-7300  
(757) 625-1504 (fax)

TAYLOR & WALKER, P.C.  
NORFOLK, VIRGINIA  
23514

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing Motion to Drop was mailed first-class, postage prepaid to James J. Shoemaker, Jr., Esquire, Patten, Wornom, Hatten & Diamonstein, 12350 Jefferson Avenue, Suite 360, Newport News, Virginia 23602; and to Robyn Hansen, Esquire, Jones, Blechman, Woltz & Kelly, 600 Thimble Shoals Boulevard, Post Office Box 12888, Newport News, Virginia 23612-2888, this 6<sup>th</sup> day of August, 2001.

Christopher J. Walker  
for John Franklin, III

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

ROSA FUSTE, M.D. and  
TIEN L. VANDEN HOEK, M.D.,

Plaintiffs,

v.

AT LAW NO.: 29743-VC

RIVERSIDE HEALTHCARE ASSOCIATION, INC.,  
RIVERSIDE HOSPITAL, INC., RIVERSIDE PHYSICIAN  
SERVICES, INC., PENINSULA HEALTHCARE, INC. and  
HEALTHKEEPERS, INC.,

Defendants.

MOTION FOR SUMMARY JUDGMENT

Without waiving their Motion for Bill of Particulars, Demurrer, Motion to Drop and Motion for Profert and Craving Oyer, the defendants, Peninsula Healthcare, Inc. and Healthkeepers, Inc., move the Court for an Order granting summary judgment on the pleadings on the grounds that, as a matter of law, plaintiffs' Second Amended Motion for Judgment again fails to allege a cause of action as to these defendants and fails to state facts upon which the relief demanded can be granted and specifically fails to allege a cause of action for defamation or conspiracy as to these defendants.

PENINSULA HEALTHCARE, INC. and  
HEALTHKEEPERS, INC.

By Christopher J. Wrenken  
Of Counsel

John Franklin, III, Esquire  
TAYLOR & WALKER, P.C.  
Post Office Box 3490  
Norfolk, Virginia 23514-3490  
(757) 625-7300  
(757) 625-1504 (fax)

TAYLOR & WALKER, P.C.  
NORFOLK, VIRGINIA  
23514

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing Motion for Summary Judgment was mailed first-class, postage prepaid to James J. Shoemaker, Jr., Esquire, Patten, Wornom, Hatten & Diamonstein, 12350 Jefferson Avenue, Suite 360, Newport News, Virginia 23602; and to Robyn Hansen, Esquire, Jones, Blechman, Woltz & Kelly, 600 Thimble Shoals Boulevard, Post Office Box 12888, Newport News, Virginia 23612-2888, this 6th day of August, 2001. .

Christopher J. Walker  
for John Franklin, III



**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS**

**ROSA FUSTE, M.D. and  
TIEN L. VANDEN HOEK, M.D.,**

**Plaintiffs,**

**v.**

**AT LAW NO.: 29743-VC**

**RIVERSIDE HEALTHCARE ASSOCIATION, INC.,  
RIVERSIDE HOSPITAL, INC., RIVERSIDE PHYSICIAN  
SERVICES, INC., PENINSULA HEALTHCARE, INC. and  
HEALTHKEEPERS, INC.,**

**Defendants.**

**MOTION FOR PROPERT AND CRAVING OYER**

Without waiving and in addition to their Demurrers and other pleadings filed in response, the defendants, Peninsula Healthcare, Inc. and Healthkeepers, Inc., move the Court as follows:

1. That plaintiffs' Second Amended Motion for Judgment alleges, among other things, that these defendants published defamatory statements as to the plaintiffs and that said publications were willful and malicious.
2. That plaintiffs' Second Amended Motion for Judgment further alleges that the defendants communicated and conspired with each other to issue and publish false and defamatory information as to the plaintiffs.
3. That plaintiffs' Second Amended Motion for Judgment relies upon and characterizes the alleged publications but fails to include and incorporate or attach said publications to the pleading.

4. That inclusion and disclosure of any such written publications will materially assist the Court in evaluating the claims of the plaintiff and the responsive pleadings filed herein by the defendants.

5. That it is necessary and appropriate that the plaintiffs be ordered to specifically identify, produce and make profert of any written publications alleged, that oyer be taken of said documents and that the documents become a matter of record for the consideration of the Court, including for purposes of the Demurrers filed herein as well as the other motions and pleadings filed in response.

WHEREFORE, the defendants, Peninsula Healthcare, Inc. and Healthkeepers, Inc., respectfully crave oyer of any and all documents which plaintiffs allege constitute defamatory publications or otherwise constitute evidence of conspiracy and further moves this Court to enter an order taking oyer of the documents requiring the plaintiffs to specifically identify, produce and make profert of the said documents making the said documents a matter of record herein.

PENINSULA HEALTHCARE, INC. and  
HEALTHKEEPERS, INC.

By Christopher J. Wren  
for Of Counsel

John Franklin, III, Esquire  
TAYLOR & WALKER, P.C.  
Post Office Box 3490  
Norfolk, Virginia 23514-3490  
(757) 625-7300  
(757) 625-1504 (fax)

TAYLOR & WALKER, P.C.  
NORFOLK, VIRGINIA  
23514



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing Motion for Profert and Craving Oyer was mailed first-class, postage prepaid to James J. Shoemaker, Jr., Esquire, Patten, Wornom, Hatten & Diamonstein, 12350 Jefferson Avenue, Suite 360, Newport News, Virginia 23602; and to Robyn Hansen, Esquire, Jones, Blechman, Woltz & Kelly, 600 Thimble Shoals Boulevard, Post Office Box 12888, Newport News, Virginia 23612-2888, this 6<sup>th</sup> day of August, 2001.

Christopher J. Wren  
for John Franklin, III

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

ROSA FUSTE, M.D.

and

TIEN L. VANDEN HOEK, M.D.,

Plaintiffs,

v.

Law No.: 29743-VC

RIVERSIDE HEALTHCARE ASSOCIATION,  
INC.,

RIVERSIDE HOSPITAL, INC.,

RIVERSIDE PHYSICIAN SERVICES, INC.,

PENINSULA HEALTHCARE, INC., and

HEALTHKEEPERS, INC.

Defendants.

**DEMURRER TO PLAINTIFF'S SECOND  
MOTION FOR JUDGMENT**

NOW COME the Defendants, Riverside Healthcare Association, Inc., Riverside Hospital, Inc., and Riverside Physician Services, Inc., by counsel, and file the following demurrer to the Plaintiff's Second Amended Motion for Judgment on the basis that the Second Amended Motion for Judgment is not sufficient in law or fact and should not be prosecuted on the following grounds:

**AS TO COUNTS I AND II**

**WRONGFUL TERMINATION**

1. With respect to Counts I and II of the Second Amended Motion for Judgment entitled the Plaintiffs' allegations have remained almost completely unchanged from those contained in the First Amended Motion for Judgment, and this Court has already granted the Defendant's demurrers

JONATHAN ECHMAN, WOLTZ & KELLY, P.C.  
600 THIBBLE SHOALS BOULEVARD  
POST OFFICE BOX 12888  
NEWPORT NEWS, VA 23612-2888  
PHONE: (757) 873-8000 FAX: (757) 873-8103



on those counts and should do so again.

2. Further Counts I and II of the Second Amended Motion for Judgment fail to state a claim for wrongful termination under Virginia law.

3. Counts I and II of the Second Amended Motion for Judgment are mirror images of each other with the sole exception that Count I seeks damages for Dr. Fuste, and Count II seeks damages for Dr. Vanden Hoek.

4. The Plaintiffs rely upon six statutes enacted by the General Assembly, one regulation promulgated by the Virginia Department of Medical Assistance Services (DMAS) and the Virginia Department of Medical Assistance Services Physicians Manual.

5. The Plaintiffs' reliance on the above statutes, regulation and manual do not support, as a matter of law, Plaintiffs' claim that they have been wrongfully discharged in violation of Virginia Public Policy.

6. In order to state a cause for wrongful termination, the Plaintiffs must meet the threshold burdens of pointing to a specific Virginia statute which enunciates a public policy; demonstrate that the employee seeking protection is a member of a class of individuals intended to benefit from the statute; and that the employee was terminated in violation of the specific public policy.

7. The statutes and regulations are not designed to protect the Plaintiffs' position in their individual employment. Accordingly, Plaintiffs are not members of the class of individuals the statutes and regulations are designed to protect.

8. Plaintiffs' reliance on an administrative regulation promulgated by a department of the Commonwealth of Virginia and Physician's Manual is misplaced. The only source from which public policy sufficient to create a wrongful termination in violation of public policy i.e., a Bowman claim, is a duly enacted statute of the Commonwealth.

9. The Plaintiffs resigned from their employment with Riverside Healthcare Association.

Virginia does not recognize a cause of action for wrongful discharge when the Plaintiffs resign.

10. Allowing an employee to resign and then file a *Bowman* claim is not in keeping with the limited nature of such a claim. Accordingly, Courts in Virginia have refused to recognize constructive discharge in *Bowman* claims.

### AS TO COUNTS III AND IV

#### DEFAMATION

11. Counts III and IV of the motion for judgment are mirror images of each other with the sole exception that Count III seeks damages for Dr. Vanden Hoek, and Count IV seeks damages for Dr. Fuste.

12. Plaintiffs incorporate the entire factual allegations into these two counts, including those labeled "Conspiracy to Injure and Defamation of Plaintiffs." Defendants accordingly are unable to ascertain with specificity upon which factual allegations the Plaintiffs rely for their defamation claims.

13. Paragraph 62, Count III, and Paragraph 67, Count IV, state that the Defendants published false and defamatory information against the Plaintiffs, but do not specify what information was false and defamatory.

14. Alleged statements made by any Defendant or any agent of Defendants that Plaintiffs were "unprofessional," "uncooperative," "abandoned" patients, "left suddenly" or that there were "concerns about their competence" are statements of opinion and cannot be the basis for a defamation cause of action.

15. Any statements made by any Defendant or any agent of Defendants regarding the future of the Plaintiffs' practice or their ability to participate in Healthkeepers or PHI network were predictions of future events and opinion, not provably false factual connotations, and thus are not actionable as defamation.

JONES, ECHIMAN, WOLTZ & KELLY, P.C.  
600 THIMBLE SHOALS BOULEVARD  
POST OFFICE BOX 12888  
NEWPORT NEWS, VA 23612-2888  
PHONE: (757) 873-8000 FAX: (757) 873-8103



16. The alleged expressions of desire by any Defendant or agent of Defendants that either Plaintiff not see certain patients, or not be allowed back on staff, are expressions of opinion and thus are not actionable as defamation.

17. The Plaintiffs fail to allege that each and every defamatory statement has been published. It is clear from Plaintiffs' own pleadings that not all conduct which they allege to be defamatory was, in fact, published to outside parties.

18. All statements alleged by Plaintiffs as defamatory are privileged under Health Care Quality Improvement Act (HCQIA), and/or Virginia Common Law. All statements were made by those, and to those, having a legitimate interest in the information.

19. Information provided to other health care providers was provided at the request of the Plaintiffs with releases provided by Plaintiffs.

20. Therefore, these Counts fail to state a cause of action and further fail to state facts upon which the relief demanded can be granted.

#### AS TO COUNTS V AND VI

#### CONSPIRACY

21. Counts V and VI of the motion for judgment respectively entitled "Conspiracy to Injure Dr. Vanden Hoek in the Practice of Her Profession", and "Conspiracy to Injure Dr. Fuste in the Practice of Her Profession" are mirror images of each other with the sole exception that Count V seeks damages for Dr. Vanden Hoek, and Count VI seeks damages for Dr. Fuste.

22. The Plaintiffs' have failed to state a claim for which relief can be granted for conspiracy in Counts V or VI.

23. The Plaintiffs' have failed to allege that the Defendants have engaged in activity that would qualify as wrongful conduct under §18.2-500 of the Code of Virginia.

24. Therefore, these Counts fail to state a cause of action, and further fail to state facts

upon which the relief demanded can be granted.

AS TO DAMAGES

25. Plaintiffs have requested "back pay, front pay, and benefits" as damages for their defamation claim. Such damages are not the natural and probable consequence of the alleged defamation and thus are not available in this defamation claim.

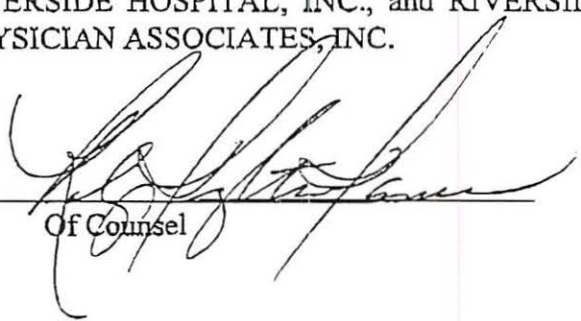
26. There are no ad damnum clauses with regards to the punitive damage claims.

27. Therefore, the Plaintiffs' requests for back pay, front pay, benefits, and punitive damages should be denied.

WHEREFORE, the Defendants ask that this matter be dismissed with prejudice, and that it be awarded its costs and attorneys' fees in defending the same.

Respectfully submitted,

RIVERSIDE HEALTHCARE ASSOCIATION, INC.,  
RIVERSIDE HOSPITAL, INC., and RIVERSIDE  
PHYSICIAN ASSOCIATES, INC.

By:   
Of Counsel

Robyn Hylton Hansen, VSB No. 23134  
Leonard C. Heath, Jr., VSB No. 26709  
Gary A. Mills, VSB No. 32897  
JONES, BLECHMAN, WOLTZ & KELLY, P.C.  
600 Thimble Shoals Boulevard, Second Floor  
Post Office Box 12888  
Newport News, Virginia 23612-2888  
(757) 873-8124  
(757) 873-8103 (Facsimile)

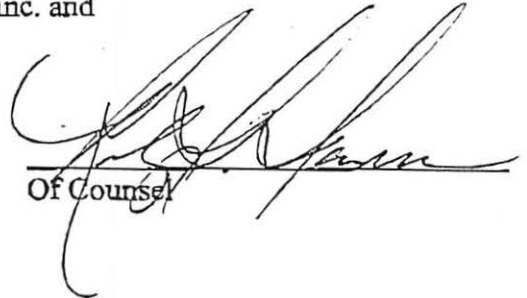
CERTIFICATE OF SERVICE

I certify that on 8<sup>th</sup> day of August, 2001, a copy of the foregoing was mailed to counsel for Plaintiffs, and mailed to counsel for Peninsula Healthcare, Inc. and Healthkeepers, Inc. addressed as follows:

JONES, BLECHMAN, WOLTZ & KELLY, P.C.  
600 THIMBLE SHOALS BOULEVARD  
POST OFFICE BOX 12888  
NEWPORT NEWS, VA 23612-2888  
PHONE: (757) 873-8000 FAX: (757) 873-8103

James H. Shoemaker, Jr., Esq.  
Douglas E. Miller, Esq.  
PATTEN, WORNOM, HATTEN & DIAMONSTEIN, L.C.  
12350 Jefferson Avenue, Suite 360  
Newport News, VA 23602  
Counsel for Plaintiffs

John Franklin, III, Esq.  
TAYLOR & WALKER, P.C.  
1300 First Virginia Tower  
555 Main Street  
P.O. Box 3490  
Norfolk, VA 23514  
Facsimile No. 625-1504  
Counsel for Peninsula Healthcare, Inc. and  
Healthkeepers, Inc.



Of Counsel

JONE, ECHMAN, WOLTZ & KELLY, P.C.  
600 THIMBLE SHOALS BOULEVARD  
POST OFFICE BOX 12888  
NEWPORT NEWS, VA 23612-2888  
PHONE: (757) 873-9000 FAX: (757) 873-8103







