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No. 91040-5

NO. 70766-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ERICKA RICKMAN,

Appellant,

vs.

PREMERA BLUE CROSS

Respondent.

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION:

Viewing the evidence in the light most favorable to Appellant Ericka Rickman ("Ericka"), Respondent Premera Blue Cross ("Premera") terminated Ericka's employment in violation of public policy after she raised concerns about Premera's potential violation of health insurance privacy laws. Therefore, the trial court erred in granting Premera's motion for summary judgment.

B. ASSIGNMENTS OF ERROR:

1. The trial court erred in finding Ericka failed to establish her burden of production on the jeopardy element of the tort of wrongful termination in violation of public policy.

2. The trial court erred in finding Ericka failed to establish her burden of production on the 'absence of justification' element of the tort of wrongful termination in violation of public policy.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR:

1. Whether discouraging Ericka's conduct of raising concerns about potential breaches of private patient information jeopardizes the clear public policy in favor of maintaining and protecting patient privacy interests articulated in both the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d, et seq. and 45 CFR 160, et seq. (HIPAA) and Washington's Uniform Health Care Information Act, RCW 70.02, et seq. (WUHCIA)?

2. Whether other means of promoting the public policy are inadequate?

3. Whether granting summary judgment on the factual 'absence of justification element' is appropriate?

D. STATEMENT OF THE CASE:

From August 31, 2004 through November 3, 2009, Ericka worked for Respondent, Premera Blue Cross ("Premera"), as Director of its subsidiary known as Washington Alaska Group Services, Inc. ("WAGS") and later known as Ucentris Insured Solutions ("Ucentris") (CP 178-179).

In mid-September 2009, Ericka learned that Pacific Benefits Trust (PBT), a large association underwritten by Premera, was likely merging with another association, Washington Grocers Trust (WGT), underwritten by Providence. *See Rickman Declaration at ¶34* (CP 187). Premera would lose PBT membership if the merger happened. *Id.* (CP 187). Ericka confirmed this information with Premera's Director of "Small Business Group", Robin Hilleary. *Id.* (CP 187). Ericka also told Ms. Hilleary that a Ucentris Captive Agent (independent insurance broker) had a client who wanted the agent to look for other non-Premera insurance for his business due to this merger. *Id.* (CP 187). Ericka asked Ms. Hilleary if it was okay for her Captive Agent to do so. In response, Ms. Hilleary told

Ericka Premera was strategizing to retain the membership rather than have agents look outside Premera for insurance for their clients. *Rickman Declaration at ¶34* (CP 187). Ms. Hilleary also told Ericka Premera planned to use Ucentris agents to move the membership of preferred groups of the merged associations into associations that were underwritten by Premera. *Id.* (CP 187). Ericka believed this would be an illegal form of "risk bucketing" (separating riskier policy holders from less risky ones and putting them into separate "buckets" for underwriting) because it would require disclosure of private policyholder information. *Id.* (CP 187).

Ericka then informed her boss, Rick Grover[1], of her conversation with Ms. Hilleary and of her concern with this strategy, saying that using Ucentris agents to move non-Premera membership into associations underwritten by Premera "had HIPAA written all over it." *Rickman Declaration at ¶35* (CP 187-188). Ericka told Mr. Grover she thought he should take her HIPAA concerns up the chain of command to make sure everything was legal. *Id.* (CP 187-188). Mr. Grover dismissed this suggestion, telling Ericka, "There's a new Sheriff in town." *Id.* (CP 188).

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[1] Mr. Grover is Premera's Vice President and General Manager for Ancillary Business and Distribution Strategy at Ucentris Insured Solutions.

On September 28, 2009, Mr. Grover forwarded an email trail to Ericka confirming her concern that Premera leadership planned on engaging in a form of "risk bucketing" that would potentially violate health insurance privacy laws. *Rickman Declaration at ¶36.* (CP 188.) Ericka told Mr. Grover she appreciated him sending the email, and reiterated her concern that the "risk-bucketing" plan was inappropriate and possibly illegal. *Id. at ¶38.* (CP 189). Mr. Grover simply replied he was more concerned about "stepping on the toes" of the agent, Drew Butler. *Id.* at ¶*36.* (CP 189).

On or about September 11, 2009, Premera received an anonymous complaint about Ericka through its "ethics hotline" internet link, alleging Ericka was violating Premera's conflict of interest policy by not disclosing the fact that her son "worked" for Premera. (CP 189). Although Ericka's son was an independent "Captive Agent", not a Premera employee, Premera nonetheless investigated the complaint and terminated Ericka's employment on or about November 3, 2009, not for the alleged conflict of interest[2], but for "lack of integrity" and "poor judgment". (CP 190.) Ericka

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[2] Even Defendant's own management team provided conflicting testimony as to whether a conflict of interest was a reason for Ms. Rickman's termination. *See Rick Grover Deposition Transcript at 127:19-15 to 128:1-13* (CP 83-84) *and see Nancy Ferrara Deposition Transcript at 51:2-5* (CP 115), *53:4-11* (CP 117).

avers Premera terminated her employment because she expressed concerns that Premera's intended "risk bucketing" would violate health insurance privacy laws. (CP 190-191.)

E. ARGUMENT:

1. Standard of Review.

The appellate court engages in the same inquiry as the trial court when reviewing a summary judgment order, i.e. whether the moving party is entitled to judgment as a matter of law because there are no genuine issues of material fact. *Allen v. Asbestos Corp., Ltd.*, 138 Wn.App. 564, 569, 157 P.3d 406, 408 (2007).

> The party moving for summary judgment has the initial burden of establishing the absence of an issue of material fact. If the moving party meets this burden, in order to withstand summary judgment, the nonmoving party must set forth specific facts establishing a genuine issue for trial. "The evidence and all reasonable inferences therefrom must still be examined in the light most favorable to the nonmoving party to determine if there are genuine issues of material fact for trial."

Id. at 570, 157 P.3d at 408, quoting *Weatherbee v. Gustafson,* 64 Wn.App. 128, 132, 822 P.2d 1257 (1992).

"[I]n employment discrimination cases summary judgment in favor of the employer is seldom appropriate." *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 144, 94 P.3d 390, 934 (2004). A strong parallel to this rule can be drawn in public policy wrongful

termination cases because both torts include similar burden-shifting analyses and are strongly fact-driven.

The rule that summary judgment is largely inappropriate in burden-shifting wrongful termination cases holds true even when the employer avers a legitimate reason for the challenged employment decision, thus shifting the burden to the plaintiff to prove that the articulated reason is pretextual. *Johnson v. DSHS*, 80 Wn.App. 212, 229, 907 P.2d 1223, 1233 (1996). This is because "the question of an employer's intent to discriminate [or violate public policy] is 'a pure question of fact.'" *Id.* See also, *Fell v. Spokane Transit Auth.*, 128 Wn.2d 618, 642, 911 P.2d 1319 (1996): "The question of pretext is generally a question for the trier of fact when there are competing inferences of discrimination in a case." *Id.*

Once the employee establishes a prima facie case, then the burden shifts to the employer to provide a nondiscriminatory explanation for the adverse employment action. *Kirby v. City of Tacoma*, 124 Wn.App. 454, 464, 98 P.3d 827 (2004). If the employer can provide a nondiscriminatory reason, then the burden shifts back to the employee to show that the employer's stated reason is actually a pretext for discrimination. *Id.* The burdens at

all three intermediate stages of a discrimination case are burdens of production, not of persuasion. *Carle v. McChord Credit Union,* 65 Wn.App. 93, 98-102, 827 P.2d 1070 (1992). Once a burden of production has been met, it is the jury's role to assess the persuasiveness of the evidence. *Renz v. Spokane Eye Clinic, P.S.*, 114 Wn.App. 611, 623, 60 P.3d 106 (2002).

The competing fact-driven allegations from both parties at every stage of the burden-shifting analysis render the present case inappropriate for summary judgment, and the trial court erred in granting summary judgment in favor of Respondent.

2. The Tort of Wrongful Discharge in Violation of Public Policy.

In *Thompson v. St. Regis Paper Co.,* 102 Wn.2d 219, 685 P.2d 1081 (1984), Washington joined a growing number of jurisdictions in recognizing a cause of action in tort for wrongful discharge in violation of public policy. "The policy underlying the exception is that the common law doctrine cannot be used to shield an employer's action which otherwise frustrates a clear manifestation of public policy." *Id.* at 231, 685 P.2d 1081. The *Thompson* Court explained "The exception has been utilized in instances where application of the terminable at will doctrine would

have led to a result clearly inconsistent with a stated public policy and the community interest it advances." *Thompson, supra,* 102 Wn.2d at 231, (citing *Roberts v. ARCO,* 88 Wn.2d 887, 897, 568 P.2d 764 (1977)). To clarify the purpose underlying the public policy exception, the *Thompson* Court compared two cases from other jurisdictions:

> [I]n *Harless v. First Nat'l Bank,* 162 W.Va. 116, 246 S.E.2d 270 (1978) a bank employee was discharged after attempting to make his employer comply with the state consumer credit and protection laws. The West Virginia Supreme Court held that despite the general rule, the bank could be liable for wrongful discharge because the discharge would otherwise frustrate a clear manifestation of public policy, protection of consumers of credit. In contrast to the result reached in *Harless,* when the interest alleged by the plaintiff/employee has been found to be purely private in nature and not of general public concern, the general rule applied and no liability attached to the employer's action. [...] Thus, in Washington the tort of wrongful discharge is not designed to protect an employee's purely *private interest* in his or her continued employment; rather, the tort operates to vindicate the *public interest* in prohibiting employers from acting in a manner contrary to fundamental public policy.

Smith v. Bates Technical Coll., 139 Wn.2d 793, 800-01, 991 P.2d 1135, 1139-40 (2000) [internal citations omitted].

The four elements of the public policy wrongful discharge tort are: (1) proof of the existence of a clear public policy (the clarity element); (2) proof that discouraging the conduct engaged in would

jeopardize such public policy (the jeopardy element); (3) proof that the public policy-linked conduct caused the plaintiff's dismissal (the causation element); and (4) the defendant's inability to offer an overriding justification for the dismissal (the absence of justification element). *Piel v. City of Federal Way,* 117 Wn.2d 604, 611, 306 P.3d 879 (2013); *Gardner v. Loomis Armored, Inc.* case, 128 Wn.2d 931, 941, 913 P.2d 377 (1996). The 'jeopardy' and 'absence of justification' elements are at issue in this appeal.

a. Establishing Jeopardy.

> To establish jeopardy, plaintiffs must show they engaged in particular conduct, and the conduct *directly relates* to the public policy, or was *necessary* for the effective enforcement of the public policy. This burden requires a plaintiff to "argue that other means for promoting the policy ... are inadequate." Additionally, the plaintiff must show how the threat of dismissal will discourage others from engaging in the desirable conduct.

Piel, supra, 117 Wn.2d at 611, quoting *Gardner, supra,* 128 Wn.2d at 945 (internal citations omitted).

Whether the jeopardy element is satisfied generally involves a question of fact. *Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 182, 125 P.3d 119, 126 (2005); *Hubbard v. Spokane County,* 146 Wn.2d 699, 715, 50 P.3d 602, 610-611 (2002). However, where the inquiry is limited to examining existing laws to

determine whether they provide adequate alternative means of promoting the public policy, the jeopardy element presents a question of law. *Korslund, supra,* 156 Wn.2d at 182.

That laws exist addressing the public policy at issue is not dispositive; rather, those laws must provide adequate alternative means of promoting the public policy in order to defeat the tort of wrongful discharge in violation of public policy. *See Piel, supra,* 117 Wn.2d at 604 (Public Employee Relations Commission (PERC) remedial scheme inadequate redress for the employer's public policy violation in retaliating against the employee for engaging in protected activity).

An employee may state a cause of action for wrongful termination if she was retaliated against for opposing a practice she objectively, reasonably believed violated the law. *See: Kahn v. Salerno,* 90 Wn.App. 110, 130, 951 P.2d 321 (1998). The employee need not prove her employer engaged in illegal activity; rather, she need only prove "that she had a 'reasonable belief' that the employment practice she protested was prohibited [by law]." *See: Trent v. Valley Electric Assn., Inc.,* 41 F.3d 524, 526-7 (9th Cir. 1994). *See also* 45 CFR §160.316 (making it unlawful to retaliate against a person for opposing any act or practice made unlawful by

HIPAA, provided the person has a good faith belief that the practice opposed is unlawful).

b. Establishing Absence of Justification.

The 'absence of justification' element "inquires whether the employer has an overriding reason for terminating the employee despite the employee's public-policy-linked conduct." *Gardner, supra*, 128 Wn.2d at 947. This element requires a court to balance the public policy concerns raised by an employee against the employer's asserted 'legitimate' interests to determine whether the public policy concerns outweigh the employer's interests. *Id.* at 948-949. To date, this element has not figured prominently in Washington jurisprudence, likely because such factual disputes require trials. *See: Hubbard v. Spokane County,* 146 Wn.2d 699, 718, 50 P.3d 602 (2002) (dispute over whether plaintiff was fired for reasons violating public policy or due to a reorganization required a trial to determine absence of justification).

3. Discouraging Ericka's conduct of raising concerns about potential breaches of private patient information jeopardizes the clear public policy in favor of maintaining and protecting patient privacy interests articulated in both the Health Insurance Portability and Accountability Act (HIPAA) and Washington's Uniform Health Care Information Act (WUHCIA).

The trial court erroneously characterized Ericka's expressed concerns about potential HIPAA violations as a single "fleeting comment to her boss[.]" *See the Court's Letter Opinion at 5, ¶3* (CP 18). In fact, Ericka expressed her concerns on more than one occasion to her supervisor, Rick Grover, and her concerns were proven justified when Mr. Grover copied her on an email in which he confirmed Premera would not be pursuing the "risk bucketing" practice she believed would violate HIPAA. *See Rickman Declaration at ¶¶33-38.* (CP 186-189.) Additionally, Defendant provided conflicting testimony as to whether the "risk-bucketing" of which Ericka complained was legal. *See Nichols Declaration at ¶¶2-3* (CP 63-64) *and Exhibit 2 thereto, Grover Deposition Transcript at pp. 62-65* (CP 77-80). Viewing the facts in the light most favorable to Ericka, Premera abandoned the risk bucketing practice after she questioned its legality. This is exactly the type of behavior the public policy articulated in HIPAA and WUHCIA is designed to encourage.

Distinguishing the facts in *Cudney v. ALSCO,* 172 Wn.2d 524, 259 P.3d 244 (2011) from those in *Hubbard v. Spokane County*, 146 Wn.2d 699, 50 P.3d 602 (2002), the *Cudney* Court specifically endorsed the survival of the tort of wrongful discharge in

violation of public policy in cases like the present one. The *Cudney* Court held that the plaintiff's reporting drinking and driving to his employer was not the only available adequate means to promote the public policy because his employer had no authority to enforce the DUI laws and get the drunk driver off the streets. *Cudney, supra,* 172 Wn.2d at 537-38. The court called this a "roundabout remedy that is unlikely to protect the public from the immediate problem..." *Id.* at 537. The court then contrasted this situation to that of *Hubbard*, in which an employee reported a potential zoning violation problem and was terminated:

> This is different from *Hubbard,* where we noted that **it is important to protect employees against retaliation when they speak up before violations of public policy occur** so that the violations can be prevented altogether. *See* 146 Wn.2d at 717, 50 P.3d 602. Hubbard was an employee of the Spokane County Planning Department, and he reported concerns about zoning violations to his direct supervisor, a decision maker on zoning issues. *Id.* at 703, 50 P.3d 602. By speaking up, Hubbard could actually stop the alleged public policy violation.

Cudney, 172 Wn.2d at 537 (emphasis supplied).

Here, Ericka's voicing of her concerns prior to the HIPAA/UHCIA violations is precisely the behavior the law encourages: *prevention* of the violations of public policy.

4. The trial court erroneously found Ericka did not act reasonably in raising HIPAA/WUHCIA compliance concerns.

The trial court erroneously relied on dicta from *Dicomes v. State, et al.,* 113 Wn.2d 612, 782 P.2d 1002 (1989) in finding Ericka's actions "too tenuous" to support a claim of wrongful discharge. (CP 18, ¶4). The trial court's reliance on this language from *Dicomes* is misplaced.

The *Dicomes* language quoted by the trial court in the present case relates to whistleblowing activity that has already occurred:

> In determining whether retaliatory discharge for employee whistleblowing activity states a tort claim for wrongful discharge under the public policy exception, courts generally examine the degree of alleged employer wrongdoing, together with the reasonableness of the manner in which the employee reported, or attempted to remedy the alleged misconduct.

Dicomes, supra, 113 Wn.2d at 619.

By contrast, Ms. Rickman did not blow the whistle, as no illegal activity had occurred for her to report.

The plaintiff in *Dicomes* "blew the whistle" on something the employer, the State of Washington Department of Licensing (DOL), failed to do which she believed to be illegal, i.e., it did not include

expenditure of surplus funds in reports to medical boards. The *Dicomes* Court granted summary judgment to the employer, in part, because the plaintiff released budget data to the medical disciplinary board contrary to her supervisors' instructions and, in so doing,

> compromised the loyalty and confidentiality required of her position as executive secretary, and unnecessarily interfered with the political and discretionary decision-making process of her appointed supervisor and ultimately of the Governor.

Dicomes, supra, 113 Wn.2d at 623.

By contrast, Ms. Rickman acted reasonably in expressing her concerns more than once to her direct supervisor Rick Grover, the Vice President and General Manager for Ancillary Business and Distribution Strategy, *before* any alleged law violation occurred. In fact, taking the facts in the light most favorably to Ms. Rickman, her actions *prevented* any law violation. Unlike the plaintiff in *Dicomes,* who contradicted her supervisors' instructions in releasing information to third parties, Ms. Rickman followed her employer's protocol in raising her concerns to her supervisor, preventing disclosure of confidential information. Such action can hardly be described as too tenuous to support a wrongful discharge claim.

5. Other means of promoting the public policy of protecting private healthcare information are inadequate.

The trial court erroneously found Premera's internal, anonymous reporting mechanisms adequate to promote the public policy. (CP 18, ¶5.) Raising concerns directly with her supervisor about potential disclosure of private healthcare information is a far more effective method of promoting the public policy of preventing disclosure than sending an anonymous email or leaving an anonymous voice message about a *potential* law violation, hoping the message will be read or heard and promptly acted upon. This was a time-sensitive issue. Even if Ms. Rickman emailed or phoned in an anonymous tip, there would be no guarantee it would be promptly acted upon in time to prevent any unauthorized disclosure of private healthcare information. The public policy behind health insurance privacy laws is the protection of private healthcare information. Viewing the facts in the light most favorable to Ericka, her actions promoted that policy, preventing such information from being disclosed.

The trial court likewise erroneously found the statutory complaint provisions of HIPAA and WUHCIA to be adequate alternative means of promoting the public policy. (CP 18, ¶5.)

These laws only provide complaint mechanisms for *actual* rather than *potential* noncompliance:

> A person who believes a covered entity or business associate is not complying with the administrative simplification provisions may file a complaint with the Secretary. (b) Requirements for filing complaints. Complaints under this section must meet the following requirements: (1) A complaint must be filed in writing, either on paper or electronically. (2) A complaint must name the person that is the subject of the complaint and describe the acts or omissions **believed to be in violation of the applicable administrative simplification provision(s).** (3) A complaint must be filed within 180 days of when the complainant **knew or should have known that the act or omission complained of occurred**, unless this time limit is waived by the Secretary for good cause shown.

45 CFR §160.306 (emphasis supplied);

> A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility **who has not complied with this chapter.**

RCW 70.02.170(1) (emphasis supplied).

Ericka could not avail herself of these means of promoting the public policy because she had no standing to do so. These means are only available *after* a violation has occurred. Regardless, the mere existence of statutory schemes for promoting public policy does not defeat a tort claim for wrongful discharge in violation of public policy. *See Piel, supra,* 177 Wn.2d at 616-618.

6. Genuine issues of material fact on the 'absence of justification' element make summary judgment on this element of the tort of wrongful discharge in violation of public policy inappropriate.

The trial court erroneously found no genuine issue of material fact on the 'absence of justification' element based on the fact that that Ms. Ferrara's termination recommendation was made without her knowledge of the risk bucketing/HIPAA compliance issue. *See* CP 19, ¶2. This finding ignores the fact that Rick Grover, not Nancy Ferrara, made the decision to terminate Ericka's employment, and would have made the decision on his own. *See Grover Deposition at 127:18-22, 128:11-22* (CP 34, 83). Viewing the facts in the light most favorably to Ericka, Mr. Grover was intimately aware of the risk bucketing/HIPAA compliance issue. *See* CP 16, ¶3 - CP 17, ¶1.

In its written documentation of Ericka's termination, Premera alleged she "failed, year after year" to disclose the fact that her son, Taylor Vidor, "was hired at Ucentris as a Captive Agent[,]" and she "created a conflict of interest" by allowing her son to be "hired and promoted at Ucentris". *See Exhibit 10 to Nichols Declaration* (CP 164). According to Rick Grover, this "conflict of interest" was the catalyst for her immediate termination. *See Grover Deposition at*

127:19-25 – 128:1-13 (CP 83-84). However, Premera never "hired" Mr. Vidor. He was an independent contractor. *See Declaration of Taylor Vidor at ¶3* (CP 166). Further, Ericka did not hide the fact that Mr. Vidor was her son, disclosed this relationship to former Vice President Steve Melton (*See Rickman Declaration at ¶31*) (CP 185-186), and kept a picture of Mr. Vidor on her desk:

> 19
>
> 13 Q After Ms. Quaife-Hopkins told you that Taylor Vidor was
> 14 Ms. Rickman's son, did you talk to anybody else about it?
> 15 A I don't recall talking to anybody else about it.
> 16 Q Did you talk to Ericka Rickman about it?
> 17 A I didn't talk to Ericka about it. I do recall going into her
> 18 office and then seeing pictures of her kids in her office and
> 19 making the connection, Oh, that's him.
> 20 Q So Ericka didn't try to hide the fact that he was her son?
> 21 A Correct.
>
> [...]
>
> 46
>
> 21 Q Do you recall telling Ms. Ferrara that it was not a secret that
> 22 Taylor was Ericka's son?
> 23 A I don't recall saying that to Nancy. It's a true statement.
> 24 Q And why do you say that's a true statement; it wasn't a secret?
> 25 A Because everybody within the organization, within our agency,

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1 was aware.

Stryker Deposition (Exhibit 3 to Nichols Declaration) at 19:13-21, (CP 88), *46:21-25,* (CP 94), *and 47:1* (CP 176). *See also Declaration of Taylor Vidor at ¶4* (CP 166), *and Declaration of Matt Sanelli at ¶4* (CP 176).

In fact, Nancy Ferrara, Premera's Associate Relations Manager and former Human Resources Supervisor, contradicts Mr. Grover's testimony that the "conflict of interest" allegedly created by Ericka's "nondisclosure" of Mr. Vidor was the reason for her immediate termination, saying it was due to "judgment and lack of integrity":

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2 A The conflict of interest -- the fact that Ms. Rickman did not
3 disclose her son on the conflict of interest was not the reason
4 that she was terminated necessarily. It was really due to
5 judgment and lack of integrity.

[...]

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4 Q Okay. So I understand the conflict of interest concern was a
5 compliance issue.
6 A Yes.
7 Q And you testified Ms. Rickman was not terminated for that

8 issue, for the nondisclosure of Mr. Vidor as her son; is that
9 correct --
10 MS. SHERWOOD: Objection. Mischaracterizes.
11 A That was not the reason for the termination.

Ferrara Deposition (Exhibit 4 to Nichols Declaration) at 51:2-5,(CP 115), *53:4-11* (CP 117).

Ericka raised genuine issues of material fact regarding the legitimacy of Premera's alleged reasons for her termination. No conflict of interest existed, as Premera was well aware for years that one of its "Captive Agents" was Ericka's son. (CP 88, 94, 166, 176.) The motives of the person making the ethics complaint against Ericka were suspect. (CP 165-177.) Rick Grover disliked Ericka's ethics in questioning the risk bucketing plan and, in part, used the findings of the flawed ethics investigation to terminate her employment. Ericka more than met her burden of production on the 'absence of justification' element. The trial court erred in finding otherwise.

F. <u>CONCLUSION</u>:

Discouraging Ericka's conduct of raising concerns about potential breaches of private patient information jeopardizes the clear public policy in favor of maintaining and protecting patient privacy interests articulated in both HIPAA and WUHCIA. Other

means of promoting the public policy are inadequate. Finally, genuine issues of material fact exist on the 'absence of justification' element. Therefore, the trial court erred in granting Premera's summary judgment motion on these bases. Ericka deserves her day in court.

DATED this __11__ day of November, 2013.

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AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
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COUNTY OF SNOHOMISH)

Kristine E. Allen, being first duly sworn on oath, deposes and states: On the 12th day of November, 2013, I emailed the preceding document to *ssherwood@riddellwilliams.com,* and deposited it in the United States mail, regular first class at Everett, Washington, postage prepaid, addressed to:

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SIGNED AND SWORN to before me this 12th day of November, 2013.

DENECIA R. EVANS
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PUBLIC
5-27-17
STATE OF WASHINGTON

NOTARY PUBLIC
Printed Name: Denecia R. Evans
In and For the State of Washington
Residing at: Arlington
My Commission Expires: 5/27/17

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