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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

23 J. Christopher Carey, M.D.,

24 Plaintiff,

25 v.

26 Maricopa County, a political subdivision of the State of
27 Arizona; Maricopa Integrated Health System, an
28 agency or political subdivision of Maricopa County;
Maricopa Medical Center, an agency or political
subdivision of Maricopa County; Maricopa County
Board of Supervisors and Fulton Brock, Don Stapley,
Andrew Kunasek, Max Wilson, and Mary Rose
Wilcox, in their capacities as members of the Maricopa
County Board of Supervisors; Andrew Kunasek and
Jane Doe Kunasek, husband and wife; Marci Moffitt,
M.D. and Robert Moffitt, wife and husband; and
William Chavira and Jane Doe Chavira, husband and
wife,

Defendants.

No. CV05-02500-PHX-ROS

AMENDED COMPLAINT

1 Plaintiff J. Christopher Carey, M.D. ("Plaintiff"), by and through his undersigned
2 counsel, for his complaint against Maricopa County, Maricopa Integrated Health System
3 ("MIHS"), Maricopa Medical Center ("MMC"), Maricopa County Board of Supervisors
4 ("BOS"), Fulton Brock, Don Stapley, Andrew Kunasek, Max Wilson, Mary Rose Wilcox, Marci
5 Moffitt, M.D., Robert Moffitt, William Chavira, M.D. and Jane Doe Chavira, alleges on
6 information and belief (except as to those allegations describing his own actions), as follows:
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8 **INTRODUCTORY STATEMENT**

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10 1. Plaintiff brings this action to redress Defendants' systematic campaign of
11 retaliation against him in connection with his employment because of Plaintiff's public
12 expression of views concerning matters of vital public concern, including the availability of
13 training in abortion procedures to resident physicians. Plaintiff, Dr. J. Christopher Carey, is an
14 experienced and highly-regarded physician and teacher who held the positions of (i) Chair of
15 Obstetrics and Gynecology at Maricopa Medical Center; (ii) Chief of Obstetrics and
16 Gynecology and Women's Health at Defendant MIHS; and (iii) Residency Program Director for
17 the Phoenix Integrated Residency in Obstetrics and Gynecology ("PIROG") in Phoenix,
18 Arizona. Defendants removed Plaintiff from those positions because he publicly and correctly
19 stated that the certification requirements that governed the residency program mandate that
20 PIROG make training in abortion available to residents who are not opposed to abortion.
21 Because Dr. Carey's publicly expressed views conflicted with Defendants' expressed intention
22 to make training in abortion unavailable to residents, Defendants embarked on a series of thinly-
23 disguised, pretextual investigations designed to oust Dr. Carey from his posts and to destroy his
24 personal and professional reputation.

25 2. Defendants' conduct violated rights secured to Plaintiff by the First
26 Amendment and the Due Process Clause of the Fourteenth Amendment to the United States
27 Constitution; and constituted unlawful discrimination against him on the basis of his religion
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1 and his religious views and moral convictions in violation of federal laws. Several of the
2 individual Defendants disseminated false, derogatory and defamatory statements regarding Dr.
3 Carey and targeted him for investigation based on trumped-up allegations, based upon their
4 disagreement with Dr. Carey's speech on matters of public concern, in violation of Arizona law.
5 Defendants' conduct caused the termination of Dr. Carey's employment and caused him other
6 injury. Plaintiff asks this Court to remedy the damage caused by Defendants' actions.

7 **JURISDICTION AND VENUE**

8
9 3. This Court has jurisdiction over Plaintiff's claims arising under 42 U.S.C.
10 § 1983 and 42 U.S.C. § 300A-7 pursuant to 28 U.S.C. § 1331, 1343(3) and (4). The Court has
11 jurisdiction over Plaintiff's claim arising under Section 703 of the Civil Rights Act of 1964
12 pursuant to 42 U.S.C. § 2000e-5. The Court has supplemental jurisdiction over Plaintiffs' state
13 law claims under 28 U.S.C. § 1367.

14 4. Venue in this District is proper pursuant to 28 U.S.C. §1391 because the
15 events giving rise to Plaintiff's claims occurred within the State of Arizona.

16 **PARTIES**

17 5. Plaintiff J. Christopher Carey, M.D. ("Dr. Carey") was at all times
18 relevant hereto a resident of Maricopa County, Arizona.

19 6. Dr. Carey is a physician specializing in obstetrics and gynecology. He
20 was recruited to the positions at MMC in August 2001. Prior to that time, he had served as a
21 tenured professor and vice-chair of OB/GYN at Pennsylvania State College of Medicine in
22 Hershey, Pennsylvania, and as a professor and vice-chair of OB/GYN at the University of
23 Oklahoma.

24 7. In addition to teaching positions, Dr. Carey has also conducted research at
25 the National Institute of Health Sciences ("NIH").

1 8. Dr. Carey is a member of the United Methodist Church and he is pro-
2 choice. Dr. Carey's pro-choice stance is intimately tied to his religious beliefs as a United
3 Methodist.

4 9. Defendant Maricopa County is a political subdivision of the State of
5 Arizona.

6 10. Defendant Maricopa Integrated Health System ("MIHS") is a political
7 subdivision of Maricopa County.

8 11. Defendant Maricopa Medical Center ("MMC") is a political subdivision
9 or agency of Defendant Maricopa County operated as a component of Defendant MIHS.

10 12. Third-party Medical Professional Associates of Arizona, P.C. ("Medpro")
11 had a contract with Defendant MMC under which Medpro provided physicians for Defendant
12 MMC.

13 13. At all times relevant to this action, Defendant Maricopa County Board of
14 Supervisors acted as the governing body of MIHS and MMC.

15 14. Defendants Fulton Brock, Don Stapley, Andrew Kunasek, Max Wilson
16 and Mary Rose Wilcox were at all times relevant hereto members of the BOS.

17 15. Defendant Andrew Kunasek is a resident of Maricopa County and is
18 currently employed as a Maricopa County Supervisor. Defendant Kunasek is named in his
19 individual and official capacities. Defendant Kunasek was married and acting for, on behalf of,
20 and in furtherance of the interests of his marital community. Jane Doe Kunasek is his
21 fictitiously-named wife.

22 16. Defendant Marci Moffitt ("Defendant Moffitt") is a resident of Maricopa
23 County employed as a physician and Director of Education for Medpro. Defendant Moffitt was
24 married and acting for, on behalf of, and in furtherance of the interests of her marital
25 community. Robert Moffitt is her husband.

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17. Defendant William A. Chavira is a resident of Maricopa County. At all times relevant hereto, Defendant Chavira was employed as a physician for Medpro. Defendant Chavira was married and acting for, on behalf of, and in furtherance of the interests of his marital community. Jane Doe Chavira is his fictitiously-named wife.

FACTUAL ALLEGATIONS

18. In 2001, Dr. Carey was recruited by Defendants for several positions at MMC and MIHS. In order to accept these positions, Dr. Carey was required to sign an employment contract with Medpro.

19. Dr. Carey and Medpro entered into a contract that commenced on July 31, 2001, under which Dr. Carey became the Division Chief for Obstetrics and Gynecology. The term of the contract was three years and provided for automatic renewal absent sixty days notice of its termination by either party. The contract further provided that Dr. Carey could only be terminated for cause.

20. Pursuant to its terms, Dr. Carey’s employment contract was automatically renewed at the end of the initial three-year term.

21. Under the aegis of his contract with Medpro, Dr. Carey was appointed to the position of Chair of the Department of Obstetrics and Gynecology at Defendant MMC. Dr. Carey could only be terminated for cause from this position.

22. Defendant MMC also conducted the PIROG residency program. Dr. Carey was the Residency Program Director for PIROG. PIROG integrates residency programs at MMC and St. Joseph Hospital, another Phoenix hospital.

23. One of Medpro’s purposes in entering into the contract with Dr. Carey was to arrange his appointment to the positions at MMC and MIHS. Medpro viewed Dr. Carey’s continuation in those positions as essential to his continued employment with Medpro.

24. Dr. Carey began working at Defendant MMC and Defendant MIHS in or around August 2001.

1 25. During Plaintiff's tenure, PIROG had approximately 30 residents divided
2 between the two hospitals.

3 26. PIROG is accredited by the Accreditation Council for Graduate Medical
4 Education ("ACGME").

5 27. MMC is the sponsor of PIROG recognized in the accreditation by
6 ACGME.

7 28. ACGME accreditation requirements provide:

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9 No program or resident with a religious or moral objection shall be required to
10 provide training in or to perform induced abortions. Otherwise, access to
11 experience with induced abortion must be part of residency education. This
12 education can be provided outside the institution. Experience with management of
13 complications of abortions must be provided to all residents. If a residency
14 program has a religious, moral, or legal restriction that prohibits the residents from
15 performing abortions within the institution, the program must ensure that the
16 residents receive satisfactory education and experience in managing the
17 complications of abortion. Furthermore, such residency programs (1) must not
18 impede residents in the programs who do not have religious or moral objections
19 from receiving education and experience in performing abortions at another
20 institution and (2) must publicize such policy to all applicants to those residency
21 programs.

22 ACGME Program Requirements for Residency Education in OBGYN, V.A.2.e
23 (emphasis added).

24 29. St. Joseph Hospital had religious restrictions against the provision of
25 abortion and MMC had legal restrictions against the provision of abortion under Arizona and
26 Maricopa county law.

27 30. When Dr. Carey started his tenure as the Residency Program Director for
28 PIROG in 2001, PIROG offered training in abortion to residents who did not have moral or
religious objections to abortion under an agreement with Planned Parenthood of Central and
Northern Arizona. All PIROG residents also rotated through Planned Parenthood to receive
family planning training.

 31. Beginning in April 2003, Defendants undertook a series of actions to
prevent PIROG from making training in abortion available to residents who sought to receive it.
Defendants also undertook a series of actions to remove Dr. Carey from his positions at MIHS,
MMC, PIROG and Medpro because he made public statements expressing opposition, consistent

1 with his moral and religious convictions, to Defendants' efforts to prevent PIROG from making
2 training in abortion available to residents.

3 32. In April 2003, in anticipation of a site visit by the Residency Review
4 Committee of ACGME ("RRC"), Dr. Carey sought to renew the agreement between PIROG and
5 Planned Parenthood under which residents who sought training in abortion received that
6 training. Defendant Moffitt, who, at all relevant times, was MMC's Director of Medical
7 Education, is opposed to the availability of abortion as a legal medical procedure and refused to
8 sign the agreement authorizing the continuation of the affiliation between PIROG and Planned
9 Parenthood.

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11 33. Despite Defendant's Moffitt's refusal to sign the agreement between
12 MMC and Planned Parenthood, Mark Hillard ("Hillard"), MMC's Chief Executive Officer, and
13 Lou Gorman ("Gorman"), a Maricopa County Assistant County Attorney, approved the
14 agreement.

15 34. Defendant Moffitt advised Defendant Kunasek, the Chairman of the BOS,
16 of the approval by Hillard and Gorman of the agreement with Planned Parenthood. Defendant
17 Kunasek directed Hillard to cease the rotation of PIROG residents at Planned Parenthood for
18 training in abortion and training in family planning.

19 35. In June and July of 2003, Dr. Carey repeatedly made public statements in
20 favor of the continued availability to PIROG residents of training in abortion, including, but not
21 limited to, the following:

22 (a) On several occasions, Dr. Carey met with Hillard and Gorman to state his
23 understanding that the ACGME requirements mandated that PIROG make abortion training
24 available to residents without a moral or religious objection, and voice his concern that ACGME
25 might withdraw its accreditation of PIROG if the program did not comply with the requirement;

1 (b) In late July 2003, Dr. Carey met with Defendant Brock, a member of the
2 BOS, to state his understanding of the ACGME requirement and concern that PIROG might lose
3 its accreditation if the agreement with Planned Parenthood was terminated;

4 (c) On or about July 28, 2003, at the invitation of a member of the BOS, Dr.
5 Carey attended a meeting of the BOS to discuss his understanding of the ACGME requirement
6 and concern that PIROG might lose its accreditation if the agreement with Planned Parenthood
7 was terminated. Defendant Kunasek did not permit Dr. Carey to speak and required Dr. Carey to
8 leave the meeting while the issue was being discussed. After that meeting concluded, Hillard
9 directed Dr. Carey to stop the rotation of PIROG residents at Planned Parenthood;

10 (d) On or about July 31, 2003, Dr. Carey sent Defendant Kunasek and the
11 other members of the BOS an e-mail describing his views on the abortion training issue and a
12 copy of a letter sent to Dr. Carey by ACGME setting forth the program requirements concerning
13 training in abortion for accreditation of obstetrics and gynecology residency programs; and

14 (e) Dr. Carey also supplied the members of the BOS with an essay he wrote
15 describing how his religious and moral principles as a United Methodist provided the basis for his
16 convictions in favor of protecting the right of a woman to choose abortion to terminate a
17 pregnancy.

18 36. On or about August 1, 2003, Defendant Kunasek called Marco Canulla
19 ("Canulla"), the Chairman of Medpro's Board of Directors and demanded that Canulla fire Dr.
20 Carey. At that time, Canulla declined to fire Dr. Carey.

21 37. On or about August 5, 2003, agents of Defendant Maricopa County, at the
22 direction of Defendant Kunasek, lodged false allegations with Medpro, including:

- 23 (a) that Dr. Carey had sexually harassed residents in the PIROG program;
24 (b) that he had violated Maricopa County laws against using public funds for
25 abortion;
26 (c) that he had performed abortions on women without obtaining their consent;
27 (d) that he had coerced residents to perform abortions; and
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1 (e) that he had discriminated in hiring practices against residents and faculty
2 who opposed legal abortion.

3 38. Defendants Moffitt and Chavira were the source of some of those false
4 allegations.

5 39. Dr. Carey was cleared of all of the foregoing allegations in three separate
6 investigations.

7 40. On or about August 12, 2003, Defendant Moffitt prepared, and Defendant
8 BOS approved, an addendum to the contract of PIROG residents that would require the residents
9 not to seek training in abortion.

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11 41. Dr. Carey made public statements in opposition to the addendum,
12 including that the residents should be advised that they were not obligated to sign it.

13 42. On or about August 13, 2003, the PIROG residents were presented with
14 the addendum and required to sign it as a condition of further employment.

15 43. On or about September 30, 2003, in his capacity as Director of PIROG,
16 Dr. Carey sent a letter to the RRC informing it that the rotations of PIROG residents to Planned
17 Parenthood had been halted and of the contract addendum that the residents had been required to
18 sign.

19 44. In October 2003, the County, at the direction of Defendant Kunasek,
20 commenced another investigation of Dr. Carey based on false allegations that Dr. Carey had
21 forced residents to perform abortions and coerced them about their beliefs concerning abortion.
22 Defendant Chavira was the source of a number of these false allegations. The County has never
23 released any report concerning the results of that investigation.

24 45. Throughout the remainder of 2003, Dr. Carey worked with Medpro, the
25 County Attorney's office and others in an unsuccessful effort to develop a compromise plan that
26 would permit PIROG to fulfill its abortion training obligations under the ACGME requirements.

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1 46. Beginning in or about December 2003, Defendants Moffitt and Chavira
2 met with Defendant Kunasek and other BOS members and staff to devise a plan to remove Dr.
3 Carey as Director of PIROG and Chair of the MMC Obstetrics and Gynecology Department.

4 47. In or about January 2004, Defendant Kunasek demanded that Hillard
5 remove Dr. Carey as Program Director and Chair of OB/GYN. At or about the same time,
6 Defendant MIHS, at the direction of Defendant Kunasek, withheld payments for services
7 provided by Medpro to MIHS in an effort to coerce Medpro to terminate Dr. Carey's
8 employment.

9 48. In or about January 2004, Defendant Kunasek's intentions and actions to
10 remove Plaintiff from his positions became public. Residents and faculty sent letters and e-
11 mails to members of the BOS to protest the threatened removal of Dr. Carey. As a result of the
12 protests, in late January and early February 2004, Medpro attorneys and representatives of
13 Defendant Kunasek negotiated a compromise abortion policy in return for a statement to be
14 issued by Dr. Carey requesting faculty and residents to cease sending letters and e-mails to the
15 BOS. Dr. Carey delivered the statement at a meeting with faculty and residents on or about
16 February 6, 2004.

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18 49. Notwithstanding Dr. Carey's good faith efforts, on or about February 13,
19 2004, Defendants Kunasek and the BOS, with the assistance of Defendant Moffitt, commenced
20 another pretextual investigation of Dr. Carey based on his alleged violation of Arizona and
21 County laws and policies concerning conflict of interest, business ethics and protection of
22 County property.

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24 50. Defendants alleged that Dr. Carey had committed those violations by
25 permitting his spouse, Marsha Carey, a real estate agent, to include her business card in an
26 information package that was distributed to PIROG applicants. Medpro had no conflict of
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1 interest policy at the time, but Dr. Carey agreed immediately that his wife's business card would
2 not be included in any information packages in the future.

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4 51. In May 2004, Timothy Casey, an attorney retained by Defendant Kunasek
5 and the Board to conduct the investigation, sent a letter to Medpro falsely asserting that Dr.
6 Carey had created a "conflict of interest" and "hostile environment," declaring that Medpro was
7 in breach of its contract with MIHS for failure to cooperate with the BOS in the investigation of
8 Dr. Carey and demanding that Medpro commence an investigation of Dr. Carey. In compliance
9 with this demand, Medpro commenced its own investigation and found no wrongdoing by Dr.
10 Carey and so advised Mr. Casey on behalf of the BOS.

11 52. Beginning in or about March 2004, Defendants Kunasek, Moffitt and the
12 BOS developed a plan to transfer accreditation sponsorship of PIROG from MMC to St.
13 Joseph's Hospital.

14 53. Defendants developed the transfer plan because they believed it would be
15 easier to justify to ACGME a policy, as reflected in the contract addendum, prohibiting all
16 PIROG residents from obtaining abortion training if the PIROG sponsor were an institution, like
17 St. Joseph Hospital, that adheres to the Ethical and Religious Directives for Catholic Healthcare
18 Facilities.

19 54. At a public meeting on June 16, 2004, the BOS formally voted to transfer
20 sponsorship of PIROG from MMC to St. Joseph Hospital. At that meeting, Defendant Kunasek
21 stated words that, in sum and substance, threatened that anybody who attempted to undermine
22 the transfer would be dealt with severely and that opposition by Medpro to the transfer would be
23 considered a breach of its contract with MIHS.

24
25 55. Dr. Carey made public statements in opposition to the transfer of PIROG
26 sponsorship to St. Joseph because of its likely adverse effects on resident education, including
27 training in abortion. Dr. Carey's public statements include, but are not limited to the following:
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1 (a) on or about June 23, 2004, Dr. Carey spoke out against the transfer at the
2 MMC Graduate Medical Education Committee;

3 (b) on or about June 28, 2004, Dr. Carey wrote to Ted Shaw, MMC's interim
4 CEO, and Linda Hunt, St. Joseph's CEO in opposition to the transfer;

5 (c) on or about July 12, 2004, Dr. Carey spoke with and wrote a letter to
6 Cynthia Taradejna of ACGME opposing the transfer; and

7 (d) on or about July 14, 2004, Dr. Carey spoke in opposition to the transfer at a
8 meeting of the MMC Program Directors.

9 56. On or about August 16, 2004, RRC requested that PIROG complete a
10 request for information concerning the transfer of PIROG sponsorship from MMC to St. Joseph.
11 Dr. Carey responded to the request as to the items within his authority to answer.
12

13 57. The August 16, 2004 RRC request also required the BOS and St. Joseph
14 to provide assurances that PIROG would continue to comply with ACGME residency education
15 requirements, including those pertaining to training in abortion. Dr. Carey transmitted that
16 portion of the RRC request to the BOS and St. Joseph, both of which failed to provide the
17 assurances.

18 58. On or about August 17, 2004, Defendants Kunasek and the BOS
19 demanded Dr. Carey's resignation as Chair of the MMC Department of Obstetrics and
20 Gynecology and Director of the PIROG residency.

21 59. On August 18, 2004, the BOS removed from its agenda the scheduled
22 consideration of the MMC Medical Staff Executive Committee ("MSEC") and Professional
23 Practice Committee's recommendations that Dr. Carey be reappointed to the staff at MMC.

24 60. On or about August 19, 2004, Defendant Kunasek sent a letter to the
25 MMC Chief of Staff demanding that the MSEC rescind and reconsider its determination to re-
26 appoint Dr. Carey to the MMC staff. The letter falsely accused Dr. Carey of creating a conflict
27 of interest and hostile environment and of being untruthful in his communications with the BOS
28 and with ACGME.

1 61. The MMC Medical Staff Executive Committee (“MSEC”) appointed two
2 of its members to investigate the allegations. When the members scheduled interviews of
3 PIROG residents to investigate the conflict of interest allegations, Defendant BOS directed the
4 members to cancel the interviews.

5 62. On or about September 2, 2004, the MSEC found that Dr. Carey had not
6 violated any Medical Staff bylaws, rules or regulations and voted again in favor of Dr. Carey’s
7 reappointment to the staff.

8 63. On or about September 3, 2004, the MIHS Professional Practices
9 Committee voted again to reappoint Dr. Carey to the MMC staff.

10 64. On September 7, 2004, the BOS voted to approve Dr. Carey’s
11 reappointment to the MMC staff. Defendant Kunasek and one other member of the BOS voted
12 to deny reappointment to Dr. Carey.

13 65. On or about September 22, 2004, the Defendant BOS voted to rescind the
14 transfer of PIROG sponsorship to St. Joseph.

15 66. On or about September 22, 2004, the Defendant BOS voted to direct Ted
16 Shaw, the acting Chief Executive Officer of MMC, to remove Dr. Carey from his positions as
17 Chair of the Department of Obstetrics and Gynecology and PIROG Director.

18 67. A letter from Shaw to Dr. Carey and published by Defendants to third
19 parties asserted pretextual reasons for the BOS determination to cause his removal and included
20 false accusations by the BOS about Dr. Carey, including false claims that:

21 (a) the MSEC had found that Dr. Carey’s wife had “derived income from
22 County employed resident physicians in the OB/Gyn Residency Program that were currently
23 under [his] direct supervision and evaluation;”

24 (b) members of the MSEC had “questioned [Dr. Carey’s] ability to continue to
25 serve in a leadership position;” and
26

1 (c) the MSEC “found in its investigation that [Carey] rotated County
2 employed Ob/Gyn resident physicians to third party Planned Parenthood of Arizona while
3 knowing that Maricopa County lacked an authorized affiliation agreement with that third party.”

4 68. In taking the aforementioned actions against Dr. Carey, Defendants were
5 motivated by Dr. Carey’s religious and moral beliefs and public statements regarding abortion
6 and the provision of legal abortion services and training.

7 69. Defendants’ actions were designed to coerce Medpro into terminating Dr.
8 Carey, including by threatening to take the residency program away from MMC and threatening
9 to terminate Maricopa County’s contract with Medpro if Dr. Carey was not terminated or forced
10 to resign.

11 70. Defendants accorded Dr. Carey no opportunity for a hearing to contest the
12 charges against him or to clear his name of the false allegations.

13 71. The MMC MSEC acquiesced in the BOS direction to remove Dr. Carey
14 from his positions as Chair of the Obstetrics and Gynecology Department and Director of
15 PIROG when, on or about October 1, 2004, the County Attorney, acting on behalf of and at the
16 request of Defendants Kunasek and the BOS, sent a letter to the MSEC threatening it with
17 criminal prosecution if it did not comply with the BOS direction to remove Dr. Carey from those
18 positions.

19 72. Defendants’ direction to the MSEC that Dr. Carey be removed from his
20 positions as Department Chair and Director of PIROG made impossible the performance of the
21 contract between Medpo and Dr. Carey. Defendants’ actions interfered with that contract and
22 caused its termination due to impossibility of performance.

23 73. Defendants’ false statements about Dr. Carey stigmatized him and
24 damaged his standing and associations in his community and impaired his ability to take
25 advantage of other employment opportunities.

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COUNT ONE

**(Violation of the First Amendment of the U.S. Constitution
Against Maricopa County, Maricopa Integrated Health System,
Maricopa Medical Center, Maricopa County Board of Supervisors,
and Brock, Stapley, Kunasek, Wilson, Wilcox, Moffitt and Chavira)**

74. Plaintiff re-alleges and incorporates by reference paragraphs 1-74 above as though fully set forth herein.

75. Dr. Carey engaged in constitutionally protected speech regarding abortion and training in the provision of abortion services to residents.

76. Dr. Carey's speech involved a matter of public concern, specifically, the provision of medical services at MMC and the training of medical residents enrolled in PIROG to provide abortions, as well as Dr. Carey's legitimate concerns regarding PIROG's continued accreditation by ACGME in light of Defendants' actions designed to prohibit all residents from receiving training in abortion.

77. In retaliation for his speech involving a matter of public concern, Defendants, acting under color of law, subjected Dr. Carey to adverse employment actions that resulted in the termination of the contract between Dr. Carey and Medpro.

COUNT TWO

**(Violation of 42 U.S.C. § 300a-7(c)(1) Against Maricopa County,
Maricopa Integrated Health System, Maricopa Medical Center,
Maricopa County Board of Supervisors, and Brock, Stapley,
Kunasek, Wilson and Wilcox)**

78. Plaintiff re-alleges and incorporates by reference paragraphs 1-77 above as though fully set forth herein.

79. Upon information and belief, MMC receives a grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act or the Developmental Disabilities Services and Facilities Construction Act.

80. Defendants MIHS, MMC, and those individual Defendants named in their capacity as Maricopa County Supervisors, discriminated against Dr. Carey in terminating his

1 positions with MIHS and MMC because of his religious beliefs and moral convictions
2 respecting abortion in violation of 42 U.S.C. § 300a-7(c)(1).

3 81. Dr. Carey was damaged as a result of Defendants' acts in an amount to be
4 proven at trial.

5 **COUNT THREE**

6 **(Intentional Interference with**
7 **Contractual Relationship Against All Defendants)**

8 82. Plaintiff re-alleges and incorporates by reference paragraphs 1-81 above
9 as though fully set forth herein.

10 83. Dr. Carey and Medpro had a valid contractual relationship.

11 84. Defendants were aware of Dr. Carey's contractual relationship with
12 Medpro.

13 85. Defendants, by their actions described above, intentionally interfered with
14 Dr. Carey's contractual relationship with Medpro, causing Dr. Carey's employment with
15 Medpro to terminate.

16 86. Dr. Carey was damaged as a direct and proximate result of Defendants'
17 intentional interference.

18 87. Defendants' actions were improper.

19 88. Defendant Moffitt was acting of her own accord and not within the scope
20 of her employment when she interfered with Dr. Carey's contractual relationship with Medpro.
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22 89. Defendants' interference was willful, wanton, and intentional and
23 evidences an evil hand guided by an evil mind. The conduct should be punished and deterred
24 and for that purpose Dr. Carey is entitled to recover punitive damages in an amount in excess of
25 the compensatory damages.
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COUNT FOUR

(Defamation Against Moffitt, Chavira and Kunasek)

90. Plaintiff re-alleges and incorporates by reference paragraphs 1-89 above as though fully set forth herein.

91. Defendants Moffitt and Chavira made false and defamatory statements concerning Dr. Carey; specifically, that Dr. Carey sexually harassed residents and tolerated an atmosphere of sexual harassment; that he violated MIHS, Maricopa County and State policies and laws on abortion; that he performed illegal abortions; that he performed abortions without patient consent; that he forced residents to perform abortions and/or coerced them about their abortion beliefs; and that he discriminated against resident and faculty applicants opposed to abortion in hiring.

92. These statements were published to third parties, including Dr. Marco Canulla, County Administrator David Smith, a county attorney, and Robert Milligan, Medpro's attorney.

93. On or about August 19, 2004, Defendant Kunasek made false and defamatory statements about Dr. Carey, and falsely accused Dr. Carey of breaches of ethics and of the Medical Staff bylaws.

94. Defendant Kunasek published these statements to one or more third parties.

95. Defendants' statements were made regarding Dr. Carey's trade or business and injured him in his business capacity.

96. Dr. Carey's reputation was damaged as a result of Defendants' defamation.

1 97. Defendants' defamation was willful, wanton, and intentional and
2 evidences an evil hand guided by an evil mind. The conduct should be punished and deterred
3 and for that purpose Dr. Carey is entitled to recover punitive damages in an amount in excess of
4 the compensatory damages.
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6 **COUNT FIVE**

7 **(Unlawful Discrimination in Employment Under Title VII of the Civil Rights Act of 1964**
8 **Against Maricopa County, Maricopa Integrated Health System,**
9 **Maricopa Medical Center, Maricopa County Board of Supervisors,**
10 **Brock, Stapley, Kunasek, Wilson and Wilcox)**

11 98. Plaintiff re-alleges and incorporates by reference paragraphs 1-97 above
12 as though fully set forth herein.

13 99. Dr. Carey was qualified for the positions he held with MMC, MIHS, and
14 Medpro.

15 100. Defendants Maricopa County, Maricopa Integrated Health System,
16 Maricopa Medical Center, Maricopa County Board of Supervisors, Brock, Stapley,
17 Kunasek, Wilson and Wilcox are employers within the meaning of Section 703 of the Civil
18 Rights Act of 1964, 42 U.S.C. § 2000e-2.

19 101. As a member of the United Methodist Church, Dr. Carey maintains the
20 religious beliefs that abortion should be legal and that training in abortion should be available to
21 resident physicians. Defendants knew of Dr. Carey's religious beliefs concerning abortion.

22 102. Defendants took adverse actions concerning Dr. Carey's employment,
23 including his removal from his positions at MMC and MIHS, because of his religious beliefs
24 that abortion should be legal and training in abortion should be available to resident physicians.

25 103. Defendants' actions constitute unlawful discrimination in employment in
26 violation of section 703 of the Civil Rights Act of 1964.
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1 104. Plaintiff filed a timely complaint of unlawful practices against defendants
2 with the Office of the Arizona Attorney General and received a right to sue letter in accordance
3 with Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5.

4 105. Dr. Carey has lost back pay and front pay as a result of Defendants'
5 discrimination.
6

7 **COUNT SIX**

8 **(Unlawful Discrimination in Employment Under the Arizona Civil Rights Act Against**
9 **Maricopa County, Maricopa Integrated Health System,**
10 **Maricopa Medical Center, Maricopa County Board of Supervisors,**
11 **Brock, Stapley, Kunasek, Wilson and Wilcox)**

12 106. Plaintiff re-alleges and incorporates by reference paragraphs 1-105 above
13 as though fully set forth herein.

14 107. Defendants' actions constitute unlawful employment practices in violation
15 of A.R.S. §§ 141-1463.

16 108. Dr. Carey has lost back pay and front pay as a result of Defendants'
17 discrimination.

18 **COUNT SEVEN**

19 **(Denial of Procedural Due Process in Violation of the Fourteenth**
20 **Amendment of the U.S. Constitution Against Maricopa County,**
21 **Maricopa Integrated Health System, Maricopa Medical Center,**
22 **Maricopa County Board of Supervisors, Brock, Stapley,**
23 **Kunasek, Wilson and Wilcox)**

24 109. Plaintiff re-alleges and incorporates by reference paragraphs 1-108 above
25 as though fully set forth herein.

26 110. Dr. Carey had a property interest in the continuation of the terms and
27 conditions of his employment as set forth in his contract with Medpro.

28 111. Under the terms of the Medpro contract, Dr. Carey could be removed
from his positions only for cause.

1 112. Defendants subjected Dr. Carey to multiple adverse employment actions,
2 including Defendants' campaign of false allegations of wrongdoing and ultimate direction to
3 Medpro that Dr. Carey be removed from his positions as Department Chair and Director of
4 PIROG, which rendered impossible the performance of the contract between Medpo and Dr.
5 Carey and caused the termination of Dr. Carey's employment.

6 113. At no time was Dr. Carey accorded notice, a hearing or any other
7 meaningful opportunity to contest the false allegations or any of the many other adverse
8 employment actions undertaken by Defendants.

9 114. Defendants' conduct was taken under color of state law as defined in 42
10 U.S.C. § 1983.

11 115. Dr. Carey was damaged as a result of Defendants' wrongful conduct.

12 COUNT EIGHT

13 **(Deprivation of Liberty Interest in Violation of the Fourteenth** 14 **Amendment of the U.S. Constitution Against Maricopa County,** 15 **Maricopa Integrated Health System, Maricopa Medical Center,** 16 **Maricopa County Board of Supervisors, Brock, Stapley,** **Kunasek, Wilson and Wilcox)**

17 116. Plaintiff re-alleges and incorporates by reference paragraphs 1-115 above
18 as though fully set forth herein.

19 117. On August 19, 2004, Defendant Andrew Kunasek sent a letter to the
20 MMC Chief of Staff demanding that Medpro reconsider its decision to re-appoint Dr. Carey
21 ("the Kunasek letter").

22 118. The Kunasek letter included numerous false, inaccurate and stigmatizing
23 statements concerning Dr. Carey, including but not limited to allegations that Dr. Carey was
24 untruthful in his communications to the BOS on numerous occasions.

25 119. The Kunasek letter was published to third parties.

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120. At no time was Dr. Carey accorded notice or a hearing or any other process to clear his name in connection with the false public statements contained in the Kunasek letter.

121. On or about September 23, 2004, Ted Shaw, acting CEO of defendant MMC, at the direction of Defendants Maricopa County, Maricopa Integrated Health System, Maricopa Medical Center, Maricopa County Board of Supervisors, Brock, Stapley, Kunasek, Wilson and Wilcox sent Dr. Carey a letter terminating him from positions at MMC, MIHS and PIROG (“the MMC letter”).

122. The MMC letter included false, inaccurate and stigmatizing statements concerning Dr. Carey as the reasons for Dr. Carey’s termination, including but not limited to allegations that Dr. Carey (i) engaged in self-dealing in violation of county and state ethics laws, and (ii) exposed the county to liability by permitting the continuation of Planned Parenthood rotations.

123. The MMC letter was published to third parties.

124. Defendants did not accord Dr. Carey notice of the charges against him or a hearing or any other process to clear his name in connection with the false public statements contained in the MMC letter.

125. Defendants’ conduct was taken under color of state law as defined in 42 U.S.C. § 1983.

126. Defendants’ actions caused injury to Plaintiff, including the loss of income, injury to his reputation, and mental anguish and emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Compensatory damages in an amount to be proved at trial;
- B. Backpay and frontpay;
- C. Punitive Damages against all defendants not exempt therefrom in an amount to be proved at trial;

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- D. Attorney's fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 2000e-5, non-taxable expenses, and taxable costs incurred in the prosecution of this matter;
- E. Interest on any amounts awarded as provided by law; and
- F. Such other and further relief as the Court deems just.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues in this action.

DATED: May __, 2006

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Leon B. Silver

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