

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Court Address: 7325 South Potomac Street  
Centennial, Colorado 80112

Plaintiff: **BARBARA MORRIS, M.D.**

vs.

Defendants: **CENTURA HEALTH CORPORATION; and  
CATHOLIC HEALTH INITIATIVES COLORADO**

Case Numbers:

2019 CV 31980

Div.: 21

**ORDER – RE: Defendants' Motion for Judgment on the Pleadings**

Having reviewed "Defendants' Motion for Judgment on the Pleadings," including the Response, Reply and supplemental briefs, and being otherwise fully advised of the premise of the Motion, the Court makes the following rulings:

**A. Standard of Review – Rule 12(c) Judgment on the Pleadings.**

1. Judgment on the pleadings under C.R.C.P. 12(c) is appropriate, if: (1) the material facts are undisputed and (2) the moving party is entitled to judgment as a matter of law after the allegations of the pleadings are construed strictly against the movant. **City & County of Denver v. Qwest Corp.**, 18 P.3d 748, 754 (Colo. 2001), **Platt v. Aspenwood Condo. Ass'n, Inc.**, 214 P.3d 1060, 1066 (Colo. App. 2009), **Trip v. Parga**, 847 P.2d 165, 167 (Colo. App. 1992). Additionally, the court must consider the allegations of the opposing party's pleadings as true. **Strout Realty, Inc v. Snead**, 530 P.2d 969, 970 (Colo. App. 1975).

**B. Factual and Procedural Background.**

2. Based on the facts alleged by the plaintiff, Barbara Morris, M.D. ("Morris"), which are accepted as true, including the 8/19/19 "Affidavit of Barbara A. Morris, MD", and other exhibits attached to Morris' First Amended Complaint ("FAC"), and on the Court's file, the following events have occurred in this case:

a. On August 21, 2019, Morris, a physician employed by Centura [Complaint, Ex. 2, ¶¶ 1 & 4], filed her initial Complaint in Arapahoe County District Court, 19CV31980, seeking declaratory relief under Rule 57(a) regarding her contract of employment with Centura.

(1) The Complaint addressed provisions of her current employment contract involving the "Colorado End-of-Life Options Act/Medical Aid in Dying" policy issued by Centura on February 10, 2017, regarding the conduct of its employees ("Policy") [Complaint, Ex. 3] which Morris alleged conflicts with her right to aid a certain qualified patient (co-plaintiff Cornelius D. Mahoney) to die under the provisions of C.R.S. § 25-48-101, *et sec.*, the Colorado End-of-Life Options Act ("EOLOA") [*id.*, ¶¶ 98-104].<sup>1</sup>

b. On August 26, 2019, Morris was involuntarily terminated from her employment by Centura for violating the Policy [First Amended Complaint ("FAC"), ¶¶ 145-148].

c. On October 7, 2019, prior to any responsive pleading by Centura, Morris filed her FAC:

(1) Morris dropped her claim for declaratory relief, and stated the following claims against Centura: (a) wrongful discharge in violation of public policy under EOLOA, in violation of her rights under Rule 57(b), and in violation of C.R.S. § 12-36-103.7(3) - control over physician's judgment [*id.*, ¶¶ 158-193; (b) breach of employment contract [*id.*, ¶¶ 194-218]; (c) violation of C.R.S. § 24-34-402.5(1) – lawful off-duty activities [*id.*, ¶¶ 219-230]; (d) violation of C.R.S. § 25-3-103.7(3) – knowing or reckless interference with the independent practice of medicine [*id.*, ¶¶ 231-238]; and (e) violation of C.R.S. §§ 25-48-116 and -118(2) – retaliation under the EOLOA [*id.*, ¶¶ 239-256].

(2) Based on her termination by Centura, co-plaintiff Mahoney was dropped from the claims stated in Morris' employment-related FAC.

d. On December 20, 2019, Centura filed its "Answer, Counterclaim, and Jury Demand" to the FAC. However, on January 10, 2020, without leave of Court, Centura filed its "Amended Answer, Counterclaim, and Jury Demand." The Court considers the Amended Answer to the FAC to be the 'active' pleading filed by Centura.

(1) The affirmative defenses to Morris' FAC stated by Centura include, *inter alia*, defenses based on the First and Fourteenth Amendments to the United States Constitution [Amended Answer at 20, ¶¶ 2-9].<sup>2</sup>

(2) Centura's Counterclaim against Morris requests declaratory relief under Rule 57(a), based on the Agreement, the Policy, and the First and Fourteenth Amendments to the U.S. Constitution [*id.* at 24].

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<sup>1</sup> The Court references the initial 8/21/19 Complaint for procedural (and not subjective) purposes only, and will not rely on any fact therein, unless any statement is repeated in the FAC.

<sup>2</sup> Centura's Counterclaim has been dismissed by the Court in the companion Order filed herewith.

e. On April 9, 2020, Centura filed its Motion for judgment on the pleadings under Rule 12(c). Briefing was completed on August 3, 2020.

3. Additional facts alleged in the FAC, and accepted as true for the purpose of this Rule 12(c) Motion, will be cited as necessary below.

### **C. Legal Analysis.**

#### **(1) Scope of Centura's Motion.**

4. The focus, or more accurately, the perspective of Centura's Motion for Judgment on the pleadings regarding Morris' claims is revealed in the first sentence of its argument:

As a Catholic hospital with a religious mission, St. Anthony is protected by the First Amendment in providing healthcare services consistent with its religious beliefs.

[Motion at 8]. That is, Centura views Morris' claims as an attack on its constitutional rights of religious autonomy, the free exercise of religion, the right not to associate with those with whom it disagrees, and the right not to kill.

5. At the threshold, the Court takes issue with Centura's perhaps inadvertent characterization of the statutory process under EOLOA as "assisted suicide":

Colorado's End of Life Options Act, C.R.S. §§ 25-48-101 to -123 ("EOLOA"), adopted in November 2016, reflects an ethic of assisted suicide inconsistent with the Religious Directives.

[*Id.* at 4 (emphasis added)].

a. Contrary to this representation of the "ethic" represented by the statute, the EOLOA expressly rejects this characterization:

. . . Actions taken in accordance with this article do not, for any purpose, constitute suicide, mercy killing, homicide, or elder abuse under the "Colorado Criminal Code", as set forth in title 18, C.R.S.

C.R.S. § 25-48-121 (emphasis added).

b. The Court will not permit Centura to euphemistically refer to Morris' good faith actions in compliance with the EOLOA, or that of any other physician or medical facility, as "assisted suicide," or any iteration thereof, within this litigation when the statute expressly addresses and rejects that characterization.

6. Without diminishing Centura's defenses to Morris' claims, the Court will address both Morris' claims and Centura's defenses as they are presented in the context of Colorado employment law. If any of the statutory or contractual claims arising from the employment and termination of Morris by Centura are susceptible to a defense based on Centura's constitutional rights under the First and/or Fourteenth Amendments to the U.S. Constitution, then the Court will address those issues in the context of a defense to an employment claim. Thereby, the Court will maintain the proper focus on whether Morris is able to state viable employment-related claims in light of Centura's defenses, rather than whether Morris has violated Centura's constitutional rights.

7. With that said, the Court will address each issue raised by Centura in its Motion for Judgment on the pleadings in turn:

a. Religious autonomy doctrine – First Amendment: Centura's over-arching defense is that *any* employment-related claim by Morris regarding the termination of her employment which involves the EOLOA inherently and improperly "entangles" the Court in Centura's right to practice its religion [Motion at 9-15]:

A correct understanding of the First Amendment and of EOLOA both lead to the same result: Defendants are entitled to judgment on the pleadings, because this court cannot decide the religious questions at the heart of the dispute between Dr. Morris and the Catholic hospital she agreed to serve.

[*Id.* at 9 (emphasis added)].

b. Free exercise of religion – First Amendment: Closely related to the "religious autonomy" argument, but more specifically focused on the EOLOA is Centura's defense that, based on its right to freely exercise its choice of religion in the operation of its business, Centura has a statutory and constitutional right to choose whether to permit its facility and its employees to participate in EOLOA procedures [*id.* at 15-21]:

Under EOLOA, participation by physicians and hospitals in assisted suicide is wholly voluntary. The law does not compel participation by any hospital, and a hospital may refuse to participate for a host of reasons, including simply to avoid administrative complexity or added costs. A refusal to participate for religious reasons must be treated the same because, under the Free Exercise Clause, a law "cannot in a selective manner impose burdens only on conduct motivated by religious belief." Since Dr. Morris's claims would do just that – impose liability on Defendants precisely because their refusal is religiously motivated – her claims must fail.

[*Id.* at 15 (citation omitted)(emphasis added)].

c. Right of "expressive association" – First Amendment: Centura asserts that Morris' termination is no more than Centura's exercise of its constitutional right not to associate with those with whom it disagrees by mandating compliance with certain employment requirements [*id.* at 21-26]:

Dr. Morris would have this court force Defendants to retain her despite (1) her direct action violating Centura's EOLOA Policy by determining that a St. Anthony patient qualified for assisted suicide, and (2) her efforts to force Defendants to abandon the EOLOA Policy altogether by filing this lawsuit. But the First Amendment does not allow the government to force a religious hospital like Defendants to accept a physician like Dr. Morris who actively works against their mission. Under the First Amendment, "the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed."

[*id.* at 21 (citation omitted)(emphasis added)].

d. Right "not to kill" – Fourteenth Amendment: Centura asserts, first, that the Due Process clause in the Fourteenth Amendment includes a "right not to kill" in the context of the military draft, capital punishment, self-defense, and (as relevant here) "assisted suicide," citing a law review article authored by Mark Rienzi [*id.* at 27]. Second, Centura asserts that the EOLOA cannot be interpreted in a way which would compel Centura or its employees to facilitate a patient's death:

EOLOA was not intended to force physicians or hospitals to participate in assisted suicide over their personal, moral, or religious objections, or to prohibit hospitals from maintaining policies against assisted suicide. But Dr. Morris would push EOLOA and other Colorado laws beyond their limit. If she prevails, Defendants would be prohibited from maintaining policies against participation in a practice they regard as the deliberate and unjustified taking of human life. Put simply, Dr. Morris's claims would coerce Defendants to participate in killing.

[*id.* at 26].

8. Before addressing Centura's constitutional defenses to Morris' claims, the Court will interpret: (a) the May 1, 2016 "Physician Employment Agreement" ("Agreement"); (b) the "Ethical and Religious Directives for Catholic Health Services" ("ERD"); (c) the 2/10/17 Policy; and (d) relevant sections of the EOLOA.

**(2) Rights under EOLOA relevant to Morris' claims and Centura's defenses.**

9. The rights and responsibilities under the EOLOA begin with how a patient qualifies for "medical aid in dying" ("MAID"):

(7) "Medical aid in dying" means the medical practice of a physician prescribing medical aid-in-dying medication to a qualified individual that the individual may choose to self-administer to bring about a peaceful death.

(13) "Qualified individual" means a **[1]** terminally ill adult with a prognosis of six months or less, **[2]** who has mental capacity, **[3]** has made an informed decision, **[4]** is a resident of the state, and **[5]** has satisfied the requirements of this article in order to obtain a prescription for medical aid-in-dying medication to end his or her life in a peaceful manner.

C.R.S. § 25-48-102(7) & (13) (emphasis & bold-face numbers added).

a. The additional "requirements of this article" under § 25-48-102(13) for which the attending physician is responsible are listed under C.R.S. § 25-48-106, which includes a dozen or more issues which the attending physician must inquire into or confirm before "qualifying" a patient for a prescription for MAID medication.<sup>3</sup> The statutory description of the first of these responsibilities is revealing:

(1) The attending physician shall:

(a) Make the initial determination of whether an individual requesting medical aid-in-dying medication has a terminal illness, has a prognosis of six months or less, is mentally capable, is making an informed decision, and has made the request voluntarily; . . .

§ 25-48-106(1)(a) (emphasis added).

b. Therefore, based on the express language of § 25-48-102(13), a patient is not a "qualified" for a prescription for MAID drugs by the attending physician until all of these requirements are satisfied, in addition to the attending physician's "initial determination" under § 25-48-106(1)(a).

10. The EOLOA includes within the definition of a "health care provider" both physicians and a "health care facility" where physicians may be employed or contracted. C.R.S. § 25-48-102(4).

11. The primary statutory issues involved in Morris' claims and Centura's defenses in 19CV31980 are set forth in the following sections of the EOLOA:

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<sup>3</sup> Under § 25-48-106, the attending physician is not only required to complete his/her own exhaustive investigation of the patient, but must confirm that the patient has made proper written and oral requests for MAID under C.R.S. § 25-48-103 and -104, and that the consulting physician has discharged his/her responsibilities under C.R.S. § 25-48-107.

(1) A health care provider may choose whether to participate in providing medical aid-in-dying medication to an individual in accordance with this article.

C.R.S. § 25-48-117(1) (emphasis added).

(1) A health care facility may prohibit a physician employed or under contract from writing a prescription for medical aid-in-dying medication for a qualified individual who intends to use the medical aid-in-dying medication on the facility's premises. The health care facility must notify the physician in writing of its policy with regard to prescriptions for medical aid-in-dying medication. A health care facility that fails to provide advance notice to the physician shall not be entitled to enforce such a policy against the physician.

C.R.S. § 25-48-118(1) (emphasis added).

a. § 25-48-117(1) is a *general* statute giving any "health care provider" (i.e., any physician or hospital) the right to choose to "participate" or not to "participate in providing medical aid-in-dying medication" to a patient.

(1) *Standing alone*, the Court finds this statutory section is reasonably interpreted to permit a hospital facility to choose not to participate in any aspect of providing MAID drugs to patients of the hospital.

(2) *Standing alone*, the Court finds that such a choice by a hospital under § 25-48-117(1) would permit a hospital to prevent its employees and contractors, including physicians from participating in any way with the MAID process under the EOLOA.

(3) Such a prohibition by a hospital on its employees and contractors under § 25-48-117(1) must be provided in writing to the employees and contractors, pursuant to C.R.S. § 25-48-118(3).

b. However, the hospital facility's choice of whether to permit its employees and contractors to participate in the MAID process under § 25-48-117(1) does not stand alone in the EOLOA. C.R.S. § 25-48-118(1) *expressly* states what "participation" by its employees and contractors a hospital facility may prohibit within the MAID process, again quoting the statutory language:

(1) A health care facility may prohibit a physician employed or under contract from writing a prescription for medical aid-in-dying medication for a qualified individual who intends to use the medical aid-in-dying medication on the facility's premises. . . .

(Emphasis added).

(1) *Standing alone*, this subsection only permits a hospital from preventing a physician employed or contracted by the hospital from writing a prescription for MAID drugs if the patient intends to self-administer the drugs on the hospital premises.

(2) *Standing alone*, this subsection does not permit a hospital to prohibit an employed or contracted physician from (a) prescribing MAID drugs to a patient if the patient intends to use the drugs *off hospital premises*, or (b) "participating" in any other MAID process under the EOLOA.

c. Finally, the EOLOA expressly and specifically prohibits a hospital from taking any adverse employment action against an employee or contractor from taking any action involving the prescription of MAID drugs for a patient in good faith reliance on the provisions of the EOLOA. In fact, this provision was important enough to the Colorado legislature and the Governor to be stated twice under the EOLOA:

(2) Except as provided for in section 25-48-118, a health care provider or professional organization or association shall not subject an individual to any of the following for participating or refusing to participate in good-faith compliance under this article:

- (a) Censure;
- (b) Discipline;
- (c) Suspension;
- (d) Loss of license, privileges, or membership; or
- (e) Any other penalty.

C.R.S. § 25-48-116(2) (emphasis added).

(2) A health care facility or health care provider shall not subject a physician, nurse, pharmacist, or other person to discipline, suspension, loss of license or privileges, or any other penalty or sanction for actions taken in good-faith reliance on this article or for refusing to act under this article.

C.R.S. § 25-48-118(2) (emphasis added).

(1) The Court finds that these subsections clearly and unambiguously prohibit a hospital employing or contracting with a physician from terminating the physician's employment for participating in the prescription of MAID drugs to a patient, if



such participation is in "good faith" reliance on the procedures under the EOLOA, *with the exception* of prescribing medications for a patient who intends to self-administer on the hospital premises under § 25-48-118(1).

12. The Colorado Revised Statutes provide assistance in the interpretation of statutes which may ambiguous or in conflict with other statutory sections:

- (1) In enacting a statute, it is presumed that:
  - (b) The entire statute is intended to be effective;
  - (c) A just and reasonable result is intended;
  - (e) Public interest is favored over any private interest.

C.R.S. § 2-4-201(1) (emphasis added).

(1) If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider among other matters:

- (a) The object sought to be attained;
- (e) The consequences of a particular construction;

C.R.S. § 2-4-203(1).

If a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision . . .

C.R.S. § 2-4-205 (emphasis added).

13. At the threshold, the Court makes the following additional findings, as a matter of law, regarding the Court's interpretation of the above-referenced subsections of §§ 25-48-117(1) and -118(1):

a. § 25-48-117(1) is ambiguous in that the scope of its application may be interpreted in isolation, and may also be interpreted in the context of §§ 25-48-118(1):

(1) § 25-48-117(1) may be interpreted to permit a hospital to prohibit an employed physician from participating in any way in the MAID process under the EOLOA (see ¶ 11.a. above); or

(2) § 25-48-117(1) may be interpreted to permit a hospital to prohibit an employed physician only from writing a prescription for MAID drugs if the patient intends to self-administer the medication on the hospital's premises, pursuant to § 25-48-118(1) (see ¶¶ 11.b. & c. above).

14. The Court resolves the ambiguity in § 25-48-117(1) regarding the scope of the hospital's authority to regulate the conduct of its employed physicians through the following analysis:

a. The object of the EOLOA is (1) to provide patients of physicians and hospitals with the ability to receive MAID drugs based on certain patient qualifications, and (2) to provide physicians and hospitals with the option of providing such services. § 2-4-203(1)(a).

b. The public purpose of providing MAID drugs to "qualified" patients must prevail over the private interests of physicians or hospitals, unless expressly indicated in the EOLOA. § 2-4-201(1)(e).

c. The hospital's ability to prevent a physician from writing a prescription for MAID drugs is expressly limited under § 25-48-118(1) to circumstances where the patient "intends to use the medical aid-in-dying medication on the facility's premises." This limitation on the hospital's authority over a physician's conduct under § 25-48-118(1) is a more specific provision than the general authority of a hospital to choose to prevent its employed physicians to participate in any aspect of the prescription of MAID drugs under § 25-48-117(1). § 2-4-205.

d. The ambiguity existing in the hospital's authority to regulate the conduct of its employed physicians under § 25-48-117(1) when read in context with § 25-48-118(1) (see ¶ 13.a. above) results in the ability of a physician to rely in good faith on the specific limitation on his/her conduct under § 25-48-118(1) and participate in process of prescribing MAID drugs, provided that the patient does not intend to self-administer the medication on the hospital's premises. § 25-48-118(2).

e. This interpretation of the limitation of the hospital's authority to regulate the conduct of its employed physicians is corroborated in the limitation on the hospital's ability to terminate or otherwise sanction or penalize the employment of the physician for the physician's good faith reliance on the MAID process under the EOLOA. §§ 25-48-116(2) & -118(2).

f. Further, this interpretation of the limitation of the hospital's authority to regulate the conduct of its employed physicians prevents any adverse employment action against an employed physician for acting in good faith reliance on the Court's interpretation of the MAID process under the EOLOA.

15. With that said, Morris cites C.R.S. § 25-3-103.7(3) as placing additional statutory limitations on Centura's ability to restrict Morris' conduct in proceeding with the MAID process under the EOLOA based on Morris' "independent professional judgment concerning the practice of medicine" [Response at 26]. The Court disagrees:

a. § 25-3-103.7(3) provides as follows, in relevant part:

(3) Nothing in this section shall be construed to allow any health care facility that employs a physician to limit or otherwise exercise control over the physician's independent professional judgment concerning the practice of medicine or diagnosis or treatment or to require physicians to refer exclusively to the health care facility or to the health care facility's employed physicians. . . . Nothing in this section shall be construed to affect any health care facility's decisions with respect to the availability of services, . . . or treatment programs, or as requiring any health care facility to make available to patients or physicians additional services, . . . or treatment programs.

(Emphasis added).

b. Although § 25-3-103.7(3) does not permit a hospital to enter into the practice of medicine by exercising control over a physician's independent medical judgment, the statute does not require a hospital to provide MAID services to any person. See § 25-48-117(1).

**(3) Rights and limitations of physicians under the employment Agreement.**

16. The 5/1/16 Agreement between Morris and Centura provides as follows, in relevant part, regarding the obligations and limitations placed on Morris' conduct in the context of her participation in the MAID process under the EOLOA:

1.10 Compliance with Policies, Laws and Accreditation Standards. At all times during the term of this Agreement, Physician shall comply in all material respects with (i) applicable state . . . laws . . .

1.12 Ethical and Religious Directives. Physicians shall not provide any services to or perform any procedures in the Hospital that are in violation of the Ethical and Religious Directives for Catholic Health Care Services (the "Directives") . . .

4.2 Immediate Termination b Hospital for Cause. This Agreement may be terminated by the Hospital immediately, without liability resulting from such termination, upon the occurrence of any one of the following events:

4.2.6 Physician is found by Hospital or Centura to have . . . violated any . . . Hospital policy.

[FAC, Ex. 1 – "Agreement", §§ 1.10, 1.12., 4.2 & 4.2.6 (emphasis added)].

17. The "Ethical and Religious Directives for Catholic Health Services (Sixth Edition)" ("ERD") referenced in the Agreement provides as follows regarding the obligations and limitations placed on Morris' conduct in the context of her participation in the MAID process under the EOLOA:

. . . Suicide and euthanasia are never morally acceptable options.

55. . . . Persons in danger of death should be provided with whatever information is necessary to help them understand their condition and have the opportunity to discuss their condition with their family members and care providers. They should also be offered the appropriate medical information that would make it possible to address the morally legitimate choices available to them. They should be provided the spiritual support as well as the opportunity to receive the sacraments in order to prepare well for death.

60. Euthanasia is an action or omission that of itself or by intention causes death in order to alleviate suffering. Catholic health institutions may never condone or participate in euthanasia or assisted suicide in any way. . . .

[ERD at 1, & ¶¶ 55 & 60].

18. On December 7, 2016 (eleven days before the effective date of the EOLOA), Centura originated the "'Colorado End-of-Life Options Act/Medical Aid in Dying (Centura)" policy (effective on February 10, 2017) which applies to all physicians employed by or contracting with Centura at Centura's hospitals in Colorado, as anticipated under § 4.2.6 of the Agreement:

#### PURPOSE

To describe Centura Health's position with respect to the Colorado End of Life Options Act and to describe procedures for managing patient requests for Medical Aid in Dying Medication (as that term is defined in Colorado Revised Statutes 25-48-102).

#### STATEMENT OF POLICY

1. Centura Health prohibits physicians and providers who are employed by Centura Health, PorterCare Adventist Health System, or Catholic Health Initiatives Colorado, as well as physicians and providers providing services at

Centura Health Facilities, from prescribing or dispensing medication intended to be used as a Medical Aid-in-Dying Medication for patients of Centura Health Facilities.

2. Physicians and providers providing services at Centura Health Facilities may discuss the range of available treatment options with patients to ensure patients are making informed decisions with respect to their care; provided, however, that physicians and providers providing services at Centura Health Facilities will not engage in any stage of qualifying a patient for use of Medical Aid in Dying Medication.

[Policy at 1, ¶¶ 1 & 2 (emphasis added)].

19. Based on these documents, either explicitly or implicitly part of the employment contract between Morris and Centura, the Court finds that the parties have the following *contractual* rights and obligations:

a. Centura may *contractually* prohibit a physician from participating in any way in the MAID process under the EOLOA, similar to the authority of Centura under § 25-48-117(1).

20. However, just as § 25-48-118(1) restricts the *statutory* authority of a hospital to prohibit certain physician conduct under § 25-48-117(1) (see ¶ 14 above), so § 25-48-118(1) restricts Centura's *contractual* authority to prohibit Morris from participating in certain aspects of the MAID process under the EOLOA:

a. Centura's *contractual* right to prohibit Morris from "engag[ing] in any stage of qualifying a patient for use of Medical Aid in Dying Medication" [Policy at 1, ¶ 2] is limited under § 25-48-118(1) only to circumstances where the patient "intends to use the medical aid-in-dying medication on the facility's premises."

b. "Colorado courts will not enforce a contract that violates public policy." **Rademacher v. Becker**, 374 P.3d 499, ¶ 10 (Colo. App. 2015).

21. Based on the Court's interpretation of the 5/1/16 Agreement, the EDR and the Policy, as statutorily limited under § 25-48-118(1), the Court addresses each of Centura's constitutional defenses set forth in its Motion for judgment on the pleadings.

#### **(4) First Amendment doctrine of religious autonomy.**

22. Centura asserts that the First Amendment doctrine of religious autonomy deprives this Court of any jurisdiction because "this court cannot decide the religious questions at the heart of the dispute between Dr. Morris and the Catholic hospital she agreed to serve" [Motion at 9].

23. As noted above, the Court is not addressing any *religious* dispute between the parties, but is only interpreting the *contractual* rights between the parties in the context of the *public policy* of the State of Colorado, as expressed in its *statutes*.

24. Therefore, the Court finds that it has jurisdiction over Morris' claims against Centura, as set forth in the FAC, and DENIES Centura's Motion for judgment on the pleadings based on the religious autonomy clause in the First Amendment to the U.S. Constitution.

**(5) First Amendment right of free exercise of religion.**

25. As noted above, Centura asserts that, because Centura's participation in the MAID process under the EOLOA is voluntary under § 25-48-117(1), "under the Free Exercise Clause [of the First Amendment], a law 'cannot in a selective manner impose burdens only on conduct motivated by religious belief'" [Motion at 15].

26. Based on the analysis above of the 5/1/16 Agreement, the EDR and the Policy, as statutorily limited under § 25-48-118(1), Morris' claims against Centura are not based on a selective enforcement of a *religiously* based belief, but on how the *public policy* of the State of Colorado, as expressed in § 25-48-118(1), limits the *contractual* rights of Centura to restrict the conduct of Morris in her participation in the MAID process under EOLOA.

27. Therefore, the Court finds that Centura's rights under the free exercise of religion clause of the First Amendment to the U.S. Constitution do not, *per se*, abrogate Morris' contractual employment claims against Centura, assuming the constitutionality of the EOLOA. **Beathune v. Colorado Dealer Licensing Bd.**, 601 P.2d 1386, 1387 (Colo. 1979).

28. The Court DENIES Centura's Motion for judgment on the pleadings based on the free exercise of religion clause in the First Amendment to the U.S. Constitution.

**(6) First Amendment right of "expressive association."**

29. Centura also asserts that, under the "expressive association" clause of the First Amendment, Centura cannot "force a religious hospital like Defendants to accept a physician like Dr. Morris who actively works against their mission" [Motion at 21].

30. Based on the Court's interpretation of 5/1/16 Agreement, the EDR and the Policy, as statutorily limited under § 25-48-118(1), Morris' claims in the FAC are not a challenge to the *religious* mission of Centura or the Catholic church, but are limited to her rights under the employment contract drafted by Centura and policies implemented by Centura, as further limited by the public policy of the State of Colorado under § 25-48-118(1) and the EOLOA.

31. Therefore, the Court finds that Centura's rights under the "expressive association" clause of the First Amendment to the U.S. Constitution does not, *per se*, abrogate Morris' contractual employment claims against Centura, assuming the constitutionality of the EOLOA. **Beathune v. Colorado Dealer Licensing Bd.**, 601 P.2d 1386, 1387 (Colo. 1979).

32. The Court DENIES Centura's Motion for judgment on the pleadings based on the "expressive association" clause in the First Amendment to the U.S. Constitution.

**(7) Fourteenth Amendment – right "not to kill."**

33. Finally, Centura asserts that Morris' claims in the FAC are designed to "push EOLOA and other Colorado laws beyond their limit" so that Centura "would be prohibited from maintaining policies against participation in a practice they regard as the deliberate and unjustified taking of human life" in violation of Centura's purported right "not to kill" under the Fourteenth Amendment to the U.S. Constitution [Motion at 26].<sup>4</sup>

34. The Court has provided its interpretation of the relevant statutes under EOLOA raised by Morris' claims in the FAC in ¶¶ 9-15 above.

35. Neither this Court in its interpretation of these statutes, nor Morris' claims in the FAC seeks to "push EOLOA" beyond the language of these statutes. The Court's interpretation and Morris' claims are confined to Morris' contractual rights within the boundaries of these statutes.

36. In fact, by enforcing the express language of § 25-48-118(1), Centura will be provided with every statutory right to prevent the "deliberate and unjustified taking of human life" which is permitted under EOLOA.

37. Therefore, the Court finds that Centura's rights under the Fourteenth Amendment to the U.S. Constitution do not, *per se*, abrogate Morris' contractual employment claims against Centura, assuming the constitutionality of the EOLOA. **Beathune v. Colorado Dealer Licensing Bd.**, 601 P.2d 1386, 1387 (Colo. 1979).

38. The Court DENIES Centura's Motion for judgment on the pleadings based on the Fourteenth Amendment to the U.S. Constitution.

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<sup>4</sup> The Court merely reports the defense identified by Centura under the Fourteenth Amendment to the U.S. Constitution based on a right "not to kill," as described by Mr. Rienzi in his law review article [Motion at 27], but the Court does not find, as a matter of law for the purpose of this Motion, that such a right exists.

**D. Further Action.**

39. Based on the analysis above, the Court DENIES Centura's Motion for judgment on the pleadings.

40. Counsel will contact the Clerk of Div. 21 ([ileana.blocker@judicial.state.co.us](mailto:ileana.blocker@judicial.state.co.us) – 303-645-6730) at the earliest convenience to schedule the Initial Case Management Conference with the Court.

By Order of the Court this 30<sup>th</sup> day of September, 2020.

A handwritten signature in black ink, appearing to be 'JL Wheeler', with a long horizontal stroke extending to the right.

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John L. Wheeler  
District Court Judge

Cc: All parties