Upper leadership also experienced 100% turnover at this time. Dr. Janis Fegley was promoted to Regional Medical Director, and became Harrison's boss, but there is no evidence that she took any interest in how Harrison ran SAPC. Spare arrived as CMO in September 2011, taking over from Field, who was CMO when both Bauer and Romney had been hired. Spare was introduced to SAPC at a provider meeting (Exh. 198); he did not interact with Romney or Bauer again until he terminated them almost two years later. O'Connor arrived in July, 2012. Spare was gone by July 2014 and O'Connor, though not a physician, took over as acting CMO for a time after that. Given the poor information flow, it was not surprising that when Spare fired them in May, 2013, he and O'Connor said Claimants were "not a good fit" and had failed to form "collegial relationships." (***See, e.g.***, Spare 1151:6-14)

SAPC might have continued to bump along under this dysfunctional system had it not been for the decline in competence of Dr. John Fuchs, another SAPC provider. By continuing directly and indirectly to press management to deal with this important and ongoing issue, Claimants put themselves even more at odds with upper management, who wanted his competence problems to just go away. The Arbitrator concludes from the evidence presented that management viewed Claimants' failure to acquiesce in brushing Fuchs's problems under the rug as not collegial and fired them while protecting Fuchs and ultimately themselves.

IV.

THE RELEVANT LEGAL FRAMEWORK

Washington law provides generally that an employer may terminate an employee's service for any reason or for no reason. Here, Claimants' contracts (Exhs.16, 17 with addenda Exhs. 23, 24) explicitly stated that right. Claimants certainly made mistakes in some of their interactions and in some of their judgments. Ordinarily, their termination for lack of "collegiality," or indeed for no reason at all, would have been acceptable.

But the employer's right to terminate without cause is subject to some restrictions under Washington law. If an employee has been exercising certain rights, then the employer may not terminate based on those activities. Under Claimants' view of the case, Claimants were acting together as whistleblowers. The Arbitrator agrees. An employer does not have free rein to terminate an employee when public policies are implicated, as they claim they were here.

In order to prevail on a whistleblower claim, Claimant employees must show that their pursuit of those public policy rights was a significant reason for their termination. ***Wilson v. City of Monroe***, 88 Wash. App. 113, 121 (1997)(rev. den.) (cited and quoted in ***Smith v. Bates Technical College***, 139 Wash. 2d 793, 803 (2000)) If the employees produce facts to demonstrate that conclusion, they have established the tort of wrongful discharge in violation of public policy. ***Rose v. Anderson Hay and Grain Co.***, 184 Wash. 2d 268 (2015), citing and quoting ***Thompson v. St. Regis Paper***, 102 Wash. 2d 219, 231 (1984). The Supreme Court of Washington stated in ***Rose***, "The purpose of the tort exception is to prevent employers from utilizing the employee at will doctrine to subvert public policy…" (at 275) The Washington pattern jury instructions, WPI 330.50, cite the seminal case of ***Gardner v. Loomis Armored Inc.,*** 128 Wash.2d 931 (1996).

Respondents argue that Claimants were not whistleblowers, but the Arbitrator disagrees. While staff first raised the concerns about Fuchs' decline, Claimants supported them (Marasco 441:13-442:15) and tried over months to elevate the issue to more senior management. (Childress 586:3- 587:2) Given FMG management's lack of interest and follow through that is revealed in the discussion below, one wonders what more Claimants could have been expected to do.

In ***Karstetter v. King County Corrections Guild***, a recent case involving an in-house attorney who claimed whistleblower protection, the Supreme Court of Washington observed that "Washington's whistle-blower provisions are intended to encourage those with knowledge of institutional wrongs to come forward in order to safeguard the public." 193 Wash. 2d 672, 685 (2019) The court emphasized that the statutory provisions are to be read broadly:

> "Protecting only those who directly reveal information while sacrificing others who assist them would unjustly narrow the scope of whistle-blower statutes and caution future whistle-blowers to think twice before helping other whistle-blowers." ***Id.***

The public policy involved here is clear to the Arbitrator. While Respondents rightly argue that this is not a medical malpractice case, Respondents' decisions about how to handle the expressed concerns about Fuchs was a significant precipitating cause of Claimants' termination. Spare, who made the termination decision, admitted this in his testimony concerning Exhibit 35, the August 30, 2012, Harrison email reporting the providers' meeting with Fuchs:

> "Q. What impact, if any, did this document have on your decision to terminate Drs. Romney and Bauer?
>
> A. It was a contributor." (1285:8-10)

Were the two Claimants terminated, in significant part, for reporting and assisting others to report what they and other employees saw as the impairment of a physician? The answer for this Arbitrator is yes. They were not the only employees to raise the issue, or even the first, but they were the most senior. Once they were gone, the others did not speak up internally. Indeed, even before Claimants were terminated, staff realized that it did no good to raise the issue to management. (Bivens email to Wilson, Exh. 52) After Claimants were fired, Marasco testified that Wilson told her to delete her personal Facebook post bemoaning their termination: "you just saw what happened to those two doctors, remove it now," Wilson said. (497:7- 498:3) Marasco complied.

After they were terminated, Claimants and others did report their concerns about Fuchs to the Washington State Department of Health, which is discussed below. Of course, Respondents had to balance the important due process rights of the physician whose skills were questioned with the legitimate interests of the patients—hence management's focus in the exhibits and testimony on whether there had been any patient complaints or any reported patient harm. The SAPC providers and staff were raising the alarm to keep that harm from happening in the first place, but management instead misconstrued their efforts as "slanderous." (Harrison Depo. 52:1-11) (14:3623-3624:20; Exh. 35) How the process derailed requires a detailed examination.

V.