COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. SUPERIOR COURT

CIVIL ACTION No: 14 01410

BHARANIDHARAN PADMANABHAN MD PhD (Dr BHARANI) Plaintiff, pro se	)	
v.	)	PLAINTIFF'S OPPOSITION
CITY OF CAMBRIDGE, CAMBRIDGE PUBLIC HEALTH COMMISSION (dba Cambridge Health Alliance - CHA), et al Defendants	)	TO CERTAIN DEFENDANTS' MOTION TO DISMISS AND CONTINUED DEMAND FOR A JURY TRIAL

Now comes Plaintiff who files this Opposition to a Motion to Dismiss filed by certain Defendants from the Cambridge Public Health Commission. Pro se Plaintiff shall explain each deliberate error by Defendants in this written Opposition and continues his demand for a jury trial.

CONSTITUTION OF THIS DEFENDANTS' GROUP

1 Certain of the Defendants from the Cambridge Public Health Commission have jointly submitted a motion to dismiss that is deliberately misleading and constitutes a fraud on this Honorable Court.

2 To begin with, these Defendants have chosen to be represented by the same external attorneys. This runs counter to the fundamentals of good governance of a hospital, one of the issues at trial here.

3 There is an assured conflict of interest in the defense of certain of the defendants within said group given that the Trustees of the Cambridge Public Health Commission had the fiduciary obligation to provide oversight over the non-Trustee Defendants within said group, an obligation they consciously chose

to ignore and is itself a major issue at trial in this action. The Trustee Defendants thus have a different set of liabilities from the non-Trustee Defendants they had oversight over. There even have been cases where the Medical Staff of a hospital have sued the Trustees for not meeting their fiduciary obligations. Medical Staff of Community Memorial Hospital of San Buenaventura vs. Community Memorial Hospital of San Buenaventura, Ventura County, California Sup. Ct. 2003 , Exeter Hospital Medical Staff & a. vs. Board of Trustees of Exeter Health Resources, Inc. & a. NH Sup. Ct. 2001-134. It is thus highly improper to lump them all into one group with one lawyer.

4 Within the Trustee subgroup itself, the Cambridge Public Health Commission refused to accept service on behalf of named Defendants (Leape, Duehay, Busnach, Healy, Metzger) who were Trustees at the time in question in this trial (2010-2011) and have rotated off the Board of Trustees since. This is clear evidence of the publicly-owned tax payer funded Cambridge Public Health Commission's conscious and total disregard for good governance.

TABLE OF AUTHORITIES

Zambrano vs. Devanesan, Florida 484 So.2d 603

Commonwealth vs. Peter Cantelli, Mass Appeals Court No. 11P405

Stephen Harris vs. Bradley Memorial Hospital, Connecticut HHBCV020516962

Smith vs. Selma Community Hospital (2008) 162 Cal.App.4th 1478

Poliner vs. Texas Health Systems, James Knochel MD, US 5th Circuit, 06-11235

Peper vs. St Mary's Hospital, Colorado App. 07CA2491

Osuagwu vs. Gila Medical Center, 1:11-cv-00001-MV-SMV

Bryan vs. James E. Holmes Reg'l Med. Ctr., 33 F.3d 1318, 1332 (11th Cir. 1994)

Shahawy vs. Harrison, 875 F.2d 1529, 1532 (11th Cir. 1989)

Northeast Ga. Radiological Assoc. v. Tidwell, 670 F.2d 507, 511 (5th Cir. 1982)

Guttman v. Khalsa, Nos. 10-2167, 10-2172 (10th Cir. Jan. 11, 2012)

Medical Staff of Community Memorial Hospital of San Buenaventura vs. Community Memorial Hospital of San Buenaventura, Ventura County, California Sup. Ct. 2003

Exeter Hospital Medical Staff & a. vs. Board of Trustees of Exeter Health Resources, Inc. & a. NH Sup. Ct. 2001-134

Granfinanciera, S.A., v. Nordberg, 492 U.S. 33, 51-52 (1989)

Saenz v. Roe, 526 U. S. 489, 508 (1999)

Brown v. Presbyterian Health Care Services, 101 F.3d 1324 (10th Cir. 1996)

Chudacoff M.D. vs. Univ Med Ctr of Southern Nevada (a subdivision of the State of Nevada) 2:08-CV-863-ECR-RJJ

Gil Mileikowski vs. West Hills Hospital et al, Cal. Sup. Ct. S156986

Tuli vs. Brigham & Women's; Arthur Day MD, US Dist. Ct. Mass 07cv12338-NG

Mindy Hoffer vs. Board of Registration in Medicine, SJC-10850

In Re Peer Review Action, Minn Ct of Appeals A07-0813

Precision Instrument vs Automotive 324 U.S. 806 (1945)

STATUTES

Title 42 U.S. Code § 11101-11152 Health Care Quality Improvement Act 1986 Title 42, Ch 117 §11113 page 7102

PEER REVIEW IMMUNITY

5 The Cambridge Public Health Commission's arrogant presumptuousness in usurping to itself the role of the finder of fact in this trial from the supervising Judge of this Honorable Court and from the jury is unlawful. It is always a matter for the Court to decide whether qualified immunity applies to the "peer review" actions of a hospital. This is settled law in Massachusetts and throughout the United States. Brown v. Presbyterian Health Care Services, 101 F. 3d 1324 (10th

Cir. 1996) , Poliner vs. Texas Health Systems, James Knochel MD, US 5th Circuit, 06-11235 , Peper vs. St Mary's Hospital, Colorado App. 07CA2491 , Osuagwu vs. Gila Medical Center, 1:11-cv-00001-MV-SMV , Smith vs. Selma Community Hospital (2008) 162 Cal.App.4th 1478 , Stephen Harris vs. Bradley Memorial Hospital, Connecticut HHBCV020516962 , Tuli vs. Brigham & Women's; Arthur Day MD, US Dist. Ct. Mass 07cv12338-NG , Zambrano vs. Devanesan, Florida 484 So.2d 603 , In Re Peer Review Action, Minn Ct of Appeals A07-0813. It is also the explicit will of Congress. 42 U.S. Code § 11101-11152

6 The demand by certain Cambridge Defendants to declare themselves totally immune and to demand absolute secrecy through impoundment of all documents is a conscious attempt at hiding their felonies from judicial and public scrutiny though employed at a public hospital at tax payer expense.

7 "Peer review" immunity can be granted or not depending on a thorough examination of the facts and after malice has been ruled out. In the case of Tuli v Brigham for example Judge Gertner refused to grant "peer review" immunity to the actions of the credentialing committee controlled by Dr Arthur Day after a full examination in open court of Dr Day's malice. Tuli vs. Brigham & Women's; Arthur Day MD, US Dist. Ct. Mass 07cv12338-NG That is the well established standard in this Commonwealth and the United States.

8 Given that Dr Day and his hospital were represented in that lawsuit by the very same external law firm, Sloan & Walsh, now representing certain of the Cambridge Defendants in this case, clearly Sloan & Walsh are fully aware of this fundamental fact. Claiming that "peer review" immunity applies immediately and absolutely thus is a conscious fraud on this Honorable Court.

9 In Plaintiff's detailed Complaint, incorporated in this Opposition as if fully set forth herein, paragraphs 223 through 229 document that the actions of the

Medical Executive Committee (MEC) on the 9th of November 2010 totally failed to meet even the low bar set by Congress to claim good faith peer review immunity. Also see Smith vs. Selma Community Hospital (2008) 162 Cal.App.4th 1478 and Zambrano vs. Devanesan, Florida 484 So.2d 603 (MEC must conduct independent investigation prior to suspending privileges) , Stephen Harris vs. Bradley Memorial Hospital, Connecticut HHBCV020516962 (The selection by the same person of charts for 2 "reviews" constituted malice.)

10 The MEC cannot even avail of the clear provision by Congress of peer review immunity for actions that do not fulfill due process requirements noted by HCQIA "where the failure to take such an action may result in an imminent danger to the health of any individual." Title 42, Ch 117 §11113 page 7102. Not implementing for a full 48 hours an allegedly Summary Suspension for allegedly Imminent Danger totally irrevocably demolishes any claim of good faith peer review.

STATUTE OF LIMITATIONS

11 Cambridge defendants claim in their Motion to Dismiss that the following statutes of limitations apply - M.G.L. c. 260 § 2A; M.G.L. c. 149 § 187; M.G.L. c. 151B § 9. Cambridge Motion page 2. Cambridge defendants again have consciously committed a fraud on this Honorable Court.

12 The felonious Termination Letter from the 11th of November 2011 to Plaintiff from the Cambridge Public Health Commission is the controlling tort for setting deadlines for any limitations even though Plaintiff can prove to the satisfaction of a jury that he is the victim of an ongoing tort. This Termination Letter is evidence of fresh felonies - uttering and publishing a known falsehood to Government agencies - namely the Massachusetts Board of Registration in Medicine and the United States Department of Health and

Human Services' National Practitioners Data Bank. These fresh felonies have severely harmed the Plaintiff and continue to block Plaintiff from earning a living anywhere as a physician.

13 In November of 2011 the Commission was fully aware that claiming the Plaintiff's last date of employment was the 28th of October 2011, was a material falsehood. see Opposition Tab 1.

14 Plaintiff did not have a valid visa to work at the Cambridge Public Health Commission beyond the 30th of June 2011. see Opposition Tab 2. He was not employed there throughout 2011 and received no pay.

15 The Commission also lied on official documents to the Government that the Plaintiff had "Resigned" his privileges in November 2011, which was another conscious falsehood that the Commission published with conscious disregard for the law. This felony continues to harm Plaintiff to this day and blocks him from earning a living. Opposition Tab 3.

16 Plaintiff's Complaint, filed in October 2014, fully meets requirements for filing and does not fall foul of M.G.L. c. 260 § 2A.

17 In March 2013 Plaintiff applied in writing to then-Attorney General Martha Coakley to enforce M.G.L. c. 149 § 187 against the Cambridge Public Health Commission. See Opposition Tab 4. This action was fully within the statute of limitations both at that time and now as this tort is ongoing. As recently as January 2015, the Commission's attorneys at Sloan & Walsh hid from Plaintiff the credentials and identity of the author of the Greeley Report which Cambridge arranged and paid for expressly to damage Plaintiff and retaliate against him via the Board of Registration in Medicine. The application is still pending at the AGO and may yet be enforced by the new anti-corruption Attorney General.

18 Cambridge Defendants further claim that under Mass R Civ P 12(b)(6), P8 and P41 Plaintiff has not set forth a short and plain statement of the claim showing the pleader is entitled to relief.

19 Plaintiff directs the Court's kind attention to the summary paragraph on page 55 of Plaintiff's Complaint, which is short and plain and all of one sentence showing the pleader is entitled to relief from severe torts including malice, felony perjury, defamation and unlawful taking under the color of law.

20 Cambridge Defendants defamed Plaintiff far and wide within the Massachusetts physician community in order to make him unemployable and put his case on Lexis/Nexis. A sworn affidavit from a former patient of the Plaintiff documents what he and his wife were told by a physician in a different hospital system based on defamatory statements by Dr Rachel Nardin and others. see Opposition Tab 5. also Opposition Tab 6. Lexis see Opposition Tab 26.

POINT BY POINT REBUTTAL OF CONSCIOUS FALSEHOODS IN DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

Cambridge Memorandum Page 2 - First sentence

"Following the death of one of Plaintiff's CHA patients, Plaintiff's CHA medical privileges were summarily suspended on November 11, 2010, (see November 11, 2010, Ltr. attached hereto as Exhibit 1), and then revoked following a Fair Hearing Plan (FHP) proceeding during which plaintiff was represented by counsel."

21 Cambridge Defendants state that Plaintiff's privileges were 'summarily suspended on November 11, 2010.' Defendants are deliberately committing a fraud on this Honorable Court with this conscious lie. The evidence is irrefutable that Plaintiff's

privileges were suspended, SUMMARILY, effective IMMEDIATELY, on November 9, 2010. see Opposition Tab 7.

22 It is extremely significant that the Defendants have chosen to not present to this Honorable Court the Minutes of the MEC meeting from November 9, 2010, attached hereto as Opposition Tab 7. This is not an inadvertent minor omission given they have readily attached numerous other internal documents. The entire question of qualified immunity for peer review activities hinges on what the MEC did before and on the 9th of November 2010 and whether they acted in good faith in compliance with the explicit provisions of Title 42 U.S. Code § 11101-11152 Health Care Quality Improvement Act 1986. To precisely not include that one document is a conscious act which deliberately obstructs the course of justice. The Letter that Defendants do produce as their Exhibit 1 is not the document produced by the peer review committee.

23 Defendants have consciously chosen to lie on this point to the Court in order to hide the intervening 48 hours which proves the complete absence of independent good faith peer review and irrevocably strips defendants of qualified immunity as explicitly set down by Congress in Title 42 U.S. Code § 11101-11152 Health Care Quality Improvement Act 1986.

24 Hospitals do on occasion summarily suspend physicians without prior due process on the basis of preventing imminent harm. The case of Dr David Arndt, who left a patient on the operating table to go cash a cheque, is famous locally. Dr Arndt's medical privileges were indeed summarily suspended on his return from the bank and he was properly not allowed near another patient again.

25 In the Plaintiff's case, the MEC knew the summary suspension was malicious, and that there was ZERO risk of imminent harm to any patient and ZERO risk of any legal liability to the hospital itself from allowing Plaintiff to routinely see his

patients for a further 48 hours. Clearly they were not worried about imminent harm which is the only lawful reason to not provide prior due process.

26 It is this damning fact that the Cambridge Public Health Commission has tried to consciously hide from this Honorable Court. Given that the Commission is a public entity supported almost entirely by tax payers through direct cash grants and costs more per patient every year than UMass Medical Center or the Beth Israel, there is an overarching need for sunlight. see Opposition Tab 8.

27 The Commission claims that 'following the death of one of Plaintiff's patients, Plaintiff's privileges were summarily suspended...' The Fair Hearing examined this exhaustively under oath and proved that when the patient died he was not a patient cared for by the Plaintiff, that he had not been in physical possession of any medicines prescribed by the Plaintiff and that this former patient's death was totally completely absolutely unrelated to the Plaintiff. see Opposition Tab 9. The Commission chose to lie to this Honorable Court fully aware that it is a proven lie.

28 The former patient's death was coldly and cynically abused by the Commission as a pretext for the termination of the Plaintiff's privileges in retaliation for his blowing the whistle on insurance fraud and patient neglect at the Commission's hospitals. see Opposition Tab 10, 11, 12, 13, 14.

29 Lots of former patients die. Never is this used to summarily suspend a physician's privileges in the normal course of good faith peer review activities. The daughter of a former patient who received care from the Plaintiff wrote a letter informing him of her mother's passing. see Opposition Tab 15.

30 Defendants then claim further in the same sentence that Plaintiff's privileges were 'then revoked following a Fair Hearing Plan proceeding...'

Again Defendants are consciously committing an egregious fraud on this Honorable Court.

31 Plaintiff was exonerated at the Fair Hearing in January 2011 which ruled that there was no credible evidence to support his termination. The Trustees of the Cambridge Public Health Commission refused to convene to review the Fair Hearing Report despite being required to do so by the binding Fair Hearing Plan. To date there has never been a final decision by the Trustees over the exoneration of the Plaintiff by the Fair Hearing, which was an undeniable abdication of their fiduciary obligations to provide oversight over the MEC.

32 Instead, the Commission falsely published to the Board of Registration in Medicine and the US DHHS that Plaintiff 'voluntarily'"Resigned" his privileges and that too in November 2011. Opposition Tab 16.

33 Never has there been one document anywhere with the word 'Revoked' till Defendants' consciously fraudulent Motion to Dismiss.

34 'Resignation' denotes an action by a physician whereas 'Revoke' denotes an action by the hospital's Board of Trustees.

35 The Commission tellingly has not included in it's Exhibits a document issued by the Trustees in 2011 to any official entity or to the Plaintiff permanently revoking Plaintiff's privileges. It is because the Trustees did not revoke Plaintiff's privileges that the Commission resorted to felony perjury. Any jury shall easily find for the Plaintiff on this matter.

Cambridge Memorandum Page 2 - Second sentence

"Plaintiff unsuccessfully sought judicial intervention, an injunction, to prevent this medical peer review investigation from proceeding."

36 The Commission actively lied to this Honorable Court again when it claimed that Plaintiff sought an Injunction to "prevent this medical peer review investigation from

proceeding." Peer review proceedings, thanks to Federal law, have clearly defined phases and obligations. By law, the investigation shall be performed by a peer review committee prior to any action by the MEC. When the MEC receives a complaint against a physician, it shall appoint someone to investigate independently and report back to the MEC within a set period of time, usually within 14 days.

37 The sole lawful exception to this is situations "where the failure to take such an action may result in an imminent danger to the health of any individual." Title 42, Ch 117 §11113 page 7102. The MEC has already proved that it was not concerned about imminent harm by waiting 48 hours to implement an allegedly "summary" suspension.

38 By law the MEC investigation ends when it issues a decision or action. Section 2.2, Opposition Tab 17. In the case of Cambridge's MEC, the investigation ended on November 9th, 2010 when the Committee as a whole took a clear decision to summarily suspend Plaintiff's privileges and recommend unequivocally to the Trustees that his Privileges be permanently Terminated. At this point everything was over and the Plaintiff was to be permanently expelled. Opposition Tab 7.

39 The MEC proved the absolute finality of this decision by choosing to disregard it's legal obligation to review the summary suspension of the Plaintiff's privileges within fourteen (14) days.

40 This legal requirement is present in order to protect the constitutional rights of physicians under investigation and suspension. The Cambridge MEC not only did not respect the Plaintiff's due process rights prior to suspending his privileges in bad faith, it chose to violate them repeatedly and consciously afterwards as well. The US Fifth Circuit eloquently ruled on the vital importance

of this review within fourteen (14) days as a way to balance the interest of public safety with the constitutional rights of the physician, his basic humanity, his need to earn a living. Poliner vs. Texas Health Systems, James Knochel MD, US 5th Circuit, 06-11235 see Opposition Tab 18.

41 Any jury will easily find that the MEC did not care and acted entirely in bad faith as in Zambrano and that statutory immunity cannot apply. Zambrano vs. Devanesan, Florida 484 So.2d 603

42 Plaintiff never sought an injunction to block any investigation. Based on the binding Fair Hearing Plan the Trustees were required to issue a final decision by April 2011. In August 2011 after waiting with no income Plaintiff moved Middlesex Superior to require the Trustees to issue their decision as required. Judge Leibensperger declined to do so based on Attorney Brian Sullivan's assertion that Plaintiff's Fair Hearing Rights had yet to be triggered as the MEC had yet to conclude an "investigation." see Opposition Tab 19.

43 Attorney Sullivan declared this to Superior Court after himself declaring in writing that the evidentiary phase of the Fair Hearing Process ended on the last day of the Fair Hearing or January 31st, 2011, whichever came first, and that Plaintiff's visa status also came to an end on that date. see Opposition Tab 2. The letter explicitly foresees Plaintiff's physical exit from the United States prior to the release of the Fair Hearing Panel's final report in February 2011.

44 The Fair Hearing Panel exonerated the Plaintiff in it's final report in February 2011 and disbanded. The investigation was fully over.

Cambridge Memorandum Page 3 - First sentence

"Subsequently the Commonwealth of Massachusetts Board of Registration in Medicine investigated Plaintiff's practice and issued a Statement of Allegations."

45 The Commission does not mention the THREE YEARS in between. Another fact not found in the Commission's Memo is the Fair Hearing's exoneration of the Plaintiff. The Commission was severely stung by this exoneration and by the Panel's Report acknowledging that the actions of the MEC did not meet safe harbor requirements for statutory immunity.

46 The Commission responded to this sting by purchasing a report from the Greeley Company after Plaintiff's privileges had lapsed and using the same charts selected by Dr Nardin and reasserting the same lies that the Fair Hearing had disproved 5 months prior. It was an unlawful do-over.

47 The Commission has gone to great lengths to keep anonymous the identity of the author of the Greeley Report to this day. Attachment A is still missing. see Opposition Tab 20. There is no sworn affidavit accompanying this Report.

48 The Commission then provided this unsworn anonymous Report to Counsel James Paikos at the Board of Registration in Medicine who used it verbatim in January 2013 to recommend that Plaintiff's License be suspended. Plaintiff pointed out to the Board that this was unlawful. see Opposition Tab 21. Dr Rachel Nardin was in active communication personally with the Board reasserting lies already disproved by the Fair Hearing Panel. Opposition Tab 22.

49 The Board tried to coerce Plaintiff again in May 2014 in the hope that he would crumble just to make it stop. Plaintiff demanded public accountability. It was at this point that the Board issued a Statement of Allegations identical to the lies asserted by Dr Rachel Nardin.

50 The most important lie from the Commission's viewpoint and one it is most desperate to have stick somehow is the allegation that the Plaintiff does not know how to read brain MRI scans and cannot tell a good MRI report from a bad one. This goes to the heart of the Plaintiff's whistle-blowing.

51 Objectively it is not the practice of any state's Board of Registration in Medicine to prosecute a neurologist over his ability to read brain MRI scans unless he/she has a string of patient complaints or has lost a number of malpractice lawsuits directly related to his/her ability to read brain MRI scans, neither of which applies to the Plaintiff. The Commission's Memo naturally takes pains to give this Court the deliberately false impression that the Board independently investigated Plaintiff. This desperation to demonstrate independent allies also underlies the consciously false statement in the Commission's Memo that Plaintiff 'sought judicial intervention, also unsuccessfully, from the Supreme Judicial Court, to stop that adjudicatory hearing.' Cambridge Memo page 3

52 The Commission is fully aware that the Plaintiff sought Certiorari from the SJC, as allowed by Hoffer, in order to gain judicial review of the Board using anonymous unsworn testimony paid for by the Commission to 'take' a physician's license. see Opposition Tab 23.

Cambridge Memorandum Page 3 - Fifth sentence

"In November 2010 David Bor M.D., Chief of Medicine for CHA ..., learned that one of the Plaintiff's CHA patients had..."

53 Once again, simply repeating proven falsehoods shall not turn them into the truth. Please see paragraphs 27, 28 and 29 of this Opposition supra and associated Tabs.

Cambridge Memorandum Page 3 - Ninth sentence

"Dr Bor noted that the Plaintiff was surprised to learn of the patient's death, and that the Plaintiff was unaware of the patient's history of intravenous drug abuse and depression."

54 Given that this was a former patient, news of his death naturally was a surprise. The Fair Hearing examined closely Dr Bor's claim that Plaintiff was unaware of

the patient's drug abuse history and proved that the drug abuse occurred 20 years previously during his tumultuous youth and that Plaintiff had been fully aware of it as had others. The patient coached at-risk youth and did his best to publicly warn young children away from drug abuse. The Fair Hearing Panel exonerated Plaintiff from this lie. The level of attention Plaintiff pays to his patients' lives is evidenced in Opposition Tab 12 and Tab 15. It is vital to note that the bylaws required Dr Bor to issue a written report of his meeting with the Plaintiff, which he consciously disregarded. This was noted in the Hearing Panel Report.

Cambridge Memorandum Page 4 - First sentence

"...and the discrepancies between the Plaintiff's claims to Dr Bor regarding the number of patients he had receiving narcotic medication and the information Dr Bor gleaned from CHA medical records."

55 This heinous lie was included as one of the four reasons to terminate Plaintiff's privileges - "You were not completely truthful to the Chiefs...."

56 The Fair Hearing Panel exonerated Plaintiff of this heinous lie even though at the time of the meeting there were only 2 people in the room - Dr Bor and the Plaintiff - and even though the Panel were required to find in favor of the MEC unless the Plaintiff could prove that there was no credible evidence to support the charge. The evidence in favor of the Plaintiff was overwhelming. Also see paragraphs 58 and 59 below.

Cambridge Memorandum Page 4 - third and fourth sentences

"On November 9, 2010, the MEC found, among other concerns, that the Plaintiff's clinical practice did not meet the community standard..."

57 The Fair Hearing examined this exhaustively and declared that there was NO "community standard" that Plaintiff's practice had run afoul of. Plaintiff was

found to be totally compliant with all State and Federal laws and guidelines including that of the Federation of State Medical Boards.

58 The MEC on the other hand did not do any "finding" on it's own at all. The MEC lifted text verbatim from Dr Bor's Request to Terminate. The Fair Hearing also examined closely the alterations proposed by Dr Rachel Nardin who actually scratched out the line "~~Dr B claimed to have discharged his pain patients~~" as it was wholly undeniably false. see Opposition Tab 24.

59 The unaltered heinous lie became the MEC's "findings" after a meeting that lasted 29 MINUTES total. As noted earlier, this action by the MEC ended it's investigation under the Fair Hearing Plan and per Federal law. Poliner vs. Texas Health Systems, James Knochel MD, US 5th Circuit, 06-11235

60 Per the Fair Hearing Plan the process now moved to the Fair Hearing phase and then the post-evidentiary phase, as acknowledged by the Defendants themselves. Opposition Tab 2.

61 It is vital for the Court to be clear that by law the Hearing Panel is not part of the MEC's "investigation" despite strenuous efforts by the Defendants to convey that false impression. The Hearing Panel issues a judgement on the MEC.

Cambridge Memorandum Page 12 - Fourth sentence

"The MEC summarily suspended the Plaintiff's license after the Plaintiff's patient presented unresponsive to the emergency department and died of a medication overdose."

62 As proved earlier the patient was no longer under the Plaintiff's care. Equally importantly, Defendants strive to give the Court the false impression of immediacy. The former patient arrived six (6) days prior to the allegedly summary suspension which itself was implemented only two (2) days later. Also the Hearing Panel found there was no evidence to support the statement that the former patient had died of an overdose as opposed to cardiac arrest and

that he was not in possession of any medicines prescribed by the Plaintiff. And yet the Defendants repeat this lie here.

Cambridge Memorandum Page 12 - Tenth sentence

"Third, the MEC provided the Plaintiff with adequate notice."

63 This statement is a conscious and egregious fraud on this Honorable Court. Plaintiff was not provided any notice prior to the summary suspension on November 9th, 2010. The MEC cannot claim the actions of the Fair Hearing as it's own. By law the question of prior due process and fair notice applies exclusively to actions by the MEC prior to suspending a physician's privileges, which is the 'taking' in question. Not only did the MEC not provide any notice despite ample time and a proven lack of imminent harm, it also refused to review the suspension within fourteen (14) days as required by law. All statements regarding their reasonable beliefs and wish to further quality health care are provably false.

Cambridge Memorandum Page 14 - Second and fourth sentences

"...(3) his credentials were not renewed.." and "...had not been paid for 2011,..."

64 After perjuring to the Commonwealth and the Federal Government in November 2011 that Plaintiff had been an employee till October 28, 2011, the Cambridge Public Health Commission now accepts to this Court that Plaintiff had not been paid in 2011.

65 Supremely stunning and staggering is the claim, Memo page 17, by this city-owned taxpayer-funded public hospital, that Plaintiff was not harmed by it's felony perjury in November 2011 when it is that perjury that blocks Plaintiff from earning a living anywhere in the US and abroad even as a lowly locum tenens. see Opposition Tab 25.

66 Defendants then claim that Plaintiff "makes no allegations regarding which of the CHA Defendants sent this allegedly fraudulent letter." Memo page 17 when it is clear that the letter is signed by named Defendant David Porell and copied to named Defendants Dr David Bor, Dr Rachel Nardin, Kathy Murphy and Nancy Lian, all of whom knew it was felony perjury, materially false and in complete bad faith.

67 It is equally incredible that Defendants claim that "upon information and belief, the Plaintiff's employment contract was with the Cambridge Health Alliance Physician's Organization" and not with CHA, given the fact that the Physician's Organization is a creature of CHA as can be seen from the felonious Termination Letter of November 11, 2011 itself which is signed by CHA's own Chief Administrative Officer and CHA is part of the City. It is further incredible that Defendants now claim Dr Nardin's "daily dossier" is fiction when all 500 pages of it were turned over in discovery prior to the Fair Hearing. It physically exists.

SUMMARY

68 Defendants have consciously reasserted already proven lies and have hidden true facts from this Honorable Court in bad faith as detailed above. Despite their false claims of "no reasonable inference" there is overwhelming documentary evidence proving bad faith, malice and total abdication of even basic obligations that peer review committees are required to meet.

69 There is overwhelming documentary evidence that the Defendants committed felony perjury with their malicious fraudulent Termination letter of November 11, 2011.

70 There is overwhelming documentary evidence that the Defendants committed felony perjury with their malicious fraudulent declaration to the Government that

Plaintiff "voluntarily Resigned" his privileges. Additionally, given that Plaintiff's privileges lapsed in June 2011 from non-renewal, there is no legal basis for the Commission's declaration to the Government that Plaintiff Resigned his privileges, a declaration that defames and harms Plaintiff daily.

71 There is overwhelming documentary evidence that the Defendants consciously committed a fraud on this Honorable Court by claiming Plaintiff's privileges were "Revoked." Defendants should be condemned for this lie.

72 There is overwhelming documentary evidence that the Defendants consciously committed a fraud on this Honorable Court by hiding the minutes of the peer review meeting on November 9th, 2010.

73 There is overwhelming documentary evidence that the Defendants consciously committed a fraud on this Honorable Court by hiding the document from Dr Rachel Nardin which proved Dr Bor had lied in bad faith to the MEC and the MEC had accepted it verbatim without ANY independent peer review.

74 There is overwhelming documentary evidence that the MEC summarily suspended the Plaintiff on the basis of blatant lies and proved it further by not implementing said suspension for 48 hours, a fact Defendants actively deliberately hid from this Court.

75 No "objective" "reasonable standard" allows for 48 hours to implement a summary suspension if the aim behind a summary suspension without prior due process truly is the fear of <u>imminent</u> harm. Imminent means NOW as in the case of Dr David Arndt. The two (2) days between the 9th and the 11th of November 2010 required the MEC to provide due process to the Plaintiff prior to suspending his privileges as the MEC clearly felt it had the time and no credible risk of <u>imminent</u> harm. As noted above, Dr Arndt's hospital did not wait 48 hours before summarily suspending his privileges. When real it is done summarily.

76 There is overwhelming documentary evidence that the MEC did not review the Summary Suspension within fourteen (14) days as required by all laws.

77 There is overwhelming documentary evidence that the MEC then continued a malicious bad faith summary suspension for 11 months and three weeks, which is against both the bylaws and the US Constitution.

78 There was no "honesty in belief or purpose.." in any of the actions of Dr Bor or the MEC or the "Investigative Committee" or the Commission. Felony perjury and malice more than meet the threshold for any Judge or jury to declare that qualified immunity does not apply to such actions and all "proceedings, reports and records" of the MEC are directly discoverable.

79 Plaintiff reasserts all his claims and waives none at this time. Plaintiff also registers his objection to all misleading arguments and defamatory statements by Defendants in their Memo including he "mismanaged narcotic medication" which is another egregious proven lie. Per the Doctrine of Unclean Hands these Defendants have forfeited their immunity and moral standing before this Honorable Court. Precision Instrument vs Automotive 324 U.S. 806 (1945)

Wherefore, Plaintiff respectfully requests this Honorable Court to reject these Defendants' Motion to Dismiss and allow the case to proceed to trial before a jury.

19 February 2015

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