

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DOCKET NO. 15CV10499WGY

BHARANIDHARAN PADMANABHAN, MD,  
PhD,

Plaintiff

v.

CITY OF CAMBRIDGE,  
CAMBRIDGE PUBLIC HEALTH COMMISSION )  
(dba Cambridge Health Alliance - CHA), )  
CAMBRIDGE PUBLIC HEALTH COMMISSION )  
PHYSICIAN ORGANIZATION (CHAPO) )  
MARY CASSESSO, ELLEN SEMONOFF, )  
MOACIR BARBOSA, DAVID BOR, )  
NANCY BUSNACH, LOUIS DePASQUALE, )  
FRANCIS DUEHAY, DENNIS KEEFE, )  
LUCIAN LEAPE, CAROL VANDEUSEN LUKAS, )  
ISAAC MACHADO, STEVE MANOS, )  
GERALD McCUE, JANE METZGER, )  
PAULA PARIS, JOSHUA POSNER, )  
MAXWELL SOLET, DEBORAH KLEIN WALKER, )  
ALLISON BAYER, DAVID PORELL, )  
GERALD STEINBERG, CAROL HULKA, )  
RACHEL NARDIN, SOMAVA STOUT, )  
KATHLEEN HARNEY, DAVID ELVIN, JACK BURKE, )  
DONALD KAPLAN, DAVID LINK, ANNE FABINY, )  
SIMON AHTARIDES, SAM DOPPELT, )  
ELIZABETH GAUFBERG, KATHERINE KOSINSKI, )  
RONALD MINTER, DAVID OSLER, GREGORY OTA, )  
ASSAAD SAYAH, STEVEN SCHWAITZBERG, )  
LAURA SULLIVAN, CHARLES DOUGLAS TAYLOR, )  
RANDY WERTHEIMER, PRISCILLA DASSE, )  
ROBERT HEALY, NANCY LIAN, )  
KATHLEEN MURPHY (FACHE), )  
THE GREELEY COMPANY, DR JOHN/JANE DOE, )  
GREGORY LIPSHUTZ, JONATHAN STRONGIN, )  
MELISSA LAI BECKER, )  
EXECUTIVE OFFICE OF HEALTH AND HUMAN )  
SERVICES, JUDYANN BIGBY, JULIAN HARRIS, )  
CHRISTINE ZAVALAS, JAMES PAIKOS, )  
LORETTA KISH COOKE, STEPHEN HOCTOR, )  
ROBERT BOUTON, GERALD HEALY, )  
CANDACE LAPIDUS SLOANE, MARIANNE FELICE, )  
LUBIN & MEYER PC, ROBERT HIGGINS, )  
CENTERS FOR MEDICARE & MEDICAID SERVICES )

(BOSTON REGIONAL OFFICE), RAYMOND HURD, )  
WILLIAM KASSLER, STANZLER LEVINE LLC, )  
LIAM FLOYD )  
Defendants )

**AMENDED COMPLAINT AND JURY DEMAND**

**Introduction**

**A. Nature of Plaintiff's civil action**

1. In 2007, Plaintiff Dr. Bharani Padmanabhan (herein referred as “Dr. Bharani”), who is Board Certified in neurology, was recruited by Dr. Thomas Glick to work for Defendant Cambridge Public Health Commission d/b/a Cambridge Health Alliance (herein referred as “Cambridge Hospital”) as in-house neurologist and Multiple Sclerosis specialist for the Whidden Hospital.
2. In 2007, Dr. Glick was a professor of neurology at Harvard and the Chief of the Division of Neurology for Defendant Cambridge. The Whidden Hospital—which is managed by Defendant Cambridge Public Health Commission did not have an in-house neurologist and Dr. Glick desired to set up an in-house neurology service for Whidden Hospital.
3. In recruiting Plaintiff Dr. Bharani, Dr. Glick explicitly expressed that a substantial objective of the position as in-house neurologist was to help improve the quality of care at Defendant Cambridge Hospital.
4. Plaintiff Dr. Bharani has had a decades-long interest in Crew Resource Management, Deming’s Principles, Root Cause Analysis and other systems designed to ensure that patients receive the best possible outcome.
5. Plaintiff Dr. Bharani was, also, fully aware of the fact that Defendant Cambridge was Defendant Dr. Lucian Leape’s hospital and the source of many of his published medical papers on the culture of teamwork and patient safety.
6. Defendant Dr. Leape was a Board Trustee at Defendant Cambridge Hospital. Defendant Dr. Leape is publicly held out by the medical community as a world-renowned expert regarding the culture in patient safety.
7. National Patient Safety Foundation has named an institute after him: The Lucian Leape Institute for Patient Safety. It was formed in 2007 to “provide a strategic vision for improving patient safety”—of which he is Chair.

8. Accordingly, Plaintiff Dr Bharani welcomed the chance to work within Dr Leape's own hospital. Plaintiff Dr. Bharani felt secure in bringing problems to the leadership's attention. Plaintiff Dr. Bharani was not aware at that time that Dr. Leape's published statements were wholly fraudulent.

9. Within eight (8) months of having been appointed, Plaintiff Dr. Bharani was awarded by the Hospital's nurses the Cambridge Health Alliance Quality Circle Award for excellent patient care and interpersonal skills—which was signed by Defendant Dennis Keefe, CEO.

10. Giving a doctor this award within eight (8) months of joining the Hospital is an institutional record that stands to this day.

11. Within a few months after Plaintiff Dr. Bharani's appointment as in-house neurologist, he began to observe an established pattern of conduct within the Department of Radiology that demonstrated that the radiologists at Defendant Cambridge were knowingly and deliberately carrying out intentional acts of Medicare fraud and patient neglect.

12. Acting upon outwardly held expectations of Defendant Dr. Leape's hospital, Plaintiff Dr. Bharani went up the chain of command to his immediate superior, Dr. Glick, Chief of the Division of Neurology. Dr. Glick validated and relayed this finding to the hospital leadership.

13. Although Defendant Cambridge hospital had outwardly expressed their wish to improve patient safety, instead, Defendants acted to the contrary.

14. Defendant Cambridge Hospital and its agents unlawfully retaliated and continue to unlawfully retaliate against Plaintiff Dr. Bharani for having properly and reasonably carried out his established responsibilities and duties and his advocacy for the safety of his patients.

15. Collective unlawful retaliatory acts inflicted upon Plaintiff Dr. Bharani have been ongoing through the present, involving the State Board of Registration in Medicine and Attorney General Maura Healey.

**B. Procedural background regarding Plaintiff's civil action**

16. Plaintiff Dr. Bharani filed an original civil action in Norfolk Superior Court (Docket No. 14-01410) on October 17, 2014, as a pro se litigant.

17. The Defendants comprise of actors who have intentionally and knowingly retaliated unlawfully against Plaintiff Dr. Bharani for properly and reasonably carrying out his obligations as a licensed physician.
18. On February 23, 2015—while Plaintiff Dr. Bharani was still pro se—the United States Attorney filed a Notice of Removal for the afore-referenced Norfolk Superior Court civil action with the United States District Court for Massachusetts.
19. On February 27, 2015, the Norfolk Superior Court received the United States Attorney’s Notice of Removal for the afore-referenced civil action and effectuated the removal of the entire matter of Norfolk Superior Court civil action (Docket No. 14-01410) to the United States District Court for Massachusetts.
20. On March 12, 2015, undersigned counsel filed her Notice of Appearance of Counsel with the United States District Court, on behalf of Plaintiff Dr. Bharani.
21. On March 25, 2015, the United States Attorney filed court records from the underlying Norfolk Superior Court civil action (Docket No. 14-01410) with this docketed action (15cv10499).
22. On April 13, 2015, Defendants represented by Attorneys Sullivan and Cobb filed a motion to dismiss and supporting memorandum. Accordingly, this First Amended Complaint is filed within twenty-one (21) days of the afore-described 12(b) motion to dismiss, and is filed by Plaintiff Dr. Bharani as a matter of right, pursuant to F. R. Civ. 15(a)(1)(B).

### **JURISDICTION**

23. Plaintiff Dr. Bharani is seeking injunctive and declaratory relief, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201, 28 U.S.C. § 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.
24. This Amended Complaint is properly before this Court seeking to redress the deprivation of rights and privileges guaranteed by the Federal Constitution, pursuant to 42 U.S.C. § 1983 (intentional abuse of power by State actors); 42 U.S.C. § 1985(3) (Federal Conspiracy Claim).
25. The civil rights claims presented in this Amended Complaint are properly before this Honorable Court pursuant to 28 U.S.C. § 1391. The underlying Federal Constitutional deprivations include the First Amendment (retaliation for exercising legal rights) and State and

Federal constitutional guarantees of substantive and procedural due process (Fifth and Fourteenth Amendments of the U.S. Constitution and Article X of the Massachusetts Declaration of Rights).

26. State law claims that are raised in this Amended Complaint are properly before this Court, pursuant to 28 U.S.C. § 1367 where the underlying facts are so enmeshed with the claims having original jurisdiction in this Court. Therefore, the raised state claims form part of the same case and controversy under Article III of the United States Constitution.

27. Venue is proper in the District of Massachusetts under 28 U.S.C. § 1391 where a substantial part of acts and omissions, on which this action is based, occurred in Massachusetts.

### **STANDING**

28. Plaintiff Dr. Bharani has been irreparably harmed by unjustified and unlawful acts of retaliation carried out by designated Defendants under a claimed color of authority.

29. Injury with regard to Plaintiff Dr. Bharani's substantial constitutionally protected property and liberty interests include—but are not limited to:

unlawful termination from privileges as in-house neurologist;

unlawful removal as faculty from Harvard;

obstructing Plaintiff Dr. Bharani from earning his livelihood as a licensed physician;

loss of his opportunity to complete his J-1 waiver to obtain his Green Card, anywhere in the United States, due to the false statements and representations made by Defendants to the State and Federal government; and

deliberate reckless harm to professional reputation.

### **PARTIES**

**Plaintiff**

30. Plaintiff Dr. Bharani resides in Brookline, MA and is a Board-certified neurologist, licensed to practice in Massachusetts. He specializes in Multiple Sclerosis. His medical license has always been active and continues to be active.

**Defendants**

Defendants are being sued in their official capacities and as private individuals.

**Party A**

31. The City of Cambridge, with a usual address of 795 Massachusetts Avenue, Cambridge MA 02139.

32. The Cambridge Public Health Commission, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

33. Cambridge Public Health Commission Physician Organization (CHAP), with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

34. Robert Healy, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

35. Mary Cassesso, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

36. Ellen Semonoff, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

37. Moacir Barbosa, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

38. David Bor, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139. In 2011, and Chief of Medicine at Defendant Cambridge Health Alliance for sixteen (16) years. He self-described his role as Chief of Medicine to “have the responsibility for the quality of medical care in the department of medicine.”

39. Nancy Busnach, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

40. Louis DePasquale, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

41. Francis Duehay, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

42. Dennis Keefe, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139 and c/o Care New England, 45 Willard Avenue, Providence RI 02905.
43. Lucian Leape, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
44. Carol Vandusen Lukas, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
45. Isaac Machado, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
46. Steve Manos, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
47. Gerald McCue, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
48. Jane Metzger, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
49. Paula Paris, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
50. Joshua Posner, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
51. Maxwell Solet, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
52. Deborah Klein Walker, Board Trustee, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

PARTY B

(Officers)

53. Allison Bayer, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
54. David Porell, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
55. Gerald Steinberg, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
56. Carol Hulka, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
57. Rachel Nardin, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

58. Somava Stout, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

#### PARTY C

(Medical Executive Committee 2010)

59. Kathleen Harney, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
60. David Elvin, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
61. Jack Burke, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
62. Donald Kaplan, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
63. David Link, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
64. Anne Fabiny, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
65. Simon Ahtarides, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
66. Sam Doppelt, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
67. Elizabeth Gauferg, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
68. Katherine Kosinski, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
69. Ronald Minter, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
70. David Osler, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
71. Gregory Ota, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
72. Assaad Sayah, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
73. Steven Schwaizberg, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
74. Laura Sullivan, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
75. Charles Douglas Taylor, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
76. Randy Wertheimer, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.
77. Priscilla Dasse, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

#### PARTY D

78. Nancy Lian, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.



79. Kathleen Murphy FACHE, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

#### PARTY E

80. Gregory Lipshutz, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

81. Jonathan Strongin, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

82. Melissa Lai Becker, with a usual address of 1493 Cambridge Street, Cambridge MA 02139.

#### PARTY F

83. The Greeley Company, with a usual address of 75 Sylvan Street, Suite A-101, Danvers, MA 01923.

84. Dr Jane/John Doe, Consultant for The Greeley Company, with a usual address of 75 Sylvan Street, Suite A-101, Danvers, MA 01923.

#### PARTY G

85. The Executive Office of Health and Human Services, with a usual address at One Ashburton Place, 11th Floor, Boston MA 02108.

86. Mary Cassesso, Asst. Secretary for Administration and Finance, with a usual address at One Ashburton Place, 11th Floor, Boston MA 02108.

87. Judyann Bigby, with a usual address at One Ashburton Place, 11th Floor, Boston MA 02108 and at Women's Health Center of Excellence, BWH, 75 Francis Street, Boston MA 02115.

88. Julian Harris, with a usual address at One Ashburton Place, 11th Floor, Boston MA 02108 and at The Office of Management and Budget, 725 17th Street, NW, Washington DC 20503.

89. Christine Zavalas, with a usual address at One Ashburton Place, 11th Floor, Boston MA 02108.

90. James Paikos, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880.
91. Loretta Kish Cooke, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880.
92. Stephen Hoctor, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880.
93. Robert Bouton, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880.
94. Gerald Healy, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880 and at 194 Grove Street, Wellesley MA 02482.
95. Marianne Felice, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880.
96. Candace Lapidus Sloane, with a usual address at 200 Harvard Mill Square, Suite 330, Wakefield MA 01880.

#### PARTY H

97. Lubin & Meyer PC, with a usual address at 100 City Hall Plaza, Boston MA 02108.
98. Robert Higgins, with a usual address at 100 City Hall Plaza, Boston MA 02108.

#### PARTY I

99. Centers for Medicare and Medicaid Services, Boston Regional Office, with a usual address at JFK Federal Building, Suite 2325, Boston MA 02203.
100. Raymond Hurd, with a usual address at JFK Federal Building, Suite 2325, Boston MA 02203.
101. William Kassler, with a usual address at JFK Federal Building, Suite 2325, Boston MA 02203.

#### PARTY J

102. Stanzler Levine LLC, with a usual address at 45 School Street, 2nd Floor, Boston MA 02108.

103. Liam Floyd, with a usual address at 45 School Street, 2nd Floor, Boston MA 02108.

## **STATEMENT OF FACTS COMMON TO CAUSE OF ACTIONS**

### **I. Background**

#### **A. Plaintiff Dr. Bharani's expertise in the discipline of Multiple Sclerosis**

104. While attending medical school, Plaintiff Dr. Bharani simultaneously worked on obtaining a PhD in multiple sclerosis.

105. Dr Bharani earned his MD degree (summa cum laude) at the Semmelweis University of Medicine in Budapest, Hungary in 1995 and his PhD in Multiple Sclerosis in 1997

106. Dr Bharani completed his internship in the Boston VA Medical Center in 1997.

107. Dr Bharani completed his residency training in Neurology at the Tufts Neurology Program in Boston (Tufts - New England Medical Center, Lahey Clinic and St Elizabeth's Medical Center).

108. Following residency Dr Bharani completed a 3-year Fellowship in Multiple Sclerosis Neuroimmunology at the Weiner Lab at Harvard Medical School's Brigham and Women's Hospital in Boston.

109. Following this 3-year fellowship Dr Bharani completed an additional 1-year Clinical Fellowship in Multiple Sclerosis at the University of Massachusetts Memorial Medical Center in Worcester.

110. Dr Bharani was the Director of the MS Service in Taunton and Abington for three years after his training was complete, where he personally care for 750 MS patients.

111. Plaintiff Dr. Bharani has authored numerous articles in peer-reviewed journals, specifically focusing on Multiple Sclerosis.

112. Plaintiff Dr. Bharani held an appointment as an instructor in neurology at Harvard Medical School for a total of seven (7) years.

113. Defendant Cambridge has acknowledged Plaintiff Dr. Bharani's expertise in Multiple Sclerosis.

**B. Overview of Plaintiff Dr. Bharani informing Defendant Cambridge of its agents' fraudulent conduct**

114. A few months after Plaintiff Dr. Bharani began treating patients at the Whidden Hospital, he had repeated occurrences of receiving brain scan reports from the Radiology Department that had serious inaccuracies. Of particular concern, he realized that there was a pattern of the brain scan reports not matching the brain scans themselves.

115. Based on Plaintiff Dr. Bharani's personal observations, it became evident to him that the radiologists were not actually reading the brain scans. It became apparent that generic reports were being generated; and were generated based on age and demographic.

116. In May of 2008, Plaintiff Dr. Bharani informed Dr. Glick and Defendant Dr. Bor about the severe problems with the brain scan reports that were issued by Defendant Dr. Carol Hulka's Radiology Department.

117. From 2008 through 2010, Dr. Glick repeatedly asked Defendant Dr. Hulka to meet with him so that he could discuss with her the above-described issues raised by Plaintiff Dr. Bharani. Defendant Dr. Hulka refused to meet with Dr. Glick and never did so

118. Dr. Glick had openly corroborated and validated Plaintiff Dr. Bharani's complaints about there being an established and continuous pattern of serious and substandard conduct by various radiologists from Defendant Dr. Hulka's Department.

119. In an email to Plaintiff Dr. Bharani, Dr. Glick wrote that Plaintiff Dr. Bharani was "doing good work and making a difference." He wrote that the documentation that Plaintiff Dr. Bharani provided was sound and described the documentation as "a smoking gun."

120. Dr. Glick had made various officials at Defendant Cambridge, including Defendants Dr. Bor and Dr. Nardin, aware of the validity of Plaintiff Dr. Bharani's concerns—within two (2) years, both, Dr. Glick and Plaintiff Dr. Bharani were gone from the hospital.

## **II Retaliation solely related to Plaintiff Dr. Bharani exposing Defendant Cambridge committing insurance fraud and their patent and reckless disregard for safety of patients' lives**

121. As previously set forth, after only eight (8) months of having worked at Defendant Cambridge Health Alliance, Plaintiff Dr. Bharani received an award for his outstanding dedication to providing quality patient care.

122. Defendant Dr. Bor testified under oath about how much the staff like Plaintiff Dr. Bharani. Defendant Dr. Bor described the staff's attitude towards Plaintiff Dr. Bharani as "exceptional".

123. Adverse treatment towards Plaintiff Dr. Bharani did not begin until after Defendant Dr. Nardin was hired to replace Dr. Glick. Plaintiff Dr. Bharani did not stop voicing his concerns about the danger to patients' lives and continued to expose repeated acts of medical malpractice by named Defendants in spite of *repeated threats* made by Defendant Dr. Nardin.

### **A. Evidence of malice to unlawfully terminate Plaintiff Dr. Bharani**

124. In mid-July of 2010, Plaintiff Dr. Bharani directly addressed an email to Defendant Dr. Hulka about serious inaccuracies made by the Radiology Department, with a cc: to Defendant Dr. Bor and Dr. Nardin.

125. Because of Plaintiff Dr. Bharani's concern of overwhelmingly foreseeable grave and imminent harm to his patients and Defendant Dr. Hulka's repeated refusal to address the serious inaccuracies that were brought to her attention by Plaintiff Dr. Bharani, in his email Plaintiff Dr. Bharani made reference to the Tuskegee syphilis study hoping to evoke Defendant Dr. Hulka's sense of professional and moral obligation to initiate corrective action. (The Tuskegee syphilis study is a well-publicized study medical schools teach to student doctors for the specific purpose of understanding that treatable diseases should be treated and that failure to do is professionally unethical).

126. The issues that Plaintiff Dr. Bharani raised in his email to Defendant Dr. Hulka were remediable, and therefore capable of preventing foreseeable serious and grave harm to patients seeking care from Defendant Cambridge.

127. Defendant Dr. Hulka responded to Plaintiff Dr. Bharani's email by her sending an email to Defendant Dr. Nardin (Division Chief of Neurology)—with cc: to Defendant Allison Bayer (Chief Operating Officer), Defendant David Porell (Chief Administrative Officer) and Defendant Gerald Steinberg (Chief Medical Officer).

128. In Defendant Dr. Hulka's above-described email, she did not deny the statements made by Plaintiff Dr. Bharani and she did not, in any manner, refute them.

129. Instead, Defendant Dr. Hulka outright stated in her email to Defendant Dr. Nardin that she wanted to pursue professional retribution against Plaintiff Dr. Bharani for his above-described statement.

130. The content of Defendant Dr. Hulka's above-described email shows that Defendant Dr. Hulka had a motive and opportunity to retaliate against Plaintiff Dr. Bharani for exposing the continuous pattern of serious inaccuracies made by the her Department in issued brain scan reports—and, especially, for Plaintiff Dr. Bharani pointing out in the email that the actual brain scans were not being read. Plaintiff Dr. Bharani point blank stated in that email that the Defendants' actions constituted insurance fraud and was life-threatening.

131. On July 27, 2010, Defendant Dr. Nardin emailed Plaintiff Dr. Bharani regarding the above-referenced email he had sent to Defendant Dr. Hulka.

132. In Defendant Dr. Nardin's above-described email, she demanded that Plaintiff Dr. Bharani apologize to Defendant Dr. Hulka for the email that he had sent her.

133. In Defendant Dr. Nardin's above-described email, she made adversarial statements against Plaintiff Dr. Bharani that were not only unsupportable, but indisputably supported medical malpractice and patient neglect.

134. In Defendant Dr. Nardin's above-described email, she characterized Plaintiff Dr. Bharani's expressed concerns as simply being a matter of differing opinions.

135. Regarding the particular brain scan at issue in the above-described email correspondence, it was indisputable that the patient's scan showed Multiple Sclerosis visible indications of Multiple Sclerosis lesions.

136. Regarding the particular brain scan at issue in the above-described email correspondence, there were no signs on the brain scan to support any inference of small vessel disease.

137. In Defendant Dr. Nardin's above-described email, she conceded that the radiologist who signed the report (Dr. Chang) was in error.

138. In Defendant Dr. Nardin's above-described email, she conceded that the brain scan undeniably included sagittal FLAIR images.

139. In Defendant Dr. Nardin's above-described email, she stated that Dr. Chang's above-described error was justifiable because the reason for the scan was based on the 64-year old patient having psychosis—which the patient did not.

140. There was a direct order from the ordering provider (Nurse Practitioner Girault) to do a sagittal FLAIR sequence.

141. The above-described reasons given by Defendant Dr. Nardin in her email to purportedly justify and excuse the inaccuracies in the brain scan report are completely irrelevant. These stated reasons are not adequate grounds on which to excuse a competent radiologist from failing to see the specifically ordered sagittal FLAIR images.

142. Failure for a radiologist to view all images provided at issue constitutes incompetence and negligence. There is no viable basis on which a competent radiologist can rely to excuse his or her failure to observe.

143. Defendant Dr. Nardin did not have any training with regard to Multiple Sclerosis—unlike Plaintiff Dr. Bharani who had spent several years training in the specialized area of Multiple Sclerosis.

144. Other than Defendant Dr. Hulka having the opportunity to review the brain scan at issue, at the time of the above-described email correspondence on July 27, 2010 when Defendant Dr. Nardin sent the email to Plaintiff Dr. Bharani, Defendant Dr. Nardin did not have any other doctor—trained in the field of Multiple Sclerosis—review the brain scan.

145. Only *after* the above-described email of July 27, 2010 sent by Defendant Dr. Nardin to Plaintiff Dr. Bharani did Defendant Dr. Hulka—on behalf of Defendant Cambridge—seek review of the above-described brain scan.

146. Defendant Dr. Hulka sent the images to both an internal and external reviewer, who both concurred that the images showed Multiple Sclerosis, demonstrating that Defendant Dr. Nardin's statement in her email to Plaintiff Dr. Bharani were grossly baseless and incompetent.

147. As evidenced, Defendants Hulka, Nardin, Bor and Steinberg had actual knowledge that Plaintiff Dr. Bharani was, in fact, correct in his reading of the brain MR images, as well as, his having reasonably and properly expressed the serious inadequacies in the report issued and the stated implication from an existing pattern of misconduct.

148. Defendant Steinberg was Chief Medical Officer, whose primary responsibility was to ensure quality care, investigate negligence, and promote patient safety.

149. Despite Defendant Steinberg's fiduciary, he never contacted Plaintiff Dr. Bharani—not even once, demonstrating his reckless disregard for the lives of patients.

150. Although Defendants Hulka, Bor and Steinberg were aware of Dr. Nardin's wrongful conduct in the statements that she made in the email she sent to Plaintiff Dr. Bharani, not one of the named Defendants took corrective actions in the improprieties that were brought forth by Plaintiff Dr. Bharani.

151. Defendants Nardin, Hulka, Bor and Steinberg *did not* contact Plaintiff Dr. Bharani to acknowledge the wrongful statements made by Defendant Dr. Nardin in her above-described email to Plaintiff Dr. Bharani.

152. The failure of Defendants Nardin, Hulka, Bor and Steinberg to take corrective action for the grossly baseless and incompetent statements made by Defendant Dr. Nardin in her above-described email to Plaintiff Dr. Bharani demonstrates the existence of malice harbored by the named Defendants against Plaintiff Dr. Bharani.

153. Defendant officials of Defendant Cambridge had actual knowledge of evidenced incompetent conduct exhibited by Defendants Dr. Nardin and Dr. Hulka.

154. The above-described acts and omissions made by Defendants Nardin, Hulka, Bor and Steinberg evidence the existence of collusion; and particularly with a jointly concerted intent to unlawfully and maliciously retaliate against Plaintiff Dr. Bharani for his lawful conduct in making the named Defendants aware of the negligence and insurance fraud in Defendant Dr. Hulka's Department and his diligent advocacy on behalf of his patients. Plaintiff Dr. Bharani's emails were, at all times, reasonable and proper.

155. After the above-described emails, Defendant Dr Nardin called Plaintiff Dr Bharani on his cellphone and said: "I don't know if you realize this but you are already officially on probation, and you had no business making Dr Hulka upset."

156. The above-described call that Plaintiff Dr. Bharani received from Defendant Dr. Nardin was the first time Plaintiff Dr. Bharani had become aware that he was supposedly placed on disciplinary probation.



157. As a matter of law, if an employer seeks to implement any adverse measures against an employee, it is statutorily mandated that the employer provide notice of the supposed grievance to the employee and that notice be documented in writing and placed in the employee's personnel file.

158. At no time was Plaintiff Dr. Bharani given any advance notice that the afore-named Defendants intended to place him on disciplinary probation. He was not asked to sign any document to acknowledge that disciplinary sanctions were being implemented and he was not afforded any opportunity to rebut any allegations of misconduct.

159. Throughout 2010, Plaintiff Dr Bharani endured enormous continuous criticism from Defendant Dr. Nardin alleging that he was providing substandard care for patients with Multiple Sclerosis—an area in which Defendant Dr Nardin had *no training whatsoever*.

160. Plaintiff Dr. Nardin has admitted, under oath, that she is not trained in the field of Multiple Sclerosis.

**B. Pattern of events that occurred after Plaintiff Dr. Bharani began exposing fraudulent acts of Defendant Cambridge Hospital and its agents**

December 8, 2009 meeting called by Defendant Dr. Nardin

161. Dr. Glick was forced to give up his position as Chief of the Division of Neurology in December of 2009.

162. Defendant Dr. Nardin was hired by Defendant Dr. Bor in August of 2009 and she replaced Dr. Glick as Chief in December of 2009.

163. On December 8, 2009, Defendant Dr. Nardin had Plaintiff Dr Bharani meet with her at Whidden Hospital where she informed him that she had been receiving a tremendous amount of complaints about him; that the number of complaints were more than she heard about any other doctor anywhere; and that he was making “her Department” look bad—that she, especially, did not want “her Department” having complaints from the “primary care community.”

164. At that time, Plaintiff Dr. Bharani told Defendant Dr. Nardin that she was Chief of Neurology which meant that if she had clear ideas of how she wanted things done that he would comply because he had needed to complete the 3-year J-1 waiver requirement to become eligible for a Green Card; to which Defendant Dr. Nardin retorted: “Just be professional. You aren't now.”

**May 2010 - Defendant Dr. Nardin's knowing and intentional harmful medical treatment suffered by Plaintiff Dr. Bharani's patient**

165. In May of 2010, a patient diagnosed and treated by Plaintiff Dr. Bharani for Multiple Sclerosis for two (2) years had been taken by ambulance to the Cambridge Hospital's Emergency Room. The patient had developed severe paralysis of his right leg and moderate paralysis of his right arm.

166. The patient specifically asked for Plaintiff Dr. Bharani to be called, as he recognized his symptoms to be related to his having Multiple Sclerosis, as the patient had two (2) previous major attacks directly caused by Multiple Sclerosis.

167. The ER Attending Physician (Dr. Melvin Schorin) did not call Plaintiff Dr. Bharani, instead he called Defendant Dr. Nardin; the patient's specific request that Plaintiff Dr. Bharani be called was ignored by the ER Attending Physician and by Defendant Dr. Nardin.

168. In addition to Defendant Dr. Nardin ignoring the patient's explicit request, the electronic medical record system at Defendant Cambridge (EPIC) fully documented that the patient has Multiple Sclerosis. His actual MRI scans were available to view by everyone in the ER, which Defendant Dr. Nardin's negligence is compounded by the fact that the patient explicitly stated that this was his third Multiple Sclerosis attack.

169. ER Attending Physician (Dr. Melvin Schorin) had a fresh MRI scan done which was *negative* for an acute stroke—in addition, to affirmatively showing Multiple Sclerosis lesions.

170. When the patient had informed Defendant Dr. Nardin that he was having another Multiple Sclerosis attack, Defendant Dr. Nardin informed the patient that Plaintiff Dr. Bharani had misdiagnosed him with Multiple Sclerosis; that Dr. Bharani did not know how to read Brain MRI scans; and that Third World doctors do not know about Multiple Sclerosis.

171. Even though Defendant Dr. Nardin had not trained in the field of Multiple Sclerosis and that the newly taken MRI brain scan overtly ruled out an acute stroke, Defendant Dr. Nardin told the patient he was suffering from his *third* stroke. Upon which Defendant Dr. Nardin told the patient that she was going to give him stroke related treatment, instead of the usual course of treatment that he received with Plaintiff Dr. Bharani for Multiple Sclerosis.

172. The patient was stunned to hear the above-described statements made by Defendant Dr. Nardin, and he had expressed reservations about the drastic change to his prior received diagnosis. In response to the patient's voiced concerns, Plaintiff Dr. Nardin assured the patient

that she had trained at Harvard; that she knew what she was doing and Plaintiff Dr. Bharani did not.

173. Consequently, Defendant Dr. Nardin treated the patient as though he were having a stroke even though the just recently taken brain scan showed that the patient did not have a stroke. More than 3 hours after the onset of his paralysis, Defendant Dr. Nardin administered an intravenous clot-buster called tPA.

174. ER Attending Physician (Dr. Melvin Schorin) did not stop Defendant Dr Nardin from giving tPA, despite his knowing that the patient was not suffering from a stroke. Rather, he deferred to Dr Nardin to avoid being labeled “disruptive.”

175. Defendant Dr Nardin sent ER Attending Physician (Dr. Melvin Schorin) a follow-up email, in which she outright stated that she knew that the new MRI scan was *negative for a stroke*. She stated in the email:

Hi Mel,  
I wanted to give you some f/u on [REDACTED]. Repeat brain MRI still not showing acute infarct. CTA without vessel cutoff, dissection or stenosis. His deficits have persisted. They are working him up for both stroke and giving him Solumedrol for possible MS flare. I think it's still possible that he had a small anterior choroidal artery infarct. Anyway, I think you did a great job caring for him and it was a pleasure to work with you!  
Best,  
Rachel

176. Per Defendant Cambridge’s protocol Plaintiff Dr. Bharani’s patient was immediately transferred to Massachusetts General Hospital’s (MGH) Neurology Service. At MGH the neurology residents immediately recognized that a major malpractice had occurred. They immediately stopped the tPA and administered intravenous high-dose steroids for the patient’s massive MS attack.

177. The following day, Defendant Dr. Nardin casually mentioned the previous day’s events to Plaintiff Dr. Bharani, while at a routine department meeting. She stated: “Oh one of your stroke patients came in yesterday. I had some difficulty exactly locating his lesion but still think it was somewhere in the Anterior Choroidal Artery distribution. I gave him tPA and he got better.”

178. Plaintiff Dr. Bharani was taken aback as he did not have any stroke patients, and so he immediately rushed to MGH to see his patient—who was still paralyzed on the right side.

179. The patient filled in Plaintiff Dr Bharani on all the prior day's events. Plaintiff Dr. Bharani, also, met with the MGH team, who were apoplectic that a known Multiple Sclerosis patient had been given tPA for a Multiple Sclerosis attack, as it had greatly increased the patient's chance of bleeding within the brain and dying.

180. Plaintiff Dr. Bharani understood that Defendant Dr. Nardin aimed for a bad patient outcome which would result in a devastating complaint to the Board of Registration in Medicine, intending to revoke Dr Bharani's License. It most emphatically was NOT a close judgment call or excusable medical error or incompetence. It was a deliberate conscious goal-directed act.

181. Given the devastating above-demonstrated misconduct by Defendant Dr. Nardin, Plaintiff Dr. Bharani apprised Dr. Glick of the situation by email and in person.

182. The above-described misconduct by Defendant Dr. Nardin falls under the classification called a Never Event by the Joint Commission; which means something that should never happen in a hospital.

183. Plaintiff Dr. Bharani asked Dr. Glick to analyze this event for a Morbidity and Mortality Conference at the hospital.

184. This Never Event was not addressed by Defendant Cambridge, at any time.

185. Where the officials of Defendant Cambridge knew of the gross misconduct committed by Defendant Dr. Nardin, they had an affirmative duty to notify the Joint Commission and EOHHS' Department of Public Health; yet, Defendant Cambridge did not report the incident.

#### August 2010

186. Unbeknownst to Plaintiff Dr. Bharani, Defendant Dr. Nardin had been actively soliciting patients of Plaintiff Dr. Bharani to be seen by her instead.

187. Plaintiff Dr. Bharani routinely saw his patients at Whidden Hospital and Defendant Dr. Nardin's clinic was located at Cambridge Hospital.

188. Defendant Dr. Nardin solicited patients of Plaintiff Dr. Bharani to be seen by her at the Cambridge Hospital via written and verbal communications.

189. Defendant Dr. Nardin told various patients of Plaintiff Dr. Bharani's that Plaintiff Dr. Bharani did not know how to read Brain MRI scans and that he was uneducated

regarding Multiple Sclerosis. Defendant Dr. Nardin, also, told many patients of Plaintiff Dr. Bharani's that Plaintiff Dr. Bharani had misdiagnosed them with Multiple Sclerosis—Defendant Dr. Nardin explicitly told the patients that they did not have Multiple Sclerosis.

October 2010 meeting called by Defendant Dr. Nardin

190. In October 2010, Plaintiff Dr Bharani was called to Defendant Dr Nardin's office. Defendant Dr Nardin informed Plaintiff Dr Bharani that she supposedly had done two (2) 360-degree analyses on him; and that he had not improved after the first one; that supposedly both 360-degree analyses had terrible results.

191. Plaintiff Dr Bharani had not been notified, at any time, that any supposed 360-degree analysis was being done—and he explicitly expressed that to Defendant Dr. Nardin. He had, also, pointed out to Defendant Dr. Nardin that if a 360-degree analysis is to be implemented that procedurally specific 360-degree coaches should be involved; and that a Performance--Improvement Plan is required before a second analysis can be done.

192. At that time, Plaintiff Dr. Bharani told Defendant Dr. Nardin that a 360-degree analysis is procedurally prohibited from being implemented as a punitive measure; that such mechanism was intended to be implemented in a positive posture meant to be a collaborative approach with the Human Resources Department to *help* the employee meet the employer's desired objectives.

193. Defendant Dr. Nardin stated that she viewed the 360-degree analysis to be done purely as a punitive measure—which mind-set she attested to under oath.

194. As Plaintiff Dr. Bharani had done in the afore-described meeting called by Defendant Dr. Nardin in July of 2010, Plaintiff Dr. Bharani raised his concern that he needed to be working at Whidden Hospital, at least, until the end of June 2011 for him to complete his 3-year J-1 waiver requirement, which was what he needed to finally obtain his Green Card.

195. As Defendant Dr. Nardin had done in the afore-described meeting of July 2010, she responded with a blanket generalization that Plaintiff Dr. Bharani was unprofessional and that his medical practices were unprofessional and substandard. She did not give Plaintiff Dr. Bharani any specific or articulable reasons as to why she considered him to be unprofessional or substandard.

196. At this meeting in October 2010, Defendant Dr. Nardin stated to Plaintiff Dr. Bharani that he did not meet the level of other doctors from Harvard and that he did not deserve to be there.

197. At that time, Defendant Dr. Nardin, also, stated that she would be speaking with Defendant Dr Bor about Plaintiff Dr. Bharani supposedly being unprofessional and substandard in his medical practices; and then stated that she doubted very much that Dr Bharani would complete his 3-year J-1 waiver requirement (meaning he would have to leave the country immediately, lose all his patients and not return for two full years).

### **November 2010**

198. On Thursday, November 4, 2010, Plaintiff Dr. Bharani was called to Dr. Bor's office around 3:30 PM.

199. Defendant Dr. Bor began asking Plaintiff Dr. Bharani about a patient he had treated for many years.

200. Plaintiff Dr. Bharani told Defendant Dr. Bor that he had been forced by Defendant Dr. Nardin to discharge this patient from his clinic. Defendant Dr. Bor asked when the patient was discharged, and Plaintiff Dr. Bharani responded that it was about six (6) weeks prior.

201. Defendant Dr. Bor was taken aback and chagrined that Plaintiff Dr. Bharani had discharged this patient six (6) weeks ago.

202. Plaintiff Dr. Bharani asked why Defendant Dr. Bor was asking about this patient. Defendant Dr. Bor then stated that the day prior the patient had been dropped off by his family essentially dead and the sole action in the Whidden ER was to pronounce him.

203. Defendant Dr. Bor said the assumption was that the patient had overdosed, and he further stated that the coroner had the body and would do the autopsy and that in most cases the hospital never hears back as to the cause of the death or other details.

204. Defendant Dr. Bor then interrogated Plaintiff Dr. Bharani about details regarding his chronic pain patients. Defendant Dr. Bharani had made clear that Defendant Dr. Nardin had been pushing him to transfer the care for those patients; that he had arranged for Dr. Allison Gorski, at Caritas Norwood, to accept his chronic pain patients and that she had accepted them with no concerns.

205. Defendant Dr. Bor then stated that he had planning with Defendant Dr. Nardin to terminate Plaintiff Dr. Bharani's contract after he returns from vacation, but now he was going to report Plaintiff Dr. Bharani to the Medical Executive Committee next Tuesday—before going on vacation, and that Plaintiff Dr. Bharani would now be judged by his peers.

206. On November 4, 2010, Defendant Dr. Bor had already made his decision to request that Plaintiff Dr. Bharani be terminated by the Medical Executive Committee, without doing any investigation whatsoever.

### **III. ILLICIT TERMINATION OF PLAINTIFF DR. BHARANI'S PRIVILEGES**

#### **A. Request for Termination made to the Medical Examination Committee**

207. On November 9, 2010, Defendants Dr. Bor and Dr. Nardin made a Request for Termination and immediate suspension of privileges to Defendant Medical Executive Committee (herein referred to as "MEC") regarding Plaintiff Dr. Bharani.

208. Defendant MEC meeting lasted a total of 29 minutes. They discussed three matters, two completely unrelated. Defendant MEC summarily suspended Dr Bharani's privileges and recommended Permanent Termination by the Trustees.

209. Despite Defendants Dr. Bor and Dr. Nardin knowing that the MEC had voted to immediately suspend Plaintiff Dr. Bharani's privileges on November 9, 2010, they *did not* inform Plaintiff Dr. Bharani until two (2) days later—they permitted Plaintiff Dr. Bharani to continue treating patients at the hospital on November 10, 2010 and November 11, 2010.

210. On November 10, 2010 and November 11, 2010, Plaintiff Dr. Bharani performed his usual duties and responsibilities as a physician not knowing about the suspension. He saw his patients who had been scheduled for appointments and consulted inpatients in the ICU and routine wards.

211. At approximately 3:00 pm on November 11, 2010, Plaintiff Dr. Bharani was in his office completing clinic notes; whereupon Defendants Dr. Nardin and Defendant Porell came to Plaintiff Dr. Bharani's office and handed him a stack of papers and a Termination Letter.

212. Defendant Dr. Nardin and Defendant Porell verbally paraphrased the contents of the termination letter to Plaintiff Dr. Bharani.

213. Having no basis for doing so, Defendant Dr. Nardin and Defendant Porell had security escort Plaintiff Dr. Bharani through the public corridors—in an extended "perp walk"—and out of the building. They precluded Plaintiff Dr. Bharani any opportunity to gather his personal belongings—with Plaintiff Dr. Bharani only being able to take his reflex hammer that his father gave him as a gift when he was seventeen years old.

214. Plaintiff Dr. Bharani expressed to Defendant Dr. Nardin and Defendant Porell his great concern for the welfare of his patients. Plaintiff Dr. Bharani insisted that he be able to make arrangements for the care of his patients, which Defendants Dr. Nardin and Defendant Porell ignored and demanded that Plaintiff Dr. Bharani leave the premises immediately.

215. The following week Defendant Kathy Murphy FACHE repeatedly contacted Plaintiff Dr. Bharani demanding that he immediately have movers come to collect all his personal belongings from his office; and that if he failed to do so promptly that she would have all his belongings put outside his home on the sidewalk.

### **B. Termination Letter**

216. The Termination Letter was on letterhead of Cambridge Health Alliance, and signed by Defendant David Porell (Chief Administrative Officer), with cc: to Defendants Bor, Nardin, Murphy and Lian.

217. The termination letter demanded that Plaintiff Dr. Bharani stay away from Defendant Cambridge Hospital and that he not talk to any of the staff or patients, which was designed to hinder Plaintiff Dr. Bharani from mounting a legal defense.

218. The above-referenced termination letter of November 11, 2010 stated that Plaintiff Dr. Bharani's visa would end on December 27, 2010.

### **C. Evidence of Defendants' malice in termination proceedings**

219. For the MEC to execute a summary suspension such action must be based on specific and articulable reasons that show the doctor presents an imminent danger to the public.

220. Plaintiff Dr. Bharani did not engage in any act to support any inference that the public was in imminent danger.

221. Plaintiff Dr. Bharani did not engage in any act to support any inference that the public was in danger, at any time.

222. Showing that Defendants knew that Plaintiff Dr. Bharani did not pose any risk of imminent harm to the public, Defendants notified that Plaintiff Dr. Bharani that he was summarily suspended *two whole (2) days* after the issuance of the suspension.



223. Defendant Dr. Bor has attested under oath—despite his personally making a Request for Termination of Plaintiff Dr. Bharani before the MEC—that he *did not* conduct a complete review of Plaintiff Dr. Bharani’s patients records. Defendant Dr. Bor specifically testified that he had only reviewed “some of them.”

**Defendant Dr. Nardin compiled a dossier specific and exclusive pertaining to Plaintiff Dr. Bharani**

224. As a direct result of Plaintiff Dr. Bharani exposing the above-described issues with the Radiology Department, Defendant Dr. Nardin, began compiling a daily dossier on Plaintiff Dr. Bharani—consisting of, at least, 600 pages—in August of 2009, before she even became Division Chief of Neurology.

225. The afore-described dossier compiled by Defendant Dr. Nardin showed that she looked at every clinic note, every hospital dictation, every email, every note about phone calls made by Plaintiff Dr. Bharani.

226. In addition, Defendant Dr. Nardin, spoke with the nurses at Whidden Hospital every evening to find out what Plaintiff Dr. Bharani had talked about during the day and if there had been any incidents.

227. Plaintiff Dr. Bharani had no knowledge, of any kind, that Defendant Dr. Nardin had placed him under comprehensive daily surveillance.

228. The above-described dossier was provided to Plaintiff Dr. Bharani as part of discovery during the subsequent fair hearing proceeding. Yet, on January 14, 2015, under oath, Defendant Dr. Nardin denied having compiled the 600-paged dossier.

**Evidence of concerted effort to illicitly use the Request for Termination proceedings with malice**

229. Defendant Dr. Bor has testified under oath that prior to making a Request for Termination of Plaintiff Dr. Bharani that he (Defendant Dr. Bor) and Defendant Dr. Nardin had met many times to specifically discuss the termination of Plaintiff Dr. Bharani’s employment.

230. Defendant Dr. Bor has testified under oath that prior to making a Request for Termination of Plaintiff Dr. Bharani that he (Defendant Dr. Bor) met with Defendant Kathy Murphy FACHE and Defendant Dr. Nardin on July 1, 2010 and on September 7, 2010 to specifically discuss employment issues regarding Plaintiff Dr. Bharani.

231. Defendant Kathy Murphy FACHE is the major administrator for the Department of Medicine.

232. In the above-described meeting before the MEC for Request for Termination, the MEC heard three (3) matters—only one of which pertained to Plaintiff Dr. Bharani. The meeting, with *all* three (3) matters presented lasted 29 minutes precisely.

233. On November 17, 2010, Defendant Nancy Lian, Senior Director for Medical Staff Services and Credentialing, misled Plaintiff Dr. Bharani about the actual procedural requirements for obtaining a Fair Hearing. Defendant Lian told Plaintiff Dr. Bharani that all he needed to do was write a one-line request and give it to her and that she would personally hand it to the CEO.

234. When Plaintiff Dr. Bharani returned home, he read through the Fair Hearing Plan for Defendant Cambridge Health Alliance. He discovered that, in actuality, that he was required to send a written request by certified mail; that by failing to do so, a request for a Fair Hearing could be deemed waived. Consequently, Plaintiff Dr. Bharani immediately rushed to the Post Office and sent in another request via Certified Mail.

235. On November 19, 2010, Plaintiff Dr. Bharani was sent a copy of his complete personnel file. There were no documents of any kind showing that complaints had been made against Plaintiff Dr. Bharani.

236. As of November 19, 2010, there were no documents of any kind showing any adverse action having been initiated or taken against Plaintiff Dr. Bharani in his file.

237. As of November 19, 2010, there were no documents in the file documenting the meetings held by Defendants Bor, Nardin and Kathy Murphy FACHE, in violation of the law.

#### **IV. CONTINUOUS AND INTERRELATED RETALIATION**

##### **November 2010**

238. On November 9, 2010, Defendant Cambridge Hospital filed a report with the Board of Registration in Medicine stating that it had suspended Plaintiff Dr. Bharani's privileges and "termination or non-renew" of contract.

239. The report filed by Defendant Cambridge Hospital with the Board of Registration in Medicine on November 9, 2010 in Medicine stated that the basis or allegation was: "Prescribing to a known addict."

240. Defendant Cambridge Hospital and its agents knew that the above-stated basis or allegation was false; and knowingly made that false representation to the Board of Registration in Medicine.

241. In early December 2010, Defendant CEO Keefe informed Plaintiff Dr. Bharani that he would arrange for a Fair Hearing to be held in January of 2011.

242. Plaintiff Dr. Bharani retained counsel for representation at the Fair Hearing.

243. Through his attorney, Plaintiff Dr. Bharani was informed by Defendant Cambridge Hospital that that he was ordered not talk to hospital staff, hindering him from being able to properly defend himself.

##### **December 2010**

244. On December 15, 2010, Defendants Paikos and Cooke formally opened a case, designating the initiation of a purported investigation by the Board of Registration in Medicine—with Defendants Paikos and Cooke waiting two (2) more years to appear before the Complaints Committee.

##### **January 2011**

245. Fair Hearing proceedings were conducted on January 5, 2011, January 6, 2011 and January 24, 2011.

246. The specific allegations that Defendant Cambridge made against Plaintiff Dr. Bharani during the presentation of documentary evidence and examination of witnesses during the three (3) days of Fair Hearing proceedings consisted of:

- Clinical practice with regard to treatment of patients' chronic pain does not meet the community standard and potentially endangers patient safety;
- Failed to adhere to the Division's Chief's request of discharging chronic patients or co-manage with primary care physicians;
- Not being completely truthful in reporting to the Division and Department Chiefs;
- Failed to improve professional conduct and interpersonal communication with referring physicians and patients despite substantial coaching and second chances.

247. Defendant Cambridge Hospital had fully and completely presented all its evidence of its case against Plaintiff Dr. Bharani.

**February 28, 2011**

248. On or about, **February 28, 2011**, the Fair Hearing Committee issued its rulings in a decree called Fair Hearing report.

249. In the Fair Hearing report of February 28, 2011, the Committee explicitly stated that Plaintiff Dr. Bharani proved, *by a clear and convincing standard*, that Defendant Cambridge *did not* present credible evidence to support the termination of Plaintiff Dr. Bharani's privileges and employment.

250. The Fair Hearing report explicitly states Plaintiff Dr. Bharani proved, *by a clear and convincing standard*, that Defendant Cambridge *did not* present credible evidence to support allegations that Plaintiff Dr. Bharani's put his chronic pain patients in any risk of harm.

251. It is mandated by Defendant Cambridge's own Fair Hearing Plan and Bylaws that for a termination to be effective and valid, it must be approved by the Trustees.

252. If Defendant Cambridge desired to appeal the Fair Hearing rulings, the Fair Hearing Plan mandates that a request be provided to the Chief Executive Officer (CEO) and it was required that the full Board of Trustees meet within 20 days to render a final decision.

253. Defendant Cambridge did not make such a request; however, Plaintiff Dr. Bharani made a timely request for a full Board review to Defendant Dennis Keefe, CEO to facilitate the rendering of a final decision.

254. Plaintiff Dr. Bharani made repeated requests to Defendant Dennis Keefe for the Board of Trustees to convene and render a final decision, however, Defendant Dennis Keefe continuously refused to do so.

255. Defendants Keefe (CEO) and Dr. Stout knowingly and intentionally did not seek final determination of the Fair Hearing ruling based on ill-motives—Defendants believed that by delaying the matter that the matter would resolve itself because they assumed that Plaintiff Dr. Bharani would have to leave the country for two (2) years because of J-1 visa rules.

### **March of 2011**

256. Defendant Dr. Stout knew that Defendant Cambridge did not have a legitimate basis to refute the ruling made by the Fair Hearing Committee of February 28, 2011.

257. Instead of using the proper and formal appellate procedures to seek a reversal of the ruling issued by the Fair Hearing Committee set forth in Defendant Cambridge Hospital's own by-laws, Defendant Cambridge and its agents sought to permanently preclude Plaintiff Dr. Bharani from being able to earn an income as a licensed medical physician.

258. On **March 22, 2011**, in direct contravention of the rulings *in favor of* Plaintiff Dr. Bharani, Defendant Dr. Stout (Medical Staff President) addressed a letter to Plaintiff Dr. Bharani stating that Defendant Cambridge was appointing an investigative committee “to conduct a further examination” of Plaintiff Dr. Bharani's practice and that they were keeping the summary suspension in place.

259. In the March 22, 2011 letter, it was unequivocally expressed that if Plaintiff Dr. Bharani appeared at the investigative committee hearing that he would be forced to undergo a psychiatric evaluation.

260. The Investigative Committee consisted of Defendants Dr. Jonathan Strongin, Dr. Greg Lipshultz, and Dr. Melisa Lai-Becker.

261. The MEC also paid The Greeley Company to purportedly conduct an External Peer Review of Plaintiff Dr. Bharani's medical practices using the same patient charts selected by Defendant Dr. Nardin.

262. It is mandated by Defendant Cambridge's own by-laws that if a suspension is not resolved within 6 months then the suspension automatically expires.

263. As of May 9, 2011, the suspension that was imposed upon Plaintiff Dr. Bharani by Defendant Cambridge Hospital automatically expired.

### **July 2011**

264. Defendant The Greeley Company issued a report entitled “External Peer Review Confidential Final Report.” (Herein referred to as “The Greeley Report”).

265. The patients referred to in The Greeley Report were the exact same patient charts selected by Defendant Dr. Nardin.

### **August 2011**

#### **Investigative Committee Report**

266. August 1, 2011, the Investigative Committee of Defendant Cambridge Hospital issued a report.

267. Six (6) months after the Fair Hearing Committee issued its ruling that the Defendant Cambridge did not have credible evidence from which to terminate the privileges and employment of Plaintiff Dr. Bharani, Defendant Cambridge Hospital informed Plaintiff Dr. Bharani that he was to appear before an Investigative Committee.

268. Defendant Cambridge Hospital and its agents did not inform Plaintiff Dr. Bharani about the subject matter of the meeting before the Investigative Committee. He was not given any notice as to purported charges.

269. Defendant Cambridge Hospital gave Plaintiff Dr. Bharani only a 3-day notice as to the scheduled meeting before its Investigate Committee.

270. The Investigative Committee issued a report that stated:

on March 8, 2011: the MEC voted to continue the suspension originated in November of 2010 and appointed an “Investigative Committee to conduct *further* examination of [Plaintiff Dr. Bharani’s] practice”; and

a list of 10 patient cases were sent to an “outside reviewer” for evaluation.

271. The content of the Investigative Committee involves the identical information and allegations that were presented and fully litigated during the Fair Hearings held on January 5, 6, and 24 of 2011.

272. No new allegations were raised by the Investigative Committee.

273. The Investigative Committee declared in writing that Defendant Dr. Bor stated that he did not want Plaintiff Dr. Bharani to be able to practice medicine anywhere at all.

274. As previously set forth, the Investigative Committee further declared that had Plaintiff Dr. Bharani come in to meet with the Committee they would have automatically required him to undergo psychiatric evaluation.

#### **Plaintiff Dr. Bharani sought injunctive relief**

275. Plaintiff Dr. Bharani filed a civil action with Middlesex Superior Court seeking injunctive relief to enforce the binding finding issued by the Fair Hearing Committee.

276. Through counsel, Plaintiff Dr. Bharani filed a Complaint seeking to have Defendant Cambridge follow the procedures set forth in its own by-laws

277. On August 4, 2011, a hearing was held in Middlesex Superior Court before Judge Leibensperger.

278. Attorney Brian Sullivan, counsel for Defendant Cambridge, intentionally and knowingly misled Judge Leibensperger by claiming that Plaintiff Dr. Bharani sought an injunction to block any investigation.

279. As set forth, Plaintiff Dr. Bharani had no income for almost a year, and so Plaintiff sought Middlesex Superior to require the Trustees to issue their decision as required.

280. Attorney Sullivan falsely stated to Judge Leibensperger that Plaintiff's Fair Hearing Rights had yet to be triggered as the MEC had yet to conclude an "investigation." Yet, Attorney Sullivan 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.

281. Attorney Sullivan's 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.

282. Based on Attorney Sullivan's misrepresentations, Judge Leibensperger denied Plaintiff Dr. Bharani's request to have Defendant Cambridge comply with its by-laws to render a final decision.

### **September 2011 & October 2011**

283. Throughout September 2011 and October 2011, Defendant Cambridge continuously demanded that Plaintiff Dr. Bharani resign from the Medical Staff.

284. Each time agents of Defendant Cambridge made its repeated and continuous demands that Plaintiff Dr. Bharani resign, he responded that the Trustees of Defendant Cambridge Health Alliance had not issued a final decision of suspension and termination of his privileges. Plaintiff Dr. Bharani, also, reminded the agents of Defendant Cambridge that the suspension had automatically expired.

285. On October 28, 2011, Defendant Cambridge filed another report with the Board of Registration in Medicine.

286. This new report of October 28, 2011 made to the Board of Registration in Medicine had *completely* changed the original reported allegations made on November 9, 2010. On November 9, 2010, the sole allegation was: "Prescribing to a known addict"—that statement was completely deleted.

287. For the report of action pertaining to October 28, 2011, the action stated: "Resignation" and the basis stated: "Failure to follow internal by-laws, etc. Interpersonal skills/personal behavior. In adequate documentation in patient medical records."

288. Plaintiff Dr. Bharani did not resign from Defendant Cambridge.

289. When Defendant Cambridge Hospital filed its new report with the Board of Registration in Medicine on October 28, 2011, it knew that Plaintiff Dr. Bharani had not resigned. Defendant Cambridge knew that it had, in fact, terminated Plaintiff Dr. Bharani's privileges and employment.

290. Defendant Cambridge Hospital knowingly and intentionally made false representations that Plaintiff Dr. Bharani "voluntarily resigned to avoid an investigation" in the reports that it filed with Board of Registration in Medicine and with the National Practitioners Data Bank.

291. Defendant Cambridge Hospital knowingly and intentionally changed prior reported information provided to Board of Registration in Medicine.



### **November 2011**

292. As previously set forth, Plaintiff Dr. Bharani had received a termination letter by Defendant Cambridge Hospital on November 11, 2010—yet, in November of 2011, *one full year after* Plaintiff Dr. Bharani had been physically escorted out of Whidden Hospital, he received a letter from Defendant Cambridge Hospital via FedEx that stated it was a termination letter, and that supposedly his last day of employment had been October 28, 2011.

293. Plaintiff Dr. Bharani *did not* receive any salary from Defendant Cambridge at all during the full year of 2011.

294. Equally importantly Plaintiff Dr. Bharani did not have a valid visa to be employed at Defendant Cambridge throughout 2011.

### **December 2011**

295. On December 15, 2011, Plaintiff Dr. Bharani sent a written complaint to Kathleen Sebelius, Secretary of DHHS, describing in detail specific occurrences of insurance fraud committed by Defendant Cambridge Hospital and describing in detail the unlawful retaliation he had been enduring by Defendant Cambridge, as his employer, for being a whistleblower.

296. On December 25, 2011, Plaintiff Dr. Bharani sent a written complaint providing specific allegations of Medicaid Fraud against Defendant Cambridge Hospital to Daniel Levinson, Inspector General for the U.S. Department of Health and Human Services—like Plaintiff Dr. Bharani had done so with Kathleen Sebelius.

### **February 2012**

297. On February 3, 2012, Special Agent in Charge Jennifer Trussell of the OIG sent written correspondence to Plaintiff Dr. Bharani and informed him that his written complaint sent to the Inspector General that specifically reported insurance fraud was forwarded to the Boston Regional Office of the Centers of Medicare and Medicaid Services (herein referred as CMS).

298. Defendant Dr. William Kassler, Chief Medical Officer for CMS's Boston Regional Office is a Board member of the organization known as Leapfrog Group—a private entity founded by Defendant Dr. Lucian Leape.

299. Leapfrog Group is where Defendant Leape serves as a consultant to evaluate the quality of hospitals.

300. The Leapfrog Group depends on Defendant Dr. Leape's public reputation to give credibility to its Safety Score and thus depends on Dr. Leape's own hospital to tout a Score of A. All of that would be threatened if CMS' Boston Regional Office investigates Defendant Dr. Leape and Defendant Cambridge Hospital and were to declare his hospital neglectful of patients and committing Medicare fraud.

301. Dr. William Kassler, Chief Medical Officer for CMS' Boston Regional Office has co-authored papers with supporters of Dr. Leape's conscious fraud.

302. Defendant Dr. Kassler's last publication prior to being co-opted by Leapfrog was in 2005. Since joining Leapfrog's Board in 2011 he has been named a co-author on 3 papers in rapid succession, papers written to cast doubt on CMS' Congressionally-mandated scheme to stop payment to hospitals providing poorer care. It is impossible to tell where Defendant Dr. Leape's Leapfrog Group ends and CMS' Boston Regional Office begins.

303. As set forth, Defendant CMS' Boston Regional Office declined to investigate Dr. Leape or his hospital. Plaintiff Dr. Bharani did not even get a single telephone call or correspondence from Defendant CMS.

304. The deliberate disregard of Defendant CMS is demonstrated by Special Agent Jennifer Trussell of OIG stating in writing that Defendant CMS was directly responsible for investigating the complaint written by Plaintiff Dr. Bharani.

305. In addition to actively shielding Defendant Dr. Leape from being investigated, CMS has improperly used the Treasury to pay for Defendant Dr. Leape to travel on speaking tours though he is faculty at a wealthy private University and has a private Institute named for him.

306. By consciously refusing to investigate Plaintiff Dr Bharani's complaint, CMS' Boston Regional Office actively aids and abets Medicare fraud and other felonies by Defendant Cambridge Hospital.

### **January 2013**

307. On January 29, 2013—more than two (2) years after opening a purported investigation of Plaintiff Dr. Bharani, Defendants Paikos and Cooke appeared before the Complaints Committee seeking to have Plaintiff Dr. Bharani suspended from the practice of medicine that very day.

308. One week prior to the hearing before the Complaints Committee, Defendant Paikos telephoned Plaintiff Dr. Bharani and informed him that he had done a comprehensive independent investigation done and that as a Board Investigator he was recommending to the Complaints Committee that Plaintiff Dr. Bharani's medical license be immediately suspended.

309. During the above-described telephone conversation, Defendant James Paikos stated that if Plaintiff Dr. Bharani would plead guilty and agree to five (5) years of probation then Defendant Paikos would recommend a stay of the immediate suspension—which Plaintiff Dr. Bharani immediately refused.

310. At the Complaints Committee hearing, Defendant Paikos read verbatim from the Greeley Report that was obtained by Defendant Cambridge in July of 2011—two years earlier and the exact same allegations that were presented at the Fair Hearing proceedings held in January of 2011. On January 29, 2013, Plaintiff Dr. Bharani sent a letter to Defendants Dr. Healy and Dr. Felice stating as such.

311. The Complaints Committee *did not* authorize Defendants Paikos and Cooke to suspend Plaintiff Dr. Bharani's medical license that day.

### **July 2013**

312. After Plaintiff Dr. Bharani correctly proved that in January 2013 Defendants Paikos and Cooke had used a report commissioned and paid for by Defendant Cambridge while claiming that Report was the result of their own comprehensive independent investigation, Defendants Paikos and Cooke purportedly sent documentation regarding Plaintiff Dr. Bharani for review to a Dr. Horowitz as a purported independent expert paid for by the Board of Registration in Medicine.

### **March 2013**

313. Plaintiff Dr. Bharani sent a written complaint to Attorney General Martha Coakley informing her of specific retaliatory acts that he had been enduring as a result of being exposing insurance fraud in the work place.

314. Attorney General Martha Coakley did not respond to Plaintiff Dr. Bharani's written complaint.

### **May 2013**

315. On May 18, 2013, Plaintiff Dr. Bharani informed Assistant Attorney General Steven Hoffman, in person, about the written criminal complaint against Defendant Dr. Julian Harris that he had sent by certified mail to Attorney General Martha Coakley.

### **May 2014**

316. On May 14, 2014, Dr. Horowitz issued a purportedly independent report regarding documents provided by Defendants Paikos and Cooke, on behalf of the Board of Registration in Medicine.

317. The Horowitz report is simply a paraphrasing of the Greeley report; the Horowitz report was not an independent review of any kind.

318. On May 28, 2014, Defendants Paikos and Cooke, again, went before the Complaints Committee. No new allegations were raised. The only difference was that there was a new Chair sitting for the Complaints Committee (Defendant Dr. Felice) and she authorized a Statement of Allegations to Issue though there was no sufficient evidence to proceed with the issuance of a complaint against Plaintiff Dr. Bharani.

### **August 2014**

319. In a letter dated, August 18, 2014, Defendant Paikos stated that he did not have possession of the Greeley report.

### **Prehearing Conference**

320. On August 21, 2014, a Prehearing Conference was held before Administrative Magistrate Kenneth Bresler.

321. Plaintiff Dr. Bharani raised the issue to Magistrate Bresler that for over the past four (4) years of a supposed investigation, the investigators for the Board of Registration in Medicine *had not* been in contact with any of the purportedly harmed patients.

322. Plaintiff Dr. Bharani raised objections that the Statement of Allegation that was presented should be dismissed for insufficient evidence.

323. Magistrate Bresler refused to allow Plaintiff Dr. Bharani to articulate the specific facts that demonstrated the lack of sufficient evidence that required the complaint to be dismissed.

324. Plaintiff Dr. Bharani raised concerns that the investigation conducted by Defendants Paikos and Cooke was tainted; that the purported investigation was not done as an independent and unbiased investigation.

325. Magistrate Bresler refused to allow Plaintiff Dr. Bharani to articulate the specific facts that demonstrated that the purported investigation violated his State and Federal Constitutional rights to due process.

326. Defendant Cooke represented to Magistrate Bresler that she and Defendant Paikos did not intend to call any of the purportedly harmed patients on which the Statement of Allegations was based.

327. Defendant Hocter represented to Magistrate Bresler that the Board of Registration in Medicine did not base its Statement of Allegations on the Greeley Report. Defendant Hocter explicitly stated that the Board's investigation was done entirely independently of the Greeley Report.

328. Plaintiff Dr. Bharani informed Magistrate Bresler that the Board was still refusing to provide the credentials of the expert that it was relying on for its Statement of Allegations.

329. Defendant Hocter represented to Magistrate Bresler that the Board was going to call the expert on whose opinion the Statement of Allegations was based.

330. Then minutes later, Defendant Hocter informed Magistrate Bresler that he did not want to be held to the position that the expert on which the Statement of Allegations was based would be testifying.

331. Magistrate Bresler asked for further clarification as to why the expert might not be able to testify, upon which Defendant Hocter stated:

It's sort of an ethical problem with the expert, that he - - And I just wanted to bring to your attention so that it's about his involvement in the case and not ethical on his part, but just he's worried about the repercussions about being involved in the case."

332. Magistrate Bresler then stated that what Defendant Hocter was really saying was that the Board was not going to present an expert witness; which Defendant Hocter clarified that the

Board intended to have an expert witness that it just *would not be* the doctor upon whose opinion the Statement of Allegations was supposedly based.

333. Plaintiff Dr. Bharani objected to the fact that he was being precluded from being able to examine the person who made the actual allegations.

## **CLAIMS FOR RELIEF**

### **Count 1**

#### **Declaratory claim**

334. The following requests for declaratory judgment involve matters in actual controversy that arise under the Constitution and laws of the United States compelling judicial declaration of the legal rights and interests of Plaintiff Dr. Bharani.

335. The below requested declaratory judgments impact redress of grave deprivation of Plaintiff Dr. Bharani's Federal Constitutional rights; such deprivations as the direct and exclusive result from Defendants' misconduct facilitated through color of law.

#### **To declare: the Massachusetts Attorney General's Office had a conflict of interest in representing named public officials as legal counsel**

336. Plaintiff Dr. Bharani seeks a declaratory judgment that the established custom and practice of the Commonwealth—having the Attorney General's Office represent public officials as legal counsel to defend civil actions brought by private parties premised on allegations of criminal misconduct—violates the substantive and procedural due process guarantees to private citizens under the Fifth and Fourteenth Amendments of the U.S. Constitution.

337. *In the matter of Wanda W. Jones*, 379 Mass 826 (1980) shows that there have been substantial concerns previously raised before the Supreme Judicial Court about the duty of the Attorney General's Office acting with divided loyalties in its duty to represent the interests of the public.

338. It is indisputable that the Attorney General's Office has an obligation to take corrective action regarding acts of abuse of power by public officials.

339. The Attorney General is breaching her duty to protect the public's interests by acting as legal counsel *for* public officials in civil actions brought by private civilians for injury sustained

by alleged illegal conduct of public officials. Inextricably, legal representation by the Attorney General signifies that she is *defending* public officials against allegations of illegal acts; therefore, it is axiomatic that the Attorney General *cannot* legitimately carry out her duty to protect the public from criminality.

340. De facto, when private civil actions against public officials are wholly based on allegations of unlawful acts, the Attorney General's Office has divided loyalties—this is a violation of the professional rules of ethics promulgated by the Board of Bar Overseers.

341. There is a long-established history of private civilians having pursued civil actions against public officials wholly based on illegal conduct, with the Attorney General's Office acting as legal counsel for the public officials.

342. As set forth herein in his original Complaint and in this Amended Complaint, Plaintiff Dr. Bharani has presented numerous specific and concrete allegations of substantial *criminal misconduct* by named Defendant public officials.

343. Plaintiff Dr. Bharani has presented substantial evidence of overt and blatant evidence of the Attorney General's actual conflict of interest in its representation of the named Defendant public officials.

WHEREFORE, Plaintiff Dr. Bharani requests that this Court grant the above-described declarative relief.

Violation of Safe Harbor Provisions of Federal Health Quality Improvements Act 1986

344. Defendant MEC did not independently investigate the Request For Termination from Defendants Dr. Bor and Dr. Nardin in knowing and intentional violation of its legal obligations.

345. Defendant MEC did not afford Plaintiff Dr. Bharani any due process before summarily suspending his Privileges at Defendant Cambridge Hospital.

356. Defendant MEC did not implement a Summary Suspension for a full 48 hours because it knew the action was fraudulent, with malice, and that Plaintiff Dr. Bharani was in no danger to the public. Defendant Cambridge Hospital knew there was no risk of patient harm in any manner and that it was never going to be sued by any patient seen within those 48 hours.

357. Defendant MEC did not review the summary suspension within 14 days as required by Defendant Cambridge's own by-laws, the Federal Health Quality

Improvement Act of 1996 (HCQIA) and case law. By not reviewing the suspension within 14 days, Defendant MEC proved intentional and deliberate malicious disregard for Plaintiff Dr. Bharani's State and Federal due process rights.

358. According to Defendants' By-laws, which are binding, Defendant MEC is obligated to be independent of the executive leadership of Defendant Cambridge Hospital and to conduct an independent investigation of all matters brought to it.

359. Defendant MEC was not independent and did not fulfill the four "Safe-Harbor" requirements set forth in the Federal Health Quality Improvements Act 1986, and, therefore, Defendant MEC cannot avail itself of peer-review immunity.

#### Requirement 1

360. Defendant MEC did not comply with the requirement of acting in the reasonable belief that they furthered the quality of care.

361. Defendant MEC spent about 20 minutes on the matter, and could not have legitimately and genuinely developed any belief, reasonable or otherwise in that time period.

362. Defendant MEC did not comply with its obligation to independently examine any impact on the quality of care before taking any adverse action.

363. By summarily suspending Plaintiff Dr. Bharani and depriving the under-served under-privileged people of Everett, Chelsea, Revere, Malden and Winthrop of his expertise, Defendant MEC has worsened the quality of care and access to specialist care locally.

#### Requirement 2

364. Defendant MEC did not comply with the requirement of making a reasonable effort to obtain the facts independently. Within a total 29-minute meeting, it is impossible for Defendant MEC to have made a reasonable effort to obtain the facts.

365. Defendant MEC was obligated by law and by Defendant Cambridge Hospital's By-laws to take Defendant Dr. Bor's request under advisement and to investigate the facts independently before taking its own action. Defendant MEC knowingly and intentionally chose not to do so.

366. Defendant MEC did not comply with Defendant Cambridge Hospital's own By-laws by not appointing an independent fact-finder who would report back within the required 14 days.

#### Requirement 3



367. Defendant MEC did not comply with the obligation to give adequate notice and a hearing to Plaintiff Dr. Bharani before taking action.

368. Defendant MEC did not inform Plaintiff Dr. Bharani that it was considering a request to terminate his privileges permanently. Defendant MEC did not afford Plaintiff Dr. Bharani to present his side before it recommended permanent termination of his privileges.

#### Requirement 4

369. Defendant MEC had to reasonably believe that its adverse action was warranted by the facts known. There was no legitimate justifiable good faith reason to not review the suspension within the required 14 days. The summary suspension was not warranted, in any manner.

370. Defendant MEC did not comply with the requirement of basing its adverse action on a good faith belief.

371. The Fair Hearing was not part of Defendant MEC's investigation, in any manner.

#### **Violations of 42 U.S.C. § 1983**

372. Plaintiff Dr. Bharani repeats and re-alleges the allegations set forth above.

373. Below are specific violations by designated Defendants causing Plaintiff Dr. Bharani to suffer substantial deprivations of multiple State and Federal Constitutional rights.

374. At all times relevant to acts and omissions by designated Defendants in violations of Plaintiff Dr. Bharani's State and Federal Constitutional rights, designated Defendants are acting under color of law.

375. The following Defendants are state officials/state agencies: James Paikos, Loretta Kish Cooke, Stephen Hoctor, Robert Bouton, Julian Harris, Candace Lapidus Sloane, Marianne Felice, Gerald Healy, City of Cambridge, Cambridge Public Health Commission and its agents

376. The following Defendants are federal officials/federal agencies: Centers for Medicare and Medicaid Services, Raymond Hurd, William Kassler.

377. The named Defendant public officials are not immune from liability under § 1983 as their conduct set forth herein this Amended Complaint constitutes intentional misconduct, by virtue of alleged conspiratorial action, that has deprived and continues to deprive Plaintiff Dr. Bharani of his Federal Constitutional rights.

376. The piercing of the veil of presumed qualified immunity also applies to attorneys who act as investigators and counsel for State agencies. See *Tower v. Glover*, 467 U.S. 914 (1988).

377. At all times relevant pertaining to the acts and omissions committed by designated Defendant State officials, a reasonable official would have understood that his or her actions were in violation of clearly established rights of Plaintiff Dr. Bharani. Where designated Defendant public officials knew—and should have known—that their actions violated a clearly established Constitutional right, they do not have immunity from liability as they had fair notice that their conduct was unlawful. See *Meaney v. Dever*, 170 F. Supp. 2d 46, 58 (D. Mass. 2001).

378. At all times relevant pertaining to the acts and omissions of designated Defendant officials, they did not act objectively or reasonably; and they knew that they were not acting objectively or reasonably—and did so with deliberate intention and purpose.

379. Defendant public officials and agencies do not have immunity from liability where their acts and omissions—individual and joint—are substantially and inextricably enmeshed with their having intentionally made false statements and acted in reckless disregard for the truth. *Burke v. Town of Walpole*, 405 F.3d 66, 86 (1<sup>st</sup> Cir. 2005).

380. The means used by designated Defendants to deprive Plaintiff Dr. Bharani of his Federal Constitutional rights were able to be effectuated *only because* designated Defendants are clothed with the authority of state and federal law.

381. At all times relevant pertaining to the acts and omissions by designated Defendants who have deprived Plaintiff Dr. Bharani of his Federal Constitutional rights, designated Defendants' conduct has been facilitated—and continues to be facilitated—with malicious intent. The sole purpose for Defendants' conduct has been to cause harm (financial and emotional) to Plaintiff Dr. Bharani.

382. Designated Defendant private parties are liable for violating 42 U.S.C. § 1983 as they intentionally engaged—and continue to engage—in joint participation with designated Defendant State officials in violating Plaintiff Dr. Bharani's Federal Constitutional rights. See *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 929 (1982).

383. Designated Defendant private parties are deemed state actors for the purpose of 42 U.S.C. § 1983 as they have acted together with designated Defendant State officials and/or have engaged in conduct that is otherwise chargeable to the State.

384. As a direct proximate result of the above-described intentional acts of designated Defendants, Plaintiff Dr. Bharani has sustained considerable and substantial harm and other damages.

## Count 2

### **§ 1983 Claim: Retaliation against Plaintiff Dr. Bharani for exercising his First Amendment right**

385. Plaintiff Dr. Bharani repeats and re-alleges the allegations set forth above.

386. As a direct result of Plaintiff Dr. Bharani's above-described lawful actions of exposing designated Defendants' misconduct and illegalities—which are set forth in detail in his Complaint and this Amended Complaint—designated Defendants have, individually and jointly, maliciously engaged in continuous and repeated acts of unlawful retaliation against Plaintiff Dr. Bharani.

387. The content that Plaintiff Dr. Bharani has exposed to the State courts and various regulatory entities directly and substantially interrelated with the interests of the general public; as the exposed unethical and criminal conduct of designated Defendants affect a broad scope of citizens.

388. The exposure of designated Defendants' misconduct and illegalities by Plaintiff Dr. Bharani has—at all times—been conducted in a manner that is reasonable and lawful; and substantiated with significant and objective concrete evidence.

389. Retaliatory acts and omissions of designated Defendants are directly a result of Plaintiff Dr. Bharani's exposure of designated Defendants' unethical and criminal misconduct; with such retaliatory acts causing Plaintiff Dr. Bharani to suffer deprivation of loss of liberty and property.

390. Plaintiff Dr. Bharani presents specific and concrete evidence that the retaliatory acts and omissions by designated Defendants—and officers, agents, servants and employees of designated Defendants, include, but are not limited to:

publicly made false allegations to various staff of Defendant Cambridge Hospital, to other medical providers outside of Defendant Cambridge and patients of Plaintiff Dr. Bharani that Plaintiff Dr. Bharani has substandard knowledge in the area of neurology;

publicly made false allegations to various staff of Defendant Cambridge Hospital, to other medical providers outside of Defendant Cambridge and patients of Plaintiff Dr. Bharani that Plaintiff Dr. Bharani has substandard knowledge of Multiple Sclerosis;

knowing and deliberate groundless punitive actions taken with regard to employment status, in terms of purported probationary sanctions;

knowing and deliberate groundless punitive actions taken with regard to employment status, in terms of removal from faculty position at Harvard;

knowing and intentional groundless suspension of privileges with Defendant Cambridge Hospital's medical staff;

knowingly and intentionally made false allegations requesting termination presented to Defendant Cambridge Hospital's Medical Executive Committee;

knowing and deliberate publicly made false allegations that Plaintiff Dr. Bharani is an imminent danger to the public;

knowing and deliberate groundless termination of appointment with Defendants Cambridge Public Health Commission and its Physician Organization;

knowing and deliberate refusal to abide by the mandated binding ruling issued by Defendant Cambridge Health's Fair Hearing Panel that there was no credible evidence to terminate Plaintiff Dr. Bharani's privileges and appointment as in-house neurologist for Defendant Cambridge Hospital;

knowing and deliberate refusal to comply with mandated by-laws and Fair Hearing Plan of Defendant Cambridge Hospital;

knowing and deliberate unlawful termination of Plaintiff Dr. Bharani's privileges with Defendant Cambridge Hospital ;

knowing and deliberate acts of obstruction in the required renewal of Plaintiff Dr. Bharani's privileges with Defendant Cambridge Hospital;

knowing and deliberate misrepresentations made to the Middlesex Superior Court to obstruct the required compliance with Defendant Cambridge Hospital's binding Fair Hearing Plan;

knowing and deliberate misrepresentations made to the EOHHS' Board of Registration in Medicine that Plaintiff Dr. Bharani had voluntarily resigned his appointment with Defendant Cambridge Hospital;

knowing and deliberate misrepresentations made to the Federal Government's Health & Human Services' National Practitioner's Data Bank that Plaintiff Dr. Bharani had voluntarily resigned his appointment with Defendant Cambridge Hospital;

knowing and deliberate false allegations and representations made to Board of Registration in Medicine;

knowing and deliberately tainted investigation process conducted by the Board of Registration in Medicine;

knowing and deliberate groundless filing of a Statement of Allegations through the Board of Registration of Medicine;

knowingly and deliberately fabricating information used to proceed with administrative adjudicative hearings with the Board of Registration of Medicine;

knowingly and deliberately using administrative proceedings of the Board of Registration of Medicine as a pretext for ill-motives, specifically intending to malign, harass and to obstruct Plaintiff Dr. Bharani from earning an income as a validly licensed physician;

knowing and deliberate use of the pretext of administrative proceedings by the Board of Registration of Medicine for over four (4) years to prolong the intent to malign, harass and to obstruct Plaintiff Dr. Bharani from earning an income as a validly licensed physician;

knowingly and deliberately initiating a Government Audit based entirely on ill-motives;

knowingly and deliberately violating the protected privacy rights and the personal prescription information of Plaintiff Dr. Bharani's patients and by putting forth the consciously false allegation of Medicaid fraud;

knowingly and deliberately raiding his home to immediately seize his patient records and his computers without informing his known attorney in advance and without a judicial warrant; and

deliberately manufacturing and facilitating multiple false malpractice suits against Plaintiff Dr. Bharani—which involve Defendants Lubin & Myer and Stanzler Levine.

391. Designated Defendants' above-described retaliatory acts have caused Plaintiff Dr. Bharani to suffer constitutional deprivations of liberty and property. In *Lane v Franks*, the US Supreme Court has unanimously held that testifying in the public interest, as Dr. Bharani did verbally and by email, was protected speech even though he was a salaried public employee.

392. Plaintiff Dr. Bharani presents specific and concrete evidence that designated Defendants engaged in the above-described retaliatory acts for the intentional and specific purpose of causing harm to Plaintiff Dr. Bharani.

393. Plaintiff Dr. Bharani presents specific and concrete evidence that the above-described retaliatory acts by designated Defendants had no justifiable or legitimate basis, whatsoever.

394. Plaintiff Dr. Bharani presents specific and concrete evidence that the above-described retaliatory acts by designated Defendants constitute conscience shocking conduct; as designated Defendants' acts and omissions are so disproportionate to their proffered needs; and that were so inspired by malice.

395. Plaintiff Dr. Bharani presents specific and concrete evidence that the above-described retaliatory acts by designated Defendants cannot reasonably be considered acts of mere carelessness or unwise excess of zeal. See *Harron v. Town of Franklin*, 660 F.3d at 536.

396. As demonstrated in this Amended Complaint, Plaintiff Dr. Bharani has set forth concrete and specific evidence of liability by the Board of Registration of Medicine in *overt* commission of intentional and deliberate acts in aiding and abetting designated Defendants' commission of unlawful acts.

WHEREFORE, Plaintiff Dr. Bharani claim his right to a jury trial for monetary damages.

### **Count 3**

#### **§ 1983 Claim: Abuse of Power involving fraudulent and deceptive investigation by agents of the Board of Registration in Medicine**

397. Plaintiff Dr. Bharani repeats and re-allege the allegations set forth above.

398. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants acted in their official role for illicit motives.

399. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants— through its officers, agents, servants and employees—colluded in making false allegations against him regarding unlawful prescribing of pain medication and substandard practice of medicine.

400. Plaintiff Dr. Bharani has presented specific and concrete evidence that Defendants have colluded to fabricate evidence against him.

401. As a direct result of designated Defendants' misconduct, Plaintiff Dr. Bharani has been substantially and gravely harmed; especially, with being deprived of his Constitutional liberty and property interests.

WHEREFORE, Plaintiff Dr. Bharani claim their right to a jury trial for monetary damages.

#### **Count 4**

##### **Defamation: § 1983 Claim & Common Law**

402. As set forth in this Amended Complaint, Plaintiff Dr. Bharani presents specific and concrete evidence that on numerous occasions designated Defendants have made false and defamatory communications regarding Plaintiff Dr. Bharani's professional qualifications to third parties—communications made in emails, correspondence and in open court.

403. As set forth in this Amended Complaint, Plaintiff Dr. Bharani has presented specific and concrete evidence that on numerous occasions designated Defendants have knowingly and deliberately made false and defamatory communications with the specific intent to harm Plaintiff Dr. Bharani.

404. As set forth in this Amended Complaint, Plaintiff Dr. Bharani presents concrete and specific evidence that designated Defendants made the above-referenced statements to third parties knowing that such statements were false.

405. As set forth in this Amended Complaint, Plaintiff Dr. Bharani presents concrete and specific evidence that designated Defendants' above-referenced statements made to third parties were not simple expressions of opinion; that designated Defendants used words of contempt, hatred, scorn, and ridicule with *deliberate* intentions to impair Plaintiff Dr. Bharani's standing in the social community and the professional medical community.

406. As set forth in this Amended Complaint, Plaintiff Dr. Bharani presents concrete and specific evidence that the false and defamatory communications made to third parties by designated Defendants were unnecessary, unreasonable and excessive; that false and defamatory communications made to third parties by designated Defendants were done in actual malice.

407. As set forth in this Amended Complaint, Plaintiff Dr. Bharani presents concrete and specific evidence that false and defamatory communications by Defendant State officials were unnecessary, unreasonable and excessive.

408. As set forth in this Amended Complaint, such intentionally made false and defamatory communications to third parties by designated Defendant State officials were specifically carried out as acts of abuse of power.

409. As a direct proximate result of the above-described intentional acts of designated Defendants, Plaintiff Dr. Bharani has sustained considerable and substantial harm and other damages.

WHEREFORE, Plaintiff Dr. Bharani claims his right to a jury trial for monetary damages.

### **Count 5**

#### **§ 1983 Claim: Deprivation of Due Process regarding false allegations of professional incompetence**

410. Plaintiff Dr. Bharani repeats and re-alleges the allegations set forth above.

411. Adjudicatory proceedings of administrative agencies shall afford all parties an opportunity for full and fair hearing. G.L. c. 30A, § 10. To comport with providing a full and fair hearing, pursuant to G.L. c. 30A, § 10:

a reasonable opportunity to prepare and to present evidence and argument;  
the right to call and examine witnesses,  
to introduce exhibits;

412. Plaintiff Dr. Bharani has not been afforded a full and fair opportunity to be heard and has a protected Constitutional interest in his reputation—especially, where such allegations directly affect his professional reputation as a physician. See *Pease v. Burns*, 719 F. Supp.2d 143, 154 (2010).



413. Plaintiff Dr. Bharani presents concrete and specific evidence Defendants have threatened his professional reputation, with threat of unusually serious harm.

414. Plaintiff Dr. Bharani presents concrete and specific evidence that the Statement of Allegations filed by Defendants Paikos and Cooke is not supported by any scintilla of evidence—let alone substantial evidence.

415. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants have consciously fabricated evidence.

416. Plaintiff Dr. Bharani has presented specific and concrete evidence that the acts and omissions by Defendants have been carried out through color of law.

417. Plaintiff Dr. Bharani has presented specific and concrete evidence that the acts and omissions by Defendants have been conducted in such a manner that demonstrates collusion.

418. Plaintiff Dr. Bharani has presented specific and concrete evidence that Defendants should have known—and did know—that they were violating Plaintiff’s Constitutional rights where the law is clearly established, and a reasonably competent public official is expected to know that the law forbade his or her conduct.

419. Plaintiff Dr. Bharani has presented specific and concrete evidence that the acts and omissions by Defendants have been conducted in such a manner demonstrating a specific intent to injure Plaintiff Dr. Bharani.

420. Plaintiff Dr. Bharani has presented specific and concrete evidence that the acts and omissions by Defendant public officials constitute an abuse of power.

421. As a direct result of Defendants’ misconduct, Plaintiff Dr. Bharani has been substantially and gravely harmed.

WHEREFORE, Plaintiff Dr. Bharani claims his right to a jury trial for monetary damages.

### **Count 6**

#### **Abuse of Process**

422. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants have filed motions and pleadings with the Division of Administrative Law Appeals for illegitimate purposes; and that they did so with deliberate intent to cause harm to Plaintiff Dr. Bharani.

423. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants deliberately used false statements and representations in the filed motions and pleadings to facilitate unlawful retaliation against Plaintiff Dr. Bharani.

424. Plaintiff Dr. Bharani present concrete and specific evidence that Defendants—individually and jointly— filed motions and pleadings using false and fabricated representations to deliberately cause emotional distress and financial harm to Plaintiff Dr. Bharani for the purpose of retaliation for his exposing Defendants’ misconduct.

WHEREFORE, Plaintiff Dr. Bharani claim his right to a jury trial for monetary damages.

**Count 7**

**Intentional infliction of emotional distress**

425. Plaintiff Dr. Bharani repeats and re-allege the allegations set forth above.

426. Plaintiff Dr. Bharani presents concrete and specific evidence that designated Defendants intended to inflict emotional distress upon him.

427. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants knew that their acts and omissions would result in emotional distress; that designated Defendants did so in reckless disregard for truth—such acts include, but are not limited to: deliberately making false allegations of wrongdoing; Defendants’ perverse use of the litigation process to unlawfully and unjustly retaliate against him; Defendants’ perverse use of the litigation process to facilitate financial harm.

428. Plaintiff Dr. Bharani presents concrete and specific evidence that Defendants’ conduct was extreme and outrageous, beyond all bounds of decency.

429. Plaintiff Dr. Bharani presents concrete and specific evidence that he suffered distress as a direct result of Defendants’ actions and omissions.

430. Plaintiff Dr. Bharani presents concrete and specific evidence that he suffered distress that was severe and of such a nature that no reasonable person could be expected to endure.

WHEREFORE, Plaintiff Dr. Bharani claim his right to a jury trial for monetary damages

**Count 8**

## Fraud

431. Defendants knowingly and fraudulently engaged in acts of deceptions, including but not limited to:

- filing false representations with the Defendant Medical Executive Committee in obtaining a summary suspension;
- false representation and manufacturing of information through the Greeley Report—which is unsworn and with an anonymous author—whom Defendants refuse to disclose;
- false representations and manufacturing of information through the use of the Investigative Committee, which served only as the creature of the Defendant Cambridge Hospital;
- Defendants Paikos' and Cooke's false representation that the Greeley Report was the Board's own comprehensive and independent investigation;
- using Dr. Horowitz's report to cover up Defendants' illicit conduct;
- false representations made to the Board of Registration in Medicine and the National Practitioners Data Bank that Plaintiff Dr. Bharani had voluntarily resigned to avoid an investigation.

432. Defendants knowingly and fraudulently engaged in acts of deception to unlawfully retaliate against Plaintiff Dr. Bharani.

433. As a direct proximate result of intentional acts of fraud and deception by Defendants, Plaintiff Dr. Bharani has sustained considerable and substantial harm and other damages—including, but not limited to, emotional distress and loss of past, present and future income.

WHEREFORE, Plaintiff Dr. Bharani claim his right to a jury trial for monetary damages.

## Monetary Damages

434. Because of Defendant Cambridge Hospital's consciously false claim to the Massachusetts Board and the Federal Government, Plaintiff Dr. Bharani is unable to enroll with insurance companies to get paid for treating patients.

435. Because of this consciously false claim to the Massachusetts Board and the Federal Government, Plaintiff Dr. Bharani is unable to apply for a fresh J-1 waiver job anywhere else as

the Federal Government requires that J-1 waiver-seeking physicians not have any professional blemishes.

- an award of compensatory damages;
- an award of punitive damages;
- an award of reasonable attorney's fees and costs of litigation pursuant to 42 U.S.C. § 1988; and
- an award of statutory interest

Respectfully submitted,

/s/ Lisa Siegel Belanger

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Dated: May 4, 2015