

3. Repeatedly, the Magistrate refused to review and hear, in any manner, Respondent Dr. Bharani's continuous requests to be heard regarding the above-described motions to dismiss

4. Respondent Dr. Bharani served the Magistrate a written motion to dismiss (on two separate occasions).

5. Each time Respondent Dr. Bharani raised the issue of his wanting to be heard on his motions to dismiss, the Magistrate flatly refused to even discuss that Respondent be given an opportunity to be heard on those matters.

6. The Magistrate summarily denied Respondent Dr. Bharani's requests to be even heard on the motions to dismiss. The Magistrate gave no articulable or justifiable reason for refusing to have Respondent Dr. Bharani make a proffer of evidence, let alone hear the merits of Respondent Dr. Bharani's motions to dismiss.

7. The Magistrate committed reversible error by his failure to state specific and articulable grounds for the Magistrate refusing to hear Respondent Dr. Bharani's motions to dismiss.

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8. In addition, where 801 CMR 1.01(7)(g) expresses that claims pertaining to the insufficiency of a complaint and/or Statement of Allegations is an appropriate matter to be heard by the Magistrate, the Due Process provisions of the State and Federal constitutional necessitated that Respondent be provided the opportunity to be heard on that matter. Kobrin

9. A Magistrate must allow a respondent to present evidence as to the insufficiency of a complaint and/or Statement of Allegations during the adjudicatory proceedings, as such

preclusion is a violation of the constitutional provisions—a Magistrate does not have discretion to violate Due Process provisions of the State and Federal Constitutions. Id.

II. Prejudicial relationship between BORIM and Cambridge Health Alliance during the purported BORIM investigation that is directly relevant and material to Respondent Dr. Bharani’s defense against BORIM’s allegations

10. Each and every allegation regarding patient care and treatment provided in BORIM’s Statement of Allegations—issued in July of 2014—had been *already* presented by Cambridge Health Alliance to the Fair Hearing Panel. BORIM’s Statement of Allegations are exactly *the same allegations, the same patients* that Cambridge Health Alliance set forth in its case to the Fair Hearing Panel.

11. As set forth above, Respondent Dr. Bharani was precluded from presenting evidence that shows the underlying complaint that Cambridge Health Alliance made to BORIM in November of 2010 (and November 2011) fraudulent and filed solely as illicit retaliation against Respondent Dr. Bharani for having “blown the whistle” that Cambridge Health Alliance for committing Medicare Fraud and knowingly putting patients’ lives at risk.

12. On November 9, 2010, Cambridge Health Alliance informed the Board of Registration in Medicine (herein referred to as BORIM) in writing that Cambridge Health Alliance had suspended Plaintiff Dr. Bharani’s privileges and “termination or non-renew” of contract, along with having filed a report seeking disciplinary action stated on the basis or allegation of Respondent supposedly “prescribing to a known addict.”

13. In December of 2010, BORIM formally opened a file, designating a pending investigation of Respondent Dr. Bharani—with James Paikos and Loretta Cooke as assigned investigators on behalf of BORIM.
14. The Fair Hearing proceedings held by Cambridge Health Alliance consisted of three (3) days of sworn testimony occurring in January 2011. Cambridge Health Alliance called the following witnesses: Dr. Rachel Nardin, Dr. David Bor, and Dr. Somava Stout.
15. The Fair Hearing Report was issued on February 24, 2011, which exonerated Respondent Dr. Bharani from any wrong doing with regard to the treatment and care of his patients.
16. As demonstrated, James Paikos and Loretta Cooke as investigators for BORIM had full knowledge in 2011 about the details of the Fair Hearing held by Cambridge Health Alliance.
17. After the Fair Hearing Panel ruled against Cambridge Health Alliance’s allegations, Cambridge Health Alliance hired The Greeley Company to do a supposed external peer review of patients treated by Respondent Dr. Bharani—except that Dr. Nardin gave The Greeley Company the exact same patient records and information that *had already been* litigated at the Fair Hearing proceedings held in January of 2011.
18. Then on January 29, 2013—based on the *very* same patients and allegations presented by Dr. Nardin to the Cambridge Health Alliance’s Fair Hearing Panel, James Paikos went before the Complaints Committee seeking issuance of a Statement of Allegations and immediate suspension of Respondent Dr. Bharani’s medical license. The Complaints Committee *did not* issue a Statement of Allegations and the Committee *did not* suspend Respondent Dr. Bharani’s license.
19. James Paikos had not presented any new allegations—and, even more so, instead of proving the Complaint Committee a hard copy of the peer evaluation report that he was relying

on in his presentation, he read verbatim from the report that Cambridge Health Alliance paid The Greeley Company to produce.

20. Attached is a copy of the letter that Respondent Dr. Bharani provided to the Complaint Committee after James Paikos's presentation on January 29, 2013.

21. A full 18 months later in July of 2014, when there was a new Chair for the Complaint Committee, James Paikos went back to the Committee, using the same patient information presented as before the Complaint Committee in January of 2013 and now obtained the issuance of a Statement of Allegations that Paikos had originally sought.

22. When the BORIM disciplinary proceedings had commenced, James Paikos had vigorously attempted to conceal the fact that he used the Greeley Report, for verbatim, in pursuit of a Statement of Allegation based on a report paid for by the hospital—the accuser—and not BORIM.

23. To hide the fact that James Paikos had used a report paid for by a hospital, he hired Dr. Horowitz to paraphrase the Greeley Report—which was after Paikos had already sought the suspension of Respondent Dr. Bharani's medical license.

24. James Paikos's first pursuit (January 29, 2013) of seeking suspension of Respondent's medical license predated the involvement of Dr. Horowitz. The push for suspension was entirely and exclusively based on the Greeley Report.

25. Through the discovery process Respondent Dr. Bharani was provided conclusive evidence that Cambridge Health Alliance paid for the Greeley Report (a copy of the check)—the very report that James Paikos had read verbatim to the Complaint Committee.

26. In November 2011, James Paikos sent a subpoena to Cambridge Health Alliance requesting all documents pertaining to Respondent Dr. Bharani. In that subpoena, James Paikos directed that if there were any documents withheld that Cambridge Health Alliance was required to identify the document and explain the reason for withholding it. Cambridge Health Alliance has not claimed to have withheld the Greeley Report. Despite these irrefutable evidence, James Paikos continues to outwardly claim that he did not have or use the Greeley Report until January 15, 2015.

27. Once Respondent Dr. Bharani made it publicly known that he had the above-described conclusive evidence, James Paikos hired Dr. Horowitz to cover up the fact he and Loretta Cooke had not conducted an independent investigation for BORIM. The “report” from Dr. Horowitz merely paraphrased the Greeley Report.

28. BORIM and Cambridge Health Alliance have vehemently refused to disclose the identity of the person who authored the Greeley Report, which refusal evidences an improper relationship between BORIM and Cambridge Health Alliance—and validation that James Paikos had used the Greeley Report to initiate disciplinary action against Respondent Bharani.

29. Further evidence of illicit concerted efforts between BORIM and Cambridge Health Alliance is the fact that the pre-trial record shows that Dr. Horowitz refused to testify on behalf of BORIM. In addition, Dr, Horowitz refused to provide a sworn affidavit in support of his own report.

30. In addition, James Paikos has insisted on relying on the Greeley Report in his case-in-chief and in his opposition to Respondent’s motion for disqualification of Dr. Levin, even though, the report remains anonymous and unsworn.

31. As evidenced above, James Paikos and Loretta Cooke have no legitimate reason or basis for having dragged out the purported BORIM investigation for four (4) years. Rather, the 4-year purported BORIM investigation was deliberately delayed to prejudice and cause irreparable harm to Respondent Dr. Bharani—specifically to aid and abet Dr. Nardin and Cambridge Health Alliance.

32. Dr. Rachel Nardin testified on behalf of BORIM as if she were “a disinterested party”—yet, she is the main accuser.

III. Respondent Dr. Bharani renews his motion to disqualify Borim’s witness, Dr. Levin, as an expert witness

33. Respondent Dr. Bharani incorporates herein Respondent’s previously filed motion to disqualify Dr. Levin as an expert witness.

34. The Magistrate summarily denied the Respondent’s motion to disqualify Dr. Levin as an expert witness.

35. The Magistrate, in his written decision regarding denial of Respondent Dr. Bharani’s motion to disqualify Dr. Levin as an expert witness, went into specific detail that he *did not* base his denial of the motion on any purported procedural defects—and then explicitly stated that the denial was based *exclusively* and *solely* on the merits of the Board’s motion.

36. However, as demonstrated by the Magistrate’s written decision, he *did not* provide any articulable or specified reason pertaining to the denial based on merits. Accordingly, the Magistrate’s written decision affirmatively shows that the denial was summarily made.

The Magistrate’s failure to state specific and articulable grounds for his denial of the

Respondent's motion to disqualify Dr. Levin as an expert witness constitutes reversible error.

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37. Respondent Dr. Bharani renews his request to disqualify Dr. Levin as an expert witness and relies on his previous filed motion for the grounds requiring Dr. Levin's disqualification.

IV. Overall negating factors of BORIM's presentation of its case-in-chief

- BORIM called only one patient to present its case-in-chief, which patient's testimony did not support BORIM's allegations against Respondent Dr. Bharani.
- Dr. Levin's testimony raises concern that, in actuality, he is not a regularly practicing physician.
- The documents presented by BORIM *do not*, as a matter of law, show that Dr. Levin met the State's qualifications for licensure in Massachusetts. Dr. Levin was unable to establish that he possesses the State mandated Opioid credits.
- BORIM intentionally omitted documents from its exhibit binders presented to the Magistrate: Letter from James Paikos to Respondent dated January 22, 2013, letter from Respondent to James Paikos dated January 29, 2013, BORIM letter to Respondent dated February 20, 2013, Letter from Loretta Cooke to Respondent dated May 8, 2014, and BORIM letter to Respondent dated July 11, 2014.

V. Required directed finding in favor of Respondent

- A. The doctrine of collateral estoppel and res judicata requires a directed finding in favor of Respondent Dr. Bharani**

38. As a matter of law, all of the allegations regarding patient care and treatment contained in BORIM's Statement of Allegations (Patients A through I) have been fully litigated during the Fair Hearing held in January of 2011. The very issues presented by BORIM in its Statement of Allegations are identical issues that Cambridge Health Alliance presented in its case at the Fair Hearing.

39. As set forth above, where Respondent Dr. Bharani was exonerated in February of 2011 by the Fair Hearing Panel of Cambridge Hospital of all allegations of regarding patient care and treatment of designated Patients A through I in BORIM's Statement of Allegations, the allegations have already been resolved in favor of Respondent Dr. Bharani.

40. Accordingly, the allegations against Respondent Bharani made in BORIM's Statement of Allegations are *exactly* the same allegations that Dr. Rachel Nardin and Cambridge Health Alliance fully litigated at the Fair Hearing Panel. Therefore, as a matter of law, under the doctrine of collateral estoppel and res judicata, BORIM is prohibited from pursuing its allegations regarding Patients A through I.

41. The full testimony of medical Expert witness, Dr. Warfield, at the Fair Hearing Panel had been admitted during the DALA hearing.

B. Standard of review

42. A magistrate's decision must be based on substantial evidence—defined as “such evidence as a reasonable mind might accept as adequate to support a conclusion. Duggan v. Bd. of Registration in Nursing. 456 Mass. 666, 925 N.E.2d 812

43. Which means that “if the evidence points to no felt or appreciable probability of the conclusion or points to an overwhelming of probability to the contrary.”

44. The doctrines of collateral estoppel and res judicata are fully applicable in BORIM adjudicatory proceedings. Commonwealth vs. Kennard C. Kobrin. 395 Mass. 284

C. Judicial notice of rules promulgated by the Federation of State Medical Boards of the United States

45. Pursuant to G.L. c. 30A, § 11(5):

Agencies may take notice of any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge.

46. Attached is the Model Policy For The Use Of Controlled Substances For The Treatment of Pain.

D. Fatal defects in BORIM’s presentation of its case that required a directed finding in favor of Respondent Dr. Bharani

Patient A

41. BORIM had four years to investigate the actual circumstances of Patient A’s care and untimely demise. BORIM chose to not do so. Respondent Dr Bharani had presented incontrovertible evidence back in 2011 itself that he had transferred Patient A’s care and that

Patient A had not filled any prescription in November 2010. See sworn affidavit from pharmacist. BORIM chose to repeat Dr Nardin's "presumptions" instead.

42. Section 1306.12 authorizes and expresses that it is valid and standard practice that a physician provide a patient with sequential follow-up scripts.

43. The Magistrate has sworn testimony from Dr Warfield, a bona fide pain expert, that Respondent's care of Patient A was well within the standard of care.

Patient B

44. The mere act of prescribing Oxycontin and Xanax does not breach the standard of care. The patient was a bona fide pain patient whose care was transferred by Respondent Dr Bharani to a pain clinic where Patient B was continued on his pain control regimen for his inoperable back injury.

45. BORIM's witness was incorrect and totally ignorant of Federal law (Section 1306.12) when he testified that providing follow-on prescriptions for Oxycontin was below the standard of care. If Dr Levin had attended the state mandated opioid course he would have known it was the standard protocol.

Patient C

45. BORIM's claim in its statement of allegations that Dr Bharani began treating Pat A in or around July 2007 is in bad faith. BORIM has known for 4 years he was Respondent's patient from much earlier.

46. Pat C himself came and testified in public under oath that he is a genuine pain patient after a terrible rollover car accident and that he is fully satisfied with the care he received from bharani and that without Respondent Dr Bharani's care he would have no quality of life and would not be able to meet his personal responsibilities.

47. The Magistrate could see that Pat C has not been harmed in any way and still chooses to receive his care from Respondent Dr Bharani.

48. Just prescribing a patient oxycodone and oxycontin is NOT below the standard of care.

49. BORIM's witness deliberately defamed Pat C by claiming that because the pharmacist did not know federal law and called the doctor, the Pat must have engaged in hanky panky and calling for EXTRA opioid prescriptions. The reality is the Patient knew the law which the pharmacist was also required to know as is Dr Levin. Title 21 chapter 2 section 1306.12.

50. Dr Levin testified he has never ever written oxycontin prescriptions. Transcript page 134-135

Patient D

51. Claiming care was substandard based on a deliberately incomplete evidentiary record is in pure bad faith.

52. Pat D himself came and testified in public under oath that he is a genuine pain patient and that he is fully satisfied with the care he received from Respondent Dr Bharani and that without Dr. Bharani he would have no quality of life and would not be able to meet his personal responsibilities, which is still the bottom line.

53. Pat D also testified that he trusted Dr Bharani's care and skills so much that he sought his advice and care even for other issues such as clots in the leg.

54. Just prescribing a patient oxycodone and Oxycontin is NOT below the standard of care.

55. Dr. Levin testified there was no documentation about the back injections Pat D gets from a different physician. BORIM had 4 YEARS to get the records from that other physician.

BORIM chose to not do so.

Patient E

56. Patient E was discussed exhaustively at the Fair Hearing by Dr Warfield, a real pain expert, and the Board has known this for 4 years.
57. The Magistrate can carefully examine the sworn testimony of Dr Warfield.
58. Dr. Levin's testimony that Pat E should not have been treated for his back pain because of a history of substance abuse itself is not the standard of care. Dr. Levin would know that had he attended the state-mandated opioid course which explicitly stresses that people who test positive for cocaine or other substances should be helped and not abandoned as Dr Levin proposed.
59. In the event Pat E could not be helped and was fired by Respondent Dr Bharani as a patient in compliance with the Board's regulation that mandates a 30-day supply of his regular medicines when care is terminated.
60. At all times Respondent's care was humane, compassionate, patient-centered and fully in compliance with Federal and state guidelines.
61. Just prescribing a patient oxycodone and oxycontin is NOT below the standard of care.
62. Dr. Levin was not qualified to comment on refill notes or on pain management given he does not possess any Opioid credits.

Patient F

63. Simply prescribing Adderall is not below the standard of care. The patient had a history consistent with the diagnosis of Attention Deficit and noted significant improvement on a daily basis on treatment.
64. Even BORIM's witness Dr. Levin testified that Dr Bharani prescribing Adderall to Pat F was within the standard of care. Transcript page 363
65. Just as written above, patients with substance abuse disorders should not be abandoned.

BORIM is wrong in insisting that Pat F should have been abandoned with no treatment. Pat F never claimed she was dissatisfied with her care and did well as long as she was under Dr Bharani's care. She never filed any complaint.

Patient G

66. Patient G is not a MALE.

67. The Board introduced only one-half of a note into evidence while claiming poor documentation. Transcript page 384 and 882

68. BORIM's witness Dr Levin is not qualified to render an opinion on multiple sclerosis on a difficult case that had been referred to Respondent because it was a complicated and hard to diagnose case.

Patient H

69. BORIM's witness is not qualified to render an opinion on multiple sclerosis.

70. The patient herself testified that she did not feel she had received substandard care from Respondent and even testified that the last time anyone did an MRI on her was the Respondent, 4 years ago. She further denied BORIM's claim that she was in angst over the copayments.

71. James Paikos himself admitted he never got Patient G's records for 4 years.

Patient I

72. Prescribing CellCept has been established to be within Respondent Dr. Bharani's training and expertise and should be given full deference by the Board especially as BORIM's witness Dr. Levin himself conceded this on the record.

73. Prescribing CellCept and baclofen by themselves are not below the standard of care.

74. Patient furthermore was never on CellCept. BORIM fully knows she was on Avonex and the management of her medicines was fully within the standard of care.

75. Patient I is a clear case of neuroimmunology that Dr. Levin concedes he knows nothing about.

76. BORIM's allegation that Respondent Dr. Bharani incorrectly diagnosed patient with inflammation has been fully disproved by the evidence and the patient herself. BORIM and it's witness have no standing to comment on standard of care here.

77. Patient I herself came and testified that she is a genuine patient and that she is fully satisfied with the care she received from Respondent Dr. Bharani and that without Dr. Bharani she would have had no quality of life and would not have be able to meet her personal responsibilities.

78. Patient I herself came in and testified that the period when she was under active neuroimmunological treatment by Respondent Dr. Bharani was the only time she felt healthy and well and that the care significantly improved her condition.

79. The way BORIM treated Patient I proves BORIM does not care at all about the health of homeless persons who have to perforce get their care outside of a regular clinic setting.

80. Numerous physicians who go out to treat homeless persons where they are get lauded and commended. BORIM is treating Respondent Dr. Bharani disparately for treating this homeless patient where she is and defamed Patient I by asking her if she had a physical exam at a McDonald's.

VI. Respondent Dr. Bharani is prejudiced by having been deprived of State and Federal Constitutional guarantees to Due Process continuously and repeatedly throughout the adjudicatory proceedings

81. G.L. c. 30A, § 10 states: “In conducting adjudicatory proceedings, as defined in this chapter, agencies shall afford all parties an opportunity for full and fair hearing.”

An adjudicatory proceeding is procedurally defective when a respondent is precluded from having “an opportunity to be heard appropriate to the nature of the case.” See Kobrin

A. Ways in which the Magistrate precluded Respondent Dr. Bharani from presenting evidence that is relevant to his defense

82. The Magistrate did not admit all of Respondent’s exhibits into evidence before allowing the testimony of Dr Rachel Nardin in between Dr Levin’s testimony.

83. Despite Respondent’s timely objections the Magistrate precluded Respondent Dr. Bharani from confronting Dr Nardin with the evidence after she had committed perjury during her testimony.

84. The Magistrate refused to allow Respondent Dr. Bharani to cross examine Dr Nardin after all the exhibits had been admitted into evidence.

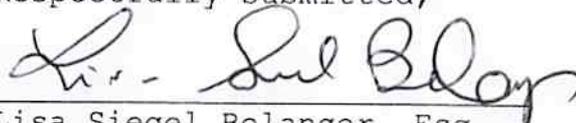
B. Ways in which the Magistrate does not have discretion to preclude a respondent from impeaching evidence presented by the petitioner

85. The Magistrate precluded Respondent from impeaching Dr. Nardin’s sworn testimony regarding her termination in November 2010 of Respondent’s employment.

85. The Magistrate precluded Respondent from impeaching Dr. Levin’s testimony regarding the veracity of radiology reports even though Dr Levin and the Statement of Allegations rely on the radiology reports to claim Respondent’s reading of MR images was incorrect.

86. The magistrate precluded Respondent from impeaching Dr. Nardin's testimony that any neurologist is trained to treat multiple sclerosis and that a fellowship-trained specialist is not needed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Siegel Belanger". The signature is written in a cursive style with a horizontal line underneath it.

Lisa Siegel Belanger, Esq.

BBO 633060

300 Andover Street, No. 194

Peabody, MA 01960

Tel. (978) 998-2342

lisa@belangerlawoffice.com

Dated: June 19, 2015