BOARD OF REGISTRATION IN MEDICINE
Petitioner

vs.

BHARANIDHARAN PADMANABHAN MD PhD
Respondent

DOCKET NO. RM-14-363

STATE OF MASSACHUSETTS
SUFFOLK COUNTY

EXPERT OPINION AFFIDAVIT

I, Douglas K. Kinan, was asked to observe the proceedings in the matter of *Board of Registration in Medicine v. Dr. Bharanidharan Padmanabhan* ("Dr. Bharani"). Having noticed severe deficiencies in procedures and the proceedings, I am compelled to provide this affidavit documenting what I have observed.

Based on my twenty-five (25) years of experience, I offer the following expert opinion regarding conduct, actions and behavior which is both unethical and unlawful, is a fraud on the court, a tremendous waste of taxpayer dollars and public resources and represents a specific danger to public health or safety, knowing that this sworn statement is not confidential.

I hereby solemnly swear and affirm:

I do not know or have personal animosity toward or against any of the principals in this matter or any other government agency. I submit this affidavit in good faith, consistent with State and Federal law and the published mandate of the Division of Administrative Law Appeals ("DALA").

I favor neither party in this complaint but serve as affiant, pro bono, as required by common law, toward a compelling public interest and a remarkable record of bullying and retaliation against Dr. Bharani, which does not comport with Government Ethics Rules, Board of Registration in Medicine ("Board") Regulations, Federal and State Law, Massachusetts Supreme Judicial Court Rule 3:07 and Massachusetts Supreme Judicial Court Rule 3:09.

The conduct, actions and behavior against Dr. Bharani demonstrate an undisputed pattern and practice of bullying and retaliation and, in terms of duration, is the worst case of bullying and retaliation I have witnessed in my professional career.

EXPERIENCE, QUALIFICATIONS AND EXPERTISE OF AFFIANT

I have approximately twenty-five (25) years of experience monitoring and evaluating the complaints process and investigations, fact finding and analyzing complaints and labor/ employee relations matters, in both the private and public sectors.

I consider myself to be a subject matter government expert witness, including testifying on personnel matters before the Massachusetts Civil Service Commission, with direct knowledge of workplace harassment, retaliation, and complaint/report analysis, with a special emphasis on complaint/whistleblower retaliation. This includes knowledge of well established patterns and practices of reprisal techniques by senior government officials to intimidate "unresponsive" whistleblower employees who follow the rules and statutory law to submit to participating to break the law or else face severe consequences, up to and including termination from their employment.

The smear, harassment and retaliatory process, under color of law, proceeds via fabricated evidence and false charges, coupled with delays and fraudulent investigations designed to spotlight the "rules compliant" whistleblower, not the wrongdoing.

I am not an attorney. However, I am a retired, sworn and commissioned officer of the Massachusetts Trial Court. My experience includes approximately 12 years of Massachusetts Trial Court experience, including 5 years of "gatekeeper" responsibility for evaluating intake pleadings for five (5) probate court judges to ensure procedural compliance to court policies procedures and Standing Orders of the court and providing procedural guidance to pro se litigants and practicing attorneys in the processing of petitions, motions, contempts, restraining orders, modifications, divorce pleadings, estates, guardianships, conservatorships, estate accounts, and other Family & Probate matters. A considerable portion of my twelve (12) years at the probate court involved providing procedural guidance ("training") to the majority of attorneys using the court in all probate matters.

My experience also included providing guidance and support services to management in the areas of employee relations, to include fact-finding and administering discipline, position classification, worker's compensation and other employee benefit programs to ensure consistent application of the rules of my respective employers, including relevant federal statutes and Department of Defense regulations.

At the Department of Defense, I was also responsible for making accept/dismiss decisions associated with processing Title VII, 29 CFR 1614 and Equal Employment Opportunity Management Directive 110, regarding individual and class action complaints of employment discrimination, retaliation and sexual harassment. I was also responsible for the timely assignment of counselors, retaining investigators, monitoring investigations, and examining and analyzing Reports of Investigation (ROI) for "legal sufficiency."

AUTHORITY AND STANDING AS A GOVERNMENT WITNESS

As a taxpayer, citizen, community and good government advocate, sworn and commissioned officer of the Massachusetts Trial Court (retired), a Board of Directors member of the Massachusetts State Hospital Citizen's Advisory Committee ("CAC") and Good Samaritan, I have a lawful and moral responsibility and a civic duty to not stand by and do nothing concerning the egregious bullying and retaliation against a good and valuable medical doctor. We all have a responsibility to stand up for doing the lawful and right thing. I was also physically present during several days of Dr. Bharani's DALA hearing and serve as an ear and eye witness to certain events and testimony, and my observations indicate that a fair and neutral hearing, according to the evidence and procedure, was not in Dr. Bharani's future.

MY INTRODUCTION TO "GAMING THE SYSTEM"

I am knowledgeable of the various "legal manipulations" used, including the retaliatory practice of filing false charges, fabricating evidence and the use of false and/or anonymous witness testimony, which has been characterized to me by a senior government attorney as "gaming." For example, in a non-selection case assigned to me during my employment at the Defense Contract Management Agency, East ("DCMAE") the undisputed evidence and admissions made to me established that the complainant was being disciplined for a violation she did not commit. I was required to go along with the frame-up. I refused.

Despite undisputed evidence of routine and systematic harassment and retaliation of the innocent female complainant, which I presented to the chief counsel, Bruce Krasker, and the deputy chief counsel, Jerome C. Brennan, with a request that they intervene to stop the harassment and retaliation, they remained silent. The retaliation proceeded. When I asked the chief counsel why he was not going to stop the frame up and termination of an innocent, elderly and sickly female when he had overwhelming evidence that she was innocent, he cavalierly replied: **"We, (the Legal Directorate) can do anything we want. It's called gaming. We can deny, we can delay...dismiss. We can manipulate the system any way we want."** [Emphasis added]. The "gaming" continued on to the federal court where a forced settlement was "agreed" to by the attorneys. Legal manipulations and forced settlements prevent witnesses from testifying and prevent jury trials.

Unfortunately, in the overwhelming majority of cases, complainants have no say and no choice in forced settlements. Prosecutors will resort to any and all unethical and/or unlawful practices to avoid a jury trial. Despite statutory protections, the illegal and unethical mind set and mentality, using the might and unlimited government resources against complainants/whistleblowers is standard operating procedure due to the lockstep conduct of those involved, with the complicity of the prosecutors. Using the federal court system to complete a crime should be rebuked by all federal judges, but that rarely

happens. A jury trial is also a remote possibility. I find similar conduct to be the case in Administrative law proceedings, sometimes worse.

BULLYING, SMEAR AND RETALIATION HAS NO LIMITS AND NO BOUNDS

The pattern of smear and retaliation against Dr. Bharani is unlike any other case I have witnessed and opposed during my career. My senior level responsibilities in all of my positions have always been clearly communicated to management and supervision that we do not "get" someone because they are not well liked for following the law or on the basis of sex, race, color, national origin, and religion and that all forms of discipline must be performance or attendance based.

There are numerous cases I could cite as outlined in my thirty (30) page affidavit, incorporated by reference, filed with the Federal Bureau of Investigation, the Department of Justice and others. However, to illustrate my "no limits-no bounds" argument, the best case would be my first labor relations case at the DCMAE. I was assigned to write up discipline for a female employee for an "attendance" problem, which was a routine matter for me as I had done this many times before in my private sector jobs. The process called for me to interview the employee's supervisor to fact-find, and if warranted, write up the discipline to be issued by the first-level supervisor. All discipline issues at the agency would be reviewed and approved by the Personnel & Ethics attorney. The employee's alleged violation was that she was late (minutes, not hours) due to a snowstorm.

During my fact-finding interview with her supervisor I learned three things, (1) the employee was blind (not semi-sighted), with a Seeing Eye dog, (2) the employee was a customer of the citywide sponsored T-Ride program for the disabled and (3) that inclement weather (a snowstorm) revealed that the T-Ride driver was culpable for the employee's lateness. The mitigation in her case was that the T-Ride driver was late due to a snowstorm, so why would anyone want to punish an innocent blind person with a Seeing Eye dog?

Based on undisputed facts, I recommended against the discipline and thought the matter was closed. Several days later, a round table meeting was called with the employee's full chain-of-command, other management officials and I to discuss the proposed discipline. All members agreed to proceed with the discipline. Her second level supervisor abstained. I was last in the vote. I recommended against the discipline. At the end of the meeting the employee's second level supervisor approached me in private, thanked me for my recommendation and informed me that they were "after her." I asked him why he would not stand up for the right and proper course of action. He informed me that he could not disagree with his boss because he would face serious consequences. Following the meeting, I explained to two levels of supervision that I could not participate in the discipline. Continuing acts of retaliation against this employee included the extreme measure of taking away her Braille equipment so she couldn't work. She sat in her 6' x 6' cubicle each and every day for an unknown duration. After I no longer worked for the DCMAE, I learned that this employee was constructively discharged.

During my tenure at the DCMAE I lawfully and conscientiously refused to participate in the well planned discrimination against minorities and women, which was contradictory to every rule, regulation and law in the federal government. I also held the collateral duty as the Black Employment Program Manager for DCMAE, to advocate for DCMAE's black employee population for one-half of the United States, but was prevented from performing my official duties.

DOCUMENTS REVIEWED AND EXAMINED

In conducting my analysis of Dr. Bharani's case, I have reviewed and analyzed the pleadings and documents filed with the Division of Administrative Law Appeals ("DALA"), in the instant case, most notably the complaint, pleadings and exhibits filed by the parties. I also attended the DALA hearing on three dates. On two of those dates I witnessed certain "expert" testimony against Dr. Bharani. Unfortunately, the "expert" testimony, matched with the pleadings and exhibits substantiates that the "expert" may not be basically qualified as a medical expert in the subject matter, lacks certain credentials to qualify him as an expert and I found his testimony to be not credible.

I also specifically reviewed and analyzed the letter dated November 11, 2010, signed by Cambridge Hospital Alliance's ("CHA") Chief Administrative Officer, David J. Porrell, stating that Dr. Bharani's medical staff privileges at the CHA were "suspended effective November 11, 2010" and that Dr. Bharani was being placed on "administrative leave" until December 27, 2010. Thus, Dr. Bharani's last day worked as a CHA-employed medical doctor was November 11, 2010, and his last paid date on the CHA payroll was December 27, 2010.

Under CHA rules, Dr. Bharani exercised his right to a hearing and on January 5, 6, and 25, 2011, Dr. Bharani's case was presented before a CHA Fair Hearing Panel.

The CHA panel was comprised of an Addiction Psychiatrist, an Internist and a Surgeon with, collectively, approximately 75 years of medical experience, and charged with a solemn responsibility for delivering an objective recommendation in the spirit of peer review ("doctors judging doctors").

In a letter dated February 24, 2011, the Fair Hearing Panel concluded that the "recommendation to permanently terminate [Dr. Bharani's] medical privileges was not supported by credible evidence." In other words, Dr. Bharani was exonerated – completely innocent of any wrongdoing.

Accordingly, the Fair Hearing Panel's decision should have been honored and respected by the CHA Board, as the rules required. It wasn't. So began the "gaming" that I have witnessed and tried to prevent in my professional career in those cases in which the smear, harassment and retaliation was obvious, unacceptable and against the law.

Ignoring the Panel's conclusion that Dr. Bharani was innocent, CHA issued a second letter dated November 11, 2011, signed by the Chief Administrative Officer, David J. PorrelI, in which he writes, "I have been informed that you no longer hold medical staff privileges at the Cambridge Health Alliance. Pursuant to Section 10 (c)(i) of your Employment Agreement ("Agreement") with Cambridge Health Alliance Physicians Organization, Inc. ("CHAPO"), your employment is hereby terminated for cause. Your last day of employment was October 28, 2011."

Despite the Fair Hearing Panel's conclusion of "no credible evidence" to sustain Dr. Bharani's termination, Mr. Porrell mentions a "cause" in his letter, but that "cause" was not stated.

Dr. Bharani was denied due process under CHA's own rules. Additionally, Dr. Bharani was removed from CHA's payroll on December 27, 2010 and his CHA work visa expired effective with the last day of the Fair Hearing Panel, which was January 25, 2011. Thus, it is an impossibility that Dr. Bharani's last day of employment was "October 28, 2011."

On October 28, 2011, CHA again reported Dr. Bharani's case to the Board of Registration in Medicine ("Board") for investigation by the Board's Investigator.

M.G.L Ch. 112 Section 5 requires the Board's Investigator or his designee, to conduct an "independent investigation" to wit: *"Section 5. The board shall investigate all complaints relating to the proper practice of medicine by any person holding a certificate of registration under sections two to twelve A, inclusive, or of section sixty-five so far as it relates to medicine and report the same to the proper prosecuting officers. There shall be established within the board of registration in medicine a disciplinary unit which will be responsible for investigating complaints and prosecuting disciplinary actions against licensees, pursuant to this section. The executive director of the board shall hire such attorneys and investigators as are necessary to carry out the responsibilities of the disciplinary unit*."

There is no record or report to establish that an "independent investigation" or any investigation occurred. Dr. Bharani was not interviewed, his patients were not interviewed, and there is no evidence in the pleadings to show that the Fair Hearing Panel members were interviewed. It should be noted that Dr. Bharani had approximately one thousand (1,000) patients. The list of patients in the Board's statement of allegations, however, only involved the same ten (10) patients' records reviewed by the Fair Hearing Panel, which, again, were the same ten (10) patients reported by CHA to the Board.

In another staggering and fabricated event, on November 11, 2011, the CHA reported to the Board that Dr. Bharani had "voluntarily resigned in order to avoid an investigation." Dr. Bharani did not submit a letter of resignation. There is no evidence that Dr. Bharani resigned his privileges or his employment. In fact, the opposite is true.

The Board's Investigator, also serving as the lead attorney in the DALA hearing, had been in possession of all documents from CHA's Fair Hearing Panel substantiating that

Dr. Bharani was exonerated and was innocent of any wrongdoing. The Board's Investigator, pursuant to a subpoena, received all documents pertaining to Dr. Bharani in about November 2011.

Despite Dr. Bharani's exoneration, the Board proceeded as if the Fair Hearing Panel's decision did not issue and Dr. Bharani's case was, eventually, three (3) years later, referred to the DALA to be tried again on the same or similar charges. I note a conflict of interest in the Board Investigator also serving as the lead prosecutor for the Board in the DALA proceeding. This negated proper oversight over the investigation itself.

It should be emphasized that the official court record shows no objections or dispute regarding Dr. Bharani's evidence-based pleadings, corroborated by the Fair Hearing Panel recommendation, which exonerated Dr. Bharani of the very same charges. The DALA Hearing Officer had knowledge of this fact prior to the start of this eight (8) day hearing. Despite this knowledge, from Dr. Bharani's Answer and Motion to Dismiss, the Hearing Officer is on record as dismissing Dr. Bharani's Motions, without reading it.

The evidence demonstrates that the Board has deliberately and without cause, kept an open docket on Dr. Bharani, which has blocked him from earning a living, going on five (5) years.

DR. BHARANI'S INTERNAL EFFORTS TO RESOLVE MATTERS WITHIN THE CHAIN OF COMMAND AT CAMBRIDGE HEALTH ALLIANCE

In my experience, all disputes and complaints should be resolved at the lowest possible level. Dr. Bharani's information that CHA was in violation of rules, laws or regulations causing danger to public health and safety were brought to the attention of his supervisor, Dr. Thomas Glick in 2008. Dr. Bharani's primary concern was overall patient care and, particularly, his patients.

In a May 12, 2008 email reply message to Dr. Bharani (Subject: "Radiology troubles"), regarding Dr. Bharani's primary concerns with erroneous reports issued by Radiology for brain MRI scans, his supervisor, Dr, Thomas Glick writes in part: ***"Hi Bharani, however frustrating, you're doing good work and making a difference. Now you have a smoking gun, nicely documented."*** [Emphasis added]

The secondary concern expressed by Dr. Bharani was Medicare fraud resulting in financial loss to the government.

CHA reacted in a negative and disapproving manner to Dr. Bharani's disclosures. In December 2009, Dr. Glick was replaced by Dr. Rachel Nardin, which cleared the way for a retaliatory termination and which is a standard tactic for getting to the whistleblower.

THE JOURNEY THROUGH WHISTLEBLOWER SMEAR AND RETALIATION

Whistleblowers, such as Dr. Bharani, do not start out as whistleblowers. They start out by doing their job to protect the company or public agency by pointing out deficiencies, potential lawful violations and/or wrongdoing to prevent harm to individuals and prevent fraud, waste and abuse by identifying problem areas, with the expectation that inappropriate conduct and behavior will stop.

Dr. Bharani objected to patients being harmed from wrong brain scan reports and refused to participate in Medicare fraud for lawful reasons, which have not been disputed or denied. The law guarantees Dr. Bharani the right to conform to the law and if he "sees something, he must say something." The argument against unlawful conduct and conscientious right is that the CHA and the Board, by their conduct, have declared they are above the law and can act any way they see fit.

Despite the law protecting whistleblower retaliation, the "right" to retaliate trumps the law. It makes no sense to have laws on the books to protect whistleblowers and then fabricate and prosecute false charges against those who oppose and do not want to knowingly participate in public corruption. The journey through retaliation and the "fraud on the court" is the tactic used in all cases.

In my experience I have found that whistleblower reprisal is limited only by the perpetrator's imagination and varies in intensity. The retaliation is commensurate to the whistleblower's actual and real evidence. The greater the perceived threat, the more heinous and violent the retaliation.

Dr. Bharani has been subjected to a string of some of the most heinous and abusive acts imaginable. The lack of humanity against Dr. Bharani because he insisted on obeying the rules, the law and his Hippocratic oath by caring about his patients and the people of Massachusetts is staggering.

That senior public officials at the Board have engaged in conduct that has prevented Dr. Bharani from earning a living for more than four (4) years cannot be adequately expressed in words and is un-American.

DR. BHARANI'S REPORTING TO THE FEDERAL BUREAU OF INVESTIGATION, FORMER ATTORNEY GENERAL MARTHA M. COAKLEY AND ATTORNEY GENERAL MAURA T. HEALEY

Dr. Bharani has acknowledged to me that he understands that 18 United States Code Section 1001, makes it a crime to knowingly and willfully make any materially false, fictitious or fraudulent statements or representations in any matter within the jurisdiction of the executive, legislative or judicial branch of the United States.

As only one portion of evidence to authenticate and validate Dr. Bharani's credibility would be a variety of self-initiated contacts with high law enforcement, especially his

approximate four (4) hour visit with Boston Division FBI Special Agent Keith L. Nelson on January 28, 2013, and a follow up letter dated February 12, 2013, to Special Agent Nelson requesting an investigation of Medicare fraud and CHA's collusion with the Board.
Dr. Bharani's request for an investigation to then Attorney General Martha Coakley, dated March 3, 2013, with a "return receipt" dated March 22, 2013, was met with silence.

Dr. Bharani's request for an investigation to Attorney General Maura Healey dated February 3, 2015, was met with severe consequences, to wit: a retaliatory and demonstrably false accusation that Dr. Bharani engaged in Medicaid fraud and a "terrifying" and unauthorized visit to his residence on April 29, 2015, for reasons that deserve a public explanation by Attorney General Healey.

Attorney General Healey, who represents the Board Investigator in Federal court, was fully aware that Dr. Bharani was represented by counsel when she chose to send two Investigators to his residence on April 29, 2015.

In a letter dated April 30, 2015, to Chris Cecchini, Medicaid Fraud Investigator, Dr. Bharani's attorney, Lisa Belanger, Esq., confirmed in writing a phone discussion of April 29, 2015, in which she writes, ***"Dr. [Bharani] is not a "Medicaid provider" under the statutory provisions cited in your letter, Dr. [Bharani] has not rendered any medical services under MassHealth, Dr. [Bharani] has not received any money whatsoever from any government source for providing medical services, Dr. Bharani has not billed Medicare or Medicaid in any manner whatsoever and Dr. [Bharani] has not received any money for the past four years."*** *[Emphasis added.]*

In fact, for more than four years, Dr. Bharani has seen his patients (many are indigent or homeless) for free.

As of this date, Attorney General Healey has not issued a subpoena or a probable cause warrant for Dr. Bharani's alleged Medicaid fraud.

A GUARANTEED FORMULA FOR BULLYING, RETALIATION AND MALICE AGAINST WHISTLEBLOWERS

It is important to note some, but not all of the following whistleblower retaliation "formula[1]" has been used against Dr. Bharani:

Spotlighting the whistleblower, not the wrongdoing.
This is also known as the "smokescreen" or "changing the subject" tactic. The first imperative of retaliation is to make the whistleblower the issue: obfuscate the dissent by attacking the source's motives, credibility, professional competence, or virtually anything else that will work to cloud the issue. The point is to direct the spotlight at the whistleblower instead of the wrongdoing or violations of law.

A typical management response to a whistleblower's disclosures is to launch an internal investigation and retaliate against the employee on trumped-up charges.

Allegations of everything, including a smear campaign - even charges that have already been investigated and discredited continue. Moreover, smears of alleged misconduct similar to what the whistleblower is exposing are not unusual.

Chutzpah in selecting the smear charges is a common tactic to demonstrate the organization's invincibility. Soft-spoken, humble individuals have been branded loudmouth egomaniacs. There is no limit to the petty and outrageous depths to which an unscrupulous employer may be willing to sink.

Often a private firm will be hired to do the dirty work of investigating a whistleblower.

A related technique is to open an internal investigation or process - and then deliberately keep it pending for an indefinite period. The idea is to leave the whistleblower twisting in the wind, with the clouds of an unresolved, never-ending investigation hanging over his head.

Some whistleblowers endure a series of nearly seamless investigations for decades. The intent is not only to create uncertainty and stress but also to undermine the whistleblower's credibility.

Potential media, government, and other officials may be discouraged from listening to and taking seriously the allegations of a whistleblower who is "under investigation." At the same time, agencies can hide behind privacy laws to hint that there is a problem with the employee that the corporation is not at liberty to disclose.

A related tactic is "chain witch hunts," in which a new investigation is opened as soon as an old one is closed without action.

Build a damaging record against the whistleblower.
This tactic goes hand in glove with spotlighting the whistleblower. Not infrequently, companies spend years manufacturing an official personnel record to brand a whistleblower as a chronic "problem employee" who has refused to improve. The idea is to convey that the employee does nothing right. In truth, many whistleblowers have a history of sterling performance evaluations – until this tactic is used against them.
An employer may begin by compiling memoranda about any incident, real or contrived, that projects inadequate or problematic performance on the job. By the time something more serious such as termination is proposed, the employer is armed with a long and contrived history of "unsatisfactory performance."

Threaten them.
Warning-shot reprisals for whistleblowing, such as reprimands, often contain an explicit threat of termination or other severe punishment if the offense is repeated.

Isolate them.
Another retaliation technique is to transfer the whistleblower to a "bureaucratic Siberia." Similar to public humiliation, the isolation makes an example of the whistleblower while also blocking the employee's access to information and severing contact with other concerned employees. Moreover, like any good retaliation tactic, isolation puts pressure on the whistleblower to be compliant or resign.

Set them up for failure.
The converse of retaliating against whistleblowers by stripping them of their duties is the tactic of putting them on a "pedestal of cards." This involves setting whistleblowers up for failure by overloading them with unmanageable work and then firing or demoting them for non-performance. This tactic commonly includes making it impossible to fulfill assigned responsibilities by withdrawing the necessary privileges, access, or staffing. Another variation of this tactic is to appoint the whistleblower to solve the problem he exposed and then make the job impossible through a wide range of obstacles that undercut any possibility of real reform. The employee may then be turned into the scapegoat and fired for incompetence when the problem is not solved. In extreme cases, this retaliatory tactic may extend to setting the whistleblower up for criminal charges, disciplinary action, or even injury, such as by ordering people with bad backs to move heavy furniture.

Physically attack them.
Karen Silkwood from Oklahoma's Kerr-McGee nuclear facility was killed after her car ran off the road on the way to meet a reporter under circumstances that led many to suspect murder. Shortly after James Murtagh successfully settled his False Claims lawsuit and made FBI disclosures in a political-corruption case that sent the Georgia State Senate leader to prison, he was hospitalized for arsenic poisoning. Brown & Williamson's Jeff Wigand experienced anonymous death threats against himself and his loved ones. These whistleblowers' fates demonstrate the risk of physical retaliation for speaking out. Physical attacks on whistleblowers are not common but do occur. Sometimes organizations encourage or wink at "the boys" who do their dirty work, as the whistleblower gets beaten up by thugs on the work floor. Sometimes physical retaliation is more subtle. Whistleblowers at nuclear or chemical facilities may find themselves assigned to work in the hottest radioactive or toxic spots in the plant.

Eliminate their jobs.
Another common tactic is to lay off whistleblowers even as the company is hiring new staff. Employers may "reorganize" whistleblowers out of jobs or into marginal positions.

Paralyze their careers.
An effective retaliation technique - and one that sends a signal to other would-be dissenters—is to deep-freeze the careers of whistleblowers who manage to thwart termination and hold on to their jobs. These employees become living legends of retaliation when employers deny all requests for promotion or transfer. A related tactic is to deny whistleblowers the training needed for professional development. The message is clear: "She is going nowhere." Bad references for future employment openings are

common, and any whistleblower settling a legal case should be careful to take this into account. Sometimes this tactic can be subtle, using buzzwords to signal that a former employee should not be hired. Common examples are statements that an employee "is not always a team player" or "needs to work on maintaining cooperative relationships."

Blacklist them.
Sometimes it is not enough merely to fire whistleblowers or make them rot in their jobs: The goal is to make sure they "will never work again" in their chosen field or industry. After several oil-industry whistleblowers exposed illegal pipeline practices, for example, the company placed them on a list of workers "not to touch" in future hiring. It does not matter whether you are completely vindicated.

Employers in scientific professions have exercised some of the ugliest forms of blacklisting. James Murtagh has endured a steady pattern of receiving new jobs in supportive environments only to get terminated without explanation within weeks. He subsequently found that his former employer had posted the equivalent of a smear dossier about him on its website. Another creative method is extradition. Whistleblowing foreign nationals at university laboratories, including students, have been warned that their visas will not be renewed and that the Department of Homeland Security is available to ensure their departure. Many other forms of retaliation against scientists have also arisen. These experiences are not unique. They illustrate what you can expect.

NEUTRALIZING DISSENT – STANDARD TACTICS OF COVER - UP

The point of the tactics described above is to overwhelm whistleblowers in an existential struggle for preservation - to undermine their credibility, career, family, finances, and even sanity until they are silenced and the issues that triggered the whistleblowing are forgotten. Typically, these tactics are only one of two fronts. In addition to "shooting the messenger," employers also strive actively to bury the message by changing the subject to cover up the wrongdoing.

Employers often rely on longstanding secrecy tactics to camouflage institutional misconduct. Large corporations will devise systems and written or unwritten policies for keeping dissent - including information about possible wrongdoing - from surfacing or creating problems for the company. Some are standing policies. Others are adopted when companies become aware of their own wrongdoing and seek to avoid getting caught. Still others are put into place as a means of damage control after a whistleblower has publicly exposed an instance of misconduct.

Gag the employee.
The most direct way to silence potential whistleblowers is to gag employees through repressive nondisclosure agreements as a job prerequisite or by excessively designating information as "proprietary" or with government contractors as "classified." Private employers often build gag orders into company manuals or employment contracts and then enforce them through civil suits for breach of contract or theft of proprietary

information. More subtly, companies routinely order staff to refer all media inquiries to an in-house public relations office.

Conduct a fraudulent investigation.
A related tactic is to launch an investigation on false and fabricated allegations that never ends, similar to this Board keeping a Docket open against Dr. Bharani for almost 5 years fully conscious that this has blocked him from earning a living.

Institutionalize conflict of interest.
Institutions accused of wrongdoing routinely initiate probes into their own misconduct. In many whistleblower cases, this is the equivalent of appointing the fox to guard the henhouse. In one sense, it is only fair (and more efficient) to allow companies a chance to resolve allegations and straighten out internal problems. That is the point of internal checks and balances; corporations should be responsible for internal housecleaning. But when confirmation of misconduct could create liability or when individual business leaders are the direct cause of misconduct, this approach inevitably places in-house investigations in a conflict of interest.

Keep them ignorant.
Like government-classified national security information, companies' information may be restricted to a "need-to-know" basis. Taken to the extreme, this policy can be misused to hide the truth and thereby keep employees too ignorant to threaten the corporation. There is often a link between this tactic and various others, such as isolation and internal reorganization. Employers may seek not only to punish the whistleblowers but also to make it impossible for them to access information and evidence. When information is power, ignorance is anti-bliss.

On occasion, employers isolate whistleblowers from gathering evidence through a longstanding labor-management technique: physically locking them out and or reassigning them to a non-job assignment or a lesser position. Managers may pull out technicalities and obscure subsections of procedures to paralyze efforts at gathering and disclosing information. Similarly, revoking an employee's security clearance is both a tactic of retaliation and a technique for hiding damaging information from those workers who would otherwise have access to it.

Prevent development of a written record.
When policies or suspect activities are indefensible, wrongdoing can best be obscured by keeping the evidence oral. This can be enforced by peer pressure, overscheduling (to ensure that there is not time to construct a written record), purging files - both electronic and hard copy - and off-the-record backdoor meetings. Managers recognize that it is difficult for whistleblowers to build a case against them without a paper trail. Verbal orders and agreements diffuse accountability over time and inevitably pit the whistleblower's word against that of his superior. In the case of Dr. Bharani, despite a requirement to keep minutes of his Complaints Committee Hearing, no minutes were allegedly kept.

Rewrite the issues.
One of the more insidious Strategies is to trivialize, grossly exaggerate, or otherwise distort the whistleblower's allegations - and then discredit the employee by rejecting the resulting "red herring." A whistleblower who alleges that superiors overlooked problems on the job may, for example, find the concerns exaggerated into allegations of willful misconduct—thus stretched beyond credibility. The corporation then finds that, although mistakes were made, the employer committed no intentional violations. The charges are dismissed, the whistleblower is discredited, and the targets promptly proclaim exoneration.

Rewriting the record can degenerate into outright censorship. This may involve deleting evidence or issues that are too hot to handle - and therefore vanish from the ensuing investigative report. In other cases, the findings are "massaged" through edits that ensure that they will not be interpreted as significant. An investigative report - even one diluted by rewritten allegations, censorship, and neutered recommendations - can still be damaging to wrongdoers. As a result, a related technique is to issue a press release declaring that the investigation had concluded that there was no wrongdoing - but then refuse to release the report containing the record of the investigation.

Scapegoat the small fry.
Just as corporations may trivialize allegations of wrongdoing by rewriting them, they may lower the scandal volume by shielding institutional leadership from accountability. Instead, they target those who do not have a support constituency or who were only following orders from higher-ups

Reward the perpetrators.
Personnel who retaliate against and drive out the whistleblower are almost rewarded by promotions, awards and/or public commendation. In my particular experience, my supervisor and "Equal Employment Manager" at the DCMAE who participated in promotion fixing designed to cheat women and minorities out of merit based promotions, retaliation, rigged investigations and more, eventually was given three promotions, received annual bonuses and received the DCMAE's highest employee award: "Superior Performance Award."

In the case of Dr. Bharani, a new Neurology Chief put into motion the events that culminated in the Board blocking him from earning a living for more than 4 years and was invited by the Board to serve as it's witness at the DALA hearing and to have her statements relied upon in both the Board's Statement of Allegations and the closing brief.

AFFIANT'S OBSERVATIONS AND EXPERIENCE AT THE DIVISION OF ADMINISTRATIVE LAW APPEALS HEARING ON JANUARY 12, 2015

On January 12, 2015, I attended the public DALA hearing. My good faith intent was to serve as a DALA government witness, if allowed, concerning the "gaming" process and lawful violations against Dr. Bharani. I didn't get that opportunity.

Upon hearing the word "witness," the Hearing Officer physically came down from the bench and escorted me out of the hearing room and into the waiting area. See pages 62, 63 and 64 of the DALA transcript.
A better explanation of the events that occurred can be found in my letter, incorporated by reference, dated January 18, 2015, to Governor Baker, Kristen Lepore - Secretary - Executive Office for Administration and Finance, Maura Healy (Eff. January 21, 2015) - Massachusetts Attorney General, Andrea Cabral - Secretary of Public Safety, Commonwealth of Massachusetts, Vincent B. Lisi - FBI, Special Agent In Charge, Boston Division and James B. Comey - Director, FBI, Washington DC, in which I registered my concerns and objections to being expelled, without cause, from a public hearing, which in all of my years of experience is unheard of.

AFFIANT'S OBSERVATIONS AT THE DIVISION OF ADMINISTRATIVE LAW APPEALS ("DALA") HEARING ON MARCH 6 AND MARCH 9, 2015

On March 6 and March 9, 2015, I again attended the DALA hearing and witnessed an alleged medical "expert" testify against Dr. Bharani.

Based on evidence presented an testimony elicited during cross-examination of this alleged expert witness, I concluded that this alleged subject matter expert had lesser credentials and experience than Dr. Bharani, that his expertise was questionable, he may not be basically qualified as a medical doctor in Massachusetts and his credibility was at zero.

In his cross-examination, Dr. Bharani raised serious doubts about the "expert's" objective ability to be licensed in Massachusetts because he was out of compliance with Acts of 2010, Ch. 283 and Board regulations regarding Opioid Credits. Thus, his standing as an "expert" without expert credentials and a large credibility gap should have made an impact on the Hearing Officer's decision. It did not.

FUNDAMENTAL FAIRNESS AND DUE PROCESS DENIED

As a former Personnel Director with approximately 25 years of experience in employee discipline matters in both the private and public sectors, termination of one's employment in personnel vernacular was considered to be the "electric chair." "In the case of a licensed practice, the law holds a license as a property interest and so any matter involving a licensed practitioner should be given impartial and full due process protections."

Dr. Bharani was accused by the Board of misdiagnosing multiple sclerosis (MS) and mismanaging the prescribing of pain medicine. To do this the Board relied upon the "anonymous" Greeley Report, which was the primary document used to "convict" Dr. Bharani and was commissioned and paid for ($7,185) by the CHA. This unsworn "anonymous" report contained the same or similar false and fabricated claims against Dr. Bharani that Dr. Glicks' replacement presented to the CHA's Fair Hearing Panel in January 2011.

According to the official website, *"The Division of Administrative Law Appeals ("DALA") is an independent agency that conducts due process adjudicatory hearings for other Massachusetts state administrative agencies."* The declaration is that DALA hearings will be fair, neutral and evidence-based to ensure "due process."

Dr. Bharani's pleadings and a subpoena for the identity and credentials of the anonymous author of the Greeley Report were denied by the Hearing Officer. The Hearing Officer ruled that Dr. Bharani was not allowed to know who authored the report. This decision denied Dr. Bharani due process and his right to examine or confront the anonymous accuser/informant.

HEARING OFFICER'S CONDUCT AND DECISION IS IN ONGOING CONTEMPT OF THE MASSACHUSETTS SUPREME JUDICIAL COURT

It is vital to note that this particular DALA Hearing Officer has already been condemned by the Massachusetts Supreme Judicial Court for his cavalier disregard for due process protections.

In a February 8, 2013, Massachusetts Supreme Judicial Court ("SJC") ruling in *Commonwealth v. Kelsey* (SJC 11087), the DALA Hearing Officer in his previous role as Essex County Assistant District Attorney was condemned for denying Kelsey the right to confront a "confidential informant."

Writing for the SJC, Associate Justice Barbara A. Lenk concluded that the *"right to confront adverse witnesses and the right to present a defense are distinct due process rights separately guaranteed…"*

The SJC concluded that the *"fundamental requirements of fairness"* demanded *"the disclosure of an informant's identity"* as *"essential to the fair determination of a cause."*

Despite the fact that the Hearing Officer knew, because of his personal involvement in *Commonwealth v. Kelsey*, that the identity of a "ghost" author of a report against Dr. Bharani must be disclosed, he ignored that non-discretionary precedential rule of law, which is critical to the preservation of Dr. Bharani's due process rights.

Under the doctrine of *Stare Decisis*, the Hearing Officer knew or should have known that denying Dr. Bharani the right to confront his accuser by protecting the anonymity of the author of the Greeley Report was improper and in contempt of the Massachusetts Supreme Judicial Court's decision in *Commonwealth v. Kelsey.*

The Hearing Officer's conduct, actions and behavior speak for themselves and suggest de facto admissions of judicial and confirmation bias and his witnessing of what he knows or should know as felony perjury. The Hearing Officer made certain bench decisions to invalidate and/or ignore the evidence of a fabricated and fraudulent report, which contradicts the DALA mission.

The Board filed a Motion and actively opposed revealing the identity and credentials of the anonymous author of the Greeley Report. I can only conclude that the author was unwilling to support his or her report under oath and was actively assisted by both the Board and the Hearing Officer. The Board relied on the Greeley Report for its Statement of Allegations and its closing Brief.

FAILURE TO RECOGNIZE AND PROPERLY RULE ON THE CLEAN HANDS DOCTRINE ("CHD") AND DUTY OF CARE

The gravamen of Dr. Bharani's complaint also rests with the "Doctrine of Unclean Hands" ("CHD"), which states that *"a party who is asking for a judgment cannot have the help of the court if he/she has done anything unethical and/or unlawful in relation to the subject of the lawsuit."* Thus, if the [respondent] can show the [petitioner] had "unclean hands," the [petitioner's] complaint will be dismissed or the [petitioner] will be denied judgment.

"A "duty of care" is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others." According to the official record, Dr. Bharani, established his duty of care, prima facie, which the petitioner breached.

Dr. Bharani offered absolute and unequivocal evidence that he was being falsely accused and prosecuted and that there were severe procedural defects amounting to obstruction of justice in his case.

The Hearing Officer knew or should have known that Dr. Bharani had been exonerated of the false and fabricated charges against him.

Dr. Bharani offered absolute and unequivocal evidence to prove felony perjury by two of the "expert" witnesses against him. The Hearing Officer knew or should have known, but declined to act on the fact that felony perjury occurred in his courtroom.

Dr. Bharani filed two Motions for the Hearing Officer to recognize and rule on numerous violations of the CHD. The first Motion was delivered in hand to the Hearing Officer on January 13, 2015. As to this Motion, the DALA Hearing Officer writes: ***"The respondent's vagueness about the name and date of his motion make it hard to check the docket. Nonetheless, I do not believe the motion came before me. The respondent will file another copy without commentary."*** The DALA Hearing Officer accepted Dr. Bharani's Motion in hand and that evidence is contained at Pages 247 and 248 of the transcript.

D. Bharani's second CHD Motion for the Hearing Officer to recognize and properly rule was filed on March 2, 2015.

In his written ruling dated March 3, 2015, the Hearing Officer denied Dr. Bharani's Motion to sanction the perjury, with his justification as follows: ***"I repeat what I have said at least once before. I expect Dr. Padmanabhan to be familiar with what I can and cannot do as an administrative magistrate. His motions that I take actions that I am not authorized to do require an unnecessary expenditure of administrative resources."*** [Emphasis added]

The Hearing Officer's ruling is a subjective preference, rather than applying the law/rules impartially, according to CHD plain language. As to the "unnecessary expenditure of administrative resources," the Hearing Officer knew or should have known that the entire eight (8) day DALA hearing was a tremendous waste of public resources (a fraud on the court) that was unnecessary, unwarranted and unjust from the beginning because Dr. Bharani was exonerated of the same charges against him on February 24, 2011 and there were fatal procedural flaws in the Board investigation. The Hearing Officer knew or should have known about his obligation to apply 18 United States Code Section 4.

The Hearing Officer also allowed exhibits from the Board well after the deadline (two medical notes from the Brigham and one MR image downloaded from the Internet), but would not accept Dr. Bharani's relevant exhibits and witnesses offered before the hearing began.

"THE PREVAILING JUDICIAL POSITION ON UNCLEAN HANDS ("CHD")[2]"

"Fraud on the court is one of the most serious violations that can occur in a court of law. If fraud on the court occurs, the effect is that the entire case is voided or cancelled. Any ruling or judgment that the court has issued will be void. The case will usually need to be retried with different court officials, often in an entirely different venue. For the official who acted in fraud upon the court, they may very well be required to step down from their position and may even be subjected to criminal consequences like a fine or a jail sentence. It could also result in other serious consequences, such as an attorney being disbarred, or a judge being removed from service. If a court official is found to be biased or prejudiced even before fraud occurs, they are required to excuse themselves from the case, and a different official must be appointed. In some jurisidictions, a trial tainted by fraud on the court will be vacated or set aside for a certain time period (such as two years), to be "reopened" at a later date.[3]"

Some, not all, of the salient points on the CHD -
"A Normative Theory of the Clean Hands Defense."
"The most dominant goal or norm that judges ascribe to the CHD is the protection of what is best captured by the concept of "court integrity."

This position holds that the integrity of the judiciary is compromised when courts assent to, entertain, or even hear petitions and pleadings predicated on or implicated by [a litigants'] own wrongdoing. As the Supreme Court put it, the court should not "be 'the abettor of iniquity.'" Accordingly, a primary interest that the CHD protects is the integrity of the court. In a sense, the integrity account of the CHD rests on a justification

concerned with keeping the court's own hands clean. By way of interpretation, their reasoning appears as follows: courts of justice should not abet iniquity and wrongdoing because doing so would put their nature as courts of justice and fairness in peril. Furthering, tolerating, abetting, or turning a blind eye to wrongdoing conflicts with the core normative tenets of courts of justice, even in cases where doing so would further a good greater than the loss in terms of court integrity. A variant of this position is that in cases of unclean hands, court integrity is put at risk of becoming marred by the hypocrisy of the litigant whose hands are unclean. Thus courts—as a matter of their core normative tenets—must not "dirty their hands" by hearing, entertaining, or assenting to the pleadings, complaints, and petitions of claimants whose hands are unclean. Even if an all-things-considered analysis were to justify the court's entertaining and even assenting to a … unclean hands, interests of court integrity still persist and may even prevail in justifying the court in denying the claim by employing the CHD, thereby washing its hands of a claim tainted with the claimant's iniquity. Under the integrity-based account of the CHD, the relation between the CHD and the integrity norm it supposedly embodies is structural. In applying the CHD, the court ipso facto refuses to reward, further, tolerate, abet, or become otherwise implicated in iniquity, wrongdoing, and even hypocrisy, which is supposedly exactly what court integrity demands in cases involving [litigants] with unclean hands. In this respect, because in applying the CHD the court in effect refuses to abet, ignore, or tolerate iniquitous ideal of court integrity more fine-grained, and in that sense, the CHD is a constituent of the court-integrity ideal. Under this reading of the court integrity interpretation of the CHD, the CHD embodies a norm of court integrity. Put differently, the norm of court integrity is at the core of the CHD's normative structure."

The DALA Hearing Officer explicitly refused to observe and/or enforce this critical and settled law, thereby ensuring the total lack of integrity in his courtroom. By so doing, the Hearing Officer ensured ongoing fraud that costs the taxpayer hundreds of thousands of dollars for an eight (8) day hearing that should not have occurred. The collateral damage in terms of patient neglect cannot be quantified.

What any judge or hearing officer should know is that "any report that is prepared and filed into evidence in which the author is afraid to disclose his or her identity or come forward to testify, under oath, is conduct done in bad faith." Any "impartial" hearing officer with advanced educational degrees, years of experience and purported intellect knows or should know this basic rule of evidence. It can be said with absolute and unequivocal certainty that the Hearing Officer knew from *Commonwealth v. Kelsey* that the author of the Greeley Report should be disclosed.

The "fabricated and fraudulent" anonymous report against Dr. Bharani, filed in bad faith, "is a badge of fraud and an egregious violation of the "clean hands doctrine."

By any standard, the Hearing Officer's decision to refuse to allow this "ghost" author to be examined and testify under oath as to the veracity of a report that will permanently damage Dr. Bharani by driving him out of the practice of medicine, is a sensational and unfair event in what is supposed to be a due process hearing.

There should be severe consequences for preparing a fraudulent report designed to commit a fraud on the court and waste tax dollars, as well as quashing the subpoena compelling the "ghost" author to come forward and be examined under oath.

Procedurally, any hearing officer/judge has a *sua sponte* responsibility to rebuke such evidence on the grounds that the "ghost" author is being shielded illegally.

For the Hearing Officer to officially pretend that the "ghost" report is authentic and allow it into evidence is a staggering idea and runs counter to DALA's own stated principles of the "due process adjudicatory hearing" and does not "exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudication."

Having witnessed several days of the hearing and examining the sworn transcripts, I am forced to conclude that the Board and the Hearing Officer determined that Dr. Bharani did not deserve and was not entitled to due process protections.

The Hearing Officer's conduct, actions and behavior affirmed my observation that he was not interested in maintaining court integrity or avoiding iniquity.

Thus far, the manipulations, tactics, false testimony, "fabricated and fraudulent" anonymous report, and an apparent bias, in an attempt to persecute and destroy Dr. Bharani do not meet the fundamental standard of the Board's and the DALA's mission.

In the interest of public service and numerous other considerations, this is a matter that should not be brushed aside. No one should be forced to engage in public corruption and/ or criminal conduct under threat of losing their profession.

THEFT OF HONEST GOVERNMENT SERVICES

"Honest services fraud refers to a 28 word sentence of i8 USC Section 1346 (the federal mail and wire fraud statute,) added by the United States Congress in 1988,[1] which states: *"For the purposes of this chapter, the term scheme or artifice to deprive another of the intangible right of honest services."*

HEARING OFFICER'S DECISION RECOMMENDATION

According to the February 14, 2013 DALA "Strategic Plan-in-Brief for 2013 – 2015, one of their seven key goals is to "ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA's adjudications."

With his "cut-and-paste" 94-page decision the Hearing Officer does not promote, and in fact undermines, the DALA goal, mission and creation of public trust.

The Hearing Officer has simply cut and pasted in the direct testimony from the Board's alleged expert witness, removed the quotation marks, and presented that testimony as his own findings of fact. This is problematic given that testimony prepared by one side in litigation presents that side's viewpoint in the best possible light, while negating the legitimacy of the other side. That is why it is the duty of the Hearing Officer to present a neutral findings of fact based on the totality of evidence presented. This Hearing Officer did not do so.

Consequently, selectively *"cutting and pasting from the transcript can result in a failure to objectively assimilate the competing positions in a transparent and defensible manner."*

CUT AND PASTE BIAS AND OMISSION OF DR. BHARANI'S UNDISPUTED EVIDENCE

Upon examining the Hearing Officer's decision dated August 7, 2015, and the transcripts of the hearing and matching it with the legal definition of bias, to wit*: "A predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination; a prejudice. A judge who demonstrates bias in a hearing over which he or she presides has a mental attitude toward a party to the litigation that hinders the judge from supervising fairly the course of the trial, thereby depriving the party of the right to a fair trial";* the numerous examples of bias are unmistakable.

The following is a detailed breakdown of just a few discrete examples of bias throughout the Hearing Officer's decision. Even one of these should be fatal to a Hearing Officer's decision.

******Page 6, Paragraph 15: The Hearing Officer declared as a finding of fact, *"However, the medical record did not specify the medication, the dosage, the quantity, instructions to the patient on taking the medication, and whether it was a refill. (Levin testimony, Tr. I-50.)"*

The preceding sentence is a direct quotation from the Alleged Expert Witness ("AEW") and cannot serve as a finding of fact as it was proved wrong during cross examination and the AEW was proved to have selected the documents entered into evidence himself thus deliberately creating incomplete medical records, which he then testified about as being incomplete.

By collaborating with the Board in selecting the documents entered into evidence, Expert Witness

By collaborating with the Board in selecting the documents entered into evidence the AEW fails to meet the definition of an "expert witness" and morphs into an active member of the Board's team. Every single medical record in the Board's evidence binder was tainted in this manner.

The AEW also testified during cross examination that he was unfamiliar with how records are organized by the EPIC Electronic Health Records system ("EHR") used at CHA. Even the incomplete record entered into evidence proved that all that data was present, including photocopies of prescriptions provided to patients. The Hearing Officer should have integrated these findings into his final decision rather than using the AEW's direct testimony without quotation marks that now masquerade as a Hearing Officer's actual findings of fact.

*****Page 6, Paragraph 18: *"However the medical record did not specify the medication or medications, the dosage, the quantity, and whether it could be refilled. (Levin testimony, Tr. I-51.) It did not specify the instructions to the patient on taking the medication."* The preceding sentence also is a direct quotation from the AEW and cannot serve as a finding of fact as it was proved wrong during cross examination and the AEW was proved to have selected the documents entered into evidence himself thus deliberately creating incomplete medical records, which he then testified about as being incomplete.

By collaborating with the Board in selecting the documents entered into evidence the AEW fails to meet the definition of an "expert witness" and morphs into an active member of the Board's team. Every single medical record in the Board's evidence binder was tainted in this manner.

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*****Page 7, Paragraph 25: *"The May 15, 2008 medical record did not specify the medication that Dr. Padmanabhan prescribed for the patient's back pain, whether it was a narcotic, and the number of refills. It did not specify the number of Xanax pills and refills that Dr. Padmanabhan had prescribed. It did not record that Dr. Padmanabhan had prescribed Neurontin and OxyContin for Patient A. (Ex. 2, p. 51 (prescriptions).)"*

The preceding sentence, too, is a direct quotation from the AEW and cannot serve as a finding of fact as it was proved wrong during cross examination and the AEW was proved to have selected the documents entered into evidence himself thus deliberately creating incomplete medical records, which he then testified about as being incomplete.

By collaborating with the Board in selecting the documents entered into evidence the AEW fails to meet the definition of an "expert witness" and morphs into an active member of the Board's team. Every single medical record in the Board's evidence binder was tainted in this manner.

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*****Page 8, Paragraph 30: *"The record omitted directions about how many pills per day the patient should have been taking. (Ex. 2, p. 46)"*

The preceding sentence too is a direct quotation from the AEW and cannot serve as a finding of fact as it was proved wrong during cross examination and the AEW was proved to have selected the documents entered into evidence himself thus deliberately creating incomplete medical records, which he then testified about as being incomplete.

By collaborating with the Board in selecting the documents entered into evidence the AEW fails to meet the definition of an "expert witness" and morphs into an active member of the Board's team. Every single medical record in the Board's evidence binder was tainted in this manner.

The AEW also testified during cross examination that he was unfamiliar with how records are organized by the EPIC Electronic Health Records system ("EHR") used at CHA. Even the incomplete record entered into evidence proved that all that data was present, including photocopies of prescriptions provided to patients. The Hearing Officer should have integrated these findings into his final decision rather than using the AEW's direct testimony without quotation marks that now masquerade as a Hearing Officer's actual findings of fact.

*****Page 9, Paragraph 40: "*The entirety of Dr. Padmanabhan's entry on the medical record for that date was: "Came in for routine refills / done.""*

There was substantial discussion during direct and cross examination about routine refill visits for prescriptions, with the Board taking the official stand that only psychiatrists are allowed to see patients for routine refill visits and as Dr. Bharani is not a psychiatrist he was not allowed to have refill visits for patients. This assertion by the Board at the DALA hearing directly contradicted it's testimony to the SJC in which the Board declared that psychiatrists and neurologists are both considered pain specialists. *Board of Registration in Medicine vs. John Doe.* 457 Mass. 738

It was the duty of the Hearing Officer to discuss the above fact. He did not.

The AEW testified repeatedly about something of which he had no knowledge because he had no experience with routine refill visits because he does not treat pain in even a single patient and testified that he would never treat pain no matter how genuine the

patient's medical need. None of this is mentioned by the Hearing Officer who strives to convey the official Board claim that the visit was not a routine refill visit and so the notes were "substandard." According to the sworn testimony of Harvard Professor of Anesthesiology Dr. Carol Warfield, Dr. Bharani's notes were not substandard. The Hearing Officer ignored her sworn testimony.

By not using quotation marks and by not citing the AEW's testimony the Hearing Officer has the AEW's testimony masquerading as his finding of fact.

*****Page 9, Footnote 3: *"I presume that this is a medical facility; "H" may stand for "Hospital.""*

The Hearing Officer had 8 hearing days to find this fact and did not need to presume anything. The "H" in TCH certainly stands for "Hospital" just as the "H" in "MGH" stands for "Hospital."

*****Page 10, Paragraph 48: *"On November 2, 2010, Patient A went to the emergency room of Whidden Memorial Hospital. The medical record was transmitted to Cambridge Health Alliance; Dr. Padmanabhan did not provide care that day."*

The Hearing Officer had 8 hearing days to learn the fact that Whidden is part of Cambridge Health Alliance just as MGH is part of Partners Healthcare. There was no transmission of the record to CHA at all.

*****Page 11, Paragraph 52: *"However this last prescription was probably not the one Patient A overdosed on because Patient A probably did not fill it. See Resp. Ex. 6."*

The Hearing Officer deliberately omits from his "factual findings" that Dr. Bharani proved beyond any doubt that no prescription from him was responsible for any harm to **Patient A** and certainly not his untimely demise. This sworn proof is part of the evidentiary record and any objective Hearing Officer would have declared in writing that this is so. Instead the Hearing Officer writes only in his discussion section that the last prescription was "probably" not the one. This proves that the Hearing Officer was not interested in making a finding of fact on this matter.

Dr. Bharani had submitted a sworn affidavit from the pharmacy proving that the last prescription was never picked up by **Patient A** and the pills were returned to the general stock. It is improper for the Hearing Officer to claim that the prescription was "probably" not the one after examining the sworn evidence and an 8-day hearing.

*****Page 13: Regarding **Patient C** there were no factual findings made.

Again, there was substantial discussion during direct and cross examination about routine refill visits for prescriptions, with the Board taking the official stand that only psychiatrists are allowed to see patients for routine refill visits and as Dr. Bharani is not a psychiatrist he was not allowed to have refill visits for patients. This assertion by the

Board at the DALA hearing directly contradicted it's testimony to the SJC in which the Board declared that psychiatrists and neurologists are both considered pain specialists. *Board of Registration in Medicine vs. John Doe*. 457 Mass. 738.

It was the duty of the Hearing Officer to discuss the above fact. He did not.

The AEW testified repeatedly about something of which he had no knowledge because he had no experience with routine refill visits because he does not treat pain in even a single patient and testified that he would never treat pain no matter how genuine the patient's medical need. None of this is mentioned by the Hearing Officer who strives to convey the official Board claim that the visit was not a routine refill visit and so the notes were "substandard." According to the sworn testimony of Harvard Professor of Anesthesiology Dr. Carol Warfield, Dr. Bharani's notes were not substandard. The Hearing Officer ignored her sworn testimony.

By not using quotation marks and by not citing the AEW's testimony the Hearing Officer has the AEW's testimony masquerading as his finding of fact.

*****Page 18, Paragraph 109: *"He also stated that Patient D had "1+ pitting edema," a measure that went unexplained. (Levin testimony, Tr. II-234-45)"*

It is incomprehensible for the Hearing Officer to declare, without quotation marks, an inexplicable direct quote from the AEW that purports to claim that every physician is required by the Board to explain in every single note what 1+ pitting edema means.

*****Page 18, Paragraph 113: *"The progress notes part of the medical record....."*

There was robust evidence presented and elicited during cross examination that showed these were routine refill visits and so these were not regular progress notes at all. There was substantial discussion during direct and cross examination about routine refill visits for prescriptions, with the Board taking the official stand that only psychiatrists are allowed to see patients for routine refill visits and as Dr. Bharani is not a psychiatrist he was not allowed to have refill visits for patients. This assertion by the Board at the DALA hearing directly contradicted it's testimony to the SJC in which the Board declared that psychiatrists and neurologists are both considered pain specialists. *Board of Registration in Medicine vs. John Doe.* 457 Mass. 738.

It was the duty of the Hearing Officer to discuss the above fact. He did not.

The AEW testified repeatedly about something of which he had no knowledge because he had no experience with routine refill visits because he does not treat pain in even a single patient and testified that he would never treat pain no matter how genuine the patient's medical need. None of this is mentioned by the Hearing Officer who strives to convey the official Board claim that the visit was not a routine refill visit and so the notes were "substandard." According to the sworn testimony of Harvard Professor of

Anesthesiology Dr. Carol Warfield, Dr. Bharani's notes were not substandard. The Hearing Officer ignored her sworn testimony.

By not using quotation marks and by not citing the AEW's testimony the Hearing Officer has the AEW's testimony masquerading as his finding of fact.

It is significant that the Hearing Officer's factual summary deliberately omits both the Patient's sworn testimony as well as the cross examination of the AEW.

*****Page 21, Paragraph 143: *"On August 13, 2008, Dr. Padmanabhan prescribed Dilaudid and Duragesic for Patient E (Ex. 6, p. 183(prescriptions)), but he did not record those prescriptions in a medical record. (Levin testimony, Tr. II-302.)"*

By not using quotation marks and by not examining the AEW's cross examination the Hearing Officer has the AEW's direct testimony masquerading as his finding of fact. The facts clearly showed that the prescriptions were indeed recorded in a medical record.

The inherent bias engendered by the AEW cherry-picking which documents to include in the evidentiary binder and then claiming documents were missing cannot be overcome. The Hearing Officer made no distinction concerning the AEW's involvement as an independent expert witness versus his prosecutorial role in putting together the Board's evidence binder - a stunning event.

*****Page 23, Paragraph 159: *"No evidence exists in the evidence why Dr. Padmanabhan wrote four prescriptions for Patient E after saying he would no longer write prescriptions; why he wrote two prescriptions on May 14, 2009 with a fill date of May 23, 2009; or why he wrote 30-day prescriptions with a fill date of May 23, 2009 and also wrote 30-day prescriptions for the same medications a day earlier, on May 22, 2009, which gave Patient E a 60-day supply of both medications. (Levin testimony, Tr. II-315.)"*

This alleged finding of fact by the Hearing Officer regarding **Patient E,** with once again the AEW's direct testimony masquerading as a finding of fact, shows the fatal problem at the heart of the Board's case and the Hearing Officer's clear attempt at hiding this fatal flaw:

a) The notes in question date from 2009
b) The Board was required by law to investigate independently
c) The Board had the notes for Patient E in November 2010 itself and has had full possession since that time
d) The Board was fully aware that these very notes had already been fully examined by Dr Carol Warfield at the Fair Hearing and been judged to meet the standard of care
e) The cross examination of the AEW demonstrated that he could not prove that the patient received all four prescriptions

f) The Hearing Officer was present during that cross examination and is aware of this fact
g) The Board had 5 full years to investigate and determine which of the prescriptions were actually filled by **Patient E**
h) If the Board cared so much about this issue it was obligated to use these 5 years to independently investigate which of these prescriptions was actually filled by **Patient E**
i) It can only be concluded the Board consciously chose to not do an independent good-faith investigation of this matter despite full possession of the notes and 5 years to do so - a fatal error

Despite the above, this Hearing Officer strives to give the impression that it is his factual finding that the problem lies with Dr. Bharani's notes.

*****Page 24: For **Patient F** the Hearing Officer omitted to make a finding of fact that the patient was helped by the treatment she received from Dr. Bharani though this is amply documented in the medical record in the Hearing Officer's possession.

*****Page 25, Paragraph 171: *"Despite Dr. Auerbach's normal and minor findings on March 20, 2010, which he had made at Dr. Padmanabhan's request, Dr. Padmanabhan on May 27, 2010 diagnosed Patient G as having multiple sclerosis. (Ex. 8, p. 208.)"*

It is instructive and vital to closely examine the following cross examination testimony of the AEW for the full impact of the Hearing Officer's bias in his quotation of the AEW's direct testimony, now masquerading as a finding of fact.

I was physically present for the cross–examination of the AEW on 03/06/2015, the transcript of which follows:

Page 20:

"Q How do you decide whether the neurologist is correct or the radiologist is correct?

A It is a generic question that I cannot answer.

Q Dr. Levin, how did you decide in this patient given these documents that the radiology report was correct and my read of the MRI was wrong?

A The March 7, 2008 brain MRI report from the radiologist indicates moderate amount of sub-centimeter T-2 hypertense fossae are scattered in the periventricular and subcortical white matter mostly on the frontal and parietal lobes. The pattern is nonspecific. No lesions demonstrate Dawson's fingers morphology pattern of multiple sclerosis, but there is some involvement of the white matter along the callosal-septal interface. There are no lesions within the corpus callosum or posterior fossa.

The impression was moderate amount of nonspecific supertentorial

white matter change. Common etiologies include chronic microvascular ischemia and/or idiopathic change. Less likely potential etiology includes demyelinating disease.

The report appears to be straightforward. The radiologist did not equivocate, and he is describing very specifically what he sees. The description is a common description of a type of MRI that we see. Oftentimes I will see it in the office sometimes on a daily basis where we see very small areas of increased T-2 signal. They are very tiny, they are nonspecific, and these are not the type of changes that one sees in multiple sclerosis. In multiple sclerosis the type of changes are very different.

The report that you described in your note was that the sagittal flair sequence is extremely suggestive of multiple sclerosis but should of course fit in with a lot of symptoms that she has had. She has quite a few lesions on the MRI, she has typical Dawson fingers coming off the ventricle, she has some pericallosal lesions as well as one fairly large extracortical lesion and two very prominent lesions coming off the ventricle in the occipital lobes.

Q Were any of those lesions mentioned in the official radiology report?

A No.

Transcript for 03/06/2015, Page 23:

DR. PADMANABHAN: Dr. Levin, on page two, tab 21 please read out loud just Report 1.
...
THE WITNESS: I have read the report.
Q (By Dr. Padmanabhan) If you turn to page 1 and start from the last paragraph from the arrow pointing down.
THE MAGISTRATE: Page 1 of tab 21?
DR. PADMANABHAN: Yes.
THE MAGISTRATE: He just read page 2 at your direction.
DR. PADMANABHAN: Yes, the official radiology report.
THE MAGISTRATE: Now you are asking him to read a second part of the exhibit?
DR. PADMANABHAN: Correct.
THE MAGISTRATE: Starting?
DR. PADMANABHAN: My read of this man's MRI.
THE MAGISTRATE: The complete page 1?
DR. PADMANABHAN: No, sir, at the bottom.
THE MAGISTRATE: Dr. Levin, do you see that?

THE WITNESS: Yes. Excuse me, would you like me to read the second report as well?
DR. PADMANABHAN: I would like you to read the last paragraph of page 1 going onto page 2. After that I would like you to read Report 2.
THE WITNESS: I completed this information.

Q (By Dr. Padmanabhan) Please tell Magistrate Bresler what conclusions you draw with the official radiology report.
A I did not draw any conclusions. I have not seen the images.

Q In the case of the previous patient, Patient H, you were confident enough to declare to Magistrate Bresler that this patient does not have multiple sclerosis without reviewing the images yourself. Why do you need to review the images--
THE MAGISTRATE: Dr. Padmanabhan, I need ask questions, not make statements.

Q Why do you need to see the images in this case, Dr. Levin,
when you did not need to see the images for Patient H?

A My preference is to see the images. The images were not available for Patient H. You asked me to comment on the two reports that you just gave me in this binder. My response was it was difficult for me to comment on this not knowing anything about the patient. Just looking at the reports whether or not the reports are accurate, I couldn't comment on that without actually seeing the images.
Q Thank you.

A May I put this binder aside?
Q We are going to deal with more pages. Please describe to Magistrate Bresler the difference between Report 1 and Report 2.
[.....]
THE MAGISTRATE: I'm going to ask you to interpret it, if you could, because I do have it in front of me.

THE WITNESS: Moderate T-2 hyperintensity is seen on the periventricular and central white matter, so there are areas of increased T-2 signal on the flair sequence that would show up as white, areas of white abnormality. So areas would be whiter than the surrounding brain which would be gray or black. So T-2 hyperintensity would be increased signal. They look white on the periventricular region which is around the normal fluid-filled spaces of the ventricles, so it's around the ventricles and the central white matter. So around the ventricle going further out is the white matter areas outside of the ventricles as well which is mostly confluent, meaning that the areas of T-2 signal are rather large and that the specific areas are coming together to form confluent areas of T-2 signal of increased white seen on the study including high signal emanating from the septal-callosal interface. There is increased signal seen at the corpus

callosum and the area round it, the septal-callosal interface. The corpus callosum is the area in the brain that connects the two hemispheres in the brain and enables signals to go back and forth from one hemisphere to the other corpus callosum. There is thinning of the body of the corpus callosum with involvement of the undersurface and more prominent involvement in the splenium of the corpus callosum. That is a portion of it.

Impression. Limited study done as follow-up imaging with only sagittal T-1 and sagittal flair sequences performed. What that states to me is this is a limited study. The radiologist does state that the MRI from 4-25-2008 was also reviewed, so the doctor would have the previous images from the entire study of 4-25-2008 plus the additional sagittal T-1 from the side looking at the T-1 sequences looking at the anatomy, sagittal flair sequences as described. Again seen is moderate white matter hyperintensity which is mostly confluent involving the septal-callosal interface and corpus callosum as described above. Multiple sclerosis is in the differential diagnosis and clinical correlation is required.

These interpretations are quite different. It isn't clear to me why there would be such radically different interpretations of two studies. The interpreting radiologist of the second study does have additional sequences, but with additional sequences I would not expect there to be such a difference in the interpretation of these two studies.The doctor reading the second study -- Again I'm assuming that this is the correct patient. I don't know that this is the correct patient because I have no identifying information, neither name, initials, birth date, anything telling me that this is indeed the same patient. Assuming it's the same patient, I cannot explain why there would be such a radically different interpretation by the two doctors."

Given this cross examination testimony the Hearing Officer has to have made the conscious decision to ignore facts before restating the AEW's direct testimony as his finding of fact that despite Dr. Auerbach's radiology report Dr. Bharani diagnosed **Patient G** with MS and that Dr. Bharani's diagnosis is therefore wrong.

It is further damning that the AEW was pleased to testify that Dr. Bharani was wrong in diagnosing patients with MS without requiring that he examine the MR images himself but then declared he needed to see them during cross examination when challenged.

What is totally unacceptable is that Dr. Auerbach did not testify in person under oath and was never cross examined and this Hearing Officer has never found that to be important.

*****Page 26, Paragraph 176: *"On January 24, 2011, a Dr Dejager reviewed the MRI from March 30, 2010, and it did not indicate MS."*

This statement masquerading as a finding of fact is stunning in it's duplicity on numerous levels.

The "and it did not indicate MS" is unsupported in any way. The Hearing Officer deliberately does not clarify if that was the radiology report or Dr. Dejager's analysis.

Dr. Dejager was not questioned under oath and not cross examined. The Board did not bring him in as a witness or ask him to furnish a sworn affidavit.

There was no voir dire done for either Dr. Dejager or Dr. Khera. Despite this the Hearing Officer has presented hearsay from these two persons as his findings of fact.

It bears repeating that Dr. Bharani trained between 2000 and 2003 at the very same MS lab that Dr. Dejager was working at in 2011 and that unlike Dr. Dejager, Dr. Bharani saw patients 5 days a week.

It is further significant that a *voir dire* would have shown that unlike Dr. Bharani who has a PhD in MS, done 2 fellowships in MS at Harvard and UMass and cared for 750 MS patients, Dr. Khera in 2011 had just finished residency training and was working at his first job without completing any fellowship training in any field.

Despite these fatal flaws, the Hearing officer "put on his medical hat" and declared on Page 75: *"Dr. Padmanabhan's diagnosis of Patient G's condition multiple sclerosis was incorrect.*"

Before a Hearing Officer who does not have 2 fellowships in MS under his belt makes such a finding it is obligatory that there be no flaws at all in the evidence presented.

*****Page 28, Paragraph 188: *"Dr. Khera doubted a diagnosis of MS, opining that the available imaging was not characteristic of MS, the patient's muscle pain and cramping were not symptoms of MS, and the patient's history pointed to a stroke. (Ex. 28, p. 9.)"*

Again there was no *voir dire* done for Dr. Khera, he did not testify under oath and he was not cross examined.

As noted above Dr. Khera's medical qualifications pale in comparison to Dr. Bharani's expertise in MS.

It is also extremely important to note what the Hearing Officer omitted.

The note from Dr. Khera was introduced by the Board in the middle of the evidentiary hearing in January 2015. The note dates from February 2011. The Board was obligated to independently investigate and had subpoenaed Cambridge Health Alliance for all the

records in November 2011. There was no legitimate reason for the Board to introduce this note in the evidentiary record only in January 2015.

The Hearing Officer not only did not sanction the Board for not examining this note in 2011 itself but omits mentioning this fact besides quietly noting the Exhibit number jumped suddenly from 9 to 28, without explanation as to why there were Exhibits offered after the discovery period and why they were allowed.

*****Page 28, Paragraph 189: *"On March 27, 2011, Dr. Christopher Severson of Brigham and Women's Hospital examined Patient H. (Ex. 29, p. 5.)"*

Again there was no *voir dire* and Dr Severson did not testify under oath and was not cross examined.

It was not entered into the evidentiary record by the Hearing Officer for example that Dr. Severson finished residency training in 2007, seven years after Dr. Bharani and that in 2011 he was doing his Fellowship in MS, something that Dr. Bharani completed at the same Brigham & Women's Hospital in 2003.

Despite these fatal flaws the Hearing officer uses unsworn hearsay to claim Dr. Bharani's diagnosis is wrong.

Other fatal flaws include the AEW's testimony about CellCept and structures identified on an MRI, which totally demolished even a scintilla of credibility and make for riveting cross examination testimony, none of which makes it into the Hearing Officer's alleged finding of facts.

As one simple example, the AEW confidently testified that the MR image, that had been randomly downloaded from the Internet by the Board and introduced in the middle of testimony, contained a *corpus callosum*. In cross examination, when asked to identify where in the image this structure may be found, the AEW pointed to a region of the brain which does not contain a *corpus callosum*. In fact, the *corpus callosum* was entirely absent from that slice of the brain. The AEW then equivocated and then testified that he thought he saw the *corpus callosum*. No reasonable person witnessing the AEW's testimony could have concluded that the AEW was a credible witness.

It is also extremely important to note again what the Hearing Officer omitted.

The note from Dr. Severson was introduced by the Board in the middle of the evidentiary hearing in January 2015. The note dates from March 2011. The Board was obligated to independently investigate and had subpoenaed Cambridge Health Alliance for all the records in November 2011. There was no legitimate reason for the Board to introduce this note in the evidentiary record only in January 2015.

Furthermore the Hearing Officer has totally ignored **Patient H's** own sworn testimony. **Patient H** testified clearly that she had not been concerned about the cost of her co-pays

and that Dr. Severson did not look at the most recent MRI of her brain, only an older one. See Transcript, January 29, 2015 page 830.

This is a significant declaration under oath from the patient herself that should not be ignored by any objective and neutral finder of fact.

It is a travesty of process for the Hearing Officer to declare that, *"The BRM has proved by a preponderance of the evidence that Dr. Padmanabhan provided substandard care to Patient H by misdiagnosing her condition as MS."* See page 78.

*****Standard of notes, Page 44: *"I asked the parties to brief the legal issue of whether a doctor can be culpable of providing substandard [sic] when his medical records are substandard. (Tr. II-143-44.) They did not do so."*

The burden of proof was entirely on the Board. The Hearing Officer's admission that they defaulted is significant. It can be concluded that a doctor's care cannot be substandard based just on notes, especially when the patients themselves come in and testify under oath that they received high-quality care as they did in the case of Dr. Bharani.

It is highly unusual for a neutral Hearing Officer to declare that Dr. Bharani's notes are substandard based on unsupportable and discredited assertions by the AEW, a person who, according to the official record, is not basically qualified to be licensed as a physician in Massachusetts.

It is even more improper given the fact that Harvard Professor of Anesthesiology Dr. Carol Warfield came and testified at the Fair Hearing in 2011 on these very same notes and proved that she had a very good idea of the clinical status of the patients and the care they received solely from the notes as she had never met Dr. Bharani prior to the day of her sworn testimony. The Hearing Officer had Dr. Warfield's sworn testimony at hand.

It can also be concluded that a neutral Hearing Officer should not issue *"his special brand of justice"* in generating his novel legal theory by declaring that Dr. Bharani is not competent as a physician based on the AEW's assertions about his notes and rewards the Board for presenting evidence not about care but about notes. See Page 3.

In addition the Hearing Officer commits a grave error in another fundamental point when he writes in Page 3 of his decision that *"Dr. Padmanabhan testified and called three witnesses: Patients D and I, and himself."*

The Hearing Officer is wrong again. Dr. Bharani called four (4) witnesses: **Patients C, D, I, and himself.** Not one word from the patients' sworn testimony was included in the Hearing Officer's decision.

THE HEARING OFFICER OMITS MENTION OF THE AEW'S MRI TESTIMONY

One of the most dramatic moments that bears repeating, during the AEW's testimony in favor of the Board was his sworn statements regarding structures seen on MR images. The AEW testified that an MR image downloaded from the Internet by the Board and introduced as an Exhibit in the middle of the hearing showed a *corpus callosum* with Dawson's Fingers that involved the *corpus callosum*. *"And what we've seen in the corpus callosum are these areas of white -- whiteness. These are areas of increased T2 signal. We see numerous ones along the top of the corpus callosum."* Transcript pages 410-413.

During riveting testimony during cross examination the AEW was asked by Dr. Bharani to show the Hearing Officer where exactly the *corpus callosum* was located in that image. The AEW pointed to an area on the image and declared it was the *corpus callosum* then qualified it with "I think" and "I believe." Transcript Pages 980-984

"Q (By Dr. Padmanabhan) You previously told Magistrate Bresler that the patient's record does not have the features present on the single image from the internet. Please show Magistrate Bresler the corpus callosum on this image.
A Holding up the image to show it to you, demonstrating this is a sagittal view of the brain, a view of the brain from the side. The patient's eyes would be here, this is the mouth, this region is the sinuses. This is the front, the back portion. This is the brain, this area the cerebral cortex. This is the normal fluid-filled space referred to as the ventricle. Looking superiorly from this ventricle this is a lateral ventricle --
THE MAGISTRATE: Let me make a comment here for the record. Dr. Levin has pointed to a large area in the middle of the image that is dark, a few inches across and is curved. Thank you.
Q Dr. Levin, please show Magistrate Bresler the corpus callosum.
A Looking at the lateral ventricle, just above the lateral ventricle is a white area coming around. That should be representing the corpus callosum in this particular patient. I would need to have further images to go back and forth to establish information about it, but I do believe that is the corpus callosum above the lateral ventricle.
THE MAGISTRATE: You are pointing to a roughly crescent-shaped dark area in the middle of the image, is that right?
THE WITNESS: Yes.
THE MAGISTRATE: The corpus callosum is the dark image or is the white area above it?
THE WITNESS: The white area above it. The black area is the lateral ventricle.
Q (By Dr. Padmanabhan) Is it your testimony, Dr.Levin, that that area is the corpus callosum?
A Yes.
Q Have you seen MRI images before of the brain, Dr. Levin?
A Yes.
Q Do you know what a corpus callosum looks like,Dr. Levin?
A Yes.
Q Is that a corpus callosum, Dr. Levin?

A I think it is. As I said looking at this image,it's difficult for me to say. It is in the region of the corpus callosum but very thin. I do not have a good view of it looking at this particular image. I think it may very well be the corpus callosum, but I'm not sure. It may be a lining of the ventricle.
Q Dr. Levin, how many years have you been practicing as a neurologist?
THE MAGISTRATE: That is on the record. Next question.
Q Why are you not sure if that is a corpus callosum or not?
A I only have a single image and I would need to have further images and look at the actual images to go back and forth to be able to establish what the exact structure is.
Q Dr. Levin, is it not the standard of care that we should as a neurologist be able to identify structures on a single image of the brain?
A The standard of care is that we be able to look at images of a study to be able to go back and forth and look at all of the appropriate images of a study to be able to identify structures and other areas of that particular study.
Q Dr. Levin, is it not required of us as neurologists to know what each image is as far as structures of the brain go?
A Yes.
DR. PADMANABHAN: Thank you. For the record this image does not contain a corpus callosum."

As a live witness to this hearing and testimony it is impossible for me to conclude anything other than that the AEW was fundamentally unqualified to testify at that hearing and that his testimony is worthless.

It is highly improper therefore for the Hearing Officer to quote this witness' testimony as if it is his own finding of fact and use it to declare that Dr. Bharani, who has a PhD in MS and 2 prestigious Boston fellowships in MS, had misdiagnosed patients with MS and did not know how to read brain MRI scans.

CONCLUSION

Dr. Bharani committed no crime and did not violate the rules or the law in his refusal to harm innocent patients and join in with Medicare fraud. To counter the selective and biased decision of the Hearing Officer which favored the Petitioner's side of the case and omitted Dr. Bharani's exoneration, the denial to recognize and apply the "Clean Hands Doctrine" 18 USC 4, and other federal and state laws too numerous to mention and other relevant facts, and to report conduct which is against the law, I am providing FBI Director James Comey, FBI Special Agent Keith L. Nelson, Federal Public Corruption Officer Fred Wyshak and Attorney General Maura T. Healey with a copy of this affidavit, with the understanding that they have an obligation to file criminal charges against me if this affidavit is false.

Consistent with Secretary Kristin Lepore's statement about DALA appointee Edward McGrath: *"Throughout his career working on behalf of individuals, municipalities and small businesses, Ed has demonstrated an ability to reach fair decisions for his clients, often times before matters made it to court. That type of creative problem solving*

will be an asset to the Commonwealth and ensure that DALA remains a fair and efficient body for resolving disputes between constituents and executive agencies." I shall provide a copy of my affidavit to DALA Chief Magistrate Edward McGrath.

I have read the above statement consisting of 36 pages and it is true and complete to the best of my knowledge and belief and I reserve the right to clarify and/or amplify any and all of the above and to provide or pinpoint evidence and a list of witnesses to corroborate the factual assertions stated above.

To the best of my knowledge and belief, my affidavit contains statements that are true and correct and contains my independent, impartial, unbiased professional judgment, opinions, analyses and conclusions, subject only to the assumptions or limiting conditions referenced herein. I have no personal interest with respect to the parties involved. I have no bias with respect to either the parties involved in this litigation or the matters addressed in my affidavit.

My affidavit is submitted, *pro bono,* in the interest of the people of the Commonwealth, justice and the "rule of law."

SUBSCRIBED AND SWORN TO
AT BOSTON, MASSACHUSETTS
ON THIS 27th DAY OF SEPTEMBER 2015

Douglas K. Kinan

Affiant, Douglas K. Kinan

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK
Sworn to and signed personally before me on 9.27.15

NOTARY PUBLIC

Type of identification produced, Massachusetts Drivers License S63065746

[1] Sources are from direct knowledge, personal experience, portions of articles published the Government Accountability Project (GAP), the National Whistleblower Center (NWC) and the Project on Government Oversight (POGO).

[2] Cornell University Law School, Cornell Law Faculty Publications, "A Normative Theory of the Clean Hands Defense" by Ori J. Herstein, Visiting Assistant Professor, Cornell Law School, ori.herstein@cornell.edu

[3] Ken LaMance, LegalWatch Law Library, Managing Editor and Attorney at Law.