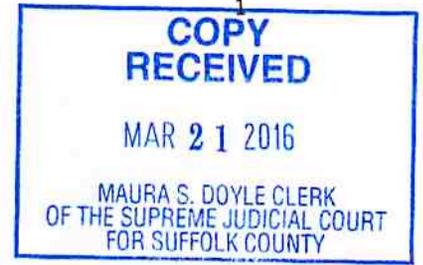


Commonwealth of Massachusetts
Supreme Judicial Court



SUFFOLK SS

Civil Action No.

Previously SJ 2014-0434

Bharanidharan Padmanabhan MD PhD)
Petitioner(Dr Bharani))
v)
Board of Registration in)
Medicine (BORIM))
Defendant)
and)
Division of Administrative Law)
Appeals (DALA))
Defendant)

SJ-2016-109

Renewed Complaint In The Nature Of A Petition For
A Writ Of Certiorari

OPENING STATEMENT

In a decision dated January 9, 2015, the Honorable Margot Botsford dismissed Petitioner's complaint on the grounds that all administrative remedies had not been exhausted.

On August 7, 2015, DALA issued a 93-page decision stating that Petitioner did not render "substandard" care to his patients.

In a January 21, 2016, public meeting at BORIM attended by approximately two dozen witnesses and the press, the members of the Board (with the exception of member Attorney Paul DeRensis)

decided to remand the case to DALA as they were dissatisfied with the Hearing Officer's decision and essentially insisted that the DALA Hearing Officer reverse his decision.

As a matter of law, 801 CMR 1.01(11)(c)(3), which applies to ALL government agencies here in Massachusetts that agree to have cases heard at DALA, the tentative Decision of August 7, 2015 became the final Decision on February 3, 2016, because the 180-day clock ran out.

LEGAL STRATEGY

Petitioner, pro se, is not a lawyer and has no legal strategy to present to this Honorable Court. In order for justice to be served Petitioner is only relying on what this Court demands which is the truth, facts, rules, case law, the rule of law, and the undisputed corroborating evidence.

No legal basis exists for the five year, two month and twenty-five day long process against Petitioner at BORIM.

Since November 11, 2010, with the singular exception of the Fair Hearing at Cambridge Hospital, Petitioner has been denied due process repeatedly over a five year period with the aim of blocking Petitioner from earning a living as a physician even though his license remains fully intact.

As detailed in Petitioner's earlier Complaint, incorporated by reference, when a BORIM docket is open against a physician,

s/he is considered 'damaged goods' and has almost no chance to get credentialed by insurance companies in order to be reimbursed for treating patients.

If an insurance company or a hospital declines to credential a physician due to an open docket at BORIM, this generates a fresh reportable complaint against the physician and BORIM shall open a second docket against the same physician as if the two events, a planned cascade, are not related. BORIM kept the docket open against the Petitioner for numerous reasons via legal manipulations including waiting for Petitioner to run out of funds.

Petitioner was informed by even temporary work agencies that place physicians in locum tenens positions that he should apply only after the docket at BORIM was closed as he would be rejected and a fresh complaint triggered at BORIM.

Petitioner thus was unable to get even temporary work and has been treating his patients entirely for free these past five years. BORIM has been officially aware of this the full five years.

JURISDICTION

This Honorable Court has jurisdiction under G.L.c. 112, §64 as well as under G.L.c. 249, §4. The facts above establish conclusively that Petitioner cannot avail of any further

“administrative remedies.” Petitioner abides by the requirements of any court and comes to this court with undisputed evidence to corroborate that Defendants used false, fabricated, unjust accusations and abused the process over five (5) years to intentionally prevent Petitioner from earning a living because Defendants knew their charges are false.

Petitioner has supported every statement of his with sworn affidavits whereas BORIM has presented assumption, conjecture, speculation, totem-pole hearsay and unsworn and even anonymous statements. The First Circuit Court of Appeals in Boston ruled this month that “just counsel’s representation” is a “bare assertion,” an “insufficient proffer” and not evidence. United States v. James Bulger, 13-2447 (1st Cir., Mar. 4, 2016)

CHRONOLOGY OF CHARGES AGAINST PETITIONER

In July of 2007 Petitioner was hired by Harvard Professor of Neurology Dr Thomas Harter Glick to work as an in-house neurologist at the Whidden campus of the hospital system run by the Cambridge Public Health Commission (dba CHA - Cambridge Health Alliance).

Petitioner had been tasked by Dr Glick with improving the quality of neurology services and carried out this task diligently with Dr Glick’s total support. Early on during the course of his employment Petitioner brought to the attention of

Dr Glick repeated cases of significant errors in the brain MRI reports officially issued by the radiology department.

On May 12, 2008, Dr Glick described the evidence of patient neglect and Medicare/Medicaid fraud presented to him by Petitioner as a “smoking gun.” Dr Glick brought this evidence to the notice of the Chiefs of Medicine and Radiology. From that day both Dr Glick and Petitioner were marked for removal.

Dr Glick, who had protected, valued and supported the Petitioner, had founded the Neurology division at Cambridge and had been there for 25 years at that point having devoted his entire life to that hospital and the underprivileged patients of Cambridge. Soon after he raised the matter of egregiously erroneous brain MRI reports he was forced to give up his position as Division Chief of Neurology and given an empty desk job, a sinecure, until he was forced to resign.

On November 11, 2010, the day Petitioner was suddenly perpwalked out of the hospital with just his reflex hammer in hand, Petitioner was removed from the hospital’s website.

That very day Dr Glick was also removed from the website, despite still being on staff and still taking night call. Dr Glick totally disappeared from the Cambridge website which did not even mention his service there for 27 years or that he was the founder and first neurology Chief at Cambridge for so long.

For the mistake of trying to improve patient care and end the practice of fraudulent brain scan reports and Medicare/Medicaid fraud, both Dr Glick and Petitioner became unpersons.

On November 9, 2010, Petitioner was unjustly accused using fabricated and false charges and summarily suspended from the hospital system wherein he worked. These false charges remained unknown to him for 48 hours. Within that time he had already been acted against and the steps put in place that would persecute him to this day. These actions followed from Petitioner proving repeatedly that the radiology reports at Cambridge were incorrect, fraudulently billed for and that many patients with MS were left undiagnosed and untreated.

Under G.L.c. 149, § 187, health professionals in Massachusetts are allegedly protected from retaliation, at least by public hospitals. The Attorney General of Massachusetts has informed the Petitioner that they have no record of ever enforcing this law.

The false charges fabricated by Cambridge against Petitioner are directly related to his protected disclosures at Cambridge. Petitioner proved that Brain MRI scans were not read properly or not read at all prior to an official report being generated and billed for and that patients with multiple sclerosis ("MS") were being left to rot undiagnosed and

untreated as a result, just like the black men in Tuskegee with syphilis left untreated even when treatment was available.

Cambridge's and by extension BORIM's primary false charges against Petitioner are as follows:

- (a) failure to read brain MRI scans correctly
- (b) misdiagnosing patients with multiple sclerosis when they do not have it

In order to render assistance to Cambridge's Medicare/Medicaid fraud and conceal patient neglect, BORIM has pursued these two false charges for the past five years even though in reality officially neither is mentioned as a charge on either of BORIM's official public profiles.

The secondary false charges include:

- a] Prescribing to a known addict
- b] Failure to follow internal bylaws, rules, etc.
- c] Interpersonal skills/personal behavior
- d] Inadequate documentation in patient medical records
- e] Substandard prescribing of opiates
- f] Substandard medical care of patients
- g] prescribing with an expired MCSR

STATEMENT OF ALLEGATIONS

ALLEGATION 1

- 1 The wrongful suspension and termination by Cambridge violated the Massachusetts Healthcare Whistleblower Statute G.L.c. 149 §187 as well as the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 et seq.
- 2 Cambridge reported Petitioner's suspension to the Massachusetts Board of Registration in Medicine ("BORIM") only on November 11, 2010. This report included false charges.
- 3 In January 2011, Petitioner presented his evidence to a Fair Hearing Panel which took in testimony and evidence under oath over three days. On February 28, 2011, the Fair Hearing Panel exonerated Petitioner of Cambridge's false charges (misdiagnosing MS, "substandard" care, inability to read MRIs, "substandard" office notes) and declared there was no credible evidence to support termination of Petitioner's hospital privileges.
- 4 On November 11, 2011, Cambridge filed a second false report to BORIM withdrawing the earlier false charges and substituting totally different false charges in their place. Cambridge's report stated that Petitioner had resigned his hospital privileges on October 28, 2011, when

he had not. There is no evidence and Cambridge cannot produce said resignation letter.

5 BORIM did not investigate any of the charges or reports, in violation of G.L.c 112, §5.

6 BORIM Investigator James Paikos did not investigate Petitioner's practice independently on behalf of the people of this Commonwealth.

7 BORIM waited till January 29, 2013, to call Petitioner before the Complaints Committee for the first time.

8 BORIM Investigator James Paikos quoted verbatim from the Greeley Report, a hitherto anonymous unsworn report commissioned and paid for by Cambridge to recommend that Petitioner's license be immediately suspended for being an immediate threat to public safety.

9 The Greeley Report stated:

A) The official MRI report issued by Cambridge is always correct

B) By not going along with the official Cambridge MRI report, the Petitioner has harmed patients

10 Petitioner established this fact to the Complaints Committee and pointed out this action was unlawful.

11 As a result Petitioner's license was not suspended and remains active to this day, but the docket remains open,

which prevents Petitioner from earning a living.

ALLEGATION 2

12 BORIM did not close the docket in January 2013 as it should have.

13 Petitioner had also established that the open docket blocked Petitioner from credentialing with new hospitals and insurance companies and so it blocked him from earning a living. Petitioner informed BORIM clearly that as a result he had been treating all his patients entirely for free from November 2010.

13 In violation of Petitioner's due process rights, BORIM has blocked Petitioner from earning a living for five years, two months and twenty-five days and knew throughout that it was doing so.

ALLEGATION 3

14 On May 28, 2014, BORIM Investigator James Paikos again called Petitioner before the Complaints Committee.

15 Again Petitioner established that the charges were false and that BORIM Investigator James Paikos quoted verbatim from the Greeley Report in violation of G.L.c 112, §5.

16 Petitioner again informed BORIM that the open docket was blocking him from earning a living. BORIM did not act to rectify matters.

- 17 In violation of G.L.c 112, §5, in May 2014 BORIM issued a Statement of Allegations drawn from the Greeley Report. The allegations did not refer to the false charges listed on BORIM's website but with the primary charge of misdiagnosing MS because Petitioner disagreed with Cambridge's official MRI reports.
- 18 During the pre-Hearing conference at DALA, Petitioner discovered that BORIM had an "expert" named Dr Steven Horowitz who then refused to testify under oath.
- 19 BORIM also declared to the DALA Hearing Officer that it did not have any patient witnesses.
- 20 Petitioner moved to have the case dismissed as BORIM was unable to produce the person whose testimony was the basis for the Statement of Allegations.
- 21 In violation of Petitioner's due process rights, DALA Hearing Officer Kenneth Bresler overruled Petitioner's motion and declared that by the start of the Hearing BORIM would have an "expert" willing to testify under oath.
- 22 During discovery Petitioner discovered that BORIM had commissioned a report from Dr Steven Horowitz in February 2013 to paraphrase directly from the Greeley Report. Both reports are identical in names of patients and allegations.

BORIM now claimed that it's allegations stemmed from the Horowitz Report.

23 The Horowitz Report remains unsworn and unsupported by affidavit to this day.

24 In violation of Petitioner's due process rights, DALA Hearing Officer Kenneth Bresler overruled Petitioner's motion to exclude the Horowitz Report.

25 In violation of Petitioner's due process rights, DALA Hearing Officer Kenneth Bresler overruled Petitioner's motion to exclude the Greeley Report.

26 In violation of Petitioner's due process rights, DALA Hearing Officer Kenneth Bresler overruled Petitioner's motion to dismiss the case based on the "Doctrine of Unclean Hands."

ALLEGATION 4

27 In violation of Petitioner's due process rights, DALA Hearing Officer Kenneth Bresler refused to admit into evidence for the Hearing approximately 75% of petitioner's exhibits until day #4 of the 8-day DALA Hearing thus preventing cross examination of BORIM witness Dr Rachel Nardin.

28 In violation of Petitioner's due process rights, DALA Hearing Officer Kenneth Bresler allowed BORIM to admit into

evidence new documents in the middle of the Hearing, weeks after the end of discovery. DALA Hearing Officer Kenneth Bresler overruled Petitioner's objections.

ALLEGATION 5

- 29 BORIM's new "expert" - Dr Barry Levin - testified for three days that portions of Petitioner's office notes were "substandard" but that other portions were not, which was a subjective opinion.
- 30 During cross examination BORIM's "expert" was unable to cite any objective standard or authority for office notes in neurology.
- 31 BORIM's "expert" has not done any fellowship training in multiple sclerosis, does not have a large MS practice and is not medically qualified as an expert in MS. (Petitioner had cared for 750 MS patients while BORIM's "expert" had fifteen total.)
- 32 During cross examination BORIM's "expert" was unable to state even basic medical knowledge regarding brain anatomy or criteria for diagnosing MS or treatments for MS.
- 33 During cross examination BORIM's "expert" Dr Levin testified that an image introduced by BORIM in the middle of the hearing contained the "corpus callosum" when it did not.

34 BORIM's alleged "MS expert" was not credible or knowledgeable. During cross examination he was forced to retract statements fundamental to BORIM's case.

35 In violation of Petitioner's due process rights, DALA Hearing Officer Bresler relied on this discredited testimony.

ALLEGATION 6

36 BORIM's "expert" testified repeatedly that he had complied with the state-mandated training requirement to possess three OPIOID credit hours prior to submitting his license renewal application in 2013, when he did not.

37 Petitioner subpoenaed the "expert's" training certificates which established that he did not possess the required three OPIOID credits prior to swearing to the Commonwealth in 2013 that he did.

38 BORIM's "expert" falsified his 2013 license renewal application form and on the days he testified at the DALA hearing he was not qualified to hold a medical license in Massachusetts. To have such an "expert" be used to testify against Petitioner violated Petitioner's due process rights.

39 In a quid pro quo arrangement BORIM unlawfully granted it's "expert" witness immunity in exchange for his fraudulent

testimony, which sums up BORIM's approach to due process protections. To have such an "expert" be used to testify against Petitioner violated Petitioner's due process rights.

ALLEGATION 6

40 BORIM had its "expert" read into the record, office notes by other doctors younger and less qualified than Petitioner, to claim Petitioner had misdiagnosed two patients with MS under the theory that anyone who disagreed with Cambridge's MRI report was incorrect. This was testimonial evidence.

41 BORIM could easily have had the authors of the notes testify in person and be cross examined by Petitioner but chose not to, thereby violating Petitioner's due process rights.

ALLEGATION 7

42 During the Hearing it was revealed that BORIM's "expert" was an integrated member of the prosecuting team rather than an "independent expert."

43 Petitioner timely moved to have BORIM's "expert" disqualified for numerous valid legal reasons but in violation of Petitioner's due process rights DALA Hearing Officer overruled the motion.

ALLEGATION 8

44 BORIM's witness Dr. Rachel Nardin testified that she did not fire Petitioner from his job at Cambridge when the termination letter dated November 11, 2010, establishes that she did.

45 As Dr Nardin was brought in to testify in the middle of Dr Levin's testimony before DALA Hearing Officer Bresler admitted most of Petitioner's exhibits into evidence, Petitioner was unable to confront the witness using the termination letter, which violated Petitioner's due process rights.

46 In violation of Petitioner's due process rights, BORIM relied on Dr Nardin's testimony ("Anybody can do MS.") throughout though she was not credible and provided false testimony.

ALLEGATION 9

47 A patient witness marked as Patient I on BORIM's statement of allegations made the effort to testify at the Hearing. This patient was homeless, living in a shelter, and was seen periodically for free by Petitioner at the McDonald's across the street from the shelter.

48 The Government has awarded and lauded other physicians for providing free care to the homeless in Massachusetts

wherever they are. The Mayor of Boston officially accompanies physicians on street rounds once a year with the Boston Globe in tow.

49 In violation of Petitioner's due process rights, BORIM asked this patient witness if Petitioner had her take her clothes off at the McDonald's.

ALLEGATION 10

50 Petitioner subpoenaed the Greeley Company to produce the resume of the author of the Greeley Report being used against him at the DALA Hearing.

51 BORIM opposed this subpoena to produce the credentials of the author and in violation of Petitioner's due process rights DALA Hearing Officer Bresler quashed it while allowing the anonymous unsworn Greeley Report to be used against Petitioner.

ALLEGATION 11

52 BORIM alleged that Petitioner prescribed medicines with an "expired" Massachusetts Controlled Substance Registration Certificate ("MCSR").

53 Petitioner pointed to the law - G.L.c. 94 §7 - and 105 CMR 700.004 to establish that a physician's MCSR never expires until the physician is notified of a "recall" by the Department of Public Health ("DPH") and entered into

evidence a copy of a change of address form timely filed with DPH in March 2011.

54 Though Petitioner had timely informed DPH, he was not sent any notice of a “recall” and DPH has evidence that he was not notified.

55 Despite this clear law and evidence BORIM continued to allege and in violation of Petitioner’s due process rights DALA Hearing Officer Bresler readily agreed that Petitioner was guilty of prescribing medicines with an “expired” MCSR.

ALLEGATION 12

56 DALA Hearing Officer Bresler issued his tentative decision on August 7, 2015, declaring that BORIM had not met it’s burden to prove Petitioner was guilty of providing “substandard” medical care and that Petitioner need not face any sanctions for (based on Dr Levin’s testimony) misdiagnosing two patients with MS.

57 In it’s Objection to DALA Hearing Officer Bresler’s finding that BORIM had not met it’s burden to prove Petitioner was guilty of providing “substandard” medical care and that sanctions were not called for, BORIM asserted that BORIM could declare at will what was “substandard” and that BORIM was absolute and could substitute it’s assertions for the

Hearing Officer's findings, in violation of Petitioner's due process rights.

58 Petitioner could not have asked for a clearer statement in writing from any party about the utter futility and meaninglessness of as well as BORIM's innate total contempt for "administrative remedies" and "due process."

59 This document is also the clearest document this Court could possess declaring that BORIM can simply conjure standards out of thin air, for example that "substandard" notes are substandard care even when there are no legal standards defining "substandard" notes.

ALLEGATION 13

60 Petitioner was scheduled to appear for the first time before the full Board at BORIM on January 7, 2016, fully five years, one month and twenty seven days after the docket was opened and Petitioner was blocked from earning a living.

61 BORIM suddenly informed Petitioner that due to a "lack of quorum" his case was postponed to January 21, 2016.

62 On January 7, 2016, Petitioner learnt from the Boston Globe that the full Board had met that day, stayed throughout and that Globe journalists had been present.

63 Petitioner enquired into this contradiction and was

informed that there had been no quorum just for him, in violation of Petitioner's due process rights and rights to equal protection.

ALLEGATION 14

- 64 Petitioner was informed that at the January 2016 meeting before the full Board he would not be allowed to speak before the members decided on his life.
- 65 On January 21, 2016, Petitioner protested and was granted "five minutes" to speak to the members before they decided on his livelihood and his life.
- 66 Petitioner then discovered in the waiting room that another physician had been invited to speak with the members for "ten minutes" on his much simpler case.
- 67 The members of the Board at BORIM held ex parte discussions with BORIM Investigator James Paikos prior to the alleged public vote on Petitioner's case.
- 68 Five months and two weeks after the DALA decision was issued, BORIM voted to remand the case back to DALA for "clarification" from DALA Hearing Officer Bresler about his credibility determinations and his finding that BORIM had not met its burden to prove Petitioner was guilty of providing "substandard" medical care and sanctions were not called for.

68 The public session at BORIM was live streamed by the press on the internet for the first time in living memory which provides important live contemporaneous documentary evidence of how BORIM actually functions. In three parts:

A <https://katch.me/ValleyPatriot/v/a21c9ce7-9411-3a20-8e5c-0d7485d0798c>

B <https://katch.me/ValleyPatriot/v/08fcd45a-93e9-3bc3-88f6-ee631a305d64>

C <https://katch.me/ValleyPatriot/v/5f6170a7-0b34-3df1-990c-a896d1ca0273>

69 Massachusetts regulation 801 CMR 1.01(11)(c)(3) declares:
3. Failure to Issue Final Decision. If the Agency fails to issue a final decision within 180 days of the filing or re-filing of the tentative decision, the initial decision shall become the final decision of the Agency, not subject to further Agency review.

70 As a matter of law, 801 CMR 1.01(11)(c)(3), which applies to ALL government agencies here in Massachusetts that agree to have cases heard at DALA, the tentative Decision of August 7, 2015 became the final Decision on February 3, 2016, because the 180-day clock ran out.

71 As there is now a final decision, and Petitioner has been forced to live without a means to earn a living for five

years, two months and twenty-five days, Petitioner seeks the oversight of this honorable Court well within the 60 days allowed.

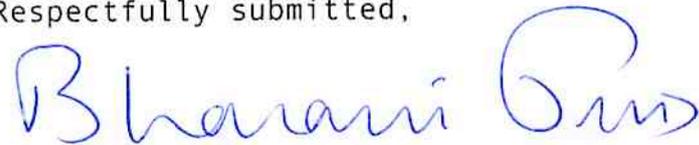
Wherefore, Petitioner respectfully requests this Honorable Court to:

1. immediately restore his professional record, good name and professional reputation;
2. order all members of the Board to produce a signed letter of apology for consciously blocking Petitioner from earning a living for five years, two months and twenty-five days;
3. order BORIM to cease and desist from future acts of retaliation against Petitioner and similarly situated physicians who engage in protected disclosures on behalf of the people of this Commonwealth;
4. order BORIM to never again block an innocent physician from earning a living for five years, two months and twenty-five days, knowing there was no evidence to support the false allegations in any procedure that respected due process;
5. declare as unlawful, expressly against the will of the Legislature and a practice conducive to arbitrary abuse, the "routine" "recall" of physician MCSRs by DPH in the absence of any wrongdoing by the physician.

Petitioner understands that he is swearing or affirming under oath to the truthfulness of the claims made in this complaint and that the punishment for knowingly making a false statement includes imprisonment.

Unlike the Defendants, Petitioner signs willingly under the pains and penalties of perjury.

Respectfully submitted,



21 March 2016

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Renewed Complaint In The Nature Of A Petition For
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CERTIFICATE OF SERVICE

Petitioner certifies that he served a copy of this complaint
upon BORIM Senior Counsel Debra Stoller via Certified Mail on 21
March 2016.

7015 0640 0002 5856 3367

Respectfully submitted,



21 March 2016

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