UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

3:99 CV15H

ASHUTOSH RON VIRMANI, M.D., Plaintiff v. PRESBYTERIAN HEALTH SERVICES CORP., also known as NOVANT HEALTH, INC., AND OTHER UNKNOWN INDIVIDUALS AND ENTITIES, Defendants	Complaint And Demand For Jury Trial

COMPLAINT FOR LEGAL, EQUITABLE, DECLARATORY AND INJUNCTIVE RELIEF, AND DEMAND FOR JURY TRIAL

Now comes Ashutosh Ron Virmani, M.D., Plaintiff herein, by and through his attorneys, LAW OFFICE OF KENNETH JOEL HABER, P.C., 17033 Briardale Road, Rockville, Maryland 20855, 301-670-0016, and BUSH, THURMAN & WILSON, P.A., 801 East Trade Street, Charlotte, North Carolina 28202, 704-377-4164, and complains unto this Court for legal, equitable, declaratory and injunctive relief against the Presbyterian Health Services Corp., also known as Novant Health, Inc., (hereinafter, Defendant), and certain yet-to-be-determined others in their individual capacity, as follows:

JURISDICTION AND PARTIES

(1) This suit is brought and jurisdiction lies pursuant to 28 U.S.C. §§ 1331 and 1367. This suit is in equity for declaratory and injunctive relief, and damages authorized and instituted pursuant to 42 U.S.C. § 1981 et seq., 42 U.S.C. § 1985, 42 U.S.C. § 1988, and 28 U.S.C. § 1367.

(2) Plaintiff, Ashutosh Virmani, is a citizen of the United States and a resident of the state of North Carolina. Plaintiff uses the name "Ron A. Virmani" in his personal and professional life. Plaintiff is a Doctor of Medicine, and is fully licensed as such in the States of North Carolina, New Jersey, and Pennsylvania. Plaintiff was born in India, and emigrated to the United States in 1976. Plaintiff received his medical degree from the New Jersey Medical School in Newark, New Jersey, in 1985, and completed an obstetrics and gynecology (OB-GYN) residency at Temple University Hospital in Philadelphia, Pennsylvania, in 1989. Plaintiff is Board-certified in the specialty of obstetrics and gynecology; he is a fellow of the American College of Obstetricians and Gynecologists (ACOG), and a member of the Charlotte Medical Society, Mecklenburg County Medical Society, North Carolina Medical Society, and American Medical Association, among others. Plaintiff became a citizen of the United States on April 16, 1987.

(3) Defendant Presbyterian Health Services Corp.

(hereinafter, Defendant Hospital) is a non-profit corporation, organized under the laws of the State of North Carolina. On July 1, 1997, Presbyterian Health Services Corp. changed its name to "Novant Health, Inc.". Defendant Hospital operates hospitals both in Charlotte, North Carolina, and in Matthews, North Carolina.

STATEMENT OF FACTS

(4) Plaintiff began practicing medicine in North Carolina as an OB-GYN physician in 1990, and obtained staff membership and privileges at Defendant Hospital and at the Carolinas Medical Center in Charlotte, North Carolina. Plaintiff began a solo practice in October 1993 in Matthews, North Carolina, a suburb of Charlotte. Plaintiff treated approximately 80 percent of his patients at Defendant Hospital's facility in Matthews, North Carolina, and another 10 percent at Defendant Hospital's facility in Charlotte, North Carolina.

(5) On or about December 1, 1994, Plaintiff performed a "laparoscopy" on Patient X at Defendant Hospital. During this procedure, the trocar inadvertently punctured an external iliac artery in Patient X, resulting in a serious situation which is a known complication of this surgery; Plaintiff performed emergency surgery on Patient X, and obtained a successful outcome.[1]

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[1] On or about February 21, 1996, a subsequent review of Patient X's medical records by Dr. Robert Lester and Dr. Charles Lampley, experts for Plaintiff's malpractice insurance company, indicated that "the medical treatment was within the standard of

(6) On or about December 12, 1994, Plaintiff was informed in a telephone conversation with Dr. Simon V. Ward, Chairman of the OB-GYN Department at Defendant Hospital, that an appropriately credentialed physician would assist Plaintiff on all laparoscopic cases until a review of Plaintiff's laparoscopic cases has been accomplished.

(7) By letter dated January 10, 1995, Dr. James J. Hardy, Chairman of the Peer Review Committee and a white OB-GYN physician at Defendant Hospital, recommended a 100 percent review of all of Plaintiff's cases;[2] Plaintiff was unaware of this recommendation, which was made to the new Chairman of the OB-GYN Department, Dr. Ronald L. Brown, who is also Caucasian.

(8) On or about March 15, 1995, Plaintiff met with Dr. Brown, and was notified as to the initiation of a focused peer review, and as to the requirements of an assisting physician on all of Plaintiff's laparoscopic cases.

(9) From or about April 25, 1995, and continuing for approximately four months, Defendant Hospital conducted a so-called focused "peer review" of all of Plaintiff's cases; Plaintiff was without knowledge that such an extensive peer review was taking place.

(10) A "Reappointment Evaluation Form" completed by Dr. Brown in or about June 1995, noted both "satisfactory" areas and

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care."

[2]In January 1997, Dr. Hardy was promoted by Defendant Hospital to be Chairman of the OB-GYN Department.

areas "needing improving", and included a comment that all of Plaintiff's laparoscopic procedures were under intensified review; the results of this evaluation were never shared with the Plaintiff.

(11) In or about July 1995, Plaintiff initiated a meeting with Colleen Hole, manager of Labor and Delivery at Defendant Hospital in Matthews, North Carolina, where Plaintiff delivered most of his patients' babies; Plaintiff was told, at that time, by the manager that there were no substantial issues of concern regarding his practice.

(12) On or about September 1, 1995, Plaintiff was told by Paul F. Betzold, Chief Executive Office of Defendant Hospital, and by Dr. Ron Brown, Chairman of the OB-GYN Department, that Plaintiff's staff membership and privileges at Defendant Hospital were being summarily suspended on the basis of the focused peer review, citing 24 cases (out of 102 cases) as being problematic;[3] Plaintiff was without knowledge as to which cases were problematic.

(13) On or about October 27, 1995, Plaintiff was notified by Defendant Hospital that a hearing on the suspension of Plaintiff's staff privileges would be held on November 21, 1995.

(14) On or about November 10, 1995, Plaintiff received a listing of the 24 problematic cases identified in the focused peer review.

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[3]Only 5 of the 24 "problematic" charts contained the ACOG (American College of Obstetrician-Gynecologists)' clinical indicators for peer review.

(15) On or about November 21, 1995, Plaintiff attended a hearing at Defendant Hospital before a panel of three physicians, none of whom was an OB-GYN physician.

(16) On or about November 21, 1995, two expert OB-GYN physicians, who are not members of the medical staff of Defendant Hospital, testified on behalf of Plaintiff; each expert had reviewed the 24 problematic cases, and each stated unequivocally that a summary suspension of Plaintiff was neither necessary nor justified by the cases cited by the peer review committee. Defendant Hospital did present testimony of its medical staff against Plaintiff.

(17) On or about November 29, 1995, the panel of three physicians upheld the suspension of Plaintiff's privileges, but noted that:

> A careful reading of the hospital bylaws ... does ... indicate that a written inquiry from the peer review committee to the physician under review is expected before referring the issue to the department chairman. It appears to us that this step was omitted in the present case .... we do think it only reasonable and fair for [Plaintiff] to have been allowed adequate time to examine the issues in question and to respond before a summary suspension was invoked. The sequence of events as presented leaves the distinct impression that [Plaintiff] was intimidated. That impression damages the entire community.

(18) On or about January 18, 1996, the Board of Trustees for Defendant Hospital confirmed Plaintiff's suspension and revoked Plaintiff's privileges.

(19) On or about January 23, 1996, Plaintiff brought a "breach of contract" suit against Defendant Hospital in state court, claiming violations of Defendant Hospital's By-Laws; to

wit:

(a) The focused peer review was done in utter secrecy, and without an opportunity for Plaintiff to respond to the reviewers' concerns;

(b) Five of the six members of the peer review committee were in direct economic competition with Plaintiff;

(c) The Chairman of the OB-GYN Department, who concurred in the findings and recommended suspension, was a competitor of Plaintiff's and was employed by Bradford Clinic, which is owned and operated by Defendant Hospital;

(d) Five of the six physicians on the panel of reviewers were employed by Defendant Hospital or in close affiliation with Defendant Hospital.

(20) On or about January 31, 1996, Defendant Hospital reported the revocation of Plaintiff's privileges inaccurately to the National Practitioner Data Bank (NPDB), and reported that a local court did issue a temporary order to reinstate Plaintiff's privileges with certain restrictions; however, Defendant Hospital failed to report to the NPDB that the peer review committee, in reviewing Plaintiff's cases, did not comply with Paragraph 8.0-2 of the By-Laws.

(21) On or about February 21, 1996, Dr. Robert H. Lester, an expert for Plaintiff's malpractice insurance company, opined in a telephone conference to Plaintiff's counsel that Plaintiff did meet the standard of care in his care and treatment of Patient X

in the laparoscopy case.

(22) On or about February 21, 1996, Dr. Charles G. Lampley, III, an expert for Plaintiff's malpractice insurance company, opined in a telephone conference to Plaintiff's counsel that Plaintiff did meet the standard of care in his care and treatment of Patient X in the laparoscopy case.

(23) On or about April 8, 1996, Defendant Hospital reported to the NPDB that the court dissolved the temporary order, and stated that Plaintiff's privileges shall be terminated unless modified upon final adjudication of the case.

(24) On or about July 30, 1996, the state court granted Plaintiff's summary judgment motion in part, and ordered Defendant Hospital to perform a new peer review in conformance with its By-Laws, and further ordered that the new peer review was to be done by physicians not in direct economic competition[4] with Plaintiff; that the findings were to be submitted to a substitute Chairman of the OB-GYN Department; and that Plaintiff was entitled to pursue all rights set forth in the By-Laws, including a due process hearing before three physicians other than those who served on the first hearing panel.

(25) On or about July 30, 1996, Defendant Hospital failed to report to the NPDB that the peer review committee, in reviewing Plaintiff's cases, did not comply with Paragraph 8.0-2 of the By-

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[4]The state court decreed that the members of the new peer review committee were "not to be OB-GYN physicians who maintain an office within the town limits of Matthews, North Carolina, or part of a medical group that maintains such an office."

Laws; further, Defendant Hospital failed to report to the NPDB that the termination of Plaintiff's privileges was not a final adjudication in this matter for the state court had ordered a new medical peer review of Plaintiff's cases.

(26) On or about August 15, 1996, Defendant Hospital filed both an appeal and an "Application for Stay Order," so as to avoid conducting a new peer review that complies with Paragraph 8.0-2 of its By-Laws during the state appellate process.

(27) On or about August 30, 1996, the state court concluded that Defendant Hospital was not entitled to the entry of a stay order pending appeal, based upon the state court's finding that a "long-term delay in completing a new medical peer review of the Plaintiff-Physician will likely result in substantial detriment to the Plaintiff ...;" further, Defendant Hospital was ordered to submit a timetable to Plaintiff as to when Defendant Hospital expected to complete a 100% focused medical peer review of Plaintiff's cases, and was ordered to "initiate and complete the new medical peer review ... as soon as reasonably possible and in a good faith effort to comply with the timetable ...."

(28) On or about September 12, 1996, Defendant Hospital submitted a timetable to Plaintiff, listing the major components of the new medical peer review, and projecting a reasonable completion date of as early as December 24, 1996, and at the latest by February 25, 1997.

(29) On or about September 17, 1996, Defendant Hospital refused to commit to a firm four-month schedule for completing

the new medical peer review, and claimed that such a schedule was "not reasonable."

(30) On or about October 17, 1996, Dr. Christopher McNeill, Executive Vice President for Medical Affairs of Defendant Hospital, signed and caused to be filed in the state court proceeding, an affidavit, which stated, in part:

> ... and to ensure complete objectivity, [Defendant Hospital] has elected to hire an independent peer review agency to conduct the focused review of [Plaintiff's] cases .... To that end, [Defendant Hospital] ... [has] obtained information and proposals from various peer review agencies.

(31) In or about November 1996, Defendant Hospital filed a motion for reconsideration of the state court's denial of its application for a stay order pending appeal; this motion was denied.

(32) In or about December 1996, Defendant Hospital filed a petition for a Writ of Supersedeas with the state appellate court for a stay of the new medical peer review pending appeal; this petition was denied.

(33) By letter dated January 2, 1997, Plaintiff was notified by Dr. Carl J. Levinson that Defendant Hospital had contacted the American Medico-Legal Foundation, and that Dr. Levinson was asked, as a member of the foundation, to review 16 of Plaintiff's cases, and whereupon Dr. Levinson commented that "[m]ost of the cases, each on its own, seem to be appropriately managed ...;" further, Dr. Levinson provided Plaintiff with an opportunity to respond in writing to questions and statements, and Plaintiff did respond appropriately.

(34) By letter dated January 21, 1997, Plaintiff was notified by Dr. Leo J. Dunn that Defendant Hospital had contacted the American Medico-Legal Foundation, and that Dr. Dunn was asked, as a member of the foundation, to review some of Plaintiff's cases, and whereupon Dr. Dunn did conduct a review.

(35) On or about February 13, 1997, Defendant Hospital filed a petition for stay of the new medical peer review, with the state Supreme Court; the petition was granted, pending an up-coming hearing in the state appellate court.

(36) On or about February 17, 1997, an OB-GYN expert for Plaintiff's malpractice insurance company, Dr. Robert H. Lester, did sign a statement that he had reviewed the medical record of Patient X in a medical malpractice case involving Plaintiff and Patient X, and that it was Dr. Lester's opinion that the medical treatment was within the standard of care.

(37) On or about May 21, 1997, Defendant Hospital's appeal of the lower court's ordering a new medical peer review was heard by the state appellate court.

(38) On or about May 30, 1997, Dr. David B. Crosland, an OB-GYN expert did sign a statement that he had reviewed the 24 problematic cases, and that it was Dr. Crosland's opinion that "the cases had been managed satisfactorily and met the proper standard of care;" further, Dr. Crosland indicated that Plaintiff was a competent OB-GYN physician, and that the action taken by Defendant Hospital was surprising to Dr. Crosland.

(39) On or about June 9, 1997, Plaintiff's malpractice insurance company, the St. Paul Insurance Company, reported to the National Practitioner Data Bank (NPDB) that Plaintiff did meet the standard of care in his treatment of Patient X.

(40) By letter dated July 30, 1997, the State of North Carolina Medical Board [hereinafter "Board"] notified Plaintiff that the Board had reviewed "information concerning [Plaintiff's] medical practice and in particular, a malpractice settlement reported to the Board pursuant to N.C. Gen. Stat. § 90-14.13(1) regarding [Plaintiff's] handling of a laparoscopy;" the Board accepted this report as information, and indicated to Plaintiff that further inquiry into the matter was not necessary.

(41) By letter dated July 30, 1997, the State of North Carolina Medical Board notified Plaintiff that the Board had reviewed "a report received pursuant to N.C. Gen. Stat. § 90-14.13 regarding the suspension of [Plaintiff's] privileges at [Defendant Hospital];" the Board accepted this report as information, and indicated to Plaintiff that further inquiry into the matter was not necessary. Plaintiff believes this inquiry from the Board involved all 24 cases that were reviewed and found problematic by Defendant Hospital.

(42) On or about August 5, 1997, the state appellate court upheld the lower court's decision, ruling that the focused peer review was in violation of Defendant Hospital's By-Laws, but reversed the lower court's decision as to how the new medical peer review was to be conducted; the state appellate court

reasoned that a "court of equity cannot make a new contract for the parties ...," and remanded that the "new peer review process is to be conducted in accordance with the Bylaws and the personnel selected in a manner as determined by the medical staff of the hospital not inconsistent with the Bylaws."

(43) On or about August 14, 1997, Dr. Ashwin Chatwani, an OB-GYN expert, signed and had notarized a statement that he, Dr. Chatwani, had personally reviewed the 24 problematic cases and did find that Plaintiff "displayed good medical judgement in these cases and met the standard of care," and that he, Dr. Chatwani, was surprised at the action taken by Defendant Hospital to suspend Plaintiff's privileges.

(44) On or about August 20, 1997, Defendant Hospital filed both a petition for discretionary review by the state supreme court and a motion for a temporary stay of the new medical peer review process; the motion for a temporary stay was granted.

(45) On or about September 4, 1997, the state supreme court denied Defendant Hospital's petition for discretionary review, thereby allowing the state appellate court's ruling to stand.

(46) As of September 4, 1997, Defendant Hospital no longer was in compliance with its own timetable for completion of the new medical peer review.

(47) By letter dated September 23, 1997, the president of the Charlotte Medical Society, which represents the majority of minority physicians in Charlotte, North Carolina, and which had been following Plaintiff's case, notified Paul F. Betzold, Chief

Executive Office of Defendant Hospital, that Defendant Hospital needed to "espouse a policy of fairness in the treatment of its minority physicians."

(48) On or about October 20, 1997, Dr. John G. Wingert, an OB-GYN physician, now retired, but who had practice in Charlotte, North Carolina, for 32 years, signed and notarized a statement that he, Dr. Wingert, had personally reviewed the 24 problematic cases, and that "the problems ... fall within the realm of all practicing obstetricians and gynecologists, and are not the result of inadequate care or lack of concern;" further, Dr. Wingert stated that the results of Plaintiff's care were "universally good."

(49) On or about October 21, 1997, Dr. David B. Crosland, an OB-GYN physician, now retired, but who had practiced in Concord, North Carolina, signed and notarized a statement that he, Dr. Crosland, personally reviewed the 24 problematic cases in November 1995, and that it was Dr. Crosland's impression that "the cases had been managed satisfactorily and met the proper standard of care," and that the "action taken by Defendant Hospital was surprising" to Dr. Crosland.

(50) By letter dated October 23, 1997, the Director of Medical Staff Services at the Carolinas Medical Center responded to a verification request, and stated that the Plaintiff "has been a member in good standing on our Staff, and there is nothing of a derogatory nature in the file which would preclude us from providing a positive recommendation for this practitioner."

(51) In or about November 1997, the North Carolina Medical Society resolved to support "the option of a physician or organization requesting an external peer review in circumstances where either party has valid concerns about the execution of an unbiased review."

(52) In or about December 1997, it is Plaintiff's belief and understanding that Defendant Hospital did purposely opt to ignore the findings of the new medical peer review conducted by Dr. Levinson and Dr. Dunn, via the American Medico-Legal Foundation, and did choose to start, and to the detriment of Plaintiff, a new medical peer review of Plaintiff's performance.

(53) On or about a date to be determined, it is Plaintiff's belief and understanding that Defendant Hospital did terminate the medical peer review that was being conducted by Dr. Levinson and Dr. Dunn, via the American Medico-Legal Foundation; further, Plaintiff believes that such medical peer review, which had been conducted prior to its termination, was basically favorable to Plaintiff.

(54) In or about December 1997, Plaintiff requested that any medical peer review be performed by external reviewers to ensure objectivity and fairness under the circumstances, as was resolved by the North Carolina Medical Society; Defendant Hospital rejected Plaintiff's request.

(55) By letter dated December 11, 1997, Defendant Hospital notified Plaintiff's counsel that "until the hearing requirements in the bylaws are triggered, [Defendant Hospital] considers the

peer review to be an internal matter between [Plaintiff] and [Defendant Hospital] which does not permit [counsel's] participation."

(56) By letter dated December 31, 1997, Defendant Hospital notified Plaintiff in writing that a 100% focused review of Plaintiff's cases will commence in mid-January 1998 and was expected to take at least ninety days; further, the letter indicated that if the peer review committee finds substantial questions "regarding the quality of care rendered, ethics or other significant issues," Plaintiff would have an opportunity to respond before recommendations are made to the Chair of the OB-GYN Department.

(57) On or about January 19, 1998, Defendant Hospital sent a letter to each member of its medical staff, notifying each member that, following a six-month investigation, Plaintiff's privileges had been terminated because of "significant quality of care issues," but that Defendant Hospital would soon commence a new peer review as ordered by a state court; further, Defendant Hospital claimed that "an internal review ... will be fairer, better, faster and less expensive" [than hiring an outside peer review agency], and that anyone who participated in the initial review will not participate in the new medical peer review of Plaintiff's performance.

(58) In Defendant Hospital's January 19, 1998 letter to each member of its medical staff, Defendant Hospital neither acknowledged any violation of its By-Laws, nor any unfairness to

Plaintiff in its not allowing Plaintiff an opportunity to respond to concerns of the peer review committee prior to the summary suspension of Plaintiff's privileges, as the reason for the state court's ordering a new medical peer review.

(59) By letter dated January 21, 1998, the president of the North Carolina Association of Physicians of Indian Origin, which represents approximately 450 physicians of Indian Origin in North Carolina, expressed the Association's intent to join the North Carolina Medical Society in sending a message to Defendant Hospital that the way in which Defendant Hospital handled the suspension of Plaintiff's privileges was "based on factors not related to his medical competence but rather a form of socio-economic credentialing."

(60) By letter dated February 2, 1998, Defendant Hospital notified Plaintiff that the new medical peer review was underway, and that a substitute OB-GYN Department Chairperson had been named.

(61) By letter dated February 3, 1998, Plaintiff reiterated his request for an external medical peer review.

(62) By letter dated March 11, 1998, the president of the American Medical Association (AMA), informed Plaintiff that courts have recognized that "an objective peer review in some instances cannot occur unless the peers are from outside the hospital medical staff."

(63) By letter dated March 18, 1998, Dr. Hollingsworth, an employee of Defendant Hospital and Chairman of the new medical

peer review committee, requested that Plaintiff respond to questions pertaining to 31 of Plaintiff's cases; Plaintiff responded appropriately.

(64) By letter dated June 1, 1998, Dr. Hollingsworth indicated to Plaintiff that the new medical peer review committee had received Plaintiff's response, and that the new medical peer review committee will report its findings to the acting Chief of the OB-GYN Department within the next week; no further information was required of Plaintiff.

(65) On or about June 23, 1998, a report of the new medical peer review committee was forwarded by Dr. Hollingsworth to Dr. John W. Tidwell, Substitute Chair of the OB-GYN Department at Defendant Hospital, identifying presumably 31 cases where questions were raised regarding (a) lack of documentation, (b) lack of indications for a procedure, and (c) poor clinical judgment; the new peer review committee noted a "significant deviation from standards" in 5 cases,[5] a "minimum deviation from standards" in 8 cases, a "trend" in 12 cases, and "no action" for 6 cases where Plaintiff had adequately addressed the reviewers' questions or concerns.

(66) By letter dated June 30, 1998, Lynda James Hatman, Director of Medical Staff Services at Defendant Hospital,

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[5]Each of these five cases noting a "significant deviation from standards" had been reviewed by the State of North Carolina Medical Board [hereinafter "Board"] in or about July 1996, and no action was ever taken by the Board with respect to Plaintiff's license to practice medicine in North Carolina.

requested that Plaintiff sign a consent form for verification of all references that were included in Plaintiff's response to Dr. Hollingsworth, and to waive and release Defendant Hospital from "any and all claims, demands, or liabilities whatsoever ... in connection with ... the completion of the Peer Review ...."; no copy of the new medical peer review committee's report was provided to the Plaintiff at that time, and Plaintiff refused to sign the consent and release form.

(67) By letter dated July 15, 1998, the American College of International Physicians expressed its support for an "unbiased external review" of Plaintiff's cases, and deplored the fact that Defendant Hospital "took away [Plaintiff's] livelihood three years ago based on an illegally conducted peer review."

(68) On or about July 16, 1998, the executive committee of the North Carolina Association of Physicians of Indian Origin signed a resolution, noting that Defendant Hospital had "pursued, in bad faith, a legal process to get a faulty, biased, substandard peer review to be accepted as proper action ... and has miserably and completely failed in its attempts ... when the Supreme Court of North Carolina handed down a stinging defeat of its appeal," and asked to resolve this dispute between Plaintiff and Defendant Hospital in an "amicable and mutually satisfactory manner as soon as possible."

(69) By letter dated August 17, 1998, the Director of Medical Staff Services at the Carolinas Medical Center responded to a verification request, and stated that the Plaintiff "has

been a member in good standing on our Staff, and there is nothing of a derogatory nature in the file which would preclude us from providing a positive recommendation for this practitioner."

(70) On or about August 31, 1998, Dr. Ashwin Chatwani, an OB-GYN expert, signed and had notarized a statement that he, Dr. Chatwani, personally reviewed the 31 cases criticized by the peer review committee and in concluding that Plaintiff "met the standard of care as to each case," noted also that Plaintiff's documentation was sufficient to establish that appropriate care was indeed rendered; further, Dr. Chatwani stated that he, Dr. Chatwani, knew Plaintiff personally when Plaintiff was a resident at Temple University Hospital and that, at that time, Plaintiff had "displayed excellent surgical skills and good judgment in evaluating and managing patient plans of care."

(71) In or about September 1998, counsel for Defendant Hospital discussed the possibility of having a neutral third party review Plaintiff's cases, and counsel for Plaintiff requested a written proposal as to this matter, but no written proposal was ever provided to Plaintiff by Defendant Hospital.

(72) On or about September 4, 1998, Plaintiff filed a Contempt Motion against Defendant Hospital for not complying with the court's order of July 30, 1996, mandating a new medical peer review, for Plaintiff had neither been given the results of the new medical peer review conducted by Dr. Levinson and Dr. Dunn, nor the results of the internal review conducted by Defendant Hospital.

(73) On or about September 11, 1998, Dr. Tidwell, the Substitute Chair, recommended to the Medical Board of Defendant Hospital that Plaintiff's privileges be terminated, based upon findings of (a) lack of documentation, (b) lack of indications for a procedure, (c) poor clinical judgment, and (d) questionable surgical expertise.

(74) In the "Chair Inquiry Report" submitted to the Medical Board of Defendant Hospital, dated September 11, 1998, Dr. Tidwell noted that the new medical peer review committee had interviewed nurses, operating room supervisors, and scrub techs, and that such persons expressed a consistent theme that Plaintiff "was very unsure of himself in the operating room and often asked ... how to perform procedures;" further, Dr. Tidwell based his finding of "questionable surgical expertise" upon these adverse allegations, even though Plaintiff had never been given an opportunity to respond to such adverse allegations during the new internal medical peer review process, contrary to Defendant Hospital's By-Laws.

(75) On or about September 11, 1998, Dr. Tidwell had submitted his Chair Inquiry Report to the Medical Board of Defendant Hospital, even though the new medical peer review committee had made its report to Dr. Tidwell without affording Plaintiff the opportunity to respond to adverse allegations made during interviews, and Dr. Tidwell failed to remand the report back to the new medical peer review committee so as to afford Plaintiff that opportunity, contrary to Defendant Hospital's By-

Laws.

(76) On or about September 23, 1998, the Medical Board of Defendant Hospital convened a special meeting and voted unanimously to accept the findings and recommendations forwarded by Dr. Tidwell, and to not reinstate Plaintiff's privileges.

(77) By letter dated September 24, 1998, Dr. Chris McNeill, Executive Vice President of Medical Affairs for Defendant Hospital, served formal notice to Plaintiff of Plaintiff's right to request a hearing on the Medical Board of Defendant Hospital's recommendations, pursuant to Article IX of the By-Laws.

(78) On or about October 6, 1998, Plaintiff agreed not to proceed with the Contempt Motion against Defendant Hospital, but did request the formula and delineation of what constituted each particular "severity code" that was cited by the new medical peer review committee, as well as a copy of each of the 31 cases, in their entirety, where questions were raised[6]; further, Plaintiff is unaware of any existing departmental or professional documentation that describes these "severity codes" and criteria for their assignment in medical cases, and Defendant Hospital has failed to substantiate the assignment of each "severity code".

(79) On or about October 6, 1998, the Chief of the Medical Staff at Defendant Hospital sent a letter to each member of its medical staff, and did biased each member of the medical staff against Plaintiff by notifying each member that two separate peer

[6]Only 4 of the 31 cases contained the ACOG clinical indicators for a peer review.

review committees arrived at identical conclusions concerning the need for Plaintiff to receive additional training and mentoring; further, this letter by the Chief of the Medical Staff did acknowledge that there had been no final adjudication concerning Plaintiff, and that the process was not yet over.

(80) By letter dated October 15, 1998, Plaintiff requested a hearing on a timely basis, as well as a listing of witnesses, and requested that members of the hearing committee include OB-GYN solo practitioners who are not employed by or affiliated with Defendant Hospital.

(81) By letter dated October 15, 1998, Plaintiff requested a copy of all documents that were reviewed by the Medical Board of Defendant Hospital in its consideration of evidence of bias or prejudice against the Plaintiff, and requested that Defendant Hospital identify all persons contacted by the Medical Board of Defendant Hospital during its consideration of such evidence of bias and prejudice, and involving its recommendation not to reinstate Plaintiff's privileges.

(82) By letter dated October 21, 1998, Defendant Hospital indicated that Plaintiff will have the opportunity to submit objections to the composition of the hearing committee, and that none of the physicians on the hearing committee will be in direct economic competition with Plaintiff.

(83) By letter dated October 21, 1998, Defendant Hospital indicated that its By-Laws require that the hearing committee be composed of at least three members of the medical staff at

Defendant Hospital, and that if a qualified OB-GYN could be found, it would make sense to include one on the Committee; further, Defendant Hospital would consider appointing an outsider in lieu of one of, or in addition to, the three medical staff members.

(84) By letter dated October 21, 1998, Defendant Hospital indicated that Plaintiff's race "is not and never has been an issue," and that the "burden is on [Plaintiff] to produce evidence to support his claim of discrimination;" but then Defendant Hospital intimidated Plaintiff and threatened to retaliate against Plaintiff for exercising his civil rights to claim discrimination, by stating, "attempts to fabricate charges against [Defendant Hospital] and its physicians reflect upon [Plaintiff's] character and integrity and will be relevant to any decision of the Hearing Committee."

(85) On or about October 23, 1998, Mark H. Davis, M.D., a Board-certified physician in obstetrics and gynecology, did sign a statement that he had reviewed the chart summaries, the new medical peer review committee's comments and questions, and Plaintiff's responses regarding the 31 cases, and that it was Dr. Davis' opinion that Plaintiff's explanations for his management decisions were reasonable, and that Plaintiff's treatment in these 31 cases meets the standard of care; further, Dr. Davis indicated that he has worked at urban hospitals in southern California and metropolitan Atlanta, and at rural hospitals in North Carolina and Alabama, and that, in his experience, this

case list would not form the basis for revoking a physician's privileges at any such hospital.

(86) By letter dated November 5, 1998, Defendant Hospital asked Plaintiff and Plaintiff's experts to sign a "Confidentiality Agreement" containing a liquidated damages clause of $50,000, in order to obtain complete copies of medical records in the 31 cases criticized by the new medical peer review committee; further, it is Plaintiff's belief and understanding that white physicians similarly situated have not so signed such confidentiality agreements for documentation necessary in their own defense in any hearing conducted in accordance with Defendant Hospital's By-Laws.

(87) On or about November 18, 1998, Defendant Hospital notified Plaintiff as to the time, place, and date of the hearing.

(88) By letter dated December 18, 1998, Defendant Hospital provided Plaintiff with the names of each individual who served on the new medical (third) peer review committee; Plaintiff believes that each member of the new medical (third) peer review committee is either employed by or affiliated with Defendant Hospital, and/or practices exclusively at Defendant Hospital; further, each member of the new medical (third) peer review committee is white and male.

(89) As of the filing date of this complaint, Plaintiff was denied prehearing access to complete copies of medical records in the 31 cases criticized by the new medical (third) peer review

committee, which were requested by Plaintiff so that Plaintiff and his experts could adequately and sufficiently prepare for the hearing scheduled for January 13, 1999.

(90) As of the filing date of this complaint, no final decision has been made by Defendant Hospital to reinstate Plaintiff's privileges.

(91) From or about October 1993, to or about September 1, 1995, Plaintiff received neither notifications nor warnings by Defendant Hospital's regular medical record staff that any medical records of Plaintiff's patients were defective, other than routine notices to complete charts, which were subsequently complied with by Plaintiff.

(92) From or about October 1993, to or about September 1, 1995, no medical records of Plaintiff's patients were "tagged" or otherwise marked as indicative of a potential quality assurance risk or trend by Defendant Hospital's regular quality assurance nursing staff.

(93) By public record filed in a North Carolina state court, it is alleged that, in or about 1982, Ezra Daniel Griffin, M.D., and Larry W. Craddock, M.D., two OB-GYN white physicians with privileges at Defendant Hospital, were negligent and committed medical malpractice in the furnishing of medical treatment and services to a patient; further, Plaintiff believes that Ezra Daniel Griffin, M.D., and Larry W. Craddock, M.D., did continue to practice after such incident, and each maintains active privileges at Defendant Hospital.

(94) By public record filed in a North Carolina state court, it is alleged that, in or about 1990, William J. Wortman, Jr., M.D., an OB-GYN white physician with privileges at Defendant Hospital, was negligent and committed medical malpractice in the furnishing of medical treatment and services to a patient; further, Plaintiff believes that William J. Wortman, Jr., M.D., has continued to practice after such incident and did maintain active privileges at Defendant Hospital until his retirement.

(95) By public record filed in a North Carolina state court, it is alleged that, in or about 1992, A. J. Lewis, M.D., an OB-GYN white physician with privileges at Defendant Hospital, was negligent and committed medical malpractice in the furnishing of medical treatment and services to a patient; further, Plaintiff believes that A. J. Lewis, M.D., has continued to practice after such incident and maintains active privileges at Defendant Hospital.

(96) By public record filed in a North Carolina state court, it is alleged that, in or about 1994, Alice B. Teague, M.D., an OB-GYN white physician with privileges at Defendant Hospital, was negligent and committed medical malpractice in the furnishing of medical treatment and services to a patient; further, Plaintiff believes that Alice B. Teague, M.D., has continued to practice after such incident and maintains active privileges at Defendant Hospital.

(97) To the best of Plaintiff's information and belief, each of the above-referenced physicians is of non-Indian origin and

white; each of the above-referenced physicians neither had an extensive peer review, nor their privileges suspended or terminated by Defendant Hospital.

(98) To the best of Plaintiff's information and belief, other white physicians practicing at Defendant Hospital have committed acts of significant deviation from the standard of care, based upon outcomes of treatment and/or alleged malpractice, but who have not been subjected to such harsh scrutiny and review by Defendant Hospital, as Plaintiff has been subjected to--namely, a 100% focused medical peer review of all cases.

(99) To date, Defendant Hospital has not notified Plaintiff of the recommendations, preliminary results, and/or findings of the new medical peer review conducted by Dr. Levinson and Dr. Dunn, via the American Medico-Legal Foundation.

(100) To date, Defendant Hospital has not provided Plaintiff with documentation and/or identification of all persons involved in the Medical Board of Defendant Hospital's consideration of evidence of bias or prejudice pertaining to the Plaintiff.

(101) To date, Defendant Hospital has not reported to the NPDB that, in July 1996, the state court found a violation of the By-Laws and ordered a new medical peer review of Plaintiff's privileges.

(102) To date, Defendant Hospital has denied Plaintiff a fair and impartial peer review process by initially not following its own By-Laws; by purposely, unreasonably, and maliciously

delaying the completion of a new medical peer review of Plaintiff's performance; and by initially procuring and then refusing to accept and allow external reviewers for objectivity and fairness in the peer review of Plaintiff's performance.

(103) As of the filing date of this complaint, Plaintiff believes he is not being provided a fair, objective, and impartial hearing by Defendant Hospital, scheduled for, on or about January 13, 1999, based upon, but not limited to, the facts that:

(a) Plaintiff and his outside experts have yet to receive complete copies of medical records in the 31 cases criticized by the new medical peer review committee;

(b) Defendant Hospital has demanded that Plaintiff and his outside experts execute Confidentiality Agreements with a $50,000 liquidated damages provision, prior to being provided complete copies of medical records in the 31 cases, for preparation and use at the hearing.

(c) The hearing panel consists primarily of members of Defendant Hospital's medical staff, who have already been biased against Plaintiff;

(d) There are no solo OB-GYN practitioners on the hearing panel;

(e) Defendant Hospital refused to allow any external reviewers to review the 31 cases for complete objectivity and fairness;

(f) Defendant Hospital has subjected Plaintiff, a minority physician, to more harsh scrutiny than that subjected to white physicians throughout the peer review process.

COUNT I

Civil Rights Violation Under 42 U.S.C. § 1981

(104) Plaintiff asserts all allegations contained in paragraphs (1) through (103) above, as though fully set forth herein and included in this count.

(105) Plaintiff is a citizen of the United States who was born in India, and is a member of a racial minority group that is commonly perceived as both ethnically and physiognomically distinct.

(106) On or about January 22, 1990, Plaintiff and Defendant Hospital had entered into a contractual relationship; to wit:

(a) Plaintiff received the benefit of being able to treat his patients in the hospital and Defendant Hospital received the benefit of providing care to the Plaintiff's patients;

(b) The relationship of Plaintiff and Defendant Hospital was governed by Defendant Hospital's By-Laws.

(107) From or about September 1, 1995, and continuing to the present date, Defendant Hospital, by non-governmental discrimination based on race and national origin, has deprived and impaired, and continues to deprive and impair Plaintiff of

his right to make, perform, and enforce contracts, and his enjoyment of his rights, benefits, privileges, terms, and conditions of their contractual relationship; to wit:

(a) Defendant Hospital summarily suspended, terminated, and continued the termination of Plaintiff's medical staff privileges both unfairly and in a manner found to be in violation of Defendant Hospital's By-Laws;

(b) Defendant Hospital purposely and maliciously delayed completing a new medical peer review of Plaintiff's performance until a contempt motion was filed, so as to avoid reinstating Plaintiff's privileges;

(c) Defendant Hospital initially procured, and then refused to accept and to allow external reviewers to conduct what would be a fair and objective medical peer review of Plaintiff's performance under the circumstances;

(d) Defendant Hospital acted in a discriminatory manner against Plaintiff, on the basis of his race and national origin, in performing its medical peer review functions, thereby violating Plaintiff's civil rights under 42 U.S.C. § 1981 as set forth herein.

(108) From or about December 1994, and continuing to the present date, Defendant Hospital has treated Plaintiff differently than white physicians similarly situated; to wit:

(a) Defendant Hospital conducted a 100 percent focused "peer review" of Plaintiff's performance in utter secrecy, and without any opportunity for Plaintiff to respond to the

peer reviewers' concerns before summary suspension, which was in violation of Defendant Hospital's By-Laws;

(b) After the state court found that Defendant Hospital violated Paragraph 8.0-2 of its By-Laws by failing to provide Plaintiff with an opportunity to respond to the peer reviewers' concerns before a report was forwarded to the OB-GYN Department Chairman, Defendant Hospital repeated this same violation by failing to provide Plaintiff with an opportunity to respond to adverse allegations made by nurses, operating room supervisors, and scrub techs during interviews conducted by the new internal medical peer review committee, and where such adverse allegations were forwarded to the OB-GYN Department Chairman and accepted by the Medical Board of Defendant Hospital as a basis for not reinstating Plaintiff's privileges.

(c) Defendant Hospital purposely and maliciously delayed completing a new medical peer review of Plaintiff's performance until a contempt motion was filed, so as to avoid reinstating Plaintiff's privileges;

(d) Defendant Hospital, after initially undertaking an external peer review of Plaintiff's performance, has refused to accept and to allow an external peer review as the basis of its determination;

(e) Defendant Hospital has unnecessarily delayed a new medical peer review required by Defendant Hospital's By-Laws;

(f) Defendant Hospital has initiated three separate medical peer reviews of Plaintiff's performance in an unjust effort to validate its initial summary suspension of Plaintiff's privileges and subsequent termination;

(g) The "severity codes" cited by the new medical peer review committee in regard to 31 of Plaintiff's cases were arbitrary and capricious, and not similarly applied to other physicians in a medical peer review.

(109) It is Plaintiff's belief and understanding that Defendant Hospital discriminated against Plaintiff on the basis of his race and national origin, contrary to its By-Laws and with gross disregard for Plaintiff's rights; to wit:

(a) Plaintiff, a racial minority, is the only physician who has had his privileges terminated by the peer review process at Defendant Hospital during the past twenty years;

(b) The laparoscopy performed on Patient X by Plaintiff at Defendant Hospital, which resulted in a serious situation and Plaintiff obtained a successful outcome, did not become a topic at any "morbidity and mortality" conference for discussion and learning for members of the OB-GYN Department, as was typical of other serious situations that arose during a medical procedure at Defendant Hospital;

(c) Defendant Hospital placed more stringent requirements upon Plaintiff, because of his race and

national origin, as evidenced by a 100 percent "focused" peer review of Plaintiff's cases, rather than a more limited review consisting only of Plaintiff's laparoscopy cases;

(d) Defendant Hospital allowed other physicians who were white and who were subject to a medical peer review to respond to the reviewers' concerns and/or to take corrective action before summary suspension and termination of privileges, if any medical peer review and/or corrective action was undertaken at all;

(e) Defendant Hospital allowed other physicians who were white and who were subject to a medical peer review to be monitored and to receive appropriate training by the medical staff at Defendant Hospital;

(f) Defendant Hospital allowed other physicians who were white and who were alleged to have committed medical malpractice to continue their hospital practice and to maintain active privileges at Defendant Hospital.

(110) It is Plaintiff's belief and understanding that Defendant Hospital did not act in good faith and without malice, after a reasonable effort under the circumstances, in defending its initial (first) peer review of Plaintiff's performance and in conducting a new medical peer review; to wit:

(a) Defendant Hospital failed to inform its medical staff that the initial (first) peer review of Plaintiff's performance was unfair to Plaintiff and in violation of Defendant Hospital's By-Laws;

(b) Defendant Hospital tainted the new medical (third) peer review against Plaintiff by informing each member of its medical staff that Plaintiff's privileges had been terminated "because of significant quality of care issues."

(c) Defendant Hospital ignored and negated, and/or terminated the new medical (second) peer review conducted by Dr. Livingston and Dr. Dunn, via the American Medico-Legal Foundation, and delayed completing a new medical (third) peer review of Plaintiff's performance, so as to avoid reinstating Plaintiff's privileges for more than three years;

(d) Defendant Hospital continued to refuse Plaintiff's request for external reviewers, and instead allowed members of Defendant Hospital's medical staff, who were already tainted and biased against the Plaintiff, to participate in and conduct a new medical (third) peer review.

(111) It is Plaintiff's belief and understanding that Defendant Hospital's reliance upon internal peer reviewers for the termination of Plaintiff's privileges under the circumstances was truly a pretext for discrimination; to wit:

(a) Plaintiff is Board-certified in the speciality of obstetrics and gynecology;

(b) Plaintiff attends grand rounds regularly at a major teaching hospital;

(c) Plaintiff has continued his medical education by taking more than 50 credit hours of medical training

annually, and attends medical conferences.

(d) Each of the five cases where the new medical (third) peer review had indicated a "significant deviation from standards" had been reviewed earlier by the State of North Carolina Medical Board, and no action was ever taken by the State of North Carolina Medical Board against Plaintiff's license to practice medicine in North Carolina.

(e) Each external OB-GYN expert who has reviewed the 31 cases noted by the new medical (third) peer review committee has found that the Plaintiff met the standard of care in each case; that the outcomes were good; and that there was appropriate documentation for each procedure.

(f) None of Plaintiff's cases had been tagged or marked for quality assurance indicators, and no warning letters other than routine notices to complete charts, which were subsequently complied with by Plaintiff, had been issued to Plaintiff, as required by Defendant Hospital's By-laws.

(g) The new medical peer review committee accused Plaintiff of lack of documentation in one case where the dictation of an operative note was not found on a chart nearly 4 years after the operation was completed, but in truth and fact, this case was never raised in the initial peer review, and Defendant Hospital's medical records department never notified Plaintiff of any incomplete record, contrary to its By-Laws.

(112) Plaintiff believes that Defendant Hospital has treated Plaintiff in a manner in which white physicians are not treated, and that Defendant Hospital refuses to recognize its responsibility for nearly destroying Plaintiff's career; to wit:

(a) Defendant Hospital terminated Plaintiff's privileges in contravention of its By-Laws;

(b) Defendant Hospital has purposely and maliciously misused the peer review process to the detriment of Plaintiff;

(c) A double standard of medical peer review exists whereby minority physicians are scrutinized more harshly by Defendant Hospital, than are white physicians.

(113) As a direct and proximate result of the foregoing, Plaintiff has suffered discrimination based on his membership in a group that is commonly perceived to be "racial" because it is ethnically and physiognomically distinct; further, Plaintiff belongs to a protected group, and is qualified as a licensed physician to obtain privileges at Defendant Hospital, but Defendant Hospital has terminated Plaintiff's privileges and is believed to have continued to issue and grant privileges to non-minority physicians.

(114) As a direct and proximate result of the foregoing, Defendant has deprived and continues to deprive Plaintiff of the benefits of their contractual relationship, and of achieving a livelihood as a Doctor of Medicine in the community and elsewhere.

(115) As a direct and proximate result of the foregoing, Plaintiff has suffered, and continues to suffer, irreparable injuries relating to embarrassment, degradation, humiliation, emotional stresses, physical pain and mental anguish, injury to professional standing, injury to character and reputation, and losses of income, property, wealth, and has sustained damages and continues to sustain damages; to wit:

(a) Plaintiff had been treating approximately 20 patients daily in 1995; following the suspension by Defendant Hospital in 1995, the number of patients treated daily by Plaintiff decreased substantially, and Plaintiff had no choice but to close his private practice in May 1997; further, the nature of Plaintiff's medical practice has changed significantly in that Plaintiff neither delivers babies nor performs gynecologic surgery.

(b) Plaintiff's character and reputation as a physician in the community has been completely and irreparably destroyed, due to the summary suspension and termination of Plaintiff's privileges, which was in violation of Defendant Hospital's By-Laws, and due to adverse publicity that continues to this date from the delays in completing a new medical peer review of Plaintiff's performance.

COUNT II

Conspiracy To Violate Civil Rights Under 42 U.S.C. § 1985

(116) Plaintiff asserts all allegations contained in paragraphs (1) through (103) above, as though fully set forth herein and included in this count.

(117) Dr. John W. Tidwell, who is uncharged herein, is an independent physician with an independent interest, and is capable of conspiring with Defendant Hospital.

(118) In or about January 1998, it is Plaintiff's belief and understanding that Dr. Tidwell was named by Defendant Hospital as Acting Chairman of the OB-GYN Department at Defendant Hospital so as to conspire with Defendant Hospital against Plaintiff.

(119) From or about January 1998 and continuing through the present date, it is Plaintiff's belief and understanding that Dr. Tidwell, Defendant Hospital, and other uncharged co-conspirators agreed and have conspired together and with each other, with racially and national origin discriminatory animus, to deprive and impair Plaintiff of equal protection of the law and equal privileges and immunities under the law, through the impairment and denial of his right to make, perform, and enforce his contract with Defendant Hospital.

Overt Acts

In furtherance of the above-cited conspiracy, the following overt acts were committed:

(120) On or about a date to be determined, Dr. Tidwell was asked by Defendant Hospital to review and receive the recommendations of the new medical (third) peer review committee;

(121) On or about June 23, 1998, a report of the new medical (third) peer review committee was forwarded by Dr. Hollingsworth to Dr. Tidwell, identifying presumably 31 cases where questions were raised regarding (i) lack of documentation; (ii) lack of indications for a procedure; and (iii) poor clinical judgment.

(122) On or about September 11, 1998, Dr. Tidwell recommended to Defendant Hospital that Plaintiff's privileges be terminated, based upon findings of the peer review committee as to (i) lack of documentation; (ii) lack of indications for a procedure; (iii) poor clinical judgment; and (iv) questionable surgical expertise.

(123) Dr. Tidwell recommended to Defendant Hospital's Medical Board that Plaintiff's privileges not be reinstated based, in part, upon a finding that Plaintiff was lacking in surgical expertise, even though the new medical (third) peer review committee made no such finding.

(124) On or about a date to be determined, the Medical Board of Defendant Hospital convened a special meeting and voted unanimously to accept the findings and recommendations forwarded by Dr. Tidwell, and to not reinstate Plaintiff's privileges.

(125) By letter to Plaintiff dated September 24, 1998, Defendant Hospital's Medical Board noted its concurrence with Dr. Tidwell that "deficiencies ... in [Plaintiff's] performance

warrant additional training and mentoring but that [Defendant Hospital] is not able to provide appropriate education and oversight."

(126) It is Plaintiff's belief and understanding that Defendant Hospital's asserting that Plaintiff lacked surgical expertise was an unsubstantiated finding of Dr. Tidwell's and was a pretext for discrimination; to wit:

(a) Plaintiff is Board-certified in the specialty of obstetrics and gynecology;

(b) Plaintiff attends grand rounds regularly at a major teaching hospital;

(c) Plaintiff has continued his medical education by taking more than 50 credit hours of training annually, and attends medical conferences.

(d) Each of the five cases where the new medical (third) peer review committee had noted a "significant deviation from standards" had been reviewed earlier by the State of North Carolina Medical Board, and no action has ever been taken by the State of North Carolina Medical Board against Plaintiff's license to practice medicine in North Carolina.

(e) Each outside OB-GYN expert who has reviewed the 31 cases noted by the new medical (third) peer review committee has found that the Plaintiff met the standard of care in each case, that the outcomes were good, and that there was appropriate documentation for each procedure.

(f) None of Plaintiff's cases had been tagged or marked for quality assurance indicators, and no warning letters other than routine notices to complete charts, which were subsequently complied with by Plaintiff, had been issued to Plaintiff, as required by Defendant Hospital's By-laws.

(g) The new medical peer review committee did not provide Plaintiff with an opportunity to respond to adverse allegations made by nurses, operating room supervisors, and scrub techs prior to forwarding its report to Dr. Tidwell, which was contrary to Paragraph 8.0-2 of Defendant Hospital's By-Laws and contrary to the state court's order for a new medical peer review in accordance with the By-Laws.

(h) Dr. Tidwell failed to return the new medical peer review committee's report to the committee, and failed to require the new medical peer review committee to provide Plaintiff with an opportunity to respond to the adverse allegations made by nurses, operating room supervisors, and scrub techs, prior to forwarding the Chair Inquiry Report to the Medical Board of Defendant Hospital on or about September 11, 1998.

(127) To date, Defendant Hospital has failed, refused, and omitted to reinstate Plaintiff's privileges.

(128) As a direct and proximate result of the above-cited conspiracy, Plaintiff has been treated differently than other

physicians who are white and who were subject to a peer review by Defendant Hospital, and who were allowed to obtain appropriate training and monitoring at Defendant Hospital.

(129) As a direct and proximate result of the above-cited conspiracy, Defendant has deprived and continues to deprive Plaintiff of the benefits of their contractual relationship, and of achieving a livelihood as a Doctor of Medicine in the community and elsewhere.

(130) As a direct and proximate result of the above-cited conspiracy, Plaintiff has suffered, and continues to suffer, irreparable injuries relating to embarrassment, degradation, humiliation, emotional stresses, physical pain and mental anguish, injury to professional standing, injury to character and reputation, and losses of income, property, wealth, and has sustained damages and continues to sustain damages; to wit:

(a) Plaintiff had been treating approximately 20 patients daily in 1995; following the suspension by Defendant Hospital in 1995, the number of patients treated daily by Plaintiff decreased substantially, and Plaintiff had no choice but to close his private practice in May 1997; further, the nature of Plaintiff's medical practice has changed significantly in that Plaintiff neither delivers babies nor performs hospital based gynecologic surgery.

(b) Plaintiff's character and reputation as a physician in the community has been completely and irreparably destroyed, as a result of the summary suspension

of Plaintiff's privileges, which was in violation of Defendant Hospital's By-Laws, and as a result of the adverse publicity that continues to this date, due to the lack of reinstatement of Plaintiff's privileges at Defendant Hospital during the new medical peer review process.

(c) Other state medical licensing boards are considering taking action against Plaintiff's license to practice medicine, as a result of Defendant Hospital's discriminatory actions against Plaintiff and the termination of Plaintiff's privileges.

COUNT III

Intentional Infliction of Emotional Distress

(131) Plaintiff asserts all allegations contained in paragraphs (1) through (103) above, as though fully set forth herein and included in this count.

(132) Defendant Hospital has a duty to comply with its By-Laws in performing any medical peer review of Plaintiff's performance.

(133) On or about July 30, 1996, the state court found that Defendant Hospital violated Paragraph 8.0-2 of its By-Laws when its peer review committee completed and forwarded a report to the OB-GYN Department Chairman without providing Plaintiff with an opportunity to respond before summary suspension; further, the state court found that Plaintiff was entitled to a new medical peer review, and was entitled to pursue all rights set forth in

Defendant Hospital's By-Laws. This determination was affirmed and modified by the state appellate court on or about August 5, 1997.

(134) From or about January 1998 and continuing through or about June 1998, Plaintiff believes that the new medical peer review committee at Defendant Hospital interviewed nurses, operating room supervisors, and scrub techs, of and concerning Plaintiff; further, it is Plaintiff's belief and understanding that Defendant Hospital intentionally, and with reckless disregard for Plaintiff's rights, failed to provide Plaintiff with an opportunity to respond to any adverse allegations made by such persons during those interviews. Such conduct by the new medical peer review committee and by Defendant Hospital, at that time, was extreme and outrageous.

(135) On or about September 11, 1998, in a "Chair Inquiry Report" submitted to the Medical Board of Defendant Hospital, Dr. Tidwell noted that the new medical peer review committee had interviewed nurses, operating room supervisors, and scrub techs, and that such persons expressed a consistent theme that Plaintiff "was very unsure of himself in the operating room and often asked ... how to perform procedures;" further, Dr. Tidwell based his finding of "questionable surgical expertise" upon these adverse allegations and this finding was accepted by the Medical Board of Defendant Hospital, even though Plaintiff had never been given an opportunity to respond to such adverse allegations during the new internal medical peer review process. Such conduct by Dr.

Tidwell and by Defendant Hospital was intentional and in reckless disregard for Plaintiff's rights under the By-Laws, and at that time, was extreme and outrageous.

(136) On or about August 30, 1996, the state court found that a long-term delay in completing a new medical peer review would likely result in substantial detriment to the Plaintiff.

(137) From or about July 1996 and continuing to the present, Plaintiff believes (a) that Defendant Hospital's failure to complete the new medical peer review until September 1998,not until after a contempt motion was filed, (b) that the Defendant Hospital's failure to schedule a due process hearing until January 13, 1999, and (c) that Defendant Hospital's failure and refusal to afford Plaintiff and Plaintiff's expert witnesses copies of many of the subject charts of the hearing without agreeing to execute a $50,000 liquidated damages provision for disclosure thereof was intentional and in reckless disregard for Plaintiff's rights, and at that time, was extreme and outrageous.

(138) As a direct and proximate result of the foregoing, Plaintiff has suffered, and continues to suffer, physical pain and mental anguish, shame, humiliation, severe emotional distress and depression, and has sustained damages, and continues to sustain damages, as set forth in this Complaint.

COUNT IV

Negligent Infliction of Emotional Distress

(139) Plaintiff asserts all allegations contained in paragraphs (1) through (103) above, as though fully set forth herein and included in this count.

(140) Defendant Hospital has a duty to comply with its By-Laws in performing any medical peer review of Plaintiff's performance.

(141) On or about July 30, 1996, the state court found that Defendant Hospital violated Paragraph 8.0-2 of its By-Laws when its peer review committee completed and forwarded a report to the OB-GYN Department Chairman without providing Plaintiff with an opportunity to respond before summary suspension; further, the state court found that Plaintiff was entitled to a new medical peer review, and was entitled to pursue all rights set forth in Defendant Hospital's By-Laws. This determination was affirmed and modified by the state appellate court on or about August 5, 1997.

(142) From or about January 1998 and continuing through or about June 1998, Plaintiff believes that the new medical peer review committee at Defendant Hospital interviewed nurses, operating room supervisors, and scrub techs, of and concerning Plaintiff; further, it is Plaintiff's belief and understanding that Defendant Hospital egregiously, erroneously, and negligently failed to provide Plaintiff with an opportunity to respond to any adverse allegations made by such persons during those interviews. Such conduct by the new medical peer review committee and by Defendant Hospital, at that time, was extreme and outrageous, and

reasonably foreseeable to cause Plaintiff severe emotional distress.

(143) On or about September 11, 1998, in a "Chair Inquiry Report" submitted to the Medical Board of Defendant Hospital, Dr. Tidwell noted that the new medical peer review committee had interviewed nurses, operating room supervisors, and scrub techs, and that such persons expressed a consistent theme that Plaintiff "was very unsure of himself in the operating room and often asked ... how to perform procedures;" further, Dr. Tidwell based his finding of "questionable surgical expertise" upon these adverse allegations and this finding was accepted by the Medical Board of Defendant Hospital, even though Plaintiff had never been given an opportunity to respond to such adverse allegations during the new internal medical peer review process. Such conduct by Dr. Tidwell and by Defendant Hospital was erroneous and negligent, and in disregard for Plaintiff's rights under the By-Laws, and at that time, was extreme and outrageous, and reasonably foreseeable to cause Plaintiff severe emotional distress.

(144) On or about August 30, 1996, the state court found that a long-term delay in completing a new medical peer review would likely result in substantial detriment to the Plaintiff.

(145) From or about July 1996 and continuing to the present, Plaintiff believes (a) that Defendant Hospital's failure to complete the new medical peer review until September 1998, not until after a contempt motion was filed, (b) that the Defendant Hospital's failure to schedule a due process hearing until

January 13, 1999, and (c) that Defendant Hospital's failure and refusal to afford Plaintiff and Plaintiff's expert witnesses copies of many of the subject charts of the hearing without agreeing to execute a $50,000 liquidated damages provision for disclosure thereof was erroneous and negligent, and in disregard for Plaintiff's rights, and at that time, was extreme and outrageous, and reasonably foreseeable to cause Plaintiff severe emotional distress.

(146) As a direct and proximate result of the foregoing, the severe emotional distress and mental anguish, befalling Plaintiff, could have been expected to befall an ordinarily reasonable person.

(147) As a direct and proximate result of the foregoing, Plaintiff has suffered, and continues to suffer, physical pain and mental anguish, shame, humiliation, severe emotional distress and depression, and has sustained damages, and continues to sustain damages, as set forth in this Complaint.

General Causation And Damages

(148) As a direct and proximate result of the foregoing counts, Plaintiff has suffered and continues to suffer irreparable injuries relating to losses of income, property, and wealth; injury to professional standing; injury to character and reputation; and injury to physical and emotional health and general well-being.

(149) As a direct and proximate result of the foregoing

counts, in May 1997, Plaintiff was forced to close his office in Matthews, North Carolina, because of Plaintiff's not being able to admit patients at Defendant Hospital, where Plaintiff did 90 percent of his work.

(150) As a direct and proximate result of the foregoing counts, Plaintiff has suffered damages as stated herein and to be proven at trial, and in an amount exceeding ten million dollars ($10,000,000), plus an appropriate amount for his emotional pain and suffering, and punitive damages to be determined.

(151) As a direct and proximate result of the foregoing counts, Defendants have deprived and continue to deprive Plaintiff of the benefits and privileges of their contractual relationship, and of achieving a livelihood as a Doctor of Medicine in the community and elsewhere.

Relief

WHEREFORE, Plaintiff hereby demands a trial by jury and prays for the following legal, equitable, declaratory, and injunctive remedies:

a. That Defendant Hospital be ordered to re-instate Plaintiff's privileges, so that Plaintiff may exercise or resign his staff membership as he so desires;

b. That Defendant Hospital be ordered to correct any and all adverse actions reported to the NPDB, of and pertaining to the Plaintiff, and to notify the NPDB of

the reinstatement of Plaintiff's privileges;

c. That the Court grant Plaintiff an award that requires Defendant Hospital to compensate Plaintiff monetarily for the full value of income, property, wealth, and loss of future earnings that Plaintiff would have received had it not been for Defendant Hospital's discriminating against Plaintiff, with interest thereon;

d. That the Court grant Plaintiff an award that requires Defendant Hospital to compensate Plaintiff monetarily for injuries suffered by Plaintiff to his professional standing, character, and reputation;

e. That the Court grant Plaintiff an award that requires Defendant Hospital to compensate Plaintiff monetarily for injuries suffered by Plaintiff, including medical expenses, for depression, shame, humiliation, severe emotional distress, physical pain and mental anguish, and feelings of self-worthlessness and loss of humanity;

f. That the Court grant Plaintiff an award that requires Defendant Hospital to compensate Plaintiff monetarily for irreparable injuries so that Plaintiff may restore his personal dignity, and regain his professional standing and competence as a Doctor of Medicine;

g. That Plaintiff be awarded against Defendant Hospital punitive damages;

h. That Plaintiff be awarded against Defendant Hospital all costs and expenses of this litigation, and reasonable attorneys' fees;

i. That Plaintiff be granted such further legal, equitable, declaratory, and injunctive relief as this Court may deem just and proper.

Respectfully submitted,

Date: 1/15/99

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