ORIGINAL

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES, CALIFORNIA

JEHAN ZEB MIR,MD

Plaintiff,

vs.

SAN ANTONIO COMMUNITY HOSPITAL

Defendant

Case No.: ED CV12-01791 GW (SPx)

SECOND AMENDED COMPLAINT FOR

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT VIOLATION

CONSPIRACY TO VIOLATE CIVIL RIGHTS

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

NATURE OF ACTION

Plaintiff a physician was in good standing at the Defendant San Antonio Community Hospital till he obtained a $ 600,000 a year surgical subcontract with IPA Inland Global to provide surgical services to 50,000 lives with 5000 Medicare recipients for an IPA in the Upland area.

The contract was previously held by two White surgeons for many years. Defendant Hospital's agents made threats against Plaintiff to drop the contract or else. Then brought false, frivolous, fraudulent and malicious charges based upon care of two patients with whom Plaintiff had no lawful physician-patient relationship.

In one patient no physician ever consulted Plaintiff as is required by law before Plaintiff could ever provide any services, without breaching confidentiality of medical records under HIPPA.

In the second patient, the Defendant and its agents mischievously tried to set Plaintiff up to provide services beyond the scope of his hospital privileges which would constitute unprofessional conduct in a patient brought to the E.R. needing vascular surgery consultation and or vascular surgery where Plaintiff had no vascular surgery privileges or was not on call for vascular surgery and he promptly so informed the E.R. Physician who within minutes obtained a vascular surgeon to provide care, resulting in no delay or injury to patient. Even though the Plaintiff did not fall into the trap set up by defendant who in bad faith suspended and then terminated Plaintiff anyway.

In order to interfere with the contract, Defendant and its agent coerced and **extorted** relinquishment of all privileges under threat of summary suspension. The Defendant falsely and in bad faith charged that Plaintiff did not come to E.R.to evaluate patient where Plaintiff was under no legal duty to see the patient and ER. Physician admitted that he had erroneously called Plaintiff because he testified under oath that had he known Plaintiff had no vascular surgery privileges, he

would not have called Plaintiff and instead would have called a vascular surgeon. That he called Plaintiff to perform surgery and not to evaluate the patient as charged by defendant. That it was his job to evaluate patient and he had already done the evaluation as an emergency room physician with 30 year experience. Plaintiff immediately lost the contract and the two White surgeons who had previously held the IPA surgical contract regained the contract at a much higher asking price.

Even after Plaintiff had favorable termination by medical board of California in its own independent investigation on the same Notice of Charges levied against Plaintiff in Defendant's proceeding and reported by Defendant under Business & Profession Code Section 805, the Defendant and it's agents in bad faith and in order to delay, harass and injure Plaintiff professionally, financially and emotionally continued to conduct sham peer review proceedings lasting over five years on two false, frivolous, malicious charges and then upheld its own Decision to terminate.

Defendant went one step further in an final cover up scheme prevented judicial review by writ of administrative mandamus of its one sided quasi-judicial decision by opposing filing of the petition of writ of mandate with the superior court. Defendant corruptly influenced the judges and justices of California Court of Appeal. The California courts never took jurisdiction of the case except delaying the present action for more than two and a half years.

Plaintiff has been denied employment opportunities as a result of Defendant's action in State of Pennsylvania where Plaintiff has held a current, active, unrestricted medical license since 1974.

Plaintiff alleges:

Jurisdiction:

1. The Court has already exercised jurisdiction in this matter and on Claims alleged hereunder.

Timeliness

2. The Court has ruled that the following Claims alleged hereunder are timely.

PARTIES

I. Plaintiff:

3. Plaintiff Jehan Zeb Mir, MD is a physician who became licensed to practice medicine in the State California in 1972. He also held licenses by Commonwealth of Pennsylvania and by the State of New York since 1974.

4 Plaintiff is currently actively licensed by Pennsylvania, currently certified by American Board of Surgery since 1970 and is also currently Recertified by American Board of Thoracic Surgery since 1993 and 2003.

5. Plaintiff was trained in General Surgery at New York University Medical Center and in Cardiovascular & Thoracic Surgery at Children Hospital of Los Angeles (USC), at Good Samaritan Hospital, Los Angeles California (USC) and University of Pennsylvania Medical Center.

6. Plaintiff honorably served in US Navy from 1968 to1972, as a Commander with 13 months tour of duty with First Medical Battalion, First Marine Division in Vietnam, as trauma surgeon in 1969.

7. Plaintiff had been in practice and on staff of 12 major hospitals in Los Angeles County since 1976 with an unblemished record with no prior disciplinary actions, with no malpractice judgments or settlements and none pending as of this day, before the Defendant and its agents took drastic action of suspension of surgical privileges on October 5, 2000. Defendant and its agents conducted sham peer review hearing till August 2, 2005 when Defendant expelled Plaintiff from the medical staff.

Defendant thereafter actively prevented filing of the writ petition with California superior court in order to cover up its wrongful acts as fully discussed below.

II. Defendant:

8.At all times mentioned in this Complaint, Defendant San Antonio Community Hospital (hereinafter "SACH") has been a private health care facility, accredited by the Joint Commission on Accreditation of Hospitals, doing business at 999 San Bernardino Road, Upland, California, 91786, located within San Bernardino County.

9. Defendant "SACH" is the only hospital in the City of Upland, CA monopolizing acute care / hospital business since the State of California controls the number of acute care, in-patient beds a hospital can have based on population and Defendant already has consumed the assigned quota of acute care beds, so no other hospital can be built or licensed by the State.

Even though Defendant is registered as a private entity, Defendant as the only hospital in the City of Upland must accept all patients regardless of their insurance status or financial ability to pay, thus giving it the character and duties of a County General Hospital.

10. San Antonio Community Hospital is also a California Corporation doing business at 999 San Bernardino Road, Upland, California, 91786.

NON-PARTY PARTICIPANTS :

11. Donald M. Alpiner D.O. is an individual who was Chief of Staff of the Defendant 'SACH' and member of its Executive Committee and is currently a member of its board of trustees and his office is located at the Defendant Hospital's at 999 San Bernardino Road, Upland, CA 91786.

12. Nabil Koudsi, M.D. is an individual. He was Defendant's Chief of Surgery and a member of its Executive Committee. He testified against Plaintiff at the Judicial

Review Committee Hearing and has his office located at 811 E. 11th Street, # 207, Upland, CA 91786.

13. Jayprakash Navnital Shah, MD, is an individual. He was Defendant's member of the Executive Committee and is currently a member of its board of trustees and was member of Judicial Review Committee, which heard the matter of Defendant's Charges against Plaintiff and his office is located at 1520 North Mountain Avenue, # 205, Ontario, CA 91762.

14. Chuang-Ti Hung, M.D. is an individual. He was Defendant's member of Judicial Review Committee which heard the matter of Defendant's Charges against Plaintiff. His office is located at 629 N. 13th Avenue, Upland, CA 91786-4906

15. Samir Anabi, M.D. is an individual. He was Defendant's member of the Judicial Review Committee which heard the matter of Defendant's Charges against Plaintiff. His office is located at 160 E. Artesia Street, # 225, Pomona, CA 9167.

16. Michael Neal Wood, M.D. is an individual. He was Defendant's member of Medical Executive Committee. He testified against the Plaintiff at the Judicial Review Committee Hearing. He then as a member of Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's staff. His current address is at 8 Woodland Drive, Mansfield Texas 76063.

17. Carl L. Shultz, M.D. is an individual and was Defendant's member of the Medical Executive Committee and is also an employee of Defendant San Antonio Community Hospital as staff radiologist. He as member of Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's staff and his office is located at Defendant's premises located at 999 San Bernardino Road, Upland, CA 91786.

18. Naveen Gupta, M.D. is an individual. He as member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial

Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff and his office located at 360 E. 7th Street, Suite # B, Upland, CA 91786.

19. Wanda B. Olsen, M.D. is an individual. She as a member Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff. Her current address is at 1677 N. Euclid Avenue Upland, CA 91784.

20. Tomi Lin Bortolazzo, M.D. is an individual. She as a member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff. Her current address is at P.O. Box 3269, Mammoth Lakes, CA 93546-3269.

21. Roger Dennis Duber, D.O. is an individual. He as member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff and his office is located at 685 N. 13th Avenue, Suite # 9, Upland, CA 91786.

22. Mahmoud A. Ibrahim, M.D. is an individual. He as member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff and his current address is at 1175 E. Arrow Highway, Suite # L, Upland, CA 91786.

23. James Michael Lee, M.D. is an individual. He as member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff. His address is at 54170 Cananero Circle, La Quinta CA 92253-8058

24. Lothar McMillian, M.D. is an individual. He as member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff. His office is located at 7777 Milliken Avenue, Suite # 240, Rancho Cucamonga, CA 91730.

25. Mahmoud H Sani, M.D. is an individual. He as member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff. His address is at 1531 El. Soneto CT. Camarillo, CA 93010

26. Henry Kwong Tan. M.D. is an individual. He was Defendant's employee as staff Pathologist and had his offices located at the Defendant Hospital's premises. He as a member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff.

27. Nedra Anne Vincent, M.D. is an individual. She is Defendant's employee and a member of its Medical Executive Committee and reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff and has his office located at 999 San Bernardino Road, Upland, CA 91786.

28. Stanley R. Saul, D.O. is an individual. He as a member of Defendant's Medical Executive Committee reviewed the proceedings and the Decision of Judicial Review Committee and took final action suspending and terminating Plaintiff from the Defendant Hospital's medical staff. His current address is at Willow Valley Lakes Drive, # D, Willow Street, PA 17584

29. Martin Thouvenell is an individual. He was Police Chief / Police Commissioner City of Upland, CA and member of board of trustees of the

Defendant Hospital. He heard the appeal of the Decision of the JRC and MEC committees and affirmed their Decisions.

30. Jim R. Milhiser is an individual. He was member of City Council, City of Upland, CA and member of board of trustees of the Defendant Hospital. He heard the appeal of the Decision of the JRC and MEC committees and affirmed their Decisions.

31. Thomas R. McGilloway is an individual. He was member of City Council, City of Upland, CA and member of board of trustees of the Defendant Hospital. He heard the appeal of the Decision of the JRC and MEC committees and affirmed their Decisions.

32. E. F."Rick" Hamilton is an individual. He was member of Los Angeles Historical Society, associated with Los Angeles County Library and Historical Society of Las Vegas, NV, and member of board of trustees of the Defendant Hospital. He heard the appeal of the Decision of the JRC and MEC committees and affirmed their Decisions.

33. George Kuykendal in an individual who was the CEO of 'SACH' during the period of Plaintiff's staff membership from 1999 to March 27,2005. He was actively involved in the racketeering activity.

34. Steve Moreau is an individual who was the CEO of the Defendant hospital from March 28, 2005 to February 1, 2011. He would not return Plaintiff's phone calls to resolve the matter, yet would not at the same time shut the door, thus lulling Plaintiff into delaying filing writ petition till 2009.

35. Harris F. Koenig is an individual who is the current CEO of the "SACH" since April 19, 2011. Plaintiff called him on more than two occasions to resolve the matter after California Supreme Court denied Petition for Review to file writ Petition. He followed the same course as his predecessor apparently upon the advice of his attorney.

36. The McDermott Will & Emery LLP is a California Corporation and was retained as the attorney for Defendant 'SACH', provided advice and artifice to defendant how best to keep Plaintiff out of the Hospital and practice of medicine and was involved in opposing filing of writ petition with the California courts based on false grounds that Plaintiff had not filed Judicial Council Optional Form MC-701, thus aided and abetted to the racketeering scheme of the Defendant to continue to injure Plaintiff

37. Thomas A Ryan is an individual was retained as attorney by the Defendant and provided advice and artifice how to keep Plaintiff out of the defendant Hospital and practice of medicine and was involved in opposing filing of writ petition with the California courts based on false grounds that Plaintiff had not filed Judicial Council Optional Form MC-701, thus aided and abetted to the racketeering scheme of the Defendant to continue to injure Plaintiff

38. Jessica J Thomas was retained as attorney by Defendant and provided advice and artifice how to keep Plaintiff out of the Hospital and practice of medicine and was involved in opposing filing of writ petition with the California courts based on false grounds that Plaintiff had not filed Judicial Council Optional Form MC-701 thus aided and abetted to the racketeering scheme of the Defendant to continue to injure Plaintiff.

39. Jessica A. Mariani was attorney by the Defendant and provided counsel to Defendant as how best to keep Plaintiff out of the hospital and practice of medicine.

40. Roger Boren is an individual and a Justice of the California Court of Appeal 2nd. He found Plaintiff a vexatious litigant and ordered Plaintiff to obtain pre-filing order even when represented by an attorney without cause or evidence and against California Law at the behest of physicians and Pomona Valley Hospital. Justice Boren set the stage for Defendant 'SACH' and Pomona Valley Hospital to injure Plaintiff and at the same time prevent Plaintiff's access to California courts. Justice

Boren referred to the Plaintiff's problem with Defendant 'SACH' and 'PVH' in great detail in his unpublished opinion which Defendant's attorneys have asked the Courts to take judicial notice at least on six different occasions. Justice Boren directly or indirectly aided and abetted the racketeering scheme by the Defendant.

41. David A. Williams is an individual and judge of the San Bernardino County, Rancho Cucamonga Superior Court, Department R-8 and was involved in denial of Plaintiff's right to file writ petition pursuant to CCP § 1094.5, appealing the Decision of the Defendant, thus providing a cover to the nefarious scheme of the Defendant to injure Plaintiff. Judge David William used finding of vexatious litigant by Justice Boren to deny Plaintiff access to the California superior court thus giving free hand to Defendant to continue to injure Plaintiff and aided and abetted Defendant's racketeering scheme.

42. James McGuire in an individual and presiding judge of the San Bernardino County Superior Court denied Plaintiff pre-filing order to file writ petition pursuant to CCP § 1094.5, appealing the Decision of the Defendant, thus by providing a cover aided and abetted to the racketeering scheme of the Defendant to continue to injure Plaintiff.

43. Thomas E. Hollenhorst is an individual and justice of the Court of Appeal 4th , Div. 2, Riverside, CA and denied pre-filing order on appeal of Plaintiff's request to file writ petition pursuant to CCP § 1094.5, appealing the Decision of the Defendant, thus aided and abetted to the racketeering scheme of the Defendant to continue to injure Plaintiff.

44. Jeffery King is an individual and justice of the Court of Appeal 4th , Div. 2, Riverside, CA and was involved in denial of Plaintiff's request to file writ petition pursuant to CCP § 1094.5, appealing the Decision of the Defendant, thus aided and abetted to the racketeering scheme of the Defendant to injure Plaintiff.

45.Betty Ann Richli is an individual and justice of the Court of Appeal 4th , Div. 2, Riverside, CA and was involved in denial of Plaintiff's request to file writ petition

pursuant to CCP § 1094.5, appealing the Decision of the Defendant, thus aided and abetted to the racketeering scheme of the Defendant to injure Plaintiff.

FACTUAL BASIS FOR CLAIMS

The following facts are taken directly from the writ petition filed in California superior court.

46. On December 28, 1998, Plaintiff was appointed to the medical staff of the Defendant "SACH", as a Provisional Staff member with privileges in general surgery and was required to work under direct supervision / proctoring on all of his cases which included performance of surgeries, including preoperative and postoperative care This requirement was still in effect at the time of termination of staff membership and all privileges.

Defendant's Discretion to Establish Reasonable Standards to Expel:

47. Under the [1]decisional law of this state of California, Defendant "SAC" Hospital has discretion to establish reasonable standards for determining whether or not physician should be expelled from staff membership and to establish internal procedures for making such a determination. Defendants had discretion to determine the facts as applied in this case to determine whether or not under these standards a ground existed for expelling Plaintiff from the medical staff for Plaintiff's alleged failure to provide care to two patients **where no lawful physician-patient relationship ever existed** at all between Plaintiff and these two alleged patients whom he did not see or know what these patients even looked like.

48. **In one patient no physician ever requested a consultation with Plaintiff** on a Medicare patient as required by law and **in other patient he had no vascular surgery privileges** to render vascular surgery services or surgery. Furthermore, Plaintiff had no legal duty because he was not on vascular surgery call on the E.R.

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[1]. *Pinsker v Pacific Coast Society of Orthodontists* (1974) 12 Cal. 3d 541,560 116 Cal. Rptr.255

panel -a fact Plaintiff promptly informed E.R. Physician who immediately contacted another vascular surgeon Dr. Nabil Koudsi who was also Chief of Surgery and provided care resulting in no net delay or injury to patient and Plaintiff did not jeopardize the quality of medical care to any patients ever at the Defendant "SACH".

Defendant's Duty to Provide a Fair Hearing:

49. Pursuant to Section 32150 of the Health and Safety Code, Business & Profession Code Section 809.3, the decisional law of the State of California, the Defendant's internal procedures for making membership decisions are required to include provisions for a [2]hearing at which evidence is taken for the determination of facts on which Defendant's membership decision is based. Defendant's provisions for holding a hearing on the facts relating to a membership decisions are set out in Medical Staff Bylaws provisions attached hereto in the administrative record, to be filed subsequently.

Plaintiff Obtains IPA Surgical Subcontract For $ 600,000.

50. On or about August 2000, Plaintiff obtained an IPA, surgical subcontract from Inland Global for $ 600,000.to provide medical / surgical services to 5000 Medicare recipients and 50,000 lives and to perform thoracic, vascular and general surgery at the Defendant "SACH" with effect from September 1,2000. This contract was previously held by two White Physicians on the Defendant's medical staff.

Defendant & its Agents Threaten Plaintiff to Drop IPA Contract:

51. Each and every following act or conduct by Defendant Hospital's agents was ratified by the Defendant Hospital itself. Plaintiff received **verbal and physical threats from Defendant and its agents** to drop the contract or else.

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[2] Code of Civil Procedure δ 1094.5 (d)
Anton v San Antonio Community Hospital (1977) 19 Cal. 3d 802,815-818 n 12 140 Cal. Rptr.442

52. In order to interfere with Plaintiff's IPA subcontract, the Defendant and its agents or their associates first refused to provide backup coverage, without which Plaintiff could not exercise any of his privileges under Medical Staff Bylaws. Defendant's Chief of Surgery Dr. Koudsi, specifically asked staff surgeon, Dr. Bressman to boycott Plaintiff and not to provide coverage for Plaintiff and prepared a letter on Defendant's stationery for Bressman to sign declining to cover. The reason being if Plaintiff did not have a backup coverage, he would lose the contract for his inability to provide continuous care on 24 hour basis 7 days a week. Just when Plaintiff found a willing surgeon to provide backup coverage, the Defendant moved to suspend and then terminate him.

Special Session of MEDICAL EXECUTIVE COMMITTEE to Discipline Plaintiff:

53. On September 18, 2000, hardly two weeks into the IPA subcontract, Defendant and its Medical Executive Committee summoned Plaintiff and his assistant Dr. Autar Wali to appear before its Special Session of "MEC" to discuss Case # 255926, a general surgery case, after it had completed its investigation on the issue of lack of Plaintiff's response to a mistaken call from a nurse, where no physician had ever consulted Plaintiff on the case, after the nurse had failed to find the surgeon Dr. Autar Wali, who had been consulted by the primary care physician by a written physician order in the medical records.

54. Plaintiff was not responsible for providing coverage for Dr. Autar Wali, who was on call for himself for 24 hour period at the Defendant 'SACH'. The Defendant's "MEC" could not find any wrong doing on part of Plaintiff and "MEC" found that it was a case of miscommunication, dismissed the matter and closed investigation. This action by Defendant's "MEC" was ratified by Defendant itself and constituted final administrative action in this matter and its closure.

Collateral Estoppel:

55. The Defendant and it's agents were [3]collaterally estopped from re-opening the administratively closed case (**Case # 255926**) however, subsequently formally brought the same issue as **Charge (c)** in the Notice of Charges against Plaintiff, as one of two cases.

56. Defendant's "MEC" member Dr. Michael N. Wood testified that September 18,2000 meeting was the final action for patient (**Case # 255926**) forming basis for Charge (c) on the Notice of Charges (T.7, 9/12/01, 897, L3-7) And at that meeting, no adverse action was taken against Plaintiff (T.7, 9/12/01, p. 897,L 24-p.898 L 11)

57. At that meeting, it was also noted that Plaintiff did not have vascular surgery privileges at the Hospital. A fact which made subsequent Charge (a) in the Notice of Charges, on the second patient irrational, without probable cause, in bad faith, malicious and unsupported by any evidence.

Defendant Notified Plaintiff, That He Had no Vascular Surgery Privileges;

58. On **September 27, 2000,** Defendant's Chief of Surgery Dr. Nabil Koudsi informed Plaintiff by letter on Defendant's stationery that he did not have Vascular Surgery privileges.

Mistaken Call by E.R. Physician on the Same Day Requesting Plaintiff to Perform Vascular Surgery on a Patient:

59. On **September 27, 2000**, Plaintiff was mistakenly contacted by the E.R. Physician at 9.00 am for a patient in stable condition arriving at 8.34 am. ER with a non-bleeding, self-inflicted vascular wound of the neck.

60. Plaintiff advised the ER Physician to provide emergency room care by transfusing several units of blood to meet the large deficit for blood lost initially at the scene of self-inflicted wound in a motel room, based on paramedic account of soaked bed sheets and pillow. Within 20 minutes, Plaintiff received a panicky call from O.R. personnel inquiring about the patient upon whom Plaintiff was going to

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[3] *Brosterous v State Bar of California* 48 Cal.Rptr.2d 87(Cal. 1995)

perform surgery as was the O.R. told by the E.R. Physician because it would have disturbed the ongoing O.R. schedule to accommodate for the emergency surgery.

61. Plaintiff asked the call to be transferred to E.R. physician and informed him that he had no vascular surgery privileges that he should get a vascular surgeon.

62. Plaintiff based upon [4]standard community practice, his experience as trauma surgeon in Vietnam, and then subsequently in private practice for management of such injuries for 30 years informed E.R. Physician, that patient was not ready for surgery, needed blood transfusions to meet the large deficit for the blood loss at the scene that the patient needed further evaluation, investigation and consultations by ENT surgeon; Thoracic Surgeon to rule out other, concomitant injuries within the neck which is so packed with all kinds of vital anatomical structures.

E.R. Physician Promptly Called Vascular Surgeon Defendant Koudsi

63. The E.R. Physician immediately called Defendant's Chief of Surgery Dr. Nabil Koudsi, a vascular surgeon who was present in the hospital and assumed care and performed surgery without even transfusing any blood or further investigating or requesting additional specialty consultations as is required by standard community practice.

64. As a result, upon induction of anesthesia the patient's blood pressure crashed on the operating table due to a depleted blood volume. Patient almost died but was resuscitated and somehow luckily survived despite low blood volume, due to his young age. This untoward event could have been prevented by transfusion of blood before starting anesthesia. Defendant Dr. Koudsi also lucked out, as neck injury was limited to a superficial vein, and no deep injuries involved other organs. The patient was discharged in two days.

Defendant Threatens Summary Suspension in Violation of Medical Staff Bylaws & Business & Profession Code:

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[4] Washington Manual of Surgery, (Administrative Record, pages 504-513)

65. Defendant's agent and Chief of Staff Dr. Donald Alpiner, D.O. had close relationship with two White surgeons who had held the Inland Global contract previously. He assisted at surgeries and received substantial income.

66. Dr. Alpiner in order to interfere with Plaintiff's IPA Inland Global surgical sub-contract threatened Plaintiff on telephone with summary suspension of all privileges because on September 27, 2000, Plaintiff did not perform timely vascular surgery on the patient with self-inflicted stab wound of the neck. Dr. Alpiner, a general practitioner was not qualified to determine if patient needed immediate surgery.

67. Dr. Alpiner admitted at the hearing that he was not a surgeon. That after graduating from Osteopathy School, he did a year of internship and right away entered general practice at "SACH". That he did not consult any surgeon on the propriety of 'suspension' or need for surgery and he had no mandate from Medical Executive Committee ("MEC") to institute summary suspension.

68. The suspension was illegal because it was **in violation of Medical Staff Bylaws 6.3(a) and Business & Profession Code Section 809.5,** requiring **'imminent danger** to the life or health' of an individual as a pre-requisite to institute summary suspension when Plaintiff could not have been 'imminent danger to life or health of a patient' where the patient with stab wound of the neck had been at home alive and well for six days and where Plaintiff was working under the direct supervision of the Defendant as a Provisional staff member and Plaintiff had no legal duty or had vascular surgery privileges to perform any consultation or vascular surgery.

69. Any suspension would automatically cancel the IPA Inland Global surgical subcontract for failure to provide contracted services.

Defendant Coerced Plaintiff to Relinquish All Privileges under threat of Suspension:

70. Defendant's agent Dr. Alpiner was extremely unreasonable, hostile and intent upon summarily suspending Plaintiff's privileges which would automatically terminate Plaintiff's IPA subcontract, for failure to provide contracted services. This would also trigger a filing of Business & Profession Section 805 Report with Medical Board of California which would disseminate such information to other hospitals adversely affecting Plaintiff's staff membership and would take its own action.

71. Dr. Alpiner placed Plaintiff under tremendous duress, extorted relinquishment of privileges in lieu of a Summary Suspension. This resulted in Plaintiff immediately losing his IPA Surgical Subcontract.

72.The contract was once again assumed by two White Physicians Wallace G. Gosney and Gilbert R. Turner on staff of Defendant" SACH". These physicians had held the same contract previously for years, but regained the contract at a much higher price than $ 600,000.

Another Harassing Special Session of "MEC" to Discipline Plaintiff:

73. On October 10, 2000, Plaintiff was again called by Defendant to appear before "MEC" to discuss the stab wound of the neck case.

74. Plaintiff reiterated above facts and informed Defendant and its agents that within 20 minutes of the first call from ER when he suggested to ER physician to transfuse six units of whole blood to meet the deficit, he told E.R. physician that he had no vascular surgery privileges and to call a vascular surgeon. The E.R. physician did promptly call vascular surgeon Dr. Koudsi who immediately took over the case.

Defendant Files Business & Profession Code Section 805 report

75. On October 23, 2000, Defendant filed Business & Profession Code Section 805 Report, informing that Plaintiff had relinquished his privileges on October 5, 2000 in the face of investigation into significant quality of care issues involving three

patients contrary to what he told Plaintiff and the "MEC" that suspension was for issue related to 'stab wound of the neck 'case.

76. Defendant also improperly in bad faith filed Report with National Data Bank of Plaintiff's alleged unproven incompetence with malice without reasonable effort to obtain facts of the matter communicated, without a reasonable belief that the communication is warranted by the facts actually known by a consultant after reasonable effort to obtain facts.

Plaintiff Had a Favorable Termination When Medical Board of California Found No Wrong Doing, Closed its Investigation on Three Cases:

77. The Medical Board of California investigated all three cases reported by Defendant and its Charges as alleged in the Notice of Charges. On or about September 28, 2002, after almost 2-years of investigation, the Medical Board called Plaintiff for an interview at its office in Riverside, CA and discussed Defendant's Charges in three cases. The Medical Board found no culpability on part of Plaintiff and on or about December 4, 2002 closed its investigation and files on all Charges based on three cases reported by Defendant.

Notice of Charges:

78. On October 30, 2000, Defendant served Notice of Charges on the same three patients.

Judicial Review Hearing:

79. A Judicial Review Committee ('JRC') comprised of Defendant's three agents / physician members, namely Dr. Samir Anabi, MD, Dr. Jay N. Shah MD, and Dr. Chuang-Ti Hung, M.D was impanelled.

80. As a delaying and harassing tactic, Defendant held 15 sessions of hearings on false, frivolous charges. The hearings were held on the following dates; 12/7/00; 1/15/2001; 3/13/01; 3/20/01; 6/14/01; 8/30/01; 9/12/01; 11/14/01; 11/28/01;1/23/02; 2/6/02; 5/28/02 ;7/30/02; 9/30/02 and 3/4/03.

81. A verbatim transcript of the record of the hearing was prepared and was included in the administrative record.

Decision of Judicial Review Committee:

82. On March 4, 2003, Defendant's JRC, held its last session when it heard the closing arguments. As a further delaying and harassing tactic, Defendants issued its Decision after one year and a half on October 26, 2004. Defendant **dismissed Charge (b) on one patient with whom Plaintiff did have a physician-patient relationship** and found against Plaintiff on Charge (a) and Charge (c) on two patients with whom Plaintiff had no physician-patient relationship whatsoever as described above.

Defendant Prejudicially Abused Discretion, Denied Fair Trial:

83. Defendant prejudicially abused discretion in that it failed to proceed according to law and failed to provide Plaintiff a fair trial and made unreasonable findings which were not supported by evidence. Abuse of discretion is established if the Defendants had not proceeded in a manner required by law, or the order or decision is not supported by the findings, or the findings are not supported by the evidence. (CCP δ 1094.5 (b))

Defendant's Findings Unsupported by Evidence:

84. The evidence received at the hearing did not support the findings. The Decision was invalid for the following reasons.

The Charge (a) of the Notice of Charges provided,

"On September 2, 2000 at 0834 hours, this patient was brought to the Emergency Department of the Hospital as a result of a self-inflicted stab wound to the neck. **Dr. Mir failed to meet the standard of care in that, despite two Requests from Emergency Room Physician, at approximately 0834 and 0930 Hours, Dr. Mir, the surgeon on call for the Emergency Department, failed to timely come to the Hospital to examine**

and evaluate the patient. Dr. Mir finally arrived at the Operating Room at approximately 1100 hours when surgery had already begun by another physician ."

85. **Timeline:** The Charge was false, frivolous and harassing and unsupported by evidence. The nurse's notes in the Medical records show that Plaintiff was first contacted at 9.00.a.m. and not at 8.34 am as was alleged. The chest x-ray was taken at 8.45 am. It takes about 15 minutes for x-ray films to be developed and read by the radiologist and Plaintiff was informed about the negative chest x-ray radiology report by the E.R. Physician on telephone.

86. **Plaintiff Had No Legal Duty To Attend; Was Not on Vascular Surgery E.R. Back up Call Panel:** The charge is false because Plaintiff was not on call on E.R. Back up Call Panel for Vascular Surgery and as per California [5]decisional law, providing

'if physician is not on call, he has no legal duty to respond.'

In fact, Defendants negligently maintained no Vascular Surgery E.R. Back up Call Panel at all. The E.R. Physician Dr. Creagan testified that *Vascular Surgeons* are contacted on emergency vascular surgery cases on ad-hoc basis, whoever is available is called and Plaintiff had no vascular surgery privileges.

Plaintiff was called to Perform Surgery & Not Examine and Evaluate as Charged:

87. The Charge (a) was false because it was unsupported by evidence. Plaintiff was not called to examine and evaluate patient as charged. The E.R. Physician Dr. Creagan who was the only physician with whom Plaintiff ever communicated, testified that he as E.R. Physician was qualified to perform examination and evaluation on this patient which he did perform. That it was his duty as E.R. Physician to examine, evaluate and stabilize the patient even with serious vascular

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[5] . *McKenna v Cedar of Lebanon Hospital* (1979) 15 Cal. Rptr. 631, 93 Cal App. 3d 282

injury. That he had 30 year experience as E.R. Physician. That Plaintiff informed him to transfuse blood. That patient did not need another examination and evaluation but needed surgery. That patient definitely had vascular injury. That he called Plaintiff to take patient to surgery. That Plaintiff requested him to call a Vascular Surgeon and a Head and Neck surgeon. That had he known that Plaintiff did not have vascular surgery privileges, he would have called vascular surgeon and he did call vascular surgeon once he became aware of that. That the second phone call was made at 9.30 am when Defendant Koudsi assumed care.

Testimony of Defendant's Chief of Surgery Dr. Koudsi

88. Defendant's Chief of Surgery and member of the Executive Committee Dr. Koudsi testified that Plaintiff was called to do surgery and not examine and evaluate the patient as charged.

89. Dr. Koudsi was questioned why Plaintiff was needed to examine and evaluate the patient (as alleged) if examination and evaluation had been done by E.R. Physician, he testified "**I think Dr. Mir is mixed up about emergency room physician and specialist on call. ER Physician can evaluate patient but he can't do surgery.**"(T.3, 3/13/01, p .491, L. 1-8)

Testimony of Dr. Michael Wood:

90. Defendant's "MEC" member Dr. Wood testified, that **ER Physician is supposed to evaluate and examine patient** and ER physician did examine and evaluate patient. (T.7, 9/12/01,p.943, L 3-9)

91. Dr. Wood testified that the **charge of not coming and examining and evaluating the patient would be potentially false**, if the emergency room physician wanted Dr. Mir to take the patient to surgery.(T. 7, 9/12/0, p.981, L 24 – p.982,7),(T 2.1/15/01,*Creagan* p.201, L 17-2)

Testimony of Dr. Alpiner:

92. Dr. Alpiner admitted that there was no charge that Dr. Mir did not perform surgery. That Dr. Creagan had made the correct diagnosis of the stab wound of the

neck. That Dr. Creagan had admitted that it was his responsibility to examine and evaluate the patient. (T.8, 11/14/01, p.1082)

93. The charge was unreasonable, because Dr. Alpiner could not explain upon repeated questioning **what would be gained by Dr. Mir examining and evaluating patient again**. (T.8, 11/14/01 p.1082, L. 22 –1085)

94. The charge was false because Plaintiff was never asked to examine and evaluate the patient. Dr. Alpiner did not even know, whether a demand had ever been made upon Plaintiff to examine and evaluate the patient. (T. 9, 11/28/01, p 1125, L 17)

95. The testimony of Dr. Creagan was read and Dr. Alpiner was questioned if the nature of dispute between Dr. Mir and Dr. Creagan was made clear to him. **Dr.Alpiner admitted that the nature of the dispute between Dr. Mir and Dr. Creagan was clear to him that Dr. Creagan called Dr. Mir to take patient to surgery.**(T.8.11/14/01 p.1094, L 14- 18, 1096, L7- 11).

96. Dr. Alpiner even did not know if the patient was ready for surgery at 0830, or 0930.Hour. (T.9 11/28/01,.p.1130, L 4-25)

97. Dr. Alpiner was questioned whether it was true that by not transfusing blood to the patient would jeopardize the patient, and not Dr. Mir coming in at 10.30-10.15.am. Dr. Alpiner testified, "One may consider that, yes "(T.9, 11/28/01, p.1131, L 20)

98. Dr. Alpiner admitted that he called Plaintiff on October 5, 2000 to institute summary suspension for not doing timely surgery.

99. Dr. Rene Umali, a Loma Linda medical graduate and a surgeon testified on behalf of Plaintiff and testified that when a physician signs in the Medical Staff application, the physician agrees to abide by the medical staff bylaws, that physician shall practice within the privileges awarded and if a surgeon does a procedure for which he has no privileges, that's a cause for disciplinary action. That Plaintiff besides not having vascular surgery privileges, was still working

under proctoring [direct supervision of defendants] and would require a proctor on site to supervise whatever he was going to do in a major case like this.(T.14, 9/30/2002 ,p.1696, L11-p.1698, L1). That the vascular surgeon agreed to come in immediately after the E.R. physician agreed to call the vascular surgeon, so there does not seem to be an issue in regards to whether or not Plaintiff did not agree to go to the E.R. Plaintiff did agree to go to the ER initially, the consultant was changed ,thus relieving Plaintiff of the responsibility.(T.14, 9/30/02, p.1665, L14-p.1666,L 16)

100. Emergency Room physician Dr. Creagan testified that in all his years at SAC Hospital, he was unaware of any E.R. Vascular Surgery Back up on Call Panel. That vascular surgeon is most qualified to attend vascular injury patient.(T. 2, 1/15/01, p. 185). Had he known that Plaintiff did not have vascular surgery privileges, he would have called someone else. (T.2, 1/15/01, p. 202, L 20)

101. Defendant was negligent for not having a Vascular Surgery ER Backup Call Panel and for not notifying the E.R. which physicians had the vascular surgery privileges.

102. Defendant was **setting up Plaintiff**. Defendant knew that Plaintiff had no vascular surgery privileges. If Plaintiff by mistake provided any services to this patient needing vascular surgery or care, then Defendant could charge Plaintiff for violating the scope of his privileges and expel him from staff. That did not happen, so Defendant deceptively tried the other trick, that Plaintiff did not come to E.R. to evaluate the patient.

103. Defendant also tried to make Plaintiff a scapegoat for its gross negligence and gross violation of law .The Defendant violated Title 22,70415 (a)(3) when it did not develop a roster of specialty physicians available for consultations at all times and its responsibilities under Medicare Participation in Emergency Cases (EMTALA), Tag A 404 to provide with an on call list of physicians specialties (Under interpretive guidelines, 489.20(r)(2),) According to Dr. Rodereick Hinshaw

of Department of Health Services if a hospital offers a service to public, the service should be available through the on call coverage of the emergency department. Defendant "SACH" accepted patients with vascular emergencies, yet did not comply with the law.

104. The Charge (c) of the Notice of Charges provided,

"The patient was brought to the Emergency Department by paramedics on September 10, at 1400 hours. On September 11 ,2000 at 2200 hours. Dr. Mir was contacted by pager and stated that he would see the Patient "**tomorrow** ". **He failed to meet the standard of care in that he never came to examine the patient. (Emphasis added)**

105. The charge was utterly false and unsupported by any evidence whatsoever because primary care physician Jin Wang's wrote a physician order in the medical records requesting a private Surgical Consultation with another surgeon Dr. Autar Wali.

106. Dr. Jin Wang never wrote an order requesting consultation with Plaintiff in the medical records for or verbally requested Plaintiff to see the patient for a consultation as is required in Defendant's Medical Staff Bylaws. Dr. Jin Wang never knew or met Plaintiff.

Call from Nurse:

107. The nurse David Deoung, R.N. after failing to get a call back from Dr. Autar Wali called Plaintiff to find out if Plaintiff was covering Dr. Autar Wali. Dr. Autar Wali was on call at that time for himself at Defendant "SACH" emergency room for 24 hour period when the nurse called Plaintiff.

108. No evidence was ever presented at the hearing that Plaintiff either covered Dr. Wali or any physician including Dr. Autar Wali ever requested a surgical consultation by the Plaintiff on this case. The nurse had no legal authority to

request a consultation on his own. (T.7, 9/12/01, *Wood,* p 906, L5-p.907, L 16; T 7 p.911-L17-21)

No Primary Care Physician's Request for a Surgical Consultation with Plaintiff and No Physician-Patient Relationship Established:

109. No physician –patient relationship was ever established between Plaintiff and the patient under HIPAA and Defendant "SACH" Rules and Regulations and the admissions by Defendant's witnesses.

110. The HIPAA (Medicare) requires a referring physician to request a formal consultation in order to authorize a consultant to see the patient. Furthermore, Plaintiff would violate strict privacy laws protecting patient's privacy rights by going through the medical records of the patient, without primary care physician's authorization.

111. Defendant "SACH" Rules and Regulations provide that the physician must contact the consultant *personally*. (T 1. p.109, L 110-p.110, L 11-20)

112. There was no evidence that Dr. Jin Wang ever personally contacted Plaintiff or wrote an order in the medical records requesting surgical consultation with Plaintiff as stated above.

Primary Care Physician Requested New Surgical Consultation With Defendant Dr. Koudsi & Not Plaintiff:

113. Even on the following day, on September 12, 2000, when Dr. Jin Wang found out that patient had not been seen by Dr. Autar Wali, the night before on September 11,2000, he requested a brand new consultation with another physician Dr. Koudsi and not with the Plaintiff whom he did not know or had met as stated above. That further proved that Dr. Jin Wang never intended or ever was interested or expected any surgical consultation with Plaintiff the night before.

114. Dr. Koudsi testified that there was nothing in the "MEC"'s Investigative Report that Dr. Mir was contacted next day on September 12, 2000. (T 3, 3/13/01, p 451, L 6-14). Dr. Koudsi testified that if the consultation had been made with

Dr. Wali, it look like it was his (Dr. Wali) patient. (T.3, 3/13/01, p 429, L 18-430, L13)

115. Dr. Michael Wood testified that he did not see anywhere a consultation made out to Dr. Mir. That the consultation was made to Dr. Wali .That Dr. Wali was on call for himself on September 11, 2000, in the emergency room at San Antonio Community Hospital.

116. Dr. Wood admitted that it would be inappropriate for Dr. Mir to see a patient on consultation which had been made to Dr. Wali and he was on call unless that doctor was covering for Dr. Wali. (T. 7, 9/12/01. p.907, L12 through p.908, L15)

117. Dr. Wood testified that he would not see a patient on consultation without referring physician first calling him for consultation and he would not see a patient if request was made by a nurse. (T. 7. 9/12/01.p. 902, L 4-18)

118. Dr. Alpiner admitted that there was no evidence that Dr. Mir covered Dr Wali. (T.10, 1/23/02, p 1318, L 14-16).Dr. Wali had back –up coverage by Dr. Koudsi and Dr. Bressman. (T 3, 3/13/01, p. 427, Exhibit # 23)

The Crux of the Charge that Plaintiff Never Came to See Patient Next Day was Irrational and Factually False:

119.The Physician Back up Coverage routinely ends at 7.00 a. m. the physician is then responsible for continuing care on his / her patients or consultations. The charge that Plaintiff never came to see patient the following day ("tomorrow') is irrational because Plaintiff was not never consulted by the primary care physician in the first place and was not required to see patient at all and assuming even if he was covering for Dr. Autar Wali, he would still not be responsible for providing care beyond 7.00 am on the following day when Dr. Autar Wali would routinely assume care.

120. The crux of the Charge (c) that the Plaintiff never came to see patient the following day was also factually false because Plaintiff out of curiosity did stop by

the following day to find out what had happened. Plaintiff found out that Dr. Jin Wang had consulted Dr. Koudsi who was planning surgery on the patient.

121. A Letter from Elsa Ornelas, RN stated that she saw Dr. Mir at the unit, asking about the patient on September 12, 2000, but the patient had already been taken to surgery by Dr. Koudsi.

122. Dr. Koudsi testified that Dr Mir came to see the patient next day.(September 12,2000) That he had not yet started the surgery, when Dr. Mir offered to assist him at surgery, but he had already called Dr. Beseth to assist him. (T. 3, 3/13/0, p. 460, L 19, 20; p.451, 23-25-452, L 1-4)

Defendant Committed Extrinsic Fraud When they Amended Charge(c) After the Close of the Hearing, in Violation of Medical Staff Bylaws:

123. Defendant abused discretion when in its Decision amended the charge (c) without authority that Plaintiff should have seen the patient that night in violation of Section 7.3.4 of Medical Staff Bylaws, providing that charges cannot be amended after the close of the hearing. In doing so, Defendant denied hearing.

The Amended Charge Unsupported By Evidence:

124. Furthermore, this amended Charge (c) was irrational and contrary to the evidence.

125. Plaintiff could not have seen without request for consultation by the primary care physician Jin Wang as stated above. However, the Nurse Deoung R.N. testified that he did not call the primary care doctor that night that Dr. Mir was going to come" tomorrow " and not see patient that night because patient had been there for a couple of days and he saw no change.That if Dr. Mir saw the patient by 10. 00 am or so when he made rounds the next day, it would still be Okay because patient was pretty much stable, not complaining of any pain and he knew the patient very well. He testified that there were no pressing circumstances for Dr. to be there right there.(T.1, 12/7/00, p.111, line 13- 122, line 21)

126. The Defendant prejudicially abused discretion in that it failed to proceed according to law and failed to provide Plaintiff a fair trial in that it required Plaintiff to provide treatment, where he was not consulted by any physician. Plaintiff without a request for consult, had no work order or no legal authority to provide care or could have established any physician-patient relationship, or could breach the privacy and confidentiality of patient's medical records. The requirement of a request for consult before providing any care is mandatory under Medicare Regulations for that Medicare patient.

127. The findings by Defendant's agents JRC members Dr. Samir Anabi, Dr. Jayaprakash Shah and Dr. Chuang –Ti Hung acting as members of the review committee on Charge (c) of the Notice of Charges were in bad faith, unreasonable, capricious, arbitrary and unsupported by any evidence.

Defendant Abused Discretion In Upholding Summary Suspension:

128. Defendant abused discretion, denied fair trial by upholding 'summary suspension' when no 'summary suspension' had been instituted in lieu of Defendant coercing the Plaintiff to relinquish his privileges. Regardless, the Defendants had no grounds to threaten summary suspension, because Plaintiff could not be 'imminent danger' to a patient who had been home for six days in violation of Medical Staff Bylaws Section 6.3.1, and Business & Profession Code Section 809.5, requiring 'imminent danger 'to life and health of an individual as a prerequisite to any suspension. Defendants upheld summary suspension to justify their own wrongful actions.

129. Furthermore, Plaintiff could not be any danger 'imminent 'or otherwise to any patient because he was working under the direct supervision of the Defendant as a provisional staff member. Dr. Koudsi testified that new members (provisional) cannot do surgery without a proctor. (T.3, 3/13/01, p 471,L 7-10).

130. Dr. Alpiner knew that he was not qualified to determine if patient needed immediate surgery. He never consulted a surgeon and he had no mandate from

"MEC". The[6] procedure employed by the Defendant in suspending Plaintiff's privileges was outrageously in bad faith procedurally as well as factually.

Defendant "SACH" Paid Money to other JRC. Members In Violation of Medical Staff Bylaws:

131. The Defendant "SACH" in bad faith corrupted and paid money to its agents JRC members Dr. Samir Anabi, Dr. Jayprakash N. Shah and Dr. Chuang-Ti-Hung in violation of Medical Staff Bylaws which require service on the JRC on voluntary basis and refused to disclose how much money had been paid to the members of JRC.

Defendant Caused Inordinate Delay in Conducting Hearings In Order To Cause Harassment & Delay & to ever Exclude Plaintiff from Practice:

132. Defendant in bad faith procrastinated hearings for 5 years for trying frivolous, false, malicious charges. The Defendant issued its Decision on October 26, 2004, one year and six months after the final adjournment of the hearing on March 4, 2003 when closing arguments were held. This was in violation of Section 7.3.21, of Medical Staff Bylaws, providing that JRC render its Decision within 15 days of its final adjournment.

133. Defendant had already secured exclusion of Plaintiff from practice of medicine by **extorting** relinquishment of all privileges under threat of 'summary suspension'. The delay over 5 year period in completing hearing process on frivolous charges was just another attempt to ever exclude Plaintiff from entering practice and effectively delaying judicial appellate review by California courts under CCP § 1094.5.

Defendant Denied Fair Trial By Appointing JRC Member on "MEC":

134. Defendant prejudicially abused discretion, denied fair trial and violated Plaintiff's fair procedure rights to an impartial tribunal by virtue of a practical

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[6] *Appelbaum v Board of Directors of Barton Memorial Hospital* 104 Cal. App. 3d 648; 163 Cal. Rptr 831

probability of unfairness when it appointed J.R.C. member Dr. Jayaprakash Shah to the Medical Executive Committee to represent its interests on the JRC's deliberation process to prevent fair trial prohibited by California [7]decisional law. Dr. Jayprakash Shah then reviewed its own Decision as a member of "MEC" and infected partiality of his Decision on other "MEC" members.

Defendant Denied Fair Trial By Repeatedly Producing Perjured Testimony.

135. As a further demonstration of bad faith, and denial of fair trial, the Defendant repeatedly recklessly, produced perjured testimony by its witnesses without any fear, guilt or compunction.

136. Dr. Koudsi was questioned if the E.R. Physician had told him that Dr. Mir had asked the E.R. Physician to call a vascular surgeon. Dr. Koudsi twice falsely testified, "He did not" (T.3, 3/13/01, p 479, 22-p. 480, L.2)

Dr. *Koudsi was impeached by his own Incident Report* and the "MEC"s Q/A Investigative Report which provided that the emergency room physician was asked by Dr. Mir to get a vascular surgeon. (T.3. 3/13/01, p 479, L. 22 – 483, L. 2) Incident Report "MEC", Investigative report)

137. Dr. Koudsi testified that he had given vascular surgery privileges to Plaintiff in order to stick the Charge in case of the self-inflicted stab wound of the neck and was impeached by his letter dated September 27, 2000, the very day of the incident to Plaintiff providing that Plaintiff had no vascular surgery privileges. Apparently Dr. Koudsi had written the letter after he performed surgery on the patient (T. 3, 3/13/01, p 467, L 11-12 -469, L 11-12)

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[7] . *Applebaum v Board of Directors of Barton Memorial Hospital* (1980, 3rd.Dist)104 Cal. App.3d 648; 163 Cal.Rptr.831

138. According to plan, Dr. Creagan testified that Plaintiff never told him to call a vascular surgeon. (T. 2, 1/15/01, page 192, L 24- 193, L) Dr. Creagan admitted that he had talked to Dr. Koudsi about the incident and discussed the matter.(T. 2 1/15/01, p 193, 20-22).

139. The Incident Report prepared by Dr. Koudsi was based upon his conversations with Dr. Creagan. The incident report showed that Dr. Mir had asked Dr.Creagan to call a vascular surgeon. (T. 2, 1/15/01, p 195, 6-7, *Supra* Exhibit 40, Incident Report)

Defendant Denied Fair Trial by Appointing an In House Hearing Officer;

140. Plaintiff moved to disqualify the Hearing Officer on the grounds that Hearing Officer had prior professional associations with the hospital attorney who got him this job. Defendant rewarded Hearing Officer with additional economic incentive by appointing him as a Hearing Officer on another concurrent lengthy peer review matter, at the hospital.

141. This repeat financial interest is prohibited by [8]California Decisional Law, where the hearing officer controls the factual scenario of the case by ruling on the admissibility of evidence as is evident from facts below.

The Defendants / Hearing Officer Prejudicially Abused Discretion & Denied Fair Trial By Repeatedly Excluding Relevant Evidence:

142. The Section 7.3.16 of Medical Staff Bylaws provides that any relevant evidence including hearsay shall be admitted which responsible persons are accustomed to rely on the conduct of serious affair. The Defendant / Hearing

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[8] *Haas v City of San Bernardino* 27 Cal. 4th 1017,119 Cal. Rptr, 2d 341(May 2002)

Officer prejudicially abused discretion, denied fair trial by excluding relevant evidence, prejudicing Plaintiff.

143. The Defendant / Hearing Officer excluded ER Back up On Call schedules showing Plaintiff was on not on call for Vascular Surgery on September 27, 2000, when the neck wound patient arrived.

144. The Defendant / Hearing Officer excluded Defendant "SACH" 's OR Schedule showing that Plaintiff was in the Hospital doing surgery till 9.30 pm, rebutting Nurse Deoung testimony that Plaintiff did not respond to calls during that time.

145. The Defendants / Hearing Officer excluded letter of termination of IPA Surgical Contract, dated October 6, 2000, based on Plaintiff's relinquishment /suspension of privileges, on October 5, 2000 thus providing a nexus and a motive for Defendant to threaten summary suspension to interfere with contract and extort relinquishment of privileges rather than patient safety.

146. The Defendant / Hearing Officer excluded 4 written expert opinions with verifications, sent directly to the Medical Staff Office, including opinion by Plaintiff's attorney based on *McKenna*.

147. The Defendant /Hearing Officer denied Plaintiff's motion to exclude Inland Global on Call Schedule on the ground of relevancy to Charge(c) that it was not available on September 11, 2000 and was irrelevant to patients who had been directly consulted by primary care physician as per letter from Dr. Atil. Dr. Jin Wang had directly consulted with Dr. Autar Wali on this patient and Inland Global Schedule had nothing to do with that.

148. Dr. Michael N. Wood testified that he had done over 100 general surgery cases in the prior year in order to qualify as an expert. Plaintiff had never seen his name on the O.R. schedule doing any general surgery. Plaintiff requested Deborah Nicols, Director Medical Staff Office to provide list of general surgery cases done

by Dr. Wood in the past 5 years in order to impeach his testimony. The Defendant / Hearing Officer ruled against it on grounds of relevancy, thus preventing impeachment.

149. The Defendants / Hearing Officer denied Plaintiff's motion to exclude testimony of Nurse David Doung on the ground of relevancy, because Nurse Doung was not present on the day when Plaintiff was supposed to see patient, the gravamen of the Charge (c).

150. The Defendant / Hearing Officer excluded Plaintiff's Exhibit, a letter from Dr. Bressman showing that before Defendant took action, Dr. Koudsi forced Dr. Bressman to boycott Plaintiff and to drop back up coverage for Plaintiff, after he had agreed to cover, showing bad faith, hostility and motive to interfere with Plaintiff's IPA Inland Global Surgical Subcontract and basis for discipline.

151. Dr. Koudsi prepared the letter on Defendant SAC Hospital stationery for Dr. Bressman to sign. The Hearing Officer then denied Plaintiff's request to call Dr. Koudsi and Dr. Bressman as witnesses to testify on the facts.

152. The Defendant / Hearing Officer excluded a letter from Medical Board of California dated December 4, 2002 dismissing and closing its file on all three Charges which were subject of Defendant's Notice of Charges and were being tried by the JRC based upon Medical Board's independent investigation.

153. The Defendant / Hearing Officer excluded ***Medical Records*** of three patients who were subject of the Charges and the hearing, where these records had been admitted into evidence by stipulation of the parties.

154. The Defendant paid money to JRC members, in violation of Bylaws which provide that such services on the JRC are on voluntary basis. The Defendant /Hearing Officer denied request that Defendant provide full accounting of money paid to each JRC member.

155. The Defendant / Hearing Officer denied request to disqualify Dr. Jayprakash N. Shah who was also member of "MEC" and represented "MEC"'s interests on JRC.

156. Defendant coerced Plaintiff to extort relinquishment of privileges in order to interfere with the Plaintiff's IPA, surgical subcontract, caused boycott, filed Business & Profession Section 805 Report and reported to National Data Bank, in order to injure Plaintiff's reputation and standing in the community and his staff membership and privileges and livelihood at other hospitals. In 2000, Defendant falsely reported in National Data Bank Report that action taken against Plaintiff was final even though the final decision was not taken till August 2, 2005.

157. Defendant harassed and delayed hearings for 5 years on frivolous charges, deprived him of his livelihood, denied fair trial and made irrational findings unsupported by evidence, all in violation of Business & Profession Code δ 16721 (d), and Civil Code Section 51, (Unruh Civil Rights Act) predicated on Plaintiff's Muslim religion, Ethnicity, national origin from Pakistan and East Indian race. Plaintiff was called a 'Taliban' fighter for defending against false, malicious charges and a terrorist.

158. Plaintiff was threatened with physical violence, death threats and threats to his medical licensure, if he continued with his contract. Plaintiff's associate Dr. Autar Wali was also threatened with physical violence. As a result Plaintiff's contract was taken over by two White surgeons who had held this IPA contract previously but at a greatly increased price, in violation of Business & Profession Code Section 16720.

159. Defendant used bad faith peer review process discriminatively by not taking action against other physicians for providing far serious substandard medical care in the same three patients, on which Plaintiff was charged and was terminated on two of them e.g. Dr. Koudsi improperly performed surgery on self-inflicted stab

wound of the neck case without transfusing blood and without doing necessary investigations. The patient almost died as a result from a minor, superficial injury.

160. Plaintiff had no plain, speedy, or adequate remedy in the ordinary course of law.

161. As a result of the fact that Plaintiff had been deprived of membership on Defendant "SACH" medical staff as well as other hospitals, Plaintiff had been denied the right to fully practice the profession of medicine and suffered a detriment to a substantial economic interest.

162. Defendant's agent, the Physicians on the "MEC" and "JRC" committee like Plaintiff were also on staff of its sister Hospital, Pomona Valley Hospital (hereinafter "PVH").

163. Defendant and its agents were concerned that Plaintiff may perform his contract at Pomona Valley Hospital and decided to do the same job on Plaintiff at that hospital. By virtue of its Business & Profession Section 805 report, the same physicians at "PVH" reopened a twice peer reviewed closed and cleared medical chart on one patient (GF) and suspended vascular surgery privileges exactly as it happened at Defendant "SACH".

164. At 'PVH' the physicians did not want to take any chances by bringing facially false, malicious charges which could not stand the scrutiny of review by the court instead took a safer high road and declined to provide any 'acts and omissions' at all.

Defendant Corrupts Judge and Justices of California Courts:

165. Defendant collects large sum of cash received from patients and has the cache to bribe public officials and wields a great deal of corrupt influence on the California state court system, its judges and justices.

166. Defendant requested 'Injunctive Relief' against "PVH" because there was no 'imminent danger 'to anyone and Plaintiff could not be threat to anyone as he was working under the direct supervision or proctorship of the "PVH" surgeons as a

provisional staff member and patient had been discharged months earlier. The exact same copycat scenario as it took place at Defendant "SACH".

167. "PVH" opposed because Plaintiff had not exhausted administrative remedies. The superior court also denied relief for the same reason.

168. In retaliation "PVH" terminated all privileges and staff membership and again refused to provide 'acts or omissions' as was required under medical staff bylaws and Business and Profession Code.

169. Plaintiff requested 'declaratory relief' in superior court for "PVH" to provide 'acts or omissions' as provided under medical staff bylaws and Business & Profession Code and under issue specific California case law *Rosenfeld v Superior Court* (1991) 231 Cal. App. 3rd 1434)in which the Fountain Valley Hospital had refused to provide Dr. Rosenfeld with 'acts or omissions' and Court of Appeal found that due process required that physician is provided 'acts or omissions' in order to defend himself, that physician is not left to guess charges.

170. "PVH" opposed on the ground that Plaintiff had not exhausted administrative remedies and made a motion to find Plaintiff vexatious litigant because Plaintiff could not afford to retain an attorney and had represented himself.

171. Los Angeles County Central Superior Court Hon. Judge Sohagian held lengthy oral arguments (LASC Case No. **BC249191**) on the issue if Plaintiff was a vexatious litigant and could not find Plaintiff a vexatious litigant based on the evidence. The Court even investigated through court clerk during oral arguments if Plaintiff had filed certain litigation against Phoenix Healthcare Consultants as alleged by "PVH" and found no evidence and took the "PVH" motion off the court's calendar making it un-appealable. The court denied declaratory relief on the grounds that Plaintiff had not exhausted administrative remedies.

172. Plaintiff had filed a lawsuit for payment of fees for covering E.R. pursuant to written agreement against Charter Suburban Hospital, Paramount, CA ("CSH").

(*Mir v Charter Suburban Hospital* (Compton Superior Court Case No. **97 CO2359**)

173. The 'CSH" attorneys Rushfeld, Shelly & Drake got wind of "PVH" motion to find Plaintiff a vexatious litigant and filed a motion of its own to find Plaintiff vexatious litigant. Hon. Judge Richard G Berry denied the motion.

174. The "CSH" made the same motion to find Plaintiff a vexatious litigant before another Judge late Hon. Jack Morgan who also denied the motion.

175. Defendants went judge shopping and within weeks made a third motion before yet another judge to find Plaintiff a vexatious litigant.

176. The Code of Civil Procedure Section 391(b) (1) provides

> "In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing"

177. Plaintiff was represented by prestigious Los Angeles Law firm of Haight, Brown & Bronesteel who in Opposition to motion to find Plaintiff vexatious litigant independently investigated all of the cases which Plaintiff had filed and presented evidence of 500 pages from the court records of all the cases Plaintiff had filed in the preceding seven years. The evidence showed that Plaintiff had filed one litigation in the preceding seven years which had been finally adversely determined to him, a far cry from five cases in seven years. The judge was unimpressed and granted motion to find Plaintiff vexatious litigant.

178. Plaintiff retained an appellate attorney to appeal the decision against him.

179. Plaintiff in the matter of "PVH" retained another attorney Neville C. King and appealed. "PVH" without standing to appeal filed cross appeal to find Plaintiff vexatious litigant.

180. Defendant and "PVH" corruptly influenced the Hon. Justice Roger Boren of the Court of Appeal 2nd. The Hon. Justice Boren denied relief to order "PVH" to provide 'acts or omissions' as provided in 'PVH' medical staff bylaws and business & Profession Code because Plaintiff had not exhausted administrative remedies where Plaintiff's contention was not that he did not want to exhaust administrative remedies but that he could not properly and fully exhaust administrative remedies unless he was provided with 'acts or omissions' as he was entitled to under Medical Staff Bylaws and California Business & Profession Code.

181 That it would cause irreparable harm if Plaintiff had to go through lengthy, procrastinated hearings by the hospital lasting few years as it happened to Plaintiff at the Defendant "SACH" and then if upon writ petition hospital was ordered to provide 'acts or omissions' which the hospital could further delay and harass by appeals for few more years, when the court could just order the hospital there and then to provide 'acts or omissions' which would end the matter right there and serve the interest of judicial economy as well as serve justice and prevent irreparable harm.

182. The Hon. Justice Boren at the Court of Appeals 2nd could not take up "PVH" appeal to find Plaintiff vexatious as the matter had been taken off court calendar and "PVH "was not the aggrieved party.

183. The Hon. Justice Boren found 'PVH' was the aggrieved party because motion had been taken off calendar, even though superior court had denied declaratory relief against Pomona Valley Hospital. He without tentative, Notice or order to show cause took upon its own motion to find Plaintiff vexatious based on same cases on which three superior court judges had denied the motion to find vexatious litigant under California Code of Civil Procedure § 391 (b) (1)

184. The Hon. Justice Boren did not have five cases in seven years determined finally and adversely to Plaintiff as pro-per in the preceding seven years.

185. The Hon. Justice Boren relied on one personal injury case (1) *(Mir v Little India Grill)* which was more than seven years old as was shown by the dates listed on the opinion itself. Two other cases (2)(*Mir v FHP, Inc*. and (3) *Mir v Green)* had been settled three years earlier. In one case (4) (*Phoenix Healthcare Consulting v Mir*)Plaintiff was a defendant as is unmistakably shown by the caption of the case, cited by the court and superior court Judge Hon. Sohagian had investigated this case and had found that Plaintiff had not filed any action against Phoenix Healthcare Consultants as had been alleged by "PVH".

186. In another case (5) (*Mir v U.S. Navy*),was filed by Plaintiff to protect statutes on the last day of expiration of statutes in Los Angeles after he found out that his attorney Cambridge in Washington, D.C. had not filed the action. However, attorney Cambridge in Washington D.C. was also able to file in Washington D.C. on the same day by mail drop method at 10.00 p.m.

187. Once confirmed, Plaintiff tried to find local attorney in Los Angeles so he could personally contact the attorney specializing in military affairs and could not find one. Plaintiff discharged attorney Cambridge in Washington, D.C. and retained the Law Offices of Feldesman, Tucker, Leifler, Fidell LLP, in Wasngton D.C. It took some time to do all that before Plaintiff dismissed the Complaint filed in Los Angeles, CA. The Summons and Complaint filed in Los Angeles was never served thus under California law no action had been commenced.

188. The Hon. Justice Boren held against Plaintiff the dismissal of his Complaint filed in Los Angeles and counted as one of five cases in the preceding seven years. Justice Boren cited *Tokerud v Capitolbank Sacramento* (1995)38 Cal. App. 4th 775,778-780).

189. There were no similarities between *Tokerud* and Plaintiff's case. *Tokerud* had voluntarily dismissed a case and he offered the excuse that he dismissed it only to file the same case in another jurisdiction but the Court of Appeal found that he had not filed any case in two months, since the dismissal. In Plaintiff's case, both cases

were filed on the same day. Plaintiff did not know that his attorney was able to file lawsuit in Washington D.C., after he told Plaintiff at about 1.00 p.m. that he had not on the last day of expiration of statutes. Plaintiff hurriedly prepared Complaint and filed it in Los Angeles to protect statutes. Furthermore, Plaintiff had prevailed in the case filed in Washington D.C. when court granted partial summary judgment and remanded.

190. Nonetheless, Court of appeal had nothing close to five cases in seven years determined adversely finally against Plaintiff to find Plaintiff vexatious as stated above.

191. The Hon. Justice Boren also improperly used against Plaintiff the Section 391(b) (2); (3); (4) by citing cases in which Plaintiff was either represented by attorneys or Plaintiff had prevailed and without any mention of "PVH" as defendant under these subsections A subsequent Court of Appeal Opinion (*Lucket v Panos,* 161 Cal. App. 4th 77, 73 Cal. Rptr. 3d. 745, 2008) provided that Section 391(b) (2); (3); (4) only apply to the defendant in the instant litigation which would be "PVH" in this case and not to other cases which the Court of Appeal had relied on.

192. Plaintiff was represented by attorney Neville C. King who was Black, elderly, respectable and distinguished looking and had been in practice in Compton, CA for 25 years. Plaintiff had not known him before and he found him only because of proximity of his office in Compton, CA to City of Lynwood CA where Plaintiff had his medical offices.

193. Attorney King employed paralegals including an out of state attorney Martin who had not passed his California bar examination. Attorney King conducted all legal research and prepared briefs, legal documents, appendix etc. in support of appeal.

194. During course of legal arguments before Court of Appeal, Plaintiff was sitting on the back benches, in the dark. Hon. Justice Boren was unreasonably yelling,

screaming and insulting attorney King. Everyone in the audience felt uncomfortable particularly Plaintiff. He moved from the back seat to the seat next to his attorney in order to support him in a very hostile environment.

195. Mr. King had not made any unreasonable argument. He had asked the Court to order PVH to provide 'acts or omissions' as provided in medical staff bylaws and summary suspension could not be justified because Plaintiff could not be 'imminent' or otherwise threat to any patient since he was working under the direct supervision of the hospital as a provisional staff member and the medical chart (GF) had been cleared by two committees of the hospital and patient had been discharged six months earlier and Plaintiff had no patient in the hospital whom he could be of any imminent threat when the action was taken against him.

196. 'PVH' attorney without standing to appeal asked Justice Boren to order pre-filing order to Plaintiff when represented by an attorney and Justice Boren immediately made note of it.

197. After the oral arguments, attorney King was so shattered that he had tears in his eyes. He remarked. "It is called JUST-US".

198. The Hon. Justice Boren in his Opinion stated that Plaintiff was a 'vagabond physician' taking his practice from one community or hospital to another. It is not clear where Hon. Justice Boren got this information from? Plaintiff had practiced in Lynwood CA. for 25 years and had been on staff of about 12 hospitals in Los Angeles County before he applied to Pomona Valley Hospital. This sort of comment can only come from someone who was personally affected by loss of IPA contract.

(199) The Hon. Justice Boren in his opinion did mention about the pending action by Defendant 'SACH' and its physicians had been irked by Plaintiff acquiring $ 600,000 a year contract and they used various tactics to force him to lose contract.

That Plaintiff had *temporarily* relinquished his privileges pending investigation. That a judicial review hearing was under way at San Antonio Community Hospital for care of three patients.

200. The Hon. Justice Boren not only found Plaintiff vexatious but also ordered that pre-filing order applied when represented by an attorney. He based this order because Plaintiff briefly talked to his attorney while sitting next to him like any other litigant. For that reason and for nothing else, he called attorney King a puppet of Plaintiff. The Hon. Justice Boren irrelevantly cited *In re Shieh* (1993) 17 Cal. App. 4th 1154. *Shieh* was an **attorney** who had been declared vexatious many times in separate cases the he started filing lawsuits under the name of other attorneys in the law firm. There was nothing of the sort here. Plaintiff is not an attorney and had paid his hard earned money to attorney King to get suspension removed ,so he could go back to work and have 'PVH' provide 'acts or omissions' so that he could properly prepare, retain experts and defend himself. He retained attorney to have peace of mind so he did not have to worry about deadlines and prepare briefs.

201. The Hon. Justice Boren on one hand was not enforcing Pomona Valley Hospital's medical staff bylaws denied relief to provide 'acts or omissions' and on the other hand he blocked Plaintiff's right of access to the court as Defendant SACH later utilized the Order to prevent Plaintiff from filing writ petition.

Even though Plaintiff had been found vexatious by another lower court, as was noted by Hon. Justice Boren in his opinion. He spent extraordinary amount of judicial resources in finding Plaintiff vexatious again. The idea was to pre-empt the pending appeal on the lower court's decision.

202. Pomona Valley Hospital expelled Plaintiff from the staff about six weeks before Hon. Justice Boren issued its opinion on February 24, 2003, indicating that physicians and 'PVH' already knew what the outcome of the appeal was going to

be and waiting to terminate Plaintiff from the hospital staff for the Hon. Justice Boren's decision to come out would have been just an unnecessary formality.

203. "PVH" Decision to terminate based on order of the hearing officer for Plaintiff objecting to irrelevant discovery order was[9] unlawful. The hearing officer's authority to impose sanctions under *Bus. & Prof. Code, § 809.2, subd. (d)* was limited to granting or denying continuances." Plaintiff

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[9] 'PVH' made a request for discovery of information from Little Company of Mary Hospital where Plaintiff was briefly on staff 25 years earlier and had admitted only five (5) patients before moving to Lynwood area. Plaintiff opposed as delaying, harassing and irrelevant. The information was solicited by 'PVH' when Plaintiff was first appointed and was available to PVH. The hearing officer terminated hearing before the Judicial Review Committee was impanelled. The California Supreme Court decided the exact same issue. ***Mileikowsky v. West Hills Hospital and Medical Center et al.***,(Cal. Supreme Court) *45* Cal. 4th 1259; 203 P.3d 1113; 91 Cal. Rptr. 3d 516; 2009 Cal. LEXIS 3662 ... A hospital's governing board upheld a hearing officer's order dismissing a doctor's request for a hearing challenging a peer review committee's recommendation that the doctor's application for obstetrical privileges and his renewal of gynecological privileges be denied. The order of dismissal was based on the fact that the doctor had refused to furnish certain documents relating to proceedings involving the doctor at another hospital. The hearing officer lacked authority to prevent a reviewing panel from fulfilling its statutory duty to review the peer review committee's recommendation to deny the doctor's applications. The hearing officer's authority to impose sanctions under *Bus. & Prof. Code, § 809.2, subd. (d)*, was limited to granting or denying continuances."

was terminated before hearing ever getting started and 'PVH' reported to medical board of California.

204. In 2012 CCP. § 391.8 were added to allow vexatious litigants to have the stigma removed by showing material change. Plaintiff applied to Court of Appeal 2nd.that he had filed one law suit as pro-per in the preceding seven years and that case was settled close to amount prayed in the complaint. That writ petition against San Antonio Community Hospital did not count because court never acquired jurisdiction because the writ petition was not allowed to be filed. (***Fink v Shemtov*** (180 Cal. App. 4th 1160, 1172; 103 Cal. Rptr. 3d 509, 517, 2010 Cal. App. LEXIS 1, 22)… We hold the summary denial of a writ petition does not necessarily constitute a litigation that has been "finally determined adversely to the person" within the meaning of *section 391, subdivision (b) (1).)*

205. The Hon. Justice Boren promptly and summarily denied request to remove name from the list of vexatious litigants.

206. On August 5, 2005, members of board of trustees of (1) E. F."Rick" Hamilton (2) Thomas R. McGilloway (3) Jim R. Milhiser (4) Martin Thouvenell notified Plaintiff by U.S. Mail of their false and fraudulent Decision to affirm the Defendant's Decision misrepresenting facts that there was substantial evidence supporting false, malicious charges including imposition of summary suspension.

207. All these members of board of trustees were public officials. Martin Thouvenell was the Police Chief with the City of Upland, CA. Thomas R. McGilloway and Jim R. Milhiser were members of the City Council. E.F."Rick" Hamilton was member of Los Angeles Historical Society associated Los Angeles County Public Library and Las Vegas Historical Society.

208. Plaintiff had already spent $ 300,000 in defending Medical Board of California's action based on false 805 report filed by Pomona Valley Hospital.

Plaintiff was completely depleted of all funds and he had no source of income and was already heavily burdened with debts.

209. Plaintiff discussed with his late attorney Douglas Schwab the situation with Defendant 'SACH'. He informed Plaintiff that only legal action Plaintiff could take at all against Defendant 'SACH' was writ of mandate in State court. That there was no remedy or ground for action for damages in the State or federal court till first Plaintiff prevailed on merit on the writ petition in the California superior court.

210. The late attorney Schwab told Plaintiff it would cost $ 40,000 to file and complete write proceedings at the superior court considering about 'SACH's hearings lasting over 13 sessions and Defendant generating over 2000 pages of administrative record. That he needed time to personally familiarize with the administrative record.

211. Alternatively, he recommended that Plaintiff talk to Defendant 'SACH' to resolve this matter and go on with his life, as Plaintiff had a current, active ,unrestricted medical license in Commonwealth of Pennsylvania. Plaintiff is a trauma surgeon, he could easily generate an income of 1-2 Million dollars a year by taking trauma call at a hospital(s) and it made no sense to wait years for writ proceedings to complete with uncertainty of outcome.

212. From 2007 to 2009 Plaintiff periodically called the Defendant's CEO in order to inexpensively, expeditiously resolve the matter to obviate the need for filing of a writ petition and left messages with call back number with the secretary.

213. The CEO never returned call and yet never closed the door by having his secretary call back that he was not interested, so Plaintiff could proceed with writ petition.

214. On July 31, 2009, Plaintiff not having $ 40,000 for attorney fees filed in proper writ of administrative mandamus with the San Bernardino County Superior Court (Rancho Cucamonga; CIVRS 908494)

215. The superior court stayed action and ordered Plaintiff to obtain a pre-filing order from the presiding judge of the court pursuant to California Code of Civil Procedure Section 391.7(c).

216.. The presiding judge even before receiving any Opposition by the defendant "SACH" promptly denied pre-filing without making a finding that the writ was filed for purposes of harassment or delay and was unmeritorious as the presiding judge was required to find before denying the request for pre-filing order under California Code of Civil Procedure Section 391.7(b) providing, " The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay."

217. Plaintiff requested pre-filing order with Court of Appeal 4th District, Division 2. Defendant "SACH" opposed.

218. On February 11, 2010 Presiding Justice Ramirez found and ruled that it was not clear why the pre-filing order had been denied by the presiding judge and vexatious litigant has right to petition presiding judge… for permission to file any litigation he chooses….(citation)… the presiding judge should rule on application for pre-filing order and granted pre-filing order to file appeal.

219. The Defendant "SACH" repeatedly opposed filing of writ petition at the superior court for judicial review of its one sided quasi-judicial decision pursuant to California Code of Civil Procedure Section 1094.5 and opposed filing of appeal and the appeal itself thus subverting due process and equal protection of the laws as it had done during the Hospital proceeding. Defendants vigorously opposed Petition for Review.

220. The pre-filing order was not required because Plaintiff was defendant in the underlying quasi-judicial proceeding and continued to be a defendant on judicial appellate review of the same decision by the defendant "SACH" and he had not commenced the action. Plaintiff was only in the court for the acts of the

Defendants. All he tried to do by filing the writ petition was to"undo" the effects of Defendant's actions. (*Mahdavi v Superior Court* (2008) 166 Cal. App. 4th 32)

221. The broad power of judicial review is based on the consideration that administrative agencies do not possess full judicial power, in the constitutional sense, such power being vested solely in the courts of record (Cal. Constitution Art. VI, δ 1,)***Bixby v Pierno*** 4 Cal. 3d 141 144) but also stems from recognition of the dangers inherent in a system where administrative agencies investigate their own cases, institute and prosecute them, and then render the ultimate *quasi-judicial* decisions.(***Guyman v Board of Accountancy*** (1976) 55 Cal. App. 3d 1010.

222. In judicial review of administrative decisions the court undertakes a unique, supervisory role in reviewing the quasi-judicial decisions of administrative agencies- agencies, it must be emphasized, lack judicial power that is rooted in the constitution.(***Wendigo Mills v Unemployment Insurance Appeal Bd.*** (1979) 92 Cal. App.3d 586 596.

223. On October 18, 2011, the Court of Appeal based upon reason provided by Defendant that Plaintiff had not filed *Optional* California Judicial Council Form MC-701 denied pre-filing order to file writ petition. Furthermore *Optional* Form MC 701 was not an issue on appeal. The presiding judge superior court had not denied it for that reason.

224. The Court of Appeal like the presiding judge of superior court did not make finding pursuant to California Code of Civil Procedure Section 391.7(b) that presiding judge denied pre-filing order because writ petition was unmeritorious and was filed for harassment and delay.

225. On January 25, 2012, the California Supreme Court denied Petition for Review (S 197851)

FIRST CLAIM

RACKETEER INFLUENCED and CORRUPT ORGANIZATION ACT

[18 U.S.C. § 1961 (1) (A) (B); § 1962 (c);(d); §1964 (c)]

Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-225 of the Second Amended Complaint as if fully set forth herein and incorporates by reference and alleges:

The Enterprise:

226. At All relevant times and SACH Corporation is an "**Enterprise**" within the meaning of 18 U.S.C.A § 1961 (4). The "SACH" is a member of the Enterprise.

227. At all relevant times the SACH Corporation, 'SACH", and the Conspirators were "persons" within the meaning of RICO, 18 U.S.C.§§ 1961 (3) and 1962(c).

228. At all relevant times, the 'Enterprise' was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO 18 U.S.C. § 1962 (c). The affecting interstate commerce is affected as Defendant controls the practice of physicians who are members of the staff of the hospital and who wish to relocate to out of state facilities. Defendant purchases equipment and supplies from out of state vendors, recruits workers particularly nurses from out of state and or Country and it provides care to out of state patients visiting City of Upland well within the language of Section 1962(a) and receives insurance payments from out of state insurers and the federal government.

229**. The Enterprise** is comprised of San Antonio Community Hospital Corporation, the San Antonio Community Hospital, its board of trustees, officers, agents. The Enterprise employs physicians and group of attorneys. The enterprise has been set up since the inception of the hospital in 1907, and was active when Plaintiff first became member of the staff. George Kuykendall was the CEO of the Hospital till March 28,

2005, when Steve C Moreau became the CEO and he left on February 1, 2011 and on April 19, 2011, Harris F Koenig was appointed as CEO of the SACH.

230. The Enterprise "SACH" Corporation exists under the laws of state of California and its character is **ongoing organization** with **ascertainable structure** and is a matter of public record from the Articles on Incorporation filed with the Department of Corporations, State of California with names of its owners, board of trustees and shareholders who function as a **continuing unit with a common purpose.**

231. At all relevant times the Enterprise San Antonio Community Hospital, the Corporation and the San Antonio Community Hospital, its Co- conspirators CEO's George Kuykendall, Steven Moreau, Harris Koenig, Physicians, Attorneys, Judges and Justices formed an **'association in fact'** for the purposes of defrauding Plaintiff of $ 600,000 a year IPA surgical subcontract with Inland Global and of his staff privileges and preventing him from seeking employment in Pennsylvania by preventing filing of writ petition.

232. The Defendant 'SACH' and its Co-conspirator CEO's, agents, employees, physicians, attorneys did unlawfully, willingly and knowingly conduct and participate, conspire with one and another either directly or indirectly in the conduct of the affairs of the described 'Enterprise' through a pattern of racketeering activity by committing two racketeering acts within ten years of in violation of 18 U.S.C.S. § 1961 (5) and 18 U.S.C.S § 1962 (c) and (d).

233. The Medical staff of 'SACH" is a **separate ongoing organization** with its own bylaws, rules and regulations and is comprised of physician members and its affairs conducted through various committees made up of physicians.

234. The Enterprise's member defendant "SACH" which generates illegal revenue for the Enterprise is separate and distinct. The Enterprise is also separate and distinct from the organization of Medical Staff which is run by gang of physicians.

235.These gang physicians provide illegal business to 'SACH' by ordering unnecessary tests, improper admissions, unnecessary surgeries, intentionally

mischaracterizing or misdiagnosing patient's condition to justify initiating and continuing care to generate fraudulent revenue for the 'Enterprise".

236. The defendant "SACH" in turn provides protection to its gang of physicians against any interference with their businesses, irrespective of their incompetence and unethical conducts.

237. The purpose of the 'Enterprise' is also to form contracts between the "SACH" and outside agencies, IPA's, HMO's and these physicians in turn oblige and support the 'Enterprise' by admitting patients and ordering tests regardless of the necessity.

238. The 'Enterprise' or the defendant "SACH" would not take any corrective actions against incompetent physician members of the gang-and instead would target, harass and eliminate innocent, competent, qualified physicians including Plaintiff because they pose competition to members of the gang and were not part of the 'Enterprise' or inner circle of the defendant San Antonio Community Hospital (SACH) providing illegal business to the SACH.

239. The "Enterprise" or the defendant "SACH" ratifies protects and upholds any physical or verbal threats, intimidations, acts of extortions, any injuries, investigations or adverse disciplinary actions taken against innocent physicians such as Plaintiff victimized by physician gang members.

240. This racketeering activity of the 'Enterprise' differs from other regular activity of maintaining and conducting the affairs of hospital including nursing staff and providing routine patient care.

The Conduct

241. At All relevant times, Defendant 'SACH', its CEO's, Physicians, Attorneys conducted or participated, directly or indirectly, in the conduct of an Enterprise affairs, through pattern of racketeering activity within meaning of 18 U.S.C. § 1961 (5), in violation of RICO, 18 U.S.C.§ 1962(c).

CONTINUITY

242. The RICO conduct or the conspiracy is "**open ended**", as it projects into future with regard to Plaintiff as well as other similarly situated physicians. Plaintiff will continued to be injured in the future for Defendant preventing Plaintiff from filing writ petition and clearing his name, thus forcing upon Plaintiff to his detriment to disclose on his future applications for employment Defendant's [illegal] suspension and termination

PATTERN OF RACKETEERING ACTIVITY

243. The Court has ruled that predicates four years prior to the filing of the Complaint are time barred. Nonetheless, in order to demonstrate that the Defendant engaged in a pattern of racketeering activity of more than two predicates within the ten year period, with continuity and relationship among the predicates and to the 'Enterprise' in violation of 18. U.S.C.S. § 1961 (5) are included as fully discussed below

PREDICATE NO.1

(Boycott Threats of Removal from Staff,Violence & Murder)

244. Defendant and it's agents in a scheme to defraud Plaintiff of his contract and means of livelihood, his staff privileges in violation of 18 U.S.C.S § 1961(1) (A) boycotted, made threats of removal from the medical staff, violence and murder if he Plaintiff would not hand over his $ 600,000 a year Surgical sub-contract with IPA known as Inland Global.

(245).On or about September 2000, Plaintiff obtained a $ 600,000 a year surgical sub-contract with IPA Inland Global which had enrollment of 5000 Medicare members and 50,000 lives. The contract had been held previously for many years by two White

gang member /surgeons. Another gang member Dr. Alpiner and Dr. Spivack assisted these surgeons on regular basis and earned substantial income. By Plaintiff getting the contract and using Dr. Autar Wali instead of other surgeons on staff to assist, provide coverage and perform surgeries, made these physicians extremely upset, angry, furious and bent on destroying Plaintiff.

(246). Both Plaintiff and Dr. Wali received verbal threats from various physicians Drs. Alpiner, Koudsi, Spivack, Garg of getting terminated from the hospital staff and losing the contract and if Plaintiff did not do it on his own.

(247). These physician gang members knew that Plaintiff is a highly competent, qualified, University trained and double board certified thoracic, cardiovascular, peripheral vascular, general, trauma surgeon with extensive experience particularly in trauma surgery during his service in Vietnam and then on staff of several very busy trauma hospitals in Los Angeles County dealing with huge numbers of penetrating and blunt trauma patients with excellent results for 25 years. Furthermore, these physician gang members also knew that Plaintiff did not have any prior disciplinary action against him and it would be extremely difficult for them to get Plaintiff on medical grounds of incompetence or negligence, so they resorted to threats of violence and murder between September-October 2000.

(248) Dr. Spivak striking hard his tight fist of right hand into the out-stretched palm of left hand told Dr. Autar Wali that he and Plaintiff would face severe consequences of violence and injury if Plaintiff did not give up the contract on his own. Plaintiff was similarly threatened by other physician gang member, such as Dr. Koudsi. How do you operate without hands? "He needs contract like hole in the head". Dr. Alpiner threatening that Plaintiff was history, a dirt bag and did not belong anywhere.

(249) After Dr. Wali was scared off from providing back up coverage. Plaintiff contacted Dr. Bressman to provide coverage. On October 2, 2000 the gang member Dr. Koudsi who was also Chief of Surgery asked Dr. Bressman to boycott Plaintiff and not to provide any back up coverage. Dr. Koudsi prepared a letter on "SACH"

stationery that Paul Bressman will not continue to provide courtesy back –up coverage for Plaintiff and coerced Dr. Bressman to sign it. As a result, Dr. Bressman signed the letter under duress and threats of retaliation and refused to cover Plaintiff after initially agreeing to provide coverage.

(250) Plaintiff got Dr. Vinod Garg to provide coverage and he told Plaintiff that he could not cover him for too long and to get rid of the contract as soon as possible because he should value his life more than the contract that the contract was not going to do him any good, if he was not going to be around any longer.

(251) The Defendant "SACH" at all times was fully aware of, aided and abetted all of its gang's racketeering acts of verbal threats of termination of staff membership, privileges, violence, injury and murder, ratified and gave its blessings to conduct of of these RICO persons.

252. Plaintiff was severely injured emotionally, professionally in his business and property as a direct and proximate cause of Defendant's racketeering acts in violation of 18 U.S.C.S. § 1961 (1) (A).

PREDICATE NO.:2

(**Extortion of Clinical Privileges under threats of Summary Suspension**)

(253). As set forth in preceding and following paragraphs, in furtherance of defendant's scheme to defraud Plaintiff's contract, privileges and staff membership, Defendant **extorted** clinical privileges in violation of 18 U.S.C. § 1961 (1) (A) and 18 U.S.C.S § 1951.

(254). On or about October 5, 2000, 'Enterprise's' protected gang member and agent' Dr. Alpiner who was the Chief of Staff and is currently serving as a member of board of trustees of the 'Enterprise' called Plaintiff at 8.00 a.m. harassed and threatened to summarily suspend because Plaintiff did not come and perform surgery on a patient who had arrived at the E.R. with self-inflicted stab wound of the neck. Suspected of a vascular injury.

(255) Plaintiff informed Dr. Alpiner that Plaintiff had no vascular surgery privileges and was not on call in the emergency room. Nonetheless, patient was not ready for surgery and due of loss of blood first needed blood transfusions to meet the large deficit based on paramedic reports of blood soaked pillow in the motel room where the patient had attempted to commit suicide.

(256). That the E.R. physician had called Plaintiff by mistake, thinking that Plaintiff had vascular surgery privileges and such misunderstanding was cleared up within minutes and vascular surgeon was called who assumed care resulting in no net delay.

(257)That instantly infuriated Dr. Alpiner. He hit the ceiling and threatened the imposition of summary suspension right away and reporting to Medical Board of California which would send report to other hospitals where Plaintiff held staff privileges and that Plaintiff would be good for nothing. That the Plaintiff was going to be real sorry and have nothing but regrets. That Plaintiff did not belong in there.

(258) Plaintiff had just weeks before acquired a surgical sub-contract for $ 600,000 a year with Inland Global IPA to provide medical /surgical services to 5000 Medicare recipients and 50,000 lives in Upland service area. Once Plaintiff got suspended, he would automatically lose the surgical sub-contract for his failure to provide contracted services at the exclusive designated hospital in the service area.

(259) The defendant "SACH" is the only hospital in the Upland area and patients most of them are poor, on limited income, use public transportation or don't want to waste time to fight traffic or can afford to burn gas to go to out of the service area hospital to receive medical services and visit their hospitalized relatives on daily basis during the period of their hospitalization if they did not have to and would rather switch IPA coverage with Inland Global, if Inland Global could not provide local contracted medical services which would cause Inland Global to lose business in millions to competitors. The only reasonable course available to Inland Global was to get rid of Plaintiff and get someone else who could provide services with back up coverage uninterruptedly.

(260) Defendant and it's agent Dr. Alpiner **threatened illegal summary suspension** in order to deprive Plaintiff the enjoyment and benefits of the contract and have it awarded for the benefit of two White surgeon members of the 'Enterprise' where Plaintiff had done absolutely nothing wrong. His only fault was to dare to successfully bid and obtain the contract.

(261) The summary suspension was **illegal** because under California Business & Profession Code § 809.5 and Defendant's own medical staff bylaws require 'imminent danger to life or health' of an individual as a precondition to imposition of any summary suspension, otherwise a hospital can suspend just any physician for any pending routine regular peer review matter.

(262)There was no possible way the Plaintiff could have been 'imminent threat to life or health of any patient because Plaintiff as a provisional staff member and was being proctored and was working under the direct supervision of the Defendant as required under Defendant's medical staff bylaws and there were no patients to whom Plaintiff could had been possibly of any threat.

(263) Plaintiff was suddenly, unexpectedly early in the morning placed under extreme duress threatening contract and privileges which also placed him in great fear for his life in view of on–going threats of violence, which were about to come true ,since the threats of interference with his privileges and contract had become a reality.

(264) Plaintiff in order to minimize injury and avoid being falsely reported to California Medical Board under Business & Profession Section 805 and have that false, libelous report disseminated to other hospitals, helplessly suggested that he would *temporarily relinquish privileges* till a hearing was held on the issue whether he had any duty to perform surgery on the patient with no vascular surgical privileges and whether there was any immediate medical / surgical need to perform surgery in an otherwise hemo-dynamically stable patient *albeit* in need of blood transfusions and need for diagnostic testing and procedures to rule out injuries to other closely packed vital organs within the neck if only Dr. Alpiner would not report to Medical Board of

California and not file 805 report till the hearing was held since Plaintiff expected the hearing could be held within days and would not need to last more than an hour to resolve such frivolous issue. Plaintiff's response was no different than a person on whose head a gun is placed by a robber and he begs to give him all he had on him and plead him not to take his life.

(265) Dr. Alpiner jumped on the idea. It appeared he something always wanted to hear all along. Plaintiff on the telephone could sense his joy and suppressed laughter. Dr. Alpiner apparently agreed because Dr. Alpiner knew that Plaintiff could easily defeat illegal summary suspension on merit within days and would be back to work but instead, if Plaintiff relinquished his privileges till the hearing was held, Plaintiff could be kept out as long as the hearings lasted and he could prolong hearings for years as it did actually happen in this case and excluding Plaintiff from practice and at the same time delaying judicial review of his actions by writ of mandate pursuant to California Code of Civil Procedure Section 1094.5.

(266)By threatening summary suspension, Defendant **extorted** all surgical privileges *under color of official right*. Plaintiff as a direct and proximate cause of Defendant's racketeering acts of **extortion** was severely injured professionally, in his business and property in violation of 18 U.S.C.S.§ 1961 (1)(A) and 18 U.S.C.S § 1951(b)(2).

PREDICATE NO.3

(Use of Mail in Furtherance of the Scheme to Defraud Plaintiff of his Property Filing of 805 Report)

(267) Defendant developed a *Scheme* to defraud, with specific intent to defraud Plaintiff of his privileges and used mailing in furtherance of the scheme.

Defendant and its agent Dr. Alpiner deceitfully turned around breached the oral agreement not to report to Medical Board the **extorted** relinquishment of privileges till the hearing was completed.

(268) Plaintiff justifiably relied on him as a man of his words and for his position of trust as Defendant's Chief of Staff running the medical affairs of the hospital.

(269) Instead Defendant "SACH" immediately **mailed** a false, fraudulent as to reasons for summary suspension, the 805 Business & Profession Report to 'MBC'. Nonetheless, Defendant knew that the report was *materially* false, fraudulent and misleading as to the grounds for suspension and need for discipline. The false statements were material because such statements influenced the decision of decision making body at the Medical Board to which it was addressed. That the communication was related to *scheme to defraud plaintiff of his property.*

(270) Plaintiff was directly injured in his business and property interest as a direct result and proximate cause of Defendant's intentionally, willfully, knowingly and recklessly **mailing** false fraudulent, malicious 805 Business & Profession report to the Medical Board of California in direct violation of 18 U.S.C.S. § 1341.

PREDICATE NO.: 4

(Mail Fraud # 2)

(271) Defendant in furtherance of scheme to defraud and with specific intent to defraud used **mail**ing in furtherance of the scheme and intentionally, willfully and knowingly **mailed** a false and fraudulent National Data Bank Report, indicating that the report was based on 'final action' when in fact the final action was not taken till 5 years later on August 2, 2005 and stating false and fraudulent grounds for discipline. Plaintiff was directly injured in his property interest as a result of mail fraud and was in violation of oral agreement not to file any reports till a hearing was held.

(272) The **mails** were used in the ordinary course of business to send false, harassing notices to Plaintiff falsely charging him and notice of making false misleading findings supporting discipline. Defendant in furtherance of its scheme **mailed** such false information to other hospitals about Plaintiff at the time of Plaintiff's

reappointment at these hospitals and to out of state employers to deprive Plaintiff of his property.

(273) Defendant knew that the report was *materially* false, fraudulent and misleading as to the grounds for suspension and need for discipline. The false statements were *material* because such statements influenced the decision of decision making body at other hospitals to which it was addressed. That the communication was related to *scheme to defraud Plaintiff of his property.*

274. Plaintiff was directly injured in his business and property interest as a direct result and proximate cause of Defendant's intentionally, willfully, knowingly and recklessly **mailing** false fraudulent, malicious National Data Bank report.

275. As a direct and proximate cause of Defendant's racketeering and corrupt acts and use of **mail fraud** in violation of 18 U.S.C.A §1341, Plaintiff was deprived of his property and injured in his business.

PREDICATE NO.: 5

(Interference with Intrastate Commerce)

(276) Defendant is engaged in interstate commerce as it purchases equipment and supplies from out of state, hires workers particularly nurses from out of state and provides care to out of state patients visiting City of Upland, receives insurance payments from out of state insurers and federal government well within the language of Section 1962(c).

(277) Defendant also controls the practice of physicians who are members of the staff of the hospital and wish to relocate to other areas within California and to out of state facilities.

(278) Defendant obstructed, delayed, or affected commerce by extortion or attempts or conspired so to do, and threatened physical violence to Plaintiff and to his property interest in furtherance of a plan or purpose to do anything, injuring Plaintiff's business

and property interest by filing Section 805 Report and by directly providing information to prospective employers or facilities where Plaintiff intended to practice **within the State of California** between 2000-2013 as a direct and proximate cause of Defendant's violations of 18 .U.S.C.S. 1961 (1), § 1962 (c) and 18 U.S.C.S.§ 1951.

PREDICATE NO.: 6

(Interference with Interstate Commerce)

(279).Defendants by first extorting privileges and then filing false, fraudulent National Data Bank Report containing false and fraudulent grounds for discipline interfered with Plaintiff's business and property interests at out of State facilities.

As a direct and proximate cause of defendant's racketeering acts in violation of 18. U.S.C.S.§ 1951, Defendant injured Plaintiff by interfering with employment opportunities or practice of medicine in the State of Pennsylvania and other states continuously between 2000-2013.

PREDICATE NO. 7

(Bribery, Obstruction of Justice)

(280) The Defendants medical staff bylaws provide that members of judicial review committee perform voluntary services as part of duties as medical staff members and monetary disincentive helps keep the members of judicial review committee free of any bias or influence.

(281)Defendant "SACH" bribed the members of the Judicial Review Committee to improperly influence and corrupt and obstruct justice. When Plaintiff requested that the Defendant release the information about amounts paid to each member of the judicial review committee, Defendant declined to disclose the information.

(282) Defendants obstructed justice by not admitting into evidence the letter dated 12/4/2002 from the Medical Board of California dismissing all of Defendant's charges listed in its Notice of charges.

(283).Defendants denied fair trial by denying impartial tribunal of decision makers by appointing members of the judicial review committee on the medical executive committee.

(284) Defendants denied fair trial and due process as alleged above. (*supra*)

(285)As a direct and proximate cause of Defendant's racketeering act in violation of 18 U.S .C/S. § 1961 (1)(A); 18 U.S.C.S. § 201; 18 U.S.C.S § 1951; § 1952 by bribing the members of Judicial Review Committee, obstructed justice and commerce which caused injury to Plaintiff's business and property interest in California and Pennsylvania.

PREDICATE NO.:8

Racketeering Act of Conspiracy to Cover up

Other Racketeering Activity

(286). In order to cover up racketeering activity of extortion to obtain relinquishment of privileges and his contract, Defendant harassed and delayed and conducted harassing prolonged hearings for a period of five years on two totally false, fraudulent malicious charges which the Defendants knew were false in order to prevent Plaintiff from seeking any speedy judicial review by writ of mandate with the superior court and in order to cover up their wrongful acts.

(287) Defendants did prevent Plaintiff from getting judicial review of their one sided quasi-judicial decision by corruptly exercising improper influence on the superior court judges and the justices of the court of appeal.

(288)Directly and proximate to Defendant's racketeering acts under 18 U.S.C.S § 1962 (c) and (d).Plaintiff was injured in his business and property interests in out of state locations.

PREDICATE NO.: 10

(Use of Mail in Furtherance of the Scheme to Defraud Plaintiff's Property By Opposing Filing of Writ Petition with California Courts)

(289) Defendant had developed a ***scheme*** to defraud, with specific intent to defraud Plaintiff of his privileges and staff membership used **U.S. Mail** in variety of ways in furtherance of the scheme to defraud.

(290). The Defendant in furtherance of its ***scheme*** or artifice to defraud Plaintiff of his property interests by means of false pretenses, misrepresentations with specific intent to defraud used **U.S. Mail** for service upon Plaintiff and courts its oppositions and thereby obstructed justice by opposing judicial review of its malicious decision by opposing filing of the petition for administrative mandamus at the California Superior Court in violation 18. U.S.C.S § 1341 and18 U.S.C.A § 1503[omnibus clause or catch all provisions of § 1503, as relating to any court in United States and not just any U.S. district court]

(291). The Pennsylvania Medical Board had rejected the Decision of Medical Board of California on the 805 complaint filed by "PVH". The "MBC" Decision to revoke on false charge of misdiagnosis was twice set aside and vacated by the Sacramento Superior Court and the Court of Appeal 3rd. and the matter is still pending in the court. Thus the Defendant by preventing Plaintiff filing writ petition and having his name cleared and obstructing justice prevented Plaintiff from seeking employment in out of state facilities where Plaintiff has held unrestricted, active, current medical license since 1974.

(292). The defendant San Antonio Community Hospital, its agents the members of the medical executive committee and judicial review committee violated the procedures established by the written medical staff 'bylaws' of the hospital, and the California Business & Profession Code acted with malice," never made a reasonable effort to obtain the facts of the matter," or "acted in reasonable belief" that the action taken by them was warranted by the facts known to them after

reasonable effort to obtain facts, as required by the statute. Defendant's witnesses admitted at the hearing that there was no evidence supporting the charges against Plaintiff in the first two sessions of the hearing yet procrastinated hearing for five (5) years. The Medical Board of California had dismissed all of the Charges by the Defendant against Plaintiff as of December 5, 2002, yet maliciously continued prosecution without probable cause till August 2, 2005.

(293) Defendant in furtherance of its ***scheme to defraud***, with specific intent to defraud Plaintiff of his privileges and staff membership and prevent practice of his profession at out of state hospitals used **U.S. Mail** by preventing Plaintiff from filing a petition for writ of mandate to conduct appellate review of its indefensible decision.

(294). On July 31, 2009, Plaintiff filed in pro-per Petition for Writ of Administrative Mandamus with Exhibits at State of California Superior Court Rancho Cucamonga, County of San Bernardino appealing Decision of Defendant "SACH". The Clerk set Status conference for October 2, 2009.

(295) On October 2, 2009, Plaintiff appeared for status conference before Hon. David A Williams in Department R-8 at Rancho Cucamonga, CA. No appearance was made by the defendant's attorney McDermott Will & Emery LLP.

(296) Hon. Judge Williams felt nothing more was needed in the form of the administrative record than the exhibits attached to the Petition. Plaintiff informed the Court that defendant had generated thousands of pages of administrative record. Hon. Judge Williams appeared to be somewhat surprised considering the issues involved and the evidence produced as alleged in the verified writ petition asked Plaintiff to submit the administrative record of the hearing.

(297) On October16, 2009, Defendant 'SACH" filed Verified Answer to the Petition for Writ of Mandamus. The defendant in its Answer either admitted the allegations or denied for lack of sufficient knowledge or information. Nowhere did the defendant specifically deny the allegations in the Writ Petition.

(298)Nowhere in the Answer to the Petition or any time before, Defendant's attorney raised the issue or defense that petition was unmeritorious and was to be filed for harassment and delay.

(299) Nowhere in the Answer to the verified Petition, Defendant Noticed that the Plaintiff was a vexatious litigant and subject to a pre-filing order pursuant to California Code of Civil Procedure 391.7 (a) which would **stay litigation** and defendant need not plead for Plaintiff to obtain pre-filing order from the presiding judge permitting filing of litigation within 10 days. If the presiding judge issues an order permitting filing, the stay of the litigation shall remain in effect, and the defendants need not plead until 10 days after the defendants are served with a copy of any order. As stated above Defendant had already appeared and filed Answer to the verified Petition.

(300)The defendant had known all along that Plaintiff had been declared vexatious on February 22, 2003 in matter of *Mir v Pomona Valley Hospital* which is a sister hospital of defendant located at a distance of 10 miles and has common medical staff.

(301) The same physicians who at 'SACH' conducted bad faith peer review also caused the same problem at Pomona Valley Hospital and had improperly obtained the order to find Plaintiff vexatious by corruptly influencing Justice Boren of the California Court of Appeal 2nd.in order to prevent Plaintiff's access to the court where three judges of the superior court had denied similar motion to find Plaintiff vexatious.

(302) Defendant by filing Answer to the Petition had already waived Notice under CCP §. 391.7(a), admitting that Petition was not frivolous or unmeritorious.

(303) On November 12, 2009, Plaintiff was hit by a bolt of lightning, shock, surprise and a strong suspicion that there was something seriously wrong when he received an order from the superior court without any name of the judge or signature or name of the Clerk who had issued pre-filing order staying litigation for 10 days beginning

November 16, 2009 to give time to Plaintiff to seek a permit for filing. If no permit was filed with the Court by November 30, 2009, the petition was to be dismissed. (304)Such a minute order staying litigation and ordering dismissal if no permit was issued was without court's jurisdiction. The California Code of Civil Procedure 391.7 (c) explicitly provides that right only to any party to litigation and not to the Court because this section is for the benefit of parties to litigation against frivolous and unmeritorious filings and not for the court to use it as a device to manage its calendar. (305) Furthermore according to California decisional law the pre-filing order is not required on appeal from a defendant in the underlying proceeding or action.(*Mahdavi v Superior Court* Cal. App. 4th Dist. August 2008) Plaintiff was respondent / defendant at the hospital's proceeding appealing in a writ proceeding in order to "undo" the effects of Defendant "SACH" adverse decision against him. Vexatious litigant statutes place no restraint on due process and equal protection of the laws of United States.

(306). On November 20, 2009, Plaintiff filed Application for an Order to proceed with the petition for writ of administrative mandamus, memorandum of points and authorities, exhibits (including Verified Writ petition) citing *Mahdavi v Superior Court* Cal. App. 4th Dist. August 2008) and *Bravo v Young* (Cal. App.4th Dist. 2002).....the vexatious litigant statutes do not deprive a litigant of due process of law. That the broad power of judicial review is based on the consideration that administrative agencies do not possess full judicial power, in the constitutional sense, such power being vested solely in the courts of record. (Cal. Constitution Art.VI,§ 1) *Bixby v Pierno* 4 Cal. 3d 141, 144) but also stems from the dangers inherent in a system where administrative agencies investigate their own cases, institute and prosecute them, and then render the ultimate quasi-judicial decisions. (*Guyman v Board of Accountancy* (1976) 55 Cal. App. 3d 1010.

That in judicial review of administrative decisions the court undertakes a unique, supervisory role in reviewing the quasi-judicial decisions of administrative agencies-

agencies, it must be emphasized, lack judicial power that is rooted in the constitution. (*Wendigo Mills v Unemployment Insurance Appeal Bd*. (1979) 92 Cal. App. 3d 586,596.

(307) The Defendant's attorneys McDermott Will & Emery, attorney Thomas Ryan and attorney Jessica Thomas suddenly woke up and on November 23 ,2009, filed Opposition to request for pre-filing order and irrelevant request for judicial notice of the nearly seven years old 2003 Opinion of Court of Appeal 2nd by Hon. Justice Boren who declared Plaintiff vexatious litigant, a fact the Rancho Cucamonga superior court already knew [Opinion did not say not to issue pre-filing order] and copies of the 2008 decision of the medical board of California ("MBC") for which Court of Appeal had already issued an alternative writ of mandate [and was subsequently set aside and vacated].

(308) After California Medical Board's 2006 Decision had been set aside and vacated by the Sacramento superior court dismissing several findings of the medical board and remanding to re-determine penalty consistent with the findings of the superior court on writ petition .The 'MBC' could not lawfully impose any penalty based upon findings which had not been dismissed by the court, disobeyed and had recycled its set aside and vacated 2006 Decision as 2008 Decision and had revoked again.

(309) The request for judicial notice by Defendant of the 2008 Decision of 'MBC' was irrelevant because Plaintiff even today has an active, current, unrestricted medical license in the Commonwealth of Pennsylvania and was seeking employment in Pennsylvania and not in California.

(310) The Defendant intentionally, willfully, knowingly opposed the filing of writ petition when the Defendant knew that would deny Plaintiff his due process rights and equal protection of the laws under the 14th Amendment.

(311) Defendant also knew that any obstruction to Plaintiff completing appellate judicial review by writ of administrative mandamus would cause major procedural defect and would render its own Decision null and void and or of no legal

consequence. The Defendant did not care because Defendant would still be able to continue to commit **mail fraud** and prevent Plaintiff from seeking out of state opportunities.

(312). Nonetheless, the Defendant filed its Opposition papers in the wrong court-Superior Court Rancho Cucamonga instead of in presiding judge's executive offices, located in San Bernardino and presiding judge never saw those papers.

(313) On November 25, 2009 the presiding judge Hon. James C McGuire ,despite not having received any Opposition from Defendant made a very strange order that the clerk of the court petitioned the court that the Application for pre-filing order was made in error because 'defendant' [Plaintiff] was a vexatious litigant and said clerk petitioned the Court for an order to vacate the Plaintiff's Application for an Order to Proceed with the Petition for Writ of Administrative Mandamus because he was vexatious. That was highly irregular, bizarre and unheard of. The Clerks of the court do not practice law or make any motions or petition before the court or make determination on the papers submitted that Application was made in error.

(314) Hon. Judge McGuire vacated Plaintiff's Application to proceed with the writ petition. In other words, judge *trashed* the Application without looking at it because that is what the Clerk of the Court had told him to do.

(315) Under California Code of Civil Procedure § 391.7(b), in denying an Application for pre-filing order Hon. Judge McGuire was required to make a finding ,that the writ petition was frivolous or unmeritorious and was filed for the purposes of harassment and delay. There was no such findings. Also there was no finding that Plaintiff had not submitted Judicial Council's *Optional* Form MC-701.

(316) On November 27, 2009, Plaintiff filed another Application for a pre-filing order and submitted Judicial Council's *Optional* Form MC-701. The Court placed a big line across the first page and returned the Application, again without giving any reasons for denial of Application to proceed with the writ petition.

(317) On December 4, 2009, hearing was held before Hon. David A Williams, Judge Department R-8. More strange things happened. There was a dramatic shift in the countenance, demeanor and attitude of Hon. Judge Williams towards Plaintiff as compared to his behavior towards Plaintiff during brief appearance on October 2, 2009. Judge Williams demonstrated nothing but contempt of the Plaintiff on his face and would not look at the Plaintiff throughout the hearing at all and would not allow Plaintiff to utter a single word or present his case or make any argument whatsoever as if Plaintiff had committed some abominable crime. The Court dismissed petition for administrative mandamus for failure to get a pre-filing order.

(318)Another strange out of the ordinary event happened as the Hon. Judge Williams would not issue a minute order dismissing writ petition. Plaintiff requested his clerk in Department R-8 to issue order of dismissal of writ petition so that he could file Notice of Appeal. The clerk declined to issue minute order and declined to accept telephone calls from Plaintiff thus blocking Plaintiff's right to file a Notice of Appeal.

(319) On December 9, 2009, Plaintiff filed another Application for pre-filing order to file a brand new verified writ petition, memorandum of points and authorities, exhibits and once again submitted Judicial Council's *Optional* Form MC-701 but this time without any case number indicating that it was a brand new filing.

(320) On December 18, 2009 the presiding judge Hon. McGuire denied again without giving any reasons.

(321) On January 8, 2010, Plaintiff filed an Application for a Pre-filing order to file Notice of Appeal with the Court of Appeal. On January 11, 2010, Defendant filed its Opposition, with its request for judicial notice with elaborate exhibits as before. On January 28, 2009, Plaintiff filed Reply to Opposition.

(322) On February 11, 2010, the Hon. Presiding Justice Ramirez of the Court of Appeal 4th , Div. 2 denied without prejudice because Superior court had not signed Order of Dismissal, as Plaintiff had been repeatedly requesting Clerk of Department R-8, Rancho Cucamonga superior court to do. The Hon. Presiding Justice

Ramirez however cautioned,

" …It does not appear that a formal, signed order dismissing the case was filed in the superior court. An order of dismissal is not effective as a judgment unless written, signed by the court and filed in this action.(CCP § 581d). Therefore there is no final, appealable order from which Mir may appeal, and this court has no jurisdiction to hear the appeal.(CCP. § § 904.1, 581d) (citations) …

On November 12, 2009, minute order issued that stayed the case for 10 days to allow Mir time to seek permission to file his petition under the vexatious litigant statute. There is no indication whether the presiding judge or another judge of the superior court issued the order.

…. On November 25, 2009, Presiding Judge James McGuire vacated the Application for order to proceed with the petition although the reason for that order is not clear…. This court feels compelled to point out to the San Bernardino Superior Court that "The vexatious litigant has right to petition the presiding judge … for permission to file any litigation he chooses…" (Wolfgram v Wells Fargo Bank (1997) 53 Cal. App. 4th 43, 60), The Presiding justice has the discretion whether to grant or deny the application to file the petition, but should rule on it.(id at page 61) "

(323) On February 16, 2010,based on the Order of the Presiding Justice of the Court of Appeal 4th, Plaintiff made Motion for Reconsideration with the presiding judge of the superior court for another Application to file writ petition or at least provide reasons, again attaching Judicial Council *Optional* Form MC-701.

(324) On March 9, 2010, Defendant filed Opposition to Motion for Reconsideration. and another request for judicial notice with voluminous exhibits as before.

(325) On March 18, 2010 a Clerk of superior court returned documents with a note that presiding judge had denied filing of motion for reconsideration again without giving any reasons.

(326) The Hon. Judge Williams's court clerk would not accept or return Plaintiff's call to issue an order of dismissal. Failing to get a response, on March 22, 2009 Plaintiff made an ex-parte application for court to sign order of dismissal so that he could appeal. The clerk refused to accept for filing papers for ex-parte application.

(327) Plaintiff by letter complained to presiding judge of the superior court that clerk of the court in violation of California Rules of Court 3: 1205 and San Bernardino County Superior Court Local Rule 591.2 would not allow plaintiff to file the ex-parte application. That Code of Civil Procedure § 581d requires a dismissal order signed by the court and clerk shall note judgment in the register of actions. San Bernardino County Superior Court Rule 591.2 provides that counsel must prepare, serve and present to the court forms for all orders, judgments which require court's signature,

(328) On March 26 ,2010, presiding judge wrote back that he had returned all paper works to Hon. Judge Williams Department R-8 *without* ordering clerk to file ex-parte application.

(329). On April 14, 2010, after plaintiff heard nothing from court clerk for Hon. Judge Williams despite numerous calls, Plaintiff called Defendant's attorney Jessica Thomas and asked her as prevailing party to obtain to prepare and obtain an order of dismissal of writ under SB County Local Rule 591 and the court is required to sign it under CCP 581 d as Justice Ramirez had ordered.

(330) Attorney Jessica Thomas told Plaintiff that she did not know if she was going to prepare the Order for dismissal. Plaintiff wrote to Defendant's counsel Thomas that he will file law suit in Federal Court for damages if he was going to be denied due process.

(331) On April 14, 2010, Plaintiff also again wrote to presiding judge to order clerk to accept Plaintiff's ex-parte application for court to sign order of dismissal.

(332) Plaintiff heard nothing back from presiding judge and on May 25, 2010, Plaintiff wrote to Hon. Judge Williams to sign the Order of Dismissal.

(333) On May 27, 2010 , presiding judge wrote that he had sent my paper work to another Judge Hon. Jon D. Ferguson who was supervising judge of Rancho Cucamonga superior court.

(334) Finally court signed dismissal order and Plaintiff filed another Application for pre-filing order with the presiding justice Hon. Ramirez to file an appeal, On July 13, 2010, Hon. Justice Ramirez GRANTED pre-filing Order to file appeal.

(335) In the Opening Brief, Plaintiff not only requested that pre-filing order to file writ petition is issued but also requested that such order should be lifted pursuant to newly enacted state statute CCP.§ 391.8 providing that vexatious litigant order can be lifted when there is change of circumstances, facts or law. That Plaintiff had filed only one litigation in pro-per in preceding seven years in order to comply with statutes of limitation and even in that case Plaintiff was soon substituted by an attorney and that the case was resolved in Plaintiff's favor. Plaintiff also requested change of venue to court in Orange County because he believed he could not get a fair trial in Rancho Cucamonga because Defendant had improperly influenced the judges.

(336) In Opposition Brief, Defendant argued that appeal should be denied because Plaintiff had not filed with superior court Judicial Council's Form MC-701, which is only for *Optional use* and Plaintiff had filed three of them.

(337) After the briefing was complete, Plaintiff received a *tentative* opinion from Court of Appeal prior to the oral arguments, stating that appeal was denied because Plaintiff did not submit Judicial Council *Optional* Form MC -701 to presiding judge, Where Plaintiff had submitted at least three of Judicial Council *Optional* Forms MC-701 to Court, besides that was not the reason presiding judge McGuire had denied pre-filing order and only his reasons or lack of them for denying a pre-filing order were on appeal and nothing else. Furthermore, Hon. Presiding Justice Ramirez had made a finding in first appeal that it was not clear why presiding judge McGuire had denied.

That finding had issue preclusion effect on the subsequent appeal and CCP § 3917(b) provides that presiding judge shall permit filing if the litigation has merit and not filed for purposes of harassment or delay. There was no such finding by the presiding judge McGuire in fact he had *trashed* it without even looking at it because according to him that is what his Clerk told him to do.

(338) At the Court of Appeal, there were other cases on the court's calendar for oral arguments before Plaintiff's case was heard by the same panel of three justices consisting of Hon. Justice Hollenhorst, presiding, Hon. Justice Richli and Hon. Justice King.

(339). When Plaintiff stepped up for his turn for oral arguments, there was sudden sullen, change in the demeanor, attitude and interest of justices ,as if some undesirable person had just appeared. They appeared to be completely disinterested, wore cold blank faces, as if their minds had already been made up.

(340) Plaintiff earnestly stressed in his arguments before the Court that it was extremely important for Plaintiff to have hearing on writ petition and have Defendant's decision set aside and vacated in order to seek employment. That just weeks before, Plaintiff had an employment interview and the very first question, the interviewer had asked Plaintiff was, if his privileges had ever been suspended or terminated. As soon as Plaintiff answered in affirmative, the interview was over. That the employers are not interested in physicians with disciplinary problems. There are plenty of qualified physician without discipline. The employers are not there to determine if injustice was done to a physician that is left for the courts to decide. That did not seem to impress the court. The court asked no questions and affirmed tentative denying appeal *that Plaintiff did not file Judicial Council Optional Form MC-701 with the presiding judge of the superior court and could not file petition for writ of mandate*. These justices had created a special new requirement just for Plaintiff to file Form MC-701 as the Defendant had proposed in its appellee's brief, notwithstanding Plaintiff had filed three of Judicial Council Form MC-701.

(341) On October 18, 2011, Plaintiff's appeal was denied and on November 2, 2011, the petition for rehearing was denied by Court of Appeal. Plaintiff requested publication of the opinion so that others would not fall into this trap, the Hon. Justice Hollenhorst referred to Supreme Court.

(342) Plaintiff filed Petition for Review. Defendant vigorously opposed. On January 25, 2012 the petition for review was denied by California Supreme Court.

(343) The foregoing series of facts leave no doubt whatsoever that the Defendant had corruptly influenced Hon. Judge Williams, Hon. Judge McGuire and three justices of the court of appeal. Their conduct stands is in sharp contrast with the rulings of Hon. Justice Ramirez, Presiding Justice Court of Appeal who was not in the loop.

344. These justices denied due process and equal protection of laws for not filing an *Optional* Form MC-701. No one even knew who issued the Order for Plaintiff to obtain pre-filing Order in the first place and Staying litigation after Defendant had answered the Petition without raising such a defense or Notice. The Hon. presiding judge James McGuire had *trashed* the Application for an order to proceed with the application because his clerk told him to do so-a practice unheard of.

345.The Hon. Judge Williams not allowing Plaintiff to speak and completely ignoring him at the hearing and not signing order of dismissal for six months preventing Plaintiff to file an appeal. Even after Hon. Justice Ramirez had found that no order of dismissal was signed and court of appeal had no jurisdiction and dismissed first appeal without prejudice, Judge Williams continued to decline to sign order of dismissal.

346. Even after Hon. Justice Ramirez had found that Hon. Judge James McGuire had not ruled on the Application for an Order to proceed with writ petition and he must do so, he declined to reconsider and never gave any reasons for denying the pre-filing order.

347. It is unheard of that the judge of the superior court would not follow the higher orders of the Presiding Justice of the Court of Appeal. It is clear that Hon. Judge Williams and Hon. Judge McGuire were following a different drummer.

348.It is also unheard of that once a finding is made by Presiding Justice of the Court of Appeal that presiding judge McGuire did not rule on Plaintiff's Application for an order to proceed with the writ petition, and the subsequent panel of court of appeal ignoring issue preclusion would create a reason of their own for denial of pre-filing order and made up a special requirement just for the Plaintiff because Plaintiff had not filed Judicial Council *Optional* Form MC-701 as was suggested by the Defendant. (349). Defendant knew that it's ground for Opposition to filing of writ petition that Plaintiff had not filed Judicial Council Form MC-701 was *materially* false, fraudulent and misleading because Judicial Council of California recommends Form MC -701 for *optional use* only to make it convenient for pro-se litigants. That there was no defense to Defendants actions in suspending and terminating Plaintiff. The false statement by Defendant was *material* because this statement influenced the decision of decisionmaking body at the Court of Appeal to which it was addressed. That the communication was related to *scheme to defraud Plaintiff of his property interests*. (350) Defendant used **U.S. Mail** to serve and file upon Plaintiff and the courts all its Oppositions to filing writ petition denying due process and equal protection of law intentionally, willfully and knowingly in furtherance of its scheme to defraud by false pretenses, misrepresentations with specific intent to defraud Plaintiff of his property. (351) As a direct and proximate cause of Defendant's racketeering acts in violation of 18 U.S.C.S. 1341, § 1346; 18 U.S.C. S §1961 (1) (A); § 1961 (5); $ 1962 (c); §1962 (d) and §1964 (c) Plaintiff was injured in his property, business and occupation by Defendant's racketeering act depriving Plaintiff of his property interest in $ 600,000 a year contract and other income and has been drastically injured in his business and occupation at other hospitals and out of state facilities or hospitals since Defendants has acted against Plaintiff.

(352). The unlawful interruption of Plaintiff's business and occupation has directly and proximately caused Plaintiff to lose millions of dollars in income and incur expenses in defending false, fraudulent, malicious charges.

PREDICATE NO.11

(Bribery / Corrupt Influence on Judges and Justices of California Courts to Prevent Filing of Writ Petition)

(353). Defendant receives every months hundreds of thousands dollars in cash receipts from patients and has always ready access to bundle of cash to dispense and to support its *criminal schemes* to bribe public officials and judges and justices of the California Court of Appeal. The circumstantial evidence presented under Predicate # 10 amply supports that the judges and justices had been bribed or corruptly influenced by the Defendant.

(354). Defendant had acted in collusion with Pomona Valley Hospital and had previously bribed or corruptly influenced Hon. Justice Boren of the Court of Appeal 2nd in finding Plaintiff vexatious litigant without cause where three judges of the superior court had denied similar motions to find Plaintiff vexatious on the same cases. Defendant had done that to make fool-proof its racketeering activities by preventing Plaintiff's access to the court.

(355).The plethora of circumstantial evidence overwhelmingly shows that Defendant had bribed or corruptly influenced Hon. Judge David A. Williams, Hon Judge James McGuire and Hon. Justice Hollenhorst, Hon. Justice Richli and Hon. Justice King to impede and obstruct justice. Their actions were diametrically opposed to opinion on fact and law by Hon. Justice Ramirez, the Presiding Justice of Court of Appeal 4th (Div. 2) who was not in the loop.

(356)As a direct and proximate cause of Defendant's racketeering acts pursuant to 18 U.S.C.S. § 1961 (1) (A), 18 U.S.C.S. 18 § 201; 18 U.S.C.S § 1503 and 18 U.S.C. S. ¶1962 (c) and (d); 18. U.S.C.S §1341 and §1346 Plaintiff was injured in his business and property between 2008 till present and projects into future, with an "**open ended**" **continuity** which would injure Plaintiff and other similarly situated physicians like Plaintiff in the future.

PREDICATE No.: 12

(Violation of Hobbs Act by Opposing Filing of Writ Petition)

(357) Plaintiff by filing writ petition was not asking the Court to reappoint him on the medical staff of the Defendant Hospital. Defendant would not be seeing Plaintiff on the premises again regardless of the outcome of the writ petition. That would be foolhardy because Defendant could corruptly bring more false, malicious baseless charges and keep Plaintiff in hearings for ten more years. Plaintiff was merely requesting the Courts the correction of the record at the Defendant hospital so that he could go on with his life and pursue employment opportunities in Pennsylvania where Plaintiff holds till this date active, current, unrestricted medical license since 1974.

(358) Plaintiff is a well trained and experienced trauma surgeon and could easily generate 1.5-2 million dollars income a year by taking emergency room trauma call at any hospital(s) and there are not very many surgeons who are qualified or want to take trauma call from the emergency room which is wildly disruptive of normal life and sleep pattern.

(359) Defendant after first **extorting privileges** and then by corruptly opposing filing of writ petition, intended and did succeed in preventing Plaintiff from correcting his professional record at the Defendant hospital and prevented interstate commerce in preventing Plaintiff from obtaining employment, practice opportunities and property interests in Commonwealth of Pennsylvania.

(360)As a direct and proximate cause of Defendant's racketeering activity in violation of 18 U.S.C.S. 18 U.S.C.S § 1951 and 18 U.S.C.S § 1952, 18 U.S, C.S 1962(c) and 1962(d) Plaintiff was injured in his commerce, business or property.

PREDICATE NO.: 13

(Extortion by Force of Law in Preventing Filing of Writ Petition)

(361). By refusing to correct Plaintiff's professional record at the Defendant hospital, and then by preventing filing of the writ petition, the Defendant continues **to extort** and prevent Plaintiff from obtaining gainful employment in Pennsylvania *as a matter of official right* and ***requiring*** Plaintiff to disclose to out of State prospective employers and job interviewers that he was suspended and terminated by the Defendant, within the meaning of 18 U.S.C. § 1961(1); 18 U.S.C. 1951; 1952.

COUNT ONE-RICO

[18.U.S.C. § 1961(1) (A), (B); § 1962(c); §1964 (c)]

Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-through 361 as if fully set forth herein.

(362)At all relevant times, the San Antonio Community Hospital Corporation was an Enterprise within the meaning of 18 U.S.C.S. § 1961 (4). Both the Corporation and "SACH" were "persons" within the meaning of RICO, 18 U.S.C.S. §§ 1961(3) and 1964(c).

(363) At all relevant times, "SACH" and its Conspirators, physicians, CEOs, attorneys, judges and justices were "persons" within the meaning of RICO, 18 U.S.C.S. 1961 (3) and 1962 (c).

(364) At all relevant times "SACH" and the Conspirators formed an **association–in fact** for the purpose of defrauding Plaintiff of his Contract and staff privileges; preventing filing of writ petition and seeking to set aside and vacate Defendant's Decision against Plaintiff, obstructing justice and his employment in State of Pennsylvania. The association in fact was an "enterprise" within the meaning of RICO 18 U.S.C.S. 1961(4).

(365)At all relevant times, the "enterprise" was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. § 1962 (c).

(366) At all relevant times, Defendant "SACH" and the other Conspirators associated with the "enterprise" **knowingly ,willfully** conduced or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "**pattern of racketeering activity**" within the meaning of RICO,**18 U.S.C.§ 1961 (5)** in violation of RICO, **18 U.S.C. § 1962 (c).**

(367)Specifically, at all relevant times, "SACH" and other Conspirators **knowingly and willfully** engaged in "**racketeering activity**" within the meaning of **18 U.S.C. § 1961 (1)** by engaging in acts set forth above. The acts set forth above constitute a violation of one or more of the following statutes: **18 U.S.C. §1341** [mail fraud]; **18 U.S.C. § 201** [bribery], **18 U.S.C §1961 (1)** [bribery, extortion]; **18 U.S.C §1951** [relating to interference with commerce, robbery, or extortion], **§1952** [relating to racketeering]; **18 U.S.C. 1961**

18. U. S.C § 1503 [relating to obstruction of justice in *any* court of U.S.].

Defendant "SACH" and the other Conspirators each committed and /or abetted the commission of two or more of these acts of racketeering activity

(368)The acts of racketeering activity referred to in the previous paragraphs constituted a "**pattern of racketeering activity**" within the meaning of 18 U.S.C. § 1961 (5). These acts alleged were related to each other by virtue of common participants, a common victim [the Plaintiff] a common method of commission, and the common purpose and common result of defrauding Plaintiff of $ 600,000 a year contract and income from other sources within the hospital and enriching the Conspirators at the Plaintiff's expense while concealing the *fraudulent scheme* under the guise of false, fraudulent and malicious charges and conducting sham peer review / judicial review hearings and further concealing by continuing sham hearings over protracted period of 5 years where such false charges had been dismissed by "MBC" and further concealing its fraudulent scheme and racketeering activities by preventing filing of writ petition with the California superior court, thus continuing to extort plaintiff of employment opportunities under color of official right. The extortion is

based on the fact that Plaintiff is required to disclose to prospective employers the extorted suspension and termination by the Defendant.

(369)As a direct result of Defendant "SACH" and other Conspirator's violation of 18 U.S.C. § 1962(c) and the *fraudulent scheme* Plaintiff has lost millions of dollars in his business.

(370)As a result of its misconduct, Defendant "SACH" is liable to Plaintiff for its losses in an amount to be determined at trial.

(371) Pursuant to RICO, 18 U.S.C. § 1964 (c), the Plaintiff is entitled to recover threefold its damages plus costs and attorneys' fees from "SACH".

COUNT TWO-RICO CONSPIRACY

[18 U.S.C. §1962(d)]

Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1through 371 as if fully set forth herein.

(372).At all relevant times, the San Antonio Community Hospital Corporation was an **Enterprise** within the meaning of 18 U.S.C.S. § 1961 (4). Both the Corporation and "SACH" were "persons" within the meaning of RICO, 18 U.S.C.S. §§ 1961(3) and 1964(c).

(373) At all relevant times, "SACH" and its Conspirators, physicians, CEOs, attorneys, judges and justices were "**persons**" within the meaning of RICO, 18 U.S.C.S. 1961 (3) and 1962 (c).

(374) At all relevant times "SACH" and the Conspirators formed **an association–in fact** for the purpose of defrauding Plaintiff of his Contract and staff privileges, preventing Plaintiff from correcting his professional record at the Defendant hospital by filing a writ petition at the superior court and seeking to set aside and vacate Defendant's wrongful Decision and thereby obstructing his employment in State of Pennsylvania. The **association in fact** was an "**enterprise**" within the meaning of RICO 18 U.S.C.S. 1961(4).

(375)At all relevant times, the "enterprise" was engaged in, and its activities affected, **interstate and foreign commerce**, within the meaning of RICO, 18 U.S.C., § 1962(c).

(376) At all relevant times, Defendant "SACH" and the other Conspirators associated with the "enterprise" conduced or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "**pattern of racketeering activity**" within the meaning of RICO,18 U.S.C.§ 1961 (5) in violation of RICO, 18 U.S.C. § 1962 (c).

(377) At all relevant times, Defendant "SACH" and the other Conspirators each were associated with the enterprise agreed and conspired to violate 18 U.S.C. § 1962 (c),that is to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C.§ 1962 (d).

(378) Defendant "SACH" and the other Conspirators committed and caused to be **committed a series of overt acts** in furtherance of the Conspiracy and to affect the object thereof, including but not limited to acts set forth above.

(379) Defendant and two or more persons in some way or manner came to a mutual understanding to attempt to accomplish a common and unlawful plan while engaged in activities which affected interstate or foreign commerce, or conducted the affairs of the alleged enterprise through a pattern of racketeering activity in the manner charged as above.

(380)That the defendant **knowingly and willfully** became a member of the conspiracy by objectively indicating through words or actions, his agreement to conduct or participate, directly or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

(381)As result of Defendant "SACH" and the other Conspirators' violations of 18 U.S.C. § 1962(d), Plaintiff lost millions of dollars in business.

(382) As a result of the Conspiracy, Defendant "SACH" is liable to the Plaintiff for the losses of income occurring since October 2008 extending into future in an amount to be determined at trial.

(383) Pursuant to RICO, 18 U.S.C. § 1964 (c), the Plaintiff is entitled to recover threefold its damages plus cost and attorney fees from Defendant "SACH"

SECOND CLAIM

CONSPIRACY TO VIOLATE CIVIL RIGHTS

(42 U.S.C. § 1985. § 1986)

Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-383 of this complaint as if fully set forth herein and alleges:

384. That the Defendant 'SACH" its CEOs, officers, agents , physicians, attorneys and each of them conspired to deny Plaintiff benefit of full and equal rights under the law to property affecting practice of medicine and to make and enforce contracts", at the Defendant "SACH" and particularly at out of State Hospitals and facilities.

385. Plaintiff belongs to a protected class as a Muslim and member of East Indian race, originating from Pakistan. Plaintiff is a Vietnam War Veteran and was subjected to jokes, insults, slurs such as Taliban fighter, Muslim terrorist [for defending false ,malicious charges] and good for nothing scum bag [just for being a Muslim getting a contract].

386. The conduct was sufficiently severe or pervasive to alter the conditions of Plaintiff's medical practice and created a hostile and abusive work environment. Plaintiff perceived working environments to be hostile and abusive. Any reasonable person in Plaintiff's circumstances would consider the working environment to be abusive and hostile.

387. The defendant San Antonio Community Hospital, its members of the medical executive committee and judicial review committee violated the procedures established by the written medical staff 'bylaws' of the hospital, and the California Business & Profession Code acted with malice," never made a reasonable effort to obtain the facts of the matter," or "acted in reasonable belief" that the action taken by them was warranted by the facts known to them after reasonable effort to obtain facts, as required by the statute.

388. The Defendant and each of agents conspired to **obstruct justice** by producing false testimonies at the hearing, **delaying hearings for several years** and then by **Opposing the filing of the writ petition** both at the superior court and California Court of Appeal consuming 2 ½ more years of professional life further depriving Plaintiff of his rights and privileges and preventing Plaintiff from conducting business at out of state facilities.

389. The Defendant conspired with its agents and attorneys to **Oppose the Filing of the Writ petition**, for the purpose of impeding, hindering, obstructing, or defeating, the due course of justice in California superior court and Court of Appeal, with intent to deny Plaintiff the equal protection of the laws and due process, or to injure him or his property for lawfully enforcing, or attempting to enforce, his rights, to the equal protection of the laws in violation of **42 U.S.C.§ 1985 (2).**

390. In order to Oppose filing of the writ petition, the Defendant conspired with its agents and attorneys for the purpose of depriving, either directly or indirectly, Plaintiff, a member of protected class of the equal protection of the laws, or of **equal privileges and immunities under the laws**, or for the purpose of preventing or hindering the constituted judicial authorities of the State of California from giving or securing Plaintiff the equal protection of the laws in violation of 42 U.S.C. § 1985 (3).

391. The Defendant acted in furtherance of the object of such conspiracy to prevent filing of writ petition, **knowingly, intentionally, willfully neglected** or **refused to prevent conspiracy** to oppose filing of writ petition in order to cover up its wrongful acts which interfered with Plaintiff's $ 600,000 a year contract in 2000 and suspension and revocation of his privileges and staff membership predicated upon Plaintiff's religion, race, national origin and ethnicity in violation of 42 U.S.C. § 1986.

392. The conduct of defendants **directly and proximately** caused Plaintiff to lose millions of dollars in income by opposing filing of writ petition for more than 2 ½years and thereafter because Plaintiff has been unable to correct his record and clear his name of Defendant's falsehood and fraudulent charges and be able to practice medicine and surgery at other facilities and caused to incur legal expenses to file writ petition and subsequent proceedings and lose income during and after attempts at filing the writ petition.

THIRD CLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1 through 392 of the Second Amended Complaint as if fully set forth herein and alleges:

393. Plaintiff was mostly one of the top five best students of his class throughout his academic carrier, was trained at University Hospitals, is certified by two Specialty Boards, and is currently certified by American Board of Surgery and Re-certified by American Board of Thoracic & Cardiovascular Surgery, had extensive surgical experience including as trauma surgeon in Vietnam as trauma surgeon and Commander U.S. Navy serving with First Marine Division and had always provided the very highest quality of medical care to his patients.

394. This is evidenced by the fact Plaintiff never paid a single dime in medical malpractice judgments or settlements ever and none are pending as of this day and there were no prior or later disciplinary actions against him.

395. Plaintiff deserved and was entitled to peace of mind and security in his life and to enjoy the practice of his profession and pursue a normal life like the rest of physicians. The defendant San Antonio Community Hospital, and its agent physicians violated the procedures established by the written 'medical staff bylaws'of the hospital, and the California Business & Profession Code acted with utmost malice," never made a reasonable effort to obtain the facts of the matter," or "acted in reasonable belief" that the action taken by them was warranted by the facts known to them after reasonable effort to obtain facts, as required by the statute.

396. Defendants caused mental suffering and destroyed comfort, peace of mind, happiness and personal esteem by extorting privileges, charging him with false, fraudulent and malicious charges and subjecting him to lengthy, harassing, delaying hearings prolonged over 5 years, making a mockery of the peer review process, falsely reporting to medical board of California and National Data Bank and continued to prosecute false, senseless charges even after medical board of California dismissed all charges by Defendant. Defendant slandered and called Plaintiff a Taliban fighter, a Muslim terrorist for defending against false Charges where Plaintiff's status as staff surgeon entitled him to a greater protection from insults and outrage than if he were a stranger to defendant. Instead Defendant threatened his life.

397. Defendants wiped out all his personal savings and subjecting him to debts and abuse at the hands of the creditors. Defendants conduct was **extreme and outrageous as to exceed all bounds of that usually tolerated in a civilized community.**

398. Defendant knew that Plaintiff was in a very precarious financial condition for losing his business and property and incurred expenses in defending frivolous, false and fraudulent charges that he was going to burdened with further debts as there was no immediate end in sight of the pending matter against Defendant.

399. First Defendant held prolonged hearings for five years denied due process and obstructed justice and then Defendant opposed filing of the writ petition for more than 2½ years in order to prevent Plaintiff to get speedy justice and have his name cleared.

400. Defendant upon extorting privileges immediately falsely notified National Data Bank before Plaintiff even had a hearing. Plaintiff's reputation and standing in the community had been seriously damaged and it was imperative for plaintiff to get his name cleared in order to get back on his feet.

401. Defendants delayed and harassed and prolonged hearings for five years and then opposed and delayed for more than 2 ½ years the filing of writ petition in the superior court, court of appeal and California Supreme Court.

402. The Defendant blocked filing of the writ petition by corruptly influencing the judges of the superior court and the justices of court of appeal and preventing a hearing on merit. Defendant intentionally caused or **reckless disregard of probability of causing severe emotional distress**.

403. As a direct and actual proximate cause of Defendant's acts, Plaintiff was subjected to extreme emotional distress for having to pay huge legal fees and costs with no income to support and to face ridicule, embarrassment of losing staff membership and privileges and standing in the community.

404. Plaintiff's extreme emotional distress was maximized when the superior court judges at the behest of Defendant started their own campaign of harassment and delay in not allowing Plaintiff to proceed with writ petition instead of doing justice. No one knew who ordered STAY of writ petition and a pre-filing order. The presiding judge trashed Plaintiff's Application to proceed with the writ

petition and presiding judge disobeyed the order of the presiding justice court of appeal that presiding judge must rule on the Application for pre-filing order.

405. The superior court judge Williams would not look at Plaintiff during hearing or allow him to speak at the hearing. The judge Williams then declined to sign the order dismissing writ petition blocking Plaintiff's right to appeal. When Presiding Justice Ramirez of the Court of Appeal 4th, 2nd Division found that Court of Appeal does not have jurisdiction unless superior court judge signed the dismissal order. Judge Williams continued to rebuke and disobey the orders of the higher court.

406. This harassment went on for six months before court performed ministerial duty. After Plaintiff got over this hurdle, Plaintiff was shocked to find that the justices of the Court of Appeal started their own abuse. These justices made a further mockery of justice system when following the suggestion of the Defendant that Plaintiff had not filed an *Optional* Judicial Council Form M-701, denied due process and equal protection of the laws and denied the appeal on a false issue, thus slamming shut all doors once for all on Plaintiff's face, cutting off any or all hope of ever resuming normal life like the one he had before Defendant and its agents started mischief.

407. Plaintiff found corruption of judges and justices of the Court of Appeal unthinkable, unacceptable, unbearable and dehumanizing. Plaintiff could not in his worst nightmares ever imagine that the Justices of the Court of Appeal would discriminate him and make up a frivolous, shameless requirement of not using Judicial Council's *Optional* Form MC-70, as the Defendant had suggested where they were entrusted to uphold the law

408. During the course of oral arguments, Plaintiff was extremely agitated as a direct result of provocation, injury by Court of Appeal- the court of last resort. Prior to receiving tentative from Court of Appeal, Plaintiff had high hopes that he would get justice and he would be able to get his life back on track. However, all these hopes were dashed, when the Court of Appeal became oppressive and

malicious making up a special requirement for Plaintiff to file *Optional* Judicial Council Form MC-701 and Plaintiff had filed three of them. That is when Plaintiff's intense emotional distress escalated beyond all bounds realizing that he will have to live with evil, ignominy, deceit, fraud, gross injustice, discrimination and poverty for the rest of his life, despite fully licensed and certified specialist.

409. As a direct and proximate cause of the Defendant's acts and that of its agents in **preventing filing of the writ petition**, Plaintiff was subjected to extreme anxiety, and thus was caused to suffer humiliation and severe, extreme mental and emotional distress including but not limited to pain, nervousness, anxiety, strain, worry, grief, torment ,mortification, embarrassment. Plaintiff suffered from physical symptoms of nausea, vomiting, headaches, sleeplessness, nightmares and fatigue requiring Plaintiff to take medications.

410. As a direct and proximate result of Defendant's outrageous conduct Plaintiff suffered extreme severe emotional distress.

PRAYER

WHEREFORE, Plaintiff prays judgment against defendant in favor of Plaintiff as follows:

1. General and Compensatory Damages for damage and injury to business, occupation or property in an amount according to proof.
2. Prejudgment and post judgment interest in an amount to be determined at trial based on loss of income as Recertified Cardiovascular, thoracic, trauma, general surgeon since 2008.
3. For treble damages for injury to business or property trebled in accordance with 18 U.S.C. § 1964(c).
4. For damages for interfering with the civil rights under 42 U.S.C §1985, § 1986.
5. For damages for mental anguish and emotional distress.

6. For punitive damages.
7. For reasonable attorney fees in accordance with 18 U.S.C. § 1964 (c), 42 U.S.C. §1985 and § 1986.
8. For cost of investigation in an undetermined amount trebled in accordance with U.S.C. § 1964 (c).
9. For any other relief the court deem fit and proper.

June 12, 2013

Jehan Zeb Mir, M.D. Plaintiff pro-se

VERIFICATION

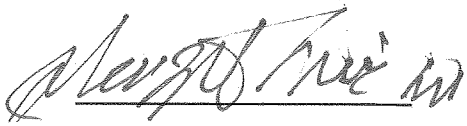
I, Jehan Zeb Mir, declare

That I know the following facts from my personal knowledge and I could and would competently testify if called to do so.

1. I am the Plaintiff. I have prepared the Second Amended Complaint. I know the facts from my personal knowledge and verify it to be true of my own personal knowledge except as those matters which are stated on information and belief and as to those matters I believe them to be true.

I declare under the penalty of perjury that foregoing is true and correct.

Executed on June 12, 2013 at Redondo Beach, CA 90277



Jehan Zeb Mir, MD

Plaintiff pro-se

CERTIFICATE OF SERVICE

I hereby certify that on this date June 13, 2013 the following Documents were served by U.S. Mail

SECOND AMENDED COMPLAINT

on the following party:

(1) Thomas a Ryan, Esq.

Jessica J Thomas, Esq.

McDermott Will & Emery

2049 Century Park East-Suite 3800

Los Angeles, CA 90067-3218

I declare under penalty of perjury that foregoing is true and correct.

Executed at Los Angeles, CA 90012 on 13th of June, 2013

Dated: June 13, 2013

Jehan Zeb Mir, MD

Declarant