UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

RE: Court of Appeals Docket #: 16-2075

Kernan Manion v. North Carolina Medical Board
5:16-cv-00063-BO

1. **Jurisdiction (for appellants/petitioners only)**

   A. Name of the court or agency from which review is sought:
   United States District Court for the Eastern District of North Carolina at Raleigh

   B. Date(s) of the order or orders for which review is sought:
   08/22/2016

2. **Timeliness of notice of appeal or petition for review (for prisoners only)**
   Exact date on which notice of appeal or petition for review was placed in institution's internal mailing system for mailing to court:

3. **Issues for Review**
   Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

   There are 16 issues which are detailed on the accompanying Informal Brief Supplement. The issues listed below are re-referenced and detailed in that supplement

Issue 1.

Judge may have been influenced by contamination bias from plaintiff's prior case which was dismissed on summary judgement

Supporting Facts and Argument.

see discussion on Informal Brief Supplement

Issue 2.

Multiple defendant / attorney falsehoods which were carried forward into judicial reasoning

Supporting Facts and Argument.

see discussion on Informal Brief Supplement

Issue 3.

Erroneous case restatement by Judge

Supporting Facts and Argument.

see discussion on Informal Brief Supplement

Issue 4.

Ensure attachment of most applicable Constitutional and civil laws to protect my rights

Supporting Facts and Argument

see discussion on Informal Brief Supplement

4. **Relief Requested**

Identify the precise action you want the Court of Appeals to take:
1) Reverse dismissal on all charges
2) If reversed, court reassignment
3) Allow to cure complaint to correct deficiencies

5. **Prior appeals (for appellants only)**

A. Have you filed other cases in this court?

Yes ✓ No

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

Signature
[Notarization Not Required]

Kernan Manion, MD
[Please Print Your Name Here]

CERTIFICATE OF SERVICE
****

I certify that on 10/14/2016 I served a complete copy of this Informal Brief on all parties, addressed as shown below:

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Lorin J. Lapidus, Grover Gray Wilson
WILSON & HELMS LLP
John Michael Durnovich, Andrew Harry Erteschik
POYNER SPRUILL LLP
see addresses on separate sheet

Signature

NO STAPLES, TAPE OR BINDING PLEASE

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CERTIFICATE OF SERVICE

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I certify that on Friday, October 14, 2016 I served a complete copy of this Informal Brief on all parties, addressed as shown below:

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Kernan Manion, MD

Informal Brief Supplement

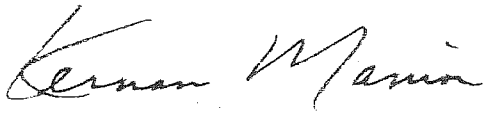
Informal Brief

4th Circuit US Court of Appeals

No: 16-2075

Kernan Manion v North Carolina Medical Board

5:16-cv-00063-BO



Kernan Manion, MD
Submitted: Friday, October 14, 2016

Contamination Bias and Dual Burden Concerns

This pertains to concerns about possible contamination bias by the judge hearing my case and concerns about premature closure of the issues being raised.

Bias by referencing my whistleblower suit pertaining to my work as a civilian medical contractor at Camp Lejeune, which suit Judge Boyle dismissed on Motion for Summary Judgment

Judge Boyle makes reference (p. 2) to my employment at the Deployment Health Center and the fact of my filing suit for retaliatory discharge. No such detailed reference was made to this in my complaint and therefore it raises the question of whether the judge has improperly referenced an earlier proceeding which was heard in his court and therefore would predispose him to a certain bias in that he found for the defendants in a motion for summary judgment.

I believe this raises the possibility of contamination bias.

"Lack of evidence of an invidious discriminatory animus"

Concerning the apparent lack of evidence of an 'invidious discriminatory animus,' let it be noted that upon proceeding with this case, sufficient documentary evidence will be presented strongly evident of a hostile animus towards me by multiple of the defendants.

Conflict of Interest principle should have caused recusal in current case

The NC Ethics Act (which may or may not pertain to the judiciary in NC but whose principles may be generalizable) indicates that if an actual or even perceived conflict of interest arises, diligence requires that one acknowledge that and take appropriate action. It may require recusal of active participation in an issue.

While my disagreement with the ruling in my whistleblower case and my ignorance / trepidation / cynical resignation re: pro se appeals in that case are not the issue here, I remain concerned that a judge who has concluded that the central theme of that case was not per se a whistleblower act violation but rather essentially a personnel dispute might possess, whether consciously or unconsciously, a preconceived notion that the litigant in the current case is simply a vexatious annoyance who is pestering the court with endless actions toward the remediation of the original whistleblower case.

This current complaint against the fourteen named defendants was entered into specifically with no explicit reference to the whistleblower action other than to non-specifically reference the fact that while my federal whistleblower litigation was in effect, these illicit and fraudulent complaint / investigation / assessment events by one or more of the defendants were undertaken.

I would find it hard to believe that Justices and their staff are entirely immune from exposure to the media. There had in fact been multiple articles and TV news pieces

pertaining to my action at Camp Lejeune and the active support of a US Congressman. During the course of this litigation before Judge Boyle, NCMB seemed to have gone to considerable lengths to illegally publicize the hypothesized and fraudulent diagnostic findings of the NCPHP "peer review" on its website for worldwide consumption to the point of stating that NCPHP's determination was that I suffered from a delusional disorder (a major mental illness), as though this were an official and infallible pronouncement, both against all known state and federal confidentiality statutes and at that prior to any charge of any sort being issued by NCMB. Further, throughout that defamatory exposure, I was not allowed to respond either to the falsity of the substance of the "anonymous concern" which allegedly justified NCMB's referral to NCPHP, nor was I given any opportunity to challenge the substance of the false information contained within the NCPHP alleged "peer review" report.

While I disagreed with the court decision, and my contract with my attorney did not extend to the appeals process, and I was too uneducated about and intimidated by the possibility of appealing on a pro se basis, I accepted that decision as final. The substance of the current complaint had nothing to do with that prior complaint and my only reference to it was nonspecific in indicating that I had then been engaged in federal litigation on a whistleblower issue while this board concern and subsequent catastrophic regulatory cascade began.

I am concerned that Judge Boyle's specific reference to elements of that case might suggests that his ruling may have been unduly influenced. In that one concluded that (and I apologize for being reductionistic here) mine was not really a major whistleblower case but rather simply a personnel contractual dispute, there exists the distinct possibility that one could view the reappearance of that litigant as trying to get justice for that complaint in a roundabout manner. That would not be a fair conclusion if that implicit understanding existed. This case is separate and distinct from the whistleblower case as is fully clear from the content of the complaint. I fear that there could exist the presence of contamination bias, even though inadvertent, and such might unduly affect the judicial reasoning and weighing the legitimacy of various parties' arguments in the current case.

Concern about new combined contamination bias

With no disrespect to Judge Boyle, I remain concerned that, in the event that this court reverses the dismissal, that the same contamination bias combined with a hostile retaliatory animus may further affect the proceedings in Judge Boyle's court and therefore I would ask for hearing in another Justice's court.

Administrative Legal Failure Leads to Unfair Burden on Licensee

Dual case burden

Therefore, what has happened in case after case that I've studied is that the victim, the licensee litigant, is burdened not only with presenting his own case to the court but then also presenting a case that the agency itself has operated illegally. In the absence of any oversight or accountability of these two state agencies, and denial of access to valid administrative judicial hearing, what other remedy is there? One is then faced – and wrongfully burdened – with having to document a veritable litany of procedural transgressions that have led to one's threatened license status.

It would seem that this is an extremely unfair burden for the litigant in that the odds are extremely thin against one prevailing because the judicial system must always defer to the presumed integrity of the agency and its being fully and legitimately functional and operating with its own system of quasi-judicial oversight and accountability.

Lack of Oversight and Accountability Prevents Justice

It is extremely unfair and fundamentally dishonest for an administrative agency such as NCMB, at that one operating with utterly no oversight or accountability, essentially operating as its own free-standing tyrannical tripartite government and with bylaws and protocols it entirely conceals from those it regulates, to refuse to correspond with those it governs in a responsible manner. This in and of itself is representative of an unprofessional and extremely dysfunctional administrative agency.

Right of Seeking Justice - Delineation of Administrative System Failure Not My Burden to Prove or Correct

It is neither my duty nor within my ability to correct an inherently flawed administrative agency system. But that should not deprive me of my right to justice. Fortunately, given that we have both state laws and federal laws, the latter superseding those of the state, I believe it is my right to call attention to the deprivation of justice in the state system by its dysfunctional licensing agency for which there is no remedy; to highlight the impossible burden of accessing its legitimate administrative judicial system; and to seek remedy for these many violations in federal court, especially insofar as they pertain to violations of federal laws and deprivation of fundamental constitutional rights which have caused severe harm.

No Oversight of NCPHP or of NCMB

When seeking to understand who might have oversight of NCMB, I and my colleagues discovered that one most knowledgeable party at the highest level of North Carolina government indicated that to his knowledge, there was no one person or entity who was responsible for oversight of the North Carolina Medical Board. Further, the NC Auditor herself indicated that the NCPHP, which was supposed to have had active oversight by

its own board of directors, by NCMB, and by the North Carolina Medical Society (NCMS) and specifically by the three members it appointed to the NCPHP Board of Directors, was found to be operating without any oversight or accountability. Such was acknowledged by the defendants in their responses to that audit.

Citing the North Carolina Auditor on the duty of government to oversee its boards:

> *"The National State Auditors Association(4) states:*
>
> ***'A governing body (i.e. the State) has the responsibility for developing a process for monitoring the regulated entities' (i.e. Board) activities to ensure they are following the applicable requirements and the public is adequately protected.*** *The monitoring process should include receiving reports from entities and the governing body should specify who should report, what they should report on, and how often.* ***The governing body should also review the information submitted and follow-up as needed on any noncompliance or questionable results.'***
> ***The ineffective oversight*** *[she documented]* ***exists for two reasons. First, state-level entities report confusion about the authority and responsibility they have to provide active oversight and monitoring*** *of Boards beyond tracking reports received.* ***Second, the General Statute identifying the state-level entities does not specify the responsibilities of the state-level entities."***
>
> *(4) Carrying Out a State Regulatory Program – A National State Auditors Association Best Practices Document – 2004.*

No governmental agent to whom to complain

Up until very recently, there was to my knowledge no vehicle for an aggrieved victim, a litigant or licensee, to confront wrongful action of an administrative agency. What was one to do – call the police? Go to one's legislator, the Attorney General or the Governor? One would be very hard-pressed to determine the chain of command of oversight of NCMB. When you have an agency that has no oversight and no accountability, then clearly there is no one to turn to.

While the issue of determining whether either of these two agencies, NCMB and NCPHP, is in fact qualified as a state agency and eligible to be covered under sovereign immunity for these appeal purposes remains a separate question, it is one which may be enlarged in the cured complaint. A central issue here is that lack of oversight of both of these agencies – alleged to be state agencies – has in fact thwarted any reasonable remedy within the administrative judicial system. The burden for this agency dysfunction and accompanying wrongdoing is not the litigant's to prove and in fact it is likely that any litigant would be told that he or she has no standing to bring such action.

Preemptively dismissing similar cases (Page 22)

It would appear that Judge Boyle has attempted to foreclose any consideration of a potential class action by dismissing all of my claims in such a wholesale fashion. Given that I contest most of the elements of this dismissal ruling, I therefore maintain that Judge Boyle's attempt to prevent similar actions, whether individually or as a group, on these or similar bases is unfounded.

Multiple Defendant / Attorney Falsehoods Which Were Carried Forward Into Judicial Reasoning

This pertains to concerns that knowingly false information of a critically important nature has been presented by multiple defendants as though factual and incorporated into the Court's reasoning.

Wide Latitude for Counsel

Lawyers are given wide latitude in creatively expounding their narrative, and it is argued that this is in the best interest of their client to ensure the fullest benefit that justice has been served in arguing the client's case. However, such latitude was never intended as a license to obscure the true facts or to present false information.

it is even more concerning when such statements are made, seemingly manipulatively, in a structured entry within a critical phase of a case, i.e. a motion to dismiss which could powerfully influence a judge's decision, in which there is no opportunity to challenge such deceit.

This false information, entered into the record in myriad defense briefs and then incorporated as though factual by Judge Boyle include the following:

False explanation for my obtaining psychological evaluation of Dr. Carter.

Alleging that I sought comprehensive psychological evaluation by Dr. Carter entirely of my own accord and, by implication, because of some personal grappling with mental illness or personal problems, and then, by extension, this alleged mental illness having something to do with my federal whistleblower case.

This is overtly false, and NCMB and its counsel know this to be the case, as my legal spokesperson at the time will attest in testimony that this recommendation for seeking an independent psychological evaluation came explicitly from NCMB Investigator Mr. David Allen. This misleads the court and I believe constitutes lawyer deceit.

False assertion that NCPHP actually provided me their full "peer review" report.

This is overtly false, and both NCMB and NCPHP and their counsel know this to be the case. My entire series of quite detailed correspondence documents the non-provision of this report and the fact that NCPHP refused to provide it.

This represents knowingly false information produced by counsel in the reply component of the defendant's motion to dismiss in asserting that I was given the full NCPHP report in a timely manner. In fact, this is one of the central assertions that I have repeatedly made and that is that I did not receive and through the present have not received the full signed and dated report. It is difficult to understand how counsel for the defendants can make such an assertion and especially include such in the reply portion

of defendants' memorandum in support of their motion to dismiss to which I was not able to respond and thereby falsely mislead Judge Boyle into believing that a fair process had been executed. Dr. Pendergast's and Mr. Testen's "peer review" report wasn't provided by them until approximately August 2015 when I received a portion of the record that I had been demanding for more than four years and at that, the NCPHP report was again provided on plain non-letterhead paper, its authorship not identified, and remained unsigned.

It should be noted here that NCPHP and its counsel explicitly lied to US DHHS-OCR investigators in claiming - whether directly or by inference - that NCPHP did not conduct a diagnostic psychiatric evaluation on me. It should be noted that both NCMB and Judge Boyle are clearly under the belief that they did. And further, deposition testimony obtained directly from Dr. Pendergast acknowledges that he in fact did conduct such.

False assertion that Dr. Manion had all means of administrative remedy available and didn't use it.

This is overtly false as a stream of administrative remedies allegedly conventionally available and operational was - and continues to be - denied to me.

NCMB denied hearing complaints about multiple procedural violations in complaint and investigatory phase and in forced referral to NCPHP.

NCPHP denied hearing complaints about procedural violations.

NCMB denied hearing complaints about wrongfulness of acting on NCPHP's findings.

NCMB denied hearing complaints about denying application for re-licensure.

False assertion that Dr. Manion had all means of judicial remedy available and didn't use it.

This is overtly false as, while many procedural violations were contested, access to appropriate administrative judicial hearing specifically on these violations (designating mine as a "contested case") was actively concealed from me and I was denied access.

False assertion that Dr. Manion already tried to have his license revocation case heard in NC Superior Court and lost.

This is a knowingly false assertion by the defendants and their counsel as anyone who would even read the pleadings and judgment would recognize that this case had nothing to do with the sanction of my license on the basis of illness or incapacity. Rather, it was an urgent, and now clearly seen as misdirected, attempt at forcing NCMB to provide me immediate administrative judicial remedy and asking for protection by the civil court for wrongful use of power and abuse of procedures which would further deprive me of my rights. Unfortunately, that endeavor was both costly and futile; further, I now believe that court erred in not directing me promptly to rightful administrative judicial remedy as a "contested case" under NC 150B.

False assertion that Dr. Manion chose not to go to a NCMB hearing on his case.

This is false as will be described in subsequent narrative. The mutually constructed letter of concern (at that done under protest) was a mutually agreed to course of action to allow me specifically to resume my practice and end the stalemate caused by NCMB's unwarranted intrusion into my practice and personal life.

False assertion that Dr. Manion had an agreement with NCMB to sacrifice his license.

This is a knowingly false assertion by NCMB and its counsel that we had an agreement that I sacrifice my license in exchange for a letter of concern. This is preposterous and NCMB and its counsel know this not to be the case. Negotiations around the "letter of concern" had nothing to do with any understanding of inactivating my license. Never was anything such as this on the table. Proof of this will be presented to this court on oral argument if desired.

False assertion that Dr. Manion reneged on that agreement

I did not renege on such because there was in fact never such an agreement and NCMB and its counsel know this to be the case.

Deleterious Effect of Combined Deceit

When one overtly false assertion of a key element is made by NCPHP and another by NCMB in separate pleadings and both parties are in communication with each other and apparently sharing the construction of briefs, and when one introduces such an assertion at a time in the pleadings on the motions to dismiss when I am not allowed to confront such a falsehood, not only do the individual assertions represent deceit but, in concert, theirs represent a combined deceit that I believe may rise to the level of fraud on the court.

Further, independent of whether it can be presently proven that such serial placement of falsehood into multiple pleadings by one and then another defendant party was intentional, the fact of multiple falsehoods again raises concern about the legitimacy of allowance of ex parte communication and collaboration amongst the defendants and their counsel.

Erroneous Case Restatement By Judge

The many contested elements in Judge Boyle's ruling not only cause me concern, they have threatened the very viability of my case and my rightful receipt of justice and, further, have imposed immense financial burden.

I detail here multiple fundamental factual errors in Judge Boyle's recap, elements of which might have been based on defendants' false information.

Judge Boyle's Narrative Recap

Judge Boyle's narrative in re Wilmington Police Department.

It is both curious and inconsistent that Judge Boyle acknowledges that the WPD detective to whom I was referred by the Wilmington Police Department Chief wrote – as a Wilmington Police Department Detective - his memo to NCMB but then later refers to him doing so as a private citizen. These two positions are incompatible.

Citing "report by police" as though providing gravitas, when in fact I was referred to Detective by WPD Chief.

However, upon inquiry, WPD has no report of me having gone to WPD to make such a report and further, WPD refused to answer my subpoena for production of its record.

I did not see, or know, Det. Overman in a private capacity. I saw him only on direct invitation for referral of the WPD Chief and such conversations, including highly sensitive material concerning my Congressman advocate's conversations with Department of Defense Sec. Gates, Sec. of the Navy Mabus, and Adm. Mullen, head of the Joint Chiefs of Staff regarding my whistleblower case. These several conversations were had in a confidential manner as is expected from such discussions.

Documentation of the Congressman's correspondence with these persons and my visits with him is available for the court's review as is documentation of my federal whistleblower case mentor's direct observation of surveillance being conducted on me.

What right then does Det. Overman (if in fact it is he who actually authored the "memo" expressing concern about my mental health) have to submit any letter of concern to this board, or for that matter any person, outside of the realm of his official capacity? Professionally, he, like I, is bound to confidentiality.

It should be noted that the narrative expressing concern about my mental health allegedly spontaneously submitted by Det. Overman was provided to NCMB on plain paper and was not submitted on WPD stationery nor signed. It should also be stressed that I was not given timely opportunity to see this narrative (even if the anonymous submitter's name were blocked) nor to respond to its many distortions and factual inaccuracies.

Does this constitute evidence of a conspiracy? I don't know. Does Judge Boyle's recounting of this in the manner done and finding no inconsistency or concern in this discrepancy amount to a conspiracy? I don't know.

What I do now is that this discrepancy must be noted.

Inference of WPD benevolence

The curious phrasing here pertaining to the Wilmington Police Department expressing concern suggests a slant giving benevolence to the detective's "expression of concern."

That I pursued the Dr. Carter psychological evaluation on my own accord.

The immediate next sentence however is a false assertion i.e. that I on my own initiative pursued a comprehensive psychological evaluation. It was clearly stated in multiple of the briefs that this was done only at the request of the NCMB investigator. The fact of this is documented and the attorney who spoke with NCMB investigator Allen is available for affidavit.

I believe this false representation constitutes another example of lawyer deceit

Lack of attention to NCMB rejection of Carter report

While Judge Boyle narrates simply that the medical board did not accept the conclusions of Dr. Carter, he fails to note that no reason was given as to why such a comprehensive psychological evaluation report documenting, after a more than eight hour evaluation, the absence of any psychiatric illness or impairment was not acceptable. This in fact is at the heart of my argument asserting the illegality of NCMB pursuing any further investigation upon receipt of such report, especially in the context of the absence of any patient or colleague complaints or any evidence of adverse impact on patient care.

False attribution of validity of Pendergast report and overlooking fraudulent content

Further, Judge Boyle confirms that Dr. Pendergast did conduct an assessment and opined, as a physician, that I was mentally ill and, most curiously, without as much as contacting one person – colleague, family member, friend, patient … – that such mental illness preceded my employment at Camp Lejeune. This is a most unusual demarcation point for Dr. Pendergast, in his fraudulent diagnostic psychiatric report to highlight, especially in consideration of the then currently active litigation against the personnel contractor who hired me for work at Camp Lejeune and who I was suing for wrongful termination in the context of my whistleblower activity.

It is of utmost importance to note that no reference was made to any such "pre-existing illness" in any brief filed in this case. It therefore remains curious as to why Judge Boyle would reference this or on what factual basis he had to do so.

Assertion of Pendergast as a legitimately diagnosing physician who made a diagnosis

Further Judge Boyle notes that Dr. Pendergast did conduct a diagnostic assessment and rendered a professional medical opinion about mental illness when in fact, in multiple written correspondence, Dr. Pendergast himself and his counsel assert that he did not conduct a diagnostic evaluation enabling him to render such an opinion. In fact he and counsel have argued emphatically that he only conducts peer review. In fact, the only activity that NCPHP is legislatively permitted to conduct is that of "peer review." Arriving at a diagnostic conclusion on the basis of a psychiatric evaluation conducted by the sole "peer review agent" is incompatible with that of the function of peer review.

Lack of clarity about NCPHP's "peer review," its capacity to conduct a diagnostic evaluation and it ability to issue wrongful recommendations which are in essence board orders

I attempted to obtain NCPHP's protocol for the conduct of its "peer review" and they declined to provide such. In fact, NCPHP is in violation of multiple state and federal laws pertaining to the conduct of a peer review evaluation as what they conduct under the rubric of peer review violates HCQIA (USC 42.11101 et seq.) as well as any medical definition of peer review as well as that which is itself defined in North Carolina law as medical peer review.

A core point here is that neither Dr. Pendergast nor NCPHP is legislatively authorized under any circumstance to conduct a forensic diagnostic psychiatric "fitness for duty" evaluation arriving at a diagnostic opinion and making sacrosanct "recommendations" to a medical licensing board.

As though authorized by law, which it is not, Judge Boyle takes it at face value that NCPHP had the right to "recommend" and NCMB had the right to order an out-of-state mental evaluation against all known understanding of involuntary commitment and wrongful subjection of a North Carolina citizen to the mental health laws of a different state. This constitutes interstate rendition under extortion. Judge Boyle also seems to glibly ignore that already in hand was a fully valid comprehensive psychological assessment documenting in detail the absence of any psychiatric illness or impairment and specifically documenting the absence of the alleged diagnosis that Dr. Pendergast illegally opined.

It should be noted here that NCPHP is not licensed as a corporate medical entity but rather as an 501(c)3 educational public charity and is therefore, I maintain, <u>out of bounds with regard to the conduct of any professional activity requiring profession-specific licensure, whether it be peer review or mental evaluation</u>. Independent of any consideration of what the legislature intended, to conduct such diagnostic evaluations, one must be appropriately licensed. It is not within the authority of the state to appropriate functions of a specialized professional nature (i.e. the practice of medicine) and of such awesome forensic import to a medically unlicensed public charity which has

no medical training requirements whatsoever for its assessment staff and is not specifically authorized to conduct diagnostic psychiatric assessments - even of a screening nature - for submission to a licensing body.

Judge Boyle makes reference to NCMB's authority to order me to undergo evaluation and treatment at one of the "recommended" out-of-state facilities pursuant to NC Gen. Statute 90 – 14 A5. The statute does not authorize the board to engage in interstate rendition under extortion by ordering a psychiatric evaluation at any facility out-of-state and further does not authorize the order of such a mental evaluation to be conducted under the rubric of "peer review."

Judge Boyle overlooks bait-and-switch deceit

Attempting to conduct a forensic diagnostic psychiatric evaluation under the guise of peer review is not only a form of deceit. It signifies that two agencies are complicit in conducting an activity for which NCPHP is not authorized and which would, if labeled appropriately, demand that it be licensed and trained to conduct such and carry appropriate medical malpractice insurance. It does not carry such. Further, by avoiding such an honest acknowledgement of it having conducted a forensic diagnostic psychiatric evaluation, it has essentially assaulted the licensee with an unwarranted and unwanted invasive medical procedure and has attempted to skirt all responsibility for the provision of civil rights safeguards in the forcible administration of what is essentially an involuntary mental commitment, at that, one accompanied by overtly illicit and SAMHSA prohibited laboratory tests.

It is quite curious that Judge Boyle does not specify – nor does it seem to concern him – what is the nature of the "assessment" or the "evaluation and treatment" to be delivered at such an out-of-state facility.

Overlooks wrongful order for interstate rendition

Judge Boyle does not indicate that the facility to which I was ordered to attend is a NCPHP & NCMB "preferred program" which maintains a financial conflict of interest as disclosed by the NC Auditor. Further, to my knowledge and belief, it is not even registered as a licensed mental health facility. He does not reference that the facility to which I was ordered (Acumen Assessments) conducts evaluations using unvalidated methodologies (e.g a 96 hour evaluation multi-person assessment) and further employs polygraph experts. Further, the program to which I was being "recommended" (and then ordered by NCMB) demonstrated no particular expertise in the diagnosis in question. Even presuming the legitimate legal basis for ordering any such assessment, Dr. Pendergast and Mr. Blankenship both repeatedly refused to answer why I could not be evaluated by a comparable in-state provider of my choice.

Judge Boyle neglects to understand that there is in fact no justification for such a 96 hour evaluation at all. Such a type of evaluation as this does not even exist in the world of mental health. At all. Anywhere. This will be proven at trial. This is a contrived profit-

driven enterprise made to appear legitimate and generally applicable and which further denies the physician licensee of one's due process rights.

For the state to compel participation in what amounts to an unlicensed, non-validated multi-party invasive psychiatric examination, at that via interstate rendition under extortion of one's license, is not only an abuse of its state power, it probably constitutes a human rights violation and may qualify as a form of torture in being subjected to four days of interrogation and invasive examination of the most sensitive sort under threat of license revocation.

Overlooks wrongful NCMB order for unwarranted psychiatric evaluation

Further the medical board as an alleged state agent does not have any authority to order a mental evaluation and certainly not treatment at any facility whether in-state or out-of-state without solidly established good cause. This is an extraordinary overreach of its authority and such has been accomplished due to its active thwarting of all due process measures and its operating with utterly no government oversight. It remains perplexing that Judge Boyle would simply accept these as legally authorized activities. These heinous violations are in fact amongst the core issues that are being challenged in this complaint.

Wrongfully discounts contamination of "independent evaluation"

Judge Boyle's narrative stating that my contention that Dr. Appelbaum's assessment was flawed on the basis of ex parte communication is only partially true. In fact, the documentation which had been submitted to Dr. Appelbaum including the detailed Overman narrative which was the original "letter of concern about Dr. Manion's mental health" and Mr. Blankenship's elaborate and defamatory statement of charges based on that narrative, both of which I was denied from challenging in any manner (allegedly because I would have to wait for the board hearing to do so and was informed that I did not have any such right at this juncture) and which was submitted to Dr. Appelbaum as though it were legitimate and authoritative and conclusive. This necessarily skewed that evaluation and forced me into a defensive position of having to allege to Dr. Appelbaum that I was the subject of unfairness, this not so ironically, in the context of being alleged to have a paranoid delusional disorder. Dr. Appelbaum, understandably presuming the integrity of the board process, took such at face value and treated them as though they were produced in a legitimate and conclusory fashion for his review. In fact they were not. I was wholly deprived of due process in contesting the extraordinarily skewed and erroneous narrative as well as the board lawyer's narrative in his "statement of charges" which, as will be seen in testimony, was written in an intentionally demeaning and harmful fashion.

Wrongfully concludes reason for inactivation of my license

In the second paragraph on page 3, the narrative is false in its inference that I inactivated my license to avoid public sanction due to the findings of Dr. Pendergast and Dr. Appelbaum. I am not clear yet whether defendants or their counsel in their brief contributed to this false inference. (Again it is noted that the findings of Dr. Pendergast are accepted here as legitimate diagnostic findings - they are not, and such will be proven.) In fact, I did not inactivate my license for that reason. There was never any evidence introduced or even proposed finding me incapable of practicing medicine with reasonable skill and safety by reason of mental illness because in fact, no such evidence existed and no such mental illness existed. NCMB and Dr. Pendergast both had in hand the results of a comprehensive independent psychological evaluation obtained specifically at the board investigator's behalf that clearly documented in its 12 page report the absence of any mental illness or impairment. Any further investigation by NCMB should have reasonably halted there. There had been no patient or colleague complaint about any aspect of my professional performance. There was no pre-existing existence of mental illness. There was no indication anywhere that my care was insufficient in any way.

Contamination from Whistleblower case

It seems extraordinarily disingenuous for Judge Boyle to infer, especially in his reference to the earlier whistleblower complaint which he dismissed on summary judgment, that a mental illness existed. It is most curious that Judge Boyle would selectively reference a particular component of the opinion of Dr. Pendergast pertaining to the alleged preexistence of a mental illness prior to my employment at Camp Lejeune when no such reference was made anywhere in the current complaint and certainly no documentation had even been introduced at this point in this case enabling Judge Boyle to even cite such a reference. Dr. Pendergast had refused all access to his report and any ability for me to contest his opinion, including such an unfounded assertion. (In fact, this assertion forms part of the grounds for alleging malfeasance with hostile intent. As will be shown in trial, Dr. Pendergast conducted no corroborative witness evaluation to have any medical basis for asserting that a mental illness which he newly diagnosed (without authority) preexisted my employment at Camp Lejeune. That Judge Boyle would assert such as though legitimate would seem to indicate at the very least contamination bias.

These multiple inferences and references to material either from an earlier case or from documentation that has not even yet been filed strongly suggest a contamination bias.

Wrongful allocation of authority to NCMB

Judge Boyle's restatement that my contention is that defendants violated my constitutional rights when they failed to establish that I was an "imminent threat to myself or the public" is a false restatement. The constitutional violations preceded that.

Even so, to assert that these actions fall within the medical board defendants' prosecutorial function to oversee and discipline the medical profession is a false assertion.

No complaint had been filed. No concern about patient care had been voiced. There had been no evidence that there was any question about my capability of practice with reasonable skill and safety. And therefore, this board acted outside of its legitimate authority in coercing referral to NCPHP for "mental evaluation."

Imagine for a moment that upon any anonymous complaint, a medical board alleges that it has the right to force someone into what amounts to an involuntary commitment for mental evaluation and does not feel compelled to produce for the licensee any rationale for doing so. And then the agency to which one is ordered to report - a PHP - somehow believes it has the right to a) arrive at a psychiatric diagnosis de novo; and b) issue a virtual order that compels the licensee to immediately report out-of-state to its "preferred facility" for an unconventional "96 hour evaluation" of questionable nature with no precedent in the world of mental health, at extraordinary cost (at that "cash only") and at an unlicensed facility with financial and other conflicts of interest involved in the referral. A facility that proudly touts it having a polygrapher on staff. And that that medical board backed up that PHP's right to do "recommend" such. And that PHP denied production of its evaluation report or even explanation of its rationale for such recommendation. And that it ordered one to abruptly cease their practice with clear potential for jeopardy to high risk patient care. And that, despite many efforts at complaint and protest, there was simply no oversight authority to be engaged in the correction of this Kafkaesque nightmare. Might this not shock the conscience? The extent of abuse is immense and I recount in the anecdote only a small part of the immensity of the horror. And I will demonstrate that this Kafkaesque nightmare is exactly what occurred in my case.

Upon receipt of an " anonymous concern" from the public or any organizational entity, at that one not involving patient care – the proper domain of the medical board – the most that the medical board could legally do is to encourage the licensee to seek professional help. No complaint had been filed. No charges were leveled either by the medical board or any sort of law enforcement entity, false contextual inferences aside. No wrongdoing had been committed anywhere. There were no reports of concern about patient safety. No patient or colleague or family or friend ever expressed any concern to NCMB or NCPHP or anyone about any unusual thoughts or behavior. For a medical board to unilaterally take this action, including profound deviation from established protocol, to compel one, even while having in hand a fully valid comprehensive psychological evaluation demonstrating no mental illness and no impairment, one gotten voluntarily (and at significant cost) at their request, this would seem to be acting extraordinarily outside of the realm of permissible behavior of a medical licensing board.

Erroneous understanding of fundamentally administrative (and not prosecutorial or judicial) nature of Medical Board

It must be stressed: this is the North Carolina Medical Board, not the North Carolina Disciplinary Board. The latter doesn't exist. It would seem that the court - in the case of Ostrzenski - has been ill-informed. (See section "Flawed case citations") There was nothing to be disciplined about. There was no prosecutorial function to be engaged. There was no patient care concern that had been presented. Forcing mental evaluation without appropriate cause amounts to a 4th Amendment violation by the state against its citizens. A state agency can't, willy-nilly, decide to use their awesome police power to order one into a mental evaluation (even if that evaluation were to be conducted ethically and by a legitimate entity, which in this case it wasn't!). Such an assault constitutes a groundless involuntary commitment, made worse by holding one's very livelihood at stake for non-compliance. (In essence this constitutes extortion.) Even arguing that a medical board has a right to "protect the public" or "oversee the profession of medicine," no complaint had been filed and no concern had been raised that would legitimately activate the right of a medical board to act in any way in this case toward using its elaborate police power to cause a cascade of interventions to "protect the public" or "oversee the profession of medicine." There in fact was never any "danger to the public" and there was nothing pertaining whatsoever to the "profession of medicine" for NCMB to intervene upon.

Overlooks rightful administrative remedy

As I have mentioned elsewhere, reasonable, appropriate and authentically honest and compassionate protocol would have called for simply contacting me and asking me to come in for a chat and having the president, or a board member, or the NCMB medical director get a preliminary read on the validity of this submitted anonymous "concern." And, considering that we are talking here not about a complaint or a wrongful action but rather the allegation of a heretofore absent mental illness, basic courtesy and compassion would have demanded such an approach. That such was not done speaks volumes and indeed, in addition to violation of customary protocol, suggests a preexisting hostile animus or other unknown biasing influence.

As will be seen at trial, the nature and course of these actions is so extreme as to be unprecedented in the history of this board and, dare I say, in the history of medical boards nationwide.

Judge Boyle's Erroneous Understandings

Erroneous understanding of the "letter of concern" agreement

The assertion that I was given an option to inactivate my license in exchange for the medical board's dismissal of its charges is explicitly false and is apparently based upon knowingly false information submitted by NCMB defendants and their counsel. What

was offered was my acceptance of a letter of concern in exchange for the medical board dropping its charges for noncompliance with its order to report to Acumen Assessments on NCPHP's "recommendation." In no way did any such agreement ever entail sacrificing my license. It concerns me greatly that such a falsehood – amongst multiple – has been made by counsel. This is a gross misrepresentation and I believe represents one of several examples of lawyer deceit.

As is noted in the record, I complied with their request that I undertake an evaluation. Independent of their course of action in response to that evaluation (the independence of which I contend and can demonstrate was compromised), the actual exchange that we had agreed to (under illegal coercion) was acceptance of the letter of concern (which, incidentally was mutually composed) in exchange simply for attending that evaluation. There was no understanding that there was any expectation of medical board action on the basis of such an evaluation and, in fact, I had no reason to believe that any adverse career impact would ensue from undertaking such an evaluation. By all rights, even in the event of a valid psychological finding of mental illness, such a finding should have been referred back for careful consideration of most appropriate next steps, e.g. in terms of treatment alternatives etc. with an intent of preserving my career and "rehabilitating" me, if such was indicated. However, most curiously, that course of action was not taken by this medical board. Rather, and apparently without any discernible input from any legitimate medical authority, the lawyer for the medical board, Mr. Blankenship, acting in an illegitimate and remarkably aggressive prosecutorial role, immediately threatened sanctions against my license on the basis of the findings as expressed by the evaluator. (As noted elsewhere, the independence of the evaluator was indeed compromised and further, an immediately subsequent independent psychiatric evaluation undertaken by a senior forensic psychiatrist, Dr. Nicholas Stratas, not contaminated by Dr. Pendergast or NCMB personnel determined that both Dr. Appelbaum's and Dr. Pendergast's evaluations were fundamentally flawed.) (This report is available as evidence.)

Erroneous understanding of appropriate medical board protocol for intervening on an alleged "danger to public" basis

Under no circumstances should a medical board lawyer have ever taken it upon himself to menacingly threaten sanction of a license on the basis of a privately contracted psychiatric evaluation, at that one which was unfounded and contaminated. There was no evidence anywhere in the record that there had been any concern about my clinical care, professional demeanor or personal habitus. There had been no complaints or concerns expressed by colleagues, patients, family or friends. For this medical board to act in this vicious manner and to threaten me with public humiliation is governmental behavior that is so completely outside of the realm of acceptable of any administrative agency that is does indeed shock the conscience.

Absence of basis for Medical Board concern about Dr. Manion's fitness to practice medicine

It is stated that "the members of the medical board had concern about Dr. Manion's fitness to practice medicine" (page 14 in the second paragraph). This in and of itself is questionable as it is not known who in fact had concerns. I was never informed who had such concerns or what was the basis for such concerns.

I learned from Mr. Curt Ellis, the then chief of investigations for NCMB, that investigations were allowed to be undertaken without any member of the medical board having knowledge of the initiation of such an investigation. I found this extremely distressing. Therefore to allege that the "members of the medical board had concern" is not necessarily valid. Further, no one had any cause for concern about my fitness to practice medicine as no complaint had ever been presented to them suggesting that there was any question about fitness to practice medicine in any venue whatsoever. The fact that a member of the Wilmington Police Department in whom I was invited to confide my safety concerns would take it upon himself (apparently without the knowledge of his chief and not on official WPD stationery), to submit an extraordinarily detailed concern, especially considering the demands on a police detective's time, seems most unusual. Nevertheless, concerns expressed by a member of the police department in such a context should be treated no differently than concerns expressed by a member of the fire department or the water department or the post office or a dog catcher. The fact that they emanated from a detective at the Wilmington Police Department is significant only in that I was referred specifically to the detective – I did not seek the detective on my own but was referred by the Wilmington Police Department chief of police after an hour and a half conversation in which I shared with him my being designated as a "whistleblower" – and that detective was engaged by the Chief's and solicited my full story of my activity at Camp Lejeune and my concerns about my personal safety. That detective was provided the many public media documents pertaining to the fact of my firing and the fabrication of my personnel record as published in the national media. It is of concern that the richness of this detail is not included and it is simply left to one's imagination as to "why would a police detective report Dr. Manion to the medical board." This false inference lends a certain biasing "gravitas" as though erratic behavior had led to WPD involvement. I believe this is an unfair and biasing inference and must be addressed. Insofar as this inference has biased this decision, I believe on that basis that element of this decision must be overturned.

Judge Boyle elsewhere makes false reference to allegations in the complaint revealing that after notification from a "member of the community" that Dr. Manion's mental health may be impaired, the medical board referred the plaintiff to PHP for an assessment.... Here, Judge Boyle makes a subtle transition from the earlier recounting of the reporter being from the WPD and now being a "member of the community." This constitutes false inference on multiple grounds.

Further, this additionally fails on its face as it is inconceivable that a state medical board can automatically act so aggressively on an anonymous "concern" from a single member of the community without even vetting that concern or seeking the licensee's input. It certainly can't do so without sharing the nature of that anonymous concern with the licensee and then compel an involuntary mental evaluation on that basis, especially in light of a) no patient complaints and b) having in hand a comprehensive diagnostic assessment gotten at their recommendation showing no illness and no impairment. To generate such a reckless process is not within the rightful power of this medical board.

False attribution of one medical authority and arbitrary dismissal of another medical authority

It should also be noted here that in Judge Boyle's referencing the detective's "concerns" and lumping this together with referencing two physicians' allegedly confirmatory reports while choosing to entirely ignore the initial comprehensive psychological evaluation of Dr. Carter, would suggest that Judge Boyle considers both Dr. Pendergast and Dr. Appelbaum's evaluations as legitimate diagnostic evaluations and ignores the legitimacy of Dr. Carter's.

This is flawed on multiple counts. Firstly, Judge Boyle overlooks the initial finding of the independent licensed psychologist who presented his report documenting in detail the absence of any illness or impairment after an eight hour comprehensive evaluation undertaken at my cost specifically at the request of NCMB investigator Mr. David Allen. This is a serious omission, and I would suggest indicates a bias. Further, Judge Boyle accepts as though factual Dr. Pendergast's diagnostic conclusion. However, in correspondence to me and to investigators with US DHHS – OCR investigating my complaint about his egregious privacy breach, Dr. Pendergast and counsel claim that he did not conduct a diagnostic evaluation. If he did not conduct a diagnostic evaluation, then he cannot have arrived at any sort of diagnostic conclusion or even hypothesis or "recommendations." Dr. Pendergast has repeatedly asserted in correspondence that he conducted "peer review." Peer review never entails a diagnostic assessment of the licensee whose records and care are under examination, and most certainly not by the peer reviewer. As will be demonstrated elsewhere, peer review entails a review of records, perhaps the interview of patients or of colleagues and the determination of the adequacy of care. No such review was ever undertaken by Dr. Pendergast, the associate NCPHP evaluator Mr. Testen, or any person at NCPHP. As will be described elsewhere, Dr. Pendergast did not conduct "peer review" but, even if it were maintained that he did, his conduct of such was grossly deficient. I also assert that he conducted a covert and fraudulent diagnostic psychiatric evaluation for which he was neither authorized nor appropriately licensed nor given permission by me to conduct. He further opined on this diagnostic basis, presenting such as a legitimate finding to NCMB, which then definitively acted upon his diagnostic findings and recommendations. Further, as I have argued elsewhere, if it were in fact a diagnostic psychiatric evaluation, a host of

rights apply to me as a "patient" subject to that involuntary evaluation including the right to see my record, the right to amend it, the right to disagree with it, the right to decline treatment etc. These rights were all denied. Further, NCPHP alleged to the North Carolina Auditor that it had a grievance mechanism in place to hear concerns of licensees who felt that they had been wrongfully evaluated or mistreated in some manner by NCPHP. My attempt to access the grievance mechanism was repeatedly thwarted by multiple members of NCPHP and its Board of Directors as well as by its counsel Mr. Weddington and through the present I have been denied such grievance mechanism. I asked for the grievance protocol. They declined to provide it. I maintain that they did not have one.

False and ungrounded conclusion about Board action being justifiable.

I believe that for Judge Boyle to then state that this conduct of the medical board, the PHP, and named members was justifiable or that I had not fully identified it as unjustifiable is an unfair conclusory statement based upon no evidence and therefore his assertion that on that basis that I cannot state a substantive due process claim is flawed.

Therefore, many elements in Judge Boyle's restatement of the issues and history and context within his narrative are fundamentally flawed and would seem to serve as a potent influence discouraging the full consideration of this complaint on valid facts and on its own merits and its unique circumstances. His dismissal on these erroneous grounds has denied me rightful justice.

Attachment of Most Applicable Constitutional and Civil Laws To Protect My Rights

Concerns about the method of attaching the various alleged violations to the stated federal and constitutional law violations so as to not further deprive me of all rights and remedies guaranteed by these and other laws. (Including 4th, 5th, 14th Amendments, ADA, and Civil Rights ... and perhaps others.)

4th Amendment

Assertion that 4th Amendment claim as attached to section 1983 fails on statute of limitations

While Judge Boyle maintains that my claim under the 4th Amendment fails, due to the statute of limitations pertaining to section 1983 (page 15), the logic of this escapes me. In fact, the logic of a statute of limitations being applied at all when one has been repeatedly refused access to one's record, access to guaranteed administrative remedy and access to any governmental overseer intervention to correct a defective administrative process and access to legitimate administrative judicial hearing does not seem comprehensible. How is it possible to speak of a statute of limitations in these circumstances?

Again going back to the statute of limitations, while this federal complaint was filed in February 2016, many concerns were raised with officials at NCPHP and NCMB and multiple governmental entities from the outset of NCMB's actions beginning in 2010 regarding the unlawfulness of its use of involuntary mental commitment to address the capricious concerns of the NC medical board allegedly acting in its judicial or prosecutorial capacity when no basis for concern existed and when no basis for it to invoke its judicial or prosecutorial role existed and further when referral to an external private agent NCPHP, not overseen by any government agent and unlicensed to conduct a diagnostic psychiatric evaluation, was employed and whose report was acted upon as though legitimate.

Wrongfulness of NCMB forced mental evaluation without clearly established and clearly conveyed warrant

While the constitutional violation of the 4th Amendment may not in and of itself avail one of personal remedy unless tied to a particular civil law, it is difficult to know what law to which to attach it. The core point here being that the medical board, while it may have a right based on legitimate concern to seek an opinion as to the competence of a physician to practice safely, it must have appropriate grounds to do so. It simply can't willy-nilly decide on the basis of a single anonymous "concern" (and refused access by me to review it or respond to it) to order an investigation and invasive mental evaluation to be undertaken initially by its non-impartial unlicensed sister organization NCPHP and then rendered out-of-state to an unlicensed program conducting experimental mental

health assessment procedures which employ a polygraph expert, without at the very least revealing to me the nature of its concern. It especially can't do so in light of its already having on hand a comprehensive psychological report demonstrating no illness and impairment and there being no patient or colleague concerns or complaints or any sort of pre-existing history to form a basis for concern. They certainly can't do so behind closed doors and "upon its own motion" without at least providing me some fundamental explanation of their doing so. To order one to be subjected to an invasive mental evaluation under any circumstances automatically invokes all protections against involuntary mental commitment. A medical licensing board simply can't, even on the basis of a legitimate professional concern, order someone to be subjected to a psychiatric evaluation without appropriate precautions. To allow such, especially as ordered by a state entity, is to enter into very dangerous territory whereby the state can easily abuse the profession of psychiatry to serve its own interests. And to do so in the recognized absence of any legitimate and appealable governmental oversight of either of these agencies with such grave potential for career jeopardy and patient harm is both extraordinarily dangerous and governmentally irresponsible.

There was no state interest in ordering such as there had been no complaint whatsoever about anything and certainly no patient or colleague complaint. There had been no evidence of any substandard care ever presented to the board. The state, through its alleged state agency the North Carolina Medical Board, had no grounding to compel me to be subjected to an involuntary mental evaluation, at that falsely couched as "peer review", conducted by NCPHP.

Inconsistency of reasoning of NCMB acting on findings of peer review and ordering interstate rendition for further forced mental evaluation (which in Judge Boyle's permissive reasoning also includes forced treatment.)

Further, if one holds that what NCPHP conducted was peer review, then NCMB had no right to cause any referral anywhere as no patient safety or quality of care was reported.

Compulsory "fitness for duty" forensic psychiatric evaluation by NCPHP is a form of involuntary mental commitment

Involuntary mental commitment does not necessarily mean inpatient hospitalization or being detained in shackles. The fact that one is forced into a psychiatric evaluation as ordered by a regulatory agency by definition makes it an involuntary mental commitment of a forensic nature. As such, extraordinary diligence must be applied to such an action. As will be shown in trial, the occurrence of this in my case is so unusual as to be nearly unprecedented in the history of this medical board and likely in the history of all national medical boards. To apprehend someone solely on the basis of their having reported – and having been invited to report – concerns about their safety in the context of their being a national whistleblower and having been subjected to intensive surveillance (multi-party surveillance incidentally that was specifically observed by one who is not only trained in but himself conducted surveillance for a national intelligence agency), is

extremely wrongful behavior on the part of that agency. And to rationalize allowing such sets an extraordinarily dangerous precedent that allows any state agent on the basis of contrived and non-vetted "anonymous concerns or complaints," the substance of which is not shared with the licensee, to conduct an invasive witch-hunt investigation that is essentially destructive to one's career and personal life and which also then subjects one to an involuntary biased, "state-agent preferred" psychiatric evaluation program (NCPHP) and at that, a psychiatric evaluation program that intentionally evades such diagnostic classification to insulate itself against charges of malpractice and give the false appearance of acting within its legislatively directed role and instead masquerades itself as a legitimate "peer review" organization. To allow this reprehensible behavior in any fashion is unconscionable.

Unknown where to attach 4th Amendment violation for remedy

There may be any number of civil violations (e.g., civil rights, ADA et al.) which might best be attached to such a profound 4th amendment violation in order to claim impact of such infringement. I am not clear why I should be limited as to which violated law most applies. Perhaps multiple do, especially in consideration of the negation of the statute of limitations due to unauthorized prevention of administrative remedy and denial of access to a legitimate court of administrative hearings which would hear alleged procedural violations. However, again due to judicial economy, one is forced to assign that constitutional violation onto some civil law. At fundamental issue here is the wrongful subjection of a citizen, a professional licensee, to unwarranted and highly invasive psychiatric evaluation, at that under false pretense, which amounts to an involuntary mental commitment.

I am not a lawyer. I am simply a citizen with a professional medical degree (ironically of the same specialty as Dr. Pendergast). I do not know which civil law is the most appropriate to pertain. I do know that many rights have ben violated and severe harms incurred. I have from the outset of this debacle attempted to exercise all available rights and all available administrative remedy and to call governmental attention to the wrongful abuse of privilege in the unwarranted ordering of compulsory forensic diagnostic psychiatric evaluations. I will continue to maintain, at whatever level of court I need to go, that unwarranted coerced psychiatric evaluation by any entity – but especially by a state agent – which forces involuntary mental evaluation or mental commitment under threat of loss of license without sufficient warrant is grievously wrong and antithetical to Constitutional principles and most specifically in violation of the 4th Amendment against unlawful search and seizure, in this case seizure both of one's psyche, a most heinous invasion, and one's property, namely one's license to practice. Additionally, one might argue that such an intrusion, given the nature of my professional work, namely intensive treatment of acutely mentally ill individuals grappling with life-threatening conditions, constitutes an unlawful search and seizure of them as well (especially in consideration of NCMB's unlawful request for confidential records), and by

such search and seizure, adversely impacted if not traumatized their care and resulted in catastrophic consequences.

Title II ADA claim

Time-barred

The issue that the ADA claim is time-barred (beginning page 16 section C) again hinges upon when the statute of limitations actually begins. In the presence of thoroughly blocked administrative remedy and hijacking of the legitimate administrative judicial process, the North Carolina Office of Administrative Hearings, such a statute of limitations can only reasonably begin after the fact of that blocked administrative remedy and rightful administrative adjudication has been acknowledged. (please see Denial of Administrative Remedy section)

Therefore, specifically referencing the non-employment related ADA claims, it is not clear how statute of limitations pertains.

It should also be noted that, in that a licensing board can fatally harm one's license to practice not only in that state but across all states and due to interconnectivity of credentialing internationally, all potential for any employment based on one's professional degree is necessarily harmed. Therefore, this relates to both non-employment as well as employment-related claims.

With regard to the discovery of wrongdoing, the time of actually knowing of the injury at the earliest began when Dr. Pendergast was compelled, apparently by the NC Auditor, to release his report to all due-process-deprived physicians requesting such. He then actually provided some of the requested documents himself via US Mail, but even this version of his report was provided on plain paper and remained authorship unattributed, unsigned and undated, essentially as had been provided in the Board hearing packet.

Of course I had suspicion that wrongdoing was being done from the outset. It was clear that administrative judicial principles were being profoundly violated. And I sought every means known to achieve justice and preserve my rights.

But here again, the fact of "knowing" about a wrongdoing and having any avenue to challenge it are two distinctly different things. I think it is fair to argue that NCMB's and NCPHP's regulatory judicial capture, its veritable hijacking of the administrative judicial system, are exactly what prevented me from accessing remedy in what the civil courts would deem as an appropriate time interval.

As noted previously, I had filed multiple complaints about lack of access to administrative remedy and the denial of due process. It would seem therefore that violating these while alleging that the clock on the statute of limitations keeps running is inherently unfair if not sadistic and unethical legal behavior.

To argue on the basis of statute of limitations and whether one or another interpretation of the ADA pertains seems to miss the point. In that there have been no reliable administrative mechanisms by which to confront the wrongdoing with regards to ADA violation within the administrative agencies named, the reference to statute of limitations seems moot. Again, when one has a full-scale dysfunctional medical licensing board administrative system with utterly no oversight or accountability, and one has been thwarted all access to administrative remedy, then one really can't rely upon the integrity of the operation of that administrative system which would then support the rationale for the institution of the statute of limitations.

It therefore seems preposterous to engage in a pedantic discussion about the ADA and the 2008 amendment in regards to statute of limitations. It seems only to serve to obfuscate the fundamental issue at hand: the medical board, either mistakenly or under the ruse of an anonymous "concern," went full throttle to conduct an invasive assessment of my mental health under the allegation that I must be impaired and endangering patient safety, this, most curiously, at the precise time when I had entered into federal whistleblower litigation in Judge Boyle's court.

The Board's and NCPHP's actions resulted, via the mechanism of all of these other interrelated actions, in my having to sacrifice my hard-earned medical license against all known precedent. No administrative licensing agency, and for that matter no government agency, should ever have that right without explicitly clear and transparently documented warrant. This atrocity speaks for itself. Entering into a microscopic analysis detail by detail and case-by-case of the ADA and its amendments and statute of limitations only serves to obscure the primacy of this fundamental violation.

"Mistreatment of Disabled" if Mental Illness Asserted

The issue of preventing me from working as a result of having a disability (page 18 middle of page) is not per se the issue here; it is forcing me into an unwarranted mental evaluation; causing me to interrupt my practice; allegedly allowing NCMB to open an investigation to evaluate the alleged extent of this impairing disability; and then pushing me through a nightmarish cascade, the ultimate end result of which is the deprivation of my license on the alleged basis that I am mentally ill and incapable of practicing with skill and safety and further, severely and without warrant interrupting high risk patient care. This goes beyond the concept of simply "preventing me from working."

Fundamental Lack of Understanding of "Mental Illness"

A further defect in the ADA dismissal argument is that, even if I were legitimately found to have a mental illness, such should never have been the sole criterion by which a government agency, unlawfully and without utmost appropriate consultation, coerces inactivation of one's professional license. It must be stressed that, to do so, one must have extraordinarily strong and clear and explicitly documented cause.

If they truly believed I had a major mental illness, clearly bias, presumably based on fundamental ignorance about the treatability of mental illness, led to the grossly inappropriate course of action by an agency lawyer who acted without apparent authorization from or consultation with either the medical director of the medical board or in any consultation with the agency which conducted the alleged "peer review." Whether he acted without such consultation or with, and such will be determined at trial, such unwarranted coercion to sacrifice my license under explicit threat of being declared mentally ill and dangerous to patient care is so horrendously inappropriate as to leave one speechless. And that even supposing that a legitimate diagnosis existed in the first place. The horror is even more unconscionable if one were to find that no such illness existed in the first place.

What is entirely overseen here is the automatic resort to the generalized "taboo of mental illness," as though simply having been designated as having such, one is now a leper, both professionally and personally, and must be removed from civil society. It might help this medical board and PHP (and perhaps relevant members of the judiciary) to understand that, even if one has a current major mental illness (e.g. major depression et al.), these do not prevent one from concurrently working, and they certainly don't serve as a basis for eliminating one from their hard-earned profession. More specifically, even if my beliefs about surveillance were illness-based delusions (though in my case it would necessarily have to be a "folie a deux" type mental illness seeing that a former FBI agent had the same delusion), they do not necessarily disqualify me from concurrently practicing. One would be amazed to discover the unusual unshared beliefs and private practices that fully functioning productive people (yes, including lawyers) abide.

Assertion that only applicable to 'public entities'

Judge Boyle asserts that, on this reasoning, only public entities are subject to Title II, and that any related claim pertaining to damages caused by violation should only pertain to public entities and therefore, a claim against any individual is therefore dismissed. The individuals named in this action are in fact the actors in these public entities who each actively and knowingly violated the ADA. While they did so while in their official role, they did so outside of the range of permissible behavior associated with their role in that official capacity. These public entities and their individual actors had utterly no oversight.

Therefore it is rightful to hold both the public institutions and the individuals of these public institutions responsible for these violations. This pertains whether or not it was done simply negligently or with malice.

As argued elsewhere, these "public entities" may turn out not to be eligible for sovereign immunity, and may not even be legitimate state entities.

Affects ALL Professional Employment

NCPHP and NCMB, by their false determination and denial of due process, as state agents which control all possible employment as a physician everywhere in the world, in both the public and private sector, have on the basis of unwarranted cause of coerced and fraudulent evaluation done under false cover, and on the basis of false determination of both illness and disability, denied me all employment as a licensed physician board certified in the specialty of adult psychiatry. No agency has that right without a licensee having prompt and discernible access to fully legal, appropriately designated adjudication.

Proof of this "blackballing" effect will be provided at trial.

Due Process Was Denied

Concerns about the court not grasping the array of due process violations committed at multiple phases by multiple parties in the adjudication of my license status and the existence of more than one manifestation of substantive due process violation - namely NCPHP's and NCMB's full-scale substantive due process violation.

I maintain that I was denied all explicitly guaranteed due process rights including access to administrative remedy (see separate section) and to administrative judicial remedy.

Substantive due process

"Substantive due process provides heightened protection against government interference with certain fundamental rights and liberty interests." The court was asked to determine whether the conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." When I am able to lay out the documentary evidence and show both the many urgent requests I have made for administrative remedy, governmental intervention, and the provision of due process, and have been repeatedly denied, I think it would be fair to conclude that anyone observing to the sequence of events, the heinous wrongfulness of the actions and the cumulative, collusive and pervasive denial of fairness throughout this process by all defendants in various roles will in fact have their conscience shocked. I maintain that it is my right to present my case to a jury to determine this and not to have such decided by a single justice (whose threshold for "conscience woundedness" might not be a standard) on a motion to dismiss.

Such denial is an established pattern by NCPHP as elaborated by the NC Auditor. Cumulative denial of administrative remedy, whether intentional or simply multiply and deafly negligent, constitutes substantive due process.

What may even be of more concern is not simply the cumulative pattern of denial of due process in my case, such a denial of due process has been systematized and imposed upon over 1,140 physicians over just the preceding decade. This strongly suggests that this pattern of being ensnared in a regulatory authority's grip and denied fair process in an expedient manner and then further being subjected to an involuntary mental evaluation on no sufficient basis and then being subjected to what amounts to involuntary mental commitment, extraordinary interstate rendition at a "preferred program" and interrogation via some form of non-validated mental assessment at an unlicensed mental health facility and then subjected to polygraph examination and forced unlicensed and inappropriate mental treatment is not limited to me.

It has also been demonstrated that even just straightforward Board complaint adjudication has resulted in a nearly 100% increase in depression, anxiety and suicidal ideation and is likely to be a previously unrecognized cause of physician suicide. Imagine if these physicians were subjected to the Hadean descent I have described

above. If that doesn't shock the conscience, it is difficult to know what will. Perhaps this "routine" process was not sufficiently explicated such that Judge Boyle's conscience was not shocked.

No administrative agency should ever have the right to ensnare a licensee in a labyrinthine and, I argue, wholly illegal, investigatory and prosecutorial process that without warrant interrupts their careers, jeopardizes the delivery of critical patient care, and that simply by its public initiation portrays them as guilty or impaired, derails their careers, bankrupts them, and drives them to a point of personal despair. No citizen should be subjected to this form of Kafkaesque administrative abuse. The fact of this abuse will be abundantly documented at trial. I maintain that this abuse is so heinous and nightmarish that it meets the criteria for cruel and unusual punishment if not torture.

The definition of torture.

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

Convention Against Torture (CAT), first adopted by the United Nations on 10 December 1984

I also maintain, as documented in the section on denial of administrative remedy that NCMB and NCPHP are in egregious violation of NC150 B (see elaboration under Denial of Administrative Remedy) and by their non-referral to this available remedy and ensnaring me in the belief that there is no alternative remedy, preventing me rightful access to justice.

Despite this, Judge Boyle somehow concludes that nothing in my complaint can be fairly said to shock the contemporary conscience. I suspect that others reading my complaint, accepting it as plausible and true, would in fact be profoundly shocked. In fact, many who have read it are, so much so that the British Medical Journal brought specific attention to it this year in an expose' of the US PHP program scandal and NCPHP in particular, incorporating previously not disclosed observations by the North Carolina Auditor. Due to the requirements of verbal economy in the elaboration of detailed complaints in such a multi-component, multi-party complaint, perhaps Judge Boyle was spared detail of the full extent of the abuse by these agencies individually and conclusively.

It is expected however that, upon entrance into the trial process and surviving motions to dismiss or motions for summary judgment, the full narrative in fact will be able to be displayed. However this structural deficiency in the construction of the judicial complaint process is addressed is addressed (certainly a worthy study for legal academics), I do not want my case to be harmed as a result of such limitation on construction of such a multi-charge, multi-party complaint. It is not my right or capability or intent to correct this deficient administrative system but only to have my case heard and uphold my rights.

NCMB order to NCPHP; NCPHP "recommendations" as virtual board orders - Double Dose of Due Process Violations

Differing from defendants' contentions, it does appear that NCMB has invariably, or nearly so, acted upon the "recommendations" of NCPHP. After all, it has "referred" many physician licensees to NCPHP for "assessment" or "mental evaluation" at which time NCPHP has arrived at a diagnostic conclusion and made its "recommendations". By dint of its having denied due process and denied any access to a grievance process, NCPHP's "recommendations" are hardly that. They are in essence virtual board orders which NCMB apparently invariably acts upon.

It is important to stress that the denial of due process and rightful administrative remedy has occurred at all four distinct phases in the adjudication of my licensee rights.

1) @ NCMB - vetting of initial concern; denial of informal hearing; dismissal of Carter evaluation; forced referral to NCPHP (among others);

2) @ NCPHP - denial of due process in conducting its "assessment" whether labeled as a peer review or as a diagnostic mental evaluation; denial of access to nature of "concern;" denial of report; denial of correction; denial of grievance; denial of providing rationale for recommendation; wrongful dissemination of report, esp. as though definitive;

3) @ NCMB post NCPHP - handling of NCPHP report; publication of NCPHP "findings" on my licensee page; interference with and compromise of impartial evaluation; and forced license inactivation;

4) @ NCMB upon application for reactivation - continued prevention of access to license through constructive denial even though prior matter was entirely dismissed with prejudice; continued denial of license on no basis – no "new" issues.

In the conspiracy section, I argue that one or more persons was actively involved in the orchestration of NCMB's sham investigation on the allegedly spontaneously submitted "concern" and NCMB's intentional ignoring the findings of a comprehensive psychological evaluation (gotten at their investigator's direction specifically in response to the expressed "concern") which fully documented the absence of any psychiatric illness or impairment.

Due process Is Required for Peer Review and for Fitness for Duty Psychiatric Evaluation

Whether considered as a "peer review" activity for the NCMB-ordered "mental evaluation" or as a diagnostic psychiatric "fitness for duty" evaluation, I as a licensee am entitled to all provisions pertaining to due process and that understanding of due process which might fall under the rubric of patient rights and medical professionalism, a specialized form of due process that I have, for shorthand, labeled "medical due process."

"Medical Due Process" when conducting a medical procedure under activity associated with "Medical Practice"

It is important to note that due process is a legal term which pertains to the assurance of fairness in the delivery of justice. Therefore, it is a difficult term to incorporate into the conceptualization of a medical evaluation such as that conducted by NCPHP. One doesn't normally speak of "justice" in such a medical context.

While a patient has a right to one's medical record, to correct or amend it, to seek an alternate opinion etc., these are considered to be professional and ethical obligations that are fundamental to the integrity of the practice of medicine. As explored elsewhere, I should have been covered under North Carolina's Patient Bill of Rights Act. However, NCPHP asserts that its conduct of these diagnostic "fitness for duty" evaluations does not constitute the practice of medicine and in fact goes so far as to insist that it does not conduct such diagnostic assessments. This flies in the face of reality in that a) NCMB specifically requested that NCPHP conduct a diagnostic "mental evaluation" not a "peer review"; b) diagnostic evaluation is never part of "peer review" proper; c) the record that NCPHP provided to NCMB is not in any way a peer review report but is rather a psychiatric diagnostic consultation (at that accompanied by illicit laboratory testing) that arrives at a diagnosis and makes medical recommendations; and d) nowhere to be found on NCPHP's website is listed having the functions of or a description of any "peer review" process. NCPHP has in fact been conducting diagnostic evaluations and not peer review and doing so with neither legislative authority nor appropriate corporate licensure. And while conducting such – with utterly no requisite oversight – it has thoroughly denied me and others of due process and access to rightful administrative remedy, both as emphatically asserted to the NC Auditor as existing and as would be available under NC 150 B (if indeed NCPHP were even a legitimate state agency which was mandated to promptly provide such to NCOAH).

However, the term "due process" in such a medical setting is not used. Therefore, if we are to refer to the term due process while referring to NCPHP in its presumptive execution of a diagnostic psychiatric evaluation, one is challenged with incorporating the legal due process concept. Therefore I propose something comparable which might be referred to as "medical due process." Such a due process would envelop a variety of

procedural activities that are currently undertaken under the rubric of patient rights, namely right to refuse consent to procedure; right to refuse permission to disclose; right to interrupt one's examination; right to access one's record; right to correct one's record; right to seek second opinion; right to refuse treatment; right to refuse rendition; right to be informed of alternative treatments etc. I raise this because, as complex as this NCPHP professional identity challenge is, NCPHP is maintaining that it is an "educational public charity." And yet it is performing professional career viability consequential activities as peer review which I maintain exceed the activities permitted under such an educational public charity corporate designation, but under the false rubric of peer review performing highest level forensic diagnostic fitness for duty evaluations without appropriate corporate licensure. Therefore, I think it is useful to conceptualize that in its conduct of diagnostic forensic fitness for duty psychiatric evaluations, even though they may be "simply" of a screening nature, it is expected that some variant of a medical due process philosophy will also prevail in the administration of such an examination and that due process analog might best be termed "medical due process" for shorthand.

Pervasive and Ongoing Denial of Due Process

Throughout, I have been denied that due process and further have been denied all means of addressing and correcting that through the administrative system. One should not have to await an NCMB administrative judicial hearing on one's own license sanction case to assert innumerable manifestations of denial of procedural and substantive due process while one is trying to argue the substance of one's case on its own merits. That is an unfair burden to the licensee. The correction of that broken system is the responsibility of the overseeing entity. In this case there is no overseeing entity. There was – and is – no one to whom to call attention to these multiple egregious procedural violations. I suspect further that, if I had tried to argue for the denial of due process in the civil court, I probably would've been told that I had no standing in that no agency had thus far investigated any such wrongdoing. Thus the endless Catch-22. This however under my recent analysis of NC 150 B is not an insoluble Catch-22. NCMB must either declare its governmental oversight in which case an investigation must be begun and deliberation on its wrongdoings conducted, or it does not have oversight in which case it is not a legitimate state agency eligible for sovereign immunity. There is no reason that I should be penalized for not being able to compel an answer to its legitimacy as a state agency or to correct its deficiencies when these are entirely out of my domain.

To be argued subsequently, I maintain that diversion from NC 150B remedy constitutes pervasive substantive due process violation.

Denial of Administrative Remedy Prevented Justice

Irrationality and Unlawfulness of NCMB Issuance of Two Orders

1) To Go To NCPHP for Evaluation

To make an assertion that, based upon a single anonymous concern that I "might be impaired" would mean that one would have to act quite promptly in terms of intervening. However, it took nearly a year from the original contact with the NCMB investigator for NCMB, their conduct of a full throttle investigation (on the basis of one anonymous concern!) to act to cause me to see Dr. Pendergast for a "peer review." Clearly, the board would have to act with more of a sense of urgency if it truly felt that I were impaired. Its rationale simply fails in the face of this.

2) To Go Out of State To Where NCPHP Said I Had to Go

It remains difficult to understand how the medical board can order compliance with an entity, NCPHP, which itself is conducting activity without legislative authority, appropriate licensure or oversight, and which activity is fraudulent and dangerous. However, NCMB, the licensing authority which was charged along with NCMS with oversight of NCPHP to which it is referring me, was documented to have wholly failed in its oversight. Further, as its overseer and presumed regulatory authority, it refused to hear any grievance about deficiencies in the NCPHP process that occurred in my case. Therefore, NCMB was found to have wholly failed. And yet despite my attempt at seeking prompt remedy and for its opening an investigation into my complaint about the irregularities of NCPHP's operations, NCMB chose to ignore and/or dismiss my detailed complaint. What then is my right of due process? Especially considering that NCMB itself has no government agent overseeing its activity? Here we have failure of oversight of NCPHP by its own board of directors, by NCMS and by NCMB, all specifically charged with its oversight. And NCMB itself has no government oversight at all. (Documentation specifying this from a senior official at the highest level of state government will be introduced into evidence.)

One simply can't give broad authority to an agency to act as they wish, simply by nature of assigning the generic function of "protecting public safety", no more so than allowing police to perform any action they wish on citizens simply because they have been given a broad mandate to "enforce the law" and "protect the public."

Denial of access to grievance process which NCPHP asserted to the NC Auditor as concurrently existing

NCPHP alleged in its testimony to the NC Auditor conducting a comprehensive performance audit in 2013 (report in 2014) that it had in place an operational grievance mechanism, one that afforded the due process required by law to be provided by NCPHP in its conduct of its "peer reviews." Having been thoroughly denied any access

to or even knowledge of such a grievance process in its assessment of me, I inquired about accessing the grievance mechanism and was denied provision of it. I again sought correction of my record and provision of the protocol that allegedly was introduced to address the North Carolina Auditor's concerns and was again denied access to either the grievance process or to the allegedly existing protocol. I assert that there was and is no such operational grievance protocol.

The absence of such a protocol and the denial of access to the grievance process is by definition a substantive due process violation (not to mention fraud on the NC Auditor). I attempted to confront this denial of due process through multiple means including complaint to its alleged overseeing body NCMB and was refused consideration. I was denied all reasonable administrative remedy by both NCMB and NCPHP. Members of both NCMB and NCMS are appointed to the NCPHP Board of Directors specifically for the purpose of overseeing the legitimacy of the operations of NCPHP. They therefore were concurrently aware of such denial of due process.

In such denial, I was refused all means of administrative remedy by NCPHP which was not only held out to the NC Auditor but also by inference to this court as having been available to me.

Joint Administrative Deafness

Denial of responsiveness by NCMB and NCPHP to multiple correspondence pertaining to extreme concerns about violation of protocol and law.

To assert that I did not exhaust all administrative remedy is to imply that the only administrative remedy is that of an NCMB administrative hearing. I believe this is fundamentally incorrect. If I were seeking only to have a hearing on the core elements of my case as finally determined after all administrative remedy had been delivered, then that might be a reasonable conclusion. However, such a linear process presumes integrity of an administrative system in which justice and professionalism have been executed throughout the process. When they have not, the licensee, i.e. me the litigant, is now burdened both with presenting one's own case as well as having to confront a plethora of procedural violations that have summarily and comprehensively biased the proceeding and intrinsically denied one fair hearing (and in fact have prevented one from stating one's case such that a hearing wouldn't even be necessary).

However, due to egregious procedural irregularities and repeated denial and active thwarting of due process throughout, I have been unfairly burdened by having to prove administrative protocol violations in addition to presenting the merits of my own case. The courts understandably defer to the presumed integrity of the administrative regulatory system. What ensues then necessarily is little more than a kangaroo court.

Lack of appropriate, responsible administrative behavior

Just as it is alleged by Judge Boyle that I had administrative remedies via a hearing which I supposedly declined, so too can it be argued that both NCMB and NCPHP (acting, whether legitimately or not, under the banner of the state) must themselves take reasonable, appropriate and prompt corrective administrative action in the event that they learn of the existence of a bona fide problem in the denial of administrative remedy, and their responsive actions must be commensurate with and responsive to the nature and gravity of the problem.

As detailed earlier, there were nearly innumerable denials of administrative remedy at each of the four phases of my license status adjudication: NCMB >>> NCPHP>>> NCMB /// and NCMB application for license reactivation

Judicial misunderstanding that there are multiple means of administrative remedy besides administrative hearing

The court does not seem to understand that there are multiple means of administrative remedy; an NCMB-conducted administrative hearing is not the only remedy (nor perhaps even a legitimate one). In fact, a hearing on one's license sanction should be the last means of adjudication within the administrative justice system.

The fact that I was prohibited from a "pre-depravation" [sic] hearing is established as fact. I was overtly denied any opportunity for discussion at the pre-charge conference (the "charge" being that I did not comply with the NCMB order to comply with NCPHP's referral for illegal out-of-state involuntary mental evaluation of an experimental nature at an unlicensed NCMB – NCPHP "preferred" institution.)

The assertion that I erred and waved my rights in not proceeding to hearing

"A plaintiff may not bypass a seemingly adequate administrative process and then complain about processes constitutional inadequacy in federal court." (Emphasis mine.) In fact, as has been discussed in addressing Judge Boyle's erroneous reconstruction, I did not bypass any "seemingly adequate" administrative process. The decision to accept the NCMB strong-armed letter of concern in exchange for the board dropping its "charges" (of noncooperation with its order to go to Acumen) was the agreement that was made. It was an expedient agreement made by me under protest simply so that I could focus on the then pressing federal whistleblower action in which I was engaged. I and my counsel saw this board intrusion as simply a side circus, a distraction.

In fact, the decision not to proceed with an extraordinarily costly administrative hearing (one at which I was told due to the confluence of seemingly legitimate, falsely stacked factual elements that I would have little likelihood of prevailing at) was influenced both by financial concerns, and by a recognition that I had been essentially strong-armed into accepting the letter of concern. Let it be clear: I did not avoid an administrative hearing. I was told that such would not be necessary if I were to take the expedient course of

simply accepting the board's letter of concern, packaged by Mr. Blankenship as being its lowest level of discipline, in return for which the board would drop its trumped-up charge of "lack of professionalism" for not acceding promptly to what I felt was an illegal order and letting me resume my clinical practice. The decision was a pragmatic "cut your losses and redirect your attention" one, though done under protest. In fact, the letter of concern itself states specifically that I had presented to the board my reason for not complying. To state that I avoided administrative hearing or did not avail myself of such a process is explicitly false and I believe constitutes another element of defendants' and counsels' egregious deceit.

How the board acted subsequently in terms of handling the independence-compromised consultant's report is a separate matter. The fact remains that the agreement pertained not to sacrificing the opportunity for a hearing but rather to obviating the need for hearing altogether in exchange for the letter of concern and the Board's dropping of the charges of unprofessionalism for failing to comply with its illegal order based on NCPHP's fraudulent assessment and being able to resume my practice. It was not in exchange for my being removed from practice and having my license "voluntarily inactivated" in such a public defamatory manner. This is an explicitly false assertion made both by defense counsel and then by restatement of this judge. I believe this is a manifestation of deceit.

Further, in asserting that I did not pursue all processes that were available to me in an attempt to obtain due process (a clearly groundless assertion), no regard is given to the entire cascade actions that I pursued in order to try to seek rightful administrative remedy.

Further, it is also unreasonable to state that if I was then "displeased" with that hearing (which had been obviated), I could have appealed to a Superior Court. Rather, it should be asked what governmental entity existed that would assure throughout this administrative process that I was in fact provided all due process and the delivery of all administrative remedy available to me? In the absence of such a governmental overseer, why is it my burden to have to argue both the deficiency of this administrative system as abundantly manifested in these agencies' joint actions as well as plead my own case pertaining to the nonexistence of mental illness or impairment.? (And why is it considered valid that I am having to prove such when no legitimate grounds existed to warrant such a dystopian infringement. Had the state had sufficient oversight mechanisms and had these two agencies operated with some element of integrity in the provision of their services, assurance of due process and facilitation of all means of administrative remedy (of which administrative hearing is only one) then I wouldn't have to proceed with this federal action. This federal action in fact was made necessary as result of the wholesale failure of the administrative processes that would have enabled me to have full administrative remedy and which would have honored my due process

rights throughout. I allege that NCMB and NCPHP have literally hijacked the legitimate administrative judicial process.

Judge Boyle, on utterly no basis, conclusory asserts (page__) that clearly process was available and that no allegation before the court would support a determination that the process available was patently inadequate. Clearly, I strongly disagree and I believe the facts in my case are supported by abundant documentation and witness statements. I believe that I have that right to make my case that such judicial usurpation, lack of government oversight and perhaps covert and collusive intent prevented me from accessing all means of administrative remedy and due process.

Arguing that I have not presented concrete evidence in the complaint that the procedures in place were unavailable or if available were a sham seems to prevent me from presenting the very evidence that I would present in a trial pertaining to these very allegations. It was my understanding that a complaint such as this is simply intended to state the diverse accusations with a sufficient skeleton of factual elements to understand them and to lay out the sequence of events that gives rise to those allegations and that it was for the court at this juncture to simply determine their plausibility and to give me the plaintiff the broadest range of believability that I will be able to provide the documentary evidence and witness testimony to support those claims. To thwart such a claim by making broad and wholly unfounded conclusory statements about the adequacy of the administrative judicial system seems not only unfair but without grounding. It is not clear to me how Judge Boyle can assert so globally that sufficient administrative processes and remedies were available to me and that I did not avail myself of them. If the case were to be heard, the evidence would be abundant (as elaborated here, which is yet only a sampling of the remedy sought) that an overwhelming number of attempts were made to seek all avenues of administrative remedy and due process. For the matter of record, I am still pursuing all avenues of administrative remedy and have still not been granted rights specifically agreed to by NCMB and NCPHP. And further, multiple complaints to multiple of these defendants over six years about the egregious wrongfulness of NCMB's and NCPHP's behavior have been overtly neglected.

In referring to the Shannon v. Testen case, where the plaintiff had alleged that certain peer review procedures were a sham, given appropriate opportunity to have this case heard before a jury, abundant documentary evidence will be produced that will fully demonstrate that the assessment by NCPHP under the false rubric of "peer review" was itself a novel form of sham peer review. It will be further demonstrated that the conduct of that assessment, taken as the diagnostic psychiatric "fitness for duty" evaluation that it actually was and acted upon by NCMB as though it were such, was severely flawed, both procedurally and substantially. It will be demonstrated that Dr. Pendergast's and Mr. Testen's construction of the history and contextual narrative were overtly fraudulent.

In addition to documenting such a sham and fraudulent process, it must again be noted that it has been factually documented by the North Carolina Auditor that NCPHP was found to have violated the due process rights of over 1,140 physicians over the preceding decade . In my case, as will be demonstrated in abundant and explicitly detailed documentation[1] Dr. Pendergast and the NCPHP organization repeatedly denied me access to my record and repeatedly denied access to any opportunity for me to contest elements of that alleged "peer review" and further refused me access to his report, and to this day has denied me access to the official signed and dated and appropriately authored report and all associated medical records. No rationale for denying such has been provided. I have repeatedly attempted to discern whether NCPHP conducted "peer review" or a diagnostic psychiatric evaluation (a "mental evaluation") as was ordered by the North Carolina Medical Board. NCPHP has persisted in denying an answer to this fundamental question and refused to provide any protocols for the conduct of its assessments or one's licensee rights. As will be seen in subsequent issue arguments, without an acknowledgment of the nature of the procedure it conducted, and without clarification of the corporate status of this organization, its oversight and its eligibility for coverage under sovereign immunity or other professional liability coverage for its actions, it has been impossible for me to proceed with any form of litigation or even to find appropriate malpractice representation given that NCPHP has denied explicitly that it conducted a diagnostic psychiatric evaluation. This in addition to being thwarted in an ongoing manner from all administrative remedy.

Additionally, the court seems unaware that a medical licensing board has available a stratified system of approach to intervention on behalf of public safety concerns and has access to invoke a variety of interim emergency interventions to remove someone from practice in the event of imminent harm. Automatic default to compulsory revocation of one's license, even if on a reasonable basis of solidly established illness, is not only erroneous, it's ignorant.

Denial of Access to Appropriate Administrative Judicial Remedy

The fact of substantive due process violation existing due to systematic denial of timely, procedure-appropriate and rightful administrative judicial remedy by both NCMB and NCPHP available under NC 150B.

I here provide a succinct delineation of what administrative and judicial remedy should have been available.

in re: NCMB:

- right to be informed of nature of "concern;"

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[1] see my letters to Dr. Collins, Chair of NCPHP Board of Directors

- opportunity to be informed of and respond to the board's concerns;
- right to have informal conference upon receipt of "concern" to explain / respond to raised "concerns;"
- right to have appropriate notification of conduct of an investigation and its rationale;
- right to learn of NCMB's reasoning for meeting and deciding "on its own motion" to compel referral to NCPHP and to not accept the Carter report;
- right to understand composition of that SSRC committee (internal NCMB senior staff committee) making such a determination so as to ascertain whether illegitimate factors were at play;
- right to seek independent opinion from community provider of one's choosing and to have that provider speak on my behalf;
- right to be informed of all of my rights and limitations of confidentiality under such an involuntary commitment evaluation;
- right to be informed of my rights at every step of the process;
- right to be informed of "contested case" designation and to seek hearing in OAH on each and every procedural matter at hand;
- duty of NCMB to declare case contested and to have no further involvement until the matter of contest was properly heard in OAH;
- duty of NCMB to have appropriate legal direction in the performance of its administrative functions;
- duty of NCMB to have active government oversight in the conduct of its functions;
- at the very least, having been thwarted from seeking contested case designation and rights available to me at OAH, I would have been able to appeal for intervention to the responsible state agent. Such uniform denial of judicial remedy is inherently a substantive due process violation.

in re: NCPHP:

- right to be fully informed of procedure that NCPHP was conducting and its rationale for conducting such;
- right be be fully informed of any limitations on confidentiality of NCPHP evaluation;
- right to be informed of laboratory tests being conducted and to see protocol for conducting them;
- right to learn of the nature of the alleged concerns and respond to them and have those responses incorporated into the report;

- right to see my report, contest its veracity and correct its errors;
- right to be informed of my alleged diagnosis;
- right to understand the rationale for its recommendations;
- right to be informed that its recommendations carried the weight of a board order;
- right to seek independent opinion of my own choosing;
- right to allow my consultant enter into the NCPHP his/her opposition to the NCPHP diagnostic assessment or treatment plan;
- right to learn that NCPHP was not following the law pertaining to the conduct of what is understood to be "peer review;"

Profound Violation of NC 150B

In further researching NC law and administrative code specifically in preparation for this appeal, I studied NC 150B intensively as I had only perused portions of it earlier.

What I read produced a whole new understanding and provided what I believe to be the missing piece of the "denial of due process and administrative remedy" puzzle. I learned that there is an entire agency created specifically for the adjudication of administrative issues of contest, and that includes all matters of a procedural nature where the licensee or citizen adversely impacted by an agency alleges that one's rights have been wrongfully infringed.

What I read here indicates that adjudication of agency vs. licensee disputes, whether over incremental procedural disputes or ultimate license sanction, is what this office is specifically designed for.

This would necessarily mean that at <u>any</u> point in the course of an <u>administrative</u> agency's deliberations impacting a licensee where the licensee feels he or she is not being treated fairly and according to the established rules governing how agencies deal with licensees, one has the right to have a hearing on the matter. While the law says that one has to somehow designate one's case as "contested," it is not clear that this is necessarily solely the licensee's duty. Based on my read, what this really says is that when there's a snag in the routine administration of an agency's decisions on a licensee – <u>anywhere</u> along the administrative production pipeline – and the licensee objects, that case, by very nature of its "objection," is now designated as <u>contested</u>. And as contested, it is now necessarily in the administrative judiciary's court which is deemed the official central quasi-judicial entity for administrative law disputes. And even then, if the licensee doesn't feel like they got a fair shake, then can go to Superior Court and appeal that ruling. And then, <u>after</u> these rulings – OAH quasi-judicial and then Superior Court, if chosen – the licensee goes <u>back</u> to the <u>administrative</u> agency, ruling in hand, and the administrative agency's interactions with the licensee, now informed by judicial wisdom and perhaps even administrative rules precedent, proceed.

If I am correct in this, then by not informing me of this route of resolution and by holding me captive under protest about what I allege to be their innumerable procedural wrongdoings, both NCMB and NCPHP have a) committed a substantive due process violation by not making this means of administrative procedural dispute resolution available to me; and b) worse, have wrongfully usurped the rightful authority of the administrative judiciary. And in so doing, they have given the licensee the false belief that 1) this was the correct route of justice; 2) it would be fair; and 3) "there is no other justice but me."

The NC Office of Administrative Hearings assumes the official quasi-judicial role and, by doing so, explicitly removes such from NCMB.

The Office of Administrative Hearings (OAH) is an independent quasi-judicial agency that was established to provide a source of independent Administrative Law Judges (ALJ) to preside in administrative law contested cases. It was created to ensure that the functions of rule-making, investigation, advocacy and adjudication are not combined in the administrative process. As a consequence of this policy, North Carolina operates under what is referred to as the "central panel" system of administrative adjudication. This simply means that the ten Administrative Law Judges, who are employed by OAH, work for the central panel rather than the state agency. North Carolina became the thirteenth jurisdiction to adopt a central panel system (1985). (from NCOAH website)

"Contested Case"

Although this refers to it taking on "contested cases" (seeming to mean that one had to have explicitly declared one's case as such), I believe that in its false funneling toward the only resolution being an NCMB administrative hearing on my license sanction (as opposed to its declaration of a case as a contested case with its own independent adjudication) I maintain that NCMB intentionally thwarted independent administrative remedy by preventing one seeking "contested case" status and for that matter one even learning of the "contested case" option. In fact, NCMB and its lawyers, and NCPHP and its lawyers, have usurped the entire NCOAH process which after all was specifically intended to ensure that its administrative functions were not confused with investigative, prosecutorial and judicial functions that were designed to be undertaken by this separate wing of the administrative system, is namely the officially designated Office of Administrative Hearings.

What NC 150 B conveys is that I had the right to contest my case as a licensee at ANY stage that I felt I was not getting justice; NCOAH is not just for an end-of-the-line administrative hearing by the Board on your license sanction case. In fact, at the point it is no longer, per se, a "board hearing" at all.

Not informing me of right of "contested case" designation so that these incremental protocol violations could be handled in the OAH

At that time with no knowledge of the apparent remedy available under NC 150 B, I made multiple attempts to remedy these many procedural violations via correspondence to the US Attorney for violation of 42 CFR Part Two; US DHHS – OCR for violation of HIPAA and severe breach of PHI; NCOAG for violation of confidentiality in releasing protected health information; extensive ethics complaint to the North Carolina State Ethics Commission under the North Carolina State Ethics Act to call attention to and seek intervention for alleged violations of protocol and law by both NCMB and NCPHP; multiple correspondence to NC Auditor; inquiry and complaint to NC Secretary of State regarding lack of appropriate licensure of NCPHP; filing complaint with NCMB about NCPHP's lack of corporate licensure to conduct diagnostic medical activity and violation of peer review protocol; and to NCMS pertaining to its failsafe oversight responsibility over NCPHP et al.

NCMB and NCPHP have no prosecutorial or judicial identities

In fact, my read of this suggests that this OAH entity being allocated specifically for prosecutorial and judicial functions entirely (and it specifically labels itself as "quasi-judicial"), this then undermines all "sovereign immunity / absolute quasi-judicial immunity" defense stances of NCMB and NCPHP as they are neither designated nor sanctioned as "quasi-judicial" entities.

NC 150B also insists on each agency providing the least burdensome approach to justice and requires the conflict initially be attempted to be resolved via informal means.

NCMB Diversion from OAH

According to this law (NC150B), it should have been declared by NCMB (and NCPHP) itself as simply the quintessentially administrative agency it was designated to be that anytime a case is not proceeding according to customary administrative procedures or when a licensee objects to any aspect of the administrative action being undertaken, it is automatically designated as a "contested case" and should have automatically been referred to OAH. I, as the licensee, should have been given this option at first indication of contest. Rather, I was held hostage in this system and forced, under all manner of rights violation and threat of license revocation, to comply with NCMB's regulatory usurpation.

It would appear that NCMB has gone off the radar, essentially keeping all contested matters out of the OAH. By keeping a case and not declaring it contested, and by not informing a licensee of one's rights, NCMB has usurped the power of the North Carolina administrative judicial system and has operated as an unlawful para-judicial entity. It has literally stolen a prosecutorial / judicial entity, and falsely made licensees believe that they had no alternative. Indeed, it has been extremely difficult to find any recourse to the "harsh justice" of NCMB. So difficult that even no counsel thus far has apparently

even sought to utilize the "contested case" protocol rightfully available under 150 B. Is access to the rightful judicial remedy THAT obscure? NCMB has been able to subvert this existing administrative judicial system precisely because it has operated with utterly no government oversight or accountability. The state of North Carolina itself has failed colossally in its lack of oversight and immense harm has been done.

By acting entirely outside of the legitimate and state authorized administrative judicial system, one specifically designed to avert such a profound denial of both procedural and substantive due process, NCMB has willfully and knowingly, under the direction of its legal department under Thomas Mansfield and its allegedly legally designated "prosecutor" Brian Blankenship, and the supervisory and consultative guidance of its "Of Counsel" subverted state law and harmed me and untold numbers of physicians, and by wrongfully harming my and their careers, jeopardized the continuity of their patients' healthcare, at times, with fatal consequences.

NCMB has usurped legitimate judicial authority

What does one call an agency which has wrongfully usurped prosecutorial and judicial power that was not rightfully theirs? It is basically a coup, an intentionally orchestrated overthrow of legislatively-authorized government. This is no different than an angry entitled group becoming a lynch mob, albeit this one meets in hallowed conference rooms, its members wearing business attire, some even wearing the white coats of their medical profession, claiming to have authority which they do not in fact have.

It can be legitimately argued that from the first moment that a case is contested, namely it has failed at informal resolution (which was required under 150 B to have been provided but was not), it should have been immediately removed from NCMB jurisdiction and placed in the hands of the OAH to hear that procedural question where legitimate administrative justice and adherence to rules of civil procedure and rights of licensees would be upheld according to written judicial standards.

If I am correct in this line of reasoning, what has occurred procedurally at NCMB is a mockery of justice, licensees deprived of their rights, made to believe there is no means of halting the para-judicial abuse they are subjected to, being sent out-of-state – a form of rendition for "assessment purposes" – for unauthorized "mental evaluations" and "treatment" at NCMB and NCPHP "preferred programs," based on "findings" of an unlicensed, non-overseen entity claiming sovereign immunity which conducts fraudulent diagnostic activities entirely outside of the scope of legitimately authorized behavior.

This non-overseen administrative agency additionally has forced physician licensees into "consent orders" and "letters of concern," both forms of plea bargaining born out the the criminal justice system, but here too often used as a form of forced false confession, under the contrived apparition that they exclusively possessed such prosecutorial and judicial power.

Such is not only a diversion from legitimate administrative justice and a dangerous usurpation of judicial authority, it also facilitates the abuse of psychiatry by a state agency, not unlike Soviet Russia imprisoning dissidents under the newly created illness designations of "refusenik" and "pre-schizophrenia," while operating under the falsely proffered banner of "protecting public safety." At its heart, theirs is a human rights violation. And by means of thwarting all access to fair and transparent legitimate judicial process, essentially creating no escape from its clutches, it has veritably committed torture. Being trapped in these combined agencies' clutches has truly been a Kafkaesque nightmare. Strong evidence exists that physicians have been driven to suicide by such sadistic abuse. Lest this seem excessively dramatic or my being an exception to the rule, the previously referenced British Medical Journal article on US PHPs lend solid credence.

Federal Court Needlessly Burdened With Administrative System Failure of Oversight

Context of failure of requisite oversight

NCPHP was supposed to have been overseen by three entities: a) its own Board of Directors; b) NCMB (whether through its designated members assigned to NCPHP's Board of Directors or otherwise remains unclear); and c) the North Carolina Medical Society through its designation of three members to the NCPHP Board of Directors specifically for oversight and compliance purposes. These were not, as is portrayed by the defendants, generically appointed board members intended to serve as "do-gooders" on a generic "educational public charity." Because this is anything but such an innocuous charity. They were specifically designated to serve as overseers of NCPHP in the conduct of career consequential "peer review" and the assurance of transparency and due process. The NC Auditor found that they fully failed in that function. The argument that one can't hold an organization responsible for its board member appointments fails on that merit. These board members were not generic board members; they were designated representatives of NCMS and NCMB to perform specific oversight functions which after all were meant to serve as a failsafe in order to keep NCPHP in compliance with law. They profoundly failed. They acknowledged such in their correspondence in response to the Auditor's report. Whatever reasons they failed in that function is irrelevant, i.e. whether NCMS specifically defines their duties and monitors their adherence to their duty or whether myriad operational and "power dynamic" factors at NCPHP prevented them from doing their duties etc., these are all immaterial. The bottom line here is they were specifically appointed for oversight to ensure compliance with law and the provision of due process in its primary function of "peer review" and they failed in that oversight. Had NCMB and NCMS conducted appropriate and courageously assertive oversight, they would have been responsive to my and others' urgent inquiries with regard to their misconduct of alleged peer review

and their covert conduct of involuntary diagnostic psychiatric fitness for duty evaluations and wrongful interstate rendition under the guise of "peer review" and to the requirement of the provision of due process and the immediate institution of remediation.

That this case and the breathtaking plethora of administrative procedural violations should even have to be heard here in this federal court is itself indicative of a wholly failed system of administrative oversight. Again, it is not my duty of fix it, nor for that matter to even prove its pervasive dysfunction but only to document here in my case how my constitutional and civil rights have been abridged and how I have been multiply, repeatedly, and wholly denied access to fair administrative remedy. And how, as a result of this debacle, my patients have been harmed, one (and possibly more) driven to suicide by the wrongful and needless termination of their care.

Is it my duty to state in my complaint the state of North Carolina itself is at fault for its lack of oversight in preventing the reckless behavior of these two agencies and the failure of oversight of a third? If so, then please inform me and I will enlarge my complaint accordingly.

The Court's overlooking the role of extensive and successive denial of administrative remedy by combined agencies.

Ongoing Denial of Administrative Remedy

To this day of informal brief, I have still not been able to receive the official signed and dated report of NCPHP. To this day, I have still been thwarted from utilizing any grievance process to contest the evaluation conducted by NCPHP. NCPHP, via its Memorandum of Understanding (MOU), while authorized to conduct peer review (and peer review only - if even that), was also ordered in repeated sections to ensure the provision of due process. Denial of access to one's report, denial to have a grievance hearing at that level – namely at the NCPHP assessment process level – is in fact an explicit violation of that provision. Continuing to prevent access to that report and access to their "peer review assessment" protocol and published licensee rights seems to be an intentional obstruction of justice with an attempt by this alleged "state agency" to "run the clock" on the statute of limitations. One might argue that this is not only dishonest manipulation and grossly unprofessional behavior, it probably meets the criteria for obstruction of justice and substantive due process violation. By not acknowledging such, it has deceived this court.

Conspiracy Claim Elements Are Sufficiently Plausible

The challenge of asserting a conspiracy claim in the presence of obstruction of justice by repeated denial of administrative remedy and due process in the production of documents as well as in the setting of extensive ex parte communication amongst defendants and their counsel, presumably under the "common interests" doctrine.

Concerns re: Common Interest

Defendants aggregation

I call attention to the aggregation of defendants' memos and the Judge's phraseology "three motions to dismiss by defendants." This treats the defendants as though they were one group. There were three clusters of defendants represented by three firms. Each cluster of defendants filed a motion to dismiss, all three remarkably similar in content.

While the right of "Common Interest" might be invoked amongst similarly charged defendants, allowing such collaboration seems unfair for three reasons:

1) the sharing of information, legal resources and legal strategy amongst them amounts to a concerted team defense that makes the separately charged defendants appear as if to be represented by one collective firm;

2) not all of the charges against the parties are commonly shared;

3) in a charge of corporate conspiracy, independent of the determination of whether that charge is found to have merit (which the judge after all must review only after defendants' lawyers have already presented their presumptively collaboratively prepared motions to dismiss), the collaboration amongst separately charged parties obstructs the very interests and rights of the plaintiff and further allows for collusion in the suppression of evidence, and joint defense strategy.

Such communication allows for joint suppression of potentially incriminating and otherwise discoverable evidence, enables unfair coaching of defendants and witnesses and development of a shared storyline, and poses grave risk for spoliation of evidence.

Therefore, I believe that, upon a charge of conspiracy in a complaint, if deemed plausible, such ex parte communication must be expressly prohibited.

Elements of Conspiracy Claim

According to Judge Boyle, a conspiracy claim must prove the following (page 15 section B)

1. conspiracy of two or more persons
2. who are motivated by a specific class based invidiously discriminatory animus
3. to deprive the plaintiff of the equal enjoyment of rights secured by the law to all

4. and which results in injury to the plaintiff
5. as a consequence of an overt act committed by the defendants in connection with the conspiracy.

I maintain that sufficient circumstantial evidence exists to establish plausibility. If it is my burden to PROVE this claim at this juncture, then I may not able to not to establish the factual evidence. However, I believe that I can more specifically elaborate on the circumstantial elements supporting each of these elements.

An additional defect in the dismissal of the conspiracy claim is that, to my understanding, corporate conspiracy does not necessitate the full knowledge and active participation of all parties; one can be unwittingly pulled into the conspiracy or participate in it through tacit agreement, or for example by selective omission of oversight or mutual non-production of requested documents.

Because of the mechanisms by which these agencies can thwart production of documents and not return correspondence, it is very difficult at this juncture to demonstrate active participation in conspiracy. However the cascade of egregious procedural abnormalities from the initiation of this agency's adjudication strongly suggests that two or more parties or agencies did not act entirely independently of each other in the commission of these wrongdoings. Multiple procedural violations occurred including ex parte communication, violation of notification protocol, violation of pre-charge hearing protocol, violation of peer review protocol, violation of standard diagnostic protocol, violation of confidentiality, violation of customary referral mechanisms … ad nauseam. (These are detailed in my North Carolina State Ethics Commission complaint.) These violations virtually required cooperation amongst multiple parties. The attempt to correct these violations through correspondence with each of the parties demonstrated astoundingly uniform noncooperation. One violation in particular stands out and that is the profound violation of confidentiality in the highly unusual publication of the NCPHP hypothesized diagnosis of "delusional disorder," at that in the absence of any charge by NCMB. When confronted about this egregious confidentiality violation (discovered only four months after it had been posted), no mitigation was offered by either multiple persons at either NCMB or NCPHP. Such uniform non-correction strongly suggests collusion and not simply independent multi-party negligence. Is this conspiratorial silence or just representatives of a tapestry of profound multi-institutional incompetence? The likelihood of the latter occurring independently seems mathematically infinitesimally small.

Setting Ripe for Manipulation

However, it bears noting that in such a dysfunctional administrative licensing system with pervasive lack of oversight, one agency already documented to have violated the due process rights of over 1,140 physicians in the preceding decade alone, and which has usurped the judicial authority, it is not difficult to envision the possibility of collusion

amongst those who realize they can capitalize on such a vacuum of oversight to achieve whatever ends their roles might permit.

Denial of access to documentation and deficiencies in the complaint

As noted, the narrative in the complaint relied upon material documenting the interrelatedness of the parties and their collusive action in the commission of the deprivation of these rights and I expected that that narrative would be seen as the providing the supporting facts, even though not fleshed out.

It is difficult to know how to proceed with a conspiracy allegation when all active agents involved in the alleged conspiracy have somehow uniformly, across institutions and roles, refused on repeated requests to provide specific documentation to the plaintiff. All! One would expect that perhaps one or the other agency might respond in a professional manner in being willing to at least hear out a licensed professional's concerns and provide appropriate protocols. The very fact that representatives from each of the agencies overtly failed to respond to requests for documentation, clarification and complaint is itself so unlikely as to raise reasonable concern about collusion in their nonresponse rising to the level of conspiracy. However, again due to judicial economy, to preserve one's right of claim, one is only able to state the allegation on the basis of the circumstances which are detailed elsewhere in the complaint under separate sections. It was therefore inferred that, cumulatively looking at the multiple aspects of the complaint and the interrelatedness of the parts in each supporting the other in the hostile and catastrophic progression of events, that such would at least preliminarily support the charge of conspiracy.

In the event that I am allowed, I intend to provide more detailed narrative so that the charge may be more fully assessed on its own merit, notwithstanding the fact that all of the defendants have adamantly refused to produce documentation upon request and there is no administrative overseer who can enforce compliance with my legitimate requests.

Other than allowing me to proceed with discovery and introducing the fact of defendants' hostile discriminatory animus with the complaint itself, I had no other choice but to "weave a suggestion" throughout the complaint.

Request Opportunity to Cure Complaint

If the opportunity is provided, notwithstanding concerns about the length of the complaint, known details strongly suggesting such a form of conspiracy amongst the parties will be elaborated upon in the cured complaint.

Assertion Of Identity As Protected State Agencies Fails

Invalidity of "state agency identity" and "alter-ego" arguments for both NCMB and NCPHP and their false identity as state agencies which are eligible for sovereign immunity.

Defect in the assertion that NCPHP is a state entity because judgment would impact State Treasury

NCPHP is not funded at all by the state but rather by multiple entities which include NCMB, hospitals, insurers and other parties. Asserting that it is a state agency and that it receives its funding entirely from another (alleged) state agency, NCMB, is overtly and knowingly false and I believe represents another example of attorney deceit.

It is difficult to understand how a private 501(c)(3) educational public charity operating with its own Board of Directors type of errors and omission insurance (and without medical malpractice insurance) would be able to make the state treasury liable.

Further, granting of sovereign immunity, even if it were to be found to be applicable, does not automatically entail fiscal responsibility.

Given also that NCPHP (as well as NCMB itself) has not been adequately overseen by a state agency, as documented by the North Carolina Auditor, it would be easy to understand how the state treasury would reasonably argue against its responsibility for the damages caused by that agency which neglected seeking requisite state oversight. After all, oversight between an agency and its overseer is a mutual contract. If the party that is supposed to be overseen proceeds without such oversight knowing that such was required, that is a failure of its responsibility also.

No state oversight = no state agency, or at least no state agency eligible for sovereign immunity

Lack of state agency qualification (for sovereign immunity purposes) is supported by the following:

1. Chief Counsel for Governor confirms no oversight of NCMB.
2. NC Auditor establishes general pattern of no oversight and cites standard for governmental oversight.
3. NC Auditor establishes no oversight of NCPHP for the time relevant to this suit.
4. North Carolina Ethics Commission does not believe NCMB or NCPHP are state entities. Commission stated not covered under State Ethics Act and declined to investigate or take any further action to cause further administrative action. The NC Ethics Act states boards and commissions are covered.

5. Suggestive evidence: Fact that North Carolina Attorney General did not represent alleged state agency party defendants.
6. NCMB and NCPHP receive no state funding
7. NCMB is entirely independent of the state treasury. This seems indicative of NCMB not being a state agency as well as not having the treasury be responsible for paying damages for its negligence.

Further, in regards to state treasury involvement, such governmental control is itself one part of a fabric that is encompassed by the meaning of "governmental oversight." Not having the external monitoring of the state treasury to oversee, examine, question and challenge certain matters pertaining to NCMB's operations necessarily results in yet one more major deficiency of government oversight and serves as one more piece of evidence that NCMB is not a legitimate state agency eligible for sovereign immunity.

However, so untethered from any governmental oversight NCMB and NCPHP are that there isn't even an identified state agent to whom one can turn to complain! How can one be a state agency with no identified state oversight.

Government responsibility

Per the NC Auditor's 2014 report on Boards and Commissions in North Carolina: "The National State Auditors Association (4) states: "A governing body (i.e. the State) has the responsibility for developing a process for monitoring the regulated entities' (i.e. Board) activities to ensure they are following the applicable requirements and the public is adequately protected. The monitoring process should include receiving reports from entities and the governing body should specify who should report, what they should report on, and how often. The governing body should also review the information submitted and follow-up as needed on any noncompliance or questionable results."

4 Carrying Out a State Regulatory Program – A National State Auditors Association Best Practices Document – 2004.

"The ineffective oversight exists for two reasons. First, state-level entities report confusion about the authority and responsibility they have to provide active oversight and monitoring of Boards beyond tracking reports received. Second, the General Statute identifying the state-level entities does not specify the responsibilities of the state-level entities."

NCPHP as Conjectured "Alter-ego" of the State

It is falsely asserted that the Memorandum of Understanding sufficiently establishes that NCPHP receives state funds and that a judgment against it would cause the state treasury to be functionally liable. These is no basis in fact for Judge Boyle's conclusory statement. Both components of this assertion are clearly false. NCPHP receives no

state funds; and of that portion contributed by NCMB, such is only a part of its operating revenue. Even further, NCMB itself proudly proclaims that it receives no state funds on its website and apparently bypasses scrutiny by the state treasury.

The second factor cited, i.e. that NCPHP is an alter-ego of the state because NCMB has members on the NCPHP board of directors which (allegedly) retain the power to veto the findings of NCPHP is likely invalid. To my knowledge, there is no support for such an assertion. There is no indication anywhere published, including NCGS and NCAC laws and certainly no indication from any document provided by NCPHP that indicates that any board member, whether from NCMB or NCMS has any veto jurisdiction or power over a clinical or "peer review" decision made by a PHP clinician in the conduct of its evaluation. In fact it appears that there is no relationship whatsoever between NCPHP's clinical or peer review activities and involvement of the Board of Directors in those determinations, whether in oversight, veto power, in quality assurance or even apparently in compliance with law. Multiple attempts to procure documents describing the roles of these entities have been entirely unsuccessful. I maintain that such an assertion is ungrounded and, unless provable, may itself rise to the level of attorney deceit. Further, NCMB having specifically designated members on NCPHP's Board of Directors placed specifically for the purposes of oversight makes NCMB even more culpable for not actively intervening in NCPHP's commission of violations.

Additionally, if one is to argue as defendants did that an NCMS-appointed board member was simply a generic board member of a public charity, why then does this same contention not pertain to an NCMB-appointed board member? Using the earlier argument, they too might simply be members appointed by NCMB simply to keep themselves abreast of this alleged benevolent public charity's "educational" work or simply as a public relations "good will" gesture of NCMB. Their presence, based upon argument presented earlier by defendants and reiterated by Judge Boyle in reference to NCMS appointed members, neither necessarily connotes "state ownership" of NCPHP nor conveys it "alter-ego" status. Further, even though understood to have oversight authority, as is clear from the NC Auditor's report, having oversight responsibility and authority and conducting oversight activity are two entirely different realities.

Their membership does however, as asserted elsewhere, indicate a fiduciary relationship of oversight. However, even this oversight role considered, such does not automatically convey any state-partnership that would confer alter-ego status. It should also be noted here that, though unlicensed as a medical corporation, and yet conducting clearly medical activities, it would be considered a healthcare organization which would require compliance with federal governance and oversight standards applicable to healthcare organizations. Their failure of governance in this matter correspondingly increases their liability.

While it is noted in Judge Boyle's recap of my complaint that I agree that "NCPHP was created to identify and rehabilitate impaired physicians," this broad mission does not in

any way convey state alter-ego status. Further, the problem is not the benevolent altruistic mission; the devil is in the details where NCPHP's actions become extremely problematic in the execution of that supposedly benevolent mission. And that, in large part, is what this component of the complaint is about.

The contention that the "North Carolina law expressly provides that peer review activities conducted in good faith pursuant to an agreement with the medical board are deemed to be state-directed and sanctioned and shall constitute state action..." is the point of complaint here. Rather, the activities that NCPHP undertook were not peer review and the activities they undertook were not done in good faith. Multiple attempts were undertaken via seeking the allegedly existent grievance mechanism and other means (including appeal to their designated overseers NCMS and NCMB) to address the lack of good faith undertaking of its "peer review" assessment and provision of grievance mechanism and all were ignored.

The assertion that a claim against NCPHP would be paid by the state fails.

it is indeed questionable how any judgment against NCPHP would be paid by the state in that NCPHP is not a state agency. It is a private nonprofit 501(c)3 educational public charity corporation which apparently maintains its own errors and omissions insurance. I do not know if there are state agencies which are also non-profit public charity corporations. It would seem an unusual arrangement.

Further, it is elsewhere alleged that any tort claim against it (notwithstanding its assertion that it is immune from all litigation as it is protected under sovereign immunity for its conduct in good faith of peer review) should go to the State Industrial Commission which to my knowledge is essentially an insurer, not the State Treasury. As an insurer, it likely has its own reserves based upon risk projections (and perhaps even secondary "non-covered risk" insurance). There is no known direct link between the operation of NCPHP and the State Treasury. Since NCPHP is apparently a subsidiary of the NC Medical Society, and operates as a NC55A 501c3 educational public charity, the conclusory statement that NCPHP would burden the state treasury seems insupportable.

Multiple attempts have been made by me to discern who in fact is the party who would be liable in the event of a negligence claim against NCPHP. Repeatedly, both the CEO and Chairman of the Board of NCPHP declined to respond to my straightforward inquiries. Given that they have repeatedly declined to answer what exactly is the nature of the procedure they performed on me, and refuse to answer who their liability coverage entity is or what is the appropriate mechanism for filing such a claim, how is it even possible for defendants to establish such financial liability by the state with such certainty? It does not seem appropriate that this conclusory statement was accepted by this court. If not factually known with certainty, then such constitutes false information and I believe is again a manifestation of deceit. If they do not know it for a fact, then

such should have been expressed in the standard phraseology of "to my knowledge and belief..."

However, even arguing conversely that a claim might be paid by the state does not automatically impute state agency identity or sovereign immunity.

Assertion That NCMB is an Undisputed Arm of the State (i.e a State Agency)

In fact, such is a very disputed assertion, especially in light of SCOTUS FTC v. NC Dental.

The fact that NCMB may provide some proportionally weighted amount of funds to NCPHP according to the number of physicians registered in the state does nothing to support the argument that NCPHP receives state funding. NCMB states that all of the monies in its own account have been gathered exclusively from licensing fees; it boasts on its website that it receives no state funds. It is likely also doubtful that State Treasury has any oversight of this entity's financial account.

Flawed Argument for immunity on basis of 11th amendment (Section 2a)

Assertion that the "Board of Medical Examiners" is an agency of the state of North Carolina.

It is noted that, similar to the alleged existence of a "medical disciplinary board," I am unable to find any reference to an entity known as the NC "Board of Medical Examiners" in review of NCGS Chapter 90 - Medicine and Allied Occupations.

Presuming that what is meant here is the NC Medical Board (NCMB) (though recognizing that accuracy in agency designations is important), that argument is questionable in light of the SCOTUS decision pertaining to FTC versus NC Dental. It remains unclear whether NCMB is in fact an agency of the state of North Carolina eligible for sovereign immunity as it has no identified oversight by any governmental agent as is substantiated by one or more documents we have to support the finding of complete lack of government oversight. Therefore, NCMB not being a state agency eligible for sovereign immunity legitimately raises the question about whether 11th Amendment protection applies either for an agency or its individuals acting in their alleged official governmental capacity as they may in fact not even meet criteria to be recognized parties eligible for such sovereign immunity.

As is clear from the NC Audit report, a large number of physicians (1,140) have been harmed by NCPHP's denial of due process and its lack of oversight by its alleged government overseer NCMB and additional overseer NCMS. The potential for harm was so significant that the NC Auditor insisted that changes be immediately instituted to protect against the deficiencies of oversight that were discovered. This clearly indicates the NC Auditor's concern about potential for ongoing harm to other individuals.

Here, the fact that I was compelled to inactivate my license without sufficient grounds is not the issue. When I attempted to reactivate my license, I was prevented from doing so on no legitimate legal basis. My citation of the harm caused by the original NCMB action that has again arisen is not an attempt to "reverse an accomplished state action." NCMB deliberations in fact did continue beyond my inactivation and into my attempt at new reactivation of my license. My attempt at reactivation, especially when considered in light of NCMB's final decision to "dismiss with prejudice" its earlier charge, indicates an ongoing harm by this board, and one that may not simply be directed to me but may be a matter of course for this board. That this ongoing deprivation existed in this manner will be demonstrated in testimony.

Defect in the argument that NCMB is a state agency eligible for sovereign immunity

Though established by law (NCGS Chapter 90 – Medicine and Allied Occupations [Medical Practice Act]) and appointed by the governor, eligibility for designation as a state agency eligible for sovereign immunity requires active state involvement in the deliberations pertaining to the rights of those it regulates. While initially seen in the antitrust context, the FTC in a subsequent advisory elaborated further on the meaning of active state agent as it pertained to medical licensing boards. It would appear that this ruling applies not only to antitrust actions but to all actions in which the legitimacy of the state's interests and the weight of the state's power are brought to bear upon an individual. Without active oversight, or in defiance of such oversight, NCMB has essentially usurped the power and authority of the administrative judicial system, wrested a hard earned property right (my license to practice) and denied all due process and access to rightful administrative remedy throughout. Such global authority was never granted to the domain of any administrative agency.

Despite considerations of such an agency becoming an uncontainable Frankenstein that threatens to devour civil and constitutional law that was intended to protect those it regulates, I believe it is fair to say that lack of active state oversight as demonstrated in both documented evidence and in findings of the NC Auditor raises a legitimate and very pressing question as to whether NCMB is a legitimate state agency which is eligible for sovereign immunity.

Reference to this concern was made in the pleadings and, should the case proceed, will be elaborated upon.

Argument that State Industrial Commission will pay for claim fails.

The reason it fails is that NCPHP has adamantly refused to declare the nature of NCPHP's activities when asked what it does. It asserts that it conducts "peer review." It is difficult to understand how an official function such as peer review which requires appropriately licensed medical personnel to review medical records can be conducted

by an unlicensed medical corporation simply because it is given by the legislature some sort of loosely defined authority to conduct a very particular (though elsewhere clearly defined) procedure. The legislature clearly must intend for it to be appropriately licensed to conduct the activity it assigned. Without such licensure of its medical evaluation/ peer review function, all havoc would ensue. However it is not so licensed. Further, as an "educational public charity," its primary purpose is solely to educate and promote peer review, not to actually perform evaluative functions of patient charts and physician's practices. Conducting such activity requires licensed physicians operating under an appropriately licensed and overseen corporate identity according to NC 55B. Such activity would seem to defy current understanding of the activities permissible as a charitable educational 501(c)(3) nonprofit. Further, as perhaps the most important additional argument against the validity of its asserting that it conducts peer review is that it followed literally none of the requisite criteria for such as identified under 42 USC 11101 et seq., the fundamental federal standard of peer review.

NCPHP and NCMB Denial of Nature and Ownership of NCPHP Role

Even more problematic is that it has been routinely conducting comprehensive diagnostic psychiatric "fitness for duty" evaluations, medical and psychiatric records review, interacting with licensed community medical providers under the false guise of legitimate medical identity, conducting forced laboratory testing and causing interstate rendition for mental evaluation and treatment without legislative authority and without corporate licensure and further doing so under the false rubric of peer review. I attempted to confront NCMB about this illegality and my complaint was dismissed. I filed concurrent concerns with both the NC Secretary of State and the NC Auditor; the former indicated, I believe quite mistakenly, that they were not set up to conduct investigations of corporations and the latter indicated that it was not their policy to return communication to complainants. I therefore do not know the status of that complaint.

Therefore, it is exceedingly difficult to initiate an action, if not entirely futile, when one is not able to obtain one's full official record from the agency which conducted the evaluation and which agency will argue (and it had already argued to US DHHS OCR) that it does not conduct diagnostic evaluations when in fact the record reveals that this is exactly what it conducted.

It would appear that even the NC legislature is somewhat confused in that, in non-public deliberations and the crafting of new law pertaining to NCPHP's revised functions, it has removed all reference to NCPHP conducting peer review. Clearly it had no intent to authorize it to conduct such previously. It would appear that legislators did not have a fundamental understanding of the meaning of the term "peer review."

Unfortunately, that law, slated to take effect October 1, 2016, is additionally flawed in that, while it seems to newly give NCPHP diagnostic screening assessment authority, it does not indicate who is NCPHP's overseer nor does it insist on revision to the current

Memorandum of Understanding, nor does it insist that NCPHP be appropriately licensed as a "medical" corporation and its staff appropriately licensed and trained in order to conduct such activity. Further, it is not provide for adequate oversight by NCMB as the licensing authority over that medical corporation. Nor does it provide for an adequate grievance mechanism allowing one to contest one's diagnostic evaluation findings and recommendations, amend and correct the NCPHP report, and hold NCPHP as a private contracted corporation liable for tort in the event of its negligence or malfeasance. I detail these deficiencies because, like this case, such defective law is highly likely to again force licensees into the federal court on these tangled administrative judicial matters and ill-constructed law.

Immunity Arguments Fail

Invalid arguments for asserting 11th Amendment, absolute quasi-judicial, and qualified immunity by any party.

11th Amendment Immunity

As argued previously, not being a legitimate state agency with active state agent involvement, and having utterly no oversight or accountability by any state agent, 11th Amendment immunity by definition is not applicable. Further, even if it were to be considered as applicable, the risk of ongoing harm is in fact real as has been clearly demonstrated by NCMB's violation of my right to unencumbered granting of license reactivation and freedom from compulsory NCPHP re-assessment due to its prior dismissal with prejudice of this debacle. Ongoing harm is also demonstrated by the fact of NCPHP being part of the national network of PHPs belonging to a Federation operational in 47 states. Because of the shared communication amongst medical boards and Physician Health Programs nationally, (and certainly considering what NCMB had already illegally published about me on its website and which I contend was further evidence of malicious intent), ongoing harm is a very real possibility in any attempt to enter into application for a license in another state.

"Absolute quasi-judicial immunity"

The assertion (page 11, section 3) that actions of the medical board and PHP committed by its myriad staff are protected by both "absolute quasi-judicial immunity" and "qualified immunity" fails.

To assert prosecutorial authority does not convey sainthood. As is clear from other judicial venues, it is indeed possible for there to exist the phenomenon of prosecutorial abuse. An agency as well as the individuals within it can in fact abuse that power, especially if there is no oversight.

A legitimate prosecutor is understandably given wide latitude; however exceeding the bounds of appropriate behavior and violating an individual citizen's rights is considered to be prosecutorial abuse. That prosecutorial abuse is not protected by immunity. The prosecutor is not allowed to be a tyrannical regal entity who can act as he or she wishes simply by invoking the hallowed designation of "prosecutor" or the broad banner of "protecting the public."

Additional reference is made by Judge Boyle to the extension of quasi-judicial immunity to the conduct of a physician who conducts peer review at the request of the medical board. First, the medical board in fact did not request peer review of me to be conducted by NCPHP. Its order states that it desired a mental evaluation. A mental evaluation is distinctly different than peer review. Each has its own protocol and each has its own rights that are assigned to the person being assessed.

Let it again be noted that both NCMB and NCPHP have adamantly refused, on multiple explicit requests, to a) define the procedure, was it peer review or diagnostic psychiatric evaluation, that was conducted by NCPHP – this should not be a difficult question; b) provide the protocols for each of these, whether peer review or mental evaluation; c) inform me of my rights to contest the assessment of whichever nature it was; and d) to provide me the full official record of each agency's investigation and official reports, including documentation of intra-agency, inter-agency and external communication.

As detailed in my analysis of the Ostrzenski ruling, there is no such thing in North Carolina (or perhaps anywhere in the country) as a "medical disciplinary board."

Further, "discipline" is not inherently a prosecutorial or judicial function.

A legitimate prosecutorial function comes into play when the formal charge and administrative hearing process is engaged and rules of procedure exist. Without such, the agency deliberations have nothing to restrain them from conducting a witch hunt and acting like a lynch mob, all under the designation of "prosecutor" or "judge" and under the righteous banner of "protecting public safety."

Further, if an administrative agency is given judicial authority beyond that which exists in the administrative judicial system, then what body of law exists to ensure that administrative agencies adhere to civil procedure rules in terms of discovery, investigation, witness statements, deliberation meetings of the board, and licensee rights? I don't know know but I ask rhetorically – can there be an agency which operates as a quasi-judicial entity when the state indicates that it has creates a centralized quasi-judicial entity specifically for the adjudication of administrative issues. Though naive in these matters, I can't imagine that there exist two quasi-judicial entities making concurrent rulings.

NCPHP and Assertion of Conducting Peer Review

As asserted previously, NCPHP did not conduct anything resembling peer review. In fact, in reference to the defining federal statute which lists the barest fundamental requirements for a fair peer review process, the activity which NCPHP engaged in under the rubric of "peer review" does not comply with any of the requisite criteria as enumerated in that federal law (USC 42.11101 et seq.). Therefore, this argument that NCPHP by implication under its assigned "peer review" function is automatically covered under immunity fails. Further, NCMB did not refer for "peer review." NCPHP did not conduct a "peer review." What it conducted was unlawful and fraudulent. What NCMB did upon receiving its report was unlawful.

Defect in the sovereign immunity eligibility argument

First, the granting of sovereign immunity presumes and relies upon the integrity of the administrative system itself so that there is assurance that all appropriate checks and

balances ensuring justice, fairness, transparency and integrity are in place. When it is clear that those are not in place as I alleged to be the case here, it is difficult to understand how sovereign immunity can still be maintained. As I have argued elsewhere, though I may be deprived of justice via a defective state administrative apparatus, that does not mean that I have to detail or attempt to correct the flawed state mechanism. Nor does it deprive me of seeking justice and restoration of my rights in a federal court.

Secondly, based upon the recent SCOTUS decision in FTC versus NC Dental, and the subsequent FTC advisories pertaining to other state boards including medical boards, the core criterion determining eligibility of state agencies' sovereign immunity – that of active government involvement through an active government agent within the agency – is not met by NCMB and it is not met by NCPHP. In the case of the former, I have written evidence upon inquiry of the chief counsel to the NC Governor that, to his knowledge, there is no person or agency which oversees NCMB. Further, the NC Auditor has clearly indicated that NCMB and other agencies failed to oversee NCPHP. Presumably, NCPHP would argue that its government agent overseeing it and thus qualifying it for sovereign immunity would be NCMB. The NC Auditor's report indicates quite clearly that NCMB failed in that function. Therefore, NCPHP is not eligible for sovereign immunity and NCMB is not eligible for sovereign immunity.

What we then have is a some form of alleged state instrumentality NCPHP which was supposed to have been overseen by a state agency (NCMB) but wasn't, and further that that state agency itself may not meet the criteria for designation as a legitimate state agency eligible for sovereign immunity.

NC 150B Essentially Declares That Neither NCMB Nor NCPHP Have Quasi-Judicial Immunity

The Office of Administrative Hearings (OAH) is an independent quasi-judicial agency that was established to provide a centralized source of independent Administrative Law Judges (ALJ) to preside in administrative law contested cases. It was created to ensure that the functions of rule-making, investigation, advocacy and adjudication are not combined in the administrative process. As a consequence of this policy, North Carolina operates under what is referred to as the "central panel" system of administrative adjudication. This simply means that the ten Administrative Law Judges, who are employed by OAH, work for the central panel rather than the state agency. North Carolina became the thirteenth jurisdiction to adopt a central panel system (1985). (adapted from NCOAH website.)

By already granting quasi-judicial authority to OAH for all administrative judicial functions, it seems clear that NCMB has NO judicial authority and must by definition refer all contested cases, whether licensee sought or not, of whatever nature, to the OAH.

Wrongful intervention by NCMB

Under its sole alleged concern about my possibly having a "mental illness" on the basis of a single anonymous "concern" that, despite no patient or colleague complaint or prior history of mental illness, the Board saw appropriate to look into such on the presumed basis that I "might be" in some way dangerous to patient care (a specious argument indeed), what then is the legal basis for claiming rightful invocation of a judicial or prosecutorial identity? Has going to the police to confidentially and presumably safely express concern become a prosecutable crime? Has a simple speculation from an uneducated (professionally) police officer to whom I was specifically encouraged to relate to my story and concerns become the equivalent of legitimate professional diagnosis? And, arguendo, even in the event that his speculation were indeed professionally right on target in highlighting a real mental illness, has such taken on such legitimacy and authority that a board can act on it to cause an invasive mental shakedown? But even further, let's imagine that the untrained police detective were instead a police psychologist, would his diagnosis be definitive to cause such an investigatory and prosecutorial cascade? And lastly, even if in reality I did have some form of psychiatric disorder (and prevalence studies seem to suggest that perhaps 20% of the population at any given time is suffering from some mental illness), has mental illness itself become a prosecutable crime?

The main argument here is that NCMB was wrong to cause any investigation or compulsory referral on such a basis, but especially so when it had in hand a comprehensive psychological report gotten specifically at its request, generously and respectfully on my part, in response to its concerns (which were nowhere conveyed to me in writing which is required) which documented utterly no illness and no impairment.

Erroneous Assignation of Qualified Immunity

The notion of "qualified immunity" was never meant to give broad license to a governmental entity to "do whatever it thought was appropriate as long as it didn't clearly violate the law." Giving such broad and unchallengeable authority to an administrative agency was never intended by the state or federal constitution or any of its laws. If not challenged, then this notion of qualified immunity allows a government official to act in any way they wish as long as it does not overtly violate any established law. This seems to be a fundamental misread of the concept of qualified immunity and the intent of that law. However, I believe it will be clear that in fact, numerous laws were substantially violated. Qualified immunity as I understand it was essentially meant t serve as a sort of "fudge factor" in freeing up various designated authorities' hands.

Further, in the absence of any governmental oversight of this administrative agency, first granting absolute quasi-judicial immunity to all of its functions and then further affording such an agency the broad privilege of qualified immunity is the equivalent of state negligence. It's reckless and extremely dangerous. It's like an irresponsible parent

telling an arrogant and entitled adolescent "okay, you can do anything you want as long as it's not against the law" (the latter phrase really meaning "as long as you don't get caught").

Whether a Constitutional Violation Occurred

"Citing a two-step procedure for determining whether qualified immunity applies, one asks whether a constitutional violation occurred and secondly whether the rights violated was clearly established."

I have a clear right to practice my profession without interference and maintain that right to practice as both a property right and a civil right unless there are demonstrably sufficient grounds to curtail those rights and all manner of due process has been provided. I have a right not to be unlawfully searched and have my property and mind seized. I have a right to be treated with respect, even if I were to have a major mental illness. All due process was denied. Full access to administrative and judicial remedy was denied. No grounds existed for any of these fundamental Constitutional violations.

My right both to practice my profession as well as to go to a Police Department to express concerns about my safety are fundamental civil rights. My right to practice my profession when appropriately licensed in the state and to continue to do so without interference unless substantial grounds exist to demonstrate lack of capacity to do so is an inviolate right. To not uphold that right is to allow a governmental institution to capriciously determine who it wishes to allow to practice and who not – this especially in the context of no government oversight.

Therefore I believe Judge Boyle is in error in asserting that I have not sufficiently alleged a constitutional violation nor attached such violations to specific law violations. In fact I have alleged multiple constitutional violations pertaining to due process and Fourth amendment violations and their relationship to Civil Rights and ADA. I maintain that his assertion that my case fails on 11th amendment, absolute quasi judicial, and qualified immunity doctrine is invalid as all grounds for asserting immunity are insufficient.

No State Oversight = No Sovereign Immunity, and Probably Not Even a State Agency

The NC Auditor, in her 2014 report on Boards and Commissions in NC which found profoundly defective oversight throughout its Board system, writes:

The National State Auditors Association4 states: "A governing body (i.e. the State) has the responsibility for developing a process for monitoring the regulated entities' (i.e. Board) activities to ensure they are following the applicable requirements and the public is adequately protected. The monitoring process should include receiving reports from entities and the governing body should specify who should report, what they should

report on, and how often. The governing body should also review the information submitted and follow-up as needed on any noncompliance or questionable results."

4 Carrying Out a State Regulatory Program – A National State Auditors Association Best Practices Document – 2004.

She continued:

The ineffective oversight exists for two reasons. First, state-level entities report confusion about the authority and responsibility they have to provide active oversight and monitoring of Boards beyond tracking reports received. Second, the General Statute identifying the state-level entities does not specify the responsibilities of the state-level entities.

Two Centrally Referenced Case Citations Flawed Or Inapplicable

Defects in Ostrzenski and Shannon case citations which were intended to support arguments for immunity and for unchallengeability of NCPHP "peer review" and non-remedy under HCQIA.

Referencing the Ostrzenski vs. Seigel Ruling

There is no such thing as a "state medical disciplinary board" in North Carolina. Whether it exists as such in Maryland is immaterial.

This case uses the terminology "state medical disciplinary board". This is inherently misleading and might represent a core misunderstanding by the judiciary. There is in fact no such entity as a state medical disciplinary board in NC and, to my knowledge, anywhere in the US. NCMB is a state medical licensing board, a fundamentally if not exclusively administrative licensing agency, only a small part of whose array of functions pertain to "licensee discipline." Using such phraseology automatically misleads the reader to believe that discipline and prosecution is, as a medical board, its primary function, as though it were an exclusively judicial / prosecutorial body. Have the courts been uniformly mistaken in this understanding?

Even the administration of discipline, namely the levying of a fine or the constriction of licensee privileges, is not inherently either a prosecutorial or judicial function any more so then the application of an overdue book charge designates the public library as having prosecutorial or judicial functions. In the event that I might contest that fine, then and only then is a judicial function invoked whereby further prosecutorial and judicial functions – along with all appropriate safeguards – may be invoked.

Board not uniformly / exclusively prosecutorial or judicial

Further, a medical board is not uniformly "judicial" or "prosecutorial." As every medical board is different in its functions from state to state according to its construction of some law variant of a model Medical Practice Act tailored to that state (in NC, NCGS Chapter 90 - Medicine and Allied Occupations is our form of the Medical Practice Act which has only some common elements across states), generality of functions as well as assignment of functions from state to state as well as to affiliated agencies cannot be established.

Its judicial immunity pertains only to that portion of their activity that is properly judicial or prosecutorial and then only when appropriate protocol is invoked indicating that it now dons its prosecutorial or judicial identity.

NC 150B Would Seem To Remove Judicial Function from NCMB

As I argue elsewhere, by nature of NC 150 B and the clearly articulated role of the NCOAH, NCMB would seem to have no right to assume a prosecutorial or judicial identity whatsoever. It certainly may have the right to construct charges and perhaps

even to conduct investigations but once done and any of the charges, procedures, or findings are contested, the ensuing prosecution and judicial adjudication are, according to NC 150 B, necessarily transferred out of the hands of NCMB and over to NCOAH where established rules of procedure and licensee rights are in place.

immunity presumes government oversight and some form of accountability, remedy and corrective action.

Further, while they may be entitled to "absolute quasi judicial immunity for performing judicial or prosecutorial functions", it would seem to be understood that to enjoy that privilege, they must operate according to well-established principles assuring due process and the integrity of their operations.

Failure of intra-agency oversight by its own head of legal services

There is strong evidence of NCMB's prosecutorial misconduct in the handling of my case, from original receipt of "concern" through investigation to prosecution.

It was the duty of the chief NCMB lawyer and Of Counsel to oversee legal and investigative staff in upholding their officer of the court function and their administration of justice (not in their pursuit of "conviction").

No prosecutorial role to cause investigation or to order or to prosecute

Further, there was no wrongdoing ever alleged. So why did NCMB have any right to invoke any prosecutorial role?

I suspect that hostile animus played a role in the Board's retaliation for my having filed a restraining order in NC Superior Court against their taking action against my license for my noncompliance with their illegal order (to comply with NCPHP's infallible "recommendation" to be rendered out-of-state for evaluation). At that point in time, both the NCMB attorney in charge and the Superior Court judge should have immediately directed me to NCOAH for prompt hearing on the procedural violations that I alleged and removed the case from active NCMB involvement. Neither did so and neither informed me of this most appropriate avenue of remedy.

To detail the points cited in Ostrzenski:

The laws of Maryland pertaining to its medical board and peer review are not applicable in NC.

This ruling referenced different laws and different definitions of function conducted in a different state. Their operation of their medical board and their "peer review" function and parameters may have no resemblance to what occurs here in NC under its alleged "peer review."

Item 1 - That boards perform essentially judicial and prosecutorial functions.

While this is not factually correct, even it it were valid, such functions are only a part of their array of functions. No complaints had been received about me that pertain to patient care, and in fact, no complaint had ever been received about anything. The fact that I spoke with a Wilmington Police Detective on referral from the Wilmington Chief of Police (not of my own doing but on his invitation after an hour and a half face-to-face meeting with him) about safety concerns in the context of my whistleblower litigation is not a wrongdoing. That the detective should individually opine that he didn't believe my recounting or share my perception and safety concerns and therefore had questions about my mental health is not a diagnostic pronouncement. And it has no more validity or importance coming from a city police detective than from a teacher or firefighter or a dog collector. (It also seems particularly uncourageous and unvirtuous for him to not have the temerity to approach me directly and indicate the he didn't agree with my beliefs and that he was concerned for my mental health.) The contextual trapping that it emanated from the WIlmington Police Department is not only inferentially misleading, it is in fact false. Further, the Wilmington Police Department has no record of such encounter, and the "concern" that the detective allegedly spontaneously submitted was not presented on official WPD stationery and was not signed and apparently nowhere to be found in WPD records (as researched by my attorney). Further, I was unable even to obtain this "concern" via subpoena. How then does such an "anonymous concern" even hold weight to support this horrific cascade of unwarranted assaultive activity which is then done under the false identity of a legitimate prosecutorial function? Rather, this "concern" – curiously an extraordinarily elaborate one, allegedly spontaneously submitted, which I was initially forbidden from seeing or contesting (and have still been unable to contest, as though the concern itself were some sort of permanent charge accepted as true) – had been presented to NCMB by a detective to whom I was officially referred by the WPD chief to further investigate my safety concerns. Note also: this was a "concern," allegedly about my mental health, not even a "complaint." NCMB then, apparently without knowledge of the Board proper (according to its chief investigator Mr. Curt Ellis who informed me that he had the right to initiate investigations without the knowledge of the board), opened an "investigation" into me. NCMB, allegedly on the basis of this contrived "concern" and sham investigation, ordered me to submit to a "mental evaluation" at NCPHP.

For a governmental entity to undertake prosecutorial or judicial function, there must exist charges against the licensee that would activate that prosecutorial function. There were no charges of any sort at this time but simply an allegedly spontaneously submitted memo of concern alleging concern that a police officer with whom I spoke in confidence in his capacity as a police officer (on explicit referral of the Chief of Police after a detailed conversation with him) had about my beliefs and worries about a variety of events that had occurred in the context of my then current whistleblower litigation. Expressing a concern and detailing that concern to a police officer in confidence is not a

crime nor indicative of faulty reasoning nor suggestive of inferior patient care. The submission of a concern about a licensed professional's mental health by a member of the public (which apparently it is now alleged per Judge Boyle this person presented his "concern" as) does not indicate a crime. The fact that the medical board may have further concern and wish to refer me to a resource that might be more capable of assessing that concern is not the conduct of a judicial or prosecutorial function as no wrongdoing had been committed and no "charge" had been filed on any basis whatsoever. (However, according to NC 150 B – 22, NCMB was required to offer me an informal hearing which most curiously they did not.)

Further, the most reasonable approach to the resolution of such a spontaneously submitted concern and, one would hope the customary approach, would have been for a responsible member of the board or its professional staff, for example its Medical Director, to simply call me in for an initial chat to ascertain what might be going on. No such process was followed. I wasn't even informed of the nature of the complaint/ concern as is required.

It is frightening to think that a licensing board can simply cause to happen an extraordinarily invasive investigation and compulsory mental evaluation - a form of involuntary commitment (which I allege is a 4th Amendment violation) – simply on the basis of a single allegedly spontaneously submitted memo of concern from a police detective now alleged to be acting in his private capacity (yet another deception). However, the fact remains that I didn't speak with the detective in his private citizen capacity and did so under conventional assumptions of confidentiality in his role as a police officer under direction of the WPD Chief.

This board had no judicial authority to engage in such behavior. I allege that it is an abuse of its power and it committed such abuse entirely outside of the scope of whatever authorized prosecutorial or judicial function it actually has.

However, despite multiple appeals to multiple authorities at NCMB and NCPHP and other entities, such abuse was allowed to proceed. I learned that there is in fact no governmental authority which oversees and holds this board accountable. In essence, it is a reckless, renegade para-judicial private trade group, operating under the guise of governmental legitimacy, which thwarts all attempts at provision of due process and administrative remedy.

While it is not my duty, and indeed out of my capacity, to cause correction of such a dysfunctional system, it remains my right to insist on the protection of my US civil and Constitutional rights. It is indeed an unfair burden to place on any plaintiff that one must simultaneously plead one's own case on its own merits while also having to prove derangement if not wholesale corruption of two allegedly legally operating administrative agencies which operate entirely untethered from any government oversight or mandate of compliance with law.

This is indeed a Kafkaesque nightmare and it is my intent to prove in court how this combined dystopian entity, unhinged from all regulatory oversight, has ruined my professional life, profoundly disturbed all aspects of my personal life and, not least, has contributed by its gross wrongdoing to the needless and entirely avoidable death of one of my patients by suicide in the context of the unwarranted disruption of his care. There may be additional patients who have been similarly harmed.

Therefore, to argue eligibility for being designated as immune on the basis of "absolute quasi-judicial immunity" for a judicial or prosecutorial function is in fact an invalid argument as a) no judicial or prosecutorial function was then activated at that time and b) per NC 150 B, it has no prosecutorial or judicial identity.

It cannot be argued that generically, all activities of a medical licensing board are to be considered under some variant of immunity, at that based on another state's law, as such would certainly allow powers to be attributed to a medical board that were never intended to be granted.

Further, in that it chose to activate its presumed prosecutorial powers, and wishes to be designated as a quasi-judicial entity, it is expected to perform that role with all of the requisite decorum commensurate with such a role. In the criminal, civil and Constitutional justice arenas, there are rules of procedure and oversight mechanisms in place to ensure compliance with regulatory protocol and further, there are professional licensing entities such as one's State Bar and other licensing entities to hold one accountable for abiding by professional rules. Since the courts seem to give unquestioned deference to medical boards throughout the states as having this exalted quasi-judicial role (and at that applicable apparently across all of their administrative functions) – this despite each state having a distinctly different Medical Practice Act which defines that board's function and powers differently, I am puzzled to begin to understand what then are the regulations which these boards – as quasi-judicial entities – must abide by. Where are they published? Is there in fact a body of law pertaining to the proper conduct of boards acting as quasi-judicial entities? The rules are surely not in NCGS Chapter 90 - Medicine and Allied Occupations. NCMB adamantly refuses to provide any protocols about its operations or licensee rights. Then who oversees these quasi-judicial entities and ensures that they abide by rules of procedure? The NC Auditor has answered this quite clearly - no one.

How then can one obtain due process and administrative remedy when such is denied in toto by these two agencies which operate as one unit with no oversight, thwart all administrative remedy and prevent appropriate intervention by the NCOAH? All laws which use as their reference point the mandate of having first exhausted "full administrative remedy" are therefore rendered hobbled. And their statutes of limitations which are contingent upon a legitimately functioning administrative judicial system are likewise made irrelevant as the exact point in time of bringing a matter to light in a civl court with mandates guiding its legitimate deliberations can then only start at the time of

recognition that the administrative judicial system as administered by the agency in question was defective. And yet, it is not within the power of the plaintiff to compel such investigation or even to prove so. (Further, given the automatic deference the administrative system is granted in civil court, surely I would be told I had no standing.) So what one has here is prosecutorial and judicial capture by an unauthorized agency operating with utterly no state oversight and from which there is literally no escape.

Lest you think that mine is simply the creative theorizing of a naïve pro se appellant, there exists another person with standing who I strongly suspect would agree. The NC Auditor cites to auditing standard (previously referenced) that a government must exercise oversight over the boards, commissions and departments it governs.

Item 2 - "There exists a strong need to ensure that individual board members perform their functions for the public good without harassment or intimidation."

it is important here first of all to separate the different boards at question. In the preceding paragraph, Judge Boyle includes both NCMB and NCPHP in this section. The functions of these boards are entirely different. They are not both nonprofit public charity boards. One is an administrative licensing board which alleges to be a state agency entitled to sovereign immunity and alleges broad authority. One is the board of directors of an alleged public charity organization which somehow is authorized, via an unusual no-bid arrangement with the state, to conduct ill-defined "assessment" activities with potentially catastrophic career implications, this without a requisite professional services corporate license. (For consideration under this discussion of Ostrzenski, NCPHP is not here considered in this itemized iteration.)

While it is obviously factual that there exists a strong need to ensure that individual board members perform their functions for the public good without harassment and intimidation, this does not automatically mean that the public - including those licensees directly affected by their actions - cannot hold them accountable for transparency and fairness. There is also the need to ensure that board members perform their functions in a legitimate fashion. Who oversees this in regards to the quasi-judicial function of NCMB? No one. Again caution is urged about this false notion of assigning all functions of a medical licensing board to a judicial or prosecutorial designation for which they will be covered by absolute quasi-judicial immunity or some variant thereof. This is obviously false and would appear to be a profoundly dangerous misreading of law as it pertains to medical licensing boards.

Only until a charge has been issued, and only under the assurance that fair processes are in place and are checked by a government overseeing agent, should the board be seen as activating its prosecutorial role. And in such, of course it should be allowed to conduct its prosecutorial function (if rightfully appropriated) for the public good without harassment or intimidation. However even when conducting such activity, the clamor for fair process and transparency and demand for accountability should not be mistaken as harassment and intimidation. In the case of an organization which cloaks itself in

prosecutorial or judicial immunity, one that is felt by multiple parties to have exceeded its authority, it is a danger to see such clamoring as harassment or intimidation. Rather it is exercise of free speech and the demand for accountability and insistence on reparation.

Item 3 - The assertion that there exist adequate procedural safeguards under state law to protect against unconstitutional conduct by board members without reliance on private damage lawsuits.

This is in fact the central point of contention.

I reference the prior arguments the profound lack of safeguards.

It is important to understand that a Medical Licensing Board is essentially two organizations: a "board proper" consisting of those professional and civilian members of the board appointed or elected to serve in that role for time-limited terms; and a hired staff employed year-round and without term to perform all of the necessary functions - administrative, educational, complaint review, license application, policy guidance and disciplinary, some aspect of which is labeled prosecutorial or quasi-judicial.

It therefore is understood that the misfeasance or malfeasance of hired staff are ultimately the legal responsibility of this "board proper" via its designated leader, the President of the Medical Board. The hired staff are presumably under the direction of the Executive Director who, presumably, serves at the discretion of the President. (The exact details of this employment arrangement are not known.)

Firstly, the behavior committed by NCMB may not, per se, have been committed directly by board members. However board members, and particularly the board president, are responsible for the conduct of their hired staff which includes their lawyers and investigators. Therefore it is the responsibility of those appointed members of the board proper to exercise oversight and due diligence in the conduct of the affairs of their hired staff.

Having very limited recourse to holding this board accountable for its abuse of power and seeking both investigation and correction, I filed an extensive complaint under the North Carolina Ethics Act with the North Carolina State Ethics Commission pertaining to the behavior of one staff lawyer who I believed manifested a profoundly important conflict of interest, the then president of the medical board, and the physician in charge of the NCPHP. In very short order, the Director of the NC State Ethics Commission indicated that the parties about whom my complaint centered were not covered under the NC State Ethics Act.

This in and of itself would seem to demonstrate that the State Ethics Commission itself determined that NCMB does not fall under the protection of the NC State Ethics Act which law states clearly that it covers boards. This would certainly strongly argue against NCMB being considered a state agency as it appears untethered from any accountability under the NC State Ethics Act.

While I disagreed with the ruling of the State Ethics Commission, having invested over 400 hours in the construction of that complaint, I saw that pursuing that line of argument was indeed futile.

Therefore, in recognition of the acknowledgment that there is no overseeing person or agency charged with responsibility for oversight and accountability of the North Carolina Medical Board, and therefore utterly no means whatsoever of demanding due process and full administrative remedy, this third point asserting that adequate procedural safeguards exist is in fact invalid.

Peer Review Under HCQIA

HCQIA, while no right of private action may pertain, is nevertheless used as a standard of practice, just as confidentiality provisions of HIPAA are used as a standard of the sacrosanct confidentiality of Protected Health Information (PHI).

In fact, in the local implementation of peer review whose fundamental stipulations are iterated in HCQIA, when not conducted in good faith, one does in fact have right of private action.

Further, general speaking, medical boards are not themselves properly engaged in the activity known as peer review. In NC, no such function is performed by NCMB.

Further, when what is performed by a designated agency is so fundamentally different from any accepted definition of peer review, and an alternate activity was in fact undertaken, then one should not even need to seek remedy under HCQIA or even locally, as the core issue is not bad peer review, it is the bait-and-switch conduct of an activity which was not peer review and in fact constitutes the illicit administration of a separate highly invasive diagnostic procedure conducted by an unlicensed private corporation and, at that, done fraudulently and without protections.

That's like being sent to the company doctor for a throat swab and his undertaking kidney removal and, at that, then causing kidney failure, and then my being told that I can't sue him because a) I was only sent for a throat swab and b) he alleges that he was only doing a throat swab; and c) I can't sue him because he's the company doctor.

Even further, the definitions of medical peer review as defined in NC law make no reference to permission to conduct of any form of individual diagnostic evaluation by a peer review entity. Nor is such diagnostic activity ever present in any peer review activity as defined both in the medical literature and in HCQIA.

Peer Review and State Legislature

Just because the NC Legislature authorized the conduct of "peer review" by NCPHP (which, it should be noted, it has since entirely removed from NCPHP's authorized functions [Session Law 2016-117 effective 10/1/2016], even if it likely had a fundamentally mistaken understanding of what actually constituted peer review, such

still does not give NCPHP permission to conduct any activity it so chooses and designate it as "peer review." One would certainly imagine that the NC Legislature, though authorizing a certain activity such a peer review as it is conventionally understood in the medical and legal literature (and more specifically defined elsewhere in NC General Statutes) would not condone the conduct of that activity a) by unauthorized personnel; b) who are untrained; c) who are not overseen; and d) who are actually conducting an activity such as an invasive involuntary mental commitment forensic diagnostic evaluation under the false cover of "peer review" and then e) entirely denying due process in such an examination; f) lying to the licensee and to federal authorities about not having conducted an illicit involuntary mental commitment type evaluation; and g) continuing to prevent access to promised administrative remedy via an allegedly existent grievance procedure.

It should also be noted that NCMB, one of the two agencies charged with NCPHP's oversight and found by the NC Auditor to be wholly negligent in such oversight, refused to investigate these irregularities and violations as brought forward by me (and multiple others) and also refused to provide direction for prompt administrative remedy as would be available under NC 150B.

Ostrzenski not applicable

Therefore, citation of the Ostrzenski ruling fails on all fronts: there is no such thing as a "medical disciplinary board" at least in North Carolina; the reference is based on role and function allocations defined in a different state which may define medical board functions and affiliated agency functions (such as their PHP and peer review) differently; as well as the arguments delineated challenging each of the three components of the Ostrzenski rationale.

Defects in the Shannon v. Testen case

Reductionist Literal Interpretation of Case Ludicrous

Elements of the Shannon decision are ludicrous. The judge actually asserts that there is no need for due process to actually be implemented, only for there to be a stipulation in the law for the provision of due process.

False Validation of Integrity of NCPHP's "Peer Review"

The Shannon case falsely refers to NCPHP as conducting peer review without clarifying what is the nature of that peer review. Simply because NCPHP states that that's what it performs does not necessarily mean that's what it actually performs.

Unexamined Violation Of Peer Review at Local Level

Additionally, it would appear that the appropriate process for investigating concerns about Dr. Shannon were not only severely deviated at the medical staff committee level

but caused him further jeopardy by being involuntarily compelled to submit to an NCPHP "peer review." Unfortunately, by this repeated reference to NCPHP's "peer review" function, there is an implicit legitimization of the illicit diagnostic activity that it conducts behind this façade. However, here too it appears that Dr. Shannon was entirely deprived of rightful access to administrative remedy and legitimate administrative hearing as would be authorized by NC 150 B. I would argue that the Shannon case is profoundly flawed and that what was conducted by NCPHP in that case was in fact not peer review but was rather a diagnostic evaluation. It could not have been peer review because it was not conducted by appropriate personnel qualified to conduct peer review. Rather, it was a diagnostic process which at that concluded the absence of any concerning diagnosis that would impact Dr. Shannon's ability to practice. That he should be compelled to lose his license under such abuse of an administrative system is incomprehensible. It is regrettable though understandable due to the somewhat obscure nature of the legitimate medical peer review process and the lack of clarity around NCPHP's delineated and designated function that counsel for Dr. Shannon did not argue these points on appeal.

Denial of Rightful Access to NC 150 B and Wrongful Burden - Amounts To Substantive Due Process Violation

But here again, why should it have been the burden of Dr. Shannon to demonstrate the inappropriate activity of NCPHP in the context of the utter lack of oversight and accountability in terms of correcting its misbehavior. It should not have been the burden of Dr. Shannon to fight with either NCPHP or NCMB for his rights to a fair hearing on the many interim procedural violations. Under NC 150 B, all of his contested procedural matters should rightfully have automatically been referred to the NCOAH and ruled upon prior to his having been compelled to seek a fair hearing in a federal court or even a state Superior Court. Like my case, NCMB hijacked his judicial process by wrongfully subjecting him to their combined NCMB - NCPHP agency abuse and prevented him access to appropriate legal remedy under NC 150 B.

False Assertion For Immunity For Peer Review

My assertion that the conduct of fraudulent peer review by NCPHP does not depend on HCQIA or its denial of right of individual remedy to be applicable for standing or remedy.

Pendergast Not Conducting Peer Review "Just a Theory"

Judge Boyle asserts that my contention that Dr. Pendergast did not actually conduct peer review is simply a "theory" and therefore declines to attribute liability here. Judge Boyle alleges that these are conclusory allegations and as such are insufficient to state a claim. It is difficult to know how to assert a statement of fact and reference the evidence supporting such in the claim without having one conclude that it is a conclusory statement. If it is such a conclusory statement based upon the evidence presented in the complaint itself, then it should be up to a jury to determine whether the evidence provided supports that conclusion.

Judge Boyle asserts that none of my allegations support a finding that what was conducted by NCPHP and Dr. Pendergast was not peer review. This is simply preposterous as requirements for legitimate peer review were in fact spelled out and the case clearly made that such was not peer review.

re: Conclusory statements re not conducting peer review

It is difficult to know how best to assert a claim of wrongful behavior (i.e. Defendant X broke the law by doing Y) without actually stating that as a conclusory fact other than to state that the actions that were committed by NCPHP were in violation of multiple laws and offering the supporting documentation as evidence. A complaint, by the very nature of its assertion, in inherently conclusory. How else to state that NCPHP did not in fact conduct "peer review" according to existing standards and to cite those standards and indicate that it instead conducted an illicit diagnostic psychiatric evaluation other than to make such a statement. While my supporting documentation is clear on this, whether it is factually conclusory is to be developed at trial and decided by jury. The nature of a complaint and the verbal economy that is required necessitate using "complaint shorthand" to simply introduce the allegation.

Documentation is abundant that multiple attempts were made to ascertain the nature of the activity that NCPHP conducted. Documentation is abundant that NCPHP did not conduct "peer review" and that what it did conduct was incompatible with peer review and was conducted not only negligently but fraudulently. If it is the desire of the court to elaborate on the specifics of that assertion in the complaint, then I will be pleased to do so, and to elaborate on every other assertion that might potentially be viewed as simply conclusory. It was not my understanding that one had to make one's entire case, detail by detail, in the complaint itself.

That NCPHP did not conduct "peer review" and was never intended to conduct "peer review" seems quite evident in the newly introduced legislation that took effect October

1, 2016. This new legislation, drafted in part as a result of the NC Auditor's findings, abruptly strikes all reference to NCPHP's function of conducting "peer review." In fact the history of the PHP movement itself indicates that PHPs perform a diagnostic and referral function. Nowhere in FSPHP's practice guidelines does it indicate that a PHP performs "peer review."

That NCPHP attempted to conduct its fitness for duty diagnostic psychiatric activities without any statutory or administrative code authority and to hide behind the rubric of "peer review" and to refuse access to its records and to deny all manner of due process is factual. I don't know how else to assert that it did not conduct "peer review" as was authorized (and limited) by the legislature other than to assert that factual statement with the constrained explanation allowable in such a complex and multi-component complaint. I should not be penalized for deferring to the court's request for verbal economy at this stage of the complaint.

NCPHP Covertly Practicing Medicine Without license

Medical malpractice

It is difficult to even begin to produce a claim for medical malpractice when in fact Dr. Pendergast and his organization relentlessly deny that he conducted a diagnostic psychiatric evaluation. While Judge Boyle asserts the fact of Dr. Pendergast actually conducting a diagnostic psychiatric evaluation and arriving at a diagnosis (and yet contradictorily claims that I haven't proven that what he conducted wasn't peer review, an activity that never entails such a diagnostic evaluation), Dr. Pendergast himself and his counsel insist that he did not conduct such a diagnostic psychiatric evaluation.

In fact, Dr. Pendergast and his organization maintained that very same stance to the Office of Civil Rights of the US Department of Health and Human Services in stating or inferring that by reason of their being a nonprofit public charity, NCPHP only conducts peer review and not diagnostic evaluations. This preposterous ruse is even more egregiously so in that NCMB acted definitively and exclusively on Dr. Pendergast's diagnostic findings and recommendations.

Therefore how can it be asserted by Dr. Pendergast and counsel that he conducted peer review and did not conduct a diagnostic psychiatric evaluation when both NCMB and Judge Boyle maintained that he did? (And in fact Dr. Pendergast, in sworn testimony, acknowledges that he did.)

"Latent Injury"

In fact, it was latent until at the very earliest the receipt of the persistently demanded preliminary report from Dr. Pendergast in or about August 2015, at that a still unofficial record as it is unsigned and undated and unattributed, and yet NCPHP still declines to produce a complete record and its official report and still declines to admit that it conducted a diagnostic evaluation at all. How then am I even to begin to initiate such a medical malpractice claim, and against whom? Dr. Pendergast and his organization assert that he did not conduct such. NCMB, by accepting a diagnosis and acting definitively on it, necessarily asserts that he did conduct such. Yet NCMB refuses to investigate or to provide me with any clarification or remedy so as to recognize my right for administrative remedy for the denial of due process and my right to sue for harm.

NC 55A, NC 55B and NCGS Chapter 90-1.1 5 (c)

The practice of medicine defined

The practice of medicine is defined under NCGS Chapter 90 - Medicine and Allied Occupations. at Chapter 90-1.1 5 (c) as "Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods,

or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual"....

Under North Carolina 55A, NCPHP is expressly not allowed to conduct activities that constitute the practice of medicine. Ironically, if they had been registered as a NC 55B, they would have been subject to oversight by NCMB which oversees both individuals and legitimate corporations which operate under a corporate medical license.

In and of itself, this represents yet another manifestation of failure of government oversight.

My assertion that NCPHP operates illegally as a corporately unlicensed medical practice and has caused harm and incurs liability not simply by its fraudulent peer review nor simply by its illegal conduct of legislatively non-authorized psychiatric evaluations nor simply by its unlicensed and non-overseen status and not simply by its unlawful out-of-state rendition of me and other licensees to conflicted-interest, experimental quasi-mental health programs where one may be subject to the laws of another state governing mental health ... but also that it conducted such psychiatric evaluation not simply negligently but fraudulently and with malice and in knowing and wrongful collusion with NCMB.

NCPHP asserts that it is an alcohol and drug treatment program which necessarily indicates that it is engaged in the practice of medicine.

Alleged "peer review agency" NCPHP is listed as an alcohol and substance abuse treatment facility on its IRS tax filing. It quotes the 42 CRR Part 2 federal regulations relevant to strictest confidentiality requirements applicable to substance abuse treatment facilities on its website.

Violation of Patient Rights Act - North Carolina 10A NCAC 13B .3302 "Minimum Provisions of Patient's Bill of Rights."

I was not able to enter this law violation into my complaint as NCPHP denies that it is a medical entity. However, as a medical entity, the law necessarily applies.

Had NCMB ordered me to go to NCPHP which was legally licensed to conduct diagnostic psychiatric evaluations, such an encounter would have by definition constituted a doctor – patient encounter as is customarily understood in such a context. By entering into such, I am customarily defined as a "patient" in such an encounter and that medical professional is defined as "doctor." By definition of such a doctor-patient relationship for the purpose of that single assessment (and it can constitute none other, even if it were just a single visit Independent Medical Exam), as a patient in these forced circumstances, I am entitled to all rights under the Patient Rights Act - North Carolina 10A NCAC 13B .3302 "Minimum Provisions of Patient's Bill of Rights." I was denied nearly all of those rights.

Clarification of NCMS and Other Parties Liability

Elaboration on the matrix of responsibility of the defendant parties for violations committed by actors in both NCMB and NCPHP and allowed to continue by the negligence of oversight and chosen non-intervention by its specifically assigned overseers NCMS (and more generally by the state of North Carolina).

In re: Section 1 - Motion to Dismiss by the North Carolina Medical Society

"A significant number of directors on the PHP board are appointed by the medical board and medical society." Whether NCMB members sit on the NCPHP board is unclear; however it is clear in the North Carolina Auditor's report that three members of the NC Medical Society are appointed to the NCPHP board specifically for the purpose of actively exercising mandated oversight as is apparently required per the NC Auditor, in the Memorandum of Understanding (MOU).

Additionally, presuming it is true that per the NC Auditor, specific designated NCMB board members who were appointed to sit on NCPHP's Board of Directors were also supposed to have overseen NCPHP; they also failed in that oversight. Further, such intermingling provides yet another avenue for potential conspiracy in that NCMB members there for oversight not only failed in that role but overtly or tacitly enabled NCPHP to conduct its illegal operations. It therefore remains entirely possible that there was a complicit arrangement to participate with NCPHP in its commission of its wrongdoing. Further, these very same NCMB members who were assigned NCPHP Board of Directors members were on-board at the time of my adjudication.

The general restatement of that portion of the complaint pertaining to the North Carolina Medical Society wholly misses the point that was raised in the complaint and that is that North Carolina Medical Society at the very least via its three appointed members sitting on NCPHP's Board of Directors was specifically instructed to oversee the operations of NCPHP and failed as clearly documented by the North Carolina Auditor and confirmed by NCMS' response. Judge Boyle's paraphrasing of this element of the complaint downplays the specific function that NCMS failed, i.e., that NCPHP is not simply a generic "do good" nonprofit educational public charity but performs a crucial forensic diagnostic assessment function and that NCMS and NCMB appointment to NCPHP's Board of Directors is specifically a placement for the express purpose of overseeing the forensic diagnostic assessment activities of NCPHP and their compliance with law. That is a distinctly different role function than simply being appointed to a relatively innocuous educational public charity board. This combined six person board member appointment of both three members from NCMS and three from NCMB was expressly designed so as to ensure the provision of due process and compliance with state and federal law. The North Carolina Auditor documented that in fact NCMS and NCMB failed in that regard; and NCMS and NCMB in their correspondence in reply essentially conceded that they had.

NCMS publicly prides itself on being the originator of NCPHP. The MOU (to be introduced into evidence) is an explicit and then currently operational contract amongst NCMS, NCMB and NCPHP in which it is stated in multiple sections that due process must be provided in the provision of its "peer review" services.

Given that the exact role of these NCMS (and NCMB) appointed members for the express purpose of oversight of NCPHP is not published or readily publicly obtainable (and in fact are so obscure as to only have been unearthed by the NC Auditor), and given that the NC Auditor found that these NCMS and NCMB appointees failed in their express duty of oversight, our (referencing my former attorney and myself) decision in the complaint was to use an economy of words and to simply note that NCMS played a significant role in the alleged violations by the fact of its lack of performance of expressly designated critically important oversight. Their role was intended as one of guidance and as a critically important "overseer failsafe."

No need to nudge complaint from "conceivable" to "plausible"

Given the NC Auditor's findings of failure of oversight, there is no need to "nudge" this aspect of the complaint from "conceivable" to "plausible" or even from "plausible" to "actual." The findings of the NC Auditor's report in reference to NCMS were referenced in this complaint. We felt that such an independent governmental audit was sufficient to stand on its own factual merit. We apparently erroneously presumed that the official findings of such a respected independent government agent citing deficiency of oversight by NCMS (as well as NCMB) would allow us to later elaborate on how that failure of oversight resulted not only in the alleged violations but perhaps even in their complicity in those violations.

Given lack of publicly available documentation (against a backdrop of NCMB and NCPHP complete blackout of providing any requested information) regarding the specific roles of these NCPHP board members assigned by NCMS, it is difficult to know whether their failure was one of simple neglect or whether it constituted a form of willing neglect that might rise to the level of tacit conspiracy or perhaps even more overt involvement.

Non-Applicability of Statutes of Limitation

Argument as to why, in the context of pervasive substantive due process violation and serial multi-party procedural due process violations, all arguments based on statutes of limitation pertinent to the cited violated laws are necessarily invalid.

Defects in the statute of limitation argument due to refusal of NCPHP to provide documentation for answers

Denying a patient's request for records is unethical and unprofessional and would seem to be grounds for sanction of license. Despite having raised these issues with NCMB in one or more complaints or correspondence, no action was taken to remedy this.

Denying to provide a conclusory medical record or peer review record of such profound importance so that one may contest it and enter into the allegedly existing and available grievance process is fraudulent behavior. To allow such fraudulent behavior to operate in an administrative system so that it consumes precious time and erodes the statute of limitations is fundamentally dishonest and I would argue an obstruction of justice. Under all circumstances, whether peer review or diagnostic psychiatric evaluation, I have a right to that record. That official record is only considered official when its authorship is clearly identified, it is signed and dated and presented on official stationary. Providing an incomplete record in the medical system is grounds for dismissal of one's privileges. Insurance companies will not pay until the record is completed and that includes being signed and dated and authorship identified. Despite numerous requests, access to the full record was denied. I identified over forty false elements in that unofficial report I received (in approximately August 2015) that demand to be corrected and I have every right to correct them. Access to a grievance process to contest these fraudulent elements of the record was entirely denied. To this day, I have not been able to obtain the author-identified signed and dated official record on official stationary from NCPHP. Without this record and without their acknowledgment that they conducted a diagnostic evaluation which in fact the unofficial record reveals, and which NCMB acted upon as though it were an official medical psychiatric consultation, then it becomes impossible for me to initiate an action for medical negligence toward any party whether it be the State Industrial Commission or a private malpractice insurer. I have earnestly attempted to determine what was the nature of the evaluation that NCPHP conducted from both NCPHP as well as NCMB. I posed direct inquiries to them asking whether this was a peer review or whether it was the ordered mental evaluation and to provide their protocol for each and my rights under each. This should not be a difficult task. Yet multiple parties at both agencies have repeatedly refused to answer my question or reply to my requests.

Clearly, whether the assessment was conducted as a peer review or as a mental evaluation, I am entitled to certain rights. Those rights are distinctly different under each of these actions and violation of one or another entails an entirely different course of action. I have a right to understand what my rights are according to the administrative

protocol that is operational. I have been denied that right repeatedly. Further, the denial caused consumption of time that would normally apply to applicable statutes of limitations. However, in the context of complete obstruction of justice, I maintain that such time limitations on statutes of limitations are irrelevant.

Therefore, it seems clear to me that, given that there is no administrative oversight which forces disclosure of the procedure performed, I still cannot determine whether or not a diagnostic evaluation was conducted and therefore am not able to institute appropriate litigation until that determination is made. To burden me, the licensee litigant, with forcing correction of an administrative system over which I have no control is an unfair burden. I have attempted to gain clarification and justice from all relevant administrative agencies.

Emotional Distress Claims Remain Alive

On similar statute of limitation basis as well as reasoning pertaining to standing. and right of remedy and access to that remedy, claim for emotional distress against all parties should stand and may pertain to additional yet-to-be-named parties.

The injury caused by Dr. Pendergast and NCPHP is different than the injury caused by NCMB and by NCMS.

Assertion of Claims Voided by Statutes of Limitations

Judge Boyle asserts that, based on my having filed my restraining order against NCMB in April 2012, my claims accrued "at the lasted [sic] in April 2015" and therefore are barred by the statute of limitations. This is erroneous as my claim in April 2012 was not an emotional distress claim and further that the most grievous harm – the forced sacrifice of my license in Feb 2013 – had not even yet occurred.

In re: the infliction of emotional distress (Page 19 - 20 section D State law claims)

I made multiple attempts to notify Doctors Taylor and Collins, Chairs of NCPHP's Board of Directors and they repeatedly declined to respond. It was their fiduciary duty along with that of the NCMB and NCMS designated-overseer board members to address these wrongs conducted by their CEO and medical director and clinical coordinator. They chose to neglect their fiduciary duty, ignore my pleas and to further obstruct all means of obtaining prompt and rightful administrative remedy.

The argument that the statute of limitations prevents any claim for infliction of emotional distress against Dr. Pendergast due to the date of the evaluation fails on all of my previous "invalidity of statute of limitations" arguments. He repeatedly denied access to my records, repeatedly denied that he actually conducted a diagnostic evaluation (though he acknowledged such in sworn deposition), and overtly prevented all means of correction and all means of grievance. He abused authority (which NCMB condoned) to order interstate rendition and compel participation in an out-of-state compulsory four day experimental mental evaluation program, a program for which there is utterly no basis in psychiatry nor peer reviewed validity or efficacy assessment. I made many attempts to seek remedy; there were no means of doing so as this agency did not have any effective oversight by its Board of Directors or by the external parties which were specifically assigned to provide such oversight, namely NCMS and NCMB.

It is erroneously stated (page 21) that I was aware that Dr. Pendergast and the PHP "were going to recommend"... In fact they had already "recommended" their course of action and such recommendation, as has been demonstrated, is essentially a virtual board order. There was utterly no basis to recommend the discontinuance of my medical practice and the disruption of high risk psychiatric care. Several of my patients, some of whom were service members who had already had their care with me disrupted, were in or potentially near suicidal or homicidal crisis. There was no reason

to submit to any inpatient assessment as there was and remains no basis for conducting such an inpatient assessment for such an alleged condition, especially at an unlicensed out-of-state "cash only" facility. NCPHP has no right to order anyone out-of-state for a forced mental evaluation, at that in an experimental program at an unlicensed "cash only" mental facility which employs non-validated instruments and possesses a financial conflict of interest. If NCPHP maintains that it conducted peer review, then, even more definitively, it had no right whatsoever under such a designation to order such an evaluation.

I then sought fullest administrative remedy with each of these agencies (abundant documentation is present) but was repeatedly denied. To be repeatedly prevented by each of these agencies from accessing administrative remedy and then told that the statute of limitations in civil court for whatever violations have occurred is now thoroughly exhausted and that all of the entities are thoroughly cloaked in layers of immunity is so inherently unfair and frighteningly dystopian as to be Kafkaesque. In court, I intend to show that I was overtly denied and continued to be denied all administrative remedy to which I am entitled and that NCMB and NCPHP individually and collectively have usurped rightful judicial authority away from NCOAH. Until that administrative remedy is produced in a fair and transparent manner, then it can be rightfully asserted that no statute of limitations has even begun on any of the alleged violations. Further, it might rightfully be argued that, due to such profound administrative perversion, I have the right to either enlarge the complaint or initiate new complaints.

Denial of Administrative Remedy

It is vital to understand that I was essentially ordered in my NC Superior Court hearing on my request for maintenance of a restraining order against NCMB and request for case adjudication outside of NCMB's clutches to seek full administrative remedy before being eligible to go to any final Board disciplinary hearing, if such were to occur. The legal guidance on these matters was clearly demonstrated by the Superior Court decision which instructed me that I had not exhausted all administrative remedy in seeking this restraining order. I find it remarkably deficient of the North Carolina Superior Court that this judge did not then direct me to the NCOAH under NC150 B with immediate designation as a "contested case" and order that my case be removed from NCMB's administrative jurisdiction. Is it possible that there is a lack of understanding by the civil judiciary of the primary role of the NCOAH?

re: Dismissal of Emotional Distress Claims Against Medical Board Defendants

Judge Boyle asserted that I concede that my emotional distress claims should be dismissed against the medical board defendants. I did not concede such. The attorney for the medical board acted with malice and apparent prejudice, and apparently while maintaining an undisclosed conflict of interest as an active duty service member

aggressively prosecuting this case against me while I was concurrently engaged in whistleblower litigation against a contractor of the Department of Defense. I attempted in multiple ways to confront this clear conflict of interest but was denied access to any hearing on that complaint. (see my NC State Ethics Commission complaint)

Invalid argument that emotional distress is tied to allegedly immunity-protected "peer review"

Judge Boyle again cites the North Carolina General Statute that states as they relate to activities of the medical board and NCPHP "peer review activities conducted in good faith pursuant to any agreement under this section shall not be grounds for civil action under the laws of the state and are deemed to be state directed and sanctioned and shall constitute State..." [so] It again must be emphatically stated that NCPHP did not in fact conduct a legitimate peer review nor did it act in good faith. Further, that it did not conduct peer review nor act in good faith should not be my burden to prove in this court as this should have been an overseeing agency's responsibility to investigate and conclude this. Mine should only have been a case to make a claim for prompt remedy on the basis of the wrongdoing determined by that internal administrative or external government investigation.

Who "Owns" Malfeasance?

It should be noted here that, to my understanding, malfeasance or conduct with malice is not covered by the State Industrial Commission. Therefore, again it remains unclear as to whom to seek a claim against, especially seeing that neither agency will communicate or address concerns or complaints and there is no external overseeing authority.

Continued Obscurity of the Nature of the NCPHP "Assessment"

Further, Judge Boyle avoids committing to defining what exactly was the nature of the "assessment" that was conducted by Dr. Pendergast. This is a crucial question. Whether a peer review or an involuntary diagnostic psychiatric evaluation, each entails a specific protocol wholly different from the other and each entails specific patient rights. Each also requires medical licensure as each is in fact considered to be of a professional medical nature.

Dr. Pendergast did not conduct peer review. He conducted an unauthorized diagnostic psychiatric evaluation in a forensic context, one at that that was fraudulent. He then released his findings indiscriminately to unidentified members of the medical board against all known confidentiality provisions but especially against 42 CFR part 2 and HIPAA which NCPHP states on its website it firmly abides by. One of the parties he released it to was the prosecuting attorney (and, in the absence of any charges, with my then being prosecuted for what?) and that prosecuting attorney or other NCMB

personnel then both took that opportunity to reveal highly protected health information (PHI) in what should have been a sealed brief before the NC Superior Court and then posted that very information of a diagnostic nature - false as it was - on on my licensee page on the North Carolina Medical Board website for the world to see, despite knowing that such allegedly legitimate diagnostic information was in fact contested. This was done most curiously at a time when my federal whistleblower case was being considered in Judge Boyle's courtroom. It remained visible for four months before we threatened another restraining order if it was not removed. It was then promptly removed, but with utterly no mitigation by either NCMB which had posted it or by NCPHP which had released the information to NCMB indiscriminately. The timing of this and likely collaborations between parties at NCMB and NCPHP cannot be ignored. Nor can the potential for judicial bias resultant from such.

NCMB and NCPHP Have Committed Fraud On The Court

If my argument on the relevance and direct applicability of NC 150B is found to be valid, my assertion that NCMB and NCPHP have, by such an extensive and combined substantive due process violation, committed fraud on this court and fraud on the courts in general by hijacking the rightful administrative judicial system and falsely portraying themselves as having judicial authority which they did not possess.

Conclusion

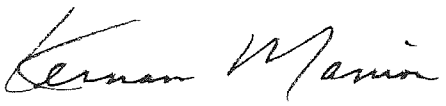
My appeal is based on matrix of objections pertaining to defendant falsehoods, invalid restatement, invalid immunity, invalid statutes of limitations, invalid peer review, denial of administrative and judicial remedy arguments, Constitutional and civil rights arguments and conspiracy to commit the wrongs.

In the event that my assertions about multiple defense falsehoods are found to have merit and rise to the level of attorney deceit, I believe that consideration of this matter merits immediate priority.

I recognize that it is not this Appellate Court's burden to rule on this case but rather to rule on appeal for reversal of dismissal and return to the district court for resumption of this case. I regret the length of this informal brief but felt that such detail was necessary so as to insure sufficient argument was presented on disqualifying each rationale for dismissal. As there were many seemingly valid disqualifiers, so too are my responses challenging these disqualifiers.

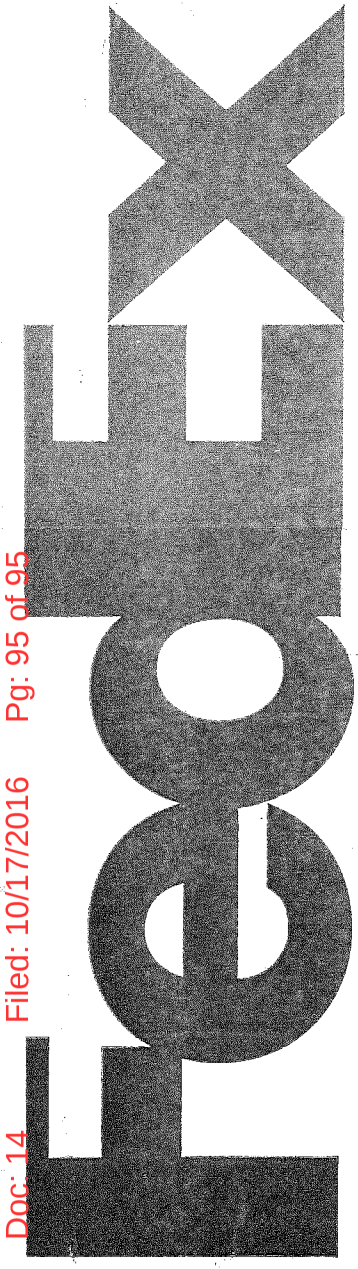
In the event that this case has too many interconnected components, I am agreeable to finding a way to disarticulate it into more manageable components. Additionally, in the event that it is thought best to remand a host of components of the case all the way back to the NCOAH, I am amenable to that, assuming that due process and expeditious hearing can be achieved. Non-closure of this matter is now approaching seven years.

I do believe that this case contains multiple substantial issues which have implications for multiple judicial domains and hope that its adjudication will be allowed to proceed.



Kernan Manion, MD

Friday, October 14, 2016



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