

App. No. \_\_\_\_\_

In the  
Supreme Court of the United States

Sheldon Schwartz M.D.

v.

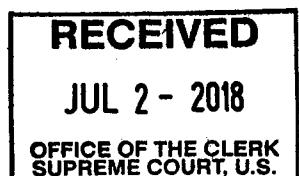
Universal Health Services Inc. et al

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI  
TO THE MASSACHUSETTS SUPREME JUDICIAL COURT

PETITIONER'S APPLICATION TO EXTEND TIME TO  
FILE A PETITION FOR A WRIT OF CERTIORARI

June 22, 2018

Sheldon Schwartz M.D.  
(pro se just for now)  
5 Abernathy Road, Lexington, MA  
781 652 8206



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**PETITIONER'S APPLICATION TO EXTEND TIME TO  
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To the Honorable Stephen Breyer, as Circuit Justice for the 1st Circuit and the Commonwealth of Massachusetts:

Petitioner Dr. Sheldon Schwartz respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days to and including August 29, 2018. The Massachusetts Appeals Court issued its opinion on December 29, 2017 and on January 18, 2018 denied a petition for re-hearing *en banc*. The Massachusetts Supreme Judicial Court denied an application for Further Appellate Review (FAR-25905) on March 29, 2018. Absent an extension of time, the Petition would therefore be due on June 29, 2018. This Court would have jurisdiction over the judgment under 28 U.S. Code § 1257(a).

**Background**

Dr. Schwarz is a physician who practiced Internal Medicine for decades in various states. He also oversaw research at Bristol Myers and brought one of the first anti-HIV medicines into clinical use. For about six years he was the in-house internist at a small psychiatric hospital, owned by Universal Health Services Inc., responsible for ensuring psychiatric patients had their general medical needs cared for. Repeated acts of retaliation by the hospital administration in response to Dr. Schwartz reporting repeated negligence of patients' basic medical needs

culminated in the hospital system falsely reporting him to the state medical board in an effort to ensure he could not work as a physician anywhere again. Dr. Schwarz finally resigned from the hospital at that point.

The former employer, however, continued to actively pursue action against Dr. Schwartz in conjunction with a specific employee at the state medical board. Three years after Dr. Schwarz separated from that hospital, the former employer actively collaborated with the board employee in selecting and excluding evidence and witnesses for a hearing (at which the board employee presented the former employer's allegations as the state's own) then actively distributed the board's subpoenas to the witnesses even when they no longer were hospital employees. Numerous witnesses testified that they received their subpoenas from their former employer and not directly from the state itself. It was impossible to tell where the state board ended and the former employer began. Because of the close collaboration between the former employer and the board employee, the state board itself was abused into acting as the agent of the former employer.

Dr. Schwarz recognized these acts as post-employment retaliation and finally filed suit against the former employer in 2016, within three years of leaving employment. The state trial court refused to recognize that post-employment retaliation **even** exists and dismissed the suit as untimely. The state appeals court ruled that no physician in Massachusetts could obtain relief from post-employment retaliation because the sole state statute that deals with retaliation against physicians, M.G.L. ch. 149 § 187, only bars actions that affect employment with that employer.

"As noted in Schwartz's complaint, the whistleblower statute defines "[r]etalatory action" as "the discharge, suspension, demotion, harassment, denial of a promotion or layoff or other adverse action taken against a health care provider affecting the terms and conditions of employment." G. L. c. 149,§ 187(a), inserted by St. 1999, c. 127, § 146. Schwartz resigned in June, 2013. The defendants' improper conduct in 2016 and their ongoing tortious conduct could not affect "the terms and conditions of [Schwartz's]

employment." As matter of law, none of this complained-of conduct falls within the statutory definition of retaliatory action that could form the basis of an actionable whistleblower claim."

SHELDON SCHWARTZ vs. HRI HOSPITAL, INC., & others. 17-P-656 (Mass. App. Ct. 2017) (unpublished)

## **REASONS FOR GRANTING AN EXTENSION OF TIME**

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

Dr. Schwarz, unemployed, represented himself *pro se* in the trial and appeal courts. He was never sent a notice from the SJC informing him that the court had denied his FAR application. Though the denial occurred on March 29, he did not discover it until the first week of May. The clerk has no record of ever sending him the required notice. Thus, he had less than the usual ninety days to prepare his Petition.

In addition, he had to deal with serious illnesses and death in his family that did not allow him to pursue attorneys who could file this Petition on his behalf.

This case presents an extraordinarily important issue that warrants a carefully prepared Petition. The Appeals court's blanket opinion forecloses all claims by physicians of post-employment retaliation in Massachusetts and gives former employers free reign to chill speech and protected disclosures by employed physicians while still employed. Worse, it approves of collusion between state regulatory authorities and hospital employers aimed at chilling speech.

This opinion is disastrous for all patients and hospital-employed physicians in Massachusetts and makes it assured that no physician would ever report neglect and malfeasance to regulatory authorities. This violates the right to petition the government for redress and is fully counter to decades of public policy that favors reporting malfeasance to regulators.

It is also disparate that only physicians are being foreclosed from seeking relief from Massachusetts' courts, even when the post-employment retaliation is blatant and egregious.

There is at minimum a substantial prospect that this Court will grant certiorari, and a substantial prospect of reversal given the severe danger to public safety and the blow to Constitutional protections and national public policy, a *carte blanche* to hospitals to chill protected conduct, that the Massachusetts court's opinion presents. The Massachusetts decision also defies the reasoning employed by the Supreme Court when it proscribed post-employment retaliation in *Robinson v Shell Oil Co.*, 519 U.S. 337 (1997), *Burlington Northern & Sante Fe Rwy. v White*, 548 U.S. 53 (2006)

The Petitioner is working diligently to retain counsel with Supreme Court expertise to prepare the Petition.

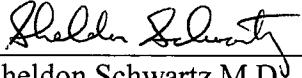
No meaningful prejudice would arise from the extension.

## **CONCLUSION**

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended sixty days to and including August 29, 2018.

Respectfully submitted,

June 22, 2018

  
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Sheldon Schwartz M.D.  
*pro se*  
5 Abernathy Road  
Lexington MA 02420  
[sheldonschwartz46@gmail.com](mailto:sheldonschwartz46@gmail.com)