

18-6611

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

ORIGINAL

Supreme Court, U.S.  
FILED

AUG 24 2018

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IN THE

SUPREME COURT OF THE UNITED STATES

Sharif A. Phillips, MD — PETITIONER  
(Your Name)

NC State, NC Court System vs.  
NC Agency, Paul Bolin, Ralph Whitley, David Creech, Jay Salsman, Debbie Meyer  
Karen Zaner, James Crouse, Nardine Guirguis RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit and North Carolina Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sharif A. Phillips, MD  
(Your Name)

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SUPREME COURT, U.S.

In the  
Supreme Court of the United States

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COURT OF APPEAL 16-1119  
CIVIL ACTION NO.: 5:15-CV-95F

SHERIF A. PHILIPS, M.D.,

*Petitioner,*

v.

NORTH CAROLINA STATE, NORTH  
CAROLINA COURT SYSTEM, NORTH  
CAROLINA AGENCY, VIDANT MEDICAL  
CENTER, M.D. PAUL BOLIN, RALPH  
WHATLEY, DAVID CREECH, JAY SALSMAN,  
DEBBIE MEYER, KAREN ZANER, JAMES  
CROUSE AND NARDINE GUIRGUIS

*Respondents.*

\*\*\*\*\*

*On Petition for Writ of Certiorari  
to the Supreme Court of the United States*

\*\*\*\*\*

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### Cases

**Barry v. Barchi**

*The U.S. Constitution protects a physician's property in his medical license.*

**Beauchamp v. DeAbadia**

*Procedural due process requires that an individual receive adequate notice and meaningful opportunity to be heard before he is deprived of life, liberty or property.*

**Brader v. Allegheny General Hospital**

*The Third Circuit ruled that HCQIA immunity would not be available to a defendant hospital if it had denied the plaintiff physician an opportunity to cross-examine witnesses that testified against him ( Vickie Haddock at the fair hearing )*

**Brown v. Presbyterian Health Care Svcs., 101 F. 3d 1324. , 1333 ( 10Th Cir 1996 )**

*If any one of the four HCQIA requirements was not satisfied, the peer review body is no longer afforded immunity for damage under the HCQIA.*

**Cook v. Wake County Hospital**

*Risk management incident report are discoverable*

**Ehlen v. St Cloud Hospital**

*The Minnesota Court of appeal conclude that a hospital's enactment of a rule requiring all of it staff urologists to be available to treat at the hospital within 30 minutes of a request was not a professional review activity.*

**Emery v. Welliver**

*The privilege does not extend to the gathering of raw data by a hospital's risk management team*

**Granger v. CHRISTUS Health Central Louisiana**

*Louisiana Supreme Court denies HCQIA and State immunity for Peer Review action against Physician.*

**Islami v. Covenant Medical Center**

*The federal court district found that a peer review proceeding did not comply with either hospital bylaw or HCQIA in that evidence was presented in the Credentialing hearing without the physician's being present and without a record being made.*

**Johnson v. Greater Southeast Community Hospital Corp**

*If a hospital complies with HCQIA but violates its own bylaws, a cause of action for breach of contract may arise and this could entitle the credentialed physician to injunctive relief.*

**Ledbetter v. Goodyear Tire and Rubber Co**

**Poe v. Charlotte Memorial Hospital**

*A doctor's loss of staff privilege at hospital constitutes the loss of valuable property.*

**Peace v. Employment Security Commission of North Carolina**

**Smith v. Keaton**

**Wilson v. Ladner**

*Portion of confidential peer review committee reports that contained purely factual information was subject to discovery.*

**Wood v. City of Wilmington**

**United State v. Murphy and Company .52 F. R.D.363**

*The court stated. There is no doubt that production of the statement should be ordered if a witness has a faulty memory and can no longer relate details of the event.*

**Pure Void For Vagueness in Skilling v. United States**

**Hicks v. Albertsons**

**Stevenson v. Bartlett**

**Quoting city of Charlotte v. McNeely**

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**Quoting Short v. Bryant**

Wehling 608 F2d at 1089 .

**People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).**

**In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985**

**Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, Â¶ 60.23.**

**The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934)**

**Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929)**

**Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896);  
Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949);**

**Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).**

**Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).**

**Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988)**

**United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a))**

**Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972)**

**Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).**

**Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989)**

**United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996)**

## STATUTES

*Under 28 U.S.C. 1254 (1)*

*Rule 60-(b)*

*Title 42 U.S. Code § 1983*

*NC Gen State ID –(45)*

*6-21-5 Attorney's fees in non-justifiable cases*

*N.C. 19.1*

*N.C. 21.2*

*N.C. 21.6*

*Rule 41 (6)*

*N.C. GS § 1-5(c)*

*N . C .1D15 d*

*Rule 56*

*Rule 12(b)(6)*

*487 Claims*



## QUESTIONS PRESENTED

I. Petition Should Be Granted To Plaintiff-Appellant Pursuant To Due process of law be allowed

This petition is requesting for Relief of all orders in Violation of the law , that Due process of law be allowed and further issues relief as the court deem appropriate.

II Petition Should Be Granted To Plaintiff-Appellants Pursuant to Title 42 U.S Code & 1983 for violation of certain protections guaranteed to plaintiff by First , Fifth , Ninth and Fourteenth Amendment of the Federal Constitution.....Page 12

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## **PETITION FOR WRIT OF CERTIORARI**

Sherif A.Philips , MD respectfully petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit .

And also North Carolina supreme court order had to be reviewed.

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### **JURISDICTION**

The Fourth Circuit Court of Appeals dismissed plaintiff appeal on February 16 , 2018 . Plaintiff filed for Petition for rehearing and on banc on February 26,2018 , Mandate on June 27 , 2018. **(Exhibit A)**

On September 20 ,2018 North Carolina Supreme Court Dismissed Both Motions ( Substantial Constitutional Question and Discretionary Review ) **(Exhibit B)**

The jurisdiction of this court is involved under 28 U.S.C. 1254 (1).

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### **STATUTORY PROVISION INVOLVED**

Due process of law, The fifth amendment, The fourteenth amendment and Health Quality Improvement Act

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### **INTRODUCTION AND STATEMENT OF THE CASE**

1. On 29 July2005 , Plaintiff filed a complaint in United State District Court for Eastern District of North Carolina bearing file No. 4:05-CV-97-F (3) ( referred to herein as “ Philips 1 “) . In Philips 1 , Plaintiff asserted claims arising out of (1)- active suspension for 31 days of plaintiff medical staff privileges without any reason.

(2)Fraudulent report to Data bank for none -professional review issues and NC Consent order was terminated prior to the report . The report was done by Kathryn Gastin without any reviewable by the chief of the medical staff and the chief of service.

2. According to NC Medical Act Chapter 90 page 15 of 379  
A hospital is not required to report the suspension or limitation of a physician privilege for timely complete medical records unless the suspension or limitation is the third within the calendar year for failure to timely complete medical record.

3. The district Court dismissed Plaintiff's Section 1981 and 1983 claims without summary judgment motion as none compliance with the discovery.

4. PCMH Lawyers asked Plaintiff to produce true and correct copies of any and all billing records for years 2000 through 2005 for any and all patients plaintiff had seen and treated either at PCMH or at any other facility

a - Billing record not relevant to the issues or claims raised in this law suits and not reasonably calculated to lead to the discovery of admissible evidence

b- a fishing expedition for information not relevant to this suit

c- overboard to the extent that the request was requested was for billing records for patients at facilities other than Pitt County Memorial Hospital when such other facilities are not parties to or otherwise connected to this suit or the issues ,claims or defenses raised in it.

d- PCMH claims that plaintiff wholesale practice were specifically the subject of the corrective action against plaintiff which was inaccurate.

e- Plaintiff was not an employee and never used PCMH billing service. PCMH had no dominion over Plaintiff office billing records. PCMH had nothing to do what so ever with the allegations made or the defense raised in the lawsuit.

f- This wholesale request to fish for some evidence that plaintiff engaged in wrongful billing practices in order to bring further pressure against plaintiff for seeking legal relief from the wrongful peer review

g- Discovery devices cannot be used to fish for information or exert improper pressure on party.

5. Magistrate Judge Webb in his order asked for considering Plaintiff Fifth Amendment privilege and defendant need to acquire relevant evidence , one possible solution would be a stay this civil action until the statute of limitations runs on all potential criminal charges as the Fifth Circuit did in Wehling 608 F2d at 1089 .

6. The Magistrate Judge Webb recommended that unless plaintiff produced responsive information , Plaintiff case be dismissed.

7. For the Court information PCMH got Plaintiff wholesale billing record as an order by Honorable Judge Doughton. PCMH refused to give their billing records to plaintiff.

8. Plaintiff filed his second lawsuits in the United States District Court for the Eastern District of North Carolina ( File No. 4 : 07 - CV - 49 - F ) “ Philips 2

As result of wrongful new corrective action and for non-professional review issues.

Plaintiff medical staff privileges was summary suspended and permanent revoked it on Dec 19, 2006.

9. Plaintiff lawyer dropped 1981 & 1983 claims, just asking for due process as only Federal claims.

10. Honorable Judge Fox deprived plaintiff from his constitutional right for due process affirmed by the fourth circuit. In an opinion issued 13 July 2009.

11. On 12 August 2009, Plaintiff filed in North Carolina Superior Court ( Pitt County Superior Court File No . 09-CVS-2652).

12. All of the plaintiff lawyers filed for motion to withdraw which was granted by the lower court Judge on October 2013. Ms Meyer and Ms Zaner filed for punitive damage claims in Every Federal and State claims . If Ms Meyer and Ms Zaner felt that plaintiff claims were malicious or frivolous why both lawyers filed for such claims.

13. Due to unexpected withdrawals of all Plaintiff lawyers, Plaintiff had hard time to defend his punitive damage claim and to approve to the court that plaintiff claim was not frivolous and malicious. Motion of legal fees and Taxation was granted by lower court on July 2014.

14. Plaintiff filed "Philips 4" on Feb 15 / 2015 vs multiple parties and new Federal claims. All of the Plaintiff 's claims never been litigated and was improperly dismissed in unlawful ways. Even the new defendants ( David Creech and Jay C. Salsman ) had been dismissed without any argument.

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## REASON FOR GRANTING THE PETITION

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### **I. Petition Should Be Granted To Plaintiff-Appellant Pursuant To Due process of law be allowed**

This petition is requesting for Relief of all orders in Violation of the law , that Due process of law be allowed and further issues relief as the court deem appropriate.

15. Oversight of Plaintiff - Appellants case by U.S Supreme Court and Fourth Circuit was abused by District Federal Court to dismissed plaintiff Rule 60 ( b ) motion.

16- The District Federal Court dismissed both Rule 60 (b) and Re-open Motions without any hearings, reading the records , arguments and even without mention any statues or cases of law. (Exhibit A)

### **II. Petition Should Be Granted To Plaintiff-Appellants Pursuant to Title 42 U.S Code & 1983 for violation of certain protections guaranteed to plaintiff by First , Fifth , Ninth and Fourteenth Amendment of the Federal Constitution**

17. Failure to obtain substantial justice in State Courts led to suits being filed in the Federal Court under Title 42 United States Code Standard 1983.

18. Plaintiff-Appellants, Sherif A Philips, MD was treated in discriminatory manner in every courts, North Carolina Board and North Carolina Agencies.

19. In plaintiff civil case, plaintiff 's civil and constitutional rights were denied . The court denied multiple requests to have all the records of both the State and the Federal cases, and that no motions or petitions filed by plaintiff would be heard .

### **III. Petition should Be Granted to Plaintiff - Appellant . In plaintiff - Appellant Civil case , Plaintiff's Civil and Constitution right was denied . They also ignore North Carolina State Statues and Federal statues. And not only violated due process of law , but also denied equal protection under the law.**

20. Plaintiff lost valuable property and deprived from due process ( This a Violation the Fifth Amendment as well as the Fourteen Amendment )

21. North Carolina and elsewhere that a doctor's loss of staff privileges at a hospital constitutes the loss of valuable property. *Poe v. Charlotte Memorial Hospital, Inc. et al*, 374 F. Supp. 1302, 1312 (W.D. N.C. 1974). Under North Carolina law, a protected property interest is

recognized . Where, as here, the wronged individual can show that he was working under a “contract, a state statute, or a local ordinance.” *Board of Regents v. Roth* 408 U.S. 564, 570-571, 92 S. Ct. 2701 (1972), *Peace v. Employment Security Commission of North Carolina*, 349 N.C. 315, 321, 507 22 S.E. 2d 272, 321 (1998). North Carolina courts have also recognized that a property interest may also be created where, as here, there are “mutually explicit understandings that support [a] claim of entitlement.

22. *Woods v. Wilmington*, 125 N.C. App. 226, 232-233, 480 S.E. 2d 429, 433 quoting *Perry v. Sindermann* 408 U.S. 593, 601, 92, S. Ct. 2694 (1972).

23. Once the plaintiff showed the existence of a protected property interest, that interest was protected by Article I, Section 19 of the North Carolina Constitution, which states that “no person shall be... in any manner deprived of his life, liberty or property, but by the law of the land.” N.C. Const. art. I, 19, *Woods*, 480 S.E. 2d at 432. The law of the land and the process of law are interchangeable terms and both import notice and an opportunity to be heard or defend in a regular proceeding before a competent tribunal. *Smith v. Keater et al*, 286 N.C. 530, 535, 206 S.E. 2d 203 206 (1974).

24. The United States Supreme court holds that an interest in continued employment is not a constitutionally protected fundamental right but is instead a “property” right subject to traditional procedural due process requirements. *Board of Regents*, 408 U.S. at 576-578. As set forth below, the plaintiff’s complaint recited a host of intentional actions by Defendant that would have demonstrated that the harm he suffered was intentional and malicious, had he prevailed on his underlying causes of actions.

25. Moreover, the record was replete with facts asserted in good faith to demonstrate violations of those due process standards. Highly relevant here, the due process clause of the U.S. Constitution protects a physician’s property interest in his medical license. *Barry v. Barchi*, 433 U.S. 55, 64, 99 S. Ct. 2642, 2649 (1979), *Beauchamp v. DeAbadia*, 779 F. 2d 773 (1st Cir. 1985), *In Re Archibald Carter Magee, M.D*, 87 N.C.App. 650, 362 S.E. 2d 564, 567 (1987). Procedural due process requires that an individual receive adequate notice and a meaningful opportunity to be heard before he is deprived of life, liberty, or property.

26. Honorable Judge Richard Doughton deprived plaintiff from his constitutional rights to defend his valuable property (hospital privilege claimed that the plaintiff case was malicious and

frivolous). The Honorable Judge Richard Doughton ruling was affirmed by North Carolina court of appeal and North Carolina Supreme Court.

#### **1V . Petition Should Be Granted to Plaintiff- Appellant Pursuant To The Right-to-Honest-Services Doctrine and Vagueness Doctrine**

27. Plaintiff-Appellants has constitutional right to challenged the fairness of plaintiff's trial at North Carolina Courts

( Pure Void-For-Vagueness in Skilling V. United States )

28. Honorable Judge Fox dismissed Plaintiff case (twice) without any hearing. Honorable Judge Fox deprived plaintiff from summary judgment motion to prove the merit of plaintiff claim.

29. After a decade of legal battles Plaintiff did know why plaintiff privilege was terminated. Every briefing or Court orders the causes were completely different.

30. From the official letters provided to the plaintiff by PCMH or from the report to Data Bank plaintiff privilege ,was summary suspended and terminated for none - professional review issues.

31. Plaintiff privilege was terminated as mentioned in every PCMH official letter that plaintiff was not following hospital by-law .

32. Every court judge tried to dig in for professional review issues to support the defendant's case of peer review and Every court did not follow the requirement of NC medical act and state law.

33. Both Federal and state lower court mishandled plaintiff - appellant case, pursued that the law did not recognized plaintiff - appellant claims or which the court cannot provide redress. Plaintiff -Appellant claims never been dismissed pursuant To Rule 12.

34. Plaintiff Appellant claims was dismissed pursuant to wrong absolute immunity to PCMH and their physicians, not appealing the protective orders ( which was fraudulent creation by PCMH lawyers ) , wrong enforcement of the statute of limitation , the laws are creatively interpreted. Due process allowed by the law never been followed and legal misrepresentation by plaintiff appellant legal team. **(Exhibit K)**

## **V. Petition Should Be Granted To Plaintiff-Appellant Pursuant To Fraud Upon the Court**

35. Fraud Upon the Court is where the Judge ( who is Not the Court ) does Not support or uphold the Judicial Machinery of the Court. The Court is an unbiased , but methodical “ creature “ which is governed by the Rule of law ....that is, The Rules of Civil Procedure , Rules of Criminal Procedure and Rules of Evidence, all which is overseen by Constitutional Law. The Court can ONLY be effective ,fair and “just “ If it is allowed to function as laws proscribe .

36. Some Judges who are violating their oath of office and are NOT properly following These rules (Some Judges are usually grossly ignorant of the Rules and are playing a revised legal game with their own created rules. Fraud Upon the Court makes void the orders and Judgement of that Court.

37. A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. *A judge is not the court.* People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

38. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

39. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."



40. "Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935).

41. Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

42. Federal law requires the automatic disqualification of a Federal judge under certain circumstances.

43. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).

44. Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Balistreri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. Â§455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

45. That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989). In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he

has received justice."

46. The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

47. "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989).

48. Further, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification. The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." *Balistreri*, at 1202.

49. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.

50. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

51. Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However some judges may not follow the law.

52. If you were a non-represented litigant, and should the court not follow the law as to non-represented litigants, then the judge has expressed an "appearance of partiality" and, under the

law, it would seem that he/she has disqualified him/herself.

53. However, since not all judges keep up to date in the law, and since not all judges follow the law, it is possible that a judge may not know the ruling of the U.S. Supreme Court and the other courts on this subject. Notice that it states "disqualification is required" and that a judge "must be disqualified" under certain circumstances.

54. The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

55. Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.

#### **North Carolina State Court**

56. Honorable Judge Richard Doughton deprived plaintiff from his constitutional rights to defend his valuable property (hospital privilege claimed that the plaintiff case was malicious and frivolous). The Honorable Judge Richard Doughton ruling was affirmed by North Carolina court of appeal and North Carolina Supreme Court.

57. North Carolina Court System Court system deprived plaintiff from his constitutional right for fair trial. Plaintiff filed on multiple occasions a motion for reconsideration a recusal of Honorable Judge Richard Doughton . Plaintiff request was denied. **(Exhibit C)**

58. Plaintiff explained in detailed that Honorable Judge Richard Doughton's impartiality (biased ) was questionable to handle plaintiff's case.

59. Honorable Judge Richard Doughton ignore the requirement of Health Care Quality improvement Act. These include the Federal law statue and immunity , North Carolina immunity and Privilege , and North Carolina Medical Act.

*(Brown vs. Presbyterian Health Care Svcs.)* **(Exhibit M & Exhibit H)**

60. The North Carolina lower Court Orders was written by Pitt County Hospital Lawyers and signed by Honorable Judge Doughton without any verification if lawful or unlawful or matched with the hearing or not. **(Exhibit H & Exhibit D)**

61. Honorable Judge Richard Doughton Granted Motion of Summary Judgement to Defendants by giving absolute immunity to PCMH and their physicians. The trial Court Judge was not aware that HCQIA immunity is acquired and Rule 56 (d) (g) was not followed.
62. The Trial court judge said that plaintiff case is a complicated one and it is very hard to be tried at North Carolina Court due to North Carolina 's immunity and privilege . Forward Plaintiff 's case to North Carolina Court of Appeal for second opinion This was against Rule 56.
63. The Trial Court never made any ruling against plaintiff Injunction Relief or Punitive Damage Claims.
64. HCQIA does not provide immunity from injunctive or declaratory relief, citing *Sugarbaker v. SSM HealthCare*, 190 F. 3d 905, 918 (8th Cir. 1999), cert. denied, 528 U.S. 1137 (2000). (*Johnson v. Greater Southeast Community Hospital Corp.*)
65. NC “§ 6-21.5. Attorney's fees in non-justifiable cases Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1, Rule 56, is not in itself a sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees.
66. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section. (1983 (Reg. Sess., 1984), c. 1039, s. 1; 2006-259, s. 13(l).)”
67. As far as Plaintiff is aware of, summary judgment motion is not enough to award legal fees for punitive damage claims (no cases of law).The only claim awarding legal fees after summary judgment motion is deceptive trade claim which is not applicable for legal and medical fees.
68. Both Plaintiff claims ( Injunction Relief and Punitive Damage ) was Dismissed By North Carolina Court of Appeal for not Appealing the protective order and wrong enforcement of statute of limitation ( The North Carolina Court of Appeal was asking Defendant to filed his claims right away after the corrective action prior the administrative procedure - not following ( Exhaustion of Remedies Doctrine ) (**Exhibit K**)
69. PCMH lawyers creatively interpreted N.C Gen Stat & ID - 45 . Without citing any case Law support or factual or reasonable basis and only echoing the words of N.C Gen. Stat & ID45. Defendant lawyers asked the lower court Judge to award all their attorney’s fees of \$444,554.45 which was granted by lower court judge without verification of their billing records. (**Exhibit G**)

70. No evidence was provided to the court that defendant should know and had to know his claim was malicious and frivolous.

71. On May and June of 2014 Defendant lawyer ( Creech and Salsman wrote in their briefing for motion of Taxation and legal fees. Even in the order which was written by Salsman and signed by Judge Doughton without any verification). The NC Medical Board Consent order was a reason for initiation of corrective action and the reason for the revocations plaintiff hospital privileges. This was a fraudulent allegation.

72. The NC Medical Board Consent order was not a reason for initiation of corrective action nor the reason for revocation plaintiff hospital privilege.

73. Plaintiff filed for North Carolina Rule 59 and Rule 60 which include new evidence (all the Privileged materials). David Creech wrote a letter to Guam Memorial Hospital and forward to them privileged materials including the request for corrective action dated Aug 26,2004 from Dr. Whatley, Dr. Barrier's Sept letters , Dr. Brown's Adhoc Committee and Dr. Olsen's fair hearing Committee documents . **(Exhibit O & Exhibit P)**

74. According to Bryson Vs Haywood Regional Medical Center, Plaintiff could be able to use these documents because David Creech gave this documents to Guam Memorial Hospital This documents lost its North Carolina privilege and became discoverable.

75. The Trial Court Judge was deceiving the North Carolina Court of Appeal by order motion of Stayed pending appeal and denied the hearing of NC Rule 59 and NC Rule 60. **(Exhibit R)** And The Trial Court Judge was holding the new evidences ( all the privileged materials ) and forward Plaintiff case to North Carolina Court of Appeal with deficit record.

The Trial Court Judge was not aware that North Carolina Court of Appeal knew about NC Rule 59 and NC Rule 60. **( Exhibit Q)**

76. Plaintiff had three back to back Peer Reviews, none of them were related to NC Medical Board Consent order and was not approved by the executive committee according to the by-laws.  
First Peer Review

In early 2004, PCMH began to raise the issue of whether plaintiff was physically examining his patients.

Second Peer Review

In June 2004, Paul Bolin initiated Peer Review As a part of plaintiff re-appointment for 2004 Plaintiff mentioned in his application the malpractice lawsuits regarding Mr. Ward.

### Third Peer Review

In July 2004, Whatley initiated Peer Review that plaintiff was not following PCMH ID Protocol NC Medical Board Consent order was terminated prior to the first corrective action.

77. Defendant lawyers ( Creech and Salsman ) wrote in the same briefing and the same order The misrepresentation of plaintiff primary site of delivery and the true nature of his practice never would have received admitting privileges at PCMH. These were fraudulent allegations.

78. PCMH was the only tertiary hospital approved by Medicare for in-patient Dialysis Plaintiff is Board Certified Nephrologist .PCMH was the primary site of delivery for plaintiff patients care. **(Exhibit N)**

79. After summary suspension of plaintiff PCMH privilege .Plaintiff lost all of his Dialysis patients and also out patients Dialysis Clinic privilege.

80. Defendant lawyer (Creech and Salsman) reasoned that the punitive claims was the main nucleus for plaintiff case which was the court awarded the entire legal fee ,paralegal and also the appellate court without reading the billing record.

This was also fraudulent allegation.

81. Debbie Meyer and Karen Zaner on Jan 2010 filed for plaintiff response and memorandum of law in opposition to defendant's motion to dismiss

[ Rules 12 A ( b )(1) and (12)(b)(6) ] Debbie and Karen asked for punitive damage for defamation, fraud and Tortious interference. **(Exhibit I)**

82. On March 20,2011 David Creech did not request for summary judgment motion against plaintiff punitive damage . On March 30,2011 Karen never defendant punitive damage claim. **(Exhibit J)**

83. NC 1D 15d No punitive damage for Breach of contract.

84. The long- standing rule in North Carolina is that , unless a statue provides otherwise parties to litigation are responsible for their own attorney fees. Hicks v. Albertsons ,284 N.C. 236, 238 ( 1973 ) ; Stevenson v. Bartlett, 177 N.C. App. 239, 244-45 (2006) ( quoting City of Charlotte v. McNeely , 281 N.C. 684 691 ( 1972 ) ( Attorney fees in this State are entirely creatures of legislation and without this do not exist. )

85. G.S. 6-21.5 permits a court to award fees to prevailing party where the claimant pursued a claim the law does not recognize or for which the court cannot provide redress The legislative purpose behind the statue is to discourage frivolous legal action persist.

Nova Constr., Inc v. Edwards 195 N.C.App 55, 66 ( 2009) ( quoting Short v. Bryant, 97 N.C.App.327,329 (1990).

86. The trial court must conduct a review of all relevant pleading and documents in determining weather fees are appropriate. Lincoln v. Bueche ,166 N.C. App150, 153 ( 2004); Badri's v. Town of Long Beach, 208 N.C.App718. 722( 2010);

87. The trial court shall make finding the fact and conclusion of law to support its award of attorney 's fees under this section." G.S. 6-21.5 Brooks v. Giesey, 334 N.C. 303, 311 - 313 (1993)

88. The lower court Judge neither read Plaintiff t case, striking all Plaintiff affidavits even his own nor reading Defendant billing records. Even the lower court judge supposed to see the privilege material under camera which was never been done. **(Exhibit H)**

89. The lower court Judge signed the order which was written by plaintiff lawyers, agreed about fraudulent allegations about defendant lost hospital privilege in relation to North Carolina Consent order, plaintiff punitive claims was the nucleus in defendant case and plaintiff primary site of practice was outside Pitt County.

90. The lower Court Judge was not aware why plaintiff 's lost his hospital privilege and how many corrective actions were done against plaintiff.

91. Even the lower court Judge award absolute immunity to PCMH , And lower court Judge was not aware of the requirements of immunity according to Federal Statue. (HCQIA) (*Brown v. Presbyterian Health Care Svcs.*), (*Islami v. Covenant Medical Center*), (*Granger v. CHRISTUS Health Central Lousiana*)

92. The corrective action was done by the Board of Trustees, The Board of Trustees have no immunity, They are liable for punitive claims.

93. Pursuant to Rule 12 (b)(6) (was not followed for the lawyers fees)

[d]dismissal is proper when one of the following three conditions is satisfied : (1)

the complaint on its face reveals that no law supports the plaintiff claim; (2) the complaint on its face reveal the absence of facts sufficient to make a good claim, or (3) the complaint disclaimer some fact that defeats the plaintiff 's claim.

94. NC 19.1 Statute of Limitation

The court found that there are no special circumstances that would make the award of Attorney's fees unjust .The party shall petition for attorney's fee within 30 days

Following final disposition of the case, (plaintiff case dismissed at NC Supreme court  
On Dec 12/2012 – PCMH Lawyer filed a motion of taxation on Jan 23 /2013 )

95. NC 21.2 Attorneys fee in notes, etc.

If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.

96. NC 21.6 Limitation on Amount

The act limits the amount of attorneys that may be recovered. They cannot exceed the amount of monetary damages award in the matter of the action is brought by a party primarily for the recovery of monetary damages.

97. NC 1D- 25. Limitation of amount of recovery

Punitive damages were awarded against defendant and shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars (\$250.000)

98. The North Carolina Court of Appeal gave the right for the Trial Court To determine that Plaintiff's claim for punitive damages against defendant was frivolous and malicious ( Page 3 ) .The Trial Court Judge was deceiving the North Carolina Court of Appeal for number of findings ( Page 4 ) . **(Exhibit F)**

99. The North Carolina Court of Appeal was not aware all of this finding was fraudulent and was written by Plaintiff lawyers .The only thing The Trial Court Judge did was signing the order without verification.

100. The defendant lawyer succeeded to put all of the plaintiff's facts as privileged and when defendant lawyer questioned this matter, they answered them back, " Because I said so"  
**(Exhibit L)**



**VI. Petition Should Be Granted To Plaintiff-Appellant Pursuant To Fraud in the Court  
Judiciary law § 487 Claims**

**NORTH CAROLINA COURT**

101. Defendant after he lost his legal representation, defendant get used to filed his motion by first class U.S Mail certified and addressed to Lori A. Strayer ( Trial Court Coordinator)  
( Exhibit E).

102. On August 2016 Plaintiff filed for noticed of appeal and requested all the records of Summary Judgment go to North Carolina Court of Appeal ( No pending appeal docketed at North Carolina Court of Appeal ?? )

103. On May 2, 2018, PCMH Lawyers filed for (1) Motion to Dismiss Plaintiff's Appeal and ( 2 ) Motion to compel Discovery. Plaintiff was served on May 14, 2018. Hearing was set on June 11, 2018.

104. On May 14, 2018 plaintiff filed for motion to Dismiss the hearing and NC Rule 62 (b)(c)(d) and Rule 12.

105. On June 11, 2018 the lower Court granted PCMH Motion and dismissed Plaintiff N.C Appeal. On June 20, 2018 Plaintiff received the orders by U.S Mail.

106. Without plaintiff presence, the lower court dismissed plaintiff appeal and granted motion to compel.

107. Plaintiff never waived his constitutional right and due process to be present in person or by the phone during the hearing.

The hearing was scheduled at 10:00 AM. The orders was filed at the Court the same day at 10:50 AM. It seemed to plaintiff the orders were created prior to the hearing as usual by The defendant lawyers and Signed by the Court.

105. Plaintiff requested a transcript from the court, no response from the court yet ?

106. On May 21 , 2018 PCMH Lawyers filed for motion for enforcement of North Carolina Judgement at Superior Court of Guam. Plaintiff had been served at Guam at June , 2018.

### **Federal Court**

107. Plaintiff Sherif A Philips, MD is not a lawyer, has expended substantial personal resources fighting legal battles to protect plaintiff constitutional property rights. Plaintiff spent almost \$ 2 M for legal fees.

108. Unexpected and unethical withdrawal of all defendant lawyers which was approved by NC lower court judge. Defendant found himself without legal presentation and plaintiff is unable to afford one.

109. Plaintiff Sherif A Philips filed a Motion for Rule 60 within the statute of limitations and plaintiff was addressing the court from Guam .

110. Honorable Judge W. Earl Britt denied Plaintiff motion and the court's decision was sent to North Carolina Address! Defendant contacted the Clerk's Office and defendant was advised to change defendant address of service to Guam by official Letter.

111. Plaintiff Sherif A. Philips, MD, On July 10, 2017 wrote an official letter to honorable Chief United State States District James C. Dever III to inform the court that plaintiff address for service is at Guam. **(Exhibit A)**

112. The District Court sent the Court Decision regarding denying Plaintiff motion to Reopen Plaintiff case again to North Carolina address by mail around Aug 28, 2017. *(Exhibit A)*

113. Plaintiff got the ruling around the first week of Sept. at Guam.

114. Plaintiff was denied electronic filing and electronic notification by the court before.

115. Plaintiff wrote his notice of appeal on Sept 12, 2017 and the following day was sent by certified express mail

116. Plaintiff never been served by the clerk office within 21 days to plaintiff's corrected address and the district court insisted to still serve plaintiff on the wrong address.

**As result of that plaintiff appeal at the Fourth Circuit was denied.**

117. Res Judicata and Collateral estoppel ,along other argument is not applicable. Honorable Judge Fox dismissed Plaintiff case with prejudice without collateral review of the case. Rule 41(b). The dismissal had been ordered in non-Jury case after a trial in which both parties had had

a full opportunity to present their claims and defenses and in which finding the fact and conclusion of law had been entered.

118. Plaintiff asked Honorable Judge Fox to get the record from NC state Court and to have legal counsel, Defendant request had been denied.

119. Plaintiff case had been dismissed for 1- Violation of Rule 8(a) and Rule 10 , defendant corrected and followed both Rule 8 (a) and Rule 10 in defendant reply brief. Even defendant re-wrote his claim for discrimination, whistleblower, and stark law.

120. Plaintiff filed "Philips 4" on Feb 15 / 2015 vs multiple parties and new Federal claims. All of the Plaintiff 's claims never been litigated and was improperly dismissed in unlawful ways. Even the new defendants (David Creech and Jay C. Salsman) had been dismissed without any argument. Even Honorable Judge Fox in his orders threatened plaintiff , If plaintiff at any point tried to file any motion , Judge Fox will award the legal fees to defendant.

Defendant Pursuant To Wrong Enforcement of Statue of limitation.

121. According to Supreme Court's 2007 decision in Ledbetter v. Goodyear Tire and Rubber Co .had a dramatic impact on the timeliness of discrimination claims. Also according Obama Administration no statute of limitation for discrimination claims.

122. Discrimination claim on Philips 1 vs. PCMH , Whatley and Bolin was dismissed by Hon J Fox for none compliance with discovery process ( Discrimination never been argued)

123. Malpractice claims were a new claims , dismissed in relation to Statue of limitation . Judge Fox did a mistake , Judge Fox granted the statute of limitation on the date of filling the law suits. Claims for professional malpractice in NC must filed within three years from the date they occurred but no more than four years from the last act giving rise to the claim (N.C G.S & 1-15(c)).

124. All of the plaintiff lawyers filed for motion to withdraw which was granted by the lower court Judge on October 2013. Ms Meyer and Ms Zaner filed for punitive damage claims in Every Federal and State claims. If Ms Meyer and Ms Zaner felt that plaintiff claims were malicious or frivolous why both lawyers filed for such claims.

125. Due to unexpected withdrawals of all Plaintiff lawyers, Plaintiff had hard time to Defend his punitive damage claim and to approve to the court that plaintiff claim was not frivolous and malicious. Motion of legal fees and Taxation was granted by lower court on July 2014. Plaintiff brought his claim on March 2015.

No Statue of limitation for Medicare Fraud and taking over North Carolina properties  
( Whistleblower Claims )

126. Plaintiff filed for Rule 60 ( b ) , The Plaintiff Case went back to Honorable Judge Fox. He kept it almost over one year and Honorable Judge Fox disqualified himself ?

127. Oversight of Plaintiff - Appellants case by U.S Supreme Court and Fourth Circuit Was abused by District Federal Court to dismissed plaintiff Rule 60 ( b ) motion.

128. The District Federal Court dismissed both Rule 60 (b) and Re-open Motions without Any hearings, reading the records , arguments and even without mention any statues or Cases of law.

129. No hearing Should Be Granted To defendant Pursuant To Rooker-Feldman Doctrine

130. Court apply the Rooker-Feldman doctrine when the following four factor are present

1. The plaintiff seeking to bring a claim in federal district has already lost on that claim in the state court.
2. The plaintiff is complaining that the state court judgment caused him some sort of injury or harm.
3. The plaintiff is asking the federal district court to review and overturn the state judgment.
4. The State court finalized its decision on the claim before the federal district court began its own proceedings.

(Exxon Mobil Corp.v. Saudi Basic Industries Corp, 544 U.S 280 (2005))

131. On June 21st ,2018 Plaintiff filed for Rule 59 , Under Title 42 United States Code Standard 1983 , Due process of law be allowed and Motion of Harassment and Retaliation. Motion was dismissed without any hearing on Sept 17 , 2018 . Up till now Plaintiff never been served with the order. **(Exhibit U)**

**VII. Petition Should Be Granted To Plaintiff - Appellant Pursuant To Change in the law of Summary Suspension of a Medical Privilege**

132. The Standard and Documentation Requirements.

A summary suspension of a medical staff member's practice can only be imposed where continuation of practice---constitutes an immediate danger to the public , including patients, visitors and hospital employees and staff

133. A summary suspension. May not be implemented unless there is actual documentation or other reliable information that an immediate danger exists.

134. The documentation or information must be available at the time the summary suspension is made. The intent behind this amendment was to narrow the scope on which a suspension decision is made and to make sure that the information is based on hard evidence rather than rumor or innuendo. For example an internal and/or external review in the form of minutes or a report which establishes that an immediate danger exist

135. Summary suspension must be based on the immediate danger standard.

136. External Reviews is becoming more prevalent for medical staff and hospital to consider using third party reviewers to evaluate patient medical records where questionable care has been provided. The reasons for doing so include conflicts of interest, evaluation of a medical specialist for which there may not be a comparable peer ,or to promote the goal of being fair and objective when evaluating quality of care issues. (Neither record nor external reviewer was available for plaintiff corrective action)

137. Most would agree that the imposition of a summary suspension has the most significant adverse impact on a physician's career and reputation compared to any other form of disciplinary action.

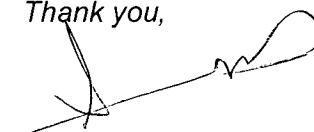
138. Hospitals and medical staffs typically will shy away from a physician applicant with summary suspension on his or her record because these decisions are typically reserved for most egregious situations in which the life or well-being of patients and other individuals in the hospital are placed in serious jeopardy by the physician's action or conduct.

138. Summary suspension where this is a violation of hospital policy or where the physician's conduct may be disruptive of the medical staff or hospital operations. These and other alternative grounds for summary suspension are no longer allowed.

## CONCLUSION

**For the above reasons the petition should be granted.**

*Thank you,*

A handwritten signature in black ink, appearing to read 'Sherif A. Philips', with a large, stylized loop at the end.

**Sherif A. Philips, MD**  
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