[CERTIFIED TRANSLATION]

I, Carlos Laó Dávila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

Identification Number 03-052

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN AND CAGUAS
V PANEL

DR. SAMUEL DAVID SILVA RAMÍREZ Petitioner v. HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC., SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO Y BENEFICIENCIA DE PUERTO RICO, INC.; SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO INC., DR. JOSÉ ISADO ZARDÓN AND THE CONJUGAL PARTNERSHIP COMPRISED BY HIM AND MRS. DIANA VIGIL VIGIL Appellee	KLCE201701318 *Certiorari* Coming from the First Instance Court, Ponce Part Case No.: K PE20015-3721 Re: Rule 49.2, Fraud and False Representation

Panel comprised by its president, Judge Sánchez Ramos, Judge Soroeta Kodesh, and Judge Romero García.

Soroeta Kodesh, Judge who writes the opinion.

JUDGMENT

In San Juan, Puerto Rico, February *13*, 2019.

Through an appeal erroneously named *certiorari*, Dr. Samuel D. Silva Ramírez appeared, pro se, hereinafter (the appellant). Requests from us to review a *Judgment* issued on July 28, 2016 and notified on August 2, 2016, through the First Instance Court (hereinafter, FIC), Ponce Part. Through ruling issued, the FIC dismissed, with prejudice, the *Complaint* filed by the appellant and imposed the payment of $5,000.00; for attorney fees.

[Seal of the Puerto Rico Court of Appeals]

On August 18, 2017, we issued a *Resolution* in which we tended the filing as an appeal, because it proceeded under the law, although for reasons of procedural expediency, it kept its original alphanumeric designation (KLCE201701318). Thus, accepted and due the grounds below, the appealed *Judgment* is confirmed.

I.

On March 4, 2011, the appellant filed a *Complaint* (K PE2011-0846), regarding a declaratory judgment, permanent injunction, and damages against Hospital

Auxilio Mutuo de Puerto Rico (hereinafter, Hospital) and against Dr. José Isado Zardón, his wife, and the conjugal partnership comprised by them. In synthesis, he requested that the first instance court determine that the termination of his appointment and clinical privileges in the Hospital was illegal and discriminatory, due to his religious beliefs. In addition, he requested the amount of $10,000,000.00 due to the damages allegedly suffered for said action. In turn, the appellant filed a preliminary injunction petition for the FIC to order the Hospital to reinstate his clinical privileges and withdraw the notification to the National Practitioners Data Bank (NPDB), regarding the result of the disciplinary action that was carried out against him by the Hospital authorities. It is important to mention that the appellant's privileges were suspended, since, during the disciplinary proceeding performed by the Hospital, it was concluded that on October 14, 2009, the appellant performed a sterilization without counting, at that time, with the written consent of the patient.

After the hearings regarding the injunction petition, on October 27, 2011, the FIC issued a *Partial Judgment* in which it granted a preliminary injunction and ordered the reinstatement of the appellant's privileges. Notwithstanding, the appealed court concluded that it was not proven that suspension of privileges was due to the religious beliefs of the Hospital. Not satisfied with the previous result, the Hospital filed appeal (KLAN201101585). Through a *Judgment* issued on March 27, 2012, another Panel of this Court revoked

the appealed ruling and, therefore, the granting of the preliminary injunction. The case was returned to the first court for the continuation of the ordinary proceedings.

Subsequently, the Hospital filed a request for summary judgment. In essence, the Hospital affirmed that no dispute of fact existed that impeded the first court to approve the correction of the administrative proceeding that ended the permanent suspension of the clinical privileges of the appellant. Therefore, it requested the dismissal of the complaint filed against it. The appellant opposed the request for summary judgment and alleged that several facts existed in dispute. It accompanied its opposition with a sworn statement signed by it.

At the end of several procedural steps, on March 16, 2014, the first court issued a *Judgment*, summarily, in which it dismissed the instant *Complaint.* Not happy with said result, the appellant requested a reconsideration that was also denied.

Not satisfied with the aforementioned determination, the appellant filed an appeal before this Court (KLAN201400743). Through a *Judgment* issued on August 29, 2014, another Panel of this Court confirmed the appealed *Judgment.* In sum, the Panel concluded as follows:

> In sum, the court *a quo* concluded that the administrative procedure of the Hospital that ended with the definite suspension of the clinical privileges of the appellant was cemented in **the lack**

> **of the written consent of the patient for sterilization, which is not included in her record**. We agree with this appreciation, that is supported in the extensive documentary evidence that is included in the instant record. (Emphasis in the original).
>
> We rule that the First Instance Court could summarily dispose of Dr. Silva's complaint because the essential facts for its definite disposition were not controverted by him in his opposition to the motion filed by HEAM. The evidence that is contained in the record on these core facts or materials that were not controverted is sufficient and preponderant to sustain the summary judgment appealed.

Subsequently, on September 14, 2015, the appellant filed a request to have the judgment vacated, which was denied by the primary court due to lateness. Thus, on December 15, 2015, the appellant filed another *Complaint*, which initiated the instant case (K PE2015-37210). In synthesis, he requested to have the *Judgment* issued on March 17, 2011 vacated and to order the reinstatement of his medical privileges in the Hospital.

On February 17, 2016, notified on February 29, 2016, the FIC issued a *Partial Judgment and Order*. In synthesis, it dismissed the preliminary injunction and ordered the ordinary proceeding of the *Complaint*. Specifically, the court that issued the decision concluded the following:

> The plaintiff requests the issuance of an injunction as a mechanism to decree the nullity of a judgment. As we have seen, the plaintiff has an ordinary cause of action, meaning an adequate remedy under the law to file his allegation. Therefore, the existence of an adequate remedy, prevents the Court from issuing an extraordinary remedy, as the injunction.
>
> Due to the above, the cause of action of the injunction is dismissed, because it does not proceed under the law. The above, does not limit the plaintiff from continuing his claim through the cause of action of judgment nullification; thus, through this Partial Judgment said cause of action is dismissed and its dismissal is ordered.[1]

In turn, dated May 4, 2016, the appellants filed a *Motion Requesting the Dismissal of the Amended Complaint due to Lack of Jurisdiction over the Issue and Application of the Res Judicata Doctrine*, then according to them the controversy presented by the appellant in the *Complaint* was res judicata. On May 27, 2016, the appellant filed a *Motion in Opposition to the Motion Requesting the Dismissal of the Amended Complaint due to Lack of Jurisdiction on the Issue and Application of the Res Judicata Doctrine*. While the FIC decided on the motions stated above, on June 9, 2016, the appellant filed a *Motion Requesting Granting the Beginning the Discovery of Evidence and Notice for Request of Production of Documents.* In turn, on June 20, 2016, the appellants filed an *Urgent Motion for*

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[1] See, Partial Judgment and Order, Attachment 31 of the Appendix of the appeal, page 171.

Waiver of Discovery of Evidence Until a Resolution of Request for Dismissal due to Lack of Jurisdiction.

Thus, on July 28, 2016, notified on August 2, 2016, the FIC issued a *Judgment* in which it received the dispositive motion from the appellees and dismissed, with prejudice, the captioned *Complaint.* In addition, the court that issued the Judgment concluded that recklessness of the appellant was evident, and imposed on him the amount of $5,000.00 for attorney fees. In the relevant part of the appeal before us, the first court concluded as follows:

> Pursuant to the jurisprudence stated above in the instant case, the requirements are not met to vacate or nullify the judgment issued in case K PE2011-0846.
>
> Thus, from the allegations contained in the complaint and the documentation that was attached to it, it is not evident because the letter that is alleged to constitute new evidence that justifies to vacate the Judgment issued in case K PE2011-0846, was material or relevant evidence to the adjudication of the claim in that case.
>
> [. . .] When taking judicial notice of the proceedings in case KPE2011-0846, including the proceedings before the CA in appeal KLAN201101585, advise that the here and there plaintiff between its claim alleged that he had been discriminated for religious reasons. Said cause of action was adjudicated and denied on its merits by the FIC as well as the CA.
>
> [. . .]

> In turn, the complaint did not state in detail the circumstances which constitute fraud to the Court. According to the law cited, the mere fact of alleging there was fraud does not constitute the circumstances that allow to vacate a judgment. *Pardo v. Sucn. Stella, supra.*
>
> Thus, having evaluated the allegations of the complaint and the documentation attached to it, the elements that justify the nullification of the adjudications made in said case cannot be seen, by the FIC as well as the CA. In addition, it is evident that the instant case is another attempt of the plaintiff to re-litigate some issues that have been adjudicated on the merits by several judicial forums for which we determined that said party was reckless by filing the instant case. Rule 44.1(d) of Civil Procedure.[2]

Not satisfied with said judgment, on August 15, 2016, the appellant flied a *Reconsideration.* The appeal forum requested that the appellees express themselves regarding said request. On September 1, 2016, the appellees filed a *Motion in Opposition to the Request for Reconsideration.* While the request for reconsideration was before the consideration of the FIC, the appellant once again appealed before this Forum and requested the issuing of a *mandamus* writ to order a discovery of evidence in case (KLRX201600060). Through a *Judgment* issued on August 31, 2016, another Panel of this Court dismissed the *mandamus* filed by the appellant. The aforementioned, after concluding that the request

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[2] See, Judgment, Attachment to the Appendix of the appeal, pages 986-987.

for the *mandamus* was highly discretional and the appellant having other remedies under the law.

It is important to state that the appellant requested the inhibition of the deciding judge in the instant case. On May 15, 2017, notified on May 23, 2017, Superior Judge, Hon. Pedro J. Polanco, issued a *Resolution* in which it *Denied* the request for inhibition filed by the appellant. Specifically, the FIC ruled the following:

It is evident that the complaint from the plaintiff refers to *judicial* determinations that can only be reviewed through the revision channels that the law provides the affected party. The plaintiff cannot intend that, through the inhibition mechanism, another judge of equal hierarchy has to pass judgment once again over the controversies of a case in which final judgment has been issued, only because the plaintiff believes the Judge affected its determination.[3]

Finally, on June 29, 2017, notified on July 4, 2017, the FIC *Denied* the request for reconsideration filed by the appellant.

Not satisfied with the aforementioned result, on July 25, 2017, the appellant filed the captioned appeal in which he stated that the FIC made six (6) errors, i.e.:

> The First Instance Court erred by not revoking the prior Judgment of case KPE2011-0846, when it is alleged under Rule 49.2, fraud to the

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[3] See, Resolution, Attachment 86 of the Appendix of the appeal, page 1346.

Court and False representation because these allegations of fraud to the Court do not require discretion of the Court, or jurisdictional term.

Not granting the discovery of evidence violates the constitutional provisions of PR and USA in a fair judgment under Rule 49.2 of the Rules of Civil Procedure by not considering the allegations in the complaint that are not supported and with overwhelming evidence. Constitutional Violation.

The religious discrimination is prohibited by the federal laws of the United States of America, (USA), who grant the Hill-Burton loans, perpetual nature, and HUD (Housing and Urban Development) of modernization of Hospitals, in addition to the Medicare and Medicaid contracts, and other Hospital Modernization loans.

The Court erred by not considering that the Hospital Español de Auxilio Mutuo (HEAM) had evidence letters from the Federal Department of Health since 1997, that they could not discriminate due to the commitment of the loans for federal guarantee, and they did so through a religious Protocol that is maintained clandestine, outside the bylaws. This protocol was only sent to the Obstetrician Gynecologist.

The Honorable FIC erred when it did not revoke the Judgment (KPE2011-0846), by not considering the lack of sincerity of the owners of HEAM and the medical directive to revoke the prior judgment (KPE2011-0846).

The Court erred by accepting the Res Judicata Philosophy if fraud to the Court was

committed and/or false representation in addition that case KPE2011-0846 was a preliminary injunction and is not considered Res Judicata.

As we stated previously, on August 18, 2017, we issued a Resolution in which we accepted the appeal, because it was a review of a Judgment. In turn, on August 24, 2017, the appellants filed the *Allegation of the Appellee.* With the benefit of the briefs of the parties, we proceed to state the applicable law.

II.

A.

The Puerto Rico Civil Code governs one of the principles of judicial certainty and procedural order that we know as Res Judicata. *Presidential v. Transcaribe*, 186 DPR 263, 273 (2012); *Feliciano Ruiz v. Alfonso Develop. Corp.*, 96 DPR 108, 114 (1968). Said doctrine is found regulated in Article 1204 of the Puerto Rico Civil Code, 31 LPRA sec. 3343, and in Article 421 of the Civil Processing Code, 32 LPRA sec. 1793. This precept responds to the interest of the State to end litigations, so that judicial matters are not prolonged and a citizen is not submitted to the annoyances of litigating the same case. *Presidential v. Transcaribe*, supra, pages 273-274; *Mendez v. Fundación*, 165 DPR 253, 267 (2005); Pagán Hernández v. U.P.R., 107 DPR 720, 732 (1978). Thus reiterated by the Supreme Court of Puerto Rico in *Worldwide Food Dis., Inc. v. Colon et al*, 133 DPR 827, 833-834 (1993), when it stated the following:

> With said doctrine the purpose is to put an end to litigations after they have been adjudicated in a definite manner by the courts and, in this way, ensure the certainty and safety of the rights declared through a judicial resolution to avoid additional expenses for the State and litigants.

For the Res Judicata defense to proceed it is required for a prior final judgment to exist, in which "the most perfect identities concur among issues, the cases, the persons of the litigants, and their capacity". Art. 1204 of the Civil Code supra; *Presidential v. Transcaribe*, supra, page 274; *Méndez v. Fundación*, supra; *Autoridad de Acueductos v. Reyes*, 77 DPR 10, 14-16 (1954). *Silva v. Doe*, 75 DPR 209, 214 (1953); *Camacho v. Iglesia Católica*, 72 DPR 353 (1951); *Municipio v. Ríos*, 61 DPR 102, 105 (1942). The purpose of the doctrine is to provide certainty and security of the rights declared through judicial resolution so that the parties in a litigation avoid incurring in additional expenses. *Presidential v. Transcaribe, supra*, pages 273-274; *Worldwide Foods Dis., Inc. v. Colon, et al, supra.* It has been reiterated that said judicial figure impedes that issues are litigated again that were or that could have been litigated and that were or that could have been resolved in the prior litigation. In sum, it avoids complaints being litigated *ad infinitum. Parrilla v. Rodríguez*, 163 DPR 263, 268 (2004); *Worldwide Food Dis,, Inc. v. Colón et al, supra.*

B.

Rule 49.2 of Civil Procedure, 32 LPRA Ap. V R. 49.2, authorizes the Court to release a party from a judgment, order, or proceeding due to several grounds: (a) error, inadvertence, surprise, or excusable negligence; (b) discovery of essential evidence that, notwithstanding a due diligence, it could not be discovered on time to request a new trial according to Rule 48; (c) fraud, false representation or other improper conduct from an adverse party; (d) nullification of the judgment; (e) the judgment has been satisfied or waived renunciada; and (f) any other reason that justified the granting of a remedy against the effects of a judgment.

When invoking any of the clauses included in Rule 49.2 of Civil Procedure, *supra*, it can be demanded that evidence is presented to support the allegation and thus an evidentiary hearing be required. *De Jesús Viñas v. González Lugo*, 170 D.P.R. 499, 513 (2007). However, it is not obligatory that in all the cases in which a motion is filed under Rule 49.2 of Civil Procedure, supra, a hearing is held, especially if from the face of the motion it is evident that it lacks merit. Only when valid reasons are alleged that demand presenting evidence to support them, does the hearing have to be held. *Pardo v. Sucn. Stella*, 145 DPR 816, 832 (1998); *Ortiz Serrano v. Ortiz Díaz*, 106 DPR 445, 449-450 (1977).

Even though Rule 49.2 of Civil Procedure, Supra, is liberally interpreted, the Supreme Court of Puerto Rico has stated that it does not constitute a "master

key" to reopen controversies and must not be used as a substitute of review remedy or a reconsideration motion. *Vázquez v. López*, 160 D.P.R. 714, 726 (2003). (Our emphasis). The determination of granting the nullity of a judgment is confined to the discretion of the First Instance Court. *Garriga Gordils v. Maldonado Colón*, 109 DPR 817, 822 (1980); *Fine Art Wallpaper v. Wolff*, 102 DPR 451, 458 (1974).

In turn, the Supreme Court of Puerto Rico stated that Rule 49.2, supra, must not be used as a substitute to indirectly extend the terms to go on appeal without going against the stability and certainty of the judicial proceedings in our jurisdiction. *Reyes v. E.L.A. et al*, 155 DPR 799, 811 (2001). Likewise, the Supreme Court of Puerto Rico stated that the motion to vacate the judgment is not available to correct errors of law, or errors of appreciation, or valorization of the evidence. These are fundamental for the reconsideration or the appeal of the judgment, but not the nullification. *García Colón et al v. Sucn. González*, 178 DPR 527, 542-543 (2010).

In *Pardo v. Sucn. Stella*, supra, pages 824-826, the Supreme Court of Puerto Rico explored the concept of the nullification of judgment under an allegation of fraud to the court. Regarding the matter, the following was stated:

> [. . .] If fraud to the court is alleged, it can be presented in a separate case, in which case the term of six months that provide the rule to file a motion to vacate does not apply.

Now, an independent action for nullification of judgment based on fraud to the court, only includes actions whose effect or intention is besmirch the court as such, or that is perpetuated by officers of the court, so that the judicial apparatus cannot perform as usual its impartial labor of judging the cases before it for adjudication. *Municipality of Coamo v. Tribunal Superior, supra*, 99 DPR 932, 939 (1971). The false allegations that have been included in a complaint per se do not constitute grounds to conclude there was fraud to the court. *Rodríguez v. Tribunal Superior*, 102 DPR 290, 292 (1974).

An action on fraud to the court has to state in detail the circumstances which constitute it. The mere fact of alleging there was fraud does not constitute one of the circumstances that, pursuant to Rule 49.2, supra, allow the vacating of a judgment. The fraud is never assumed. This means that the petitioner has proven with reasonable certainty, meaning, with preponderance of the evidence that satisfies the judgment of the Trier. (Citations omitted).

[. . .]

An independent action on fraud to the court should only be filed in those cases in which the fatal term of six (6) months has expired and the circumstances are such that the court can reasonably conclude that maintaining the judgment will constitute a grave injustice against the party that has not been negligent in the processing of the case and that, in addition, has a good defense on the merits. (Citations omitted).

In *Municipio de Coamo v. Tribunal Superior, supra*, on pages 939-940, the Supreme Court, citing *Martínez v. Tribunal*, 83 DPR 358 (1961), stated that fraud to the court is: "[. . .] the preparation, the use and the presentation in the hearing of the case of false evidence obtained through the adverse party through bribes and the inducing of perjury." *Id.* On the contrary, the false allegations per se in a complaint do not constitute grounds to conclude there was fraud to the court. *Rodríguez v. Tribunal Superior*, 102 DPR 290, 292 (1974) *(Per Curiam)*. Likewise, that a witness while under oath, even if it is the party, does not constitute fraud to the court. *Municipio de Coamo v. Tribunal Superior*, supra.

Last, a judgment becomes final and enforceable when the term has gone by to appeal without this having been done, or when concluding the appeal process. *Rivera v. Algarín* 159 D.P.R. 482, 489 (2003).

Together with the principles previously stated, we proceed to resolve if this Court has jurisdiction to tend to the appeal remedy before our consideration.

III.

In its first finding of error, the appellant stated that the first court erred when it did not revoke the *Judgment* in case K PE2011-0846. It argued that its allegation of fraud and false representation under Rule 49.2 of Civil Procedure, supra, turned the *Judgment* in case K PE2011-0846 null and, therefore, the determination of the FIC was not discretional, and it was not

tied to the term of six (6) months established by Rule 49.2 of Civil Procedure, supra. The appellant is not correct in his argument.

We have carefully reviewed the instant case records and we agree with the first court regarding that the supposedly new evidence presented by the appellant supporting his allegation of fraud is not sufficient for the first court to declare null the *Judgment* issued on March 16, 2014 and that, in fact, was confirmed by this Court, through a *Judgment* issued on August 29, 2014. According to the legal framework stated before, fraud is not assumed and, therefore, must be proven by petitioner of the request for nullification with preponderance of the evidence, meaning, with reasonable certainty. In the instant case, the first court tended to the arguments of both captioned parties and issued its determination, after application of the law to the facts of this controversy. By proceeding in this manner, the FIC analyzed said arguments and concluded that no basis arose to conclude that the judgment impeached had defects for nullification or fraud. The error alleged by the appellant was not committed.

Due to its relevance to the instant case, we will discuss the sixth finding of error alleged by the appellant. In essence, he alleged that the FIC erred when applying the doctrine of Res Judicata. He alleged that said doctrine must not be applied when fraud and false representation is alleged. Likewise, the appellant stated that said doctrine did not apply, since the case which *Judgment* attempts to leave without effect was a preliminary injunction, there was not discovery of

evidence and was resolved summarily. The appellant is also not correct in his arguments.

In first place, it is indispensable to state that contrary to what is alleged by the appellant, the determination in case K PE2011-0846 did not constitute merely a preliminary injunction, neither is it about an interlocutory ruling.. The injunction was dismissed by this Court, through a *Judgment* issued on March 27, 2012 (KLAN201101585), and the case was returned for the continuation of the ordinary process. As we stated previously, the primary court issued a *Judgment*, summarily, on March 16, 2014, that was the subject of an appeal filed by the appellant (KLAN201400743). A *Judgment* issued on August 29, 2014, another Panel of the Court confirmed the *Judgment* appealed. Therefore, the *Judgment* in the prior case constitutes a final and firm ruling.

In second place, contrary to what is stated by the appellant, in the previous case (k PE2011-1585), the same parties litigated in the same capacity, in addition that the appellant filed the same cause of action and the same allegations. Therefore, we are forced to conclude that the FIC did not make an error when applying the Res Judicata doctrine. The sixth error alleged by the appellant was also not committed.

Due to the result thus reached, regarding the application of the res judicata doctrine, it is not necessary that we discuss the remaining findings of error alleged by the appellant, since said errors result repetitive and patently without merit. The appellant simply did not

present sufficient evidence to support what was alleged. Regarding this matter, it needs to be stated that it is a governing principle and a norm firmly established in which mere allegations and theories do not constitute evidence. *U.P.R. Aguadilla v. Lorenzo Hernández*, 184 DPR 1001, 1013 (2012), citing *Pereira Suárez v. Jta. Dir. Cond.*, 182 DPR 485, 509-510 (2011) and *Alberty v. Bco. Gub. De Fomento*, 149 DPR 655, 671 (1999). Due to the aforementioned, we confirm the appealed judgment.

IV.

Due to the all the aforementioned considerations, the appealed *Judgment* is confirmed.

Agreed and ordered by the Court, and certified by the Clerk of the Court of Appeals.

[Illegible Signature]
Lilia M. Oquendo Solís, Esq.
Clerk of the Court of Appeals

[illegible signature]

[Seal of the Court of Appeals]

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SAN JUAN SUPERIOR COURT

DR. SAMUEL DAVID SILVA-RAMÍREZ Plaintiff v. HOSPITAL AUXILIO MUTUO, INC. et al Defendants	CIVIL NO.: K PE2015-3721 R (Courtroom 806) RE: PRELIMINARY INJUNCTION; DECLARATORY JUDGMENT; DAMAGES

JUDGMENT

I. PROCEDURAL BACKGROUND

On December 15, 2015, doctor Samuel D. Silva-Ramírez (hereinafter, "the plaintiff" or "Dr. Silva-Ramírez") filed a *pro se Complaint* in the above-captioned case, along with a petition for a preliminary injunction against Hospital Auxilio Mutuo de Puerto Rico, Inc. (hereinafter "HEAM" or "Hospital"), Dr. José A. Isado-Zardón (Medical Director) and his wife. In this motion, Dr. Silva-Ramírez requested the relief from the Judgment issued in Civil Case No. KPE2011-0846, alleging newly discovered evidence and fraud.

On February 17, 2016[1], the Court of Extraordinary Appeals handled the temporary injunction phase in

[1] Notified on February 29, 2016.

this case and issued a *Partial Judgment and Order* dismissing the motion for injunctive relief filed by Dr. Silva-Ramírez by finding it to be legally inadmissible. Consequently, the case was referred to the ordinary proceeding currently before us.

Upon referral of the case for ordinary proceeding, Dr. Silva-Ramírez filed an *Amended Complaint* outlining the same claims previously made in the *Complaint*.

On May 4, 2016, the defendant filed a dispositive motion stating that this Court lacks jurisdiction on the subject and, therefore, the *res judicata* doctrine is applicable in this case, given that the facts and the claims raised by the plaintiff were duly adjudicated in a final and enforceable manner in Civil Case No. K PE2011-0846. A copy of the Partial Judgment and the Final Judgment entered in case number K PE2011-0549, as well as a copy of the Judgment by the Court of Appeals reversing the Partial Judgment and a copy of a Decision Dismissing a request for a new trial and a release from judgment were attached to the Motion.

This Court issued an Order on May 11, 2016 whereby the Court granted the plaintiff twenty (2) days to oppose the *Motion to Dismiss* filed by the defendant. The defendant filed his opposition to the *Motion to Dismiss* on May 27, 2016.

With the benefit of the pleadings and the documents filed by the parties, we proceed to decide the case:

II. FACTUAL BACKGROUND

The judicial determinations made in case K PE2011-0846, a copy of which is found in the case files, shows the following:

1. Dr. Silva-Ramírez was stripped of his appointment and his clinical privileges to practice gynecology and obstetrics at HEAM after a disciplinary process initiated by the HEAM's medical authorities in accordance with applicable HEAM Medical Faculty Bylaws.

2. Dissatisfied with the disciplinary process initiated against him, on March 4, 2011, Dr. Silva-Ramírez filed a complaint (Civil Case No. KPE2011-0846) along with a request for preliminary injunction against HEAM and against Dr. José Isado-Zardón (Medical Director) and his wife. Dr. Silva-Ramírez requested that a declaratory judgment be entered stating that HEAM had stripped him of his appointment to the HEAM Medical Faculty, as well as of his clinical privileges to practice gynecology and obstetrics at said institution, in an illegal and discriminatory manner, due to his religious beliefs. Meanwhile, as an injunctive relief, Dr. Silva-Ramírez requested that his clinical privileges be restored and that the notice issued by HEAM to the National Practitioners' Data Bank (N.P.D.B.) regarding the result of the disciplinary action taken by the institution's medical authorities against him be withdrawn. Lastly, Dr. Silva-Ramírez sought compensation for alleged damages for a multi-million sum.

3. After the required hearings were held, on October 27, 2011, Hon. Judge Ángel R. Pagán-Ocasio, who participated in the initial stage of the preliminary injunction in case number K PE2011-0846, entered a Partial Judgment in favor of Dr. Silva-Ramírez. As shown by the Partial Judgment, it was limited to restoring Dr. Silva-Ramírez's privileges and withdrawing the notice issued by HEAM to the N.P.D.B. However, said Partial Judgment expressly states that "it had not been proven that the plaintiff's religious beliefs were a determining factor for the decision to suspend his privileges at Hospital Auxilio Mutuo" (p.18; CFI Partial Judgment; KPE2011-0846).

4. Dissatisfied with the Partial Judgment issued by the Court of First Instance [CFI], HEAM appealed to the Court of Appeals (hereinafter "CA"). The CA entered Judgment[2] revoking the Partial Judgment previously entered by the CFI. According to the CA's Judgment, the suspension of Dr. Silva-Ramírez's clinical privileges took place after HEAM conducted an internal disciplinary process in absolute compliance with the provisions of the Medical Faculty Bylaws. The CA adjudicated Dr. Silva's claim that he had not been provided with an adequate discovery process by ruling that "Dr. Silva was provided all the necessary documents for his defense (see p. 30; CA Judgment; KLAN201101585). On the other hand, it should be noted that the allegations of religious discrimination

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[2] Delivered on March 27, 2012; notified on March 29, 2012.

were also manifestly rejected by the appellate court (see pp.39-40; CA Decision; KLAN201101585).

5. In view of the Decision issued by the CA revoking the Partial Judgment issued by the CFI, Dr. Silva-Ramírez opted to file a petition for Writ of Certiorari before the Supreme Court of Puerto Rico (hereinafter "TSPR," [for its Spanish acronym]). Said court decided not to issue the writ and, consequently, the case was remanded to the CFI to conduct the relevant procedures of the ordinary proceeding.

6. Once the case had been sent back to the CFI to conduct the relevant procedures of the ordinary proceeding, HEAM filed a *Motion for Summary Judgment*. Facing the opposition of the plaintiff, the CFI granted the motion on the grounds that there were no unresolved issues in the suit since the core facts had been adjudicated by the CA and, therefore, the claims made in the complaint had been resolved based on their merits.

7. On March 17,2014, the CFI summarily dismissed Civil Case No. KPE2011-0846. Dissatisfied with the dismissal, Dr. Silva-Ramírez requested a reconsideration, which was denied.

8. In a Judgment issued on August 29, 2014[3], the CA confirmed the decision of the CFI and ruled that the Court of First Instance acted correctly by deciding the case summarily, given that the evidence contained in the case file regarding the core facts of the case was

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[3] Notified on September 11, 2014.

strong and sufficient to sustain the appealed summary judgment (see p. 41, CA Judgment; KLAN201400743).

9. Since Dr. Silva-Ramírez did not appeal the decision of the CA panel (KLAN201400743) before the TSPR, the judgment of dismissal became final and enforceable.

10. Approximately one (1) year and a half after the Judgment of the CA was issued, under appeal number K LAN2014-00743, Dr. Silva-Ramírez filed[4] a *Motion Requesting Relief of Judgment* in case KPE2011-0846, which was Dismissed due to lack of jurisdiction because it was filed after the six (6) – month term stipulated under Rule 49.2 of the Rules of Civil Procedure, 32 L.P.R.A. App. III, R. 49.2.

11. On December 15, 2015, Dr. Silva-Ramírez filed the complaint in the above-captioned case, along with a petition for preliminary injunction against HEAM and Dr. José A. Isado-Zardón and his wife. In said complaint and petition for preliminary injunction, Dr. Silva-Ramírez requested the relief of the Judgment entered in Civil Case No. KPE2011-0846, as well as the withdrawal of the notice issued by HEAM to the N.P.D.B., and the restitution of his clinical privileges to practice gynecology and obstetrics at HEAM.

12. Hon. Judge Aileen M. Navas-Auger, who heard the initial stage of the present case, dismissed the motion for injunctive relief by means of a Partial Judgment and Order issued on February 17, 2016, on

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[4] Filed on September 14, 2015.

the grounds that Dr. Silva-Ramírez's appeal was legally inadmissible because the Judgment for which relief was being requested stems from a case that was adjudicated on its merits; therefore, said Judgment had become final and enforceable.

III. APPLICABLE LAW

A. Origin of the Independent Action for Relief Due to Nullity of Judgment

The first two paragraphs of Rule 49.2 of the Rules of Civil Procedure, 32 L.P.R.A., App. III, R. 49.2, provide the following with regard to the relief from judgment:

> **32A L.P.R.A. § Rule 49.2. Mistakes; inadvertence; surprise; excusable neglect; newly discovered evidence, fraud, etc.**
>
> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a judgment, order or proceeding for the following reasons:
>
> **(1)** Mistake, inadvertence, surprise or excusable neglect;
>
> **(2)** Discovery of material evidence which, despite due diligence, could not be discovered in time to move for a new trial under Rule 48;
>
> **(3)** Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;
>
> **(4)** The judgment is void;

(5) The judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) Any other reason justifying relief from the operation of the judgment.

The provisions of this rule shall not be applicable to judgments entered in divorce lawsuits, unless the motion is based on subparagraphs (3) or (4). The motion shall be filed within a reasonable term, but in no event after six (6) months of the recording of the judgment or order or after the procedure has been conducted. A motion under Rule 49.2 shall not affect the purpose of a judgment, nor shall it suspend its effects. This rule does not limit the power of the court to:

(a) Hear an independent suit in order to relieve a party from a judgment, order, or proceeding; (Emphasis provided)

(b) Grant a remedy to a party that really would not have been summoned, and

(c) Revoke a judgment due to fraud to the court. (Emphasis provided)

The first paragraph of Rule 49.2, *supra*, provides for relief from the effects of the judgment by means of a petition filed in the same case within six months (180 days) from notice of judgment, based on the six causes indicated in subparagraphs (1) to (6) of Rule 49.2. The last two subparagraphs of the second paragraph of Rule 49.2 refer to two particular cases to which the six

(6)-month term does not apply, that is, when a party really would not have been summoned, subparagraph (b), and due to fraud to the Court, subparagraph (c). Also, subparagraph (a) of said paragraph reaffirms the discretion of the Court to grant relief from the effects of a judgment by filing an independent lawsuit, even after the six (6)-month period has passed, in the situations discussed below, thus leaving the independent suit for nullity of judgment expressly considered in Rule 49.2.

As for the independent action for relief from judgment in **Figueroa v. Banco de San Juan**, 108 D.P.R. 680, 687-689 (1979), the Supreme Court stated:

> We agreed with the court of first instance that the res judicata doctrine prevents the appellée from once again litigating the matters that he brought forth or that they may have brought forth in the request for a suspension of judgment. *Mercado Riera v. Mercado Riera, 100 D.P.R. 940 (1972);* ***González v. Méndez et al.,*** *15 DPR 701 (1909).* In addition, he may not use the mechanism of an independent action in order to challenge the validity of the judgment and the proceedings in civil case 75-4206 as erroneous, nor to raise substantive matters that should have been brought forth as affirmative defenses during the trial. Said action is not intended to replace the review procedure or to provide an additional remedy against an erroneous judgment. González v. Chávez, 103 DPR 474 (1975); ***Rodríguez v. Tribunal Superior,*** *102 DPR 290 (1974);* ***Parés Inc. v. Galán,*** *98 D.P.R. 772 (1970);* ***E.L.A. v. Tribunal Superior,*** *86 D.P.R. 692 (1962).* If this was the case, the

independent case for a suspension of judgment would constitute a mere procedural mechanism to indirectly extend the review term while undermining the fundamental interest in the stability and accuracy of legal proceedings. Rule 49.2 safeguards this fundamental interest by establishing a six-month deadline for requesting the suspension, by establishing the reasons in precise terms, and by excluding judicial error, as opposed to mistakes made by the party, as a basis for the remedy. Banco Popular v. Tribunal Superior, 82 DPR 242 (1961). (Emphasis added.)

However, the court's inherent authority to nullify at any moment a void or fraudulently obtained judgment, be it at its own request or at the request of the interested or affected party. ***Calderón Molina v. Federal Land Bank***, *89 D.P.R. 704 (1963);* ***Martínez v. Tribunal Superior***, *83 D.P.R. 358 (1961); Sucn. Rosario v. Sucn. Cortijo, 83 D.P.R. 678 (1961);* ***Roca v. Thomson***, *77 D.P.R. 419 (1954).* This inherent power is acknowledged by Rule 49.2, about which it states the following:

> . . . This rule does not limit the court's power to (a) hear an independent case for the purposes of suspending part of a judgment, order, or procedure; (b) grant a remedy to a party that would not have actually been given; and (c) suspend a judgment due to fraud.

The broad and comprehensive framework of remedies provided by Rule 49.2 considerably reduces the use of this independent action to cases in which the six month deadline has elapsed and the circumstances are such that the court can

reasonably conclude that sustaining the judgment would constitute a grave injustice against a party that has not been negligent in their case and that also has a good defense. (Emphasis added.)

The exercise of the independent action in cases with void judgments is generally accepted because these are inexistent. ***Calderón Molina v. Federal Land Bank**, 89 D.P.R. 704, 708; 7 Moore, **Federal Practice**, sec. 60.37(1), page 621; Wright & Miller, **11 Federal Practice and Procedure**, 238.* A judgment is void when it has been issued without jurisdiction over the subject-matter or the parties, or, if it somehow infringes on the due process of law. ***E.L.A. v. Tribunal Superior, supra, Rodríguez v. Albizu**, 76 D.P.R. 631 (1954).* The use of the independent action is acceptable against a judgment obtained through fraud, error, or accident, and when a party has been unable to present their defenses due to the other party's schemes and machinations, as long as they have not been negligent in their case or committed a fault. **Olivera v. Grace**, 122 P. 2d 564. Moore, *op. cit.*, on pages 621-627; **Wright & Miller**, op. cit., pages 639-645. (Emphasis added.)

Expanding on the above, in ***Rivera v. Jaume**, 157 D.P.R. 562, 572-575 (2002)*, the Supreme Court stated:

Rule 49.2(4) provides a procedural vehicle for a party to be able to request the suspension of a judgment against it for one of the reasons established by the rule itself, as long as said action is presented within the six (6) months following the registry of the judgment. However, even after the six (6) month deadline has elapsed, the rule itself

acknowledges a court's power to hear an independent case for the purposes of relieving a party from a judgment, order, or proceeding; granting a remedy to a party that would not have actually been given; and to suspend a judgment due to fraud. Rule 49.2, *supra*. See, also, ***Figueroa v. Banco de San Juan***, *108 D.P.R. 680, 688 (1979)*. (Emphasis in source.)

Generally, this type of action is allowed when the judgment is void, because it is inexistent. This occurs when the judgment has been issued without jurisdiction over the subject-matter or the parties in a case, among other cases. We have also considered that, in the context of Rule 49.2, a judgment is void when the court has acted in a manner inconsistent with the due process of law. See E.L.A. v. Tribunal Superior, 80 D.P.R. 692 (1962). (Emphasis in source.)

However, the acknowledgement of this action is not a master key for nullifying judgments that have been issued validly. The reservation of the right to the independent action is predicated in the fundamental justice of the claim. See Alicea Álvarez v. Valle Bello, 111 D.P.R. 847, 853 (1982). The broad and comprehensive framework of remedies provided by Rule 49.2 considerably reduces the use of this independent action to cases in which the six month deadline has elapsed and the circumstances are such that the court can reasonably conclude that sustaining the judgment would constitute a grave injustice against a party that has not been negligent in their case and that also has a good defense. Figueroa v. Banco de San Juan, *supra*, page 689. (Emphasis in source.)

On the other hand, as for the independent action for the suspension or nullification of a judgment similarly recognized in the federal jurisdiction, the well-known treatise by **Wright, Miller & Kane, *Federal Practice and Procedure 2d***, sec. 2868, pages 397-399, states the following when discussing its requirements:

> The requirements of established doctrine for the independent action in equity were succinctly summarized by the Eighth Circuit long before the Adoption of the Civil Rules:
>
> The indispensable elements of such a cause are (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law. (Emphasis added.)
>
> Resort to an independent action may be had only rarely, and then only under unusual circumstances. It is not the function of an independent action to relitigate issues finally determined in another action between the same parties. It is not a remedy for inadvertence or oversight by the losing party in the original action, nor will it lie on behalf of a party who was himself at fault. (Emphasis added.)

Based on these principles, in ***United States v. Beggerly***, 118 S. Ct. 1862, 524 U.S. 38, 141

L.Ed.2d 32 (1998), the United States Supreme Court reiterated the rule that independent action would only be considered if what was ruled in the judgment is "manifestly unconscionable", as follows:

> Independent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of "injustices which, in certain instances, are deemed sufficiently gross to demand a departure" from rigid adherence to the doctrine of res judicata. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944).
>
> . . . [A]n independent action should be available only to prevent a grave miscarriage of justice.
>
> Based on the above, an independent action would not simply be appropriate in grave cases, but it would also have to comply with the elements discussed above. In addition, they must comply with specific allegations related to fraud, mistake, accident, or fatal defects that make the challenged judgment void or voidable.

On the other hand, as for the specific cases of fraud, the Supreme Court expressed in ***Pardo v. Sucn. Stella***, *145 D.P.R. 816, 824-826 (1998):*

> An independent action to declare a judgment void based on fraud only includes actions whose effects or intent was to sully the court, or that was perpetrated by officials of the court, in such a way that the legal system cannot conduct its impartial work of judging the cases with which it is presented for adjudication. ***Municipio de Coamo v. Tribunal Superior***, *99 D.P.R. 932, 939 (1971).*

False allegations included in a lawsuit per se do not constitute grounds for concluding that there was fraud at court. ***Rodríguez v. Tribunal Superior***, *102 D.P.R. 290, 292 (1974).*

An action due to fraud must present in detail the circumstances that constitute the fraud. The mere fact of alleging that fraud took place does not constitute one of the circumstances that, based on Rule 49.2, supra, would allow for the suspension of a judgment. ***Correa v. Marcano***, *139 D.P.R. 856 (1996);* ***Dávila v. Hosp. San Miguel, Inc.***, *117 D.P.R. 680 (1979).* Fraud is never presumed. This means that it must be proven by the petitioner with a reasonable prospect of certainty, that is, with a preponderance of the evidence satisfying the judge's conscience. ***González v. Quintana***, *145 D.P.R. 463 (1998);* ***De Jesús Díaz v. Carrero***, *112 D.P.R. 631 (1982);* ***Canales v. Pan American***, *112 D.P.R. 329 (1982);* ***García López v. Méndez García***, *102 D.P.R. 383 (1974);* ***Carrasquillo v. Lippitt & Simonpietri, Inc.***, *98 D.P.R. 659 (1970).*

On the other hand, we have established that when a court examines a request for the suspension of a judgment under Rule 49.2 of the Code of Civil Procedure, supra, it must consider certain criteria in order to safeguard the rights of the parties involved in the case. The judge must be aware of the existence of a valid defense to oppose for the petitioner's claim, the time elapsed between the judgment and the request for suspension, the damages the opposing party would suffer if the suspension of judgment is granted, and the damages suffered by the moving party should the

requested remedy not be granted. ***Neptune Packing Corp. v. Wackenhut Corp.***, *120 D.P.R. 283, 294 (1988);* ***Murphy Lugo v. Atl. So. Insurance Co.***, *91 D.P.R. 335 (1964).*

An independent action due to fraud must only be presented in such cases where the six (6) month deadline has elapsed and the circumstances are such that the court can reasonably conclude that sustaining the judgment would constitute a grave injustice against a party that has not been negligent in their case and that also has a good defense. ***Figueroa v. Banco de San Juan***, *supra, page 688.*

Even though Rule 49.2 of the Code of Civil Procedure, supra, must be interpreted in a liberal manner, the interest of seeing the cases in light of their merits cannot always prevail over the equally just interest of preventing the congestion of schedules, of resolving cases swiftly, of eliminating uncertainty and preventing unnecessary delays in the legal proceedings, thereby promoting the just, swift, and economical resolution of the controversies. ***Correa v. Marcano***, *supra, page 861,* ***Dávila v. Hosp. San Miguel, Inc.***, *supra, page 818.*

Fraud in court, under said rule, refers to unusual cases that involve more than damages to a particular disputant. The courts have rejected invoking this concept in cases in which the alleged fraudulent act, should it exist, took place between the parties in the case and had no direct effect on the integrity of the legal process. ***11 Wright, Miller, and Kane, Federal Practice and***

Procedure; *Civil 2d Sec. 2870 (1995).* In ***Municipio de Coamo v. Tribunal Superior,*** *supra, pages 939-940,* we pointed out that fraud in court must cover only those types of fraud whose intent is to sully the court as such, for example, those perpetrated by officials of the court, the preparation, use, and presentation in the case's hearing of false evidence obtained by the opposing party or obtained through bribery and instigating perjury, or when the party against which the judgment was issued was never properly summoned.

IV. CONCLUSION

In conformance with the laws discussed above in this case, the requirements for suspending or declaring void the judgment in case K PE2011-0846 have not been met.

Therefore, based on the allegations contained in the lawsuit and the documentation attached to it, it does not result evident why the letter that is alleged to constitute new evidence that justifies the suspension of the Judgment issued in case K PE2011-0846 was material or pertinent evidence to the adjudication of the claim in that case. We warned that said letter, at most, is evidence that the HEAM received some sort of benefit under a federal law known as Hill-Burton, which the plaintiff argues in some of its filings prohibits institutions that have received funding under said statute from discriminating based on religious grounds. Upon taking judicial note of the proceedings in case K PE2011-0846, including the procedures

before the Appellate Court in appeal KLAN200101585, we warned that the plaintiff here and there had alleged in their claims that they had been discriminated against based on religious grounds. Said cause of action due to discrimination was adjudicated and rejected based on its merits both by the Court of First Instance and the Appellate Court. In their ruling, the Court of First Instance and the Court of Appeals at no moment based their determinations on the inapplicability of the constitutional or statutory provisions against religious discrimination. Therefore, even accepting it as fact, viewing the plaintiff in the most favorable way possible, that said letter is in effect new evidence that the plaintiff did not possess or which was not possible to discover at the time when case K PE2011-0846 was adjudicated, it is implausible to allege that it was essential to the adjudication of said case.

On the other hand, the lawsuit did not present in detail the circumstances that constituted fraud in Court. According to the case law cited, merely alleging that there was fraud does not constitute the circumstances that would allow for the suspension of a judgment. *Pardo v. Sucn. Stella*, supra.

Therefore, having evaluated the allegations made in the lawsuit and the documentation attached to it, no elements justifying the suspension of judgments made in said case, be it those made by the Court of First Instance or the Appellate Court, present themselves. In addition, it is evident that this case is another attempt by the plaintiff to relitigate matters that have been

tried based on their merits by various legal forums, which is why we have determined that said part was frivolous in presenting this action. Rule 44.1(d) of the Code of Civil Procedure.

JUDGMENT

In light of the above, the motion filed by the defendant is granted and a Judgment is issued dismissing WITH PREJUDICE the lawsuit ABOVE and imposing on the plaintiff the payment of legal fees reasonably estimated by this court to total $5,000.00, as well as

> BE IT RECORDED AND NOTICE HEREOF BE DULY GIVEN ISSUED in San Juan, Puerto Rico, on July 28, 2016.

Griselda Rodriguez-Collado
Assistant Secretary

[Signed]
Juan A. Frau-Escudero
Superior Court Judge

I, Juan E. Segarra, USCCI #06-067/translater, certify that the foregoing is a true an accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

[CERTIFIED TRANSLATION] I, Carlos Laó Dávila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN AND CAGUAS V PANEL

DR. SAMUEL DAVID SILVA RAMÍREZ Petitioner v. HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC., SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO Y BENEFICIENCIA DE PUERTO RICO, INC.; SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO INC., DR. JOSÉ ISADO ZARDÓN AND THE CONJUGAL PARTNERSHIP COMPRISED BY HIM AND MRS. DIANA VIGIL VIGIL Appellee	KLCE201701318	*Certiorari* Coming from the First Instance Court, Ponce Part Case No.: K PE20015-3721 Re: Rule 49.2, Fraud and False Representation

Panel comprised by its president, Judge Sánchez Ramos, Judge Soroeta Kodesh, and Judge Romero García.

RESOLUTION

In San Juan, Puerto Rico, March *11*, 2019.

The "Reconsideration" filed by the petitioner, Dr. Samuel Silva Ramirez was considered, and DENIED.

Agreed and ordered by the Court, and certified by the Clerk of the Court of Appeals.

[Illegible Signature]

Lilia M. Oquendo Solís, Esq.

Clerk of the Court of Appeals

[Seal of the Puerto Rico Court of Appeals]

Identification Number

RES2019

[CERTIFIED TRANSLATION] I, Carlos Laó Dávila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN AND CAGUAS V PANEL

DR. SAMUEL DAVID SILVA RAMÍREZ Petitioner v. HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC., SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO Y BENEFICIENCIA DE PUERTO RICO, INC.; SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO INC., DR. JOSÉ ISADO ZARDÓN AND THE CONJUGAL PARTNERSHIP COMPRISED BY HIM AND MRS. DIANA VIGIL VIGIL Appellee	KLCE201701318	*Certiorari* Coming from the First Instance Court, Ponce Part Case No.: K PED015-3721 Re: Rule 49.2, Fraud and False Representation

Panel comprised by its president, Judge Sánchez Ramos, Judge Soroeta Kodesh, and Judge Romero García.

RESOLUTION

In San Juan, Puerto Rico, August 28, 2017.

Having tended to the *Request for Extension to File Allegations* filed on August 22, 2017, it is disposed by *Nothing To Provide* due to as of this date the appealed party filed its allegation. Taking judicial knowledge that on August 24, 2017, the appealed party already filed its allegation.

The Court so ruled and it is certified by the Court of Appeals.

[Seal of the Puerto Rico Court of Appeals]

/s/ Lila M. Oquendo Solis
Atty. Lila M. Oquendo Solis
Clerk of the Court of Appeals

[CERTIFIED TRANSLATION]

I, Carlos Laó Dávila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

THE SUPREME COURT OF PUERTO RICO
II COURTROOM

Samuel David Silva Ramírez Petitioner v. HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC., SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO Y BENEFICIENCIA DE PUERTO RICO, INC.; SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO INC., DR. JOSÉ ISADO ZARDÓN AND THE CONJUGAL PARTNERSHIP COMPRISED BY HIM AND MRS. DIANA VIGIL VIGIL Appellee	**CC-2019-0236**	

Dispatch Courtroom comprised by Associate Justice Mrs. Rodríguez Rodríguez as President, Associate Justice Mr. Kolthoff Caraballo, and Associate Justice Mr. Estrella Martínez.

RESOLUTION

In San Juan, Puerto Rico, May 10, 2019.

Having tended to the *Certiorari* Petition filed by the Petitioner, it is ruled denied due to gross noncompliance with the Rules of this Court.

Decided by this Court and certified by the Clerk of the Supreme Court.

/s/ José Ignacio Campos Pérez
José Ignacio Campos Pérez
CLERK OF THE SUPREME COURT

Res201900039375

[CERTIFIED TRANSLATION]

I, Carlos Laó Dávila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN

SILVA RAMIREZ, SAMUEL DAVID	CASE NO. KLCE201701318
V.	RE:
HOSPITAL ESPAÑOL AUXILIO MUTUO DE PR INC	CIVIL INTERLOCUTORy CERTIORARI

NOTIFICATION

TO: GENERAL CLERK SAN JUAN (SUP)
PO BOX 190887
SAN JUAN PR 00919

MONROUZEAU BONILLA, IRIS M ESQ.
IM@AMLAWFIRM.COM, TRISHA1955@YAHOO.COM

MANZANO YATES, PEDRO J ESQ.
pmanzano@scmplex.com, pjmy1216@gmail.com

SILVA RAMIREZ, SAMUEL DAVID
234 PARIS ST PMB 1834
SAN JUAN PR 00917

THE UNDERSIGNED CLERK CERTIFIES AND NOTIFIES YOU THAT REGARDING THE: RECONSIDERATION – MARCH 01, 2019

THIS COURT ISSUED A RULING ON THE RECONSIDERATION, ON MARCH 11, 2019, OF WHICH A COPY IS ATTACHED HERETO OR A LINK IS INCLUDED:

YOU ARE ADVISED THAT BY BEING A PARTY OR THE LEGAL REPRESENTATION IN THE CASE SUBJECT TO THIS RECONSIDERATION RULING, OF WHICH YOU MAY FILE AN APPEAL OR CERTIORARI, PURSUANT TO THE PROCEEDING AND THE TERM ESTABLISHED BY LAW, RULE, OR REGULATION, I ADDRESS TO YOU THIS NOTIFICATION.

I IN ADDITION CERTIFY THAT, AS OF TODAY, I SENT A COPY OF THIS NOTIFICATION TO THE PERSONS INDICATED ABOVE, TO THEIR ADDRESSES REGISTERED IN THE CASE, ACCORDING TO THE APPLICABLE NORM. ON THIS SAME DATE IT WAS FILED IN THE RECORD OF THE CASE A COPY OF THIS NOTIFICATION.

IN SAN JUAN, PUERTO RICO, MARCH 13, 2019

LILA M. OQUENDO SOLIS	By: S/ ENIBETH GARCIA RIVERA
NAME OF THE CLERK OF THE COURT OF APPEALS	NAME AND SIGNATURE OF [ILLEGIBLE] DEPUTY CLERK OF COURT

[Seal of the Court of Appeals of Puerto Rico]

OAC1835-Court of Appeals-Notification Form

TSupreme de PR

[CERTIFIED TRANSLATION] I, Carlos Laó Dávila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

IN THE SUPREME COURT OF PUERTO RICO
COURTROOM I

Samuel David Silva Ramírez Petitioner v. Hospital Español Auxilio Mutuo de Puerto Rico, Inc.; Sociedad Española de Auxilio Mutuo y Beneficiencia de Puerto Rico, Inc.; Sociedad Española de Auxilio Mutuo Inc.; José Isado Zardón and the Conjugal Partnership comprised by him and Diana Vigil Vigil Respondent	CC-2019-236	Certiorari

Dispatch Courtroom comprised by Chief Justice Oronoz Rodríguez, Associate Justice Mrs. Pabon Charneco, and Associate Justice Mr. Peliberti Cintrón.

The *Reconsideration* request filed by the petitioner, denied.

Agreed by the Court and certified by the Clerk of the Supreme Court.

IN SAN JUAN, PUERTO RICO JUNE 21, 2019

[seal of the Supreme Court]

[Illegible signature]

José Igñacio Campos Perez
Clerk of the Supreme Court

[Ink seal of General Court of Justice]

[SEAL]

Government of Puerto Rico

CERTIFICATE OF GOOD STANDING

I, **MARÍA A. MARCANO DE LEÓN, Under Secretary of State** of the Government of Puerto Rico,

CERTIFY: That, **HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC.,** register number **22651**, a **non-profit domestic** corporation, organized under the laws of Puerto Rico on **April 29, 1992**, has complied with the filing of its Annual Reports.

[SEAL]

IN WITNESS WHEREOF, the undersigned by virtue of the authority vested by law, hereby issues this certificate and affixes the Great Seal of the Government of Puerto Rico, in the City of San Juan, Puerto Rico, today, **August 13, 2019.**

/s/ María A. Marcano De León

MARÍA A. MARCANO DE LEÓN
Under Secretary of State

To validate this certificate go to: http://estado.pr.gov/

This certificate can be validated an unlimited number of times before its expiration date of 12-Aug-2020.

Certificate Validation Number: **309335-63002527**

NATIONAL PRACTITIONER DATA BANK
NPDB

P.O. Box 10832
Chantilly, VA 20153-0832

https://wwwnpdb.hrsa.gov

DCN:
5500000136590815
Process Date: 10 /2018
Page: 1 of 2
SILVA, SAMUEL DAVID
For authorized use by:
METRO PAVIA CLINIC

SILVA, SAMUEL DAVID – ONE-TIME QUERY RESPONSE

A. SUBJECT IDENTIFICATION INFORMATION
(Recipients should verify that subject identified is, in fact, the subject of interest.)

Practitioner Name:	SILVA, SAMUEL DAVID
Date of Birth:	[redacted] **Gender:** MALE
Organization Name:	METRO PAVIA CLINIC
Work Address:	ZONA INDUSTRIAL VICTOR ROJAS II, COTTO STATION, ARECIBO, PR 00613
Home Address:	[redacted] SAN JUAN, PR 00917-3632
Social Security Number:	***-**-6799 **DEA:** B55043156
NPI:	1245225523
License:	PHYSICIAN (MD), 12158, PR, OBSTETRICS & GYNECOLOGY
Professional School(s):	PONCE SCHOOL OF MEDICINE (1992) SAN JUAN CITY HOSPITAL (1996)

B. QUERY INFORMATION

Statutes Queried: Title IV; Section 1921; Section 1128E

Query Type: This is a One-Time query response. Your organization will only receive future reports on this practitioner if another query is submitted.

Entity Name: METRO PAVIA CLINIC (DBID ending in . . . 08)

Authorized Submitter: CAMILLE COLON, HR SUPERVISOR, (787) 650-0020 Ext. 254

C. SUMMARY OF REPORTS ON FILE WITH THE DATA BANK AS OF 10/09/2018

The following report types have been searched:

Medical Malpractice Payment Report(s):	**Yes, See Below**
State Licensure Action(s):	No Reports
Exclusion or Debarment Action(s):	No Reports
Government Administrative Action(s):	No Reports
Clinical Privileges Action(s):	**Yes, See Below**
Health Plan Action(s):	No Reports
Professional Society Action(s):	No Reports
DEA/Federal Licensure Action(s):	No Reports
Judgment or Conviction Report(s):	No Reports
Peer Review Organization Action(s):	No Reports

SIMED

MEDICAL MALPRACTICE PAYMENT
Basis for Action: - IMPROPER MANAGEMENT

Initial Action:- SETTLEMENT **Date of** 01/25/2016
DCN: 5500000103835126 **Action:**

HOSPITAL AUXILIO MUTUO		
TITLE IV CLINICAL PRIVILEGES **Basis for Action:** - VIOLATION OF BY-LAWS, PROTOCOLS OR GUIDELINES		
Initial Action:	-SUMMARY OR EMERGENCY SUSPENSION OF CLINICAL PRIVILEGES - SUMMARY OR EMERGENCY LIMITATION, RESTRICTION, OR REDUCTION OF CLINICAL PRIVILEGES - REDUCTION OF CLINICAL PRIVILEGES	**Date of Action:** 01/20/2010
DCN:	5500000060545358	
Subsequent Action:	- REVOCATION OF CLINICAL PRIVILEGES - MODIFICATION OF PREVIOUS ACTION	**Date of Action:** 07/22/2010
DCN:	5500000063654454	

CONFIDENTIAL DOCUMENT –
FOR AUTHORIZED USE ONLY

* * *

LETTER FROM JAY OLIN (APRIL 10, 2015)

DEPARTMENT OF HEALTH AND HUMAN SERVICES Centers for Medicare & Medicaid Services 7500 Security Boulevard, Mail Stop N2-20-16 Baltimore, Maryland 21244-1850

Office of Strategic Operations and Regulatory Affairs/ Freedom of Information Group

Refer to: Control Number 100120147004 and PIN 8SB8

Mr. Samuel D. Silva-Ramirez 243 Paris St PMB 1834

San Juan, PR 00917

Dear Mr. Silva-Ramirez:

This letter is the final response to your amended Freedom of information Act (5 U.S.C. § 552) request dated September 9, 2014 to the Department of Health and Human Services (DHHS) requesting the Hospital Cost Reports and the Providers Agreement Documents of Hospital Auxilio Mutuo, San Juan, Puerto Rico since the year 1992 up to 2014.

DHHS forwarded your request to the Centers for Medicare and Medicaid Services (CMS) to search for responsive records. The CMS, New York Regional Office searched for responsive records and released certified copies of the Cost Reports directly to you and forwarded the Provider Agreement documents, a total of 78 pages, to me because of my responsibility under the FOIA. We are releasing certified copies of the Provider Agreement documents to you in their entirety, without deletions.

Sincerely yours,

/s/ Jay Olin

Director, Division of FOIA Analysis-C Freedom of information Group

Enclosure

MEDICARE ENROLLMENT APPLICATION, INSTITUTIONAL PROVIDERS – RELEVANT EXCERPTS

Section 14: Penalties for Falsifying Information

This section explains the penalties for deliberately furnishing false information in this application to gain or maintain enrollment in the Medicare program.

1. 18 U.S.C. § 1001 authorizes criminal penalties against an individual who, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies. Conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. Individual offenders are subject to fines of up to $250,000 and imprisonment for up to five years. Offenders that are organizations are subject to fines of up to $500,000 (18 U.S.C. § 3571). Section 3571(d) also authorizes fines of up to twice the gross gain derived by the offender if it is greater than the amount specifically authorized by the sentencing statute.

2. Section 1128B(a)(1) of the Social Security Act authorizes criminal penalties against any individual who, "knowingly and willfully," makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program. The offender is subject to fines of up to $25,000 and/or imprisonment for up to five years.

3. The Civil False Claims Act. 31 U.S.C. § 3729, imposes civil liability, in part, on any person who:

a) knowingly presents, or causes to be presented, to an officer or any employee of the United States Government a false or fraudulent claim for payment or approval:

b) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; or

c) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

The Act imposes a civil penalty of $5,000 to $10,000 per violation, plus three times the amount of damages sustained by the Government

4. Section 1128A(a)(1) of the Social Security Act imposes civil liability, in part, on any person (including an organization, agency or other entity) that knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any, department or agency thereof, or of any State agency . . . a claim . . . that the Secretary determines is for a medical or other item or service that the person knows or should know:

a) was not provided as claimed; and/or

b) the claim is false or fraudulent.

This provision authorizes a civil monetary penalty of up to $10,000.00 for each item or service, an assessment of up to three times the amount claimed, and

exclusion from participation in the Medicare program and State health care programs.

5. 18 U.S.C. § 1035 authorizes criminal penalties against individuals in any matter involving a health care benefit program who knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items or services. The individual shall be fined or imprisoned up to 5 years or both.

6. 18 U.S.C. § 1347 authorizes criminal penalties against individuals who knowing and willfully execute. or attempt, to execute a scheme or artifice to defraud any health care benefit program, or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by or under the control of any, health care benefit program in connection with the delivery of or payment for health care benefits, items, or services. Individuals shall be fined or imprisoned up to 10 years or both. If the violation results in serious bodily injury, an individual will be fined or imprisoned up to 20 years, or both. If the violation results in death, the individual shall be fined or imprisoned for any term of years or for life, or both.

7. The government may assert common law claims such as "common law fraud," "money paid by mistake,"

and "unjust enrichment" Remedies include compensatory and punitive damages, restitution, and recovery of the amount of the unjust profit.

Section 15: Certification Statement

An AUTHORIZED OFFICIAL means an appointed official (for example, chief executive officer, chief financial officer, general partner, chairman of the board, or direct owner) to whom the organization has granted the legal authority to enroll it in the Medicare program. to make changes or updates to the organization's status in the Medicare program, and to commit the organization to fully abide by the statutes, regulations, and program instructions of the Medicare program,

A DELEGATED OFFICIAL means an individual who is delegated by an authorized official the authority to report changes and updates to the provider's enrollment record. A delegated official must be an individual with an "ownership or control interest in" (as that term is defined in Section 1124(a)(3) of the Social Security Act), or be a W-2 managing employee, of, the provider.

Delegated officials may not delegate their authority to any other individual. Only an authorized official may delegate the authority to make changes and/or updates to the provider's Medicare status. Even when delegated officials are reported in this application, an authorized official retains the authority to make any such changes and/or updates by providing his or her printed name, signature. and date of signature as required in Section 15B.

NOTE: Authorized officials and delegated officials must be reported in Section 6. either on this application or on a previous application to this same Medicare fee-for-service contractor. If this is the first time an authorized and/or delegated official has been reported on the CMS-855A, you must complete Section 6 for that individual.

By his/her signature(s), an authorized official binds the provider to all of the requirements listed in the Certification Statement and acknowledges that the provider may be denied entry to or revoked from the Medicare program if any requirements are not met, All signatures must be original and in ink. Faxed, photocopied, or stamped signatures will not be accepted.

Only an authorized official has the authority to sign (1) the initial enrollment application on behalf of the provider or (2) the enrollment application that must be submitted as part of the periodic revalidation process. A delegated official does not have this authority.

By signing this application. an authorized official agrees to immediately notify the Medicare fee-for-service contractor if any information furnished on this application is not true, correct, or complete. In addition, an authorized official, by his/her signature, agrees to notify the Medicare fee-for-service contractor of any future changes to the information contained in this form, after the provider is enrolled in Medicare, in accordance with the timeframes established in 42 C.F.R. 424.516(e).

The provider can have as many authorized officials as it wants. If the provider has more than two authorized officials, it should copy and complete this section as needed.

Each authorized and delegated official must have and disclose his/her social security number.

A. Requirements for Medicare Enrollment

These are additional requirements that the provider must meet and maintain in order to bill the Medicare program. Read these requirements carefully. By signing, the provider is attesting to having read the requirements and understanding them.

By his/her signature(s), the authorized official(s) named below and the delegated official(s) named in Section 16 agree to adhere to the following requirements stated in this Certification Statement:

1. I agree to notify the Medicare contractor of any future changes to the information contained in this application in accordance with the time frames established in 42 C.F.R. § 424.516(e). I understand that any change in the business structure of this provider may require the submission of a new application.

2. I have read and understand the Penalties for Falsifying Information, as printed in this application. I understand that any deliberate omission, misrepresentation, or falsification of any information contained in this application or contained in any communication supplying information to Medicare. or any deliberate alteration of any text on this application form, may be

punished by criminal, civil, or administrative penalties including, but not limited to, the denial or revocation of Medicare billing privileges, and/or the imposition of fines, civil damages, and/or imprisonment,

3. I agree to abide by the Medicare laws, regulations and program instructions that apply to this provider. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws. regulations, and program instructions (including. but not limited to, the Federal anti-kickback statute and the Stark law), and on the provider's compliance with all applicable conditions of participation in Medicare.

4. Neither this provider, nor any physician owner or investor or any other owner, partner. officer, director. managing employee, authorized official, or delegated official thereof is currently sanctioned, suspended, debarred, or excluded by the Medicare or State Health Care Program, e.g., Medicaid program, or any other Federal program, or is otherwise prohibited from supplying services to Medicare or other Federal program beneficiaries.

5. I agree that any existing or future overpayment made to the provider by the Medicare program may be recouped by Medicare through the withholding of future payments.

6. I will not knowingly present or cause to be presented a false or fraudulent claim for payment by

Medicare, and I will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.

7. I authorize any national accrediting body whose standards are recognized by the Secretary as meeting the Medicare program participation requirements, to release to any authorized representative, employee, or agent of the Centers for Medicare & Medicaid Services (CMS), a copy of my most recent accreditation survey, together with any information related to the survey that CMS may require (including corrective action plans).

B. 1st Authorized Official Signature

I have read the contents of this application. My signature legally and financially binds this provider to the laws, regulations, and program instructions of the Medicare program. By my signature, I certify that the information Contained herein is true, correct, and complete, and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Medicare fee-for-service contact of this fact in accordance with the time frames established in 42 CFR § 424520(b).

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

☐ Change

Date: 02/03/2014

Authorized Official's Information and Signature

First Name: Angel

Last Name: Cocero

Telephone Number: (787) 758-2000

Title/Position: Board of Director President

/s/ Angel Cocero

Authorized Official Signature

2/25/2014

C. 2nd Authorized Official Signature

I have read the contents of this application. My signature legally and financially binds this provider to the laws, regulations, and program instructions of the Medicare program. By my signature, I certify that the information contained herein is true, correct, and complete, and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete. I agree to notify the Medicare fee-for-service contractor of this fact in accordance with the time frames established in 42 CFR § 424.520(b).

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

☐ Change

Date: 02/03/2014

Authorized Official's Information and Signature

First Name: Jorge

Middle Name: L

Last Name: Matta

Suffix (e.g., Jr., Sr.): MHSA

Telephone Number: (787) 758-2000

Title/Position: Administrator

/s/ Jorge L. Matta

Authorized Official Signature

2/25/2014

All signatures must be original and signed in ink. Applications with signatures deemed not original will not be processed. Stamped, faxed or copied signatures will not be accepted.

Section 16: Delegated official(s) (Optional)

☐ You are not required to have a delegated official. However, if no delegated official is assigned, the authorized official(s) will be the only person(s) who can make changes and/or updates to the provider's status in the Medicare program.

☐ The signature of a delegated official shall have the same force and effect as that of an authorized official, and shall legally and financially bind the provider to the laws, regulations, and program instructions of the Medicare program. By his or her signature, the delegated official certifies that he or she has read the Certification Statement in Section 15 and agrees to adhere to all of the stated requirements. The delegated official also certifies that he/she meets the definition of a delegated official. When making changes and/or updates to the provider's enrollment information maintained

by the Medicare program, the delegated official certifies that the information provided is true, correct, and complete.

☐ Delegated officials being deleted do not have to sign or date this application.

☐ Independent contractors are not considered "employed" by the provider and, therefore, cannot be delegated officials.

☐ The signature(s) of an authorized official in Section 16 constitutes a legal delegation of authority to any and all delegated official(s) assigned in Section 16.

☐ If there are more than two individuals, copy and complete this section for each individual.

A. 1st Delegated Official Signature

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

☐ Change

Date: 02/03/2014

Authorized Official's Information and Signature

Delegated Official First Name: Rafael

Last Name: Jaca

Telephone Number: (787) 771-7934

Authorized Official Signature
(First, Middle, Last Name, Jr., Sr., M.D., D.O., etc.)

/s/ Rafael Jaca

Authorized Official Signature

2/25/2014

☐ Delegated Official is a W-2 Employee

MOTION SUBMITTING DOCUMENTS TRANSLATED TO ENGLISH (APRIL 22, 2016) IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Ex. Relator, SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of THE UNITED STATES OF AMERICA,

Plaintiff, v.

HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC. ET. ALS.,

Defendants.

Civil Num. 13-CV-1813 (CCC)

COMES NOW, Relator on behalf of plaintiff through its (his) undersigned attorney and very respectfully states, alleges and prays:

1. At docket 98, relator filed a motion requesting an extension of time in order to submit translations until April 22, 2016. The Honorable Court granted it at docket 106.

2. Plaintiff hereby attached the documents translated.

3. The documents translated form part of the Exhibits attached at docket 97.

WHEREFORE, the appearing party requests to the Honorable Court to accept the documents translated.

I HEREBY CERTIFY: that a true and exact copy of this document was forwarded by regular mail to Assistant U.S. Attorney Hector E. Ramirez Carbo, U.S. Department of Justice, Torre Chardon, Suite 1201, 350 Carlos Chardon Street, San Juan, P.R. 00918; Marie V. Bonkowski, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, 601 D. Street, N.W., Room 9116, Washington, D.C., 20004.

In San Juan, Puerto Rico, 22nd of April, 2016.

/s/ Glenn Carl James, Esq. USDC-PR 207, 706 JAMES LAW OFFICE PMB 501 1353 Ave. Luis Vigoreaux Guaynabo, PR 00966-2700

Tel. (787)763-2888

E-mail: jameslawoffices@centennialpr.net
glenncarljameslawoffices@gmail.com

EXHIBIT LIST

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Ex. Relator,
SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of THE UNITED STATES OF AMERICA,

Plaintiff, v.

HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC. ET. ALS.,

Defendants.

Civil Num. 13-CV-1813 (CCC) Plaintiff Demands Trial by Jury

- ☐ Exhibit 1 Medical Record of Elizabeth Morales
- ☐ Exhibit 2 Medical Record of Yelena Padilla Bengochea
- ☐ Exhibit 3 Medical Record of Elizabeth Agosto
- ☐ Exhibit 4 Medical Record of Moraima Ocasio
- ☐ Exhibit 5 Medical Record Marisol Morales

DR. SILVA'S MEMORANDUM REGARDING ELIZABETH MORALES (SEPTEMBER 19, 2002)

I, Carlos Lao Davila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

HOSPITAL AUXILIO MUTUO RISK MANAGEMENT

(787) 758-2000 EXT. 3110 ———————

FAX TRANSMITTAL SHEET

TO: DR. SAMUEL SILVA

FROM: BRENDA LEE ROSA MARTINEZ,
MHSA FAX NUMBER: (787) [HW] 753-5034

DATE: SEPTEMBER 19, 2002

TOTAL PAGE INCLUDING COVER: 3

RE: ELIZABETH MORALES DELIVER TO DR. SILVA

PLEASE CALL WHEN YOU RECEIVE THE FAX

DEAR DOCTOR SILVA:

THROUGH THIS DOCUMENT YOU ARE INFORMED THAT THE REQUEST FOR STERILIZATION OF PATIENT ELIZABETH MORALES WAS NOT APPROVED

SINCERELY,

[Illegible signature]

BRENDA LEE ROSA MARTINEZ,
MHSA RISK ADMINISTRATION MANAGER

———————————————

I, Carlos Lao Davila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

Hato Rey OB-GYN CENTER HR OB-GYN

Date: 8/07/02

Patient Name: Elizabeth Morales

Pregnancy Number: 03

Live Babies: 01

Miscarriages: 01

Stillborn:

Systematic Illnesses: B. asthma, Endometriosis

RISK MANAGEMENT Samuel D. Silva Ramirez
2002 SEP 12 A 11:28

151 America St Floral Park Hato Rey, Puerto Rico
00917 Off. 753-2015/Fax. 753-5034

Allergies: (/)

Surgeries: 01

Pregnancy complications and Risks:

Medical Reason for Sterilization:

[Illegible] document of patient [illegible]

Delivery Date: 9/27/02

Date of Elective Cesarean: 9118/02

To Whom It May Concern:

Please authorize sterilization for this patient who will give birth vaginally/elective cesarean in the Auxilio Mutuo Hospital.

[Illegible] 9/16/2002

Thanks!

The reason for the sterilization is not medical. [Illegible] I think that if you want sterilization you can do so somewhere else after the birth. Nun Claribel [Illegible]

Dr. Samuel D. Silva Ramirez 12,158 [Illegible]

LETTER TO MARILINA SIERRA (JULY 21, 1997)

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES Health Resources & Services Administration New York HRSA Field Office

26 Federal Plaza, RM. 3337

New York, New York 1027B ——————

Marilina Sierra

Director, Financial Department Auxilio Mutuo hospital Apartado 1227

Hato Rey, PR 00919-1227

Re: HillBurtonID#720025 Dear Ms. Sierra;

This letter is in reference to the Hill-Burton uncompensated services substantial compliance review conducted on Auxilio Mutuo hospital's records covering Fiscal year 1996.

Your facility is Certified as having provided $981,591 in creditable uncompensated services in Fiscal year 1996; Enclosed for your information is a subsequent substantial compliance summary which shows the amounts credited for the year reviewed. It also shows how excess and deficit amounts have accumulated, as adjusted by the consumer price index. As of the end of Fiscal year 1996, your facility has an accumulated excess of $216,800. The hospital's 20 year eligible use period has an expiration date of April 29, 1995. The accumulated excess through the end of Fiscal year 1996 is more than sufficient to place the hospital in buy-out status.

Therefore, Auxilio Mutuo Hospital is Certified as having completed its uncompensated services obligation and is no longer required to provide uncompensated services in accordance with subpart F of the regulations. However please be advised that your facility's community services obligations, as specified in Subpart G of the regulations, remains in effect in perpetuity. Further information on your facility's community services obligations can be obtained from the office for civil rights, the agency which administrates this portion of the regulations. If you have any questions concerning the community service assurance, the office for civil rights toll free number 1-800-942-5577.

Any records pertinent to the provision of uncompensated services for the period covered by this review must be maintained for a minimum of 180 days from the date of this letter. If you wish to appeal this certification decision, you may do so by writing to Dr. Joseph O'Neill; Director, Bureau of health Resources Development, Parklawn Building, 5600 Fishers lane, Rockville, Maryland 20857, Within 60 days of receipt of this decision.

Should you have any question concerning the audit findings, please contact Steven Wong at (212) 264-3354.

Sincerely,

/s/ Mark Siegel

Senior Health Facilities Consultant

HOSPITAL AUXILIO MUTUO – PROTOCOL FOR STERILIZATION OF PATIENTS (MARCH 25, 2016)

Purpose:

Establish the steps to follow in the cases where the doctor considers it medically indicated to carry out a sterilization.

Procedure: Introduction:

Every doctor that considers it necessary to carry out this procedure on his patient must comply with the following steps:

1. File a request for approval to carry out the procedure of sterilization by an official letter to the Head of the OB-Gyn Department. The same should include the following information:

a. Name of the patient with the two last names.

b. Age

c. Number of pregnancies, abortions

d. Risks/complications of the patient

e. Other medical reasons to effect said procedure.

2. The doctor shall file said request at least two (2) months in advance, a reasonable time so that the Ethics Committee can process the same,

3. The doctor shall advise the patient about the process to be followed for the consideration of the request.

4. The request has to be accompanied by a letter from the priest/pastor of the patient's parish, where

approval is given, after the appropriate religious orientation.

5. The doctor refers both letters to the Head of the OB-Gyn Department for its endorsement. It will be the Head of the Obstetrics and Gynecology who refers said correspondence to the Ethics Committee.

6. The Ethics Committee will refer the petition to the Head of the OB-Gyn Department to the Sister Servant of the Religious Community and the Medical Director of the Institution for the corresponding approval.

7. The Ethics Committee will proceed with the final consideration of the request for approval or denial and will notify the head doctor of its determination to that regard.

8. The Ethics Committee will send a copy of its decision to the Head of the Department, Operations Room and the institutional personnel that intervened in the process.

9. The Ethics Committee will receive a report in its regular meeting of the proceedings held during the previous month. Said Committee will maintain a register of the patients and the head doctors that effected the procedures and of the cases that were denied.

Approved by:

(Illegible signature)

Adrian Colon Laracuente, MD Head,
OB-Gyn Department

June 20, 1996 Date of Approval

June 20, 1996

June 20, 1996

June 20, 1996

(Illegible signature) Ibrahim Perez, MD
Medical Director

(Illegible signature)

Angel L. Rivera, MD President, Ethics Committee

(Illegible signature]

Sister Juanita Flores, HC Sister Servant Religious Community

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO COURT OF APPEALS SAN JUAN-CAGUAS JUDICIAL REGION JUDICIAL PANEL V		
DR. SAMUEL DAVID SILVA RAMÍREZ Petitioner v. HOSPITAL ESPAÑOL AUXILIO MUTUO DE PUERTO RICO, INC., SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO Y BENEFICIENCIA DE PUERTO RICO, INC.; SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO INC., DR. JOSÉ ISADO-ZARDÓN AND THE COMMUNITY PROPERTY COMPOSED BY HIM AND MRS. DIANA VIGIL-VIGIL Appellee	KLCE201701318	Writ *of Certiorari* from the Court of First Instance, Ponce Part Case No.: K PED015-3721 Re: Rule 49.2, Fraud and Misrepresentation

Panel composed of its Chief Justice, Judge Sánchez-Ramos, Judge Soroeta-Kodesh, and Judge Romero-García

DECISION

In San Juan, Puerto Rico, on August 18, 2017.

Upon reviewing the *Pro Se Petition for Writ of Certiorari* filed on July 25, 2017, this Court *Grants* the petition. Moreover, this Court takes notice of the *Petition for Writ of Certiorari* filed on July 25, 2017, which it has heard.

It was so agreed by the Court and certified by the Clerk of the Court of Appeals.

[Signed] [SEAL]
Lilia M. Oquendo-Solis, Esq.
Clerk of the Court of Appeals

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.
