

20-6881

## IN THE SUPREME COURT OF THE UNITED STATES

ALAN DOUGLAS, Petitioner - Appellant,  vs.  SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Respondent-Appellee,	Medical Malpractice INJURY <i>Res Ipsi Loquitur</i>  USSC No.: _____  Supreme Court of California Case No.: S 264351  2 <sup>nd</sup> District Court of Appeal-CA No. B294801 Remittitur issued  Los Angeles County Super. Ct. Cases No. BC657529/BC696685 on Appeal	<b>FILED</b> <b>JAN 04 2021</b> <small>OFFICE OF THE CLERK, SUPREME COURT, U.S.</small>
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*On Petition for a WRIT of Certiorari to Supreme Court of California*

**In re ALAN DOUGLAS, Petitioner (Fed. R. App. P. 21(a)(2)(A))**  
 Appeal from the Supreme Court of California  
 Petition for Review; Petition for Rehearing-filed; Phone: (415) 865-7000  
 [1] Supreme Court of California -- FRAP 9<sup>th</sup> Circuit Rule 21-2(a)  
**PUBLISHED OPINION REQUESTED:**

**PETITION FOR WRIT OF CERTIORARI, *Sua sponte***  
*"irreparable" injury or harm and cause immediate danger*

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NON-Capital--Personal Injury Medical Malpractice

The Questions Presented for Review - US Sup Ct Rule 14.1(a)

I. The Relief Sought - Reverse and Settle Personal Injury [ 9<sup>th</sup> Circuit FRAP 21(a)(2)(B)(i)]

II. The issues (The Questions Presented for Review) [9<sup>th</sup> Circuit FRAP 21(a)(2)(B)(ii)]  
See below [1], [2], [3], [4], [5], [6] and [7].

[1] Appellant's US Constitutional and Civil Rights Violation;

[2] Reverse Judgment issued on Feb.19, 2019 in favor of Timothy J. Daskivich, MD by TJ;

[3] Reverse Judgment issued on Feb.14, 2019 in favor of CSMC by TJ in LASC;

[4] Reverse Judgment issued on Jan. 18, 2019 in favor of Nancy Zimmerman, NP and Jay Neal Schapira, MD by TJ in LASC;

[5] Court Order for AWARD based on Documents presented, which is just and proper;

[6] Reassignment the Cases to Settlement Court if No Award is granted;

[7] Reverse, remand, reassignment and Trial Judge Disqualification based on plain ERRORS, bias with gross prejudice, willful misconduct and adverse personal reaction with cruelty.

III. The Facts necessary to understand the issue presented by the Petition.

[9<sup>th</sup> Circuit FRAP 21(a)(2)(B)(iv)]

IV. The reasons why the writ should issue [ 9<sup>th</sup> Circuit FRAP 21(a)(2)(B)(iv)]

Document received by the CA Supreme Court.

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The Los Angeles County Superior Court  
Superior Court Case No.: BC657529/BC696685  
List of Superior Court Judges on Both Cases

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1. Hon. Benny C. Osorio – Dept.97, Room 630
2. Hon. Dennis Landin – Dept.93 Superior Court
3. Hon. Elaine Lu – Dept. 5 PI [Personal Injury] Court
4. Hon. William F. Fahey – Dept. 69, Room 621 Superior Court, Independent Calendar,  
last Judge assigned for all purposes
5. Hon. Stephen I. Goorvitch – Supervising Judge for PI Court
6. Hon. Ruth Ann Kwan – Dept.1 – Supervising Civil Cases in Superior Court
7. Hon. Richard J. Burge Jr. – Dept. 1 – Supervising Civil Cases in Superior Court
8. Hon. Yolanda Orozco – Dept. 5 PI [Personal Injury] Court in Superior Court
9. Hon. Joseph R. Kalin – Dept. 21, Central District-Stanley Mosk Courthouse
10. Hon. Samantha Jessner – Dept.1, Central District- Stanley Mosk Courthouse,  
- Supervising Judge Civil
11. 2DCA - Second District Court of Appeal of California
12. Supreme Court of California - en Banc - for many writs;

List of Opposite Counsels for LASC Cases BC657529 and BC696685
--

1. Kathryn S.M. Mosely, Esq., State Bar No.: 92852=>LASC BC657529 and BC696685
2. Lee M. Moulin, Esq., State Bar No.: 232843 => LASC BC657529 and BC696685
3. Robert C. Reback, Esq., State Bar No.: 58092 =>LASC BC696685
4. Stephen A. Diamond, Esq., State Bar No.: 176735 =>LASC BC696685

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# IN THE SUPREME COURT OF THE UNITED STATES

ALAN DOUGLAS, Petitioner - Appellant, vs. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Respondent-Appellee,	Medical Malpractice INJURY <u>Res Ipsa Loquitur</u> USSC No.: _____  Supreme Court of California Case No.: S 264351  2 <sup>nd</sup> District Court of Appeal-CA No. B294801 Remittitur issued  Los Angeles County Super. Ct. Cases No. BC657529/BC696685 on Appeal
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 [1] Supreme Court of California -- FRAP 9<sup>th</sup> Circuit Rule 21-2(a)  
**PUBLISHED OPINION REQUESTED:**

### MEMORANDUM OF POINTS AND AUTHORITIES

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George J. Netto, MD [Associate Professor, Department of Pathology, Urology and Oncology; The John Hopkins Medical Institution, Baltimore, MD "Biopsy Interpretation of the Prostate"

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**STATEMENT OF THE CASES BC657529/BC696685 – 2DCA B294801**

Appellant -Alan Douglas in *propria persona* filed an initial complaint as of April 11, 2017 [4/11/2017], the statute of limitations for allegations of Medical Malpractice Negligence is three years under the *Cal. CCP § 340.5* cite: "In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers." This is because a claim of professional negligence of a dependent adult or an elder is analogous to similar torts of assault, battery or injury to others. *See Benun v. Superior Court*, 123 Cal. App. 4th 13, 126 (2004). Appellant alleging professional negligence, medical malpractice and recklessness done by Medical Doctors, Nurses and CSMC - [TJ' ERR]. The Appellant in these LASC Cases BC657529/BC696685 is a Victim of Medical Malpractice on event happened on January 29, 2016. The Defendants moved for Motion Summary Judgment and TJ grand in favor of Defendants.

**JURISDICTION Statement of Appealability**

The judgment entered pursuant to the Superior Court's order granting the motion for summary judgment for LASC Cases BC657529/BC696685 are an appealable final judgment pursuant to Code of Civil Procedure sections 904.1.(1).The Supreme Court of California notified Appellant for Denying Rehearing on December 21, 2020. So, the Petition is filed on timely manner and The Supreme Court of United Stated has Jurisdiction on the Appellant's Petition for Writ of Certiorari.

**PRAYER [The Relief Sought]**

The Relief Sought - Reverse and Settle Personal Injury [ 9<sup>th</sup> Circuit FRAP 21(a)(2)(B)(i)]

**REASONS FOR GRANTING THE PETITION**

**[1] Appellant's US Constitutional and Civil Rights Violation**

*Appellant's US Constitutional and Civil Rights Violation*

**(1) US Constitutional Rights:**

Appellant do not have Jury Trial-The case was terminated by Trial Judge and violated Appellant's Constitutional right for equal protection by the Law- US Constitution -- Amendment VII (1791) ... "the right of trial by jury shall be preserved"; Amendment IX (1791)-Appellant's right to Settle the Medical Malpractice Cases in LASC; Amendment X (1791); Amendment XIV

(1868) Section 1. All persons born or naturalized in the United States ... "nor deny to any person within its jurisdiction the equal protection of the laws" *Brown v. Board of Education*;] [FRAP 9th Circuit Rule 30-1.4(a)(vi)]. See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 188. USA Constitution Amendment VII (1791) In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law. See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 189. USA Constitution Amendment IX (1791) The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 190. USA Constitution Amendment X (1791) The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 191. USA Constitution Amendment XIV (1868) Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. See Case: 20-56105, 11/25/2020, ID: 11905943, DktEntry: 19-1, Page 192. The Equal Protection Clause is from the text of the Fourteenth Amendment to the United States Constitution. In United States constitutional law, a Due Process Clause is found in both the Fifth and Fourteenth Amendments to the United States Constitution, which prohibits arbitrary deprivation of life, liberty, or property by the government except as authorized by law. See [1] *Madison, P.A. (2 August 2010)*. "Historical Analysis of the first of the 14th Amendment's First Section". *The Federalist Blog*. Archived from the original on November 18, 2019. Retrieved 19 January 2013. [2] "The Bill of Rights: A Brief History". *ACLU*. Archived from the original on August 30, 2016. Retrieved 21 April 2015. [3] "Honda Motor Co. v. Oberg, 512 U.S. 415 (1994), at 434". *Justia US Supreme Court Center*. June 24, 1994. Retrieved August 26, 2020. The U.S. Supreme Court interprets these clauses broadly, concluding that they provide three protections: procedural due process (in civil and criminal proceedings); substantive due process, a prohibition against vague laws; and as the vehicle for the incorporation of the Bill of Rights.

## [2] Mistake in Law and Erroneous Decision in Intermediate Court - 2DCA

APPELLANT'S ARGUMENTS for Modification of Disposition before publishing or get status as Final Disposition, Appellant asks Supreme Court to give correct Direction to 2DCA and Reviewing Panel for Division 8 [Abbreviated as ADC] to consider following :

[1] Overall impression [Summary] for Disposition Filed on Aug. 28, 2020 is that all Appellant's Arguments and Evidence supported by the LASC Clerk's Transcript are ignored, not considered or not included in the Disposition by the Reviewing Panel, which demonstrate deficiency or lack of scientific Knowledge as concern medical Part of this LASC Cases—BC657529/BC696685. In this case Respected Hon. Justice Grimes ,J. shall be directed by APJ2DCA to modify the Disposition which is a proof for inaccuracy, gross bias, impartiality, highly prejudicial and is basis all Judgments in LASC against the Plaintiff to be reversed.

The Appellant have Right to Appeal this Disposition based on the following violations:

(1) Appellate Reviewing Panel-Division 8 – further will be notice as ADC [Appellate District Court] Violate Appellant's USA Constitutional rights – XIV Amendment Section One –equal protection by the Law and Award for Compensation as Victim of Medical Malpractice cases Filed in LASC BC657529/BC696685 with serious bodily injury [mean by definition – crime committed – supported by third Party in Appellant Briefs including ARB – 2<sup>nd</sup> Acute MI with 43[%] dead Heart Muscles and LVEF[%]=27[%] – on the Record in SCMC. Please see also LASC Clerk's Transcript] as proven in MRI stress tests, which are omitted or not taken into consideration by the respected Reviewing Panel. That's mean ADC created ERR # 1 – Plain ERROR with gross bias, inaccuracy, impartial, highly prejudicial and Judgments issued by LASC shall be reversed. Why? The both Opposition party used in their pleading False Statements and ADC already accept it. Appellant will prove it once again later with applicable Law (statue) and Case Law.

(2) The Opposite Counsels in their pleading violated *Cal. CCP* § 426.16(a), which also protect Appellant from unlawful suppression of public right to complain and for compensation. The *Cal. CCP* § 426.16(a) mean that California State and USA Constitutional right for all people are embedded. The ADC decided to protect Opposition Counsels, take their stand and create ERR # 2 which is proof for inaccuracy, gross bias, impartiality, highly prejudicial and is basis all Judgments in LASC against the Plaintiff to be reversed.

(3) The Opposite Counsels use Discrimination as concern Appellant right for Settlement and violate

California State Law §12926.05. The ADC stand and protect Appellant's tortfeasors, which mean Reviewing Panel [RP] create ERR # 3 which is proof for inaccuracy, gross bias, impartiality, highly prejudicial and is basis all Judgments in LASC against the Plaintiff to be reversed.

(4) The Opposite Counsels deliberately and intentionally violated Business and Professional Code Rules – 1-400(D)(1)(2)(3)(4)(5). The respected ADC and RP failed to establish this facts and created ERR # 4.

(5) The Opposite Counsels failed to deliver INFORMED MEDICAL CONSENT, violated Appellant's USA Constitutional right to know [1<sup>st</sup> Amendment]. The RP failed to establish this allegation and create ERR # 5

(6) The Opposite Counsels violated Appellant's right protection by AMERICAN WITH DISABILITY ACT 1900 [ADA], California Legislature Chapter 6. Discrimination prohibited [12940-12957].

[ADA] 42 U.S.C. §§12101 et seq.

28 CFR Part 35 (Title II, Department of Justice).

28 CFR Part 36 ( Title III, Department of Justice).

The RP failed to establish this allegation and create ERR # 6.

[2] Analysis for ERRORS in the Disposition [Not to be published in the Official Reports] –

Filed on Aug. 26, 2020. Appellant believe that Supreme Court of California will never Certified this Opinion to be published, because of too many controversial, contradicted, insufficiency of FACTS, Statements, Judgments et all exist. In addition to that ADC failed to established the truth [FRCP Rule 55(b)(2)(C) and to establish the truth of any allegation by evidence or Investigate any other matter accordingly, to FRCP Rule 55(b)(2)(D)], also FRCP Rule 702(b)(c)(d)-Testimony by Expert Witness Insufficiency, not reliable documents because of incompleteness and the principles and methods to the facts of the Appellant's Cases are not reliably applied [FRCP Rule 702].

(1) Disposition p.1 Cite: "... Alan Douglas, in pro per.," – correct should be "Pro per" or "Pro se." ERR - typing error- not qualify to be reversible for any Judgment.

(2) Disposition SUMMARY p.2 Citation written by Hon. Grimes, J. :"...Plaintiff's appellate briefs...fail to make any cogent argument supported by citation to pertinent legal authorities, and raise irrelevant legal points that have no relation to his claims...are barred by the Statue of limitations...he presented no expert declaration to counter defendants expert opinions that no malpractice occurred." This written Statement by respected Hon. Grimes is a PLAIN ERROW –

LASC Clerk's Transcript may give her necessary explanation which are submitted later on this Petition. Why? Please refer to Appellant's PRAYER sections I, II, III(1)(2)(3)(4)—presented Expert Testimony for Daskivich and CSMC are giving false, biased or unscientific testimony with plenty of insufficiency —2DES, incomplete, lack of explanation to what CAUSE Appellant 2<sup>nd</sup> Acute MI, failed to admit that the Appellant had implanted two—2DES [Drug Eluded Stents]—mean he is not familiar with Appellant's Medical record or intentionally omitted substantial material fact. The Defendant's Expert failed to state that Appellant should have been proceed with Aspirin 81mg as American Heart association recommend in their Guide line for Cardiologist. That mean that presented Defendant's Expert Testimony are not reliable, objective, accurate and do not provide a truthful analysis of the Standard of care. In other words, are False Statements by irresponsible Experts. As a result, the Appellant in this 2DCA-B294801 – suffered compensable injury and damages. Actually, the respected Experts shall point to all relevant facts of the Cases, shall have access to all Documents used in the proceeding used to establish the facts of the Cases and all circumstances surrounding the occurrence, also relevant information should not be excluded for any reason and should be fair and objective. Relevant Information in 2DCA Case B294801 is Appellant's LVEF[%]=27[%] as of 8/30/2020 and stopping Aspirin 81 mg—not a day included in Appellant's Disposition. Please, refer also to appellant's Prayer Section III(4)

Please, refer to Defendant' Respondent's Brief Filed on April 20, 2020 with 2DCA. The respected Attorney –Tayaba Sarah Attar, Esq. wrote, cite: "...he was on notice sufficient to trigger the Statue of limitation on January 29, 2016 –(p.8)–...his claim for medical malpractice was barred (p.8)...irrelevant and inaccurate claims(p.9) ...The Judgment in favor of Respondent should be affirmed as Douglas has failed to demonstrate error committed by the trial court (p.9)...He incoherent(???) arguments that are unsupported by citation to the record or legal authority (p.9)...Dr. Daskivich did not obtain cardiac clearance ??? (13CT 003404)(p.15) ...failed to show any facts that would excuse his dilatory inaction (p.16)...he was on notice??? (p.17)...fails to address the issue in his brief, an appellate court has discretion to treat that issue as abandoned (p.18)...AOB are not properly presented nor sufficiently developed to be cognizable ( ???)p.21)...time bar of his claim is completely unintelligible???, irrelevant, and deficient (p.22)...plaintiff could cure the defect??? by amendment (p.22)...He does not present any factual allegations...to his SAC would actually render demurrer unwarranted(p.23)"

FACTS – [1] The Background – cite:"...Myocardial Infarction that he thinks was caused by the negligence of one or more defendants." ERR # 7 instead "(myocardial infarction)" correct shall be "2<sup>nd</sup>

Acute(massive) Myocardial Infarction" usually people are dead, Appellant has survived this Medical Malpractice Incident, which is proof for diminishing the FACT that actually is very Important for Appellant. Please refer to LASC Clerk's Transcript for Case No.: BC657529 [1CT 000079] cite: "EKG in the field showed STEMI...The patient was rapidly taken to the Cath Lab...The pain is severe.] Further Citation: "...stabilize the patient for potentially life threatening condition which required highly complex medical decision making...The patient showed signs of STEMI in the Emergency Department on EKG. Cardiology took the patient to the Cath Lab immediately.[1CT000088]. Next citation CSMC-Stanford Hospital Medica Group:" Discharge Summary; Date of Admition:1/29/2016; Date of Discharge: 1/31/2016; Discharge diagnoses: (1) Acute STEMI s/p PCI 1/29/16 for 100% in-stent thrombosis of proximal LAD s/p angioplasty; (2) Acute systolic and diastolic CHF[Congestive Heart Failure]; (3) Acute hyperkalemia; (4) Elevated PCA s/p prostate biopsy; (5) Aortic root dilatation; (6) Mild to moderate aortic insufficiency;... Brief HPI: ... CAD s/p drug eluting stents to mid LAD and proximal D2 in 2/2013...(1) Acute STEMI s/p PCI 1/29/16 found to have 100% in-stent thrombosis of proximal LAD s/p angioplasty (2) Acute systolic and diastolic CHF due to STEMI." Refer to [1CT000091].

Cite, (D-p.3): "...discharged him...allowing him to drive home." At the time for prostate biopsy i Daskivich, MD's Office two major ERRORS occurred—(1) Daskivich, MD 'Staff let the Appellant to go home – the time to go home and time back to Emergency Room is Causation Appellant to receive more Heart Damages - major ERR # 8 – not included in the Disposition; (2)Daskivich, MD's staff never Produced Nursing Notes , were clearly is stated what was done and was not, because the lack of this Nursing Note give chance Defendant's Counsel to use her fantasy and create False story—major ERR # 9 –Important Appellant's Argument that was not included in the Disposition . These are major ERRORS that were left out and not taken into consideration by RP, which are *proof for inaccuracy*, gross bias, impartiality, highly prejudicial action and is basis all Judgments issued by LASC against *the Plaintiff to be reversed*. The same page – p.3 – cite "myocardial infarction" – misstatement- on the Record is stated as "2<sup>nd</sup> Acute(massive) Myocardial Infarction" ..."(1) Acute STEMI s/p PCI 1/29/16 found to have 100% in-stent thrombosis of proximal LAD s/p angioplasty " mentioned above, which is intentionally diminishing the Appellant's Heart damages. This may be classified as major misstatement of substantial material FACT—ERR # 10.

[2] The Litigation – cite (D-p.3) "stopping the anticoagulants" is a misstatement used by Opposite Counsels. Correct shall be "Antiplatelet" like aspirin, Plavix etc. This misstatement appear in LASC

Clerk's transcript also. Cite - (D-p.4):"On November 14, 2018 the two lawsuits were consolidated and assigned to Judge William F. Fahey for all purposes." Correct—Judge William F. Fahey consolidated LASC Cases BC657529 and BC696685 under the Case BC657529 – Lead. On the First page – Appellant Notice that is omitted Case BC696685—shall be corrected—again on the first page.[

[2](a)-Daskivich. MD—cite-(D-p.4):" ...but presented no expert opinion to counter the expert opinion of Dr. Pearson. RP omitted to review LASC Clerk's Transcript. For convenience to all Justices involved in this review Appellant attached copy of "Declaration of Philip G. Pearson, MD" Pearson,, MD is a Urologist. LASC case BC657529 [1CT27-33]. Here is the Appellant's Opinion and Opposition presented in TC:"PLAINTIFF'S OPINION, OPPOSITION AND ARGUMENTS FOR DEPOSITION OF THE DECLARATION BY PHILIP G.PEARSON, MD AND WOHLGELERNTER, MD.

The Plaintiff states that CSMC has affirmative Duty to obtain INFORM MEDICAL CONSENT for each surgery [Notice to the COURT – On January 29, 2016 there were two Surgery performed on the Plaintiff (Alan Douglas)-First 11am-12:15 pm as outpatient Surgery in Daskivich, MD's Office—who is staff member of CSMC and Second by Rag Makkar, MD – Director of Cat Lab and staff member of CSMC-start approximately 3:00 PM (Time Sheet Attached separately based on Evidence and proof taken from Medical Record). This affirmative action is required to determine whether Physician with surgical privileges at the Hospital were competent to prescribe and perform such surgery. That means it must prohibit certain surgical procedures from being performed on its patients if such procedure do not conform to MINIMUM MEDICAL STANDARD in the same or similar community. The Hospital MUST take appropriate Action when it KNOWS or should know that a Physician on its staff is treating a patient on its premises in a NEGLIGENT MANNER. The Plaintiff states that the respected Urologist – Daskivich, MD was INCOMPETENT and FAILED to evaluate the patient's (Douglas) Cardiac Condition and used Schapira, MD as cover up for CONSPIRACY to create "MEDICAL CLEARANCE" (Progress Note by his agent—Nancy Zimmerman). This "Medical Clearance" was based on FALSE Statement, which is Criminal intent. The Plaintiff already FILED with LASC Case No. BC657529 on August 3, 2018—"MOTION TO STRIKE "MEDICAL CLEARANCE" AS INADMISSIBLE DOCUMENT IN THE COURT OF LAW FOR CIVIL CASE." In addition to that, Daskivich, MD is NOT CERTIFIED ANESTHESIOLOGIST and used LIDOCAINE as Anesthesia. Lidocaine is not approved by FDA for Cardiac patient – please See Attached Evidence for New Allegations and DISCOVERY about LIDOCAINE. As a result, the Plaintiff had adverse reaction, Ischemia and struggle to survive. Use of LIDOCAINE is proof of GROSS NEGLIGENCE and

EGREGIOUS CONDUCT, because Daskivich, MD at this time was INCOMPETENT and DO NOT HAVE TRAINING at all how to treat patient with adverse reaction of Lidocaine. Plaintiff come to discuss DECLARATION, SECOND PRODUCTION [EDITION] written by respected UROLOGIST – PHILIP G. PEARSON, MD. In his first Edition Person, MD stated quote: "...Daskivich, MD is not a cardiologist and therefore lacks the education, training, and experience to provide such opinion" At this point there is nothing WRONG. Pearson, MD's DECLARATION First Edition contents two pages and 5 lines. The SECOND EDITION of Pearson, MD's DECLARATION Executed on August 3, 2018 content 6 pages and 3 lines. Pearson, MD was provided by the Defendant with all available Data – Medical Record from CSMC, oral and written testimony by Daskivich, MD; additional resent Court Filing by the Plaintiff and also Direction from Daskivich, MD's Legal Team. The first consideration of Physician is not to harm, while the second is to diagnose and hopefully to cure the patient's (Plaintiff) prostate cancer. These two concepts bring us to the current dilemma of providing Information to the Plaintiff in such a way that they can and indeed must play a part in the process. It is the basic right of every competent person (the Plaintiff) to be involved in decisions about his Medical care. The scope of Physician's DUTY to DISCLOSE are:

- (1) PROFESSIONAL or Medical Custom STANDARD and
- (2) REASONABLE PATIENT STANDART.

REASONABLE PATIENT STANDARD requires that the Physician disclose all risk that would be material to a reasonable person in the Plaintiff's position. A MATERIAL RISK is ONE which a Physician knows or ought to know would be significant to a reasonable person in the Plaintiff's position to decide whether or not to submit to a particular medical treatment or procedure. THE JURISDICTION WHICH MEASURE THE DUTY OF DISCLOSURE BY THE REASONABLE PATIENT STANDART DO NOT REQUIRE EXPERT MEDICAL TESTIMONY SINCE THE STANDARD IS MEASURED BY THE PATIENT'S RIGHT TO KNOW, AND LIABILITY FOR DAMAGES DO NOT FLOW FROM ANY MEDICAL STANDARD. The Case *Fore v Brown*, No CV-86-002494 (Ala. Apr. 1989) Motion for Summary Judgment was ruled out in favor of the Plaintiff. Another Case in Favor for the Plaintiff is *Savold v Johnson*, No. 16435-r-RAM (S.D. July 1989) –Medical Malpractice Case, where the Physician FAILED to obtain Medical Informed Consent. The Case *Mason v. Walsh*, 26 Conn. App 225 (1991) involved administering of Anesthesia. In LASC Case BC657529 also involved Administering of Anesthesia, where Daskivich, MD FAILED to obtain INFORMED MEDICAL CONSENT, WAS NOT BOARD CERTIFIED ANESTHESIOLOGIST, USED LIDOCAINE as

ANESTHESIA, VIOLATED CALIFORNIA LEGISLATIVE SAFETY CODE, HEALTH AND SAFETY CODE- HSC, Division 2. [1200-1797.8], CHAPTER 1.3. Outpatient Settings [1248-1248.85] (*Chapter 1.3 added by Stats. 1994, Ch. 1276, Sec. 2*) Medical Quality shall be deemed pursuant to Section 2002 of the Business and Professions Code, see also §1248 (b) (1) “Outpatient setting” means any facility...office...as defined in Section 1250 and where anesthesia is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient’s life-preserving protective reflexes. The Plaintiff has reason to believe that LIDOCAINE Anesthesia was one of the CAUSATION for devastating damages and LIABILITY – 2<sup>nd</sup> Acute MI, ISCHEMIA DISABILITY et all for CSMC and its staff members, including Daskivich, MD. The Case *Poole v University of Chicago* was ruled by the COURT in Favor of Plaintiff’s RES IPSA LOQUITUR claims. In our LASC BC657529 Plaintiff’s claim established DAMAGES and Liability based on CSMC members staff including Daskivich, MD et all. The Case *Bagley v Shortt* Ga. 762, 410 S.E.2d 738 (1991) awarded in favor of Plaintiff for punitive damages in tort action—cap of \$250,000. The Case *Graham v Columbia-Presbyterian Medical Center*, No.46233 (N. Y. Sup. Ct., App. Div. Aug.1992) involves administering Anesthesia, where the Patient was abandoned and had Damages and Liability similar to the LASC Case No. BC657529 Standard of Care is required where when there is need to identify acceptable levels of healthcare rendered to a patient. Not only Physicians have Standard of Care, but also all people including the patients define a Standard as a Level of quality of Service rendered. The Expert Witness in Urological Medical Malpractice Cases is asked to give an opinion as to the Negligence of the defendant (Daskivich, MD), but only in the context as to whether any departure from the Standard of Care occurred. Pearson, MD FAILED to show DEVIATION from NATIONAL MEDICAL STANDARDS, California Legislative laws, Rules and Regulations, National Safety Code for Medical Professional Physicians, Nurses etc.

**Declaration by Daniel Wohlgelernter, MD** with citation for LASC Case BC657529 Vol.3.

The respected Expert Wohlgelernter, MD is a Cardiologist and stated that, quote “...I am qualified to render opinions regarding the Standard of Care and causation as they pertain to the diagnosis, and treatment of patients with cardiac disease who require prostate biopsy. Citation as stated above [3CT656:17-24] The Expert failed to stated that the Appellant is high risk – contradict Zimmerman’s Statement and on top of it he was familiar with MRI stress test, and confirm Zimmerman False Statement—gross **ERR#11**.Wohlgelernter, MD **ERR # 12** –citation [3CT657:28; 658:1] – failed to follow the Guideline from American Heart Association – Please refer to ARB p.32 – quote”Fig.2 – Drug

Eluded Stent—Proceed to the operating Room with Aspirin.” **ERR # 13** – The respected RP omitted or left out fact and Important Argument that was not included in the Disposition, which is a *proof for inaccuracy, gross bias, impartiality, highly prejudicial action and is basis all Judgments issued by LASC against the Plaintiff to be reversed*. See also explanation below the table. Further, Wohlgelernter, MD failed to explain the causation of Myocardial Infarction a few minute later, when the Appellant leave Daskivich, MD Office. The Appellant Medical record stated and CSMC staff note that 100% in stent occlusion (thrombosis) occurred right after the prostate biopsy, which cause 2<sup>nd</sup> Acute (massive) Myocardial Infarction. Omission of substantial material (genuine) material facts is an attempt to contempt any court. It’s obvious that the Expert was paid to render same kind of Opinion, but this does not mean that he supposed to omit substantial FACTS. It’s a PLAIN ERROR, which is highly prejudicial and reversible.

What they did—to Summarize-- they follow the Medical Record, but do not take into consideration Appellant’s results from MRI stress test—where in more details are described Heart damages [they just skipped all of them, which mean they both do not understand what was written inside, or they both read the text and decided not to mention LVEF[%]-mean Left Ventricle Ejection Fraction which supply the whole body with Oxygen]. Again, omission of substantial material facts is a Fraud, “Plain ERROR” and is *highly prejudicial and reversible*. They both skipped the Facts that Daskivich, MD at the time of procedure was not Licensed Urologist or Anesthesiologist, they both do not take exam of the Appellant, do not take into Consideration California State safety Code, do not take into consideration National Standard of Health Care, DO not commented at all the CAUSATION (as promised) of Appellant’s Heart and general Damages and all of a sudden from the blue sky these Experts concluded that Daskivich, MD did his procedure on or above Medical Standard for local Community. Where come from all Appellant’s Heart Damages? The both Testimony are controversial and is plain ERROR presented by Opposition.

In *Chaffin v. Kauffman*, 995 N.E.2d 707 (Ind. Ct.App.2013). Chaffin alleged negligence on the part of the physician and hospital nursing staff for discharging her after colonoscopy despite continued complaints of severe abdominal pain. The court held that where a deviation from the standard of care is a matter commonly known to lay person, a plaintiff is not required to present expert testimony. Furthermore, where the complained-of conduct is “so obviously substandard that one need not possess

medical expertise in order to recognize the breach, “ the “common knowledge exception” is applicable. *Chaffins* at 713. The court held that a reasonable trier of fact could *infer* this was a breach in the standard of care, and such an inference did not involve the “sophisticated subtleties” of medicine that necessitate expert testimony. *Id.*

In *Siner v. Kindred Hospital*, 51 N.E.3d 1184 (Ind.2016), an opinion handed down by the Indiana Supreme Court, pro se plaintiffs failed to designate any medical expert testimony to refute the claims of the physician-defendant. Despite the lack of medical expert testimony, the Supreme court reversed summary judgment for the defendants, concluding that the Defendants’ own designated evidence was sufficient to create a genuine issue of material fact as to causation without any designated expert testimony from the plaintiffs.

The Defendant must refute the Plaintiff’s claim of Medical Malpractice “by specific factual reference.” *See Alvares v. Prospect Hospital*. 68 N.Y. 2d 320 (1986). The Plaintiff only need to produced evidentiary proof of material questions of facts so that a Judgment, as a matter of law, cannot be rendered: (1) Plaintiff’s Opposing to Evidence - Pearson, MD –BC657529 [3CT618- 621]; (2) CSMC- Wohlenlernter, MD—Plaintiff’s Opposing to Evidence – LASC Case BC696685 [13CT3012- 3032]. *See Zuckerman v. City of New York*, 49 N.Y. 2d 557 (1980). The Plaintiff need not proof their case and all reasonable inferences must be drawn in favor of the nonmoving party. *Assaf v. Ropog Cab Corp.*, 153 A.D. 2d 520 (1<sup>st</sup> Dept 1989).

**[2] (b) Dr. Schapira and Ms. Zimmerman**

Case BC696685 – Demurrer’s Zimmerman, NP and Schapira, MD:  
*Judgment* filed on Jan.18, 2019 in Los Angeles County Super. Ct. No.BC657529 and BC696685 by Hon. William Fahey - DEMURRER to Appellant’s Second Amended Complain [SAC] in favor of Defendants- Nancy Zimmerman and Jay Neal Schapira shall be overruled because Appellant’s SAC has no defects and is NOT time barred according to time Limitation and Appellant’s Heart Condition.

[1] *Kaplan v. Mamelak*, 162 Cal. App. 4th 637, 75 Cal. Rptr. 3d 861, 2008 Cal. App. LEXIS 631, 162 Cal. App. 4th 637, 75 Cal. Rptr. 3d 861, 2008 Cal. App. LEXIS 631;  
[2] *Nguyen v. Western Digital Corp.*, 229 Cal. App. 4th 1522, 178 Cal. Rptr. 3d 897, 2014 Cal. App. LEXIS 870, 229 Cal. App. 4th 1522, 178 Cal. Rptr. 3d 897, 2014 Cal. App. LEXIS 870;  
[3] *Esparza v. Kaweah Delta Dist. Hospital*, 3 Cal. App. 5th 547, 207 Cal. Rptr. 3d 651, 2016 Cal. App. LEXIS 790, 3 Cal. App. 5th 547, 207 Cal. Rptr. 3d 651, 2016 Cal. App. LEXIS 790.

*Appellant's Discussion for Time Limitation.* Usually, TJ apply his discretion to decide whether to cut of the case or continue with jury trial. In Appellant's case BC 696685 TJ abuse his Discretion and unlawfully terminated [attempt to dismiss the Case]. The Case is still pending and probably will be Affirmed, if the Disposition is not modified or appeal further. Appellant's ARGUMENT during presentation for "Oral Arguments" were as the following:

The Respected Counsel for Zimmerman and Schapira, MD do not argue and forfeit his right to give any meaningful explanation. Appellant present the summary approximately the following:

(1) What is a cardiac clearance? "As a cardiologist, I am often asked to perform preoperative cardiovascular "**clearance**" — whatever that means — on patients prior to elective procedures. The term **clearance** implies that a patient can proceed with surgery and will have no risk for complications — which is a fictional state."

Apr 7, 2017. *Note by Appellant:* The event on Jan.29, 2016 proof the opposite – the Medical Clearance was inadequate [lacking the quality or quantity required; insufficient for the purpose of preoperative cardiovascular "**clearance.**"] Refer to Tab 7.

(2) Does the Appellant have been Time barred? *Appellant's comments:* No way. Notice by Definition is a written Document. Zimmerman, NP NEVER ever gave Appellant written Document for Medical Clearance. Appellant received upon his request Medical Record by Schapira, MD on December 2017 and for the first time saw Progress Note By Zimmerman, NP about Preoperative Exam. Beside False Statement there were no Exam whatsoever and that was stated in Appellant Disposition. The data in the Progress Note probably were insert[taken] from previous Exam. Zimmerman updated her "Progress Note" a few times. Appellant submitted Schapira, MD 's Record to his Lawyer immediately upon received. Why Appellant's Lawyer waited from December 2017 to March 5, 2018 to file Claim is unknown to the Petitioner in this Appeal. Probably because of CCP § 364 (Notice of Intent to sue for Medical Negligence). Citation from LASC Clerk's Transcript: for Case BC696685-SAC- [13CT3042-3054] – page 3044 Line 25, 26 and 27: " 15. This action was commenced within three years of the incident,-- January 29, 2016. This action was also commenced within one year of the discovery of misconduct by Dr. Schapira, Nancy Zimmerman, N.P. and CSMC surrounding the clearance." The above Citation is a extract from Appellant's LASC Clerk Transcript – Second Amended Complain— Filed on July 12, 2018 by Petitioner's Second Lawyer – John Owen Murrin SBN (75239). Why RP left out, excluded and do not included this Appellant's Important Argument is unknown, but anyway respected RP created PLAIN ERROW as concern Time Limitation. If my second Lawyer stated

in SAC, that's mean that RP failed to review Appellant's LASC Clerk's Transcript had created PLAIN ERROW, which is a proof for inaccuracy, gross bias, impartiality, highly prejudicial action and is reversible. 2DCA – RP stated that [Disposition – p.5] cite: "Defendant argued that the one-year provision applied." Appellant stated that he do not have Time Limitation based on *Cal. CCP §358*. When two or more disability coexist at the time the right of action accrues, the limitation does not attach until they are removed. (Note; Prof. Eli GANG stated that Appellant Heart Condition is indefinite – forever—on the Record)

More for Time Limitation.

[1] *Cal. CCP § 335.1* – Within two years: An action for assault, battery or injury to an individual caused by the wrongful act or neglect of another.

[2] *Cal. CCP § 338.1* –... *Chapter 6.95* (commencing with section 25500) of Division 20, of the Health and Safety Code shall be commenced within 5 years after the discovery...

[3] *Cal. CCP §340.5*; In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

[4] *Cal. CCP § 354.8 (a)* ...the following action shall be commencing within 10 years: (i) an action for assault, battery or both,,,; (A) an act of torture; (ii)(IX)...intentionally causing great suffering, serious bodily injury, or serious mental injury.

[5] *Cal. CCP §358*. When two or more disability coexist at the time the right of action accrues, the limitation does not attach until they are removed. (Note; Prof. Eli GANG stated that Appellant Heart Condition is indefinite – forever—on the Record)

**[2] (c) Cedars-Sinai – Disposition-** Appellant stated above in more detail objection and ERROW created by RP-Please refer to Appellant's PRAYER sections I, II, III, III(1)(2)(3)(4)—presented Expert Testimony for Daskivich and CSMC are giving false, biased or unscientific testimony with plenty of insufficiency –2DES, incomplete, lack of explanation to what CAUSE Appellant 2<sup>nd</sup> Acute MI, failed to admit that the Appellant had implanted two—2DES [Drug Eluded Stents]—mean he is not familiar with Appellant's Medical record or intentionally omitted substantial material fact. The Defendant's Expert failed to state that Appellant should have been proceed with Aspirin 81mg as American Heart Association recommend in their Guide line for Cardiologist. That mean that presented Defendant's Expert Testimony are not reliable, objective, accurate and do not provide a truthful analysis of the

Standard of care. In other words, are False Statements by irresponsible Experts where they omit to state Breach of Care. As a result, the Appellant in this 2DCA-B294801 – suffered compensable injury and damages. Actually, the respected Experts shall point to all relevant facts of the Cases, shall have access to all Documents used in the proceeding used to establish the facts of the Cases and all circumstances surrounding the occurrence, also relevant information should not be excluded for any reason and should be fair and objective. Relevant Information in 2DCA Case B294801 is Appellant's LVEF[%]=27[%] as of 8/30/2020 and stopping Aspirin 81 mg—not included in Appellant's Disposition. Please, refer also to appellant's Prayer Section III(7).It's a PLAIN ERROW which is a proof for inaccuracy, gross bias, impartiality, highly prejudicial action and is reversible.

**[2] (d) Post Judgment filing and orders** – Appellant do not have objection as to factual site of the allegations. Appellant will not Appeal cause of action by LASC at this level because on misstatement in Unpublished Disposition.

## **DISCUSSION**

### **[1]Forfeiture**

Appellant believe that with this 'Petition for Review" make clear where RP make PLAIN ERROW and why he is entitled for modification of Disposition issued on Aug.26, 2020. Appellant do not forfeit his Appeal and will continue to Appeal. Furthermore, ADC failed to held accountable Opposition Counsels for using False Statement and accepted. Opposition Counsels forfeited their right to give any meaningful answer to Appellant's Arguments presented during ORAL Argument session. Appellant has duty to show ERROWS and what Appellant understood and believe the duty of RP is to review LASC Clerk's transcript. Should the Panel Review have been reviewed the entire Transcript, part of it or none is not of competency of the Petitioner.

### **{2] The Demurrer Ruling – Statue of Limitation**

Appellant's SAC do not have any defect and therefore no reason Opposite Counsel to File Demurrer. As concern Time Limitation Appellant stated that he discovered Zimmerman, NP misconduct December 2017 and receive from the Office copy of Medical Record. Appellant's Lawyer probably mailed Notice of Intent to sue for Medical Negligence and need to wait at least 90 days.[CCP § 364]. 2DCA – RP stated that [Disposition – p.5] cite: "Defendant argued that the one-year provision applied." Appellant stated that he do not have Time Limitation based on *Cal. CCP §358*. When two or more disability coexist at the time the right of action accrues, the limitation does not attach until they are removed. (Note: Prof. Eli GANG stated that Appellant Heart Condition is indefinite – forever—on the

Record and is clearly stated in the LASC Clerk's Transcript.) If this fact is accepted by RP, OK if not – this is abuse of discretion and PLAIN ERROR' which cause substantial harm to Appellant. Medical Doctors never admit that they did mistake or commit negligence. RP did LAIN ERROR-- Appellant is entitled for reverse.

### [3]The Summary Judgment Ruling

Appellant explain in more detail to respected RP--Summary Judgment in above Sections--“**Declaration of Philip G. Pearson, MD,**” **Declaration by Daniel Wohlgelernter, MD,**” Standard of Care Deviation.

The Appellant's Expert Opinion clearly stated that whoever stopped Aspirin is liable.

The Medical Malpractice is stopping Aspirin 81m, which cause 100% in stents

Thrombosis as stated on the CSMC Medical record - after Prostate biopsy done by

Daskivich, MD and before Appellant to be admitted to Cat Lab. There are more than three time sheet in LASC Clerk's Transcript, but respected RP failed to Review it and

make controversial Finding of facts. Refer to (3)[1](1) and LASC Case BC657529[1CT000091].

*Example for Summary Judgment* may be reversed even where Plaintiff failed to designate medical expert evidence. In LASC Cases BC657529/BC696685 Appellant included Expert Testimony [ Attorney charged him], but RP refuse to take it into consideration, because cite: “...plaintiff...including as an exhibit an unsworn, undated letter, apparently from a doctor in New York State, stating “[t]he malpractice was stopping the aspirin which directly caused the restenosis of the LAD stent which directly caused the [myocardial infarction].” Please, refer to Appellant's Verification in this Petition for Review, which has sworn statement and dated Sept.6, 2020. The data for Appellant's Expert Letter are taken from the same SCMC Medical Record as LASC Clerk's Transcript presented in 2DCA, which support Expert Opinion and American Heart Association Guide Line for Cardiologists. Appellant act as Pro se and is entitled to have opinion heard and taken into consideration and not to be excluded from Disposition.[Disposition-p.6] Let us Compare this Statement in the Disposition with Medical record from CSMC, cite: “...(1) Acute STEMI Mendez s/p PCI 1/29/16 for 100% in-stent thrombosis of proximal LAD s/p angioplasty; (2) Acute systolic and diastolic CHF[Congestive Heart Failure very Mike ha ha(3) Acute hyperkalemia; (4) Elevated PCA s/p prostate biopsy; (5) Aortic root dilatation; (6) Mild to moderate aortic insufficiency;... Brief HPI: ... CAD s/p drug eluting stents to mid LAD and proximal D2 in 2/2013... (1) Acute STEMI s/p PCI 1/29/16 found to have 100% in-stent thrombosis of proximal LAD s/p angioplasty (2) Acute systolic and diastolic CHF due to STEMI.” Refer to [1CT000091]. If anyone compare what stated Medical Record from CSMC and how was the same

FACTS are cited in the Disposition is oblivious Misstatement of FACT and misinterpretation. Appellant present in his ARB p.31-32 support of that Guide Line from American Heart Association with 2007/2014 Writing Committee Members, which actually are top Experts in the USA, where absolutely clear is stated – ARB p.32, Fig.2 cite: "... Expert Opinion by Fletsher et all 2009 ACCF/AHA Perioperative Guidelines-Previous PCI-with DES [Drug Eluting Stent->365 days> Proceed to the operating room with aspirin, where PCI indicates Percutaneous Coronary Intervention." The Appellant's Medical Record from LASC Clerk's Transcript support the same FACTS which apply to the Appellant—he has 2DES with PCI [three times] . Usually, any Court may accept AHA opinion as *Amicus Curiae* , but that seems do not apply for Appellant's Case in 2DCA – case B294801. In addition to that Appellant states that Defendants' own designated evidence was conflicting and established a genuine issue of material fact on the element of CAUSATION. That mean that Summary Judgment is inappropriate whenever "a conflict of evidence may exist." *In* at 1189. This is a proof that RP discriminated Appellant and created in the Disposition major misstatement of FACTS, facts that were left out, important Appellant's Argument that was not included in the Disposition/Opinion and is a PLAIN ERROW of Law, which is a proof for inaccuracy, gross bias, impartiality, highly prejudicial action and is basis all Judgments issued by LASC against the Plaintiff to be reversed.

In *Chaffin v. Kauffman*, 995 N.E.2d 707 (Ind. Ct.App.2013). Chaffin alleged negligence on the part of the physician and hospital nursing staff for discharging her after colonoscopy despite continued complaints of severe abdominal pain. The court held that where a deviation from the standard of care is a matter commonly known to lay person, a plaintiff is not required to present expert testimony. Furthermore, where the complained-of conduct is "so obviously substandard that one need not possess medical expertise in order to recognize the breach, " the "common knowledge exception" is applicable. *Chaffins* at 713. The court held that a reasonable trier of fact could *infer* this was a breach in the standard of care, and such an inference did not involve the "sophisticated subtleties" of medicine that necessitate expert testimony. *Id.*

In *Siner v. Kindred Hospital*, 51 N.E.3d 1184 (Ind.2016), an opinion handed down by the Indiana Supreme Court, pro se plaintiffs failed to designate any medical expert testimony to refute the claims of the physician-defendant. Despite the lack of medical expert testimony, the Supreme court reversed summary judgment for the defendants, concluding that the Defendants' own designated evidence was sufficient to create a genuine issue of material fact as to causation without any designated expert testimony from the plaintiffs.

The Defendant must refute the Plaintiff's claim of Medical Malpractice "by specific factual reference." *See Alvares v. Prospect Hospital*. 68 N.Y. 2d 320 (1986). The Plaintiff only need to produced evidentiary proof of material questions of facts so that a Judgment, as a matter of law, cannot be rendered: (1) Plaintiff's Opposing to Evidence - Pearson, MD -BC657529 [3CT618- 621]; (2) CSMC- Wohlenlernter, MD—Plaintiff's Opposing to Evidence – LASC Case BC696685 [13CT3012- 3032]. *See Zuckerman v. City of New York*, 49 N.Y. 2d 557 (1980). The Plaintiff need not proof their case and all reasonable inferences must be drawn in favor of the nonmoving party. *Assaf v. Ropog Cab Corp.*, 153 A.D. 2d 520 (1<sup>st</sup> Dept 1989).

### **[3]The facts on the Record entitled Appellant for Extraordinary Relief**

Appellant is entitled for Extraordinary Relief pursuant to CCP §§1085; 1094.5 see *Conlan v. Bonta*, 102 Cal.App.4th 745, 751-52 (2002) because of the following reason and basis for AOB relief:

[1] The issue tendered in Appellant's AOB is of widespread interest or presents a significant and novel constitutional issue - equal protection by the Law and AWARD for Compensation shall be granted based upon USA Constitution XIV Amendment, Section One. Appellant state in this AOB that in these LASC Cases there is no adequate way to address the trial court's error other than issuing an Order (this is referred to as availability of "no adequate remedy at law"). If the Order is not issued the Appellant will be harmed in a way that cannot be fixed by the appeal, which is referred to as "irreparable" injury or harm and cause immediate danger.

[2] The trial court's orders deprived petitioner of an opportunity to present a substantial portion of his cause of action – Suppression of Evidence, unlawful advance and vacate motions.

[3] Conflicting trial court interpretations of the law require a resolution of the conflict of interest by Appellant and the People of California. Also, *Writ review is necessary and proper* where a "significant issue of law is raised, or resolution of the issue would result in a final disposition as to the petitioner." *Boy Scouts of Am. Nat'l Found. v. Superior Court* (2012) 206 Cal. App.4<sup>th</sup> 428, 438. Both conditions are present here. First, the application of inverse condemnation liability to a privately-owned entity that present evidence that it cannot socialized losses as a matter of right is an issue that has not to date been addressed by the appellate courts.

See *Casterson v. Superior Court* (2002) 101 Cal. App. 4<sup>th</sup> 177, 182 (writ review warranted

where “[t]he petition raises [a] first-impression issue”]. Second, resolution of 33-5423123 this issue in Edison’s favor would result in final disposition on Plaintiff’s inverse condemnation claims. *Without Writ* review the Appellant and thousands of other litigants throughout California and USA will be forced to expend significant resources litigating inverse condemnation claims that should have been determined at the pleading stage to be inapplicable. See *City of Glendale v. Superior Court* (1993) 18 Cal. App. 4<sup>th</sup> 1768 (“Included among this category of cases are those in which relief by writ is necessary to prevent an expensive trial and ultimate reversal.”]

[4] The trial court’s orders are both clearly erroneous as a matter of law and substantially prejudices petitioner’s LASC Cases—BC657529 and BC696685- Medical Malpractice with serious personal heart Injury and multiple causation, including irreparable harm and immediate danger (exposure to sudden cardiac death). *This AOB raises legal issues* which can be resolved by this Court without having to make factual determination. See *Holz, supra*, 3Cal.3<sup>rd</sup> at 302 n.4

[5] The Appellant seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief – all filed Writ with 2DCA are summarily denied and lost Jurisdiction but the facts still stay and may considered as a matter of subject.

[6] The petitioner for his PETITION FOR EXTRAORDINARY WRIT OF MANDATE TO CONSIDER SUPPRESSION OF EVIDENCE FOR CORRECT ACTION – OSC (*Rule 8.487(b)*); Amicus Curiae Brief (*Rule 8.520*)will suffer harm or prejudice in a manner that cannot be corrected on appeal. (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266) Pursuing to CCP §1085 does not have a statute of limitations, so the Appellant looks to the substantive law - *See Howard Jarvis Taxpayers Association v. City of La Habra*, 25 Cal.4th 809 (2001).

[7] The 2DCA may issue *Palma Notice* - *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171 for an alternative writ. The Appellant’s petition is in proper form and states a basis for relief. The Court of Appeal may issue an alternative writ which commands the superior court to act in conformity with the prayer of the petition or, alternatively, show cause before the Court of Appeal why it should not be ordered do so and answer the Appellant’s question “Who ORDER Petitioner-Alan Douglas- to stop 81 mg Aspirin and not to be given anticoagulant?” This Question was not answered and all Evidence were suppressed. If the superior court “complies” (i.e., elects to proceed as directed), the petition becomes moot. If the superior court does not comply, then the parties must serve and file briefs as set forth in the alternative writ.

The matter is then a “cause” to be decided “in writing with reasons as stated,” as required by article VI, section 14 of the Constitution. The Court of Appeal may grant relief as the Appellant’s prayer stated. Circumstances under which a peremptory writ may issue “in the first instance” without oral argument: “when it appears that the petition and opposing papers on file adequately address the issues raised by the petition, that no factual dispute exists, and that the additional briefing that would follow issuance of an alternative writ is unnecessary to disposition of the petition.”

[8] The Appellant exhausted all available LAC-SC administrative remedies. This means not only Appellant have to go through the hearing process, but also that generally Appellant can’t litigate an issue that he could have but also that issue that Appellant could have, but did not, raise at the administrative hearing. The Appellant also states the following:

1) the appealed Medical Malpractice Cases BC657529 and BC696685 are outside the LAC-SC Jurisdiction;

2) where important questions of constitutional law or public policy governing the court, authority are tendered. *Public Employment Relations Bd. v. Superior Court 13 Cal.App.4th 1816, 1827 (1993)*.

3) Where CCP §1085 proceeding is based on action taken after administrative hearing, the same rules apply. *Western States Petroleum Assn. v. Superior Court, 9 Cal.4th 559 (1995); Poverty Resistance Center v. Hart, 213 Cal.App.3d 295, 302 (1989)* (General Relief grant amount challenge limited to evidence before Board of Supervisors). However, because Appellant is challenging the fairness of the proceeding itself, then extra-record evidence (and even discovery) may be permitted, even under CCP § 1094.5. *Western States Petroleum Assn., 9 Cal.4th at 575, n 5.*

[9] Timing for Writ petition against LAC-SC should be applied §1094.6 and may govern: suit must be filed 90 days after challenged decision becomes final.

[10] Petitioner is beneficially interested in the outcome of the proceeding and that there are no adequate alternative remedies at law.

The petitioner “need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced ...” *Green v. Obledo, 29 Cal.3d 126, 144 (1981)*.

[11] Respondent has a ministerial (non-discretionary) duty to follow the law, and is

breaking it.

[12] There are no plain, speedy and adequate alternative remedies at law.

[13] Accordingly, Appellant is allowed to use Combined §§1094.5 and 1085 writs. Petitioner is entitled to seek both in the same action. *Conlan v. Bonta*, 102 Cal.App.4th 745, 751-52 (2002)

[14] Discovery may be available, where there are "facts in dispute." *Bright Devpmt. v. City of Tracy* (1993) 20 Cal.App.4th 783, 795.

[15] TJ [Trial Judge] ERRORS OF LAW with prejudice for Appellant's Medical Malpractice Cases Filed with LAC-SC are:

1) Application of the wrong substantive standard in making the [Trial Court] decision.

2) Application of an invalid regulation.

3) A reviewing court always exercises *de novo review* in regard to questions of law.

That means the reviewing court does not defer in any way to the LAC\_SC's interpretation of the law. *Ruth v. Kizer* 8 Cal.App.4th 380, 385 (1992).

[16] DENIAL OF FAIR TRIAL - This category includes all types of *procedural and substantive due process violations*. Both constitutional due process standards and any procedural statutes or regulations are relevant. Substantive due process violations fall under this category as well. For example, the failure to maintain and apply objective, written, ascertainable standards resulting in arbitrary and capricious administration of the LAC\_SC program denies the petitioner a "fair trial." Other "fair trial" issues are Trial Court use of irrebuttable presumptions, interference with petitioner's right to put on his case at the administrative level, biased fact finders, etc.

[17] DECISION NOT SUPPORTED BY FINDINGS-- FINDINGS NOT SUPPORTED BY EVIDENCE

1. A "finding" is any determination of disputed fact and can be implicit or explicit. This is important, especially where the Appellant is dealing with irrebuttable presumptions.(a) One situation where you will frequently find that the decision is not supported by the findings is in benefits and Medi-Cal cases when the Director of DSS or DHS alternates (reverses) a decision after the ALJ has found in favor of the appellant. As the Supreme Court stated in *Topanga Assn. for a Scenic Community v. County of Los Angeles* 11 Cal.3d 506, 515 (1974) :

2. Standard of Review for Factual Issues. "Independent judgment" is a higher level of scrutiny. It applies to cases which involve *fundamental rights*. In such cases "abuse of discretion is established if the [reviewing] court determines that *the findings are not supported by the weight of the evidence*. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." Thus, the difference between independent review cases and others is that in the former type the Court re-weights the evidence. In the latter type, the Court defers to the lower tribunal if its decision is supported by substantial evidence even if there is contrary evidence which *outweighs it*. It's a question presented by Appellant and ignored in the low Court Review, which is the case with Petitioner - Alan Douglas.

The Petitioner/Appellant in LAC-SC filed with 2DCA Record by Superior Court Clerk's Transcript of 29 Volume contain 7,020 pages , Augment of Record with recent Medical Record from CSMC which are proof of undisputable facts that proceeding in Superior Court was wrong [unlawful] with multiple EERS in LAW with gross prejudice and gross bias and False Statement by Opposite Counsels. In addition to all of the above TJ used willful misconduct to make the Cases nastier. Therefore, the LASC Cases BC657529/BC696685 are reversible and entitled for reward. Writ shall be granted.

**[4] Documents presented are based for granting Award by any Court**

Please, refer to Appendix 5: pages 234, 235, 237, 238, 240, 242, 243 and 244. The Administration of Superior Court of California, County of Los Angeles-Stanley Mosk Courthouse-not Trial Judge, block prematurely Default Judgment because of Summary Judgment - entered at a later date. The Defendant fail to respond to all Documents filed with Default Department to enter Default by the Clerk. How do I know? The deputy Clerk explained to the Appellant. Later, the Defendants ask 2DCA not to enter Default and was granted by the RP [Reviewing Panel].

## CONCLUSION

Based on the above, Appellant believe that the Petition for a Writ of Certiorari shall be granted. Final ORDER by 2DCA may be modified and all Judgment in LASC for Cases BC657529/BC696685 shall be reversed , settle based on the Record or Reassigned to Settlement Court. Reassignment to Settlement Court is the proper remedies for relief. Accordingly, correct Direction shall be given to 2DCA and any other remedies in favor of Appellant he may be entitled to them as just and proper.

All parties shall bear their own costs. (*Solberg v. Superior Court of San Francisco*, 19 Cal. 3d 182,561 P.2d 1148, 137 Cal. Rptr. 460, 1977 Cal. )

Respectfully submitted,

Dated: Jan.3 , 2021  
Los Angeles, CA

Signed by   
Alan Douglas

Document received by the CA Supreme Court.