21-5

No. 21-_____

IN THE

SUPREME COURT OF THE UNITED STATES

Solomon Adu-Beniako

Petitioner,

vs.

Respondent.

Michigan License and Regulation Affairs (LARA)

On Petition for a Writ of Certiorari to

The Michigan Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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First Question.

The United States is in the throes of a public health crisis arising from the abuse of opioids. Opioids are addictive, prone to abuse, and readily available in illegal forms, such as heroin and synthetic fentanyl. At the same time, the federal government's Health and Human Services Pain Management Best Practices Inter-Agency Task Force has determined that tens of millions of Americans rely on legal prescription opioids to treat acute or severe chronic pain, including pain arising from cancer as well as terminal or degenerative illnesses. The Food and Drug Administration (FDA) long ago approved opioid medications for these purposes, and doctors throughout the country lawfully prescribe them. Congress tasked DOJ and its sub-agency DEA with primary responsibility for preventing drug abuse. With respect to illegal opioids—the chief cause of opioid overdose deaths—DEA's and DOJ's duty is to keep those drugs off the streets and to find and punish the criminals who push them. Through the CSA, Congress similarly entrusted DEA with the responsibility for regulating legal opioids. DEA is responsible for enforcing the CSA in a way that preserves legitimate patients' access to pain-relief medications prescribed by their doctors while preventing diversion, misuse, and abuse. As such, Congress has charged DEA with regulating every step in the opioid supply chain.

Watchdog agencies have meticulously catalogued, however, myriad ways in which DEA has failed to safeguard the public from improper diversion of prescription opioids. In the shadow of their own profound failures, DOJ and DEA now seek to retroactively impose on physicians unworkable requirements that are not found in any law and go beyond what physicians are trained and licensed to perform- to investigate and arrest criminals.

The first question presented is:

Does the Respondent's unfairly tasking, and blaming the Petitioner for the DOJ/DEA responsibility violate the Petitioner's Constitutional rights ?

Second Question.

On January 22nd 2018, based on uncorroborated MAPS and wild lies, the State of Michigan suspended the Plaintiff's controlled license. Speculation based on uncorroborated MAPS reports is not credible," citing Michigan Aero Club v. Shelly, 283 Mich 401; 278 NW 121 (1938),

The second presented is :

Whether the Respondent usage of uncorroborated MAP violate the Due process clause ?

Third Question.

The medical-malpractice expert-testimony statute, MCL 600.2169, states that an expert witness must be licensed and, "if [the defendant] is a specialist who is board certified, the expert witness must be a specialist who is board certified in that same specialty." MCL 600.2169(1)(a). The Petitioner is Board certified in Addiction Medicine. The Respondent's expert witness, Dr. David Nicolaou is board certified in Emergency Medicine. The Respondent 's second expert witness , Ms. Janice Waldmiller is only a Registered Pharmacy. The Petitioner objected to the two offering any testimony. The respondent acting as the prosecutor and the judge disregarded the Petitioner's objection. Both expert witnesses had no knowledge, to low quality knowledge in chronic diseases and out patient settings, and drew inferences before knowing all the facts.

The Third question presented is :

Whether the Respondent expert testimony was in violation of Due Process?

Fourth Question.

The authors of the CDC guidelines Dr. Deborah Dowell, Dr. Tamara Haegerich and Dr, Roger Chou specifically stated that the CDC guidelines are only clinical recommendations, they are NOT laws, rules or regulations. They do not have the effect of law.
The Plaintiff's own guidelines were more stringent than the CDC guidelines. see CDC, Guideline for Prescribing Opioids for Chronic Pain (Mar. 18, 2016).
https://www.cdc.gov/drugoverdose/pdf/Guidelines_At-A-Glance-508.pdf

The Michigan Court of Appeals ruled that the Petition violated the CDC guidelines

The Fourth question presented is :

Whether CDC guidelines have effect of law?

Fifth Question.

The court "may not find substantial evidence `merely on the basis of evidence which in and of itself justified [the agency's decision], without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.'" Lakeland Bus Lines, Inc. v. NLRB, 347 F.3d 955, 962 (D.C. Cir. 2003) (quoting Universal Camera Corp. v. NLRB, 340 U.S. 474, 487, 71 S.Ct. 456, 95 L.Ed. 456 (1951)). And, while the agency is the ultimate factfinder, the Plaintiff's evidence and testimony are part of the record, and the record must be considered as a whole in order to see whether the result is supported by substantial evidence.

The Fifth question presented is:

Whether it is proper for the Court to set aside a judgment if the whole record on file is not reviewed?

Sixth Question.

The Petitioner was a respected professional in the community and has spent his life building a positive reputation. Nevertheless, he uncovered that the Respondent has been maliciously spreading inaccurate and unfounded information that is damaging to his personal and professional character. The aforesaid defamatory statement has harmed Petitioner reputation; such a statement has a tendency to injure and has injured the Petitioner in his occupation, his future business and employment prospects have been severely harmed, the Petitioner has had to incur substantial expense, in order to redress the harm he has suffered and continued to suffer.

Under the laws in the State of Michigan, it is unlawful for an individual to make deliberate statements that intend to harm a person's reputation without factual evidence or based on hearsay.

The Sixth question presented is:

Whether uncovering of new evidence warrant review of a case?

Cases

Statutes

Petition for Writ Of Certiorari

The Petitioner respectfully petitions this court for a writ of certiorari to review

the opinion of the Michigan Court of Appeals.

Opinions Below

The opinion of the Michigan Court of Appeals affirming the decision of the Michigan Subcommittee is reported as Department of Licensing & Regulatory Affairs v. Adu-Beniako (In re Adu-Beniako), No. 348668 (Mich. Ct. App. May. 14, 2020). The Michigan Supreme Court denied review on March 30th 2021.

Jurisdiction

The Petitioner's appeal to the Michigan Supreme Court was declined to review on

March 30th 2021. The petitioner seeks review of the state-court decision, this Court's jurisdiction is being invoked under 28 U.S.C. §1257(a) having timely filed this petition for a writ of certiorari within ninety days of the Michigan Supreme Court's order.

Constitutional Provisions Involved

United States Constitution, Amendment 5th and 14th Amendments.

Statement of the Case

In 2008, the Petitioner incorporated East & West Physicians, which he owns 100%. However, he didn't do any business or treat any patients at East & West Physicians until August 2016. He treated his first patient at East & West Physicians on August 28, 2016. The Plaintiff treated two groups of patients. The first group was the addiction group. The addiction group consisted of patients who were battling mostly heroin. This group consisted of about 99% heroin addicts and about 1% were patients who were abusing and using prescription opioids in large quantities.

The Petitioner's office was one of the office-based centers registered at the Substance Abuse and Mental Health Services Administration (SAMBHSA) website. The Providers at this website had gone through training, taken tests and had been given special DEA numbers which permitted them to treat patients who had been battling opioid addictions especially heroin. The second group consisted of other chronic cases. MB, JJ, LL, SK, BS and MO were all other chronic cases. The six patients chosen for review by the Respondent, all had something in common. All of them had pain score levels in the range of 8-10 out of 10.

In October 2016, the Petitioner saw his first prescription fraud from Jefferson Pharmacy, Detroit, Michigan. The Petitioner at that time informed the Respondent, Detroit DEA and filed Police report in Detroit etc. The Petitioner never had arresting power to arrest people. All what the Petitioner had to do was to wait for the law enforcements to effect the arrests of the perpetrators, which never happened.

. In December 2016 the Petitioner pulled "MAPS" report on MB and found out that MB had fraudulently filled Oxycodone and Xanax 2mg at Meijier's Pharmacy in East Lansing, about 70 miles away from the Petitioner's office location. The Petitioner tried to call MB to find out how she got the prescription. MB did not respond and the Petitioner filed police report with East Lansing Police (Case #1736400173). At that time Meijer's Pharmacist had informed the Petitioner that someone at the Petitioner's office called Dana had verified the prescription. But there was no one at the Petitioner's office called Dana. All the Petitioner 's employees denied any involvement when questioned. In early April 2017, the State of Michigan requested for the charts of MB, BS, JJ, LL, MO, SK. When the Petitioner pulled MAP reports on JJ, LL, MO, he found out that the three had pulled the same scheme as MB did. The three had fraudulently filled Oxycodone and Xanax 2mg using the Petitioner 's credentials at Meijer's Pharmacies in Lansing, Michigan and Dewitt, Michigan, about 70 miles away. At that time Lansing and Dewitt Police departments refused to file police reports over the phone directing the Petitioner to the City of Southfield, the location of the Petitioner's office. When the Petitioner contacted the Southfield Police to file reports, they also refused, claiming that the prescriptions were filled at different location, hence the Southfield Police had no jurisdictions. All the six were not even the Petitioner 's patients in early April 2017 when the Michigan Board asked for their charts. SK was dropped in October 2016 due to Doctor shopping. BS's insurance did not pay for services

provided due to networking problem. MB, JJ, LL, MO did not come back after the prescription fraud scheme. In April 2017, the Petitioner wrote a letter to the Michigan Medical Board reiterating that he had never written powerful pain medications such Oxycodone, Oxymorphone, hydromorphone in his life. That any pain medication exceeding 30 MMED under his credentials, should be investigated right away.

To give this Court a brief summary of what happened, in early May 2017 the Petitioner had a meeting with Janice Waldmiller Rph, a pharmacy inspector with the State of Michigan at Southfield Library concerning " over prescribing of controlled medications". At that time the Petitioner let Ms. Waldmiller know that his DEA number had been compromised and showed her some police reports that he had filed. The Petitioner also let Ms. Waldmiller know that he did not prescribe powerful medications such as Oxycodone, Oxymorphone, hydromorphone, Morphine, Xanax 2 mg etc. Next, the Petitioner let her know that he did not prescribe any pain medication that exceeded 30 Morphine Milligram Equivalent/day (30 MME/day). (Note the MME/day per the state and federal standard is 90 MME/day). The Petitioner let Ms. Waldmiler know that any pain medication exceeding 30 MME/day , under the Petitioner warranted immediate investigation. Before parting the early May 2017 meeting , Ms. Waldmiller promised the Petitioner that she would come to the Petitioner's office at a later date to show him more prescriptions. On or around 31st May 2017, Ms Waldmiller came to the Petitioner's office with a huge stack of prescriptions. Those were prescriptions for medications exceeding 30 MME. Ms. Waldmiler and the Petitioner plugged the names on the prescriptions into the Petitioner's computer, to check the names against the Petitioner 's patients' population. NOT a single match. Ms. Waldmiller advised the Plaintiff to contact the Detroit DEA and change his DEA number. In June 2017, the Petitioner spoke to Detroit DEA agent, Mr. Patrick Reimann. After hearing the Petitioner 's story, Mr. Reimann and the Petitioner came to conclusion that changing the DEA number alone would not solve the problem. Because the information on the prescriptions matched the Petitioner's office information, it looked like the person behind the prescription frauds was someone closed to the Petitioner . That person would still get hold of the new DEA number since the Petitioner had to be putting the numbers on the prescription pads. Mr. Reimann let the Petitioner know that the new vendor the State of Michigan had, allowed providers to "MAP" themselves. In other words the new feature allowed providers to see people who had filled prescriptions under their credentials. That the Petitioner could" MAP" himself

while he waited for the Police to apprehend the perpetrators. Right away the Petitioner contacted the vendor to learn how to use the new feature to MAP himself. The vendor spent hours over the phone with the Petitioner but the new feature couldn't work for the Petitioner. Meanwhile the prescription fraud continued and the Plaintiff kept on filing Police reports. The Plaintiff encountered numerous Police abuses, humiliations and unwillingness to assist. That dampened the hope and the spirit of the Petitioner . It was only Warren Police Department which sent one of the criminals to jail but the person went in for only 95 days. The person did not expose the source of the prescription frauds due to the light sentence. The person in question came all the way from Grand Rapids , Michigan about 145 mile away, to Warren Michigan to fill prescriptions for Norco (Hydrocodone and Acetominophin) and Promethazine with Codeine under the Petitioner s credentials. .The inactions of the area Police emboldened these criminals to continue their criminal activities.

In October 2017 with the help of Safari Pharmacy in Detroit, Michigan, Ms. Krystalla Cross Medical Assistant of the Plaintiff was caught red-handed verifying prescription of Norco (Hydrocodone and Acetominophen) and Promethazine with Codeine for someone called Macy Glover, a person who had never been the Petitioner 's patient. The Petitioner has a voice recording of Ms Cross engaging in the prescription fraud using alias Anita (Transcript, 3/14/18, pp. 33, 214-218.)). Ms Cross worked for the Petitioner from September 2016 until she was caught and fired in October 2017. Krystalla Cross was fired and police reports filed. Krystalla Cross lied to the Petitioner for over a year. The person doing the prescription frauds was using different aliases to verify prescriptions and was mostly dealing with cooperating Pharmacists and people who were not the Petitioner's patients. This made it difficult for the Petitioner to tie the frauds to a specific person or group. All the employees including Krystalla Cross were questioned several times and all of them including Krystalla Cross, each time steadfastly denied any involvement. This went on until October 2017 , that was when Krystalla Cross was caught red-hand engaging in the prescription fraud using alias Anita (Transcript, 3/14/18, pp. 33, 214-218.)).

In November 2017 the Petitioner found out from the head of MAPS, Mr. Andrew Hudson that the State of Michigan had blocked the Plaintiff from "MAPING" himself preventing him from

seeing people who had filled prescription under his credentials. Making the Petitioner's problem worse.

The Petitioner was a respected professional in the community and had spent his life building a positive reputation. The Petitioner had never had malpractice lawsuit filed against him in his entire life and had unblemished reputation and was ready to meet with law enforcement agents any time any day anywhere to give them the necessary and clean information to help them investigate, arrest and prosecute. But the Detroit police were thinking about homicides not prescription frauds.

There were and still are a lot of patients in Detroit Metropolitan area. Even more than what the Petitioner could see. Why would the Petitioner knowingly see patients who would give him trouble? There were a lot of apples, why would the Petitioner knowingly pick up the one which would give him a stomachache? Everything was done for legitimate medical purposes, and in "good faith."

Hydrocodone is a semisynthetic, moderately potent, orally available opioid that, in combination with acetaminophen, is widely used for treatment of acute or chronic pain, and in combination with antihistamines or anticholinergics used to treat cough. The FDA indication for Norco (Hydrocodone and Acetaminophen) is for moderate to severe pain. Hydrocodone was first manufactured in 1920 and was introduced in the US market on March 23rd 1943. The half life of hydrocodone is 4 hrs to 6 hrs. The medication is metabolized by the liver enzymes. Hydrocodone does not stay in the human body forever. Medications taken several days ago may not show in the urine. For example JJ was seen on November 4th 2016 and he came back on December 8 , 2016. JJ was given only 30 days medication with no refill. But JJ came back after 34 days, if JJ's urine drug screen was negative. That was correct, the medication had been eliminated from his body. As for the Codeine which is a pro drug and was given for a maximum of 10 days. If JJ, LL, MO and MB came back after 30 days and the urine drug screens for codeine were negative. That was correct. The codeine had been eliminated from their bodies. The FDA indication for Promethazine with Codeine is for cough. JJ, LL, MO MB received not more than 8 oz of this medication as needed which lasted from 7 to 10 days which was good for acute cough. Patients were seeing the Plaintiff once a month for monitoring and thorough assessments. Patients were advised that if they did not kick the bad risk habit such as continuing smoking , the cough would

come back. All the six patients were smokers. Janice Waldmiller was always surrounded with controversies because she had been drawing conclusions without any solid facts.

On January 22nd 2018, based on uncorroborated Michigan Automated Prescription System (MAPS) and fabricated evidence, the Respondent suspended the Petitioner license. Speculation based on uncorroborated MAPS reports is not credible," citing Michigan Aero Club v. Shelly, 283 Mich 401; 278 NW 121 (1938), holding that a mere claim cannot stand in the place of evidence and operate a proof; things not make to appear must be taken as not existing.*** Courts do not guess in the absence of evidence. [Emphasis added] Clements v. Clements, 2 Mich App 370; 139 NW2d 918 (1966), holding that a Court's decision cannot rest on conjecture or speculation by an expert witness. The Petitioner through his then Attorneys filed answers to the complaints and a motion to dissolve the summary suspension (Exhibit A). Hearings were held on that motion on March 12, March 14 and March 21, 2018. The hearing were filled with fabricated evidence, lies and liars. Mr. Bruce Johnson, Mr. Timothy Erickson and Ms. Janice Waldmiller came to the hearing with fabricated evidence, names on some prescriptions scratched out with black pens, witnesses coached to lie on the stand and most of "the evidence" used against the Petitioner concealed. The Petitioner had never written a single Oxymorphone in his life, yet he was ranked 21st among the Michigan doctors. The Petitioner had never written a single Oxycodone in his life yet he was ranked 26th. The Petitioner had never written a single Xanax 2mg in his life, yet he was ranked. The Petitioner had never written Promethazine with Codeine 16 oz (Exhibit E) yet he was ranked number one and the list went on and on. The Respondent victimized the Petitioner by fueling a media circus with outright lies. On March 23rd 2018, after three day hearings, Judge Williams saw through the lies and dissolved the suspension (Exhibit B). That was when everything was opened for the Petitioner to "map" himself and view everything for the first time. The Petitioner was shocked to find what he saw. Thousands of prescriptions filled under his credentials by these criminals who were not even his patients (Please see Exhibits C,D,E for few of the criminals). In fact, the Petitioner learned from the Canton city Police that some of the names of the people featured on the MAPS under the Petitioner's credentials were fictitious and not even real. The Respondent freely injected lies into evidence.

The medical-malpractice expert-testimony statute, MCL 600.2169, states that an expert witness must be licensed and, "if [the defendant] is a specialist who is board certified, the expert witness

must be a specialist who is board certified in that same specialty." MCL 600.2169(1)(a). Dr. David Nicolaou, the State's expert witness was not competent and was not qualified to testify. The plain language of MCL 600.2169(l)(a) precluded Dr. David Nicolaou, the State expert witness from offering any testimony regarding the applicable standard of practice or care. The Petitioner is board certified in Addiction Medicine by the American Board of Addiction Medicine and the State's expert witness Dr. Nicolaou is board certified in Emergency Medicine. That was a big mistake. Here is ER Physician Vs Out Patient Physician. Acute Conditions Vs Chronic Conditions. General Practice Vs. Subspecialty. Huge knowledge gap. Dr. Nicolaou made inferences without solids facts. Anybody who is well versed in medicine knows that Dr. Nicolaou cannot compare himself with the Petitioner. For a Provider to be able to manage a disease very well, that Provider should know the pathogenesis of the disease. The Provider should also know the Pharmacodynamics and Pharmacokinetics of the medications being used. Something Dr Nicolaou disagreed and did not know. Dr. Nicolaou even did not know the basic conversions of MME of opioids. Dr Nicolaou himself raised the issue of Oxycodone 90 mg. When asked the MME of that, Dr. Nicolaou was up 5 point. (135 vs 140). There is no room for errors in medicine. Providers are dealing with human lives not woods or metals. Dr. Nicolaou thought Tussionex is a single medication (Hydrocodone). He didn't even know its indication. TUSSIONEX- Pennkinetic is a combination of hydrocodone, an opioid agonist; and chlorpheniramine, a histamine-1 (H1) receptor antagonist, indicated for the temporary relief of cough and upper respiratory symptoms associated with allergy or the common cold in patients 18 years of age and older]. And the list goes on and on. When the Petitioner tried to correct Dr. Nicolaou so that they would be on the same page, Dr Nicolaou started running his mouth and became belligerent. After the first day, when Dr. Nicolaou saw that the Petitioner would not be a cool walk, Dr. Nicolaou decided to testify over the phone. The Petitioner wanted Dr. Nicolaou to testify in person. The Petitioner Verses Dr. Nicolaou. There would have been" medical hematomas".

Dr Nicolaou tried to take a jab at the Petitioner's notes. Doctors are not required to spend their whole time writing thesis about their patients' visits .Providers are required to make reasonable efforts to document their patients' visits. Templates are created to assist doctors with documentations. So that the Providers get and spend ample time with their patients. Patients' charts are susceptible to criticisms and the Petitioner as an MD, MPH, MRO, FASAM and a

diplomate of American board of addiction medicine, can rip up Dr. Nicolaou's notes within seconds, if the Petitioner wants to be critical of Nicollaou. If a Provider has no notes on a patient that he/she saw, then that is a problem. Every Provider is required to make a reasonable effort to write notes on a patient he/she saw. The "SOAP" notes formats are the same, whether in the Soviet Union, in the United States or in Hong Kong . The 'S" is for the Patients' subjective feeling . The "O" for the Provider's objective findings. The "A" for the Provider's Assessments and Diagnosis and the "P" for the Plan. The SOAP notes is basic knowledge which even every first year Medical Student knows and writes well. In Boyd v Wynadotte, 402 Mich 98,104-105; 260 NW2d 439 (1977), the Michigan Supreme Court affirmatively stated that evidence of an alleged breach that didn't cause any harm has "no bearing on whether defendants were negligent." The Court also held that the negligent record-keeping theory "would have no bearing on whether a defendant was negligent" .

The initial position of the Respondent was that the Petitioner was "overprescribing". When that theory sank like titanic, Mr. Johnson and Co quickly shifted their position to asserting that the CDC guidelines were somehow "violated." The CDC guidelines are only clinical recommendations, they are NOT laws, rules or regulations . They do not have the effect of law. The Judge Williams correctly quoted the authors on Recommendation No. 11, which is in contention. That section refers to the fact that the recommendation that "clinicians should avoid prescribing opioid pain medication and benzodiazepines concurrently whenever possible, PFD, p. 18. [Emphasis added] That, of course, clearly means that these medications can certainly be used in certain cases such as the cases of patients MB and BS, and thus the mere use of them cannot be construed as proving a violation of the "standard of care." Both MB and BS had the dual diagnosis of severe pain and severe anxiety and were treated properly as the medical literatures recommended.

Earlier pain research listed the overall prevalence of comorbid anxiety disorders and pain as ranging between 16.5% and 28.8%.1 However, newer studies suggest that anxiety disorders may be present in up to 60% of patients with chronic pain. (See, FN 3, supra). It is well published in the medical literature that both ailments (Lower Back pain and Anxiety) should be treated concurrently for effective results.

1 McWilliams LA, Goodwin RD, Cox BJ. Depression and Anxiety Associated with Three Pain Conditions: Results from a Nationally Representative Sample. *Pain.* 2004;111(1-2); 77

We believe but we would check. (Доверяй но проверяй). When MB, JJ, LL and OM turned out to be dishonest and criminals by engaging in prescription frauds, using the Petitioner's credentials, the four were immediately terminated from the Petitioner's clinic and appropriate authorities (DEA and Police) notified. Patients would never confide to a Doctor , their underlying fears and embarrassing information if they perceived that the Doctor was indifferent, judgmental or hostile. So the Petitioner never exhibited that kind of behavior to patients. The opioid contract emphasized on the risks of substance use and overdose associated with controlled substances containing an opioid. Mixing opioids with benzodiazepines, alcohol, muscle relaxants, etc. For female who were pregnant or were of reproductive age, the heightened risk of short and long term effect of opioids including but not limited to neonatal abstinence syndromes were stress. Safe disposal of opioids and safe storage of medications to prevent family members from reaching them also stressed. The patients were informed by the Petitioner, what the contract stressed, that it was a felony to illegally deliver, distribute or share controlled substances without a prescription properly issued by a licensed health care prescriber and all the patients verbalized understanding of the contract provided. Everything was instituted to combat diversions. All the six patients were seen for legitimate medical purposes, and in good faith as the Petitioner extensively testified .

The Subcommittee also came in later to make a farce of the administrative process. Mr. Johnson and his group had converted the Subcommittee's functions to a conveyor belt of convictions based on fabricated evidence. The Respondent who was the prosecutor and the Judge also made use of the" local effect" also known as the " Ottawa road" effect to bulldozer its way through the State's judicial system. At the core of a real fair judicial system is the unfettered right to due process and equal protection of the law . The Michigan Appeals Court's decision is stunningly one-sided in its focus and, thus, utterly arbitrary and capricious. As indicated in the brief, the transcripts and the exhibits, the Petitioner presented extensive testimonies and provided numerous evidence pertaining to each of these disputed facts, though one would not know it from the Appeals Court Opinion analysis. The Petitioner was not even present when the Subcommittee met. In fact the Petitioner did not know that there was a meeting and no one represented him over there. Because the Petitioner rightly refused to accept responsibility for something he had NOT done. The Subcommittee meted on the Petitioner, the harshest punishment. Suspending his license for six months (6 months) and one day (1 day), commencing May 5th 2019 and fifteen thousand dollar ($15000.00) fine. The Petitioner's controlled substance license revoked and Ten thousand dollars ($10,000.00) fine imposed. The Petitioner appealed the decision to all the way to the Michigan Supreme Court. The Petitioner filed the reply brief himself. (Exhibit F). On March 30th, 2021, the Michigan Supreme Court declined to review the case stating that the question presented by the Petitioner's then attorney is "not for this Court" (Exhibit G). The Michigan Supreme Court failed to state which Court the

question is for.

Another strange thing, the Petitioner's case was scheduled for oral argument on May 5th 2020 via zoom. The oral argument was suspiciously cancelled "due to Covid 19" . The Petitioner saw that his then Attorneys had been very ineffective and had not done a good job with the brief and the Petitioner was looking forwarding to answering any questions which the Justices might have. Even though all the answers can be found in the five day hearings/ transcripts, everyone knows that no Court would spend that much time going through all the five day transcripts. Cancelling the oral argument adversely affected the Petitioner. The oral argument was cancelled due to "Covid 19". If the oral argument was going to be done via zoom, then the risk of infection was zero. The Petitioner does not want to sound redundant. The Michigan Supreme Court Reply Brief written by the Petitioner (Exhibit F) answers all the questions raised in the Appeals Court.

The Michigan Court of Appeal's opinion cannot withstand review, because it fails to consider contradictory record evidence where such evidence is precisely on point. Such a lapse of reasonable and fair decision making is particularly acute where, as here, the opinion entirely ignores the Petitioner's evidence and testimony (Exhibit G). The Michigan Appeals Court's decision is stunningly one-sided in its focus and, thus, utterly arbitrary and capricious.

The court "may not find substantial evidence `merely on the basis of evidence which in and of itself justified [the agency's decision], without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.'" Lakeland Bus Lines, Inc. v. NLRB, 347 F.3d 955, 962 (D.C. Cir. 2003) (quoting Universal Camera Corp. v. NLRB, 340 U.S. 474, 487, 71 S.Ct. 456, 95 L.Ed. 456 (1951)). And, while the agency is the ultimate factfinder, the Petitioner's evidence and testimony are part of the record, and the record must be considered as a whole in order to see whether the result is supported by substantial evidence.

A court must set aside agency action it finds to be `arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" Tourus Records, Inc. v. DEA, 259 F.3d 731, 736 (D.C. Cir. 2001) (quoting 5 U.S.C. § 706(2)(A) (2000)). "[A]n agency [decision is] arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency

expertise." Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983). Although the respondent is the ultimate fact finder, the agency's decision is vulnerable when it does not take the Petitioner's testimony and evidence into consideration. That is in Violation of the Petitioner's Due process clause enshrined in the 5th and the 14th Amendments.

Rulings by disciplinary subcommittees of regulated professionals are reviewed on appeal solely under Const. 1963, art. 6, § 28. Dep't of Community Health v. Anderson , 299 Mich.App. 591, 597, 830 N.W.2d 814 (2013) ; Dep't of Community Health v. Risch , 274 Mich.App. 365, 371, 733 N.W.2d 403 (2007). Const. 1963, art. 6, § 28, provides, in relevant part:

" All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record".

A court must review the entire record, not just the portions that support an agency's findings, when assessing "whether an agency's decision was supported by competent, material, and substantial evidence on the whole record[.]" Risch , 274 Mich.App. at 372, 733 N.W.2d 403. "Substantial evidence" means "evidence that a reasonable person would accept as sufficient to support a conclusion." Id. This may be substantially less than a preponderance of evidence, but does require more than a scintilla of evidence. Id. For purposes of Const. 1963, art. 6, § 28, a decision is not "authorized by law" when it is in violation of a statute or a constitutional provision, in excess of an agency's statutory authority or jurisdiction, made upon unlawful procedure that results in material prejudice, or when it is arbitrary and capricious. Northwestern Nat'l Cas. Co. v.Comm'r of Ins. , 231 Mich.App. 483, 488, 586 N.W.2d 563 (1998).

The Petitioner's opioid contract and SOAP notes emphasized on the risks of substance use and overdose associated with controlled substances containing an opioid. Mixing opioids with benzodiazepines, alcohol, muscle relaxants, etc. For female who were pregnant or were of reproductive age, the heightened risk of short and long term effect of opioids including but not limited to neonatal abstinence syndromes were stress. Safe disposal of opioids and safe storage

of medications to prevent family members from reaching them also stressed. The patients were informed by the Petitioner, what the contract stressed, that it was a felony to illegally deliver, distribute or share controlled substances without a prescription properly issued by a licensed health care prescriber and all the patients verbalized understanding of the contract provided. Everything was instituted to combat diversions. The other diversion enforcement area such as investigations, arrests and prosecutions were supposed to be done by the Detroit DEA and local police. In Detroit Metropolitan area, the DEA and the local police enforcements have woefully failed.

The Respondent acting under the color of the State law violated the Due Process Clause which is enshrined in both the Fifth and Fourteenth Amendments to the United States constitution. Such as :

1- The right to an unbiased trial

2- The right of being aware of all evidence against him

3- The right to freely cross-examine witnesses

4- The right to freely present evidence

The Michigan Appeals Court's decision is stunningly one-sided in its focus and, thus, utterly arbitrary and capricious..

The Michigan Appeals Court's assertions that the whole evidence/records were examined were far-fetched. If the Appeals Court had examined the whole evidence/records as required by law before arriving at conclusions, the Appeals Court would have found the following:

1) Dr. Nicolaou's qualifications and knowledge were challenged from day one. Nicolaou's and the Petitioner's qualifications and knowledge do not match.

2) Ms. Janice Waldmiller's qualifications and knowledge were challenged. Mr. Bruce Johnson had to step in and stop the Petitioner from cross examining to save Ms. Waldmiller. Ms. Waldmiller was RPh not PharmD. Her knowledge showed. It was abysmal. The Petitioner did not mean to humiliate her, he wanted to see whether she knew what she was charged to investigate. Ms. Waldmiller drew conclusions without knowing the basic facts. Waldmiller knowingly lied on the stand

3) Krystalla Cross is a liar, not credible and prescription fraudster who was caught red-handed and fired. To cover her covert prescription frauds, she used aliases to verify prescriptions for her criminals. When Krystalla Cross' criminal activities were uncovered, she lost all the respects the patients had for her. Cross is still walking free because Mr. Bruce Johnson, Michigan Assistant Attorney has pardoned her in exchanged for her manufactured lies. Krystalla Cross is not credible. The Petitioner has a voice recording of Ms Cross engaging in the prescription fraud using alias Anita (Transcript, 3/14/18, pp. 33, 214-218.)).

4) Dr Uche Obua, a Nurse Practitioner who has two PHD Degrees , is credible and has impeccable reputation. Highly respected by all patients. He refuted Cross' accusations that the Petitioner saw Patients in group and wrote prescriptions before seeing patients. Krystalla Cross was simply a spiteful and angry former employee who was caught red-handed doing prescription fraud and got fired. Police report was filed against her.

5) Akeela Noel, the Office Manager is credible with clean record and well respected by all the patients.

6) Francina Kirk, a Medical Assistant is credible with clean record and well respected by all the patients.

7) The CDC guidelines are clinical recommendations. The Authors of the guidelines have mightily stated that the CDC guidelines are NOT laws, NOT rules and NOT regulations. The Petitioner's guidelines were more stringent than the CDC guidelines.

8) Every patient was schooled on the risks and benefits of all medications and treatments. Every patient signed opioid contract in which the risks and benefits of opioids Benzos, muscle relaxants etc well laid out.

9) The Petitioner had plan in place to stamp out diversion by seeing and monitoring Patients monthly. Patients who received opioids were given not more than 30MMED (30 vs 90), lower quantity, MAPS pulled before Patients were given controlled medication. Refills never put on controlled medications to limit access and quantity. Frequent toxicology performed etc. Drug Diversion preventions are multifunctional, interdepartmental and involve investigations. Maintain data base of cases. Assure proper reporting to authorities before case closed. The Petitioner gave the Detroit DEA and several Michigan local police departments wealth of

information. But those Authorities failed to act on, making the cases continued as long as they did. Krystalla Cross would have been caught earlier.

10) All Patients were informed that it was a felony to illegally deliver, distribute or share controlled substances as spelt out in the contracts.

11) The Patients who breached any part of the contracts were terminated and the appropriate authorization informed, if indicated.

12) All Patients counseled on prescription drugs and street drug during every visit. Opioid and Benzos never given concurrently whenever possible.

13) Mr. Johnson and Co had been making inferences without proofs.

14) The State of Michigan, through its employees knowingly lied, concealed evidence, and blocked proper Due Process. All the witnesses the Respondent presented had been coached to lie.

REASONS FOR GRANTING THE WRIT

Reasons for Granting the Petition

I. State supreme courts are divided on the question

presented.

II. The case presents an issue of national importance.

III. The Michigan Supreme Court's decision is incorrect.

At the core of a real fair judicial system is the unfettered right to due process and equal protection of the law . The Michigan Appeals Court's decision is stunningly one-sided in its focus and, thus, utterly arbitrary and capricious. As indicated in the brief and the exhibits, the Petitioner presented extensive testimonies and evidence pertaining to each of these disputed facts, though one would not know it from the Appeals Court Opinion analysis.

The Respondent's findings, and conclusions were arbitrary, capricious. The Respondent abused its discretion. The Respondent's action were not in accordance with law and were contrary to constitutional right, power, privilege/ immunity. The Respondent's action were

in excess of statutory jurisdiction, authority/ limitations, and short of statutory right and without observance of procedure required by law.
The Michigan Court of Appeals' opinion is unsupported by substantial evidence provided by statute. The Michigan Appeal's Court's opinion is unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

This Court adopted a set of prophylactic measures to protect the Petitioner's Due Process Clause enshrined in both 5th and 14th Amendments.

The decision by the Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of MCL 600.2169 and the express purpose of the rule.

The present case is a textbook example of the arm strong arm tactics the Respondent has been using to crash Innocent Physician. Despite having clearly invoked his right to qualified expert witness, the Petitioner was nonetheless placed in "an interrogation room" and subjected to

the Respondent who had no legitimate reason for doing so. Despite observing that the Respondent's actions violated MCL 600.2169, the Court of Appeals then proceeded with its analysis without any acknowledgement that the Respondent actions have affected the Petitioner's Constitutional Rights. Making most vulnerable Physicians to feel that the invocation of the right to qualified expert is meaningless:

The Court of Appeals' erroneous decision circumvents this premise, effectively

permitting the Respondent the right to use strong-arm tactic and break the law.
Next, the Respondent invoked the CDC guidelines for Opioid prescribing. Well, the authors of the CDC guidelines Dr. Deborah Dowell, Dr. Tamara Haegerich and Dr, Roger Chou specifically and publicly stated that the CDC guidelines are only clinical recommendations, they are NOT laws, rules or regulations . They do not have the effect of law. The Respondent has

been trying to shamelessly distort the CDC guidelines to make them fit its narrative of the applicable standard of practice or care. The CDC guidelines have no applicable standard for patients' assessments and notes writing.

Lastly, Congress entrusted DEA—not Physicians —with the responsibility, tools, and legal authority to investigate, arrest and prosecute criminals and bad actors who want to make it bad for legitimate Patients. The Respondent's legal contentions about the duties of Physicians cannot be found anywhere in the text of the Controlled Substance Act (the CSA) or in any DEA regulation. At most, the Respondent has stitched its untested position together from scattered and informal letters and PowerPoint presentations by its officials. But these documents are not law, as DOJ has recently reaffirmed in rules and other public statements. In any event, the Respondent's opioid "guidance" is often inconsistent or even irreconcilable with the expert judgment of federal health agencies, and with other state practice of medicine and pharmacy laws.

This case presents this Court with an opportunity to clarify. Absent intervention by this Court, the Michigan Court of Appeals' opinion will work to undermine the carefully-crafted procedural safeguards and rule of law that this Court and Congress have spent years developing. The Michigan Appeals Court's decision is stunningly one-sided in its focus and, thus, utterly arbitrary and capricious.

X. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Honorable Court issue a writ of certiorari to review the opinion of the Michigan Court of Appeals.

Respectfully Submitted

/s/ Solomon Adu-Beniako

SOLOMON ADU-BENIAKO DATED June 28, 2021.