

21-6421

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

ORIGINAL

IN THE

Supreme Court of the United States

Shirlene Bailey,

Petitioner, Pro se

Supreme Court, U.S.  
FILED

SEP 21 2021

OFFICE OF THE CLERK

v.

Suffolk Public Schools,  
Suffolk City School Board,  
Respondents.

On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
For the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Shirlene Bailey  
Petitioner, Pro Se  
6000 Rollingwood St.  
Suffolk, Virginia. 23435

RECEIVED

SEP 24 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In the Supreme Court of the United States

Shirlene Bailey

Petitioner, pro se

Virginia Workers' Commission: JNC ~~VAC0001323920~~

Appeals Court of Virginia: 0664 – 20 – 1

Virginia Supreme Court: 201472

v.

September 15, 2021

Suffolk Public Schools

Defendant

**QUESTIONS FOR REVIEW**

Dear Justices of this U. S. Supreme Court I contacted the Courts by letter inquiring about what I believe to be a violation of my rights concerning fair, timely, proper treatment and my right to due process hope of recovery. I submit the following questions for review.

1. Employer fail to give Employer's intent in a timely manner. 65.2-601.2
  - a. Question: Should the Court have required claims adjuster, Loretta Lawrence to specified reasons why the claim was still being investigated after the beyond the 30 days required and continuing to 10/31/2018? Rule 1.5
  - b. Question: Was Employers failure to update Claim status, and injury status on 04/07/17, 04/17, 05/22/17 deliberate, intentional misleading of the Court? Va. Code 65.2 – 600, 29CFR Parts 1904 and 1952
  - c. Questions: Should Dr. Roger Talbot's initial recommend for surgery on 05/23/17 have been considered when determining claimant's injury was compensable on 04/17, 05/22/2017 proven by medical evidence of MRI? 65.2 – 601.2
2. The Court erred in determining claimant refused selective work on October 17, 2017?
  - a. Question: Did the Court take into account claimant's testimony she had suffered doctor patient abandonment on October 16, 2017? (18 VAC 85 – 20 – 28, 32.1-27.1:03)
  - b. Question: Did the claimant have the right to receive proper notification of doctor patient relationship ending, an impairment rating, or a Functional capacity evaluation,

In the Supreme Court of the United States

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Petitioner, pro se

Virginia Workers' Commission: JNC 0000

Appeals Court of Virginia: 0664 – 20 – 1

Virginia Supreme Court: 201472

v.

September 15, 2021

Suffolk Public Schools

Defendant

and time to seek treatment following Dr. Bryan Fox's doctor patient abandonment on October 16, 2017?

- c. **Question: Should the Court have questioned Dr. Rodney Brown conflicting testimonies pertaining to alleged refusal of work on 10/17/17 and approval of claimant's Extended Leave on the same date 10/17/17?"**
- d. Question: Should the Court have required Dr. Brown to product copies of the claimants Extended Leave from October 17, 2017 – October 17, 2018

3. The Court erred when they said claimant was not injured as claimed.

- a. Question: Should the Judges have taken into account the initial attending physician recommend of surgery May 23, 2017– SEE ATTACHED, Pp.
- b. Question: Should the Court have required the defendants to provide documented proof how the alleged MMI was reached on 10/16/17?
- c. Question: Did the Court assume, because there was no change in the MRI on (10/07/17) that claimant's injury had improved?
- d. Question: Did the Court take into account the medical professional opinion, diagnosis and treatments of all (8) eight physicians before and after Dr. Fox's abrupt release?
- e. Question: Did the Court consider Dr. Arthur Wardell's medical opinion was based on all medical documents, testing, MRI's, x-rays of all physicians; diagnosing claimants "Permanently Aggravated conditions?
- f. Question: Was Claimant rights violated as a pro se litigant with being forced to take leave for a work injury and being given an ultimatum to backdate the leave or face job abatement?

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Virginia Supreme Court: 201472

v.

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4. The Court erred

- a. Question: Did the Court considered claimant's testimony and proof that she had been denied a new treating physician for over 3 months.
- b. Question: Why wasn't a panel offered from October 16, 2017 until February 2, 2018 prior to upcoming court hearing?
- c. Question: Did the Court consider claimant's testimony of the defendant's denial of new panel/treatment for over three months was truthful?

5. The Court err in heavily relying upon the contradictive plan of care of the non-treating; abandoning physician; Dr. Bryan Fox?

6. The Court erred when they said claimant did not receive "Summer Pay."

- a. Question: Did the Court review copies of checks submitted by the claimant that shows, pre-taxed deduction for "Summer Pay?"
- b. Question: In making that determination did the Court consider claimant's testimony disputing defendant's calculations were incorrect?
- c. Question: Did the Court consider claimant's request to have a mutual party calculate claimant's average weekly wages?
- d. Question: Should all SROI – EDI quarterly Reports provide a complete and accurate report; recording all specified data, dates, times and amounts in the report?

7. Patient right to a complete accurate medical record

- a. Question: Did the Court take into account claimant's testimony of crucial omissions, possible electronic tampering. Poor note taking

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Virginia Supreme Court: 201472

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8. The Court err when they heavily relied on the contradictive plan of care of Non- treating physician Dr. Bryan Fox than that of all 8 doctors who treated claimant, Ms. Bailey
  - a. Question: According to the 90 Day Rule was claimant within her right to seek treatment?
  - b. Question: Should the Courts have taken into account the claimants SSI awarded was determined by medical records of all (8) treating physicians?
  - c. Question: Should the doctors has taken into account Dr. Wardell professional medical opinion, the testimony of his recorded deposition?
  - d. Question: Should they have considered Dr. Wardell had taken claimant out of work on 02/09/2018 contradicting previous abandonment?

## LIST OF PARTIES

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P. O. Box 14663  
Lexington, KY 40512-4663  
Claims Adjuster Ms. Loretta Lawrence

Attached list of parties not appearing on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. VWC Commission - Commissioner Judge Andrea Lee
2. VWC Commission - Deputy Commissioner Lee Wilder (Opinion by WILDER)
3. VWC Commission- Commissioners Marshall, Newman, and Rapaport (Opinion by Commissioner NEWMAN)
4. Court of Appeals - Judges Beales, Huff and Senior Judge Annunziata

## RELATED CASES

Mediation Hearing - Case Shirlene Bailey v. Suffolk School Board - VA00001323920  
(Mediator VWC Commissioner Andrea Lee - October 29, 2018 at 10:30)

Mediation Update Re: Shirlene Bailey v. Suffolk Public Schools JNC VA0001323920  
October 31, 2018.

WWC Opinion by Wilder on January 6, 2020 - JNC:VA00001323920, No.  
B785301311000101853

WWC opinion by Newman on April 21, 2020 - JNC:VA00001323920, No.  
B785301311000101853

Court of Appeals Virginia Judges Beales, Huff and Senior Judge Annunziata on  
November 4, 2020. JNC:VA00001323920, Record No. 0664-20-1

List of all interested parties involved

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In the Supreme Court of the United States

Shirlene Bailey

Petitioner, pro se

Virginia Workers' Commission: JNC *VA 0001928920*

Appeals Court of Virginia: 0664 - 20 - 1

Virginia Supreme Court: 201472

v.

September 15, 2021

Suffolk Public Schools

Defendant

#### TABLE OF AUTHORITIES

Court Rules:

1. **Health Record Privacy – 32.1 – 127**
2. **Gardner V. Bath Iron Works Corp. 11BRBS 556 (1979) affd, 640 f. 2d**
3. **65.2 – 603 sections (C & D) Burden of Proof:** In proving that the injury arises out of employment, a claimant is aided by the presumption of Section 20(a) which states that, “in the absence of substantial evidence to the contrary,” it is presumed “[t]hat the claim comes within the provisions of this Act.” 33 U.S.C. §920(a). Pursuant to Section 20(a), a claimant does not have the initial burden of establishing a causal relationship between his injury and employment. Rather, claimant must show that (1) the worker sustained physical harm, i.e., an injury, and (2) an accident occurred or working conditions existed at claimant’s job which could have caused the harm. Once these two elements are established, a claimant has proven his *prima facie* case and is entitled to a presumption that his injury arises out of his employment. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); see *Adams v. General Dynamics Corp.*,
4. 17 BRBS 258 (1985); *Lacy v. Four Corners Pipe Line*, 17 BRBS 139 (1985) (“the Section 20(a) presumption applies to link the harm or pain with claimant’s employment.”);
5. **5 U.S.C. §557(c)(3)(A).** An administrative law judge thus must adequately detail the rationale behind his decision and specify the evidence upon which he relied. See

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Virginia Supreme Court: 201472

v.

September 15, 2021

Suffolk Public Schools

Defendant

Ballesteros v. Willamette W. Corp., 20 BRBS 184 (1988); see also Frazier v. Nashville Bridge Co., 13 BRBS 436 (1981). Failure to do so will violate the APA's requirement for a reasoned analysis. Ballesteros, 20 BRBS at 187; see Williams v. Newport News Shipbuilding & Dry Dock Co., 17 BRBS 61 (1985).

6. Aggravated Rule: The **law in Virginia** is 100% clear that your employer is responsible for any **aggravation** of a pre-existing **injury**, and all of the disability that it creates, as well as all of the treatment that relates to the **injury**

7. **54.1-2962.2 of the Code of Virginia,**

Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

8. **18 VAC85-20-28 Practitioner-Patient Communication; Termination of Relationship**

a. **16VAC 30 – 50 – 20, 65. 2 – 708, 65. 2. 902** (employers intent in finding compensable)

b. **12 VACS – 410 – 230** Patient was refused a new treating Physician/Panel

c. **1 VAC 55. 20 – 380**

9. Backdating leave of absence. Backdating leave gives the false impression to the court and third parties involved. The motives behind such action taken by the employer can be viewed as fraudulent. As it implies voluntarily participation of the employee. The parties

In the Supreme Court of the United States

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Virginia Workers' Commission: JNC 0000

Appeals Court of Virginia: 0664 – 20 – 1

Virginia Supreme Court: 201472

v.

September 15, 2021

Suffolk Public Schools

Defendant

intention should be considered when evaluating whether it is legal pertaining to the rules and laws applying to that document.

- a. **1 VAC 55. 20 – 380;** Coverage with the employer contribution continues to the end of the month in which the leave without pay begins provided the first day of the leave is after the first work day of the month. If the person returns from leave the following month and works at least half of the workdays in the month, coverage will be continuous. If the leave without pay begins on or before the first work day of the month, coverage and the employer contribution ceases on the last calendar day of the previous month.
- b. Employees who do not want to continue coverage will be asked to sign a waiver.

**10. Request to Amend/Right**

**42 CFR 482. 24** – Patients are entitled to a complete accurate medical record. All orders including verbal should be noted, timed, dated and authenticated.

- a. Crucial omission, manipulated notes, electronic tampering and generated notes that read verbatim in patient's medical record for several different dated appointments

**11. Failure to Report Changes to Injury Status - 65.2.900, 65.2.600**

- a. Employer failed to update Injury status reports

**12. Change in Condition – 65.2 - 708**

In the Supreme Court of the United States

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Virginia Workers' Commission: JNC ~~VA00001323920~~

Appeals Court of Virginia: 0664 – 20 – 1

Virginia Supreme Court: 201472

v.

Suffolk Public Schools

Defendant

September 13, 2021

TABLE OF AUTHORITIES

Court Rules:

**1. Doctor/Patient Abandonment on 10/16/201. 54.1-2962.2 of the Code of Virginia,**  
Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner. **18 VAC85-20-28 Practitioner-Patient Communication; Termination of Relationship**

a. **16VAC 30 – 50 – 20, 65. 2 – 708, 65. 2. 902** (employers intent intent in finding compensable)

b. **12 VACS – 410 – 230** Patient was refused a new treating Physician/Panel

1. **1 VAC 55. 20 – 380**

• Backdating leave of absence. Backdating leave gives the false impression to the court and third parties involved. The motives behind such action taken by the employer can be viewed as fraudulent. As it implies voluntarily participation of the employee. The parties intention should be considered when evaluating whether it is legal pertaining to the rules and laws applying to that document.

a. **1 VAC 55. 20 – 380;** Coverage with the employer contribution continues to the end of the month in which the leave without pay begins provided the first day of the leave is after the first work day of the month. If the person returns from leave the following month

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Virginia Supreme Court: 201472

v.

September 13, 2021

Suffolk Public Schools

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claimant does not have the initial burden of establishing a causal relationship between his injury and employment. Rather, claimant must show that (1) the worker sustained physical harm, i.e., an injury, and (2) an accident occurred or working conditions existed at claimant's job which could have caused the harm. Once these two elements are established, a claimant has proven his *prima facie* case and is entitled to a presumption that his injury arises out of his employment. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); see *Adams v. General Dynamics Corp.*,

8. 17 BRBS 258 (1985); *Lacy v. Four Corners Pipe Line*, 17 BRBS 139 (1985) ("the Section 20(a) presumption applies to link the harm or pain with claimant's employment.");

9. **5 U.S.C. §557(c)(3)(A)**. An administrative law judge thus must adequately detail the rationale behind his decision and specify the evidence upon which he relied. See *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); see also *Frazier v. Nashville Bridge Co.*, 13 BRBS 436 (1981). Failure to do so will violate the APA's requirement for a reasoned analysis. *Ballesteros*, 20 BRBS at 187; see *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985).

10. **Aggravated Rule:** The **law in Virginia** is 100% clear that your employer is responsible for any **aggravation** of a pre-existing **injury**, and all of the disability that it creates, as well as all of the treatment that relates to the **injury**.

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A - Orders, Court filings, Hearings

APPENDIX B - OPINIONS

APPENDIX C - SROI - EDE Reports and Day Orders - Exhibits

APPENDIX D - Medical Records Relied Upon - Exhibits

APPENDIX E

APPENDIX F

## JURISDICTION

### For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 21, 2021

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.  
April 21, 2021

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.  
April 21, 2021

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

### For cases from state courts:

The date on which the highest state court decided my case was April 21, 2020.  
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: June 28, 2021, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.  
June 28, 2021

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

In the Supreme Court of the United States

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Virginia Workers' Commission: JNC *VA00001823920*

Appeals Court of Virginia: 0664 – 20 – 1

Virginia Supreme Court: 201472

v.

September 13, 2021

Suffolk Public Schools

Defendant

JURISDICTION

On September 13, 2021 now comes Petitioner pro se filing in a timely manner a Motion for a Petition of Writ of Certiorari pursuant to Rule 13 of the Rules of the Supreme Court of the United States. This Court has the authority to exercise its jurisdictional discretion over Rulings, Decisions and Opinions of the lower Court. The power to exercise jurisdictional review with issuing writs, granting reversal and establishing laws and rules that are nationally beneficial to all.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1- Wage Dispute of weekly average wage.

A) Statex staffing and Houston General

Insurance Company Petitioners, v. Director,

Office of Workers Compensation Programs, United States

Department of Labor, and Ramiro Loredo Respondents,

237 F. 3d 404 (5th Cir. 2000)

B) Section 928(b), in relevant Part, provides that:

① Although VWC states in detail how wage are to be calculated  
The Employer failed to do so. This failure cause the Court to  
Err in saying claimant did not receive "Summer pay."

See Attached VWC - Wage Chart

① Employer did not provide 26 Payments equaling 52 Weeks  
② Employer did not include pre-taxed deduction of "Summer Pay."

C) OSHA Section 1904.5(a), 1904.5(b)(2)

1904.7(a) recording criteria - days away, restrictions, treatments  
beyond first aid

① must be reported accurately and timely - 1904.7(b)(1)(ii), 1904.7(b)(3)  
1904.7(b)(4), 1904.7(b)(2)(iv), See 1904.7(b)(5)

② 1904.7(b)(1)(vi) severely diffuse Disc bulge - Dr Talbot  
Lumbar and cervical radiculopathy - Dr Miteche  
permanently aggravation - Dr Wardell  
Neurosurgeon referral consult - Dr Wardell  
Dr Tollakson

③ 1904.7(b)(3)(i)

④ 1904.7(b)(4)(i)(B) - Dr Talbot sedentary order was not honored  
- i. 11 reduced daily lifting in mind

## FILING INSTRUCTIONS

### Wage Chart VWC Form No. 7A

#### How to complete the Wage Chart:

- Indicate gross weekly earnings for the 52 weekly periods immediately preceding the date of accident.
- Note that these earnings are GROSS earnings and include overtime and tips, before any deductions are made for taxes or Social Security. If there were any perquisites, please list the TOTAL value separately at the bottom of the chart.
- If an injured employee lost more than seven consecutive calendar days, although not in the same week, these periods should be noted on the Wage Chart (VWC Form No. 7-A) using an asterisk in the Week No. column and are not to be counted in the calculations. Va. Code § 65.2-101.
- If injured employee has worked less than 12 months, the earnings for the time worked should be used. The earnings for a similar employee may be used if the employee has worked less than 60 days.

#### How to calculate the Wage Chart:

- If a full year's wage information has been provided covering the 52 week period prior to the date of accident:
  - determine the total wages earned, including yearly perquisites;
  - divide the total wages earned for this period by 52;
  - the sum will be the average weekly wage.
- If a full year's wage information has not been provided covering the 52 week period prior to the date of accident:
  - determine the total wages earned, including yearly perquisites;
  - divide the total wages earned by the number of weeks wages were earned (Note: if warranted, the weeks can be converted into days and calculated on that basis);
  - the sum will be the average weekly wage.
- If the form is completed on a bi-weekly basis:
  - determine the total wages earned, including yearly perquisites;
  - divide the total wages earned by the number of weeks worked (employee paid 26 times a year represents 52 weeks of wages);
  - the sum will be the average weekly wage.

- Samples of properly completed wage chart(s) are available through the Commission's Website at [www.workcomp.virginia.gov](http://www.workcomp.virginia.gov) under the forms menu.
- For questions or assistance with completing this form, please contact the Commission's Toll-Free number at 877-664-2566.

STATEMENT OF THE CASE

① Appendix B  
JCN VA 00001373920  
1/6/20 opinion by Wilder - Award Temporary Total Disability  
Medical Benefits pursuant 65.2-6

② 4/21/20 - Opinion by Newman -

③ 11/4/20 - Opinion by Commissioner

④ 12/4/20 - Petition Denied - Deputy Clerk Cynthia McCall

⑤ 3/9/21 - Court of Appeals Record No 201472, Court of  
Appeals No. 0664-20-1 Deputy Clerk Douglas Robelen

⑥ 5/26/21 - motion to Request Admission of Evidence

⑦ 6/28/21 - Petition for Rehearing

⑧ 7/15/21 - Letter Concerning Filing to the Supreme  
Court of the United States / Office of the Clerk  
Clerk: Scott S. Harris

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Virginia Supreme Court: 201472

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#### REASON FOR GRANTING THE PETITION

Dear Justices of the Supreme Court,

I ask the Court to grant this writ so that myself, and others like me will not have to continue to experience the negative effects of implied biases, prejudiced, retaliatory and or discriminatory action against us as injured workers/patients. Especially, those who have permanently aggravated injury, or who had little to no improvement as myself.

Justices of this Court It is my sincerest hope that with careful eyes on this case the Court will see how implied biases, prejudiced, and unjust accusations can sway and adversely influence those entrusted with your care. I believe many of my rights, concerns and complaints were dismissed, minimized as trivial, ignored or denied.

I ask the Court to hold accountable both the employer and insurer for their failure to comply with Rules according to the VWC Commission, The Appeals Court of Virginia, and The Virginia Supreme Courts. I believe it would benefit not only myself but others for this Court to exercise the Court's discretionary Jurisdiction that patient everywhere be given the opportunity to fair, unbiased treatment. That injured be allowed to participate in their recovery having access to complete accurate medical records for all eyes to see. Enforcing sanctions, penalties and other deterrents that would prevent not only myself but others from suffering discriminatory or retaliatory actions due to our unimproved injuries, or the injured worker not recovering according to the Employers

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Appeals Court of Virginia: 0664 – 20 – 1

Virginia Supreme Court: 201472

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Suffolk Public Schools

Defendant

expectations. Or, the Employers approval or non-approval of treatments, surgery, visits, or anything that involves the injured worker's recovery.

According to rule 65.2 – 601.2. Should the Court have required the Employers to give their intent to except or reject in the required 30 day time frame?

After Employer's repeated contempt's filed by the VWC Commission, I believe the Court err by not requiring Ms. Lawrence's (Claims Adjustor) to specify reason for the investigation, or whether the investigations had concluded with Insurer rendering an answer of their findings of compensable or non-compensable. Was the contempt satisfied by the Court?

*VWC Filed 20 Day Orders filed by VWC on September 13, 2017, October 10, 2017 and November 2017 still giving no response.*

Again, I am asking the Court to grant the Writ as I believe the influence of implied biases, prejudiced comments and accusations made by the abandoning doctor, whose opinion overrode my complaints and medical evidence. For this Court to exercise its discretionary jurisdiction over many of the violation I believe I suffered, would be beneficial to all who have suffered the same.

Following the abandonment by Dr. Bryan Fox on October 16, 2017, Dr. Arthur Wardell after careful review of all medical records proved there was a necessity for on-going treatment following the doctor patient abandonment by Dr. Bryan Fox.

Justices I pray this case prompts changes that will dissuade the abuse of power, bullying implications and false accusation that cause so many injured workers to suffer mental

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Virginia Supreme Court: 201472

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stress creating further injury for the injured. Justices my right to have a complete and accurate medical record, was denied. My chance of any recovery was and continues to be jeopardized. According to the 90 Day rule, and the doctor patient abandonment, again I was within my rights to seek treatment. I had a right to an impairment rating, functional capacity evaluation, physical examination, MRI Read with Dr. Fox, proper notification of the doctor patient relationship ending physician but instead I was denied those rights and abruptly abandoned.

Granting this writ and other similar to it I believe will discourage the use of implied biases, prejudiced, mishandling and abuse of power by all entrusted who are entrusted to care for those injured at work.

In conclusion I, Shirlene Bailey present to Petition filed on this \_\_\_\_\_

day of September 2021.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sherlene Bailey  
Date: September 20, 2021