ORIGINAL

22-444
No._____

IN THE

SUPREME COURT OF THE UNITED STATES

NAZIR KHAN, PETITIONER

Vs.

PRESENCE CHICAGO HOSPITALS NETWORK, doing business as PRESENCE ST. MARY AND ST. ELIZABETH HOSPITALS, et al., RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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I. Questions presented

1. Whether the hospital can terminate the privileges of a physician who is physically and mentally normal on the basis that he did not cooperate with the cognitive disability testing. Such testing is illegal, unethical, violative of statutory provision. Termination was based upon fraud with misrepresentation of facts.

2. Defendants had no federal claims, lacked subject matter jurisdiction. District court should have dismissed their motions as void. 7th circuit appeals court must declare judgment void because appellate court may not address merits of District court, and appeals court took no actions, on the other hand

made defendants a prevailing party, inflicting cost on plaintiff, whether such actions were proper.

3. Constitution III injury needs to be redressed by the federal courts. Because of the actions of the hospital and members of executive committee of terminating petitioner's privileges, petitioner sustained severe economic loss from injury to medical business, destruction of plaintiff's career. Nether district court nor 7th court of appeals redressed constitution 111 injury, whether their actions were proper, this court to resolve and redress constitution III injury.

4. District court decision and 7th circuit appeals court decisions violated petitioner's 14th amendment due process clause, abridging of property rights and privileges, equal protection in

violation of the 14th amendment of constitution and 42 USC section 1983, whether their actions were in violation of the constitution this court to resolve.

5. There is a conflict between the decision of the Seventh Circuit court and other circuits with regard to subject matter jurisdiction under rule 28(a), and 28(b), and there is a conflict between supreme court decision and district court's decision with regard to 28 USC Civil rights act 1991, this court to resolve.

6. Petitioner contends that the district court and the 7Th circuit appeals court did not address the four standards of the human care quality improvement act of 1986. And that resulted in loss of federal immunity to the hospital chief executive officer ,chief medical officer and members of

executive committee. This court should rule that the four standards of human care quality improvement act of 1986 were violate and petitioner's claim was proper.

7. Petitioner provided services to the hospital as independent contractor, and is not covered under the civil rights act of 1964 , The District court's order in the First Amended complaint that the petitioner obtain EEOC letter to sue in federal court was an error, since petitioner was not an employee of the hospital, the Statute only applies to employees. This court should rule on this error.

8. Petitioner filed claim under antitrust law section 4 of the clayton act because of the unlawful termination of privileges, causing significant injury due to monetary loss, injury to the medical

business and destruction of the career of the plaintiff. Plaintiff had standing, the district court and 7th circuit court of appeals ignored the claim. This court to rule on the ignored claim.

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3. Laura Concanon

4. Nora Byrne

5. Norma Thornton

6. Thomas Mulvar

7. Medical Quality Council of Presence St. Mary and Saint Elizabeth Hospital

8. David Hines

9. Ada Arias

10. Raghu Ramadurai

11. Ernesto Cabrera, Discovery Defendant

12. Savedra Olga

13. Dana I. Vais

14. Alex Dictryk, Discovery Defendant

15. Michael Maghrabi

16. Board of directors Presence St. Mary's and Elizabeth Medical center

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Related cases

- Nazir Khan v. Presence Chicago Hospitals Network, doing business as Presence Saint Mary and Saint Elizabeth Hospital, et el. No 1:20-cv-03819 United States District Court for the Northern District of Illinois, Judgment entered on November 17, 2020 and June 16, 2021.
- Nazir Khan v. Presence Chicago Hospitals Network, doing business as Presence Saint Mary and Saint Elizabeth Hospital, et el. No 21-2159 United States Court of Appeals for 7th Circuit, Judgment entered on January 5, 2022.

IV. Opinions below

1. The opinions of United States Court of Appeals for the 7th Circuit appears at Appendix A and is published.
2. The opinion of United States District Court appears at Appendix B and is published.

V. Jurisdiction

Seventh circuit United States court of appeals decided petitioner's case No. 21-2159 on January 5th 2022.

Petition for rehearing was denied by the United States Court of appeals for the Seventh Circuit on February 3, 2022.

Jurisdiction of the United States Supreme court is invoked under 28 USC section 1254(1).

VI. Index of Appendices

VII. Constitutional and Statutory Provisions Involved

The Fourteenth Amendment of the Constitution provides in relevant part that "The Fourteenth Amendment Due Process Clause and Equal Protection clause (Section 1), expressly declares no state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any Stata deprive any person of life, liberty, or property, without due process pf law..."

The civil rights act of 42 USC § 1983 provides in relevant part that: "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution, shall be liable to the party injured..."

Title IV – Health Care Quality Improvement Act of 1986

Sec. 411 [42 USC 11111] (a)(1) mandates to have Federal immunity. The peer review committee actions, hospital's actions should be done under four standards 42 USC sec. 412 [42 USC 11112]:

(a)In general

For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken—

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such

reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.

(b)Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) Notice of proposed action

The physician has been given notice stating—

(A)

(i)that a professional review action has been proposed to be taken against the physician,

(ii)reasons for the proposed action,

(B)

(i)that the physician has the right to request a hearing on the proposed action,

(ii)any time limit (of not less than 30 days) within which to request such a hearing, and

(C)a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

(A)the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B)a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1)(B)—

(A)subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

(i)before an arbitrator mutually acceptable to the physician and the health care entity,

(ii)before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

(iii)before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B)the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C)in the hearing the physician involved has the right—

(i)to representation by an attorney or other person of the physician's choice,

(ii)to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii)to call, examine, and cross-examine witnesses,

(iv)to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v)to submit a written statement at the close of the hearing; and

(D)upon completion of the hearing, the physician involved has the right—

(i)to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii)to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

VIII. Statement of the case

The plaintiff Nazir Khan is a pro se litigant, has been in practice of cardiovascular and thoracic surgery since 1983. He is a highly competent and skilled surgeon who can perform complicated cardiovascular and thoracic surgeries. District court judge acknowledged this fact in the decision, filed on 11/17/2020 (Id at 2-3). Plaintiff became attending surgeon in cardiovascular and thoracic surgery at Presence St. Mary and St. Elizabeth hospital and served the hospital for 20 years from 1998 to November 3, 2017 as an independent contractor to the hospital. From 1983 to 2017 Plaintiff was an attending Cardiovascular Surgeon at Our Lady of Resurrection, where Plaintiff performed

complicated surgical cases on Jehovah's witnesses without blood like removal of the ling and abdominal aortic aneurysms and the cases came from out the State from Wisconsin and referrals from Mayo Clinic. Review of 110 cases from John Hopkins Chief of Surgery stated that Dr Khan is not only competent he is an asset to the community of Chicago. Plaintiff invented and patented two medical devices, a Hybrid Arteriovenous shunt for cleaning blood of impurities in Chronis kidney failure patients. Review of 4 cases in the law suit were sent to outside reviewer CIMRON, the reviewer reported that the Plaintiff is a novel surgeon meaning he can perform difficult surgeries which others cannot do. One of the cases took 8

hours, this case testified that Dr. Khan is physically fit with superior mental abilities. Plaintiff complaint was dismissed in the District Court for lack of subject matter jurisdiction under 12(b)(1) and 7th Circuit Appeals Court affirmed Plaintiff was denied justice in the District Court and 7th Circuit Court Plaintiff now moves to Supreme Court for justice in the case. The questions presented are discussed in detail in subsequent sections.

Introduction

It was on November 3rd 2017 Plaintiff was forced to sign leave of absence by the chief medical officer and chief executive officer of the Presence St. Mary and St. Elizabeth hospital, without providing any cause. Plaintiff told

them there is no imminent danger to the patients by his actions and that he has two more surgeries to perform on that day. They allowed the surgeries to be performed and stated that he must sign the letter of leave of absence which will be effective from November 4th 2017 otherwise the petitioner will be suspended. Petitioner had no choice but to sign leave of absence letter under duress. There was no date on the letter to indicate the duration of the leave of absence. From November 4th Petitioner could not exercise his privileges of seeing the patient and performing surgeries. This invoked civil rights act of 42 USC 1983. The petitioner was terminated on June 18th 2018 by the governing board on the

recommendations of medical executive committee that he did not undergo cognitive disability testing. The president of the medical staff Dr. Ada Arias sent a letter to the petitioner on November 17th 2017 on behalf of the medical executive committee that a peer review committee has been set up and four cases will go to the outside reviewer and the peer review committee will review petitioner's responsiveness to calls, high infection rate, report of the four cases that are to be sent to an outside reviewer, and also petitioner to undergo physical and neurocognitive testing. See also Appendix G 123a The petitioner presented before the peer review committee on February 7th 2018. All the issues were

discussed. The petitioner was cleared by the peer review committee, there was no adverse action by the peer review committee (see Appendix F 116a also Appendix E 113a affidavit). Dissatisfied with the recommendation of the peer review committee. The medical executive committee got the petitioner terminated by the governing Board, on the ground that he did not undergo physical and neurocognitive testing, the Hospital by laws did not provide that a normal physician be subjected to physical and neurocognitive testing. Petitioner is a healthy person, physically and mentally, and such a testing was not justified. This testing was illegal, unethical, violated statute 42 USC § 12102.

Such an action was intended for harassment and defamation. Plaintiff filed a lawsuit in the federal district court of the northern district of Illinois on 06/29/2020, case No 21-02159 under federal question of jurisdiction USC 28:1331. District court dismissed amended complaint on the basis that plaintiff has no Federal claims under 12(b)(1), and failure to state a claim under 12(b)(6), plaintiff timely filed appeal to the 7th circuit, who affirmed district court and also rehearing was denied.

A) Proceedings in the Northern District court of Illinois (Appendix B)

In the first amended complaint 37a all the defendants were properly served

within 90 days under FRCP 4(m). Complaint filed on 06/29/2020 in the district court. All the defendants served properly by 9/25/2020 within less than 3 months.

I. Voluntary termination of petitioner's privileges from St. Mary and St. Elizabeth hospital (Appendix F 116a) was wrongful, fraudulent with misrepresentation of facts as discussed below.

Medical executive committee members and president of medical staff stated that termination of privileges is based upon peer review recommendation, which is incorrect. The peer review committee never

recommended plaintiff's privileges be revoked because he did not undergo physical and neurocognitive testing. The peer review committee cleared the petitioner with no adverse action.

In the first amended complaint petitioner presented claim of Termination of plaintiff's privileges as wrongful, fraudulent and misrepresentation of the facts. Plaintiff was told by the president of medical staff and the members of the medical executive committee, and chief medical officer Laura Concannon (Appendix G 123a) to undergo physical and neurocognitive testing prior to any reinstatement. Plaintiff refused that he is a normal person with good physical and mental

ability, and such a testing is unethical, illegal, violates 42 USC § 12102. statue stated definition of disability.

(1) DISABILITY The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) MAJOR LIFE ACTIVITIES

(A)In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B)Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain,

respiratory, circulatory, endocrine, and reproductive functions.

Petitioner does not fit in category of cognitive disability testing. This testing under the hospital by-laws is meant for drug addicts and chronic alcoholics who have cognitive deficit further such patients are first sent to physician wellness committee who interrogates the physician and if they find any evidence of mental impairment of the physician, they order the testing of the physical or neurocognitive testing. The plaintiff is a normal physician physically and mentally, he was not subjected to any procedure rules under the hospital bylaws before the physician wellness

committee for evaluation, physical and mental status.

Review of the termination letter (See Appendix F 116a) shows that the termination is voluntary. Plaintiff never signed any voluntary termination letter, under the hospital bylaws. Voluntary termination is meant for those applicants who are on leave of absence and do not submit letter of reinstatement prior to the expiration of the date of leave of absence. The dates of petitioners leave of absence was written by the administration from November 4th 2017 till February 28th 2018 without petitioners' consent. The chief executive officer of the hospital ordered the petitioner on December

21st 2017 to submit a letter of reinstatement. Plaintiff acted accordingly, submitted the letter to chief of surgery on February 7th 2018, and this letter was not forwarded for approval to the governing board by the medical executive committee and the President of the Medical Staff stating that unless the petitioner goes for physical and neurocognitive testing he will not be reinstated. This constituted willful misconduct on the part of President of Medical Staff and the members of the executive committee, this court should sanction the Chief medical officer, the President, and members of the executive committee.

The voluntary termination letter stated that there is no adverse action by the Medical

Staff, the decision is administrative such an action violates statute 42 USC § 11151 under human care quality improvement act of 1986. The statute states when there is there is no adverse action the privileges should not be revoked. All the aforementioned evidences indicate that plaintiff's privileges were wrongly terminated with fraud and misrepresentation of the facts there was no justification for the plaintiff to undergo cognitive disability testing and physical testing.

Plaintiff requests this court to declare the termination of the plaintiff's privileges was wrongful under the statute 42 USC section 11151 and provide relief under Federal rule of

civil procedures 60 (b)(3) for 2,000,000 (two million) dollars.

II. Lack of subject matter jurisdiction.

RULE 12(h)(3) STANDARD

Federal Rule of Civil Procedure 12(h)(3) instructs: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." As this language makes clear, "[t]he objection that a federal court lacks subject-matter jurisdiction may be raised . . . at any stage in the litigation, even after trial." Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006).

The reason for this "springs from the nature and limits of the judicial power of the United States," which are "inflexible and without exception." Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998) (quoting Mansfield, C. & L. M. R. Co. v. Swan, 111 U.S. 379, 382 (1884)). "Without jurisdiction the court cannot process at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause/" Steel Co., 523 U.S. at 94 (quoting Ex parte McCardle, 7 Wall. 506, 514 (1868)); see also John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc., 588 F.2d 24, 27 (2d cir. 1978) ("[J]urisdiction over

the subject matter provides the basis for the court's power to act, and an action must be dismissed whenever it appears that the court lacks such jurisdiction.") (Citing Rule 12(h)(3)).

Thus, a court may not "resolve contested questions of law when its jurisdiction is in doubt," but must instead decide jurisdiction first. Steel Co., 523 U.S. at 101. To do otherwise, the Supreme court has held, is "to act ultra vires." Id. at 101-02. Because "standing to sue" is a "threshold jurisdictional question," id. 1t 102 – and one that the plaintiff "bears the burden" of proving "at the trial stage," Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) – this Court must address that question before it can proceed any further in

this case. These is no such thing as "hypothetical jurisdiction." Steel Co., 523 U.S. at 101. A court without jurisdiction may not consider the merits of the plaintiff's claims – even if only to reject them.

Plaintiff pleaded four federal claims in first amended complaint.

1. Antitrust claims, Sherman act 1 and 2;

2. Section 4 Clayton act;

3. Civil rights act of 1991;

4. Health care quality improvement act of 1986 (HCQIA).

And five state claims:

1. Violation of hospital bylaws, forcing the plaintiff to sign the leave of absence;
2. Fraudulent action, misrepresentation of facts, wrongful termination of plaintiff's privileges;
3. Breach of contract;
4. Defamation;
5. Mental distress.

The defendants of the Presence Network had no federal claims. The district court of Northern District of Illinois had no jurisdiction on the defendants' motion under rule 12(b)(1), Appendix F 116a, whereas had jurisdiction on the plaintiff's claims under 28 USC § 1331. The district court should have dismissed the defendants' motion under rule 12(h)(3). The

district court wrongfully terminated plaintiff's complaint and made the defendants as prevailing party.

Violations of antitrust claims under Sherman act 1 and 2

The hospital administration in concert with members of executive committee, Chief medical officer, conspired in bad faith to remove the petitioner from the medical staff without any cause. The motive was very clear: to reduce competition among seven other independent peers and intervention radiology department, violating Sherman act 1.

Plaintiff suffered severe economic injury from the loss of hospital privileges. Hospital

administration had complete monopoly to remove any physician from the staff without any cause, violating Sherman act 2. The plaintiff was performing endovascular surgeries on the arteries of the patients. The hospital has to buy balloons and stents from other states, thereby affecting interstate commerce. The three elements of the Sherman act were satisfied, that is restrain of trade, economic injury, interstate commerce. District court made erroneous decision in denying claim under Sherman act 1 and 2.

Under Section 4 of the Clayton act, plaintiff had claimed severe economic injury that had resulted from the action of the hospital, terminating his privileges that

amounted to constitution III injury. The district court judge ignored the claim, did not redress constitution III injury.

The civil rights act of 1991

The civil rights act of 1991 discrimination claim was invoked by the plaintiff because four cases of plaintiff were sent to outside reviewer, out of 110 surgeries that plaintiff performed in 2017, plaintiff requested medical staff president that there are three endovascular surgeons out of 7 peers, who performed endovascular surgery. Petitioner's six months cases and three peers' 6 months cases be sent to the outside reviewer for evaluation of results and infection rate. That was denied by the medical executive

committee and the hospital. Petitioner filed a claim under civil rights act section 1991 for intentional discrimination. **The district court judge stated that such an act never existed and construed the claim as 42 U.S.C. 1981. See Appendix B 59a.** Both these claims have four years of statute of limitation. The district court created a conflict on the claim with supreme court ruling.

There is a conflict regarding the civil rights act of 1991 between the district court and the supreme court judgment in the 1st amended complaint. The district court judge stated that the civil rights act of 1991 does not exist, and construed the claim as 42 USC 1981. Congress enacted act under 28 USC § 1658 and

applied the act if cause of action arose after December 1990. The statute of limitation is 4 years. The supreme court ruled in [*Jones v. R.R. Donnelley & Sons Company, No. 02-1205, US Sup Ct, May 3, 2004.*]

Plaintiff's civil rights claim 1991 was a valid claim in the first amended complaint, and supreme court has ruled on it. The judgment of the district court was erroneous in violation of supreme court ruling and congressional act 28 USC section 1658.

This court should resolve the split between district court and supreme court ruling.

Even if plaintiff had only one federal claim, under 42 USC 1981, construed by the district court, in-lieu of claim 1991, that satisfied the requirement subject matter jurisdiction under 28 USC § 1331. See Supreme court ruling Gibbs, 383 U.S. at 725. Therefore, the district court had no reason to dismiss first amended complaint on the basis of lack of subject matter jurisdiction under rule 12(b)(1). The judgment of the district court was erroneous and there was no reason to decline state claims of, voluntary termination of petitioner's privileges, and four other state claims under 28 U.S.C. section 1367(c)(3).

Plaintiff had four federal plausible claims under Twombly and Iqbal standard.

Plaintiff's complaint had sufficient facts to give rise to plausible claims under Bell Atlantic Corp. v. Twombly 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Under seventh circuit ruling pro se litigants' pleadings should be relaxed, construe liberally with less stringent standards. Plaintiff survived rule 12(b)(6) to dismiss for failure to state a claim. The defendants have no federal claims, their motion should have been dismissed for failure to state a claim under 12(b)(6). District court did not do that, only dismissed plaintiff's claims under rule 12(b)(6). Therefore, the district court should have dismissed the defendants' motion Appendix D 94a for failure to state a claim under 12(b)(6)

and terminate the defendants' motion for lack of subject matter jurisdiction under rule 12 (b)(1) and 12(h)(3) as void judgment. District court made an error in judgment. This court should declare that district court judgment was erroneous, and reverse the decision of the district court in making the defendants as prevailing party.

The claim under human care quality act of 1986 was a valid claim of a plaintiff. The district court dismissed the claim on the basis of that HCQIA act does not create a private cause of action. The district court misunderstood the claim. The plaintiff contended that Health care improvement act of 1986 immunizes the members of the peer

review committee from damages, they have to conduct the review under four standards of Health care improvement act of 1986 42 USC 11112(a).

Under standard (a)(1) in the reasonable belief that actions was in the furtherance of quality health care, the fact of the matter is the action was not for the furtherance of quality health care but to terminate a highly competent petitioner. Under standard (a)(2) after a reasonable effort to obtain the facts of the matter, the defendants made 6 months enquiry, did not find any evidence that indicated the petitioner had any physical or mental impairment. Under standard (a)(3) after adequate notice hearing procedures are

afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, petitioner was denied adequate notice and hearing procedures, the report of the external reviewer, see Appendix F 116a, was received by the petitioner after the peer review committee meeting ended. Violating constitutional due process clause of the plaintiff. That makes defendants' motion void. The plaintiff seeks $1,000,000 (one million dollars) damage under rule 12(b)(4).

Standard (a)(4) is a combination of 2 and 3 standards. When the peer review committee was held on February 7th 2018, petitioner had not received the report of external reviewer on four cases, it was received after the meeting

was over. Because the defendants acted outside scope of 42 U.S.C. 11111 (a)(1) and 42 U.S.C. 11112 (a). The rejection of claim of HCQIA of 1986 was improper and erroneous. The hospital administration and members of the executive committee lost federal immunity. The petitioner's claim under Health care quality improvement act of 1986 was proper and the district court had no reason to deny the claim. This court should rule on the Health care quality improvement act claim of 1986.

Defendants had no federal claims and the district court lacked jurisdiction on defendant's motion (Appendix 116a) under rule 12(b)(1) and the court should have dismissed the motion under 12(h)(3). The district court

first had to see that the defendants have federal claims. To do otherwise, Supreme court has held, is "to act ultra vires." Because the district court had no jurisdiction on the defendants' claims under rule 12(b)(1), the court should have dismissed the defendants' motion as void judgment (See Appendix 29a). Steel Co., 523 U.S. at 94 (quoting Ex parte McCardle, 7 Wall. 506, 514 (1868)); see also John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc., 588 F.2d 24, 27 (2d cir. 1978). Plaintiff seeks relief under rule 60(b)(4) for $1,000,000 (one million dollars).

III. Constitution III injury.

Standing is an "essential and unchanging" requirement of every federal case.

Lujan, 504 at 560. It demands that the plaintiff – "for each claim and form of relief sought" – establish a legally cognizable injury that is "fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 353 (2006); Cacchillo v. Insmed, Inc., 638 F. 3d 401, 404 (2d Cir. 2011). These three elements – injury, causation, and redressability – make up the "irreducible constitutional minimum of standing." Lujan, 504 U.S. at 560. If the plaintiff fails to prove them at trial, then the "dispute is not a proper case or controversy" and the court has "no business deciding it." DaimlerChrysler, 547 U.S. at 341.

St. Mary and St. Elizabeth hospital was the principal hospital of the plaintiff from 1998 till November 3rd 2017. Plaintiff was the leading surgeon among seven other peers, provided services in the section of cardiovascular and thoracic surgery as independent contractor. As is evident from Appendix C 87a, the case log of the hospitals, the petitioner performed 357 surgeries in 2014, 258 cases in 2015, 243 cases in 2016, 110 cases in 2017. Petitioner was making more than 300,000 dollars per year. Depriving plaintiff of privileges on November 4th 2017 led to severe economic injury (monetary loss, destruction of plaintiff's career and destruction of his medical business). The plaintiff invoked section 4 of

clayton act. The district court ignored the injury under Clayton act. That speaks of judicial bias of the district court. Plaintiff also sustained Constitution III injury because plaintiff sustained a concrete injury. Supreme court rule in Spokeo, Inc. V. Robins, 136 S. Ct. 1540 (2016) that if plaintiff sustains the concrete injury, he has an article III standing and the Federal courts have to redress. Because plaintiff sustained legally cognizable injury that is fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. DaimlerChrysler Corp. v. Cuno, 647 U.S. 332, 352 (2006); Cacchillo v. Insmed, Inc., 638 F. 3d, 404 (2d Cir. 2011). Plaintiff seeks $1,000,000

(one million dollars) for the constitution III injury damage under rule 60(d)(1), that resulted from the unlawful termination of plaintiff's privileges. Plaintiff is entitled for relief compensatory and punitive damages.

Dismissal of the second amended complaint (Appendix B 72a)

1. Plaintiff never filed a claim under Title VII of the civil rights act of 1964 because plaintiff was an independent contractor. The statute does not cover independent contractors and only covers employed physicians of the hospital. See 9th circuit court ruling 613 F. 3d, 943 (9th cir. 2010). The dismissal of the second amended

complaint on the basis of expiration of the statute of limitation was improper. It is not understood how district court dismissed the title VII claim of Civil rights act of 1964 without prejudice, when the claim did not exist. Plaintiff was forced to obtain the letter to sue "From EEOC", which was wrong. District court knew that plaintiff has filed the lawsuit to the federal court on 06/29/2020 and EEOC letter was issued on 02/10/2021 by the district court director Julianne Bowman, so it was more than two years from the date of termination. Under Title VII

of civil right act of 1984 an employee has to get the letter of EEOC to sue within 300 days (10 months). Plaintiff's request to the district court to toll the statute of limitation, that was denied. The district court denied the second amended complaint on the basis of affirmative defense, barring the claim on the basis of expiration of statute of limitation. This was improper. 7th circuit court of appeals affirmed the dismissal of the second amended complaint under affirmative defense that dismissal of the second amended complaint was proper. But this decision of 7th circuit court was

wrong and supreme court should reverse the decision of the second amended complaint.

2. Dismissal of second amended complaint on second ground under 42 USC section 1983 Appendix B 72a. District court stated (Appendix B 72a) that plaintiff did not seek leave to bring claim under 42 USC section 1983. The district court stated that the court could not dismiss plaintiff's claim on the ground not seeking leave to file the claim. The court would dismiss on merits. The court stated "Dr. Khan's attempt to invoke 42 USC 1983 is dismissed with prejudice

because he has not alleged a deprivation of constitutional rights, and defendants are not government officials who acted under color of law. To state a section 1983 claim, a plaintiff must allege that he was deprived of a federal right, privilege, or immunity by a person acting under color of state law. See Brown v. Budz, 398 F.3d 904, 908 (7th Cir. 2005). Dr. Khan's employment claims against private actors plainly does not fall within the ambit of § 1983". The fact of the matter is that the plaintiff invoked violation of the claim under 42 USC section 1983 on

two grounds. One, that plaintiff's privileges were deprived by the hospital and medical executive members on November 4th 2017 under the color of state law. St Mary and St. Elizabeth hospital are licensed by the state of Illinois to provide care to the patients. The hospital actions and members of the executive committee are state actors. They violated section 1983, depriving the plaintiff of privileges. Dismissal of the claim by the district court was improper under the statute. Seventh circuit court affirmed district court the supreme court should reverse the

decisions of the district court under section 1983.

IV. Violation of the petitioner's constitutional rights under 14th amendment and under 42 USC § 1983.

Plaintiff had a 2 years contract with the hospital as an independent contractor from January 1st 2016 till December 31st 2018. This contract was breached on November 4th 2017 and from November 4th petitioner could not exercise any privileges of seeing the patients and performing surgeries, that violated 42 USC § 1983 and also constitutional rights under 14th amendment. Contract was a property right of the plaintiff, he

could not perform surgeries from November 4 2017 till December 31st 2018, that is one year and about two months. Plaintiff was stopped by the hospital from exercising his privileges, abridging plaintiff's property rights, constituted violation of 14th amendment of the constitution. Further, when the privileges were terminated on June 18th 2018, fair hearing rights were denied to the plaintiff, causing violation of due process clause of the Constitution. When the peer review was conducted on February 7th 2018, the report of the four cases of the outside reviewer CIMRO was not provided to the plaintiff before

the meeting, it came to the office at about 1:26 pm, the meeting had already ended at noon, see Appendix G 123a, started at 10 am and ended at noon. Under federal statute 42 USC 11112(a)(3) adequate notice and hearing procedures was not given to the plaintiff, and that lead to the violation of the due process clause of the 14th amendment of the constitution. The petitioner could not prepare for the case and could not consult an attorney prior to the meeting. Plaintiff filed a motion for violation of constitutional right that was denied by the court. Plaintiff seeks $1,000,000 (one million dollars) in relief for violation of

14th amendment of the constitution and 42 USC section 1983 under rule 60(b)(6).

B) Proceeding in the United States court of appeals for 7th circuit (Appendix A 1a).

7th circuit court made the following erroneous decisions in the case.

Conflict between the 7th circuit and other circuits.

A conflict arose between the 7th circuit court of appeals and other circuits: Fourth Circuit' decision in Borzilleri v. Mosby, 874 F. 3d 187 (4th Cir. 2017), and the Eight Circuit's decision in Ivy v. Kimbrough, 115 F. 3d 550 (8th Cir. 1997). All the circuits including the 7th circuit agree there should be jurisdiction under

rule 28(a) and rule 28(b). The 7th circuit court of appeals in it's decision created a split with other circuits. This court has to resolve the split. When the respondents filed a reply brief in response to plaintiff's brief, one of the screening judges of the 7th circuit appeals court found out that the respondents' brief is inadequate, incomplete (**See Appendix A** 15a dated September 30, 2021). Before submitting the case to 3 judge Merit Panel, the screening appeals court judge ordered the respondents to show that appellant's jurisdictional statement is complete and correct, in compliance with rule 28(a), rule 28(b). Respondents failed to provide jurisdictional statement, which is complete and correct. All circuits maintain that jurisdictional

statements must show that appellants' jurisdictional statement should be complete under rule 28(a) and also under rule 28(b), the respondents have to show that the district court had jurisdiction and appeals court had jurisdiction, Plaintiff filed a motion of void judgment of district court's decision in amended complaint and second amended complaint. See **Appendix A** 29a This was submitted to the Merit panel of the 7th circuit court on October 7th 2021. The merit panel did not act on jurisdictional statement and violated the rules of the 7th Cir. R. 28(b) under the rules in Baez-Sanchez v. Sessions, No. 16-3784, the 7th circuit merit panel should have stricken the defendants' reply brief and district court's

judgment on the plaintiff's amended complaint and 2nd amended complaint. Appeals court did not do that and made an erroneous decision of affirming district court in violation of federal rule of civil procedure 12(h)(3), rule 28(a) and 28(b). **Because of the failure of the appellees to remedy the problem that was raised by the appeals court judge, the reply brief should have been dismissed or sanctions imposed on the appellees.** ***See Meyerson v. Harrah's East Chicago Casino, 312 F. 3d 318 (7th Cir. 2002); Tylka v. Gerber Products Co., 211 F. 3d 445 (7th Cir. 2000).***

The appeals court should have sanctioned the defendant attorney. He obtained the judgment on the merits of the case, knowing that the

respondents lack subject matter jurisdiction and that was a misconduct for which the defendant attorney should be disciplined. ***See Enbridge Pipelines (Illinois) L. L. C. v. Moore, 633 F. 3d 602, 606 (7th Cir. 2011).***

Defendants' claims were frivolous, unreasonable, without foundation. This court should sanction the defendants and their attorney.

The 7th circuit court also made the following errors in it's decision (See Appendix A 1a).

1. Plaintiff was never employed by the hospital. It was an error by the 7th circuit alleging that petitioner Nazir Khan was

formally employed by the Presence Chicago Hospital Network. See Appendix A 1a. Plaintiff provided 20 years of service to the hospital as an independent contractor.

2. Dismissal based on the issue of infection rate and responsiveness to calls. The plaintiff's infectious rate was within normal limits as discussed before the peer review committee as shown in Appendix C 87a Plaintiff had performed 110 cases and out of each there were two infectious cases, so infections rate should be 1.8%. The hospital wrongly recorded plaintiff's infectious rate as 3.75%. Also, another competitor Abdelhady Khalid had infectious rate of 5.28%. This doctor was not subjected to the termination of

privileges. This constitutes discrimination by the hospital. The plaintiff was promptly responding to calls. The peer review committee cleared the plaintiff with no adverse action. Plaintiff was terminated on the pretext that he did not undergo physical and neuropsychiatric testing. Such a testing was unjustified, violative of statute 42 USC 12102. The supreme court should reverse the decision of 7th circuit.

3. Plaintiff never filed a claim under title VII of the civil rights act 1964 in the first amended complaint(.see AppedixB 44a) Plaintiff was not entitled to the benefit of title VII claim, being not an employee of the hospital, only independent contractor, Statute

does not cover independent contractors, see ninth circuit court ruling in Murray v. principal Financial group inc. 613 F. 3d 943 (9th cir. 2010). The plaintiff was forced to get letter from EEOC to sue in the district court. The district court judgment was erroneous. Seventh circuit court of appeal should not have affirmed District judgement in the dismissal of 2and amended complaint

4. 7th circuit court affirmed that HCQIA 1986 does not provide a private cause of action. Plaintiff did not dispute that, but what the plaintiff was contending that the peer review committee did not act within the four standards of 42 USC 11112(a) and the hospital,

therefore, lost the federal immunity. Denial of the claim under HICQIA 1986 was an error.

Because the 7th circuit court lacked jurisdiction under 12(b)(1) standard, under rule 28(a) and 28(b), the7th circuit court should have dismissed the action of the district court, not to adjudicate the case on merits. See Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006). Affirming the decision of the district court was erroneous and 7th circuit court should not have affirmed the district court's decision making the defendants as prevailing party.

5. Petitioner's petition for rehearing, and En Banc was denied on February 3rd 2022. The decision was not on merits, the judges on the

panel voted to deny rehearing without providing any reason (see Appendix A 13a).

6. Seventh circuit court of appeals ignored constitution III injury, did not redress the claim.

In summary, in view of foregoing points 1-6, the 7th circuit court decision was erroneous and this court should reverse the decision.

IX. Reasons for Granting the petition

The court should grant petition for writ of certiorari on eight grounds described below.

1. Petitioner is a normal surgeon physically and mentally. He has been described as highly competent surgeon, an asset to

Chicago community, as a novel surgeon by an outside reviewer. He is an innovative surgeon, has two patents to his credit. His privileges were deprived on November 4th in violation of 42 USC sec 1983 and 14th amendment of constitution. Plaintiff did not have any cognitive disability. All EEOCs directors and attorneys have sued the hospitals for perceived disability of the employees for compensatory and punitive damages. Plaintiff was instructed by the members of the executive committee and president of medical staff and hospital chief medical officer (Appendix G 123a) that reinstatement of privileges will not occur unless you undergo physical and neurocognitive testing. Plaintiff replied that

testing was not justified. It is unlawful, unethical, unconstitutional, violative of stature 42 USC 12102, in retaliation hospital executive committee members, president of medical staff, got the plaintiff terminated from the medical staff, from June 18th 2018 by the governing board (Appendix F 116a).

The court should rule that cognitive disability testing for normal physicians is illegal, unconstitutional, violative of statute 42 USC 12102. There are 98502 physicians In the United States. The court's ruling will have a national importance. It will protect normal physicians all over United States, and will deter the hospitals from using unlawful cognitive disability testing for normal

physicians in the termination of hospital privileges. There are 7 other peers in the hospital with the plaintiff. They are at eminent risk of losing their privileges, if hospital uses their abusive cognitive disability testing against them. The testing costs $3000 and a normal physician will not accept that, then the hospital has an excuse of terminating normal physicians. It is crystal clear that members of the executive committee and the hospital were working with misconduct. This court should sanction the members of the executive committee, the Hospital and the defendant attorney who brought frivolous allegations, vexatious, defamatory, unreasonable, without foundation.

Petitioner appeared before the peer review committee on Feb,7th 2018, discussed four cases, physical and neuro psychiatric testing question. Petitioner asked chairman and chief of surgery, members of committee why petitioner has to undergo testing, petitioner is a normal person physically and mentally. they had no answer. Petitioner was cleared with no adverse action (see **Appendix F** 16a) and Plaintiff's affidavit **Appendix E** 113a . Hospital administration members of executive committee had no authority under statute SEC431[42 U.S.C 11151] to revoke petitioner's privileges as voluntary termination, their actions constitute willful misconduct, this court should sanction them. This court should rule

that when a reviewed physician is determined by peer review committee to have no adverse action under statutory provision under [42 U.S.C 11151] physician privileges should not be revoked. There are thousands of Physicians all over united states who are who are subjected to peer review process, this court's ruling will protect those physicians who are cleared with no adverse action, their privileges should be restored, this court's ruling is of national importance. Hospitals all over united states will be deterred, from using cognitive disability testing for normal physicians, in termination of privileges. Hospitals have to follow mandatory guidelines of human care quality improvement act of 1986

section [42U.S.C11151], Hospitals have no authority to terminate physicians by using abusive testing of physical and neuro cognitive testing in violation statue [42 USC 11151. Plaintiff is a normal physician physically and mentally was terminated in violation, statue [42 USC 11151]. This court should reverse erroneous decision of the district court of the Northern District of Illinois See (**Appendix B** 37a, 72a) and seventh circuit erroneous decision (**Appendix A** 1a). This Court should order District court to issue permanent injunction to the Hospital's order (**Appendix F** 116a) and restore plaintiff's privileges.

This court's ruling will have an impact on the public. The public deserves quality care

from normal competent physicians. Congress enacted HCQIA of 1986 to ensure that competent physicians render quality care to the public and patients, under sec 402 [42 U.S.C11101]. A reviewed physician by the peer reviewed committee determining that there is no adverse action is a competent physician. This court's ruling will help public all over United States to get quality care from competent physicians. Hospitals' removal of competent physicians on the pretext of not undergoing physical and neuropsychiatric testing is illegal, violative of statute 42 USC 11101. This court should rule that St. Mary hospital and members of executive committee

violated statute in termination of plaintiff's privileges.

2. This court should rule that if there is a lack of subject matter jurisdiction for having no federal claims, the complaints or motions should be dismissed under rule 12(h)(3). The plaintiff had Federal question of jurisdiction under 28 USC 1331, Plaintiff's complaint was wrongly dismissed, defendants had no federal claims and their motions (Appendix D 94a) should have been dismissed for lack of subject matter jurisdiction under rule 12(h)(3). The court should rule that dismissal of the plaintiff's first and

second amended complaint by the district court and affirmation by the 7th circuit court was improper and wrong. This court should reverse.

3. This court should resolve the conflicts between district court and supreme court ruling on federal claim 1991 and 7th circuit and other circuits court on the question of jurisdictional statement which should be complete and correct, under Fed. Rule FRCVP28 (a) and 28(b). (See **Appendix A** 15a), Order of the court.)

4. This court should rule that the actions of the defendants violated the constitutional rights of the plaintiff

under 14th amendment of the constitution and 42 USC 1983.

5. This court should rule that the plaintiff had constitution III injury from the unlawful acts of defendants. The district court and 7th circuit appeals court did not redress the injury. The court should redress the constitution III injury and provide relief under rule 60 (d)(3).

6. District court and 7th circuit court of appeals ignored plaintiff's injury under section 4 of clayton act. This court should provide relief to plaintiff as court deems proper.

7. This court should rule that hospital and members of executive committee violated four standards under 42 USC 11112(a) and lost federal immunity under Title IV HCQIA of 1986, 42 U.S.C. 11111(a)(1). Plaintiff's claim under HCQIA was valid, well-pleaded, plaintiff seeks equitable relief for violating claim under Human care quality improvement act 1986. District court and 7th circuit appeals court dismissal of the claim was erroneous in violation of the HCQIA of 1986.

8. Petitioner was not an employee of the hospital. District court ordering plaintiff to get EEOC letter to sue in

federal court was an error, in violation nineth circuit ruling in Murray v. principal group holding that statute of Title VII of civil rights act 1964 does not cover independent contractors like plaintiff. See 613 F. 3d 943 (9 cir. 2010). Plaintiff's dismissal of first and second amended complaint was improper. This court should reverse the decision of the district court (Appendix B 37a, 72a) and also 7th circuit court of appeals (See Appendix A 1a).

Relief

This court should provide relief to the plaintiff under FRCP 60(b)(3), 60(b)(4), 60(b)(6) and 60(d)(1).

Conclusion

Certiorari should be granted.

Dated:_____ By:_____

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