Supreme Court, U.S.
FILED
DEC 27 2022
OFFICE OF THE CLERK

No. 22-626

# In the Supreme Court of The United States

Eman S. Hegazy and Hazem M. Hamdan
Petitioners,

vs.

Tim Walz, Keith Ellison, Joan Gabel, Keith Mays,
and Bridgett Anderson, all in their official capacities,
Respondents.

On Petition for a Writ of Certiorari
to the Minnesota Supreme Court

## PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

## QUESTIONS PRESENTED

Petitioner, Eman Hegazy, suffered from fatal complications because of her treatment by undergraduate students under the supervision of their professors, during an educational session at the University of Minnesota School of Dentistry (the School). She was admitted to the Emergency Room twice within eight days. The questions presented are:

1) Are complainants to the Minnesota Board of Dentistry (the Board) entitled to the statutory due process as plainly stated in 45 CFR § 164.508, and MN Statutes: 214.001, 214.10, 214.103, 150A.081, 13.04, 13.05, 13.055, 325L.08, 325L.09, 144.292 and 144.293? Can this Court affirm due process to the complainant as a corollary of *Withrow v. Larkin*, 421 U.S. 35 (1975), since fairness to the complainant is reciprocally fairness to the licensees, and retributive justice is the complainant's right against licensees?

2) The School is a public institution and a participant in the Medicare/Medicaid Program. Thus, the School is *theoretically* bound to uphold Patients' Rights under 42 CFR § 482.13. Does the School have a duty to resolve Hegazy's grievances as *mandated in the statute?* Notably, Hegazy's treatment was covered by Medicaid. Did Dean Mays and his colleagues have a fiduciary duty to answer Hegazy's medical questions on the causes of her complications? Should their silence give rise to an adverse inference, especially one of her complications was expressly excluded from the surgery's informed consent?

## PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page. The parties to this proceeding include:

I. Petitioners: Eman S. Hegazy (Hegazy) and Hazem M. Hamdan (Hamdan), as *pro se* litigants.

II. Respondents:

(1) The MN State Respondents: Tim Walz in his official capacity as Minnesota Governor (Governor Walz). Keith Ellison in his official capacity as Minnesota Attorney General (MN AG). Bridgett Anderson in her official capacity as Executive Director of the Minnesota Board of Dentistry (Board Director).

(2) The University of Minnesota Respondents: Joan Gabel in her official capacity as President of the University of Minnesota (President Gabel). Dr. Keith Mays in his official capacity as Dean of the University of Minnesota School of Dentistry (Dean Mays).

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# In the Supreme Court of The United States

## PETITION FOR A WRIT OF CERTIORARI

Petitioners, Hegazy and Hamdan, respectfully petitions for a writ of certiorari to the Minnesota Supreme Court to review the judgment of the Minnesota Court of Appeals at App. 2a.

## OPINIONS BELOW

The MN Supreme Court denied the review of Petitioners' case on November 15, 2022, at App. 1a. The order opinion of the MN Court of Appeals, at. App. 3a, is unpublished. The District Court's opinion is at App. 11a.

## JURISDICTION

The judgment of the court of appeals was entered on November 17, 2022, at App. 2a. The jurisdiction of this Court is pursuant to 28 U.S. Code § 1257 (a).

## RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATION PROVISIONS

The relevant constitutional, statutory, and regulatory provisions are reproduced in Appendix D, at App. 25a–45a, to this petition.

## STATEMENT OF THE CASE

### I. Private Causes of Action.

This case is to be decided pursuant to the fourteenth amendment to US Constitution's *due process* and *equal protection* of the laws clauses, at App. 25a. Fifth amendment may be pertinent. Both Respondents and Courts are *distracting* on Petitioners' private causes–of–action as alleged in the District Court's complaint.

(1) MN Health Record Act (MHRA), MN Statute 144.298, at App. 40a, against the School and the Fairview Hospital, because of an invalid release form with neither signature nor date, pursuant to MN Statutes 144.293 Subd. 2, Subd. 10 (b)–(c), at App. 38a; and 144.292 Subd. 8 at App. 37a.

(2) MN Government Data Practice Act (MGDPA), MN Statute 13.08, at App. 37a, against the State of Minnesota. No Tennessen warning was given to Hegazy pursuant to MN Statute 13.04 Subd. 2, at App. 34a; no informed consent from her to disseminate her data pursuant to MN Statute 13.05 Subd. 4 (d), at App. 36a; and no data protection on personal Google account pursuant to 13.055 Subd. 2.

(3) Petitioners asked the lower courts to create an implied–cause–of–action under MN Statutes 214.103, at App. 32a, and 144.651 subdivision 20, and its Federal counterpart, 42 CFR § 482.13, at App. 28a, to enforce the administrative remedy in these statutes as an ***equity relief,*** to reach a settlement, based on only scientific evidence, with the State School and its dentists. **Retributive Justice** is a legal right to the aggrieved person. Disciplining those dentists for their infliction of severe agony to Hegazy is her legal right.

(4) Tort claim for the billing dispute with the School. This claim was never analyzed by any court.

The **undisputed legal facts** are: (1) Any signature, wet or electronic, **must** be *authenticated* and *attributed* to the signer. (2) MHRA is stricter than HIPAA, and a violation of HIPAA **must** be a violation of MHRA, which gives rise to a State–

private–cause–of–action against the provider. (3) Tennessen warning **must** be given to the person whose private information to be collected, then this person **must** sign and date an informed consent. The State waived its immunity under MGDPA. (4) Grievance process under MN Statutes: 214.103, 144.651 and 144.691 **must** be a statutory entitlement to the aggrieved patients, especially those whose treatments were covered by Medicare/Medicaid.

## II. Undisputed Factual Events.

On September 23, 2019, Petitioner Hegazy went to the School's urgent care unit, because she had a severe pain in her right lower third molar. Both Petitioners did not expect that the urgent care is part of an educational session, where undergraduate students participated in her care. Two of those undergraduate students were at the level of sophomore. During the preparatory exam, Hegazy reported to them that she had a foul taste and smell in her mouth, and she cried to the degree that one of those students patted on her shoulder. This foul taste/smell is one of the overwhelming indicatives to the existence of active infection, which must be treated first by antibiotics. Then, Hegazy moved to the oral surgery department for extraction. She asked a female student to get antibiotics to treat the infection first. Notably, Hegazy has a bachelor degree in pharmacy. This student denied such a request. Then, she asked the student, who extracted the tooth, to get antibiotics first or after the extraction. The student denied the request, as well. This student read the the surgery's informed consent and he

excluded "sinusitis" in writing from the complications on the list. After he read it, he told Hegazy that he read it as a protocol and none of these complications was likely to occur. This was in clear violation of 16 CFR § 1028.116:

> "No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence." *Id.*

Contrary to his expectation, the active infection spread fast forming a phlegm, and other problems, compromising the airway, and it was about to cause sepsis. One of the complications was left "sinusitis." Then, Hegazy had to go immediately to the surgery room for clearing the infection on September 27, 2019. Upon her discharge on September 28, 2019, Hegazy was prescribed antibiotic pills, Augmentin, which is notorious for causing gastrointestinal problems. Because Hegazy had not eaten for several days, the Augmentin suddenly caused acute colitis on September 30, 2019, and she was admitted to the emergency room on October 1, 2019, and she was discharged on October 2, 2019.

On December 1, 2019, Petitioner Hamdan emailed the former School dean to see the report documenting her complications and its causes. About 2 weeks later, Petitioners received a letter, signed by the patient relations representative, that Hegazy's treatment by both the undergraduate students and

faculty was appropriate. Petitioners were unaware that the School should have afforded Hegazy a statutory grievance process.

Unconvinced by this letter, on December 29, 30, 2019, Petitioner Hamdan filled four online Google forms on the Board website as complaints against four faculty: three faculty in the oral surgery department, and the fourth is the former associate dean for clinical affairs. These forms were clearly "personal" Google forms belonging to a Board employee, and they did not look governmental. Always, Hamdan does not sign personal Google forms electronically, and it is well established that this type of forms does not possess the mechanism for electronic signing. Hamdan did not talk to Hegazy about signing of these forms. There was a statement on the form in extra large font that the complainant does not need to make such an authorization, and the Board would subpoena redacted records from the providers. Hamdan understood what "subpoena" means, but he understood that redaction would be of unnecessary medical information to the investigation. *To him, releasing redacted medical records was better than releasing all records*. It turns out that pursuant to HIPAA, MHRA, and MN Statute 150A.081, at App. 41a, redaction means DE–identification of the patient in the records. Thus, this notice statement is absurd, because the Board already knew Hegazy's identity. The Board Director was informed on December 31, 2019, that Hamdan filled the forms. She emailed Hamdan back: "Yes they have been received and opened. Throughout the process she will receive a letter letting her know the status of the complaint."

Factually, Hegazy never received a single letter or email or phone call from the Board until the closure of the four complaints on July 7, 2020. On July 7, 2020, Hegazy emailed Dean Mays a list of questions on the causes of her complications, including left sinusitis, and he did not respond. Dr. Mays—in his official capacity as dean of the State School—never responded to Petitioners on three occasions. The former dean responded only once, then they sent her this letter. The School completely ignored Petitioners' pleadings for resolving both the billing and the malpractice disputes.

Hegazy never signed an informed consent for the release of her medical records, nor signed an authorization to designate her husband, Hamdan, as her legal authorized representative. From July 7, 2020 to August 11, 2021, Petitioner Hamdan contacted many people to resolve this dispute: MN Attorney General, MN Governor, US Department of Health, FBI, US Attorney in MN, and others. On September 1, 2021, Petitioners submitted a complaint to the MN District Court.

## III. Violations of Plain Statutory Requirements.

Petitioners, below, outline the violations of plain statutory requirements on several counts.

### A. Violations of 45 CFR § 164.508, MN Statutes: 144.292 and150A.081.

MN Legislature vested the Department of Health, 144.292 Subd. 8 at App. 37a, in preparing this form for the release of protected health information in compliance with HIPAA. Nonetheless, the Board

Director created an awfully invalid Google Authorization form. Appendix E, App. 48a–49a, contains this Google form. The lines are numbered to ease referencing them.

- Lines 2–3: Hegazy was not informed of her rights under MGDPA (Tennessen Warning). See Response of *General Counsel* of MN Department of Administration to Hamdan's question on Oct 17, 2022, at App. 50a–51a, "Any collection of private data must include a "Tennessen warning," which is described in Minnesota Statutes section 13.04, subd. 2." *Id.* Notably, MN AG in all of his submissions to the lower courts never proved that the *Tennessen* warning was given to Hegazy.
- Lines 3–5: The person, whose records are to be released, is not named. Is it Hegazy or one of her children? Respondents may argue that Lines 29–38 can help in figuring out that Hegazy's records to be released, but the law requires two personal identifiers to be explicitly mentioned in the form. Cf. 45 CFR § 164.508(c)(1)(ii), at App. 25a. MN Department of Health requires inclusion of full and complete name, at App. 38a, pursuant to MN Statute 144.292 Subd. 8. The authorization form was printed on two sheets, and the first sheet does not have any identifier of the patient.
- Lines 5–7: The statement "dental, medical, or other relevant records containing protected health information" violates the plain language requirements, contra 45 CFR § 164.508(c)(3). See the instruction given on MN Department of Health's form at App. 38a.

- Line 7: The records should have been given "for inspection," nonetheless the Board has kept a hard or an electronic copy of her health records.
- Lines 21–22: Ambiguous typo: "its provide's!"
- Lines 23–28: Notice to the Complainant is really illegal. This statement contravenes the Tennessen warning, and MN Statute 150A.081 Subd. 2. The naive Hamdan's understanding was that this subpoena is enforceable, *akin to* no consent. And it turns out that his understanding is almost consistent with that an administrative subpoena "'is properly enforced if (1) issued pursuant to lawful authority, (2) for a lawful purpose, (3) requesting information relevant to the lawful purpose, and (4) the information sought is not unreasonable.'" *United States v. Whispering Oaks Residential Care Facility, LLC,* 673 F.3d 813, 817 (8th Cir. 2012). Also, *Hamdan expected not all records to be released, and some of contents to be redacted.*
- Lines 40–47: Who are the parties in this agreement? There was no direct contact between the Board and Hegazy to establish such an agreement. There was no public hearing pursuant to Minnesota Administrative Procedure Act (MAPA), in Chapter 14, to establish such an agreement, considering Hegazy as a member of the public who were invited to this hearing. Collecting patient information through ***personal*** Google forms requires a *procedural rule because it affects the privacy of the public like Hegazy.* In the

Board's law, Chapter 150A, MN Statute 150A.04: RULES OF BOARD:

> "The board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with chapter 14." *Id.*

- Line 48: There is no date. Also, Hamdan did not use /s/ to show the intention of signing. Cf. 45 CFR § 164.508(c)(1)(vi), at App. 26a.
- Line 49: Hegazy's email is not used. The Board Director was informed that this is not Hegazy's email. This email is not in her medical records.
- The required *Revocation Statement* is not there. Cf. 45 CFR § 164.508 (c)(2)(i), at App. 26a.
- Hamdan did not receive any acknowledgment and copy of the submission by email. Cf. 45 CFR § 164.508(c)(4), at App. 27a.

Thus, there is no valid–signed–dated–consent from Hegazy to release her medical and dental records to the Board. Scandalously, MN Supreme Court is defying the Federal Law: 45 CFR Part 160 Subpart B: **Preemption of State Law**: "A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law." *Id.* What is about a Google form enacted by the Board Director without even going through the rule–making process pursuant to MAPA 14.06 **Required Rules**:

> "(a) Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal

and informal procedures related to the administration of official agency duties to the extent that those procedures *directly affect the* ***rights of or procedures available to the public***." *Id.* (emphasis added).

In *Chevron U.S.A. v. NRDC*, 467 U.S. 837 (1984), US Supreme Court said: "If the intent of Congress is clear, that is the end of the matter*; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.*" *Id.* (emphasis added).

**B. Violations of MGDPA, Chapter 13.**

MN Statute 13.04 subd. 2, at App. 34a, mandates that the *Tennessen warning* be given to Hegazy before collecting her private protected health information. There is no informed consent from her to disseminate her data pursuant to MN Statute 13.05 Subd. 4 (d), App. 35a. Further, collecting Hegazy's protected health information through a personal Google account transfers the ownership of this data from the State to this employee, and there is no business associate agreement between the State and Google. Thus, the State cannot meet its obligation of disclosure of data breach by sending a notice to individuals who are affected by such a breach, pursuant to MN Statute 13.055, App. 35a, Subdivision 2. So, the question to the State where is the affidavit that negates such a data breach since the Board Director's acquisition of Hegazy's protected health information? Can the State fulfill its obligation in the future?

### C. Violations of MN Statute 214.10 and MN Statute 214.103.

(1) MN Statute 214.103 Subd. 1(a), at App. 32a, commands the Board to send two notices to the complainant: one within 14 days from the receipt of the complaint, and one after 120 days. Hegazy did not receive any of these notices. Notably, Hegazy should have received at least 2 notices per complaint. *So, the Board forgot to send 8 notices to her*! MN AG misstated MN Statute 214.103 Subd. 1(f) in this responses—three times—to the lower courts. In MN AG's response to MN Supreme Court, he wrote:

> "Finally, Petitioners' new suggestion that section 214.103 entitles them to some degree of procedural due process, is explicitly contravened by the statutory language. *See* Minn. Stat. § 214.103, subd. 1a(f) (stating that failure to notify a complainant of the status of a complaint "shall not be considered by an administrative law judge, the board, or any reviewing court")." *Id.* (emphasis added).

Compare this to the plain language of MN Statute 214.103 1a(f), at App. 33a, and rationale for this:

> "Such a failure by the board shall not be the basis for a licensee's request for the board to dismiss a complaint, and shall not be considered by an administrative law judge, the board, or any reviewing court." *Id.* (emphasis added).

Petitioners are *warning* lest they may repeat the same lie for the fourth time. In *Rohmiller v. Hart*, 811 NW 2d 585 (2012), MN Supreme Court said: "We

cannot add words or meaning to a statute that were intentionally or inadvertently omitted." *Id.* MN AG forgot that he is no longer a lawmaker, and he *rewrote* the entire subdivision. Assume, *arguendo*, that it was as he said. It is agreed that "Distinctions in language in the same context are presumed to be intentional." *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 759 (MN 2014). The same statute does not explicitly bar the complainant from suing the Board for the violation of subdivision 10, at App. 29a. Thus, the silence in this subdivision 10, on the contrary, would imply that the complainant can sue for the violation of this subdivision, which plainly *prohibits* such a participation of Board members.

(2) MN Statute 214.103 Subd. 9, App. 34a, mandates that the Board should have sent Hegazy a written description of the board's complaint process, and actions of the board relating to the complaint. The Board sent Hamdan by email a single generic letter regarding the four complaints with no specificity to each complaint's process and the actions of the Board relating to each complaint. Further, the closure letter contains this false statement at the beginning: "As you may recall from previous correspondence shared with you..." *Id.* Factually, nothing was shared with either Hegazy or Hamdan!

(3) MN Statute 214.10 Subd. 8(b), at App. 31a, and MN Statute 214.103 Subd. 10, at App. 34a, *prohibits* participation of a board member, who has a direct current or former financial connection or professional relationship to a person who is the subject of board disciplinary activities, in any board

action related to that person. In Hegazy's case, the two dentists, who were on the Board's Review Committee, are adjunct faculty at the School. One of them is working in the same oral surgery department, where Hegazy was treated. Further, Hamdan filled a complaint against the former associate dean for clinical affairs, who was their hiring authority, and professor. MN Statute 214.001 (App. 29a) requires *procedural fairness*. Indeed, it has come to be the prevailing view that "[m]ost of the law concerning disqualification because of interest applies with equal force to.....administrative adjudicators." K. Davis, Administrative Law Text § 12.04, p. 250 (1972). In *Ohio Civil Rights v. Dayton Christian Schools,* 477 US 619 (1986), US Supreme Court said: "We stated in *Gibson v. Berryhill*, that "administrative proceedings looking toward the revocation of a license to practice medicine may in proper circumstances command *the respect due court proceedings*." *Id.* (emphasis added).

**D. Violations of MN Statute 325L.08, 325L.09.**

MN AG may repeat his *unmitigated nonsense* that there is no private cause of action under MN Statute 325L: UNIFORM ELECTRONIC TRANSACTIONS ACT. Plainly, violation of this statute leads to an *invalid* electronic signature (forgery). Thus, the private cause of action is under the other statute which requires signature. See MN Statutes 325L.06 and 325L.08(b) at App. 42a-43a. In this instant case, the other statutes with private cause of action are MN Statutes (MGDPA) 13.08 and

(MHRA) 144.298. Since there was no communication between Hegazy and the Board in any means (oral or writing), you cannot attribute any signature to Hegazy on these Google forms; even the form itself is invalid. Also, there was neither written nor oral authorization from Hegazy to designate Hamdan as her authorized representative. *Four times, Hamdan did not sign it by not writing*: (1)/s/ before her name. (2) date. (3) her email. The District Court, at App. 22a, lied by saying: "The complaint does not allege Mr. Hamdan lacked authority to sign for his wife." *Id*. Factually, it is one of the complaint's allegations.

**E. Violations of 42 CFR § 482.13, and MN Statutes 144.651, 144.691.**

42 CFR § 482.13 (a)2(i)–(iii) defines the minimum requirements for such a grievances process, App. 24a–25a. None of these occurred in this instant case. Also, MN Statute 144.691 Subdivision 2 requires such a notice to the patient, at App. 41a. Notably, 144.691 Subd. 3, App. 41a, vests the state commissioner of defining such a process, but the fine is very small per offense. In this instant case, Petitioners are seeking to enforce this grievance process as an administrative remedy for the violation of Patients' Bill of Rights, if not under the state law, then under the Federal law. *Especially, Hegazy was a beneficiary of Medicaid*. The Petitioners are not aware whether such a statutory process exists or not at the School. Grievance process at the University of Washington School of Dentistry, is here: https://dental.washington.edu/policies/clinic-policy-manual/patient-complaints/

The University of Minnesota may argue that Hegazy got the email review by one of the faculty. What type of investigation by the University without questioning the accuser and the accused! Again, Petitioners received this email on August 11, 2021, almost 2 years after the complications. The faculty's email, to his team in the oral surgery department, lacks a cornerstone: questioning Hegazy and the undergraduate students with cross–examination. Oral records are part of the medical records pursuant to MN Statute 144.291 Subd. 2(c). Also, this email does not answer important questions like: (1) What caused sinusitis which is expressly excluded from informed consent? (2) What is foul taste's indicative? (3) Why not considering other routes for administering the antibiotic after the surgery? Did Dean Mays and his colleagues have a fiduciary duty to answer these medical questions—regarding alleged medical malpractice—by their students and their colleagues, or this Court will consider his silence—innocent—as asserted by his counsels, and no adverse inference should be made. Perplexingly, at least ten faculty were directly involved in this dispute, and they are authorities in their specialties, and the School declined to give Petitioners a report analyzing Hegazy's case at the level of those case studies published in medical journals. If they were confident of their analysis, why are they shy in disclosing it? Had they given Petitioners such a report, our case should not have reached the Courts.

Petitioners asked the lower Courts and Governor Walz about the legitimacy of withholding

the answer to all these scientific questions, while those faculty use patients' data to apply for research grants, and publish case studies in medical journal based on which they get promoted! The School's voluntary participation in Medicare/Medicaid requires the disclosure of their scientific findings in their investigation, if any exists, to resolve the patient's grievances. Even under compulsion by Court order, since *Hale v. Henkel,* 201 U. S. 43 (1906), it has been understood that a corporation (as the University) has no Fifth Amendment privilege and cannot resist compelled production of its documents on grounds that it will be incriminated by their release. Our case should be very typical of *collective entity doctrine*, since many actors were involved in her treatment within the School clinic. More importantly, the School and the Board are state agencies, and thus not entitled to the fifth amendment privilege. Petitioners wanted only the medical analysis of Hegazy's case which should be considered her private information.

## REASONS FOR GRANTING THE PETITION

### I. Due Process to *Pro Se* Litigants And Equal Protection of the Laws.

This Court has been consistently the bulwark of affirming due process to *pro se* litigants versus the government. See *Haines v. Kerner et al.*, 404 U.S. 519 (1972). Petitioners' pleadings are clear, and they are the only side who submitted evidence to support their case. In *Niz-Chavez vs. Garland,* 141 S. Ct. 1474 (2021), SCOTUS said: "But as this Court has long

made plain, pleas of administrative inconvenience and self-serving regulations never justify departing from the statute's clear text....." *Id.* This instant case is not about textual interpretation of an indefinite article "a" as in *supra*, but it is about violations of *complete plain* subdivisions in both Federal and State statutes. Also, this Court declared that where statutory duties are in the form of commands, and there is an "absence of any available administrative remedy," the only mode of enforcement is the courts, "whose jurisdiction and duty to afford a remedy for a breach of statutory duty are left unaffected." (*Steele v. Louisville Nashville R.R.*, 323 U.S. 192, (1944).)

Petitioners had *Right to Petition* the Government of Minnesota pursuant to MN Statute 624.72 Subdivision 1. And, they did. This right was obliterated or sacrificed. MN AG Ellison declined to redress pursuant to MN Statute 214.103 subdivision 8. Governor Walz did not respond, despite his authority in MN Statutes 150A.02 and 214.04. Subd. 2a. President Gabel was shielded from Petitioners by her office. Dean Mays has maintained his innocent silence! Those named officials declined to enforce *state-created* rights/remedies to Petitioners. Thus, they caused breach of their duties. Conclusively, Petitioners exhausted their administrative remedies.

Notably, pursuant to MN Statute 214.10 Subd. 1, at App. at 30a: "... the designee of the attorney general may require the complaining party to state the complaint in writing on a form prepared by the attorney general." *Id.* Supposedly, this Google form should have been approved by MN AG. Nonetheless,

the Board Director prepared a form, which is categorically non–compliant with any law, such as HIPAA or MGDPA. Admissibility of this Google form requires being authenticated pursuant to *Lorraine v. Markel Amer. Insurance Co.*, No. PWG-06-1893, 2007.

The School, also, did not authenticate these forms, as the School is liable under MHRA. Further, the School did not submit any evidence that it followed the *grievances process* as required in 42 CFR § 482.13. Lyingly, the MN Court of Appeals, at App. 9a item#12, is making a false statement of fact that "... [Hegazy] did not argue that any one of the numerous rights in the statute was violated." *Id.* In Petitioners' memorandum to the District Court, their brief and Reply brief to the Court of Appeals, Petitioners elaborated on the grievances process afforded by both the Federal and State laws.

Petitioners firmly believe—as alleged in the complaint to the District Court—that several officials and dentists should be penalized under 18 U.S. Code §1346: Conspiracy to commit mail fraud and an *honest services* fraud: where "intangible property right within the scope of mail fraud statute is Petitioners' right for "damage," if the State held itself liable through a fair procedure. The Board's failure to earlier disclose conflict of interest by its reviewing dentists associated with violating State laws proves this. The Google forms and the closure letter sent to Hegazy through Hamdan's email have false statements of fact, regarding that Tennessen warning was given, and there was a Board communication

shared with Hegazy. See *Skilling v. United States*, 561 U.S. 358 (2010).

**II. Defying Well-Established Precedents.**

The three MN Courts defied well-established precedents by this Court, and MN Appeals Courts.

(1) In *Martens v. Minnesota Mining*, 616 N.W.2d 732 (2000), MN Supreme Court said: "We have held it is immaterial whether or not the plaintiff can prove the facts alleged,... and we will not uphold a Rule 12.02(e) dismissal "if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded..." *Id.* The District Court dismissed the case without any "**single**"affidavit from Respondents, notwithstanding the District Court noted that "Hegazy categorically repudiates these signatures on all forms submitted to the Board," *Id.* at App. 16a. Even, Respondents' motions to dismiss Petitioners' claim should have been denied by applying the plausibility standard of *Twombly,* 550 U.S. at 570, 127 S. Ct. "a pleading must contain "enough facts to state a claim to relief that is *plausible* on its face." *Id.* (emphasis added). Indeed, Petitioners' complaint contains factual allegations that "raise a right to relief above the speculative level," which are **unsigned undated invalid forms**. Notably, in *Walsh v. US Bank*, NA, 851 NW 2d 598 (2014), MN Supreme Court affirmed the *possibility* standard: "... [w]e now decline to engraft the plausibility standard from *Twombly* and *Iqbal* onto our traditional interpretation of Minn. R. Civ. P. 8.01." *Id.*

(2) In *Martin ex rel. Hoff v. City of Rochester*, 642 NW 2d 1, (2002), MN Supreme Court said "[We] read and construe a statute as a whole and "interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Id.* MN Attorney General in his response to MN Supreme Court wrote:

> "Minnesota law that applies to electronic signatures makes clear that state agencies may determine the type of electronic signatures they accept and the terms upon which such signatures are accepted... (citing Minn. Stat. § 325L.18(a) and (b)(2)))."*Id.*

Yes, this part of MN Statute 325L.18(a),(b) says this. The fundamental *question* is: Did the Board Director determine the right type of electronic signature pursuant to the law and common practice in this area, cf. *Security Procedure* in 325L.02(n) at App. 42a? The **litmus test** is showing a sworn statement certifying her electronic signature pursuant to MN Statute 325L.09; Rule 901: Evidence; and MN Civil Procedure Rule 56.03(a): Supporting Factual Positions, in the same way as authentication of wet signature since the *England's Statute of Frauds* (29 Car 2 c 3) (1677). In a precedent by MN Court of Appeals (*SN4 v. Anchor Bank*, 848 NW 2d 559, 2014):

> "But the mere existence of electronic signatures does not end our inquiry. *We must determine whether an electronic signature is "attached to or logically associated with" the electronic record at issue.* See Minn.Stat. § 325L.02(h). In other words, an electronic signature in an e–mail message does not necessarily evidence intent to

electronically sign a document attached to the e–mail." *Id.* (emphasis added.)

(3) In *Expose v. Wilderson*, 889 N.W.2d 279, 287 (2016), MN Supreme Court said:

> "Because the record does not establish that the patient consented to the disclosure of information about his treatment, the district court erred in dismissing a claim that alleged an intern-therapist's disclosure of that information violated the Minnesota Health Records Act, Minn.Stat. §§ 144.291-.298 (2014)." *Id.*

In our case, there is no evidence that Hegazy consented to the disclosure of her records, and the form itself is invalid as that of *Expose v. Wilderson*. Further, Hamdan's actions is not akin to signing them, and even he was not authorized to sign them.

(4) In *Cable Comm. Bd. v. Nor-West Cable,* 356 NW 2d 658, (1984), MN Supreme Court said: "(rules must be adopted in accordance with MAPA, and the failure to comply with necessary procedures results in invalidity of the rule")" *Id.* MN AG responded to MN Supreme Court:

> "Petitioners also argue that the Board should have promulgated rules related to the Board's records release form. Petitioners' argument mischaracterizes the type of Board action that requires formal rule making. Further, Petitioners failed to assert this argument before the District Court, and the argument is therefore waived. *See Leppink v. Water Gremlin Co.*, 944 N.W.2d 493, 501 (MN 2020)." *Id.*

MN AG's statement is fallacious. Because using personal Google account to collect people's protected health information must be considered a procedural rule to be promulgated—as required in MN Statute150A.04 Subd. 5—pursuant to MAPA. Factually, Petitioners asserted this argument before the District Court except for *Cable* precedent, for being unbeknownst to them then, which was cited in their briefs to MN Court of Appeals and MN Supreme Court. Further, MN Appellate Procedure Rule 103.04 *Scope of Review*: "The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require...," *Id.* Justice requires invalidating this rule for using Google forms. Anyway, because the Board did not follow the rule—making procedure, the Board ignorantly created a very awful defective form as seen above.

(5) In *Withrow v. Larkin*, 421 U.S. 35 (1975), the US Supreme Court affirmed:

> "Concededly, a "fair trial in a fair tribunal is a basic requirement of due process."...This applies to administrative agencies which adjudicate as well as to courts.... Not only is a biased decision maker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness."..." *Id.*

The plain language of MN 214.103 Subd. 10 and 214.10 subdivision 1 prohibits participation of those two dentists who reviewed the four complaints. This must be considered impropriety in the course of the proceeding, and should conclusively invalidate

the decision from such a proceeding. This Court should take note that the Board's proceeding was severely defective on all levels: (1) Administration (illegal paper work). (2) Investigations (no questioning of students with cross—examination of Hegazy), and (3) Adjudication (prohibited participation of the Board's dentists).

(6) In *Tatro v. University of Minnesota*, 816 NW 2d 509 (2012), MN Supreme Court upheld the *Student Conduct and Academic Integrity Policy*. The *Tatro* Court did "...analyze the relationship between the statutory professional conduct standards and the academic program rules promulgated by the University." *Id.* In *Mumm v. Mornson*, 708 NW 2d 475, (2006), MN Supreme Court said:

> "The existence of a government policy mandating certain conduct by public officials can influence whether a duty is classified as ministerial or discretionary.[...] In *Anderson,* we concluded that the existence of a policy that sets a sufficiently narrow standard of conduct will make a public employee's conduct ministerial if he is bound to follow the policy. *Id.* at 659." *Id.*

In Hegazy's case, MN Supreme Court denied her petition to uphold the statutory grievances process with its notice part, mandated in Federal and State Patients' Bill of Rights, and the School of Dentistry's Student Conduct Policy. It is a double standard by MN Supreme Court.

(7) In *Schulte v. Transportation*, 354 NW 2d 830 (1984), MN Supreme Court said: "...[we] conclude

that the notice in question is affirmatively misleading and results in a denial of due process under both the state and federal constitutions." *Id.* In this instant case, Hegazy did not receive any notice of any right, including (1) Tennessen Warning. (2) Revocation Right. (3) Notices in 214.103 subd. 1(a). (4) 42 CFR § 482.13 a(2)'s notice, at App. 28a, or equivalently MN Statute 144.691's notice, App. 41a. Further, "Notice to Complainant" in the Google form was misleading to Hamdan when he filled the forms.

(8) In *Logan v. Zimmerman*, 455 US 422 (1982), US Supreme Court said:

> "Appellant's right to use the FEPA's adjudicatory procedures is a species of property protected by the Due Process Clause." *Id.* And "Here,...., it is the state system itself that destroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference whether the Commission's action is taken through negligence, maliciousness, or otherwise." *Id.* And "Terminating potentially meritorious claims in a random manner is hardly a practice in line with our common law traditions." *Id.*

Also, in *Popovich v. Allina Health Sys.*, 946 N.W.2d 85, 890 (2020), MN Supreme Court said:

> "The existence of other remedies does not justify granting a hospitals–only exemption from the general rule of vicarious liability based on apparent authority.." *Id.* (emphasis added).

Applying these two precedents to our case, both filing a complaint to the Board and the grievances process are statutory entitlements to an aggrieved patient. Thus, existence of other remedies, like filing a medical malpractice against the dentists, does not relieve both the Board and the School from their statutory duties. Also, the *Popovich* Court held:

> "A plaintiff states a vicarious liability claim against a hospital for the professional negligence of an independent contractor in the hospital's emergency room based on a theory of apparent authority if (1) the hospital held itself out as a provider of emergency medical care; and (2) the patient looked to the hospital, rather than a specific doctor, for care and relied on the hospital to select the personnel to provide services." *Id.*

Thus, the Sate School is vicariously liable for Hegazy's complications during an educational round, where the names of five faculty exist in Hegazy's chart. If not the grievance process, then it is MN Tort Claim Act: MN Statutes 3.732 and 3.736. The enactment of the *Tort Claims Act,* made no change in the relationship between the State and the University but, rather, merely opened the State to include the University to tort claims arising from the conduct of State employees who are responsible for public education, which is a governmental function. See Section 1: "Uniform system of public schools" of MN Constitution's Article XIII.

(9) All lower courts dismissed Hamdan's standing (App. 19a) because Hamdan "...suffered no physical

injury from his wife's tooth extraction and the alleged complications;" *Id.* Petitioners pleaded emotional–distress, tantamount to marital and parental *loss of consortium*, to Hamdan and their children because of this ordeal. This opinion defies MN precedents on reciprocal standing of any of the spouses as in *Thill v. Modern Erecting Co.,* 170 NW 2d 865, MN Supreme Court (1969), and *Salin* v. *Kloempken,* 322 N.W.2d 736, MN Supreme Court (1982). Moreover, Hamdan was a party in the billing dispute with the School, which was never analyzed by any of the courts.

(10) In addition to MN Court of Appeals' false statements on Petitioners' arguments, MN Court of Appeals defied the standard of judiciary review several times. Lyingly, MN Court of Appeals said (item#10 at App. 8a): "Hegazy does not challenge the district court's reasoning on that point." *Id.* Factually, Petitioners *extensively* elaborated on an implied–cause–of–action in all of their filings starting from their first complaint to the district court. Another example, the MN Court of Appeals said on the billing dispute (item# 13 at App. 9a): "Hegazy did not clearly assert such a claim in the district court," *Id.* Factually, Petitioners asserted undisputed facts with evidence in the exhibits. MN Court of Appeals determined the state–of–mind of the District Court by using an ambiguous term "clearly," rather than on Petitioners' undisputed documents.

MN Courts belittled Petitioners' pleadings, notwithstanding their pleadings are tantamount to the State's and the School's utter disregard of Hegazy's well–being, dignity and constitutional

rights: (1) her inviolability as a human being not subject to experiments; (2) personal autonomy by not contacting her during the Board investigation; (3) personal privacy by disclosing her records without her consent; (4) marital privacy by assuming her husband her *de facto* guardian. *This is so pronounced as to demand the invocation of constitutional condemnation. Their decision*s defy *Williams v. Trans World Airlines,* 660 F. 2d 1267, 8th Circuit (1981) on "*emotional harm*" involving a violation of a substantive constitutional right:

> "[T]he question before us, however, is what is the proper legal standard for proof of mental distress. This court has held that damages for emotional harm are to be presumed where there is an infringement of a substantive constitutional right..." *Id.*

All of the aforementioned pleadings were presented to the District Court. But as Petitioners kept reading, they presented discovered precedents and statutes, unbeknownst to Hamdan, to support their pleadings to the MN Court of Appeals. Cf. *Halva v. MN State Colls. AND Univs.*, 953 NW 2d 496 (2021), MN Supreme Court said: ""No longer is a pleader required to allege facts and every element of a cause of action." *Franklin...*" *Id.* By arrogantly dismissing these claims, MN Courts of Appeals defied this standard of Judiciary review. Further, the District Court did not analyze: (1) Tort Claim for the Billing Dispute. (2) MGDPA's claim. (3) Patients' Bill of Rights. Even, the District Court understood Petitioners' claim regarding the invalidity of the

Google forms, but did not rule on this. See District Court 's opinion at App. 11a–24a. Then, MN Court of Appeals dismissed three claims not analyzed by the District Court without analysis in defiance of "A reviewing court must generally consider "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Id.* See *Thiele v. Stich*, 425 NW 2d 580 (MN 1988). In *Plowman v. Copeland*, 261 NW 2d 581, MN Supreme Court (1977) said: "An appeal tribunal hearing officer should be especially careful to insure fairness to all persons bringing grievances before him." *Id.*

## III. The Questions Presented Are Important And Warrant Immediate Review.

### A. Enforcing Quality Control in the Health Sector Should Save Life.

There is no other profession in which one passes so completely within the power and control of another as does the medical patient. This Court shall save life by enforcing a thorough root cause analysis of the medical complications at medical schools, which should be the golden standard of medicine. That is literally the essence of these laws. In Hegazy's case, there were five dentists in her chart at the School, then at least three doctors in her chart at Fairview Hospital. There were six undergraduate students at the School. Quality Control is also required by the accreditation standards of the medical schools. See Commission on Dental Accreditation's: at (https://coda.ada.org/standards).

"In 1999, the Institute of Medicine (IOM) estimated that as many as 98,000 deaths a year were attributable to medical errors. A second study concluded that "never–events" add significantly to Medicare hospital payments." (Posted on website of Center for Medicare/Medicaid Services (CMS): https://www.cms.gov/.)

Petitioners alleged in their complaint to the District Court that three "never–events" occurred during Hegazy's treatment. According to the National Quality Forum (NQF), "never–events" are errors in medical care that are clearly identifiable, preventable, and serious in their consequences for patients, and that indicate a real problem in the safety and credibility of a health care facility. These never–events are defined in MN Statute 144.7065. Fortunately, the MN Legislature has vested the patient the right to report these medical errors, which is filing a complaint to the medical boards. If the medical boards agree with the complainant, then the boards are obliged to report this to the MN Commissioner of Health pursuant to MN Statute 144.7068: REPORTS FROM LICENSING BOARDS.

**B. Inviolability of Any Human Being.**

This Court is obliged to affirm the *inviolability* of any human being. Hegazy was subject to experiments by the School's *six* unlicensed undergraduate students, two of them at the level of sophomore. The faculty did not monitor them for most of the exam. Existence of six students and five faculty exposed Hegazy to poor communication of

indicative symptoms. Even, one complication was *expressly excluded* from the surgery's informed consent. Notably, Section 1 of MN Constitution's Article I: "Section 1. Object of government. Government is instituted for the security, benefit and protection of the people,..." *Id.* Hegazy's treatment was done at the State School during an educational session. By abandoning the due process in redressing Hegazy's grievances in administrative proceedings, the State and the School did not proffer Hegazy the MN Legislature's intended remedies in MN Statutes 214.103 and 144.651. Thus, the State agencies did not abide by Section 8 of MN Constitution's Article I, Redress of Injuries and Wrongs, at App. 29a.

The State investigation of Hegazy's complications is no less concrete and no less valuable than other government services, and a crucial part of the School's education process itself. Those leaders' perpetuated silence and failure to respond to her grievances clearly allege a due process violation. At the very least, due process required that the relevant state decision makers should have listened to Petitioners, and then applied the relevant law in reaching their decision. The failure to do so created an unacceptable risk of arbitrary and erroneous deprivation. The process Petitioners were afforded up to the MN Supreme Court constituted nothing more than "a sham or a pretense." (Adopted from the dissenting opinion *in Castle Rock v. Gonzales, 545 US 748,* (2005)). There is *neither indeterminacy nor vagueness* in our case's relevant statutes. Contrast with *Castle case:* "Such indeterminacy is not the

hallmark of a duty that is mandatory. Nor can someone be safely deemed "entitled" to something when the identity of the alleged entitlement is vague." *Id.* "The procedural component of the Due Process Clause does not protect everything that might be described as a "benefit": "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire" and "more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* Both quotes are in *supra's opinion*.

Petitioners have a *property interest* which is: (1) Tort claim for the billing dispute. (2) The School's liability for wrongful disclosure. (3) The State's liability for collecting and disseminating Hegazy's private data without her informed consent. *Importantly*, the grievance process should avoid Petitioners filing a medical malpractice claim against the School, as intended by MN Legislature, cf. Statute 144.691 Subd. 1.

> "...every outpatient surgery center shall establish a grievance or complaint mechanism designed to process and resolve *promptly* and *effectively* grievances by patients or their representatives related to billing, inadequacies of treatment, and other factors which may <u>have an impact on the incidence of malpractice claims and suits</u>." *Id.* (emphasis added.)

Because MN AG is complicit in covering up these wrongs, Petitioners lack the instrumentality to prove some of their allegations under the criminal code as MN Statutes: 609.231 MISTREATMENT

OF PATIENTS; 609.43 MISCONDUCT OF PUBLIC OFFICER; 609.63 FORGERY; or Title VI; or 18 U.S. Code §1346 HONEST SERVICES FRAUD.

**C. Implicating Discrimination in Applying the Federal Law.**

Pursuant to 42 CFR § 482.13 (a)(2)—Condition of participation—in Medicare/Medicaid, the hospital must establish a process for prompt resolution of patient grievances and must inform each patient whom to contact to file a grievance. None of the conditions in 42 CFR § 482.13 (i)–(iii) at App. 28a–29a was satisfied in our case. Petitioners discovered Patients' Bill of Rights in December 2021 while preparing their memorandum. The School never claimed that Hegazy was not aberrant. This contends that Hegazy was subject to discrimination by an entity receiving federal funds. In Petitioners' filings to the lower courts, they accused the School and the State of discrimination. Title VI, of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq, prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. It just happens that Hegazy is a Muslim woman from the Middle East. All *major factors* of discrimination exist in Hegazy: color (brown), gender, race, religion, national origin, non–citizen.

The Board, another entity receiving federal funds, did not explain why they did not send any statutory notice to Hegazy during the six–month period. The plain language of MN Statute 214.103

and MN Statute 214.10 requires that the Board investigates the complaint before notifying the dentists. The Board notified the dentists within 4 business days, and the Board received the full dental chart from them on January 6 and 8, 2020. Then, the Board received the medical records from Fairview Hospital on January 13, 2020. How did the Board investigate the "*four*" complaints, while receiving the dental records directly from them and the medical records after notifying them? The Board had at least 60 days to send a notice to the four dentists, but they sent them a notice within 4 business days. The former associate dean for clinical affairs ignored the requirements of HIPAA, while he was responsible for disciplining the students for violating the law. Worse, the Board, pursuant to MN Statute 144.298 Subdivision 1, at App. 40a, may discipline the dentists if they violate MHRA; at the same time the Board was accomplice with those four faculty in violating HIPAA requirements of a valid form.

### D. Reimbursement of Payments to Medicaid.

This Court should consider the fact that if the School had formally investigated the complaint and found itself liable, then the insurance companies should have reimbursed Medicaid about *seven thousands* dollars spent on Hegazy's treatment. Resolving these grievances pursuant to the statute can save millions of dollars to Medicare/Medicaid in a timely manner, as the US Congress and MN Legislature intended.

## CONCLUSION

It is utterly bizarre that Respondents did not submit any affidavit to prove, at least, her signature or her being given the *Tennessen* warning. Alas, the State is protected by both qualified and official im[p]unity. Thus, Petitioners were trapped in a bootstrap process of judicial scam to drain their resources in vain. Being untruthful is antithetical to being a judge. And there exist "ten" of those judges in the Minnesota Judiciary, who could not see more than a dozen of violations of plain statutory requirements; and they defied more than a dozen of common law precedents and judiciary rules. Injustice B. Anderson wrote the opinions of *Expose* and *Halva,* which supersede his order in our case.

**WHEREFORE**, Petitioners, both Eman S. Hegazy and Hazem M. Hamdan, respectfully ask this Court to grant their petitions.

**Respectfully Submitted,** **Dated: 12/22/2022**

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