

22-6899

IN THE
SUPREME COURT OF THE UNITED STATES

ROSALYN McDONALD-HENRY

Petitioner,

v.

DALE S. BRINK, D.P.M., Individually and as agent
Of PERFORMANCE FOOT and ANKLE CENTER, an Illinois
Limited Liability Company, and INGALLS MEMORIAL HOSPITAL,
An Illinois not-for-profit corporation, and SVEND J. BJORN, D.P.M.,
As agent of INGALLS MEMORIAL HOSPITAL

Respondents.

On Petition for a Writ of Certiorari to
The Appellate Court First District

PETITION FOR A WRIT OF CERTIORARI

Pro se Petitioner
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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

I. QUESTIONS PRESENTED

Questions presented are:

1. Whether the substantive Due Process Clause subsumes a constitutionally protected right to refuse experimental medical procedures by a physician in *Newman v. Spellberg*, with using the patient as a teaching subject for medical procedures demonstrated to interns?
2. Whether an individual's First Amendment Rights guaranteed by the Constitution of the United States and a state constitution were violated by a restraining order in *Same Condition, LLC v. Codal, Inc.*, prohibiting *Same Condition* from posting critical information about *Codal's* business practices?
3. Whether a legally disabled patient has rights under the Illinois Statute of Limitations 735 ILCS 5/13-211(a) that tolls a disabled person's injuries announced in *Lawler v. The University of Chicago Medical Center*, with the relation back doctrine applicable to a timely filed original complaint on record with the court.
4. Whether medical expert testimony is unnecessary in determining a breach of medical care announced in *Newman v. Spellberg* where the physician performed an unnecessary medical operation on a patient with interns for teaching purposes?
5. Whether Medicare, a federally funded healthcare governmental program announced in *Universal Health Services v. United States ex. Rel. Escobar* has legal rights with reimbursement for false medical care and treatment submitted to the government for payment?

II. LIST OF ALL PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

- *Lawler v. The University of Chicago Medical Center, Inc.*, No.120745, Illinois Supreme Court, Judgement entered, Nov. 30, 2017.
- *Zayed v. Clark Manor Convalescent Center, Inc.*, No. 1-18-1552, Judgement entered Sept. 26, 2019.
- *Giles v. Parks*, No. 1-16-3152, Appellate Court of Illinois First District First Division, Judgement entered Feb. 5, 2018.
- *Union Pacific Railway Co., v. Botsford*, No. 141 U.S. 250, United States Supreme Court, Judgement entered 1891.
- *Flowers v. Mississippi*, No. 17-9572, United States Supreme Court, Judgement entered Jun. 21, 2019.
- *Scott v. Sanford*, No. 60 U.S. (19 How.) 393, United States Supreme Court, Judgement entered 1857.
- *Same Condition, LLC v. Codal, Inc.* No. 19-L-5407, Appellate Court of Illinois, First District, Third Division, Judgment entered Jun. 21, 2021.
- *Board of Education v. Pico*, No. 457 U.S. 853, Judgement entered 1982.
- *Newman v. Spellberg*, No. 51,458, Appellate Court of Illinois First District, Judgement entered Jan. 24, 1968.
- *Maria and Robert Brady v. William Urbas, D.P.M.*, No. 111 A.3d, Supreme Court of Pennsylvania, Judgement entered Mar. 25, 2015.
- *Proctor v. Safeway, Inc.*, No.11-cv-3406, U.S. Court of Appeals for the Seventh Circuit, Judgement entered Mar. 8, 2018.
- *Universal Health Services v. United States ex. Rel Escobar*, No. 15-7, United States Supreme Court, Judgement entered Jun.16, 2016.

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**V. IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Rosalyn McDonald-Henry, a legally disabled person was diagnosed with a flatfoot deformity by the respondent podiatrist Dr. Dale S. Brink, D.P.M. Dr. Brink admitted during his discovery deposition the procedures he diagnosed to Rosalyn did not exist, and that his role with Ingalls Memorial Hospital was to teach medical procedures to podiatry students in training. This Court is petitioned for a writ of certiorari to review the constitutionality of law in the Petition for Leave to Appeal denied by the Illinois Supreme Court and the Appellate Court First District's order.

VI. OPINIONS BELOW

The Order of Justice Theis denying Rosalyn McDonald-Henry's Petition For Leave to Appeal is attached to Appendix A. The Petition For Leave To Appeal is attached at Appendix B. The Order of Justice Pierce for the Illinois Appellate Court First District is attached at Appendix C.

VII. JURISDICTION

Ms. McDonald-Henry's Petition for Leave to Appeal to the Illinois Supreme Court on the constitutionality of law and first impressions rights in healthcare was denied on December 13, 2022. Ms. McDonald-Henry invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Illinois Supreme Court's denial. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

VIII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois First Impressions Medical Patient's Right Act 410 ILCS 50/3.1(a)(b):

- (a) Any patient who is the subject of a research program or an experimental procedure, as defined under the rules and regulations of the Hospital Licensing Act, shall have, at a minimum, the right to receive an explanation of the nature and possible consequences of such research or experiment before the research or experiment is conducted, and to consent to or reject it. (b) No physician may conduct any research program or experimental procedure on a patient without the prior informed consent of the patient or, if the patient is unable to consent, the patient's guardian, spouse, parent, or authorized agent.

Illinois Statutes of Limitations: (1) section 13-211(a), addressing minors and persons under a legal disability; and (2) section 13-209, addressing death of a party.

IX. STATEMENT OF THE CASE

Over 75 years ago the Nuremberg Code of 1947 implemented the right to avoid imposition of human experimentation. The Nuremberg Code is the most important document in the ethics of medical research. The Nuremberg Code was a result of Nazi doctors accused of conducting murderous and torturous human experiments and were judged by American judges for their unlawful actions. One of the primary principles of the Nuremberg Code upheld by the United States is the regulation of informed consent on human subjects for medical experiments.

1. The Respondents Admitted to Performing Rosalyn's Operation For Teaching Purposes

Rosalyn experienced years of off and on swelling in her left foot and sought medical care and treatment from the respondent, Dr. Brink. An MRI of Rosalyn's left foot and ankle was taken and viewed by Dr. Brink. The results of the MRI according to Dr. Brink's diagnosis to Rosalyn was arthritis, a tear and fallen arch in her left foot and ankle describing the condition as a flatfoot, also known as Adult Acquired Flatfoot. On January 14, 2014, Dr. Brink's recommendations to Rosalyn for surgery was gastrocnemius recession, calcaneal osteotomy, Posterior tibial tendon repair and Talonavicular fusion for arthritis. On February 21, 2014, Rosalyn trusted Dr. Brink's diagnosis and underwent the medical procedures recommended. On August 15, 2018, Dr. Brink admitted the conditions he diagnosed to Rosalyn did not exist. Dr. Brink stated:

Q. I'm just – I'm just trying to confirm that there was no arthritis; right?

A. Correct.

Q. Okay. And as I – as I understand it, sir, there was no arthritis in any of the foot or ankle joints; correct?

A. That's my re-recollection.

Q. Do you agree with me sir, that she did not have talonavicular arthritis, correct?

A. Correct.

In Dr. Brink's Request to Admit he acknowledged facts about himself as being unskilled and lacking appropriate training, and knowledge in performing flatfoot operations referred to as "Adult Acquired Flatfoot." Dr. Brink admitted:

Q. I understand that there are five publications listed on the CV, is that accurate?

A. Yes.

Q. Okay. Did any of them concern adult-acquired flatfoot?

A. No.

Q. Any of them speak to posterior tibial tendon?

A. No, not directly.

During Dr. Brink's deposition he admitted to destroying Rosalyn's medical records inside Ingalls Memorial Hospital. Dr. Brink stated Rosalyn's medical records were "secondary" to the care and treatment he was providing.

On December 10, 2018, Dr. Bjorn, the resident physician in training admitted he was taught unnecessary medical procedures by Dr. Brink on Rosalyn. Dr. Bjorn admitted Rosalyn did not have talonavicular arthritis and confessed:

"There is some time physicians will perform surgeries that I – you know, I – maybe we shouldn't have done that."

As a result of the gross negligence of Dr. Brink and Dr. Bjorn, Rosalyn required medical interventions from skilled professionals to correct the respondents gross negligence requiring: (1) an orthopedic surgeon, (2) a surgeon in plastic and reconstructive surgery with a high degree of skill in phantom limb pain and muscle re-innervation, and (3) a skillful pain management specialist for the implantation of a medical stimulator to treat Rosalyn's chronic and debilitating nerve damage.

Rosalyn underwent six medical operations to date requiring a cadaver nerve transplant on her left leg, the removal of hardware screws placed inside the heel of her left foot and a Stim Wave Stimulator implant to assist in controlling her chronic and debilitating nerve damage suffered to her posterior tibial tendon. To date, Rosalyn remains under the care of skilled professionals for ongoing medical care and treatment with her left foot where amputation is inevitable.

Rosalyn McDonald-Henry is a legally disabled person under federal and state guidelines since 2003. Rosalyn is of reasonable intelligence and entered her appearance as a *pro se* litigant after the unexpected withdrawal of counsel. Upon Rosalyn becoming a *pro se* litigant, respondent's counsel Michael Denny Huber, Aimee Lipkis, Michelle Carole

Anderson, and Molly Panskausas obtained a protective order granted by the court prohibiting the public from having knowledge of the contents contained in Rosalyn's pleadings and none of her pleadings could be filed with the Clerk of the Circuit Court. Rosalyn was also prohibited from having any communication with the government regarding the medical operation performed on her by Dr. Brink and Dr. Bjorn inside Ingalls Memorial Hospital.

2. Illinois Supreme Court - Constitutional Rights In Healthcare

The Illinois Supreme Court was petitioned to renew the constitutional rights owed to Rosalyn in the State of Illinois. An interpretation on the constitutionality of law from the Illinois Supreme Court was to learn what persons, if any, would be without any constitutional rights under the laws and statutes in Illinois. Dr. Brink's counsel on record, Aimee Lipkis and Michael Denny Huber advised the court that Dr. Brink "owed plaintiff only those duties imposed upon them by the laws and statutes of the State of Illinois." There was an obvious, deep desire, derived from some form of the deadliest hate that viewed Rosalyn as less of a citizen. This Court is asked if it would be unconstitutional by a person's natural born looks, when viewed by others as being born so ugly, there would be no laws to protect a citizen from the slaughtering of their health? The cold state of the record does not produce the tone inflicted in counsels voice and selective choice words and facial expressions as an obvious degradation and bias towards Rosalyn.

Rosalyn's arguments to the courts presented her rights under Illinois law that provide citizens with two statutes of limitations: (1) section 13-211(a), addressing minors and persons under a legal disability; and (2) section 13-209, addressing death of a party.

The Illinois Supreme Court decided the case of *Lawler v. The University of Chicago Medical Center*, where the issue pertained to the statute of repose and the relation back doctrine with a timely filed original complaint. *Lawler v. The University of Chicago Medical Center*, 2016 IL. App. (1st Dist.) 143189. Jill Prusak died, and her daughter Sheri Lawler was granted leave to file an amended complaint for the estate of her mother. The *University of Chicago* defendants filed a motion to dismiss the wrongful death claim based on section 2-619(a)(5) of the Code of Civil Procedure. The *University of Chicago* argued the wrongful death claim was barred by the four-year medical malpractice statute of repose because Prusak had died more than four years after the last alleged negligent medical treatment with Dr. Jager. *Lawler's* argument was the wrongful death claim was timely and not barred by the statute of repose because it related back to the original complaint. The court ruled on behalf of the defendants and dismissed the wrongful death claim brought by *Lawler*.

On petition to the Illinois Supreme Court, *Lawler* was decided under the doctrine of first impressions. The court reversed the decision of the lower court holding the relation back doctrine did apply and that plaintiff's wrongful death claim was not barred the statute of repose. The Illinois Supreme Court stated the theory of a relation back doctrine statute provides:

The cause of action, cross claim or defense set up in any amended pleading shall not be barred by lapse of time under any statute.....if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear from the original and amended pleadings that the cause of action asserted.....or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some matter which is a necessary condition precedent to the right of recovery or defense asserted.....any pleading shall be held to relate back to the date of filing of the original pleading so amended.

The Illinois Supreme Court held any injuries continuing to arise from the same injury had standing under the statute and stated:

“This interpretation does not create absurd, inconvenient, or unjust results, because the proposed amended complaint, as compared with the earlier, timely filed complaint show[s] that the events alleged were close in time and subject matter led to the same injury.”

Rosalyn sought an interpretation from the Illinois Supreme Court on the relation back doctrine and if it was applicable to her as a legally disabled person with the statute of limitations under section 13-211(a) that tolls a disabled person’s injuries until their death. Rosalyn has been under a legal disability with Sarcoidosis, a lung disease since 2003, and now suffers with chronic and debilitating sural nerve damage, posterior tibial tendon nerve damage and the continued need for left foot and leg medical care. On December 16, 2022, Rosalyn’s left foot was placed in a medical brace designed to keep the foot and ankle from rolling, dropping, and dragging. Currently, Rosalyn has zero movement in her subtalar joint due to the fusion performed by Dr. Brink and Dr. Bjorn. Without a subtalar joint properly functioning, Rosalyn experiences severe instability during walking.

If the issue pertaining to the section 13-211(a) for disabled person was heard and decided by the Illinois Supreme Court, the process would have rendered fair where the court is to hear issues on the constitutionality of law and first impressions. The issues in *Lawler* were relevant to those of Rosalyn. If the Prayer for Leave to Appeal was granted by the Illinois Supreme Court, it would have exposed greater consequences for the lawless actions of the respondents. It was through the respondent’s counsel’s ability to intentionally cover up the unlawful medical negligence of Dr. Brink and Dr. Bjorn on behalf of Ingalls Memorial Hospital with a protective order granted by the court.

In 2019, the Appellate Court First District heard the case of *Said Mohammad Zayed v. Clark Manor Convalescent Center, Inc.*, a legally disabled person suffering from dementia, Parkinson's disease, and Alzheimer's. *Zayed v. Manor Convalescent Center, Inc.*, No. 1-18-1552, (2019). *Zayed* fell in a nursing home and suffered a hip fracture that caused and contributed to his death 18 months later. The family for *Zayed's* estate filed suit after the two-year statute of limitations. Illinois law provides for personal injury suits to be filed within two years when a cause of action accrues. 735 ILCS 5/13-202 (West 2014). The respondents argued the statute of limitation expired and sought a dismissal of *Zayed's* claim as untimely. The trial court based its reasoning on *Giles v. Parks*, that *Zayed's* personal injury claims accrued when he became traumatically injured in 2014 at the nursing home. *Giles v. Parks*, 2018 IL App (1st) 163152. The trial court ruled the statute of limitations was not controlling. *Zayed's* estate appealed arguing the two statutes under Illinois law section 13-211(a) and 13-209(a)(1) were to be applied together. The appellate court first district's opinion in *Zayed* held the statute of limitations is tolled when a legally disabled individual suffers personal injury until their death.

Rosalyn presented the courts with the issues in *Lawler* and *Zayed* and sought an interpretation on her rights with redress under Illinois law. The injuries Rosalyn continues to suffer with arise out of the same issues of negligence complained of in her timely filed complaint.

This case presents questions on the constitutionality of law and the violations taken against Rosalyn with her right to refuse unnecessary medical treatment, first impression rights in healthcare and freedom of speech. Rosalyn is a competent, legally disabled person who held a constitutional right under the laws in the United States and the State of Illinois

to reject the unnecessary medical procedures performed on her for the purpose of experiment and teaching instruction.

This Court's supervisory power is necessary.

X. REASONS FOR GRANTING THE WRIT

This Court is asked to consider granting this writ based upon: (1) the constitutional rights guaranteed in the United States with the right of a person to refuse unwanted medical treatment for the purpose of experiment as a teaching subject, (2) the unconstitutional use of a protective order violating Rosalyn's First Amendment Rights of the United States Constitution and the Illinois State Constitution, (3) the Illinois Statute of Limitations under 735 ILCS 5/13-211(a) that tolls a disabled persons injury and the First Impression Rights in healthcare owed to a citizen in the State of Illinois, (4) the removal of Dr. Brink and Dr. Bjorn's medical expert Dr. K. Paul Flannigan and (5) Medicare's existing lien for reimbursement for the fraudulent and unnecessary operation performed on Rosalyn.

1. THE RIGHT TO REFUSE MEDICAL TREATMENT AND A BODILY INSPECTION

The United States Supreme Court has held a competent person has a "constitutionally protected liberty interest in refusing unwanted treatment." Disabled patients of sound mind have a fundamental right to reject medical treatment when their autonomy (body) is being used for experimental purposes designed to advance teaching instruction.

A medical inspection of Rosalyn's left foot and leg was requested by respondent's counsel Aimee Lipkis and Michelle Anderson. Rosalyn was expected to un-robe during her deposition for respondent's counsel for them to view any visible injuries, that was to take place in the presence strangers which included the court reporter and videographer. At a court hearing, Aimee Lipkis advised the court of counsel's right to "inspect,"

Rosalyn's left foot and leg to enable a correct diagnosis of the damages. The court advised Rosalyn she would be required to submit to the examination no matter how difficult it was at opposing counsel's request. There was an obvious bias by respondent's counsel to humiliate and degrade Rosalyn with the stripping of her clothing which appeared to be more like an auction and a violation of Rosalyn's privacy.

In the case of *Union Pacific Railway Co.*, the court held a plaintiff in an action for an injury cannot be forced to submit to a surgical examination. *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891). In *Union Pacific Railway Co.*, the United States Supreme Court received a motion from respondent's counsel requesting the plaintiff to submit to a surgical examination in the presence of her surgeons and respondent's counsel. The Court overruled and held "this Court had no legal right or power to enforce such order." It was the decision of the Court to intervene with upholding respect for the plaintiff because such an examination should only be made in a manner that did not expose any indelicate manner. The Court in *Union Pacific Railway Co.*, stated:

"No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."

The Court continued admonishing the respondents request and held:

"The inviolability of the person is as much invaded by a compulsory stripping and exposure as by a blow. To compel any one, especially a woman, to lay bare the body, or to submit it to the touch of a stranger, without lawful authority, is an indignity, as assault, and a trespass; and no order of process, commanding such an exposure or submission, was ever known to the common law in the administration of justice between individuals, except in a very small number of cases, based upon special reason, and upon ancient practice, coming down from ruder ages, now mostly obsolete in England, and never, so far as we are aware, introduced into this country."

When bias is recognized, prejudice is seen in favor or against a person or group of persons compared with another in a way considered to be unfair as Rosalyn's experience. In the case of *Flowers v. Mississippi*, an armed robbery left four employees dead inside a furniture store and *Flowers* was alleged to have committed the murders. *Flowers v. Mississippi*, No. 17-9572, S. Ct. (2019). At issue was the prosecutorial misconduct who struck 41 of 42 black jurors to secure a mainly all-white jury where the prosecutor was seeking capital punishment. Justice Kavanaugh of the United States Supreme Court observed an obvious racial bias towards *Flowers*. Justice Kavanagh confronted racism head on because *Flowers* was repeatedly being prosecuted for the same crime six times and it was obvious there was discriminatory intent by the prosecutor. A majority of the Court agreed with Justice Kavanaugh in recognizing bias as being problematic with *Flowers* receiving a fair trial.

Rosalyn's rights with a due process of law were taken away because of counsel's unethical conduct. Aimee Lipkis and Molly Panskauskas, counsel for the respondents requested the court in their Motion for Sanctions and Protective Order for an Order of Protection against Rosalyn which would have removed her from representing herself in court. There existed a right of Rosalyn to seek justice based on her constitutional rights violated in healthcare by Dr. Brink and Dr. Bjorn who acted on behalf of Ingalls Memorial Hospital.

In past years there were no laws to protect against the unlawful actions taken against African Americans who were without any constitutional rights. In the case of *Scott v. Sanford*, *Scott* was taken into the Wisconsin territory by his owner Emerson where slavery was outlawed. *Scott v. Sanford*, 60 U.S. 393 (1857). When Emerson died, *Scott* attempted

to purchase his freedom from Emerson's wife, and she refused, and *Scott* sued in federal court. Chief Justice Taney's opinion of *Scott* was that he held no constitutional rights to sue in a court of law as an African American man born a slave. Justice Taney's opinion was viewed as an example of the blatant infusion of racism in the 19th century. After the civil war, the Fourteenth Amendment declared:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws. "

Justice Taney's opinion became obsolete by the Fourteenth Amendment which was the rule of law providing African Americans with constitutional rights to date.

Rosalyn's Petition for Leave to Appeal to the Illinois Supreme Court was for an interpretation on her constitutional rights as a citizen in the United States of America and the State of Illinois. The leadership of the Illinois Supreme Court states:

"The main, most important indicator of whether people will accept what happens to them in court is if they believed they've been treated fairly. The perception of fairness is what holds together our communities, our court system, the rule of law, and our democracy."

This Court is respectfully asked for an interpretation with Rosalyn's constitutional rights under the law where she is seeking a due process of law with the right for Illinois jurors to hear and decide her case.

This Court's supervisory power is necessary.

2. First Impressions of the Medical Patient's Right Act

In the State of Illinois, the theory of First Impressions and the right to refuse medical procedures as an experiment and teaching subject guarantees certain acts to be unlawful and a violation of the law.

The State of Illinois Patient's Medical Rights Act is the rule of law in Illinois under (410 ILCS 50/3.1) Sec. (a) and (b) states:

- (a) Any patient who is the subject of a research program or an experimental procedure, as defined under the rules and regulations of the Hospital Licensing Act, shall have, at a minimum, the right to receive an explanation of the nature and possible consequences of such research or experiment before the research or experiment is conducted, and to consent to or reject it.
- (b) No physician may conduct any research program or experimental procedure on a patient without the prior informed consent of the patient or, if the patient is unable to consent, the patient's guardian, spouse, parent, or authorized agent.

Rosalyn did not agree by any documented evidence through any informed consent to have her autonomy used as a medical experiment and teaching subject with a podiatrist in training at Ingalls Memorial Hospital.

This Court's supervisory power is necessary.

3. WHETHER THE COURT VIOLATED A LITIGANT'S FIRST AMENDMENT RIGHTS

The First Amendment of the Constitution in the United States provides certain rights with freedom of speech. In the United States an individual is allowed to speak and publish what they wish in addition to asking the government to correct the wrongs when a person's constitutional rights have been violated. The appellate court "forfeited" Rosalyn's argument on the unconstitutional use of a protective order under Ill. S. Ct. R. 341(h)(7), claiming her argument was not "coherent," a "legal argument," or argued on the

unconstitutional use of a protective order. The Appellate Court First District's Order of March 1, 2021, ¶19 reads:

“Finally, plaintiff argues that the circuit court entered an unconstitutional protective order prohibiting her from disseminating discovery responses, deposition transcripts and exhibits, and video of depositions to the public. Defendants apparently sought the protective because plaintiff disclosed discovery responses and Brink's deposition transcripts to government agencies, including the FBI and the Illinois Attorney General's Office, as part of her allegations to those entities that Brink had engaged in fraud. Plaintiff fails to develop a coherent argument on this issue or offer a legal argument as to how the entry of the protective order prejudiced her in any manner. She has therefore forfeited this argument (Ill. S. Ct. R. 341(h)(7), and we cannot discern any basis for granting plaintiff any relief.”

The argument with the respondent's protective order prejudicing Rosalyn was clear where it stated: “The role of the court is to protect a litigant's right to the First Amendment.” Furthermore, Rosalyn provided the court with a legal argument citing case law. The issue surrounding the dissemination of materials obtained during discovery was protected by the first amendment which provides an individual the right to free speech. In guiding the appellate court with the facts necessary to an understanding of the litigation, lengthy testimonies from the respondent's deposition transcripts were necessary in demonstrating their unlawful actions with their admissions on record. Illinois Supreme Court Rule 341(h)(7) reads:

“(7) Argument, which shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”

During the court proceedings in the circuit, the respondents counsel Aimee Lipkis and Molly Panskauskas presented a list of rules for Rosalyn as a *pro se* litigant as part of their protective order granted by the court: (1) “No party or their counsel shall complain to

governmental and oversight entities about any of their parties or their counsel during the pendency of this lawsuit,” (2) Rosalyn’s pleadings were prohibited from filing with the Clerk of the Court, (3) All pleadings were to be placed in the judge’s chamber prohibiting public view with the contents contained in Rosalyn’s pleadings, (4) Aimee Lipkis and Molly Panskauskas informed the court, if the contents in Rosalyn’s pleadings were made available to the public, the respondent’s medical careers and counsel’s legal profession would be harmed and specifically asked the court to remove the deposition transcript of Dr. Armen Kelikian from the record, Rosalyn’s former orthopedic surgeon.

4. A Judicial Conflict In A Protective Order As Unconstitutional

On appeal to the Illinois Appellate Court Third Division was the case of *Same Condition, LLC v. Codal, Inc.*, decided three months after Rosalyn’s appeal to the appellate court. *Same Condition v. Codal, Inc.*, No. 19-L-5407, IL App. Ct. (1st Div.) (2021). *Same Condition’s* argument was *Codal’s* restraining order was unconstitutional and a violation of the First Amendment of the United States Constitution and the Illinois Constitution. The respondent *Codal* was attempting to keep secrecy the allegations in which *Same Condition LLC* complained of with their interactions in business matters for breach of contract and fraud. *Codal’s* product with the application of the software did not meet the standards expected by *Same Condition* who intended on creating a web-based medical patient-centered software application. Upon *Same Condition* receiving the application of the software product he alleged it was incomplete, substandard, riddled with errors and inadequate for release to the public. *Same Condition* and their president Kumar went online and complained about *Codal’s* performance and business integrity. The circuit court granted *Codal* a restraining order prohibiting *Same Condition* and Kumar from posting

critical online complaints about *Codal's* business dealings, breach of contract and fraud. On appeal to the Appellate Court, Third Division, the court ruled the circuit court abused its direction:

“Same Condition and Kumar have appealed the circuit court’s order as an unconstitutional abridgment of their right to free speech under both the first amendment of the United States Constitution (U.S. const., amend. I) and article I, section 4, of the Illinois Constitution (Ill.Const. 1970, art. I, § 4). Because we agree the court’s order is unconstitutional, we vacate that order.”

The protective order granted to the respondents in Rosalyn’s litigation was as a direct violation against Rosalyn’s constitutional rights by prohibiting her pleadings from being filed with the Clerk of the Court. The appellate court acknowledged missing pleadings the court attempted to locate in the judge’s chamber. Rosalyn’s pleadings were placed in the judge’s chamber for safe keeping and to prohibit public access with the contents contained in those pleadings. The appellate court stated ¶8:

“The parties have not directed our attention to plaintiff’s response to defendant’s motion for summary judgment in the record. The transcript of the circuit court’s hearing on defendants’ motion for summary judgment, however, reflects that plaintiff filed two motions styled as motions for partial summary judgment, filed November 8, 2019, and December 3, 2019, which the circuit court treated as responses to defendants’ motion for summary judgment. We have only been able to locate plaintiff’s November 8, 2019, motion for partial summary judgment in the record.”

If Rosalyn were allowed to file her pleadings with the Clerk of the Court, no pleadings would have been inappropriately handled or missing. In legal proceedings across the United States of America the public has a right to information contained in judicial proceedings. The United States Supreme Court held the right to receive information is a fundamental right protected by the Constitution, where an individual has “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own

rights of speech, press, and political freedom.” *Board of Education v. Pico*, 457 U.S. 853 (1982).

The court was advised by respondent’s counsel Aimee Lipkis and Molly Panskausas that Rosalyn could not have any communication with the government, or any governmental entities, and there was no right of the court to suppress the information contained in Rosalyn’s pleadings where the court serves as a part of government. The First Amendment rights guaranteed by the Constitution provides freedoms and the government is forbidden from regulating and restricting speech. The contents of Rosalyn’s pleadings were of public interest in protecting the health and safety of Illinois citizens from unnecessary harm by Dr. Brink and Dr. Bjorn and Ingalls Memorial Hospital.

This Court’s supervisory power is necessary.

**5. WHETHER MEDICAL EXPERT TESTIMONY IS UNNECESSARY
BASED ON THE RESPONDENT’S DR. BRINK AND DR. BJORN’S
ADMISSIONS**

Under normal circumstances a medical expert is obtained to examine the material facts based on all the patient’s medical records. The respondents Dr. Brink and Dr. Bjorn informed the court Dr. K. Paul Flanigan, DPM, of Portland Foot and Ankle was to testify according to “Defendant’s Rule 213(f) Interrogatories:

“Dr. Brink’s and Dr. Bjorn’s care and treatment of this patient and that based on his knowledge, training and experience and his review of all of the records and materials, to a reasonable degree of medical certainty as to what is more probably true than not.”

There is no truthful testimony Dr. Flanigan could provide to cover-up the admission of Dr. Brink and Dr. Bjorn who performed the left foot operation on Rosalyn for medical conditions they admitted did not exist.

In a case that set a precedent in Illinois was *Newman v. Spellberg*, where the Illinois Appellate Court First District held a medical expert was not necessary to establish the defendant physician's mistakes because he demonstrated procedures to interns on the patient. The defendant physician Dr. *Spellberg* treated *Newman* for a peptic ulcer, and after the treatment was provided the patient successfully healed. Dr. *Spellberg* advised *Newman* that a gastroscopic examination was necessary to confirm the peptic ulcer healed. After the defendant physician performed the gastroscopic examination on *Newman*, the defendant physician moved *Newman's* body in a position that was uncomfortable and caused a sharp pain in his back while demonstrating the procedure to interns. After this, *Newman* became violently ill and returned to the defendant physician where he learned an internal organ perforation (puncture) had occurred. *Newman's* esophagus required repair by another physician, and it was learned that the perforation of the esophagus was caused by the unnecessary gastroscopic examination. As a result of Dr. *Spellberg's* negligence, *Newman* presented the court with a *prima facie* argument asking the court to render a verdict in *Newman's* favor without a medical expert because Dr. *Spellberg* performed an unnecessary procedure. The court held a *prima facie* could not be established by the plaintiff without a medical expert to show want of care and that the rupture of the esophagus was caused by lack of care by Dr. *Spellberg*.

On appeal to the Appellate Court First District, the court ruled the defendant physician was found to have provided teaching instructions with interns and the actions of Dr. *Spellberg* were inherently a deviation from the standard of care by demonstrating a procedure unnecessarily and an injury occurred. The appellate court found the trial court

failed to recognize the evidence and the facts and erred in granting the defendant's motion for a directed verdict. The case was reversed, and the cause remanded.

Rosalyn presented the case of *Newman* to the same appellate court arguing that jurors as laymen of reasonable intelligence could determine the actions of the respondents Dr. Brink and Dr. Bjorn on behalf of Ingalls Memorial Hospital to be heinous and a deviation of the acceptable medical standards based on the admissions of Dr. Brink and Dr. Bjorn. Dr. Brink admitted his role with Ingalls Memorial Hospital was a trainer at the time of Rosalyn's operation until he was named Chairman of All Surgery for the hospital.

In *Maria and Robert Brady v. William Urbas*, the patient brought a negligence claim against a podiatrist for an operation on her right foot, second toe. *Maria and Robert Brady v. William Urbas*, D.P.M., 2015 Pa. LEXIS 655 (Pa. Mar. 25, 2015). The defendant Dr. *Urbas* performed several operations on the plaintiff, and afterwards she suffered with extreme pain and an extremely shortened toe. At issue was whether the podiatrist surgeon had met the standard of care in the performance of the procedures.

During the trial proceedings the court received a motion in limine prohibiting consent-related evidence the patient signed. The jurors requested to view the consent forms *Brady* signed and ultimately ruled in favor of the defendant because *Brady* agreed to accept the risks of the surgery. On appeal, the Supreme Court of Pennsylvania determined the trial court abused its discretion by allowing the jurors to view the consent forms. The Supreme Court of Pennsylvania relied on the Supreme Court of Virginia's decision regarding the inadmissibility of consent evidence in a medical negligence case. The Virginia Supreme Court held:

[A plaintiff's] awareness of the general risks of surgery is not a defense available to [a defendant physician] against the claim of a deviation from

the standard of care. While [the plaintiff] or any other patient may consent to risks, she does not consent to negligence. Knowledge by the trier of fact of informed consent to risk, where lack of [in]formed consent is not an issue, does not help the plaintiff prove negligence. Nor does it help the defendant show he was not negligent. In such a case, the admission of evidence concerning a plaintiff's consent could only serve to confuse the jury because the jury could conclude...that consent to the surgery was tantamount to consent to the injury which resulted from the surgery. In effect, the jury could conclude that consent amounted to waiver, which is plainly wrong.

The Supreme Court of Pennsylvania agreed with Supreme Court of Virginia and remanded the case for a new trial.

Rosalyn's argument in comparison to *Brady*, is it would be plainly wrong for Dr. Flanigan to testify Rosalyn consented to the surgery and accepted the risks. There is no legal argument Dr. Flanigan can medically argue in defending the gross negligence and incompetence of Dr. Brink, along with the admissions of Dr. Bjorn.

Rosalyn argued four legal elements could be established without a medical expert, based on (1) the professional duty owed to the patient; (2) breach of such duty; (3) injury caused by the breach; and (4) resulting damages. First, the law dictates a physician must have the informed consent of the patient prior to undergoing any medical procedure that is not a life-saving necessity. Second, the professional duty of Dr. Brink did not consist of the truth, and he breached his duty as a medical provider on behalf of Ingalls Memorial Hospital by lying to the patient about her medical condition. Third, using Rosalyn's autonomy for the purpose of fulfilling his duty as a trainer on behalf of the hospital. And, fourth, the resulting damages have continued to cause Rosalyn continued medical care and treatment with protecting her left foot from amputation in addition to treating her chronic and debilitating sural and posterior tibial tendon nerve damage.

This Court is asked to consider the facts that Dr. Brink intentionally misled a competent, legally disabled patient into believing she suffered with medical conditions Dr. Brink knew did not exist.

This Court's supervisory power is necessary.

A. Dr. Kelikian's Testimony on Dr. Brink's Incompetence

Dr Armen Kelikian stated Dr Brink was grossly unskilled and "incompetent" as a podiatrist. Aimee Lipkis, counsel for Dr. Brink asked if Dr. Brink's surgery caused Rosalyn's sural nerve damage. Dr. Kelikian stated: "I wouldn't say you have sural neuroma before surgery, that's pretty hard to do." Dr. Kelikian stated he did not know half of the neurological test to perform but recognized there are "neurological test that any competent orthopedic surgeon, podiatrist, or neurologist would know." According to Dr. Kelikian, the sural nerve damage Rosalyn suffers with is a "known complication of a Strayer procedure," which involves releasing the gastrocnemius tendon to lengthen the calf muscle. The Strayer procedure is necessary when a patient has a flatfoot deformity that requires surgical intervention. Dr. Brink and Dr. Bjorn both admitted Rosalyn did not suffer with a flatfoot deformity.

Despite the admissions of Dr. Brink and Dr. Bjorn on the record, Dr. Kelikian continues to lie by protecting the respondents when Aimee Lipkis asks:

"Doctor a surgeon is justified in performing a fusion of the talonavicular joint in an obese patient who has a PTT dysfunction, or a Stage I tear based on the signs and symptoms we were just discussing?"

Dr. Kelikian says: "Yeah." Dr. Brink and Dr. Bjorn admitted Rosalyn did not have talonavicular arthritis in her joints nor did she have arthritis.

When Rosalyn contacted Dr. Brink's office complaining about the intensity of her pain and swelling in the left foot, Dr. Brink advised Rosalyn to elevate her foot above her head. Aimee Lipkis asks Dr. Kelikian:

"Typically, if you are treating a patient who claims to be in excruciating pain post-operatively, you would expect that the patient would be at home, in bed trying to cope with the pain?"

Dr. Kelikian states: "No. why do I want them in bed. They'll sit around and get a blood clot and die." Aimee Lipkis says: "okay." Dr. Kelikian proceeds to state all of Rosalyn's injuries were "superficial." Dr. Kelikian stated he would defend the actions of the respondents because he "defends doctors for a living." To date Dr. Brink is with privileges at Northwestern Memorial Hospital alongside Dr. Kelikian.

The petitioner Rosalyn, a legally disabled person survived a heinous act of medical violence and torture taken against her inside Ingalls Memorial Hospital for the purpose of experiment while being used as a teaching subject. The conduct of the officers of the court, Michelle Anderson, and Amy Garland representing Dr. Arem Kelikian, found humor in Aimee Lipkis' bias towards Rosalyn.

This Court's supervisory power is necessary.

6. DOES MEDICARE HAVE A RIGHT TO REIMBURSEMENT

Whether Medicare is entitled to reimbursement of the monies advanced in the unnecessary operation performed on Rosalyn for teaching purposes is for the judgment of this Court. In Illinois, the law dictates a lien can be placed on an entity to recover monies in a personal injury claim as a right of Medicare. There remains an open lien claim pending with the Center for Medicare Services (CMS) for reimbursement from Ingalls Memorial

Hospital and Dale S. Brink, D.P.M., on behalf of Performance Foot & Ankle Center. The cost paid for Rosalyn's operation totaled \$213,577.27 and is substantially higher today.

In a case under consideration before this Court is *Proctor v. Safeway, Inc.*, No. 20-2425 (7th Cir. 2022). In *Proctor*, there is alleged Safeway knowingly submitted false claims to the government's health care programs for certain drugs as having a "retail" price as a "usual and customary price." The district court in Illinois granted *Safeway's* summary judgment by misapplying the law and finding the practices of *Safeway* were "objectively reasonable."

There appears to be a high level of unity throughout the Illinois courts that seemingly grants summary judgments to defendants where fraudulent actions alleged against the government are an issue. For example, counsel on behalf of Ingalls Memorial Hospital, Molly Panskauskas and Michelle Carole Anderson held the claim for fraud Rosalyn complains of could not be sought and stated:

"Plaintiff cannot seek summary judgment on any claim for fraud because: (1) there is no sufficient cause of action for fraud currently pending; and (2) even if Plaintiff was given leave to file an amended complaint, a claim would be time barred by the statute of limitations. Such a claim would never relate back to absolutely nothing in Plaintiff's Complaint put Ingalls on notice that there was any type of fraud on behalf of anyone involved in this matter."

This Court is asked respectfully to revisit the law upheld by the Illinois Supreme Court's opinion in *Lawler*. According to the ruling in *Lawler*, a claim for fraud against the government with the actions of Dr. Brink on behalf of Ingalls Memorial Hospital can exist because of Rosalyn's disability under Illinois Law Section 13-211(a) which tolls a disabled persons injuries until their death. The appellate court acknowledged why the respondent's counsel obtained a protective order against Rosalyn.

“Defendants apparently sought the protective order because plaintiff disclosed discovery responses and Brink’s depositions to government agencies, including the FBI and the Illinois Attorney General’s Office, as part of her allegations to those entities that Brink had engaged in fraud.”

In demonstrating the grant of *Safeway’s* summary judgment in comparison to the issues Rosalyn complains of, the governments federally run healthcare programs, Medicare, and Medicaid, will continuously advance payments for unnecessary medical procedures by unethical doctors like Dr. Brink in Illinois who will expect the court’s prior rulings to be favorable in their defense who knowingly defraud the government. The issues with the pricing of *Safeway’s* drugs concluded the prices had no “authoritative guidance,” such a statement like this by the court is an attempt to undermine the interpretations of Medicare and Medicaid’s regulations outlined by the government.

The court’s decision in *Safeway* held that a defendant does not act with reckless disregard if its interpretation of the relevant statute or regulation was objectively reasonable and no authoritative guidance warned the defendant away from that interpretation. Also, the court held in *Safeway*, a failure to satisfy the standard for reckless disregard precludes liability under the False Clams. The decision of the court’s grant of summary judgment to *Safeway* is sounding in absurdity and an outlet for defense counsel to obtain favorable rulings for misconduct and abuse against the government in the State of Illinois.

In the case of *Universal Health Services v. United States ex rel. Escobar*, Justice Thomas’ opinion before the Court should serve as a model blueprint with the government’s decision to render payment on behalf of federally run healthcare programs. *Universal Health Services v. United States ex. Rel. Escobar*, 136 S. Ct. (198). In a unanimous ruling by the Court, Justice Thomas stated:

“What matters is not the label the Government attaches to a requirement, but whether the defendant knowingly violated a requirement that the defendant knows is material to the Government’s payment decision. A misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government’s payment decision in order to be actionable under the False Claims Act.”

The Court learned *Universal Health Services* submitted claims for reimbursement on behalf of their providers for mental health services, but failed to disclose material violations which governed the treating professional’s qualifications and licensing requirements. The *Escobar* issues arose from the death of their teenage daughter who died after being treated by *United Healthcare Services* representatives who were without any qualifications to prescribe medications and other services. The focus was on the implied certification theory of the False Claims Act. The Court held a party can be held liable under the FCA when submitting claims that specifically states the goods or services provided while knowing the information is false and payment from the government is received.

In the case of the petitioner Rosalyn, the respondents by and through counsel, intentionally conspired to withhold the unlawful actions of Dr. Brink who knowingly caused payments to be rendered to Ingalls Memorial Hospital and his medical practice, Performance Foot & Ankle Center, when he performed a left flatfoot operation on Rosalyn, a legally disabled patient, for conditions the respondents admit did not exist.

This Court’s supervisory power is necessary.

XI. CONCLUSION AND PRAYER FOR RELIEF

The 7th Circuit Court of Appeals held “fraud upon the court is to embrace that species of fraud which does, or attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner

its impartial task of adjudging cases that are presented for adjudication.” The actions of respondent’s counsel Michael Denny Huber, Aimee Lipkis, Michelle Carole Anderson, and Molly Pankauskas’ participation in covering up the fraudulent actions of Dr. Brink inside Ingalls Memorial Hospital with a protective order suppressing Rosalyn’s First Amendment Rights with freedom of speech was unconstitutional. The conduct of these officers of the court is unbecoming as a member of the American Bar Association.

Illinois Supreme Court Rule 4.1 is clear in stating a lawyer is prohibited from assisting in conduct the lawyer knows is criminal and fraudulent. The actions of respondent’s counsel were not punished or admonished by the Illinois courts but protected through the protective order. The people in the State of Illinois have a right to know of the unlawful actions of Dr. Brink and Dr. Bjorn who acted on behalf of Ingalls Memorial Hospital. The business of the court is open to the public for their safety and decision making.

Disabled persons have constitutional rights in healthcare and that includes the right to reject medical procedures for the purpose of experiment and as teaching subjects. This Court is respectfully asked to grant this Writ of Certiorari not for the sole benefit of the petitioner Rosalyn alone, but, for all disabled Americans to know of their constitutional right to reject unwanted medical procedures. Rosalyn is of the belief that seeking justice should never be feared, what should be feared is an injustice. This was not a typical medical malpractice case, but an unethical violent act against Rosalyn’s humanity.

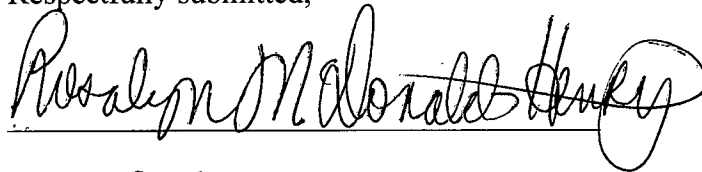
The petitioner Rosalyn McDonald-Henry could not receive any justice from the Illinois courts or the Illinois Department of Financial & Public Relations on behalf of the State of Illinois who investigated the actions of Dr. Brink and held there was no evidence of any wrongdoing committed by Dr. Brink. The respondents counsel on record, Aimee Lipkis

is a Regulation's Private Detective appointed by the Illinois Department of Financial & Public Relations for the State of Illinois.

The petitioner Rosalyn McDonald-Henry respectfully asks this Court for justice with the unlawful actions taken against her constitutional rights under the United States Constitution.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, reading "Rosalyn McDonald-Henry", written over a horizontal line.

Date: February 25, 2023