

23-7255 ORIGINAL

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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

Andrew Horace,

*Petitioner,*

vs

MD NOW MEDICAL CENTERS, INC.,

Rami Mansour (Medical Doctor)

*Respondent.*

On Petition for a Writ of Certiorari to  
The United States Court of Appeals  
for the Eleventh Circuit

**PETITION FOR WRIT OF CERTIORARI**

Andrew Horace

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## I. Questions Presented

Beginning in State Court, Horace raised an issue and submitted his medical records as "exhibits". The United States Magistrate Judge William Matthewman entered an order on February 17<sup>th</sup> 2023. In said order, parties were asked to *exchange initial disclosures pursuant to Rule 26(a)(1)*, Horace complied by submitting his medical records and expert witness statements as "exhibits" to support his pleading claim of *medical battery* before dismissal for failure to state a claim.

1. In this action, did Horace forfeit his argument in the District Court error in granting MD Now's motion to dismiss without considering medical records and expert witness statements?

Pursuant Fla.R.Civ P 1.190. On appeal, Horace plausibly plead medical battery in Federal Court on it's face before the case was dismissed for the court to draw reasonable inference. See, Ashcroft v Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L. Ed.2d 868 (2009) quoting Bell Atlantic Corp. v Twombly, 550 U.S 544, 570, 127 S. Ct 1955, 167 L.Ed.2d 929 (2007) Bell Atl Corp V. Twombly, 550 US.544,570 (2007). To avoid dismissal under Rule (12)(b)(6)

2. Whether the 11<sup>th</sup> Circuit Court erred in affirming the District Court Motion to dismiss Horace medical battery claim in its pleading stage?
3. Pursuant 28 USC App. Fed General Rules of Pleading Defenses (1)(a)(b)2, whether Defendant forfeited its argument by not denying Horace plausible claim of medical battery at its pleading stage?
4. Pursuant Rule 90.402 Evidence; was Horace deprived?
5. Whether Horace abandoned his pleading of *medical battery* Per *Pretrial Scheduling Order*?
6. *Whether Horace claim of medical battery is unpreserved, despite the Joint Agreement per Court order?*
7. Whether, The District Court recognized the psychotherapist-patient privilege in federal common law?

II.

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<b>A. TO AVOID ERRONEOUS DEPRIVATIONS THAT HORACE CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY FORMER MD NOW MEDICAL CENTERS, INC. EMPLOYEE JAYLEN WILLIAMS BY INTENTIONAL STABBING HIM THAT CAUSED INJURIES/TRAUMA. THIS COURT SHOULD CLARIFY THAT MEDICAL BATTERY IS THE INTENTIONAL INFILCTION OF SERIOUS HARM UNTO PATIENTS IN A MEDICAL SETTING IN RESPECT TO ARTICLE 25 OF THE UNITED NATIONS OF DECLARATION OF THE UNITED STATES.</b>	
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Jaffee v. Redmond, 518 U.S. 1, 15 (1996)

Alexander v. Smith, 2015 WL 12942496 (N.D. Fla. Dec. 18, 2015)(quoting Fla. Stat. § 90.503(2)).

Reese v. Herbert, 527 F.3d 1253, 1268-69, 1272 (11th Cir. 2008)

Statutes

Palm Beach County Ordinance..... No.2017-046

Fed. R. Civ. P 8 (a) (2)

766.110 Medical Battery

Fed. R. Evid.103 and 402

F. 2d 1337 n.5 (9<sup>th</sup> Cir.1981)

Sections 57.105

Federal law 42 U.S.C. § 2000e-2 (Section 703)

Pursuant 766.1185 (Bad Faith)

Under 44 CFR 352.24

Section 458.3485 (Medical assistant)

Pursuant 18 U.S. Code § 1001

28. U.S.C 1446 (Removal to Federal Court)

Pursuant Fla.Stat.768.72/28 USC App Fed R Civ P Rule 8

Article 1170 of Civil Code/Article 111 Standing

Chapter 2.48.220

statues continued...

Chapter 760.08/837.06

44 CFR 352.24

Federal Rule of Civil Procedure 26(a)(1).

**(IV)**

**Petition for Writ of Certiorari**

Andrew Horace, a Pro Se Litigant, respectfully petitions this Court for a Writ to review the judgment of the Eleventh Court of Appeals

**(V)**

**Opinions Below**

The decision by the Eleventh Circuit Court of Appeals stated, I forfeited my argument that the district court erred when it did not consider my medical records and expert witness statements raised in argument to the District Court. That opinion and Horace dissent is attached at Appendix.

**(VI)**

**Jurisdiction**

Mr. Horace petitions The Eleventh Court of Appeals decision entered on March 13, 2024. Mr. Horace invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for Writ of Certiorari within ninety days of The Eleventh Court of Appeals decision.

(VII)

Constitutional Provisions

Article 25 of the United Nations Universal Declaration of Human Rights

Psychotherapist-patient privilege in federal common law

U.S Const. Amdt. XIV

Due Process of Law

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Please take notice. Pursuant 18 U.S. Code § 1001 -It is axiomatic that Appellee knowingly made false statements in its Answer Brief referring Horace issues as unpreserved and abandoned. Here, Horace is except of forfeiture; Horace made an argument in Federal Court referencing *Article 25 of the United Nations Universal Declaration of Human Rights*. See; *Appendix I*. Federal courts enjoy the sole power to interpret the law, determine the constitutionality of the law, and apply it to individual cases. As a further matter, in the Scheduling Conference held via zoom on February 17, 2023 Drew Levin was asked by United States Magistrate Judge William Matthewman of any objections and Levin's reply was "no". Therefore, Levin never refuted or denied the argument of *medical battery*.

## Constitutional Provisions continued...

### Constitutional Provisions Involved

#### Article 25 of the United Nations Universal Declaration of Human Rights

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

#### Psychotherapist-patient privilege in federal common law

That it is appropriate for the Federal Courts to recognize a psychotherapist privilege under Rule 501 is confirmed by the fact that all 50 states and the District of Columbia have enacted into law some form of psychotherapist privilege. The submission of my sensitive medical records were to be used to support my claim of medical battery and the records were not recognized but ignored. Here, the action was completely disgraceful and humiliating.

#### U.S Const. Amdt. XIV

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.

#### Due Process of Law

Procedural due process refers to the constitutional requirement that when the government acts in such a manner that denies a citizen of life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker.

(VIII)

**STATEMENT OF CASE**

On March 5<sup>th</sup> 2022 Appellant went to MD Now Medical Center located at 2272 N. Congress Ave in Boynton Beach, FL 33426 to have PCR (nasal swab) test done which was around 8am. Appellant signed in and waited in the lobby for about five minutes. A Black male Medical Assistant came out and direct Appellant to the medical room. Appellant noticed the Black male Medical assistant approach was not welcoming, nor did he greet Appellant as he had displeasing look on his face and a poor body demeanor. Appellant followed the Medical Assistant to the medical room, not knowing he would be stabbed. After, I was asked by the Medical assistant to sit on the edge of the chair and tilt my head back. The Medical assistant forcefully inserted the swab in my left nostril and began stabbing Horace. The action immediately caused water to form in Appellants eyes. Appellant had to lean away in order to prevent the Medical assistant from causing further injuries. Without regards of apologizing, the Medical assistant walked out the room and said; *the doctor will see you shortly*. I was in shock and couldn't believe what just took place. I remained professional. Rami (Medical Doctor) Mansour FL Bar No. ME152615 entered the Room. I voiced to him what transpired. Rami Mansour showed no compassion, concern, dignity or respect to the Appellant nor the issue at hand but stated "that's how Covid nasal swab test are done" Appellant then left the medical room in pain. Appellant went to the front desk to complain and asked for the name of the Medical assistant and learned his name was Jaylen Williams.

Horace experience in the care by Jaylen Williams is true and correct.

On March 7<sup>th</sup> 2022 when I returned to the location and spoke with Management. I asked Vaughn who was in attendance with another staff member, “name unknown” “has Jaylen Williams had any prior complaints from other patients while performing the nasal swab covid test” Vaughn’s reply; “no”. This confirms Horace was discriminated against which is why Jaylen Williams stabbed him and then was terminated from the Company. Here, stabbing someone is a *personal crime* and it was clearly demonstrated. Further, Vaughn also mentioned to Horace on March 7<sup>th</sup> 2022 that my complaint was never reported to Management. *Dr Rami Mansour was added as a responsible party in State Court filing on August 30, 2022. Mansour.* The entire staff failed to report Jaylen Williams deviant behavior, which is an act to cover up Williams *deviation in the standard of care.* *Dr Mansour breach his duty to care/report.* Here, its proven to a fault that Jaylen Williams action constitutes to discrimination. Horace was the only patient who experienced Jaylen Williams *deviation in the standard of care. Here, this is an prime example of national importance of patients being abused in healthcare settings.*

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Fed. R. Evid.401; see also *United States v. Federico*, 658 F.2d 1337, 1342 n.5 (9th Cir. 1981) (noting that probative value need only be “slight” to meet the threshold for relevance), overruled on other grounds by *United States v. DeBright*, 730 F.2d 1255, 1259–60 (9th Cir. 1984). *Conley v. Gibson* (USSC 1938)- a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief.

**(IX)**

## **REASON FOR GRANTING THE WRIT**

A Petition Writ of Certiorari should be granted due to the national importance of patients being abused in healthcare settings due to gross negligence, medical errors, medical battery, discrimination and malpractice. Wrongdoers must be held liable for their actions to prevent other patients from being harmed. Healthcare supposed to be a safe place free of harm. No one should ever be *deprived* of seeking healthcare in the United States or anywhere else in the world. Horace was a victim of abuse in a healthcare setting. I never in my life felt so violated. A trauma, I think of daily. I can't erase the event from my memory. As it continues to affect my health, it really hurts. In my healthcare profession all I desire to do is give sincere care, respect, compassion and dignity to ALL of my patients. However, when I needed care, I was intentionally stabbed and then deprived of my Constitutional rights by exclusion of my medical records *Pursuant initial 26 disclosure*. Further, the Defendant never denied I was stabbed because it's true which is way ***Jaylen Williams*** was terminated.

**(X)**

## **CONCLUSION**

The petition for a Writ of Certiorari should be granted.  
Respectfully submitted,

*Andrew Horace*  
April 1,2024

## **APPENDIX A**

### **DECISION OF UNITED STATES COURT OF APPEALS FOR THE 11<sup>TH</sup> CIRCUIT**