App. No. __________

In The
Supreme Court of the United States

Bharani Padmanabhan MD PhD
v.
Cambridge Health Alliance

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI
TO THE MASSACHUSETTS SUPREME JUDICIAL COURT
(State Supreme Court Docket # FAR-29364)

November 15, 2023

/s/ Bharani Padmanabhan MD PhD
BHARANI PADMANABHAN MD PhD, *pro se*
30 GARDNER ROAD #6A
BROOKLINE MA 02445
617 566 6047
SCLEROPLEX@GMAIL.COM

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PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To Circuit Justice Ketanji Brown Jackson:

Petitioner Dr. Bharani Padmanabhan respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days, up to and including February 15, 2024. On September 18, 2023, the Massachusetts Supreme Judicial Court denied a motion for reconsideration. Docket report enclosed. Absent an extension of time, the Petition would be due on December 17, 2023. This Court has jurisdiction over this Application under 28 U.S.C. 1257, and Rule 10(b), and has authority to grant the requested relief under 28 U.S.C. 1651.

BACKGROUND

In 1995, Dr. Bharani Padmanabhan graduated *summa cum laude* at 25 after concurrently completing his MD and PhD (multiple sclerosis) degrees. In 2000, he completed his residency in neurology at Tufts, and followed that with three years of fellowship training in neuroimmunology at the Weiner Lab at Harvard's Brigham & Women's Hospital (where he was the first to identify CXCR6/CXCL16 as the most important markers for inflammation in multiple sclerosis), and an additional year at the MS Clinic at the University of Massachusetts.

In 2004 he began the MS Service at a private neurology practice in Southern Massachusetts, where he cared for 751 MS patients by himself. In 2007, he was recruited to the neurology division at Cambridge Health Alliance in Everett, Massachusetts, a public safety-net hospital system that serves indigent and undocumented patients. In 2008, petitioner conducted a prospective study directed by his neurology chief, Dr. Thomas Harter Glick, Professor of Neurology at Harvard, to quantify the prevalence of medical errors in reports for brain MRI scans issued by the radiology department. They found that a majority of CHA's brain MRI scan reports had little or no correlation with the images of the scans themselves, and that the reports correlated almost exclusively with the patient's age, meaning the reports were generated blindly and generically. Many important findings on the images went unmentioned in the reports, including strokes, contrast-enhancing brain tumors, HIV and multiple sclerosis lesions.

Dr. Glick gently brought this to the attention of radiology chief Dr. Carol Hulka and sought a collegial meeting to discuss a quality improvement plan to reduce medical errors. At the time, Dr. Glick was unaware that the federal government had already threatened Dr. Hulka with daily monetary fines and exclusion from Medicare/Medicaid because she had performed mammograms on hundreds of women without calibrating the machine every morning, meaning the scan reports were worthless. Worse, none of the women were brought back for rescanning so we have no idea how many breast cancers were missed at an early stage.

Within a year of informing Dr. Hulka of massive medical errors, Dr. Glick was forced to retire. CHA then 'summarily' suspended Dr. Padmanabhan's membership of the medical staff on November 9, 2010 (but did not implement it for another 48 hours during which he treated another 30 patients) and perp-walked him out on November 11, 2010. The charge was that Dr.

Padmanabhan did not know how to diagnose and treat multiple sclerosis or treat chronic pain. This triggered the binding contract (Bylaws and Fair Hearing Plan) that governs the relationship between a physician, the medical staff, and the hospital, and allows only one Fair Hearing per suspension.

Dr. Padmanabhan prevailed at CHA's contractually-required January 2011 Fair Hearing. In February 2011, the Fair Hearing panel ruled that there was no credible evidence to terminate Dr. Padmanabhan's membership of the medical staff or his employment at CHA. Because Dr. Padmanabhan won, CHA ignored this report in breach of the binding contract and sought a do-over with different panel members. Dr. Padmanabhan demanded that the contractual terms be honored with a final decision as required, and informed CHA in October 2011 that the binding contract ensured that the suspension of his clinical privileges had contractually ended after six months as enforced by the Bylaws (May 2011), and that his clinical privileges had routinely lapsed in June 2011, seven (7) months after the hospital terminated his work visa in 2010. Instead of acknowledging the substandard quality of its MRI reports and care, and total lack of commitment to reducing medical errors, in November 2011, CHA falsely uttered to the state's medical board and to the federal government that Dr. Padmanabhan had resigned in October 2011 in order to avoid a Fair Hearing and that no Fair Hearing was held.

Within three years of this, after settlement talks went nowhere, in November 2014, plaintiff filed suit. Norfolk Superior Court dismissed the complaint as time-barred. In March 2021, via a published full opinion, the Massachusetts Appeals Court reversed as to the false uttering cause and the four counts related to that. *Padmanabhan v. City of Cambridge*, 99 Mass. App. Ct. 332 (Green CJ., 2021) The case was remanded to Norfolk Superior for discovery and

trial by jury. CHA's attorney did not respond to plaintiff's email and so plaintiff arranged a Litigation Control Conference to ensure discovery and a timetable for a jury trial. At that Conference, CHA's attorney Brian Sullivan refused to begin discovery and declared "We respectfully disagree with the Appeals Court's decision and intend to file another motion to dismiss." A motion for summary judgment followed, accompanied by a "List of Undisputed Facts" which entirely omitted any mention of the January 2011 Fair Hearing at which Dr. Padmanabhan was exonerated, and instead claimed that Dr. Padmanabhan had resigned to avoid a Fair Hearing and so no Fair Hearing was held, though this 100% contradicted what this same attorney had admitted to Judge Edward Leibensperger in Middlesex Superior and who had even produced a full transcript of that January 2011 Fair Hearing. *Padmanabhan v. Cambridge*, MICV2011-02685 (Middlesex Sup., Aug. 4, 2011) And, again, in November 2020, in the Appeals Court, CHA admitted that a Fair Hearing had been held in January 2011. See video at 2:01:10 (https://www.youtube.com/watch?v=loUAcO66hh4) At 2:03:30 CHA implied that Justice Sookyoung Shin's grasp of English was suboptimal, a message received by both minorities.

In his timely opposition to the motion for summary judgment, Dr. Padmanabhan objected to summary judgment in the total absence of any discovery, disputed with documentary evidence CHA's false assertion that no Fair Hearing was ever held, and explained that the missing paragraph regarding the January 2011 Fair Hearing could not be disputed within the List of Undisputed Facts as it was… missing.

The state judge declared that Massachusetts Rules of Civil Procedure 9A(b)(5)(iii)(A) did not allow a judge to consider disputed facts listed within the opposition if they were not

presented within the movant's List under the same paragraph number. The judge deemed the hospital's "facts" (*no fair hearing was ever held because the physician just voluntarily resigned to avoid one*) admitted as the facts of the case and granted summary judgment based on this one point. A different panel in the Appeals Court applied the abuse of discretion standard without *de novo* review of the entire evidentiary record, and summarily affirmed through unpublished decision the assertion of MRCP Rule 9A(b)(5)(iii)(A)'s primacy as being within the trial judge's discretion.

The state supreme court was presented the entire evidentiary record, including irrefutable proof that CHA had intentionally concealed - for summary judgment - the material fact that a Fair Hearing had been held in January 2011 which exonerated Dr. Padmanabhan, and that CHA had actively engaged in conscious misrepresentations to the courts.

Equally importantly, the state supreme court was presented with a conflict in the lower courts where two judges in two courts had arrived at diametrically opposite decisions on summary judgment motions when two different movants (one in each court) had intentionally concealed material facts from the List of Undisputed Facts and then claimed that no facts are in dispute.

This conflict arises because Massachusetts courts disregard Supreme Court precedent which chooses function over form and requires a comprehensive view of the evidentiary record on summary judgment in order to ensure the nonmovant's rights and preserve the truth. The state supreme court declined further appellate review, chose to let the summary judgment decision stand, and affirmed the practice of granting summary judgment prior to any discovery and even when the record shows material facts remain in dispute.

This is counter to the Court's view of the role of the summary judgment process. "Where, as here, the record blatantly contradicts the plaintiff's version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion. Pp. 1774-1776." *Scott v. Harris*, 550 U.S. 372 (2007), *Tolan v. Cotton*, 572 U.S. 650 (2014)

Helping defendants avoid discovery and trial by jury at any cost is not the role prescribed by this Court to state courts.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

This case presents documented and undeniable abuse of the summary judgment process through concealment by the defendant of material disputed facts. If left unchecked, there will be an epidemic of abuse nationwide with consequent denial of the fundamental American right to fact-finding by a jury, even in civil cases. As it is, very few criminal cases are heard by a jury.

Also, in 1944, this court declared that courts shall not reward fraud. "Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless

victims of deception and fraud." *Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 U.S. 238 (1944) The defendant in this case won summary judgment through deception. This is easily evident. The judgment must be reversed.

Review by the Court is thus an essential "public welfare demand." There is at minimum a substantial prospect that this Court will grant certiorari and reverse given the danger that the documented abuse of the summary judgment process in Massachusetts shall inevitably spread nationwide, and the severe blow to the inherent duties and powers of American courts that the state supreme court's abdication presents.

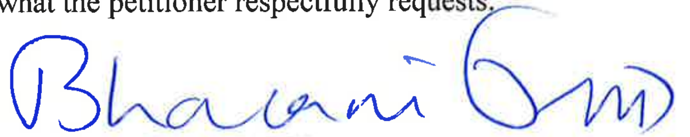
The Petitioner is working diligently to retain counsel with Supreme Court expertise to prepare the Petition. The extension sought shall assist greatly in locating appropriate counsel.

No meaningful prejudice to any party would arise from the extension.

CONCLUSION

Based on the facts and legal arguments presented herein, this Application for extension of time to file a petition for certiorari must be granted and the time to file should be extended sixty days up to and including February 15, 2024, which is what the petitioner respectfully requests.

Respectfully submitted,



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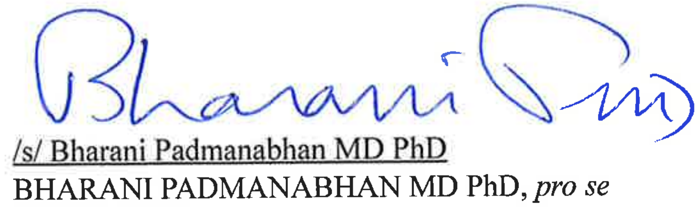
SCLEROPLEX@GMAIL.COM

CERTIFICATE OF SERVICE
Petitioner certifies that he served a copy of this application upon the defendant via counsel Brian Sullivan via email.



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