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IN THE

SUPREME COURT OF THE UNITED STATES

ZAFAR IQBAL – PETITIONER v.

BPOA, PA STATE BOARD OF MEDICINE; et al

On Petition for a writ of Certiorari to

THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT NO. 24-1077

*(D.C. WPA no 2:23-cv- 832)*

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## QUESTIONS PRESENTED

1. Can the 3<sup>rd</sup> Circuit Court and DCWPA overrule, Jurisdictional statute of limitations set by US Supreme Court as 10/18/2022 in case no.22-624?
2. Did the 3<sup>rd</sup> Cir CA and DCWPA made double standards as PA Human Services admitted Medicaid Preclusion appeal, setting Jurisdictional statute of limitations as 10/18/2022 (*Appendix B, p1, lines 3 - 7*)?
3. Can BPOA *expunge* as a *Right*, three statutory Law-breaking material witnesses' testimonies as *first three exceptions* (*Appendix C, p3, lines 25-28*), *endorse FMC illegal action as 5<sup>th</sup> exception* (*Appendix C, p5, lines 29-32, p6, lines 2-5*), and *Claim Rights of Immunity from scrutiny* ['fact finders need not explain' (*Appendix C, p2 lines 26-27*)?]
4. Can Courts overrule the Statutory Law-Breaking *EXPUNGE RIGHTS of BPOA* (*Appendix C, p2, lines 28-29*)?
- 5.. Did 3<sup>rd</sup> Cir CA, DCWPA, PA State Court violated US Constitution by endorsing BPOA's *EXPUNGE RIGHTS* of Statutory Law-breaking evidence?
6. Did 3<sup>rd</sup> Circuit Court and DC WPA violated US Constitution by ignoring First, Fifth and Fourteenth Amendment Rights of the Petitioner?
7. Did DCWPA by granting 11th Amendment Immunity to BPOA and granting Issue Preclusion defense to Chief Cokus, violated US Constitutional and Congressional Laws.
8. Did 3<sup>rd</sup> Cir CA forfeit petitioner's shares to ARA/Betts illegally (who met 3 out of 4 criteria of non-state actors) by endorsing dismissal with prejudice by DCWPA?

## LIST OF PARTIES AND RELATED CASE

1. Third Circuit Court (24-1077) order Nov 1, 2024.
2. Third Circuit Court order (24-1077) Sept 3, 2024.
3. Third Circuit Order (24-1077) July 29, 2024.
4. D.C. WPA order (2:23-cv-832) Jan 12, 2024.
5. D.C. WPA Order 2:23-cv-832 Dec 27, 2023.
6. UNITED STATES SUPREME COURT no. 22-624
7. COMMONWEALTH CRT PA 1190CD2020, 4/18/2022.
8. BPOA Final Order case. no 17-49-14398.
9. D.C. WPA 2:18-cv-842 Oct 24, 2019.
10. Commonwealth of PA CP-02-CR-0003120-2018
12. Common Pleas of Allegheny County no GD16-010615
13. Common Pleas of Allegheny County GD 02-23533

## TABLES OF CONTENTS

TABLES OF AUTHORITIES.....	1
REFERENCES TO OPINION CITED .....	2
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	5,6,7,8,9,10
REASONS FOR GRANTING THE WRIT.....	11
CONCLUSION.....	12

## **1. TABLE OF AUTHORITIES**

### **A. CONSTITUTION OF THE UNITED STATES OF AMERICA 1789.**

- a. FIRST AMENDMENT 1791
- b. FIFTH AMENDMENT 1791
- c. Eleventh Amendment 1795
- d. FOURTEENTH AMENDMENT 1868.

### **B. UNITED STATES CONGRESS LAWS**

- a. 42 USC § 1983 enacted 1871
- b. 28 USC § 1257a enacted 1948

## **2. REFERENCE TO THE OPINIONS BELOW**

Petitioner prays that a writ of certiorari be issued to review the judgement/s below:

1. Appendix A: THIRD CIRCUIT COURT OF APPEALS ORDER JULY 29, 2024
2. Appendix B: DOCUMENTS REPRODUCED
3. Appendix C: BPOA FINAL ORDER NOVEMBER 2, 2020.
4. Appendix D: COMMONWEALTH COURT PA NO. 1190CD2022 April 18, 2022.
5. Appendix E: DC WPA MEMORANDUM OPINION DEC 27, 2023.
6. Appendix F: DCWPA ORDER 1/12/2024
7. Appendix G: APPELLANT BRIEF TO THIRD CIRCUIT COURT Feb. 7, 2024

### 3. JURISDICTION

THIRD CIRCUIT COURT OF APPEALS decision No. 24-1077, Dated July 29, 2024.  
A rehearing was denied November 1, 2024.

4. CONSTITUTIONAL AND STATUTORY PROVISIONS.

1. THE UNITED STATES CONSTITUTIONS BILL OF RIGHTS: FIRST, AND FIFTHS AMENDMENT RIGHTS
2. THE UNITED STATES CONSTITUTION ELEVENTH AMENDMENT RIGHTS.
3. THE UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT RIGHTS
4. UNITED STATES CONGRESSIONAL LAW 42 USC §1983. -1871.
5. UNITED STATES CONGRESSIONAL LAW USC §1257a -1948.

4.

5. STATEMENT OF THE CASE:



## **5. STATEMENT OF THE CASE:**

**BACKGROUND:** 22 years ago, Petitioner, a naturalized citizen and resident of suburban Pittsburgh was fired after 12 years of employment and as a partner in a Nephrology Group. St. Francis Hospital, group's main hospital closed. He was asked to leave 15 hospitals, where he had privileges or face sexual harassment charges at Fresenius Medical Care (FMC) nation's largest Dialysis Company. Out of State employees of FMC, acting as jury returned a not-guilty verdict (*Appendix B, p4, lines 7-9*) FMC wanted the case to be retried *since a majority of patients switched to the petitioner's care. Petitioner's* Counselor refused another hearing (*Appendix B, p4, lines 10-12,*). Dr. Lupariello, Medical Director overturned that decision by an *Executive Order on May 1, 2003 (Appendix B, p4, 13-17).*

Same charges with same witnesses with a new panel banned for life the petitioner on 10/13/2003 (14 F, *Appendix B, p4, 15-17*). FMC faced with petitioner's competition closed 3 Clinics, two of them bought out by American Renal Associates (ARA) where petitioner started as Minor shareholder of 15%. Two hospitals conducted hearing on FMC's complaint, Butler Hospital (2006) denied privileges (*Appendix B, p5, lines 8-11*) on technicality (Dr. Betts as Chief of Medicine). ARA/Betts with combined shares of 85%, reduced petitioner's share to 10% (*Appendix B, p5, lines, 2, 3 and 5, 6*). The panel at UPMC ruled in favor of the petitioner and declared MEC decision as 'Arbitrary and Capricious' (*Appendix B, p2, lines 15-17*). UPMC filed another complaint in 2012, without any consequence.

In 2015, UPMC mounted a choreographed effort with employees reporting hourly from August 1 to August 5th as shown in Hospital Investigation Report (*Appendix B, P, 3, lines 2, 3,*) Petitioner was informed on August 5, 2015, of the complaint (4 days later than hospital policy). **THE REPORT DOES NOT INDICATE ANY POLICE REPORT FILED.**

Petitioner disagreed with the hospital that he assaulted Melissa Smith in a stationary elevator but maintained that he travelled with her down to first floor with other passengers. To find hospital surveillance videos Petitioner conducted a telephone conference meeting with Hospital security, which located such Hospital video surveillance intact (*Appendix B, p3, 11-13*). Hospital refused to share the Hospital video tape and subsequently declared that it was overwritten at the BPOA

Hearing by Dr. Pollice (*Appendix B, p3, 15-20*). Petitioner objected to President-lawyer that tape from PNC Bank ATM Machine had interruptions by the patrons. In Dr. Weis's contention that was the only video tape available, *proven to be lie by Dr. Pollice's testimony (Appendix B, p3, 5-8)* Petitioner conducted several telephone conference meetings with President-lawyer, and it was agreed as per Hospital policy each side will give Pre-Statement to the Hearing Panel instead of post-statement (*Appendix B, p3, lines 23-25*). Petitioner filed a statement on time which explained the discrepancy of Hospital surveillance tape versus PNC Bank ATM tape. The President-lawyer was reminded of First Amendment Rights, who ruled against petitioner and the written statement was not given to the panel (*Appendix B, p3 lines, 29-32, p4, line1*)

Petitioner refused to appear before panel without presenting the panel with a written statement, and lost privileges at UPMC Hospital.

In 2018, petitioner was convicted of a misdemeanor simple assault. Detective Cokus police report (3) (*Appendix B, p, 1, lines 10-15*) was entered verbatim in trial transcript (*trial transcript page 10 and 11*). The conviction triggered an OTSC from Board of Professional and Occupation Agency of Pennsylvania (BPOA) a hearing.

#### **EVIDENCE PRESENTED AT BPOA HEARING:**

Hearing on February 26<sup>th</sup> and 27<sup>th</sup> 2020 became a *watershed* moment and Three material witnesses *Melissa Smith, Kimberley Ferketic and Detective Cokus* provided testimony *which will not only impeach them but would violate*

*Statutory laws of the Constitution of the United States.*

1.. ***Donald Cokus, now police chief, testimony was most egregious:*** He admitted under oath that he tore up the first statement of petitioner and asked to write one, which was of his liking (*Appendix B, p1, lines 20-26, lines 13-26, lines 28-30*). **This testimony made the Cokus 's report (3) which was read verbatim in petitioner's criminal trial as PERJURED (*Appendix B, p1, lines 10-15*). HE ADMITTED, UNDER CROSS, THAT HE FOUND NO INJURY MARKS ON K. FERKETIC (*Appendix B, p1, lines 25-26*).**

2. ***Kimberley Ferketic fabricated testimony:*** Under Oath, she owned her written two statements (5,6) *which were concealed by Curahealth and were not given in the Criminal Trial of the petitioner (Appendix B, p, 2 lines 3-8)* In her second written statement (6) the physical injury was deleted.

### **3. UPMC HOSPITAL:**

**a.** First attempt by UPMC to oust petitioner in 2008 was unsuccessful (*Appendix B, p2, lines 13-17*) #10A, B.

**b.** *Second attempt in 2015:*

(I). *Melissa Smith participated in choreographed event described in Hospital Investigation report*

*(pages 5,6) but forgot to report to the Police in the first 28 days after the incident (Appendix B, p,2 lines 20-23 lines 26-31).*

(II). Melissa Smith reported to police 28 days later but insisted perjuringly under other oath that she reported to police within a couple of days of incident

*(Appendix B, p2, 20-23)*

(II). Dr. Weiss in Hospital Investigation report (page 12, #12) claimed there was no video evidence besides PNC ATM machine (wrongfully), (*Appendix B, p3, 5—13*)

(III). Spoliation of Hospital Video evidence (*Appendix B.p3, lines9-13*). Dr. POLLICE testimony (*Appendix B, p3, lines 16-20*).

(IV)Hospital denial of petitioner's written statement to Panel in Violation of 1st Amendment Rights and hospital-laws (*Appendix B,p,3, lines 27-31*).

### **4.SUMMARY OF BPOA HEARING:**

Four Corporations and Three petitioner's Competitors with the help of their employees, presented the following evidence:

**a.** *Curahealth and Det. Cokus concealed evidence from Petitioner's Criminal Proceedings (Appendix B p 1, lines 10-15, 19-25,26-29).*

**b.** *Det. Cokus committed Obstruction of Justice by tearing up petitioner's first statement. He committed Fifth and Fourteenth Amendments rights violation of petitioner by obtaining forced self-incriminating statement (Appendix B,p2, lines 20-30).*

**c.** *Det. Cokus entered a false police report (Appendix B, p 1, lines 10-15)*

d. FMC Panel found 'sexual harassment charges were not substantiated' (Appendix B, p4, lines 5,6). Letters exchanged 14 C and 14 D (Appendix B, p4, lines 7-22) show a preemptive effort to overturn panel's decision. Hearing panel decision was overturned by an executive order (Appendix B, p4, lines 13-15) but same charges retried to revoke privileges (Appendix B, p4, 16,17). This violated Fourteenth amendment rights of the petitioner.

e. UPMC and Butler Hospital used FMC as a foundation for proceedings against petitioner (Appendix B, p4, lines 20-2410A, #10 B.

#### 4. BPOA FINAL ORDER:

##### **1. BOARD'S RIGHT TO EXPUNGE STATUTORY LAW- BREAKING**

EVIDENCE: I quote, 'In response to Respondent's first three exceptions, the Board concludes that the Proposed Adjudication and Order correctly states that in an administrative proceeding, the fact finder determines questions of credibility of witnesses and weight of evidence (Appendix C, p2, lines 21-23). Overturned FMC's decision of Panel by an executive order (Appendix B, p.4, lines 13-14), retried same charges to revoke privileges was endorsed as 5<sup>th</sup> exception (Appendix C, p4, 1-9). 'Additionally, the fact finder need not provide specific reasons finding one witness credit over other. The reviewing courts do not accept invitations to re-evaluate evidence and credibility determinations. (Appendix B, p2 lines 29-30)'

4. COMMONWEALTH Court of PA: Affirmed the BPOA decision, and I quote: 'Physician disciplinary sanctions are within the Board's discretion and must be upheld unless the Board acted in bad faith or fraudulently or the sanction constitutes capricious action or a flagrant abuse of discretion (Appendix D, p6 lines 10-13). 'Generally, a reviewing court may not substitute its judgement for that of the agency whose decision is being reviewed (Appendix D, p6, 15-19)' 'This Court's review is limited to determining whether constitutional rights have been violated. Whether the findings of fact are supported by substantial record evidence and whether errors of law have been committed.

'Board is the ultimate fact finder and may accept or reject the testimony of any witness in whole or in part, and this Court is bound by those determinations. Ids Thus, when reviewing a decision by the Board, this Court may not re-weigh the evidence which was presented or judge the

*credibility of witnesses. Id.’ (Appendix D, p6, lines 21-26).*

*This endorsement provided ‘Color of Law’ to the law-breaking testimonies of 3 material witnesses and one FMC’s decision.* The Court proffers to watch for Constitutional rights *but did not do so.* SCPA denied the petitioner,

**5.FEDERAL COURTS:** US Supreme Court admitted a petition for writ of certiorari on 12/07/2022 under Rule 1257a, as case no 22-624 and later allowed petitioner to change it to 42 USC §1983 in March 2023 recognizing against ‘Color of law’ decision of PA Commonwealth Court decision dated April 18, 2022.

#### **A. DCWPA.**

1.The Court found the petition was time -barred by ignoring US Supreme Court proceedings and PA Human Services Appeal number BHA 007-22-009 under Judge Herzing. The Judge in view of Federal proceedings paused the case for 180 days in August 2023. Judge Herzing has issued an Order for scheduling (*Appendix B p1, lines 3-7*) DCWPA stands in contempt of US Supreme Court proceedings and has created double standards with PA Department of Human Services.

2 The District Court in its Memorandum Order dated December 27, 2023, stated, and I quote “Moreover this court lacks the authority to review a decision of Commonwealth Court because “federal court are obliged by statutes to give full faith and credit to state court proceedings.” (*Appendix E, p10, lines 1-4*). ***This sums it all for DCWPA, that it has recognized the BPOA’S RIGHT TO EXPUNGE STATUTORY LAW-BREAKING EVIDENCE. DCWPA IS ALSO NOT WILLING TO OVERRULE COMMONWEALTH COURT FOR PROVIDING ‘COLOR OF LAW’ TO THE STATUTORY LAW-BREAKING RIGHTS OF BPOA.***

#### **B. THIRD CIRCUIT COURT AFFIRMATION:**

Third Circuit did not find, ***BPOA’s right to Expunge statutory Law - Breaking evidence, in contravention with the Constitution of the United States.*** Third Circuit does not recognize the Jurisdictional statute of limitations granted by case no 22-624 as starting from 10/18/2022. Third Circuit Court also created double – standards with PA Department of Human Services over Statute of limitations. The Third Circuit Court has granted ARA/Betts dismissal with prejudice, even though it has forfeited legitimate shares of petitioner illegally.



**SUMMARY OF THE CASE: Petitioner** sums it up in four categories:

**1. BPOA RIGHTS OF EXPUNGING STATUTORY LAW-BREAKING RIGHTS IS IN CONTRAVENTION WITH THE CONSTITUTION OF THE UNITED STATES AND IS ILEGAL:** BPOA has violated Fourteenth Amendment Rights of the petitioner by disregarding incriminating and law-breaking testimonies of three material witnesses' and by disregarding 5<sup>th</sup> exception has endorsed FMC overturning of a panel decision by executive order, *all HAVE violated the Constitution of the United States and needs looking into by Grant of this petition of certiorari at The Supreme Court of the United States.*

**2. JURISDICTIONAL STATUTES OF LIMITATIONS:** DCWPA and Third Cir CA ARE IN Contempt of the United States case no 22-624 established date of October 18, 2022, and have created double standards as PA Human Services Appeal is in process.

**3. DCWPA** granting 11<sup>th</sup> Amendment immunity, to BPOA which has violated Fourteenth Amendment

Rights has violated US Constitution and by granting Issue preclusion defense to Police Chief has violated US Congressional Laws.

**4A.** DCWPA and Third Circuit Court by giving ARA/ Betts *who qualify for liable non-state actors (3 out of 4 Criteria of Ninth Circuit) a dismissal with prejudice have illegally forfeited petitioner's legit shares.*

**4B.** Dr. Lupariello still owes petitioner 10% shares and a case under GD-02-23533 is not final.

**PETITIONERS APPREHENSION:** With BPOA declaring itself immune and two State and two FEDERAL COURTS endorsing Constitutional Violations petitioner finds it unsettling if the Case remanded back to same thinking,

## **6. REASONS FOR GRANTING THE PETITION**

1. Supreme Court had granted 42 USC §1983 petition in March 2023 under 22-624 and PA State Court has allowed Petitioner (Preclusion) Appeal based on Jurisdictional statutory limitations from 10/18/22, No lower Court should be allowed to overrule SC or create double standards.
2. BPOA right to *Expunge* Statutory Law-breaking evidence violated The Constitution of the United States and should be corrected.
3. BPOA's expressed *right* that no Higher Court can overrule their *Expunge Right* which are Statutory Law Breaking, violates The Constitution of the United States.
4. DCWPA and 3<sup>rd</sup> Circuit Court of Appeals are in Contempt of THE UNITED STATES SUPREME Court in case no 22-624 for time-bar. The Courts to be overruled and case remanded back under an unbiased Judge.
5. BPOA by disregarding material witnesses' testimonies and FMC fraud conviction, violated Statutory Laws: State Courts, DCWPA and 3<sup>rd</sup> Circuit ignored the violations.
6. BPOA cannot have immunity if it violates Statutory Laws of the United States.
7. Police Chief Cokus cannot violate First, Fifth and Fourteenth Amendment Rights and then can hide behind any immunity.
8. Fresenius Medical Care had **A NOT GUILTY (16A) PANEL DECISION** annulled by an **executive order**, (14<sup>th</sup> amendment violation).
9. DCWPA RULED for ARA/Betts, (with prejudice). Three out of Four Criteria of Ninth Circuit of Appeals Non-state actors' liability applies to ARA/BETTS. The decision resulted in the forfeiture of LEGIT petitioner's shares in violation of the Petitioner's 14th Amendment rights.
10. BPOA, State Courts and Lower Federal Courts, all have violated Federal Statutory Laws.
11. All the above need trials.

## 7. CONCLUSION

The petition for the writ of certiorari should be granted, as Justice can only be served if trials weigh in evidence against each defendant, under 42USC §1983.

Respectfully submitted,

Commonwealth of Pennsylvania  
County of Allegheny  
ZAFAR IQBAL Sworn to and subscribed before me this  
10<sup>th</sup> day of December, 2024 by  
Zafar Iqbal  
Harry M. Ruben, Notary Public

(Signature)

Dated December 10, 2024

