

Appendix A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ZAFAR IQBAL. NO.24-1077

Appellant V.

BPOA. PA STATE BOARD OF MEDICINE: CHIEF DONALD K. COKES.
North Fayette Township Police Department. City of Pittsburgh'.
CURAHEALTH PITTSBURGH. LLC; STEVEN JONES. MD: PHILIP
POI-LICE. MD: MICHAEL WEIS. MD: A.D. LUPARIELLO MD;
KIMBERLEY FERKETIC: MELISSA SMITH: C. ROSS BETTS. MD,
UPMC PASSAVANT HOSPITAL: AMERICAN RENAL ASSOCIATES.
LLC: FRESENIUS MEDICAL CARE INC.

On Appeal from the United States District Court for the Western District
of Pennsylvania (DCCivilAction2-23-cv -832)

Magistrate Judge Honorable Patricia L. Dodge

Submitted Pursuant to Third Circuit LAR 34. I(a) July 9. 2024

Before: SHWARTZ RESTREPO. and FREEMAN. Circuit Judges
(Opinion filed: July 29, 2024)

OPINION*

*1 This disposition is not an opinion of the full Court pursuant to I.O. P- 5.7
does not constitute binding precedent.*

Document: 52.

1

PER CURIAM

Zafar Iqbal MD appeals from orders dismissing his complaint under Fed. R. Civ. P. 12(b)(6) and denying his motion for relief that judgement under Fed. R.Civ P.(60)(b)(3). We will affirm. Iqbal is a physician who has faced allegations of sexual misconduct since at least 2003. That year, Fresenius Dialysis Center terminated his practice privileges following allegations by several nurses. In 2016, UPMC Passavant revoked his hospital privileges following an investigation into allegations by still by another nurse. And in 2018, Curahealth Pittsburgh. LLC suspended him following an investigation into allegations by still another nurses. Those allegations led to his conviction that same year of assault and harassment following

a bench trial in Allegheny County, Pennsylvania. Finally on November 2, 2020, and following a hearing, Iqbal's license to practice medicine in Pennsylvania was revoked by Pennsylvania Board of Professional and Occupational Affairs("BPOA") and the State Board of Medicine ("the Board"). On Iqbal' petition for review, the commonwealth Court of Pennsylvania affirmed. See Iqbal Bureau of Pro. & Occupational Affairs. No- 1190 CD 2020,202WL1131987 (Pa.Commw.Ct.Apr.18, 2022), allowance of appeal denied. 286 A.3d 709(pa. 2022). Cert.denied. 143S.Ct786(2023reh'gdenied143S.Ct.1777(2023).

Iqbal later filed pro se the civil action at issue here against numerous defendants, including his two most recent accusers, others who provided testimony and evidence in his prior proceedings, the BPOA and the Board, and health care providers that terminated his privileges. 2

Iqbal filed suit under 43 USC § 1983 alleging that all these defendants violated his constitutional rights by either making or acting on the accusations against him, which he claimed were false. His request for relief included request for damages, "reversal" of his conviction and restoration of his license.

All defendants except Kimberley Ferketic filed motions to dismiss. Iqbal's complaint under Rule 12(b)(6). Iqbal responded to each response and other filings in which he expounded on his claims at length. The district Court acting though a Magistrate Judge on parties' consent under 28 USC § 636(c). granted defendants motions and dismissed Iqbal's complaint with prejudice. Iqbal then filed a motion for Rule 60(b)(3). The court denied that motion, and Iqbal appeals both rulings.

II

The District Court dismissed Iqbal's claims for numerous reasons, but we need only address two of them. First. the court dismissed Iqbal's claims against all defendants American Renal Associates LLC("ARA") and Dr. C. Ross Betts under the two-year statute of limitations that applies to § 1983 actions arising in Pennsylvania. See Kach v. Hose, 589 F.3d 626,634(3rd Cir. 2009). *1The District Court dismissed Iqbal's claims against Ferketic (one of his accusers) by order entered October 19.2022, because she passed away, he filed suit, and he did not name or serve her estate. Iqbal does not challenge or even mention that ruling on appeal, so we do not address it further except to note that both grounds for dismissal discussed later in this opinion apply to Ferketic too.*

2We have Jurisdiction under USC Section 1291, jurisdiction under 28. We exercise plenary review of a complaint under Rule 12(b)(6). See Curry v Yachera. 835 F.3d 373,377 {3d Cir. 2016}. We review the denial of a motion

under Rule 60(b)(3) for abuse of discretion. See Budget Blinds, Inc. White, 536 F.3d 244, 251 (3d Cir. 2008).³

Hose, 589 F.3d 626, 634 (3d Cir. 2009). The court did so because all of Iqbal's claims against the other defendants accrued at the latest upon the revocation of his license on November 2, 2020, more than two years before he filed his complaint on May 17, 2023 and because some had accrued much earlier including his claims against Fresenius for terminating his privileges in 2003.

Iqbal provides no basis to disturb that ruling. He argues that he is entitled to equitable tolling because due to the COVID- 19 pandemic. It took the Commonwealth Court about a year and a half to decide his petition for review. But as the District Court explained. Iqbal's claims regarding the revocation of his license accrued when the BPOA and Board it in 2020, not when the Commonwealth Court affirmed that ruling. See Pakdel v- City and Cant. of San Francisco, 594 U.S. 474, 475)(2021) (per curiam) (applying the settled rule that exhaustion of state remedies is not a prerequisite to an action under 42 U.S.C. §1983--- outside the prison context) (cleaned up); Kelly v. City of Chicago, 4 F. 3d 509, 511-13 (7th Cir, 1993) (holding that § 1983 claim related to revocation of liquor license accrued license officially revoked and that "[t]he availability of a state appeals process had no different effect on the accrual date").

Iqbal also argues that these limitations periods should have been tolled by fraud allegedly committed at the BPOA hearing. But Iqbal appears to mean only that the evidence presented at that hearing was false and he does not claim to have been unaware of that fact at the time. Nor has he raised any other persuasive.⁴

challenge to the court application of statute of applications. Thus, we affirm that ruling with the only modification noted in the margin. Second, the court dismissed Iqbal's claims against ARA and Dr. Betts (and most other defendants) on the grounds that they are not state actors for the purpose of § 1983. Iqbal's claims against ARA and Dr. Betts are that they terminated his minority ownership interest in ARA after his medical license was revoked. Iqbal does not squarely argue the point, but we agree with the District Court that he has not raised anything suggesting that this alleged conduct could be deemed state action for purposes of § 1983. Although Iqbal alleges that these defendants terminated his ownership because the state revoked his license, that fact does not plausibly transform these defendants 'wholly private conduct into conduct by the state as required under § 1983. See Kach, 589 F.3d at 646; Benn v. Universal Health Sys. Inc., 371 F.3d 165. (3d Cir. 2004). Nor does Iqbal argue that the District Court should have let him amend his complaint on

this point or that he could allege anything plausibly suggesting state action as to these defendants if given another chance.

One or Iqbal's claims is that defendants Melissa Smith and Donald Cokus provided false evidence in the proceeding leading to his 2018 Allegheny County conviction, this claim will not accrue unless that conviction is invalidated. See McDonough v. Smith 588 U.S. 109.115-9(2019) (applying the delayed-accrual rule of Heck v. Humphrey.512 C. S. 477 (1994), to a similar claim). Iqbal sought such invalidation in his complaint by requesting that his conviction be "reversed. The proper vehicle for that request is a habeas petition. not a Section 1983 action. See ids at 118 & n.6. Nevertheless, because this claim against Smith and Cokus has not yet accrued. We will modify the judgment to reflect that the dismissal of this claim is without prejudice to Iqbal's ability to assert it if his conviction is invalidated by other means. See Curt-v. 835 F.3d at 379. But we note that Smith and Cokus might be immune from this claim to the extent that it is based on their testimony in court, See Briscoe v. LaHuee 460 C.S. 325. 341-46 (1983).

5

Finally, Iqbal also challenges the denial of his Rule 60(b)(3) motion, in which he claimed fraud on the court. But as the District Court explained, Iqbal appears to claim only that certain defendant committed "fraud" by presenting false evidence in his prior proceedings. Iqbal cannot proceed with those claims for the reasons explained by the District Court and as discussed herein, and he did not raise anything in his Rule 60(b)(3) motion even arguably requiring a different result.

III

For these reasons. We will affirm the judgment of the District Court as modified 3 of this opinion.

6

24-1077

Document: 57 Page1

Date Filed: 09/03/2024

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
No. 24-1077 ZAFAR IQBAL. Appellant BPOA, PA STATE BOARD OF MEDICINE: CHIEF DONALD K. COKUS, North Fayette Township Police Department, City of Pittsburgh. CURAHEALTH PITTSBURGH, LLC; STEVEN JONES, MD; PHILIP POLICE, MD; MICHAEL WEIS, MD; A. D. LUPARIELLO, MD; KIMBERLEY FERKETIC, MELISSA SMITH; C. ROSS BETTS, MD; UPMC PASSAVANT HOSPITAL. AMERICAN RENAL ASSOCIATES. LLC; FRESENIUS MEDICAL CARE, INC.
(W.D. Pa. No. 2-23-cv-00832)

Present: A. FREEMAN, Circuit Judge.

Motion by Appellant Zafar Iqbal to File Exhibits to Petition for Rehearing2. Supplemental Motion by Appellant Zafar Iqbal to File Exhibits to Petition for Rehearing.

Respectfully.

Clerk JK ORDER The foregoing motions are granted.

By the Court,

s/ Arianna J. Freeman Circuit Judge Dated: September 3, 2024 JK/cc:
Zafar Iqbal All Counsel of Record

Case 24-1077

Document: 59 1

Date 11/01/2024

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
No. 24-1077

ZAFAR IQBAL, Appellant v.

BPOA PENNSYLVANIA STATE BOARD OF MEDICINE, ET AL

On Appeal from the United State District Court for the Western District of Pennsylvania DC Civil No2:23-cv-00832

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and CHUNG, Circuit Judges .The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court

and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

By the Court,

s/ Arianna J. Freeman

Circuit Judge Dated November 1, 2024kr/kj/ cc Zafar Iqbal

Appendix B

1. Reproduced Document related to Jurisdictional Statute of limitations.

a. Partial Reproduced Telephone Hearing Scheduling order by Jacob Herzing, PA Department of Human Services, Bureau of Hearings and Appeal, BHA Docket number 007-22-009. Medical assistance Preclusion dated 12/3/2024. Document 30 "A hearing will be held by telephone and will begin at 3.00 pm on January 21,2025. Jacob Herzing Esq."

2. Documents related to Chief Cokus perjury and Fifth amendment violations at BPOA Hearing 2/27/2020.

A. Partial reproduced Affidavit(SC appendix #96,97) which was read verbatim in petitioner's Criminal trial downloaded from SC case 22-624 appendix # 89, Reproduced Transcript of now Chief Cokus and Petitioner's Criminal Trial Transcript CP-02-CR-0003120-2018 page 10 lines 20'I will proceed to read the affidavit of probable cause which states that, Your Honor, you affiant is a Corporal Donald K Cokus'page 11, line 25.

There was no mention of any physical injury stated by Cokus as written by Kimberley Ferketic in her first written statement. This statement of Chief Cokus became perjurious after his testimony at the BPOA Hearing as below.

b. Reproduced Transcript SC appendix #89, 2/27 page 83 lines 11. 'Q. what happened to first statement that he gave you?15. A. I disposed it off after I read it....' 2/27 SC appendix # 94 page 87 lines 3. 'Q. Okay going back, how did you dispose of the statement? The first statement? 6.A. The first statement? 8.A. I either tore it up and threw it in the garbage can.' 2/27 SC appendix SC appendix #93 page 84 lines: '1. A.... which she alleges that there was ultimately bruising. We did not see.'

c: REPRODUCED TRANSCRIPT OF COERCED CONFESSION:

2/27-page 84 Line 20: So I provided him the same blank document that he was provided initially, and he wrote the second statement which was much closer to what his verbal statement was to me.

3. Reproduced Documents related to Kimberley Ferketic impeached testimony at BPOA Hearing 2/27/2020

a. Reproduced Transcript SC appendix # 82, 2/27 page 126 lines 9. A. 'My right breast is starting to bruise....' SC appendix # 85, 2/27 page 128 lines 17-18 Q. 'where is the blood-stained shirt now? Line 19 A. The detective took it.'

b/c Kimberley Ferketic Written statements 5 (2 pages) and 6(one page). The first written statement (5) page 2 and my right breast started to bruise. It is very sore.....

Page 6 dated 12/5/2017. *physical injury statement deleted. Both statements were concealed by Curahealth from petitioner's Criminal trial.*

4. Reproduced documents of UPMC unsuccessful attempt to deny petitioner opportunity to practice in 2008.

- a. Unprovoked and without any complaint UPMC denied hospital privileges renewal 10 A on January 3, 2008.
- b. A Hearing panel (10 B) overturned the medical executive decision on April 21, 2008. 'The hospital panel; concluded that recommendation made by the MEC was capricious and not supported by substantial evidence.'

5. Reproduced Documents related to Melissa Smith and Police Officer Lawrence Itri who testified at BPOA Hearing 2/26/2020.

- a. Transcript from Melissa Smith testimony: SC appendix # 2/26 page 50 lines 21.'Q. And did you report this to the police? 22. A. Yes. I believe a couple of days later.' Page 79 lines 19. Q. Mrs. Smith, you said you went to the police the next day? 21. A. I believe it was a couple of days later'

This is entirely false as depicted in police report document partially reproduced here original uploaded in case no 22-624 and a copy submitted.

- b. Police report SC appendix #65 Incident 201508331M8358 report written by Sergeant Lawrence Itri on 8/29/2015 at 15:49, this was 28 days later than the day of incident 08/01/2015.
- c. Sergeant Itri testimony SC appendix # 58 2/26 page 122 lines, 23. 'Q. ... the time reported is 8/29/2015 at 15:49? 25 'A. Yes. That the time I took the report.' SC appendix 59. 2/26-page 123 line 6 'A. Yes. That is first time I h've seen them'.

d. **Reproduced Documents from UPMC Hospital Investigation Committee.**

SC appendix # 70,71 pages 5,6 There is hourly watch documented from 8/1/2015 to 8/5/2024, it does not show that Melissa Smith any time contacted Police.

e. **Reproduced Document from investigation Committee report.**

SC appendix # 72, page 12 line 12 'The only tape available which showed outside of elevators on the first floor of the hospital was from PNC ATM machine. Page 12 line 15, there are multiple instances for a short period of time, the elevators are not visible, and someone is blocking the view.

fPhoto evidence that 10D, there is Hospital surveillance camera directly above first floor elevators.

g. On February 19, 2016, telephone conference call (10 E) with security revealed that there was hospital unhindered surveillance tape available. Hospital refused to share the tape.

h **Reproduced transcript of Dr. Police which confirms Spoliation of video evidence.**

2/27-page 32 line 3-6,Hearing Examiner: 'Okay to your knowledge, was there any other videotape available to you- for you to review beyond the PNC Bank tape? Line 8. The witness Dr. Police: So yes. I believe that UPMC also has video cameras in that area. I also believe that by the time we tried to obtain those video tapes, they had already been overwritten

i.**Reproduced portion of UPMC bylaws which govern Hearing panels (10 F).**

j.**No. 7. D.8. Post Hearing Statement.**

Each party shall have the right to submit a written statement, and the Hearing panel may request that statement be filed, following close of the hearing.

k. **Reproduced emails where President-lawyer ruled against written statement to be given to the hearing panel from the petitioner, violating his First Amendment Rights.**

UPMC and the President lawyer refused petitioner to file a written statement which contained above spoliation of video evidence.

(13) 'As I have already ruled. I sustained ms. Lapenta's objection to aspects of your statement. So, unless the objection is withdrawn, or you make

edits.... Your statement would not be given.

5. Reproduced documents for Fresenius Medical Care (FMC).

a. Document labelled as (14 A) and referred as R-15 (uploaded as SC appendix 103 in 22-624 case)

‘..... However, we feel that charges of sexual harassment are not substantiated....’ April 4, 2003.

b. Letter dated April 21, 2003 (14 C) demanding to try the same charges again....., Dr. Iqbal should present himself for an interview with appropriate company personnel”.

c. Response Letter (14 D) dated April 28, 2003, by Attorney Alan Baum. ‘Governing body on April 4, 2003, ruled in favor of Dr. Iqbal. If your investigation was not complete, FMC has no right to suspend and terminate Dr. Iqbal privileges.’

d. Document (14 E) Immediate suspension and Termination of FMC privileges dated May 1, 2003, by an Executive order of Medical Director.

e. Reproduced Document (14 F) dated 10/13/2003.

National Practitioner Data Bank DCN 5500000039647565

‘Privileges were immediately and permanently suspended....’

Same charges and same witnesses were used as of April 4, 2003, Hearing. Petitioner contends this violated his Fourteenth Amendment Rights.

e. Reproduced Final order BPOA pages 5 foot not 9 and page 6 lines 8-18.

Final Order: ‘Admitted loosing privileges at Fresenius Medical Care in 2003 as a result of sexual harassment allegations.

‘On April 4, 2003...there is insufficient grounds for sexual harassment.... the sole purpose was to lay foundation and provide full picture....”

Petitioner contends that even he was exonerated of same charges earlier, which were retried and resulted in his loss of privileges which violated Fourteenth amendment rights and both BPOA and FMC used it to smear petitioner’s reputation.

6. Reproduced Documents for ARA/Betts.

- a. Document (15*) shows petitioner share of 10%, this has been forcibly reduced from 15%.

Third Circuit and DCWPA dismissal with prejudice had these shares being confiscated illegally by ARA.

- b. Document (15 E), petitioner filed grievance report but without avail, his 15% shares were not restored.
- c. ARA and Dr. Betts excluded petitioner from Butler Market (15 A, B, C, D). Illegally keeping information from Hearing panel and then modifying questionnaire's question number V. (adding dialysis clinics) yet still denying privileges on technicality.

Appendix C

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania Bureau of Professional and Occupational Affairs Case
No.: 17-49-14398

vs.

Zafar Iqbal, M.D.

Respondent

FINAL MEMORANDUM OPINION AND ORDER ADOPTING HEARING EXAMINERS PROPOSED ADJUDICATION AND ORDER AND ADDRESSING EXCEPTIONS

At its September 2, 2020, Board meeting, the State Board of Medicine (Board) considered the entire record established before the hearing examiner in this case, including the proposed history, findings of fact conclusions of law and discussion in the hearing examiner's Proposed Adjudication and Order issued on July 17, 2020. In addition, the Board considered *the Brief on Exceptions to the Hearing Examiner 's Proposed Adjudication and Order (Brief on Exceptions)* filed by Zafar Iqbal, M.D. (Respondent) on August 3, 2020.

It is consistent with Board's authority under the Medical Practice Act of 1985 and the Administrative Agency Law, 2 Pa. C.S. S 504, for the Board to adopt the hearing examiner's proposed findings of fact, conclusions of law and discussion if the Board determines that they are complete, and the evidence supports them. Having reviewed the entire record, the Board concludes that the evidence and the law support the hearing examiner's proposed findings of fact, conclusions of law and discussion and incorporates them as if set forth fully in this *Final Memorandum Opinion*.

Prothonotary Filed 0m Nov 02, 2020, 12:03 PM

Act of December 20, 1985. PL. 457, No. 1 12, as amended, 63 P.s. 422.1 -422.51 a.

and Order. The Board adds the following discussion to address the exceptions raised in Respondent's *Brief on Exceptions*.

In his *Brief on Exceptions*, Respondent outlines several exceptions to the hearing

examiner's *Proposed Adjudication and Order*. In his first two exceptions, Respondent takes exception to the hearing examiner's credibility determination as it relates to his two accusers, M.S. and K. In his third exception, Respondent takes exception to the credibility of the testimony of Detective Donald Cokus as it relates to the criminal proceedings in this matter. Finally, in his fourth and fifth exceptions, Respondent provides an explanation of his prior relationship with a 2012 complainant, Ms. S. and provides further information on the "Fresenius Incident in 2002." *See Brief on Exceptions at para. 1-5.*

The Board begins by noting that "[any participant who wishes to appeal all or part of the Hearing Examiner's proposed report to the Board must file exceptions in the form of a Brief on Exceptions with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code 35.211-214." *Arowosaye v. Bureau of Professional and Occupational Affairs* 2017 WL 1 152561 (Pa. Cmwlth. 2017) Specifically, the Brief on Exceptions shall contain the following: a short statement of the case, a summary of the basic position of the party filing, the grounds upon which the exceptions rest and the argument in support with appropriate reference to the record and legal authorities. *1 Pa. Code 35.212.*

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. See e.g *Neva v. Department of Public Welfare* 551 A.2d 354 (Pa. Cmwlth. 1988)(determination of credibility of witnesses in health care providers' appeal is the province of the fact finder.) Additionally, the fact finder "need not provide specific reasons for finding one witness credible over the other.": *Sunoco Inc. v. Department of Environmental Protection* 864 A.2d 960 (Pa. Cmwlth. 2005) The reviewing courts do not accept invitations to re-evaluate evidence and credibility determinations. *Id.*

In attacking both the victim's credibility and the detective's credibility in his *Brief on Exceptions*, Respondent argues that it was "extremely clear" that the three key witnesses "lied under oath making their accusation probative values not beyond a reasonable doubt." *See Brief on Exceptions, pg. 1.* However, the normal burden of proof

for most administrative actions is the preponderance of the evidence standard. Samuel J. Lansberry In v. Pennsylvania Public Utility Commission 578 A.2d 600(Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 529 Pa. 654, 602 A.2d 863 (1998); *see also North American Coal Corp. v. Air Pollution Commission* 279 A.2d 356 (Pa. Cmwlth. 1971) citing *In Matter of Leopold*, 366 A.2d 227 (Pa. 1976).

In Leopold, the Pennsylvania Supreme Court was faced with the issue of what standard of proof to apply when conducting a *de novo* review of the recommended disbarment of an attorney. Rejecting the contention that the "beyond a reasonable doubt" standard should be used, the Pa. Supreme Court stated that "[w]hile we recognize the severe impact that such sanctions may have on an individual's career, we are also mindful of our duty to uphold the integrity of the Bar." Suber v. Pennsylvania Commission on Crime and Delinquency 885 A.2d 678 (Pa. Cmwlth. 2005) citing Leopold. Accordingly, the Court concluded that use of the preponderance of the evidence standard is necessary as it had been consistently utilized in disciplinary cases through the years. *Id.* citing Ruane v. Shippensburg University, 871 A.2d 859 (Pa. Cmwlth. 2005)(holding that the proper standard for a student suspended for sexual assault was "preponderance of the evidence" standard), Boguslawski v. Department of Education, 837 A.2d 614 (Pa. Cmwlth. 2003) (reaffirming and holding that preponderance of evidence was the correct standard to be applied in teacher discipline cases).

3.

The Board notes that the hearing examiner began the proposed discussion by clearly and accurately outlining that the correct burden of proof to be applied in this administrative proceeding is the preponderance of the evidence standard. Next, the hearing examiner provides a lengthy discussion on the credibility of the witnesses and weight of the evidence and cites to the controlling case law on that issue. The Board concludes that the hearing examiner's proposed discussion on burden of proof and credibility is precise and complete. Accordingly, Respondent's first three exceptions, relating to the credibility of M.S., K.F. and Detective Cokus are without merit.

In his fourth and fifth exceptions, Respondent provides additional explanations regarding a 2002 sexual harassment complaint against him while employed at the

Fresenius Dialysis Center and a 2012 complaint against him while employed at UPMC. Specifically, in his fourth exception, Respondent states that, "I had a purely platonic relationship with "Ms. S" with a small altercation in 2012. I was extremely contrite and have not spoken to her since. She did not appear at the hearing." *See Brief on*

Exceptions at para. 4. In his fifth and final exception Respondent states, "attached are documents which show exoneration initially. The instigating event was my breakup with a group and starting a new dialysis clinic. I was readmitted to the clinic once new administration took over." *See Brief on Exceptions at para 5.* Respondent attaches exhibit R-15 in support of his fifth exception. This exhibit is the Governing Body Committee Decision Dated April 4, 2003, which found sufficient grounds for revocation of Respondent's staff privileges based on his progress notes, history and physicals, long and short-term care plans and physician orders. The Committee further found that the charges of sexual harassment were not substantiated. *See Exhibit R-15.2*

The Board notes that Respondent uses the complainant's full name but for sake of privacy, the Board has used the complainant's initials.

4

The Board notes that Respondent's statements in his fourth and fifth exceptions do not specifically cite to any proposed finding, conclusion or discussion within

the *Proposed Adjudication and Order* to which he takes exception as required by the General Rules of Administrative Practice and Procedure. However, for the sake of completeness. The Board will treat these general statements as exceptions to the only areas of the proposed report that address these incidents. In the Proposed Adjudication and Order, at findings of fact 41 through 43, the hearing examiner found as fact the following related to the investigation of the MS. complaint:

41. The Investigating Committee considered the incident involving MSS. as well as previous incidents involving Respondent from 2003 (involving multiple complaints at the Fresenius Dialysis Center)9, 2012 (involving unwanted physical contact of a co-worker nurse. A.S.) IO and 2013 (involving patient complaints).

N.T. 2/27/20 at pp. 286-287, 292; Exhibit c-8e

42. "The Investigating Committee conducted a thorough investigation and

recommended that Respondent's medical staff and clinical privileges be revoked because he violated UP MCs policies. including the Code of Conduct and

Harassment-Free Workplace Policy. N.T. 2/26/20 at pp. 182-183; Exhibit C-9.

43. Based upon the results of that investigation, the unanimous vote of the Medical Executive Committee was to revoke Dr. Iqbal's medical staff and clinical privileges. 'N.T. 2/26/20 at P. 186. *See Proposed Adjudication and Order at pg 9.*

Proposed finding of fact number 41 contains two footnotes (FN 9 and FN 10) which describe the 2003 and the 2012 incidents. Footnote 9 and 10 states as follows •

9"Dr. Iqbal admitted to losing his privileges at the Fresenius Dialysis Center in 2003 as a result of sexual harassment allegations. "The complainants in that case were all nurses. N.T. 2/27/20 at pp.

467-470. Although the Fresenius allegations are not the basis for the present OTSC before the Board, the allegations are material to the extent they were a factor considered by UPMC in its decision to revoke Respondent's medical staff and clinical privileges.

10The 2012 incident involved Respondent's unwanted physical with nurse A. S. That unwanted physical contact resulted in a "collegial intervention" by UPN • IC personnel including Dr. Rupa Mokkapatti, the Chair of Medicine at UPMC Passavant (who testified in person at the hearing in this matter. N.T. 2/26/20 at pp. 25-26; 28-31: Exhibit C-1 and C-2). Although the 2012 unwanted contact with nurse A.S. is not the basis for the present OTSC before the Board, it is material to the extent it was a factor considered by UPMC in its decision to revoke Respondent's privileges.

5

See Proposed Adjudication and Order at pg 9, FN 9. 10.

The hearing examiner made no other reference to the 2003 and the 2012 incidents in the Proposed Adjudication and Order. The Board has reviewed the entire record of this matter, including the transcript of testimony. The Board notes that the hearing examiner properly considered the testimony concerning the 2003 and 2012 incidents as they related to the investigation of M.S.'s complaint against Respondent and not as violations themselves. The hearing examiner's proposed findings of fact 41

through 43 accurately reflect the testimony provided by several of the Commonwealth's witnesses. The Board recognizes *Exhibit R-15* contains the conclusion of the Governing Body Committee Decision, on April 4, 2003, that there were insufficient grounds for a finding of sexual harassment based on Respondent never being warned, notified or counseled about the allegations of harassment against him. However, the Board

concludes that the 2003 finding is irrelevant to these proceedings as Respondent is not charged with a violation related to that complainant. The sole purpose of the introduction of this evidence was to lay the foundation and provide the full picture of UPMC's investigation in the current M.S. matter. Therefore, Respondent's fourth and fifth exceptions are without merit.

While Respondent does not raise an exception to the hearing examiner's proposed penalty, the Board concludes that the imposition of a civil penalty is not necessary in this matter. The revocation of Respondent's license is enough to further the Board's specific goal of protecting the public health and safety. In conclusion, the Board finds that the evidence and law support the hearing examiner's *Proposed Adjudication and Order* and that the issues raised in the *Commonwealth's Brief on Exceptions* are without merit.

Wherefore, the following substitute Final Order shall issue:

6

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE
Commonwealth of Pennsylvania,
Bureau of Professional and Occupational Affairs
Case No.: 17-49-14398 vs.
Zafar Iqbal, M.D.
Respondent
FINAL ORDER

AND NOW, this 2nd day of November 2020, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is ORDERED that the license to practice

medicine and surgery issued to Respondent, Zafar Iqbal, MD., license no. MD044624E is

REVOKED.

This Order is effective immediately. The sanction will become effective thirty (30) days from the mailing date of this order, namely December 2, 2020. BY ORDER:

BUREAU OF PROFESSIONAL AND STATE BOARD OF MEDICINE
OCCUPATIONAL AFFAIRS

K. KALONJI JOHNSON, MARK B. WOODLAND, M.S., M.D.

COMMISSIONER CHAIR

APPENDIX D

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Zafar Iqbal, Petitioner V

Bureau of Professional and Occupational Affairs,

State Board of Medicine,

ORDER

AND NOW, this 18th day of April, 2022, the November 2, 2020, order of the State Board of Medicine revoking Dr. Zafar

Iqbal's license to practice medicine in Pennsylvania, is AFFIRMED.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Order Exit 04/18/2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Zafar Iqbal,

Petitioner

Bureau of Professional and

Occupational Affairs,

State Board Of Medicine,

Respondent 4:

No. 1190 C.D. 2020 Submitted: February 4, 2022

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge

HONORABLE CHRISTINE FIZZANO CANNON, Judge HONORABLE LORI A.

DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION

BY JUDGE FIZZANO CANNON FILED: April 18, 2022

Zafar Iqbal (Dr. Iqbal) petitions for review of the November 2, 2020, order of the State Board of Medicine (Board) revoking his license to practice medicine in Pennsylvania on the basis of multiple incidents of unwanted sexual advances toward nurses and medical support staff. The Board concluded that revocation is warranted because Dr. Iqbal's conduct violated the prohibition on immoral and unprofessional conduct set forth in the Medical Practice Act of 19851 (MPA) and its associated regulations. Upon review, we affirm.

Act of December 20, 1985, P.L. 457, as amended, 63 P.s. 422.1-422.53.

I. Background and Procedural Posture Dr. Iqbal has been a licensed medical doctor in Pennsylvania since 1990 and specializes as a nephrologist. Hearing Officer's Op., 7/17/20, at 5; Certified Record (C.R.) #23. In 2003, Dr. Iqbal lost his practice privileges at the Fresenius Dialysis Center after allegations of sexual harassment by several nurses. Id. at 9 & n.9. In 2012, after an incident involving unwanted sexual contact with a nurse when he was practicing at UPMC Passavant (UPMC), Dr. Iqbal received a warning but no formal discipline. Id. at 9 & n. 10.

On August 1, 2015, while still at UPMC, Dr. Iqbal made unwanted physical advances toward a nurse, M.S.,² in an elevator, by kissing her and putting his tongue in her mouth; she reported it to her superiors the same day. Hearing Officer's Op. at 5-7. After an investigation and internal proceedings, UPMC's board of trustees revoked Dr. Iqbal's hospital privileges as of March 17, 2016. Id. at 7-10.

Them on November 7, 2017, while working for Curahealth in Oakdale, Dr. Iqbal sexually assaulted a medical records clerk, K.F., who reported it to the police on November 9, 2017. Id. at 10-12. Dr. Iqbal was suspended from Curahealth and after a bench trial on November 20, 2018, he was convicted of one count of simple assault (a second-degree misdemeanor) and three counts of harassment (a third-degree misdemeanor);³ he was sentenced to five years of probation. Id. at 12-13.

In November 2019, the Bureau of Professional and Occupational Affairs (Bureau) filed an Order to Show Cause (OTSC) against Dr. Iqbal, alleging that in association with the M.S. and K.F. incidents, he was being charged with seven counts of unprofessional and/or immoral conduct in violation of the MPA and its

2 For confidentiality purposes, the victims' names are limited to their initials.

3 see 18 Pa.C.S. 2701(a), 2709. 2

regulations. OTSC, 11/8/19, at 2-11; C.R. #1. The OTSC advised Dr. Iqbal that his state medical license could be revoked and he could be assessed civil fines of up to \$10,000 per violation. Id. at 11-12.

At hearings on February 26-27, 2020, two UPMC doctors testified about the 2012 incident. M.S. testified about the 2015 incident, as did two of her superiors, as well as two doctors involved in UPMC's investigation, two police officers, and the professional conduct investigator who worked on M.S.'s report. K.F. testified as to the 2017 incident, as did the police officer and the professional conduct investigator who investigated it. The Bureau also presented an expert on medical ethics and conduct.

Dr. Iqbal testified that the M.S. incident was not an unwanted advance. He had suggested to her that they speak privately about her personal "problems" after he finished with his patients. Notes of Testimony (N.T.), 2/27/20, at 433. They first went to a seating area on the fifth floor away from the nurses' station, then to the elevator for more privacy. Id. at 436. She was upset and tearful and since they knew each other, he gave her a hug and a peck on the cheek. Id. at 437-39. In the elevator, they went up and down to various floors because they were confused, then when they returned to the fifth floor and were exiting the elevator, he gave her a hug, his lips accidentally brushed against hers, then they went in different directions. Id. at 441-42. He denied putting his tongue in her mouth or throat. Id. at 444 & 487.

Dr. Iqbal acknowledged that when UPMC leadership asked if he kissed M.S., he said he had, even though it was accidental, because he wanted to be truthful, but he had not known the nature of the allegations against him when he admitted to kissing her. N.T., 2/27/20, at 443, 486 & 495. He acknowledged telling them that his actions towards M.S. were inappropriate. Id. at 485-86. Nevertheless, he

3

believes M.S. has lied about it being non-consensual. Id. at 561. He confirmed that he had been warned after the 2012 incident. Id. at 488-93. He also believed that better video of the incident existed and would have cleared him, but it was "obstructed" and never shown to the UPMC investigative panel. Id. at 558 & 564.

With regard to K.F., Dr. Iqbal admitted that he kissed her and touched her breasts but stated that she consented and put his hand on her breasts. N.T., 2/27/20, at 445. He believed they were going to have an extramarital affair and that she wanted to go out and have a good time with him; he maintains that she is lying about the encounter being non-consensual. Id. at 446, 461 & 560. He acknowledges that he

was convicted of charges arising from the incident, but criticized Detective Cokus, the investigating police officer, for having misled him about there being video of the K.F. incident and for tearing up his first written statement suggesting that the incident had been consensual. Id. at 453, 464, 483, & 558.

Dr. Iqbal acknowledged that his practice privileges at Fresenius were revoked in 2003 after several allegations of sexual harassment by nurses. N.T., 2/27/20, at 468-69. He stated that he has had about 15 extramarital affairs, about half with women from his medical workplaces who were nurses or support staff. Id. at 471-76. He maintained that in the past, allegations of sexual harassment have been lodged against him after an affair soured. Id. at 552-53.

Dr. Iqbal agreed that if he had acted in the way M.S. and K.F. alleged and the incidents had been non-consensual, it would have been improper in the hospital workplace setting. N.T., 2/27/20, at 500-01. He acknowledged that he had an opportunity for a further hearing before the UPMC Medical Committee, but refused to attend because he was not given video that he believes would have cleared him. Id. at 569-71.

4

The hearing officer credited M.S. and R.F. and described their testimony as consistent, credible, and corroborated: "More specifically, their body language, tears, as well as the tone and tenor of [their] voice[s] lent credibility to the veracity of their testimony." Hearing Officer's Op. at 17. The hearing officer also credited the Bureau's additional witnesses and discredited Dr. Iqbal. Id. The hearing officer therefore concluded that Dr. Iqbal had violated the MPA's prohibition on unprofessional and immoral conduct as to the M.S. and K.F. incidents. Id. at 18-28. Weighing the seriousness of Dr. Iqbal's offenses with the lack of any "meaningful" mitigation evidence, the hearing officer concluded that Dr. Iqbal's medical license should be revoked.⁴ Id. at 28-30 & Order. The Board adopted the hearing officer's opinion in full. Board's Op., 11/2/20; C.R. #30. Dr. Iqbal then petitioned this Court pro se for review.⁵

II. Parties' Arguments

Dr. Iqbal argues that the Board's revocation of his medical license was arbitrary and capricious. Dr. Iqbal's Br. at 3. He claims that M.S. should not have been found credible because she stated in her testimony that she reported the August 1, 2015, incident to the police several days after it occurred, but the police report taken by Sergeant Itri was taken several weeks later on August 29, 2015. Id.

4 *The hearing officer also imposed a civil penalty of \$1,000 against Dr. Iqbal. Hearing Officer's Order. The Board reversed the penalty *sua sponte*, explaining that revocation of Dr. Iqbal's medical license was sufficient to ensure public health and safety, and it is not at issue here. Board's Op., 11/2/20, at 6.*

5 *Dr. Iqbal's petition for review was filed on November 23, 2020. He then filed amended petitions for review on January 19, 2021, and February 3, 2021. This Court struck those filings as they sought to add new claims not contained in the original petition and the appeal period from the Board's determination had lapsed. Order, 2/3/21, & Order, 2/4/21 (citing Pa.R.A.P. 1513(d)(5)). We therefore consider only the merits of Dr. Iqbal's original petition.*

5

He claims that the settlement funds M.S. received from her lawsuit against him and UPMC arising from the incident were fraudulently acquired. *Id.* at 9.

Similarly, Dr. Iqbal claims that R.F. should not have been found credible, because she stated that Dr. Iqbal had blood on his shirt that stained her shirt during the November 7, 2017, incident and that she gave her shirt to the police, but Detective Cokus testified that she did not give him the shirt; Dr. Iqbal asserts that R.F. lied about the shirt and therefore falsified evidence against him. *Id.* at 4-5 & 9.

Dr. Iqbal claims that Detective Cokus likewise should not have been found credible, because he admitted misleading Dr. Iqbal during their interview by stating he would be reviewing video of the R.F. incident that ultimately did not exist and also acknowledged disposing of Dr. Iqbal's initial written statement that asserted the K.F. incident had been consensual. *Id.* at 6-7. Dr. Iqbal asserts that his subsequent admission to Detective Cokus that the incident was not consensual was therefore a product of duress and obstruction of justice, such that his criminal convictions arising from the R.F. incident were invalid. *Id.* at 7-8. He adds that the hearing officer deliberately excluded an allegedly exculpatory report by Dr. Wettstein, a forensic psychologist who examined Dr. Iqbal in June 2017 as part of the Bureau's investigation of the M.S. matter. *Id.* at 9. He asks this Court to reinstate his medical license, overturn his criminal convictions, and institute criminal proceedings against M.S., K.F., and Detective Cokus. *Id.* at 9.

The Bureau responds that the Board's decision to revoke Dr. Iqbal's medical license was supported by substantial evidence of record and that Dr. Iqbal

has not established that the revocation was either arbitrary or capricious. Bureau's Br. at 12. The Bureau notes that the hearing officer applied the appropriate preponderance of the evidence standard rather than the criminal standard of proof

6

beyond a reasonable doubt, and that any discrepancies in M.S. and K. F.'s testimony were ancillary to the main issue of whether the assaults occurred. Id. at 15. The Bureau avers that Dr. Iqbal's attempt to discredit Detective Cokus is likewise immaterial in light of the extensive evidence that Dr. Iqbal committed the actions that led to his criminal conviction arising from the K.F. incident. Id. at 20-21.

III.. Discussion

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. *Slawek v. State Bd. of Med. Educ. & Licensure*, 586 A.2d 362, 364-66 (Pa. 1991); *Tandon v. State Bd. of Med.*, 705 A.2d 1338, 1346 (Pa. Cmwlth. 1997). Generally, a reviewing court may not substitute its judgment for that of the agency whose decision is being reviewed. *Slawek*, 586 A.2d at 365-66. This Court's review is therefore 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. *Gleeson v. State Bd. of Med.*, 900 A.2d 430, 435 (Pa. Cmwlth. 2006). The 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.

The Board is charged with the responsibility and authority to oversee the medical profession and to determine the competency and fitness of an applicant

6 *"Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support [a] conclusion." Taterka v. Bureau of Pro. & Occupational Affs., State Bd. of Med., 882 A.2d 1040, 1044 11.4 (Pa. Cmwlth. 2005).*

7

to practice medicine within the Commonwealth. *Barran v. State Bd. of Med.*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996). Section 41 of the MPA, titled "Reasons for refusal, revocation, suspension or other corrective actions against a licensee or

certificate holder," states that the Board "shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons":

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. In proceedings based on this paragraph, actual injury to a patient need not be established. 63 P.S. S 422.41(6), (8). The Board's regulations further provide that "A Board regulated practitioner who engages in unprofessional or immoral conduct is subject to disciplinary action under section 41 of the [MPA] (63 P.S. S 422.41)." 49 Pa. Code S 16.61(a). This subsection lists actions-related to patient care that would warrant discipline, but the list is not limited to patient care. Id. Immoral conduct also includes "[t]he commission of an act involving moral turpitude, dishonesty or corruption when the act directly or indirectly affects the health, welfare or safety of citizens of this Commonwealth." 49 Pa. Code S 16.61(b).

Although Section 16.61 also states that a criminal conviction is not required for disciplinary action, a conviction or guilty plea involving conduct pertaining to medical practice is admissible and relevant to disciplinary proceeding

8

For the same actions at issue in the criminal matter. *Herberg v. State Bd. of Med. Educ. & Licensure*, 442 A.2d 411, 413 (Pa. Cmwlth. 1982) (guilty plea to felony drug charges admissible in revocation proceedings). Disciplinary proceedings, however, are conducted on the basis of a preponderance of the evidence standard rather than the criminal standard of beyond a reasonable doubt. *Lyness v. State Bd. of Med.*, 561 A.2d 362, 369 (Pa. Cmwlth. 1998). Deference is accorded to the Board's determination of what constitutes unprofessional and immoral conduct. *Starr v. State Bd. of Med.*, 720 A.2d 183, 190 (Pa. Cmwlth. 1998).

In *Tandon*, a doctor's medical license in Tennessee had been suspended for unwanted sexual advances toward his receptionist and a female insurance agent. 705 A.2d at 1341. He relocated to Pennsylvania, reactivated his prior Pennsylvania license, and began practicing as the only oncologist at his new hospital, with a case load of 170 cancer patients per month. Id. The Bureau, citing Section 41 of the MPA, began reciprocal disciplinary action based on his Tennessee record. Id. at 1342. A hearing officer imposed a three-year suspension (mostly stayed), which was

upheld by the Board. Id. This Court affirmed, noting that but for the doctor's patient case load and the lack of other oncologists at the facility, the discipline for his misconduct would likely have been more severe. Id. at 1346.

In Flickinger v. Department of State, 461 A.2d 336 (Pa. Cmwith. 1983), multiple sexual harassment and assault complaints had been filed against the doctor, a chiropractor, by both patients and staff where he practiced. Id. at 337. Under provisions of the chiropractor conduct law analogous to Section 41 of the MPA, his license was revoked. Id. The doctor argued that misconduct involving staff should not be subject to professional discipline because it did not impact patient care and well-being, but this Court disagreed and upheld the revocation, finding extensiveL

9

support in the record of multiple incidents of sexual misconduct and no mitigating evidence. Id. at 337-38.7

Tandon and Flickinger establish that doctors found to have sexually assaulted nurses and medical support staff are subject to discipline, up to and including license revocation. Apart from the mitigating evidence of an extensive patient case load in Tandon, the primary reason for lenience in cases involving sexual misconduct has been when too much time has elapsed and the principle of laches applied because memories had faded and witnesses were not available. See Shah v. State Bd. of Med., 589 A.2d 783 (Pa. Cmwlth. 1991) (over four years between alleged incident and report by patient to Board); Lyness (victims did not

report incidents for several years). Dr. Iqbal has not argued laches in this matter and, in any event, M.S. and K.F. promptly reported their incidents with Dr. Iqbal.

Here, the Bureau presented evidence of Dr. Iqbal's unwanted sexual contacts dating back to 2003, when he lost his practice privileges at Fresenius after multiple staff reports. Hearing Officer's Op. at 9 & n.9, Findings of Fact (F.F.) 41. The record also includes the testimony of Dr. Robert Volosky, who observed the 2012 incident at UPMC in which Dr. Iqbal verbally propositioned a nurse, and Dr. Rupa Mokkapatti, who stated that the incident led to an informal (but documented) inquiry after which Dr. Iqbal admitted wrongdoing, accepted a warning, and promised not to do it again. N.T., 2/26/20, at 24-41 & 237-39.

Despite that assurance, in 2015, Dr. Iqbal assaulted M.S. in an elevator, which she recalled included him "shov[ing] his tongue down [her] throat." Hearing

7 *Our courts have also consistently upheld revocation of doctors' medical licenses for improper sexual harassment or conduct regarding patients. Telang v. Bureau of Pro. & Occupational Affs., 751 A.2d 1147 (Pa. 2000); Yousufzai v. Bureau of Pro. & Occupational Affs., State Bd. of Med., 793 A.2d 1008 (Pa. Cmwlth. 2002); starr v. state Bd. of Med., 720 A.2d 183 (Pa. Cmwlth. 1998).*

10

Officer's Op. at 5-7 & 20. M.S. reported it immediately to three superiors, two of whom testified consistently concerning her account of the incident. N.T., 2/26/20, at 89-97 & 105-17. Several weeks later, M.S. also reported the incident consistently to the police. Id. at 119-27. M.S. subsequently told the UPMC investigating panel, which found her credible, and the professional conduct investigator gathering evidence for these disciplinary proceedings, who found her "sincere." Id. at 301-03 & 249-57. Ultimately, the hearing officer also credited M.S.'s account, to which she testified in person. Hearing Officer's Op. at 17.

Dr. Iqbal maintains that the incident with M.S. was not an unwanted advance in light of their prior friendly relations, but proffered no evidence or witnesses to support his assertion. The UPMC investigative panel did not find his version of the incident as consensual to be credible, and neither did the hearing officer. N.T., 2/26, 20, at 303-08 & 314; Hearing Officer's Op. at 17. Moreover,

Dr. Steven Jones of UPMC, whom the hearing officer found credible, testified that shortly after the incident, when he and the Leadership Council conducted an initial inquiry, Dr. Iqbal admitted he had "crossed a line" with M.S. and that he regretted the incident. Id. at 154-61. Dr. Iqbal's attempts to discredit M.S. were rejected by the hearing officer, who found the passage of several weeks before M.S. reported

the matter to the police irrelevant in light of the fact that she immediately reported it at UPMC and did ultimately report it to the police. Hearing Officer's Op. at 20 &

23. After UPMC revoked Dr. Iqbal's hospital privileges in March 2016, he began practicing at Curahealth, but his episodes of misconduct did not cease and, in fact, escalated to the 2017 physical assault on K.F., who stated she had no prior relationship with him at all when he came into her office to sign medical records,

11

then violently attacked her, "stuck his tongue down [her] throat," ground his body against hers in a bear hug, and grabbed at her breasts, bruising them. N.T., 2/27/20, at 373-76. Two days later, she reported the incident to Curahealth and the police. Id. at 337-38.

Detective Cokus, who investigated the K.F. incident, stated he was suspicious of Dr. Iqbal's verbal and written assertions that the incident had been consensual, so he used an accepted technique of misleading Dr. Iqbal by mentioning

there was video of the incident that would clear up any questions, at which point Dr. Iqbal admitted the incident had not been consensual. N.T., 2/27/20, at 346-49 & 355-58. Dr. Iqbal's criminal conviction on misdemeanor charges of simple assault and harassment arising from the R.F. incident after a counseled bench trial (with stipulated evidence) in Allegheny County was admitted at the hearing and acknowledged by Dr. Iqbal in his testimony. Hearing Officer's Op. at 4 & n.4.

The hearing officer credited K.F. and Detective Cokus and found Dr.

Iqbal's account of the incident as consensual to be not credible. Hearing Officer's Op. at 17 & 24. The hearing officer also described this incident as an escalation in the severity of Dr. Iqbal's conduct, particularly after he received a warning following the 2012 incident at UPMC and ultimately lost his UPMC hospital privileges after the M.S. incident in 2015. Hearing Officer's Op. at 23. The hearing officer dismissed Dr. Iqbal's attempt to discredit R.F. by arguing about whether blood on his shirt stained her shirt during the incident as immaterial to whether the incident was nonconsensual and amounted to immoral and unprofessional conduct. Id. At 24.

8 Dr. Iqbal now contends that his conviction was unjust, but the record contains no indication that he appealed it within the appropriate timeframe.

12

The hearing officer concluded that the Bureau proved all of the charges against Dr. Iqbal, whose actions amounted to immoral and unprofessional conduct as set forth in Section 41 of the MPA and Section 16.61 of the associated regulations. Id. at 19 & 25. Given the preponderance standard, the breadth and consistency of the Bureau's evidence, and Dr. Iqbal's lack of rebuttal or mitigating evidence, the hearing officer's conclusions were supported by substantial evidence of record and were not legally erroneous, arbitrary, or capricious.

As to sanctions, the hearing officer considered the numerous and escalating instances of Dr. Iqbal's misconduct, the revocation of his UPMC hospital practice

privileges after the M.S. incident, his criminal conviction arising from the K.F. incident, and his lack of any mitigating evidence. Hearing Officer's Op. at 30. The hearing officer concluded that "despite numerous warnings, including collegial interventions and revocation of privileges at various medical facilities, [Dr. Iqbal] [cannot], or will not, act in a professional, ethical or moral manner. Thus, a severe sanction is warranted." Hearing Officer's Op. at 30. The hearing officer therefore ordered Dr. Iqbal's medical license revoked. Id. The Board adopted the hearing officer's findings and conclusions in full, dismissed Dr. Iqbal's exceptions attacking the credibility and conduct of the witnesses who testified for the Bureau, and upheld the revocation of his medical license. Board's Op. at 2-6.

We agree with the Board that the extensive evidence presented by the Bureau and summarized above fully supports the sanction of revocation. That determination was amply supported by substantial evidence of record and was not legally erroneous, arbitrary, or capricious. This result is also consistent with the holdings of Tandon and Flickinger, where this Court has upheld severe sanctions for

13

doctors found to have violated the MPA and its regulations against unwanted sexual advances and attacks on nurses and support medical staff.

In his brief, Dr. Iqbal again argues that M.S., K.F., and Detective Cokus should not have been found credible. Dr. Iqbal's Br. at 3-5. However, credibility determinations are firmly reserved to the fact finder (the Board) and this Court has no basis or authority to overturn such determinations. Gleeson, 900 A.2d at 435.

Moreover, as the hearing officer pointed out, Dr. Iqbal's assertions of inconsistencies in the testimony of both M.S. and K.F. pertain to minor or ancillary matters rather than these victims' accounts of the incidents themselves, which were the basis of the Board's revocation decision, and which were unequivocally found credible, consistent, and corroborated by other evidence of record. Hearing Officer's Op. at 17, 19 & 23-24. Likewise, Detective Cokus was found credible by the hearing officer, and as explained above, this Court may not disturb that determination. See Gleeson, 900 A.2d at 435. Moreover, the hearing officer's opinion does not indicate that Detective Cokus's testimony was relied on for any specific finding or served as anything other than a supplemental or corroborative source to that of M.S., K.F., and the hospital personnel who corroborated their accounts. See Hearing Officer's op. at 17 & 23-25.

IV. Conclusion

As the Board's determination was supported by substantial evidence of record and Dr. Iqbal has not shown that the Board acted arbitrarily, capriciously, or

14

in a legally erroneous manner, we affirm the Board's order revoking Dr. Iqbal's license to practice medicine in Pennsylvania.⁹

S/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Appendix E

IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

ZAFAR IQBAL, M.D

v

BPOA, STATE BOARD
OF MEDICINE, et al.

}
}
}
}
}
}
} Civil Action
}
} No. 23-832

Magistrate Dodge

Defendants

MEMORANDUM OPINION

Plaintiff Zafar Iqbal, M.D. ("Plaintiff" or "Dr. Iqbal") brings this pro se civil rights action pursuant to 42 U.S.C § 1983 in which he alleges violations of his rights under the First, Fifth and Fourteenth Amendments.

Plaintiff's claims arise out of a November 2, 2020, order of the Pennsylvania Board of Professional and Occupational Affairs ("BPOA) Pennsylvania ("the Revocation Order"). The Revocation Order followed an investigation into two incidents in which Dr. Iqbal made unwanted sexual advances to medical personnel at facilities where he worked, one of which resulted in his conviction on criminal charges. Plaintiff appealed the Revocation Order to the Pennsylvania Commonwealth Court, which affirmed the decision in an order dated April 18, 2022.

Along with the BPOA and the Board, he also asserted claims against Melissa Smith and Kimberly Ferketic, the two victims who testified against him at the BPOA hearing; Donald K Cokus, a police detective North Fayette Township Police Department who interviewed

him in connection with the Ferketic incident; Curahealth Pittsburgh, LLC ("Curahealth"), the facility. 1

where Ferketic worked, physicians; the Steven Jones, Phillip Pollice and Michael Weiss. who were involved in the investigation against him; and UPMC Passavant Hospital ("UPMC"), which revoked his privileges to practice at that facility in 2016 following the Smith incident. Finally, he has brought claims against Dr. A.D. Lupariello and Fresenius Medical Care, Inc which revoked his privileges to practice at their facilities following allegations of sexual harassment by several nurses back in 2003 and American Renal Associates, LLC ("ARA") and Dr. C. Ross Betts, who terminated his minority ownership in two clinics in 2022 as a result of the Revocation Order. Presenting pending before the Court for resolution are eight motions to dismiss, including a motion filed on behalf of UPMC: Dr. Jones, Dr. Pollice, Dr. Weiss and Melissa Smith (together, the "UPMC Defendants") and motions filed by the remaining defendants. ² For the reasons below, all of the motions will be granted. ¹ Because it would be futile to allow amendment of the dismissed claims, the dismissal will be with prejudice.

I. Relevant Procedural History. Plaintiff filed this action on May 17, 2023 (ECF No. 1). Federal question jurisdiction is based on the civil rights claims asserted, 28 U.S.C. §1331. The Complaint does not have separate counts. It alleges generally that the actions of Defendants violated Plaintiff's rights under the First Amendment's freedom of speech clause, the.

1This defendant refers to itself as "Bio-Medical Applications of Pennsylvania, Inc., incorrectly identified as 'Fresenius Medical Care' ('BMAPA')." (ECF No. 59 at 1 y) To simplify the record, it will be referred to as Fresenius.

2An order was entered directing Plaintiff to show cause why Ferketic should not be dismissed based on his failure to effect service on her (ECF No. 57). In his response (ECF No. 62), Plaintiff indicated that he could not serve Ferketic because he has learnt that she had died on August 10, 2020. Subsequently Ferketic was dismissed as a party to this action. [ECF 93].

3The parties have consented to full jurisdiction by a magistrate judge pursuant to 28 USC (ECF Nos. 47, 50, 51-54, 56, 60-61) 2

Fifth Amendment⁴ and the Fourteenth Amendment's due process clause. As will be detailed below, Dr. Iqbal's allegations raise the same arguments that he presented to the state agencies and the Commonwealth Court. As relief, Dr. Iqbal requests the following:

- Reversal of Criminal Conviction at Common Pleas Court CP-02-CR-0003120-2018.
- Restoration of PA and NY Medical License[s]retroactively from 11/02/2020
- Arbitration to determine financial loss of income since 2015.
- Arbitration to determine punitive damages and compensation for pain and suffering.
- Arbitration for dialysis income lost from [ARA's] removal of my partnership shares.
- Arbitration for loss of income from Fresenius Medical Care, for life ban on privileges. (1d. at 11.)⁵

²Defendants have addressed the claim solely under Fifth amendment's due process clause, which applies to federal actors, not state actors See Dusenbury v United States, 534 US 161,167 (2002). Some of the plaintiff's submission suggest he may raising a claim under Fifth amendment's compulsion clause, which states that no one shall be compelled in a criminal case to be a witness against himself. US Const. Amend V. This provision does not apply to state actors. See Curtis v Wetzel 763 F App'x 259, 265, (3rd Cir. 2019). Nevertheless, for the reasons explained below it is not necessary to resolve the issue.

On March 25, 2021, the New York Office of Professional Medical Conduct reciprocally revoked Dr. Iqbal's license to practice medicine in that state based on his criminal conviction and the Revocation Order. ECFNO.42-at 4-5).

3

Plaintiff has attached to his Complaint the Commonwealth Court opinion, the Revocation Order and many other documents related to his case. In response to the motions to dismiss, he has submitted a number of other documents, which will be considered to the extent they are relevant to resolving the motions to dismiss. All of the motions to dismiss (ECF Nos. 4,9,18,32,38,48,58,73) have been fully briefed 'fully briefed. ECF 'Nos. 5, 10, 11, 14, 19, 35, 39, 42, 49, 55, 59, 63, 74, 75) and are ripe for review.

II. Relevant Fact The factual background that preceded Plaintiffs proceedings before the BPOA was summarized by the Pennsylvania

Commonwealth Court in its opinion affirming the Revocation Order: Dr. Iqbal has been a licensed medical doctor in Pennsylvania since 1990 and specializes as a nephrologist. In 2003, Dr. Iqbal lost his practice privileges at Fresenius Dialysis Center after allegations of sexual harassment by several nurses. In 2012, after an incident involving unwanted sexual contact with a nurse when he was practicing at UPMC Passavant (UPMC), Dr. Iqbal received a warning but no formal discipline. On August 1, 2015, while still at UPMC, Dr. Iqbal made unwanted physical advances toward a nurse,

[Melissa Smith], in an elevator, by kissing her and putting his tongue in her mouth; she reported it to her superiors the same day. After an investigation and internal proceedings, UPMC's board of trustees revoked Dr. Iqbal's hospital privileges as of March 17, 2016, then, on November 7, 2017, while working for Curahealth in Oakdale, Dr. Iqbal sexually assaulted a medical records clerk, [Kimberly Ferketic], who reported it to the police on November 9, 2017. Dr. Iqbal was suspended from Curahealth on November 9, 2019, and after a bench trial on November 20, 2018, he was convicted of one count of simple assault (a second-degree misdemeanor) and three counts of harassment) he was sentenced five years of probation.

Iqbal v. Bureau of Professional & Occupational Affairs, State Bd. of Med, 278 A.3d 409, 2022WL 1131987, at *1 (Pa. Commw. Apr. 18, 2022) (footnotes and internal references omitted), *appeal denied*, 286 A.3d 700 (Pa. 2022), *cert. denied*, 143 S. ct. 786 (2023). Plaintiff has attached this opinion to his Complaint. (See ECF No. 1- 9at 3.)⁶

On November 8, 2019, the BPOA charged Dr. Iqbal with seven counts of unprofessional and/or immoral conduct in violation of the Medical Practice Act of 1985, 63 P.S. §§. 422.1 to

6The commonwealth court opinion used the victims' initials to protect their privacy, but since they are named as Defendants here, it is necessary to identify them by their full names. 4

422.1 to 422.53 ("the MPA") and its regulations, based on the Smith and Ferketic incidents.⁷ He was advised that his state medical license could be revoked, and he could be assessed civil fines of up to \$10,000 per violation. (*Id* at 3-4.) He filed an answer, and a two-day hearing was held on February 26 and 27, 2020 before Hearing Examiner Jason C. Giurintano. During the hearing, twelve witnesses presented testimony and Dr. Iqbal (appearing pro se) also testified on his own behalf. (*Id.* at 3.)⁸ As noted by the Commonwealth Court in its opinion:

The hearing officer credited [Smith] and [Ferketic] and described their testimony as consistent, credible and corroborated: "More specifically, their body language, tears, as well as the tone and tenor of [their]

voice[s] lent credibility to the veracity of their testimony." The hearing officer also credited the Bureau's additional witnesses and discredited Dr. Iqbal.

The hearing officer therefore concluded that Dr. Iqbal had violated the MPA's prohibition on unprofessional and immoral conduct as to the [Smith] and [Ferketic] incidents. Weighing the seriousness of Dr Iqbal's offenses and the lack of any "meaningful" mitigation evidence, the hearing officer concluded that Dr. Iqbal's medical license should be revoked. (Ids at 5) (footnotes and record citations omitted).

On July 17, 2020, the Hearing Examiner filed an Adjudication and Order, in which he found that Dr. Iqbal violated the MPA on all seven counts and recommended that his license to practice medicine be revoked* On November 2, 2020, the BPOA and the Board adopted this recommendation and entered a Final Memorandum Opinion and Order revoking Dr. Iqbal's license to practice medicine in Pennsylvania. (ECF No. 1-9 at 5, 17-23.) As alleged in his Complaint, Dr. Iqbal challenges multiple aspects of the hearing including the following:

The Board has the authority to take disciplinary or corrective action against licensed physicians for violating their professional responsibilities. See 63 P.S. § 422.41. Specifically, Dr. Iqbal was charged with two counts of violating 63 P.S. §422.41(8), two counts of violating 49 Pa. Code §16.61 two counts of violating 49 Pd. Code §16.61(b)(2) and a final count under §16.61 (a) based on his criminal conviction. (ECF No. 10-1 at 14-16,) The witnesses included Smith, Ferketic, Cokus, Dr. Jones and Dr. Pollice, who are all named as Defendants. Hearing Examiner Guirintano is not named as defendant.

5

- Smith's testimony should not have been believed because she waited about one month before reporting the incident to the police.
- Ferketic's testimony should not have been believed because she testified that she gave the police a shirt stained with blood that was transferred to it when Dr. Iqbal grabbed her, but the police have no record of receiving this shirt suggesting that it never existed.¹⁰
- Cokus's testimony should not have been believed because he admitted lying to Dr. Iqbal about the existence of a video showing that his encounter with Ferketic was not consensual and he admitted tearing up the first statement provided by Dr. Iqbal that was not incriminating.
- Fresenius's revocation of his privileges to practice at its facilities in 2003 ¹¹was improper because he was not provided a hearing in 2003 and because the revocation was based on allegations of

sexual harassment that were previously dismissed as unsubstantiated. (ECF No. I at 5-6.)

- UPMC "precluded the evidence and a statement to the panel on February 24, 2016, and information regarding the attempt to revoke privileges by the hospital in 2008 which was successfully overturned, violated Plaintiffs First amendment rights." (*Id.* at 6.)

Dr. Iqbal appealed the Final Memorandum Opinion and Order to the Pennsylvania Commonwealth Court. On April 18, 2022, the court entered an Opinion and Order affirming the Revocation Order. As noted above, Dr. Iqbal contended in his appeal that the testimony of Smith, Ferketic and Cokus should not have been believed. Observing that the Hearing Examiner and the Board had rejected these arguments (ECF No. 1-9 at 11-13), the court noted as follows: We agree with the Board that the extensive evidence presented by the Bureau summarized above fully supports the sanction of revocation. That determination was amply supported by substantial evidence of record and was not legally erroneous, arbitrary, or capricious. This result is also consistent with the

⁹Plaintiff also contends that Smith's description of having been assaulted in a stationary elevator was not plausible and that UPMC failed to provide a video that would have undermined her account and instead supplied a video with an obstructed view.

¹⁰On the other hand, Plaintiff also accuses Cokus of having disposed of the blood-stained shirt. (ECF No. 55 at 1, 3, 4.)

¹¹As Fresenius notes, the Board stated that "the 2003 finding is irrelevant to these proceedings as [Dr. Iqbal] is not charged with a violation related to that complainant." (ECF No. 1-9 at 22.) Plaintiff acknowledges this in the Complaint (ECF No. I at 5).

holdings of [prior cases] where this Court has upheld severe sanctions for doctors found to have violated the MPA and its regulations against unwanted sexual advances and attacks on nurses and support medical staff. In his brief, Dr. Iqbal again argues that [Smith,] [Ferketic,] and Detective Cokus should not have been found credible. However, credibility determinations are firmly reserved to the fact finder (the Board) and this Court has no basis or authority to overturn such determinations. Moreover, as the hearing officer pointed out, Dr. Iqbal's assertions of inconsistencies in the testimony of both [Smith] and [Ferketic] pertain to minor or ancillary matters rather than these victims' accounts of the incidents themselves, which were the basis of the Board's revocation decision, and which were unequivocally found credible, consistent, and corroborated by other evidence of record. Likewise, Detective Cokus was found credible by the hearing officer, and

as explained above, this Court may not disturb that determination. Moreover, the hearing officer's opinion does not indicate that Detective Cokus's testimony was relied on for any specific finding or served as anything other than a supplemental or corroborative source to that of [Smith], [Ferketic,] and the hospital personnel who corroborated their accounts. (*Id.* at 13-14) (citations omitted).

After the issuance of the Commonwealth Court's decision, Dr. Iqbal petitioned for allowance of appeal in the Pennsylvania Supreme Court, which was denied on October 18, 2022 (ECF No. 1-9 at 31.) *Iqbal v. Bureau of Professional & Occupational Affairs, State Bd. of Med.*, 286 A.3d 709 (Pa. 2022). Dr. Iqbal then sought to appeal the matter to the United States Supreme Court. On February 21, 2023, the Court denied his petition for a writ of certiorari. *Iqbal v. Bureau of Professional & Occupational Affairs, State Bd. of Med.*, 143 S. Ct. 786 (2023).

III. Discussion

A. Standard of Review

Under Rule 12(b)(6), a motion to dismiss may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that plaintiffs claims lack racial plausibility." *Warren Gen. Hosp. v. Amgen* 643 F.3d 77, 84 (3d Cir. 2011) (citing *Bell Corp v. Twombly*, 550 U.S. 544,555-56 (2007))."This requires a plaintiff to plead "sufficient factual matter to show that the claim is facially plausible," thus enabling "the court to draw the reasonable inference that the defendant is liable for misconduct alleged." 14. (quoting *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). While the complaint "does not need detailed factual allegations ... a formulaic recitation of the elements of a cause of action will not do "*Twombly*, 550 U.S. at 555. See also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell. At/. corp. Y. Twombly*, 550 US.544, 570 (2007).

7

As noted by the Third Circuit in *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011), a 12(b)(6) inquiry includes identifying the elements of a claim, disregarding any allegations that are no more than conclusions and then reviewing the well-pleaded allegations of the complaint to evaluate whether the elements of the claim are sufficiently alleged, when dismissing a civil rights case for failure to state a claim, a court typically must allow a plaintiff to amend a deficient complaint, irrespective of whether it is requested, unless doing so would be "Inequitable or futile." *Fletcher-Harlem Corp, v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007). "An amendment is futile if the amended complaint would not survive a motion to dismiss for failure to state a claim upon which relief could be granted," *Alvin v. Suzuki*, 227 F.3d 107, 121 (3d

Cir. 2000). The Court of Appeals has explained that: "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *Mayer Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) (citation omitted). As indicated above. Dr. Iqbal has attached numerous documents to his Complaint and to his responses to the motions to dismiss and they may therefore be considered without converting the motions into motions for summary judgement. In addition, the Commonwealth Court Opinion

8

is a matter of public record and the Hearing Examiner's Adjudication and Order, and the Revocation Order are undisputedly authentic documents on which Plaintiffs claims are based

B. Civil Rights Claims. Plaintiff asserts that his Civil rights have been violated. These claims are made under 42 U.S. § 1983. Section 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979).

1. Statute of Limitations: All of the Defendants argue that Plaintiff's claims are untimely because they were not brought within two years of the Revocation Order, which was issued on November 2, 2020. In general, a statute of limitations is properly raised as an affirmative defense. See Fed. R. Civ. P. 8(c)(1). That said, the Third Circuit has held that the statute of limitations defense may be raised in a Rule 12(b)(6) motion when the bar is apparent on the face of the complaint. *Robinson v. Johnson*, 313 F.3d 128, 135 (3d Cir. 2002). *see also Jones Bock*, 549 U.S. 199, 215 (2007) (if the allegations of a complaint "show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim,.)

"Section 1983 provides a federal cause of action, but in several respects relevant here federal law looks to the law of the State in which the cause of action arose. This is so for the length of the statute of limitations: It is that which the State provides for personal-injury torts." *Wallace v. Kato*, 549 U.S. 384, 387 (2007) (citations omitted). Under Pennsylvania law, the statute of limitations for personal injuries is two years, 42 Pa. CS. § 5524(2), and that statute is applied to §1983 claims. *Garvin v. City o/ Phila.*, 354 F.3d.

9

215, 220 (3d Cir. 2003). Thus, for Plaintiffs' claims to be timely, they must have accrued on or after May 17, 2021. two years before the Complaint was filed. Plaintiff commenced this action on May 17, 2023, Defendants contend that since Plaintiff did not file suit within two years

of the November 2, 2020, Revocation Order, his claims are time-barred. Plaintiffs' primary response to this argument is to claim that his causes of action did not accrue until April 18, 2022, the date of the Commonwealth Court's decision. As Defendants note, however, Plaintiffs position is contrary to established case law. "Federal law governs a cause of action's accrual date. Under federal law, a cause of action accrues, and the statute of limitations begins to run, when the plaintiff knew or should have known of the injury upon which its action is based." *Kach vs Hose*, 589 F.3d 626, 634 (3d Cir. 2009). As held by the Court of Appeals: The accrual date is unaffected by Plaintiffs' administrative appeal Exhaustion of state remedies is not required where an administrative process is remedial or designed to vindicate a wrong by the state, *O'Neill v. City of Philadelphia*, 32 F.3d 785, 791 n.13 (3d Cir. 1994), Since Plaintiffs were not required to exhaust state remedies before filing this lawsuit, their pursuit of an administrative remedy by appealing the revocation has no effect on the statute of limitations. *See Kelly v. City of Chicago*, 4 F.3d 509, 51 1-13 (7th Cir. 1993) (holding that §1983 claim related to revocation of liquor license began to run when license was officially revoked and "the availability of a state appeals process had no different effect on the accrual date"). *Rascoe v. Cody*, 763 F. App'x 228, 232. (3d Cir. 2019).

Thus, the fact that Plaintiff elected to appeal *12**Plaintiff acknowledges these points, although he also argues alternatively that only Congress can impose a statute of limitations in a case under § 1983 (ECF No. 1 1 at 5; ECF No. 35 at 3) and that the Court "should consider the most analogous case to fit the rights of the plaintiff."* (EGF No. 42 at 8-9; ECF NO. 63 at 5; ECF No. 75 at 6.) Notably, however, this Court is bound by the Supreme Court's holding that it should borrow the most analogous state statute of limitations and by the Third Circuit's holding that the appropriate time period for §1983 claims in Pennsylvania is two years. To the extent that Plaintiff suggests that he is entitled to invoke some different time period based on the specific considerations of his case, his suggestion lacks foundation.

10

appeal the Revocation Order to the Commonwealth Court does not delay the accrual of the statute of limitations. Plaintiff knew or should have known the alleged injuries on which his action was based when his license was revoked on November 2, 2020.

In the alternative, to the extent that We had a student who contends that the Commonwealth Court decision itself forms the basis of his claims this argument is also rejected. Plaintiff's claims arose when his license was revoked, not when an appellate court affirmed this decision.

Moreover, this Court lacks the authority to review a decision of the Commonwealth they're all like damn that's the best experience courts are obliged by statute to give full faith and in 20 minutes all like that to state you're welcome court proceedings." *Adelphia Gateway, LLC v. Pennsylvania Envtl. Hearing Bd.*, 62 F.4th 819, 825 (3d Cir. 2023) (citing 28U.S.C. 1738). Rather, Plaintiffs recourse which he pursued was to petition for allowance of appeal with the Pennsylvania Supreme Court. See 42 Pa. C.S. § 724(a). His petition was denied. While he disagrees with the outcome of his appeals, this Court is not the forum in which to litigate such issues. Plaintiff has not named the Commonwealth Court as a defendant, nor could he do so. The Commonwealth Court is part of the state's unified judicial system and as such, is an arm of the state for Eleventh Amendment immunity purposes. *See Haagensen v. Supreme City of Pennsylvania*, 651 F. Supp. 2d 422, 432 (W.D. Pa. 2009) ("The Pennsylvania Supreme Court is a court entity of the Unified Judicial System of Pennsylvania and as such it is an arm of the state for Eleventh Amendment immunity purposes."), *aff'd*, 390 F. App'x 94 (3d Cir. 2010). The only action that occurred after the Revocation Order was the ARA's decision on November 20, 2022, to terminate Dr. Iqbal's minority ownership in two clinics.¹³ As reflected on. 11

the documentations supplied by Dr. Iqbal, that decision was based on an October 31, 2022, letter from the United States Office of the Inspector General of the Department of Health and Human Services and a subsequent letter from the Pennsylvania Department of Human Services. These letters informed Dr. Iqbal that he was excluded from participating in Medicare and Medicaid programs because his medical license had been revoked. (ECF No. 42-4 at 6-9.)¹⁴ Plaintiff does not allege that ARA or its minority owner, Dr. Betts, took any action other than relying on the decisions of various governmental bodies. However, to the extent that Plaintiffs claims against ARA and Dr. Betts relate to the termination of his minority interest on November 20, 2022, any such claim is not time-barred. In any event, as discussed below, ARA and Dr. Betts are not state actors and thus they cannot be held liable under §1983. Because Plaintiff did not file suit within two years of the date of the Revocation Order, his claims against all Defendants other than ARA and Dr. Betts are barred by the statute of limitation.¹⁵

ARA and Dr. Betts contend that the Complaint contains no allegations of any actions by them that provide a basis for their inclusion and that the last act cited by Dr. Iqbal is the Revocation Order. (ECF 19 at 3, 6; ECF No. 33 at 3, 36.) However, the Complaint refers to a "Loss of Dialysis. income11/18/22 (ECF No. 1 at 10) and requests as relief "[a]rbitration for dialysis income lost from [ARA's] removal of my partnership shares."

(Id. at I l.) Moreover, these Defendants have acknowledged that ARA terminated Dr. Iqbal's minority ownership in two clinics on November 20, 2022 (ECF No.19 at 1-2.) Drs Betts has noted that he is also a minority owner (ECF No. 33 at I), thereby implying that he did not have the ability to oust Dr. Iqbal. The Court need not resolve this issue. "Neither letter mentions the Commonwealth Court opinion." It should also be noted that many of the cited actions of various individual Defendants occurred even earlier: Cokus testified at the hearing that he lied to Dr. Iqbal when he interrogated him on November 10, 2017 about the existence of a video showing that his sexual advance on Ferketic was not consensual and Cokus admitted that he tore up Dr. Iqbal's first statement that was not incriminating; Ferketic testified at the hearing that she had given the police her shirt, which had blood transferred to it when Dr. Iqbal assaulted her, but the police had no record of receiving this shirt; Smith testified at the hearing that she contacted the police a couple of days" after the incident but the record demonstrated that she did not do so until approximately one month later; UPMC revoked his hospital privileges on March 17, 2016; and Dr. Lupariello and Fresenius suspended his privileges to practice at their facilities in 2003.

12

As discussed below, even if Plaintiffs claims were not time barred, they are otherwise subject to dismissal with respect to each of the Defendants.

2. ELEVENTH AMENDMENT IMMUNITY. The BPOA and the Board argue that they are

entitled to immunity under the Eleventh Amendment to the United States Constitution. The Eleventh Amendment provides: The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign state. US Const. Amend. XI The Supreme Court has stated that the presupposition confirmed by the Eleventh Amendment is that "federal jurisdiction over suits against states was not contemplated by the Constitution when establishing the judicial power of the United States. *"Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996) (internal citation omitted). The Court of Appeals for the Third Circuit has indicated that: Eleventh Amendment immunity is, however, subject to three primary exceptions: (1) congressional abrogation, (2) waiver by the state, and (3) suits against individual state officers for prospective injunctive and declaratory relief to end an ongoing violation of federal law. The third exception is the doctrine of *Ex Parte Young*, 209 U.S. 123, .28 S.ct. 441, 52 L.Ed.714 (1908).

Pennsylvania Federation of Sportsmen's Clubs, Inc, v. Hess, 297 F.3d 310, 323 (3d Cir. 2002) (citation omitted). None of these exceptions apply to the claims asserted by Plaintiff. Pennsylvania has not consented to waive its Eleventh Amendment immunity to being sued in federal court. I Pa. C.S. §2310; 42 Pa. C.S. § 8521(b) *Chittister v. Dept. of City. Econ. Dev.*, 226 F.3d 223, 227 (3d Cir. 2000). Further, as the Supreme Court has held, 1983 does not abrogate states' sovereign immunity. *Quon v. Jordan*, 440 U.S. 332, 339-46 (1979). Finally, Plaintiff has not alleged any.

13

claims for injunctive relief against individual state officers. The BPOA and the Board are executive agencies in the Pennsylvania Department of State. 71 P.S. § 61 (a).

Therefore, they have a right to assert Eleventh Amendment immunity, See *Shine Merenda*, 586 F. App'x 95, 97 (3d Cir. 2014) (affirming the holding of the district court that the "Pennsylvania Department of State, the

Pennsylvania Bureau of Professional and Occupational Affairs, and the Pennsylvania State Police are immune from suit under the Eleventh Amendment."); *Glunk v. Pennsylvania State Bd of Med.* 687 F. App'x 196, 202 (3d Cir. 2017) (doctor filed claims arising out of the 60-day suspension of his license, but the "District Court correctly dismissed the second amended complaint as to the State Board of Medicine and Department of State [because] they are immune from a suit for money damages under the Eleventh Amendment") In opposing this argument, Plaintiff contends that these Defendants "waived" their Eleventh Amendment immunity by filing a document in the United States Supreme Court on January 19, 2023 that included the word "waiver" stamped across the top. (ECF No. 75 at 4.) This document merely stated that a Senior Deputy Attorney General of Pennsylvania was entering his appearance as counsel in that case, (ECF No. 1-3 at 22; ECF No. 77 at 15.) It did not represent consent to a waiver of Eleventh Amendment immunity. In any event, no such waiver has been asserted here. Because the BPOA and the Board are entitled to immunity under the Eleventh Amendment, they are entitled to dismissal with prejudice on this ground.

3. Lack of State.

Other than the BPOA, the Board and Cokus, all of the other Defendants assert that they cannot be liable under §1983 because they are not state actors.

14

The moving Defendants are private individuals (doctors and a nurse), private companies and a hospital. Therefore, as the moving Defendants correctly assert, they cannot be sued under §1983 because they are not state actors. *See West v. Atkins*, 487 U.S. 42, 49 (1988) ("The traditional definition of acting under color of state law requires that the defendant in a §1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'")

Plaintiff fails to allege any facts that would suggest that any of these Defendants are employed by the state or have authority by virtue of state law. Instead, Plaintiff suggests that the Commonwealth Court's discussion and holding somehow-transformed Defendants' conduct into "state action." In support of this premise, he highlights the court's statement that its "review is therefore limited to determining whether constitutional rights have been violated" (ECF No. 1-9 at 8). As this quotation makes clear, however, the court merely stated that it was determining whether Plaintiffs constitutional rights had been violated by the actions of the Defendants and concluded that no such violations had occurred. And Plaintiff cites no authority for his farfetched theory that the Commonwealth Court's decision retroactively provides "color of law" for the actions of private individuals and organizations. Plaintiff also argues that a private individual may be held liable if he is a willful participant in joint activity with the state or its agents. *Dennis Sparks*, 449 US. 24, 29 (1980). *See also McKeesport Hosp. v. Accreditation Council for Graduate Med. Educe*, 24 F.3d 519, 524 (3d Cir. 1994) ("State action may be found if the private party has acted with the help of or in concert with state officials.") That said, Plaintiff has not pointed to any "joint activity" with the state or its agents. Rather, he has merely alleged that various private individuals falsely testified against him at a hearing before a state agency. Even accepting his allegations as true.

15

This does not represent joint activity with the state or a state agent. *See, e.g., Jutrowski v. Twp. of Riverdale*, 904 F.3d 280, 293-94 (3d Cir. 2018) ("To prevail on a conspiracy claim under §1983, a plaintiff must prove that persons acting under color of state law 'reached an understanding' to deprive him of his constitutional rights.") Plaintiff has not alleged that any private individual reached an understanding with the state or a state agent to deprive him of his constitutional rights. Therefore, because all Defendants other than the BPOA, the Board and Cokus are not state actors, they will also be dismissed with prejudice.

4. Issue Preclusion. Cokus argues that the issues Plaintiff is raising have already been decided in previous proceedings and are therefore

barred from relitigation based on the doctrine of issue preclusion. Plaintiff has not responded to this argument. The Court of Appeals recently reiterated that federal courts "look to state law to determine when to apply this doctrine" and Pennsylvania courts required the party asserting issue preclusion to establish four elements:

(1) an issue decided in a prior action is identical to the one presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. *Adelphia Gateway*, 62 F.4th at 826 (quoting *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998)).

As explained above, Plaintiff raised the same identical issues before the Commonwealth Court, and he had a full and fair opportunity to litigate them, but the court rendered a final judgment against him on the merits. Although Cokus was not a party to that case, "a litigant may also be estopped from advancing a position that he or she has presented and lost in a prior proceeding against a different.

16

adversary. *'Peloro v'. United States*, 488 F.3d 163, 175 (3d Cir.2007) (citation omitted). Plaintiff is therefore barred from recitation them under the doctrine of issue preclusion.¹⁶ Because this issue cannot be cured by amendment, the dismissal of Cokus will be with prejudice.

5. Due Process Claim Plaintiff's primary contention is that he was denied his right to due process when his medical license was revoked. As the BPOA and the Board argue, however, his claim is belied by the very documents he attached to his Complaint, which demonstrate that he received all the process that he was "due".

As the Court of Appeals has held: A plaintiff who brings a §1983 suit based on a violation of the due process clause must allege and prove five things: (1) that he was deprived of a protected liberty or property interest; (2) that this deprivation was without due process; (3) that the defendant subjected the plaintiff, or caused the plaintiff to be subjected to, this deprivation without due process; (4) that the defendant was acting under color of state law; and (5) that the plaintiff suffered injury as a result of the deprivation without due process *Sample Dicks*, 885 F.2d 1099, 1113 (3d Cir. 1989). The BPOA and the Board acknowledge that Plaintiff has adequately alleged that they were acting under color of state law when they deprived him of a constitutionally protected property interest in his medical license. (ECF No. 39 at 12) (*citing Barry v Barchi*, 443 U.S. 55,64 (1979), for the holding that a property interest

in a state-issued occupational license is sufficient to invoke due process protections).

"Once it is determined that due process applies, the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). "The determination of what process is

As noted by the Commonwealth Court, Plaintiff never appealed from his criminal conviction. (ECF No. 1-9 at 12 n.d.).

17

due' is 'not to be found in statutes [but] is a question of federal constitutional law. *McDaniels v. Flick*, 59 F.3d 446, 458 (3d Cir. 1995) (quoting *Cleveland Bd. of Educ v.*

Loudermill, 470 U.S. 532, 541 (1985)). See *United States v. James Daniel Good Real Prop.*, 510 US. 43, 48 (1993) (citing the "general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.") As the. BPOA and the Board note, the documents submitted by Dr, Iqbal undisputedly show that: he received notice of the charges against him; he had the opportunity to be heard at a two-day hearing in February 2020 and took advantage of this opportunity by appearing at the hearing to present a defense and testify on his own behalf; ¹⁷ he was provided with a written opinion containing findings and the reasons for the adjudication; ¹⁸ he had the ability to file an appeal with the Commonwealth Court and did so; and he appealed that court's decision to the Pennsylvania Supreme Court and then to

United States Supreme Court. That the Board and the appellate courts to which he appealed did not grant the relief he sought fails to show that he did not receive all appropriate due process protections. See *Kaul v. Christie*, 372 F. Supp. 3d 206, 253 (D.N.J. 2019) (doctor whose medical license was revoked received "the full panoply of due process rights during the disciplinary hearing. "He was represented by counsel [,] [he] submitted evidence and was able to cross-examine the State's witnesses [, and the Board and the ALJ issued reasoned, written opinions, and [he] had the

¹⁷See 2 Pa. C.S. 504 ("No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded, and a full and complete record shall be kept of the proceedings."): 2 Pa. C.S. § 505 ("Reasonable examination and cross-examination shall be permitted.'")

¹⁸ see 2 Pa. C.S. § 507.

¹⁹ see 2 Pa. C.S. § 702;42Pa.CS §763(a)1.

18

opportunity to take exception to or appeal to them. „ And as the Commonwealth Court noted, it could not reevaluate the credibility of

Smith, Ferketic or Cokus as that determination was the responsibility of the fact finder (the Board). Thus, even if Dr. Iqbal had not received all the process which he was "due," he has not explained how this Court could evaluate the credibility of witnesses who offered testimony in a proceeding held three years ago. Moreover, with respect to Cokus, the Commonwealth Court noted that "the hearing officer's opinion does not indicate that Detective Cokus's testimony was relied on for any specific finding or served as anything other than a supplemental or corroborative source to that of [Smith.] [Ferketic] and the hospital personnel who corroborated their accounts." (ECF No. 1 .9 at 14.)²¹ As conclusively shown by the documents submitted by Dr. Iqbal, he cannot state a claim for denial of his right to due process with respect to the revocation proceedings. Therefore. His claim against the BPOA and the Board will be dismissed with prejudice.²⁰ *Pennsylvania law provides that: "Any party may be represented before a Commonwealth agency" 2 Pa. C.S. § 502. Dr. Iqbal does not contend that he was denied the opportunity to appear before the Board with counsel and thus that the fact that he appeared pro se was his own choice.*²¹ As Cokus notes, although Plaintiff alleges that his testimony should not be believed, 'the record demonstrates that Cokus testified truthfully on February 27, 2020 that he lied to Dr. Iqbal on November 10, 2017 and did not reveal his deception in the criminal complaint he filed against Dr. Iqbal on November 15, 2017 (ECF No.1-4at7). Plaintiff contends that Cokus's testimony at the hearing retroactively made his prior actions "perjurious" (ECF No. 1 at 5), but there is no support for this theory.

19

IV. Conclusion. For the reasons explained above, Defendants' motions to dismiss (ECF Nos. 4, 9, 18, 32, 38, 48, 58, 73) will be granted and the Complaint will be dismissed with prejudice,³

Appropriate orders will follow.

Dated: December 27, 2023,

PATRICIA L. DODGE

United States Magistrate Judge

22Some of the Defendants have also argued that Plaintiff has not alleged how his First Amendment rights were violated, and that Plaintiff has not alleged specific acts by them that Plaintiff has not alleged specific acts by them that form the basis of the Complaint. The BPOA and the Board alternatively argue that the Court should abstain from exercising jurisdiction and Cokus argues that he is entitled to qualified immunity. The Court need not reach these arguments.

20

Appendix F

IN THE UNITED STATES DISTRICT COURT FOT THE WESTERN
DISTRICT OF PENNSYLVANIA

ZAFAR IQBAL, MD plaintiff)
v. BOARD OF POA et al) Civ A. No. 2:2 cv-832
)
)
)
)
)
)
)

ORDER

1. Introduction

Plaintiff Zafar Iqbal, MD has filed what he calls a "Motion Under Rule 60(b)(3) Relief from Memorandum Opinion/Order Dated December 27, 2023" (ECF No, 109). In this motion. He seeks relief from the Court's ^Mmemorandum Opinion and Orders filed on that date. These orders granted eight motions to dismiss and dismissed Plaintiffs case with prejudice (ECF Nos. 99-108). In his ci\il rights Complaint filed under 42 U.S.C. ss 1983, Plaintiff challenged the November 2, 2020, order of the Pennsylvania Board of Professional and Occupational Affairs ("BPOA") and the State Board of Medicine ("the Board") that revoked his license to practice medicine in Pennsylvania (the "Revocation Order"). The Revocation Order was affirmed on appeal by the Pennsylvania Commonwealth Court. In addition to the Board and BPOA, he also sued numerous other defendants, all of whom moved to dismiss his claims against them. Plaintiff attached the Complaint and to his responses to the motions to dismiss numerous documents, including the Revocation Order and the opinion of the Commonwealth Court, many of which were taken into consideration as appropriate. ¹

Based upon the arguments submitted by Defendants, the Court held that: almost of the claims were untimely because they filed on May 1 7, 2023. well beyond two years of the date of the Revocation Order; the BPOA and the Board were immune under the Eleventh Amendment to the Constitution; the police detective who interviewed him successfully argued that Plaintiff was relitigating issues he raised and lost in the state administrative proceedings and before the Commonwealth Court; the other Defendants were not state actors for purposes of Section 1983; and he received all the process he was "due" during the state

administrative and court proceedings. On January 3.2024, Plaintiff filed his Rule 60(b)(3) motion.

II. Discussion

Rule 60(b)(3) provides for relief from a final judgment where there has been "fraud, misrepresentation, or misconduct of an adverse party." Fed. R. Civ. P. "To prevail, the movant must establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case." *Stridiron v. Stridiron*, 698 F.2d 204, 206-07 (3d Cir. 1983). Furthermore, "the evidence must be clear and convincing." *Floor graphics Inc v. Sews Am. Nftkg. In-Store Servs., Inc.*, 434 F. App'x 109, 111 (3d Cir. 2011) (citation omitted). "Uncorroborated, self-serving statements do not satisfy the 'clear and convincing' standard necessary to sustain a motion under Rule 60(b)(3)." *Umansky v. Mellon Int'l Tackle, Inc.*, 2019 WL 5418050, at *8 (E.D. Pa. Oct. 23, 2019) (citation omitted). Plaintiff does not identify any fraud, misrepresentation or misconduct by an adverse party in this case that prevented him from fully and fairly presenting his claims, nor has he submitted clear and convincing evidence of any such alleged fraud or misconduct. In fact, the only actions taken by Defendants in this case is filing motions to dismiss. In these motions, they cited various public records and undisputedly authentic documents that Plaintiff himself cited,

2

all of which demonstrated that he could not state a claim upon which relief could be granted. Rather, the fraud and misconduct on which Plaintiff relies in the pending motion relates to the actions that various individuals and entities allegedly took well prior to the commencement of this lawsuit that he claims prevented him from receiving a fair hearing with respect to the revocation of his license to practice medicine. These are the same allegations made in his Complaint and in his responses to Defendants' motions to dismiss.

Thus, Plaintiff's arguments utterly fail to meet the standard for Rule 60(b)(3) relief. In its prior rulings, the Court reviewed Plaintiff's arguments and found them to be unsupported. For example, the Court explained that the statute of limitations began to run on November 2, 2020, the date of the Revocation Order, and not on April 18, 2022, the date the Commonwealth Court entered its decision affirming the Revocation Order. Further, the Court explained that the Commonwealth Court's decision did not retroactively provide "color of law" to the actions of private individuals and further confirmed that the BPOA and the Board are state actors. The Court did not "ignore issues", as Plaintiff claims, nor did it ignore any fraud as none occurred in this case.

Notwithstanding Plaintiffs refusal to accept these legal principles, his arguments were without merit, and he failed to state any claim on which relief may be granted. Further, he has made no showing of fraud.

misrepresentation or misconduct during the pendency of this case.

As such, Plaintiffs motion for relief under Rule 60(b)(3) will be denied.

Plaintiff also requests that his access to Pacer be restored. The Court did not terminate his access to Pacer. Further, while Plaintiff also requests reassignment to another judge, he has failed to show any reason for reassignment of this case to another judge other than his displeasure with.

Plaintiff should contact the Clerk's Office regarding any issue with access to Pacer.

3

the outcome, and having reviewed this matter, the Court finds no issue that would require recusal. Therefore, it is ORDERED that Plaintiffs Motion Under Rule 60(b)(3) Relief from Memorandum Opinion/Order Dated December 27, 2023" (ECF No. 109) is denied. ²

SO ORDERED this 12th day of January 2024.

/s/ Patricia L. Dodge

United States Magistrate Judge.

While this motion was pending. Plaintiff filed a notice of appeal. Pursuant to Federal Rules of Appellate Procedure, his notice becomes effective... when the order disposing of last such remaining motion is entered "Fed. R. App P. (4a)(4)B(i). Thus, his notice of appeal becomes effective the date of this order, which disposes of his Rule 60(b)(3).

4

Appendix G

IN THE UNITED STATES COURT OF APPEALS FOR THIRD CIRCUIT
COURT
Docket no. 24-cv-1077

ZAFAR IQBAL v.
BOPA PA State Board of Medicine, et al

APPELLANT: ZAFAR IQBAL MD

APPELLEE. BOARD OPROFESSIONAL AND OCCUPATIONAL-
AFFAIRS, STARE BOARD OF MEDICINE OF PA, et al

PETITION FOR APPEAL IN THIRD CIRCUIT COURT Western PA
District Court

Case no. 2:23-cv-000832-PLD

ZAFAR IQBAL MD Pro se Attorney

205EssexCourt
T:2123811564
ziqbalmd@gmail.com

TABLE OF CONTENTS

- i.* Statements and Summaries.
- ii.* Appellant's Brief(l-21).
- iii.* US Supreme Court Petition for Rehearing 22-624 (1-4)
- iv.* *District Court order Document 112 (1-4) 1/12/2024*
- v.* *District Court order Document _99 (1-20) 12/27/2023*
- vi.* *Federal case no cv-00842 PLD*
- vii.* *Combined Certificate of Service (1-2)*

THE STATEMENTS & SUMMARIES

1. Appeal against Federal District Court Case no. 2:23-cv-00832 PLD.
2. Issues: False Appellant conviction, Equitable Tolling, Collateral Estoppel and violation of Federal Laws, Equitable Estoppel, Fourteenth Amendment abrogating Eleventh Amendment sovereignty, Defendants fraudulent practices in State Courts. Qualified Immunity inapplicable in Statutory Lawbreaking evidence.
3. Related cases and proceedings:
 - a. Allegheny County Common Pleas Court no. CP-CR-0003120-2018.
 - b. Federal District Court case no. 2: 18-cv-00842-JFC-PLD
 - c. Commonwealth of PA State Dept. of health case no. 17-49-14398
 - d. Commonwealth of PA Case no. 1 190CD2020
 - e. PA Supreme Court case no. 131 WAL2022
 - f. UNITED STATES SUPREME COURT CASE NO. 22-624
 - g. Allegheny County Common Pleas Court Case no. GD-02-23533.

APPELLANT'S FORMAL BRIEF AND SUMMARY OF ARGUMENTS:

BACKGROUND:

Appellant is a naturalized US citizen no. 13921833 since 1990 living in the state of Pennsylvania. Board of Professional and Occupational Affairs of Pennsylvania HEARING was precipitated by a criminal conviction of appellant on November 20, 2018, for misdemeanor under case no.CP-02-CR-003120-2018(l), In Federal Court case no 2: 18-cv-0842 evidence was revealed that Kimberley Ferketic fabricated her complaint (5,6). Appellant filed a motion (27) on August 29. 2019 (enclosed) apprising Court perpetrated by Ferketic Counselor by not mentioning fabricated two statements (5,6)

In the Amended Complaint (27). The current Curahealth Counselor has not disputed this evidence. This resulted in dismissal of suit (7), Detective Cokus now Police Chief

supplied a sworn statement (3) was read verbatim into the record (trial transcript page 10 -13) which now stands to be perjured (Counselor for Cokus has not disputed this evidence), his testimony of February 27, 2020 (4B) at the BPOA hearing. Two complainants; Melissa Smith (8C,9) and Kimberley Ferketic (5,6,6B) also testified perjuriously, among others and they stand impeached after BPOA hearing. Detective Cokus admitted

tearing up a first appellant statement (4B) (Obstruction of Justice) and coercing appellant in a confessional statement of his liking (4B), This perjured his sworn statement (3) and made appellant's conviction fraudulently obtained. This fact was ignored by BPOA as a discretion in their November 2, 2020, order (Exhibit B). Perjurious statements of Melissa Smith (8C) and Kimberly Ferketic (5,6) (6B) and Statutory law-breaking testimony of Cokus (4B) were ignored again as a discretion by BPOA final order (Exhibit B) and GIVEN as Color of law' by Commonwealth Court April 18, 2022, order (Exhibit A). Counselors or each defendant have not disputed the evidence. Melissa Smith's testimony stood perjurious when contrasted with Sergeant Itri testimony and report (8C,9). A PRE-HEARING STATEMENT (8B) by appellant has made it clear that the question will be asked as to why Melissa Smith waited for .28 days (about 4 weeks) to report to the police. This delay goes to

the heart of how egregious the incident was. Both Counselors Lapenta and DeLaurentis forced 1

Melissa Smith *to perjure* herself to change the day (within a couple of days after the incident) (8C) which 'forensically stood in contrast to Sergeant Itri 's testimony(8C) and report, counselors do not dispute THIS EVIDENCE. Kimberly Ferketic deceased) admitted that she gave a written statement (5) which included bodily injury and bleeding, this she recanted in the second statement (6) and Detective Cokus did not see any injury (4B). Both complainants were impeached. However, all three testimonies of Cokus, Smith and Ferketic which were Statutory violation of laws were ignored by BPOA as a discretion in final order on November 2, 2020 (Exhibit B). It took 18 months (about one and a half years) for the appellate Court (Covid delay included) to supply' color of law • while PA Supreme Court refused to interfere taking another 6 months to answer. The case was admitted at UNITED STATES Supreme COURT under docket number 22-624 which was allowed to change to Section 1983 and was recommended to pursue it, in lower court (22) for remedy. It was admitted on May 17, 2023, to US District of Western PA under Magistrate Dodge. Magistrate Dodge dismissed the case on December 27, 2023, without conducting a single hearing to evaluate if any fraud was perpetrated. Magistrate Dodge granted dismissal to each defendant with prejudice without a single hearing. Counselors of defendants did not dispute the evidence presented to the Court. A REVIEW UNDER RULE 60(b)(3) document # 109, citing fraud at multiple levels, was sent to Chief Judge Hornak. Hon Judge was asked to

overturn Magistrate Dodge ruling and assign a new Judge for the case for a trial. The Chief Judge did not act, except referring the review petition back to Magistrate Dodge who denied the petition. MAGISTRATE DODGE COMPLETELY DISREGARDED EVIDENCE WHICH WOULD HAVE OVERTURNED A FALSE CONVICTION OF THE APPELLANT (BURDEN BEYOND A REASONABLE DOUBT). THE CONVICTION WAS THE REASON THE BPOA ISSUED ORDER TO SHOW-CAUSE NONE OF THE DEFENDANT'S RESPONDED TO EVIDENCE SUBMITTED FOR FIRST, FIFTH, AND FOURTEENTH AMENDMENT RIGHTS VIOLATIONS.

2

1. STATEMENT OF REVIEW.

EQUITABLE TOLLING, EQUITABLE ESTOPPEL, FIRST, FIFTH AND FOURTEENTH AMENDMENT RIGHTS (DUE PROCESS AND EQUAL PROTECTION UNDER LAW) VIOLATIONS IN CONJUNCTION WITH 42 USC SECTION 1983 RIGHTS, WHICH EACH DEFENDANT VIOLATED AND MAGISTRATE DODGE IGNORED.

A. Magistrate Dodge ignored perpetrated fraud by Detective Cokus, Curahealth, Charles Lamberton(lawyer)Kurt Miller (lawyer upon Allegheny County Common Pleas Court under case CP-02-CR-0003120-2018.

Magistrate Dodge argument is arbitrary and capricious not congruence with the evidence presented. In response to appellant Motion under Rule 60 (b)(3) citing fraud, Magistrate Dodge wrote in her order dated January 12, 2024, and filed under Document #112 (page2, lines 19-21) ...*plaintiff does not identify any fraud, misrepresentation, or misconduct....*) Appellant clearly has shown Curahealth, Kimberly Ferketic, their lawyers and Cokus withheld two statements of Kimberly Ferketic from criminal case no.CP-02-CR-0003120-2018 LEADING TO FALSE CONVICTION OF APPELLANT. When Statements (5,6) were made available to Federal case no. 2:18-cv-0084-JFC-PLD) Judge Conti dismissed the case against Appellant (7), where burden of proof was less. 3

Appellant had enclosed for Magistrate Dodge Motion to Judge Conti dated August 19, 2019, and Second Amended complaint filed on behalf of Ferketic by lawyer Lamberton, where he clearly has committed fraud by not informing the Criminal Court of Ferketic (5, 6) fabricated complaints. Current Curahealth and Cokus 's Counsels have not disputed this evidence. as to why Ferketic statements were not part of Appellant 's Criminal trial. The Magistrate did not acknowledge this evidence.

B. MAGISTRATE DODGE FAILED TO ACKNOWLEDGE, THE FRAUD AND MISREPRESENTATION AND MISCONDUCT AT BPOA HEARING. IT WAS THE CROSS-EXAMINATION AT BPOA HEARING WHEN FRAUD CAME TO FORE BY KIMBERLEY FERKETIC (6B) AND MELLISA SMITH PERJURED HER TESTIMONY (8C 9) AND COKUS'S TESTIMONY WHICH ACKNOWLEDGED TEARING UP FIRST STATEMENT OF APPELLANT AND OBTAINING COERCED SECOND STATEMENT (4B).

1. Curahealth was in possession of the first Ferketic statements (5) (6B) BY 11/09/2017 which had her claim to include physical injury. 2.. Cokus tore up the first statement of Plaintiff (4B) on 11/10/2017 (4B) and obtained a coerced one (2).

3. Cokus *filed a police report* on 11/15/2017 (3), this report became *false* upon his testimony of 2/27/2020 (4B) at BPOA Hearing. 4. Curahealth received a second Ferketic statement (6) on 12/5/2017 where she recanted physical injury, making her claim fraudulent. 5. Curahealth did not give these statements (5,6) to Allegheny County Common Pleas court for November 20, 2018, trial. COUNSELOR FOR CURAHEALTH HAS NOT DISPUTED THIS EVIDENCE.

6. Lamberton filed a fraudulent brief (27) in Federal court case no. 2: 18-cv-842 on 9/06/2018 in WHICH he deliberately held back written statements (5,6) of Ferketic. 7. Ferketic and Cokus were present on 11/20/2018 nonjury trials of Plaintiff, fully aware of exculpatory evidence, which resulted in false misdemeanor conviction of the Plaintiff. CURRENT COUNSELOR FOR CURAHEALTH HAS NOT DISPUTED THE EVIDENCE.

8. Mr. Miller (lawyer for Curahealth) released Ferketic statements to the Federal trial on 6/30/2019 under case no.2:18-cv-842, resulting dismissal of the case against Plaintiff Curahealth Counselor has not disputed the evidence.

9. These facts were brought to the attention of Magistrate Dodge on 10/20/2023 as a supplement brief filed and a motion was made under Rule 56 on November 7, 2023, which was dismissed by Magistrate Dodge without a hearing. 5

C. Magistrate DODGE ignored OBSTRUCTION OF JUSTICE AND FOURTEENTH AMENDMENT RIGHTS violations by Detective Cokus.

Magistrate states in her Memorandum Opinion Document #99 (page 7, line 31 to page 8, line 2) " This requires a plaintiff to plead "sufficient matter to

show that the claim is facially plausible, ' thus enabling 'the court to draw the Reasonable inference that the defendant is liable for misconduct alleged.

Appellant quotes the following.

1. Cokus admitted tearing up the first statement of appellant (4B), an Obstruction of Justice.

2 Cokus admits obtaining another statement 'under coercion. Admits violations of fifth and fourteenth amendment rights (4B)

3. Ferketic admits fabricating and recanting claims of injury under oath (6B) VIOLATION OF DUE PROCESS

D. Magistrate ignored Fraud upon BPOA by Melissa Smith Counsellor Lapenta and Counsellor DeLaurentis on 2/26/2020 hearing and Spoliation of video evidence. Counselors have not disputed Appellant's evidence given (8C, 9). 1.Magistrate Dodge purposely ignored fraud which was perpetrated by Counselors Lapenta and DeLaurentis by forcing Melissa Smith to change the date of police report; in direct contrast to Sergeant Itri forensic evidence and testimony (8B, 8C, 9, 10). "Date of reporting to police went to the heart of the egregiousness of the incident. Counselors have not disputed the evidence. 2.Magistrate. Dodge purposefully ignored UPMCs spoliation of video evidence 10,10D,10E,10 F,12A, 13).

E. Magistrate Dodge ignored BPOA discretion to ignore three exceptions (Exhibit B uploaded in 22-624) which violated Statutory Laws Obstructed Justice and Fourteenth amendment rights of the appellant.

1.Magistrate Dodge purposefully ignored that then Detective Cokus obstructed Justice by tearing up the appellant's first statement and coerced into getting a confessional statement, violations of Fourteenth Amendment Rights. 2.Magistrate Dodge ignored Kimberley Ferketic concocted injury and then recantation in her second statement, (5,6, 6 B) making her testimony to be perjurious, a Due process violation. 3.Magistrate Dodge ignored that Melissa Smith was forced to perjure on the date of reporting to police, Due process violation6

F. Magistrate Dodge ignores 'Color of Law' provided by Commonwealth Court to Statutory Law-breaking testimonies by Court order dated April 18, 2022(Exhibit A part of 22-624 case.

G. MAGISTRATE DODGE IGNORED THAT FMC AND LUPARIELLO PERPETRATED FRAUD UPON JUDGE FOLINO UNDER DOCKET NOT GD-02-23533

1.Magistrate Dodge purposefully ignored fraud perpetrated by FMC and Dr. Lupariello (14 A, 14G*).

2. FMC/BMA HEARING PANEL EXONERATED APPELLANT OF SEXUAL\ HARASSMENT CHARGES ON APRIL 4, 2003 (14A).
LUPARIELLO OVERTURNED THE VERDICT BY A 'EXECUTIVE ORDER' AND CONDUCTED ANOTHER HEARING WITH THE SAME CHARGES AND SAME WITNESSES TO DENY APPELLANT PRIVILEGES IN OCTOBER 2003*. FMC AND LUPARIELLO 'S COUNSELORS HAVE NOT DISPUTED THIS EVIDENCE.

3. BPOA on one hand admitted that FMC panel ruled on April 4, 2003, that sexual harassment charges are not substantiated (Page 6, lines 8-18), yet they still accused 'admitted losing privileges at FMC AND SMEARING REPUTATION of sexual harassment page 5, footnote 9. This is based upon fraudulent means by FMC. WITH SAME CHARGES IN OCTOBER 2003 HEARING, COUNSELORS FOR FMC DID NOT DISPUTE THIS EVIDENCE.

8

G. Magistrate dodge ignore Fraud upon Appellant by American renal Associates and Betts, who still owe funds to appellant. The magistrate's conclusion was arbitrary.

1. Magistrate Dodge acknowledges ARA Betts "were within Statute of limitations set up by her calculations (Memorandum Order page 11 lines 20,21)

2. Magistrate Dodge purposefully ignored, American Renal Associates and Betts who still owe plaintiff funds from illegal transactions when both forcibly reduced plaintiff ownership percentage and denied access to Butler market (15,15*,15,15A, B, C). These facts were not opposed by Counselors of American Renal Associates and Betts.

II. MAGISTRATE IGNORED THAT THE ELEVENTH AMENDMENT INVOKED BY BPOA IS LANDED BY SUBSTANTIVE GUARANTEES BY FOURTEENTH AMENDMENT' AND PERMITS SUIT AGAINST STATE. FOR DAMAGES, THE STANDARD OF REVIEW IS THE FOURTEENTH AMENDMENT WHICH ABROGATES SOVEREIGN IMMUNITY FOR UPHOLDING DUE PROCESS. 9

BPOA HEARING FACTS: 1. Cokus testified that he tore the first statement of Appellant (4B), this is irrevocable Obstruction of Justice, Violation of Due process and Fourteenth Amendment Rights. 2. Cokus TESTIFIED THAT HE FORCED/COERCED APPELLANT (4B) TO (GET APPELLANT'S CONFESSIONAL STATEMENT (4B) a fifth and Fourteenth amendment rights violation. 3. Ferketic admitted to fabricating evidence (5,6,6B). This is irrevocable Obstruction of Justice Violation of Due process and Fourteenth

Amendment Rights violation of the appellant. 4. Mellisa Smith perjured her testimony (8C, 9). This is an irrevocable OBSTRUCTION OF JUSTICE, VIOLATION OF DUE PROESS AND FOURTEENTH AMENDMENT VIOLATION. 5. Magistrate (Memorandum order page 13#2) invokes BPOA Eleventh Amendment immunity without acknowledging Fourteenth amendment and of Fitzpatrick v. Bitzer abrogates SOVEREIGN PROTECTION CLAIMED BY BPOA. 6. FITZPATRICK V. v. BITZER: The Court held Congress through Fourteenth amendment enforce the "substantive guarantees of the Fourteenth amendment" by lancing the "shield of sovereign immunity afforded to state the Eleventh amendment.

10

Ex Parte Young, 209 U.S. 123 (1908) United States Supreme Court allows suits in Federal courts for injunctions against officials acting on behalf of State of the Union to continue despite the State's sovereign immunity, when State acted contrary to Federal law or contrary to the Constitution

III. MAGISTRATE DODGE PURPOSEFULLY IGNORED many aspects OF 42 USC Section 1983. THE OF STANDARD OF REVIEW REQUIRES THAT SUPREME COURT ADMITTED THIS LAWSUIT IN MARCH 2023 AND LOWER COURT CANNOT DEFY ADMITTED SUIT BY SETTING NEW STANDARDS IN CONTEMPT OF THE SUPREME COURT OF THE UNITED STATES.

a. TOLLING TO BE CONSIDERED 1. USC § 1983 has no built-in statute of Limitations The recommendations from U.S. Supreme Court are to apply closest similar case, which serves plaintiff. Magistrate Dodge has not found a similar case and has not applied Equitable tolling. Equitable Tolling is applicable because of Curahealth and Cokus fraud upon Criminal Trial leading to fake conviction of appellant and Magistrate did not recognize it

2. Equitable lolling was not applied because of Covid 19 delay

(Commonwealth Court took 18months (about 1 and a half year to provide 'Color of law') (Exhibit A) uploaded in 22-624. 11

3. Appellant raises multiple frauds perpetrated, which were not addressed by Lower Court and would have paused Tolling.

b. State Actors: Monel v. New York City Dept Social Services, 436 U.S. 658 (1978).

1. Section 1983 has evolved and expanded since 1961example, in Monell vs New York City Department of Social Services the U.S. supreme court expanded § 1983 to allow civil suits against Municipal entities, as well as individual state actors.

Since then, state officials found liable under §1983 have included police, other law enforcement officers, and private parties testifying and acting on behalf of the State. Magistrate Dodge order (page 14 lines 22-23) the Board and Cokus, all other defendants assert they cannot be liable under Section 1983 because they are non-state actors. *This conclusion cannot stand up to this Standard of Review.*

IV. MAGISTRATE DODGE VIOLATED UNITED STATES CONSTITUTION WHEN ACCEPTING STATE RULINGS AS COLLATERAL ESTOPPEL WITHOUT APPLYING FEDERAL STATUTES OF FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO IT. 12

Magistrate raises 'Issue Preclusion and Collateral Estoppel', Memorandum opinion order page 16, #4 Argument: "Issue preclusion 'for Cokus comes from FINAL ORDER dated November 2, 2020 (EXIBIT B uploaded in 22-624) where the Board disregarded exceptions lions on testimonies of Melissa Smith, Ferketic and Cokus as a discretion and Commonwealth order (Exhibit A, uploaded in 22-624) provide 'Color of law'. This discretionary disregard by the board of these testimonials including that of Cokus violated First, Fifth, and Fourteenth Amendment's rights. The Collateral Estoppel does not stand when these Federal Statutes are applied.

Magistrate Dodge violated the US constitution by not applying Federal laws to 'already settled issue' in contravention with Constitutional provisions of Fifth and Fourteenth amendment rights and Due process. The US Supreme Court has ruled that Collateral estoppel may preclude a later claim involving the same set of facts but a different statute. (B&B Hardware v Hargis Industries, US 2015. The Magistrate here has not applied the Statutes of Fifth and Fourteenth Amendments and has violated Constitutional laws.

V. MAGISTRATE DODGE IGNORED DUE PROCESS VIOLATIONS: 13

Magistrate in her order memorandum opinion page 19 lines 2-13 found that no Due process has been violated and dismissed the CLAIM with PREJUDICE.

1.Detective Cokus admitted tearing up appellant's first statement: An obstruction of Justice and Due process violation AND First Amendment Right violation. 2.Detective Cokus admitted getting coerced confession: Fifth and Fourteenth amendment violation and a Due process violation. 3.Ferketic admitted fabricating statements (5,6, 6B) and then recanting injury (6B): A Due process violation. 4.Mellissa Smith perjured herself by lying under oath on which date, she went to police, IN subornation of her Counselors: A Due process violation

VI. QUALIFIED IMMUNITY FOR DETECTIVE COKUS. 1. Cokus's attorney claimed immunity for a police officer. 2. Harlow Fitzgerald 457 U. S. 800 (1982). There is no blanket immunity for anyone, and no violations of Statutory rights are covered by it. 3. Malley v Briggs, 457 US 335(1986), 457 U.S 335 d1986), the Supreme examined immunity for police officers with faulty warrants. Supreme Court decided that qualified immunity does not apply when officers' arrests wrongfully. 13

Detective Cokus filed a sworn statement (3) with false information obtaining a false conviction and cannot qualify for immunity.

VII. MAGISTRATE DODGE IGNORED CONTINUOUS VIOLATION

DOCTRINE AND DUE PROCESS VIOLATION BY FMC. 1. Fresenius

Medical Care committed a series of illegal acts upon Plaintiff up until BPOA hearing. It falsely portrayed that FMC found plaintiff guilty second time in October 2003, though April panel had exonerated appellant for any sexual harassment charges. *FMC fraudulently overturned the first verdict by a jury by an executive order and reintroduced same charges with same witnesses with a new jury, 14th amendment violation. Counselors have not opposed this FACT.* 2. Betts falsely used the same accusations to deny privileges in Butler ARA and Hospital, by fraudulently keeping information away from the panel (1 5, 15 ABC). He qualifies to be a liable non-state actor with ARA.

VIII. ARGUMENTS FOR MISCARRIAGES OF JUSTICE

1. Magistrate ignored false conviction under CP-02-CR-003120-2018. *The Curahealth in their filing did not oppose the fact they withheld information of two conflicting statements (5, 6 UPLOADED IN 22-624) from Judge Bigley of Allegheny County Common Pleas Court. This alone resulted in the false conviction of the appellant.*

2. Magistrate ignored Curahealth and Cokus perpetrated fraud upon Allegheny County Common Pleas Criminal Court, Curahealth withheld fabricated statements 15

(Ferketic, Cokus filed a perjured sworn statement) (4B) resulting in a false conviction. Neither Curahealth or Cokus Counselors have refuted or opposed any evidence put forth by appellant, Under provision 60(b)(3). Magistrate Dodge was reminded of this fraud, the Magistrate refused to acknowledge any evidence put forth.

2. Magistrate has dismissed case against Melissa Smith, UPMC et al without the DEFENDANTS answering any of the evidence entered into record, VIOLATION OF DUE PROCESS.

3. USC §1983 STATUTE OF LIMITATIONS: Commonwealth Court took 18 months (about ONE and a half years) to rule, a period affected by covid 19 Pandemic. Magistrate by not applying pandemic associated pause to statute of limitations conducted an injustice. Congress has not applied any statute of Limitations and the US Supreme Court accepted a case under 22-624 as late as March 2023. Magistrate has not recognized US Supreme Court Rules over calculation.

4. QUALIFIED IMMUNITY FOR STATUTORY LAW VIOLATIONS: Cokus asked to be granted qualified immunity, which he cannot qualify for any immunity by committing fraud (DUE PROCESS VIOLATION), Fifth and Fourteenth Amendment violations. Cokus was not to be questioned under oath or cross examined by Magistrate Dodge, an injustice. 16

5. Magistrate ignored 14th Amendment power through Fitzpatrick and Young exception which abrogates State 11th Amendment immunity as claimed.

6. MAGISTRATE AND BPOA HEARING IGNORED OBSTRUCTION OF JUSTICE AND STATUTORY VIOLATIONS BY COKUS AND PERJURIES BY COMPLAINANTS: Both complainants gave perjured testimonies and were impeached at the hearing (evidence uploaded 22-624). Magistrate Dodge ignored the evidence and did not offer the opportunity to question Melissa Smith under oath in a Federal Court. COUNSELORS FOR COKUS AND BPOA DID NOT DISPUTE THE EVIDENCE.

7. MAGISTRATE APPLIED COLLATERAL ESTOPPEL WHICH VIOLATES FEDERAL STATUTORY RIGHTS UNDER FITTH AND FOURTEENTH AMENDMENT RIGHTS.

8. Magistrate ignored FMC action of using same allegations and same witnesses (Appellant exonerated of sexual harassment charges in April 2003 hearing (14 A) to deny privileges in October 2003. FMC has not DENIED THE EVIDENCE.

9. MAGISTRATE ACKNOWLEDGES ARA AND BETTS FALL WITHIN HER ARBITRARY STATUTE OF LIMITATIONS BUT IGNORED 17 PERPETRATED FRAUD BY ARA AND BETTS WHO REDUCED APPELLANT'S SHARES AND PARTICIPATED IN DENIAL OF PRIVILEGES OF THE APPELLANT AT A HOSPITAL VIOLATING DUE PROCESS.

10. MAGISTRATE DISMISSED EACH DEFENDANT WITH PREJUDICE WITH LEGIT SHARE FORFEITED A FOURTEENTH AMENDMENT VIOLATIONS AND GROSS INJUSTICE.

11. Magistrate Dodge dismissed Dr Lupariello (14 A, 14 G*) with prejudice as defendant. This has allowed fraud upon Judge Folino under GD-020233, where defendant must answer questions about evidence entered into record. *An Injustice.*

12. Magistrate Dodge has Betts (15.15*, 15 ABC0 to perpetrate fraud upon appellant by dismissing Betts as defendant with prejudice without conducting a hearing. ARA AND Betts still owe funds to appellant.

ARA/Betts Counselors have not opposed any evidence brought forth.

13. **ALL THE EVIDENCE ENTERED AGAINST CURAHEALTH, COKUS, MELLISSA SMITH, 'UPMC, FMC, LUPARIELLO, AMERICAN RENAL ASSOCIATES, AND BETTS WAS UNOPPOSED AND UNCHALLENGED BY DEFENDANTS' COUNSELORS.**

14. The basic tenets of Justice with a direct and cross examination of witnesses was not allowed by Magistrate Dodge, an injustice. The US Supreme court Cert. pool 18 admitted the case under violation of Fifth and Fourteenth amendment rights under docket 22-624. Then it was directed to continue at a lower court Supreme Court did allow Appellant to plead under 42USC §1983. 15. Any unnecessary delay in this litigation to remedy the appellant's usurped rights will be injustice.

XI. **CONCLUSION AND REMEDIES SOUGHT BY APPELLANT.**

1. CURAHEALTH AND COKUS'S COUNSELORS WERE UNABLE TO GIVE SATISFACTORY REASON AS TO WHY NO WRITTEN STATEMENTS OF Ferketic (5,6) WERE NOT MADE PART OF CP-CR-0003120-2018 TRIAL OF APPELLANT. THIS CONVICTION IS PRAYED BY APPELLANT TO BE OVERTURNED OR REMANDED BACK FOR TRIAL.

2. EQUITABLE TOLLING AND SUPREME COURT ACCEPTED CASE UNDER 22-624. CASE TO BE REMANDED BACK UNDER AN UNBIASED JUDGE.

3. COKUS CANNOT BE GRANTED ANY IMMUNITY FOR VIOLATING FIRST, FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF APPELLANT AND SHOULD STAND A TRIAL IN A LOWER COURT.

COLLATERAL ESTOPPEL 19 DOES NOT APPLY SINCE FIFTH AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED.

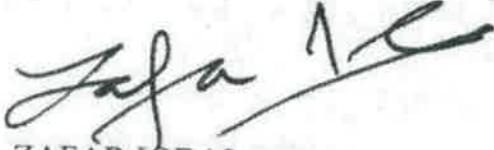
4. THE POWER INVESTED IN THE FOURTEENTH AMENDMENT ABROGATES STATE SOVEREIGN IMMUNITY. BPOA HEARING CONTAINS EVIDENCE WHICH VIOLATES DUE PROCESS, FIRST,

FIFTH AND FOURTEENTH AMENDMENT RIGHTS. A TRIAL IS NECESSARY TO DETERMINE VALIDITY OF REVOCATION OF APPELLANT'S MEDICAL LICENSE.

5. THE RECORD CONTAINS TWO PERJURIOUS TESTIMONIES OF COMPLAINANTS AND COERCED SELF-INCRIMINATING STATEMENT (PART OF 22-624 RECORD) WHICH CAUSED THE DENIAL OF LICENSE, THIS NEEDS A TRIAL.

6. FMC HAD NOT DENIED THE SAME ALLEGATIONS WHICH WERE NOT SUBSTANTIATED IN APRIL 2003 HEARING AND VERDICT OVERTURNED BY AN EXECUTIVE ORDER. FMC COUNSELOR HAS NOT RESPONDED TO THIS EVIDENCE. APPELLANT ASKS FOR A TRIAL IN LOWER COURT. 20

7. LUPARIELLO FRAUDULENTLY AVOIDED SEVERANCE PAYMENT AND FRAUDULENTLY OBTAINED JUDGEMENT FTOM JUDGE FOLINO IN CASE NO GD-02-23533. LUPARIELLO HAD NOT SETTLED 10%SHARES OF APPELLANT. THE COUNSELOR HAS NOT DISPUTED THE EVIDENCE. APPELLANT PRAYS FOR A TRIAL IN LOWER COURT 8.ARA AND BETTS COUNSELORS HA VE NOT ANSWERED AS TO WHY APPELLANT SHARES WERE REDUCED FROM 15 % to 10% ARBITRARILY. BETTS AND ARA DENIED APPELLANT PRIVILEGES IN BUTLER MARKET FRAUDULENTLY. APPELLANT PRA YS FOR A TRIAL IN LOWER COURT. Respectfully,



ZAFAR IQBAL MD

205 Essex Court, Gibsonia, PA 15044. Dated February 7, 2024

T:2123811564. ziqbalmd@gmail.com

21

(30)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES
BUREAU OF HEARINGS AND APPEALS

IN THE APPEAL OF: Zafar Iqbal, M.D.
BHA ID No.: 9999
BHA Docket No.: 007-22-0009
Medical Assistance Preclusion

TELEPHONE HEARING SCHEDULING ORDER

AND NOW, the Bureau of Hearings and Appeals hereby ORDERS the following to resolve the Parties' outstanding motions.

- 1. Hearing Date, Change of Hearing Date, and Unavailability at Time of Hearing**
 - a. A hearing will be held **by telephone** and will begin at **3:00 PM on JANUARY 21, 2025**. This is the **ONLY** written notice of the telephone hearing that you will receive.
 - b. Requests for a change of the hearing date or time are granted only when you can show that you or your witnesses cannot participate because of previously scheduled appointments or medical conditions. You must send a written request for change of hearing date or time to the Formal Docketing Coordinator as soon as possible.
 - c. If you or your witnesses are not available when the hearing is scheduled to begin, the hearing will proceed without you and/or any witnesses. This may cause the Judge to find in favor of the other party.
- 2. Purpose of the Hearing**
 - a. This hearing will address whether Provider's July 17, 2024, *Request for a Dispositive Motion under Rule § 41.135* should be granted.
 - b. This hearing will address whether the Department of Human Services' August 5, 2024, *Motion for Summary Judgment* should be granted.
 - c. This hearing will address whether Provider's September 6, 2024, *Motion to Compel Bureau of Professional and Occupational Affairs through Program Office or Directly to Comply with Pre-Hearing Order of Judge Herzing Dated May 8, 2024*, should be granted.
 - d. This hearing will address any other outstanding motions.
- 3. Telephone Hearing**
 - a. No later than ten (10) days before the hearing, you must complete and return the enclosed pre-paid, self-addressed postcard, making sure you include the telephone number where you can be reached for the hearing and that your signature is legible (or include your printed name beneath your signature).
 - b. The Judge will call you on the day and time of your hearing at any telephone number you provided and will, at that time, secure from you telephone numbers for any witnesses you wish to call so you must be able to provide the phone numbers at which your witnesses can be reached. Please note, however, that the judge will only be able to connect up to five different

- b. Free interpreter and translator services are available at the hearing and for any notices that are sent to you.

8. Legal Representation

- a. You may have a lawyer represent you at the hearing, but you are not required to have a lawyer. You may represent yourself.
- b. If you do not have a lawyer or cannot afford one, you may call your local County Bar Association for information about finding a lawyer.
- c. If you have low income, you may be eligible for assistance from your local Legal Services Corporation or from legal clinics at local law schools such as: Widener School of Law (located in Harrisburg, PA), Dickinson School of Law of the Pennsylvania State University (Carlisle, PA); and Temple University School of Law or University of Pennsylvania School of Law (Philadelphia).
- d. In order to receive important information and notices pertaining to your case and to participate in this hearing, your counsel should enter a written entry of appearance with the Bureau of Hearings and Appeals prior to the hearing date. Said entry of appearance should include the attorney's name, address, telephone number and facsimile number and be provided to the other side, with proof thereof in the form of a certificate of service being attached to the entry of appearance. Failure of your counsel to enter such an appearance may result in proposed exhibits which your counsel may not have seen being considered for admission to the record as long as you were properly served with copies of them.

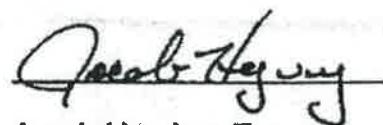
9. Contact Information

Address: Formal Docketing Coordinator
Bureau of Hearings and Appeals
2330 Vartan Way, 2nd Floor
Harrisburg, PA 17110-9721

Telephone: 717-783-3950
FAX: 717-346-1959

December 4, 2024

Date



Jacob Herzing, Esq.
Administrative Law Judge

See Appendix # 96

Reproduced Affidavit Exhibit I of police report by Detective Cokus.

Your Honor, your affiant is Corporal Donald J. Cokus Jr. I am a Detective with North Fayette Township police and I am currently assigned to investigation division.

On November 9th, 2017, the North Fayette Police Department was dispatched to CuraHealth to speak with a female regarding a sexual assault. The female victim's identity is known to Your affiant and will be available for court proceedings, until that time she will be known as "Victim #1.

In speaking with Victim # 1she stated she was in her office at CuraHealth on November 7th, 2017 at approximately 1300 hours. At that time, the defendant (Dr. Zafar Iqbal) entered and asked if she had any medical charts for him to sign. Victim # 1 stated that defendant then closed and locked the office door. The defendant approached the victim #1 and kissed her by "shoving his tongue" in her mouth. The victim indicated she did not consent to the contact, and backed away. Victim #1 indicated that the defendant approach from behind, and hugged her by "pinning" both of her arms against her body, down at the side. The victim stated the defendant then kissed her again, and placed her left hand inside of her shirt. The defendant "squeezed" the right breast of victim # 1 tightly and removed it from her bra, attempting to make facial contact with it.

Victim # 1 stated she backed away again, and advised the defendant to leave and he complied.

I conducted an interview of the defendant at the North Fayette Police Department on November 10th, 2017. He was provided a Waiver of rights, and agreed to speak with me. In doing so, the defendant admitted to having aforementioned contact with Victim # 1. The defendant acknowledged that the victim did not consent, and he provided a written statement of his involvement accordingly..

Your Honor, probable cause does exist to file the charges located here in, based on the aforementioned facts and circumstances.

SC appendix #97

I, Donald Cokus BEING DULY SWORN ACCORDING TO THE LAW DEPOSE AND SAY THAT THE FACTS SET FORTH IN FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Signature of Affiant

Sworn to me and subscribed before me this 15th day of November, 2017.

Anthony Saveikus District Judge . Signature

1 and everyone is going to cross-examine. They are
2 just going to give me all of the information that's
3 stipulated to. I'll accept it as fact, and then I
4 will draw whatever conclusions from that. Do you
5 understand?

6 A. Yes, Your Honor.

7 Q. And by proceeding in this manner, am I depriving you
8 in any way of your ability to present evidence on
9 your behalf, including character witnesses?

10 A. No, Your Honor.

11 THE COURT: All right. Thank you.

12 And, then, what would the stipulation be
13 to?

14 MS. SCHOEDEL: In fact, Your Honor, I
15 will read in the affidavit of probable cause
16 which will be stipulated, as well as some
17 additional facts that I spoke with counsel
18 about.

19 THE COURT: Okay.

20 MS. SCHOEDEL: With that being said, I
21 will proceed to read the affidavit of
22 probable cause, which states that, Your
23 Honor, your affiant is Corporal Donald Cokus,
24 Jr. C-o-k-u-s. I am a detective with the
25 North Fayette Township police department, and

Ferketic 01479

1 I am currently assigned to the investigations
2 division.

3 On November 9 of 2017, the North
4 Fayette police department was dispatched to
5 Cura Health -- C-u-r-a. Health -- with a
6 female -- to speak with a female regarding a
7 sexual assault. The female, her identity is
8 known to your affiant. For purposes of
9 today's plea, Your Honor, that victim is
10 Kimberly Ferketic. F-e-r-k-e-t-i-c.

11 In speaking with the victim, she stated
12 that she was in her office at Cura Health on
13 November 7 of 2017 at approximately 1300
14 hours. At that time the defendant, Dr. Zafar
15 Iqbal, entered, asked if she had any medical
16 charts for him to sign. The victim stated
17 that the defendant then closed and locked the
18 office door. The defendant approached the
19 victim and kissed her by, quote, shoving his
20 tongue, unquote, in her mouth.

21 The victim indicated that she did not
22 consent to the contact and backed away. The
23 victim indicated that the defendant then
24 approached her from behind, hugged her by,
25 quote, pinning both of her arms against her

Ferketic 01480

REPRODUCED TRANSCRIPT OF DET COKUS:

SC Appendix # 89

2/27 page 83, lines:

11. Q. And did he say that it was consensual?

12. A. Initially yeah. He believed it was consensual.

2/27 page 84, line:

11. Q. What happened to first statement that he gave you?

15. A..... I disposed of that after I read it....

2/27-page 87-lines:

3. Q. Okay. Going back, how did you dispose of the statement? The first statement?

6. A. The first statement?

7. Q. Yeah

8. A. I either tore it up or I crumbled it up and threw it in the garbage can.

2/27 Page 84 lines:

1. A. which she alleges that there was ultimately bruising. We did not see....

(THE COKUS's TESTIMONY OF DESTROYING A VOLUNTARY STATEMENT AND OBTAINING ANOTHER UNDER DURESS, STANDS IN CONTRAST TO BPOA CONCLUDING STATEMENT (Appendix B, page 4).

2/27page 92, lines:

4. Q. And, you also said there is a video surveillance of the medical records.

6. A. I told you there was

7. Q. Yes.

8. A. -video absolutely-

9. Q. And that was a lie?

10. A. Absolutely.

11. Q. So, you lied to me?

12. A. What did I lie to you? Yes, absolutely.

SC Appendix # 90

2/27 page 94 lines:

3.Q. Did she give you a blood-stained garment?

4.A. I don't believe so.

(ABOVE WRITTEN STATEMENTS ARE OWNED BY K.F. HER TESTIMONY STANDS IN DIRECT CONTRAVENTION TO DONALD COKUS. KF CLAIMS OF BLOOD-STAINED GARMENTS AND CLAIM OF INJURY NEVER MADE TO POLICE REPORT (I) EXHIBITS CONTRADICTING, BPOA CONCLUSION (Appendix B, page 4).

Transcript of Detective Cokus

2/27 83

11.. Q. And did he say it was consensual?

12. A. Initially yeah. He believed it was

13. A. consensual

2/27. 84

11.. Q. What happened to the initial statement

12. Q. he gave you?

15. A....., I disposed that after I read

2/27 87

3. Q. Okay

4. Q. Going back, how did you dispose of the

5. Q. statement? The first statement?

6. A. The initial statement?

7. A. Yeah.

8. A. I either tore it up or I crumbled it up

9. and threw it in the garbage can.

2/27.

84

1. A..... which she alleged that there was
2. ultimately bruising. We did not see.

2/27

92

4. Q. And, you also said there is a video surveillance of the medical
5. records.

6. A. I told you there was-

7. Q. Yes

8. A. -video absolutely-

9. Q. And that was a lie?

10. A. Absolutely.

11. Q. So, you lied to me?

12. A. What did I lie to you? Yes, absolutely.

2/27

94

3. Q. Did she give you a bloodstained garment?

4. A. I don't believe so.

2/27

83

1 you're supposed to read it, now it's in your mind.

2 Now she is talking about it.

3 THE WITNESS: Okay.

4 BY ATTORNEY DELAURENTIS:

5 Q. Okay.

6 So and what - what did Dr. Iqbal say at
7 first?

8 A. He admitted that he entered the - Ms.
9 Ferketic's office and locked the door, and that they
10 had contact with each other.

11 Q. And did he say that it was consensual?

12 A. Initially, yeah. He believed that it was
13 consensual, but after there was further discussion
14 between the two of us on the interview process, he
15 admitted that it was not consensual.

16 Q. And what specifically was the sexual
17 contact that he had?

18 A. The sexual contact that was reported and
19 that we had spoken about was approaching her from
20 the front with a bear hug, him kissing her and
21 putting his tongue in her mouth. The disengagement
22 from Ms. Ferketic, which is ultimately, there is
23 another engagement where he was behind her and gave
24 her another bear hug and put his left hand in - on
25 the inside of her shirt and grabbed her right breast

1 and squeezed it. Which she alleged that there was
2 ultimately bruising. We did not see. She was sent
3 to the hospital for that. And that he tried to
4 place his mouth on her breast.

5 Q. Okay.

6 Did Dr. Iqbal indicate whether he was
7 willing to provide a written statement?

8 A. He did.

9 Q. And did he do so?

10 A. He did.

11 Q. What happened to the first statement that
12 he gave you?

13 A. He provided two written statements. The
14 first statement was not indicative of the - of our
15 interactions in our interview. I disposed of that
16 after I read it, and - and said this + this is not
17 what he told me. This is not what our interview
18 was. I'm going to give you an opportunity to write
19 a second statement.

20 So I provided him the same blank document
21 that he was provided initially, and he wrote the
22 second statement which was much closer to what his
23 verbal statement was to me.

24 Q. Okay.

25 I'd like you to turn in the book, I'll

1 what the Respondent verbally expressed to you?

2 A. It was. It was more consistent.

3 Q. Okay.

4 Going back, how did you dispose of the
5 statement? The first statement?

6 A. The initial statement?

7 Q. Yeah.

8 A. I either tore it up or I crumbled it up
9 and threw it in the garbage can.

10 Q. Okay.

11 And why did you do that?

12 A. Because that was inconsistent with what
13 his - his - his verbal statement during our
14 interrogation.

15 Q. Okay.

16 And did the Respondent deny physical
17 contact with the victim at any point?

18 A. He did not.

19 Q. What did you do after the Respondent
20 finished his statement?

21 A. He was free to leave. He was allowed to
22 leave.

23 Q. Is this when you gave him a pat on the
24 back?

25 A. Probably - probably that's when I shook

2/21

Sc Appendix 95

94

1 A. An incident report? I don't recall
2 reviewing an incident report from her.

3 Q. Did she give you a bloodstained garment?

4 A. I don't believe so.

5 DR. IQBAL: Your Honor, I have a
6 written statement I'd like to enter and show to -
7 to -.

8 HEARING EXAMINER: A written - a
9 written statement from who?

10 DR. IQBAL: From Ms. Ferketic.

11 HEARING EXAMINER: You can't -.

12 DR. IQBAL: I can show that if he has
13 ever seen it.

14 HEARING EXAMINER: Okay.

15 You can ask him if he's seen it, okay?

16 But that's the extent you can ask him - unless he
17 says - unless he will testify that he's seen it,
18 okay?

19 THE WITNESS: I don't recall seeing
20 that statement.

21 BY DR. IQBAL:

22 Q. Did -?

23 A. I'm sorry.

24 Q. Police Officer, are you supposed to lie
25 to your - to - we are under your protection. You

SC Appendix 82

REPRODUCED TRANSCRIPT OF K.F. TESTIMONY.

KF: 2/27 page 126 lines

7. A. He had -he had blood on his shirt that.

8. A. is on my shirt that I wore that day. And my right

9. A. my right breast is starting to bruise....

12. Q. And when was this incident report written?

14. A. On the 9th | believe I have.

15.Q. And the second page, the second document, is that your-?

17. Hearing Examiner: And - and that's C-12. We marked it as C12.

19. BY DR. IQBAL:

20. Q. Is that yours too?

21. A. Uh-Uh (yes).

22. Q. When was that written?

23. A. They were written at the same time as far I can recall.

2/27 page 128 lines:

17-18. Q. The blood-stained shirt, where is that shirt now?

19. A. The detective took it.

Transcript from BPOA hearing Feb 26, 27, 2020

2/27

126

1. Q. Can you read it out loud, please?

2. thing or -?

3. Yes. Do you want me to read the whole

4.Q. No. Just the one with the

5. A. Just where you - the little wiggly line?

6. Q. Yeah.

7. A. He had - he had blood on his shirt that

8. is on my shirt that I wore that day. And my right -

Scappavida 83

9. my right breast is starting to bruise. It is very
10. sore now. I'm scared he will try to do this again.

11. Q. Okay.

12. And when was this incident report

13. written?

14. A. On the 9th I believe I have.

15. Q. And the second page, the second document,

16. is that your -?

17. HEARING EXAMINER: and - and that's C-

18. 12. So, we marked the document as C-12.

19. BY DR. IQBAL:

20. Q. Is that yours, too?

21. A. Uh-huh (yes).

22. Q. When was that written?

23. A. They were written at the same time as far

24. as I recall

25 ATTORNEY DELAURENTIS: And Your Honor,

Sargent's Court Reporting Service, Inc. (814) 536-8908

2/27.

128

16. BY DR. IQBAL:

17. Q. The bloodstained shirt, where is that

18. shirt now?

A. The detective took it.

2/27

Scappendix #84

126

1 Q. Can you read it out loud, please?

2 A. Yes. Do you want me to read the whole
3 thing or -?

4 Q. No. Just the one with the -.

5 A. Just where you - the little wiggly line?

6 Q. Yeah.

7 A. He had - he had blood on his shirt that
8 is on my shirt that I wore that day. And my right -
9 my right breast is starting to bruise. It is very
10 sore now. I'm scared he will try to do this again.

11 Q. Okay.

12 A. And when was this incident report
13 written?

14 A. On the 9th I believe I have.

15 Q. And the second page, the second document,
16 is that yours -?

17 HEARING EXAMINER: And - and that's C-
18 12. So we marked the document as C-12.

19 BY DR. IQBAL:

20 Q. Is that yours, too?

21 A. Uh-huh (yes).

22 Q. When was that written?

23 A. They were written at the same time as far
24 as I can recall.

25 ATTORNEY DELAURENTIS: And Your Honor,

2/27

SC Appendix 85

128

1 So this - all this handwriting up here
2 is - ma'am, this is not your handwriting.

3 Correct? At the top of -

4 THE WITNESS: Correct. That is not
5 mine.

6 HEARING EXAMINER: - of Exhibit R-12?

7 The handwriting is Dr. Iqbal's? Okay. But the
8 handwriting that's in the lines is your handwriting.

9 Correct?

10 THE WITNESS: Correct, yeah. And I
11 see on the bottom that has - has a date of 12/5/17.

12 HEARING EXAMINER: Okay.

13 Very good. Thank you, I appreciate
14 it. Go ahead. You - you - you may ask - you may
15 ask her questions now.

16 BY DR. IQBAL:

17 Q. The bloodstained shirt, where is that
18 shirt now?

19 A. The detective took it.

20 DR. IQBAL: Your Honor, can I say that
21 the detective took it and reported you and said he
22 never got one?

23 THE WITNESS: He said he didn't
24 recall.

25 HEARING EXAMINER: Thank you.

(5)

R-11 Scappendix #86



INCIDENT REPORT ADDENDUM

LAW

Description of incident/treatment administered: I was in my office and DR. Iqbal stopped by and asked if he had anything to sign. I was surprised about his visit because it was the first time he had come this. I gave him the chart and sat across from him @ the other desk to analyze charts and then to review the charts once he signed. He then stood up took his jacket off walked to my door and locked it. He then told me to stand up. He walked over to me, wrapped his arms around me like a bear hug, looked down @ me said I'm kissing you and then he stuck his tongue down my throat. I then said that's enough. I walked over to another area closer to my door @ my car trying to keep distance. I was scared. He then came up behind me again from behind and wrapped his arms around me again. My arms were trapped down, he reached up grabbed both of my breast. I tried to use my arms to break away. He reached his left arm into my shirt & grabbed my right breast and squeezed it again and pulled it out of my shirt. I kept saying stop this is enough. He started to put his hand towards my breast like he was going to put his mouth on it. I was able to get loose & say again enough! I then

Investigator comments: ~~tripped~~ down my throat.

Signature: _____

Name & Title: _____ Date/Time: _____

Scappendix A 87

went into my office & stood behind my desk.

He grabbed his coat, stood in my doorway & told me that if I told anyone this happened I would lose my job.

{ He had blood on his shirt that is on my shirt
that I wore that day and my right breast is
starting to bruise. It is very sore now. I'm
scared he will try to do this again. }



UPMC | University of Pittsburgh
Medical Center

UPMC Passavant
UPMC Passavant Cranberry

10A

Teresa G. Petrick
President

9100 Bebcock Boulevard
Pittsburgh PA 15237-0842
412-367-0800

CERTIFIED MAIL

January 3, 2008

Zafar Iqbal, MD
118 South Butler Street
Butler, PA 16001

Re: Special Notice

Dear Dr. Iqbal,

At the Medical Executive Committee meeting on January 2, 2008 and pursuant to Article 7, Section 7.B.1 of the UPMC Passavant Credentialing Policy of the Bylaws, please be advised a recommendation has been made to deny your request for reappointment to the Professional Staff. The reason for this recommendation was based upon your failure to disclose appropriate responses to declaration questions on your reappointment application, which was signed by you on September 14, 2007.

Please recognize you are entitled to request a hearing within 30 days of receiving this notice. A copy of this article has been enclosed for your reference.

Sincerely,

Teresa G. Petrick, President
UPMC Passavant

TGP/lb

enclosure

cc: Richard Hamilton, Chairman
Board of Trustees
Scott E. Cahn, MD, President
Professional Staff
Steve Harris, MD, Chairman

1008
ID B

04/22/2008 10:27 FAX

1008

PPR-22-2008 12:35

THORACIC SURGEONS OFFICE

412 358 3359 P.83

that the severity of the MEC's recommendation for non-reappointment, coupled with these serious procedural deviations, should have warranted further review by the MEC itself into the facts and circumstances surrounding Dr. Iqbal's reapplication.

For the reasons set forth above, the Hearing Panel concluded that recommendation made by the MEC was capricious and not supported by substantial evidence.

IV. DISPOSITION OF THE HEARING PANEL REPORT

This report of the Hearing Panel is to be delivered to the Chief Executive Officer for appropriate distribution pursuant to Section 7.B.4 of the Professional Staff Credentials Policy of UPMC Passavant

Respectfully Submitted:

Christopher G. Koman, M.D.

Syed Hyder, M.D.

Jennifer L. Osborn
Jennifer L. Osborn, M.D.

Dated April 21, 2008

SC Appendix 51

TRANSCRIPT FROM M.S. TESTIFYING

2/26 Page 50 lines:

21 Q. And did you report this to the police?

22. A. Yes. I believe a couple of days later we had reported to the McCandless Police...

Page 79 lines

19. Q. Mrs. Smith, you said you went to the police the next day?

21. A. I believe it was a couple of days later.

This is entirely false as depicted in the police report (Exhibit-III, R-3), which suggests that Mr. and Mrs. Smith presented themselves on 08/29/2015 @15:49 (Incident #20150831M8358) to the police station. The report was written by Lawrence J. Itri Sergeant. This was followed up by his interview with me on September 1, 2015 (Exhibit III, R-3).

TRANSCRIPT OF SERGEANT LAWRENCE ITRI TESTIMONY.

02/26-page 122 lines:

17. I'm handing Sergeant what's been marked as Exhibit R-3

23. Q. Is that she said- the time reported is 8/29/2015, at 15:49?

25. A. Yes. That's the time I took the report.

02/26 -Page 123 lines:

2. A. That's the date that Mrs. Smith and her husband came to the station. Yes, it is.

4. Q. Did they come before this date? Is this the first time ever you saw them?

A. Yes. That was the first time I've seen them

ALLEN FLEMM, PCI testified 2/26 page 253 lines

15. Q. But she told you that she went to the police a month later?

17. A. She didn't give an exact date, but she said she went after her vacation. She said took a vacation and went after the vacation.

2/26

Sc appendix 58

122

1 BY DR. IQBAL:

2 Q. Sir, did you file a report?

3 A. Yes, I did.

4 Q. Is that report somewhere there?

5 HEARING EXAMINER: And are you
6 referring to what's been marked -?

7 DR. IQBAL: Yes, it's on the report
8 bottom, yes. It's the report 1, 2, 3.

9 ATTORNEY DELAURENTIS: I don't know if
10 I left that up there.

11 THE WITNESS: I don't see it up here.
12 Is it in the file?

13 ATTORNEY DELAURENTIS: No.

14 HEARING EXAMINER: Okay.

15 Here, I'll give you my copy. There
16 you go.

17 I'm handing the Sergeant what's been
18 marked as Exhibit R-3.

19 BY DR. IQBAL:

20 Q. Is that your name Lawrence J. Itri. Is
21 that you?

22 A. That's me, yes.

23 Q. Is that what she said - the time reported
24 is 8/29/2015, at 15:49?

25 A. Yes. That's the time I took the report.

R-3 SC Appendix # 65

Incident Report



McCandless Police Department
9955 GRUBBS RD
WEXFORD, PA 15080

Phone: (412)369-7992 Fax: (412)364-4684

Incident #	Reference #	Municipality Report Type	TOWN OF MCCANDLESS (108) INCIDENT
20150831M8368	MCP1507642	Location	9100 BABCOCK BVD - PITTSBURGH 15237
Criminal Code	Title : Section : Sub-Section : Description :	Landmark	UPMC PASSAVANT HOSPITAL
UCR Codes	3800 SUSPICIOUS PERSONS OR CIRCUMSTANCES	Premise	
		Point of Entry Meth. of Entry	
		Patrol Zone	DIST Grid
		Reported	08/28/2016 @ 16:49 (Sat)
		Discovered	@
		Last Secure	@
		Received	16:49 Dispatched 16:05
		Arrived	16:05 Cleared 17:08
		Status	FURTHER INVESTIGATION
		Disposition	
		Clear Date	
		Badge	235 - LAWRENCE J. ITRI, SERGEANT

Investigating Officer	Section	Date	Approving Officer	Signature	Date
McCandless Police Department Printed by: CYNTHIA MILLER (05/23/2017 07:49:52 AM)			Page 1 of 4		



2/26

Scappendix 59

123

1 Q. And is that the day they showed up?

2 A. That's the date that Mrs. Smith and her
3 husband came to the station. Yes, it is.

4 Q. Did they come before this date? Is this
5 the first time ever you saw them?

6 A. Yes. That was the first time I've seen
7 them.

8 Q. I don't know, Sergeant, where you were
9 before Mrs. Smith took the stand today and she said
10 she came two days later after the incident.

11 Is that correct?

12 ATTORNEY DELAURENTIS: Objection. I'm
13 not clear on the question.

14 HEARING EXAMINER: Sure. Just
15 rephrase the question.

16 BY DR. IQBAL:

17 Q. Sergeant, before you took the stand, Mrs.
18 Smith took the stand.

19 A. Yes.

20 Q. And she said she came to the pol - to
21 you, to the police department, within two days of
22 the incident, which makes it either 8/2nd, 2015 or
23 8/3rd, 2015.

24 Is that correct?

25 A. No. I took this report on the 29th of

SC Appendix # 70

- (l) Dr. Iqbal again suggested to Nurse Smith that they go someplace quiet to talk. Unsure of what to do and feeling as though she could not say "no" to a physician, Nurse Smith followed Dr. Iqbal onto the elevator.
- (m) Almost immediately upon entering the elevator, and after the elevator doors had shut, Dr. Iqbal aggressively kissed Nurse Smith. During the forced kiss, Dr. Iqbal stuck his tongue in Nurse Smith's mouth.
- (n) According to Nurse Smith, Dr. Iqbal kissed her and then the elevator door opened and he and she both got off of the elevator.
- (o) Nurse Smith said that the interaction on the elevator lasted between 30 seconds to a minute.
- (p) Nurse Smith was very clear and told the Investigating Committee that the elevator never moved. They never went to another floor and got off and back on the elevator.
- (q) When Nurse Smith and Dr. Iqbal exited the elevator, Dr. Iqbal told her to go back to her unit (Rehab) and he would go to the acute side of the hospital.
- (r) When Nurse Smith returned to the Rehab Unit, she immediately reported the incident to the charge nurse, Edwin Plezia, R.N. Mr. Plezia advised Nurse Smith to report the incident to the Nursing Supervisor, Chris Mankey.
- (s) Nurse Smith returned to work.
- (t) Soon after Nurse Smith had returned to the unit, and after she had reported the incident to Mr. Plezia, Dr. Iqbal also returned to the unit.
- (u) Nurse Smith said that Dr. Iqbal's daughter was in a relative's room and came out to ask him a question as he was approaching Nurse Smith. Dr. Iqbal introduced his daughter to "Melissa" by name.
- (v) Later that day, Nurse Smith reported the incident to Ms. Mankey when Ms. Mankey was on the unit getting reports. Ms. Mankey advised Nurse Smith to report the incident to Denise Sponcer, the Unit Director.

See appendix #71

- (w) Nurse Smith called Ms. Sponcer at home, at 4:48 p.m., on August 1, 2015 to report the incident.
- (x) After reporting the incident to Ms. Sponcer, Nurse Smith was offered the opportunity to go home early and she did.
- (y) The next day, August 2, 2015, Dr. Iqbal returned to the Rehab Unit at approximately noon. When Nurse Smith saw him, she told the HUC that she was going to the locker room and to call her when Dr. Iqbal left. However, Nurse Smith heard call lights going off and decided to respond.
- (z) Later, while she was passing meds, between Room 5710 and 5711, Dr. Iqbal approached Nurse Smith and asked "Is everything ok?" She said yes and then asked Dr. Iqbal "Is everything ok?" He said "yes." He then hugged Nurse Smith, which she stated made her feel even more uncomfortable and upset.
- (aa) On August 3, Nurse Smith reported the August 2 interaction with Dr. Iqbal to Ms. Sponcer and described it as "awkward."
- (bb) On August 5, 2015, Paul Hanlon contacted Dr. Iqbal and invited him to meet with the Leadership Council that evening. Mr. Hanlon was not sure what time he made this call. Dr. Iqbal asked Mr. Hanlon what the meeting was about. Mr. Hanlon said that the Leadership Council would explain. Dr. Iqbal then asked "can you give me an idea? Is it personal or clinical?" Mr. Hanlon informed Dr. Iqbal that the matter was personal.
- (cc) At around noon on August 5, 2015, Dr. Iqbal was on the Rehab Unit. Ms. Sponcer witnessed Dr. Iqbal approach Nurse Smith and speak to her, leaning over the wall at the nursing station. Dr. Iqbal asked Nurse Smith if she was ok. Dr. Iqbal then asked Nurse Smith if she was working the next day or the day after. Nurse Smith responded that she would be on vacation. Dr. Iqbal asked Nurse Smith where she was going. Before Nurse Smith could answer Dr. Iqbal's question, Ms. Sponcer intervened by asking Nurse Smith a patient-based question.
- (dd) Dr. Iqbal returned to the unit later that day (August 5), after Ms. Sponcer left. According to Nurse Smith, Dr. Iqbal was looking for her. Nurse Smith hid in the med room until Dr. Iqbal left.
- (ee) Since Mr. Hanlon could not remember what time he called Dr. Iqbal, it is not clear whether Dr. Iqbal approached Nurse Smith

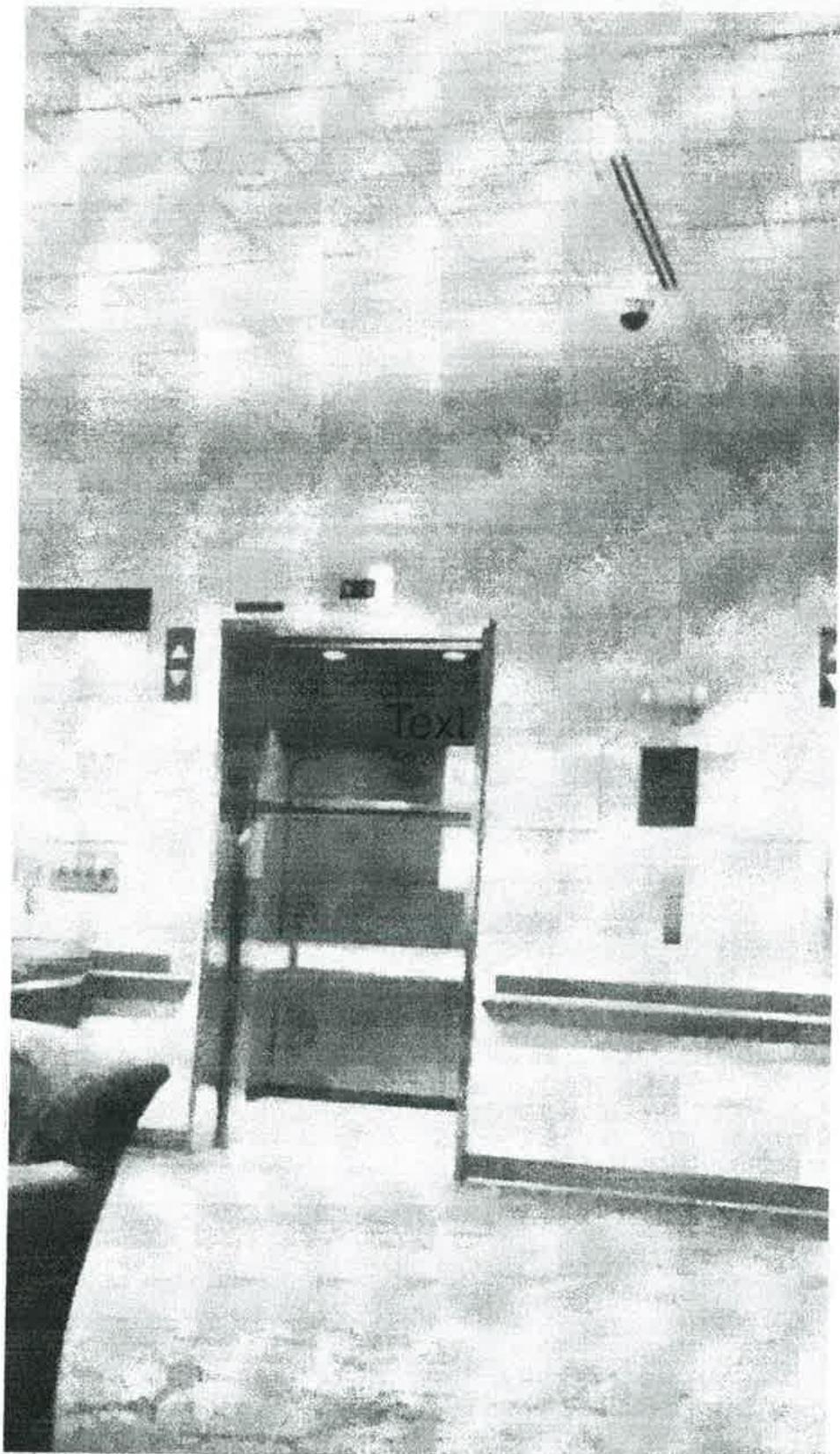
SCappendix #72

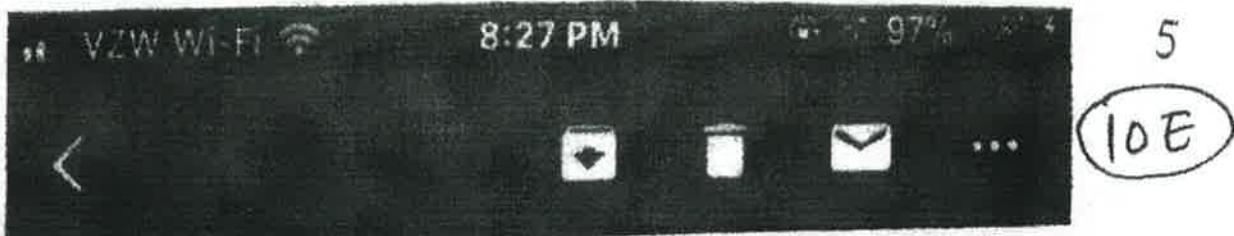
- (10) Dr. Iqbal's statements that Nurse Smith sought him out on August 1, 2015 about her medical condition, asked his advice, and asked him to visit her in the hospital, are not credible. Nurse Smith told the Investigating Committee that, on an earlier occasion, she had discussed her condition with Dr. Iqbal and may have asked him for advice. However, sometime prior to August 1, Nurse Smith had already decided against the surgery and thus had no reason to be talking to Dr. Iqbal about the surgery on August 1. It appeared to the Investigating Committee that Dr. Iqbal was offering this explanation in an attempt to explain his actions.
- (11) Following its interview with Dr. Iqbal, the Investigating Committee did not find Dr. Iqbal's statement, that on August 1, 2015, Nurse Smith followed him on and off the elevator three times, to be credible.
- (12) In an effort to be as thorough and fair as possible, and out of an abundance of caution, the Investigating Committee sought to find a surveillance tape of the inside or outside of the elevator. The only surveillance tape which was available showed the outside of the elevators on the first floor of the Hospital. This surveillance tape was from the PNC ATM machine. The Investigating Committee requested the surveillance tape from PNC for the relevant time frame of 10:00 a.m. to 2:00 p.m. on August 1, 2015.
- (13) The Investigating Committee obtained a copy of the surveillance tape on Friday, November 20, 2015. A copy of the surveillance tape is included as Exhibit 19.
- (14) The Investigating Committee reviewed the surveillance tape in its entirety. The Investigating Committee did not see any evidence to confirm Dr. Iqbal's statement that he and Nurse Smith had got off of the elevator (and then back on the elevator) on the first floor.
- (15) On the surveillance tape, there are multiple instances when for a short period of time (usually under a minute) the elevator doors are not visible because someone is blocking the view. However, based on all of the information available, the Investigating Committee concludes that Dr. Iqbal's statement to the Investigating Committee, that on August 1, 2015, Nurse Smith followed him on and off the elevator three times, is not credible.
- (16) The comments that Dr. Iqbal made to Nurse Smith, including "I can't have an affair with you, I'm married" and "I would have dated you if I met you before I was married," are similar to the comments Dr. Iqbal made to Autumn Schlafhauser, R.N. in 2012. (See below.)
- (17) The comments that Dr. Iqbal made to Nurse Smith, including "I can't have an affair with you, I'm married" and "I would have dated you if I met you

12:57

5G

10 D.





Friday February 19th conference
call at 8am **Inbox**

Feb 17, 2016

Lisa Hertzer

to Susan, me, Thomas, Lauren, Marti...

The call has been scheduled for 2/19/16
at 8am

Everyone should call 866-228-9900

Susan ONLY will enter 4074540

Everyone else to enter code 841672

**If you have any questions please let me
know.**

2/21

53

1 THE WITNESS: That is correct.

2 HEARING EXAMINER: Okay.

3 To your knowledge, was there any other
4 videotape available to you - for you to review
5 beyond the PNC Bank tape?

6 THE WITNESS: So yes. I believe that
7 UPMC also has video cameras in that area. I also
8 believe that by the time that we tried to obtain
9 those videotapes, they had already been overwritten.
10 So, you know, you learn a lot about things you never
11 knew before. And one of the things that I learned
12 in 2015 was that these videotapes are on some sort
13 of rollover. That after a certain period of time,
14 number of days, weeks, whatever it may be, that they
15 overwrite themselves.

16 HEARING EXAMINER: Okay.

17 Very good. So at the end of the day,
18 to your knowledge, as a member of this committee,
19 there were no other videotapes for - that existed
20 for you to review beyond the PNC tape that you
21 reviewed.

22 Correct?

23 THE WITNESS: That is correct, and we
24 actually did try, if I remember, to obtain the other
25 videotape. At the time we tried, we were told that

10F

guiding principle shall be that the record contains information sufficient to allow the Board to decide whether the individual is qualified for appointment and clinical privileges.

7.D.8. Post-Hearing Statement:

Each party shall have the right to submit a written statement, and the Hearing Panel may request that statements be filed, following the close of the hearing.

7.D.9. Postponements and Extensions:

Postponements and extensions of time may be requested by anyone, but shall be permitted only by the Presiding Officer or the Hospital President on a showing of good cause.

7.E. HEARING CONCLUSION, DELIBERATIONS,
AND RECOMMENDATIONS

7.E.1. Basis of Hearing Panel Recommendation:

Consistent with the burden on the applicant/Professional Staff member to demonstrate that he/she satisfies, on a continuing basis, all criteria for initial appointment, reappointment and clinical privileges, the Hearing Panel shall recommend in favor of the Medical Executive Committee unless it finds that the applicant/Professional Staff member who requested the hearing has proved, by a preponderance of the evidence, that the recommendation that prompted the hearing was arbitrary, capricious, or not supported by credible evidence.

7.E.2. Deliberations and Recommendation of the Hearing Panel:

Within 20 days after final adjournment of the hearing (which may be designated as the time the Hearing Panel receives the hearing transcript or any post-hearing statements, whichever is later), the Hearing Panel shall conduct its deliberations outside the presence of any other person except the Presiding Officer. The Hearing Panel shall render a recommendation, accompanied by a report, which shall contain a concise statement of the basis for its recommendation.

7.E.3. Disposition of Hearing Panel Report:

The Hearing Panel shall deliver its report to the Hospital President and to the President of the Professional Staff. The Hospital President shall send by special notice a copy of the report to the applicant/Professional Staff member who requested the hearing. The President of the Professional Staff shall also provide a copy of the report to the Medical Executive Committee.

RE: cancellation of hearing for dr. iqbal

Boyle, Thomas <thomas.boyle@bipc.com>
To: zafar iqbal <ziqbalmd@gmail.com>
Cc: Susan Lapenta <SLapenta@hortyspringer.com>, Lauren Massucci <LMassucci@hortyspringer.com>

Wed, Feb 24, 2016 at 4:05 PM

As I have already ruled, I sustained ms. Lapenta's objections to aspects of your statement. So unless the objection is withdrawn or you make edits (which seems unlikely) or the decision is made to just proceed with oral opening statements, your statement would not be given. Frankly, at this late time, I am not sure how likely it is that any statements can be delivered in advance of the hearing. As you will recall, I put a hold on the delivery of the statements yesterday because susan had objected to your statements and I felt you had not had time to review her statement. As a result, I believe all that the panel now has is the book of stipulated exhibits.

From: zafar iqbal [mailto:ziqbalmd@gmail.com]
Sent: Wednesday, February 24, 2016 3:57 PM
To: Boyle, Thomas
Cc: Susan Lapenta; Lauren Massucci
Subject: Re: cancellation of hearing for dr. iqbal

A potential security risk was detected and removed from this email. Please reply if my written statement is given to the hearing panel.

Kindly

On Wednesday, February 24, 2016, Boyle, Thomas <thomas.boyle@bipc.com> wrote:

I will see you all around 630 am tomorrow.

From: Susan Lapenta [mailto:SLapenta@hortyspringer.com]
Sent: Wednesday, February 24, 2016 2:48 PM
To: 'zafar iqbal'
Cc: Boyle, Thomas; Lauren Massucci
Subject: RE: cancellation of hearing for dr. iqbal

A potential security risk was detected and removed from this email.

I plan on being there tomorrow and proceeding with the hearing. Dr. Iqbal, if you do not show up then consistent with Section 7.D.3 of the Credentials Policy your failure "to appear and participate at the hearing shall constitute a

Governing body Hearing -Dr Iqbal

Governing Body Committee Decision April 4, 2003

14A

We the governing body Governing Committee agree that there is sufficient evidence grounds for revocation of privileges at all FMC-NA dialysis facilities where he currently has those privileges. We believe his deficiencies in regard to keeping current monthly notes, history and physical, long and short term care plans, rounding and signing physician's orders justifies this revocation in principle.

However we feel that charges of sexual harassment are not substantiated. He was never warned, notified, counseled about the allegations against him.

We believe the revocation of Dr. Iqbal's privileges should not stand. The company did not execute properly in terms of oversight of Dr. Iqbal's performance in the past, the timing of the revocation and lack of proper warning and notification of his dismissal.

Committee

REPRODUCED LETTER OF TERMINATION OF FMC PRIVILEGES

May 1, 2003,

14E

Dear Dr. Iqbal: Immediate Suspension and Termination of Privileges

The governing bodies of the BMA clinic in Kittanning, Butler, New Castle, Ellwood City, Mercer, Cranberry, Ohio Valley, Pittsburgh, Southwestern Pennsylvania, South Hills, Three Rivers, Penn Hills, and Mt. Oliver have found that your exercise of privileges at these clinics poses a serious and immediate threat to patients and staff. Therefore, your privileges at this above-listed BMA Clinics are suspended indefinitely effective immediately.

The governing bodies of the BMA-Clinics in Kittanning, Butler, New Castle, Ellwood City, Mercer, Cranberry, Ohio Valley, Southwestern Pennsylvania, South Hills, Three Rivers, Penn Hills, Mt. Oliver also revoke your privileges permanently for violation of the following Medical Staff By-Laws and other appropriate reasons, including but not limited to:

- 4(a) Failure to abide by the Medical Staff By-laws and Rules and regulations.
- 4(e) Unethical or illegal conduct and
- 4(f) Conduct that disrupts the efficient operation of BMA centers or that threatens the safety of good medical care of patients of BMA Centers.

Your unacceptable and improper conduct including violations of the Medical Staff Bylaws, including but not limited to, events which have previously outlined in the correspondences directed Dominic Gaeta Assistant General Counsel, to your Attorney Alan Baum, date April 14, 2003, and April 16, 2003. Additionally, your unacceptable conduct includes, but is not limited to.

GACA MATIS BAUM & RIZZA
PROFESSIONAL CORPORATION

14D

ALAN S. BAUM
Direct Dial (412) 338-4743
E-Mail: abbaum@gaca.com

April 28, 2003

Four Gateway Center
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222
412/338-4750 338-4742/fax

www.gaca.com

(Via Facsimile 4/28/03, 781-402-9714)

Domenic P. Gaeta
Assistant General Counsel
Fresenius Medical Care North America
95 Hayden Avenue
Lexington, Massachusetts 02420

RE: Zafar Iqbal, M.D.
Our File No.: 401.27647

Dear Mr. Gaeta:

This letter is in response to yours of April 21, 2003 concerning your intention to "continue" the 2002 investigation against Dr. Iqbal.

As far as Dr. Iqbal and I are concerned, the investigation of FMC and BMA has already been completed. The completion of that investigation was one of the stated bases for the suspension and termination of Dr. Iqbal's privileges on December 6, 2002. In the letter of that date from Michelle Taylor, no reference is made to any incomplete investigation, nor was Dr. Iqbal ever invited to present himself for an interview with company personnel. If it was indeed your intention or desire to interview Dr. Iqbal to obtain the benefit of his response to the allegations, the appropriate time to have done so would have been either before his privileges were terminated, before the preliminary injunction hearing in December, before the April 3 Governing Body hearing, or certainly before the Governing Body ruled in Dr. Iqbal's favor on April 4, 2003. If your investigation was not complete, FMC had no right to suspend and terminate Dr. Iqbal's privileges, and force him to incur significant time and expense in his effort to successfully restore those privileges.

The HCQIA professional review action that was taken by FMC and BMA against Dr. Iqbal was taken for the stated purpose of terminating his privileges. Under Section 11112, such an action is to be taken only "after a reasonable effort to obtain the facts of the matter." If FMC did not take a reasonable effort to obtain the facts of this matter, its action was in violation of HCQIA and in contravention of the BMA By-Laws. Whether FMC and BMA complied with its own "stringent anti-harassment policies" is no longer of Dr. Iqbal's concern. Your company had full opportunity to do so, and made the decision to take action against Dr. Iqbal on December 6, 2002 after necessary facts had been obtained. Dr. Iqbal would have been willing to participate in an interview before your company took action against him. According to the sworn testimony of your company witnesses, Dr. Iqbal was never asked for an interview or for his response. Now, almost five months after the notice of suspension and termination, your request is moot, untimely, and unprofessional.

For the foregoing reasons, Dr. Iqbal will not again subject himself to interrogation concerning the "sexual harassment/hostile workplace allegations made in late 2002" as described in your letter. After all of the activity that has taken place over the past several months, it is incomprehensible that FMC and BMA are not fully aware

GACA MATIS BAUM & RIZZA

14 D

Domenic P. Gaeta
November 3, 2005
Page 2

of Dr. Iqbal's response to the allegations. He testified at length and was vigorously cross-examined by your lawyers when he testified in the Court of Common Pleas of Allegheny County in December, and at the Governing Body hearing on April 3. I recommend that you and your company read the transcripts of Dr. Iqbal's testimony if you indeed want the benefit of his response. He repeatedly denied the allegations made against him and has nothing more to add.

Very truly yours,

Alan S. Baum

ASB/dsn
J:\CLIPS\W-M\IQBAL\ABL27647-051



14C

W/DP

Fresenius Medical Care

Writer's Direct Dial: 781-402-9784
Fax: 781-402-9714
E-mail: domenic.gaeta@fmc-na.com

April 21, 2003

**VIA FACSIMILE (412) 338-4742
and FIRST CLASS MAIL**

Alan Baum, Esq.
Gaca Matis Baum & Rizza
Professional Corporation
300 Four PPG Place
Pittsburgh, Pennsylvania 15222-5404

Re: Dr. Zafar Iqbal

Dear Mr. Baum:

Please be advised that Fresenius Medical Care North America and Bio-Medical Applications of Pennsylvania, Inc. (collectively the "Company") intend to continue the investigation into sexual harassment/hostile workplace allegations made in late 2002 against Dr. Iqbal. In order to complete the investigation, we request that Dr. Iqbal present himself for an interview with appropriate Company personnel. (Tracey Mayall, from the Company's Human Resources department, will conduct the interview in person, with Elizabeth Sahatjian, Esq., from the Company's legal department, being present and providing legal support.) While we believe it is in Dr. Iqbal's best interest to appear for the interview, please be advised that the Company fully intends to conclude the investigation and take whatever appropriate action is required, consistent with the Company's stringent anti-harassment policies, with or without Dr. Iqbal's participation. We would like to complete this interview within the next two weeks. Therefore, I would appreciate your advising me of three (3) alternative dates in that time frame on which Dr. Iqbal is available for an interview.

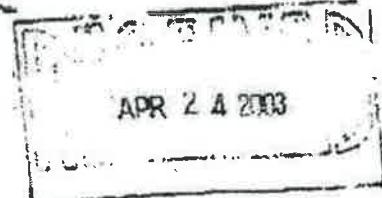
Thank you for your prompt attention to this matter.

Very truly yours,

Domenic P. Gaeta

Domenic P. Gaeta
Assistant General Counsel

cc: Dean Passodelia, Esq., by fax and first class mail
Ms. Tracey Mayall, Human Resources
Elizabeth Sahatjian, Esq.



Fresenius Medical Care North America

Corporate Headquarters: 95 Hayden Avenue Lexington, MA 02420-9192 781-402-9000

8

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Exhibit B

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

vs.

Zafar Iqbal, M.D.
Respondent

Case No.:

17-49-14398

FINAL ORDER

← "Admitted loosing privileges at Fresenius Medical Care
in 2003 as a result of sexual harassment allegations"
Page 5 footnote 9.

"On April 4, 2003 .. there were insufficient grounds for
sexual harrassment.... the sole purpose of introducing
this evidence was to lay foundation and provide full
picture.... Page 6, lines 8-18.

BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



K. KALONI JOHNSON

STATE BOARD OF MEDICINE



MARK B. WOODLAND, M.S., M.D.

CONTINUING-VIOLATION DOCTRINE: Any person or entity, here Fresenius Medical Care commits a series of illegal acts against a person, *limitation period begins to run from the last act on the series. The entire series of events can be tolled if the violations were continuing.* FMC caused plaintiff's loss of privileges at Allegheny General Hospital in 2004, Butler Hospital and ARA denial 2005, UPMC denial in 2008 (reversed), Washington Hospital 2012. BPOA FINAL ORDER DATED NOVEMBER 2, 2020, which was provided 'color of law' by Commonwealth Court Order under case no 1190CD2020 on April 18, 2022, found allegations to be good to lay foundation and provide full picture to an investigation. THE ALLEGATIONS WHICH WERE FOUND NOT TO BE SUBSTANTIATED FOR SEXUAL HARASSMENT BY APRIL 2003 PANEL WERE REINTRODUCED AND SAME WITNESSES TESTIFIED AGAIN AND JUDGED AGAIN BY OCTOBER 2003 PANEL TO REVOKE PLAINTIFF's PRIVILEGES. THIS FACT WAS CONCEALED BY FMC FROM NPDB REPORT.

FRESENIUS MEDICAL CARE COMMITTED FRAUD AND MISLEADING NOW

1. FMC misled this Court when trying to dissociate BMA/PA from FMC which they have claimed to be the same (14C dated April 21, 2003).
2. FMC decision to reinvestigate and reintroduce charges of sexual harassment was *defrauding the process, to quickly Re-suspend Plaintiffs privileges only fourteen days after being allowed back.*
3. October 2003 Panel was presented same charges as those in April 2003. *This is a fraudulent practice which violated Due Process, Section 11112 and HCQIA laws.*
4. *The language in NPDB does not say that same charges and same witnesses were used. This evasive and fraudulent language led institutions to react adversely to prima facies INFORMATION. Allegheny General Hospital, Washington Hospital, Butler Hospital, BPOA and UPMC found it worth revoking privileges without investigating. UPMC revocation was reversed in 2008 by appeal.*

National Practitioner Data Bank
 Healthcare Integrity and Protection Data Bank
 P.O. Box 10832
 Chantilly, VA 20153-0832

<http://www.npdb-hipdb.hrsa.gov>

DCN: 5500000039647565
 Process Date: 11/08/2005
 Page: 2 of 3
 For authorized use by:
 KINDRED HOSPITAL PITTSBURGH

State License Number, State of Licensure: NY-170745, NY

Other, as Specified:

(14F)

Drug Enforcement Administration (DEA) Numbers: BI-2460636



Type of Adverse Action: TITLE IV CLINICAL PRIVILEGES

Adverse Action Classification Code(s): REVOCATION OF CLINICAL PRIVILEGES (1610)

Other, as Specified:

Date Action Was Taken: 04/30/2003

Date Action Became Effective: 10/13/2003

Length of Action: PERMANENT

Years:

Months:

Days:

Description of Act(s) or Omission(s) or Other

Reasons for Action Taken: PRIVILEGES WERE IMMEDIATELY SUSPENDED AND PERMANENTLY REVOKED DUE TO VIOLATIONS OF THE MEDICAL STAFF BYLAWS AND IMPROPER AND UNPROFESSIONAL BEHAVIOR, INCLUDING: SOLICITATION OF PATIENTS AND THEIR CAREGIVERS; IMPROPER INTERFERENCE BETWEEN PATIENTS AND THEIR PHYSICIANS; AND A PATTERN OF HARRASSING BEHAVIOR THAT OFFENDED BOTH PATIENTS AND STAFF, AND POTENTIALLY CREATED A HOSTILE WORK ENVIRONMENT. DR. IQBAL'S CONDUCT CAUSED THE STAFF TO THREATEN TO WALK OUT OF THE FACILITY AND THEREBY MADE IT IMPOSSIBLE TO PROVIDE QUALITY, EFFECTIVE CARE WHILE HE WAS IN THE FACILITY. THE HEARING COMMITTEE DECIDED THAT DR. IQBAL'S CONTINUED PRIVILEGES POSED AN IMMEDIATE AND SERIOUS THREAT TO PATIENT CARE AND WARRANTED THE IMMEDIATE SUSPENSION OF HIS PRIVILEGES BECAUSE THE CONDUCT DIRECTLY IMPEDED THE ABILITY OF THE CLINIC TO PROVIDE QUALITY HEALTHCARE.

Basis for Action: UNPROFESSIONAL CONDUCT (10)

Other, as Specified:

Basis for Action: IMMEDIATE THREAT TO HEALTH OR SAFETY (F1)

Other, as Specified:

Basis for Action: OTHER - NOT CLASSIFIED, SPECIFY (99)

Other, as Specified: SOLICITATION OF PATIENTS AND CAREGIVERS.

Basis for Action: OTHER - NOT CLASSIFIED, SPECIFY (99)

Other, as Specified: IMPROPER INTERFERENCE BETWEEN PATIENT AND THEIR PHYSICIANS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Exhibit B

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

vs.

Zafar Iqbal, M.D.
Respondent

Case No.:

17-0-14398

FINAL ORDER

← “Admitted loosing privileges at Fresenius Medical Care in 2003 as a result of sexual harassment allegations’ Page 5 footnote 9.

“On April 4, 2003 .. there were insufficient grounds for sexual harrassment.... the sole purpose of introducing this evidence was to lay foundation and provide full picture.... Page 6, lines 8-18.

BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



K. KALONI JOHNSON

STATE BOARD OF MEDICINE



MARK B. WOODLAND, M.S., M.D.

CONTINUING-VIOLATION DOCTRINE: Any person or entity, here Fresenius Medical Care commits a series of illegal acts against a person, *limitation period begins to run from the last act on the series. The entire series of events can be tolled if the violations were continuing.* FMC caused plaintiff's loss of privileges at Allegheny General Hospital in 2004, Butler Hospital and ARA denial 2005, UPMC denial in 2008 (reversed), Washington Hospital 2012. BPOA FINAL ORDER DATED NOVEMBER 2, 2020, which was provided 'color of law' by Commonwealth Court Order under case no 1190CD2020 on April 18, 2022, found allegations to be good to lay foundation and provide full picture to an investigation. THE ALLEGATIONS WHICH WERE FOUND NOT TO BE SUBSTANTIATED FOR SEXUAL HARASSMENT BY APRIL 2003 PANEL WERE REINTRODUCED AND SAME WITNESSES TESTIFIED AGAIN AND JUDGED AGAIN BY OCTOBER 2003 PANEL TO REVOKE PLAINTIFF's PRIVILEGES. THIS FACT WAS CONCEALED BY FMC FROM NPDB REPORT.

15*



ASSUMPTIONS/CONFIDENTIAL Central Kittanning Expansion

Ownership:	ARA 51% Partner 1 39% Partner 2 10%
Stations:	13 original with the addition of 6 = 19
Patients:	In Center: 29 actual as of June 2009 - 6% growth thereafter 33 additional in Sept 2009 from Kittanning - 6% growth thereafter
PD:	3 actual as of June 2009 - 6% growth thereafter
Revenue:	Central Kittanning: \$311.60 per treatment based on June YTD Kittanning: \$259.62 per treatment based on June YTD Combined: Approximately \$266.00 per treatment
Dear Doctor Iqbal	

I wanted to take this opportunity to follow up once again on your most recent letter of September 17, 2009. In that letter, you requested three specific pieces of information which you indicated would be determinative in your execution of the proposed Settlement Agreement. More specifically, you requested the salary of the Medical Director of the combined Central Kittanning unit, information relative to the Sublease between Central Kittanning and Dr. Ross Betts and the impact of increase revenue at Central Kittanning as it relates to the equity interests of its members. Each of these issues is addressed in this letter.

As you are aware, Central Kittanning Dialysis Center LLC is a party to a Medical Director Agreement with Northern Tier Nephrology, Inc. which is affiliated with C. Ross Betts, M.D. As a result of the recent merger of operations between Central Kittanning and ARA-Kittanning, ARA engaged the services of a third party valuation company to prepare a report on the fair market value of medical director compensation relative to the combined facility. As a result of this report, the medical director compensation of the combined Central Kittanning dialysis facility was set at \$75,536.00 annually on September 5, 2009. This compensation level is subject to review every two years.

Central Kittanning and Northern Tier Nephrology are also parties to a Sublease Agreement for approximately 365 square feet of space at One Nolte Drive, East Franklin Township, Kittanning, Pennsylvania. The Sublease term runs coterminous with that of the prime lease and is based on a blended rate of \$12.24 per square foot. In addition, Northern Tier is responsible for its proportionate share of utility, taxes and related costs. Northern Tier was also responsible for its proportionate share of all tenant improvements to the subleased space. All rent proceeds associated with the Sublease Agreement inure to the benefit of Central Kittanning in meeting its lease payment obligations.

As for the impact of increased revenue at the Central Kittanning location relative to the merger of operations, I have attached a detailed financial model for your review. We would be more than happy to walk you though the model at your convenience. As of this date, both American Renal and Dr. Betts have made their required capital contributions to Central Kittanning.

I hope that the following has been helpful and answers all of your questions. We look forward to finalizing the Settlement Agreement.



15E

15G

Zafar Iqbal MD & Assoc., Inc.

June 29, 2009

VIA EMAIL, FAX AND FIRST CLASS MAIL PRIVATE AND CONFIDENTIAL

Michael R. Costa, Esq., MPH
V.P. & General Counsel
American Renal Associates
66 Cherry Hill Dr.
Beverly, MA 01915

Re: Grievance Report

Dear Mr. Costa,

I am writing in response to your letter dated June 17, 2009. First, I would like to request a correction to my address. I have moved from the address listed in your correspondence as of July 2006. I still have an office in Butler PA; but I would like correspondence to be sent both, via email at ziqbalmd@gmail.com and via mail to 3009 Wilmington Rd Suite C, New Castle, PA 16105.

I agree with your premise that ARA had no obligation to give me 10% of the stock in Central Kittanning Dialysis, when it was purchased from FMC in 2006. This is also true for the stocks given to me for ARA Kittanning two years earlier, but the only difference was that we all faced competition of FMC at the time. With my help and diligence, we all were able to drive FMC out of business. This is reflective in my client census at ARA Kittanning as of December of 2006. This also caused fire sale price for ARA to buy out FMC. So with these dynamics, I do not think I have received charitable stocks from ARA or from my competitor. Over the next two and a half years my share of clients at ARA Central grew from 0% to 50%. This hallmarks the disparity between economic contributions at ARA Central Kittanning from my clients versus 10% stock which I was given, reluctantly.

I understand the choke hold position ARA has with the stock shares by siding with my competitor. But, to fire the economic motor of the combined entity at all cylinders, my contributions cannot be ignored. You have surmised it correctly that 10% of combined entity will bring more revenue for me, but it will generate greater revenue for my competition, increasing the disparity per se.

"Under no obligation" conclusion confirms that ARA attributes success to only one individual. This assumption completely ignores my contributions towards not only the closure of FMC Kittanning, but also the closure of FMC Butler where 15-20 of my clients

3009 Wilmington Rd.
Suite C
New Castle PA 16105
Ph: 724.856.7238
Fax: 724.856.7259

118 South Church St.
Butler PA 16001
Ph: 724.431.0253
Fax: 724.431.0254

500 Medical Arts Building
Suite 510
Kittanning PA 16201
Ph: 724.543.1600
Fax: 724.431.0254

ISE

tipped the balance in favor of ARA. This is outright insulting to a junior partner particularly when his phone calls are not returned by the president of the company. I am also surprised that such an up and coming National Dialysis Provider does not have a track to address the concerns of an aggrieved minority shareholder or simply the executives have decided to let loose the company's attorney at a junior partner to show sheer force.

I feel that I have not been served a fair deal and the majority partner (ARA) has sided with my competitor to suppress my fair share, and manipulated the closure of ARA Kittanning for the benefit of one individual.

Under PA Corporate Law the following legitimate rights of minority stock holders stand:

A shareholder who has owned stock in the corporation for six months or who owns at least five percent of the stock in the corporation may inspect and copy any of the records a corporation is required to keep at its principal office and under certain circumstance may review additional records and reports. Other shareholders have more limited rights to inspect corporate records, including shareholder lists. All shareholders are entitled to receive a copy of the corporation's annual financial statements or written notice of their availability.

I request the following to be constituted or provided:

1. A forum should be constituted to review my concerns and improving my representation in shares of the combined entity fairly.
2. A copy of all financial transactions which occurred between ARA (Central Kittanning) and ACMH since 2006..
3. A copy of all financial transactions which occurred between ARA and all share holders since 2006 including Medical Directors Compensation for services in Kittanning area.
4. A copy of the revenues of acute dialysis program (Central Kittanning) and their disbursement.
5. Copies of financial transactions at the time of ARA Kittanning closure and their disbursement.
6. Up until the disbursement of funds of ARA Kittanning; my shares should stand as collateral for the funds asked, for now.

Thank you,

Zafar Iqbal, MD

cc: Syed Kamal
Alan Baum

BUTLER MEMORIAL HOSPITAL

F. CONTINUING MEDICAL/PROFESSIONAL EDUCATION (during past three years)

2007

V. WORK HISTORY AND INSTITUTIONAL AFFILIATIONS

List in chronological order your work history and all institutional affiliations since completion of medical school. This includes all hospitals, clinics (including dialysis & other outpatient type facilities), corporations, military assignments, government agencies, or any other setting where healthcare is rendered. Complete mailing addresses must be included. This information may be supplemented by, but not replaced by, attaching a copy of your curriculum vitae.

(15C)

V. WORK HISTORY AND INSTITUTIONAL AFFILIATIONS

List in chronological order your work history and all institutional affiliations since completion of your postgraduate education. This includes all hospitals, corporations, military assignments, or government agencies. Complete mailing addresses must be included. This information may be supplemented by, but not replaced by, attaching a copy of your curriculum vitae

2005

Name of Institution	JAMESON MEMORIAL HOSPITAL
Complete Mailing Address	
Specialty	Nephrology

(15A)

V. WORK HISTORY AND INSTITUTIONAL AFFILIATIONS

List in chronological order your work history and all institutional affiliations since completion of your postgraduate education. This includes all hospitals, corporations, military assignments, or government agencies. Complete mailing addresses must be included. If more space is needed, please attach an additional sheet. This information may be supplemented by, but not replaced by, attaching a copy of your curriculum vitae.

2005

Date: Oct 2nd 2000 to July 4, 2004
Institution: Elwood City Hospital
Address: Elwood City Hospital Elwood City PA
Department Chief: Dr. Munir Am. Dibagio
Staff Category: Medicine /Nephrology

Wasim Ahmed, MD (Active)

Page 6

Page 6

ZAFAR IQBAL MD

ZAFAR IQBAL MD

7244318254

7248367239

12/08/2004 12:47 16:28

2/08/2004 12:47

National Practitioner Data Bank
Healthcare Integrity and Protection Data Bank
P.O. Box 10832
Chantilly, VA 20153-0832

ISD
DCN: 5500000041398318
Process Date: 09/21/2006
Page: 2 of 3

<http://www.npdb-hipdb.hrsa.gov>

Drug Enforcement Administration (DEA) Number: 812460638

Type of Adverse Action: TITLE IV CLINICAL PRIVILEGES

Adverse Action Classification Code(s): DENIAL OF CLINICAL PRIVILEGES (1650)
Other, as Specified:

Date Action Was Taken: 09/07/2006
Date Action Became Effective: 09/07/2006
Length of Action: INDEFINITE

Years:

Months:

Days:

Description of Act(s) or Omission(s) or Other
Reasons for Action Taken:

DR. IQBAL'S REQUEST FOR MEDICAL STAFF APPOINTMENT AND
CLINICAL PRIVILEGES TO PRACTICE AT BUTLER MEMORIAL
HOSPITAL WAS DENIED BECAUSE HIS APPLICATION FORM
OMITTED MATERIAL INFORMATION. SPECIFICALLY, DR. IQBAL
FAILED TO DISCLOSE THAT HE HAD BEEN INVESTIGATED AND
HAD HIS PRIVILEGES REVOKED AT A DIALYSIS FACILITY.

Basis for Action: OTHER - NOT CLASSIFIED, SPECIFY (99)
Other, as Specified: OMISSION OF MATERIAL INFORMATION

If the subject identified in Section 8 of this report has submitted a statement, it appears in this section.

Date Submitted: 09/27/2006

I deny that I failed to disclose any information requested in the application. The application requested information about "healthcare facilities", which to me and most other nephrologists, does not include out-patient dialysis centers. The application did not request disclosure of dialysis centers. It was left to the interpretation of the applying physician. Other nephrologists with privileges at Butler Memorial Hospital were granted privileges after they also "failed to disclose" dialysis center/s affiliations in their applications. Once Butler Memorial Hospital specifically requested dialysis centers information, I immediately provided it. Butler Memorial Hospital then denied me privileges several months later. On appeal, the denial was affirmed by the hospital, despite the hospital panel's specific acknowledgement that the application language created "considerable confusion regarding how to categorize a dialysis center." The hearing panel recommended that the hospital application be changed to "include a specific category for freestanding dialysis centers." This matter is currently in litigation in the Court of Common Pleas of Butler County at docket number 06-10852. It should be noted that in denying my application, the Butler Memorial Hospital hearing panel acknowledged it did not rely upon any of the events concerning my privileges with the dialysis unit which was a result of a severed relationship with my

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ZAFAR IQBAL,

No. 131 WAL 2022

Petitioner

v.

Petition for Allowance of Appeal
from the Order of the
Commonwealth Court

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS, STATE
BOARD OF MEDICINE,

Respondent

ORDER

PER CURIAM

AND NOW, this 18th day of October, 2022, the Petition for Allowance of Appeal is
DENIED.

APPENDIX E

IN THE SUPREME COURT OF THE UNITED STATES

ZAFAR IQBAL

(C)

v.

Bureau of Professional and Occupational Affairs,

State Board of Medicine

On Petition for a Writ of Certiorari

To the Supreme Court of Pennsylvania

Docket no. 131WAL2022

PETITION FOR REHEARING

WAIVER

(22A)

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 22-624

Zafar Iqbal

(Petitioner)

v. Bureau of Professional and Occupational Affairs

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate boxes:

Please enter my appearance as Counsel of Record for all respondents.

There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

I am a member of the Bar of the Supreme Court of the United States.

I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member.

Signature 

Date: 01/19/2023

(Type or print) Name Sean A. Kirkpatrick, Senior Deputy Attorney General

Mr. Ms. Mrs. Miss

Firm Office of Attorney General, Appellate Litigation Section

15th Floor, Strawberry Square

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 22-624

Zafar Iqbal

(Petitioner)

v. Bureau of Professional and Occupational Affairs

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate boxes:

Please enter my appearance as Counsel of Record for all respondents.

There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

I am a member of the Bar of the Supreme Court of the United States.

I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member.

Signature 

Date: 01/19/2023

(Type or print) Name Sean A. Kirkpatrick, Senior Deputy Attorney General

Mr. Ms. Mrs. Miss

Firm Office of Attorney General, Appellate Litigation Section

Address 15th Floor, Strawberry Square

City & State Harrisburg, PA

Zip 17120

Phone 717-705-2331

Email skirkpatrick@attorneygeneral.gov

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

CC: Zafar Iqbal (pro se petitioner)