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No. 61272-7-1
(TRIAL COURT CAUSE No.05-2-28501-0 KNT)

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

C. RULE ET. AL.

RESPONDENTS,

V

C. MOMAH

APPELLANT.

APPELLANT'S REPLY BRIEF

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APPENDIX

1. Relevant parts of Ms. Cathy Gonzales' Deposition 7/1/2005
2. Interview of Rena Burns September 22, 2005 - Trial Court's Ex. 49 (also requested as Clerks Papers but not yet received).
3. Letter dated September 18, 2003 to M.Q.A.C from Rena Burns - Trial Court's Ex. 47 (also requested as Clerks Papers but not yet received)
4. Deposition of Dawn Vannoy *Redacted*

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I. IDENTITY OF MOVANT

Appellant Charles Momah seeks the relief designated in paragraph II.

II. STATEMENT OF RELIEF SOUGHT

Appellant requests permission to file an Overlength Brief and to accept the additional submissions as "Appendix" of the Trial Court's exhibits 47 and 49 owing to delay in obtaining these documents from the Clerk of the Court, and to accept the relevant transcripts of Ms. Gonzales' July 1, 2005 Deposition and Ms. Vannoy's September 25, 2005 Deposition.

III. FACTS RELEVANT TO THE MOTION

Dr. Momah asks this Court for one page Overlength Brief because of the complexities of this case. As the Court is already aware, this case is a consolidated case of three separate causes of action, Rena Burns (Cause No. 05-2-40236-9KNT), Lisa McDougal (Cause No. 05-2-39548-6KNT) and Cherie Rule (Cause No. 02-28501-0KNT). The issues raised are substantial and complex. The transcripts of Ms. Gonzales' and Ms. Vannoy would help this Court understand more clearly what the appellant states in both his Opening and this Reply Brief and about what the chaperones who were present when these plaintiffs' were examined. The transcript of Ms. Gonzales is particularly relevant because it was a key exculpatory evidence that is material to, and directly contradicts Ms. Burns' civil and criminal verdicts, and

this Court, in the interest of justice should accept it. This Court would benefit from the material contained in the Overlength Brief and and the Appendix. The exhibits are submitted to save time while awaiting those requested from the Clerks office.

I respectfully suggest that the Court would benefit from the material contained in this Overlength Brief and appendix filed contemporaneou^sly therewith.

IV. ARGUMENT FOR RELIEF SOUGHT.

This Court has the power to grant a motion to file an Overlength Brief for "compelling reasons". RAP10.4(b). Also under RAP10.3(8), this Court can grant permission to the appellant to file the documents contained in the appendix. The depositions were not readily available to the appellant, as he is currently incarcerated and had to rely on efforts of others to locate these documents. "An adverse party may not rest upon mere allegations or denials, but must instead set forth specific facts showing the existence of a genuine issue..", McBride v Walla Walla County, 95 Wn. App. 33, 36, 975 P. 2d 1029;1999 Wash App.LEXIS 482 No.16977-4-III. Therefore, it is the responsibility of the appellant to set forth those specific facts and not rely on "bare assertions". It is for this reason that the Court would benefit by granting the appellant permission to file the supporting documents in the appendix. This would serve the ultimate goal this Court is devoted to, the interest of justice. I respectfully

ask this Court to grant this motion to fully brief and clarify the issues at stake for this Court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'C. Momah', written in a cursive style.

Dr. Charles Momah, pro se appellant

Dated this day of January 14, 2011

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I. IDENTITY OF PETITIONER

Charles Momah asks this Court to overturn this civil verdict and this civil claim.

II. RESPONSE TO THE RESPONDENTS' ANSWER TO THE OPENING BRIEF

1. RESPONDENTS' FAILED TO ADDRESS THE MULTIPLE EVIDENCE OF FABRICATED TESTIMONY AND WITNESS TAMPERING. THE TRIAL TRANSCRIPT IS REplete WITH EVIDENCE OF FABRICATION AND PERJURED TESTIMONY, KNOWN TO THE PLAINTIFFS' ATTORNEYS AND THEY FAILED TO CORRECT THEM, LEADING TO THE DELIBERATE DECEPTION OF THE COURT AND JURY.

2. RESPONDENTS' ASSERTION THAT THIS COURT REJECTED THE CLAIM THAT MR. BHARTI PLAYED A PREJUDICIAL ROLE IN THE CRIMINAL CASE IS MISLEADING.

3. THE TRIAL COURT AND THE JURY WERE DECEIVED BY THE DELIBERATE PRESENTATION OF FALSE AND FABRICATED TESTIMONY AND EVIDENCE BY THE PLAINTIFFS, THEIR WITNESSES AND THEIR LAWYERS, MOST OF WHICH THE DEFENSE ATTORNEYS WERE EVEN ^{UN-}AWARE OF, THEREFORE, THEY HAVE NO BASIS TO CLAIM THE "CREDIBILITY" OF THE PLAINTIFFS AND WITNESSES WAS DECIDED BY THE JUDGE AND JURY.

4. RESPONDENTS CLAIM THAT THE CRIMINAL CASE WAS NOT A PART OF THIS CASE YET QUOTED EXTENSIVELY FROM THAT CRIMINAL CASE, TO REHABILITATE THEIR PLAINTIFFS' AND WITNESSES' CREDIBILITY AND VULNERABILITY.

5. RESPONDENTS' CLAIM THAT "NO ERROR HAS BEEN ASSIGNED" TO (A) DR OLSON'S TESTIMONY, PLAINTIFFS' MEDICAL EXPERT (B) "EFFECTIVENESS OF APPELLANT'S CO-COUNSEL (C) THE JURY VERDICT ASCRIBE ALL THE NEGLIGENCE TO AND OUTRAGEOUS CONDUCT TO CHARLES MOMAH, ALONE." THIS STATEMENT IS MISLEADING AND IS INAPPOSITE TO WHAT THE APPELLANT SAID IN HIS OPENING BRIEF.

6. VARIOUS TRIAL COURTS' RULINGS ABOUT THE MISCONDUCTS OF THE PLAINTIFFS' ATTORNEYS, MS. STARCZEWSKI AND MR. BHARTI SOUND ONE REPETITIVE TUNE, THEIR VERACITY, WITNESS TAMPERING, FILING FRIVOLOUS ALLEGATIONS WITHOUT GOOD-FAITH BASIS AND ENGAGING IN CONDUCTS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

7. THE RESPONDENTS' ASSERTION THAT APPELLANT, ON PAGE 57 IN HIS OPENING BRIEF ADMITTED TO BOTCHED SURGERY ETC IS PATENTLY FALSE AND MISLEADING, AND DELIBERATE ATTEMPT TO CONFUSE THIS COURT. THAT WAS PART OF MEDICAL QUALITY ASSURANCE CORPORATION (MQAC) AGREEMENT THAT THE TRIAL COURT ADMITTED

IN ERROR.

8. RESPONDENTS' CONTINUED TO ASSERT THAT JUDGE STOLTZ'S RULING ON MAY 24, 2006 WAS "VACATED". THIS IS FALSE AND MISLEADING. THAT RULING WAS PART AFFIRMED, PART OVERTURNED. MOREOVER, THAT RULING IN ITS ENTIRETY ON MAY 24, 2006 WAS THE KNOWN FACTS OF THIS CASE AT THE TIME OF THIS INSTANT TRIAL WHEN THE TRIAL COURT DENIED ITS ADMISSION.

9. THAT MS. BURNS AND MS. RULE LIED UNDER OATH IN ANOTHER COURT PROCEEDING IS CRUCIAL TO DETERMINING THEIR CREDIBILITY, SO THE TRIAL COURT DENIAL OF ITS ADMISSION TO THE TRIAL IS PREJUDICIAL.

10. RESPONDENTS' CLAIM THAT THE RECORD ORDERED WAS INSUFFICIENT EVIDENCE TO JUSTIFY "LACK OF SUFFICIENT EVIDENCE" IS LACKING, BECAUSE THE QUANTUM OF EVIDENCE REQUESTED WAS SUFFICIENT FOR A FAIR MINDED PERSON TO MAKE A DETERMINATION.

11. RESPONDENTS MISSES THE FACT THE APPELLANT, IN OPENING BRIEF, CITED AS ONE OF THE ELEMENTS OF ABUSE OF DISCRETION, WAS THE TRIAL COURT 'S ADMISSION OF THE CRIMINAL TRIAL TO BE INTRODUCED INTO THAT TRIAL, ALLOWING THE PLAINTIFFS' ATTORNEY TO REFER REPETITIVELY TO HIS CRIMINAL CONVICTION TO BOLSTER THEIR CLAIM

OF CIVIL LIABILITY.

12. RESPONDENTS IGNORE THE FACT THAT ACCORDING TO NIECE, KALTREIDER, SIMMONS, AND SHEPARD, MS. McDOUGAL ETC ARE NOT “VULNERABLE ADULTS”, UNDER THE MEANING AND INTERPRETATION OF THE SUPREME COURT AND APPELLATE COURTS.

The bulk of the plaintiffs’ response to the appellant’s opening brief was just a “recital” of their “plaintiffs’ motion against appellant’s overlength brief, motion to strike brief of appellant and motion to dismiss” that this court has already been denied. It is surprising that the plaintiffs, rather than address the issues in the opening brief are recasting their motion. To save valuable space and not waste this Court’s precious time, the appellant will resubmit his “APPELLANT’S OPPOSITION TO PLAINTIFFS, MOTION AGAINST OVERLENGTH BRIEF OF APPELLANT AND MOTION TO DISMISS” with his reply. All the other issues interjected in this “motion” will be addressed.

ARGUMENT

The Respondents failed to address the multiple instances of deliberate falsehoods, perjured testimony and outright deception of the trial court and the jury. Of more importance, their attorneys were the architect of

some of these fabrications and deceptions. What the plaintiffs' attorney, Ms. Starczewski terms "minor inconsistencies" in Ms. Burns' testimony, actually are not minor in any sense, but major fabrications and perjured testimony that deceived the trial court and the jury. Here are only some of those: (1) Ms. Burns testified that she had **8 visits prior to her surgery**, when had **just one visit**. (2) Ms. Burns testified that that she had **6 ultrasounds**, when she had **just one ultrasound**. Opening Brief at 14. **It is inconceivable how a difference between one and eight, and one and six could be described as minor inconsistencies!**(3) Ms. Burns testified that March 25, 2003 was not her first visit to the appellant's office, and Mr. Bharti, on the witness stand reinforced this lie by having her deny that March 25, 2003 was her first visit. **Because Mr. Bharti filed her lawsuits (CP 232-272) where at page 240, line 6, Mr. Bharti noted, "In March 25, 2003, plaintiff (Ms. Burns) began visiting defendant, CHARLES MOMAH MD" meant that he knew they were deliberately lying to the trial court and the jury.** Opening Brief at 21.(4) On the witness stand, Mr. Bharti, while asking leading questions, Ms. Burns lied that she had paid **\$5,000 in cash, a type of payment that could not be verified, for the type of surgery she never had.** Opening Brief at 16. (5) Mr. Bharti led Ms. Burns to testify that she had undergone **tubal reversal surgery (reanastomosis)**

when infact she had undergone a **diagnostic laparoscopy, hysteroscopy and endometrial sampling.** (6) Ms. Burns, with Mr. Bharti's assistance, when he interjected with a phony objection, on the witness stand denied those were not her actual records. While Ms. Burns was cross examined by the defense attorney, the impetus for her fabrications and perjury becomes obvious. **Because she was told by Mr. Bharti that her medical records were no longer in existence, she believed that her falsehoods would never be discovered.** She was questioned by the defense.

Q. You are not disputing the accuracy of the dates being shown in the records, are you? A. Well I would kinda question where you got them, *Opening Brief at 12*
because I was told these records don't even exist. **The practical import of**

Ms. Burns' fabrication and continued perjury is that her testimony during the criminal trial about her second visit where she made a litany of allegations on a visit that never was, would then be discovered as false, her allegations of what happened to her during second ultrasound examination that never was, would be uncovered as a lie. So she had had to tell more lies to cover previous lies. As the saying goes **"One lie begets another"**, and it becomes hard to stop". These are some of the falsehood that Ms. Starczewski termed minor inconsistencies. She is merely trying to duplicate a "ruse" that worked for Ms. Burns during the

criminal trial where during her testimony she appeared to forget her birthday! This Court should not be deceived. (7)Ms. Burns testified in her various depositions, that her ultrasound examination anywhere from twenty, thirty to forty five minutes, depending on the audience she was testifying to. In her letter to M.Q.A.C, on page 2 (Ex. 47), she wrote that the ultrasound lasted “about 25 to thirty minutes” and in the deposition on September 22, 2005 (Ex. 49), on the eve of the criminal trial, Ms. Burns said, “the prior ones I had done were like five minutes long and his ultrasound was half hour to forty five”. Opening Brief at 20. It is important to note the **use of the singular verb, “was”, meaning one (ultrasound)**. At the criminal trial, she said it lasted from thirty to forty five minutes and later denied it. **But the record shows that the ultrasound only lasted seven minutes.** These are not minor inconsistencies, by any stretch of imagination. She testified that no pictures were taken on March 25, 2003, her first visit because the “**machine was not even on**”, that the ultrasound pictures were taken on **the second visit¹ that never was.** But the record of the ultrasound shows

¹ These are the allegations she made during her second visit that never was. On October 24, 2005 (pages 55, 56, and 57) Ex.48-Attachment. Q. And during the second visit Dr. Momah repeated many of the improper things he did to you during the first visit. A. Yes. Q. He watched you dressed and undressed? A. Yes. Q. He did another breast exam on you. A. Yes. Q. Except it really wasn't a breast exam, was it? A. No, it wasn't. Q. Did you

March 25, 2003 and the insurance company's "Explanation of Benefits" (E.O.B) only show one payment, for March 25, 2003! Opening Brief at 15, 20. **Because there was no second visit, all allegations she made at the second visit were all fabricated.** This is what Ms. Starczewski terms "minor inconsistencies" and "unfortunately for Charles Momah, Ms. Burns was a credible witness, even without a good memory for dates".

Reply Brief at 15. Her testimony at the criminal trial and this trial were fabricated and perjured, both attorneys knew it was false and allowed it to stand, bolstered it and helped its fabrication. The Prosecutors knew as well. Apparently the jury at the criminal trial believed her fabricated and perjured testimony and she won a conviction. The quotation that Ms Starczewski referred to on pages 7 to 10 was the prosecutors' and witnesses' arguments in the criminal case, the winning side. This Court,

Say to him, Dr. Momah, you have already examined my breast, why are you doing it again? A. Yes. Q. What did he say? A. Because he wanted – he wanted to check everything out completely **before I had surgery. That's why he made me a second appointment.** Q. So, there was the dress and undress, there was the breast exam. But it wasn't an exam, so breast massage? A. Yes. Q. And that was done the same way as the first time? Let me stop. That second one you told us he had two hands one of your breasts? A. Um-hmm. Yes. Q. Ultrasound wand again? A. Yes. Q. And that was like the first time, it was thrust in and out? A. Yes. Q. He touched your clitoris? A. Yes. Q. How long this time, this second time? A. I don't remember how long it was. Q. And this time you told the Doctor, I don't want the ultrasound wand up my anus? A. No. Yeah, because he used his hand. Q. so he put his hands in your anus? A. Yes. Q. He did not give you Fentanyl the second time, did he? A. No. Q. He watched dress? A. Yes. Q. As before, this time, you knew it was improper for him to watch you dress and undress? A. Yes, I did. Q. As the first time you knew it was improper for him to touch your breast with both hands. A. Yes.

because of the conviction, was bound to follow the jury's decision, and therefore, quote verbatim what the witnesses' and the prosecutors' argued. As the saying goes, "To the victor, goes the spoils of war". At that time, without her medical record, buttressed by other witnesses, there was support for her fabrications. What is not known is that all the complainants in the charged counts and all the ER 404b witnesses at the criminal case are Mr. Bharti clients, and he met with all of them before the police or the prosecutors ever got to them. Mr. Bharti sent them all to the police and prosecutors. Because of the extensive publicity that prejudiced the criminal trial, opinions were made even before the defense began its uphill task. Mark Twain's prescient observation that "a lie can travel half-way around the world while the truth is still putting its shoes", is vast understatement in this case. Because Ms. Burns fabricated the allegations of the second visit, she also fabricated the allegations of the first visit and all her other allegations in this civil case as well the criminal case. This should be the finding and conclusion of this Court with what it now knows. **These are the specific facts of Ms. Burns' fabrications.** "An adverse party may not rest upon mere allegations or denials, but must instead set forth specific facts showing the existence of a genuine issue (for trial)". Comma added. McBride v Walla Walla County,

95 Wn. App. 33, 36, 975 P.2d 1029; 1999 Wash. App. LEXIS 482 No. 16977-4-III. The appellant has set forth specific and verifiable facts for any fair minded person to conclude that Ms. Burns' allegations are fabricated and warrant dismissal of both her civil and criminal verdicts. On page 13 of the Respondent Brief, they complain that the billing record was from an "independent third party", her insurance company, "therefore, even the Appellant would not be able to authenticate those records, let alone his former patient". This is a lame argument, because those very insurance companies Explanation of Benefits (E.O.Bs) were also sent to Ms. Burns, a customary insurance practice that the insured receive a copy of all billing records for their own record. Moreover, those records were admitted during the trial as part of Ms. Burns' medical records. At the time of the criminal trial and subsequently when this Court wrote its opinion that Ms. Starczewski cited on pages 7 to 10 of her Brief, none of the prejudicial and tampering influence of both attorneys, Ms. Starczewski and Mr. Bharti was known. Now that the mask is off, their pattern of advocacy, which has morphed into fundamental illegality, is clearly evident. There will never be enough space to detail all the illegalities they have perpetuated on these courts.

(8) Ms. Starczewski and Mr. Bharti represented to the trial court, during

ER 404b analysis that Ms. Ramos worked for the appellant for 14 months, when they knew she worked for only one week, was a deliberate deception of the trial court and the jury to whom she testified. Opening Brief at 37 to 40. They needed a rebuttal witness for Ms. Sarah Maitland, a defense witness and a medical assistant who worked for the appellant who testified that there was always chaperones in the examination room during patient exams, that they doctor always wore gloves, that she never witnessed any improper use of the ultrasound wand, that she has never witnessed any improper conduct by the appellant, who has never been impersonated by his brother, Dr. Dennis Momah. **I would urge Ms. Starczewski and Mr. Bharti to produce for this Court the 14 months' paycheck and W2 Tax forms for Ms. Ramos.** Because Mr. Bharti sent Ms. Ramos to the Federal Way Police for the September 19, 2003 interview (Ms. Ramos said so) where Ms. Ramos testified she had worked for the appellant for three months (which is a lie), Mr. Bharti knew that her testimony that she had worked for 14 months was false, fabricated and bolstered it and allowed it to stand uncorrected. Above all, they deceived the judge and the jury.

(9) Ms. McDougal lied to the jury that she was not seeing any other doctors, besides the appellant's referral to the University of Washington,

when infact she had sought medical care at the Providence Everett Medical Center on more than nine occasions, that she was not obtaining narcotics from any other source but the appellant, when infact she was went to ER at Providence on more than nine times for narcotics aside from other doctors she was seeing for narcotics. The jury asked, **did you not have the recommended hysterectomy performed?** Again she deceived the jury when she responded, **“I feel, and what I have heard even from the doctors at the U (UW), I don’t need a hysterectomy”**. RP McDougal testimony Nov. 1, 2007 at 110. Mr. Bharti tried to lead Ms. McDougal to lie when he tried to get to testify that her medical record was incomplete, and she succumbed to the false testimony. But under defense re cross examination, she changed her testimony about the record being incomplete and admitted that her medical record was complete. RP. McDougal testimony at 94.

(10) Mr. Bharti attempted to influence Mr. Rule to testify falsely when he improperly tampered with testimony by showing a video to the exclusion of her husband², just as Mr. Bharti had done in the Saldivar case, which

² On Oct. 18, 2007 at 68. Q. (by defense) So, he you saw a video. Which video was this? A. A video of Dr. Dennis Momah.... Q. Is that when you found out that Charles had a twin brother? A. Yes. Q. Mr. Bharti told you? A. Well, I looked at the video as shown...it continues on page 70, line 24. **Q. Was anybody else in the meeting? (while being the**

the Court of Appeals affirmed Judge Stoltz's finding that Mr. Bharti was liable for severe sanctions for lying to the court and tampering Ms. Saldivar's testimony and influencing her to lie on the witness stand. This is precisely the same conduct Mr. Bharti committed when he influenced Ms. Sherry Wood, Ms. Burns, Ms. McDougal and Ms. Ramos to testify falsely. (11) During the testimony of Ms. Rule, she tried to blame her divorce on Dr. Momah when infact she had filed for divorce on April 18, 2002long before she sought treatment from the appellant. Mr. Bharti tried to get Ms. Rule to testify that she never filed the petition for divorce when infact she did. RP Rule testimony Oct. 31, 2007 at 12, 13, 14, 15 and 16.

Q. (By defense) And you worked things out and your marriage was good until, you are saying, your encounter with Dr. Momah; is that correct? A. Yes. Q. Ms. Rule isn't true you filed a petition for divorce in May of 2002. A. No, I don't recall that. She was handed Ex. 61, her petition for divorce. RP Oct. 31, 2007 at 12. ...Q. That's a petition for dissolution of marriage between Cherie Rule and Jason Rule, filed May 28, 2002; Is that correct? A. Yeah, I think it says that, yes. Q. If you look at the last page of the petition, you signed that petition, didn't you? A. Yes. Q. And then the last page, your husband, Jason Rule, signed that petition; correct? A. Yes. It shows you were separated on April 28, 2002: Isn't that correct? A. It says that, yes. Q. And again, you signed this on the last page, under penalty of perjury, under the laws of the State of Washington, and you attested that all of the foregoing was true and correct; is that correct?

video) A. My husband was there but Mr. Bharti asked him to leave the room. He showed me a video.... Q. Before that time, did you know that Charles Momah had a twin brother? A. No, I did not.

A. Yes. RP Oct. 31, 2007 at 13. Then she was questioned by Mr. Bharti.
Q. And what happened to this petition? A. I don't --- I don't know what exactly the thinking was on this. Q. Was it even filed? It says something; you see something, 'no fees'? A. Yeah, it doesn't -- I'm confused, it says at the bottom, -- Q. Do you recall anything about it? A. It seems like it is close to the time of the one that we filed before, I don't ---. Mr. Bharti: That all I have, your Honor. RP Oct. 31, 2007 at 14. Then the defense produced the form she completed "in forma pauperis". Q. Handing you what's been marked as Ex. 62, it is the application, slash order to proceed in forma pauperis, which means you are asking to them to waive fees, with your signature on the lower left hand; is that correct? A. Right... Q. And it is a three page petition, with once again, your signature at the end stating you are providing that information under the penalty of perjury; correct? A. Yes. Q. And if we look at Ex. 61, it was actually filed because it has a "filed" stamp on the paper? A. Right, I see that. Q. Correct? A. Yes. RP Oct. 31, 2007 at 15.... Q. So your prior testimony where you got back together after the first petition and worked everything out that you gave under oath was false; correct? A. No, it is not false. RP Oct. 31, 2007 at 16.

Despite Mr. Bharti's attempt to get Ms. Rule to deny under oath that she never filed the petition for divorce long before she became a patient of the appellant, because of "no fees", she had no choice but admit that it was filed when shown the actual "filed" petition, and confirming that she lied under oath when she told the jury that the appellant was the proximate cause of the breakdown of her marriage, and Mr. Bharti knowingly provided this false evidence to the jury. This illustrates the type of advocacy these attorneys are providing, encouraging a witness to lie under oath, hoping that the judge, jury or even the defense would not find out. This is the same type of "evidence" they provided the trial court

about the “credibility of their witnesses” such as Ms. Ramos they had manipulated to deceive the trial court to allow their testimony.

2. The trial court and the jury were deceived by the deliberate presentation of false and fabricated evidence and testimony by plaintiffs, their witnesses and their attorney, most of which the defense attorneys were even unaware of, therefore they have no basis to claim “credibility” of the plaintiffs and witnesses were decided by the judge and jury. Because Mr. Bharti filed Ms. Burns’ lawsuit, he knew she did not have 8 visits prior to surgery, that all the allegations of second and subsequent visits were false and fabricated, that the only ultrasound performed was done on her first visit as the insurance payment clearly shows, so the ultrasound monitor was on and the ultrasound did not last 45 minutes but 7 minutes, Mr. Bharti was therefore a knowing participant of Ms. Burns’ fabricated allegations in this civil suit and the criminal case, which is material and prejudicial, and an error of constitutional magnitude, the Fourteenth Amendment and a denial of due process. **Because these fabrications are the only evidence provided in Rena Burns’ case,** it is a structural error and therefore a reversible error. All the medical assistants interviewed said there was no examination without gloves, no clitoral touching, no improper use of ultrasound wand etc. Ms.

Cathy Gonzales was deposed by both the defense attorney in the criminal case and the prosecutor on July 1, 2005. Ms. Gonzales said she was present throughout the duration of Ms. Burns' first and only physical examination and ultrasound of March 25, 2003, and it was conducted **"appropriately "and "professionally". And it is even a more material exculpatory evidence because Ms. Gonzales was "hostile" witness .**

Q. By Mr. Allen (defense) Before we broke I asked you about some patients. One patient was Rena Burns, and I do have some description of her. She's apparently a Caucasian woman, about five foot eight, a little bit on the heavy side, dark hair, a bit gray, and had procedures. Does that ring a bell? A. Uh-huh. Q. **Would you be present during these procedures?** A. **Yes. Yeah, I do know who she is.** Q. **At any time did you see ever see Dr. Momah perform hands-on procedures where he would have to touch the genitalia of women without wearing his gloves or did he always wear his gloves?** A. **I think he had his gloves on. He put them on when he started. I didn't see them come off.** Q. **Okay. And did you see him use the ultrasound probes?** A. **Correct, Yes.** Q. **And were you present ---**A. **Yeah.** Q. **---when he would use them?** A. **Yes.** Q. **Realizing that you're not trained specifically in usage, was there anything unusual that you saw when he was using the probes?** A. **To my knowledge, no.** But I did not like doing that and I did go to him and specify, I don't want to work there because I was sick of looking at women with their parts. Q. So that was your personal --- I mean not anything wrong. A. My personal problem. Q. Sort of some people don't like to see blood? A. Correct. Q. Now I have a description -- A. By then he told me to -- he said look away, act busy. **Just be in the room.** Q. If had a personal problem? A. **Yeah, because I was accompanying him right there at the end...** RP Cathy Gonzales Deposition July 1, 2005 at 55, 56, and 57

Q. At anytime did you ever see Dr. Momah holding on to a person's breast at the same time he was doing a digital exam. on their -- sticking his hands on their vaginas or anything like that? A. No. Actually he would say -- every time I'm in there he would say, I am going to do a breast exam. He would talk through it. Q. He would talk through it? A. Yeah. Q. And you would see him do breast exam? A. **He was very professional** at that time. Different side of him that I would see. Q. Okay. But at least **when he was doing the breast exams he was very professional?** A. **All the way through from the beginning, he said this is going to be cold or**

this is what I'm going to do, or sometimes the girls would joke about how cold the stuff is. RP Cathy Gonzales July 1, 2005 at 62.

This testimony, combined with all the other evidence³ set forth by appellant in his Opening and this Reply, present actual innocence of all the allegations Of Ms. Burns and warrant both, reversal of the verdicts in both the civil and criminal cases and dismissal of both the civil verdict and criminal conviction as pertains to Ms. Burns. This Court should come a similar conclusion. Mr. Bharti⁴ and Ms. Starczewski (and the prosecutors had this evidence too), yet they continued to pursue baseless claims. This is why I wrote to the defense attorneys requesting that Ms. Gonzales must be called as a witness, particularly to rebut Ms. Burns' allegations. *It was a peculiar misfortune of the appellant that neither the defense in the criminal case nor in the civil suit presented Ms. Gonzales as a witness to rebut Ms. Burns' allegations of her first*

³The evidence that "the central core of Ms. Burns' case both this civil suit and the charge in the criminal case revolves around her medical records, her insurance billing records, and the presence of chaperone at her only one physical examination". Opening Brief at 10. Her insurance payment record as March 25, 2003 being her first date of visit, the **only payment** for her **one and only physical examination and ultrasound and the testimony of Ms. Gonzales as the chaperone on that day.**

⁴ Ms. Gonzales was questioned regarding her interaction with Mr. Bharti. Q. (By Mr. Allen) At any time did Mr. Bharti indicate with a message or anything like that –A. Who? Q. Mr. Bharti. He's that attorney who was on TV who tried to call you. A. Oh, yeah. Q. Did he indicate he was going to sue, if didn't cooperate? A. Yes. Q. Tell me about. A. **He threatened me, actually.** Q. Over the phone? A. Uh-huh, yes. Q. Were you on the phone or was it a message that he left? A. I was on the phone, and **he told me he was going to sue me if I didn't help the girls that he was representing...** RP Cathy Gonzales Deposition of July 1, 2005 at 59, 60. (Bold added)

visit, because as Ms. Gonzales testified, she was present throughout Ms. Burns' first and only physical examination and only ultrasound on March 25, 2003. As in Giglio v. United States, 405 US 150, 92 S. Ct. 763 (1970), their case depended entirely on plaintiffs' and witnesses' testimony, without which there could be no case and no evidence to carry to the jury. Therefore, their credibility is out-determinative. This applies to Ms. McDougal and Ms. Rule as well. Because their attorneys, Mr. Bharti and Ms. Starczewski deliberately and knowing provided false evidence to **an unsuspecting Judge and jury**, they have no basis to claim, "it was up to the judge and jury to decide what to believe". They infected the trial process with unfairness and prejudice to make the resulting outcome a denial of due process and a constitutional error.

3. Respondent's assertion that this Court rejected the claim that Mr. Bharti played a prejudicial role in the criminal process is misleading. The appellant, in his direct appeal sought judicial notice of the ruling by Judge Stoltz of May 24, 2006 that "Mr. Bharti was a knowing participant of Ms. Saldivar's fabrications" and "lied to the Court". **But this court did not accept judicial notice of that ruling because the record of that proceeding was not part of the record of the criminal trial. The appellant sought to have that ruling admitted under ER 201, stating:**

The Momah case of which we seek Judicial Notice is related to this case – It is filed against the same party, makes the same allegations, bears the imprimatur of the same victims’ attorney (Harish Bharti), and Transcripts from that Saldivar v Momah was inserted into this State v Momah case.⁵ In its denial to accept judicial notice and review, the Court: A Commissioner of this Court denied the motion and a panel of this Court denied Dr. Momah’s motion to modify. The Supreme Court denied review of ruling. **Thus the information Dr. Momah sought to bring before this Court to support his appeal is not before us. We will therefore not review this claim on appeal. (Bold and underline added)**

Because the merit of the Saldivar’s ruling was never considered by this Court, Ms. Starczewski assertion is false and misleading. The Respondents’ cannot claim that this Court considered and rejected that Mr. Bharti was prejudicial to the defense in the criminal case. **Now that more light has been cast on this issue, this Court can clearly appreciate the “prejudicial influence” of Mr. Bharti on all the plaintiffs, and Ms. Burns, the only plaintiff that was part of the criminal trial. This Court should^{review} this “new evidence”.** By extensively quoting the decision of this Court in direct appeal of the criminal case, Ms. Starczewski is hoping that this Court would not review this “new evidence” and simply apply its earlier ruling. That would not be justice. This Court now knows more than

⁵ Our argument was based on the fact that Mr. Bharti represented all the complainants in the charged counts and all the Er404b witnesses, and scores of additional former patients of Dr. Momah whose statements he presented to the court, both at arraignment and at sentencing. The State argued otherwise, that judicial notice cannot be taken because the material presented is not the record of the criminal case, that it should be admitted through a Personal Restraint Petition. **The Court denied the appellant’s Motion and never admitted or reviewed the merits of the Saldivar ruling.**

it did then and has the benefit of that. Moreover this Court said: **Washington courts will not tolerate convictions based upon tainted evidence, but will insist upon proper standards of conduct and procedure.** (Bold added) In re Pers. Restraint of Angela Hoemlein, 2003 Wash. App. LEXIS 378. Here as in Roche, Hoemlein would likely not have been tried or sentenced at all if the evidence of Hoover's malfeasance had come to light before she was tried, convicted or sentenced. In State v Roche, 114 Wn. App. 424, 59 P.3d 682, 2002 Wash. app. LEXIS 2946: **Holding that newly discovered evidence of malfeasance by a chemist at the state crime laboratory that tested the substance entered as evidence against defendant Roche and petitioner Sweeney in their respective trials broke the chain of custody of the evidence , thereby tainting the integrity of both trials, the court reverses the judgment in the Roche case, grants the petition in the Sweeny case, vacates petitioner Sweeney's conviction of unlawful possession of a controlled substance.**

4. The Respondents continue to claim that the criminal case was not part of this proceedings , yet quoted extensively from that case in their response, to rehabilitate their plaintiffs' and witnesses' credibility and "vulnerability". The criminal was and still is a part of this case, because the trial court allowed it. The available "new evidence" involving Ms. Burns and the prejudicial influence of her attorneys should apply.

5. The Respondents' claim no error has been assigned to (a) Dr. Olson's testimony , plaintiffs' medical expert, (b) "effectiveness of the Appellant's co-counsel, Mr. Grotke". These statements are misleading and in direct contradiction to what the appellant said in his Opening Brief. There, the Appellant propounded the rationale for the medical care he rendered

to each of the plaintiffs, to challenge their expert opinion. Dr. Momah, by his own medical expertise, explained that Ms. Burns underwent an uncomplicated diagnostic laparoscopy, hysteroscopy and endometrial sampling, not tubal reanastomosis as the plaintiffs and their attorneys had told Dr. Olson. Ms. Burns alleged that she “hemorrhaging to death” from a 2cm laparoscopic skin incision. Ms. McDougal falsely claimed she was overprescribed narcotics when infact the bulk of the narcotics she received was from other physicians. Then she alleged consensual sexual relationship with the appellant as a **vehicle for a malpractice suit**. Ms. Rule underwent tubal reanastomosis, conceived but was complicated by a tubal pregnancy, whose incidence is six times increased with that procedure. Because of the size of the tubal pregnancy, she was neither a candidate for methotrexate therapy or removal by laparoscopy. It was unsafe to apply those two modalities of treatment in such a condition. This is sound medical judgment. Adverse outcome does not necessarily imply malpractice. The tubal pregnancy was timely diagnosed, removed through a 4 inch incision, not a “hip to hip” incision, as Ms. Rule told the jury because she knows the jury cannot verify this lie, **because they cannot submit her to an examination. Most importantly, Dr. Olson’ opinion was tainted because it was based on statements made to him by**

Mr. Bharti, Ms. Starczewski and the plaintiffs, an opinion not gathered by a physician in the ordinary course of his or her practice, faced with circumstances of a solo physician in a private practice setting, encountering similar issues. He testified by phone and did not examine Ms. Burns' medical records. The appellant stated in his Opening Brief at page 63⁶, that there was no cause for malpractice action by these plaintiffs. As Dr. Welch testified, as the appellant is well aware, "pelvic pain is the bane of the gynecologist", that is why pelvic ultrasound is an invaluable tool in its diagnosis and treatment, as it is easily available in an office setting and prevents unnecessary laparoscopies. Ms. Starczewski stated that the "effectiveness of the appellant's co-counsel, Eric Grotke, who participated in the trial, did visit the appellant, and was not ill". (At page1) Mr. Grotke, along with Ms. Starczewski, attended the appellant's deposition on December 21, 2006 for the Collier et. al. case. Because Ms. Starczewski was in attendance at that deposition and knew it was

⁶None of the plaintiffs claim that she was injured because Dr. Momah performed any procedure below the standard of care, rather each claim that she was somehow injured by the "overuse" of vaginal ultrasound procedure, the very instrument designed to diagnose their pelvic pain, cysts or other gynecologic conditions which the chaperones that were present testified in depositions and declarations were professionally performed.

for a different case, she attempting to dissemble the facts and deceive this Court. The appellant has never claimed his attorneys were incompetent, on the contrary.

“Even if (trial) counsel is competent, a serious breakdown in communication can result in an inadequate defense “. United States v. Nguyen, 262 F. 3d. 998, 1003 (9th Cir.2001) citing United States v Musa, 220 F. 3d. 1096, 1102, (9th Cir. 2000).

There was only a 30minute phone⁷ conversation, and they should have called Ms. Gonzales and other chaperones. 6. The Respondents’ assertion on page 4 of their Brief that “The Appellant admits in his Brief, at page 57, that there was evidence of botched surgery, sexual assaults, and other conduct” upon the Respondents is misleading and theatrical, and follows the same pattern of deceitful advocacy that has become the hallmark of these counsels. The document in question relates to the M.Q.A.C. issue which the appellant discussed ad nauseam in his Opening

⁷ Ms. Starczewski states at 27, “All the materials were clearly available to Charles Momah and his attorneys who had been though (sic) the Collier v Momah trial, and if relevant, would have been presented to the trial court. But she misses the point. The Collier trial was substantively difference from the instant trial because there was no mention of the criminal conviction, (which prejudiced this trial) at that trial. That was the reason and necessity to bring to trial all the chaperones like Ms. Gonzales to directly challenge Ms. Burns' conviction as fraud. **When faced with the appellant’s actual innocence, the criminal conviction notwithstanding, the jury would have been swayed to decide otherwise. This is where the counsels ‘performance was deficient.**

Brief at pages 43 and 57. Nowhere in his Brief did the appellant admit to any of these false and fabricated allegations, instead, he merely acknowledged that these patients were making these allegations⁸. Moreover, M.Q.A.C conducted no hearing or trial whatsoever, to determine the veracity⁹ and validity of the allegations. These are patients Mr. Bharti had manipulated to file frivolous and salacious allegations to garner media coverage for himself and recruit more clients. 8 of those patients went to trial in Collier v Momah that resulted in a defense verdict. The document was not supposed to be used for any other proceedings and it said so, yet the trial court admitted it over defense objections. This is **propensity evidence and highly prejudicial, with no probative value**. It is a **reversible error**. 7. Respondents continue to state that Judge Stoltz's ruling of May24, 2006 was vacated. Nothing could be further from the truth. The Court of Appeals, Division 2 affirmed in part, reversed in part. At 21, 22 of "Appellant's opposition to plaintiffs' motion

⁸ At page 43 of the Opening Brief, the M.Q.A.C document states: "Without admitting the allegations herein, and specifically denying any criminal conduct, the Respondent (appellant) acknowledges the following allegations and for the purpose of these proceedings only, does not dispute them. For the record, the appellant categorically denies all those false, frivolous and fabricated allegations. At page 57 of the Opening Brief, "Nowhere in the document does the defendant admit the truth of the allegation contained therein"

⁹ The counsel in the M.Q.A.C reasoned that since the appellant was incarcerated and could not practice anyway if the appellant prevailed at an M.Q.A.C trial, it was wise to stay the M.Q.A.C issues by that order.

to strike Brief of Appellant”, what the Court affirmed was discussed.

In Saldivar v Momah, 145 Wn.App. 365,386, 186 P.2d 1117 (2008), the trial court found that Perla’s testimony was impermissibly tainted because Bharti showed her a video recording of Charles during the lunch hour of her testimony shortly before she described the differences between the brothers to the court, the trial court found that she lied to the stand when she stated she had “absolutely no contact with M.Q.A.C after 2003” when she filed a new complaint with the assistance of her attorneys (Ms. Starczewski and Mr. Bharti) whoassured the trial court they had no knowledge of and had never participated in preparing that additional complaint”. (Attorneys names added)The Court of Appeals concluded :“Bharti may be subject to sanctions for affirmatively lying to the court regarding the Saldivar’s second M.Q.A.C report. Id. at 1139.

On November 30, 2010, the Supreme Court of Washington denied review; the Court of Appeals denied reconsideration and imposed further sanctions on Mr. Bharti for violating court rules. Ms. Starczewski did not tell this part of the story. To paraphrase Winston Churchill, the truth is so vital to my cause, and fatal to their case, they have surrounded it with a bodyguard of lies and deception. 8. Ms. McDougal is not a vulnerable¹⁰

¹⁰ Respondents cite this Court’s opinion. (page7 to 9) These are not vulnerable adults in the meaning of Niece (page 33, 58, 59 of Opening Brief), Kaltreider (33, 59), Shepard (58). HP has one conviction for Theft, and CB had three convictions of Theft, **a crime of Dishonesty**. Both HP and Amy McFarlane (AM) were requesting to be alone with Dr. Momah when they were being examined as Stephanie Watson said in her declaration. Both HP and AM had met with Mr. Bharti at least 10 months before the appellant’s office was closed because of the allegation of HP. The reason for their requesting to be alone with Dr. Momah now reveals “they had something up their sleeves”. HP, CB, SS, KT, CW as well as Ms. McDougal were seeing other doctors and obtaining narcotics from them as well. They had choices of doctors. Most importantly, all these are clients of Mr. Bharti whom he manipulated and shaped their testimony for money damages.

adult in the meaning and interpretation of the Supreme Court in Niece v Elmview, 131 Wn. 2d 39, 45, 929 P. 3d 420, and 1997 Wash. LEXIS 26 said:

Lori Niece was a vulnerable adult because she suffers from cerebral palsy and profoundly developmental disabilities including difficulty with mobility and communication. She has the mental abilities of a young child. Niece at 39. Profoundly disabled persons are totally unable to protect themselves and thus dependent on their care givers for their own personal safety. Niece at 45.

Conclusion This civil suit should be overturned and dismissed because of their knowing and deliberate use of perjured and fabricated testimony and evidence to obtain a verdict, of which their attorneys were instrumental in their creation, the defense attorneys were ineffective for conducting inadequate investigation and failing to call to the witness stand key exculpatory witnesses, the trial various rulings were abuse of discretion and prejudicial, and under RCW 7.70.040, their case is unproven.

Respectfully submitted.

Charles Momah MD
888910, CRCC, HA 4
P.O. Box 769
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Rena Burns Sept 22, 2005
Ex 49

1

2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

3 IN AND FOR THE COUNTY OF KING

4 -----

5

6 STATE OF WASHINGTON,

7 Plaintiff,

8 -vs-

No. 04-1-05925-5 KNT

9 CHARLES MOMAH,

10 Defendant.

11

12

13 -----

14 INTERVIEW OF RENA E. BURNS

15 -----

16

17 2:50 p.m.

18 September 22, 2005

19 Kent Regional Justice Center

20 401 Fourth Avenue North

21 Suite 2-A

22 Kent, Washington 98032

23

24

25 Cheryl L. Wiese, CCR #2170

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16 ALSO PRESENT:
 17 Stacy Russell

INTERVIEW

1 BY MR. ALLEN:
 2 Q. Ms. Burns, I'm David Allen. I'm the attorney for
 3 Charles Momah.
 4 Would you please state your full name for the
 5 record?
 6 A. Rena Elizabeth Burns.
 7 Q. Ms. Burns, this is an interview, and so I'll be
 8 asking you questions that might relate to the law case that
 9 we're involved in.
 10 If at any time you don't understand my questions
 11 will you ask me to repeat them?
 12 You have to answer out loud?
 13 A. Oh, yes.
 14 Q. And that's the next thing. Will you try to
 15 answer out loud?
 16 A. Yes.
 17 Q. I'll remind you if that happens. And also if you
 18 need to take a break will you let us know and, we'll take a
 19 break?
 20 A. Yes.
 21 Q. First, can you tell me what your occupation is?
 22 A. Right now I'm just at home.
 23 Q. Okay. I know you were employed at Valley Medical
 24 Center at one time?
 25

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| By Mr. Allen |

1 A. That's correct.
 2 Q. What years were you employed at Valley?
 3 A. 2000 to 2005.
 4 Q. And what was your job at Valley Medical Center?
 5 A. Unit Coordinator.
 6 Q. For what unit was that?
 7 A. Surgery center pre-op.
 8 Q. And what were your duties as unit coordinator?
 9 A. To coordinate the surgery times, working with the
 10 surgery board to make sure that the surgery stayed on time
 11 and the patients were ready.
 12 Q. And did you have any specialized training for
 13 that type of work?
 14 A. No.
 15 Q. Can you tell me what other occupations you've had
 16 that you've held?
 17 A. I worked for Wells Fargo.
 18 Q. That's the bank?
 19 A. Yes.
 20 Q. What did you do for Wells Fargo?
 21 A. I was a teller.
 22 Q. When years would that have been?
 23 A. Until 2000, and I started it in '97.
 24 Q. Okay. And what other occupations beside that?
 25 A. I'm a licensed cosmetologist, and I also -- for

Page 6

1 Valley Medical Center I carry a CNA license, a Certified
 2 Nursing Assistant.
 3 Q. Did you go to school to get trained to be a CNA?
 4 A. Yes.
 5 Q. Whereabouts did you go?
 6 A. In Renton.
 7 Q. What school was that?
 8 A. It was at a rehabilitation -- Talbot
 9 Rehabilitation, and it's on Talbot Road.
 10 Q. And this allows you to be a nursing assistant?
 11 A. Yes.
 12 Q. That's different than an RN?
 13 A. That's correct.
 14 Q. Is that like an LPN, or that's different --
 15 A. That's even lower than an LPN.
 16 Q. And have you worked as a CNA?
 17 A. Yes, I have.
 18 Q. Whereabouts?
 19 A. Where I got my CNA license, Talbot Rehab.
 20 Q. What years did you work there?
 21 A. When I got my license it was in '95.
 22 Q. Okay. And let me go back to high school. Where
 23 did you attend high school?
 24 A. Kent Meridian High School.
 25 Q. What year did you graduate?

Page 8

1 A. Yes.
 2 Q. And who performed or did the IVF for you? Where
 3 did you go for that?
 4 A. Bellevue. A Dr. Kevin Johnson.
 5 Q. When did you go to Dr. Johnson? When did you
 6 first start going to him?
 7 A. Three months after. June.
 8 Q. June of 2003?
 9 A. Yeah.
 10 Q. And by three months after that's three months
 11 after you stopped with Dr. Momah?
 12 A. Yes, because he'd performed a surgery.
 13 Q. Okay. And again you said three months after, so
 14 what month would that be? Are we talking like May or June
 15 of 2003?
 16 A. Yeah.
 17 Q. Okay. And when was the -- do you know the date
 18 of conception for the child, or why don't you give us the
 19 date of birth anyway?
 20 A. Well, that's going to be hard, too, because they
 21 were 99 days early. They were twins.
 22 Q. Twins. So when you said one you meant twins?
 23 A. Well, I only have one child. My son died.
 24 Q. I'm sorry.
 25 A. The conception was taken I think in March and --

Page 7

1 A. '79.
 2 Q. So from '79 to '95 were you in the work force?
 3 A. No, I was not.
 4 Q. Did you go out for any schooling after high
 5 school?
 6 A. No, I did not.
 7 Q. Okay. And are you presently married?
 8 A. Yes.
 9 Q. Was that your husband who we met there?
 10 A. Yes.
 11 Q. And his name is Rick?
 12 A. Ricky.
 13 Q. Ricky?
 14 A. Legally it's Ricky Burns, R-I-C-K-Y.
 15 Q. Okay. And how long have you been married to
 16 Ricky?
 17 A. Five years this June.
 18 Q. And you have children?
 19 A. One.
 20 Q. How old?
 21 A. She'll be a year next month.
 22 Q. So you were able to conceive after seeing Dr.
 23 Momah?
 24 A. Yes.
 25 Q. Did you use IVF?

Page 9

1 Q. Would that be March of 2004?
 2 A. No, it couldn't have been March. Okay. Go back
 3 -- I delivered October 24th, twins.
 4 Q. And that would be October 24th, 2004?
 5 A. Yes.
 6 Q. So it would be nine months minus -- it would be
 7 --
 8 A. Five months. I was five months pregnant when I
 9 had an emergency c-section because I hemorrhaged.
 10 Q. So maybe April 2004? Something like that?
 11 A. Yeah. Yeah.
 12 Q. Okay.
 13 A. They delivered 99 days early.
 14 Q. Okay. And this is a question we have to ask all
 15 witnesses, so please don't take this as anything personal
 16 because I have no idea. Do you have any convictions?
 17 A. No.
 18 MR. ROGOFF: Criminal convictions?
 19 MR. ALLEN: Right. I don't know of any other
 20 type.
 21 A. No.
 22 Q. (By Mr. Allen) Okay. So how were you referred
 23 to Dr. Momah?
 24 A. A friend of mind had gone to him because she was
 25 having problems getting pregnant.

Page 10

1 Q. Who was your friend?
 2 A. Her name is Jennifer.
 3 Q. Do you have a last name?
 4 A. Sloan.
 5 Q. And is she still your friend?
 6 A. Yes.
 7 Q. And do you have a phone number for Jennifer?
 8 A. I might at home.
 9 Q. Where does Jennifer live?
 10 A. Kent.
 11 Q. And Sloan is spelled S-L-O-A-N?
 12 A. S-L-O-A-N, yes.
 13 Q. And she was a former patient of Dr. Momah?
 14 A. Yes.
 15 Q. Did she recommended him to you?
 16 A. She said that he did -- that he was a fertility
 17 doctor. She wouldn't recommend him, no.
 18 Q. She wouldn't recommend him? So why did you see
 19 him if she wasn't recommending him?
 20 A. Well, she didn't recommend him because she
 21 couldn't understand the way he talked.
 22 Q. Was that her only complaint about him?
 23 A. I don't remember.
 24 Q. Okay. Do you think there might have been more
 25 complaints besides the fact that she couldn't understand

Page 11

1 him?
 2 A. No. I remember mostly it was because she said
 3 when he talked she didn't understand what he was saying.
 4 Q. Why then did you decide to go to him anyway if
 5 she couldn't understand him?
 6 A. Why did I go see Dr. Momah?
 7 Q. Well, I mean, I know the reason. Let me ask you
 8 this first: What was the medical reason for which you saw
 9 Dr. Momah?
 10 A. Because he stated that he did In Vitro
 11 Fertilization.
 12 Q. Now you were looking for somebody to do In Vitro?
 13 A. That's correct. That's the only way I can become
 14 pregnant.
 15 Q. So you had previously gone to a clinic where you
 16 had a laparoscopy done?
 17 A. That's correct.
 18 Q. And that's the what clinic? It has a name to it?
 19 A. The Gyft Clinic out of Tacoma.
 20 Q. And that's spelled G-Y-?
 21 A. G-Y-F-T.
 22 Q. And what did you understand the laparoscopy
 23 indicated that was done by the Gyft Clinic?
 24 A. The Gyft Clinic stated that they wanted to go in
 25 and do a tubal reanastomosis, which was reversing your

Page 12

1 tubes. And they went in and did a diagnostic laparoscopic,
 2 which means they go in just to check to see if they can even
 3 do it, and going in -- I also paid to have it videotaped.
 4 And going in he stated that it could not be done
 5 because not only did I have my tubes clipped but I had them
 6 burned on both ends, and them being burned were burnt too
 7 severely.
 8 Q. Okay. When did you have your tubes clipped, as
 9 you say?
 10 A. I had that done in April of '84 when I was 19
 11 years old.
 12 Q. Okay. And you had no children at that point?
 13 A. No, I did not.
 14 Q. Okay. So when was it that you had the
 15 laparoscopy done by the Gyft Clinic?
 16 A. I had the Gyft Clinic do that -- let's see. I
 17 was seeing him in March; so, it had to be like -- it was
 18 before Thanksgiving because I spent Thanksgiving on my
 19 mother-in-law's bed. So it was the Wednesday before
 20 Thanksgiving.
 21 Q. Are we talking Thanksgiving 2002?
 22 A. Yes.
 23 Q. Okay. You say you had a video done of it?
 24 A. Yes, I did.
 25 Q. Do you still have that video?

Page 13

1 A. You know what? I'm not sure who has it, because
 2 I brought it in; so, I don't know if these guys have it or
 3 an attorney.
 4 Q. By these guys who do you mean by these guys?
 5 A. The prosecutors. I came in and met with a lady
 6 here.
 7 Q. Would that be Ms. Otaki?
 8 A. Yeah.
 9 Q. Did you give her a copy of the video?
 10 A. I don't remember if I did or not. I don't know.
 11 Q. Okay. But you say you had the video at least
 12 back in 2004 when you talked to Ms. Otaki?
 13 A. Yes.
 14 Q. You might have given it to her, you might have
 15 given it to who else?
 16 A. Harish Bharti.
 17 Q. And Harish is your attorney?
 18 A. Yes.
 19 Q. And you're suing Dr. Momah now?
 20 A. I'm not sure.
 21 Q. So you don't know whether Mr. Bharti filed a
 22 lawsuit on your behalf?
 23 A. No, I do not. I do not know.
 24 (Deposition Exhibit 1 is
 25 Marked for Identification)

Page 14

1 Q. (By Mr. Allen) I'm handing you what's been
 2 marked Exhibit number 1, and does that appear to be a
 3 lawsuit, Rena E. Burns versus Charles Momah?
 4 A. Yes, it does.
 5 Q. And it's called a Complaint for Damages?
 6 A. Yes, it does.
 7 Q. When you look to the last page it appears to be
 8 signed by two attorneys, one of whom is Mr. Bharti? This
 9 would be on page 11.
 10 A. Yes.
 11 Q. You've never seen this document before?
 12 A. No, I have.
 13 Q. You have seen this?
 14 A. Yes, I have.
 15 Q. Okay. So why is there some question about
 16 whether they're bringing a lawsuit on your behalf?
 17 A. Because it's to my understanding that Harish
 18 Bharti had no insurance.
 19 Q. You mean Dr. Momah had no insurance?
 20 A. Yeah. I mean Dr. Momah. Sorry. That he had no
 21 insurance, and that there was -- that there was no lawsuit
 22 action to be taken because he carried no liability
 23 insurance.
 24 Q. So do you know why then that --
 25 A. And that if anybody was rewarded any type of

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1 damages it would be extremely minimal because of the fact
 2 that he had nothing.
 3 Q. Okay. Do you know why then Mr. Bharti put
 4 together that document that's Exhibit 1 if there's no
 5 insurance and there's no lawsuit?
 6 A. Because that wasn't known until after. That's to
 7 my understanding.
 8 Q. Let me ask you about the treatment by Dr. Momah.
 9 Well, first, have you ever talked to the media
 10 about this case, either the television media, or the
 11 newspaper media, or the radio media?
 12 A. No.
 13 Q. Have you ever talked to any other patients,
 14 besides Ms. Sloan, any other patients of Dr. Momah's as far
 15 as you know?
 16 A. No.
 17 Q. When was the first time you saw Dr. Momah?
 18 A. March of 2003.
 19 Q. And where did you see him?
 20 A. In his Burien office.
 21 Q. Who came with you to that visit?
 22 A. Jennifer Sloan.
 23 Q. Was there a receptionist there?
 24 A. Yes, there was.
 25 Q. Can you describe her?

Page 16

1 A. She was about 5'4", about 120 pounds, shoulder
 2 length blonde hair.
 3 Q. Okay. Who took you back into the exam room?
 4 A. The receptionist.
 5 Q. Okay. Did she stay in the exam room?
 6 A. She did not.
 7 Q. Okay. What happened back in the exam room?
 8 A. I was asked to change my clothes, and remove my
 9 clothes and to lie on the table.
 10 Q. Okay. And you did that?
 11 A. Yes, I did.
 12 Q. Did you put on a gown?
 13 A. Yes, I did.
 14 Q. Was anyone in the room while you were changing?
 15 A. Yes.
 16 Q. Who?
 17 A. The doctor.
 18 Q. What was the doctor doing in the room while you
 19 were changing?
 20 A. Standing in the corner.
 21 Q. Was he looking at you?
 22 A. Yes.
 23 Q. Did you say anything to him?
 24 A. I asked him what it was that we were going to be
 25 doing.

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1 Q. Okay. So he was watching while you were naked?
 2 A. Mm-hmm.
 3 Q. Okay. Had you ever had a doctor do that before?
 4 A. No.
 5 Q. Did you tell him to stop looking at you?
 6 A. No.
 7 Q. Did you ask him to leave the room?
 8 A. No.
 9 Q. Why not?
 10 A. I had never seen him before so I -- I don't
 11 know. I just didn't ask him.
 12 Q. Okay. And so you asked him --
 13 A. Just talking to him about procedures and what I'd
 14 already had done. He was asking me about things that, you
 15 know, prior to, you know, other physicians going -- I mean
 16 because he was the second fertility doctor that we'd seen.
 17 Q. Who was the first one?
 18 A. The Gyft Clinic.
 19 Q. Why did you decide not to have your IVF treatment
 20 done at the Gyft Clinic?
 21 A. The Gyft Clinic would not do it because -- my
 22 husband and I were going through the Gyft Clinic, and in
 23 going through and getting all the procedures and everything
 24 we found out that my husband had come in contact with
 25 hepatitis, and the Gyft Clinic would not do any type of In

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1 Vitro with one partner having hepatitis.
 2 So they recommended me going somewhere else
 3 because he had hepatitis, because we had to wait. It was
 4 about eleven months that my husband went through an
 5 intensive IV treatment for his hepatitis before we could
 6 start the In Vitro again.
 7 Q. And this was the In Vitro that you're talking
 8 about that was the successful one? You had to wait eleven
 9 months for that?
 10 A. No. Before I could start looking again into In
 11 Vitro, and that's when we started going to Dr. Momah.
 12 Q. Would Gyft Clinic have taken you if you had
 13 waited eleven months?
 14 A. I'm not sure.
 15 Q. So did you have any other problems that you
 16 presented with when you first saw Dr. Momah? I mean, did
 17 you have any unusual pains or problems, gynecological
 18 problems --
 19 A. No.
 20 Q. -- beside the issue that you wanted fixed?
 21 A. No.
 22 Q. So did you actually discuss IVF with Dr. Momah?
 23 A. Yes.
 24 Q. What did say?
 25 A. He told me -- he stated that he wanted to know

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1 why I wanted IVF, and why I felt that that was the only way
 2 that I could become pregnant. And I told him that I'd gone
 3 to the Gyft Clinic, that I'd had a diagnostic laparoscopy,
 4 and that I knew that I could not become pregnant, and that
 5 would be the only way that I could become pregnant.
 6 And at that time that's when stated that he did
 7 not trust any other doctor's diagnoses and that he wanted to
 8 go in and see for himself. I told him I had videotape of --
 9 videotape of the surgery and he could see it. I had, you
 10 know, the pre-op -- the postop report stating that, you
 11 know, not only had they been cut but they had been burned.
 12 And he again said that it was not something that he wanted
 13 to trust anybody else's work. He wanted to go in and do it
 14 himself before he would even consider me.
 15 Q. Did you show him the postop report?
 16 A. Yes. No. Not that first time, no.
 17 Q. Not the first time?
 18 A. No.
 19 Q. Did you give him the video the first time?
 20 A. No.
 21 Q. Could you describe the examination that took
 22 place during the first visit?
 23 A. He did a vaginal and breast.
 24 Q. By vaginal and breast, do you mean examinations?
 25 A. Mm-hmm.

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1 Q. Okay. Can you describe the breast examination?
 2 A. He had one hand here and one hand here, down
 3 here.
 4 Q. Okay. So you used both your hands. Where was
 5 his left hand?
 6 A. His left hand was on my right breast.
 7 Q. Okay. Where was his right hand?
 8 A. His right hand was on the ultrasound --
 9 Q. -- wand?
 10 A. -- wand, or whatever you call it.
 11 Q. So you're saying he was conducting an ultrasound
 12 at the same time as --
 13 A. -- as doing the breast exam.
 14 Q. And in what way was he holding your breast, or
 15 did he have his hand on it?
 16 A. He was like -- how do you say it? Where he goes
 17 in like this, like massaging type.
 18 Q. Okay. And was he just massaging your left
 19 breast, or did he do that to your right breast also?
 20 A. No. He had my right breast the whole time, not
 21 my left. It was my right. His left hand was on my right
 22 breast.
 23 Q. Okay. His left hand was on your right breast?
 24 A. That's correct.
 25 Q. Okay. Sorry about that. Did he ever massage

Page 21

1 your left breast?
 2 A. No. It was just on that side here, just the
 3 right side.
 4 Q. Okay. You've had breast exams before?
 5 A. Yes, I have.
 6 Q. Was this like other breast exams?
 7 A. No, it was not.
 8 Q. Why not?
 9 A. Because the other breast exams that I'd had prior
 10 to that were done in a circular motion, starting at the
 11 lower part of the breast and moving all the way around until
 12 you hit the nipple. And then on the nipple it was done like
 13 a small squeeze, and his was not done that way at all.
 14 Q. So he then massaged it?
 15 A. It was more a fondling type thing.
 16 Q. Okay. How long did that go on for?
 17 A. I can't remember.
 18 Q. So it was obvious to you that he was doing
 19 something unusual?
 20 A. Yes.
 21 Q. And then what about -- have you ever had a
 22 vaginal ultrasound before?
 23 A. Yes, I have.
 24 Q. And how was this the same or different than the
 25 other vaginal ultrasounds?

Page 22

1 A. Well, the ultrasound that he did prior -- the
 2 prior ones that I had done before were like five minutes
 3 long, and his ultrasound was a half hour to forty-five
 4 minutes. And on his ultrasound the wand was moving very
 5 quickly in and out, and the ultrasounds, prior to me having
 6 them, it was put in the vaginal area but the part that moved
 7 on the wand was the tip, not the whole wand. You know, it
 8 was circulated around, and that's what you felt moving was
 9 the tip inside, where his was not like that at all.
 10 Q. Okay. You say this went on for half an hour to
 11 forty-five minutes?
 12 A. Mm-hmm.
 13 Q. Could you see the screen where the ultrasound was
 14 projected?
 15 A. Mm-hmm. At one point the machine wasn't even on
 16 Q. Did you mention that to him?
 17 A. Yes.
 18 Q. What did he say?
 19 A. That he was checking to feel for lumps.
 20 Q. And he was using the ultrasound to do this?
 21 A. Mm-hmm.
 22 Q. Okay. Anything else?
 23 A. And what he was stating was he was using the wand
 24 to separate it.
 25 Q. Okay. Was there anything else unusual that you

Page 23

1 observed or felt with regard to the examination?
 2 A. The wand went up my butt.
 3 Q. The wand did? The ultrasound wand?
 4 A. And his hand or his fingers.
 5 Q. Which was it? Both or one?
 6 A. Well, he done the wand at one time and then he
 7 did a finger.
 8 Q. Okay. When the finger went up the butt, what was
 9 he doing with his other hand, or was he -- was that just a
 10 rectal exam or rectal insertion?
 11 A. That's what he stated it was.
 12 Q. But at the same time he did the rectal insertion
 13 did he have a finger in your vagina?
 14 A. I don't remember.
 15 Q. And then you say he put the ultrasound wand up
 16 your bottom?
 17 A. Mm-hmm.
 18 Q. Did that hurt?
 19 A. Oh, yes.
 20 Q. You'd never had that before?
 21 A. No, I have not.
 22 Q. And you have medical training, did it seem like
 23 this was something that was improper that he was doing?
 24 A. Yes, I did.
 25 Q. Did you mention that to him?

Page 24

1 A. No, I did not.
 2 Q. Okay. What else did he do that you found unusual
 3 or improper?
 4 A. He never left room when I was getting dressed.
 5 He kept about talking about positions, sexual positions
 6 between my husband and I.
 7 Q. Let me ask you about that then. How did the
 8 conversation get started about sexual positions?
 9 A. Because he was stating that a lot of woman can't
 10 get pregnant because of the fact that the sperm can't get up
 11 the channel; so, if you do a different position it allows
 12 the sperm to go up deeper and allows the penis to be in
 13 more, and it allows the sperm to go up deeper so it doesn't
 14 have to work as hard.
 15 Q. Okay. Anything else about sexual positions that
 16 were discussed?
 17 A. He wanted to know my husband's size. He wanted
 18 to know why -- what my husband did to have me orgasm.
 19 Q. Okay. Did you answer those questions?
 20 A. No. Not all of them.
 21 Q. What would you say if you didn't answer the
 22 question?
 23 A. Because, like the sexual positions, I stated that
 24 he could stand on his head for all I care, it's not going to
 25 get me pregnant because I had my tubes tied.

Page 25

1 Q. So any other conversation about sexual positions
 2 or sexual intercourse that you had with him?
 3 A. He talked about oral sex.
 4 Q. What did he say about oral sex?
 5 A. He was asking how often I did oral sex, and how
 6 often I enjoyed getting oral sex.
 7 Q. Did that make you feel uncomfortable?
 8 A. Yes, it did.
 9 Q. Did you feel that was improper?
 10 A. Yeah.
 11 Q. You knew that had nothing to do with fertility,
 12 obviously?
 13 A. Mm-hmm.
 14 Q. Did you answer him?
 15 A. I don't know.
 16 Q. You don't have to give me an answer, but I mean,
 17 did you engage in the conversation with him?
 18 A. No, I did not.
 19 Q. What did you tell him then when he asked those
 20 questions about oral sex?
 21 A. I don't remember exactly what I said.
 22 Q. Okay. So any other conversation that you felt
 23 might be improper?
 24 A. I can't recall anything else.
 25 Q. Anything else that happened during the

1 examination that you felt might have been improper, or
 2 unusual, that you haven't told us at this the first
 3 examination?
 4 A. He's the only person that ever medicated us,
 5 medicated me.
 6 Q. How did he medicate you?
 7 A. He used Fentanyl.
 8 Q. Now you know what Fentanyl is?
 9 A. Mm-hmm.
 10 Q. How do you know?
 11 A. Because we use it at Valley Medical Center.
 12 Q. What's it used for?
 13 A. It's to put people asleep.
 14 Q. And it's used prior to medical procedures?
 15 A. Mm-hmm. It's a drug used to get people to relax
 16 that are like extremely uptight about the procedure that
 17 they're getting ready to have, like somebody that's getting
 18 ready to have surgery; so, they're given Fentanyl through an
 19 IV.
 20 Q. So did he give it to you through an IV?
 21 A. Mm-hmm.
 22 Q. He set up an IV in his office?
 23 A. Mm-hmm.
 24 Q. This was during the first visit?
 25 A. Mm-hmm.

1 A. For a vaginal ultrasound?
 2 Q. Yeah.
 3 A. Yes.
 4 Q. What situation?
 5 A. Before I had the diagnostic laparoscopy with Dr.
 6 Dr. McLees, I had it then. I had it when I broke my leg in
 7 '91.
 8 Q. Okay. So in those other situations they were
 9 given either before procedures or when you've had severe
 10 trauma?
 11 A. Right.
 12 Q. So were you concerned with him giving you
 13 Fentanyl prior to what should have been a routine
 14 examination?
 15 A. Yes.
 16 Q. Did you tell him not to?
 17 A. Yes.
 18 Q. And what happened?
 19 A. He said that he needed me to get as relaxed as I
 20 could possibly get because he needed to go in, and he
 21 continually told me that he needed to because I was really
 22 pushing the issue of not having a surgery, that I wanted to
 23 go to IVF.
 24 He was continually saying that he needed to find
 25 a way that the insurance would pay for it. And I told him

1 MR. ROGOFF: You need to say either yes or no so
 2 we make sure we get it as either a yes or no.
 3 A. Sure.
 4 Q. (By Mr. Allen) So he set up an IV and gave it to
 5 you during your first visit?
 6 A. Yes.
 7 Q. Was his assistant with him while he was doing it?
 8 A. Nobody else was in the room.
 9 Q. How do you know it was Fentanyl?
 10 A. Because I seen the container.
 11 Q. And the container said Fentanyl?
 12 A. No. It said something like -- the long word.
 13 Q. So it had the generic name?
 14 A. Yeah.
 15 Q. And do you know what that name is?
 16 A. No. Not offhand I don't.
 17 Q. But you recognized that as Fentanyl?
 18 A. Yes.
 19 Q. Now Fentanyl would make someone go unconscious?
 20 A. No, that does not.
 21 Q. Fentanyl doesn't?
 22 A. No, it does not.
 23 Q. So it's just a relaxer?
 24 A. Mm-hmm.
 25 Q. Had anybody ever given you Fentanyl before?

1 at that time that my husband and I had money for IVF, I
 2 don't have a problem paying for IVF. And he said, well, why
 3 would you do that if we can get the insurance to pay for it,
 4 let's just get them to pay for it.
 5 Q. So your insurance through your place of work?
 6 A. I had dual insurance. I had insurance through my
 7 work and my husband's work.
 8 Q. Okay.
 9 A. But IVF is paid for by the patient. Insurances
 10 do not cover for IVF.
 11 Q. So was there anything else that you found unusual
 12 during the first examination?
 13 A. Nothing else that I can remember.
 14 Q. Okay. So then how was it left after the first
 15 visit? What was going to happen?
 16 A. That he would contact my insurance. It was left
 17 that he would contact my insurance and that he wanted to do
 18 the diagnostic laparoscopic to see if he could reverse my
 19 tubes because he felt that he could do that. And when I
 20 left I was telling him that there is no reason for that
 21 because I know that they can't be reversed, I would be happy
 22 to bring the videotape.
 23 He said that he would contact my insurance. His
 24 receptionist took all the information on my insurance and my
 25 cell phone number, and they called both insurances to make

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1 sure that that was covered.
 2 Q. How many times total did you see Dr. Momah?
 3 A. Like five or six times.
 4 Q. Five or six times. Okay. So this is the first
 5 time you've told us about?
 6 A. Right.
 7 Q. When was the second time?
 8 A. Like two weeks later.
 9 Q. And was that for an exam, or was that for
 10 laparoscopy?
 11 A. No. That was for another examination.
 12 Q. Okay. Who came with you the second time?
 13 A. My husband.
 14 Q. That's Ricky?
 15 A. Yes.
 16 Q. Did he come into the exam room?
 17 A. No, he did not.
 18 Q. Where was he then?
 19 A. Out in the waiting area.
 20 Q. Okay. And then what happened during the second
 21 exam?
 22 A. Basically the same thing, and he continually
 23 talked about having -- needing to go have the surgery, and
 24 that he did not trust anyone else's work, that he wanted me
 25 to have the surgery so that -- and you know he continually

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1 seem -- because it doesn't seem like he was doing anything
 2 in a, like, circular motion or a massaging motion. It just
 3 seemed to be all over the place.
 4 Q. So was he just holding it, or was he moving his
 5 hand around?
 6 A. He was moving his hand around.
 7 Q. Which breast was that, or both breasts?
 8 A. It was both.
 9 Q. So would he have one hand on each breast or two
 10 hands on --
 11 A. No. One hand on -- one breast on two hands.
 12 Q. Okay. How long did that go on for?
 13 A. I don't remember.
 14 Q. Are we talking seconds or minutes, or more than
 15 that?
 16 A. Probably a few minutes.
 17 Q. Okay. And again this wasn't like any other
 18 breast exam that other doctors did?
 19 A. No.
 20 Q. You tell him to stop?
 21 A. No.
 22 Q. Why not?
 23 A. I don't know.
 24 Q. Okay. And then describe the vaginal exam.
 25 A. It was done with -- first it was done without the

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1 -- and during that time he continually called me on my cell
 2 phone telling me that my insurance was covering this
 3 diagnostic surgery, and that, you know, he could perform it,
 4 and he'd set certain days aside.
 5 Q. Okay. Just so I'm clear, the second time was a
 6 couple weeks after the first time?
 7 A. Yes.
 8 Q. Did he perform an exam the second time?
 9 A. Yes.
 10 Q. What exams did he perform?
 11 A. The same.
 12 Q. Meaning a breast exam?
 13 A. The same as the first; a breast exam and a
 14 vaginal ultrasound.
 15 Q. Okay. How did he do the breast exam?
 16 A. That one it was more just working on the breast
 17 at that time, just he had his hands on the breast.
 18 Q. Two hands?
 19 A. Yes.
 20 Q. Two hands on one breast?
 21 A. Yes.
 22 Q. And what was he doing when he had two hands on
 23 one breast? Was he squeezing? Was he massaging? Was he
 24 palpating?
 25 A. Well, I'm not sure what he was doing. It didn't

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1 wand.
 2 Q. Did he use his hands?
 3 A. Yes.
 4 Q. Did he have gloves on?
 5 A. When he started he did.
 6 Q. Did he have gloves on when he finished?
 7 A. No.
 8 Q. How do you know?
 9 A. Because he told me he was removing them.
 10 Q. Why was he removing them?
 11 A. Because he said he felt lumps on the outer part
 12 of my uterus and he wanted to feel them, and the gloves were
 13 not allowing him to feel those lumps.
 14 Q. Do you wear gloves in the course of your work at
 15 the hospital?
 16 A. I did, yes.
 17 Q. And I take it these gloves are latex, or are they
 18 non-latex gloves?
 19 A. They were both.
 20 Q. Okay. Are those gloves very thin?
 21 A. Some are. Some aren't. It depends on which ones
 22 you get.
 23 Q. Okay. There are very thin gloves?
 24 A. Yes.
 25 Q. Did it seem unusual when he said he had to take

1 off his gloves to feel the lumps?
 2 A. Yes, because I remember thinking that because he
 3 had such large hands the gloves didn't fit him properly
 4 anyway.
 5 Q. So he said he was going to feel for lumps with
 6 his hands. Did he do anything else that you felt was
 7 unusual during that second exam?
 8 A. Kind of like the same as the first. I was given
 9 another rectal exam, stating that he was feeling that.
 10 Q. Did he use the wand to do the ultrasound?
 11 A. No. The only time I got that was the first.
 12 Q. Okay. And then did he touch you either the first
 13 or second time in any way that you felt was, beside what
 14 you've told us, that was improper?
 15 A. I don't -- to me every visit I had with him was
 16 improper.
 17 Q. Did he ever touch your clitoris?
 18 A. Yes.
 19 Q. Which visit? Was it every visit?
 20 A. I don't know if it was every visit.
 21 Q. Did he touch your clitoris the first visit?
 22 A. Yes.
 23 Q. Did he touch your clitoris the second?
 24 A. Yeah.
 25 Q. And for how long did he touch your clitoris the

1 first visit?
 2 A. I have no clue. It was when he was doing his
 3 little things with his ultrasound wand.
 4 Q. So it was with the ultrasound wand?
 5 A. No. He touched my clitoris with his fingers.
 6 Q. With his fingers?
 7 A. Yes.
 8 Q. Could you see him or just feel it?
 9 A. No, I felt it.
 10 Q. Okay. And did he stop on his own, or did you
 11 tell him to stop?
 12 A. No. He stopped on his own.
 13 Q. Okay. And do you know how long it went on before
 14 it stopped?
 15 A. No, I don't.
 16 Q. Okay. What about the second time? Did he again
 17 touch your clitoris?
 18 A. Mm-hmm.
 19 Q. And again --
 20 A. Doing an exam and that was just the hand without
 21 the wand, and then when the wand was in, the ultrasound wand
 22 was in.
 23 Q. Okay. That would have been the first one then
 24 with the ultrasound?
 25 A. That's the second.

1 Q. So there was a ultrasound the second visit?
 2 A. The second one.
 3 Q. I thought you said there was not an ultrasound
 4 the second visit?
 5 A. That was in the butt. The second time I did not
 6 have the wand up the butt because I refused to have that.
 7 Q. Did you have the wand in your vagina the second
 8 time?
 9 A. I think so, yeah.
 10 Q. Okay.
 11 A. Yes.
 12 Q. How long did the vaginal ultrasound take?
 13 A. The second time, twenty to thirty minutes.
 14 Q. Okay. Did he say why he was going to do a second
 15 vaginal ultrasound?
 16 A. At that time he was taking pictures for our
 17 insurance so that he could send them pictures. I remember
 18 that he was taking pictures.
 19 Q. Did you ask him why he didn't take pictures the
 20 first time for the insurance?
 21 A. No.
 22 Q. Okay. Did he do anything else that you felt was
 23 improper the second time?
 24 A. He continually talked about sexual positions.
 25 Not a whole lot there, because on that particular day I

1 remember I was really busy so I had to get in and out very
 2 quickly; so, it was like -- I think he knew that.
 3 Q. Was the assistant there that day, the second
 4 visit?
 5 A. That was done in the Federal Way clinic, not
 6 Burien. It was done -- the second visit after I had my
 7 first visit in Burien. After that all my other visits were
 8 done in Federal Way, and, no, the assistant was not in the
 9 room.
 10 Q. Was there an assistant outside?
 11 A. I don't know.
 12 Q. Okay.
 13 MR. ROGOFF: Dave, I hate to interrupt. I'm very
 14 sorry. Mr. Fogg is here as well, Scott Fogg. And I'm going
 15 to have to leave and Mr. Fogg is going to take over, but I
 16 don't know if Rena has met Scott directly before. Have you?
 17 MR. ALLEN: Do you want to go off the record for
 18 a minute?
 19 MR. ROGOFF: Let's go off the record.
 20 (Brief Recess Taken)
 21 Q. (By Mr. Allen) So the second visit then took
 22 place about two weeks after the first visit. Was there
 23 anything else that took place that you felt was improper or
 24 uncomfortable during the second visit, other than what
 25 you've told us so far?

1 A. Yeah. That's all I remember at this time.
 2 Q. Okay. When was the next time you saw him?
 3 A. That would have been when I went in to have my
 4 surgery.
 5 Q. And how long was that after the second visit?
 6 A. A few days because he got my insurance to approve
 7 it, and he planned the surgery right away.
 8 Q. Now you didn't tell your husband about the --
 9 A. No, I did not.
 10 Q. -- about the problems with Dr. Momah during the
 11 first and second visit I take it?
 12 A. No, I did not.
 13 Q. Any reason why you didn't tell him?
 14 A. Because I was -- I work in the medical field and
 15 it was something that I knew wasn't appropriate, and I
 16 didn't, you know, I didn't know how he was going to react to
 17 it and we were still seeing him.
 18 Q. You didn't know how Dr. Momah would react?
 19 A. No. My husband.
 20 Q. Your husband. All right. Okay. So you went in
 21 for surgery two days after the second visit. Where was the
 22 surgery done?
 23 A. The Federal Way office.
 24 Q. Okay. And what was the situation at the Federal
 25 Way office at the surgery? Was there anybody else present?

1 surgery.
 2 And I was telling my husband he was not to leave
 3 me, don't leave me, don't leave me, this isn't right, this
 4 is not right, I don't like it, I don't want to do this.
 5 And so then the doctor had the anesthesiologist
 6 come out and she talked to us, and I told her that I didn't
 7 feel comfortable in this situation. And you know, she seen
 8 the state that I was in, and so then she just started
 9 talking to me. She knew I worked at Valley. She started
 10 talking to me about a couple of the people that she knew
 11 from Valley, and stated that they would vouch for her as an
 12 anesthesiologist, you know, and that they would say, you
 13 know -- because I think she was -- I think she was in the
 14 military, and that they would vouch for her.
 15 Q. Okay.
 16 A. You know, but ultimately it had to be my decision
 17 if we were going to go through with this, but she kept
 18 reassuring me that she would never leave my side, she would
 19 always be right there, you know.
 20 Q. So you felt like going ahead with it?
 21 A. And my husband had stated that he himself would
 22 not leave the waiting area.
 23 Q. Okay. And did he?
 24 A. No. To my understanding he did not.
 25 Q. Okay. So then the procedure went forward?

1 A. An anesthesiologist.
 2 Q. Do you remember what her name was?
 3 A. No, I do not.
 4 Q. And what was the condition of the surgery center?
 5 A. It was awful. There was things scattered all
 6 over the place. The room just looked like a tornado hit it.
 7 Q. And you work in a surgery center?
 8 A. That is correct.
 9 Q. So you know what a surgery center should look
 10 like?
 11 A. That is correct.
 12 Q. Okay. Your husband was with you?
 13 A. Yes.
 14 Q. Okay. Did you have any concerns then about
 15 proceeding with the --
 16 A. Yes, I did.
 17 Q. You went ahead?
 18 A. Yes, I did.
 19 Q. Why?
 20 A. Because I had spoken with the anesthesiologist
 21 and she was telling us that she had worked with -- I had --
 22 you know, because I had had all of these problems prior to
 23 this and I began -- and I was just crying because Dr. Momah
 24 was trying to have my husband go to Rite-Aid to fill a
 25 prescription so that I would have that when I came out of

1 A. Yes, it did.
 2 Q. And then you woke up when the procedure was over?
 3 A. Yes.
 4 Q. Did you talk to Dr. Momah at that point?
 5 A. It was the anesthesiologist, and the first thing
 6 I remember was getting up and she was telling me I needed to
 7 go to the restroom.
 8 Q. Okay. So did you do that?
 9 A. Yes.
 10 Q. Did you see Dr. Momah before you left the surgery
 11 center?
 12 A. Not that I remember, no.
 13 Q. Okay. When did you see Dr. Momah again after the
 14 surgery?
 15 A. The following Saturday.
 16 Q. And how many days later was that? Do you
 17 remember?
 18 A. I had my surgery on Wednesday and I seen him on
 19 Saturday.
 20 Q. And how were you feeling physically at the time
 21 you saw him?
 22 A. Extremely weak, sick. My incision was bleeding
 23 and I insisted that I be seen.
 24 Q. Okay. And so you did see him?
 25 A. Yes, I did.

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1 Q. What did he do during that -- that would have
 2 been your fourth time seeing him; is that right?
 3 A. Right.
 4 Q. So what happened during that fourth visit?
 5 A. It was on a Saturday. I called and told him that
 6 my incision was bleeding. He said that there was no reason
 7 for me to come in. And I told him that I was coming in and
 8 that he was going to see me.
 9 And when we got there, that's when my husband
 10 went back with me, and he acted like he didn't even know who
 11 I was and he couldn't remember what procedure was done on
 12 me. He -- he was, like, saying, you know, that there's no
 13 reason for me to come in. He asked me if I wanted any more
 14 pain killers. The pain killers were offered like M&Ms with
 15 him. And I insisted that he look at my incision.
 16 Q. Did he?
 17 A. For about five seconds.
 18 Q. Did he do anything about it?
 19 A. No.
 20 Q. Did he do anything else during the examination?
 21 Did he conduct a breast exam?
 22 A. I can't remember.
 23 Q. What about a vaginal exam?
 24 A. I don't think so. I think that was when --
 25 Q. I know you're looking at some papers. If you

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1 could just go from memory now and you can check those
 2 later.
 3 If you put those down for now, I would just ask
 4 you to remember from memory and you can check them later.
 5 A. I don't remember then.
 6 Q. You don't remember a vaginal exam or if it
 7 happened?
 8 A. No.
 9 Q. What about an ultrasound that last time, or the
 10 fourth?
 11 A. I don't remember.
 12 Q. Besides the --
 13 A. I just remember his reaction to me coming into
 14 his office. He was not happy about it.
 15 Q. Did he remove the stitches?
 16 A. It was staples. No, he did not.
 17 Q. I mean, did this appear to be Dr. Charles Momah
 18 who you were talking to on this fourth time?
 19 A. No, it did not.
 20 Q. So do you think it was somebody else?
 21 A. Do I believe that it was somebody else?
 22 Q. Yeah.
 23 A. The way his reaction was, yes.
 24 Q. Who do you think it was?
 25 A. I was told that it was his twin brother.

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1 Q. You were told that by whom?
 2 A. By the attorney.
 3 Q. That's --
 4 A. Harish.
 5 Q. Harish told you that it was Dennis?
 6 A. That he had had a twin. If I noticed the
 7 difference, that he had had a twin brother.
 8 Q. And you believe it was his twin brother?
 9 A. Yes, I do, because he had no clue who I was, and
 10 I was just there on Wednesday. He had no clue of what the
 11 procedure was that was done.
 12 Q. Did the person look different than you remember
 13 Charles looking?
 14 A. Yes.
 15 Q. How do you remember him looking?
 16 A. Size wise he was smaller, not as tall.
 17 Q. Okay. What about his way of speaking? Was it
 18 the same or different?
 19 A. No. It was different because, like I said, he
 20 knew nothing about what I was talking about.
 21 Q. Okay. And which office was this at?
 22 A. Federal Way.
 23 Q. Was he wearing clothes that were different from
 24 those that Dr. Momah would usually wear, or could you tell
 25 any difference that way?

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1 A. I couldn't tell the difference on that.
 2 Q. So was it mainly that he was smaller and that he
 3 didn't know about your case?
 4 A. Mm-hmm.
 5 Q. Now did your attorney show you any pictures of
 6 Charles and Dennis to ask you to identify them?
 7 A. Yes.
 8 Q. And were you able to look at the pictures and say
 9 that was Dennis, instead of Charles, that saw me on that
 10 last time?
 11 A. On that one visit, yes.
 12 Q. Did you ever see either of the Dr. Momahs after
 13 that last visit?
 14 A. Yes, I did.
 15 Q. Okay. So did anything sexually improper take
 16 place on that Saturday visit?
 17 A. No, because my husband was -- he came back with
 18 me because I was so upset; so, I don't think so. No. I
 19 don't remember if it did or not.
 20 Q. Have you brought a lawsuit against Dennis?
 21 A. Well, the exhibit on this one, but it was to my
 22 understanding that that was dropped when we found out that
 23 he didn't have any type of insurance.
 24 Q. Exhibit 1, though, I understand is just against
 25 Charles. Did you ever bring a lawsuit, or do you know if

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1 you brought a lawsuit against Dennis?
 2 A. To my knowledge, no. I don't know.
 3 Q. Do you have a plan to bring a lawsuit against
 4 Dennis?
 5 A. I don't know.
 6 Q. Okay. At the time you saw a doctor on that
 7 Saturday after surgery, did it go through your mind at that
 8 point that you were talking to somebody other than Charles,
 9 or is this something you figured out afterwards?
 10 A. I felt something was different because, like I
 11 said, my medical questions he had no clue what I was even
 12 talking about. So I felt something was totally different,
 13 yes. And his -- he was so adamant that I not come to the
 14 office.
 15 Q. But then did he say come in?
 16 A. I told him I was coming in.
 17 Q. Were there other patients there?
 18 A. No.
 19 Q. Was there a receptionist there?
 20 A. Yes.
 21 Q. What did the receptionist look like?
 22 A. She was a black girl, probably about 5'3", 130
 23 pounds.
 24 Q. By black you mean African American?
 25 A. Yeah.

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1 Q. And 5'3"?
 2 A. Yeah.
 3 Q. 130 pounds?
 4 A. Yeah.
 5 Q. About how old?
 6 A. 30s.
 7 Q. Do you know her name?
 8 A. No.
 9 Q. Okay. When was the next time you went in to see
 10 Dr. Momah?
 11 A. I had the staples removed.
 12 Q. And how long after the Saturday visit was that?
 13 A. I don't remember.
 14 Q. Are we talking a couple weeks? Months? Days?
 15 A. Probably a month.
 16 Q. Okay. Did your husband come with you?
 17 A. No, he did not.
 18 Q. Anybody come with you?
 19 A. No.
 20 Q. The federal Way office?
 21 A. Yes.
 22 Q. Receptionist there?
 23 A. I don't remember.
 24 Q. Okay. Did you have to get into a gown?
 25 A. No, I did not.

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1 Q. Okay. How was it that -- now during that visit
 2 for the staples removal, did it seem like it was Charles or
 3 somebody else?
 4 A. No, it seemed like it was Charles.
 5 Q. Okay. How did he get access to your body to
 6 remove the staples? Did he lift up your shirt?
 7 A. Because I had sweat pants on and -- he went in
 8 through the belly button, so I just lowered the waist band
 9 on my sweat pants and he removed the two staples that were
 10 there.
 11 Q. Did he do an exam on you?
 12 A. No.
 13 Q. Did he touch your breasts?
 14 A. No.
 15 Q. Did he do an ultrasound?
 16 A. No.
 17 Q. Did you have a discussion with him?
 18 A. Yes.
 19 Q. What was the discussion?
 20 A. When we could start In Vitro.
 21 Q. And what did he say?
 22 A. That he doesn't do In Vitro.
 23 Q. What was your response?
 24 A. I started screaming and yelling at him, why did
 25 you make me go through the surgery? why did you make me do

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1 this? why didn't you just tell me right up front so I could
 2 have just went into another fertility clinic?
 3 Q. What was his response?
 4 A. He felt that he could reverse my tubes.
 5 Q. Did he refer you to somebody?
 6 A. No, he did not.
 7 Q. How was the examination or the appointment ended?
 8 A. With me calling him a fucking idiot.
 9 Q. Then did you leave?
 10 A. Yes.
 11 Q. Have you seen him again since then?
 12 A. No.
 13 Q. Can you give me an approximate date of that last
 14 visit?
 15 A. Probably the end of April, maybe first of May.
 16 Q. That would be 2003?
 17 A. Yeah.
 18 Q. Okay. Did you receive bills from him?
 19 A. Yes.
 20 Q. Were you upset about the bills?
 21 A. Yes.
 22 Q. Why were you upset?
 23 A. Because he billed my insurance for a diagnostic
 24 laparoscope for -- I think it was almost \$11,000.00.
 25 Q. Did the insurance pay?

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1 A. Yes, they did.
 2 Q. All of it?
 3 A. No.
 4 Q. How much?
 5 A. I don't remember.
 6 Q. Did they pay half of it? Most of it? A little?
 7 A. Probably 80 percent, because that's usually what
 8 they pay.
 9 Q. Dr. Momah ever go after you for the balance?
 10 A. Yes.
 11 Q. How did he do that?
 12 A. His receptionist called.
 13 Q. Did he send you a bill?
 14 A. Mm-hmm. For \$7,000.00.
 15 Q. So if he charged 11,000 for the laparoscopy, it
 16 would seem to me that the insurance company didn't pay 80
 17 percent?
 18 A. Well, that's how much he sent a bill for.
 19 Q. 7,000?
 20 A. Mm-hmm.
 21 Q. And did you ever pay it?
 22 A. No, I did not.
 23 Q. Did you ever pay any part of it?
 24 A. No, I did not.
 25 Q. Were you upset about it?

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1 A. Yes.
 2 Q. Did you do anything about it?
 3 A. I had sent two letters to the State of
 4 Washington. The first one was for his conduct, and they
 5 stated that they never received it. I sent another one
 6 after all of it had gone through and it stated that -- and
 7 gave them copies of what my insurance paid and what he --
 8 and sent a copy of the bill.
 9 And I let them know at the office that I sent
 10 those letters and she had told me not to worry about it,
 11 that they were going to do it as a wash whatever my
 12 insurance paid.
 13 And I said, well, I don't understand why you
 14 billed my insurance for \$11,000.00. I just had this
 15 procedure done prior to this doctor doing it and we paid 600
 16 out of our own pocket.
 17 Q. Let me stop you for a second. So this
 18 conversation you're talking about is with his receptionist
 19 for billing purposes?
 20 A. Yes.
 21 Q. Let's talk about your complaints though. You
 22 said you wrote a letter to the Department of Health which
 23 they never received?
 24 A. The first letter, yes.
 25 Q. When did you write that?

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1 A. After the first visit.
 2 Q. After your first visit with Dr. Momah?
 3 A. Mm-hmm.
 4 Q. So that would have been the one in March?
 5 A. Yeah.
 6 Q. And what did that letter say?
 7 A. The conduct that was going on during the
 8 examination, him not leaving the room, when had gone on with
 9 the vaginal ultrasound.
 10 Q. Him touching your breast in the way that he did?
 11 A. Yes.
 12 Q. Do you have a copy of that letter?
 13 A. No, I don't.
 14 Q. Did you type the letter?
 15 A. No. It was handwritten.
 16 Q. And being in the medical field yourself, you know
 17 where the Department of Health is?
 18 A. Yes, I do.
 19 Q. Did you have a return address on your envelope?
 20 A. Yes.
 21 Q. Did it ever come back to you?
 22 A. No. Then I wrote a second one after I had -- a
 23 couple days after I had the staples removed, and my husband
 24 hand delivered that to Olympia.
 25 Q. So in your first letter, which was written right

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1 after your first visit, you complained about the sexual
 2 impropriety?
 3 Yes? You have to answer out loud.
 4 A. Yes. I'm sorry.
 5 Q. In your second letter and -- I'm sorry. The
 6 first letter was handwritten, was sent, but was never
 7 acknowledged by the Department of Health?
 8 A. That's correct.
 9 Q. The second letter you sent after the staples were
 10 removed?
 11 A. Mm-hmm.
 12 Q. Was that before the final visit?
 13 A. No. The final visit was --
 14 Q. Okay. The final visit was the staple removal.
 15 I'm sorry. I misunderstood.
 16 And did that final letter complain about the
 17 billing?
 18 A. It was some of the billing, some of his
 19 mishandling, some of him making me have a surgery that was
 20 not necessary.
 21 Q. Do you have a copy of that letter?
 22 A. I think it's this one right here.
 23 Q. Okay. And that's a letter that you had with you
 24 today?
 25 A. I had this letter with me?

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1 Q. Did you have that with you today?
 2 A. No.
 3 Q. Okay. I thought this letter was something that
 4 had you on your side of the table today?
 5 A. Yeah. I mean --
 6 Q. When did you get this letter?
 7 A. I got that from them because I asked them -- I
 8 wanted to see everything that they had.
 9 Q. Okay.
 10 MR. ALLEN: Can we mark this as an exhibit,
 11 please.
 12 (Deposition Exhibit 2 is
 13 Marked for Identification)
 14 Q. (By Mr. Allen) I'm going to take your copy and
 15 I'll get you another copy. Here's another copy for
 16 yourself. Okay. So this has been marked, the copy that you
 17 gave me. The letter has been marked Exhibit 2.
 18 A. Yes.
 19 Q. Then you see I gave you a copy of that for your
 20 own personal --
 21 A. Yes.
 22 Q. Do you say that that letter that's marked as
 23 Exhibit 2 that's the letter that your husband hand delivered
 24 to the Department of Health sometime in March or April of
 25 2003?

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1 A. It had to have been the -- yes.
 2 Q. Okay. Probably April 2003?
 3 A. Yes.
 4 Q. Right after the last visit with Dr. Momah?
 5 A. Yes.
 6 Q. Okay. Now that has handwritten up on the top in
 7 someone else's handwriting, it looks like, a number. Do you
 8 see that, 2003-09? Do you see that?
 9 A. Mm-hmm.
 10 Q. You don't know who put that on?
 11 A. No, I do not.
 12 Q. And there's also a typed thing up there that
 13 looks like it was put on by somebody else, too?
 14 A. Yes.
 15 Q. The upper left-hand corner it says "Received
 16 September 19, 2003, Investigations"?
 17 A. Yes.
 18 Q. Now please go to the last page of that. The last
 19 page has -- it says included you'll find copies of billing
 20 to my insurance company and so forth. Go back one page
 21 earlier. Do you see it's signed by yourself, Rena Burns?
 22 A. Yes.
 23 Q. Do you see a date on there September 18, 2003?
 24 A. Mm-hmm.
 25 Q. Did you write in that date?

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1 A. Yes, I did.
 2 Q. So would that indicate that this letter was sent
 3 in September, not in March or April?
 4 A. Yes.
 5 Q. Okay. So where is a copy of the letter that you
 6 sent, the one that was hand delivered by your husband? Do
 7 you know where that is, or have you ever seen that again?
 8 A. It must be that one. I thought it was in March
 9 that I did this; so, I'm not sure of the date.
 10 Q. So maybe instead of doing it in --
 11 A. This is the second one that I wrote.
 12 Q. Okay. So Exhibit 2 is the second letter you
 13 wrote?
 14 A. Right.
 15 Q. So it wasn't written in March or April of 2003?
 16 A. Yes.
 17 Q. It was written in September of 2003?
 18 A. Yes.
 19 Q. Now when did you first become aware that there
 20 were legal proceedings against Mr. Moment?
 21 A. I don't remember.
 22 Q. Did you see something on TV?
 23 A. No, I did not.
 24 Q. Did you read something in the paper?
 25 A. No.

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1 Q. So how did you -- how was it that apparently this
 2 Exhibit 2 was sent September 18th of 2003?
 3 A. Because my husband watches the news. I don't.
 4 Q. So did your husband tell you --
 5 A. He said that the doctor that we had gone to see
 6 is -- was arrested.
 7 Q. Okay.
 8 A. Because I don't watch the news.
 9 Q. Okay. So he said that Dr. Momah was arrested?
 10 A. Yes.
 11 Q. And did he give you any other details?
 12 A. Just that he had been arrested.
 13 Q. Okay. Did that cause you then to write this
 14 letter to the Department of Health?
 15 A. No.
 16 Q. Okay. Did he give you any details about what he
 17 had heard on the news?
 18 A. I don't remember.
 19 Q. So after your husband told you he saw something
 20 about Dr. Momah being arrested, did that cause you to watch
 21 the news, or listen to the radio or TV at that point?
 22 A. No.
 23 Q. When did you first meet with Mr. Bharti?
 24 A. It was quite some time after that, and I don't
 25 remember the first time I met with him.

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1 Q. How did you get referred to Mr. Bharti?
 2 A. I don't remember. I don't remember who told us.
 3 Q. And did Mr. Bharti ever have you meet with any
 4 other patients --
 5 A. No.
 6 Q. -- that he was representing?
 7 A. No.
 8 Q. Did he tell you what other patients or clients
 9 were telling him about what Dr. Momah did to them?
 10 A. No.
 11 Q. He did tell you though that it was Dennis Momah
 12 who saw you on that visit after the surgery?
 13 A. He asked me if I could identify -- he never told
 14 me. He never said, okay, this is his brother and this is
 15 him. He asked me if I could tell the difference between the
 16 two photos, and asked me which was the one that was seeing
 17 me.
 18 Q. Okay.
 19 A. He never said, okay, this is his bother and this
 20 is him, you know, which doctor seen you at which time. He
 21 asked me.
 22 Q. Are you aware that Mr. Bharti is bringing cases
 23 on behalf of Dr. Momah's former patients claiming that
 24 Dennis Momah stood in for Dr. Momah on occasions?
 25 A. Mm-hmm.

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1 Q. Yes?
 2 A. Yes.
 3 Q. And you're not part of those lawsuits?
 4 A. I'm not sure.
 5 Q. Did you ever talk to any detectives from the
 6 Federal Way Police Department?
 7 A. No, I did not.
 8 Q. You did talk with the prosecutor Ms. Otaki?
 9 A. Yes, I did.
 10 Q. Was that approximately May of 2004? Does that
 11 sound about right?
 12 A. I don't remember what day it was.
 13 Q. Now you say that Dr. Momah called you on your
 14 cell phone?
 15 A. Yes, he did.
 16 Q. Do you have records of that? Do you have cell
 17 records that would show his phone calls?
 18 A. I don't know if I do or not.
 19 Q. Okay. If you can find them would you give them
 20 to Mr. Fogg, who can give them to us?
 21 A. Yes.
 22 Q. If you could find them.
 23 A. Yeah, I'll try, because he called my home phone
 24 and my cell phone.
 25 Q. Okay. And again Ms. Sloan, how can we locate

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1 her? Do you have her address?
 2 A. No, I don't know her address. She just lives
 3 right up at the top of the hill here.
 4 Q. You do have her phone number though?
 5 A. Yeah.
 6 Q. Would you provide that to Mr. Fogg and he can
 7 give it to us?
 8 A. Mm-hmm.
 9 MR. ALLEN: I'll just need a minute.
 10 (Brief Recess Taken)
 11 Q. (By Mr. Allen) Have you talked to anybody from
 12 the Department of Health?
 13 A. No.
 14 Q. Did you talk to a Ms. Virginia Rens from the
 15 Department of Health? She's an investigator.
 16 A. I don't remember.
 17 Q. Did you ever record any conversations you had
 18 with Dr. Momah?
 19 A. No.
 20 Q. Did Dr. Momah prescribe you drugs?
 21 A. Yes.
 22 Q. What kind of drugs?
 23 A. Percocet. Valium.
 24 Q. Okay. Was this post surgery?
 25 A. Yes, and prior to surgery, too.

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1 Q. Okay. Were you in pain prior to surgery?
 2 A. No.
 3 Q. Did you fill the prescriptions?
 4 A. No.
 5 Q. Did you fill the prescriptions after surgery?
 6 A. My husband did, yes.
 7 Q. Did you use the prescriptions? Did you use the
 8 drugs?
 9 A. I used one of the Valiums prior to surgery. I
 10 took one the morning of, and then I used the Percocet after
 11 surgery.
 12 Q. Okay. Did you use the Percocet for pain?
 13 A. Yes.
 14 Q. Did he re-prescribe or give you refills of the
 15 Percocet? Was that necessary?
 16 A. It wasn't necessary, but it was done.
 17 Q. Did you fill them?
 18 A. No.
 19 Q. You said you've not met with the police; is that
 20 right?
 21 A. No.
 22 Q. Have you met with the prosecutors, besides Ms.
 23 Otaki?
 24 A. Just Ms. Otaki.
 25 Q. Okay. Did you meet with Mr. Rogoff today before

1 the interview?
 2 A. Is that the gentleman who was sitting across from
 3 me?
 4 Q. Yes.
 5 A. Yeah, briefly.
 6 Q. Okay. All right. Do you know anything about the
 7 propriety of a gynecologist giving somebody a dosage of
 8 Fentanyl, if that's proper or not?
 9 A. I have no clue what they give. Every doctor's
 10 different.
 11 Q. Okay. Were you concerned when Dr. Momah gave you
 12 Fentanyl during the first visit? That cause you any
 13 concern?
 14 A. Some.
 15 Q. Did you stay conscious during the whole visit,
 16 the first visit?
 17 A. Yes.
 18 Q. Okay.
 19 A. Just relaxed.
 20 MR. ALLEN: Okay. Let me review my notes here.
 21 Q. (By Mr. Allen) Besides the letter you say you
 22 sent after the first visit complaining about Dr. Momah, and
 23 the letter that's dated September 19th, did you write any
 24 other letters to the Department of Health that you know of?
 25 A. No. Well, just the second one.

1 almost three years?
 2 A. Three years. Two, maybe two and a half.
 3 MR. ALLEN: Okay. Thank you very much. No
 4 further questions.
 5 MR. FOGG: No questions.
 6
 7 (WHEREUPON, the interview was
 8 concluded at 4:01 p.m.)
 9
 10
 11
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 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 Q. Right. The one that's Exhibit 2?
 2 A. Right.
 3 Q. Let me ask you a question. If you felt so upset,
 4 or upset enough after the first visit to write a letter to
 5 the Department of Health about what Dr. Momah did, why did
 6 you go back and see him again?
 7 A. Because he continually called my cell phone and
 8 was telling me that I wouldn't have to pay one cent for this
 9 In Vitro. And if he did the In Vitro he could get it so
 10 that my insurance paid 100 percent of it, and that I would
 11 not have one dime come out of my pocket.
 12 Q. If you were so upset, that you wrote the letter,
 13 why didn't you tell your husband?
 14 A. Because we were newly married and I didn't know
 15 how he was going to react.
 16 Q. You were married to him for five years?
 17 A. I wasn't married to him for five years when that
 18 was going on. We were married five years this June. This
 19 June will be five years.
 20 Q. So if you were married five years this June, you
 21 got married in June of 2000?
 22 A. No. We got married in -- in 2000.
 23 Q. In June of 2000?
 24 A. Mm-hmm.
 25 Q. So when you saw Dr. Momah you'd been married for

Rena Burns - letters to MQAC
Ex 47

2003-09-0065MD

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SEP 19 2003

INVESTIGATIONS

Washington State Department of Health
Medical Quality Assurance

My first appointment with Charles M. Momah M.D. was on March 25, 2003 in his Burien office. We first met in in his office. I began asking him if he did in vitro fertilization, he then ask why I felt I needed to do it this way. I told him that on November 20, 2001 I had Diagnostic Laparoscopy surgery done by Dr. R.Z. McLees M.D. to see if I could have Tubal Reanastomis but it couldn't be done. I then handed him my Operative Report done by R.Z. McLees M.D. Dr Charles M Momah took it and said that he doesn't trust any doctor but himself. So I then gave him a VHS tape of the surgery done by Dr. R.Z. McLees MD. at that time he said he must do it his way. He then had me go into the exam room told me to undress from the waist down and to get on the exam table. He then said he was going to do a vaginal ultra sound. When he put the probe in I could feel his fingers massaging my clitorous and surrounding area.

He was moving the probe in and out for about 20 to 30 mins. While he was still feeling my clitoris and surrounding areas. He then told me to get dress and meet him in his office. In the office he told me that he would call my insurance to get coverage for surgery on March 27, 2003 to see if he could do Tubal Reanastomis. He then sent me to Labcorp of America in Kent, WA. to do Lab work for surgery on March 27, 2003. On Wednesday March 26, 2003 he called me at home to tell me my insurance would cover this surgery. He then said my surgery was March 27, 2003 at 4:30 p.m. At that time I again ask if we could just do in vitro fertilization and he stated that this is how he does this. My husband came home from work early to take me to this appointment. I told my husband Ricky K. Burns that he was not to go anywhere until I was done. I felt very uncomfortable being around Dr Charles M. Momah MD. So Dr. Charles M. Momah MD had me sign a consent for surgery when I ask why my consent was blank

he stated that the office girls would fill it in because insurance use codes for surgeries. When my surgery was complete it felt as if they couldn't get me out fast enough. Then on Saturday March 29, 2003 I called Dr. Charles M. Momah M.D. to tell him my incision has puss and that my husband would be bringing me in to his Federal Way office, so that he could look at my incision. He said that was not necessary. I told him it was. My next appointment was Monday March 31, 2003, on that day he called me back to the exam room, told me to undress and Dr. Charles M. Momah M.D. never left the room while I was changing. While on the exam table he removed my gown look at my incision about 5 seconds. Then he started rubbing my breast. He then told me to get dressed and again he never left the room. We then went into his office. He told me that the other doctor was right and tubes could not be put back together. So I asked him how soon can we start in vitro fertilization

That's when he told me that he didn't do this procedure, but he would give names and phone numbers of doctors that do. I was very upset and asked why he didn't tell me from the start that he didn't do in vitro fertilization. I told him that I already knew that it was not possible for my tubes to be repaired. At that time he stated again that he never trust any other Doctors. I then told him that another doctor will not do anything for 6 months so my body would heal from this surgery. So nothing could be done until the end of September 2003. I was very upset and crying asking how could he do this to me. I got up and left his office Never to return. The office staff called 2 times to ask me to come in for diagnostic testing I said "No". Dr Charles M. Momah MD. himself called asking me to return I again said "No".

The above statement is true and accurate to the best of my knowledge.

Rena E. Burns
September 18, 2003

Enclosed you'll find copies of the billing to my insurance company. My letter of approval for surgery on March 27, 2003. You will also find my Operative report from Dr. R.Z. Mclees M.D.

Please feel free to call me anytime

Thank-you

Rena E. Burns
23812 102nd Ave SE.
Kent, WA. 98031

Home phone (253) 813-9449
cell phone (253) 350-5294

- Opposition to Respondents' Motion to Strike Brief.
- Rebuttal to part of the Respondents' Brief

1
2
3
4
5 **IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

6 **DIVISION ONE**

7 C. RULE ET. AL)

8 Plaintiffs,)

9 vs.)

10 C. MOMAH)

11 Defendant)

) Case No.: 61272-7-1

) APPELLANT'S OPPOSITION TO
) "PLAINTIFFS, MOTION ~~FOR~~ ^{AGAINST}
) OVERLENGTH BRIEF, MOTION TO
) STRIKE BRIEF OF APPELLANT AND
) MOTION TO DISMISS"

12
13 **I. Identity of the responding party and opposition to respondents' requests.**

14
15 The appellant, Charles Momah, "a Lay Person", Pro Se litigant opposes
16 Respondent's motion to strike the opening brief and dismiss this appeal. Under the
17 Supreme Court of the United States holding in Haines v. Kerner, 404 US 519, 30 L.Ed
18 652, 92 S.Ct. 594 (1972)." Pleading 130 - pro se complaint" 1. "The United States
19 Supreme Court holds allegations of a pro se complaint to less stringent standards than
20 formal pleadings drafted by lawyers". at page 653.

21 "Pleading 130 - failure to state a claim", 2. "A complaint should not be dismissed for
22 failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set
23 of facts in support of his claim which would entitle him to relief". Id at 653. "In a per
24 curiam opinion, expressing the unanimous views of the court, it was held that since it
25 did not appear beyond doubt that the inmate could prove no set of facts in support of his

APPELLANT'S OPPOSITION TO "PLAINTIFFS, MOTION ~~FOR~~ ^{AGAINST}
OVERLENGTH BRIEF, MOTION TO STRIKE BRIEF OF
APPELLANT AND MOTION TO DISMISS"

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1 claim which would entitle him to relief, he was entitled to an opportunity to offer proof".
2 Id at page 653.

3
4 The Respondents' attorney opposition to the Appellant's motion for an overlength
5 is misplaced because this Court has an inherent power to grant permission for an
6 overlength pursuant to RAP10.4 (b) for "compelling reasons". This Court should not
7 grant their motion to strike the Opening Brief of Appellant for "non compliance", and to
8 dismiss this appeal. The plaintiffs' attorney attempts to mislead this Court by stating that
9 the Appellant's recitation of the record is outside the record of proceedings ordered and
10 citations to published opinions. The Plaintiffs' attorney could not be more wrong. The
11 Statement of Facts and the citation of authority have been limited to the record of
12 proceedings and the unpublished opinions were provided to the trial court and were an
13 integral part of the pretrial proceedings and the trial. Much of the recitations and the
14 citations were carefully tailored to what was filed in the trial and requested by the
15 Appellant.

16 II. Facts.

17 The Appellant has complied with the Court's request when his first brief was
18 rejected. The Court provided a checklist for brief. In this Checklist, the Court itemized
19 the part of the Brief the Court has problems with. These areas were as follows:
20 (3)Assignment of Error RAP10.3(a); RAP 10.4(c) (5)Argument RAP 10.3(a) (7) Length
21 of the Brief (8) Failure to comply with provisions of the Rule of Appellate Procedure
22 related to font size, margins, or spacing. RAP10.4 (a) The Court did not seem to have
23 any problem with item (1) Title Page and Tables (2). Following this guideline, the
24 Appellant amended his second Brief to include "Assignment of Error", "separately
25 stated" and "Issues pertaining thereto" as the Checklist item No (3) required. The Court,
in item No (4) requested that "references to the record should be to specific pages in the

1 Clerks Papers (CP) or Report of Proceedings (RP) rather than to sub numbers or to
2 appendix". This request was complied with even though not all the requested CP have
3 been received and in keeping with Court imposed deadline of October 18, 2010, the
4 Brief was nevertheless submitted so as not to miss the deadline. Under item No (5) on
5 the Checklist, "Argument", the Court requested "(1) Record references and (2)
6 Authorities cited". This was complied with. Under item No (7), the Court requested that a
7 "A brief of appellant, petitioner or a pro se brief in a criminal case should not exceed 50
8 pages".

9
10 The Appellant filed a 65 page brief, and in keeping with provision of RAP 10.4
11 (b), filed a request for an overlength as the Rules of Appellate procedure required. This
12 Court has not made a ruling on that motion. The Appellant urges this Court to grant his
13 request for an overlength in the interest of justice. This case involves more than a civil
14 judgment. It involves the deception of the judge and the jury by two unethical lawyers
15 who have been "gaming the system" "by fabrication of evidence", "witness tampering",
16 "lying to court" and "filing frivolous allegations without good-faith basis and engaging in
17 conduct prejudicial to the administration of law". Both of the Attorneys have been
18 sanctioned. Both have been investigated by the Washington State Bar Association
19 (WSBA). Ms. Starczewski was sanctioned for filing frivolous allegations without good-
20 faith basis and engaging in conduct prejudicial to the administration of law. Mr. Bharti
21 was found both by Division 2, Court of Appeals of the State of Washington and Hon.
22 Judge K. Stoltz for lying to the Court and liable to severe sanctions. The WSBA, in their
23 investigation of Mr. Bharti, found there is "sufficient evidence of unethical conduct".
24 Anything coming from these attorneys or their clients should be taken with a grain of
25 salt. This is one of the reasons this Court should permit an Overlength Brief to properly

1 and completely put all the facts before this Honorable Court,
2 and not omit the truth the plaintiffs and their attorneys find
3 distasteful. The plaintiffs' attorney asserts that the first 45
4 pages are defective for lack of citation to the record as
5 required by RAP 10.3(a) (5). I will address the motion of the
6 plaintiffs according to how they presented their motion.

7 **They claim lack of citation to the record.**

8 The Statement of the case presented by the Appellant is just
9 that, "statement of the case" regarding the genesis of this case
10 and events leading to the criminal case and subsequent
11 conviction of Dr. Charles Momah and consequently this civil
12 suit. It is difficult to understand what the plaintiffs'
13 attorney has problems with. She can refute any part of that
14 Brief she believes is untrue.

15 **Pages 4** Page 4 simply narrates the genesis of this case.

16
17 **Page 5** The plaintiffs' attorney claims improper citation to
18 Superior Court case of Collier et. al v Momah Cause No. 05-2-
19 05525-1KNT, of which she was a co-counsel with Mr. Bharti. It
20 was the same trial court in this instant case that presided over
21 that case, Hon. Judge D. Fleck. The trial court heard argument
22 during the pretrial motion, Defendant's Memorandum in Opposition
23 to Plaintiffs' Motion in Limine on October 7, 2007 where the
24 plaintiffs sought to cross admit all the ER 404b witnesses from
25 that case into this one, without any further examination. The

1 trial court granted the plaintiffs' motions and the witnesses
2 were cross admitted in this trial from the Collier case. Clerk
3 Papers 371-386 Therefore Collier et. al.v Momah was a part of
4 the record of this trial. Collier v Momah also appeared on pages
5 5, 38 and 42. The appellant did not include its citation in CP
6 because he did not receive the CP on time.

7 **Page 6** Bharti v Ford et. al. Superior Court Cause No. 06-2-
8 03169-5 SEA was cited because both cases were part of the
9 pretrial hearing. In his opposition to consolidation on December
10 22, 2005, Dennis Momah had submitted documents which included
11 the three judges finding, Judge Lau, Judge Stoltz and Judge
12 Schapira findings of unethical conduct of the plaintiffs'
13 attorneys Mr. Harish Bharti and Ms. Starczewski. CP pages 5 to
14 7. Saldivar v Momah 145 Wn. App. 365,386, 186 P. 3d 1117 (2008)
15 is a published case that was cited because (1) It was one of the
16 examples of court's finding of Mr. Bharti's unethical conduct of
17 witness tampering, fabrication of evidence and lying to the
18 court, (2) Saldivar V Momah Pierce County Cause No.04-2-66777-3
19 cited on pages 44, 48 and 60 which dealt with Mr. Bharti's
20 sanctionable conduct was part of the Defendant's Memorandum in
21 Opposition to Plaintiffs' Motion in Limine of October 7, 2007.CP
22 380 The trial court denied defense request to admit the findings
23 of Hon. Judge Stoltz's finding that Mr. Bharti had tampered with
24 witness in that trial, Ms. Perla Saldivar, fabricated her
25

1 allegations of sexual assaults and lied to the court. The
2 rationale for citing these cases is to portray the unethical
3 character and lack of integrity of the plaintiffs' attorneys,
4 Mr. Bharti and Ms. Starczewski, and the quality of their cases
5 and evidence.

6 Page 7

7 The citation of the Gordon Codman v. Space Needle Corp. is
8 relevant in this case because (1) it is part of this trial, CP
9 pages 5 to 7, as explained above, it is one those ^{Cases} Dennis Momah
10 had submitted to the court on December 22, 2005 in his
11 opposition of motion to consolidate. Citation of Momah v Bharti,
12 144 Wn. 2d App.371, 182 P. 3d455,466 (2008) is appropriate,
13 especially if the plaintiffs and their attorneys are accusing
14 the appellant of serious unethical conduct of allowing his
15 doctor twin brother to impersonate him and assaults the
16 appellant's patients. The plaintiffs' attorney opposition to
17 these citations is disingenuous. Momah v Bharti is a published
18 case which can cited as an authority regardless of which ^{either} Dennis
19 Momah is involved in this case or not. Moreover, Dennis was part
20 of the trial, testified at the trial and the plaintiffs and
21 their attorneys all made false accusation against him which
22 implicates the appellant's character and integrity. Dennis Momah
23 was part of the jury instructions even though the same trial
24 judge had dismissed all the cases against him involving these
25

1 same plaintiffs. Because the appellant is trying to prove that
2 the plaintiffs' attorneys knowingly presented false evidence and
3 deceived the trial court and the jury, any authority that tends
4 to support that fact is relevant to this case. One of such cases
5 is Momah v Bharti where this very court, in its reinstatement of
6 that suit, found that the plaintiffs' attorney, Mr. Bharti, a
7 defendant in that case knew that the allegations he was making
8 against the Momahs were false at the time he was making them and
9 still persisted in making them to the press and public.

10 Page 8

11 The declarations from Ms. Sherry Wood, Attorneys Michelle Shaw
12 and Mark Johnson cited was submitted by Dennis Momah to the
13 court on December 22, 2005 opposition to consolidation. It was
14 accepted by the trial court as part of this case. And moreover
15 they implicate the plaintiff's attorney, Mr. Bharti unethical
16 conduct of witness tampering and the quality of the evidence
17 presented during the trial. This court would benefit from these
18 cases.
19

20 Page 9

21 What the plaintiffs' attorney calls "improper testimony" is a
22 summary of Ms. R. Burns medical record admitted in the trial as
23 Ex. 31. This court can verify the dates contained in the medical
24 record which ^{was} subject of extreme controversy during the trial.

25 The plaintiffs' attorney, Ms. Starczweski is making a futile

1 attempt to dissemble the facts and confuse this court. My
2 attorney was unaware of some these facts that are readily
3 available in the medical record.

4 **Page 10**

5 As explained above, Ms. Burns' medical and billing records were
6 admitted as Ex. 31. The citation to the criminal case refers to
7 the deposition and testimony of Ms. Burns on September 22, 2005
8 (Ex. 49) and October 24, 2005 (Ex. 48) respectively. Both were
9 admitted in this trial. The criminal trial was an integral part
10 of the trial that was referred to by both sides. Mr. Bharti
11 referred to the criminal case and trial extensively during all
12 the stages of the trial. He argued that the criminal conviction
13 of the appellant of Ms. Burns' charge should be included in this
14 trial. The defense opposed any inclusion of the criminal trial
15 in this trial and argued that the trial court bar any mention of
16 the criminal case in this trial. Because the trial judge denied
17 the defense's motion not to include but granted the plaintiffs'
18 motion to include, the criminal case became an integral part of
19 this trial. So any discrepancies or inconsistencies of Ms.
20 Burns' prior testimony in the criminal trial becomes an
21 impeachable evidence for the defense, that becomes evidence for
22 this appeal, especially when the appellant is trying to prove
23 the Use of Perjured evidence and testimony to obtain a verdict.
24
25

1 Both are evidence for appeal, the September 22, 2005 deposition
2 and the testimony on October 24, 2005 criminal trial.

3 On October 18, 2007 pretrial testimony of Ms. Burns', Mr. Bharti
4 referred extensively to the criminal case. e.g. RP of October
5 18, 2007 at page 5, 6. RP of October 25, 2007 at page 88.

6 Much of what the plaintiffs' attorney disagrees with is
7 "semantic". It appears that the plaintiff attorney is rather
8 using an "alternative route" to respond to the Appellant's
9 Opening Brief. The court should direct the plaintiff's attorney
10 to reply to the Opening and not waste the court's time in delaying
11 the inevitable, responding to the Opening Brief.

12 **Page 11**

13 The mention of Ms. Cathy Gonzales in the Brief was ^{to} present
14 evidence that was available, that the defense attorney could
15 have presented to the jury, but for defense counsel's
16 ineptitude, would have been offered to the jury. This evidence
17 was vital and exculpatory.

18 **Page 12**

19 "Ms. Burns took advantage of her missing records to fabricate
20 her allegations" is a true statement that was proven in the
21 Opening Brief. Ms. Burns' statement "Well, I kind of question
22 where you got them because I was told that these records don't
23 even exist". RP of October 25, 2007 at page 103. The defense
24 attorney alluded to this fact, the knowledge of her missing
25

1 medical records. RP of Oct. 2007 at 103. "Just like Mr. Bharti
2 coached her to lie" was exactly what Mr. Bharti did when he
3 interjected with a phony objection during defense cross
4 examination about the accuracy of the medical regarding her
5 dates of visits. RP of Oct. 25, 2007 at 105:

6 Your Honor, I have an objection. He should let the witness
finish. **This is the available records, not the actual records.**

7 The Court: Overruled. You may ask the question again.
8 (Defense) Q: Ms. Burns, are you disputing the accuracy of the
records, do you? (Ms. Burns) A. Um, I guess my question would
9 first be, **are these actual medical records?**

10 It is very clear from this exchange that Mr. Bharti improperly
11 influenced Ms. Burns's testimony, coaching a witness to lie to
12 the judge and jury, even under oath. This is proven from the
13 evidence presented in the Opening Brief that March 25, 2003 was
14 Ms. Burns first visit and Mr. Bharti told to her to testify that
15 it was not and that she had earlier visits prior to her surgery,
16 to explain her false testimony that she had **eight visits** prior
17 to surgery when she had **just one visit** and **six ultrasound**
18 examinations when she had **just one**. There is citation in the
19 records for this evidence.

20 **Page 13**

21 The plaintiffs' attorney continues to state that the criminal
22 records are not part of record of this case and not part of the
23 record of the appeal. This is just not true. The criminal case,
24 with its Ex. 48 - Rena Burns testimony in the criminal case (Oct.
25 19, 20 and 24 2005) and Ex. 49 - Rena Burns Deposition of Sept.

1 22, 2005 were admitted and referred to by the defense during the
2 cross examination of Rena Burns and was accepted by the judge.
3 RP of Oct. 25, at 115,116,117,118 and 119. The defense admitted
4 the criminal trial testimony of Ms. Burns as Ex. 48. RP of Oct.
5 25, 2007 at 116.

6 Q. (defense) And you talked about giving testimony at the
7 criminal trial. At the criminal trial, you told the jury then
8 there was two weeks between the first and the second visit, do
9 you recall that? Id at 115-116.

10 A. No, I don't recall that.

11 (Defense) Mr. Mungia: I would like to ---again....publish the
12 trial testimony of Ms. Burns that you will find under tab 4 of
13 your notebook. I will have this marked; I believe this will be
14 49? 48.

15 **The Clerk: Defense Exhibit 48 is marked.**

16 Q. You recall, I think you said you said you gave testimony in
17 the criminal trial; is that correct?

18 A. Yes. Q. I am going to show the transcript....And this
19 testimony was given on October 19 ---oh October 20, 2005.And I
20 am referring you to page 82 on that day, starting at line 82.

21 Question, "So did you -"

22 A. Line 82? There is only 25 lines.

23 Q. I am sorry, line 8 on page 82.... Id at 116....

24Q. That was the testimony you gave at the criminal trial; is
25 that correct?

A. Yes, yes, yes. Id at 117.....

Q Do you recall, at the criminal trial you were adamant you did
give the video on that first exam.

A. I don't recall that, I don't know.

Q. You have the transcript right in front of you. Go to date of
October 24, 2005...

A. what page?

Mr. Mungia: Do you have that, Mr. Grotke, the October 24, 2005
transcript?

Q. Go to page 18. At the criminal trial, under oath, you were
asked this question: Question, "Now, when you first--"

A. What question number are you on, please? Id at 117,118.

The September 22, 2005 deposition was admitted as Ex. 49 RP of

Oct. 25, 2007 at 119. **Clerk: Defense Exhibit 49 has been marked.**

1 It is very clear from the above testimony at this trial that the
2 criminal was part of this trial. Infact all the exhibits not
3 accepted were explicitly refused by the trial court. The above
4 explanation refutes all the assertion by the plaintiffs'
5 attorney that the criminal trial was not part of this trial and
6 not part of this appeal. It is.

7 **Page 14**

8 Yes, this testimony was presented to the jury. But the jury was
9 deceived by the plaintiffs' attorney, Mr. Bharti and the
10 plaintiff, Ms. Burns. It was not that she was inconsistent or
11 that she was not credible, she lied to the jury and her
12 attorney, Mr. Bharti bolstered her false testimony by lending
13 his own credibility to her false testimony as explained on page
14 10 of this motion, thereby deceiving the jury. The jury did not
15 just choose between two conflicting testimonies, they were
16 deceived.

17
18 **Page 15**

19 The evidence on page 15, her billing record is a part of her
20 medical record, Ex. 31. It was mistakenly stated as Ex. 3 in the
21 Opening Brief.

22 **Page 16**

23 This is one of those remarkable display of witness tampering,
24 fabrication of evidence and deliberate deception of the judge
25 and jury. Contrary to what the plaintiffs' attorney stated, her

1 testimony detailed on page 16 of the Appellant's Opening Brief
2 was not subjected to cross examination by the defense because
3 the defense attorney was unaware that the testimony Ms. Burns
4 was giving about paying \$5,000 out of pocket was a false and
5 fabricated testimony manufactured with the tacit endorsement of
6 her attorney, Mr. Bharti. Because Ms. Burns had testified
7 earlier at the deposition of the criminal case that she paid
8 nothing out of pocket (Opening Brief at page 17), it is with
9 help of Mr. Bharti that she fabricated this key false evidence.
10 The plaintiffs' attorney states that "NO \$5,000 amount was
11 awarded by the Jury to Ms. Burns, so this testimony is not
12 relevant to any issue in this appeal". She misses the point.
13 Because one of the Issues in this appeal the appellant is trying
14 to prove is the **"Use of Perjured and Fabricated Testimony and**
15 **Evidence to obtain a Verdict"**, any evidence that supports this
16 fact is a bona fide issue in this appeal. This is one of those
17 instances. This evidence of fabrication by Ms. Burns and her
18 attorney becomes important because in a civil suit where the
19 plaintiffs and their attorneys are asking for money damages,
20 **this was a powerful evidence that was provided to the jury but**
21 **it was false. Above all, it was not subjected to any cross**
22 **examination because the defense attorney did not know it was**
23 **false testimony, because of his ineffective assistance by**
24 **inadequate investigation.** Ms. Burns obtained a \$600,000 jury
25 award by providing false and fabricated evidence that deceived

1 the jury, in the same way she obtained the criminal conviction.
2 It is very important to note that Ms. Burns and her lawyer, Mr.
3 Bharti chose a mode of payment that is unverifiable, **CASH** as the
4 form of payment for the \$5,000 to conceal this false and
5 fabricated testimony. This is further explained on page 17 of
6 the Opening Brief.

7 **Page 18**

8 All the detailed explanations on pages 8, 10, 11 and 12 of this
9 motion about the criminal case apply here. It is obvious that
10 that Ex. 48, the transcript of deposition of Ms. Burns (not of
11 Charles Momah as the plaintiffs' attorney erroneously stated in
12 her motion) **was admitted** at the trial and is therefore properly
13 part of this appeal. Ms. Burns testified in detail about
14 allegations of a second visit that never was. Her second visit
15 was the surgery. Because Ex.48 was admitted at this trial (**see**
16 **page 11 -"Clerk: Defense Exhibit 48 is marked".**), it is relevant
17 in this appeal.
18

19 **Page 19**

20 Same explanation as on page 18 about the admission of the
21 criminal case in this trial.

22 **Page 20**

23 Exhibit 49, Ms. Burns testimony at the criminal trial was
24 admitted at this trial as explained on page 11 - **"Clerk: Defense**
25 **Exhibit 49 has been marked"**.

Page 22

1 This contains reference to the submitted Clerk Papers from page
2 232 to 272, the lawsuit Ms. Burns' attorney, Mr. Bharti filed on
3 her behalf which stated that March 25, 2003 was her visit,
4 followed by surgery on March 27, 2003 and then March 31, 2003.
5 Because Mr. Bharti knew the correct dates and sequence of visits
6 and coached her to lie under oath that she had 8 visits before
7 surgery and 6 ultrasounds, this is witness tampering,
8 fabrication of evidence and deliberate deception of the judge
9 and jury. This is what the appellant is trying to prove. Any
10 evidence that supports this fact is relevant to this appeal.
11 Media publicity was part of this case because it was discussed
12 extensively during voir dire.

13 **Page 23**

14 This is part of the criminal case and testimony she gave in the
15 admitted Exs. 48 and 49. This is intended to show the extent of
16 Ms. Burns' fabricated allegations.

17 **Page 24**

18 Again, the criminal was admitted in this trial as explained on
19 pages 8, 10, 11 and 12.

20 **Page 25**

21 The plaintiff, Ms. Burns and her attorney, Mr. Bharti deceived
22 the jury by claiming that the surgery, Tubal reanastomosis that
23 she never had, did not help her. Further, she claimed she paid
24 \$5,000 which was a lie. Page 25 is a statement of the **fact of**
25 **the case**, Ms. Burns and her attorney's version is the **fiction of**

1 **the case.** The record shows that her insurance company was billed
2 for diagnostic laparoscopy, diagnostic hysteroscopy and
3 endometrial sampling, as the medical record also shows ^{and} not tubal
4 reanastomosis. But she told the jury she had tubal
5 reanastomosis, which was false testimony. At the defense
6 deposition, she admitted Ex. 48, she even testified that she was
7 charged for laparoscopy, not tubal reanastomosis. This is the
8 relevance of that testimony on page 25. The plaintiff attorney
9 is trying to dissemble the facts and confuse this court, when
10 she states, "The prior argument about whether Ms. Burns paid
11 \$5,000 does not appear to be connected to the \$11,000 insurance
12 charge by Charles Momah which Ms. Burns admits she did not pay".
13 **Of the \$11,000 bill sent to her insurance of which the insurance**
14 **paid a fraction of, Ms. Burns told the jury she paid \$5,000 of**
15 **this bill which is false because she paid nothing.** This Court
16 should not be confused by the plaintiffs' attorney clever
17 disguise.
18

19 **Page 26**

20 Ms. Butler's testimony is very clear. RP of Nov. 5, 2007. She
21 testified that she had never witnessed any inappropriate
22 behavior from the appellant with the patients during her almost
23 three year tenure working with the appellant as the anesthetist.
24 She said so in 2003 when she was questioned by the Medical
25 Quality Assurance Corporation (MQAC) of the Department of
Health. The testimony of Ms. Butler is very pertinent. Ms. Burns

1 has never alleged any improper conduct during the surgery in
2 this case or the criminal case because she knew there was
3 another person present to give anesthesia. The plaintiffs'
4 attorney continues to assert that the appellant has ordered
5 incomplete record. The Clerk Papers and the Report of
6 Proceedings the appellant has ordered are substantial records of
7 the case from which a fair minded person can make a
8 determination. As this Court has ruled, the plaintiffs should
9 order additional records they deemed fit to supplement the
10 record at their own expense. The plaintiffs' attorney misses the
11 point of the Footnote on this page, to illustrate the extent of
12 Ms. Burns' fabrications. When Ms. Burns' filed her lawsuit and
13 amended it in Nov. 2005, she stated, "On numerous visits to the
14 office of Dr. Charles Momah, plaintiff was in fact examined and
15 treated by someone other than him". CP at 233. But she told the
16 jury in the criminal case that Dennis Momah saw her only once,
17 at the fourth visit, for wound check, which was a lie. Dennis
18 never saw or treated Ms. Burns. This is important because the
19 appellant is trying to prove that Ms. Burns obtained the
20 conviction in the criminal case and her verdict in this civil
21 suit by deliberate deception of the jury. Additionally, Ms.
22 Burns said that it was Mr. Bharti who told her it was Dennis who
23 treated her, planting the seed of fabrication of doctor
24 impersonation and the other allegations. This is witness
25 tampering.

Page 27

1 The issue of Bankruptcy is very relevant for two reasons: (1)
2 Ms. Burns lied under oath to obtain a bankruptcy discharge, (2)
3 the trial court abused its discretion by refusing to dismiss Ms.
4 Burns' (and Ms. McDougal's) lawsuit because as she did not
5 disclose this lawsuit in that proceedings, collateral estoppel
6 applies. To compound this mistake, the trial court barred its
7 introduction into the trial. This is part of the pretrial
8 hearing and motions.

9
10 Pages 27- 34, Lisa McDougal

11 The complete transcript of Ms. McDougal was ordered, both direct
12 and cross examinations. The Official Court Transcriptionist, Mr.
13 Michael Townsend was paid and asked to send a copy each to this
14 court and the plaintiffs. If the plaintiffs' attorney has not
15 received it, she should request it from the transcriptionist.
16 The plaintiffs' attorney states, " although the medical records
17 span Exhibits 6,7 and 8, the only references are to Exhibit 8"...
18 Again she misstates the record. While Ms. McDougal medical
19 record were referenced as exhibit 6, pages 2 to 101, exhibit 7,
20 pages 2 to 68 and exhibit 8, pages 1 to 244, only exhibit 8 is
21 the complete record and that was the record the appellant
22 ordered, **the complete record**. Exhibits 6 and 7 are part of
23 exhibit 8. **Again, the direct examination of Ms. McDougal was**
24 **ordered**. The medical records of all the plaintiffs are still
25

1 being awaited. The plaintiffs' attorney citation of State v Drum
2 is misplaced, because the complete trial transcript as well as
3 the complete medical records of Ms. McDougal was ordered. As
4 Commissioner Mary Neel noted on September 10, 2010, "The time to
5 file objection on the ground that the appellant provided less
6 than a complete record has passed". If the plaintiffs' belief
7 that there are additionally records, she should provided those
8 to this court as the Commissioner directed.

9
10 **Page 31**

11 The Citation of Momah v Bharti, 144 Wn. App. 731, 182 P. 3d
12 455,466 (2008) is
13 appropriate because it is a published case that involves the key
14 players in that trial and therefore part of this appeal. It is
15 relevant to prove one of the elements of this appeal, Use of
16 Perjured Evidence and testimony to obtain a Verdict. The
17 declaration of Ms. Michelle Shaw is part of this trial as
18 explained on page 8 of the Opening Brief. It was submitted by
19 Dennis Momah to the trial court in his opposition to
20 consolidation of the three cases.
21

22 **Page 33**

23 Citation of the case laws regarding "vulnerable" adult regarding
24 Ms. McDougal is relevant because that was what the trial judge
25 said as the basis for her ruling that Ms. McDougal allegation of

1 consensual relationship with her physician was medical
2 malpractice." [t]hat a physician having power and authority
3 cannot obtain consent for sexual activity from a patient who, in
4 that relationship, is a vulnerable adult". RP of November 7,
5 2007 at page 3. That trial court's ruling hinged on Ms. McDougal
6 being a "vulnerable adult" and therefore pertinent case laws
7 cited, Kaltrieder v Lake Chelan Community Hospital, 153 Wn. App.
8 762, 224 P. 3d 808 (2009), Simmons v U.S., 805 F. 2d 1363 (9th Cir.
9 1986), Niece v Elmview Group Home, 131 Wn. 2d 39, 929 P. 2d
10 420 (1997) are appropriate. These authorities support the fact
11 that Ms. McDougal was not a "vulnerable adult" and no other
12 court has made similar rulings.

13 **Page 34**

14 Ms. McDougal, during direct examination by Mr. Bharti testified
15 that Kathie Gonzales told her about "powerful family" and "mafia
16 connection" of the Momah family. RP of Nov. 1, 2007 McDougal
17 testimony at pages 83, 84, 85 and 86. It was not from a "defense
18 deposition" as the plaintiffs' attorney asserted. The
19 plaintiffs' attorney should refer to that record of the
20 proceedings.
21

22
23 **Page 34 to 37, Cherie Rule**

24 Footnote 19 on page 35 is the exact citation from the record of
25 what Ms. Rule testified that Mr Bharti did to improperly

1 influence her testimony, fabricate evidence and tampered with
2 her testimony during her pretrial hearing of Oct. 18, 2007. RP
3 Oct. 18, 2007 at page 68. This is very important to prove
4 witness tampering and fabrication of evidence by the way it was
5 obtained. First, she was in the room with her husband and Mr.
6 Bharti, then Mr. Bharti excludes her husband and then shows her
7 a video. This is the same pattern of behavior that Mr. Bharti
8 had used earlier with Ms. Wood, Ms Burns and Ms. Saldivar. He
9 excluded her husband because he felt it would be easier to
10 influence her testimony in the absence of her husband and he did
11 not want to leave any witnesses to his crimes of witness
12 tampering.

13 **Page 36**

14
15 The Footnote 20 on page 36 was the finding of Hon. Judge Stoltz
16 that was part affirmed and part reversed on appeal. The
17 Appellate Court, Division Two in Saldivar v Momah, 145 Wn. App.
18 365,386, 186 P.3d 1117(2008)noted the following:

19 The trial court granted the motion to dismiss because it found that Perla's testimony was
20 not credible for several reasons. First, the trial court noted that Perla "was as outraged
21 by [Dr. Momah's brusque] treatment of her as she was by the apparent alleged sexual
22 assault." 5 RP at 705. Second, the trial court found that Perla's testimony was
23 inconsistent and that "she has made too many sworn statements to too many people
24 with too many variations for this court to know what to believe." 5 RP at 705. Third, the
25 trial court found that Perla's testimony was impermissibly tainted because Bharti
showed her a videotape recording of Charles during the lunch hour of her testimony,
shortly before she described the differences between the two brothers to the court.
Lastly, the trial court found that Perla lied on the stand when she stated that she had
"absolutely no contact with [MQAC]" after 2003, when she had "filed a new complaint .
. . {186 P.3d 1128} with the assistance of her attorneys who . . . assured [the trial court
that] they had no knowledge of and had never participated in preparing that additional
complaint." 5 RP at 706.

1 The trial court concluded that Bharti was "an active and knowing participant in the
2 fabrication of Perla Saldivar's ever changing accusations," and that he signed both the
3 initial and amended complaint and responses to interrogatories without a reasonable
4 belief that they were true and well grounded in fact. CP at 1530. The trial court also
5 found that Bharti filed "irrelevant and salacious declarations . . . for the improper
6 purpose of eliciting media/public attention, to harass and damage the reputation of Dr.
7 Momah, and to . . . gain advantage in other litigation." CP at 1530-31. Lastly, the trial
8 court found that Bharti violated a King County protective order and affirmatively lied to
9 the court. Id 186 P. 3d at 1128

10 **The Momah brothers also point to several other allegations of misconduct. For
11 example, the Momah brothers point to the trial court's finding that Bharti
12 "actively participated" in Perla's fabrication and ever changing story. But the trial
13 court did not enter specific findings, only general findings which are insufficient
14 to permit meaningful review. In re Dependency of C.R.B., 62 Wn. App. 608, 618, 814
15 P.2d 1197 (1991) (quoting In re Det. of LaBelle, 107 Wn.2d 196, 218, 728 P.2d
16 138 (1986)). Although the findings are insufficient to support sanctions based on
17 Bharti's alleged participation in "fabricating" Perla's story, Bharti may be subject
18 to sanctions for affirmatively lying to the court regarding the Saldivars' second
19 MQAC report, filing documents to further other litigation and the like, if there is
20 sufficient evidence and findings to support the sanctions. Id at 1139**

21 Given the above findings by the appellate court it is unbelievable to understand how the
22 plaintiffs' attorney could claim that the appellate court vacated the findings of Judge
23 Stoltz. It is true that the appellate reversed part of the ruling of the judge. But it was
24 because "the trial court did not enter specific findings, only general findings which are
25 insufficient to permit meaningful review", as described above.

Regardless of the Appellate Court finding in Saldivar v Momah about witness
tampering and fabrication of evidence, what is before this court is to decide whether Ms.
Burns' testimony is fabricated and whether Mr. Bharti was a knowing participant in this
fabrication. All the other instances of fabrications and witness tampering detailed with
all the plaintiffs and witnesses particularly Ms. Ramos are evidenced in the Opening
Brief and it is for this Court to keep an open mind and evaluate all the facts of this case
and the plaintiffs' prior testimony particularly Ms. Burns and the prejudicial tampering
influence of their attorneys and to use the wisdom of Solomon to decipher the truth.

1 When it does, the total picture would be clear and not be clouded by smokescreen and
2 smog that the plaintiffs and their attorneys have been casting over this case and the
3 criminal case as it relates to Ms. Burns. It is about time that the truth be told regarding
4 the impermissible influence of the plaintiffs' attorneys, particularly Mr. Bharti on the
5 plaintiffs', **particularly Ms. Burns** and the witnesses, **particularly Ms. Ramos**. This
6 Court should consider the totality of Ms. Burns' testimony and make its own
7 determination about the appellant's assertions of the truth and the attorneys' witness
8 tampering and fabrication of evidence and knowing use of perjured testimony to obtain
9 a verdict on the part of the plaintiffs. In all the instances this court has dealt with Mr.
10 Bharti, (Momah v Bharti and Bharti v Ford et. al.) the one recurring subject is Mr.
11 Bharti's veracity and unethical conduct. Both attorneys have been sanctioned by the
12 Washington State Bar Association (WSBA). In Ms. Starczewski's case, the WSBA
13 sanctioned her for "filing frivolous allegations without good faith basis and engaged in
14 conduct prejudicial to the administration of law". Over and over the plaintiffs' attorney
15 continues to state, "this testimony was subject to cross examination and jury was free to
16 choose which to believe". She failed to appreciate the fact much of the testimony
17 deceived the jury and some of the time, the defense attorney was even unaware the
18 plaintiffs and their witnesses were giving false testimony, which were unchallenged by
19 the defense attorney, like the \$5, 000 payment Ms. Burns claimed she made. The
20 plaintiffs' attorney failed to appreciate the Supreme Court of Washington ruling in In the
21 Matter of Disciplinary Proceedings of Stroh, 97 Wn. 2d 289, 644 P. 2d 1161, 1989
22 Wash. LEXIS 1357, "In sum, the legal system is virtually defenseless against the united
23 forces of a corrupt attorney and a perjured witness". Stroh 97 Wn. 2d at page 295-96.
24
25

Page 37 -41 Jenny Ramos

1 Again the plaintiffs' attorney misses the point. The appellant was not only trying to
2 portray the fabricated testimony of Ms. Ramos, but more importantly, the subornation of
3 perjury and fabrication of evidence. Mr. Bharti and Ms. Ramos fabricated her whole
4 testimony with the involvement of Ms. Kelly Acker as the person Ms. Ramos worked
5 with, a person whom Ms. Ramos could never have known but for Mr. Bharti because
6 Ms. Acker is Mr. Bharti's client. Ms. Ramos worked for me in 1996 while Acker was my
7 patient in 1998. When Ms. Ramos could not remember the name of the person she
8 worked with, Mr. Bharti fabricated the testimony. It was to rebut Ms. Maitland testimony
9 that during her tenure that Ms. Maitland has never witnessed any doctor impersonation.
10 Opening Brief at page 39. Mr Bharti vociferously represented to the trial court that Ms.
11 Ramos had worked for more than one year ^{when} he knew she worked for one week. Opening
12 Brief at page 38. This is deliberate deception of the trial court that allowed the testimony
13 of Ms. Ramos which deceived the jury. The plaintiffs' attorney's repetition that the jury
14 was free to chose who to believe. They were deceived. The evidence of her one check
15 of \$255 that is being submitted with this brief and her preposterous tale is sufficient to
16 establish her falsehood and the subornation of perjury. The plaintiffs' asserts that Ms.
17 Ramos was unwilling to testify at trial because she knew she was committing ~~of~~ perjury
18 and "the sin of bearing false witness" and its consequences. Both of these are enough
19 to give her cold feet. It further buttresses the fact that Ms. Ramos was not doing this to
20 her own benefit but for the benefit of another, Mr. Bharti since the thrust of her whole
21 testimony is doctor impersonation and sexual assaults by the Momahs, to help with Mr.
22 Bharti defend his impersonation lawsuit. All through her testimony of November 7, 2007,
23 when she cross examined by Mr. Bharti about the duration of her employment, she
24
25

1 gave the following testimony:

2 Q. (by Bharti) Can you tell us the time frame when you worked?

3 A. Um, I believe it was '93,'94. '94, around '94. Been a while.

4 Q. Okay. Let me --- do I have the --

5 THE CLERK: Plaintiff's Exhibit 81 has been marked. RP of Nov. 7,
6 2007 at page 13. (Exhibit 81 is the Deposition of Ms. Jenni
7 Ramos on June 21, 2005)

8 Q. Ms. Ramos, please take a look at this exhibit, 81.

9 Mr. Bharti: Your, Honor, this copy is for you.

10 Q. Ms. Ramos, do you recall giving a deposition on June 21st,
11 2005?

12 A: Not really, but I must have. Yeah, I do.

13 Q. The date is--

14 A. Yeah.

15 Q. This. Okay. And if that would refresh your recollection---

16 A. Thank you.

17 Q. The - if you look at page 10, page 10 and line 7. Now, does
18 it help to refresh your recollection that you worked for about a
19 year, from January of '96 to March of '97?

20 A. I was thinking about when I got out of school, sorry.

21 Q. And you worked as a full time employee for Dr. Momah at that
22 time?

23 Mr. Mungia: Objection, your Honor, leading....

24 The Court: Sustained. RP of Nov. 7, 2007 at page 14.

25 A. You mean how many hours did I work? I worked as a full time
employee.

Q. Yes, thank you. And Ms. Ramos, when you were working as a
full time employee in '96,'97, did you know Dennis Momah?

A. Yes. RP of Nov. 7, 2007 at page 15.

It is clear from the above testimony that Ex. 81, Deposition of

Ms. Ramos on June 21, 2005 was admitted at the trial by the

plaintiffs themselves and the plaintiffs' attorney is misleading

this court when she states otherwise. The defense admitted

Exhibit 83.

Q. (by defense) And you actually worked for Dr. Momah for a
total of three months, not one year; isn't that correct?

A. Actually, as an employee?

Q. Correct.

A. Not counting the externship?

Q. Correct.

A. Yeah, I think the total time was about --- could have been
six and nine months, yeah...

1 THE CLERK: Defense Exhibit 83 has been marked (Ex. 83 is the
Federal Way Police Deposition of Ms. Ramos on Sept. 19, 2003).

2 Q. Do you recall giving a statement to the Federal Way Police in
September of 2003?

3 A. Yes RP of Nov. 7, 2007 at page 26.

4 Q. (line 11, page 27, referring to her Federal Way Police
interview) You were asked a question, "And how long did you work
5 for Dr. Momah?" You responded, "Um, it was actually only three
months."

6 The defense was unaware that Ms. Ramos actually worked for a
7 week and did not do her externship with me, but somewhere else.

8 The defense also referred to Exhibit 82, the declaration she
9 signed under in Mr. Bharti's office at Mr. Bharti's request.

10 Q. (by defense) So the declaration that is Exhibit No. 82, that
you signed under oath, under penalty of perjury, two years
11 later, when you said , "I was a medical assistant for Charles
Momah for approximately one year in 1996," that was false;
12 correct?

13 A. I wouldn't say false, it was my recollection at the time. It
had been a few years, yeah.

14 Q. And you actually wrote this declaration in Mr. Bharti's
office; isn't correct? The court overruled Bharti's objection.

15 Q. You can answer the question.

16 A. To my recollection, I think I did do it in his office. RP of
Nov.7, 2007 at page 29.

17 The defense showed that Mr. Bharti was the architect of the
18 declaration he used to deceive the judge into allowing Ms.
19 Ramos' perjured and fabricated testimony.

20 Q. You have Exhibit 81 before you, the deposition testimony that
you gave previously; is that correct?

21 A. Yes.

22 Q. Turn to page 56. Look at line 10. Question, "Did Mr. Bharti
ask you to write a declaration?" Answer, "Yes." Does that
refresh your memory to the fact it was Mr. Bharti who asked you
23 to write this declaration? Mr. Bharti's objection was overruled.

A. If that is what I said at the time, then, yes.

24 Q. And Mr. Bharti didn't tell you why he needed it, did he?

A. Not that I recall.

25 Q. And you didn't ask him why he needed the declaration, did
you?

1 A. Not that I recall.

2 Q. Now, you were never introduced to Dr. Dennis Momah, were you?

3 A. No. RP of the Nov. 7, 2007 at pages 30, 31.

4 It is evident from this exchange that it was Mr. Bharti who
5 requested Ms. Ramos' declaration and testimony, and it was Mr.
6 Bharti who prepared and fabricated the contents of that
7 declaration and testimony for Mr. Bharti's benefit and not to
8 the benefit of Ms. Ramos, unless Mr. Bharti rewarded her for
9 those services. It is evident that Ms. Ramos and Mr. Bharti both
10 lied when they declared that she worked for fourteen months and
11 lied to the jury. Because it was Mr. Bharti that sent Ms. Ramos
12 to the Federal Police on September 19, 2003 when she testified
13 to the police that she worked for three months, (which is a lie)
14 Mr. Bharti knew that Ms. Ramos was lying when she told the jury
15 that she worked for fourteen months. (See footnote 21 on page 39
16 of the Opening Brief) This is precisely what the appellant is
17 trying to prove to this Court, the knowing use of perjured
18 testimony and fabricated evidence to obtain a conviction and a
19 verdict. This is a material evidence. It is a constitutional
20 error, a violation of the Fourteenth Amendment. Again the focus
21 of the appellant's argument is to show witness tampering,
22 subornation of perjury and fabrication of evidence to the
23 deliberate deception of the judge and the jury. Whether the jury
24 believed Ms. Ramos or not is immaterial. This case involves the
25 unethical conducts the plaintiffs, their witnesses and their

1 attorneys have perpetuated on the justice system in this case
2 and the criminal case, to win a criminal conviction to enable
3 them pursue civil suits and insurance money from the fruits of
4 their illegal conducts.

5 **Page 39-40**

6 The plaintiffs, attorney continues to assert, "Ex. 83 Jenny
7 Ramos interview. This exhibit was apparently not admitted by the
8 trial court, and is not appropriately before this Court". This
9 ~~is~~ obviously is not true from the above explanation on page 24.
10 Exs. 81, 82 and 83 which are deposition of Ms. Ramos on June 21,
11 2005, her declaration that Mr. Bharti prepared and her testimony
12 to the Federal way Police respectively, were admitted at the
13 trial and are part of this appeal. The plaintiffs' attorney is
14 trying to mislead this court. The trial court granted these
15 exhibits and their content presented to the jury by both the
16 defense and the plaintiffs' attorneys. Similarly, exhibits 48
17 and 49, the criminal trial testimony of Ms. Burns and the
18 pretrial defense deposition of Ms. Burns were admitted by the
19 trial court. They are part of this appeal.

21 **Pages 40-41**

22 The introduction of Ms. Acker here is ~~to~~ merely to portray the
23 prejudicial and witness tampering influence of Mr. Bharti with
24 the fabrication of Ms. Acker as the person Ms. Ramos worked
25

1 with. This is to illustrate further the theory of the
2 appellant's case, the Use of Perjured and fabricated testimony
3 and evidence to obtain a conviction and a civil verdict. The
4 appellant by this motion request the supplementation of the
5 record with Ms. Kelly Acker's testimony.

6 **Pages 41 -42**

7 The plaintiffs' attorney asserts, "Charles Momah fails to state
8 why it is insufficient to have Eric Grotke meet him in jail,
9 rather than the lead counsel, Salvador Mungia". Both attorneys
10 displayed the same unwillingness to confer with the appellant
11 prior to the trial. As explained on pages 41 and 42 in the
12 Opening Brief, there was a fee dispute, and after two letters to
13 them, all the pretrial preparation was a 30 minute phone call
14 with Mr. Grotke. I cite the Collier case because both counsels
15 represented me in that case. They both came to see on numerous
16 occasions and there was adequate pretrial preparations and I won
17 that case.

18
19 **Page 44**

20 Because Hon. Judge Stoltz ruling of **May, 2006** in Saldivar v
21 Momah was the available evidence at the time of this trial in
22 **October 2007**, so it was pertinent to this case, the trial and
23 therefore this appeal. The Court of Appeals affirmed in part and
24 reversed in part in **August 2008**. The trial court denied the
25 defense this vital evidence, the finding of Judge Stoltz that:

1 "The contradictions and inconsistencies in Ms. Saldivar's
2 testimony were some of the most pronounced this Court has ever
3 seen. This Court finds that Perla Saldivar knowingly and
4 intentionally fabricated her allegations against Dr. Dennis
5 Momah and Dr. Charles Momah". At page 2. "This Court finds that
6 Harish Bharti knowingly and in bad faith lied to this Court at
7 the April 28, 2006 pretrial conference". At page 12. "This Court
8 finds that Harish Bharti had reason to know, prior to his filing
9 that the complaint in this action, that the Saldivars' claim
10 were not well grounded in fact. In addition, this Court finds
11 that Harish Bharti was an active and a knowing participant in
12 the fabrication of Perla Saldivar's ever changing accusations..."
13 At page 14. "This Court finds that Harish Bharti amended the
14 complaint in this matter to bring Charles Momah into this case
15 as a defendant without any reasonable basis in fact to do so..."
16 at page 15 "This Court finds that Marja Starczewski materially
17 assisted Harish Bharti in his pursuit of this frivolous action
18 in reckless disregard of the truth [and] falsity of the claims
19 being asserted. "The Court has received no credible evidence
20 that Dr. Charles Momah ever saw or treated Perla Saldivar" .at
21 page 17. The Honorable Katherine M. Stoltz FINDING OF FACT AND
22 CONCLUSIONS OF LAW May 24, 2006.

23 Contrary to what the plaintiffs' attorney stated, Dennis Momah
24 was part of the trial, testified at the trial in his own defense
25 and was part of the jury instruction. Because the appellant is
trying to prove that the plaintiffs' attorneys were knowing
participants in the fabrication of the plaintiffs' allegations
particularly Ms. Burns, any evidence that supports this theory
is relevant in this case especially the ones that involves
Charles and Dennis Momah and more importantly the ones that
involve the plaintiffs' attorneys, Mr. Bharti and Ms.
Starczewski. Citations of the Superior Court cases, (1) Codman v
Space Needle Corps et. al, Superior Court Cause No. 04-2-17911-
SEA, (2) Bharti v Tim. Ford et. al, Superior Court Cause No. 06-
2-03139, (3) Saldivar v Momah, Pierce County Court Cause No.04-

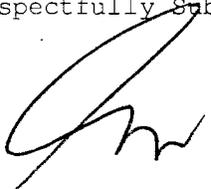
APPELLANT'S OPPOSITION TO PLAINTIFFS'
MOTION AGAINST OVERLENGTH BRIEF,
MOTION TO STRIKE BRIEF OF APPELLANT 30

Dr. Charles Momah, Layman
Unit H A9, CRCC
P. O Box 769
Connell, WA 99326

AND MOTION TO DISMISS

1 2-66777-3 are all cases dealing with Mr. Bharti and Ms. Starczewski and their
2 unethical conducts. Any evidence that is relevant and supports this fact is
3 pertinent in this case especially if it had been submitted during the course
4 of this litigation in the pretrial period and the plaintiffs and the trial
5 court received them as well. See judge Schiapira's ruling in Codman v Space
6 Needle Corps. et. al at CP 5, 6. The other opinions, Judges Lau and Stoltz
7 will follow as attachments. The appellant will present to this Court all the
8 admitted evidence it needs that paints a complete picture for this Court to
9 make a determination in this case. To the contrary, the plaintiffs' strategy
10 is to exclude as much evidence as they can, to shade the truth, throw as much
11 smog and smoke screen and leave this Court in the dark. This Honorable Court
12 should resist this tactics.

13
14 Respectfully Submitted this day November 8, 2010



15
16
17 Dr. Charles Momah, Pro se appellant

Ms. Gonzales
7/1/2005
Deposition

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

-vs-

04-1-05925-5KNT

CHARLES MOMAH,

Defendant.

Deposition Upon Oral Examination

of

CATHY GONZALES

9:30 a.m.

July 1, 2005

600 University Street

Seattle, Washington

Cheryl Macdonald, RMR, CRR
Court Reporter

Moburg & Associates
(206) 622-3110

MOBURG & ASSOCIATES (206) 622-3110

1 Q. At any time did you ever see Dr. Momah
2 perform a hands-on procedures where he would have to
3 touch the genitalia of women without wearing his
4 gloves or did he always wear his gloves?

5 A. I think that he had his gloves on. He put
6 them on when we started. I didn't ever see them come
7 off.

8 Q. Okay. And then did you see him use the
9 ultrasound probes?

10 A. Correct, yes.

11 Q. And were you present --

12 A. Yeah.

13 Q. -- when he would use them?

14 A. Yes.

15 Q. Realizing that you're not trained
16 specifically in usage, was there anything unusual that
17 you saw when he was using the probes?

18 A. To my knowledge, no. But I did not like
19 doing that and I did go to him and specify, I don't
20 want to work there because I was sick of looking at
21 women with their private parts.

22 Q. So that was your personal -- I mean, not
23 that anything was wrong.

24 A. My personal problem.

25 Q. Sort of like some people don't like to see

1 blood?

2 A. Correct.

3 Q. Now I have a description --

4 A. By then he told me to -- he said to look
5 away, to act busy. Just be in the room.

6 Q. If you had a personal problem?

7 A. Yeah, because I was accompanying him right
8 there at the end. I mean, I just didn't -- I didn't
9 want to do that no more. I was uncomfortable for my
10 own self.

1 message or anything like that --
 2 A. Who?
 3 Q. Mr. Bharti. He's that attorney who was on
 4 TV who tried to call you.
 5 A. Oh, yeah.
 6 Q. Did he indicate that he was going to sue
 7 you if you didn't cooperate?
 8 A. Yes.
 9 Q. Tell me about that.
 10 A. He threatened me, actually.
 11 Q. Over the phone?
 12 A. Uh-huh, yes.
 13 Q. Were you on the phone or was it a message
 14 that he left?
 15 A. I was on the phone, and he told me that he
 16 was going to sue me if I didn't help the girls that he
 17 was representing, but he wasn't going to represent me.
 18 He needed me for information for them.
 19 Q. And he threatened to sue you?
 20 A. Yeah. I got scared.
 21 Q. How do you know it was him?
 22 A. That's a good question. I'm easy to fool,
 23 I guess.
 24 Q. Did he identify himself as Mr. Bharti?
 25 A. Uh-huh. He identified himself, and I

1 really believed it. At that time I had spoken to a
 2 few lawyers people.

25 Q. At any time did Mr. Bharti indicate with a

1 not even Kelly Acker, because I had never really seen
2 her.

3 Q. You saw Kelly Acker on TV?

4 A. They showed her name at the bottom of the
5 screen. I was like, oh, that's what she looks like.

6 You know, the file and the face don't always go
7 together for me, because I filed.

8 -Q. At any time during the exams did you ever
9 see Dr. Momah holding on to a patient's breast at the
10 same time he was doing a digital exam on their -- or
11 sticking his hands on their vaginas or anything like
12 that?

13 A. No. Actually, he would say -- every time
14 I'm in there he would say, I'm going to do a breast
15 exam. He talked through it.

16 Q. He would talk through it?

17 A. Yeah.

18 Q. And you would see him do breast exams?

19 A. He was very professional at that time.

20 Different side of him that I would see.

21 Q. Okay. But at least when he was doing the
22 breast exams he was very professional?

23 A. All the way through from the beginning, he
24 said this is going to be cold or this is what I'm
25 going to do, or sometimes the girls would joke about

1 how cold stuff is.
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[REDACTED]

Vannoy remembers little of working with **Cathy Gonzales** who she describes as "trashy." Vannoy does not know if Gonzales was a drug abuser or not. Gonzales called Vannoy right after the allegations hit the news. Vannoy said, "She told me 'I'm gonna say that he had asked me out.'" Gonzales made no other allegations about Momah and Vannoy could not tell if Gonzales was happy about the allegations. She does not know if Momah actually did ask Gonzales out. "It seemed like they were friends," said Vannoy. Vannoy remembers working at Federal Way with **Stephanie Watson**. She felt Watson was very competent and "very mellow."

Vannoy is certain **no patient ever complained** to her that the doctor said or did anything inappropriate. She never heard the doctor or heard of the doctor asking anyone to have his baby. Vannoy never heard the doctor say anything inappropriate to a patient and never saw him doing anything inappropriate. "He was always very professional," she said, "his patients liked him."

Vannoy is certain Momah always wore gloves during exams. She said she was responsible for ensuring the sterility of the exam/procedures rooms. She said there were autoclaves at both Burien and Federal Way. She said they also used chemical sterilizers such as Cidex. Vannoy felt both offices were appropriately clean and sterile.

The **exams procedure** was as follows: Vannoy would take the patient into the exam room and provide her with a gown. She would usually, but not always leave while the patient changed. Once the patient was ready, Vannoy would notify the doctor and he would enter the exam room with her. Once the procedure was over, the doctor would leave the room and the patient would dress. "He never counseled people in the exam room. He would have him dress and meet him in his office.

Vannoy is certain Momah was never alone in the **exam/procedures rooms** with a patient. He never asked to be alone and no patient ever asked to be alone with him. Vannoy could not remember a patient ever bringing a relative with them, but said even in cases where the patient brought her husband; Momah did not want to be alone with a patient. "He was very aware of the law and was concerned about setting himself up for problems," she said.

Vannoy was attentive while the doctor performed procedures. Vannoy said the doctor often first performed the pelvic **ultrasound** wand. That wand was often ineffective at viewing internal areas, such as when the bladder was not full enough. "Patients would go to the bathroom before the exam and that made the ultrasound less effective," said Vannoy. Vannoy said, "If you can't see, the protocol is to use the Transvaginal Ultrasound wand" inserted into the vaginal canal. Vannoy said the doctor never used the wand in an inappropriate manner. Vannoy demonstrated how Momah would center the wand to see the uterus and bladder and turn it to see

the ovaries. "He moved it left and right, never in and out," she said. "He would have to move it a little in and out to find the uterus if the patient had like a tilted cervix." "Absolutely, he never used the wand like a sex toy. I was always right there, I would have seen it," said Vannoy demonstrating herself looking down.

Vannoy was Momah's patient while she was pregnant and working for him. She said he was always very professional with her while treating her. He never joked with her or made any suggestive or inappropriate comments while treating her. Momah's use of the ultrasound wand on her was completely appropriate and consistent with her other gynecologists' use of it.

[REDACTED]

Momah asked Vannoy if he was **intimidating** to his patients. She told him that he was a large person and that would intimidate some people. Vannoy asked why he got into gynecology as she felt it an unusual occupation for a man. Momah told her he liked helping people have babies. He told her he wanted to promote life and that was why he refused to perform abortions. Vannoy felt Momah's primary interest was in obstetrics and fertility and that gynecology went along with the territory.

Looking at my **list of patients**, Vannoy remembered being present during examinations of Kelly Acker, Tracy Jo Lawson, Sarah Maitland, Karen Perry (Terry), Cheryl Reich, Cynthia Strong and Sheryl Wood. With photographs or charts, she may remember more of them.

Vannoy remembers **Heather Phillips** would "call all the time for drugs. It was on the border of harassment." Momah often instructed Vannoy to decline Phillips' request for a new prescription and ask them to remind her she had just filled one. "She'd get really, really mad and scream at us when we refused," said Vannoy, "Then she would say her purse got stolen or her mother took them or some other excuse like that." Vannoy is certain Phillips was never in an exam/procedure room alone with Momah and that she never complained of Momah's behavior.

Vannoy remembers **Sheryl Wood**. "She was a regular. In all the time," said Vannoy. Vannoy tentatively remembers Wood as a drug seeker. Vannoy is certain Wood would never have been alone with Momah in an exam/procedures room. She is certain Wood never complained to her about Momah's behavior. "I got the impression she liked him," said Vannoy.

[REDACTED]

Very truly yours,

[REDACTED]

**ERROR ON PAGE 64 OF THE OPENING BRIEF, PLEASE
NOTE AND CORRECT THIS ERROR. THANK YOU**

award. The plaintiffs were required to present medical evidence of injury proximate to the appellant's incompetence or substandard care and they failed to do so. Berger v Sonneland, 144 Wn. 2d 91, 26P. 3d 257 (2001). Instead, they presented salacious allegations designed for shock value to win their case. In order to support a claim of Tort of Outrage:

"The action of the defendant must be so outrageous in character, so extreme in degree, as to go beyond all bounds of human decency" and "be utterly intolerable in a civilized community". Grimsby v Samson, 85 Wn. 2d 52, 59, 530 P.2d 291 (1975) (quoting Restatement (Second) of Torts 46 cmt. d at 73(1965). Rice v Janovich, 109 Wn. 2d 48, 50,62, 742 P.2d 1230 (1987) (permitting a plaintiff to claim emotional distress where masked men, armed assailants approached him outside a tavern where he worked; grabbed him; held a gun to his head; threatened to [b]low [his] off; bound his hands and ankles; taped his mouth shut; dragged him by the ankles, face down, through the tavern and down the staircase into the kitchen; and firebombed the tavern); **See also Grimsby** at 60. (finding outrage where," as a result of the defendants doctor's actions, the plaintiff was required to helplessly witness the terrifying agony and explicit pain and suffering of his wife while she proceeded to die in front of his eyes....because of his inability to secure any medical care or treatment for his wife"(emphasis omitted).

The plaintiffs' allegations and claims including the emotional distress claim of Ms.McDougal without an expert testimony do ^{NOT} rise to the level of Tort of Outrage as explained above. This court should reject their claim.

CONCLUSION

Given that the plaintiffs obtained their verdict by the knowing use of false and fabricated testimonies and evidence of which their attorneys were

CERTIFICATE OF SERVICE

January 14, 2011

I, Charles Momah, declare under the penalty of perjury, according to the laws of the State of Washington that I served a copy of the Appellant's Reply Brief to Ms. Starczewski, attorney for the Respondents at Law Office of Marja Starczewski, 10 Cove Ave. # 28, Wenatchee, WA. 98801.

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