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I. IDENTITY OF PETITIONER

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

II. ASSIGNMENT OF ERROR

1. Civil verdict obtained by the use of perjured and fabricated testimony and evidence.
2. Ineffective Assistance of Counsel.
3. Abuse of Discretion. Various trial court rulings and jury instructions denied the petitioner a fair trial.
4. The lack of sufficient evidence pursuant to RCW 7.70.040 which provides two elements to be proven: failure of the health care provider to follow the accepted standard of care and that such failure resulted in proximate injury complained of.

ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Does the deliberate and elaborate deception of the judge, jury and the public by the plaintiffs and their attorneys by providing consistently evolving fabricated testimony and evidence that changes with time and audience, both in this civil suit and the criminal trial (and conviction upon

which they relied on to further their ^{interests} in this civil suits) deprive the Appellant a fair trial?

(b) Does the deliberate deception of the judge and jury by fabricating false allegations of improper conducts during physical examinations which the plaintiffs knew were false and there were chaperones during these examinations and surgical procedures warrant overturning the jury verdict and dismissal of the suits?

(c) Does the plaintiffs' allegations of doctor impersonation by the appellant's twin brother, Dr. Dennis Momah which only began after Dennis filed a defamation lawsuit against their attorney, Harish Bharti, a fabricated allegation designed to help Mr. Bharti defend the defamation lawsuit, deprive the appellant a fair trial?

(d) Does the inducement of Ms. Jenny Ramos (nee Bender) by Mr. Bharti to testify falsely at the trial that she was employed for one year in the appellant's medical clinics when she knew she was only employed for one week, a perjured testimony designed to enable her to testify to the doctor impersonation and assault deprive the appellant a fair trial? Does the fact that Ms. Ramos had previously testified to the police that she was employed at the appellant's medical clinics for three months when

she knew she worked for one week and received one week's pay ,
~~deprive the defendant~~ violate the appellant' s due process right? Does
the deliberate deception and fabrication of Ms. Ramos of whom her
coworker was, as Ms. Acker, another client of Mr. Bharti when she could
not remember who it was and the only way she could have known Ms.
Acker was through Mr. Bharti, constitute violation of due process right?

(e) Does the influence on the testimony of the plaintiffs and their
witnesses of a sanctioned, lying attorney currently under investigation by
the Washington Bar Association where they have found "sufficient
evidence of unethical conduct", taint the entire trial process and renders
the verdict void?

2. Does the failure of a defense attorney to conduct adequate
investigations owing to failure to consult and confer with appellant prior
to trial deny the defendant a fair trial? Does this failure to confer the
appellant even once prior to trial with the failure to call key exculpatory
witnesses, the chaperones who were present during the medical
examinations when the plaintiffs and their witnesses alleged these
improper conducts deprive the appellant a fair trial and constitute
ineffective assistance of counsel?

(3) Do the various trial courts' ruling constitute abuse of discretion and denied the appellant a fair trial?

(4) Does the lack of sufficient evidence to sustain a verdict pursuant to RCW 7.70.040 which provides two elements to be proven: failure of the health care to follow the accepted standard of care and that such failure resulted in proximate injury warrant reversal of the verdict and dismissal of the plaintiffs' lawsuits?

STATEMENT OF THE CASE

This case ^{is} about allegations of improper examinations and doctor impersonation in the medical clinic of Dr. Charles Momah, an Obstetrician, Gynecologist and Fertility Specialist who practiced in South Seattle from 1994 to 2003. In November 2002 a patient, Ms. Amy McFarlane contacted Mr. Harish Bharti alleging medical negligence. The appellant was out of town and had contracted with another physician to cover his practice. Ms. McFarlane had called the office requesting narcotics. She was upset when the office staff had referred her to the covering physician or to go the emergency room. She was displeased ~~by~~ ~~her~~ and contacted Mr. Bharti alleging medical malpractice. That case,

Collier et. al v Momah, Superior Court Cause No.05-2—5525-1 KNT went to trial in May/ June 2007resulting in a defense verdict.

From that time Mr. Bharti conduct a clandestine investigation of my practice (he said so, himself), surrepticiously obtaining complete list of my patients from my office staff, Natasha Edens, whom he was representing in a lawsuit against me. From then onwards, Mr. Bharti began to gather scores of former patients to file law suits seeking money damages. The first patient whose false allegation of sexual assault resulted in the closure of office was Mr. Bharti''s client. This false allegation and closure of my office was locally televised with Mr. Bharti at the center of the media publicity. This extensive media publicity orchestrated by Mr. Bharti occurred locally and nationally, with his multiple appearances with former patients including these plaintiffs seeking money damages. They appeared on KOMO, KIRO news etc, local newspapers like Seattle Times, King County Journal I Newspaper etc , nationally on Today Show with Katie Couric, Montel William show, CNN, CBS, FOX News channel etc. They also appeared on Oprah. Mr. Bharti supplied the entire complainant-witnesses to the police and prosecutor and the Medical licensing Board, after he had talked with them first,

having an opportunity to shape their testimony. He was pushing for criminal charges to be filed as early as October 2003. Mr. Bharti and his clients understood that a criminal conviction would greatly enhance their standing in the civil suits, the same complainants and witnesses in the criminal case. They all referred ^{to him} as their lawyer. He appeared at all stages of the criminal proceedings. Given Mr. Bharti's role in orchestrating complainants-witnesses, any finding of his lack of veracity in this case, attempts at witness tampering or unethical conduct on his part in this case would be relevant to the credibility of the plaintiffs and witnesses in this case. It is important whether the plaintiffs and their witnesses were subject to improper influence. But there is evidence that Mr. Bharti engaged in misconducts, tainting witness's testimony and lying to the court. This is not just my opinion. A court order sanctioned Mr. Bharti for conduct in orchestrating and coaching witnesses, suborning perjury and "lying to the court". Saldivar v Momah, 145 Wn. App. 365, 386, 186 P. 3d 1117(2008). Another court found "found these allegations are baseless and ^{not} grounded in fact". Bharti v Ford et. al Superior Court No. 06-2-03169-5 SEA ~~which~~ also found that "Mr. Bharti and Ms. Starczewski conducted no prefiling investigations before asserting these claims". Another court found "Plaintiff's counsel signed and filed two more

baseless pleadings". Gordon v Space Needle Corporation et. al., Superior Court Cause No. 04-2-17911-4 SEA. This very court, Court of Appeals Division One found in Momah v Bharti, 144 Wn. App. 731, **182 P. 3d, 455, 466** (2008) that the allegation of doctor impersonation was known to be false by the plaintiffs' attorney¹, Mr. Harish Bharti and thus his co-counsel, Ms. Marja Starczewski and yet they continued to pursue this doctor impersonation in civil suits after civil suits. Moreover the same trial Judge had dismissed all the claims involving doctor impersonation against Dr. Dennis Momah in August 2006. Mr Bharti and his counsel have been under investigation by the Washington State Bar Association (W.S.B.A) for their pattern of unethical and deceitful practices. In February 2010, The W.S.B.A found that "there is sufficient evidence of unethical conduct to proceed to further hearing" involving these very cases and clients by Mr. Bharti. One cannot reiterate here all the evidence of Mr. Bharti⁵ reckless disregard for the truth, fabrications and

¹ In that case the court said, "During discovery, Bharti provided copies of several investigative and police reports. The reports involve the investigations into Charles by the police and MedQAC investigators. They provide exculpatory evidence for (Dennis) Momah because the employees interviewed stated that he had never impersonated Charles. Bharti contends that the reports fail to support Momah's theory that Bharti had notice of Momah's innocence because they do not show when Bharti learned of the statements or received the copies. That this evidence was in Bharti's possession, and produced by him in discovery, shows he had reason to know that his statements to the press were false. The documents are relevant." Momah v Bharti, 182 P. 3dat page 466.

shaping plaintiffs' and witnesses' testimony; one can only hope that this court review all the records of prior plaintiffs and witness testimonies. If it does, despite Mr. Bharti and Ms. Starczewski's efforts to conceal, and dissemble the facts, particularly with regards to Ms. Rena Burns, it will find the record is replete with evidence of falsehoods, fabrication and deliberate deception of the judge and the jury. There is evidence of witnesses and attorneys who ^{said} that Mr. Bharti is lying about what they ^{told} him, witnesses who say he fabricated evidence and asked them to commit perjury².

²The declarations of Sherry Wood, Attorneys Michelle Shaw, Mark Johnson and Tim Ford illustrate Bharti's modus operandi. These show witness tampering, subornation of perjury and fabrication of evidence. Ms. Wood declared, on page 2, that Mr. Bharti was "insistent that I come in and look at the video that day. He offered gas money, but I told him that was not my concern".... Mr. Bharti was persistent and saying that I had to do it, come and look at the video and he stating there were two doctors and he had police and husbands and others that could identify it's two different people and I needed to look at the video. I told him I could not really ^{text} difference on anything because it was too dark. Mr. Bharti responded that it's him and they look just alike. I told Mr. Bharti that I could not tell". "He got frustrated and kept moving the video back and forth. He then asked me to do a declaration". "After I saw the declaration, I told my sister Cheryl that it was not truthful and did not reflect what I said". "When I signed the declaration I felt pressured and rushed by Mr. Bharti. He told me he had to hurry because it was the only day he had the video available. Ms. Shaw declared in a sworn statement. "I met with Mr. Bharti for one about hour... Neither in this conversation nor at any other time did I tell Mr. Bharti that Dennis and Charles Momah had sex with a woman in the emergency room or anything to that effect. I have reviewed 40 of the amended complaint against Dennis Momah... I was not the source of the allegation in that paragraph"... "It is absolutely untrue that I provided Bharti with the information contained in ^{not} paragraph". "After talking with Mr. Bharti, I formed the opinion that we have ^{ethical} standards and I accordingly decided not to work with him or refer clients to him with respect to this matter". Mr Johnson states, "The quality of what Mr. Bharti contends is voluminous evidence that Dennis Momah conspired with his brother Charles, impersonated each

THE PLAINTIFFS

I. Ms. R. Burns

Ms. Burns was one of my former patients who responded to Mr. Bharti's media publicity that started with the closure of my offices on September 11, 2003. She testified at the criminal trial and depositions that she saw Mr. Bharti during the investigation of the appellant on the news, then went to the library and read about it. To summarize, Ms. Burns' entire medical care with me consists of a total of three visits and one ambulatory surgery and was as follows: a complete physical examination with ultrasound on her visit on March 25, 2003, ambulatory surgery on March 27, 2003, wound check on March 31, 2003 and a final visit on April 5, 2003, which was a consultation in the doctor's office, with no examination whatsoever. Her billing records also confirm these dates showing three billings only because one of the postoperative visit (March 31, 2003) was complimentary to the surgery and as such is not billed

other, is suspect. For example, Mr. Bharti obtained a declaration from a woman...it was abundantly clear that she was mentally ill. Her deposition included accusations that Charles Momah sent "22 black men" to attack her...that Charles 3 men to rape her.... In spite of her obvious ^{mental} illness, Mr. Bharti had no compunction in having her sign a declaration". Mr. Johnson concludes, "If this sounds like fiction, it was in 1998 when the author Alexander McCall Smith wrote a chapter entitled "Medical Matters" in the novel The NO 1 Ladies Detective Agency In Africa. The chapter describes Nigerian twins, one a doctor, impersonating each other.

according to insurance guidelines. Her medical^{record} was misplaced when my office was closed and the Federal Way Police Department confiscated all my patients' medical records for their investigation. Given the absence of her medical records of which Ms. Burns became aware, she took advantage of this to fabricate whatever allegations her and her attorney, Mr. Bharti wanted. Her medical record was admitted into evidence at the trial as Exhibit 31. RP Page 103, October 25, 2007. This evidence, her medical records tells a different story from what Ms. Burns and her attorney, Mr. Bharti has been telling since 2003, at the criminal trial and this civil suit. **The central core of Ms. Burns' case, both this civil suit and her charge in the criminal case revolves around her medical records, her insurance billing records, and the presence of chaperones at her only one physical examination.** These three factors are decisive of the truth as regards her preposterous allegations. The medical records and billing records as Exhibit 31 is the fact of Ms. Burns' case. Her billing record which was provided by an independent source, produced contemporaneously with the medical records confirms the dates in the medical records and the procedures performed and billed for and is the final arbiter of truth regarding the dates of her care. Anything else is a

fabricated story and her testimony is teeming with such fabrications, falsehoods and inconsistencies that continued evolve over time.

During her **first visit** was on March 25, 2003, she was accompanied to the office by her best friend, Ms. Jenny Sloan ^{who} ~~that~~ referred her to me. Her first visit was conducted with a chaperone, Ms. Cathy Gonzalez who was **present during the entire time of her physical examination.** Ms.

Gonzalez checked her in she presented to the office, took her intake interview, did her vital signs and weight and prepared her fee ticket. This is verifiable from Ms. Gonzalez known handwriting, her attendance on March 25, 2003 and her Paychex documentation of her wages. She was taken to the examination room by Ms. Gonzalez who remained present during the entire examination that lasted about **15 minutes.** Her ultrasound examination lasted just **7 minutes.** Burns' medical records CP Ex. 31. There was just one ultrasound performed on March 25, 2005.

Burns' Billing records (Part of the medical records). Her next visit was on March 27, 2003 when she underwent a diagnostic laparoscopy, hysteroscopy and endometrial sampling, the ambulatory surgery performed with Ms. Lynne Butler, the anesthetist who testified that she ~~was~~ present during the entire procedure and that during her three year

tenure with the appellant had never witnessed any inappropriate behaviors, anything sexual with patients on the part the appellant. Ms. Kathy Reeves was the medical assistant who chaperoned her wound care on March 31, 2003 while Ms. Evette Kidd was the receptionist on that day. Ms. Reeves took her to the examination room where her surgical wound on the umbilicus measuring 2 centimeters was examined. She was fully clothed. The wound check lasted 5 minutes with Ms. Reeves assisting with the wound dressing change. Her fourth and final visit was on April 5, 2003 for a discussion in the doctor's office. There was no examination on that last visit. These are the facts. Ms. Burns took advantage of her missing record to fabricate her allegations. When she was confronted with the dates in her medical record, she lied and her attorney, Mr. Bharti bolstered these lies by claiming it was not the actual record but the available record, therefore incomplete record. Her insurance billing record from independent source precisely matches the medical record and thus vouches for the accuracy of the dates in the medical record.

Q. (Defense by attorney) you are not disputing the accuracy of the dates being shown in the records, are you?

A. "Well, I would kind question where you got them because I was told these records don't even exist".

Q. Objection, I don't want any hearsay at this point, I asked a simple question.

The Court: sustained.

Q. Are you disputing dates?

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

The Court: Overruled. You may ask the question again.

Q. Ms. Burns, are you disputing the accuracy of these records, do you?

A. Um. I guess my question would be first, **are these the actual medical records? (Just like Mr. Bharti coached her to say, that is to lie.)**

Q. Ms. Burns, the question is very simple, are you disputing the accuracy?

A. I have some question on that, yes.

Q. So you are questioning the dates?

A. I'm questioning the dates, yes. RP Burns' testimony Oct. 25, 2007 at page 105. That was not a real objection, it was a *charade*.

That was not a real objection; it was a chance to influence her testimony

to lie on the witness stand, under oath. Moreover, in all the lawsuits she

and her attorney, Mr. Bharti filed in this case, on September 25, 2003,

June 20, 2005 and November 2005, she stated she was seen first, on

March 25, 2003, (physical exam.), March 27, 2003 (ambulatory surgery),

and on March 31, 2003(wound check) These dates correspond with the

dates in her letter to M.Q.A.C , where she also said that on March 26,

2003, she was called at home and told that her insurance had approved

her surgery and was scheduled for surgery the next day, March 27, 2003.

Because she was seen only once prior to surgery, it makes her

allegations a fabrication, her allegation of 8 visits prior to surgery and 6

ultrasounds, all the allegations of her second visit she detailed during

the criminal case.

Q. What is your best estimate of how many times you saw him pre-surgery?

A. Probably 8 times.

Q. The eight times you saw him pre-surgery, was the ultrasound done each of those eight times?

A. Probably six of them. RP Burns' testimony Oct. 25, 2007 at page 103.

The dates are exactly what she stated in her letter to M.Q.A.C on September 18, 2003. In that letter, she stated the first date as March 25, 2003, followed by March 27, 2003 and March 31, 2003. Moreover, the fact that in that letter she said she was called on March 26, 2003 to notify her that her insurance had approved her surgery meant that there was no visit between March 25 and March 27 2003.

Q. In your own handwriting, in the letter you wrote, "My first appointment with Charles Momah MD. was on March 25, 2003 in his office in Burien" (We first met in his office) Do you see that?

A. Uh-huh.

Q. That's the truth, isn't? That's the first day you saw him and it matches the medical records; correct?

A. No. My first appointment for the surgery was at that date. RP Burns' testimony Oct. 25, 2007 at page 109.

Q Are you saying that was not your first appointment?

A. My first appointment for the stuff to do for surgeries.

Q. Are you saying there were previous appointments to that?

A. Yes. RP at page 110line 25 to page 111.

The reason she was testifying falsely was to explain her false allegations of eight visits and six ultrasounds and all the preposterous allegations of the abuses during those visits. If the dates on the medical records and the billing records are true, her allegations become impossible and her entire

falls. **This truth is fatal to their case and they, Ms. Burns and Mr. Bharti knew it. This was why they told another lie to cover previous lies. These dates are what her billing records, from an independent source states.**

Billing record CP Ex. 3. These billing record states that on March 25, 2003, her insurance company's Explanation of Benefits (E.O.B) show a payment for office visit and ultrasound coinciding with her medical records and her earlier statements. The E.O.B showed three billing codes, 99204, "Office Mod. Complex" bill of \$200, ULTRASOUNDS –Complex Gyn. – 76856, and Abdominal-76700, both with a fee of \$304. Her E.O.B showed three payments of \$200, \$304 and \$304 on March 25, 2003 coinciding respectively with the exact dates she had her first and only physical exam. And only ultrasound, that was paid as "DIAGNOSTIC TESTING". The other payment on March 25, 2003 was a laboratory bill submitted by another service LabCorp. Of America, the place that she went to do her laboratory tests, accompanied by her friend, Ms. Jenny Sloan, after leaving my office. The other payments were on March 27, 2003, surgery and April 5, 2003, her last visit, which was just an office consultation with her husband. Ms. Burns' medical record, verified by her insurance billing and payment dates correctly identifies the sequence of events of her care and the facts of this case. **This is an evidence of monumental and**

determinant proportion and upon this critical evidence, rests the criminal conviction and this civil verdict as far as it relates to Ms. Burns. This Court should not be confused. Ms. Burns' ever changing, evolving and fabricated allegations are a fiction of this case. She testified to the jury that she paid the appellant \$5000 besides, and in addition to what her insurance company paid. But during the defense deposition of September 22, 2005 admitted in this trial (CP Ex. 49), she testified that she paid nothing out of pocket. But in this trial she lied to the jury. In her direct examination by Mr. Bharti she said the following: (RP Burns' testimony Oct. 25, 2007 at pages 92, 93, 94 and 95)

Q. (by Bharti) How much money---let's focus on how much money went out of your pocket, meaning --- leaving other things aside?

A. Right under \$5000.

On page 93. Q. How did you pay that?

A. Cash.

Q. You paid cash. And what was the reason you were asked to pay money?

A. Um, for the surgery that he was going to do, tubal reanastomosis.

Q. And to your knowledge, did that surgery help you in any way?

A. No.

On page 95. A. I gave him the money, and I don't ^{know} if he used it all for the surgery or for some of these procedures.

Q. All right.

A. Parts were paid for my part, and my insurance paid for part.

The problem is that she did not pay anything out of pocket and she never had tubal reanastomosis. **This testimony, above is a fabrication.** But

in the defense deposition of September 22, 2005. CP Ex. 49 at page 50.

Q. (defense) Did he send you a bill?

A. Mm-hmm. So he charged 11,000 dollars for the laparoscopy, it would seem to me that the insurance company didn't pay 80per cent?

A. Well that's how much he sent a bill for.

Q. Did you pay any part of it?

A. No, I did not. Q. Were you upset? A. Yes.

It is evident that this is a fabricated testimony. She testified that she paid nothing out of pocket and it is clear from that defense deposition (and her medical and billing records) that she did not have a tubal reanastomosis, but a diagnostic laparoscopy, hysteroscopy and endometrial sampling. In a civil suit where the plaintiff is asking for monetary damages and lied under oath that she paid \$5,000 along with the horrible, fabricated allegations she made certainly had an influence on the jury in rendering a monetary verdict.

Most importantly, the defense attorney was unaware of this false statement and did not impeach this testimony. The trial court and jury was therefore deliberately deceived. It is clear from her testimony that she was upset that she did not get tubal reanastomosis (reversal) which she wanted, and she got a bill. This is the reason for these allegations. It was clear after laparoscopic evaluation that tubal reversal would yield very poor results and she would be better served by In Vitro Fertilisation (I.V.F), in keeping with our discussion on her first visit. This is precisely

what we did discussed in the office prior to her surgery. Moreover her ultrasound showed cysts that needed laparoscopic evaluation.

It is obvious from the medical and billing records, her filings of this lawsuit on September 25, 2003, June 15, 2005 and November 2005 and the letter to M.Q.A.C³ that there was **no second visit prior to surgery**.

The second visit to my office was the surgery. But these are the allegations she made about her second office visit, her phantom second examination. Her testimony at the criminal trial on October 24, 2005 was admitted in this trial as Exhibit 48. On pages 55, line 25, pages 56 and 57, she made a series of allegations on a visit that never happened.⁴ This is

³ In that letter she wrote, (on page one) "My first appointment with Charles M. Momah MD. was on March 25, 2003 in his Burien office. We first met in his office.....(on page 2) On Wednesday, March 27, 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. It is clear that there was no second visit prior to surgery.

⁴October 24, 2005, (pages 55, 56 and 57) at the criminal trial she testified falsely. 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 say to him, Dr. Momah, you have already examined my breast, why are 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 have a second appointment.** Q. So, there was the undress, there was the breast exam. But it wasn't an exam, so breast massage? A. Yes. Q. And was that done the same way as the first time? Let me stop you. 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 up my anus? A. No. Yeah, because that's when 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 you

deliberate deception of the Judge and jury and a conviction obtained by the use of perjured testimony, a false and fabricated testimony that enabled her to pursue a civil suit where she obtained monetary verdict with the same falsehoods.

In her letter to M.Q.A.C, on page one, “ He then had me go into the exam room (sic) told me to undressed from waist down and get on the exam table” implying that the doctor was not in the examination room when she was undressing. And on page two of the letter she wrote, “He then told me to get dressed and meet him in his office”, again implying that the doctor was not in the examination room while she dressed.⁵ Her allegation about the improper use of the ultrasound was false and fabricated. Ms. Burns claims she had six ultrasound examinations. She had **only one ultrasound examination in her entire care with me.** Her medical record as well as her billing record showed just one ultrasound, which **lasted seven minutes.** She testified in her various depositions and trials that the ultrasound examination lasted anywhere from twenty,

dress? A. Yes. Q. As before, the first time, you knew it was improper for him to watch 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 his hands. A. Yes.

⁵ In her testimony at the criminal trial on October 24, 2005(Ex. 48) at page 102, from line 25, Q. There is nothing about him watching you get dressed after the visit, is there? A. No, there is not.

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 to thirty minutes”. During the defense deposition of the criminal trial on September 22, 2005 (Ex. 49), she said the prior ones I had done before were like five minutes long and his ultrasound was half hour to forty five”⁶ CP Ex. 49 at page 22, line 1. ⁷ When she found ^{out} that her medical record has been located during this trial, she changed her story yet again. She said it was somewhere like ten, fifteen minutes. Others were like a half hour. RP Burns Testimony October 18, 2007 at page 30. She testified no pictures were taken on March 25, 2003 visit because the ultrasound ^{machine} “was n’t even on”. She told the defense on September 22, 2005 there was no picture taken on March 25, 2003, that the ultrasound machine was not on, that the ultrasound pictures were taken on her second visit.

⁶ In this trial, she lied to the jury when they asked her about previous ultrasounds. Q. Court: In procedures done by the Gyft Clinic, with the ultrasound wand, was it typical to use a lubricant and/or a protective cover? Ms. Burns: I never had an ultrasound at the Gyft Clinic that I can recall at this time. RP Burns’ Testimony October 25, 2007, at page 129.

⁷ Her testimony on September 22, 2005 was as follows: Q. Okay. You say this (ultrasound) went on for half hour to forty five minutes? A. Mm-hmm. CP Ex. 49, page 22, line 10. In her testimony at the criminal trial on October 24, 2005 CP. EX. 48, she denied it lasted 45 minutes. Q. The ultrasound lasted from thirty to forty minutes long? A. No, because the whole procedure took that long. I wouldn’t say it was just that.

"At one point in time the machine wasn't even on". CP Ex. 49, lines 15, 16.

Q. Okay. Did he say he was going to do a second ultrasound?

A. At this point he was taking pictures for our insurance so he could send them pictures. Q. Did you ask him why he didn't take pictures the first time for the insurance? A. No.

The date on the ultrasound record is March 25, 2003, which is the date of her first visit when the only ultrasound was done, which is the date of the only insurance payment for ultrasound. These are the facts of this case and the criminal case. Mr. Bharti's and Ms. Burns' version is the fiction and the fabricated version. Moreover, the fact is that Mr. Bharti had 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." He filed her lawsuits on September 25, 2003, and refiled it in June 15, 2005 where he noted the date of March 25, 2003 as her first date of visit, followed by surgery on March 27, 2003 and a postsurgical visit on March 31, 2003 meant that he knew that her testimony at the trial that March 25, 2003 was not the first date of her care, that she had 8 visits prior to surgery and 6 ultrasounds and coached her to lie on the witness stand during defense cross exam. was a deliberate deception of the judge and jury. This is a constitutional error, a violation of the 14th Amendment and denial of due process. Q. (defense) Are you disputing the dates? Mr. Bharti... This is the available records not the actual records.

Q. Ms. Burns, are you disputing the accuracy of the dates being shown on these records, do you?

A. Um. I guess my question would be first, are these actual medical records?

Q. Ms. Burns, the question is very simple, are you disputing the accuracy?

A. I have some question on that, yes.

Q. So you are questioning the dates?

A. I'm questioning the dates, yes. RP page 105, Burns' testimony, October 25, 2007. To the questions of pre-surgery visit and ultrasound, she said: Q. What is your best estimate of how many times you saw him pre-surgery?

A. Probably 8 times.

Q. The eight times you saw him pre-surgery, was ultrasound performed those eight times?

A. Probably six times. RP page 103, Burns' testimony October 25, 2007.

It is not that she testified falsely but it was under the prejudicial influence⁸ of Mr. Bharti. (Mr. Bharti) Q. And did he ---did he insert this probe into—inside you?

A. Yes, he did.

Q. And how many times let's say several times you went there. Out of those times, how often did he use this device (ultrasound wand) on you, inside—in your inside?

A. I would have to say maybe six.

Q. Okay. RP page 39 Burns' testimony October 25, 2007.

⁸It is evident that Ms. Burns was exposed to prejudicial influence of Mr. Bharti and his media publicity. In her testimony at the criminal trial on October 24, 2005. CP Ex.48, at page 19. Q. You indicated last week that you had seen something about this case on Television? A. Yes. Q. Or at least Dr. Momah and allegations against him? A. Right. Q. And you went to the library at that point in time? A. Um-hmm. Q. And that's because you didn't internet access at home? A. That's correct. Q. So at the library you used their internet access; that's right --- A. Yes. Q. --to look up what was on the internet at that point about Dr. Momah, yes? A. Yes. Q. That included television news stories, yes? A. Yes. Q. And print media news stories? A. No, I didn't look up anything printed. Q. In terms of television stories, those had pieces where other patients of Dr. Momah talked on television during interviews. Do you recall that? A. Some of them, yes. From this exchange it is evident that Ms. Burns was exposed from the beginning of the prejudicial news coverage, both print and broadcast media that prominently featured Mr. Bharti as plaintiff's lawyer. She met with Mr. Bharti prior to her letter to M.Q.A.C of September 18, 2003 and when Mr. Bharti filed her lawsuit of September 25, 2003.

In this trial, there was not even any mention of Fentanyl injection. The very powerful anesthetic medication used in the operating room to put patients to sleep, Used anywhere else, the result is fatal.⁹ Ms. Burns testified during the criminal depositions¹⁰ that she was given this powerful medication (100 times more powerful than morphine) Fentanyl, during her very first visit on March 25, 2003 at the Burien office. She neither mentioned this fabricated allegations in any of her lawsuits filed

⁹ It was the medication that killed Michael Jackson.

¹⁰ On September 22, 2005, at the criminal deposition CP Ex. 49 on page 26, she testified, "He's the only person that ever medicated us, medicated me". Q. How did he medicate you? A. He used Fentanyl. Q. Now you know what Fentanyl is? A. Mm-hmm. A. **Because we use it Valley Medical Center.** (where she is surgical coordinator) Q. What's it used for? A. **It's to put people to sleep.** Q. And it is used prior to medical procedures? A. Mm-hmm. It is a drug used to get people to relax that are extremely uptight about the procedures that they're ready to have, they are given Fentanyl through I.V. Q. So did he give it to you through an I.V.? A. Mm-hmm Q. He set up an I.V in his office. A. Mm-hmm. Q. This was during the first visit? A. Mm-hmm..... Q. So he set an I.V and gave it to you on your visit? A. Yes.....Q. Now Fentanyl would make someone go unconscious? A. No, it does not. Q. Fentanyl doesn't? A. No, it does not. Q. So it's just a relaxer? A. Mm-hmm. Q. Has anybody given you Fentanyl before? A. For a vaginal ultrasound. Q. Yeah. A. Yes. Q. What situation? A. Before I had the diagnostic laparoscopy with Dr. McLees, I had it then. I had it when I broke my leg in '91. Q. Okay. So in these other situations they were given either procedures or when you had severe trauma? A. Right. Q. So were you concerned with him giving you Fentanyl prior to what should have been a routine examination? A. Yes. Q. And what happened? A. He said that he needed me to relax as I could possibly get because he needed to go in..... But her testimony at the criminal trial was different regarding Fentanyl. She said she never went ^{to sleep} when asked how she could remember the allegation of her first visit if she went o sleep on Fentanyl. On Page 50 of her testimony at the criminal trial on October 24, 2005, her testimony to the deputy prosecuting attorney, Ms. Otake was read back to her. Q. **You started at 11:00. By the time you realized what was happening it was 2:00; isn't that right? She responded to the defense attorney: A. No, I never went to sleep.** A. Didn't you tell the prosecutor, this is Ms. Otake when you talked to her on May 21, 2004, "I relaxed on Fentanyl. The time was 11:00. Next I remember it is about 2:00. Do you remember telling her that? A. **No.** This is a lie. She told Ms. Otake she was knocked out by Fentanyl that she remembered nothing, yet lied at the criminal she did not say that and that she never went to sleep.

on September 25, 2003, June 20, 2005 and the Amended Complaints for Damages in November 2005. It was not even mentioned in her September 18, 2003 letter to M.Q.A.C. Her familiarity with this medication from having received it earlier prior to surgery or severe trauma under anesthetic settings and, from her job as surgical theater coordinator in a large area hospital made it easy to fabricate this key **allegation** that featured prominently in the criminal case. But she and her attorney, Mr. Bharti **conveniently forgot it altogether in this trial**. She made inconsistent testimony about so many other things that it is difficult to know what to include in this limited space and she stonewalled the defense from finding the truth. She refused to provide the phone number of the friend who accompanied her to the office on her first visit, Ms. Jennifer Sloan¹¹ who had testified to the defense that Ms. Burns and her were in the office on March 25, 2003 for **less than one hour, that she, Ms. Burns was fine when they left and did not make any complaints about her visit other than the doctor was a little difficult to understand and that they went to LabCorp for blood testing.**

¹¹ In the criminal trial, on October 24, 2005 at page 50 CP Ex.48 Q. Now, following the first exam (March 25, 2003) – Let me ask you. You went to the first exam with a friend of yours, didn't you? A. Yes, I did. Q. Her name is Jennifer Sloan? A. Yes. Q. Do you recall at my interview with you I asked you for her phone number? A. Yes. Q. You didn't provide it to us? A. I didn't have it at the time, no. Q. And you never provided it to us afterwards? A. Yes. I have. Q. To whom? She claimed she provided it to the prosecutors.

Her other false testimony under oath were ~~1~~ She told the jury she had undergone Tubal reanastomosis but she did not. RP Burns' testimony October 25, 2007 at page 59, line 19 to 25 and page 90 lines 13 to 16. The medical record's operating report, the insurance billing payment and Ms. Lynne Butler's (the anesthetist who gave anesthesia) testimony and records all state that she underwent a diagnostic laparoscopy, hysteroscopy and endometrial sampling. Mr. Bharti compounded this lie by having her claim that the surgery she never had, did not help her, in fact delayed her from having In Vitro Fertilisation (I.V.F).

On page 93, October 25, 2007, Burns questioned by Mr. Bharti, she said:

Q. How did you pay that? (Meaning the \$5000¹² she falsely testified she paid) A. Cash (she never paid anything besides what her insurance paid)

Q. You paid cash. And what was the reason you were asked to pay that money?

A. Um, for the surgery that he was going to be doing, **the tubal reanastomosis.**

Q. And to your knowledge, did that surgery help you in any way? A. No.

The chaperone, Cathy (Kathie) Gonzales who ~~were~~^{as} present at her

March 25, 2003 physical examination have testified twice under penalty of perjury that she was present throughout for the examination and that

^{page}
¹² See 17 of the brief. On September 22, 2005 CP Ex. 49 at 50. Q. (by the defense) So he charged you \$11,000 for the **laparoscopy (not tubal reanastomosis)**, it would seem to me that the insurance did not pay 80 per cent? A Well that's how much he sent a bill for. Q. **And did you pay any part of it?** A. **No, I did not.**

Nothing inappropriate happened, no breast massage, no fentanyl injection, no clitoral rubbing, rape with ultrasound wand, no anal probing and that the doctor did not watch her dress and undress. She had said this twice. Ms. Butler testified at trial that during two and half year tenure as the anesthetist she had no witnessed any inappropriate conduct by the appellant. That she would have reported to the police if she witnessed any misconduct by the appellant. She furthered testified that nothing inappropriate occurred at Ms. Burns' surgery. Surprisingly Ms. Burns did not make any allegation at her surgery because she knew it could be easily verified because there would another person present to give anesthesia. Ms. Kathie Reeves and Ms. Evette Kidd were the other chaperones in the office on her March 31, 2003 wound check and her last visit was just a consultation. All her allegations are fabricated, her testimony perjured with the help of her attorney, Mr. Bharti. In all her testimony she never mentioned doctor impersonation ^{until} ~~under~~ September 22, 2005 and her Amended Complaint for Damages in November 2005, when Dr Dennis Momah filed a lawsuit against her attorney Mr. Bharti,¹³

¹³ In that Amended Complaint for Damages she stated, "On numerous visits to the office of Dr. Charles Momah, plaintiff was in fact examined and treated by someone other him, but closely resembling him". Next she added, "In January 2005, upon reviewing photographs and video of Dr. Momah, plaintiff realized that he was the person who examined and treated her on numerous occasions in place of Dr. Charles Momah". But

in an attempt to help Mr. Bharti defend this lawsuit. This is witness tampering. Additionally, **Ms. Burns testified falsely under oath¹⁴ during her bankruptcy proceedings** about the presence of this very lawsuit.

II. Ms. L. McDOUGAL

Ms. McDougal had been my patient from 1995 to 2003. Her complaints consisted of pelvic pain and abnormal uterine bleeding that predated her care with me. She had had two episodes of cerebrovascular accidents while on methamphetamine and cocaine. She underwent laparoscopic surgery during her eight year care to evaluate excessive bleeding and abdominal pain. Eventually, owing to her persistent symptoms and excessive request for narcotics, she was referred to the University of Washington June 2003 after laparoscopic surgery on May 24, 2003. At the University of Washington she was evaluated and treated by many physicians: Dr P. Lin, Dr. E. Everret, Dr. A. Amies and Dr. S. Feng whom

on September 22, 2005, CP Ex. 49 on page 43, lines 17 to 19 and page 45 lines 8 to 11 she said it was only once, **fourth visit, only that one visit, yes**. On page 43 to 44, Q. By (the defense) I mean, did it appear to be Charles Momah who you were talking to on this fourth time? A. No, it did not. Q. So do you think it was somebody else? A. Do I believe it was somebody else? Q. Yeah. A. Who do you think it was? **A. I was told it was his twin brother. Q. You were told by whom? A. By the attorney. Q. That's --- A Harish. Q. Harish told you it was Dennis? A. That he had had (sic) a twin.**

¹⁴ Ms. Burns and Ms. Rule failed to disclose the presence of this lawsuit when they completed forms as part of their bankruptcy filings that they had listed all their assets. **Their willingness to lie on their bankruptcy applications goes to their ability to tell the truth even under oath.**

she had seen in January 2003. Prior to her referral to the University of Washington, she had sought treatment at Providence – Everret Medical Center **on her own**. Ms. McDougal was seen at the Providence emergency room (ER) by Dr. Iguchi on March 26, 2003 where he prescribed narcotics for her, dilaudid and phenergan. On May 2, 2003, she was seen at the ER at providence again where dilaudid was given to her. She continued to frequent the ER at Providence with visits on May 3, June 3 and June 9 2003, and each time she was given narcotics – vicodin, Percocet, hydromorphone and dilaudid. At these times she was seen by Drs. Klein, Graham, McKee and other ER physicians. CP Ex. 8 McDougal medical records March 24, 2003 at pages 220,222, March 26, 2003 at page 216, May 2, 2003 at page 199,200, May 3, 2003 at pages 184, 185, June 3, 2003 at pages 174, 175.

But at the trial, she denied seeing any other physicians besides her referral. Q. You were seeing other health care providers in the summer of 2002? A. No. He sent me to the UW to see a gynecologist that was it. Q. He did that in August of 2002, did he not? A. Sent me to UW? Q. Correct? A. Yes, right around there. **Q. Were you seeing any other health care providers other the referral that he made for you to the University of Washington? A. No.** **Q. And let's take it all the way through 2002, until the end of 2002. Were you seeing anybody? A. No, not that I can remember.** RP November 1, 2007. McDougal testimony at page 29. This was a lie.

On page 39, she was asked, "Yet all this ----if all this happened, why didn't

you go find a new doctor? A. I believed he told me he was the only doctor that could take care of me. I have said this over and over; he told me no other doctor would treat me. Even UW bounced me back to Dr. Momah. So in my belief and between that, this is the man that's going to make me better. I didn't have anything to do outside the office after August 2002. It was strictly him. Q. Why didn't you find a new doctor? Infact, you are saying he told you no other doctor would take care of you? A. Yes. Q. So how can you --- reconcile those two statements, when you're saying, "He is telling me no other doctor could take of me," yet he is referring you to another doctor? A. They sent me right back to him....**Q. Did you try to find a new doctor your own? A. No, I did not.**

This is false testimony as the records shows. On July 24, 2003, it was noted that Ms. McDougal has had **nine ER visits** in 2003 when she was seen by Dr. Novak who prescribed Percocet and hydromorphine. CP. Ex. 8 McDougal medical records at page 162. The doctor also noted that she was recently seen at UW and UW is planning endoscopy for her.

On page 163, July 24, 2003 Dr. Novak remarked, "The patient has undergone evaluation for same and is currently being reevaluated at the University of Washington" and concludes at the end of the page, "**The patient has multiple emergency department visits for same. I conclude that the patient's outpatient physicians should be in charge of her ongoing narcotics needs.**" See also RP Nov. 1, 2007 McDougal testimony at page⁵⁹ and 60.¹⁵

The next day, July 25, 2003 she went back to the ER and was seen by Dr.

McKee where she received narcotics , "**dilaudid 1 gram IV, and refusing**

GI cocktail and accepting Vicodin". At the University of Washington, she

¹⁵ On page 60, line 16, Q. Okay. So you recall, at the time, infact, the Providence emergency room department was telling you, "You can't come here anymore for narcotics, you have to go to your outside physicians". Do you remember that? A. Um, I don't remember them telling me I couldn't come in for narcotics when I was there.

was seen by Dr. Everett and she wrote: "The patient is a 39 year old female with significant history of menorrhagia (abnormal uterine bleeding) who is followed by Dr. Momah in Burien who was referred here today for discussion of medical and surgical treatment of menorrhagia" and it continues....39 year old female who is unable to take continuous oral contraceptive therapy pill secondary to history of cerebrovascular accident, failed medical management with progesterone and is quite debilitated by her menorrhagia. **Currently the patient has an operating room date for August 14 (2003) should she decide to opt for surgical therapy either with an endometrial ablation or abdominal hysterectomy**". McDougal medical record CP Ex. 8.

Ms McDougal was asked by the jury, "Did you not have the recommended hysterectomy performed?" Again she lied to the jury. "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 page 110.

The Providence Medical center also referred her to another gynecologist, Dr. Angela Chien. RP Nov. 1, 2007 McDougal testimony at page 54. Ms. McDougal had multiple options for gynecologists and other doctors but continued to seek care with ~~the~~ Dr. Momah. This fact makes her allegations suspect and opportunistic. After the news of the appellant hit, these plaintiffs started coming out of the woodworks with these allegations, aided by opportunistic lawyers both of whom have been sanctioned for unethical conduct in the practice pattern. Ms. McDougal's other allegations was doctor impersonation which the jury rejected by finding a verdict for the defense. She also alleged consensual sexual relationship with Dr. Charles Momah and claimed that Dr. Dennis Momah

impersonated Charles and had sex with her on two occasions. This is false and fabricated testimony orchestrated by Mr. Bharti in any attempt to defend the defamation lawsuit Dennis had filed against him. This Court noted to the contrary in Momah v Bharti 44 Wn. 2d App. 731, 182 P. 3d 455,466, **“They provide exculpatory evidence for (Dennis) Momah because the employees interviewed stated that he had never impersonated Charles”**. In fact another attorney, Michelle Shaw declined to pursue the allegations of Ms.McDougal.¹⁶

Ms. McDougal and her attorneys claimed that the appellant saw Ms. McDougal her very frequently and over prescribed narcotics for her as a way to keep her as a patient, but this is unsupported by the record. During the period from August 2002 to August 2003, she was seen by Dr. Momah seven times but she was seen at Providence eleven times and the UW four times. And of these 7 visits with Dr. Momah, he prescribed vicodin only twice. RP Nov. 1, 2007 McDougal testimony at page 62, 63.

16 Michelle Shaw sworn declarations stated, “I met with Mr. Bharti for one hour. I spoke with him about at least two women to whom I have spoken about Charles Momah, Lisa McDugall (McDougal) and Cathy Gonzales. Neither in this conversation nor at any other time did I tell Mr. Bharti that Dennis and Charles Momah had sex with a woman in the emergency of a hospital or anything to that effect...As I said above, I did not at anytime tell Mr. Bharti anything about Dennis and Charles having sex with Lisa McDugall or anyone at a hospital...I was aware that women who were former patients of Charles Momah were talking to each other about him...After talking with Mr. Bharti, I formed the opinion that we have different ethical standards and I accordingly decided not work with him and not to refer clients to him with respect to this matter”. See Attachment.

But she was prescribed narcotics each of the eleven times at Providence and the four times at the UW. And Dr. Paul Lin on June 26, 2003, just like Dr. Novak had done on July 24, 2003, warned her to reduce her narcotics use. This is what her complete medical records states. Infact Ms.

McDougal was seen by many other doctors for narcotics: St Joseph Medical center in Tacoma on February 7, 2002, June 25, 2002 by Dr. S. Finn gave her vicodin and dilaudid (medical record at page 240), Dr. Begett gave vicodin and dilaudid on Nov. 14, 2002 (medical record at page 233) Hansen gave vicodin on February 6, 2003 and many more.

Dr. Lin said, " I also encourage the patient to taper off vicodin and have encouraged her to take nonsteroidal for approximately one to two weeks prior to the onset her menstrual cycle." RP Nov. 1, 2007 at page 58, see also CP Ex. 6 McDougal medical records at page 10.

But her attorney, Mr. Bharti again attempted to get her to testify falsely, just like he did with Ms. Burns, that the medical records was incomplete, about the number of visits and the narcotics prescribed.

Q. (by Bharti) And when you look at your records and this exhibit, medical records, **can you tell if these are the complete records, your complete records, the times you gone there?**

A. **No, no. Even what I heard today tells me that these records are not complete on me.** RP. Nov.1, 2007 McDougal testimony at page 94.

But in recross by the defense, she changed her story about the record being incomplete and indeed, admitted that the record is complete.

Q. (by defense). **I just want to clear a couple of things, Ms. McDougal, because it wasn't clear to me when you said you were reviewing records with Mr. Anderson, regarding your medical records, did you say you saw more records than what had been put into evidence?**

A. Oh, no, no, I did not say that. RP Nov. 1, 2007 McDougal testimony at pages 106,107.

Her allegations of improper examinations is false because she was never examined without a chaperone present in the room. Her allegation of doctor impersonation and sex is preposterous, and inflammatory to the jury. Even if the allegation of consensual sexual relationship with the appellant is to believed, according to Kaltreider, Simmons, Shepard and Niece¹⁷, Ms McDougal is a not a "**vulnerable adult**" and by her own testimony, voluntarily admitted she engaged in a sexual relationship with her doctor and so does not rise to medical malpractice. On November 6, the trial court denied the defense motion to dismiss Ms. McDougal's case because no other authority has ruled that a **non vulnerable** adult who voluntarily engaged in consensual sex with her physician, with the exception of psychiatrists and psychologists, was medical malpractice. Ms. McDougal's entire case does not support and is insufficient for a

¹⁷Kaltreider v Lake Chelan Community Hospital, 153 Wn. App. 762, 224P. 3d. 808, 2009 LEXIS 3143(2009), Simmons V United States, 805 F. 2d1363(9th Cir. 1986), Shepard v Mielke, 75 Wn. App. 201, 877 P. 2d. 220(1994) and Niece v Elmview Group Home, 131 Wn. 2d 39,929 P. 2d 420, 1997 LEXIS 26. These cases do not support her allegation.

finding of medical malpractice. The jury discounted her allegation of doctor impersonation and lack of informed consent. Then, there is her ridiculous story about “powerful family¹⁸ and “mafia”, and what she said Kathie Gonzales told her about it. RP Nov. 1, 2007 Ms. McDougal testimony at pages 83, 84, 85 and 86.

And she told the trial court, “He told me no other doctor would take care of me, and because of my weight, no one would take me seriously and no other doctor would give me a hysterectomy but him. I just felt he was the only person that could take care of me”. RP Oct. 18, 2007 at page 109. This is obviously a false and fabricated testimony.

The UW scheduled her for hysterectomy on August 14, 2003 but she declined it and came back to my practice **voluntarily**.

Ms. C. Rule

Ms. Rule was a patient from February until September 2003, who sought help for secondary infertility after a voluntary tubal ligation. She was seeking reversal of tubal. She also had pelvic pain and abnormal uterine bleeding. She underwent a laparoscopic evaluation prior to tubal reversal (just as Ms. Burns) which confirmed pelvic adhesions and adequate

¹⁸ Ms. Gonzales knew that the appellant had many siblings, two other doctors, a judge, a corporate attorney and an architect. There is no mafia connection. This is what Mr. Bharti concocted to further tarnish the reputation of the Dr. Dennis Momah and the appellant. Ms. Gonzales worked for the appellant for many years and in ^{defense} deposition she ~~said~~ ^{said} she was never in fear or uncomfortable working with appellant.

fallopian tubes for reversal. Tubal reversal and lysis of adhesions was performed. It was explained to her that tubal reversal carried a six^{fold} risk of subsequent tubal pregnancy because of scar tissue formation. She conceived but unfortunately it was a tubal pregnancy. Ms. Rule underwent laparotomy through a skin incision that measured four inches, assisted by a surgical technician I had worked with some many times and anesthesia was provided by Ms. Butler. She told the jury "he cut me from hip to hip". RP. Oct. 18, 2007 at page 52. This is false testimony. She also told the jury that it was Dennis Momah who performed her laparotomy. This^{is} a fabricated testimony implanted in her mind by Mr. Bharti in an attempt to defend the defamation lawsuit against him that Dennis had filed. Ms Butler made clear in her that testimony that it Dr. Charles Momah who performed that surgery. RP Nov. 5, 2007 at pages 24, 25.

Mr. Bharti influenced her testimony by showing her a video¹⁹. She said, "My husband was there but Mr. Bharti asked him to leave the room. He

On Oct. 18, 2007 at 68, ¹⁹ Q. (by defense) So, you saw a video. Which video was this? A. A video of Dr. Dennis Momah.Q. And where did you see this? A. In my attorney's office? Q. That's Mr. Bharti? A. Yes. Q. Is that when you found that Charles had a twin brother? A. Yes. Q. Is that when you found that Charles Momah had 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 shown the video)** A. **No. 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.** This is what Mr. Bharti did in Saldivar v Momah (see page 6).

showed me a video”.... This is eerily similar to what Mr. Bharti had done with Ms. Saldivar²⁰, Ms. Wood and Ms. Burns, witness tampering and fabrication of evidence. Ms. Rule also lied when she filed her bankruptcy proceedings. She completed forms as part of her bankruptcy filings in which she confirmed under oath, that she had listed all her assets and specifically denied the presence of this lawsuit. **This, as with Ms. Burns goes to her ability to tell the truth even under oath.** She lied to the jury when she said her marriage fell apart because of Dr. Momah, yet had filed a petition for divorce in May 2002, prior to becoming a patient of Dr. Momah in February 2003. RP Oct. 31, 2007 at pages 12, 13. And her attorney attempted to get to lie that she never filed it. RP Oct. 31, 2007 at page 14, “Was it even filed? It say something, you see... no fees”. But the defense made it abundantly clear this was a lie. RP Oct. 31at pages15, 16. She misled the jury when she said that her laparotomy was supposed to be done through the belly button. This is not true because of stage of her tubal pregnancy. The jury also was misled when they asked,“Were you offered any other options to terminate your ectopic pregnancy other

²⁰ Saldivar v Momah 145 Wn. App. 365, 407 (2008). In that case the judge found that Mr. Bharti “improperly influenced and tainted a Perla’s testimony when he showed her a video..., actively participated in Perla’s fabrication and ever changing story and lied to the court”.

than surgery? It was explained to Ms. Rule that because she was bleeding internally and tubal pregnancy was at an advanced stage with danger of imminent rupture, she was not a candidate for conservative treatment with **methotrexate**. Moreover, her incision which she told the jury was “hip to hip” was a “bikini- type” which measured 4 inches in length, which of course she knew the jury could not see and misled the jury. Ms. Rule misled the jury by testifying that the appellant have been convicted of fraudulent billing and her attorney I knew it was false testimony, but let it stand. That charge has never been tried. He also tried to get her to testify falsely about the monitor being off, as he did with Ms. Burns.

Q... (by Mr. Bharti) To your knowledge, has Charles Momah been criminally charged for fraud issues relating to your care? A. He has.

Q. The charges are pending?

A. As far as I know, he has been convicted of that. Q. Convicted?

A. I am sure he has. Q. Okay. RP Oct. 18, 2007 at 67.

Q. Okay, the ---now the ultrasound exams. How many times ---- when the ultrasound exams were done on you, did you --- see the monitor?

A. Yes I did. Q. And was the monitor on all the time?

A. Yes, it was.

Q. So there were no times that it was not on.

A. No. RP Oct. 18, 2007 at 62.

Ms. Jenny Ramos (nee Bender)

This is one of the most troubling witnesses that attorneys, Mr. Bharti and

Ms. Starczewski presented to the jury to testify about sexual assaults

and doctor impersonation. Her whole testimony was predicated on having worked for me for a whole year. **But Ms. Ramos only worked for a week and received just one pay check for \$250 in April 2006, because she worked during the last week in March 1996. (See copy of check in attachment)** She was fired ^{for} misrepresentations on her application form about her work experience. She never did her externship with me as she claimed during this trial. But Mr. Bharti and Ms. Starczewski argued vociferously to the trial judge about her importance in this case for having worked longest. **Mr. Bharti told the jury that she worked from January 1996 to March 1997. Even the defense was unaware that she worked for only one week because he never conferred with me prior to this trial.** The trial court was deceived during the ER 404b analysis by both attorneys in the Collier et.al. on May 9, 2007 and on Oct. 22, 2007 in this trial. The ER 404b witnesses were cross admitted .The court asked:

(Judge Fleck) (at page 23)So, Ms. Ramos, is there an argument that you wish to make on her? Have made it already, Mr. Bharti? ...A. Your Honor, Momah's practice was nobody stayed for a while.But since she was there for a whole year, she knew. The defense protested that she was not credible. The Court: All right I have heard enoughBased on my review of the declaration, I can and do find on a more than probable than not basis that during this witness's tenure there that Dennis Momah filled in for Charles at times ...And this witness is unique in being a staff person as opposed to being a patient. (at page 23, 24) RP May 9,2007at pages 22 to 25.

In this trial, responding to Ms. Starczewski's argument, the judge said: So the gist of what you are telling me is that you would like someone like who served as an employee, Ms. Ramos, maybe the only one you have who served as an employee, and since they want call – you (defense) will call Ms. Maitland to testify that for the brief of time she worked for him, she didn't ^{see} anybody else except Charles Momah treating patients? You want to rebut; is that fair? A. (Ms. Starczewski) Correct. The Court: All right. A. That would be Ms. Ramos.... RP Oct. 22, 2007 at pages 49, 50.

The judge made this ruling after reading Ms. Ramos fabricated declaration. But because Ms. Ramos was there for one week, she could not have seen “Dennis at the clinic one hundred times wearing his name tag as Dr. D. Momah”. This is deliberate deception of the court because both Mr. Bharti and Ms. Starczewski knew that she was there for one week as the defense in the Dennis Momah impersonation told them in prior depositions. Moreover Ms. Ramos told Federal Way Police Department (F.W.P.D) that she worked for only three months, and both attorneys knew it was a lie, because it was Mr. Bharti that sent her to the F.W.P.D. Ms. Ramos said it was Mr. Bharti who sent her there on June 21, 2005 ²¹ at the defense deposition for the defamation suit.

²¹ Q. (defense) So you would have gone there on your own accord in the fall of 2003, just decided to go down to Federal way and ask for his statement? A No. No. I—must have been contacted. Yeah. Q. Were you contacted by Mr. Bharti at that time? A. I was contacted by him, I believe, it could have been end of August, first week of September maybe 2003. Q. Okay, of 2003? A. Yeah. Q. Did he give you a phone call or write a letter? A. Called me, I believe. Yeah. CP Ex. 81 at page 41. At 56 of this same deposition, she said: Q. Did Mr. Bharti ask you to write a declaration? A. Yes. Q. Did he tell you why he needed it? A. No. Q. Did you ask? A. No. Q. Did you believe it was for a case against

During September 19, 2003 interview at the F.W.P.D, she said: Q. (by Detective Wilcox) And how long did you work for Dr. Momah?
A. (Ms. Ramos) Um, it was actually three months. CP Ex. 83 at page 4 of 9.

While Ms. Ramos worked in the Issaquah office for one week, another long term employee worked in the Burien office. Mr. Bharti tried to obtain the name of this medical assistant who worked with Ms. Ramos. Before the defense could provide this name during the criminal case, Mr. Bharti and Ms. Ramos both claimed it was Ms. Kelly Acker, another one of my former patients who is Mr. Bharti's clients, suing me. The problem is that Ms. Ramos worked for me in 1996 and Ms. Acker was a patient in 1998 and there was no way Ms. Ramos could have known Ms. Acker except through Mr. Bharti. Moreover in the depositions with the F.W.P.D (page 3), and the above stated defense deposition (page 26), she could not remember the name of the person she worked with. **That was when Mr. Bharti filled in the blanks and fabricated a name, Ms. Kelly Acker.**

one of the Momahs? A. I didn't know and I didn't ask. Q Did he tell you it was for a case against him? A. No. Q. When was the first time you found out that there was a lawsuit against Mr. Bharti by Dennis Momah?A. When I got this subpoena in the mail...Q. did you give Mr. Bharti permission to use this declaration that you signed in defense of a suit against him. a. I gave him permission to use it for a reason. I don't think I said specifically for this, I just said he was okay to use for whatever reason he needed. Ms. Ramos appeared in multiple depositions and two trials giving fabricated testimony: she worked anywhere from 3, 6 or 9 months or 1 year, she was paid in cash, personal checks or she worked for free. She said she worked with a woman who whose she could not remember. **Mr. Bharti helped her fabricate that she worked with Ms. Kelly Acker.**

Neither the defense attorney nor the judge in this case were aware of this fabrication.

2. INEFFECTIVE ASSISTANCE OF COUNSEL

I was unable to meet and confer with my defense counsel to prepare for this trial. Because I was incarcerated at the Monroe Correctional Center at that time, I wrote him two letters on September 19, and October 15, 2007 requesting meetings with him to confer and prepare for trial. The only pretrial preparation I had with his office was a 30 minute phone call with his associate Eric Grotke. In the letters I wrote to him, I emphasized the need to call the key medical assistants who were chaperones at the examinations when the plaintiffs' allegations were made. These key exculpatory witnesses would have testified at the trial that none of the allegations are true, that they were present during the entire duration of the examinations. These witnesses include Kathie Reevis, Evette Kidd and Cathy Gonzales chaperoned Ms. Burns's visits, and Ms. Sloan accompanied her to the office on her first visit; Josiane Gifford, Dawn Vannoy, Beth Goode, Michelle Fjeld, Darlene Kildare, Anastasia Fernandez, Kathie Gonzales and Stephanie Watson were chaperones when Ms. McDougal and Ms. Rule were examined. These witnesses

would have testified that they were in the examination^{room}, that there was no improper use of ultrasound wand, no clitoral touching, and no examinations without gloves, no doctor impersonation and these other fabrications. Moreover, neither my previous attorney in the M.Q.A.C, and civil suit, Ms. Cheryl Comer and private investigator, both whom are familiar with this case and these chaperones were interviewed. Both were very familiar with Mr. Bharti's modus operandi. **There was also a fee dispute between us.**

The period on the eve of trial was complicated with by counsel's illness which his associate, Eric Grotke had alluded to in his declarations on January 18, 2007 and on April 20, 2007 sworn to the court in Collier et. al v Momah, Cause No. 05-2-05525-1KNT. On July 18, 2007, he filed a Notice of Withdrawal and on September 7, 2007 (CP #51 and 53) he filed a Notice of Appearance. These resulted in a breakdown in communication and left only a few weeks for trial preparations. He did not request for an extension of time with trial court.

3. ABUSE OF DISCRETION

Several of the trial court rulings prejudiced the defense and their cumulative effect denied the appellant a fair trial. These include 1) The

trial's court's admission of the M.Q.A.C finding of fact, Conclusion of Law and Agreed Order, Ex. 11, was manifest error. The document stated, "Without admitting the allegations herein, and specifically denying any criminal conduct, the Respondent acknowledges the following allegations and the purpose of these proceedings only does not dispute them"

(Underline and bold added) As ER 404b evidence, its admission was highly prejudicial as it was tended as a proof of allegations of actions committed with other patients. If he did it before or with others, he must have done it again. This is propensity evidence that was not subject to cross examination. It gutted the defense and should never have been admitted. 2) The trial court rejected the defense motions prohibiting any mention of the criminal conviction. Except for Ms. Burns, that conviction relates to individuals not party to this lawsuit. As for Ms. Rule and McDougal, it can only be used to portray Dr. Momah as a bad person. And Ms. Burns have not pleaded claim for acts on which the conviction was based. 3) Admission of doctor impersonation was highly prejudicial because the same trial court had dismissed all the cases of about impersonation by Dr. Dennis Momah. On August, 2006, the Hon. Judge D. Fleck dismissed all those cases: R. Burns v D. Momah, 05-2-40236-9KNT, L. McDougal v D. Momah, 05-2-39548-6KNT, C. Rule v D. Momah, 05-

28502KNT and many others. Dr. D. Momah was not a named party to this lawsuit, yet the trial court included his name in the jury instructions. 4) The trial court ruled that the finding by Hon. Judge K. Stoltz in **Saldivar v Momah**, Pierce County Cause No. 04-2-06677-3 of May 24, 2006 that **Mr. Bharti “had lied to the court” and “was a knowing participant of Ms. Saldivar’s fabricated allegations of sexual assaults”** would not be admitted in this trial, allegations eerily similar to those at issue in this case. **If the jury had known that in an earlier case Mr. Bharti had lied to the court and fabricated allegations similar to those in this trial against the same defendants, it would have had an impact in their deliberation and ultimate decision.** 5) The trial court denied the defense motion to dismiss Burns and Rule lawsuits because they failed to disclose the presence of this lawsuit in their bankruptcy filings as part of their assets. 6) The trial court denied the defense motion to dismiss Ms. McDougal lawsuit and made a ruling that an allegation of consensual sexual relationship between a patient and her physician was a standard care issue and therefore medical malpractice. No other courts to the best of my research and knowledge have come to a similar conclusion. 7) The trial court dismissed the appellant’s counterclaims against the plaintiffs ~~were dismissed~~ and he was denied due process. The appellant stated in

his counter claim that Ms. Burns”at the time of this lawsuit, counsels for the plaintiff knew or should have known with reasonable investigations that Ms. Burns’ allegations are false and without merit.

4) THE LACK OF SUFFICIENT EVIDENCE TO SUSTAIN A VERDICT

Pursuant to RCW 7.70.040 which provides two elements to be proven: failure of the health care provider to follow the accepted standard of care and that such failure resulted in proximate injury complained of. These plaintiffs have not proven any injury they sustained. It is difficult for the plaintiffs to prove their Medical Negligence claims. In addition, the plaintiffs have not really alleged that any procedure performed by the appellant was below the standard of care. Rather, each claim that she was injured by “overuse” of vaginal ultrasound procedure, or their claim that Dr. Dennis Momah performed some procedure, a ludicrous claim the jury rejected. Ms. McDougal claims she was injured by voluntarily engaging in sexual relationship with her physician. The alternative method of imposing liability on a healthcare provider besides Negligence is Lack of Informed Consent, to which the jury returned a defense verdict. Their verdicts were obtained by simply impugning the character of Dr. Charles Momah and hoping that the jury will pick up the fork and join in

the witch hunt. Apparently they did.

ARGUMENT OF THE CASE

1. USE OF PERJURED AND FABRICATED TESTIMONY AND EVIDENCE TO OBTAIN A VERDICT.

Deliberate deception of a court and jury by the presentation of knowing false evidence is incompatible with the rudimentary demands of justice.

Giglio v United States, 405 US150, 153, 92 S. Ct. 763(1970), United States v Agurs, 427 US97, 103, 96 S. Ct. 2392(1976), Jenkins v Artuz, 294F.

3d284, 292-293 2nd Cir. (2002). The Supreme Court of the United States has consistently held that a conviction(or verdict) obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is a reasonable likelihood that it could have affected the judgment of the jury. In Washington State, it is never permissible to encourage or suggest to a witness to that he or she testify falsely, or even allow false or misleading testimony to stand uncorrected. State v Floyd, 11 Wn. App.1, 5 521 P.2d 1187(1974), citing Napue v Illinois, 360 US 264, 79 S. Ct 1173(1959), State v Finnegan 6 Wn. App. 612, 495 P.2d 674 (1972). The Supreme Court of Washington said In the Matter of Disciplinary Proceedings v Hugh Stroh, 97 Wn. 2d 289,644 P. 2d1161;

1989 Wash. LEXIS 1357, “First, the crime of tampering with a witness strikes at the very core of the judicial system and necessarily involves moral turpitude..... A witness tampered with by an attorney, however becomes much more destructive in the search for the truth””That witness, privy to the testimony of other witnesses, can avoid the pitfalls of contradiction and refutation by judicial fabrications”. “Vigorous cross examination may become ineffective as coached witness would know the questions and proper answers. **In sum, the legal system is virtually defenseless against the united forces of a corrupt attorney and a perjured witness**”. Stroh 97 Wn. 2d at page 295-96, quoting In re Allen, 52 Cal. 2d 762, 768, 433 P.2d 609(1959). The fact is these plaintiffs were represented by attorneys whose ethical standards have been impugned by the W.S.B.A²² and at least three judges, Judge Stoltz, Judge Lau and

²²On May 19, 2010, Ms. Starczewski was sanctioned with reprimand involving these very cases for filing **frivolous allegations without good-faith basis and engaged in conduct prejudicial to the administration of law**. Both attorneys alleged that Mr. Ford and Mr. Johnson conspired with Charles and Dennis Momah and Kathie Gonzales to destroy medical record. In that case Bharti v Tim. Ford et.al. Superior Court Cause No. 06-2-03169-5SEA Judge Lau while imposing a CR 11 sanction on both attorneys, Bharti and Starczewski, stated, “the court found these allegations baseless, not grounded in fact...at page s22-23. “Mr. Bharti and his attorney (Ms. Starczewski) conducted no prefiling investigations before asserting these claims. A reasonable attorney would have known that these claims were without merit....at page 24. “The declarations of Bartel and McDougal (same plaintiff) relied upon by Bharti provide absolutely no support for this unfounded claim” ...at page 26. Ms. Shaw disavowed herself from this very lawsuit when she found out that it was fraud. In Mr. Bharti’s case, in February 2010, W.S.B.A (No. 03-01666) found that “there is sufficient evidence of unethical conduct”

Judge Schiapira, and three attorneys, Mr. T. Ford, M. Johnson and Ms. M. Shaw. Judge Stoltz (in May 2006 -Pierce County Cause No. 04-22-66777-3) and Division 2, Court of Appeals in Saldivar v Momah, 145 Wn. App. 365,384, 406,186 P. 3d 1117 (2008) found that Mr. Bharti “lied to the court” and “improperly influenced Perla (Saldivar) to lie on the witness stand” and “improperly influenced and tainted her testimony when he showed her a video”. On March 25, 2005 while dismissing Codman v Space Needle Corp. et. al. Superior Court Cause No. 04-2-17911-4 SEA, Judge Schiapira said, “Plaintiff’s attorney (Mr. Bharti) did not engage in a reasonable inquiry as to the facts before initiating this action and signing the complaint. Plaintiff and his counsel continue to pursue a factually baseless claim despite having actual knowledge that plaintiff did not testify at Taylor’s unemployment compensation” ... Plaintiff’s counsel (Mr. Bharti) signed and filed two more factually baseless pleadings” She imposed a CR11 sanction on Mr. Bharti and his client. This is the same pattern of conduct that Judges Lau and Stoltz found. In this case, Mr. Bharti knew that Ms. Burns had no second visit and that all her allegations of the second visit were lies because Mr. Bharti filed her lawsuits on September 25, 2003 and June 20, 2005 with the correct dates of March 25, 2003 (first visit) and March 27, 2003 (surgery). But during

her allegations of the second visit were lies because Mr. Bharti filed her lawsuits on September 25, 2003 and June ~~20~~¹⁵, 2005 with the correct dates of March 25, 2003 (first visit) and March 27, 2003 (surgery). But during this trial he misrepresented to the jury that she had more visits prior to March 25, 2003. Coached by Mr. Bharti on the witness stand, she lied to the jury. "RP Oct. 25, 2007 at page 105. Because all the employees interviewed states that Dennis Momah had never impersonated Charles as noted in Momah v Bharti, 144 Wn. App. 731, 182 P3d,455,466(2008) as noted on page 7 of this brief, Mr. Bharti and Ms. Starczewski fabricated the testimony of Ms. Ramos that she worked for one year enabling her to fabricate the allegation of impersonation and sexual assaults, and when she could not remember the name of the person she worked with, Mr. Bharti and Ms. Starczewski fabricated the person she worked with as Ms. Kelly Acker. It was not Ms. Acker. Ms. Burns did not pay any money to the appellant as she said in her deposition in the criminal case (see pages 16, 17 of this brief), yet she lied to the jury that she paid \$5000, a significant amount of money to sway the jury. Mr. Bharti met with all these plaintiffs and witnesses in this case and the criminal case before sending them to the police and prosecutor. His

influence was material in shaping their testimony. The Supreme Court of the United States held in *Napue*, “The principle that a State (or plaintiff) may not knowingly use false evidence, including false testimony to obtain a tainted conviction (or verdict) implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty and (property interest) may depend”. *Napue* 360 US at 269. “It is of no consequence that the falsehood bore upon the witness’s credibility rather than directly upon the defendant’s guilt”. *Napue* 360 US at 269. Because their testimony is the only evidence presented at this trial, their credibility is outcome determinative. Under the “Reasonable Application Standard” of the US Supreme Court established following *Napue*, *Giglio* and *Agurs*, this verdict should be overturned because materially false evidence was knowingly introduced into this trial. Also in *Jenkins v Artuz*, 294 F. 3d, 284, 292-3 (2nd Cir.) 2002 US App. LEXIS5621, the court said, “ADA Lendino’s attempt to hide Morgan’s plea from the jury and to use the false impression of its absence to bolster his credibility leaves us with no doubt that her

behavior violated Jenkins due process. Prejudice is further heightened when an attorney elicits false testimony. The jury might have doubted their testimony given the stark inconsistencies and contradictions had they know the extent of the lies. The general rule of legal ethics is that an advocate must disclose the existence of perjury with respect to material facts, even that of a client. At least since 1935, it has been the established of the United States that a verdict, whether criminal or civil obtained through testimony the prosecutor or plaintiff's attorney knows to be false is repugnant to the Constitution and must be overturned. Mooney v Holohan, 294 US 103, 55 S.Ct. 340 (1935). In this case, the attorneys was instrumental and complicit in eliciting false testimony. Their perjured testimonies were material.

INEFFECTIVE ASSISTANCE OF COUNSEL.

"To establish ineffective assistance of counsel, counsel's conduct must fall below an objective standard of reasonable and, but for counsel's error, there is reasonable probability that the outcome of the trial would have been different" Strickland v Washington, 466 US 668,687, 104 S. Ct. 2052 (1984)

"Counsel's performance herein was unreasonable because under Washington Rules of Professional Conduct (RPC), (a) "a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information" and (b) a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decision about his representation" See RPC 1.4

In Wiggins v Smith, 539 US 510, 123 S. Ct. 2527156 L.Ed. 471 2003), "Trial counsel's failure to investigate and present mitigating evidence....violated the accused right, under the 6th Amendment, to the effective assistance

of counsel and such failure by the trial counsel had fallen below the standard of reasonableness under the prevailing practice norms; and prejudiced the accused's defense". Wiggins 539 US at 510

Under Strickland, Ineffective ^{assistance} of Counsel has two components (1) that the counsel's performance was deficient (2) that the deficiency had

prejudiced the petitioner. As Wiggins Court makes clear, without a

reasonable investigation, a fully informed decision with respect to trial

strategy is impossible. Wiggins 539 US at 527-528.

"Their decision to end their investigation when they did was neither consistent with the professional standards that prevailed in 1989, nor reasonable in the light of the evidence counsel uncovered in the social service records—evidence that would led a reasonably competent attorney to investigate further" Wiggins 539 US at 534.

The Court in Hendricks v Vasquez, 974 F. 2d 1099, 1109 9th Cir. (1992)

while vacating the judgment found: "Counsel was ineffective where he

neither conducted a reasonable investigation nor made a strategic

reasoning for failing to do so". **"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 US v Musa, 220F. 3d 1096, 1102(9th Cir. 2000). The Court has

uniformly found constitutional error without a showing of prejudice

when counsel was prevented from assisting the accused during the critical stages of the proceedings”. United States v Cronin, 466 US 648,659 n.25, 104 S. Ct. 2039, 80 L.Ed. 657(1984). “We have held that a defendant’s right to the effective assistance of counsel is impaired when he cannot cooperate in an active manner with his lawyer. The defendant must be able to provide needed information and to participate in the making of decisions on his behalf”. Riggins v Nevada, 504 Us127, 144, 112 S. Ct.1810, 118 L.Ed. 2d 479 (1992).¹¹Under Criminal law 46.6 – effective assistance of counsel- surrounding circumstances and inherent prejudice. “There may be circumstances of such magnitude that, although counsel is available to assist the accused during trial, the likelihood that a lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial”. US v Cronin 466 US at page 660.

The Supreme Court of the United States have repeatedly held that a defendant’s right to counsel is violated if the defendant is unable to communicate his or her counsel during key trial times . Other jurisdictions have held similar views concerning pretrial investigations.

“Counsel must at a minimum, conduct a reasonable investigation enabling him to make informed decisions about how best to represent his client”. Sanders v Ratelle, 21 F. 3d 1446, 1456(9th Cir. 1994) “Essential to effective representation...is the independent duty to investigate and prepare”. Birt v Montgomery, 709 F. 2d690, 701(7th Cir. 1983). “At the heart of effective representation is the independent duty to investigate and prepare”. Goodwin v Balkom, 684 F.2d 794,805(11th Cir. 1982). “Counsel has a duty to make reasonable investigations or to make reasonable decision that makes particular investigations unnecessary”. Strickland 466 US at 691, Wiggins, 539 Us at 527-28 “In the event that a trial court determines that a serious conflict did exist that resulted in constructive denial of counsel, no further of prejudice is required and Schell trial shall be presumed to be unfair”. Schell v Witek 218F. 3d1017, 1027, 2000 US. App. LEXIS 15852(9th Cir. 2000). “No case in which the Ninth Circuit has held that a defendant’s Sixth Amendment right to a

counsel, violated by reason of a breakdown in communication between a client and counsel has involved a more clear showing that the breakdown amounted to a constructive denial of the right counsel itself". Daniels v Woodford, 428F. 3d 1181, 1199, 2005 US App. LEXIS 23642(9th Cir. 2005). "The lack of communication.....was so profound that it rendered counsel completely unable to discover the basic information necessary to a fair consideration to how best to defend Daniels...at 1199".

All the records of the depositions and affidavits from the medical assistants and secretaries who were present in the examination room and the office when the plaintiffs were seen, and the medical assistant who worked with Ms. Ramos were available from my previous attorneys and private investigators. Not calling these chaperones to the witness stand to testify that nothing improper happened during their examinations as Ms. Butler had testified about the surgical room, deprived me of vital evidence to rebut these accusations. **This is material evidence that the jury would have taken into consideration during their deliberation. In short, my counsels terminated their investigation at an improper juncture. Nothing in the record suggests that his failure to investigate further beyond what he already knew, and obtain exculpatory information that was at his fingertips, was the result of a strategic decision.** His ill preparation resulted in the calling of a witness, Natasha Edens, who was actually a plaintiff's witness. She was the former Office Manager who had filed a lawsuit against me, represented by Mr.

Bharti and given him my Office master list from which he recruited scores of patients for lawsuits seeking money damages. His failure to conduct adequate and further investigation beyond what he already knew, not calling the chaperones whose exculpatory evidences were readily available was a prejudicial and warrant a reversal of this verdict. Two of those key exculpatory witnesses not called are Stephanie Watson and Dawn Vannoy whose affidavit and deposition is included in this brief, are relevant, that they have never observed any inappropriate conduct by the appellant, ever, during these examinations.

In Avila v Galaza, 297 F. 3d 911,919, 2002 US App. LEXIS 14653 that court said:

“We find that Yamamoto’s (his defense counsel) performance was deficient because he failed to investigate or introduce at trial evidence that Ernesto was the shooter (not Jesus) There is a clear and convincing showing that it was Yamamoto’s inadequate pretrial investigation and not witnesses’ lack of cooperation that kept this evidence out of the courtroom at Jesus’ trial”. Avila 297F 3d at 919.

In State v Cory, 62 Wn. 2d 371, 382 P. 2d1019(1963), the Supreme Court of Wash. said: “No criminal conviction (or civil verdict) can stand, no matter how overwhelming of guilt, if the accused is denied the effective assistance of counsel”.

ABUSE OF DISCRETION

“A trial court abuses its discretion when its order is manifestly unreasonable or is based on untenable grounds. A trial court’s discretionary decision rests on untenable grounds or is based on untenable if the trial court relies on unsupported facts or applies the

wrong legal standards. A trial court's decision is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take". Magana v Hyundai Motor America et. al. 167 Wn.2d570, 220 P.3d 191(2009), 2009LEXIS 1066; Mayer v Sto. Industry Inc. 156 Wn. 2d 677,684, 132 P.3d 115(2006); State v Rohrich, 149 Wn. 2d647, 654, 71 P.3d 638(2003)

"Washington Appellate Courts review trial court's evidentiary rulings for abuse of discretion". City of Spokane v Neff, 152 Wn. 2d 85, 91, 93 P. 3d 158 (2004). "Trial court error is prejudicial if it affected the outcome of the trial or there is no way to determine what effect it had". Thomas v Frenchet.al. 99 Wn. 2d 95; 659 P.2d 1097, Wash. LEXIS 1417(1983).

Various trial courts' rulings impacted the defense in this case. On Oct. 5, 2007, the defense in their "DEFENDANT'S MOTION IN LIMINE" opposed the plaintiff's request for the admission of the "M.Q.A.C Stipulated Finding of Facts", CP Ex.11. The trial court on October 23, 2007 admitted this evidence on its face value. Admission of this "document" was highly prejudicial on many levels. The prejudicial effect of this document is evident on its face. This document was an "out-of-court" statement that **stated it was not supposed to be used in any other proceedings.** The admission of this untried, uncross examined and unproven propensity evidence was abuse of discretion. Because it cannot be cross examined the jury was left to accept it on its face value as facts. The allegations, all from Mr. Bharti clients, can only be offered to prove actions committed with other patients, in the hope that they can prove actions in conformity

therewith. Nowhere in the document does the defendant admit the truth of the allegations contained within, instead he merely acknowledged that the patients were making the allegations and for M.Q.A.C proceedings only, would not dispute. Under ER 403, it should have been excluded because its probative value substantially outweighed the danger of unfair prejudice, confusion of issues, misleading the jury and presentation of cumulative evidence. Because there is no way to know what value the jury placed upon the improperly admitted evidence, a new trial is warranted. *Thomas v French*, 99 Wn. 2d at 105, See also *Smith v Ernst Hardware Co.*, 61 Wn. 2d 75, 80, 377 P. 2d 258(1962), *State v Murphy*, 7 Wn. App. 505, 508-10, 500 P. 2d 1276 (1972).

The trial court's compounded the error of admitting the false evidence of doctor impersonation, when it had dismissed them on August, 2006, by including it in the jury instructions. CP Jury instruction. At page 1, question 3: "Did Dennis Momah conduct any exam. or procedure on the plaintiff(s) in the clinic of Charles Momah? Even though the jury returned a defense verdict, this false, unnecessary and unwarranted evidence of botched surgery, sexual assaults and other improper conduct prejudiced the defense by lending support to the other allegations.

The trial court also rejected the defense motion prohibiting any mention of the criminal conviction in this trial. The Rules of Evidence provides that evidence of crimes, wrongs or acts is not “admissible to prove the character of a person in order to show action in conformity therewith”- ER 404b. The trial court’s ruling on Nov. 7, 2007 that Ms. McDougal was a “vulnerable “ adult meant that the alleged sexual relationship was a standard of care issue and, thus medical malpractice. On Nov. 5, 2007, the judge said: I didn’t have time to do any research on my own, and I don’t have any from either side”. RP Nov. 5, 2007 at page 46. Her ruling that Ms. McDougal was a vulnerable adult conflicts with the ruling of the Supreme Court of Washington under Niece v Elmview,131 Wn. 2d 39, 42 , 929 P. 3d 420, 1997Wash. LEXIS 26:

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

The ruling of the trial also court conflicts from Courts of Appeals in this State. In Shepard v Mielke, 75 Wn. App. 201,205, 877 P.2d 220 (1994), the plaintiff suffered from brain damage and was entrusted to the care of Manor Care, a convalescent center. “A nursing home’s function is to

provide care for those who are unable because of physical and mental impairment to provide care for themselves”.

Kaltreider v Lake Chelan Community Hospital (LCCH), 153 Wn. App. 762, 224 P. 3d 808, 2009LEXIS 3143, that court noted “Here, unlike Niece, Ms. Kaltreider was completely impaired. She voluntarily admitted herself to LCCH and engaged in consensual sexual acts with Mr. Mennard. Moreover, In Smith v Sacred Heart Medical Center, 144 Wn. App. 537, 545-46, 184 P. 3d 646(2008, the court noted that the woman in Niece was totally helpless, which it distinguished from the patients who claim no mental or physical disability in the case before it.,We conclude that Ms. Kaltreider was not a **vulnerable adult**, nor were the actions of Mr. Menard foreseeable. Thus, LCCH did not have a duty to protect Ms. Kaltreider from the actions of a third party and correctly dismissed Ms. Kaltreider’s claim ”.Kaltreider at 762.

The similarity of Ms. McDougal’s²² claim with Kaltreider is obvious. The trial court’s ruling was abuse of discretion because Ms. McDougal was not a “vulnerable adult” and because “Courts do not routinely impose liability upon physicians in general for sexual contact with patients”.

Simmons v United States, 805 F. 2d 1363, 1366 (9th Cir. 1986) See e.g.

Smith v St Paul Fire and Marine Insurance Co. 353 N. W 2d. 130, 132

(Minn. 1984). But in Omer v Edgren, 38 Wash. App. 376, 685 P. 2d

635,637 (1984), “There is no question that a mental health professional’s

²²During the cross exam. Of Ms. McDougal by the defense on Oct. 22, 2007 at page 19 she said: Q. So when –did he come up to your car, or did you go up to his car? A. He just pulled up right next to me and rolled his window down and I kind of stepped out for a minute. Q. He asked if I would go to a hotel...A. Um, I said, Okay. Q. So you knew he wanted to have sex at the hotel with you; is that correct? A. Yes, at that point, yes. Q. And you agreed to have sex with him in a hotel. A. Yes. Q. There is no coercion about this, there is just two adults? A.... I felt I owed him or something. On page 21, Q. Okay. When you say several, how many times did you have sex with Charles Momah, total. A. Five times.

involvement with a client is a breach of duty and malpractice under Washington law”, quoting Simmons at 1368-69.

This is because of the “Transference Phenomenon”, “which is the term used by psychiatrists and psychologists to denote a patient’s emotional reaction to a therapist and is generally applied to the projection of feelings and thoughts and wishes onto the analyst, who has come to represent some person from the past”. Simmons at 1364.” When the therapist mishandles transference and becomes sexually involved with a patient, medical authorities are nearly unanimous in considering such conduct malpractice ...because it is through the creation, experiencing and resolution of these feelings that the patient becomes well”. Simmons at 1365. “Courts have uniformly regarded mishandling of transference as malpractice or gross negligence”. Simmons at 1365. “The crucial factor in the therapist-patient relationship which leads to imposition of legal liability which arguably is no more exploitative of a patient than sexual involvement of a lawyer with a client, a priest and a parishioner, or a gynecologist with a patient is that lawyers, priests and gynecologists do not offer a course of treatment and counseling predicated upon the handling of transference phenomenon”. Simmons at 1366.

The trial court’s ruling that the finding of by Hon. Judge Stoltz in Saldivar v Momah that the plaintiff’s attorney, Mr. Bharti had”lied to the court”, and “was a knowing participant of Ms. Saldivar’s fabricated allegations of sexual assaults” involving the same defendants was abuse of discretion because if the jury had known that Mr. Bharti and his client had lied in an earlier involving similar allegations with the same defendants, they would have considered this aspect of the case In their deliberation and the outcome would have been different. Part of this ruling was overturned because the judge “did not include sufficient findings in the record to

make a determination”, but upheld the fact that Mr. Bharti lied to the court and was subject to severe sanctions.

On Oct. 15, 2007, the defense motion for summary judgment and dismissal of the claims of Ms. Burns and Ms.McDougal because (1) they both failed to disclose their claims against Dr. Momah as an asset, in their bankruptcy petitions (2) they relied on that nondisclosure to obtain a discharge of their debts (3) the doctrine of judicial estoppel precludes a party from taking inconsistent positions in different judicial proceedings.

The trial court denied the defense motions. The defense argued that:

“Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceedings and later seeking advantage by taking a clearly inconsistent positions”. Bartley-Williams v Kendall, 134 Wn. App. 95, 98, 138 P. 3d 1103(2006).In an opinion this Court noted that the doctrine seeks “to preserve respect for judicial proceedings without necessity to a **perjured statutes**” and “to avoid inconsistency, duplicity and ... waste of time. Cunningham v Reliable Concrete Pumping Ink, 126 Wn. App. 222,225,108 P. 3d 147 (2005) (quoting Johnson v Si-Cor, Inc., 107 Wn. App. 902,906, 28 P.3d 832(2001). “A bankruptcy debtor has an affirmative duty under the Bankruptcy Code to disclose all assets, including contingent and liquidated claims”. Cunningham at 229-30, “a litigant takes inconsistent positions by failing to disclose a claim during bankruptcy proceedings and later attempting to pursue those claims”. Cunningham at 230, Hamilton v State Farm, Fire and Casualty Co., 270 F. 3d 778, 784, (9th Cir. 2001). “ Judicial estoppel applies to parties who have potential claims that have occurred, have filed for bankruptcy but failed to list those claims among their assets, and who then attempt to pursue those claims after bankruptcy discharge”. Hamilton at 782-86, Cunningham at 223-233, Deatley v Barnett, 127 Wn. App. 478, 482-84, 112 P. 3d 540(2005). **Both Ms. Burns and Ms.McDougal lied under oath.**

The defendant had a right to cross examine both of these witnesses under oath about their false statements, State v Williams, 60 Wn. App. 887,808 P. 3d 754 (1991) and that court noted that, “Any fact which goes to the truthfulness of a witness may be elicited if it is germane to the issue”. Id citing State v New York, 28 Wn. App. 33, 36, 621 P.2d 784(1980). Given the fact that the witnesses claim Dr. Momah actions occurred outside the presence of third party witnesses’, their credibility is certainly relevant to their claims. The trial court abused its discretion by denying the motions and precluding any mention of bankruptcy and their falsehood during the trial.

The trial court also dismissed the appellant’s counterclaims, denying him an opportunity be heard and due process.

4. LACK OF SUFFICIENT EVIDENCE TO SUSTAIN A VERDICT PURSUANT TO RCW 7.70.040

The law RCW 7.70.040 provides “that the plaintiff in action for medical negligence must show that the defendant failed to exercise that degree of care, skill and learning expected of a reasonably prudent healthcare provider at that time in the profession or class to which he or she belongs in the State of Washington, acting in the same or similar circumstances”. Miller v Jacoby et. al. 145 Wn. 2d 65, 2001 Wash. LEXIS 682 No. 70286-1. “To prevail on a claim of negligence, a plaintiff must show duty, breach of that duty and injury. In addition, a plaintiff must show that breach of that duty was the proximate cause of his or her injury”.

In this case the plaintiffs have not proven any injury proximately related to the care they received. Here, it is unclear how the plaintiff's allegations fit into Medical Negligence claim. None 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 gynecological conditions which the chaperones that were present during the exams. would have testified was professional performed. Their claim of Lack of Informed Consent was rejected by the jury.

Their other claim is Intentional and Negligent Infliction of Emotional Distress or Outrage, which is comprised of three elements which the plaintiff must prove:

“(1) Extreme and outrageous conduct (2) Intentional or reckless infliction of emotional distress and (3) severe emotional distress actually resulting in injury to the plaintiff”. The conduct in question must be so outrageous in character and so beyond the bounds of decency and be regarded as atrocious, utterly intolerable , in a civilized community”. Kloepful v Bokor, 149 Wn. 2d192, 66 P.3d 630 (2003).

The plaintiffs relied on their false allegation of doctor impersonation (which the jury rejected) or their claim of unprofessional conducts to support their claim, this court should reject these as basis for a jury

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 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

instrumental in their creation, that my defense attorney was ineffective for failing to confer with the petitioner and prepare for trial, failed to call the key exculpatory witnesses to the witness stand, the very medical assistants who were chaperones at the examinations when these allegations were made, the various trial court rulings, some individually, but when combined deprived the defense a fair trial, and finally, under RCW 7.70.040, their case is unproven, this verdict should be overturned and the lawsuit dismissed.

Respectfully submitted by:


Charles Momah MD.

Dated this 4th day of October, 2010

01272-7

ATTACHMENTS

1. Ms. Burns medical billing records...9,10,11,15,16,17,18,19,20,21,24,25

2. Transcripts of Ms. Burns' testimony : criminal trial18,19,22,23,24,

3. Ms. Jenny Ramos (nee Bender)-copy of one week paycheck37, 38
.....39, 40, 54

4. Transcript of ER404b hearing about the admission of Ms. Ramos, May
9,2007. Mr. Bharti's submission (4a), Complete copy of the same
document (4b)38

5. Declaration of Ms. Stephanie Watson.....55
(Affidavit of Ms. Vannoy to follow)

6. Letters to the Defense Attorney requesting preparation for trial....41,42

7. Declaration of Eric Grotke regarding Defense Attorney's illness.....42

8. Declaration of Ms. Sherry Wood, Ms. Michelle Shaw (attorney), Mr.
Mark Johnson (attorney).....8,31

9. Washington State Bar Association letter RE: "sufficient evidence of
unethical behavior" regarding Harish Bharti.....7,47

10. List of Cases dismissed by Hon. Judge D. Fleck against Dr. Dennis
Momah on August 25, 2006.....43,57

11. Letter from Ms. Lisa McDougal to Dr. Momah.....27

12. Transcripts of Ms. McDougal's trial testimony.....59

2011 OCT 22 AM 10:06


13. Ms. McDougal’s University of Washington and Providence Everett
Medical Center27 to 34

14. Transcript of CR 11 sanction against Mr. Bharti in Harish Bharti v Tim
Ford et. al. No. 06-2-03169-5 SEA before Hon. Judge Lau.....6,47,48

15. Transcript of CR 11 sanction against Harish Bharti by Hon. Judge
Schiapira in Codman v Space Needle Corp. et. al. No. 04-2-17911-4-SEA
.....6,7,47,48,

16. Hon. Judge K. Stoltz rulings in Saldivar v Momah, Pierce County
Docket No. 04-2-66773-3.....6,47,48,60

1

Burns billing Records
from the Insurance Company



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Forwarding Service Requested

6543 0-9792 AV 0-278
 S-DIGIT 98030
 RENA BURNS
 23812 102ND AVE SE
 KENT, WA 98031-3306

Claim #: 03216549-01
 Patient: RENA BURNS
 Patient Acct #: BURNS0000
 Soc Sec #: 463-41-3470
 Provider: CHARLES M MOMAH MD
 Group #: 4151
 Group Name: VALLEY MEDICAL CENTER
 Date: 04/21/2003

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Dates of Service	Service Description	Total Amount	Not Covered	Reason Code	Discount Amount	Allowed Amount	Deductible Amount	Co-Pay Amount	Balance	Paid At	Payment Amount
03/25-03/25/2003	PHYSICIAN VISIT	200.00	0.00		0.00	200.00	0.00	0.00	200.00	100%	200.00
03/25-03/25/2003	DIAGNOSTIC TESTIN	304.00	0.00		0.00	304.00	0.00	0.00	304.00	100%	304.00
03/25-03/25/2003	DIAGNOSTIC TESTIN	304.00	0.00		0.00	304.00	0.00	0.00	304.00	100%	304.00
TOTAL		808.00	0.00		0.00	808.00	0.00	0.00	808.00		808.00
Other Credits or Adjustments											0.00
Total Net Payment											808.00
Patient Responsibility											0.00

Payment To:	Check No.	Amount
CHARLES M MOMAH MD	01874830	808.00

Reason Code Description

Claim Comments

*** If you disagree with this determination, you have the right to make a written request for review under the appropriate first level of the member appeal process outlined below. **First Level** - You must request review within 180 days of this notice. First level review will be handled by the appeals department representative and a decision will be reached within 30 days. **Second Level** - If you disagree with the determination made in the first level review, you have the right to a second review under the member appeal process applicable to your plan. Instructions for requesting further appeal will be included in the written first level determination. A complete description can also be found in your summary plan description, or can be obtained upon request at any time. **Subsequent Action** - Upon exhaustion of the full member appeal process, you may have a right to pursue voluntary appeal procedures and, for most group coverage's, may bring action under Section 502 (a) of ERISA.



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 5-DIGIT 98030
 RENA BURNS
 23812 102ND AVE SE
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Claim #: 03222033-01
 Patient: RENA BURNS
 Patient Acct #: 44785788
 Soc Sec #: 463-41-3470
 Provider: LABCORP OF AMERICA
 Group #: 4151
 Group Name: VALLEY MEDICAL CENTER
 Date: 04/21/2003

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03/25-03/25/2003	LABORATORY	32.00	0.00	FD	19.65	12.35	0.00	0.00	12.35	100%	12.35
03/25-03/25/2003	LABORATORY	38.00	0.00	FD	27.85	10.15	0.00	0.00	10.15	100%	10.15
03/25-03/25/2003	LABORATORY	24.10	0.00	FD	19.36	4.74	0.00	0.00	4.74	100%	4.74
03/25-03/25/2003	LABORATORY	41.90	0.00	FD	33.62	8.28	0.00	0.00	8.28	100%	8.28
03/25-03/25/2003	LABORATORY	36.00	0.00	FD	29.77	6.23	0.00	0.00	6.23	100%	6.23
03/25-03/25/2003	LABORATORY	36.00	0.00	FD	29.73	6.27	0.00	0.00	6.27	100%	6.27
03/25-03/25/2003	LABORATORY	36.00	0.00	FD	27.87	8.13	0.00	0.00	8.13	100%	8.13
03/25-03/25/2003	LABORATORY	145.00	0.00	FD	111.93	33.07	0.00	0.00	33.07	100%	33.07
03/25-03/25/2003	LABORATORY	12.00	0.00	FD	6.22	5.78	0.00	0.00	5.78	100%	5.78
TOTAL		401.00	0.00		306.00	95.00	0.00	0.00	95.00		95.00
										Other Credits or Adjustments	0.00
										Total Net Payment	95.00
										Patient Responsibility	0.00

Payment To: LABCORP OF AMERICA
 Check No. 01874613
 Amount 95.00

Reason Code Description

FD FIRST CHOICE PREFERRED PROVIDER DISCOUNT. THE PATIENT IS NOT RESPONSIBLE FOR THIS AMOUNT.

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6541 0.9792 AV 0.278
RENA BURNS
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Claim #: 03216551-01
Patient: RENA BURNS
Patient Acct #: BURNS0000
Soc Sec #: 463-41-3470
Provider: CHARLES M MOMAH MD
Group #: 4151
Group Name: VALLEY MEDICAL CENTER
Date: 04/21/2003

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03/27-03/27/2003	SURGEON/OUTPATIE	2,365.00	150.42	RC	0.00	2,214.58	0.00	0.00	2,214.58	100%	2,214.58
03/27-03/27/2003	SURGEON/OUTPATIE	1,750.00	777.56	RC	0.00	972.44	0.00	0.00	972.44	100%	972.44
03/27-03/27/2003	SURGEON/OUTPATIE	1,019.00	63.72	RC	0.00	955.28	0.00	0.00	955.28	100%	955.28
TOTAL		5,134.00	991.70		0.00	4,142.30	0.00	0.00	4,142.30		4,142.30
Other Credits or Adjustments											0.00
Total Net Payment											4,142.30
Patient Responsibility											991.70

Payment To: CHARLES M MOMAH MD
Check No. 01874830
Amount 4,142.30

Reason Code Description

RC THIS CHARGE EXCEEDS REASONABLE & CUSTOMARY ALLOW

Claim Comments

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3-DIGIT 980
81956 0-3840 AT 0-292
RENA BURNS
23812 102ND AVE SE
KENT, WA 98031-3306

Claim #: 03187018-02
Patient: RENA BURNS
Patient Acct #: BURNS0000
Soc Sec #: 463-41-3470
Provider: CHARLES M MOMAH MD
Group #: 4151
Group Name: VALLEY MEDICAL CENTER
Date: 05/27/2003

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Dates of Service	Service Description	Total Amount	Not Covered	Reason Code	Discount Amount	Allowed Amount	Deductible Amount	Co-Pay Amount	Balance	Paid At	Payment Amount
03/27-03/27/2003	SURGEON,OUTPATIE	4,429.16	2,214.58	PA	0.00	2,214.58	0.00	0.00	2,214.58	100%	2,214.58
03/27-03/27/2003	INELIGIBLE	2,110.84	2,110.84	RC	0.00	0.00	0.00	0.00	0.00	0%	0.00
TOTAL		6,540.00	4,325.42		0.00	2,214.58	0.00	0.00	2,214.58		2,214.58
Other Credits or Adjustments											0.00
Total Net Payment											2,214.58
Patient Responsibility											4,325.42

Payment To: CHARLES M MOMAH MD
Check No. 01903217
Amount 2,214.58

Reason Code Description

PA	AMOUNT REPRESENTS CHARGES PREVIOUSLY CONSIDERED.
RC	THIS CHARGE EXCEEDS REASONABLE & CUSTOMARY ALLOW

Claim Comments

THIS IS AN ADJUSTMENT TO A PREVIOUSLY PROCESSED CLAIM.

BASED ON ADDITIONAL INFORMATION RECEIVED, IT HAS BEEN DETERMINED THAT A CORRECTED USUAL & CUSTOMARY AMOUNT BE UTILIZED \$2110.84 IS NOW CONSIDERED OVER UCR FOR CPT4 49322-51. CPT4 58558 REMAINS AS ORIGINAL PROCESSED

*** If you disagree with this determination, you have the right to make a written request for review under the appropriate first level of the member appeal process outlined below. First Level - You must request review within 180 days of this notice. First level review will be handled by the appeals department representative and a decision will be reached within 30 days. Second Level - If you disagree with the determination made in the first level review, you have the right to a second review under the member appeal process applicable to your plan. Instructions for requesting further appeal will be included in the written first level determination. A complete description can also be found in your summary plan description, or can be obtained upon request at any time. Subsequent Action - Upon exhaustion of the full member appeal process, you may have a right to pursue voluntary appeal procedures and, for most group coverage's, may bring action under Section 502 (a) of ERISA.



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 RENA BURNS 38
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Claim #: 03187018-01
 Patient: RENA BURNS
 Patient Acct #: BURNS0000
 Soc Sec #: 463-41-3470
 Provider: CHARLES M MOMANI MD
 Group #: 4151
 Group Name: VALLEY MEDICAL CENTER
 Date: 04/21/2003

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Dates of Service	Service Description	Total Amount	Not Covered	Reason Code	Discount Amount	Allowed Amount	Deductible Amount	Co-Pay Amount	Balance	Paid At	Payment Amount
03/27-03/27/2003	SURGEON/OUTPATIE	6,540.00	4,325.42	RC	0.00	2,214.58	0.00	0.00	918.83	65%	597.24
									1,295.75	100%	1,295.75
03/27-03/27/2003	SURGEON/OUTPATIE	3,000.00	1,637.66	RC	0.00	1,362.34	0.00	0.00	1,362.34	100%	1,362.34
TOTAL		9,540.00	5,963.08		0.00	3,576.92	0.00	0.00	3,576.92		3,255.33
Other Credits or Adjustments											0.00
Total Net Payment											3,255.33
Patient Responsibility											6,284.67

Payment To: CHARLES M MOMANI MD Check No. 01874830 Amount 3,255.33

Reason Code Description

RC THIS CHARGE EXCEEDS REASONABLE & CUSTOMARY ALLOW

Claim Comments

*** If you disagree with this determination, you have the right to make a written request for review under the appropriate first level of the member appeal process outlined below. First Level - You must request review within 180 days of this notice. First level review will be handled by the appeals department representative and a decision will be reached within 30 days. Second Level - If you disagree with the determination made in the first level review, you have the right to a second review under the member appeal process applicable to your plan. Instructions for requesting further appeal will be included in the written first level determination. A complete description can also be found in your summary plan description, or can be obtained upon request at any time. Subsequent Action - Upon exhaustion of the full member appeal process, you may have a right to pursue voluntary appeal procedures and, for most group coverage's, may bring action under Section 502 (a) of ERISA.



PO Box 85016
BELLEVUE WA 98015-5016

200304300004

For questions concerning benefits call (425)
462-1000 toll free (800) 700-7153
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Forwarding Service Requested

81887 0.7808 AT 0.292
E-DIGIT 980
RENA BURNS 297
23812 102ND AVE SE
KENT, WA 98031-3306

Claim #: 03227280-01
Patient: RENA BURNS
Patient Acct #: BURNS0000
Soc Sec #: 463-41-3470
Provider: CHARLES M MOMAH MD
Group #: 4151
Group Name: VALLEY MEDICAL CENTER
Date: 04/28/2003

This is an Explanation of Benefits-- NOT A BILL
Keep this statement for tax purposes. No other record will be provided

Dates of Service	Service Description	Total Amount	Not Covered	Reason Code	Discount Amount	Allowed Amount	Deductible Amount	Co-Pay Amount	Balance	Paid At	Payment Amount
03/31-03/31/2003	PHYSICIAN VISIT	148.00	46.37	RC	0.00	101.63	0.00	0.00	101.63	100%	101.63
TOTAL		148.00	46.37		0.00	101.63	0.00	0.00	101.63		101.63
Other Credits or Adjustments											0.00
Total Net Payment											101.63
Patient Responsibility											46.37

Payment To:	Check No.	Amount
CHARLES M MOMAH MD	01880907	101.63

Reason Code Description

RC THIS CHARGE EXCEEDS REASONABLE & CUSTOMARY ALLOW

Claim Comments

*** If you disagree with this determination, you have the right to make a written request for review under the appropriate first level of the member appeal process outlined below. First Level - You must request review within 180 days of this notice. First level review will be handled by the appeals department representative and a decision will be reached within 30 days. Second Level - If you disagree with the determination made in the first level review, you have the right to a second review under the member appeal process applicable to your plan. Instructions for requesting further appeal will be included in the written first level determination. A complete description can also be found in your summary plan description, or can be obtained upon request at any time. Subsequent Action - Upon exhaustion of the full member appeal process, you may have a right to pursue voluntary appeal procedures and, for most group coverage's, may bring action under Section 502 (a) of ERISA.

2

Relevant Transcripts of Burns' Criminal Trial
Testimony.

CROSS-EXAMINATION

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By Mr. Allen:

Q. Ms. Burns, my name is David Allen. We met when I had an opportunity to interview you; is that right?

A. That's correct.

Q. And that interview was on September 22, 2005; is that right?

A. Yes.

Q. And that was in the prosecutor's office. Do you recall that?

A. Yes, I do.

Q. And do you recall that there was a prosecutor present with you during that interview?

A. Yes, there was.

Q. And actually there were two prosecutors, weren't there?

A. Yes, there was.

Q. There was Mr. Rogoff who is sitting to your left, yes?

A. Yes.

Q. And there was Mr. Fogg who is sitting next to him, yes?

A. Yes.

Q. And you were aware ahead of time that we were going to do that interview?

A. Yes.

Q. And that interview was put off for a while because you had some family issues. Do you recall that?

- 1 A. Yes, I do.
- 2 Q. First what I would like to talk to you about was the
3 video that was previously done at the Gyft Clinic. Do
4 you recall that video?
- 5 A. Yes, I do.
- 6 Q. You don't have that video today, do you?
- 7 A. Yes, I do.
- 8 Q. When I interviewed you I asked you where that video
9 was, didn't I?
- 10 A. Yes, you did.
- 11 Q. You said, I may have given it to Harish or I might have
12 given it to the prosecutor. Do you recall that?
- 13 A. Yes, I do.
- 14 Q. Since that time you have been able to locate it; is
15 that correct?
- 16 A. That's correct.
- 17 Q. And where did you locate it?
- 18 A. In my home.
- 19 Q. So you had it at home?
- 20 A. I had a copy made when I gave it -- I have always kept
21 a copy of it.
- 22 Q. Now, when you first talked to Dr. Momah you did not
23 give him a copy of that video, did you?
- 24 A. Not on my first visit, no.
- 25 Q. I would like to talk -- before I talk to you about the

1 first visit I would like to talk to you about a little
2 timing here in terms of how this case was reported.
3 You indicated last week that you had spoken to your
4 husband who had seen something on television?

5 A. Yes.

6 Q. And he indicated to you that he had seen something
7 about this case on television?

8 A. Yes.

9 Q. Or at least about Dr. Momah and allegations against
10 him?

11 A. Right.

12 Q. And you indicated you went to the library at that point
13 in time?

14 A. Um-hum.

15 Q. And that's because you didn't have internet access at
16 home?

17 A. That's correct.

18 Q. So at the library you used their internet access; is
19 that right --

20 A. Yes.

21 Q. -- to look up what was on the internet at that point
22 about Dr. Momah, yes?

23 A. Yes.

24 Q. And that included television news stories, yes?

25 A. Yes.

- 1 Q. And also print media news stories?
- 2 A. No, I didn't look up anything printed.
- 3 Q. And in terms of the television news stories, those had
4 pieces where other patients of Dr. Momah talked on
5 television during interviews. Do you recall that?
- 6 A. Some of them, yes.
- 7 Q. What I would like to do is talk to you about your first
8 visit to Dr. Momah. You gave us a date on that, didn't
9 you?
- 10 A. Early March.
- 11 Q. That first visit was at which office?
- 12 A. Burien.
- 13 Q. When you came into the office there was a receptionist
14 there; is that correct?
- 15 A. That's correct.
- 16 Q. Can you describe that receptionist for us?
- 17 A. She was about five-four, a little bit longer, shoulder
18 length, ash blonde hair and probably about 130 pounds.
- 19 Q. You made an appointment before you came in obviously?
- 20 A. No, I did not.
- 21 Q. So you came in unannounced?
- 22 A. No, I did not. I was out in the Burien area and I
23 phoned the office. He got on the phone and said to
24 come in right now.
- 25 Q. How long after you called did you arrive at his office

1 on the first visit?

2 A. Within a half hour.

3 Q. You were greeted by the blond receptionist?

4 A. Yes.

5 Q. And did the blond receptionist take you back to the
6 exam room or did Dr. Momah come out?

7 A. I first went to his office.

8 Q. I take it the receptionist took you back to his office?

9 A. Yes.

10 Q. And you met him for the first time?

11 A. Yes.

12 Q. And then tell me how long after that was it that you
13 got to the exam room?

14 A. Maybe 10, 15 minutes. Probably about 10.

15 Q. So before you got to the exam room you had a chance to
16 discuss your situation with Dr. Momah?

17 A. That's correct.

18 Q. And I take it that during the earlier conversation over
19 the phone there wasn't much opportunity to tell
20 Dr. Momah what your medical history was?

21 A. No, I told him.

22 Q. So you told him that you were trying to get -- there is
23 a medical term for it, and you apparently know what
24 that term is, trying to get your tubes reattached?

25 A. Tubal reanastomosis. No, I did not go for that. I did

- 1 not tell him that's what I wanted.
- 2 Q. But you did talk to him over the phone about why you
3 wanted to come in and see him?
- 4 A. For IVF.
- 5 Q. So in the office you present and you say, I want IVF;
6 is that correct?
- 7 A. That is correct.
- 8 Q. And he took a medical history at that point in time, or
9 did he?
- 10 A. Not really, no.
- 11 Q. Okay. So he didn't ask you about the Gyft Clinic?
- 12 A. No.
- 13 Q. He didn't ask you about when you had had your tubes
14 detached?
- 15 A. No.
- 16 Q. He just said we are going to go in and do an exam?
- 17 A. No, he asked me why I felt I needed to have IVF.
- 18 Q. And then you told him about your decision or your hope
19 to have a child?
- 20 A. That's correct.
- 21 Q. And then after that he said, go in the exam room and I
22 will examine you?
- 23 A. That's correct.
- 24 Q. Or words to that effect?
- 25 A. Yeah.

- 1 Q. So you went into the exam room, correct?
- 2 A. Yes.
- 3 Q. And you undressed?
- 4 A. Yes.
- 5 Q. And while you were undressing Dr. Momah is in the room?
- 6 A. That's correct.
- 7 Q. And Dr. Momah is not only in the room he is watching
- 8 you get undressed?
- 9 A. Yes.
- 10 Q. And did you completely get undressed from top to
- 11 bottom?
- 12 A. Yes.
- 13 Q. Just so I am clear, your breasts are visible?
- 14 A. Yes.
- 15 Q. Your genitalia is visible?
- 16 A. Yes.
- 17 Q. Your shoulders are visible?
- 18 A. Yes.
- 19 Q. Stomach?
- 20 A. Yes.
- 21 Q. Legs?
- 22 A. I just had socks on.
- 23 Q. So except for your feet the rest of your body was
- 24 visible?
- 25 A. Yes.

1 MR. ALLEN: Your Honor, with the Court's
2 permission, I would like to use the writing board here
3 so I can keep track of things?

4 THE COURT: You mean you want to move the board
5 over there?

6 MR. ALLEN: No, we have another one that
7 Mr. Burns got for me.

8 THE COURT: You may set that up.

9 By Mr. Allen:

10 Q. What I want to do is, you tell me and I will write down
11 those things that happened. I am writing down first
12 visit. And I will write down undressed, Doctor watched
13 you. Then after you undressed did Dr. Momah tell you
14 to get on the exam table?

15 A. Yes.

16 Q. Did the exam table have stirrups on it?

17 A. Not at first. And then he pulled the stirrups out.

18 Q. The next thing that the doctor did was to start to
19 examine your breasts?

20 A. Yes.

21 Q. And when he was examining your breasts he was massaging
22 them?

23 A. Fondling, yes.

24 Q. And was it one breast or both?

25 A. Just one.

1 Q. And he was using his left hand to massage your right
2 breast?

3 A. Yeah.

4 Q. And this massaging of your breast went on for a period
5 of time, didn't it?

6 A. A few minutes.

7 Q. And you described this as a massage rather than a
8 palpation, didn't you? Let me go back a step. Do you
9 know what the term "palpation" means?

10 A. No.

11 Q. Can you describe what you mean when you say he massaged
12 your breast?

13 A. More of just fondling, groping, handling. There was no
14 structured direction.

15 Q. I think you told us on direct the other day that he
16 didn't go around to the various quadrants of the
17 breast?

18 A. Right.

19 Q. And then what he started to do was to do a vaginal
20 ultrasound; is that right?

21 A. Right.

22 MR. ALLEN: Would you please mark this as an
23 exhibit?

24 THE CLERK: It would be Defendant's Exhibit 24.

25 By Mr. Allen:

1 Q. Now, do you recall you previously identified a
2 photograph that was shown to you by the prosecution?

3 A. Yes.

4 Q. I will show you what has been previously marked as
5 Prosecution Exhibit Number 2. Is that the photograph
6 you identified?

7 A. Yes.

8 Q. And that's where you identified the ultrasound wand
9 looking like?

10 A. Yes.

11 Q. I am going to show you what has been marked as Defense
12 Exhibit 24.

13 MR. ALLEN: May I approach the witness, your
14 Honor?

15 THE COURT: You may.

16 By Mr. Allen:

17 Q. I will ask you if you can identify that?

18 A. That is the ultrasound wand.

19 Q. So that is similar to the wand --

20 A. Similar, yes.

21 Q. -- that Dr. Momah was utilizing?

22 A. Um-hum.

23 Q. Can you put that on the floor because I might ask you
24 some more questions about that?

25 A. (Complying.)

1 ultrasound before?" Do you see your answer there?

2 A. "Yes, I have."

3 Q. And then I asked you about how this was different than
4 other vaginal ultrasounds. Do you see that?

5 A. Yes.

6 Q. Let me read to you your answer here. And please read
7 along. "Well, the ultrasound he did prior -- the prior
8 ones that I had done before were like five minutes
9 long, and his ultrasound was half hour to 45 minutes."
10 Do you see that?

11 A. Yes.

12 Q. So you did tell me during the interview that the
13 ultrasound went on for half-an-hour to 45 minutes?

14 A. Yes.

15 Q. Do you see again on the same page, line 10, I asked the
16 question again, where I say, "you say this went on for
17 a half hour to 45 minutes"?

18 A. Yes.

19 Q. And you agree?

20 A. Yes.

21 Q. "While he is doing the ultrasound he is also massaging
22 your breast?"

23 A. He started out with just doing the vaginal ultrasound.

24 Q. "And then while he was into it, during the half hour,
25 45 minutes, he started massaging your breast at the

1 you?

2 A. No, I did not.

3 Q. And you are aware, are you, that Fentanyl could cause
4 people to go off to sleep?

5 A. Some people it does, yes.

6 Q. Now, tell us the other times prior to this you have had
7 Fentanyl?

8 A. When I broke my leg.

9 Q. How long ago was that?

10 A. That was in -- 14 years ago.

11 Q. And when else did you have Fentanyl?

12 A. I think I had some when I had my tubes tied in '84,
13 April of '84.

14 Q. How old were you then?

15 A. 19.

16 Q. You would have known that it was improper for Dr. Momah
17 to give you Fentanyl during a routine gynecological
18 examination, wouldn't you?

19 A. No. There are doctors that do that.

20 Q. You would have known that it might be dangerous for you
21 to receive fentanyl during this examination given the
22 little you knew about Dr. Momah at the time he gave it
23 to you?

24 A. I wouldn't say that it was dangerous, no.

25 Q. Fentanyl makes you relax?

- 1 A. Yes.
- 2 Q. You started the exam at 11:00. By the time you
3 realized what was happening it was 2:00 p.m.; isn't
4 that right?
- 5 A. No, I never went to sleep.
- 6 Q. Didn't you tell the prosecutor, this is Ms. Otake, when
7 you talked to her on May 21, 2004, "I relaxed on
8 Fentanyl. The time was about 11:00. Next I remember
9 it is about 2:00 p.m." Do you remember telling her
10 that?
- 11 A. No.
- 12 Q. Now, following this first exam -- Let me ask you. You
13 went to the first exam with a friend of yours, didn't
14 you?
- 15 A. Yes, I did.
- 16 Q. Her name is Jennifer Sloan?
- 17 A. Yes.
- 18 Q. Do you recall at my interview with you I asked you for
19 her phone number?
- 20 A. Yes.
- 21 Q. You didn't provide that to us?
- 22 A. I didn't have it at the time, no.
- 23 Q. And you never provided it to us afterwards?
- 24 A. Yes, I have.
- 25 Q. To whom?

1 Q. The ultrasound examination lasted from 30 to
2 45 minutes, didn't it?

3 A. No, because the whole procedure took that long. I
4 wouldn't say that it was just that.

5 MR. ALLEN: Would you please mark this as a
6 Defense Exhibit?

7 THE CLERK: Defense Exhibit 25 is marked for
8 identification.

9 MR. ALLEN: May I approach, your Honor?

10 THE COURT: You may.

11 By Mr. Allen:

12 Q. Ms. Burns, I am handing you what has been marked as
13 Defense Exhibit 25. Does that appear to be a copy of a
14 transcript of an interview of Rena E. Burns?

15 A. Yes.

16 Q. That was done on September 22, 2005?

17 A. Yes.

18 Q. And that was done at the Kent Regional Justice Center?

19 A. Yes.

20 Q. Have you had a chance to review this? Was a copy
21 provided to you?

22 A. Yes.

23 Q. Would you please look at Page 22? Actually go back to
24 21. Do you see my question on page 21, line 21? "And
25 then what about -- have you ever had a vaginal

1 September 16, 2003 by Ms. Virginia Renz of the
2 Department of Health you told her that after your final
3 visit with Dr. Momah he said, I am referring you to
4 Dr. Kevin Johnson?

5 A. I don't remember that, no.

6 Q. Was it Dr. Kevin Johnson who you went to after
7 Dr. Momah?

8 A. Yes.

9 Q. And that's where you went to have the successful
10 pregnancy?

11 A. Yes.

12 Q. So for the second visit you brought your husband, Ricky
13 Burns, with you?

14 A. Yes.

15 Q. However, you did not tell your husband about all these
16 improper things that took place during the first visit?

17 A. No, I did not.

18 Q. And not only did you not tell him about all the
19 improper things, you did not tell him about any of the
20 improper things that Dr. Momah did to you?

21 A. No, I did not.

22 Q. And you had your husband wait out in the waiting room
23 during the second visit, yes?

24 A. Yes.

25 Q. And during the second visit Dr. Momah repeated many of

1 the improper things he did to you during the first
2 visit?

3 A. Yes.

4 Q. He watched you get dressed and undressed?

5 A. Yes.

6 Q. He did another breast exam on you?

7 A. Yes.

8 Q. Except it really wasn't a breast exam, was it?

9 A. No, it wasn't.

10 Q. It was fondling of your breast?

11 A. Yes.

12 Q. Did you say to him, Dr. Momah, you have already
13 examined my breast, why are you doing it again?

14 A. Yes.

15 Q. What did he say?

16 A. Because he wanted -- he wanted to check everything out
17 completely before I had the surgery. That's why he
18 made me have a second appointment.

19 Q. So there was the undress, there was the breast exam.
20 But it wasn't an exam, so breast massage?

21 A. Yes.

22 Q. And was that done the same way as the first time? Let
23 me stop you. That second one you told us he had two
24 hands on one of your breasts?

25 A. Um-hum. Yes.

- 1 Q. Ultrasound wand again?
- 2 A. Yes.
- 3 Q. And that was like the first time, it was thrust in and
4 out?
- 5 A. Yes.
- 6 Q. He touched your clitoris?
- 7 A. Yes.
- 8 Q. How long this time, the second time?
- 9 A. I don't remember. I don't remember how long it was.
- 10 Q. And this time you told him, Doctor, I don't want the
11 ultrasound wand up my anus?
- 12 A. No. Yeah, because that's when he used his hand.
- 13 Q. So he put his finger in your anus?
- 14 A. Yes.
- 15 Q. He didn't give you Fentanyl the second time, did he?
- 16 A. No.
- 17 Q. He watched you dress?
- 18 A. Yes.
- 19 Q. As before, the first time, you knew it was improper for
20 him to watch you dress and undress?
- 21 A. Yes, I did.
- 22 Q. And as with the first time you knew it was improper for
23 him to touch your breast with both his hands?
- 24 A. Yes.
- 25 Q. That clearly wasn't a breast exam?

1 the first visit, wouldn't it?

2 A. Yes, it would.

3 Q. And then you talk about how he did an ultrasound and
4 you could feel his fingers massaging your clitoris and
5 surrounding area?

6 A. Yes.

7 Q. And then you talk about it lasting 20 to 30 minutes?

8 A. Um-hum.

9 Q. And then there is some more discussion about still
10 feeling your clitoris, yes?

11 A. Yes.

12 Q. And then you write, "he then told me to get dressed and
13 meet him in his office", yes?

14 A. Yes.

15 Q. There is nothing in there about him watching you --

16 A. There is nothing in there that --

17 MR. ALLEN: Your Honor, I would like the witness
18 to allow me to finish my question.

19 THE COURT: Ask a question. Go ahead.

20 MR. ALLEN: I would like her answer stricken
21 because it is nonresponsive.

22 THE COURT: That portion is stricken. Ask a
23 question.

24 By Mr. Allen:

25 Q. There is nothing in there about him watching you get

1 dressed after the visit, is there?

2 A. No, there is not.

3 Q. And your answer where you say, he then told me to get
4 dressed and meet him in the office would imply that he
5 left the room while you were getting dressed, wouldn't
6 it?

7 MR. FOGG: Objection to the form of the question.
8 I think counsel has moved past leading and is simply
9 testifying.

10 THE COURT: I will sustain the objection as
11 argumentative.

12 By Mr. Allen:

13 Q. Doesn't this indicate -- didn't you indicate to
14 Ms. Renz that he did not watch you get dressed?

15 A. It doesn't imply that he either stayed or left the
16 room. It implies neither way.

17 Q. And then you go on from there talking about other
18 matters. And then later on in the letter you talk
19 about the second visit, don't you, the next visit?

20 A. On the next page?

21 Q. I am just saying that is the end of your discussion
22 about the first visit.

23 A. And what is your question?

24 Q. There is nothing more in your letter, Exhibit 27, that
25 describes the first visit other than what I went over

- 1 A. Just that she went.
- 2 Q. Just that she had seen a doctor?
- 3 A. Yeah.
- 4 Q. And then you went back with her to her second
5 appointment?
- 6 A. Yes.
- 7 Q. And that was in Federal Way?
- 8 A. Yes, it was.
- 9 Q. And you didn't hear anything from your wife at that
10 point about Dr. Charles Momah molesting her?
- 11 A. No.
- 12 Q. She didn't say, he makes me feel uncomfortable, or
13 anything to that effect?
- 14 A. I didn't know anything at that time.
- 15 Q. So you didn't know the specifics?
- 16 A. I didn't know anything period.
- 17 Q. And she didn't even say anything like, he gives me the
18 creeps, or anything like that?
- 19 A. I never heard her say that at that time, if that's what
20 you mean. At that time?
- 21 Q. Yes, at that time.
- 22 A. No.
- 23 Q. And when you went to her appointment in Federal Way
24 with her, you didn't go into the exam room with her?
- 25 A. We didn't go into an exam room. We went into his

1 office.

2 Q. You went in his office?

3 A. Yes.

4 Q. And at that point you had a conversation about having
5 children, getting pregnant?

6 A. Yes.

7 Q. And then you left?

8 A. Okay. Yeah.

9 Q. Is that right, you both left after that?

10 A. Well, yeah, we left. That was it. We just talked
11 about it and left.

12 Q. And then at some point you went back with your wife
13 when she had her surgery; is that right?

14 A. Yes.

15 Q. And do you recall how much later that was?

16 A. No.

17 Q. Was it a matter of weeks or months?

18 A. I don't remember exactly. I know you are wanting exact
19 times and dates. Forget it. I don't know.

20 Q. And you testified earlier that your wife was -- seemed
21 afraid?

22 A. Yes. She didn't seem afraid, she was at that time.

23 Q. She asked you not to leave?

24 A. Yes.

25 Q. She didn't say she was afraid of being molested, did

3
Mrs Jenny Ramos (nee Bender)
Copy of Paycheck

1039

CHARLES M. MOMAH, MD
NW CENTER FOR OB / GYN
(206) 246-8231
P.O. BOX 48279
SEATTLE, WA 98148

4/1 19 96

19-2/1250

PAY TO THE ORDER OF

Jenni Bender

\$ 57.57

Fifty seven & 57/100

DOLLARS

1 SEAFIRST BANK

Kent North Branch 099309
18030 E. Valley Hwy.
Kent, WA 98031

FOR

assembly desk

⑆001039⑆ ⑆125000024⑆ 17606 914⑆

⑆0000005757⑆

1053

CHARLES M. MOMAH, MD
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(206) 246-8231
P.O. BOX 48279
SEATTLE, WA 98148

4/12 19 96

19-2/1250

PAY TO THE ORDER OF

Jenni Bender

\$ 50.00

Fifty

DOLLARS

1 SEAFIRST BANK

Kent North Branch 099309
18030 E. Valley Hwy.
Kent, WA 98031

FOR

Kent nurse and supply

⑆001053⑆ ⑆125000024⑆ 17606 914⑆

⑆0000005000⑆

1054

CHARLES M. MOMAH, MD
NW CENTER FOR OB / GYN
(206) 246-8231
P.O. BOX 48279
SEATTLE, WA 98148

4/12 19 96

19-2/1250

PAY TO THE ORDER OF

Jenni Bender

\$ 250.00

Two hundred and fifty

DOLLARS

1 SEAFIRST BANK

Kent North Branch 099309
18030 E. Valley Hwy.
Kent, WA 98031

FOR

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*James Bender
Quartz P.F.*

▶325081403▶
BOEING EMPLOYEES
CREDIT UNION
P.O. BOX 27000
SEATTLE, WA 98104-0700

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KC5697 0142

APR 15 1996

rcpt # 0678 tran date 4-15-96

James Bender
Quartz P.F.

KEY BANK OF WASHINGTON
SEATTLE, WA 98115/96
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SEATTLE, WA
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APR 15 1996

rcpt # 0678 tran date 4-15-96

James Bender
Quartz P.F.

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KEY BANK OF WASHINGTON
SEATTLE, WA
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Transcripts of ER 404B hearing
about admission of Mr. Ramos, May 9,
2007.

- (a) Mr. Bharti's submission
- (b) Complete copy of the same

1 So, Ms. Ramos, is there an argument that you wish
2 to make on her? Have you made it already, Mr. Bharti?

3 MR. BHARTI: You know, Your Honor, Ms. Ramos, as
4 I indicated, she's the only witness who knew Dennis as
5 Dennis Momah. She didn't speculate or see similarities.
6 She knew him.

7 And Dennis Momah was covering two days a week,
8 and sometimes even more when Charles wouldn't be there,
9 and she would know that Charles is not going to be
10 there, and Dennis is going to cover. She --

11 THE COURT: Without patients knowing, I think, is
12 what the assertion is.

13 THE COURT: Yes.

14 MR. BHARTI: Your Honor, Momah's practice was

15 nobody stayed there for a while. There is no witness
16 other than her who worked this long, you know. And even
17 Momah was trying to deceive her, too. Never Dennis
18 Momah introduced himself, never spoke to her, never
19 greeted her, never said anything. And he came through
20 the back door, Dennis Momah, when he entered first time.
21 Charles came through the front door.

22 And so she understood that Dennis is seeing
23 patients. And she also testifies the expectation of the
24 patients was to see Charles. And she also says that one

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1 11 patient complained to her when last Dennis examined her;
2 12 the pelvic ultrasound was very rough. And this is
3 13 consistent with what you just heard from this witness;
4 14 when Dennis was, it was rough.

5 15 And so he was trying to fool this woman, too.
6 16 But since she was there for a whole year, and she was
7 17 new. So the plan was -- and their defense is
8 18 fabrication. You heard Charles Momah talk on and on
9 19 that, Dennis Momah, on the stand, trying to intimidate
10 20 the counsel as well, that, as if this is all kind of
11 21 fabrication.

12 22 THE COURT: All right. I've heard enough.

13 23 The purpose here is, again, for common scheme or
14 24 plan, having one doctor fill in for another, and it's
15 25 relevant to the issue, as I have said with other
16 1 witnesses, to the lack of informed consent claim.

17 2 Based on my review of the declaration, as well as
18 3 my review of the deposition, I can and do find on a more
19 4 probable than not basis that during this witness's
20 5 tenure there Dennis filled in for Charles at times.

21 6 And under State v. Kilgore, at 147 Wn.2d. 288,
22 7 where an offer of proof by an attorney was found to be
23 8 adequate, in light of all of the testimony that I have
24 9 now heard, as well as a review of these documents, I can

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1 So, Ms. Ramos, is there an argument that you wish
2 to make on her? Have you made it already, Mr. Bharti?

3 MR. BHARTI: You know, Your Honor, Ms. Ramos, as
4 I indicated, she's the only witness who knew Dennis as
5 Dennis Momah. She didn't speculate or see similarities.
6 She knew him.

7 And Dennis Momah was covering two days a week,
8 and sometimes even more when Charles wouldn't be there,
9 and she would know that Charles is not going to be
10 there, and Dennis is going to cover. She --

11 THE COURT: Let me hear from Mr. Mungia.

12 MR. MUNGIA: Thank you, Your Honor.

13 As I said before, I think it's still a 404(b)
14 analysis. She doesn't have any direct testimony. It
15 just goes to this common plan or scheme of having Dennis
16 Momah substitute in for Charles. So we start there.

17 And they always have the burden of proof. I don't
18 think this Court, in light of all the evidence, now can
19 say more likely than not what Ms. Ramos is saying
20 actually happened. Her scheme doesn't fit anybody
21 else's as common plan and scheme. That's the test,
22 common plan or scheme.

23 She has Dr. Dennis Momah going in there twice a
24 week, wearing a lab coat with his name on it, and not
25 hiding that at all. I mean, this does not fit this

1 | so-called common plan or scheme that the plaintiffs have
2 | been trying to say that Dennis Momah would impersonate
3 | without anybody knowing. And, you know --

4 | THE COURT: Without patients knowing, I think, is
5 | what the assertion is.

6 | MR. MUNGIA: I think -- I haven't heard anybody
7 | saying the staff would know, either, for this
8 | impersonation purpose. But maybe I missed something.

9 | But I haven't heard any staff member saying, oh,
10 | yeah, we knew that it was going on, this impersonation.
11 | So I don't think it falls within this common plan or
12 | scheme.

13 | First of all, it doesn't come within that,
14 | because it's not the same plan or scheme; it's something
15 | different. And, two, I don't think you can evaluate her
16 | credibility simply by the cold deposition. And I think,
17 | in light of everything else, I just think it's more
18 | likely than not what she's saying did not happen.

19 | And it's from my memory, because I did not have
20 | the file with me, but I will stand by my recollection
21 | this was a witness that was not identified yesterday
22 | when we were trying to get that transcript.

23 | MR. BHARTI: Your Honor?

24 | THE COURT: Yes.

25 | MR. BHARTI: Your Honor, Momah's practice was

1 nobody stayed there for a while. There is no witness
2 other than her who worked this long, you know. And even
3 Momah was trying to deceive her, too. Never Dennis
4 Momah introduced himself, never spoke to her, never
5 greeted her, never said anything. And he came through
6 the back door, Dennis Momah, when he entered first time.
7 Charles came through the front door.

8 And so she understood that Dennis is seeing
9 patients. And she also testifies the expectation of the
10 patients was to see Charles. And she also says that one
11 patient complained to her when last Dennis examined her;
12 the pelvic ultrasound was very rough. And this is
13 consistent with what you just heard from this witness;
14 when Dennis was, it was rough.

15 And so he was trying to fool this woman, too.
16 But since she was there for a whole year, and she was
17 new. So the plan was -- and their defense is
18 fabrication. You heard Charles Momah talk on and on
19 that, Dennis Momah, on the stand, trying to intimidate
20 the counsel as well, that, as if this is all kind of
21 fabrication.

22 THE COURT: All right. I've heard enough.

23 The purpose here is, again, for common scheme or
24 plan, having one doctor fill in for another, and it's
25 relevant to the issue, as I have said with other

1 witnesses, to the lack of informed consent claim.

2 Based on my review of the declaration, as well as
3 my review of the deposition, I can and do find on a more
4 probable than not basis that during this witness's
5 tenure there Dennis filled in for Charles at times.

6 And under State v. Kilgore, at 147 Wn.2d. 288,
7 where an offer of proof by an attorney was found to be
8 adequate, in light of all of the testimony that I have
9 now heard, as well as a review of these documents, I can
10 make, I believe, that finding on a more probable than
11 not basis. And this witness is unique in being a staff
12 person as opposed to being a patient. I believe that
13 makes her rebuttal evidence more necessary.

14 I don't think it is particularly inflammatory,
15 with the exception of the references on Pages 43 and 44
16 of the deposition, where there's a reference to him
17 squeezing her right breast, and leaning over and trying
18 to kiss her, et cetera. Her reason for leaving the
19 clinic associated with those statements is unnecessary
20 to this purpose, and it will not come into evidence.

21 (End of excerpt.)
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Declaration of Stephanie Watson

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IN RE DOCTOR CHARLES MOMAH

)
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) No.
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)
) DECLARATION OF
)
) STEPHANIE WATSON
)

I, Stephanie Watson, have personal knowledge of the following facts and could and would testify

as follows:

- 1. I am over the age of eighteen, competent to testify herein, and make this declaration based on my personal knowledge.
- 2. I worked for Doctor Charles Momah as a medical assistant in his Federal Way office from July 14, 2003 through the date his office was shut down on September 10, 2003. I worked three days a week, on one of two shifts: 9:00 A.M. to 5:00 PM and 10:00 A.M. to 6:00 P.M. My duties included assisting with patient exams, helping patients, scheduling appointments, sterilizing instruments and equipment, and cleaning the examination/procedures rooms.
- 3. I knew Cathy Gonzales, as she worked one day a week in Federal Way and one day a week in the Burien office. (The doctor worked five days per week, four in Federal Way and one in Burien). Cathy tended to be a rather dramatic person, often complaining about the doctor's schedule and her pay.

1 Cathy was definitely not afraid of Dr. Momah and was not afraid to speak her mind to him. Sometimes
2 she would get angry with Dr. Momah and cuss him out. I was very surprised she would talk to her boss
3 that way. He would listen and respond, sometimes speaking very harshly to Cathy. That said, Cathy
4 really seemed to like Dr. Momah.

5 4. I also worked with Natasha Edens. Natasha was very young; I think nineteen. Her and I got
6 along fine, but I guess because of her age, she was very self-centered. Her life seemed to be about
7 earning enough money to party on. She spent a lot of work time looking through catalogs and ordering
8 clothes or talking on the phone with her friends. Natasha hated doing anything that didn't involve her
9 personal life or socializing. She was the queen of 1000 excuses for leaving work.

10
11 5. I believe Natasha hated Dr. Momah simply because she hated working. Natasha would get
12 very snappy and rude to the doctor, such as when he asked her to get off the phone and perform her work
13 duties or when she would ask take her lunch break and the doctor would tell her she could not go,
14 because she had not done her work. Natasha would argue quite meanly to the doctor. I remember her
15 yelling at Dr. Momah and I remember her calling him a "big fat bastard." I remember Dr. Momah
16 telling her she needed mental help during her tirades. Natasha was not afraid of Dr. Momah.

17
18 6. Dr. Momah kept Natasha on because she was the only one who understood the billing. He
19 was looking for a replacement when the clinic was shut down. Dr. Momah asked me to write my letter
20 dated September 3, 2003, because I had reported to him that Natasha had not appeared to let me into the
21 office as scheduled. Dr. Momah was getting ready to fire Natasha. He was concerned she might
22 retaliate, so he wanted me to document the event. I have reread the letter today. It is true and correct.
23 Said letter is attached and incorporated by reference herein. Dr. Momah asked me to write my letter
24 dated September 10, 2003, for the same purposes. I have reread the letter today. It is true and correct.
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1 Said letter is attached and incorporated by reference herein.

2 7. My primary duty was to assist patients into the exam room and to assist him during the exam.
3 When I first hired on, Dr. Momah told me it was important for me to be present during the entire exam.
4 I knew through my training that it was important professionally that he never be left alone with a patient,
5 but it was good that the doctor told me that it was an office policy.

6
7 8. During the entire time I worked for the doctor, I am certain the doctor was never alone with a
8 patient except when the patient brought along a significant other; a husband, boyfriend, mother, or sister.
9 Even then, I would usually still remain in the room and assist the doctor.

10 9. Doctor Momah's patients seemed to really like him. Other than the later explained issue with
11 Heather Phillips, I never knew of a patient who was angry with him. The only issue patients seemed to
12 have with the doctor was that he was often late for appointments.

13
14 10. I am absolutely certain the doctor always wore surgical gloves every time he examined
15 patients. I always paid attention to the procedures and exams and watched attentively as the doctor was
16 working with a patient. I am certain I never saw him touch anyone in an inappropriate manner. I
17 absolutely would remember such behavior if I had seen it. I am certain I would have noticed if he had
18 stimulated or rubbed a patient's clitoris. I never saw him do any such thing. I am certain I would have
19 heard him if he had said anything sexual to a patient. I never heard him say any such thing. I would
20 assist the doctor when he used the ultrasound wand on patients. Never did the doctor use the wand in
21 any way that seemed sexual. I never saw or heard a patient react in a way that would indicate they were
22 concerned about his use of the wand.
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1 11. I observed as the doctor perform many breast exams. Not once did I ever see the doctor
2 touch any patient's breast in any way that appeared inappropriate. I have had breast exams by many
3 doctors and I see no difference between the exams Dr. Momah performed and the ones I have received.
4 I never saw or heard a patient react in a way that would indicate they were concerned about his behavior.
5 No patient ever complained to me that they felt he had touched them in an inappropriate manner. I never
6 heard any patient ever complain to the doctor that he had touched them inappropriately.

8 12. Not once did I hear the doctor speak with any patient in an inappropriate or improper
9 manner. I never heard him speak to any patient in a sexually suggestive manner. No patient ever
10 complained to me of any such behavior. I never heard of anyone complaining of such behavior. I have
11 never heard him ask anyone out on a date or ask anyone to have his baby. No one ever complained or
12 even mentioned to me such behavior on the part of the doctor.

14 13. Dr. Momah and I worked alone a lot and not once did the doctor say anything to me that
15 could in any way be considered sexual harassment. Never did the doctor ever touch me in any way that
16 made me feel uncomfortable. He would occasionally put his hand on my shoulder, but it was not in any
17 sexually suggestive manner. I was never uncomfortable or afraid when working for Doctor Momah.

19 14. Other than Heather Phillips, I do not remember being aware that any patients were drug
20 seeking or addicted to pain medications. Many of our patients were in a lot of pain. Some had large
21 cysts and other reproductive system problems. The doctor prescribed pain pills to them, because he
22 believed it the most effective way for the patients to be pain free. Dr. Momah was not encouraging drug
23 use. I believe it was his medical philosophy that drug therapy was the most effective method of reducing
24 or eliminating patients' pain.



1 15. I remember Heather Phillips well. On or about August 25, 2003, Heather came in for her
2 appointment. When I informed Dr. Momah she was his next patient, he told me he had already told
3 Heather he no longer wanted her as a patient. I apologized to the doctor and told him I had not been
4 aware of that. Dr. Momah said it was okay and that he would see her and tell her again.

5 16. Heather told me that I did not need to be present during her exam. She told me she has seen
6 the doctor many times and that it was okay that they be alone together. I told her that it was office policy
7 that someone be in the room with the patient and the doctor and that it was part of my job. When I told
8 Dr. Momah that she did not want me in the exam room, he insisted that I attend the exam. Dr. Momah
9 told me to stay with Heather at all times and to not leave her alone in the exam room. I therefore entered
10 the room immediately after she had completed undressing and put on a gown. After I entered the room
11 and before the doctor came in, Heather told me to leave the room. I again informed her that I had to stay
12 until the exam was complete. After Heather left, Dr. Momah asked me to write my letter dated August
13 25, 2003, to document Heather's request. I have reread the letter today and it is true and correct. Said
14 letter is attached and incorporated by reference herein.
15
16

17 17. On that same August day, I heard Dr. Momah suggest to Heather that she needed drug abuse
18 counseling. He told her he thought she might have an issue with the pain pills and informed her she
19 would not be getting any more prescriptions from him.
20

21 18. As in the case of every patient the doctor saw while I was working for him, at no time were
22 Heather and Dr. Momah alone in the exam room. Natasha Edens told me Heather had told her to stay
23 out of the exam room on other occasions, but that she had refused to leave them alone and the doctor had
24 insisted Natasha stay with them.
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(SW)

1 25. [REDACTED] showed me a list of names today to see if I remembered them as patients of
2 Dr. Momah. I recognized Karen Bartels, Cheryl Reich and Sheryl Wood who's exams I attended. I do
3 not remember how many of their exams I attended. I would possibly remember others if I had
4 photographs of them.

5 26. This statement was prepared for me by [REDACTED] after he interviewed me on
6 August 22, 2005, at my home. I have read this statement carefully and everything in this statement is as
7 told to [REDACTED] by me, with the exception of any corrections I have made.

8 27. Before interviewing me, [REDACTED] identified himself to me as a private investigator
9 working for the attorney for Dr. Charles Momah. [REDACTED] made neither promises nor threats to
10 me. [REDACTED] was at all times kind, professional and respectful toward me.

11
12 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF**
13 **WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY**
14 **KNOWLEDGE AND BELIEF.**

15 DATED: 9/23/05 _____

16 PLACE: [REDACTED] _____

17 *S. Watson* _____
18 Stephanie Watson

6
Letters to Defense Attorney requesting
preparation for trial.
(Relevant part)

Copy

September 19, 2007.

Dear Sal,

I am writing to you regarding the preparation of the coming trial on October 15. As part of the trial preparation, I would request a meeting with you to discuss the cases with you as I have not done so. I would like to discuss with you about the plaintiffs, C.R., L.M. and R.B. I have not spoken to you since I returned the interrogatories in July.

I would like to be updated on the progress of the trial preparations. Please arrange a telephone call so that we can discuss this. I am unable to call you from here as your telephone does not accept collect calls.

Thank you.

Charles.

attorney client privilege

10

lied about the impersonation allegation as soon as Dennis filed a lawsuit against Bharti. If her allegations are grounded in facts, why did she continue to see me from 1995 to 2003, even after she was fired in 1997 or 1998 and wanted a part time job in my new Burien office in 2000.

I believe we need to call Cathy Gonzales as a witness because she was present when Rena Burns was seen on her first visit when she alleged rape with ultrasound wand, drugging with fentanyl and clitoral touching, claiming she was molested for "three hours" in busy office! I understand that Cathy may be a hostile witness but her testimony regarding Burns is vital. I hope these information is of help to you.

Sincerely,


Charles.

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Declaration of Eric Grotke

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ASSIGNED TO THE HONORABLE DEBORAH FLECK

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

NATASHIA COLLIER, TESSA GEARE, et al,
Plaintiffs,
vs..
DENNIS MOMAH, CHARLES MOMAH, et al
Defendants.

NO. 05-205525-1 KNT
DECLARATION OF ERIK R. GROTZKE

Erik R. Grotzke, declare under penalty of the laws of the State of Washington as follows:

1. I am one of the attorneys for the Defendant.

2. In late November, Salvador Mungia, the lead attorney for the defendant, underwent surgery to remove a cancerous tumor in his colon. Initially, the projected recovery time was a few weeks. However, complications arose after that surgery, and Mr. Mungia was forced to undergo additional surgery and was hospitalized several additional times over the next few months. He was last released from the hospital on January 4, 2007.

3. After the first complication, subsequent to Mr. Mungia's surgery, I had a conference call with plaintiffs' counsel Harish Vardi and Maria Starczewski. At that time, we

1 had anticipated that Mr. Mungia would be unavailable for a few weeks, but would have been
2 back in the office around the middle of December. During that conference, we agreed to
3 extend the discovery cutoff that existed at that time to allow both parties to depose witnesses
4 in January of 2007. We agreed to block out dates in January based on dates that Mr. Mungia
5 would have been available for those depositions. A copy of the letter sent out by my
6 paralegal memorializing that conference is attached as Exhibit A.
7

8 4. Subsequent to that meeting, Mr. Mungia was hospitalized several other times.
9 At Dr. Momah's deposition on December 21, 2006, I informed plaintiff's counsel that
10 Mr. Mungia's condition had changed and suggested that we might agree to continue the
11 trial dates in order to have Mr. Mungia involved with discovery. The next day I sent an email
12 to plaintiff's counsel in regards to that issue. A copy of that email is attached as Exhibit B.

13 5. Plaintiff's counsel agreed to the continuances in light of Mr. Mungia's
14 condition. In addition, because Mr. Bharti wanted a chance to take the trip to India that he
15 had missed in December, the defense agreed to cancel all pending discovery and to agree not
16 to conduct discovery until after March 16, 2007.
17

18 6. Around the middle of March I had a telephone conversation with Mr. Bharti
19 during which time he requested dates for depositions. He was not specific as to exactly which
20 depositions he was requesting. At that time I indicated to him that I would also like potential
21 dates for deposition of plaintiff's witnesses. Mr. Bharti and I had a similar conversation on
22 April 9, 2007, following our settlement conference with Judge Shapira. I did not receive any
23 potential dates for those depositions of plaintiff's witnesses.

24 7. Plaintiff's counsel did serve a Notice of Deposition on defense counsel in early
25 December for a deposition in early January of Dr. Welch. In coordinating the availability of
26

1 Dr. Welch, Mr. Mungia's assistant, Gina Mitchell, sent an email to plaintiff's counsel
2 apprising them of Dr. Welch's unavailability on the date they had noted for the deposition and
3 proposing alternate dates when he would be available. Plaintiff's counsel's only response to
4 this email was to again request his deposition during dates when it had already been
5 established that Dr. Welch was not available. About this same time, Mr. Mungia went into
6 the hospital again. At this point it became clear that he would not be able to participate in the
7 discovery as anticipated in our November 30th conference call. At that point, the parties
8 began discussions towards continuing the trial date. The parties agreed to continue the trial
9 date and to delay any further discovery until after March 16, 2007.

11 8. I agreed only to accept service on behalf of Dennis Momah and Dr. Welch.
12 Defense counsel never agreed to accept service for Lynn Butler or Cathy Gonzalez.

13 9. Pursuant to the Court's October 13, 2006, order, Plaintiff's counsel was to
14 provide defense counsel with a list of witnesses deposed in other cases. In email requests, Mr.
15 Mungia reminded counsel of this requirement. I also requested this list from plaintiff's
16 counsel in person on April 9, 2007, and my paralegal requested that information in an email
17 dated April 18, 2007. To date no list has been provided.

19
20 Dated this 20th day of April, 2007 at Tacoma, Washington.

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22 
Erik R. Grotzke

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RECEIVED
KING COUNTY, WASHINGTON

JAN 19 2007

KNT DEPARTMENT OF
JUDICIAL ADMINISTRATION

ASSIGNED TO THE HONORABLE DEBORAH FLECK

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

NATASHIA COLLIER, TESSA GEARE, et al,

Plaintiffs,

vs..

DENNIS MOMAH, CHARLES MOMAH, et al

Defendants.

NO. 05-205525-1KNT

AFFIDAVIT OF ERIK R. GROTZKE

Erik R. Grotzke, being first duly sworn upon oath deposes and says:

1. I am one of the attorneys for the Defendant.

2. In late November, Salvador Mungia, the lead attorney for the defendant, underwent surgery to remove a cancerous tumor in his colon. Initially, the projected recovery time was a few weeks. However, complications arose after that surgery, and Mr. Mungia was forced to undergo additional surgery and was hospitalized several additional times over the next few months. He was last released from the hospital on January 4, 2007.

3. I discussed these medical complications with opposing counsel, and suggested that the trial date be continued so that Mr. Mungia would have a chance to fully return for work and prepare the case for trial. Opposing counsel agreed to a continuance, with the

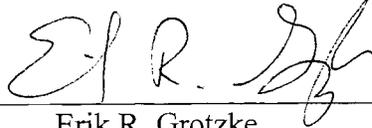
AFF OF ERG - 1 of 2
(05-2-05525-1KNT)
[1371065 v01.doc]

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-6500 - FACSIMILE (253) 620-6565

1 stipulation that the discovery period be delayed for a time commensurate with Mr. Mungia's
2 absence.

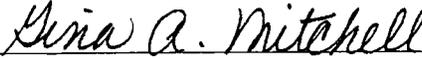
3 4. Attached as Exhibit A is a copy of the agreed stipulation and order to continue
4 the trial date.

5 Dated this 18th day of January, 2007 at Tacoma, Washington.

6
7 

8 Erik R. Grotzke

9 SUBSCRIBED AND SWORN TO before me this 18th day of January, 2007.

10 

11 Gina A. Mitchell

(Type/Print Name above)

12 Notary Public in and for the State of Washington,
13 residing at Lakewood.

14 My appointment expires: 1/24/08.



8
Declarati^on of Sherry Wood, Michelle Shaw
and Mark Johnson

HON. PALMER ROBINSON

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DENNIS MOMAH, M.D., a single man,)
)
 Plaintiff,)
 v.)
 HARISH BHARTI; ANOOP BHARTI; and)
 LAW OFFICES OF HARISH BHARTI AND)
 ASSOCIATES, LLC, a Washington State)
 Limited Liability Company,)
 Defendants.)

No. 04-2-36115-0 SEA
DECLARATION OF SHERRY WOOD

Sherry Wood, on oath, says:

I am an adult woman and make this statement on personal knowledge.

I am the person who signed the attached declaration, dated ~~January 17, 2005~~ ^{not sure of date} *SW*. As the
declaration states, I am the sister of ~~Cheryl~~ ^{S. S.} Cheryl Wood, who was a patient of Dr. Charles Momah. I
once accompanied her to his Burien office. When I was there I saw Charles Momah. I don't
recall hearing or noticing Dr. Momah's voice. I also saw Dr. Momah about three times at the
hospital when my sister had surgery. I remember then he had an accent but was not real difficult
to understand. He always sounded the same to me.

ORIGINAL

1 I made the attached declaration after receiving a call from Harish Bharti. I had
2 previously met Mr. Bharti when I went to his office with my sister Cheryl. When he called me
3 in ^{SW} January 2005 Mr. Bharti told me that he had a video that he wanted me to look at and to see if
4 I could identify any differences in this video, to identify if it was two different people. He was
5 insistent that I come and look at the video that day. He offered me gas money, but I told him that
6 was not my concern; my concern was my work schedule, and I was sick and really tired from
7 working nights. Mr. Bharti was very persistent and was saying I had to do it.
8

9 When I went to Mr. Bharti's office he said he was glad that I came, and then he asked
10 me to look at the video. I looked at the video and, and he was stating that there were two doctors
11 and he had police and husbands or others that could identify that it's two different people and I
12 needed to look at the video. I told him I could not really tell any difference on anything in the
13 video because it was too dark. Mr. Bharti responded that it's him and they look just alike. I told
14 Mr. Bharti I could not tell.
15

16 Mr Bharti got frustrated and kept moving the video back and forth. He then asked me to
17 do a declaration. The declaration was typed by a lady with dark hair. She was in a hurry to get
18 to some appointment or something. And Mr. Bharti said to her to type this and put this here and
19 put that there, things like that. He was saying something about putting things in line two and
20 line four, that kind of thing. It was lawyer talk and I wasn't paying attention to every little word.
21

22 When they printed the declaration I just glanced at it and signed it. I took it on faith he
23 just put down that I wasn't real clear on seeing the video and I couldn't tell any difference
24 between whoever these people are. I have now read the declaration carefully and see that a
25 number of things in it are not correct and not what I said.

1 The declaration speaks of "whenever" I went to Dr. Momah's clinic, but I went only
2 once. It also says that on at least one occasion I believe that instead of being treated by Dr.
3 Charles Momah, my sister was actually treated by someone who closely resembles him. That is
4 not true and I never made a statement like that. I did say I noticed at the clinic Dr. Momah
5 looked cleaner and then at the hospital he just looked more tired and not as well groomed. I
6 never thought this difference in appearance meant there were two different people. I never said
7 anything about differences in size of the doctor I saw at different times, and I remember no such
8 change. I never said there was a difference in the accent because the doctor always sounded the
9 same to me.

11 I did not at any time indicate to Mr. Bahrti that the person in the video was not Dr.
12 Charles Momah. I did not communicate to Mr. Bharti that I believed I had interacted with two
13 different doctors, because I didn't feel that way. I did not say I was of the confirmed opinion
14 that Dr. Charles Momah was allowing his identical twin brother to see his patients without
15 disclosing this fact to his patients. I did not have that opinion when I met with Mr. Bharti and I
16 do not have it now. I also did not say I believe Dennis Momah treated and examined me without
17 my permission and consent because I do not believe that and I have never been treated by any
18 Dr. Momah. I did not come to the conclusion or the belief that Dennis Momah had ever treated
19 my sister, Cheryl and I did not indicate to Mr. Bharti that I had.

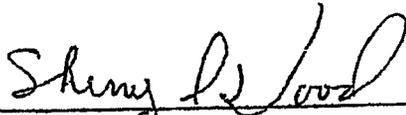
21 After I saw this declaration, I told my sister Cheryl that it was not truthful and did not
22 reflect what I said.

24 When I signed this declaration I felt pressured and rushed by Mr. Bharti. He told me he
25 had to hurry because ^{because it was the only day he had video available.} he had police and husbands and others who were going to come in and say

1 the same thing. The written statement is false in the respects described above, and I would so
2 testify in a court of law.

3
4 I swear under penalty of perjury under the law of the State of Washington the above is
5 true.

6 DATED at Bothell, Washington, this 15th day of August, 2005.

7
8 
9 Sherry Wood

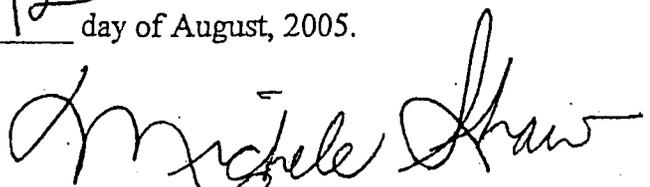
Neither in this conversation nor at any other time did I tell Mr. Bharti that Dennis and Charles Momah had sex with a woman in the emergency room of a hospital, or anything to that effect.

4. I have reviewed paragraph 40 of the amended complaint against Dennis Momah captioned Campbell v. Momah, a copy of which is attached. I was not the source of the allegation in that paragraph. As I said above, I did not at any time tell Mr. Bharti anything about Dennis and Charles Momah having sex with Lisa McDugall or anyone else at a hospital emergency room. I do recall some mention in my conversation with Mr. Bharti of a rumor that one of the Momah brothers used a condom and the other did not. I was aware that women who were former patients of Charles Momah were talking to each other about him and I heard something had been said on that subject in that context. But apart from a mention of that rumor, on which I did not claim to have any actual knowledge, it is absolutely untrue that I provided Mr. Bharti with the information contained in paragraph 40 of the Campbell complaint.

5. After talking with Mr. Bharti, I formed the opinion that we had different ethical standards and I accordingly decided not to work with him and not to refer clients to him with respect to this matter.

I swear under penalty of perjury under the laws of the State of Washington that the above is true to the best of my knowledge.

DATED at Seattle, Washington, this 12 day of August, 2005.



Michele Shaw

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

DENNIS MOMAH, M. D., a single man,)	
)	
Plaintiff,)	NO. 04-2-36115-0 SEA
)	
vs.)	DECLARATION OF
)	MARK JOHNSON IN
HARISH BHARTI; ANOOP BHARTI;)	OPPOSITION TO
and LAW OFFICES OF HARISH)	DEFENDANTS' MOTION
BHARTI AND ASSOCIATES, LLC, a)	FOR SUMMARY JUDGMENT
Washington State Limited Liability Company,)	AND IN SUPPORT OF
)	PLAINTIFF'S CR 56(f) MOTION
Defendants.)	
)	

MARK JOHNSON declares under penalty of perjury under the laws of the State of Washington as follows:

1. I am one of the attorneys for the plaintiff Dennis Momah and I am competent to testify to the facts stated in this Declaration. I have practiced law for nearly 27 years, all of that as a litigator. I have represented plaintiffs in multiple types of complex lawsuits, including medical and legal malpractice, product and drug product and serious injury cases. I have never, until this lawsuit, taken a deposition that lasted longer than two days. I have, thus far, taken Mr. Bharti's deposition for two days and have barely scratched the surface. From my perspective he is completely and utterly incapable, or resistant to, answering questions in a straight

forward manner. Mr. Ford's office and my office have worked very hard on this case but I cannot imagine being able to finish Mr. Bharti's deposition in less than three-five more days, and; it is not for lack of trying.

2 I request that the Court enter an order continuing defendant's summary judgment motion and not cut discovery off in this matter.

3 My client, Dennis Momah, is a very large, very black Nigerian-born U S citizen who is an internal medicine specialist and a locum tenens (traveling) physician. He has been accused publicly by Mr. Bharti of the most vile things of which a person, particularly a doctor, can be accused. His career and life have been destroyed.

4 The quality of much of which Mr. Bharti contends is voluminous evidence that Dennis Momah, in conspiracy with his brother Charles, impersonated each other, is suspect. For example, Mr. Bharti obtained a Declaration accusing Dennis Momah of impersonating Charles Momah from a woman named Yvonne Maciel. When the deposition of Ms. Maciel was taken, it was abundantly clear that she is mentally ill. Her deposition testimony included accusations that Charles Momah sent "22 black men" to attack her outside The Bon. She also testified that Charles Momah sent three men to her home to rape her; that they did rape her and she began to live with one of them who got her addicted to cocaine and she had a baby with him. In spite of her obvious illness, Mr. Bharti had no compunction in having her sign a Declaration. True and accurate copies of pages 1, 24, 40-42 of Ms. Maciel's deposition and the Declaration are attached as Exhibits 1 and 2. We spent several hundred dollars taking her deposition.

5. Another of Mr. Bharti's clients, Ms. Loreena Beltran, accused Dennis Momah of delivering her baby at Highline Hospital in 1999. Dennis Momah is an internal medicine physician, not an obstetrician/gynecologist. Plaintiff asks the Court to consider the improbability of a physician entering a hospital in which he had no privileges, scrubbing and gloving, and delivering a baby with none of the hospital staff, other physicians or nurses noticing that it was not Charles Momah. Even assuming (a big "if") that Dennis was in Seattle at that time and he was able to get into the delivery room, why would he do it?

6. Another woman, Natasha Collier, contends that Charles Momah raped her during a surgical procedure, although she has no conscious recollection of the rape (she had a nightmare about it). After that, she continued to see Charles as a patient, told a woman friend about the rape and fixed the woman up for a date with Charles after telling her that Charles raped her. See Exhibit 3.

7. I ask that the Court also consider and appreciate the improbability of what Mr. Bharti contends occurred. Dennis, a locum tenens physician, who during much of the time the alleged abuses took place was not living in Seattle, and his brother worked out an elaborate scheme of deception so that Dennis could join his brother (Mr. Bharti contends) in abusing patients at Charles' medical offices. The allegations include internal medicine physician Dennis performing gynecologic surgery and delivering a baby at a hospital at which he had no privileges

8. If this sounds like fiction, it was in 1998 when the author Alexander McCall Smith wrote a chapter entitled "Medical Matters" in the novel The No. 1

Ladies Detective Agency In Africa. The chapter describes Nigerian twins, one a doctor, impersonating each other. The chapter is attached as Exhibit 4.

Declared under penalty of perjury this 14th day of August 2005

Mark Johnson, WSBA #8463

9
W.S.B.A
Letter. RE: Mr Bhatti

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION
Carrie M. Coppinger-Carter (Chair), Michael Bahn, Grace Greenwich
FINDING AND ORDER OF REVIEW COMMITTEE I

FILED

FEB 10 2010

Respondent Lawyer: HARISH BHARTI

WSBA FILE NO. 03-01666

Respondent's Counsel: KURT M. BULMER

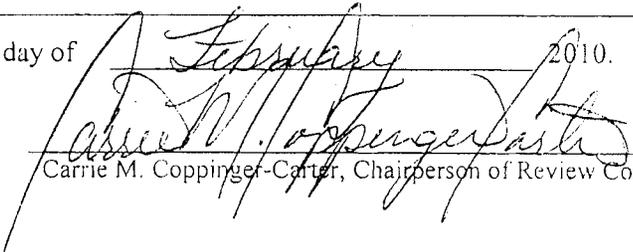
Grievant: CHARLES MOMAH

Having reviewed the materials regarding the above captioned grievance, Review Committee I of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rules 2.4, 5.3, 5.6 and 8.2 of the Rules for Enforcement of Lawyer Conduct (ELC):

- There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
 and consolidated with other grievances against this lawyer.
- () There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.
- () The allegations in the grievance do not constitute misconduct under the Rules of Professional Conduct. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.
- () The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (ELC 13.5)
- () There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to ELC 5.7 cautioning the lawyer regarding
-
- () There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____
- () There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.
- There is good cause pursuant to ELC 3.2(e) to issue a protective order prohibiting the disclosure of **attorney/client** and **third party** information. IT IS ORDERED THAT the documents at Bates Numbers: 001430-001445; 001465-1490; 001669-001683; 001696-001707; 001777-001779; 001792-001799; 001839-001882; 001892-001895; 001906-001915; 001925-001935; 002249-002251 and 002258-2264 shall not be public.
- () IT IS ORDERED under ELC 5.3(f) that respondent lawyer pay \$ _____ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.
- () and IT IS ORDERED _____

Dated this 5th day of September 2010.

The vote was 3-0


Carrie M. Coppinger-Carter, Chairperson of Review Committee I

501

10

List of Cases dismissed by
Hon. Judge Fleda against Dr. Dennis
Mamah, August 25, 2006

List of Cases Dismissed against Dennis Momah by Judge Fleck on August 25, 2006

1. *Yolanda Shaw v. Dennis Momah, et al.*, Cause No. 03-2-37382-6 KNT
2. *Darla Harper, et al. v. Dennis Momah, et al.*, Cause No. 05-2-15467-5 KNT
3. *Kolene Heintz, et al. v. Dennis Momah, et al.*, Cause No. 05-2-17726-8 KNT
4. *Merridee Jaynes v. Dennis Momah, et al.*, Cause No. 05-2-28499-4 KNT
5. *Loreena Beltran v. Dennis Momah, et al.*, Cause No. 05-2-28500-1 KNT
6. *Cherie Rule v. Dennis Momah, et al.*, Cause No. 05-2-28501-0 KNT
7. *Ayanna Wagner v. Dennis Momah, et al.*, Cause No. 05-2-28503-6 KNT
8. *Elvie Franklin v. Dennis Momah, et al.*, Cause No. 05-2-31733-7 KNT
9. *Lisa McDougal v. Dennis Momah, et al.*, Cause No. 05-2-39548-6 KNT
10. *Rene Burns v. Dennis Momah, et al.*, Cause No. 05-2-40236-9 KNT
Cheri Rule
11. *Wendy Biggs v. Dennis Momah*, Cause No. 06-2-15352-9 KNT
12. *Jodi Coyne v. Dennis Momah, et al.*, Cause No. 05-2-25886-1 KNT

13. *Natashia Collier et al* 05-2-053-25-1 KNT 5/30/06
↳ except Danielle Hopkins per Appellate Court Div I

11
Letter from Ms. Lisa McDougal
to Dr Charles Mumah

Dr Moman

2/7/03

Thank you so much for the medication I have been in a lot of pain lately but I found a doctor next week to start working on my knees. Then we can schedule my surgery with you. I made an appointment on Tuesday with you.

Thanks again

Jessie McDonald

12

Transcripts of Ms McDempal's
Trial testimony.

- 1 Q. And you got there first and he pulled up?
- 2 A. Yes, and he was driving his Mercedes, the gold one.
- 3 Q. Did he have more than one Mercedes? When you say
- 4 "the gold one" --
- 5 A. No, I just mean -- yeah.
- 6 Q. What was he wearing?
- 7 A. His suit.
- 8 Q. So when -- did he come up to your car, or did you go
- 9 up to his car?
- 10 A. He just pulled right up next to me and he rolled his
- 11 window down and I kind of stepped out for a minute.
- 12 And that's -- yeah, I just -- he, you know, we kind
- 13 of approached each other at the same time.
- 14 Q. What did he say?
- 15 A. He asked if I would go to a hotel.
- 16 Q. And said it just like that, "Will you go to a hotel"?
- 17 A. Yeah. He was very blunt about what he wanted.
- 18 Q. What did you respond?
- 19 A. Um, I said, "Okay."
- 20 Q. So you knew he wanted to have sex at a hotel with
- 21 you; is that correct?
- 22 A. Yes, at that point, yes.
- 23 Q. And you agreed to have sex with him in a hotel?
- 24 A. Yes.
- 25 Q. There is no coercion about this, there is just two

- 1 adults?
- 2 A. I didn't -- I felt like I owed him or something. I
3 cannot explain why I went in there. I was very
4 intimidated by Dr. Momah. Um, for years, he had been
5 kind of just pulling me, and I think he got me at a
6 very low time, very sick, you know, and he made it
7 sound like he is the only person that would be able
8 to take care of me. And for some reason, I think the
9 combination, I just went along with something I
10 normally would never, ever do. And afterwards, I
11 knew it was a very bad thing. It was wrong for him
12 as a doctor, you know. He should never have
13 approached a patient like that. So it did take place
14 in a hotel.
- 15 Q. And which hotel?
- 16 A. The Silver Cloud Inn, in Renton.
- 17 Q. This is after you tried to go to the Holiday Inn?
- 18 A. He did try to the go to the Holiday Inn first.
- 19 Q. Did you go with him to the Holiday Inn?
- 20 A. I followed him, but I didn't go in.
- 21 Q. Did you follow him in your car, or walk?
- 22 A. I followed him in my car.
- 23 Q. So he went in, came back out, and told you what?
- 24 A. He couldn't get a room and, "Let's go to the Silver
25 Cloud Inn."

- 1 Q. Did you agree to do that?
- 2 A. Yes.
- 3 Q. And how long -- what day of the week was this?
- 4 A. This was a weekday, um, it was a weekday, because I
- 5 had to go up to Renton for some reason with work, so
- 6 I was up in that area.
- 7 Q. But you can't remember the specific day of the week?
- 8 A. I cannot remember, it has been too long.
- 9 Q. What time of day?
- 10 A. This was early afternoon.
- 11 Q. So what's early afternoon?
- 12 A. I would say twelve, 12:30.
- 13 Q. And I think on direct you said you paid with your
- 14 credit card?
- 15 A. Yes.
- 16 Q. What was that?
- 17 A. He just asked me to. And then he gave me the money
- 18 back afterwards to pay for it.
- 19 Q. How much was it?
- 20 A. It was a hundred and something. About \$111. I can't
- 21 tell you the exact amount.
- 22 Q. How many times did you have sex with Charles Momah?
- 23 A. Several times in the different clinics.
- 24 Q. Okay. When you say "several," how many times do you
- 25 recall having sex with Charles Momah, total?

- 1 A. Five times.
- 2 Q. Other than this one time at the Silver Cloud, were
3 the rest of the times in the clinic or were they
4 other places?
- 5 A. Different clinics, the Burien and Federal Way clinic.
- 6 Q. How many times did you have sex in the Burien clinic?
- 7 A. At least twice.
- 8 Q. And how about the Federal Way clinic?
- 9 A. That would have been the other couple times, the
10 three times.
- 11 Q. You said five times total. We have one at the Silver
12 Cloud?
- 13 A. Well, okay. So it would be two times at the Federal
14 Way.
- 15 Q. Okay. Let's talk about the two times in Burien.
16 What days of the week were they?
- 17 A. They were always weekdays.
- 18 Q. What time of the day?
- 19 A. Evening, after the building closed.
- 20 Q. And how would that come about? Would he call you and
21 say something to you?
- 22 A. He would have my appointment set up late in the
23 afternoon, and then try to call me and ask me to
24 wait, you know, around the corner or something, in
25 the parking lot of his business, his clinic.

13

Ms. Mehanpal's Univ. of Wash.
and Providence Everett Medical
Center.

Transcription Report For U4681464

Page 1 of 3

If you are having problems displaying this document, try the "noncompressed" format.

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LISA MCDUGAL U4681464

Clinic Note unverified

Service date: 09-jun-2003 00:00:00

Dictated by ELISE EVERETT on 09-jun-2003

Patient: MCDUGAL, LISA J

MR#: U4681464

Visit: 06/09/2003

Dictator: ELISE G EVERETT

CLINIC NOTE

This is a preoperative counseling visit.

IDENTIFICATION: The patient is a 39-year-old female with significant history of menorrhagia who is followed by Dr. Momah in Burien who is referred here today for discussion of medical and surgical options for treatment of menorrhagia.

HISTORY OF PRESENT ILLNESS: Please see Dr. Sophy Feng's dictation from January 17 for a complete history and physical exam. In brief, the patient is a 39-year-old female G10P1091 who has a past medical history significant for heavy menorrhagia which thus far failed medical and surgical therapy. The patient has a history of a cerebrovascular accident times two after being on oral birth control pills and using methamphetamines. Following that incident the patient was on Coumadin for several years and has not used oral contraceptive pills since that time and thus oral contraceptive pills are not a medical option for the patient for treatment of her menorrhagia.

For treatment of her menorrhagia she has had a diagnostic hysteroscopy, diagnostic laparoscopy in 2000, 2001, and 2002, and 2003 for repeat complaints of pelvic pain. She has also had a D&C. For medical therapy she has been on progesterone therapy without relief and is now currently on Depot Lupron therapy. The patient is referred by Dr. Momah for possible surgical treatment with hysterectomy. We, however, had a long discussion with the patient and explained the medical and surgical options to her. Medical treatment of menorrhagia includes continuous oral birth control pills, progesterone therapy either in the form of pill therapy with Micronor, shot therapy with Depott Provera or the Mirena IUD. Other medical therapy includes Depo Lupron either in the short term in a three to six month period to be followed by surgical therapy or by Mirena IUD, or Depot Lupron therapy can now be used long term with estrogen add back therapy and osteoporosis screening with a DEXA scan. We also discussed the surgical options which include at this time endometrial ablation and hysterectomy. Our recommendations would be that the patient precede any surgical option with three to six months of Depot Lupron therapy.

After discussion of these results the patient understands her options and at this time wishes to complete a three to six month course of Depot Lupron therapy and then in the interim will decide whether or not she wishes to follow up that therapy either with continuation of the Depot Lupron or the Mirena IUD, or

with surgical therapy either with an endometrial ablation which is an outpatient procedure or with abdominal hysterectomy.

OBJECTIVE: VITAL SIGNS: Blood pressure 152/100. **HEENT:** Head normocephalic, atraumatic. Good dentition. **LUNGS:** Bilateral inspiratory and expiratory wheezes. **HEART:** Regular rate and rhythm. S1 and S2. No murmurs, rubs or gallops. **ABDOMEN:** Soft, nontender, nondistended, positive bowel sounds, obese, multiple laparoscopic scar incisions, one at umbilicus, one in right upper quadrant from her laparoscopic cholecystectomy. She also has an old Pfannenstiel incision from her previous cesarean section. **EXTREMITIES:** No cyanosis, clubbing or edema. **PELVIC:** Normal female external genitalia. The vaginal vault is pink and well estrogenized with rugae. **CERVIX:** is nulliparous and without gross lesions. On bimanual exam the uterus is mobile and in mid position. Size is difficult to determine secondary to the patient's obesity. No adnexal masses bilateral. **RECTAL:** There is good rectal tone.

ASSESSMENT: The patient is a 39-year-old female with menorrhagia who is unable to take continuous oral contraceptive pill therapy secondary to history of cerebrovascular accident who has failed medical management with progesterone and is quite debilitated by her menorrhagia. She is here today to discuss her surgical and medical options for treatment of her menorrhagia. Please see the dictation above for the complete discussion that was had with the patient.

PLAN:

1. Check hematocrit, TSH, prolactin levels. Will check hematocrit to determine the patient's baseline blood count prior to possible surgical therapy. This can also be used to assess the patient's bleeding. Will check TSH as the patient has had history of prior goiter treated with radioactive iodine and is now on Synthroid. We will also check a prolactin as the patient complains of breast discharge. Most likely this is secondary to the patient's thyroid disease.
2. Pelvic ultrasound. The patient's pelvic exam is limited by her obesity and she has repeated notes from Dr. Momah which suggest that her uterus is enlarged; however, this is unable to be determined on exam. We will obtain an ultrasound to look for any pathology which might include a fibroid uterus, endometrial polyp or possible adenomyosis.
3. Medicine consult. The patient has multiple medical problems including history of cerebrovascular accident with left sided residual weakness. She is a smoker and on exam today has bilateral inspiratory and expiratory wheezes. She also has hypothyroidism and today her blood pressure is elevated at 152/100. Thus prior to surgery she will be seen by an internist in our Medicine Consult Service to assess for her perioperative risks.
4. Menorrhagia. At this time the patient's treatment for her menorrhagia will be to continue her Depot Lupron therapy. She is due for a shot now and again in early July. She will then follow up with us after she has had those two shots which will bring her total Depot Lupron therapy to four shots. At that time we will discuss with her the results of the Lupron therapy and will proceed either with continued Lupron therapy versus Mirena IUD versus Lupron therapy followed by endometrial ablation or hysterectomy. Currently the patient has an operating room date scheduled for August 14 should she decide to opt for surgical therapy either with an endometrial ablation or with abdominal hysterectomy. If the patient desires hysterectomy it will need to be done through an abdominal incision as on exam today the patient has no descent for a uterus. She is obese which would make laparoscopy difficult and she has had multiple surgeries including four laparoscopic procedures, a laparoscopic cholecystectomy, cesarean section, which would make a vaginal hysterectomy or laparoscopic assisted surgery extremely unlikely to be successful.

Transcription Report For U4...1464

Page 3 of 3

ELISE EVERETT, MD
RESIDENT, Box #356460

ANNE-MARIE AMIES, MD
ATTENDING PHYSICIAN, Box #356460

REVIEWED ON: June 10, 2003 16:48:04
ELISE N. EVERETT MD
Resident Ob/Gyn

EE/
DD: 06/09/2003
DT: 06/09/2003

CC'd To:
MOMAH, CHARLES M MD

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COPY - DO NOT FILE IN CHART

PT NAME: MCDOUGAL, LISA J
NUMBER: U 4-68-14-64
DOB: 6/21/1963
DOS: 6/9/2003

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HISTORY OF PRESENT ILLNESS: Please see Dr. Sophy Feng's dictation from January 17 for a complete history and physical exam. In brief, the patient is a 39-year-old female G10P1091 who has a past medical history significant for heavy menorrhagia which thus far failed medical and surgical therapy. The patient has a history of a cerebrovascular accident times two after being on oral birth control pills and using methamphetamines. Following that incident the patient was on Coumadin for several years and has not used oral contraceptive pills since that time and thus oral contraceptive pills are not a medical option for the patient for treatment of her menorrhagia.

OBJECTIVE: VITAL SIGNS: Blood pressure 152/100. **HEENT:** Head normocephalic, atraumatic. Good dentition. **LUNGS:** Bilateral inspiratory and expiratory wheezes. **HEART:** Regular rate and rhythm. S1 and S2. No murmurs, rubs or gallops. **ABDOMEN:** Soft, nontender, nondistended, positive bowel sounds, obese, multiple laparoscopic scar incisions, one at umbilicus, one in right upper quadrant from her laparoscopic cholecystectomy. She also has an old Pfannenstiel incision from her previous cesarean section. **EXTREMITIES:** No cyanosis, clubbing or edema. **PELVIC:** Normal female external genitalia. The vaginal vault is pink and well estrogenized with rugae. Cervix is nulliparous and without gross lesions. On bimanual exam the uterus is mobile and in mid position. Size is difficult to determine secondary to the patient's obesity. No adnexal masses bilateral. **RECTAL:** There is good rectal tone.

ASSESSMENT: The patient is a 39-year-old female with menorrhagia who is unable to take continuous oral contraceptive pill therapy secondary to history of cerebrovascular accident who has failed medical management with progesterone and is quite debilitated by her menorrhagia. She is here today to discuss her surgical and medical options for treatment of her menorrhagia. Please see the dictation above for the complete discussion that was had with the patient.

PLAN:

For treatment of her menorrhagia she has had a diagnostic hysteroscopy, diagnostic laparoscopy in

<p>Patient Name: MCDOUGAL, LISA J Patient No: 4-68-14-64 Patient DOB: 6/21/1963 Admit/Serv. Date: 6/9/2003 Disc./Tran Date: 6/9/2003 Page: 1</p>	<p>CLINIC NOTE</p> <p>University of Washington Medical Center 1959 N.E. Pacific Street Seattle, WA 98195</p>
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COPY - DO NOT FILE IN CHART

should she decide to opt for surgical therapy either with an endometrial ablation or with abdominal hysterectomy. If the patient desires hysterectomy it will need to be done through an abdominal incision as on exam today the patient has minimal uterine descensus. She is obese and she has had multiple surgeries including four laparoscopic procedures, a laparoscopic cholecystectomy, cesarean section, which would make a vaginal hysterectomy or laparoscopic assisted surgery challenging.

ELISE G. EVERETT, MD
RESIDENT, , Box #356460

ANNE-MARIE AMIES, MD
ATTENDING PHYSICIAN, DEPARTMENT OF OBSTETRICS & GYNECOLOGY, Box #356460

ELECTRONICALLY EDITED AND AUTHENTICATED ON: June 24, 2003 13:7:6
ANNE-MARIE AMIES MD
Attending Physician
DEPARTMENT OF OBSTETRICS AND GYNECOLOGY

REVIEWED ON: June 10, 2003 16:48:04
ELISE N. EVERETT MD
Resident Ob/Gyn

EE/
DD: 06/09/2003
DT: 06/09/2003

cc: CHARLES MOMAH, MD
14212 AMBAUM BLVD SW
SUITE 303
SEATTLE, WA 98166
Printed 06/24/2003

Patient Name: MCDUGAL, LISA J Patient No: 4-68-14-64 Patient DOB: 6/21/1963 Admit/Serv. Date: 6/9/2003 Disc./Tran Date: 6/9/2003 Page: 3	CLINIC NOTE University of Washington Medical Center 1959 N.E. Pacific Street Seattle, WA 98195
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Radiology Report For U468. .4

University Of Washington Medical Centers

LISA MCDUGAL U4681464
2177381 12-jun-2003 09:14 Requested by: AMIES, ANNE-MARIE
ECHOGRAPHY, TRANSVAGINAL

Diagnosis:
218.9

DATE: 12 June 2003.

CLINICAL PROBLEM/INDICATION:

Menorrhagia.

COMPARISON: None.

PELVIC ULTRASOUND WITH TRANSVAGINAL EXAM: 6-12-2003.

TECHNIQUE:

USB13: COMPLETE PELVIC ULTRASOUND:

Complete pelvic real time scan with image documentation.

USB14: TRANSVAGINAL EXAM:

Transvaginal real time scan with image documentation.

FINDINGS:

Transabdominal images show a normal-sized, anteverted uterus. It measures 9.7 x 4.0 x 6.4 cm for a volume of 129 cc.

Endovaginally, the endometrial thickness is normal at 4 mm. No fluid or debris is detected within the endometrial cavity. There is no uterine mass.

The ovaries both exhibit normal contours, size and morphology. The right ovary measures 2.9 x 1.8 x 2.6 cm (7.1 cc), while the left ovary is 3.2 x 1.6 x 2.8 cm (volume 7.5 cc). No ovarian or adnexal mass. A very small amount of free fluid is present within the pelvis dependently.

IMPRESSION:

1. Normal pelvic sonogram. No endometrial or ovarian abnormality. No uterine fibroid.

END OF IMPRESSION:

CUEVAS, CARLOS
WICKLUND, DAVID



UNIVERSITY OF WASHINGTON
MEDICAL CENTER

June 26, 2003

CHARLES MOMAH, MD
NW CENTER FOR OB/GYN
PO BOX 48279
SEATTLE WA, 98148

RE: MCDUGAL, LISA J
U 4-68-14-64

Dear Dr. Momah:

I wanted to thank you for referring Ms. Lisa McDougal to our reproductive endocrinology & infertility practice. As you know, she is a 40-year-old multip who has multiple issues. The main issue is her menometrorrhagia and dysmenorrhea. We have considered options regarding treatment of those, including conservative medical therapy versus endometrial ablation versus balloon therapy versus hysterectomy.

She is quite reluctant to proceed with a major surgery such as hysterectomy. At the same time, she has also had hypothyroidism and has been basically noncompliant with her Synthroid. We made a contract for her to continue Synthroid 150 mcg daily and recheck her thyroid in six weeks. It is a requirement for me that she proceed with any therapy to make her euthyroid for not only major surgery such as hysterectomy, but it may undermine the total efficacy of a more conservative therapy, such as ablation or balloon therapy, if she chooses to do so.

I also encouraged her to taper the Vicodin off and have encouraged her to take nonsteroidals for approximately one to two weeks prior to the onset of her menstrual cycle. She will continue with that through her menstrual cycle. This may also help with her dysmenorrhea, as well as her menometrorrhagia. She will continue Lupron, and I have also given her add-back therapies such as norethindrone acetate to limit hot flashes, as well as bone loss.

It is my plan to make her euthyroid, for her to reevaluate her menstrual cycle after taking her off Lupron and add-back therapy, to assess how much impact the hypothyroidism has on her bad bleeding. If her bleeding is still bothersome, we will proceed with definitive surgical intervention. She overall would like to avoid a hysterectomy at all costs. I think if she is patient with medical therapy may be effective.

Please note that an US was recently done that noted a normal uterus. No evidence of fibroids.

If you have any questions regarding the care of Ms. McDougal, please do not hesitate to give my office

a call.

Sincerely,

PAUL C. LIN, MD
ATTENDING PHYSICIAN, DEPARTMENT OF OBSTETRICS & GYNECOLOGY, Box #354693

ELECTRONICALLY EDITED AND AUTHENTICATED ON: July 1, 2003 7:35:31

PAUL C. LIN MD
attending, fertility and endocrine clinic

~ ~

PCL[15:33]:06/26/2003nan[13:15]:06/29/2003
Printed 07/01/2003



UNIVERSITY OF WASHINGTON
MEDICAL CENTER

August 1, 2003

CHARLES MOMAH, MD
NW CENTER FOR OB/GYN
PO BOX 48279
SEATTLE WA, 98148

RE: ~~MCDUGAL LISA J~~
U 4-68-14-64

Dear Dr. Momah:

I wanted to update you on a patient of yours named Lisa McDougal, who is a 40-year-old multiparous woman who has multiple issues:

1. She has newly diagnosed hypertension, and I have encouraged her to follow up with her primary care provider; however, I have initiated antihypertensives to get that under control. She has persistently had blood pressure of 130 to 160/100 to 110.
2. In regard to her menorrhagia and dysmenorrhea, this problem is being controlled with nonsteroidals, as well as current Lupron Depot. She did have a recent bout of bad bleeding on Lupron Depot, which required some additional pain medication after visiting the ER at Providence. She currently has 15 Vicodin at this time. She takes 2 a day when the pain is bad. I gave her Vicodin approximately two weeks ago. She is about to take her 4th shot of Lupron. I plan on a full 6 month course.
3. She also has hypothyroidism. Her TSH was 15 IU/ml. I have placed her on Synthroid 150 mcg. I have checked a TSH today and will continue to follow that to make her euthyroid. I will not proceed with any definitive surgery until she is euthyroid. My goal is to control her thyroid while on the DepoLupron, if the bleeding continues, we will consider options to control her menometrorrhagia and pain.
4. She also states she has blood in her stool. I have taken the liberty of referring her to a gastroenterologist, not only to find out the etiology of the blood in her stool, but also to rule out any GI issues for her dysmenorrhea and pelvic pain.
5. She also has issues with obesity. I have referred her to Nutrition, as well as given her my recommendations for continued weight loss, which will also help the hypertension.

If you have any questions regarding the care of Ms. McDougal, please do not hesitate to give my office

a call.

Sincerely,

PAUL C. LIN, MD
ATTENDING PHYSICIAN, DEPARTMENT OF OBSTETRICS & GYNECOLOGY, Box #354693

ELECTRONICALLY EDITED AND AUTHENTICATED ON: August 4, 2003 8:1:3
PAUL C. LIN MD
attending, fertility and endocrine clinic

~ ~
PCL[09:43]:08/01/2003mhd[15:27]:08/01/2003
Printed 08/04/2003



DATE OF ADMISSION: 07/24/2003 8:49 AM EDT

The patient is a 40-year-old woman. She presents to the emergency department with vomiting and abdominal pain. She has multiple previous episodes. The patient has undergone evaluation for same and is currently being reevaluated at the University of Washington. Upper and lower endoscopy is currently being scheduled.

PHYSICAL EXAMINATION: Unremarkable. There is mild tenderness to palpation in the epigastrium but no guarding or rebound.

When I first enter the room the patient is vomiting yellowish material. I conclude she has had significant bouts of vomiting and proceed with interventions including intravenous antiemetics and analgesics. In addition, the patient is felt to be volume depleted, which is addressed with an infusion of normal saline.

The above interventions improve the symptom complex markedly. The patient has no further vomiting.

The patient's mother arrives in the emergency department. The mother demands that I admit the patient to the hospital for a hysterectomy. I consider this a somewhat unusual request. The mother explains that the patient's cyclic vomiting is associated with her periods and a gynecologist in south Seattle has determined that a hysterectomy is indicated. I discuss with the patient and her mother that hysterectomy may be indicated but there is no indication for emergency hysterectomy. The patient's mother is quite unhappy that we are not proceeding with a surgical solution. I have the mother call that physician in south Seattle. That physician concurs that there is not an emergent reason to perform hysterectomy. I, therefore, begin to make plans for Gynecology consultation to determine if hysterectomy is necessary.

Following the above activities the patient received 2 liters normal saline and feels much improved. Serial examinations of the abdomen do not reveal evidence of surgical process in evolution. I conclude that outpatient evaluation and treatment is appropriate.

The patient has multiple and frequent emergency department visits for same. I conclude that the patient's outpatient physicians should be in charge of her ongoing narcotic needs. I explained this to the patient and she concurs.

Electronically auto-authenticated by:
THOMAS NOWAK, MD

MLS: 95424

cc: Angela J Chien, M.D.
Er M.D., M.D.
Thomas A Nowak, M.D.

Page 1 of 1

NAME: MCDUGAL, LISA J
DOB: 06/21/1963
M.R. #: 0001-05-02-26 ACCT. #: 0320500300
D: 07/25/2003 9:26 A T: 07/25/2003 11:39 A JOB # 040496999

PROVIDENCE EVERETT MEDICAL CENTER
PATIENT TYPE: EDE
COLBY EMERGENCY ROOM

ORIGINAL

PMC 00163

14

Transcripts of CR II Sametini against
Bhanti by Hon. Judge Lau.

~~EXHIBIT~~

**CR 11 Proceeding
Harish Bharti v. Timothy Ford, et al.
No. 06-2-03169-5 SEA
Transcript of Proceeding
Before Judge Lau**

1 MR. ROCKEY: MY CLIENT THANKS THE COURT FOR THE VERY
2 GENEROUS TIME YOU HAVE SPENT ON THIS. IT WAS REALLY VERY
3 GENEROUS. THANKS.

4 THE COURT: THANK YOU. THE COURT IS PREPARED TO
5 RULE.

6 LET ME BEGIN MY RULING WITH A CASE THAT IS OFTEN
7 CITED BY COUNSEL AND MAY EVEN BE FAMILIAR TO PRESENT
8 COUNSEL. AND THAT IS PHYSICIANS INSURANCE EXCHANGE V.
9 FIZONS CORPORATION, 122 WN.2D, 299, A 1993 CASE, IN WHICH
10 SEVERE SANCTIONS WERE IMPOSED AGAINST A LAW FIRM FOR A
11 NUMBER OF VIOLATIONS. LET ME QUOTE FROM THAT OPINION.

12 "VIGOROUS ADVOCACY IS NOT CONTINGENT ON LAWYERS BEING
13 FREE TO PURSUE LITIGATION TACTICS THAT THEY CANNOT JUSTIFY
14 AS LEGITIMATE. THE LAWYERS' DUTY TO PLACE HIS CLIENTS'
15 INTERESTS AHEAD OF ALL OTHERS PRESUPPOSES THAT THE LAWYER
16 WILL LIVE WITH THE RULES THAT GOVERN THE SYSTEM. UNLIKE
17 THE POLEMICIST HARANGUING THE PUBLIC FROM HIS SOAPBOX IN
18 THE PARK, THE LAWYER ENJOYS THE PRIVILEGE OF A PROFESSIONAL
19 LICENSE THAT ENTITLES HIM TO ENTRY INTO THE JUSTICE SYSTEM
20 TO REPRESENT HIS CLIENT, AND IN DOING SO TO PURSUE HIS
21 PROFESSION AND EARN HIS LIVING. HE IS SUBJECT TO THE
22 CORRELATIVE OBLIGATION TO COMPLY WITH THE RULES AND TO
23 CONDUCT HIMSELF IN A MANNER CONSISTENT WITH THE PROPER
24 FUNCTIONING OF THAT SYSTEM. WHILE WE RECOGNIZE THAT THE
25 ISSUE OF IMPOSITION OF SANCTIONS UPON ATTORNEYS IS A

1 DIFFICULT AND INDEED DISAGREEABLE TASK FOR A TRIAL JUDGE,
2 IT IS A NECESSARY ONE IF OUR SYSTEM IS TO REMAIN ACCESSIBLE
3 AND RESPONSIBLE. MISCONDUCT ONCE TOLERATED WILL BREED MORE
4 MISCONDUCT, AND THOSE WHO MIGHT SEEK RELIEF AGAINST ABUSE
5 WILL INSTEAD RESORT TO IT IN SELF-DEFENSE."

6 THIS COURT HAS REVIEWED THE PARTIES' SUBMISSIONS IN
7 SUPPORT OF AND OPPOSING THE SANCTIONS UNDER CR 11 AND THE
8 TESTIMONY OF MR. BHARTI AND THE ARGUMENT OF COUNSEL. THE
9 ALLEGATIONS IN PARAGRAPH 19, 15, 21, 25 OF THE SECOND
10 AMENDED COMPLAINT BROADLY STATE THAT THE DEFENDANTS'
11 ASSISTED AND CONSPIRED WITH CERTAIN OTHER ALLEGED PERSONS
12 TO HELP DESTROY, HIDE AND SECRETE EVIDENCE, AND THAT DENNIS
13 MOMAH WAS A FRONT CLIENT OF THE DEFENDANT, AND THAT
14 DEFENDANTS USED DENNIS MOMAH AS A FRONT TO SERVE THE
15 INTERESTS OF ANOTHER ENTITY.

16 THE COURT FINDS THAT THESE ALLEGATIONS ARE BASELESS,
17 NOT WELL-GROUNDED IN FACT, AND ADVANCED WITHOUT REASONABLE
18 OR COMPETENT INQUIRY. RATHER THE CLAIMS ARE BASED WHOLLY
19 ON MR. BHARTI AND HIS COUNSEL'S PERSONAL OPINIONS AND MERE
20 SPECULATION. THE SOLE PURPOSE FOR THE EXTRAORDINARY
21 EVIDENTIARY HEARING IN THIS CASE WAS TO INQUIRE AND TO
22 ELICIT THE BASIS FOR THESE ALLEGATIONS AND TO DETERMINE
23 WHAT IF ANY INVESTIGATION OCCURRED BEFORE THESE ALLEGATIONS
24 WERE MADE, BECAUSE INDEED THESE ARE SERIOUS CHARGES BROUGHT
25 AGAINST THE DEFENDANTS AND INDEED SERIOUS ALLEGATIONS AND

1 SANCTIONS SOUGHT AGAINST MR. BHARTI AND MS. STARCZEWSKI.

2 MR. BHARTI AND HIS ATTORNEY CONDUCTED NO PREFILING
3 INVESTIGATION BEFORE ASSERTING THESE CLAIMS. A REASONABLE
4 ATTORNEY UNDER THE CIRCUMSTANCES HERE WOULD HAVE KNOWN THAT
5 THESE CLAIMS WERE WITHOUT MERIT. ALTHOUGH FAMILIAR TO
6 COUNSEL, I'M SURE THE LEGAL FRAMEWORK WHICH GUIDES AND
7 INFORMS THIS COURT'S ANALYSIS BEARS REPEATING. SANCTIONS
8 ARE FREQUENTLY SOUGHT IN LITIGATION BUT RARELY GRANTED.
9 THIS COURT ACKNOWLEDGES THE RARE CIRCUMSTANCE IN WHICH CR
10 11 SANCTIONS SHOULD BE GRANTED. THE PURPOSE BEHIND CR 11
11 IS TO DETER BASELESS FILINGS AND TO CURB ABUSES OF THE
12 JUDICIAL SYSTEM. THE TRIAL COURT SITS AS THE WATCHDOG
13 WHENEVER CR 11 SANCTIONS ARE SOUGHT. CR 11 IS NOT MEANT TO
14 ACT AS A FEE-SHIFTING MECHANISM, AS COUNSEL HAVE POINTED
15 OUT, BUT RATHER AS A DETERRENT TO FRIVOLOUS PLEADINGS.

16 THE COURT MUST EMPLOY AN OBJECTIVE STANDARD IN
17 EVALUATING AN ATTORNEY'S CONDUCT, AND THE APPROPRIATE LEVEL
18 OF PREFILING INVESTIGATIONS IS TO BE TESTED BY INQUIRING
19 WHAT WAS REASONABLE TO BELIEVE AT THE TIME THE PLEADINGS
20 MOTIONS OR LEGAL MEMORANDUM WERE SUBMITTED? AN ATTORNEY'S
21 SIGNATURE ON A PLEADING CONSTITUTES AN ASSERTION TO THE
22 COURT THAT THE CLAIM IS MERITORIOUS TO THE ATTORNEY'S BEST
23 KNOWLEDGE, INFORMATION OR BELIEF. THIS IN TURN MUST HAVE
24 BEEN BASED ON AN ACTUAL INQUIRY THAT WAS REASONABLE UNDER
25 THE CIRCUMSTANCES OF THE PARTICULAR CASE.

1 COUNSEL HAS CITED BRYANT VERSUS JOSEPH TREE. AND I
2 CITE THAT CASE IN SUPPORT OF THIS STANDARD. THAT IS 57
3 WN.APP. 107, 1990, AFFIRMED AT WN.2D 119, 210, 1992. THE
4 APPROPRIATE LEVEL OF PREFILING INVESTIGATIONS DEPENDS ON
5 WHAT WAS REASONABLE TO BELIEVE AT THE TIME THAT THE
6 PLEADING WAS FILED. BIGGS VERSUS VAIL, 124 WN.2D, 193,
7 1994. THE FACTORS TO BE CONSIDERED IN ASSESSING THE
8 REASONABLENESS OF THE PREFILING INQUIRY MAY INCLUDE THE
9 TIME AVAILABLE TO THE SIGNER, THE EXTENT OF THE ATTORNEY'S
10 RELIANCE ON OTHERS, INCLUDING THE CLIENT, FOR FACTUAL
11 SUPPORT, WHETHER THE SIGNING ATTORNEY ACCEPTED THE CASE
12 FROM A FORWARDING ATTORNEY, THE COMPLEXITY OF THE FACTUAL
13 AND LEGAL ISSUES, THE NEED FOR DISCOVERY TO DEVELOP FACTUAL
14 CIRCUMSTANCES UNDERLYING THE CLAIM. AND LASTLY THE
15 PLAUSIBILITY OF THE CLAIM. INDEED AN ATTORNEY'S BLIND
16 RELIANCE ON A CLIENT'S REPRESENTATION WILL SELDOM
17 CONSTITUTE A REASONABLE INQUIRY, MILLER VERSUS BADGLEY, 51
18 WN.APP., 285, REVIEW DENIED, 111 WN.2D, 1007, 1988.

19 IT IS NOT ENOUGH THAT THE ATTORNEY OR PARTY BELIEVES
20 THAT THE CLAIM IS MERITORIOUS. THE REASONABLENESS OF THE
21 INQUIRY IS EVALUATED BY AN OBJECTIVE STANDARD. THAT LEGAL
22 PRINCIPLE CAN BE FOUND IN THE BIGGS CASE. THIS COURT ALSO
23 ACKNOWLEDGES THE RULE THAT BECAUSE A COMPLAINT DOES NOT
24 PREVAIL ON ITS MERITS, AS IN THIS CASE, IT IS BY NO MEANS
25 DISPOSITIVE OF THE CR 11 QUESTION. FURTHER THE RULE IS NOT

1 INTENDED TO CHILL AN ATTORNEY'S ENTHUSIASM OR CREATIVITY I
2 PURSUING FACTUAL OR LEGAL THEORIES. FEDERAL RULES OF CIVI
3 PROCEDURE 11, ADVISORY COMMITTEE NOTES.

4 ACCORDINGLY IT IS WITHIN THE LEGAL FRAMEWORK THAT
5 THIS COURT FINDS AND CONCLUDES THAT NEITHER MR. BHARTI NOR
6 MS. STARCZEWSKI CONDUCTED ANY PREFILING INVESTIGATION
7 BEFORE THEY MADE THE ALLEGATIONS AND CLAIMS WHICH ARE THE
8 SUBJECT OF THIS MOTION AND THE SECOND AMENDED COMPLAINT.
9 THEY WERE UNDER NO TIME CONSTRAINTS BEFORE THEY FILED THE
10 SECOND AMENDED COMPLAINT. THEY HAD PRESUMABLY FULLY
11 INVESTIGATED THE CLAIMS AGAINST DENNIS MOMAH BEFORE FILING
12 THE SECOND AMENDED COMPLAINT, AS MR. FORD HAS STATED,
13 INCLUDING A FULL OPPORTUNITY TO DEPOSE, QUESTION, SEEK OUT
14 AND INTERVIEW MS. GONZALEZ AND ANY OTHER WITNESSES IN
15 SUPPORT OF THEIR CLAIMS.

16 MR. BHARTI UTTERLY FAILED TO EXPLAIN IN HIS
17 DECLARATION OR HEARING TESTIMONY THE FACTUAL BASIS FOR THE
18 CLAIMS HE ALLEGED AGAINST THE DEFENDANTS. HIS VERY LENGTHY
19 BUT NONRESPONSIVE TESTIMONY REVEALED NOTHING IN SUPPORT OF
20 THE CLAIM THAT HE MADE AND THAT ARE REFLECTED IN THE SECOND
21 AMENDED COMPLAINT.

22 THE COURT REVIEWED CAREFULLY THE DECLARATIONS AND
23 EXHIBITS SUBMITTED BY MR. BHARTI AND MS. STARCZEWSKI, AND I
24 OBSERVED MR. BHARTI AS HE TESTIFIED, HIS MANNER AND
25 Demeanor. HIS TESTIMONY WAS TROUBLING FROM THIS COURT'S

1 PERSPECTIVE. HE WAS QUESTIONED REPEATEDLY ABOUT WHAT
2 PREFILING INVESTIGATION OCCURRED AND THE FACTUAL BASIS FOR
3 THE QUESTIONABLE CLAIMS. HE IGNORED THE RELEVANT QUESTIONS
4 AND DEVOTED NEARLY HIS ENTIRE TESTIMONY ATTEMPTING TO
5 JUSTIFY THE MERITS OF THE CLAIMS AGAINST DENNIS MOMAH
6 WITHOUT EVER ADDRESSING THE CRITICAL QUESTION BEFORE THIS
7 COURT.

8 THE ISSUES FACTUALLY BEFORE THIS COURT WERE PRETTY
9 SIMPLE. WHAT DID HE KNOW? AND WHEN DID HE KNOW IT?
10 SIMILARLY MR. BHARTI AND MS. STARCZEWSKI DECLARATION FAILED
11 TO ADDRESS THE CORE QUESTIONS. NOTHING IN THEIR
12 DECLARATIONS OR IN THE EXHIBITS THEY SUBMITTED EXPLAINED OR
13 IDENTIFIED WHAT PREFILING INVESTIGATION OCCURRED AND WHAT
14 FACTS EXISTED AT THE TIME TO SUPPORT THEIR CLAIMS AGAINST
15 JOHNSON AND FORD. THEIR VAGUE ASSERTIONS OF AN
16 ATTORNEY-CLIENT PRIVILEGE ARE CURIOUS. THE PRIVILEGE
17 PROTECTS COMMUNICATIONS, NOT FACTS. IT'S CLEAR NEITHER
18 EVEN ATTEMPTED TO LEARN FROM GONZALEZ OR ANYONE ELSE IF
19 FORD AND/OR JOHNSON ASSISTED OR CONSPIRED TO DESTROY OR
20 HIDE RELEVANT EVIDENCE.

21 THE DECLARATIONS OF BARTEL AND McDOUGAL RELIED UPON
22 BY MR. BHARTI PROVIDE ABSOLUTELY NO SUPPORT FOR THE
23 UNFOUNDED CLAIM. FOR EXAMPLE, HE CONTENDS THAT AT THE
24 REQUEST OF CHARLES MOMAH GONZALEZ DESTROYED MEDICAL RECORDS
25 AND HID EVIDENCE. THERE IS NOTHING IN THE RECORD BEFORE

1 THIS COURT THAT SUPPORTS THAT CONTENTION. THE McDUGAL ANI
2 BARTEL'S DECLARATIONS DO NOT SUPPORT ANY OF THE CLAIMS THAT
3 MR. BHARTI MADE AND THAT ARE REFLECTED IN THE SECOND
4 AMENDED COMPLAINT. CERTAINLY THERE IS NOTHING IN ANY OF
5 THE DECLARATIONS WHICH STATE OR REMOTELY SUPPORT THAT FORD
6 OR JOHNSON ASSISTED OR CONSPIRED WITH ANYONE TO DESTROY OR
7 HIDE EVIDENCE.

8 IT APPEARS THAT THE ONLY FACTUAL ASSERTION OFFERED BY
9 MR. BHARTI AND HIS COUNSEL IN SUPPORT OF THEIR FRONT CLAIM,
10 WHICH FRANKLY STILL MYSTIFIES THIS COURT IS THAT DENNIS
11 MOMAH COULD NOT POSSIBLY HAVE AFFORDED THE COSTS ASSOCIATED
12 WITH THE LITIGATION AGAINST MR. BHARTI. IT IS CLEAR THAT
13 MS. STARCZEWSKI CONDUCTED NO INVESTIGATION BEFORE SHE
14 PREPARED AND FILED THE SECOND AMENDED COMPLAINT. INSTEAD
15 SHE BLINDLY RELIED ON MR. BHARTI'S OPINIONS AND
16 SPECULATION. HER DECLARATION IS TELLING. SHE CRITICIZES
17 THE FACT THAT NO ONE APPARENTLY CALLED HER TO INQUIRE AS TO
18 THE BASIS FOR HER KNOWLEDGE BEFORE SHE SIGNED THIS SECOND
19 AMENDED COMPLAINT. BUT ON THE OTHER HAND SHE ARGUES THAT
20 EVERYTHING IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE
21 THAT BEARS ON THE ISSUES BEFORE THIS COURT. SHE CAN'T HAVE
22 IT BOTH WAYS.

23 WHAT IS TELLING IN HER DECLARATION -- AND I QUOTE
24 FROM THAT DECLARATION -- "IN EVALUATING MR. BHARTI'S CLAIMS
25 AGAINST THE DEFENDANT IN THIS CASE I RELIED UPON MY OWN

1 KNOWLEDGE OF MR. BHARTI AND HIS CHARACTER AND UPON THE FAC
2 THAT MR. BHARTI IS ADAMANTLY OPPOSED TO ANY DEVIATIONS FRO
3 THE TRUTH, NO MATTER HOW SLIGHT. I THEREFORE FEEL VERY
4 ASSURED THAT IF MR. BHARTI TELLS ME SOMETHING, IT IS THE
5 ABSOLUTE TRUTH TO THE EXTENT OF HIS KNOWLEDGE." END OF
6 QUOTE.

7 SHE GOES ON TO OFFER A VAGUE BASIS FOR THE CLAIM, YET
8 NEVER IDENTIFIES ANY FACT OR ANY INVESTIGATION. SHE STATES
9 THE OPINIONS OF EXPERTS WHO EVALUATED BHARTI'S CLIENT,
10 DECLARATIONS OF EYE-WITNESSES, ACTUAL DEPOSITIONS,
11 INTERVIEWS OF LISA McDOUGAL AND SO FORTH. I WAS INVITED TO
12 LOOK AT AND REVIEW TWO LARGE NOTEBOOKS OF DEPOSITION
13 TESTIMONY. BECAUSE OF THE IMPORTANCE OF THIS MOTION TO
14 BOTH SIDES, DESPITE THE FACT THAT THIS COURT HAS OTHER
15 CASES THAT DEMAND MY TIME, I REVIEWED THOSE DEPOSITIONS,
16 WHICH WERE ONLY PROVIDED IN PART. BUT WHAT WAS PROVIDED TO
17 ME WAS PROVIDED BY THE OPPOSING PARTY. AND I TRUST THAT
18 THOSE PORTIONS WERE PORTIONS THAT WERE MOST FAVORABLE TO
19 THE NONMOVING PARTY. AND EVEN THOSE PORTIONS DO NOT
20 SUPPORT THE CLAIMS MADE AGAINST JOHNSON AND MADE AGAINST
21 MR. FORD, BUT NONETHELESS ARE RELEVANT TO THIS INQUIRY.

22 MS. STARCZEWSKI'S BLIND RELIANCE ON HER CLIENT DOES
23 NOT SATISFY AN ATTORNEY'S INDEPENDENT AND AFFIRMATIVE
24 OBLIGATION UNDER CR 11 TO ENGAGE IN AN ADEQUATE PREFILING
25 INQUIRY TO ENSURE THAT A POSITION IS WELL-GROUNDED IN FACT.

1 COUNSEL FOR PLAINTIFF ASSERTS FOR THE FIRST TIME THAT THE
2 COURT'S DISCOVERY STAY PREVENTED THEM FROM CONDUCTING
3 DISCOVERY THAT PRESUMABLY WOULD HAVE REVEALED THE FACTS
4 NECESSARY TO SUPPORT THEIR CLAIMS. THE ARGUMENT FAILS FOR
5 SEVERAL REASONS. FIRST, CR 11 REQUIRES COUNSEL AND THE
6 PARTY TO CONDUCT A REASONABLE INVESTIGATION BEFORE
7 PREPARING AND FILING THE PLEADINGS.

8 THE SECOND AMENDED COMPLAINT WAS SIGNED BY MS.
9 STARCZEWSKI ON MARCH 30TH, 2006 AND FILED WITH THE CLERK ON
10 MARCH 31ST, 2006. SECOND, THE DISCOVERY STAY WAS IMPOSED
11 MAY 31ST, 2006, TWO MONTHS AFTER PLAINTIFF'S COUNSEL SIGNED
12 AND FILED THE SECOND AMENDED COMPLAINT. THIRD, PLAINTIFF
13 DID NOT SEEK LEAVE OF COURT TO CONDUCT LIMITED DISCOVERY AT
14 ANY TIME. PLAINTIFF COMPLAINED ABOUT THE DISCOVERY STAY
15 ONLY FOR THE FIRST TIME IN HIS WRITTEN OPPOSITION TO THE
16 MOTION FOR CR 11 SANCTIONS, EVEN THOUGH THEY KNEW WELL
17 BEFORE THE FORMAL MOTION WAS FILED THAT DEFENDANT INTENDED
18 TO SEEK CR 11 SANCTIONS. DESPITE THE LIBERAL NOTICE
19 PLEADING RULES, A PARTY NOR HIS ATTORNEY IS ENTITLED UNDER
20 CR 11 TO SHOOT FIRST AND ASK QUESTIONS LATER.

21 THE COURT TURNS NEXT TO THE REMEDY.

22 THE DEFENDANTS PROMPTLY GAVE NOTICE. AND INDEED
23 UNDER BOTH FEDERAL AND STATE LAW, MITIGATION MUST BE
24 CONSIDERED. BUT HERE THE DEFENDANTS PROMPTLY GAVE NOTICE
25 TO PLAINTIFF AND HIS COUNSEL THAT CR 11 SANCTIONS WERE

1 CONTEMPLATED. DEFENDANTS INFORMED COUNSEL SPECIFICALLY OF
2 THE NATURE OF THE MISCONDUCT. PLAINTIFF AND HIS ATTORNEY
3 DECLINED TO PROMPTLY AND UNCONDITIONALLY WITHDRAW THE
4 UNFOUNDED CLAIMS. NEGOTIATIONS OVER WHETHER TO WITHDRAW
5 AND STRIKE THE PLEADINGS FRANKLY HAVE NO BEARING ON WHETHER
6 CR 11 SANCTIONS AND WHETHER A VIOLATION OCCURRED. AN
7 ATTORNEY HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO
8 WITHDRAW UNCONDITIONALLY CLAIMS THAT HAVE NO BASIS IN FACT
9 OR IN LAW. THE MOVING PARTY SHOULD NOT HAVE BEEN PUT TO
10 THE EXPENSE OF MOVING THE COURT FOR SUCH EXTRAORDINARY
11 RELIEF.

12 ALTHOUGH COUNSEL FOR PLAINTIFF ARGUED AS MS.
13 STARCZEWSKI ARGUES TODAY THAT NO CR 11 VIOLATION OCCURRED
14 BECAUSE THE COURT STRUCK THE SECOND AMENDED COMPLAINT, THE
15 POSITION IS CONTRARY TO LAW. THE VIOLATION OF CR 11 IS
16 COMPLETE ON FILING OF THE OFFENDING PAPER. HENCE AN
17 AMENDMENT OR A WITHDRAWAL OF THE PAPER OR EVEN A VOLUNTARY
18 DISMISSAL OF THE SUIT DOES NOT EXPUNGE THE VIOLATION,
19 ALTHOUGH SUCH CORRECTIVE ACTION SHOULD BE USED TO MITIGATE
20 THE AMOUNT OF SANCTIONS IMPOSED. COOTER AND GELL VERSUS
21 HARTMARX CORPORATION, 496 US 384 AT 395, A 1990 CASE. THE
22 RULE IS THE SAME IN STATE COURT.

23 DEFENDANTS SEEK AN ORDER STRIKING THE PLEADINGS FROM
24 THE RECORD AND FOR MONETARY SANCTIONS AGAINST MR. BHARTI
25 AND MS. STARCZEWSKI. THE COURT GRANTS THE REQUEST TO

1 STRIKE THE SECOND AMENDED COMPLAINT FROM THE RECORD AND
2 DIRECTS FURTHER THAT BY SEPARATE ORDER MEETING THE
3 REQUIREMENTS OF AMENDED RULE GR 22 AND THE CLERK'S RULES
4 THAT THE SECOND AMENDED COMPLAINT BE SEALED. THE
5 COMPELLING -- THERE ARE, AND THE COURT FINDS AND CONCLUDES
6 THAT THERE ARE COMPELLING CIRCUMSTANCES WHICH EXIST UNDER
7 BOTH CASE LAWS AND COURT RULES THAT SUPPORT SEALING THE
8 ENTIRE SECOND AMENDED COMPLAINT, SPECIFICALLY THE CLAIMS
9 ARE ENTIRELY UNFOUNDED AND IMPUGN THE DEFENDANTS'
10 PROFESSIONAL REPUTATIONS BY ALLEGING THAT THEY ENGAGED IN
11 MULTIPLE ACTS OF PROFESSIONAL AND CRIMINAL MISCONDUCT. THE
12 DEFENDANT'S HEIGHTENED PRIVACY OUTWEIGHS THE PUBLIC'S
13 INTEREST IN ACCESS TO THE SECOND AMENDED COMPLAINT AND
14 REDACTIONS IF ANY IS NOT A REASONABLE OR SUFFICIENT
15 ALTERNATIVE.

16 WITH RESPECT TO MONETARY SANCTIONS, PLAINTIFF'S
17 COUNSEL INDEED ATTEMPTED TO MITIGATE THE VIOLATION BEFORE
18 THE HEARING, BUT THE NEGOTIATIONS FAILED. HE ALSO OFFERED
19 TO WITHDRAW AND AGREE TO SEAL THE SECOND AMENDED COMPLAINT
20 JUST BEFORE THE START OF THE EVIDENTIARY HEARING. THE
21 COURT TAKES INTO CONSIDERATION THAT OFFER AND THE ATTEMPT
22 TO MITIGATE. THE COURT ALSO ACKNOWLEDGES THAT THE
23 SANCTIONS SHOULD BE THE LEAST SEVERE AND SHOULD NOT BE USED
24 AS A FEE-SHIFTING MECHANISM. THE CLAIMS ALLEGED IN THIS
25 CASE ARE PARTICULARLY EGREGIOUS. THE UNFOUNDED CLAIMS

1 PUBLICLY ACCUSE JOHNSON AND FORD OF ENGAGING IN CRIMINAL
2 AND PROFESSIONAL MISCONDUCT RATHER THAN UNDERTAKING A
3 REASONABLE INVESTIGATION BEFORE MAKING SUCH EGREGIOUS
4 CLAIMS WITH A POTENTIAL TO HARM DEFENDANTS' REPUTATIONS.
5 MR. BHARTI AND MS. STARCZEWSKI BELIEVED THAT THEY WERE
6 ENTITLED TO SHOOT FIRST AND ASK QUESTIONS LATER. NO
7 REASONABLE ATTORNEY AFTER A FACTUAL -- AFTER A REASONABLE
8 FACTUAL INQUIRY WOULD HAVE MADE THE ALLEGATION CONTAINED IN
9 THE SECOND AMENDED COMPLAINT.

10 IN CONSIDERING THE APPROPRIATE SANCTIONS THE COURT
11 CONSIDERED THE POLICIES UNDERLYING CR 11 AND THE GOALS OF
12 DETERRENCE, PUNISHMENT AND EDUCATION AND THE LEAST SEVERE
13 SANCTIONS. THE COURT ALSO CONSIDERED PRIOR SANCTIONS
14 IMPOSED AND ADMONISHMENTS GIVEN TO MR. BHARTI AND MS.
15 STARCZEWSKI IN THE SALDIVAR CASE AND THE OTHER CASE HANDLED
16 BY JUDGE SCHAPIRA. HOWEVER THIS COURT'S CONSIDERATION OF
17 THOSE CASES, THOSE PRIOR CASES, AND IN PARTICULAR THE MAY
18 24, 2006 SALVADOR DECISION IS LIMITED TO THE FACT THAT
19 JUDGE STOLTZ STRONGLY ADMONISHED MR. BHARTI AND MS.
20 STARCZEWSKI AGAINST CONDUCT VIOLATIVE OF CR 11.

21 THE MERITS OF THAT DECISION ARE NOT BEFORE THIS
22 COURT. ALTHOUGH STERNLY WARNED LESS THAN THREE MONTHS
23 EARLIER AGAINST SIMILAR CONDUCT, MR. BHARTI AND MS.
24 STARCZEWSKI FAILED INEXPLICABLY TO HEED THE COURT'S
25 COMMENT. THUS THE ABUSES HERE ARE ESPECIALLY EGREGIOUS.

1 ACCORDINGLY AND BECAUSE OF THE EXTRAORDINARY CIRCUMSTANCES
2 OF THIS CASE AND THIS COURT DOES NOT TAKE LIGHTLY A REQUEST
3 FOR SUCH SEVERE SANCTIONS KNOWING THE EFFECT THAT IT HAS ON
4 THE REPUTATION OF AN ATTORNEY, HOWEVER IN THIS CASE THEY
5 ARE WARRANTED TO PUNISH, DETER AND EDUCATE MR. BHARTI AND
6 MS. STARCZEWSKI.

7 A FURTHER REPRIMAND FROM THIS COURT IS A USELESS ACT.
8 THEREFORE IN ADDITION TO ORDERING THE SEALING OF THE SECOND
9 AMENDED COMPLAINT, I'VE CAREFULLY CONSIDERED THE RECORD IN
10 THIS CASE, THE EGREGIOUS CIRCUMSTANCES. I'M GUIDED BY
11 NUMEROUS CASES THAT ADDRESS THE APPROPRIATENESS AND THE
12 AMOUNT OF SANCTIONS IN ASSESSING THE APPROPRIATE SANCTIONS
13 IN THIS CASE, INCLUDING THE AMOUNT OF SANCTIONS AGAINST MR.
14 BHARTI AND MS. STARCZEWSKI. THE FOLLOWING MONETARY
15 SANCTIONS AGAINST MR. BHARTI AND MS. STARCZEWSKI ARE
16 IMPOSED JOINTLY AND ARE WARRANTED IN THE AMOUNT OF FIVE
17 THOUSAND DOLLARS TO DETER SIMILAR ABUSES BY MR. BHARTI AND
18 MS. STARCZEWSKI IN THE FUTURE, PAYABLE TO THE KING COUNTY
19 SUPERIOR COURT SUPERIOR CLERK. THE COURT ALSO AWARDS
20 COMPENSATORY SANCTIONS, WHICH ARE PERMITTED UNDER THE CASE
21 AUTHORITY, AND ARE CERTAINLY WARRANTED UNDER THESE
22 CIRCUMSTANCES. THE COURT AWARDS COMPENSATORY SANCTIONS
23 THAT COVER ANY REASONABLE AND NECESSARY ATTORNEYS' FEES AND
24 EXPENSES ACTUALLY EXPENDED IN SEEKING CR 11 SANCTIONS.

25 IF THE OPPOSING PARTY FEELS THAT THEY HAVE HAD

1 INSUFFICIENT TIME TO CONSIDER AND REVIEW THE BILLING RECORD
2 IN SUPPORT OF THAT, AND THE DECLARATION OF MR. ROCKEY IN
3 SUPPORT OF COMPENSATORY SANCTIONS, IT IS FAIR TO ALLOW THEM
4 AN OPPORTUNITY TO REVIEW THE BILLING RECORDS IN SUPPORT OF
5 THE AMOUNT REQUESTED? DO YOU SO REQUEST?

6 MS. STARCZEWSKI: YES, YOUR HONOR.

7 THE COURT: I WOULD PROPOSE THE FOLLOWING: THAT
8 PURSUANT TO LOCAL RULE 7, WITHOUT ORAL ARGUMENT, THAT THE
9 ISSUE OF THE REASONABLENESS, NOT THE ENTITLEMENT -- THE
10 COURT HAS ALREADY ADDRESSED THE ENTITLEMENT TO COMPENSATORY
11 ATTORNEY FEES AND EXPENSES -- BUT UNDER LOCAL RULE 7 THAT
12 THE PARTIES BEGINNING WITH THE MOVING PARTY, THAT IS, MR.
13 ROCKEY, IF YOU WILL RESUBMIT YOUR DECLARATION AND BILLING
14 RECORDS IN SUPPORT OF AS YOU WOULD UNDER ANY REQUEST FOR
15 ATTORNEY FEES AND EXPENSES, THEN THAT WILL ALLOW MS.
16 STARCZEWSKI AND MR. WARREN TO REVIEW THE REQUEST AND FILE
17 AN OPPOSITION TO THE AMOUNT. AND THEN YOU MAY REPLY TO THE
18 LOCAL RULE 7 PROCEDURE WHICH WOULD ALLOW AND DICTATE THE
19 BRIEFING SCHEDULE.

20 ONCE AGAIN LET ME STRESS IT IS NOT AN OPPORTUNITY TO
21 SEEK RECONSIDERATION AS TO THE ENTITLEMENT, BUT IS AN
22 OPPORTUNITY IN FAIRNESS TO GIVE MR. BHARTI AND HIS ATTORNEY
23 A CHANCE TO REVIEW THE BASIS FOR THE AMOUNTS THAT ARE BEING
24 REQUESTED. LET ME BE CLEAR ABOUT THE NECESSARY ORDERS. IT
25 IS CLEAR THAT WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF

1 LAW ARE NECESSARY TO SUPPORT THE COURT'S DECISION TODAY.
2 THE PROPOSED FINDINGS AND CONCLUSIONS THAT WERE PROVIDED TO
3 ME BY MR. ROCKEY ARE OBVIOUSLY INSUFFICIENT IN LIGHT OF
4 THIS COURT'S DETAILED FINDINGS AND CONCLUSIONS AND IN LIGHT
5 OF THE SUBSEQUENT PROCEEDINGS. I'M DIRECTING THAT MR.
6 ROCKEY, YOU PLEASE PREPARE APPROPRIATE FINDINGS AND
7 CONCLUSIONS CONSISTENT WITH THE RECORD AND THIS COURT'S
8 ORAL FINDINGS AND CONCLUSIONS. IT MAY WELL BE THAT
9 REQUESTING A COPY OF THE TRANSCRIPT WILL AID YOU IN THAT
10 EFFORT. PLEASE INCLUDE THAT THE COURT ADOPTS AND
11 INCORPORATES ITS ORAL RULING IN THE WRITTEN FINDINGS. YOU
12 ARE FREE TO INCLUDE ANY OTHER FINDINGS THAT ARE CONSISTENT
13 WITH THE RECORD.

14 WITH REGARD TO GR 22 AND THE COURT'S COMMENTS IN THAT
15 REGARD, AS YOU KNOW THERE HAS BEEN A GREAT DEAL OF
16 PUBLICITY OF LATE CONCERNING THE FILING AND SEALING OF
17 COURT DOCUMENTS. I'VE MADE SPECIFIC FINDINGS ALREADY BUT
18 WOULD DIRECT THAT YOU PREPARE A SEPARATE ORDER ON SEALING
19 THE SECOND AMENDED COMPLAINT TO REFLECT NOT ONLY GR 22
20 REQUIREMENTS BUT THE REQUIREMENTS OF CASE LAW. THE CLERK'S
21 OFFICE FRANKLY HAS A PROCEDURE. I THINK YOU CAN GET A COPY
22 OF THE COURT'S CLERK'S PROCEDURES, THEIR INTERNAL
23 PROCEDURES WHENEVER A DOCUMENT THAT THE COURT SUBSEQUENTLY
24 SEALS HAS ALREADY BEEN FILED. THERE IS A PARTICULAR
25 PROCEDURE AND IN FACT FORMS THAT ARE AVAILABLE TO LITIGANTS

1 FOR ADDRESSING A DOCUMENT THAT HAS PREVIOUSLY BEEN FILED
2 AND MADE AVAILABLE IN THE PUBLIC FILE AND THEN SUBSEQUEN
3 ORDERED SEALED BY THE COURT. AND BECAUSE I DO WANT TO
4 ADHERE TO THE REQUIREMENTS OF GR 22, AND BECAUSE THESE
5 TYPES OF FILINGS ARE BEING SCRUTINIZED RATHER CAREFULLY,
6 ASK THAT YOU DOT THE I'S AND CROSS THE T'S WHEN FILING THE
7 MATTER RATHER WHEN SEALING THE PARTICULAR PLEADING IN THE
8 CASE.

9 MR. FORD: YOUR HONOR, MAY I SAY SOMETHING ON THAT
10 QUESTION?

11 THE COURT: YES.

12 MR. FORD: I DON'T BELIEVE THERE WAS AN ACTUAL
13 REQUEST FOR THAT IN THE PLEADINGS. AND I WOULD JUST ASK
14 THE COURT'S LEAVE TO CONSULT WITH COUNSEL AND MY
15 CODEFENDANT AND AFFIRM ALSO THE DEFENDANT. AND IT'S
16 POSSIBLE THAT WE MIGHT ASK THE COURT NOT TO SEAL THAT
17 DOCUMENT BECAUSE OF THE ATTENTION THAT THAT CAN DRAW AND
18 THE NEGATIVE EFFECT THAT OF -- I JUST DON'T WANT THAT --
19 I'D INFORM THE COURT THAT MAY BE OUR POSITION. I WOULD
20 ASSUME WE WOULD TALK ABOUT IT. AND IF IT WAS A
21 RECONSIDERATION TO BE ASKED, WE'D DO THAT TIMELY WITHIN THE
22 RULES. BUT I'D LIKE TO LET THE COURT KNOW THAT IS A
23 CONCERN I HAVE.

24 THE COURT: I FRANKLY, THE ONLY ISSUE, THE ENTIRE
25 ISSUE OF SEALING CAME UP IS BECAUSE COUNSEL ARGUED IT AT

1 VARIOUS POINTS DURING THE PROCEEDINGS. AND SINCE THERE IS
2 NO OBJECTION BY ANYONE, I SIMPLY ASSUMED THAT THAT WOULD
3 A REQUEST THAT YOU'D MAKE. I AM NOT ORDERING OVER
4 OBJECTION THAT THAT DOCUMENT BE SEALED, FRANKLY. IF YOU
5 DON'T WANT IT SEALED, I WILL NOT ORDER THAT IT BE SEALED.

6 MR. FORD: PERHAPS WE CAN, AFTER THAT HEARING, WE CAN
7 LET THE COURT KNOW IN LIEU OF AN ORDER, HOW IT TURNS OUT.

8 THE COURT: ARE THERE ANY QUESTIONS, ANY REQUESTS TO
9 CLARIFY? I REALLY WOULD PREFER THAT WE NOT COME BACK FOR
10 PRESENTATION. BOTH SIDES HAVE SPENT AN EXTRAORDINARY
11 AMOUNT OF TIME AND EFFORT ON THIS COLLATERAL LITIGATION.
12 AM AWARE THAT DURING THE COURSE OF YOUR NEGOTIATIONS THAT
13 THIS DECISION WILL BE APPEALED, AND SO BE IT. IT IS
14 CERTAINLY THE DECISION THAT THE PARTIES CAN MAKE. BUT I
15 THINK BECAUSE THE CASE LAW REQUIRES IT, THE SERIOUSNESS OF
16 THE ALLEGATIONS DICTATE IT, AND FRANKLY I THINK THE PARTIES
17 WOULD BENEFIT AS WELL AS THE REASON WHY THIS COURT GAVE
18 ESSENTIALLY A VERY DETAILED RULING IN THIS CASE. I DO WANT
19 TO MAKE IT ABUNDANTLY CLEAR THAT THIS COURT RULING WAS NOT
20 BASED ON THE FACT THAT THESE ATTORNEYS HAVE BEEN SANCTIONED
21 BEFORE. BUT I ONLY MENTION THESE CASES IN MY RULING
22 BECAUSE I RELY ON THEM SIMPLY BECAUSE IT'S INDICATIVE THAT
23 THE PARTIES HAD NOTICE FROM OTHER COURTS THAT SIMILAR
24 CONDUCT IN THE FUTURE COULD BE SANCTIONABLE AND IT
25 CERTAINLY WOULD THEN SUPPORT THE SANCTIONS THAT THIS COURT

1 IMPOSED TODAY. SO I DO WANT TO BE CLEAR THAT I'M NOT
2 RELYING ON THE FINDINGS THAT WERE MADE BY JUDGE STOLTZ NOR
3 THE FINDINGS THAT WERE MADE BY JUDGE SCHAPIRA. THERE'S A
4 VERY CLEAR DISTINCTION THAT I'M DRAWING HERE. AND I HOPE
5 MY COMMENTS SERVE TO CLARIFY ANY MISPERCEPTION THAT THIS
6 COURT RELIED ON OTHER JUDGES IN IMPOSING SANCTIONS OR IN
7 DETERMINING THE MERITS IN THIS CASE. ARE THERE ANY
8 QUESTIONS?

9 MR. FORD: NO, YOUR HONOR.

10 THE COURT: WHAT I WOULD ALSO PROPOSE, I THINK, IS
11 THAT YOU PREPARE THE PROPOSED FINDINGS AND CONCLUSIONS AND
12 THAT YOU PROVIDE THEM TO THE OPPOSING SIDE TO GIVE THEM A
13 CHANCE TO REVIEW THEM. IF YOU HAVE ANY OBJECTIONS TO ANY
14 OF THESE SPECIFIC FINDINGS AND CONCLUSIONS, THAT THOSE
15 OBJECTIONS BE MADE IN WRITING SO THAT THE RECORD IS CLEAR
16 SO WE DON'T HAVE TO COME BACK FOR A PRESENTATION. I'LL
17 REVIEW THOSE OBJECTIONS. AND IF THEY ARE EITHER NOT
18 SUPPORTED BY THE EVIDENCE OR THE CONCLUSIONS ARE ERRONEOUS
19 OR IF THERE'S ANY MERIT TO ANY OBJECTIONS, I'LL MODIFY THE
20 FINDINGS AND CONCLUSIONS. BUT FRANKLY I WOULD PREFER THAT
21 COUNSEL NOT HAVE TO COME BACK AGAIN TO ARGUE OVER FINDINGS
22 AND CONCLUSIONS.

23 ARE THERE ANY FURTHER QUESTIONS, COMMENTS AT ALL
24 ABOUT WHAT NEEDS TO BE DONE AND WHEN IT SHOULD BE DONE BY?
25 IT WOULD PERHAPS MAKE SENSE TO IMPOSE A DEADLINE FOR

1 FINDINGS AND OBJECTIONS SO THAT THIS DOES NOT TRAIL ON
2 FOREVER. MR. ROCKEY, WHEN CAN YOU PROVIDE THE OTHER SIDE
3 WITH A COPY OF YOUR FINDINGS AND CONCLUSIONS?

4 MR. ROCKEY: NEXT WEEK IS A SHORT WEEK. AND I'D
5 PERHAPS GIVE THEM THE WEEK FOLLOWING EXCEPT THAT I KNOW
6 THAT I HAVE 3 OR 4 DEPOSITIONS THE WEEK FOLLOWING. IF IT
7 WOULDN'T TROUBLE THE COURT TOO MUCH I WOULD ASK UNTIL TWO
8 WEEKS FROM TOMORROW, IF I CAN GET THEM IN BEFORE THE
9 DEPOSITIONS START, WHICH IS ON MONDAY, THE ELEVENTH, I'LL
10 TRY AND DO THAT. BUT OTHERWISE I'D LIKE TO GET THROUGH
11 THOSE DEPOSITIONS AND DO THEM THAT WEEK.

12 THE COURT: CAN YOU JUST GIVE ME A DATE OF, GIVEN
13 YOUR PERSONAL SCHEDULE, WHEN YOU'D LIKE TO HAVE IT IN BY?

14 MR. ROCKEY: THAT'S TRUE. I NEED TO REQUEST A
15 TRANSCRIPT TO BE TYPED. AND I DON'T KNOW HOW LONG THAT
16 WILL TAKE. PERHAPS MONDAY THE EIGHTEENTH. BUT IT MAY TAK
17 LONGER, GIVEN GETTING THE TRANSCRIPT TYPED.

18 THE COURT: LADD, WHEN DO YOU THINK YOU CAN DO THIS?

19 (DISCUSSION OF THE RECORD)

20 THE COURT: HE'LL HAVE IT TO YOU SOMETIME NEXT WEEK.

21 MR. FORD: I THINK IF SEPTEMBER 18TH IS ACCEPTABLE TO
22 THE COURT, THAT'S WHAT I'D ASK FOR.

23 THE COURT: MS. STARCZEWSKI, WHEN WOULD YOU LIKE TO
24 FILE ANY OPPOSITION?

25 MS. STARCZEWSKI: HOW ABOUT THE TWENTY-NINTH OF

1 SEPTEMBER, WHICH WOULD BE FRIDAY NEXT, BECAUSE THE WEEK
2 THE EIGHTEENTH I HAVE A NUMBER OF THINGS ON THE WEEK OF
3 EIGHTEENTH. IF I CAN HAVE UNTIL THE TWENTY-NINTH.

4 THE COURT: THAT'S FINE. I'M ASSUMING THAT ON THE
5 EIGHTEENTH YOU'LL ALSO FILE YOUR PROPOSED FINDINGS WITH T
6 COURT?

7 MR. ROCKEY: YES, YOUR HONOR.

8 THE COURT: OKAY. DO YOU WISH AN OPPORTUNITY TO
9 RESPOND TO ANY OPPOSITION?

10 MR. ROCKEY: YES, YOUR HONOR, IF FIVE WORKING DAYS
11 COULD BE PROVIDED, YES, THAT WOULD BE OCTOBER 4TH, I THIN
12 OR OCTOBER 6TH.

13 THE COURT: THAT'S FINE. WOULD YOU ALSO PROVIDE ME
14 IN SOME FORM YOUR POSITION CONCERNING SEALING SO THAT THE
15 RECORD IS CLEAR WHETHER YOU WISH TO REQUEST SEALING OR NO

16 MR. ROCKEY: YES, YOUR HONOR, WE DO NEED TO CONSULT
17 ON THAT. AND WE'LL TRY AND DO THAT BY THE END OF NEXT WEE
18 AND PERHAPS A LETTER TO THE COURT.

19 THE COURT: FRANKLY I WOULD PREFER A PLEADING SO THA
20 IT'S FILED SO THAT THERE IS A RECORD. WE ALWAYS FILE
21 LETTERS. BUT WE PREFER TO HAVE IT IN THE FORM OF A
22 PLEADING SO THAT GETS IN AUTOMATICALLY. WE'LL FILE THAT.
23 SO BY THE END OF NEXT WEEK, DID YOU SAY?

24 MR. ROCKEY: YES, YOUR HONOR.

25 THE COURT: SO BY THE END OF --

1 MR. ROCKEY: SEPTEMBER 8TH.

2 THE COURT: DECISION ON SEALING, LOYCE.

3 THE BAILIFF: I HAVE IT, YOUR HONOR.

4 THE COURT: ARE THERE ANY OTHER DEADLINES OR ANY

5 OTHER GUIDANCE THAT COUNSEL WISHES FROM THE COURT?

6 MR. ROCKEY: NOT BY ME, YOUR HONOR.

7 THE COURT: MS. STARCZEWSKI, FROM YOU?

8 SPEAKER NO. 8: NO.

9 THE COURT: MR. WARREN, I THINK GIVEN THE UNUSUAL

10 DEVELOPMENTS IN THIS PROCEEDING SINCE SUMMARY JUDGMENT THAT

11 IT PROBABLY WOULD BE HELPFUL IF YOU FILED A NOTICE OF

12 WITHDRAWAL, IF YOU INTEND TO WITHDRAW OR NOT, IN THE EVENT

13 THERE ARE ANY FURTHER PROCEEDINGS IN THIS CASE SO THAT THE

14 RECORD IS CLEAR AS TO WHETHER OR NOT YOU HAVE ANY

15 OBLIGATIONS LEFT IN THIS CASE. OFTENTIMES ATTORNEYS NEVER

16 FILE A NOTICE OF APPEARANCE AND NEVER FILE A NOTICE OF

17 WITHDRAWAL. AND THE LINES OFTEN ARE EXTREMELY BLURRED.

18 AND GIVEN THE CONTENTIOUSNESS OF THIS LITIGATION, IT WOULD

19 PROBABLY BE BENEFICIAL.

20 MR. WARREN: YES, YOUR HONOR.

21 THE COURT: I'M NOT DIRECTING THAT YOU DO SO.

22 MR. WARREN: OF COURSE.

23 THE COURT: BUT IF YOU WISH TO DO SO, IT PROBABLY

24 WOULD NOT BE A BAD IDEA.

25 MR. WARREN: THANK YOU, YOUR HONOR.

1 THE COURT: COUNSEL, IS THERE ANYTHING ELSE?

2 MR. ROCKEY: NO, YOUR HONOR.

3 THE COURT: THANK YOU VERY MUCH.

4 MR. FORD: THANK YOU VERY MUCH, YOUR HONOR.

5 THE COURT: YOU'RE WELCOME.

6 (WHEREUPON THE HEARING IN THE ABOVE-ENTITLED MATTER

7 CONCLUDED ON THE RECORD AT 3:17 P.M.)

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Transcript of CR 11 Sanction
against Bharti by Hon. Judge
Sethupira



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

GORDON CODMAN,

Plaintiff,

v.

SPACE NEEDLE CORPORATION, dba SKY
CITY CAFÉ and SKY CITY at the NEEDLE,

Defendant.

Case No.: 04-2-17911-4 SEA

~~SECOND REVISED PROPOSED~~
ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND ENTRY OF
DEFAULT

HEARING DATE: MARCH 25, 2005

in part
CRS

This matter came before the Court on Defendant's Motion for Summary Judgment and Entry of Default and Memorandum in Support Thereof ("Defendant's Motion"), which was filed on February 25, 2005. The Court has considered the arguments of the parties and the papers and pleadings on file in this case, including all of the following:

- Plaintiff Gordon Codman's Complaint for Wrongful Termination, Negligent Supervision or Hiring, Intentional Infliction of Emotional Distress, and Negligent Infliction of Emotional Distress;
- Defendant's First Amended Answer, Affirmative Defenses and Counterclaim;
- Plaintiff's Motion Seeking Leave to File First Amended Complaint and Proposed First Amended Complaint;

~~SECOND REVISED PROPOSED~~ ORDER GRANTING DEF'S
MOTION FOR SUMMARY JUDGMENT AND ENTRY OF
DEFAULT- 1
Case No. 04-2-17911-4 SEA

in part
AS

Jackson Lewis LLP
One Union Square
600 University Street, Suite 2900
Seattle, Washington 98101
(206) 405-0404

- 1 • Declaration of Karen P. Kruse in Support of Defendant's Memorandum Opposing
- 2 Plaintiff's Motion Seeking Leave to File First Amended Complaint;
- 3 • Declaration of Karen P. Kruse Dated February 25, 2005;
- 4 • Declaration of Gordon Codman (August 27, 2004);
- 5 • Declaration of Robert Dunbabin (August 24, 2004);
- 6 • Defendant's Motion;
- 7 • Plaintiff's Opposition to Summary Judgment;
- 8 • March 2, 2005 Order Denying Leave to Amend Complaint;
- 9 • Defendant's Reply Memorandum Supporting its Motion for Summary Judgment;
- 10 • Declaration of Lynn Gilkey (March 21, 2005);
- 11 • Plaintiff's Answer to Defendant's Counterclaim;
- 12 • Defendant's Sur-Reply Memorandum Supporting Its Motion for Summary Judgment.
- 13 •
- 14 •

15 Being fully advised, the Court finds that there are no genuine issues of material fact, and
 16 that defendant is entitled to judgment as a matter of law dismissing all of plaintiff's claims with
 17 prejudice. In particular, the Court hereby makes the following findings of fact and conclusions
 18 of law concerning defendant's motion for summary judgment dismissing plaintiff's claims:

- 19 1. Plaintiff's Claim for Wrongful Discharge in Violation of Public Policy.
 - 20 a. It is undisputed that plaintiff did not testify at Brian Taylor's unemployment
 - 21 compensation hearing.
 - 22 b. It is undisputed that plaintiff did not begin receiving "write-ups" only after
 - 23 Taylor's unemployment hearing.
 - 24 c. It is undisputed that plaintiff received numerous "write-ups" before Taylor's
 - 25 unemployment hearing.
 - 26 d. ^{49.12.200} Neither of the two statutes cited in plaintiff's Complaint (~~RCW 49.60.070~~ nor
 - 27 ~~RCW 49.12.200~~ ^{not} is applicable to his contentions. *AM* *CRS*

1 c. Plaintiff has failed to plead any clear mandate of public policy, as is required
2 by the "clarity element" of his claim for wrongful discharge in violation of
3 public policy. *OKS*

4 f. Given the undisputed facts and the controlling law, plaintiff cannot prove that
5 defendant violated a clear mandate of public policy as required by this claim. *OKS*

6 **2. Plaintiff's Claims for Negligent Infliction of Emotional Distress, Outrage,
7 and Negligent Hiring or Supervision ("Other Tort Claims").**

8 a. Plaintiff's Other Tort Claims are duplicative of his wrongful discharge claim
9 as they rely on the same facts. Thus, as a matter of law, they may not be
10 maintained.

11 b. Defendant did not have a general tort duty of care to refrain from employment
12 decisions that might cause plaintiff emotional distress.

13 c. As a matter of law, the conduct by defendant that plaintiff alleges was not
14 unreasonably dangerous, and was not sufficient to support a claim for
15 negligent infliction of emotional distress.

16 d. As a matter of law, the conduct by defendant that plaintiff alleges does not
17 rise to the level of outrageousness needed to support a claim for intentional
18 infliction of emotional distress.

19 e. As a matter of law, plaintiff's allegations fail to support a claim for negligent
20 hiring or supervision as his allegations fail to establish any of the following:
21 (i) that any of defendant's supervisors or managers actually posed an
22 unreasonable risk of bodily harm to him, or (ii) that any of defendant's
23 supervisors or managers actually had any dangerous tendencies, or (iii) that
24 defendant knew or should have known that one or more of its supervisors or
25 managers posed an unreasonable risk of bodily harm to plaintiff, or had
26 dangerous tendencies.

1 Based on the above findings and conclusions, the Court therefore DISMISSES WITH
2 PREJUDICE all claims in plaintiff's Complaint, *Other than Wrongful Termination*

3 With respect to defendant's counterclaim under CR 11, the Court hereby makes the *under Public Policy*
4 following additional findings of fact and conclusions of law: *CATS*

5 1. Plaintiff's Complaint is ~~factually baseless~~ *and contains baseless assertions* because plaintiff knew before he
6 initiated this action that he did not testify at Taylor's unemployment
7 compensation hearing. *CATS*

8 2. Plaintiff's Complaint also is ~~factually baseless~~ *incorrect* because he initiated this action
9 knowing that he had received numerous "write-ups" before Taylor's
10 unemployment compensation hearing. *CATS*

11 3. Plaintiff's counsel signed and filed a ~~factually baseless~~ *containing baseless* pleading by signing and
12 filing a Complaint that alleged plaintiff testified at Taylor's unemployment
13 hearing, and that he began receiving "write-ups" only after that hearing. *assertion*

14 4. Plaintiff's counsel did not engage in a reasonable inquiry as to the facts before
15 initiating this action and signing and filing the Complaint. *CATS*

16 5. If plaintiff's counsel had made a reasonable pre-filing inquiry, this inquiry would
17 have disclosed that plaintiff did not testify at Taylor's unemployment hearing, and
18 that plaintiff received numerous "write-ups" before that hearing.

19 6. Plaintiff and his counsel continued to pursue a factually baseless claim despite
20 having actual knowledge that plaintiff did not testify at Taylor's unemployment
21 compensation hearing.

22 7. Plaintiff and his counsel continued to pursue a factually baseless claim despite
23 having actual knowledge that plaintiff received numerous "write-ups" before
24 Taylor's unemployment compensation hearing.

25 8. Plaintiff's counsel included in the Complaint, and pursued arguments, based on
26 statutes that are not applicable to plaintiff's contentions (~~the RCW 49.50.010 and~~ *CATS*
27 RCW 49.12.200). In so doing, they asserted and pursued arguments that were not

1 warranted by existing law or by a good faith argument for the extension,
2 modification or reversal of existing law.

3 9. Plaintiff's counsel signed and filed two more factually baseless pleadings by
4 signing and filing Plaintiff's Motion Seeking Leave to File First Amended
5 Complaint, and the attached First Amended Complaint, still alleging that plaintiff
6 began receiving "write-ups" only after Taylor's unemployment hearing.

7 10. Plaintiff's Motion Seeking Leave to File First Amended Complaint, and the
8 attached First Amended Complaint, continued to include arguments based on
9 statutes that are not applicable to plaintiff's contentions (~~RCW 49.00.010 and~~
10 ~~RCW 49.15.200~~). In so doing, plaintiff's counsel continued to assert and pursue
11 arguments that were not warranted by existing law or by a good faith argument
12 for the extension, modification or reversal of existing law.

13 11. Plaintiff's Opposition to Summary Judgment and the March 23, 2005 Declaration
14 of Gordon Codman contain a new factually baseless contention that plaintiff
15 received a write-up for eating pizza in the kitchen after the Taylor hearing, when
16 plaintiff's own produced documents show that he received this write up on March
17 25, 2003—nearly two months before the hearing.

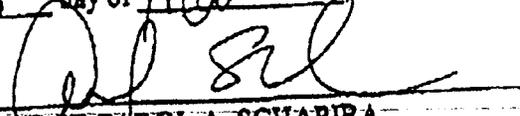
18 Based on these additional findings and conclusions, the Court finds that there are no
19 genuine issues of material fact on defendant's counterclaim, and that defendant is entitled to CR
20 11 sanctions against both plaintiff and his counsel based on their filing and pursuit of factually
21 baseless pleadings that included theories not warranted by existing law, or by a good faith
22 argument for the extension, modification or reversal of existing law. The Court therefore
23 **GRANTS** defendant's motion for summary judgment on its counterclaim for CR 11 sanctions
24 against both plaintiff and his counsel. Defendant ^{may} ~~shall~~ file a motion for its attorney's fees and
25 costs under CR 11 within thirty (30) days of the entry of this Order. At the same time, defendant
26 may move for a determination

(49.12.200)
OAS

OAS

1 under RCW 4.84.185. Any opposition or reply memoranda on these motions shall conform to
2 the deadlines set forth in Local Rule 7.

3 DONE IN OPEN COURT this 25th day of March 2005.

4 
5 JUDGE CAROL A. SCHAPIRA
6 King County Superior Court

7
8 Presented by:

9 JACKSON LEWIS LLP

10
11 By Karen P. Kruse
12 Barry Alan Johnrud, WSBA # 21952
13 Karen P. Kruse, WSBA #19857
14 Laurene E. Somerville, WSBA #26345
Jennifer L. Mora, WSBA #31859
Attorneys for Defendant Space Needle Corporation

15 Approved as to form; Notice of presentation waived.

16 LAW OFFICE OF HARISH BHARTI

17
18 By  STE
19 Harish Bharti, WSBA No. 23960
20 Scott Engan, WSBA #31778
Marja Starczewski, WSBA #26111
Attorneys for Plaintiff

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28 [SECOND REVISED PROPOSED] ORDER GRANTING DEF'S
MOTION FOR SUMMARY JUDGMENT AND ENTRY OF
DEFAULT- 6
Case No. 04-2-17911-4 SEA

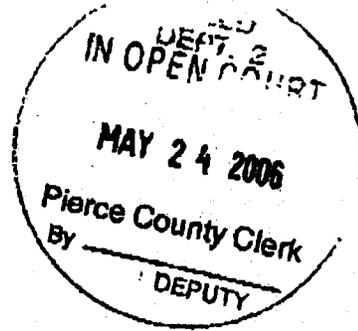
Jackson Lewis LLP
One Union Square
600 University Street, Suite 2900
Seattle, Washington 98101
(206) 405-0404

16 A and B

Transcript of rulings by Hon. Judge
Stoltz in *Salduan v Manah*

APPENDIX A

The Honorable Katherine M. Stolz



SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

PERLA SALDIVAR and ALBERT SALDIVAR,

Plaintiffs,

v.

DENNIS MOMAH, JANE DOE MOMAH, and the marital community composed thereof; U.S. HEALTHWORKS MEDICAL GROUP OF WASHINGTON, P.S., a Washington professional services company; CHARLES MOMAH, JANE DOE MOMAH, and the marital community composed thereof and DOES 1-10,

Defendants.

NO. 04-2-06677-3

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing all testimony and reviewing the exhibits offered and admitted during trial, and considering the Defendants' post-trial motions for sanctions, the Court makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

- 1. Perla Saldivar was seen by several different healthcare providers at the US Healthworks Puyallup clinic in May and June of 2003. She was seen only twice by Dr. Dennis Momah: May 28, 2003 and June 26, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

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2. Perla Saldivar was not sexually assaulted or in any other way inappropriately treated by Dr. Dennis Momah. Plaintiffs presented no evidence that Ms. Saldivar was assaulted by Dr. Momah other than Ms. Saldivar's own testimony. This Court finds that Perla Saldivar's testimony was not credible. Her version of events occurring at the US Healthworks Puyallup clinic was inconsistent with the medical records, patient sign-in sheets, and all other objective evidence. She changed her version of events frequently and her testimony was contrary to common sense. In addition, Ms. Saldivar's trial testimony was repeatedly and effectively impeached with her own prior statements and testimony, conclusively demonstrating that she has significantly altered her story over time on nearly every material fact.

3. The contradictions and inconsistencies in Ms. Saldivar's testimony were some of the most pronounced this Court has ever seen. This Court finds that Perla Saldivar knowingly and intentionally fabricated her allegations against Dr. Dennis Momah and Dr. Charles Momah. Ms. Saldivar's testimony and statements have dramatically changed over time. She contradicted earlier statements and testimony she and her husband provided about nearly every fact material to her complaint, including how many times she saw Dr. Momah, who allegedly assaulted her, when and on which appointments the alleged assaults occurred, and the manner in which she claims to have been assaulted. Even Ms. Saldivar's description of which parts of her body she claims were touched by Dr. Momah has changed from one account to another.

4. Albert Saldivar has no personal knowledge of the events material to plaintiffs' liability claims—what occurred between Perla Saldivar and Dr. Momah in the examination room

1 at the US Healthworks Puyallup clinic—and his testimony at trial was not credible. Mr.
2 Saldivar's testimony was repeatedly impeached at trial with his prior sworn testimony.
3 Much of his testimony was changed and/or recanted at trial. For example, Mr. Saldivar
4 testified in his deposition that he was standing right outside the door of the examination
5 room during one of his wife's medical visits with Dr. Momah and even provided detail
6 concerning what he heard his wife say during that visit. Faced with impeachment
7 evidence at trial, on cross examination Mr. Saldivar admitted that he was never inside the
8 US Healthworks Puyallup clinic building during any of his wife's medical visits with Dr.
9 Momah. This and innumerable other contradictions and changes in Mr. Saldivar's
10 testimony has persuaded this Court that he has fabricated his testimony in an effort to
11 support his wife's false and ever-shifting complaints.
12

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14 5. The testimony of interpreter Ed Fuentes was not credible and did not provide meaningful
15 support for plaintiffs' claims. Ed Fuentes admitted at trial that he had previously told
16 multiple defense counsel in this case that he was not present during any of Perla
17 Saldivar's medical appointments with Dr. Dennis Momah. When called as a witness at
18 trial, Mr. Fuentes testified that despite these earlier statements, and the fact that he had
19 long since destroyed any record he had of his translation appointments in 2003, he
20 suddenly remembered at trial that he was in the examination room with Perla Saldivar
21 during one or more of her medical appointments with Dr. Momah three years earlier. Yet
22 he could not remember how many visits he had attended or the dates (not even the
23 month) of these visit(s). He was unable to describe what either party was wearing, what
24 either party said, or the actions of either party during these visit(s). The Court did not
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find Mr. Fuentes' testimony credible. In addition, even if the Court were to believe Mr. Fuentes' sudden recollection of having attended one or more of Perla Saldivar's medical appointments with Dr. Momah, Mr. Fuentes did not claim to have witnessed any inappropriate behavior by Dr. Dennis Momah during these visits. His testimony therefore did not support or corroborate plaintiffs' allegations.

6. Dr. Charles Momah did not impersonate Dr. Dennis Momah at the US Healthworks Puyallup clinic, and Dr. Charles Momah never saw, treated or otherwise had any contact with Perla Saldivar. There were intricate systems and office procedures in place that would make it highly unlikely that any physician could have sneaked into the US Healthworks Puyallup clinic in May or June of 2003 and impersonated another physician without being detected. In addition, there are no doors near the doctor's office that would allow a physician to leave or enter the premises without being observed by multiple people. The US Healthworks Puyallup clinic was very busy on the days Perla Saldivar was treated by Dr. Dennis Momah, and this Court finds that it is not plausible that a physician could be absent from the premises for any significant period of time during the physician's shift without this being noticed by the clinic staff. It is similarly implausible that a doctor could be occupied with a patient for three to five hours as alleged by Perla Saldivar without significantly disrupting the functioning of the clinic and without the clinic staff noticing the situation. Records establish that Dr. Dennis Momah saw numerous patients on both of the days Perla Saldivar saw him. He could not have seen that number of patients if Perla Saldivar's appointment was three to five hours long as she claims.

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7. There is no evidence or even allegation in this case that Dennis Momah impersonated Charles Momah. The only evidence before this Court of any alleged impersonation by Charles Momah of Dennis Momah, or any treatment or other contact between Charles Momah and Perla Saldivar, is the testimony of the Saldivars, which this Court does not find reliable or credible. According to the testimony of the Saldivars, Perla Saldivar believes she saw Charles Momah for approximately 10 minutes during one medical visit in May of 2003. Her testimony concerning who she believes she saw during which medical visit has materially changed in different accounts of her story, she never alleged any impersonation until well after the fact, and after she had retained Harish Bharti as her attorney and information about Charles Momah began to appear in the media. Perla Saldivar's initial complaint to the Department of Health, made before retaining Harish Bharti as her attorney, did not mention impersonation or sexual contact. Even her recent accounts of when she believes she saw Charles Momah as opposed to Dennis Momah at the US Healthworks Puyallup clinic have been inconsistent. The Court finds no credible evidence to support an allegation that Charles Momah ever entered the US Healthworks Puyallup clinic, pretended to be his brother Dennis Momah, or had any interaction of any kind with Perla Saldivar.

8. The Saldivars changed their testimony about what happened as necessary to achieve their stated goal of preventing Dr. Dennis Momah from practicing medicine. The initial complaint to the Department of Health's Medical Quality Assurance Commission (MQAC) said that Dennis Momah touched Perla Saldivar's buttocks during a low back examination. After retaining attorney Bharti, she made a complaint to the Federal Way

1 Police Department. Ms. Saldivar testified that Mr. Bharti helped her prepare the
2 declaration provided to the police department. In that declaration, prepared with Harish
3 Bharti's assistance, Ms. Saldivar materially changed her allegations against Dennis
4 Momah and, for the first time, asserted that Dr. Momah inserted his hand into her vagina
5 and that Dr. Charles Momah was impersonating Dr. Dennis Momah. This Court finds
6 that these revised allegations were false, and that attorney Harish Bharti was materially
7 involved in the fabrication of this false, sworn testimony.
8

9 9. Perla and Albert Saldivar knowingly made false reports to the Department of Health, the
10 Federal Way Police Department and the Pierce County Superior Court alleging that Perla
11 Saldivar was assaulted by Dr. Dennis Momah. These false reports were made for an
12 improper purpose. These false reports were made with the explicit intent of ruining Dr.
13 Dennis Momah's reputation and interfering with Dr. Dennis Momah's ability to make a
14 living as a medical doctor as both Saldivars testified at trial. The false reports were
15 willful and malicious and made to bolster the Saldivar's frivolous civil lawsuit.

17 10. The type of back/knee/shoulder examination performed by Dr. Dennis Momah on Perla
18 Saldivar on May 28, 2003 and June 26, 2003 is not the type of examination for which the
19 standard of care ordinarily would require a female chaperone. Perla Saldivar's testimony
20 that she asked Dr. Momah to call a nurse into the room after her examination began was
21 not credible. She admits to having spoken to two nurses during the course of her May 28,
22 2003 appointment, while Dr. Momah allegedly was not even in the room, and she did not
23 ask for a nurse chaperone either time. Rather, she asked these nurses, allegedly shortly
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after being sexually assaulted, what was taking Dr. Momah so long, seemingly impatient for his return.

11. Perla Saldivar admits that she did not ask any employee at US Healthworks other than Dr. Momah to have a nurse present in the room during her examination. This Court did not find Ms. Saldivar's testimony that she asked Dennis Momah for a nurse chaperone to be credible.

12. The Saldivars did not report any alleged inappropriate behavior by Dr. Dennis Momah to US Healthworks contemporaneous with her treatment at the US Healthworks Puyallup clinic.

13. The Saldivars did not report any alleged inappropriate behavior by Dr. Dennis Momah to the Department of Labor and Industries, despite frequent telephone contact with the Department during the relevant time period.

14. US Healthworks had no reason not to schedule Perla Saldivar to see Dr. Dennis Momah in May of 2003. US Healthworks had not received any patient complaints about the quality of care provided by Dr. Dennis Momah or about any alleged inappropriate behavior by Dr. Dennis Momah.

15. No credible evidence was presented at trial that Perla Saldivar ever asked US Healthworks to schedule her June 26, 2003 appointment with a doctor other than Dr. Momah. To the contrary, Perla Saldivar testified that she went to see Dr. Momah that day to have him sign a transfer of physician slip for the Department of Labor & Industries.

1 16. Perla Saldivar's testimony that she was not examined by Dr. Momah on June 26, 2003,
2 but merely went to see him on June 26, 2003 to get him to sign a Labor and Industries
3 form authorizing a change of physician was not credible. The medical records reflect that
4 Dr. Momah examined and treated Ms. Saldivar on June 26, 2003. In addition, the L & I
5 form requesting a change of physician does not require or even have a space for the
6 signature of a physician. And even if a physician signature had been desired, there was
7 no reason that Perla Saldivar needed Dennis Momah's signature on the form.
8

9 17. This Court is not persuaded that Perla Saldivar ever asked US Healthworks not to
10 schedule her to see Dr. Dennis Momah. Even in Ms. Saldivar's version of events, this
11 was merely expressed to US Healthworks as a scheduling preference. Ms. Saldivar
12 admitted that she was told on arrival at the clinic that she probably could not be
13 scheduled to see a different physician on that date. Nonetheless, Ms. Saldivar made no
14 effort to reschedule her appointment for a different date when Dr. Momah was not
15 scheduled to work.
16

17 18. The only evidence of alleged medical negligence arose from plaintiffs' own statements
18 that she was sexually assaulted during her medical examination, and the Court does not
19 find this allegation to be credible. Even Ms. Saldivar's affect was not credible as she
20 described Dr. Momah's alleged brusqueness with the same level of emotion and same
21 affect that she used when she described the alleged rape.
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23 19. This Court further finds that in addition to the numerous contradictions and changes in
24 Ms. Saldivar's story, her ultimate position did not comport with the documentary and
25 other evidence presented. The Court finds that Ms. Saldivar was attempting to conform
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1 her testimony to the medical records, but that in continually contorting her testimony in
2 furtherance of this effort, she was vulnerable to impeachment and was effectively
3 impeached at trial.

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5 20. The Saldivars' numerous contradictions and contrary evidentiary support should have put
6 a reasonable attorney on notice prior to filing this action that the Saldivars' claims were
7 not well grounded in fact.

8 21. Although the Court did not even need to consider Dennis Momah's testimony in reaching
9 its decision to dismiss plaintiffs' claims at the close of plaintiffs' case, the testimony of
10 Dr. Dennis Momah was consistent and credible. Dr. Dennis Momah testified that he did
11 not sexually assault Ms. Saldivar or touch her improperly in any way. He testified that he
12 did not trade places with his brother Charles, and that he, not Charles, saw and treated
13 Perla Saldivar at the Puyallup clinic on May 28 and June 26, 2003. Dr. Dennis Momah is
14 a board certified doctor of internal medicine, licensed to practice in Washington and other
15 states during the relevant time period. US Healthworks has received no patient
16 complaints about Dr. Momah's alleged sexual improprieties other than from the
17 Saldivars, who were not credible witnesses. In contrast, Dennis Momah's demeanor and
18 testimony were convincing and credible and the Court found his testimony to be
19 persuasive.
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22 22. Dr. Dennis Momah lost his employment at US Healthworks as a direct result of the
23 Saldivars' allegations that were fabricated with the active assistance of attorney Harish
24 Bharti. With the exception of a brief, temporary position, Dr. Momah has been unable to
25 work since he lost his job at US Healthworks. He has made significant efforts to obtain
26

1 employment and has been unable to do so. He is uninsurable as a result of the Saldivars'
2 allegations and therefore unemployable by US Healthworks and other employers.

3 23. Dr. Dennis Momah suffered a stroke in June of 2004 that was proximately caused by the
4 false allegations by Perla Saldivar. This Court found Dr. Lily Jung's testimony on this
5 point very persuasive. This Court further finds that all of the medical bills contained in
6 Trial Exhibit No. 23 were reasonably and necessarily incurred for the treatment of Dennis
7 Momah's stroke and thus compensable in this action.
8

9 24. Dr. Dennis Momah was planning to build a home and had made a down payment of
10 \$7500 shortly before the Saldivars made their false allegations. Dennis Momah lost this
11 down payment because he could not afford to proceed with the project after losing his job
12 due to the Saldivars' false allegations.
13

14 25. Dr. Dennis Momah suffered extreme emotional distress as a result of the Saldivars'
15 conduct, as manifested by the stroke, symptoms of depression, loss of enjoyment of life,
16 and a reduced ability to function from day to day. He also suffered embarrassment and
17 humiliation as a result of these unfounded allegations. Because he lost his job and his
18 ability to earn an income in his chosen profession, he had to borrow money from family
19 and friends just to survive, and had to live with family members because he could not
20 afford to maintain a separate home. It was emotionally difficult for Dr Dennis Momah to
21 deal with financial dependence on others and with having to financially depend upon
22 others. This emotional burden was compounded by the cultural and family expectations
23 that he should be sending money to friends and extended family member in the village
24 where he grew up in Nigeria, which he was unable to do after losing his job. Dr. Dennis
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1 Momah felt degraded and diminished as a result of the Saldivars' misconduct. The
2 humiliation and emotional pain and suffering, as well as the financial loss, will extend
3 indefinitely into the future. Dr. Dennis Momah will have to record the fact of the
4 complaints and lawsuits on future applications for employment and insurance, which will
5 perpetuate the problems caused by the Saldivars' false claims.
6

7 26. The Saldivars moved to amend their complaint after criminal charges were filed against
8 Charles Momah in order to add Charles Momah as a defendant. The Saldivars' amended
9 complaint was not well grounded in fact and was intentionally filed for the improper
10 purpose of furthering their effort to assure that the Momah brothers' reputations were
11 destroyed and that they would never again be permitted to practice medicine. New
12 process was served with this amended complaint in furtherance of this improper purpose.
13 In addition, the declaration filed by Perla Saldivar in support of the motion to amend
14 (Trial Exhibit 14), contained false testimony provided under oath. This Court was
15 persuaded by Perla Saldivar's own admission and the circumstantial evidence that
16 attorney Harish Bharti actively participated in the construction of Perla Saldivar's false
17 sworn statement offered in support of the motion to amend plaintiffs' complaint.
18

19 27. Harish Bharti assured this Court that neither he nor his client Perla Saldivar submitted
20 any new materials to the Department of Health after Perla Saldivar's original complaint
21 to the Department was closed without action in April of 2004. Mr. Bharti vociferously
22 represented to this Court that the Department of Health had reopened the investigation of
23 Dennis Momah on its own, without any further complaints or materials submitted by or
24 on behalf of Ms. Saldivar. During the trial of this matter, and in response to a direct court
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1 order, the Department of Health produced a new complaint against Dr. Dennis Momah by
2 Perla Saldivar, in the form of a sworn declaration, submitted in 2005 and containing a
3 2005 complaint number. When confronted with this declaration on cross examination,
4 Ms. Saldivar admitted to having filed this second complaint against Dennis Momah and
5 explained that attorney Harish Bharti assisted her in doing so. Consequently, either Perla
6 Saldivar was lying on the stand when she said that attorney Bharti helped her to prepare
7 this second complaint to the Dept. of Health, or Harish Bharti was lying to this Court at
8 the pretrial conference when he assured this Court that neither he nor Ms. Saldivar had
9 filed any additional materials with the Department of Health. Based upon an evaluation
10 of the surrounding circumstances and the witness's demeanor, and the spontaneity with
11 which Ms. Saldivar exclaimed that Mr. Bharti assisted her in preparing this second
12 complaint once she was confronted with the inconsistent statement at trial, this Court
13 finds that Harish Bharti knowingly and in bad faith lied to this Court at the April 18, 2006
14 pretrial conference.
15
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17 28. Mr. Bharti, in violation of two court orders and numerous prior reminders by the court
18 that evidence from other cases and other claims were not part of this case and should not
19 be referenced or introduced into this case, showed a videotaped deposition of Dr. Charles
20 Momah taken in another case to Perla Saldivar the morning before she testified. The
21 videotape had not been provided to defense counsel. Mr. Bharti had the tape only
22 because he represented the plaintiff in the suit in which the deposition was taken. The
23 deposition was subject to a protective order entered by a King County Superior Court
24 judge that prohibited its showing to Ms. Saldivar. Mr. Bharti knowingly and in bad faith
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26

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 12

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ATTORNEYS AT LAW
701 FIFTH AVENUE, STE 2400
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

1 violated the King County court's order and this Court's order in response to defendant's
2 motion in limine concerning the use or reference of discovery material obtained in other
3 cases by showing the videotape to Ms. Saldivar and thereby tainted her testimony.

4
5 29. Plaintiff sought to introduce portions of medical expert Dr. Olsen's testimony by
6 deposition in this case. Because of a number of concerns the Court had about Dr. Olsen's
7 foundation to provide certain opinions he offered, as well as concerns the court had about
8 Dr. Olsen having based his opinion on statements made by Mr. Bharti's other clients that
9 are irrelevant to Perla Saldivar's claim and are not reasonably relied upon by physicians
10 in the ordinary course of their practice, coupled with the concern that plaintiff's counsel
11 refused to produce to defendants some of the materials upon which Dr. Olsen's testimony
12 was founded, this Court ruled that Dr. Olsen's deposition testimony was insufficient and
13 potentially tainted and that his testimony therefore had to be presented live if it was to be
14 admitted at all. Plaintiffs' counsel advised that Dr. Olsen had scheduling problems, so
15 the Court, out of an abundance of caution, reviewed Dr. Olsen's entire deposition
16 transcript. Dr. Olsen testified in his deposition that there was nothing in the written
17 materials that he reviewed that demonstrated any impropriety or violation of the standard
18 of care by the defendants. His opinions on the standard of care were based on what he
19 was told by Harish Bharti and Perla Saldivar factually occurred between Ms. Saldivar and
20 Dr. Momah. Because the Court did not accept Ms. Saldivar's testimony as credible, Dr.
21 Olsen's deposition testimony, if admitted, would not have affected the Court's decision in
22 this case. Nor would this Court have expected Dr. Olsen's live testimony to have
23 affected the Court's decision because it too would necessarily have been based on the
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non-credible testimony of Perla Saldivar. Further, the Court accepted in ruling on the motion to dismiss at the close of plaintiffs' case, without need for expert testimony, that the alleged conduct, if it actually occurred, would be a breach of the standard of care. The Court's dismissal of plaintiffs' claims was based upon a factual finding that the alleged inappropriate conduct by the defendants did not occur.

30. This Court finds that Harish Bharti had reason to know, prior to his filing the complaint in this action, that the Saldivars' claims were not well grounded in fact. In addition, this Court finds that Harish Bharti was an active and knowing participant in the fabrication of Perla Saldivar's ever changing accusations against Dennis Momah made to the Federal Way Police Department, the Washington State Department of Health and this Court.

31. This Court finds that Harish Bharti signed the complaint and amended complaints in this matter without a reasonable belief that the allegations asserted against the defendants by Perla Saldivar were well grounded in fact.

32. This Court finds that attorney Harish Bharti signed plaintiff Perla Saldivar's responses to Dennis Momah's interrogatories in this case, and that even a casual examination would have revealed that her response to Interrogatory No. 3 concerning the dates she claimed to have been seen by Dr. Dennis Momah at US Healthworks was inconsistent with the evidence and untrue.

33. This Court finds that Harish Bharti continued to file irrelevant and salacious declarations and statements in the court file in this case that were unrelated to Perla Saldivar's claim after being repeatedly instructed by the Court not to do so. This placed an undo burden on the Court. This court finds that Mr. Bharti's efforts to fill the court file with these

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salacious and irrelevant materials was for the improper purpose of eliciting media/public attention, to harass and damage the reputation of Dr. Momah, and to improperly influence public opinion and gain advantage in other litigation.

34. This court finds that Harish Bharti amended the complaint in this matter to bring Charles Momah into the case as a defendant without any reasonable basis in fact to do so, and that this new process was served for the improper purpose of harassing Dennis Momah and escalating the media attention in this case.

35. This Court further finds that a number of the material changes in Perla Saldivar's version of factual events, most of which were provided via sworn testimony, were prepared with the active assistance of attorney Harish Bharti, and that Mr. Bharti had reason to know that many of these contradictory statements were untrue. Yet Mr. Bharti proceeded to prepare declarations for Ms. Saldivar to sign either knowing they were false or at least in reckless disregard of their truth or falsity.

36. This Court finds that Mr. Bharti's improper use of legal process in this case is part of a pattern of behavior by Mr. Bharti to harass Dennis Momah, destroy his career, unduly run up legal expenses, and gain Mr. Bharti media exposure and leverage in other legal matters brought by Mr. Bharti.

37. Mr. Bharti has been sanctioned by this Court during the discovery phase of this case, and has been sanctioned under CR 11 less than one year ago by a King County court for the filing and pursuit of meritless claims. However, these sanctions have been ineffective in deterring Mr. Bharti's repeated misconduct.

1 38. This Court finds that attorney Marja Starczewski materially assisted Harish Bharti in his
2 pursuit of this frivolous action in reckless disregard of the truth of falsity of the claims
3 being asserted.
4

5 **II. CONCLUSIONS OF LAW**

6 1. All of the claims asserted by plaintiffs against the defendants in this case arise from the
7 same alleged factual nexus. All arise from plaintiffs' allegations that Dr. Dennis Momah
8 sexually assaulted Perla Saldivar during a physical examination and/or that Dr. Charles
9 Momah impersonated Dr. Dennis Momah and sexually assaulted Perla Saldivar during a
10 physical examination at the US Healthworks Puyallup clinic. Because the Court does not
11 find any credible evidence that Dr. Dennis Momah sexually assaulted or in any other way
12 inappropriately treated Perla Saldivar, and because the Court does not find any credible
13 evidence that Perla Saldivar was ever seen by Dr. Charles Momah, all claims by plaintiffs
14 in this case are dismissed with prejudice.
15

16 2. All claims by plaintiffs of failure to obtain informed consent are hereby dismissed as a
17 matter of law. There is no amount of "information" that a physician could provide to a
18 patient that would justify the alleged misconduct in this case. Even if plaintiffs'
19 allegations were credible, and the Court expressly finds that they are not credible, there
20 would be no basis for an informed consent claim. Because the Court finds the alleged
21 conduct did not occur, there clearly was no need to get "informed consent" to perform the
22 alleged conduct.
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APPENDIX B

1 May 24, 2006.

2 (With the Court and Counsel
3 present and the Parties
4 represented, the following
5 proceedings were had, to wit:)

6 (Only the following proceedings
7 have been requested; all
8 other proceedings were hereby
9 deleted.)

10 THE COURT: I was in practice for over twenty
11 years and I've been on the bench, I'm in my sixth year,
12 and I have never seen or heard an attorney who
13 played more games with his regard for the court and
14 orders of the court. From the outset Mr. Bharti
15 attempted to basically overwhelm this court with the
16 number of allegations, with the media filings he'd
17 pull off his web site and file. Much of the first two
18 volumes in this case are copies of the filings and
19 media news accounts and his web site, which I had to
20 order them to quit filing because it was not germane
21 to this case. From the outset I made it plain to
22 Mr. Bharti and Ms. Starczewski that this case would
23 be tried on its merits and its merits alone.

24 Mr. Bharti listed an enormous number, 152
25 witnesses in the initial list of witnesses in this case.
He listed Ms. Clingbeale as an expert.
Ms. Clingbeale had a master of social work and she
is in no way qualified to make any kind of diagnosis of

1 post traumatic stress disorder. Ms. Clingbeale was
2 also provided copies of a number of other declarations
3 by other clients of Mr. Bharti's in an attempt to
4 sway her testimony because all these people are saying,
5 gosh, it must be true.

6 The so called medical expert that Mr. Bharti
7 proposed to bring in could offer nothing in regards to
8 U.S. Health Works' negligence since he never looked
9 at their records, went to their clinic, interviewed
10 anyone from that clinic. In addition the doctor was
11 also to help establish credibility because his
12 testimony was he believed Ms. Saldivar because he'd
13 been provided not only her declaration but with a
14 whole lot of other declarations from a whole lot of
15 other clients of Mr. Bharti's. When requested in the
16 deposition regarding what those other declarations
17 are the doctor cited attorney-client privilege,
18 which was a little unusual since he certainly wasn't
19 Mr. Bharti's client. And, he refused to disclose
20 what those declarations were. And, yet Mr. Bharti
21 and Ms. Starczewski seemed to think that he was a
22 credible expert and proposed to have select bits of
23 his testimony admitted in lieu of having him come
24 down here and testify even after I told them in court
25 that he needed to be here to testify. Now, I have

1 never heard of an attorney bringing an expert in
2 where all the documents of the expert looked at were
3 not made available to opposing counsel. You do not
4 secrete and hide or provide select bits to your expert
5 and think that they're going to have any credibility
6 whatsoever.

7 In closing argument both sides invited me to
8 take judicial notice of the file, which, of course,
9 by that point was into its fifth volume. And, it's
10 very interesting that some of the names that Mr. Bharti
11 listed as potential witnesses in this case he knew
12 at the time that he'd listed them that their testimony
13 was false. That in fact a number of individuals had
14 alleged that Dennis Momah in 1998 and 1999 was
15 impersonating his brother Charles in King County.
16 And, there's ample declarations and the records
17 provided to the Medical Quality Assurance Commission
18 by Ms. Ek which shows that not only was Dennis not
19 impersonating his brother, he wasn't even in this
20 state. And, lawsuits were filed based on those false
21 allegations and lawsuits were ultimately dismissed.

22 And, at a time when any competent attorneys would
23 have realized that their clients had a serious
24 credibility problem and that their case was seriously
25 gut-shot Mr. Bharti filed amended complaints and

Think
Scott
Roger
Rogoff

1 added more frivolous allegations. And, on the eve of
2 the trial date last year, which was continued
3 because Dr. Charles Momah was facing his criminal
4 charges on the same day, Perla Saldivar sent in a
5 new complaint along with a whole slew of other clients
6 of Mr. Bharti's who coincidentally sent their
7 complaints in as well. And, it's really strange
8 because the contact person that the Medical Quality
9 Assurance Commission is going through, even to get the
10 addresss and phone numbers of these many individuals
11 who have just coincidentally complained they went
12 through Mr. Bharti. And, on April 18th both
13 Mr. Bharti and Ms. Starczewski stood here and told me
14 they had absolutely no knowledge of those complaints.
15 They lied to this court. I am not accustomed to
16 having attorneys stand in front of me and lie to me.
17 And, I am appalled that officers of the court would
18 have so little regard to the legal system that they
19 would do that.

20 Quite frankly as this case started and began to
21 unfold it became fairly obvious that the plaintiffs
22 not only had no case but they put together no case.
23 It seems to me the overwhelming amount of allegations
24 that were raised by Mr. Bharti and Ms. Starczewski
25 was to try and force these people to settle and when

1 it didn't settle it caught them flat-footed. They
2 had no credible witnesses, they had no admissible
3 expert testimony, they put on no case regarding the
4 counterclaim, as if they didn't even think it would
5 get to the counterclaim, and as a result their
6 clients are now stuck with almost three million
7 dollars in damages, which I find appalling that they
8 would risk these people and not even put on a decent
9 case. And, it is really obvious that Mr. Bharti does
10 seem to have a serious addiction to publicity in this
11 case. And, he has fabricated testimony. And, he did
12 no investigation whatsoever before filing this case,
13 because for him to say he was relying on statements of
14 his client when he already knew many of his clients
15 were lying, or perhaps manipulated by him, is
16 unconscionable. And, of course, the fact that
17 Mr. Bharti isn't here today is also troublesome to
18 this court because I told the attorneys to be here
19 and that included Mr. Bharti. And, I can't say it
20 surprises me that he didn't show up because I had a
21 feeling that it was fifty-fifty that he wouldn't show
22 up at all.

23 The use of the video, when we had our pretrial
24 hearings in April we were discussing the fact that
25 when Mr. Bharti provided photos or alleged videos in

1 discovery he would refuse to provide any information
2 whatsoever regarding how those were obtained, who took
3 the photographs and who took the videos. And, this
4 court told him if you want them to be admitted you're
5 going to have to provide the information so the
6 defense has a chance and opportunity to talk to these
7 people and depose them if necessary. If you want to
8 get them in you're going to have to bring whoever took
9 the videos, took the photographs and they'll have to
10 come in and testify. He didn't do that. It was also
11 contemplated on April 18th that a preservation
12 deposition of Dr. Charles Momah would be taken because
13 he was languishing and no doubt still is in the Kent
14 Regional Justice Center and we had significant
15 discussion about the fact that he would not be making
16 a personal appearance here since they don't transport
17 for civil cases. Mr. Bharti didn't want to spend the
18 money to depose and do a preservation deposition of
19 Dr. Charles Momah. So here we have this lovely theory
20 that somehow Charles Momah and his brother Dennis are
21 both sneaking around an extraordinarily busy health
22 clinic and absolutely nobody else notices and
23 particularly given the size of Dr. Charles and Dr.
24 Dennis Momah. It's difficult for men who weigh 350
25 plus pounds to be sneaking around with no one noticing

1 anything.

2 So, in terms of the allegation that somehow
3 Dr. Charles and Dr. Dennis Momah look so much alike
4 that no one else noticed the difference, although
5 Ms. Saldivar did, I had absolutely no evidence that
6 was offered by the plaintiffs other than Ms. Saldivar's
7 unsupported word that she realized there was a
8 substitution when she saw something on television in
9 September of '04. The plaintiffs' attorneys chose
10 not to present any evidence whatsoever which would
11 support the allegation that somehow the Momah brothers
12 could be readily mistaken one for the other.

13 So, this court has become convinced that
14 Mr. Bharti will continue in his course of conduct
15 unless this court makes it very plain to him that I
16 will not tolerate this kind of behavior and he needs
17 to start acting ethically as he is obligated to do as
18 an officer of the court. Mark Twain often said
19 much about the art of lying. In one of his works
20 called "Puddinhead Wilson" he discusses the art of
21 lying and says "What trips up most liars is they start
22 coming up with all sorts of small artful lies and they
23 can't keep track of those lies. The secret to a
24 successful liar is you pick one big lie and you stick
25 to it." Well, unfortunately Mr. Bharti it's a whole

1 bunch of little lies and then he can't keep track of
2 the little lies that his client is telling, not only
3 on the stand but in all of her previous many sworn
4 statements none of which ever agreed with one another.

5 And, then she sat on the stand and said she'd had
6 no contact with MQAC since August of '03 or September of
7 '03, when in fact she had sent in this new complaint
8 in '04. So, she's lying on the stand. And, when she
9 was asked about it she said it was with Mr. Bharti's
10 assistance. Now maybe she was lying about that. I
11 don't think so because of the fact that the only
12 contact MQAC had for all of these people with all of
13 these complaints was Mr. Bharti. And normally the
14 damage done by lies, at least 20 or 30 years ago, was
15 somewhat more limited than it is today. And, it is
16 Mr. Bharti who has placed all of this on his web site
17 and who has therefore increased the damages immensely.

18 Now, Ms. Starczewski you're here.

19 MS. STARCZEWSKI: Yes, Your Honor.

20 THE COURT: I know that many of the decisions
21 in this case were made by Mr. Bharti because during
22 trial you were deferring to his decisions about
23 whether or not the doctor would be brought down to
24 testify personally or not. But quite frankly if you
25 value your reputation as an attorney, and you should,

1 you will consider your conduct far more carefully
2 in the future. If you follow Harish Bharti's style
3 of practice you're going to be looking at your mal-
4 practice insurance, if they don't cancel on you, if
5 you get sued for malpractice. And, having
6 Mr. Anderson do closing arguments on this case, a
7 young man who was here for part of the first day of
8 trial and then was not here for the rest of the trial
9 and yet Mr. Bharti shoves the responsibility of closing
10 arguments off to somebody who had not been here to
11 hear the testimony I found to be appalling. And,
12 certainly he was not serving his clients' interests
13 at that point.

14 This court is going to order that Mr. Bharti
15 pay all of the attorney's fees, except those with
16 connection of the counterclaim by Dennis Momah, to
17 Dr. Dennis Momah, Dr. Charles Momah and U.S. Health
18 Works. The court is also going to unseal the file.
19 And, the court is ordering Mr. Bharti to place a copy
20 of the Findings of ~~Fact~~ and Conclusions of Law and
21 orders of this court and as well as the orders on
22 CR-11 sanctions onto his web site. And, they will be
23 in type no less as large as anything else on that
24 web site. Live by the sword, die by the sword.

25 Now the additional sanctions, Dr. Dennis Momah

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has asked that a sanction be paid to him by Mr. Bharti of \$250,000.00. And, in addition he asked that a sanction of \$50,000.00 be paid to this court. I'm going to award those. Unless Mr. Bharti is seriously impacted in his pocket book he's going to keep this up. As the past sanctions imposed upon him in King County have not had the slightest effect at modifying his egregious behavior. And, the fact that he is not here, which I understand Mr. Goodfriend is certainly not your fault, it's just an indication of how contemptuous Mr. Bharti is for the legal system and for this court.

We'll take the morning recess and when we come back we'll address the entry of the Findings of Fact and Conclusions of Law in this case.

(WHEREUPON, the Court recessed.)

DIANE J. FARNING, CCR
Official Court Reporter, Dept. 2.
930 Tacoma Ave. So.
Tacoma, WA 98402
(253) 798-7281

December 17, 2010

CERTIFICATE OF SERVICE

I, Charles Momah, declare under the penalty of perjury according to the laws of the State of Washington, that I mailed a copy of the "Attachments" to Marja Starczewski at her address; Law office of Marja Starczewski, 10 Cove Ave. S, Wenatchee, WA. 99801.



Charles Momah MD.
888910, CRCC, H A 4
PO Box 769, Connell
WA 99326

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