

ORIGINAL

No. 34891-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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PERLA SALDIVAR and ALBERT SALDIVAR,

Appellants,

vs.

DENNIS MOMAH, JANE DOE MOMAH, and the marital community  
composed thereof; U.S. HEALTHWORKS MEDICAL GROUP OF  
WASHINGTON, P.S., CHARLES MOMAH, JANE DOE MOMAH,  
and the marital community composed thereof,

Respondents,

HARISH BHARTI,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR PIERCE COUNTY  
THE HONORABLE KATHERINE M. STOLZ

---

BRIEF OF APPELLANT HARISH BHARTI

---

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FILED  
JAN 16 AM 10:17

COURT OF APPEALS  
DIVISION II

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## I. INTRODUCTION

The fundamental role of the courts is to provide a forum for the peaceful redress of grievances, and the paramount duty of counsel is to assist parties in having their claims resolved within the legal system. Accordingly, sanctions against counsel must be imposed with caution and restraint, based only on clear violations of the standards of CR 11 or upon counsel's bad faith conduct in violation of a court's orders or breach of ethical duties. The imposition of sanctions is subject to careful appellate review.

After finding that the Saldivars' lawyer Harish Bharti violated CR 11 by assisting his clients in fabricating allegations of sexual abuse, the trial court in this case imposed extraordinary sanctions totaling \$600,000, including a \$300,000 "fine," and required Mr. Bharti to post its findings on his website. The trial court's findings are substantively and procedurally flawed by the court's failure to consider whether Mr. Bharti had a basis for believing his clients' allegations after performing a reasonable investigation when the claims were brought, by the court's reliance on defendants' allegations of misconduct while at the same time refusing to consider any evidence that could have directly refuted those

allegations, and by its reliance on hearsay reports of Mr. Bharti's actions in cases that were not pending before the trial court.

The trial court's punitive sanctions do not comport with due process, are based on an erroneous view of the law, and are not supported by the record. This court should reverse.

## **II. ASSIGNMENTS OF ERROR**

Harish Bharti joins in the assignments of error alleged by co-appellants Perla and Albert Saldivar in their Brief of Appellants. Mr. Bharti makes the following additional assignments of error relating to the trial court's award of sanctions against him:

1. The trial court erred in entering the underlined findings of fact and conclusions of law attached as Appendix A.

2. The trial court erred in entering its judgment against Mr. Bharti for respondents' attorney fees and costs. (CP 1921-23) (App. B)

3. The trial court erred in entering its June 23, 2006 Show Cause Order re: Contempt. (CP 1926-29) (App. C)

## **III. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

A. Did the trial court err in refusing to consider whether pleadings were supported by a reasonable investigation and in holding that the desire to preclude a physician accused of sexual

abuse from continuing in the practice of medicine was an improper purpose under CR 11? (Assignments of Error 1, 2, 3).

B. Did the trial court's inherent power authorize it to sanction counsel for actions taken outside of the courtroom in other pending cases, while refusing to consider evidence bearing on those actions? (Assignments of Error 1, 2, 3).

C. Did the trial court deny counsel due process by imposing punitive sanctions of \$300,000 in addition to awarding defendants all their attorney fees and costs, and violate counsel's right to free speech by dictating the content of his website without finding that his website was false or misleading? (Assignments of Error 1, 2, 3).

D. Could counsel be held in contempt for non-compliance with the court's sanctions order where he posted a bond to supersede the monetary sanctions of \$300,000 and modified his website as soon as reasonably possible? (Assignments of Error 1, 2, 3).

#### IV. STATEMENT OF THE CASE<sup>1</sup>

**A. The Saldivars Contacted Mr. Bharti After They Filed A Complaint Against Dennis Momah With The Department Of Health/Medical Quality Assurance Commission.**

The Saldivars first raised their complaint of sexual abuse by Dennis Momah with the Washington Department of Health in June 2003, when Albert Saldivar phoned the Department. (CP 987; RP 96-99) Ms. Saldivar was interviewed by investigator Virginia Renz. (RP 312-13, 318-19) At Ms. Renz's request, she prepared and faxed a written narrative describing her treatment with Dennis Momah on three occasions – May 27, June 19 and June 26, 2003. Ms. Salvidar reported that on her first visit Dennis Momah “was behaving unprofessionally and without ethics to my person” and that during her last visit “he uncovered me and touched my buttocks, making me feel uncomfortable and humiliated.” (CP 319, Ex. 19) She asked Ms. Renz to treat her complaint with “all the possible discretion.” (Ex. 19, CP 1597)

No one assisted Ms. Saldivar in drafting this narrative, prepared in her halting English. (RP 319, 433; see Ex. 19) Ms. Saldivar faxed her complaint to Ms. Renz. (RP 319) Ms. Renz

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<sup>1</sup> The underlying facts related to Perla Saldivar's claims of abuse against respondents Dennis and Charles Momah are fully set forth in the Saldivars' Brief of Appellant and are relied upon here.

encouraged Ms. Saldivar to complain to the police. (RP 312) Ms. Saldivar reported the sexual abuse to the Federal Way Police by phone. (RP 317, 416; *see also* CP 2374)

When Ms. Saldivar became dissatisfied with the lack of response to her complaints, she started contacting lawyers, one of whom referred her to Mr. Bharti in July 2003. (RP 102-04, 316; CP 987) Ms. Saldivar told Mr. Bharti over the phone the details of her experience with Dennis Momah and that she felt "something was wrong with the doctor." (CP 1249)

At their first meeting in August 2003 (CP 1236), Ms. Saldivar told Mr. Bharti that she believed that she had been examined by two different individuals. (CP 1238, 1247, 1249) Mr. Bharti did not tell the Saldivars that Dennis Momah had a twin brother Charles. (CP 1238, 1247)

Mr. Bharti interviewed each of the Saldivars in at least two separate personal interviews. (CP 987) He interviewed interpreter Ed Fuentes and Ms. Saldivar's friend in Arizona, Nancy Wiesniewski, both of whom told him that Ms. Saldivar had complained to them about sexual abuse by Dennis Momah. (CP 987; *See* CP 478, 702) He also interviewed her father, Dr. Daniel Quiroz, with whom Ms. Saldivar had spoken shortly after the

alleged abuse occurred. (CP 987; See CP 702) Mr. Bharti found the allegations credible. (CP 987)

Ms. Saldivar's complaint was not the first one that Mr. Bharti had received about Dennis Momah. Her contention that Dennis Momah's appearance seemed to have changed between his two visits to the examination room on May 27, 2003, was consistent with allegations of impersonation by dozens of other patients of Dr. Charles Momah, some of whom had contacted Mr. Bharti before he met with the Saldivars. (CP 987) In January 2003, over six months before the Saldivars contacted him, Amy McFarlane, told Mr. Bharti of sexual abuse occurring at Dr. Charles Momah's clinic, alleging that the twins impersonated one another. (CP 987, 1218-19) A former employee and patient of Charles Momah, Kelly Acker, told Mr. Bharti during the first week of August 2003 that Dennis Momah inappropriately subjected her to an unnecessary gynecological and breast examination at Charles' clinic. (CP 1109-10, 1116-17) Another former employee, Jenni Ramos, told Mr. Bharti in September 2003 that Dennis Momah had posed as Charles at Charles' clinic approximately 35 to 40 times. (CP 445, 997) Over the ensuing months, and before he filed the Saldivars complaints in this action, dozens of additional patients of Charles Momah

contacted Mr. Bharti to discuss their belief that they had been inappropriately treated by Dennis Momah at Charles Momah's clinic (CP 997-1000)<sup>2</sup>

Although Ms. Saldivar was the only patient who claimed impersonation at Dennis Momah's clinic, rather than at Charles' clinic, her complaint shared many of these common features. The complainants noticed differences in weight, speech patterns and demeanor in their treating physicians. Many observed the examining physician's inability to recall basic patient information, such as the patient's name, condition, or tests previously given. (CP 998-999; see CP 1297, 1307-08, 1311, 1317)

Mr. Bharti discussed the Saldivars' claims with co-counsel Michael Woerner of the Keller Rohrback law firm, who authorized

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<sup>2</sup> Jeannine LaPoint told Mr. Bharti in September 2003 that Dennis sexually assaulted her at Charles' clinic. (CP 1204-11) Jolie Campbell and Natasha Collier, former patients of Charles Momah, also contacted Mr. Bharti in September 2003, claiming that they had been treated by Dennis Momah at Charles Momah's office. (CP 1141, 1148, 1157-59, 1162) Deninse Blanchard, a former employee of Charles Momah, also told Mr. Bharti in September 2003 that Dennis Momah had treated patients at Charles' clinic (CP 998, 1294-95), while another former employee, Jodi Coyne, claimed that "both Momah brothers sexually abused me." (CP 1299) See also, CP 1176-77 (Shannea Day); CP 1191 (Merri Jaynes); CP 1296-98 (Roxanne Warren); CP 1307-08 (Ellen Davis); CP 1311-12 (Jennifer Conrady); CP 1313-15 (Tessa Geare); CP 1316-17 (Loreena Beltran); CP 1349-50 (Danielle Hopkins); CP 1370-71 (Elvie Franklin); CP 1377-78 (Lisa Cummins); CP 1381-83 (Merri Dee Glasen Jaynes); CP 1384-85 (Amy Kondratyuk); CP 1386-88 (Robbie Burger))

Mr. Bharti to sign the Saldivars' complaint. (CP 987-88, 1078) Mr. Bharti filed the original summons and complaint in this action in April 2004, alleging that Ms. Saldivar may have been treated by two different physicians at the U.S. Healthworks clinic in May 2003. (CP 11, 16)

One month later, in May 2004, Mr. Bharti retained Professor Karil Klingbeil, MSW, the founder of Harborview Hospital's Sexual Assault Center and Professor of Social Work at the University of Washington, to examine Perla Saldivar. (CP 425, 989) Professor Klingbeil interviewed both the Saldivars on two separate occasions. (CP 439) Professor Klingbeil concluded that Ms. Saldivar suffered from posttraumatic stress syndrome and, based on her past experience in evaluating numerous sexual abuse victims, that she found Ms. Saldivar's allegations to be credible and consistent with the trauma experienced by victims of sexual abuse. (CP 439, 989, 1093-98)

**B. Ms. Saldivar Told Mr. Bharti In September 2004 That She Recognized Charles Momah On Television As the Physician Who Assaulted Her In May 2003. Mr. Bharti Amended The Complaint To Add Charles Momah.**

In September 2004, Ms. Saldivar saw video footage of Charles Momah on television, subsequent to his arrest and arraignment on charges of sexual abuse of his patients. (CP 66-

67) Ms. Saldivar notified Mr. Bharti that she recognized Charles Momah as the physician who initially sexually assaulted her on May 27, 2003. (CP 1245) After interviewing Ms. Saldivar again, Mr. Bharti believed her allegations to be entirely consistent with the complaints of other patients that the twin brothers posed as each other. (CP 991) Mr. Bharti also compared the signatures on Ms. Saldivar's U.S. Healthworks medical records with those of Charles Momah in his criminal file, and believed that Charles Momah's signature was similar to the signature purporting to be that of Dennis in Ms. Saldivar's medical records. (CP 991, 1408)

Mr. Bharti had Ms. Saldivar sign a declaration that was limited to discussing the evidence that supported the motion to amend the complaint to add Charles Momah. (CP 65-67; Ex. 36; RP 442) The motion was also supported by Ms. Saldivar's September 7, 2004 deposition, in which she reiterated the differences in appearance and demeanor between the two physicians whom she saw on May 27, 2003. (Supp. CP \_\_, Ex. 2A & 2B to Motion (Dep. at 30-31))

The trial court granted the motion to amend. (CP 230) Mr. Bharti signed the amended complaint on behalf of his co-counsel, Marja Starczewski, Michael Woerner and Lorraine Lewis Phillips.

(CP 256) The amended complaint was also verified by Ms. Saldivar. (CP 257)

**C. The Trial Court's Imposed Almost \$600,000 Of Sanctions Against Mr. Bharti, Ordered Him To Post The Court's Findings On His Website, And To Show Cause for Contempt For Also Posting His Notice of Appeal.**

After dismissing the Saldivars' claims at the conclusion of their case in chief, the trial court concluded that Mr. Bharti was "an active and knowing participant in the fabrication of Perla Saldivar's ever changing accusations," (Finding of Fact (FF) 30, CP 1530), and testimony, (FF 35, CP 1531) and that he signed the initial and amended complaint, and responses to interrogatories, "without a reasonable belief that they were true and well grounded in fact." (FF 31 and 32, CP 1530) Ignoring a King County Superior Court order holding that Mr. Bharti had not acted with "actual malice" (CP 1644), the trial court found that Mr. Bharti filed "irrelevant and salacious declarations . . . for the improper purpose of eliciting media/public attention, to harass and damage the reputation of Dr. Momah . . . and to gain advantage in other litigation." (FF 33, CP 1530-31) As detailed in the argument section of this brief, the trial court found that Mr. Bharti violated numerous court orders, and affirmatively lied to the court. (Arg. §B, *infra*)

The trial court entered its findings of fact and conclusions of law and sanctions order on May 24, 2006. (CP 1517-38) The trial court directed Mr. Bharti to pay sanctions totaling almost \$600,000, including \$292,993.49 for the defendants' attorneys fees and costs (CP 1537, 1922), additional non-compensatory sanctions of \$50,000 to Pierce County Superior Court, and \$250,000 to Dennis Momah. (CP 1537)

Further, the trial court ordered Mr. Bharti to post its findings of fact and conclusions of law on Mr. Bharti's website "in the same font size as other displayed links, with the title 'Result In First Civil Case Tried Against Charles and Dennis Momah,'" within two days of its order. (CP 1537) Mr. Bharti notified the court that he could not modify his website until his webmaster returned from vacation the following week (CP 1831-34, 1844-46), and took the website down entirely on May 26, 2006. (CP 1835, 1845) When the website was brought back up on May 31, 2006, it contained the court's findings, as well as other pleadings from the Saldivars' case. (CP 1792-94, 1837-39)

Mr. Bharti posted a cash bond (CP 1811), and promptly filed a motion for a stay in this court, on June 2, 2006. (CP 1816, 1828)<sup>3</sup> Despite the fact that Mr. Bharti fully superseded enforcement of the \$300,000 in non-compensatory sanctions (CP 1811-14), the trial court ordered Mr. Bharti to appear and show cause why he should not be found in contempt for failing to pay the non-compensatory sanctions, and for failing to prominently post the court's findings on his website by May 26, 2006. (CP 1927)

Mr. Bharti timely appealed the trial court's sanctions order, judgment and order to show cause. (CP 1514, 1918)

## V. ARGUMENT

### A. This Court Carefully Reviews A Trial Court's Imposition Of Sanctions In Light Of The Public Policy Mandating Access To The Courts.

Sanctions against counsel, whether under CR 11 or under the court's inherent authority, may be imposed only for egregious misconduct. *Biggs v. Vail*, 124 Wn.2d 193, 198 n.2, 876 P.2d 448 (1994) ("We share the federal court's concern that sanctions be reserved for egregious conduct"); *In re Dyer*, 322 F.3d 1178, 1196

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<sup>3</sup> The trial court stated that it would not stay its sanctions award, and that any stay should be considered by the Court of Appeals. (Supp. RP 60-61) Mr. Bharti superseded the attorney fee award after it was reduced to judgment on June 23, 2006. He has posted a total of \$705,000. (CP 2519-20)

(9th Cir. 2003) (“With regard to the inherent sanction authority, bad faith or willful misconduct consists of something more egregious than mere negligence or recklessness.”) Washington’s CR 11 was modeled after and is substantially similar to the 1983 version of Fed. R. Civ. P. 11, and Washington courts look to federal decisions interpreting Rule 11 for guidance in construing CR 11. **Bryant v. Joseph Tree, Inc.**, 119 Wn.2d 210, 218-19, 829 P.2d 1099 (1992). The federal courts have repeatedly emphasized that the trial court should use “extreme caution” in imposing sanctions. **Larez v. Holcomb**, 16 F.3d 1513, 1522 (9th Cir. 1994). See also **Arab African Int’l Bank v. Epstein**, 10 F.3d 168, 175 (3rd Cir. 1993) (Rule 11 sanctions should be imposed only when the claim is patently unmeritorious); **Harlyn Sales Corp. Profit Sharing Plan v. Kemper Fin. Serv., Inc.**, 9 F.3d 1263, 1269-70 (7th Cir. 1993) (courts must carefully evaluate the attorney’s conduct before imposing sanctions).

A trial court’s order imposing sanctions, although reviewed for abuse of discretion, must be reversed if it is manifestly unreasonable or based on untenable grounds. **Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp.**, 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993). A ruling based on an erroneous

view of the law or based on facts that do not satisfy the correct legal standard is necessarily an abuse of discretion. *Fisons*, 122 Wn.2d at 339; see *Marriage of Horner*, 151 Wn.2d 884, 894, 93 P.3d 124 (2004).

This court and the Supreme Court have recognized that the threat of sanctions under CR 11 raises the substantial risk of chilling “an attorney’s enthusiasm or creativity in pursuing factual or legal theories.” *Bryant*, 119 Wn.2d at 219; *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 574, 27 P.3d 1208 (2001). Because a lawyer has an ethical duty to firmly and effectively advocate on behalf of a client, Rule 11 must be interpreted in light of a public policy that fosters the right to seek redress of legitimate grievances:

There is, and should be, the strongest presumption of open access to all levels of the judicial system. Creating a risk that the invocation of the judicial process may give rise to punitive sanctions simply because the litigant's claim is unmeritorious could only deter the legitimate exercise of the right to seek a peaceful redress of grievances through judicial means.

*Talamini v. Allstate Ins. Co.*, 470 U.S. 1067, 1071, 105 S. Ct. 1824, 85 L. Ed.2d 125 (1985) (Stevens, J., concurring in Court’s refusal to impose sanctions). Substantial sanctions, such as those imposed in the instant case, are therefore subject to particularly

rigorous review. *MacDonald v. Korum Ford*, 80 Wn. App. 877, 892, 912 P.2d 1052 (1996), citing *Thomas v. Capital Sec. Serv., Inc.*, 836 F.2d 866, 883 (5th Cir. 1988). See *Skimming v. Boxer*, 119 Wn. App. 748, 755, 82 P.3d 707, rev. denied, 152 Wn.2d 1016 (2004) (“the threshold for imposition of these sanctions is high”).

Mr. Bharti incorporates by reference all of the Saldivars’ arguments for reversal of the judgment in this case. As the trial court denied the Saldivars a fair trial, this court must also reverse the sanctions against their trial counsel.

**B. The Trial Court Erred In Sanctioning Mr. Bharti Under CR 11.**

**1. The Trial Court’s Award Of CR 11 Sanctions Improperly Penalized Counsel For Pursuing Claims That Were Reasonably Deemed To Be Factually And Legally Meritorious After A Thorough And Good Faith Investigation.**

The trial court’s findings that Mr. Bharti actively assisted the Saldivars in fabricating their claims is contrary to the undisputed evidence that Mr. Bharti filed the Saldivars’ original complaint only after they had complained to the Department of Health and the police (RP 96, 315-16; CP 6), and after performing a thorough and reasonable investigation. (CP 987) The trial court erroneously conflated the inability of the Saldivars to prove their claims by a preponderance of admissible evidence with Rule 11’s objective

standard of whether an attorney has a reasonable basis for making a claim at the time the complaint is filed.

CR 11<sup>4</sup> applies to pleadings and other papers filed with the court. Under CR 11, an attorney signing a pleading has a duty 1) to conduct a reasonable inquiry into the supporting facts; 2) to conduct a reasonable inquiry into the law; and 3) not to interpose the pleading for the purposes of delay, harassment, or to increase costs. *Miller v. Badgley*, 51 Wn. App. 285, 300, 753 P.2d 530, rev. denied, 111 Wn.2d 1007 (1988).

Even if a pleading lacks a factual or legal basis, a court cannot impose CR 11 sanctions unless it also finds that the attorney who signed and filed the complaint failed to conduct a reasonable inquiry into the factual and legal basis of the claim. *Bryant*, 119 Wn.2d at 220. The reasonableness of an attorney's inquiry is evaluated by an objective standard at the time the

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<sup>4</sup> Civil Rule 11 provides in relevant part:

The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum; that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation....

pleading is signed. **Bryant**, 119 Wn.2d at 220. The court must avoid being swayed by the benefit of hindsight. **Wood**, 107 Wn. App at 574. Instead, the court must inquire whether a reasonable attorney in like circumstances could believe his actions to be factually and legally justified. **Bryant**, 119 Wn.2d at 220.

The trial court did not consider whether Mr. Bharti had a reasonable basis for believing his client at the time he filed the original and amended complaints. See **Golden Eagle Distrib. Corp. v. Burroughs Corp.**, 801 F.2d 1531, 1538 (9th Cir. 1986) (rejecting sanctions if “a reasonable basis for the position exists in both law and in fact at the time the position is adopted”). Ignoring Mr. Bharti’s substantial factual investigation, the trial court concluded that Mr. Bharti knew that the Saldivars, as well as other clients whose testimony was not considered by the trial court, were lying. (FF 35, CP 986-90, 1531; Supp. RP 43-44) See **Bryant v. Joseph Tree, Inc.**, 57 Wn. App. 107, 120, 791 P.2d 537 (1990), *aff’d*, 119 Wn.2d 210 (1992) (“The trial court does not appear to have given any consideration to the substantial and uncontroverted affidavit evidence” concerning counsel’s pre-filing investigation). The trial court’s reliance on credibility determinations made at trial rather than on the evidence presented to Mr. Bharti when the action

was commenced undermines the attorney-client relationship by imposing upon plaintiff's counsel the "requirement that the lawyer, in addition to advocating the cause of his client, step first into the shoes of opposing counsel . . . and finally into the robes of the judge." *Golden Eagle*, 801 F.2d at 1542.

**a. The Original Complaint Against Dennis Momah.**

Mr. Bharti did not fabricate Ms. Saldivar's claim in her initial complaint that she was sexually abused by Dennis Momah at U.S. Healthworks. The Saldivars had lodged a complaint with the Department of Health and complained to the Federal Way police before seeking counsel to pursue a civil claim. (Ex. 19; RP 315-16; CP 987) Over the next eight months, before filing the Saldivars' complaint, Mr. Bharti interviewed, and obtained declarations from, both the Saldivars, interpreter Ed Fuentes, her parents and her friend Nancy, with whom Ms. Saldivar contemporaneously discussed Dennis Momah's alleged sexual abuse, and discussed the claims with his co-counsel. (CP 6, 987-88, 1236)

Mr. Bharti's investigation complied with Rule 11. "Although an attorney's 'blind reliance' on a client . . . will seldom constitute a reasonable inquiry, counsel's consultation with their client and review of independent evidence supporting the claim is generally

sufficient.” *Bryant v. Joseph Tree, Inc.*, 57 Wn. App. at 120 (quoting *Miller*, 51 Wn. App. at 302). Barring an admission by Dennis Momah himself, that “independent evidence” could only come from those persons with whom Ms. Saldivar discussed the alleged abuse immediately after it occurred. See *Uy v. Bronx Municipal Hosp. Center*, 182 F. 3d 152, 156 (2nd Cir. 1999) (attorney need not “ascertain that the plaintiff’s contentions will be conceded by the defendant’s witnesses”); *Karmen v. American Tel. & Tel. Co.*, 791 F.2d 1006, 1012 (2<sup>nd</sup> Cir. 1986)(plaintiff’s attorney could rely on client’s assertion that defendant company received certain federal financial assistance when additional information was in control of defendant).

Mr. Bharti was also entitled to consider as corroborating evidence the dozens of other individuals who claimed to have been sexually abused by Dennis Momah while posing as his brother. Mr. Bharti was justified in concluding that the Momah brothers had engaged in a pattern of sexual abuse of patients, and had a tenable basis for arguing that these other patients’ testimony established a common scheme or plan under ER 404. See *Pierce v. F.R. Tripler & Co.*, 955 F.2d 820, 830 (2nd Cir. 1992) (although evidence relied upon by plaintiff was ultimately deemed inadmissible, attorney had

a good faith basis for relying on it in bringing action and arguing for its admissibility); *CNA Fin. Corp. v. Brown*, 162 F.3d 1334, 1337-38 (11th Cir. 1998) (plaintiff's claims factually warranted despite trial court's later ruling that evidence relied upon by counsel would be inadmissible at trial).

Further, the fact that Ms. Saldivar's testimony was "effectively impeached at trial" (FF 19-20, CP 1524-25), does not form a basis for sanctions if Mr. Bharti had a reasonable basis to believe her allegations at the time he filed the complaint. An attorney is not required to resolve factual disputes against his client. An "unfavorable credibility assessment is rarely a sufficient basis for [a Rule 11] award." *Mar Oil, S.A. v. Morrissey*, 982 F.2d 830, 844 (2nd Cir. 1993).

**b. The Amended Complaint Against Charles Momah.**

Filing an amended pleading in light of new or additional information provided by a client and consistent with other information discovered by counsel is not grounds for imposing sanctions under Rule 11 if it is supported by a reasonable investigation and a reasonable interpretation of the facts. See *Krauth v. Executive Telecard, Ltd.*, 870 F. Supp. 543, 549 (S.D.N.Y. 1994) See also *Clifford v. Hughson*, 992 F. Supp. 661,

671 (S.D.N.Y. 1998) (declining to award sanctions where court had previously granted leave to file amended complaint). When the trial court granted the Saldivars leave to file an amended complaint, it necessarily rejected the defendants' contention that the claims against Charles Momah lacked a good faith basis. (CP 230)

By the time he filed the amended complaint, Mr. Bharti had information that corroborated Ms. Saldivar's additional claim that Charles Momah was the first individual to sexually abuse her at the U.S. Healthworks clinic. Ms. Saldivar's claim of impersonation, uninfluenced by any contact with other clients of Mr. Bharti, was consistent with the claims of other female patients and clinic employees that the twin doctors had traded places with each other. (CP 989-90) Professor Klingbeil, an expert in the treatment of sex abuse victims, told Mr. Bharti that she found Ms. Saldivar's allegations of sexual abuse to be credible and her affect, demeanor and symptoms were consistent with the trauma experienced by victims of sexual abuse. (CP 1093-98)

Thereafter, Mr. Bharti still did not "blindly rely" on his client. By the time this matter was heard by the trial court, Lynn Larsen-Levier, the State's investigator, had interviewed the Saldivars and

found their allegations of impersonation and abuse to be credible.  
(CP 1080-82, 1086)

**c. The Claims Against U.S. Healthworks.**

The trial court's sanctions award in favor of U.S. Healthworks is similarly flawed by its reliance on hindsight. The Saldivars alleged that Dennis Momah's employer was directly liable for allowing sexual abuse to occur at its clinic and in refusing to honor the Saldivars' demand that Ms. Saldivar not be seen by Dennis Momah and to have a chaperone present.<sup>5</sup> (CP 403) Defense witnesses corroborated the fact that no chaperone was present during any physical exam of Ms. Saldivar by Dr. Momah, and no U.S. Healthworks employee recalled ever being asked to chaperone for Dr. Momah's exams. (RP 452, 474)

The trial court found that the Saldivars' allegations that Mr. Saldivar asked U.S. Healthworks office staff not to schedule his wife with Dennis Momah and that Ms. Saldivar asked Dennis Momah to have a chaperone present were not credible (FF 11, 12,14, 15, 18, CP 1523-24), but accepted plaintiffs' legal theory that

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<sup>5</sup> The Saldivars also alleged vicarious liability to the extent the claims against Dennis Momah were based on negligence and breach of the duty of informed consent, but these claims were dismissed on summary judgment. (CP 376-407, 554-55)

this conduct “if it actually occurred, would be a breach of the standard of care.” (FF 29, CP 1530) Thus the claims against U.S. Healthworks were supported by existing law. See ***Does 1-9 v. Compcare, Inc.***, 52 Wn. App. 688, 694, 763 P.2d 1237 (1988), *rev. denied*, 112 Wn.2d 1005 (1989).

**d. Ms. Saldivar’s Declarations.**

The trial court found that 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.” (FF 8, 35, CP 1521-22, 1531) The trial court erred in basing its CR 11 award on Ms. Saldivar’s declarations.

The declarations signed by Ms. Saldivar and her testimony do not support a conclusion that the declarations were false. Ms. Saldivar’s initial declaration, prepared by her alone and sent to the Department of Health before she contacted Mr. Bharti, stated that Dr. Momah touched her improperly on two occasions, (Ex. 19; RP 315-16, 319-20), and was consistent with her trial testimony. (RP 215, 290-91) She contended that although she had just been examined, the doctor could not remember her name or why she was treated. (Ex. 19) At trial and in her deposition, Ms. Saldivar explained that she used the term “buttocks” and not “vagina” as she

did in her second declaration (Ex. 20) because she had used an English dictionary to translate her initial declaration and was uncomfortable using explicit language. (RP 433-34; CP 2508)

Ms. Saldivar's third declaration recounted how she recognized Charles Momah from television news footage as one of the two doctors who treated her, and that it was Charles Momah who sexually abused her at U.S. Healthworks. (Ex. 36, *see also* Ex. 14 (Albert Saldivar Dec.)) The trial court held that Ms. Saldivar's declaration was false (FF 26, CP 1527), rejecting Ms. Saldivar's explanation that it was filed solely for the purpose of discussing the evidentiary basis for the claims against Charles Momah, rather than to detail all her allegations against both brothers. (RP 404-06, 442)

That Ms. Saldivar may have been effectively impeached with the declarations that Mr. Bharti helped her draft does not establish that the declarations were false or fabricated. *See Davis v. Carl*, 906 F.2d 533, 537 (11th Cir. 1990) (while the factual evidence was certainly weak, court could not hold that plaintiff's counsel acted with "the deliberate indifference to obvious facts that compels a court's resort to Rule 11 sanctions"). Mr. Bharti may not be

sanctioned for filing poorly drafted declarations if they were supported by a reasonable investigation. **Bryant**, 57 Wn. App. at 120 n.9 (reversing sanctions based on trial court's conclusion that complaint filed by plaintiff's counsel was "unintelligible").

In any event, CR 11 its terms applies only to the individual signing an offending pleading or paper. CR 11(a) ("The signature of party or of an attorney constitutes a certificate by the party or attorney . . ."). See **Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.**, 498 U.S. 533, 546, 111 S. Ct. 922, 112 L. Ed.2d 1140 (1991) ("The essence of Rule 11 is . . . signing . . ."). The fact that Mr. Bharti assisted Ms. Saldivar in preparing affidavits for her signature does not render him subject to sanctions under CR 11. See **Calhoun v. Liberty Northwest Ins. Corp.**, 789 F. Supp. 1540, 1544 (W.D. Wash. 1992) (practice of having attorneys prepare affidavit for client's signature is "neither unusual nor improper").

**e. Discovery Responses And Motions.**

The trial court also sanctioned Mr. Bharti under CR 11 for signing discovery responses "that contradicted plaintiff's sworn testimony and are inconsistent with the medical records and evidence," and for pursuing a motion to compel the deposition of

Steve McLaughlin. (CL 12, CP 1535) This was error. Rule 11 sanctions may not be imposed when a more specific sanction rule covers the conduct at issue. **Bryant**, 119 Wn.2d at 223. "Because CR 26(g), the discovery sanctions rule, was adopted to specifically address the type of conduct involved here, it, rather than CR 11, CR 37 or the inherent power of the court, is applicable in the present case." **Fisons**, 122 Wn.2d at 340.

The trial court found that Mr. Bharti signed "untrue" responses to one of Dennis Momah's discovery requests concerning the dates Ms. Saldivar "claimed to have been seen by Dr. Dennis Momah at U.S. Healthworks . . ." (FF 32, CP 1530) The interrogatory in question requested Ms. Saldivar to "list each and every date on which you ever had a medical appointment at U.S. Healthworks." (CP 783) The Saldivars responded that "Defendants have Ms. Saldivar's medical records. A review of the medical records in plaintiff's possession reveals the following," followed by a list of all appointments and physical therapy sessions with all providers at U.S. Healthworks, indicating that their response regarding the dates of treatment at U.S. Healthworks in Puyallup were based on their review of those medical records in their possession and that they were not sure whether Ms. Saldivar

attended all the appointments. (CP 784) Ms. Saldivar confirmed at trial that she could not accurately remember the precise dates of her treatment. (RP 383-84) There was nothing in this answer that contradicted the Saldivars' testimony.

Moreover, the trial court had previously ruled on U.S. Healthworks' request for sanctions when it denied the Saldivars' motion to compel the deposition of Steve McLaughlin in February 2005. (CP 1955-56, 2201-03) Further sanctions were unwarranted under Rule 11.

**2. The Trial Court Erred In Holding That The Complaints Were Filed For An Improper Purpose.**

The trial court erred in holding that Mr. Bharti filed and maintained this action "for an improper purpose." (FF 33-34, 36, CP 1530-31, CL 6, 8, 12, CP 1533-35) If counsel's investigation was reasonable and the complaint had a tenable basis in fact, the court may not sanction a complaint regardless of the motives behind its filing. "[A] complaint must lack a factual or legal basis before it can become the proper subject of CR 11 sanctions." *Bryant*, 119 Wn.2d at 220. "[A] complaint that is non-frivolous is, objectively, not filed for an improper purpose." *Harcourt Brace Jovanovich Legal and Professional Publications, Inc. v. Multistate Legal Studies, Inc.*, 26 F.3d 948, 953 (9<sup>th</sup> Cir. 1994);

***Townsend v. Holman Consulting Corp.***, 929 F.2d 1358, 1362 (9<sup>th</sup> Cir. 1991) (*en banc*) (“complaints are not filed for an improper purpose if they are non-frivolous”).

The trial court found that Mr. Bharti filed and maintained this action for “the improper purpose of furthering [the Saldivars’] effort to assure that the Momah brothers’ reputations were destroyed and that they would never again be permitted to practice medicine” (FF 26, CP 1527), and to “improperly influence public opinion and gain advantage in other litigation.” (FF 33, *see also* FF 36, CP 1530-31) Here again, the trial court used an improper standard. “Harassment under Rule 11 focuses upon the improper purpose of the signer, objectively tested, rather than the consequences of the signer’s act, subjectively viewed by the signer’s opponent.” ***Zaldivar v. City of Los Angeles***, 780 F.2d 823, 832 (9<sup>th</sup> Cir. 1986).

As the Saldivars have argued in challenging the trial court’s abuse of process judgment, it would be a rare case in which a physician found to have sexually abused his patients was permitted to continue in the practice of medicine. (Saldivar Br. at 27-31). The embarrassment, reputational and financial harm that result from a lawsuit do not establish an improper purpose if plaintiff’s counsel has a legitimate basis to seek redress in a court of law.

Similarly, the trial court could not conclude that Mr. Bharti's communications with the Department of Health on behalf of his client were undertaken for an improper purpose. Any person, including a lawyer, "who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization." RCW 4.24.510. (Saldivar Br. at 23-31) Mr. Bharti's and his clients' purpose to further the state's regulation of physician misconduct is not improper as a matter of law and furthers the Legislature's express statement of public policy. RCW 4.24.500.

The trial court's findings regarding Mr. Bharti's "improper purpose" are particularly erroneous because they are based on the trial court's conclusion that Mr. Bharti fabricated not only the Saldivars' claims against the Momah brothers, but also the claims of the other women who alleged impersonation, despite excluding their testimony and testimony from the Department of Health investigators evaluating their claims. (Supp. RP 43-46; see CP 410, 504, 550-53, 556, 983; RP 23-26, 38, 657-661) The trial court erroneously relied on defense counsel's arguments regarding Mr.

Bharti's actions in other cases as a basis for sanctions.<sup>6</sup> See *Transamerica Commercial Fin. Corp. v. Banton, Inc.*, 970 F.2d 810, 815-16 (11th Cir. 1992) ("absolutely no authority" to sanction a litigant for actions taken in another court).

Worse still, the trial court made credibility assessments regarding the veracity of complaints filed in other lawsuits and with the Department of Health while refusing to consider any evidence or testimony offered by the Saldivars and Mr. Bharti that would have established that they were true. (See Saldivar Br. at 37-48)<sup>7</sup> The trial court's reliance on evidence that it excluded at trial violates principles of fundamental fairness and deprived Mr. Bharti of procedural due process. *Bryant*, 119 Wn.2d at 224 (sanctions awarded must comport with due process). See *Public Serv.*

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<sup>6</sup> The trial court relied on defense counsel's argument that one declarant later refuted similar claims and that some of Mr. Bharti's clients voluntarily dismissed other pending actions against Dennis Momah alleging impersonation (Supp. RP 44; CP 951-54). The trial court ignored the fact that the plaintiffs would have undermined Charles Momah's criminal prosecution by providing Charles Momah with a viable identity defense. (CP 2349)

<sup>7</sup> For instance, the trial court relied on Dennis Momah's written response to the Department of Health's investigation to find that "not only was Dennis not impersonating his brother he wasn't even in this state." (Supp. RP 44) Yet the trial court not only prevented the investigators and the complaining patients from testifying, but prevented plaintiffs from reviewing any portion of the Department's investigation, save for Ms. Saldivar's "complaints." (RP 329, 657-61; CP 982-83, 991)

*Comm'n of Kentucky v. F.E.R.C.*, 397 F.3d 1004, 1012 (D.C. Cir. 2005) (due process right to notice and an opportunity to be heard includes “the parties’ right to present rebuttal evidence on all matters decided at the hearing”); *Piggie v. McBride*, 277 F.3d 922, 925 (7th Cir. 2002), *reh. denied*, 342 F.3d 660 (7th Cir. 2003) (quoting *Whitford v. Boglino*, 63 F.3d 527, 536 (7th Cir.1995) and *Viens v. Daniels*, 871 F.2d 1328, 1336 n. 2 (7th Cir.1989)) (adjudicator in disciplinary hearing “may not arbitrarily refuse to consider exculpatory evidence simply because other evidence in the record suggests guilt”).

The trial court’s determination that Mr. Bharti acted in bad faith in pursuing the claims of individuals other than the Saldivars also conflicts directly with the judgment entered by the King County Superior Court in Dennis Momah’s defamation lawsuit against Mr. Bharti. King County Superior Court Judge Palmer Robinson granted Mr. Bharti’s motion for summary judgment, holding as a matter of law that Mr. Bharti’s statements to the press regarding his other clients’ allegations that Dennis Momah had engaged in sexual abuse while impersonating his brother Charles were privileged. (CP 993-94, 1421-22, 1639-44) The King County court held that Dennis Momah could not establish that it was “highly probable that

Mr. Bharti made the statements with reckless disregard of the truth or falsity of the statements he made, which the Supreme Court has defined as 'awareness of probable falsity' of the statements." (CP 1644) Dennis Momah was precluded under principles of issue preclusion from relitigating Mr. Bharti's good faith in asserting those claims in the Pierce County action. See *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004).

Mr. Bharti never spoke to the press regarding the Saldivars, who from the outset wanted their complaint to be treated with "all . . . possible discretion." (Ex. 19) Here, defendants relied on evidence of news accounts of the claims of various victims of Charles Momah, and of those who claimed impersonation by Dennis Momah, but could not cite a single publication that mentioned the Saldivar case. (CP 135-169, 994, 1601-05)

Further, sanctioning Mr. Bharti for statements made to the press regarding other clients penalizes the exercise of his right to free speech guaranteed by the First Amendment and Art I, § 5. See *Port of Longview v. International Raw Materials, Ltd.*, 96 Wn. App. 431, 444, 979 P.2d 917 (1999) (permitting, in unlawful detainer action brought by government entity, affirmative defense of

retaliation for exercise of First Amendment rights based on tenant's public statements). While affirming a sanctions award on other grounds, the Fourth Circuit held that using the media to publicize a claim is not sanctionable conduct, "so long as there is evidence that a plaintiff's central purpose in filing a complaint was to vindicate rights through the judicial process." *In re Kunstler*, 914 F.2d 505, 520 (4th Cir.1990), *cert. denied*, 499 U.S. 969 (1991). The trial court erred in relying on Mr. Bharti's media statements regarding other cases.

**C. The Trial Court's Inherent Authority Does Not Authorize The Imposition Of Sanctions.**

The trial court based its sanctions both on CR 11 and the court's "inherent authority to sanction litigation conduct." (CL 12, CP 1535) A trial court has the inherent power to issue sanctions for abusive litigation practices undertaken in bad faith. See *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000). But this inherent authority must be limited to those circumstances in which no applicable rule applies. *Fisons*, 122 Wn.2d at 339-340. The inherent power may not be used to police attorney conduct occurring outside of the courtroom. See *Saldana v. Kmart Corp.*, 260 F.23d 228, 237-38 (3rd Cir. 2001) (reversing sanctions against counsel for derogatory remarks towards opposing counsel outside

the presence of the court). “Because of their very potency, inherent powers must be exercised with restraint and discretion.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S. Ct. 2123, 115 L. Ed.2d 27, *reh. denied*, 501 U.S. 1269 (1991). Most courts require a burden of proving by clear evidence counsel’s bad faith in order to sustain sanctions under the court’s inherent power. See, e.g., *Mickle v. Morin*, 297 F.3d 114, 125-26 (2nd Cir. 2002).

In addition to relying on Mr. Bharti’s alleged fabrication of the Saldivar’s and other clients’ claims, the trial court based its sanctions award on its findings that Mr. Bharti lied to the court by denying that he and Ms. Saldivar had filed any new complaints with the Department of Health and in showing Ms. Saldivar a deposition of Charles Momah during a court recess. (FF 27-28, CP 1527-29) These findings are not supported by substantial evidence and cannot justify the imposition of sanctions.

**1. Mr. Bharti Did Not Violate The Trial Court’s Or The King County Court’s Orders.**

Mr. Bharti did not violate an order when he showed Ms. Saldivar a video deposition of Charles Momah during a recess. Mr. Bharti did not attempt to introduce the deposition into evidence. (See RP 262-63; CP 993) The trial court erred in finding that Mr. Bharti violated the King County Superior Court’s protective order,

which authorized the use of that deposition as background in other pending cases. (CP 1425)

The trial court did not specifically identify any of its own orders that prevented Mr. Bharti from showing Perla Saldivar, outside of court, a videotaped deposition of Charles Momah taken in a different lawsuit. (FF 28, CP 1528-29) In pre-trial rulings, the trial court had restricted the Saldivars from introducing impersonation evidence to those witnesses who "have experience at the Puyallup clinic of U.S. Healthworks during similar time period." (CP 410, 504, 550; *see also* RP 23-26) The trial court also barred the plaintiffs from introducing into evidence or showing in opening statement a videotape of the news broadcast from which Ms. Saldivar had identified Charles Momah, on the ground that it was not properly authenticated. (RP 31-35, 38)

As Charles Momah was incarcerated following his criminal conviction for rape and not present at trial (CP 2342-47), Ms. Saldivar testified to her recollection of differences in the physical appearance and demeanor of the two physicians whom she believed had treated her during her May 27 visit, contrasting the hair, voice, and weight of the first physician she saw with her observations of Dennis Momah during his deposition. (RP 218-21,

259-62) Ms. Saldivar testified that Dennis Momah, who was present in court, looked different from his brother based upon her review, during the recess, of a video deposition of Charles Momah that was taken in a case brought by one of his patients in King County. (RP 262) The defense objected and the trial court admonished counsel for not providing notice of its intent to “use” the video deposition and sharing it with opposing counsel:

THE COURT: Counsel, you seem to have a complete inability to understand that just because you got it this morning doesn't mean that you can willy-nilly go ahead and use it. You seem to think you can still play with a couple of aces up your sleeve and that's not the way the procedure works in this state.

MR. BHARTI: Your Honor, we haven't played it in court. . . .

(RP 265)

Because Mr. Bharti did not attempt to introduce the deposition into evidence, showing it to Ms. Saldivar did not violate the court's orders *in limine* precluding introduction of unauthenticated videos of Charles Momah. (RP 31-35, 38) The evidence rules allow counsel to refresh a witness's recollection prior to her testimony without showing the document or evidence to opposing counsel. ER 612 provides that the court may, in its discretion, direct counsel to produce the writing and allow the

adverse party “to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.” ER 612. See Tegland, 5D *Washington Practice* 316 (2007) (“If the witness reviews a writing to refresh his or her memory *before testifying*, the opposing party has the foregoing rights only if the court in its discretion determines it is necessary in the interests of justice”) (italics in original).<sup>8</sup>

The trial court also erred in holding that the deposition was shown in violation of a 2004 King County Superior Court protective order that limited the dissemination of Charles Momah’s video deposition to “attorneys, witness and support staff involved in” that particular King County case. (FF 28, CP 1528-29, CL 2, CP 1536; see CP 1490-91) That court modified its order on April 3, 2006 to allow “background information to be used in all remaining open cases,” providing that the original protective order “shall be modified as to background but shall apply to the depositions as well

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<sup>8</sup> Although ER 612 refers to a “writing,” the rule has been interpreted to apply equally to audio and videotapes. See, e.g., *Hardin v. State*, 252 Ga. 99, 311 S.E.2d 462 (1984); *Johnson v. State*, 659 N.E.2d 194, 197-98, (Ind. App. 1995), *reh. denied*, (1996); *Speed v. State*, 500 N.E.2d 186, 190 (Ind. 1986) (“We have long held that simply because a witness uses something to refresh his recollection does not require him to produce it at trial.”).

(Basnaw, George & Collier) and other pending cases properly noted depositions.” (CP 1425)

Because the King County protective order was designed to prevent other prospective plaintiffs from making unwarranted claims of impersonation<sup>9</sup>, and because it was modified to allow the depositions to be used in open and active cases, such as the Saldivars’, Mr. Bharti and his co-counsel believed that they were authorized to show the deposition to Ms. Saldivar to refresh her recollection. (CP 984-85, 993) It was for the King County Superior Court to interpret and enforce the meaning of its order, not the trial judge in the instant case. Mr. Bharti acted in furtherance of his client’s interests under a reasonable good faith interpretation of the King County Superior Court’s order. (CP 1449-50, 1458)

**2. Mr. Bharti Did Not Lie To The Court About His Role In Filing Complaints With The Department Of Health.**

The trial court also erred in finding that Mr. Bharti “knowingly and in bad faith lied to this Court at the April 18, 2006 pretrial conference” when he denied filing new complaints on behalf of Ms.

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<sup>9</sup> Citing the potential for misuse of a videotaped deposition, Dennis Momah also obtained a protective order in this action prohibiting the dissemination of Dennis Momah’s deposition to any person not connected to the Saldivar lawsuit. (CP 1943-52, 1953-54)

Saldivar against Dennis Momah. (FF 27, CP 1528) In the unreported pre-trial conference on April 18, 2006, a dispute arose between plaintiffs and the defendants concerning the status of “complaints” filed by the Saldivars against the Momahs. Dennis Momah contended that he had been exonerated by the Department of Health following investigation of Ms. Saldivar’s complaint. (Ex. 8, 28) Mr. Bharti repeatedly told the court that the Department’s investigation of Dennis Momah was ongoing based on the Saldivars’, and other, complaints. (CP 991-92, 1453, 1454; see also CP 2245, 2261-62) Mr. Bharti, who assisted the State with its investigation, had no basis to represent that he had not filed *documents* with the Department of Health. He told the court at the pretrial conference that neither he nor Ms. Saldivar had filed “any new complaints with the Department of Health . . .” relating to the Saldivars. (CP 991) (emphasis added)<sup>10</sup>

The trial court sua sponte ordered the Department of Health to produce its records of “any all materials produced by Ms.

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<sup>10</sup> At trial, the court recalled that Mr. Bharti represented that he was unaware of any new “complaints” by Ms. Saldivar after she filed her initial complaint in 2003. (Supp. RP 44-45) By the time the findings were entered however, the court claimed that Mr. Bharti had “assured this Court that neither he nor Ms. Saldivar had filed any additional materials with the Department of Health.” (FF 27, CP 1527)

Saldivar or Albert Saldivar or the Saldivars' counsel regarding Saldivars, including all statements and transcripts of interviews of the Saldivars." (CP 556) Mr. Bharti and his co-counsel asked the court to also order the release of "the statements made by defendants in response to that investigation and other complaints which caused the Department to re-open its investigation, as well as the department's correspondence with Denis Momah regarding these complaints." (CP 991) The trial court refused both requests (CP 556, 983) and rejected the Saldivars' request to call as witnesses the Department of Health investigators because "defendants have made an issue that investigations were closed and that investigations were re-opened. . ." (RP 36, see RP 38: "I don't see how these two witnesses are relevant to the issues.>").

When the Department's investigators appeared in court in response to the trial court's order, (RP 324), they produced a January 29, 2005 declaration from Perla Saldivar with a 2005 Department of Health docket number. (RP 324; CP 1414)<sup>11</sup> That docket number (2005-03-0062) reflects the fact that Ms. Saldivar's case was opened contemporaneously with cases regarding several

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<sup>11</sup> That declaration was identical to the declaration filed in opposition to the U.S. Healthworks' motion to dismiss. (CP 1100, Ex. 46)

of Mr. Bharti's other clients, whose declarations the Department of Health received at approximately the same time in 2005. (See CP 1411-12, listing 2005 docket numbers)

Mr. Bharti and his co-counsel both stated that when Mr. Bharti received a request for documentation from the Department of Health he forwarded to the Department's investigator numerous declarations relating to impersonation, including Ms. Saldivar's. (CP 982-83, 991-92) Lynn Larsen-Levier, one of the Department's investigators, confirmed that she had "decided to reopen the Saldivar related investigation . . ." in 2006. (CP 1453-54) The trial court rejected Mr. Bharti's explanation that the Department was investigating Dennis Momah "without any request from me or my client." (RP 715; CP 982-83, 991-92) Instead it found credible Ms. Saldivar's one-word answer "yes" to defense counsel's contention on cross-examination that she filed a new "complaint" with the Department of Health, (RP 422), holding that Mr. Bharti "knowingly and in bad faith lied to this court at the April 18, 2006 pretrial conference." (FF 27, CP 1528)

The trial court erred in using its inherent authority to sanction Mr. Bharti based on his honest belief that his communications with the Department of Health were not new "complaints," especially

while refusing to allow the Department's personnel, who were present in court, to testify, and while precluding consideration of other complaints or investigations contained in the Department's files. (RP 329, 714-15) Mr. Bharti should have been allowed to establish why he believed he was cooperating with an ongoing governmental investigation. The evidence that Mr. Bharti acted in bad faith, or "lied" to the court, certainly did not meet the "clear evidence" standard justifying the extraordinary fine imposed against Mr. Bharti. *Mickle*, 297 F.3d at 125-26.

**D. The Trial Court Erred In Ordering Punitive Sanctions Of \$300,000 In Addition To Attorney Fees And In Requiring Mr. Bharti To Post Its Findings On His Website.**

The trial court's non-compensatory fine of almost \$300,000, and its requirement that Mr. Bharti post its findings on his website, exceed the permissible scope and purpose of CR 11 and the court's inherent authority and violated due process principles. See *Biggs*, 124 Wn.2d at 197; *Fisons*, 122 Wn.2d at 355-56 (sanctions under Rule 11 should be no more severe than necessary to serve the purpose of deterring frivolous pleadings); *Bryant*, 119 Wn.2d at 224 (an award of sanctions must comport with due process of law).

**1. The Punitive Fine Of \$300,000 Exceeded The Court's Statutory and Inherent Powers And Violated Mr. Bharti's Right To Due Process.**

The trial court's non-compensatory fine of \$300,000 exceeded the court's authority, either under its inherent power to remedy bad faith litigation conduct or to punish a violation of the court's orders. In awarding Dennis Momah a punitive fine of \$250,000, the trial court exceeded its "inherent power to assess the litigation expenses, including attorney fees, against an attorney for bad faith litigation conduct." *State v. SH*, 102 Wn. App. at 474, quoting *Wilson v. Henkle*, 45 Wn. App. 162, 174-75, 724 P.2d 1069 (1986). Dennis Momah was fully compensated by the court's award of compensatory damages, fees and costs. To the extent the fine was intended as additional compensation to Dennis Momah for the damages caused by other litigation, it must be vacated.

The, \$50,000 fine to the Pierce County Superior Court clerk exceeded the trial court's inherent contempt authority under RCW 7.21.050(1) to "summarily impose either a remedial or punitive sanction . . . upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt." RCW 7.21.050(2) limits the punitive sanction that a court "may impose for each separate of contempt of court [to] a

punitive sanction of a fine of not more than five hundred dollars.” Although the trial court found that its additional sanctions were “the least severe sanctions that stand a reasonable chance of deterring Mr. Bharti’s misconduct” (CL 13, CP 1538), it exceeded its authority in failing to limit its punitive contempt sanction to the statutory amount of \$500 per violation, after awarding the defendants almost \$300,000 in attorney fees and costs. See *Interest of M.B.*, 101 Wn. App. 425, 452, 3 P.2d 780 (2000), *rev. denied*, 142 Wn.2d 1027 (2001) (court may only deviate from statutory powers if they “are in some specific way inadequate. Otherwise, a resort to inherent powers effectively nullifies the statutes.”); *State v. Berty*, \_\_\_ Wn. App. \_\_\_, ¶ 34, 147 P.3d 1004, (2006) (reversing sanction in excess of \$500 per violation imposed against counsel under court’s inherent contempt power).

The trial court’s imposition of non-compensatory sanctions violated Mr. Bharti’s right to due process of law. Substantial punitive sanctions, such as those imposed in the instant case, require heightened due process protections because the judge acts as “accuser, fact finder and sentencing judge, not subject to restrictions of any procedural code and at times not limited by any rule of law governing the severity of sanctions that may be

imposed.” *Mackler Productions, Inc. v. Cohen*, 146 F.3d 126, 128 (2<sup>nd</sup> Cir. 1998). Here, the trial court gave Mr. Bharti less than four court days to respond to defendants’ allegations of misconduct, (RP 779-80); *Mackler Productions, Inc. v. Cohen*, 225 F.3d 136, 144-45 (2<sup>nd</sup> Cir. 2000) (court must provide adequate notice and opportunity to respond to each allegation of sanctionable misconduct). Much of the evidence relied upon by the trial court was first submitted in defendants’ reply materials one day before the sanctions hearing. (See, e.g., CP 1467-69, 1486-89) Because the sanction was punitive and not compensatory, Mr. Bharti was entitled to adequate notice to gather and present exculpatory evidence and to fair procedures, including an evidentiary hearing to resolve disputed issues of fact. See *Donaldson v. Clark*, 819 F.2d 1551, 1561 (11<sup>th</sup> Cir. 1987) (en banc).

**2. The Trial Court’s “Scarlet Letter” Non-Monetary Sanction Violates The First Amendment.**

The trial court’s non-monetary sanction directing that its findings be placed on the informational portion of Mr. Bharti’s website is a direct restriction on Mr. Bharti’s non-commercial speech on matters of general public concern.

Mr. Bharti’s website both promotes his law practice and contains links to articles relating to the criminal prosecution,

Department of Health investigation, and civil claims made against Charles and Dennis Momah. (CP 789-90, 1788) It contains both commercial and non-commercial speech under the First Amendment. "Purely informational portions of home pages are not considered commercial speech, but biography, specialty and e-mail sections on a home page usually are." Hill, LAWYER COMMUNICATIONS ON THE INTERNET: BEGINNING THE MILLENNIUM WITH DISPARATE STANDARDS, 75 Wash. L. Rev. 785, 817 (2000).

When "component parts of a single speech are inextricably intertwined," the Court subjects any restrictions to the strict scrutiny standard applicable to fully protected non-commercial speech. ***Riley v. National Fed'n of the Blind of North Carolina, Inc.***, 487 U.S. 781, 796, 108 S. Ct. 2667, 101 L. Ed.2d 669 (1988). See ***Consolidated Edison Co. of New York v. Public Service Comm'n of New York***, 447 U.S. 530, 537, 544, 00 S. Ct. 2326, 65 L. Ed.2d 319 (1980) (Commission's suppression of utility's bill inserts discussing controversial issues was impermissible content-based regulation not justified by compelling state interest).

Even if Mr. Bharti's website is purely commercial speech under the First Amendment, as is most lawyer advertising, "unduly burdensome disclosure requirements offend the First Amendment."

***Ibanez v. Florida Dept. of Business and Professional Regulation, Bd. of Accountancy***, 512 U.S. 136, 146, 114 S. Ct. 2084, 129 L. Ed.2d 118 (1994). See ***Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio***, 471 U.S. 626, 637 n.7, 105 S. Ct. 2265, 2274, 85 L. Ed.2d 652 (1985) (lawyer advertising protected as commercial speech even if “in another context [it] would be fully protected speech” relating to matters of public interest). The trial court’s order is unduly burdensome because it is unrelated to any misleading statements appearing on Mr. Bharti’s website, none of which related to this case at the time the sanction order was entered. (CP 789-90, 994, see CP 1601-15) See ***Ohralik v. Ohio State Bar Ass’n***, 436 U.S. 447, 460-61, 98 S. Ct. 1912, 56 L. Ed.2d 444 (1978).

Under the intermediate scrutiny test applicable to commercial speech, the trial court’s order can be upheld only if it complies with the four part test established in ***Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York***, 447 U.S. 557, 566, 100 S. Ct. 2343, 65 L. Ed.2d 341 (1980):

[Protected commercial speech] must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and

whether it is not more extensive than is necessary to serve that interest.

The trial court's order cannot withstand this scrutiny because Mr. Bharti's website contained no information regarding Ms. Saldivar's claims. (CP 789-90, 994, see CP 1601-15) The trial court's order should be reversed because it failed to identify any misleading or untruthful statements on Mr. Bharti's website.

Moreover, the court's order fails to advance a legitimate governmental interest because it discourages other members of the public from coming forward to assert that they have been sexually abused by licensed physicians. As the trial court's order is freely available on the court's website and was widely publicized in the media (see CP 804-07), there are less restrictive means of advancing its stated goal of protecting the public.

**E. The Trial Court Erred In Requiring Mr. Bharti To Show Cause Why He Should Not Be Held In Contempt.**

The trial court's order directing Mr. Bharti to show cause why he should not be held in contempt after Mr. Bharti superseded the court's monetary sanctions and modified his website confirms that the trial court viewed its sanctions as punitive and not remedial. (CP 1811, 1833-39, 1927) "Remedial sanctions" may be imposed to coerce performance when the contempt consists of the omission

or refusal to perform an act that is yet in the person's power to perform. RCW 7.21.010(3). "Punitive sanctions" may be imposed to punish a past contempt of court for the purposes of upholding the authority of the court. RCW 7.21.010(2).

If a contempt sanction does not afford the defendant an opportunity to purge the contempt by performing the acts required in the original order, the sanction must be punitive and not remedial. *Interest of Rebecca K.*, 101 Wn. App. 309, 314-15, 317, 2 P.3d 501 (2000). Such punitive sanctions may be imposed only if the court follows the rigorous procedural requirements of RCW 7.21.040. See *State v. Boatman*, 104 Wn.2d 44, 48, 700 P.2d 1152 (1985) (reversing order of contempt against parent who failed to pay child support when the court's imposed sanction was punitive rather than coercive); *Rebecca K.*, 101 Wn. App. at 317 (reversing the trial court's imposition of punitive sanctions against minors for past violations of court orders when the parents rather than the State initiated the contempt proceedings).

Mr. Bharti's failure to pay money or otherwise comply with an order requiring certain acts to be performed outside the courtroom may not be summarily punished under the court's inherent contempt power under RCW 7.21.050, which is limited to "a

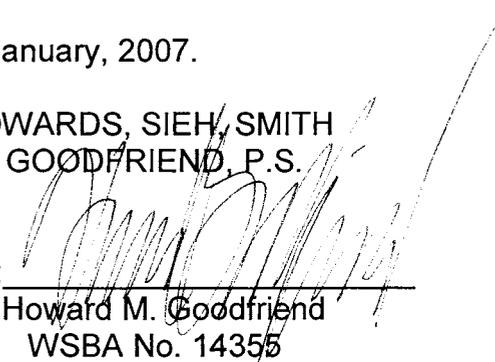
contempt of court within the courtroom.” *In re Coulter*, 25 Wash. 526, 529, 65 P. 759 (1901) (“It is clear that the contempt charged against the petitioner [failure to pay judgment] is not one committed in the immediate view and presence of the court, which can be punished summarily.”). *Accord*, *Dimmick v. Hume*, 62 Wn.2d 407, 409, 382 P.2d 642 (1963); *Starkey v. Starkey*, 40 Wn.2d 307, 312, 242 P.2d 1048 (1952). This court should reverse the order to show cause why Mr. Bharti should not be held in contempt.

#### VI. CONCLUSION

This court should reverse the sanctions against Mr. Bharti. To the extent this court remands this case, it should be to a new superior court judge.

Dated this 12<sup>th</sup> day of January, 2007.

EDWARDS, SIEH, SMITH  
& GOODFRIEND, P.S.

By: 

Howard M. Goodfriend  
WSBA No. 14355

Attorneys for Appellant Harish Bharti

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 12, 2007, I arranged for service of the foregoing Brief of Appellant Harish Bharti, to the court and counsel for the parties to this action as follows:

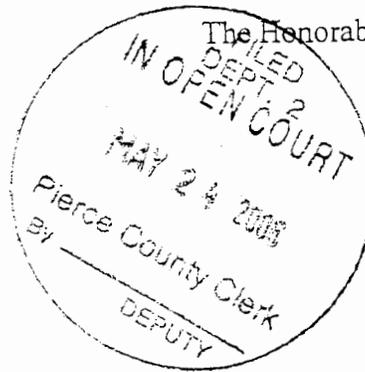
Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Tyna Ek Soha & Lang, P.S. 701 - 5th Avenue, Suite 2400 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Heath S. Fox Johnson, Graffe, Keay, Moniz & Wick, LLP 925 Fourth Avenue, Suite 2300 Seattle, WA 98104-1157	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Marja Starczewski Attorney at Law 18520 - 44th Avenue West Lynnwood, WA 98037	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Vanessa Vanderbrug Lawrence & Versnel PLLC 601 Union Street, Suite 3030 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Ms. Mary H. Spillane Williams Kastner & Gibbs PLLC Two Union Square 601 Union St., Suite 4100 Seattle WA 98101-2380	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

**DATED** at Seattle, Washington this 12<sup>th</sup> day of January, 2007.

*Tara M. Holland*  
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Tara M. Holland

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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 )  
 martial 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.

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

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

23  
24 4. Albert Saldivar has no personal knowledge of the events material to plaintiffs' liability  
25 claims—what occurred between Perla Saldivar and Dr. Momah in the examination room  
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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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- 4 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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1 find Mr. Fuentes' testimony credible. In addition, even if the Court were to believe Mr.  
2 Fuentes' sudden recollection of having attended one or more of Perla Saldivar's medical  
3 appointments with Dr. Momah, Mr. Fuentes did not claim to have witnessed any  
4 inappropriate behavior by Dr. Dennis Momah during these visits. His testimony  
5 therefore did not support or corroborate plaintiffs' allegations.  
6

- 7 6. Dr. Charles Momah did not impersonate Dr. Dennis Momah at the US Healthworks  
8 Puyallup clinic, and Dr. Charles Momah never saw, treated or otherwise had any contact  
9 with Perla Saldivar. There were intricate systems and office procedures in place that  
10 would make it highly unlikely that any physician could have sneaked into the US  
11 Healthworks Puyallup clinic in May or June of 2003 and impersonated another physician  
12 without being detected. In addition, there are no doors near the doctor's office that would  
13 allow a physician to leave or enter the premises without being observed by multiple  
4 people. The US Healthworks Puyallup clinic was very busy on the days Perla Saldivar  
15 was treated by Dr. Dennis Momah, and this Court finds that it is not plausible that a  
16 physician could be absent from the premises for any significant period of time during the  
17 physician's shift without this being noticed by the clinic staff. It is similarly implausible  
18 that a doctor could be occupied with a patient for three to five hours as alleged by Perla  
19 Saldivar without significantly disrupting the functioning of the clinic and without the  
20 clinic staff noticing the situation. Records establish that Dr. Dennis Momah saw  
21 numerous patients on both of the days Perla Saldivar saw him. He could not have seen  
22 that number of patients if Perla Saldivar's appointment was three to five hours long as  
23 she claims.  
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1 7. There is no evidence or even allegation in this case that Dennis Momah impersonated  
2 Charles Momah. The only evidence before this Court of any alleged impersonation by  
3 Charles Momah of Dennis Momah, or any treatment or other contact between Charles  
4 Momah and Perla Saldivar, is the testimony of the Saldivars, which this Court does not  
5 find reliable or credible. According to the testimony of the Saldivars, Perla Saldivar  
6 believes she saw Charles Momah for approximately 10 minutes during one medical visit  
7 in May of 2003. Her testimony concerning who she believes she saw during which  
8 medical visit has materially changed in different accounts of her story, she never alleged  
9 any impersonation until well after the fact, and after she had retained Harish Bharti as her  
10 attorney and information about Charles Momah began to appear in the media. Perla  
11 Saldivar's initial complaint to the Department of Health, made before retaining Harish  
12 Bharti as her attorney, did not mention impersonation or sexual contact. Even her recent  
13 accounts of when she believes she saw Charles Momah as opposed to Dennis Momah at  
14 the US Healthworks Puyallup clinic have been inconsistent. The Court finds no credible  
15 evidence to support an allegation that Charles Momah ever entered the US Healthworks  
16 Puyallup clinic, pretended to be his brother Dennis Momah, or had any interaction of any  
17 kind with Perla Saldivar.

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21 8. The Saldivars changed their testimony about what happened as necessary to achieve their  
22 stated goal of preventing Dr. Dennis Momah from practicing medicine. The initial  
23 complaint to the Department of Health's Medical Quality Assurance Commission  
24 (MQAC) said that Dennis Momah touched Perla Saldivar's buttocks during a low back  
25 examination. After retaining attorney Bharti, she made a complaint to the Federal Way  
26

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.

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  
4 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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1 after being sexually assaulted, what was taking Dr. Momah so long, seemingly impatient  
2 for his return.

3 11. Perla Saldivar admits that she did not ask any employee at US Healthworks other than  
4 Dr. Momah to have a nurse present in the room during her examination. This Court did  
5 not find Ms. Saldivar's testimony that she asked Dennis Momah for a nurse chaperone to  
6 be credible.  
7

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

11 13. The Saldivars did not report any alleged inappropriate behavior by Dr. Dennis Momah to  
12 the Department of Labor and Industries, despite frequent telephone contact with the  
13 Department during the relevant time period.  
14

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

19 15. No credible evidence was presented at trial that Perla Saldivar ever asked US  
20 Healthworks to schedule her June 26, 2003 appointment with a doctor other than Dr.  
21 Momah. To the contrary, Perla Saldivar testified that she went to see Dr. Momah that  
22 day to have him sign a transfer of physician slip for the Department of Labor &  
23 Industries.  
24  
25  
26

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.  
22

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  
26

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.

4  
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.  
20

21  
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  
25  
26

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  
4 (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  
25  
26

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  
16  
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  
25  
26

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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1 non-credible testimony of Perla Saldivar. Further, the Court accepted in ruling on the  
2 motion to dismiss at the close of plaintiffs' case, without need for expert testimony, that  
3 the alleged conduct, if it actually occurred, would be a breach of the standard of care.  
4 The Court's dismissal of plaintiffs' claims was based upon a factual finding that the  
5 alleged inappropriate conduct by the defendants did not occur.

6  
7 30. This Court finds that Harish Bharti had reason to know, prior to his filing the complaint  
8 in this action, that the Saldivars' claims were not well grounded in fact. In addition, this  
9 Court finds that Harish Bharti was an active and knowing participant in the fabrication of  
10 Perla Saldivar's ever changing accusations against Dennis Momah made to the Federal  
11 Way Police Department, the Washington State Department of Health and this Court.

12  
13 31. This Court finds that Harish Bharti signed the complaint and amended complaints in this  
14 matter without a reasonable belief that the allegations asserted against the defendants by  
15 Perla Saldivar were well grounded in fact.

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

21  
22 33. This Court finds that Harish Bharti continued to file irrelevant and salacious declarations  
23 and statements in the court file in this case that were unrelated to Perla Saldivar's claim  
24 after being repeatedly instructed by the Court not to do so. This placed an undo burden  
25 on the Court. This court finds that Mr. Bharti's efforts to fill the court file with these  
26

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

4  
5 34. This court finds that Harish Bharti amended the complaint in this matter to bring Charles  
6 Momah into the case as a defendant without any reasonable basis in fact to do so, and that  
7 this new process was served for the improper purpose of harassing Dennis Momah and  
8 escalating the media attention in this case.

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

15  
16 36. This Court finds that Mr. Bharti's improper use of legal process in this case is part of a  
17 pattern of behavior by Mr. Bharti to harass Dennis Momah, destroy his career, unduly run  
18 up legal expenses, and gain Mr. Bharti media exposure and leverage in other legal  
19 matters brought by Mr. Bharti.

20  
21 37. Mr. Bharti has been sanctioned by this Court during the discovery phase of this case, and  
22 has been sanctioned under CR 11 less than one year ago by a King County court for the  
23 filing and pursuit of meritless claims. However, these sanctions have been ineffective in  
24 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 **II. CONCLUSIONS OF LAW**

5  
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  
4 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.  
23  
24  
25  
26

- 1 3. The Court has received no credible evidence that Dr. Charles Momah ever saw or treated  
2 Perla Saldivar. All of plaintiffs' claims against Dr. Charles Momah *et. ux.* are dismissed  
3 with prejudice.
- 4 4. Plaintiffs have failed to provide any credible evidence that US Healthworks had and  
5 breached a duty not to schedule Perla Saldivar to see Dr. Dennis Momah on May 28,  
6 2003 or June 26, 2003. Nor have plaintiffs presented credible evidence that the  
7 scheduling by US Healthworks was a proximate cause of harm to the plaintiffs.  
8 Plaintiffs' claim against US Healthworks for negligence in scheduling Perla Saldivar to  
9 see Dr. Dennis Momah is dismissed with prejudice.
- 10 5. Plaintiffs have failed to provide any credible evidence that US Healthworks breached any  
11 duty to provide Ms. Saldivar with a female chaperone during her medical visits, and have  
12 failed to provide any credible evidence that any alleged failure to provide a chaperone  
13 was the proximate cause of harm to the plaintiffs. The Court has found that Dr. Dennis  
14 Momah did not exhibit any inappropriate behavior toward Perla Saldivar during her  
15 medical appointments. Plaintiffs' claim that US Healthworks should have provided Ms.  
16 Saldivar with a chaperone is dismissed with prejudice.
- 17 6. The Saldivars' false accusations and claims against Dennis Momah made to the  
18 Department of Health, the Federal Way Police Department and the Pierce County  
19 Superior Court were willful and malicious. The claims were advanced for an improper  
20 purpose. The Saldivars pursued their lawsuit to prevent Dr. Dennis Momah from  
21 practicing medicine. They issued new process to bring Dr. Charles Momah into this  
22 litigation to allow them to assert "switching" and/or "impersonation" claims against  
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1 Charles and Dennis Momah with the improper purpose of influencing the Dept. of Health  
2 to terminate Dennis Momah's license to practice medicine, to harass and professionally  
3 destroy Dennis Momah, and to fulfill their improper but self-proclaimed motive of  
4 making sure that Dr. Dennis Momah would never be permitted to practice his chosen  
5 profession again. Their efforts, with the active and improper assistance of their attorney  
6 Harish Bharti, were intentional and calculated to achieve an improper purpose.

7  
8 7. Harish Bharti filed numerous declarations by other alleged "victims" in this case solely to  
9 prejudice the court, obtain media attention, and to vex, harass and annoy Dennis Momah.  
10 Throughout the proceedings plaintiffs, through their counsel of record, used the court and  
11 the discovery process to advance their goal of driving Dr. Momah out of the practice of  
12 medicine and to destroy his reputation by making numerous unfounded claims and  
13 allegations in declarations, depositions and pleadings.

14  
15 8. These false and malicious claims, asserted through legal process for an improper purpose,  
16 constitute an abuse of process for which the Saldivars are liable to Dr. Dennis Momah.  
17 Moreover, Harish Bharti actively and knowingly participated in this abuse of process for  
18 his own personal gain.

19  
20 9. The Saldivars' false accusations of sexual assault and impersonation constitute  
21 outrageous conduct beyond all bounds of human decency in a civilized society, and the  
22 Saldivars are liable to Dr. Dennis Momah for the tort of outrage (a/k/a intentional  
23 infliction of emotional distress).

24  
25 10. The Saldivars' advancement of this lawsuit was a violation of the statutory prohibition  
26 against frivolous lawsuits set forth in RCW 4.84.185 and the Saldivars are liable to Dr.

1 Dennis Momah and US Healthworks for all actual/reasonable costs and attorneys' fees  
2 incurred in this matter.

3 11. The Saldivars' abuse of process and intentional infliction of emotional distress  
4 proximately caused severe harmed to Dr. Dennis Momah.

5 12. Harish Bharti has committed multiple violations of Civil Rule 11, and other conduct  
6 sanctionable by this court under its inherent authority to sanction litigation conduct,  
7 including the following:

- 8
- 9 • filing the original and amended complaints in this action without a reasonable belief  
10 that the claims asserted were well grounded in fact;
  - 11 • filing the original and amended complaints in this action without conducting a  
12 reasonable investigation of the facts;
  - 13 • filing the original and amended complaints in this matter for the improper purpose of  
14 harassing the defendants, increasing the cost of litigation, asserting salacious false  
15 allegations to damage the reputation of the defendants and gain personal media  
16 attention for Harish Bharti and financial leverage for other litigation asserted by Mr.  
17 Bharti;
  - 18 • Signing plaintiffs' responses to interrogatories that contradicted plaintiff's sworn  
19 testimony and are inconsistent with the medical records and evidence in this case;
  - 20 • Filing and pursuing a motion to compel the deposition of Steve McLaughlin after the  
21 deposition sought had occurred and refusing to withdraw the motion when this was  
22 pointed out to counsel, necessitating the expenditure of needless time and expense by  
23 the court and defendants;
- 24  
25  
26

- 1 • Harish Bharti drafted multiple contradictory declarations by Perla and Albert Saldivar  
2 that he knew or should have known were untrue and this was done in furtherance of  
3 both Mr. Bharti's and the Saldivars' improper motives and abuse of process;  
4  
5 • Harish Bharti lied to this Court on April 18, 2006 when he stated as an officer of the  
6 court that neither he nor his client had provided additional materials to the  
7 Washington State Department of Health in furtherance of a complaint against Dennis  
8 Momah since the Department had closed its investigation in 2004.  
9  
10 • Harish Bharti showed a videotape of a deposition of Charles Momah taken in a  
11 different case to his client Perla Saldivar during trial in an effort to improperly  
12 influence her testimony in violation of this Court's order in limine and a King County  
13 Superior Court protective order.

14 13. The Court hereby makes the following award in this case and orders that final judgment  
15 be entered accordingly:

- 16 • Plaintiffs' claims against all defendants are dismissed with prejudice;  
17  
18 • Judgment shall be entered in favor of Dennis Momah and against the Saldivars in  
19 the amount of \$2,819,036 plus all attorneys' fees and costs incurred in this  
20 litigation; minus those incurred exclusively in pursuit of the counterclaim;  
21  
22 • Judgment shall be entered in favor of US Healthworks and against the Saldivars  
23 for all attorneys' fees and costs incurred in defending US Healthworks in this  
24 litigation;  
25  
26 • Judgment shall be entered in favor of Charles Momah, with an award of statutory  
fees and costs pursuant to RCW 4.84.010.

- 1 • Attorney Harish Bharti is ordered to personally pay and/or perform the following  
2 sanctions:

- 3 i. Attorneys fees and costs shall be paid to Dennis Momah and his attorneys;  
4  
5 ii. Attorneys fees and costs shall be paid to US Healthworks and its  
6 attorneys;  
7  
8 iii. Attorneys fees and costs shall be paid to Charles Momah and his  
9 attorneys;  
10  
11 iv. An additional sanction of \$250,000.00 shall be paid to Dennis Momah no  
12 later than June 14, 2006.  
13  
14 v. An additional sanction of \$50,000.00 shall be paid to the registry of the  
15 Court for the Superior Court of the State of Washington, County of Pierce  
16 no later than June 7, 2006.  
17  
18 vi. Harish Bharti shall, by noon on May 26, 2006, post on his law firm  
19 website, these Findings of Fact and Conclusions of Law. This posting  
20 should be prominently displayed on Mr. Bharti's website, in the same font  
21 size as other displayed links, with the title "Result In First Civil Case  
22 Tried Against Charles and Dennis Momah" with a link to the full  
23 documents; i.e., these Findings of Fact and Conclusions of Law. This  
24 posting shall remain on Mr. Bharti's law firm website for as long as any  
25 reference to the Momahs is made on Mr. Bharti's website, but not less  
26 than one year from the date of this Order.

1           vii. This Court has specifically considered lesser sanctions, but believes that  
2           the above listed sanctions are the least severe sanctions that stand a  
3           reasonable chance of deterring Mr. Bharti's misconduct.

- 4           • Attorney Marja Starczewski is hereby sternly and formerly admonished by this  
5           Court for her role in the filing and pursuit of this frivolous action, and is hereby  
6           warned that future reckless participation in meritless or frivolous litigation shall  
7           justify the application of significant monetary sanctions. An attorney has a duty  
8           of reasonable inquiry and is not permitted to file or pursue meritless claims. Each  
9           attorney of record in a matter has an independent duty to comply with CR 11 and  
10           otherwise fulfill his/her obligations as an officer of the court, and this duty is not  
11           diminished simply because an attorney is not lead counsel in a matter or is taking  
12           instruction from other counsel.

13  
14           14. The court file in this matter is hereby unsealed and any restrictions implied by the sealing  
15           of the court file are lifted.

16  
17  
18           Hereby Ordered this 24<sup>th</sup> day of May, 2006.

**KATHERINE M. STOLZ**

19  
20  
21           \_\_\_\_\_  
22           Hon. Katherine M. Stolz



The Honorable Katherine M. Stolz

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUN 23 2006 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

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; and DOES 1- )  
10, )

Defendants. )

NO. 04-2-06677-3

JUDGMENT

Clerk's Action Required

**I. JUDGMENT SUMMARY**

1. Judgment creditors: Dennis Momah, M.D.  
US Healthworks Medical Group of Washington, PS  
Charles Momah, M.D.
2. Attorneys for judgment creditors: For Dennis Momah, M.D.:  
Tyna Ek, WSBA #14332  
Soha & Lang, P.S.  
701 Fifth Avenue, Suite 2400  
Seattle, WA 98104  
206-684-1800

SOHA & LANG, P.S.  
701 FIFTH AVENUE, SUITE 2400  
SEATTLE, WASHINGTON 98104  
(206) 624-1800/FAX (206) 624-1888



2. Interest shall accrue on the judgment at a rate of 12 percent per annum until paid.

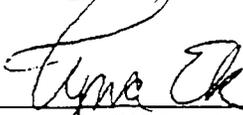
DONE IN OPEN COURT this 23<sup>rd</sup> day of June, 2006

**Katherine M. Stolz**

\_\_\_\_\_  
Honorable Katherine M. Stolz

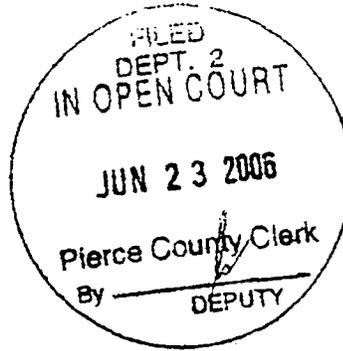
Presented by:

SOHA & LANG, P.S.

By   
Tyna Ek, WSBA #14332  
Of Attorneys for Defendant Dr. Dennis Momah

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

Perla Saldivar and Albert Saldivar

Plaintiff

vs.  
Dennis Mamah, et al

Defendants

Cause No: 04-2-06677-3

ORDER to show cause why Harish Bharti should not be held in contempt and setting supersedeas bond

This matter having come on duly and regularly before the undersigned judge this day upon Defendants' Motion objecting to Harish Bharti's Bond and seeking an Order to Show Cause why Bharti should not be found in Contempt of Court & the Court having considered the pleadings and argument of Counsel  
HEREBY ORDERS:

DATED this 23<sup>RD</sup> day of June, 2006

Judge

**COPY**

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

Cause No:

Plaintiff

ORDER

vs.

Defendant

Harish Bharti is ordered to appear and show cause by July 1<sup>st</sup> 2006 <sup>at 9am</sup> ~~at 10am~~ <sup>awake</sup> he should not be found in contempt for failing to pay \$50,000 in sanctions to the Court by June 7, 2006, for failing to pay \$250,000 in sanctions to Dennis Manah MD by June 14, 2006 and for not ~~post~~ prominently posting the Findings & Conclusions on his website by noon on May 26, 2006, all as required by this Court's May 24, 2006 order with penalties for contempt to possibly include monetary fines and/or ~~confinement~~.

DATED DEPT. CLERK  
IN OPEN COURT Day of June 2006  
JUN 23 2006  
Pierce County Clerk  
By [Signature] DEPUTY

[Signature]  
Judge

Failure to appear after personal service may result in issuance of a bench warrant.



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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

Plaintiff  
  
vs.  
  
Defendant

Cause No:  
  
ORDER

This Court has denied Mr. Bharti's request that the interlocutory sanctions totaling \$300,000 be stayed pending appeal. If the Court of Appeals stays the imposition of these sanctions then the current cash bond that has been posted is insufficient to secure the sanctions and the judgment amount. The appropriate bond amount for the sanctions imposed against Mr. Bharti and the judgment against Mr. Bharti is \$705,000.00. This order does not address what bond would be needed to stay the separate judgment against the Saldivas.

DATED this 23<sup>RD</sup> day of JUNE 2006

*[Signature]*  
FILED  
DEPT. CLERK  
IN OPEN COURT  
JUN 23 2006  
Pierce County Clerk  
By *[Signature]* DEPUTY

*[Signature]* WSBA #14132  
Att. for Dennis Nomaly

*[Signature]* WSBA #2506  
Attorney for U.S. Healthworks

*[Signature]* WSBA #34608  
Attorney for Charles Nomaly P.P.