**I.**

**STATEMENT OF JURISDICTION**

This is an appeal from a final order or judgment of the U.S. District Court of Oregon which dismissed Plaintiff’s 42 U.S.C. 1983 action (District Court’s Opinion and Order attached) and falls within this Ninth Circuit Court appellate jurisdiction pursuant to 28 U.S.C. 1291.

The U.S. District Court entered its final order on November 26, 2013. This

gravely injured Appellant filed a timely Notice of Appeal on December 17, 2013.

**II.**

**BASIS FOR THE COURT OF APPEAL’S JURISDICTION**

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. 1291.

1. **FILING DATE OF APPEAL**

The District Court dismissed this Appellant’s complaint with prejudice. The record will reflect this aspect of the proceedings that was taking place in the court below. The final order of dismissal was entered on November 26, 2013. Appellant filed the Notice of Appeal on December 17, 2013.

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1. **APPEAL FROM A FINAL ORDER OR**

**JUDGMENT PURSUANT TO F.R.A.P. 4**

This appeal is from a final Order of dismissal of this Appellant’s complaint. The record in the Court below will reflect this fact.

**III.**

**STATEMENT OF THE ISSUES PRESENTED ON APPEAL**

**1.** Did the District Court err in dismissing Appellant’s complaint and thus

denying the Due Process Appellant was entitled to by United States

Constitution and federal law?

**2.** The constitutional injuries inflicted by the Appellees and sustained by this

Appellant and his family are cognizant under the sweeping clause of Due

Process of the Fourteenth Amendment with regard to Appellees enforcing

O.R.S. Chap. 677 and Oregon Senate Bill (OSB) 267 and thus actionable under

42 U.S.C. 1983.

**3.** The constitutional injuries inflicted by Appellees upon this Appellant and his

family are prohibited by the sweeping clause 1 of the Fourteenth

Amendment of the United States Constitution, and attaches no immunity to

the Appellees from obeying the supreme laws of the land, and thus confirms

that they are liable to this gravely injured Appellant pursuant to 42 U.S.C.

1983.

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**4.** Does the Eight Amendment prohibit Appellees’ infliction of excessive fines

that amount to punishment in the amount of $30,722.38

upon this Appellant?

**5.** The constitutional injuries sustained by this Appellant and his family are

cognizant under the Fourteenth Amendment to the United States

Constitution and actionable pursuant to 42 U.S.C. 1983. Does OMB’s use of

unilateral and arbitrary medical scientific preferences in enforcement of

the O.R.S. Chapter 677 relative to “discipline”, which includes deprivation

of a physician’s license, violate the Equal Protection Clause of the

Fourteenth Amendment?

**IV.**

**STATEMENT OF THE CASE**

1. **Nature of the Case**

This Plaintiff –Appellant appeals the dismissal of the final Order of the U.S. District Court of Oregon, as a matter of right.

This case deals with federal constitutional injuries sustained by this gravely injured Appellant, cognizable and actionable pursuit to 42 U.S.C. 1983.

**B. Course of Proceedings and Statements of Facts**

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On August 6, 2013, Appellant filed a complaint in the U.S. District Court of

Oregon for damages and injunctive relief under 42 U.S.C. 1983 against the

individually named Appellees: Kathleen Haley, JD; Warren Foote, JD; John Kroger,

JD; Nicole Krishnaswami, JD; Rick Barber, ALJ; Jim Peck, MD; Phillip Parshley, MD;

Joseph Thaler, MD; James Calvert, MD; Lisa Cornelius, DPM; Linda Johnson,MD;

Ralph Yates, DO; Roger McKimmy, MD; Donald Girard, MD; George Koval, MD;

Ramiro Gaitan; Douglas Kirkpatrick, MD; Lewis Neace,DO; Gary LeClair, MD; Keith

White, MD; Patricia Smith; Sarojini Budden, MD; Clifford Deveney, MD; Natalie

Johnson, MD; W. Kent Williamson III, MD; Clifford Mah, DPM; Shirin Sukumar,

MD; Michael Mastrangelo, Jr., MD; Angelo Turner; Gary Stafford; Jay Drum; Eric

Brown; Oregon Medical Board; State of Oregon; and 25 John Does and 25 Jane

Does.

Appellant stated allegations of civil and constitutional violations, and claims,

inflicted by the Appellees upon this Appellant, and sought relief from Appellees’

actions and conduct pursuant to 42 U.S.C. 1983, namely against Oregon Medical

Board (OMB), OMB members and employees named in the complaint (p.3, 4),and

against certain State and OMB investigators(p.5),State’s legal counselors for the

OMB (p.4, 5), and against State of Oregon (p.5, 6)for allowing unconstitutional

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and arbitrary statutes to be enforced by Appelleesagainst this Appellant, which

violate the sweeping Clause 1 of the Fourteenth Amendment; and against one

employee of the Oregon Administrative court Rick Barber.

On August 26, 2013 the Appellees appeared by their State employed Counsel

Marc Abrams not to file an answer to the complaint, but instead to file a motion

to dismiss or alternatively summary judgment.

On October 2, 2013, Appellant filed a reply to said Appellees’ Counsel.

On October 4, 2013, Appellees filed a Reply Memorandum to Appellees’

Counsel.

On November 26, 2013, Article III Judge filed the Opinion and final Order.

**V.**

**STANDARD OF REVIEW**

The Constitutionality of a statute is a question of law, reviewed *de novo* in this Court. United States of America v. Daniel Edward Chovan, No. 11-50107, Opinion, P. 7 (9th Cir. 2013); United States v. Perelman, 658 F.3d 1134, 1134-35 (9th Cir. 2011); United States v. Vongxay, 594 F.3d 1111, 1114 (9th Cir. 2010).

Whether a statute violates an Appellant’s constitutional right to Due Process is

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reviewed *de novo* in this Court. United States v. Hill, 279 F.3d 731, 736 (9th Cir. 2003). This Court of Appeals reviews *de novo* the District Court’s findings and determinations of law. United States v. McConney, 728 F.2d 1195, 1201 (9th Cir.) (*en banc*), cert. denied, 469 US 824 (1984); see, United States v. Silverman, 861 F.2d 571, 576 (9th Cir. 1988)(the appeals court should consider the matter anew, the same as if it had not been heard before, and no decision was previously rendered). As a general matter, constitutional issues are reviewed *de novo*. Berry v. Dept. of Soc. Services, 447 F.3d 642, 648 (9th Cir. 2006).

Whether the U.S. District Court in Oregon is bound by this Court’s rulings and those of the United States Supreme Court is reviewed *de novo* in this Court. Green v. United States, 630 F.3d 1245, 1248 (9th Cir. 2011)

Whether the Court below is bound to give effect to the Fourteenth Amendment Clause 1 which commands that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” is reviewed *de novo* in this Court. Green v. United States, 630 F.3d 1245, 1248 (9th Cir. 2011).

Whether the Court below is bound to give effect to the Fourteenth

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Amendment Clause 1 which commands that “No State shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” is reviewed *de novo* in this Court. Green v. United States, 630 F.3d 1245, 1248 (9th Cir. 2011)

The standard of review on **all issues** in this Court is ***de novo***. Green v. United States, 630 F.3d 1245, 1248 (9th Cir. 2011) (the U.S. district court’s dismissal is reviewed *de novo*. Subia v. Comm’r of Soc. Sec., 264 F.3d 899, 901 (9th Cir. 2001)

This Court has jurisdiction pursuant to 28 U.S.C. 1291 to review the district

court’s order dismissing the complaint for lack of subject matter jurisdiction. Klemm v. Astrue, 543 F.3d 1139, 1141 (9th Cir. 2008); Green v. United States, 630 F.3d 1245, 1248 (9th Cir. 2011).

**VI.**

**ARGUMENT**

1. **SUBJECT MATTER JURISDICTION**

Whether the Constitutional injuries inflicted by Appellees and sustained by this

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Appellant and his family violate the sweeping Clause 1 of the FourteenthAmendment which commands that “No State shall not make and enforce any law which shall abridge the privileges and immunities of the citizens of the United States” [this Appellant], namely O.R.S. Chapter 677 and OSB 267.

The constitutional injuries inflicted by Appellees upon this Appellant and his

family are prohibited by the sweeping Clause 1 of the Fourteenth Amendment of

the United States Constitution, and confirms that they are liable to this injured

Appellant pursuant to 42 U.S.C. 1983, regardless of any immunity invoked.

This Appellant, is a Citizen of the United States, born in the United States of

America. The Appellees, also are Citizens of the United States, presumably born

in the United States. Additionally, Appellees also are citizens of the State of

Oregon and employees of the State, some or most are also recipients of federal

funds for the operation of their adversary business against this and presumably

other physician victims.

This Court of Appeals ruled that a dismissal by the Court below is proper only

“where it appears beyond doubt that the Plaintiff (this Appellant) can prove no

set of facts in support of his claim which would entitle him to relief”. Roberts v.

Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). This Court further ordered that

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upon remand, if ”the jurisdictional facts are disputed, the parties should be

allowed to conduct discovery for the limited purpose of establishing jurisdictional

facts before the claim can be dismissed”. Siderman De Blake v. Republic of

Argentina, 965 F. 2d 699, 713 (9th Cir. 1992).

The Court below cited a convoluted “alien smuggling” case, that even the Ninth

Circuit Court had a problem dealing with its highly questionable facts. see, Rivas

v. Napolitano, 714 F.3d 1108 (9th Cir. 2013).

**First**, this Appellant was deprived of Due Process, by not being allowed to

develop and articulate his facts of constitutional injuries (although most attorneys are allowed routinely through the discovery process, which all the Federal Courts afford to those representing federal civil rights litigants). This aspect amounts to deprivation of this Appellant’s due process, which is a fundamental right of meaningful access to courts under the United States Constitution and the Supreme Court rulings. The Supreme Court explained the profound meaning of this Due Process guarantee, and stated that in observing the due process guarantee, the Court must look “not [to] particular forms of procedures, but [to] the very substance of individual rights to life, liberty, and property.” Hurtado v. California, 110 US 516, 528-529 (1884); Murray’s Lessee v. Hoboken Land &

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Improvement Company, 59 US 272, 276 (1856). There, Mr. Justice Curtis delivering the opinion of the court after showing that **due process of law must mean something more than the actual existing law of the land, for otherwise it would be no restraint upon legislative power.** This clearly indicates the arbitrariness and anti constitutional system of deprivation of physicians’ civil and federal constitutional interests without Due Process they have stealthily imbedded in the Oregon Revised Statutes (ORS), Chapter 677, and its supporting nefarious pylon Oregon Senate Bill 267.

The general question is whether these laws, upon which Appellees depend for enforcement of their agency dictates, deprive this (and other) physician(s) of the liberty interests in his profession, practice, license and his prospective property interests derived from practicing medicine, violate the Fourteenth Amendment of the Constitution either by abridging the privileges or immunities of this and other similarly situated citizens of the United States, or deprive this and many other physicians of their life, liberty, or property without due process of law?

This Appellant submits that defendants OMB employees, DOJ employees, and the State Administrative Department of Courts employee Rick Barber have

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reached too far and into the constitutionally protected zone of the Fourteenth Amendment that commands to the Appellees: **”No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without Due Process of law;….”.** XIV Amendment, Const.

This Appellant is at a loss as to what motivated these defendants to exact such an exorbitant price from this Appellant by invading the Constitutional prohibited zone and deprived him of his civil and Constitutional interests in his profession,which is property, his license, which is property, his practice, which is property, and his prospective liberty interests in his profession, which is also property.

The U.S. Supreme Court emphatically held that:

**“the fundamental rights to life, liberty, and the pursuit of**

**happiness**, considered as individual possessions, are secured

by those maxims of constitutional law which are the monuments

showing the victorious progress of the race in securing to men

the blessings of civilization under the reign of just and equal laws,

…for the very idea that one man may be compelled to hold his

life, or the means of living, or any material right essential to the

enjoyment of life, at the mere will of another, seems to be

intolerable **in any country where freedom prevails**, as being

the essence of slavery itself”. Yick Wo v. Hopkins, 118 US 356,

370 (1886).

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**Second**, this serious failure by the Court below to afford fundamental (and the most rudimentary) due process to this Appellant, namely an opportunity by subsequent proof to establish this Appellant’s claims, shows an entrenched bias against this citizen of the United States who appeared ***pro se*** before the Court below and, as in other *pro se* cases before, the court below routinely denied this particular right of Due Process, almost in the same way and manner, as did to him Oregon Medical Board (OMB). These grave constitutional errors need to be rectified by this high Court, as pertains to this Appellant, so to afford Due Process which this, and other injured citizens are entitled to, under the Constitution of the United States.

**Third**, this Appellant should have been allowed to proceed to the discovery process (that is fair Due Process), and if the court below still had doubts about the magnitude of the Appellant’s constitutional injuries, then this Appellant was entitled to appeal to this high Court any dismissal thereof.

In Calder v. Jones, 465 U.S. 783, 788 (1984), the Chief Justice of the Supreme Court, William H.Rehnquist, speaking for the High Court, held that:

**“The Due Proccess Clause permits personal jurisdiction**

**over a defendant in any State…”.**

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Appellees’ tortuous actions of deprivation were expressly aimed at this

Appellant, and Appellees knew that their unconstitutional tortuous actions would

have a devastating, ruinous economic impact on this Appellant and his family.

The Appellees also knew, or should have known, that the brunt of this Appellant’s

tortuous injuries would be felt by this Appellant for a long time, causing him

elevated emotional distress, mental and prolonged suffering in addition to the

unwarranted, excessive and arbitrary deprivations of the constitutional guarantees commanded by the Fourteenth Amendment with respect to Due Process, liberty interests in his license property, his medical profession, his medical practice, and the prospective property interests in his medical profession for which he was educated and thereby received a doctor of medicine degree with all the rights and privileges appertaining thereto (see, Appellant’s Diploma, **Exhibit-A**). Calder v. Jones, 465 US 783, 789,790 (1984); Davis v. Mills, 194 US 451, 457 (1904) (**“Constitution is ‘intended to preserve practical and substantial rights**, **not to maintain theories.’”**).

The High Court held that introduction of “special procedural protections”

afforded to defendants at the jurisdictional stage…in addition to the

constitutional protections (they already claimed) would amount to a “double

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counting”. Calder, 465 US, at 791 (emphasis added in parenthesis). This means

that this Appellant would be so heavily burdened and demeaned, or looked upon

with antipathy, that the only option left to the court below was to dismiss with

prejudice and forget all about the constitutional injuries described in the

complaint in 62 places. This, of course, is not fair justice, neither meaningful Due

Process which comports with the United State constitutional standards. see,

Solesbee v. Balkcom, 339 US 9, 16 (1950).

As its Fifth Amendment counterpart, the Fourteenth Amendment’s Clause 1 is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process ‘due process of law,’ by its mere will.”.\*\*\*”It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process ‘due process of law,’ by its mere will.”\*\*\* Murray’s Lessee v. Hoboken Land & Improvement Co., 59 US 272, 276, 284 (1856).

Furthermore, the Supreme Court clearly thought from its very beginning, that

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barring certain government actions regardless of the fairness of the procedures used to implement them, it serves to **prevent governmental power from being “used for purposes of oppression.**” Murray’s Lessee v. Hoboken Land & Improvement Co., 59 US 272, 277 (1856); Rochin v. California, 342 US 165 (1952).

The famous constitutional scholar, Thomas M. Cooley, in his influential work

A Treatise on the Constitutional Limitations Which Rest Upon the

LegislativePower of the States of the United States (1868), insisted that **due**

**process** was not satisfied by any duly enacted legislation. Rather, he argued that,

**due process** was not merely procedural, but it **limited legislative authority to**

**violate fundamental constitutional values**. [Consider this alongside O.R.S.

Chapter 677 and OSB 267]

As demonstrated above, denial of jurisdictional discovery, without a doubt, is a

protected Due Process violation of the Fourteenth Amendment, and a

fundamental right of access to courts denied by the Court below. United States v.

Hudson, 11 US 32, 33 (1812) **(“The judicial power of the United States…is to be**

**exercised by courts organized for the purpose…of the legislative power of the**

**Union.”**). This open discrimination and bias should be taken into consideration by

this supervisory Court when all the elements comprising the decision in this case

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are factored in.

The Congress had authorized this and other litigants federally injured by “every person” to file their Section 1983 with a Federal Court, regardless of immunity or other “special considerations” or legal bias, or any prior dealings with tortfeasors.

Furthermore, Appellant wrote his constitutional injuries in plain English which needs no special tutoring to comprehend, neither special jurisprudence for a fair and reasonable judge to take cognizance of this Appellant’s grievous injuries inflicted by defendants-Appellees upon this Appellant. The Court below it appears to make special accommodations to defendants-Appellees, all to this Appellant’s detriment. Moreover, the Court below was fairly appraised and knew well about the Appellees’ contrivances, masquerading as “administrative hearing” without informing or give meaningful opportunity to defend against their secret revocation process directed at this unsuspecting Appellant. Appellees’ administrative process was aimed at this Appellant’s constitutionally protected interests in property and liberty interests in his profession and in his license so that Appellant will be ambushed, surprised, and revoked permanently without Due Process of law. The conduct and actions of the Appellees violated this

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Appellant’s constitutional guarantees commanded in the Fourteenth Amendment specifically against the Appellees. The Appellees’ treatment of this Appellant is clearly unjust, unfair and disregards the Supreme Law of the land:

“Our Constitution mandates that level of legal process due to reflect respect enforced by law for the feeling of just treatment which has been evolved through centuries

of Anglo-American constitutional history and civilization.”

Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S.

123, 162 (1951) (Justice Frankfurter, concurring)

Moreover, Appellees knew, or should have known, that the State itself arbitrarily directed special legislation (ORS Chapter 677 and OSB 267) against this and other physicians without Due Process of law inflicting deprivation of liberty and property interests prohibited by the Fourteenth Amendment of the U.S. Constitution, that amounted to denial of constitutional Due Process to this and many other injured physicians covering a whole field of abuses.

It is perfectly clear from mandatory language of first section of the Fourteenth Amendment that its purpose was to place restraints upon the action of the States. A majority of the Supreme Court held that the object of the Fourteenth Amendment was to protect from hostile legislation of the States, the privileges and immunities of citizens of the United States. The U.S. Supreme Court, in the

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majority, held that:

“…if the states do not conform their laws to its (Fourteenth

Amendment) requirements, then by the fifth section of the

article of amendment Congress was authorized to enforce it

by suitable legislation.” In Re Slaughter-House Cases, 83 US

36, 81 (1872)(emphasis added in parenthesis).

To be sure, United States Congress enacted the Civil Rights Act of 1871, now codified in 42 U.S.C. 1983, that intended to put an end to the States’ abuses and the arbitrary laws, and now authorizes any person injured by the State officials acting “under color of any statute” to pursue “an action at law, suit in equity” for redress.

In this respect, the United States Supreme Court held that:

“The Fourteenth Amendment prohibits a State from depriving

any person of life, liberty or property without Due Process of

law, or from denying to any person the equal protection of

the laws… It simply furnishes an additional guarantee against

any encroachment by the States upon the fundamental rights

which belong to every citizen as a member of society.”

United States v. Cruikshank, 92 U.S. 542, 639 (1876).

This Appellant has been deprived in excess of $10,030,000.00, including the prospective income guarantees under Constitution. see, **Exhibit-B**. (Financial Affidavit).

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While State and Federal statutes must be directed at menacing evils in society, Appellees have utterly failed to support or controvert in the Court below that this Appellant’s medical practice for past 25 years amounted to menace upon the public safety. see, **Exhibit-C** (Curriculum Vitae of Eric A.Dover, M.D.)Far from it, Appellees acting under color of State law, used trickery, deceit, arbitrary and coercive conduct to abridge and brazenly destroy Appellant’s guarantees commanded by the Fourteenth Amendment that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;…” U.S. Const., Amendment XIV; Calder v. Bull, 3 US 386, 388 (1798)(“An act of the legislature…contrary to the first great principles of the social compact cannot be considered a rightful exercise of legislative authority”). This Appellant suggests that his Due Process right which derives its supremacy power, *inter alia*, from the Fourteenth Amendment, including the Amendment itself, that the right is otherwise subject to heavy-handed regulation by Appellees and are somehow immune from observing its supreme commands as they are governmental employees or public servants dressed with “immunity”. In other words, Appellant’s right to be free of arbitrary and ruinous governmental actions and conduct **(Exhibit-D** – Oregon Board Member Duties and Responsibilities)would be

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subject to heavy-handed regulation and constrictions that suit their immunity prerogatives, as they swell their retirement portfolios and this injured Appellant be driven with a blast and excessive stigma from the face of the medical community of this civilized nation. This kind of governmental conduct is contrary to the core Due Process Clause, even the entire Fourteenth Amendment’s commands that are written in “normal and ordinary” meaning at its adoption. United States v. Sprague, 282 US 716, 731 (1931); see also, Peruta, et al, v. County of San Diego, No. 10-56971 (9th Cir. 2014) (**“Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.”** (quoting District of Columbia v. Heller, 554 US 570, 634-635 (2008)) (A law that “under the pretence of regulating, amounts to a destruction of the right” would not pass constitutional muster “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights”); District of Columbia v. Heller, 554 US 570, 634-635 (2008).

Furthermore, Appellees, including the State itself, condoned, tolerated, aided and assisted with clear knowledge and legal power in the violation of the

Fourteenth Amendment’s imperative and absolute command, knowing well that

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their actions would be a violation of the Supreme Law of the land, which they swore to uphold **(Exhibit-E** – Examples of Office Oaths of Defendants) , and in doing so Appellees inflicted direct injury upon this Appellant’s civil and

constitutional interests, depriving him of his right to property interests in his

chosen profession, in his license of 25 years, in his prospective property interests; this, in addition to deprivation of his livelihood, contrary to the Fourteenth Amendment.

Clearly, as applied to this Appellant, the basis for their operation and enforcement upon which Appellees relied, namely ORS Chapter 677 and OSB 267, are arbitrary exercise of State power unwarrantably depriving Appellant of Due Process of which complained in the Court below, pursuant to his 42 U.S.C. 1983 action. The Supreme Court clearly stated that such conduct by the government would be **intolerable in any country where freedom prevails, as being the essence of slavery itself”.**  Yick Wo v. Hopkins, 118 US 356, 370 (1886).

The Court below sites a copyright case of infringement pursuant to 17 USC 501. In that case, the Court dismissed for lack of personal jurisdiction pursuant to FRCP 12(b)(2) and denied plaintiff request to conduct discovery. Plaintiff appealed to

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this Court. After a challenging analysis, this Court reversed, stating that he presented a *prima facie* case sufficient to survive a motion to dismiss. Mavrix Photo, Inc. v. Brand Technologies, Inc., 647 F.3d 1218 (9th Cir. 2011).

The Appellant’s case here, under consideration, as Mavrix’s, recited *prima facie* constitutional injuries clearly cognizable under 42 U.S.C. 1983. As demonstrated above, the Court below had a constitutional duty and also ample jurisdiction to give course to this action, and to afford Due Process in this case, including Appellant’s fundamental right to procedural due process, and further including his constitutional right to trial by a jury of his peers. The jury is the “constitutional tribunal provided for trying facts in courts of law.” Berry v. United States, 312 US 450, 453 (1941).

Appellant submitted statements of claims of constitutional injuries and arbitrary conduct totaling 62 instances in his complaint, and that he suffered significant harm at the hands of Appellees, thus satisfying the threshold requirement that [Appellant] be deprived of a right secured by the Constitution and laws. A majority of Supreme Court, speaking by Justice Rehnquist with Chief Justice Warren Burger joining, it was held that:

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“The Fourteenth Amendment…protects…against deprivations…

accomplished without Due Process of law. A reasonable division

of functions between law enforcement officers, committing

magistrates, and judicial officers – **all of whom may be potential**

**defendants in a 1983 action – is entirely consistent with Due**

**Process of law.”** Baker v. McCollan, 443 US 137, 145-146 (1979).

Defendant OMB’s decision to deprive this Appellant of his physician license, which in turn deprived him of his civil and constitutional rights and interests as he identified them in the complaint, would suffice for liability under 42 U.S.C. 1983. This federal statute is mandatorily applicable in this case against Appellees. This Appellant was entitled to his right to a jury trial on the factual issues of the case. The Court below denied this right. The denial prejudiced the Appellant and should be taken in consideration by this supervisory Court of Appeals.

Moreover, failure of the Court below to accommodate this injured Appellant’s reasonable request for jury trial on the facts that gives rise to due process violation for the deprivation of his physician license by Appellees should therefore be taken in consideration by this supervisory Court.

The famous Chief Justice John Marshall of the U.S. Supreme Court, speaking for the court, held that under Article III of the Constitution, Federal Courts can hear **“all cases in law and equity arising under this Constitution and the laws of the**

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**United States”**. U.S. Constitution, Art. III, Sec. 2.

The Supreme Court interpreted this clause broadly, finding that it allows federal courts to hear any case in which there is a federal ingredient. Osborn v. Bank of the United States, 22 US 738 (1824); United States v. Lee, 106 US 196 (1882) (“The constitutional provisions that no person shall be deprived of life, liberty, or property without Due Process of law, nor private property taken for public use without just compensation, **relate to those rights whose protection is peculiarly within the province of the judicial branch of the government.**”).

Furthermore, the high Court, by its Chief Justice held that:

“This clause [Art. III, Sec. 2], enables the judicial department

to receive jurisdiction to the full extent of the constitution,

laws, and treaties of the United States, when any question

respecting them shall assume such a form that the judicial

power is capable of acting on it.” Osborn, at 809-821.

The U.S. Supreme Court in Davis v. Gray, 83 US 203 (1872), reiterates the rule of Osborn v. United States Bank, so far as concerns the right to enjoin a State officer from executing a state law in conflict with the Constitution or a statute of the United States when such execution will violate the rights of the litigant. Ex Parte Young, 209 US 123, 151(1908). The U.S. Supreme Court teaches that:

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“The various authorities we have referred to furnish ample

justification for the assertion that individuals who, as officers

of the State, are clothed with some duty in regard to the

enforcement of the laws of the State, and who threaten and

are about to commence proceedings,…violating the Federal

Constitution, may be enjoined by a Federal Court of equity

from such action”. Ex Parte Young, at 155-156(1908); and,

see, Mugler v. Kansas, 123 US 623, 661 (1887)(…”[i]t does

not at all follow that every statute enacted ostensibly for

the promotion of [public health, morals or safety] is to be

accepted as a legitimate exertion of the police powers of

the state.”).

Consequently, theCourt below erred in dismissing this Appellant’s action, and this error prejudiced Appellant by compounding Appellant’s constitutional grievous injuries, and showing unmerited favor toward menacing defendants who disobeyed the Constitution of the United States by engaging in ruinous actions, under color of law severely prohibited by the imperative commands of the Fourteenth Amendment against this unsuspecting Appellant.

The Mavrix, Calder and other authorities indicated, clearly demonstrate that

the constitutional harms suffered by this Appellant are *bona fide* elements

cognizable under 42 U.S.C. 1983, the Fourteenth Amendment, and under the

highest Court’s case law. The Court below should not have been indifferent to

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such a grievous loss and harm this Appellant suffered at the hands of the

Appellees, especially the prime actors, who are the recipients of federal funds

presumably used against this injured Appellant’s civil and constitutional interests,

considering that this Appellant’s civil and constitutional interests claimed in the

complaint originate in an act of Congress (The Civil Rights Act of 1871 – codified

42 U.S.C. 1983), including in the United States Constitution itself (Fourth, Fifth and

Fourteenth Amendments).see, **Exhibit-F and G**. (Documents of Federal funding

received by Oregon Department of Justice).

This Ninth Circuit Court recently stated that the U.S. Supreme Court decision in

J. McIntyre Machinery, Ltd. v. Nicastro , 131 S.Ct. 2780 (2011) was cited, as a basis for specific jurisdiction in Mavrix, that this Court held that the **“…uncontroverted allegations in the Complaint must be taken as true.”** see, Schwartzenegger v. Fred Martin Motor Company, 374 F.3d. 797, 800 (9th Cir. 2004); and further, that **“…will resolve factual disputes in the Plaintiff’s favor”**.see,Pebble Beach Co. v. Caddy, 453 F.3d. 1151,1154 (9th Cir. 2006).

In sum, 42 U.S.C. 1983 authorizes jurisdiction over the Appellant’s person, the defendants’ persons, and Appellant’s constitutionally cognizable injuries pursuant

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to the supreme laws of the land cited as basis for supreme authority in the civil rights complaint.

Moreover, federal courts are not bound to give “full faith and credit” to Appellees’ purely administrative (forum generated) acts, masquerading as “judicial” acts and procured by the violation of and contrary to the Supreme Laws of our Nation, such as the Fourteenth Amendment, 42 U.S.C. 1983, Due Process Clause and many other supreme authorities cited in the complaint. Furthermore, Supreme Court held that denial of a fair and meaningful opportunity to be heard in defense of his liberty and property interests, before a jury, on the questions of fact alleged by the Appellant falls in the category of the Supreme Law of the land, without which the Appellees’ decision making body- **a non-judicial, agency forum** – may not enter a binding judgment imposing obligations on this Appellant or effecting interests in property. see, Pennoyer v. Neff, 95 US 714, 733 (1877)(“the several States are not…in every respect independent”, many of the rights and powers that originally belonged to them being now vested in the (national) government created by the Constitution.” Pennoyer, 95 US, at 722 (emphasis in

parenthesis added).

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This Appellant’s grievous losses and harm suffered at the hands of Appellees, as asserted in the complaint 62 times (see, **Exhibit-H** – Table of Constitutional Claims), is *prima facie* evidence that 42 U.S.C. 1983 applies, Baker v. McCollan, 443 US 137, 145-146 (1979), and the Fourteenth Amendment’s clauses cited herein and in the complaint, also apply. Therefore, this injured Appellant had standing to bring this Section 1983 action against Appellees, and the Federal court’s jurisdiction attached therein, regardless of the Appellees’ protests and their erected legal contrivances raised against the supreme authorities which this Appellant cited herein and in the complaint.

This injured Appellant has met the constitutional standing requirements by showing injury fairly traceable to the Appellees’ acts. As demonstrated herein, the U.S. District Court below had ample jurisdiction over this case. Failure to attend and give course to this action, pursuant to all of the foregoing supreme authorities cited is not a harmless error, because it involves rights guaranteed by the Constitution. This high Court of Appeals should take notice of it.

Deprivation of Appellant’s civil and constitutional interests by the Appellees, unquestionably involves other serious deprivations with a *domino effect*,

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imperiling Appellant’s prospective employment, interrupting Appellant’s decent income for his livelihood, impairing his family relationship and much more. These deprivations under color of law visited upon Appellant by the arbitrary actions of Appellees are injuries of constitutional magnitude, and therefore cognizable by our national courts of law, as mandated by Article III of the United States Constitution, the Fourteenth Amendment to the Constitution, and 42 U.S.C. 1983.

1. **SUPREME LAWS OF THE LAND, INCLUDING 42 U.S.C. 1983**

**APPLY TO APPELLEES; IMMUNITY CLAIMS TO**

**THE CONTRARY NOTWITHSTANDING**

1. **Appellees Are Not Above the Supreme Law of the Land, and their**

**actions and conduct must comport to the Constitutional standards**

The constitutional injuries inflicted by Appellees and sustained by this

Appellant and his family are cognizant under the sweeping clause of the Due

Process of the Fourteenth Amendment concerning Appellees enforcing ORS Chap.

677 and the Oregon Senate Bill (OSB) 267, and thus actionable pursuant to 42

U.S.C. 1983.

U.S. Supreme Court explained in Davis v. Gray, 83 US 203 (1872) that when a

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State law is in conflict with the Constitution or a statute of the United States, State employees are prohibited to enforce that State law (in our case here, ORS Chap. 677 and OSB 267) in violation of the civil and constitutional interests of this Appellant . Ex Parte Young, 209 US 123, 151 (1908); Osborn v. United States Bank, 22 US 738, 886 (1824)\*\*\*(“The judicial power extends only to cases arising - that is, actual, not potential cases. The framers of the Constitution knew better than to trust such a *quo minus* fiction in the hands of any government. I have never understood anyone to question the right of Congress to vest original jurisdiction in its inferior courts in cases coming properly within the description of “cases arising under the laws of the United States.” but surely it must first be ascertained in some proper mode that the cases are such as the Constitution describes.”). Also, the Supreme Court in the same case held that\*\*\*”The Eleventh Amendment of the Constitution has exempted a State from the suits of citizens of other States, or aliens;…”. Osborn, supra. at 847. **The said exemption clearly does not extend to citizens of the same State.** Surely, this high Court would have so stated; but the Supreme Court Justice did not state so.

This is evident, in the later decisions of the Supreme Court, in which Chief

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Justice Burger and his successor Chief Justice Rehnquist held that:

“However, since Ex Parte Young, 209 US 123 (1908), it has been

settled that the Eleventh Amendment provides no shield for a

State official confronted by a claim that he had deprived another

of a federal right under the color of State law. Ex Parte Young

teaches that when a State officer acts under a state law in a

manner violative of the Federal Constitution, he “comes into

conflict with the superior authority of that Constitution, and he

is in that case stripped of his official or representative character

and is subjected in his person to the consequences of his individual

conduct. The State has no power to impart to him any immunity

from responsibility to the supreme authority of the United States.”

Scheuer v. Rhodes, 416 US 232, 237 (1974).

Thus, it follows that Appellees’ immunity arguments (together with their own Counsel’s), presumably grounded on misreading of the Constitution’s text will not stand under intense light of prevailing common law of year 1824. The actual text of the Amendment XI, that was produced by the ratification process declares that only citizens of other States and aliens are prohibited to sue a State in which they do not actually reside (and its employees), whereas a lawsuit is permitted when a citizen is injured by his own State (and by its officials’ actions). In this constitutional context, the Judicial branch of the United States construes all laws, pursuant to its mandate granted by the U.S. Constitution. Marbury v. Madison, 5

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US 137, 177-178 (1803); Wayman v. Southard, 23 US 1 (1825); Ex Parte Young, 209 US 123,151 (1908).

In a democratically professing government, these abusive and arbitrary practices should not be allowed at all, let alone allowing any “absolute immunity” for these public servants-Appellees, which persist with their ruinous practices. In this respect, the U.S. Supreme Court declared and held long ago, that:

**“…arbitrary power, enforcing its edicts to the injury of the**

**persons and property of its subjects, is not law, whether**

**manifested as the decree of a personal monarch or of an**

**impersonal multitude.** And the limitations imposed by our

constitutional law upon the action of the governments, both

state and national, are essential to the preservation of public

and private rights, notwithstanding the representative character

of our political institutions. The enforcement of these limitations

by judicial process is the device of self-governing communities

to protect the rights of individuals and minorities, as well against

the power of numbers, as against the violence of public agents

transcending the limits of lawful authority, even when acting in

the name and wielding the force of the government.

”Hurtado v. California, 110 U.S. 516, 528, 532, 536 (1884).

The U.S. Supreme Court held that, a person…is guaranteed…the preservation

of a substantial right to redress by an effective procedure. Gibbes v. Zimmerman,

290 US 326, 332 (1933). Congress enacted the Civil Rights Act of 1871 (42 U.S.C.

1983) to, *inter alia*, deter violations of civil and constitutional rights guaranteed

under U.S. Constitution, and at the same time to preserve the substantial

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constitutional rights of all Americans. Federal legislative history and numerous

U.S. Supreme Court case law, as seen herein, confirms all of the foregoing.

The Due Process Clause of Fourteenth Amendment protects against arbitrary

deprivation of “property”, privileges or benefits that constitute property are

entitled to protection. Snowden v. Hughes, 321 US 1, 6, 15 (1944) (Three distinct

provisions of the Fourteenth Amendment guarantee rights of persons and

property. It declares that ‘No state shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.’)

(in order to give rise to a constitutional grievance a departure from a norm must

be rooted in design).

The U.S. Supreme Court teaches that when rights so fundamental are involved,

the federal courts must subject any legislation infringing on them to close

scrutiny.

The federal courts apply the strict scrutiny standard in two contexts, when a fundamental constitutional right is infringed, particularly those found in the Bill of Rights, and those the court has deemed a fundamental right protected by the Liberty or Due Process Clause of the Fourteenth Amendment. The Court must use strict scrutiny if one of these tests is met: (1) the impact is so “stark and dramatic” as to be unexplainable on non-racial grounds; (2) the historical background

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suggests intent; (3) the legislative and administrative records show intent. see, Arlington Heights v. Metropolitan Housing Corp., 429 US 252 (1977).

Inasmuch as the Appellees have cast a “Dread Scott” mentality on the entire legal landscape of the Fourteenth Amendment and continue to maintain that the right of Appellant to be free from the arbitrary and ruinous actions of government is and continue to be otherwise subject to heavy- handed regulation, their **actions** and **clear intentions** should be strictly scrutinized by this high Court. Very recent holdings of this Appellate Court make clear that: **“…the enshrinement of constitutional rights necessarily takes certain policy choices off the table…”**. Peruta, et al v. County of San Diego, No. 10-56971 (9th Cir. 2014). The same high Court also implied that the Fourteenth Amendment text, as its first twain the Second Amendment’s text, contains no such open-ended clause restricting its application, and we ought not to go looking for an unwritten one. Peruta, supra, (2014).

**2. Appellees’ Deprivation of Appellant of Civil and Constitutional**

**Interests in Violation of the Supreme Law of the Land is Fully**

**Cognizable Under 42 U.S.C. 1983 Imposing Mandatory Liability**

It is common knowledge in the high Courts of our nation, that administrative

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and executive proceedings are not judicial. McMillen v. Anderson, 95 US 37, 41 (1877). The core of these judicial requirements is notice and a hearing before an impartial tribunal. **Due process also requires an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.**

1. **The Requirements of Due Process Imposed by U.S. Constitution:**

The Supreme Court held that “[p]rocedural due process rules are meant to

protect persons…from the mistaken or unjustified deprivation of life, liberty, or

property.” Carey v. Piphus, 435 US 247, 259 (1978).

Moreover, “[P]rocedural due process rules are shaped by the risk of error

inherent in the truth-finding process as applied to the generality of cases.“

Mathews v. Eldridge, 424 US 319, 344 (1976).

The required elements of Due Process are those that “minimize substantively

unfair or mistaken deprivations” by enabling persons to contest the basis upon

which a State proposes to deprive them of protected interests.” Fuentes v.

Shevin, 407 US 67, 81 (1972). The Supreme Court has stressed the dignitary

importance of procedural rights, the worth of being able to defend one’s interests

even if one cannot change the result. Carey v. Piphus, 435 US 247, 266-267

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35(1978); Marshall v. Jerrico, Inc., 446 US 238, 242 (1980).

1. **Notice.** “An elementary and fundamental requirement of due process in

any proceeding which is to be accorded finality is notice reasonably

calculated, under all the circumstances, to appraise interested parties of

the pendency of the action and to afford them an opportunity to present

their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 US

306,314 (1950). In addition, notice must be sufficient to enable the

recipient to determine what is being proposed and what he must do to

prevent the deprivation of his interest. Goldberg v. Kelly, 397 US 254,

267-268(1970).

1. **Hearing.** “[S]ome form of hearing is required before an individual is

finally deprived of a property [or liberty] interest.” Mathews v. Eldridge,

424 US 319,333 (1976). Moreover, “parties whose rights are to be

affected are entitled to be heard.” Baldwin v. Hale, 68 US (1 Wall.) 223,

233 (1863).

**This right is a “basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his**

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**possessions.** The purpose of this requirement is not only to ensure

abstract fair play to the individual. Its purpose, more particularly, is to

protect his use and possession of property from arbitrary

encroachment…”. Fuentes v. Shevin, 407 US 67, 80-81 (1972); Joint Anti-

Fascist Refugee Committee v. McGrath, 341 US 123, 170-171 (1951)

(Justice Frankfurter concurring). Therefore, the notice of hearing and

the opportunity to be heard “must be granted **at a meaningful time and**

**in a meaningful manner**.” Armstrong v. Manzo, 380 US 545, 552 (1965).

1. **Impartial Tribunal.** As in all criminal and quasi-criminal cases an

impartial decision maker is an essential right in civil proceedings as well.

Tumey v. Ohio, 273 US 510 (1927); In Re Murchison, 349 US 133 (1955).

“The neutrality requirement helps to guarantee that life, liberty, or

property will not be taken on the basis of an erroneous or distorted

conception of the facts or the law…At the same time, it preserves both

the appearance and reality of fairness…by ensuring that no person will

be deprived of his interests in the absence of a proceeding in which he

may present his case with assurance that the arbiter is not predisposed

to find against him.” Marshall v. Jerrico, 446 US 238, 242 (1980);

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Schweiker v. McClure, 456 US 188, 195 (1982); Gibson v. Berryhill, 411

US 564 (1973). Cleveland Board of Education v. Loudermill, 470 US

532, 547-548 (1985) (“…what process is due in a particular case **is a**

**constitutional question that must be answered by the Court**”); see also,

Erwin Chemerinsky, Constitutional Law:Principles and Policies,450(1997).

As long as Appellees operate their governmental business with a heavy-handed manner against this and other physicians and aim to destroy Appellant’s **right to be free from their arbitrary and ruinous actions**, and have subjected this Appellant to heavy-handed, oppressive and arbitrary regulations their actions, conduct and their clear intentions should bestrictly scrutinized by this high Court. Recent holdings of this high Court correctly affirm that: **“…the enshrinement of constitutional rights necessarily takes certain policy choices off the table…”** Peruta, et al v. County of San Diego, No. 10-56971 (9th Cir. 2014);and **see, Chief Justice Burger’s historical analysis** in Richmond Newspapers, Inc. v. Virginia, 448 US 555, 569 (1980).

1. **Confrontation and Cross-Examination**. “In almost every setting where

[the] important decisions turn on questions of fact, due process requires

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an opportunity to confront and cross-examine adverse witnesses.”

Goldberg v. Kelly, 397 US 254, 269 (1970); ICC v. Louisville & Nashville

R.R., 227 US 88, 93-94 (1913). Where the “evidence consists of the

testimony of individuals whose memory might be faulty or who, in fact,

might be perjurers or persons motivated by malice, vindictiveness,

intolerance, prejudice, or jealously”, the individual’s right to show that it

is untrue depends on the rights of confrontation and cross-examination.

“This Court has been zealous to protect these rights from erosion. It has

spoken out not only in criminal cases,…but also in all types of cases

where administrative…actions were under scrutiny.” Greene v. McElroy,

360 US 474, 496-497 (1959); Mathews v. Eldridge, 424 US 319, 343-345

(1976).

**5. Discovery.** The U.S. Supreme Court has observed *in dictum* that “where

governmental action seriously injures an individual, and the

reasonableness of the action depends on fact findings, the evidence

used to prove the government’s case must be disclosed to the individual

so that he has an opportunity to show that it is untrue.” Greene v.

McElroy, 360 US 474, 496 (1959) (quoted in Goldberg v. Kelly, 397 US

254, 270 (1970).

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1. **Trial by Jury.** The U.S. Supreme Court held that a “heightened pleading

rule simply ‘prescribes the means of making an issue,’ and…, when ‘[t]he

issue [is] made as prescribed, the right of trial by jury accrues.’” Tellabs,

Inc. v. Makor Issues & Rights, Ltd., 551 US 308, 327, 328 (2007) (quoting

Fidelity & Deposit Co. of Md. v. United States, 187 US 315, 320 (1902)).

The U.S. Supreme Court held that:

“The words ‘due process of law’, were understandably intended

to convey the same meaning as the words ‘by the law of the land’,

in Magna Charta. Lord Coke, in his commentary on these words

(2 Inst. 50), says they mean due process of law. The Constitutions

which have been adopted by the several states before the federal

constitution following the language of the great charter more

closely, generally contained the words that lay the judgment of

his peers, as the law of the land.” Murray v. Hoboken Land & Imp.

Co., 59 US 272, 276 (1856); Reid v. Covert, 354 US 1, 10 **n. 13**

(1955);and **see, Chief Justice Burger’s historical analysis** in

Richmond Newspapers, Inc. v. Virginia, 448 US 555, 569 (1980).

During common law era, the highest Court held that “[I]t is beyond

doubt…that the provisions of the Constitution of the United States

securing the right of trial by jury, whether in civil or in criminal cases,

are applicable to the District of Columbia. Capital Traction Co. v. Hof,

174 US 1, 16 (1899) (At the time of the adoption of the Constitution, it

was a part of the system of trial by jury in civil cases that the court

might, in its discretion, set aside a verdict…Each party-the losing as well

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as the winning-has a right to the legitimate trial by jury, with all its

safeguards, as understood when the Constitution was adopted.”)

Thompson v. Utah, 170 US 343, 350 (1898).

The supreme command of the Constitution with respect to the right

of trial by jury in suits at common law apply to the United States and its

territories, and this question is foreclosed (no longer an open question).

Cohens v. Virginia, 6 Wheat. 264, 19 US 420 (1821). Trial by Jury implies

the right to public trial – as provided at common law and since

Appellees invoked the common law protections, Appellant is likewise so

entitled the same. Sources of our Liberties, 188 (R. Perry ed. 1959); B.

Schwartz, The Bill of Rights: A Documentary History, 129 (1971);

Richmond Newspapers, Inc. v. Virginia, 448 US 555, 567 (1980) (Chief

Justice W. Burger speaking for the Court).

In Curtis v. Loether, 415 US 189, 194 (1974), U.S. Supreme Court held:

“The Seventh Amendment does apply to actions enforcing statutory

rights and requires a jury trial upon demand if the statute creates legal

rights and remedies, enforceable in an action for damages in the

ordinary courts of law”. Feltner v. Columbia Pictures Television, 523 US

340 (1998) (jury trial required).

1. **Decision on the Record.** The exclusiveness of the record is

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fundamental even in administrative law processes. It must be shown not only that the agency used *ex parte* evidence, but that he or she as a victim of process was prejudiced thereby.

1. **Counsel.** “In a long line of cases that includes Powell v. Alabama, 287US

45 (1932), Johnson v. Zerbst, 304 US 458 (1938), Gideon v.

Wainwright, 372 US 335 (1963), this Court has recognized that the Sixth

Amendment right to counsel exists, and is needed, in order to protect

the fundamental right to a fair trial. The Constitution guarantees a fair

trial through the Due Process Clauses…”. Strickland v. Washington, 466

US 668, 685 (1984). \*\*\*”Thus, a fair trial is one in which evidence

subject to adversarial testing is presented to an impartial tribunal for

resolution of issues defined in advance of the proceeding”. \*\*\*”...the

Court has recognized that “the right to counsel is the right to the

effective assistance of counsel.” McMann v. Richardson, 397 US 759,

771, n.14 (1970). [The] government violates the right to effective

assistance when it interferes in certain ways with the ability of counsel

to make independent decisions about how to conduct the defense.”

The benchmark for judging any claim of ineffectiveness must be

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whether [the] counsel’s conduct so undermined the proper functioning

of…process that the trial cannot be relied on as having produced a just

result.” Stickland v. Washington, 466 US 668, 686 (1984); (The right to

counsel is the right to effective assistance of counsel. see, Strickland v.

Washington, 466 US 668, 686 (1984)…Missouri v. Frye, 10-444 (Sup. Ct.

2012)).

In light of the foregoing discussion on Due Process, Appellant hereby

respectfully submits that Appellees’ deprivation of Appellant’s Civil and

Constitutional interests in Violation of the Supreme Law of the Land is

fully cognizable under 42 USC 1983 which by its unquestionable terms

imposes mandatory liability on the governmental tortfeasors who acted

under color of law against and seriously injured this Appellant pursuant

to arbitrary and destructive State legislation. Hurtado v. California, 110

US 516, 528-529 (1884); Murray’s Lessee v. Hoboken Land &

Improvement Company, 59 US 272, 276 (1856); Ex Parte Siebold, 100 US

371 (1879); Reid v. Covert, 354 US 1, 7 (1955); Wolff v. McDonnell, 418

US 539, 558 (1974); (Thomas Cooley’s A Treatise on the Constitutional

Which Rest Upon the Legislative Power of the States of the United

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States (1868), written during the heights of common law jurisprudence,

authoritatively informs and confirms absolutely that Due Process was

not merely procedural but it limited legislative authority to violate

fundamental constitutional values. It follows that the defendant

tortfeasors are liable pursuant to 42 U.S.C. 1983-that is also the

supreme law of the land. Peruta, et al v. County of San Diego,

No. 10-56971 (9th Cir. 2014); Baker v. McCollan, 443 US 137, 145-146

(1979).The federal Courts were given power **to enforce constitutional**

**rights of citizens who are deprived of them**. United States v. Lee, 106

US 196 (1882).

**b. The Court below errs by maintaining “common law” immunity**

**for Appellees, but the Appellant’s Constitutional injuries claims**

**including Due Process are destroyed and vanished from common**

**law purview and decisive authority enshrined in the Constitution**

The Court below, on page 10 and 11 of its Order, states that “all…[defendants] …”are absolutely immune from suit under common law for…due process and equal protection violations…”. This erroneous conclusion cannot be based on common law, which clearly revered constitutional standards of that era, prior to and following the formation of the United States under its common law

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Constitution. United States v. Cruikshank, 92 US 542, 639 (1876); In Re Slaughter-

House Cases, 83 US 36, 55 (1872); Osborn v. United States Bank, 22 US 738, 886 (1824); Davis v. Gray, 83 US 203 (1872); Murray’s Lessee v. Hoboken Land & Improvement Co., 59 US 272, 276, 277, 284 (1856); Hurtado v. California, 110 US 516, 528-529 (1884); Yick Wo v. Hopkins, 118 US 356, 370 (1886); Ex Parte

Siebold, 100 US 371 (1879).

Prior to and during the formative years of our nation, the common law was the dominant jurisprudence of the land, and very consonant with the Constitution. see, 5 Writings of James Madison, p. 220.

Stellar jurists of that common law era, James Madison, Benjamin Franklin, John

Marshall, Wilson, Ellsworth, Jay, Iredell, Peters, Story, and many others have

spoken eloquently and with great passion about the common law-this remarkable law-that has protected and sustained them and the medical profession from the specter of the tyranny and ruin.

During those historical years of our nation operating largely under the authority of the common law, the medical as well as legal profession enjoyed the respect and dignity that the common law afforded to all professions.

The Supreme Court, speaking during the common law era, articulated the

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practice of medicine, and held that it cannot be arbitrarily taken from physicians

any more than their real or personal property:

“It is undoubtedly the right of every citizen of the United States

to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon

all persons of like age, sex , and condition. This right may in

many respects be considered as a distinguishing feature of our

republican institutions. Here, all vocations are open to everyone

on like conditions. All may be pursued as sources of livelihood,

some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the “estate”, acquired in them—that is, **the right to continue their prosecution — is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken.”** Dent v. West Virginia, 129 US 114, 121-122, 123 (1889).

If anyone in their professions was going to be deprived of his possession, it will

have to involve the judicial–not administrative or ministerial–power, to

accomplish such a result. The judicial power was following the common law rules

and precepts, and made clear that exclusion from a profession so valuable as that

of a physician was carefully made upon conviction of a crime or misdemeanor:

“…it is a right of which he can only be deprived by the

judgment of the court for moral or professional delinquency.”.

Their admission or their exclusion is not the exercise of a mere

ministerial power. It is the exercise of judicial power...”. Ex

Parte Garland, 71 US 333, 379 (1866); Hawker v. New York,

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170 US 189, 190 (1898) (defendant charged and convicted of the crime and felony of abortion and barred to practice medicine).

Exclusion from the medical profession was only for very serious reasons well established in law and facts. Dent v. West Virginia, 129 US 114, 121-122 (1889); Graves v. Minnesota, 272 US 425, 428 (1926) (failure to have a doctor’s diploma); Hayman v. Galveston, 273 US 414, 417 (1927) (physician not allowed to practice in a State hospital reserved for “medical instruction” only), Barsky v. Board of Regents of the University of the State of New York, 347 US 442, 452 (1954) (physician was suspended for 6 months—but not revoked—upon conviction for a “crime” in a foreign jurisdiction); Watson v. Maryland, 218 US 173, 174-175 (1910) (practicing medicine without being registered as a physician –but, afforded Due Process—was given a jury trial by and adjudication made under judicial power, not administrative or ministerial).

To be sure, at common law, the doctors’ licenses were not denied, revoked or suspended for every questionable matter a State official might perceive. It clearly appears that the judicial officers and the jury of their peers had the last word on their medical practice. Dent v. West Virginia, 129 US 114, 121-122 (1889).

Appellant submits that, if “[‘T]he right to life and to personal security is not

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only sacred in the estimation of the common law, but it is inalienable.’” Washington v. Glucksberg, 521 US 702, 714 (1997), then it follows that Appellant’s liberty interest in his property must also be inalienable and sacred – “in the estimation of the common law” that Appellees also claim for their absolute immunity. Amend. XIV, U.S. Const.

1. **THE CONSTITUTION’S EIGHT AMENDMENT GUARANTEES**

     The constitutional injuries inflicted by Appellees upon this Appellant and his

family are prohibited by the sweeping clause 1 of the Fourteenth Amendment of

the United States Constitution, and attaches no immunity to the Appellees from

obeying the supreme laws of the land, and thus confirms that they are liable  to this

gravely injured Appellant pursuant to 42 U.S.C. 1983. Does the Eight Amendment

prohibit Appellees’ infliction of excessive fines that amount to punishment in the

amount of $30,722.38 upon this Appellant?

The sweeping clause of the Eight Amendment of the Constitution of the United

States commands:

**“Excessive bail shall not be required, nor excessive fines**

**imposed, nor cruel and unusual punishments inflicted.”**

The U.S. Supreme Court has authoritatively established that the Bill of Rights

protections can apply to defendants in purely civil proceedings when government

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is the plaintiff. United States v. Halper, 490 US 435, 442, 448 (1989).

The Supreme Court further held that, “The labels affixed either to the

proceeding or to the relief imposed…**are not controlling and will not be allowed to defeat the applicable protections of federal constitutional law.”** Halper, supra, at 448.

The underlying case or event, before this high Court, is about deprivation of the property interests and punishment, without Due Process of Law rather than discipline—as those two terms are used indistinguishable (and misleadingly) in ORS Chap. 677 **which works ruinous deprivation of Appellant’s constitutional interests.**

The U.S. Supreme Court articulated this aspect in Halper, this way:

“…a civil sanction that cannot fairly be said solely to serve a

remedial purpose, but rather can only be explained as also

serving either retributive or deterrent purposes, is punishment,

as we have come to understand that term.” Halper, 490 US at 449.

The high Court further stated that:

“…our case law did not foreclose the possibility that in a

particular case a civil penalty…may be so extreme and so

divorced from the government’s damages and expenses as

to constitute punishment.” Halper, 490 US 435 at 442.

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Moreover, OMB Appellee’s self-styled “Bill of Costs” is in the nature of a

governmental fine being cleverly disguised as, and converted to, a declaration of

“costs”—the underlying case being one of punishment for a statutory infraction.

Austin v. United States, 509 US 602, 607, 609 (1993). Eight Amendment applies

“to all cases”, Austin, at p. 609.

The U.S. Supreme Court, speaking about the Eighth Amendment’s Clause,

clearly and authoritatively held that:

“…Excessive Fines Clause limits the governnment’s power to

extract payments whether in cash or in kind as punishment for

some offense.”\*\*\*”…the notion of punishment, as we

commonly understand it cuts across the division between the

civil and criminal law.” Austin, at p.610\*\*\*”The purpose of the

Eighth Amendment…was to limit the government’s power to

punish.” Austin, at 609, 610 (applying the Bill of Rights to

protections to civil contexts).

U.S. Supreme Court asserted that the **“specific guarantees in the Bill of Rights**

**have penumbras, formed by emanations from those guarantees that help give**

**them life and substance.”** Griswold v. Connecticut, 381 US 479, 484 (1965).

Appellant had a **right to be free from excessive and punitive financial burdens**

**imposed by government’s agency** defendant OMB, without Due Process of law.

In United States v. Bajakajian, 524 US 321, 334 (1998), the Supreme Court stated

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that:

“The touchstone of the constitutional inquiry under the

Excessive Fines Clause is the principle of proportionality:

The amount of the forfeiture must bear some relationship

to the gravity of the offense that is designed to punish.”

see, also, Atkins v. Virginia, 536 US 304, 311-312 (2002).

As applied to this injured Appellant, the OMB’s excessive “Bill of Costs”, not

only arises under suspecting machinations of the administrative process

implemented by the agency defendant OMB and its co-conspirators, but also

violates the implicit requirement of equality of treatment found within the Eighth

Amendment (keeping in mind that no constitutional Due Process was afforded

before depriving of liberty and property interests, as alluded above). Also, as

applied arbitrarily against Appellant, it served no justifying end to the

government agency defendant OMB. To be sure, the rich and affluent, and the

well connected senators and like governmental persons are spared from these

arbitrary, inhuman and disgusted treatments. U.S. Supreme Court teaches that

the Eighth Amendment **“…must draw its meaning from the evolving standards of**

decency that **mark the progress of a mature society.”** Trop v. Dulles, 356 US 86,

99, 100-101 (1958) (**“the principle of civilized treatment guaranteed by the**

**Eighth Amendment.”)** Deprivation of property and liberty interests without Due

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Process of Law is tantamount to “deprivation of citizenship”, viewed as

“discipline” in the armed forces. Trop v. Dulles 356 US, at 99-100. Supreme Court

teaches that “the Amendment was intended to preserve the basic concept…[of]

the dignity of man” by assuring its exercise “within the limits of civilized

standards” and prevent total destruction of the individual status in organized

society.” Trop, supra, at 101. The U.S. Supreme Court emphasized that:

“The Eighth Amendment is defined by the evolving standards

of decency that mark the progress of a maturing society.”

Trop, at 101; Kennedy v. Louisiana, 554 US 407 (2008) (“The

Amendment draw[s] its meaning from the evolving standards

of decency that mark the progress of a maturing society.”

Trop v. Dulles, 356 US 86, 101 (1958) (plurality opinion).

In this respect, Appellant was guaranteed civilized treatment by the sweeping

authority of the Eighth Amendment-as the high Court clearly emphasized in Trop,

and Kennedy, to be free from uncivilized treatment of extracting over $30,000.00

under “court costs” pretenses, intimidation and threats of arrest. see, **Exhibit-I**

(“Bill of Costs”)

**The Appellees, by such obnoxious conduct, under color of law, have lost any**

**good faith immunity that may have been available under other state theories.**

To be sure, the common law penalized judges for failure to comply with the

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Acts of Parliament. Habeas Corpus Act of 1679, 36 Eng. Rep. Jenkes’ Case, 518

(1676); Wheeler v. Nesbitt, 24 How. 544, 550 (1861) (no immunity for malicious

prosecutors); Dinsman v. Wilkes, 12 How. 390, 402 (1852) (no immunity for

wrongful indictment).

**The common law cases are many and make clear, that no one had immunity**

**(let alone “absolute immunity”) for doing a wrongful act, or disobeying an act**

**of the Parliament**, while employed as a public servant. Dinsman v. Wilkes, 12

How. 390, 402 (1852); Ex Parte Young, 209 US 123, 124 (1908) (**The attempt of a**

**State officer to enforce an unconstitutional statute is a proceeding without**

**authority of, and does not affect, the State in its sovereign or governmental**

**capacity, and is an illegal act, and the officer is stripped of his official character**

**and is subjected in his person to the consequences of his individual conduct.**

**The State has no power to impart to its officer immunity from responsibility to**

**the supreme authority of the United States**).

**Our American Constitution’s Amendments, indeed even the Acts of Congress**

**are enshrined as “the supreme law of the land”**—Article VI, U.S. Constitution—to

which all the Appellees public servants owe obedience, respect and loyalty. In

these, the Appellees have failed, and in consequence the mandatory liability

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imposed by the supreme law of the land, as it is codified, *inter alia*, in 42 U.S.C.

1983 attaches.

The U.S. Supreme Court authoritatively ruled that:

“The Eighth Amendment guarantees individuals the right not

to be subjected to excessive sanctions.” Miller v. Alabama,

567 US \_\_\_ (2012), 132 S. Ct. 2455; Roper v. Simmons, 543 US

551, 560 (2005).

The Supreme Court permitted federal appellate courts to overturn the

Appellees’ imposition of their “bill of costs”, which would amount to **a fine that is**

**“arbitrary, capricious, or so grossly excessive as to amount to a deprivation of**

**property without Due Process of law.”**  Water-Pierce Oil Co. v. Texas, 212 US 86,

111 (1909). Because Appellees’ deprivation of Appellant, under color of law—as

demonstrated in this brief—occurred without Due Process of law, and their hands

thus are tainted with inequitableness, the doctrine of clean hands should apply.

see, Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co., 324 US

806, 814 (1945).

Appellees’ failure to follow the constitutional standards, by giving written

notice beforehand to this unsuspecting Appellant , of impending constitutional

injuries they will inflict, under color of State law, is a violation of Due Process.

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Joint Anti-Fascist Refugee Committee v. McGrath, 341 US 123, 168 (1951);

Mathews v. Eldridge, 424 US 319, 332 (1976); Schware v. Board of Bar Exam. of

New Mexico, 353 US 232, 238-239 (1957) (“A State cannot exclude a person from

the practice of law or from any other occupation in a manner or for reasons that

contravene the Due Process or Equal Protection Clause of the Fourteenth

Amendment”); see, Heller, supra (A state may not burden a constitutional right

guaranteed to Appellant by Fourteenth Amendment) (emphasized).

1. **THE CONSTITUTION’S EQUAL PROTECTON GUARANTEES**

**ENSHRINED IN THE FOURTEENTH AMENDMENT, CLAUSE 1**

The constitutional injuries sustained by this Appellant and his family are

cognizant under the  Fourteenth Amendment to the United States Constitution and

actionable pursuant to 42 U.S.C. 1983.

Does the OMB’s use of unilateral and arbitrary medical scientific preferences in

its enforcement of the O.R.S. Chapter 677, relative to “discipline”, which includes

deprivation of a physician’s license, violate the Equal Protection Clause of the U.S.

Constitution’s Clause 1 of the Fourteenth Amendment?

On July 9, 1868, three fourths of the States ratified the Fourteenth Amendment,

and at that time, the Equal Protection of the Laws clause became part of the

supreme law of the land–as every law scholar in the United States knows.

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The Fourteenth Amendment of the United States Constitution, with respect to

the Equal Protection of the Laws guarantee, commands in relevant part, as

follows:

**\*\*\*”No State…shall deny to any person within its**

**jurisdiction the equal protection of the laws.”**

It is authoritatively established by the U.S. Supreme Court, that the Fourteenth

Amendment’s Equal Protection guarantees apply to administrative procedures. In

this respect, U.S. Supreme Court, in a recent case, Engquist v. Oregon Dept. of

Agriculture, 553 US 591 (2008), held that:

“It is well settled that the Equal Protection Clause protect[s]

persons, not groups,” Adarand Constructors, Inc. v. Pena, 515

US 200, 227 (1995) (emphasis omitted), and that the Clause’s

protections **apply to administrative as well as** legislative acts. see,

Raymond v. Chicago Union Traction Co., 207 US 20, 35-36 (1907)”.

\*\*\*”We have long held the view that there is a crucial difference,

with respect to constitutional analysis, between the government exercising “the power to regulate or license, as lawmaker,” and

the government acting “as proprietor, to manage [it’s] internal operation.” Cafeteria & Restaurant Workers v. McElroy, 367 US

886, 896 (1961).\*\*\*Thus, “the government as employer indeed

has far broader powers than does the government as sovereign.”.

Waters v. Churchill, 511 US 661, 671 (1994) (plurality opinion).

\*\*\*”Our equal protection jurisprudence has typically been

concerned with governmental classifications that “affect some

groups of citizens differently than others.”. McGowan v.

Maryland, 366 US 420, 425 (1961). see, Ross v. Moffitt, 417 US

600, 609 (1974) **(“’Equal Protection’…emphasizes disparity in**

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**treatment by a State** between classes of individuals whose

situations are arguably indistinguishable”.). see, **Exhibit-J**

(Oregon Senators speaking to OMB in October 2012).

Appellant submits that, defendant OMB, by its defendant leaders, largely

ignores any semblance of fair, just, non-oppressive, and non-arbitrary regulation

designed to comport with the established constitutional standards, and oppresses

and regulates its victims to oblivion; and, then, curiously argues that their

agency’s administrative actions and conduct are not subject to scrutiny by

neutral, impartial federal courts. The U.S. Supreme Court authoritatively held

that:

“To justify the State in interposing its authority in behalf of

the public, it must appear first that the interests of the public

generally, as distinguished from those of a particular class,

require such interference, and second that the means are

reasonably necessary for the accomplishment of the purpose,

and **not unduly oppressive upon individuals. The legislature**

**may not, under the guise of protecting the public interests,**

**arbitrarily interfere with private business or impose unusual**

**and unnecessary restrictions upon lawful occupations**; in other

words, its determination as to what is a proper exercise of its

police powers **is not final or conclusive, but is subject to the**

**supervision of the courts.”** Lawton v. Steele, 152 US 133, 137

(1894).

In an incredible historical event in our American jurisprudence recorded in a

floor SPEECH OF HON. J. A. BINGHAM, in The House of Representatives, in

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March 31,1871, The House having under consideration the Bill H. R. No. 320, to

enforce the provisions of the Fourteenth Amendment to the Constitution of the

United States, and for other purposes \*\*\*the Framer of the Fourteenth Amendment

text himself, affirmed that:

                  “The States exercise their judicial power under the Constitution,

                  and in subordination to the Constitution, and subject to the express              limitations of the Constitution, but for the purpose  of aiding its             enforcement, not of breaking it.” Congressional Globe, 42d Cong.,

                  1st Sess., March 31,1871.

The highly skilled and learned Federal legislator, on the occasion to consider

the Bill H.R. No. 320, “to enforce the provisions of the Fourteenth Amendment”,

spoke with great passion on the floor of the House about the Fourteenth

Amendment and the Equal Protection of the Laws.  Pressed by one of his

colleague congressman to explain the meaning of Equal Protection of the Laws

clause, he explained it thus:

                  “....it [the Clause] means that no State shall deny to any person

                  within its jurisdiction the equal protection of the Constitution of

                  the United States, as that Constitution is the supreme law of the

                  land, and of course, that no State should deny to any such person

                  any of the rights which it [the Constitution] guarantees to all men,

                  nor should any State deny to any such  person any right secured to

                  him either by the laws and treaties of the United States or of such

                  State.” [emphasis in bracket added] [Cong. Globe, 42d Sess., 1871]

                  See, also, The Adoption of the Fourteenth Amendment, page 232

                  (John Hopkins Press, 1908).

     The learned Federal legislator further asserted on that historical day of 1871,

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that the States [then in 1871][as also happens now in 2014], perpetrated unlawful

acts and conspiracies against the rights of the people:

                  “The people of the United States are entitled to have their

                rights guaranteed to them by the Constitution of the United

                  States, protected by national law. \*\*\*\*

                  “Our Fathers in the beginning set us the example of legislating

                  in advance.  \*\*\*\*

                  “Why not in advance provide against the denial of rights by States,

                  whether the denial be acts of omission or commission, as well as

                  against the unlawful acts of combinations and conspiracies against

                  the rights of the people?” [Cong. Globe, 42d Sess., March 31, 1871].

On that historical day of March 31, 1871, the learned Federal legislator made an

important revelation with respect to Liberty:

                  “Liberty secured by law is not license. Liberty, our own American

                  constitutional Liberty, is the right “to know, to argue, and to

                  utter freely according to conscience.”  It is the Liberty, to know

                  your duty and to do it. It is Liberty to work in an honest calling

                  and contribute by your toil in some sort to the support of yourself,

                  to the support of your fellow men, and to be secure in the enjoyment

                  of the fruits of your toil.” [Cong. Globe, 42d Sess., March 31, 1871]

      On that historical day of March 31, 1871, the learned Federal legislator made

an important revelation with respect to Justice:

                  “Justice, to establish which this Constitution was ordained, the

                  people themselves being witness, is to give to every man his due.

                  The Justice to be established by the Constitution is the attribute

                  of God, as to do Justice is the perpetual obligation of men and

                  nations. Let Justice for all, by the power and majesty of American

                  law be established for all, so that the poorest man in his house on

                  the frontiers of your widely extended domain, bearing with him

                  toward the setting sun the symbols of civilization, and laying in

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the wilderness the foundations of new commonwealths, may be

                  made as secure in his person and property as the prince in his

                  palace or the king on his throne.” [Cong. Globe, 42d Sess., 1871]

       To be sure, that historical day of March 31, 1871 is marked by the learned and

highly esteemed congressman John Bingham’s astounding declaratory statements

to the entire Nation on the House floor with incredible passion:

“I pray, Mr. Speaker, that the House will not misunderstand me

                  as placing the Government, either National or State, above the

                  Citizen.  I ask the House, when they come to deliberate upon                      this question, not to forget the imperishable words of our great

                  Declaration [of Independence], “All men are created equal and

                  endowed by their Creator with the rights of life and liberty. I ask               gentlemen not to forget those other words of the Declaration [of

Independence], that “to protect these rights” (not to confer them)

“governments are instituted among men.” I ask gentlemen further,

                  when they come to deliberate upon this question, not to forget the

                  words incorporated by its makers in the Constitution of our common     country, by which it is declared that, to establish justice and to

                  secure the blessings of liberty, “We, the people of the United States,

                do ordain this Constitution.” [Cong. Globe, 42d Sess., March

31,1871]

     The distinguished Federal legislator’s passionate speech reminisced Chief

Justice Marshall’s famous words uttered back in 1821 respecting the supremacy of

the U.S. Constitution confirmed before the highest Court, in Cohens v. Virginia:

           \*\*\* “The Constitution and laws of a State, so far as they are repugnant             to the Constitution and laws of the United States, are absolutely

                  void. These States are constituent part of the United States.” \*\*\*

                  Cohens v. Virginia, 19 US 264 (6 Wheat. pp 376-447) 1821.

     The distinguished and learned Federal legislator stated that the

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Fourteenth Amendment concludes as follows:

                  “The Congress shall have power, by appropriate legislation, to

                  enforce the provisions of this Article.” That is the grant of power.

                  It is full and complete. It contains the words, among others—“Nor

                  deny to any person within its jurisdiction the equal protection of

                  the laws.” [Cong. Globe, 42d Sess., March 31, 1871]

       The distinguished Federal legislator’s passionate speech on that historical day

of March, 1871, contained an astounding revelation about the equal protection

clause:

“These are the words of Magna Charta, ‘we will not deny to any man right or justice,’ the great words of England’s Constitution, out of which has come all that grand system of  English law and growth and development...”. [Cong. Globe, 42d Sess., March 31, 1871]

       The distinguished Federal legislator explained and made clear, once for all, that:

\*\*\* “The words of that [Fourteenth] Amendment, “No State shall

make or enforce any law which shall abridge the privileges

                  or immunities of citizens of the United States, are an express

                  prohibition upon every State of the Union, which may be

                  enforced under existing laws of Congress, and such other

                  laws for their better enforcement as Congress may make.”

                  [Cong. Globe, 42d Sess., March 31, 1871]

       It is interesting that this eminent Federal legislator, John Bingham, spoke of

the Equal Protection clause, four years earlier, in January 1867, in the following

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terms:

                  “No State may deny to any person the equal protection of

                  the laws, including all the limitations for personal protection

                  of every article and section of the Constitution...”. Congress

                  and the Fourteenth Amendment: Enforcing Liberty and Equality

                  in the States,  p. 79, Glidden, William (Lexington Books 2013).

       As demonstrated from the records of Congress, the Equal Protection of the

Laws clause of the Fourteenth Amendment to the United States Constitution is

binding on all Appellees, irrespective to their official qualification or classification. It follows, that Appellees’ immunity assertion under common law was never contemplated by the national Constitution, and therefore the mandatory liability imposed by supreme authority of 42 U.S.C. 1983 upon Appellees, as claimed by this injured Appellant in the complaint, stands. Furthermore, OMB Appellees, by their conduct under color of state law, offered protection and continued medical practice to other medical doctors similarly situated who committed serious breaches of medical practice safety and professional dereliction, while this Appellant, for much less serious alleged breaches of practice, largely unfounded, was targeted and selected for oppressive treatment and deprivation of civil and constitutional liberty interests in addition to deprivation of physician license and property interests accrued thereof, all without Due Process of Law, and in violation of the supreme and express commands of the Fourteenth Amendment; and in doing

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so, the Appellees violated the Equal Protection of the Laws clause of the Amendment. Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977) (professional discriminatory intent or purpose). see, **Exhibit-K.** (Affidavit Concerning Absence of Fourteenth Amendment Equal Protection Guarantees)

Furthermore, the Appellees have destroyed and ruined Appellant’s happiness of

being secured by the Constitution of the United States, and similarly have

destroyed and ruined Appellant’s blessings of liberty and of his family, and thus

perpetrated and inflicted upon this Appellant a terrible misfortune, in violation of

Due Process and the Equal Protection of the Laws as pleaded largely in the

complaint. Board of Regents v. Roth, 408 U.S. 564 (1972); Yick Wo v. Hopkins,

118 US 356 (1886).

       As demonstrated in the foregoing constitutional analysis, grounded in the

legislative history, the Court below erred in dismissing Appellant’s complaint.

This high Court should reverse with authoritative instructions, the unfortunate

errors of the district court below which in effect worked denial of Due Process and

Equal Protection of the Laws to the further constitutional injury of this emotionally

distressed Appellant. see, **Exhibit-L.** (Affidavit Concerning Stress Related

Disease as a Consequence of License Deprivation).

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**VII.**

**CONCLUSION**

In conclusion, this gravely injured Appellant submits that the court below erred

in dismissing Section 1983 action on the basis of “subject matter jurisdiction”, and

not allowing the case to proceed in accordance with Due Process standards

guaranteed by the Constitution and case law discussed in this brief.

In a recent landmark case, the U.S. Supreme Court authoritatively held that:

“[C]onstitutional rights are enshrined with the scope they

were understood to have when the people adopted them

…”. A law that “under the pretence of regulating, amounts

to a destruction of the right” would not pass constitutional

muster “[u]nder any of the standards of scrutiny that we

have applied to enumerated constitutional rights.” District

of Columbia v. Heller, 554 US 570, 634-635 (2008); Peruta v.

County of San Diego, **No. 10-56971 (9th Cir. 2014)**.

It now clearly appears that, “The constitutional provisions that no person shall

be deprived of life, liberty, or property without due process of law…relate to

those rights whose protection **is peculiarly within the province of the judicial**

**branch of the government.”** United States v. Lee, 106 US 196 (1882). The high

Court further ruled in this case that the federal Courts were given power **to**

**enforce constitutional rights of citizens who are deprived of them**.

United States v. Lee 106 US 196 (1882).

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**The Court below erred in dismissing this injured Appellant’s 42 U.S.C. 1983**

**action—at the behest of Appellees -- which involves matters of constitutional**

**guarantees and magnitude.**

In light of all of the foregoing, this severely injured, aggrieved and distressed

Appellant respectfully submits that the Court below erred in dismissing this

Appellant’s complaint which involved constitutional issues cognizable by all

federal courts—as plainly written by many supervisory federal court authorities,

including this high Court of Appeals for the Ninth Circuit. It follows, that the order

of the Court below should be reversed with instructions to allow the Due Process,

as authorized by the Constitution of the United States and expounded same in

this brief.

Dated: March 25, 2014.

Respectfully submitted:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ERIC A. DOVER, MD\*

**Doctor of Medicine**

**In pro per**

**\*This Appellant is a graduate from a prestigious medical university**

**In the United States. Copy of authoritative and lawful Doctor of**

**Medicine Diploma was provided to this honorable Court of Appeals**

**as Exhibit – A in the opening brief.**

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STATE OF OREGON )

) ss:

County of Clackamas)

Affidavit of Dr. Eric A. Dover

I hereby state that all the foregoing is my opening brief. All of the matters that I have addressed and dealt with are true and correct, as to the best of my knowledge and belief.

Subscribed and affirmed to before me: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

A Notary Public in and for the State of Oregon, County of Clackamas, on this

\_\_\_ day of March, 2014.

Notary Public Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission expires on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**STATEMENT OF RELATED CASES**

Appellant is not aware of any related cases pending in this Court within the

meaning of Circuit Rules.

**CERTIFICATION OF COMPLIANCE**

The undersigned certifies under FRAP 32 (FORMS OF BRIEFS, APPENDICES,

AND OTHER PAPERS), that the Opening Brief is proportionally spaced, has a type

of 14 points or more and pursuant to the word count feature of the word

processing program used by Appellant to prepare this Opening Brief contains

13,800 words.

Dated this 25th day of March 25, 2014.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eric A. Dover, M.D.

Pro Se

(Appellant)

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**RIGHTS RESERVED UNDER CONSTITUTION**

I, Eric A. Dover, M.D., hereby reserve all of my rights enumerated and

unalienable under the Constitution of the United States, including all rights under the Ninth Amendment and Tenth Amendment.

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eric A. Dover, M.D.

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