Eric A. Dover, MD

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

|  |  |  |
| --- | --- | --- |
| Eric A. Dover, MD,  Plaintiff, v.  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; Patricia Smith; Gary LeClair, MD; Sarojini Budden, MD; Clifford Deveney, MD; Keith White, MD; W. Kent Williamson III, MD; Nathalie Johnson, MD; Shirin Sukumar, MD; Clifford Mah, DPM; Michael Mastrangelo Jr., MD; Angelo Turner; Jay Drum; Gary Stafford; Eric Brown; Oregon Medical Board; State of Oregon, 25 John Does and 25 Jane Does,  Defendants, | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Civil No.: 3:13-cv-01360-BR  PLAINTIFF’S RESPONSE IN OPPOSITION TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT OF DEFENDANTS KATHLEEN HALEY, JD, *ET AL.* |

COMES NOW the Plaintiff, Eric A. Dover, MD, and hereby respectfully submits his response to defendants Kathleen Haley, JD, et al Motion to Dismiss or for Summary Judgment. For the reasons hereafter stated and following, the defendants’ motion to dismiss or for summary judgment should be denied.

**I.** **INTRODUCTION**

Counsel for defendants imagines that our federal courts function in the same way which the former totalitarian regime courts of Eastern Europe functioned without Due Process rights and devoid of Equal Protection of the laws, namely that any injured party by the police agencies of the dictator will be entitled to nothing.

Moreover, Counsel for defendants appears to possess a crystal ball by which he can delve into the Plaintiff’s subjective mind and would be capable to see how Plaintiff thinks about the enforcement abuses that defendants practice routinely against all doctors whom they target for revocation, namely that any injured party appearing before this Court should be ignored on mere legal theories. To this end, Counsel produces a document from defendants’ administrative court procured by numerous Constitutional violations and made possible the revocation on the basis of legislative enactment of SB 267 and ORS Chapter 667, as identified in the complaint (See Plaintiff’s Affidavit, **Exhibit-A**). The Fourteenth Amendment places a bar against defendants not to make or enforce any laws which shall abridge Plaintiff’s privileges and immunities, nor deny Plaintiff equal protection of the laws.

Curiously, Counsel neither argues, nor controverts Plaintiff’s allegations of legislative deprivation of his property, liberty, and liberty interests in his property.

Counsel for defendants submits his Exhibit-A, which is in fact *prima facie* evidence of Plaintiff’s deprivation of his property, privileges, and liberty interests in his property, but he does not advise this Court that those papers were procured by unconstitutional means, namely by violation of Due Process of law enshrined in the Fourteenth Amendment, or by the use of deceptive practices of procedural process which produce an unconstitutional result as to Plaintiff’s injury, or that Plaintiff’s unconstitutional deprivation was procured by the use of legislative enactments operating unconstitutional results, and the Plaintiff’s outrageous deprivation of his property and liberty interests in his property by defendants.

Defendants OMB and its senior members falsely represent to NPDB and this Court that Plaintiff’s medical practice may pose a danger to the public—and defendants are there to protect the public—or so their argument goes.

Defendants OMB and its senior members have not shown to this Court any actual breaches of public safety by Plaintiff in order to justify their actions of deprivation of Plaintiff’s medical privileges as a last resort. There must be more than mere potential for a breach of public safety to justify deprivation of Plaintiff’s liberty interest in property and his privileges accrued in his license and medical practice—which is property—protected by the Fourteenth Amendment and Fourth Amendment of the Constitution of the United States.

Defendants OMB and its senior members, including their Counsel, have not demonstrated to this Court a pattern of imminent harm to be visited upon the public by Plaintiff’s medical conduct or practice to justify a last resort action of deprivation of Plaintiff’s medical privileges accrued in his license and medical practice over 25 years protected by Fourteenth Amendment’s Due Process clause, neither did they certify the existence of the foregoing to this Court.

**II. STANDARD OF REVIEW**

**A. Plaintiff’s Response in Opposition to Defendants’ Motion to Dismiss**

**1. Treatment of Plaintiff’s *Pro Se* Pleadings**

Plaintiff respectfully asks this Court to take **judicial notice** of the following:

In reviewing a *Pro Se*’s complaint for dismissal, courts must read complaint less stringently than it would an attorney’s. Hughes v. Rowe, 449 US 5, 9-10 (1980) (*per curiam*); Haines v. Kerner, 404 US 519, 520-521(1972) (*per curiam*).

All U.S. Circuit Courts of Appeal treats *Pro Se* pleadings with leniency and less scrutiny than those of members of the bars. For example, appellate courts are under a duty “to examine the complaint to determine if the allegations provide for relief on any possible theory”. Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) [(quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974) [Toyota Motor Sales, U.S.A., Inc. v. Tabari](http://www.ca9.uscourts.gov/datastore/opinions/2010/07/08/07-55344.pdf), Appeal No. 07-55344 (9th Cir. July 8, 2010)]. Title 28, U.S. Code, Section 1654 provides as follows:

“In all courts of the United States the parties mat plead

and conduct their own causes personally.”

Pro se litigants are entitled to meaningful access to the courts. Wolff v. McDonnell, 418 US 539, 579-80 (1974); Farretta v. California, 422 US 806, 814-32 (1975). Concerning this fundamental right of access to courts, U.S. Supreme Court stated emphatically that:

“No person will be denied the opportunity to present

to the judiciary allegations concerning violations

of fundamental Constitutional rights.” Wolff, 418 US

539, 579-80 (1974).

Federal courts provide *pro se* litigants wide latitude when construing their pleadings and documents. When interpreting *pro se* documents, this Court should use **common sense** to determine what relief the party desires. S.E.C. v. Elliot, 953 F.2d 1560, 1582 (11th Cir. 1992); United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) [(Court has special obligation to construe *pro se* litigants’ pleadings liberally); Poling v. K. Hovnanian Enterprises, 99 F Supp.2d 502, 506-507(D.N.J. 2000)]. A judge cannot excessively scrutinize a *pro se* papers. Draper v. Coombs, 792 F.2d 915, 924 (1984).

**2. U.S. Supreme Court Rulings on Pro Se Litigants**

United States Supreme Court instructs all federal courts that *pro se* litigants’ documents should be construed liberally and held to less stringent standards than documents written by lawyers. For example, **if the court can reasonably read** the documents, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant’s unfamiliarity with rule requirements. Haines v. Kerner, 404 U.S. 519 (1972); Estelle v. Gamble, 429 U.S. 97, 106 (1976); Boag v. MacDougall, 454 U.S. 364 (1982); McDowell v. Delaware State Police, 88 F.3d. 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992) (holding *pro se* petition cannot be held to the same standard as pleadings drafted by lawyers); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999).

**3. The Right of Meaningful Access to Courts**

The right of access to the courts stems from the First Amendment’s right to petition the government. Cal. Motor Transp. Co. v Trucking Unlimited, 404 US 508, 513 (1972).

The importance of the right of access to courts has long been recognized by the Supreme Court of the United States. Chambers v. Baltimore & Ohio RR, 207 US 142, 148 (1907). The right of access to courts is fundamental:

“The right to sue and defend in the courts is

the alternative of force. In an organizedsociety,

it is the right conservative of all other rights, and

lies at the foundation of orderly government. It is

one of the highest and most essential privileges

of citizenship.” 207 US at 148 (1907).

In another similar ruling, a U.S. Court of Appeal recently stated that:

“The right of access to the courts is basic to our

system of government, and it is well established

today that it is one of the fundamental rights protected by the Constitution.” Ryland v. Shapiro, 708 F.2d. 967, 971 (5th Cir. 1983).

Defendants would prefer to tempt this Court to dismiss Plaintiff’s Constitutional injuries lodged with the Court because it would suit them—the requirements of FRCP 12 (A) notwithstanding:

**“A defendant MUST SERVE AN ANSWER:**

**(i) within 21 days after being served with the**

**summons and complaint;...”.**

Defendants brazenly ask this Court, in so many words and jargon, to constrict the Plaintiff’s fundamental right of meaningful access to this Court protected by the Constitution, and under their tyrannical view of the Constitution and laws they need not answer the complaint as FRCP 12 (A) requires, neither produce a reasonable basis upon which they depend.

**Complainant-Plaintiff is entitled to an Answer to his complaint.**

This Court should order defendants or their Counsel to answer the complaint or show cause as to why they are exempt from answering routine complaints of injured people appearing before this Court.

While Counsel for defendants concedes that Plaintiff has been injured by defendants, by producing *prima facie* evidence of the injury they visited upon Plaintiff, (see Counsel’s Declaration, Exhibit-A), they nonetheless wish this Court to turn blind eyes to the claims of this severely injured Plaintiff. Such is the gist of their stealthy machination advanced in disguise to this Court by the contrivance of their motions. However, the Supreme Court clearly established that “meaningful access” to the courts is the touchstone and a fundamental Constitutional guarantee. Chambers, 207 US 142, 148; Ryland, 708 F.2d. 967, 971.

**4. The Right to Court Notification**

As of this date, this Court has not notified Plaintiff of the obligations under FRCP 56 in regard to summary judgment. Because Rule 56 is not clear, the notice provided by the Court must be sufficiently clear to impress the consequences of failure to submit responsive materials and counter affidavits. Lewis v. Faulkner, 689 F.2d 100, 101-102 (7th Cir. 1982). This severely injured Plaintiff appearing *Pro Se* has a right to notification of the requirements of the summary judgment rules by this Court.

**IV. PLAINTIFF’S ARGUMENT**

Counsel for defendants started on a personal level with Plaintiff, instead of

focusing on the pleadings of Plaintiff which the federal rules requires him to plead that defendants “acted under color of law”, and secondly, that defendants deprived him of his Constitutional rights identified in the complaint (42 USC 1983; Parratt v Taylor, 451 US 527, 531-44 (1981); Baker v McCollan, 443 US 137, 145(1979).

**A. Defendants Mischaracterize Section 1983.**

Defendants’ Counsel, not only mischaracterizes Plaintiff’s right of cause of action in this Court, but also confuses the issues that Plaintiff brought before this Court in his complaint. Moreover, Counsel for defendants, Marc Abrams, incorrectly advises this Court that Monroe v. Pape, 365 U.S. 167 (1961) provides absolute immunity against Section 1983 claims, when in fact the U.S. Supreme Court stated beyond a doubt that Monroe Court misapprehended the meaning of the Civil Rights Act of 1871 Monell v. Dept. of Social Services of the City of New York, 436 U.S. 658, 659 (1978).

Counsel for defendants incorrectly advises this Court that Plaintiff is arguing in this Court some various “vague theories” in regards to deprivation of his physician license in the administrative court of defendants, and that based upon the Counsel’s interpretation of Plaintiff’s allegations in his complaint “Plaintiff’s claims should not go forward”, although Counsel for defendants concedes that this Plaintiff’s Constitutional claims are valid and true, but that Plaintiff’s “actions complained of are immune from judicial review”.

This Court should take judicial notice of the Counsel’s admission.

Furthermore, Counsel for defendants’ proposition that this severely injured Plaintiff be further deprived even of his most rudimentary procedural Due Process permitted by Constitution and law mirrors an embarrassing cartoon of defendants’ troubled jurisprudence practiced in their administrative court.

Counsel for defendants is arguing a Rooker-Feldman theory, immunity, FRCP 12 failure to state a claim, FRCP 55, and timeliness of the action.

Plaintiff submits here as **Exhibit-B**, an episode from 2006 wherein the Counsel for defendant, Marc Abrams, **tried in vain** to plead immunity with a State judge to no avail. Curiously, **Marc Abram’s boss at the time Attorney General Hardy Myers emphatically stated that he does not read the statute related to immunity in the way his employee, Marc Abrams, was reading it, meaning that immunity was not available to Marc Abrams while speeding to 90 mph behind a sheriff deputy on a highway.**

As it will be shown in the following, this severely injured Plaintiff is entitled to the relief prayed in the Complaint, and therefore, this Court should deny Counsel for and defendants’ Motion to Dismiss or for Summary Judgment.

**B.** **Answer to Complaint or** **Motion to Dismiss.**

Federal Rules of Civil Procedure 12(a)(1)(A) requires **“a party must serve an answer within 21 days after being served with a summons and complaint”**.

**Neither defendants, nor Counsel for defendants have submitted and**

**filed with this Court an answer to this Plaintiff’s complaint in more than 31 days. This Court should therefore, take judicial notice of this fact.**

Counsel for defendants urges this Court a myriad of things against this severely injured Plaintiff, including “summary judgment” even before this Plaintiff would have a fair opportunity to move forward with the case—which are an affront to our Constitution and would amount to fast-tracking and subverting Due Process to which the Plaintiff is entitled under the Fourteenth Amendment of the United States Constitution (42 USC 1983; Parratt v Taylor 451 US 527, 531-535 (1981); Baker v. McCollan 443 US 137, 145 (1979); Armstrong v. Manzo, 380 US 545, 552 (1965); Poe v. Ullman, 367 US 497, 541(1961); Washington v. Glucksberg, 521 US 702, 710, 720, 721 (1997).

The Congressional Debate of 1871, which gave rise to 42 U.S.C. 1983, clearly invalidated any immunity of State officials. Bradley v. Fisher, 80 U.S. 335 (1871); (see also Baker v. McCollan, 443 U.S. 137 (1979).

SUPPRESSION OF PROCESS BY OMB

OMB routinely suppresses both confessions and testimony offered by witnesses (that favor doctors). OMB makes no secret of the fact that they bring their own witnesses with a view to cast doctors in a false light before ALJ judge. These are both violations of Due Process Clause of the Fourteenth Amendment Brady v. Maryland, 373 U.S. 83, 86 (1963). One of OMB methods of procuring a decision of revocation of a physician is by routine use of a third party hearsay, in violation of Due Process Brady v. Maryland, 373 U.S. 83, 86 (1963).

During President Taft administration, his solicitor general, Frederick Lehman, stated “The United States wins its point whenever justice is done its citizens in the courts”. Brady v. Maryland, 373 U.S. 83, 86 (1963).

The U.S. Supreme Court, routinely begins in all Due Process cases analysis, “by examining our nation’s history, legal traditions and practices”. See, e.g., Casey, supra, at 849-850; Cruzan, supra, at 269-279; Moore v. East Cleveland, 431 U. S. 494, 503 (1977) (plurality opinion) (noting importance of "careful 'respect for the teachings of history' ") **[Washington et at v.Glucksberg et al,** 521 U.S. 702, 710 (1997)].

Furthermore, the U.S. Supreme Court emphatically states that: "The Due Process Clause guarantees more than

fair process, and the "liberty" it protects includes

more than the absence of physical restraint. Collins

v. Harker Heights, 503 U. S. 115, 125 (1992) (Due

Process Clause "protects individual liberty against

'certain government actions regardless of the fairness

of the procedures used to implement them' ") (quoting

720\*720 Daniels v. Williams, 474 U. S. 327, 331

(1986)). The Clause also provides heightened

protection against government interference with

certain fundamental rights and liberty interests.

Reno v. Flores, 507 U. S. 292, 301-302 (1993);

Casey, 505 U. S., at 851. **[Washington et at v.**

**Glucksberg et al,** 521 U.S. 702, 720 (1997)].

The U.S. Supreme Court matter of factly states that:

Our established method of substantive-due-

process analysis has two primary features: First,

we have regularly observed that the Due Process

Clause specially protects those fundamental

rights and liberties which are, objectively, 721\*721

"deeply rooted in this Nation's history and tradition,"

id., at 503 (plurality opinion); Snyder v. Massachusetts,

291 U. S. 97, 105 (1934) ("so rooted in the traditions

and conscience of our people as to be ranked as

fundamental"), and "implicit in the concept of

ordered liberty," such that "neither liberty nor

justice would exist if they were sacrificed,"

Palko v. Connecticut, 302 U. S. 319, 325, 326

(1937) **[Washington et al v.Glucksberg et al,**

521 U.S. 702, 721 (1997)].

The U.S. Supreme Court, discussing the Fourteenth Amendment, recently stated that:

“The Fourteenth Amendment ‘forbids the government

to infringe...’ ‘fundamental’ liberty interests at all, no

matter what process is provided, unless the infringement

is narrowly tailored to serve a compelling state interest.”

507 U.S. at 302 Washington v. Glucksberg, 521 U.S. at 721

Defendants disciplinary scheme depending upon O.R.S. chapter 677 fails the foregoing test, and their scheme is used capriciously and arbitrarily to silence opponent licensee of defendant’s abuse of official power, and is clearly not “narrowly tailored” (as a last resort measure) to serve a compelling state interest.

The Supreme Court further states that:

**“The guarantees of due process,...’have in this country**

**become bulwarks also against arbitrary legislation.’”**

Poe v. Ullman, 367 U.S. 497, 541 (1961)

(Planned Parenthood of Southeastern Pennsylvania et al. v. Casey, Governor of Pennsylvania, et al., 505 U.S. 833, 847 (1992)

United States Supreme Court consistently warns States to respect and give effect to the Fourteenth Amendment and the Due Process and Equal Protection that guarantees Plaintiff’s fundamental rights and liberty interests:

"The Fourteenth Amendment provides that

no State shall "deprive any person of life,

liberty, or property, without due process of

law." We have long recognized that the

Amendment's Due Process Clause, like its

Fifth Amendment counterpart, "guarantees

more than fair process." Washington v.

Glucksberg, 521 U. S. 702, 719 (1997). The

Clause also includes a substantive component

that "provides heightened protection against

government interference with certain fundamental

rights and liberty interests." Id., at 720; see also

Reno v. Flores, 507 U. S. 292,301-302 (1993).

Troxel et vir v. Granville, 530 U.S. 57, 65 (2000).

The U.S. Supreme Court emphatically states in its decisions, that:

The most familiar of the substantive liberties protected

by the Fourteenth Amendment are those recognized by

the Bill of Rights. We have held that the Due Process

Clause of the Fourteenth Amendment incorporates most

of the Bill of Rights against the States. See, e.g., Duncan v. Louisiana, 391 U.S. 145, 147-148 (1968). It is tempting,

as a means of curbing the discretion of federal judges, to

suppose that liberty encompasses no more than those

rights already guaranteed to the individual against federal interference by the express provisions of the first eight Amendments to the Constitution. See Adamson v. California,

332 U.S. 46, 68-92 (1947) (Black, J., dissenting). But of

course this Court has never accepted that view.

(Planned Parenthood of Southeastern Pennsylvania v. Casey, Governor of Pennsylvania, 505 U.S. 833, 847-848 (1992).

Moreover, the U.S. Supreme Court, speaking of the Fourteenth Amendment emphasized that:

“...the [14th Amendment] Clause has been understood to

contain a substantive component as well, one “barring

certain government actions regardless of the fairness of the procedures used to implement them.” Daniel v. Williams,

474 U.S. 327, 331 (1986). As Justice Brandeis (joined by

Justice Holmes) observed, “[d]espite arguments to the

contrary which had seemed to me persuasive, it is settled

that the due process clause of the Fourteenth Amendment

applies to matters of substantive law as well as to matters

of procedure. Thus all fundamental rights comprised within

the term liberty are protected by the Federal Constitution

from invasion by the States.” Whitney v. California, 274

U.S. 357, 373 (1927) (concurring opinion). “[T]he guarantees

of due process, though having their roots in Magna Carta’s

‘*per legem terrae’* and considered as procedural safeguards ‘against executive usurpation and tyranny’, have in this

country ‘become bulwarks also against arbitrary legislation.’” Poe v. Ullman, 367 U.S. 497, 541 (1961) (Harlan, J.,

dissenting from dismissal on jurisdictional grounds) (quoting Hurtado v. California, 110 U.S. 516, 532 (1884)(Planned Parenthood of Southeastern Pennsylvania v. Casey,

Governor of Pennsylvania, 505 U.S. 833, 847-848 (1992) [emphasis added in bracket].

In Monell v. New York Dept. of Health & Human Services, 436 U.S. 658, (1978) and California v. Trombetta, 467 U.S. 479 (1984) fairness of process is reviewed:

“The Supreme Court has long interpreted

this standard of fairness that defendant be

afforded a meaningful opportunity to

present a complete defense”. Monell, 436

U.S. at 660, 670 (1978).

United States Supreme Court consistently teaches that Due Process prevents State action which “offends some principles of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental”. Snyder v. Massachusetts [292 U.S. 97, 105 (1934).

During the Federal Convention of 1787, Mr. James Madison stated that:

“Experience had proven a tendency in our

Governments to throw all power into the

Legislative vortex. The executives of the States

are in general little more than Cyphers; the

Legislatures omnipotent.” (p. 35) (July 17, 1787)

The Records of the Federal Convention of 1787.

Moreover, the high Court also teaches that Due Process requires that “no change in ancient procedure can be made which disregards those fundamental principles to be ascertained from time to time by judicial action, which has relation to process of law and protect the Citizen in his private right, and guard him against the arbitrary action of government”. Twining v. New Jersey, 211 US 78,101 (1908)

A distinguished Founding Father in the Convention stated that:

“Wealth tends to corrupt the mind and to

nourish its love of power, and to stimulate

it to oppression. History proves this to be the

spirit of the opulent”. (p. 52) (Journal, July 19,

1787) (The Records of the Federal Convention

of 1787.

Defendants’ actions with the purpose and effect manifested in defendants’ action of deprivation of Plaintiff’s physician privileges and rights secured by the Fourteenth Amendment against total loss of his physician practice—which is property—and his physician license interest accrued for 25 years—which also is property—have demonstrated that defendants intended to deprive this Plaintiff permanently of his rights and privileges guaranteed by the Fourteenth Amendment. Section 1983 apprehends this kind of governmental action under color of State law and provides specific remedy to this injured Plaintiff. 42 USC 1983; Baker v. McCollan, 443 US 137,145 (1979); Ex Parte Virginia, 100 US 339, 347 (1879); Ex Parte Young, 209 US 123 (1908).

Therefore, defendants’ purposeful and effective deprivation of Plaintiff’s physician privileges and rights guaranteed by the Fourteenth Amendment is wholly actionable under 42 USC 1983 in this Court.

Counsel for defendants proposes a bias standard of review which would amount to subversion of Plaintiff’s Due Process and his right to meaningful access to court. Next, the standard on review proposed to this Court rests upon Counsel’s personal understanding as to what a “cognizable legal theory” is or is not, and secondly, whether or not his understanding of “a cognizable legal theory” entails or not, sufficient facts upon which such “cognizable legal theory” would depend, although he cites the Ninth Circuit Court’s ruling which favors the injured parties’ allegations to be read in good faith. Sun Savings & Loan Ass’n v. Dierdorff, 825 F.2d 187, 191 (9th Cir. 1987).

In the majority of Due Process cases, the U. S. Supreme Court ruled that inflicting the constitutional harm, by State officials, of which this Plaintiff complains, would violate the Due Process clause of the Fourteenth Amendment.

The high court clearly stated that,

“That provision was enacted to deter real abuses

by State officials in the exercise of governmental

powers”. Parratt v Taylor 451 US 527, 550

The high court also stated that,

“The Due Process clause imposes substantive limitations

on State action, and under proper circumstances,

these limitations may extend to intentional and malicious

deprivations of liberty and property,...”. 451 US 527, 553

The high court further stated that,

“The Constitution deals with substance, not shadows...

It intended that the rights of the citizen should be secure

against deprivation for past conduct by legislative enactment.

under and form, however disguised. If the inhibition can be

evaded by the form of enactment, its [inhibition] insertion in the fundamental law was

a vain and futile proceeding”. Cummins v. Missouri, 71 US

277, 325 (1866).

Moreover, the U.S. Supreme Court held that,

“Were Due Process merely a procedural safeguard,

it would fail to reach those situations where the

deprivation of life, liberty or property was accomplished

by legislation which by operating in the future could,

given even the fairest possible procedure in application to individuals. Nevertheless destroy the enjoyment of all

three”. Poe v. Ullman, 367 US 497, 541 (1961); Cummins v. Missouri, 71 US 277, 325 (1866).

Finally, the U.S. Supreme Court, since 1879, has held:

“We do not perceive how holding an office under

a State, and claiming to act for the State, can relieve

the holder from obligation to obey the Constitution

of the United States, or take away the power of

Congress to punish his disobedience.” 100 US 339,

338 (1879).

“The inhibition contained in the Fourteenth

Amendment means that no agency of the

State, or of the officers or agents by whom

her powers are exerted, shall deny to any

person within its jurisdiction the Equal

Protection of the laws. Whoever by virtue

of his public position under a State government

deprives another over life, liberty or property,

without Due Process of law, or denies, or takes

away the Equal Protection of the laws, violates

that inhibition; and as he acts in the name of and

for the State, and is clothed with her power, his

act is her act. Otherwise, the inhibition has no

meaning, and the State has clothed one of her

agents with power to annul or evade it”.

Ex Parte Virginia, 100 US 339, 347 (1879).

**C. Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment**

The Court reviews *de novo* the district judge’s decision to grant summary judgment, to determine whether there are any genuine issues of material fact and whether the district judge correctly applied the substantive law. Burlington Ins. Co. v. Oceanic Design & Constr., Inc., 383 F.3d 940, 944 (9th Cir. 2004); Barry A. Hazle, Jr. v. Mitch Crofoot, No. 11-15354 (9th Cir. 2013); Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th Cir. 2001).

The Ninth Circuit Court further states:

“**Summary judgment is appropriate only** **if,**

taking the evidence and all reasonable inferences

drawn therefrom in the light most favorable

to the non-moving party, there are no genuine

issues of material fact and the moving party

is entitled to judgment as a matter of law.”

[Furnance v. Sullivan, 705 F.3d 1021, 1026

(9th Cir. 2013); quoting Torres v. City of Madera,

648 F.3d 1119, 1123 (9th Cir. 2011); Jacqlyn

Smith v. Clark County School District, No.

11-17398 (9th Cir. 2013)].

Moreover, the Ninth Circuit Court recently stated that:

“The District Court...necessarily abuses its

discretion when it bases its decision on an

erroneous legal standard...”. Farris v. Seabrook,

677 F.3d 858,864 (9th Cir, 2012); Kathleen M.

AH Quin v. County of Kanai Dept. of Transportation,

No. 10-16000 (9th Cir. 2013) (Opn. by Judge Graber).

Furthermore, Fed. R. Civ. P. 56 (f) provides for deferral of consideration of summary judgment until discovery is complete.

**Discovery is necessary to establish the existence of material issues in dispute. FRCP 56 (b) allows a motion for summary judgment at any time until 30 days after the close of all discovery.**

OMB has a propensity to deny production of material evidence necessary to doctors going through the ALJ process, withholding critical evidence which denies plaintiff his rights of Due Process for the purposes of obtaining an unfair tactical advantage. To be sure, defendants would like to play this game in this Court.

FRCP 56 (c) sets forth the procedures for defendants asserting that a fact cannot be or is genuinely disputed; and, must support their assertion by citing to particular parts of materials in the records, including depositions, documents, affidavits or declarations, stipulations, admissions, interrogatory answers or other materials;...” (FRCP 56 (c)(1)(A).

For example, the Ninth Circuit Court recently ruled that **FRCP 12 does not authorize a district court to dismiss a claim for damages** on the basis it is precluded as a matter of law. Whittlestone Inc. v. Handi-Craft Co., No. 09-16353 (9th Cir. 2010) (“This Court reviews *de novo* a district court’s interpretation of the FRCP” California Scents v. Surco Prods., Inc., 406 F.3d 1102, 1105 (9th Cir, 2005)

The Ninth Circuit Court’s interpretation of FRCP begins with the relevant rule’s “plain meaning”. Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1111 (9th Cir. 2002).

The Plaintiff’s claims for Constitutional injuries or damages under Section 1983 are recoverable and even mandatory by the language of 42 USC 1983, because they pertain directly to the harm Plaintiff has alleged in his complaint.

The U.S. Supreme Court holdings on Section 1983 are compelling:

“A broad construction of Section 1983

is compelled by the statutory language

which speaks of deprivations of ‘any

rights, privileges or immunities secured

by the Constitution and laws’. It is also

supported by Section 1983’s legislative

history and by this Court’s decisions

which have rejected attempts to limit

the types of Constitutional rights that

are encompassed within the phrase

‘rights, privileges or immunities,’

see e.g. Lynch v. Household Finance Corp.,

405 US 538, 543, 545-546 (1972), Mark E.

Dennis v. Margaret L. Higgins, Director,

Nebraska Dept. of Motor Vehicles, et al,

498 US 439 (1991)”.

Defendants have not identified the portions of Plaintiff’s complaint upon which they depend for the controversy. Neither had any facts in dispute been identified by defendants, nor matters they controvert.

The Ninth Circuit Court, very recently stated emphatically:

“Section 1983 creates a federal remedy against

anyone who, under color of State law, deprives

‘any citizen of the United States...of any rights,

privileges or immunities secured by the Constitution

and laws.’” [(42 U.S.C. 1983; Planned Parenthood of

Arizona Inc., et al v. Tom Beltach, et al, No. 12-17558

& No. 13-15506, page 12 (9th Cir. 2013)].

Section 1983 thus authorizes lawsuits “to enforce individual rights under federal statutes”...not a federal statute may implicate. City of Rancho Palos Verdes v. Abrams, 544 US 113, 119-120 (2005) (quoting Gonzago Univ. v. Doe, 536 U.S. 273, 283 (2002).

Furthermore, in Conn. Nat’l Bank v. Germain, 503 US 249, 253-254 (1992), the U.S. Supreme Court has established a **cardinal** **canon** of statutory construction which says: Congress **“says in a statute what it means and means in a statute what it says there”** (emphasis in bold added).

“In determining the scope of a statute,” we

“give the words used their ordinary meaning,”

Moskal v. United States, 498 US 103, 108 (1990)

(internal quotation marks and citation omitted),

unless Congress has directed us to do otherwise.

(Planned Parenthood, supra, p. 17).

Moreover, the U.S. Supreme Court held that:

“If the intent of Congress is clear, that is the

end of the matter, for the Court, as well as the

agency, must give effect to the unambiguously

expressed intent of Congress.” Chevron, U.S.A.,

Inc., v. Natural Res. Def. Council, Inc., 467 US

837, 842-43 (1984).

Defendants attempt of the use of summary judgment amounts to a catch penny contrivance to take this Plaintiff into its toils and deprive him of a trial by jury. Moreover, Plaintiff objects and opposes both motion for summary judgment and of dismissal, because it would amount to a sanction of Rule 41 (b) dismissal.

It is clear from the matters in the record of this Court that there is a “case of controversy” under Article III of the Constitution, otherwise this Court would lack jurisdiction. Public Utilities Comm’n v. Federal Energy Regulatory Comm’n, 100 F.3d 1451, 1458 (9th Cir. 1996). Accordingly, this controversy must exist at all stages of process, including appellate review.

Based upon the foregoing, it is evident that defendants have not established basis for granting their summary judgment.

**D. Plaintiff’s Response and Objection in Opposition to Defendants’ Timeliness Argument**

Consistent with Wilson and Owens, federal, not State, law determines when a federal cause of action accrues. Wallace v. Kato, 549 US 384, 388 (2007).

The general common law principle is that a cause of action accrues when “the plaintiff knows or has reason to know of the injury.” Two Rivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999).

When a Section1983 claim accrues—when all of the elements of the claim are present—is a matter of federal law. Wallace, 549 US at 388.

Defendants’ administrative “disciplinary” scheme is manifestly unjust and riddled with intimidation, humiliation, emotional distress and is buttressed by legislative edicts that few doctors realize the magnitude of their Constitutional injuries until long after the Board registers its dreadful final documents, and even then, defendants conceal many things from their victims, only to be discovered personally during the course of an employment interview.

Defendants’ ruthless processes are buttressed by legislative edicts which provide heightened incentive to deprive more effectively their physician victims of their Constitutional rights and privileges. These are some of the kind of oppressive methods and practices which the Founding Fathers sought to proscribe by Constitutional edict (Fourth and Fifth Amendments) and later on their successors further buttressed by the Fourteenth Amendment.

Counsel for defendants, defendants included, not only misadvises this Court, but he also writes reminiscently to the tyrannical issues long discarded by the Founding Fathers during the Constitutional Convention of 1787.

The Founding Fathers sought to eliminate all forms of former governmental oppression in the newly formed Republic by the newly enacted and established Constitutional edicts.

On July 21, 1787, during the Constitutional Convention, two Founding Fathers—Madison and Wilson—stated that:

“Laws may be unjust, may be unwise, may

be dangerous, may be destructive; (p. 73)

and that “Experience in all the States had

evinced a powerful tendency in the Legislature

to absorb all power into its vortex. This was

the real source of danger to the American

Constitutions...” (p. 74). It [Legislature] was

perceived tyrannical (p. 52). (The Records

of the Federal Convention of 1787, by Max

Farrand, Vol. II. Yale University. Press).

The U.S. Supreme Court made it clear that:

“Section 1983, provides a federal cause of action,...”

“...the accrual date of a Section 1983 cause of action

is a question of federal law that is not resolved by

reference to State law.” Wallace v. Kato, 127 S. Ct.

1091, 1094, 1095 (2007).

Plaintiff is seeking to impose personal liability upon governmental defendants for their actions done under color of State law. Kentucky v. Graham, 473 US 159, 165 (1985). Defendants were aware, or should have known that their actions to deprive Plaintiff of his rights and privileges violated a clearly established federal right. A governmental employee defendant has no qualified immunity from compensatory damages liability brought under Section 1983. Owen v. City of Independence, 445 US 622 (1980).

Defendants’ motion to dismiss is tied to motion for summary judgment, and therefore both should be denied.

Fraudulent concealment of cause of action:

Defendants fraudulently and with ill will concealed the cause of action from this injured Plaintiff by directing him to file an appeal to the Oregon Court of Appeals, where defendants brag that all odds are stacked against Plaintiff (the appeal will be rigged, see **Exhibit-C**, document of defendants bragging about it).

In deciding whether officials performing a particular function are entitled to absolute immunity, courts generally look at the historical basis for the immunity in question. The history clearly shows that the original Chisholm decision has firmly

established that States were (and continue to be) subject to federal judicial review. Chisholm v. Georgia, 2 US (2 Dall.) 419, 474-477 (1793). Later decisions of the U.S. Supreme Court (e.g. Ex Parte Young, 209 US 123, 124, 157, 160, 167 (1908) will confirm the foregoing as originally pronounced by Supreme Court Justice Jay. About 90 years later, the Supreme Court maintains the same judicial rhythm as in the days of Justice Jay, holding that “The Fourteenth Amendment provides that no State ‘shall deprive any person of life, liberty, or property, without the due process of law”. We have long recognized that the Amendment’s Due Process Clause, like its Fifth Amendment counterpart, “guarantees more than fair process.” Washington v. Glucksberg, 521 US 702, 719 (1997).

**IV. CONCLUSION**

In light of all of the foregoing, Plaintiff opposes, and objects to, defendants’ motion to dismiss or for summary judgment. For the reasons and grounds set forth above, the motion to dismiss or for summary judgment should therefore be denied.

Dated this 2nd day of October, 2013.

Respectfully submitted:

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

ERIC A. DOVER, MD

*(In Propria Persona)*

Affidavit

STATE OF OREGON )

) ss:

County of Clackamas )  
  
 I, Eric A. Dover, MD, am the Plaintiff in the above entitled cause. I know that all the foregoing is true, correct and certain, as I verily believe.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 ERIC A. DOVER, MD

SUBSCRIBED and sworn to before me: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

a Notary Public in and for the State of Oregon, in the County of Multnomah, on this 2nd day of October, 2013.

Notary Public’s signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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