

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Western Division

KERNAN MANION, M.D.,

Plaintiff,

v.

NORTH CAROLINA MEDICAL BOARD;
NORTH CAROLINA PHYSICIANS
HEALTH PROGRAM, INC.; and NORTH
CAROLINA MEDICAL SOCIETY

and

WARREN PENDERGAST, M.D.; R.
DAVID HENDERSON; SCOTT G. KIRBY,
M.D.; PASCAL UDEKWU, M.D.; and
GREGORY W. TAYLOR, M.D., each in his
or her individual and official capacity;

and

CHERYL WALKER-McGILL, M.D.; PAUL
S. CAMNITZ, M.D.; WILLIAM A.
WALKER, M.D.; RALPH C. LOOMIS,
M.D.; JANICE E. HUFF, M.D.; and DAVID
D. COLLINS, M.D., each in his or her
individual capacity,

Defendants.

COMPLAINT AND DEMAND FOR JURY
TRIAL

NOW COMES Plaintiff, Kernan Manion, M.D., by and through his undersigned attorneys, Donald C. Davis and ACKERMAN BROWN, PLLC, and in support of his Complaint and Demand for Jury Trial against the above-captioned Defendants, pleads as follows:

NATURE OF THE ACTION

1. This action is necessary to protect the property and due process rights of Plaintiff Kernan Manion, M.D. (“Dr. Manion”) who has been, and continues to be, damaged due to the arbitrary and unlawful application of summary suspension procedures by the North Carolina Medical Board (“NCMB”) that result from intentionally and/or negligently abusive practices by the North Carolina Physicians Health Program, Inc. (“NCPHP”) and Warren Pendergast, M.D. (“Dr. Pendergast”), and other common law, statutory and constitutional violations more fully detailed herein.

JURISDICTION AND VENUE

2. This action arises under the United States Constitution and statutes enacted under the United States Constitution, particularly the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under certain laws of the United States, particularly: (1) the Civil Rights Act of 1871, Title 42 of the United States Code, §§ 1983 and 1985; and (2) the Americans with Disabilities Act of 1990, Title 42 of the United States Code, §§ 12101 et seq. This action also arises under the statutory and common law of North Carolina, including claims of medical negligence and intentional and negligent infliction of emotional distress.

3. The Statutes of Limitations for claims brought under each of the federal statutes as alleged herein relies upon the North Carolina statute of limitations for personal injury claims, which is three years from the date of accrual, which occurred either when Dr. Manion’s license was constructively suspended by Defendants on February 9, 2013 or on May 7, 2015 when Defendants refused to permit Dr. Manion to reinstate his license without submitting to an undue and unconstitutional process.

4. This Court has jurisdiction over the federal claims under the provisions of 28 U.S.C. § 1331 and 1343(a)(3) and pendent jurisdiction over state law claims that arise out of the nucleus of operative facts common to Plaintiff's federal claims pursuant to 28 U.S.C. § 1367.

5. This Court may also exercise jurisdiction over all claims as a result of diversity of the citizenship of the Parties under 28 U.S.C. § 1332. Plaintiff now resides in the Commonwealth of Massachusetts and Defendants are organized and existing in, or reside in, the State of North Carolina; the amount in controversy in this action exceeds \$75,000.00.

6. Venue is proper in this Court because each of the actions giving rise to Plaintiff's causes of action occurred or originated in this judicial district, most notably the constructive summary suspension of Dr. Manion's license to practice medicine in North Carolina.

7. Plaintiff brings suit against each and every Defendant in their individual and official capacities.

8. Each and all of the acts of the Defendants set forth were done by those Defendants under the color and pretense of the statutes, ordinances, regulations, laws, customs and usages of the State of North Carolina and the United States, and/or by virtue of and under the authority of the Defendants' relationship with agencies or instrumentalities of the State of North Carolina.

9. To the extent that the violations of federally-protected property and liberty rights herein alleged are present, continuing and/or prospective in nature, which is hereby and herein pleaded, the sovereign immunity of the State of North Carolina under the Eleventh Amendment does not bar such claims.

PARTIES

10. Dr. Manion is now a resident of the Commonwealth of Massachusetts and until February 9, 2013 was duly licensed in good standing to practice medicine in the State of North Carolina by NCMB. His license was constructively revoked on or about February 9, 2013 when he surrendered his license in lieu of promised summary suspension and/or revocation by NCMB for his refusal to participate in unwarranted and unnecessary treatment at the direction of NCMB, NCPHP and Dr. Pendergast.

11. Dr. Manion, at the time he was forced to suspend his North Carolina medical license, served as the director of a medical clinic providing acute mental health services to low-income minority individuals. Prior to his tenure at this clinic, Dr. Manion was previously engaged both in private practice and as an on-base psychiatrist treating members of the United States Navy and Marine Corps at Camp Lejeune in North Carolina.

12. NCMB is an agency of the State of North Carolina organized under Chapter 90 of the North Carolina General Statutes and is charged thereunder with the responsibility for licensing physicians and other medical professionals to practice in North Carolina and regulating such practice in the interest of the public health, safety and welfare. It was established April 15, 1859 by the North Carolina General Assembly “in order to properly regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina.”

13. NCMB is empowered “to require the examination of a licensee when the Board has reasonable cause to believe that the licensee’s fitness to practice skillfully and safely has been compromised by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material, or by reason of physical or mental abnormality.”

14. NCMB “has the ultimate authority to restrict, suspend, or revoke the license of a licensee who is unable to practice with reasonable skill and safety to patients.”

15. NCMB appoints some members of the Board of Directors of NCPHP.

16. NCMB has its principal offices at 1203 Front St., Raleigh, NC 27609.

17. The North Carolina Medical Society (“the Society”) is a statutorily incorporated North Carolina nonprofit professional medical association existing to preserve the integrity and vitality of the medical profession and to maintain and enhance high standards of professional competence and skill among its members, toward the end that the medical profession in North Carolina may provide safe, quality medical service to its patients.

18. The Society performs its functions through its subsidiary and affiliate organizations and appoints some members of the Board of Directors of NCPHP with the specific function of oversight of NCPHP’s activities and its compliance with the law.

19. The Society maintains its principal offices at 222 N Person St # 200, Raleigh, NC 27601.

20. NCPHP is a private not-for-profit 501(c)(3) educational charity organization organized and existing under Chapter 55A of the North Carolina General Statutes. NCPHP is an affiliate organization of the Society. NCPHP was created for the purpose of identifying impaired licensees, implementing appropriate measures to protect public health and safety, and rehabilitating impaired licensees. NCPHP receives part of its funding from the NCMB. A significant number of directors on NCPHP’s Board of Directors are appointed by NCMB and the Society.

21. NCPHP’s principal offices are located at 220 Horizon Dr., Suite 201, Raleigh, NC 27615.

22. The State of North Carolina, by and through NCMB, entered into a formal relationship with the Society and NCPHP by way of a Memorandum of Understanding dated November 30, 2009. That instrument states that NCMB is statutorily required to refer to NCPHP all licensees of the Board whose health and effectiveness have been significantly impaired by alcohol, drug addiction, or mental illness. The Memorandum also establishes that NCPHP will report its findings regarding a referred licensee to NCMB and that NCMB, with deference to NCPHP's report, will act with respect to a particular licensee, which may include suspension or revocation of the licensee's license to practice medicine.

23. Warren Pendergast, M.D. is the Chief Executive Officer of NCPHP and a resident of Wake County, North Carolina. At all times relevant, Dr. Pendergast's conduct occurred within the State of North Carolina. He also served as its Medical Director and was the principal clinical evaluator in Dr. Manion's case.

24. Dr. Pendergast is also a licensee of the NCMB. In his role as CEO (and formerly Medical Director) of NCPHP, he exerts substantial influence over the operations of NCPHP, and, under the guise of peer review, Dr. Pendergast is or was engaged in the diagnosis of licensees referred to NCPHP for evaluation and treatment. Dr. Pendergast is being sued in his individual and official capacity.

25. R. David Henderson was and is the Chief Executive Officer of NCMB and a resident of Wake County, North Carolina. Defendant Henderson is being sued in his individual and official capacity.

26. Scott G. Kirby, M.D. was and is the Chief Medical Officer of NCMB and a resident of Wake County, North Carolina. Defendant Kirby is being sued in his individual and official capacity.

27. Each of Defendants Cheryl Walker-McGill, M.D., Paul S. Camnitz, M.D., William A. Walker, M.D., Ralph C. Loomis, M.D., and Janice Huff, M.D. was, during some time relevant to this Complaint, President of the North Carolina Medical Board. Each committed the acts or omissions described herein in Wake County, North Carolina. Defendants Walker-McGill, Camnitz, Walker, Loomis and Huff are each sued in their individual capacity.

28. In addition to her role as President of NCMB, Defendant Janice E. Huff also served as the Chair of the Board of Directors of NCPHP during some times relevant to this Complaint. Defendant Huff is sued in her individual capacity.

29. Defendant Pascal Odekwu, M.D. currently serves as the President of the North Carolina Medical Board. Defendant Odekwu is sued in his individual and official capacity.

30. Defendant David D. Collins, M.D. served as the Chair of the Board of Directors of NCPHP during some times relevant to this Complaint. Defendant Collins is sued in his individual capacity.

31. Defendant Gregory W. Taylor, M.D. currently serves as the Chair of the Board of Directors of NCPHP. Defendant Taylor is sued in his individual and official capacity.

32. Defendants Walker-McGill, Walker, and Huff are residents of Mecklenburg County, North Carolina.

33. Defendant Camnitz is a resident of Pitt County, North Carolina.

34. Defendant Loomis is a resident of Buncombe County, North Carolina.

35. Defendant Udekwu is a resident of Wake County, North Carolina.

36. Defendant Collins is a resident of Forsyth County, North Carolina.

37. Defendant Taylor is a resident of Guilford County, North Carolina.

STATEMENT OF FACTS

38. Dr. Manion is an accomplished physician who, until forced to inactivate his North Carolina license, practiced in the discipline of psychiatry for approximately 30 years, beginning with a residency at the Tufts New England Medical Center in 1979, and having been Board-certified in Psychiatry since 1992.

39. Previously licensed in Louisiana, Colorado and Massachusetts, Dr. Manion has no record of prior discipline by any licensing entity in any state.

40. Dr. Manion has never been found liable for malpractice.

41. Despite the wrongful and flawed diagnoses of Dr. Manion conducted by NCPHP and its agents, Dr. Manion has never suffered from mental or emotional health issues and has demonstrated full mental capacity to safely and effectively treat patients according to standards of care for his profession.

42. Dr. Manion has never suffered from alcohol, drug or any other form of substance abuse.

43. At all relevant times herein, Dr. Manion was a resident of the State of North Carolina and practiced medicine in North Carolina. Dr. Manion was licensed by NCMB to practice medicine in North Carolina on April 17, 2002 and maintained an active license in good standing until February 9, 2013.

44. In September 2009, Dr. Manion was dismissed from his position as a civilian contracted clinical psychiatrist at the Deployment Health Center (“DHC”) at the Naval Hospital Camp Lejeune (“NHCL”) after having raised issues and concerns on base regarding what he alleged to be the deficient care of active duty service members with post-traumatic stress

disorder. Thereafter, Dr. Manion brought claims against his employers alleging retaliatory discharge.

33. Thereafter, Dr. Manion experienced a series of events that led him to believe that he was being harassed as a result of his civil action for retaliatory discharge.

34. As a result, in late 2010, and out of concern for his own well-being, Dr. Manion met confidentially with the Chief of the Wilmington, North Carolina Police to discuss a series of strange or unusual things that happened to him in the context of his federal litigation, which included noxious odors and low frequency noises in his home and place of business, and being followed. The Chief of Police encouraged him to speak with a police detective about his concerns. The only time in Dr. Manion's life that he has either experienced or reported these kinds of events was during the period of time concurrent with his employment-related litigation. Third parties have confirmed many of the facts and experiences Dr. Manion reported to the police.

35. Shortly thereafter, Dr. Manion received an email from an NCMB investigator communicating that the NCMB had received information from someone at the Wilmington Police Department expressing "concern" about Dr. Manion's mental health, and that it had opened an investigation on Dr. Manion.

36. NCMB did not provide Dr. Manion with a copy of the document that it referenced in opening the investigation against him and would not provide him with specifics about the "concerns" raised about him.

37. In order to dispense with any unfounded notions about the integrity of his mental health, Dr. Manion on his own initiative and with the encouragement of the NCMB investigator sought and obtained a comprehensive psychological evaluation from Edwin Carter, Ph.D., a

well-regarded, well-trained and competent psychologist. At the time of his evaluation by Dr. Carter, Dr. Manion did not personally know Dr. Carter nor had he contacted Dr. Carter at any point prior to seeking an evaluation from him.

38. Dr. Carter's evaluation, which was approximately eight hours in length and performed according to widely accepted practices in the field of psychology, concluded that Dr. Manion does not have a delusional disorder.

39. Specifically, Dr. Carter's report stated the following:

“[I]t is extremely common for individuals involved in whistleblowing activity to find that they are the subject of retaliatory activities, many of which extend far beyond those which are legally acceptable...[Dr. Manion's] perceptions ***fall far short of representing a delusional system***. His reality contact is within ***normal*** limits...As such, he is ***not properly diagnosed as having a paranoid disorder of any type***.” (Emphasis added).

It further stated:

“It is recommended that he [be][sic] ***permitted to retain his unrestricted medical license***. Dr. Manion...is ***sane*** and is able to isolate his own personal problems in such a way that they ***do not interfere with his ability to practice medicine***.” (Emphasis added).

41. Although it encouraged Dr. Manion to seek the evaluation, NCMB for no stated reason rejected Dr. Manion's proffer of the conclusions of Dr. Carter's psychological evaluation and, on its own motion on October 12, 2011, ordered Dr. Manion to undergo an “assessment” by NCPHP. Dr. Manion protested the need for such an assessment and stated that such an assessment was unnecessary in the light of sufficient evidence indicating his mental fitness. Though voicing protest, Dr. Manion nevertheless submitted to the NCMB-ordered assessment by NCPHP.

42. NCPHP's “assessment” of Dr. Manion on December 5, 2011 included a diagnostic evaluation by Dr. Pendergast and required Dr. Manion to produce a urine sample to test for drugs despite no evidence or reasonable suspicion of substance abuse.

43. Dr. Pendergast's diagnostic evaluation of Dr. Manion wrongly and negligently, or intentionally and with malice, concluded that Dr. Manion was mentally ill *and* that his mental illness preceded his employment at Camp Lejeune. In doing so, Dr. Pendergast relied upon only the unofficial information provided by the police officer, reviewed no clinical records, and failed to interview any collateral sources as is required in such evaluations.

44. While NCPHP has refused to disclose information or data to allow Dr. Manion to determine with certainty whether Dr. Pendergast's finding from his evaluation of Dr. Manion constituted a medical diagnosis, Dr. Manion has since formed a good faith belief that such evaluation was indeed a psychiatric diagnostic evaluation based upon his own expertise in the practice of psychiatry and in light of NCMB's decision to force him to inactivate his license on February 9, 2016.

45. Dr. Pendergast and NCPHP refused to provide Dr. Manion or his counsel with a report of the diagnostic evaluation Dr. Pendergast conducted and refused to show Dr. Manion the results of his lab tests.

46. On December 13, 2011, NCPHP and Dr. Pendergast recommended that Dr. Manion complete a comprehensive psychological assessment at either Acumen Assessments, Inc. ("Acumen") or the Professional Renewal Center ("PRC"), both out-of-state mental health evaluation and treatment facilities of uncertain provider and institutional licensure, and further recommended that Dr. Manion cease practicing medicine until after he had received such evaluation and any required treatment.

47. Upon information and belief, Acumen and PRC are NCPHP "preferred" evaluation and/or treatment centers that provided and/or continue to provide a financial benefit to

NCPHP and benefit financially from NCPHP referrals and being designated as “preferred” programs.

48. Preferred evaluation centers such as Acumen and PRC often charge the licensee thousands of dollars for multi-day assessments and require that a physician incur costs for travel and spend multiple days if not months away from his or her medical practice for such assessment and treatment, resulting not only in loss of earnings but interruption of a practitioner’s ability to provide continuity of ongoing specialized and life-dependent medical care.

49. These facilities’ findings, also virtually incontestable by the licensee, may result in recommendation for prolonged treatment at the same or other NCPHP “preferred” facility which will cost the licensee tens of thousands of dollars. If the licensee objects, he is automatically charged as non-complaint with NCPHP’s recommendations and subject to immediate license suspension or revocation by NCMB.

50. Upon information and belief, rampant fraud and abuse exists among physicians health programs (“PHPs”) in multiple states across the United States arising out of financial motives flowing from symbiotic relationships between PHPs and treatment centers. Currently, federal litigation is pending in the United States District Court for the Eastern District of Michigan (Case No. 2:15-cv-10337-AJT-RSW) alleging violations of multiple federal constitutional and statutory rights by both the medical licensing board and the physicians health program in Michigan. The Michigan medical board and PHP are similar in function to NCMB and NCPHP.

51. Furthermore, a report of the North Carolina State Auditor’s office in April 2014 found multiple conflicts of interest inherent in the relationships between NCPHP and its

preferred assessment and treatment centers and an alarming potential for abuse and violations of due process rights by NCPHP.

52. Dr. Manion was not referred for secondary evaluation and treatment by NCPHP because of a need for treatment. On the contrary, NCPHP and Dr. Pendergast abused the absolute deference and blind rubber-stamp NCMB gives NCPHP's recommendations by recommending Dr. Manion for additional assessment and treatment in order to, among other things, feed its network of preferred assessment and treatment centers.

53. NCMB's mandatory referral of Dr. Manion to NCPHP and Dr. Pendergast's diagnostic evaluation of Dr. Manion occurred at approximately the same time that Dr. Manion had entered into active litigation in federal court regarding retaliatory termination for whistleblowing while serving as a contracted psychiatrist.

54. Alternatively, even if there existed no financial motive for NCPHP's recommendation, NCMB and NCPHP intentionally ignored the weight of the evidence in forcing Dr. Manion into unnecessary evaluation and almost certain ensuing treatment based upon a flawed diagnostic assessment by NCPHP.

55. NCMB and NCPHP had demonstrated no reasonable basis to conclude that Dr. Manion was impaired and unfit to practice medicine, conclusions that forced him into a Kafkaesque nightmare that ultimately concluded in the loss of his license and his livelihood.

56. Dr. Manion, having proposed alternate in-state evaluation of his own choosing, refused to submit to the specified "preferred" out-of-state assessment and likely preordained treatment and monitoring as recommended by NCPHP and Dr. Pendergast and ordered by NCMB because such treatment and monitoring was wholly unnecessary and would constitute deprivation of Dr. Manion's right to liberty under the United States Constitution. NCMB and

NCPHP refused at this stage to provide Dr. Manion with their reports and rationale for ordering him to treatment.

57. On January 19, 2012, NCMB, based wholly on NCPHP's intentionally flawed diagnosis and recommendation, voted to order Dr. Manion to undergo evaluation and treatment at Acumen pursuant to N.C. Gen. Stat. 90-14(a)(5), and thereafter served upon Dr. Manion the order for assessment on February 27, 2012.

58. Dr. Manion thereafter unsuccessfully sought a restraining order against NCMB to prevent NCMB from taking action against him.

59. In the restraining order matter, NCMB's counsel filed a pleading intentionally containing HIPAA-protected health information regarding Dr. Manion (i.e., quotes from Dr. Pendergast's intentionally incorrect or negligent diagnosis of Dr. Manion) and NCMB posted this confidentiality-breaching pleading on the internet. After threats by Dr. Manion of further litigation over this unlawful disclosure, NCMB removed the protected health information from public view. At this time, the NCMB still had not brought any charges against Dr. Manion.

60. On October 10, 2012, NCMB brought formal charges against Dr. Manion alleging Dr. Manion's failure to cooperate with NCPHP and seeking discipline against Dr. Manion for the same.

61. Despite his position that one was not needed, Dr. Manion, against his will, submitted to yet another evaluation concerning his mental health. Dr. Manion traveled to New York to be evaluated Barry Rosenfeld, Ph.D ("Dr. Rosenfeld") and Paul Appelbaum, M.D. ("Dr. Appelbaum") in January 2013. Dr. Manion paid approximately \$5,000.00 for these assessments. However, NCMB required that Dr. Appelbaum have an *ex parte* conversation with Dr. Pendergast just prior to his evaluation of Dr. Manion. Upon information and belief, Dr.

Appelbaum's evaluation was not in fact independent and was tainted by bias intentionally injected into his evaluation by NCPHP and Dr. Pendergast. Dr. Appelbaum concluded that Dr. Manion was delusional based chiefly on information he received from Dr. Pendergast about Dr. Manion, and not based upon medical evidence or corroborative fact checking.

62. Brian Blankenship, counsel for NCMB and acting as its chief prosecutor, told Dr. Manion on February 7, 2013 that Dr. Manion must inactivate his own medical license by the very next day or the NCMB would issue a public sanction against him finding him incapable of practicing medicine with reasonable skill and safety by reason of mental illness. Blankenship further communicated to Dr. Manion that if he did not immediately resign his position as medical director at the clinic at which he was employed and discontinue any and all activities congruent with professional activities permissible under his medical license, NCMB would seek felony charges against Dr. Manion for practicing medicine without a license.

63. Specifically, Mr. Blankenship stated on February 7, 2013, "I fully expect, based on Dr. Appelbaum's assessment and the additional information, that Dr. Manion's license will be summarily suspended and that the Board will order that Dr. Manion be charged under N.C. Gen. Stat. 90-14(a)(5)."

64. NCMB offered to issue a "Letter of Concern," a nondisciplinary action, if Dr. Manion would agree to "voluntarily" inactivate his license.

65. Left with no real choice between irreparable damage to his professional and personal reputation and inactivation of his medical license, and acutely aware of the preceding breach of confidentiality committed without regard to law, Dr. Manion inactivated his medical license on February 9, 2013, believing that it was a foregone conclusion that if he did not, he

would be publicly sanctioned and that his license would be suspended and he would have virtually no chance of acquiring licensure in another state or for that matter any other country.

66. After Dr. Manion inactivated his license, NCMB dismissed all charges against Dr. Manion with prejudice.

67. Dr. Manion attempted to reactivate his North Carolina medical license beginning in December 2014. In this effort, he submitted the independent evaluation of Dr. Nicholas Stratas, an accomplished and respected psychiatrist in Raleigh, North Carolina who previously served as President of NCMB. Dr. Stratas concluded that Dr. Manion is not delusional, that he is fit to practice medicine, and that the prior evaluations conducted by or at the direction of NCPHP (by Drs. Rosenfeld, Appelbaum and Pendergast) are flawed and incorrect.

68. Regardless of this compelling evidence, which Dr. Manion submitted to NCMB demonstrating Dr. Manion's fitness to practice medicine, NCMB conveyed to Dr. Manion on May 7, 2015 that he must nevertheless submit to another NCPHP evaluation in order to hope to activate his license.

69. After Dr. Manion objected, NCMB demanded evaluation by an alternate NCMB "preferred" evaluator which Dr. Manion declined.

70. To date, Dr. Manion has not been able to practice medicine as a result of being forced to inactivate his North Carolina license. Because of the NCMB and NCPHP-referenced records posted publicly by NCMB, Dr. Manion would be unable to obtain medical licensure or renewal of his medical licensure in another state without undue burden or being subjected to further board-ordered PHP evaluations in those states whose evaluation would necessarily be contaminated by bias.

71. As a result of the unlawful deprivation of Dr. Manion's rights by all Defendants, Dr. Manion has suffered, among other things, severe economic loss, including loss of significant earnings and potential earnings, the burden and cost of defense against unwarranted action, traumatic loss of a former patient to suicide in the context of interruption of care caused by Defendants' actions, public humiliation, irreparable harm to professional reputation, and severe emotional distress, manifesting itself in sleeplessness, loss of appetite, irritability, anxiety, depression, and loss of enjoyment of life.

COUNT ONE (Procedural Due Process Deprivations of Plaintiff's Rights by all Defendants)

(United States Constitution, Amendments V and XIV; 42 U.S.C. § 1983)

72. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

73. On November 30, 2009, NCPHP entered into a Memorandum of Understanding with the State of North Carolina (by and through its agency NCMB) as the corporation responsible for administering the Board's physician assistance program. (Exhibit A).

74. Under the terms of the Memorandum, NCMB is required to refer licensees of NCMB whose health and effectiveness have been significantly impaired by alcohol, drug addiction, or mental illness.

75. The Memorandum further states "the Board shall have no authority or power to conduct, control, or influence the management of the business or affairs of the Program [NCPHP]."

76. The Memorandum also establishes that NCPHP will report its findings regarding a referred licensee to NCMB and that NCMB, with deference to NCPHP's report, will act with

respect to a particular licensee, which may include suspension or revocation of the licensee's license to practice medicine.

77. Specifically, Section 8 of the Memorandum states the following, in relevant part:

“NCPHP...shall...upon investigation and review, or upon receipt of a complaint or other information, report immediately to the Board detailed information about any **impaired** practitioner licensed by the Board if: (A) the **impaired** practitioner constitutes an **imminent danger** to the public or to himself; or (B) the **impaired** practitioner refuses to cooperate with the Program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or (C) it reasonably appears that there are other grounds for disciplinary action.”

This section presumes that the practitioner actually and reasonably be found to be impaired as a condition precedent to the obligations placed on the practitioner.

78. Section 9 of the Memorandum states the following:

“Upon receipt of the report from NCPHP pursuant to Section 8 of this Memorandum, upon **reasonable grounds established for believing the reported licensee to be an impaired practitioner**, and upon consultation with NCPHP, the Board shall act according to Article 1 of Chapter 90 of the General Statutes of North Carolina.”

79. The Memorandum defines “Impaired practitioner” as a “licensee of the Board who has one or more of the following: mental illness, chemical dependency, or cognitive problems.”

80. In the face of evidence demonstrating that Dr. Manion was not an impaired practitioner and in willful denial of well-documented protests citing procedural irregularities and unethical conduct of Dr. Pendergast and NCPHP, Defendants continued to assume him to be impaired and to treat him as if he were an impaired practitioner.

81. Other than vaguely referencing private concerns purportedly conveyed by a Wilmington police officer, the Defendants refused to specify the reasons for its decisions to force Dr. Manion into NCPHP evaluation and ensuing treatment and monitoring. Defendants refused to provide a copy of the NCPHP report or any specifics about it to Dr. Manion.

82. Later, after his rights had already been violated, Dr. Manion finally received a copy of the statements purportedly made by Wilmington Police Department Officer B.L. Overman on an unsigned document, not submitted in the form of a police report or in his official capacity as a police officer, and made only as a private citizen, a capacity in which he did not know Dr. Manion and in which capacity Dr. Manion did not enter into privileged communication with.

83. Upon information and belief, Officer Overman has no training in or ability to diagnose a mental health condition.

84. Dr. Manion, in response to these allegations and with explicit endorsement of the NCMB investigator, sought an independent evaluation from a licensed clinical psychologist and neuropsychologist who was previously unknown to him by the name of Edwin Carter, Ph.D.

85. Dr. Carter is trained in and highly qualified to identify mental illness and to determine its effect on an individual including professional impairment in the execution of one's duties.

86. Dr. Carter's evaluation, which was approximately eight hours in length and performed according to widely accepted practices in the field of psychology, concluded that Dr. Manion does not have a delusional disorder.

87. Specifically, Dr. Carter's report stated the following:

a. "[I]t is extremely common for individuals involved in whistleblowing activity to find that they are the subject of retaliatory activities, many of which extend far beyond those which are legally acceptable...[Dr. Manion's] perceptions ***fall far short of representing a delusional system***. His reality contact is within ***normal limits***...As such, he is ***not properly diagnosed as having a paranoid disorder of any type***."

b. "It is recommended that he [be][sic] ***permitted to retain his unrestricted medical license***. Dr. Manion...is ***sane*** and is able to isolate his own personal problems [related to his retaliatory discharge at Camp Lejeune] in such a way that they ***do not interfere with his ability to practice medicine***." (Emphasis added).

88. Dr. Carter provided his evaluation containing the above-quoted statements to Defendants.

89. Defendants refused to accept Dr. Carter's professional conclusions about Dr. Manion and instead treated and prosecuted Dr. Manion as an impaired practitioner in violation of his constitutional rights.

90. Defendants thereby forced Dr. Manion to seek medical evaluation and treatment that they did not reasonably believe he needed, without a hearing or any other due process to determine whether such mandated evaluation was necessary or legal.

91. As a result of Defendants' actions and NCMB's ratification of NCPHP's errant findings despite numerous objections raised by Dr. Manion, NCMB forced Dr. Manion to inactivate his license to practice medicine.

92. Because of the inactivation of Dr. Manion's license, he is unable to earn a living in his trade and has been forced to attempt to find other work. His earnings and income have been severely reduced and his professional reputation irreparably damaged by Defendants' constitutional violations.

93. As a direct or proximate cause of Defendants' actions, Dr. Manion's patients suffered from needless interruption of highly specialized life-dependent care. One such patient committed suicide after Dr. Manion was not permitted to continue to treat him.

94. The actions, inactions, and customs, policies and procedures created and followed by all Defendants as outlined above and as applied to Dr. Manion were and continue to be violations of clearly established statutory and constitutional rights, to wit: lack of pre-deprivation investigation, lack of pre-deprivation hearing, and refusal and/or failure to carefully evaluate the

facts of his case pursuant to North Carolina law and the Fifth and Fourteenth Amendments to the United States Constitution.

95. NCMB had and has a broad policy and/or practice of ratifying, without conducting any due diligence into their propriety or validity, NCPHP's recommendations; such policies and practices require summary suspension of a licensee's license, often without a hearing, in the event NCPHP reports a licensee's failure to cooperate or comply with its requirements *for any reason*.

96. NCPHP and NCMB are riddled with conflicts of interest. One is the fact that the continued funding and existence of NCPHP relies upon referrals of licensed practitioners (NCMB licensees) by NCPHP to "preferred" assessment and treatment centers. Another is that the medical literature suggests that a formal or informal competition exists among state medical licensing bodies and state PHPs across the United States concerning how many practitioners are disciplined and/or referred to treatment.

97. A scholarly article published in 2012 by experts in the ethics of PHPs has raised serious questions about the potential ethical conflicts and potential for abuse inherent in PHPs such as NCPHP. *See J.W. Boyd & J.R. Knight, Ethical and Managerial Considerations Regarding State Physician Health Programs*, 6 J. Addict Med. 243 (2012).

98. In response to concerns about NCPHP abuse by a number of physicians in North Carolina, the Office of the State Auditor of North Carolina conducted a more than year-long audit of the practices and policies of NCPHP, concluding in April 2014. The Auditor's April 2014 report found multiple alarming concerns related to the potential for abuse and conflicts of interest at NCPHP and concluded that there should be changes promptly made with respect to the

policies and practices surrounding NCPHP. Further, the report found that a follow-up audit would be warranted.

99. Defendant NCMB has a policy and/or practice of deferring to the recommendation of NCPHP in all instances such that any licensee who does not obediently submit to the recommendation of NCPHP, *whether justified or not*, may be summarily disciplined up to and including suspension and/or revocation of his medical license.

100. In furtherance of its overly broad and unconstitutional policy and/or practice, Defendants have failed to establish that Dr. Manion was and is an imminent threat to himself or to the public and denied him a meaningful opportunity to demonstrate that he was not. As stated above, Dr. Manion presented Defendants with ample and convincing evidence that he was and is fit to practice medicine and that he was and is not an impaired physician, and Defendants ignored and continue to ignore such evidence.

101. Defendants refused and refuse to consider any data or evidence beyond the recommendation of NCPHP with respect to Dr. Manion despite well-documented protest by Dr. Manion.

102. Defendants did not conduct a full and meaningful fact-finding investigation to serve as the basis for their recommendations and orders.

103. Defendants did not conduct a meaningful review to determine whether Dr. Manion was a danger to the public.

104. Defendants refused and continue to refuse to allow Dr. Manion a meaningful way to address and rebut the accusations brought against him.

105. Defendants frightened and threatened Dr. Manion with a certainty of suspension or revocation of his license, effectively depriving him of his right to a fair process, of the ability to defend against charges made against him, and of a full and impartial hearing.

106. Specifically, in February 2013, Defendants threatened Dr. Manion that it would issue a finding that Dr. Manion was incapable of practicing with reasonable skill and safety by reason of mental illness if he did not “voluntarily” inactivate his license and accept the NCMB’s Letter of Concern. Defendants further threatened Dr. Manion that they would pursue felony charges for practicing medicine without a license if he did not immediately resign his position as medical director at the clinic in which he was employed, an action which the NCMB was informed would again jeopardize delivery of needed care.

107. Given no other choice but to be publicly sanctioned and have his license suspended and/or revoked, Dr. Manion inactivated his North Carolina medical license on February 9, 2013.

108. Dr. Manion undertook another independent psychiatric evaluation by Nicholas Stratas, M.D. in North Carolina in early 2013, beginning the evaluation before but not concluding it until shortly after the constructive suspension of his license. Dr. Stratas is a highly acclaimed Board certified specialist in psychiatry and formerly served as the President of NCMB.

109. On September 10, 2013, Dr. Stratas issued the report of his psychiatric evaluation of Dr. Manion. The report concludes that Dr. Manion does not suffer from mental illness, that the evaluations performed by NCPHP and its “independent” evaluators Dr. Rosenfeld and Dr. Appelbaum were flawed, and that Drs. Rosenfeld, Appelbaum, Pendergast and NCPHP did not conduct third-point checking of the facts conveyed by Dr. Manion assumed by others to indicate

paranoia. Dr. Appelbaum relied upon NCPHP's evaluation, which was devoid of third-point fact checking and on Dr. Rosenfeld's analysis that did not conclude with any diagnosis.

110. Dr. Stratas stated that Dr. Manion's "display of anxiety, distress and intensity is proportionate to the circumstances which have occurred." He further concludes that these "symptoms do not intrude upon his clinical function."

111. Defendants received a copy of Dr. Stratas' evaluation report.

112. Despite the conclusions of both Dr. Carter and Dr. Stratas, Defendants refused to reinstate Dr. Manion's license in or about May 2015 and told Dr. Manion that he must submit to another NCPHP evaluation in order to reinstate his license. In so doing, Defendants continue to violate the due process rights of Dr. Manion.

113. Defendants acted and continue to act with malice and reckless disregard for the rights of Dr. Manion.

114. As a direct and proximate result of Defendants' violation, Dr. Manion has suffered and will continue to suffer damages in an amount to be proven at trial, but in excess of \$75,000.00, for economic damages including lost wages with interest thereon, moving and storage expenses, emotional distress, suffering (including that caused by the unwarranted interruption of high intensity specialized clinical care upon which his patients were life-dependent), inconvenience, mental anguish, loss of enjoyment of life, and for any attorney's fees, expert witness fees and costs incurred in the prosecution of this action.

COUNT TWO (Systemic and Continuing Due Process Deprivations by Defendants NCMB, NCPHP, NCMS, Pendergast, Henderson, Kirby, Udekwu and Taylor)
(United States Constitution, Amendments V and XIV; 42 U.S.C. § 1983)

115. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

116. Defendants engaged and continue to engage in various actions designed to increase the broad scope of activity and power of NCPHP beyond its statutory boundaries, increase its budget, and gain power by unilateral action or creating the aforementioned customs, practices, policies or procedures designed to arbitrarily increase the number of NCPHP participants and subject participants to extensive, unnecessary and involuntary assessment and treatment.

117. The policies and/or practices outlined above constitute deprivations under the Due Process Clause and the Fourteenth Amendment because licensees are subject to, among other things, job loss and suspension, forced medical care, wrongful diagnosis, public humiliation under presumed referral legitimacy, and deprivation of the fundamental right to due process under the unassailable threat of license suspension, *whether or not they are reasonably referred to NCPHP or appropriately diagnosed by NCPHP and whether or not they are actually impaired.*

118. These broadly-applied policies and practices draw unimpaired licensees into a Kafkaesque, “damned if you do, damned if you don’t” catch-22 scenario that almost always ends in severe and undeserved harm.

119. The alleged positive treatment outcomes reportedly achieved by a certain number of formerly actually impaired licensees as a result of Defendants’ policies and practices do not justify the severe violations of constitutional rights and other harm committed by and caused by the Defendants with respect to licensees who cannot be shown to require evaluation and treatment.

120. The policies, practices and conduct of Defendants deprives licensees wrongly accused of being impaired of their rights secured under the Fifth and Fourteenth Amendments

and of their procedural due process by being subjected to the aforementioned unconstitutional policies, procedures, and/or actions without – and in explicit defiance of – due process of law and under threat of summary suspension of their medical license.

121. The individual Defendants were and/or are personally involved in creating, implementing and carrying out the above-mentioned unconstitutional practices.

122. Defendants' actions and omissions amount to the corporate practice of medicine and are outside the standard of care.

123. Defendants also retain the authority to arbitrarily instruct licensees to refrain from practicing medicine and working while investigation and charges are pending or assessment and/or treatment are in process.

124. *Regardless of the reasons for doing so*, failure to follow NCPHP and Pendergast's recommendations effectively results in summary suspension or revocation of an accused's medical license with irreparable harm to one's career as well as immediate jeopardy to the licensee's patient population.

125. Blind ratification of NCPHP's recommendations by NCMB amounts to an improper delegation to NCPHP of the statutory authority of NCMB and NCMB's (and NCPHP's) duty to safeguard licensees' due process rights.

126. Defendants' policies and/or practices are without due process of law, and as ratified by NCMB without question, amount to a continuing violation of the guarantees of procedural due process under the United States Constitution.

127. Defendants have acted and continue to act with malice and reckless disregard for the rights of unimpaired licensees, including Dr. Manion.

COUNT THREE (Substantive Due Process Deprivations by All Defendants)
(United States Constitution, Amendments V and XIV; 42 U.S.C. § 1983)

128. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

129. Dr. Manion has a fundamental right to choose his own health care and a right to refuse coerced medical assessment and treatment, both of which involve a right to bodily integrity, invoking the right to liberty under the United States Constitution.

130. Dr. Manion also has a fundamental right to his property, that is, his medical license which is essential to his ability to practice his profession and earn a living.

131. The Fifth and Fourteenth Amendments forbid the government to infringe fundamental liberty and property rights, regardless of the process provided for doing so, unless the infringement is narrowly tailored to serve a compelling and clearly identified state interest.

132. All Defendants banded together through the use of the unconstitutional policies and/or practices described above for the purpose of discriminating against licensees (including Dr. Manion) who they regarded, nevertheless groundlessly, as disabled, in order to arbitrarily increase NCPHP participation and serve their own financial or other interests.

133. Under threat of suspension or revocation of his license, Defendants forced Dr. Manion into unwarranted and highly intrusive forensic "fitness for duty" medical evaluations without basis and against his consent and ultimately took his property (his medical license) and severely harmed the health and well-being of his patients without justification.

134. The forced medical care, denial of medical care, broad monitoring agreements, broad restrictions on practice, blanket policies and practices, and corporate practice of medicine are not narrowly tailored to achieve the compelling state interest in protecting the public from physicians with legitimately diagnosed mental health issues. The State of North Carolina does

not have a compelling interest in forcing particular medical care upon its citizens under the threat of deprivation of life, liberty and property without due process of law.

135. Dr. Manion was forced to choose between unnecessary forced medical care and retaining his license in good standing to practice medicine. The use of pre-deprivation procedures was not narrowly tailored to achieve a compelling state interest.

136. Defendants' arbitrary use of unsupervised investigation and summary suspension procedures, without investigation and regard to whether Dr. Manion was and is actually a threat to the public health, safety and welfare, was not narrowly tailored to serve a compelling state interest.

137. At all times relevant, Defendants were and are acting under the color of state law, namely those North Carolina statutes and regulations granting authority to NCPHP.

138. Defendants' policies, procedures, and actions that require forced medical care of licensees shock the conscience. Forced medical care decisions, especially those executed arbitrarily and without recourse by governmental bodies, are ethically repugnant and a profound departure from accepted professional judgment, practice, or standards of health care professionals.

139. Defendants' conduct amounts to direct violations of the fundamental right to bodily integrity and the right to choose one's own medical treatment.

140. Defendants' unlawful and coerced psychiatric evaluation of Dr. Manion amounts to an unlawful detention and thereby an unlawful deprivation of his liberty.

141. Defendants' constructive revocation of Dr. Manion's license through the means described herein is an unconstitutional deprivation of his property and his livelihood.

142. Defendants' continued insistence that Dr. Manion submit to unlawful evaluation by NCPHP and Defendants' refusal to reinstate Dr. Manion's license on that basis continue to deprive Dr. Manion of his property and his livelihood.

143. Defendants acted and continue to act with malice and reckless disregard for the rights of Dr. Manion.

144. As a direct and proximate result of Defendants' conduct, Dr. Manion was forced to, among other things, undergo unnecessary medical diagnostic evaluations on more than one occasion, incur personal expense in doing so, and endure unnecessary care, fear and humiliation.

145. As a direct and proximate result of Defendants' conduct, Dr. Manion suffered and continues to suffer from job loss, loss of earnings and earning potential, public humiliation, loss of professional reputation, forced medical care at his own expense, pain and suffering, profound psychological distress witnessing the disruption of specialized life-dependent care of his patients, severe emotional distress and attorney's fees and costs.

COUNT FOUR (Unreasonable Search and Seizure by all Defendants)
(United States Constitution, Amendments IV and XIV; 42 U.S.C. § 1983)

138. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

139. At all times relevant, Dr. Manion had a fundamental right to be free from unreasonable and unwarranted search of his person and seizure of his property by state actors.

140. Defendants unlawfully subjected Dr. Manion to unlawful search of his person by forcing him to submit to unwarranted invasive deeply personal psychological and medical evaluation and drug testing including collection of a urine sample, for which it lacked a reasonable basis to do so. It further did so in the presence of documentation clearly

demonstrating the absence of mental illness or any basis for regulatory concern about practice capability.

141. The compulsory psychiatric evaluation performed by NCPHP is highly invasive and represents a form of civil commitment. Under North Carolina law, to force a patient into civil commitment, there must be a demonstrable and immediate threat that the patient will harm himself, others or property.

142. The medical evidence that was available to Defendants prior to their decision to force Dr. Manion into further psychiatric evaluation controverted and rendered unreasonable and malicious the Defendants' conclusions and decisions.

143. Defendants forced Dr. Manion to submit to medical care under threat of losing his license to practice medicine and his livelihood.

144. At all times relevant, Defendants were acting under the color of state law.

145. Defendants acted and continue to act with malice and disregard for the rights of Dr. Manion.

146. Defendants' conduct amounts to direct violations of the constitutionally guaranteed right to liberty and to be free from unreasonable search and seizure.

147. As a direct and proximate result of Defendants' conduct, Dr. Manion was forced to, among other things, undergo unnecessary and invasive medical and psychiatric "fitness for duty" diagnostic evaluations on more than one occasion, incur personal expense in doing so, and endure unnecessary care, fear and humiliation.

148. As a direct and proximate result of Defendants' conduct, Dr. Manion suffered job loss, loss of earnings and earning potential, public humiliation, loss of professional reputation, forced medical care at his own expense, pain and suffering, profound psychological distress

witnessing the disruption of specialized life-dependent care of his patients, severe emotional distress and attorney's fees and costs.

COUNT FIVE (Conspiracy to Interfere with Civil Rights by All Defendants)
(42 U.S.C. § 1985)

146. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

147. At all times relevant, Dr. Manion had and has a fundamental right to, among other things, maintenance of his professional license, appropriate healthcare, to choose his own healthcare, and to utmost privacy of his health data. All named Defendants acted and/or continue to act in concert to deprive Dr. Manion of his fundamental right to appropriate health care, to wit: NCPHP exceeded and continues to exceed its authorization under empowering statutes and violated its Memorandum of Understanding with the other Defendants; NCMB developed and continues to follow a policy or practice of automatic ratification of NCPHP recommendations, unlawfully delegating its authority and due process obligations to NCPHP; and the Society and NCMB failed and continue to fail to properly oversee and supervise NCPHP. Through this concerted effort, license suspension was and is used as a punitive tool to enforce compliance with NCPHP's unconstitutional demands.

148. Dr. Manion is a qualified person with a disability under 42 U.S.C. § 12102(1)(C) because he is erroneously regarded as having a mental health impairment by Defendants. Defendants treated and continue to treat Dr. Manion differently than other individuals not regarded as disabled by refusing him due process in seeking the summary suspension of his medical license.

149. Dr. Manion received constructive suspension of his license as a result of his non-compliance with NCPHP for refusing to accept unnecessary treatment, unconstitutional

treatment, and the arbitrary treatment decisions of Defendants. Dr. Manion has further been retaliated against for enforcing his fundamental rights to procedural and substantive due process.

150. Dr. Manion was and continues to be discriminated against by all Defendants acting in concert and conspiracy to violate his civil rights under the United States Constitution and the Americans with Disabilities Act.

151. During all relevant times, Defendants acted with malice in furtherance of their conspiracy to coerce Dr. Manion into unnecessary treatment and by arbitrarily depriving him of due process, through the arbitrary application of suspension procedures and the threat of public discipline and summary suspension or revocation of his professional license, in violation of his constitutional rights.

152. Defendants continue to act with malice in furtherance of their conspiracy to refuse Dr. Manion's rights as described herein.

153. The conduct described herein was and is done at the direction, consent and knowledge of all Defendants, in known violation of the law, and under the constant threat to Dr. Manion that he must comply, without question, to everything NCPHP mandated, or face certain loss of (and inability to reinstate) his professional license.

154. As a direct and proximate result of Defendants' conduct, Dr. Manion suffered and continues to suffer job loss, loss of earnings and earning potential, public humiliation, loss of professional reputation, forced medical care at his own expense, pain and suffering, severe emotional distress and attorney's fees and costs.

COUNT SIX (Violations of the Americans with Disabilities Act (“ADA”) by All Defendants)
(42 U.S.C. § 12101 *et seq.*)

155. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

156. In 1990, Congress enacted the Americans with Disabilities Act with the purpose of establishing “a clear and comprehensive prohibition of discrimination on the basis of disability.” 42 U.S.C. § 12101 *et seq.*

157. Title II of the ADA at 42 U.S.C. § 12202 provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

158. 42 U.S.C. § 12102 defines disability as including being regarded as having a mental impairment, even when the individual does not in fact have such an impairment. Therefore, the ADA was meant to extend its protections to individuals erroneously assumed to be disabled.

159. Defendants assumed Dr. Manion to have a mental impairment and therefore regarded him as disabled.

160. Admission into NCPHP requires that a licensee have an impairment which requires treatment, such as mental illness or substance addiction.

161. By implication, anyone Defendants contend is in need of NCPHP evaluation, referral for further assessment or treatment and monitoring is an individual with a disability as defined by the ADA.

162. Dr. Manion is covered by the ADA's protections because Defendants regarded him as having a mental health impairment.

163. Title II of the ADA prohibits governmental entities from discriminating against disabled persons by reason of their disability or assumed disability. This prohibition applies to "all services, programs, and activities provided or made available by public entities" even if not carried out by the public entity itself.

164. NCPHP and its services qualify as a service, program or activity provided or made available by a public entity (NCMB). NCMB has entered into a formal relationship with NCPHP to provide services to its licensees.

165. Here, by broad application of the aforementioned policy requiring pre-hearing deprivation procedures, Dr. Manion was and is discriminated against by all Defendants, and particularly NCMB and NCPHP, solely on the basis of a perceived disability without regard to whether he actually possessed such a disability and whether he posed an imminent threat to the public health, safety and welfare.

166. Because he was and is regarded as disabled by Defendants, Defendants disregarded and continue to disregard his substantive and procedural due process rights by forcing him into unwarranted evaluation and treatment.

167. Dr. Manion had his license constructively suspended and/or revoked, not because he was determined to actually be a threat to the public safety and health, but solely because he was erroneously regarded as having a disability and refused to accept unnecessary evaluation and treatment at the hands of NCPHP.

168. Once Dr. Manion was erroneously regarded as having a disability and refused treatment for this perceived disability in the manner arbitrarily prescribed by NCPHP, he was

given a choice between “voluntarily inactivating” his license or being publicly sanctioned and having NCMB suspend or revoke his license under a cloud of immense humiliation and permanent irretrievability. In this way, his license was constructively suspended and/or revoked by Defendants.

169. Further, all Defendants enacted or ratified the broad policies and/or procedures that had the effect of discriminating against Dr. Manion regardless of whether he suffered from an actual disability, including by subjecting him to forced and invasive unnecessary medical and psychiatric assessment and treatment and disclosing his federally protected private health information.

170. Defendants’ refusal to investigate prior to effectively suspending Dr. Manion’s license and failure to articulate the reasons for pre-hearing deprivation further denied Dr. Manion the benefit of procedural due process solely on the basis of perceived disability.

171. Defendants have refused and continue to refuse to reinstate Dr. Manion’s license because they continue to erroneously regard him as disabled.

172. The conduct of Defendants constitutes violations of the Fourth, Fifth and Fourteenth Amendments, infringement on the fundamental rights to bodily integrity and adequate health care, and discrimination on the basis of being regarded as disabled.

173. Defendants acted and continue to act with malice and reckless disregard for the rights of Dr. Manion.

174. As a direct and proximate result of Defendants’ conduct, Dr. Manion suffered and continues to suffer job loss, loss of earnings and earning potential, public humiliation, loss of professional reputation, forced medical care at his own expense, pain and suffering, severe emotional distress and attorney’s fees and costs.

COUNT SEVEN (Intentional Infliction of Emotional Distress against All Defendants)
(North Carolina Common Law)

175. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

176. Defendants engaged in extreme and outrageous conduct by maliciously and knowingly violating and conspiring to violate Dr. Manion's civil and constitutional rights as alleged above and forcing the constructive suspension and/or revocation of his medical license.

177. Defendants intended their conduct to cause severe emotional distress to Dr. Manion.

178. Defendant's conduct in fact caused severe emotional distress to Dr. Manion

179. As a direct and proximate result of Defendants' conduct, Dr. Manion has suffered severe emotional distress, loss of earnings and earning potential, professional humiliation, loss of enjoyment of life, and attorney's fees and costs.

COUNT EIGHT, in the alternative (Negligent Infliction of Emotional Distress against all Defendants)
(North Carolina Common Law)

180. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

181. Defendants had a duty to safeguard the rights and well being of Dr. Manion and a duty not to inflict emotional distress on him.

182. Defendants breached that duty by engaging in conduct that violated and continues to violate Dr. Manion's civil and constitutional rights as alleged above and that forced the constructive suspension and/or revocation of his medical license.

183. It was reasonably foreseeable that Defendants' conduct would cause Dr. Manion severe emotional distress.

184. Defendant's conduct in fact caused severe emotional distress to Dr. Manion.

185. As a direct and proximate result of Defendants' conduct, Dr. Manion has suffered and continues to suffer severe emotional distress, loss of earnings and earning potential, professional humiliation, loss of enjoyment of life, and attorney's fees and costs.

COUNT NINE (Medical Negligence against NCPHP and Pendergast)
(North Carolina Common Law; N.C. Gen. Stat. Chapter 90, Article 1B)

186. The foregoing allegations are hereby restated and re-alleged and incorporated herein by reference as if fully set forth herein.

187. Pendergast is a physician providing psychiatric diagnosis and treatment pursuant to his North Carolina medical license, issued by NCMB.

188. NCPHP is an entity existing to identify and monitor licensees of NCMB who have mental or substance abuse illness.

189. During all relevant times, Pendergast was and is employed by NCPHP full-time and is directed by NCPHP to conduct "assessments" of licensees who are alleged to have mental health or substance abuse illnesses or are otherwise alleged to be impaired medically or behaviorally.

190. NCPHP and Pendergast performed a diagnostic evaluation of Dr. Manion in or about December 2011.

191. NCPHP and Pendergast owed a duty of care to Dr. Manion to diagnose him correctly according to widely accepted standards of care and to take care to avoid causing him injury.

192. Without use of evidence-based medicine, and acting knowingly and with malice outside the standard of care, Pendergast and NCPHP intentionally misdiagnosed Dr. Manion with a mental health impairment.

193. In the alternative, Pendergast and NCPHP were negligent in breaching the standard of care for assessing and diagnosing Dr. Manion.

194. Dr. Manion did not discover or have reason to discover the injurious misdiagnosis of Dr. Pendergast and/or NCPHP until August 2015 when he finally received the diagnostic evaluation report directly from Dr. Pendergast.

195. This claim is brought within one year of the discovery of the breach of Defendants' duty of care and within four years of the last breach of Defendants.

196. As a direct and proximate result of the negligence and breaches of the applicable standard of medical care by the Defendants, Dr. Manion's person has been injured because he has suffered severe emotional distress and other psychological harm as a result of the constructive revocation of his medical license, the revocation of which was based in whole or in part on Defendants' misdiagnosis of Dr. Manion.

197. The medical care and medical records pertaining to the alleged negligence that are available to Dr. Manion after reasonable inquiry have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care complained of did not comply with the applicable standard of care.

PRAYER FOR RELIEF

WHEREFORE, Dr. Manion prays unto the Court to grant him judgment and relief as follows:

1. For appropriate compensatory and punitive damages against all Defendants in an amount to be determined at trial;

2. For appropriate equitable and injunctive relief against Defendants NCMB, NCPHP, NCMS, Pendergast, Henderson, Kirby, Udekwu and Taylor as allowed by the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1985, including the enjoining and permanent restraint of these violations, and direction to Defendants to take such immediate affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful practices are eliminated and do not continue to adversely affect Dr. Manion or others so similarly situated;

3. Just and appropriate relief including economic, non-economic, compensatory and punitive damages as a result of Defendants' violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*;

4. Immediate reinstatement and reactivation of his license to practice medicine in North Carolina without submission to NCPHP evaluation and/or treatment;

5. For an award of reasonable attorney's fees and costs expenses on behalf of Dr. Manion pursuant to 42 U.S.C. § 1988;

6. For punitive damages authorized pursuant to 42 U.S.C. § 1983; and

7. For such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

This the 8th day of February, 2016, by

ACKERMAN BROWN, PLLC

/s/ Donald Carrington Davis

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