

**United States District Court
for the
Eastern District of California
Sacramento Division**

Barbara Clark,

05-2410-FCD-PAN

Plaintiff (pro se)

Vs.

John M. Rea,

Acting Director, Department of Industrial Relations, and;

Dennis J. Hershewe, esq., and;

Carol Pope

Defendants

VERIFIED AMENDED COMPLAINT

NOW COMES THE PRO SE PLAINTIFF, **BARBARA CLARK**, to AMEND her complaint and cause for damages and to seek redress in the federal courts from the unconstitutional activities of the Defendants that have been directed to injure and harm the Plaintiff, deny her due process, cause her financial damage, destroy her professional reputation and inflict severe emotional injury.

JURISDICTION

The Plaintiff herein presents a federal question that provides this Honorable Court with original jurisdiction. Jurisdiction is herein granted by AMENDMENT XIV of the U.S. Constitution, 42 U.S.C. 1983¹, and 1985², et. al, (also known as the Klu Klux Klan Act), and 42 U.S.C. 12101 (also known as the Americans with Disabilities Act).³ Sections 501, 503 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a)⁴ and the ancillary Civil rights remedies equalization provisions of the Civil Rights Act 42 U.S.C. 2000d-7⁵.

The amount of damages sought by the Plaintiff against the Defendants exceeds **\$40,000,000.00** US.

¹ 42 U.S.C. § 1983 --- every person who, "under color of any statute, ordinance, regulation, custom or usage..." subjects another person within jurisdiction of the U.S. to deprivation of any rights, privileges, or immunities secured by the Constitution and Laws" shall be liable to the party injured thereby.

² 42 U.S.C. § 1985 --- any conspiracy of two or more persons to prevent any public officer from performing his or her duties; to obstruct justice by of equal protection of the laws, shall be liable for such injury.

³ 42 U.S.C. § 12101 --- The Americans with Disabilities Act of 1990 --- provides for the protection of people with disabilities in employment and public accommodations. The definition of disability is broadened to include any condition, which significantly impedes a major life activity.

⁴ 29 U.S.C. 794(a) -- No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

⁵ 42 U.S.C. 2000d-7 -- (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794]

Defendants are all residents of the State of California. The majority of egregious behavior and allegations described concern behavior that has taken place within the jurisdiction of this Honorable Court.

JURISDICTION FOR PENDANT STATE CLAIMS

The following pendant state laws are hereby incorporated within this instant complaint. Article XIV of the State of California Constitution⁶, Cal. Civil Code § 51 et seq⁷, also known as the Unruh Civil Rights Act, and Cal. Gov't Code § 11135⁸, Cal. Govt. Code Section 12900 and the California Labor Code. Also, *The City of Moorpark v. Superior Court* decision rendered by the California Supreme Court.

⁶ CALIFORNIA CONSTITUTION, ARTICLE 14, LABOR RELATIONS, SEC. 4. The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party;

⁷ Cal. Civil Code § 51 et seq. provides that all persons are entitled to full and equal "accommodations, advantages, facilities, privileges or services" regardless of "sex, race, color, religion, ancestry or national origin."

⁸ CAL. GOV'T CODE § 11135 provides that no person on the state of California shall be denied legal benefits, or subjected to discrimination in the basis of "ethnic group identification, religion, age, sex color, or physical or mental disability," in any program or activity funded by the State.

PARTIES

The Department of Industrial Relations is a state agency of the State of California. John Rea as chief deputy director and/or acting director of the Department of Industrial Relations (DIR)⁹ is also being sued and named as a defendant, as is DIR. Mr. Rea's duties include the oversight of the operations of DIR, which has state wide jurisdiction for labor standards enforcement (minimum wage, hour and labor standards), occupational safety and health, workers' compensation, apprenticeship standards, labor statistics and research, and state mediation and conciliation services. Business address: Department of Industrial Relations, Office of the Director, 455 Golden Gate Avenue, 10th floor, San Francisco CA 94102. John Rea, maintains points of contact at telephone number (415) 703-5050, and Fax:(415) 703-5059.

Dennis J. Hershewe is an attorney licensed to practice in the State of California. Dennis J. Hershewe controls an office known as "The Law Office of Dennis J. Hershewe a Professional Law Corporation". Both Dennis J. Hershewe and "The Law Office of Dennis J. Hershewe a Professional Law Corporation" are hereby

⁹ California Labor Code Section 53 states: " Whenever in Section 1001 or in Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code "head of the department" or similar designation occurs, the same shall, for the purposes of this code, mean the director, except that in respect to matters which by the express provisions of this code are committed to or retained under the jurisdiction of the Division of Workers' Compensation..."

cited as defendants in this instant lawsuit. Mr. Hershewe maintains law offices at 21835 Nordhoff Street, Chatsworth, California 91311.

Carol Pope is a claims adjustor who is employed by the Adventist Health System, a division of the Seventh Day Adventist Church. In that capacity Carol Pope oversees the administration and payment of workers' compensation claims filed by disabled injured workers (like the Plaintiff). Carol Pope maintains a business office at 2100 Douglas Blvd., Roseville, California 95661, Telephone 916-781-2000.

The Plaintiff, Barbara Clark, is a disabled injured worker that maintains an address at Suite G-125, 785 Tucker Road, Tehachapi, CA 93561. Ms. Clark is a registered nurse and a nurse practitioner in the State of California. She has been a resident of the Tehachapi community (near Bakersfield) for more than a decade. The PRO SE Plaintiff lives in constant pain and must deal with untreated injuries to her neck, spine and jaw.

GENERAL ALLEGATIONS

Plaintiff is a disabled person who is unable to perform several major life activities that an average person in the population might easily be able to perform. Plaintiff has difficulty speaking for extended periods of time due to excessive pain in her jaw that is complicated by extended speech. Plaintiff has significantly decreased

range of motion for movements associated with her neck and left arm and hand accompanied by pain and spasms. This condition complicates her ability to use word processing equipment, computers and the Internet. Plaintiff's ability to drive an automobile is severely restricted and sometimes prevented by throbbing pain in her left leg and spine. Mitigating measures have not helped the Plaintiff in performing the aforementioned tasks and routine duties of life.

Plaintiff was employed by the San Joaquin Community Hospital (this is one of about twenty hospitals in a hospital chain) as a licensed registered nurse practitioner until a job related injury disabled limited her ability to work, her ability to perform routine daily activities and severely restricted her life activities. Pursuant to the California Labor Code this injury would be classified as an "industrial injury", or a work related injury.

On or about February 16, 1994 while on-duty at the San Joaquin Community Hospital the Plaintiff was kicked in the head by a patient in the unsafe and sub-standard delivery room that was inadequate for the procedure being performed. Plaintiff's head then struck a concrete cider block wall following the impact of the patient's foot with the Plaintiff's head. Plaintiff suffered several broken teeth, muscle and jaw spasms, headaches, etc.

The San Joaquin Community Hospital was owned and operated by the Adventist Health System, a division of the Seventh Day Adventist Church (which owns

about twenty hospitals in a hospital chain). The San Joaquin Community Hospital and the Adventist Health System maintained a religious preference hiring, retention and employment system that favored the employment of members of the Seventh Day Adventist Church. This religious preference hiring system favored those employees that were Church members. One of the tenants of the Church is that those individuals looked upon favorably by God would enjoy the blessings of good health. Consequently, those non-Church members would experience the lack of God's protection. Therefore, the San Joaquin Community Hospital religious preference hiring, retention and employment system established a systematic discriminatory employment scheme that favored Church members.

The Adventist Health System (AHS) was in 1994, and is presently, a self-insured plan under California Labor Code (L.C.) Section 3700(b)¹⁰. Under this L.C. Section the AHS was in 1994, and is presently, considered a permissibly self-insured entity for the purposes of workers' compensation claims filed in the State of California. This means that AHS has the authority; vested by the Office of Self Insurance Plans within the Department of Industrial Relations; to self-administer workers compensation claims pursuant to a Certificate of Consent to Self-Insure

¹⁰ California Labor Code Section 3700 "Every employer except the state shall secure the payment of compensation in one or more of the following ways....(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees..."

issued to an employer pursuant to Section 3700(b) of the Labor Code by the Department of Industrial Relations. Therefore, the AHS, owner of San Joaquin Community Hospital, can administer the treatment, rehabilitation and payment for medical services of industrial injuries suffered on the job by employees of the AHS, or one of its subordinate hospitals.

The Office of Self Insurance Plans (OSIP) within the Department of Industrial Relations (DIR) administers, regulates and oversees the operations of self-insured plans like the one operated by the AHS, as codified in Title 8 of the California Code of Regulations, Administration of Self-Insurance Plans, Sections 15000-15463, also known as Labor Code (L.C.) Sections 15000 to 15463. Indeed, the Labor Code authorizes the Director of Industrial Relations to adopt, amend, and repeal regulations necessary to carry out the purposes of Articles 1, 2, and 2.5 of the California Labor Code.

Following her industrial injury in February 1994 the Plaintiff attempted to obtain treatment for her industrial injury. Unfortunately, this industrial injury involved damage to the jaw, spine, neck, etc. This was not a simplistic industrial injury, but a complex industrial injury.

The Plaintiff remained an employee of the San Joaquin Community Hospital and received on again, and off again treatment for her industrial injury from organizations within the Adventist hospital chain (AHS).

However, during the period of 1994 to 1994, the Plaintiff had to deal with the religious preference hiring, retention and employment system scheme created by the Adventists. This religious preference employment scheme transcended mere employment operations and also influenced the industrial injury treatment process with religious overtones. The spirituality of the Plaintiff was raised as an issue by the Adventists at the San Joaquin Community Hospital concerning the industrial injury sustained by the Plaintiff.

Beginning in 1997, the disabled Plaintiff began obtaining AWARDS and ORDERS directly from a Workers' Compensation Appeals Board (WCAB)¹¹ Administrative Law Judge (ALJ) to educate the Adventists at the hospital chain about the complexity of her jaw, head, spine and neck injuries.

The WCAB Awards and Orders compelled the AHS hospital chain to provide necessary and appropriate medical treatments and temporary disability payments for the complex industrial injury of the jaw, neck, spine, etc.

¹¹ The Workers' Compensation Appeals Board, a seven-member, judicial body appointed by the Governor and confirmed by the Senate, exercises all judicial powers vested in it by the Labor Code. Its major functions include review of petitions for reconsideration of decisions by workers' compensation administrative law judges of the Division of Workers' Compensation and regulation of the adjudication process by adopting rules of practice and procedure. See: <http://www.dir.ca.gov/WCAB/>

These aforementioned Awards and Orders directed the AHS self-insured workers' compensation plan to provide medical benefits and temporary disability payments to the disabled Plaintiff.

Unfortunately for the Plaintiff, the AHS disagreed with the complexity of the industrial injury and refused to believe that the jaw, neck and spine problems were that serious. Spirituality questions also influenced the decision not to provide the required treatments as directed by the WCAB ALJ issued Awards and Orders.

Then the AHS hospital chain made a unilateral decision to ignore the Awards and Orders of the WCAB ALJ. The AHS chose to allow these WCAB Awards and Orders to languish unpaid and not enforced.

However, the Plaintiff continued to pursue enforcement proceedings in the WCAB to compel the AHS hospital chain to pay comply with the numerous WCAB issued Awards and Orders.

Then AHS hospital chain hired a dubious attorney in January 2001 named Dennis J. Hershewe, who has been cited by the WCAB as "vile, conniving and despicable"¹². Mr. Hershewe had a reputation as an egregious attorney that

¹² See Roxana Clabough vs. Fremont Compensation Insurance Co., Workers' Compensation Appeals Board, MON 0206327, May 18th, 2001.

used ex-parte, non-judicial tactics to “brow beat” or “crush” injured workers as he had maintained a personal animus and disgust for the disabled.

Beginning in 2001 the dubious attorney Mr. Hershewe (who is the subject of an on-going California State Bar investigation for unprofessional conduct) began filing frivolous appeals to strike down the WCAB ALJ Awards and Orders. These frivolous appeals were subsequently ignored by the California Supreme Court, which upheld the numerous WCAB ALJ Awards and Orders, as did the 5th Appeals Court of California¹³.

After Mr. Hershewe’s appointment to the WCAB proceedings in early 2001, and after the Plaintiff began experiencing Mr. Hershewe’s peculiar style of litigation (which included intimidation of witnesses, writing letters to medical providers threatening lawsuits if they assisted the Plaintiff with her industrial injury, contravening lawful Awards and Orders of the WCAB ALJ, etc.) the Plaintiff had experienced enough. In December of 2001 the Plaintiff filed an action in the Kern County (California) Superior Court against Mr. Hershewe and the San Joaquin Community Hospital under the provisions of the Racketeering Influenced and Corrupt Organizations (RICO) statutes¹⁴. Note: the underlying allegations of

¹³ Court of Appeal, State of California, Fifth Appellate District, F044977 (Super. Ct. No. 245966)

¹⁴ Kern County Superior Court, Barbara Clark v. SJCH/Adventist Health; number S-1500-CV-245966-RA.

this RICO lawsuit has been verified by the Court of Appeals for the State of California, Fifth District¹⁵.

The filing of the state RICO lawsuit in Kern County Superior Court seemed to enrage Mr. Hershewe and a claims administrator at AHS named Carol Pope. In the years following 2001 and the issuance of more Awards and Orders it became clear to the disabled Plaintiff that the AHS hospital chain would fail to timely provide proper and timely payments for her temporary disability, would fail to make payments for her self procured medical treatments, and would fail to provide reasonable medical care, etc.

As the Plaintiff's legal remedies in the State of California (Kern County) courts proceeded, the disabled Plaintiff began complaining to the OSIP and DIR about the lack of payments and progress made by the AHS to comply with the half dozen Awards and Orders awarded on her behalf.

In 2002 the disabled Plaintiff began to communicate with the OSIP and DIR departments with requests to pressure the AHS to comply with the half dozen Awards and Orders. The Plaintiff asserted that OSIP and DIR had a regulatory, compliance and oversight responsibility to investigate the matter of non-compliance by the AHS for failure to provide the Plaintiff medical treatment and pay disability payments as ordered by the WCAB.

¹⁵ Court of Appeal, State of California, Fifth Appellate District, F044977 (Super. Ct. No. 245966)

The DIR has waived its claim to sovereign immunity pursuant to 42 U.S.C. 2000d-7 -- (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794].

That the DIR is the responsible organization within the State of California government for enforcement of ARTICLE 14, LABOR RELATIONS, SEC. 4 of the California Constitution.

SPECIFIC ALLEGATIONS

COUNT ONE:

DENIAL OF PLAINTIFF'S PROPERTY INTEREST IN A PROFESSIONAL REPUTATION

Prior to February 1994 the disabled Plaintiff enjoyed a reputation as a registered nurse and nurse practitioner. In fact, Plaintiff was specifically hired by the San Joaquin Community Hospital to "clean up" the maternity and delivery ward in the hospital, based upon the Plaintiff's impeccable credentials in the delivery and new born medical field.

Carol Pope, a claims adjustor for the AHS, assumed the management of the Plaintiff's worker's compensation claims file under the provisions of the AHS self insured plan. Carol Pope assumed the responsibility for the Plaintiff's claim file shortly after the Plaintiff's industrial injury in 1994.

Between 1994 and 2001 Carol Pope had several unsuccessful interactions with the Plaintiff. Indeed, it became obvious to the Plaintiff that the Adventists at AHS wanted to somehow punish the Plaintiff for being a "whistleblower". Apparently, the references to "whistleblower" with regard to the Plaintiff included the Plaintiff's reporting of several physicians on the staff at San Joaquin Community Hospital for unsafe medical practices, possible abuse of drugs, and an intimidating sexual discriminatory environment (to include one physician who pulled down the bottom "scrubs" or pants of the Plaintiff during a delivery to reveal the Plaintiff's underwear with the accompanying comment, "...looks like Barb wears Victoria's Secret underwear..").

During her employment with the San Joaquin Community Hospital between 1994 and 1997, the Plaintiff had to endure the religious preference hiring, retention and employment policy, which favored members of the Adventist Church. That between 1994 and 1997 the Plaintiff had to endure personnel at the San Joaquin Community Hospital (1) spiritualizing the Plaintiff's industrial injury, (2) criticizing the Plaintiff for being out of favor with God, and (3) minimizing the extent of the neck, spine and jaw injuries.

During the period of 1994 to 2001 Carol Pope had unsuccessfully attempted to deny most, if not all, of the requests for medical treatment and Awards and Orders sought by the Plaintiff. By 2001 it became clear that Carol Pope was unsuccessful in these attempts and that she needed the services of a “vile, conniving and despicable” attorney to use non-judicial, ex-parte, smear tactics to silence the Plaintiff.

In 2001 Carol Pope located such a “vile, conniving and despicable” attorney, a Mr. Dennis J. Hershewe, esq., who held personal animus for injured workers, or those that relied upon the California workers’ compensation system for assistance. Hershewe’s personal disgust of the disabled was used by Hershewe to attract new clients, like the AHS. Hershewe’s attitudes that injured workers or the disabled were malingerers that deserved nothing for there “injuries” played well to Carol Pope and the Adventists at AHS.

Carol Pope needed an attorney who would use “sleazy” tactics to silence the Plaintiff, including violations of Constitutional rights.

It is alleged that Ms. Pope and Mr. Hershewe maintained a personal distaste for disabled injured workers. That Pope and Hershewe are more or less the type of individuals that enjoy the infliction of emotional pain upon litigants that they oppose in WCAB legal proceedings.

It is alleged that Pope felt “she was on a mission from God” to quash the Plaintiff, refuse medical treatments for the Plaintiff, routinely deny the Plaintiff disability payments for her industrial injuries, etc.

It is alleged that Pope had a personal disgust for the disabled Plaintiff as the Plaintiff was not a member of the Seventh Day Adventist Church, was a disabled injured worker, and was a litigant in a WCAB proceeding.

That Pope & Hershewe designed schemes to oppress and defraud the Plaintiff, to deprive the Plaintiff of her Constitutional rights, to prevent the Plaintiff from receiving prompt medical care, to inflict egregious emotional duress and financial damage to the Plaintiff. The Pope & Hershewe schemes were designed to drive the Plaintiff out of the local Bakersfield community, much like the Klu Klux Klan tactics of the 1960’s Civil Rights movement in violation of 42 USC 1983 and 1985, only with a white-collar twist to the harassment and intimidation.

That unable to trump the Plaintiff’s legal proceedings in the State of California courts (Kern County) and the WCAB, Pope & Hershewe used their personal animus of disabled injured workers who were non-members of the Adventist Church to fuel a smear campaign to intimidate and harass the Plaintiff to deny the Plaintiff a property interest in career and reputation.

To accomplish the near total destruction of the Plaintiff's property interest in her career and standing in the community (as provided by AMENDMENT XIV of the U.S. Constitution) Pope & Hershewe harassed and intimidated witnesses, obstructed official investigations, contravened official WCAB Awards and Orders, and attempted to impose their own brand of justice on the Plaintiff to deny the Plaintiff her property interest in a career and standing in the community.

The Pope & Hershewe scheme to deny the Plaintiff her property interest in a career, reputation and standing in the community, included demanding that the Plaintiff attend interrogation interviews with David M. Glaser, M.D. and Julie A. Armstrong, Psy.D, RNCS, qualified medical examiner in July 2004.

That Pope & Hershewe knew that Julie A. Armstrong maintains a web site at the Internet address of <http://www.psychologyexpertwitness.com/> .

On November 30th, 2005 this web site contained the following remarks:

"...Dr. Armstrong has an intimate knowledge of the legal process and the stress of litigation. She is available to support you and/or treat your clients throughout particularly stressful cases. This may be of particular benefit when a client is particularly disorganized, impulsive or for other reasons needs support and containment. ..."

That during the interrogation interview in July 2004, arranged for by Pope & Hershewe, the Plaintiff met with Julie A. Armstrong, Psy.D, RNCS. During the interrogation interview, Julie A. Armstrong, Psy.D, RNCS questioned the Plaintiff extensively about the progress of the Plaintiff's legal proceedings. Questions were offered by Julie A. Armstrong, Psy.D, RNCS regarding the progress of the Plaintiff's legal cases, the Plaintiff's discussions with agents of the Federal Bureau of Investigation (FBI), the Plaintiff's discussions with David Wolf, a prosecuting attorney in the Kern County prosecutor's office, State of California agencies to include the Office of Self Insured Plans (OSIP), etc.

NOTE: It is instructive to note that the website maintained by Julie A. Armstrong, Psy.D, RNCS announces a series of articles written by Ms. Armstrong. One article is entitled: *The More Dead: Investigating the Murders in the Mexican Maquila* (published in 1999). Another paper was written and presented at the FBI training facility at Quantico, Virginia by Ms. Armstrong¹⁶ in 1999. These papers indicate that Ms. Armstrong has some knowledge of law enforcement investigative techniques and a comprehensive understanding of the law enforcement investigative process.

Julie A. Armstrong, Psy.D, RNCS appeared more interested in the theories and processes of the Plaintiff's legal proceedings in the Kern County Superior Court

¹⁶ *Identification of Suicidal Fantasies in Virtual Reality Simulation Games* Presented at the 9/21-23 1999, Federal Bureau of Investigation, Quantico, Va. (Paper published by the FBI in Collected Papers on Suicide and Law Enforcement, 1/2002.)

and the WCAB than any industrial injury suffered by the Plaintiff during these interrogation interviews in July, 2004.

Pope & Hershewe knew prior to these interrogation interviews between the Plaintiff and Ms. Armstrong that a medical report would be created and labeled as a "Comprehensive Psychiatric Evaluation".

Pope & Hershewe also knew that Dr. David N. Glaser, M.D., would rely heavily on the findings of Ms. Armstrong to create a report known as a "Comprehensive Psychiatric Evaluation".

Pope & Hershewe knew that Ms. Armstrong would act as a fact-finder to quiz the Plaintiff about the Plaintiff's legal proceedings, the Plaintiff's contact with the FBI and the Plaintiff's communications with the Kern County prosecutor's office.

Further, Pope & Hershewe knew prior to these interrogation interviews that the "Comprehensive Psychiatric Evaluation" would label the Plaintiff as essentially unfit to maintain a career in the medical field. That the "Comprehensive Psychiatric Evaluation" would be widely distributed to nearly a dozen parties with no interest in the WCAB enforcement proceedings by Pope & Hershewe.

That the wholesale distribution of the "Comprehensive Psychiatric Evaluation" en masse widely through-out the medical community in the Bakersfield area that

labeled the Plaintiff as unfit for service in the medical career field was one objective of the Pope & Hershewe conspiracy to deny the Plaintiff her property interest in a career and reputation in violation of AMENDMENT XIV of the U.S. Constitution.

NOTE: It is instructive to note that the findings of Dr. David N. Glaser, M.D., published in the "Comprehensive Psychiatric Evaluation" of July, 2004 were refuted by Dr. Perry Maloff, M.D. in June, 2005. Further, Dr. Maloff essentially calls the Glaser report slanderous. In fact, Dr. Maloff suggested in his report (June, 2005) that the Plaintiff should receive additional disability compensation due to the reprehensible and egregious conduct of Pope & Hershewe. Indeed, in a report issued in November, 2005 by a Panel Qualified Medical Examiner (Panel QME) known as Dr. Robert Reed, D.D.S. concurred with the report written by Dr. Maloff and severely disagreed with the erroneous conclusions of Dr. Glaser.

Pope & Hershewe knew that the indiscriminate distribution of the "Comprehensive Psychiatric Evaluation", written by Dr. Glasser in July, 2004, to nearly a dozen parties (with no interest in the pending WCAB enforcement proceedings) in the Bakersfield area would slander and disparage the Plaintiff and in effect destroy her property interest in a career and reputation.

That the net result planned for by Pope & Hershewe was that the medical community within the State of California and Bakersfield would learn of the

Plaintiff's reputation based upon the "Comprehensive Psychiatric Evaluation".
arranged for by Pope & Hershewe.

That acting on orders from Carol Pope, Mr. Hershewe indiscriminately distributed to nearly a dozen inappropriate and irrelevant parties to pending WCAB enforcement proceedings the "Comprehensive Psychiatric Evaluation". That the object of this scheme was to destroy the Plaintiff's reputation forcing her to seek employment in a state other than the State of California or the Bakersfield, Kern County area.

That the conspiratorial efforts of Pope & Hershewe were designed to significantly injure the reputation of the Plaintiff and to deny her property interest in a reputation and career in the State of California in violation of AMENDMENT XIV, U.S. Constitution. That the aforementioned acts constitute a violation of AMENDMENT XIV of the U.S. Constitution, 42 USC 1983 and 1985.

COUNT TWO:

RETALITORY HARRASSMENT FOR PURSUING A FEDERAL REMEDY

That the Plaintiff filed a complaint with the U.S. Department of Health and Human Services (DHHS), Office of Civil Rights (OCR) on February 24, 2005 concerning the activities of Pope & Hershewe to violate the Health Insurance Portability and Accountability Act of 1996 (HIPAA)¹⁷ (also known as Public Law 104-191).

That the DHHS OCR is the proper agency to investigate the breach of confidentiality of sensitive medical records related to HIPAA. That the website maintained by DHHS OCR has the Internet address of <http://www.hhs.gov/ocr/hipaa/> displayed the following information on November 30th, 2005:

"...If you believe that a person, agency or organization covered under the HIPAA Privacy Rule ("a covered entity") violated your (or someone else's) health information privacy rights or committed another violation of the Privacy Rule, you may file a complaint with the Office for Civil Rights (OCR). OCR has authority to receive and investigate complaints against covered entities related to the Privacy Rule. A covered entity is a health plan, health care

¹⁷ See 42 USC 1320d-6, Subtitle F, Part C, Section 1177 of HIPAA.

clearinghouse, and any health care provider who conducts certain health care transactions electronically. For more information about the Privacy Rule, please look at our responses to Frequently Asked Questions (FAQs) and our Privacy Guidance. (See the web link near the bottom of this form.).”

That shortly after the Plaintiff filed a complaint with the DHHS OCR an investigator with the DHHS OCR contacted the AHS hospital chain to discuss the allegations contained in the Plaintiff’s February 24, 2005 HIPAA complaint.

That word reached Pope & Hershewe that the Plaintiff had filed a complaint with the DHHS OCR in February 24, 2005 describing the breach of patient record confidentiality and privacy by Pope & Hershewe in violation of the HIPAA Act of 1996.

That the reporting of this complaint to the DHHS OCR further enraged Pope & Hershewe who began planning a scheme to further harass, intimidate, and injure the Plaintiff in violation of 42 USC 1983 and 1985.

Further, shortly after the Plaintiff filed the February 24, 2005 DHHS OCR complaint, Pope & Hershewe’s conduct became more aggressive and more egregious. Additional medical records of a sensitive and confidential nature were obtained by Pope & Hershewe and were indiscriminately distributed to parties

with no interest in the WCAB enforcement proceedings for the purpose of inflicting great emotional distress on the Plaintiff. Note: Joseph Schames, D.M.D., wrote to the Plaintiff on May 28, 2005, as did Rudy B. Herrera, D.C., that they had never requested the medical records of the Plaintiff that had been indiscriminately sent to them by Hershewe.

In the summer of 2005 the Plaintiff warned Pope & Hershewe and the AHS hospital chain that she intended to seek redress in the federal courts for several violations of the criminal sanctions of the HIPAA Act of 1996.

That the Plaintiff's allegations described in the DHHS OCR complaint related to the indiscriminate distribution of the "Comprehensive Psychiatric Evaluation" to nearly a dozen third parties with no interest in the WCAB enforcement proceedings in violation of the confidentiality and privacy provisions of HIPAA.

That Pope & Hershewe knew the Plaintiff had been communicating with agents of the DHHS OCR since February, 2005 and the FBI, the Kern County prosecutor's office since at least July, 2004 and other state agencies (including the OSIP).

That in July, 2004 (when the Dr. Glaser report was issued) Pope & Hershewe knew that the Plaintiff had been communicating with agents of the federal government.

That in February, 2005 Pope & Hershewe knew that the Plaintiff had been communicating with agents of the DHHS OCR.

That the Plaintiff's communications further enraged Pope & Hershewe that intensified their efforts to harass, intimidate, coerce and extort compliant behavior from the Plaintiff to end her communications with law enforcement, federal officials and state agencies.

That Pope & Hershewe continued to defy WCAB Awards and Orders and deny medical treatments for the Plaintiff's neck, jaw and spine injuries causing the Plaintiff to endure significant pain as a form of retaliation for the Plaintiff's communications with federal agents and investigative agencies.

Finally, in July 7th, 2005, the Plaintiff amended the state RICO proceeding to include several allegations against Mr. Hershewe for violating the HIPAA of 1996. That these allegations included Mr. Hershewe's violations of HIPAA related to the indiscriminate distribution of the "Comprehensive Psychiatric Evaluation".

Further, the Plaintiff alleged in the Kern County Superior Court RICO lawsuit that the conspiracy of Pope & Hershewe to distribute Dr. Glaser's July, 2004 report was of a criminal nature as articulated in the criminal provisions of the HIPAA Act of 1996.

The Plaintiff included copies and citations from a policy memorandum written June 1, 2005 by the U.S. Department of Justice (DOJ) to the DHHS concerning the criminal aspects of violating the HIPAA Act of 1996. Indeed, the Kern County Superior Court RICO lawsuit was amended in July, 2005 to include several references and cites to the DOJ policy memorandum of June 1, 2005.

Indeed, that the DOJ policy memorandum contained the following summary:

*“...MEMORANDUM OPINION FOR
THE GENERAL COUNSEL
DEPARTMENT OF HEALTH AND HUMAN SERVICES*

AND

*THE SENIOR COUNSEL
TO THE DEPUTY ATTORNEY GENERAL*

You have asked jointly for our opinion concerning the scope of 42 U.S.C. § 1320d-6 (2000), the criminal enforcement provision of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 ("HIPAA").

And..

Thus, the statute reflects a heightened concern for violations that intrude upon the medical privacy of individuals.

and..

For the foregoing reasons, we conclude that covered entities and those persons rendered accountable by general principles of

corporate criminal liability may be prosecuted directly under 42 U.S.C. § 1320d-6 and that the "knowingly" element of the offense set forth in that provision requires only proof of knowledge of the facts that constitute the offense.

STEVEN G. BRADBURY
Principal Deputy Assistant Attorney General
Office of Legal Counsel..”

The Plaintiff again reported Pope & Hershewe to agents of the FBI in June, 2005 for violations of the HIPAA Act of 1996. The FBI is the appropriate agency tasked with the investigation of criminal conspiracies to violate the HIPAA Act of 1996¹⁸.

Additionally, the Plaintiff transmitted certified letters to the Adventists at the AHS hospital chain that she was intending to sue their organization for the HIPAA violations perpetrated by Pope & Hershewe.

As a courtesy to both OSIP and DIR the Plaintiff included copies of this correspondence to those offices as well, as well as a copy of the RICO amended complaint outlining the violations of the HIPAA Act of 1996 (seemingly condoned

¹⁸ Covered entities and those persons rendered accountable by general principles of corporate criminal liability may be prosecuted directly under 42 U.S.C. § 1320d-6, and the knowingly element of the offense set forth in that provision requires only proof of knowledge of the facts that constitute the offense.

by the AHS hospital chain), with a request that OSIP and DIR conduct an investigation into the matter.

Plaintiff alleges that Pope & Hershewe increased this campaign of intimidation and harassment directed at the Plaintiff in retaliation for her pursuit of a federal remedy with the DHHS OCR in violation of 42 USC 1985. Further, that the Plaintiff began to communicate with agents of the FBI in July, 2004 and that this fact was known to Pope & Hershewe via the Dr. Glaser report of July, 2004.

That the aforementioned acts constitute a violation of 42 U.S.C. 1985 and the criminal provisions of HIPAA, 42 USC 1320d-6.

**COUNT THREE:
DENIAL OF DUE PROCESS RIGHTS**

As a licensed attorney in the State of California Mr. Hershewe is familiar with, or should be familiar with, the rights of individual litigants in the state. Indeed, that litigants (called applicants) in the Workers Compensation Appeals Board have due process rights to obtain satisfactory judgments by seeking redress to claims and controversies in appropriate legal forums.

That Mr. Hershewe was originally named as a defendant in the Kern County Superior Court RICO lawsuit. That Mr. Hershewe was also notified verbally by the Plaintiff in the presence of a WCAB ALJ in July, 2005 that he was a suspect in an on-going FBI, DOJ and DHHS probe into the alleged HIPAA violations.

That the WCAB ALJ further admonished Mr. Hershewe to cease and desist from his indiscriminate distribution of sensitive and confidential medical records of the Plaintiff.

Nevertheless, and in spite of several warnings, Pope & Hershewe, who, failing to trump the legal judgments obtained by the Plaintiff in the WCAB and the Kern County Superior Court, sought to circumvent the practical applications of legal remedies by conducting a harassing non-judicial ex-parte campaign against the Plaintiff. That the objective of the harassment campaign was to inflict great

emotional distress and emotional upset on the Plaintiff to “beat her down”, deny her access to medical treatments, force her to live in pain from neck, spine and jaw injuries and suffer the destruction of her career and reputation in the Bakersfield area.

That even though the Plaintiff obtained legitimate and valid WCAB Awards and Orders, that Mr. Hershewe used his tactics of distributing highly sensitive and confidential medical records (Dr. Glaser report of July, 2004) to inappropriate and irrelevant third parties with no interest in WCAB enforcement proceedings to enable these individuals (friendly to the AHS hospital chain and armed with Dr. Glaser’s July, 2004 report) to slander the Plaintiff and inflict great emotional distress on the Plaintiff so she would abandon her career and leave the Bakersfield area.

That Pope & Hershewe used Dr. Glaser’s July, 2004 report to discredit the Plaintiff, confuse and confound the medical community in Bakersfield about the Plaintiff, and to deny the Plaintiff orderly enforcement of existing WCAB Awards and Orders. That the distribution of Dr. Glaser’s July, 2004 medical report was designed to neutralize any efforts by the Plaintiff to seek redress from investigative agencies, whether federal or state.

That the Pope & Hershewe “ex-parte” non-judicial harassment techniques using slander, intimidation, distribution of confidential medical reports, etc. were

conducted to negatively neutralize the legitimate WCAB Awards and Orders by creating a shroud disparaging and slanderous confusion concerning the Plaintiff's motivations and mental health in order to continue to force the Plaintiff to live in non-stop pain from her neck, spine and jaw injuries and watch her career and reputation be destroyed by the likes of Carol pope and Dennis Hershewe (cited as a "vile, conniving and despicable" individual by the WCAB).

That the Pope & Hershewe campaign of slander, intimidation and harassment was designed to negate the positive effects of legitimate WCAB Awards and Orders by creating an intimidating fear within the Plaintiff in the hopes she would abandon her career and any further legal proceedings with the Kern County Superior Court, the WCAB, or the DHHS OCR against the Adventists at the AHS hospital chain. The intentional infliction of emotional distress upon the Plaintiff was Pope & Hershewe's method of causing the Plaintiff to fear pursuing further enforcement actions with the DHHS OCR, Kern County Superior Court, or the WCAB and force the Plaintiff to live in daily pain from her neck, spine and jaw injuries.

That Pope & Hershewe continued this egregious harassment, slander and intimidation against the Plaintiff for filing the DHHS OCR complaint, the Kern County Superior Court RICO lawsuit, the WCAB enforcement proceedings and threatening to seek redress in the federal courts.

That the aforementioned acts constitute a violation of Amendment XIV of the U.S. Constitution and 42 USC 1983 and 1985.

**COUNT FOUR:
VIOLATIONS OF THE
AMERICANS WITH DISABILITIES ACT AND
REHABILITATION ACT OF 1973**

Shortly after Pope & Hershewe began their harassment campaign against the Plaintiff in 2002, the Plaintiff contacted the State of California Department of Industrial Relations (DIR) and the DIR's subordinate Office of Self Insurance Plans (OSIP).

The Plaintiff identified herself to DIR and OSIP officials as an injured worker with a disability that held numerous WCAB directed Awards and Orders against the AHS hospital chain.

That during a period of several years (2002 to the present) the Plaintiff has written more than fifty (50) letters to the DIR and OSIP about the on-going smear campaign, harassment, slander and intimidation suffered by the Plaintiff at the hands of Pope & Hershewe.

Further the Plaintiff advised DIR and OSIP that the failure of a regulated self-insured plan (the AHS hospital chain) to comply with Awards and Orders of the WCAB was a violation of the California Labor Code (L.C.).

Further, the Plaintiff advised DIR and OSIP that L.C. 132a prohibited discrimination of any sought by a self insured plan (like the AHS hospital chain) against any injured worker seeking enforcement of a WCAB Award and Order.

As early as 2002 the DIR and OSIP were provided copies of letters sent various agencies and investigative officers with an interest in these matters. The DIR and OSIP received copies of the Plaintiff's to the Federal Bureau of Investigation, the U.S. Departments of Justice and Health and Human Services and several Members of Congress, as well. The DIR and OSIP were provided copies of the Kern County Superior Court amended RICO complaint concerning egregious violations of HIPAA by Pope & Hershewe. Dozens and dozens of letters were sent to both DIR and OSIP about the complete and utter lack of compliance with the WCAB Awards and Orders by the AHS hospital chain.

In response to her dozens of letters to the DIR and OSIP the Plaintiff only received condescending electronic mail messages from OSIP employees that instructed the Plaintiff that "she was wasting her time" in pursuing OSIP cooperation in enforcing the WCAB Awards and Orders.

One e-mail from an OSIP employee stated “no SIP [self insured plan, like the AHS hospital chain] has ever been sanctioned by SIP [the Office of Serf Insured Plans]”, meaning that the Plaintiff should give-up her efforts to seek action by DIR or OSIP concerning the egregious behavior of Pope & Hershewe.

It is alleged that the employees of DIR and OSIP contacted the Adventist at AHS hospital chain with the Plaintiff’s concerns for the purpose of neutralizing the Plaintiff’s complaints between 2002 and the present. That the DIR and OSIP, instead of assisting a disabled injured worker to obtain legitimate compliance with WCAB Awards and Orders simply joined in on the Pope & Hershewe conspiracy.

It is alleged that members of the DIR and OSIP staff entered into a civil conspiracy with certain employees of the AHS hospital chain [most likely Pope & Hershewe] for the purposes of “silencing” the complaints and concerns of the Plaintiff.

That when contacted by federal agents and officers the staff of DIR and OSIP dismissed the Plaintiff as a “crack pot” that should be ignored. As DIR and OSIP had received numerous copies of letters that the Plaintiff had sent to federal agencies and officers, the DIR and OSIP could easily fashion affirmative defenses to create a shroud of immunity for their respective offices and ignore the Plaintiff and lawful requests from federal officers and agents.

That the excess insurance carrier of the AHS hospital chain self insurance plan was a firm known as the National Union Fire Insurance Company of Pittsburgh, Pa., a member company of American International Group, Inc. (AIG).

That National Union Fire Insurance Company would have to pay the lion's share of the disabled Plaintiff's medical expenses, disability payments, etc. That AIG had provided Governor Arnold Schwarzenegger's election committee with approximately \$123,000.00 of political contributions shortly after the Governor's political victory in 2003.

That employees of DIR and OSIP had received instructions from parties in the Governor's office to neutralize the complaints and concerns expressed by the disabled Plaintiff concerning the medical care and disability payments she required and how the AHS hospital chain was not complying with WCAB Awards and Orders. That the Plaintiff's medical care and disability payments would ultimately be the responsibility of that National Union Fire Insurance Company of Pittsburgh and AIG.

That in a *qui pro quo* arrangement, it was agreed upon by the Governor's staff and employees of DIR and OSIP that the disabled Plaintiff's concerns and allegations against the AHS hospital chain must be neutralized and silenced. Otherwise the National Union Fire Insurance Company of Pittsburgh, and

ultimately AIG, would be responsible for the disabled Plaintiff's medical expenses, disability payments, etc.

That together, employees of DIR, OSIP and the AHS hospital chain, viewed the Plaintiff's allegations as a direct threat to the interests of AIG and the Governor's political agenda to reduce workers' compensation premiums to employers through the passage of Senate Bill 899 (S.B. 899).

That the successful public perception of S.B. 899 and the purported accompanying benefits in the reduction of workers' compensation premiums paid by employers would be perceived as a major political accomplishment of Governor Schwarzenegger.

That any stories, allegations and other negative reports from untreated disabled and injured workers – like the Plaintiff -- would detract from the perceived positive effectiveness of the S.B. 899 initiative. That one of the publicly stated goals of Governor Schwarzenegger's S.B. 899 initiative was to crack down on disabled injured workers to reduce fraud in the workers' compensation system in the State of California.

The presumption of Governor Schwarzenegger's staff, and employees of DIR and OSIP, was that S.B. 899 initiatives were held high on Governor Schwarzenegger's political agenda and that negative stories that contradicted the

purported success of the S.B. 899 crack down on workers' compensation fraud would be severely discouraged. Negative reports and stories of disabled injured workers – like the Plaintiff – living in constant pain with untreated injuries would detract from the perceived public benefits of the S.B. 899 initiative.

That a civil conspiracy was entered into by the DIR, OSIP and the AHS hospital chain employees to ignore any allegations or concerns raised by the disabled Plaintiff regarding her untreated medical condition. That the objective of this civil conspiracy was to silence the disabled Plaintiff's allegations that had the potential to tarnish Governor Schwarzenegger's S.B. 899 initiative.

That after the Plaintiff filed the DHHS OCR complaint in February 2005 the closeness of the DIR, OSIP and AHS hospital chain conspiracy grew in intensity with the main objective of the conspiracy to neutralize the complaints of the Plaintiff. By denying the disabled Plaintiff's concerns all parties (DIR, OSIP, and AHS hospital chain employees) knew that the disabled Plaintiff would live in daily pain suffering from untreated injuries to her neck, spine and jaw.

That the objective of the civil conspiracy was to have the Plaintiff endure unusual hardship of an emotional and economic nature in the hopes that the Plaintiff would be made homeless or commit suicide by the unnecessary delay in enforcement of the WCAB Awards and Orders issued against the Adventists at the AHS hospital chain.

That persons associated with the Adventists at the AHS hospital chain promised certain kick-backs, gratuities and bribes (KGBs) to employees of the DIR and OSIP employees if those agencies would take no action in helping the Plaintiff in enforcing the outstanding WCAB Awards and Orders.

That the AIG contributions to Governor Schwarzenegger's election committee came with "strings attached" and negative reports about disabled injured workers – like the Plaintiff – with untreated medical injuries, who lived in constant pain, were expected to be quashed and silenced so as not to detract from the perceived public benefit of Governor Schwarzenegger's S.B. 899 initiative.

That Governor Schwarzenegger's staff instructed employees of DIR and OSIP to obstruct justice, delay investigations, delay enforcement proceedings and otherwise turn a blind eye to the problems of the disabled Plaintiff to spare the National Union Fire Insurance Company of Pittsburgh, and ultimately AIG, from having to pay for medical treatments, disability payments, etc.

That the aforementioned allegations violate Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), 42 U.S.C. 2000d-7 and 42 U.S.C. 1985.

JURY OF PEERS DEMANDED

The Plaintiff hereby DEMANDS a jury of her peers to hear the aforementioned allegations.

DAMAGES AND AWARDS

The Plaintiff seeks compensatory damages of \$20,000,001.00 against all defendants.

The Plaintiff seeks punitive damages of \$20,000,001.00 against all defendants.

Respectfully submitted,

Barbara Clark