

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO:

BHARANIDHARAN PADMANABHAN MD PhD)
(Dr. Bharani))
- PLAINTIFF)

JURY TRIAL DEMANDED

vs.)

MAURA HEALEY)
STEVEN HOFFMAN)
CHRIS CECCHINI)
ADELE AUDET)
JAMES PAIKOS)
LORETTA KISH COOKE)
JOHN DOES)
JANE DOES)

- DEFENDANTS)

FILED
IN CLERK'S OFFICE
2015 SEP 30 AM 11 15
U.S. DISTRICT COURT
DISTRICT OF MASS.

COMPLAINT

PLAIN AND CONCISE STATEMENT OF CLAIM

Defendants conspired together and intentionally engaged in unauthorized access and access exceeding authorization to a protected computer and protected database in conscious intentional violation of 18 U.S.C. 1030 (CFAA), conscious intentional violation of Massachusetts regulation 105 CMR 700.012, conscious intentional violation of 18 U.S.C. 2701 (SCA) and the Clean Hands Doctrine and as a direct result caused Plaintiff severe and irreparable damages and losses exceeding \$5000 in one calendar year.

JURISDICTION

- 1 This Court has original jurisdiction over the Plaintiff's claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

- 2 Medicaid is a Federal program that distributes Federal tax dollars.
- 3 The Medicaid Fraud Division at the Attorney General's Office (AGO) serves as the Medicaid Fraud Control Unit for the Commonwealth of Massachusetts and is annually certified by the Secretary of the U.S. Department of Health and Human Services.
- 4 The Medicaid Fraud Division at the AGO is funded by Federal tax dollars to the level of 75% of its annual budget. For 2015 the budget is \$4,033,878. Therefore approximately \$3 Million of this comes from Federal funds.
- 5 The Prescription Monitoring Program (PMP) is a computer database managed by the Drug Control Program (DCP), a Government entity within the Department of Public Health (DPH) and so within the Executive Office of Health and Human Services (HHS) of the Commonwealth of Massachusetts. The online computer database (PMP) has received Federal grants, especially from the Department of Justice, based on the U.S. Department of Justice Appropriations Act (Public Law 107-77), at approximately \$400,000 every two years, to enhance interstate communication, a Federal goal.
- 6 18 U.S.C. § 1030 "The Computer Fraud and Abuse Act" and 18 U.S.C. § 2701 "Stored Communications Act" are Federal statutes.

7 This Court has supplemental jurisdiction over Defendants' violation of Massachusetts regulation 105 CMR 700.012 because said violation is inextricably intertwined with their violation of the Federal CFAA.

PARTIES

8 At all times relevant to this action Defendant Maura Healey was and is the Attorney General for Massachusetts and the ultimate authority with power to authorize actions by her office. Defendant Maura Healey resides and works within this District.

9 At all times relevant to this action Defendant Chris Cecchini was and is an Investigator at the Office of the Massachusetts Attorney General. Defendant Chris Cecchini resides and works within this District.

10 At all times relevant to this action Defendant Steven Hoffman was and is the Deputy Chief of the Medicaid Fraud Division at the Office of the Massachusetts Attorney General. Defendant Steven Hoffman resides and works within this District.

11 At all times relevant to this action Defendant Adele Audet was and is the Assistant Director of the Drug Control Program (DCP) at the Massachusetts Department of Public Health (DPH) and is responsible for the proper management and use of the Prescription Monitoring Program computer database (PMP) as well as liaison with law enforcement agencies. Defendant Adele Audet resides and works within this District.

- 12 At all times relevant to this action Defendant James Paikos was and is Complaint Counsel and Investigator for the Enforcement Division at the Board of Registration in Medicine (an agency within Massachusetts HHS). Defendant James Paikos resides and works within this District.
- 13 At all times relevant to this action Defendant Loretta Cooke was and is an Investigator for the Enforcement Division at the Board of Registration in Medicine (an agency within Massachusetts HHS) and serves as the assistant/collaborator for Defendant James Paikos. Defendant Loretta Cooke resides and works within this District.
- 14 At all times relevant to this action Defendant Jane Doe was an agent of the Office of the Massachusetts Attorney General or the Massachusetts State Police. Her identity remains unknown as she refused to identify herself when politely asked.
- 15 There may be other Defendants Jane Does and John Does similarly unidentified who may be revealed during legal discovery.
- 16 Plaintiff Dr. Bharani is a neurologist who specialises in multiple sclerosis and resides and practices within this District.

VENUE

- 17 Venue is proper in this District pursuant to 18 U.S.C. 1391 as each Defendant is resident and works within this District.

18 Plaintiff Dr. Bharani is resident and practices within this District.

19 All of the actions alleged in this complaint occurred within this District.

BACKGROUND FACTS

20 In March 2013, Plaintiff Dr. Bharani filed a written criminal complaint with the
Massachusetts Attorney General against the then Director of the Massachusetts Office of
Medicaid, Dr. Julian Harris, documenting the aiding and abetting of Medicaid Fraud by
Dr. Harris.

21 In May 2013, at the Massachusetts Medical Society, Plaintiff Dr. Bharani personally
informed Defendant Assistant Attorney General Steven Hoffman about his written
criminal complaint and that no action seemed forthcoming from the Massachusetts
Attorney General. Defendant Hoffmann was then and is now the Deputy Chief of the
Medicaid Fraud Division.

22 The Massachusetts Attorney General has ignored that criminal complaint to this day. Not
once has the AGO responded to Plaintiff to enquire about his complaint. The complaint
was sent twice via certified mail and also mentioned in an open letter published in a local
newspaper in 2013. Attorney General Coakley and her office were fully aware.

23 For two years Plaintiff Dr. Bharani had documented repeatedly to Defendant James
Paikos' employer (the Board of Registration in Medicine, an agency within

Massachusetts HHS), that Defendant James Paikos had (in violation of 18 U.S.C. § 371) aided and abetted Medicaid Fraud at the Cambridge Public Health Commission (“Cambridge”), a public instrumentality established by the Massachusetts Legislature, and had used old medical records and a fabricated report paid for by Cambridge and provided to him by Cambridge in 2011, while claiming he had instead done an independent good faith investigation through 2013, as required by M.G.L. Ch. 112 § 5. It was repeatedly made clear that the absence of any medical records from 2012 in Defendant Paikos’ possession was proof of his guilt.

- 24 Plaintiff Dr. Bharani had also repeatedly documented on the record that the absence of any records not tainted by Cambridge, from the period 2011-2012, proved that Defendant Paikos had violated state law and aided and abetted Medicaid Fraud by Cambridge when he demanded in January 2013 that Plaintiff Dr. Bharani’s license be suspended.
- 25 Plaintiff Dr. Bharani filed another written criminal complaint with Defendant Attorney General Healey specifically against Defendant James Paikos in January 2015. While Defendant Attorney General Healey has the time, resources and will to investigate fantasy football and issue daily press releases, Defendant Attorney General Healey officially declined to investigate Defendant James Paikos’ aiding and abetting of Medicaid Fraud.

- 26 Even worse, instead of investigating Defendant James Paikos, Defendant Attorney General Healey chose to defend him in a private civil action by not denying Defendant Paikos' overt criminal acts but by claiming quasi-judicial immunity for him.
- 27 To this day Defendant Attorney General Healey has not officially denied that her client, Defendant Paikos, committed overt criminal acts.
- 28 In or about April 2015, Defendants accessed the protected computer hosting the protected database of the Massachusetts Prescription Monitoring Program (PMP) to identify and procure a list of patients treated by Plaintiff Dr. Bharani. From a full list of his patients, 16 were selected because they are on Medicaid.
- 29 Plaintiff Dr Bharani can fully prove beyond even a shadow of a doubt that this protected computer database (PMP) was accessed to select this list of patients. This list could not have been compiled from any other source on earth. This list could not have been compiled (in express violation of 105 CMR 700.012) without the knowledge and approval of Defendant Adele Audet, the DCP liaison with law enforcement.
- 30 Defendants stated the reason for their procuring this list of patients is that they had "information that suggested a violation of ... the Social Security Act had occurred" and that the Medicaid Fraud Division was "investigating allegations of violations of the rules and regulations governing the conduct of certain providers and recipients of Medicaid benefits." EXHIBIT 1

31 As a matter of law the access and search of the protected computer database (PMP) by
the Defendants was explicitly unlawful and a severe egregious chilling violation of the
explicitly-protected privacy rights of Plaintiff's patients as well as those of all residents
of Massachusetts who have been explicitly promised this privacy by Government
regulation 105 CMR 700.012.

32 According to Massachusetts HHS -

"The Massachusetts Prescription Monitoring Program (MA PMP) is a tool that supports safe prescribing and dispensing and assists in addressing prescription drug misuse, abuse and diversion."

33 The 2013 annual report from HHS/DPH/DCP to the Massachusetts Legislature claims:

*"DCP allows law enforcement and regulatory agencies to obtain case reports in support of open and ongoing **controlled-substances related investigations**. Case reports must be specific to a particular prescriber, pharmacy or person. In accordance with the terms and conditions of use, investigators registered with the PMP may also use the online system to obtain this information. However, it is strictly prohibited to use the MA Online PMP as part of routine inspections, for general screening, or any other manner not in support of an already open and ongoing investigation. In fact, DCP requires regulatory and law enforcement employees to provide background case information relevant to a specific PMP request via an online form."* [Emphasis added.]

34 Massachusetts Regulation 105 CMR 700.012 is totally explicit in requiring that law enforcement have legitimate access to the confidential prescription data only in the exclusive context of a "drug-related" investigation, not for any other non-drug-related investigations, which perforce includes alleged violations of the Social Security Act.

35 By law it is established that the access and use by Defendants of the explicitly-protected data on the protected computer database (PMP) on the stated basis of a Medicaid Fraud investigation is explicitly unlawful. 105 CMR 700.012 Defendants should have known and did know that they were in violation of 105 CMR 700.012 and the CFAA and that they intentionally accessed a computer without authorization and exceeded authorized access.

36 Defendants' chilling violation and conscious disregard for the explicitly-protected data privacy rights of the people is likely to be routine and affects anyone who had a prescription filled in Massachusetts, including residents of other States.

SERIOUS CONSCIOUSLY-FALSE ALLEGATION AGAINST PLAINTIFF

37 The Massachusetts Attorney General has committed itself in writing to declaring that Plaintiff Dr. Bharani and 16 of his patients have committed violations of the Social Security Act and engaged in Medicaid fraud.

38 This is a very serious allegation that should not simply be thrown at people, in writing, on official letterhead, without any basis in fact.

39 If indeed Plaintiff Dr. Bharani and fully 16 of his patients (whom he has been treating for free the past five (5) years and has not billed the Government for their care) have engaged in Medicaid Fraud, there should already be sufficient real evidence of massive fraud,

evidence enough for the Massachusetts Attorney General to obtain an indictment from a grand jury or at minimum a subpoena from a judge.

- 40 The absence of either till today is telling and clear evidence they intentionally violated the Clean Hands Doctrine.

CONSCIOUS VIOLATION OF CONSTITUTIONAL LAW AND STATE RULING
AND AMBUSH AT HOME

- 41 The Massachusetts Attorney General flung this very serious allegation into an administrative letter in a clear attempt to make a malicious end run around the due process protections of the Fourth Amendment.

(Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.)

- 42 The very nature of the action documents the total absence of real evidence of a crime.

- 43 Defendant Attorney General Healey is fully aware that the Government was never billed by Plaintiff Dr. Bharani for these patients' care.

- 44 The letter sent by Defendant Attorney General Healey itself clearly acknowledges this fact. Defendant Attorney General Healey's letter alleging Medicaid Fraud by Plaintiff Dr. Bharani did not seek billing records. Instead it sought "immediate access" to "Complete page-by-page medical records" for the 16 patients.

- 45 The aim of this letter clearly is to give the impression that Plaintiff Dr. Bharani is a criminal who would alter the patients' medical records if given even a moment's notice and therefore it was absolutely imperative for the Massachusetts Attorney General to immediately, post-haste, seal the medical records, to immediately remove the doctor's notes from his physical possession, that there was no time to waste, that it was an absolute emergency.
- 46 This end run around the Fourth Amendment by Defendant Attorney General Healey was an abuse of office in order to intimidate and tamper with the very witness who had officially alerted the Massachusetts Attorney General to aiding and abetting of Medicaid Fraud by high officials within the Massachusetts Office of Medicaid (MassHealth). Defendants clearly aimed to give a false impression on the basis of a consciously-false assertion on official letterhead.
- 47 Even worse, this "immediate" demand for "complete page-by-page medical records" had nothing whatsoever to do with investigating Medicaid Fraud and everything to do with aiding and abetting Defendant James Paikos, a state government employee presently being defended by Defendant Attorney General Healey in a civil lawsuit brought by Plaintiff Dr. Bharani.
- 48 On April 29th, 2015, Defendant Attorney General Healey sent Defendant Chris Cecchini and Defendant Jane Doe (who refused to identify herself) to Plaintiff Dr. Bharani's

residence to take immediate possession of his computer and medical records including medical notes written between 2012 through 2015.

- 49 Defendant Attorney General Healey launched this sudden stealth attempt at stealing Plaintiff Dr. Bharani's confidential medical files by abusing her official powers. Her action was aimed at helping her client, Defendant James Paikos, in his private civil action and publicly retaliating against an honest physician who actually filed a criminal fraud complaint. Applying the 'who gains?' analysis, Defendant Attorney General Healey's client, Defendant Paikos, is the sole beneficiary of this unlawful action.
- 50 Defendant Attorney General Healey was fully aware at the time that the AGO was in litigation with Plaintiff Dr. Bharani, that Plaintiff Dr. Bharani was represented by Counsel and thus all communications from the AGO should go through Counsel. Defendant Attorney General Healey ignored this ethical requirement in order to ambush Plaintiff Dr. Bharani on behalf of her client, in conscious violation of the Clean Hands Doctrine.
- 51 Plaintiff Dr. Bharani's elderly parents were home at the time and dealt with the sudden and deliberately intimidating action of the Defendants as best they could. All of a sudden they were confronted with what they perceived to be the menacing spectacle of Defendant Jane Doe silently standing across and blocking the doorway of their home with feet apart and arms folded. Their sworn affidavit documents their clear impression that had Plaintiff Dr. Bharani been present he would have been arrested on some pretext

just so his files could be physically taken by the Massachusetts Attorney General on behalf of her client. EXHIBIT 2

52 Plaintiff Dr. Bharani's elder parents have been left totally shaken by the reality of an Attorney General consciously violating the rule of law and the sanctity of their home. They now are in palpable distress daily, fearful of further Government abuse at any time and under any pretext amid the realization that the chief law enforcement official for this Commonwealth, Defendant Attorney General Maura Healey, has no respect for the rule of law.

53 Plaintiff Dr. Bharani, through his existing Counsel, individually informed Defendant Attorney General Healey, Defendant Assistant Attorney General Hoffman and Defendant Cecchini in writing that what they demanded was unlawful and the manner of their demand was even more so. Defendants Healey, Hoffman and Cecchini were informed they lacked both jurisdiction and probable cause. Defendants knew and should have known they lacked both jurisdiction and probable cause and had violated the Clean Hands Doctrine.

CONCURRENT CONSCIOUS VIOLATION OF MASSACHUSETTS SJC PRECEDENT

54 Overriding the objections of the Massachusetts Attorney General, the Massachusetts Supreme Judicial Court had ruled in *Kobrin* that even a grand jury subpoena for medical records cannot be for "complete page-by-page" records as all reports from patients are required to be redacted before records are turned over to the Government.

(“...but not those portions of his records reflecting any patient's thoughts, feelings, or impressions, or containing the substance of any psychotherapeutic dialogue, or exposing personal relationships of no concern to legitimate investigation.”) *Commonwealth vs. Kennard C. Kobrin*. 395 Mass. 284 (1985)

- 55 This holds especially true for a Government’s demand in the absence of a judicial subpoena issued “upon probable cause, supported by oath or affirmation.”
- 56 Defendant Attorney General Healey’s demand for “immediate access” to “complete page-by-page copies of the medical record (written and electronic)” was thus also a deliberate malicious end run around the precedent set by the Massachusetts SJC in *Kobrin*, a precedent that is binding also on this Honorable Court per the Erie doctrine.
- 57 In this context it is vital for this Honorable Court to note Defendant Cecchini’s explicit written declaration -

“Furthermore, as a public official, I certify that the records being requested, which may contain protected health information, are the minimum necessary for the purpose of this inquiry.”

- 58 Plaintiff Dr. Bharani was supposed to believe that Defendant Attorney General Healey and Defendant Cecchini had an urgent pressing need to totally disregard the SJC’s ruling in *Kobrin* when Plaintiff Dr. Bharani had not billed the Government for seeing his patients, when Plaintiff Dr. Bharani has been seeing all his patients for free for the past 5 years, and when Defendant Attorney General Healey was fully aware of this fact and had not therefore demanded any billing records.

- 59 Plaintiff Dr. Bharani was supposed to believe that Defendant Attorney General Healey and Defendant Cecchini had an urgent pressing need for “complete page-by-page medical records” as the “minimum necessary” for an inquiry into Medicaid Fraud allegedly committed by Plaintiff Dr. Bharani and 16 of his patients.
- 60 It is vital for this Honorable Court to understand that the only legitimate need the Attorney General may claim for the confidential medical records of people is to compare the doctor’s notes with the level of billing for a particular visit. This requires that the Attorney General have a bill for a particular visit and then demand the records to substantiate the legitimacy of that bill for that particular visit. This also requires that the doctor be a Medicaid Provider under the statutory provisions and have signed a Provider agreement. All of this is mandatory for any alleged Medicaid Fraud investigation.
- 61 In the absence of any money paid by the Government for any visit, the Government has no legitimate need for people’s confidential medical records, especially in the form of “immediate access” to “complete page-by-page copies of the medical record (written and electronic)” as the “minimum necessary” for allegedly investigating Medicaid Fraud.
- 62 Defendant Attorney General Maura Healey and the other Defendants have now proved that there truly was no legitimate need for “immediate” access as five full months have gone by since the sudden ambush on Plaintiff Dr. Bharani’s residence with only silence emanating from Defendant Attorney General Maura Healey’s office.

STANDING

63 Plaintiff Dr. Bharani has standing as (1) he personally has suffered some actual or threatened injury as a result of the challenged conduct; (2) the injury can fairly be traced to that conduct; and (3) the injury likely will be redressed by a favorable decision from the court.

64 Plaintiff Dr. Bharani thus brings this action before a JURY to recover damages caused to Plaintiff by Defendants' attempt to unlawfully obtain Plaintiff's computer and data in violation of the probable cause and due process protections of the Fourth Amendment and Massachusetts case law, intentionally exceeding authorized access to a protected computer and protected computer database that is for the use of an agency of the Government of the United States in conscious intentional violation of the Computer Fraud and Abuse Act 18 U.S.C. § 1030 and conscious intentional violation of Massachusetts 105 CMR 700.012 and the Clean Hands Doctrine.

CLAIMS FOR RELIEF

COUNT 1

VIOLATION OF 18 U.S.C. § 1030 et seq. COMPUTER FRAUD AND ABUSE ACT

65 Plaintiff reasserts the allegations set forth in paragraphs 1 - 64 as though fully set forth herein.

66 Medicaid is a Federal program that distributes Federal tax dollars.

- 67 The Medicaid Fraud Division at the AGO serves as the Medicaid Fraud Control Unit for the Commonwealth of Massachusetts and is certified annually by the Secretary of the U.S. Department of Health and Human Services.
- 68 The Medicaid Fraud Division at the AGO is funded by Federal tax dollars to the level of 75% of it's annual budget. For 2015 the budget is \$4,033,878. Therefore approximately \$3 Million of this comes from Federal funds.
- 69 The Prescription Monitoring Program (PMP) is a computer database managed by the Drug Control Program (DCP), a Government entity within DPH and HHS of the Commonwealth of Massachusetts. The PMP database receives Federal grants, especially from the Department of Justice, based on the U.S. Department of Justice Appropriations Act (Public Law 107-77), at approximately \$400,000 every two years, to enhance interstate communication, a Federal goal.
- 70 All computers hosting the Prescription Monitoring Program computer database are protected computers that are for the use of an agency of the Government of the United States under the Computer Fraud and Abuse Act (CFAA) 18 U.S.C. §1030(e).
- 71 Massachusetts Regulation 105 CMR 700.012 which governs authorized access to the protected computers and protected database explicitly requires any and all access by law enforcement to involve a drug-related investigation.
- 72 The 2013 annual report from HHS/DPH/DCP to the Massachusetts Legislature claims:

*“DCP allows law enforcement and regulatory agencies to obtain case reports in support of open and ongoing **controlled-substances related investigations**. Case reports must be specific to a particular prescriber, pharmacy or person. In accordance with the terms and conditions of use, investigators registered with the PMP may also use the online system to obtain this information. However, it is **strictly prohibited** to use the MA Online PMP as part of routine inspections, for general screening, or any other manner not in support of an already open and ongoing investigation. In fact, DCP requires regulatory and law enforcement employees to provide background case information relevant to a specific PMP request via an online form.”* Emphasis added. EXHIBIT 7

73 Going by the simple and clear language of Massachusetts regulations (and terms and conditions of use) and DCP’s unequivocal assurances in it’s official report to the Massachusetts Legislature, an alleged Medicaid Fraud investigation, that too without probable cause and without a warrant or subpoena issued upon probable cause after oath, fails to satisfy the clear requirement in 105 CMR 700.012 (the legal authorization) of an already open “drug-related” investigation prior to accessing this protected computer database. No individual person, especially an Executive-branch employee, has the authority to override the regulations and the explicit assurances furnished to the Massachusetts Legislature.

74 By law, access by Defendants to the protected private confidential prescription data of all of Plaintiff’s patients, held on protected computers and an explicitly protected database (PMP), was an unauthorized intrusion and intentionally in excess of authorization as defined by §1030(a)(2)(B), §1030(a)(2)(C) and §1030(e)(6) of the CFAA and thus immune from narrow/broad ‘interpretations’ or ‘Circuit splits.’ Furthermore, this intentional unauthorized access was in furtherance of a criminal or tortious act, namely aiding and abetting Medicaid Fraud and tampering with a witness who reported it.

- 75 Plaintiff Dr. Bharani prescribes medicines to more than 16 patients. Defendants have selected 16 of Plaintiff's patients who are on Medicaid from the protected computer database (PMP) which lists all of Plaintiff's patients who have received prescriptions. Defendants violated the explicitly protected data privacy of all of Plaintiff Dr. Bharani's patients simply because they are his patients.
- 76 The only criteria for the selection of these 16 patients were that they were Plaintiff's patients and they were on Medicaid. There was no "drug-related" criterion applied.
- 77 Plaintiff Dr. Bharani can fully prove beyond even a shadow of a doubt that this protected computer database (PMP) was accessed to select this list of patients. This list could not have been compiled from any other source on earth.
- 78 Plaintiff Dr. Bharani can also fully prove that the patients do not share any other criterion including prescriptions for certain classes of medicines, thus precluding Defendants from now falsely claiming they were hastily responding to an "opioid crisis" when they violated the CFAA intentionally and in furtherance of a criminal or tortious act, namely aiding and abetting Medicaid Fraud and tampering with a witness who reported it.
- 79 Defendants' use of the protected computers and protected database intentionally in excess of their authorization and in violation of the CFAA was aimed solely at causing and has caused Plaintiff massive injury and irreparable harm with "loss" – as defined in §1030(e)(11) – substantially in excess of \$5,000 over a one-year period including direct

costs owing to having to respond to this violation, including consulting with each of his 16 patients who were targeted and accused of Medicaid Fraud simply for being his patients, seek legal advice and prepare this action.

80 Defendants' intentionally unauthorized use of the protected computers and protected database intentionally and maliciously in excess of their authorization in order to procure a list of Plaintiff's patients and subsequent written false official claim of a Medicaid Fraud investigation remains a massive injury to Plaintiff who for years to come will be forced to disclose this fact on official forms even though the claim is consciously fraudulent and the list was procured in intentional violation of the CFAA in furtherance of a criminal or tortious act, namely aiding and abetting Medicaid Fraud and tampering with the witness who reported it.

81 Defendants' intrusion into the protected computers and protected database intentionally and maliciously in excess of their authorization in violation of §1030(a)(2)(B), §1030(a)(2)(C) and §1030(e)(6) in furtherance of a criminal or tortious act, namely aiding and abetting Medicaid Fraud and tampering with a witness who reported it, has irreparably harmed Plaintiff's ability to practice his profession, harmed Plaintiff's ability to credential with Medicare and Medicaid or private insurers, harmed Plaintiff's ability to routinely renew his medical license, harmed Plaintiff's ability to earn a living despite being totally innocent and entitles Plaintiff to an award of punitive damages.

82 Plaintiff's eventual losses and damages from Defendants' violation of the CFAA are thus
massive and many magnitudes higher than the threshold sum of \$5000.

83 All Defendants knowingly and intentionally conspired to commit the offenses detailed
above and all meet the definition of "person" as defined by §1030(e)(12).

84 Because Defendants' conduct involves at least one of the factors identified in
§1030(c)(4)(A)(i), and for the reasons set forth with particularity above, Plaintiff is
entitled to assert this civil action to obtain compensatory damages and injunctive relief
pursuant to 18 U.S.C. §1030(g).

85 Because Plaintiff's action is begun within 2 years of the date of the act complained of or
the date of the discovery of the damage, Plaintiff is entitled to assert this civil action to
obtain compensatory damages and injunctive relief pursuant to 18 U.S.C. §1030(g).

COUNT 2

VIOLATION OF 18 U.S.C. § 2701 STORED COMMUNICATIONS ACT

86 Plaintiff reasserts the allegations set forth in paragraphs 1 - 85 as though fully set forth
herein.

87 Medicaid is a Federal program that distributes Federal tax dollars.

- 88 The Medicaid Fraud Division at the AGO serves as the Medicaid Fraud Control Unit for the Commonwealth of Massachusetts and is certified annually by the Secretary of the U.S. Department of Health and Human Services.
- 89 The Medicaid Fraud Division at the AGO is funded by Federal tax dollars to the level of 75% of it's annual budget. For 2015 the budget is \$4,033,878. Therefore approximately \$3 Million of this comes from Federal funds.
- 90 The Prescription Monitoring Program (PMP) is a computer database managed by the Drug Control Program (DCP), a Government entity within DPH and HHS of the Commonwealth of Massachusetts. The online PMP database receives Federal grants, especially from the Department of Justice, based on the U.S. Department of Justice Appropriations Act (Public Law 107-77), at approximately \$400,000 every two years, to enhance interstate communication.
- 91 All computers hosting the Prescription Monitoring Program computer database are protected computers that are for the use of an agency of the Government of the United States.
- 92 Massachusetts Regulation 105 CMR 700.012 which governs authorized access to the protected computers and protected computer database (PMP) explicitly requires any and all access by law enforcement to involve a "drug-related" investigation.

- 93 Going by the simple and clear language of Massachusetts regulations and DCP's unequivocal assurances in its official report to the Massachusetts Legislature, an alleged Medicaid Fraud investigation, that too without probable cause and without a warrant or subpoena issued upon probable cause after oath, fails to satisfy the clear requirement in 105 CMR 700.012 (the legal authorization) of an already open "drug-related" investigation prior to accessing this protected computer database.
- 94 The U.S. Attorneys' Criminal Resource Manual #1061 explicitly clarifies that §2701(a) "is not intended to criminalize access to "electronic bulletin boards," which are generally open to the public. A communication will be found to be readily accessible to the general public if the telephone number of the system and other means of access are widely known, and if a person does not, in the course of gaining access, encounter any warnings, encryptions, password requests, or other indicia of intended privacy."
- 95 The protected computer database (PMP) hosted on protected computers, funded by Federal funds, and for the use of an agency of the Government of the United States does not meet any definition of a system readily accessible to the general public as all persons desiring access are made fully aware of warnings, encryptions, password requests and other indicia of intended privacy, including filling a separate form confirming that their access request complies with the explicit requirements of 105 CMR 700.012.
- 96 Access to this protected computer database (PMP) is restricted with individual requests required to affirm they comply with 105 CMR 700.012 for legitimate on-going, open

drug-related investigations before authorized access is granted to the stored communications from pharmacies about select patients.

97 By law, access by Defendants to the protected private confidential stored prescription data of all of Plaintiff's patients, held on protected computers and an explicitly protected database, was explicitly unauthorized and intentionally in excess of authorization as defined by §2701(a)(1) and §2701(a)(2) of the SCA, in furtherance of a criminal or tortious act, namely aiding and abetting Medicaid Fraud and tampering with a witness who reported it and entitles Plaintiff to an award of punitive damages.

98 Defendants fully meet the definition of persons as defined by §2711 of the SCA.

COUNT 3 EQUITABLE RELIEF

99 Plaintiff reasserts the allegations set forth in paragraphs 1 - 98 as though fully set forth herein.

100 The following requests for declaratory judgment involve matters in actual controversy that arise under the Constitution and laws of the United States compelling judicial declaration of the legal rights and individual interests of Plaintiff Dr. Bharani.

101 The degree of lawlessness at the level of the Massachusetts Attorney General that has been laid out with particularity in this complaint should not be tolerated. In a different

case the Courts have already been informed about corruption within the Office of the present Massachusetts Attorney General.

102 The chilling violation and conscious disregard by Defendants of explicit Massachusetts law and the CFAA is being exposed to this Honorable Court and the general public due to the integrity of Plaintiff Dr. Bharani who respects compliance with 18 U.S.C. 4, and views the conduct of Defendants as egregiously un-American and more in keeping with the well-documented practices of the Stasi.

103 Plaintiff Dr. Bharani respectfully requests this Honorable Court to condemn Defendants' conduct publicly in the strongest terms in a judicial order declaring the actions of Defendant Attorney General Healey to be a malicious abuse of office. To use the words of Telford Taylor, Attorney General Maura Healey's accusation against Dr Bharani is a fraud that has "no purpose or effect other than to expose [an individual] to public contumely and to the loss of [his job] or perhaps of [his] livelihood" and "nothing other than a method, outside of law, of inflicting punishment on individuals" that should and can only be publicly condemned. Plaintiff has no adequate remedy of law for Defendants' continued violation of the CFAA.

104 Plaintiff requests an official referral of Defendants to the U.S. Attorney for prosecution under 18 U.S.C. 1030, 18 U.S.C. 2701, 18 U.S.C. 371, 18 U.S.C. 4, and other relevant US statutes. Only a custodial sentence shall be an adequate remedy and future deterrent to those seeking high office and enormous asymmetric power.

105 Plaintiff requests a judicial order officially referring Defendant Attorney General Healey to the Board of Bar Overseers for disciplinary action.

106 Plaintiff also seeks an injunction permanently enjoining Defendant Attorney General Healey from further routinely violating the protected privacy of anyone who had a prescription filled in Massachusetts, including residents of other States, and from further violating 105 CMR 700.012, the CFAA and the SCA.

107 Plaintiff seeks a judicial order that no public funds be expended for the defense of the Defendants as that would constitute an extreme conflict of interest. Plaintiff also seeks a judicial order reminding Defendant Attorney General Healey that regulations and laws are to be obeyed, including the Clean Hands Doctrine and SJC precedents, and that the Attorney General is not above the law.

108 Plaintiff requests a judicial order officially referring Defendant Attorney General Healey's client, Defendant James Paikos, to the Board of Bar Overseers for disciplinary action.

109 Plaintiff seeks a judicial order enjoining Defendant James Paikos from any further access to the protected computer database (PMP) due to a history of exceeding authorized access and routinely violating the protected privacy of anyone who had a prescription filled in

Massachusetts, including residents of other States, and from further violating 105 CMR 700.012 and the CFAA.

110 Plaintiff seeks a judicial order enjoining Defendant Adele Audet from any further access to the protected computer database (PMP) due to a history of exceeding authorized access and routinely violating the protected privacy of anyone who had a prescription filled in Massachusetts, including residents of other States, and from further violating 105 CMR 700.012 and the CFAA.

111 Plaintiff seeks a judicial order enjoining Defendant Loretta Cooke from any further access to the protected computer database (PMP) due to a history of exceeding authorized access and routinely violating the protected privacy of anyone who had a prescription filled in Massachusetts, including residents of other States, and from further violating 105 CMR 700.012 and the CFAA.

112 Plaintiff seeks a judicial order enjoining Defendant Steven Hoffman from any further access to the protected computer database (PMP) due to a history of exceeding authorized access and routinely violating the protected privacy of anyone who had a prescription filled in Massachusetts, including residents of other States, and from further violating 105 CMR 700.012 and the CFAA.

113 Plaintiff seeks a judicial order enjoining Defendant Chris Cecchini from any further access to the protected computer database (PMP) due to a history of exceeding authorized

access and routinely violating the protected privacy of anyone who had a prescription filled in Massachusetts, including residents of other States, and from further violating 105 CMR 700.012 and the CFAA.

COUNT 4
CIVIL CONSPIRACY

114 Plaintiff reasserts the allegations set forth in paragraphs 1 - 113 as though fully set forth herein.

115 An agreement and conspiracy existed between and among the Defendants, and other co-conspirators yet to be identified during discovery, to access the private protected prescription data of all of Plaintiff's patients, simply because they were Plaintiff's patients, in the conscious absence of any legitimate "drug-related" investigation, in conscious intentional violation of 105 CMR 700.012 and the CFAA.

116 Each Defendant intentionally participated in the agreement and conspiracy.

117 Each Defendant knowingly agreed to engage, and did engage, in one or more overt acts in pursuit of the conspiracy as set forth with particularity above and liability therefore attaches equally to each Defendant.

118 Plaintiff has been damaged by the conspiracy and Defendants' reckless actions in furtherance thereof and is entitled to an award of punitive damages.

DEMAND FOR A JURY TRIAL

119 Plaintiff demands a trial by jury on all triable issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. Bharani respectfully requests that this Honorable Court enter final judgement in favour of Plaintiff and against the Defendants, jointly and severally, as follows:

- a) Awarding Plaintiff compensatory, consequential, punitive and special damages including, without limitation, lost goodwill, damage to his reputation, damage to his professional good name, damage to his ability to earn a living as a physician, intentional infliction of emotional distress, actively intimidating a witness, damages accruing from responding to Defendants' violation of the CFAA and SCA, together with pre- and post-judgement interest, as provided by law; with a minimum order of \$1 million.
- b) Awarding Plaintiff reasonable attorneys' fees and costs associated with this action;
- c) Granting permanent declarative and injunctive relief in favour of Plaintiff Dr. Bharani and against Defendants as described above and enjoining Defendants from engaging in the unlawful practices described in this Complaint;
- d) Enjoining Defendants from all further access to the protected computer and protected database (PMP);
- e) Entering a judicial order declaring the actions of the Defendant Attorney General Healey to be a malicious abuse of office;

- f) Entering an official referral of Defendant Attorney General Healey to the U.S. Attorney for prosecution under the relevant US statutes, including, but not limited to, CFAA and SCA;
- g) Entering an official referral of Defendants Hoffman, Cecchini, Jane Doe, Paikos, Cooke and Audet to the U.S. Attorney for prosecution under the relevant U.S. statutes, including, but not limited to, CFAA and SCA;
- h) Granting such further relief as this Court deems just and proper.

PLAINTIFF'S REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d) of the U.S. District Court for the District of Massachusetts, Plaintiff Dr. Bharani requests oral argument for the above-captioned matter on the belief that a hearing may assist the Court.

Respectfully submitted this 30th day of September, 2015



Bharanidharan Padmanabhan MD PhD
Plaintiff, pro se
30 Gardner Road #6A, Brookline MA 02445
617 5666047 - scleroplex@gmail.com

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BHARANIDHARAN PADMANABHAN MD PhD
(Dr. Bharani)
- PLAINTIFF

vs.

MAURA HEALEY et al.
- DEFENDANTS

EXHIBIT 1



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200
www.mass.gov/ago

April 29, 2015

BY HAND

Dr. Bharani Padmanabhan
30 Gardner Rd., Apt 6A
Brookline, MA 02451

NOTICE TO PRESERVE RELEVANT EVIDENCE, DOCUMENTS, AND DATA

**NOTICE OF OFFICIAL REQUEST FOR IMMEDIATE ACCESS OR
DOCUMENTS**

Dear Keeper of the Records:

The Massachusetts Office of the Attorney General, Medicaid Fraud Division (MFD), is investigating allegations of violations of the rules and regulations governing the conduct of certain providers and recipients of Medicaid benefits.

Pursuant to Section 42 U.S.C. 1396b (q) of the Social Security Act, this office is vested with the responsibility for the investigation and prosecution of all applicable state laws regarding any aspect of fraud in connection with provision of medical assistance, and for reviewing and acting upon all complaints regarding abuse, mistreatment or neglect of patients of health care facilities that receive payments under public medical assistance programs. This administrative demand for documentation is separate and distinct from any other request from a state or federal agency that may involve the same allegations and incidents.

Notice to Preserve Relevant Evidence, Documents, and Data

This letter serves as notice to preserve all documents, records, and data, in whatever format they are regularly maintained, that may be relevant to this request for production of documents, as specified herein below. It is advisable to inform employees not to destroy or alter potentially relevant documents or data in the normal course of work.

Administrative Request to Furnish Documentation

State and Federal law requires Medicaid providers to furnish any information in its possession to a requesting Medicaid Fraud Control Unit (MFCU) for its health oversight activities. (See 130 CMR 450.205, 42 CFR 431.107.)

This notice, which is being issued for records by an agent of the Massachusetts Office of the Attorney General, Medicaid Fraud Division Unit, is to inform you that **we are hereby making a request for "immediate access" to the records specified below**, as defined by federal regulations 42 CFR 1001.1301, and to review and copy these documents and records whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or any memory storage devices such as computers, optical disks, or in any other storage media.

Under these regulations, a request for immediate access means a written request for documents signed by an authorized official of the Medicaid Fraud Division during reasonable business hours, where there is information to suggest a violation of the statutory or regulatory requirements under Titles V, XI, XVIII, XIX, or XX of the Social Security Act has occurred.

Immediate access includes making available for inspection and/or furnishing copies of the requested records upon reasonable request **at the time of the request** or to provide a compelling reason why such records cannot be produced **within 24 hours of such request**. The compelling reason must be provided to and received by the Medicaid Fraud Control Unit at the address shown below within 24 hours of the request.

If one or more of the requested documents is not available, such information should be provided with the inventory list of produced documents, along with the reason for its unavailability, and if appropriate, information as to its present location and when it would be available.

Failure to comply with these regulations could lead to exclusion as a provider to a state health care program by the Office of Inspector General of the United States Department of Health and Human Services. (See 42 CFR 1001.1201). The Massachusetts Medicaid Program, MassHealth, may also recover any payments made for services for which a provider does not produce required records. 130 C.M.R. § 450.205(H), and seek other sanctions, including administrative fines and suspension or termination from participation in MassHealth, 130 CMR § 450.238.

MFCU is a health oversight agency pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules. Covered entities are authorized by HIPAA to disclose protected health information to the MFCU in the course of its health oversight activities without notice to or consent of the individual patient or resident. (See 45 CFR 164.501 and 45 CFR 164.512 (a) and (d).) Furthermore, as a public official, I certify that the records being requested, which may contain protected health information, are the minimum necessary for the purpose of this inquiry. (See 45 CFR 164.514 (d) (3) (iii) (A).)

Standard of Production

Requested documents must adhere to the following standard of production. They must be identifiable or labeled and segregated per the numbered requests below. Unless a requested record or document is clearly identifiable, such as a Logbook or Policy Manual, the class of documents should be placed in folders and the folder labeled according to the requested item, e.g., "Job Descriptions" or "Medical Records of [name]," etc. Requested items that require you to create a document, e.g. a list of residents or payments, should be titled at the top of the first page per the request below and dated. Requested items that are maintained or stored in electronic or digital format must also be produced.

Applicable Date Range and Documents and Records Requested

SEE ATTACHMENT "A"

If you have any questions, please do not hesitate to contact me at the number below.

Sincerely,



Chris Cecchini
Investigator
Medicaid Fraud Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 963-2236
Fax: (617) 727-2008

Attachment "A"

Complete, page-by-page copies of the medical record (written and electronic) for each of the following MassHealth members

First Name	Last Name	DOB	MA Health ID #

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BHARANIDHARAN PADMANABHAN MD PhD
(Dr. Bharani)
- PLAINTIFF

vs.

MAURA HEALEY et al.
- DEFENDANTS

EXHIBIT 2

25 June 2015

AFFIDAVIT

On April 29th, 2015, we were present in our son's apartment when investigators arrived from the office of Attorney General Maura Healey.

A man and a woman came up from downstairs. Neither presented us an official badge. The man introduced himself as Mr Chris Cecchini. The woman did not. When we asked for her identification Mr Cecchini waved vaguely in her direction and simply said "She's with me." The woman never said a word. She stood with her legs apart and her arms folded in front. We felt extreme discomfort at this sudden circumstance and what she demonstrated as a menacing presence.

We phoned our son and informed him that 2 people had arrived from the AGO and he spoke with Mr Cecchini. Mr Cecchini then handed us a demand letter that he had signed. We accepted receipt of that letter on our son's behalf.

We are convinced that had our son been home, especially home alone, he would have suffered unknown consequences.

Sworn to under the pains and penalties of perjury.



CHITRA PADMANABHAN



RAJAM PADMANABHAN

Dated: June 25th, 2015