In the matter of James R. Caputo, M.D.

Vacatur Petition

to the

Board of Professional Medical Conduct

of the

New York State Department of Health

for

Determination and Order (No. 07-271)
dated December 7, 2007

January 22, 2015

Keith W. Servis, Director
Office of Professional Medical Conduct
New York State Department of Health
433 River Street, Suite 1000
Troy, NY 12180-2299

Re: BPMC Order #: 07-271
NYS Medical License #: 206065

Dear Mr. Servis,

Your time and effort to thoroughly read and respond accordingly to the information contained in this petition letter is expected and appreciated. I am writing you once again regarding matters involving my (recently past) New York State Medical License. As you know, after nearly twelve years of direct interaction with the Department of Health over various contested matters, I grudgingly surrendered my license under the latest conditions of duress by your agency this past June of 2014, pleading no contest to a new set of charges stemming from, among other things, cases that were initially investigated back in 2008. In response to this June event, in addition to this entire time we have been on opposing sides of the aisle in regards to my license, and pursuant to ***Public Health Law, Section 230(10)(q)***, it is my position that the petition that is to follow offers both **"new and material evidence that was not previously available which, had it been available, would likely have led to a different result"** along with "**circumstances which have occurred subsequent to the original determination that warrant a reconsideration of the measure of discipline"** and thus serve as the basis for the filing of this **"petition with the director, requesting a vacatur of the determination and order."**

In other words, after you read what is presented in this petition, it is my categorical position that had the Office of Professional Medical Conduct, (OPMC) known at all or if known, given proper weight to this information, (both new AND old), at **any time** it was investigating my license, they would have acted and ruled far differently, if at all. It is therefore with the utmost gravity that I seek your review of this material evidence along with this vacatur petition in order to affirm that the proof presented is clear and convincing so that your agency can thus act accordingly by granting this long overdue request and remedy.

This petition marks the second time in eighteen months that I have written the Board of Professional Medical Conduct, (BPMC – essentially synonymous with OPMC), with compelling argument for there to be some sort of a amendment of the previously imposed Order on my license. The prior letter of July 2013 has yet to be answered by your agency without there having been any explanation as to why this communication has been ignored, when BPMC is otherwise obligated under the law to respond. Further, the most recent prosecuting attorney for the State admitted that he too was troubled by the blatant disregard of that formal appeal filed with your office. Still, no answer. Therefore, this petition is being submitted with the expectation (in accordance with written statute on such matters) that it will be properly reviewed and answered in short order given both the enormity of what is at stake and what has been done, along with the straightforwardness of what has been submitted.

Due to the importance of this petition, a great deal of information and detail was essential to present in order for the reader(s) to fully appreciate and understand the legitimate basis for this request. Over the ensuing pages, various historical and notable material facts of this matter concerning my license will indisputably validate the veracity of this vacatur petition as well as establish, (without question), the dastardly manner by which I arrived at this point. You will notice that I repeat many pertinent facts along the way as a point of emphasis. This is intentional. And also note, despite there being a tremendous amount of information presented here, there is not one contradiction at any point in the history or presentation of this ordeal that I speak of as being the facts and truth concerning this malicious prosecution of my medical license. Not one single inconsistency can be found with regard to by contentions herein. You won't be able to find one.

Please understand that I have tried to keep this request as brief as possible, however, the pertinent arguments and information set forth are absolutely necessary and in fact, are merely a sampling of the enormity of information that could be offered in additional support. I have fashioned a webpage that contains all of what is presented here in addition to numerous other substantive documents that sustain this appeal even further, which will be referenced as this petition moves along. The website address is http://goodlifecentre.com/petition.html.

Again, the measure of what has been presented here is a bit lengthy and therefore will require the reader/investigator to exercise due diligence in carefully examining and (more importantly) affirming the factual grounds of this plea. With the utmost of earnestness, my

family and my children need for someone to take this seriously. It has been thirteen years that this travesty of justice has been going on for crying out loud. Being able to correlate the various items discussed should be straight forward, and moreover, is crucial for seeing how each account is a working and likewise, additive component of a broader picture pertaining to the circumstances of how my prosecution all came about, how pejorative conclusions by OPMC were based on fraudulent information and why there is justification for making this petition, particularly when considering an eventual outcome that turned out to be highly contrary to even what the original OPMC penalty had intended.

Pursuant to that last sentence, I will introduce several documents, including a new, recently discovered one that **completely exonerates** me from the Hearing Panel's most significant adverse finding that any honest reader should conclude had **the most** significant impact on the **penalty** from the original Determination and Order in December 2007 and the ARB Appeal Ruling in April 2008, both of which set forth the subsequent (and soon to be proven groundless) probation conditions that were a major factor leading to me having no choice but to surrender my license, again, under continued (and endless) duress by the Department of Health, (DOH), this past June. Additionally, this erroneous conclusion by OPMC consequently fostered certain untoward perceptions of my character as a physician in the eyes of the DOH as well which was then disseminated for public consumption. Most, if not all, of these documents are ones I believe OPMC ought to have had upon querying my hospital file more than a dozen times since first doing so in the Fall of 2002. Maybe some or more were omitted from what you received. However, given my experience, I find that questionable. After presenting each component of this petition, the reader should be able to readily correlate everything together for the full picture to be clear as to why I seek your interest and authority, (as well as others), in this matter once again – for the right thing to finally be done.

As can be seen listed at the end, numerous parties will receive this petition along with it being released publicly. This is done for two reasons and why much of this writing (though addressed to you, Mr. Serivs), is also done from a perspective so as to fully educate all readers on the totality of this matter. One reason for the widespread disclosure is for certain official and public entities to be aware of what has gone on in this matter, specifically as it pertains to due process, widespread procedural violations, dubious un-Constitutional practices and inconceivable administrative corruption not to mention what this is all supposed to be about in the end and that is patient care. Frankly, any honest New Yorker should be outraged with

what they are about to read unto itself about their State government, not to mention the fact that it was all funded with their tax dollars. It also just so happens that in the backdrop of this messy experience is a hospital department that, for decades, has so badly underperformed for the entire central part of New York State with far too many preventable bad medical outcomes that something has to be done about it, outside of my own circumstances. So, in essence, this petition is also serving as a formal complaint in many respects. This just mentioned problem concerning what amounts to the Ob/Gyn leadership for this region is serious and real with plenty of evidence/cases available to authenticate such a claim, should anyone truly care about it.

Secondly, the reason for other parties to be included is because this matter cannot remain isolated to just BPMC anymore in order for them to simply ignore me once again, as they have repeated done in the past already. Last I knew, this was the United States and we have a right to be heard when we have been wronged, not to mention the fact that law provides this avenue for any licensee to formally seek relief. Therefore, given a lack of confidence in what I have experienced already for the past thirteen years, I seek the help of as many authoritative parties as possible, (including those with oversight power), trusting that someone honest will be moved by what they read and thus make a change for not only my circumstance but for all others so harmed by a corrupted system capable of what you are about to discover.

HISTORY

It is imperative to first understand certain fundamental pieces of history as to how I arrived at the inconceivability of being left no choice but to surrender my New York State medical license this past June. Having been interactive with OPMC for so long, some or much of the following information might be familiar to you. As I write this entire petition, please know that every effort has been made to minimize the visceral emotion that will invariably surface as these events are once again relived. It will not be easy and most assuredly **will not** be completely suppressed. I am confident that the upright reader will clearly understand why.

Be certain of one thing, I am not a lawyer, nor do I pretend to be. I am a highly skilled, board certified physician who has been thrust into this role, beyond his wishes and therefore will continue to do my level best in trying to intermingle with a world with which I hope to never again interact beyond this writng. I believe my delivery is no different that what might be seen in a typical court room where attorneys often display emotion, commentary, opinion and

a passionate conveyance of their message to the judge, opposing attorneys and most importantly, the jury. Therefore, however I might come across in this petition, it ought not be an impediment to the shocking truths that will be revealed as well as the equitable action that should be an immediate response to this information. After each section, I will not only provide what I have labeled a "**Truth Summary**", I will also directly apply the statute cited above to what has just been presented in the form a **QUESTION** that begs to be asked according to the provisions of the law. Thus, these are questions and realities that BPMC is obligated to answer.

Training History

What is perhaps the most important thing to understand from the start is where I did my training, because this established my character, style, understanding and composure as a practicing physician. I trained in Dearborn, MI where the measure and expectation of excellence was set extremely high with zero tolerance for any sort of adverse outcome. This was medical education with an in-your-face, unwavering, uncompromising objective for training highly skilled and competent physicians. Period. And an Ob/Gyn residency program that ranked amongst the top ten percent in the nation at the time I attended. So, this was all I knew prior to coming to Syracuse and was what I understood to be the standard or norm for all clinical hospital departments, not to mention what the public ought to expect as well.

After I arrived at Crouse Hospital in Syracuse in October of 1998, I would go on to regularly see major departures involving such a wide range of care standards, (on labor and delivery, specifically), that I was shocked and compelled to speak up in a department meeting about it one day, (after I had been there six months), to simply bring it to a discussion. Here I was an outsider to this hospital and medical community and didn't fully know any of these departmental leaders really, though I had been sort of apprised by my practice associates about them. What I did not appreciate was that a certain small group of them had ruthlessly dominated the department politically for the previous several decades. This, combined with the fact that they didn't like the two doctors I had recently moved to Syracuse to join, was not a good starting condition for me to then bring forth a clinically challenging discussion where I didn't foresee that they would take it as a personal attack. For any number of reasons, my concerns for patient welfare brought up during that department meeting were met with scorn as opposed to engaging in a legitimate discussion about quality. I was really taken aback by this at the time as this was the antithesis of my own training experience.

This event was critical in that it placed me in the crosshairs of very powerful, influential and (soon to be discovered) brutal departmental leadership who would then seek to detrimentally impose their authority over me from this day forth. This departmental meeting event, combined with other interpersonal factors between these men, with whom a friendship never had a chance to be formed, were the spark that would eventually lead to motive on their part to cause me professional harm. More on this below.

Truth Summary: The Department of Ob/Gyn, operating out of both Crouse/Upstate Hospitals and serving as the tertiary care center for all of Central New York State, has a major quality of care problem that has been calculatingly obfuscated over several decades by a group of men leading the department with a personal interest to cover over their own clinical incompetence and shortcomings. There are so many cases of horrible care and bad clinical outcomes to establish this fact, several of which I can name myself. It didn't take long for someone trained in an entirely different setting to recognize the seriousness of the problem. Not realizing the scope of impiety amongst these men, I spoke up about it to my detriment.

QUESTION: Given the fact that I specifically spoke to these departmental conditions all during my OPMC investigation, is it BPMC's position that all of this mitigating/exculpatory evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? Because if **any** of this **material evidence is new**, then it is my opinion that it **would have likely led to a different result**. Though these important realities are the least weighty of what you will be reading in this document as far as information known to OPMC, it should have definitely spurred the curiosity **of** and should have been a factor to be considered **by** those investigating this matter to ensure that they were allowing for **all** the facts in order to make certain that there wasn't more to the story, especially as it pertained to quality patient care, which is what OPMC's mission is all about. This will be abundantly clear as you read on.

Clinical Practice History

Certainly, as part of any defense of my position in this petition, it is essential to establish my history as a quality physician and surgeon since this is ultimately what all of this is about as far as BPMC's jurisdiction over my license is concerned not to mention the very issue that has been called into question by them as well as misleadingly disseminated to the public. Again, the information I espouse ought to have been available in my hospital file. A file which I was never allowed a copy of, although my attorney and I were allowed to look through it one day several years ago only to find it sadly padded with any possible negative, [disparaging letters and commentary mainly], in the midst of a statistically highly competent performance history.

Whenever one looks at any sort of quality measure or standard in anything, there have to be certain variables or measures that establish what is good and what is not. In the field of Ob/Gyn, for example, there are a number of tangible things that an investigating party could consider as an indicator of one's true clinical ability as opposed to what others might perceive that ability to be based on hearsay, for example. Objective vs. Subjective information. These would/could/should include real-life and obtainable statistics such as overall complication rate, infection rate, readmission rate, reoperation rate, average blood loss, blood transfusion rate, premature birth rate, NICU admission rate, maternal complication rate, c-section rate, number of Ureteral injuries, hospital length of stay, number of lawsuits, to name a few. It is an **incontestable** fact that during the ten years I was on staff at Crouse Hospital, I either favorably led outright, or was right near the very top of the department in every single one of those clinical performance categories. As another example – for being one of the most bloody and complication prone surgeries in all of medicine, there has never been one single complication experienced from my performance of more than two hundred cesarean sections at Crouse Hospital between 1998 and 2008. This is a very noteworthy testimony.

These clinical performance facts are so important to take into account when considering what I am writing you about in this letter. With an incidence of only 3 complications in over 3600 hospital cases, that is a rate that is almost unheard of in a surgical specialty and about 30 times below the national average. 30 fold! Has that ever meant anything to you? I can still name all three complications too, because I take them and all clinical matters very seriously. Again, I implore you to weigh these laudable clinical performance statistics against my peers who are currently practicing in New York as a provable measure of enough competence in my field to be deemed safe for the public and still worthy of holding a New York State medical license. But then again, you knew this all along.

As for malpractice cases, there have been a few Gyn ones [never an Obstetrical case] with the only successful claim being a settlement, (against my consent), due to a mesh rejection reaction after a properly and effectively performed corrective surgery for urinary incontinence and where the patient went on to experience her greatest devastation by two overly-aggressive surgeries by other doctors after she left my practice while still in the early recovery phase of the original case. This case was adjudicated at a time when the medical product companies hadn't yet been rightfully held accountable for problematic mesh micro-architecture that was at the heart of most such complications, as in this case. Other than that, my record as a physician is demonstrably clean, knowledgeable and performance-wise, surely (as a bare minimum) in the upper 50% [in reality, upper 10%] of other practicing Ob/Gyn physicians across the State of New York. In other words, my record clearly shows that it is by far not even close to being that of a subpar physician while those with records and abilities far worse than mine are freely practicing right now. Certainly this must count for something. In support of my record as a physician, I submit **Exhibit A** which consists of the following components:

1. A 2005 Gyn QA Report from Crouse Hospital. This is the only one I was sent in all the years there. I have been denied all similar reports from the other years I was on staff after they were requested in writing. You can see that in 2005 for high volume Gyn providers, I was statistically the top performing physician in the department that year. (ID # 1595) I submit that this year was essentially representative of every year that I was at this institution. I also submit that were one to query these same reports for the Obstetrical side of things that they would be equally demonstrative of my proficiency as the top performing physician in the department.
2. Letter from United Healthcare designating Premium Provider status when last participating with them. UHC doesn't award this label to just any physician. They have a formal algorithm that takes into account several quality of care factors.
3. Letters of recommendation by two peers even after my name was destroyed in this town.
4. A brief delivery history analysis I put together back in the Fall of 2001 (after the incident case that started this entire matter) that indicated my performance up to that point in time because of trouble that was then coming from the department leadership mentioned above. These are commendable numbers to say the very least.
5. My CV with a performance highlights page which further speaks to this issue.
6. Printout from RateMD's doctor rating site that has James R. Caputo, M.D. ranked as the top Ob/Gyn in Central New York.

I realize that this list is limited but it is all I have available to me. Surely, OPMC had every access to the full scope of institutional quality of care analyses to draw from beyond what is offered here. You must understand that this clinical performance history is one of the reasons why I defended myself so vehemently when I was left no other choice but to do so at both the hospital and State levels. I believe anyone would have, since truth is truth. My two mistakes were believing that such a record would actually count in the eyes of the State agency commissioned to ensure quality medicine being delivered, along with the censorious manner by which I carried myself while defending the eventual assault **of** that record by both parties.

Truth Summary: Multiple pieces of material evidence clearly establish my clinical performance history as one of unquestionable competence and efficacy in treatment throughout my entire career. And with an overall complication rate of 0.01%, my practice of medicine certainly must rank amongst the best performers in the entire State of New York. I would never flaunt this record or imply that there aren't other excellent Ob/Gyn doctors in this community or State for that matter. These are strictly the facts and realities of the body of work I have been blessed and humbled to be associated with and grieved to have lost. This performance history is pointed out solely for the purposes of this petition in order to demonstrate that it is **not** consistent with what one would expect to be the record of a physician who was highly skilled but simply didn't use that skill when medically appropriate, as has been alleged. Or consistent with whom the Department of Health has hence labeled a danger to the public and thus took away his license and livelihood as a result. You simply cannot have both or even claim that it was all "luck" as has been done as well. These are very weak arguments.

QUESTION: Given the fact that I specifically spoke to these clinical performance credentials all during my OPMC investigation, not to mention the fact that OPMC had direct access to my hospital staff file which contained institutional quality assurance reports sustaining my history of being a highly proficient physician, on top of having an unheard of complication rate of 0.01% for a surgical specialty, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever.

Departmental/Hospital History

INCIDENT CASE

I already established the dynamic that had been experienced within the hospital department after I stood up that day in 1999. Over the course of the next few years, various attempts were made by this same departmental leadership to essentially bully this outsider concerning management of certain cases. In retrospect, I probably could have exhibited a little more camaraderie during the times they were doing this. But I was being professionally attacked by fiendish men I had been warned about and wasn't seasoned in such matters. Unsuccessful in what I now know were attempts to onerously exert themselves on me, it wasn't until my stillbirth case of 2001 that they were finally able to underhandedly cause me real trouble – via the hospital's weaponized medical peer review system. And the only means by which they would accomplish this deed through the peer review system and outside of the truth was to **totally control** the flow of information – mainly through **total exclusion** from the evaluation process of the primary physician involved – that being me. I am going to assume that OPMC has records enough still for this case to be able to follow specific references to it.

After being omitted from all parts of the case investigation related to this stillbirth, including an official Root Cause Analysis (RCA) at Crouse Hospital that followed that unfortunate outcome, I was improperly sanctioned as having unduly caused the death of that baby with Obstetrical forceps instead of recognizing and accurately communicating to the administration what the real cause was – that being a rare form of umbilical cord accident – proven by autopsy, all scientific data and the medical literature. The outcome of the stillbirth case had nothing whatsoever to do with forceps – a fact that even OPMC eventually had to concede despite originally riding the coattails of this mistruth concerning forceps that was propagated by agents of the hospital. The presentation of this false information about the cause of death to the administration by members of the Ob/Gyn department leadership at Crouse Hospital, along with my exclusion from the RCA were pinnacle in having the 2001 summary suspension of my privileges handed down by the hospital's Medical Executive Committee (MEC). This unfounded and invalid sanction would prove to be the cardinal event ultimately leading to my interaction with OPMC.

In other words, had the correct information been given to the hospital administration as to the cause of death, there would have never been a suspension of privileges and I would never have had OPMC investigating any of this or me for that matter. Do you see the massive significance of this one (of many more to come) point in what is clearly a vindicating piece of evidence. Incidentally, for the record, even that patient and her husband were able to fully understand and grasp the scientific evidence as to what happened to their baby. It was a devastating experience for everyone involved. However, they remained with my practice and I successfully delivered their next two children, which was a joyous conclusion to what had happened previously.

For my colleagues at ACOG reading this, I have posted (on the site referenced above) material from this first case and from the medical literature that fully explains the extremely rare physiological event that was responsible for this sad outcome. I find this important since this is such a rare occurrence that none of my own colleagues (nor I) had ever heard of such a thing before. Incidentally, it must be also made known that this delivery is the only baby in over 1300 delivered in this community that did not go home healthy – and this is after establishing a career abounding with countless extremely high risk Obstetrical cases – all successfully managed.

**[It is essential to pause and introduce a most critical element in this petition to you at this moment since the chronology of events demands it to be presented here. Please take note of this section so that you can reference it later when this subject matter is given its full presentation below. It pertains to the sanction I received within the hospital after the stillbirth case was improperly reviewed and wrongly represented to the MEC. The original penalty handed down was a complete summary suspension for six months of all of my operative vaginal delivery privileges. The problem with this was two fold. First, it eliminated even the use of vacuum as an option for me with patients which left me with no real options at all (other than cesarean section) should the appropriate clinical circumstance arise for such a need during the course of managing a patient's labor. And second, it is completely unpredictable as to when a patient might need the use of an operative vaginal delivery technique such that restricting these services placed any number of patients and their babies at potential risk, especially if the need for these services is acute and/or under conditions of distress to either the mother or baby. Further, cesarean section, while being an option in many cases, particularly after a failed operative vaginal delivery attempt that was felt to be the best first line approach, became the <u>only option</u> for my patients. This, again, placed them at unnecessary risk given the fact that a c-section is major abdominal surgery and ought not to be taken lightly just because so many are done nowadays.

To put it another way, this restriction was not for something like removing a gallbladder where abiding by it was a simple matter of not scheduling that particular procedure. Operative vaginal delivery is a completely unpredictable entity that can present itself at any time during the second stage of a patient's labor, should certain circumstances be present and certain other criteria be met.

Thus, when such a case indeed presented itself within the first week or so of the suspension, it was difficult, as a true patient advocate, to justify performing a cesarean section when the baby was literally sitting on the doorstep of delivery and just needed a little assistance. Therefore, I called the chairman of the department and explained the situation to him. By this time, he was conscious of a few important things that influenced his decision in this matter I was now addressing with him. One was the fact that I was a veteran physician within the hospital who had long established himself as proficient in the practice of operative vaginal delivery, namely Obstetrical forceps, with arguably more experience than anyone in the department or community for that matter. In fact, I was the primary educator of the Ob/Gyn Resident physicians in the use of such instruments since no one else in the department really did them anymore. So, the chairman knew I was not a danger to any patient since there had never been a single case in several dozen (by that point in time) where my use of them and/or the outcome was suspect. Another factor in the chairman's decision on the phone that day was the fact that by this time, after I had already opposed what they had done administratively leading to the suspension in the first place, he knew that I had been wronged and at least favored the patients in how he ruled.

The Department Chairman, himself, therefore **modified** the disciplinary ruling and established the following – That if any clinical situation arose where there was a medical need to consider operative vaginal delivery during the six months of imposed limitation, then I could approach the faculty attending on call that day and present the case and **only if** they agreed that it met clinical indication, they would then stand in the room as a proctor. He could have said "no" to my presentation and thus I would have then performed a cesarean section. But he did not. Therefore, this consultation plan is what was done on, (I believe), six occasions in that six month time frame without a single adverse event, all with successful deliveries, all having avoided c-sections, all with happy moms and healthy babies, all indicated per agreement with a colleague – and all done **legitimately**. Not one forceps delivery during that six months was done outside of this new set of conditions set by the Chairman and therefore was **never** a violation of **anything** within the hospital concerning this matter. This is imperative to remember when measuring what I seek in this petition against what is written and baselessly concluded in OPMC's Determination and Order (D&O) from 2007.

The **crucial point** to be made about this correction concerning what turned out to be really a privilege ***limitation*** and not an actual suspension of privileges is the following. OPMC contended that I blatantly and willfully violated a ***suspension*** of my privileges by performing those forceps deliveries during that six months. This is just not so. Yet, upon anyone reading the D&O, this conclusion was the most significant basis and moreover, the most aggravating factor for why OPMC ultimately imposed punishment on me. I repeat, every one of these forceps deliveries during that six months were not only authorized given the modification of the original suspension but were all done in accordance with the stipulations set forth by the department chairman himself and documented in the chart. Again, OPMC should have readily known this but yet, their final Determination and Order from December 2007 seriously rebuked me for having "willfully violated" what they maintained was a suspension rather than a limitation with consultation. Several attempts were made during the investigation and hearing phases of my OPMC experience in order to try and clarify this erroneous understanding that they had. Such disclosure was simply ignored. The implications of this information cannot be discounted. This matter will be addressed in greater detail below including a document that provides unimpeachable material proof of this factual error by OPMC.]

Continuing on chronologically, you **must** agree that having been purposely excluded from something (the Root Cause Analysis for the stillbirth case) that ought to have ended this entire matter at that moment in time was not only unfair and a clear due process violation of both hospital bylaws and State regulation of RCA's, but also a significant factor to consider when deliberating over what I seek with this letter. There is a reason why there is a specific process in medical peer review, a component of which is to include pertinent individuals involved in the case in order to reach proper and legitimate conclusions. In other words, if I (the actual attending physician involved with the care under review) had been given the opportunity to participate, both the true clinical facts of the case as well as the autopsy would have completely exonerated me of any wrongdoing since the RCA is a multidisciplinary setting, inclined to open and honest involvement and conclusions. Again, the significance of this fact alone bears enormous weight as part of the basis of this petition.

The converse question one/OPMC should also ask is this, "what kind of RCA could it really have been by NOT having had the attending physician involved?" The truth of the matter is that OPMC should never have even known my name had I been afforded this participatory right at the hospital level. Still, during their subsequent investigation, OPMC might not have recognized that I was not included in this critical component of the process, though it ought to have been something sought by the investigators. Certainly you would agree that the actual doctor involved with the patient care should have been included in the Root Cause Analysis for a case of his that eventually led to a State investigation and ultimately, the loss of his license. Therefore, by not being involved, it calls into question the motive of the hospital along with the accuracy of the information in that report altogether which was a substantial initial piece used by OPMC in launching/justifying their investigation and subsequent prosecution.

This lack of inclusion in what should have been an exonerating event is also offered as one of several pieces of evidence to be considered by OPMC in this petition as to what I emphatically contend was malice by a certain element within the department of Ob/Gyn at Crouse Hospital intent on causing me harm ultimately at the State level by both misleading and misusing the Office of Professional Medical Conduct as a means to their ends. If this purposed effort on Crouse Hospital's part to distort and misrepresent the truth can be further supported and corroborated with other pieces of evidence, then I ask BPMC to please consider the burden of proof having been met to establish that at least on some level, my exclusion from the RCA and the department choosing to misrepresent the facts of that original case to the MEC were not only intentional but moreover, crucial in you (OPMC) ever becoming involved in the first place. Remember that last sentence since we will be coming back to it soon.

Because my National Practitioner Data Bank Record was negatively impacted by what I knew to be an unjustly imposed clinical sanction as a result of these due process violations, I contested the ruling within the hospital. It unfortunately caused an even greater degree of animosity between these same leaders in the department and myself. At the ensuing hearing within Crouse Hospital to adjudicate these matters, I was forced to confront them as each proceeded to provide inconsistent, contradictory and clinically inaccurate testimony (transcripts of which I continue to maintain and you should have read) while clearly demonstrating their indignation towards me for them having to be there. Yet, all I was seeking with this hearing was to have the erroneous National Practitioner Data Bank report expunged. That's it. Ironically, as a result of this simple pursuit to correct this most sacrosanct record for a physician, my NPDB profile would go on to sustain damage far beyond imagination and all based on purposed lies and deception.

Can you at least see how, with the combination of the following: being an outsider; clinically doing things a little differently because of where I trained; having become successful; having posted an exceptional performance record; having stood up in that department meeting to discuss quality concerns; and now having to confront four ruthless and questionably competent men before the hospital's medical executive committee – it might have gained their ire to the degree that they would have a desire to see me out of their midst. This is very important to understand and reflect on when being asked to consider and thereafter, affirm how all these cases used in my prosecution illegitimately got to OPMC when the patients themselves never levied any complaint.

Truth Summary: There can be no denying the absolute fact that I was not given a fair deal as to how the hospital/department managed the review of that original stillbirth case. They had been gunning for such an opportunity to impugn me for something and saw the peer review avenue with this case as their means to finally achieve it. Their rush to judgment and subsequent lies to cover over what they had done is clearly evident from the facts. There should have never been any sort of censure from within the hospital and therefore, no eventual involvement with OPMC. The fraudulent and dishonest actions of this hospital and department, therefore, completely illegitimize my entire prosecution by OPMC, as will be manifestly obvious as you read on.

QUESTION: Given the fact that I was conspicuously absent (in fact excluded) from any and all involvement in the review and subsequent official report to the State on this stillbirth case, not to mention the availability of all the information, testimony, data from the MEC Hearing within the hospital that proves that the entire disciplinary effort by those in my department was a sham and that the information sent to OPMC was intentionally corrupted, on top of my hospital file which should have contained the revelatory document I will soon be presenting, in addition to the material evidence proving the actual cause of death in that baby, plus years of hospital records indicating proficiency with the use of Obstetrical forceps, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? A result that turned out to be a highly aggressive, dishonest and malicious prosecution of my medical license? Is this to be believed? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. I would seem implausible that OPMC didn't have this information and understanding. So, either the investigative process was suspect unto itself or there was a deliberate

effort to turn a blind eye to the truth of the matter or there was a determined mission to simply prosecute me with as much malice and dishonesty necessary in order to literally destroy my practice of medicine. It had to be at least one of the three because none of the truth was ever formally entertained. I will **prove** that it was all three.

WALDMAN

It is also central to establish another mitigating/exonerating piece of information here. During my hearing within the hospital where I was seeking to have my record expunged of the false report, my defense expert for the stillbirth case was a physician named Richard Waldman, M.D. What is important to consider about Dr. Waldman is this. At that point in time, he was not only the longstanding chairman of the department of Ob/Gyn at St. Joseph's Hospital here in Syracuse, he was also the District President for the central region of New York State for the American Congress of Ob/Gyn (ACOG). ACOG is essentially the governing body and official voice for all of Obstetrics and Gynecology worldwide. In other words, his testimony carried great weight unto itself given his credentials. And it just so happened that Dr. Waldman would go on to become the outright President of ACOG a few years later. Despite there being an **overabundance** of rock solid material evidence and testimony for what I sought at that hospital hearing, including detailed physiologic drawings and diagrams that undeniably established the truth of that stillbirth, I was informed after the fact by a couple of colleagues who sat on the MEC as part of that event that they (the MEC), (upon deliberation of the facts), were told by hospital counsel once the doors were closed that although there had been an agreement between all parties prior to the event for there to be multiple options on the table, (including expunging the NPDB report), no changes to the previous decision were going to be made regardless of the evidence presented. That was a long but very important sentence that bears reading again.

Essentially, the hospital reneged on their word which, again, should be yet another huge red flag as to the (lack of) authenticity of anything coming out of Crouse Hospital at this point in history, particularly as it applies to me and my practice of medicine. In spite of this miscarriage of justice, it is re-emphasized that Dr. Waldman completely defended my entire management of the case and acknowledged the pathological conclusion of the unfortunate outcome as well. OPMC should have had all of this exonerating information including the dishonest, conflicting and moreover, troublesome testimony of the four doctors from the department. Again, I have the transcripts if you would like to read them if you somehow didn't get them twelve years ago and maybe *forgot* to ask for them.

It is inconceivable that the blatancy of the department's dishonesty was **not** overtly identified by OPMC upon review of **all** records in this matter, since that is required of an investigation by your agency. The question anyone should be asking is how and why did OPMC either miss this or ignore this crucial information altogether? Were those investigating this stuff simply incompetent themselves or was there another explanation such as a predetermined agenda at hand? I'm sure you, Mr. Servis, know. Incidentally, despite it having been a dozen years since this event and memories might be faint, the two doctors who apprised me of the hospital's decision to essentially stick it to me are Michael Duffy, M.D. the then Chairman of the Department of Anesthesia with whom I had collaborated on numerous cases over the years. The other is Steven Montgomery, M.D., the then Chairman of the Department of Radiology, who I also collegially interacted with over the years I was on staff at Crouse Hospital. These are two good men and doctors. Whether they will still corroborate that information at this point in time is really anyone's guess. All I know is that it is the truth. You can certainly query them or any number of other potential sources in order to confirm these facts, if necessary. The attorney, incidentally, was Marguerite Massett.

Subsequent to this MEC hearing in Crouse Hospital, I was compelled to file a complaint with the Department of Health against the four doctors from within my department who participated in both the intentional harming of my record via a bogus formal case review as well as instigating this hospital event by blatantly lying while under oath. **Exhibit B** pertains to this grievance filed with OPMC and is presented as three parts.

1. The actual complaint dated and sent to OPMC on September 21, 2002.
2. Letter dated October 1, 2002, received from OPMC acknowledging receipt of my complaint and with the assignment of a case #.
3. Letter dated August 9, 2004 from my attorney to OPMC inquiring about the status of that complaint since it has never been taken beyond that initial response letter. In other words, it was **quashed**. **(emphasis added)**
4. September 15, 2010 letter received from the New York State Office of Health Systems Management in response to the then correspondence I had sent to Governor Paterson about what the Department of Health had done to me, seeking some sort of executive relief. This is a very important document in that it establishes, (from the pen of another official State agency), the rules of investigation, (from PHL 230), that OPMC is obligated to abide by – none of which they can demonstrably prove they **ever** adhered to in my case – be it the phantom investigation of the four Crouse doctors that mysteriously was forgotten or the vicious investigation and subsequent prosecution/punishment of my medical license that I had the misfortune to be on the receiving end of. In other words, following the rules were a secondary concern for OPMC.

In full support of **Exhibit B**, the following excerpt from the Public Health Law, **PHL Section 230 – (State board for professional medical conduct; proceedings)** is submitted.

10. Professional misconduct proceedings shall consist of:
* (a) Investigation. (i) The board for professional medical conduct, by the director of the office of professional medical conduct, may investigate on its own any suspected professional misconduct, **and shall investigate each complaint received regardless of the source.** The director of the office of professional medical conduct shall cause a preliminary review of every report made to the department pursuant to section twenty-eight hundred three-e as added by chapter eight hundred sixty-six of the laws of nineteen hundred eighty, sections twenty-eight hundred five-l and forty-four hundred five-b of this chapter, and section three hundred fifteen of the insurance law, to determine if such report reasonably appears to reflect physician conduct warranting further investigation pursuant to this subparagraph.

As you can see, this Statute formally establishes and affirms, without question, OPMC's **obligation** to investigate **all** complaints received, regardless of source. Yet, it has been more than twelve years since filing that complaint and receiving a response with an actual case # assigned with nothing more having ever been done. And this is after my own attorney formally wrote them asking why they hadn't responded. This should be obvious to everyone as being just a bit suspicious and devious.

I submit this important issue and these substantive documents to consider here because of chronology but will refer to them below when writing about my history with OPMC. Nonetheless, though written at a time when I was still very raw with and from all of this, the complaint itself (**Exhibit B1**) which was against those within my hospital department provides a compelling and more importantly, contemporaneous account of the events leading up to and through the hospital MEC hearing where Dr. Waldman testified.

Why is Dr. Waldman's testimony so important and asked to be considered as one of the many parts of this petition? It is because this one particular case that he was involved in as my expert was the primary case that launched the investigation within OPMC and served as the catalyst for other forceps cases to be surreptitiously sent from within the department at Crouse

that proved cumulative to the eventual list of charges by the Department of Health, even though the patients and their babies were happy, healthy and still members of the practice. It is **re-emphasized** here that **all** additional cases that would eventually be used as part of my prosecution would be sent from within the institution as part of a concerted effort to inflict harm upon my license and career and not the result of anything untoward with their medical care or any patient complaint. This latter point is evidenced by the fact that each of patients, whose forceps cases were being used against me, (including the woman who lost her baby), went so far as to testify on my behalf at the original hearing. Isn't this a bit unusual to have the patients themselves (whose cases are supposedly in question) testifying for the doctor being prosecuted who rendered the care in those cases?

The point being in all of this is this. When OPMC investigated my use of forceps involving an adverse Obstetrical outcome where they were merely an incidental component of the delivery and not the cause, it is my contention that Dr. Waldman's testimony from that MEC hearing should have bore **considerably** more exculpatory weight towards the investigation committee's decision to proceed with a prosecution and eventual hearing. You see, not only did Waldman substantiate the physiologic explanation for the outcome, he also affirmed that I was within the Standard of Care for having implemented the use of forceps in this case as well. This is very, very important because the State would eventually have to find a new angle to prosecute me once they knew they couldn't use the outcome as a means to their end.

Exhibit C is a copy of a response memo during the hearing phase of this matter where OPMC acknowledges the fact that Dr. Waldman was my expert for that hospital level proceeding. It is also interesting to note in the first response in this exhibit, OPMC affirming that there was no way I would ever be able to face my accuser(s) as part of defending myself, since the complaints behind my prosecution would remain undisclosed. This is how it works outside of a legitimate legal proceeding. Most importantly, what this document is essentially saying is that OPMC knew about testimony from a heavyweight in the field with local expertise that was exonerating for my position in the matter. The natural question would then be this. What did OPMC consider over and against Dr. Waldman's innocence-proving testimony and all that contradictorily went on in that MEC Hearing that pushed their investigation into that first case all the way to an actual State level Hearing, which was a prosecutorial decision based on my alleged misuse of Obstetrical forceps? The highest level of adjudication within the DOH no less. What did they have otherwise to offset such resounding support for my position?

With the scientific evidence in the stillbirth case irrefutable as to the outcome being from a rare umbilical cord event and no other patient or baby in the other cases (secretly sent to them) harmed at all, what did OPMC possess as far as material basis contrary to Dr. Waldman's testimony that matters escalated as they did? Or was it that Dr. Waldman's exculpatory testimony was simply ignored as a factor to consider in order to "justify" launching a full-scale investigation/prosecution, which OPMC is technically not allowed to do? That being, ignoring exculpatory evidence. Remember that. Could it be that OPMC was under the false impression at this point in time that I had violated an imposed hospital restriction and thus needed to be prosecuted for that? Was there something mysterious about these cases that even I didn't know about being the board certified doctor who delivered the care? It had to be something. And I have **no doubt** as to what it was – particularly the primary source.

Truth Summary: There can be no argument that the Testimony of Richard Waldman, M.D., combined with the facts and other testimony from that 2002 MEC Hearing ought to have stopped this entire matter in its tracks and would have (rightfully) never gotten to OPMC. Further, there is good reason to suggest that OPMC either ignored certain pertinent evidence that vindicated my management of that stillbirth case or did such a cursory review of the information available to them that they missed these critical facts – to the detriment of my life and career. Upon reading the D&O, it is abundantly clear that the most damning conclusion reached by the Hearing Panel, which consequently had the greatest bearing on the imposed penalty, was the belief that I had blatantly chosen to violate a hospital sanction when in fact, this was the furthest thing from the truth and something OPMC should have known as well, had they received a complete copy of my staff file. Again, this will be discussed in more compelling detail below.

QUESTION: Given the fact that I specifically wrote a formal complaint to OPMC spelling out in great detail the malevolent practices of four members of the Department of Ob/Gyn who abused their administrative positions and institutional power in order to impose an unjustified punishment upon my practice, in addition to all of the bogus testimony from them at the MEC Hearing that ensued from those illegitimate actions, on top of the fact that OPMC also knew of exculpatory testimony from an official of ACOG, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case as far as taking it from an investigation all the way to the highest level of prosecution? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. And, again, you know this to be true, Mr. Servis.

Aubry

So, if OPMC saw fit to ignore all that was exculpatory involving that incident case only to then aggressively pursue a prosecution, what would/could be the reason? Enter the late Richard Aubry, M.D. It is no secret to OPMC that I have maintained for some time that a certain individual from within the department of Ob/Gyn at Crouse Hospital was purposefully manipulating the process at the State level by using his credentials in a disreputable manner through various written (and anonymous to me) complaints in order to influence those from within the Department of Health to pursue what they were (initially ONLY) led to believe was a legitimate prosecution. I can fully understand how this could happen, yet it absolutely does not make it acceptable or excusable, especially after the point when OPMC **knew** it was completely illegitimate. This man not only sat atop the hospital's Obstetrical Quality Assurance Committee (Ob QA) whereby he could readily manipulate many components of peer review, he also showed himself to be someone set out, (on more than one occasion), to **intentionally corrupt** information being sent to the Department of Health with the aim of causing harm to another physician. In other words, he had a lot of power and influence and a will to use them both – especially in an injurious manner. So when you have an individual, such as Aubry, with four decades worth of credentials (on paper) fomenting this matter via an agency who is known for its prosecutorial power, it's easy to see how matters could escalate as they did with OPMC (very loosely) believing that they were pursuing a legitimate cause.

I **know** Richard Aubry was the one who disseminated all the fraudulent complaint letters about me to OPMC even though I have never been allowed to see what OPMC then used to tear down my life. To **prove** that this man had an inclination for propagating corrupted information, I submit **Exhibits D, E1, E2** and **F** which are derived from the Root Cause Analysis that was held within Crouse Hospital for the patient labeled "Patient D" in my 2007 OPMC prosecution. Without going into too many clinical details, here is a woman who was beyond morbidly obese weighing in at around 500lbs. In summary, we (at the practice) admittedly misdiagnosed her later stage pregnancy mainly as a result of unforeseen limitations in our highly qualified ($100+K) office ultrasound equipment given her obesity. Importantly, the ultimate outcome was favorable with a healthy mom and baby.

However, when examining that case and how it played out, everyone at the RCA was able to understand completely how any practitioner could have been equally led to a misdiagnosis given the combination of her weight and other unusual factors. Even the hospital's own urgent care got it wrong when she presented to them prior to presenting to me. It was a very unique and odd case with significant teaching potential. Additionally, several papers from the literature were produced by the librarian in attendance at the RCA to further support the fact that morbid obesity had been causing similar problems nationwide in regards to radiological equipment incapabilities and failures. In the end, all parties agreed that there was no negligence or breach of the standard of care given all the contemporaneous information known at the time, with the clinical adjustment being a referral out for ultrasound of all patients over 300 pounds. Thus, as this was all playing out, an executive secretary was taking notes on an overhead with all the information that was openly discussed and affirmed as being the conclusion of the committee.

However, when I received a requested copy of the RCA Report, what was written down as having been determined and discussed from the meeting was a complete adulteration of those events. See **Exhibit D**. In fact, there were some commentaries (particularly those pertaining to transvaginal ultrasound) that were downright disconcerting and creepy not to mention completely unnecessary, irrelevant and wholly unprofessional. After I read it, I immediately contacted the medical staff office with my objection to this report, seeking to know how such an alteration of the facts could happen. I asked who did the final writing of the report and was told it was, amongst others, the Ob QA committee. In other words, Richard Aubry.

Having thought I dodged what I knew was an intended bullet, I had a hand in formally restoring the report to contain what was discussed and concluded the day of the RCA. See **Exhibit E1**. You need not examine the two of them (**Exhibits D** and **E1**) too closely other than to recognize the following. One is that there is a stark difference in the actual clinical content between them and the organization thereof. Second, the tenor and content of some of the writing along with the overall lack of professionalism in the adulterated version is troubling when considering it an official document that would ultimately be sent to the State. And third, there is no question that the adulterated version is written to be ***unfavorable*** for the physician involved – that being me. It's subtle but it's there. This was all **by intent** by Richard Aubry. **Exhibit E2** is the NYPORTS Report that was generated from the corrected RCA report and thus is essentially a mirror of **Exhibit E1**.

This final report was then (supposedly) sent to the State as the formal analysis of the matter from within the institution. See **Exhibit F** which is the series of emails between myself and Crouse Hospital's Medical Staff Office **affirming** this matter of the adulterated RCA Report. Because of the reverse order of how emails are displayed, the reader must start on the last page of the document and work upwards. I have boxed all the individual emails in order to be able to follow them easier. Note the name of the file on the final email that represented the NYPORTS Report sent to the State. It is the same as **Exhibit E2** which has never been renamed since being received.

At this moment in time, one would think that once the State received this NYPORTS Report and examined it, given the overall favorable outcome and the detailed description of the events in the report, that the matter should have been concluded at this point. In fact, as we all know, it was **not**. Instead, it became another case added to the already compiled list of cases set to be used by OPMC at the 2007 Hearing against my license.

If the official State report of the case by a multidisciplinary team of medical personnel determined there to be **no negligence**, **no breach** in the standard of care, no issue whatsoever warranting anything more than what was suggested, then how did it suddenly become a matter worthy of prosecution at the highest level of the Department of Health? Well, wanting to add to the list of corrupted cases he was already able to promulgate against me with OPMC, Richard Aubry was ***unable*** to achieve his intended objective with this one particular case via his polluted RCA Report as he successfully did with the stillbirth case some years earlier that started this whole thing. Remember, his previous success of debasing the information sent to the DOH was because he was able to hold that original RCA without me and thus control all the information as the chairman of the Ob QA committee, as opposed to the one represented by **Exhibits D, E and F**. Therefore, he resorted to Plan B when his initial plot was upended by me having caught him in the act. Since Aubry also sat on what's known as IPRO (Independent Peer Review Organization) that has chapters in many if not most hospitals or communities, he used this avenue instead to present a corrupted report of this obese woman's case to OPMC which served as their basis of prosecution over and against the conclusions reached after a formal analysis by several other professional minds. I know this to be true because I saw State's Attorney Timothy Mahar holding this counterfeit report in his hand during cross examination on this case with the big bold letters **IPRO** right across the top of the page. I knew immediately that it was Aubry's dirty work.

Now again, ask yourself whether there was malice involved with such an endeavor on Dr. Aubry's behalf. Both his manipulation of the information in the RCA report and then his sidestepping the legitimate process by sending a corrupted IPRO Report to the State provide that additional evidence to support my earlier contention of a purposed and intentional misrepresentation and/or omission of the true facts by this man from the very beginning with **all** the cases that he would not only secretly send to OPMC but would also be used in my prosecution and eventual destruction as a physician. None of it was ever legitimate. **None.**

In order to fully understand the force and dynamic behind Aubry's unbecoming motives, it is essential to provide some information that provides greater clarity of the man's character. Though never truly becoming anything more than distant colleagues, I was able to learn a great deal about Dr. Aubry, including what lurked inside as far as honesty, integrity and what he was capable of ruthlessly doing with his authoritative position. Understanding Richard Aubry starts with the fact that way back in the 1960's in Central New York, he essentially declared himself the high risk Obstetrician for the area. He had no formal training and his clinical record since then is **replete** with questionable cases of his own. Over the years, he ascended to hold a tremendous amount of authority within both the department as well as the region given the stronghold the high risk Obstetrics division (The Regional Perinatal Center) has over **all** other doctors practicing Obstetrics. And he was well into his 70's when he decided to harm me.

Though there is plenty of room for criticism (and even a formal complaint to OPMC) concerning both this man as well as the High Risk Ob Division of Upstate's Ob/Gyn department, (The Perinatal Center, aka, PNC), the important thing to comprehend about Aubry was his massive (and **pathologic**) ego. This is not some attempt to defenselessly attack the poor man now that he is no longer alive. I may not like what he did to me one bit to the extent of having been very outspoken about it since his behavior was purely sinister, but I still respected the man as a human being – difficult as it was. No, rather than pointlessly slight Dr. Aubry, this is an important piece of information that bears considerable weight as to his sense of self and how it played out in how he dealt with others, especially professionally. Understanding Richard Aubry at this level speaks a great deal to motive as to the why and how this man could do what he did to me. This should be clear to the reader as well.

Incidentally, it bears mentioning that Dr. Waldman's large Ob/Gyn group practice at St. Joseph's Hospital knows of the ineptitude and relative incompetence of the Perinatal Center and therefore never consults them for their patients despite this Division representing itself as the Region's High Risk Obstetrical Center. Instead, his group has for years brought in a high risk Obstetrician all the way from Rochester every couple of weeks to attend to their patients. This Central New York Chapter Representative and eventual President of ACOG himself understood the perils of trusting the Regional Perinatal Center to care for his group's patients. Very telling wouldn't you say?

In order to further establish this point about Aubry's personal (lack of) integrity and hyper-inflated sense of self, two examples will be offered. First is testimony from Dr. Omar Rashid. Dr. Rashid was one of the two doctors I joined when first coming to Syracuse. He was a local icon in the field of Obstetrics and Gynecology and a true gentleman and scholar who, oddly enough, was extremely talented in the use of Obstetrical forceps. His proficiency in and application of this dying art in medicine was an uncanny thing that Dr. Rashid and I had in common. He is a very special man with whom I have remained close over the years. Upon joining his practice, I learned a bit about the local players, including Aubry. I was warned about him and advised that he was politically aggressive and not to be trusted. Dr. Rashid then told me, at some point, something extremely unusual (and obviously very revealing) about Richard Aubry. Apparently, Dr. Aubry has always had a hatred for any physician who is skilled in the use of Obstetrical forceps, (**especially the advanced forms**), because he was never able to do them himself. In fact, during that initial six months after all of this trouble started for me in the hospital at the hands of Aubry, Dr. Rashid even advised me one day to never again put on the medical record that a midforceps procedure was done because he, (Aubry), would find out about it and make even more trouble for me. I was like, "seriously?!" Rashid's classic answer with his beautiful accent, "Absolutely." All of this information about Aubry is extremely important to remember for later in this document.

After hearing such a thing, I thought this to be a most preposterous statement but Omar went to clarify. It turns out that Rashid has had his own run-in's with Aubry over the years where he too was specifically targeted because of his abilities with this legitimate tool for the Obstetrician. In fact, sometime during the 1980's, Dr. Rashid had to defend himself against a Department of Health investigation that was incited by Aubry. He was able to find out who had done this to him since at that time, the anonymity statutes were not as strong as they are today. So clearly, Aubry not only had a proclivity towards using the Department of Health as his weapon against other doctors he didn't like, but that he had been doing it for decades, no less. An addiction he was apparently never able to quit.

In order to validate this seemingly ridiculous claim that Aubry had it in for doctors who were skilled in advanced forceps, I submit **Exhibit G** which is in three parts. The first (**G1**) is the six month review, (written by Aubry), of my Obstetrical cases during the time following the stillbirth case where my hospital privileges had been sanctioned. Before examining this document, remember that this was the time frame where I was required to consult the faculty attending with any Obstetrical case where an operative technique was felt to be indicated **before** they would agree to proctor me. In other words, despite being arguably the most experienced physician in the department in this area of Obstetrics, there was **no way** I was ever going to be performing an operative delivery during that six months without the approval and oversight of my fellow attending on the unit.

Indeed, in two such cases, Aubry himself was the one who not only approved the indication for operative delivery but observed them being performed as well and without incident. Yet, in his report, you can get a glimpse into the man. The first sentence alone shows just how superficial his clinical explanation of things typically were, (see the corrupted RCA Report – **Exhibit D**) particularly with how he disapprovingly described what they all knew to be a rare umbilical cord phenomenon leading to that sad outcome. Note next how he provides a list of problems with three **midforceps** deliveries falling under the "serious" label forgetting to mention that every delivery had to be approved by the department's own faculty and all went without a single complication. But yet, they were "serious" problems nonetheless in the eyes of Aubry. Understand, midforceps deliveries are an **advanced** form of forceps that few Obstetricians perform and just what Dr. Rashid had revealed to me that Aubry hated. Interesting how **only** the midforceps rose to this supposed level of violation. Keep a note of this as you read on. And if these deliveries were such a "serious" problem, then what say him about his peers who concurred with their use in each of those cases? What a charade.

So, what was the net result of this attempt by Aubry to further trip me up within the institution by writing this disparaging report? It sure did seem as though it was going to be a problem for me after having been sanctioned on those very procedures. The answer? Not one thing negative came of this latest (and feeble) attempt by Aubry to stir up trouble – much to his chagrin. In fact, I was given **all** of my operative vaginal delivery privileges back **without** any restriction immediately after this report. Why is that? How could this possibly be given the gravity of his report following a harsh six month limitation concerning these very clinical matters? Why? Because everyone in the hospital, including administration, knew that they

had wrongfully punished me. That's why. There is no other explanation for this glaring disparity between Aubry's rhetoric in that report and the actuality of what oppositely happened as a result. This is yet one more piece of exculpatory evidence regarding that stillbirth case and what was subsequently unjustly done. I know OPMC had this document but did they ever seek to understand the "why's" asked above? Apparently not. But why? That should be the most pressing of all the "why's" over this document. I'll tell you why. Because when the fix is in, there is no entertaining of the truth. That's why. And we shall see plenty more evidence of that.

The second part of this exhibit (**G2**) are copies from the 2002 MEC Hearing transcript from Aubry. It is important to understand that the MEC hearing occurred about a year after the stillbirth case and six months after the above review and return of all my privileges because, remember, I was seeking to have the NPDB report expunged. Despite all scientific data, an official autopsy report, clear physiologic breakdown of the case, and his other three colleagues now truthfully testifying to the fact that the forceps **were not** the cause of death, Richard Aubry still insisted point blank, (when asked by a member of the Executive Committee), that the forceps caused the death of this baby. My jaw dropped as he arrogantly sat there so intent on further establishing his rotten character. I'm sorry but this is just the truth. As you can see from the transcript, I couldn't interject quickly enough. When I then asked him to explain how this was possible, he offered the most disingenuous load of nonsense that was cloaked in "smart-sounding" clinical language that only an Obstetrician would know was phony. Yet, when really stepping back and analyzing the drivel that repeatedly emanated from this man, I am not so sure that he just wasn't simply an ignoramus with absolutely no insight into his own lack of intelligence. That description may sound harsh, but honestly, from all that I have seen from this man, I really don't think it too far fetched. "Pulsopressure"?!? – which appears on the second page of the exhibit, (page 193, line 11 of the transcript). I couldn't believe my ears with such a word, especially being used in this context. In fact, no such word exists. There is something called "Pulse Pressure" which is the difference between the systolic and diastolic blood pressure values in mmHg. But no, "pulsopressure" anywhere I was able to find, even google, which I queried in the event I may have missed something in my training. I once again ask my ACOG colleagues to read this exhibit carefully. As you can see, there is writing/commentary on the transcript from years ago after I reviewed such counterfeit testimony.

It is way beyond the scope of this petition to get into the specifics of just how ridiculous his testimony was in the context of what is happening anatomically (as well as physiologically) with a forceps delivery and how such information ought to be correlated with the particulars of that stillbirth case. But in order to address what may be an honest curiosity by the unfamiliar reader as well as make it clear to everyone that I will in no way shy away from **any** detail in **any** of this experience, I offer the following brief clarification as a measure of remaining completely transparent. So, to that end, just know that it is **IMPOSSIBLE** for a clinical scenario involving a tight nuchal cord (cord around the neck) to ever actually have the cord be alongside the face when the baby is way down in the birth canal such that forceps could ever be in direct contact with it, nevertheless compress it. That is first fact to point out, yet Aubry would have you believe otherwise. Second, the forceps were not "engaged" for more than a few minutes – total. This means, they were not closed such that any pressure on anything they were in contact with would/could be exerted for more than a few minutes. The bulk of the time the forceps were being used was to properly position them in order to be able to then safely "engage" them. This is customary to their use and Aubry knew this – or at least he should have as the self-anointed high risk Obstetrical guru for Central New York. And lastly but absolutely not "**leastly"**, in order to have "cardiac arrest" as he ridiculously claimed was the cause of death, there would have to be both an absence of a heart beat, as well as consequences of no movement of blood within the baby – i.e., major signs of oxygen deprivation. Well, as the record showed, the forceps were only used to bring the baby to a crowning position and then removed, whereafter the mom pushed the baby out on her own within the next two contractions. AFTER the forceps had been removed, there was not only a documented (and normal) heart beat noted **IN THE RECORD**, but the pH was unaffected until several minutes AFTER deliver as well. The cause for the sudden and catastrophic fall in the pH is because of the real cause of death and that was due to a rare and massive loss of blood into the baby's placenta in the few minutes prior to delivery and **after** the forceps had been removed. (See the clinical documents online for further reference and total clarification of this rare phenomenon.) The autopsy, again, affirmed all of these truths. This **proves** Aubry as either a liar or an utter incompetent. I hold this to be true of the man for both contentions. And one can only imagine, given what he revealed of his motives by way of his perjurious testimony in this hearing, what the disparaging letters to OPMC must have looked like.

Certainly, those in the room listening to this diatribe from Aubry were more interested in going through the motions than seriously asking themselves why there was such inconsistent testimony from four doctors who were not only the **leaders** in the department, but, at one point, all seemed to agree on the cause of death (that led to the initial suspension of privileges) and now were changing their story. And we also know by now that regardless of the effort put forth by me to simply have them erase the NPDB report, they did nothing at the behest of the hospital's attorney so as to avoid having to explain to the State why they were now making this change. This propensity to evade accountability on part of this hospital is important to remember as you read on, as it is but one of many examples that will be detailed.

The third example proving how it was my ability with advanced forceps that Aubry despised was evidenced in OPMC's Determination and Order from 2007. **Exhibit G3** are pages 63 and 64 form this ruling where my license was consequently limited to perform both High and Mid forceps deliveries – again, ***advanced forms***. What makes this important to point out is this. First of all, I was being prosecuted for allegedly violating the standard of care as it applied to the ***indications* for *operative vaginal delivery*** – in other words, **all** forceps and not just the advanced forms. Nowhere in the ACOG standard or even in the charges against me are the various types of forceps separated out pertaining to "indications" in the use of these operative techniques. Thus the standard for indicated use applies to **ALL** forms of forceps as well as vacuum.

The State never once delineated the issue either as being one where I had breached the standard of care for specifically mid-forceps vs. that of low and outlet forceps – the two other and highly more common forms. It is important to know that during the investigation phase, I was told by Prosecutor Mahar that the State was seeking all of my forceps privileges and not just the advanced forms. Just look at the angle of the prosecution to begin with (which will be discussed in much greater detail below) by them going after the "indicated use" and nothing else. Now, please read this next sentence carefully because it furthers this bizarre notion that Aubry hated others who could do advanced forceps deliveries. If I was so "allegedly" braggadocios and pompous with my use of Obstetrical forceps (as the Hearing Committee shamefully claimed in the Determination) to the extent that I used them without proper medical indication on multiple occasions just to "show off", then with over 80 cases throughout my career, are you telling me that these three cases used against me by the State were the only ones they could come up with to justify a six year prosecution of my license

and career on this subject matter of "indicated use"? Go ahead, please read that again because it speaks volumes. If I was truly guilty of such a baseless accusation; if I truly had a practice pattern of showing off and thereby disrespected the actual standards for implementation, then there ought to have been plenty of other cases, including low and outlet forceps as well, to illustrate this claim. Since OPMC is in the business of piling on as many charges as possible, and with full access to all of my hospital cases, the absence of **any** low or outlet forceps cases is a glaring omission in these matters and again, speaks volumes to what I am illustrating here about this advanced forceps jealousy thing with Aubry. If this was not a matter of attacking advanced forceps but just to get me in trouble by any means with operative delivery issues, then there must have been plenty of other cases that even Aubry could have drummed up to send to the Department of Health. But no, the only cases Aubry used as part of his agenda when secretly writing the complaint letters were advanced forceps cases.

Then on top of it all, for OPMC to actually limit my license for advanced forceps deliveries in the Determination and Order after they indicated early on that they were seeking all of my forceps in addition to their prosecutorial stance being that I violated the Standard of Care as it applies to the application of forceps (in general) is so bewildering that there had to be a specific agenda behind it. Yep, Aubry. If he was incapable of doing them, then no one was going to be allowed to do them in his midst. Can you imagine such a distorted moral fiber? What this also **proves**, without question, is that Aubry had an incredible amount of direct influence on my entire prosecution to be able to exact such a highly specific verdict. There is absolutely no way of denying this. So, after nearly six years of OPMC indicting my use of forceps at huge expense to taxpayers, in the end, they essentially endorsed my use **of** them by giving me back the types that comprise arguably 90+% of all forceps cases, but limiting those types that Aubry had an agenda against. This is so illogical and again, a total sham.

This contradiction should be that obvious to everyone. But what about high forceps that I had my license limited for as well, you ask? Well, this brings me to my second point, which will be addressed in greater and necessary detail below when discussing my history with OPMC. This high forceps limitation stands as irrefutable evidence that, (as a bare minimum), OPMC had failed to properly provide the necessary expert analysis I had been asking of them from the very beginning. In other words, OPMC imposed a penalty on a subject matter they had no clue on what they were standing in authority over. You see, high forceps were a form of use that had already been abandoned/outlawed **BY** ACOG for several decades prior to this case

and were **never** an issue in any of these matters. For OPMC to even include high forceps in the limitation is testimonial to the relative ignorance of those deciding this matter not to mention consistent with Aubry's fervent agenda against advanced forceps and more importantly, the means to get any sort of limitation on my license for reasons that will be abundantly clear as you read on.

The point in all of this is that Aubry had a history of (strange and pathologic) professional jealousy towards any doctor who was either able to perform advanced forceps deliveries or simply a better doctor than he was. And by way of his power and authority, this sad excuse for a professional has proven time and again to be one to wield it in a harmful manner, namely through the use of corrupted peer review at the hospital level and then hiding behind the anonymity provisions contained in the law as he utilized OPMC to do his dirty work at the State level. These are the actions of a coward. Dr. Rashid is retired and living in Florida now. However, I am certain that he could and moreover, would readily corroborate the information pertaining to his experiences with Aubry as well as this forceps nonsense. His number is (315) 708-2653.

The second offering as to the character of this man is a letter written by an old patient of mine to Crouse Hospital where she contrasts and compares her previous delivery experience at Crouse via Aubry's Perinatal Center, with her most recent one that was with me. Please see **Exhibit H**. This letter is very revealing on a number of levels. For one, it provides a first hand experience of just how clinically inept the Perinatal Center really is. [Like previously mentioned, a lengthy letter about the devastating care received by many patients through that division could easily be written.] Second, her letter describes a doctor who is so arrogant and full of himself (Aubry, of course) that just because he, at some point in time past, was asked to write the Forward (that's all it was – the Forward) for that particular year's update of a famous book for expecting mothers, he is now one to "offer" his autograph "free" of charge?

Stop and reflect on this for a few seconds and certainly don't discount this written account by the patient. Offering to sign the book for free were not words in jest but serious as to what he thought of himself. Did he really believe that by writing the overly flattering Forward to this book that he could therefore justify "charging" for his autograph? Think about that again and ask yourself what type of personality does such a thing? This is Richard Aubry and the man was pathologic with a very diseased mind and heart. His actions and character were clearly

off base as experienced by this very educated patient. Furthermore, I had another patient tell me similarly that as Aubry was walking by her hospital bed one day, he noticed this same book on her night stand and, without even having any familiarity with the woman, offered to autograph it for her. When you combine his "self anointing" as "top" high risk doctor in the area, his complete lack of formal training, a sketchy personal clinical history, an ego the size of Texas, arrogance beyond measure, decades worth of tremendous institutional power and authority and friends in influential positions, (including the Department of Health), Richard Aubry was a very dangerous man to anyone who stood to upset him. Well, I upset him by calling him out on his lies and look what happened to me while simultaneously using OPMC to do his unscrupulous work as he spinelessly hid behind his desk.

The third very important notable about this letter is the following. It is clearly a favorable letter for me and my conscientious practice of medicine both within the institution and from an educated patient's perspective. Given that it was a formal letter to the hospital administration, it should have made its way into my hospital staff file. Since OPMC has queried this file countless times, the two questions that beg to be asked are these. First, has this letter even been in my file upon receiving it? As just stated, it ought to be and stands as a pretty darn good testimony of what I have already firmly established as far as my clinical competency. In fact, I was very humbled by such writing. If this letter was not contained within my file, then this would therefore be a significant omission. The second question is predicated on the assumption that OPMC **did** see this letter in my file. Question: "What kind of assuaging effect did this letter have (if any) on the decision to proceed to a prosecution against my license beyond this date, namely the most recent round this past May of 2014?" Is not the doctor described in that letter someone the State should feel pleased to have caring for the citizens of New York? Didn't anyone at the DOH find it curious that the doctor named in the letter as being offensive was the same doctor writing all the disparaging letters about me, thus fomenting all of my troubles with OPMC? I offer these points in an effort to further impact what I seek from you through this vactur petition. More on this below under the OPMC History section.

Yet another example of how this man was determined to cause me harm is the following. After the above obese patient, (Patient D from OPMC's prosecution), delivered her healthy baby and was recovering on the postpartum unit, Richard Aubry specifically came into her room on a mission. Without any prior acquaintance with the woman, he instructed her that she ought to sue me. I know this because she told me herself. This patient and I had known each other for years and she understood what happened in her case and had no intention of doing so. In fact, she was put off by such an act on Aubry's part which is why she disclosed this to me. Now I would encourage you to call this patient as well to validate these events, however, she is no longer living, having succumbed to the morbid stress her obesity imposed upon her system. She was a neat lady, a loving mother and very popular in the office.

I realize that I am writing the very State agency that Richard Aubry is being described as having, what seems to be, carte blanche access to in order to cause other doctors trouble. If there is some internal relationship Aubry shared that enabled him to use OPMC as a weapon, then this is **so wrong** and I am demanding for it to stop having a continued bearing on my life and career. Actually, I recant using the word "if" in that last sentence, because it should be patently obvious that there is/was indeed an internal connection somewhere, and you know it, Mr. Servis. Yet, regardless of the specifics as to how and by whom he carried out his actions, you have to agree that Richard Aubry was a very influential man in the filthy, State sponsored process of how I went from the department's top performer to unemployable and insolvent.

By New York State Law, Dr. Aubry committed misconduct himself by what he did to me. The law specifically forbids any reporting of cases or complaints to be done with malice. I have provided ample proof with this petition for there to be absolutely no doubt that Richard Aubry, M.D. acted with malice towards my medical license through abuse of his departmental position. The only thing I don't have are the actual letters he wrote, nor do I ever wish to see them. I've had enough of this creep's wickedness already burned into my brain. In order to establish the certainty of Aubry's violation in the eyes of the State, consider the following three entries from the NY Public Health Law pertaining to the issue of malice so as to illustrate how serious an infraction acting with malice is:

PHL Section 230

9 Notwithstanding any other provision of law, no member of a committee on professional conduct nor an employee of the board shall be liable in damages to any person for any action taken or recommendation made by him within the scope of his function as a member of such committee or employee provided that (a) such member or employee has taken action or made recommendations within the scope of his function and without *malice*, and (b) in the reasonable belief after reasonable investigation that the act or recommendation was warranted, based upon the facts disclosed.

11 Reporting of professional misconduct:
(b) Any person, organization, institution, insurance company, osteopathic or medical society who reports or provides information to the board in good faith, and without *malice* shall not be subject to an action for civil damages or *other relief as the result of such report*.

16. Liability. Notwithstanding any other provision of law, persons who assist the department as consultants, expert witnesses or monitors in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, probation, or criminal prosecutions for unauthorized practice, shall not be liable for damages in any civil action or proceeding as a result of such assistance, except upon proof of actual *malice*. The attorney general shall defend such persons in any such action or proceeding, in accordance with section seventeen of the public officers law.

When measuring Aubry's decision to abuse his power and act with malice towards my license and career against what the State of New York considers professional misconduct, he was without question in violation of the following two statutes.

New York State Education § 6530 Definitions of Professional Misconduct

13. A willful violation by a licensee of subdivision eleven of section two hundred thirty of the public health law; (this subdivision is #11 immediately above)

21. Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so;

Not only did Aubry do what he did with **malice**, it was also **not done** in good faith. Both of these criteria have been met in regards to what Aubry did to my license. The significance that these truths bring to this petition cannot be overstated.

So again, thirteen-plus years worth of travails were essentially **totally fabricated** by agents of Crouse Hospital acting in an unprofessional and malicious manner. Aubry's abusive rulership as chairman of the Ob QA committee by controlling the peer review process along with attempted manipulation and alteration of the facts in the one Root Cause Analysis that had to be corrected are definitive proofs of these and other such reprehensible activities by representatives of Crouse Hospital with reporting power to the State.

In even further support of the fact that Aubry abused his power as Chairman of Ob QA both within Crouse Hospital and **beyond**, I submit **Exhibit I** which is a card I received from another Ob/Gyn in the region. In 2010, after losing a multimillion dollar practice due to this mess, I sought other job opportunities in local communities. The card I received in response from this one doctor working out of a neighboring community hospital spoke to what he both knew of what happened to me and moreover, the medical-political climate stemming from The Perinatal Center's (Aubry's) oversight of his own hospital's Ob department. The card is hard to read because of copying but this is what it states:

April 1, 2010
Dear Dr. Caputo,
I have received your CV and want to forward it to a recruiter we know who specialize placing physicians who may have issues. The hospital pays all fees.
(name of recruiter is intentionally blocked out)
Good luck on your search. I wish I could recommend (blocked out name of his hospital) **but it is a snake pit that is held hostage to QA from Crouse.**

I have followed your blog. Best of luck to you and your family.
(signature blocked out)

Very revealing, wouldn't you say?

Truth Summary: The bottom line is this. Regardless of whatever credentials he could offer, Richard Aubry was a very, very bad man, and a marginal doctor at best who had managed to pull the wool over the collective eyes of this entire medical community for decades who

thought him to be a competent and upright doctor, all the while concealing (to many but not all) the moral bankruptcy that resided inside of him. Plenty of others knew what he was capable of and can be as equally outspoken as I have been here. He was a man who was often consumed by professional jealousy while simultaneously possessing a pathologic sense of self that fueled his desire to harm anyone who either didn't bow to him or stood to make him look less prominent than what he believed he deserved. By being so inclined to unscrupulousness, he was not forthright and honest with the information he sent to OPMC and he did so with malice in his heart.

To review: As chairman of the Ob QA committee himself, Richard Aubry, M.D. **purposely** altered or withheld pertinent information involving two separate Root Cause Analyses for cases that I was eventually prosecuted **and** convicted on. As a hospital department insider, he further incited matters for me at the Department of Health in Albany by underhandedly writing complaint letters and sending charts with distorted information and fraudulent clinical narrative in order to foment a full scale investigation that overrode any and all truth about these cases on top of the extensive number of mitigating/exculpatory factors and material evidence pertaining to my once esteemed medical career. OPMC has these letters (that I have never been allowed to see) that can only be disclosed by the DOH as part of some formal investigation into any number of potential matters, including impropriety in the adjudication of a complaint/investigation/prosecution by OPMC. I point this out for those at the Inspector General's Office should you find it curious to want to know and affirm this yourself.

Though I have insisted that these letters bear Aubry's signature on them, it is quite possible that they were sent under the authority of one of his fellow scoundrels who also participated within the hospital and were party to the events at the MEC hearing – including the then chairman, Dr. Shawky Badawy, Dr. Robert Silverman (Aubry's fellow PNC colleague and current chairman) or Dr. Ronald Stahl (who would go on to become the hospital's Chief Medical Officer – and who incidentally was just recently fired). All four were named in my 2002 complaint to OPMC. Though I make sure to cover this possibility, I highly doubt the letters were in either of these other men's names as Aubry seemed to be proud of what he did. I sensed this last statement because whenever I would be anywhere near him while in the hospital, (particularly during these awful six years), such as passing him in the hallway or standing on the hospital unit charting, he continuously wore a wry grin on his face when looking in my direction knowing what he had done to me and moreover, my family. Pure evil.

Regardless of these particulars, just know this – Richard Aubry was **only** able to carry out all of this malevolence due to the decade's long ties he had with the few other (equally unprincipled) leaders of the department of Ob/Gyn at Crouse/Upstate Hospitals along with his tenured position within the institution, not to mention a clear inside connection to certain influential parties ***within*** the Department of Health in Albany. A true team effort. It is worthy to note that over the years, other doctors within this central region of New York State who have dared to cross Aubry or simply disagreed with him publicly have also found themselves unexpectedly being looked into by the Department of Health, as affirmed by several of my colleagues. Is it possible that Aubry was an agent of OPMC, working with them to ensure a steady supply of victims for each other's mutual benefit? It would sure seem that way. Everyone seasoned enough in the politics of the region knew about this man and what he was capable of doing to their lives and careers which is why others in the field feared him and dared not cross him. After this entire Ob/Gyn community saw what Aubry did to me, their fears were only emboldened.

QUESTION: Given all that has been revealed about Richard Aubry, M.D., (the corruption, abuse of power, professional jealousy, malice, fraudulence, incompetence) the majority of which the Department of Health not only had available to them but also ought to have fully known about, is it still BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. Either you knew about all of this, Mr. Servis, or you did not. If you did know, you have no excuse. If you somehow claim that you didn't know, now you do and therefore, you still have no excuse. This entire thing was a lie from the start – but you **did** in fact know this because you allowed Aubry to use OPMC like a dirty dish rag over and against a mountain of evidence in my favor. So, you don't get a pass on this.

Crouse Hospital Repeat Peer Review Abuse

To re-emphasize the above card received in 2010, the tactics of Aubry's Ob QA committee even towards doctors in neighboring institutions were described by this other veteran attending physician as ***holding them hostage in a snake pit***. This is very significant to consider when adding it to all the other material evidence submitted to establish what conditions were like under Aubry's rule and about the man himself. I've already shown how he corrupted the two Ob RCA's that he was able to get his hands on. However, all of what you read above is not the only evidence to prove intent by agents of Crouse Hospital in both manipulating the facts and fomenting trouble with the Department of Health by **lying** to them in order to ultimately cause me harm. Please consider the following.

After receiving my Determination and Order in December of 2007 from the Hearing of that summer and it being made public, you are well aware of the fact that I went on my practice's website to try and publicly defend myself by simply speaking truth about the matter. Unfortunately, this was a far more hurtful decision than a beneficial one. Not only did it not really change anything for the better, it further aggravated the two parties with whom I had been at odds with – Crouse Hospital and OPMC (you). Understand, it was an extremely stressful time with not only five young children to consider in the middle of it all but also thousands of patients along with twelve full-time employees, all of whom also relied on the practice for critical needs in their lives as well. Do you have any idea what it is like to sit through eight hours a day over multiple sessions while you bear witness to a deeply contrived, intentionally crafted, wholly untruthful, entirely evil, all out assault on your life, career and the truth by State officials who allowed themselves to be manipulated by and were party to the scheming of the societal dreg known as Richard Aubry? Do you? Well I do. In fact, I had to sit through it twice over six years. So, when I was humiliated before the entire community, I was fighting mad as you know and therefore spilled a lot of information and commentary while calling out those who did it.

In response, and while staying in character, Crouse Hospital did an impromptu 18 month chart review of all my cases in early 2008, as was informed to me by a couple of patients of mine who worked at the time in medical records. They said this was something they had never seen done before. Shortly thereafter, (big surprise), there were several old cases that I was suddenly being investigated for in the hospital for "questionable" care when they had not previously been the subject of any quality of care interest. **Once again**, without being

allowed to participate in the up front analysis of this latest round of aggressive peer review, (mostly Gyn this time), I was sanctioned, once again, within the hospital after which I tried, (once again) to appeal – to no avail. This was the same old modus operandi of abusive peer review without any due process or due cause – just when I thought six plus years of absolute hell was hopefully going to end for me and my entire family, parents and siblings included.

Of course, these cases would eventually find their way to Albany once again and would become the interest of OPMC – once again. A lot of "once agains" with this Hospital. This malicious assault was apparently never going to end – at least truthfully so long as they were controlling it. I submit **Exhibit J** which is a flow chart of the peer review process within Crouse Hospital. To illustrate the utter lack of due process I *once again* received, this time for the cases in 2008 that were sent and subsequently used by OPMC specific to their 2014 prosecution, (that's right, **six years** later), the circles represent the steps in the process that were either **skipped** or ones that I was expressly **excluded** from. Would any entity, (including the Department of Health), interested in jurisprudence find this abomination of due process to be fair and/or trustworthy? Well, this is what happened, time and again leading to the programmed demise of my career as a result.

It is one thing to make this repeated claim that I was once again the object of a concerted effort by a small group at Crouse Hospital using the peer review system to cause me even more grief, which **is** precisely what happened. However, there is another very significant wrinkle to this 2008 experience that bears introduction and moreover, serious contemplation along with what has already, ***over-abundantly***, been established. A long term colleague of mine and one of the premier Ob/Gyn doctors in Central New York, Byuong Ryu, M.D., (also a current agent of the DOH), was the then Chairman of the Gyn QA committee at Crouse Hospital when they were asked to review a number of cases drawn from the just mentioned 18 month chart-pull. It was from these reviewed cases where the ones sent to the Department of Health were derived.

What's important to understand here about the cases that eventually made their way to OPMC, two of which were used in the latest prosecution of 2014, is this. When the Gyn QA committee, as a whole body of individuals, thoroughly examined each of these cases and measured them against both the standard of care and the community standard, they found no issue with the care rendered to pursue anything further in each of them. However, after

certain untowardly interested parties in the department received these reports, Dr. Ryu was approached and asked (with a nudge and a wink) to "re-review" them with the intent that a new and tainted report would now prove unfavorable for the care I provided. Dr. Ryu, a man of honor and integrity and in total opposition of such an untruthful and deceptive thing, immediately tendered his resignation as Chairman of the Committee and stepped down.

Yet, despite the **official** Gyn QA Committee **position** being one of not willing to "revise" otherwise favorable Committee reviews, several of theses cases **still** made their way to the Department of Health and were used as the (lame) clinical basis for OPMC's most recent round of investigation and prosecution. Please, I hope you are starting to see a pattern here.

Once again, this deliberate attempt to corrupt the legitimacy of the information sent to the Department of Health for the sole purpose of causing harm cannot be seen as anything other than malicious – which, as established above, is a violation of the Rules of the Proceeding when it comes to how complaints ultimately reach OPMC and grounds for Professional Misconduct not to mention, disqualifies any case sent under such circumstances as having merit for prosecution – on a legal basis alone, and with these cases, a clinical one as well.

It is my belief that even unsullied parties within the Department of Health were perhaps able to somewhat discern the scheming involved with this most recent peer review falsification by Crouse Hospital when they received information about these cases that was somehow lacking certain pertinent information that one would inherently expect from an official QA Committee report such as the ***name of the review committee from within the hospital*** as well as the ***actual date of the case reviews***. Please see **Exhibit K**. If one was (hypothetically) trying to sidestep an official (and otherwise exculpatory – at least in the eyes of the subject's immediate peers) case review pathway by sending fraudulently damning information under the guise of "official business", perhaps certain inconsistencies in the documentation were unavoidable and subtly noticeable. This all may be just speculation, however, it is a highly unusual comment within an official communication from the Department of Health involving the very cases Dr. Ryu refused to alter which we know OPMC still ended up prosecuting given information that had to have been sent to them somehow. I know the patients weren't the source and I know someone from within the hospital was.

What this letter also establishes is the following. It is clear from the request that OPMC clearly has a mission and desire to obtain as many, not to mention highly specific, internal hospital records concerning the doctors they investigate. This is a component of extensively examining any issue, as it ought to be. Again, this evidently thorough procurement of the records is not only consistent with the language in **Exhibit B4**, from the Office of Health Systems Management, but it also leaves OPMC with no absolutely excuse for <u>not</u> having been privy to ALL of what I have thus far disclosed concerning Aubry and the deliberate defilement of literally every possible fact and procedure, all of which was clearly evident while they were still in their investigative phase of matters with me. So, knowing that OPMC knew, (or should have known), all about the sham that this entire thing was, by them proceeding as they did, it is inescapable as to their culpability as well in what has been clearly a most malicious act of aggression against my license and career and the pinnacle of power abuse.

A few more examples of just how grotesque this department leadership has been in regards to not only me but to the overall mission of just being "good" are the following. Well into my dealings with both the department of Ob/Gyn at Crouse and OPMC I had a conversation one evening with a second year resident named Jacob Rastagar, M.D., while I was waiting for a delivery. He was a solid doctor who told me that he was transferring out of the residency for, amongst other reasons, it being a terrible program. He apparently empathized with what he knew of my travails within the department, and that day, voluntarily confided in me the following. He said that the then chairman, Shawky Badawy, (also well into his 70's like Aubry), would hold specific meetings with the entire resident staff in order to "warn" them about me. Badawy was described as ruling with an iron fist and tried to impart to them that I was a "bad man" and that I was not to be interacted with as much as possible. Just peer into my hospital staff file and see the repeated writings of Badawy that besmirched anything he could about me as proof of this man's will to sully my presence in that institution. While honestly not surprised to hear such a thing given what I had already learned concerning the character of the Departmental leadership, this information answered the long wondered mystery for why first year residents would be so enthusiastic to work with me upon initial arrival to the program since I have always been a nurturing type of teacher, only to see them literally change their countenance towards me overnight and avoid all interaction thereafter. Rastagar said this was why. Call him and confirm this yourself. I believe he is in California somewhere, last I knew.

Teaching has always been one of my many strengths and why I also gave two (popular) lectures to the second year medical students each year at Upstate through the Department of Pathology on the female reproductive organ system. It was my imperative to impart the same principles of excellence that were instilled in me during my training. The department would have none of anything truly resembling "excellence". Those in charge were simply incapable of such a thing because they themselves were too incompetent to even know better which is why they, in turn, abused their power in order to keep the status quo. In fact, on the subject of educational experience as part of their third year of school, the department of Ob/Gyn at Upstate/Crouse has consistently been ranked by the medical students as the absolute worst clinical rotation in all of medical school, by far, and has been the subject of many negative reviews over the years, only to see nothing change. What the heck? How bad does it have to be before the house is rightfully cleaned?

I offer one last piece of information to consider when measuring the credibility gap of Crouse Hospital, (at least at that point in time), being able to reliably provide accurate reporting of case events, especially to the Department of Health. Take, as this example, one of the cases that **was** being heavily investigated by OPMC as a result of the hospital's 2008 sweep of charts. This was one of my three career complications which occurred in 2007 where a patient was admitted for observation after an extensive surgery for severe pelvic scar tissue, which I had long established myself in this community as being highly proficient in treating, through hundreds of such cases. Unfortunately, the patient ended up sustaining a small bowel perforation that was not immediately evident. While still under observation and despite exhibiting profound symptoms of deteriorating health status, for which the Upstate Ob/Gyn Resident physicians were called four separate times, they not only failed to recognize blatant warning signs and did nothing, they also **never bothered** to call me one time to inform me of any of these events since they occurred while I was out of the hospital. Calling a private attending physician about ANY matter concerning their patient is Residency 101 and by not doing so was a massive departure from the Standard of Care. This patient nearly died as a result and suffered a long recovery. Had I been called just once, her clinical course would have been greatly lessened where she would have likely gotten out of the hospital in less than a week after the complication was readily attended to.

As required, a Root Cause Analysis was done on this case that I, again, made sure I was present for and it was unanimous that there was no negligence or breach of the Standard of Care on my part – as this was a known potential complication for this type of surgery and the patient had received proper informed consent in addition to the fact that everything I did upon knowing the situation was spot on with what would be expected. However, there was much criticism of the resident physicians' role in this case and rightfully so. Yet, despite really being the eight hundred pound gorilla in the room, this resident matter was essentially brushed under the rug as the meeting was quickly adjourned after this glaring fact was starting to be intensely discussed. This double standard of accountability was and may still be rampant within Crouse Hospital. I know I have seen it numerous times where resident deficiency was covered up, namely because it stood to expose the incompetency that oversaw their education.

After what I had already detrimentally experienced regarding the previous RCA's concerning cases of mine in the hospital, I asked the medical staff office for a copy of the NYPORTS Report for this RCA as well, several months after it had been "sent" to the DOH in Albany. Please see **Exhibit L.** This is two part exhibit with the first part (**L1**) being an email communication from late 2008 where in response to my request, I was told that the case **did not** meet the reporting criteria for NYPORTS. When examining second part of the exhibit (**L2**), [which are print outs from the Public Health Law, Appendix 1, Section 2805-I – (Incident Reporting), Subsections 2a and 3 along with Appendix 2, Section 405.8 – (Incident Reporting), Subsections b1, c, and d1-d7], it would seem **very clear** that the outcome of this particular case **demanded** a report to have been filed with the State. In fact, as you can see by looking at Dr. Novello's underlined comments, it is a serious violation in this case for them **not** to have filed a NYPORTS Report and thus would constitute professional misconduct.

With the only true culpable party in the case being agents of the hospital itself, there was clear **motive** to withhold a report that could spell trouble for the hospital, and particularly an Ob/Gyn department which had been woefully underperforming for decades, particularly at the Resident/Medical Education level. Remember, this department enjoyed a direct connection to the DOH in Albany somehow, so such a glaring omission would likely be brushed aside, should it ever be "noticed" by anyone. In my experience, a great deal was done by this hospital to keep the light of truth and reality off of this medical education debacle known as the Upstate Medical University Ob/Gyn Residency Program.

What's sad is that these residents have no clue what has been done to them by such awful clinical instruction. "The eye don't see what the mind don't know." In other words, unless you actually **know** that something is awful, you will never be able to **see** it. I witnessed this educational atrocity on a regular basis in the weekly Resident case presentations at the hospital and simply couldn't believe what I repeatedly saw as being passed off as a University level of training and teaching, where the likes of Aubry, Badawy and Silverman were often observed patting each other on the back for a case well done when the outcome was highly adverse and wholly preventable with such commentary as, "oh well, you can't win 'em all." I'm not kidding. I have the record number of one such case (here it is – 115706251) where this very comment was uttered by Aubry. I was aghast. This was Obstetrical medicine that was so horribly administered where the poor unsuspecting woman lost her second (third trimester) baby in as many years under the care of these terrible doctors. And this is the programming these poor Residents in training receive with many becoming just like this.

I know for a fact that you (OPMC) are very aware of certain additional and even more appalling improprieties that I have previously written about involving this hospital and residency and what they continue to perpetrate on this community (as was seen written in ***The Truth Test*** of 2013) that ought to be cause for criminal investigation but I will forgo these matters as part of this petition knowing that you know already and have done nothing about it. But just to prove even this, on the website cited above, I will post the website tracking records I maintain for my practice showing two separate Department of Health IP addresses with over **600** page loads from my site during the three months ***The Truth Test*** was posted and available to the public with every document posted there having been downloaded by whoever was sitting at those DOH computers. This writing was a revealing exposé detailing, among other things, a very damning case that would otherwise be grounds for criminal investigation not to mention out-and-out medical misconduct should any "real" oversight agency be doing their job, while posing various questions to the community as part of the "Test", (if you will), after having learned the Truth about women's health in Central New York at the hands of those who have run it into the ground for decades. Two "someones" at the DOH had a curious and persistent enough interest in James R. Caputo, M.D. by having loaded six hundred pages from my site. It would be an interesting exercise for the Office of Inspector General to simply query the IP addresses noted to see if the unknown internal connection, aiding and abetting all of these activities by Aubry and Crouse, might very well be identified.

What's all the more telling about this above mentioned 2007 case of mine with the complication and the Root Cause Analysis that followed is this. First of all, this case was one of the one's picked up in the 18 month sweep of charts (although admittedly, it was definitely outright worthy of an RCA which did indeed happen) that were then rammed through the peer review process where all those steps had been skipped over as seen in **Exhibit J**. By the time the RCA was held, I had already been found guilty by the administration and punished for this very case. Yet, at the RCA, after the real facts were on the table in front of a multidisciplinary team of professionals who couldn't all be "in" on the fix, the correct determination was made, as stated. Once these conclusions were affirmed by all in attendance, I then spoke up and asked the following question, "I would like to know how it is possible that this Root Cause Analysis is now being held and with the obvious conclusion that has been reached, but yet, I have already previously been found adversely against by the administration for this same case?" No answer, just blank stares as everyone continued heading for the door, especially after the resident culpability issue had been brought up. Look at **Exhibit J** again and see for yourself. The Root Cause Analysis is one of the early and mandatory steps in the Peer Review process that is a **prerequisite** before any conclusion or adverse finding (for that matter) could ever be made and any penalty imposed. Yet, by the time the RCA was actually held for this case, corrective action had already been levied against my hospital privileges with, you guessed it, mandatory reporting to the National Practitioner Data Bank. It was interesting in how this latest sham peer review had been exposed by a normal process, (the RCA), having been convened by legitimate parties who were properly carrying out their duties to the process not realizing that a parallel course of action had already taken place in the shadows of the legitimate one and where this mandatory step was somehow skipped.

This was one of many cases I had to defend in the hospital, after the fact, when I was so "courteously" extended the opportunity to appeal the latest sanction that was arrived at outside of the obligatory bylaws governing peer review of cases. Needless to say, after having to endure my name having just been dragged through the mud publicly in December of 2007 because of what they did at the State level, and having to close a multimillion dollar practice in April, I literally spent the majority of 2008 defending this new onslaught of bogus cases within the hospital that were trumped up just as you all have now seen done with this case. The hospital proceedings were nothing short of disgusting and part and parcel of what I had already been experiencing for over six years by that point. It was a horrible year to say the least.

My question to you, BPMC, is this. Do the administrative actions of this hospital still have any authority and integrity before OPMC given such impeaching information having been presented to you concerning their credibility? It ought to call into question every single piece of disparaging information that emanated from that institution (and Aubry himself) as it pertained to my prosecution at OPMC. More than that, I unconditionally maintain that the actions described by Crouse Hospital and the information they sent to OPMC were unlawful and counterfeit, respectively, and ought to be, (unto themselves), the basis for granting every single request in this petition. What's more, you **knew** about most if not all of it being phony. Despite these obvious efforts to bring destruction upon my career and family, there is still so much more. So, get a cup of tea and be prepared for some of the worst stuff yet to come.

Incidentally, the patient in the case just mentioned rightfully brought a lawsuit against both me and the hospital. After a jury heard the evidence, I was acquitted while the hospital and their resident physicians were held responsible for a substantial penalty because of the obvious. After the civil ruling in this case where (in an open honest setting) the hospital was **finally** held accountable for something in my dealings, fascinatingly, OPMC suddenly lost interest in pursuing it for their own prosecution after going full force up to that point. Need anything more be said?

Truth Summary: The point in all of this is this. With the continued evidence of certain malicious and unlawful activities continuing into 2008, just as they were perpetrated in 2001, I have more than established a pattern of questionable integrity and blatant violation of their own bylaws from certain administrative forces at Crouse Hospital with State reporting power that was directly responsible for my travails with OPMC and the eventual loss of my license. It would be a blight on the integrity of the Department of Health to think for a second that you, Mr. Servis and your agency, would ever condone any reporting party being deliberately dishonest with you to the extent of advancing an immoral agenda against another's license by using OPMC as their means to an end. OPMC wouldn't allow themselves to be misused like that, would they? No, of course not. [Cynicism emphasized] But, if it were to actually be so; If OPMC did indeed ally themselves with this den of delinquents and was party to their unlawful activities, then it certainly provides a considerable amount of veracity to the basis for the **OPMC Reform Bill** that was introduced by two State Senators several years ago that describes these same violations as having been committed by OPMC throughout their entire existence. **Exhibit M** is the fact sheet concerning this Reform Bill that was unfortunately

defeated in the Legislature. Look at the writing on this document and ask yourself how it is possible that basic Constitutional principles have been wholesale abandoned by this agency in wielding their power stick to the destruction of doctor after doctor without an ounce of due process or due cause with absolutely no oversight protection whatsoever. OPMC is the epitome of what it means to be un-American. Therefore, as a continuing part of this petition, I am asking you, (those who stand in authority over this State agency), to please not disregard the significance and relevance of this substantial accumulation of facts concerning my history with Crouse Hospital and specifically, certain individuals within the Department of Ob/Gyn who, working secretly with agents of OPMC, were cohorts in multiple cases being baselessly prosecuted by the Department of Health that were ultimately responsible for losing my license and career and then, as a result, sustaining an unspeakable level of personal damage.

QUESTION: Given all that has been revealed about Crouse Hospital and their 2008 gross violation of virtually every rule involving proper peer review, in addition to breaking their own bylaws, covering up Resident physician impropriety, on top of making false reports to the State in bad faith and with malice at the heart of it all – things that the DOH, again, should have been more than privy to – is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? If you can honestly say yes, then you have just affirmed your role in as well as support for these same unlawful practices. Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. If you try to claim that you simply "did not know", then there is but one response to what you have just read. And that is to sustain the terms of this vacatur petition that will be presented at the end. There is no other position you can hold.

OPMC History

Now that I have disclosed much of what I had to deal with at Crouse Hospital, (believe it or not, there is still a great deal more that is just as stomach turning), we now get back to the original time line for this part of the historical account, which now focuses on my direct involvement with OPMC. It was soon after the original hospital MEC hearing in the Fall of 2002 [where, again, I was seeking to have the NPDB report expunged because the summary

suspension by the MEC was based on tainted information presented to them] that I started being investigated by OPMC. This was a very scary time as I really did not know what to expect – all with a thriving practice and a young and growing family. It is also important to again understand that at this point in time, I had previously gone through some serious trials already in my young career with some very dishonest people which were business/political in nature. So when all this started happening, I guess you can say that I was a bit edgy from the previous matters I had to deal with. I hadn't yet, nor could I ever have anticipated experiencing **all** that you just read involving Crouse Hospital, which further ate away at my inner peace. In the Fall of 2002, I was young and completely unseasoned in any sort of real life politics, (since I had essentially been in school all my life), never mind such wranglings within medicine itself. These sorts of things (politics) are not important pursuits for me. All I wanted was to just wake up and go to work and live a quiet life while practicing top quality medicine. Yet, I was thrust into this world and I did not do a very good job of dealing with what was being done to me, despite the actuality that I most certainly had the clinical facts, the practice standards and most importantly, the **truth** on my side.

I will try to be succinct yet methodical with this section since I am essentially covering much of what we both know was the source of bad blood between us over the years. Just look at what I have revealed thus far. It sure does stand to reason. You must understand, however, that any and all responses from me, including this petition, have always been and have only been in defense of the truth in these matters and put forth relative to the fallout in my life and career as a result. Truth ought not to be replaced by personal animus towards the one telling the truth, which has been the case in my experience. I know I didn't engage your agency with the best of attitudes, but how can you condemn me for essentially doing what is only natural of anyone in my position? My career was being venomously attacked based on lies. Therefore, I am most certainly not going to sugar coat anything after what I have so viciously received for over thirteen years now – be it from you or Crouse Hospital. Truth is truth, regardless of the personalities involved. Is this really what OPMC wants to be defined as? Pounding an innocent man into the ground just because he dared defend himself without holding back? I will be bringing up things in this section that I ask you to consider from my perspective. In other words, what would you do or think as each example was experienced as I experienced them? Could you have even handled such atrocities being brought upon your life? Either way, what is about to be disclosed is nothing short of depraved and I got to be the lucky recipient.

Investigation

In the Fall of 2002, numerous charts involving forceps deliveries were requested from my office by OPMC. I realized at this moment that a nefarious effort had been initiated and forceps were apparently the angle that was going to be used to stir up trouble. I knew right then and there that this was the work of someone in Crouse, since the patients named were all happy and content with the care they received. However, if one were looking for any sort of tactic to cause difficulty at this level of medical oversight, forceps were a brilliant subject. Here they are already controversial in the eyes of most who don't understand them and therefore, readily subject to all sorts of inaccuracies being disseminated about my professional utilization of them by those with an agenda to deceive the prosecutorial arm of the Department of Health to do their dirty work against my license. Additionally, so few within Ob/Gyn itself have practical knowledge of forceps. Therefore, expecting investigative agents at the DOH to necessarily possess the erudition required to be able to properly discern truth from **almost** truth in order to render a sound and educated judgment on the facts before them would be difficult to say the least.

This is why all of my initial communication with OPMC, be it in writing or on the phone, repeatedly emphasized the need for there to be an Obstetrician seasoned in forceps involved with their investigation, (like, for example, my eventual expert who was also an agent of the DOH as one of their past experts), in order to get a fair evaluation. I refer once more to **Exhibit B4**, the response letter from the Office of Health Systems Management, where in reference to OPMC investigations is says quote, ***"When reviewing allegations of medical misconduct, OPMC relies not only on the opinions of investigators, nurses, and supervisors, but also on the medical expertise of board-certified physicians in the same specialty as that of the subject physician. Therefore, the investigations are thorough and carried out coexistent with statutory requirements."*** You see, I didn't mind (nor do I **ever** mind) being scrutinized at all about **anything**, so long as it was done honestly and with intellectual integrity. I have always lived my life with as much transparency as would seem appropriate for any circumstance. In regards to this repeated request of mine for OPMC to simply do what they are required to do as far as ***thoroughly investigating*** me by using physicians with ***medical expertise*** on the subject matter, I still possess numerous phone recordings from 2002-2003 that speak to these specific points with what I was asking the DOH, as well as reflecting my incredulity over all that was unfolding. As you can see, I kept it all, despite such a basic and mandatory principle of "thorough investigation" never having been extended.

That's right. So what did OPMC do in response to this simple and logical request? The DOH **never** recruited anyone as far as I have ever seen at **any stage** of this encounter with OPMC who had any sort of expertise or extensive experience in the actual use and application of Obstetrical forceps. In fact, all experts for the State who would eventually testify at Hearing admitted that they did not use them in their practice and thus had little to no active clinical experience as a result. Therefore, the decision by OPMC on whether to proceed to a Hearing or not way back in the beginning concerning this very subject matter of forceps would thus be susceptible to easy manipulation of any number of facts and nuances because of a relative ignorance concerning this esoteric clinical subject matter. This is what Aubry took advantage of. The result – to sway the opinion of those involved by using his (pseudo) lofty credentials (on paper really) and very condemning language in the complaint narratives he sent in order to ultimately steer the outcome. This is just the truth of what happened and the Department of Health knows it and furthermore, allowed it to all happen.

This section is by no means an attempt to retry the past. However, as part of this vacatur petition to BPMC, I at least want to briefly discuss these portions of my investigation that would cause anyone in my position (in addition to anyone else reading this) to be very troubled by what you have learned and still have yet to learn.

When looking at the law as it applies to an OPMC investigation, (PHL Section 230 10(a)(i)) the first thing that jumps out is the following statement that BPMC ***"shall investigate each complaint received regardless of the source."*** While this certainly gave Dr. Aubry the avenue to ensure that whatever he or the hospital department sent regarding me was going to get investigated, it continues to leave me wondering about a glaring departure from this mandate by the Board itself. Why has the Board failed on this Rule as it pertains to my 2002 complaint (mentioned above) against these very men from Crouse Hospital (Aubry included) where, despite a case number even having been assigned, not to mention a letter from my attorney years later inquiring as to why there had been no further response from OPMC, the entire matter appears discarded by the State? Is this not a clear violation of 10(a)(i)? Wouldn't this disobedience to the law leave you wondering if there was some sort of effort to protect these men? Did you do this, OPMC? Did someone within your ranks quash this complaint in order to shield these scoundrels? Of course these things were done. Ought not the complete disregard of this complaint be troubling to me – or to anyone reading this? It would sure seem that someone purposely suppressed this complaint without anything being offered since then or otherwise to impeach this overt reality. What's the new way of dealing with truth and reality in America? You simply ignore it, especially when there is no one above you to hold you responsible. Correction, it's really not that new, just implemented by those who live at that level.

Reading on further in the law pertaining to OPMC investigations, PHL Section 230 10(a)(iv) states the following, ***"If the director of the office of professional medical conduct, after obtaining the concurrence of a majority of an investigation committee,……"***

At the point in time where the OPMC investigation committee decided that they did concur on the facts in order to proceed to a Hearing, aside from what we have already established had to be a litany of corrupted information, most of which they should have known was tainted, including the very damaging letters of complaint at the hands of Richard Aubry, the following information is what the investigative committee should have **ALSO** had before them as well when casting that supposed ***majority*** decision: **(1)** my clinical record as previously stated with all sorts of internal hospital statistics (again, unavailable to me after being denied upon request) validating a departmental (and community wide) leading performance history, **(2)** no complaints from patients, **(3)** all pathological and scientific data as to what caused the stillbirth in the original case, **(4)** exculpatory testimony from a regional heavyweight and agent of ACOG – Richard Waldman, M.D. **(5)** my complaint to OPMC with a detailed account concerning what happened and by who at Crouse Hospital involving clear-cut peer review **and** administrative abuse, **(6)** no unduly harmed patient or baby from my care, **(7)** hours of interview testimony and pages of written testimony from me discussing each case in question in great clinical detail including specifics in decision making, **(8)** the actual patient charts that speak clearly as to what truly occurred in each case under prosecution, **(9)** conflicting clinical reports concerning Patient D, described above, **(10)** ACOG's Practice Bulletin on Operative Vaginal Delivery and more.

So, what kind of "investigators" could they have really been after considering all of that only to essentially ignore it? Now can you understand why it would greatly concern anyone in my position as to what it was they paradoxically had before them that drove the investigative committee to either disregard completely, or seriously discount everything in that list in order to push a costly prosecution in a matter where no patient was harmed, no Standard of Care was ever violated (as specifically defined by the ruling body for the specialty) and where no true "pattern" of deficient medical practice has ever been established? Didn't anyone at OPMC identify a huge disparity between whatever they might have been reading in the complaints and what they saw when actually examining my clinical performance record? The law cited above says, ***"If the Director of OPMC…."*** That would be you, Mr. Servis. That would mean that you, above anyone else, would have been well-informed on all of this.

Of course, without any record of the investigation, it is impossible to know just how many were even involved in the first place. It could have been **just you** for all anyone knows. Frankly, after all that I have witnessed and have been subjected to, I wouldn't doubt it. With my entire livelihood and ability to support my family having been lost and now back on the line with the penning of this petition, of course I am going to feel disenfranchised by my own State Government over what I know to be the real truth in these matters.

Truth Summary: The investigation stage for complaints received by OPMC is so ill defined and completely without any sort of oversight protection that it remains to this day the single most readily manipulated component of the process. What assurance does any physician in this State have that there actually is a large enough body of people involved in the investigation for there to be an open and honest evaluation of the care rendered? I have more than demonstrated how critical this principle truly is when examining the various RCA's involved in my life which have **proven** (without question) how a multiplicity of minds counteracts fraud and abuse in reaching a proper conclusion based on the material facts and nothing else. I don't see a single assurance anywhere in the Public Health Law that provides for this basic Constitutional right as it applies to OPMC investigations and their so-called "committees". As stated, as far as my case is concerned, for all I know, there could have been only one individual making all the decisions and then labeling it the conclusion of the "investigation committee." I will say that the one comment made by Prosecutor Michael Hiser during our telephone conversation in the Spring of 2014 is certainly telling as to the agenda behind the scenes at OPMC as it pertained to one James Richard Caputo, M.D.
As OPMC was readying to baselessly hammer me once again over properly managed cases they received as part of that 2008 ruse at Crouse Hospital where the intent to corrupt the Gyn QA reports was revealed above, I asked Mr. Hiser a simple question. I wanted to know just what it was about **any** of these cases that OPMC felt was justifiable for yet another prosecution after having provided detailed descriptions of the medical care as well as the Standards of Care for each case along with having already endured two formal hearings where I had not only been compliant with the stipulations set forth but was also still reeling from the consequences as well. His answer, "I don't know. I am just following my marching orders from the higher ups." That was a very troubling statement to hear and I believe his subtle way of telling me that there was much more to the story than a State agency simply looking out for the interest of the public. I think we all know by now that nothing about any of this was legit.

QUESTION: Given all that has been just revealed about the material evidence that **had** to be present before the investigation committee, (the list is undeniable), measured against the highly disparate letters written by Aubry, (who was named along with the others in the very damning 2002 complaint that was also before them but subsequently quashed), is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? That a full scale investigation and prosecution was justified? There is no honest affirmative to that question you could **ever** give, especially after having been an accomplice to it all. Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. Of course you know this to be true as well.

Hearing Panel

To add even further support to the proceeding being dishonored and vulnerable to manipulation I offer the following since no component of this hoax was spared by those driving it. The manner by which the DOH selects the three member Hearing Panel/Committee (or jury – they're all synonymous) is, yet again, not only a complete mystery, as there is nothing formal in the Statute that speaks to it, in my case it had a huge impact on the final outcome. It hasn't been formally mentioned yet in this petition (though briefly alluded to) but the 2007 Hearing was **not** the first held by the DOH concerning my license. In 2005, the original Hearing concerning these same cases was held where there were several improprieties committed by this one and only Ob/Gyn doctor on the panel who was an elderly man in his 70's named Albert Ellman, M.D. – who is now deceased as well. Of course, here's a man who would stand in judgment, with my entire career on the line, without any experience in forceps. No surprise there. And obviously, as mentioned, there were two other members of the Panel as well. But how reliable could they have been to understand **anything** being discussed since one was a doctor from another specialty altogether and the other was a lay person from the community. In essence, this was **not** what I would call a jury of my peers, with the only "peer" being ill-equipped to render judgment on the subject matter.

Though it would have been fair and just to have all experienced Ob/Gyn's on the Panel, it really shouldn't have mattered if the trial had been carried out honestly. You see, with OPMC taking a prosecutorial avenue of "clinical indication" as opposed to "clinical competency" on my part, the ACOG standards governing these matters were so straight forward that a second grader could have gotten the decision right since all they had to do is read the official Practice Bulletin which spoke loud and clear on this subject. More on the Determination below.

Getting back to this Albert Ellman character. As one example of his bad conduct, on one of the Hearing days, the Administrative Law Judge, (ALJ), had to call an emergency executive session in order to reprimand Ellman for stepping way outside of his boundaries. This man was literally trying to both coach the State's expert witness as well as provide some of her testimony while she was literally <u>on the stand</u>! Could you imagine seeing such a thing? The ALJ was not the only one in the room stunned to see Ellman dare act this way. In fact, his audacity was quite reminiscent of Richard Aubry. This violation, along with numerous other outrageous acts by this man, which included an ex parte communication with that same State expert witness at the end of one of the sessions where, upon parting, he was seen winking at her, was enough for us to seek an answer through the ALJ as to who this man really was and why he was on my jury given such misconduct of his own. Well, it turned out that he just so happened to be long time friends with one Richard Aubry.

Yep, the very man orchestrating this entire con. No wonder he behaved so much like him. Am I not supposed to connect those dots? Was this just a mere coincidence along with the fact that I would go on to be convicted on essentially everything despite no true material basis? The only thing OPMC presented at Hearing was the incredibly disingenuous and intellectually dishonest opinions of an expert inexperienced in the subject matter on trial. How appalling an experience and yet I am condemned for having the nerve to object to such obvious cheating that the presence of this man (and literally **everything** else) clearly represented?

Again, although I was convicted on virtually every charge, the foundation of which, (or better, lack thereof), is beyond the purpose of this petition, it bears mentioning that after an Appeal was filed with the Administrative Review Board (ARB), they actually concurred that the entire first Hearing in 2005 was corrupted by bias and thus threw that entire conviction out, but remanded the entire matter to a new Hearing with new people. In the ARB's own words,

"bias pervaded the entire proceeding." **Pervade** (defn) – *spread through and be perceived in every part of; be present and apparent throughout; permeate.* They at least got that word right. This ruling by the ARB marked the first time in Department of Health **history** that a case had to be literally thrown out on such a basis. Think about that one for a moment. The fix had literally been officially exposed to the tune of a first time "invalidating" event at the DOH. Can I possibly come up with any more examples and evidence for how rotten to the core this entire thing has been? Well, make another cup of tea and read on to see what more they did. It's disturbing.

Set aside all that I have disclosed already and ask yourself this. Was the presence of this corrupt juror not one of the most telling truths about my encounter with your agency that anyone would cite as evidence of a completely fraudulent prosecution? The question that everyone should be asking is this. How does a good friend of the one man deceitfully concocting this entire matter end up on my jury? Again, though it is old news, it gives **insurmountable** weight to the argument that the entire process was somehow being manipulated outside of what would be expected from an honest Hearing. But OPMC doesn't have a history of carrying out their duties in a dishonorable fashion, do they? Or do they? Hence the Reform Bill previously mentioned, (**Exhibit M**)

Of course, OPMC cannot be expected to admit such an obvious plant on my jury. Being the director, you wouldn't have tolerated such a thing, right? So, how did OPMC allow this to happen? Or better yet, is it even possible for this to have happened "by accident"? It would seem **virtually impossible** given all the potential candidates/agents of the DOH who could have also sat for that Hearing. Once they selected Ellman, as a measure of jurisprudence, is there not any sort of internal procedure to ensure no connection to any of the involved parties, including the source of any of the complaints?

Well the subsequent Hearing in 2007 again found the only Ob/Gyn on the panel to be questionable, especially since they had almost two years to find a replacement. Not only did he not have any forceps experience on top of not having practiced Obstetrics for several years, he just so happened to once again be loosely connected to adversarial elements at that time within the hospital department. To add further insult to injury, the only other physician on the 2007 Panel, an Anesthesiologist named Charles Vacanti, M.D., who also acted as the jury foreman and thus had **control** over certain aspects of the Hearing, was a longtime colleague of the State's new expert for that Hearing, Robert Tatelbaum, M.D. How convenient.

The Defense objected to both of these doctors being present but were only allowed to ask them questions concerning their reliability as jurors. When Vacanti was voir dired prior to the Hearing as to whether his professional relationship with the State's expert enabled him to remain impartial, of course he said "yes". Yet, numerous times throughout the Hearing when Tatelbaum was backed into a corner by his deliberate lies, Vacanti would immediately interject and bail him out in any number of ways, including ordering a new direction of questioning and/or calling for adjournments and breaks on the spot. It was so pathetically **obvious** what was going on and they didn't care. Among other obvious agendas, it was the same old mantra seen throughout much of American society – the old guard sticking it to the younger talent, simply because they could.

My experience with the Hearing Panels alone speaks volumes as to why we have a Constitutional mandate concerning jury selection for both criminal and civil cases. How the Department of Health is able to directly infringe upon the Constitutional rights of New York physicians by what is essentially a closed door tribunal with preselected juries is a question everyone should be demanding an answer for since it has been irrefutably established that such a condition has indeed led to exploitation of the process and wrongful convictions against innocent victims.

Truth Summary: The full measure of integrity for any adjudicatory process is arguably most reliant on the uprightness of the jury in rendering a truly nonbiased decision. The expectation of an impartial jury is one of the foundational principles of the American justice system. Yet, as has been unquestionably determined by the Appellate division of the Department of Health itself, this directive of seating an unprejudiced panel (jury) was dishonored in 2005 with every reason to believe it to have not only been intentional, but to also have once again occurred in 2007. Knowing emphatically that the sole basis for any sort of OPMC prosecution of my medical license had to be shrouded in dishonesty, the major means by which a conviction could be secured was to taint the jury. Consider this matter having been definitively proven.

QUESTION: Given all that has been revealed and moreover proven about how a jury in an official State proceeding was deliberately infected by a close friend of the very man who was secretly concocting this entire malevolent prosecution, whereafter the entire first Hearing had to be discarded because of this crime having been discovered, only to see the subsequent jury equally as questionable, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. Come on. How many examples can you possibly try to explain away, Mr. Servis? The answer is that there is no explanation other than the unquestionable fact that is was all purposely committed by your agency, working in concert with Richard Aubry and that it was all by design – and you know this to be true as well.

Determination and Order

Again, I repeat, this petition is by no means an effort to retry any of the clinical material from the previous hearings. However, with my investigation and eventual prosecutorial process itself being what I have already described as fraught with massive abuse, rules violations and outside manipulation, the evidence establishing the illegitimacy of this entire matter certainly doesn't stop with how the final Determination and Order was both arrived at and ultimately represented. Every morsel of this process as it was applied in my case was corrupted. Every bit of it. I ask you… Adults? Professionals? Really?

There is a reason why rules are written for the adjudication of an OPMC Hearing, not to mention virtually everything else in life. I think this goes without saying. However, the non-application of those rules and laws in this matter is what I have come to witness as being unbelievably reprehensible and totally responsible for what was done to my life and career. In addressing the outright violations of the law as it pertained to the 2007 Determination and Order, I will speak to two specific areas that, when truly examined with an honest heart, provide even more indisputable foundation for the fact that my conviction on any of these matters was completely illegitimate. These two components of the Official Determination and Order that were the sole basis for OPMC's spurious guilty verdict are the following – The expert witnesses and the actual justification and declaration of the Hearing Panel's findings of supposed negligence.

Experts

In order for the portrait of my dreadful prosecutorial experience to be even more vividly clear, it is necessary to establish a little history concerning the experts who participated in these proceedings so that the reader can gain a full appreciation of the following line of argument in addition to a better understanding as to how this aspect of the proceedings against me was just as contaminated as all the others so far discussed. I have mentioned above that when comparing experts in this matter, those who the State presented have been shamefully deficient in knowledge and experience of the core clinical issues under examination – that being Obstetrical forceps and particularly the advanced forms of the procedure, since the cases themselves specifically involved them, as well as what was ultimately cited in the Determination concerning them.

Further, it has also been established (with emphasis) that OPMC not only **NEVER** produced one written Standard of Care that was allegedly in violation by my practice of medicine across **every single case**, (including even the non-forceps cases), their experts offered little more than personal opinion as to what ***they*** would have done, (even though they admittedly (at least for the forceps charges) don't even perform such procedures), instead of what my management had been in the context of the **written** standard of care that was **in evidence** but brazenly ignored. Again, OPMC's prosecution of my care of these patients was all done without so much as a single document of their own to back up their expert's negative commentary concerning his claims that I violated the Standard of Care while at the same time completely discounting the actual established standards from ACOG, a highly qualified expert's exculpatory testimony citing those standards, as well as the bona fide clinical performance record provided above that establishes, without question, the overall competency of my practice of medicine, including that of proper decision making. Decision making or "exercising proper judgment" is specifically mentioned here because this groundless rhetoric was OPMC's (only possible) angle of attack on my license given what they knew of that record and moreover, the real truth in these matters.

In other words, it was completely disingenuous and intellectually dishonest for anyone or any oversight agency, after sincerely looking at the evidence in the cases used against my license, to try and label and then proceed to prosecute and convict me no less, (over and against my long proven record of exceptional care), as being a doctor who doesn't know how to apply his craft by exercising "proper judgment". How cheap and feeble an avenue to have to take in

order to win on a lie. But this is what was actually done, without any basis other than manufactured charges, unqualified, inexpert opinion and the fact that it all certainly "sounded good", especially to those sitting on the Hearing Panel who did not possess the requisite knowledge or discernment to know that they were (as a minimum) being lied to or (at most) were actually party to the lie. It would also "sound good" to an undiscerning public as well with further and significant losses that were more of a personal nature.

I repeat, yet again, that this vacatur petition is not being written to reexamine the actual clinical facts, though they still stand as the most reprehensible component of this malicious prosecution since the medical records have always been absolutely clear as to these facts, to the science of Obstetrical medicine and to the proper care rendered within the confines of known care standards. The medical record is supposed to be the source, the foundation of all that is known of what happened. Yet, the information contained therein has been either so adulterated and/or simply ignored that it bears mentioning here out of respect of the documents themselves and the patients for whom they represent.

No, instead, it is the dishonored process itself along with the untruthful adjudication of my case that is being primarily confronted in this petition document, namely in the face of new and convincing material evidence that (I repeat once more) completely exonerates me in these matters. However, it bears bringing to the attention of the reader by discussing these facts concerning the experts to illustrate just how contradictory the entire Determination and Order was with that of reality as well as the actual law.

Again, as just mentioned above, I have not even fully addressed, (nor will I in this petition), the actual medical/clinical facts of the cases based on both the true medical records and what is true of Obstetrical and Gynecological medicine. Just knowing that I have consistently stood ready to openly defend the actual care rendered, (as documented in the record), is important to understand in the face of everything else presented in this appeal. The doggedness of the malicious prosecution I sustained these past thirteen years cannot be denied when combining each and every component that has been offered in this writing and furthered by what is about to be discussed.

So, let us now examine the expert witnesses presented by each side. In doing so, it is necessary to reemphasize the stark difference between them. The State presented two experts over the two Hearings, (keeping in mind that the first Hearing was thrown out (setting a new legal precedent remember) because of having been corrupted by the long-time friend of Aubry who had not only been planted on the Panel, but who then blew his assignment by blatantly revealing his prearranged agenda). To reiterate, each State "expert" over both Hearings was unskilled and had no clinical experience in the use of Obstetrical forceps, particularly the advanced application thereof which was essentially the main subject of this Hearing and eventual Determination. It is therefore poorly understood (and should be to any reader too) as to what exactly qualified these witnesses as "experts" in the eyes of OPMC. Is one to believe that in all of New York, OPMC was unable to find a legitimate expert capable of speaking experientially to these matters? Or was it that they had to find someone willing to say whatever was necessary in order for the ends to justify the means? My vote is for the latter, namely because it's the obvious truth of this matter.

The purposed ***effort*** (which it had to be, given the clinical truth of these cases) to find someone willing to help propagate OPMC's ongoing malevolent prosecutorial agenda is likely why it took the DOH nearly two years to bring the second Hearing when the Law stated that they really had sixty days to do so. Why such a delay? Well, they clearly had to search for a new "expert" as well as the "newly appointed member of the board", who sat as the only Ob/Gyn on the Hearing Panel. "Newly appointed." Hmm. Had to go out a recruit someone, huh? No one else was available? Or was it that no one else would be party to what you were doing? I must point out once again that this panel member had not practiced Obstetrics for years prior to sitting in judgment of my practice but was somehow qualified and then selected as their new "appointee". Yes indeed.

Aside from the DOH's feeble effort to reconvene a legitimate jury of my peers, it also bears mentioning that as part of the 2005 ARB ruling where they denounced the presence of bias having "pervaded the entire proceeding", the State's Prosecuting Attorney was also implicated in their rebuke as having been, (as a bare minimum also), complicit with the illegal interaction regarding the State's expert, Jane Ponteiro, M.D. and this juror Albert Ellman, M.D. Yet, despite our formal objection to even Prosecutor TImothy Mahar continuing on, our request was denied. **Exhibit N** is introduced to expand upon this point even further. In this very revealing document, written on my behalf by my attorney to the Department of Health

prior to the 2007 Hearing, various pertinent issues are addressed. Among them was the subject of Mahar being improperly biased in this matter citing the above unlawful interaction between his expert witness and the panel member in the first Hearing. In addition, several other **significant improprieties** in how Mahar carried out his duties as it pertained to my prosecution are also delineated.

Though we were (as expected) denied what we sought, this document proves once again that nothing about my experience with OPMC was unprejudiced or legitimate – this time, at the State Prosecuting Attorney level. Timothy Mahar was just as crooked as the entire process itself and should have been replaced as part of the ARB's ruling that ALL new participants were to be involved with the new hearing, but of course he wasn't. He couldn't because he was the ring leader on the inside of the sham who knew full well and was wholly complicit with the underhanded efforts of the outside ring leader, Aubry, as evidenced by his use of the IPRO document sent by Aubry to circumvent the corrected RCA for the obese patient discussed above. This latter point is further established by Aubry's buddy being on my jury – something Mahar had to have known being such an intimate part of the process as the Prosecutor and there not being anything in the rules as to how these people are chosen. When Ellman was discovered to be friends with my known adversary as well as being cited for his interaction with the State's expert, Mahar didn't bat an eye when he too should have been outraged over such impropriety. He wasn't because he was party to it. It is impossible to impart in writing the kindergarten demeanor of this man, (Mahar), during the Hearing with how he was literally bent on winning at all costs while not possessing an ounce of integrity or honor. Professional he is not.

Let us look at my argument this way in order to understand just how deficient these State's witnesses were to stand as experts in my Hearing. Having become a board certified physician in my specialty of Ob/Gyn, it certainly garners an extensive acumen in the anatomy and pathophysiology of the female pelvis and reproductive organ system. However, despite this considerable amount of knowledge, I could **never** sit as an expert in a Gynecologic Oncology (cancer) case under prosecution because my lack of applicable clinical experience in such highly specific and technical matters rightfully disqualifies me. Yet, this utter lack of qualification is precisely what OPMC perpetrated as Officials of the State of New York State onto my prosecutorial process after it was repeatedly asked of them during the investigation that they NOT do such a thing in order for me to receive a fair judgment.

Further, not that this is an expected response to the petition before you today, but if one were to honestly look at the State's experts' actual testimony, it was nothing more than personal opinion, that's it. Not one statement made by any of these experts was backed up by anything in writing that could be tangibly examined for credibility. By contrast, every single defense position was backed up with a material document (where available) establishing, **without question**, the proper implementation of care in **every one** of these cases. This disparity was downright staggering.

For the most recent State expert, Robert Tatelbaum, M.D., an accurate depiction of the incredible dishonesty and moral repugnancy put forth by this man while under oath can only be exceeded by the fact that he had the audacity to munch on a big bowl of popcorn while wearing a big (you-know-what eating) grin on his face during that very testimony knowing precisely what he was underhandedly doing. Smiling right at me as he was speaking his lies, fully enjoying himself. It was the most manifestly evil experience in all these thirteen years and I had to sit through sixteen hours of it.

A look at the Federal Rules of Evidence concerning Expert Witness Testimony affirms that Tatelbaum really had no business representing any expert opinion in these matters.

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods; and
(d) the expert has reliably applied the principles and methods to the facts of the case.

Should the effort in this appeal be such that the actual testimony uttered by this man was necessary to offer (which it is not) as part of the petition to vacate my previous conviction, I suspect that there would be at least a dozen more pages that could be written to establish the basis on these facts alone given just how fallacious this man's false witness truly was to anyone with a true knowledge of Obstetrics and Gynecology. In fact, ACOG has a Code of Ethics for all members of the Congress who serve as expert witnesses that Tatelbaum was in complete violation of by how he testified on that stand. Given that Tatelbaum was technically unqualified to give evidence as an expert based on actual clinical experience, by default, the

only thing he should have been allowed to speak to was the written Standard of Care concerning these matters and that's it. Simply put, since he was capable of reading, he should have only spoken so much as to orate the ACOG Practice Bulletin on Operative Vaginal delivery, (which was in evidence), and nothing else as it pertained to Obstetrical forceps.

Fortunately, these points are offered here as merely adjunctive pieces of evidence to ensure the entire portrait of this horrible experience is appreciated by the reader and how OPMC didn't miss a beat in guaranteeing that they had oppressive rule over ever possible aspect of the process. Sure, in the absence of actually putting forth his testimony, it is easy for me to make this statement. Therefore, I will post the transcripts of Tatelbaum's testimony from this second Hearing in 2007 so anyone can read what this ~~man~~, person had to say, especially those at ACOG receiving this grievance.

Thus, the Panel's statement in the Determination and Order that Tatelbaum's testimony was forthright means little in the face of **any true** examination of this entire bogus prosecution, not to mention his false witness while under oath to tell the truth. This latter point shouldn't be too difficult to find agreement with since it ought to be obvious to the reader by now that nothing whatsoever to do with this entire ordeal was rooted in honestly and/or integrity. It is impossible to separate this man's (Tatelbaum) overt intellectual dishonesty with the fact that OPMC was party to it as well. Again, just look at what happened in the first Hearing, when the attorney for the State, Tim Mahar, himself, was implicated as being complicit with the impropriety that led to the ruling by the ARB to throw it all out and start over with **all new** people. Of course, OPMC didn't see that to include this very attorney who returned for round two, just as ready to implement the same dishonest strategy, albeit a little less obvious – and I stress, "a little".

This outright attack on my life, career and license by way of Tatelbaum's untruthful testimony was just inconceivable to bear witness to and a travesty of jurisprudence of epic proportions on part of the prosecution – to not only bring charges based upon such shabby foundation but to then force what they had to know was an outright lie through the process by essentially having to cheat in doing so. I am sorry for being so repetitive and moreover, blunt in what I know to be fact. And as you can see in my writings, having to relive these things is cause for me to get a little perturbed. And I further apologize if this commentary displeases BPMC since I have come to realize that just about anything I speak to concerning these matters has

stimulated your agency to do the unspeakable. But remember, I am fighting for what is right and true not to mention the interest of my children and a once thriving career that were destroyed by these events and ripped from my life, that has seen me struggle to live above the poverty level for the past several years as I try to come out from under the rubble this mess has created in my world. So, frankly, I really don't care what you think or how you take this. My distain has been rightfully earned, that is for sure. But more importantly, it's the truth. And no man can successfully argue against hard fact.

Is cheating in order to get the win (particularly for something not even justified) what we were taught growing up? Is this what we are then taught to teach our own children? Is this what the agents of the DOH teach their children? Do their children know about how morally bankrupt their fathers are? Well, this lying to win at all costs is what was done, regardless of how those at OPMC manage their own families and what they have pawned off as having been done under the **official label** of New York State. The latter is how you get away with it since the reaction by most people to any of this being decried as a fraud is, "How can that be? It's got the official seal of the State of New York." I've not only heard it all, I've had to walk upright amongst it all – for thirteen years! "Caputo had to have done something wrong. He's just disgruntled and can't accept his own failings….." Blah, blah, blah. I have listened to it all to the tune of great loss in my life, particularly relationally – which, sadly, has even eclipsed the significant pain felt from all of this. As for being disgruntled, since when did that all of a sudden become a term of vilification? It's an eleven letter word, not a four letter one. What exactly does the term mean really? By definition, disgruntled means – *dissatisfied, discontented, aggrieved, resentful, fed up*. Yep, I can attest to each and every one of those meanings, so color me **disgruntled**, as would you be if this was your experience.

By **huge** contrast, looking at Steven Burkhart, M.D., (my expert), his credentials to stand in testimony on these matters superseded that of the State's experts by miles and clearly qualified him as a true expert based on the Federal Rules of Evidence, Rule 702 – detailed above. What is a stark reality concerning this particular doctor is the following. Dr. Burkhart had, himself, been utilized **BY** the Department of Health several times in the past as one of their own experts. Why, then, didn't they call upon him again when investigating this entire matter way back in the beginning, since he was already an agent of the DOH, he lived in the region and given his own extensive history in the application of Obstetrical forceps, surely represented a mind available to OPMC that could have cut right to the issues here as to

whether misconduct was in play or not. Or did OPMC not want to hear that there was no misconduct, because this is what Dr. Burkardt emphatically concluded upon thorough examination of ALL facts in the context of correct clinical practice and not as part of some nefarious agenda. In fact, he was downright exasperated upon realization of what was being maliciously done towards my license by this entire proceeding.

Certainly, the two main experts on each side are pertinent to the discussion. However, it must be also made very clear that I took the stand as an expert concerning these charges as well. Even though I may have been the one on trial, my credentials amply qualify me as one with **scientific, technical, or other specialized knowledge, skill, experience, training, and education** concerning each and every issue under indictment. So when my testimony is examined adjacent to what Dr. Burkhart said in his testimony, they are undeniably parallel because they both represent the truth from two qualified experts authorized to speak on this subject matter.

The issue of believability of the experts is **the crucial point** that is to be made here with strict language in the law that speaks to this matter of how such testimony is to be weighed and how it applies to the ability to impose a guilty verdict. While I'd like to think that I could present this point in an eloquent and understandable manner, there can be no better narrative on this issue of weighing the testimony of expert witnesses than what my attorney, Michael Ringwood, submitted to OPMC at the conclusion of the 2007 Hearing. This brilliant summation document of the entire trial, which is labeled "Findings of Fact", provides an explanation of this "expert witness weight of evidence" matter that is powerful and moreover, **exonerating** if it was actually obeyed. This writing by my attorney will be available in its entirety online as alluded to above concerning other supporting documents. Specific to the matter of expert witnesses, Mr. Ringwood wrote the following:

> "There can be very little more unsettling than a circumstance such as this hearing where a medical doctor and the **livelihood** dependent upon his license to practice medicine rises or falls based upon a hearing panel decision as to which expert they might choose to believe. The burden and obligation on this hearing panel is indeed a substantial one. They should know that any appellate or review authority looking over their decision in the future, cannot substitute their own opinion for that of the hearing panel as to which expert testimony to credit. The law will not allow it.
>
> If this panel feels they are not sufficiently convinced on any given issues by the testimony of Dr. Tatelbaum, then the state has failed in their burden of proof and

there is no need nor should the panel go on to consider the testimony of Drs. Burkhart, Stahl or Caputo. To do so would be to improperly shift to Dr. Caputo a burden of proof when he has none. This is the law.

If the panel has considered the State's expert proof as well as respondent's expert proof and is not convinced that one is more believable than the other, then this panel has no option other than to find that the State has failed to prove their case against Dr. Caputo. This is the law.

It is **only** when the hearing panel can say in their hearts and in their minds, based upon the evidence and the law, a certainty of belief in the States expert and a **certainty of disbelief** as to respondent's expert, that an adverse finding against Dr. Caputo would be legally allowed."

So, now that we have examined both a brief history of the experts as well as the actual law on weighing their testimony, what did the Hearing Panel have to say about them in their 2007 Determination and Order? **Exhibit O** is page 50 from this D&O where the Hearing Panel declared the testimonies from **both** Tatelbaum AND Burkhart had been given **"great weight"** – the significance of which, again, cannot be overstated.

Remember, even though others testified during the Hearing, these two witnesses were the ones on opposing sides of all forceps issues, which in the end was the crux of what the Hearing Panel really ruled on. I don't know about what anyone else interprets this statement by the Panel to mean as to the weight of the experts, but it **is** abundantly clear from the **Law** itself that by OPMC giving what amounts to exculpatory testimony by my expert ***"great weight"***, such a conclusion from their own hand certainly fails to reach the requirement of a "**certainty** of disbelief" in that very testimony in order to convict me on **ANYTHING** that these two experts may have disagreed on. Reread that again. In other words, the Hearing Panel simply cannot assign my expert and his exonerating testimony great weight on any charge or allegation and then simultaneously convict me on that same charge as having disbelieved his testimony **with certainty** – which is the legal requirement. Such a paradox is forbidden by law and made clear by Mr. Ringwood to this very Hearing Panel in his Finding of Fact. This evidence thus establishes a ***bullet proof*** position of exoneration concerning **any and all** adverse finding(s) based upon the testimony of Dr. Tatelbaum over and against that of Dr. Burkhart – which was nearly everything in the Determination and Order.

Truth Summary: Simply put, given the Hearing Panel's assignment of **"great weight"** to the expert providing exculpatory testimony on my behalf, along with their failure to specify how they then had a certainty of disbelieve in said testimony, they were therefore prohibited, by law, to have found adversely on any charge so supported thereby. Period.

QUESTION: Given all that has been presented here concerning the qualification of the experts and the rules of weighing their testimony, which, when the Determination is examined, clearly specifies (in the words of the Hearing Panel itself) that the Defense's expert fully endorsed every single bit of my care in these cases as having met the written, (and in evidence) Standard of Care; and with the burden of proof on the prosecution and the law stating that the jury **must** establish, with **certainty,** a disbelief in the Defense's expert in order to legally be allowed to find adversely on any such charge, which they clearly **DID NOT DO**, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. There is no way out of this one, just as ALL the other questions posed. There was no legal authority, nor was there ever any true justification to begin with to have ever been convicted on anything, nevertheless even investigated or prosecuted as I was. This is the law that OPMC and their Hearing Committee manifestly broke in order to maliciously convict me without a single basis. True that.

Charges, conviction and justification thereof

The preceding paragraphs clearly establish the fact that the Hearing Panel, having a responsibility to know the law, violated that very statute concerning the experts by convicting me over and against the very testimony they labeled as valid, without bias and weighty.

To further this representation of juris-imprudence, (if you will), on part of the Hearing Panel, it is essential to discuss the actual finding of misconduct, (negligence, gross negligence, etc.) and more importantly, **how** they arrived at such a conclusion. I have more than amply written to the absolute absence of anything compelling in writing presented by OPMC that the Panel could specifically refer to in order to determine just what the Standard of Care was in order to

then render an adverse judgment. Yet, despite this lack of material basis, they saw fit to draw some serious conclusions, contrary to the evidence presented at Hearing by the Defense.

Let's first examine the charges themselves, and specifically as they pertain to forceps since, once again, this subject matter was the core of my conviction. Even though the State knew that the forceps had nothing to do with the outcome of that initial case, (based again on the autopsy, lab data, pathology reports, medical record, testimony by Waldman, my own writings during the investigation, and more…), their initial posture was that they did. However, when they realized that this would be a little difficult to prosecute in the face of so much material evidence that spoke otherwise, they decided that in order to justify their unwarranted interest in indicting my practice of medicine, there had to be a way to do it that enabled them to foist their lies while being cloaked in what would appear to be a legitimate beef. And this was the allegation of implementing the use of forceps without proper medical ***indication*** in addition to language towards the other charges such as "what a reasonably prudent physician would have done under the circumstances".

Because you, OPMC, couldn't get me on the written standards or the actual objective outcomes of any of these cases or the technical use of forceps specific to the three of them on trial, the prosecutorial angle had to be more subjective. Pertaining to the technical issue of forceps during my ten years on staff at Crouse Hospital, I had more cases than anyone in the region (and quite possibly the entire State) that not only proved my skill with these instruments but also ***logically*** established the fact that they were being used as properly indicated as well. But no, instead, (and contrary to the medical records themselves), OPMC attacked the "thought processes" that supposedly went on in my brain leading to the care rendered to the patients under prosecution as well as the implementation of Obstetrical forceps for those in which they were involved. Never mind the significant additional fact that each of the forceps patients had no issue whatsoever with my having used them as part of their delivery on top of the Practice Bulletin also being crystal clear as to their indicated use. Two of the three other (non-forceps) patients used in my prosecution were equally as supportive with the only one having an issue being the last patient, Patient F, which is understandable. She was one of my three career complications who went on to have a full recovery. Yet, when anyone truly reads the D&O, the main theme of the document is a condemnation of my use of Obstetrical forceps.

On page 53 of the 2007 Determination and Order that, again, stood as the conviction document against my license, the following is written by the Panel, ***"Respondent was not charged with inadequate skill or knowledge in the use of forceps. Rather, he was charged with performing a forceps operation without adequate medical indications."*** This nebulous claim "without adequate" medical indications was the sole angle used by OPMC in my prosecution on the matter of forceps and really everything else. Why? Because this was all they could come up with given my vindicating performance history, measured alongside what was able to be purposely done to distort the clinical facts. Just look at that sentence from the Determination again and ask yourself if it even makes any sense. How is it that a doctor could be skilled and knowledgeable and still not exercise proper judgment as it pertained to appropriate application of those two principles *especially* when that doctor's clinical record bears no such thing? Shouldn't proper implementation of forceps be a constituent of knowledge of forceps? How can the two be separated? Oh, but OPMC will surely argue that that "knowledge" the Panel wrote of was not a matter of proper "application" of knowledge but instead, just a mere "possession" of it without ever having made such a distinction at Hearing.

Now, to be fair, I suppose someone could have all the knowledge in the world about something and still drop the ball on applying it. However, that was not the case here as was proven without question at the hearing and supported by the REAL medical record and all written standards of care available, not to mention my long-standing record itself.

When attempting to pigeon-hole my prosecution into the "lack of indication" type, it cannot be overstated as to how OPMC demonstrated an incredible contempt towards ACOG's own publication for **indications** on the use of Operative Vaginal Delivery. This blatant disregard of the actual written standard I was being accused of violating stands as one of the most tangible pieces of evidence of a malicious prosecution in this entire matter. There it was in writing – THE Official Standard set forth by ACOG. Ignored as if it didn't even exist – to my massive detriment. Once again, I am not supposed to be upset (or disgruntled) by such a thing? Here is the portion of the Practice Bulletin which establishes the Standard of Care in question.

Indications for Operative Vaginal Delivery

No indication for operative vaginal delivery is absolute. The following indications apply when the fetal head is engaged and the cervix is fully dilated.

- **Prolonged second stage:**
  - **—Nulliparous women: lack of continuing progress for 3 hours with regional anesthesia, or 2 hours without regional anesthesia**
  - **—Multiparous women: lack of continuing progress for 2 hours with regional anesthesia, or 1 hour without regional anesthesia**
- **Suspicion of immediate or potential fetal compromise.**
- **Shortening of the second stage for maternal benefit.**

When examining the actual medical records for every single case used as part of this forceps "indication" angle by the prosecution, they clearly show that the application of Obstetrical forceps was right down the middle of what was deemed to be appropriate by ACOG as far as suggested indications. It is completely unnecessary for the reader to have a clinical background in Obstetrics in order to understand the basis of this one particular point. Yet, rather than rehash the clinical nuances that establish this absolute fact, this entire matter as to the indicated use of forceps by me as part of my practice can be summed up with that first sentence that reads ***"No indication for operative vaginal delivery is absolute."***

If OPMC claims to be officers of the State dedicated to upholding not only the Standard of Care but also the integrity of the judicial process, then according to the official document that establishes the very standard within the field of Ob/Gyn as to the application of Obstetrical forceps, they were completely disqualified to bring any charge as it pertained to indicated use. Even though I was totally compliant (yet ignored by OPMC) in each of these cases on trial with what ACOG lists as the clinical indications for forceps application, as a skilled and experienced clinician in their use, that first sentence detailed above essentially gave me license and latitude to use them whenever I felt them to be applicable to the clinical situation, regardless of anything else – even the opinion of a hired liar, like Tatelbaum.

In other words, this one sentence is yet one more indisputable fact that completely exonerates me from any claim by the Department of Health that I committed medical misconduct as to the "indicated use" of Obstetrical forceps, despite the fact that I actually met those suggested indications nonetheless. Can you see how such a thing being done to a once pristine license and clinical record would incite me to defend myself as I did? But no, somehow fighting for what's right suddenly equates to justification to teach me a lesson for daring to object.

The DOH knew that my record was what it was even though they disregarded it as part of any measure of prosecutorial integrity. Instead, they repeatedly chose to take the low road in order to bring a conviction at all costs. Of course it is a Constitutional principle that all proceedings involving charges against another do so with the burden of proof being on the accuser and not the one defending him/herself. This is the law, even as it applies to OPMC Hearings as well. Yet, the full measure by which anyone can expect this to actually be carried out depends on how dedicated those involved with the process actually respect the law.

It is my uncompromising position, (as has been affirmed by direct experience), that from the very beginning and all the way through both Hearings, I was already guilty in the eyes of OPMC as well as the Hearing Panel. Thus my defense was all a matter of trying to prove my innocence and not the other way around as mandated by law. All of these mendacious efforts to bring destruction upon my career and life were accordingly met with intense scrutiny and commentary by me as the process careened along. It would be **impossible** for me to impart to the reader the effect these thirteen years have had on not only my life as a physician, but on the lives of my children and extended family as well, who have also sustained several wounds that go deep. I will speak to this a bit more in detail at the conclusion of this petition given how devastating it has been for my family. Just know that any living creature, when being viciously attacked, is going to bring the full measure of defense against that attack, even if it has to be ugly. Yet, this unattractiveness to my demeanor towards OPMC ought **never** to have been the basis of ramming a conviction on fraudulent charges, by way of dishonest tactics and corrupt expert witness testimony, contrary to the medical record just so the DOH can flex their muscle and teach me who holds the power for merely defending myself in an outspoken manner. As much as anyone would like to think or believe that the DOH would not do such a thing, on that basis alone, this is exactly what ***was*** done.

I realize that there have been times where the tenor of what I wrote in defense of this attack during the investigative stage might have been a bit off-putting to OPMC – just as I suspect much of this petition will be as well. However, this was a legal battle over my livelihood and never was anything profane or inappropriate ever materially offered from me other than accurate descriptions of the various participants given the content of their character as well as strong language condemning what was being unjustly done to my license. That's it. Still, despite the undeniable facts of every one of these cases being what they were, not one patient being unduly harmed by my care and my record being what it was, on top of the fact that no patient was party to any complaint that fueled this prosecution, I was, (incredibly), convicted of having committed **gross** negligence. In order to briefly address both the issue of my demeanor as I was being maliciously prosecuted as well as the specifics related to the issue of competence, my attorney felt it necessary to speak to each of them in his aforementioned "Findings of Fact". I submit here another excerpt from this document which the Hearing Panel had before them as well when they decided that the law and moreover, the facts and testimony in evidence were just not important enough to follow and give merit to, as it applied to them adversely deciding this case. The entry states the following:

> "Dr. Caputo has been consistently vigilant in his defense even to the point of appearing intemperate in his writings. It is a matter of understandable frustration. This panel has had the opportunity to see him, to hear him, to size him up. Was he intense? Certainly! Was he respectful? Certainly! Did he over emphasize or repeat himself in his answers to questions posed? Sure. Is that a vice to hold against him when his license to practice his chosen profession of medicine and to provide for his wife and children is at risk? Certainly not! Was his medical school training lacking? No! Did his experience level and training up to and including the year 2000 justify his medical practice to the extent of the types of procedures in issue herein? Absolutely! These preliminary remarks within this paragraph are meant to lead into the next area of true concern – a concern that this panel must voice amongst themselves and likely would do so even in the absence of these written remarks.
>
> Someone who drafted these accusations against Dr. Caputo saw fit to say that he practiced medicine incompetently on more than one occasion and practiced medicine with gross incompetence on a single occasion.
>
> In their own submissions, these accusers have announced that the legal definition which they must prove by the evidence is that "incompetence is a lack of requisite skill or knowledge to practice medicine safely "(Exhibit "1"). Yet a full search of the record which makes up this hearing, fails to identify one speck of evidence on the subject

> matter of incompetence. Not one question was posed on Dr. Caputo's skill level or knowledge level in relation to the alleged criticisms connected to these four patients. Not one. No questions posed ever used the words incompetence, skill or knowledge. In fact the State's only witness, Dr. Tatelbaum made it very clear that these were all standard of care issues rather than competence issues when he stated on cross exam, "I'm not impugning your experience, only your judgment."" (Record at p 1059).

Upon reading this entry, it's no wonder the Panel couldn't find be guilty of incompetence when the subject was never addressed at Hearing. No, instead they went down the negligence pathway – in fact, gross negligence. Sure, we've all heard the word. But just what does *negligence* really mean? On page 48 of the Determination they define it as ***"failure to exercise the care that a reasonably prudent physician would have exercised under the circumstances. It involves deviation from accepted standards in the treatment of patients."*** Whereas they defined Gross Negligence as ***"a single act of negligence of egregious proportions or multiple acts of negligence that cumulatively amount to egregious conduct."*** Online, one can find the definition of gross negligence to be, ***"willingly misleading a patient or failing to look out for the patient's best interest."***

Either way, the establishment of "negligence" relies **COMPLETELY** on the Standard of Care as having been established and then demonstrably having been violated. This is imperative to grasp. Read the Determination and Order (again, online) and I defy anyone to find anywhere a reference to **any** document that they cited as having established the Standard of Care in **any** of these cases. Yet, I have been convicted of "negligence" for having violated the supposed (and yet, unnamed) standard somehow. You cannot have both. You cannot fail to provide anything that establishes a rule and then claim that the rule was broken. Personal opinion of a hired hypocrite does not qualify for the acceptable Standard of care, especially when formal written standards actually **do** exist. How preposterous a thing to witness – not just once but over the course of two Hearings and six and a half years! With **seven** additional years of a destroyed life left in the wake of such injustice!

"The committee shall not be bound by the rules of evidence, but its conclusion shall be based on a preponderance of the evidence." (New York State Public Health Law 230 section 10(f))

As for what constituted "a preponderance of the evidence" as it applied to my Hearing, I refer the reader to the table at the end of this petition. Though it is only a relatively comprehensive listing of the various types of proof that speaks to my entire experience with OPMC's prosecution of my license and how the entire thing was unfounded, the starred items delineate what that "evidence" ought to have actually been to a Hearing Panel purported to be committed to due diligence in adjudicating this case. However, as you can see from this table, the disproportion between what would be considered convicting vs. mitigating/exculpatory evidence is completely absurd to say the least. And yet, after all you have read thus far, are we surprised the Panel's ruling defies the stark reality depicted in that illustration?

Further, the Hearing Panel's decision to convict me for negligence without it ever having produced a single thing establishing the Standard of Care during the Hearing is precisely why there are further rules as to how Determinations are to be reached when speaking to each of the charges. I will cite a few Statutes that specifically address this point and how the State totally disregarded even this facet of the process.

"Findings of fact shall be based *exclusively* on the evidence and on matters officially noticed." (State Administrative Procedure Act – section 302(3))

What this section of the law is essentially saying (and particularly as it applies to my case) is this. Unless the actual Standard of Care was first **established** and **in evidence** AND contrary to what I did in these cases, the Panel had **no right** or legal authority to thereafter render a judgment concerning the issue of negligence **to** that standard because it had never been formally established by them – you know, the ones with the burden of proof. With nothing to legitimately support their position of having deviated from the Standard of Care, "negligence" was therefore off the table as anything the Panel could rule on. Of course we all know that the real Standard of Care from ACOG for forceps was indeed **in evidence** and wholly contradicted any contention that I was negligent in their implementation. The Hearing Committee's incongruous decision to assign negligence, over and against both the written Standard as well as this legal imperative, is therefore a frank violation of SAPA 302(3) and thus any and all conclusions made along these lines must be dismissed as having been arrived at illegally and without merit.

To put it another way, by ignoring the Defense's submission of the established Standard of Care while not producing anything themselves at the Hearing, the Panel chose to take what was really only a stylistic difference of opinion offered by the State's expert and extrapolate it into multiple instances of negligence as well as instances of gross negligence when the record, testimony, facts, evidence, you name it, completely destroyed any such contention – and they knew it. Such leaps in reality were all part of the plan to confuse and conceal the truth in order to reach the predetermined end. How else can you explain such continuous departure from literally everything that governed this entire process, including this latest example? That's right…you can't.

In other words, by what indeed **did** happen, it seems as though those representing the State of New York figured that if they simply left anything to do with a written Standard of Care out of the Hearing, they could then slip some nebulous (unreferenced) violation of it into the Determination and Order where the ability to overturn a matter of conviction has proven essentially impossible throughout my entire experience with medical peer review at both the hospital and State levels. The first Hearing having been thrown out was an anomaly of epic proportions and only due to the flagrant pomposity of Aubry's buddy Ellman thinking that he, while sitting on the jury no less, could do as he pleased as part of his assignment to bring home the planned verdict, which consequentially led to a never before event and legal precedence needing to be delivered by the ARB as a result – it was that insolent an event. Though one of many examples, Ellman's behavior alone truly speaks to how deep the inside connection between Crouse and OPMC really must be to think that he could be so smug with what he did. Nevertheless, this forcing a fraudulent verdict and then "politely" extending supposed appellate rights to the victim is how the game of sham peer review is played. **Exhibit P,** is submitted in two parts. The first (**P1**) is a short article entitled ***"Tactics Characteristic of Sham Peer Review"***. And the second (**P2**) is one called, ***"The Psychology of Sham Peer Review"***

These are just two of many documents available from Dr. Lawrence R. Huntoon, M.D., PhD who is considered one of the nation's leading experts and outspoken voices concerning sham peer review. There are other excellent voices and organizations out there as well speaking against this scourge of all that is good in medicine. Upon reading these excellent descriptions concerning sham peer review, I can wholly attest that nearly every single component of this mockery of justice was implemented across my experience with both Crouse Hospital and

OPMC. Can you imagine how sickening this material might have been to read upon realizing that it all had been thrust onto your own life and career to a level of destruction unimaginable? This attitude of "being above the law" by those who perpetrate such desecration of due process and honesty cannot be overemphasized with literally every facet and stage of this experience described in this writing demonstrating at least one example of this incredible arrogance. And I use the word "plan" above in reference to OPMC deviously camouflaging the True Standards and True practice of Obstetrics and Gynecology when making their Determination since there can be no other legitimate explanation citing the fact that this Hearing Panel manifestly went outside of what they were allowed to do by law in order to impose the harshest of penalties upon my license and career.

The attorney representing the office of professional medical conduct shall have the burden of going forward and proving by a preponderance of the evidence that the licensee's condition, activity or practice constitutes an imminent danger to the health of the people." (New York State Public Health Law 230 section 12(a))

Though this above paragraph is, again, the law, please explain to me how Prosecutor Mahar was able to prove, via a preponderance of the evidence and without personally submitting anything to establish the Standard of Care, that I was not only guilty of negligence but that I was also an imminent danger to the people of New York when my clinical record coming into the Hearing was undeniably exceptional, when no one in any of these cases was unduly harmed by my hand, and when no material evidence for having deviated from a written standard existed from the Hearing. As for the specific language in that Statute just cited, "….constitutes and imminent danger to the health of the people.", let's look at a few things in relation to the verdict made against me concerning this concept of "imminent danger".

But first, of course the three forceps cases were <u>not</u> the only cases used in this Hearing and cited in the D&O as having allegedly reached the level of gross incompetence. There were others as well which I will not shy away from addressing either. Again, it is way beyond the scope of this petition to even try to argue the clinical realities of those cases in order to even further establish the baselessness of OPMC's claims of negligence. But know this. They were unusual cases that were easy to manipulate in order for them to look a certain way. So, in order to provide a detailed and completely transparent rebuttal to the State's Determination and Order, four years ago I sat down and wrote a line by line, paragraph by paragraph

refutation of this entire fraudulent official State document that destroyed my career. It is a lengthy and highly technical treatise on the deception contained in the D&O and most likely not something the average reader would acclimate to reading, although it is spot on with the facts and science, and moreover, the actual medical records of these matters.

The complimentary document that goes with what I wrote in that refutation would be my attorney's aforementioned "Findings of Fact" which lays out, with great specificity, the failure of OPMC to prove literally anything, especially on the issue of negligence. I really encourage my colleagues at ACOG as well as any other Ob/Gyn who might find themselves in a position to read these documents to do so, since ***you*** will at least "get it". Of course as I wrote this rebuttal mentioned above, I was homeless and out of work, so it was impossible to separate my gut emotions to what I was having to (even then) relive from what I ended up writing since, again, this whole experience has been absolutely disgusting to have been subjected to. So, please understand all of this, if you decide to read it online where it will be available. In other words, I am allowed to be outraged given what I have incurred at the hands of these people. So forgive me if my indignation seeps into my writings. It has already in this one, if you haven't noticed.

So again, in reference to PHL 230 12(a) cited above, the word **imminent** is defined as, "happening very soon; ready to take place; looming; impending." Now with everything that the DOH fully knew of my record as a physician as well as the fact that, again, there was really no negligence whatsoever involving any of these cases, how is it then that OPMC not only justified the entire prosecution to begin with but a Hearing Panel, entrusted to rule impartially based upon a preponderance of evidence and the rule of law, was able to reach their finding that my practice of medicine was an "imminent danger"? If the reader is able to see the absurdity of this ruling in the face of what has amply been presented here, then measure that further against what the Panel wrote in the Determination and Order on page 64 (see **Exhibit Q**) where they state the following:

"The Hearing Committee believes that Respondent has the requisite knowledge and skill to practice medicine safely, but that he has repeatedly failed to exercise the care that a reasonably prudent physician would exercise under the circumstances."

The first part of this sentence speaks volumes against any sort of "imminent danger" and will be even more important below when discussing this whole matter in regards to the punishment imposed. The language in the second part of that statement makes it very clear that the Panel is implying a degree of negligence on my part when there was none. I think that that has been redundantly established.

I apologize, but the following begs to be repeated for what seems to be the "millionth" time. By proving, via written material evidence submitted at Hearing, that every component of patient care in each of those cases was consistent with the established standards, how then was it possible to be found for negligence? Remember, the only thing this Panel could find to criticize in my management of these cases were my thought processes in determining if the clinical scenario met the criteria for either the application of forceps for those cases so associated and/or their un-established management protocols for the other cases. Again, at Hearing, we had already proven that not only was each of the forceps cases involved well within the confines of the "suggested" standard but that the indication for the use of forceps was really a decision solely in the discretion of the physician. The panel couldn't attack my actual skill or knowledge of forceps, so they resorted to condemning my "knowing when to use them." They took that same lack of foundation position with the other charges as well.

This shameful deception, of course, was predicated on the wholesale denial of the available and submitted written standards in combination with the wholesale acceptance of the testimony by a Prosecution "expert witness" with no personal experience in any of these clinical matters (and thus really no expert at all) over and against the testimony of the Defense expert with extensive experience in this same discipline. How preposterous in the face of everything so far presented. The entire second half of that statement from **Exhibit Q** is a total oxymoronic cop out by the Panel in trying to obfuscate the facts in evidence by making such a blanket statement without any specifics. What care are they referring to? What circumstances? Everything done in these cases was documented in the medical record as it played out, including plenty of "justification", in addition to being compliant with the letter of what was in writing from ACOG as being acceptable and moreover, prudent for a physician in such circumstances!

What I have interestingly come to learn as both a physician and someone whose sister is an attorney about how some in the legal profession work is this – and I hope I can iterate it so as to appreciate what I am getting at. The law is so convoluted and complex sometimes that those who choose and then seek to essentially "play dirty" use the extensiveness of the various legal statutes in combination with so many criss-crossing facts and data in order to inundate the process (and jury) with so much "stuff" to consider that they are able to bury all sorts of improprieties into the process. In other words, as was most definitely done in my case, such individuals throw so much information and so many allegations into the process that having to simultaneously defend them while crying foul about transgressions against the actual rules and statutes governing the process becomes almost futile, should these violations ever be identified and attempted to be called out.

These sorts of violations of the rules, evidence, testimony, written standards of care, weight of the experts, Constitutional due process, as well as many other distressing components of this 2007 Hearing, were also addressed in the Appeal that was filed with the Administrative Review Board (ARB) after the 2007 D&O, only to be completely ignored by them as well. That last point must be reiterated for emphasis. When reading this Appeal to the ARB, (which will also be available online), it is hard to believe but when they ruled on it, virtually every assertion contained therein proving the sham that characterized that Hearing was essentially disregarded and ignored. The ARB not only affirmed the Hearing Panel's findings without providing anything other than a rubberstamping, they saw fit to add another year onto the sentence. OPMC had successfully obscured their ruse against my license just enough so that this time around, it couldn't be thrown out like previously due to what every reader ought to know by now was a predetermined outcome and a malevolent will to see it come to pass onto my life.

What get's me in all of this is this. Here there are rules that dictate how all of this whole OPMC process is supposed to be carried out towards a physician who is under scrutiny for, among other things, breaking certain rule(s) (if you will) in medicine. Though I have pointed out a great deal already, I haven't even scratched the surface of how many individual violations of the Rules of the Proceeding I witnessed during these prosecutions. In other words, the Rule Enforcers can't even follow their own rules. Just look at how they allowed themselves to be used by Aubry. There was no doubt OPMC complicity with what he did.

If OPMC is the oversight for doctors following the rules and standards for the practice of medicine, then who oversees OPMC to ensure that they are abiding by their own rules and standards, not to mention doing so in an honest and just manner? Of course, it is no mystery that this is how much of our society operates. That would be little to no accountability at many levels. And when such conditions of lack of accountability do exist, the abuse of power is ALWAYS bound to occur. Eh hem, have we not seen this in the preceding pages? Hence, this is why there exists the essential necessity for oversight and the reason why certain overseeing administrative parties have been included in receiving this vacatur petition.

In fact, like mentioned above, there is so much for the Panel to process in these sorts of matters, it is easy to disguise a violation of the rules in order to steer the process as you wish and then claim that such violations were either not real violations or that such criticism had no bearing on the case. Of course this is what those perpetrating the violation would say, especially when there has been no evidence of anything compelling them, (as in my case), to be forthright in their own duty **to** the process. What a disingenuous position for the DOH to take when Aubry had carte blanche to sling OPMC in any direction he wanted while numerous other Statutes were sidestepped by the agency itself in order to bring home the preplanned verdict.

Ok, now with all this having been said, the one distinguishing feature from both of my Hearings that was very clear as to how these Panels are able to get away with convicting anyone they want without really any basis was **how** they laid out the actual ruling in relation to the charges. Let's look at the law first to see what it says before revealing what they did to me, in contravention to that law.

Decisions, determinations and orders. 1. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include *findings of fact and conclusions of law or reasons for the decision, determination or order*. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his attorney of record. (State Administrative Procedure Act – section 307(1)).

What this Statute is saying is essentially this. When a Hearing Panel renders a Determination, they are **obligated** to make a statement as to how they arrived at the decision. Of course, this makes sense. However, this would also imply that as part of any ruling on the charges, they were to speak to not only the prosecution evidence but **also** that of the defense's as well, especially if they somehow rejected it as part of their conclusion and **even more so** if the Panel is going to label the defense expert's testimony as having been given great weight only to then discount what they had to say. The second part of the Statute that is underlined furthers their obligation to address each an every charge since, as part of the defense of these allegations, my attorney indeed submitted proposed Findings of Fact, which has been referenced already in this petition (and again, available in its entirety online).

So, in essence, the Panel was obligated **by law** to specify each charge and then discuss the findings of fact and their conclusions of the law. In doing so, the evidence presented from both sides was required to be included in the ruling along with why they chose one side over the other in reaching their conclusion. Let's use an example from the Hearing to better understand what this responsibility of the Panel was and how it should have looked in the Determination and Order as it pertained to them rendering a decision on the facts according to this law. OPMC prosecuted and convicted me for negligence because they alleged that I implemented the use of Obstetrical forceps outside of the standard set forth in the specialty of Ob/Gyn.

If one were to construct a brief flow chart as to how the Panel ***ought*** to have addressed, **IN WRITING**, each and every charge in the Determination and Order, it would look something like the following example for the primary charge against me – that being performing forceps deliveries without proper medical indication:

Charge

The Respondent, James R. Caputo, M.D. is charged with performing a forceps operation without adequate medical indications.

Findings of Fact—Prosecution

The State offered Dr. Robert Tatelbaum as an expert, whose testimony we gave great weight to. Dr. Tatelbaum stated that he does not nor has he ever used Obstetrical forceps as part of his clinical practice. However, his testimony impugns Dr. Caputo's judgment in utilizing forceps in these cases because he wouldn't have personally used them as such, despite his lack of history with them. Neither the State nor the State's expert produced any written Standard of Care detailing the established indications for forceps deliveries.

Findings of Fact—Defense

The Defense offered Dr. Steven Burkhart as an expert whose testimony we also gave great weight to. Dr. Burkhart has been using Obstetrical forceps as part of his clinical practice for decades and brings extensive experience to his testimony. Dr. Burkhart testified that Dr. Caputo's use of forceps in each of the cases before us was completely within the known and widely accepted Standard of Care. The Defense then produced the Practice Bulletin published by the American Congress of Ob/Gyn regarding Operative Vaginal Delivery which establishes these very Standards for the subject at hand. Upon examination of this document, it appears affirmative that not only was Respondent Caputo well within the detailed Standards set forth in this document based upon the medical records in evidence, the Congress itself also provides considerable leeway for the Clinician to exercise their own medical judgment based on experience and the clinical situation before him/her.

Ruling

Though both experts were given great weight as having provided pertinent testimony, we are bound by the rule of law in rendering a decision in this matter. The law states the following on the matter of evidence and Expert Testimony:
*If after considering the State's expert proof as well as Respondent's expert proof and it is not convincing that one is more believable than the other, or in other words, **only** when the hearing panel can say in their hearts and in their minds, based upon the evidence and the law, a certainty of belief in the States expert **and** a certainty of disbelief as to Respondent's expert, can an adverse finding against Respondent be legally allowed. Otherwise, this panel has no option other than to find that the State has failed to prove their case.*

By assigning **each** Expert's testimony great weight, the burden of proof for the State is therefore even greater. This is based on the law. Therefore, on this matter of proper indication for the use of Obstetrical forceps we have the following before us.
1-State's expert with no experience as opposed to the Respondent's expert with extensive experience. **Favor Defense**.
2-Neither State nor their expert produced anything in writing that established the Standard of Care for indicated use of Obstetrical forceps as opposed to Respondent producing the ACOG Practice Bulletin detailing specifics as far as indication**. Favor Defense**.
3-State's expert impugns Respondent's "judgment" concerning the application of forceps as opposed to Respondent's expert testifying as to their proper use, the material evidence from the world governing body for Ob/Gyn that establishes Standard of Care for use and the medical records themselves – all testifying to the fact that Respondent's application of these instruments was indeed well within the confines of the established Standard of Care. **Favor Defense**.

Therefore, based on findings of fact and conclusions of law, this Hearing Panel rules that the State has failed to prove their charge of performing a forceps procedure without proper medical indication against Respondent James R. Caputo, M.D.

When looking at that flow chart and comparing it to the actual Determination and Order, is there anything close to SAPA 307(1) having been done by this Hearing Panel? I'll answer for you. **NO**! Not only were these procedural violations by not doing so, such an obvious evasion enabled them to completely circumvent the truth by offering only select information from the Prosecution without addressing the mountain of exculpatory testimony and material evidence submitted by the Defense – for **every** charge and in **every** case – especially after having labeled Defense expert testimony as weighty. Again, after reading all that you have read so far, are you surprised? I will admit, this 2007 Hearing Panel at least did a better job of subverting the truth in how they rendered their decision after this second hearing as opposed to what they did with the first. The contempt the first Panel had for SAPA 307(1) was astounding to read. This is what they wrote in regards to the **entire Defense** that had been presented in the first Hearing. ***"Conflicting evidence, if any, was rejected."*** That's it. Not one word more as to **ALL** we painstakingly submitted at Hearing. And I am still to believe that I was treated fairly and impartially? Would you, the reader, like to have this sort of treatment if your livelihood was on the line? What a racket.

Truth Summary: This section on the charges and the conviction set forth by OPMC was a long but very important one to show the reader that literally every aspect of this prosecution was corrupted. And these weren't things that just so happened to be a little out of place as might be expected of any lengthy proceeding. No, these were deliberate and calculated efforts by agents of the DOH to knowingly and willfully force a fraudulent legal action against my medical license through a process conducive for abuse by essentially breaking whatever rule necessary in order to make it happen. The facts do not perjure themselves.

QUESTION: Given all that has been presented here concerning **how** the Hearing Committee actually ***misruled*** on the evidence by completely sidestepping the law which **required** them to state the findings of fact for both sides as part of rendering a decision for each charge, in addition to the fact that no Standard of Care was ever produced by OPMC as a **requirement** for determining the presence of negligence, on top of failing to establish any specific "circumstances" of care that were supposedly not properly exercised by me as would have been the case of a reasonably prudent physician, which then failed to substantiate any foundation for being any sort of imminent danger to the public when my top rated clinical record equally disputed such a contention, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been**

previously available and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? The simple answer once again is not a chance, if there was any truth or honestly involved. Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever.

My Mistakes up to and including the 2007 Hearing and Appeal ruling in April of 2008

No treatise on this entire matter could be complete and moreover, forthright, without at least addressing what role my actions had in all of this. Let's first get the most important fact out of the way. When it comes to the actual care rendered and all things clinical in every one of the cases used against my license, I categorically and with as much emphasis possible make it clear right here and now that not one care related thing was EVER done on my part to EVER justify the New York State Department of Health to EVER do ANY of what they did to me, my career and my family. I will hold to that point forever and stand ready any day to present the clinical material facts of these cases before as many of my peers as could be assembled in an open, honest forum. This is how outrageous and shameful this entire thing has been solely on clinical grounds alone. And this is despite what one might (erroneously) conclude after reading the complete deception that is the 2007 Determination and Order which, though it all sounds good on paper, is really one massive subterfuge of everything that actually happened in those cases. It would be my delight to have the opportunity to openly expose just how it could be possible that what you read in that official State document is completely fraudulent.

The level of intellectual dishonesty and abuse of State level power in my investigation and prosecution has been so shocking and unlawful that I declare right here and now that my experience MUST stand as **THE quintessential** example of the very abuses by OPMC that have not only plagued this agency's history and reputation but were also pointed out in the Reform Bill previously mentioned and submitted as an exhibit in this petition. In other words, the malicious prosecution of my license is the **Poster Child** of OPMC Abuse where there has been no more egregious departure from all that was intended by the establishment of this agency as part of this prosecution. Do not be deceived or mistaken about any of what was just stated. These are the undisputable facts and the DOH could never defend such a claim in any open and fair setting.

Now with all that said, did I make some mistakes of my own as part of this process? Of course I did. And I suspect that the tenor of that last paragraph (as well as prior and beyond) might even qualify somewhat as to one component of what I speak. In other words, I might have been better served early on by simply not getting as angry as I did about what was being done. And that is a big "might" since there is no question as to the hidden agenda that is plainly obvious from this writing. The one document I can readily point out as having likely hurt my cause the most was my written response to OPMC after having been ambushed in my first interview during the initial investigation when that event was advertised as a friendly discussion between me and an Ob/Gyn member of the State Medical Board. The awful manner in which I was treated at that interview was one thing unto itself. However, when I received that actual written report of the interview by this Dr. Clifford Elson character, I was irate with how grotesquely distorted every bit of it was on both a material factual basis as well as a clinically correct basis.

I responded with a twenty-four page scathing rebuttal replete with scientific and accurate analysis of the care that had been rendered as well as discussed, and what the interviewer ought to have understood himself being an agent of the Department of Health entrusted to know what he was talking about. Were my comments anything offensive outside of pointing out the obvious and (apparently) deliberate misrepresentation of literally everything by this man? No they weren't. Were they the sort of comments that officials at OPMC were likely to be offended by solely on the basis of attitude? I am sure they were and I saw just how much I was going to learn who holds the keys to the ship. However, were one to understand the bigger picture of what was being done and the massive threat it was to what I had worked so hard to build for my family's future, my rebuttal was not anything more than an honest man reacting to being baselessly and viciously attacked to the point that his life, livelihood, even his young, were thus being threatened. As stated earlier in this petition, I was not skilled or experienced in these political matters. And as you can see from this writing, my political correctness is still something that my need work given certain conditions in play. However, after what I have so far disclosed (as well as what is still yet to come), there is most assuredly justification for there to be an air of scorn in my temperament. Nevertheless, even this pales in comparison to what I wish I could write.

In being able to cope with all that I have had done to me, I give a great deal of credit to my upbringing. I am the middle of five children from an energetic all Italian family who grew up with a father who was the embodiment of resoluteness. Yet professionally, I have always been a physician and surgeon who has tried to mind his own business while seeking to be extremely competent at what he does. And to this end, I did in fact put forth a clinical performance record that establishes this goal as having been accomplished – without question – as definitively authenticated in the section above concerning my clinical history, despite it being completely ignored by the DOH and their prosecutorial arm, OPMC.

In order to further grasp the fullness of how OPMC steered this entire thing in their favor, even with how they **controlled** the information at the ***interview*** level so as to be able to then adulterate what was actually discussed there, I refer to **Exhibit R.** This was a correspondence between my attorney and the DOH in regards to our request to tape the latest round of interviews at that point in history after what we had already experienced the first time as mentioned above. Even my attorney, a seasoned veteran in these sorts of procedures, found their position on the matter to be contrary to what he understood to be the policy, based on his own experience no less. Of course, as you can see, our request was denied and I'll give you one guess what happened to each of those patient cases. Yep, all added to the prosecutions laundry list of cases and charges against my license despite having completely dispelled any suggestion of impropriety in that interview.

So of course, such underhanded actions being carried out to the detriment of my life and career are going to garner a negative response. Was I supposed to thank them for doing this? Remember, as it bears repeating, by the time I started having to deal with the early attempted assaults by members of my departmental leadership and now this from OPMC, I had already been browbeaten unsuspectingly by other nasty elements of medical politics in my short time out of training, which is what led me both to Syracuse as well as desiring to operate my own practice, so as to minimize any future conflict with a nasty element in medicine I was beginning to gain an understanding of. Yet, in those early days, I still knew nothing of sham peer review as well as the kind of putrid soul that perpetrates it. That would obviously change, with quite literally the **King** of putrescence, Richard Aubry, having chosen me to be his grand accomplishment.

That aforementioned vision of mine to strive to be my best and the practice that eventually became of it, incidentally, was one of the absolute finest places for Ob/Gyn care in Central New York with a body of work second to none in the region. You, OPMC knew this to be the truth, as did Aubry, which is what fueled him (at least) to then use you as he did. You, OPMC, took that wonderful accomplishment not only from me but from the very citizens (thousands of them) your charter was instituted to protect. You, OPMC, took that away from my five children and their futures to such a degree that the effect on their lives has caused a depth of brokenness in their father that no one could ever know. Taking away something **that demonstrably** good while leaving the community in the hands of men who have proven themselves incompetent and downright malevolent does not fulfill OPMC's mission of protecting the public. And I know that you are well aware of several of the cases and examples from this Department of Ob/Gyn at Crouse/Upstate Hospitals that I speak of which defy any sense of believability in just how horrifying they are as far as clinical competence is concerned – and all brushed under the rug, no less. The fact that numerous lives have been damaged and babies lost since the writing of my complaint letter about these men and this department renders you, OPMC, as directly responsible for those outcomes since, if you had simply done your job, the facts were straight forward, this community would have finally been rid of this icky element and who knows how many families would be vastly different and not suffering today. So essentially, for anything bad that has happened to anyone stemming from the continuation of these men, you, OPMC, own it, as does anyone else who has failed to heed my repeated warnings about this department..

For anyone wanting to know specifically just what I refer to in that last statement, just contact me and I will gladly provide numerous cases examples but be prepared for your head to spin with what you will learn, particularly my colleagues at ACOG. Not able to completely resist, let me provide just one of the "minor" (if you could even justify such a term) examples I would come to learn about when measured against the other more egregious cases. Here we have a preexisting diabetic patient in her twenties who is pregnant with her second child. She ends up in the care of the (infamous) Perinatal Center (again, Aubry and his ilk) where they proceed to atrociously manage her diabetes in a manner not necessary to discuss so much here but simply testimonial as to their utter incompetence. Nevertheless, she is lucky to get to 38 weeks gestation when her water breaks. Being a scheduled repeat cesarean section, she is admitted to the hospital and preparations are made to deliver her a few days earlier than her

scheduled date. While she is waiting in the pre-op holding area supposedly waiting for blood work to come back from the lab, her baby literally dies right out from under the noses of those caring for her – residents, nurses, attendings. As I write this, I still shake my head in complete disbelief. One of Aubry's fellow incompetents from the Perinatal Center is called to confirm the finding only to offer nothing more to the patient than, "I'm sorry. We lost her."

Such a case ought to have incited a full-scale hospital investigation and reporting to the State, where they too should have investigated. Did the DOH ever get such a thing? I highly doubt it since the patient knows nothing of the sort. As with everything else at this hospital – likely brushed under the rug. These and numerous other examples make you wonder just what the hospital's slogan really ought to mean for women's health when they say, "Your care in our hands." Given who runs the show, "no thank you" is my response. Oh, and by the way, the patient did indeed get her c-section – for her now dead baby. Her life has never been the same, of course. As a board certified Obstetrician and Gynecologist, it is beyond the pale to ever imagine such a thing ever occurring – and at a tertiary care center no less. Yet, despite this one example, it is child's play with what else I can disclose about this department and their relative incompetence from the residents all the way to the (current) chairman. Obviously, one cannot completely malign every single physician and every single case. However, with the standard set for where I trained, these countless cases of horrible care that occur on a fairly regular basis at Crouse Hospital speak volumes for there desperately needing to be a complete overhauling of that department.

Truth Summary: So, when addressing my component of how this thing might have spiraled out of control, I readily admit that my demeanor was most likely inciting towards an agency who notoriously flexes their prosecutorial muscle whenever possible even to the extend of outright abuse, while simultaneously posturing itself as being above reproach. But like I have stated previously, you can't blame the victim for resisting. You have to look at what started the conflict. You have to look at the oppressor. You have to look at the stronger power and the responsibility that lies in their hand. That would be you, OPMC. And what happened as a result of my outward resentment for what was dishonestly being done to me? You chose to pound me into the ground over and against a mountain of evidence that exculpated my clinical care in those cases without question. So, of course I am going to object, as I am once again.

Illegal Release to Public the 2007 Determination and Order

It would seem that I couldn't possibly come up with any more examples of how OPMC was set on sidestepping any possible rule in achieving their end game with my medical license, but believe it or not, there is more and it is just as filthy. Again, forgive the disapproving remarks but I am just being honest given the fact that ALL of this was done to **me** by **you** (OPMC) and with your complete knowledge, Mr. Servis.

To understand this section a little better, you have to appreciate the fact that by December 2007, when I received the D&O in the mail, (having been convicted on virtually every unsubstantiated charge as it related to so-called "negligence"), it had already been more than five years since OPMC initially launched their investigation based on what we all know were the letters sent to them from within the Department of Ob/Gyn at Crouse Hospital. By now, Aubry and the other departmental miscreants were getting anxious. They had already blown it with the first Hearing in 2005 by it having been thrown out on Appeal by their obvious hand in corrupting it with the seating of their confidant on my jury. And they **knew** that I was never going to relent on what they had done already as my attorney and I were gearing up for yet another Appeal effort to be put forth in defiance of this endless lie.

It is critical to understand that at that point in time in this process, the law was very clear as to public disclosure of all OPMC investigations and prosecutions. The law stated that all matters were to be held confidential from the public **until** each and every appeal measure had been exhausted and where the Respondent was still found adversely against. In other words, so long as I continued to appeal this indignity, it would remain confidential information and not available to the public until all appeal rulings were complete.

So, in December of 2007, after receiving what my attorney and I knew already was a fixed result, my attorney immediately submitted papers indicating that we were appealing and thus, this matter was to remain confidential – BY LAW. However, those running the show from behind the curtain, (Aubry and I am sure a few of the others previously mentioned being at least complicit), were getting impatient that the demolition of my career was taking too long. So what did they do? They called in their DOH inside connection once again. Unknown to anyone as it still remains a complete "mystery", somehow, someway, my Determination and Order was illegally posted on the Department of Health's website **AND** the local newspaper

was “made aware” of such a posting so that a nice fat and juicy story could be written in the local paper thus blindsiding both me and my practice to the tune of great destruction and public humiliation. I received a surprise phone call at 5pm on December 12, 2007 by James Mulder, the lowlife health reporter from the Syracuse Post Standard, stating that I had one hour to get him a rebuttal to the story he had ready for the morning edition. It was a total shock. When trying to briefly explain to him that his knowledge of these matters was a violation of the law, his response was simply, “Illegal or not, you’ve got one hour.” Both my attorney and I were outraged and knew that five years of defense had just been annihilated by the local paper gaining privileged information from inside this crooked State agency who maintained a streamline of communication between themselves and those at Crouse Hospital driving this entire thing.

To be clear and fair, why do I choose to use the word, “lowlife” to describe Mr. Mulder since that is one pretty harsh word? Well, it is for a couple of reasons. For one, this man has had every opportunity to report this matter truthfully and honestly, especially after I have written him at least three separate times over the years since then apprising him of the real story and the real facts, in addition (with emphasis) to how it all relates to the horrible clinical conditions for the women and unborn babies of this community being under the incompetent care of the (current even) leadership in the Crouse/Upstate Ob/Gyn department. He has been given great detail and actual case examples only to seemingly abrogate his duties as a journalist upon learning this information. At least vet out the facts and hold my claims to the fire in order to see if there be any truth. Of course not. No journalistic integrity whatsoever.

The second reason why he gets the moniker of “lowlife” is this. Within a month window of that destructive article hitting the newspaper in December of 2007, my oldest child, (who is now in college but then in sixth grade – that’s how long this disaster has disrupted the lives of even my children), went on a school field trip to the Post Standard with his class. Certainly, as part of any such endeavor, the paper is likely to be given a roster of the children in the class or at least some information by which they could possibly draw an inference as to the names of the kids so attending. At any rate, while they were on the field trip, a male representative of the Post Standard held up an example of one of their newspaper sections to my son’s class and it just so happened to be from weeks earlier with the name of his father plastered all over the headlines as having just lost his license after being found guilty of medical misconduct by the State. Of all the sections of the paper from any possible day’s edition, that one was held up? My little boy almost went into a panic attack after having been ambushed like that, in

front of all his classmates and teachers no less. He still remembers it to this day. I don't care what anyone offers as an explanation or who that specific individual was. That was a deliberate act as far as any honest and rational human being can see it. And frankly, I personally find it impossible to separate Mr. Mulder from that having happened to my poor unsuspecting child. Hence, "lowlife".

The result of that article hitting the paper when it did had a crushing blow to my practice. I lost over 80+% of my Obstetrical practice overnight because patients simply didn't know what to believe. Yet, amazingly, many others rose to my defense and took to the online blogs to speak out about what had shamefully been done to their doctor. In fact, many then went on to specifically write their own support comments when, (of all people), my children's piano teacher got involved by organizing a community effort to speak out against what had been done. I will post those support comments online with the names of the patients redacted so the reader can see that even the public knew what these bastards did to their beloved doctor. That's right, I just used that word because it is the only one that fits.

In defense of my practice and moreover, the truth, I went on my practice website and decided to reveal everything, since the cat was now out of the proverbial bag. In doing so, I not only told everything that had happened and (transparently) posted the actual transcripts of the testimony, but I also named names. Know this, so as to dispel any thought you might have. Prior to any of this, I was as quiet and silent a member of the department and hospital as anyone else. I wasn't some loudmouth or trouble maker. In fact, I enjoyed friendships with nearly everyone ranging from fellow physicians, nurses, ancillary staff, housekeeping, you name it. My personality is one of lovingkindness. Anyone who ***truly*** knows me knows this of me. However, as stated, if you threaten my livelihood and especially my children, especially by a vicious and baseless attack, you **will** see the full measure of my wrath.

So, this posting of the truth online, you might imagine, did not go over well with the reprobates in the department who had been fomenting this thing all along by whatever inside connection they had to the DOH. No one working in darkness likes to have the light of truth shined on their evil deeds. Their reaction? Well, you have already been told about the eighteen month medical record sweep of my hospital cases that led to the whole new round of sham peer review in the hospital, just when I thought and hoped this nightmare might be finally over, though I will admit that it was my public outrage that most likely spawned this

response. This latest cheat then produced the bogus cases that were sent to OPMC and used, (SIX YEARS LATER!!) by the Department of Health in their 2014 unrelenting malicious prosecution of my license that (given what OPMC was viciously doing this time around), left me no choice but to surrender my license under this latest duress that will be disclosed in a little bit below.

The second thing those at Crouse Hospital did was to go on a community-wide smear campaign to disparage my character with all sorts of libelous claims and rhetoric. One example I caught wind of was that I was apparently deemed a threat (by the hospital and its security forces) to blow up the institution with a bomb of some sort. Unreal and ludicrous, but then again, all part and parcel of how those in the wrong (and especially with power and influence) must destroy the messenger in order to subvert the message of their wrongdoing. Isn't this the usual tactic when there is nothing else to offer in the debate? The extent by which they carried out this operation was so injurious, yet beyond the needs of this petition to get completely into. But know this. My reputation in this community went from being a physician getting referrals from doctors I didn't even know who labeled me to their patients as being (by their understanding) the best Ob/Gyn in town to afterwards seeing the daughter of one of my best friends who needed surgery being told by the two doctors she worked for (who I had never even hear of) that I was a monster and that she needed to get as far away from my practice as possible – which she sadly did. The cheaters at Crouse had finally won and let me tell you, Aubry was indeed proud of himself. Correct me if I'm wrong but isn't this a bit unseemly for professional leaders of a Regional Medical Center who had fooled everyone into believing that they were gentlemen and scholars? Upstate is my alma mater as well and these men are responsible for a forty year black mark on a lowly department within what many would otherwise consider a quality institution.

In order to complete the point on how the State actually **broke** the law in releasing that information on their website when it was illegal to do so, I submit the following **Exhibit S** which is in two parts. The first (**S1**) is the Temporary Restraining Order that was immediately filed with the State Supreme Court upon learning of this violation. It placed an immediate injunction against what the State did and ordered them to take the D&O off the State's website. They immediately obliged knowing full well that their mission had been accomplished since the injunction did not stop the destructive newspaper article. The second (**S2**) is the eventual Decision and Order by State Supreme Court Judge Joseph C. Teresi on the matter of this violation. In this document, the labels of the parties involved are reversed over what they were in my D&O. I was now the Petitioner and OPMC was the Respondent. With OPMC now

having been officially outed for administrative misconduct, of course they challenged their own blatant infringement of my legal rights by actually trying to fight this boldfaced abuse of power. The judge's conclusion is clear and logical in accordance with the Law. The interesting thing once again is that **another** precedent had to be set, now involving this portion of the entire ordeal, because no one had ever before challenged the language that governed this disclosure Statute. The reason why it had never been challenged before? Well, because the wording in the Law regarding public disclosure is that manifestly discernible and obvious as to its meaning. It was disgraceful to see the fervent effort on part of the other lowlife in this matter, State's Attorney Tim Mahar, as he fought tooth and nail to cover over this obvious transgression. Even the judge stated that ***"Respondent's interpretation…… …actually renders the provision meaningless."***

So, are we to believe that the State's attorneys weren't able to properly interpret that simple stipulation contained in the Public Health Law? Hardly. No, what I experienced was a deliberate act of aggression and yet another definitive example of the malice involved with the destruction of my medical career. So, what did the Department of Health do in response to this clear violation of the law after the Judge found against them for what they did? They changed the law so that now public disclosure is a mandate for any physician so much as being "***charged***" with misconduct and before they ever have any opportunity to defend themselves. You see how this all works? There's no honesty or integrity. It's all about winning and destroying lives by people who apparently enjoy such endeavors. Clearly reform is long overdue as this process bears absolutely no resemblance to anything Constitutional.

Truth Summary: Due to a vehement Defense and blatant wrongdoing on part of the State in the first Hearing such that this prosecutorial process was now in its sixth year, those driving this thing had become impetuous over the amount of time it was taking to exact their plan. Knowing that an Appeal was imminent, and thus would stand to prolong the nondisclosure of these matters to the public, once again the law had to be sidestepped in order for their Machiavellian mission to be complete. As a result, I sustained huge damage to the practice at a time that was out of sequence with what I ought to have been able to accommodate as part of any sort of adverse finding and community reporting. The entire landscape of my Defense was now disrupted by someone on the inside mysteriously posting that Determination. The ARB, knowing full well that the DOH and OPMC had been publicly exposed for this misdeed by the time they had to make their ruling, chose rather to put the final nail in the matter by not only ignoring virtually everything in that Appeal but also turned a blind eye to this latest disgrace to the agency's reputation and integrity.

QUESTION: Given all that has been presented here concerning the repeated and deliberate violations of numerous Statutes by OPMC as they pertained to my case, this time now involving the unlawful public disclosure of my D&O that may well have influenced the ARB to now have to assuage the obvious liability that such an act of aggression clearly created for the DOH, should an even stronger second appeal actually prove successful – as it ought to have, is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. Shouldn't the DOH have been furious themselves that such a breach of Department Policy and the Law itself was committed instead of trying to cover over their own aberrant role in it? By this course of action having been taken instead of being equally as disturbed by these events, it sure does point a big finger towards you, Mr. Servis, as having also been party to the entire thing. Please explain how this conclusion is not justifiable to make. Otherwise, what kind of quality directorship do you actually perform?

These actions perpetrated by OPMC, through the unlawful release of this Board Order, unequivocally establish the fact that someone on the inside of the DOH is literally out of control and way out of line with how they have collaborated with agents of Crouse Hospital. And this person had to have considerable authority to be able to influence the entire process as we have seen. Is this person you, Mr. Servis? Either it is, or it is someone else with considerable power that you have allowed to do this, or else you have been asleep at the proverbial wheel in regards to your duty as director. Either way, you are ultimately to blame as well as the one who ought to be held responsible for such a disgraceful showing by the Department of Health and their Office of Professional Medical Conduct – all at taxpayer expense.

Just when one might think that there couldn't possibly have been any more impropriety on part of this agency, this insider exploitation of the prosecutorial process is a degree of malfeasance that defies any sense of believability and knowing that it's true, is all the more foreboding for the physicians of New York State, should nothing be done about it. I loathe even saying it, but believe it or not, there is still way more ***intentional*** harm they, (OPMC), put upon my existence so as to ensure I couldn't just walk away from all of this.

Penalty and Result

Now that the reader has been taken through a chronological account of the main components of my experience with this clearly deceit-filled matter, we have now reached the most crucial of discussions of this petition – the Penalty imposed by the Hearing Panel. To add to this frame of reference before discussing the penalties imposed, consider these points of truth once more concerning the actual cases. While I will maintain and can defend endlessly the care provided for these patients when the actual medical records and facts are taken into account, the cases themselves were isolated, atypical cases that were chosen primarily for their ability to be distorted in such a way as to give the "appearance" of wrongdoing. **Even if** one were to hypothetically believe that I did fail in some regard in managing them, (let's be real, there were a few mistakes, such as our ultrasound machine failing in that obese patient's pregnancy), there is no way they represent any sort of "pattern" of practice which is truly what OPMC is supposed to be analyzing and overseeing. If the Standard for OPMC prosecution was for an odd case, or even five odd cases a doctor might have encountered in the tens of thousands of cases during his/her career, then no doctor would be safe. Odd cases occur all the time. How you navigate them so as to ensure a favorable outcome is truly the goal of any physician. With all that I have experienced in this matter, the (double) Standard that was set for me for both prosecution and punishment was unrealistic, cruel and unusual.

I could take each and every charge and conviction and destroy them clinically in this document if necessary but that was done in the abovementioned Repudiation document written against the Determination and Order that will be online. However, for the purposes of establishing just how ridiculous this entire thing was, I will cite one example of what I was convicted on for perspective, especially for any Obstetrician reading this. In one of the cases, there was a need at some point in the delivery process for me to artificially rupture the patient's amniotic membrane as a means of furthering the course of labor. In other words, I had to break her water in order to stimulate the labor process as it characteristically does. There are rules, of course, that govern even this procedure. It entails the head of the baby being enough into the pelvis so as not to expose the umbilical cord to prolapse from the womb upon breaking the water, which is an Obstetrical emergency were it to happen. The term used to describe the head's position in the pelvis is "station". The higher the station, the greater the risk. Every Obstetrician knows this. The highest station "technically" allowable to be able to perform the procedure "safely" with minimal risk of cord prolapse is something known as -3. In fact, ALL Obstetricians know that there are even circumstances where the water needs to

be broken when the head is even higher than this and still floating in the uterus. This is why there are special instruments and procedures that we use in order to perform this as well. Nonetheless, in one of the cases I was prosecuted for, the head was at -3 station. The water was broken without any incident and the patient's labor progressed just as expected as a result. In fact, never in my career had I broken a patient's water and then experienced a cord prolapse.

However, since OPMC must throw the kitchen sink into every allegation as well, I was not only charged with professional misconduct for having done this completely permissible procedure, their hired liar, Robert Tatelbaum, M.D., then actually had the nerve to testify that by doing so was a transgression against the Standard of Care because it "exposed" the patient to "unnecessary risk". You see, this is the language and these are the catch phrases used, by intention, to imply to an ignorant reader that the doctor involved was a danger due to this "unnecessary exposure of risk" nonsense. Forget about the fact that this was an everyday occurrence in the world of Obstetrical medicine and that there was no issue even in this case. Yet, over and against the testimony of my expert, (who remember was given great weight in the matter), I was actually convicted of professional misconduct/negligence for having done this. This is so telling as to the maliciousness of this entire experience. The law states that "Gross Negligence" can also be multiple instances of a doctor having committed single acts of negligence. By this **NEW STANDARD** now having been established by the DOH in my case, every single Obstetrician in New York State is now technically guilty of "Gross Negligence" as well and ought to be equally indicted. What a disgrace to all that is right and just.

Let's examine for a moment just what is the supposed mission of OPMC. Well, right from their own website it states the following: ***"The mission of the Office of Professional Medical Conduct (OPMC) is to protect the public through the investigation of professional discipline issues involving physicians and physician assistants."***

In order for this agency to legitimately convict any physician for misconduct, it needs to establish that there is a danger to the public due to their practice of medicine. Taking a doctor with the best clinical performance profile in the entire community for his specialty, selecting out a half dozen oddball cases, (from the tens of thousands he has successfully treated), where the outcomes were all clear and understandable, as depicted in the actual medical record, is not what I would call keeping to the mission statement above. Rather, it is called abuse of power with a purposed end.

In order to do this section of the Petition justice, it is absolutely necessary to write here the words of the Hearing Panel as it pertained to my penalty on pages 51, 53 and 63-67 in the Determination and Order. But before reading these entries, let us first review some very important facts to consider as you interpret this ridiculous series of statements by the Committee. And again, forgive the redundancy as it is necessary to lay it all out in this manner to illustrate the point.

Fact #1: **Not once** did the State of New York introduce, provide in writing or establish for the court (outside of opinion by a hired fibber) the actual Standard of Care as it pertains to the use of Obstetrical forceps. So as you read their use of words such as "accepted standard", ask yourself, "what is that standard anyway that they keep referring to? Shouldn't it be expressly stated by them?" See the flow chart above for renewed clarity on this point.

Fact #2: For years, I had definitively established myself as really the only doctor in the department who not only implemented this legitimate option (forceps) for the Obstetrician to the benefit of the patient, but was also the primary instructor of their use for the resident physicians in training as well. As part of this educational objective, (in addition to the knowledge and skill the State even admits I possessed), **knowing when to use them** would be an essential component of that ability and role, wouldn't you think? The indicated use of forceps had ALWAYS been one of the most pertinent points taught to the residents when instructing them on their use. Otherwise, what kind of instructor would I have been? And don't you think the residents were capable of reading those same indications set forth by ACOG in their Practice Bulletin? The Committee's attempt to separate the two (knowledge of them and actually knowing when to use them) is not only baseless, it is ignorantly malicious.

Fact #3: There were plenty of departmental statistics available to the DOH showing that I had implemented Obstetrical forceps on many more occasions than the cases before them. Not only were they all performed without incident where the patient was spared a major abdominal surgery, there was plenty of documentation in the charts, (just as in the cases under prosecution), to establish without question the clinical circumstance that warranted their use. In fact, the ***pattern*** of their use was **always** consistent with correct implementation and not the other way around. Just because they make disparaging statements regarding my decision to implement them in an official New York State document doesn't therefore validate their assertion. This should be more than obvious by now.

Fact #4: This prosecution was for the alleged misapplication of the use of Obstetrical forceps as it related to indication and **never once** singled out the various types of forceps deliveries, which is determined by station of the fetal head. Yet, in their Determination, the Committee chose to separate out high and midforceps over and against the other, and far more common types – low and outlet. This simply does not make any sense and was never clarified anywhere. This leads into the next fact.

Fact #5: Remember, Richard Aubry had this disturbing form of professional jealousy towards anyone who was able to perform advanced forceps deliveries, such as midforceps and midforceps rotations. This fact about the man is without question and was amply established above. As you read the words of the Committee, see if you can detect the residue of Richard Aubry's jealously as they parroted what he likely wrote in his secret complaint letters by using such cheap-shot language towards my practice of medicine while also specifically targeting advanced forceps use in their Determination. This Committee had the nerve to insultingly equate my implementation of this skill as someone who was ***"overconfident", "deriving satisfaction"*** and apparently showing off instead of doing what was not only indicated given the documented clinical circumstance but was also best for the patient. Yeah, sure, I am going to flex my "bravado" in order to get a "thrill" as a practitioner of Obstetrical forceps outside of the proper indication standards and expose my own multimillion dollar career and practice to unnecessary liability should there be any adverse event just because I wanted to show off? How preposterous and without an ounce of foundation other than the childish rhetoric that had to have been contained in the complaint letters sent by Aubry. Just go back and look at the document we do have that he wrote in relation to my advanced use of these instruments when he penned the six month hospital review (**Exhibit G1)**. I would have preferred to never use forceps if possible since each time I did use them, it was always accompanied with a certain degree of professional trepidation knowing the seriousness of their use in relation to ensuring a favorable outcome for both the mom and baby – which is THE ultimate goal of any assiduous Obstetrician. However, since it was clearly an advantage in nearly every circumstance to offer forceps to the patient, I was not going to eliminate it as an option given this skill I had worked hard to obtain and had most assuredly established my competency with. This personal attack pertaining to their use was just revolting to read but again, all part of the campaign to win at all costs, even at the expense of my character and integrity as a physician not to mention being publicly humiliated and disgraced on a lie.

Fact #6: Note, as you read, the fact that the Hearing Panel/Committee further indicts my use of forceps given their erroneous conclusion that I somehow violated a hospital suspension order. There can be no doubt that the extent of their penalty was entirely influenced by this one invalid assumption. It is clear in their writing. **Much** more on this below.

The Hearing Committee's entries concerning their "justification" and imposition of my penalty are as follows: (please note the underlined parts as they are very important to what is to be discussed afterwards)

> **Page 51: "Although he appeared sincere, knowledgeable and dedicated to his profession, several aspects of his testimony were troubling. Respondent demonstrated a capacity to perform prohibited actions in that he admitted to using forceps on multiple occasions in a hospital during a period when the hospital had suspended and/or limited his privileges to do so.**
>
> **Page 53: "Respondent was not charged with inadequate skill or knowledge in the use of forceps. Rather, he was charged with performing a forceps operation without adequate medical indications."**
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> **Pages 63-67:**
>
> **DETERMINATION AS TO PENALTY**
>
> **The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license should be suspended for two years; however, after 30 days of actual suspension, the remainder of the period of suspension should be stayed provided that Respondent complies with certain terms of probation. The Committee determined further that Respondent's license to practice medicine as a physician in New York State should be permanently limited to prohibit him from performing high forceps and midforceps rotations or deliveries. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension, and/or probation, censure and reprimand, and the imposition of monetary penalties.**

The Hearing Committee believes that Respondent has the requisite knowledge and skill to practice medicine safely, but that he has repeatedly failed to exercise the care that a reasonably prudent physician would exercise under the circumstances. The Committee sought to fashion a penalty that would permit Respondent to continue to practice his chosen profession while ensuring the safety of his patients.

The Committee feels that 30 days of actual suspension must be imposed to provide a period of time during which Respondent can reflect upon his prior misconduct and redirect his energy and focus towards practicing medicine within the accepted standards. In addition, Respondent's inability to practice for that period of time will serve as a penalty by having a significant monetary impact.

A suspension of Respondent's license, stayed after 30 days for the remainder of a two-year period provided Respondent complies with terms of probation, is necessary to ensure that Respondent practices medicine within accepted standards. In spite of his knowledge and skill, Respondent has managed the care of his patients in ways that expose them to unnecessary risk. Under the terms of probation, the Director of the Office of Professional Medical Conduct will be able to review Respondent's professional performance and take action if necessary.

The Committee believes that Respondent's license to practice medicine must also be limited to prohibit his from performing high forceps and midforceps rotations or deliveries. Although midforceps operations are within the accepted standard of care under appropriate circumstances, Respondent's conduct shows that he does not recognize the risks associated with their use. Respondent professes great skill in using forceps and seems to derive satisfaction from exhibiting this ability. His judgment concerning whether the appropriate circumstances for forceps use exist, however, appears clouded by his desire to display his professed ability. An example of Respondent's impaired judgment in this regard was evidenced by his persistence in

performing midforceps operations in a hospital after his privileges to perform that operation were suspended. Respondent had other viable options to safely address the medical circumstances of his patients; however, he blatantly disregarded the terms imposed upon his hospital privileges, professing to do so out of necessity.

The Hearing Committee recognizes that this limitation will remove one tool from Respondent's armamentarium; however, a cesarean section is an acceptable alternative. The reality is that many obstetricians practice safely within the accepted standard of care without performing midforceps operations. The Committee unanimously determined that Respondent's over-confidence and his unwillingness to alter his use of midforceps strongly dictates the imposition of a prohibition against their use.

The three sustained specifications of gross negligence, taken separately, would warrant the suspension and probation imposed. The sustained specification of negligence on more than one occasion, considered separately, would also warrant the suspension and probation imposes.

I am speechless as I go through those statements and underline the parts that I did. Where does one start? I suppose one could point out the favorable words that seem to be a bit misplaced within the condemnation of my practice of medicine. Words like, *sincere, knowledgeable, dedicated, has the requisite knowledge and skill to practice medicine safely.* Doesn't this all seem a little oxymoronic with how they would then go on to characterize those descriptors? Like stated above, ad nauseum, both the actual written standards that were in evidence and my demonstrable history of proper use, (not to mention accurate and substantiated testimony for all other charges as well), were all available and before them when rendering this illogical and patently fictitious conclusion. Instead, they chose to ignore everything truthful as part of some mission to apparently teach me a lesson. Yet, I really don't think that even the Hearing Committee knew the full extent of what they had just done to my life and career by bringing in the planned verdict. For all they knew, I was getting a nice smack on the rear where, after two years, I would be back to where I started, albeit without said privileges on my license for these highly specific and relative rare types of forceps procedures. Little did they know what ramifications all of this would ultimately have, while others behind the scenes knew all too well what this would eventually mean for me.

Standard of Care and proper medical indications

I have already proven beyond a shadow of a doubt (possibly to the extent that you are perhaps getting tired of reading it) that whatever so-called "standard" I was allegedly guilty of breaching was never once formally established for the Committee to then be able to speak to it as part of any Determination of guilt. Don't forget where the burden of proof lied. Therefore any adverse finding stemming from **anything** concerning *Standard of Care* or *adequate indication* as it applied to Obstetrical forceps, (their main charge in these proceedings), is entirely invalid and should be vacated immediately.

Punishment on Paper

For the **utmost purpose** of this petition, it is essential to now examine the level of punishment this Committee stated was justifiable and therefore imposed under the circumstances. Take away all the bogus claims and look specifically at what penalty they, (in their own words), ***"reached upon due consideration of the full spectrum of penalties"*** and ultimately ***"imposed."*** I'll list them.

1. Two (2) years license suspension, the remainder stayed after serving 30 days.
2. License permanently limited from performing High and Mid forceps deliveries.
3. Thirty (30) days of monetary loss by being out of work on suspension.
4. Compliance with the terms of probation (which consisted of double malpractice insurance limits and a practice monitor) for two years.

It is vital to understand the significance of their intended sanction when they wrote, ***"The Committee sought to fashion a penalty that would permit Respondent to continue to practice his chosen profession while ensuring the safety of his patients."*** So, in other words, though they found adversely, they felt that after a short period of "reflection" and having to submit to certain terms of probation whereby my practice would be scrutinized like never before as part of some "indispensable" safety measure for my patients, I ought to be able to move on in life with my chosen career. Seems simply enough, no? Well, this is not even close to what happened in reality. Though I can't definitively say that the Committee necessarily knew the long-term implications of their penalty, I am certain others involved behind the scenes knew full well the devastation that was about to be unleashed upon my life, family, career and patients. I will prove it and will show that once again that both **intent** and **malice** were at the heart of it all.

Punishment in Reality

After fighting this lie for six and a half years from when it started in the hospital way back in September of 2001, I got the terribly adjudicated Appeal back from the ARB in April of 2008 where they not only turned a blind eye to the truth of the matter as well as literally every other contention made as part of it, but they also (punitively) added another year to my probation terms as well. Even so, it was finally over (so I thought) and I welcomed a 30 day break after literally being consumed by this calamity that entire time to the detriment of my family, finances, professional relationships, and health. And let me tell you how difficult and painful it was to have to uproot an extensive practice from a 7,500 sq. foot office space, having to somehow find a place for everything, including over 8,000 patient charts both active and old. It was a living hell. As for the license limitation, by this point in time and especially given how uncommonly they were even encountered clinically, I could care less about these advanced types of forceps procedures and just wanted to move on.

What wasn't evident when the ARB laid down their decision was the fact that four months earlier, the unlawful release of this information was already public knowledge. So, rather than April 2008 being the moment the public would have to discern the truth, my practice had already become essentially insolvent by this time because of the huge financial liabilities of the business and a substantial loss of revenue. So, even though I had a thirty day "vacation" so to speak, there was nothing for me to return to because it had already been destroyed, thanks to the mysterious person in the DOH who illegally posted the D&O. Thus, that intended thirty days of lost revenue was (from the start) already well beyond what the Committee had originally felt appropriate since I no longer had my million dollar practice because of what had previously been done, on top of what they would continue to baselessly do as the years went <u>forward</u>.

But, I could always go out and get another job as a physician somewhere else, right? Um, no. I was about to learn what the real target was in all of this by those who engineered it. And that would be my license being **<u>limited</u>**. You see, whenever you have your license limited in **any way**, even for something, (like this), that had absolutely no bearing on my ability to effectively and safely practice my specialty, you become a professional leper to virtually every entity in medicine. For example, at one point following this sanction, I sent thirty three letters to every hospital and many practices in a 100 mile radius seeking to find anything as far as employment. In fact, many of these communities had been desperate for years to find

an Ob/Gyn to serve their population. What became of that effort? Nothing. Here, with arguably the best clinical performance profile of any Ob/Gyn physician in the region, I wasn't even responded to, but by one entity who politely turned me down.

What's more, immediately after the ARB's authorization of the ruse, all of my insurance carriers for patient reimbursements dropped me as a participating provider. So, no matter how much I was capable of working as a physician, I was now unemployable due to not being able to bill for my services. As can be clearly seen, this license limitation would have sweeping ramifications that have plagued me to this day. Not only was I dropped by my insurance carriers, after several of them had deemed me to be one of their premier providers, I was also restricted from being able to apply to several of the local hospitals for staff privileges. You see, regardless of the actual insignificance of the limitation on my license, three of the four potential admitting hospitals in Syracuse have a policy that you can't even apply to the staff if you have **any** license limitation. No exceptions. Complete exclusion without any recourse. Frankly, I don't know how any of them can justifiably hold such a policy but nonetheless, this is how it is. But what about all the various temp agencies, (called Locum Tenens), that exist for doctors where they can find small assignments of work in areas of great need? Nope. Not one would even go so far as try to get me credentialed since the stigma was so great to overcome. I couldn't even get any work on an Indian Reservation the damage has been that bad.

I ended up initially being out of work for fourteen months before enormous efforts were able to reopen my practice on a very small scale. This was short lived due to a number of factors, not the least of which were the sanctions that had been imposed upon me – as will be briefly explained below. This six month window of life back in practice was followed by a two and a half year period of being out of work with an incapability of finding any sort of employment to try and offset the massive debt that had been incurred from a multimillion dollar practice defaulting on all financial obligations. My credit rating went from superlative to the worst that you can think of. I was also homeless during this time since there turned out to be yet another revelation in my life around this time, this one involving matters at home. Board Certified Obstetrician and Gynecologist – homeless, penniless, jobless for thirty straight months. Yep, this sure was consistent with what the Hearing Committee laid out as their intended penalty. Only after my divorce was final in January of 2012 was I able to finally finance the re-launching of my practice in June of that year **but only** after I was able to miraculously meet the oppressive stipulations set forth in the Order.

These just mentioned consequences of the license limitation were just a drop in the bucket of the massive fallout I (and others as well) sustained as a result of this Determination and Order. How can one place any sort of value on the tranquility and security produced in the heart of a child from a solid and complete family unit? Or how about five children for that matter? The answer is, "You can't." What my children have been subjected to by what you, OPMC, did to their father and their family is unconscionable. I will never ever get that time or their peace back as it has altered who they have become. There is a great deal inside of me that wishes to scream at you, "how dare you do this!"

As mentioned, the other terms of the probation were just as destructive and repressive to any chance of being able to successfully practice again. First, there was a requirement to carry double the standard liability limits on my malpractice policy even though not one patient was unduly hurt and not one penny was ever sued for or obtained as part of the cases involved in my prosecution. The problem – there is but one private insurer in all the United States that is capable of writing such a policy. I wasn't able to find them until reopening my practice for the second time in 2012 where the premium was still substantial. Prior to that, when I reopened it in 2009, the only policy obtainable at that time was through the "insurance pool" in New York City. This is equivalent to a horrible driver having no choice but to pay a massive monthly premium in order to get automotive insurance. Where my previous premium before any of this for my entire specialty was $45K per year, it was now $165K if I wanted to practice full Ob/Gyn. Since this was way out of the question, I had to reduce my practice to Gyn only where the premium was still over $60K a year. This was a very difficult premium payment to make considering the very slow return of patients added to a medical billing company who failed miserably to efficiently keep the flow of reimbursements coming in. They have since gone out of business. And all of this was on top of the fact that I was only able to get three of the almost dozen different insurance carriers back as a participating provider. Therefore, the conditions were essentially way against me being able to sustain this otherwise very low-cost, new practice endeavor and thus fulfill what the Hearing Committee seemed to think was an easy stroll off into the sunset after initially taking a little spanking.

To make matters even worse, the one stipulation that proved the most difficult to overcome was the requirement for a practice monitor. This had to be a colleague who, if approved, would become an agent of the Department of Health and would then be obligated to come to

my office once a month, unannounced, to review my medical records for patient care. And then every quarter, they were required to send in a lengthy written report to the Board of Professional Medical Conduct regarding my care in great detail. The problem – no one would dare step up and do this for me out of fear of reprisal. Sure, I was able to get a colleague to agree in 2009 for that six month stint before not being able to cover my malpractice premium and thus having to close the practice for what I initially thought would be for just a month or so. Well, because all the parameters to be able to sustain an active practice essentially reset themselves due to this closure, it turned out to be the two and half years mentioned above before I could once again put it all together.

After this second period of time out of work, not one colleague (of many asked) would agree to expose themselves by helping me, including the one from 2009. You see, it should be readily obvious to the reader by now that Richard Aubry had an inside connection to the DOH such that he would be able to know who was functioning in that capacity for me, not to mention being able to use OPMC as he wished if he felt the need to stir up trouble in their lives as well. In fact, at one point in time, one of my long term colleagues did indeed agree to help me. But when I sent him the documents to fill out for the State and followed up with him after not hearing back, he suddenly wasn't able to help me after all – citing a pretty lame excuse as to why. I could read between the lines by understanding the real reasons and certainly didn't want any badness to come upon his career for my sake.

You see, as was explained way above when trying to characterize just how abusive this monster of a man truly was with his position and authority, Richard Aubry had many a doctor practicing and living in fear for what they all knew he was capable of doing to them, especially after what they saw him do to me. It was not a secret by this time because, remember, I had put the entire truth of the matter out for public consumption and made it clear as to who all was responsible. I'm not saying that that was the right thing to do, but at the time, given the fact that I was surely experiencing post traumatic stress of some sort, not to mention having just been blindsided by the illegal disclosure of my D&O by the Department of Health insider working with Aubry, I felt it necessary to speak a truth that this community needed to hear, especially since at the heart of it all were substantial deficiencies in both the quality of medicine for the community and the proper training of the Resident physicians that was being perpetrated by the Department of Ob/Gyn at Crouse/Upstate Hospitals.

Though I have rightfully singled out Aubry as the primary instigator in all of my troubles, it would be incomplete of me not to at least mention another significant player in all of this who operated mainly in the shadows of what Aubry was doing but was equally as influential. This would be Robert Silverman, Aubry's cohort at the Perinatal Center who is now, (big surprise), the current chairman of the department of Ob/Gyn at Crouse/Upstate Hospitals. The word around the Ob/Gyn community from a few of my colleagues is that Silverman has a relative who works inside the Department of Health in Albany. It could be wrong but the person who told me was pretty certain themselves. Perhaps that was the connection all along and Aubry readily tapped into it. Should this be true, it would certainly explain a great deal as to how my whole OPMC experience could not only be so extensively corrupted in every manner possible but also gotten away with as has most definitely been the case. Need I relist all of what you have read so far that pretty much confirms this? Remember my complaint from 2002 that has been scrubbed? Silverman was also named in this document as well. So, ironically, much to Aubry's (and likely Silverman's) advantage, by me calling them out in public for what they did, everyone now knew ***who*** to fear instead of learning the hard way that crossing either of them meant potential destruction upon their lives and careers.

It wasn't until a fateful night at two of my children's high school band concert that I ran into Dr. Ryu, who I hadn't seen in a long time. He and I were medical school classmates where he remained in Syracuse to train while I went to Michigan. He had become one of the darlings of the Ob/Gyn establishment in this community and rightfully so because of his exceptional ability as a physician. I was desperate to get back to work so I approached him about possibly helping me as my monitor. He not only agreed saying, quote, "Someone has to help you, Jim.", but he also revealed something very important to me that night as well. First, I was grateful for such empathy and then even more so for his honesty. It was this conversation at the high school that night where he then told me about how back in 2008, while still the Chairman of the Gyn QA Committee, he was approached and then refused to alter the already favorable chart reviews for those cases that would eventually make their way to Albany anyway as part of my eventual 2014 prosecution. How could I even be surprised?
I knew and even apprised him that the heat would be on him to help me just as it had been applied to the previous colleague who agreed and then suddenly backed out. However, if there was one single doctor in this entire region who could/would stand immune to the machinations of Richard Aubry, (or Silverman), it would be Dr. Ryu. He was essentially untouchable by these creeps given his distinguished history in the department as well as the

prominence of his group in the hospital. Yet, he would go on to tell me that as soon as he agreed to help me, it was not only immediately known to certain parties in the department, but he had a great deal of pressure put on him to forgo doing so as well. He did not back down and because of his willingness to do a good thing, I was ***finally*** able to meet the stipulations of my Board Order and reopen my practice in June of 2012. Yet, prior to that, I had been relegated to remain homeless and penniless because of my **steadfast compliance** with that very Order which had been set forth in the Determination. This is important to remember for what I need to discuss relative to this compliance issue a little below when detailing the circumstances of my 2014 OPMC prosecution.

As an aside, just because Dr. Ryu was a former classmate and longstanding colleague, he by no means abrogated his duties to the State by offering cursory analysis of my medical care. In fact, I appreciated how seriously he took this assignment which is what I readily desired in order to show the State that my practice of medicine could withstand the utmost of scrutiny, which it got. I give Dr. Ryu a lot of credit for his integrity. And what's more, he did this huge act of kindness for me for no remuneration, which is otherwise standard for monitors.

What **must** be said here and now is the following. During the ***thirty months*** of detailed analysis and inspection by both practice monitors of essentially every single patient I cared for, I know of **not one** case where my care was deemed anything but acceptable and appropriate. Certainly, there were a number of engaging clinical discussions where we each learned from each other but nothing was outside of that which a reasonably prudent physician would do under the same circumstances. In fact, with how much respect I have for Dr. Ryu, it was a privilege and an honor to hear him tell me one day that by reviewing my charts, he not only emphatically felt that my medical record keeping was "impeccable", but that he had also learned a great deal concerning patient care nuances that he had previously not held himself. The educational benefit was mutual, that's for sure.

With all that said, however, my efforts still didn't translate into anything of a fruitful practice whereby I could then claim any sort of income. This was because of the burden incurred by the untenable sanctions imposed by the State Medical Board. So, with these being the terrible conditions by which I was allowed by the State to operate my business even back before reopening in 2012, I wrote the Board of Professional Medical Conduct in December of 2010 seeking a modification of the stipulations of my probation in order to have a chance of

successfully sustaining the practice. In fact, two letters were written to BPMC around this time. (They can be found online as well) Though I felt the argument in these letters to be compelling, the response of BPMC was to deny my request stating that I failed to demonstrate a tangible connection between my sanctions and my condition. Ok, sure. Frankly, the demeanor of this agency, (again, that being you, BPMC), was essentially heartless when it came to my plight. But are you surprised after the 109 pages of incontestable examples written thus far in this petition?

Also in late 2010, I sought potential employment as a Laborist with a hospital in Utica, N.Y. I personally met with the Chief Medical Officer and explained my plight to him. He was a good man who embraced what I had gone through and championed my cause in trying to obtain a position on staff at the hospital. While I was in the process of credentialing, which was actually moving along favorably, I happened to have a conversation with a former colleague who still worked at Crouse Hospital where I briefly (and foolishly) mentioned that I was hoping to get on staff at this one hospital. Hmm, some colleague. Because, soon thereafter, Ronald Stahl, M.D. the recently ousted Chief Medical Officer at Crouse and one of the original four who was party to the departmental lie and railroading back in 2001, apparently put a call in to this Utica hospital whereafter my application was essentially scrubbed. You see, those who perpetrated this scam were hell bent on keeping me down and out for as long as they had any influence over the matter. And why wouldn't they? After my practice closed, everyone in town got an immediate injection of patients from the almost four thousand active ones in my practice that were now left stranded after losing their doctor. Even though I have been highly critical of this man, (Stahl), it must be clarified here very briefly as to his entire role in my life since 2001.

In mid 2007, after the dust had settled with those at Crouse Hospital, I needed another expert for the second Hearing that summer to speak to two more cases that had since been added onto the previous list of cases from the 2005 Hearing that was thrown out. With virtually everyone not wanting to get involved, my attorney queried Stahl, (who had left clinical medicine altogether for hospital administration), as a last resort to see if he would be willing to help. It's hard to explain his personality but for a very small window of time, this guy actually did a good thing and testified on my behalf at the second hearing. He was essentially a political "yes-man" who claimed he had no idea that matters for me had downspiraled that profoundly since the hospital MEC Hearing. In fact, I believed him since Aubry was the real culprit in all of these additional misgivings. I believe Stahl's role in the original case was more out of spineless obedience to the

power than really anything else. You know, the type of guy when you shake his hand, it's like grabbing a wet fish. I don't think that he really disliked me outside of being ordered to dislike me. This is just always who he was. So when asked by my attorney, he actually agreed to help and his testimony turned out to be solid and wholly consistent with the medical record and the science of Obstetrics for the limited amount of testimony we needed him for. It was not a surprise, however, to see the Hearing Committee place little weight on his testimony because they had to. So, despite his temporary assistance in 2007, being the company man that he was, Stahl soon fell back into place as an adversarial element in my dealings with Crouse Hospital when they pulled that second sham on me in 2008. As you can see, this entire thing was such a disaster no matter how hard I tried to overcome it.

After I reopened my office in June of 2012, these same practice conditions were still in place since the three years of probation are clocked for active practice only. By this point in time, I had only been able to work for six months out of the previous four years due to what was done to my license and career. In 2012, I had several patients who desperately wanted to return to the practice but couldn't due to a continued non-par status with their insurance company (and many others) secondary to the license limitation. This, in addition to not being able to obtain hospital privileges, fueled my second attempt at achieving a modification of this Board Order that was essentially killing my practice and more importantly, my ability to support my five children. Everything had been lost by this point in time. Gone was a million dollar house that I had waited my entire life to not only build, but completely designed myself as well as overseeing its entire construction (as this has always been an outside interest of mine), that had to be literally given away after it was 95% complete. Never got to live in it one day. Gone was my 401K and all of my children's college funds. Little was spared outside of the home that my children had lived in since moving to Syracuse – thanks only to the ridiculous munificence extended to my family by the local community bank who held that mortgage, knowing all that we had been going through. Otherwise, my children would have also been out on the street thanks to OPMC and their handler, Richard Aubry.

So, in July of 2013, I wrote a thorough and compelling modification argument for BPMC to reconsider providing me, (once and for all), with the relief necessary in order to be able to actually fulfill the Hearing Committee's original Determination premise that I be able to carry on in practice. **Exhibit T** is the Statute that spells out my right to file that petition as well as the one you

are reading right now. It is submitted for all to see that not only have I met the criteria set forth in the language of that law, but that **YOU**, BPMC, had an obligation as well to act on such a request. **Exhibit U** is submitted in three parts. **U1** is the certified mail receipt to make sure you can't claim that you did not receive my 2013 petition. Note the date, ***7-15*** written on the card that would be for when it was sent in July of 2013. **U2** is the actual petition with a proposed agreement that would have enabled me to get my insurances and hospital privileges back. And **U3** are the material documents that supported the petition which were also the fulfillment of the conditions BPMC stated in my previous attempt were not met. I really encourage the reader of this petition to read what was sent to BPMC in 2013. It speaks volumes as to the oppressive conditions I had been under as well as the continued mistreatment I received from this despotic State agency. Let us now examine how well you upheld your end of the law after receiving this appeal, Mr. Servis.

Again, as part of this 2013 petition, I addressed each and every point and condition that BPMC made in the previous denial as not having been met in order for you to consider modifying my Order. In addition, by this time, you also had **over eighteen months worth** of practice monitor reviews that demonstrated, without question, what you knew all along about my ability as a physician, which was the fact that my patient care had been consistently deemed appropriate and acceptable without a single instance of concern while under a level of scrutiny few doctors could withstand, while simultaneously receiving such high marks for proficiency. In other words, you had no argument against what I was rightfully seeking as provided in the law itself and based solely on factual material evidence.

Even though I laid out a case for BPMC to consider that was completely justifiable, the component of my petition that ought to have compelled you, BPMC, to act as swiftly as possible was my plea as it pertained to my children. I essentially begged you for relief and specified that time of response was of the utmost importance as the practice was consistently on the edge of failing. To provide an even greater perspective regarding the effect of this limitation on my finances, even ***after*** I was able to reopen the practice in 2012, consider the fact that my gross adjusted income for my 2012 and 2013 federal tax returns were -$57,000 and -$3,800 respectively. And those aren't just dashes to separate out the numbers from the text. Those are negative signs. 2014 wasn't much better.

So, what was your response to this 2013 petition pleading with you for help? How did you carry out your legal mandate upon receiving such a request? Well, that would be anyone's guess since it has now been eighteen months since it was sent and you still have not even

bothered to answer. So much for the urgency spelled out in that appeal. So much for BPMC/OPMC demonstrating any respect for the law and revealing any capacity to operate legitimately outside of what they had repeatedly made obvious as being one to violate every conceivable portion of this process so as to ruin my professional and personal existence. So much for your humanity. Really, Mr. Servis?

And as previously mentioned, Michael Hiser, the most recent prosecuting attorney working for the State, stated that even he was troubled by this blatant disregard of my petition by BPMC. But did anything change? Of course not. The only thing I received in response to that plea was the ramping up of a prosecution that involved those bogus cases sent **six** years earlier after they had been ruled appropriate by the Gyn QA committee but still somehow managed to grow legs and make their way to Albany. Six years these sham cases sat lying in wait for the right time for OPMC to once again bring oppression and destruction onto a career that was, by then, hanging on by a tattered thread. These cases were now going to be dusted off and used, on top of a new angle of prosecution that would prove to be my final undoing after sustaining this fight for thirteen years. More on this below.

The point in all of this discussion about the sanctions imposed upon my license is this. Despite there having been two Hearings in my case where I have more than amply spelled out the details on how saturated with corruption and patently wrong it all has been from the beginning, involving nearly every single component of the process, in the end, the punishment ended up being **way more** than what was originally intended. This is but one stipulation in the law that gave me the right to file those previous petitions as well as this current one. Again, it is quite conceivable that the 2007 Hearing Committee didn't fully appreciate the effect of their ruling on my ability to ever practice again as a physician. I tend to think not, though. However, there were parties who **did know** and they include individuals at both Crouse Hospital **and** the Department of Health. And after I pleaded for there to be any sort of relief even in previous attempts, I have been simply ignored. The word malice has been used numerous times in this petition to illustrate the motive behind ALL of this. However, it just doesn't seem enough anymore to describe the reality of what these people – OPMC, Aubry, Silverman, Badawy, Crouse Hospital – have done in these matters. Malice on steroids maybe.

I have contended that the ultimate goal of those who did this to me was to place a "limitation" on my license because those who perpetrate these sorts of things had the **foreknowledge** that

by doing so, it would ***literally*** destroy any hope of ever practicing again. In other words, I am claiming that it was ***INTENTIONAL***. "But wait!", you say. "What about the fact that you were found guilty of misconduct in using forceps and thus the limitation was legitimized?" Well, first of all, if after reading **any of this** you feel my prosecution or penalty was legitimate, then you are deluded. Furthermore, I have more than adequately established the fact that the limitation for the advanced forms of forceps makes no sense at all since the whole premise of the prosecution from the start was to take away ALL of my forceps privileges.

At first glance, one **might think** that by OPMC taking away only the extreme types by limiting my license for them, I had actually won in a sense because the forms I was allowed to still do comprised virtually 95% of all forceps cases encountered by the Obstetrician. I even thought this at first. But not so fast. By them only limiting the advanced forms of Obstetrical forceps, two things were accomplished. One, Aubry got his childish way by taking away from me what he was jealous of. And secondly, they knew full well that even this inconsequential and trivial limitation would have the sweepingly destructive effect on my career as evidenced by what you have learned did indeed come of it. So, in summary, they knew all along what they were doing. But ***intentional***? Did they really do this to me intentionally and thereafter purposely ignored any and all attempts to modify my Order, and specifically, the license limitation for this sole purpose of inflicting continued (and really permanent) injury on my life? The answer – most definitely!! Don't forget, not one case has **ever** been produced where my use of forceps caused the harm to any baby. It was all about "indication" remember? And we already know by now that even that was a farce. This is crucial to keep in the forefront of your mind as you read further. If this claim of "intentionality" were really true, then surely I should be able to show some sort of example or proof for that matter as to how I could declare such a thing. Well, sit back and get ready to read even more incredible information that is about to be disclosed to you.

Case of Marc Feiner, M.D.

Who is Marc Feiner, you ask? This man was an Ob/Gyn from the Utica, NY area (I believe now retired) who, ten plus years ago, used forceps to deliver a baby where he was so reckless and incompetent that he literally committed manslaughter on this poor child. I am intimately familiar with the case because the family who lost that baby are close personal friends of mine, not to mention all extended members being patients as well, including the mom who would eventually transfer to my practice and have her only live child delivered by me years later. Without getting too much into the horrific details, what this man did to this baby and

the injuries sustained by her were THE MOST vicious thing I have ever seen in medicine. I saw this otherwise perfect little baby girl while she was still on life support, though brain dead, with her bilateral mastoid bones (behind the ears) sticking out of the skin, his delivery was so violent. To make matters even worse, there was word that he had devastated the life of another baby by his use of forceps as well. Moreover, this man went on to further establish the rotten nature of his character by how he and his lawyer launched a smear campaign against the beautiful and upstanding mother in the first case (whose baby was mangled by him) after she sued him. What's sad, he wasn't even her doctor and was only covering that evening where he was so impatient because he had a previous engagement that he rushed the delivery, of a premature infant no less, in order to get out of there. The loss to that family has aggrieved them to this very day and, of course, will forever.

Of course, OPMC would soon get involved since such a case is impossible to avoid an obligatory reporting to the State because a death had occurred. Knowing what OPMC did to my license by limiting it for not so much as even causing one bit of harm to any baby, it would seem that Feiner was really going to get it along these lines of license restriction for these procedures. Right? With definitely one and perhaps two babies having been victimized by this man, it would seem completely logical and furthermore, legitimate to take away **all** of this man's forceps privileges through a license limitation. No? So, what was his final penalty from OPMC – particularly in the area of license limitation? You know, the very thing that would stand to equally destroy his potential to ever practice again just like me? The answer: NOTHING. Not only did he strike a deal with the State by pleading "no contest", (which is not an admission of guilt), where he would only be on probation for a period of time, but he completely walked as far as the devastating imposition of a license limitation. Why? Because **everyone** in the know, of course, knows the effect of such a thing. Everyone in the know, which **included** OPMC. OPMC **absolutely knew** that by imposing any sort of limitation on a physician's license, it meant that he/she would ***find it difficult to seek employment in the future.***
But hold on a second. How could I say that OPMC ***absolutely*** knew such a thing? And if so, wouldn't that add an insurmountable quantity of weight to my previous argument that by knowing such a thing, they ***intentionally*** imposed a limitation on me with the sole purpose of inflicting long term harm only to then dispense with all efforts to modify that limitation in order to maintain the level of destruction upon my career? I am going to absolutely **prove** it, so hang on.

So essentially, (according to his Order), as long as Feiner attended a continuing medical education course on the use of forceps and vacuum and a practice monitor was able to review any future operative vaginal delivery cases (only), he retained all of these privileges in regards to his license by ruling of the State. As a result of this completely incompatible and outrageously unpardonable Order having been handed down to Feiner by OPMC, he was otherwise fully permitted to use forceps at any time in the future with the only oversight being **subsequent** to their use and not prior. How is this protecting the public from a known offender? No pre-use consultation monitoring to ensure the public's safety. Nothing. No practice monitor for his entire practice, even – which was my sentence. Nope. Just a monitor requirement for any operative delivery – after the fact. This is despite him already having killed one and possibly another baby with them. I will repeat – **killed**. Not some nebulous "lack of indication" of their use that resulted in a ***permanent*** license limitation in my case without any standard ever having been produced. No, of course not. A baby was now dead because of him and his incompetent use thereof but yet, no license limitation for him. Does this make any sense? But you, BPMC, then had the audacity to not only impose the career ending license limitation on me for **NOT** having done **ANYTHING**, but then flat out ignored every effort to overcome the devastation because of it while simultaneously permitting this man to walk, scott free?

If the standard applied to me was applied to him, he should have had as a bare minimum, all of his forceps taken away with only vacuum left available to him. This limited use to that of vacuum only is the case for most practicing Obstetricians anyway, since probably 95% or more don't even use forceps. By killing a baby and possibly seriously injuring another with Obstetrical forceps, it should have been clear that he had forfeited his rights to use them, regardless of any educational opportunity or practice monitor.

In the Hearing Committee's own words on pages 65-66 of **my** Determination and Order in regards to having taken away my forceps privileges through the license limitation, they stated the following:

"The Hearing Committee recognizes that this limitation will remove one tool from Respondent's armamentarium; however, a cesarean section is an acceptable alternative." This is a monstrous double standard. But still, no license limitation for Feiner, yet we all know my plight and the end result thereof. Yep, my baseless penalty was ***INTENTIONAL*** alright and there is nothing in this universe you, Mr. Servis, (and your dubious leadership of BPMC), can offer to offset this reality of what you did to me and continued to do to me as you chose to ignore my subsequent pleadings.

I offer **Exhibit V** which is the 2003 Board Order for Marc Feiner, M.D. Look at it. All he got was a censure and reprimand and three years probation. No thirty day suspension (in order to "contemplate" his actions), no fines, no limitations in his license. Essentially, **nothing!** Plus, look at how they disgracefully minimize what he did to that poor unsuspecting baby girl (using the heartless word "fetus" no less) with the following wording, ***"Respondent delivered Patient A's fetus by forceps, which resulted in, among other things, bilateral subdural hematomas in Patient A's fetus. Respondent's obstetrical care of Patient A failed to meet the accepted standards of medical care in the following respects: 1. Respondent failed to perform a competent and/or appropriate forceps delivery of Patient A's fetus."*** "Among other things?" How dismissing of what truly happened in this case. He massacred that baby and what became of all of this for him? He went back to work and enjoyed the fruits of his profession.

Oh, and I almost forgot. Just look at who the Prosecuting Attorney was for the State as well, in this matter. Uh huh, Timothy Mahar. I'm sorry, but I must once more specify what a reprobate this man is, as well, for his role in all of this. Intent and malice **proven** once again concerning this awful man when examining what he did to me. Yet, this is not the proof I just mentioned above about them having preexisting knowledge of the devastating effects of a license limitation in order for them to try and claim that they "didn't know". That's coming up. If anyone were looking for any sort of legal precedent in support of my petition to have my license limitation modified as I proposed in that 2007 modification petition, this is the exemplary example. Yet, by this standard along with everything else presented here, a vacatur is the only suitable option.

Practice Monitoring

I want to leave no issue uncovered in this petition. Therefore, the matter of Practice Monitoring, from an administrative imposition perspective, needs to be discussed – because EVEN this was subject to corrupt manipulation by OPMC and the Hearing Committee. If one were to truly examine the law as far as requiring any sort of monitoring of my practice, the following entry from the PHL 230 provides an interesting look at what should have been the case for me as opposed to what they indeed inflicted. And I'm going to use the Hearing Committee's own words to **prove** it. The Law:

17. Monitoring. (a) A licensee may be ordered to have his or her practice monitored by another appropriate licensee after investigation and review pursuant to paragraph (a) of subdivision ten of this section, **if there is reason to believe that the licensee is unable to practice medicine with reasonable skill and safety to patients.**

(c) If the committee determines that reasonable cause exists as specified in paragraph (a) of this subdivision and that there is insufficient evidence for the matter to constitute misconduct as defined in sections sixty-five hundred thirty and section sixty-five hundred thirty-one of the education law, the committee may issue an order directing that the licensee`s practice of medicine be monitored for a period specified in the order, **which shall in no event exceed one year,** by a licensee approved by the director, which may include members of county medical societies or district osteopathic societies designated by the commissioner. The licensee responsible for monitoring the licensee shall submit regular reports to the director. If the licensee refuses to cooperate with the licensee responsible for monitoring or if the monitoring licensee submits a report that the licensee is not practicing medicine with reasonable skill and safety to his or her patients, the committee may refer the matter to the director for further proceedings pursuant to subdivision ten of this section. An order pursuant to this paragraph shall be kept confidential and shall not be subject to discovery or subpoena, unless the licensee refuses to comply with the order.

We need to really look at what this section of the law is saying, as well as the proper interpretation thereof. This is a very important section to grasp and has huge application concerning this appeal, as if there hasn't been enough presented already to justify the cause. Let's get the obvious out of the way. Notwithstanding the fact the that the Hearing Panel actually **did** find for misconduct (although unfounded as you have seen) and thus one might immediately conclude that the ***"shall in no event exceed one year"*** stipulation in 17(c) might not necessarily apply to my case on the surface, it is clear that that subsection of the law is **only** intended to be implemented as follows:

IF** the committee determines that reasonable cause exists as specified in paragraph (a) of this subdivision **AND** that there is insufficient evidence for the matter to constitute misconduct…the committee **MAY** issue an order…..*for a practice monitor. The three KEY words are **IF**, **AND** and **MAY**. The legal permission to apply 17(c) AT ALL is **completely dependent** upon there being ***"reasonable cause" (thus the **IF**) as specified in 17(a) **AND** only in the context of insufficient evidence for misconduct whereafter the requirement of a practice monitor **MAY** be imposed. Otherwise, 17(c) is off the table altogether WHEN there is **NO** reasonable cause, regardless of the issue of "sufficient" evidence or not for misconduct. In other words, the fact that I was found guilty for misconduct is irrelevant because the "insufficiency of evidence" provision is rendered moot should there not be reasonable cause as specified in 17(a). Ok, so what is this ***reasonable cause*** that this entire matter of practice monitor is contingent upon? Well, let's look at 17(a) again. The reasonable cause for there to be ANY sort of practice monitor imposed and for 17(c) to ever even be considered is contained in the language, ***"if there is reason to believe that the licensee is unable to practice medicine with reasonable skill and safety to patients."***

So, in other words, ONLY when OPMC determines that the licensee is UNABLE to practice medicine with reasonable skill and safety to patients (thus the ***reasonable cause*** requirement) is a practice monitor allowed to be imposed as a punishment or sanction or probationary stipulation. Notice the use of the word, **"may"**, in 17(a) as well. So, even if there was reasonable cause, the law still doesn't mandate that there be a practice monitor. If, however, we were to apply 17(a) in the reverse, it would also legitimately read as follows: ***"If there is reason to believe that the licensee IS ABLE to practice medicine with reasonable skill and safety to patients, then licensee may NOT be ordered to have his or her practice monitored by another appropriate licensee".*** The law is pretty darn clear.

So, with all that said, what did the Hearing Committee state again in my Determination and Order as far as this issue of reasonable skill and safety to patients for James R. Caputo, M.D.? As entered above on pages 82-84 of this petition, they stated the following, **"The Hearing Committee believes that Respondent has the requisite knowledge and skill to practice medicine safely…"** Yet, to be fair and upright, they followed that sentence with a litany of disparaging comments about my clinical practice, not the least of which was their repeated condemnation of my use of forceps during the six month hospital sanction that we all know by now was unduly imposed in the first place. In fact, it should be abundantly clear that any

and all criticism by the Hearing Committee in their penalty statements submitted on pages 82-84 were completely unfounded and thus are (in reality) completely not applicable when considering this discussion of the law concerning practice monitor as well as the foundation of this entire vacatur petition.

So what is the point in all of this Practice Monitor discussion? Well, first of all, given the fact that the Hearing Committee stated themselves that they felt my practice was skilled and safe certainly upends the "reasonable cause" clause of 17(a). There is no doubt that the disapproving language that followed that statement (unfounded as it was) was what they used to justify the monitor. However, with there being no one hurt in any of these cases as a huge mitigating factor, it is my position that the **MAY** in 17(a) and/or 17(c) ought to have been more in play by them either not imposing a monitor at all or at most one year – again predicated on the erroneous fact that they found adversely. Just take a look at the monitor imposition for Marc Feiner by comparison. His monitoring was limited to his use of operative vaginal delivery only and **not** his entire practice even though his verdict was essentially on the same subject matter as mine – with an **infinitely** (you know, *infinity* being a pretty big number) more justifiable basis. So, as long as Feiner avoided any sort of operative vaginal delivery, he did not require a practice monitor. If my monitor requirement was for that same limited application, I believe it would have been considerably easier to find someone to monitor me based solely on the amount of work alone this would have spared the monitor in having to complete. Instead, I was forced to wait thirty months in order to reopen with my monitor because the numerous individuals I had approached prior to Dr. Ryu all politely declined. Oh, but there were other cases as well outside of forceps in my prosecution that they found adversely for that justified the placement of the monitor requirement. Nonsense. None of it was valid. Not one bit.

Remember, since the law states that the practice monitor was something that MAY be imposed, ought not the penalty for me have been, (given the precedence in the Feiner case, which occurred BEFORE my case), simply the same CME requirement and nothing more? In fact, I did in fact comply with such an order for CME from the hospital back in 2001 since this was a mandate imposed as part of the six month action on my privileges, which again, I was fully compliant with, even to this extent. The Hearing Committee knew and even stated that I had the requisite ***knowledge and skill*** to use forceps since again, all of these cases were executed without any flaw on top of the fact that I had dozens upon dozens of cases proving

that I knew how to use them with great skill as opposed to Feiner – who took the life of a newborn baby. The Committee's beef with me was indication of use and not anything else. Did they really need to limit my license in order for me to learn my lesson in all of this over and above what would have been gained through CME if the entirety of my prosecution was based on "supposedly" not understanding **when** best to use them? They felt that Feiner was able to go from killing a baby to proficiency by simply attending eight hours of didactic teaching of forceps without the need to limit his license or demonstrably prove to someone that he was mechanically skilled enough to actually be allowed to continue using them. So why then was there this the huge disparity between the two of us in relation to the penalty imposed? Do I really need to ask that question? I'll give you a hint. Malice and Aubry.

I am going to repeat this so that it remains patently clear. When examining the words used by the Committee in order to understand what might be their excuse for having exacted this degree of punishment, wholly inconsistent with what they meted out to Feiner, it is **without question** tied to their condemnation of what they were certain was my violating the six month hospital restriction. This was **THE most aggravating** factor in all the language set forth by the Committee in their Penalty section of my Determination and Order. Don't forget this last point as it is the **cornerstone** of this petition, in addition to all else provided being equally as strong components of that rock solid foundational basis for what I seek. Hang on, we are almost there. The ***big one*** is soon to be presented. Yet, when examining what has just been presented on the subject of Practice Monitor, the fact that they imposed as harsh a penalty on me further establishes the fact that all along, those involved with my case had an agenda to do whatever was necessary, including malicious intent, in order to ensure that my medical career was toast..

Truth Summary: I have disclosed a great deal of information in this section on the **reality** of what my penalty was over and against what the Hearing Panel had intended. It should go without saying that NONE of ANY of this entire prosecution should have happened to my professional career. Nonetheless, I fought the good fight knowing the fix was in. But after living through it all on top of putting together all that you have seen in this document, not even I realized at the time just how deep that "fix" really was on paper. I at least thought that by it finally being over in 2008, I could finally look up without seeing this seemingly never ending black cloud hovering over my life so that I could simply move on hoping the wounds would quickly heal. But as you can see, those engineering this thing had other intentions. This whole thing was all about total destruction and that is what they got.

You, Mr. Servis, and your OPMC, by allowing yourself to be used in this manner and then taking the ball and running with it, took away my livelihood! Over what? The fact that someone was able to twist the facts and state that I performed certain procedures flawlessly but did so outside of how or when ***they*** would have done them, even though they ***don't even*** do them? Seriously? Well, that's what you did and this entire document has proven it **resoundingly**! Not only was this entire ordeal unfounded from the start, I had plenty of recourse, at least at the modification petition level, to seek some sort of relief after the fact. The first attempt was shot down as not having risen to enough of a level of proof that my life was in shambles as a result of the imposed Order having far greater negative effect than originally proposed. You didn't care. You were still collecting your paycheck. You didn't have to live below the poverty level. You were able to (somehow) sleep at night. Why bother doing your job when simply snubbing me was so much easier and all the more delightful?

Therefore, by resubmitting what I would consider a bullet proof second petition, the only answer BPMC could muster was to not only simply ignore it, but to also ramp up another malicious prosecution since there was no way of refuting the contents of that petition. In other words, that petition left no room **but** to accommodate my request which would have enabled me to potentially reach practice success once again not to mention, properly provide for my children. But this was counter to the overall plan so, the response was to set it aside, (just like we have seen with my 2002 complaint to OPMC regarding the initial sham peer review at Crouse Hospital), and then pull six year old cases from your back pocket in order to put me out once and for all. Again, the evidence speaks for itself. Shame on you, Mr. Servis and your whole organization.

QUESTION: Given all that has been presented here concerning the reality of what I experienced as far as penalty over and against what the original intention was by the Hearing Committee, in addition to the case law cited in the Feiner matter that confirms that my license limitation was NEVER justified from the beginning, as well as the misapplication of the Statute governing the imposition of a practice monitor based on the Committee's own language, not to mention the repeated petitions to have my Order modified with substantive material evidence to support such an effort (only to be disregarded), is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my

case? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no** investigation, prosecution and/or penalty whatsoever. Additionally, do not these arguments represent "**circumstances which have occurred subsequent to the original determination that warrant a reconsideration of the measure of discipline"**? This was the foundation of my previous two appeals to you with still no answer after the latest.

2014 OPMC Prosecution

Stepping back a bit, after the negative 2008 ARB ruling on my appeal and being out of work for nearly four years, save for a short six month period in 2009, it was such a good feeling to finally get back to practicing in June of 2012 doing what I spent half my life training for. I honestly thought that maybe OPMC would now leave me alone although back in 2010, there was a continued interaction with them concerning those most recent cases from Crouse Hospital that had been clandestinely sent to Albany as part of that institution's repeat sham peer review that also occurred in 2008.

Just as before, I not only provided OPMC with detailed accounts and clinical justification for each one of those cases, I also informed the then prosecuting attorney for the State, Cindy Fascia, of some of the goings on in the Department of Ob/Gyn at Crouse/Upstate that ought to have spawned an official investigation into some serious misconduct on part of those who both perpetrated it and were still in power. The previous (discarded) complaint from 2002 where an actual case file # was assigned wasn't sufficient enough to stimulate OPMC to follow the law by investigating EVERY complaint it receives. So, I figured something tangible as far as an egregious level of concern might finally provoke this agency to finally investigate this place as well as offset this latest act of aggression against my license. I even gave medical record numbers for the BIG case that we both know you (OPMC) are readily aware of. Ok, I'll say it here for the record – a case where Crouse Hospital intentionally euthanized (you can use the word *murder* if you want) a five day old baby to avoid a massive lawsuit for the most egregious instance of negligence any Obstetrician could ever (really *never*) imagine to see followed by a most despicable cover up. And you, OPMC, know I retain the actual records in this case for both the mother and the baby. Still, no justice for that child either, as with everything else involving this depraved department.

After sending this information to Ms. Fascia, for some reason, even though she made it clear in her correspondence to both my attorney and me that the DOH was seeking to revoke my license, I never heard back from her or the DOH…..until I reopened my practice more than two years later where she was no longer involved. I would like to think that perhaps she had a conscience. I could be wrong but I will give her the benefit of the doubt.

So, here in June of 2012, I was glad to be finally moving forward. Patients were happy to have me back. I was able to get on staff at St. Joseph's hospital after I was shamelessly browbeaten for over a year by them as part of the application process, even though I had enjoyed a staff position there for years prior to all of this – with a perfect clinical record. They, St. Joe's, are an entirely different story who, like their cohorts at Crouse Hospital [they all comingle with each other despite being separate institutions], chose, within three months being back on staff, to pull a sham peer review of their own on me that was just as disgusting as any other I had experienced (fervently driven by the hospital's notoriously spiteful in-house counsel) but beyond the purpose of this appeal yet readily presentable should the need arise.

Needless to say, that appointment at St. Joe's lasted only six months into early January of 2013. You were even aware of this matter as they tried to use you, OPMC, in the same way Crouse had by trumping up a case and secretly sending it to Albany that you had to eventually toss out (shockingly given your own history) because the facts were **that** blatantly in my favor. Apparently, there is a community-wide sham peer review playbook that gets passed around amongst the other malefactors that partake in these schemes as well. I speak to this matter for both completeness, on top of pointing out that there is a culture of moral turpitude amongst many of the healthcare leaders and administrators in this community that is not only sickening, but it also speaks volumes as to why there continues to be a substandard of quality and excellence, at least as it applies to women's health. Hey, wait a minute. Isn't it OPMC's mission to protect the community from this sort of bad medicine as well as moral fiber? Or is it really only select cases and select doctors depending on who is favorably connected to your office? That's right, it's all about who you know in this society and not what you know.

Nonetheless, it was the summer of 2012 and I was overjoyed to be practicing medicine again. I had even picked up in the operating room where I had left off years earlier as if there had been no break at all where several patients benefited immensely from some pretty complex surgical cases I was blessed to be the doctor for. I also had a wonderful nurse and secretary,

even though business was not so great. And then, just when it seemed as though life was at peace again….boom. I got served with papers from OPMC in early 2013 that they were once again investigating me for misconduct. I almost vomited. This time the agenda was clear. They (you) were going to stop at nothing in order to make sure my life continued to be miserable. Sure I was allowed a little reprieve, but that was apparently just a tease. The agenda this time around? To put me down once and for all. The angle? Well, on top of there now being only two cases from the 2008 ruse at Crouse Hospital, I was now also being investigated for having violated the terms of my three year probation that had been (unjustifiably) imposed five years earlier back in 2008.

Let's make something clear right here and now. I had no choice but to remain unemployed and literally, (this is no joke), penniless for nearly four years during the time it took to get my practice reopened in 2012 because I was UNABLE to fulfill the oppressively cruel probation conditions that have already been discussed, on top of not being able to find any suitable employment in that time due to the profound damage to my credentials. I couldn't get work anywhere using my medical school education because no one is going to hire anyone who has been labeled by the State of New York as having been found guilty of multiple counts of misconduct. The language alone is so damning. My only hope to get out from under the massive debt that had been sustained was to reopen my practice that I still had sitting there from 2009 waiting for me because of a landlord who defies the meaning of generosity and encouragement. He believed in my ability to get back and thus has extended more grace to me than anyone **ever** in my life.

During this time out of work between January 2010 and June of 2012, I still had my New York State medical license which was active and otherwise in good standing. I actually went on a surgical mission trip to Africa in June of 2011 as a means of serving others while trying to keep connected to my profession as I waited for the conditions to be such that I could indeed reopen the practice. ONLY when I was able to put together the stipulations, (double malpractice insurance, practice monitor) was I then in a position to reopen, after a mountain of other hurdles to get past as well, (including insurance panels), in order to be able to actually see patients and get paid. In other words, by **obediently abiding** by my imposed sanctions, I remained out of work and homeless. Remember, **because** of my submission **to** my Board Order, I had to close my practice in early 2010 due to the lack of cash flow to be able to cover my malpractice premium, which then led to the (unanticipated) thirty month layoff. I didn't

say, “to hell with them” and thus reopen my practice in defiance to what I had been required to do per my Order – like some doctors have chosen to do given their own dire circumstances as a result of similar punishment. This is important to understand as you read further. No, I waited, to my huge detriment, in order to be compliant with what we all know was a groundless and onerous set of conditions to begin with.

So, what was this new angle of having violated the terms of my probation all about then? Well, it all stems from an honest mistake on my part. During those thirty months out of work, a handful of times I helped various friends and/or relatives out with very limited needs concerning their health. I might see a friend one day who was experiencing clear-cut symptoms of a sinus infection where he needed to go to his doctor or prompt care in order to get better. Instead, I took his history including past experiences and allergies and helped him out by calling in a script for antibiotics so as to see his condition resolve. Remember, I had my license still and this was totally within my right and ability as a physician to do such a thing. In fact, there is not a single practitioner in the State of New York, (Physician, PA, NP), who DOESN’T do this on a regular basis. It is all part of life as a medical provider. Even retired physicians who retain their license even do this long into their retirement. They don’t need to be in practice or have liability insurance in order to do this. This is normal and by no means any sort of abuse of their license or the system. This should be absolutely clear to everyone reading this.

However, in my case, because I did not have double malpractice insurance as well as a practice monitor in place when I called or wrote those prescriptions, I was now technically in violation of my Board Order because by doing so, it was (by definition) “the practice of medicine.” Upon seeing the list of patients OPMC wanted records for, (which included both of my parents), it was clear as to this new angle of prosecutorial approach. I had no idea at the time of such a thing nor had I truly realized the potential pitfalls of simply helping a small number of individuals during those two years. I didn’t thumb my nose to the State by defiantly going outside of my Order by having done this. This violation wasn’t done knowingly or willfully. My writing those prescriptions was not done in bad faith. I had far too much at stake to commit such professional suicide, especially after having defended myself so vehemently all those years. Yet, as far as they were concerned, they finally had me. And they were right. I never even contested these facts. But when you look at the actual prescriptions themselves, they were all for simple one time scripts and not anything else.

I knew they were going to use this misstep of mine to hammer me. Should anyone be surprised with all that you have read so far? I wasn't worried at all about the two spurious patient cases that they had sat on for those six years. They were readily defensible. No, this prescription thing was their coup de grâce (their death blow) as far as their dealings with me after thirteen years of defending lie after lie. Needless to say, I was very concerned given what I already knew this agency was capable of doing. And frankly, from what I have since learned from the case law, it is my position that OPMC, knowing that these probation conditions are cruel and unfair to nearly every physician upon whom they are imposed, uses them to set up doctors for the very thing I got caught in.

The Case of Vito Edward Caselnova, M.D.

So, what did OPMC do with this new set of charges? Before learning how they once again scandalously declared themselves in their dealings with James R. Caputo, M.D., let us first examine if there have been any precedents in the past along these same lines of probationary violation. My sister, (God bless her), a former Assistant District Attorney, did a thorough review of the case law for me and sent a number of examples she was able to find. One of them says it all. I, therefore, submit here **Exhibit W** for consideration. This document is a 1997 Determination and Order for Vito Edward Caselnova, M.D. and stands as a crucial precedent in relation to my case with several extremely important facts contained therein.

The reader of this vacatur petition **must** review this Exhibit as a substantial foundation for my argument. The underlined sections speak volumes as to what I have been contending for thirteen years as being a malicious prosecution where, specifically, the Department of Health and their prosecutorial arm, OPMC, have gone above and beyond the scope and dignity of the law by persistently bringing devastation on my life and career – and without an ounce of justification.

What does this case tell us? First, here is a doctor who had the same probation conditions thrust upon him (practice monitor, double malpractice insurance) as I had. As you can see in this doctor's own words, these requirements were, ***"killing him"***, not to mention the fact that as a result of his prosecution, the Committee even recognized that he had suffered ***"significant humiliation from the loss of his livelihood as well as his home."*** I can completely relate to this poor soul's pain. Unable to find work anywhere outside of medicine

(sound familiar), he essentially **DID** thumb his nose to his probationary terms and proceeded to practice medicine full time without any of the required stipulations in place. This wasn't him simply writing a small number of harmless prescriptions for close friends and/or relatives. This was full scale medical practice, outside of his probation terms. And what was the penalty for this man for having violated his terms infinitely, (that's right, "infinity" again), more than what I was found to have done? Six months added to his probation, that's it.

Before I drive my point home in all of this, I want to direct the reader to notice some other pertinent facts about this document as well. Note how the Hearing Committee for this man actually showed themselves to be human and with a heart of understanding as to the devastation felt by this man. And note, Timothy Mahar was nowhere to be found in these proceedings. As stated, this Hearing Committee acknowledged the great humiliation he suffered and by also relating the fact that no patient was even harmed by his actions, apparently gave significant weight to this as well when concluding that he didn't deserve to lose his license.

By comparison, what was my fate as related to Dr. Caselnova's? Just as was the case for him, no patient in any of my cases (prescriptions or otherwise) was improperly treated or harmed. And my having written a small number of prescriptions were a fraction of the exacerbating circumstances involved with a violation of the same probationary terms that Caselnova had. And remember, when I asked the latest Prosecutor, Michael Hiser, months earlier what it was that they felt they had with any of these latest charges since I knew them to be totally fabricated? His answer, I repeat it once again, "I don't know. I am just following my marching orders from the higher ups." If this statement doesn't have even more significance than when you first read it way above, it will very shortly.

Clearly, this document concerning Dr. Caselnova establishes some serious foundation for what ought to be considered appropriate for a physician who may have fallen short on complying with their Board Order. I fully support the outcome he received. The Hearing Committee even speaks to how it would be unwarranted to have "**revoked"** his license as a result of his actions. However, if one were to look closely, there is an even more significant piece of information contained in the language. Under section #4, the Committee writes the following, ***"The Hearing Committee recognizes that it will be difficult for Respondent to seek employment in the future with a restricted medical license."***

Remember how I asked the reader the question just a bit earlier as to how I was **certain** and could also **prove** how OPMC absolutely knew that by limiting a physician's license it spelled doom to his/her career? Well, there you have it. In their own words and writing. This wasn't some limited understanding by an isolated group of individuals. This is a common piece of knowledge spoken to loud and clear in an OFFICIAL Department of Health/OPMC Determination and Order as to the HUGE consequences of such a penalty. They knew precisely what they were doing in my case, and I just **proved** it! You can never argue against hard fact. What they did to me was intentional, egregious, unprecedented, malicious, hateful, and I would contend, criminal.

So, as you can see, despite this precedent and the relative innocuous nature of my prescription offense, the Department of Health had different plans for me. So in May of 2014, I was informed that should I decide to take this matter to a Hearing, the State was seeking Federal level punishment for me. I was facing Federal fraud charges, criminal charges, hundreds of thousands of dollars in fines, and possibly even jail time. In addition, I would never have a chance of ever practicing medicine again. Can you now see how this all works for James R. Caputo, M.D.? What was I to do? You have all seen that there is no winning once you get into any sort of adjudicatory process with these people. My latest attorney put it to me bluntly. Unless I surrender my license pleading "no contest", (which again technically is **not** an admission of guilt although it sure does appear that way), I was done, forever.
At least by going this route, maybe there was a chance of salvaging something somewhere else outside of New York. It was a very sad day with many tears after trying for so long to have the simple truth rise to the top. I grudgingly signed the necessary papers and for the first time in over twenty years, I was now stripped of my ability to practice medicine. For what?

The fallout continued even after this event. Of course, I was the star of yet another newspaper article making sure everyone knew about it – you know, the humiliation factor. Aubry, Silverman, and Badawy had finally gotten their man. It took them thirteen years, but they did it, by golly. They had to lie, cheat and steal their way in order to pull it off, no less, like the true gentlemen and scholars they are (not). But they won – at least for the time being. But even more than that, I got a notice from the United States Department of Health and Human Service's division of Inspector General's Office stating that my Federal Status, (Medicare, Medicaid, Tricare Military, etc), was now being revoked as well. I tried writing them to explain the history of the matter but it didn't change anything. I tried writing the Governor

(for the third time since Paterson was in office) as well as meeting with the President of Upstate Medical University. No one cared. NO ONE cared.

Truth Summary: The 2014 prosecution was just another chapter in the endless indictment of my medical license, driven by those within Crouse Hospital, (led by Richard Aubry), to see me utterly destroyed as a physician. These were unspeakable acts of aggression, which were then embraced by a proven malevolent force within the Department of Health who purposely violated every possible rule in order to fulfill the desire of these horrible men. The two cases being used this time around were not only a pathetic attempt as far as any clinical justification concerning misconduct was concerned, but were sent to OPMC by Crouse Hospital in violation of PHL 230 Section 11(b) where it was not done in good faith (as with every single other case used in the past by OPMC) and in fact, was done maliciously. It is necessary to repost this law since it will be referenced yet another time in the coming section regarding what I am seeking in all of this.

11 Reporting of professional misconduct:
(b) Any person, organization, institution, insurance company, osteopathic or medical society who reports or provides information to the board in good faith, and without *malice* shall not be subject to an action for civil damages or *other relief as the result of such report*.

Yet, despite the obvious malfeasance by all parties involved for more than thirteen years of my life, OPMC used the cruel and unusual probational penalty they impose upon doctors to ram a most vicious threat against my life and freedom into the process that left me with no choice but to surrender my medical license. I admit to making a mistake with the prescriptions even though I categorically maintain that the probation terms were unjustified to begin with. If it was truly my intent to willfully violate those probation terms, I would have simply reopened my practice just like Dr. Caselnova did. But I did not nor was it even a thought. I remained unemployed and penniless out of compliance TO that Order, to my significant detriment. The prescriptions were an irresponsible oversight but still innocuous in reality because, (even in the words of the OPMC Hearing Committee in Caselnova's case), no one was harmed. There was no real misconduct here, just the appearance thereof with the case law providing a definitive example of how such a violation was felt to be of no real consequence by a previous ruling Hearing Committee who compassionately saw the bigger picture for that doctor. Yet, in keeping with the malicious prosecution that was not going to stop in my case, these charges were amplified to such an extent that I was being threatened above and beyond anything imaginable thus necessitating the surrender of my license.

QUESTION: Given the fact that since my D&O from 2007, my level of punishment and inability to practice was grotesquely out of proportion with that which was intended by the ruling, in addition to the fact that while I was practicing, every bit of patient care rendered was not only reviewed but deemed proficient and satisfactory by the accepted medical standards, on top of the fact that I purposed to abide by my probationary terms to the extent that I remained out of practice, homeless and broke for as long as it took to be able to actually comply with the Order, not to mention the fact that a simple and harmless oversight was made on my part with the prescriptions where case law precedent showed that, comparatively, such an oversight was not worthy of really anything more than a simple measure of discipline, coupled with the fact that case law also supported the premise that having any sort of limitation on one's license spelled doom to any hope of successfully practicing, a reality that served as the primary basis of not one but two separate appeals to the DOH seeking modification of these crushing conditions only to see these efforts patently ignored, whereafter I found myself suddenly being aggressively prosecuted once again for matters that were not only six years old but where utterly groundless from both a clinical and a public risk perspective; is it BPMC's position that all of this exculpatory/exonerating evidence is in fact not **new material evidence** but rather **has been previously available** and yet despite OPMC having both known and considered these undeniable facts, it **wouldn't have likely led to a different result** in my case? That none of this evidence offset the desire to proceed to yet another Hearing in order to further whatever inside agenda existed at the Department of Health towards the outright desecration of my name and ability to practice some of the highest quality medicine in the region? Because if **any** of this irrefutable **material evidence is new**, then it is ***indisputable*** that it **would have likely led to a different result –** that being **no further** investigation, prosecution and/or penalty whatsoever. Additionally, do not these arguments represent "**circumstances which have occurred subsequent to the original determination that warrant a reconsideration of the measure of discipline"**? Having to repeatedly state the obvious is getting a bit redundant.

Exonerating Document from Crouse Hospital

Out of work, out of practice, no medical license, unemployable for anything even remotely related to my educational background, I have had to find work doing construction – which has not proven fruitful either. It was during some house cleaning this past November where I was organizing the massive amount of paperwork I have after thirteen years of legal entanglements with both Crouse Hospital and the Department of Health that I stumbled upon a document that I knew I had somewhere but could not find previously. This document was not only something that should have **most definitely** been contained in my Crouse Hospital physician file, but also something OPMC and the 2007 Hearing Committee should have also had in their possession as well. So I began assembling all the various other documents in my possession in order to be able to show just what had been done in order to once and for all put this devastating experience in a legal brief. Even though I always knew I had more than enough material evidence to establish a case for malicious prosecution, (as you have clearly seen), this one document was a scale tipper in being able to corner the DOH with no way out, specifically as it applied to the Statute governing a vacatur of my entire conviction. And I am about to unleash it here in a moment.

Before I do, the following is **ABSOLUTELY ESSENTIAL** to ascertain and understand as it applies to my Determination and Order and specifically the Penalty that set forth my license limitation AND the **probation conditions,** the latter of which were THE foundational component of the Department of Health's latest prosecution not to mention the source of all my struggles to survive and provide for my five children since my groundless conviction in 2008. As has been already alluded to numerous times in this petition document, there is no question whatsoever that the most magnifying factor in my 2008 conviction for misconduct, which again served as the primary basis as well for the probation terms and license limitation, as evidenced in the language set forth in my D&O, was the Hearing Committee's **absolute certainty** and subsequent condemnation of my having violated the six month restriction on my hospital privileges back in 2001-2002. So much so that they mentioned it four separate times in their Determination. Let's take a look.

> **"Although he appeared sincere, knowledgeable and dedicated to his profession, several aspects of his testimony were troubling. Respondent demonstrated a capacity to perform prohibited actions in that he admitted to using forceps on multiple occasions in a hospital during a period when the hospital had suspended and/or limited his privileges to do so.**

His judgment concerning whether the appropriate circumstances for forceps use exist, however, appears clouded by his desire to display his professed ability. An example of Respondent's impaired judgment in this regard was evidenced by his persistence in performing midforceps operations in a hospital after his privileges to perform that operation were suspended.

…he blatantly disregarded the terms imposed upon his hospital privileges, professing to do so out of necessity.

The Committee unanimously determined that Respondent's over-confidence and his unwillingness to alter his use of midforceps strongly dictates the imposition of a prohibition against their use.

There can be no denying the fact that this one conclusion alone stood as **THE most aggravating component** of the Determination as well as the Committee's **primary grounds** for imposing any sort of penalty, **especially** the license limitation, since they had to justify such an extreme punishment somehow over and against a simple CME requirement that was levied on Dr. Feiner. As stated near the beginning of this petition, this completely incorrect belief also had a huge bearing on what they thought of my character as a physician by purportedly disobeying a hospital order.

In other words, even though we all **know** the fix was in by all that has been evidenced thus far, it is my irrefutable contention that if there had not been this perception and/or **conclusion** by the Hearing Committee, they would have been hard pressed to find anything else to justify imposing anything close to what they did, if at all. Just look again, four separate times they refer to this one accusation. In fact, BOTH the license suspension/limitation AND the probation terms, (as demonstrated above when discussing the law as it pertained to assigning a practice monitor), **hinged** entirely upon this conclusion that Respondent (me) ***"disregarded the terms imposed upon his hospital privileges…"***

Repeatedly throughout my Defense, it was impressed upon the Hearing Panel that this alleged "disregard" of that hospital matter was just not so. They would not have any of it, just as they did with literally everything else that was presented by the Defense, including all exculpatory evidence. I have already explained way back towards the beginning of this vacatur petition that the privilege suspension was modified to a limitation with "consultation" in order to

accommodate the best interest of the patients because there is no way of knowing ahead of time when there might be a need for an operative delivery. In doing so, there was positively no such violation of anything and therefore, the Committee was completely wrong. I hereby submit **Exhibit X**, which is a letter from then Chief Medical Officer, Mary Beth McCall, M.D., dated June 6, 2002 – nearly six months **prior** to OPMC initiating their investigation into these matters. I have taken the liberty of underlining the parts that establish **the truth** once and for all. Note the decisive phrases that **erase** any contention of me having violated **anything** within the hospital pertaining to my operative vaginal delivery privileges. This document also negates anything disapproving that might have been inferred from Aubry's six month chart review when examining that failed attempt by the man to attack my advanced forceps privileges as well as stir up even more trouble for me.

Even though I have submitted, (as components of this petition), more than enough documents to completely justify a wholesale vacating of my entire prosecution, this one document, (**Exhibit X**), is my own death blow to all that you have done to me, my children, my career, my patients, my employees, my name, my reputation, my finances, my health, my relationships, my National Practitioner Data Bank, ***my world*** for more than **THIRTEEN YEARS!!** I can now say with affirmation, "How dare you!!" I don't care one iota that you are OPMC. My experience at your hands has been utterly wretched! That's not the OPMC that was righteously conceived at its inception. You, Mr. Servis, as the DIRECTOR, have allowed this entire agency to become a black mark on my home State of New York by becoming the worst example of ANYTHING good, fair, just, equitable, and honest!!

Truth Summary: No summary needed. Without an ounce of doubt to anyone with a brain cell, every single thing in this entire document screams fraud and corruption in how OPMC knowingly, willfully and most importantly, maliciously took everything from me based on lie after lie. And you know it, Mr. Servis. Period.

No more **QUESTIONS** either. This IS "**new and material evidence that was not previously available which, had it been available, would ~~likely~~ MOST DEFINITELY have led to a different result",** just as the Statute states and allows. I don't care if you claim you "didn't know". You knew, since this document, (**Exhibit X**), had to be in my file and therefore, you and your organization blatantly ignored it as far as I am concerned. And any attempted denial will NEVER serve to excuse OPMC for ALL the other vicious acts of aggression this agency subjected me to for more than thirteen years!

Furthermore, I have more than proven that there exist "**circumstances which have occurred subsequent to the original determination that warrant a reconsideration of the measure of discipline".** All tolled, this entire document in addition to this iron clad new evidence now before you serve as the immovable basis for not just the filing of this **"petition with the director,** but also for the complete **vacatur of the determination and order"** as well as ALL the collateral damage that has occurred as a result.

What is it that I am seeking?

It should be pretty obvious to anyone that I am not happy. In fact, I'm furious over what everyone in my world has had to endure for thirteen years as I repeatedly sought the truth of these matters. Every single effort was met with nothing but cruelty and dishonesty on your part. Nonetheless, it's one thing to have definitively proven **everything** I have contended from the very beginning, it's an entirely different thing to expect BPMC/OPMC to do anything upright and honorable. This is why I have involved so many different parties in this matter so as to compel you to do the right thing. Each and every entity on that list will not only get a copy of this petition and the exhibits, they will also get their own cover letter as to why they have specifically been included. Additionally, this matter will be disseminated to the public as well, along with whatever action I can think of to bring as much attention to this matter for the SOLE purpose of ensuring that this NEVER happens to another New York physician EVER again, so long as my ghastly experience can help it!

The bottom line is this. You, BPMC, have the power and authority to do pretty much whatever you want. We have all seen this. Therefore, after doing so much wrong, you now have the opportunity to finally do what's **right**. So, I guess there is one final **QUESTION** to be asked. Will you do it?

WHAT MOST DEFINITELY SHOULD BE DONE

Simply put, I want my life reset back to September1, 2001 which was how it was prior to the stillbirth case that month. Crouse Hospital violated their bylaws by railroading me on that case which led to OPMC becoming involved. ALL cases sent to Albany thereafter were equally unjustified. I don't think I need to repeat all else that has been presented. Therefore, everything should be reset to that point in time since you have the authority to do all of these things. This would include the following:

1. New York State license restored immediately without any limitation. My license is paid through February 2016, thus all BPMC needs to do is flip whatever switch necessary to make this happen. Don't say you can't. You control it all.
2. All adverse reporting at the National Practitioner Data Bank completely expunged.
3. All adverse reporting on the Department of Health's website is erased.
4. Immediate notification to the Department of Health and Human Services' Office of Inspector General notifying them that my license has been re-instated.
5. Press Release plus something in writing stating that my conviction has been overturned for having been completely wrong and that my license has been fully restored without any restriction.

WHAT OUGHT TO BE HIGHLY CONSIDERED BEING DONE

Though the above is truly what I seek by the submission of this petition, there are a host of other matters that still need speaking to and ought not be overlooked as they seem to have been in the past. You see, this is not only about me and what was done to my life. There are thousands of others affected by what has occurred here and even more so by who has remained in control of women's health in Central New York. This is why the other parties have been included and therefore, it will be up to them to act accordingly within their own jurisdictions after having read both what has been presented here as well as the issues that involve them as they have been imparted in each of their letters.

Some may find my contentions here to be a bit outside the bounds of my petition, since getting back to work truly IS my utmost objective. But in keeping with the times, a good catastrophe shouldn't go to waste. Therefore, this petition is also intended to serve as a form of complaint as well, since there is no mistaking the fact that nothing will change otherwise unless someone makes a definitive effort. There can be no more archetypal basis for change than what we have all seen here. Therefore, this is submitted with a great deal more confidence in the other parties than what we all have seen can be derived from OPMC. Thus, the following suggestions as to what ought to very well happen are merely my own opinions based upon the evidence and what would seem prudent under the circumstances, if I may be so allowed to do so. In other words, knowing that every single thing presented in this document is true and proven so, if I was one in a position to exact what was fair just, these are the things that come to mind, for the best interest of the vast majority.

The first question I would personally ask if I had just read this petition is this. "How is it that you, Mr. Servis, can justifiably retaining your job as the Director of BPMC/OPMC given THIS level of proven corruption and dishonesty within an agency you maintain the headship for?" You have personally demonstrated such a staggering contempt for the uprightness of public service as a representative of my State's government that it would seem that you have abandoned your duties to the extend of needing to be simply relieved of your duties. Yet, despite your intimate role in all of this, there are plenty of other, just as serious changes, that ought to happen. As any rational adult would clearly agree based on the truth of this entire matter, the following seem more than fitting:

1. Immediate change in the Directorship of BPMC/OPMC – again, that being you, Mr. Servis. Sorry, but it's more business and not personal really – ok, I stand corrected, it is personal but equally predicated on what is also lawful. You just don't deserve to hold that position after what you have shown of yourself in strictly a business/administrative and legal sense. The taxpayers of New York should be outraged by what they have received from you, not to mention every doctor who has suffered at the hands of your overly aggressive and moreover, malignant agency. While there are plenty of players involved that will be named to certain agencies receiving this brief, you are the ring leader and therefore ought to be removed. This should be a no-brainer.

2. Timothy Mahar is also unfit to serve at the Department of Health. He has shown himself to be a corrupt man willing to break any and all rules in order to knowingly and willfully drive a malicious prosecution to the degree of destroying an innocent man's life. He too has forfeited his right to serve the State of New York and as far as I am concerned, ought to be disbarred. Another no-brainer.

3. A renewed and spirited effort to introduce a fresh OPMC Reform Bill to the State Legislature that would recreate OPMC into a constitutionally sound and upright agency with the same mission, while eliminating any possibility of this abuse **ever** happing to another New York physician **ever** again, if my experience has anything to do with it. Clearly OPMC is out of control with my most recent attorney telling me that they have seen the number of doctors needing counsel from their office for OPMC prosecution go from roughly four to five per year to now four to five per month. They are just one of

hundreds of firms defending doctors against allegations of misconduct. It has been said that there are fifty (50!) prosecuting attorneys working for the Department of Health, all with quotas. Quotas?!? Therefore, it is apparently open season on doctors in New York State, with a good number of them likewise being baselessly persecuted. Speaking out of experience for **every single** doctor in this State who has grown to live in fear of OPMC, I say, "enough!" The cottage industry amongst professional misconduct defense attorneys (or even prosecutors) that has sprung up in the face of your overly aggressive agency will need to find other assignments. Their fiscal interests do not justify any continuation of the current system, whatsoever.

4. A cleaning of house concerning the leadership of the Department of Ob/Gyn at Crouse and Upstate Hospitals. This would include as a minimum, Drs. Robert Silverman and Shawky Badawy. Fate took care of Aubry this past Fall via a single car accident. It ought not trouble anyone to take such action to depose these individuals for two reasons. First, these men, too, have forfeited their right to hold such positions of distinction as having violated every possible code of ethics for a professional, not to mention having turned the department into a joke as far as excellence and honor. As I have written previously, I don't want any of them to get in trouble with the State over this. I just want them to get lost for the betterment of the healthcare for women and unborn babies in this region of New York State. Second, there are others who can readily step in and fill these roles until a suitable permanent replacement is found. So, that need not be a factor in finally doing what's right and just.

5. A full-scale investigation into the care being rendered to patients out of the Regional Perinatal Center. Though not a complete indictment of this entity as I know of some good doctors who work there, I have seen cases from this division that are beyond reprehensible when this place is supposed to be representative of the highest level of Obstetrical care available in the region. No amount of "good" cases trump the dreadful care I have seen too many times. There is absolutely no excuse. If the former President of ACOG, Dr. Waldman, refuses to allow any of his group's patients be cared for by them, then you now have a witness of two separate people that this place needs to be changed, for the better.

6. An immediate seizing of the reigns of the Residency Program for the sake of providing a sound and thorough Medical Education experience for these poor unsuspecting doctors. Though I have not been active in this department since 2008, I have every reason to believe that nothing has positively changed due to terrible case reports still emanating from this place not to mention first hand reports from acquaintances who have attested to this continued deficiency. Even from when I went to medical school here in 1993, this Residency has consistently ranked as one of the worst programs around when sadly, the substrate exists for it to be one of the best. For illustration, one year I know of, when the five graduating residents sat for the written board exam, which is ***designed*** for passing should the resident have simply been breathing and paying attention during their training, three out of the five residents failed. Unreal. This Residency has been so substandard as far as both supervision and actual learning experience, that I actually met with and submitted a proposal to the past president of the medical school who had the authority over post graduate medical education. I spoke to him and presented a written submission of the issues that desperately needed addressing. Not only did he simply pay no attention to my delineation of a number of serious deficiencies in the education and supervision of the residents, (politics no doubt), he was shortly thereafter expelled from his post for improprieties of his own. In fact, this community has a moral and ethical problem that seems to run through much of the leadership in the medical establishment, as evidence again by the most recent past President of Upstate Medical University and Hospital, David Smith, who also was ousted in 2013 for corruption.

7. I once stood atop of multimillion dollar practice that I had personally built through extensive work and proficiency as a physician. Nothing can replace what that once was and no value can possibly be placed on such a thing. And if there can be no value placed on that, then how does one even begin to valuate what a father has lost with his children by what has occurred. The scars in their lives and my heart are immeasurable and I have you to thank. Furthermore, by doing what you did and not being able to sustain any work since 2008, I have lost more than $4 million dollars in anticipated income not to mention the massive debt I still carry and a destroyed credit rating. As a punitive measure, I ought to recover that loss. The law is clear as far as seeking relief as indicated below.

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8. Notwithstanding any other provision of law, no member of a committee on professional conduct nor an employee of the board shall be liable in damages to any person for any action taken or recommendation made by him within the scope of his function as a member of such committee or employee provided that (a) such member or employee has taken action or made recommendations within the scope of his function and without malice, and (b) in the reasonable belief after reasonable investigation that the act or recommendation was warranted, based upon the facts disclosed.

11 Reporting of professional misconduct:
(b) Any person, organization, institution, insurance company, osteopathic or medical society who reports or provides information to the board in good faith, and without *malice* shall not be subject to an action for civil damages or *other relief as the result of such report*.

**** (f)(v) No member of any such committee shall be liable for damages to any person for any action taken by such member provided that such action was taken without malice and within the scope of such member`s function as a member of such committee.**

16. Liability. Notwithstanding any other provision of law, persons who assist the department as consultants, expert witnesses or monitors in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, probation, or criminal prosecutions for unauthorized practice, shall not be liable for damages in any civil action or proceeding as a result of such assistance, except upon proof of actual malice. The attorney general shall defend such persons in any such action or proceeding, in accordance with section seventeen of the public officers law.

Yet, in my case, there **was** malice with damages having been incurred involving parties covered in every one of those subsections of the law just listed. Therefore, according to this law, I am technically entitled to both relief, (everything in the

What Most Definitely Should Be Done section) as well as civil damages. I know that there is also a provision in the law called an Article 78 proceeding where monetary damages are sought and that there is a statute of limitations that I believe is only for a few months following an adverse OPMC Determination. However, it is still a legitimate claim and thus I will defer any consideration for this matter to those who stand in higher judgment of even OPMC to determine if this demand is valid for any sort of provision. This petition is in no way a means to "cash in". However, given the losses I have sustained by what you have read, it would be imprudent of me not to bring this issue to a discussion as well.

8. Certainly, no list concerning all of this would be complete without speaking to the issue of sham peer review. This is a most gruesome practice within the honorable profession of medicine with massive consequences as you have just seen. Though this problem is a nationwide epidemic and considered by some to be just a myth, my experience clearly demonstrates that it is not only real, but begs to be addressed once and for all. The State of Michigan Legislature recently, in 2006, took action by passing a law making it far easier for physicians to seek monetary damages for those individuals who choose to go down the pathway of malicious reporting to a State Medical Board. Being one of the most progressive States in the Union, New York ought to lead to the way in instituting sweeping legislation that puts this repugnant practice to bed for good. This is by no means a measure that would eliminate fair and honest peer review, which is always going to be necessary, it is simply skimming the dross off of a process that we can now see is fraught with abuse and real life devastating consequences.

How does one even wrap up something like what you have just read? There is much more I wish I could say and will probably kick myself for not writing something that I forgot after I finalize this document for distribution. I suppose I would like to speak to things on a little more human level. While I have surely castigated certain individuals in this petition who were party to this thirteen year ordeal, (and rightfully so), they must know that despite what they did to me, I forgive them. You read that right – I forgive them. I don't excuse them for what they did and they still should face whatever is just for their actions as was written above. But as far as my heart towards them, they are forgiven – for they truly know not what they do and have done. Not so much to me, which was appalling as you have read, but really to themselves, which is everlasting.

There are a lot of personal regrets that I could probably think of as well that this ordeal has produced. However, the one that probably is the most fresh concerns my father. My dad was so broken over this whole thing for his son. Imagine having to watch your own child go through something like this after seeing him overachieve his entire life and work so hard to be the first of his children to not only graduate college, but to then become a doctor and thereafter inspire his older brother to also become one as well after his life had taken some unpredictable turns. In fact, all of my four siblings (who I love dearly) are overachievers and outright successes in their own right and have stood by me this entire time. My father unfortunately died this past summer and never got to temporally see me restored to what he knew, as my dad, I loved and fought so hard to reclaim. My beautiful mother, a fifty year nurse who **was** my inspiration to become a doctor, has equally suffered greatly and ought to see justice for her son in her lifetime. I have so many others (family, friends, landlords, patients even) to thank for so generously stepping up to help me subsist all these years as well. Humbled just doesn't come close to describing such a blessing.

But most importantly, were it not for my steadfast faith, these thirteen years would have been impossible to have survived. It would be wholly ungrateful of me, therefore, not to thank God first and foremost. What He has manifestly done in me, how He has repeatedly shown Himself to me, what He has taught me of Who He is, the beautiful people He has placed in my life, how He has sustained me in ways beyond description in the face of ridiculous odds, cannot ever be measured, expressed or described in words. Regardless of whatever becomes of this petition, God will be there, as always. I owe Him everything.

This document is also for my children. They have endured so, so much. No parent could ever imagine their own child having to personally suffer the indignity of their father being dragged through the community mud and considered by many to be a charlatan and a loser. It's not in their face but they have definitely felt the fallout in even their own lives and relationships since the dirty laundry fashioned for me by what you have read has been aired for everyone to see. Two of my children were born into this disaster and is all they have known. The others, too, have witnessed and bore far more than any child ought to. My oldest was a little five year old boy when this all started. He is now a grown man and a brilliant one at that. These children saw every single Christmas during those five years leading up to April 2008 essentially undermined because OPMC would purposely time significant events so as to fall right during that season which naturally impacted the whole experience.

As horrible as this has been for even them, they are all stronger at least because of all it and have learned the value of something as simple as a piece of gum, because there have been many times when I couldn't even buy that for them. With the writing of this petition, they now have material information and facts that they can someday turn to and see just what it was and why it was that caused dad to be so sad and beleaguered all those years, in the middle of all the fun he tried to still experience with them in spite of having little to no resources other than his undying love for them.

I'm going to end with this because tears are beginning to stream down my face once again over the thoughts concerning my children. I dearly appreciate the enormous amount of time you have taken to not only read this but to closely examine the exhibits that support this effort. I want to speak finally to those with authority over this matter. You chose your profession and to pursue the positions you have for a reason. At some point you believed that you could make a difference in your own right. At some point you saw your job as important and were proud of the fact that you held certain influence to either rightly show mercy or justly flex your muscle depending on the necessity at hand. At some point and hopefully still, I would like to think that there was a sense of righteousness in your heart to do what was good and acceptable with your title and rank. Well, I am asking you to step up to this momentous occasion and show your own children what it means to be someone of honor and integrity. I don't think you will find a more virtuous opportunity than this one. Thank you.

Yours truly,

James Richard Caputo, M.D.

"A good name is rather to be chosen than great riches,
and loving favour rather than silver and gold." – The Book of Proverbs

Short List of Material Evidence from 2007 OPMC Hearing. Items with an Asterisk (*) indicate that which was entirely available to the Hearing Committee and/or ARB upon rendering a verdict.

Mitigating	Exculpatory/Exonerating	Convicting
*2002 Complaint filed with the DOH against the four department doctors that has been quashed for more than twelve years.	*My performance throughout my entire career ranks in the top 5-10% of practicing Ob/Gyn physicians in NY State	Opinionated, unsubstantiated, misleading and dishonest testimony of one man recruited to lie. Nothing more was offered.
Repeatedly being blatantly ignored by BPMC after multiple correspondences – including the 2013 Modification Petition	*No repetitive history or pattern of inappropriate medical care which is required for both conviction and penalty.	
*Ruthless, incompetent and dishonest departmental leadership at Crouse Hospital as evidenced my the card from a local doctor describing Aubry's ObQA oppression of his department.	*Not one written practice standard was ever introduced by OPMC as having been violated while ACOG's guidelines were presented by the Defense showing all cases to be well within the ***suggested*** standard of care.	
Inconceivably awful medical care rendered to too many patients by this incompetent department.	*Being excluded from the incident case Root Cause Analysis along with the adulteration and deliberate sidestepping of official hospital documents (NYPORTS Report) intended for the DOH.	
*All patients whose forceps delivery was being adversely used against my license testified on my behalf as having no personal issue at all.	*The actual cause of death for the stillbirth case. It would have otherwise never been reviewed as a potential problem had there been an honest declaration of the facts.	
*CK Letter to Crouse about Aubry and his character as a physician.	*Crouse Hospital Department of Ob/Gyn deliberately lying to the MEC in order to have a sanction imposed. This is supported by the entire record of that MEC Hearing in 2002, including the testimony of the doctors from the department.	
Experience of Omar Rashid, M.D. at the hands of Aubry.	*Exculpatory testimony of Richard Waldman, M.D. that fully supported my management of the stillbirth case.	
Richard Aubry's twisted jealousy towards anyone who is skilled in advanced forceps.	Richard Aubry, M.D. – this man is essentially responsible for fomenting this entire matter – initially from within the hospital and then at the State level with OPMC.	
*Repeated administrative violations by Crouse Hospital in required State reporting	*Disparity between the bogus six month case review by Aubry and the return of all my operative vaginal delivery privileges in 2002.	
*Failure of Hearing Committee to properly render Determination as per the Statute	***Crouse Hospital administration documents showing an actual limitation of privileges and not a suspension.	
*Undisclosed manner by which Hearing Panels are seated	*Fraudulent and malicious reporting of cases to OPMC by Richard Aubry, M.D. constituting professional misconduct	
*OPMC Reform Bill establishing the existence of the very abuses that were rampant in my experience with OPMC	*The unequivocal fact that the 2005 hearing had to be thrown out for bias because somehow one of Richard Aubry's friends was seated on my jury – setting a DOH precedent	
*Profound bias and impropriety on part of State Prosecutor Timothy Mahar	*Great weight to my primary expert.	
*The established existence of sham peer review and the reality of this scourge in medicine which was proven to have occurred in my case.	2008 attempt by Crouse Hospital to have the Gyn QA committee "rewrite" a previously favorable review to read as substandard.	
*Refusal of OPMC to allow any record of early interviews which were then adulterated and used in an aggressive and dishonest manner.	*The Law regarding assignment of Practice Monitor which precluded them from doing so in my case given the Hearing Committee's own words.	
*DOH breaking the law when someone on the inside posted the D&O when it was to remain confidential.	*Cases of both Marc Feiner, M.D. and Vito Edward Caselnova, M.D. proving that a license limitation was not only unwarranted but also done so in my case out of malice	
*Someone tipping off the local newspaper about the unlawful posting of the D&O who then wrote an inaccurate and highly damaging article concerning my medical practice.	*Caselnova's case also proves that there should have been no real penalty for me having violated my probation terms as it applied to the 2014 prosecution by OPMC and that OPMC's actions in my case were again evidence of malice.	
	*Department of Health insider colluding with members of Crouse Hospital's Department of Ob/Gyn to purposely engineer a completely fraudulent malicious prosecution of my medical license causing great harm to my life.	

CC:

-Governor Andrew M. Cuomo -New York State Office of Inspector General -Department of Health and Human Services – Office of Inspector General -New York State Commissioner of Health -Hon. John M. Katko -Hon. James L. Seward -Hon. Kemp Hannon -The Joint Commission – JCAHO -National Practitioner Data Bank – NPDB -New York State Bar Association -ACOG - American Congress of Ob/Gyn – Grievance Committee -MSSNY – Medical Society of the State of New York -Onondaga County Medical Society -AMA – American Medical Association	-ACLU – American Civil Liberties Union -Center for Constitutional Rights -AAPS – American Association of Physicians & Surgeons -Peer Review.org -Semmelweis Society -Michael Hiser, Esq. -Timothy J. Mahar, Esq. -Michael P.Ringwood, Esq. -Dick Tubiolo, Esq. -David Brittan, M.D. – OPMC Director Syracuse Office -Kimberly Boynton – CEO, Crouse Hospital -Gregory Eastwood, M.D. – President of Upstate Medical University -Select Media Outlets -Public -Several Others