UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA HOSPITAL ASSOCIATION; FLORIDA MEDICAL ASSOCIATION; SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION; BAY HOSPITAL, INC. d/b/a GULF COAST MEDICAL CENTER; CENTRAL FLORIDA REGIONAL HOSPITAL, INC. d/b/a CENTRAL FLORIDA REGIONAL HOSPITAL; COLUMBIA HOSPITAL (PALM BEACHES), LIMITED PARTNERSHIP d/b/a COLUMBIA HOSPITAL; COLUMBIA HOSPITAL CORPORATION OF SOUTH BROWARD d/b/a WESTSIDE REGIONAL MEDICAL CENTER; EDWARD WHITE HOSPITAL, INC. d/b/a EDWARD WHITE HOSPITAL; ENGLEWOOD COMMUNITY HOSPITAL, INC. d/b/a ENGLEWOOD COMMUNITY HOSPITAL; FAWCETT MEMORIAL HOSPITAL, INC. d/b/a FAWCETT MEMORIAL HOSPITAL; FORT WALTON BEACH MEDICAL CENTER, INC. d/b/a FORT WALTON BEACH MEDICAL CENTER; GALEN OF FLORIDA, INC. d/b/a ST. PETERSBURG GENERAL HOSPITAL; GALENCARE, INC. d/b/a BRANDON REGIONAL HOSPITAL and NORTHSIDE HOSPITAL; HCA HEALTH SERVICES OF FLORIDA, INC. d/b/a BLAKE MEDICAL CENTER, OAK HILL HOSPITAL, REGIONAL MEDICAL CENTER BAYONET POINT and ST. LUCIE MEDICAL CENTER; JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK MEDICAL	CASE NO. 4:08cv312-RH/WCS COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

CENTER; KENDALL HEALTHCARE)
GROUP, LTD. d/b/a KENDALL)
REGIONAL MEDICAL CENTER;)
LARGO MEDICAL CENTER, INC.)
d/b/a LARGO MEDICAL CENTER)
and SUN COAST HOSPITAL;)
LAWNWOOD MEDICAL CENTER,)
INC. d/b/a LAWNWOOD REGIONAL)
MEDICAL CENTER & HEART)
INSTITUTE; LEESBURG REGIONAL)
MEDICAL CENTER, INC.; MARION)
COMMUNITY HOSPITAL, INC. d/b/a)
OCALA REGIONAL MEDICAL)
CENTER; MARTIN MEMORIAL)
MEDICAL CENTER, INC. d/b/a)
MARTIN MEMORIAL MEDICAL)
CENTER and MARTIN MEMORIAL)
HOSPITAL SOUTH; MEMORIAL)
HEALTHCARE GROUP, INC.)
d/b/a MEMORIAL HOSPITAL)
JACKSONVILLE and SPECIALTY)
HOSPITAL JACKSONVILLE; MIAMI)
BEACH HEALTHCARE GROUP, LTD.)
d/b/a AVENTURA HOSPITAL AND)
MEDICAL CENTER; NEW PORT)
RICHEY HOSPITAL, INC. d/b/a)
COMMUNITY HOSPITAL; NORTH)
FLORIDA REGIONAL MEDICAL)
CENTER, INC. d/b/a NORTH)
FLORIDA REGIONAL MEDICAL)
CENTER; NORTHWEST MEDICAL)
CENTER, INC. d/b/a NORTHWEST)
MEDICAL CENTER; OKALOOSA)
HOSPITAL, INC. d/b/a TWIN CITIES)
HOSPITAL; OKEECHOBEE)
HOSPITAL, INC. d/b/a RAULERSON)
HOSPITAL; ORANGE PARK)
MEDICAL CENTER, INC. d/b/a)
ORANGE PARK MEDICAL CENTER;)
ORLANDO REGIONAL)
HEALTHCARE SYSTEM, INC. d/b/a)
ARNOLD PALMER HOSPITAL FOR)
CHILDREN, DR. P. PHILLIPS)
HOSPITAL, LUCERNE HOSPITAL,)

ORLANDO REGIONAL MEDICAL)
CENTER, SOUTH SEMINOLE)
HOSPITAL and WINNIE PALMER)
HOSPITAL FOR WOMEN & BABIES;)
OSCEOLA REGIONAL HOSPITAL,)
INC. d/b/a OSCEOLA REGIONAL)
MEDICAL CENTER; PALMS WEST)
HOSPITAL LIMITED PARTNERSHIP)
d/b/a PALMS WEST HOSPITAL;)
PLANTATION GENERAL HOSPITAL,)
L.P. d/b/a PLANTATION GENERAL)
HOSPITAL; SARASOTA DOCTORS)
HOSPITAL, INC. d/b/a DOCTORS)
HOSPITAL OF SARASOTA;)
SOUTH BROWARD HOSPITAL)
DISTRICT d/b/a MEMORIAL)
HOSPITAL MIRAMAR, MEMORIAL)
HOSPITAL PEMBROKE, MEMORIAL)
HOSPITAL WEST, MEMORIAL)
REGIONAL HOSPITAL and)
MEMORIAL REGIONAL HOSPITAL)
SOUTH; SUN CITY HOSPITAL,)
INC. d/b/a SOUTH BAY HOSPITAL;)
TALLAHASSEE MEDICAL CENTER,)
INC. d/b/a CAPITAL REGIONAL)
MEDICAL CENTER; THE VILLAGES)
TRI COUNTY MEDICAL CENTER,)
INC. d/b/a THE VILLAGES REGIONAL)
HOSPITAL; UNIVERSITY HOSPITAL,)
LTD. d/b/a UNIVERSITY HOSPITAL)
AND MEDICAL CENTER; WEST)
FLORIDA REGIONAL MEDICAL)
CENTER, INC. d/b/a WEST FLORIDA)
HOSPITAL; JAMES C. PAPPAS, M.D.;)
CHERYL PAYNTER; LINDA TAYLOR;)
TINA POITRAS; and VICTOR)
POITRAS,)
)
Plaintiffs,)
)
v.)
)
ANA VIAMONTE, SURGEON)
GENERAL AND SECRETARY OF THE)

FLORIDA DEPARTMENT OF HEALTH; HOLLY BENSON, SECRETARY OF THE AGENCY FOR HEALTH CARE ADMINISTRATION; and BILL McCOLLUM, ATTORNEY GENERAL OF FLORIDA, in their official capacities,	)
Defendants.	)

Plaintiffs, by and through undersigned counsel, hereby allege the following:

PRELIMINARY STATEMENT

1. To guarantee the highest quality of medical care, to comply with federal and state laws, and to satisfy accreditation standards, healthcare facilities are required to engage in medical peer review. This process includes thorough credentialing and recredentialing procedures, quality assurance protocols, risk management, and peer review of staff physicians.

2. The records compiled and maintained by healthcare facilities contain inherently sensitive and private information.

3. A comprehensive set of federal statutes and regulations recognize that effective peer review is critical to quality medical care, and confidentiality is critical to meaningful peer review.

4. Federal laws likewise recognize the private nature of a patient's medical information and enforce stringent requirements to ensure that this inherently sensitive information is not disclosed to the general public without patient consent.

5. Those statutes and regulations complement the nearly universal approach of all fifty states which, recognizing that confidentiality is the *sin qua non* of effective peer review, expressly protect the confidentiality of the records produced in the course of the medical peer review process and provide statutory or common law privileges shielding such documents from discovery or admissibility at trial.

6. In the limited instances where these confidentiality protections do not apply, courts retain their inherent authority to circumscribe overly broad discovery requests and utilize traditional tools to protect widespread disclosure of sensitive information.

7. Until recently, Florida vigorously protected the confidentiality of medical peer review information through no less than four statutory provisions and robust case law expansively interpreting the scope of the various peer review privileges as essential to candid peer review and critical to the continued provision of quality medical care.

8. On November 2, 2004, Florida became the first and only state to adopt a constitutional amendment ("Amendment 7"), via ballot initiative, granting any "individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a healthcare facility or by a healthcare provider" a constitutional right of access to all records made or received by a healthcare facility or provider that relate to any act that "could have caused injury to . . . a patient."

9. As interpreted by the Florida Supreme Court and lower appellate courts, Amendment 7 applies retroactively to all records and documents produced under statutory and contractual promises of confidentiality, may be invoked by plaintiffs

seeking discovery in medical malpractice cases, overrides all statutory peer review privileges, strips the state trial courts of any authority to assess relevance or otherwise limit expansive discovery requests, and could even trump claims of attorney-client or work product privilege.

10. Plaintiffs seek declaratory and injunctive relief barring enforcement of Amendment 7 as violative of the Constitution of the United States in several respects.

11. Amendment 7 is expressly preempted by, conflicts with congressional policy in, and represents an obstacle to the accomplishment of federal statutes governing the medical review process.

12. Amendment 7 also violates Plaintiffs' constitutional right to informational privacy, denies Plaintiffs their due process rights, and substantially impairs the obligations of existing contracts.

JURISDICTION

13. This Court has jurisdiction to resolve this case pursuant to 28 U.S.C. § 1331 as it presents federal questions arising under the Constitution and laws of the Untied States.

14. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

15. There is an actual controversy between the parties as is hereinafter alleged.

VENUE

16. Venue is proper in the Northern District of Florida pursuant to 28 U.S.C. § 1391(b).

17. All Defendants perform their official duties in Tallahassee, Florida, and a substantial portion of the events or omissions giving rise to this dispute occurred in this District.

PARTIES

18. Plaintiff Florida Hospital Association ("FHA") is a not-for-profit association representing hospitals throughout the state. FHA's purpose is to serve as an advocate for member hospitals at the state and federal levels, pursuing issues that impact their mission of serving the community and providing quality care to patients. The validity of Amendment 7 is an issue of great significance to FHA's member hospitals as it mandates the release of privileged information to the detriment of quality healthcare and the operation of member hospitals.

19. Plaintiff Florida Medical Association ("FMA") is a not-for-profit association representing doctors of medicine and doctors of osteopathic medicine throughout the state. FMA's purpose is to serve as an advocate for physicians and their patients to promote the public health, to ensure high standards in medical education and ethics, and to enhance the quality and availability of healthcare. The validity of Amendment 7 is an issue of great significance to FMA's members as it mandates the release of privileged information to the detriment of quality healthcare and the activities of member physicians.

20. Plaintiff South Florida Hospital and Healthcare Association ("SFHHA") is a not-for-profit regional healthcare provider association. SFHHA's purpose is to serve as an advocate, facilitator and educator for its members and as a voice for improving the health status of its community by representing the interests of its member organizations. The validity of Amendment 7 is an issue of great significance to SFHHA's members as it mandates the release of privileged information to the detriment of quality improvement initiatives and the operation of member hospitals.

21. Plaintiff Bay Hospital, Inc. d/b/a Gulf Coast Medical Center is a Florida corporation with its principal place of business in Panama City, Florida. Gulf Coast Medical Center has received at least seven requests seeking records pursuant to Amendment 7.

22. Plaintiff Central Florida Regional Hospital, Inc. d/b/a Central Florida Regional Hospital is a Florida corporation with its principal place of business in Sanford, Florida. Central Florida Regional Hospital has received at least five requests for records pursuant to Amendment 7.

23. Plaintiff Columbia Hospital (Palm Beaches), Limited Partnership d/b/a Columbia Hospital is a Delaware limited partnership with its principal place of business in West Palm Beach, Florida. Columbia Hospital has received at least fourteen requests seeking records pursuant to Amendment 7.

24. Plaintiff Columbia Hospital Corporation of South Broward d/b/a Westside Regional Medical Center is a Florida corporation with its principal place of business in

Plantation, Florida. Westside Regional Medical Center has received at least thirteen requests seeking records pursuant to Amendment 7.

25. Plaintiff Edward White Hospital, Inc. d/b/a Edward White Hospital is a Florida corporation with its principal place of business in St. Petersburg, Florida. Edward White Hospital has received at least three requests seeking records pursuant to Amendment 7.

26. Plaintiff Englewood Community Hospital, Inc. d/b/a Englewood Community Hospital is a Florida corporation with its principal place of business in Englewood, Florida. Englewood Community Hospital has received at least two requests seeking records pursuant to Amendment 7.

27. Plaintiff Fawcett Memorial Hospital, Inc. d/b/a Fawcett Memorial Hospital is a Florida corporation with its principal place of business in Port Charlotte, Florida. Fawcett Memorial Hospital has received at least ten requests seeking records pursuant to Amendment 7.

28. Plaintiff Fort Walton Beach Medical Center, Inc. d/b/a Fort Walton Beach Medical Center is a Florida corporation with its principal place of business in Fort Walton Beach, Florida. Fort Walton Beach Medical Center has received at least eleven requests seeking records pursuant to Amendment 7.

29. Plaintiff Galen of Florida, Inc. d/b/a St. Petersburg General Hospital is a Florida corporation with its principal place of business in St. Petersburg, Florida. St. Petersburg General Hospital has received at least ten requests seeking records pursuant to Amendment 7.

30. Plaintiff Galencare, Inc. d/b/a Brandon Regional Hospital and Northside Hospital is a Florida corporation with its principal place of business in Hillsborough County, Florida. Brandon Regional Hospital has received at least three requests seeking records pursuant to Amendment 7. Northside Hospital has received at least fifteen requests seeking records pursuant to Amendment 7.

31. Plaintiff HCA Health Services of Florida, Inc. d/b/a Blake Medical Center, Oak Hill Hospital, Regional Medical Center Bayonet Point, and St. Lucie Medical Center is a Florida corporation. Blake Medical Center is located in West Brandenton, Florida; Oak Hill Hospital is located in Brooksville, Florida; Regional Medical Center Bayonet Point is located in Hudson, Florida; and St. Lucie Medical Center is located in Port St. Lucie, Florida. Blake Medical Center has received at least eight requests seeking records pursuant to Amendment 7. Oak Hill Hospital has received at least nine requests seeking records pursuant to Amendment 7. Regional Medical Center Bayonet Point has received at least four requests seeking records pursuant to Amendment 7. St. Lucie Medical Center has received at least eight requests seeking records pursuant to Amendment 7.

32. Plaintiff JFK Medical Center Limited Partnership d/b/a JFK Medical Center is a Delaware limited partnership with its principal place of business in Atlantis, Florida. JFK Medical Center has received at least twenty requests seeking records pursuant to Amendment 7.

33. Plaintiff Kendall Healthcare Group, Ltd. d/b/a Kendall Regional Medical Center is a Florida limited partnership with its principal place of business in Miami,

Florida. Kendall Regional Medical Center has received at least sixteen requests seeking records pursuant to Amendment 7.

34. Plaintiff Largo Medical Center, Inc. d/b/a Largo Medical Center and Sun Coast Hospital is a Florida corporation with its principal place of business in Largo, Florida. Largo Medical Center has received at least eleven requests seeking records pursuant to Amendment 7. Sun Coast Hospital anticipates receiving requests seeking records pursuant to Amendment 7 in the near future.

35. Plaintiff Lawnwood Medical Center, Inc. d/b/a Lawnwood Regional Medical Center & Heart Institute is a Florida corporation with its principal place of business in Fort Pierce, Florida. Lawnwood Regional Medical Center & Heart Institute has received at least eight requests seeking records pursuant to Amendment 7.

36. Plaintiff Leesburg Regional Medical Center, Inc. is a not-for-profit Florida corporation with its principal place of business in Leesburg, Florida. Leesburg Regional Medical Center has received at least seven requests seeking records pursuant to Amendment 7.

37. Plaintiff Marion Community Hospital, Inc. d/b/a Ocala Regional Medical Center is a Florida corporation with its principal place of business in Ocala, Florida. Ocala Regional Medical Center has received at least eight requests seeking records pursuant to Amendment 7.

38. Plaintiff Martin Memorial Medical Center, Inc. d/b/a Martin Memorial Medical Center and Martin Memorial Hospital South is a Florida not-for-profit corporation with its principal place of business in Stuart, Florida. Martin Memorial

Medical Center has received at least ten requests seeking records pursuant to Amendment 7. Martin Memorial Hospital South has received at least five requests seeking records pursuant to Amendment 7.

39. Plaintiff Memorial Healthcare Group, Inc. d/b/a Memorial Hospital Jacksonville and Specialty Hospital Jacksonville is a Florida corporation with its principal place of business in Jacksonville, Florida. Memorial Hospital of Jacksonville has received at least eighteen requests seeking records pursuant to Amendment 7. Specialty Hospital Jacksonville has received at least three requests seeking records pursuant to Amendment 7.

40. Plaintiff Miami Beach Healthcare Group, Ltd. d/b/a Aventura Hospital and Medical Center is a Florida limited partnership with its principal place of business in Aventura, Florida. Aventura Hospital has received at least seventeen requests seeking records pursuant to Amendment 7.

41. Plaintiff New Port Richey Hospital, Inc. d/b/a Community Hospital is a Florida corporation with its principal place of business in New Port Richey, Florida. Community Hospital has received at least thirteen requests seeking records pursuant to Amendment 7.

42. Plaintiff North Florida Regional Medical Center, Inc. d/b/a North Florida Regional Medical Center is a Florida corporation with its principal place of business in Gainesville, Florida. North Florida Regional Medical Center has received at least eleven requests seeking records pursuant to Amendment 7.

43. Plaintiff Northwest Medical Center, Inc. d/b/a Northwest Medical Center is a Florida corporation with its principal place of business in Margate, Florida. Northwest Medical Center has received at least fourteen requests seeking records pursuant to Amendment 7.

44. Plaintiff Okaloosa Hospital, Inc. d/b/a Twin Cities Hospital is a Florida corporation with its principal place of business in Niceville, Florida. Twin Cities Hospital has received at least three requests seeking records pursuant to Amendment 7.

45. Plaintiff Okeechobee Hospital, Inc. d/b/a Raulerson Hospital is a Florida corporation with its principal place of business in Okeechobee, Florida. Raulerson Hospital has received at least two requests seeking records pursuant to Amendment 7.

46. Plaintiff Orange Park Medical Center, Inc. d/b/a Orange Park Medical Center is a Florida corporation with its principal place of business in Orange Park, Florida. Orange Park Medical Center has received at least nine requests seeking records pursuant to Amendment 7.

47. Plaintiff Orlando Regional Healthcare System, Inc. d/b/a Arnold Palmer Hospital for Children, Dr. P. Phillips Hospital, Lucerne Hospital, Orlando Regional Medical Center, South Seminole Hospital, and Winnie Palmer Hospital for Women & Babies is a Florida corporation with its principal place of business in Orlando, Florida. Collectively, Orlando Regional Healthcare Systems has received over twenty requests seeking records pursuant to Amendment 7. Arnold Palmer Hospital for Children has received at least two requests seeking records pursuant to Amendment 7. Dr. P. Phillips Hospital has received at least two requests seeking records pursuant to Amendment 7.

Lucerne Hospital has received at least two requests seeking records pursuant to Amendment 7. Orlando Regional Medical Center has received at least two requests seeking records pursuant to Amendment 7. South Seminole Hospital has received at least two requests seeking records pursuant to Amendment 7. Winnie Palmer Hospital for Women & Babies has received at least two requests seeking records pursuant to Amendment 7.

48. Plaintiff Osceola Regional Hospital, Inc. d/b/a Osceola Regional Medical Center is a Florida corporation with its principal place of business in Kissimmee, Florida. Osceola Regional Medical Center has received at least seven requests seeking records pursuant to Amendment 7.

49. Plaintiff Palms West Hospital Limited Partnership d/b/a Palms West Hospital is a Delaware limited partnership with its principal place of business in Loxahatchee, Florida. Palms West Hospital has received at least nine requests seeking records pursuant to Amendment 7.

50. Plaintiff Plantation General Hospital, L.P. d/b/a Plantation General Hospital is a Delaware limited partnership with its principal place of business in Plantation, Florida. Plantation General Hospital has received at least sixteen requests seeking records pursuant to Amendment 7.

51. Plaintiff Sarasota Doctors Hospital, Inc. d/b/a Doctors Hospital of Sarasota is a Florida corporation with its principal place of business in Sarasota, Florida. Doctors Hospital of Sarasota has received at least four requests seeking records pursuant to Amendment 7.

52. Plaintiff South Broward Hospital District d/b/a Memorial Hospital Miramar, Memorial Hospital Pembroke, Memorial Hospital West, Memorial Regional Hospital, and Memorial Regional Hospital South is a special tax district of the State of Florida with its principal place of business in Broward County, Florida. Collectively, the South Broward Hospital District has received at least nine requests seeking records pursuant to Amendment 7. Memorial Hospital Pembroke has received at least one request seeking records pursuant to Amendment 7. Memorial Hospital West has received at least two requests seeking records pursuant to Amendment 7. Memorial Regional Hospital has received at least six requests seeking records pursuant to Amendment 7.

53. Plaintiff Sun City Hospital, Inc. d/b/a South Bay Hospital is a Florida corporation with its principal place of business in Sun City Center, Florida. South Bay Hospital has received at least three requests seeking records pursuant to Amendment 7.

54. Plaintiff Tallahassee Medical Center, Inc. d/b/a Capital Regional Medical Center is a Florida corporation with its principal place of business in Tallahassee, Florida. Capital Regional Medical Center has received at least twenty-four requests seeking records pursuant to Amendment 7.

55. Plaintiff The Villages Tri County Medical Center, Inc. d/b/a The Villages Regional Hospital is a not-for-profit Florida corporation with its principal place of business in The Villages, Florida. The Villages Regional Hospital anticipates receiving requests seeking records pursuant to Amendment 7 in the near future.

56. Plaintiff University Hospital, Ltd. d/b/a University Hospital and Medical Center is a Florida limited partnership with its principal place of business in Tamarac,

Florida. University Hospital and Medical Center has received at least twelve requests seeking records pursuant to Amendment 7.

57. Plaintiff West Florida Regional Medical Center, Inc. d/b/a West Florida Hospital is a Florida corporation with its principal place of business in Pensacola, Florida. West Florida Hospital has received at least ten requests seeking records pursuant to Amendment 7.

58. Plaintiff James C. Pappas, M.D., is a Florida resident and patient. Dr. Pappas has personal medical records at Florida healthcare facilities that fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028. As currently interpreted and enforced, Dr. Pappas fears that his medical records will be subject to release pursuant to Amendment 7.

59. Plaintiff Cheryl Paynter is a Florida resident and patient. Ms. Paynter has personal medical records at Florida healthcare facilities that fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028. As currently interpreted and enforced, Ms. Paynter fears that her medical records will be subject to release pursuant to Amendment 7.

60. Plaintiff Linda Taylor is a Florida resident and patient. Ms. Taylor has personal medical records at Florida healthcare facilities that fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028. As currently interpreted and enforced, Ms. Taylor fears that her medical records will be subject to release pursuant to Amendment 7.

61. Plaintiff Tina Poitras is a Florida resident and patient. Ms. Poitras has personal medical records at Florida healthcare facilities that fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028. As currently interpreted and enforced, Ms. Poitras fears that her medical records will be subject to release pursuant to Amendment 7.

62. Plaintiff Victor Poitras is a Florida resident and patient. Mr. Poitras has personal medical records at Florida healthcare facilities that fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028. As currently interpreted and enforced, Mr. Poitras fears that his medical records will be subject to release pursuant to Amendment 7.

63. The associations identified in paragraphs 18-20 ("healthcare associations") are comprised of members that fall within the definition of "health care facility" or "health care provider" pursuant to Amendment 7 and Fla. Stat. § 381.028. The healthcare facilities identified in paragraphs 21-57 ("healthcare facilities") fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028. The individuals identified in paragraphs 58-62 ("patients") have been patients at, and have medical records held by, Florida healthcare facilities that fall within the definition of "health care facility" pursuant to Amendment 7 and Fla. Stat. § 381.028.

64. Defendant Ana Viamonte is sued in her official capacity as Surgeon General and Secretary of the Florida Department of Health. Pursuant to Fla. Stat. §§ 381.0011 *et seq.*, the Department of Health is tasked with assessing and enforcing laws related to the public health in Florida, including Amendment 7. Amendment 7 has

been implemented through section 381.028, and is part of title 29, chapter 381 of the Florida Statutes—laws related to public health. Under Fla. Stat. § 381.0012(2), the Department of Health is authorized to apply for an injunction restraining any person from violating or continuing to violate any of the provisions of chapter 381, or from failing or refusing to comply with the requirements of chapter 381. Pursuant to section 381.0012(3), the Department of Health may commence and maintain all necessary and proper actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any Florida law relating to public health. And, under section 381.0012(5), it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county official to assist the Department of Health or any of its agents in enforcing the state health laws under chapter 381. Florida Statutes § 381.0025(1) provides that a violation of any of the provisions of chapter 381 constitutes a misdemeanor of the second degree, punishable by up to 60 days imprisonment and a $500 fine. Under Fla. Stat. §§ 458.311(1)(g), 459.015(1)(g), 460.413(1)(i), 461.013(1)(h), 462.14(1)(h), and 466.028(1)(i), the Department of Health is also empowered to initiate disciplinary action against physicians who fail to comply with any statutory or legal obligation placed upon a licensed physician.

65. Defendant Holly Benson is sued in her official capacity as Secretary of the Agency for Health Care Administration ("AHCA"). Under Fla. Stat. § 20.42(3), AHCA is the chief health policy and planning entity for the state, and is responsible for health facility licensure, inspection, and regulatory enforcement, as well as investigation of consumer complaints related to health care facilities. Pursuant to Fla. Stat. §§ 395.001 *et*

seq., AHCA is responsible for overseeing hospital regulation in Florida. Under Fla. Stat. § 395.0161(d), AHCA is required to perform licensure complaint investigations and may investigate complaints received from individuals. Pursuant to Fla. Admin. Code Ann. R. 59A-3.273(2)(a), facilities are required to comply with applicable laws and regulations, including Amendment 7. AHCA is authorized to assure compliance with the licensure requirements of chapter 59A-3 of the Florida Administrative Code, and may institute sanctions for noncompliance pursuant to Fla. Admin. Code Ann. R. 59A-3.253(11). Under Fla. Stat. §§ 408.031 *et seq.*, AHCA is tasked with overseeing healthcare facilities and healthcare services in Florida. Under Fla. Stat. § 408.15, AHCA is empowered to exercise all powers reasonably necessary or essential to carrying out the expressed intent, objects, and purposes of chapter 408 of the Florida Statutes. And, pursuant to Fla. Stat. § 381.028(3)(a), AHCA is named in relation to the implementation of Amendment 7.

66. Defendant Bill McCollum is sued in his official capacity as the Attorney General of the State of Florida. Pursuant to article IV, section 4 of the Florida Constitution, the Attorney General is the chief legal officer of the state. Under Fla. Stat. § 16.01, the Attorney General is required to perform the duties incident to the office of the Attorney General, which include the power to initiate suit in the public interest. Pursuant to Fla. Stat. § 760.51, the Attorney General is authorized to enforce the provisions of Florida's Constitution and laws. Accordingly, the Attorney General is empowered to initiate suit in the public interest to enforce Amendment 7 on behalf of the citizens of Florida.

FEDERAL STATUTORY AND REGULATORY BACKGROUND

Federal Laws Governing The Peer Review Process

67. Congress adopted the Health Care Quality Improvement Act of 1986 ("HCQIA") to address the "overriding national need" to provide incentives and protections for physicians to engage in effective professional peer review, which Congress deemed essential to restricting the ability of incompetent physicians to move from state to state. 42 U.S.C. §§ 11101 *et seq.*

68. When Congress enacted HCQIA, it made five findings:

> (1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.
>
> (2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.
>
> (3) This nationwide problem can be remedied through effective professional peer review.
>
> (4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.
>
> (5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review. *Id.*

69. HCQIA established federal standards for professional review actions. As long as a professional review body complies with these standards, both the hospital and

the members of the professional review body are immune from suits for damages relating to decisions made during the professional review action.

70. HCQIA established a National Practitioner Data Bank ("NPDB") and required hospitals, state medical boards, and parties paying out settlements or judgments to make specific reports to state and federal authorities.

71. Congress made the information reported to state and federal authorities under HCQIA confidential.

72. Any unauthorized disclosure of such information is subject to a civil monetary penalty of $10,000 per violation.

73. The NPDB serves as a comprehensive means for healthcare facilities to track and evaluate incompetent physicians.

74. Pursuant to HCQIA, hospitals must consult the NPDB to learn whether reports have been filed concerning (1) any new physicians, and (2) existing physicians once every two years.

75. In order to assert the immunity conferred by statute, hospitals are required to report adverse findings to the applicable state licensing board and to the NPDB.

76. As a practical matter, if a hospital cannot provide appropriate incentives, immunities, and protections to the peer review process, including confidentiality, it will be unable to conduct the required credentialing and peer review in an effective manner and will be unable to generate reliable information for the NPDB. This would constitute an obstacle to the primary purpose of HCQIA.

77. HCQIA's legislative history further indicates that Congress considered effective credentialing and peer review indispensable to achieving HCQIA's purpose. According to the House Report, HCQIA's stated purpose was "to improve the quality of medical care by encouraging physicians to identify and discipline other physicians who are incompetent or who engage in unprofessional behavior." Congress also noted that "[d]octors who are sufficiently fearful of the threat of litigation will simply not do meaningful peer review." H. Rep. No. 99-903, 99th Cong. 2d Sess. 245, reprinted in 1986 U.S.C.C.A.N. 6384, 6385.

78. Congress clearly indicated, through its statutory findings and the legislative history of HCQIA, that effective professional peer review is essential to achieving HCQIA's objective and purpose.

79. Congress did not preempt state laws that provide incentives, immunities, or protections for those engaged in a professional review action that are greater than those incentives, immunities, or protections provided under HCQIA.

80. Congress implicitly preempted those state laws that provide lesser incentives, immunities, or protections to a healthcare facility's peer review process because such laws would thwart the purposes and objectives of HCQIA.

Federal Laws Governing Maintenance and Disclosure of Patient Information

81. Congress enacted the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191, 110 Stat. 1936, on August 21, 1996.

82. The Administrative Simplification provisions of HIPAA, codified at 42 U.S.C. §§ 1320d through 1320d-8, ensure the protection of confidential health

information and facilitate healthcare efficiencies and cost savings by encouraging the electronic exchange of information.

83. HIPAA directs the Department of Health and Human Services ("HHS") to establish specifications for implementing the standards adopted under the Administrative Simplification provisions.

84. Pursuant to this authority, HHS promulgated a "suite of uniform, national standards" for the "security of health information." Standards for Privacy of Individually Identifiable Health Information; Final Rule, 67 Fed. Reg. 53,182, 53,182 (Aug. 14, 2002).

85. These regulations delineate the specific circumstances under which individuals may request, and healthcare facilities may release, patient medical information. 45 C.F.R. pts. 160, 164.

86. In carrying out its duty under HIPAA, HHS promulgated its Final Rule on the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"), 65 Fed. Reg. 82,462 (Dec. 28, 2000) (codified at 45 C.F.R. pts. 160, 164). The Privacy Rule was intended to protect and enhance the rights of consumers by providing them access to their health information and controlling the inappropriate use of that information, and by improving the efficiency and effectiveness of healthcare delivery by creating a national framework for health privacy protection.

87. Because no federal rule existed to "protect the privacy of health information and guarantee patient access to such information," the rule established "a set of basic national privacy standards and fair information practices that provides all

Americans with a basic level of protection and peace of mind that is essential to their full participation in their care." *Id.* at 82,464.

88. "Individually identifiable health information" can only be released to the same individual who was the subject of the information or if that individual's consent is acquired.

89. If information identifies an individual, or if there is a reasonable basis to believe that the information can be used to identify an individual, it is individually identifiable health information, and thus protected under HIPAA.

90. The Privacy Rule also establishes the standard for discerning whether individually identifiable health information has been "de-identified" and thus is no longer fully protected under HIPAA.

91. The Privacy Rule requires that one of two intricate and complex methods of review be employed before information may be deemed de-identified. First, if a facility (1) hires an expert with "appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable"; and (2) the expert determines that the risk is very small that the information could be used alone or in combination with other reasonably available information by an anticipated recipient to identify an individual who is a subject of the information; and (3) the expert documents the methods and results of the analysis that justify such a determination, then the information may be deemed "de-identified" under HIPAA. 45 C.F.R. § 164.514(b)(1)(i)-(ii).

92. Second, if a facility eliminates at least eighteen enumerated identifiers of the individual and the individual's relatives, employers, and household members, and the facility does not have actual knowledge that the resulting information could be used alone or in combination with other information to identify an individual who is a subject of the information, the information may be deemed "de-identified." *Id.* § 164.514(b)(2)(i)-(ii).

93. Both of these methods, however, require the healthcare facility to also conclude that the information could not be used, alone or in combination, with other reasonably available information to identify the subject of the information.

94. HHS has acknowledged that de-identified information is not unidentifiable information, and as more information is made publicly available the possibility of re-identifying de-identified information increases.

95. Violations of these provisions are punishable by civil and criminal fines and possible imprisonment.

96. Pursuant to 42 U.S.C. § 290dd-2 and concomitant implementing regulations, codified at 42 C.F.R. §§ 2 *et seq.*, records concerning the identity, diagnosis, or treatment of any patient maintained in connection with a substance abuse treatment program or facility that has received direct or indirect federal assistance are entitled to complete confidentiality. These protections apply to records concerning any individual irrespective of whether or when such individual ceases to be a patient. Records covered by these provisions may only be released to medical personnel in cases of a bona fide medical emergency, to certain qualified personnel in limited instances, or if authorized by

a court order after a showing of good cause, including the need to avert a substantial risk of death or serious bodily harm.

97. Violations of these provisions are punishable by fines in accordance with Title 18 of the United States Code.

98. The Restatement of Bill of Rights for Mental Health Patients, enacted as part of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99-319, 100 Stat. 478, and codified at 42 U.S.C. § 10841, provides that individuals admitted to a program or facility for the purpose of receiving mental health services should be accorded the right to confidentiality of the individual's records.

99. The right to confidentiality of records under the Bill of Rights for Mental Health Patients remains applicable to records pertaining to an individual after such individual's discharge from a program or facility.

FACTUAL ALLEGATIONS

Florida Law Prior to Amendment 7

100. Florida law affirmatively requires hospitals to "have a planned, systematic, hospital wide approach to the assessment, and improvement of its performance to enhance and improve the quality of health care provided to the public." Fla. Admin. Code R. 59A-3.271(1).

101. Health care facilities are required to engage in self-critical credentialing and peer review as a necessary component to licensure under Florida law.

102. Self-critical credentialing and peer review are also required by The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations.

103. The federal Medicare Hospital Conditions of Participation, administered by the Center for Medicare and Medicaid Services, have established conditions and standards that providers must follow in the credentialing and peer review process.

104. Failure to comply could result in a loss of accreditation and a loss of Medicare eligibility.

105. At least four Florida statutes protect the confidentiality of information and documents produced in conformity with peer review and quality control proceedings.

106. The Florida legislature adopted several discovery privileges that apply to the various components of a hospital's self-critical analysis. These statutory privileges ensure the confidentiality of information and documents compiled and considered for the purpose of credentialing, peer review, risk management, and all other quality and performance improvement purposes. In most instances, the Legislature has expressly provided that such records "shall not be subject to discovery or introduction into evidence" in civil actions. Fla. Stat. §§ 395.0191(8), 395.0193(8), 766.101(5), 766.1016(2).

107. The Legislature also immunized those participants in such self-evaluation procedures from liability for actions taken in that process.

108. In interpreting these statutes, Florida courts have recognized that a guarantee of confidentiality is absolutely essential to meaningful self-critical analysis by healthcare facilities.

109. The Attorney General of Florida has previously explained that the rationale for affording peer review or medical review committee proceedings confidentiality is to (1) encourage medical review committees to advance the quality of health care; (2) encourage the eager and voluntary assistance of physicians on medical review committees; and (3) ensure complete candor in the process.

110. Florida law requires that each hospital's systematic hospital-wide self-critical review process "be defined in writing, approved by the governing board [of the hospital]," and shall include "a confidentiality policy." Fla. Admin. Code R. 59A-3.271(1)(b).

111. Hospitals' governing bodies, together with their medical staffs, have passed medical staff bylaws and rules which necessarily define in writing the hospital system for quality improvement and include the mandated confidentiality policy.

112. Under Florida law, the bylaws and medical staff rules and regulations, designed to accomplish effective credentialing, peer review, risk management and quality assurance functions, are binding, enforceable contracts between the hospitals and the physicians serving on their medical staffs.

113. These bylaws and medical staff rules and regulations invariably require that the members of the medical staff and all who participate in peer review functions do

so in a confidential setting, and promise that all information created through these processes will remain confidential and privileged.

114. Plaintiff healthcare facilities have entered into these bylaws or medical staff rules and regulations with all of their respective medical staffs.

Passage of Amendment 7

115. On November 2, 2004, Florida adopted Amendment 7, titled the Patients' Right to Know About Adverse Medical Incidents, by ballot initiative. That Amendment is now codified as Article X, Section 25 of the Florida Constitution.

116. Prior to its passage, Amendment 7 was touted as a patient rights initiative that would give current and prospective patients access to information previously unavailable under Florida law.

117. Amendment 7 grants all "patients" a constitutional right of access to certain medical records. Amendment 7 provides:

> (a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

Fla. Const. art. X, § 25(a).

118. "Patients" are defined as any individual who "has sought, is seeking, is undergoing, or has undergone care or treatment in a healthcare facility or by a healthcare provider." *Id.* § 25(c)(2).

119. "Adverse medical incident" includes any "act, neglect, or default of a healthcare facility or healthcare provider that caused or could have caused injury to or

death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any healthcare facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committee." *Id.* § 25(c)(3).

120. Amendment 7 states that the identities of the patients whose medical records are inspected and copied "shall not be disclosed," and that "privacy restrictions imposed by federal law shall be maintained." *Id.* § 25(b).

121. Immediately following passage of Amendment 7, various physician and hospital groups voiced their concern that Amendment 7 would likely eliminate meaningful peer review. Specifically, the removal of confidentiality in peer review processes would cause healthcare facilities' medical review committees to either refuse to participate in the committee structures which ensure peer review, or refuse to address the critical issues of whether physicians were qualified and whether substandard care was provided. Because most healthcare facilities in Florida rely on voluntary medical staff membership on these review committees, this concern was immediate and pressing.

122. No other state has authorized such a broad right to acquire the information and records maintained by healthcare facilities.

Interpretation of Amendment 7

123. On June 20, 2005, the Florida legislature passed a law designed to enact and further define the scope of Amendment 7.

124. Section 381.028 provided that Amendment 7 was not retroactive.

125. Section 381.028 also provided, among other things, that: (1) Amendment 7 only permitted access to final reports produced by hospitals; (2) the statutory privileges and confidentiality afforded healthcare facility records would be preserved; (3) access to records was limited to records at facilities at which the requesting individual had been a patient; (4) individuals were only entitled to access records involving the same or a substantially similar condition, treatment, or diagnosis that the individual had; and (5) the laws governing the discoverability or admissibility into evidence of records of an adverse medical incident in any judicial or administrative proceeding were preserved.

126. Florida courts have since invalidated several provisions of this legislation and broadly construed Amendment 7.

127. The Florida Supreme Court has held that Amendment 7 is retroactive, and therefore applicable to every record maintained by a healthcare facility that relates to any act that could have caused injury to a patient—whether the record was created before or after passage of the Amendment.

128. The Florida Supreme Court also held that Amendment 7 is self-executing, and thus Florida's Legislature may not regulate or define the effect of the provision in a manner that would limit its broad grant of authority.

129. Based on this ruling, the Florida Supreme Court struck down the portions of section 301.028 that: (1) provided for prospective application of Amendment 7; (2) only allowed for access to "final records" prepared by facilities; (3) preserved the statutory privileges and confidentiality of healthcare facility records; (4) limited access to facilities at which the requesting individual was a patient; (5) limited access to records

relating to the same or a substantially similar condition, treatment, or diagnosis; and (6) preserved the laws governing and limiting the discovery or admissibility into evidence of records concerning adverse medical incidents.

130. Florida courts have also concluded that Amendment 7 strips courts of their inherent authority to limit the scope of access to records based on their relevance to a pending proceeding or based on whether it would impose an unreasonable or undue burden or expense upon a healthcare facility or healthcare provider.

Application and Impact of Amendment 7

131. Amendment 7 expressly requires the dissemination of information reported to or reviewed by Plaintiffs' confidential professional review process.

132. Amendment 7 requests are overwhelmingly made in medical malpractice actions and under Florida's medical malpractice pre-suit process. They are generally directed at party defendants in the form of document requests, interrogatories, and subpoenas for testimony.

133. Additional requests are sent to non-party healthcare facilities in subpoenas for documents and testimony.

134. While some direct requests have come to healthcare facilities outside of the formal discovery process, they are largely sought in the course of the pre-suit process.

135. Efforts to secure information concerning defendant doctors and non-parties in the discovery process are consistently made without regard to relevancy, admissibility, materiality, annoyance, embarrassment, patient privacy, oppression, undue burden or expense.

136. Medical malpractice plaintiffs have issued discovery requests invoking Amendment 7 and requesting every record of "all adverse medical incidents at the hospital"—without any limitation as to timeframe or type of incident, or any concern for the healthcare facility's ability to gather such information without creating an undue burden or impacting confidential and privileged patient information, peer review materials, or attorney-client work product.

137. Medical malpractice plaintiffs have also sought the complete credentialing and peer review files of physicians, the complete employment files of hospital employees, and the identities of individuals who participated in hospital boards, hospital committees, and medical staff committees performing peer review, credentialing, risk management, and quality of care investigations—information that was clearly protected prior to the adoption of Amendment 7.

138. Medical malpractice plaintiffs have also sought to compel hospital board members, administrators, employees, and physicians to answer interrogatories or provide testimony at depositions about the investigations, proceedings, and records relating to credentialing, peer review, risk management, and quality of care activities. Immunity from providing such testimonial evidence was clearly protected prior to the adoption of Amendment 7.

139. The burdens imposed by these requests are enormous. The broad requests received pursuant to Amendment 7 have an extremely large number of potentially responsive documents. These requests will require a significant amount of time and resources to locate, collect, and catalogue the relevant files. Upon assembling the files,

each document within the file must be closely reviewed and analyzed for potentially responsive information, and then scrutinized and screened for any potentially identifying health information. Prior to releasing any records, the facility will also need to assess the records and conclude that any remaining information could not be used, alone or in combination with other reasonably available information, to identify the subject of the information.

140. For example, it is estimated that it would take well over one year (approximately seventy weeks) and cost several hundreds of thousands of dollars for Plaintiff University Hospital and Medical Center—a 317 bed facility—to comply with an Amendment 7 request for seven years worth of records relating to adverse medical incidents. These estimates do not include the time and cost necessary to produce records maintained by the Performance Improvement/Patient Safety Committee, the Infection Control Committee, the Pharmacy Therapeutic Committee, the Surgical Review Committee, the Emergency Room Task Force, the Medical Staff Department, and the Quality Management Department. Each of these departments maintain separate and independent sets of records that would also need to be assembled, reviewed, redacted, and copied before they can be produced.

141. It is estimated that it would take over forty-two weeks and cost several hundreds of thousands of dollars for Plaintiff Brandon Regional Hospital—a 367 bed facility—to comply with an Amendment 7 request for five years worth of records relating to adverse medical incidents. These estimates only cover the time and cost associated with producing the records under direct control of the hospital's Risk Management

Department, and do not include the time and cost necessary to produce records separately maintained by other departments in the hospital.

142. The burden to smaller facilities would also be tremendous. At Englewood Community Hospital—a 100 bed facility, and Regional Medical Center Bayonet Point—a 290 bed facility, Plaintiffs anticipate that an Amendment 7 request for ten years worth of records would encompass over 50,000 records at each facility.

143. Because the records are not static, complying with Amendment 7 also requires the repeated culling and detailed review of the records in response to each new request.

144. Amendment 7 requires Plaintiff healthcare facilities to divulge inherently sensitive medical information and contribute to an increased risk that private medical data will be disclosed to, and identified by, the public.

145. Plaintiffs will need to review hundreds of thousands of medical records, redact all of the identifying factors that may possibly permit the re-identification of the patient, and possibly employ expert statisticians to assess the likelihood of re-identification in light of the existence of other information publicly available—including other medical records acquired through Amendment 7.

146. Because Amendment 7 will cause the comprehensive and public distribution of sensitive health information, there is a significant risk that protected private health information will either be distributed in error because of the volume of records released, or that re-identification will occur because of the cumulative and combined amount of data that becomes publicly available.

HARM TO THE PLAINTIFFS AND THE PUBLIC INTEREST

147. If Plaintiff healthcare facilities and the members of Plaintiff healthcare associations are forced to comply with Amendment 7, they will have no adequate remedy at law to make them whole for the damage to their operations and interests in their confidential records, for the risks associated with violating the federal statutory scheme governing the maintenance of sensitive health information, for the threat of disclosure of personal patient information, and for the impairment of their contractual obligations.

148. Absent declaratory or injunctive relief, Plaintiff healthcare facilities and the members of Plaintiff healthcare associations will be forced to dedicate risk management staff members, enumerable staff hours, and possibly employ expert statisticians to try to simultaneously comply with Amendment 7 and the federal laws governing healthcare facility information and records. Plaintiffs will also need to locate, transport, catalogue, redact, review, and copy hundreds of thousands of records in order to comply with these requests. If Plaintiffs fail to comply with both Amendment 7 and the federal regulatory scheme, they may be exposed to contempt citations, criminal sanctions, substantial fines, civil liability, and unrecoverable costs associated with compliance. These sums could reach into the many millions of dollars.

149. A central purpose of HCQIA is to encourage a candid and honest analysis and review of staff physicians' medical treatment and procedures. Amendment 7 unduly strips information produced in the course of the peer review process of its confidentiality, exposing Plaintiffs to suit despite their good faith efforts to honor their contractual obligations and foster the safest medical environment attainable.

150. The injury to Plaintiff patients if healthcare facilities are forced to comply with Amendment 7 is immeasurable given that it will deprive them of informational privacy and adequate health care. Plaintiffs and the public have an overriding interest in preserving the confidentiality of inherently sensitive health information. Plaintiffs and the public have an equally compelling interest in sustaining a safe, affordable, and cost effective heathcare system. These interests are comprehensively met at the federal level, but Amendment 7's broad command that healthcare facilities divulge all records involving any acts or omissions that could have caused injury will guarantee a substantial reduction in Plaintiffs' fundamental right to informational privacy. In addition to embarrassing Plaintiffs, who have previously undergone healthcare treatment, this disclosure will deter Plaintiffs from seeking necessary medical care in the future, or from providing crucial personal information when they do. Amendment 7 will also discourage candid medical peer review, thereby diminishing the quality of care publicly available, and it will reduce the efficiencies and cost effective privacy measures advanced under HIPAA.

CLAIM ONE

Amendment 7 Violates The Supremacy Clause Because It Is Preempted By HCQIA

151. Plaintiffs reallege and incorporate by reference Paragraphs 1-150.

152. Amendment 7 is expressly preempted by HCQIA as applied to information covered by HCQIA because the Amendment affords less incentives and protections to individuals taking part in peer review processes.

153. Amendment 7 also conflicts with and constitutes an obstacle to the full object and purpose of HCQIA, and is therefore preempted as applied to records covered by HCQIA.

CLAIM TWO

Amendment 7 Violates The Fourteenth Amendment

154. Plaintiffs reallege and incorporate by reference Paragraphs 1-150.

155. The dissemination of private health information that will inevitably occur under Amendment 7 because of the volume of records released to the public, the cumulative and combined amount of data that will become publicly available, and other intended and incidental effects of Amendment 7, violates Plaintiff patients' constitutional right to informational privacy.

156. Amendment 7 is therefore unconstitutional as applied to records containing individually identifiable health information.

CLAIM THREE

Amendment 7 Violates The Fourteenth Amendment

157. Plaintiffs reallege and incorporate by reference Paragraphs 1-150.

158. The breadth and severe burdens imposed by Amendment 7, coupled with its retroactive application, violates the Due Process Clause of the Fourteenth Amendment. Amendment 7 lacks a legitimate purpose and is not furthered by a rational means.

159. The prospective application of Amendment 7 also violates the Due Process Clause because there is no legitimate purpose for the Amendment, and the Amendment is not furthered by a rational means.

CLAIM FOUR

Amendment 7 Violates The Contracts Clause

160. Plaintiffs reallege and incorporate by reference Paragraphs 1-150.

161. Through its retroactive application, Amendment 7 substantially impairs the obligation of contracts.

162. There is no significant and legitimate public purpose for the Amendment, and the resulting adjustment of rights and responsibilities of the contracting parties are not based upon reasonable conditions, nor are they of an appropriate nature.

163. Amendment 7 is therefore unconstitutional as applied to records covered by Plaintiff healthcare facilities' contracts.

RELIEF REQUESTED

164. Plaintiffs pray that this Court find and conclude and declare that:

(a) Amendment 7 is preempted in part by HCQIA;

(b) Amendment 7 is contrary to federal law because it violates Plaintiff patients' constitutional right to informational privacy;

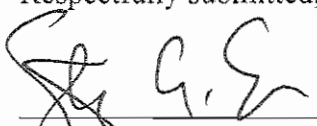
(c) Amendment 7 is contrary to federal law because it violates Plaintiff healthcare facilities' due process rights;

(d) Amendment 7 is contrary to federal law because it impairs the obligations of existing contracts; and

(e) Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

Dated July 10, 2008

Respectfully submitted,



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