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**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

RANDY WARNER, M.D.,)
)
 Plaintiff,)
)
 v.)
)
 TANNER MEDICAL CENTER, INC.,)
)
 Defendant.)

CASE NO.: 12-CV-01197

JURY TRIAL DEMANDED

PLAINTIFF'S FIFTH AMENDED COMPLAINT

INTRODUCTION

The basic facts are simple and shocking. Defendant has engaged an unholy war against Plaintiff Randy Warner, M.D. ("Dr. Warner") including but not limited to engaging in racketeering activity against Dr. Warner.

Defendant has invaded Dr. Warner's privacy by eavesdropping on a telephone conversation that Dr. Warner had with a childhood friend. Defendant has tortiously interfered with Dr. Warner's business relationship with Anita Waid, APRN ("Ms. Waid"). By the above stated outrageous misconduct, Defendant has intentionally inflicted emotional distress upon Dr. Warner.

In addition, Defendant has engaged in racketeering activity against Dr. Warner by fraudulently electronically billing third party payers for services rendered by Dr. Warner. And Defendant has engaged in racketeering activity by

receiving money mailed through the United States mail to a post office box in Atlanta, Georgia for services rendered by Dr. Warner that Defendant was not entitled to receive and keep.

The above claims are not based upon and do not arise from any peer review process. Accordingly, Defendant does not have any alleged peer review immunity for those claims.

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JURISDICTION AND VENUE

1.

The Court has jurisdiction over the parties and the subject matter.

2.

Venue is proper in this judicial district.

PARTIES

3.

Dr. Warner, at all material times, has been a physician licensed to practice medicine by the State of Georgia.

4.

Defendant Tanner Medical Center, Inc., (“Defendant”) operates several medical facilities in West Georgia, including hospitals in Carrollton, Bremen and Villa Rica, Georgia, and medical offices in Bremen, Carrollton, Franklin, Tallapoosa, Temple, and Villa Rica, and a psychiatric facility known as Willowbrooke in Villa Rica, Georgia.

BACKGROUND FACTS

A.

DR. WARNER'S STAFF PRIVILEGES WITH DEFENDANT

5.

Dr. Warner's medical specialty is psychiatry.

6.

Dr. Warner had staff privileges with Defendant from late 2004 until March 8, 2013, when Defendant summarily suspended Dr. Warner's privileges.

7.

Dr. Warner's primarily hospital based medical practice, since early 2005, was with Defendant's mental health and psychiatric services.

8.

Since Willowbrooke's inception, during April 2009, until March 8, 2013, Dr. Warner practiced at Willowbrooke.

B.

DEFENDANT MANIPULATES PATIENT DISCHARGES TO INCREASE IT'S PROFITS

9.

Defendant manipulates patient discharges to increase its profits.

10.

Georgia Medicaid reimbursements decline from the second day of a patient's admission.

11.

By the fourth day a Georgia Medicaid patient is hospitalized, Defendant is no longer making a profit on the patient.

12.

Defendant urged Dr. Warner to discharge Georgia Medicaid patients by the patient's fourth day of admission, so that Defendant would not lose money on the patient.

13.

Some insurance companies pre-approve patient coverage for seven days.

14.

With regard to patients pre-approved for seven days, Defendant pressured Dr. Warner not to discharge these patients prior to the seventh day of pre-approved payment.

15.

Because Defendant attempts to maximize its revenue from pre-approved patients, many pre-approved patients are kept in the hospital longer than they need to be kept.

16.

Defendant, by manipulating patient discharges, interfered with Dr. Warner's compliance with the Standard of Care.

C.

**DEFENDANT'S EFFORT TO MONOPOLIZE AND
CONTROL THE WEST GEORGIA MEDICAL AND BEHAVIORAL
HEALTH CARE MARKET**

17.

Defendant seeks to monopolize and control the West Georgia medical and behavioral health care market.

18.

Defendant has had an on-going strategy to acquire private medical practices.

19.

Defendant has acquired numerous private medical practices.

Defendant has 28 private medical practices:

- (A) Carousel Pediatrics;
- (B) Carrollton Family Health Care;
- (C) Carrollton Surgical Group;
- (D) Children's Healthcare of West Georgia;
- (E) Comprehensive Breastcare Center;
- (F) Gastroenterology Associates;
- (G) Infectious Diseases of West Georgia;
- (H) Internal Medicine of West Georgia;
- (I) Mirror Lake Internal Medicine;
- (J) New Georgia Family Health Care;
- (K) Primary Care of Bremen;
- (L) Tallapoosa Family Healthcare;
- (M) Tanner Family Healthcare of Franklin;
- (N) Tanner Heart and Vascular Specialists;
- (O) Tanner Intensive Medical Services;
- (P) Tanner Lung & Sleep Specialists;
- (Q) Tanner Urology;

- (R) Tanner Primary Care of Carrollton;
- (S) Tanner Primary Care of West Paulding;
- (T) Tanner Radiation Oncology;
- (U) Tanner Vascular Surgery;
- (V) Villa Rica Family Medicine;
- (W) Villa Rica OB-GYN;
- (X) West Carroll Family Healthcare;
- (Y) West Georgia Anesthesiologist Associates, Inc.;
- (Z) West Georgia Behavioral Health;
- (AA) West Georgia Family Medicine; and
- (BB) Woodland Family Healthcare.

21.

Upon information and belief, after acquiring private medical practices, Defendant has increased the acquired practices' charges for their services.

D.

DR. WARNER'S REFUSAL TO SIGN AN ALL-INCLUSIVE CONTRACT

22.

Defendant, during 2006, urged Dr. Warner to sign an all inclusive contract for psychiatric services at its day hospital.

23.

Defendant urged Dr. Warner to sign an all-inclusive contract in an effort to increase its profits.

24.

Dr. Warner refused Defendant's request to sign an all-inclusive contract for its day hospital.

25.

Dr. Warner refused to sign a contract that would allow Defendant to bill insurers for his professional services.

E.

DEFENDANT'S PATTERN OF RACKETEERING ACTIVITY

26.

Defendant has engaged in a pattern of racketeering activity by repeated and continuous acts of wire and mail fraud directed against Dr. Warner, who is the "victim" of Defendant's pattern of racketeering activity.

27.

Defendant has engaged in a repeated wire fraud by electronically billing third party payers for services Dr. Warner provided.

28.

Defendant has engaged in repeated mail fraud by receiving, through the United States mail at a post office box in Atlanta, Georgia, payments for services rendered by Dr. Warner, that Defendant fraudulently received and kept.

29.

Defendant, through its pattern of racketeering activity, has obtained money to which Dr. Warner was and is entitled.

30.

Defendant was and is the direct beneficiary of its pattern of racketeering activity.

31.

Defendant was and is the perpetrator of its pattern of the racketeering activity.

32.

With regard to Patient A, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 30, 2012, October 31, 2012, November 1, 2012, November 2, 2012, November 5, 2012, November 6, 2012, November 7, 2012, November 8, 2012, November 9, 2012, November 12, 2012, November 20, 2012, November 21, 2012, November 26,

2012, November 28, 2012, November 29, 2012, November 30, 2012, and December 3, 2012.

33.

With regard to Patient A, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 32.

34.

With regard to Patient B, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 4, 2012, December 5, 2012, December 6, 2012, December 7, 2012, and December 10, 2012.

35.

With regard to Patient B, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 34.

36.

With regard to Patient C, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 5, 2012, November 6, 2012, November 7, 2012, November 8, 2012, November 9,

2012, November 12, 2012, November 13, 2012, November 19, 2012, November 20, 2012, November 21, 2012, November 26, 2012, November 27, 2012, November 29, 2012, November 30, 2012, December 3, 2012, and December 13, 2012.

37.

With regard to Patient C, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 36.

38.

With regard to Patient D, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 26, 2012, November 27, 2012, November 28, 2012, November 30, 2012, and December 4, 2012.

39.

With regard to Patient D, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 38.

40.

With regard to Patient E, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 19, 2012, November 20, 2012, November 21, 2012, November 26, 2012, November 27, 2012, and November 30, 2012.

41.

With regard to Patient E, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 40.

42.

With regard to Patient F, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 9, 2012, November 20, 2012, November 26, 2012, and November 27, 2012.

43.

With regard to Patient F, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 42.

44.

With regard to Patient G, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 12, 2012, November 19, 2012, and November 20, 2012.

45.

With regard to Patient G, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 44.

46.

With regard to Patient H, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 19, 2012, November 20, 2012, November 21, 2012, November 26, 2012, November 27, 2012, November 28, 2012, November 29, 2012, November 30, 2012, December 4, 2012, December 6, 2012, and December 7, 2012.

47.

With regard to Patient H, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 46.

48.

With regard to Patient I, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 19, 2012, November 20, 2012, and November 26, 2012.

49.

With regard to Patient I, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 48.

50.

With regard to Patient J, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: June 15, 2012, June 18, 2012, June 20, 2012, June 21, 2012, June 25, 2012, June 27, 2012, July 9, 2012, July 11, 2012, and July 12, 2012.

51.

With regard to Patient J, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 50.

52.

With regard to Patient K, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: May 31, 2012.

53.

With regard to Patient K, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 52.

54.

With regard to Patient L, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: June 25, 2012, June 26, 2012, June 26, 2012, July 2, 2012, July 9, 2012, and July 10, 2012.

55.

With regard to Patient L, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 54.

56.

With regard to Patient M, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: July 9, 2012, July 10, 2012, July 12, 2012, July 16, 2012, July 17, 2012, July 25, 2012, July 31, 2012, and August 2, 2012.

57.

With regard to Patient M, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 56.

58.

With regard to Patient N, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: June 21, 2012, June 22, 2012, June 25, 2012, June 26, 2012, June 27, 2012, and June 29, 2012.

59.

With regard to Patient N, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 58.

60.

With regard to Patient O, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: August 1, 2012, August 2, 2012, August 3, 2012, August 6, 2012, August 8, 2012, August 9, 2012, August 10, 2012, August 14, 2012, and August 15, 2012.

61.

With regard to Patient O, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 60.

62.

With regard to Patient P, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: April 16, 2012, April 17, 2012, April 19, 2012, April 24, 2012, April 25, 2012, April 26, 2012, April 30, 2012, and May 1, 2012.

63.

With regard to Patient P, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 62.

64.

With regard to Patient Q, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: August 1, 2012, August 2, 2012, August 3, 2012, August 4, 2012, August 6, 2012, August 8, 2012, August 9, 2012, August 10, 2012, August 14, 2012, and August 15, 2012.

65.

With regard to Patient Q, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 64.

66.

With regard to Patient R, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: August 9, 2012, August 10, 2012, August 13, 2012, and August 15, 2012.

67.

With regard to Patient R, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 66.

68.

With regard to Patient S, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: July 9, 2012, July 10, 2012, July 11, 2012, July 12, 2012, July 17, 2012, July 31, 2012, and August 1, 2012.

69.

With regard to Patient S, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 68.

70.

With regard to Patient T, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: May 29, 2012, May 31, 2012, June 12, 2012, and June 18, 2012.

71.

With regard to Patient T, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 70.

72.

With regard to Patient U, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: February 28, 2012.

73.

With regard to Patient U, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 72.

74.

With regard to Patient V, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 17, 2011, October 21, 2011, October 27, 2012, October 28, 2011, October 31, 2011, November 14, 2011, and November 22, 2011.

75.

With regard to Patient V, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 74.

76.

With regard to Patient W, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 26, 2011, November 9, 2011, and November 10, 2011.

77.

With regard to Patient W, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 76.

78.

With regard to Patient X, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 27, 2011, October 28, 2011, October 31, 2011, November 2, 2011, November 3, 2011, November 4, 2011, November 7, 2011, November 9, 2011, November 10, 2011, November 11, 2011, and November 14, 2011.

79.

With regard to Patient X, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 78.

80.

With regard to Patient Y, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 13, 2011, December 14, 2011, December 15, 2011 and December 16, 2011.

81.

With regard to Patient Y, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 80.

82.

With regard to Patient Z, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: November 15, 2011, November 16, 2011, November 17, 2011, November 18, 2011, November 21, 2011, November 22, 2011, and November 23, 2011.

83.

With regard to Patient Z, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 82.

84.

With regard to Patient AA, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 13, 2011, December 14, 2011, December 15, 2011, December 23, 2011, December 26, 2011 and December 27, 2011.

85.

With regard to Patient AA, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 84.

86.

With regard to Patient BB, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 16, 2011 and December 20, 2011.

87.

With regard to Patient BB, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 86.

88.

With regard to Patient CC, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 22, 2011, December 23, 2011, December 26, 2011, December 28, 2011, January 4, 2012, and January 6, 2012.

89.

With regard to Patient CC, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 88.

90.

With regard to Patient DD, Defendant made fraudulent electronic billing claims for rendered the following dates by Dr. Warner: December 23, 2011, December 26, 2011, December 27, 2011, December 28, 2011, January 4, 2012, and January 6, 2012.

91.

With regard to Patient DD, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 90.

92.

With regard to Patient EE, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 4, 2012.

93.

With regard to Patient EE, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 92.

94.

With regard to Patient FF, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: January 30, 2012, January 31, 2012, February 2, 2012, February 6, 2012, February 8, 2012, February 9, 2012, and February 10, 2012.

95.

With regard to Patient FF, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 94.

96.

With regard to Patient GG, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 30, 2012, November 1, 2012, November 2, 2012, November 5, 2012, November 6, 2012, and November 7, 2012.

97.

With regard to Patient GG, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 96.

98.

With regard to Patient HH, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: January 25, 2012, January 26, 2012, January 30, 2012, February 1, 2012, February 7, 2012, February 8, 2012, February 9, 2012, and February 15, 2012.

99.

With regard to Patient HH, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 98.

100.

With regard to Patient II, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 1, 2012, October 2, 2012, October 3, 2012, October 4, 2012, October 5, 2012, October 8, 2012, October 10, 2012, October 11, 2012, October 12, 2012, and October 16, 2012.

101.

With regard to Patient II, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 100.

102.

With regard to Patient JJ, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 2, 2012, October 3, 2012, October 8, 2012, October 9, 2012, and October 10, 2012.

103.

With regard to Patient JJ, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 102.

104.

With regard to Patient KK, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: April 26, 2012, April 27, 2012, April 30, 2012, May 7, 2012, May 8, 2012, May 9, 2012, May 10, 2012, and May 11, 2012.

105.

With regard to Patient KK, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 104.

106.

With regard to Patient LL, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: April 4, 2012, April 5, 2012, April 6, 2012, April 9, 2012, April 11, 2012, April 12, 2012, April 17, 2012, April 19, 2012, April 20, 2012, and April 25, 2012.

107.

With regard to Patient LL, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 106.

108.

With regard to Patient MM, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: October 2, 2012.

109.

With regard to Patient MM, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 108.

110.

With regard to Patient NN, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: April 11, 2012, April 16, 2012, April 17, 2012, and April 19, 2012.

111.

With regard to Patient NN, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 110.

112.

With regard to Patient OO, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: August 17, 2011, August 18, 2011, August 22, 2011, and August 23, 2011.

113.

With regard to Patient OO, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 112.

114.

With regard to Patient PP, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: May 29, 2012, May 31, 2012, June 12, 2012, and June 18, 2012.

115.

With regard to Patient PP, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 114.

116.

With regard to Patient QQ, Defendant made fraudulent electronic billing claims for the services rendered the following dates by Dr. Warner: December 18, 2012 and December 20, 2012.

117.

With regard to Patient QQ, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 116.

118.

With regard to Patient RR, Defendant made fraudulent electronic billing claims for services rendered the following dates by Dr. Warner: December 19, 2012 and December 21, 2012.

119.

With regard to Patient RR, Defendant received payments through the United States mail for the services rendered by Dr. Warner for the dates stated in paragraph 118.

120.

Dr. Warner, upon information and belief, believes that Defendant has engaged in fraudulent billing in addition to the fraudulent billing set forth above and Dr. Warner will pursue the issue in informal and formal discovery.

F.

**DR. WARNER'S REFUSAL TO BECOME
A "CAPTIVE" PHYSICIAN**

121.

Defendant has had an on-going strategy to control, if possible, the private medical practices that it is unable to acquire.

122.

Dr. Warner, during 2005, at Defendant's urging, initially allowed Defendant's Medical Services Organization to do his billing.

123.

Defendant's Medical Services Organization, for doing Dr. Warner's billing, received 8% of Dr. Warner's gross revenue.

124.

But within approximately six months, Dr. Warner discontinued his relationship with Defendant's Medical Service Organization.

125.

Dr. Warner did not want to be "functionally" Defendant's employee.

126.

Dr. Warner told Defendant that he did not want to “function” as its employee.

127.

Dr. Warner refused to give Defendant any control over his practice.

G.

**DEFENDANT’S INTENTIONAL INTERFERENCE WITH
DR. WARNER’S RELATIONSHIP WITH ANITA WAID, APRN**

128.

Defendant willfully and wrongfully delayed the credentialing of Anita Waid, APRN (“Ms. Waid”) while she was employed by Dr. Warner.

129.

Defendant delayed granting Ms. Waid Level I privileges.

130.

No legitimate reason existed for Defendant delaying Level I privileges to Ms. Waid

131.

After granting Ms. Waid Level I privileges, Defendant, for an undue period of time refused to grant Level II privileges to Ms. Waid.

132.

No legitimate reason existed for Defendant delaying Level II privileges to Ms. Waid.

133.

Level II privileges allow an APRN to act more autonomously.

134.

No legitimate reason existed for Defendant delaying Level II privileges to Ms. Waid.

135.

Defendant's delay in granting Level II privileges to Ms. Waid limited her contribution to Dr. Warner's practice.

136.

Level II privileges authorized Ms. Waid to see patients when Dr. Warner is on campus in "direct proximity" to Ms. Waid.

137.

After unjustly delaying Ms. Waid's Level II credentialing, Defendant wrongfully refused to credential Ms. Waid to Level III.

138.

Defendant stated that it would not consider giving Ms. Ward Level III credentialing until December 2012.

139.

Level III credentialing would have authorized Ms. Waid to function independently of Dr. Warner.

140.

Level III privileges would have made Ms. Waid more valuable to Dr. Warner's practice.

141.

No legitimate reason existed for Defendant to refuse Level III credentials to Ms. Waid, while she was employed by Dr. Warner.

142.

Ms. Waid, August 29, 2012, believing that Defendant was denying her level III credentialing because of her relationship with Dr. Warner, resigned her full time position with Dr. Warner.

143.

After resigning from her full time position, Ms. Waid agreed to work for Dr. Warner during weekends.

144.

Defendant, September 19, 2012, forced Ms. Waid to resign from her staff privileges with Defendant.

145.

By forcing Ms. Waid to resign her staff privileges, Defendant made it impracticable for Ms. Waid to continue to work for Dr. Warner.

146.

Because Defendant forced her to resign her staff privileges, Ms. Waid, during November 2012, terminated her relationship with Dr. Warner.

H.

**DEFENDANT'S BLATANT FAVORITISM
TO DR. WARNER'S COMPETITOR**

147.

Defendant, during December 2012, reinstated Ms. Waid's staff privileges.

148.

Defendant reinstated Ms. Waid's staff privileges so she could work for Mahaveer Vakharia, M.D. ("Dr. Vakharia").

149.

Dr. Vakharia is a psychiatrist who practices at Willowbrooke.

150.

Hospitals typically do not “fine” doctors for late discharge summaries.

151.

Defendant has “fined” Dr. Warner for late discharge summaries.

152.

Defendant has denied Dr. Warner’s request to have assistance in preparing his discharge summaries.

153.

Dr. Vakharia has been late in preparing discharge summaries for Willowbrooke patients to an extent that far exceeds Dr. Warner’s lateness.

154.

Defendant has not “fined” Dr. Vakharia for his late discharge summaries.

155.

Defendant has given Dr. Vakharia permission to use an LPC to prepare his discharge summaries.

I.

DEFENDANT'S INVASION OF DR. WARNER'S PRIVACY

156.

Dr. Warner, from June 3, 2011 to September 14, 2011, employed Tierra Peters ("Ms. Peters"), in his private practice, as a receptionist.

157.

Five days after Ms. Peters without notice abruptly resigned her employment with Dr. Warner, Defendant's agents met ("Meeting") with Ms. Peters.

158.

The Meeting was attended by Gary Thomas ("Mr. Thomas").

159.

Mr. Thomas is not a physician.

160.

Mr. Thomas is not a member of Defendant's medical staff.

161.

Mr. Thomas, as a non-physician, by definition can not be a member of a peer review committee.

162.

Defendant, by a letter dated February 13, 2013, acknowledged that Mr. Thomas was not a member of any “peer review committee.”

163.

Defendant had an alleged tape of the Meeting transcribed by a non-employee.

164.

Defendant’s agents, at the Meeting, reviewed Dr. Warner’s emails, which Mr. Peters produced to them, that related solely to Dr. Warner’s private practice.

165.

Defendant’s agents, at the Meeting, reviewed pictures taken by Ms. Peters of Dr. Warner’s private office space.

166.

Defendant’s agents, at the Meeting, asked Ms. Peters about Dr. Warner’s alleged medical history.

167.

Defendant’s agents, at the Meeting, asked Ms. Peters about alleged medications that Dr. Warner was taking.

168.

Defendant's agents, at the Meeting, reviewed pictures on Ms. Peters' cellphone of medications allegedly taken by Dr. Warner.

169.

Defendant, October 17, 2011, secretly recorded Dr. Warner while he was speaking on a land line telephone ("Private Telephone Conversation") in a private room ("Room") at Willowbrooke that he uses to review patient records and to dictate medical records.

170.

Dr. Warner took appropriate steps to ensure the privacy of his Private Telephone Conversation.

171.

Dr. Warner, during the Private Telephone Conversation, had the Room's door closed.

172.

Dr. Warner, during the Private Telephone Conversation, did not have anyone in the Room with him.

173.

Dr. Warner, during the Private Telephone Conversation, talked in a manner so that he was not overheard by persons walking past the Room with its door closed.

174.

Defendant either “bugged” the Room or wiretapped the telephone, which Dr. Warner used in the Room, or both.

175.

Defendant did not give notice to Dr. Warner that Defendant was eavesdropping on the Private Phone Conversation.

176.

Dr. Warner’s childhood friend, with whom Dr. Warner was speaking with during the Private Telephone Conversation, did not have notice that Defendant was eavesdropping on the Private Telephone Conversation.

177.

Dr. Warner’s statements, during his Private Telephone Conversation, were solely a private discussion with an African American childhood friend.

178.

Dr. Warner's statements, during his Private Telephone Conversation, were not directed towards any staff member.

179.

Dr. Warner's statements, during his Private Telephone Conversation, were not directed toward any patient.

180.

Dr. Warner, during his Private Telephone Conversation, was not engaged in any patient care activity.

181.

Dr. Warner's statements, during his Private Telephone Conversation, were unrelated in any manner to patient care.

182.

Defendant wrongfully recorded Dr. Warner's Private Telephone Conversation.

183.

Defendant did not have the right to record Dr. Warner's Private Telephone Conversation.

184.

Defendant wrongfully transcribed Dr. Warner's Private Telephone Conversation.

185.

Defendant did not have the right to transcribe Dr. Warner's Private Telephone Conversation.

186.

Defendant wrongfully distributed Dr. Warner's Private Telephone Conversation.

187.

Defendant did not have the right to distribute Dr. Warner's Private Telephone Conversation.

188.

Defendant wrongfully recorded, transcribed and distributed Dr. Warner's Private Telephone Conversation to malign and delegitimize Dr. Warner in the eyes of his colleagues and peers.

189.

Defendant wrongfully recorded, transcribed and distributed Dr. Warner's Private Telephone Conversation in a malicious attempt to ruin Dr. Warner personally and professionally.

190.

Defendant wrongfully recorded, transcribed and distributed Dr. Warner's Private Telephone Conversation to create an unbridgeable breach between Dr. Warner and his colleagues.

191.

Defendant's misuse of Dr. Warner's Private Telephone Conversation is fraught with racial bias.

192.

Defendant's invasion of Dr. Warner's privacy was not limited to the information wrongfully obtained from Ms. Peters and the Private Telephone Conversation.

193.

Defendant has had its security employees follow Dr. Warner when he is on Defendant's property.

194.

Defendant, by chicanery, recently attempted to obtain the security code to Dr. Warner's office.

COUNT ONE

DEFENDANT'S INVASION OF DR. WARNER'S PRIVACY

195.

Dr. Warner incorporates paragraphs "1" through "194" as if stated fully herein.

196.

Privacy encompasses the real and virtual space where a person can express his or her thoughts, whether socially correct or not, without the fear of personal or professional consequences.

197.

Privacy is where the bonds of friendship are sealed.

198.

Louis D. Brandeis (later United States Supreme Court Justice Brandeis) and Samuel D. Warren, in one of America's most famous law review articles, stated that privacy is the right to be "left alone."

199.

At its core, the history of America is the history of the right of privacy.

200.

Georgia was the first State to recognize a claim for invasion of privacy.

201.

By looking at and obtaining copies of photos of his alleged medication, Defendant invaded Dr. Warner's privacy.

202.

By seeking and obtaining information about Dr. Warner's alleged medical conditions, Defendant invaded Dr. Warner's privacy.

203.

By reviewing Ms. Peters photos of Dr. Warner's office and alleged medication, Defendant invaded Dr. Warner's privacy.

204.

By receiving confidential financial information about Dr. Warner, Defendant invaded Dr. Warner's privacy.

205.

By reviewing and obtaining emails pertaining only to his private office, Defendant invaded Dr. Warner's privacy.

206.

By eavesdropping on Dr. Warner's Private Telephone Conversation, Defendant invaded Dr. Warner's privacy.

207.

By eavesdropping on Dr. Warner's Private Telephone Conversation, Defendant violated O.C.G.A. 16-11-62.

208.

By its wrongful use of the Private Telephone Conversations, Defendant has sought to coerce and functionally blackmail Dr. Warner.

209.

By divulging the contents of Dr. Warner's Private Telephone Conversation, Defendant violated Dr. Warner's privacy.

210.

By divulging Dr. Warner's Private Telephone Conversation, Defendant violated O.C.G.A. § 16-11-62.

211.

O.C.G.A. 16-11-67 prohibits Defendant from admitting the Private Telephone Conversation into evidence.

212.

O.C.G.A. 16-11-67 is based on the well-established legal principle that a party cannot benefit from its wrongdoing.

213.

Defendant acted with callous and conscience indifference to the consequences of its outrageous invasion of Dr. Warner's privacy.

214.

Defendant's outrageous invasion of Dr. Warner's privacy makes punitive damages against Defendant necessary and appropriate.

215.

Punitive damages are needed to punish Defendant for its outrageous invasion of Dr. Warner's privacy.

216.

Punitive damages are needed to deter Defendant and others from engaging in similar outrageous invasions of privacy.

217.

Defendant, in connection with its invasion of Dr. Warner's privacy, acted with the specific intent to harm Dr. Warner.

218.

Because it acted with the specific intent to harm Dr. Warner, Defendant is not entitled to the \$250,000 limitation on punitive damages provided by O.C.G.A. 51-12-5.1 (g).

219.

Defendant's bad faith conduct falls within the ambit of O.C.G.A.'s 13-6-11 attorney's fee provision.

220.

Because of Defendant's bad faith conduct, Dr. Warner is entitled to recover his costs of litigation including attorney's fees.

Wherefore, Dr. Warner requests the Court to enter a judgment against Defendant:

- (A) Awarding Dr. Warner compensatory damages in the amount of at least \$1,000,000, the exact amount to be determined by the jury;
- (B) Awarding Dr. Warner punitive damages in an amount of at least \$1,000,000, the exact amount to be determined by the jury;
- (C) Awarding Dr. Warner all allowable litigation costs including attorney's fees; and
- (D) Awarding Dr. Warner whatever other relief the Court deems just and proper.

COUNT TWO

**DEFENDANT'S TORTIOUS INTERFERENCE WITH
DR. WARNER'S BUSINESS RELATIONS WITH MS. WAID**

221.

Dr. Warner incorporates paragraphs "1" through "194" as if stated fully herein.

222.

Dr. Warner had a business relationship with Ms. Waid.

223.

Dr. Warner's business relationship with Ms. Waid was very important to Dr. Warner.

224.

Dr. Warner spent a substantial amount of time recruiting Ms. Waid.

225.

Dr. Warner spent substantial money recruiting Ms. Waid.

226.

After hiring Ms. Waid, Dr. Warner spent substantial time and energy training Ms. Waid so that she could contribute to his practice, lessen Dr. Warner's work load, and assist Dr. Warner in keeping his discharge summaries current.

227.

Defendant knew that Dr. Warner had a business relationship with Ms. Waid and that the business relationship was very important to Dr. Warner.

228.

Defendant intentionally and willfully interfered with Dr. Warner's business relationship with Ms. Waid by wrongfully delaying her credentialing.

229.

Defendant's interference with Ms. Waid's credentialing, which Ms. Waid attributed to her association with Dr. Warner, caused Ms. Waid to resign her full time position with Dr. Warner during August 2012.

230.

After resigning her full time position with Dr. Warner, Ms. Waid agreed to work during weekends for Dr. Warner.

231.

Defendant, September 19, 2012, forced Ms. Waid to resign her privileges at Defendant's hospital.

232.

By forcing Ms. Waid to resign her privileges, Defendant caused Ms. Waid to end her business relationship with Dr. Warner.

233.

Sometime during December 2012, Defendant reinstated Ms. Waid's privileges so that she could work for Dr. Warner's competitor Dr. Vakharia.

234.

Defendant acted with malice in connection with interfering with Dr. Warner's business relationship with Ms. Waid.

235.

Defendant's outrageous and egregiousness tortious interference with Dr. Warner's business relationship with Ms. Waid makes punitive damages against Defendant appropriate.

236.

Punitive damages are needed to punish Defendant for its outrageous wrongful conduct.

237.

Punitive damages are needed to deter Defendant and others from engaging in similar wrongful conduct.

238.

Defendant, in connection with its tortious interference with Dr. Warner's business relationship with Ms. Waid, acted with the specific intent to harm Dr. Warner.

239.

Because it acted with specific intent to harm Dr. Warner, Defendant is not entitled to the \$250,000 limitation on punitive damages provided by O.C.G.A. 51-12-5.1 (g).

240.

Defendant's bad faith conduct falls within the ambit of O.C.G.A.'s 13-6-11 attorney's fee provision.

241.

Because of Defendant's bad faith conduct, Dr. Warner is entitled to recover his costs of litigation including attorney's fees.

Wherefore, Dr. Warner requests the Court to enter a judgment against Defendant:

- (A) Awarding Dr. Warner compensatory damages in the amount of at least \$500,000, the exact amount to be determined by the jury;
- (B) Awarding Dr. Warner punitive damages in an amount of at least \$1,000,000, the exact amount to be determined by the jury;

- (C) Awarding Dr. Warner all allowable litigation costs including attorney's fees; and
- (D) Awarding Dr. Warner whatever other relief the Court deems just and proper.

COUNT THREE

**DEFENDANT'S INTENTIONAL INFLECTION
OF EMOTIONAL DISTRESS**

242.

Dr. Warner incorporates paragraphs "1" through "194" as if stated fully herein.

243.

By its invasion of Dr. Warner's privacy and by its intentional interference with Dr. Warner's business relationship with Ms. Waid, which unwarranted acts Defendant sought to hamstring, harass, and harm Dr. Warner (collectively Malicious and Abusive Conduct), Defendant intentionally inflicted severe emotional distress upon Dr. Warner.

244.

Defendant's Malicious and Abusive Conduct shocks the conscience.

245.

Defendant's Malicious and Abusive Conduct exceeds all permissible boundaries of decency.

246.

Defendant's Malicious and Abusive Conduct is utterly intolerable in a civilized society.

247.

Defendant's Malicious and Abusive Conduct rises to the requisite level of outrageousness and egregiousness to support a claim for intentional infliction of emotional distress.

248.

A description of Defendant's Malicious and Abusive Conduct to an average person of the community would cause the person to exclaim "outrageous!"

249.

Defendant's malicious and abusive conduct has caused Dr. Warner to suffer severe emotional distress.

250.

Defendant acted with callous and conscience indifference to the consequences of its outrageously Malicious and Abusive Conduct.

251.

Defendant's outrageous and egregiousness Malicious and Abusive Conduct makes punitive damages against Defendant appropriate.

252.

Punitive damages are needed to punish Defendant for its outrageous and egregious Malicious and Abusive Conduct.

253.

Punitive damages are needed to deter Defendant and others from engaging in similar outrageous and egregious Malicious and Abusive Conduct.

254.

Defendant, in connection with its Malicious and Abusive Conduct, acted with the specific intent to harm Dr. Warner.

255.

Because it acted with the specific intent to harm Dr. Warner, Defendant is not entitled to the \$250,000 limitation on punitive damages provided by O.C.G.A. 51-12-5.1 (g).

256.

Defendant's bad faith conduct falls within the ambit of O.C.G.A.'s 13-6-11 attorney's fee provision.

257.

Because of Defendant's bad faith conduct, Dr. Warner is entitled to recover his costs of litigation including attorney's fees.

Wherefore, Dr. Warner requests the Court to enter a judgment against

Defendant:

- (A) Awarding Dr. Warner compensatory damages in the amount of at least \$500,000, the exact amount to be determined by the jury;
- (B) Awarding Dr. Warner punitive damages in an amount of at least \$1,000,000, the exact amount to be determined by the jury;
- (C) Awarding Dr. Warner all allowable litigation costs including attorney's fees; and
- (D) Awarding Dr. Warner whatever other relief the Court deems just and proper.

COUNT FOUR

DEFENDANT'S PATTERN OF RACKETEERING ACTIVITY

258.

Dr. Warner reincorporates paragraphs "1" through "194" as if stated fully herein.

259.

O.C.G.A. 16-14-4(a) states: "It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including, money."

260.

Mail fraud, pursuant to O.C.G.A. 16-14-3 constitutes Racketeering acts.

261.

Wire fraud, pursuant to O.C.G.A. 16-14-3, constitutes Racketeering acts.

262.

Each electronic submission by Defendant of a fraudulent bill to a third party payer for services rendered by Dr. Warner constitutes Racketeering activity.

263.

Each mailing Defendant has received of payments mailed through the United States Postal Service for payments from their fraudulent billing for Dr. Warner's services constitutes Racketeering activity.

264.

Defendant's pattern of racketeering activity has directly injured Dr. Warner.

265.

Dr. Warner is entitled to recover his damages caused by Defendant's pattern of racketeering activity.

266.

Dr. Warner, pursuant to O.C.G.A. 16-14-6(c), is entitled to have his compensatory damages caused by Defendant's pattern of racketeering activity trebled.

267.

Dr. Warner, pursuant to O.C.G.A. 16-14-6(c), is entitled to punitive damages for Defendant's racketeering activity.

268.

Dr. Warner, pursuant to O.C.G. A. 16-14-6(c), is entitled to recover his attorney's fees caused to be incurred by Defendant's racketeering activity.

269.

Dr. Warner, pursuant to O.C.G.A. 16-14-6(c), is entitled to recover his costs of investigation with regard to Defendant's racketeering activity.

270.

Dr. Warner, pursuant to O.C.G.A. 16-14-6(c), is entitled to his costs of litigation with regard to Defendant's racketeering activity.

Wherefore, Dr. Warner respectfully request the Court to enter a judgment against Defendant:

- (A) Awarding Dr. Warner compensatory damages in an amount to be determined by the jury;
- (B) Awarding a trebling of his compensatory damages;
- (C) Awarding Dr. Warner punitive damages in an amount to be determined by the jury;
- (D) Awarding Dr. Warner his attorney's fees;
- (E) Awarding Dr. Warner his costs of investigation; and
- (F) Awarding Dr. Warner his costs of litigation.

271.

Dr. Warner demands a jury trial on all claims.

GARY BUNCH, P.C.

By: 

Gary Bunch
Georgia Bar Number 094612
Attorney for Plaintiff
Randy Warner, M.D.

527 Tanner Street
Carrollton, Georgia 30117
(770) 836-0405
pc257@bellsouth.net

August 2, 2013


CERTIFICATE OF SERVICE

CLERK _____ COURT

I hereby certify that I have this day caused to be served upon the other party a copy of **PLAINTIFF'S FIFTH AMENDED COMPLAINT** by causing a true and correct copy thereof to be hand delivered to Defendant's counsel:

Richard G. Tisinger, Jr.
Tisinger-Vance, P.C.
100 Wagon Yard Plaza
Carrollton, GA 30117

This 7th day of August, 2013.



Gary Bunch