



#### **IV.** **FACTS**

##### **A. BACKGROUND.**

The Plaintiff is a physician licensed to practice medicine in Texas with board certifications in obstetrics and gynecology. In 1996 the Plaintiff applied for and was granted privileges at Baylor Medical Center at Grapevine and until September, 2000 his practice was successful.

##### **B. THE [Name Redacted] CASE.**

In the early morning of September 6<sup>th</sup>, 2000, a patient of Dr. Basco named [Name Redacted] was in labor at the hospital. Her previous baby was delivered by a c-section but she consented to have Dr. Basco deliver this baby vaginally. This procedure is referred to as a VBAC which means vaginal birth after caesarian. A known risk of a VBAC is uterine rupture through the pre-existing surgical scar. A VBAC is permitted by the standard of care but because contractions can cause a uterine rupture, which can be catastrophic for the mother and baby, it is essential the patient and fetus be carefully monitored during labor for any signs of distress. A fetal heart monitor is used by the attending nurse to assess the well being of the baby's heart during labor. At 2:25 am the Defendant's attending nurse was negligent in commencing pitocin in violation of Dr. Basco's orders which in turn resulted in serious fetal distress including late decelerations of the fetal heart rate. Beginning at 2:45 am there was a loss of the fetal heart rate and tracing, ominous signs of a uterine rupture the attending nurse failed to observe and report to Dr. Basco. When she finally called Dr. Basco at 3:00 am she only told there was slight bleeding and she could not feel the presenting part. She did not tell

him she had been giving pitocin for 30 minutes, that there were decelerations or that there was a loss of the tracing of the fetal heart rate for 15 minutes. Unknown to Dr. Basco at the time was that the nurse was negligent and provided substandard care that actually caused a uterine rupture that would cause the ensuing death of the newborn. Since the nurse told him she could not feel the baby's presenting part, Dr. Basco suggested she try an ultrasound probe. When the attending nurse left the phone to get the ultrasound equipment, a charge nurse picked up the phone and told Dr. Basco for the first time there were decelerations, more bleeding and to come in immediately, which Dr. Basco did. Although he arrived at the bedside within 15 to 20 minutes and performed a timely emergency caesarian section by 3:30 am , because there had been a uterine rupture, the baby was severely compromised and placed on life supports which were withdrawn on 10/13/00.

#### **C. THE COVER-UP.**

The hospital had a prior experience when a uterine rupture in a VBAC case led to the baby's death and a lawsuit and was concerned the [Name Redacted] case could also lead to a lawsuit against it. If the medical records and nurse's notes revealed the nurse violated Dr. Baxco's pitocin order and that she did not timely assess and report the decelerations and loss of fetal heart tracing to Dr. Basco, this could prove the hospital's negligence in a subsequent lawsuit. Rather than be honest and forthright, the hospital chose to be dishonest and attempted to cover up the nurse's negligence by altering the chart in a way to make it appear Dr. Basco was negligent. Employees of the hospital, acting in concert with unknown persons, caused the original nurse's notes to

be destroyed and replaced with notes that stated during the 3:00 am call, Dr. Basco was informed by the attending nurse of not only the lack of the presenting part and slight bleeding but that the attending nurse could not detect the fetal heart rate and there was a loss of the fetal heart tracing. This was false. The new note implied Dr. Basco refused to come to the bedside and insisted the attending nurse do an ultrasound even though he was told of the ominous developments of the loss of the fetal heart rate and fetal heart tracing. In addition to altering the nurse's not, the pitocen order was altered to make it appear Dr. Basco had authorized the commencement of pitocen .

News of the uterine rupture spread rapidly at the hospital. The nurses and/ or nursing supervisors circulated false rumors to the hospital's Chief of Obstetrics that Dr. Basco refused to come to the hospital even when told of the loss of the fetal heart rate. After the surgery, Dr. Basco looked for the chart to make a note and observed the nurse's notes that he had reviewed before the surgery were missing. When he complained to the hospital's Quality Review Committee (QRC) about the substandard care the nurse provided his patient, the nurse falsely told the Section Chief that Dr. Basco had threatened her. On 9/14 Dr. Basco pulled the chart to respond to a QRC inquiry about the case and found the altered nurse's notes. When he requested the fetal monitor strip, a nurse supervisor refused to voluntarily provide it to him. He wrote a note in the chart on 9/14 stating the attending nurse's notes were incorrect as she did not report to him the ominous changes in the fetal heart rate.

#### **D. THE RETALIATION BEGINS-THE 29 DAY SUSPENSION.**

On 9/18/00, just four days after he wrote a note in the [Name Redacted] chart

that the nurse's note was incorrect and after he had complained to a nurse in QRC over the poor care [Name Redacted] received by the Defendant's nurse, Dr. Basco's privileges were summarily suspended by the Chief of the Medical Staff for 29 days . The stated reasons for the suspension was the outcome in the [Name Redacted] case, threatening a QRC nurse, using cytotec without patients' consent and failure to timely inform the hospital in an application for renewal of privileges he had been sued in a case styled "Powell v. Parkland."

#### **1. Intimidating a QRC nurse**

Dr. Basco was upset over the substandard care [Name Redacted] received by the nurse and reported this to the QRC nurse so it could be investigated. He did not threaten or intimidate anyone and the charge was later dropped.

#### **2.. The Powell case.**

When Dr. Basco was still in training as a resident at Parkland in '91, he performed a c-section on a patient with the permission of the attending physician. There were no complications with the procedure. In 1996 Mrs. Powell sued Parkland, four nurses and seven physicians, six of whom were residents in training at Parkland at the time, including Dr. Basco. Dr. Basco had no legal liability and the case was settled for nuisance value. In an application for renewal of privileges at Baylor Grapevine, Dr. Basco failed to list the Powell suit as having been filed based on legal advice from Winston Borum who represented him and all the Defendants in the Powell case that he did not have to report the case until it was resolved. When the Powell case was settled it was promptly reported to the Defendant in February, 2000. Despite knowing of this

issue the hospital took no action against Dr. Basco over the late reporting for 7 months, and then only after the uterine rupture in the [Name Redacted] case.

**c. CYTOTEC**

Cytotec is a drug to treat ulcers. It has also been used by some obstetricians to induce labor in term patients by placing a cytotec pill in the vagina on the cervix. In the late '90's the Defendant's Chief of Obstetrics, Dr. Tim Rost , recommended obstetricians at the hospital consider using cytotec in term patients to induce labor. Using cytotec in the office or hospital to induce labor in term patients was within the standard of care. Dr. Basco considered Dr. Rost's suggestion, but his research confirmed his own limited experience that cytotec was not very effective as an induction agent so he decided not to use it. To induce labor in term patients, Dr. Basco used a safe and effective procedure he was trained to use at Parkland called membrane stripping. This involves gently massaging the membranes inside the cervix with a gloved finger which causes the body's natural prostaglandins to be released which can cause labor to start.

Months before he was suspended , some of the labor and delivery nurses were spreading false rumors Dr. Basco must be using cytotec on his patients as he sometimes had more than one patient come to the hospital in labor in the middle of the week. Two nurses claimed that while working the night shift, they performed vaginal exams of Dr. Basco's patients and found remnants of a pill they claimed was cytotec. The reason several of his patients were in labor at the hospital in the middle of the week was because on Tuesday mornings he used membrane stripping to induce labor in his term patients. These rumors were reported to the hospital's Chief of Obstetrics who had the authority to investigate, refer the matter to the Quality Review Committee and suspend Dr. Basco, but he didn't take any action

because he determined they were unsubstantiated rumors.

Mrs. JoAnn DeCola was a medical assistant who had been employed off and on for Dr. Basco for four years. She was present during some examinations of his patients. She was unaware Dr. Basco used membrane stripping to induce labor in term patients, but she had heard of the rumors Dr. Basco may be using cytotec on his patients without their knowledge. During the four years she worked for him, she never complained to Dr. Basco, the office manager or anyone that she saw Dr. Basco inserting cytotec in his patients without consent. By the spring of 2000, Ms DeCola was placed on probation for not performing her duties. She was hostile toward Dr. Basco for making Pam Salinas the office manager instead of her and refused to carry out assignments from Ms. Salinas, including filing medical records. On or about April 3<sup>rd</sup>, 2000, when Ms. Salinas asked her to complete filing of records she refused and abruptly quit. On her way out the door she told the office manager to f--- herself and made an unspecified threat that everyone would be sorry for this and would pay for it. In May, 2000 she made good on her threat and told Dr. Rost, the Chief of Obstetrics, that she believed a patient of Dr. Basco's who delivered a premature infant in mid- July of 1999 was cytoteced by Dr. Basco without consent as she had seen him cytotecing other patients without telling them. Although Dr. Rost shared Ms. DeCola's allegation with the Hospital CEO Mark Hood, he did not take any further action to investigate the allegation, discuss it with Dr. Basco, request the Quality Review Committee investigate it or recommend any actions against Dr. Basco's privileges because he determined the allegation was unsubstantiated. At or about that time Dr. Rost was also aware a nurse claim she found remnants of a pill she believed was cytotec during an exam of one of Dr. Basco's patients, and although as Section Chief he had

the authority to refer the report to the Quality Review Committee for investigation and suspend Dr. Basco , he did neither because he did not believe the allegation proved anything as it was not against the standard of care to use cytotec.

Prior to Dr. Basco complaining to the QRC on or about 9/6/00 about the substandard nursing care Mrs. [Name Redacted] received, and prior to Dr. Basco's documenting on 9/14/00 the attending nurse's note in the chart were false, the Defendant never formally investigated or took any action against Dr. Basco's privileges based on the Powell case, since it knew there was no intent to conceal the case since he voluntarily self reported it seven months before the [Name Redacted] case . Nor did the Defendant take any action against his privileges based on the cytotec rumors which had been circulating for months because it knew they were not provable or credible because a) it knew that just because the remnant of a pill believed to be cytotec was reportedly found during a vaginal exam is no proof of substandard care since it was within the standard of care for obstetricians to use cytotec as an induction of labor agent; b) it knew it was unlikely these were Dr. Basco's patients or that the pill was not cytotec because it knew cytotec dissolves in less than four hours and would not be present more than seven hours later when nurses working the night shift claimed they found the pill. c) the hospital knew the nurses claims were not credible because if they found remnants of a pill they are trained and required by the standards of nursing practices to document the finding in the chart and notify the attending physician. The fact they did neither tends to prove the claimed events never happened ; d) the Defendant knew that assertions that a physician engaged in substandard care typically require the patient (s) in question be identified so the charts could be reviewed for verification of the complaint, but the nurses could not identify the patients and



the hospital could not produce any patient's chart to corroborate the charge; e) the hospital knew the alleged pill was never analyzed by a qualified physician such as a pharmacologist and that nurses were unqualified by training to identify the contents of a pill; and f) it knew the Chief of Obstetrics had reviewed the allegations months before the [Name Redacted] case and determined these allegations were not substantiated therefore he took no action against Dr. Basco's privileges even though he was authorized to do so.

**F. THE HOSPITAL IS THREATENED WITH SUIT BY [Name Redacted] ATTORNEY - DR.BASCO IS CLEARED IN [Name Redacted] BY THE QUALITY REVIEW COMMITTEE.**

On 9/20/00, just two days after the 29 day suspension, the [Name Redacted] attorney sent a letter to the hospital threatening litigation because of the nurse's negligence in causing the uterine rupture. The [Name Redacted] infant had been careflighted to Baylor Dallas and remained in extremely critical condition on life supports which were withdrawn on 10/13/00. By late September the Quality Review Committee (QRC) had completed its review of Dr. Basco's care in the [Name Redacted] case and advised him he had been cleared of any wrongdoing. This action frustrated the Defendant's plan to defend the [Name Redacted] claim by blaming Dr. Basco for the outcome and forced the defendant to drop the [Name Redacted] case as a basis of continued suspension of Dr. Basco. The Defendant knew, however, that Dr. Basco represented a significant threat to it because he would be an adverse witness to the Defendant in the [Name Redacted] claim as he had documented in the chart the nurses

notes were false and the attending nurse never told him of the ominous signs of the uterine rupture. The Defendant knew the [Name Redacted] would likely prevail unless the hospital could undermine Dr. Basco as a potential witness against it and persuade the [Name Redacted] counsel Dr. Basco caused the rupture. It knew it could severely undermine Dr. Basco's credibility as a potential witness by revoking his hospital privileges on charges he was unethical in cytotecing patients without consent and leaking news of the action to the [Name Redacted] 's attorney. Once this was accomplished , the final step was to induce the [Name Redacted] 's counsel to believe the hospital's nurse did not cause the rupture - Dr. Basco caused it by cytotecing her without her knowledge. It didn't matter to the Defendant the QRC had cleared Dr. Basco in the [Name Redacted] case or that the cytotec allegations could not be proven and would be not deemed credible in a court of law because the hospital planned to use secret proceedings and rigged rules of evidence in a hospital hearing that didn't require it to prove anything.

#### **G. THE CIVIL CONSPIRACY**

By September, 2000, the hospital retained attorney James Mac Stewart to prosecute a case on behalf of the Medical Executive Committee to revoke Dr. Basco's privileges and to represent the hospital to defend against the [Name Redacted] 's attorney's threats to sue for the nurse's negligence. The hospital retained him to revoke Dr. Basco's privileges on the pretextual charge that he was unethical in not listing the Powell case on an application to renew privileges even though they both knew he had relied on the advice of Mr. Borum in the delayed reporting. The Defendant knew there was a conflict of interest in retaining Mr. Stewart because he had been a partner of Mr. Borum during the entire time Mr. Borum

represented Dr. Basco in the Powell litigation, including when Mr. Borum gave him legal advice regarding reporting the case and when Mr. Borum wrote a letter to the Defendant in February, 2000 stating Dr. Basco had no legal liability in Powell and it was resolved with a nuisance value settlement. The canons of legal ethics prohibit an attorney from accepting an assignment for a new client that is adverse to a former client, especially if it would require him to disclose confidences or criticize his former partner's legal work. The hospital had shown its willingness to engage in unethical behavior by altering medical records and was willing to continue to be unethical by hiring an attorney with a known conflict of interest to revoke Dr. Basco's privileges based on pre-textual charges.

The hospital CEO, Mr. Stewart and unknown others entered into a civil conspiracy that had as the central goal winning the [Name Redacted] case at all costs, even if it meant destroying Dr. Basco's career and reputation. To carry out this conspiracy the following acts took place:

1. The nurses notes in [Name Redacted] and the pitocen order were altered in an attempt to cover up the nurse's negligence and make it appear Dr. Basco was negligent;
2. The hospital and its attorney improperly and unethically counseled the [Name Redacted] s regarding the withdrawal of life supports for the baby without disclosing to the [Name Redacted] s its nurse's negligence had caused the baby's injuries and that it had attempted to cover-up the negligence;
3. In spite of the fact Dr. Basco was cleared in the [Name Redacted] case by

the QRC, the Defendant not only continued the suspension but proceeded to revoke Dr. Basco's privileges based on the pre-textual charges of unethical behavior relating to not reporting Powell and using cytotec without consent. By letter dated 10/5/00 the hospital CEO informed Dr. Basco the Medical Executive Committee had met on 10/2/00 and recommended his privileges should be revoked because the MEC determined he used cytotec in his office without the patient's consent and his failure to identify the Powell case on the application to renew privileges. The charges were pre-textual because the Credentials Committee had known of the delayed reporting of the Powell case for 7 months without acting and knew the delayed reporting was not because of unethical behavior but because of legal advice from Mr. Borum. The hospital knew the cytotec allegations were not legitimate because Dr. Rost had known of the cytotec rumors for months and determined they were not substantiated. Moreover, the assertion the MEC determined in the 10/2/00 meeting Dr. Basco cytoted his patients without consent was either false or was done by the MEC by ignoring the views of Dr. Rost, the Chief of Obstetrics and the only obstetrician on the MEC that the allegations were not legitimate.

4. The hospital would grant Dr. Basco a peer review hearing, but it was a kangaroo court. The only peer ob-gyn on the hearing panel had been a consulting expert for the [Name Redacted] 's attorney for years, a conflict of interest that was undisclosed and that should have disqualified him. The two

other members of the hearing panel had strong financial ties to the Defendant. At the hearing the MEC falsely claimed that it determined Dr. Basco used cytotec on patients without consent . The hospital relied on witnesses it knew were unqualified and not credible to prove the allegations if the hearing was held in a court of law because the hospital imposed its own unfair rules at the hearing that did not require the hospital to prove anything. The rules it imposed at the hearing only required that the recommendation of the MEC be read, not proven, and the burden shifted to Dr. Basco who would lose unless he could prove the allegation was arbitrary and never had any basis in fact. This reverse or negative burden of proof is virtually impossible for the physician to satisfy because you can not disprove a negative and insures the hospital virtually always prevails at such hearings. The hospital rejected expert witness testimony it knew was reliable and credible that it was not scientifically possible for cytotec to be present and found during an examination done more than seven hours after it was alleged to have been inserted. The hospital proceeded with the charges despite the fact that no patients or their charts could be identified where it was substantiated cytotec was used without consent and despite the fact there were no qualified expert witnesses, such as pharmacologists, toxicologists or medical doctors who were independent of the hospital to support the cytotec charge.

5. The hospital revoked Dr. Basco's privileges and filed a false Adverse Action Report (AAR) with the National Practitioner Data Bank asserting it revoked

his privileges for being unethical as the MEC had determined he cytotedec patients without consent and because he had not listed a malpractice suit on an application. The AAR was false because the MEC never made such a determination, he was not unethical in not listing the Powell case or in using cytotec inpatients without consent, and because the true reason for revocation of privileges was to promote a litigation strategy to win the [Name Redacted] case.

6. The [Name Redacted] s filed a lawsuit against Dr. Basco and the Defendant. Despite the fact the nurse's negligence for which the hospital is liable was indefensible, and even though the hospital's peer review case against Dr. Basco based on the cytotec allegations was privileged from discovery by law and inadmissible in a civil suit, the hospital and its attorney conspired to leak the hospital's cytotec allegations to the Plaintiff's counsel in the [Name Redacted] case. Their purpose was to influence the [Name Redacted] 's attorneys to believe Dr. Basco was unethical and therefore not a credible witness against the hospital, and to induce them to shift the allegations in the case away from nursing negligence to a new theory that Dr. Basco caused the rupture by cytoteking Mrs. [Name Redacted] without consent. The [Name Redacted] 's attorneys pursued the cytotec allegations and deposed the hospital's three witnesses on the subject, but they ultimately determined the witnesses were unqualified and provided no evidence admissible in a court of law to prove the cytotec allegations. The attempted cover-up of the nurse's

negligence failed as did the conspiracy to blame Dr. Basco for causing the [Name Redacted] 's baby's death, as the Defendant would pay the [Name Redacted] s a substantial confidential settlement from the Defendant who would dismiss the suit against Dr. Basco without the payment of any compensation. The conspiracy was, however, successful in devastating Dr. Basco's career and reputation.

#### IV.

#### DECLARATORY JUDGMENT ACTION

Pursuant to the Health Care Quality Improvement Act (HCQIA), 24 USCA, Section IIII(a) and its state counterpart, for the Defendant to be entitled to immunity for professional review actions against Dr. Basco, it must be shown the Defendant complied with all four requirements of the acts-that the action was in the reasonable belief it was in furtherance of health care, that the action was taken after a reasonable effort to obtain the facts, that the action was taken after fair notice and hearing procedures were provided the physician, and the action was taken in the reasonable belief the it was warranted by the known facts. Plaintiff seeks a declaratory judgment that Defendant is not entitled to immunity for the professional review action because it failed to comply with one or more elements of the HCQIA and the Texas version of the act for the following reasons:

1. The hospital and co-conspirators did not act in furtherance of health care but to promote a litigation defense strategy for the [Name Redacted] claim and lawsuit by
  - a. Altering the chart in [Name Redacted] to make it appear Dr. Basco was

responsible.

b. Even though the outcome in [Name Redacted] was the principal reason for the 29 day suspension, when Dr. Basco was cleared in the [Name Redacted] case by the QRC the hospital did end the suspension but sought to destroy his credibility as a potential witness against the hospital in the [Name Redacted] suit by revoking his privileges based on the unproven pre-textual charges based on cytotec and Powell and illegally leaking the allegations to [Name Redacted] 's counsel.

2. The actions on the part of the hospital were not taken after a reasonable effort to determine the facts. The Defendant knew the Chief of Obstetrics and Gynecology had considered and rejected the cytotec rumors; it knew nurses were not qualified to opine as to the contents of the pill they claimed to have found; it knew there was no scientific evidence including qualified expert testimony to support the allegations; it knew no patients or their charts could be identified to corroborate the rumors ; it knew Dr. Basco's membrane stripping explained clustering of mid week deliveries; and it knew cytotec dissolves rapidly and would not be present more than seven hours later.; and it knew a highly qualified expert witness established the charge was not scientifically supportable.

3. The notice and hearing procedures were not fair. The hospital sought to revoke privileges based on unsubstantiated cytotec rumors that months earlier had been brought to the attention of the Chief of Obstetrics who decided not to pursue the allegations with the QRC or by taking action against Dr. Basco's privileges because he determined the allegations could not be substantiated. Normally when a complaint



against a physician is brought to the attention of his Section Chief who rejects it, this lays the rumors to rest. Here the Defendant pursued revoking privileges based on the cytotec rumors notwithstanding the fact that the only ob-gyn member of the MEC did not support the adverse action. The hospital retained counsel to prosecute Dr. Basco with a conflict of interest, appointed the only ob-gyn member of the hearing panel with an undisclosed conflict and appointed hearing panel members with financial ties to the Defendant which should have disqualified them. It imposed an unfair reverse burden of proof which not only permitted it to win the hearing without proving anything but to also file a false claim in Adverse Action Report and reports to State Boards of Medical Examiners that the hospital proved the charges.

4. The revocation of privileges and publication of the Adverse Action report to the National Practitioner Data Bank was not supported by the facts known. The hospital knew Dr. Basco was not unethical in not reporting the Powell case as he relied on counsel and self reported the case when it was resolved. It knew the Section Chief had rejected the cytotec allegations; the nurses were unqualified; their claims were unsupported by any scientific proof and were disproved by the scientific facts it was aware of; the nurses allegations were uncorroborated because they failed to chart the findings and inform the physician which was required; no patients could be identified or any charts produced which contained documentary evidence that cytotec was used on any patient without consent; that no qualified expert or forensic evidence existed; that no independent expert could be retained because there was no documentary support; that the failure to chart finding the remnants of a pill and inform the doctor

was a violation of the standards of care and provides compelling proof the findings never occurred, the pill was not cytotec or the patient was not Dr. Basco's; that an analysis of his deliveries did not prove cytotec was being used was supported by Dr. Gary Cunningham; that the hospital's cytotec case was reviewed in four legal forums and rejected as unsubstantiated; that JoAnne DeCola was not credible as she was a disgruntled former employee whose claim she complained to the Office Manager and another employee each time she saw cytotec being used were false.

The hospital, its attorney and others entered into a civil conspiracy to bring about the wrongful revocation of privileges based upon an inadequate investigation, that lacked sufficient proof, that was not in furtherance of health care and that used unfair hearing procedures.

## V.

### FIRST CAUSE OF ACTION - DEFAMATION

The hospital acting in a civil conspiracy with its attorney published false and defamatory allegations as follows:

1. To the National Practitioner Data Bank that Dr. Basco had his privileges terminated because the MEC determined he was unethical by using cytotec without informed consent and in failing to timely report the Powell litigation to the hospital. These allegations are false and defamatory because the MEC never made this determination, Dr. Basco was not unethical, he did not use Cytotec in his office, he timely reported the Powell lawsuit in reliance upon advice from his lawyer, and these were not the true reasons for the termination of Dr. Basco's privileges. His privileges were terminated to undermine his credibility as a witness and to falsely blame him for the death of an infant in a wrongful death suit brought by the [Name Redacted] s. The contents of the National Practitioner Data Bank have been re-published to the Texas State Board of Medical Examiners, and every medical society, insurance company, hospital, Medicare and Medicaid and other providers who have access to the National

**Practitioner Data Bank.**

- 2. At times which are not precisely known to the Plaintiff, Baylor Medical Center at Grapevine acting in concert with its attorney Mr. Stewart caused the disclosure of privileged peer review documents to the Plaintiff's counsel in the [Name Redacted] , which that counsel has used not only in the litigation, but that was also the basis of placement of advertisements in the newspaper soliciting former patients of the Plaintiff to sue Dr. Basco. These publications as well as the re-publications are false and defamatory since they falsely state that Dr. Basco was guilty of malpractice and unethical behavior, that he has wrongfully dispensed Cytotec to his patients without their consent and without informing health care providers and that he acted in an unethical manner in failing to timely report the Powell litigation, when the facts were that he did not use Cytotec in his office, and the delay in reporting the Powell litigation was his reliance upon the hospital's attorney's former partner's advice.**
- 3. In order to apply for any position of employment, the Plaintiff has been required to disclose the circumstances regarding the termination of his privileges with the Defendant which is a de-facto re-publication of the libel.**
- 4. Although he obtained a job as a case reviewer for Cigna, the Defendant's agents objected to his reviewing their cases because he had his privileges revoked because of the reasons stated in the AAR. While recently under consideration for a clinical ob-gyb position on the staff of a hospital in Wise County, the Defendant's agent conveyed to persons making the offer he should not be hired because he was an unethical doctor as stated in the AAR.**

**VI.**

**SECOND CAUSE OF ACTION - BREACH OF CONTRACT**

**The hospital bylaws and/or medical staff bylaws constitute a binding contract between the Plaintiff and the hospital. Under the terms of this contract, the Plaintiff cannot be summarily suspended unless he is an imminent danger to the patients. Moreover, his privileges cannot be terminated unless there is just cause and substantial evidence to support the termination. Dr. Basco's privileges were suspended and terminated not because he was an imminent danger, but in a failed attempt to destroy his credibility and to make him a scapegoat and the person to take the blame by the hospital in the wrongful death suit that was going to be filed by Mr. and Mrs. [Name Redacted] . Moreover, at all times material the**

hospital knew that the case against Dr. Basco was not supported by substantial evidence.

**VII.**

**THIRD CAUSE OF ACTION - INTENTIONAL INTERFERENCE  
WITH BUSINESS AND CONTRACTUAL RELATIONS**

At the time of the Plaintiff's summary suspension, he had a large number of patients who he planned to deliver at Baylor Medical Center at Grapevine. The wrongful summary suspension and revocation of his privileges constituted an intentional interference with his existing and prospective business relationships and caused significant economic harm.

**VIII.**

**FOURTH CAUSE OF ACTION - CIVIL CONSPIRACY**

The hospital entered into a civil conspiracy with its attorney and unknown persons to bring about the termination of Dr. Basco's privileges not in furtherance of health care, but rather to shift the blame in a lawsuit for the death of the [Name Redacted] s baby to Dr. Basco. Evidence of this conspiracy has previously been set forth herein and is adopted and incorporated for all purposes.

**IX.**

**MALICE**

The Defendant should forfeit any immunity and privilege under the state and federal versions of the Health Care Quality Improvement Act as well as any privileges that may legally excuse the publication of libel, breach of contract and interference with existing and prospective contractual relations because it acted with actual malice as previously alleged herein.

**X**

## **DAMAGES.**

**As a direct and proximate cause of the Defendant's wrongful conduct herein, Dr. Basco sustained a loss of referrals and such injury to his business that he was forced to close his medical practice. He has sustained a loss of earnings and earning capacity in the past and future; mental anguish, loss of sleep, anxiety, depression , and loss of self esteem, in the past and future; and injury to his career and reputation in the past and future. His damages are well in excess of the minimum jurisdictional limits of the Court. The Plaintiff also seeks punitive damages since the conduct of the Defendant was done with actual malice.**

**WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing he have judgment for his damages herein, exemplary damages and costs, pre-judgment and post judgment interest, and for such other and further relief, general and special, at law or in equity to which he may show himself to be justly entitled.**

**Respectfully submitted,**

**THE TOWNEND LAW FIRM**

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**ATTORNEY FOR PLAINTIFF**

## **CERTIFICATE OF SERVICE**

This will certify that the above and foregoing Plaintiffs' Third Amended Petition has been

mailed to the attorney for Defendant, James M. Stewart, 1701 Market Street, Suite 318, LB 18, Dallas, Texas 75202 on this \_\_\_\_\_ day of March, 2005.

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David W. Townend