

meetings regarding Dr. Tohidi's privileges occurred at either 5:30 p.m. or 6:00 p.m. at night (see Minutes of February 5, 2004, February 25, 2004 and March 15, 2004). On the morning of March 25, 2004, I was informed that the meeting to discuss Dr. Tohidi's privileges would be that night. See email, included with this letter. I rearranged my plans and I traveled to Oceanside, California, as did my client, his wife and a patient for a meeting at night, either at 5:30 pm or 6:00 pm, only to learn the meeting occurred at 3:30 p.m. and was over.

I intended to inform the board of directors, among other things, that Dr. Tohidi only recently underwent a voluntary psychiatric evaluation at the request of the Medical Board of California as a result of the false reporting by Dr. Folkerth of the scalpel incident and, as a result of the examination, Dr. Tohidi's case was closed. I have informed Mr. Merrill and Mr. Curtis of this fact. Moreover, Dr. Folkerth has insisted that the only psychiatric examination he wanted for Dr. Tohidi was a six day inpatient examination in Houston, Texas. Given the recent psychiatric examination and Dr. Tohidi's recent offer to undergo a second examination in San Diego at his expense, it seems punitive to require Dr. Tohidi to spend six days in Houston, Texas for an examination costing around \$6,000.

I also intended to provide to board members the information included in this letter regarding the effort Dr. Tohidi expended attempting to work with the hospital regarding his reintroduction to the staff. The letters and our attempts were rejected or ignored. Instead, Dr. Folkerth jammed through the board additional punitive measures against Dr. Tohidi, all in violation of the Brown Act.

In the event it appears to you that the conduct of Dr. Folkerth is in violation of the Brown Act, I

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April 9, 2004

**Via Facsimile (760) 940-4050 and Certified Mail**

Ronald A. Mitchell, President/Chairperson

Cyril Kellet, Vice President

Darlene Garrahy, Secretary

Max Halfon, Treasurer

Sheila Bryant-Tucker, Assistant Secretary

Larry Schallock, Assistant Treasurer

RoseMarie Reno, Member

Tri-City Healthcare District

Board of Directors

4002 Vista Way

Oceanside, Ca 92056

Dear Elected Officials:

This letter is to call your attention to what we believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the board of directors of the hospital.

The nature of the violation is as follows: In its meeting of March 25, 2004, the board of directors took action on formal vote to adopt the recommendations of the Medical Executive Committee with respect to the reappointment of Dr. Tohidi and consequently the extension of his privileges at the hospital.

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the board of directors that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

Moreover, the action taken violated Health & Safety Code section 32155 in that Dr. Tohidi was not given notice of the meeting, as he had been with all other meetings of the board. In fact, while you were told I requested an open meeting, you were not told that I was misdirected as to the time of the meeting. You may recall that the other

meetings regarding Dr. Tohidi's privileges occurred at either 5:30 p.m. or 6:00 p.m. at night (see Minutes of February 5, 2004, February 25, 2004 and March 15, 2004). On the morning of March 25, 2004, I was informed that the meeting to discuss Dr. Tohidi's privileges would be that night. See email, included with this letter. I rearranged my plans and I traveled to Oceanside, California, as did my client, his wife and a patient for a meeting at night, either at 5:30 pm or 6:00 pm, only to learn the meeting occurred at 3:30 p.m. and was over.

I intended to inform the board of directors, among other things, that Dr. Tohidi only recently underwent a voluntary psychiatric evaluation at the request of the Medical Board of California as a result of the false reporting by Dr. Folkerth of the scalpel incident and, as a result of the examination, Dr. Tohidi's case was closed. I have informed Mr. Merrill and Mr. Curtis of this fact. Moreover, Dr. Folkerth has insisted that the only psychiatric examination he wanted for Dr. Tohidi was a six day inpatient examination in Houston, Texas. Given the recent psychiatric examination and Dr. Tohidi's recent offer to undergo a second examination in San Diego at his expense, it seems punitive to require Dr. Tohidi to spend six days in Houston, Texas for an examination costing around \$6,000.

I also intended to provide to board members the information included in this letter regarding the effort Dr. Tohidi expended attempting to work with the hospital regarding his reintroduction to the staff. The letters and our attempts were rejected or ignored. Instead, Dr. Folkerth jammed through the board additional punitive measures against Dr. Tohidi, all in violation of the Brown Act.

In the event it appears to you that the conduct of the board of directors specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e., as a "collective decision made by a majority of the members of the legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

As you are aware, the 1986 amendments to the Brown Act created specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also created a legal remedy for illegally taken actions, namely the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to Government Code Section 54960.1, I demand that the board of directors of Tri-City Healthcare District cure and correct the illegally taken action as follows: the formal and explicit withdrawal from the action taken accepting the recommendation of the MEC regarding the extension of Dr. Tohidi's privileges and his reappointment to the medical staff of the hospital, accompanied by a full opportunity for

Board of Directors  
Tri-City Health Care District  
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informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda.

Sincerely,  
ANDREWS & HENSLEIGH, LLP

  
Barbara J. Hensleigh

BJH/pjm

cc: Behrooz Tohidi, MD (via facsimile w/o enclosures)  
Woody Merrill, Esq. (counsel for hospital) (via facsimile w/enclosures)  
Carlo Coppo, Esq. (counsel for hospital) (via facsimile w/enclosures)  
Tom Curtis, Esq. (counsel for hospital) (via facsimile w/enclosures)

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

ORIGINAL

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Attorneys for Plaintiff Behrooz Tohidi, M.D.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

11 BEHROOZ TOHIDI, M.D.,

12 Plaintiff,

14 vs.

15 TRI-CITY HOSPITAL DISTRICT,  
16 THEODORE FOLKERTH, MD, THOMAS  
17 CURTIS, ESQ., MARCOS CONTARDO,  
18 MD, ELLIS DIAMOND, MD, ADAM  
19 FIERER, MD, TERRY HAAS, MD, KEN  
20 IWAOKA, MD, STEPHEN KARAS, MD,  
21 JEFFERY LEACH, MD, MARC LEBOVITS,  
22 MD, HAMID MOVAHHEDIAN, MD,  
23 DONALD PONEC, MD, H. RICHMOND, and  
24 MD, GREGORY SAHAGIAN, MD, and  
25 DOES 50-100, Inclusive

26 Defendants.

) Case No.: 03CV 02492 IEG (WMC)

) The Honorable Irma Gonzalez  
Department 13

) ~~PROPOSED~~ FIRST AMENDED  
COMPLAINT FOR:

- ) (1) VIOLATION OF CONSTITUTIONAL LIBERTY INTEREST UNDER 42 U.S.C. SECTION 1983;
- ) (2) VIOLATION OF CONSTITUTIONAL RIGHT TO FREE SPEECH UNDER 42 U.S.C. SECTION 1983;
- ) (3) DISCRIMINATION IN VIOLATION OF 42 USC SECTION 1983;
- ) (4) CONSPIRACY TO VIOLATE CONSTITUTIONAL RIGHTS;
- ) (5) INTENTIONAL INTERFERENCE WITH PRACTICE OR PROFESSION;
- ) (6) BREACH OF FIDUCIARY DUTY;
- ) (7) MALICIOUS PROSECUTION;
- ) (8) DEFAMATION; AND
- ) (9) DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF CALIFORNIA'S OPEN MEETINGS ACT (BROWN ACT);

[DEMAND FOR JURY TRIAL]

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1 Plaintiff, BEHROOZ TOHIDI, M.D., ("Plaintiff") by and through his attorneys, alleges  
2 the following against Defendants, TRI-CITY HOSPITAL DISTRICT, THEODORE  
3 FOLKERTH, MD, THOMAS CURTIS, ESQ., MARCOS CONTARDO, MD, ELLIS  
4 DIAMOND, MD, ADAM FIERER, MD, TERRY HAAS, MD, KEN IWAOKA, MD,  
5 STEPHEN KARAS, MD, JEFFERY LEACH, MD, MARC LBOVITS, MD, HAMID  
6 MOVAHHEDIAN, MD, DONALD PONEC, MD, H. RICHMOND, MD, GREGORY  
7 SAHAGIAN, MD, and DONALD PONEC, MD, and DOES 50 through 100, inclusive as  
8 follows:

### 9 SUBJECT MATTER JURISDICTION

10 1. This action is brought pursuant to 42 U.S.C. Section 1983 for (1) violations of  
11 Plaintiff's liberty interest by disseminating false information about Plaintiff, among other  
12 things; (2) violation of constitutional right to free speech; (3) discrimination; and (4) conspiracy  
13 to violate constitutional rights. This First Amended Complaint also includes pendent California  
14 State law claims for: (1) intentional interference with practice or profession; (2) breach of  
15 fiduciary duty; (3) malicious prosecution; (4) defamation; and (5) declaratory relief for  
16 violations of California's Open Meetings Act.

17 2. Defendant TRI-CITIES HOSPITAL DISTRICT ("DEFENDANT HOSPITAL")  
18 is and was at all times relevant a local agency in the State of California, exercising  
19 governmental functions under the police powers of the State. At all times relevant herein,  
20 Defendants have acted under color of state law, including DEFENDANT HOSPITAL's decision  
21 to implement the custom, policy or practice of summarily suspending and/or restricting the  
22 medical staff privileges of Plaintiff.

### 23 PERSONAL JURISDICTION AND VENUE

24 3. Defendants are subject to the jurisdiction and venue of this Court under 28  
25 U.S.C. section 1391(b). Venue is appropriate in the Southern District of California as  
26 DEFENDANT HOSPITAL is a local governmental entity that has a principal place of business,  
27 maintains an office, transacts business, has an agent and/or is found in the Southern District of  
28

1 California. Venue is also appropriate in that a substantial part of the unlawful acts alleged  
2 herein have been performed, carried on, and have had effect in the Southern District of  
3 California.

#### 4 PARTIES

5 4. Plaintiff, BEHROOZ TOHIDI, MD, is and was at all times herein mentioned, a  
6 physician licensed in the State of California and practicing in the filed of orthopedic surgery.  
7 DEFENDANT HOSPITAL considers Plaintiff "to possess superior clinical skills." Other  
8 physicians practicing in the community and patients consider Plaintiff to be "at the top of his  
9 field." Indeed, he is a physicians' physician, performing surgery on many health care  
10 practitioners in the geographic area. Plaintiff has held hospital privileges at DEFENDANT  
11 HOSPITAL for almost 20 years. By virtue of contractual relationships between DEFENDANT  
12 HOSPITAL, primary care physician groups and managed healthcare plans, Plaintiff is required  
13 to utilize DEFENDANT HOSPITAL for over 60% of his patients. As set forth more fully  
14 below, Plaintiff has been a vocal critic of the redirection of hospital funds to the cardiac surgical  
15 services, to the detriment of patients in the San Diego's North County who need other types of  
16 surgery, including orthopedic surgery, among other things. Based upon information and belief,  
17 Plaintiff became a target of retaliation for his vocal criticisms, based upon the pretext that,  
18 primarily in the distant past, he had engaged in outbursts of anger directed at some nurses at  
19 DEFENDANT HOSPITAL generally when patient care was compromised.  
20

21 5. At all times herein mentioned, DEFENDANT HOSPITAL and DOES 50 through  
22 60, inclusive (collectively "DEFENDANT HOSPITAL"), were and now are local governmental  
23 entities operating a hospital in the City of Oceanside, County of San Diego, State of California,  
24 and organized and licensed to provide healthcare services under the laws of the State of  
25 California. Based upon information and belief, the hospital has had a general deterioration in the  
26 provision of healthcare services over the last several years, due in part, to: (1) diverting money  
27 and resources to supposedly more lucrative cardiac surgeries, including guaranteeing the income  
28 for the recruitment of at least one physician to join the practice of a cardiac surgeon; and (2)

1 paying inflated salaries and retirement benefits to, among others, certain members of the  
2 administration, all to the detriment of citizens in North County who need and are entitled to  
3 quality healthcare services. Based upon information and belief, as a result of the diversion of  
4 resources and money, among other things, other surgeries at the hospital generally begin late,  
5 many times hours late, some staff are poorly trained or not trained at all, patients are brought to  
6 surgery unprepped, and, in one recent case, reeking of urine with food stuck to the patient's  
7 buttocks. As a result of the deterioration of services, based upon information and belief,  
8 DEFENDANT HOSPITAL has only a provisional accreditation with the Joint Committee on  
9 Accreditation of Healthcare Organizations ("JCAHO"), the entity that accredits hospitals.

10  
11 6. Defendants THEODORE FOLKERTH, MD and DOES 60 through 70, inclusive  
12 (collectively "FOLKERTH"), were and are at all times relevant herein, cardiac surgeons with  
13 privileges at DEFENDANT HOSPITAL, enjoying the deferential and special treatment given  
14 their surgical specialty over the medical care given other non-cardiac surgery patients at  
15 DEFENDANT HOSPITAL. Based upon information and belief, the hospital entered into an  
16 illegal contract with FOLKERTH to kick-back money to him through the form of an income  
17 guarantee agreement for a physician he hired, in order to induce the referral of patients for  
18 cardiac surgery at the hospital. As of July 1, 2003, FOLKERTH assumed the powerful position  
19 of Chief of Staff at DEFENDANT HOSPITAL. Based upon information and belief, Defendant  
20 FOLKERTH abused his position of authority by setting out to ruin Plaintiff for vocalizing  
21 complaints about the preferential treatment given to the cardiac surgery specialties over other  
22 patient care matters, by among other things; (1) providing false information to the Medical  
23 Executive Committee of the hospital; (2) falsely reporting to the National Practitioner Data  
24 Bank, a reporting agency for physicians, that the patient in an alleged scalpel incident was not  
25 draped and prepped at the time of the incident (and thus Plaintiff Tohidi had no reason to be  
26 holding a scalpel other than to endanger the life of a scrub technician), refusing to change the  
27 report despite multiple pleas to do so, thereby ruining Plaintiff's ability to obtain hospital  
28 privileges at new hospitals; (3) "poisoning the well" of the first administrative hearing about



1 Plaintiff Tohidi's reinstatement by, based upon information and belief, providing prospective  
2 panel members with documents before the hearing that were largely irrelevant to the  
3 proceedings but designed to prejudice the panel against Plaintiff; and (4) delaying the  
4 resumption of the administrative hearing to further financially harm Plaintiff Tohidi.  
5 Defendant FOLKERTH acted recklessly, in conscious disregard of Plaintiff Tohidi's rights and  
6 with actual malice.

7  
8 7. Defendants THOMAS CURTIS ("CURTIS") and DOES 70 through 80,  
9 inclusive (collectively, "CURTIS"), are attorneys, licensed to practice in the State of California.  
10 Defendant CURTIS was retained and paid by DEFENDANT HOSPITAL, based upon  
11 information and belief, to follow Defendant FOLKERTH'S directions regarding ruining  
12 Plaintiff Tohidi. Among other things Defendant CURTIS (1) published false information about  
13 Plaintiff Tohidi, claiming he was a threat to patient and public safety in order to meet the legal  
14 standard justifying the summary suspension of Plaintiff Tohidi's privileges; (2) hid exculpatory  
15 information that would show the information published was false; and (3) engaged in multiple  
16 violations of the hospital's own rules (called "Bylaws") related to Plaintiff Tohidi's rights with  
17 respect to his summary suspension. Defendant CURTIS acted recklessly, in conscious disregard  
18 of Plaintiff Tohidi's rights and with actual malice.

19 8. Defendant MARCUS CONTARDO, MD ("CONTARDO") and DOES 80  
20 through 90, inclusive (collectively "CONTARDO"), are members of the medical staff of  
21 DEFENDANT HOSPITAL. During some of the relevant times alleged herein, Defendant  
22 CONTARDO kept a secret file on Plaintiff Tohidi, documenting each and every written  
23 complaint about Plaintiff Tohidi. As the Chairman of the Well Being Committee, in addition to  
24 addressing nursing complaints about Plaintiff Tohidi, Defendant CONTARDO had a fiduciary  
25 duty to act as an advocate for Plaintiff Tohidi to address his frustrations and concerns about  
26 patient care at the hospital.

27 9. Defendants FOLKERTH, CONTARDO, ELLIS DIAMOND, MD, ADAM  
28 FIEREP, MD, TERRY HAAS, MD, KEN IWAOKA, MD, STEPHEN KARAS, MD,

1 JEFFERY LEACH, MD, MARC LEBOVITS, MD, HAMID MOVAHHEDIAN, MD,  
2 DONALD PONEC, MD, H. RICHMOND, MD, GREGORY SAHAGIAN, MD, and DOES 90  
3 through 100, inclusive (collectively "MEMBERS OF THE MEC") were each members of the  
4 Medical Executive Committee ("MEC") of the hospital, which committee voted to continue the  
5 summary suspension of Plaintiff Tohidi without making a reasonable effort to obtain the facts of  
6 the matter before they voted to continue the summary suspension of Plaintiff Tohidi's privileges  
7 and acted on the basis of information they either knew was false or knew was incomplete,  
8 recklessly, and in conscious disregard of Plaintiff Tohidi's rights and with actual malice.

9  
10 10. Plaintiff is ignorant of the true names and capacities of Defendants sued herein  
11 as DOES 50 through 100, inclusive, and therefore sues these Defendants by fictitious names.  
12 Plaintiff will seek leave of court to amend this First Amended Complaint to allege the unknown  
13 Defendants true names and capacities when they are ascertained. Plaintiff is further informed  
14 and believes and thereupon alleges that each of the fictitiously named Defendants was legally  
15 responsible in some manner for the occurrences herein alleged. Plaintiff is informed and  
16 believes and thereon alleges that the Plaintiff's damages as alleged in this First Amended  
17 Complaint were proximately caused by these Defendants' constitutional violations and/or other  
18 wrongdoing.

### 19 GENERAL ALLEGATIONS

20 11. It is well settled law that physicians, including Plaintiff, have a property interest  
21 in their hospital privileges. Under California Business & Professions Code 809, et seq.,  
22 California has codified the minimum due process rights that must be afforded to physicians  
23 before their privileges are restricted.

24 12. Both California and Federal law recognize that due process ordinarily must occur  
25 *before* the deprivation of any property interest, including the property interest of a physician in  
26 his/her hospital privileges.

27 13. The Medical Staff Bylaws of Defendant Hospital ("BYLAWS") and California  
28 law each require that a physician pose an imminent danger or threat to the health of a patient or

1 other person before his/her privileges are summarily suspended. Attorneys practicing in the  
2 privileging arena are well aware of the "imminent threat" requirement. Most recently, the  
3 California Medical Association ("CMA") filed an Amicus Brief with the Fourth Appellate  
4 District urging the Appellate Court to uphold the decision of a trial court entering a temporary  
5 restraining order reinstating a physician, before an administrative hearing, on the basis that the  
6 hospital had not met the "imminent threat" requirement. A true and correct copy of that brief is  
7 attached hereto as Exhibit 1. The law firm of Defendant CURTIS authored the brief.

### 8 **ILLEGAL SUMMARY SUSPENSION**

9  
10 14. On June 24, 2003, Plaintiff performed approximately six surgeries on patients at  
11 DEFENDANT HOSPITAL, a total knee replacement, wrist surgery, a knee manipulation and  
12 three shoulder arthroscopies. Each of the surgeries was completed successfully and without  
13 complication. Plaintiff rounded on these patients on June 25, 2003, and June 26, 2003, writing  
14 orders for their medical care. He also performed an additional surgery on one patient at  
15 DEFENDANT HOSPITAL on June 25, 2003. The surgery was completed successfully and  
16 without complication.

17 15. On June 26, 2003, DEFENDANT HOSPITAL summarily suspended Plaintiff's  
18 privileges. The act supposedly triggering the summary suspension occurred two days earlier, on  
19 June 24, 2003. DEFENDANT HOSPITAL assigned to Plaintiff Tohidi's surgeries, a new  
20 technician who the hospital had not trained. The technician accused Plaintiff of waiving a  
21 scalpel in a threatening manner when Plaintiff was actually holding the scalpel to begin surgery.  
22 The technician did not leave the room, ask to be reassigned, or call the police. In fact, he  
23 continued to work with Plaintiff throughout the day, telling Defendant CURTIS later in an  
24 exculpatory interview withheld from Plaintiff Tohidi, that he would work with Plaintiff Tohidi  
25 again if he had the chance.

26 16. On July 7, 2003, the MEC met to consider whether to maintain the suspension  
27 resulting from the scalpel incident and to revoke Plaintiff's privileges. The MEC is responsible  
28 for among other things establishing the structure of the Medical Staff, for reviewing credentials

1 and delineating clinical privileges, for the mechanism and operation of quality assurance, for  
2 terminating Medical Staff membership, for fair hearing procedures, and for other matters  
3 relevant to the operation of an organized Medical Staff at DEFENDANT HOSPITAL. Under  
4 the BYLAWS, the MEC had the power to rescind or approve the suspension. The MEC has a  
5 duty and obligation to conduct a fair and impartial investigation regarding the facts giving rise  
6 to a summary suspension before it meets to determine whether to continue or rescind the  
7 suspension.

8  
9 17. In the morning of July 7, 2003, before the MEC meeting, Defendant CURTIS  
10 interviewed only a few of the witnesses in the operating room on June 24, 2003. The interviews  
11 were tape recorded and transcribed. Rather than fact finding, CURTIS conducted the interviews  
12 from the standpoint of an advocate, asking leading questions and even suggesting to the scrub  
13 technician that the knife was closer to his face than the technician recounted. Each interview  
14 was exculpatory. Each interview demonstrated that Plaintiff Tohidi was holding the scalpel in  
15 anticipation of imminent surgery; i.e., the patient was draped and prepped. DEFENDANT  
16 HOSPITAL withheld the interviews from Plaintiff Tohidi in violation of the BYLAWS and  
17 Plaintiff Tohidi's due process rights.

18 18. Defendant CURTIS did not interview many of the witnesses in the operating  
19 room, including one sales representative who witnessed the incident and said there was no  
20 objective threat.

21 19. At the MEC meeting after the interviews, and based upon information and belief,  
22 in order to uphold the summary suspension, Defendant CURTIS falsely represented to the  
23 MEC, among other things, that "The scalpel was drawn to threaten the individual. It was not  
24 during surgery, the patient was not draped and the surgical tech had turned away to reposition a  
25 table. There was no need to have the scalpel in his hand."

26 20. In order to bolster the argument for summary suspension, Defendant CURTIS  
27 piled on hoary charges. Most of the outdated charges concerned disputes that Plaintiff Tohidi  
28 had with nursing personnel regarding poor patient care at DEFENDANT HOSPITAL. One of

**FOURTH CLAIM FOR RELIEF****(Conspiracy to Violate Constitutional Rights)****(Against All Defendants, Except Curtis)**

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4 59. Plaintiff realleges and incorporates herein by reference the allegations contained  
5 in paragraphs 1 through 67, inclusive, of this First Amended Complaint as if fully set forth  
6 herein.

7  
8 60. Defendants and other unnamed co-conspirators conspired to violate Plaintiff's  
9 constitutional rights as more fully described in the foregoing paragraphs in violation of 42 U.S.C.  
10 §1983, for which Defendants are liable.

11 61. As a direct and proximate result of the unlawful and unjustified acts and  
12 omissions of Defendants, and each of them, Plaintiff has been damaged in an amount according  
13 to proof at the time of trial.

14 62. The conduct of the Defendants, and each of them, towards Plaintiff was done  
15 with actual malice towards Plaintiff and with willful and wanton indifference to and deliberate  
16 disregard for the rights of Plaintiff. Plaintiff is thus entitled to exemplary damages.

**FIFTH CLAIM FOR RELIEF****(Intentional Interference with Practice or Profession)****(Against All Defendants, Except Curtis)**

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19  
20 63. Plaintiff realleges and incorporates herein by reference the allegations contained  
21 in paragraphs 1 through 71, inclusive, of this First Amended Complaint as if fully set forth  
22 herein.

23 64. Defendants, and each of them, intentionally interfered with Plaintiff's right to  
24 pursue the practice of his profession, by unlawful means or by means otherwise lawful lacking  
25 sufficient justification.

26 65. As a direct and proximate result of the unlawful and unjustified acts and  
27 omissions of Defendants, and each of them, Plaintiff has been damaged in an amount according  
28 to proof at the time of trial.

1 the charges was marked trivial. Due to their age, these charges were, by definition, not proof of  
2 an "imminent threat." Piling on the charges is a tactic designed to mislead and to convince the  
3 MEC and the administrative panel that the pile on makes up for the lack of evidence to support  
4 the "imminent threat" requirement. In an Amicus Brief, filed recently by the CMA and  
5 authored by the BondCurtis law firm, where CURTIS is a partner, the BondCurtis condemned  
6 the conduct of piling on charges in the summary suspension context where the focus must be on  
7 an immediate threat rather than upon alleged past conduct.

8  
9 21. On or about July 7, 2003, the MEC MEMBERS wrongfully upheld  
10 DEFENDANT HOSPITAL's summary suspension of Plaintiff Tohidi. Plaintiff is informed and  
11 believes that the MEMBERS OF THE MEC, (1) acted based upon the wrongful conduct of  
12 FOLKERTH and of CURTIS, including their concealment, fraud, and/or reckless  
13 misrepresentations, (2) also acted upon the failure of the "MEMBERS OF THE MEC" to make  
14 a reasonable effort to obtain the facts of the matter before they voted to continue the summary  
15 suspension of Plaintiff Tohidi's privileges, and (3) acted on the basis of information the  
16 MEMBERS OF THE MEC either knew was false or knew was incomplete, and thus acted  
17 recklessly and in conscious disregard of Plaintiff Tohidi's rights and with actual malice.

### 18 POST-DEPRIVATION LACK OF DUE PROCESS

19 22. The BYLAWS, provided they are consistent with California and Federal law,  
20 govern the conduct of a hearing for a physician, such as Plaintiff, who is subject to restriction of  
21 his/her staff privileges. Under the BYLAWS, and California law, Plaintiff was due the  
22 following process, among other things:

- 23 • A prompt hearing;
- 24 • A judicial review committee ("JRC") acting as a jury, where feasible, containing at  
25 least one individual practicing in the same specialty as the Physician; and
- 26 • Within thirty days of the hearing, a copy of the evidence forming the basis of the  
27 charges which is reasonably necessary to enable the physician to prepare a defense,  
28 including all evidence considered in determining whether to proceed with the

1 adverse action, any exculpatory evidence, and all evidence to be made available to  
2 the JRC.

3 23. On or about August 11, 2003, DEFENDANT HOSPITAL sent Plaintiff a letter  
4 giving Plaintiff notice of the charges against him and setting the date of the hearing for  
5 September 8, 2003. The letter stated that the documents related "to this matter" would be  
6 provided under separate cover.

7 24. The JRC hearing commenced on November 18, 2003. At the outset of the  
8 hearing and at Plaintiff's counsel's request, counsel for DEFENDANT HOSPITAL confirmed  
9 on the record that all documents considered by the MEC, exculpatory information and  
10 documents to be supplied to the JRC had been produced.

11 25. During voir dire, Plaintiff learned that DEFENDANT HOSPITAL had provided  
12 the prospective JRC panel members with a variety of documents many of which had never been  
13 produced to Plaintiff as required by the BYLAWS. While some documents were exculpatory,  
14 most of the documents were highly prejudicial and inadmissible. Based upon information and  
15 belief, the documents were designed to "poison the well" against Plaintiff.

16 26. Faced with the improper dissemination of these documents, the JRC hearing  
17 officer dismissed the entire prospective panel. Given Plaintiff's suspension, Plaintiff requested  
18 a resumption of the hearing immediately with a new panel. DEFENDANT HOSPITAL  
19 however refused to reconvene a new panel, claiming that none of the over 300 physicians on the  
20 hospital staff will serve on the panel during the month of December 2003.

#### 22 A NEW JRC PANEL REINSTATES PLAINTIFF

23 27. On or about January 22, 2004, a newly constituted JRC panel unanimously found  
24 that the Plaintiff's summary suspension was not reasonable or warranted.

#### 25 DEFENDANT HOSPITAL UPHOLDS PLAINTIFF'S REINSTATEMENT

26 28. The MEC appealed the decision of the JRC to the board of directors (the  
27 "Board") of DEFENDANT HOSPITAL. In special meetings, the Board held three hearings to  
28 address the reinstatement of Plaintiff's privileges by the JRC. For each meeting, the Board

1 followed the requirements of California's Brown Act both as to timely notice to the general  
2 public of the meetings and as to Plaintiff specifically. Plaintiff Tohidi requested an open  
3 hearing. Approximately one hundred patients, their families and physicians turned out to  
4 support Plaintiff Tohidi.

5 29. On or about March 15, 2004, the Board affirmed the decision of the JRC.  
6 Almost nine months after his wrongful summary suspension, Plaintiff finally began conducting  
7 surgeries again at DEFENDANT HOSPITAL on or about March 18, 2004. Plaintiff has  
8 exhausted all administrative remedies relating to Defendants summary suspension of his  
9 privileges.

10 **DEFENDANT HOSPITAL SUBVERTS ITS ROUTINE REAPPOINTMENT PROCESS**  
11 **AND VIOLATES CALIFORNIA'S OPEN MEETINGS LAW TO RESTRICT**  
12 **PLAINTIFF'S PRIVILEGES IN VIOLATION OF LAW**

13 30. In its decision of March 15, 2004 reinstating Plaintiff, the Board noted the JRC's  
14 statement in its written decision that Plaintiff had been disruptive in the past and directed  
15 Plaintiff Tohidi and the MEC to immediately address and to eliminate that pattern of conduct.  
16 Plaintiff Tohidi attempted to address the Board's comments and called and wrote to arrange for  
17 meetings regarding his return to the medical staff. The suggestions and offers to meet were  
18 ignored.

19 31. Rather than work constructively to reintroduce Plaintiff to the staff,  
20 DEFENDANT HOSPITAL through its counsel coordinated strategies that Plaintiff is informed  
21 and believe were intended to at least (1) subvert the privilege reapplication process to continue  
22 FOLKERTH'S campaign to ruin Plaintiff, and (2) to subvert the privilege application process to  
23 obtain a collateral advantage in the present litigation.

24 32. Under the BYLAWS and in accordance with custom in the industry, each  
25 physician is subject to the reappointment of his staff privileges and membership every two  
26 years. Plaintiff has routinely applied for and been granted reappointment every two years for  
27 the past twenty years. Contrary to this standard practice, DEFENDANT HOSPITAL had  
28



1 extended Plaintiff's privileges for only a few months at a time pending the outcome of the JRC  
2 hearing.

3 33. On or about the morning of March 25, 2004, DEFENDANT HOSPITAL notified  
4 Plaintiff that CURTIS was producing that day the "MEC's recommendations for the extension  
5 of Dr. Tohidi's privileges", and that "[t]he Board will be deliberating regarding the MEC  
6 credential recommendations tonight, which will be in closed session."

7 34. In fact, the meeting was not conducted at night: it was conducted at 3:30 p.m.  
8 Because of the misdirection, Plaintiff and his counsel missed the meeting completely.

9 35. DEFENDANT HOSPITAL conducted the March 25, 2004 Board meeting in  
10 violation of California's open meeting law (the Brown Act). The subject matter of "privileges"  
11 is not identified on the agenda of the closed session of the regular meeting of the Board held on  
12 March 24, 2004, in violation of Government Code § 54954.5(h). Plaintiff is informed and  
13 believes that FOLKERTH added the restrictions on Plaintiff's reappointment to the credentials  
14 section of the open session, in violation of the requirements of the Brown Act, Government  
15 Code § 54954.2. Plaintiff never was given proper notification of the closed hearing to discuss  
16 his privileges as required by Health & Safety Code § 32155, so he could properly exercise his  
17 right to attend it.

18 36. While misdirecting Plaintiff's counsel as to the time of the meeting, those intent  
19 on damaging Plaintiff were not so misdirected. Plaintiff is informed and believes that a nurse  
20 appeared at the meeting and provided the Board with a letter expressing dissatisfaction with the  
21 Board decision to uphold the JRC decision. Plaintiff is informed and believes that the first  
22 signature on the letter was the signature of FOLKERTH'S wife, in charge of the cardiac surgical  
23 suites at DEFENDANT HOSPITAL, who has never worked with Plaintiff.

24 37. Plaintiff is informed and believes that the general public, including Plaintiff's  
25 family and his patients and their families wanted proper notice of the meeting and an  
26 opportunity to attend the meeting. Plaintiff's family, his patients, and his patient's families had  
27 attended earlier meetings of the Board, and provided support of Plaintiff. Plaintiff is informed  
28

1 and believes that DEFENDANT HOSPITAL was able to prevent the participation and input of  
2 the general public and of Plaintiff in the March 25, 2004 Board Meeting, through at least  
3 DEFENDANT HOSPITAL's failure to follow the agenda requirements of the Brown Act and  
4 its misrepresentation as to the time of the meeting. In this manner, DEFENDANT HOSPITAL  
5 was able to obtain approval of the recommendation of the MEC as prepared by CURTIS and as  
6 presented to the Board by FOLKERTH, to avoid participation of the general public in the  
7 process, and to avoid or to lessen public scrutiny of their decision.

8  
9 38. In a letter dated on or about March 31, 2004, the Board gave Plaintiff until April  
10 15, 2004, to accept the terms of reappointment as drafted by CURTIS and as presented to the  
11 Board by FOLKERTH. If Plaintiff does not accept these terms of reappointment, Plaintiff's  
12 reappointment to the medical staff will be denied and once again he will be unable to provide  
13 patient services at this public hospital.

14 39. Plaintiff has no adequate remedy at law. Defendants' conduct has forced  
15 Plaintiff to take a second mortgage on his home and move out of the medical offices he has  
16 leased for the past nine years. Money damages cannot compensate Plaintiff for this second  
17 wrongful termination of his privileges.

18 **PLAINTIFF PROVIDED NOTICE OF DEFENDANTS'**  
19 **BROWN ACT VIOLATIONS AND REQUESTED A CURE**

20 40. On April 9, 2004, Plaintiff provided notice of DEFENDANT HOSPITAL's  
21 violations of the Brown Act and requested that the Hospital Board cure and correct the  
22 violations. A copy of that notice of violations is attached as Exhibit 2 to this First Amended  
23 Complaint.

24 **FIRST CLAIM FOR RELIEF**

25 **(Deprivation of Liberty Interest Without Due Process)**

26 **(Against All Defendants, Except Curtis)**

27 41. Plaintiff realleges and incorporates herein by reference the allegations contained  
28 in paragraphs 1 through 49, inclusive, of this First Amended Complaint as if fully set forth

1 herein.

2 42. The conduct of Defendants, and each of them, in publicly disclosing stigmatizing  
3 statements about Plaintiff to members of the physician community in San Diego who were  
4 prospective members of the JRC panel, the accuracy of which is contested, has caused plaintiff  
5 the denial of a tangible interest in the prompt outcome of the JRC proceedings and resulted in a  
6 wrongful suspension of approximately nine months based upon false accusations, among other  
7 things, all to Plaintiff's significant economic damage.

8 43. The conduct of Defendants, and each of them, in submitting to the Medical  
9 Board of California and the National Practitioner Data Bank false information about Plaintiff  
10 has stigmatized Plaintiff further and, based upon information and belief, will cause Plaintiff the  
11 denial of a tangible interest in hospital privileges at institutions other than DEFENDANT  
12 HOSPITAL.

13 44. Defendants, and each of them, failed to provide Plaintiff with notice or a prompt  
14 hearing to clear his name, resulting in a wrongful suspension of approximately nine months  
15 based upon false accusations.

16 45. Defendants, and each of them, failed to provide Plaintiff with proper notice of  
17 the March 25, 2004 meeting of the board of DEFENDANT HOSPITAL, in violation of  
18 California Health & Safety Code § 32155, so that Plaintiff could be present at the March 25,  
19 2004, meeting of the Board of the hospital and respond to the attacks made upon him there.

20 46. Defendants, and each of them, have subverted the routine reapplication process,  
21 and are misusing that process to deny or to limit Plaintiff's tangible interest in hospital  
22 privileges, and to continue the effects of Defendants' wrongful suspension.

23 47. As a direct and proximate result of the unlawful and unjustified acts and  
24 omissions of Defendants, and each of them, Plaintiff has been damaged in an amount according  
25 to proof at the time of trial.

26 48. The conduct of Defendants, and each of them, towards Plaintiff was done with  
27 actual malice towards Plaintiff and with willful and wanton indifference to and deliberate  
28

1 disregard for the rights of Plaintiff. Plaintiff is thus entitled to exemplary damages.

2 **SECOND CLAIM FOR RELIEF**

3 **(Violation of Constitutional Right to Free Speech)**

4 **(Against All Defendants, Except Curtis)**

5 49. Plaintiff realleges and incorporates herein by reference the allegations contained  
6 in paragraphs 1 through 57, inclusive, of this First Amended Complaint as if fully set forth  
7 herein.

8 50. Plaintiff's conduct in complaining about the quality of care provided by  
9 DEFENDANT HOSPITAL and by certain physicians was protected activity under the First  
10 Amendment of the United States Constitution. Based upon information and belief, Plaintiff  
11 alleges that his First Amendment activity was a substantial factor in the decision to summarily  
12 suspend Plaintiff, to maintain the suspension of Plaintiff's privileges, to file and publish false  
13 information regarding the reasons for the suspension including filing false adverse action  
14 reports with the medical Board of California and the National Practitioner Data Bank, and  
15 subverting the routine reapplication process to attempt to limit or to create a pretext to revoke  
16 Plaintiff's privileges.  
17

18 51. As a direct and proximate result of the unlawful and unjustified acts and  
19 omissions of Defendants, and each of them, Plaintiff has been damaged in an amount according  
20 to proof at the time of trial.

21 52. The conduct of Defendants, and each of them, towards Plaintiff was done with  
22 actual malice towards Plaintiff and with willful and wanton indifference to and deliberate  
23 disregard for the rights of Plaintiff. Plaintiff is thus entitled to exemplary damages.

24 **THIRD CLAIM FOR RELIEF**

25 **(Discrimination)**

26 **(Against All Defendants, Except Curtis)**

27 53. Plaintiff realleges and incorporates herein by reference the allegations contained  
28 in paragraphs 1 through 61, inclusive, of this First Amended Complaint as if fully set forth

1 herein.

2 54. Plaintiff is informed and believes and based thereon alleges that Defendants, and  
3 each of them, have and are pursuing and maintaining the policy, custom and usage of  
4 investigating, granting or restricting the privileges of physicians of races other than Caucasian  
5 and national origins other than the United States, in a manner different from physicians who are  
6 Caucasian and who are from the United States. Based upon information and belief, such  
7 discrimination is being practiced by Defendants, and each of them, against Plaintiff based solely  
8 or in part on his national origin or race.

9 55. Plaintiff is being denied equal protection of the law in that he has been the  
10 subject of greater scrutiny, the subject of unequal interpretation and application of the Medical  
11 Staff Bylaws and California law, the subject of improper summary suspension, and the subject  
12 of a novel and discriminatory interpretation of the reapplication process. The State of  
13 California, acting through Defendants as its agents, have applied the rules, regulations, practice,  
14 usage and custom of the State of California in a discriminatory manner to Plaintiff.

15 56. The purpose and effect of the Defendants' aforesaid discriminatory policy, and  
16 each of them, is to deprive, under color of law, statute, regulation, custom, and usage, the rights,  
17 privileges, and immunities secured by the Constitution and laws of the United States, under  
18 Sections 1981, and 1983, and 1985 of Title 42 of the United States Code and the Fourteenth  
19 Amendment to the Constitution of the United States providing for the equal rights of citizens  
20 and all other persons within the jurisdiction of the United States.

21 57. As a direct and proximate result of the unlawful and unjustified acts and  
22 omissions of Defendants, and each of them, Plaintiff has been damaged in an amount according  
23 to proof at the time of trial.

24 58. The conduct of Defendants, and each of them, towards Plaintiff was done with  
25 actual malice towards Plaintiff and with willful and wanton indifference to and deliberate  
26 disregard for the rights of Plaintiff. Plaintiff is thus entitled to exemplary damages.  
27  
28



1 73. Defendants, and each of them, initiated administrative proceedings against  
2 Plaintiff by a letter from Defendants following an MEC meeting on or about July 8, 2004,  
3 sustaining the continued summary suspension of Plaintiff's privileges. Those administrative  
4 proceedings were pursued to a termination in Plaintiff's favor.

5 74. The administrative proceedings against Plaintiff were initiated without probable  
6 cause.

7 75. Plaintiff is informed and believes and based thereon alleges that the  
8 administrative proceedings were initiated and pursued with malice. Plaintiff is informed and  
9 believes that Defendants, and each of them, initiated and continued to pursue the administrative  
10 proceeding out of actual ill will and hostility, for an improper purpose, with knowledge that the  
11 information upon which Defendants acted was inaccurate, or with no proper investigation such  
12 that Defendants acted on information that they knew to be inaccurate and incomplete and thus  
13 acted recklessly and in conscious disregard of Plaintiff's rights.

14 76. As a direct and proximate result of Defendants' malicious prosecution, Plaintiff  
15 has been damaged in an amount according to proof at the time of trial.

16 77. The conduct of the Defendants, and each of them, towards Plaintiff was done  
17 with actual malice towards Plaintiff and with willful and wanton indifference to and deliberate  
18 disregard for the rights of Plaintiff. Plaintiff is thus entitled to exemplary damages.

19  
20 **EIGHTH CLAIM FOR RELIEF**

21 (Defamation)

22 (Against All Defendants)

23 78. Plaintiff realleges and incorporates herein by reference the allegations contained  
24 in paragraphs 1 through 86, inclusive, of this First Amended Complaint as if fully set forth  
25 herein.

26 79. On or about July 28, 2003, and thereafter, Defendants, and each of them,  
27 published to third parties, including but not limited to, the prospective JRC panel members who  
28 had yet to be empanelled or hear evidence, including a surgeon in Plaintiff's specialty not on

1 staff at Defendant Hospital, the following false statements, libelous on their face, about  
2 Plaintiff: "Patient was not draped/Not prepared for incision" when Plaintiff gestured "in a  
3 threatening manner" towards an operating room technician. Plaintiff "repeatedly [waived a  
4 scalpel] in close proximity" to the face of the operating room technician. "The scalpel was  
5 drawn to threaten the individual. It was not during surgery, the patient was not draped and the  
6 surgical tech had turned away to reposition the table. There was no need to have the scalpel in  
7 his hand. [Plaintiff] picked it up to intimidate the surgical tech." The surgery was disrupted.

8 80. The truth is that: (1) it is undisputed that the patient was draped and prepared for  
9 the incision; (2) Plaintiff picked up the scalpel but was unable to start surgery because the  
10 technician was not ready; (3) Plaintiff did not waive the scalpel at the technician; (4) the  
11 technician did not think Plaintiff would cut him; (5) Plaintiff put down the scalpel as soon as the  
12 technician made a comment about it in his hand; (6) Surgery began on the patient approximately  
13 three seconds after the exchange between Plaintiff and the technician and went flawlessly,  
14 without any change in personnel; (7) Plaintiff and the technician continued to work the rest of  
15 the day together and apologized to each other for the incident; (8) the technician has expressed a  
16 desire, if given a choice, to work again with Plaintiff; (9) the incident was so inconsequential to  
17 one witness that she forgot about it until prompted to remember; (10) the anesthesiologist in the  
18 room described the accusation that Plaintiff was threatening the technician with a scalpel as  
19 "quite a reach from what was going on"; and (11) no one present thought there was a risk of  
20 blood or life.

22 81. Because the publications discredited Plaintiff in his business or profession or are  
23 libelous on their face, damages are presumed. Nonetheless, as a direct and proximate result of  
24 the unlawful and unjustified acts and omissions of Defendants, and each of them, Plaintiff has  
25 been damaged in an amount according to proof at the time of trial.

26 82. The conduct of the Defendants, and each of them, towards Plaintiff was done  
27 with actual malice towards Plaintiff and with willful and wanton indifference to and deliberate  
28 disregard for the rights of Plaintiff. Plaintiff is thus entitled to exemplary damages.



**TENTH CLAIM FOR RELIEF****(Declaratory Relief)****(Against Defendant HOSPITAL only)**

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2  
3  
4 83. Plaintiff realleges and incorporates herein by reference the allegations contained  
5 in paragraphs 1 through 91, inclusive, of this First Amended Complaint as if fully set forth  
6 herein.

7 84. A controversy has developed between Plaintiff and Defendants.

8  
9 85. Plaintiff contends that Defendants must abide by the provisions of the California  
10 open meeting Act, the Brown Act, and that Defendants violated that Act through the March 25,  
11 2004 Board meeting by at least the following acts or omissions: (1) The subject matter of  
12 "privileges" is not identified on the agenda of the closed session of the regular meeting of the  
13 Board, in violation of Government Code § 54954.5(h); (2) Plaintiff is informed and believes  
14 that FOLKERTH added the restrictions on Plaintiff's reappointment to the credentials section of  
15 the open session, in violation of Government Code § 54954.2; (3) Defendants never provided  
16 Plaintiff with proper notification of the closed hearing to discuss his privileges as required by  
17 Health & Safety Code § 32155; (4) Defendants misdirected Plaintiff's counsel as to the time of  
18 the meeting so that Plaintiff would not be represented at the meeting; (5) Defendants' violations  
19 of the Brown Act prevented the general public, including Plaintiff's family, his patients and  
20 their families, from attending the meeting and providing support for Plaintiff. Plaintiff contends  
21 that because of Defendants' violations of the Brown Act, the action taken by the Board on or  
22 about March 25, 2004 regarding limitations, restrictions, and loss of Plaintiff's privileges, is a  
23 nullity. Plaintiff is informed and believes that Defendants dispute these contentions.

24 86. Plaintiff also contends that after having failed to take away Plaintiff's privileges  
25 through an administrative hearing process manipulated by Defendants, Defendants cannot now  
26 attempt to accomplish the same purpose by subverting the routine reapplication process to  
27 attempt to deny or to limit Plaintiff's privileges, illegally attempting to end run the due process  
28 and fairness requirements of California and of Federal Law when a hospital attempts to take

1 away a physician's existing property interest in privileges at a hospital. Plaintiff is informed  
2 and believes that Defendants dispute these contentions and that Defendants take the position  
3 that they can use the routine reapplication process to take away Plaintiff's benefits and thus end  
4 run the Due Process safeguards required when a hospital attempts to take away a physician's  
5 privileges.

6 87. Plaintiff requests a declaration of the parties' respective rights on those  
7 controversies stated above, and requests appropriate relief, including declaratory and injunctive  
8 relief to force Defendants to nullify action taken in violation of the Brown Act, to enjoin  
9 Defendants from taking further such action in violation of the Brown Act, and to enjoin  
10 Defendants from subverting the reapplication process to avoid the Due Process safeguards that  
11 must be provided when a hospital attempts to take away a physician's privileges.

#### 12 PRAYER FOR RELIEF

13 Plaintiff prays for judgment as follows:

#### 14 On the First, Second, Third, and Fourth Claims for Relief

- 15
- 16 1. For a temporary restraining order, and preliminary and permanent injunctions  
17 against Defendants to prevent them from continuing with their violations of  
18 Plaintiff's liberty interests, discrimination and with their continuing violations of  
19 Plaintiff's constitutional and statutory rights;
  - 20 2. For damages to compensate Plaintiff for all income past, present and future lost by  
21 Plaintiff as a result of the wrongful suspension of his privileges, in an amount not  
22 less than \$1,000,000;
  - 23 3. For attorney's fees and costs incurred in connection with the administrative  
24 proceedings and in connection with the California State Court action attempting to  
25 restrain Defendants from enforcing the illegal summary suspension, in an amount  
26 exceeding \$100,000;
  - 27 4. For general damages including damages for inconvenience, anxiety, and emotional  
28 distress;

- 1) 5. For attorney's fees incurred in the present case, or alternatively, for the reasonable value of attorney's fees and costs as allowed by statute or law;
6. For the expenses of complying with the requirements imposed by Defendants during the illegal summary suspension and with the requirement imposed by the Medical Board of California; and
7. For punitive or exemplary damages in an appropriate amount to set an example of Defendants and to deter Defendants from such future similar action against Plaintiff or others in the future.

**On the Fifth, Sixth, Seventh and Eighth Claims for Relief**

1. For damages to compensate Plaintiff for all income past, present and future lost by Plaintiff as a result of the wrongful suspension of his privileges, in an amount not less than \$1,000,000;
2. For attorney's fees and costs incurred in connection with the administrative proceedings and in connection with the California State Court action in attempting to restrain Defendants from enforcing the illegal summary suspension, in an amount exceeding one hundred thousand dollars;
3. For general damages including damages for inconvenience, anxiety, and emotional distress;
4. For the expenses of complying with the requirements imposed by Defendants during the illegal summary suspension and with the requirement imposed by the Medical Board of California;
5. On the eighth claim for relief only, presumed and actual damages for Defendants' defamation per se; and
6. For attorneys' fees pursuant to California Business & Professions Code § 809.9;
7. For punitive or exemplary damages in an appropriate amount to set an example of Defendants and to deter Defendants from such future similar action against Plaintiff or others in the future.

**On the Ninth Claim for Relief**

1. For a Declaration of rights that Defendants must abide by the provisions of the California open meeting Act, the Brown Act, that Defendants violated that Act through the March 25, 2004 Board meeting, and that the action Defendants took at that meeting as it relates to Plaintiff and to limitations, restrictions, and loss of Plaintiff's privileges, is a nullity.
2. For a temporary restraining order, and preliminary and permanent injunctions to continue Dr. Tohidi's current unrestricted privileges, until such time as the Board meets to discuss the extension of his privileges in compliance with the Brown Act and § 32155.
3. For a Declaration of rights that Defendants cannot now attempt to accomplish the same purpose it failed to accomplish through summary suspension and an administrative proceeding, by subverting the routine reapplication process to attempt to deny or to limit Plaintiff's privileges, illegally attempting to end run the due process and fairness requirements of California and of Federal Law when a hospital attempts to take away a physicians existing property interest in privileges at a hospital;
4. For a temporary restraining order, and preliminary and permanent injunctions enjoining Defendants from subverting the reapplication process to avoid the Due Process safeguards that must be provided when a hospital attempts to take away a physician's privileges; and
5. For attorney's fees and costs as allowed under the Brown Act or any other provision of law.

**On All Claims for Relief**

1. For any additional amounts of compensatory damages against Defendants, for general or special damages, as allowed by law and according to proof;
2. For costs of suit;


1 3. For pre-judgment interest; and

2 4. For such other and further relief as the Court deems just.

3 Respectfully submitted,

4 Dated: April 12, 2004

ANDREWS & HENSLEIGH, LLP

5  
6 By:   
7 Barbara J. Hensleigh  
8 Attorney for Plaintiff  
9 BEHROOZ TOHIDI, M.D.

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands jury on all issues triable by jury.

Respectfully submitted,

Dated: April 12, 2004

ANDREWS & HENSLEIGH, LLP

By:   
Barbara J. Hensleigh  
Attorney for Plaintiff  
BEHROOZ TOHIDI, M.D.

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1 **PROOF OF SERVICE – HAND DELIVERY**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the aforesaid county, State of California; I am over the age of 18 years  
4 and not a party to the within action; my business address is **DDS, Legal Support Systems, 123**  
5 **S. Figueroa, Los Angeles, California 90017**

6 On April 12, 2004, I served **[PROPOSED] FIRST AMENDED COMPLAINT FOR:**

- 7 **(1) VIOLATION OF CONSTITUTIONAL LIBERTY INTEREST UNDER 42 U.S.C.**  
8 **SECTION 1983;**  
9 **(2) VIOLATION OF CONSTITUTIONAL RIGHT TO FREE SPEECH UNDER 42**  
10 **U.S.C. SECTION 1983;**  
11 **(3) DISCRIMINATION IN VIOLATION OF 42 USC SECTION 1983;**  
12 **(4) CONSPIRACY TO VIOLATE CONSTITUTIONAL RIGHTS;**  
13 **(5) INTENTIONAL INTERFERENCE WITH PRACTICE OR PROFESSION;**  
14 **(6) BREACH OF FIDUCIARY DUTY;**  
15 **(7) MALICIOUS PROSECUTION;**  
16 **(8) DEFAMATION; AND**  
17 **(9) DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF**  
18 **CALIFORNIA'S OPEN MEETINGS ACT (BROWN ACT);**

19 on the interested parties in this action by hand delivery to the addressee, a true copy/original  
20 thereof in a sealed envelope addressed as follows:

21 Carlo Coppo, Esq.  
22 DiCaro, Coppo & Popcke  
23 1959 Palomar Oaks Way, Suite 300  
24 Carlsbad, CA 92009

25 Tom Curtis, Esq.  
26 BondCurtis, LLP  
27 140 S. Lake Avenue, Suite 208  
28 Pasadena, CA 91101


**HAND DELIVERY**

**STATE** - I declare under the penalty of perjury under the laws of the State of  
California that the foregoing is true and correct.

**FEDERAL** -- I declare that I am employed in the office of a member of the bar of this  
Court at whose direction the service was made.

Executed on April 12, 2004, at Los Angeles, California 90012.

  
\_\_\_\_\_  
Sign Name

  
\_\_\_\_\_  
Print Name