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3 **785 Tucker Road**  
4 **Tehachapi, CA 93561**

5 **WORKERS COMPENSATION APPEALS BOARD**

6 **STATE OF CALIFORNIA**

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9 Barbara Clark,  
10 Applicant,  
11 vs.  
12 San Joaquin Community Hospital,  
13 Adventist Health System - West  
14 Defendants

) **Case No.: BAK 112784**  
)  
) **APPLICANT'S OBJECTION TO**  
) **POTENTIAL ORDER REQUIRING**  
) **EXAMINATION BY**  
) **DEFENDANT'S BIASED AND**  
) **PREJUDICIAL EXPERTS**

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18 At the outset, this administrative tribunal should construe this entire pleading  
19 as submitted under the penalties of perjury and in any section where a declarative  
20 statement is made by the applicant it should be assumed by this administrative  
21 tribunal to be made under the penalties of perjury.

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24 ***APPLICANT'S OBJECTION TO POTENTIAL ORDER COMPELLING RE-EXAMINATION***



1 This very same judge, or referee, now seeks to “compel” the applicant to be  
2 re-examined by two physicians that the applicant intends to sue in federal court;  
3 one physician an agreed medical examiner (“AME”) James L. Strait, M.D. and  
4 another with no status before this court (not an AME or other designation), Dr.  
5 David N. Glaser, M.D. Caveat: it is a curiosity of the dual proceedings (federal  
6 and administrative tribunal) that judge Norton was named as a co-defendant with  
7 Dr. Glaser. In essence, defense counsel seeks an order from a co-defendant  
8 (Norton) to compel applicant Clark to submit to a medically unnecessary and  
9 procedurally improper medical re-examination with another co-defendant (Dr.  
10 Glaser). An identical scenario is more fully described in the applicant’s *Petition*  
11 *for Writ of Certiorari* pending before the U.S. Supreme Court.  
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15 **II. GROSS MIS-CHARACTERIZATION OF DR. DAVID N. GLASER AS A**  
16 **QUALIFIED MEDICAL EXAMINER IN THESE PROCEEDINGS**  
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18 The Amended Petition (12/17/2007) ignores the fact that a comprehensive  
19 report has been created by Dr. Robert Reed, D.D.S., a panel qualified medical  
20 examiner (Panel QME); see report of 11/10/2005. In fact, defense counsel  
21 erroneously refers to Dr. David Glaser as a “QME” on the first page of the  
22 12/17/2007 pleading.

1 Dr. Glaser may have “QME” trumpeted on his *curriculum vitae* or *resume*;  
2 but, in this proceeding Dr. Glaser holds no such “QME” status, designation or  
3 relationship. The use of the “QME” status by defense counsel before this  
4 administrative judge is an artifice of what Mr. Dennis J. Hershewe does best –  
5 commit flagrant and arrogant fraud before this tribunal, which said tribunal is all to  
6 happy to approve of and condone (hence, applicant’s federal lawsuit against Mr.  
7 Hershewe and the administrative law judge reviewing this instant pleading (as well  
8 as Dr. Glaser himself)).

9 Other examples of such fraud include the numerous cites to orders of this  
10 tribunal pre-dating the 11/10/2005 Panel QME report; which is supposedly the  
11 only operative and authoritative medical report available to this tribunal at this  
12 stage of proceedings. Such cites include:

- 13 • 7/1/2004 order compelling applicant to be examined by Dr. Glaser
- 14 • 4/23/2003 order compelling applicant to be examined by Dr. Strait
- 15 • 8/8/2002 minutes of hearing
- 16 • 11/6/2002 minutes of hearing

17 One might ask, “why the re-hash of orders and hearings that have occurred  
18 more than five years in the past?”  
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2 **III. IGNORING ISSUES RELATED TO SPINAL SURGERY DISPUTES**  
3 **WITH THE LABOR CODE 4062.3(J) DETOUR**  
4

5 Defense counsel has incorrectly relied upon Labor Code 4062.3(j) to justify  
6 the latest attempt to compel re-examinations of Clark by a fraudulently described  
7 “QME” (Dr. Glaser); a co-defendant in federal court with Mr. Hershewe and the  
8 judge reviewing this pleading.

9 Labor Code 4062.3(j) was promulgated in the context of obtaining a report  
10 from a Panel Qualified Medical Examiner (Panel QME) and concerns “new  
11 disputed issues” not addressed in a report of a Panel QME physician which have  
12 been discovered after issuance of such a report. Labor Code 4062.3(j) has been  
13 completely lifted out of context by defense counsel.

14 To illustrate, defense counsel cites (in the 12/17/2007 Amended Petition)  
15 obscure language on page 8 of judge Norton’s 12/19/2006 “Opinion on Decision”,  
16 “..medical-legal record is obsolete with respect to Applicant’s spinal ...  
17 condition..”. This administrative tribunal’s attention is directed to the use of the  
18 word “spinal”.

19  
20 If defense counsel is disputing issues related to the recommendation for  
21 follow-up spinal surgery for the applicant, then, such disputes regarding spinal  
22 surgery must be resolved under section 4062(b) (Lab. Code, § 4610(g)(3)(A); see

1 also, § 4062(a) & (b).) and the statutorily created procedure for disputing  
2 recommendations for spinal surgery.

3 Title 8, California Code of Regulations (CCR), Section 9788.1 (8 CCR §  
4 9788.1), describes in detail the procedure for obtaining and creating legitimate  
5 objections to a primary treating physician's (PTP) recommendation for spinal  
6 surgery, a process known as "*Spinal Surgery Second Opinion Procedure*"  
7 (SSSOP). To this end, the Division of Workers' Compensation published a  
8 memorandum on October 26, 2004 (10/26/2004) that addressed changes to the  
9 implementing regulations for spinal surgery disputes; quoted in relevant part:

10 ***Section 9788.1. Employer's Objection To Report Of Treating Physician***  
11 ***Recommending Spinal Surgery.***

12 *An objection to the treating physician's recommendation for spinal surgery*  
13 *shall be written on the form prescribed by the Administrative Director in*  
14 *Section 9788.11 The employer shall include with the objection a copy of the*  
15 *treating physician's report containing the recommendation to which the*  
16 *employer objects. The objection shall include the employer's reasons,*  
17 *specific to the employee, for the objection to the recommended procedure.*  
18 *The form must be executed by a principal or employee of the employer,*  
19 *insurance carrier, or administrator.*

20 Regarding any disputes related to spinal surgery defense counsel's reliance  
21 on Labor Code 4062.3(j) is completely misplaced, erroneous and misleading.

22 Review of sub section ("i") of 4062.3 is instructive on this point:

23 *(i) Upon completing a determination of the disputed medical issue, the*  
24 *medical evaluator shall summarize the medical findings on a form*  
25 *prescribed by the administrative director and shall serve the formal medical*  
26 *evaluation and the summary form on the employee and the employer. The*  
*medical evaluation shall address all contested medical issues arising from*



1 ***Further Reports Addressing The Post-Utilization Review Treatment***  
2 ***Dispute.***

3 *The panel QME's evaluation is the only medical evaluation that may be*  
4 *obtained to resolve any dispute regarding a utilization review physician's*  
5 *determination not to fully approve a treating physician's treatment request;*  
6 *the treating physician and the utilization review physician cannot issue*  
7 *supplemental reports or provide testimony, either at trial or by deposition, in*  
8 *rebuttal to the panel QME's report. This interpretation is consistent with the*  
9 *language of sections 4610 and 4062. Once more, section 4610 states, in*  
10 *relevant part: [emphasis added]*

11 *""If the [treating physician's] request [for authorization of medical*  
12 *treatment] is not approved in full, disputes shall be resolved in*  
13 *accordance with Section 4062." (Lab. Code, § 4610(g)(3)(A) .."*

14 Following the issuance of a Panel QME report a party can not request  
15 supplemental medical reports for the sake of obtaining re-evaluations on a whim  
16 and attempting to justify same with orders and hearing minutes from 2002; such  
17 conduct smacks of re-litigating the issues. Defense counsel has not addressed what  
18 "new" medical issues are in dispute since the issuance of the 11/10/2005 Panel  
19 QME report by Dr. Reed.

20 The attention of this administrative tribunal is directed to the corrective  
21 actions suggested in *Willette* (see Exhibit One, page 10); quoting in relevant part:

22 *"Here, following the post-utilization review dispute over applicant's*  
23 *entitlement to medical treatment, the statutory procedure outlined above was*  
24 *not followed. That is, the dispute was not resolved by going to a panel QME*  
25 *in accordance with the [\*1309] provisions of sections 4610, 4062(a),*  
26 *4062.1, and 4062.3..."*

1 It is clear, disputed issues are resolved by the Panel QME’s report (dated  
2 11/10/2005, Dr. Robert Reed, D.D.S.); not be supplemental reports created by an  
3 AME and a non-designated (non-AME) defense expert witness (Dr. David N.  
4 Glaser, M.D.).

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6 V. SUMMARY

7 The context of 4062.3 is the determination of new disputed medical issues  
8 that have been identified following the stated opinion or report of a Panel QME  
9 physician. There are no disputed medical issues discussed in the 12/17/2007  
10 Amended Petition by Mr. Hershewe. Defense counsel attempts to create  
11 ambiguous and mysterious undocumented “disputes” to justify a detour around the  
12 Panel QME report of 11/10/2005 by misplaced reliance on 4062.3(j). This  
13 administrative tribunal should flatly reject the relief requested in the 12/17/2007  
14 Amended Petition.

15 The 12/17/2007 Amended Petition does not present substantial law or fact, it  
16 merely rehashes defense counsel’s displeasure with the alleged “Nasty Letter  
17 Campaign” attributed to Clark and the alleged outdoor aquatic exercise program  
18 used by Clark to maintain her physical condition – both issues are completely  
19 irrelevant to the matter before the bar.

20 Defense counsel (Hershewe), via the Amended Petition, seeks to have  
21 applicant re-examined by two physicians whom the applicant plans to sue for  
22 violations of the federal Racketeer Influenced and Corrupt Organizations (RICO)

1 Act for their participation in certain mail and wire fraud conspiracies to create  
2 erroneous, false and misleading medical reports and misrepresent the state  
3 regulations in “appointment letters” they have transmitted to the applicant. These  
4 individuals apparently are part of a extra-judicial racketeering ring that has  
5 routinely denied the access to urgently needed medical care, which is the property  
6 interest of injured workers that have obtained legitimate Awards and Order for  
7 medical care, but are denied by inconclusive medical reports riddled with  
8 slanderous defamation and devoid of substantive medical analysis.

9 Both of these physicians have been alerted to the intentions of the applicant  
10 to bring an action against them for RICO violations, as defense counsel points out  
11 in his 12/17/2007 pleading (defense characterization of said communications is  
12 “threatening letters”). Such pre-litigation letters by the applicant are considered to  
13 be extra-judicial communications apart from this instant administrative hearing and  
14 are related to the applicant’s rights to seek redress in the federal courts against  
15 these physicians. Defense counsel’s characterization of “threatening letters” is in  
16 of itself slanderous and an act of defaming the applicant, creating additional  
17 prejudicial bias against Clark in this administrative tribunal; which offers no plan  
18 for remediation of such bias and prejudice.

19 As this tribunal is aware, the applicant has filed a *Petition for Writ of*  
20 *Certiorari* with the U.S. Supreme Court concerning this tribunal’s last “compelling  
21 order” issued July 1, 2004 by Judge Evelyn Dapremont to have the applicant  
22 “examined” by the notorious Dr. David N. Glaser, M.D. Three years ago Dr.

1 Glaser filed a late, uncertified report (signed in October 2004), which was never  
2 used as part of the medical evaluation process. That slanderous report was  
3 designed solely for the purpose of allowing defense counsel to freely distributed  
4 said report to nearly twenty (20) entities in December 2004. The medically  
5 unnecessary and irrelevant report by Dr. Glaser served as yet another artifice of  
6 fraud that defense counsel could use to add legitimacy to his extra-judicial “smear  
7 campaign” of the applicant, in violation of federal RICO laws and to destroy any  
8 hope Clark may have of regaining a normal and meaningful career and work life  
9 (which should be the objective of this administrative tribunal; see “return to work”  
10 doctrine).

11 Now the defense seeks another attempt at this same old tactic; which will not  
12 be tolerated by the applicant, who is prepared to (1) litigate this issue to the U.S.  
13 Supreme Court, if necessary, (2) seek criminal conspiracy charges against defense  
14 counsel, Dr. James L. Strait, M.D., Dr. David N. Glaser, M.D., and the present  
15 administrative law judge hearing this case, and (3) file new federal litigation  
16 against the parties described above following review of an order, dated 11/14/2007,  
17 issued by U.S. District Court judge Frank C. Damrell by the U.S. Court of Appeals  
18 for the Ninth Circuit. That federal 11/14/2007 order has apparently created a  
19 temporary bar from pursuing these individuals and their racketeering ring by the  
20 applicant in *federal court*.

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22 **ATTESTATION TO ACCURANCY**

1 I, Barbara Clark, hereby attest under the penalties of perjury that this  
2 pleading is not designed or submitted for the purposes of harassment or undue  
3 delay pursuant to Labor Code §5902. Also, any exhibits attached to this pleading  
4 should be considered faithful and accurate copies of what the applicant attests such  
5 exhibits to be, and the applicant hereby authenticates said exhibits as truthful  
6 reproductions of the original source document, under the penalties of perjury.  
7 Further, I state under oath, that I submit this pleading in good faith and sincerely  
8 believe in the disputes of fact and law presented herein; namely that the evidence  
9 does not justify the findings of fact by the WCJ (as discussed herein).

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12 Barbara Clark, R.N., N.P.

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14 I attest, under penalties of perjury, that copies of this pleading have been  
15 placed in the U.S. mails with First Class postage affixed on this \_\_\_ day of  
16 December, 2007.

17  
18 ***Copies provided:***

19 Judge Robert K. Norton  
20 Workers' Compensation Appeals Board (WCAB)  
21 1800 30<sup>th</sup> Street, Room 100  
22 Bakersfield, California 93301-1929

1 Workers' Compensation Appeals Board  
2 455 Golden Gate Avenue, 9th floor  
3 San Francisco, California 94102

4 Dennis J. Hershewe, esq.  
5 "a professional corporation"  
6 21835 Nordhoff Street  
7 Chatsworth, California 91311

8 Dr. Allen I. Salick, MD  
9 Rheumatology  
10 Cedars-Sinai Medical Towers  
11 8631 West Third Street Suite 1145E  
12 Los Angeles, California 90048

13 Dr. Gil Tepper, M.D, QME, FACS  
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15 Valley Spine Center  
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18 Dr. Jacobo Chodakiewitz, MD  
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21 Dr. David N. Glaser, M.D.  
22 4644 Park Mirasol  
23 Clabaras, California 91302

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25 16530 Venture Blvd.  
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***APPLICANT'S OBJECTION TO POTENTIAL ORDER COMPELLING RE-EXAMINATION***

*EXHIBIT 1*

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*APPLICANT'S OBJECTION TO POTENTIAL ORDER COMPELLING RE-EXAMINATION*

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