

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dr. Gregory Sherr,

Plaintiff,

v.

HealthEast Care System, CentraCare Health,
Dr. Margaret Wallenfriedman,
Dr. Mary Beth Dunn, Dr. Richard Gregory,
Dr. Stephen Kolar, Dr. Jerone D. Kennedy
and Archie Defillo,

Defendants.

Case Type: Civil

Court File No.

**COMPLAINT AND
JURY DEMAND**

Plaintiff Dr. Gregory Sherr (“Plaintiff” or “Dr. Sherr”), by and through counsel, for his Complaint against HealthEast Care System (“HealthEast”), CentraCare Health (“CentraCare”), Dr. Margaret Wallenfriedman, Dr. Mary Beth Dunn, Dr. Richard Gregory, Dr. Stephen Kolar, Dr. Jerone Kennedy, and Archie Defillo, states and alleges as follows:

INTRODUCTION

1. This Complaint describes a pattern of anti-competitive, tortious and otherwise illegal actions perpetrated by Defendants against Plaintiff. These illegal actions have destroyed Plaintiff’s reputation in this state, ended his promising career at

the Midwest Spine & Brain Institute (“MSBI”), and forced him to relocate to Florida to continue to provide expert neurosurgery care.

2. The above-named Defendants were direct competitors of Dr. Sherr and his employer, MSBI, for the care of neurosurgery patients at St. Joseph’s Hospital (“SJH”) in St. Paul, Minnesota and at St. Cloud Hospital (“SCH”) in St. Cloud, Minnesota. Dr. Sherr had privileges to treat neurosurgery patients at SJH, which is part of the HealthEast system, and began to significantly increase his surgical practice there when his employment at MSBI began in early 2015. Dr. Sherr and MSBI also established an MSBI neurosurgery clinic in St. Cloud, which opened in January 2015. This clinic allowed Dr. Sherr to maintain his active neurosurgery practice for St. Cloud area patients.

3. Defendants sought to remove Dr. Sherr as a competitor for neurosurgery patients in both the Minneapolis-St. Paul (“Twin Cities”) market and the St. Cloud market. Based on this anti-competitive motive, they colluded to initiate complaints against him under the HealthEast Peer Review process, and improperly secured a summary suspension of his privileges.

4. Once HealthEast imposed this improper summary suspension, the above-named individual physician Defendants (including for purposes of this Complaint Defendant Defillo) communicated freely about it, both amongst themselves and throughout the very tight-knit neurosurgery community in this region. These repeated communications were direct and flagrant breaches of the state- and federally-mandated

confidentiality protections associated with physician peer review, and along with additional false information conveyed by the individual Defendants, destroyed Dr. Sherr's reputation in this community and ended his once very promising MSBI career opportunity.

5. Therefore, despite his successful appeal of his baseless summary suspension and its reversal, Dr. Sherr was forced to resign his HealthEast privileges, end his MSBI employment, and continue his neurosurgery career in another state. This move came at a significant economic cost, loss of income, and expenses associated with his resignation from MSBI. Defendants' misconduct destroyed his reputation in this community and his choice to practice his area of expertise in his community of choice.

6. The most significant harm caused by Defendants' anti-competitive and illegal conduct is to the care of neurosurgery patients in the Twin Cities' and St. Cloud communities. These patients, who often face life-threatening and excruciatingly painful medical conditions with limited treatment options, have been deprived of Dr. Sherr's innovative and expert care, and are instead forced to accept treatment from the above individually named physician Defendants, who have, individually and collectively, nowhere near the expertise and innovative skills and techniques Dr. Sherr brings to this critically needed area of medical care.

PARTIES, JURISDICTION, AND VENUE

7. During all relevant times, Plaintiff Dr. Gregory Sherr was a licensed neurosurgeon practicing in Minnesota. He currently resides in Florida, where he was forced to move in order to continue his neurosurgery career.

8. Defendant HealthEast Care System is a non-profit health care provider and hospital management company headquartered in St. Paul, Minnesota. It employs approximately 7,500 employees, of whom about 850 are employee physicians. It owns four hospitals (St. Joseph's, St. John's, Bethesda, and Woodwinds Hospital), fourteen clinics, a home care organization, and a medical transportation system.

9. Defendant CentraCare Health is a non-profit health care provider headquartered in St. Cloud, Minnesota, with locations throughout the central Minnesota area. It owns and operates six hospitals (St. Cloud, Long Prairie, Melrose, Monticello, Paynesville, and Sauk Center), six nursing homes, senior housing in numerous locations, 18 clinics, and four pharmacies. CentraCare employs approximately 5,000 employees, of whom about 450 are employee physicians.

10. Defendant Dr. Margaret Wallenfriedman is a neurosurgeon licensed in the State of Minnesota and employed in-house at HealthEast. She resides in the State of Minnesota.

11. Defendant Dr. Mary Beth Dunn is a neurosurgeon licensed in the State of Minnesota and employed in-house at HealthEast. She resides in the State of Minnesota.

12. Defendant Dr. Richard Gregory is a neurosurgeon licensed in the State of Minnesota and employed in-house at HealthEast. He resides in the State of Minnesota.

13. Defendant Dr. Stephen Kolar is an internal medicine physician licensed in the State of Minnesota. He specializes in geriatric care. During the events described herein, he was the HealthEast Senior Vice President and Chief Medical Officer. He resides in Minnesota.

14. Defendant Dr. Jerone D. Kennedy is a neurosurgeon licensed in the State of Minnesota and employed in-house at CentraCare. He practices primarily at St. Cloud Hospital, where he is the Medical Director of Neurovascular Surgery at the Saint Cloud Hospital Center for Neurosciences. He resides in the State of Minnesota.

15. Defendant Archie Defillo is a non-licensed neurosurgeon trained outside the United States and employed as an administrator at CentraCare. He is the Clinical Director of Neurosciences at St. Cloud Hospital. He resides in the State of Minnesota.

16. The present action is timely commenced under Minn. Stat. §§ 145.64 and 42 U.S.C. § 11101, *et seq.* (for breach of peer review confidentiality claims); Minn. Stat. § 541.07 (for invasion of privacy and defamation); Minn. Stat. § 541.07 (for tortious interference claims); 15 U.S.C. §§ 1, 2, and 15b (for Federal antitrust claims); and Minn. Stat. §§ 325D.51, 325D.52, and 325D.64 (for Minnesota antitrust claims).

17. This Court has jurisdiction over this action pursuant to 18 U.S.C. § 1864, 15 U.S.C. § 1, 15 U.S.C. § 2, and 28 U.S.C. §§ 1331 and 1337(a) (for the Federal Antitrust claims) and under 28 U.S.C. § 1367 (for claims under Minnesota statutory and common law).

18. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because all Defendants reside in Minnesota, and all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Minnesota.

FACTUAL BACKGROUND

PLAINTIFF'S BACKGROUND AND EMPLOYMENT WITH DEFENDANTS

19. Dr. Sherr is a 46 year old Board Certified neurosurgeon. He graduated from Columbia University in New York, in 1994, and then completed a post-baccalaureate pre-medical degree from Columbia in June 1999. He graduated from New York Medical College with his M.D. degree in June 2004. Dr. Sherr completed his neurosurgery fellowship and residency in surgical critical care in the Department of Neurosurgery at the University of Minnesota in December 2010.

20. In January 2011, Dr. Sherr joined Dr. Jeff Gerdes at Central Minnesota Neurosciences ("CMN"), an independent neurosurgery practice serving patients in the St. Cloud area. He ultimately became a 49% owner of this practice, with Dr. Gerdes owning the majority 51 % interest. Dr. Sherr was granted privileges to practice as an attending physician in the Department of Neurosurgery and Interventional Stroke

Neurology at SCH and also secured privileges to practice in the HealthEast system, primarily at SJH.

21. He was appointed Chairman of the Department of Neurosurgery and Intervention Stroke Neurology at SCH in January 2012, and in this role successfully recruited physicians to specialize in interventional stroke care and developed a robust and exceptionally successful practice.

22. Through December 2014, Dr. Sherr managed a dual department of neurosurgeons and interventional neurologists at a very busy Level II trauma and stroke center. He oversaw the development of a dedicated service for stroke patients with two interventional angiography suites, which handled approximately 700 stroke patients per year, as well as patients with complex vascular lesions of all kinds. Dr. Sherr also developed a fellowship program in Interventional Stroke Neurology at SCH, which continues through the present time.

23. In late 2014 CentraCare approached Dr. Gerdes about purchasing CMN, the independent practice he owned with Dr. Sherr. As the majority owner, Dr. Gerdes decided to move forward with the transaction even though Dr. Sherr opposed it. Dr. Gerdes was nearing retirement age and this sale would ease his transition. This sale closed on or about December 31, 2014, with Dr. Gerdes then becoming an in-house neurosurgeon at CentraCare, practicing primarily at SCH.

24. As a result of the sale of CMN over his objections, Dr. Sherr was forced to attempt to negotiate reasonable employment terms at CentraCare, which could not

be accomplished. He therefore accepted a modest buy-out of this equity interest in CMN, and elected to continue his lucrative neurosurgery practice through another independent practice. Dr. Gerdes succeeded Dr. Sherr as SCH Neurosurgery Chairman when Dr. Sherr resigned.

25. After the sale Dr. Sherr had several options, as numerous organizations were interested in retaining his services. He is a uniquely well qualified neurosurgeon who specializes in treating the most complex cases in this field, often involving patients at high-risk with poor self-care histories. He had previously been granted privileges to practice at HealthEast, and in particular at SJH, and had discussions with HealthEast executives about providing his services to this organization as an independent contractor, though HealthEast eventually chose to hire Defendants Wallenfriedman, Gregory and Dunn.

26. Since early in 2013 Dr. Sherr had been in discussions with Dr. Stefano Sinicropi, a very successful spine surgeon who was and is the President of MSBI, about the possibility of working with this group. Dr. Sherr ultimately elected to join MSBI in January 2015. He made this decision because MSBI offered him a path toward full partnership after a year of employment, and was committed to expanding, under Dr. Sherr's leadership, its neurosurgery practice with a focus on complex neurotrauma cases and surgical critical care, both of which were Dr. Sherr's specialties.

27. At the time of these negotiations with MSBI, this organization was known as the Midwest Spine Institute, but to reflect the significant expansion of its practice into cranial neurosurgery it changed its name to Midwest Spine and Brain Institute upon the hiring of Dr. Sherr. He joined MSBI as its Program Director for Neurosurgery.

28. Dr. Sinicropi and Dr. Sherr discussed how the merger of their two practice areas, and the establishment of a clinic in St. Cloud in addition to the locations where MSBI had clinics (Apple Valley, Burnsville, Elk River, Golden Valley, Maple Grove, Maplewood, Minnetonka, Princeton, St. Anthony, New Richmond, WI, and St. Croix Falls, WI), would allow MSBI to effectively dominate the larger Northwest “corridor” neurosurgery and spine care market, from the northern Twin Cities to St. Cloud. This would involve Dr. Sherr securing privileges to practice at North Memorial Medical Center and United Hospital, which Dr. Sinicropi assured him could readily be accomplished.

29. In his 15 months at MSBI Dr. Sherr maintained privileges at numerous hospitals, including Fairview Southdale, SCH, HealthEast (SJH), North Memorial Medical Center, and United Hospital. He had previously been granted privileges to practice at HealthEast while chairing the SCH Neurosurgery Department. MSBI and Dr. Sherr sought, and on February 2, 2015, he was granted “temporary privileges” to resume his neurosurgery practice at HealthEast while employed at MSBI.

30. Dr. Sherr performed approximately 500 surgical cases in the time period he practiced with MSBI (a little over 140 at HealthEast/SJH), the majority of which were complex reconstructive spine surgeries, often for low income patients who struggle with obesity, poor health habits, or otherwise suffer from conditions such as diabetes. These chronic and pervasive issues significantly increase the risk of infections and other surgical complications.

31. He successfully performed surgeries in all subdivisions of neurosurgery, including cranial, neuro-oncology, and complex spine cases of all kinds as he ramped up his practice. By June 2015, Dr. Sherr had become the most significant revenue producer of all of the MSBI physicians, including the four partner physicians.

32. Before Dr. Sherr resigned as Neurosurgery Department Chair at SCH, he recruited Dr. Jerone Kennedy to join CentraCare/SCH in early 2014. Following Dr. Gerdes' tenure as Chairman (after he succeeded Dr. Sherr), Dr. Kennedy was elected the Medical Director of Neurovascular Surgery for the SCH Center for Neurosciences, the same position previously held by Dr. Sherr, albeit with a slightly revised title.

33. Until late 2012, Dr. Kennedy had served as the Neurosurgery Medical Director at United Hospital in St. Paul, working directly with, and often supervising, Defendants Dr. Richard Gregory, Dr. Mary Beth Dunn, and Dr. Margaret Wallenfriedman. These four physicians practiced for over ten years together at United Hospital. Upon information and belief, they became close friends as well as professional colleagues. Before joining CentraCare/SCH, Dr. Kennedy resigned from

United Hospital and worked for about a year as a neurosurgeon in Norfolk, Virginia. He was in that position when he was recruited to join SCH by Dr. Sherr.

34. In his capacity as Medical Director at SCH, Dr. Kennedy worked with and supervised Archie Defillo, who was recruited by Dr. Sherr to join SCH in early 2014, and later became the SCH Clinical Director of Neurosciences. Before joining CentraCare/SCH, Defillo worked as a neurovascular researcher at HealthEast, from 2008 through 2013.

DR. SHERR SUCESSFULLY COMPETES WITH THE HEALTHEAST AND CENTRACARE/SCH IN HOUSE NEUROSURGERY GROUPS

35. Dr. Sherr joined MSBI pursuant to an Employment Agreement that provided he would be eligible for full partnership after one year of employment. At that time, MSBI was owned by four partner physicians, Dr. Stefano M. Sinicropi (who served as President), Dr. Glenn A. Buttermann, Dr. Daniel W. Hanson, all spine surgeons, and Dr. Lynn Miller, a neurosurgeon who was offered partnership at or around the same time that Dr. Sherr joined this practice. MSBI also hired Dr. David Chang, another experienced neurosurgeon, at or around that same time.

36. MSBI added Dr. Miller as a partner and Dr. Sherr and Dr. Chang as experienced neurosurgeons because MSBI intended to follow a business plan to significantly increase its share of the neurosurgery market in the Twin Cities and central Minnesota regions. Before that time, MSBI had principally focused on spinal surgery, and had successfully built that practice to the point where it was generating

revenues of approximately \$15,000,000 annually. In discussions with Dr. Sherr, Dr. Sinicropi projected that adding a successful neurosurgery practice, led by Dr. Sherr, could readily increase that revenue to the \$25,000,000-\$30,000,000 range, or above.

37. Consistent with this plan, in or around January 2015, Dr. Sherr and MSBI opened a neurosurgery clinic in St. Cloud, Minnesota, at 1511 Northway Drive, just two blocks away from SCH. Dr. Sherr was able to staff this clinic with his administrative team from CMN, who, like Dr. Sherr, were not interested in joining CentraCare. This group was very well-connected and familiar with the patient base and referral sources in the St. Cloud area, and this clinic was soon operating very successfully, allowing Dr. Sherr to continue to maintain a significant share of the neurosurgery patient market in that community, at the direct expense of CentraCare's share of this market.

38. Neurosurgery is a highly specialized, extremely lucrative field, with about 35-40 active practitioners in Minnesota. As a result of its small size, this professional community is relatively tight-knit, and gossip travels fast within it.

39. MSBI, with the addition of Dr. Sherr and Dr. Chang, and the opening of the St. Cloud office, was becoming a significant threat to CentraCare and its ability to attract neurosurgery patients at SCH. In the same vein, MSBI, with the addition of these two new neurosurgeons and the elevation of Dr. Miller to full partner status, was becoming a significant threat to HealthEast and its ability to attract and retain the

majority of the neurosurgery patients who were treated at SJH, one of HealthEast's four hospital locations.

40. MSBI grew this staffing because of its interest in providing expanded neurosurgery services to HealthEast and increasing its presence in the central Minnesota market. MSBI, through its President Dr. Sinicropi, was involved in extensive discussions with HealthEast executive leadership about expanding these services at HealthEast and its affiliated Hospitals.

41. These discussions included a proposal from Dr. Sinicropi that MSBI take over the neurosurgery practice at HealthEast. The executive leadership at HealthEast with whom he discussed this proposal included Senior Vice President and Chief Medical Officer, Kevin Garrett, Vice President of Medical Affairs, John Kvasnicka, and Vice President of Operations for Ambulatory Care and Medical Services, Eric Nelson. They all appeared interested in Dr. Sinicropi's proposal, but the discussions ended when HealthEast announced that Dr. Gregory, Dr. Dunn and Dr. Wallenfriedman, as a group (hereafter referred to as "HealthEast Neuro Group" unless identified individually), had been forced to leave United Hospital. They had practiced at United Hospital with Dr. Jerone Kennedy until he left to begin practicing in Virginia, and they decided to join HealthEast as a group. This occurred in February 2015.

THE HEALTHEAST NEURO GROUP, IN COLLUSION WITH DR. KENNEDY AND DEFILLO, BEGIN TO LAUNCH A COORDINATED CAMPAIGN TO DESTROY DR. SHERR AND THE MSBI NEUROSURGERY TEAM

42. In the course of negotiating with Drs. Wallenfreidman, Dunn, and Gregory about joining HealthEast as in-house physicians, HealthEast executives informed the MSBI shareholders (then Drs. Sinicropi, Hanson and Buttermann) that this group had demanded that HealthEast discontinue any use of MSBI physicians for neurosurgery and spine care, and that it remove any MSBI clinic presence from HealthEast. This severing of ties between HealthEast and MSBI was a precondition for the Wallenfreidman, Dunn, and Gregory group (which soon became the HealthEast Neuro Group) before they would agree to move their neurosurgery practice from United Hospital.

43. MSBI vigorously protested this request, and the HealthEast executive team relented. MSBI, however, was required to agree that their physicians would no longer be “on call” in the St. John’s/St. Joseph’s emergency rooms for neuro or spine cases, and the HealthEast executives asked MSBI to agree not to have any MSBI physicians perform “elective procedures” at HealthEast facilities – a significant reduction of their practice at HealthEast, and all the result of the conditions the HealthEast Neuro Group sought. When MSBI refused, the HealthEast Neuro Group was still assured that there would be no neurosurgery referrals from HealthEast to MSBI. Upon information and belief, this assurance allowed the HealthEast Neuro Group to join HealthEast and pursue its goal of monopolizing neurosurgery within the HealthEast system.

44. Not satisfied with this significant restriction, the HealthEast Neuro Group soon began a concerted attack intended to accomplish the goal that MSBI and HealthEast had successfully blunted in these negotiations – to eliminate MSBI neurosurgeons from practicing at HealthEast. Upon information and belief, the HealthEast Neuro Group promptly enlisted the participation of Dr. Kennedy and Defillo in this plan, as these physicians shared the goal of eliminating Dr. Sherr and MSBI as competitors. They were deeply disturbed by the establishment of the successful MSBI Neurosurgery Clinic two blocks from SCH, which was dramatically affecting revenues for neurosurgery practice at SCH.

45. Shortly after the MSBI St. Cloud Neurosurgery Clinic opened, physicians in the St. Cloud area informed Dr. Sherr that Defillo threatened them by stating that if they continued to refer patients to Dr. Sherr at the MSBI Clinic, Defillo would ensure their SCH practice would suffer. Defillo informed one such physician that he would be denied “block time” to follow up with his patients at SCH, which would essentially preclude him from practicing at SCH.

46. These CentraCare physicians made no attempt to hide their disdain for Dr. Sherr and MSBI, their anger over his clinic, or their intent to destroy his practice. Defillo informed a Sales Representative at Stryker Spine that he and Dr. Kennedy were going to “take Dr. Sherr down” soon after learning of the opening of the MSBI Clinic in St. Cloud. Upon information and belief, Defillo and Dr. Kennedy began to

communicate, orally and in writing, with the HealthEast Neuro Group, specifically about the shared desire to force Dr. Sherr out of practicing neurosurgery in Minnesota.

47. Upon information and belief, they began to devise a plan to have the HealthEast Neuro Group initiate complaints about Dr. Sherr's practice at SJH, and thus to secure the termination of his privileges there.

48. The HealthEast Neuro Group members were all-too receptive to this plan given their shared anti-competitive desire to eliminate Dr. Sherr and MSBI as competitors, and were equally vocal in their disparagement of Dr. Sherr when he began to increase his MSBI practice at SJH. Operating room nurses would frequently inform Dr. Sherr how the HealthEast Neuro Group would regularly complain to them about the significant block time Dr. Sherr's very active surgery practice was consuming on the SJH Operating Room calendar.

49. These nurses also conveyed to Dr. Sherr how the HealthEast Neuro Group would disparage Dr. Sherr for how quickly he would complete his surgeries. He would often complete two to four surgical cases in the same time it took for these surgeons to complete one case. The HealthEast Neuro Group said that Dr. Sherr's speed in surgery was putting his patients at risk. This statement is demonstrably false, as excessive length of surgery is a significant factor in *increasing* patient risk of developing an infection. Indeed, Dr. Sherr's efficiency in complex surgical procedures establishes his vastly superior technique and qualifications compared to the HealthEast

Neuro Group, and the devastating impact to the neurosurgery patient population if he is not a treatment provider.

50. HealthEast, like all organizations subject to Health Care Quality Improvement Act (“HCQIA”), 42 U.S.C. §11101, *et seq.*, has developed specific policies and procedures to govern review of any issues that arise concerning the granting of privileges to physicians to practice at HealthEast hospitals. These procedures are designed to effectively address complaints or concerns that arise regarding any privileged physician’s clinical competence or behavior, and ensure that these complaints are handled in the strictest confidence and are based solely on legitimate patient care and/or physician behavior concerns.

51. At HealthEast, the policies governing these processes are set forth in the Medical Staff Bylaws, as well as the more specific Focused Professional Practice Evaluation (“FPPE”) Policy, and the Ongoing Professional Performance Evaluation (“OPPE”) Policy.

52. In order to effectuate the plan to remove Dr. Sherr and MSBI as competitors, the HealthEast Neuro Group needed to control the committee(s) that determined when and how to elevate complaints about physician care or behavior to more serious levels of investigation and, potentially, adverse action against the subject physician. Soon after joining HealthEast, Dr. Wallenfriedman thus arranged to have herself nominated for the position of chairperson of the HealthEast Spine Council, the group that met approximately monthly to review any physician clinical competence or

behavior concerns. The other nominees were Dr. Lynn Miller, an MSBI partner, and Dr. David Dubois, a SJH staff physician employed at St. Croix Orthopedics.

53. There was supposed to be a vote at the September Spine Council meeting regarding these three candidates, and the HealthEast Bylaws require that all physicians with privileges were required to vote on the slate of the three candidates and select the chair. Dr. Miller and Dr. Dubois could not attend this scheduled meeting, so both expected this vote would be delayed and taken up at the next monthly meeting, in October. Instead, Dr. Wallenfriedman was simply placed into this role, apparently without a vote, in direct violation of the HealthEast Bylaws.

54. Once empowered in this position of authority, Dr. Wallenfriedman moved swiftly to attack Dr. Sherr and engineer a suspension of his privileges. After the very first Spine Council meeting that she chaired, which took place on October 6, 2015, she and the HealthEast Neuro Group convinced Dr. Stephen Kolar, the HealthEast Senior Vice President and Chief Medical Officer, to issue a summary suspension of Dr. Sherr's HealthEast privileges, based on claimed concerns over infection rates involving the care of eight patients on whom Dr. Sherr had operated. Dr. Kolar had announced his intention to retire from this position shortly before issuing this startling and unprecedented suspension. Upon information and belief, Dr. Kolar is a close friend of Dr. Richard Gregory.

55. The HealthEast Medical Staff Bylaws allow the very drastic step of summary suspension only when "a practitioner's conduct requires that immediate

action be taken to protect the life of any patient(s) or to reduce the substantial likelihood of *immediate* injury or damage to the health or safety of any patient . . . or if the practitioner's conduct raises serious questions regarding qualifications, ethics, or medical abilities . . .” HealthEast Medical Staff Bylaws, Section 9.2.1 (emphasis added). This summary suspension was unilaterally imposed by Dr. Kolar, and approved by the Spine Council on October 20, 2015, two weeks after the first meeting chaired by Dr. Wallenfriedman.

56. On September 15 and 21, 2015, Dr. Sherr had been notified by letter of complaints to the Spine Council, which he believes originated from the HealthEast Neuro Group, regarding his care provided to two surgical patients who had developed infections. He had treated these patients effectively, as demonstrated by the good outcomes for both of them. These two charts were to have been reviewed at the October 6, 2015 Spine Council meeting.

57. Four days before this meeting, Dr. Peter Tenghe, the HealthEast peer review Medical Director, informed Dr. Sherr that a total of eight cases would be discussed at this meeting, the two previously identified by letter, and *six additional cases*, identified solely by patient ID, patient name, and date of surgery. There was no information regarding the alleged patient care concern provided, which left Dr. Sherr to guess at what was to be discussed or what alleged concerns arose from these cases.

58. The Spine Council met to discuss these eight cases on October 6, 2015 during the first meeting chaired by Dr. Wallenfriedman. Dr. Dunn, Dr. Gregory, Dr.

Kolar, Dr. Sinicropi, and Dr. Tenghe were in attendance, as well as other regular members of the Spine Council. Dr. Sherr was hastily asked to respond to the claimed issues with the eight identified cases, which largely involved a supposedly high rate of infections in the patients Dr. Sherr treated, as well as concerns Dr. Wallenfriedman and Dr. Dunn persisted in raising regarding allegedly excessive blood loss.

59. The HealthEast Neuro Group made numerous knowingly false statements in this meeting, including allegations that Dr. Sherr had failed to order some basic and necessary imaging in connection with the treatment of these eight patients, which Dr. Sherr attempted to explain could be demonstrated as false simply by reviewing the complete charts associated with these patients' care.

60. Dr. Sherr, with Dr. Sinicropi's support, explained that the allegedly high infection rate, when considered in the context of the number of patients Dr. Sherr treated, and the difficulty of these cases (many involving Dr. Sherr's willingness to correct prior failed surgical interventions for these patients or patients with obesity or diabetes issues significantly increasing the risk for infections), was actually not cause for any concern at all, and well within the expected infection rates when these factors were appropriately considered. Dr. Wallenfriedman and her HealthEast Neuro Group, however, attacked all of these explanations, refusing to consider the objective explanations provided.

61. Dr. Sherr presented statistics demonstrating that the incidence of infection was well within the expected statistical occurrence, and all patients were

treated effectively and consistent with the appropriate standards of care. He stressed that all patients under review experienced good outcomes.

62. The HealthEast Neuro Group was, not surprisingly, unmoved by this objective evidence, and relentlessly attacked Dr. Sherr at this meeting, making scores of false and malicious statements. Dr. Dunn claimed that Dr. Sherr was known by the operating staff to have his patients “lose a liter of blood for every level of fusion surgery Dr. Sherr performed,” a plainly false statement that previously had been conveyed to Dr. Sherr by the hospital staff as an example of the false and malicious statements the HealthEast Neuro Group had been making about him. Dr. Sherr was also criticized for the speed of his surgeries, despite his pointing out that this was a direct reflection of his expertise, and significantly *reduced* the possibility of developing infections.

63. Dr. Sinicropi suggested that if there was a consensus among the Spine Council that corrective measures should be taken, MSBI was willing to develop a corrective action plan to reduce the risk of infections to patients treated by Dr. Sherr or any of its other physicians, and would be willing to proctor Dr. Sherr (*i.e.*, observe his treatment and surgical procedures) over a 3-6 month period to ensure that this plan produced a significant reduction in infection rates, even though the explanations for these outcomes in the eight charts under review were entirely reasonable.

64. The consensus at the conclusion of the October 6, 2015 meeting was that this plan would be developed by MSBI and presented and discussed at the follow-up Spine Council meeting “to be scheduled.”

65. Dr. Wallenfriedman then unilaterally scheduled this meeting for October 20, 2015. Despite knowing that Dr. Sinicropi was working on a potential plan to reduce infections, Dr. Sinicropi was not invited. In fact, an email “invitation” was sent to an email account which did not exist and not to the MSBI email the Spine Council had always used to provide notifications to Dr. Sinicropi. No phone call or personal notification was ever provided to Dr. Sinicropi. Dr. Sinicropi’s partners, Dr. Miller and Dr. Buttermann, were either not notified of the meeting or could not attend, yet Dr. Wallenfriedman insisted the meeting proceed.

66. At the outset of the October 20, 2015 meeting, which again was chaired by Dr. Wallenfriedman and attended by the HealthEast Neuro Group and Dr. Kolar (but not Dr. Sherr, or any MSBI physician), Dr. Wallenfriedman falsely stated that Dr. Sinicropi had been personally invited to the meeting, but had expressly declined to attend. She further emphasized that this knowing declination indicated that Dr. Sinicropi and Dr. Sherr were no longer interested in developing or following any corrective action plan or submit to any proctoring oversight. Dr. Gregory added that in his view “proctoring” Dr. Sherr would be a waste of time, given Dr. Sherr’s significant past experience as a neurosurgeon. Dr. Gregory emphasized that Dr. Sherr would be

highly unlikely to change his well-established means of treating patients, which Dr. Gregory described as posing a clear danger to patients.

67. Despite Dr. Sinicropi's and Dr. Sherr's objective and reasonable explanations at the October 6, 2015 Spine Council meeting, no effort was made to either consider Dr. Sherr's rate of infections in light of the same rates for other HealthEast neurosurgeons, evaluate those infections in light of the risk factors present in the specific eight patients, or consider Dr. Sherr's infections rates in any other facilities where he was privileged to practice, all of which were at the very low end of acceptable ranges.

68. Without any MSBI neurosurgeon or spine surgeon present, Dr. Kolar decided at the conclusion of the October 20, 2015 meeting to summarily suspend Dr. Sherr's privileges, which the Spine Council then approved in a unanimous vote. Each member of the HealthEast Neuro Group voted in favor of this summary suspension.

69. Two critical steps in the HealthEast Bylaws and related policies were bypassed entirely in this proceeding. First, the HealthEast Focused Professional Practice Evaluation ("FPPE") Policy and Procedure requires that when any physician is initially granted privileges at any HealthEast facility, after the first six months following a physician's grant of privileges, HealthEast is required to undertake a FPPE to evaluate the care provided in that time period, and address, collaboratively with the physician, any alleged patient care concerns. This could include elevating these concerns to the Clinical Council Chair and assigning a proctor over the physician if

necessary. This time period for Dr. Sherr would have commenced on February 6, 2015, and ended on August 6, 2015. The eight patients cited as issues were all treated by Dr. Sherr in that six month time frame, *and yet no FPPE ever occurred.*

70. Likewise, the OPPE Policies and Procedures require that an OPPE be conducted every eight months. Accordingly, Dr. Sherr should have had an OPPE conducted by October 6, 2015. Again, the eight patients cited as issues were all treated by Dr. Sherr in this eight month time frame, *and yet no OPPE ever occurred.* Upon information and belief Dr. Kolar, influenced by the HealthEast Neuro Group, simply elected to bypass these required steps and elevate the alleged concerns over Dr. Sherr's treatment directly to a summary suspension.

71. Second, the HealthEast Bylaws only permit a summary suspension to be imposed by a vote of the HealthEast Medical Executive Committee ("MEC"). No such vote occurred on October 20, 2015. On the morning of October 20, 2015, however, after the Spine Council voted to uphold Dr. Kolar's recommendation of a summary suspension, but before this suspension had been approved by the MEC, Dr. Sherr and his surgical team were actually readying two patients for surgery in the HealthEast pre-Op. In the midst of these preparations, Dr. Sherr was notified of his summary suspension by Dr. Kolar and Dr. Andrew Fink and was thus forced to cancel both surgical procedures, to the dismay of both patients and their families. This was also publicly humiliating to Dr. Sherr, in addition to compromising his patients' care and creating an undue burden for these patients and their families.

72. One of these patients was transferred to another hospital where Dr. Sherr was able to successfully perform the surgery later that evening, and the other patient's surgery was rescheduled to another date and facility, and also completed successfully.

73. The MEC did, however, hastily convene on October 22, 2015, and voted to approve Dr. Sherr's summary suspension, at a meeting where no MSBI physicians were present, and in which the HealthEast Neuro Group all voted in favor of this suspension.

**THE ISSUANCE OF THE SUMMARY SUSPENSION IS PROMPTLY
BROADCAST TO THE TIGHT-KNIT NEUROSURGERY COMMUNITY**

74. Under federal and state law governing the peer review process, a summary suspension of a physician is an extraordinarily rare event, to be taken only in the most egregious instances of clinical incompetence that threaten patient safety. Even when this extreme measure is taken, a public report to the National Practitioner Data Bank ("NPDB") may not occur until at least 30 days have elapsed, and this required report can be delayed when this action is subject to appeal and challenge.

75. When this public report is made, the NPDB notifies other facilities where the practitioner has privileges of his or her summary suspension, often noting that the basis for the suspension is under appeal and not final. If the summary suspension is later reversed, a "void report" is issued by the NPDB, essentially erasing the suspension from the physician's public record. No individual outside of those involved in the peer review process is to know of any summary suspension apart from

this limited disclosure protocol, and any such violation of confidentiality is punishable in Minnesota as a criminal violation. Minn. Stat. §145.66.

76. In flagrant violation of these strict confidentiality protections, the individually named Defendant physicians widely broadcast Dr. Sherr's summary suspension *right after it issued*.

77. Stryker Sales Representative Doug Mackay was informed of this confidential summary suspension by a fellow Stryker Spine sales representative within days of its occurrence. This sales representative explained that he learned this from the SCH neurosurgeons. Mr. Mackay was in fact shocked to observe these physicians, and the SCH in-house Neurosurgery group led by Dr. Kennedy, actually appearing to celebrate the suspension, apparently congratulating each other on their role in removing a serious competitor.

78. Within days of this suspension, Defillo informed Mr. Mackay that he needed to lessen his presence on sales calls at SCH given the widespread knowledge that he was close professionally with Dr. Sherr. Defillo informed Mr. Mackay that "he might want to distance himself from Dr. Sherr."

79. On December 14, 2015, while Dr. Sherr was appealing his summary suspension and before any report of any kind had issued to the NPDB concerning Dr. Sherr, Defillo texted Dr. Sherr to inform him of a position open in Dubai in a "private/academic hospital as chairman of NS & NeuroSci." Defillo described it to Dr. Sherr as an "excellent way to rebuild your career." This stunned Dr. Sherr, as

Defillo at that time would have no legitimate reason to even be aware of any suspension of Dr. Sherr, much less any “need to rebuild his career,” apart from improper disclosures by those involved in the process.

80. Within days of Dr. Sherr’s summary suspension, Tom O’Connor, the United Hospital President and an Executive Vice President in the Allina system, who had worked with the HealthEast Neuro Group and Dr. Kennedy for years when these physicians provided their services through United Hospital, called Dr. Sinicropi to inform him of Dr. Sherr’s summary suspension, and that it would directly and adversely affect the willingness of United Hospital and Allina-affiliated neurosurgeons (who were also aware of this suspension), to make any referrals to Dr. Sherr or MSBI.

81. This productive referral source thereafter dried up to nothing for Dr. Sherr and MSBI, which had a devastating impact on Dr. Sherr’s and MSBI’s revenues.

82. President O’Connor directly inferred in this telephone conversation that he was informed of the suspension by the HealthEast Neuro Group, who had worked for years at United Hospital. Without prompting, he informed Dr. Sinicropi that Dr. Wallenfriedman, Dr. Dunn, and Dr. Gregory had “sharp elbows” and would not hesitate to use any means at their disposal to eliminate potential competitors.

83. Shortly after Dr. Sherr’s summary suspension, he was up for re-credentialing at Fairview Southdale, where he performed a significant percentage of his surgeries. In the course of this process, Dr. Sherr was informed by a credentialing specialist at Fairview Southdale that executives at this Hospital had become aware of

the summary suspension at HealthEast and SJH. This specialist informed Dr. Sherr that in order to be re-credentialed at Fairview Southdale, he would need to provide a letter of explanation from a practicing neurosurgeon at HealthEast, addressing the issues that led to the summary suspension. Upon information and belief, the HealthEast Neuro Group communicated the fact of Dr. Sherr's suspension to Fairview Southdale.

84. Dr. Sherr was ultimately able to secure a letter from Dr. Meyram Kebriael, a friend who is a neurosurgeon with privileges at HE/St. Joseph, but whose primary practice is at Children's Hospital. Upon information and belief, Dr. Kebriael agreed to provide this recommendation without informing any of the in-house HealthEast Neuro Group physicians. Based on this recommendation, Dr. Sherr was able to obtain re-credentialing at Fairview Southdale.

**DR. SHERR SUCCESSFULLY APPEALS HIS SUMMARY SUSPENSION AND
SECURES ITS REVERSAL**

85. Dr. Sherr and MSBI were forced to retain the services of Carolin J. Nearing of Larson King, LLP, to appeal his summary suspension. Under the HealthEast Medical Staff Bylaws, the first step in that process was to submit a written appeal within 30 days of the suspension notification, and proceed to a hearing before the HealthEast Judicial Review Committee ("JRC"). Ms. Nearing submitted this appeal letter on Dr. Sherr's behalf on November 19, 2015, and the JRC appeal hearing took place on February 1, 2016.

86. Under Article 10 of the HealthEast Bylaws, Dr. Sherr's burden at this hearing was to demonstrate that Dr. Kolar and the MEC had acted arbitrarily and capriciously in summarily suspending his privileges, which required that he demonstrate that the decision had no rational connections to the facts presented. HealthEast counsel at this hearing stressed that even if the JRC felt the decision reached was wrong, it was still required to uphold the suspension if there was *any* rational basis for it, however slight.

87. Dr. Sherr and his counsel presented his testimony, the testimony of Dr. Sinicropi, and an expert witness, Dr. Martin Herman, a Director of Neurosurgery at Lutheran General Hospital in Chicago, Illinois, a Level 1 trauma center. HealthEast Counsel, Susan Kratz and Scott Rusert of the Nilan Johnson Lewis, PA firm, presented the testimony of Dr. Stephen Kolar, who at that time was retired from his position as Senior Vice President and Chief Medical Officer at HealthEast.

88. The JRC issued its decision on February 4, 2015, concluding that Dr. Sherr had met this difficult burden, and reversed the wholly unwarranted summary suspension.

**THE WIDESPREAD BREACHES OF CONFIDENTIALITY
DEVASTATE DR. SHERR'S REFERRAL SOURCES AND RESULT IN
HIS FORCED SEPARATION FROM MSBI**

89. Even though he prevailed on appeal, the damage had been done to Dr. Sherr. The widespread public disclosure of the initial summary suspension, broadcast by the individual named Defendant physicians as described herein, had accomplished

its intended effect. Dr. Sherr's referral sources had been devastated, and his ability to continue to be a top revenue producer for MSBI had been destroyed. MSBI informed Dr. Sherr that given this damage to his reputation in this region, MSBI could not continue to retain him as a physician employee, much less offer him the expected full partnership position that all parties anticipated would occur after a year with MSBI. Dr. Sherr therefore agreed to resign from his MSBI employment.

90. As a result, Dr. Sherr has been forced to accept employment with a neurosurgery group in Florida, where he is now located.

91. The above-described conduct has been devastating to Dr. Sherr's reputation, and to his emotional well-being. He has experienced difficulty sleeping, loss of enjoyment of all aspects of his professional and personal life, and profound, and ongoing, anxiety concerning the effect of this illegal conduct on his career and future prospects.

LEGAL CLAIMS

COUNT I

BREACH OF PEER REVIEW CONFIDENTIALITY IN VIOLATION OF MINN. STAT. §145.64

(Against Defendant HealthEast Wallenfriedman, Dunn, and Gregory)

92. Plaintiff hereby incorporates all of the statements and allegations set forth above.

93. HealthEast's MEC and Spine Council are "Review Organizations" as that term is defined in Minn. Stat. § 145.61, Subd. 5.

94. HealthEast's MEC and Spine Council conducted "reviews" of Plaintiff as that term is used in Minn. Stat. § 145.64.

95. HealthEast, through its agents Dr. Wallenfriedman, Dr. Dunn, and Dr. Gregory, disclosed data and information acquired by the MEC AND Spine Council in the exercise of these entities' duties and functions as Review Organizations and disclosed information about what transpired at meetings of these Review Organizations, including the fact of Plaintiff's summary suspension. Health East and the individually named physician defendants disclosed this information to third parties not involved in the review process.

96. Data and information acquired by Review Organizations and individuals acting at the directions of a Review Organization, as well as data and information regarding what transpired at a meeting of a Review Organization, are to be held in confidence, pursuant to Minn. Stat. § 145.64. Defendants failed to hold such data and information in confidence.

97. Defendants' disclosure of such confidential information was not made for any reason related to carrying out the purposes of the Review Organizations.

98. Defendants were motivated by malice in disclosing such confidential information, as evidenced, among other things, by their total disregard for bylaws and accepted review procedures and the disparate standards applied to Dr. Sherr.

99. The medical peer review process in Minnesota is governed by state law, through the Minnesota Peer Review Statute (“MPRS”), Minn. Stat. § 145.61, *et seq.*, and federal law, through the HCQIA.

100. Both state and federal law require that peer review be conducted confidentially, and accord limited immunity to peer review participants from subsequent legal action *only* when specified criteria are met.

101. As described above, confidentiality was *repeatedly* breached in Dr. Sherr’s case, and therefore, this immunity has no application under state or federal law.

102. Defendants here acted with malice toward Dr. Sherr throughout his peer review process, had no reasonable belief that their actions were in furtherance of a quality health care objective, made no reasonable efforts to obtain the facts, and provided no minimal due process to Dr. Sherr in the events leading to his summary suspension.

103. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by Defendants’ failure to keep peer review information confidential, which damages exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT II

COMMON LAW INVASION OF PRIVACY

(Against Defendant HealthEast, Wallenfriedman, Dunn, and Gregory)

104. Plaintiff hereby incorporates all of the statements and allegations set forth above.

105. The data and information HealthEast and the individually named Defendants acquired or of which they learned through the peer review processes described above were private facts to which Plaintiff had a reasonable expectation of privacy from public disclosure.

106. Defendants made public and/or publicized private facts from the peer review process by disclosing such facts to the larger neurosurgery community. Through such disclosure, these private facts became public knowledge in the neurosurgery community and beyond.

107. The disclosed information – specifically related to the fact of Plaintiff's summary suspension – was true.

108. Defendants' disclosure would be offensive to a reasonable person, as it violated public policy and HealthEast policy, and had the effect of destroying Dr. Sherr's reputation and career in Minnesota.

109. Defendants' disclosure served no public benefit, was made without Plaintiff's consent, and was subject to no qualified privilege.

110. HealthEast is liable for the intentional torts of its management/employees that take place within the scope of their employment.

Wallenfriedman, Dunn, and Gregory made these disclosures while acting on behalf of HealthEast.

111. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by Defendants' failure to keep peer review information confidential, which damages exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT III

DEFAMATION

(Against HealthEast, Wallenfriedman, Dunn, and Gregory)

112. Plaintiff hereby incorporates all of the statements and allegations set forth above.

113. The statements made by the HealthEast Neuro Group regarding Plaintiff and the duration of the surgeries he performed, described in paragraph 49 above, constitute defamation. The statements made by the HealthEast Neuro Group regarding Plaintiff and his professional abilities at the October 6, 2015 Spine Council meeting, described, for example, in paragraphs 59-62 above, also constitute defamation. The statements made by Dunn regarding the blood loss of Plaintiff's patients, described in paragraph 62 above, also constitute defamation. Moreover, upon information and belief, the physicians in the HealthEast Neuro Group, have made many other false and defamatory statements about Plaintiff.

114. The HealthEast Neuro Group physicians made these statements knowing they were untrue. They knew or should have known these statements would harm Plaintiff and damage his professional reputation, which the statements did.

115. The HealthEast Neuro Group physicians made these statement not for any business purpose, or any purpose related to the purposes of a Review Organization as that term is used in Minn. Stat. §§ 165.61-64, but instead for anti-competitive purposes. They were motivated by malice.

116. The statements made by the HealthEast Neuro Group physicians are demonstrably false.

117. The statements made by the HealthEast Neuro Group physicians were published to third parties.

118. The false statements are not privileged because they were not made in good faith, upon a proper occasion, nor from a proper motive, and were not based on reasonable cause.

119. HealthEast is liable for the intentional torts of its management/employees that take place within the scope of their employment. The HealthEast Neuro Group physicians made these statements while acting on behalf of HealthEast.

120. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by the defamatory statements, which damages exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also

entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT IV

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE **(Against HealthEast, Wallenfriedman, Dunn, Gregory, and Kolar)**

121. Plaintiff hereby incorporates all of the statements and allegations set forth above.

122. Plaintiff had a business relationship with MSBI.

123. Plaintiff had a business relationship with Allina Healthcare, whereby Plaintiff received referrals from Allina.

124. Defendants were aware of Plaintiff's business relationships with MSBI and Allina.

125. Defendants wrongfully, intentionally, and without justification interfered with Plaintiff's business relationships when Defendants purposefully disclosed to MSBI and Allina confidential information related to a peer review process.

126. Plaintiff had realized an economic advantage with Allina in the months preceding Defendant's interference. In the absence of Defendants' interference, it is reasonably probable that Plaintiff would have continued to realize an economic advantage or benefit with Allina.

127. Plaintiff had realized an economic advantage with MSBI in the months preceding Defendant's interference. In the absence of Defendants' interference, it is

reasonably probable that Plaintiff would have continued to realize an economic advantage or benefit with MSBI.

128. These existing and prospective business relationships were destroyed by the conduct described above, which was independently wrongful and in violation of state laws regarding peer review confidentiality and common law defamation.

129. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by Defendants' interference, which damages exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT V

**TORTIOUS INTERFERENCE WITH
CONTRACT**

(Against HealthEast, Wallenfriedman, Dunn, Gregory, and Kolar)

130. Plaintiff and MSBI were parties to a valid contract in which Plaintiff was employed as a neurosurgeon at MSBI. This contract provided Plaintiff extensive benefits, including a full partnership in MSBI after one year.

131. HealthEast, and its agents, Wallenfriedman, Dunn, and Gregory, were aware of Plaintiff's contract with MSBI.

132. Defendants intentionally procured the breach of this contract through a plan to have meritless complaints initiated about Plaintiff's practice at HealthEast, to defame and disparage Plaintiff in the neurosurgery community, and to engage in other wrongful conduct as described above.

133. Defendants' interference was committed without legal justification and was motivated by an anti-competitive desire to eliminate a competitor and by personal animosity.

134. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by Defendants' interference, which damages exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT VI

TORTIOUS INTERFERENCE WITH CONTRACT **(Against CentraCare, Kennedy and Defillo)**

135. Plaintiff and HealthEast were parties to a valid contract in which Plaintiff was granted privileges to practice medicine at HealthEast. Plaintiff and MSBI were also parties to a valid employment contract.

136. CentraCare and its agents Kennedy and Defillo were aware of Plaintiff's contracts with HealthEast and MSBI.

137. Defendants CentraCare, Kennedy, and Defillo intentionally procured the breach of these contracts through a plan to have meritless complaints initiated about Plaintiff's practice at HealthEast, to defame and disparage Plaintiff in the neurosurgery community, and to engage in other wrongful conduct as described above.

138. Defendants' interference was committed without legal justification and was motivated by an anti-competitive desire to eliminate a competitor and by personal animosity.

139. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by Defendants' interference, which damages exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT VII

ANTITRUST VIOLATION OF SHERMAN ACT SECTION 1 **(Against All Defendants)**

140. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

141. Defendants Wallenfriedman, Dunn, Gregory, Kolar and HealthEast, conspired, agreed, and acted in concert with each other and with Defendants Kennedy, Defillo, and CentraCare to limit and eliminate the ability of Plaintiff and MSBI to participate in the neurosurgery markets for St. Cloud and the Twin Cities of Minneapolis-St. Paul.

142. Defendants' efforts to limit and eliminate Plaintiff and MSBI as competitors included, without limitation, false and unwarranted negative peer reviews of Plaintiff's performance as a neurosurgeon, which reviews made it difficult if not impossible for Plaintiff to maintain or obtain admitting privileges at SJH, SCH, and other hospitals.

143. Without admitting privileges, Plaintiff could not provide neurosurgery services in the relevant markets (Twin Cities and St. Cloud).

144. Defendant HealthEast and Kolar exacerbated the effects of the improper negative peer reviews by suspending Plaintiff's admitting privileges at SJH and, along with and through Defendants Wallenfriedman, Dunn, and Gregory, sharing highly

confidential information about the negative peer reviews and the suspension with others, including Defendants Kennedy, Defillo, and CentraCare.

145. Defendants Kennedy, Defillo, and CentraCare, once in possession of the confidential information about Plaintiff, improperly shared it with others.

146. The improper disclosure of peer review related confidential information about Plaintiff has adversely affected his ability to provide neurosurgery services in the Twin Cities, St. Cloud, and other parts of the country.

147. In the Twin Cities there are only about 30 neurosurgeons providing the kinds of care in which Plaintiff and MSBI specialize.

148. In St. Cloud there are very few neurosurgeons providing the kind of care in which Plaintiff and MSBI specialize.

149. The exclusion of Plaintiff and MSBI limited and reduced competition in those markets and reduced the care options open to patients, thus constituting an unreasonable restraint on trade.

150. Defendants' concerted actions have affected interstate trade in that residents from states other than Minnesota are from time to time diagnosed and/or treated at the SCH and SJH.

151. Defendants' concerted actions have further affected interstate trade in that the negative peer reviews of Plaintiff affect his ability to seek and find employment in states other than Minnesota.

152. The negative peer reviews received by Plaintiff were not based on a proper evaluation of the services he provided to patients and were not justified by concerns about the quality of care received by patients.

153. Defendants' concerted actions are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1.

154. Plaintiff has suffered harm as a result of Defendants' unlawful conduct in that he has lost income and has been forced to move to another state and restart his practice there. His injuries are the kind of injuries the antitrust laws are intended to prevent, and thus are antitrust injuries.

155. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by the antitrust violations alleged above, which exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT VIII

ANTITRUST VIOLATION OF SHERMAN ACT SECTION 2 **(Against All Defendants)**

156. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

157. In the St. Cloud Market CentraCare had no potential competitors for the provision of neurosurgery services other than Plaintiff and MSBI, and Defendants' concerted anti-competitive actions was intended, in part, to maintain this monopoly.

158. Defendants Kennedy, Defillo, and CentraCare additionally sought to maintain its St. Cloud monopoly by threatening to limit the access to "block time" at SCH for physicians who referred patients to Plaintiff or MSBI.

159. The concerted actions of all Defendants, and the "block time" access conduct of Defendants Kennedy, Defillo, and CentraCare are unlawful under Section 2 of the Sherman Act, 15 U.S.C. § 2.

160. Plaintiff has suffered harm as a result of Defendants' unlawful efforts to maintain the CentraCare monopoly in St. Cloud in that he has lost income and has been forced to move to another state and restart his practice there. His injuries are the kind of injuries the antitrust laws are intended to prevent, and thus are antitrust injuries.

161. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by the antitrust violations alleged above, which exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT IX

ANTITRUST VIOLATION OF MINNESOTA STATUTE § 325D.51
(Against all Defendants)

162. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

163. The conduct alleged above is also unlawful under the Minnesota Antitrust Law of 1971, Minn. Stat. § 325D.51.

164. Plaintiff has suffered harm as a result of Defendants' unlawful conduct in that he has lost income and has been forced to move to another state and restart his practice there. His injuries are the kind of injuries the antitrust laws are intended to prevent, and thus are antitrust injuries.

165. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by the antitrust violations alleged above, which exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

COUNT X

ANTITRUST VIOLATION OF MINNESOTA STATUTE § 325D.52
(Against All Defendants)

166. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

167. The conduct alleged above is also unlawful under the Minnesota Antitrust Law of 1971, Minn. Stat. § 325D.52.

168. Plaintiff has suffered harm as a result of Defendants' unlawful efforts to maintain the CentraCare monopoly in St. Cloud in that he has lost income and has been forced to move to another state and restart his practice there. His injuries are the kind of injuries the antitrust laws are intended to prevent, and thus are antitrust injuries.

169. By reason of the foregoing, Plaintiff is entitled to judgment against Defendants for all damages proximately caused by the antitrust violations alleged above, which exceed \$75,000. The precise amount will be proven at trial. Plaintiff is also entitled to reasonable costs, as well as such further relief as the court may deem appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court award the following types of relief:

1. Judgment against Defendants, in an amount to be determined at trial, but believed to be *significantly* in excess of \$75,000 for each Defendant with regard to each of the causes of action enumerated above;
2. Treble damages where appropriate;
3. Statutory penalties where appropriate;

4. Punitive damages where appropriate, in part pursuant to a motion to be filed upon the close of discovery pursuant to Minn. Stat. §549.191 *et seq.*;

5. Attorneys' fees pursuant to claims under the applicable provisions of the statutes cited above;

6. And any other further relief deemed just and equitable by the Court.

7. As soon as reasonable, upon Plaintiffs' motion pursuant to Minn. Stat. § 549.191, leave for Plaintiffs to assert a claim for punitive damages pursuant to Minn. Stat. § 549.20.

JURY DEMAND

Plaintiff demands trial by jury on all issues triable of right by jury.

Dated: September __, 2016

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