UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
CLASS ACTION LAWSUIT AND JURY DEMAND

[redacted], R.N.; [redacted], R.N.; [redacted], P.A.; [redacted], R.N.; John and Mary Doe Healthcare Professionals; and all other similarly situated Healthcare Professionals.

Plaintiffs,

vs.

Civil Action No. 15-10337
Hon. Arthur J. Tarnow

Ulliance, Inc.; Department of Licensing and Regulatory Affairs ("LARA");
Carole H. Engle, Director of BHCS (Official and Individual Capacity);
Carolyn Batchelor, Contract Administrator,
HPRP (Official and Individual Capacity);
Stephen Batchelor, Contract Administrator,
HPRP (Official and Individual Capacity);
Susan Bushong, Contract Administrator,
HPRP (Official and Individual Capacity);
Nikki Jones, LMSW (Official and Individual Capacity); and,
John and Mary Doe employees of HPRP and BHCS
(Official and Individual Capacity).

Defendants.

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There is no other pending or resolved civil action within the jurisdiction arising out of the transaction or occurrence alleged in the Complaint.

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COME, [redacted], **R.N.**; [redacted], **R.N.**; [redacted], **P.A.**; [redacted], **R.N.**; **and John and Mary Doe ("Doe")**, for themselves and on behalf of all others similarly situated, by and through their attorneys, **Ronald W. Chapman, Ronald W. Chapman II**, and **Chapman Law Group**, and state in support of their Class Action Complaint and Demand for Jury Trial against Defendants, **Ulliance, Inc. d/b/a HPRP (hereinafter referred to as "HPRP"); Department of Licensing and Regulatory Affairs (LARA); Carole H. Engle, Director of the Bureau of Healthcare Services (BHCS) (Official and Individual Capacity); Carolyn Batchelor, Contract Administrator, Health Professional Recovery Program (HPRP) (Official and Individual Capacity); Stephen Batchelor, Contract Administrator, HPRP (Official and Individual Capacity); Susan Bushong, Contract Administrator, HPRP (Official and Individual Capacity); Nikki Jones, LMSW, HPRP, (Official and Individual Capacity)**; and **John and Mary Doe ("Doe") (Official and Individual Capacity)** as follows:

INTRODUCTION

The Health Professional Recovery Program (HPRP) was established by the Michigan Legislature as a confidential, non-disciplinary approach to support recovery from substance use or mental health disorders. The program was designed to encourage impaired health professionals to seek a recovery program before their impairment harms a patient or damages their careers through disciplinary action. Unfortunately, a once well-meaning program, HPRP, has turned into a highly punitive and involuntary program where health professionals are forced into extensive and unnecessary substance abuse/dependence treatment under the threat of the arbitrary application of pre-hearing deprivations (Summary Suspension) by LARA.

HPRP is administered by a private contractor, Ulliance, Inc., ("HPRP"). HPRP was originally designed to simply monitor the treatment of health professionals recommended by providers; however, HPRP has expanded its role to include making treatment decisions in place of the opinions of qualified providers. Licensees are subjected to intake evaluations by a pre-selected cadre of providers who profit from the enrollment of HPRP members. This process culminates in a large number of health professionals receiving a "Monitoring Agreement" which is essentially a non-negotiable contract for treatment selected by HPRP. While HPRP's contract with the State requires that treatment be selected by an approved provider and that it be

tailored in scope and length to meet the individual licensee's needs, licensees generally receive the same across-the-board treatment mandates regardless of their diagnosis or condition. Further, treatment providers are not permitted to recommend the specific treatment rendered and HPRP has a policy that only HPRP can set the terms of the treatment required in the contract.

Failure to "voluntarily" submit to unnecessary and costly HPRP treatment results in automatic summary suspension by the Bureau of Healthcare Services without a pre-deprivation hearing. Facing the threat of summary suspension in the event of non-compliance, licensed health professionals are induced into a contract as a punitive tool of BHCS and are often required to refrain from working without prior approval, refrain from taking prescription drugs prescribed by treating physicians, and sign broad waivers allowing HPRP to disclose their private health information to employers, the State of Michigan, and/or treating physicians. Also, failure to sign an HPRP contract within 45 days of first contact results in automatic case closure, even if a licensee is requesting appeal of a decision to be included in an HPRP contract. Case closure always results in summary suspension of the licensee's license by the BHCS.

Once a licensee is summarily suspended, HPRP sends all of the licensee's private health data (treatment records, psychotherapy notes etc.) to the State for use in administrative procedures against them despite the mandate that this program is

voluntary and confidential. Every licensee in the State of Michigan who has received a summary suspension, as a result of HPRP non-compliance, has had their private health data transmitted to the BHCS for use during administrative proceedings.

In short, the mandatory requirements of HPRP, coupled with the threat of summary suspension, make involvement in HPRP an involuntary program circumventing the due process rights of licensees referred to the program. The involuntary nature of HPRP policies and procedures as outlined above and the unanimous application of suspension procedures upon HPRP case closure are clear violations of Procedural Due Process under the Fourteenth Amendment.

Plaintiff's, [redacted], R.N.; [redacted], R.N.; [redacted], R.N.; and [redacted], P.A., are four (4) such examples of the hundreds, and potentially thousands, of licensed health professionals injured by the arbitrary application of summary suspension procedures by the BHCS and HPRP. Each named Plaintiff suffered arbitrary license suspension by the Bureau of Healthcare services as a result of their desire to not enter the voluntary treatment offered by HPRP. In each case, the unconstitutional Department of Licensing and Regulatory Affairs, Bureau of Healthcare Services policy requiring that each licensee who does not comply with HRPP shall have their license suspended was arbitrarily applied. In each case, the suspension was promptly overturned by an administrative law judge after the

opportunity for a hearing. In each case, the State did not produce information that a board member or its designee reviewed the case and independently exercised judgment that summary suspension proceedings should ensue. In each case, licensees had their private health data from "voluntary" and "confidential" involvement with HPRP disclosed by HPRP at a subsequent administrative hearing. It is clear that HPRP was a punitive tool wielded by LARA, Carole Engle, HPRP and its employees in order to circumvent due process, increase its budget through providing unnecessary treatment, and increase its power over substance use treatment programs in Michigan at the hands of hard working healthcare professionals.

NATURE OF THE ACTION

1. Plaintiffs bring this action as a Class Action pursuant to Rules 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons who are, or were participants in the Health Professionals Recovery Program during the period from January 1, 2011 to present.
2. This action is necessary to protect the property rights of Plaintiffs and all others similarly situated which have been and will continue to be damaged due to the arbitrary application of summary suspension procedures by the Bureau of Healthcare Services and HPRP, and other statutory and constitutional violations more fully detailed below.

STATEMENT OF JURISDICTION

3. This action arises under the United States Constitution and under the laws of the United States Constitution; particularly under the provision of the Fifth and Fourteenth Amendments of the United States Constitution and under the laws of the United States, particularly under the Civil Rights Act, Title 42 of the United States Code, §1983, §1985 and §1986.
4. This Court has jurisdiction under the provisions of 28 U.S.C. §1331 and 1343(a)(3) and pendant jurisdiction over state claims which arise out of the nucleus of operative facts common to Plaintiffs' federal claims pursuant to 28 U.S.C. §1367.
5. Plaintiffs bring suit against each and every Defendant in their individual and official capacities.
6. Each and all of the acts of Defendants set forth were done by those Defendants under the color and pretense of the statutes, ordinances, regulations, laws, customs, and usages of the State of Michigan, and by virtue of and under the authority of the Defendants' employment with the State of Michigan and MCL 333.16168 and 333.16167.
7. Each Plaintiff and similarly situated class members, as a result of Defendant's unconstitutional policies, procedures, customs or practices

faced actual injury; namely suspension of their license or forced medical care.

PARTIES AND PERSONAL JURISDICTION

8. Plaintiffs, [redacted], R.N., [redacted], R.N., [redacted], R.N.; and [redacted], P.A., are residents of the State of Michigan and are registered health professionals in the State of Michigan.

9. All named Defendants are, or were, residents of the State of Michigan and are, or were, employed either by the State of Michigan or HPRP, a Michigan Corporation, at the time of the alleged conduct. All acts alleged occurred in Michigan and thus personal jurisdiction is proper in Michigan.

10. Plaintiff, [redacted], R.N., is a registered nurse in the State of Michigan and received a license suspension for failure to comply with HPRP despite the fact that two (2) HPRP evaluators determined that she did not require treatment. Her license was subsequently suspended after refusing this forced medical treatment and will remain suspended until she subjects herself to this forced medical treatment or this Court grants relief.

11. Plaintiff, [redacted], R.N., is a nurse licensed in the State of Michigan who received a Summary Suspension after an anonymous and unverified tip was communicated to HPRP regarding Ms. [redacted]. Ms. [redacted] was informed during intake that she must refrain from taking pain

medication prescribed by physicians who treated her for years by an evaluator who failed to consult her treating physicians. Ms. [redacted] summary suspension was dissolved after a hearing and an Administrative Law Judge (ALJ) recommended dismissal of her Administrative Complaint. ALJ, Andre Friedlis, noted in his opinion, "it is also troubling that an anonymous complaint could have caused the events that lead to an Administrative Complaint, Summary License Suspension, and an administrative hearing. At the very least HPRP should have investigated the complaint before requiring Respondent to prove her innocence."

12. Plaintiff, [redacted], P.A., is a physician's assistant licensed to practice in the State of Michigan. Ms. [redacted] was referred to HPRP after reporting a DUI she received to the state but was suspended for failing to contact HPRP after they *sent a letter to the wrong address*. HPRP refused to reopen her case upon Ms. [redacted]' request. Ms. [redacted] suspension was subsequently overturned by an ALJ.

13. Plaintiff, [redacted], R.N., was a nurse licensed to practice in Michigan who received a DUI after driving with a BAC of .09. [redacted] was suspended one (1) year after his original DUI for refusing to receive a third HPRP evaluation after two (2) evaluators, one (1) of which was HPRP approved, recommended that he didn't need treatment. At the subsequent

hearings, the Bureau presented no evidence indicating that Mr. [redacted] had a substance abuse issue or was a threat in any way. The Court noted "It appears that Mr. [redacted], *with some justification*, was concerned that he would be required to enter into a multiple year Monitoring Agreement requiring attending meetings, counseling, and drug screens, all at his expense without a clinical justification."

14. Plaintiffs, Doe, are other similarly situated Healthcare Professionals, negatively impacted by the Defendants' unconstitutional policies, procedures, callous and reckless conduct described herein.

15. Defendant, Department of Licensing and Regulatory Affairs (LARA), is a Michigan "agency" as defined by MCL 691.1401 and is responsible for overseeing eight (8) bureaus responsible for licensing various professions in the State of Michigan. The Bureau of Healthcare Services is one (1) such bureau and is responsible for regulating licensed health professionals in the State of Michigan under the Public Health Code. This Court has personal jurisdiction over Defendant, LARA, in Michigan.

16. Defendant, Ulliance, Inc. d/b/a "HPRP," is a Michigan domestic profit corporation with its registered agent located at 901 Wilshire Dr., Suite 210, Troy, Michigan 48099; thus personal jurisdiction is proper in Michigan. HPRP was, at times, employing one (1) or more Defendants, Carolyn

Batchelor, Stephen Batchelor, and Nikki Jones to operate HPRP in the State of Michigan.

17. Defendant, HPRP, is currently contracted with the State of Michigan to administer the contract for HPRP. HPRP operates as a separate section of HPRP's overall operations. HPRP also contracts with employers to provide human resources assistance in the State of Michigan and specifically, assistance related to monitoring and treatment of substance abuse issues.

18. Defendant, Carole H. Engle, is the former Director of the Bureau of Healthcare Services under the Department of Licensing and Regulatory Affairs, a Michigan Agency, as defined by MCL 691.1407 and, on information and belief, is a resident of Michigan and an attorney licensed in the State of Michigan. Thus, personal jurisdiction is proper in Michigan. Defendant is being sued in her individual and official capacity.

19. Defendant, Carolyn Batchelor, is an employee of HPRP and the contract administrator for the HPRP contract who works and resides in Michigan. Thus, personal jurisdiction is proper in Michigan. Defendant is being sued in her individual and official capacity.

20. Defendant, Stephen Batchelor, is, or was, an employee of HPRP who works and resides in the State of Michigan and the current or former

contract administrator for the HPRP contract and, on information and belief, is a resident of Michigan. Thus, personal jurisdiction is proper in Michigan. Defendant is being sued in his individual and official capacity.

21. Defendant, Nikki Jones, LMSW, is a licensed social worker in the State of Michigan who works and resides in Michigan and is an employee of HPRP. Thus, personal jurisdiction is proper in Michigan. Defendant is being sued in her individual and official capacity.

22. Susan Bushong, is an employee of the State of Michigan, Department of Licensing and Regulatory Affairs, Bureau of Healthcare Services and is charged with overseeing the execution of the HPRP contract with Ulliance, Inc. Defendant is being sued in her individual and official capacity.

23. Defendants, Doe, are other HPRP employees and Department of Licensing and Regulatory Affairs employees who work and reside in Michigan and who undertook or carried out acts described herein, such as the application of arbitrary summary suspension procedures, unnecessary treatment of health professionals, and disclosure of private health records, inter alia. Defendants are being sued in their individual and official capacities.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action as a Class Action, pursuant to Rules 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the

named Plaintiffs, Doe health professionals and all persons who are, or were participants in the Health Professionals Recovery Program during the period from **January 1, 2011 to present**.

25. Plaintiffs also bring this action on behalf of a sub-class of health professionals who received summary suspension of their license between **January 1, 2011** and the present, as a result of the application of the unconstitutional practices alleged herein.

26. The Class consists of thousands of persons located throughout the United States, thus, joinder of all Class Members is impracticable. For example, between March 2013 and September 2013, HPRP had approximately eight hundred and eight (808) new participants, of which only thirty six (36) were assessed as not eligible for the program. During that same time period, one-hundred and ninety two (192) participants had their case closed as non-compliant.

27. The exact number of Class Members is not presently known to Plaintiffs, but can readily be determined by appropriate discovery and access to HPRP quarterly and monthly reports.

28. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in 42 U.S.C. §1983 litigation and in professional licensing. Plaintiffs' counsel

is uniquely qualified to handle the complexities of 42 U.S.C. §1983 litigation as well as the administrative law issues arising out of the cause of action. Chapman Law Group currently represents or has represented a significant number of potential Class Members and represented the named Plaintiffs during their respective licensing proceedings.

29. Plaintiffs have no interests that are adverse or antagonistic to those of the Class.

30. Each Class Member was injured in that, among other things, pre-deprivation review was not completed as a result of the arbitrary application of a policy, custom or practice that every licensee who does not elect to enter HPRP will be summarily suspended. Class Members were deprived of a constitutionally protected right to due process and subjected to unnecessary treatment at their own expense. Because of the commonality of the injuries and the readily identifiable nature of the Class, as well as the common grievances of the Class, a Class Action is superior to other available methods for the fair and efficient adjudication of this controversy.

31. Because the damages suffered by some of the individual Class Members may be relatively small when compared to the expense of Federal Civil Rights litigation, the expense and burden of individual litigation make it

virtually impossible for the Class Members to individually seek redress for the wrongful conduct alleged herein.

32. The Class contains possibly thousands of similarly situated individuals. Suit by each potential member of the Class would unnecessarily burden the Court and individually prejudice Class Members and Defendants themselves. Class certification is the superior device for adjudication for all parties involved.

33. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class because the issues are fundamentally related to HPRP and BHCS general policies, customs, and practices; not the individual application of that policy, custom, or practice.

34. Pursuant to Rule 23(b)(2), through their unconstitutional policies and procedures, the Defendants have refused to act on grounds that apply generally to the class and the Class seeks injunctive or declaratory relief as well as monetary relief. Final injunctive relief is appropriate respecting the class as a whole.

35. Among the questions of law and fact common to the Class are:

a. Did the BHCS's arbitrary application of summary suspension procedures amount to a procedural due process violation, in violation of 42 U.S.C. § 1983?

b. Did HPRP's policies amount to procedural due process violations where HPRP participants were forced into medical treatment under the threat of license suspension without due process of law?

c. Did the actions and policies of Defendant, HPRP employees, ratified by LARA, amount to involuntary treatment decisions which were and are contrary to the empowering statute and therefore in violation of the Fourteenth Amendment?

d. Did Defendants conduct, policies, and procedures violate Plaintiffs' substantive due process violations where Plaintiffs were deprived of their fundamental right to bodily integrity, the right to choose their health care, and such deprivations were not narrowly tailored to achieve a compelling government interest?

e. Did Defendants, who had knowledge of LARA's denial of due process and equal protection, and the conspiracy between LARA and HPRP, have the ability to prevent said conspiracy and fail to prevent it?

f. Did Defendant, HPRP and its Defendant employees, breach specific terms of the State Contract with HPRP which applied to all Class Members more fully detailed below?

36. Plaintiffs envision no difficulty in the management of this litigation as a Class Action.

CLASS ACTION ALLEGATIONS

COUNT I

42 USC 1983 PROCEDURAL DUE PROCESS DEPRIVATIONS BY LARA, CAROLE ENGLE, SUSAN BUSHONG, AND DOE

37. Plaintiffs hereby re-allege each and every allegation of this Complaint as if fully stated herein.

38. On September 1, 2012, Ulliance, Inc. ("HPRP") entered into a contract with the State of Michigan as the corporation responsible for administering HPRP. **(Exhibit A)**

39. The aforementioned contract is set to expire in August, 2015.

40. Under the terms of said contract, HPRP is required to undertake certain tasks in the administration of the HPRP contract on behalf of the State of Michigan as established by Public Act 80 of 1993.

41. At all times, each Defendant was operating under color of state law, namely MCL 333.16168, MCL 333.16233 and 333.16167 which authorizes LARA to contract with a company to administer the HPRP

contract. At all times, each Defendant was either an employee of the State of Michigan or employed by HPRP, and therefore an agent of the State of Michigan operating under the statute that authorizes HPRP.

42. At all times relevant, pursuant to the Fifth and Fourteenth Amendments of the United States Constitution, Plaintiffs and Class Members, had a right to procedural due process prior to deprivation of their rights, suspension of their license by HPRP and BHCS. *Matthews v Eldridge*, 424 U.S. 319 (1976).

43. The actions and omissions of acts and policies created by Defendants LARA, Carole Engle, Susan Bushong, and Doe, were violations of clearly established statutory and constitutional rights to a due process proceeding or review of the circumstances of their case pursuant to the laws of the State of Michigan, namely MCL 333.16233(5) and the Fourteenth Amendment.

44. On information and belief, Defendant LARA, Carole Engle, Susan Bushong, and Doe (employees of LARA) did not conduct the required review but instead arbitrarily suspended a licensee's license to practice their chosen health profession simply on the basis of "case closure" by HPRP as ordered by Carole Engle and LARA.

45. On information and belief, Defendant, LARA, Carole Engle, Susan Bushong, and Doe (employees of LARA) had a broad policy that required Summary Suspension in the event that a licensee's HPRP case was closed – regardless of the reason.

46. In furtherance of this broad unconstitutional policy, Defendants, LARA, Carole Engle, and Doe, failed to follow clearly established law requiring that they "incorporate" findings indicating that a licensee is an imminent threat to the public health safety and welfare in to the Order of Summary Suspension as required by MCL 24.292 and thereby depriving Plaintiffs of statutorily required notice of the allegations. Defendant, LARA, Carole Engle, and Doe's Summary Suspension Orders – in every case - fail to state why emergency action is required to protect the public health, safety and welfare.

47. Without a factual review by a board member or his or her designee, and a specific finding as to the necessity of Summary Suspension, the risk of erroneous deprivation is high. Further, the deprivation is based off of administrative "case closure" by HPRP and is not supported by a particular reason for case closure but instead a broadly applied policy circumventing due process.

48. Upon post deprivation review, a staggering number of summary suspensions are "dissolved" after review by the appropriate judge, indicating that erroneous deprivation is a very frequent occurrence.

49. Defendants, LARA and Doe, through the actions of Carol Engle, knew that this policy or procedure was a violation of clearly established State and Federal Statues (namely MCL 24.292, 42 U.S.C. 1983) and the Fourteenth Amendment, which lead to a substantial number of erroneous deprivations given the statistical number of overturned Orders of Summary Suspension. Defendants continued to implement this policy in the face of said statistics, thereby arbitrarily and with evil motive, a reckless and callous indifference to the federally protected rights of Plaintiffs, deprived a substantial number of health professionals' due process.

50. Through Defendant's callous and reckless application of a broad policy of suspension, LARA, Carole Engle, Susan Busong, and Doe deprived hundreds and possibly thousands of licensed health professionals' due process and subjected them to substantial damages including loss of income, loss of employment, and professional embarrassment.

51. Any reasonable person would understand that this policy itself is a violation of constitutional rights; namely, due process under the Fourteenth Amendment.

52. The fiscal burdens of statutorily required board review of a file is de minimis and is not so time consuming or expensive as to justify a broad policy that all licensees whose cases are closed by HPRP require summary suspension.

53. By the arbitrary application of such a policy that prevents case-by-case review of each licensee's case to determine if "the public health, safety, or welfare requires emergency action" prior to the initiation of summary suspension proceedings in accordance with MCL 333.16233(5), Defendants, LARA, Carole Engle, Susan Bushong, and Doe were not preforming a judicial, prosecutorial, or legislative function and are not entitled to absolute immunity.

54. Wherefore, Plaintiff requests the following relief:

a. Compensatory and punitive damages;

b. Attorney fees and expenses;

c. Any and all other damages otherwise recoverable under USC Section 1983 and Section 1988; and

d. A permanent injunction preventing Defendants from:

    i. Suspending the license of a health professional governed under the Public Health Code without the express written approval by the chair of the appropriate board or task force or his or her

designee, and the specific justification for emergency deprivation as required by MCL 333.16233(5); and

ii. Upholding any summary suspension levied as a result of the unconstitutional policies as described above, and immediate reinstatement of said licensees pending a pre-deprivation hearing.

COUNT II

42 USC 1983 PROCEDURAL DUE PROCESS DEPRIVATIONS BY ALL DEFENDANTS

55. Plaintiffs hereby re-allege each and every allegation of this Complaint as if fully stated herein.

56. HPRP and Defendants, Carolyn Batchelor, Stephen Batchelor, Nikki Jones, and Susan Bushong, engaged in various actions designed to increase the broad power of HPRP beyond its statutory boundaries, increase its budget, and gain power of Michigan substance abuse treatment by unilateral action or creating various customs, practices, policies or procedures designed to arbitrarily increase the number of HPRP participants and subject participants to extensive, unnecessary, and involuntary treatment.

57. Specific examples of such policies include, but are not limited to:

a. Forcing licensees to undergo extensive and unnecessary treatment against the advice of a licensed health professionals;

b. Unilateral extension of HPRP "Monitoring Agreements" under the threat of license suspension;

c. Defendants enacted policies and procedures that prevent licensed health professionals from making treatment decisions;

d. HPRP engaged in arbitrary case closure despite pending review of appeals;

e. HPRP forces licensees to see only providers that they pre-select and who are instructed to refrain from making treatment decisions;

f. HPRP and its case workers, namely Doe and Nikki Jones, used threats, false statements, and coercion, often threatening licensees with license suspension if they refuse to sign broad sweeping releases of information, subject themselves to unnecessary treatment, or delay signing a contract to seek the advice of counsel;

g. HPRP has a policy of disclosing the private health data of licensees who have their cases involuntarily closed as "non-compliant";

h. HPRP prevents patients with chronic pain conditions from receiving adequate pain control by requesting prior approval of pain medication

and arbitrarily prevents the use of prescription narcotic pain control, even when prescribed by treating physicians; and

i. HPRP unilaterally demands that licensees refrain from working, or puts restrictions on employment for various reasons, and will close a licensee's case subjecting them to certain summary suspension if they do not comply with this request.

58. The policies above constituted Deprivations under the Due Process Clause and the Fourteenth Amendment because licensees were subject to, among other things, job loss or suspension, forced medical care, forced deprivation of prescription medications, licensees were forced to see a physician of HPRP's choosing, and denial of necessary medical care and thus were deprived of their Fundamental Right to bodily integrity.

59. The conduct of each Defendant deprived each Plaintiff and Class Member of the rights secured under the Fourteenth Amendment and were denied Procedural Due Process by being subjected to the aforementioned unconstitutional policies, procedures, and actions without Due Process of Law and under the threat of Summary Suspension.

60. Defendants HPRP, Carolyn Batchelor, Stephen Batchelor, Susan Bushong, and Doe (HPRP employees) were involved in creating, implementing and carrying out the above mentioned unconstitutional practices.

61. Defendant, Nikki Jones, was involved in carrying out the above mentioned unconstitutional practices and other customs, policies, and procedures designed to subject licensed health professionals to involuntary treatment.

62. That as a direct and proximate result of willful, wanton, reckless, and callous conduct and omissions of each Defendant, individually, and as agents of the State of Michigan, named Plaintiffs and members of the Class suffered loss of life (proper health care), liberty, and property, together with significant financial harm, emotional distress, mental anguish, attorney fees, and costs of litigation.

63. Defendants are not entitled to Eleventh Amendment immunity pursuant to MCL 691.1407 because the acts described above constitute gross negligence that is the proximate cause of Plaintiff's injury and damages and Defendants were "providing medical care or treatment to a patient." MCL 691.1407. Defendants' conduct, as outlined herein, is so reckless as to demonstrate a substantial lack of concern for whether an injury results.

64. Wherefore, Plaintiff requests the following relief:

a. Compensatory and punitive damages;

b. Attorney fees and expenses;

c. Any and all other damages otherwise recoverable under USC Section 1983 and Section 1988; and

d. A permanent injunction preventing Defendants from:

i. Making treatment decisions regarding the care of licensee's participating in HPRP;

ii. Further breaching the September 1, 2012 contract with the State of Michigan; (**Exhibit A**)

iii. Restricting the access to medical care of licensees referred to HPRP;

COUNT III

42 USC 1983 SUBSTANTIVE DUE PROCESS DEPRIVATIONS BY ALL DEFENDANTS

65. Plaintiffs hereby re-allege each and every allegation of this Complaint as if fully stated herein.

66. Plaintiffs and similarly situated Class Members have a fundamental right to choose their own healthcare, pursuant to the Fourteenth Amendment, and a fundamental right to refuse medical treatment, both of which involve a right to bodily integrity. *Roe v Wade*, 410 U.S. 113, 155, 93 S. Ct. 705, 728 (U.S. 1973); see also, *Cruzan v Missouri Department of Health*, 497 U.S. 261 (1990).

67. The Fourteenth Amendment forbids the government to infringe fundamental liberty interests at all, no matter what process is provided,

unless the infringement is narrowly tailored to serve a compelling state interest. *Reno v Flores*, 507 U.S. 292, 302 (1993)

68. Defendants, as a result of the aforementioned unconstitutional policy requiring summary suspension for HPRP non-compliance, forced Plaintiffs and the Class to undergo involuntary medical treatment under the threat of license suspension without the benefit of a pre-deprivation hearing.

69. Under the threat of deprivation of their license to practice, significant legal expenses, job loss, and the public humiliation of a formal Administrative Complaint, Plaintiffs and the class were forced to enter into treatment with HPRP, involuntarily.

70. At all times relevant, the Defendants were acting under the color of law, namely MCL 333.16168, MCL 333.16233 and 333.16167.

71. Defendants conduct, policies, procedures, and rules were not narrowly tailored to serve a compelling state interest. The State does not have a compelling interest in forcing particular medical care upon its Citizens under the threat of deprivation of life, liberty, and property without due process of law.

72. Defendants deliberate indifferent policies, procedures, and actions that required forced medical care of health professionals by the State shocks

the conscious. Further, forced healthcare decisions are a substantial departure from accepted professional judgment, practice or standards of health professionals.

73. Defendants' conduct amounts to direct violations of the fundamental right to bodily integrity and the right to choose medical treatment.

74. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class were forced to, among other things, undergo, unnecessary medical treatment, accept treatment by a small cadre of physicians assigned by HPRP, accept treatment decisions made by HPRP, incur significant personal expense, accept medical care against the advice of their private physicians, and endure unnecessary care against the advice of their private physicians.

75. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class suffered, job loss, public humiliation, forced medical care at significant expense, pain and suffering, loss of income, legal expenses, etc.

76. Wherefore, Plaintiffs and all other similarly situated individuals request the following relief:

a. Compensatory and punitive damages;

b. Attorney fees and expenses;

c. Any and all other damages otherwise recoverable under USC Section 1983 and Section 1988; and

d. A permanent injunction preventing Defendants from:

   i. Subjecting licensed health professionals to forced medical treatment in violation of their Fundamental Rights;

   ii. Making treatment decisions regarding the care of licensees participating in HPRP;

   iii. Further breaching the September 1, 2012 contract with the State of Michigan; (**Exhibit A**)

   iv. Suspending the license of a health professional governed under the Public Health Code without the express written approval by the chair of the appropriate board or task force or his or her designee, and the specific justification for emergency deprivation as required by MCL 333.16233(5);

   v. Upholding any summary suspension levied as a result of the unconstitutional policies as described above, and immediate reinstatement of said licensees pending a pre-deprivation hearing.

COUNT IV

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS IN VIOLATION OF 42 U.S.C §1985 BY ALL DEFENDANTS

77. Plaintiffs fully incorporate and adopt each and every allegation of this Complaint as if fully stated herein.

78. At all times relevant, Plaintiff and the Class of similarly situated healthcare professionals had a fundamental right to, among other things, their professional licenses, adequate healthcare, to choose their healthcare, and to privacy of their health data.

79. As a result of Defendants' conduct to wit: the unconstitutional application of the HPRP empowering statutes and the arbitrary application of summary suspension procedures, a class of licensed health professionals referred to HPRP were disproportionally treated by the aforementioned Defendants by, among other things, subjecting licensed health professionals to involuntary treatment under the threat of summary suspension.

80. Such conduct amounted to class based discrimination of Plaintiffs and similarly situated health professionals simply because they were referred to HPRP.

81. Defendants, LARA, Carole Engle, Ulliance, Susan Bushong, Stephen Batchelor, Carolyn Batchelor, Nikki Jones, and Doe Defendants engaged in a conspiracy to callously and recklessly deprive Plaintiffs of their

constitutionally protected rights by going outside the law and empowering statutes/contracts to force licensed health professionals into unnecessary and involuntary contracts for substance abuse/addiction treatment with the arbitrary threat of license suspension in the event of refusal or non-compliance for the purpose of depriving Plaintiffs their constitutional rights, increasing their budget, and securing influence over the Michigan substance abuse treatment programs.

82. It is expressly stated in the contract that HPRP is not a treatment program and does not provide intervention, evaluation, treatment, or continuing care services. HPRP is a monitoring program that coordinates services between participants and approved service providers. **(Exhibit A; p.33)**

83. At various times between September 1, 2012, and the present, Defendants Ulliance, Carolyn Batchelor, Stephen Batchelor, Nikki Jones, Sue Bushong, and Doe consistently exceeded their authority under the aforementioned contract and supplanted treatment recommendations made by approved service for their own recommendations in order to arbitrarily increase the number of participants in the program.

84. On information and belief, the above named Defendants have enacted a policy whereby "approved service providers" are no longer permitted to

provide treatment recommendations to HPRP and are merely permitted to provide a diagnosis.

85. Additionally, "approved providers" are instructed that they cannot use their independent clinical judgment but must defer to specific clinical requirements of HPRP when providing a diagnosis.

86. On information and belief, HPRP and the above named Defendants have developed a closed network of "approved service providers" and sent a disproportionate number of licensees to a small number of "approved service providers" (namely Sabrina Mitchell, LMSW and Bella Shah, M.D.) who are more likely to recommend an HPRP contract and have removed "approved service providers" from the "approved list" when they exercise independent judgment that individuals do not require HPRP monitoring.

87. On information and belief, HPRP and the above named Defendants consistently used intimidation and threats of summary suspension against those who chose not to sign broad releases, refrain from taking medications approved by treating physicians, or otherwise submit to HPRP's broad requests.

88. Moreover, Defendants, Ulliance, Carolyn Batchelor, Stephen Batchelor, and Nikki Jones have used intimidation and threats against "approved

providers" in order to coerce them to recommend that licensees qualify for monitoring.

89. In one such instance of furtherance of said conspiracy and in violation of 42 U.S.C. 1985(2) and (3), on July 1, 2014, Martha Harrell, LMSW was contacted by Carolyn Batchelor, the Director of HPRP, one (1) day after testifying that [redacted], P.A. did not meet the requirements for an HPRP contract and was told that if she continued to testify on behalf of licensees she could no longer be on the HPRP approved provider list. Ms. Harrell advised that she could no longer testify at a further proceeding and as a result, Ms. [redacted] was injured by the threats and intimidation of Defendant, Carolyn Batchelor, and forced to accept unnecessary medical treatment at the hands of HPRP. **(Exhibit B; Affidavit of Martha Harrell)**.

90. In each instance of HPRP case closure, LARA and Carole Engle, arbitrarily applied summary suspension procedures and summarily suspend a licensee's license simply because of the decision to not voluntarily participate in HPRP.

91. Defendant's arbitrary application of summary suspension procedures, coupled with the flagrant due process violations committed by HPRP and its employees under the threat of certain license suspension, amount to a

conspiracy in violation of 42 U.S.C. §1985 designed to arbitrarily increase HPRP participants through threats, intimidation, force, and coercion and systematically deprive Plaintiffs and similarly situated Class Members of due process and the equal protection of the laws and privileges and immunities of the laws.

92. At all times relevant between September 1, 2012, and the present, all Defendants were engaged in a conspiracy for the purpose of depriving, either directly or indirectly, the named Plaintiffs and other similarly situated individuals (namely health professionals) governed by the Public Health Code, the equal protection of the rights secured under the Fourteenth Amendment and Due Process Rights (namely the right to bodily integrity), through forced medical treatment and by depriving them of their property interest (namely their professional licenses) and by depriving Class Members of their liberty and life by forcing them to accept the HPRP provider and the treatment decision made by non-licensed state actors.

93. During relevant times, Defendants acted in furtherance of the conspiracy by conspiring to coerce Plaintiffs into unnecessary treatment and by arbitrarily depriving health professionals of due process, through the arbitrary application of suspension procedures and through the threat of

summary suspension, in violation of the licensees' constitutional rights of due process.

94. During relevant times, Defendants used threats, intimidation, and coercion toward licensed health professionals and "approved treatment providers" to increase participation in HPRP.

95. As a direct and proximate result of the Defendants' conduct, the named Plaintiffs and similarly situated individuals were deprived of their constitutionally protected Equal Protection and Due Process Rights secured by the Fourteenth Amendment; and were forced to enter into arbitrary and capricious treatment programs set up and designed by HPRP, with HPRP approved providers that were forced to follow HPRP universal guidelines, and not in the best interest of the licensee when making healthcare decisions. All of this was done at the direction of HPRP and BHCS, in known violation of law, and under the constant threat that the licensee either follow everything HPRP said or face certain suspension and/or revocation of their professional license.

96. As a direct and proximate result of Defendants' willful, wanton, reckless, and callous conduct, the named Plaintiffs and similarly situated individuals suffered loss of life, liberty and property, and experienced mental anguish and financial harm.

97. Defendants are not entitled to Eleventh Amendment immunity, pursuant to MCL 691.1407, because the acts described above constitute gross negligence that is the proximate cause of Plaintiffs' injuries and damages and Defendants were "providing medical care or treatment to a patient," MCL 691.1407. Defendants conduct, as outlined herein, is so reckless as to demonstrate a substantial lack of concern for whether an injury results.

98. By the arbitrary application of such a policy that prevents case-by-case review of each licensee's case to determine if "the public health, safety, or welfare requires emergency action" prior to the initiation of summary suspension proceedings in accordance with MCL 333.16233(5), Defendants, LARA, Carole Engle, and Doe were acting as administrators and not preforming a judicial or legislative function and are stripped of any Eleventh Amendment immunity they may otherwise avail themselves of.

99. Wherefore, Plaintiffs request the following relief:

e. Compensatory and punitive damages;

f. Any and all other damages otherwise recoverable under 42 U.S.C. § 1985, including attorney's fees.

COUNT V

NEGLECT TO PREVENT CONSPIRACY PURSUANT TO 42 U.S.C. 1986 BY ALL DEFENDANTS

100. Plaintiffs incorporate and adopt each and every paragraph of this Complaint as if fully stated herein.

101. At relevant times, all Defendants had knowledge of the aforementioned wrongs conspired to be done by the aforementioned Defendants, and failed to prevent the commission of the same, or neglected or refused to do so.

102. As a result of reasonable diligence executed by any of the the Defendants, harm to the Plaintiffs and similarly situated individuals could have been prevented.

103. The deprivations of constitutional rights at the hands of the Defendants were so obvious that a reasonable person would have recognized that severe deprivations were occurring.

104. As a direct and proximate result of the aforementioned Defendants failure to act, the named Plaintiffs and similarly situated individuals have suffered injury, including but not limited to, suspension of their license, involuntary admission into a two (2) to three (3) year treatment program, loss of employment, loss of hospital privileges, and unnecessary entries into the National Practitioner Databank.

105. Wherefore, Plaintiffs request the following relief:

g. Compensatory and punitive damages;

h. Any and all other damages otherwise recoverable under 42 U.S.C. §1986, including attorney's fees;

COUNT VI

BREACH OF CONTRACT (3rd PARTY BENEFICIARY) PURSUANT TO MCL 600.1405 BY ALL DEFENDANTS

106. Plaintiffs incorporate and adopt each and every paragraph of this Complaint as if fully stated herein.

107. On September 1, 2012, HPRP entered into a contract with the State of Michigan as the corporation responsible for administering the HPRP contract. **(Exhibit A)**

108. Members of the Class, under this cause of action, are HPRP participants between September 1, 2012, and the present.

109. The aforementioned contract is set to expire in August of 2015. However, HPRP has the option to exercise two (2) one-year extensions.

110. Under the terms of said contract, HPRP is required to undertake certain tasks in the administration of HPRP on behalf of the State of Michigan as established by Public Act 80 of 1993 and directly for the benefit of HPRP participants.

111. The stated intent of the contract is to provide a "confidential, non-disciplinary, treatment-oriented approach to address these public health and safety issues while assisting licensees in their recovery." **(Exhibit A; p.33)**

112. A number of other requirements under the contract specifically require HPRP to perform tasks *directly for the benefit* of HPRP participants making Plaintiffs third party beneficiaries pursuant to MCL 600.1045:

i. HPRP is required to individually tailor to each contract licensee's specific situation. **(Exhibit A; p.33)**

j. HPRP is required to maintain the confidentiality of those licensees whose involvement in the program is on a voluntary basis. **(Exhibit A; p.33)**;

k. HPRP is required to refrain from making treatment decisions regarding a licensee; **(Exhibit A; p.33)**

l. HPRP is required to provide HPRP participants with a full list of approved HPRP providers; **(Exhibit A; p.39)**

m. HPRP case managers can only have 80 cases per manager;

n. HPRP must follow the rules approved by the Health Professional Recovery Committee (HPRC). The HPRC policies and procedures

contain exhaustive guidelines, most of which are in place for the benefit of participants during their recovery; **(Exhibit A; p.43)**

o. HPRP is expressly prevented from engaging in treatment of licensees. **(Exhibit A; p.33)**

113. Additionally, the Department of Licensing and Regulatory Affairs specifically contends that HPRP participants are the direct beneficiaries of HPRP, under the heading "What are the Benefits of HPRP?" the Department of Licensing and Regulatory Affairs provides, "It is the philosophy of the HPRP that substance use and mental illness disorders are treatable conditions. By providing health professionals an opportunity to enter into treatment and to recover from their diseases early in the disease process, the HPRP can serve to minimize negative impacts on licensees/registrants…"[1]

114. Pursuant to the contract, Defendant, HPRP, and its employees owe a duty to HPRP participants as intended beneficiaries to provide them with a voluntary and confidential method of seeking treatment for substance use and mental health related issues.

[1] Department of Licensing and Regulatory Affairs, *Health Professional Recovery Program General Information*, *available at* http://www.michigan.gov/lara/0,4601,7-154-35299_63294_63303_27985-43107--,00.html

115. Further, Employees of HPRP and Ulliance, as licensed health professionals in the State of Michigan, owe HPRP participants a pre-existing duty to provide only the specifically tailored treatment that is needed to treat a qualifying diagnosis and treat participants in an ethical and confidential manner.

116. Moreover, LARA, Ulliance, and its employees, pursuant to MCL 333.16165, 333.16167, 333.16168, 333.16169 and 333.16167, owed a pre-existing duty to provide health professionals in the State of Michigan with a confidential and voluntary avenue of recovery for substance abuse related issues.

117. It is expressly stated in the contract that "HPRP is not a treatment program [and] that HPRP does not provide intervention, evaluation, treatment, or continuing care services. HPRP is a monitoring program that coordinates services between participants and approved service providers." **(Exhibit A; p.33)**

118. Pursuant to the aforementioned contract, HPRP and its evaluators are required to individually tailor to each contract licensee's specific situation based off of clinical treatment decisions. **(Exhibit A; p.33)**

119. Pursuant to the aforementioned contract, HPRP is required to refrain from making treatment decisions regarding the individual treatment of a licensee. **(Exhibit A; p.33)**

120. Pursuant to the aforementioned contract, HPRP is required to maintain the confidentiality of those licensees whose involvement in the program is on a voluntary basis. **(Exhibit A; p.33)**

121. Pursuant to the aforementioned contract, HPRP is required to provide HPRP participants with a full list of approved HPRP providers. **(Exhibit A; p.39)**

122. Pursuant to the aforementioned contract, HPRP case managers can only have 80 cases per manager.

123. Pursuant to the aforementioned contract, HPRP must follow the rules approved by the Health Professional Recovery Committee. **(Exhibit A; p.43)**

124. At various times between September 1, 2012 and the present, Ulliance, Carolyn Batchelor, Stephen Batchelor, Susan Bushong, and Doe have consistently exceeded their authority under the aforementioned contract and made treatment decisions regarding the care of licensees.

125. At various times between September 1, 2012 and the present, the aforementioned Defendants disclosed confidential participant files and health records to LARA and BHCS after HPRP case closure.

126. At various times between September 1, 2012 and the present, the aforementioned Defendants failed to tailor each contract to meet the needs of each licensee.

127. At various times between September 1, 2012 and the present, the aforementioned Defendants failed to provide participants with a full list of HPRP approved providers and has instead only provided a list of one (1) to three (3) providers specifically selected because of their history in determining that participants require a contract.

128. On information and belief, at various times between September 1, 2012 and the present, case managers had loads grossly exceeding the amount required by the contract.

129. At various times between September 1, 2012 and the present, the aforementioned Defendants failed to follow the rules promulgated by the Health Professional Recovery committee.

130. As a direct and proximate cause of the aforementioned, Defendants breach of the September 1, 2012 contract with the State of Michigan, Plaintiffs and similarly situated members of the Class incurred injuries

such as economic damages resulting from unnecessary treatment, professional embarrassment, lost wages, etc.

131. Wherefore, Plaintiffs request the following relief:

p. Compensatory and punitive damages;

q. Consequential damages;

r. Any and all other damages otherwise recoverable for a breach of contract; and

s. Attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and all other similarly situated individuals request judgment against Defendants as follows:

A. For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of Defendants described herein;

B. For appropriate compensatory damages in an amount to be determined at trial;

C. For appropriate equitable relief against all Defendants as allowed by the Civil Rights Act of 1871, 42 U.S.C. §1983, §1985, and §1986, including the enjoining and permanent restraining of these violations, and direction to Defendants to take such affirmative action as is necessary to ensure that

the effects of the unconstitutional and unlawful practices are eliminated and do not continue to affect Plaintiffs or others so similarly situated;

D. For an award of reasonable attorney's fees and costs expended on behalf of Plaintiffs Pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1988;

E. For punitive damages authorized pursuant to 42 U.S.C. §1983; and

F. For such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,
CHAPMAN LAW GROUP

Dated: January 30, 2015

s/Ronald W. Chapman II
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[redacted]

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all causes of action in this matter and as to any question of damages.

Respectfully submitted,
CHAPMAN LAW GROUP

Dated: January 30, 2015

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