

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

ASHWIN PIMPALWAR, M.D., )  
 )  
 Plaintiff, ) Civil Action  
 )  
 v. )  
 ) No. 24-cv-1118  
 U.S. DEPARTMENT OF HEALTH AND )  
 HUMAN SERVICES; XAVIER BECERRA, in )  
 his official capacity as Secretary of Health and )  
 Human Services; and CAROLE JOHNSON, )  
 in her official capacity as Administrator of the Health )  
 Resources and Services Administration, )  
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 Defendants. )  
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Ashwin Pimpalwar, M.D. (“Plaintiff Pimpalwar” or “Dr. Pimpalwar”), seeks declaratory and injunctive relief against the U.S. Department of Health and Human Services (“HHS”), Xavier Becerra, in his official capacity as Secretary of Health and Human Services (“Becerra”), and Carole Johnson, in her official capacity as Administrator of the Health Resources and Services Administration (“HRSA”), to invalidate their regulatory limitations on correcting or voiding incorrect and misleading reports as maintained and republished by HRSA in its National Practitioner Data Bank (“Data Bank” or “NPDB”).

**NATURE OF THE CASE**

1. False allegations are maintained forever and republished by Defendants’ Data Bank, while Defendants prevent victims of falsehoods from obtaining removal or correction of misleading reports about them. Not even the reporting entity can void its own unjustified report except on arbitrarily narrow grounds. Defendants’ unreasonable procedural restrictions, as

imposed by the Data Bank Guidebook (Oct. 2018) (“Guidebook”), violate due process and are unauthorized by Congress. Both the U.S. Constitution and the recent U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo* require that these arbitrary regulatory restrictions be enjoined and declared invalid. Physicians who are perpetually harmed by incorrect reports about them in this federal database must be afforded due process to void falsehoods about them.

2. Plaintiff Pimpalwar is a highly acclaimed pediatric surgeon who saves the lives of newborns with a specialized, minimally invasive repair of an incomplete esophagus, which afflicts about 1 out of every 4,000 births. He has excelled throughout his ongoing career, including training others to save infant lives with this technique. But soon after he took a new job at the University of Missouri he was caught in crossfire of political in-fighting between rival departments there. A member of an adversarial group participated in a sham investigation against Dr. Pimpalwar and then became the outspoken member of a three-person panel to decide against him, refusing to recuse herself despite the conflict of interest. In addition, the university refused to provide as a witness at the internal proceeding a primary source of the allegations, despite being under the control of the university. There was no due process, and the panel decision was ultimately reversed as to patient issues on the internal appeal. But in the meantime, substantively false reports were sent by the university to the Data Bank, and Defendants’ procedures do not allow Dr. Pimpalwar to clear his record of these falsehoods.

3. Dr. Pimpalwar has continued to perform his unique life-saving surgeries elsewhere, while the University of Missouri has refused to rescind its false reports despite his repeated requests. Defendants’ continued insistence on republishing these false reports about Dr. Pimpalwar, without providing him due process to correct them, hinders his ability to save additional infant lives and to train others on this life-saving surgical technique.

4. One of these false reports to the Data Bank, for example, resulted from the university's own mishandling of his application for renewal of his medical staff privileges, which resulted in a denial of renewal that triggered an automatic report to the Data Bank. Similarly, under Defendants' improper policies, a mere resignation by a physician from a hospital, while unaware that there is an undisclosed peer review of his work, automatically triggers an adverse report about him to the Data Bank without any meaningful recourse for him to clear his record.

5. Due process rights preclude the federal government from maintaining and publishing falsehoods about people without affording them a meaningful procedure for correcting or voiding the falsehoods. Defendants' restrictions are not authorized by Congress.

6. Plaintiff Pimpalwar requests that this Court enjoin on its face and declare invalid the improperly restrictive procedure for voiding a false or misleading report in the Data Bank. He further requests that this Court order the voiding of the unjustified adverse reports by the University of Missouri against him in the Data Bank, which arose from allegations subsequently disproven in a confidential internal appeal there.

### **PARTIES**

7. Plaintiff Ashwin Pimpalwar, M.D., is a citizen of the United States who resides in the metropolitan area of Dallas-Fort Worth, Texas. Dr. Pimpalwar is, and has been at all relevant times, a physician specializing in the medical field of pediatric thoracic and general surgery. He is nationally and internationally acclaimed for performing life-saving surgery on newborns, as described in greater detail below. In addition to his ongoing achievements in the United States, Dr. Pimpalwar frequently goes on charity mission trips to share his unique expertise around the world as he did in September at the National Children's Hospital in Tashkent, Uzbekistan, where his

work was then featured and praised on its television news as posted on Facebook.<sup>1</sup> Plaintiff Pimpalwar has worked successfully and without blemish at numerous prominent medical institutions, but unjustified reports to the Data Bank filed by the University in Missouri have hindered his ability to assist additional patients and further train other surgeons.

8. Defendant U.S. Department of Health and Human Services is an executive department of the United States government.

9. Defendant Xavier Becerra is the Secretary of Defendant U.S. Health and Human Services, who is sued here in only his official capacity.

10. Defendant Carole Johnson is the Administrator of the Health Resources and Services Administration, a federal agency of Defendant U.S. Department of Health and Human Services, who is sued here in only her official capacity.

#### **JURISDICTION AND VENUE**

11. This action arises under the laws of the United States, specifically the Due Process Clause of the U.S. Constitution, amend. V, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702, 706. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1361, and jurisdiction to render the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

12. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(C) because Plaintiff Pimpalwar resides here.

#### **IRREPARABLE HARM AND EXHAUSTION**

13. Plaintiff Pimpalwar has suffered – and continues to suffer – irreparable harm from

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<https://www.facebook.com/bahrom.azizov.37/videos/503499369143752/?rdid=8pKdv18AAp7OH1K9> (viewed Nov. 2, 2024).

the continued maintenance and republication of false and misleading reports about him in the Data Bank, without Defendants providing him a meaningful procedural opportunity to void these substantively false and misleading reports.

14. It would be futile and harmful for Plaintiff Pimpalwar to seek an administrative appeal, because the Data Bank Guidebook expressly prohibits a substantive challenge to a false report in the Data Bank. *See* Data Bank Guidebook F-5; *see also Marcus v. Sullivan*, 926 F.2d 604, 614 (7th Cir. 1991) (where plaintiffs asserted a facial challenge to a Social Security agency policy, the court determined that exhaustion was futile because the HHS Secretary was on the record as being “committed to [the] policy”). Moreover, Data Bank procedures require that Defendants enter a new statement adverse to the physician in the report, and then republishing that adverse report to hospitals, whenever the physician is unsuccessful in his administrative challenge to falsehoods. This thereby multiplies the harm to the physician. In addition, Plaintiff Pimpalwar would be irreparably harmed by further delay that would result from a futile administrative appeal.

## **FACTUAL BACKGROUND**

### **National Practitioner Data Bank**

15. The National Practitioner Data Bank (“Data Bank”) is managed and maintained by the Health Resources and Services Administration (“HRSA”), which is a component agency of Defendant HHS.

16. HRSA describes its Data Bank as follows:

The National Practitioner Data Bank (NPDB) is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. Established by Congress in 1986, it is a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance.

Data Bank, “About Us.”<sup>2</sup>

17. The statutory requirement that HHS establish a procedure to challenge, correct, or void an improper report to the Data Bank is found in the second clause in Section 426 of the Health Care Quality Improvement Act of 1986:

**SEC. 426. DISCLOSURE AND CORRECTION OF INFORMATION.**

With respect to the information reported to the Secretary (or the agency designated under section 424(b)) under this part respecting a physician or other licensed health care practitioner, *the Secretary shall, by regulation, provide for—*

- (1) disclosure of the information, upon request, to the physician or practitioner, and
- (2) *procedures in the case of disputed accuracy of the information.*

42 U.S.C. § 11136 (emphasis added).<sup>3</sup>

18. HHS published regulations for the Data Bank in 78 FR 20484 (Apr. 5, 2013), which are codified at 45 CFR Part 60.<sup>4</sup>

19. The Data Bank regulations require reporting of many different types of adverse actions taken by healthcare entities against physicians. For example, summary or precautionary suspensions must be reported to the Data Bank if the suspension persists for more than thirty days and the hospital deems the suspension to be a professional review action. *See* Data Bank Guidebook, p. E–22, example 6; page E–33, example 22; 45 CFR § 60.12(a)(i) (indicating that healthcare entities should report such determinations that constitute a professional review action).

20. Under rules imposed by the Data Bank Guidebook, a resignation by a physician of his medical staff privileges at a hospital must be reported to the Data Bank as an adverse report if

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<sup>2</sup> <https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp> (viewed Nov. 3, 2024).

<sup>3</sup> The entire HCQIA is posted in an easy-to-read format at [https://www.ssa.gov/OP\\_Home/comp2/F099-660.html](https://www.ssa.gov/OP_Home/comp2/F099-660.html) (viewed Nov. 3, 2024).

<sup>4</sup> This entire regulation is posted in an easy-to-read format at <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-60> (viewed Nov. 3, 2024).

there was a peer review investigation, even an undisclosed one of which the physician was unaware, that existed when the physician happened to resign:

9. When a physician surrenders medical staff privileges due to personal reasons, infirmity, or retirement, and such a surrender does not occur in order to avoid an investigation or during an investigation, should it be reported?

No. The surrender should not be reported to the NPDB because the physician did not surrender clinical privileges while under investigation by a health care entity relating to possible professional incompetence or improper professional conduct, or in return for not conducting such an investigation. However, *if an investigation was under way when the physician surrendered privileges, even if the physician was not aware of the investigation, the surrender would have to be reported even if the physician claimed the surrender of privileges for unrelated personal reasons.*

Data Bank Guidebook, p. E-46, ¶ 9 (emphasis added).

21. In addition, a failure to renew an application for renewal of medical staff privileges – even if due to failure by the hospital to cooperate in its processing of such an application – results in an additional adverse report to the Data Bank against the physician if this occurs during a peer review proceeding or its internal appeal. One of the adverse reports in the Data Bank against Plaintiff Pimpalwar at issue here is on this basis.

22. Every adverse report in the Data Bank is republished by Defendants to hospitals, healthcare facilities, state medical boards, and insurance companies.

23. When a physician is “in the Data Bank,” regardless of what the details are, the physician is typically excluded from practicing at most hospitals and training others at academic institutions. This reduces patient choice to the detriment of the public, in addition to harming good physicians. False Data Bank entries are thus harmful to patients in addition to physicians.

### **Rescinding or Voiding a Data Bank Report**

24. HHS allows only the reporting entity, and only under narrowly defined circumstances, to rescind or “void” a false or misleading report by it against a physician including

Plaintiff Pimpalwar. The physician himself has no means by which to seek and obtain the voiding of a misleading or substantively wrong report against him, such as a report based on false accusations that he disproved on an internal appeal. *See* Data Bank Guidebook C-9 (“Correcting Information in the Report. A subject of a report may **not** submit changes to a report.”) (emphasis altered).

25. The Data Bank Guidebook expressly states that “[a]ny changes or corrections to a report may *only* be submitted by the reporting entity.” *Id.* (emphasis in original).

26. Incredibly, the subject of a report in the Data Bank – including Plaintiff Pimpalwar – is even prohibited from correcting his “date of birth, address, date of graduation, Social Security Number, or other identifiers, as well as the description of the reported event.” *Id.*

27. Defendants prohibit challenges to a Data Bank entry based on its substance or the failure to abide by due process:

Dispute Resolution Limitations

The Dispute Resolution process can determine only:

- Whether a report was submitted in accordance with NPDB reporting requirements, including the eligibility of the reporting entity to report the information to the NPDB,
- Whether the report accurately depicts the action taken as reflected in the written record provided by the reporting entity, and/or
- Whether the reporter’s basis for the action is reflected in the written record provided by the reporting entity.

The Dispute Resolution process does **not** include reviewing:

- The underlying reasons for the report, such as the merits of a medical malpractice claim or ***the appropriateness of, or basis for,*** other types of reports, or
- The ***extent to which entities followed due process procedures;*** due process issues must be resolved between the subject of the report and the reporting entity.

Data Bank Guidebook F-5 (Oct. 2018) (emphasis added).

28. Plaintiff Pimpalwar repeatedly attempted to resolve with the reporting entity – the



University of Missouri – the inaccuracies in its adverse reports against him, but the University of Missouri has declined to substantively correct or void its reports.

29. The relevant regulations require, without statutory support, that “[t]he Secretary will only review the accuracy of the reported information, and ***will not consider the merits or appropriateness of the action or the due process that the subject received.***” 45 CFR § 60.21(c)(1) (emphasis added).

30. In fact, not even the reporting entity itself is allowed to void its own false or misleading report to the Data Bank, except in three narrow circumstances as set forth by the Data Bank Guidebook:

#### Void Report

A Void Report, also referred to as a Void, is the withdrawal of a report in its entirety. When the reporting entity voids a report, the report is removed from the disclosable record of the subject of the report. A reporting entity may void a report at any time. The three reasons for voiding a report are:

- The report was submitted in error
- The action was not reportable because it did not meet NPDB reporting requirements
- The action was overturned on appeal

Data Bank Guidebook E-8 (Oct. 2018).

31. Defendants thereby void a report if “the [adverse] action was not reportable and therefore should be removed from the NPDB.” *Id.* This “not reportable” category is extremely narrow and unavailable to nearly all of the victims of false Data Bank reports, including Dr. Pimpalwar. “[N]ot reportable” means that a report failed to satisfy technical thresholds for reporting, such as a summary suspension that did not last longer than the 30-day time period as required to become reportable.

32. Omitted from the narrow categories allowed for voiding reports to the Data Bank

are many instances in which a report should be voided, but are not, including:

- The report was reviewed by an internal review process at the hospital, as provided by its medical staff bylaws, which substantially held in favor of the accused physician;
- The report was the result of racial or gender discrimination against the physician, as later conceded or resolved but never litigated to a judicial appeal;
- The report was caused by an antitrust violation, as implicit in a settlement that was not litigated to a judicial appeal;
- The report was based on false accusations that were never substantiated or proven in an internal proceeding; and
- The report was based on highly implausible accusations that even lawyers representing the reporting entity recognize to have been false.

33. The Data Bank Guidebook candidly admits that it will not correct reports that are false due to discrimination or other improper bases:

All disputes related to a correct or incorrect diagnosis and appropriate or inappropriate treatment by a practitioner must be resolved with the reporting entity. The [Division of Practitioner Data Bank] DPDB does not review documentation provided by organizations or individuals other than the reporting entity and the subject of the report. No investigations, panel reviews, other reviews, or references provided by other organizations or independent practitioners can substitute for a valid written record provided by the reporting entity. The DPDB does not examine how a reporting entity uses its bylaws, how practitioners are disciplined, or how they are afforded due process; all such concerns must be resolved between the subject of the report and the reporting entity. The DPDB does not examine whether the subject of a report was informed of an ongoing investigation. The DPDB does not examine civil rights issues such as discrimination or harassment in the work environment.

Data Bank Guidebook F-5.

34. Defendants' blanket prohibitions on correcting entries in its Data Bank are not authorized by Congress, and deny due process to the physician-victim of a false report.

35. Defendants improperly prohibit a physician-victim of an adverse report from obtaining the voiding of a report by providing proof that an internal proceeding found the underlying accusations to have been false.

36. Defendants further violate due process by inserting a new statement adverse to the physician in his entry in the Data Bank, whenever an administrative challenge to a false entry by

the physician is denied by Defendants as nearly all such challenges are. Defendants then republish this new adverse statement against the physician to hospitals, which harms the physician further. This adds a punitive penalty to the assertion by the physician of his rights, in violation of due process.

37. Defendants maintain the adverse reports forever in the Data Bank, without ever cleaning its Data Bank of entries that should no longer be there due to recantation of false allegations, proof of violations of federal law by the reporting entity, such as discrimination or antitrust infractions, or other vindications of the falsely accused physician.

38. Having a false or misleading entry in the Data Bank inflicts devastating harm to the physician and to the public, as it results in the automatic yet improper denial of opportunities. Being “in the Data Bank” is akin to a Scarlet Letter for physicians, as hospitals and insurance networks commonly exclude physicians simply for being in the Data Bank, regardless of what their entry in the Data Bank actually says or how meritorious a physician’s rebuttal is. Patients are harmed by this due to a reduction in their options for obtaining medical care when their preferred physicians or, as in this case, a physician who has life-saving skills not commonly available in most areas, are wrongly excluded from a hospital or an insurance network.

### **The Privacy Act**

39. Without statutory justification, Defendants declare, in their Data Bank Guidebook, to be beyond the reach of protections provided by the Privacy Act:

Pursuant to the requirements of the Privacy Act of 1974 (5 USC § 552a), HHS has published a Privacy Act Systems of Record Notice (system no. 09-15-0054) describing the NPDB system of records. The NPDB system of records has been exempted from certain Privacy Act access and amendment requirements, ***and access and correction rights are governed by NPDB regulations.***

Data Bank Guidebook A-9.

**Dr. Ashwin Pimpalwar**

40. Dr. Pimpalwar is a highly skilled pediatric general and thoracic surgeon, who specializes in performing life-saving surgery on newborns. He twice won teacher of the year awards at Baylor Medical School. He has never had a malpractice case against him, and is an expert at several advanced surgical techniques for the benefit of newly born infants. He regularly leads charitable missions to foreign countries where he saves or improves many infant lives there. He has never been the subject of a claim or investigation by any government agency or private insurance company regarding his billing or utilization practices. He has been and remains in good standing with every state medical board where he has obtained a medical license.

41. Dr. Pimpalwar's highly specialized skills include performing single-port thoroscopic surgery on newborns in a minimally invasive manner. Roughly 1 out of every 4,000 newborns suffers from a disconnect between the upper and lower ends of their esophagus, also known as an incomplete esophagus. Dr. Pimpalwar specializes in surgically joining together an incomplete esophagus in a newborn. In addition, his surgical practice for newborns include correcting other severe anomalies at birth, such as abdominal, airway, gut and chest issues. Dr. Pimpalwar is one of the renowned world leaders in this specialty, as he teaches, trains others, and performs these unique surgeries in the United States, Turkey, Tunisia, Ethiopia, Kenya, India, Uzbekistan, Vietnam, and elsewhere.

42. Dr. Pimpalwar brought his special skills as a pediatric surgeon to the University of Missouri Health Care ("MUHC"), where he was on their medical staff from 2017 to 2020 with a perfect record of caring for patients. He provided and demonstrated his advanced techniques to other surgeons there. He had no adverse outcomes or malpractice claims as he performed his highly

sophisticated surgical techniques on newborns there, which had not previously been available in most of Missouri.

43. In 2019, false and medically ignorant allegations were made against Dr. Pimpalwar, as instigated by an underachieving medical resident who had a brief rotation in his department. The medical resident was ultimately dismissed from the rotation in that department based on a subsequent, independent conflict with another senior surgeon there. But the allegations provided fodder to an interdepartmental conflict between the medical student residency program and the surgical department.

44. The allegations against Dr. Pimpalwar were subsequently proven to be false, and he was ultimately vindicated on all quality of care issues by the highest level of authority at MUHC.

45. Pending the internal appeal in his case, Dr. Pimpalwar attempted in good faith to renew his medical staff privileges at MUHC. But MUHC was uncooperative and then wrongly asserted that Dr. Pimpalwar had not completed his renewal application in 2020, when he had completed it in good faith and an MUHC clerk even indicated to him that the application was properly submitted. MUHC then filed a new adverse report with the Data Bank based on Dr. Pimpalwar allegedly not completing his application for renewal of his privileges while he was under peer review. Defendants' policies require submission of a new adverse report to the Data Bank for this.

46. Overall, prior to the ultimate vindication of Dr. Pimpalwar in the internal appeal, MUHC filed multiple unjustified adverse reports against him to the Data Bank, including new reports to partially correct its prior erroneous reports. To this day these adverse reports against Dr.

Pimpalwar by MUHC in the Data Bank are based on allegations that were proven to be substantially false in an internal review at MUHC.

47. Dr. Pimpalwar remains the subject of these false entries in the Data Bank, which Defendants continue to publish to hospitals and other healthcare entities without adequate due process for him to void these unjustified, misleading entries.

48. The reporting entity, MUHC, declined multiple requests by Dr. Pimpalwar that it void its unjustified reports against him in the Data Bank.

49. Defendants prohibit Dr. Pimpalwar from seeking to void reports based on the substantive falsehood of the allegations, and he has exhausted all of his remedies in requesting MUHC to file a report to void its reports in the Data Bank against him.

50. Plaintiff Pimpalwar suffers ongoing irreparable harm from the deprivation of his rights in connection with the adverse entries against him as maintained and republished by Defendants in connection with their Data Bank.

51. Under the U.S. Supreme Court decision in *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 144 S. Ct. 2440 (2024), the injury to Plaintiff Pimpalwar is ongoing and his challenge here to Defendants' policies concerning the Data Bank is timely.

**COUNT I**  
**(Against All Defendants for Violation of the  
Due Process Clause of the Fifth Amendment)**

52. Plaintiff Pimpalwar incorporates herein all statements and allegations contained in this Complaint.

53. Defendants impose policies that are invalid, on their face and as applied, by narrowly limiting the procedure for voiding false and misleading entries in the Data Bank. These policies by Defendants are not authorized by Congress, and violate the Due Process Clause of the

Fifth Amendment of the U.S. Constitution for those harmed, including Plaintiff Pimpalwar.

54. Defendants continue to maintain in the Data Bank statements that are false and misleading, which were reported to the Data Bank by MUHC against Plaintiff Pimpalwar, and Defendants continue to republish these falsehoods to others in an ongoing basis.

55. Plaintiff Pimpalwar is deprived by Defendants of due process to obtain correction and/or removal of these false entries in the Data Bank.

56. A request to Defendants to remove MUHC's false and misleading statements about Plaintiff Pimpalwar would be futile, as prohibited by Defendants' own express limitations on voiding reports, and such a request by Dr. Pimpalwar would result in additional harm to him by causing yet another adverse statement against him in the Data Bank and republication of the adverse entry based on the virtually automatic rejection of his request.

57. It violates due process for Defendants to require reporting and then republishing alleged failures to renew an application for medical staff privileges during a peer review proceeding, without any recourse by the subject of the adverse reports, including Plaintiff Pimpalwar, to demonstrate that in fact he did attempt in good faith to renew his privileges.

58. Resignation by a physician without notice or knowledge that he was under investigation should not trigger an adverse report to the Data Bank, and Defendants' policy requiring an adverse report for such resignations violates due process.

59. Defendants' policy to insert a new statement adverse to the physician into an entry about him in the Data Bank, and then republish all that to hospitals, due merely to an unsuccessful administrative challenge by him to the entry, imposes an improper punitive penalty contrary to due process on an assertion of one's constitutional rights.

60. Entities that wrongly fail to void or correct their false reports are not subject to any

penalty, or even identification, in further violation of due process for the victims of this wrongful conduct.

61. The delegation of authority by Congress to HHS to establish a procedure for disputing reports contains an implicit requirement to comport with due process. As recently held by the U.S. Supreme Court in *Loper Bright Enterprises*, “*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.” 144 S. Ct. 2244, 2273 (2024).

62. Yet Defendants do not provide due process for Plaintiff Pimpalwar to challenge substantive errors in the adverse reports about him in the Data Bank. Defendants further fail to require that a reporting entity provide due process to a victim, such as Plaintiff Pimpalwar, on adverse reports by the entity to the Data Bank.

63. Plaintiff Pimpalwar seeks declaratory relief, pursuant to 28 U.S.C. §§ 2201(a) and 2202, that Defendants’ procedural limitations on voiding false reports in the Data Bank are in violation of due process and thereby invalid.

64. Plaintiff Pimpalwar further seeks injunctive relief against the limitations by Defendants in voiding false reports to the Data Bank, including an order requiring Defendants to terminate its prohibition on voiding reports that were substantially based on unproven allegations.

65. Plaintiff Pimpalwar further seeks an order requiring Defendants to void the adverse reports submitted to the Data Bank by MUHC against Plaintiff.

66. Plaintiff Pimpalwar further seeks attorney’s fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and corresponding principles of equity.

**COUNT II**  
**(Against All Defendants for Violation of the Administrative Procedure Act)**

67. Plaintiff Pimpalwar incorporates herein all statements and allegations contained in



this Complaint.

68. The adherence by HHS to its strict limitations on voiding reports, as set forth in its Data Bank Guidebook, while continuing to publish to healthcare entities false reports about Dr. Pimpalwar, constitutes a final agency action within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. § 706.

69. This conduct by HHS is arbitrary, capricious, an abuse of discretion, and contrary to law, in violation of the APA, 5 U.S.C. § 706(2)(A), (B), (C), and (D).

70. HHS's foregoing violations of the APA have injured Plaintiff Pimpalwar by wrongly preventing him from obtaining a voiding of reports against him in the Data Bank, which are based on allegations proven to have been false.

71. These injuries to Plaintiff Pimpalwar are likely to persist as long as Defendants continue to publish the Data Bank entries about him to healthcare entities.

72. These ongoing injuries to Plaintiff Pimpalwar by Defendants are in violation of the APA, and thus should be enjoined.

73. Plaintiff Pimpalwar seeks declaratory relief, pursuant to 28 U.S.C. §§ 2201(a) and 2202, that the limitations by HHS on voiding false reports in the Data Bank are invalid.

74. Plaintiff Pimpalwar further requests injunctive relief as outlined in Count I above.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Pimpalwar respectfully requests that this Court:

- (i) adjudge and decree that Defendants' narrow restrictions on voiding entries in the Data Bank are invalid both as unconstitutional and as being in violation of the Administrative Procedure Act;
- (ii) order Defendants to comply with due process and the APA, such that an entry in

the Data Bank is voided when the subject of the entry provides evidence that (a) the underlying allegations were mostly reversed, disproven or unsubstantiated in an internal proceeding, (b) the adverse report is not justified by any legitimate quality of care issues, or (c) the reporting entity denied due process to the subject of the report, such as having a conflict of interest on its reviewing panel or failing to provide a key witness who perpetrated accusations underlying the adverse report;

(iii) order that a good faith attempt to apply for renewal of medical staff privileges must not trigger an additional adverse report to the Data Bank based merely on an allegation by the reporting entity that the application was incomplete and thus deemed to be a reportable termination of privileges;

(iv) order that a resignation by a practitioner from a reporting entity must not trigger a report to the Data Bank unless the practitioner was made aware of a pending investigation prior to his resignation;

(v) order that Defendants may not insert a new statement adverse to a practitioner into an entry about him in the Data Bank, and then republish the adverse entry to hospitals, based merely on his unsuccessful exercise of his right to administratively challenge the adverse entry;

(vi) order that Defendants void the adverse reports sent by MUHC to the Data Bank against Dr. Pimpalwar, which are not justified by any legitimate quality of care issues; and

(vii) order Defendants to pay Plaintiff Pimpalwar's reasonable costs and attorney's fees under 28 U.S.C. § 2412(d); and

(viii) grant such other relief as the Court may deem appropriate.

Dated: November 13, 2024

Respectfully submitted,

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