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# [***Logan v. HCA, Inc.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RVK-X1M1-FCCX-6415-00000-00&context=)

United States District Court for the Middle District of Tennessee, Nashville Division

March 12, 2018, Decided

No. 3:05-0006

**Reporter**

2018 U.S. Dist. LEXIS 41141 \*

BRADLEY S. LOGAN, M.D., Plaintiff, v. HCA, INC., ET AL., Defendants.

**Prior History:** [*Logan v. HCA, Inc., 2005 U.S. Dist. LEXIS 50731 (M.D. Tenn., Nov. 30, 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RHV-JJP1-JGBH-B53R-00000-00&context=)

**Core Terms**

Recommendation, privileges, motion to dismiss, defendants', peer review, misrepresentation, abuse of process, state law claim, racketeering, allegations, resignation

**Counsel:** **[\*1]**Bradley S. Logan, Plaintiff, Pro se, Tampa, FL.

For HCA, Inc., St. Petersburg General Hospital, HTI Memorial Hospital Corporation, doing business as Skyline Medical Center, David Desper, Dr., Dan Friedrich, Akshay Desai, Dr., George Banks, Rosemary Northrup-Bloomfield, Columbia Pinellas, Inc., now merged with Health Services (Delaware), Daneil McAuliffe, Ogden & Sullivan, P.C., Robert Klein, Gregory Neal, Dr., David McKee, Dr., Lloyd Walwyn, Dr., Kelly Duggan, C.J. Gideon, Brandy Burnette, Gideon & Wiseman, TriStar Health Systems, Defendants: John Shannon Bryant, Walker, Bryant, Tipps & Malone, Nashville, TN.

For Crockett Hospital, Lifepoint Hospitals, Inc., Jack Buck, Penny Mediate, Dr., Neil Kunkel, Defendants: Keli J. Oliver, Metropolitan Legal Department, Nashville, TN; Paula D. Walker, Waller, Lansden, Dortch & Davis, Nashville, TN; W. Travis Parham, Waller Lansden Dortch & Davis, LLP, Nashville, TN.

For Virgil Crowder, Dr., Defendant: Robert L. Trentham, Butler Snow LLP (Nashville), Nashville, TN; Taylor B. Mayes, Butler Snow LLP (Nashville), Nashville, TN.

For Marjorie Nix, Defendant: W. Travis Parham, Waller Lansden Dortch & Davis, LLP, Nashville, TN.

For Andrew Naylor, Waller, Lansden,**[\*2]** Dortch & Davis, Defendants: Keli J. Oliver, Metropolitan Legal Department, Nashville, TN; W. Travis Parham, Waller Lansden Dortch & Davis, LLP, Nashville, TN.

For Steven B. Riley, Amy Kurzweg, Bowen, Riley, Warnock & Jacobson, Defendants: John Shannon Bryant, Walker, Bryant, Tipps & Malone, Nashville, TN; Robert Jackson Walker, Butler Snow LLP (Nashville), Nashville, TN.

**Judges:** Joe B. Brown, United States Magistrate Judge. Honorable Robert L. Echols, Chief District Judge.

**Opinion by:** Joe B. Brown

**Opinion**

**REPORT AND RECOMMENDATION**

By an order (Docket Entry No. 2) entered January 18, 2005, the Court referred this action to the Magistrate Judge "for consideration of all pretrial matters. Any dispositive motions filed shall be considered by the Magistrate Judge, who shall submit proposed findings of fact and recommendations for disposition."

Presently pending before the Court are Motions to Dismiss from the defendants (Docket Entry Nos. 37, 45, 47, 49, 56 and 61), a Motion to Strike from the defendants (Docket Entry No. 40), plaintiff's Response to the Motion to Strike (Docket Entry No. 55), his Response to each Motion to Dismiss (Docket Entry Nos. 63, 64, 65, 70, 72 and 83), and Replies from the defendants in support**[\*3]** of their Motions to Dismiss (Docket Entry No. 77, 78 and 80).

A hearing was held on April 12, 2005 to address the defendants' dispositive motions (Docket Entry No. 81). The undersigned has considered the arguments of counsel, the motions presently pending and the record in this case. For the reasons stated below, it is respectfully recommended that the defendants' Motions to Dismiss be granted and that this action should be dismissed. Should the Court adopt this recommendation, it is further recommended that the defendants' Motion to Strike be denied as moot.

**I. BACKGROUND**

The plaintiff, proceeding *pro se*, is a physician (OB/GYN) residing in Goodlettsville, Tennessee. In August, 1997, he was a member of the medical staff at the St. Petersburg General Hospital in St. Petersburg, Florida. He resigned his position there because of a dispute arising over his care of certain patients.[[1]](#footnote-0)1 An administrator at the hospital notified the National Practitioner Data Bank (NPDB) and the Florida Agency for Health Care Administration (AHCA) that the plaintiff had resigned "while under investigation". Docket Entry No. 1 at pgs. 13-14.

Following his resignation, the plaintiff moved to Lawrenceburg,-Tennessee**[\*4]** where he began a practice at Crockett General Hospital. Docket Entry No. 1 at pg. 16. Citing economic pressures and the refusal of Crockett administrators to address those pressures, the plaintiff left his practice at Crockett effective January, 2002. Docket Entry No. 1 at pgs. 21-22. Before leaving, though, the plaintiff had already applied for clinical privileges at the Skyline Medical Center in Nashville. Docket Entry No. 1 at pg. 23.

In November, 2001, he executed a Recruiting Agreement with Skyline. Docket Entry No. 1 at pg. 23. This agreement, however, was later rescinded because the plaintiff had failed to "commence the full-time practice of medicine in the Skyline community on or before January 1, 2002." Docket Entry No. 1 at pg. 25. On February 28, 2002, the plaintiff met with the Credentials Committee at Skyline and learned that the committee would not recommend his application for privileges at the hospital. Shortly thereafter, the plaintiff withdrew his application for privileges. Docket Entry No. 1 at pg. 26.

Later that year, the plaintiff submitted a second application for privileges at Skyline. Docket Entry No. 1 at pg. 28. On July 7, 2003, the Medical Executive Committee**[\*5]** at Skyline met and voted to deny plaintiff's second application for privileges at the hospital. Docket Entry No. 1 at pg. 50. Three days later, the plaintiff sent a letter to Skyline withdrawing his application for privileges. An administrator at Skyline subsequently notified the NPDB that the plaintiff's application for privileges had been denied rather than withdrawn. Docket Entry No. 1 at pg. 51.

**II. THE COMPLAINT**

On January 5, 2005, the plaintiff initiated this action with the filing of a complaint (Docket Entry No. 1).[[2]](#footnote-1)2 In the complaint, the plaintiff alleges that he was harmed by various acts related to his employment at the St. Petersburg General Hospital and the Crockett General Hospital. He also claims that misconduct on the part of some defendants led to the improper denial of his application for privileges at the Skyline Medical Center.

More specifically, the plaintiff alleges ten general claims for relief. These claims are:

1) fraudulent misrepresentation,

2) suppression[[3]](#footnote-2)3,

3) conspiracy,

4) negligence,

5) wantonness[[4]](#footnote-3)4,

6) breach of contract,

7) abuse of process,

8) violations of [*18 U.S.C. § 1961, et seq. (RICO)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTW1-NRF4-40PD-00000-00&context=),

9) the denial of due process and stigmatizing statements in violation of *42 U.S.C. § 1983*, and

10) violations of the**[\*6]** [*Health Care Quality Improvement Act of 1986 (HCQIA), 42 U.S.C. § 11101, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GWN1-NRF4-42X0-00000-00&context=)

The plaintiff brings this action against the Hospital Corporation of America (HCA). The St. Petersburg defendants include Galen of Florida, Inc., d/b/a St. Petersburg General Hospital; Drs. David Desper, Akshay Desai and George Banks; Dan Friedrich, CEO of the St. Petersburg General Hospital; Rosemary Northrup-Bloomfield, Director of Risk Management; Daneil McAuliffe, an attorney for the hospital; Ogden & Sullivan, a law firm in Tampa, Florida; Columbia-Pinellas, Inc.; Steven Riley and Amy Kurzweg, attorneys in Nashville; and the Nashville law firm of Bowen, Riley, Warnock & Jacobson.

The Crockett defendants include the Crockett General Hospital; Lifepoint Hospitals, Inc., which operates the Crockett General Hospital; Drs. Virgil Crowder and Penny Mediate; Jack Buck, CEO of the Crockett General Hospital; Marjorie Nix, a former Physician Recruiter for Crockett; Neil Kunkel and Andrew Naylor, Tennessee attorneys; and the Nashville law firm of Waller, Lansden, Dortch & Davis.

The Skyline defendants include HTI Memorial Hospital Corp., d/b/a Skyline Medical Center; the TriStar Health System; Drs. Gregory Neal, David McKee and Lloyd Walwyn;**[\*7]** Robert Klein, CEO at Skyline; Kelly Duggan, Senior Operations Counsel for HCA; Clarence Gideon and Brandy Burnette, attorneys in Nashville; and the Nashville law firm of Gideon & Wiseman.

**III. STANDARD OF REVIEW**

A motion to dismiss under [*Rule 12(b)(6), Fed. R. Civ. P.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), is reviewed under the standard that dismissal is appropriate only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of his alleged claims which would entitle him to relief. [*Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 102, 2 L. Ed. 2d 80 (1957)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J5D0-003B-S1MW-00000-00&context=). In reviewing a motion to dismiss, the allegations in the plaintiff's complaint are liberally construed and taken as true. [*Westlake v. Lucas, 537 F.2d 857, 858 (6th Cir. 1976)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1VS0-0039-M3SY-00000-00&context=). More than bare assertions of legal conclusions, however, are required to withstand a [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) motion, and the complaint must contain allegations of fact sufficient to support the asserted legal claims. *See*[*Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436-437 (6th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XVT0-001B-K4WH-00000-00&context=).

**IV. ANALYSIS OF THE CLAIMS**

The plaintiff asserts that the Court has federal question jurisdiction to adjudicate his claims. This jurisdiction rests on the viability of plaintiff's federal claims arising under *42 U.S.C. § 1983*; the Health Care Quality Improvement Act of 1986, [*42 U.S.C. § 11101, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GWN1-NRF4-42X0-00000-00&context=); and the [*Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTW1-NRF4-40PD-00000-00&context=)

**A) Claims brought pursuant to *42 U.S.C. § 1983***

To state a claim for relief under *42 U.S.C. § 1983*, the plaintiff must plead and prove that the**[\*8]** defendants, while acting under color of state law, deprived him of some right or privilege guaranteed by the Constitution or laws of the United States. [*Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 1913, 68 L.Ed.2d 420 (1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6J80-003B-S169-00000-00&context=).

As noted above, a defendant in a *§ 1983* action must have acted "under color of state law." Purely private conduct, no matter how discriminatory or wrongful, is not actionable under *§ 1983*. *American Manufacturers Mutual Insurance Co. v. Sullivan, 526 U.S. 40, 119 S.Ct. 977, 985, 143 L.Ed.2d 130 (1999)*. Here, the defendants are either persons or private entities with no direct authority to act on behalf of the State. Thus, the defendants in this case do not appear to have acted "under color of state law".

Nevertheless, state action may be found if a private party has (1) acted with the help of or in concert with state officials, (2) been delegated power traditionally exclusively reserved to the State, or (3) there is a sufficiently close nexus between the State and the challenged action of the private party so that the action of the latter may be fairly treated as that of the State itself. [*McKeesport Hospital v. Accreditation Council for Graduate Medical Education, 24 F.3d 519, 524 (3rd Cir. 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-61G0-003B-P42F-00000-00&context=). The underlying question, therefore, is whether the conduct of a private party is fairly attributable to the State. [*Rendell-Baker v. Kohn, 457 U.S. 830, 102 S.Ct. 2764, 2770, 73 L.Ed.2d 418 (1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FM0-003B-S4JY-00000-00&context=).

The fact that a private person or entity performs a function which serves the public does not render its acts state action. Id, at [*102 S.Ct. at 2772*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FM0-003B-S4JY-00000-00&context=). Nor does a business**[\*9]** or profession perform state functions merely because it is subject to state ***regulation***. *American Manufacturers Mutual Insurance Co., supra at 119 S.Ct. at 986*. In this case, the plaintiff has offered no factual allegations that would seriously suggest that the defendants' actions are fairly attributable to either Florida or Tennessee. Therefore, he has failed to state a claim under *§ 1983* for which relief can be granted. *See*[*Crowder v. Conlan, 740 F.2d 447, 450 (6th Cir. 1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-W9D0-003B-G175-00000-00&context=)(the decision by a private hospital to restrict staff privileges does not constitute state action).

B) **Claims brought pursuant to** [***42 U.S.C. § 11101, et seq.***](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GWN1-NRF4-42X0-00000-00&context=) **(HCQIA)**

In 1986, Congress made the following findings:

1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

3) This nationwide problem can be remedied through effective professional peer review.

4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal ***anti-trust*** law, unreasonably discourages**[\*10]** physicians from participating in effective professional peer review.

5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

[*42 U.S.C. § 11101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GWN1-NRF4-42X0-00000-00&context=).

In response to these findings, Congress enacted the Health Care Quality Improvement Act. [*42 U.S.C. § 11101, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GWN1-NRF4-42X0-00000-00&context=) This legislation was enacted to encourage physicians to identify and discipline, through the peer review process, other physicians engaging in unprofessional behavior. As such, HCQIA was enacted to benefit professional medical review bodies and patients, not an aggrieved physician. Thus, it has been generally held that HCQIA does not provide an aggrieved physician with a private cause of action. [*Wayne v. Genesis Medical Center, 140 F.3d 1145, 1148 (8th Cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SDC-CVH0-0038-X3G4-00000-00&context=); *see also*[*Hancock v. Blue Cross-Blue Shield of Kansas, Inc., 21 F.3d 373, 374-75 (10th Cir. 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6XP0-003B-P3VR-00000-00&context=); [*Bok v. Mutual Assurance, Inc., 119 F.3d 927, 928-29 (11th Cir. 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3V-4BK0-00B1-D1N9-00000-00&context=), cert. denied, *523 U.S. 1118, 118 S. Ct. 1796, 140 L. Ed. 2d 937 (1998)*.

Here, the plaintiff is an aggrieved physician who was subjected to peer review at hospitals in Florida and Tennessee. He was not satisfied with the results of these peer reviews and is attempting to raise claims under HCQIA. However, this statute does not provide him with a private cause of action. Therefore, the plaintiff is unable to state a claim for relief under HCQIA.

C) Claims brought pursuant to [*18 U.S.C. § 1961, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTW1-NRF4-40PD-00000-00&context=) (RICO)

The plaintiff describes his RICO claim by stating "The defendants**[\*11]** were a group of corporations and persons associated together both formally and informally who were engaged in a common enterprise or course of conduct that involved conspiring to willfully, wantonly, fraudulently and/or negligently misrepresent facts, surrounding the Plaintiff, and/or his clinical competence, and/or his application for or resignation of privileges, and/or his character as well as to effect [*sic*] breach of contract, abuse of process, to violate HCQIA and to publish stigmatizing statements." Docket Entry No. 64 at pgs. 17-18.

The Racketeer Influenced and Corrupt Organizations Act creates a civil cause of action for "any person injured in his business or property by reason of a violation of *section 1962*." [*18 U.S.C. § 1964(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GPJ1-NRF4-44WX-00000-00&context=). Generally speaking, *§ 1962* makes it unlawful for anyone to profit "from a pattern of racketeering activity or through the collection of an unlawful debt". It must be noted, though, that an injury caused by an overt act that is not an act of racketeering or otherwise wrongful under RICO is not sufficient to give rise to a cause of action under [*18 U.S.C. § 1964(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GPJ1-NRF4-44WX-00000-00&context=). [*Beck v. Prupis, 529 U.S. 494, 120 S.Ct. 1608, 1616, 146 L.Ed.2d 561 (2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4048-9TB0-004B-Y032-00000-00&context=).

In this case, the overt acts complained of involve the alleged misrepresentation of facts relating to peer reviews of the plaintiff's competence**[\*12]** as a physician, his application for or resignation of hospital privileges and "stigmatizing" statements made about him. None of these types of acts qualify as racketeering activity. *See* [*18 U.S.C. § 1961(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTW1-NRF4-40PD-00000-00&context=).[[5]](#footnote-4)5 Accordingly, the plaintiff has failed to state claims for relief under the RICO statutes.

D) **Pendent State Law Claims**

The plaintiff has also offered several state law claims for adjudication. These claims include fraudulent misrepresentation, breach of contract, negligence, suppression, wantonness, conspiracy and abuse of process. As discussed above, the plaintiff has failed to state an actionable claim implicating a federal question. A federal question was the basis for this Court's original jurisdiction over the case. When those claims giving the Court its original jurisdiction have been dismissed, the Court may decline to exercise supplemental jurisdiction over any pendent state law claims. [*28 U.S.C. § 1367(c)(3)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=); [*United Mine Workers v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 1139-40, 16 L.Ed.2d 218 (1966)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PK-00000-00&context=). Finding no compelling reason for the Court to exercise supplemental jurisdiction in this case, the plaintiff's pendent state law claims should be dismissed without prejudice.

**RECOMMENDATION**

For the reasons discussed above, the undersigned respectfully RECOMMENDS that the defendants' Motions to Dismiss (Docket**[\*13]** Entry Nos. 37, 45, 47, 49, 56 and 61) be GRANTED and that the plaintiff's federal claims should be DISMISSED with prejudice and his state law claims should be DISMISSED without prejudice. It is further RECOMMENDED that the defendants' Motion to Strike (Docket Entry No. 40) be DENIED as MOOT.

Any objections to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice and must state with particularity the specific portions of the Report and Recommendation to which objection is made. Failure to file written objections within the specified time can be deemed a waiver of the right to appeal the District Court's Order regarding the Report and Recommendation. [*Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8XP0-0039-N1VY-00000-00&context=); *see also* [*United States v. Walters, 638 F.2d 947 (6th Cir. 1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5VR0-0039-W2F8-00000-00&context=).

Respectfully submitted,

/s/ Joe B. Brown

Joe B. Brown

United States Magistrate Judge

**End of Document**

1. 1During his practice in St. Petersburg, the plaintiff was a member and owner of Group Medica of Florida. This professional association apparently had a lease agreement for office space with Columbia-Pinellas, Inc., a subsidiary of the Hospital Corporation of America. For some reason, the lease agreement was breached and a judgment was entered against Group Medica of Florida. An effort was subsequently made in Tennessee to collect this judgment from the plaintiff. Docket Entry No. 1 at pg. 15. [↑](#footnote-ref-0)
2. 2The plaintiff has described his 79 page complaint as "a testament to respect for judicial economy". Docket Entry No. 64 at pg. 10. [↑](#footnote-ref-1)
3. 3Suppression is also referred to by the plaintiff as misrepresentation by concealment. Docket Entry No. 64 at pg. 15; Docket Entry No. 70 at pg. 19; Docket Entry No. 72 at pg.10. [↑](#footnote-ref-2)
4. 4With respect to wantonness, the plaintiff describes it "as a common law tort action in that it is not inconsistent with the Constitution of the United States, its laws, and institutions of the state." Docket Entry No. 70 at pg. 27. [↑](#footnote-ref-3)
5. 5The plaintiff attempts to justify his RICO claims by asserting that the defendants were able to press forward their misrepresentations by means of mail fraud and abuse of process. The alleged mail fraud and abuse of process, however, were mere by-products of the defendants' misconduct. The underlying basis for plaintiff's RICO claims are the misrepresentations and distortions of the facts as they have been offered by the defendants. [↑](#footnote-ref-4)