

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

PETER F. MERKLE, M.D.,

Plaintiff,

CASE NO.: 01-016923

v.

DIVISION 11

NORTH BROWARD HOSPITAL
DISTRICT d/b/a NORTH BROWARD
MEDICAL CENTER; JOSEPH SCOTT;
JOSEPH O'CONNOR; DANIELLE ORR, R.N.;
AND STEVEN M. SHAPIRO, M.D.,

Defendants.

THIRD AMENDED COMPLAINT

Plaintiff, Peter F. Merkle, M.D. ("Dr. Merkle"), sues Defendant, North Broward Hospital District ("NBHD") d/b/a North Broward Medical Center ("NBMC"), Joseph Scott ("Mr. Scott"), Joseph O'Connor ("Mr. O'Connor"), Danielle Orr, R.N. ("Ms. Orr"), and Steven M. Shapiro, M.D. ("Dr. Shapiro"), filing this Third Amended Complaint, relating back in time to and amending the Complaint he originally filed in this action on October 2, 2001, and later amended (with all Exhibits having been attached to the Amended Complaint, filed with the Court and are incorporated herein by reference), and alleges:

GENERAL ALLEGATIONS

a. Parties, Jurisdiction and Venue

1. This is an action for damages in excess of \$15,000, exclusive of interest and costs, and for equitable relief, including counts for libel, slander, tortious interference with a business

relationship, tortious interference with a contract, conspiracy, violation of due process rights under the Florida Constitution, violation of due process rights under the United States Constitution, breach of contract, and invasion of privacy.

2. Plaintiff, Dr. Merkle, is a resident of Deerfield Beach, Broward County, Florida. Dr. Merkle is a doctor of medicine licensed by the State of Florida, and is Board Certified in the medical specialty of orthopedic surgery.

3. Defendant, North Broward Hospital District ("NBHD"), is a special tax district of the State of Florida, organized pursuant to Section 155.04, Florida Statutes, and located in Broward County, Florida. At all times material hereto, NBHD kept offices in and regularly conducted business at 303 Southeast 17th Street, Ft. Lauderdale, Broward County, Florida.

4. NBHD operates a number of medical facilities in Broward County, Florida, including North Broward Medical Center ("NBMC"). At all times material hereto, NBMC kept offices in and regularly conducted business at 201 East Sample Road, Pompano Beach, Broward County, Florida.

5. "North Broward Medical Center" is also a fictitious business name used by NBHD.

6. For all purposes relating to this Complaint, NBMC and NBHD are the same party.

7. Subdivisions or departments of NBMC include: Emergency Department ("ED"), Inpatient Department, Outpatient Department, Surgery Department, and the Medical Staff of NBMC.

8. Defendant, Joseph Scott ("Mr. Scott"), is believed to be a resident of Broward County, Florida. At all times material hereto, Mr. Scott was the Chief Executive Officer (CEO) of NBMC.

9. Defendant, Joseph O'Connor ("Mr. O'Connor"), is believed to be a resident of Broward County, Florida. At all times material hereto, Mr. Scott was the Assistant Chief Executive Officer and the Assistant Administrator of NBMC.

10. Defendant, Danielle Orr, R.N. ("Ms. Orr"), is believed to be a resident of Broward County, Florida. At all times material hereto, Ms. Orr was the Head Nurse of the Orthopedic Surgery Unit of NBMC.

11. Defendant, Steven M. Shapiro, M.D. ("Dr. Shapiro") is believed to be a resident of Broward County, Florida. At all times material hereto, Dr. Shapiro was the Chief of Staff at NBMC.

12. Bose Yalamanchi, M.D. ("Dr. Yalamanchi"), at all times material hereto, was the Chief of Surgery (Head of the Surgery Department) at NBMC. Dr. Yalamanchi is identified here but is not named as a defendant.

13. Jurisdiction is proper under Section 48.193, Florida Statutes, in that Defendants, NBHD, Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro have operated, conducted, engaged in, or carried on a business or business venture in this State, have an office or agency in this State, have committed torts in this State and have breached a contract in this State by failing to perform acts required by the contract to be performed here.

14. Venue is proper in Broward County, Florida in that Defendants, NBHD, operating through NBMC, Mr. O'Connor, Ms. Orr and Dr. Shapiro, each have offices in Broward County,

Florida and conduct business there; this cause of action, in whole or in part, accrued in Broward County; and the Contract that is the subject of this suit was to be performed in Broward County. Additionally, Defendant NBHD, operating through NBMC, has an office in Pompano Beach, Broward County, Florida and conduct business there; and this cause of action as it relates to them, in whole or in part, accrued in Broward County.

15. All conditions precedent to the filing of this action have been met, have been performed or have been waived, including compliance with Section 768.28, Florida Statutes.

b. General Allegations Concerning Dr. Merkle

16. Dr. Merkle is Board Certified in the medical specialty of orthopedic surgery.

17. Dr. Merkle graduated from Medical School in 1982.

18. Dr. Merkle completed his residency in orthopedic surgery at McLaren General Hospital, Flint, Michigan, in 1987.

19. Dr. Merkle completed a fellowship in Foot and Ankle Surgery at the Hospital for Special Surgery, New York, New York in 1988.

20. Dr. Merkle became Board Certified in Orthopedic Surgery in 1990 and became a Fellow of the American Academy of Orthopedic Surgery in 1992.

21. Dr. Merkle has been licensed to practice medicine since 1982 and licensed to practice medicine in the state of Florida since 1987.

22. Dr. Merkle originally applied for and received his clinical privileges to practice medicine at NBMC and became a member of its Medical Staff in 1988.

23. Dr. Merkle has been a member of the Medical Staff of NBMC and of the Surgery Department of NBMC since 1988.

24. Dr. Merkle also has clinical privileges in orthopedic surgery and is a member of the medical staffs at several other hospitals in Broward County.

c. General Allegations Concerning NBHD Medical Staff Bylaws and Rules

25. NBHD owns and operates several different medical facilities including NBMC.

26. NBHD is ultimately responsible for and liable for the actions taken by NBMC.

27. NBHD establishes or adopts rules, regulations policies and procedures, including medical staff bylaws, that apply to each facility it owns and operates, including NBMC.

28. NBHD has adopted what is known as "Medical Staffs North Broward Hospital District Bylaws and Rules" (referred to herein as the "Medical Staff Bylaws"). Exhibit "2." The Medical Staff Bylaws are binding on NBMC and also are binding on and apply to the individual members of the Medical Staff of NBMC, including Dr. Merkle. Exhibit "2." Dr. Merkle only has an incomplete copy of Exhibit "2." It is believed that Defendant NBHD has a complete copy of this.

29. NBHD has also adopted what is known as "Rules and Regulations of the Medical Staffs of North Broward Hospital District" (referred to herein as the "Medical Staff Rules and Regulations"). Exhibit "3." The Medical Staff Rules and Regulations are binding NBMC and also are binding on and apply to the individual members of the Medical Staff of NBMC, including Dr. Merkle. Exhibit "3."

d. General Allegations Concerning Call Schedules at NBMC

30. From at least 1988 to 1996, NBMC had only one "Call Schedule" for orthopedic surgeons in which orthopedic surgeons who were "on call" and listed on the Call Schedule treated all patients, whether indigent patients, private pay patients, or trauma patients.

31. The purpose of the Call Schedule, was to ensure that physicians, including orthopedic surgeons, were available before, during and after normal working hours, including at night, on weekends and on holidays, to provide specialty care, consultations and emergency medical care in certain medical specialties, primarily for patients coming into the NBMC Emergency Department ("ED"), but also for other purposes.

32. Physicians placed their names on the Call Schedule and agreed to be available to treat patients or to consult within the area of their medical specialty when called upon by ED physicians and other physicians on the NBMC Staff.

33. Prior to 1996, being placed on the Call Schedule at NBMC was considered to be both a duty that Medical Staff members had as well as a right that each individual member of the Medical Staff of NBMC had.

34. The right to be on the Call Schedule for NBMC had great value in that physicians who were on the Call Schedule derived a great deal of income and medical fees from the patient referrals they received, the consultations they performed and the emergency surgeries they performed as a direct result.

35. Thus, the right to be on the Call Schedule at NBMC was a valuable property right.

36. Prior to 1996, the Medical Staff of NBMC itself (as opposed to the paid administrators of NBMC) controlled and was in charge of placing physicians on the Call

Schedule and determining whether or not a physician was qualified to be placed on the Call Schedule.

37. From at least 1988 to 1996, NBMC had a separate fund for and paid "On Call" physicians, including Dr. Merkle, when the On Call physicians were called in to treat indigent patients. This was done pursuant to the NBMC Policy on Physician Payment for Uncompensated Care Program ("PPUC" or "PPUC Policy"), Exhibit "1."

38. In 1996, Dr. Merkle was on the NBMC Call Schedule. From 1988 to 1996, Dr. Merkle treated patients pursuant to the PPUC Policy and received payment from NBMC for doing so.

39. In approximately 1996, the administration of NBMC unilaterally decided to develop two (2) separate call schedules: one call schedule for indigent patients treated pursuant to the PPUC Policy (the "PPUC Call Schedule"), and the other call schedule for all other patients ("All Others Call Schedule").

40. However, at that time in 1996, the PPUC Call Schedule and the All Others Call Schedule were identical, so that the same physicians were placed on both call schedules and took call on nights and holidays for both patient populations (indigents and all others).

41. After this occurred in 1996, Dr. Merkle was on both of the NBMC Call Schedules.

42. In approximately 1998, the administration of NBMC unilaterally decided to implement three (3) separate call schedules, further dividing up and eliminating the "All Others Call Schedule."

43. In 1998, NBMC then implemented the following: one call schedule for indigent patients, the care for whom it reimbursed physicians ("PPUC Call Schedule"); a separate call schedule for trauma patients ("Trauma Call Schedule"); and a third call schedule for private pay patients ("Private Pay Call Schedule").

44. After this occurred in 1998, Dr. Merkle was on all three NBMC Call Schedules.

45. The Medical Staff Bylaws, Exhibit "2," are a valid, enforceable contract between NBMC and members of the Medical Staff of NBMC, including Dr. Merkle.

46. The Medical Staff Rules and Regulations, Exhibit "3," are a valid, enforceable contract between NBHD and the Medical Staff of NBMC, including Dr. Merkle.

47. At all times relevant hereto, Dr. Merkle was a member of the Medical Staff of NBMC and continues to be.

48. The "North Broward Medical Center Standard Policy, Procedure, Guidelines and Protocol Format; Subject: Surgical Specialist Availability" ("NBMC Policy and Procedures" or Exhibit "4") and the "North Broward Medical Center Surgery Department Rules and Regulations" ("Surgery Department Rules and Regulations" or Exhibit "5") are a valid contract between NBMC (or the Department of Surgery, a subdivision of NBMC) and the individual members of the NBMC Department of Surgery, including Dr. Merkle. Exhibits "4" and "5."

49. Dr. Merkle does not have a complete copy of Exhibit "5" so he has only attached an excerpt. Defendant NBHD has a complete copy of Exhibit "5."

50. At all times material hereto, Dr. Merkle was a member of the NBMC Department of Surgery.

51. Article X, Section A, of the Medical Staff Rules and Regulations, Exhibit "3," provides that physicians have a duty to take emergency call.

52. Article VII, Section H of the NBMC Department of Surgery Rules and Regulations states:

SECTION H: EMERGENCY COVERAGE

All active-primary staff members shall provide emergency service coverage and shall rotate emergency room call in their specialty in accordance with the Bylaws of the North Broward Hospital District. Provisional members may be required to serve on the emergency care service of the hospital at the discretion of the chief.

The Chief of Surgery shall authorize the Emergency Call Roster for each Section of the Department. Service in this capacity shall be on a rotation basis. The rotation list shall be made available in the Emergency Department, in the Medical Staff office, and on the computer.

Exhibit "5."

53. Article VIII, Section A, of the Rules and Regulations of the NBMC Department of Surgery, states that any discipline and corrective action must be in accordance with the Medical Staff Bylaws. Exhibit "5."

54. The NBMC Policy and Procedures, Exhibit "4," is a valid contract between NBMC and the individual members of the Medical Staff, including Dr. Merkle.

55. In 2000, a group of orthopedic surgeons decided to stop participating in the PPUC Call Schedule and the Trauma Call Schedule, resulting in different physicians taking calls on the

same night, but responsible for different groups of patients. Thus there were then two separate schedules.

56. Dr. Merkle was on both of these Call Schedules.

57. In or about April 2001, NBMC, through its agent, servant or employee, Joseph O'Connor, Assistant Administrator, presented the attached Proposed Physician Payment for Uncompensated Care/Orthopaedic Services Agreement (referred to herein as the "PPUC Agreement" or the "Agreement") (attached hereto as Exhibit "6") to Dr. Merkle and told him he would have to sign it.

58. The Agreement, Exhibit "6," reduced or eliminated the reimbursement paid to the physicians participating on the PPUC Call Schedule and on the Trauma Call Schedule.

59. NBMC, through the Agreement, sought to stop paying physicians who were on call for providing care to indigent patients outside a certain geographic area.

60. The Agreement, Exhibit "6," provides that when a physician is on the PPUC Call Schedule and provides medical care to any indigent patient residing outside a certain geographic area, then that physician would no longer be compensated for providing the care by NBMC.

61. NBMC, through the Agreement, Exhibit "6," also sought to cease reimbursing physicians on the PPUC Call Schedule when they provided medical treatment for Medicaid patients.

62. The orthopedic surgeons on the PPUC Call Schedule and the Trauma Call Schedule at NBMC, including Dr. Merkle, believed that the Agreement was unfair and unacceptable. They believed this, in part, because: 1) it would change the agreement by which they had previously provided medical care and been reimbursed for it; 2) it would require them

to provide medical services without being paid for them; and 3) the hospital would be able to bill and receive payment for treating some of the same patients it was seeking to have the physicians treat without reimbursing the physicians for providing care.

63. Consequently, Dr. Merkle refused to sign the Agreement, Exhibit "6."

64. Dr. Merkle entered into negotiations with NBMC to obtain modifications to the Agreement, Exhibit "6," to increase the reimbursement for the orthopedic surgeons on the PPUC Call Schedule and on the Trauma Call Schedule.

65. In or about May 2001, NBMC, through its agent, servant, or employee, Mr. Scott, directed Dr. Merkle to execute the Agreement, Exhibit "6," and threatened Dr. Merkle by stating to Dr. Merkle: "Sign the contract or we're going to have problems."

66. Again, Dr. Merkle refused to sign the Agreement.

67. On or about August 6, 2001, NBMC, through Mr. O'Connor and Mr. Scott, again directed Dr. Merkle to sign the Agreement, Exhibit "6."

68. At the same time Mr. O'Connor and Mr. Scott presented the Agreement to Dr. Merkle on August 6, 2001, Mr. O'Connor stated to Dr. Merkle that all of the other orthopedic surgeons on the NBMC Medical Staff who then participated in PPUC Call, the Trauma Call and the Private Pay Call Schedules had already executed the Agreement.

69. The statement made by Mr. O'Connor was false and was then known by Mr. O'Connor to be false, or Mr. O'Connor should have known it to be false, in that only one (1) of five (5) orthopedic surgeons, Dr. Helmy, had executed the PPUC Agreement, an agreement similar to Exhibit "6."

70. The foregoing false statement was made for the purpose of inducing Dr. Merkle to sign an unfair contract, the Agreement, Exhibit "6," a contract which he did not desire to sign.

71. Dr. Helmy later withdrew from or terminated his PPUC Agreement.

72. If executed by any of the orthopedic surgeons, the Agreement, Exhibit "6," would have expired on June 30, 2001.

73. At the same time as Mr. O'Connor and Mr. Scott presented the proposed PPUC Agreement to Dr. Merkle on August 6, 2001, Mr. Scott also told Dr. Merkle that he held several incident reports in his hand concerning allegations that had been made against Dr. Merkle.

74. Mr. Scott refused to inform Dr. Merkle of the information allegedly contained in the incident reports or any other specifics regarding them.

75. On or about August 20, 2001, NBMC was informed by Dr. Merkle that neither he nor any of the other five (5) orthopedic surgeons, would agree to sign the Agreement, Exhibit "6," or any similar agreement.

76. Shortly thereafter, Dr. Merkle was informed by a letter dated August 22, 2001, from Dr. Yalamanchi, Chief of the Surgery Department at NBMC, Exhibit "7," that Dr. Merkle was removed from the Private Pay Call Schedule at NBMC "because of recent incidents evidencing a continuing problem." Exhibit "7."

77. Such removal of Dr. Merkle from the Private Pay Call Schedule at NBMC was improper, wrongful, without cause and without authority.

78. Shortly thereafter, Dr. Merkle was informed by a letter dated August 24, 2001, from Mr. Scott, Chief Executive Officer (CEO) of NBMC (Exhibit "8"), that Dr. Merkle was removed from the PPUC Call Schedule and the Trauma Call Schedule at NBMC. Exhibit "8."

79. Such removal of Dr. Merkle from the PPUC Call Schedule and the Trauma Call Schedule at NBMC was improper, wrongful, without cause and without authority.

80. The Medical Staff Bylaws do not allow Mr. Scott or the administration of NBMC to determine which physicians may be included on or excluded from participation in any of the three (3) Call Schedules.

81. NBMC and Mr. Scott breached Article VI, Section A5 of the Medical Staff Bylaws by removing Dr. Merkle from the trauma and PPUC call schedules.

82. Dr. Merkle requested that NBMC provide him with an appeal of the decisions to remove Dr. Merkle from the Private Pay, PPUC and Trauma Call Schedules.

83. NBMC refused to review its unilateral decisions to remove Dr. Merkle from the Private Pay, PPUC and Trauma Call Schedules, or to provide him any avenue of hearing or appeal for these decisions.

84. The actions of NBMC and its officers, agents and employees, including Dr. Yalamanchi and Mr. Scott, constitute adverse disciplinary and corrective action against Dr. Merkle.

85. NBMC has refused to provide Dr. Merkle with any of the rights required by the Medical Staff Bylaws for such actions.

e. General Allegations of Conspiracy

86. Between April 2001 and the present, administrators, agents and employees of NBMC, including Dr. Westphal, Mr. Scott, Mr. O'Connor, Ms. Orr, Dr. Shapiro and Dr. Yalamanchi, agreed among themselves and with others (including those who were not officers,

agents or employee's of NBMC or NBHD) to, and took actions to, wrongfully and maliciously, accomplish the following objectives:

- a. Remove Dr. Merkle from the PPUC Call Schedule, the Trauma Call Schedule, and the Private Pay Call Schedule;
- b. Coerce and intimidate other orthopedic surgeons on the medical staff to sign the agreement by removing Dr. Merkle from the three Call Schedules;
- c. Prevent Dr. Merkle from treating patients at the North Broward Medical Center's Orthopaedic Clinic (the "Orthopaedic Clinic");
- d. Prevent Dr. Merkle from receiving payment for treating patients at the Orthopaedic Clinic;
- e. Prevent Dr. Merkle from negotiating better reimbursement for the orthopaedic physicians taking PPUC Call or on the PPUC Call Schedule;
- f. Reduce Dr. Merkle's income by removing Dr. Merkle from the list or pool of physicians referred to patients from NBMC's referral hotline; and
- g. Decrease the amount of money NBMC was paying to Dr. Merkle and other orthopedic surgeons for treating PPUC patients.

87. In furtherance of their objectives, administrators, agents and employees of NBMC encouraged employees of NBMC to wrongfully report any incidents involving Dr. Merkle to the administrators of NBMC, regardless of whether such incidents were, in fact, significant or met the existing criteria for reporting such incidents.

88. Each of the persons in Paragraph 86 above had a personal stake in the conspiracy.

f. General Allegations of Fraudulent and False Statements and Misrepresentations

89. Specifically, on or about September 2001, Danielle Orr, R.N., an employee of NBMC and the Head Nurse for the Orthopedic Surgery Unit at NBMC, maliciously and with the intent to cause harm to Dr. Merkle, without any justification or privilege, wrongfully convinced or coerced an orthopedic surgery technician, Mark Levinson, to sign an incident report, prepared by Ms. Orr, containing false statements, reporting Dr. Merkle to the administration of NBMC. This alleged "incident" concerned Dr. Merkle's use of an anesthetic in treating one of Dr. Merkle's orthopedic surgery patients at NBMC.

90. This action was taken solely in furtherance of the conspiracy and to assist NBMC, Dr. Westphal, Dr. Shapiro and Dr. Yalamanchi in accomplishing their goals to cause harm to Dr. Merkle.

91. Ms. Orr then knew that the statements were false or should have known that the statements were false.

92. The administration of NBMC then knew or should have known that the incident report prepared by Ms. Orr was false or contained material false statements.

93. Dr. Merkle appropriately used an anesthetic in treating the patient in question.

94. Ms. Orr intended others to receive and act on the false report.

95. Ms. Orr intended the Chief of Surgery, Dr. Yalamanchi, to act on the false statements by taking disciplinary or other harmful adverse action against him.

96. Ms. Orr also intended Mr. Scott, the CEO of NBMC, Dr. Westphal, Dr. Shapiro and others to act on the false statements by wrongfully continuing to keep Dr. Merkle off of the Call Schedules, and without cause, taking other actions harmful to Dr. Merkle.

97. As a result of receiving the false statements of Ms. Orr, actions were taken or sustained against Dr. Merkle, including his continued exclusion from the Call Schedules, damage to his professional reputation, a reduction in the referral of patients to him, and other harm.

98. This caused Dr. Merkle to lose patients and professional fees. Additionally, Dr. Merkle's professional reputation as a physician was damaged as well as his personal reputation.

99. Additionally, paragraphs 68 and 69 above are re-alleged herein as false statements and misrepresentations made by Mr. O'Conner to damage Dr. Merkle.

100. In or about August, 2001, NBMC through its agents, servants or employees devised and initiated a plan to deceive and knowingly misrepresent to physicians, hospital patients, members of the medical community and others the status of Dr. Merkle's clinical privileges to practice medicine and to perform surgery at NBMC.

101. NBMC, through its agents, servants, or employees, misrepresented that Dr. Merkle was professionally incompetent or was guilty of misfeasance or malfeasance sufficient to justify the termination of his medical staff privileges, his medical staff membership and his entitlement to be on the Call Schedules at NBMC. They also misrepresented that Dr. Merkle was under review or investigation for medical and surgical improprieties.

102. Beginning in August 2001, and continuing to date, agents, servants and employees of NBMC, at the direction of the NBMC administration, falsely communicated to hospital patients, Dr. Merkle's patients, medical doctors and other persons (including those who were not officers, agents or employee's of NBMC or NBHD) that Dr. Merkle's Emergency Department privileges at NBMC had been terminated.

103. Specifically in or about September 2001, Dr. Marc M. Aueron was falsely informed by an employee of NBMC that Dr. Merkle no longer had Emergency Department privileges and was no longer a member of the medical staff at NBMC.

104. In fact, Dr. Merkle's clinical privileges at NBMC had not been limited, restricted or terminated in any way, and Dr. Merkle still had Emergency Department privileges.

105. The NBMC employee knew or should have known that the statement was false.

106. The NBMC employee intended Dr. Aueron to act on the false statement by not referring patients to Dr. Merkle.

107. As a result of the statement, Dr. Aueron stopped referring patients to Dr. Merkle, stopped using him for consultations, and took other actions which caused loss of income to Dr. Merkle.

108. Beginning in August 2001 and continuing to date, agents, servants and employees of NBMC, at the direction of the NBMC administration, have falsely communicated to hospital patients, Dr. Merkle's patients, medical doctors and other persons that Dr. Merkle is not permitted to have referrals or consultations made to him from the Emergency Department of NBMC.

109. Because of said false representations made by NBMC, Dr. Merkle's referrals of orthopedic surgery patients from other physicians on the NBMC Medical Staff have significantly decreased.

110. NBMC, through its agents, servants, or employees wrongfully and tortiously intended to deceive and defraud the individual members of the NBMC Medical Staff and NBMC employees, to damage or ruin Dr. Merkle's medical practice, and to induce physicians and other

members of the medical community to refer patients to orthopedic surgeons other than Dr. Merkle, and to otherwise cause damage to Dr. Merkle.

g. General Allegations of Actions by NBMC that Place Dr. Merkle in a False Light

111. The administration of NBMC directed the staff of NBMC to remove Dr. Merkle from the premises of NBMC, should Dr. Merkle ever again enter upon the premises of the Orthopaedic Clinic, thereby intentionally harming Dr. Merkle's professional reputation and falsely implying or attributing gross and criminal wrongdoing to Dr. Merkle.

112. Between August 2001 and present, NBMC, through its agents, servants and employees, published the following facts about Dr. Merkle to other employees of NBHD and NBMC, physicians on the Medical Staff of NBMC, patients of NBMC and patients of Dr. Merkle:

- a. Dr. Merkle was not allowed to be on the premises of the Orthopaedic Clinic;
- b. Dr. Merkle could not take call for any other physician on any indigent, trauma or hand call schedule at NBMC;
- c. Dr. Merkle was prohibited from treating patients at the Orthopaedic Clinic; and
- d. Dr. Merkle was not on its list of acceptable trauma physicians.

113. The publication of the facts by NBHD, through its agents, servants and employees, placed Dr. Merkle in a false light. Specifically, the publication of the foregoing facts

made Dr. Merkle appear as if Dr. Merkle no longer had clinical privileges at NBMC, was no longer a member on the Medical Staff of NBMC and was not competent to practice medicine at NBMC.

114. Additionally, in July 2002, Dr. Merkle was approached by Depak Kapila, M.D., an orthopedic surgeon on the Medical Staff of Broward General Hospital ("BGH"), another medical facility owned and operated by NBHD.

115. Dr. Kapila asked Dr. Merkle to apply for clinical privileges and for medical staff membership at BGH telling Dr. Merkle that there was a shortage of orthopedic surgeons practicing there and Dr. Kapila wanted Dr. Merkle to help him cover the trauma calls and to help provide orthopedic surgery services there.

116. On or about July 15, 2002, Dr. Kapila approached Dr. Merkle again and told Dr. Merkle that he had been informed by officers, agents or employees of NBHD that Dr. Merkle was "not on its list of acceptable physicians" and would not be allowed to practice at BGH.

117. The publication of these facts by NBHD, through its agents, servants and employees, and other individuals, placed Dr. Merkle in a false light. Specifically, the publication of the foregoing facts made Dr. Merkle appear as if Dr. Merkle were an incompetent orthopedic surgeon, was unskilled, had his clinical privileges in orthopedic surgery denied or acted on by NBHD, or was otherwise unqualified as an orthopedic surgeon.

COUNT I

ACTION FOR INJUNCTIVE RELIEF FOR SLANDER (DEFAMATION PER SE)

AGAINST NBHD

118. This is an action in equity by Dr. Merkle for temporary and permanent injunctions for slanderous statements made, constituting defamation per se, against Defendant NBHD.

119. Plaintiff incorporates herein all allegations in Paragraphs 1 through 117 above.

120. In support of this Count, Dr. Merkle pleads the specific statements set forth in paragraphs 89, 102, 103 and 108, and also alleges that there were statements in addition to these.

121. The statements made by NBMC through its agents, servants and employees, by Dr. Yalamanchi, Mr. O'Connor, Ms. Orr, Mr. Scott and by others were known by each of them to be false when made, were without justification or cause and were made maliciously as retribution for Dr. Merkle's continued refusal to sign the Agreement and further for the purpose of thwarting the refusal by the other orthopedic surgeons led by Dr. Merkle to sign the proposed PPUC Agreement, and were defamatory.

122. By reason of the speaking of such remarks in the presence of and among others, including the patients of Dr. Merkle, hospital patients, medical doctors and others (including those who were not agents or employees of NBMC or NBHD), Dr. Merkle has been and continues to be greatly injured in his good name, character and reputation, brought into public scandal, infamy and disgrace as those who have heard or learned of said remarks believe that Dr. Merkle is professionally incompetent and is guilty of misfeasance and malfeasance sufficient to justify the termination of his clinical privileges, medical staff membership and service on the Call Schedules at NBMC.

123. NBHD and NBMC, through their agents, servants and employees, have initiated a plan of character assassination, harassment and intimidation against Dr. Merkle by disseminating

malicious, false, derogatory and misleading information about him and his skills, competence and qualifications to practice medicine at NBMC.

124. Additionally, Defendants' statements:

- a. Were made or published to third parties;
- b. Tended to subject Dr. Merkle to hatred, distrust, contempt or disgrace;
- c. Tended to injure Dr. Merkle, a practicing physician and orthopedic surgeon in his profession as a physician and orthopedic surgeon by disparaging his skills, competence and qualifications; and
- d. Attributed to Dr. Merkle either conduct, characteristics, or conditions incompatible with the proper exercise of his lawful profession as a physician and orthopedic surgeon.

125. As a direct and proximate result, Dr. Merkle has sustained and continues to sustain great damage to his personal reputation and to his professional reputation.

126. Plaintiff will suffer irreparable harm unless the conduct of the Defendants is enjoined in that Plaintiff's reputation will be harmed by continued slanderous statements.

127. Plaintiff has no adequate remedy at law, as monetary damages remedy past slanderous statements only.

128. Plaintiff has a substantial likelihood of success on the merits.

129. A temporary injunction will serve the public interest by allowing Dr. Merkle, a board certified orthopaedic surgeon skilled in treating seriously injured accident and trauma patients on an emergency basis, to provide these needed medical services to the public. This will also allow Dr. Merkle to continue to provide medical care and treatment to indigent patients from

the community in the emergency room of North Broward Medical Center. Additionally, it is the only way that many severely injured patients with orthopaedic injuries will be referred to a surgeon as highly skilled and experienced at treating such injuries as Dr. Merkle. It will also ensure the continuation of the availability of Dr. Merkle's medical care in the community which may be lost to it otherwise.

WHEREFORE, Dr. Merkle prays for:

- a. A temporary injunction enjoining Defendant NBHD and its officers, agents and employees, from making or promulgating any further slanderous or otherwise tortious communications until trial on the merits be had and judgment becomes final or as otherwise ordered by the Court;
- b. A permanent injunction permanently enjoining Defendant NBHD and its officers, agents and employees, from making or promulgating any slanderous or otherwise tortious communications restraining the slanderous communications; and
- c. Such other relief as this honorable Court may deem just and proper.

COUNT II

ALTERNATE ACTION FOR DAMAGES FOR SLANDER

(DEFAMATION PER SE) AGAINST NBHD

130. This is an action for damages by Dr. Merkle in an amount in excess of \$15,000, exclusive of interest and costs, for slander (defamation per se) against Defendant NBHD.

131. Plaintiff incorporates herein all allegations in Paragraphs 1-117 and 120-125 above.

132. The statements made by NBMC through its agents, servants and employees, by Dr. Yalamanchi, Mr. O'Connor, Ms. Orr, Mr. Scott and by others were known by each of them to be false when made, were without justification or cause and were made maliciously as retribution for Dr. Merkle's continued refusal to sign the Agreement and further for the purpose of thwarting the refusal by the other orthopedic surgeons led by Dr. Merkle to sign the proposed PPUC Agreement, and were defamatory.

133. By reason of the speaking of such remarks in the presence of and among others, including the patients of Dr. Merkle, hospital patients, medical doctors and others (including those who were not agents or employees of NBMC or NBHD), Dr. Merkle has been and continues to be greatly injured in his good name, character and reputation, brought into public scandal, infamy and disgrace as those who have heard or learned of said remarks believe that Dr. Merkle is professionally incompetent and is guilty of misfeasance and malfeasance sufficient to justify the termination of his clinical privileges, medical staff membership and service on the Call Schedules at NBMC.

134. NBHD and NBMC, through their agents, servants and employees, have initiated a plan of character assassination, harassment and intimidation against Dr. Merkle by disseminating malicious, false, derogatory and misleading information about him and his skills, competence and qualifications to practice medicine at NBMC.

135. As a direct and proximate result, Dr. Merkle has sustained damage to his professional reputation and to his personal reputation, including loss of income.

WHEREFORE, Dr. Merkle prays for judgment against NBHD for:

- a. Monetary damages, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT III

ALTERNATE ACTION FOR DAMAGES FOR SLANDER (DEFAMATION PER SE)

AGAINST MR. SCOTT AND MR. O'CONNOR, INDIVIDUALLY

136. This is an action by Dr. Merkle for damages in an amount in excess of \$15,000, exclusive of interest and costs, for slander against Defendants Scott and O'Connor.

137. Plaintiff incorporates herein all allegations in Paragraphs 1-117 above.

138. All statements made by Mr. Scott and Mr. O'Connor set forth or referred to in this Count were made by them outside of the scope of their duties as employees, officers or agents of NBMC and NBHD and were not for the benefit of NBHD. As such, they are each individually liable for such statements.

139. The statements made by Mr. Scott and Mr. O'Connor were known by each of them to be false when made, were without justification or cause and were made maliciously as retribution against Dr. Merkle.

140. By reason of the speaking of such remarks in the presence of and among others, including the patients of Dr. Merkle, hospital patients, medical doctors and others (including those who were not agents or employees of NBMC or NBHD), Dr. Merkle has been and continues to be greatly injured in his good name, character and reputation, brought into public scandal, infamy and disgrace as those who have heard or learned of said remarks believe that Dr.

Merkle is professionally incompetent and is guilty of misfeasance and malfeasance sufficient to justify the termination of his clinical privileges, medical staff membership and service on the Call Schedules at NBMC.

141. Mr. Scott and Mr. O'Connor, in part through the statements they made, participated in character assassination, harassment and intimidation against Dr. Merkle by making and disseminating malicious, false, derogatory and misleading statements and information about him and his qualifications to practice medicine.

142. Paragraphs 121-125 above are realleged herein.

WHEREFORE, Dr. Merkle prays for judgment against Mr. Scott and Mr. O'Connor, holding them jointly, severally and individually liable for:

- a. Monetary damages, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT IV

ACTION FOR INJUNCTION FOR LIBEL (DEFAMATION PER SE) AGAINST NBHD

143. This is an action in equity for an injunction for libel (defamation per se) against Defendant, NBHD.

144. Plaintiff incorporates herein the allegations in Paragraphs 1-117 and 120-129 above.

145. On August 22, 2001, NBMC through its agent, servant and employee Dr. Yalamanchi falsely and maliciously wrote and published or caused to be written and published

the following words about Dr. Merkle: "This decision is based upon recent incidents which evidence a continuing problem." Exhibit "7."

146. This statement was false in several respects, including the following:

- a. There were no recent "incidents."
- b. There was no "continuing problem" with Dr. Merkle or his care of patients.
- c. The decision was not based on any incidents or any continuing problem.
- d. Such a statement when made about a physician by a person in Dr.

Yalamanchi's position indicates that the physician lacks clinical skill or medical competence, which would be false when made about Dr. Merkle.

147. The false statement was published to others, including other physicians having clinical privileges at NBMC, to nonphysician employees of NBMC, and to others who were not officers, agents or employees of NBMC or NBHD.

148. By reason of the foregoing false and libelous statement, willfully and maliciously made and published by the defendant aforesaid, Dr. Merkle has been and continues to be greatly injured in his good name, character and reputation, fame and credit, and has been brought into public scandal, infamy and disgrace, because: 1) those who have learned of said writing believe that Dr. Merkle is professionally incompetent and 2) is guilty of misfeasance or malfeasance sufficient to justify the termination of his clinical privileges, medical staff membership, and right to be service on the Call Schedules at NBMC.

149. At all times relevant hereto, Dr. Yalamanchi was acting as the employee or agent of NBMC and NBHD, or a subdivision of NBMC and NBHD, and within the course and scope of his duties or employment.

150. All statements made by Dr. Yalamanchi set forth or referred to in this Count were made by him pursuant to his duties as an employee or agent of NBMC and NBHD.

151. The statements made by NBMC through its agent, servant or employee, by Dr. Yalamanchi, were known by him to be false when made, were without justification or cause and were made maliciously as retribution against Dr. Merkle for Dr. Merkle's continued refusal to sign the Agreement and further for the purpose of thwarting the refusal by the other orthopedic surgeons led by Dr. Merkle to sign the proposed PPUC Agreement.

152. As a direct and proximate result, Dr. Merkle has sustained and continues to sustain great damage to his personal reputation and to his professional reputation.

153. Plaintiff will suffer irreparable harm unless the conduct of the Defendants is enjoined in that Plaintiff's reputation will be harmed by continued slanderous statements.

154. Plaintiff has no adequate remedy at law, as monetary damages remedy past slanderous statements only.

155. A temporary injunction will serve the public interest by allowing Dr. Merkle, a board certified orthopaedic surgeon skilled in treating seriously injured accident and trauma patients on an emergency basis, to provide these needed medical services to the public. This will also allow Dr. Merkle to continue to provide medical care and treatment to indigent patients from the community in the emergency room of North Broward Medical Center. It will also ensure the

continuation of the availability of Dr. Merkle's medical care in the community which may be lost to it otherwise.

WHEREFORE, Dr. Merkle prays for:

- a. A temporary injunction enjoining Defendant NBHD and its officers, agents and employees, from making or promulgating any further libelous or otherwise tortious communications until trial on the merits be had and judgment becomes final or as otherwise ordered by the Court;
- b. A permanent injunction permanently enjoining Defendant NBHD and its officers, agents and employees, from making or promulgating any libelous or otherwise tortious communications restraining the slanderous communications; and
- c. Such other relief as this honorable Court may deem just and proper.

COUNT V

ALTERNATE ACTION FOR DAMAGES FOR LIBEL AGAINST NBHD

156. This is an action in for damages in excess of \$15,000, exclusive of interest and costs, for libel against Defendant, NBHD.

157. Plaintiff incorporates herein all allegations in Paragraphs 1-117, 120-125 and 142-152 above.

158. On August 22, 2001, NBMC through its agent, servant and employee Dr. Yalamanchi falsely and maliciously wrote and published or caused to be written and published the following words about Dr. Merkle: "This decision is based upon recent incidents which evidence a continuing problem." Exhibit "7."

159. The false statement was published to others, including other physicians having clinical privileges at NBMC, to nonphysician employees of NBMC, and to others who were not officers, agents or employees of NBMC or NBHD.

160. By reason of the foregoing false and libelous statement, willfully and maliciously made and published by the defendant aforesaid, Dr. Merkle has been and continues to be greatly injured in his good name, character and reputation, fame and credit, and has been brought into public scandal, infamy and disgrace, because: 1) those who have learned of said writing believe that Dr. Merkle is professionally incompetent and 2) is guilty of misfeasance or malfeasance sufficient to justify the termination of his clinical privileges, medical staff membership, and right to be service on the Call Schedules at NBMC.

161. At all times relevant hereto, Dr. Yalamanchi was acting as the employee or agent of NBMC and NBHD, or a subdivision of NBMC and NBHD, and within the course and scope of his duties or employment.

162. All statements made by Dr. Yalamanchi set forth or referred to in this Count were made by him pursuant to his duties as an employee or agent of NBMC and NBHD.

163. The statements made by NBMC through its agent, servant or employee, by Dr. Yalamanchi, were known by him to be false when made, were without justification or cause and were made maliciously as retribution against Dr. Merkle for Dr. Merkle's continued refusal to sign the Agreement and further for the purpose of thwarting the refusal by the other orthopedic surgeons led by Dr. Merkle to sign the proposed PPUC Agreement.

164. As a direct and proximate result, Dr. Merkle has sustained damage to his professional reputation and to his personal reputation, including loss of income.

WHEREFORE, Dr. Merkle prays for judgment against NBHD for:

- a. Monetary damages, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT VI

ACTION AGAINST NBHD FOR INJUNCTION FOR TORTIOUS INTERFERENCE

WITH ADVANTAGEOUS BUSINESS RELATIONSHIPS

165. This is an action in equity by Dr. Merkle for an injunction against its tortious interference with an advantageous business relationship, against Defendant NBHD.

166. Plaintiff incorporates all allegations in Paragraphs 1-117, 120-122, and 125-129 above.

167. Dr. Merkle has developed advantageous business relationships with referring physicians in the community and who are also on the medical staff of NBMC including Dr. Marc Aueron and Dr. Depah Kapila. These physicians refer patients requiring orthopedic surgery evaluations, consultations, treatment and surgery to Dr. Merkle for his care.

168. Dr. Merkle also has existing relationships with patients who require his care, including follow-up care and treatment, some of which he began providing at NBMC.

169. Additionally, Dr. Merkle had contracts with the Medicare Program, health maintenance organizations (HMO's), managed health care companies, health care insurers and others (collectively referred to herein as "Third Party Payers"), which require him to treat

patients covered by them at NBMC and to receive payment from these Third Party Payers for providing such care.

170. These relationships were advantageous to Dr. Merkle and he received income from them.

171. NBMC and the agents, servants and employees of NBMC knew of the relationships Dr. Merkle had with referring physicians, with patients, and with Third Party Payers.

172. NBMC and the agents, servants, and employees of NBMC intentionally and unjustifiably interfered with Dr. Merkle's relationships with referring physicians, with patients and with Third Party Payers:

- a. By stating that Dr. Merkle no longer had ED privileges.
- b. By stating that Dr. Merkle was no longer a member of the medical staff.
- c. By stating that Dr. Merkle is not permitted to have referrals or consultations made to him from the Emergency Department of NBMC.
- d. By prohibiting Dr. Merkle from treating patients at the orthopaedic clinic.
- e. By stating that Dr. Merkle was not on NBHD's list of acceptable trauma physicians.

173. The conduct, actions and activities of Defendant NBMC through its agents, servants, employees or apparent same, were undertaken with the malicious intent to interfere with the economic relationships by and between Dr. Merkle and various other physicians, hospital patients and other individuals and entities yet to be identified.

174. The tortious conduct, actions and activities of NBMC through its agents, servants and employees, demonstrate a willful, wanton, intentional and malicious disregard for the consequences and are deliberate efforts to cause financial, professional and personal harm to Dr. Merkle.

As a direct and proximate result, Dr. Merkle has sustained and continues to sustain great damage to his personal reputation and to his professional reputation.

175. Plaintiff will suffer irreparable harm unless the conduct of the Defendants is enjoined in that Plaintiff's reputation will be harmed by continued slanderous statements.

176. Plaintiff has no adequate remedy at law, as monetary damages remedy past slanderous statements only.

177. A temporary injunction will serve the public interest by allowing Dr. Merkle, a board certified orthopaedic surgeon skilled in treating seriously injured accident and trauma patients on an emergency basis, to provide these needed medical services to the public. This will also allow Dr. Merkle to continue to provide medical care and treatment to indigent patients from the community in the emergency room of North Broward Medical Center. It will also ensure the continuation of the availability of Dr. Merkle's medical care in the community which may be lost to it otherwise.

WHEREFORE, Dr. Merkle prays for:

- a. A temporary injunction enjoining Defendant NBHD and its officers, agents and employees, from any interference with the business relationships of Dr. Merkle set forth in this Count until trial on the merits be had and judgment becomes final or as otherwise ordered by the Court;

- b. A permanent injunction permanently enjoining Defendant NBHD and its officers, agents and employees, from any interference with the business relationships of Dr. Merkle set forth in this Count; and
- c. Such other relief as this honorable Court may deem just and proper.

COUNT VII

ALTERNATE ACTION AGAINST NBHD FOR DAMAGES FOR TORTIOUS INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONSHIPS

178. This is an action for damages in excess of \$15,000, exclusive of interest and costs, for the tortious interference with an advantageous business relationship against Defendant NBHD.

179. Plaintiff incorporates all allegations in Paragraphs 1-117 and 156-168 above.

180. NBMC and the agents, servants, and employees of NBMC intentionally and unjustifiably interfered with Dr. Merkle's relationships with referring physicians, with patients and with Third Party Payers:

- a. By stating that Dr. Merkle no longer had ED privileges.
- b. By stating that Dr. Merkle was no longer a member of the medical staff.
- c. By stating that Dr. Merkle is not permitted to have referrals or consultations made to him from the Emergency Department of NBMC.
- d. By prohibiting Dr. Merkle from treating patients at the orthopaedic clinic.
- e. By stating that Dr. Merkle was not on NBHD's list of acceptable trauma physicians.

181. The conduct, actions and activities of Defendant NBMC through its agents, servants, employees or apparent same, were undertaken with the malicious intent to interfere with the economic relationships by and between Dr. Merkle and various other physicians, hospital patients and other individuals and entities yet to be identified.

182. The tortious conduct, actions and activities of NBMC through its agents, servants and employees, demonstrate a willful, wanton, intentional and malicious disregard for the consequences and are deliberate efforts to cause financial, professional and personal harm to Dr. Merkle.

183. As a direct and proximate result, Dr. Merkle has sustained and continues to sustain great damage to his personal reputation and to his professional reputation.

184. As a direct and proximate result of the foregoing, Dr. Merkle has sustained financial loss, loss of business and other pecuniary damages.

WHEREFORE, Dr. Merkle prays for judgment against NBHD for:

- a. Monetary damages, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT VIII

ALTERNATE ACTION FOR DAMAGES FOR TORTIOUS INTERFERENCE

WITH ADVANTAGEOUS BUSINESS RELATIONSHIPS

AGAINST MR. SCOTT, MR. O'CONNOR, MS. ORR AND

DR. SHAPIRO, INDIVIDUALLY

185. This is an action for damages in excess of \$15,000, exclusive of interest and costs, for the tortious interference with an advantageous business relationship against Defendants Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro, individually.

186. Plaintiff incorporates herein all allegations in Paragraphs 1-117 and 154-161 above.

187. The Medical Staff Bylaws do not allow Mr. Scott or the administration of NBMC to determine which physicians may be included on or excluded from participation in any of the three (3) Call Schedules.

188. NBMC and Mr. Scott breached Article VI, Section A5 of the Medical Staff Bylaws by removing Dr. Merkle from the trauma and PPUC Call Schedules.

189. Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro knew of Dr. Merkle's advantageous business relationships.

190. Mr. Scott interfered with Dr. Merkle's advantageous business relationships with referring physicians and patients, among other ways, by removing Dr. Merkle from the PPUC and Trauma Call Schedules.

191. Mr. O'Conner interfered with Dr. Merkle's advantageous business relationships with referring physicians and patients, among other ways, by making false reports and spreading false statements about Dr. Merkle, encouraging staff members to make unjustified reports to the administration on Dr. Merkle, and having removing Dr. Merkle from the PPUC and Trauma Call Schedules.

192. Ms. Orr interfered with Dr. Merkle's advantageous business relationships with referring physicians and patients, among other ways, by making false reports on Dr. Merkle,

encouraging other staff members to make false reports, by encouraging other staff members to make unjustified reports to the administration on Dr. Merkle, and having Dr. Merkle removed from the PPUC and Trauma Call Schedules.

193. Dr. Shapiro interfered with Dr. Merkle's advantageous business relationships with referring physicians and patients, among other ways, making false reports on Dr. Merkle, by encouraging other staff members to make unjustified reports to the administration on Dr. Merkle, and having Dr. Merkle removed from the PPUC and Trauma Call Schedules.

194. All actions taken by Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro set forth or referred to in this Count were made by them outside of the scope of their duties as employees, officers or agents of NBMC and NBHD and were not for the benefit of NBHD. As such, they are each individually liable for such actions.

195. The actions taken by Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro were without justification or cause and were taken as retribution against Dr. Merkle.

196. As a direct and proximate result, Dr. Merkle has sustained damage to his professional reputation and to his personal reputation, including loss of income, loss of referrals of patients, and an inability to pursue his business relationships at NBMC.

WHEREFORE, Dr. Merkle prays for judgment against Mr. Scott, Mr. O'Connor, Ms. Orr, and Dr. Shapiro, holding them jointly, severally and individually liable for:

- a. Monetary damages, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT IX

ACTION FOR DAMAGES FOR CONSPIRACY AGAINST NBHD, MR. SCOTT,

MR. O'CONNOR, MS. ORR, AND DR. SHAPIRO

197. This is an action for damages by Dr. Merkle, in excess of \$15,000, exclusive of interest and costs, for conspiracy to harm Dr. Merkle through fraud against Defendants, NBHD, Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro.

198. Plaintiff incorporates all allegations in Paragraphs 1-117 and 167-176 above.

199. Beginning in or about August 2001, Defendants, NBHD, Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro, maliciously conspired together in Broward County, Florida, with the intent to injure Dr. Merkle, by making false statements against him and by tortiously interfering with the advantageous business relationships which Dr. Merkle had. Defendants wrongfully removed Dr. Merkle from the PPUC Call Schedule, Trauma Call Schedule and the Private Pay Call Schedules by fraudulent means. Defendants also wrongfully deprived Dr. Merkle of income and property and harmed his reputation by slandering Dr. Merkle.

200. Additional co-conspirators included Dr. Yalamanchi, Dr. Westphal, and other persons not agents or employees of NBHD or NBMC.

201. Each of the co-conspirators had a personal stake in the conspiracy.

202. In furtherance of conspiracy to remove Dr. Merkle from the Call Schedules, the administration of NBMC instructed its employees and staff to actively look for and report any incidents or allegations involving Dr. Merkle to the administrators of NBMC, whether those allegations met the previously established threshold criteria for such reports or not.

203. In furtherance of the conspiracy, to remove Dr. Merkle from the Call Schedules, Ms. Orr, an employee of NBMC, prepared a false incident report and submitted the report to the administrators of NBMC in or about September 2001.

204. Preparation of the false report was outside the scope of Ms. Orr's employment.

205. At the time Ms. Orr prepared the false report, Ms. Orr knew that the report was false.

206. Ms. Orr intended Dr. Yalamanchi, Mr. Scott, Dr. Shapiro, Dr. Westphal, and others to act on the false report by wrongfully continuing to keep Dr. Merkle off the Call Schedules.

207. Dr. Yalamanchi, Mr. Scott, Dr. Shapiro, Dr. Westphal and others relied on Ms. Orr's statements and wrongfully kept Dr. Merkle off of the Call Schedules.

208. In furtherance of the conspiracy, an employee of NBHD stated to Dr. Marc Aueron that Dr. Merkle no longer had Emergency Department privileges and was no longer a member of the medical staff at NBMC.

209. The false statement injured Dr. Merkle in his profession because it disparaged his skills, competence and qualifications.

210. The NBMC employee knew or should have known that the statement was false.

211. The NBMC employee intended Dr. Aueron to act on the false statement by not referring patients to Dr. Merkle.

212. As a result of the statement, Dr. Aueron stopped referring patients to Dr. Merkle, stopped using him for consultations, and took other actions which caused loss of income to Dr. Merkle.

212. As a result of the conspiracy, Dr. Merkle was removed from and kept off of the PPUC Call Schedule, the Trauma Call Schedule and the Private Pay Call Schedule and he suffered financial loss, including loss of patients, loss of income and damage to his personal and professional reputation.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages, including prejudgment interest on all liquidated amounts, and postjudgment interest, against NBHD, Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro, holding them jointly and severally liable; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT X

**ACTION FOR INJUNCTION FOR VIOLATION OF DUE PROCESS UNDER
THE FLORIDA CONSTITUTION, ARTICLE I, SECTION 9, AGAINST NBHD**

213. This is an action in equity by Dr. Merkle for an injunction for violation of his right to due process of law under Article I, Section 9, of the Florida Constitution, against Defendant NBHD.

214. Plaintiff incorporates all allegations in Paragraphs 1-117.

215. Dr. Merkle is a citizen of the State of Florida and, as such, has the right to due process of law as stated in Article I, Section 9 of the Florida Constitution.

216. NBHD is a statutorily created entity of the State of Florida and NBMC is a division of NBHD.

217. By removing Dr. Merkle from the Call Schedules, NBHD through its subdivision NBMC took adverse disciplinary action and corrective action against Dr. Merkle, without providing him the rights required by Medical Staff Bylaws (Exhibit "2") and the constitutional rights set forth in this Count.

218. NBHD through its subdivision NBMC deprived Dr. Merkle of a valuable property right, without providing him the rights required by Medical Staff Bylaws and the constitutional rights set forth in this Count.

219. Defendant NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to advise Dr. Merkle of the alleged "incidents," complaints or charges made against him.

220. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to advise Dr. Merkle of the consequences of the alleged "incidents," complaints, or charges made against him.

221. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to provide Dr. Merkle a proper forum for a hearing of said alleged "incidents," complaints, or charges made against him.

222. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to afford Dr. Merkle the opportunity to refute the alleged "incidents," complaints, or charges made against him.

223. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to afford Dr. Merkle an opportunity to confront complainants or his

accusers, question and cross-examine witnesses and to otherwise prepare a defense against the alleged "incidents," complaints, or charges made against him.

224. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to afford Dr. Merkle the opportunity to be represented by counsel as to the alleged "incidents," complaints, or charges made against him.

225. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, at all relevant times during the course hereof, presumed the guilt of Dr. Merkle of the alleged "incidents," complaints, or charges made against him and did not give him the opportunity to present his side of the event or any defense to the event.

226. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to afford Dr. Merkle access to any administrative procedure to appeal the decisions to remove Dr. Merkle from the Call Schedules of NBMC that allegedly resulted from the alleged "incidents," complaints, or charges made against him.

227. The conduct, actions, and activities undertaken by NBHD, NBMC, Mr. Scott and Dr. Yalamanchi evidence the appearance of impropriety, self-dealing and bias which foreclosed the opportunity for Dr. Merkle to be afforded a fair hearing by an impartial decision maker.

228. The foregoing constitutes an actionable violation of the Dr. Merkle's constitutional rights by NBHD.

WHEREFORE, Dr. Merkle prays for:

- a. A temporary injunction directing NBHD and its subdivision, NBMC, to reinstate Dr. Merkle to the Trauma Call Schedule, PPUC Call Schedule and the Private Pay

Call Schedule, of NBMC until trial on the merits be had and judgment becomes final or as otherwise ordered by the Court;

- b. A permanent injunction directing NBHD and its subdivision, NBMC, to reinstate Dr. Merkle to the Trauma Call Schedule, PPUC Call Schedule and the Private Pay Call Schedule, of NBMC;
- c. Alternatively, an injunction requiring NBHD to provide Dr. Merkle a hearing and other due process rights prior to enforcing any decision to remove Dr. Merkle from the Trauma Call Schedule, PPUC Call Schedule and the Private Pay Call Schedule, of NBMC; and
- d. Such other relief as this Honorable Court may deem just and proper.

COUNT XI

**ALTERNATE ACTION FOR DAMAGES FOR VIOLATION OF DUE PROCESS
UNDER THE FLORIDA CONSTITUTION, ARTICLE I, SECTION 9, AGAINST NBHD**

229. This is an action for damages in excess of \$15,000, exclusive of interest or costs, by Dr. Merkle, for violation of his right to due process of law under Article I, Section 9, of the Florida Constitution, against Defendant NBHD.

230. Plaintiff incorporates all allegations in Paragraphs 1-117, and 196-209 above.

231. By removing Dr. Merkle from the Call Schedules, NBHD through its subdivision NBMC took adverse disciplinary action and corrective action against Dr. Merkle, without providing him the rights required by Medical Staff Bylaws (Exhibit "2") and the constitutional rights set forth in this Count.

232. NBHD through its subdivision NBMC deprived Dr. Merkle of a valuable property right, without providing him the rights required by Medical Staff Bylaws and the constitutional rights set forth in this Count.

233. Defendant NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to advise Dr. Merkle of the alleged "incidents," complaints or charges made against him.

234. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to advise Dr. Merkle of the consequences of the alleged "incidents," complaints, or charges made against him.

235. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to provide Dr. Merkle a proper forum for a hearing of said alleged "incidents," complaints, or charges made against him.

236. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to afford Dr. Merkle the opportunity to refute the alleged "incidents," complaints, or charges made against him.

237. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to afford Dr. Merkle an opportunity to confront complainants or his accusers, question and cross-examine witnesses and to otherwise prepare a defense against the alleged "incidents," complaints, or charges made against him.

238. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to afford Dr. Merkle the opportunity to be represented by counsel as to the alleged "incidents," complaints, or charges made against him.

239. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, at all relevant times during the course hereof, presumed the guilt of Dr. Merkle of the alleged "incidents," complaints, or charges made against him and did not give him the opportunity to present his side of the event or any defense to the event.

240. NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi, failed to afford Dr. Merkle access to any administrative procedure to appeal the decisions to remove Dr. Merkle from the Call Schedules of NBMC that allegedly resulted from the alleged "incidents," complaints, or charges made against him.

241. The conduct, actions, and activities undertaken by NBHD, NBMC, Mr. Scott and Dr. Yalamanchi evidence the appearance of impropriety, self-dealing and bias which foreclosed the opportunity for Dr. Merkle to be afforded a fair hearing by an impartial decision maker.

242. The foregoing constitutes an actionable violation of the Dr. Merkle's constitutional rights by NBHD.

243. Dr. Merkle was deprived of income and valuable property rights as a result of the actions of NBHD.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages in excess of \$15,000, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XII

ACTION FOR INJUNCTION FOR VIOLATION OF DUE PROCESS UNDER THE UNITED STATES CONSTITUTION AGAINST NBHD

244. This is an action by Dr. Merkle for an injunction for violation of the right to due process of law under the Fifth and Fourteenth Amendments of United States Constitution against Defendant, NBHD.

245. Plaintiff incorporates all allegations in Paragraphs 1-117 above.

246. Dr. Merkle is a citizen of the United States of America and as such is entitled to due process of law under the Fifth Amendment of the United States Constitution, as applied to the states by the Fourteenth Amendment of the United States Constitution.

247. Plaintiff incorporates all allegations in Paragraphs 197-209 above.

WHEREFORE, Dr. Merkle prays for:

- a. A temporary injunction directing NBHD and its subdivision, NBMC, to reinstate Dr. Merkle to the Trauma Call Schedule, PPUC Call Schedule and the Private Pay Call Schedule, of NBMC until trial on the merits be had and judgment becomes final or as otherwise ordered by the Court;
- b. A permanent injunction directing NBHD and its subdivision, NBMC, to reinstate Dr. Merkle to the Trauma Call Schedule, PPUC Call Schedule and the Private Pay Call Schedule, of NBMC;
- c. Alternatively, an injunction requiring NBHD to provide Dr. Merkle a hearing and other due process rights prior to enforcing any decision to remove Dr. Merkle from the Trauma Call Schedule, PPUC Call Schedule and the Private Pay Call Schedule, of NBMC;
- d. Such other relief as this Honorable Court may deem just and proper.

COUNT XIII

ALTERNATE ACTION FOR DAMAGES FOR VIOLATION OF DUE PROCESS

UNDER THE UNITED STATES CONSTITUTION AGAINST NBHD

248. This is an action for damages in excess of \$15,000, exclusive of interest or costs, by Dr. Merkle, for violation of his right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution, against Defendant NBHD.

249. Plaintiff incorporates all allegations in Paragraphs 1-117 above.

250. Dr. Merkle is a citizen of the United States of America and as such is entitled to due process of law under the Fifth Amendment of the United States Constitution, as applied to the states by the Fourteenth Amendment of the United States Constitution.

251. Plaintiff incorporates all allegations in Paragraphs 197-209 above.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages against NBHD, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XIV

ACTION FOR DAMAGES FOR BREACH OF CONTRACT BY ESTOPPEL FOR PARTICIPATION IN PPUC PROGRAM AGAINST NBHD

228. This is an action for damages in excess of \$15,000, exclusive of interest and costs, for breach of contract by estoppel against Defendant NBHD.

229. Plaintiff incorporates herein all allegations in Paragraphs 1-117 above.

230. From some time prior to 1988 through at least January 1998, NBMC agreed with orthopedic surgeons, including Dr. Merkle, to provide care to indigent patients in the emergency room of NBMC.

231. In exchange for their agreeing to take calls involving indigent patients, to treat and consult on indigent patients received in the NBMC Emergency Department ("ED"), to perform surgery on indigent patients, and to otherwise perform services including orthopaedic surgery on indigent patients, including participation on the PPUC Call Schedule from at least

1998 on, Dr. Merkle was to receive reimbursement from NBMC for providing medical care to indigent patients at NBMC.

232. Dr. Merkle and the other orthopedic surgeons were each paid based on the total claims each of them submitted for reimbursement through the PPUC program, from approximately January 1998 on.

233. NBMC and Dr. Yalamanchi breached Article X, Section A of the Medical Staff Rules and Regulations, Exhibit "3," which provides that physicians have a duty to take emergency calls. NBMC and Dr. Yalamanchi also breached Article VIII Section A of the "North Broward Medical Center Surgery Department Rules and Regulations" ("Surgery Department Rules and Regulations"), Exhibit "5," which provides that any discipline and corrective action must be in accordance with the Medical Staff Bylaws.

234. The foregoing constituted an enforceable agreement by and between Dr. Merkle and NBMC, which NBMC is estopped from denying.

235. On or about August 24, 2001, Dr. Merkle was informed by letter from Mr. Scott of NBMC that Dr. Merkle was removed from the PPUC Call Schedule. Exhibit "8."

236. NBMC breached its agreement with Dr. Merkle by removing him from the PPUC program, not allowing him to be on the PPUC Call Schedule, and not paying him for treating indigent patients in NBMC's Emergency Department.

237. As a direct result, Dr. Merkle lost patients, lost business, lost income and was harmed thereby.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages against NBHD, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XV

ACTION FOR EQUITABLE ESTOPPEL FOR

PARTICIPATION IN PPUC PROGRAM AGAINST NBHD

238. This is an action in equity for damages for equitable estoppel, against NBHD.
239. Plaintiff incorporates herein all allegations in Paragraphs 1-117 and 223-229 above.
240. At all material times hereto, Defendant represented to Plaintiff that if he served as an orthopedic surgeon on the Medical Staff of NBMC and desired to treat indigent patients, he could and would be allowed to take calls and be on the Call Schedules for indigent patients and that NBMC would pay him for providing such care and treatment.
241. The foregoing were material facts upon which Plaintiff relied.
242. Plaintiff changed his position as a result of the representations of NBMC.
243. Defendant NBMC later asserted a contrary condition of affairs.
244. On or about August 24, 2001, Dr. Merkle was informed by letter from Mr. Scott of NBMC that Dr. Merkle was removed from the PPUC Call Schedule. Exhibit "8."
245. NBMC removed Dr. Merkle from the PPUC Program, did not allow him to be on the PPUC Call Schedule, and refused to pay him for treating indigent patients in NBMC's ED.
246. Plaintiff suffered detriment by a change in position as a result of the representation of Defendant and his reliance thereon.

247. As a direct result, Dr. Merkle lost patients, lost business, lost income and was harmed thereby.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages against NBHD, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XVI

ACTION FOR DAMAGES FOR BREACH OF CONTRACT BY ESTOPPEL FOR PARTICIPATION IN TRAUMA CALL AND PRIVATE PAY CALL AGAINST NBHD

248. This is an action for damages in excess of \$15,000, exclusive of interest and costs, for breach of contract by estoppel against Defendant NBHD.

249. Plaintiff incorporates herein all allegations in Paragraphs 1-117 above.

250. Since Dr. Merkle became a member of the Medical Staff of NBMC in 1988, all orthopedic surgeons were required to be members of the Medical Staff of NBMC for two (2) years, prior to taking calls in the Emergency Department ("ED") of NBMC.

251. This policy on Emergency Department call constituted an enforceable agreement between NBMC and the orthopedic surgeons with privileges at NBMC, including Dr. Merkle.

252. From some time prior to 1988 through at least January 1998, NBMC agreed with orthopedic surgeons, including Dr. Merkle, serve on the Call Schedule, after they qualified to do so, and to be "on call" for the ED of NBMC.

253. In exchange for their agreeing to take call, for qualifying to do so and for agreeing to serve on the Call Schedules, including those which later came to be known as the Trauma Call

Schedule and the Private Pay Call Schedule, orthopedic surgeons, including Dr. Merkle, were to be allowed to serve on the Call Schedules and receive referrals of patients and other benefits therefrom.

254. NBMC and Dr. Yalamanchi breached Article X, Section A, of the Medical Staff Rules and Regulations, Exhibit "3," which provides that physicians have a duty to take emergency call, and Article VIII, Section A (page 7), of the Surgery Department Rules and Regulations, Exhibit "5," which provides that any discipline and corrective action must be in accordance with the Bylaws.

255. Section C8 (page 42), of the Medical Staff Bylaws, Exhibit "2," require that due process be provided to a disciplined physician.

256. NBHD, NBMC and Dr. Yalamanchi breached Article X, Section A of the Medical Staff Rules and Regulations; Article VIII, Section A, of the Surgery Department Rules and Regulations; and the Medical Staff Bylaws; by removing Dr. Merkle from the Private Pay Schedule and the Trauma Call Schedule at NBMC without due process of law and without complying with its existing rules, regulations and Medical Staff Bylaws.

257. The Standard Policy, Procedures, Guidelines and Protocol Format of NBMC ("NBMC Policy and Procedures"), Exhibit "4," is a valid contract between NBMC and the medical staff of NBMC, including Dr. Merkle.

258. NBMC breached the NBMC Policy and Procedures, Exhibit "4, which provides that orthopaedic surgeons are required to take trauma calls, by removing Dr. Merkle from the Trauma Call Schedule.

259. The foregoing constituted an enforceable agreement by and between Dr. Merkle and NBMC, which NBMC is estopped from denying.

260. On or about August 12 through 24, 2001, Dr. Merkle was informed by Mr. Scott of NBMC, Dr. Yalamanchi of NBMC, and others, orally and by letter, including Exhibits "7" and "8," that he was being taken off of all Call Schedules (including the Trauma Call Schedule and the Private Pay Call Schedule), that he would not be allowed to be on any Call Schedule at NBMC, and that he would not receive any referrals or consults from the NBMC ED as a result.

261. As a result of the breaches by NBMC, Dr. Merkle has suffered damages, including loss of income and patients.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment against NBHD for damages, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XVII

ACTION FOR EQUITABLE ESTOPPEL FOR

PARTICIPATION IN TRAUMA CALL AND PRIVATE PAY CALL AGAINST NBHD

262. This is an action in equity for damages for equitable estoppel, against Defendant NBHD.

263. Plaintiff incorporates herein all allegations in Paragraphs 1-117 and 243-253 above.

264. The foregoing were material facts upon which Plaintiff relied.

265. Plaintiff changed his position as a result of the representations of NBMC.

266. Defendant NBMC later asserted a contrary condition of affairs.

267. On or about August 12 through 24, 2001, Dr. Merkle was informed by Mr. Scott of NBMC, Dr. Yalamanchi of NBMC, and others, orally and by letter, including Exhibits "7" and "8," that he was being taken off of all Call Schedules (including the Trauma Call Schedule and the Private Pay Call Schedule), that he would not be allowed to be on any Call Schedule at NBMC, and that he would not receive any referrals or consults from the NBMC ED as a result.

268. Plaintiff suffered detriment by a change in position as a result of the representation of Defendant and his reliance thereon.

269. As a direct result, Dr. Merkle lost patients, lost business, lost income and was harmed thereby.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages against NBHD, including prejudgment interest on all liquidated amounts, and postjudgment interest; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XVIII

**ACTION FOR DAMAGES FOR INVASION OF PRIVACY BY PLACING
IN A FALSE LIGHT AGAINST NBHD**

270. This is an action by Dr. Merkle for damages in excess of \$15,000, exclusive of interest and costs, for invasion of privacy by placing him in a false light against Defendant NBHD.

271. Plaintiff incorporates herein all allegations in Paragraphs 1-117 above.

272. The publication of the facts by the named individuals, acting at all times within the course and scope of their employment and for the benefit of NBMC and NBHD, specifically those facts and statements set forth in paragraphs 107-112 above, placed Dr. Merkle in a false light by making it appear that Dr. Merkle no longer had the requisite privileges to practice at NBMC and the orthopaedic clinic.

273. This conduct by NBHD was highly offensive because it made Dr. Merkle to appear as though he was an incompetent orthopaedic surgeon, was unskilled, had his clinical privileges in orthopaedic surgery denied or acted on adversely by NBHD or was otherwise unqualified as an orthopaedic surgeon.

274. At all times NBHD, Mr. Scott, Mr. O'Connor, Ms. Orr, and Dr. Shapiro were acting in concert with each other in perpetrating these tortious acts against Dr. Merkle.

275. This constitutes a cause of action under Florida law for invasion of Dr. Merkle's right to privacy.

276. As a direct result, Dr. Merkle lost patients, lost business, lost income and was harmed thereby.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages, including prejudgment interest on all liquidated amounts, and postjudgment interest against NBHD; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XIX

ALTERNATE ACTION FOR DAMAGES FOR INVASION OF PRIVACY
BY PLACING IN A FALSE LIGHT AGAINST MR. SCOTT, MR. O'CONNOR,

MS. ORR, AND DR. SHAPIRO, INDIVIDUALLY

277. This is an action by Dr. Merkle for damages in excess of \$15,000, exclusive of interest and costs, for invasion of privacy by placing him in a false light against Defendants Mr. Scott, Mr. O'Connor, Ms. Orr, and Dr. Shapiro, individually.

278. Plaintiff incorporates herein all allegations in Paragraphs 1-117 above.

279. At all times Mr. Scott, Mr. O'Connor, Ms. Orr, and Dr. Shapiro were acting outside the course and scope of their employment by NBMC or NBHD in making such statements and taking such actions.

280. At all times Mr. Scott, Mr. O'Connor, Ms. Orr, and Dr. Shapiro were acting in concert with each other in perpetrating these tortious acts against Dr. Merkle.

281. The publication of the facts by the named individuals, specifically those facts and statements set forth in paragraphs 107-113 above, placed Dr. Merkle in a false light.

282. This constitutes a cause of action under Florida law for invasion of Dr. Merkle's right to privacy.

283. As a direct result, Dr. Merkle lost patients, lost business, lost income and was harmed thereby.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages, including prejudgment interest on all liquidated amounts, and postjudgment interest against Mr. Scott, Mr. O'Connor, Ms. Orr and Dr. Shapiro, holding them jointly and severally liable; and
- b. Such other relief as this Honorable Court may deem just and proper.

COUNT XX

**ACTION FOR BREACH OF CONTRACT AGAINST NBHD FOR VIOLATION
OF MEDICAL STAFF BYLAWS AND RULES AND REGULATIONS**

284. This is an action for breach of contract by Dr. Merkle for violation of his rights as set forth in Subsection C8 (page 42) of the Medical Staff Bylaws (Exhibit "2") and other documents constituting a contract with Dr. Merkle, for damages in excess of \$15,000, exclusive of interest and costs, against Defendant NBHD.

285. Plaintiff incorporates all allegations in Paragraphs 1-117.

286. The Medical Staff Rules and Regulations (Exhibit "3," page 13) state that physicians who are members of the Medical Staff have a duty to take call. Dr. Merkle is a member of the Medical Staff.

287. The NBMC Policy and Procedures (Exhibit "4") state that orthopedic surgeons are required to be on call and to be promptly available to treat trauma patients. Dr. Merkle is an orthopedic surgeon.

288. The Surgery Department Rules and Regulations (Exhibit "5," Section H, page 7) state that all active members [of the Department of Surgery] shall provide emergency service coverage and the Chief of Surgery shall authorize the Emergency Call Roster for each section of the Department. Dr. Merkle is an active member of the Department of Surgery.

289. PPUC Policy (Exhibit "1", page 1) states that physicians who take call in the Emergency Department may expect to collect a fee for the indigent cases they treat. Dr. Merkle took calls in the Emergency Department expecting to collect a fee for the indigent cases he treated.

290. By removing Dr. Merkle from the Call Schedules, NBHD through its subdivision NBMC took adverse disciplinary action and corrective action against Dr. Merkle, and restricted his membership on the medical staff, without advising him of or providing him the rights required by the Medical Staff Bylaws (Exhibit "2"). Specifically, NBHD violated Subsection C8 (page 42), of the Bylaws.

291. Medical staff bylaws of hospitals are considered to be a contract under Florida law.

292. Additionally, the foregoing documents show that standing call duties, including Indigent Call pursuant to the PPUC, and receiving professional fees from this, are rights of orthopedic surgeons, members of the Department of Surgery, and members of the Medical Staff, as Dr. Merkle was.

293. The other written documents referred to above in Paragraphs 279 through 283, and attached as Exhibits "1" through "5" constitute a contract and give rise to enforceable obligations on these Defendants.

294. NBHD through its subdivision NBMC deprived Dr. Merkle of valuable property rights, including the right to stand call and professional fees, without providing him the rights required by the Bylaws and the other documents referred to in this Court.

295. NBHD through its subdivision NBMC, restricted Dr. Merkle's membership on the Medical Staff, without providing him the rights required by the Bylaws and the other documents referred to in this Court.

296. NBHD through its subdivision NBMC breached its obligations to Dr. Merkle, by removing him from Trauma Call and PPUC or Indigent Call, when only the Chief of the Surgery Department has the right to determine call coverage.

297. Defendant NBHD, acting in part through its subdivision, NBMC, and through Mr. Scott and Dr. Yalamanchi failed to advise Dr. Merkle of his rights under the Bylaws, failed to forward him required notices, and failed to afford him a hearing, in violation of the Bylaws.

298. Such breaches of the Bylaws were material breaches which caused damage to Dr. Merkle.

WHEREFORE, Dr. Merkle prays for:

- a. Judgment for damages, including prejudgment interest on all liquidated amounts, and postjudgment interest against NBHD; and
- b. Such other relief as this Honorable Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

THUS DONE: This _____ day of April, 2004.

GEORGE F. INDEST III, ESQUIRE
Board Certified in Health Care Law
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JASON L. HARR, ESQUIRE

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ATTORNEYS FOR PLAINTIFF,
PETER F. MERKLE, M.D.

EXHIBITS

1. North Broward Medical Center Policy on Physician Payment for Uncompensated Care Program ("PPUC Policy")
2. Medical Staffs North Broward Hospital District Bylaws and Rules ("Medical Staff Bylaws")
3. Rules and Regulations of the Medical Staffs of North Broward Hospital District ("Medical Staff Rules and Regulations")
4. North Broward Medical Center Standard Policy, Procedure, Guidelines and Protocol Format; Subject: Surgical Specialist Availability ("NBMC Policy and Procedures")
5. North Broward Medical Center Surgery Department Rules and Regulations ("Surgery Department Rules and Regulations")
6. Proposed Physician Payment for Uncompensated Care Orthopaedic Services Agreement
7. August 22, 2001 Letter from Dr. Yalamanchi to Dr. Merkle regarding his removal from private pay call roster
8. August 24, 2001 letter from Mr. Scott to Dr. Merkle regarding his removal from PPUC and trauma call roster

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Vanessa A. Reynolds, Esquire/ Reid A. Cocalis, Esquire (Attorneys for Defendants), Conrad & Scherer, LLP, 633 South Federal Highway, Post Office Box 14723, Fort Lauderdale, Florida 33302, by United States mail, postage

prepaid, this _____ day of November, 2002.

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