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No. 23- 1354

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IN THE  
**Supreme Court of the United States**

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JAMILAH ABDUL-HAQQ,

*Petitioner,*

*v.*

THE PERMANENTE MEDICAL GROUP, INC.  
(TPMG), FORM UNKNOWN; KAISER FOUNDATION  
HOSPITALS (KFH), FORM UNKNOWN; TERYE  
GAUSTAD, AN INDIVIDUAL; DENNIS RAMAS,  
AN INDIVIDUAL; ROBERTO MARTINEZ, AN  
INDIVIDUAL; SONYA BROOKS, AN INDIVIDUAL;  
KAROL BURNETTQUICK, AN INDIVIDUAL;  
SHELLEY ROMBOUGH, AN INDIVIDUAL;  
BERNARD TYSON, AN INDIVIDUAL; GREGORY  
ADAMS, AN INDIVIDUAL; CALIFORNIA NURSES  
ASSOCIATION (CNA),

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The basis for the Grant of Certiorari is that the lower court's error regarding individuals with disabilities has fundamental legal significance and may impede the effectiveness of federal and state statutes.

a. Do the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA) necessitate employers and unions to engage in an interactive process and offer reasonable accommodations for Registered Nurses with disabilities like Post-Traumatic Stress Disorder (PTSD) who have requested an accommodation prior to termination? In this context, are the duty of fair representation obligations adequately fulfilled when unions only attend meetings and propose settlements but neglect to address a member's concerns regarding requested accommodations and facilitate members' participation in arbitration hearings?

b. This case highlights a critical, recurring Fourteenth Amendment issue with notable implications that may affect the effectiveness of a federal and state statute. Additionally, it raises questions about whether an employer or union can neglect their legal obligations toward Registered Nurses and subsequently pursue disciplinary actions. The central inquiry revolves around whether the employee's complaints give rise to disciplinary actions that are warranted or retaliatory in nature due to failure to uphold legal obligations toward nurses?

**PARTIES TO THE PROCEEDINGS**

**Plaintiff/Appellant**

Jamilah Abdul-Haqq **UNREPRESENTED**

**Defendants/Appellees**

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**RELATED CASES**

**Name of Court**

United States Court of Appeals 9th Circuit.

**Case Number**

22-16684

**Case Title**

ABDUL-HAQQ vs The Permanente Medical Group  
(TPMG) et al.

**Date of Opinion/Order**

March 18, 2024 and March 28, 2024

**Name of Court**

United States District Court San Francisco Division

**Case Number**

19-CV-03727-JD

**Case Title**

ABDUL-HAQQ vs The Permanente Medical Group  
(TPMG) et al.

**Date of Opinion/Order**

October 12, 2022, March 10, 2022

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## **OPINIONS BELOW**

The Ninth Circuit Unpublished Memorandum (attached as Appendix A page 1a) affirming the district court Summary Judgment in favor of Defendants-Apelles (attached as Appendix B page 7a and Appendix C page 14a) while denying the request for the petitioner's request for a rehearing (Appendix D page 18a).

## **JURISDICTION**

The 9th Circuit entered a judgment on March 18, 2024, and denied the request for rehearing on March 28, 2024. See Appendix 1 and 4. This petition is timely filed pursuant to Supreme Court Rule 13.1. This court has jurisdiction under 28 U.S.C. §1254(1).

## **UNITED STATES, CALIFORNIA CONSTITUTIONS AND STATUTORY PROVISIONS INVOLVED**

Understanding the Requirements of Due Process, the California Constitution Article I §7 and the 14th Amendment of the U.S. Constitution ensure that individuals are not deprived of their rights without appropriate legal procedures. This includes ensuring that healthcare professionals are treated fairly and justly in their employment. NOT providing adequate training and resources that are critical for nurses to provide effective patient care deprives nurses of due process when they are disciplined for an employer's failure to provide mandated resources and education.

The following Statutes and Regulations ensure that healthcare facilities must support their staff appropriately.

By adhering to these legal requirements, healthcare providers can ensure that they meet the standards of care and legal obligations, thereby protecting both patient welfare and employee rights:

1. California Business and Professions Code §2725.3(5): This code restricts unlicensed personnel from assessing patient conditions, ensuring that only qualified healthcare professionals perform these critical tasks.
2. California Health and Safety Code §1276.4(e): This code mandates that registered nurses must be adequately trained to perform their duties effectively, highlighting the importance of proper training for patient safety and care quality.
3. California Code of Regulations, Title 22, §70211(a): This regulation requires that nursing services be organized, staffed, equipped and supplied, including furnishing and resource materials to meet the needs of patients and the service. It ensures that nurses have the necessary tools and support to perform their duties.
4. California Code of Regulations (CCR), Title 2, §§11067, 11068, 11069 These sections provide mandated disability protections, ensuring that employees with disabilities receive reasonable accommodations and are protected from discrimination.

5. Code of Federal Regulations, Title 29, §§1630.2(o)(p)(r): These federal regulations define reasonable accommodation and other related terms, further ensuring protections for employees with disabilities.
6. Health and Safety Code, §1279.1(b)(4)(A) adverse reactions associated with care management . . . but not limited to, an error involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, wrong route of administration, excluding reasonable differences in the clinical judgment of drug selection and dose.

## **STATEMENT OF THE CASE**

### **INTRODUCTION**

The petitioner, Jamilah ABDUL-HAQQ, an Registered Nurse with fifteen years in the field, has faced a troubling pattern of injustice in her workplace. Despite her consistent performance, she was met with unwarranted disciplinary actions after bravely lodging complaints of sexual harassment, disability harassment, discrimination, retaliation, and patient safety complaints.

The genesis of her Post-Traumatic Stress Disorder (PTSD) can be traced back to a prior sexual harassment incident in 2010 with a different employer, where collaboration between the Human Resources Director and her union, the California Nurses Association (CNA), led to the failure to address her grievances for a final written

warning that caused the petitioner to be terminated after she lodged a sexual harassment complaint.

It is essential to highlight the egregious injustice inflicted upon the petitioner. Before the sexual harassment complaint, she had upheld an exemplary record, consistently surpassing expectations without any disciplinary incidents. However, the severe psychological impact of receiving a final written warning and being terminated despite her clean disciplinary history initiated her PTSD diagnosis. This diagnosis was further compounded by the CNA's failure to advocate for her against retaliatory actions by her employers. The CNA's inaction ultimately led to her unjust termination, facilitated by the perfunctory way they handled grievances, which utterly contradicts the duty of fair representation expected of exclusive representatives. This sequence of events continues and underlines the profound wrongdoing endured by the petitioner.

Between 2010 and 2019, (CNA) handled her grievances in a perfunctory manner, effectively aiding The Permanente Medical Group (TPMG) in unfairly disciplining her without "just cause." Her termination rested solely on a series of fabricated policy violations that started approximately 27 days after she made an Equal Employment Opportunity Commission (EEOC) complaint, completely disregarding her 11-year employment history that did not entail patient care errors. This egregious disregard for fairness emphasizes the severity of the wrongdoing against the petitioner.

The gravity of this injustice becomes apparent when considering the absence of legal representation to challenge the 7 defense attorneys assigned to her

case during lower court proceedings. Without adequate legal support, the protection afforded to individuals with disabilities under federal and state laws becomes an unattainable ideal.

### **HISTORY OF THE CASE**

The petitioner was sanctioned every time she filed a patient care complaint; she would be called into investigatory meetings. In 2014, a CNA labor representative (Sue Fendley) failed to file a grievance when a manager falsely claimed to have conducted a blood draw for the nurse, deceiving her into placing a patient's name label on the tube of blood drawn.<sup>1</sup> Although the blood was redrawn, it was not resolved because management refused to compare the blood in the lab with the redrawn sample. This resulted in disciplinary action against the petitioner for allegedly mishandling blood labeling. It's crucial to emphasize that the blood in question was never tested to verify the truth of the manager's claim against the petitioner. As a result, HEARSAY was given precedence over testing the blood and uncovering the actual truth.

This incident occurred after the petitioner filed a complaint regarding religious and disability accommodations. The labor representative at the time,

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1. The petitioner confirmed patient identification by cross-referencing the armband with the labels; the manager now claimed that he did not draw the patient's blood after he said he did. The petitioner documented the puncture site as evidence with photographs and reported the issue to the nursing supervisor.

Sue Fendley<sup>2</sup>, failed to address this misconduct and did not protect the petitioner who experienced this deceitful behavior as she (Fendley) protected others in the past. Being accused of mislabeling the patient's blood was equal to being accused of a crime you did not commit. As a result, the petitioner had a severe PTSD reaction to the point that she was unable to function at the TPMG ANTIOCH LOCATION due to the exacerbation of PTSD. These actions caused the first federal complaint against TPMG and CNA. The charges against CNA were eventually dropped.

In 2015, the petitioner transferred to TPMG San Leandro LOCATION according to CCR Title 2 §11069. (c) 9 A-5 "If reassignment to an alternate position is considered as an accommodation, the employer . . . find a suitable alternative position for the employee," the disability was confirmed. Upon transfer, employee health cleared the petitioner, stating PTSD accommodation in employee health records. Dkt# 9-1, 6-ER-0976 (9th Cir. Case #22-16684). This transfer ACCOMMODATION was never reassessed, and the petitioner continued to have symptoms at the new location.

The EEOC contacted the employer again in August 2016. By the end of August 2016, the petitioner was rapidly disciplined for patient care violations. It is crucial to address the significant lapses in due process and accountability evident in the petitioner's case. After (CNA)

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2. Sue Fendley was a strong nurse labor representative. She worked closely with legal counsel to process grievances and confronted these " investigation meetings" after a nurse filed a complaint for all nurses except Jamilah Abdul-Haqq and Janet Hall.

failed to process the grievance for a suspension in August 2016, the petitioner experienced emotional strain and was subsequently placed on disability leave. Additionally, there was a failure to assess why the transfer did not alleviate her PTSD exacerbation.

These actions culminated in filing a second federal complaint against (TPMG). Notably, the petitioner attempted to seek justice despite being in a compromised state and lacking the financial means to hire legal representation. This was a failed attempt because of the incapacitated state.

Furthermore, TPMG continued to offer an interactive process meeting letters while the petitioner was on (FMLA) disability leave between September 2016 and December 2016. But failed to address the confirmed receipt of the 12/09/2016 accommodation request Dkt#8-9 pg 16<sup>3</sup>The petitioner consistently submitted accommodation requests to perform her duties effectively. However, each interactive process letter stated that no physical limitations were prescribed by a doctor then and mentioned “self-prescribed” limitations. Despite the petitioner submitting these accommodations, no one addressed or denied them, nor did they propose any alternatives. Instead, the union and the employer ignored the petitioner’s requests for one year.

Again, it’s essential to highlight the injustices apparent in the disciplinary actions taken against the petitioner. Notably, on April 19, 2016 (Dkt 8-9 page25),<sup>4</sup>

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3. 9th Cir. Case #22-16684

4. 9th Cir. Case #22-16684

The supervisor acknowledged and informed the human resource manager of the petitioner's valid complaint regarding the inability to log into the computer system to chart patient information, which is a critical task for nurses providing effective care.

However, despite this acknowledged issue, by August 2016, the petitioner faced disciplinary action for allegedly failing to document an assessment and medication, ultimately leading to her termination.

On June 12, 2017, the petitioner's first day back from disability leave, she suffered symptoms of her PTSD. She provided an accommodation request on this date. On June 19, 2017, she also submitted a doctor's note supporting the accommodations requested on June 12, 2017. These are the same requests submitted on April 30, 2017, May 13, 2017, and June 12, 2017, prior to TPMG offering the last chance agreement.

**A crucial aspect overlooked in the lower courts is the timeline of events related to the petitioner's case.** The lower courts claimed that "TPMG only terminated ABDUL-HAQQ after her repeated noncompliance with reasonable requests" (App. A pg 4a). However, a detailed examination of the timeline reveals significant discrepancies.

**All incidents related to patient care that contributed to the petitioner's termination occurred between July 11, 2016, and August 12, 2016. The petitioner was on disability leave from September 2016 to June 12, 2017.** She was initially suspended on August 29, 2016, for issues excluding the patient care complaint dated August 12,

2016. During her leave, TPMG did not discipline her for any new patient care issues. Despite this, TPMG updated the original suspension five weeks later and left both disciplinary actions in her employee file. This gave the misleading appearance of multiple patient care issues.

Leaving both disciplinary actions in the petitioner's employee file creates a false narrative of repeated noncompliance. **This is particularly problematic since it is implausible for someone to display such behavior while absent from work.** These actions raise serious doubts about the validity of the claim of repeated noncompliance, calling into question the integrity of the termination decision. This discrepancy highlights the need for this court's thorough re-evaluation of the case.

## **PROCEDURAL HISTORY**

### **IN US DISTRICT COURT SAN FRANCISCO Case #19-CV-03727-JD**

On June 26, 2019, the petitioner filed a complaint against The Permanente Medical Group, hereinafter TPMG, and The California Nurses Association, hereinafter CNA, for I. Wrongful Termination In violation of Public Policy II. Breach of Implied Promise, III. Breach of Good Faith Dealing, IV. Emotional Abuse, V. Negligent of Duty, VI. Negligent Supervision, VII. Negligence on Behalf of CNA, VIII. Breach in Fair Representation, VIIII. Breach of Fiduciary, X. Conspiracy to harm employment.

On December 5, 2019, Wrongful Termination in Violation of Public Policy against CNA was dismissed. The surviving claims were for TPMG's wrongful termination

in violation of public policy and Breach of Duty based on bad faith due to a conflict of interest. (Dkt# 82 of 19-cv 03727) We were ordered to settle.

Due to the COVID-19 pandemic, the settlement conference did not happen until July 7, 2020. The case was not settled because TPMG and CNA offered one week of pay for wrongful termination/breach of duty of fair representation. Petitioner lost over a million in benefits she had since she was thirty-seven years old. During September 2020-November 2020, the petitioner was unsuccessful with her request for informal plans for Discovery or settlement.

December 21, 2020, the petitioner wrote a letter to the Honorable James Donato for a case status conference and scheduling order. (Dkt #103) On January 8, 2021, a scheduling order was filed electronically without a notice of mailing. (Dkt #104) the petitioner notified the court that she did not have the privilege to file in US District Court electronically, so she did not have the notice via the mail of the order until AFTER January 18, 2021. January 18, 2021, was the last date to amend pleadings. Therefore, she could not amend the pleadings.

Despite unresolved discovery disputes, contrary to the judge's specific discovery orders, *he ordered to follow instead of the standard discovery orders* (so the petitioner did not waive her rights to file a motion to compel as the 9th circuit stated) (App. A 5a (3)), the motion for summary judgment filed by CNA, was GRANTED. Subsequently, the petitioner submitted a revised request for reconsideration under Federal Rules of Civil Procedure 60(b)(6) to the district court, which

was DENIED as documented in Docket 172. Both the petitioner and TPMG were then ORDERED to participate in another settlement conference. Moreover, during the July 21, 2022, hearing, it was explicitly directed that no further motions should be filed in this case, as recorded in Docket 177. Nonetheless, by October 12, 2022, after no warning of the settlement conference being rescinded, TPMG had successfully obtained a summary judgment.

**IN 9TH CIRCUIT APPEALS  
CASE #22-16684 APPEAL**

The petitioner appealed to the 9th Circuit Court, and her appeal was denied because the 9th Circuit Court affirmed that “TPMG established a non-discriminatory, non-retaliatory reason for terminating an employee with a disability.

Per order, the petitioner ABDUL-HAQQ had multiple violations of TPMG policy that negatively impacted patient care and the workplace environment.” (Appendix A pg 3a). Per 9th Circuit, CNA faithfully attended Abdul-Haqq’s disciplinary meetings, heeded Abdul-Haqq’s commands regarding which arguments to raise with TPMG and followed multiple avenues in an effort to achieve Abdul-Haqq’s reinstatement or lessen TPMG’s disciplinary” action against her. CNA’s decision not to pursue arbitration, especially considering Abdul-Haqq’s significant admissions in her “rebuttal” letter, was not made in bad faith. (Appendix A pg 5a)

The petitioner contends that the evidence does not justify TPMG’s termination of an employee with a disability. Key failures include the lack of reassessment

of the February 2015 transfer accommodation request, failure to hold an interactive meeting following the December 9, 2016, May 13, 2017, April 30, 2017, and June 12, 2017, accommodation request upon the petitioner's return from disability leave, and failure to conduct an interactive meeting after the subsequent accommodation requests on June 19, 2017.

Despite these obligations, TPMG offered the petitioner with a disability a Last Chance Agreement instead of an accommodation to assess if ALLEGED patient care violations would decrease. TPMG's decision to offer a last-chance agreement instead of an accommodation further confirms failure to follow public policy because CFR §1630.2(r) requires assessments based on (1) the duration of the risk, (2) the nature and severity of the potential harm, (3) the likelihood that the potential harm will occur, and the imminence of the potential harm. The petitioner's termination was initiated on June 22, 2017, without addressing these critical issues and confirmed on June 27, 2017. In addition, TPMG did not provide an interactive process and, therefore, voided all defenses as per CCR Title 2 11067, stating that there was no reasonable accommodation available after engaging in the interactive process.

Per US GOVT. 12940(n), failing to provide an interactive process, and failing to provide accommodation, and US GOVT.12940(m) and C.F.R 29 1630.2(o)4 failing to provide a reasonable accommodation for the June 12, 2017, and June 19, 2017 accommodation request is a public policy violation. Although the 9th Circuit decided in *2000 Barnett v. US Air Inc.*, 228 F.3d 1105, addressed the interactive process is mandatory rather than a permissive obligation

... the obligation is triggered by an employee giving notice of employee disability and desire for an accommodation. For this reason, the petitioner is perplexed as to why the 9th Circuit affirmed the lower court's decision to GRANT summary judgment.

In addition, the 9th circuit stated that the employer must initiate a discussion with the employee regarding alternative accommodations. *Humphrey v. Memorial Hospitals Assn.* (9th Cir. 2001) 239 F. 3d 1128, 1139-1139. However, it is confusing why the 9th Circuit ruled that TPMG had non-discriminatory grounds to terminate an employee with a disability when they violated public policy by not providing an interactive meeting or an accommodation for April 20, 2017, May 13, 2017, June 12, 2017 and June 19, 2017 accommodation requests.

It's puzzling why the 9th Circuit claimed there were years of policy violations, given that all patient care disciplinary actions occurred approximately 27 days after the petitioner filed the EEOC complaint. Throughout her 11-year employment, the petitioner had no history of patient care issues except when she was framed in the 2014 blood labeling issue. TPMG orchestrated patient care problems to appear as policy breaches. However, without investigation or grievances filed by CNA, the petitioner's union, these fabricated policy infractions became part of the petitioner's employment record and reason for termination.

Furthermore, the conduct of the CNA facilitated unjust discipline by TPMG. For instance, labor representative Supreet Pabla falsely claimed she did not receive the petitioner's suspension for grievance filing. However,

evidence submitted during the deposition contradicted this, confirming receipt and revealing perjury. (Dkt 8-3 pg 9-11)<sup>5</sup>. Additionally, concerning a policy violation on 7/18/2016, the petitioner faced disciplinary action twice on 08/29/2016 and 06/19/2017. The fabricated discipline included being disciplined for a pediatric patient the petitioner did not handle. Being disciplined for Kaiser Foundation Hospitals policy, not the petitioner's employer, The Permanente Medical Group (TPMG) is her employer.

Furthermore, in December 2016, the petitioner was assaulted by labor representative Sue Fendley. There was evident tension between the union and the petitioner before the decision to bar her from the arbitration hearing is notable. The act of committing perjury regarding the grievance for the initial suspension and preventing the petitioner from attending the arbitration hearing constituted intentional interference, aiming to justify an unlawful termination and silencing the petitioner's factual position.

This Breach of Fair representation is presented in the same scenario as *Tenorio v. N.L.R.B* (9th Cir. 1982) 680 F.2d 598, 601, 602 because the union did not make an effort to hear the appellant's explanation of events and failed to do a minimal investigation. The 9th Circuit stated in *Evangelista v. Inlandboatmen's Union of Pacific*, 777 F.2d 1390,1395, (9th Cir 1985) that the union's duty of fair representation includes the duty to perform some minimal investigation.

As outlined above, the discrepancies found in the disciplinary documentation confirm that the CNA did not

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5. 9th Cir. Case #22-16684

conduct minimal investigations despite attending meetings and offering a settlement. It is concerning that the CNA is the exclusive representative and did not even seek to determine whether the petitioner's accommodations were a hardship for the employer or if the accommodation request violated the CBA but offered a settlement because TPMG was not going to rehire the petitioner.

All circuits agree that an assessment is needed to deny an accommodation, especially if it violates the CBA see . . . *Willis v. Pacific Maritime Ass'n* (9th Cir. 2001), 244 F.3d 675, 680, this circuit stated, "Eight of our sister circuits that have confronted this issue have held that an accommodation that violates a collective bargaining agreement is per se unreasonable. See *Davis v. Florida Power Light Co.*, 205 F.3d 1301, 1307 (11th Cir. 2000); *Feliciano v. Rhode Island*, 160 F.3d 780, 787 (1st Cir. 1998); *Cassidy v. Detroit Edison Co.*, 138 F.3d 629, 634 (6th Cir. 1998); *Kralik v. Durbin*, 130 F.3d 76, 81-3 (3d Cir. 1997); *Foreman v. Babcock Wilcox Co.*, 117 F.3d 800, 810, (5th Cir. 1997); *Eckles v. Consol. Rail Corp.*, 94 F.3d 1041, 1051 (7th Cir. 1996); *Benson v. Northwest Airlines, Inc.*, 62 F.3d 1108, 1114 (8th Cir. 1995); *Milton v. Scrivner, Inc.*, 53 F.3d 1118, 1125 (10th Cir. 1995)." CNA, as an exclusive representative, thought it was better to request a settlement rather than help TPMG MEET THE DUTY TO ACCOMMODATE.

It's deeply concerning that previous court cases didn't consider the petitioner's circumstances. It's crucial to highlight that both parties involved have blatantly ignored key provisions outlined in the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). Despite this egregious oversight,

they have secured summary judgment by redirecting focus to disciplinary actions allegedly affecting patient care. These disciplinary measures were manipulated to unjustly paint the petitioner as being negligent in patient care while essential legal provisions were ignored.

### **REASONS FOR GRANTING THE PETITION**

The petitioner respectfully requests that the Supreme Court grant a Writ of Certiorari, highlighting the crucial importance of safeguarding the rights of nurses with disabilities. Furthermore, compelling evidence indicates that (CNA) committed perjury and (TPMG) misled the courts by falsely alleging repeated policy violations during the petitioner's documented absence from work, thereby fabricating the basis for disciplinary measures. In addition, the alleged policy violations were orchestrated to appear as violations because the nurse raised valid concerns about the hospital's failure to maintain operational computers, failure to have adequate staff, and valid competency to care for patients, which gave rise to unlawful retaliation. The lower court's decision erodes the integrity of the legal system and necessitates this Court's intervention to address this injustice.

- 1. This issue is of great legal/national significance regarding nurses with disabilities and receiving accommodations, and in the context of accommodation, most circuits are split.**

Post-Traumatic Stress Disorder "PTSD has been recognized as a "mental disorder." See American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders 236-38 (3d ed. 1980) [hereinafter

DSM-III]. “ *U.S. v. Whitehead* (9th Cir. 1990) 896 F.2d 432, 433, fn. PTSD is recognized as a disability because it can significantly impair a person’s functioning in daily life. “The regulations list certain impairments that substantially limit major life activities, and that list includes PTSD. (29 C.F.R. § 1630.2 (j)(3)(iii).)” *Gropen v. The Superior Court* (2023) 89 Cal.App.5th 1068, 1076.

Throughout the COVID-19 pandemic, registered nurses bore witness to profound loss and suffering, often standing in as the last comforting presence for patients separated from their families. Many were compelled to work under dire conditions that not only endangered their lives daily but also left indelible marks on their psychological well-being. The severe trauma experienced is expected to lead to an increase in PTSD among these frontline heroes. The impact of the pandemic on nurses was nothing short of devastating, highlighting their sacrifice and the urgent need for support in their ongoing recovery. We must unite to establish robust protections that ensure nurses suffering from PTSD have equal opportunities to maintain employment. This collective effort is essential to support those who have dedicated themselves to caring for us during our most challenging times. It is with great urgency that this Certiorari be granted.

- a. **TPMG distracted the court with past interactive meetings, excluding the four requests before termination.**

December 09, 2016 (Dkt#8-9 pg 16)<sup>6</sup>, April 31, 2017 (Dkt#8-3 pg 13)<sup>7</sup>, May 13, 2017 (Dkt#8-3 pg 15), June 12,

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2017 (Dkt#8-3 pg 21), and June 19, 2017 (Dkt#8-3 pg 32), the petitioner made an accommodation request. There is no evidence of interactive meetings for the accommodations request dated above. While the Supreme Court has not always ruled on the specifics of the interactive process, its decision underlines the importance of employers and employees working together to find reasonable solutions that accommodate disabilities in the workplace. Even the 9TH CIRCUIT decisions at the summary judgment stage suggest that if there is evidence that the employer refused to engage in the interactive process, the burden shifts to the defendant to prove the unavailability of a reasonable accommodation. THIS WAS NOT DONE THROUGHOUT THE INTERACTIVE PROCESS and during the court proceedings. See *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105 (9th Cir. 2000) (en banc), vacated on other grounds sub nom., *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); *Morton v. United Parcel Serv., Inc.*, 272 F.3d 1249 (9th Cir. 2001), overruled on other grounds, *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974 (9th Cir. 2007) (en banc). *Brumley v. United Parcel Serv., Inc.* (6th Cir. 2018) 909 F.3d 834,

**b. TPMG distracted lower courts to pay attention to discipline and personality traits instead of their failure to accommodate**

We must emphasize that TPMG's decision to offer a Last Chance Agreement instead of providing reasonable accommodation fails to achieve its legal obligation to accommodate the employee's needs. Per CCR Title 2 §11068—Reasonable Accommodation—(a) an employer or other entity [union] has an affirmative duty to make reasonable accommodations for the disability.

THEREFORE, ITS IMPERATIVE TO RESOLVE THIS ISSUE IN THIS COURT BECAUSE if an adverse employment action occurs because of the failure to accommodate, the circuits are split . . . see *Exby-Stolley*, 906 F.3d at 914 (first citing *Colón-Fontáñez v. Municipality of San Juan*, 660 F.3d 17, 32 (1st Cir. 2011); then citing *Parker v. Sony Pictures Entm't, Inc.*, 260 F.3d 100, 108 (2d Cir. 2001); then citing *Foster v. Arthur Andersen, LLP*, 168 F.3d 1029, 1032 (7th Cir. 1999); then citing *Fenney v. Dakota, Minn. & E.R.R.*, 327 F.3d 707, 711 (8th Cir. 2003); then citing *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012); and then citing *Marshall v. Fed. Express Corp.*, 130 F.3d 1095, 1099 (D.C. Cir. 1997)). These differences highlight how various circuits handle the obligation of employers to engage in the interactive process and the implications of failing to do so. In some circuits the employer has a heavier burden on the interactive process must be particularly diligent in documenting their efforts to engage with employees and explore reasonable accommodations.

By adhering to the standards of the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA), healthcare facilities not only foster a supportive environment for all employees but also ensure that nurses with disabilities are given equal opportunities to contribute their skills and expertise, which is vital for the integrity and efficiency of our healthcare system.

**c. 9th Circuit-based summary judgment on circumstantial evidence when direct evidence was presented**

According to the 9th Circuit memorandum, the petitioner's "wrongful termination claim was based on

circumstantial evidence.” (App. A 3a). Contrary to the lower courts’ assertion, most of all evidence presented was direct evidence. Direct evidence clearly indicated that offering a last-chance agreement would contravene Article III §K 317 of the Collective Bargaining Agreement (Dkt8-4 pg 9)<sup>8</sup>. This provision expressly prohibits any employee from entering into a written or verbal agreement with the employer that conflicts with the terms of the collective bargaining agreement.

Despite this compelling evidence, the lower court proceedings overlooked this crucial point and ignored the bad faith and arbitrary action of the CNA, which attempted to encourage a member to break the CBA contract to prevent termination.<sup>9</sup> (Dkt#8-4 page 77) In addition to being unable to sign the last chance agreement legally, the petitioner was in a protected status due to her need for PTSD accommodations. TPMG’s Employee Health documents that were given to the petitioner during discovery confirm that as of February 2015, the petitioner required accommodations for PTSD, and the employer was aware of this ongoing need since February 2015 (Dkt 9-1, 6-ER-0976)<sup>10</sup>.

**d. 9th Circuit ignored the TPMG made false claims during grievance proceedings**

The EMPLOYEE HEALTH verification of Employee’s Completion of Health Assessment document 02/15/2015,

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9. Violating the CBA would void a member’s representation by the union

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(Dkt# 9-1 6-ER-0976)<sup>11</sup>, and the 12/09/2016 (Dkt 8-9,pg 16, 4-ER-638)<sup>12</sup> was the earliest CONFIRMED accommodation request contradicting the employer's statements found in the grievance documents that TPMG never knew of any accommodation as set out in Step II (Dkt 8-6 pg 5, para 5)<sup>13</sup> and that the accommodation request was made after June 19, 2017, as stated in Step III (Dkt 8-6 pg 7, para 4). Yet, the sequence of the emails requesting an accommodation was sent on April 30, 2017 (Dkt 8-3, pg13-14)<sup>14</sup>, May 13, 2017 (Dkt 8-3, pg. 15-19), and June 12, 2017 (Dkt 8-3, pg. 21, 29), giving detailed ways to help the petitioner function, were ignored. This direct evidence proved that TPMG knew of PTSD accommodations before the last-chance agreement was offered, therefore violating public policy for FEHA and ADA.

It is imperative to note the blatant disregard for the Americans with ADA and the FEHA throughout this case. Per CCR Title 2 §11069(a)—FEHA requires a timely good faith interactive process. The petitioner repeatedly and clearly articulated her need for accommodations on approximately five separate occasions. Despite prior interactive process meetings conducted by TPMG, they failed to initiate such a meeting after the petitioner's requests for accommodations on December 9, 2016, April 2017, May 2017, and June 2017. This deliberate refusal to engage in the interactive process and provide any alternative accommodations is well-documented.

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On June 19, 2017 (Dkt 8-4, pg 89, Dkt 8-8, page 79)<sup>15</sup>, These documents were given to the petitioner during discovery and, as evidenced by CNA inquiring about the petitioner's accommodation request status but doing nothing else about the request. However, they decided to appeal for settlement because per Dkt 8-5, pg 78<sup>16</sup>, the union representative PABLA doubted that TPMG would rehire the petitioner, and PABLA only asked for the settlement to help the petitioner exhaust administration remedies. This email confirms that they did not put any effort into advocating the petitioner's factual position, as the 9th Circuit states about CNA, "following multiple avenues in an effort to achieve ABDUL-HAQQ'S reinstatement or lessen TPMG'S disciplinary actions against her." (App. A 5a paragraph 1)

Furthermore, TPMG's offer of a last-chance agreement **IN ORDER FOR THE PETITIONER TO KEEP HER JOB** insinuates that the petitioner could retain her employment despite alleged patient care violations but would forfeit her job if she required accommodation for her disability. Such discriminatory practices directly contravene the core principles of equal opportunity and reasonable accommodation enshrined in these statutes.

On July 16, 2015, FEHA amended Assembly Bill AB 987 to amend sections (l) and (m) of GOVT 12940. In sections (l) and (m) of GOVT 12940, this amendment makes it unlawful for an employer to retaliate or otherwise discriminate against a person for requesting an accommodation, regardless of whether the request is granted.

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Although the Ninth Circuit first articulated that standard in *Humphrey v. Memorial Hospitals Association*, 239 F.3d 1128 (9th Cir. 2001), and district courts in the Circuit have followed suit. The link between the disability and termination is particularly strong where it is the employer's failure to reasonably accommodate a known disability that leads to discharge for performance inadequacies resulting from that disability. *Id.* at 1139-1140 yet the 9th circuit affirmed the Summary Judgment.

Despite clear documentation of the standards for disability accommodation and termination, the petitioner could not persuade the lower courts in her favor for TPMG's misleading actions, resulting in an unjust dismissal through summary judgment. Additionally, it is concerning that the CNA, as the exclusive representative, failed to conduct even basic investigations during the grievance process. Their lack of oversight in ensuring compliance with the Collective Bargaining Agreement and assessing undue hardship as the only reason not to receive an accommodation to retain her job further exacerbates the petitioner's injustice.

- e. **CNA, the exclusive representative, represented a member with a disability, SILENCED their member's factual position**

Under the Labor Management Reporting and Disclosure Act (LMRDA), union members have a series of tools to help hold union officials accountable. This *Bill of Rights* grants members several rights: **Equal rights to participate in union activities**, Freedom of speech and assembly, Voice in setting rates of dues, fees, and assessments, Protection of the right to sue, **Safeguards**

**against improper discipline.** An arbitration review board is part of union activities if the union is involved in resolving disputes between employees and employers through arbitration. These boards review arbitration cases, ensure that the arbitration process is fair, and help enforce the decisions made.

Therefore, due to the Bill of Rights of Equal Rights to Participate in Union Activities, the CNA should have allowed the petitioner to participate in the Arbitration Review Committee meeting as part of the fair process. In addition, although the CNA questioned TPMG about accommodation being met, they never sought a remedy to get an accommodation; this fact was silenced.

Furthermore, due to the Bill of Rights of Safeguards against improper discipline, the CNA, as the exclusive representative, failed to conduct even basic investigations during the grievance process regarding the requested accommodations the employer stated they had no knowledge of, failing to do a basic investigation regarding the discrepancies in the suspension documents, neglecting their duty to ensure compliance with the Collective Bargaining Agreement and properly assess any undue hardship on the employer to fairly deny an accommodation request, or ignore it entirely thereby exacerbating the petitioner's injustice.

The failure of the union to address the above situations and ignore the petitioner's grievance is alarming. Despite the petitioner's efforts to bring attention to the issue by alerting supervisor of PABLA Zach Goldman (Dkt 8-4, pg

37)<sup>17</sup>, the evidence reveals a disturbing pattern of neglect, forcing the petitioner to rely on union representatives who do not have her best interest is unethical. During deposition evidence, it was exposed that the CNA committed perjury (Dkt 8-3, pg 9-11)<sup>18</sup> Even more shockingly, the individual responsible for this perjury (Pabla) was consistently present at every grievance meeting, alongside the labor representative who physically assaulted (Fendley) the petitioner. This representative (Fendley) not only failed to conduct minimal investigations into the discrepancies with the disciplinary paperwork in 2014 but also neglected her duty to oversee the new labor representative, ensuring documentation was complete, despite being the lead labor representative familiar with the labor law.

Even more troubling is the revelation that FENDLEY did not receive emails from the petitioner but answered the petitioner's emails intended for the new labor representative (Tizoc ARENAS) handling the petitioner's grievance (Dkt 20 pg 98)<sup>19</sup> and subsequently issued a letter claiming that the CNA had thoroughly reviewed the evidence and concluded that the grievance lacked merit (Dkt 20, pg 99). The union's egregious mishandling of the petitioner's case represents a grave injustice and a blatant betrayal of its duty to protect the rights of its members.

The injustice reached new heights when the petitioner was unjustly barred from the arbitration hearing despite the union's awareness of her accommodation request (Dkt

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19. US District Court case #19-CV-03727-JD

8-6 pg 9)<sup>20</sup>; ARENAS stated, “**There are also several claims that if she had gone through an accommodation meeting that this would have not led ultimately to her termination.**” Its subsequent failure was not to advocate for an accommodation on the petitioner’s behalf. This blatant disregard for the interests of its members is deeply troubling. Adding insult to injury, the arbitration review committee’s mishandling of paperwork exacerbates the situation.

**f. CNA departure from protocol is overlooked by the 9th Circuit because they attended meetings and requested a settlement**

The Arbitration Review Committee’s departure from instructions, as outlined in the documentation (Dkt 8-5, pg 80)<sup>21</sup>, is evident. Specifically, the failure to include the petitioner’s rebuttal to the disciplinary memo, as per the instructions, not only silenced the petitioner’s factual position but also undermined her ability to contest the disciplinary actions imposed upon her. Such egregious mishandling perpetuates the injustice faced by the petitioner. It underscores the urgent need for accountability within the arbitration process and the failure to safeguard its members from improper disciplinary action.

Although this case mimics Tenorio, the 9th Circuit stated, “the Union’s departure from its policy led us to inquire whether the Union had a legitimate basis for doing so.” *Tenorio v. N.L.R.B* (9th Cir. 1982) 680 F.2d 598,

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## 602. THIS ISSUE WAS IGNORED IN THE LOWER COURTS.

The union's actions are of great importance in this court as per *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 67 (1991). See also Conkle, 73 F.3d at 915-16 (holding that union's decision is arbitrary if it lacks rational basis); *Johnson v. U.S. Postal Serv.*, 756 F.2d 1461, 1465 (9th Cir. 1985) (holding that reckless disregard may constitute arbitrary conduct); *Tenorio v. NLRB*, 680 F.2d 598, 601 (9th Cir. 1982) (defining arbitrary as "egregious disregard for the right of union members").

It is deeply troubling that the lower courts did not address the gravity of committing perjury for failing to file grievances, disregarding arbitration directions to present the case to the arbitration review board, and excluding the petitioner from participating in the hearing. These actions are particularly concerning given that the lower courts have acted on other Duties for fair representation of cases.

The current ruling implicitly suggests that employers and unions have broad discretion to disregard the needs and rights of employees with disabilities. It also reinforces the idea that employers can terminate employees without providing accommodations, while the union, as the sole representative for employees with disabilities, can participate in all relevant meetings without addressing concerns about Title 22 violations or the employee's ability to maintain employment with an accommodation.

**2. The lower court's decision will impede the effectiveness of state and federal statutes protecting nurses with disabilities.**

When employers fail to provide necessary resources and then discipline employees for not performing their jobs effectively, it can be considered a violation of employees' rights. The U.S. Supreme Court has addressed issues related to unfair labor practices and improper disciplinary actions in the following cases:

*Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 118 S. Ct. 2257 (1998) This case emphasized the employer's responsibility to prevent and correct discriminatory behavior and to ensure that employees have the necessary support to perform their duties.

*Faragher v. Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275 (1998), which reinforced the notion that employers must exercise reasonable care to prevent and address any issues that might impair an employee's ability to work, including providing adequate resources and support.

This case highlights unlawful retaliation because the nurse was disciplined for raising valid concerns about the hospital's failure to maintain operational computers and failure to accommodate a disability.

Per CCR Title 22 §70211(a), *the nursing service shall be organized, staffed, equipped, and supplied, including furnishing and resource materials, to meet the needs of patients and the service.* The lower courts took no notice

of state and federal regulations regarding employers' obligations to registered nurses, which could undermine the efficacy of statutes designed to protect nurses. Such judicial oversight risks not only the dilution of these crucial protections but also jeopardizes the enforcement of standards intended to ensure fair and equitable treatment for nurses with disabilities in the workplace.

Per CCR Title 22 §70016.1(a) Competency validation for registered as set forth in Business and Professions Code §2725 and for specific patient care unit §70213(c)

As exclusive representatives, CNA the petitioner union is fully aware of Title 22. CNA equips the nurses with the Assignment Despite Objection (ADO) forms (Dkt#33-4 pg 77-76) in the event employers force nurses to violate Title 22 regulations. Therefore, when a hospital fails to maintain operational computers, it directly impedes nurses' ability to perform their duties effectively. This delays patient care and severely hinders the nurse's ability to document assessments promptly and accurately give medications. Such hindrances violate the standards set forth under Title 22.

Despite addressing the disregard for patient safety and lack of a functional computer in her rebuttal letter (Dkt #20, pp. 62-75, case# 19-03727-JD), the 9th Circuit noted that the CNA's decision not to pursue arbitration was influenced by "Abdul-Haqq's significant admissions in this rebuttal letter." (App. A 5a)

This implies that knowledge of the nonfunctional computer is the employee's fault and clarifies why CNA stated, "patient assessments to medication administration

delays and errors that typically are extremely difficult to disprove in arbitration,” Dkt 8-5 pg 74<sup>22</sup>, This statement highlights the union’s failure to protect its members from improper discipline by allowing regulatory violations. Additionally, CNA suppressed the petitioner’s factual defense that TPMG did not have functional computers for the nurse to perform her job adequately.

- a. **The 9th Circuit exceeds its authority by ignoring TPMG’s legal obligations as an employer to maintain functional computers, provide adequate training, and have adequate staffing to care for patients effectively**

Nurses’ legal rights are protected as outlined in legislation, but lower court discretion overrules them. Employers, typically healthcare institutions, are responsible for ensuring these standards are met. The following are mandated standards that make the employer responsible for what the lower courts suggest are “mere allegations.” (App. A 3a):

Accreditation Standards the Joint Commission: A primary accrediting body that sets performance standards for healthcare organizations. As part of their performance improvement standards, hospitals must have adequate supplies, adequate staff, and medication management systems, including medication error reporting and analysis, to keep accreditation.

An example of the consequences of a continued violation is the closure of St. Catherine Medical Center in

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2012; the emergency room was shut down due to severe patient safety breaches, including the loss of essential supplies like syringes and surgical gloves.

Occupational Safety and Health Administration (OSHA) Standards Ensure safe working conditions for hospital staff. Clinical Laboratory Improvement Amendments (CLIA) Regulates laboratory testing to ensure patient test results' accuracy, reliability, and timeliness.

California has its State Regulations, which include the Business and Professions Code, a comprehensive set of laws regulating a wide range of professional practices, trades, and businesses within California. The primary aim of the code is to ensure consumer protection, maintain public safety, and uphold the integrity of various professions

California Title 22 General Requirements pertains to various health and safety standards enforced by the state. This title encompasses a wide range of regulations to protect public health, ensure safety, and maintain standards across several sectors. This includes providing adequate staffing, ensuring access to necessary medical supplies and equipment such as computers, offering training and development opportunities, and fostering a workplace culture that prioritizes patient safety and care quality. This is outlined in Title 22 Nursing Service Regulations of §70211-§70217.

An example of violating Title 22 is when 2016 San Joaquin General Hospital lost Designation of Level III Trauma due to the county EMS agency finding the hospital

trauma center out of compliance with several staffing and management requirements established by state and federal law. Currently, they have regained the Designation of Level III Trauma.

**b. Mandated employer requirements are not mere allegations of standards**

The lower courts have downplayed the significance of the allegations regarding the lack of training and inadequate computer resources, referring to them as mere allegations. However, it is essential to emphasize that under state and federal legislation, employers are not only OBLIGATED but also required to provide adequate training and resources.

This requirement ensures that healthcare professionals can deliver the necessary standard of patient care. By dismissing these critical FACT, the lower courts overlook the foundational legal obligations that employers must meet to ensure quality healthcare and patient safety. This oversight does not merely neglect employer responsibilities but potentially compromises patient welfare, highlighting a significant error in the court's evaluation.

For example, in May 2016, and especially on July 11, 2016, the alleged patient care violation occurred because the emergency room was severely short of nurses, and staff from the night shift had to stay. On this date, the petitioner was forced to stay over an hour and a half past her agreed-upon time because there was no nurse to relieve her. Per Title 22, not having enough staff and broken equipment played a part in the delay of care.

The Business and Professions Code, 2725.3(5), only a registered nurse can assess the patient's condition. The problem 07/11/2016 alleged patient care incident is that the Respiratory Therapist alerted the doctor he assessed that the patient was in a hypotensive condition. The doctor then accused the nurse of not telling her of the patient's condition, and the petitioner was then suspended because she did not treat the patient due to the respiratory therapist's assessment. The nursing process is eliminated. This was explained thoroughly in district court Dkt148 pg 6-8

Another problem is that according to AB 394 Legal Requirements, No Registered nurse shall be assigned a nursing unit or clinical area unless that nurse has first received orientation in that clinical area. As of 7/11/2016, the petitioner did not have competencies per CCR Title 22 §70016.1, §70213. When the petitioner alerted CNA of the discipline, CNA stated they did not receive the suspension to file the grievance nor the Assignment Despite Objection (ADO) that would have protected the petitioner from discipline. CNA's statement of not receiving the suspension was later revealed as a lie and proof the union representative had committed perjury.

The current situation presents a troubling paradox: Those entrusted with our nation's health are themselves rendered vulnerable through systemic legal and regulatory failures. The discrepancies in lower court rulings and the absence of a definitive Supreme Court pronouncement on these matters have led to a fragmented legal landscape, necessitating this Court's intervention to ensure uniformity and fairness in applying the law.

**c. TPMG and CNA mislead the 9th circuit regarding allegations of the petitioner making medical errors**

Patient care errors remain hearsay until properly investigated, as illustrated by the 2014 blood-handling incident. In the case of TPMG, none of the alleged patient care issues were reported to risk management or quality assurance for investigation and prevention of future incidents.

If TPMG had had the proper investigation, the investigation would have revealed that TPMG assigned a nurse without proper training to manage a sick patient on July 11, 2016, which is a direct violation of Title 22. On May 16, 2016, TPMG failed to initiate a breathing treatment for a patient left in the waiting room after starting intravenous access for a steroid. The charge nurse then incorrectly assigned this patient to the petitioner, who was already at the maximum patient ratio, and removed another patient from the petitioner's list in the computer system, even though the patient was still physically in the room. This led to the petitioner being falsely accused of delay in care for a patient she did not have because the patient was in the waiting room.

Further incidents include a computer malfunction on April 16, 2016, which prevented medication scanning, and pharmacy department downtime on August 12, 2016, which meant medications ordered during this period did not appear on the Medication Administration Record (MAR).

Despite these employer issues, TPMG issued an initial suspension on August 29, 2016, for patient care incidents

that were not the petitioner's fault. TPMG did not involve an in-house investigation to substantiate these allegations, allowing the patient care allegations to remain unverified hearsay rather than established facts.

This corrupt behavior creates significant challenges for nurses attempting to provide quality care under such conditions. Both TPMG and CNA are aware of the California Health and Safety Code, §1279.1(b)(4) (A), which mandates that all adverse events must be reported to the California Department of Public Health. The California Department of Public Health is then responsible for investigating these events. Failure to follow these procedures means that the allegations remain unverified and unaddressed but are the petitioner's fault per disciplinary paperwork.

The mandatory policy is not followed because it would expose the truth about the alleged patient care. Hearsay manipulation of events takes precedence in the lower courts. As stated above, every hospital must abide by regulations and the standard of care to keep its accreditation with the Joint Commission.

The Joint Commission requires accredited organizations to have medication management systems, including medication error reporting and analysis, as part of their performance improvement standards. Even during district court, this request to have defendants turn in the alleged medication error reports was ignored. The district court Dkt#115 explained the importance of hospitals targeting nurses and hiding real sentinel events from the Joint Commission and the Department of Health. Failure to adhere to these professional standards

and regulatory requirements can result in significant consequences for employers.

But, according to the 9th Circuit memorandum, the petitioner “Abdul Haqq contends she met this burden because she points to supposed inconsistencies in KPMG’s paperwork surrounding her termination, the supposed lack of training on certain policies, and a computer problem. But these mere allegations are insufficient to show pretext when ABDUL-HAQQ engaged in a pattern of policy violations over multiple years. . . .” (App. A 3a).

**d. Timeline of patient care discipline began in July 2016 after TPMG was notified of the EEOC complaint**

**The lower courts’ oversight of the timeline of the incidents in question is significant. They inaccurately state that the patient care incidents spanned multiple years (App. A 3a).** However, the records clearly show that all such incidents began only after the nurse reported TPMG to the EEOC in 2016. Furthermore, the allegations of policy violations are specifically documented between July 2016 and August 2016.

This critical error in timeline assessment has substantial implications for the case, potentially affecting the claims’ credibility and the proceedings’ fairness. It is crucial that this discrepancy be addressed to ensure that the judicial process accurately reflects the factual circumstances and upholds the integrity of legal scrutiny.

Both the employer and union strategically diverted the court’s attention to disciplinary actions impacting

patient care rather than addressing the nurse's history and the timing of issues. The courts focused on the nurse's inability to attend some interactive process meetings, labeling her as uncooperative. However, most of these meetings were scheduled while the nurse was on disability leave, in an incapacitated state. Direct evidence, such as the dates on the interactive process letters and the dates the nurse was on disability leave, should have been crucial material facts in demonstrating this point.

By not considering these factors, the lower courts have overlooked key evidence suggesting retaliatory motives and the impracticality of the nurse attending meetings while incapacitated. This oversight represents a failure to provide due process and a fair assessment of the case.

The lower courts overlooked critical failures and misconduct by the union (CNA) and TPMG. Key points include: 1. CNA missed deadlines to file grievances and lied about the reason, 2. The CNA exaggerated the petitioner's "KICK ROCKS" statement made out of frustration when the CNA offered help after they missed the deadline to file a grievance. This statement overshadowed the union's deliberate deceit. 3. The CNA falsely claimed the nurse attempted to represent another nurse. However, emails showed the nurse was supporting a fellow nurse because Sue Findley of CNA refused to represent a fellow nurse, 4. TPMG disciplines a nurse for failure to perform when evidence shows she was not trained and did not have a functional computer.

Key points highlighting the discipline was a collaboration of unlawful retaliation was ignored by the lower courts:

1. Union and HR Director Affiliation: The HR director involved in the investigation of the petitioner's sexual harassment in 2010 was affiliated with both TPMG and CNA, involving new registered nurse positions.
2. Disproportionate Discipline: The disciplinary actions against the nurse were excessively severe, falsely portraying her as failing in her duties.
3. Resource/Education Shortages: The real issue was a lack of resources/competency validation necessary for the nurse to provide proper care to her patients for the discipline 04/2016, 07/2016, 08/2016.
4. Sabotage by Charge Nurses: Charge nurses sabotaged the nurse by assigning patients who were not physically present in the petitioner room but were waiting in the waiting room for the discipline 05/2016.
5. Ignored Evidence: Important evidence, such as downtime causing antibiotics to be late and discrepancies in the Medication Administration Record (MAR), was discussed in district court but ignored. 08/2016

This collaboration led to unjust disciplinary actions against the nurse, violating her rights. By collaborating with the employer, the union failed to investigate these inferences, violating the Bill of Rights to safeguard members from false discipline. This failure is the sole reason TPMG was

able to carry out a retaliatory and unjust process, further violating the nurse's rights and wrongfully terminating an employee with a disability.

### CONCLUSION

In light of the foregoing, the petitioner respectfully prays that this Honorable Court grants a Writ of Certiorari to resolve the critical legal questions presented herein, thereby affirming the nation's commitment to the health and well-being of its healthcare providers and ensuring that Registered Nurses are afforded the legal protections and support they rightfully deserve.

This petition centers on a systemic failure to uphold and enforce the statutory and regulatory frameworks designed to ensure Registered Nurses receive adequate training and have the resources needed to meet patient needs consistent with state and federal mandates. This systemic oversight not only undermines the quality of healthcare but also exposes nurses to undue disciplinary actions for shortcomings directly attributable to their employers' and unions' failure to comply with obligatory state and federal laws.

Further Complication of the Issue Compounding this already dire situation is the egregious disregard for the protections guaranteed under the Americans with Disabilities Act (ADA) and the Federal Equal Employment and Housing Act (FEHA) for Registered Nurses who, during their noble profession, endure psychological traumas manifesting as Post-Traumatic Stress Disorder (PTSD) among other disabilities. The seminal case of *Jensen v. Wells Fargo Bank* (2000) underscores the

judiciary's recognition of PTSD's severity and its mandate for accommodations under the statutes—a legal obligation conspicuously neglected in the treatment of our nurses.

Respectfully submitted,

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