

SUPREME COURT

STATE OF NEW YORK COUNTY OF SCHOHARIE

JUSTIN BALL

INDEX NO. 2024-469

PLAINTIFF,

**COMPLAINT SEEKING**

-against-

**DECLARATORY JUDGMENT**

THE NEW YORK STATE DEPARTMENT OF HEALTH

DEFENDANT

-and the-

NEW YORK STATE ATTORNEY GENERAL, as a

Necessary Party

DEFENDANT

---

Plaintiff, by and through his attorneys, Pinsky Law Group, PLLC, as and for his Complaint, allege as follows:

1. This is a hybrid Complaint to determine the constitutionality *as applied* of Public Health Law §§ 12 and 12-a and of 10 NYCRR §§ 800.15 and 800.16. This Complaint seeks a declaratory judgment pursuant to CPLR § 3001 and is also brought as a hybrid Article 78 action out of caution.
2. Plaintiff is an individual with a residence in Schoharie County, New York and a certified emergency medical technician with the state of New York.

3. Defendant is the New York State Department of Health, a Department of the state of New York, located in Albany, New York.
4. Defendant New York State Attorney General is a necessary party as this Complaint also challenges the constitutionality of Public Health Law §§ 12 and 12-a *as applied*, as well as 10 NYCRR §§ 800.15 and 800.16 *as applied* to this matter.

### **INTRODUCTION**

5. This Complaint seeks to require the New York State Department of Health to provide Plaintiff with a jury trial in New York State Supreme Court, with the rules of evidence applicable to such trials, as required by the New York State Constitution, Article 1, Section 2 and CPLR § 4101(3). Article 1, Section 2 provides that “Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever”.
6. This Complaint further seeks to declare that portion of Public Health Law § 12 and 12-a and 10 NYCRR §§ 800.15 and 800.16 to be unconstitutional *as applied* to the facts of this matter as it deprives Plaintiff of his right to a jury trial granted by the New York State Constitution.

### **HISTORY OF THE MATTER**

7. By Statement of Charges brought on July 17, 2024, the Commissioner of Health charged Plaintiff, summarized as follows:
  - neglecting a patient, as defined by 10 NYCRR §800.3(am)
  - physically and psychologically abusing a patient as defined by 10 NYCRR § 800.3(ap)(1)

- demonstrating incompetence as defined by 10 NYCRR § 800.3(a) by engaging in acts of neglect and demonstrating a lack of skill and/or knowledge required of EMTs at any level; and
- breaching confidentiality by recording a conversation with the patient about events surrounding the call and maintaining a copy of the recording.

A true and accurate copy of the Notice of Hearing and Statement of Charges is attached hereto as **Exhibit A.**

## **ARGUMENT**

### **PLAINTIFF IS ENTITLED TO A JURY TRIAL IN SUPREME COURT**

8. This Complaint is premised upon the recent United States Court decision of *Security and Exchange Commissioner v. Jarkesy*, \_\_\_ U.S. \_\_\_, 144 S.Ct. 2117 (2024). Plaintiff asserts that New York State’s Constitution provides Plaintiff with the same right to a jury trial, rules of evidence and burden of proof, and that this Court should undertake the same analysis to ultimately conclude that Plaintiff has a right to a jury trial, rules of evidence and burden of proof, in New York State Supreme Court in this matter. To the extent that Public Health Law §§ 12 and 12-a deprive Plaintiff of such right, they should be deemed unconstitutional *as applied*.
9. The Seventh Amendment to the United States Constitution guarantees that in “[s]uits at common law, . . . the right of trial by jury shall be preserved.” Article 1, Section 2 of the New York State Constitution guarantees Plaintiff the same right.

10. As stated by the United States Supreme Court:

The right to trial by jury “is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right” has always been and “should be scrutinized with the utmost care.” *Dimick v. Schiedt*, 293 U.S. 474, 55 S.Ct. 296 (1935).

*Jarkesy, supra at* \_\_\_\_, 144 S.Ct. at 2128.

11. The United States Supreme Court made clear that “The Seventh Amendment extends to a particular statutory claim if the claim is “legal in nature.” *Jarkesy, supra at* \_\_\_\_, 144 S.Ct. at 2128. The United States Supreme Court’s held that S.E.C.’s enforcement action implicated the Seventh Amendment because “The SEC’s antifraud provisions replicate common law fraud, and it is well established that common law claims must be heard by a jury.” *Jarkesy, supra at* \_\_\_\_, 144 S.Ct. at 2126.

12. As further stated by the Supreme Court:

To determine whether a suit is legal in nature, we directed courts to consider the cause of action and the remedy it provides. Since some causes of action sound in both law and equity, we concluded that the remedy was the “more important” consideration.

In this case, the remedy is all but dispositive. For Defendants’ alleged fraud, the SEC seeks civil penalties, a form of monetary relief. While monetary relief can be legal or equitable, money damages are the prototypical common law remedy. What determines whether a monetary remedy is legal is if it is designed to punish or deter the wrongdoer, or, on the other hand, solely to “restore the status quo.” As we have previously explained, “a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment.”. And while courts of equity could order a defendant to return unjustly obtained funds, only courts of law issued monetary penalties to “punish culpable individuals.” Applying these principles, we have recognized that “civil penalt[ies are] a type of remedy at common law that could only be enforced in courts of law.” The same is true here.

*Jarkesy, supra at* 2128-2129, 144 S.Ct. at 2128 (internal citations omitted).

13. The United States Supreme Court further concluded that both securities and exchange fraud and common law fraud target the same basic conduct: misrepresenting or concealing material facts. By using “fraud” and other common law terms of art when it drafted the federal securities laws, Congress incorporated common law fraud prohibitions into those laws. *Jarkesy, supra at* \_\_\_\_, 144 S.Ct. at 2130.
14. The Supreme Court focused a portion of its decision on the facts that the S.E.C. has no juries, presides over a hearing which is prosecuted by the same agency, has an administrative law judge that decides discovery disputed and that the agency’s own rules of practice govern as opposed to federal rules of court. The Court highlighted that the SEC determines the scope and form of permissible evidence and may admit hearsay and other testimony that would be inadmissible in federal court. *Jarkesy, supra at* \_\_\_\_, 144 S.Ct. at 2126.
15. The United States Supreme Court also noted that when a Commission member or an Administrative Law Judge presides, the full Commission can review that official’s findings and conclusions, but it is not obligated to do so. Judicial review is also available once the proceedings have concluded, but such review is “deferential”. *Jarkesy, supra at* \_\_\_\_, 144 S.Ct. at 2126. “By law, a reviewing court must treat the agency’s factual findings as ‘conclusive’ if sufficiently supported by the record.” *Id.*
16. The same is true with a state court’s review of an agency’s determination. *Stevens v. Axelrod*, 162 A.D.2d 1025, 557 N.Y.S.2d 809, 810-811 (4<sup>th</sup> Dept. 1990). 10 NYCRR § 800.16 provides that the hearing is held pursuant to Public Health Law § 12-a. Notably, section 12-a provides

that the “commissioner...shall not be bound by the laws of evidence in the conduct of hearing proceedings...”, and “the commissioner may make appropriate determinations and issue an order in accordance therewith”.

17. Even more severe is that an emergency medical technician can lose not only their state certification, but also their national emergency medical technician certification if the state certification is revoked by the state. Even more severe yet, though not applicable in this instance, is that an emergency medical technician who also is a nurse or other licensed professional is subject to loss of that license as a result of a revocation of their emergency medical technician certificate. The State and Department of Health cannot dispute these claims.
18. The Supreme Court did recognize that the Seventh Amendment would not be implicated if the “public rights” exception applied. Under this exception, Congress may assign the matter for decision to an agency without a jury, consistent with the Seventh Amendment. *Jarkesy, supra at \_\_\_*, 144 S.Ct. at 2131. However, the Supreme Court held that the “public rights” exception to Article III jurisdiction did not apply “because the present action does not fall within any of the distinctive areas involving governmental prerogatives where the Court has concluded that a matter may be resolved outside of an Article III court, without a jury. The Seventh Amendment therefore applies and a jury is required”. *Jarkesy, supra at \_\_\_*, 144 S.Ct. at 2127.
19. Ultimately, the United States Supreme Court held that an individual has a right to a jury trial when they are charged by a federal agency with the same type of allegations as could be made

by a citizen, and where the result could be a monetary penalty which is not designed to make such an aggrieved person whole.

20. That same rationale should govern the analysis of whether the New York State Constitution guarantees citizens of New York State the same rights under similar circumstances.

**A.**

***The Department of Health's charges allow fines up to \$10,000***

21. The U.S. Supreme Court held that a citizen has a constitutional right to a jury trial for “all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume” and that the “Seventh Amendment extends to a particular statutory claim if the claim is ‘legal in nature’”. *Jarkesy, supra at* \_\_\_, 144 S.Ct. at 2145. “What determines whether a monetary remedy is legal is if it is designed to punish or deter the wrongdoer...” *Jarkesy, supra at* \_\_\_, 144 S.Ct. at 2129. “Because they tie the availability of civil penalties to the perceived need to punish the defendant rather than to restore the victim, such considerations are legal rather than equitable.” *Id.* “Since nothing in this analysis turns on ‘restor[ing] the status quote,... these factors show that these civil penalties are designed to be punitive.” *Jarkesy, supra at* \_\_\_, 144 S.Ct. at 2130.

22. Public Health Law § 12 allows penalties which are only designed to punish, and are thus legal in nature, by providing:

any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the

people of the state for a civil penalty of not to exceed two thousand dollars for every such violation.

23. The penalty may be increased to up to ten thousand dollars “if the violation directly results in serious physical harm to any patient or patients.” None of the funds collected are provided to the victim and they belong to the state of New York. Public Health Law § 12.

24. There can be no question that the fines and penalties imposed by Public Health Law § 12 and 12-a are punitive in nature. This factor weighs in Plaintiff’s favor.

**B.**

***The Public Health Law and the Department of Health regulations model common law suits for negligence, incompetence, abuse and breaches of confidentiality***

25. As stated by the United States Supreme Court, “if the action resembles a traditional legal claim, its statutory origins are not dispositive.” *Jarkesy, supra at \_\_\_*, 144 S.Ct. at 2136. 10 NYCRR § 800.16 provides that a fine may be issued in accordance with Public Health Law Section 12 if the Department finds that the certificate holder:

- (1) has failed to comply with the requirements of section 800.15 of this Part;
- (2) has been negligent in the performance of his/her EMS duties and practice, as negligence is defined in section 800.3 of this Part;
- (3) has been incompetent in the performance of his/her EMS duties and practice, as incompetence is defined in section 800.3 of this Part;
- (4) has abused a patient, as patient abuse is defined in Section 800.3 of this Part;

26. Negligence is defined by 10 NYCRR § 800.3(am) as:

a failure to perform, on one or more EMS calls, as an ordinary, reasonable, similarly situated certificate holder certified at the same level would, based upon the standard



of care in the region, as delineated in controlling protocols, curricula, and policies, and as demonstrated by an ordinary, reasonable certificate holder's general standards of practice.

27. This test is exactly that of common law negligence and medical malpractice. *See, Lynch v. Town of Greenburg*, 61 Misc.3d 459, 83 N.Y.S. 3d 818 *citing Bowe v. Brooklyn United Methodist Church Home*, 150 A.D.3d 1067, 56 N.Y.S.3d 180 (2<sup>nd</sup> Dept. 2017).

28. Incompetence is defined as “a lack of, or loss of, skill or knowledge to practice the profession, and/or practicing with negligence, as negligence is defined in this part, on one or more occasions while treating a patient.” 10 NYCRR 800.3(al). This is identical to a claim for medical malpractice and negligence as stated above.

29. “Patient abuse” is defined by 10 NYCRR 800.3(ap) in relevant part to mean:

any inappropriate and/or offensive physical, sexual or verbal contact or interaction with a patient, irrespective of whether the certificate holder is specifically acting in his/her capacity as an EMT when (s)he engages in the abuse, including but not limited to the following:

(1) Physical abuse means conduct by a certificate holder which causes, by physical contact, physical injury, or serious or protracted impairment of the physical, mental or emotional condition of a patient, or which causes the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to, slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, pinching, punching, shaking, sitting upon, burning, cutting, strangling, striking, using corporal punishment, or throwing objects at a patient. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

30. These elements are identical to a civil assault and/or battery case and to an intentional infliction of emotional distress claim. *See, e.g., Coopersmith v. Gold*, 172 A.D.2d 982, 568 N.Y.S.2d

250 (3<sup>rd</sup> Dept. 1991); *Capellupo v. Nassau Health Care Corp.*, 97 A.D.2d 619, 948 N.Y.S.2d 362 (2<sup>nd</sup> Dept. 2012).

31. Clearly, each of the above claims model those which could be instituted by any person in New York State Supreme Court.

32. Plaintiff has the right to a jury trial on the charges before him, with established rules of evidence for courts in civil matters, with a burden of proof applicable to civil jury trials.

**WHEREAS**, Plaintiff respectfully requests that this Court:

A. Declare that the protections offered to citizens by the United States Constitution's Seventh Amendment are identical to those offered to New York State residents under Article I, Section 2 of the State Constitution; and

B. Declare and Order that, as applied to the facts in this Complaint, Public Health Law §§ 12 and 12-a, and 10 NYCRR §§ 800.15 and 800.16 are unconstitutional and deprive Plaintiff of his right to a trial by jury;

C. Declare and Order that in this matter, Plaintiff has the right to a jury trial in Supreme Court, utilizing the rules of evidence applicable to civil matters, with the same burden of proof available to defendants in civil matters; and

D. For such other and further relief as this Court shall determine is appropriate.

Respectfully submitted,

PINSKY LAW GROUP, PLLC

By: Bradley Pinsky

Bradley M. Pinsky  
4311 East Genesee Street  
Syracuse, New York 13214  
(315) 428-8344

**ATTORNEY VERIFICATION**

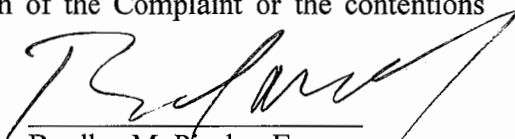
STATE OF NEW YORK        )  
  )ss.:  
COUNTY OF ONONDAGA    )

Bradley M. Pinsky, Esq., an attorney admitted to practice in New York State, affirms under penalties of perjury that: Deponent is the attorney of record for the Plaintiff, Justin Ball, in the within action; Deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated upon the information and belief, and as to those matters I believe them to be true.

This verification is made by Deponent because the Plaintiff has no residence or office within the County of Onondaga, New York, where his attorney has his office. The grounds of Deponent's belief as to all matters not stated upon Deponent's own knowledge are as follows: inspections of records and documents of the Plaintiff, correspondence, conversations, other writings, interviews and other information concerning this subject matter which Deponent has caused to be made or acquired from the parties herein.

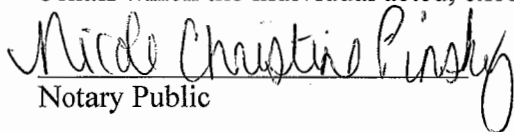
I certify that to the best of my knowledge, information and belief, formed after inquiry reasonable under the circumstances, the presentation of the Complaint or the contentions therein are not frivolous.

Dated: September 23, 2024

  
\_\_\_\_\_  
Bradley M. Pinsky, Esq.

STATE OF NEW YORK )ss.:  
COUNTY OF ONONDAGA    )

On the 23<sup>rd</sup> day of September in the year 2024, before me, the undersigned, personally appeared Bradley M. Pinsky, Esq., attorney for the Plaintiff, Justin Ball, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person on whose behalf which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

