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**Docket Number**

M-23-386

**ALJ Appeal Number**

3-10817205455

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# Appeal Status Information

**Docket Number**

M-22-23

**ALJ Appeal Number**

3-7514532214, 3-7514531962

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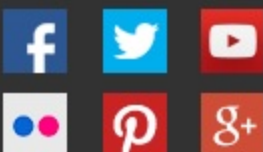
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# Appeal Status Information

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3-7514532214, 3-7514531962

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# Docket Number: M-23-386

## Appeal Information

**Appellant name**

Dr. Richard Cordero, Esq.

**Appellant type**

BENEFICIARY

**Appellant representative****ALJ appeal number**

3-10817205455

**ALJ decision date**

08/24/2022

**Medicare contractor**

MAXIMUS FEDERAL SERVICES

**Claim type**

Part C - Prior Authorization

**Service type**

Dental services

**Case involving an overpayment?**

No

**Overpayment****Amount in controversy**

\$8,000

**Date or period of service start**

09/08/2021

**Date or period of service end**

10/28/2022

#	Document Name	Uploaded By	Date Uploaded
1	<b>Form_DAB-101.pdf</b> [2 MB] Request for Review (Form DAB-101)	Dr. Richard Cordero, Esq.	10/28/2022 05:34 pm
2	<b>22-8-24_ALJ_Fleming_decision.pdf</b> [2 MB] Copy of ALJ Decision/Dismissal Order	Dr. Richard Cordero, Esq.	10/28/2022 05:34 pm

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3	<b>22-10-26DrRCordero-Medicare_Appeals_Council.p...</b> [19 MB] Memorandum or brief or other written statement in support of your appeal	Dr. Richard Cordero, Esq.	10/28/2022 05:35 pm

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October 26, 2022

Medicare ALJ hearing # 3-1081 7205 455;  
Medicare Id. # 8G24-KQ8-WV67  
ECAPE Id. E1021112;  
EmblemHealth Id. K405 191 5001  
Health Insurance Plan of Greater New York  
(HIP) = EmblemHealth cases 1063 8576 et al.

Dr. Richard Cordero, Esq.  
Appellant

v.

Health Insurance Plan of Greater  
New York=EmblemHealth;  
and Maximus Federal Services  
Appellees

**Appeal to the Medicare Appeals Council  
by Appellant Dr. Richard Cordero, Esq.,  
from the decision of ALJ Loranzo Fleming  
of OMHA Atlanta, GA, Field Office  
dated August 24, 2022<sup>†</sup>**

## **A. Request for review of the ALJ decision for the case**

1. Appellant Dr. Richard Cordero, Esq., (hereinafter referred to as Appellant or Dr. Cordero) hereby asks the Medicare Appeals Council to review the decision of Administrative Law Judge (hereinafter ALJ) Loranzo Fleming (ALJ Fleming or the Judge) concerning which the Office of Medicare Hearings and Appeals (OMHA) Atlanta Field Office in Georgia sent him the Notice of Decision dated August 24, 2022, which is attached hereto.

## **B. Venue**

2. The 3<sup>rd</sup> Level Medicare ALJ hearing (the hearing) was held on August 8, 2022, before ALJ Loranzo Fleming. He issued a decision (the decision) dated August 24 for this case. These events provide the jurisdictional basis for the 4<sup>th</sup> Level appeal to the Medicare Appeals Council.

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

### **C. Queries on appeal**

**Query 1:** Was the motive of ALJ Loranzo Fleming of the OMHA Atlanta Field Office for being biased against appellant Dr. Richard Cordero, Esq., his intent to avenge his peer ALJ Dean Yanohira of the OMHA Phoenix Field Office, who denied Dr. Cordero's motion for his recusal only to have to withdraw his denial and recuse himself, so that ALJ Fleming's decision on appeal herein must be vacated?

**Query 2:** Did ALJ Fleming act in furtherance of his bias to reach a predetermined outcome and unreasonably in disregard of "the totality of circumstances" when he limited the hearing to the issue on which the appellee, not the appellant, had based its claim denial, which the appellee wanted to validate through the ALJ hearing?

**Query 3:** Did ALJ Fleming cover up his motive for bias by not even mentioning in his decision appellant Dr. Cordero's motion for his own recusal or disqualification, which if granted, would have deprived the Judge of jurisdiction over this case and thus, of the power to remove the record of this case from OMHA's control and conceal it in an effort to make it unavailable to the Council for review on appeal?

**Query 4:** Did ALJ Fleming forfeit his authority to decide the case due to bias when he abdicated his role as an impartial and fair arbiter ensuring due process in light of the facts of the case and the applicable law, and arrogated to himself the power to take over the video teleconference hearing (video hearing or hearing) to conduct it as opposing counsel cross-examining Dr. Cordero for the more than an hour that it lasted?

**Query 5:** Has ALJ Fleming committed spoliation, obstruction of justice, and abuse

of power in the self-interest of evading a motion for his recusal and hindering his disqualification by the Council, for which purpose he has coordinated with other officers of OMHA and Medicare the withholding of the record, including the recording of the video hearing, so that appellant could not submit it to the Council and expose it as a racketeer influenced and corrupt organization?

**Query 6:** Are ALJ Fleming, Medicare, and OMHA accountable and liable to compensation in light of *Strickland v. U.S.*, 211346.p, where the U.S. Court of Appeals for the Fourth Circuit, held that the Federal Judiciary and its officers, including judges in their official and individual capacities, can on the constitutional grounds of due process and equal protection of the law be sued and held liable?

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

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**D. 1<sup>st</sup> Level: Emblem's crown replacement claim denial; and overview of its condonation by ALJ Fleming in his decision**

**1. Emblem's crown replacement claim denial**

3. This case arose when the crown of tooth # 19 of appellant Dr. Cordero, Esq., broke loose from the cracked root of the tooth on September 8, 2021. From that day to date, the gap between his adjacent teeth has caused him to keep biting his tongue, chewing his cheek, and leading to the malocclusion of his jaws. At the request of appellee EmblemHealth (Emblem), Dr. Cordero's PCP, Dr. Monte Ezratty, established the medical necessity of a replacement crown, writing a statement to that effect and submitting it to Emblem and to the New York University College of Dentistry, both of which acknowledged receipt of it to Dr. Cordero.
4. Time and again, he had to recount the events since the crown broke loose in the scores of recorded phone conversations held with the more than 15 supervisors of Emblem, who with reckless disregard for his pain and suffering bandied him for months from one to the next. Each of the supervisors was unwilling to take ownership of the replacement claim to determine Emblem's coverage pursuant to its representations on the front side of the Id. card that Emblem had issued to Dr. Cordero, namely: "VIP Dual [Medicare and Medicaid] (HMO D-SNP) [Dual Special Need Plan] Comprehensive Dental; Medicaid COB [Coordination of Benefits] may apply".



5. Most of the Emblem supervisors did not even know what those abbreviations stood for. This is borne out by the recorded telephone conversations, the emails exchanged between Emblem and Dr. Cordero, the letters that it sent him, and, it is submitted, the notes written in the record by the supervisors themselves.
6. Much less did they know the extent of the representation in the Emblem rules and advertisement that Emblem's coverage exceeds that of Medicare, never mind the way of coordinating benefits with Medicaid. They had no idea what Medicare rules applied, not to mention to what extent those rules could determine Emblem's coverage.
7. However, they would have known had they been properly trained and they should have known had they proceeded with due diligence to find out. In fact, this is stated in the advertisement "EmblemHealth Enhanced Care (Medicaid) Member Benefits -Covered by EmblemHealth -All Members, Customer Services, tel. (855)283-2146":

We believe that providing you with good dental care is important to your overall health care. EmblemHealth members must choose a dentist in the DentaQuest Network for preventive and restorative dental care such as routine checkups, X-rays, fillings, root canals, crowns and more. If you need help finding a dentist, call DentaQuest Customer Service **at 1-844-776-8748**, Monday through Friday, 8 am to 5 pm, for the most up-to-date network information.

You can also go to a dental clinic that is run by an academic dental center without a referral. Call EmblemHealth Customer Service at **1-855-283-2146** for a list of academic dental centers near you.

Call your dentist right away to schedule appointments for you and all other enrolled family members. Just show your dentist your member ID Card.

8. In the same vein, the "2021 Evidence of Coverage for EmblemHealth VIP Dual or

EmblemHealth VIP Dual Select – Chapter 4. Benefits Chart (what is covered)” (Exhibit 22-4-8 EH Hillegass-DrRCordero) provides as follows in pertinent part:

page 114: “Members who qualify for Medicare and Medicaid are known as “dual eligibles.” As a dual eligible member, you are eligible for benefits under both the federal Medicare Program and the New York State Medicaid Program. The Original Medicare and supplemental benefits you receive as a member of this plan are listed in Section 2.1.”

page 118. “Dental. Medicaid covers preventive, prophylactic and other dental care, services, supplies, routine exams, prophylaxis, oral surgery (when not covered by Medicare), and dental prosthetic and orthotic appliances required to alleviate a serious health condition, including one which affects employability.”

9. It follows indisputably from the above that Emblem and Medicaid cover medical services that Medicare does not. This fact supported Dr. Cordero’s insistence on asking Emblem to coordinate benefits with Medicaid and grant his crown replacement claim.
10. Emblem dragged out its determination of Dr. Cordero’s claim for months. When it realized that it could not wear him down into abandoning his claim, it took the easy way out: On December 11, 2021, Emblem denied the crown replacement claim by arbitrarily, capriciously, and belatedly invoking only extraneous Medicare rules. It did so without applying its more “comprehensive” rules. Nor did it make a due diligence effort, if any, to ‘coordinate benefits with Medicaid’. Why would Emblem make any effort since it could merely rubberstamp on the claim ‘Not Medicare approved’?
11. If Emblem knew that Medicare rules were dispositive of the unambiguous claim made to it by Dr. Cordero in his first call on September 8, 2021, when the crown came out of the root and he asked to have it replaced, Emblem could have told Dr.

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

Cordero so and had the duty to tell him so.

12. Instead, it allowed more than 15 supervisors to drag out the coverage determination for months. They had no motive to do more than the minimum and pass the case on to any other Emblem receptionist or supervisor since they relied on both the absence of any requirement that they take ownership of a case until resolving its problem, and the obvious pattern of Emblem not holding them accountable for acting accordingly.

## **2. Overview of the condonation by ALJ Fleming of Emblem's ignorance, incompetence, and bad faith**

13. OMHA sent Appellant Dr. Cordero a parcel of 24 pages, one or more of which bear their own title and constitute a section of the parcel. The first section is titled "Notice of Decision" and dated August 24, 2022 (the Notice). The decision is identified in another section as that of ALJ Loranzo Fleming. The Notice states in its second sentence the following:

This decision is based on the administrative record, including any evidence or testimony presented at the hearing, if one was held.

14. The ignorance and incompetence of those more than 15 Emblem supervisors shows that from its opening sentence the decision of ALJ Loranzo Fleming of August 24, 2022, is a distortion of the facts

The Appellant requested that Health Insurance Plan of Greater New York<sup>1</sup> (<sup>1</sup> Also known as Emblem Health.) (the Plan) preapprove a guided tissue regeneration (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D6057), abutment supported case metal crown (D6062), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (6066) (collectively dental implant and related codes.

15. What appellant Dr. Cordero requested was the replacement of the crown that had



come loose on September 8, 2021. Neither he nor the more than 15 Emblem supervisors that for months passed on his request like a hot potato to whomever picked up Dr. Cordero's next call to Emblem after they had stopped returning his calls knew any such technicalities, much less their source, that is, Medicare rules.

16. Emblem conjured up those rules after Dr. Cordero showed that Emblem would not be able to wear him down into desisting from his claim. This explains why though Emblem denied the claim on December 11, 2021, it was not until Emblem realized that Dr. Cordero would keep protesting its claim denial pretext that more than a month later, on January 12, 2022, Emblem referred its claim denial for reconsideration to Maximus Federal Services, an Independent Review Entity, (Maximus).
17. ALJ Fleming distorted the facts from the outset that he stated in his decision. His distortion was intentional, for it is unsupported by, and contrary to, the record, especially Dr. Cordero's [Statement on Appeal](#) of May 21, 2022. (Exhibit [22-5-21DrRCordero-Medicare\\_Appeals](#)) and the many [emails](#) and mail exchanged between Emblem and Dr. Cordero (Exhibit [22-8-5DrRCordero-EH\\_OMHA-email\\_evidence](#)), but removed from the record by Emblem and Maximus. His distortion pervades his decision and impeaches its credibility.
18. ALH Fleming condoned Emblem's incompetence and negligence in its case handling system as well as its hiring, training, employee motivating, and supervising practices. Likewise, he condoned Emblem's bad faith and reckless disregard of commonly accepted standards of medical care, thus causing a member to endure pain and suffering for months due to the adverse consequences of the gap between his teeth resulting from the crown of tooth 19 breaking loose.
19. ALJ Fleming knew and should have known had he proceeded with due diligence that Emblem's invocation of Medicare rules in support of its claim denial was a

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pretext to avoid coverage. It constituted unfair surprise. It violated the spirit of the “No Surprises Act (Title I of Division BB of the Consolidated Appropriations Act of July 2021)” and the “Requirements Related to Surprise Billing: Final Rules of August 19, 2022”. Instead of Emblem sending Dr. Cordero a surprise bill for a certain amount that he had to pay, it sent him surprise rules to deny the payment of any amount by Emblem.

20. Emblem baited Dr. Cordero with misrepresentations in its advertisement and Evidence of Coverage. It kept pulling the bait away from Dr. Cordero to wear him down as he dragged himself after it and thereby cause him to drop exhausted on his belly dead. When that did not happen, Emblem switched its tactic: It invoked Medicare rules. Emblem’s bait and switch practice was driven by bad faith and constituted fraud. Its motive was to save money through its claim denial. ALJ Fleming should have realized that Emblem came to the hearing with dirty hands that tainted its conduct with bad faith. But the Judge’s bias covered it up.

21. Dr. Cordero protested.

**E. 2<sup>nd</sup> Level reconsideration: Emblem and Maximus coordinated their effort to make Dr. Cordero miss the hearing request deadline**

**1. Emblem and Maximus misled Dr. Cordero about sending him the reconsideration decision**

22. On January 12, 2022, Emblem took the initiative to submit its denial of Dr. Cordero’s claim for reconsideration to Maximus.

23. Maximus mailed to Dr. Cordero a letter dated January 21, 2022 (Exhibit 22-1-21 Maximus) bearing appeal number 1-1081 7205 455, and concerning its review of Emblem’s denial of “a medical item or service”, without specifying what item or service that was. It was a form letter. Maximus stated that Dr. Cordero did not have

to contact it because it would contact and inform him of the outcome of its review.

24. However, weeks went by without Dr. Cordero receiving any communication from Maximus whatsoever. So, on March 9, 2022, he emailed Emblem Grievance and Appeals supervisor Sean Hillegass, [SHillegass@emblemhealth.com](mailto:SHillegass@emblemhealth.com), tel. (647)447-0617, to inquire about the state of Maximus's review. In his reply of the same date, Mr. Hillegass wrote the following:

We have automatically forwarded your case to the Independent Review Entity, Maximus Federal Services, to determine if they agree with our decision to uphold your denial. The appeal number is 1-10817205455. You should receive a copy of their response in the mail, along with instructions for any additional levels of appeal. You can contact them at 844-559-6743 for an update on the status of the appeal.

25. Emblem expected that Dr. Cordero "should receive a copy of their response in the mail". Hence, he just had to keep waiting for it.

26. On March 14, Appellant Dr. Cordero called Emblem supervisor Hillegass to complain about not having received any decision from Maximus. Surprisingly, he said that he had received it, dated February 15!

27. This means that when on March 9, Mr. Hillegass emailed Dr. Cordero, the former was in a position to inform the latter that Maximus had concluded its review of Emblem's denial of the crown replacement claim and had issued a decision supporting Emblem, and thus unfavorable to him. Mr. Hillegass concealed that vital information and instead pretended that Dr. Cordero had ample time to appeal, which would only start to run whenever in the future Maximus made its decision.

28. On that call on March 14, Mr. Hillegass agreed to email Dr. Cordero Maximus' decision. Weeks went by without Dr. Cordero receiving any such email or any communication from Maximus.

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

29. As a result, Dr. Cordero saw the need to call Mr. Hillegass again on March 31 to complain. Suspiciously, Mr. Hillegass did not assert having emailed it already. He simply said that he would email it to Dr. Cordero. But the latter insisted that he would remain on the phone until his email inbox indicated that the email from Mr. Hillegass had arrived and upon opening it Maximus's decision displayed. By then Dr. Cordero had less than 15 days out of the normal period of 60 days to request an ALJ hearing on appeal from that decision.
30. This shows that Maximus and Emblem were working together to prevent Dr. Cordero from receiving the decision in time to file an ALJ hearing request within the allowed period. The way they handled the hearing request confirms that statement, for it establishes a pattern of conduct: They conceal evidence.

**2. Neither Maximus nor Emblem ever sent Dr. Cordero any paper that they filed with OMHA**

31. Maximus's decision of February 15, 2022 (Exhibit 22-1-21 Maximus), was shared with Dr. Cordero at his insistence by Emblem only on March 31. It was contained in a parcel constituted of sections. One of them was the official OMHA-104 form titled "Office of Medicare Hearings and Appeals, WAIVER OF RIGHT TO AN ADMINISTRATIVE LAW JUDGE (ALJ) HEARING" consisting of Instructions, Sections 1-5, and a Privacy Act Statement. (Office of Medicare Hearings and Appeals (OMHA))
32. However, Maximus did not accompany the official Waiver form with the [official OMHA-100](#) form for requesting an ALJ hearing, which has not one, but rather two pages. Far from it, Maximus replaced that official OMHA form by its own consisting of a one-liner.

**ALJ HEARING REQUEST FORM**

Date: April 12, 2022

RE: Appeal Number 1 - 1081 7205 455

I request a Hearing before an Administrative Law Judge to appeal Maximus Federal Services Reconsideration Determination.

Very truly yours,  
Dr. Richard Cordero, Esq.  
 Signature

2165 Bruckner Blvd  
 Address

Dr. Richard Cordero, Esq.  
 Print Name

Bronx, NY 10472-6506  
 City, State, Zip

(718)827-9521  
 Telephone Number

-----

33. The brevity of this form is intended to deprive the requester of all the information contained in the official form, including the period for OMHA to receive the appeal. It neither affords the appellant the opportunity to file any statement nor states that Maximus will file a self-serving record that excludes all the communications exchanged between the appellant and Emblem, OMHA, the ALJ office, and others. Nor does it provide the address of OMHA for the appellant to request more information about its appeal rights. On the contrary, Maximus asked that the filled-out form be sent to its own address, not that of OMHA. Maximus wanted to retain control of the ALJ hearing request. It is a form crafted and used by Maximus and Emblem in self-interest and bad faith.
34. Maximus is deemed to be the largest provider of services to Medicare as well as other governmental units. Thus, OMHA, which is a Medicare component, must have receive a large number of hearing requests from Maximus rather than from the requesters themselves. It follows that OMHA knowingly had ceded control of the appeal to the issuer of the decision that was the object of the appeal: an opposing party...worse yet, an employee.

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35. Hence, Maximus has an interest in sparing Medicare, its employer, having to pay on claims. That gives rise to a conflict of interests: making an “independent review” of claim denials v. protecting its employer from having to pay those claims AND thereby protecting its continued employment by it. Hence, OMHA had reason to expect Maximus to abuse in self-interest the power to control the appeal, but it recklessly disregarded it. So, Maximus risklessly abused its power, for OMHA would not hold it accountable:
36. On May 3, 2020, the legal assistant of ALJ Dean Yanohira in the OMHA Phoenix Field Office in Arizona, Ms. Deniese Elosh, called Dr. Cordero. She said that she wanted to set the date for the ALJ hearing.
37. Dr. Cordero was taken aback. He stated how odd it was that the hearing was going to be scheduled but he, the requester of it, had neither been asked nor given the opportunity to file his statement on appeal. In fact, it was Maximus who had sent him its own unofficial ALJ hearing request form and it did not provide for the requester to submit anything, whether a statement or evidence, to an ALJ. Of course, Maximus had no interest in asking a requester to submit anything, as anything so submitted would only impugn Maximus’s reconsideration decision. Maximus was acting in self-interest.
38. The conversation between Assistant Elosh and Dr. Cordero lasted 1 hour and 47 minutes. During it, he found out something grossly outrageous: Maximus had filed with ALJ Yanohira what it passed off as the record on appeal, but had not served a copy of it on Dr. Cordero. That is required by well-established principles and practice of due process: notice to the opposing party that ensures the transparency of the process and affords that party an opportunity to prepare and respond. In fact, till this day, neither Maximus nor Emblem has served on him, whether by mail, email, or phone, any paper or oral message concerning the appeal.

39. Dr. Cordero asked legal assistant Elosh to send him a copy of what Maximus had filed with ALJ Yanohira. She claimed that Maximus's record was too big to be printed. Dr. Cordero asked how big it was and she answered "more than 100 pages". He said that she could send them to him as one or more attachments or on a USB stick. But she said that she could only send them to him on a CD. Although computers no longer come with CD readers, which would force Dr. Cordero to get an external CD reader, he agreed.
40. Nevertheless, a few days later, on May 6, what he received was hundreds of printed pages. He suspected that for the same reason that initially assistant Elosh had not wanted to send him a printed copy of the record, that is, 'because there are too many pages', she might not have sent him all the pages.
41. So, he called her and insisted that she abide by their agreement to send him on a CD all the record filed by Maximus. She refused to do that. Dr. Cordero tried to contact ALJ Yanohira, to no avail. He tried to contact the supervisor of legal administrative assistants, Ms. Tamara, tel. (833)636-1476, but she would neither pick up the phone nor return his recorded messages requesting that she contact him. So, he called assistant Elosh, who would neither take his calls nor call him back.
42. By contrast, on May 17, Dr. Cordero received a call from Inspector Cory Hogan: Assistant Elosh had filed a complaint against him with the Federal Protective Services of Homeland Security. Dr. Cordero was being treated as a terrorist!
43. The conversation convinced Inspector Hogan that Dr. Cordero had not posed and did not pose any threat to anybody; he only wanted a copy of the whole of Maximus's record. So much so that Inspector Hogan agreed to use his good offices to secure a copy of it and send it to him on a CD. Inspector Hogan kept his word.
44. When Dr. Cordero received the CD, he ran a page count on its contents and the return outraged him even more: The record that Maximus had filed with ALJ Yanohira

consisted of 1,800 pages! Assistant Elosh, as legal assistant dealing with, among other things, records, must have known how big the record was. She concealed that important piece of information from Dr. Cordero and misled him into thinking that the record was ‘only a few more than 100 pages’.

45. Maximus too engaged in misleading. It was trying to game the process by pretending that that the support that the record provided for its reconsideration decision affirming Emblem’s denial of Dr. Cordero’s claim was so abundant that its decision had to be correct. Maximus could not have reasonably expected ALJ Yanohira to read 1,800 page to detect any passage showing that its decision was wrong. If such passage existed, Maximus buried it in 1,800 pages. Rather, Maximus was counting on ALJ Yanohira to take its word for it and rubberstamp its decision as correct. Maximus had proceeded in bad faith.

46. What was also outrageous was that the alleged “record” did not contain a single page of the numerous emails exchanged between Dr. Cordero and more than 15 supervisors of Emblem, tel. (877)344-7364, that had dealt with him for some nine months, such as (cf. Section B, page alj:9, of Dr. Cordero’s [Statement on Appeal](#) of May 21, 2022):

- 1) Ms. Jessica (Jessie) Ebeng in The Philippines; tel. (877)344-7364, ext. 19366; case 1063 8576, [m\\_nana@emblemhealth.com](mailto:m_nana@emblemhealth.com)
- 2) Nick Edwards in The Philippines; tel. (877)344-7364, ext. 19467; case 1016 8705, [n\\_enopia@emblemhealth.com](mailto:n_enopia@emblemhealth.com)
- 3) DentaQuest, EmblemHealth’s Dental Benefits Administrator, tel. (800)516-0165, (888)468-5509,
  - a. supervisor Ms. Yumai
  - b. Ms. Tracy, case # 2021-0027 3289



- c. Sergio Diaz, Customer Representative, tel. (844)776-8749,  
[Sergio.Diaz@greatdentalplans.com](mailto:Sergio.Diaz@greatdentalplans.com), case 2021-0028 0626
  - d. Reed Sequoya of the Appeals Department
  - e. Sharon, call reference # 2021 0035 6184
  - f. Customer Service Representative Rita
  - g. Approval and Denial Department Ms. Sasha
  - h. Supervisors Melisa and Char, tel. (844)776-8749
  - i. Authorization Department, fax (262)241-7150; Stephanie
- 4) Kevin Buttler in The Philippines
  - 5) Chris Osorno in The Philippines, (877)344-7364, ext. 19479,  
[k\\_osorno@emblemhealth.com](mailto:k_osorno@emblemhealth.com)
  - 6) Eps G. in The Philippines; (877)344-7364, ext. 17913
  - 7) Joseph Sanchez Lomocso in The Philippines;  
[j\\_lomocso@emblemhealth.com](mailto:j_lomocso@emblemhealth.com)
  - 8) Supervisor Joan in The Philippines, who at Dr. Cordero's request transferred his call to Emblem in the U.S.
  - 9) Susan S., tel. (877)344-7364, in Emblem's "New York Ship", tel. (800)447-8255
  - 10) Tamika Simpson in the NY Ship; tel. (800)447-8255;  
[T\\_simpson@emblemhealth.com](mailto:T_simpson@emblemhealth.com); case 0028 0626
  - 11) Thomas Gray in the NY Ship, [T\\_Gray@emblemhealth.com](mailto:T_Gray@emblemhealth.com); case 1016 8705
  - 12) Melissa Cipolla, Sr. Specialist, Grievance and Appeals Department; tel. (646)447-7026, Fax (866)854-2763; [MCipolla@emblemhealth.com](mailto:MCipolla@emblemhealth.com),  
Inquiries # 840 518, 890 344

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

- 13) Sean Hillegass, Supervisor at the Grievance and Appeals Department, tel. (646)447-0617, [SHillegass@emblemhealth.com](mailto:SHillegass@emblemhealth.com); case # 824 311
- 14) Ms. Darwin Quipit Arcilla in The Philippines, ref. 1120 9655
- 15) May E. in The Philippines
- 16) Shelley Bergstrom, Quality Risk Management, tel. (631)844-2691, [SBergstrom@emblemhealth.com](mailto:SBergstrom@emblemhealth.com)
- 17) Sandy Yang, Specialist, Grievance and Appeals Department, tel. (646)447-4380
- 18) Membership Benefits Dar, reference # 1120 9655
- 19) Murugan Sudalai; letter of March 15, 2022, Case Id. 1237 2750; Claim # 21D 8699 38 100
- 20) Stephanie Macialek, Specialist, Grievance and Appeals, tel. (646)447-6109, [Stefanie.Macialek@emblemhealth.com](mailto:Stefanie.Macialek@emblemhealth.com)
- 21) Maximus Federal Services, Medicare Part C QIC [Qualified Independent Contractor], tel. (844)559-6743; (585)348-3300; fax (585)425-5292

47. The emails exchanged between Dr. Cordero and those Emblem supervisors run to hundreds of pages (Exhibit [ALJ/22-10-24DrRCordero-EH\\_OMHA-email\\_evidence](#)). Those emails do not even include the ones concerning this case that the supervisors exchanged among themselves and with third parties.

48. However, the recorded phone conversations were sufficient to cause Emblem Grievance and Appeal supervisor Sean Hillegass to make the following admission in his letter to Dr. Cordero of as late as December 29, 2021:

We reviewed the call logs from your contacts with the EmblemHealth and DentaQuest Customer Service centers. It does appear from the records that there was a significant

amount of back and forth in trying to determine if the providers you wished to see for these services were participating or non-participating, and what sort of coverage is available for these services. On behalf of both EmblemHealth and DentaQuest I apologize that there was so much difficulty in this and for any frustration it caused. We realize you have a choice when it comes to your health insurance provider, and we value you as a member. We value you as a member and continually strive to resolve any issues you may have as efficiently and clearly as possible. We're sorry you were not afforded that in these calls.

49. True to its pattern of concealment, Maximus did not submit as part of the “record” any of the tens of recorded conversations between Emblem and Dr. Cordero and/or, among others:

- 22) Medicare, tel. (800)633-4227, [Medicare.Appeals@hhs.gov](mailto:Medicare.Appeals@hhs.gov); Supervisor Mark Keelan
- 23) Human Resources Administration of the City of New York (HRA)/Department of Social Services (DSS), Information Center, tel. (800)343-9000; Medical Utilization Threshold Team, tel. (718)920-1070, Jackie
- 24) NY State Medicaid, tel. (800)541-2831
  - a. Tasha, tel. (855)355-5777, (800)663-6114
  - b. Ms. Charles and Ms. Anderson, tel. (888)692-6116
- 25) NY State of Health, (866)881-2809
  - a. supervisor Mr. Terry
  - b. representatives Laura, Sherry, and Jeda, who wrote ticket 2683 3671
- 26) Jacobi Medical Center Dental Department, tel. (718)918-3422, (718)918-7107

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

- a. Director Dr. Benn Lieberman
  - b. Front desk manager Sharryl
  - c. Dr. Sunny Choudhary
  - d. Dr. David Charrette
- 27) New York University College of Dentistry, (212)998-9900, (212)998-9800, (212)998-9680
- a. Clinic 1A, 1<sup>st</sup> Floor Registration, tel. (212)998-9430
  - b. Call Center Representative Catherine, tel. (631)940-5446
  - c. Fellow Dr. Alekxandra Anna Malz, tel. (212)998-9923, [aam743@nyu.edu](mailto:aam743@nyu.edu)
  - d. Attending Doctor Samiak Najafi
  - e. Dental records clerk Andy Terc, [at61@nyu.edu](mailto:at61@nyu.edu), [dental.records@nyu.edu](mailto:dental.records@nyu.edu)
  - f. Seth Yeboah, tel. (212)998-9923, Manager of the Endodontics Clinic W7, tel. (212)998-9677, [sky203@nyu.edu](mailto:sky203@nyu.edu)
  - g. Perio Resident Dr. Arwa Alsalem; Periodontics Clinic W5, tel. (212)992-7040
  - h. Managers Ms. Renee A. Briggs, tel. (212)992-7021 and Ms. Whitney Peters, tel. (212)992-7020
  - i. Call Center Christine, Patty, and Manager Clyde Jackson, tel. (212)992-5763
  - j. Mr. Robert Glickman, [dental.clinicalaffairs@nyu.edu](mailto:dental.clinicalaffairs@nyu.edu), supervisor of Patient Advocate Bianca Drew, tel. (212)998-9245, and Assistant Patient Advocate Alison Leffel, (212)998-9875

- 28) PCP Dr. Monte Ezratty, Park South Medical,  
[SouthParkMedical1545@gmail.com](mailto:SouthParkMedical1545@gmail.com)
- a. Melisa, Isabel, Brian, tel. (718)892-2201; fax (718)828-9663;  
Emblem case 1040 3958
- 29) Internist Dr. Forrest Manheimer and his staff at Weill Cornell Medical College, Gastroenterology Weill Cornell Physician Practice, (646)962-4000 or 5110;
- a. Billing, tel. (855)880-0343
  - b. Gramercy Park Digestive Disease Center, tel. (212)979-3237
- 30) Ophthalmologist Dr. David Ritterband, tel. (212)702-7300
- a. Northwell Health, a division of Manhattan Eye, Ear, & Throat Clinic, Physicians Partners Ophthalmology, tel. (516)876-5555, (212)505-6550, (212)702-7712
  - b. Diana Paguay, [D.Paguay@Northwell.edu](mailto:D.Paguay@Northwell.edu); Ms. Janine Medina, [JMedina14@northwell.edu](mailto:JMedina14@northwell.edu); and Robert Sawyer
  - c. Optometrist Dr. J. Huang, [Jhuang@northwell.edu](mailto:Jhuang@northwell.edu)
  - d. Records Officer Ms. Kim; Emblem case # 1040 5920
  - e. Ophthalmology Consultants, tel. (212)505-6550
- 31) EmblemHealth EyeMed, tel. (844)790-3878, [email@eyemed.com](mailto:email@eyemed.com)
- 32) Emblem reward cards vendor Black Hawk, tel. (833)483-9942
- 33) Debt collector Harris & Harris of Chicago; tel. (800)314-8305
- 34) Credit Collection Services, tel. (617)581-1061
- 35) Quest Diagnostics, Laboratory Bill, tel. (866)254-3859, (866)697-8378, [contactbilling@mydocbill.com](mailto:contactbilling@mydocbill.com)

36) Inform Diagnostics, Inc., tel. (866)588-3280, Fax (866)588-3280

37) Department of Health and Human Services, (216)462-4121

a. Office of Medicare Hearings and Appeals (OMHA) Centralized  
Docketing, Cleveland, OH, tel. (866)236-5089

b. OMHA Beneficiary and Enrollee Appeals and Assistance

50. In preparation for the ALJ hearing, Dr. Cordero requested copies of the communications, including recorded conversations, between and among them. They were incorporated in the record by reference and are hereby reincorporated therein by this reference to them. But Medicare, OMHA, and the administrative law judges have refused to produce them.

51. Those communications, whether recorded or summarized as “Reports of Contact” in the Medicare/OMHA call log and similar notes in equivalent records, will show how many people in those entities have dealt with Dr. Cordero or refused to reply to the messages that he recorded on their answering machines. Among them are the following:

38) Deniese Elosh, Legal Assistant of ALJ Dean Yanohira, [dean.yahohira@hhs.gov](mailto:dean.yahohira@hhs.gov), in the OMHA Phoenix Field Office in AZ; tel. (602)603-8609; [Deniese.Elosh@hhs.gov](mailto:Deniese.Elosh@hhs.gov); Team Yanohira fax (602)379-3038

39) Cesar Morales, Legal Administrative Specialist, Team Yanohira; OS/OMHA; tel. (602)603-8599; [Cesar.Morales@hhs.gov](mailto:Cesar.Morales@hhs.gov)

40) Todd Valdini, Legal Administrative Specialist, Team Yanohira; OS/OMHA; tel. (602)603-8502; [Todd.Valdini@hhs.gov](mailto:Todd.Valdini@hhs.gov)

41) Tamara, Chief Legal Administrative Officer; OMHA Phoenix Field Officer, tel. (833)636-1476; never returned Dr. Cordero’s calls

- 42) ALJ Bill Wells in the OMHA Phoenix Field Office, tel. (602)603-8509, who answered a call from Dr. Cordero and said that he would have Cesar Morales and Todd Valdini call him back, but they never did
- 43) Federal Protective Services of the Department of Homeland Security
- 44) Inspector Cory Hogan of the Federal Protective Services, tel. (602)514-7130

52. They know, whether as principals or accessories, about the coordinated effort to conceal evidence, which support counts of spoliation, obstruction of justice, and abuse of power that influence the operation of a corrupt organization engaged in racketeering through the illegal denial of insureds' claims. Among them are the following

**F. 3<sup>rd</sup> Level ALJ hearing in Phoenix: ALJ Yanohira's denial of the recusal motion by rubberstamping a form and his eventual recusal**

53. The motion for the recusal of ALJ Dean Yanohira of the OMHA Phoenix Field Office in Arizona and the forced withdrawal of his denial, and grant, of it provides the foundation for understanding the bias of ALJ Loranzo Fleming in the OMHA Atlanta Office in Georgia: the latter wanted to avenge the former and teach Dr. Cordero a lesson: *Never mess with one of us judges!*
54. Dr. Cordero filed by email and fax his [Statement on Appeal](#) on May 22, 2022 (Exhibit 22-5-21DrRCordero\_Statement\_on\_Appeal) with the OMHA in Phoenix and served it on the parties.
55. The Statement's first sentence introduces PART I, which bears the following title:

**Upon the shocking complaint that Ms. Deniese Elosh, Legal Assistant to ALJ Dean Yanohira, to whom this case has been assigned, filed against Appellant Dr. Richard Cordero, Esq., with the Federal Protective Services!, Dr. Cordero petitions for the recusal or disqualification of ALJ Yanohira and for the transfer of this case out of the OMHA office in Phoenix, AZ**

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

56. ALJ Yanohira rubberstamped OMHA-183T form with his digital signature, dated May 27, 2022, where he denied Dr. Cordero's motion for his recusal. That denial does not mention a single ground for Dr. Cordero's petitioning the ALJ's recusal. Moreover, ALJ Yanohira did not even refer to Dr. Cordero's objection to the hearing date, namely, June 14, 2022, due to his current service on a grand jury in New York City.
57. Upon receiving that rubberstamped form on May 31, Dr. Cordero called ALJ Yanohira's office and recorded a message protesting his form on both grounds.
58. The ALJ simply had Legal Administrative Specialist Cesar Morales, tel. (602)603-8599, email Dr. Cordero on May 31, another form, to wit, "RESPONSE TO NOTICE OF HEARING", with the instruction "Please review the attached form to request a new ALJ. Please ensure you mark the check box in section 6".
59. If ALJ Yanohira had bothered to read the first sentence of Dr. Cordero's Statement faxed to him at (602)379-3038 on May 22, he would have realized that Dr. Cordero had requested a new ALJ, and that requiring him to fill out the RESPONSE form was superfluous and intentionally burdensome as wasteful of Dr. Cordero's time and effort. In fact, the "NOTICE OF HEARING" mailed to Dr. Cordero and dated May 11 provides thus: "You are encouraged, but not required, to use the enclosed *Response to Notice of Hearing* (form OMHA-I02) when responding". The information that it requested was provided in the Statement.
60. It follows that ALJ Yanohira did not even read the motion for his recusal, which was contained in Dr. Cordero's Statement. He denied it robotically by rubberstamping a fiat.
61. Canon 2 of the Code of Conduct for U.S. Judges mandates that "Judges must avoid every impropriety and even the appearance of impropriety". The Code provides also as follows:



## Compliance with the Code of Conduct

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below [concerning “A. Part-time Judge...B. Judge Pro Tempore...C. Retired Judge”; bold letters in the original]

62. Even the justices of the Supreme Court recognize that they must accord their conduct with legal rules, such as those at 28 U.S.C. §455 on recusal, and ethical rules. In fact, Chief Justice John G. Roberts, Jr., wrote in his 2021 Year-End Report on the Federal Judiciary, page 3-4, as follows:

We are duty-bound to strive for 100% compliance because public trust is essential, not incidental, to our function. Individually, judges must be scrupulously attentive to both the letter and spirit of our rules, as most are.

63. Such strict compliance is guided by this tenet of the administration of justice: "Justice should not only be done, but should manifestly and undoubtedly be seen to be done". *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923). Cf. "Justice must satisfy the appearance of justice", *Aetna Life Ins. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

64. What ALJ Yanohira let it be seen in his denial was not his consideration of the grounds of the recusal petition. The only appearance that he manifested in his denial was that of his rubberstamped digital signature on a form. Justice Thurgood Marshall put it this way in his dissent in *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex*, 442 U.S. 1, 40 (1979): “[A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary”.

65. ALJ Yanohira let himself be seen exercising “power [, which] corrupts”, and when it is reasonless, it is arbitrary and capricious. When it is allowed to be exercised

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unaccountably, it becomes riskless, thus “absolute power [, which] corrupts absolutely”, as stated by Lord Acton in his letter to Bishop Mandell Creighton, of April 3, 1887.

66. How many times has ALJ Yanohira used the same or similar self-indulgent form to lazily deny a motion for recusal without having to bother to read the movant’s grounds for recusal? Eventually, the same question can be asked with respect to his colleagues.
67. By merely rubberstamping a form for denying a recusal petition, ALJ Yanohira disposed of a petition without considering its merits. Since his denial was not based on the law, it is ultra vires.
68. Thus, ALJ Yanohira’s denial constituted an abuse of power in excess of his discretion. He could not have exercised discretion to decide a petition that he had not even read.
69. By denying the recusal motion without even reading it, ALJ Yanohira deprived Appellant Dr. Cordero of his due process right to be heard in his own cause before judicial power was exercised upon him.
70. It follows that his denial of the recusal motion without even reading it, never mind considering its merits, ALJ Yanohira foreshadowed how he would decide the ALJ hearing requested by Dr. Cordero: by exercising arbitrary and capricious power with disregard for any legal arguments or even material facts giving rise to legitimate issues, such as those in Dr. Cordero’s [Statement on Appeal](#) (Exhibit 22-5-21DrRCordero\_Statement\_on\_Appeal).
71. As a result, ALJ Yanohira detracted from a fundamental element of judicial process: trust in the fairness and impartiality of the judge. In this regard, Canon 2 of the Code of Conduct provides:

A. *Respect for Law.* A judge should respect and comply with the law and

should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

#### COMMENTARY

**Canon 2A.** An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.

### **G. 3<sup>rd</sup> Level ALJ hearing in Atlanta: ALJ Fleming's bias and motive, his disregard for the motion for his recusal, and the coordinated spoliation to prevent evidence from reaching the Medicare Appeals Council**

#### **1. ALJ Fleming's bias and motive**

72. At the instigation of Dr. Cordero, ALJ Dean Yanohira in the OMHA Phoenix Field Office had to withdraw his initial denial of the motion for his recusal and recuse himself; and as requested by Dr. Cordero, the case was transferred to the OMHA Atlanta Field Office, where it so happened that the case was assigned to the chief of ALJs, namely, ALJ Loranzo Fleming. To avenge that 'afront' to a fellow ALJ was the motive for ALJ Fleming's bias against Dr. Cordero.
73. ALJ Fleming conducted a video hearing on October 8, 2022. The details of how he did so are set forth in Dr. Cordero's [motion of October 17](#) for his recusal or disqualification, incorporated herein by reference as though it were fully set forth (Exhibit [22-8-17DrRCordero\\_motion\\_recuse\\_ALJLFleming](#)).
74. In brief, ALJ Fleming disregarded the due process requirement of granting Dr. Cordero's motion for judgment by default due to appellees Emblem's and Maximus's failure for more than two and a half months to answer Dr. Cordero's [Statement on Appeal](#) served on them repeatedly starting on May 22 by email and fax

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

(Exhibit [22-5-21DrRCordero\\_Statement\\_on\\_Appeal](#)).

75. That motion had to be decided at the outset of the hearing so as to avoid a hearing by ambush and unfair surprise by arguments and facts alleged there for the first time ever, and ensure transparency. If granted, the hearing would have terminated right then and there. That would have deprived the appellees of an unjustified opportunity to make a belated, surprise statement for the record that could be sent on appeal to the Council. If not granted, then Dr. Cordero could raise an objection for appeal. Dr. Cordero objected to ALJ Fleming's failure to even discuss his motion.

76. ALJ Fleming's office sent Dr. Cordero a parcel of 24 pages, one or more of which bear their own title and constitute a section of the parcel. The first section is titled "Notice of Decision" and dated August 24, 2022 (Notice). The decision is identified in another section as that of ALJ Fleming. The Notice includes a "REQUEST FOR REVIEW OF ADMINISTRATIVE LAW JUDGE (ALJ) MEDICARE DECISION/DISMISSAL Form DAB-101 (12/19)". It provides, among other things, the following:

**You must send a copy of your appeal to the other parties and indicate that all parties, to include all beneficiaries, have been copied on the request for review.** [so in the original]

77. The due process principle underlying that statement is so fundamentally important to an OMHA review that it has been emphasized in three ways, namely, by writing it in **boldface** and *italics*, and underlying it. There can be no doubt that not only general notions of due process required the appellees to serve on Dr. Cordero a copy of their request for an ALJ hearing and the record, but also OMHA itself recognizes the importance of a party serving a copy on "**all parties**" of "**the request for review**".

78. Consequently, ALJ Fleming knew that Emblem and Maximus had a legal duty to serve on Dr. Cordero a copy of the Request for ALJ Hearing and the record that

they, though appellees, rather than Dr. Cordero, the appellant, had filed. He knew that they had to “indicate [] all parties [who] have been copied”, in other words, they had to provide a ‘List of service’. They did not.

79. Thus, it was knowingly and intentionally that ALJ Fleming did not even discuss Emblem’s and Maximus’s breach of duty and the resulting harm to Dr. Cordero’s rights. He was protecting them at his expense. ALJ Fleming was biased toward Emblem and Maximus and against Dr. Cordero.

80. In addition, ALJ Fleming knew and had constructive knowledge that Dr. Cordero had the right to a copy of the record. Indeed, the NOTICE OF HEARING on the OMHA-1024AT form provides as follows on page 4 of 6:

**Can I request a copy of the case file?** [so in the original]

Yes. If you would like a copy of all or part of your file before the date of the hearing, please contact our office for further instructions.

81. As early as May 22, 2022, in his [Statement on Appeal](#) (Exhibit [22-5-21DrRCordero\\_Statement\\_on\\_Appeal](#)), Dr. Cordero requested a copy of the case file as follows. He referred to that request in each of his **Response to Notice of Hearing**, the last one of which was dated August 4, 2022:

### **C. Action requested**

168. Therefore, Dr. Cordero respectfully requests that:

169. the ALJ send him a copy of any and all documents, including all text, graphs, voice mail, photos, video, etc., that it has already received and may in future receive for this case from any entity, whether they have been or may be filed by a person, Maximus, EmblemHealth, Medicare, Medicaid, the Human Resources Administration, etc.;

82. ALJ Fleming showed disrespect for Dr. Cordero from the outset of the hearing in the way of addressing him; made him out to be a fool who could not understand the ALJ, who said ‘I am going to read you the issue of this hearing’, ‘for the second time

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

I am going to read you...’, ‘for the third time I am going...’, ‘for the fourth time...’, ‘for the fifth time...’; and when appellant objected during the hearing, the ALJ failed to withdraw his comments or make any apologetic gesture. Thereby the Judge confirmed that he had intended the foreseeable effect of his repeated statement: to belittle Dr. Cordero. Judge Fleming was sending an unambiguous message:

“You caused my peer ALJ Yanohira to take back his denial of your motion for his recusal. But you’re not going to cause me to take back anything. On the contrary, I’m going to give you a lesson: *Never mess with us judges!*”

83. ALJ Fleming had no justification for mocking Dr. Cordero for insisting on his objection to the issues that Maximus, an appellee, had raised and done so without giving notice thereof to Dr. Cordero. The Judge knew that Dr. Cordero had the right to object to the issues; he also had constructive knowledge that such right is acknowledged officially in the following form accompanying the Notice of Hearing:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Medicare Hearings and Appeals

RESPONSE TO NOTICE OF HEARING

Section 6: Do you object to any of the following conditions? (Check all that apply)

...

☐ **I object to the issues described in the notice of hearing.** ...[so in the original]

I object to the issues described in the notice hearing because: ...

84. ALJ Fleming mocked Dr. Cordero arbitrarily and capriciously, out of his bias against him.
85. ALJ Fleming acted as opposing counsel cross-examining Dr. Cordero. He took over the longer than hourlong hearing, during which the Emblem Deputy General Counsel Carlos Manalansan did not ask the Dr. Cordero a single question or engaged him in argument, in line with the aphorism, “When the judge opens his mouth in your defense, you close yours and enjoy”. Maximus did not bother to appear. After all, the outcome of the hearing was predetermined in its and Emblem’s favor.
86. ALJ Fleming disregarded all the facts that had taken place for the preceding nine months. They were justifiably brought to the ALJ’s attention because Dr. Cordero, as the appellant, was the one entitled to raise at the ALJ hearing the facts and resulting issues on which the appellees’ liability was predicated. Instead, ALJ Fleming trampled on due process and common sense by allowing the appellees to self-servingly choose the facts and issues that would lead to the desired decision validating their denial of Dr. Cordero’s crown replacement claim.
87. Accordingly, ALJ Fleming connived with appellees Emblem and Maximus by allowing them to manipulate the record through the removal from it of the emails, mail, and recorded conversations exchanged between and among them and Dr. Cordero and third parties. Then ALJ Fleming limited the hearing to the extraneous issue of Medicare rules that he discussed in his decision. The Judge allowed the appellees to use those rules and the manipulated record to ambush and surprise Dr. Cordero in order to validate their claim denial.

## **2. ALJ Fleming’s disregard for the motion for his recusal**

88. The Notice of Decision states in its second sentence the following:

This decision is based on the administrative record, including any

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

evidence or testimony presented at the hearing, if one was held.

89. It is incomprehensible that ALJ Fleming's decision was "based on the administrative record", as opposed to the record that had been building up for more than nine months through the interactions between Dr. Cordero, Emblem, Maximus, and others. That "administrative record" appears to consist only of what Maximus, an appellee, self-servingly filed in support of its redetermination in favor of Emblem's denial of Dr. Cordero's crown replacement claim.
90. It follows that ALJ Fleming disregarded the impartial and realistic [record](#) of what the parties had emailed to each other (Exhibit [22-8-5DrRCordero-EH\\_OMHA-email\\_evidence](#)) and chose a record that would support his predetermined decision in favor of Emblem and Maximus and against Dr. Cordero. The bias that he showed by limiting the record and/or his decision to what the appellees wanted him to consider renders his decision infirm.
91. The fact is that even documents created after the hearing that ALJ Fleming held on August 8, 2022, made it to "the administrative record". The hearing was recorded as a video conference. That is stated in the section of the Notice titled "Index of the Administrative Record and Exhibit List", contained on OMHA-156 form. It identifies the recorded hearing as "video File 46".
92. At the August 8 hearing, Dr. Cordero requested a copy of the record. He did so in writing in the Request for relief section of his [motion dated August 17](#) for ALJ Fleming to recuse himself or be disqualified for bias and denial of due process (Exhibit [22-8-17DrRCordero\\_motion\\_recuse\\_ALJLFleming](#)). On that date, he emailed it to numerous members of the opposing parties, OMHA, and Medicare itself.
93. There was objective justification for requesting a copy of the record, for there has developed a pattern of suppression of key documents in this case and



Medicare/OMHA has condoned it. In fact, Medicare/OMHA has engaged in it by failing to even acknowledge receipt of any of the documents submitted to it by Dr. Cordero, never mind respond to any of them; e.g.:

- a. [http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero-Medicare\\_Appeals.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero-Medicare_Appeals.pdf)
- b. [http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare_Appeals_Council.pdf)
- c. [http://Judicial-Discipline-Reform.org/EH/22-7-15DrRCordero-EH\\_OMHA.pdf](http://Judicial-Discipline-Reform.org/EH/22-7-15DrRCordero-EH_OMHA.pdf)
- d. [http://Judicial-Discipline-Reform.org/EH/22-7-21DrRCordero-EH\\_OMHA.pdf](http://Judicial-Discipline-Reform.org/EH/22-7-21DrRCordero-EH_OMHA.pdf)
- e. [http://Judicial-Discipline-Reform.org/ALJ/22-8-8DrRCordero-ALJ\\_hearing.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-8DrRCordero-ALJ_hearing.pdf)
- f. [http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero\\_motion\\_recuse\\_ALJLFleming.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_motion_recuse_ALJLFleming.pdf)

### **3. ALJ Fleming's spoliation to prevent evidence from reaching the Medicare Appeals Council**

94. The first issue that ALJ Fleming had to deal with in deciding this case was Dr. Cordero's [motion of August 17](#) for his recusal or disqualification due to bias and disregard of due process, for if granted, the Judge would have been deprived of jurisdiction to proceed to decide the case. Far from it, ALJ Fleming did not even acknowledge receipt of the motion.
95. So, Dr. Cordero called his legal assistant, Mr. Andre Rutledge, tel. (470)633-3424; [Andre.Rutledge@hhs.gov](mailto:Andre.Rutledge@hhs.gov) on Monday, August 22, 2022. He told Dr. Cordero that ALJ Fleming would not accept a motion sent by email and that it had to be filed by

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

fax or printed and mailed.

96. That was an arbitrary and capricious requirement, nowhere stated on the Medicare website, which on the contrary, provides the email address [Medicare.Appeals@hhs.gov](mailto:Medicare.Appeals@hhs.gov).
97. Moreover, the motion for the recusal of ALJ Yanohira in the OMHA Phoenix Field Office was sent by email by Dr. Cordero and received and acted upon by Judge Yanohira. That established a precedent upon which Dr. Cordero could reasonably rely. Since this case was transferred by Team Yanohira to ALJ Fleming, the latter had actual and constructive notice of such precedent.
98. If after ALJ Fleming received the motion for his recusal emailed to, among others, [Loranzo.Fleming@hhs.gov](mailto:Loranzo.Fleming@hhs.gov), [Andre.Rutledge@hhs.gov](mailto:Andre.Rutledge@hhs.gov), and [Medicare.Appeals@hhs.gov](mailto:Medicare.Appeals@hhs.gov), he did not want to deem it filed, he had the duty to inform Dr. Cordero thereof. Instead, he did not do so, thus allowing Dr. Cordero to reasonably rely on the fact that the emails containing his motion had gone through rather than returned as “Undelivered”, and not objected to. Hence, Dr. Cordero had reasonable cause to belief that his emailed recusal motion had been received, filed, and would be process. By ALJ Fleming not giving notice to Dr. Cordero that his motion was not deemed filed and would not be processed, the Judge intended to mislead Dr. Cordero into thinking the opposite. ALJ Fleming acted in bad faith.
99. To appeal from ALJ Fleming’s refusal to deem the recusal motion filed, Dr. Cordero called the Medicare switchboard at (833)636-1474, where he recorded a message. But Dr. Cordero did not want to rely on a callback that might never take place, which is precisely what happened: Nobody called him back.
100. To speak live with an officer Dr. Cordero called (855)556-8475. Dustin in Cleveland, OH, took the call. Dr. Cordero insisted on speaking with his supervisor or a supervisor of legal assistants. He was connected to Mr. Matthew “Matt”

Dufama. He said that he would look into the matter. An hour or so later, Mr. Dufama called Dr. Cordero to tell him that Mr. Rutledge would acknowledge receipt of the recusal motion. Dr. Cordero took that opportunity to request through Mr. Dufama a copy of the recording of the August 8 video hearing. Mr. Dufama said that it would take 15 days for the copy to be sent to him

101. Mr. Rutledge failed to acknowledge receipt of the recusal motion. So, the following day, August 23, Dr. Cordero protested by email, which he shared with 18 other addressees, namely:

Andre.Rutledge@hhs.gov, Loranzo.Fleming@hhs.gov, Medicare.Appeals@hhs.gov,  
Erin.Brown@hhs.gov, Sherese.Warren@hhs.gov, Hillary.Didona@hhs.gov,  
Kathy.Greene@hhs.gov, Jon.Dorman@hhs.gov, Alethia.Wimberly@hhs.gov,  
medicareappeal@maximus.com, CManalansan@emblemhealth.com,  
SHillegass@emblemhealth.com, M\_Cipolla@emblemhealth.com,  
SBergstrom@emblemhealth.com, S\_Macialek@emblemhealth.com,  
sdambrosio@emblemhealth.com, SMacialek@emblemhealth.com,  
ParkSouthMedical1545@gmail.com, corderoric@yahoo.com

102. Only then did Mr. Rutledge email only to Dr. Cordero a laconic “Receipt Acknowledged”. Dr. Cordero forwarded it to all the other addressees. Mr. Rutledge did not comment on Dr. Cordero’s request for a copy of the record.

103. Since then, Dr. Cordero has repeatedly requested a copy of the record, to which he is entitled. His request is in harmony with the section in the Notice of Decision titled “REQUEST FOR REVIEW OF ADMINISTRATIVE LAW JUDGE (ALJ) MEDICARE DECISION/DISMISSAL Form DAB-101 (12/19)”. At the top of its second page, it provides as follows:

If you have additional evidence, submit it with this request for review.

104. That evidence is contained in the record. Dr. Cordero’s performance at the video hearing is *his* evidence, as is the rest of the video as well as the other entries in the

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

Notice of Decision section titled “Index of the Administrative Record and Exhibit List” on the OMHA-156, where the video hearing is identified as “video File 46”. Dr. Cordero has made it clear that he needs the record and its video to support his appeal to the Medicare Appeals Council, in general, and his motion for the Council to disqualify ALJ Fleming, in particular.

105. Since then Dr. Cordero has called ALJ Fleming to request a copy of the hearing and the rest of the record. Mr. Rutledge has told Dr. Cordero that ALJ Fleming does not have jurisdiction over the appeal. Dr. Cordero retorted that the issue was not jurisdiction to decide the appeal, but rather possession of the record, of which the Judge can send him a copy. He said that he had to ask ALJ Fleming for instructions. The next time Dr. Cordero spoke with Mr. Rutledge, he said that the Judge no longer had the record of the case because he had sent it for safekeeping to Maximus, an opposing party! What a preposterous excuse.
106. Dr. Cordero called OMHA Headquarters, tel. (866)231-3087, on September 28, and was told by Ms. Aileen that his record had been sent to Maximus.
107. The following day, September 29, Dr. Cordero called Maximus, tel. (585)348-3300, and spoke with Camille, who transferred him to Nico. The latter said that supervisor Christine V. knew who Dr. Cordero was and was aware of the situation. He transferred the call to her. Supervisor Christine told Dr. Cordero that after the 2<sup>nd</sup> Level Appeal, Maximus has nothing to do with cases and neither receives nor safekeeps 3<sup>rd</sup> Level Appeal cases. She assured Dr. Cordero that Maximus did not have his case. She was willing to give him her direct phone number: (585)348-3300, extension 3427.
108. Who told Ms. Aileen to tell Dr. Cordero that his record had been sent to Maximus?
109. Mr. Rutledge said that ALJ Fleming had send the record of Dr. Cordero’s case to the Medicare Appeals Council. Yet another preposterous excuse, for why would the

Judge send a file to the Council before any appeal has been filed with it; and without knowing whether the appellant had appealed to the Medicare Board of Appeals or to a federal district court and, if so, which?

110. Mr. Rutledge also directed Dr. Cordero to request the video hearing by calling the telephone number in the Notice of Decision. Dr. Cordero asked what number was that. Mr. Rutledge did not know. He began to look for it. He found a number on page 17, to wit, (202)565-0100. Dr. Cordero protested, for that is the number of the Departmental Appeals Board. Mr. Rutledge was stumped. He said that he was not allowed to call that number. Yet another preposterous excuse.
111. Mr. Rutledge said that ALJ Fleming had instructed him to deal with Dr. Cordero. What was the exact tenor of those instructions? With how many other appellants has the Judge instructed Mr. Rutledge to deal through tergiversations and to what end? When ALJ Fleming, the chief of the OMHA Atlanta Field Office, sets such example of how to deal with another person, do the other officers in his office feel free to go as far and even farther in behaving dishonestly?
112. Dr. Cordero's calls to Mr. Rutledge go directly to voicemail and he does not call back.

#### **4. Evidence of coordination and abuse of power to achieve spoliation and obstruct justice**

113. Medicare and OMHA have failed to even acknowledge receipt of Dr. Cordero's emails to them, never mind provide an answer to his request for a copy of the record. They have a conflict of interests between, on the one hand, complying with Dr. Cordero's disclosure and discovery requests in order to be transparent, and on the other hand, being incriminated in the cover-up to protect ALJ Dean Yanohira, ALJ Loranzo Fleming, their assistants, others, and themselves.
114. Indeed, it is not reasonable to assume that Medicare and OMHA have from their

inception decades ago behaved in strict compliance with legal and ethical requirements; and only when for the first time ever two of its ALJs, namely, ALJ Yanohira and ALJ Fleming, disregarded arbitrarily and capriciously the rights of an insured, i.e., those of Dr. Cordero, causing him injury in fact, did Medicare and OMHA go rogue as principals and accessories to protect those ALJs.

115. On the contrary, the reasonable assumption is that Medicare and OMHA have been covering up for, and conniving with, their officers, including ALJs, and third parties, for a long time. By now, their wrongdoing is so frequent and relied upon by all that it has become institutionalized as their *modus operandi*.

116. The conduct of so many Medicare and OMHA officers has had the same result, to wit, evade dealing with Dr. Cordero and his request for the record. Here applies the tort principle “People are deemed to intend the foreseeable result of their conduct”. Their conduct is not due to mere coincidence: It evinces complicit coordination. It amounts to the intentional wrongful denial of services and causation of injury in fact to a Medicare insured. Among those officers are the following:

- 45) Andre Rutledge, Legal Assistant to ALJ Loranzo Fleming in the OMHA Atlanta Field Office in GA; tel. (470)633-3424; [Andre.Rutledge@hhs.gov](mailto:Andre.Rutledge@hhs.gov); stopped answering and returning Dr. Cordero’s calls
- 46) ALJ Loranzo Fleming; [Loranzo.Fleming@hhs.com](mailto:Loranzo.Fleming@hhs.com)
- 47) the members of Team Yanohira in the OMHA Phoenix Field Office in Arizona, cf. ¶51 above
- 48) Hillary Didona at OMHA in Cleveland, OH, (216)462-4175; she called Dr. Cordero once and identified herself as an assistant to supervisory attorney Erin Brown, but thereafter never communicated with him by any means whatsoever
- 49) Jon Dorman, [Jon.Dorman@hhs.gov](mailto:Jon.Dorman@hhs.gov), August 8, 2022

- 50) Alethia Wimberly, [Alethia.Wimberly@hhs.gov](mailto:Alethia.Wimberly@hhs.gov), August 8, 2022
- 51) OMHA Centralized Docketing, Cleveland, OH, tel. (216)462-4121
- 52) Alexander and Dustin, in Cleveland, OH, tel. (855)556-8475. The latter put Dr. Cordero in touch with Mr. Matthew “Matt” Dufama on August 22, 2022.
- 53) Mr. Dufama is a Legal Administrative Specialist, tel. (216)462-4242. After talking to him on August 22 ([¶100 above](#), Dr. Cordero called Mr. Dufama on August 30 to ask for his help in obtaining a copy of the recorded video hearing. Mr. Dufama did not answer the call, which went to his voicemail, and he did not call back. That is how Mr. Dufama has handled Dr. Cordero’s repeated calls to him since then. Who instructed Mr. Dufama not to speak with Dr. Cordero again and why?
- 54) Mr. Alexander, tel. (855)556-8475, escalated Dr. Cordero’s call to John Colter, Chief of Legal Administrative Specialists; tel. (571)457-7200, (571)457-7290; [John.Colter@hhs.gov](mailto:John.Colter@hhs.gov), and they spoke on September 21 about obtaining a copy of the video hearing. Despite his position as a chief, he has been unable to find out and tell Dr. Cordero where the video hearing is and how to get a copy of it. Dr. Cordero’s calls to either of those phone numbers go straight to his voicemail and he does not call back.
- 55) Ms. Leslie in Arlington, Virginia, tel. (855)633-3424, told Dr. Cordero on September 27, that she would find out and let him know who is the supervisor of her supervisor John Colter. But she never called back. Would you not reasonably expect an officer to know as a matter of course the name of his/her supervisor’s supervisor? How many times during their normal dealings is the former likely to have mentioned the name of the latter?
- 56) Ms. Aileen at the Departmental Appeals Board, tel. (202)565-0100. Dr. Cordero told her on September 28, that he had called that number on

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

September 19, and recorded a message requesting a copy of his record, but nobody had called him back. She said that she would escalate his request for it, but nobody has called him back either.

- 57) James “Jim” Griepentrog, Legal Administrative Specialist US HHS, OMHA Arlington Field Office Attention - LAS Pool Team, Fax (703)603-1812, [James.Griepentrog@hhs.gov](mailto:James.Griepentrog@hhs.gov). (Exhibit [JimGriepentrog-DrRCordero](#))

1) Dr. Cordero spoke with Mr. Griepentrog on Thursday, September 29, and explained to him that he has repeatedly since August 8 requested a copy of the video hearing held on that date and the rest of the record, all of which he needs to support his recusal motion and brief on appeal to the Medicare Appeals Council, with which he must file the brief in the week of October 24. However, Medicare and OMHA officers have given him the runaround. Dr. Cordero asked Mr. Griepentrog to explain the situation to Ms. Brown. He said that he knew her and would do so given that her office is only two floors away from his own in the same building in Arlington, Va. He knew what the “Index of the Administrative Record and Exhibit List” accompanying the Notice of Decision was and agreed to send him on a CD a copy of the video hearing, identified there as “video File 46”, as well as the “Reports on Contact” referenced therein and other entries.

2) In fact, on September 30, Mr. Griepentrog sent Dr. Cordero an [email](#) under the subject line, “Partial Case File Req Processed and Ready to Proceed to Appellant Dr. Richard Cordero” and added UPS Tracking 1ZA5361A0391799687. Although four weeks have gone by since, that CD has not been delivered to Dr. Cordero. The reason for that is as apparent in the return of the tracking as it is shocking:



Shipper created a label, UPS has not received the package yet.

- 58) Sherese Warren, (HHS/OMHA), [Sherese.Warren@hhs.gov](mailto:Sherese.Warren@hhs.gov)
- 59) Kathy Greene, [Kathy.Greene@hhs.gov](mailto:Kathy.Greene@hhs.gov)
- 60) Douglas Reed, Medicare in Kentucky, tel. (800)633-4227. Dr. Cordero asked him on October 6, to put him in touch with his supervisor. He transferred the call to supervisor Kathy James in OMHA Arizona, whose phone number she said was (844)419-3358. Since she did not know how to handle the request of Dr. Cordero for his record, he asked her to transfer the call to her supervisor, but she said that none was available. She agreed to request that a senior supervisor call Dr. Cordero. She said that the turnaround time was 48 hours, but nobody called Dr. Cordero back.
- 61) Senior Customer Representative Bill Blake at the OMHA Advanced Resolution Center, tel. (844)419-3358, told Dr. Cordero on October 6 that he would have senior supervisor call him back in 15 to 20 minutes, but nobody did.
- 62) Supervisor Kenny Porter in OMHA Kansas, tel. (844)419-3358, told Dr. Cordero on October 6, that he would have a senior supervisor call him back.
- 63) Timothy West, senior supervisor at OMHA Advanced Resolution Center (ARS) called and recorded a message on October 7, on Dr. Cordero's answering machine only to say that he was calling back, but did not leave his phone number! Dr. Cordero had to call OMHA John Colter, tel. (571)457-7200, and (844)419-3358 and record messages, but nobody called him back. Dr. Cordero went ahead that day and called Medicare, tel. (800)633-4227. He spoke with Ms. April Neil, who transferred him to Customer Service supervisor Jessie Nelson, who did not know what OMHA

was! She said that senior supervisor Timothy West had noted the account to state that he had no access to the CD with the August 8 video hearing or even to the phone number of Supervisory Attorney Erin Brown.

- 64) Ms. Brooke in OMHA Arlington answered Dr. Cordero's call to (800)633-4227 on October 7, and transferred his call to supervisor Ms. Kiera, who said that the Advanced Resolution Center has no direct number and takes seven days to call back. She agreed to write on her record Dr. Cordero's description of the urgency of getting a copy of the record, including that of the video hearing so that he could submit it with his brief on appeal to the Medicare Appeals Council. She said that she had no way of finding the phone number of OMHA supervisory attorney Erin Brown.
- 65) Senior Supervisor Timothy West called Dr. Cordero on October 7 to let him know that he had found out that Erin Brown's title is Legal Director, but not her phone number or that of the chief of ALJs, Allen McArthur. Dr. Cordero gave him the UPS Tracking # 1ZA5361A0391799687 that Legal Administrative Specialist Jim Griepentrog had given Dr. Cordero. Mr. West confirmed that the return of the tracking indicated that 'the label had been created by the shipper, but the package had not been given to UPS'. Mr. West said that he would look for the whereabouts of the CD and call Dr. Cordero back on Tuesday, October 11; but he failed to call.
- 66) When Dr. Cordero called him back on October 12, Mr. West admitted that he had not found anything. Not even the phone number of a senior officer, such as Ms. Brown!? Mr. West was being disingenuous. He has stopped taking Dr. Cordero's calls, and has not called him back either.
- 67) Rebecca at the OMHA Arlington Office, tel. (800)633-4227, took Dr. Cordero's call on October 12. She said that his phone number is flagged and

when he calls he is transferred automatically to the Advanced Resolution Center. She said that she could not put a request for both Mr. West or his supervisor to call me back. The request could only be addressed to one person. In any event, nobody called Dr. Cordero.

- 68) Craig Brown took Dr. Cordero's call, tel. (800)633-4227, on October 13. He confirmed that his phone number is flagged and his calls go automatically to the Advanced Resolution Center. He put a request for the manager of senior supervisor Timothy West to call Dr. Cordero. That may have prompted Mr. West to call him shortly afterwards. He said that he had not been able to find the phone numbers of Supervisory Attorney Erin Brown or Chief of ALJs Allen McArthur, or the whereabouts of the CD that Legal Administrative Specialist Jim Griepentrog had prepared for Dr. Cordero and even created a UPS label to send it to him.
- 69) Ms. Mindy Johnson at the Medicare Advance Resolution Center, tel. (800)633-4227, took Dr. Cordero's call on October 13. She would not transfer him to either her or any other supervisor.
- 70) Mr. Alex Reyes at the Medicare Advance Resolution Center, tel. (800)633-4227, took Dr. Cordero's call on October 13. He would not transfer Dr. Cordero to his supervisor. He said that on the record concerning Dr. Cordero there was no note on how to deal with him. He found on that record the UPS Tracking number for the CD.
- 71) On October 13, Dr. Cordero called OMHA Arlington Office, tel. (866)231-3087, and recorded a message, but nobody called him back. He called (571)457-7290, and his call again went straight to the voicemail of the chief of Legal Administrative Specialist John Colter, who did not call him back.
- 72) Eric Lee in Kansas at Medicare (800)633-4227, took Dr. Cordero's call on

October 18, and said that he had no means of transferring him to anybody. Yet, he was physically at the Advance Resolution Center, rather than at home. He replied repeatedly that there was no note on the record concerning Dr. Cordero with instruction on how to deal with him.

- 73) John Colter did not call back after Dr. Cordero recorded a message on his voicemail on October 18.
- 74) Leslie McDonald, tel. (571)457-7289, [Leslie.McDonald@hhs.gov](mailto:Leslie.McDonald@hhs.gov), was referred to by Mr. Griepentrog when he went on vacation from 3 to 24 October. All of Dr. Cordero's calls to Ms. McDonald also go to her voicemail, and she does not call him back, just as she does not answer any of his repeated emails to her.
- 75) The Front Desk of OMHA Arlington, tel. (571)457-7200, is an entity opened to the general public. Mr. Griepentrog referred callers to her while he was on vacation. But when Dr. Cordero called, he was transferred directly to the voicemail of Mr. Colter, who did not call him back. This means that Dr. Cordero's calls are being monitored and that he is being denied all services to which the Front Desk gives access. This points to a decision taken at a very high level to discriminate against Dr. Cordero in violation of the equal protection of the law to which he is entitled and Medicare and OMHA are duty-bound to provide under the Medicare Act and its implementing regulations.
- 76) An insider provided Dr. Cordero with OMHA Supervisory Attorney Erin Brown's tel. (216)462-4121, [Erin.Brown@hhs.gov](mailto:Erin.Brown@hhs.gov), at the OMHA Headquarters, Arlington, VA, tel. (703)-235-0635. Dr. Cordero has called Ms. Brown repeatedly, but she has never returned his calls or even acknowledged receipt of his emails to her.

77) In addition to calling Ms. Brown, Dr. Cordero called Mr. Griepentrog, Mr. Colter, and Ms. McDonald on October 24, 25, 26, and 27, but nobody has called him back. Everyday since October 18, he has been [emailing](#) them at least once a day to request a copy of his record and the video hearing, but none has replied. (Exhibit [22-9-29JimGriepentrog-DrRCordero](#)).

117. Has the above account of Dr. Cordero's relentless effort to obtain officially a copy of the record and the video hearing bored you to death yet? If you had to replicate Dr. Cordero's effort, would it take long before you grew exasperated? Would you come to the conclusion that officers of an organization who could not find even a telephone number of its top officers were incompetent and working for a disjoint organization or rather that they had coordinated their effort to deprive you of evidence that you were legally entitled to but that was too incriminating to them?

118. Experience has shown that Medicare is an entity, not imbued with "a culture of caring", but rather pervaded by unresponsiveness and contempt for duty, the law, and their intended beneficiaries. That is the product of 'power, which corrupts, and when it is unaccountable, as the power of ALJs is, that power is absolute and corrupts absolutely'; cf. ¶65 above.

119. Consequently, if officers do not feel like dealing with you, they could not care less that it is their duty to do so. After all, nobody is going to hold them accountable, not even the Medicare Appeals Council. That explains why ALJs and so many other Medicare and OMHA officers dare withhold evidence from even the Council, never mind engage in denial of services to Medicare insureds, such as Dr. Cordero.

## **H. 4<sup>th</sup> Level appeal to the Council: making this a test case**

### **1. Exposing the wrongdoing of a racketeer influenced and corrupt organization**

120. ALJ Fleming has shown contempt for due process and equal protection of the law in

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

defiance of “traditional notions of fair play and substantial justice”; *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). That is what fellow ALJ Yanohira did too. Their conduct reveals a pattern (cf. [18 U.S.C. §1961\(5\)](#)) of wrongdoing involving spoliation, obstruction of justice, and abuse of power that is also engaged in by fellow Medicare and OMHA officers.

121. So, the question becomes whether the Medicare Appeals Council will turn this case into a test of the extent, nature, and gravity of their wrongdoing that expose them as the runners of a racketeer influenced and corrupt organization; or far from it, joins them connivingly to cover up their wrongdoing to the detriment of Medicare’s tens of millions of insureds and the rest of the national public.
122. Likewise, the Council must not allow Emblem and Maximus, or for that matter other similarly situated entities, to use the Medicare system and rules as props behind which to hide their illegal and abusive refusal to pay a claim and save money. The Council must take into account “the totality of circumstances” that force health insureds to put themselves through the grind of dealing with an insurer and an appeal process that only leads to their reasonable expectation of coverage frustrated by their self-interest, incompetence, and bad faith.
123. To “the totality of circumstances” that preceded the August 8 ALJ hearing ([§§D aboveE, F above](#)) must be added those that have arisen since then. The latter are memorialized and incorporated herein by reference in:
  - a. Dr. Cordero’s [motion](#) of August 17 for ALJ Fleming to recuse himself or be disqualified (Exhibit [22-8-17DrRCordero\\_motion\\_recuse\\_ALJLFleming](#));
  - b. the many recorded phone calls among the members of the office of ALJ Fleming, Medicare, and OMHA, and between them and Dr. Cordero;
  - c. the “Reports of Contact” listed in the records concerning Dr. Cordero and others that Medicare, OMHA, the office of ALJ Fleming, and others have built

(cf., those listed in the Index of the Administrative Record and Exhibit List accompanying the Notice of Decision); and

- d. the [emails](#) and letters exchanged between and among them, such as those in Exhibit [22-10-26DrRCordero-EH\\_OMHA-email\\_evidence](#).

124. ALJ Fleming, Medicare, and OMHA, and fellow officers have withheld quantitatively and qualitatively substantial evidence from the Council, e.g., the video hearing, “Reports of Contact” and their equivalents, and communications among their officers and third parties. That constitutes spoliation and obstruction of justice. Hence, the Council should order the production of all such evidence so that it can base its decision on a fully developed evidentiary record. It is necessary to do that before its decision is reviewed by the Medicare Board of Appeals and a federal district court.

125. The Council should aim to ensure that on appeal it is found to have done a thorough job in its effort to be fair, impartial, and committed to safeguarding the integrity of Medicare and OMHA, and protecting the rights of the insureds. The mission of the Council is to apply the law that is intended to protect insureds when they are at their lowest point physically, financially, and emotionally: in pain and suffering, filing medical services claims, and overwhelmed by the complexity of the system and the unfair surprises sprung on them.

## **2. *Strickland* held that judges are accountable and liable to compensation: a holding applicable to ALJs**

126. Medicare, OMHA, Emblem, and Maximus were not created to operate as profit-making entities. Nor can they be allowed to operate by saving money at the expense of the insureds. When they so operate, they must be held accountable and liable. That is particularly the case when their conduct is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law", [5 U.S.C. § 706\(2\)](#).

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

127. Providing the precedent to do so is [\*Strickland v. U.S.\*](#), No. 211346.p, a federal civil case decided on April 26, 2022, by the [U.S. Court of Appeals for the 4th Circuit](#), which remanded it to the U.S. District Court for the Western District of North Carolina. It held that the Federal Judiciary itself and its officers, including judges in their official and individual capacities, can be held accountable for their performance and liable to compensation. *Strickland* provides a precedent for holding ALJs and other officers and their accessories accountable and liable.
128. It should be borne in mind that among those who wrote amicus curiae briefs on behalf of plaintiff Strickland and welcomed the Appeals Court's decision were members of Congress, as did the chairman of the House Judiciary Committee Jerrold Nadler; the preeminent constitutionalist and Berkeley Law School dean Erwin Chemerinsky; and more than 40 organizations.
129. Equitable relief is available under the Administrative Procedure Act. However, simply to vacate ALJs' decisions is painless for the offending judges. Consequently, it is not a deterrent either to them or their peers, not to mention that it does not compensate those who suffered due to their decisions and who were put to enormous expense of effort, time, and money to have them vacated.
130. There must be compensatory as well as punitive relief. That is the principle that the prosecution of this case aims to establish by analogy to the dual type compensation to which are subject malpracticing doctors and their hospitals and lawyers and their law firms; wrongdoing police officers and their departments; and pedophilic priests and their covering-up churches, e.g., the Catholic Church is estimated to have paid more than \$4 billion to its victims. That is what the consistent application of the equal protection of the law constitutional clause demands.
131. Precedent for such application is provided by *Northwest Env'tl. Def. Ctr. v. Bonneville Power Admin.*, [477 F.3d 668, 689-71](#) (9th Cir. 2007) (When "the public



interest is involved, `equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.""). Medicare has over 33 million insureds. The decision of the Council in this case will impact them, whether by benefiting or harming them.

132. Profound consequences for the administration of justice rides on *Strickland* thanks to a courageous decision of the panel of three judges from other circuits sitting by designation after plaintiff Strickland managed to cause the recusal of the chief judge of the Fourth Circuit Court of Appeals and of the rest of the whole bench!
133. That panel was attuned to the mood of the national public that has been building up since the rise of the *MeToo!* and BLM movements; the demonstrations against police brutality and for racial and socio-economic equality; and the protests against Covid restrictions. Though the latter may be irrational, they are all popular manifestations of the same widespread mood seething deep in the collective psyche of *We the People*. It is expressed in the self-assertive rallying cry:

*Enough is enough!*

We won't take any abuse from anybody anymore.

134. To begin with, the Council can stress the importance of ALJs' conduct to be guided by their oath of office under 28 U.S.C. §453:

to "administer justice without respect to persons [who "*mess* with fellow judges"], and do equal right to the poor [in means to defend their rights and health] and to the rich [in connections with ALJ fellows and our Medicare employer], and [ ] will faithfully and impartially discharge and perform all the duties incumbent upon us as [ALJs] under the Constitution and laws of the United States".

135. Then the Council can unambiguously condemn the gang mentality that is the source of ALJ Fleming's bias against Dr. Cordero and his spoliation of evidence in

<sup>†</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf)

coordination with fellow officers of Medicare and OMHA and others, namely, to avenge a fellow ALJ by teaching Dr. Cordero a lesson: *‘Never mess with one of us judges!’*

136. What is more, the Council can turn this into a test case for judicial accountability and liability. It can craft its decision so that it becomes a referential point for a tenet that our divided, polarized country and embattled democracy need all responsible officers to defend unambiguously whenever they have the opportunity to do so: **Nobody is Above the Law**. That is how a courageous Council can that brings about transformative change in Medicare, OMHA, and the administration of justice.

### **I. Action requested**

137. Therefore, appellant Dr. Cordero respectfully requests that the Council:

- a. enter judgment by default against Emblem and Maximus and for Dr. Cordero;
- b. consider and compile as the record of this case all communications by email, mail, and phone that officers of OMHA, Medicare, Maximus, Emblem and other entities and people have had among themselves and with others, and that an impartial and fair person would want to know to determine whether they have individually and in coordination engaged in spoliation, obstruction of justice by withholding evidence from him and the Council, and abuse of power;
- c. add that record to all their communications with Dr. Cordero and send him a copy of the combined record;
- d. determine based on ‘the totality of circumstances’ described in the record whether they are running a racketeer influenced and corrupt organization;
- e. grant Dr. Cordero’s motion for the disqualification of ALJ Fleming;
- f. investigate whether Medicare and OMHA officers (see those listed at ¶116

above) have engaged in the denial of services to a Medicare insured member by coordinating their sending the calls of Dr. Cordero to voice mail and not returning his calls, and not allowing him to speak with their supervisors, who fail to call him back despite being supposed to do so within 48 hours; and whether their coordination has as its intent or effect to deprive him of the recording of the August 8 video hearing and other entries in the record so that they may not be filed with, and reviewed by, the Medicare Appeals Council, and eventually the Medicare Board of Appeals and a U.S. district court;

g. declare the principle that ALJs and their fellow Medicare and OMHA officers are accountable and liable to compensation in their official and individual capacities;

h. declare that Dr. Cordero is entitled to compensatory and punitive relief, the amount of which can only be established after ascertaining the nature, extent, and gravity of the harm that those officers and entities have inflicted on him.

## **J. Verification**

138. I, Dr. Richard Cordero, Esq., declare pursuant to 28 U.S.C. §1746 and under penalty of perjury that to the best of my knowledge the foregoing statements are true and correct.

Executed on October 26, 2022  
Bronx, New York

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## **K. Notice of Service**

Medicare Appeals Council, filed after registering for MOD E-file at [appeals@dab.efile.hhs.gov](mailto:appeals@dab.efile.hhs.gov)

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## **L. List of exhibits accessible also through links**

[http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero\\_Statement\\_on\\_Appeal.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf)

[http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero-Medicare\\_Appeals.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero-Medicare_Appeals.pdf)

[http://Judicial-Discipline-Reform.org/EH/DrRCordero-Medicare\\_Appeals\\_Phoenix\\_AZ.pdf](http://Judicial-Discipline-Reform.org/EH/DrRCordero-Medicare_Appeals_Phoenix_AZ.pdf)

[http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare_Appeals_Council.pdf)

[http://Judicial-Discipline-Reform.org/EH/22-6-27DrRCordero-Emblem\\_DrMEzratty.pdf](http://Judicial-Discipline-Reform.org/EH/22-6-27DrRCordero-Emblem_DrMEzratty.pdf)

[http://Judicial-Discipline-Reform.org/EH/22-7-15DrRCordero-EH\\_OMHA.pdf](http://Judicial-Discipline-Reform.org/EH/22-7-15DrRCordero-EH_OMHA.pdf)

[http://Judicial-Discipline-Reform.org/EH/22-7-21DrRCordero-EH\\_OMHA.pdf](http://Judicial-Discipline-Reform.org/EH/22-7-21DrRCordero-EH_OMHA.pdf)

[http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH\\_OMHA.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH_OMHA.pdf)

[http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH\\_OMHA-email\\_evidence.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH_OMHA-email_evidence.pdf)

[http://Judicial-Discipline-Reform.org/ALJ/22-8-8DrRCordero-ALJ\\_hearing.mp3](http://Judicial-Discipline-Reform.org/ALJ/22-8-8DrRCordero-ALJ_hearing.mp3)

[http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero\\_motion\\_recuse\\_ALJLFleming.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_motion_recuse_ALJLFleming.pdf)

<http://Judicial-Discipline-Reform.org/ALJ/22-9-29JimGriepentrog-DrRCordero.pdf>

[http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-EH\\_OMHA-](http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-EH_OMHA-)

## **Exhibits**

**ALJ HEARING REQUEST FORM**

Date: April 12, 2022

RE: Appeal Number 1 - 1081 7205 455

I request a Hearing before an Administrative Law Judge to appeal Maximus Federal Services Reconsideration Determination.

Very truly yours,

Dr. Richard Cordero, Esq.  
Signature

Dr. Richard Cordero, Esq.  
Print Name

2165 Bruckner Blvd  
Address

Bronx, NY 10472-6506  
City, State, Zip

(718)827-9521  
Telephone Number

**SOLICITUD DE AUDIENCIA ANTE EL JUEZ DE DERECHO ADMINISTRATIVO**

Fecha: \_\_\_\_\_

Ref: Número de apelación \_\_\_\_ - \_\_\_\_\_

Pido una audiencia ante un juez de derecho administrativo para apelar la determinación de reconsideración de Maximus Federal Services.

Atentamente,

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Dirección

\_\_\_\_\_  
Nombre en letra de molde

\_\_\_\_\_  
Ciudad, Estado, código postal

\_\_\_\_\_  
Numero de teléfono

Mail to:  
(Enviar por correo a)

**Maximus Federal Services  
3750 Monroe Ave. Suite 702  
Pittsford, NY 14534-1302**

Maximus Federal Services  
Medicare Managed Care & PACE Reconsideration Project

Exhibit 3: Maximus's redetermination of 15 February 2022

Exhibit 4: Forms sent by OMHA James Griepentrog to Dr. Cordero on 30 Sep. 22

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Re: Service on Emblem and Maximus of brief of Dr Richard Cordero, Esq. on appeal  
to Medicare Appeals Council

CorderoRic@yahoo.com,

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