

*Burke v. HCA Kingwood Hospital. (2022)*

IN THE DISTRICT COURT, HARRIS COUNTY

**234th Judicial District**

Mark Burke ) CASE No. 202268307  
 )  
 Plaintiff. )  
 )  
 vs. )  
 )  
 KPH – Consolidation Inc., )  
 DBA HCA Houston Healthcare )  
 Kingwood, a domestic For-Profit )  
 Corporation, )  
 )  
 )  
 Defendant. )

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**PLAINTIFF’S PLEA IN ABATEMENT**

Mark Burke, Plaintiff and Counterclaim Defendant (“Plaintiff”), files this Plea in Abatement on the Defendant’s Counterclaim for the following reasons:

**PREAMBLE**

[On October 18, 2022](#), Plaintiff filed a lawsuit against HCA Houston Healthcare Kingwood (“HCA”), in large part to obtain video surveillance footage denied by HCA after complaining directly about the fact Plaintiff was attended to by an “Imposter Doctor”. Calling himself Dr. Aguilar, the imposter Doctor visited bedside with Plaintiff on two separate occasions<sup>1</sup>, during his short and life-changing stay, as confirmed in the Plaintiff’s operative complaint.

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<sup>1</sup> See: [Exhibit: “Imposter Doctor Timeline”](#).

Plaintiff checked into HCA Kingwood Hospital Emergency Room at the behest of his GP, who urged him to seek medical attention that same day for his serious medical ailments. Plaintiff complied, and on Tuesday evening, Aug. 9, 2022, Plaintiff entered the ER with his parents in tow. What happened in-between is detailed in the original complaint.

Without resolving his serious medical issues, the Doctors wished to evict Mark Burke on Friday and refer him to a specialist as an 'out-patient'. Plaintiff contested this scenario, but as a result of a phone call with one of the assigned "real" HCA Doctors on Friday evening, Doctor Randy Chung threatened he was going to remove Plaintiff to another hospital "in the Houston area" (an undefined hospital or location) on the Saturday morning, Plaintiff could not be transferred out with the local area, due to his commitment to caring for his parents, including the ability to reach them quickly, which Dr. Chung was made aware of, so a decision was made to self-

check-out of HCA hospital early that morning, August 13, 2022. Plaintiff immediately arranged for an Uber ride back home.

As a legally registered Carer, Plaintiff was extremely anxious about returning to see his sick parents, who would later be diagnosed with pneumonia as a direct result of accompanying and visiting Plaintiff at HCA Kingwood, and where the hospital rooms were freezing cold, with no way to increase the controlled room thermostat.

John Burke would die because of his time in the HCA facility, where he was verbally threatened and abused by nursing staff, along with the Plaintiff and Plaintiff's mother.

John Burke was admitted by Ambulance to Memorial Northeast Humble ICU on Saturday, August 27, 2022, but needlessly died on Sunday, September 4, 2022.

The death of John Burke resulted in Mark Burke filing a second complaint with HCA, to obtain the video surveillance footage for the same

period as the first complaint, however, it should specifically include video of John Burke visiting the cafeteria for a meal and standing in the grounds of the hospital 'to defrost' during his visitation with the Plaintiff.

Without replanting the arguments and pleadings from the Plaintiff's original petition, in short, Plaintiff's complaints against HCA were not handled in a professional nor timely manner, which resulted in the filing of this lawsuit.

Without justifiable reasons, the delay in obtaining the video surveillance footage from HCA rolls on despite the persistent requests (including Spoilation letter I<sup>2</sup> and Spoilation letter II<sup>3</sup>) as the co-conspirators, HCA Lawyers, trading under a corporation name of Serpe Andrews, PLLC

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<sup>2</sup> See; [Exhibit "Spoilation Letter I"](#).

<sup>3</sup> See; [Exhibit "Spoilation Letter II"](#).

(“HCA Lawyers”) also seek to delay the recovery of the all-important video evidence by unethical and malicious acts.

## **LITIGATION TIMELINE**

### **October 18, 2022 (Exhibit “Dr. Who 1”)**

Plaintiff and Counterclaim Defendant (“Plaintiff”) filed suit in this Court on October 18, 2022. Plaintiff emailed counsel (“HCA Lawyers”) for Defendants, HCA Houston Healthcare Inc., (“HCA”) asking if they would waive service.

### **November 2, 2022 (Exhibit “Dr. Who 2”)**

No response was received, and Plaintiff incurred the time and expenses to serve HCA at their registered agent address in Dallas, returned to this Court on November 2, 2022.

### **November 17, 2022 (Exhibit “Dr. Who 3”)**

HCA filed their Reply and general denial along with a request for a Jury Trial.

**November 21, 2022 (Exhibit “Dr. Who 4”)**

Plaintiff filed Notice of Compliance re Initial Disclosures with the Court.

**November 22, 2022 (Exhibit “Dr. Who 5”)**

Plaintiff filed a “Motion for Sanctions, to Disqualify Serpe Andrews PLLC, Nicole G. Andrews, and Madison J. Addicks and Order Release of Video Surveillance Footage to Plaintiff”.

**November 23, 2022 (Exhibit “Dr. Who 6”)**

After filing and serving HCA the previous day, in the early morning of November 23rd, Plaintiff spoke with Shannon North-Gonzalez at 234th to arrange the Oral Hearing date.

Plaintiff asked for an ‘emergency motion’ but he was advised the earliest would be January 23, 2023. Plaintiff initially accepted the date but then quickly called back and reset the date to January 30, with Ms. North as Plaintiff would not be available on that day.

**November 23, 2022 (Exhibit “Dr. Who 7”)**

As such, it was with surprise that Plaintiff would receive an unannounced<sup>4</sup> notice of hearing to attend this Court, in person on January 9, 2023 re HCA’s “Original Counterclaim and Application for Temporary Injunction and Permanent Injunction” filed on the same day as Plaintiffs’ call to the Court, [November 23](#). It is specifically this filing which Plaintiff addresses in his Plea.

**November 26, 2022 (Exhibit “Dr. Who 8”)**

Plaintiff conferred via email (including attached letter) with HCA Lawyers regarding their latest filings (for reasons explained in the letter, no other means of communication would be acceptable to Plaintiff), requesting they withdraw the same and to release the video surveillance footage.

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<sup>4</sup> Defendants did not discuss, confer re motion or injunctions with Plaintiff. Defendants did not confer about the scheduled date of hearing with Plaintiff, in violation of [Judge Reeder’s court procedures](#).



## **TEXAS LAW MANDATES ABATEMENT**

In 2013, the Texas legislature enacted the [Texas Defamation Mitigation Act](#) (“DMA”). Under the DMA, a plaintiff may maintain an action for defamation only if:

(1) the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant, or

(2) the defendant has made a correction, clarification, or retraction.

A request for correction, clarification, or retraction is timely if it is made during the period of limitations applicable to a claim for defamation.

If a person does not request a correction, clarification, or retraction within 90 days after receiving knowledge of a publication, such person may not recover exemplary damages.

Generally, a defendant in a lawsuit in which the DMA governs who does not receive a timely and sufficient written request for correction, clarification or retraction may file a plea in abatement not later than the 30th

day after the date the defendant files an original answer in the court in which the suit is pending. See; [Hardy v. Commc'n Workers of Am. Local 6215 Afl-Cio](#), 536 S.W.3d 38 (Tex. App. 2017).

**PLAINTIFF'S LETTER WITH PROPOSAL IS PART OF HIS  
INCORPORATED DEFENSE ([Exhibit "Dr. Who 8"](#))**

Plaintiff received no response to his emailed<sup>5</sup> letter with legal reasoning behind his proposal.

An eye-catching and very relevant quote from a lawyer in a case where Attorney John Serpe, (the Serpe in Serpe Andrews, PLLC) was counsel, defending [defamation claims](#), with arguments mirroring the false

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<sup>5</sup> See; [Exhibit "Dr. Who 8a"](#).

accusations<sup>6</sup> leveled at Plaintiff in this counterclaim by Serpe Andrews, PLLC, stated:

*“I think it’s a case that needs to be prosecuted to show lawyers in the state that you can’t just file garbage and expect to get away with it.” – Harvey v. Thi of N.M. at Albuquerque Care Ctr., LLC, No. 12-CV-727 MCA/LAM (D.N.M.).*

### **RELEVANT FACTS, EVIDENCE, ARGUMENTS & AUTHORITIES**

HCA and HCA Lawyers November 23, 2022 filing: “Original Counterclaim and Application for Temporary Injunction and Permanent Injunction” fails as a matter of Texas law, as recited above, and hence does not require a detailed analysis nor response in respect to the Plaintiff’s Plea.

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<sup>6</sup> See [combined] [Exhibit “Who is John Serpe Defending for Defamation?”](#); “Plaintiffs also claim that Defendants’ disparagement and defamation was done purposefully and maliciously with the intent to injure their business and law practice and their personal and professional reputations.” – citing from Memorandum Opinion and Order – *Harvey v. Thi of N.M. at Albuquerque Care Ctr., LLC*, No. 12-CV-727 MCA/LAM (D.N.M., March 31, 2014) and John Serpe’s filing into same case, DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS’ DEFAMATION CLAIMS, dated Aug. 15, 2013.

HCA and HCA Lawyers unethical, unlawful, malicious, and retaliatory counterclaims are founded in allegations of Defamation, as confirmed by plaintiff in this pleading and declaration.

Mark Burke confirms in this Plea, no retraction requests have been received by him before, during or after filing of the counterclaims by HCA, HCA lawyers, or *any* of the other non-parties they list in the baseless counterclaim.

Furthermore, HCA and HCA lawyers do not provide any exhibits nor statements in their pleadings, unequivocally stating that they, or the non-parties to which they refer, have provided a written request for correction, clarification, or retraction.

See; [Tex. Civ. Prac. & Rem. Code § 73.055](#) (“ (d) A request for a correction, clarification, or retraction is sufficient if it: (1) is served on the publisher; (2) is made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to have been defamed

or by the person's authorized attorney or agent; (3) states with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication; (4) alleges the defamatory meaning of the statement; and (5) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication. (e) A period of limitation for commencement of an action under this section is tolled during the period allowed by Sections 73.056 and 73.057. Tex. Civ. Prac. and Rem. Code § 73.055”).

Quite clearly, HCA and HCA Lawyer’s filing fails to reach (d)(1) above, which terminates the need to address (2), (3), (4) and (5).

Preempting a response from HCA citing to their ‘causes of action’, namely their harassment, stalking and tortuous interference with contracts claims, these too can be included in the Plaintiff’s Plea in Abatement.

HCA’s baseless and malicious counterclaims stem from Plaintiff’s gripe site at KingwoodDr.com. Again, Mark Burke confirms under the

penalty of perjury that he has never received any requests from any of the 'victims' named by HCA and HCA Lawyers, he's not received a visit from the local police, the U.S. Marshals, the FBI, or ever been served with a cease and desist letter.

Indeed, if these 'victims' of harassment, "through the use of his website, Burke published, and continues to publish, several statements that meet the threshold of [Texas Penal Code Section 42.07\(a\)\(8\)](#)" and stalking "rises to the level that would cause a "reasonable person" to feel "harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended." [Tex. Pen. Code § 42.072\(3\)\(D\)](#)," as stated in Defendant's frivolous and malicious filing, these persons acts should have mirrored that of Plaintiff, who was so fearful for his safety, and that of his family, it resulted in him filing a Police Complaint on the same day he discharged himself from HCA Houston

Healthcare Kingwood. The Police Officer labeled the Imposter Doctor complaint under the category “Stalking”<sup>7</sup>.

The only visits Mark Burke has received in recent times and relevant to this Plea, were by an Imposter Doctor during his internment at HCA Houston Healthcare Kingwood Hospital, and a phone call on Sunday morning, September 4, 2022 from Memorial Northeast Humble ICU, telling him his father had died.

As admitted by HCA, Plaintiff avers John Burke was “frozen to death” as a direct result of visiting plaintiff at HCA Houston Healthcare Kingwood Emergency Room and Hospital and recovery of the video surveillance footage will, without question, prove this claim.

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<sup>7</sup> See: [Exhibit “Police Report Incident Receipt: Stalking by Imposter Doctor”](#).

It's why HCA and co-conspirators HCA Lawyers are filing baseless and outrageous claims – it is a premeditated and mischievous scheme to distract the court, consume Plaintiff's time in matters other than the lawsuit and legal recovery of the video surveillance footage, which will verify Mark Burke was correct about; (i) The Imposter Doctor; (ii) HCA froze Plaintiff's father to death, and finally; (iii) the Defendant(s) are serial liars whose track record in fraudulence is documented on the Plaintiff's gripe site as a serious matter of public concern.

### **RELIEF REQUESTED**

Plaintiff has previously filed for disqualification of HCA Lawyers, sanctions, and referral to the State Bar of Texas, along with an expedited Order to obtain the video surveillance footage as described.

See; Motion for Sanctions, to Disqualify Serpe Andrews PLLC, Nicole G. Andrews, and Madison J. Addicks and Order Release of Video Surveillance Footage to Plaintiff (Nov. 22, 2022, [Exhibit "Dr. Who 5"](#)).



Plaintiff resubmits the request here, due to the baseless and malicious claims by Defendant(s) herein.

### **CONCLUSION**

For the foregoing reasons, the Plaintiff files this Plea in Abatement.

RESPECTFULLY submitted this 8th day of December, 2022.  
I declare under penalty of perjury that the foregoing is true and correct  
(Texas Civil Practice & Remedies Code 132.001)



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Mark Burke  
State of Texas / Pro Se

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plea in Abatement has been forwarded to:

Nicole G. Andrews  
Madison J. Addicks  
Serpe Andrews, PLLC  
2929 Allen Pkwy  
Suite 1600  
Houston, TX  
77019

by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 8th day of December, 2022.



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Mark Burke  
State of Texas / Pro Se

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#### Case Contacts

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