

raised by the Magistrate Judge is now necessary in the context of this motion since it has been referred to Her Honor for a ruling.

Starting with Request to Modify Paragraph 4:

4. In the past, Magistrate Judge issued order at Doc 66 acknowledging that Junior Prosecutor Kathryn McHugh presented falsities to the Magistrate Judge and these falsities were in relation to Physicians Against Abuse, (“PAA”) and one of its board members, Dr. Black. *See Doc 66.*
5. While Magistrate Judge courageously identified and spoke of the falsities that Junior Prosecutor was making to the court in an effort to prohibit the physician advocacy group, PAA, from participating in Dr. Akula’s defense, the Magistrate Judge also made certain conclusions without taking in evidence and/or without hearing from the physician advocacy group and its counsel, Sebastian Ohanian.
6. Without taking evidence or hearing from PAA, Magistrate Judge speculated that the Board Member Dr. Christina Black and its counsel Sebastian Ohanian had no specific expertise in Medicare billing so as to allow access to the discovery. This was pure speculation by Magistrate Judge. First, Dr. Black was not allowed to appear before the court as former Counsel Rachel Conner engaged in gymnastics misleading PAA and Dr. Black about being able to attend the hearing on the protective order.

Second Magistrate Judge was not presented with evidence so as to allow the court to make the findings that there is no expertise by Dr. Black in Medicare billing. Visiting PAA's website is not a sufficient form of gathering evidence regarding such a conclusion. Dr. Akula had solicited the services of PAA specifically because they are intricately familiar with Medicare billing practices in addition to having access to experts who would be testifying in court regarding such practices. The Magistrate Judge's reasoning that just because Dr. Black was not a per se designated expert and therefore because of this should be excluded from discovery review would have been a substantial interference with Dr. Akula's defense. The organization, PAA, has numerous resources including resources for experts that have been organized specifically to assist physicians like Dr. Akula who face the wrath of the government filing frivolous prosecutions against physicians.

7. These speculative conclusions were reduced to writing in an Amended Order by the Magistrate Judge at Doc 66 and if adhered to, the protective order would have been fatally harmful to Dr. Akula had it not been for former counsel Cassidy who came on board and represented to Judge Africk that defense counsel needed the assistance of PAA and Dr. Black as this was not only choice by defense counsel but also by Dr. Akula.

McHugh having no legal basis to object, did not object and did not file any motions contesting this arrangement.

8. As such effectively, the protective order had already been modified after this Court's issuance of said order at *Doc 66* under the provision that defense counsel representing Dr. Akula at the time represented to the Court that PAA and Dr. Black were needed resources in the preparation of a defense for Dr. Akula.
9. As a result of this representation by defense counsel, which to date, was likely unbeknownst to Magistrate Judge, PAA was authorized to review the limited discovery that was disclosed by the government.
10. However, other factors came into play which ultimately led to PAA parting ways with Dr. Akula. PAA and its members were unjustifiably threatened and intimidated by Junior Prosecutor McHugh by way of McHugh issuing grand jury subpoenas to PAA and Dr. Black. These grand jury subpoenas were issued and served personally on Dr. Black at her personal residence in Florida where even the subpoena for the entity, PAA, was served at the personal residence of Dr. Black. This was akin to McHugh serving grand jury subpoenas on employees of defense counsel, like paralegals, legal secretaries and investigators-an unprecedented tactic by the government in health care fraud cases. This also amounted to direct interference and

violations by the government of Dr. Akula's Sixth Amendment rights. Intimidating and scaring off PAA and Dr. Black with a criminal investigation by serving both with grand jury subpoenas under the disguise that there was potential witness intimidation all before the government had even disclosed its witnesses, worked and PAA parted ways with Dr. Akula. This was a monumental loss to Dr. Akula because of the resources that PAA offers to physicians who are in the same predicament as Dr. Akula.

11. This toxic behavior by Junior Prosecutor was not only limited to PAA and Dr. Black. McHugh engaged in the same behavior of intimidating and threatening Dr. Akula's own in house counsel, Les Johnson. McHugh even suggested that Les Johnson should testify against Dr. Akula- there being nothing to testify against Dr. Akula, Mr. Johnson refused but remained intimidated and threatened with a future indictment. Mr. Johnson was Dr. Akula's in house counsel who was in charge of oversight over all billing at Canon Hospice. Mr. Johnson was also the same attorney who had secured for Dr. Akula one of the largest settlements (\$704,881.58.) by the Secretary of Health and Human Services. McHugh misused the authority given to her as an AUSA and ran off Mr. Johnson out of Dr. Akula's sphere, depriving Dr. Akula of the benefit of being able to have

communications with his own in house counsel for billing issues in preparation for trial.

12. Fast forward to today, with PAA now having withdrawn from Dr. Akula's case, and former counsel, Les Johnson being effectively shut down out of fear that he would be indicted by this Junior Prosecutor's misuse of her authority, Dr. Akula has had to reach out to other organizations.

13. One of these organizations is Louisiana United International, ("LUI"). LUI is a civil rights organization which provides assistance to those who become victims of selective prosecution by the government.

14. While Dr. Akula has been able to secure the commitment of LUI members to conduct interviews of potential witnesses, sort, organize and catalog discovery, and perform investigatory functions, LUI members have expressed concerns that they will be the target of this Junior Prosecutor who will once again present falsities to the court under disguise of witness intimidation against those members who are simply assisting Dr. Akula to prepare a defense. There is no plausible way that Dr. Akula can prepare his own defense without the assistance of those who will call and interview potential witnesses and organize the discovery that was provided for the first time on March 7, 2023 in a readable format. Dr. Akula is also concerned that Junior Prosecutor McHugh will again engage in the same

behavior to intimidate and threaten LUI members the same way she did with PAA and its members.

15. For these reasons, as for request to modify Paragraph 4, Dr. Akula submits that it is reasonable that no disclosure of names or identifying information of the individuals assisting Dr. Akula be required to be disclosed as McHugh would like it to be through submission of an "Attachment A".

16. If this Court orders the disclosure of identifying information about those who will be conducting interviews and doing investigatory work in this case, this would be unprecedented and would amount to treating Dr. Akula differently than attorneys appearing before this Court. No defense counsel comes before this Court requiring to disclose the names of all those assisting defense counsel so as to expose those assisting to the wrath of this Junior Prosecutor who is still stuck on the Press Release that was issued in August 2021 which did not contain pleasant comments about her. This Court cannot treat a pro se litigant differently than it would an attorney.

17. There is good cause for Dr. Akula requesting that he be afforded the opportunity to control the organization and content of his own defense without interference by Junior Prosecutor McHugh. "A pro se defendant

must be allowed to control the organization and content of his own defense...,” *United States v. Mammoth*, 47 F.4th 394 (5th Cir. 2022).

18. Junior Prosecutor McHugh has shown how she attacks those who are willing to help and assist Dr. Akula in this litigation. As such, Paragraph 4 modifications as proposed should be adopted which should simply state:

No persons other than the defendant, retained experts, retained vendors, support staff employed by defendant and the defendant himself in the preparation of their defense may see the Protected Materials or any other discovery. In the course of interviewing witnesses in preparation for trial, parties may share portions of discovery with witnesses in the presence of the parties. Other than as specified in this paragraph, parties shall not share the Protected Material with anyone outside these [sic] individuals.

Going Back to Paragraph 3, and the Request to Modify Paragraph 3:

19. The requested modification in this paragraph is insignificant. The government appears to have an issue with the elimination of the second part of the sentence which states “The Protected Materials shall remain in the possession and custody of counsel for the defendant until the litigation has concluded or this matter has been otherwise resolved.”. The objection by the government does not make sense since no matter how, if this litigation is resolved, it will be deemed as being concluded. In fact, once litigation is resolved, it is not clear whether the government desires for Dr. Akula to return the Protected Materials. Dr. Akula has no objection to that

if it does not cost any expenditure of time or money to do so. But this paragraph in general just does not make sense. Being a physician, it is hardly that McHugh is more keenly aware about protecting patients' confidential information than Dr. Akula. As such, there is no question that under no circumstances would any patient records be disclosed to anyone or anywhere at the hands of Dr. Akula. And as for other discovery, once witnesses testify, it is not clear what McHugh is trying to allude to here. But in any case, Dr. Akula's issue is that once the litigation is concluded or other been resolved are both the same thing because either way the litigation will be deemed concluded.

As for Request to Modify Paragraph 6:

20. The Government's position for Paragraph 6 is for it to stay as is and for Dr. Akula to make a motion to modify it on a need-to basis. The government's request is unreasonable because it improperly shifts the burden to Dr. Akula where there is a constitutional right of First Amendment. Dr. Akula does not have the burden to establish a constitutional right-that right has already been established by the Constitution. In the absence of a showing by the government where the government provides evidence to this Court to meet its burden to limit Dr. Akula's First Amendment right, this Court knows all too well that it cannot

gag Dr. Akula from discussing his criminal case with the media- which is different than sharing discovery with members of the media. The language of discussing his criminal case with the media is overbroad and quite shocking in the first place that it was included in the protective order.

21. This is especially so because numerous media publications already exists which shed a false light on Dr. Akula and Canon Hospice. *See Exhibit 1.* Dr. Akula has the right to fend off these publications and to speak about his criminal case in general and especially to speak of everything that gets filed almost on a daily basis on PACER which is a publicly accessed website.

As for the Addition of the Paragraph Requesting Protection for Those Assisting Dr. Akula from the Threats and Intimidation by Junior Prosecutor McHugh:

22. The predicate for this Additional Paragraph was already discussed above in conjunction with discussion of the need to modify Paragraph 4. The government's position is that it does not know who is assisting Dr. Akula. The reality that McHugh needs to be hit with is that Dr. Akula is not required to disclose to McHugh who is assisting him in the preparation of his defense just like McHugh is not required to disclose who is on the prosecution team, who are the paralegals, investigators or legal secretaries who are helping McHugh in this prosecution.

23. In the most ludicrous fashion, the government's position is somehow that it is required to be notified of the names and all identifying information of those assisting Dr. Akula. Of course that would be so convenient for McHugh as she could embark on the same course of conduct to intimidate and threaten these individuals with criminal prosecution like she did with PAA and Dr. Black where PAA pulled out of Dr. Akula's assistance just so they would not have to deal with McHugh and the attorneys' fees that she was causing PAA to incur in order to defend themselves against the baseless attacks by McHugh.

24. McHugh has already demonstrated that she will lie and present falsities under the guise of witness intimidation just so that she could pierce through the defense team for Dr. Akula. This is nothing short of outrageous and if the Court stands by and does nothing, that would be short of nothing but indifference amounting to disregard for Dr. Akula's rights that are of directly root cause of a structural error which would require reversal of any future potential conviction.

25. Where the government interferes with a defendant's ability to conduct his own defense, the error is structural. See "*Weaver v. Massachusetts*, 198 L. Ed. 2d 420, 137 S. Ct. 1899 (2017), holding because harm is irrelevant to

the basis underlying the right of a defendant to conduct his own defense, a violation of that right is structural error”.

26.As was before, McHugh cannot be allowed, in an unhinged manner, or in any manner, to intimidate those members of the defense team that Dr. Akula puts together under the disguise that these members of the defense team are intimidating potential government witnesses. Dr. Akula has to have people to speak to potential government witnesses although McHugh would rather that Dr. Akula does not have this opportunity. McHugh was successful in her endeavors to drive away one organization already, and she cannot be allowed to continue to drive another organization, LUI, which is poised to provide crucial assistance to Dr. Akula.

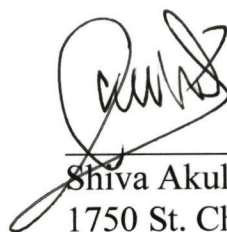
27.For the all the foregoing reasons, the modifications should be ordered as requested.

28.Under “collateral order doctrine,” some orders may be appealed despite the absence of final judgment if they (1) are conclusive, (2) resolve important questions that are separate from the merits, and (3) are effectively unreviewable on appeal from the final judgment in the underlying action. *United States v. Brown*, 218 F.3d 415 (5th Cir. 2000). As such, if this protective order is restrictive as to impede Dr. Akula’s ability to retain any person or entity that he desires without having to

disclose the names and identifying information of these persons or entities so that McHugh could go after them, Dr. Akula will take the necessary steps to address this at the Fifth Circuit before the trial in this cause.

29. Based on the foregoing and the number of issues that are involved in this motion, Dr. Akula respectfully requests that the Court set this matter for a hearing prior to issuing an order.

WHEREFORE, Defendant, DR. SHIVA AKULA, respectfully requests that this Court hold a hearing on the issues presented, and after such hearing enter an order modifying the Protective Order at *Doc 92* consistent with the modifications referenced in this motion, and grant any other relief as the Court deems just and proper.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to counsel of record, including AUSA Kathryn McHugh via email on this 25th day of April, 2023.


Shiva Akula, MD

EXHIBIT 1

[Canon Healthcare Owner Indicted for 23 Counts of ...](#)



[Hospice News](#)

<https://hospicenews.com> › 2021/08/17 › canon-health...

Aug 17, 2021 — **Shiva Akula, 65**, the owner of New Orleans-based hospice facility Canon Healthcare has been indicted by a grand jury for 23 counts of health ...

[NOLA.com](#)

<https://www.nola.com> › news › courts › canon-healthcar...

Aug 18, 2021 — **Shiva Akula, 65**, was charged Aug. 5 in a 23-count health care fraud indictment that centers on a hospice care company he owns, Canon Healthcare.

[Hospice Facility Owner Indicted for Health Care Fraud](#)



[Department of Justice \(.gov\)](#)

<https://www.justice.gov> › usao-edla › hospice-facility-...

Aug 6, 2021 — NEW ORLEANS – U.S. Attorney Duane A. Evans announced that **SHIVA AKULA** (“**AKULA**”), age 65, of New Orleans, Louisiana was charged by a grand ...

[Hospice Facility Owner Indicted for Health Care Fraud](#)



[HHS.gov](#)

<https://oig.hhs.gov> › Fraud › Enforcement Actions

NEW ORLEANS – U.S. Attorney Duane A. Evans announced that **SHIVA AKULA** (“**AKULA**”), age 65, of New Orleans, Louisiana was charged by a grand jury on August 5, 2021 ...

[National Insurance Crime Bureau](#)

<https://www.nicb.org> › news › regional-news › hospic...

United States Attorney's Office – Eastern District of Louisiana, Aug. 6, 2021 NEW ORLEANS – U.S. Attorney Duane A. Evans announced that **SHIVA AKULA** ...

[Med-Net Concepts, LLC](#)

<https://mednetconcepts.com> › mednetconnect › louisia...

Aug 9, 2021 — Shiva Akula, age 65, of **New Orleans**, Louisiana was **charged** by a grand jury on August 5, 2021, in a 23-count **Indictment** for Healthcare **Fraud**.

[Hospice Facility Owner Charged with Health Care Fraud](#)



Healthcare Fraud Group

<https://healthcarefraudgroup.com/news/hospice-fac...>

NEW ORLEANS – SHIVA AKULA (“AKULA”), 65 from **New Orleans**, Louisiana, was **indicted** by a grand judge on 5th August 2021, l a 23-count charge for Health Care ...

Investigative Press Releases



Oversight.gov

<https://www.oversight.gov/investigative-press-releases>

Hospice Facility Owner Indicted for Health Care **Fraud**. Friday, August 6, 2021. **NEW ORLEANS** – U.S. Attorney Duane A. Evans announced that SHIVA AKULA ...

Louisiana Fends Off Doctor's Lawsuit to Regain Medicaid ...



Bloomberg Law

<https://news.bloomberglaw.com/litigation/louisiana...>

Dec 27, 2022 – The doctor, **Shiva Akula**, had no property or liberty interest in his status as a Medicaid provider that was protected by the 14th Amendment's ...

Missing: new orleans

NOLA.com - Federal prosecutors have accused a New ...



Facebook

<https://www.facebook.com/NOLAnews/posts/fed...>

Shiva Akula indicted for overbilling Medicare for hospice patients. Federal prosecutors have accused a **New Orleans** doctor of bilking the federal government out ...

Overbilling for substandard care: the horrors of hospice ...



VTDigger

https://vtdigger.org/sponsored_content/overbilling...

Last month, **New Orleans** hospice facility owner **Shiva Akulu** was **charged** with 23-counts of healthcare **fraud**. According to the **indictment**, **Akula** submitted ...

Investigative Press Releases



[Oversight.gov](https://www.oversight.gov)

<https://www.oversight.gov> › [investigative-press-releases](#)

Norwood Woman **Indicted** for Stealing Government Benefits ... **NEW ORLEANS** – U.S. Attorney Duane A. Evans announced that **SHIVA AKULA** (“AKULA”), age 65, of New ...

In re Grand Jury Subpoena, 56 F.4th 395



[Casetext](https://casetext.com)

<https://casetext.com> › ... › [Ct. App.](#) › [2022](#) › [December](#)

Dec 14, 2022 – The Department of Justice conducted an investigation of Dr. **Shiva Akula** for healthcare **fraud** in connection with his owne