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☞ Details: Audit requests, 2005

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06
(session year)

Joint
(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

June 14, 2005

Rep. Suzanne Jeskewitz
Co-Chair, Joint Committee on Audit
Room 314 North, State Capitol
Madison WI 53708

Sen. Carol Roessler
Co-Chair, Joint Committee on Audit
Room 8 South, State Capitol
Madison WI 53707

Dear Rep. Jeskewitz and Sen. Roessler,

Please find along with this letter copies of materials delivered to me by Dr. Robert Waters, a physician in my area who specializes in alternative treatments. Dr. Waters was put through a years-long ordeal with the Department of Regulation and Licensing in which he was zealously pursued by an investigator with the department. It was later discovered that the investigator was acting with near-complete autonomy. The Medical Examining Board (MEB), once it approved the investigation, had little to no oversight of the investigation. No supervisor sought to ensure professional conduct or wise use of resources, or to ensure the credibility of expert witnesses. Dr. Waters and others who practiced chelation therapy were put through years of stress and tens of thousands of dollars in legal expenses to defend themselves and their practices.

We strongly believe that an audit of the Department of Regulation and Licensing's enforcement mechanism is in order. Since the administrative operations of various professional boards were consolidated under one agency, it seems that it is increasingly unclear as to whom the department's investigators are answering to, what power structure exists, and whether there are more instances of taxpayer dollars being wasted on fruitless investigations.

We are not against regulation – rather, we strongly support the state's role in *responsibly* investigating concerns authorized by professional boards and carefully supervised by the department. As it stands, we are not confident that the department has an operating structure in this area that is optimal to its mission. Accordingly, we ask that you consider authorizing a limited audit of the internal structure of the department's investigation authority and the manner in which resources are spent on enforcement activities.

Please feel free to contact our offices with any questions you might have. Thank you for your careful consideration of this request.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District

Dale Schultz
State Senator
17th Senate District

cc: Janice Mueller, Legislative Audit Bureau

June 21, 2005

RE: Dr. Harold Dykema

Representative Scott Suder
Room 21 North
State Capitol
P.O. Box 8953
Madison 53708

Dear Representative Suder:

I am a constituent who believes in using an alternative health practitioner such as a chiropractor.
It is my understanding that certain health care practitioners, such as my chiropractor, **Dr. Harold Dykema** has been under assault from the Wisconsin Department of Regulation & Licensing (DRL) for using cutting edge methods.

My Story:

In 1980, I was in a truck accident. I tipped the truck onto its side in a steep ditch. I spent a week in the Stanley Hospital and was sent home with pain pills and a neck collar. My head was jammed into my shoulders. I had constant back pain and my arms hurt to move them. I needed someone to help me in and out of a chair. My medical doctor told me to learn to live with the pain and to keep taking my pain pills. I would take the pain pills and they would put me to sleep and I would wake up when they were wearing off. This was a large problem for me because I had three small children at the time to care for and my husband had to work so we would have an income to pay for the medical bills.

A friend saw the pain I was in and told me about Dr. Dykema. I was in so much pain I would have done anything to get relief. I made my first appointment and felt some relief for the first time. I went three times a week for two weeks and I could take my neck collar was off and I had stopped the pain pills. I could sleep in my bed again. After that I had appointments, once a week for two months with no returning head, neck or back pain related to the accident. I am a new person after all the treatments; it is so nice not to be in pain anymore, thanks to Dr. Dykema.

If not for Dr. Dykema and his staff, I would be in a nursing home today.

This problem goes beyond what is happening to **Dr. Dykema**. It has been brought to my attention that the prosecutors for the DRL are not properly supervised and several cutting edge practitioners are being targeted.

I request that you ask the "Joint Legislative Audit Committee" for a formal audit of the Wisconsin Department of Regulation & Licensing (DRL), for cause.

Because of DRL restrictive policies, I am being denied first-rate care from **Harold J. Dykema, D.C.**

I WANT MY CHIROPRACTOR BACK!

Dr. Dykema will appear before the Chiropractic Board on June 23, 2005 for one last attempt to regain his license.

Respectfully,

Lorraine Westaby
W16639 CR F 54768
Stanley, WI 54768

cc:
Governor Doyle
Celcia Jackson: Secretary
James W. Weber, D.C.: Chairman
Senator David A. Zien

I am Robert Waters MD, a licensed medical doctor within the State of Wisconsin. I hereby, and herein, state the following to be true, to the best of my knowledge.

This document is, and represents, a formal "Complaint" against one Arthur Thexton, a practicing attorney licensed within the State of Wisconsin, and employed as an attorney/prosecutor in the Wisconsin Department of Regulation & Licensing (DRL), for cause.

The allegations contained herein relate to charges of unprofessional conduct, violation of State Statutes, violation of specific Wisconsin and United States Constitutional Rights of a citizen, and acting in conspiracy to deprive certain citizens of their rights and due process in conjunction with, and in conspiracy with, a private, special interest group.

This complaint will show that all or part of Mr. Thexton's actions described herein were done under "the color of law" and these acts will be spoken to separately in the proper legal *fori*. I ask, however, that the Agencies to which I am reporting these abuses will consider Mr. Thexton's actions in the former light as well as his capacity as a Prosecutor for the Department of Regulation and Licensing.

1. **Violations of State Statutes**
    a. Mr. Thexton willfully and with malice, forethought, and acting in a conspiracy with a Massachusetts resident, one Robert S. Baratz MD, DDS PhD, and others, including the National Council Against Health Fraud (NCAHF), repeatedly violated and attempted to violate the State Laws of Wisconsin, to wit, continued an inappropriate investigation against me, knowing that a breach of the Medical Practice Act had never occurred. This caused me damage. The Medical Practice Act of 1983 states clearly that (Chapter Med. 18 Alternative Modes of Treatment. Med. 18.03(2)):

> "Nothing in sub (1) shall be construed as preventing or limiting a physician in recommending a mode of treatment which is in his or her judgement the best treatment for a patient."

Despite the clear wording of this paragraph, the DRL opened cases 97MED101 and 97MED108 against me based solely on complaints from a medical doctor (97MED101), William West, MD, and an insurance company (97MED108) *via* its Medical Director, Howard Travers, M.D., Blue Cross/Blue Shield. These cases alleged **only that I was using alternative forms of medical practice**. Wisconsin has NO prohibition against the practice of alternative forms of medical practice. Furthermore, there had been no complaints of harm by a patient. No complaint against me has ever been initiated by a patient to the DRL in 18 years of practice in Wisconsin.

In addition, the DRL had previously received a complaint from another practitioner, Richard Sarnwick, DO, in 1991 for the same alleged violation, "the use of Chelation Therapy," and after a thorough investigation and communication with me as well as review of the numerous scientific references I sent through my attorney, the DRL closed this case against me in 1993. The cases 97MED101 and 97MED108 were therefore redundant and were a waste of the Department's time and resources as well as forcing a great stress and financial burden on my practice, staff and myself. Such actions on the part of Mr. Thexton and the DRL represented violations of my rights under State Law, the Wisconsin Constitution and the United States Constitution.

There was no difference at all in the complaints made against me by Dr. Sarnwick in 1991 and Drs. West and Travers in 1997. The 1997 cases against me represented nothing more than harassment, as suggested by my attorney of record at the time, Gregory Seeley, in his reply to the inquiry (Enclosure 1). The DRL and Mr. Thexton simply tried to manufacture a case against me because of a politically motivated agenda based in part on the mission of a special interest group, the National Council Against Health Fraud, as will be further explored below.

b. Mr. Thexton, after a period of over four years had elapsed with no action being taken by the DRL, somehow got my cases assigned to himself and attempted to create cases where none existed. He did this in direct violation of Wisconsin Statute Chapter 227.20(1) Filing of Rules which states:

> "An Agency shall file a certified copy of each rule it promulgates in the office of the Secretary of State and in the office of the Revisor. No rule is valid until the certified copies have been filed."

In addition, in Upton v. S.E.C., 75 F.3d 92 (2nd Cir. 1996), the Supreme Court decided that:

> "...we cannot defer to the Commission's interpretation of its rules if doing so would penalize an individual who has not received fair notice of a regulatory violation. See United States v. Matthews, 787 F.2d 38, 49 (2d Cir. 1986). This principle applies, albeit less forcefully, even if the rule in question carries only civil rather than criminal penalties. See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498-99, 102 S.Ct. 1186, 1193-94, 71 L.Ed.2d 362 (1982).

I was never given a notice of any violation let alone a "fair" notice.

On two occasions I asked Mr. Thexton, via certified mail, to provide me with the exact "Rules of the Board" he claimed I violated or potentially violated, and to which he referred in his correspondence with me. His reply was to refer me to the Medical Practice Act, which provides no such Rules regarding the practice of Complementary and Alternative Medicine (CAM), let alone any specific Rules regarding Chelation Therapy (hereinafter the designation "CAM" will be used for the practice of Complementary and Alternative Medicine). In fact, as mentioned above in (a), the Act specifically allows a physician to offer therapies to patients "which is in his or her judgement the best treatment for a patient."

It would be understandable that Mr. Thexton or another prosecutor would pursue investigation of a physician if his or her practices were clearly dangerous or had resulted in damage to a patient. In the case of Chelation Therapy, Mr. Thexton knew that the treatment was an FDA approved therapy for heavy metal accumulation that was being used for "off-label" use in the case of cardiovascular disease and therefore was perfectly legitimate.

Thexton also knew that the National Institutes of Health was starting a $30 million study of EDTA Chelation Therapy (of which I am a study participant) in coronary heart disease treatment using an in-office protocol virtually identical to the one I had been using for 22 years without a single serious adverse effect or patient complaint. The Federal Government knew that EDTA Chelation Therapy was not dangerous or they wouldn't support such a large study (of approximately 2400 heart disease patients).

Why did Mr. Thexton use the power of Wisconsin government to attempt to stop a treatment that was perfectly legal and legitimate when the United States of America was studying such treatment as an alternative to the expensive "standard of care" treatments accepted today. In fact, Mr. Thexton had a duty under the law to follow all statutory requirements as taught in Mahler v. Eby, 264 US 32, 44 S.Ct. 283:

> It is essential that where an executive is exercising delegated legislative power he should substantially comply with all the statutory requirements in its exercise."

During the Eleazar Kadile, M.D. case (94MED94) at a hearing in front of ALJ John Schweitzer on October 28, 2002, the Judge specifically cautioned Mr. Thexton that his (Thexton's) attempt to argue that Chelation Therapy represented a potential violation of the Medical Practice Act under the "unprofessional conduct" section (Med 10.02) was a "Legislative Matter" (Enclosure 2, especially page 25) and not something that he as an ALJ could adjudicate.

In law, if the Board wanted to make up rules against specific practices of medicine, they should have written them up, held public hearings for input and got the legislature to pass laws regarding such rules and filed them as certified copies with the Secretary of State and the Office of the Revisor as required by Statute (227.20).

Instead, Mr. Thexton hired an unqualified, dishonest "expert" witness with a political agenda to attempt to create a case against me. This "expert" named Robert S. Baratz who is President of an organization, NCAHF, known to be openly prejudiced against all forms of CAM. Baratz brazenly calls Chiropractic and Acupuncture, both of which are licensed professions in the State of Wisconsin, quackery in his public appearances, website writings and other propaganda statements.

Baratz was paid over $18,000 to act as an advisor in my cases and yet I was never charged with a violation. After my cases were reassigned to a different prosecutor who dispassionately looked at the files, that person had the courtesy to communicate with me directly to attempt to understand what my practices were and make an intelligent assessment. After that, it took only about a month for her to recommend to the Board that my cases be dropped. That action ended 6 ½ years of wasted resources for the State of Wisconsin and my medical practice.

c. Mr. Thexton basically attempted to manufacture cases against me by operating a conspiracy with Robert S. Baratz, Stephen Barrett, Wallace Sampson and their respective website/organizations www.quackwatch.org ,and the National Council Against Health Fraud (www.ncahf.org), to further the political agendas of these individuals and organizations. In fact, Dr. Barrett, Dr. Sampson and the NCAHF have been discredited at the appellate level in California [See NCAHF, Inc. v. King Bio Pharmaceuticals, Inc.; Frank J. King, Jr.; and Does 1-50. Case No. BC 245271 (Enclosure 3b)] The Appeal was made to the Appellate District, Division

5. Case B156585 (Los Angeles County Superior Court No. BC 245271.) The Disposition affirmed the judgment against the NCAHF.

d. Mr. Thexton knew full well that Robert S. Baratz is a "professional witness" against CAM, since it came out while Dr. Baratz was under oath during testimony in the Kadile case (194MED94) and that Dr. Baratz had been active in 14 States as a witness against CAM practitioners of various types (Enclosure 3).

e. What is really amazing is that Wisconsin would hire a person who testified in many States as an expert in dentistry when, by his own admission, he hadn't practiced dentistry since 1986 and had almost no experience as a medical doctor except as an outpatient practitioner at the Veterans Administration (VA) and in emergency rooms, and had never, by his own admission, had a private practice of medicine. He admitted under oath that he had only started a private practice of medicine early in 2002.

f. How could our State use such an "expert" to judge the practices of Wisconsin physicians? Mr. Thexton knew that Dr. Baratz was making a substantial portion of his living testifying in Court/Board actions and as such was operating unprofessionally from the standpoint of the American Medical Association (AMA) criteria for expert witnesses (Enclosure 3a, pages 17-20). The AMA had developed these guidelines specifically to police opportunistic individuals like Dr. Baratz. In fact, pleadings in early October 2002 by Dr. Kadile's attorney, Greg Seeley, (Enclosure 3a) clearly show that Dr. Baratz does not qualify as an expert witness and also speaks to his credibility and honesty. Judge Schweitzer initially disqualified Dr. Baratz as an expert on Chelation Therapy and other matters, but later inexplicably reversed his decision when Mr. Thexton threatened to bring another quackbuster in from California, Dr. Wallace Sampson.

g. A reading of Judge Fromholz' decision (Enclosure 3b) *vis* the qualifications and credibility of Dr. Sampson in the NCAHF v. King Bio Pharmaceuticals will

reveal that Dr. Sampson, like Dr. Baratz, is no expert at anything but rather a political activist. Reading from Judge Fromholz' decision (Enclosure 3b) under "C. Credibility of Plaintiff's experts":

> "Furthermore, the Court finds that both Dr. Sampson and Dr. Barrett are biased heavily in favor of the Plaintiff and thus the weight to be accorded their testimony is slight in any event. Both are long-time board members of the Plaintiff; Dr. Barrett has served as its Chairman. Both participated in an application to the U.S. FDA during the early 1990's designed to restrict the sale of most homeopathic drugs. Dr. Sampson's university course presents what is effectively a one-sided, critical view of alternative medicine. Dr. Barrett's heavy activities in lecturing and writing about alternative medicine similarly are focused on the eradication of the practices about which he opines. Both witnesses' fees, as Dr. Barrett testified, are paid from a fund established by Plaintiff NCAHF from the proceeds of suits such as the case at bar. Based on this fact alone, the Court may infer that Drs. Barrett and Sampson are more likely to receive fees for testifying on behalf of NCAHF in future cases if the Plaintiff prevails in the instant action and thereby wins funds to enrich the litigation fund described by Dr. Barrett. It is apparent, therefore, that both men have a direct, personal financial interest in the outcome of this litigation. Based on all of these factors, Dr. Sampson and Dr. Barrett can be descried as zealous advocates of the Plaintiff's position, and therefore not neutral or dispassionate witnesses or experts. In light of these affiliations and their orientation, it can fairly be said that Drs. Barrett and Sampson are themselves the client, and therefore their testimony should be accorded little, if any, credibility on that basis as well."

Remember that Dr. Baratz was President of NCAHF at the time the suit was filed against King Bio and at the time Judge Fromholz made his decision. At appeal in front of a three Judge Panel in California, NCAHF lost again in two separate cases and has been ordered to pay the original defendant attorney's fees in the

second case. **Mr. Thexton had been informed of these cases** before he hired Dr. Baratz in my cases and before he attempted to substitute Dr. Sampson for Dr. Baratz in the Dr. Kadile case and therefore knew that the organization he was using (NCAHF) as the bases of his cases, and the members of this organization he was using as experts, had already been discredited in the Courts as biased witnesses.

The NCAHF theories of health care, which Mr. Thexton had adopted and used as the bases of his complaints against Dr. Kadile and myself were clearly judged to be inappropriate in the Court and Mr. Thexton, as a lawyer for the DRL, should never have continued pursuing Wisconsin physicians based on such bogus health theories. A careful reading of Seeley's pleadings (Enclosure 3a) would lead one to understand that Mr. Thexton knew or should have known that Dr. Baratz was not an appropriate person to use in any legal proceedings in Wisconsin.

Mr. Thexton also knew that Dr. Baratz is a perjurer. Mr. Thexton was present when Dr. Baratz claimed under oath that he left his employment at Neponset Health Center in Dorchester, Massachusetts in December 1999 because he clamed his left arm was "severely injured" by a 74-year-old female physician (Enclosure 4). Mr. Thexton was present when the subject of Dr. Baratz' accusations, Florence Wilson, M.D. walked into the courtroom and ALJ Schweitzer asked the Court video photographer to train the camera on the elderly, frail Dr. Wilson for later reference by the Medical Examining Board.

Dr. Baratz had previously slandered Dr. Wilson claiming she was a mental patient and a drug addict during a deposition here in Wisconsin. In a deposition in the State of Florida, Dr. Baratz stated under oath that he had "no idea" why Dr. Wilson "assaulted" him. Any person in possession of their faculties knew at that point that Dr. Baratz was a perjurer and a slanderer. For a clear understanding of the true import of my charges, I would beg your Office to view the testimony of

Dr. Baratz on videotape during the July 15-16, 2003 hearing, as well as the October 28-30, 2002 hearings.

Mr. Thexton was also present when it came out during that same Kadile hearing in July 2003 that in fact Dr. Baratz was forced to resign from his position at that clinic because of sexual harassment and threatening of a female employee (Enclosure 5). In fact, Dr. Baratz attempted to cover up the fact that he had been asked to resign for cause by the Neponset Health Center by claiming disability. He tried to bolster this claim by filing a lawsuit against Dr. Wilson and other employees of the Neponset Health Center (Enclosure 6). The document alleges that Dr. Baratz anticipated losing $2,430,000 in lost wages in the future and had already lost $628,000 (from September 1999 to November 2001, the date of the suit, a period of approximately two years). He clearly inflated his wage losses in this suit because he admitted under oath, and it is clearly stated in his contract with Neponset, that his wages are approximately $62.00 per hour. Even if he had worked 40 hours weekly, he couldn't have earned more than $270,000 during this interval and that's only if he had been totally disabled. He himself stated that he was only partially disabled. He had more than doubled his lost wages in this suit.

By the way Dr. Baratz comports himself, observable in the video testimony and by the fact that he is now operating a depilatory salon within his medical practice, it is clear that he falsified his medical condition for personal gain and to cover up the fact that he lost his job for sexual harassment and could not find another one due to his reputation, incompetence and litigious nature. It is pathetic that Mr. Thexton used the State of Wisconsin to pay such a corrupt individual.

What is even more incredible is that Mr. Thexton paid Dr. Baratz $175.00 hourly starting from his home in Massachusetts to Madison and back again for travel and even when he was sleeping in a hotel paid for by Wisconsin taxpayers. One billing was for $4,376.30 for travel and expenses alone from March 14 – 15, 2002! (Enclosure 7) Mr. Thexton had been warned by my attorney at the time

that we would not be appearing before Mr. Thexton's and Dr. Baratz' ill-conceived "deposition" but Mr. Thexton allowed Dr. Baratz to come to Wisconsin anyway and gouge our State of $4,376.30. Mr. Thexton claimed that $175.00 per hour (far above the usual fee paid to a expert witnesses by our State (see Enclosure 24), which was set at $75.00 per hour) was a bargain because it was so hard to find such a "qualified witness." Considering that Dr. Baratz was only paid a bit over $60.00 at his last place of employment, it is hard to imagine how $175.00 (from door to door) could possibly be a bargain considering Dr. Baratz' ill-qualified and prejudiced nature. Dr. Baratz claims that he will have to "take a bath on costs" and that his fees from our State ($175.00 per hour) "only pays for my time, but not lost overhead" (Enclosure 7).

It is clear that Dr. Baratz was never a legitimate expert witness for the State in my cases, or in the Kadile case, but in fact was an opportunistic fraudulent hired gun employed by Mr. Thexton to achieve his own and the private interests of the NCAHF. Mr. Thexton hired Dr. Baratz not to ascertain the truth about Chelation Therapy or to protect the people of Wisconsin, but instead to illegally apply the law to suppress any innovative therapy that was in any way in contradiction to his own and Dr. Baratz' personal view of Medicine and Science.

The people of this State can not countenance such behavior at their expense as taxpayers, and Mr. Thexton should have his license to practice law revoked and be punished in an appropriate way by the authority which granted him his license.

Mr. Thexton was also present when Dr. Baratz lied about his numerous lawsuits against individuals such as two cases of Dr. Baratz suing people whose car he ran into while he was jogging (Enclosure 8). These cases were obviously frivolous and were either dropped or lost at trial with Dr. Baratz being ordered to pay the costs. This again goes to the character of Dr. Baratz and the lack of judgment or self-serving actions of Mr. Thexton. Despite all this, Mr. Thexton, an officer of the Court, continued to use Dr. Baratz as an expert witness against Dr. Kadile and

myself. He allowed Dr. Baratz to defraud our State of a total of almost $86,000.00 in "expert witness" fees in the Kadile case and my own cases.

2. Violations of DRL Rules and Procedures

a. The DRL, Wayne Austin and Mr. Thexton refused to allow me to send scientific articles to Medical Board members on the grounds that this would represent "*ex parte* communications" with the Board and thereby prejudice them. In fact, the Board regularly meets in closed session and prosecutors such as Mr. Thexton are allowed to communicate with the Board without the Respondent or her/his attorney present. Mr. Thexton admitted in writing that he would go before the Board to get a formal complaint filed against me while Greg Seeley was my attorney. My attorney was not invited to such meeting. Fortunately, the MEB denied his pleadings. It is known that in other cases coming before member Boards that prosecutors are allowed to address the Board without Respondent's legal counsel or Respondent themselves present. Depriving me of the ability to allow the Board to learn the scientific facts regarding Chelation Therapy resulted in prolongation of my cases and large financial and other damages to my practice and myself (I am enclosing a copy of the exact document that I sent to the MEB and which Mr. Berndt and Mr. Thexton confiscated and thereby disallowed the members of the MEB to use in their potential judgment of my cases (Enclosure 9). By so doing, Mr. Thexton violated Davis v. Scherer, 82 L.Ed.2d. 139:

> "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 552 [14 L.Ed.2d 62, 85 S.Ct. 1187] (1965). See Grannis v. Ordean, 234 U.S. 385, 394 [58 L.Ed. 1363, 34 S.Ct. 779] (1914)." Mathews v. Eldridge, 424 U.S. 319, 332-333, 47 L.Ed.2d.18, 96 S.Ct. 893 (1976).
>
> See also Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337, 23 L.Ed.2d 349, 89 S.Ct. 1820 (1969).

As a prosecutor, Mr. Thexton's mission was to ascertain the true facts and protect the public, not simply decide a person is guilty and in need of punishment. Mr. Thexton constantly controlled what the Board would learn so he could, as he admitted on more than one occasion (in the presence of ALJ John Schweitzer and attorneys Frank Recker, Raymond Roder and Algis Augustine who could all be relied upon for affidavits), "set policy for the Board." He was challenged in the Kadile Case by Dr. Kadile's lawyer, Dr. Frank Recker, over such an attempt and Mr. Thexton arrogantly admitted that he was going to make policy regarding Chelation Therapy for the Board because, in his words, "The Board won't." This alone should be grounds for discipline or firing of Mr. Thexton from his job at the DRL and discipline by your office.

Even after the settlement of the Kadile case and the dropping of my cases, Mr. Thexton shouted out at the end of the Kadile Hearings that "I still say Chelation Therapy is quackery!" This was filmed by Channel 3 news and broadcasted thereby causing further damage to my practice and to those of others. It is also no doubt inhibiting enrollment in the $30 Million NIH study of Chelation Therapy here in Wisconsin.

b. Mr. Thexton violated written DRL policy concerning adding cases to numbered open cases by bringing the issue of my use of Insulin Potentiation Therapy into case numbers 97MED101/108 (Enclosure 10). Notice that he immediately sent the patient charts to Dr. Baratz, his "expert." There hadn't even been a complaint about IPT and if there had, shouldn't Mr. Thexton have used a cancer specialist instead of Dr. Baratz? He did this to cover up the staleness of those cases, which had been received in 1997, during a hearing before ALJ Jacquelyn Rothstein on March 14, 2002. When my attorney, Mr. Seeley, argued during the 2002 hearing that my case was a) redundant due to an identical complaint against me in 1991 and b) was allowed to become "stale" and was therefore evidence that my

practices couldn't be dangerous because Mr. Thexton had allowed many years to elapse between the complaint and his attempt to subpoena me, Mr. Thexton told the ALJ that he had a fresh complaint. This was a shock to my attorneys who had no prior knowledge of this alleged complaint. When Mr. Thexton was questioned by Mr. Seeley as to the nature of the complaint, Mr. Thexton stated he was not required to divulge any information about it, but yet was clearly using it, in violation of DRL rules, as support for his inappropriate subpoena and as evidence or at least an argument to defeat Mr. Seeley's motion to quash the subpoena. **There had never been any complaint at all** (Enclosures 11,12,13). A physician, Dr. Cynthia Pickney, made an anonymous "inquiry" to the State Medical Society regarding my use of Insulin Potentiation Therapy on a mutual patient. This doctor didn't call me directly, but elected to simply tell the "Legal Department" of the State Medical Society of my use of this 70 year old, understudied treatment, which is at worst, far safer than standard chemotherapy for lung cancer, from which this patient suffered. A letter to Wayne Austin, an attorney for the MEB, from the Associate General Counsel of the State Medical Society dated February 20, 2002 stated that the Society was merely "forwarding all of the aforementioned information to you" and that, "We are not filing a complaint against Dr. Waters because we have not determined that a complaint is appropriate or that the health and safety of the public is at risk" (Enclosure 13).

c. Mr. Thexton then violated DRL rules by trying to add this non-complaint to an already open case(s) and then lied to ALJ Rothstein about it to cover up. The fact is that he had no legitimate cases against me to begin with and was using his State employment as an attorney to further personal and political goals. Mr. Thexton handed over his ill-gotten files to Dr. Baratz (Enclosure 10) and wasted out more State taxpayers' money to accomplish his personal vendetta against CAM or anything innovative. Mr. Thexton's actions can not be explained in terms of NORMAL, DRL approved behavior, an argument which should question his ability and competency to act as an attorney in Wisconsin, especially as an attorney employed as a prosecutor for the DRL.

d. The DRL opened, and Mr. Thexton pursued, cases 97MED101 and 97MED108 regarding my use of Chelation Therapy despite the fact that an identical complaint regarding my use of Chelation Therapy had been opened in 1991 as a result of an individual complaint by a physician, Richard Sarnwick, DO in that year (Enclosure 14). It was known to the DRL in 1997 that the 1991 case (91MED365) had been closed on January 21, 1993 because "there is insufficient evidence to meet the standard of proof required to prove that a violation occurred" (Enclosure 15).

e. According to Michael Berndt, the supervisor of Mr. Thexton, in personal communication to my office manager, Sarah Chapman, and myself, the DRL rules dictate that <u>after</u> cases are closed the DRL retains such files for a period of five years. By that standard the DRL should have reviewed the 91MED365 case before even opening the 97MED101 and 97MED108 cases since the complaints of the later (made by physicians James West, MD in 97MED101 and Howard Travers, MD, on behalf of BC/BS, in 97MED108) were identical.

f. In addition, the DRL should have realized that the 97MED108 complaint initiated by Dr. Travers was made in his position as Medical Director of Blue Cross/Blue Shield and as such represented a conflict of interest for BC/BS and Dr. Travers since the complaint was made in order for BC/BS to disobligate themselves from paying their contractual claims of one of my Chelation Therapy patients as well as two of my general practice patients. The later two patients' names were turned in to the Medical Board in order to further harass me for using medical therapies that differ from those erroneously believed to be "unprofessional conduct" by Dr. Travers. The DRL and the Board certainly should not be the arbiter of insurance claim disputes and yet the Board proceeded with an investigation on this basis at a great financial cost to myself and my practice despite the clear impropriety of such a position. This harassment was based in part on the Board's adoption of policy emanating from the Committee of the FSMB(Federation of State Medical

Boards) on April 19, 1997 (Enclosure 16). This policy was adopted as a result of the political machinations of openly anti-alternative medicine groups and persons: *vis*: Steven Barrett, John Renner, Victor Herbert, the NCAHF, Quackwatch.com and the President of the NCAHF, Robert S. Baratz. The later individual was none other than the State's only "expert witness" against Dr. Kadile and myself in our investigations. This aspect of Mr. Thexton's unprofessional and illegal conduct will be addressed below.

g. The truth is, the ill-advised policy of the FSMB was abandoned in April of 2002 (Enclosure 17) and this fact was pointed out to Mr. Thexton in certified letters from myself. He chose to continue to prosecute me based on the old policy and his personal prejudices and chose to ignore the 1993 ruling by the Board that "there was no evidence that a violation had occurred." My attorneys at the time, Seeley, Savage and Ebert, as well as myself, delivered a large amount of data to the DRL. This data (scientific articles, extensive explanations of my Chelation therapy practice, textbooks and other literature) were presumably analyzed by the Board's case advisor at the time, Mark Hughes, MD of Dodgeville, Wisconsin and were no doubt the basis of the findings of January 21, 1993 when the case was closed.

h. The DRL acted irresponsibly in opening the 1997 cases since they had, by their own internal policy, the file of the 1991-1993 case. In fact, the dismissal letter of case 91MED365 dated January 21, 1993 was found in my files when I examined them in the DRL offices in February 2004 (Enclosure 15). Mr. Thexton acted more than irresponsibly by continuing this policy even after he was informed the guidelines of the FSMB had been altered in 2002. Despite this he spent almost $19,000 of the Department's money in retaining the President of the highly prejudiced organization NCAHF, Robert Baratz. If the DRL had reviewed their own records of my 1991 case, which were by DRL rules available in 1993 through 1998, the 1997 cases would never had been opened. I would have saved tens of thousands of dollars, 100's of hours of time and heartache and the DRL would have saved over $20,000 in costs associated with cases 97MED101 and

97MED108. It is interesting to note that over 90% of this money was given to Dr. Baratz.

i. Mr. Thexton simply hired a known prejudiced "expert" to attempt to write Medical Board policy and rewrite Wisconsin Statutes. This represents fraud pure and simple on both Mr. Thexton's and Dr. Baratz' part. The State should recover their loses. Why Mr. Thexton would allow this large sum to be spent on a case with no basis brings up the question of whether Mr. Thexton had a financial arrangement with Dr. Baratz or a mental health issue exists. Mr. Thexton has forced various practitioners to submit to mental health examinations; shouldn't he be held to the same standards? I don't believe your Office can adequately explain Mr. Thexton's actions without a mental health appraisal.

3. Violations of "The Case Handling Process"

The DRL, namely Sid Johnson, MD, the case advisor, the other members of the Medical Examining Board, Michael Berndt and Arthur Thexton violated the written procedures of the DRL as spoken in the document known as "The Case Handling Process" (Enclosure 18). The Processing of complaints are divided into four major stages:

1. Intake Stage
2. Investigation Stage
3. Legal Action Stage
4. Hearing Stage

The Intake Stage

In the Intake Stage, the complaint is *"routed to a screening panel consisting of members of the credentialing authority, and an attorney from the Division of Enforcement."* Supposedly, this screening panel *"brings together the professional expertise of the board members and the case handling expertise of the department staff."* A review of my file revealed that the record was totally silent on the Department's processing of this Stage. This is shocking since the above quoted document states that approximately 50% of the

complaints are closed at this screening Stage. In fact, no actual evaluation was done at the screening level. The case advisor, Sid Johnson, simply allowed the case to be moved forward to the Investigation Stage without any justification.

Did Johnson know that the prior complaint against me (91MED365) had been closed by the DRL in 1993 but allowed 97MED101 and 97MED108 to continue because of his prejudice against CAM and his wish to punish and suppress any forms of medicine that didn't fit into his paradigm of how medicine should be practiced? Did he use his position with the MEB to push those illegitimate cases forward? Dr. Johnson later violated the HIPAA laws by illegally transmitting private patient information to Mr. Thexton in an attempt to further harass CAM in general and myself in particular. This matter will be directly addressed to the HIPAA governing agency.

The Intake Stage written procedure document demands that the panel may consider: "the seriousness of the allegations, the harm or threat of harm, the prior complaint history, the past handling of prior similar cases... and any other relevant factors identified by the panel" (my emphasis). Simple analysis by a reasonable person would indicate:

a) The only complaints against my use of Chelation Therapy were by other medical practitioners.
b) There was no indication at any time of Chelation Therapy representing a hazard to my patients.
c) My use of EDTA Chelation Therapy in degenerative diseases was merely an "off-label" use of a legal drug that had been on the market for almost 50 years.
d) A prior complaint had been investigated thoroughly and closed because there was "no evidence of a violation."
e) The "Panel" knew or should have known of the National Institutes of Health study on Chelation Therapy.

In addition, my attempt to inform the Panel with a certified letter and scientific papers was deflected by Mr. Berndt and Mr. Thexton (Enclosure 9). Did Mr. Thexton operate

autonomously with the evident approval of the Department in pursuing me because it fit his and Mr. Berndt's political and possible other agendas?

The Investigation Stage

In this Stage, an investigator is "assigned to each new case." In addition, "a member of the Board acting as a case advisor is also assigned." Back in 1997-1998, Mr. Nash was the investigator assigned to my case. He evidently retired early due to ill health according to Mr. Thexton (Enclosure 19). I heard nothing about cases 97MED101 or 97MED108 from the time my attorneys and I submitted charts and other documents in early 1998 until late 2001 when Mr. Thexton came into the picture (Enclosure 24). There was no longer an investigator on the case and the Department was aware of this and offered to assign one (Enclosure 20). There is no communication from Mr. Thexton regarding this offer in my file and in fact, Mr. Thexton continued to act as the Prosecutor and investigator and simply used Dr. Baratz' prejudiced and (I would be glad to prove to your office if given the opportunity) totally false and inaccurate testimony to manufacture the cases against me. The case advisor, Sid Johnson, Mr. Thexton, and Dr. Baratz were evidently the only individuals involved in my cases.

Dr. Johnson was also involved in Dr. Kadile's case involving Chelation Therapy and so was clearly prejudiced against this treatment and couldn't be objective about my cases. He was in a conflict of interest and should have assigned the cases to another Board member. This complaint to your office cannot involve Dr. Johnson, who is governed by the Medical Examining Board, but I relate this information in reference to Mr. Thexton's violation of a number of written Board policies within the Investigation Stage.

The Decision Tree also requires that the investigator (which didn't exist at the time of Mr. Thexton's misconduct in my cases) "proceeds with the investigation by collecting necessary evidence and making witness contacts as needed." No witnesses were contacted other than Mr. Thexton's "expert" witness Dr. Baratz! Although the Department had 12, and later 15 with the IPT "case", of my patient's charts, no attempt

was made to interview any of these patients about whom the cases were allegedly based. Mr. Thexton went directly to "case manufacture" using a fraudulent, prejudiced witness, Dr. Baratz. After evidence is obtained "the investigator summarizes the case and sends the evidence to the advisor for a recommendation" (quoting the DRL case handling process Enclosure 18). There was no investigator after Mr. Thexton acquired the case and so there could be no recommendations to the advisor, Dr. Sid Johnson, other than Mr. Thexton's and Dr. Baratz' self-serving recommendations. There are no documents in my file that relate to <u>any</u> communication between Mr. Thexton and Dr. Johnson, let alone an investigator. In fact, it is clear from the communications between Mr. Thexton and Dr. Baratz that Dr. Baratz was making all the decisions. Dr. Baratz wasn't acting as a witness; he was acting as case advisor and "expert" witness! This is a clear violation of Wisconsin Statutes. The enclosed documents (21 – 24) reveal this and in enclosure 22 we can envision Dr. Baratz "rubbing his hands in the counting room" in anticipation, along with Mr. Thexton, of my inquisition when he states, "seems like you will be a busy guy with all of this, <u>and perhaps me too</u>" (emphasis mine). There was no legitimate investigation of my practices, only a judgment on the part of Mr. Thexton in violation of both State law and Departmental procedures designed to harass me and damage my business and reputation. Mr. Thexton even planned to "try" Dr. Kadile and myself in one proceeding (does this snack of inquisitional thinking and illegal procedure) to, in Mr. Thexton's words, "save money" (Enclosure 24). This approach on Mr. Thexton's part was also illegal and actionable from a due process and equal protection standpoint. Of course, Dr. Baratz would be Mr. Thexton's only witness. Mr. Thexton and Dr. Baratz are clearly guilty of Racketeering in a Commercial Organization (RICO) and such a charge may be erected and pursued by others and myself at a later date in the appropriate venue.

Legal Action Stage

Notice that there must be "clear and precise communication between the DOE attorney and the case advisor." There is no evidence of this in my retrieved file after my cases were closed. Mr. Thexton acted autonomously with the evident blessing of his supervisor Michael Berndt and Sid Johnson. No attempt was even made to resolve my cases. There

were only aggressive subpoenas by Mr. Thexton attempting to use Dr. Baratz as his source of truth *sans* witnesses or real experts. No "Informal Settlement Conference" was ever proffered. Reviewing the "Legal Action Stage," DRL guidelines reveal (see highlighted area of "Legal Action Stage") that "only the more serious cases in which there is evidence of a violation tend to progress to the Legal Action Stage." It continues, "In some cases an expert must be retained" when the "case advisor is unable to render an opinion." In reality, Mr. Thexton hired Dr. Baratz to create the cases against me and then attempted to destroy my business and my financial life by subjecting me to the stresses of unjustified investigation, distraction from my medical mission and great financial burden in legal fees. A look at Dr. Baratz' website, www.ncahf.org will verify that he is in an openly anti-CAM business and therefore couldn't be a legitimate expert against me. Mr. Thexton knew this and, incredibly, admits this in an e-mail communication to Dr. Kadiles's office manager Debbie (Enclosure 25). The entire cases against Dr. Kadile and myself regarding CAM in general and Chelation Therapy in particular were predicated on the opinions of Quackwatch and NCAHF *et al* – Renner, Barrett, Baratz and when Thexton couldn't get Dr. Baratz legitimized in Judge Schweitzer's courtroom, an attempt to hire another leading "Quackbuster" Dr. Wallace Sampson of California. Among the over 12,000 physicians in Wisconsin, Mr. Thexton couldn't find an expert witness. He claims that there were "a very limited number of persons who can testify about this unusual therapy" (Enclosure 24) and that paying Dr. Baratz $175.00 per hour (from his house in Massachusetts to Madison/Green Bay and back again) was a bargain even though Dr. Baratz' wage at his last job was only $61.80 per hour (Enclosure 26) by his own testimony. The entire situation represents a fraud on the people of Wisconsin and if Mr. Thexton's complicity in it doesn't represent unprofessional conduct, I don't know what does.

Fortunately, my cases were reassigned to another DOE prosecutor as I indicated above and they were dropped before the "Hearing Stage" (Enclosure 27). Colleagues who have been attacked by Mr. Thexton have not been so fortunate. Dr. Kadile's legal fees have been almost $300,000 and his business has been destroyed. In Dr. Kadile's case there were also no patient complainants – only ones by Sid Johnson (who was a MEB member

at the time) and an insurance company. He finally had to settle his case with DRL because he couldn't pay his lawyers any longer. It is unfortunate to say the least that justice in Administrative Law situations in Wisconsin is predicated on how much money one has. The State apparently has unlimited resources as evidenced by Dr. Baratz almost $86,000 fees in Dr. Kadile's and my cases attest. At any rate, there is clear evidence here of unprofessional conduct on the part of Arthur Thexton and I pray he be held accountable.

4. Violations of my Due Process of Law

Including failure of ALJ Jacquelyn Rothstein to protect my rights and adjudicate the arguments and pleadings of my attorneys at the time of the March 14, 2002 hearing in my motion to quash Mr. Thexton's subpoena (Enclosure 1). Her order is enclosed as Enclosure 28. She does not speak to Mr. Seeley's detailed arguments in a thorough fashion (Enclosure 1). A letter from myself and ALJ Rothstein's answer reveal her irresponsible thinking and behavior in these matters (Enclosure 29).

After Mr. Thexton was assigned or otherwise commandeered my cases 97MED101 and 97MED108, I attempted to protect myself by demanding my due process of law. The arguments I am about to make should be relevant to the Supreme Court Office of Lawyer Regulation and/or the DRL lawyer disciplining process, and I will give these bodies the opportunity to right the wrongs that Mr. Thexton has perpetrated on me and my practice. I may also proceed to the Federal Court system on the basis of Title 42, Section 1983 suits against Mr. Thexton and possibly other members of the DRL and the MEB and its members, independently of this *instant* document. I preface my arguments with this data because I believe that the Administrative Law Division of our State government is not exempt from the requirements of the State and Federal Constitutions and the Supreme Court decisions governing those entities that ultimately make up the supreme law of this land. In fact, the U.S. Supreme Court has spoken to questions of violations of the rules of Administrative Agencies and the consequent invalidation of any action taken by an Agency if it violates its procedures

and rules. To quote Wichita R. & Light Co. v. Public Utilities Commission, 260 U.S. 48, 43 S.Ct. 51:

> It is a wholesome and necessary principle that an administrative agency must pursue the procedure and rules enjoined upon it in the performance of its function and show a substantial compliance therewith to give validity to its action."

I sincerely hope that the powers to which I plead will examine my arguments dispassionately and decide for themselves how the DRL and its employees have comported themselves *vis a vis* these Supreme Court decisions and how they should view their prosecutorial actions in the future.

a. On October 30, 2003, I asked Mr. Thexton by certified mail (Enclosure 30) for a pre-administration hearing which had never been offered to me. On November 4, 2003, I received a letter from Mr. Thexton (Enclosure 30) claiming that "there is no such thing" required by any law even though it is clear from my listings of U.S. Supreme Court rulings that pre-administrative hearings are demanded by law. Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337, 23 L.Ed.2d 349, 89 S.Ct. 1820 (1969). Mr. Thexton simply has no care for due process but only to find people guilty. In my cases, there wasn't even a legitimate complaint so a pre-administrative hearing would have been even more important to resolve the matter quickly and inexpensively.

b. Under Due Process and Equal Protection Provisions of both U.S. and Wisconsin Constitutions, I am and was entitled to have the Oaths of Office of the MEB members, Arthur Thexton and other employees of DRL involved in any way in my cases. While this is a technical requirement of the law, it is the law never the less. On May 14, 2003, I, by certified mail, demanded that Mr. Thexton provide me with his Oath of Office and other documents. He ignored this request. On October 27, 2003 I, by certified

mail, again demanded that Mr. Thexton provide me with his Oath of Office as well as the Oaths of other members of the DRL and the Medical Board members who claimed jurisdiction over my cases (Enclosure 31). Mr. Thexton ignored both of these requests. On November 19, 2003 I requested the assistance of ALJ Jacquelyn Rothstein who had been assigned my case in March of 2002 (Enclosure 29). She wrote me back and told me I should look to Mr. Thexton to get the information I demanded (Enclosure 29). While my cases have been closed without any reprimand or other judgment against me, I was entitled to the information I requested and I must assume that my cases were allowed to continue for years without proper authority on the part of employees of the DRL and members of the Medical Board. Failure to provide an accused citizen of information relating to due process in his/her prosecution is both unethical and illegal under Federal Law and Supreme Court decisions. Again, the arrogance of power is evidenced by Mr. Thexton's behavior. I pray he be disciplined for his scoffing of the law and violation of my due process rights.

c. On January 28, 2003, I asked Mr. Thexton for the exact Rules he was claiming I was violating in his continuing prosecutions of my cases (Enclosure 31). He referred me to the Medical Practice Act, which is silent on Chelation Therapy, or any other accusation made against me by my accusers. Chapter 227 requires that all Rules of agencies of our state Government be reduced to writing and filed with the offices of the Secretary of State as well as the Office of the Revisor (Enclosure 32). Mr. Thexton provided no further information. Instead he continued to proceed with my prosecution using only the prejudiced opinion of a professional "witness-for-hire" as the total basis of his cases. He ignored my pleas for a listing of the exact rules or laws I had allegedly violated because there in fact were none. U.S. v. Batchelder, 442 U.S. 114, 123, 99, S.Ct. 2198, 2203 (1979) teaches us that,

"Due process requires that a person be given fair notice as to what constitutes illegal conduct, so that he may conform his conduct to the requirements of the law."

His cases against me were a fraud on the State of Wisconsin and myself, and the DRL and his licensing body must hold him accountable.

d. On November 5, 2003, I requested the index and cross-indices of Wisconsin and other Statutes that Mr. Thexton relied upon to continue my prosecution and to attempt to impose subpoenas upon me (Enclosure 33). Prosecution of citizens requires such information be made available to accused persons be they accused in civil, quasi criminal or criminal cases under the Common Law as defined by the States including Wiscosnin. Mr. Thexton totally ignored my request. He did this because he had no such indices or cross-indices to rely upon. He simply, with the help of his hired gun "expert" Dr. Baratz, CREATED the cases against me under color of Law. He in effect attempted to write or rewrite Wisconsin Statutes to benefit a private group whose sole stated mission is and was the destruction of CAM and the inhibition of innovation in medicine, dentistry, chiropractic and other healing arts. Failure to provide such legal references and to continue cases that had no merit except in the minds of himself and his prostitute witness, Dr. Baratz, represents a fraud on the State of Wisconsin and myself. He must be held accountable to the DRL and his licensing body.

e. Mr. Thexton violated my due process rights under the Constitutions of Wisconsin and the United States of America by his actions associated with subpoenas issued on February 25, 2002 and April 16, 2003 (Enclosure 34). These subpoenas violated my due process of law and equal protection under the law because there was never any legal basis for their issuance. They are akin to the illegal attempt of the Justice Department to subpoena Minker in United States v. Minker in which the U.S. Supreme Court ruled

that the Immigration Department couldn't simply go on a fishing expedition.

> "The subpoena power, is a power capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial order of enforcement. But the subpoena is in form an official command, and even though improvidently issued it has some coercive tendency, either because of ignorance of their rights on the part of those whom it purports to command, or because of their reluctance to test the subpoena's validity by litigation."

In my cases, there was no probable cause for such subpoenas and thus these were violations of my Constitutional rights (liberty, property, pursuit of happiness, *etc.*)

5. Violation of Chapter ER-MRS 24 – Code of Ethics

It is clear from the reading of the 'Enclosure 26' that Arthur Thexton, by his own admissions, had and continues to have a conflict of interest in his capacity as a DOE Prosecutor in his handling of my cases and other cases he has been involved with that relate to Complementary and Alternative Medicine (CAM). He did not rely upon evidence in the prosecution of the cases I will list below, but instead used his personal political/medical views to fuel his zeal, at the expense of Wisconsin citizens, practitioners and DRL funds, to destroy the practice of innovative alternative healing arts in our State.

ER-MRS 24.03 defines "anything of value" to include favor, forbearance and promise of future employment."

It further defines "organization" as "any corporation..., association... or any other legal entity... which engages either in nonprofit or profit-making activities."

Under ER-MRS 24.04, "Standards of Conduct" it appears that Mr. Thexton had a conflict of interest because of his refusal "to act propitiously" and in "producing a private benefit for...an organization with which the employee is associated." By this, I obviously mean that Mr. Thexton was acting on behalf of Robert Baratz and the National Council Against Health Fraud, NOT the people of Wisconsin. ER-MRS 24.04(2) specifically "prohibits those activities that will cause a conflict of interest to the employee or to the State of Wisconsin" and, further "no employee may use or attempt to use his...public position...to influence or gain financial or other benefits... for the private benefit... of an organization with which the employee is associated."

In fact, all of Mr. Thexton's efforts in my case were made for the benefit of Dr. Baratz and his organization, a position Dr. Baratz used to gain financial reward *via* fees for fraudulent testimony. Mr. Thexton's benefits for such actions include, among ones that can be identified with certainty but which logically may include financial remuneration (which may have occurred secretly) the succor afforded him by Dr. Baratz who skillfully manipulated Mr. Thexton's ego weakness by inflating in Mr. Thexton's mind his own (Thexton's) self importance. An example of this is found in 'Enclosure 35' where Dr. Baratz sends a very scientifically complex e-mail to Mr. Thexton that purports to show some type of evidence that would indicate my use of Insulin Potentiation Therapy (IPT) is without scientific basis. In fact, this document is unintelligible by Dr. Baratz let alone Mr. Thexton. The important aspect of this e-mail is the condescending and manipulative preface that Dr. Baratz includes just before the IGF receptor article, to wit:

> "Here is a recent review of the cell biology of insulin and IGF receptors. Note the source is even from Spain! (*I ask, how is this relevant? R.S.W.*) I don't expect you to understand it all, since you aren't yet a cell biologist, but include it for completeness"(emphasis mine).

This sentence is revealing. It is clear that Dr. Baratz is manipulatively stroking Mr. Thexton's ego. Why would Dr. Baratz say, "I don't expect you to understand it all" other than to fuel the insane fire in Mr. Thexton's head that Dr. Baratz is actually knowledgeable about insulin and insulin potentiation therapy. **This ploy is merely**

an example of Dr. Baratz' mission to keep Mr. Thexton operating on his (Baratz') and the NCAHF's mission to belittle any medical treatment which doesn't comport with their narrow-minded paradigm of medicine. The Medical Practice Act is designed to protect the public, not promote one idea or treatment over another! It is clear that Dr. Baratz had Mr. Thexton under his spell and as a result, vast resources were wasted by Wisconsin and vast harm accrued to my practice and myself. In fact, Dr. Baratz gave no evidence that IPT was harmful and didn't even list any literature indicating whether it was efficacious or not (see Enclosure 36, a peer-reviewed scientific article that shows that insulin potentiated low dose chemotherapy is <u>superior</u> to standard therapy even <u>after</u> such therapy has failed). He merely gave his uninformed opinion and Mr. Thexton used it as the basis of another "complaint" against me. In fact, a violation of Mr. Thexton's Code of Ethics (Chapter ER-MRS24) occurred because of his having received "favor" from Dr. Baratz. The definitions of "favor" include in the American Heritage Dictionary 1981 edition include under 2b:

"A state of being held in (friendly) regard."

It is clear that Mr. Thexton used his relationship with Dr. Baratz to elevate himself in his own regard and Dr. Baratz used his relationship with Mr. Thexton to acquire incredibly high and unjustified "expert" witness fees from our State. Neither of these motives served the people of Wisconsin and both represent unprofessional conduct on the parts of these individuals. **In fact, Dr. Baratz' and Mr. Thexton's actions represent a fraud on the people of Wisconsin to the tune of approximately $86,000.00.**

Mr. Thexton also attempted to gain "favor" in his quest to use my cases and other CAM practitioner's cases to launch a new career for himself at the Federal level. He stated to Terry Chappell, M.D., an Ohio CAM physician, at the time of a deposition in the State of Ohio involving the Kadile case that he intended to obtain copies of William Ray, M.D.'s textbooks of environmental medicine in order to learn more about CAM with the purpose of being able to prosecute more cases against CAM practitioners. Both Dr. Chappell and Wallace Simons, R.Ph. would be willing to

testify to the veracity of my assertion. He in fact involved the Food and Drug Administration in the investigation and harassing prosecution of Wallace Simons, RPh and stated to Mr. Simons at a hearing that he had an agenda to stop, in this case, compounding of pharmaceuticals, and in general, CAM practices *via* a career at the Federal level. Mr. Simons would be more than glad to testify to your commission personally as to the veracity of my claims should you so desire. Indeed, Mr. Simons will most probably be filing his own complaint against Mr. Thexton since he has spent approximately $1,000,000 defending himself against Mr. Thexton's attack against pharmaceutical compounding. Mr. Simons has prevailed all the way up to the U.S. Supreme Court, but at great expense. Mr. Thexton continues to harass him to this day by claiming to other States that Simons' license is restricted.

ER-MRS 24.05 (Enclosure 37) speaks to conflict of interest regarding government employees. It asks employees to notify their "appointing authority" of any possible conflict of interest. It states in (2) that if there is a potential conflict of interest, the employee is required to report such to their supervisor and that such supervisor should act by

"Relieving the employee of the assignment and assigning the matter to another qualified employee who does not have a conflict of interest."

In fact, Michael Berndt, was either not informed of Mr. Thexton's prejudiced, politically motivated *modus operandi* in my cases or was complicit in the injustices and illegalities which resulted in the damages to my patients, practice, employees and myself in the inappropriate use of governmental powers resulting in such damages. In either event, both Mr. Thexton and Mr. Berndt are culpable. At this time, however, my complaint only involves Mr. Thexton. My advisors and myself are studying potential actions against Mr. Berndt and certain other members of the DRL, DOE and the MEB.

ER-MRS 24.07 also speaks to "criminal penalties." This is relevant *vis* Dr. Baratz' contract for services which Mr. Thexton illegally "feathered" by allowing Dr. Baratz

to collect "secretarial fees" at the rate of $30.00 per hour. The DRL specifically disallows such fees yet Mr. Thexton added language to Dr. Baratz' contract (Enclosure 38) to allow him to further defraud our State. In reviewing my files, I can find no document from Mr. Thexton's supervisor allowing or directing Mr. Thexton to make such an exception to DRL rules. When Dr. Baratz was asked at one of Dr. Kadile's hearings why he charged our State such unauthorized fees, he said, "Mr. Thexton said I could" (Enclosure 39). When asked if he thought it "necessary to expend 26 hours and bill the State over $5,000.00 to sit in on Dr. Kadile's deposition," Dr. Baratz replied, "That wasn't my decision that was Mr. Thexton's" (Enclosure 39). Note that the standard contract makes no mention of "secretarial fees." Mr. Thexton added these under "Payment for Services" in the September 7, 2001 contract at $30.00 per hour. In fact, Dr. Baratz charged the State $35.00 per hour for 15 hours on the July 1, 2003 billing (Enclosure 40). This represents a double fraud: one for charging for illegal services and two for annexing $5.00 per hour to the phony bill. Here we see greed and swindling in the flesh and our State employee, Mr. Thexton, countenanced it. This is clearly malfeasance on Mr. Thexton's part and dictates investigation and prosecution of Mr. Thexton for such unwarranted acts. Again I ask you to review the videotaped testimony of Dr. Baratz to see for yourselves that he is in no way an expert on CAM or any form of medicine and is in fact a mentally damaged professional witness with a political agenda. Why didn't Mr. Thexton hire a <u>real</u> witness to judge my cases if I had been a danger to the people of Wisconsin?

6. <u>The undeniable proof that Mr. Thexton violated The Case Handling Process, State Law, Constitutional guarantees and the Code of Ethics of his profession.</u>

Interestingly, an e-mail from Mr. Thexton's supervisor, Michael Berndt, to another DRL employee, Beth Cranton, speaks volumes about the mishandling of the investigations against me (Enclosure 41). This single half page document reveals that

there never had been a legitimate investigation against me, but rather a politically motivated conspiracy on the part of Mr. Thexton, Dr. Johnson, Dr. Baratz and the NCAHF to destroy my practice and professional life.

After 6 ½ years of the opening of cases 97MED101 and 97MED108, Mr. Berndt finally asked Ms. Cranton on December 3, 2003 to engage in research to see if I in fact was a danger to the people of Wisconsin and whether my investigation and prosecution should proceed!

Please let me analyze, line by line, the importance of this document to the ajudication of your investigation of Mr. Thexton.

The first sentence says it all: *"Please do some research regarding the Waters Cases, 97MED101 and 97MED108. The cases involve Chelation Therapy and Insulin Potentiation Therapy (commonly called IPT)"* for which there had been no actual complaint. This sentence is proof in point that there was not investigation data in my file at all at this time. There was only the biased analysis of Dr. Baratz. Mr. Thexton had clearly bypassed the DRL's "Case Handling Process" that demands that an expert witness be retained "if necessary" only in the "Legal Action Stage." In fact, by the meaning of Mr. Berndt's sentence, my cases were in what one should call a "preinvestigation" stage. Mr. Thexton had proceeded to act as judge, jury and, if he could have, sentencer of my fate. His illegal and unethical actions cost me over $50,000 in legal fees and untold stress, heartache and lost income over a 6 ½ year period. Also note that Mr. Berndt lumps the non-complaint regarding my use of IPT into cases 101 and 108 in violation of DRL procedures.

Note that sentence/paragraph two asks Ms. Cranton to research whether there are any *"studies in the US that support these therapies (Chelation Therapy and IPT)."* In fact, I had sent the Medical Examining Board (MEB) numerous scientific papers documenting the safety and efficacy of Chelation Therapy during my 1991 – 1993 investigation by DRL and these were available to Mr. Berndt and Mr. Thexton by

merely looking at my file. Perhaps, Mr. Berndt wasn't aware of this data because Mr. Thexton had withheld it from view by other DRL employees. Or perhaps, Mr. Berndt and other DRL employees also need to be held accountable. Mr. Berndt and Mr. Thexton were also in possession of Enclosure 9 with its references, which further explained and supported my use of Chelation Therapy. (I can provide the listed references upon request.)

The third sentence/paragraph inquires as to *"disciplines in other States or Canada for Chelation or IPT. We would want the final decisions and orders."* If Mr. Thexton and Mr. Berndt had done any research at all before proceeding with my cases, they would have read the Supreme Court of Florida's decision in State Board of Medical Examiners of Florida *vs.* Robert J. Rogers, M.D. dated September 4, 1980 (Enclosure 42) which concluded in a case virtually identified to my cases that the State of Florida Medical Board was "an unreasonable exerciser of the police power" in its attempt to stop Dr. Rogers from engaging in Chelation Therapy. Chelation Therapists have been subjected to investigations by Medical Boards in approximately 23 States in the United States and in every instance, Chelation Therapy has withstood the scrutiny and has been allowed to continue in those States. Mr. Gregory Seeley, my former legal council in these matters, has been the attorney for most of these cases acting on behalf of individual practitioners as well as legal council for the American College for Advancement in Medicine (ACAM), a professional society of CAM practitioners. In every case, he and Chelation therapists have prevailed. Like Mr. Thexton, a prosecutor in California had attempted to subvert the law and manipulate the Medical Board of that State with outright lies about the status of Chelation Therapy in other States. Mr. Seeley, who was present at the Board Meeting, indicated to the Board that a "Fraud" was being visited upon that Board and that the "facts" being used by the Attorney General's office were in fact bald-faced lies. As a result of Mr. Seeley's intervention, the California Board did not restrict physicians from engaging in Chelation Therapy. The import of this case is that Mr. Thexton and Mr. Berndt knew or should have known about this decision and Mr. Seeley's testimony. Mr. Seeley explained the truth about other State Medical Boards in his testimony before ALJ

Schweitzer and Mr. Thexton at a Hearing in October 2002. Yet, Mr. Berndt in his e-mail to Ms. Cranton appears to be without any knowledge of other Chelation Therapy cases and decisions and, after 6 ½ years, appears to attempt the initial steps of an investigation whilst Mr. Thexton has launched prematurely, by DRL rules and Constitutional processes, into a "legal action" motif in my cases (as well as Dr. Kadile's case and other victims of his malfeasance).

Sentence/paragraph four reiterates a request to Ms. Cranton to determine if other States have "enacted laws regulating these procedures" (Chelation and IPT). Notice the last sentence that asks if "the laws require disclosures to the patient." In truth of fact I had always provided full disclose of the "experimental" nature of my medical practices to my patients even though none of my practices are any more experimental than most of what medical doctors provide as the "standard of care" to their clients. As will be discussed below, my "permits" (disclosure statements) were judged by Prosecutor Jeanette Lytle thus: "in my opinion, they are as good or in some places better than what we required of Dr. Kadile in the stipulation" (Enclosure 43, highlighted area).

In sentence/paragraph five, Mr. Berndt asks Ms. Cranton to look at my website "and print it out." It is amazing to me that Mr. Thexton's supervisor had no knowledge of my practice as evidenced by my website and yet allowed Mr. Thexton to continue a 6 ½ year investigation against me. In fact, there was no "printout" of my website pages in my files at the time I retrieved them, as requested by Mr. Berndt. This is yet another example of Mr. Thexton's singular motive – to find me guilty of something without any evidence or complaint by a patient, but only with the biased opinion of Dr. Baratz. I only wish Mr. Berndt had assigned a different prosecutor to my case who would have analyzed it fairly and dispassionately. It would have saved the DRL and myself a large sum in time and money. Mr. Thexton has shown himself to be wasteful in many actions of the DRL as will be listed below.

The next sentence/paragraph is particularly revealing in the lack of any actual investigation having been done on my cases at the time of Mr. Thexton's attempt to depose me. Mr. Thexton knew that there was an NIH (National Institutes of Health) study involving EDTA Chelation Therapy going on as of 2002, that I was an investigator and that there were 62 sites nationwide as of July 2003. Mr. Berndt asked the right questions, but clearly didn't supervise Mr. Thexton and, by neglect, permitted Mr. Thexton to continue an unwarranted investigation against me. Mr. Thexton even e-mailed my former legal council, Greg Seeley, of his knowledge of the NIH study early in 2002. Yet, he persisted in trying to depose me and paid Dr. Baratz large sums after that point in time to act as an "expert" against Chelation Therapy. Dr. Baratz in fact distorted the facts in a threatening letter to Pat Simms of the Wisconsin State Journal (Enclosure 44) in which he tried to extort an apology from that newspaper regarding a truthful article Ms. Simms wrote about the actions of the MEB against Dr. Kadile and myself. Mr. Thexton knew that Dr. Baratz lied to the newspaper and yet continued to use him and pay him State monies to achieve their (Thexton's and Baratz') motives to illegally deprive Wisconsinites of a perfectly legal treatment.

The next sentence/paragraph involves Mr. Berndt's questions to Ms. Cranton over whether various government agencies have positions on the use of Chelation Therapy or IPT. He asks whether there were any statements on the "off-label use of drugs for these procedures." 'Enclosure 45' is a statement by the FDA dated April 1982 that clearly states the FDA's position. **The FDA in this statement actually encourages the off-label use of drugs since "*valid new uses for drugs*" already on the market are often "first discovered through serendipitous observations and therapeutic innovations."** Indeed at the Senate Hearing on the Chelation Bill, Senator Chvala questioned why the DRL was wasting resources on investigations since once a drug is on the market, it is perfectly legal for doctors to use it for any indication they deem appropriate. Mr. Thexton and Mr. Berndt as lawyers for the DOE of the DRL knew or should have known that once a drug is licensed by the FDA for any indication, it can be legally used both for other diagnostic indications and at different doses for

such use. The FDA merely allows drugs on the market because a) they have passed all safety studies and b) they have been shown to be effective in at least one medical condition. Mr. Berndt's failure to know these facts can be blamed on ignorance and carelessness while Mr. Thexton's must be laid to his operating a conspiracy with Dr. Baratz and the NCAHF to deprive my patients of their rights and my freedom to practice medicine as allowed under the Medical Practice Act. It is an outrage that Mr. Berndt's letter was transmitted to Ms. Cranton and copied to one Cortney Keo on December 3, 2003, 6 ½ years after complaints were lodged against me and little more than a month before the cases were closed. It is proof that the DRL through its agent, Mr. Thexton, was operating outside the Law.

Mr. Berndt cuts to the heart of the matter in the fourth to last paragraph:

> "The purpose of the research is to try to find out if the procedures actually represent a threat of harm to patients... My major concern is the threat of harm" (emphasis mine).

The above paragraph clearly shows that Mr. Berndt knew the purpose of the Medical Practice Act and if he had been the attorney on my cases or had properly supervised Mr. Thexton, my cases would have been closed promptly as my 1991 case was, or, more realistically and properly, never opened.

Finally, Mr. Berndt asks Ms. Cranton to "read and think creatively about the articles and things that you find." He then states, "I expect this may take some time." Despite his requests there were no documents or commentary in my files written by Ms. Cranton or Keo at the time when I picked up copies of my files. In fact, it must have been clear to Mr. Berndt, and certainly to Ms. Lytle, the new prosecutor, that there were never any bases for investigations 97MED101 or 97MED108 and that they should never have been opened. They in fact represented a conspiracy and harassment by Mr. Thexton and his collusion with a private individual and group with vested interests to support such investigations. This represents fraud and conspiracy on the part of Mr. Thexton, and he should therefore be excluded from the practice of Law in Wisconsin and fired from his job as a DRL prosecutor.

7. Other unethical behavior on the part of Arthur Thexton:

While violations of the "spirit of the Law" may not themselves be actionable, in conjunction with actual violations of State law, denial of due process of law for the accused, violation of Departmental rules and policies and outright lying to any ALJ as well as ignoring and concealing the lying of expert witnesses, whom he hired, such violations of Law's spirit could certainly be proof of the intentions of an out-of-control prosecutor and help in the determination of his or her discipline or discharge from a State job. In particular, attorneys, as officers of the Court, should be held to an especially high standard in this area.

It has been a policy of DRL as taught by the recent decision of ALJ William Black in the case against Genia Kadile brought by Mr. Thexton, for discipline in the DRL to be of an "educational nature." **To quote ALJ Black in his January 7, 2004 decision, "While it is true that Wis. Stats. §440.21, allows the bringing of a statutorily authorized suit for an injunction, injunctions are still matters of equity. The rule of common courtesy and the policy of this department has in the past been that education and voluntary compliance are the preferred means to protect the public; as opposed to prosecution. Discretion in the exercise of equity compels that citizens of this state be assisted to comply with a new regulatory scheme." (Enclosure 46, page 12)**

Mr. Thexton has repeatedly shown a total lack of respect for this principle in his handling of cases around the State. He frequently initiates a case against a practitioner by stating to them the equivalent of, "Just give me your license now and you will save the costs of your own prosecution." The depravity and medieval nature of such a mindset is chilling and has no place in modern government. In addition, it is a violation of the entire mission of DRL – to protect the public. Instead, Mr. Thexton simply decides who is guilty *via* his own deranged judgment and then proceeds to create a case by finding a prejudiced expert, misinterpreting prior case

decisions, generating expensive discovery and hearing costs both to the accused and the DRL, attempting to intermingle the accused's rights with those of other persons and outright misrepresentation of facts.

Mr. Thexton outright lied to ALJ John Schweitzer regarding the purpose of Assembly Bill 397 (Senate Bill 227, which was passed, but died in the Assembly Committee because of the lack of one vote and according to its Chair, Greg Underheim, the Bill was no longer needed since the DRL claimed it was no longer pursuing Chelation Therapy as unprofessional conduct) in an attempt to deflect the ALJ from understanding that his (Thexton's) unjustified pursuit of Dr. Kadile and myself for using Chelation Therapy in our practices was <u>being spoken to by the Legislature</u> (Enclosure 47).

Due to Mr. Thexton's and the Board's continuing harassment of physicians who use Chelation Therapy in their practices, Representative Sheryl Albers and Senator Dale Schultz introduced a Bill to protect practitioners from being investigated solely for their use of this 50 year old treatment of toxic metal accumulation. I was personally present when Rep. Albers, Sen. Schultz, Attorney Dick Sweet of the Legislative Council and other persons began the writing of this Bill at the Legislative Council. I am enclosing a copy of this Bill so you may see the intent of this legislation and Mr. Thexton's distortion of the facts (Enclosure 47). Basically, a number of my clients who had been undergoing Chelation Therapy for many years had implored their elected officials, Albers and Schultz, to protect their right to continue to receive this treatment. The Bill was worded to specifically accomplish this and to stop any <u>current</u> inappropriate investigations of practitioners using the treatment. There had been no complaints against doctors doing the treatment by patients. No patient has <u>ever</u> alleged damage or harm from this treatment in the State of Wisconsin. No complaint by a patient had ever been lodged with the Medical Board. No malpractice suit has ever been filed by patient alleging damage as a result of undergoing Chelation Therapy in the State of Wisconsin. Despite this, certain doctors and insurance companies made complaints to the Medical Board and the Board, through

its agent Mr. Thexton, hired Dr. Baratz of Massachusetts to testify that Chelation Therapy was quackery despite his admission in our Court system that he had only witnessed the use of Chelation Therapy as a medical student and had never personally administered the treatment himself. One of the AMA's rules for being a legitimate expert witness is that the witness has practiced in the area of the specialty under investigation for a "minimum of five years." Because of these actions by the Board, starting with my 1991 case, these legislators wrote and introduced the Bill. Dr. Kadile's attorney, Dr. Frank Recker, in the presence of Dr. Kadile and Mr. Thexton, told the ALJ John Schweitzer that a Bill had been introduced to stop Mr. Thexton's harassing investigations from continuing. Mr. Thexton became angry and told ALJ Schweitzer that the Bill had "nothing to do with" the Kadile case but rather was "about metals." An affidavit or testimony under oath can be provided for verification. I, in fact, personally helped Mr. Sweet with the wording of the Bill *vis a vis* the definition of Chelation to wit: "binding and removing or rearranging metallic elements in the body." Entire conferences have been held in the Czech Republic and elsewhere every three years since 1986 devoted to metal binding in medicine and biology. Does Wisconsin want to inhibit growth of medicine because of individuals like Mr. Thexton and Dr. Baratz?

The truth is the Bill only became a necessity because of the actions of Mr. Thexton and Dr. Baratz/the NCAHF. Mr. Thexton simply lied to the ALJ. Are not lawyers, especially ones employed by the State of Wisconsin, bound to truth and should not attempt to manipulate ALJ's with falsehoods? Should such activities be considered unprofessional conduct and disciplined accordingly? Here is yet another example of Mr. Thexton plying his own agenda with a private interest group to the detriment of our State and its people. Mr. Thexton must be held liable for this offense. Here he was trying to rewrite Wisconsin law while actual Legislators were actually writing such law. In fact, during the Kadile hearings of July 2003, ALJ Schweitzer indicated to Mr. Thexton that he (Schweitzer) didn't think it in the Court's purview to decide whether Chelation Therapy was unprofessional conduct or not, <u>that this was a legislative matter</u> (as discussed and documented above).

If my cases were the only examples of Mr. Thexton's malfeasance and incompetence there would still certainly be grounds for discipline. However, Mr. Thexton's entire professional life has been a litany of prosecutorial misconduct, malfeasance, wasteful use of the taxpayers money, champerty (albeit not necessarily for financial rewards, but for certain political and personal satisfaction, things not appropriate to inure to the benefit of a governmental official). I will now list examples of other cases and past employment which illustrate and document Mr. Thexton's wrongful deeds.

The Genia Kadile Case:

The most egregious examples of Mr. Thexton's unprofessional conduct are revealed in Enclosure 46, the decision of ALJ Black, in the frivolous attempt at prosecution of Mrs. Genia Kadile. A thorough reading of this document reveals that ALJ Black saw clearly that:

a) Mr. Thexton attempted to rewrite Wisconsin Law
b) Mr. Thexton violated Mrs. Kadile's constitutional rights by attempting to deny her due process under the law in the form of, in ALJ Black's words, "intermingling her rights with those of her husband."
c) There was no justification for a DRL case against Mrs. Kadile and therefore no costs were accessed against her.
d) Mr. Thexton (the DRL) made unsupported conclusions based upon the attorney's (Thexton's) "view."
e) Mr. Thexton (the DRL) misreads the commercial speech doctrine and didn't present case law in support of its position. This represents a *de facto* violation of Mrs. Kadile's constitutional rights and should be spoken to by your office. Can you allow a lawyer under your tenure to behave in such fashion?

The Wentworth Case:

Dr. Wentworth (telephone 920-336-3274) is a prominent Neurosurgeon who had brought University grade Neurosurgery to Green Bay, Wisconsin. Dr. Wentworth admits to having made

an error during a cervical spine operation and when he discovered his error after a postoperative x-ray analysis, he openly admitted to the patient that he had made such error and he vowed to correct it. This he did. He even asked his hospital and malpractice insurance carrier to compensate the patient for her damages. He personally corrected the surgical problem and the hospital where the error occurred also agreed to absorb the new bill associated with the necessary corrections. It is State Law or policy (I'm not sure what in fact is the law in such a situation) for insurance companies to report all malpractice settlements to the Medical Board. This was done and even though the case was settled to everyone's satisfaction, Mr. Thexton proceeded with an unnecessary investigation at great expense and misery to Dr. Wentworth and Wisconsin. Mr. Thexton claimed that "we have to stop doctors from making mistakes" to quote Dr. Wentworth and his attorney. Dr. Wentworth retired early as a result of his experience with your licensee, Arthur Thexton.

The Sanford Larsen, M.D., Ph.D Case:

Another neurosurgeon was also victimized by Mr. Thexton. He was the Head of Neurosurgery at Marquette University in Milwaukee. This prominent Neurosurgeon, Dr. Larsen (telephone 414-805-5407), committed the heinous crime of trying to make life easier for an elderly patient who couldn't easily come to the University to acquire her pain medication and thus received prescriptions at her pharmacy in the neighborhood of where she lived under the orders of Dr. Larsen. Yes, he committed a technical violation of the prescribing laws by allowing the lady to get her needed medication without taking circuitous bus trips to the University. He allowed a pharmacist to dispense her pain medicine without her having to actually go to his office – for her own convenience. Mr. Thexton somehow discovered this "violation" of the law and initiated an investigation against Dr. Larson, which, as trivial as this case was, resulted in his early retirement because of the stress involved in the investigation. His lawyer, Mr. Malone of Milwaukee, told me that "Thexton has no governor on himself." By that, he meant that Mr. Thexton pursued cases without any logical merit and also possibly wasn't governed by his superiors. You may ask Mr. Malone to testify or otherwise give evidence concerning his experience with Mr. Thexton by calling him (262-781-3387). This case is another example of Mr. Thexton's violation of the DRL's policy of always "disciplining" doctors by educational methods rather than aggressive and costly prosecution.

The Hiro Nishioka, M.D. Case

This prominent neurosurgeon was the partner of Dr. Wentworth in Green Bay. I do not know all the details of his case, but I do know that Dr. Nishioka left the State of Wisconsin in 1993 to practice in another State as a result of harassment by Mr. Thexton. His partner, Dr. Wentworth, told me he begged Dr. Nishioka to stay and defend himself from the attacks of Mr. Thexton, but he finally gave up and left our State. I ask you to inquire about the circumstances of Drs. Wentworth and Nishioka's retirement/migration from the practice of Neurosurgery in Wisconsin. It will be revealing in light of my present complaints. Mr. Thexton appears to have been indiscriminant in his attack on medical practitioners. His maliciousness was not limited to his prosecution of CAM practitioners.

Mr. Thexton has also been active in harassing pharmacists in our State and details of these activities can be obtained directly form Wallace Simons, RPh (telephone 608-576-2662). Mr. Simons will probably also bring a complaint against Mr. Thexton to your office.

Mr. Thexon's prior (un)professional history and past employment:

Mr. Thexton's professional life has been a stormy one. After Law School, Mr. Thexton at some point became the prosecutor for Taylor County (Medford, Wisconsin). Although I admit that these statements are "hearsay," I have been told that Mr. Thexton lost this job as a result of prosecutorial misconduct. It was the same pattern – harassment of the citizens in his charge.

After the loss of his job, Mr. Thexton was unable to find (amazingly) employment as an attorney. He then applied for and was hired as an Assistant Deputy Sheriff of Dane County. After continuing his harassment of citizens of that County he was discharged as a Sheriff because he was unable to pass "probation" as a result of his irregular behavior. That an attorney could not pass probation period in our State is a definite indication of his incompetence and possibly malfeasance. I would hope that your Agency will look into and discover Mr. Thexton's work history in your judgment and adjudication of my complaint. After his discharge from his Dane County job he evidently landed in his present position as prosecutor in the DOE of the DRL. It is tragic and sad that our government would continue to employ such a maladjusted individual.

Why the DORL even hired such a person is a real mystery. Unlike myself, your office has the ability to obtain Mr. Thexton's employment records and can verify for yourselves the pattern of his past misconduct.

The Schmidtz Case

While Mr. Thexton sees fit to waste our Wisconsin taxpayers money on trivial and totally inappropriate investigations, he has also proven himself incompetent in cases where a legitimate investigation and prosecution were warranted. I am enclosing a document (Enclosure 48) from a Milwaukee news item for your reference. Mr. Thexton, in the Schmidtz case, declined to prosecute a physician who was clearly inappropriately prescribing narcotics to a patient (Lori Schmidtz) with a chronic pain problem. A complaint has already been filed against Mr. Thexton by Habish, Habish, and Rottier, a very large personal injury law firm. Briefly, when a complaint came in to the DRL that Ms. Schmidtz was being dangerously overmedicated, Mr. Thexton investigated and decided not to pursue the doctor. He actually "congratulated" the doctor for giving such high doses of narcotics stating that, in effect, he (Thexton) was "proud" that a "small town" doctor was giving such doses. The doses were so astronomical that no physician during latter Court testimony had ever personally witnessed such dosing.

Mr. Thexton ended the investigation, the misprescribing continued and a few months later the patient went into coma and sustained permanent brain damage and is now in a $1000 per day facility in the South where her husband and children must travel every six weeks to see her.

The DRL incredibly assigned the second investigation to Mr. Thexton, but due to the diligence of Mr. Daniel Rottier, the plaintiff's attorney, the case thankfully was removed from Mr. Thexton's hands. This case reveals Mr. Thexton's gross incompetence and requires your Committee to seriously consider his ability to practice law professionally in Wisconsin.

I bring this complaint both as a practitioner who has been victimized by Arthur Thexton as well as a citizen who has witnessed his abuse of others. As a result, I have asked you to consider Mr. Thexton's actions as they relate to my own cases as well as his actions in those of other practitioners.

My cases have been dropped by the DRL. After over six years of harassment, a new prosecutor was assigned to my case. This reasonable attorney, Jeanette Lytle, analyzed my files (Enclosure 43, note especially that Ms. Lytle states that the MEB has no policy on alternative medicine), gathered information from myself and other sources and within a few weeks recommended that the Board drop the cases. They did so the very day she plead my case on behalf of the DRL and, as a proper officer of the Court, the people of Wisconsin.

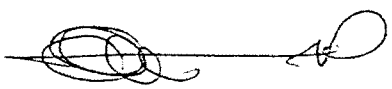
The fact that Mr. Thexton was allowed to operate the way he did, engaging in a conspiracy with the NCAHF/quackwatch.com/Baratz, violating peoples' rights and due process, ignoring DRL rules/procedures, trying to rewrite State Statutes and wasting hundreds of thousands of dollars of State funds is a disgrace to his profession and his supervisors.

I hope and pray that you act to right the wrongs he has perpetrated and improve faith in government by taking away Arthur Thexton's license to practice law, and his employment. Our State will be a better place to live if you do. In addition, I implore you to assist us who have been damaged by Mr. Thexton's immoral and unethical behavior to recover from Robert S. Baratz the approximate $86,000.00 he defrauded from our citizens.

Thank you for your time and consideration. I would be glad to appear personally before any committee or official and also to gather more documents and facts as you may need in your investigation.

I can also help arrange direct testimony by other persons damaged by Mr. Thexton's malfeasance who also wish to correct the wrongs done to them and to improve the climate of healthcare innovation in Wisconsin.

Sincerely,



Robert S. Waters, M.D.