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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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1 Q. And you sign it, "President, National Council
2 Against Health Fraud, www.NCAH.org. See also
3 www.quackwatch.org." Is that the organization Quackwatch,
4 you weren't sure what it was?
5 A. No, I was sure what it was.
6 Q. Well, then --
7 A. And you're misphrasing my testimony.
8 Q. Tell us again. I'm sorry, what is that?
9 A. What is it? It's a -- it's a website and an
10 organization that exists in Pennsylvania.
11 Q. And you're a medical advisor for NCAH -- NCAHF,
12 correct?
13 A. No, I'm the president of NCHAF.
14 Q. You're not also medical advisor?
15 A. To NCAHF? I don't think we have medical advisors.
16 Q. We'll get to that later. How about Quackwatch?
17 A. I believe I'm listed as a medical advisor to
18 Quackwatch. And perhaps a dental advisor too.
19 Q. Doctor, do you recall testifying in this matter
20 before this same administrative law judge in October of 2002
21 that clinically -- quote -- "Clinically in 1999 I was forced
22 to stop emergency department work because I was assaulted at
23 work by a deranged former employee of one of the agencies
24 for which I worked who had known mental illness." Do you
25 recall saying that?

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1 A. I don't recall it but I may have said it.
2 Q. Would you like to see the transcript?
3 A. Sure.
4 LAW JUDGE: I don't think it's necessary.
5 MR. RECKER: All right.
6 LAW JUDGE: Mr. Thexton, you don't disagree with
7 -- I -- that sounds like an accurate statement.
8 MR. THEXTON: Okay.
9 LAW JUDGE: Go ahead.
10 Q. Doctor, the deranged former employee that you're
11 alleging forced you to stop emergency department work was
12 Dr. Florence Wilson, correct?
13 A. That is the employee who used to work at our
14 agency.
15 Q. Is that --
16 A. Who I -- I said assaulted me.
17 Q. Is that who you're referring to in this transcript
18 in this hearing?
19 A. I suppose so.
20 Q. Okay. And Dr. Wilson is sitting right behind me,
21 is she not?
22 A. That looks like her.
23 Q. Okay. And at the time of this alleged assault she
24 was over 70 years old, is that correct?
25 A. I don't know what her age was?

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1 Q. And approximately 120 pounds.
2 A. I don't know what her weight was.
3 Q. Does she look a lot different today than she did
4 when she allegedly assaulted you?
5 A. I'm not sure I could answer that question.
6 Q. Doctor, in any event you testified before this
7 administrative law judge that you were forced to stop
8 emergency department work because of the assault, alleged
9 assault by Dr. Wilson, is that correct?
10 A. If that's what my testimony said.
11 Q. And this alleged assault occurred on December 3,
12 1998, correct?
13 A. That's right.
14 Q. And Doctor, isn't it true --
15 LAW JUDGE: Just a second -- just a second, Mr.
16 Recker. I think I'm going to take an opportunity since we
17 are videotaping this to ask the recorder to identify the
18 person in the video that you just referred to, Mr. Recker.
19 If you would do that clearly.
20 MR. RECKER: Dr. Wilson, could you please --
21 LAW JUDGE: I -- stand would be good.
22 MR. RECKER: Would you please stand for a second?
23 LAW JUDGE: Okay. Just so we know exactly who
24 we're talking about, that's all. Thank you very much. You
25 may sit down. Just as a comment the videotapes are very

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1 seldom reviewed by the Medical Examining Board in testimony
2 but I figured that an advantage of having that technology is
3 we might as well make that record. Thank you. You may
4 continue.
5 MR. RECKER: Thank you.
6 Q. Doctor, isn't it true that you were not forced to
7 stop emergency department work because of any alleged
8 assault by Dr. Wilson but because you could not find
9 employment?
10 A. That's not true.
11 Q. Isn't it true you were forced out of Harvard
12 Health Services because of your poor performance?
13 A. That's not true either.
14 Q. Isn't it true that you were forced out of Harvard
15 Health because you abused your position of authority and
16 degraded persons who worked under your supervision?
17 A. I wasn't forced out of Harvard Health Services. I
18 resigned on my own.
19 Q. Isn't it true you were forced out of Harvard
20 Health for repeatedly breaking the employment policies of
21 Harvard Health Services?
22 A. I wasn't forced out. It's not true.
23 (Document marked as Exhibit 37 for identification)
24 Q. Doctor, I hand you what's been marked Exhibit 37.
25 These documents represent disciplinary memos given to you

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1 during your employment at Harvard Health Services?

2 MR. THEXTON: Your honor, at this point I'm going
3 to object because these have nothing to do with his
4 credibility as an expert witness.

5 LAW JUDGE: Well, I've been wondering that and
6 I've been wondering how far we go on that. Nevertheless,
7 the last three questions and answers were a definite --
8 definite statements by Dr. Baratz of the conditions on which
9 he left and if this impeaches that I think I need to let it
10 in. Objection overruled.

11 Q. Dr. Baratz, the first memo dated April 23, 1999 --
12 quote -- "This memo will summarize my counseling discussions
13 with you related to the formal complaint submitted by your
14 supervisee Sharon Brennan. The substance of the complaint
15 was related to interaction in which Ms. Brennan described
16 your behavior as 'verbally aggressive and abusive' and
17 included obscenities directed at her. In my investigation
18 of the complaint you acknowledge the use of profane language
19 and attribute it to your frustration over Ms. Brennan's
20 handling of a patient related issue. You stated you
21 apologized to Ms. Brennan for your use of language shortly
22 after the interaction. As we discussed, notwithstanding Ms.
23 Brennan's unfortunate poor judgment in handling the patient
24 situation, discourteous or disrespectful interactions with
25 staff and the use of obscenities are unacceptable behaviors

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1 department which she had been instructed not to do. "I
2 immediately apologized for the use of the epithet at which
3 time she was abusive to me. I wish to have and see a copy
4 of the complaint before signing this" -- which I was never
5 given. And I have not been given a copy of the alleged
6 complaint.

7 Q. Doctor, as a physician of high character,
8 integrity and ethics is it fair to say you're familiar with
9 the provisions of the principals of ethics of the American
10 Medical Association?

11 A. I haven't read them lately.

12 Q. Do you know whether or not it's unethical to
13 engage in sexual harassment with a female subordinate
14 employee?

15 A. I don't know what their ethics statements say.

16 Q. In your opinion is it unethical to engage in
17 sexual harassment of a female subordinate employee under
18 your charge?

19 A. It might be.

20 Q. How about having sexual relations with a female
21 subordinate employee under your charge?

22 MR. THEXTON: Your honor, at this point I'm going
23 to object. This cannot possibly have anything to do with
24 the --

25 LAW JUDGE: How does this relate --

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1 on the part of a manager under any circumstances. In
2 addition, such behavior is most often counterproductive in
3 producing the desired change in the employee's performance.
4 At the conclusion of our discussions I felt assured that you
5 both understood the seriousness of the incident and
6 regretted the behavior. You subsequently returned to Ms.
7 Brennan to again apologize. Giving weight to both the
8 seriousness of the complaint and the fact that I am unaware
9 of any prior incidence of similar behavior it is my
10 determination that a first verbal warning is appropriate
11 resolution -- is the appropriate resolution to this
12 complaint. Furthermore we have agreed that this warning
13 will remain a confidential part of your employee file and if
14 there is no recurrence of similar behavior in the next six
15 months it will be removed from the file." Now, Doctor, you
16 have written something at the bottom of this. Would you
17 care to read that?

18 A. I could read what's written.

19 LAW JUDGE: If you wish. Otherwise we can get --
20 we'll get it -- get at it a different way, I'm sure.

21 A. "I disagree. I made one obscenity which was not
22 directed at Ms. Brennan. I was not verbally aggressive or
23 abusive." This involved a telephone conversation where I
24 was called out of a meeting to be told about something that
25 she had done which was a direct violation of policy in the

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1 MR. THEXTON: -- credibility of the testimony.

2 LAW JUDGE: -- to credibility --

3 MR. RECKER: Well, it relates --

4 LAW JUDGE: -- Mr. Recker?

5 MR. RECKER: -- to this witness's premise that
6 this trial is all about character, integrity and ethics and
7 he is of high character, integrity and ethics. And I think
8 I have a right to impeach him on that direct assertion.

9 MR. THEXTON: I think it's collateral.

10 LAW JUDGE: If this was the basis for his
11 termination from Harvard Health --

12 MR. RECKER: Correct, your honor. And it also
13 directly -- well, in my opinion refutes the statement made
14 by this witness that he had nothing -- that Harvard Health
15 did not force him out of his job.

16 LAW JUDGE: It would be collateral enough and
17 prejudicial enough that I would exclude it unless it is
18 directly related to impeaching his statements that he was
19 not forced out of Harvard Health. Is that what these memos
20 are going to show?

21 MR. RECKER: Yes, sir.

22 LAW JUDGE: Okay, I need to take one further step
23 then, Mr. Recker, which is you may by these memos raise an
24 inference that there were problems at Harvard Health. Which
25 by -- in inference that Dr. Baratz' statement about leaving

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1 voluntarily was wrong. Do -- do we reach the point in these
2 memos that directly contradict his statement? There's not a
3 firing memo here, right? These are simply personnel
4 actions? Is that what we have?

5 MR. RECKER: There is more after this, your honor.
6 Your honor, in this memo he was suspended without pay and
7 warned that he could be terminated.

8 LAW JUDGE: Well, okay. Let me go another step
9 now which is if you had something that's going to show that
10 he -- his statement was incorrect that he was forced out --
11 that he wasn't forced out and resigned on his own, I would
12 like to get that directly. We do not need to in fact use
13 this type of material, which I consider a little bit
14 inappropriate, if we're simply getting to that point. So,
15 I'll repeat that. If you have something that will show me
16 directly that he was forced to resign I want that into
17 evidence. I in fact don't want the individual complaints.
18 Even though you -- you know -- even though you started the
19 questioning with the phrase which he used "high character,
20 integrity and ethics," I don't think it's appropriate to
21 bring in every possible activity in which Dr. Baratz has
22 been involved which can be argued is not of high character,
23 ethics or integrity. I will let you impeach the statement
24 about his being let go from Harvard Health. Can you do that
25 directly?

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1 Q. Dr. Baratz, this severance agreement, does it have
2 your initials on the front page? On the front page?

3 A. There are some.

4 Q. Item number seven says -- quote -- "Provide a
5 position letter" -- and positive is crossed out, initialed
6 by you -- "letter of recommendation, Dr. Baratz' high level
7 of medical competency" -- high level is crossed out,
8 initialed by you and Mr. Driscoll, correct?

9 A. At his insistence.

10 Q. At his insistence? But you initialed, correct?

11 A. I initialed because we both agreed to the change.

12 Q. And in this agreement on paragraph five you were
13 given absence with pay on August 25 to September 3rd "to
14 allow him to begin planning for job transition," is that
15 correct?

16 A. That's what it says.

17 Q. And this is dated September 3rd, 1999, is that
18 correct?

19 A. That's the date we signed it.

20 Q. Doctor, why would you need a week off for job
21 transition planning when you testified under oath in this
22 hearing that you were disabled. You were unable to work as
23 a result of this assault?

24 A. This was the language that they chose to use in
25 that sentence. I didn't choose the language; they did.

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1 MR. RECKER: Sure.

2 LAW JUDGE: Or are you doing that only by
3 inference, the fact that he --

4 Q. Doctor, isn't it true that Harvard Health entered
5 -- entered into an agreement with you in which they refused
6 to give you a positive letter of recommendation as to your
7 medical competency?

8 A. I don't recall the specifics of that part of our
9 agreement as to exactly what that sentence said. They did
10 give me a letter. And I have a letter.

11 WITNESS: Your honor, these appear to be marked
12 with some kind of exhibits. I'm not aware of any proceeding
13 in which they've ever been released. And I'm not sure of
14 their authenticity.

15 LAW JUDGE: Well, we'll have to raise that. If
16 Mr. Recker wishes to volunteer where he got them he can. I
17 don't --

18 MR. RECKER: Certainly, your honor. These were --
19 these were obtained from the attorney who represented Dr.
20 Florence Wilson in Dr. Baratz' suit against Dr. Wilson.

21 LAW JUDGE: All right.

22 MR. RECKER: And were attached as exhibits as
23 marked in some -- in that litigation.

24 WITNESS: Can we know that for sure?

25 LAW JUDGE: I'm going to accept that.

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1 Q. And Dr. Baratz, on page 037, the third page back,
2 you agreed not to sue anybody at Harvard Health related to
3 anything that happened during your employment, correct?

4 A. That's what it says. Within the context of my
5 employment.

6 Q. And you subsequently, notwithstanding that clause,
7 you subsequently sued Dr. Wilson two years later, correct?

8 A. She was not an employee at the time that this was
9 executed.

10 Q. Did you sue Ms. Vito?

11 A. Yes.

12 Q. Was he an employee at the time this was executed?

13 A. The question in that case involved whether or not
14 her acts were outside her employment. And that's why that
15 suit was brought forward by counsel.

16 Q. Is your answer yes, she was an employee?

17 A. Yes, she was an employee but --

18 Q. And you sued her, didn't you?

19 A. -- the suit involved acts outside of -- outside of
20 employment.

21 Q. And you sued Mr. Tumi?

22 A. His name -- he was subsequently dropped from the
23 suit.

24 Q. And the suit was subsequently dismissed in April
25 of '03, wasn't it?

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1 A. We withdrew it.
 2 Q. Do you know the difference between withdrawing a
 3 suit and dismissal with prejudice?
 4 A. I'm not aware, sir.
 5 Q. Okay. Doctor, is it still your testimony that you
 6 voluntarily resigned, you weren't forced out of your job at
 7 Harvard Health?
 8 A. We agreed to disagree and I resigned.
 9 Q. And is it your testimony your resignation had
 10 nothing to do with your performance at Harvard Health?
 11 A. I made \$350,000 a year for Harvard Health. But
 12 performance speaks for itself.
 13 Q. Doctor, after you signed this agreement and you
 14 took the checks that were part of the agreement on September
 15 3rd, 1999 you did not file suit alleging disability until
 16 November of 2001, correct?
 17 A. That is the workers comp case, yes.
 18 Q. No, Doctor, the suit. You remember we talked
 19 about the --
 20 A. Oh.
 21 Q. -- docket before? You filed suit in November of
 22 2001 against Dr. Wilson and several other people?
 23 A. Yes, I was advised by counsel to file that suit to
 24 get it in by the deadline of filing to protect my rights.
 25 Q. And you could not find employment as a physician

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1 bit longer than expected but that is what always happens. A
 2 ruling is being made that certain records are not going to
 3 be admitted but certain records will be. And Mr. Recker,
 4 you may question on those if you want now.
 5 MS. HUBBARD: Mr. Thexton, I'm assuming you still
 6 have your copies?
 7 MR. THEXTON: I do. What's it marked?
 8 MS. HUBBARD: 39.
 9 Q. Doctor, I'm handing you what's been marked Exhibit
 10 number 39. Page three of that exhibit, is that a claim you
 11 filed with the Department of Industrial Action, State of
 12 Massachusetts?
 13 A. I would imagine so. I have never seen it before.
 14 Q. Doctor, it's your writing, isn't it?
 15 A. No, it's not my writing.
 16 Q. How about the signature at the bottom?
 17 A. It's not my signature. I gave Ms. Hall my
 18 permission to sign my name to get the document in on time.
 19 But I never saw this document and she had my authority to
 20 sign it to submit the claim in a timely fashion.
 21 Q. Where did she get the information to put on the
 22 form?
 23 A. From me over the phone and from the prior attorney
 24 who was handling the case before he turned it over to her.
 25 Q. And the fact you said it was -- it was late, it

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1 after you left Harvard Health, isn't that true?
 2 A. I couldn't find employment as an emergency
 3 physician which is what I was trained to do at that point.
 4 Q. So you weren't looking for a position as primary
 5 care physician?
 6 A. I couldn't do it as well. I was in pain. I was
 7 having medical treatments and I was unable to do that kind
 8 of work at that time.
 9 MR. RECKER: Your honor?
 10 LAW JUDGE: Yes.
 11 MR. RECKER: Could we talk about --
 12 LAW JUDGE: Do you want to move onto that --
 13 MR. RECKER: -- the records?
 14 LAW JUDGE: Okay, we have an issue regarding
 15 records which may or may not be admissible. In this case in
 16 order to have that discussion we have to have it off the
 17 record. Otherwise they'd be in the record. So we're going
 18 to need to just take a break for perhaps ten minutes. The
 19 attorneys and I will actually leave the room and discuss it
 20 and we'll come back and either move onto that or something
 21 else. So let's -- off the record.
 22 (Off the record)
 23 (Document marked as Exhibit 39 for identification)
 24 LAW JUDGE: Thank you all. To those who are
 25 waiting for us we did have a discussion that lasted a little

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1 had to be filed right away?
 2 A. It had to be filed in a timely fashion she told me
 3 and that I was unavailable to pass papers back and forth
 4 with her. So she said, "Can I sign your name to this," and
 5 I said yes.
 6 Q. Now, this is dated December 2nd, '02 and that's
 7 four years minus one day after the alleged incident where
 8 you were attacked by Dr. Wilson, is that correct?
 9 A. I'm sorry, I'm looking for the date.
 10 Q. The bottom right column.
 11 A. I see the date. Okay. And your question was?
 12 Q. That is one day short of four years after the
 13 alleged of December 3rd, 1998, correct?
 14 A. If that's the correct math, I suppose so.
 15 Q. And you're aware that the statute of limitations
 16 for filing such claims in Massachusetts is four years?
 17 A. I don't know. I'm not an attorney.
 18 Q. Now in this -- on item number 17 it says, "Assault
 19 by co-employee." Where did Ms. Hall get that information?
 20 A. I assume she garbled whatever I told her but
 21 that's -- it should have said ex-employee.
 22 Q. I see. And to your knowledge would that have
 23 effected the potential coverage in anyway if you said
 24 ex-employee?
 25 A. No, I don't think so.

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1 Q. Okay.

2 A. Not from what she told me. Any on the job injury
3 is an on the job injury, no matter how it happens.4 Q. And you indicated you were -- number 13, the first
5 day of total or partial incapacity to earn wages was
6 December 3, 1998, correct?

7 A. That's what she wrote.

8 Q. Doctor, isn't it true you earned your wages at
9 Harvard Health from that day all the way to the day you left
10 on September 3, 1999?11 A. Right, but they weren't the only ones I was
12 working for during 1998. I was also working as an ER
13 physician through a good portion of the year. I was unable
14 to do that work after that time.15 Q. Correct me, Doctor, but hadn't your relationship
16 with Carney stopped -- ended before December 3, 1998?

17 A. Yeah, before -- with Carney it did.

18 Q. Where else were you working?

19 A. In '98, '99 -- I'm sorry -- I have to get my years
20 right. In the most recent work I did as an emergency
21 physician was with Martha's Vineyard Hospital.22 Q. Martha's Vineyard, you were terminated from that
23 position, were you not?24 A. No. I had a one year contract and it -- it ran
25 its length.

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1 Q. And that ended prior to December 3rd, 1998, did it
2 not?3 A. It was -- ended in October I believe, the end of
4 the month.5 Q. So correct me if I'm wrong, the only employment
6 you had on December the 3rd, 1998 in the practice of
7 medicine was with Harvard Health Services?8 A. I used to work part time in several other
9 emergency departments including Jordan Hospital. And I
10 would get calls from time to time to work in other places
11 but I couldn't because of my -- my time commitments. So it
12 wasn't the only place.13 Q. Do you recall testifying in a deposition in the
14 Florida case that you had not had any contact with Martha's
15 Vineyard or Jordan Hospital --

16 A. After this date --

17 Q. -- prior to December 3rd, 1998?

18 A. I'm sorry, prior to?

19 Q. Prior to December 3rd, 1998 you terminated your
20 relationships with every other hospital except --

21 A. Oh, prior to that date?

22 Q. Yes.

23 A. Well, I didn't terminate my relationship with
24 Jordan. I was still listed as a staff member. I wasn't
25 working there at the time but they called me when they

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1 wanted me.

2 Q. My point is, Doctor, the only place you deriving
3 income as of December 3rd, 1998 was Harvard Health Systems,
4 correct?5 A. No, that's not true. That's not the only place I
6 derived income.

7 Q. Practicing medicine?

8 A. Seeing patients.

9 Q. Seeing patients.

10 A. There are other parts to the practice of medicine
11 besides seeing patients.12 Q. Okay, so as of December 3rd, 1998 the only job you
13 had seeing patients was at Harvard Health Services, correct?14 A. That's the only job I had seen patients at that
15 time.

16 Q. Okay.

17 A. On that date.

18 Q. And this alleged incident on December the 3rd did
19 not deprive you of any salary from Harvard Health Services,
20 did it?

21 A. It actually did.

22 Q. Please tell the judge how?

23 A. Because I was able to work large amount of
24 overtime there in my own department because we were short
25 staffed. My ability to work extra hours was limited by this

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1 injury.

2 Q. And who other than you could verify that
3 information?4 A. Employment records could show that I worked many
5 extra hours at Harvard Health Service over the years that I
6 was there. I was there for five years.7 Q. Doctor, isn't it true that after these
8 disciplinary memos we just talked about you were -- you --
9 all supervisory authority over employees was taken away from
10 you?11 A. Which disciplinary memo are you speaking to
12 because there's different ones here.13 Q. Well, that's true. There are. Well, the last
14 memo, Doctor, dated July 22nd, 1999, "As we discussed, your
15 recent behavior in meetings, including yelling, pointing
16 fingers and threatening to leave the room is also
17 inappropriate and will not be tolerated. This type of
18 behavior may be born out of anger and frustration on your
19 part but is perceived by your peers and staff as threatening
20 and highly disturbing." Do you recall -- isn't it true
21 after July 22nd, 1999 you were removed of any supervisory
22 authority over any other employee at Harvard Health?

23 A. I don't remember specifically. I really don't.

24 Q. So it's your contention that after December 3rd,
25 1998, even though you were only gainfully employed as a

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1 physician practicing clinical medicine by Harvard Health you
 2 lost overtime because of your injury, is that what you're
 3 saying?
 4 A. I lost that and I lost the ability to do ER work
 5 at other places.
 6 Q. You weren't working any other place, were you?
 7 A. I worked all of 1998 at other places. ER work is
 8 sporadic sometimes. You work, you know, two weeks at a time
 9 and then you don't work for two weeks. I'd worked in ER
 10 medicine for years.
 11 Q. Doctor, isn't it true from the time you began your
 12 employment at Harvard Health in 1994 up to the day you left
 13 -- termination, September 3, 1999 -- you had received no
 14 raises during that entire time?
 15 MR. THEXTON: Your honor, I -- really, I must
 16 object --
 17 LAW JUDGE: Sustained --
 18 MR. THEXTON: -- to the relevance of this
 19 question.
 20 Q. Doctor, is it still your testimony that Harvard
 21 Health was completely satisfied and happy with your
 22 performance as a physician during your employment?
 23 MR. THEXTON: Objection to the question because
 24 there's -- the premise is not established.
 25 LAW JUDGE: It was as if it had been asked and

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1 Q. Gotcha. Doctor, you indicated on the workers comp
 2 claim form that your weekly salary was \$2,400, is that
 3 correct?
 4 A. My attorney filled out this form. I would have to
 5 look up what the numbers are. This goes back several years
 6 ago. And it says average weekly wages. It varied from week
 7 to week.
 8 Q. Okay. The hourly rate remained the same, did it
 9 not, Doctor?
 10 A. My base pay varied over time and it increased
 11 almost every year. And I had several raises while I was
 12 there.
 13 Q. You had several raises while you were there?
 14 A. Yes.
 15 LAW JUDGE: You keep looking at me, Mr. Recker.
 16 Obviously your previous question might be in order now. If
 17 you have evidence to the contrary.
 18 (Document marked as Exhibit 40 for identification)
 19 Q. Doctor, you've been handed Exhibit 40 which is a
 20 letter to you dated October 20, 1994 from Dr. Robert Hock,
 21 the medical director. And there are entries on that letter
 22 that have your initials and your writing, correct?
 23 A. On the front page, yes.
 24 Q. And Doctor, you were changing the proposed hourly
 25 rate of 57.82 to \$60 an hour, correct?

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1 answered before, right? I don't remember --
 2 MR. THEXTON: Is it still your testimony that --
 3 you know what -- what --
 4 LAW JUDGE: Let's just rephrase it, please --
 5 MR. RECKER: Sure.
 6 LAW JUDGE: -- Mr. Recker.
 7 Q. Doctor, is it not true that Harvard Health
 8 Services was not happy with your performance as a physician
 9 during your employment at Harvard Health?
 10 A. That's a double negative question. Could you
 11 phrase it in a positive way?
 12 LAW JUDGE: I was thinking the same thing.
 13 A. I'm not quite sure what the question is.
 14 Q. Is it not true that Harvard Health was
 15 dissatisfied with your services as a physician in their
 16 employee?
 17 A. I've never received any notification for Harvard
 18 Health about any patient care matter, any unsatisfactory
 19 performance as a physician, my entire performance there as a
 20 physician.
 21 Q. But you've already noted on the severance
 22 agreement where they refused -- they crossed out "positive
 23 letter of recommendation"?
 24 A. We agreed on language. That has nothing to do
 25 with anything else. That's just the language we agreed on.

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1 A. Yeah, we did that.
 2 Q. And on the second to last page of that exhibit,
 3 appendix B, physician base salary, again you crossed out
 4 122,066 and changed it to 124,800 for your salary, correct?
 5 A. That's what it says.
 6 Q. That's your writing, is it not?
 7 A. That's what it says.
 8 Q. You initialed it?
 9 A. That's what it says.
 10 LAW JUDGE: I think the question was somewhat
 11 different. Is that your writing?
 12 A. That is my writing and that's what it says.
 13 Q. And also it is your writing \$60 per hour initialed
 14 by you, dated 10/24/94, correct?
 15 A. Right, that was my initial pay at Harvard Health.
 16 Q. Okay. Doctor, go back --
 17 A. This is my initial contract with Harvard Health.
 18 Q. Go back to Exhibit 38, severance agreement.
 19 Paragraph B, severance pay, 40 hours per week times \$61.80
 20 an hour." Is that \$1.80 difference in the five years the
 21 raises you were talking about?
 22 A. That was one of them. My recollection is there
 23 was more than one.
 24 Q. The document doesn't seem to verify that, does it?
 25 A. It doesn't say it doesn't either.

Page 1105

1 Q. It says \$61.80 an hour, correct, Doctor?
 2 A. That's what it says.
 3 Q. And you started five years earlier at \$60 an hour,
 4 right?
 5 A. The agency was a community health center.
 6 Q. Right.
 7 A. And --
 8 Q. You just told the ALJ --
 9 A. -- they --
 10 Q. -- that you had several raises?
 11 A. That's my recollection. I did.
 12 Q. Your recollection is incorrect, is it not?
 13 A. No, that was my pay at the time I left. According
 14 to this letter.
 15 Q. Okay. All right. So according to the letter you
 16 -- over the period of five years you did realize an increase
 17 of \$1.80 per hour?
 18 A. I don't remember specifically anymore. I know I
 19 had several raises while I was there. This is -- this is
 20 quite a few years ago.
 21 Q. Doctor, in your suit you filed November 2001
 22 against Dr. Wilson, do you recall stating that you had
 23 documented lost wages of \$628,000 as a result of her alleged
 24 attack?
 25 A. My attorney wrote that and that's what he wrote.

Page 1106

1 Q. You have no idea where he got that number?
 2 A. We went over numbers and that's the numbers he
 3 derived.
 4 Q. Doctor, if your base salary at Harvard was
 5 \$124,000 -- Let's call it \$125,000. You left them in '99.
 6 You've been paid for the full year. And you allegedly
 7 couldn't work for two years because of the assault by Dr.
 8 Wilson. Two times 125 comes out to be 250 in my math, how
 9 about yours?
 10 A. I'm not sure what time period he was speaking to
 11 in the lawsuit. This had to do with several years, not one
 12 year, and it had to do with earnings as an ER physician in
 13 addition to my base pay at Harvard Health. I was earning
 14 considerable money as an ER physician.
 15 Q. You weren't working as an ER physician prior to
 16 the incident, were you, Doctor?
 17 A. Yes, I was. In 1998 I absolutely did work as an
 18 ER physician. I worked in '98, '97, '96, '95, '94 and
 19 backwards. All the way back to '91.
 20 Q. Doctor, I'm handing you what's called civil action
 21 cover sheet in the lawsuit you filed against Dr. Wilson.
 22 Looking at paragraph B, "Documented lost wages and
 23 compensation to date." And Doctor, this was filed November
 24 14th, 2001. "Documented lost wages and compensation to
 25 date, \$628,000." Do you have any idea where your attorney

Page 1107

1 came up with that number?
 2 A. Yes.
 3 Q. Tell us?
 4 A. He derived that number from my earnings.
 5 Q. Your earnings at Harvard Health?
 6 A. And other places over the period of time it
 7 involved.
 8 Q. But you were still acting as a legal consultant in
 9 these years 2000, 2001, correct?
 10 A. Likely.
 11 Q. So can you tell the judge anymore about this
 12 documented lost wages?
 13 A. Not unless we go back and I could find the numbers
 14 from which they were -- these were derived with Mr. Renton.
 15 We have them. They're in his file.
 16 Q. Doctor, on number E, "Reasonably anticipated lost
 17 wages, \$2,430,000," you were asking the court to award you
 18 against Dr. Wilson and others. Where did you come up with
 19 that number?
 20 A. Mr. Renton came up with that number as is
 21 customary in the legal profession based upon his knowledge
 22 and experience.
 23 Q. Did you review this before it was filed?
 24 A. We discussed the numbers.
 25 Q. And you agreed with him?

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1 A. I agree with his assessment.
 2 Q. Umm hmm.
 3 A. He was my counsel and I agreed with him.
 4 Q. So the total claim was over three million dollars,
 5 was it not?
 6 A. That's what it says.
 7 Q. And of course you believe when you filed this that
 8 you had a legitimate claim against Dr. Wilson, is that
 9 correct?
 10 A. I did. I did believe that and I still do.
 11 (Document marked as Exhibit 42 for identification)
 12 Q. Doctor, I'm handing you what's been marked Exhibit
 13 42. Do you recall seeing this before, your complaint you
 14 filed against Dr. Wilson and others?
 15 A. Yeah, I've seen it before. I don't remember all
 16 the specifics.
 17 Q. Okay. Where did the lawyer get the information
 18 that he put in this complaint? From his client?
 19 A. From his client.
 20 Q. And would you be surprised to know that the
 21 allegations about the assault are very different in this
 22 complaint as opposed to what you testified under oath to
 23 this judge?
 24 A. I'd have to compare the --
 25 MR. THEXTON: Object to the form --

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1 A. -- two.
 2 MR. THEXTON: -- of the question, "Would you be
 3 very -- would you be surprised to learn?" That's not an
 4 appropriate question.
 5 Q. Now, Doctor, let me tell you -- why don't you pick
 6 up --
 7 LAW JUDGE: Let me -- just stop a second --
 8 MR. RECKER: Sure.
 9 LAW JUDGE: -- Mr. Recker, only because I want to
 10 see how collateral this is. You're going to have to show me
 11 that the statements are significantly different, not in some
 12 small detail. And I will let you do that, all right?
 13 MR. RECKER: Transcript --
 14 LAW JUDGE: All right, again, not in nitpicky --
 15 MR. RECKER: Sure.
 16 LAW JUDGE: All right, go ahead.
 17 Q. The transcript of the hearing, do you have that,
 18 Doctor, from the October hearing, day one?
 19 LAW JUDGE: That's the transcript of this hearing?
 20 MR. THEXTON: Yes.
 21 MR. RECKER: Yes, your honor.
 22 LAW JUDGE: Okay.
 23 MR. THEXTON: I'm sorry, which page are we on?
 24 MR. RECKER: 109.
 25 Q. Line 17.

Page 1110

1 A. I'm not sure I have that. What page, please?
 2 Q. 109, line 17. Your answer was: "This individual
 3 was subsequently discovered to have been seeing patients at
 4 a health center after having left the employment of the
 5 health center. And I found her in the administrative office
 6 with a pile of charts and discovered that she was actually
 7 seeing patients who were former patients of her illegally,
 8 without insurance, without sanction of the -- without the
 9 authority of the health center. And this was something not
 10 good. And I discovered this and I asked her to give me the
 11 charts and to leave the premises. And at that point she
 12 attacked me. And I tried to get away from her. And I had
 13 the charts in my hand." So, Doctor, you walked up to her,
 14 she had charts, she attacked you, correct?
 15 A. No, I think the clauses are out of order here.
 16 But I -- what I said was that I had the charts in my hand
 17 when she attacked me.
 18 Q. "I asked her to give me the charts and to leave
 19 the premises and at that point she attacked me." Now, let's
 20 direct your attention to the complaint you filed against Dr.
 21 Wilson. Paragraph 21, "On or about December 3rd, 1998 Dr.
 22 Baratz observed Dr. Wilson sitting behind a desk at the
 23 health center reviewing private patient files in the
 24 presence of defendant Ms. Nervito. Dr. Baratz immediately
 25 confronted Dr. Wilson -- reminding her that she had no

Page 1111

1 patient responsibilities and thus should not be looking at
 2 the files. Dr. Wilson responded she had found the files
 3 lying around but refused to return the files and stated that
 4 he, Dr. Baratz, would have to get the police to throw me out
 5 of here. Dr. Baratz quickly spoke with the director of
 6 human resources, Val McCrae, who stated that she would page
 7 Mr. Tumi. While Dr. Baratz waited for Mr. Tumi to respond
 8 Ms. Nervito informed him that Dr. Wilson was preparing to
 9 take the medical records from the building. At this
 10 point Dr. Baratz removed the files from the desk and walked
 11 with them towards his office. As he walked away Dr. Baratz
 12 was viciously assaulted by Dr. Wilson, who grabbed his left
 13 arm and yanked it with great force in an effort to dislodge
 14 the medical records."
 15 Doctor, those are two very -- different scenarios, are
 16 they not?
 17 A. No, they're the same scenario and they say the
 18 same thing.
 19 Q. To you they say the same thing?
 20 A. They do.
 21 Q. You continue in your complaint --
 22 MR. THEXTON: Your honor, I renew my objection.
 23 LAW JUDGE: Without commenting --
 24 MR. THEXTON: To the extent that there's any
 25 difference at all it is clearly of the most minor character.

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1 LAW JUDGE: And without adding my commentary to
 2 that I think I'm going to allow it to stand in the record
 3 for what it's worth.
 4 MR. THEXTON: And I would ask you to control the
 5 --
 6 LAW JUDGE: With your comment as well.
 7 MR. THEXTON: Great. Control the manner and
 8 motive of the interrogation of the witnesses by instructing
 9 counsel to move on.
 10 LAW JUDGE: Well, what was your next question?
 11 Q. Doctor, in the same paragraph of the complaint it
 12 goes on -- quote -- "The ensuing struggle lasted several
 13 minutes before Dr. Wilson was physically removed from Dr.
 14 Baratz' left arm with the assistance of two other health
 15 center employees."
 16 MR. THEXTON: Your honor, I -- again, I renew my
 17 objection.
 18 LAW JUDGE: Right, and there is no question.
 19 MR. RECKER: I'm still reading.
 20 LAW JUDGE: Well, I'm going to stop you because I
 21 think it actually goes counter to my previous admonition not
 22 to bring up a matter if it is not a significant distinction.
 23 I'll make my comment. I -- there is indeed a difference in
 24 the testimony of these two. How this affects Dr. Baratz'
 25 credibility is beyond me. The -- the distinction on this

Page 1113

1 one is not going to make any difference. Mr. Recker, I
 2 think you should move on.
 3 MR. RECKER: Very good.
 4 LAW JUDGE: Whether he took the -- I'm going to --
 5 whether he took the files from Ms. Wilson or whether Ms.
 6 Wilson took the files from him does not say it didn't happen
 7 -- it didn't happen more or less the way he described it.
 8 It suggests that the story has been reasonably consistent.
 9 So I think the attempt to impeach him on that one was a
 10 failure. You can move on.
 11 Q. Doctor, is it not true that two employees, two
 12 other employees did not intervene and were not involved at
 13 all in removing Dr. Wilson from your arm?
 14 A. My recollection is there were two people who had
 15 to pull her away.
 16 Q. And who was --
 17 A. I so put that into my report at the time.
 18 Q. Who were those people?
 19 MR. THEXTON: Well, your honor, at this point --
 20 LAW JUDGE: Objection sustained.
 21 MR. THEXTON: -- this is collateral. Thank you.
 22 Q. Doctor, you recall dismissing your lawsuit in
 23 April of '03?
 24 A. Yes.
 25 Q. And you recovered nothing from any defendant,

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1 A. Not to my recollection.
 2 Q. Paragraph 2A states that, "The AMA believes that
 3 the minimum statutory requirements for qualification as an
 4 expert witness should reflect the following: 1) That the
 5 witness be required to comparable education, training and
 6 occupational experience in the same field as the defendant."
 7 Please tell us how you've got comparable education, training
 8 and occupational experience in the same field as Dr. Kadile?
 9 A. He maintains in documents I've seen that he
 10 practices general family type medicine. I've had
 11 essentially the same amount of time and have practiced in
 12 the same basic environment as Dr. Kadile.
 13 Q. Doctor, what's your understanding of the time Dr.
 14 Kadile has engaged in primary care medicine?
 15 A. I'd have to look up in the records exactly what he
 16 claims the times are. I know he -- earlier in his life he
 17 was listed as a psychiatrist for many years.
 18 Q. So you don't know how much time -- how many years
 19 he's engaged in primary care?
 20 A. Not exactly. I think in a ball park figure it may
 21 be ten to 15 years.
 22 Q. And based on our previous lengthy testimony about
 23 your experience as -- in the emergency department is it your
 24 believe that you have the same occupational experience as
 25 Dr. Kadile?

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1 isn't that true?
 2 A. I can't answer that with a simple yes or no.
 3 MR. THEXTON: Well, your -- and I'm going to
 4 object to the -- to the question anyway as not relevant.
 5 LAW JUDGE: I think the dismissal question is --
 6 is appropriate and the answer is appropriate. Beyond that,
 7 unless there's some real purpose that I don't understand
 8 here, I think it's collateral and irrelevant.
 9 WITNESS: Your honor, I was wondering if we could
 10 take a break.
 11 LAW JUDGE: If the witness requests that I would
 12 be happy to grant it. Let's try and keep it very quick.
 13 Let's pause the record.
 14 (Off the record)
 15 LAW JUDGE: And Mr. Recker, you may continue.
 16 MR. RECKER: Sure.
 17 (Document marked as Exhibit 44 for identification)
 18 Q. Dr. Baratz, I'd like to speak a few moments about
 19 your qualifications to serve as an expert witness in this
 20 matter. I'm handing you what's been marked Exhibit 44,
 21 which is also Bates stamped 044. It's from the American
 22 Medical Association, advisory opinion regarding expert
 23 witness testimony. Are you familiar with this, Doctor?
 24 A. I haven't seen it before.
 25 Q. You have not?

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1 A. In terms of practicing general medicine, I believe
 2 so.
 3 Q. Now, you've never been engaged in what we call the
 4 private practice of medicine, is that true?
 5 A. That's not true.
 6 Q. Should we go back to the exhibit where you define
 7 for Dr. Hock what you consider to be private practice of
 8 medicine and how you were not engaged in that?
 9 A. You're talking about two different things.
 10 Q. Have you ever gone to work in your own office
 11 prior to 2002, seeing patients clinically?
 12 A. As a physician, no, in my own office. Many
 13 physicians do not practice in their own offices. In the
 14 metropolitan Boston area the norm is to be working for
 15 either an agency or a group or a hospital.
 16 Q. You've never treated families of patients over a
 17 course of years in primary care medicine, have you?
 18 A. Whole families or whole individuals? You said
 19 whole families?
 20 Q. Families, individuals --
 21 A. I don't practice pediatrics. And I'm not a family
 22 practitioner in that -- that sense. I do see children. And
 23 I have seen many children. Currently I see children down to
 24 the age of 12 which is the norm for primary care internists.
 25 Q. Doctor, after you got out of your residency in

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STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

In the matter of the disciplinary proceedings against:

Eleazar Kadile,
Respondent.

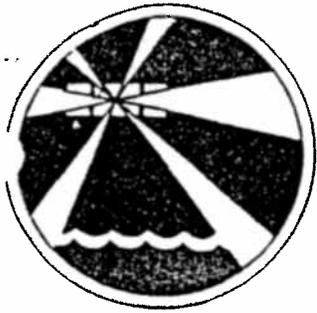
Case Number LS-0112061-MED

Day 6 Hearing before John N. Schweitzer

July 15, 2003
1400 East Washington Avenue
Madison, Wisconsin

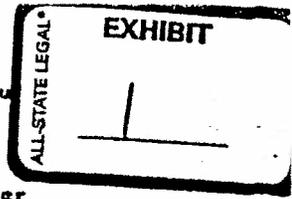
APPEARANCES

For the State of Wisconsin:
Department of Regulation and Licensing
Arthur K. Thexton
1400 East Washington Avenue
Madison, Wisconsin



Harbor Health Services, Inc.

398 Neponset Avenue • Dorchester, MA 02122
(617) 282-3200



The Gaiger-Gibson Commu
250 Mount Vernon Street
Dorchester, MA 02125

The Neponset Health Center
398 Neponset Avenue
Dorchester, MA 02122

Mary Elean McCormack Health Center
10 Logan Way,
South Boston, MA 02127

Columbia Point Infant and Toddler Day Care Progr
250 Mount Vernon Street
Dorchester, MA 02125

Harbor W.I.C. Program
398 Neponset Avenue
Dorchester, MA 02125

The Elder Service Plan
2216 Dorchester Avenue
Dorchester, MA 02124

(617) 282-
Fax: (617) 825-

(617) 288-
Fax: (617) 288-

(617) 288-1
Fax: (617) 288-3

(617) 265-0
Fax: (617) 825-3

(617) 296-5
Fax: (617) 296-5

*Given to
Bob Baratz
7/29/99
in presence
Hoch, Quinlan,
Toomey*

July 19, 1999

Robert Baratz, DDS, Ph.D., MD
Neponset Health Center
398 Neponset Avenue
Dorchester, MA
02125

Dear Bob:

You have made Brian Toomey and Bob Hoch, MD aware of a personal relationship that you have had with a staff member from Neponset Health Center that you directly supervise. In disclosing this information, you were consistent in insisting that you not reveal the name of the woman involved in this relationship, and preferred to keep that information private.

In your conversations with the above referenced senior managers, you stated that you felt obligated to inform Harbor Health Services, Inc., senior management because of the possibility of the risk of a sexual harassment charge that the unnamed employee might bring. You believed that this was not going to happen, but that it remained a risk. In addition, you stated that you thought that the liability insurance for HHSI would cover any possible financial risk that this relationship might cost.

You further stated that you had had several conversations with the HHSI employee on this matter, and described her as "upset" over the breakup of the relationship. There was some concern expressed by you that her "upset" might make her take legal action and pursue a sexual harassment charge against both you and the corporation. You stated that you felt strongly that she would be making a mistake if she pursued that course of action and expressed that to her directly.

You stated to Brian Toomey that you told this employee that Harbor Health (HHSI) would vigorously defend itself and you on any charge of sexual harassment, that she needed to think very carefully before she took such an action as her sexual relationship with you could be made public, and that such action could be damaging to her personally. This position was taken without prior consultation with senior managers nor with their prior permission.

Harbor Health Service has a Personnel policy, titled, "Sexual Harassment", which states "It is the policy of the Agency that all employees should be able to work in an environment free from all forms of sexual harassment." In the "Reporting Guidelines" section, part 4 states: "Any retaliatory action of any kind taken by an employee against an other employee as a result of that person seeking redress, cooperating in an investigation or otherwise participating in any proceeding is subject to disciplinary action up to and including discharge."

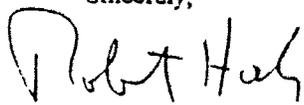
In fact, our policy states that we would conduct an objective investigation and discipline any employee guilty of sexual harassment. Since no complaint has been brought forth, no investigation has been possible. It was therefore improper for you to tell this employee that the agency would vigorously defend you, and that it would be a mistake for her to pursue this matter. This action on you part violates

Enclosure 5

Reporting Guideline # 4 in the Sexual Harassment Policy in that it constitutes an intimidating and retaliatory action. It was also inappropriate for you to tell the employee that the filing of a complaint could have damaging repercussions for her.

Your action is seen as a violation of Reporting Guideline # 4 in the Sexual Harassment policy. You will be suspended without pay from HHSI for one day for this action. The day of the suspension will be set by Dr. Hoch. Also, you should regard this letter as a letter of reprimand which will be placed in your personnel file.

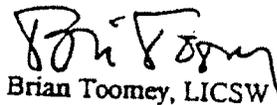
Sincerely,



Bob Hoch, MD
Medical Director



Paulette Shaw-Querner, MBA
Executive Director, NHC



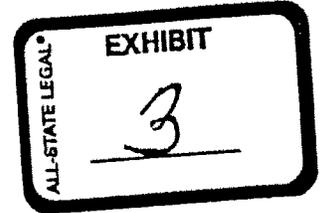
Brian Toomey, LICSW
Executive Director, GGCHC

doc:brtz1

Given to Bob Baratz
7/26/99 in presence
Bob Hoch, P. Querner

Memorandum

DATE: July 22, 1999
TO: Bob Baratz
FROM: Paulette Shaw Querner and Bob Hoch
RE: Follow Up on July 20, 1999 Discussion
CC: Personnel file



We felt it was important to follow up on the July 20, 1999 discussion to ensure that the points made were clear. It is apparent from our discussion with staff regarding the interaction with Kathy Kelley that your behavior was perceived as loud, threatening and inappropriate. As we discussed, this incident is viewed in light of a pattern of inappropriate displays of anger on your part over the past few months. As we discussed, your recent behavior in meetings including yelling, pointing fingers and threatening to leave the room is also inappropriate and will not be tolerated. This type of behavior may be born out of anger and frustration on your part but is received by your peers and staff as threatening and highly disturbing. After careful consideration, our plan at this point is to issue this memo as a written warning to be placed in your personnel file and to retain the April 23, 1999 memorandum from Sue Brinkert to you as a permanent part of your personnel record. If behavior problems on your part continue, we will pursue the disciplinary process up to and including termination.



DATE: April 23, 1999
 TO: Robert Baratz, MD
 Urgent Care Director
 FROM: Susan Brinkert
 Chief Operating Officer
 RE: Verbal Warning

This memo will summarize my counseling discussions with you related to the formal complaint submitted by your supervisee, Sharon Brennan. The substance of the complaint was related to an interaction in which Ms Brennan described your behavior as "verbally aggressive and abusive", and included obscenities directed at her.

In my investigation of the complaint, you acknowledged the use of profane language, and attributed it to your frustration over Ms Brennan's handling of a patient related issue. You stated that you apologized to Ms Brennan for your use of language shortly after the interaction.

As we discussed, notwithstanding Ms Brennan's unfortunate poor judgment in handling the patient situation, discourteous or disrespectful interactions with staff and the use of obscenities are unacceptable behaviors on the part of a manager under any circumstances. In addition, such behaviors are most often counter-productive in producing the desired change in the employee's performance. At the conclusion of our discussions, I felt assured that you both understood the seriousness of the incident and regretted the behavior. You subsequently returned to Ms Brennan to again apologize.

Giving weight to both the seriousness of the complaint and the fact that I am unaware of any prior instance of similar behavior, it is my determination that a first verbal warning is the appropriate resolution to this complaint. Furthermore, we have agreed that this warning will remain a confidential part of your employee file, and if there is no recurrence of similar behavior in the next six months, it will be removed from the file.

Employee comments:

I disagree I made one obscenity which was not directed at Mrs. Brennan. I was not verbally aggressive or abusive. I immediately apologized for the use of the epithet at which time she was abusive to me. I wish to have and see a copy of the "complaint" before signing this document.

Employee signature

 Susan Brinkert

Date

 4/23/99 Robert Baratz

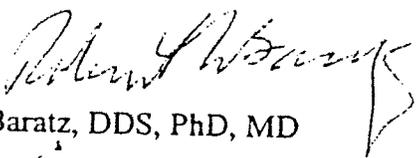
Supervisor signature

4/26/99
 I have not been given a copy of the complaint.

To : Daniel J. Driscoll

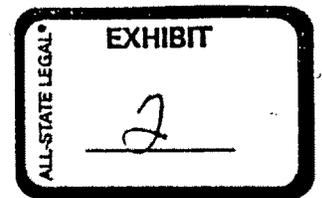
From: Robert S. Baratz, DDS, PhD, MD

I hereby submit my resignation from employment with Harbor Health Services to become effective on the close of business September 3, 1999. I hereby generally and fully release Harbor Health Services and all of its agents, officers, directors and employees from any and all claims that I have or may have against them in any forum whatsoever arising from my employment with or my ending of employment with Harbor Health Services except as otherwise provided in that Certain Severance Agreement of even date herewith and attached hereto. Notwithstanding the foregoing, the undersigned reserves all claims available to him against any employee who may first bring an action against him.



Robert S. Baratz, DDS, PhD, MD

Date: 9/3/99



Severance Agreement

Robert S. Baratz, D.D.S., Ph.D., M.D., and Daniel J. Driscoll, acting on behalf of Harbor Health Services, Inc., agree to the following severance.

Robert Baratz agrees to:

A 1. Submit a letter of voluntary resignation, including release of all current and future claims as specified in the attached form, to Daniel J. Driscoll to be effective September 3, 1999. This release will not prevent Dr. Baratz from pursuing workers compensation claims.

2. Between now and the last date of employment, maintain the integrity, completeness and accessibility of all files under his jurisdiction, including hard copy files and computer stored documents.

3. Waive any rights to revoke this severance agreement.

4. Return to Harbor Health Services forthwith all keys to buildings owned or leased by the agency and pager provided by the agency.

Daniel J. Driscoll, on behalf of Harbor Health Services, Inc., agrees to the following

B. 1. Pay severance pay for eight weeks (40 hours per week, at \$61.80 per hour = \$19,776) on or before September 10, 1999.

2. Maintain health, life, and dental insurance and other benefits under the current employer employee cost sharing for the eight weeks and process in a timely fashion any forms for continued coverage for Dr. Baratz and his family under COBRA thereafter.

3. Pay out accrued vacation time 208.8 hours @ \$61.80 per hour = \$12,904 on or before September 10, 1999.

4. Vacation pay and severance pay will be paid in a lump sum on or before September 10, 1999, assuming a September 3, 1999 resignation date. Dr. Baratz further agrees that the payments made pursuant to this Severance Agreement satisfies all compensation claims Dr. Baratz may put forth now or in the future.

5. Consent to Dr. Baratz's absence with pay from work from August 25 through September 3, 1999 to allow him to begin planning for a job transition. These days will not be charged to his vacation allotment or counted towards the eight weeks severance pay period.

6. Not contest any claim for unemployment compensation.

7. Provide a ~~positive~~ letter of recommendation to Dr. Baratz's ~~high level~~ of medical competency

in the form attached hereto.

8. Pay Dr. Baratz for any approved continuing education expenses incurred before the date of his resignation, consistent with the agency's Personnel Policies, and up to the limit set by the Agency in the amount of \$1665.

9. Process the invoices for inpatient medical care submitted by Dr. Baratz in the normal manner and pay out collected sums per the letter of 7/30/99 from Dr. Hoch to Dr. Baratz ~~and the letter from Dr. Baratz to Dennis Dionne of 8/19/99~~ in a timely fashion. Harbor Health Services will make available all accounting for the collection of these monies.

10. Agree to make Dr. Baratz's personnel file available to only those parties legally entitled to review it.

C. The parties agree that they will not in the future, and will not direct others in the future, to denigrate or disparage the parties hereto, nor their officers, directors, employees, representatives, agents, successors, or assigns concerning the allegations and matters that were the subject of this severance. The parties shall have all legal and equitable remedies available to them for any violation of this covenant.

Agreed:

Daniel J. Driscoll

Date: 9/3/99

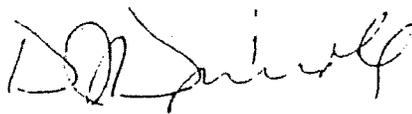
Robert S. Baratz, DDS, PhD, MD

Date: 9/3/99

To :Robert S. Baratz, DDS, PhD, MD

From: Daniel J. Driscoll

Acting on behalf of Harbor Health Services, Inc. the undersigned hereby generally and fully releases Robert S. Baratz, DDS, PhD, MD from any and all claims that Harbor Health Services, Inc. and all of its agents, officers, directors and employees have or may have against him in any forum whatsoever arising from his employment with or ending of employment with Harbor Health Services except as otherwise provided in that Certain Severance Agreement of even date herewith and attached hereto.



Daniel J. Driscoll

Date:

9/3/99

*Neponset Health Center
398 Neponset Avenue
Dorchester, MA 02122*

CONFIDENTIAL

To be reviewed 10/23/99 by
Director of Human Resources or
Chief Operating Officer of NHC

Present

6/17/98

J. J. [unclear]
CEO

[Faint, illegible text]

CIVIL ACTION COVER SHEET

DOC NO(S)

01-5508

a

Superior Court Department
County: Suffolk



PLAINTIFF(S)
Robert Baratz, M.D.

DEFENDANT(S)
Teresa Mirabito, Brian Toomey and
Florence Wilson

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE
Jeffrey B. Renton (978) 475-7580
Gilbert & Renton LLC
23 Main Street Andover MA 01810
Board of Bar Overseers number 554032

ATTORNEY (if known)

Origin code and track designation

- Place an x in one box only:
- 1. F01 Original Complaint
 - 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
 - 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)
 - 4. F04 District Court Appeal c.231, s. 27 & 104 (After trial) (X)
 - 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
 - 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
B99	Assault, Battery, Infliction of Emotional Distress, Negligence	(F)	(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date:
- | | |
|---|------------------|
| 1. Total hospital expenses | \$ 5,500 |
| 2. Total Doctor expenses | \$ 1,500 |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses / occupation therapy | \$ 4,500 |
| 5. Total other expenses (describe) | \$ |
| Subtotal | \$ 11,500 |
- B. Documented lost wages and compensation to date \$ 628,000
- C. Documented property damages to date \$
- D. Reasonably anticipated future medical and hospital expenses \$ uncertain
- E. Reasonably anticipated lost wages \$ 2,430,000
- F. Other documented items of damages (describe) \$
- G. Brief description of plaintiff's injury, including nature and extent of injury (describe)
 Damages (e.g., pain, suffering, emotional distress, and physical disability)
 From a physical attack causing permanent partial disability from entrapment and partial release of the radial nerve in the left arm, as well as a host of other injuries to the left arm (including without limitation, damage to the extensor muscle bundle in left forearm and elbow area, ligament strains, sprains)
- TOTAL \$ 3,069,500**

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

[Handwritten Signature]

Enclosure 6

DATE: *[Handwritten Date]*

COPY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
OF THE TRIAL COURT

_____)
 ROBERT BARATZ, M.D.,)
 Plaintiffs,)
))
 v.)
))
 TERESA MIRABITO, BRIAN TOOMEY)
 and FLORENCE WILSON,)
 Defendants.)
 _____)

01-5500A

C. A. No. 01-_____

COMPLAINT FOR DAMAGES AND JURY TRIAL DEMAND

Introduction

1. In December 1998, while working at Geiger-Gibson Health Center in Dorchester. Plaintiff Robert Baratz, M.D., was viciously assaulted by Defendant Florence Wilson, M.D., and as a result has suffered permanent and career-disabling damage to the radial nerve in his left arm. Defendants Teresa Mirabito and Brian Toomey share legal responsibility for the attack, because they acted wantonly and outside the scope of their employment in allowing Dr. Wilson unlawful access to the Health Center, to patients and to private medical records – thus creating the conditions for the foreseeable attack upon Dr. Baratz.

Parties

2. Plaintiff Robert Baratz, DDS, M.D., Ph. D. ("Dr. Baratz") is an individual who resides at 159 Bellevue Street, Newton, Middlesex County, Massachusetts. At relevant times, Dr. Baratz was employed as Medical Director of Gibson-Geiger Health Center (the "Health Center"), which is owned by Harbor Health Services, Inc., a Massachusetts corporation.

10. During 1997 and 1998, the Managerial Defendants held managerial responsibility for and controlled access to medical records, and also held managerial responsibility for day-to-day, non-medical operational issues such as disputes among staff.

11. On or around March 30, 1998, Dr. Baratz acted to suspend Dr. Wilson from clinical duties in treating patients at the Health Center, due to performance issues raised by Dr. Baratz and others.

12. The Managerial Defendants had full knowledge of, and assented to, the suspension decision.

13. Dr. Wilson never regained clinical responsibilities as an employee of the Health Center.

14. In or around June 1998, Dr. Wilson formally announced her resignation from the Health Center. Her last day of employment occurred in or around September 1998.

15. After her employment terminated, Dr. Wilson continued to come to the Health Center, where she would access and review the private medical records of her former patients, and even participate in their treatment.

16. The foregoing misconduct by Dr. Wilson was not authorized or condoned in any way by Dr. Baratz, violated Massachusetts' privacy laws, and jeopardized the treatment of patients. Accordingly, Dr. Baratz repeatedly complained about the misconduct to the Managerial Defendants.

17. Although they possessed the authority and ability to redress the unlawful post-employment conduct of Dr. Wilson, the Managerial Defendants instead decided to allow it to continue unabated.

18. For example, after discovering patient files that had been removed, sequestered and hidden by Dr. Wilson at the Health Center, Dr. Baratz went to Defendant Toomey, and sought his help and support in seeing to it that Dr. Wilson was barred from the Health Center and otherwise precluded from viewing the private medical records of the patients. Mr. Toomey took no action in response, despite acknowledging that Dr. Wilson had a history of psychological issues, and that Dr. Wilson blamed Dr. Baratz for the termination of her employment at the Health Center. Mr. Toomey stated that Dr. Wilson could continue to visit the Health Center.

19. On information and belief, Defendant Maribito also knew of Dr. Wilson's psychological history and animus towards Dr. Baratz, but nevertheless assisted Dr. Wilson in her unlawful conduct, e.g., by taking no reasonable steps to prevent Dr. Wilson from accessing the medical records.

20. The foregoing conduct by the Managerial Defendants was outside the scope of their employment as a matter of law, because they engaged upon a common scheme to allow Dr. Wilson to violate Massachusetts privacy laws and engage in the improper treatment of patients.

21. On or around December 3, 1998, Dr. Baratz observed Dr. Wilson sitting behind a desk at the Health Center reviewing private patient files in the presence of Defendant Mirabito. Dr. Baratz immediately confronted Dr. Wilson, including by reminding her that she had no patient responsibilities and, thus, should not be looking at the files. Dr. Wilson responded that she had found the files "lying around," but then refused to return the files and stated that he (Dr. Baratz) would "have to get the police to throw me [Dr. Wilson] out of here." Dr. Baratz quickly spoke with the Director of Human Resources, Velda McCrae, who stated that she would page Mr. Toomey. While Dr. Baratz waited for Mr. Toomey to respond, Ms. Mirabito informed him that Dr. Wilson was preparing to take the medical records from the building. At this point, Dr.

Baratz removed the files from the desk and walked with them towards his office. As he walked away, Dr. Baratz was viciously assaulted by Dr. Wilson, who grabbed his left arm and yanked it with great force in an effort to dislodge the medical records. The ensuing struggle lasted several minutes before Dr. Wilson was physically removed from Dr. Baratz' left arm, with the assistance of two other Health Center employees. By then it was too late, as Dr. Baratz had suffered permanent and career-disabling damage to the radial nerve and elbow in his left arm, as well as other injuries.

22. In discussing the incident with Defendant Toomey, Dr. Baratz stated his strong desire to report the assault to the police and have it treated as a criminal matter. Defendant Toomey instructed Dr. Baratz not to do so. Subsequently, Dr. Baratz asked that the matter be reported to the Board of Registration of Medicine, but was again told not to do so by Defendant Toomey, who stated that he wanted to "keep this quiet" and that Dr. Baratz would suffer "consequences" if he proceeded on his own.

23. Since this incident, Dr. Baratz has seen a variety of health professionals and received a course of medical treatments for his nerve damage, elbow and other injuries, including prescription medications, steroid injections, the use of a sling and various braces, physical and occupational therapy, and – most recently – surgery. Despite these efforts, the injury has not resolved and is permanent.

24. In or around September 1999, Dr. Baratz resigned from the Health Center due (in part) to the injuries he had suffered and under duress from management.

25. Since September 1999, as a direct result of the injuries suffered during the assault by Dr. Wilson, Dr. Baratz has not been able to work in his chosen profession as an urgent care and emergency room clinical physician, and indeed has not been able to work full-time at all.

**COUNT I – ASSAULT
(AGAINST DEFENDANT FLORENCE WILSON)**

26. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1-25 as if fully restated herein.

27. Defendant Florence Wilson caused Dr. Baratz to suffer reasonable apprehension of imminent and substantial bodily harm.

28. As a proximate result, Dr. Baratz has suffered grievous injury, both physical and emotional, and incurred substantial detriment and damages.

**COUNT II – BATTERY
(AGAINST DEFENDANT FLORENCE WILSON)**

29. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1-28 as if fully restated herein.

30. Defendant Florence Wilson knowingly caused harmful bodily contact to Dr. Baratz without his lawful consent.

31. As a proximate result, Plaintiff has suffered grievous injury, both physical and emotional, and incurred substantial detriment and damages.

**COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)**

32. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1-31 as if fully restated herein.

33. The conduct of Defendant Wilson and the Managerial Defendants as set forth herein (i) was extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society, (ii) demonstrates that the Managerial Defendants intended to inflict emotional distress upon Plaintiff, and (iii) did in fact has caused Plaintiff to suffer severe

physical harm and emotional distress.

34. The conduct of the Managerial Defendants as set forth herein was not committed within the scope of their employment as a matter of law, as it (i) involved participation in or consent to the violation of Massachusetts privacy laws, and (ii) was unrelated to the business interests of the Health Center or Harbor Health Services, Inc.

35. As the reasonable, proximate and foreseeable consequence of the foregoing conduct of Defendant Wilson and the Managerial Defendants, Plaintiff has suffered grievous injury, both physical and emotional, and incurred substantial detriment and damages.

**COUNT IV – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)**

36. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1-35 as if fully restated herein.

37. The conduct of Defendant Wilson and the Managerial Defendants as set forth herein demonstrates that – if they did not intend to inflict emotional distress upon Plaintiff (they did) – they at least knew or should have known that emotional distress was the likely result of their conduct.

38. As the reasonable, proximate and foreseeable consequence of the foregoing conduct of Defendant Wilson and the Managerial Defendants, Plaintiff has suffered grievous injury, both physical and emotional, and incurred substantial detriment and damages.

**COUNT V – NEGLIGENCE
(AGAINST ALL DEFENDANTS)**

39. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1-38 as if fully restated herein.

40. By virtue of their position of managerial control and supervisory authority over the Heath Center, the Managerial Defendants owed a duty of reasonable care towards Plaintiff and breach that duty by virtue of their conduct as set forth herein.

41. Defendant Wilson also owed a duty of reasonable care towards Plaintiff, which she breached during her conduct on December 3, 1998, as further described herein.

42. As a direct, proximate and reasonably foreseeable result of the foregoing breaches, Plaintiff has suffered grievous injury, both physical and emotional, and has incurred substantial detriment and damages.

**COUNT V – CONSPIRACY
(AGAINST ALL DEFENDANTS)**

43. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1-42 as if fully restated herein.

44. All of the Defendants knowingly and wilfully agreed and conspired together upon a common design in allowing and aiding Dr. Wilson, following the termination of her employment, to access and continue to access private medical records, and to participate in the treatment of patients.

45. In perpetrating their common scheme, Defendants have committed unlawful, wrongful and tortious acts, as set forth herein.

46. As a proximate and foreseeable result of the foregoing, Plaintiff has suffered grievous injury, both physical and emotional, and has incurred substantial detriment and damages.

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. All damages suffered by Plaintiff because of the wrongful and illegal conduct of Defendants (including pain and suffering, emotional distress, physical injury, back pay, future pay, lost benefits, compensatory, consequential, multiple, exemplary, punitive, equitable and/or every other form of damages as may be warranted by the facts pertaining to each count, separately and collectively);

B Pre-judgment and post-judgment interest at the maximum rate permitted by law;

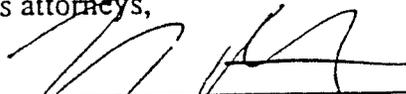
C. Reasonable attorneys' fees, costs and expenses; and

D. Such other and further relief as the Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

Respectfully submitted,
PLAINTIFF ROBERT BARATZ,

- By his attorneys,



Jeffrey B. Renton, Esq. (BBO #554032)

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DATED: November 30, 2001