

☞ **05hr_JC-Au_Misc_pt36e**



☞ 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**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil Action No. SUCV2001-05506

ROBERT BARATZ, M.D.,
Plaintiff

v.

TERESA MIRABITO, BRIAN TOOMEY and
FLORENCE WILSON,
Defendants

DEFENDANT FLORENCE WILSON'S ANSWER TO THE COMPLAINT,
WITH JURY CLAIM

Introduction

1. The defendant denies the allegations contained in paragraph 1.

Parties

2. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 2, and therefore denies the same and calls upon the plaintiff to prove the same if material.
3. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 3, and therefore denies the same and calls upon the plaintiff to prove the same if material.
4. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 4, and therefore denies the same and calls upon the plaintiff to prove the same if material.
5. The defendant admits only that Florence Wilson, M.D. resides at 27 Indiana Terrace, Newton, Middlesex County, Massachusetts. The defendant denies the balance of the allegations contained in paragraph 5.

Venue and Jurisdiction

6. The defendant denies the allegations contained in paragraph 6.

7. The defendant denies the allegations contained in paragraph 7.

Facts

8. The defendant denies the allegations contained in paragraph 8.

9. The defendant denies the allegations contained in paragraph 9.

10. The defendant denies the allegations contained in paragraph 10.

11. The defendant denies the allegations contained in paragraph 11.

12. The defendant denies the allegations contained in paragraph 12.

13. The defendant denies the allegations contained in paragraph 13.

14. The defendant denies the allegations contained in paragraph 14.

15. The defendant denies the allegations contained in paragraph 15.

16. The defendant denies the allegations contained in paragraph 16.

17. The defendant denies the allegations contained in paragraph 17.

18. The defendant denies the allegations contained in paragraph 18.

19. The defendant denies the allegations contained in paragraph 19.

20. The defendant denies the allegations contained in paragraph 20.

21. The defendant denies the allegations contained in paragraph 21.

22. The defendant denies the allegations contained in paragraph 22.

23. The defendant denies the allegations contained in paragraph 23.

24. The defendant denies the allegations contained in paragraph 24.

25. The defendant denies the allegations contained in paragraph 25.

Count I – Assault
(Against Defendant Florence Wilson)

26. The defendant repeats and reavers the responses to paragraphs 1 through 25 above and incorporates the same by reference herein.

27. The defendant denies the allegations contained in paragraph 27.

28. The defendant denies the allegations contained in paragraph 28.

Count II – Battery
(Against Defendant Florence Wilson)

29. The defendant repeats and reavers the responses to paragraphs 1 through 28 above and incorporates the same by reference herein.

30. The defendant denies the allegations contained in paragraph 30.

31. The defendant denies the allegations contained in paragraph 31.

Count III – Intentional Infliction of Emotional Distress
(Against All Defendants)

32. The defendant repeats and reavers the responses to paragraphs 1 through 31 above and incorporates the same by reference herein.

33. The defendant denies the allegations contained in paragraph 33.

34. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 34, and therefore denies the same and calls upon the plaintiff to prove the same if material.

35. The defendant denies the allegations contained in paragraph 35.

Count IV – Negligent Infliction of Emotional Distress
(Against All Defendants)

36. The defendant repeats and reavers the responses to paragraphs 1 through 35 above and incorporates the same by reference herein.

37. The defendant denies the allegations contained in paragraph 37.

38. The defendant denies the allegations contained in paragraph 38.

Count V – Negligence
(Against All Defendants)

39. The defendant repeats and reavers the responses to paragraphs 1 through 38 above and incorporates the same by reference herein.

40. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 40, and therefore denies the same and calls upon the plaintiff to prove the same if material.

41. The defendant denies the allegations contained in paragraph 41.

42. The defendant denies the allegations contained in paragraph 42.

Count V [sic] – Conspiracy
(Against All Defendants)

43. The defendant repeats and reavers the responses to paragraphs 1 through 42 above and incorporates the same by reference herein.

44. The defendant denies the allegations contained in paragraph 44.

45. The defendant denies the allegations contained in paragraph 45.

46. The defendant denies the allegations contained in paragraph 46.

Affirmative Defenses

FIRST DEFENSE

And further answering, the defendant says that the complaint fails to state a claim against this defendant upon which relief may be granted.

SECOND DEFENSE

And further answering, the defendant says that if the plaintiff proves that the plaintiff received the injuries and damages or either of them as alleged by the plaintiff, the same were in no way caused by this defendant, or by any person for whose negligence this defendant is legally responsible or answerable.

THIRD DEFENSE

And further answering, the defendant says that the plaintiff's conduct was negligent and said conduct contributed to cause the injuries and damages alleged such that the plaintiff is thereby barred from recovery or said recovery should be diminished in accordance with the provisions of the comparative negligence statute, G.L. c. 231.

FOURTH DEFENSE

And further answering, the defendant says that the plaintiff's claim is barred by G.L. c. 260, Limitation of Actions.

FIFTH DEFENSE

And further answering, the defendant says that the plaintiff's claims are barred by G.L. c. 152 as the parties were co-employees.

SIXTH DEFENSE

And further answering, the defendant says that the plaintiff's claims against the defendant have been released and any obligations or liability of the defendant have been satisfied and discharged.

SEVENTH DEFENSE

And further answering, the defendant says that the defendant was privileged and justified in her acts and conduct and used no more force than was necessary; wherefore, she is not liable to the plaintiff as alleged in the complaint.

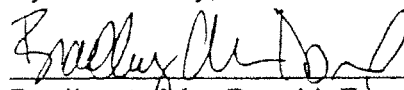
EIGHTH DEFENSE

And further answering, the defendant says that the plaintiff has given releases or covenants not to sue in good faith to other persons liable in tort for the same injury and damage alleged against this defendant, and such releases or covenants not to sue shall reduce the claim against this defendant to the extent of the amounts stipulated by said releases or covenants or the amounts of consideration paid therefore, whichever is greater.

Jury Claim

The defendant Florence Wilson demands a jury trial on all issues.

DEFENDANT,
By her attorney,



Bradley A. Mac Donald, Esq.

B.B.O. No. 310380

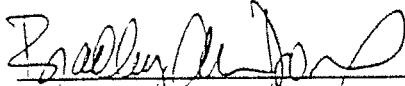
CUMMINGS, KING & MACDONALD

One Gateway Center, Suite 351

Newton, MA 02458

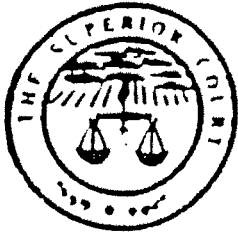
(617) 630-5100

CERTIFICATE OF SERVICE: I hereby certify that on April 25, 2002, I served the foregoing by first class mail, postage prepaid, on counsel of record: Jeffrey B. Renton, Esq., Gilbert & Renton, LLC, 23 Main Street, Andover, MA 01810; Lorna M. Hebert, Esq., Murphy, Hesse, Toomey & Lehane, LLP, P. O. Box 9126, Quincy, MA 02269-9126.



Bradley A. Mac Donald, Esq.

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION

No. 01-5506A

Robert Baratz, M.D.

Plaintiff(s)

v.

Teresa Mirabito, Brian Toomey
and Florence Wilson

Defendant(s)

[Signature]
THE CLERK ATTES
DEPUTY/SHERIFF
Middlesex County
2-7-07
DATE OF SERVICE

SUMMONS

Florence Wilson, 27 Indiana Terrace, Newton MA 02141

To the above-named Defendant:

You are hereby summoned and required to serve upon Jeffrey B. Renton, Esq.

plaintiff's attorney, whose address is Gilbert & Renton 23 Main St Andover, MA an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DeVecchio, Esquire, at Boston, the fifth day of February, in the year of our Lord two thousand and two

Michael Joseph Donovan

Clerk/Magistrate

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

COMPLAINTS ACTORNEY PLEASE CIRCLE TYPE OF ACTION INVOLVED:
CONTRACT TORT CONTRACT TORT OTHER

This document is a copy of the original filed with the court. It is not a substitute for the original. The original is the only one that should be used for any legal purpose.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 01-5506A

ROBERT BARATZ, M.D.)
Plaintiff,)

v.)

TERESA MIRABITO and)
FLORENCE WILSON,)
Defendants)
_____)

ANSWER AND COUNTERCLAIM OF DEFENDANT TERESA MIRABITO

Pursuant to Mass. Rs. Civ. P. 8(b) and 12(a), Defendant Teresa Mirabito ("Mirabito" or the "Defendant") answers the separately numbered paragraphs of Plaintiff's Robert Baratz's ("Dr. Baratz" or "Plaintiff") Complaint as follows:

INTRODUCTION

1. Defendant denies the allegations in paragraph one of the Complaint.

PARTIES

2. Defendant admits that Dr. Baratz is an individual and that, at relevant times, Dr. Baratz was employed at the Geiger-Gibson Health Center ("Geiger-Gibson"), which is owned by Harbor Health Services, Inc. ("Harbor Health") a Massachusetts corporation. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph two.

3. Defendant admits that Mirabito is an individual who resides at 33 Commercial Wharf, Boston, Suffolk County, Massachusetts. Defendant also admits that, at relevant times, Mirabito was a Nurse Practitioner and the Director of Clinical Operations at Geiger- Gibson.

4. Defendant admits that Brian Toomey ("Toomey") is an individual and denies that Toomey resides at 39 Willow Tree Hollow, West Tisbury, Barnstable County, Massachusetts. Defendant admits that Toomey served as Executive Director of Geiger-Gibson at relevant times.

5. Defendant admits that Defendant Florence Wilson ("Dr. Wilson") is an individual. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Dr. Wilson resides at 27 Indiana Terrace, Newton, Middlesex County, Massachusetts. Defendant admits that Dr. Wilson was previously employed by Harbor Health and admits that Dr. Wilson was not employed by Harbor Health during December, 1998. Defendant denies that Dr. Wilson assaulted Dr. Baratz.

VENUE AND JURISDICTION

6. Defendant admits that Mirabito resides in Suffolk County and denies the remaining allegations in paragraph six of the Complaint.

7. Defendant denies the allegations in paragraph seven of the Complaint.

FACTS

8. Defendant admits that from 1997 to 1999, Dr. Baratz worked for Harbor Health and denies that Harbor Health is located at 270 Mount Vernon Street in Dorchester. Defendant admits that Dr. Baratz first worked as Urgent Care Director for Harbor Health and later also became the Medical Director for Geiger-Gibson.

9. Defendant admits that during his employment, Dr. Baratz was supervised by and reported to Toomey and admits that Dr. Baratz held supervisory authority over Dr. Wilson while she was employed by Harbor Health.

10. Defendant admits that during 1997 and 1998, Mirabito had managerial responsibility for nurses and medical assistants. Defendant admits that during 1997 and 1998, Toomey had overall managerial responsibility for medical records at Geiger-Gibson. Defendant also admits that Toomey had overall managerial responsibility for the staff and day to day operations at Geiger-Gibson. Defendant denies the remaining allegations in paragraph ten of the Complaint.

11. Defendant admits that on or around March 30, 1998, Dr. Wilson's clinical privileges were suspended due to performance issues raised by Dr. Baratz and others.

12. Defendant admits that Toomey had full knowledge of, and assented to the decision to suspend Dr. Wilson's clinical privileges. Defendant admits that Mirabito had full knowledge of the suspension decision but denies that Mirabito had any power or authority with regard to the decision to suspend Dr. Wilson's clinical privileges.

13. Defendant admits that Dr. Wilson's clinical privileges were never reinstated after March 30, 1998.

14. Defendant admits that Dr. Wilson announced her resignation but denies that she announced it in or around June, 1998. Defendant denies that Dr. Wilson's last day of employment was in or around September, 1998.

15. Defendant admits that following her employment with Harbor Health, Dr. Wilson continued to go to Harbor Health, where she updated the medical records of her former patients. Defendant denies the remaining allegations in paragraph fifteen of the Complaint.

16. Defendant admits that Dr. Baratz complained to Toomey about Dr. Wilson updating the medical records of her former patients following her termination from employment at Harbor Health and denies the remaining allegations in paragraph sixteen of the Complaint.

17. Defendant denies the allegations in paragraph seventeen of the Complaint.

18. Defendant admits that Dr. Baratz spoke with Toomey about precluding Dr. Wilson from accessing patient records following her employment with Harbor Health and denies the remaining allegations in paragraph eighteen of the Complaint.

19. Defendant denies the allegations in paragraph nineteen of the Complaint.

20. Defendant denies the allegations in paragraph twenty of the Complaint.

21. Defendant admits that on December 3, 1998, Dr. Baratz observed Dr. Wilson sitting behind a desk at Geiger-Gibson with patient files in her possession. Defendant admits that Mirabito observed the same. Defendant also admits that Dr. Baratz confronted Dr. Wilson and told her that she was not permitted to have the patient files. Dr. Baratz then grabbed the patient files from Dr. Wilson, and walked toward his office. Defendant admits that, as Dr. Baratz walked toward his office, Dr. Wilson tugged at his arm in an attempt to obtain personal notes which Dr. Baratz also had taken. Defendant admits that the former Director of Human Resources, Velda McCrae, paged Toomey. Defendant denies the remaining allegations in paragraph twenty one of the Complaint.

22. Defendant admits that Dr. Baratz told Toomey that he wanted to report the incident involving Dr. Wilson to the police and to the Board of Registration of Medicine. Defendant also admits that Toomey told Dr. Baratz that he was not going make a report to either entity. Defendant denies the remaining allegations in paragraph twenty two of the Complaint.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph twenty three of the Complaint.

24. Defendant admits that Dr. Baratz resigned from Harbor Health pursuant to a severance agreement he entered into with Harbor Health. Defendant denies the remaining allegations in paragraph twenty four of the Complaint.

25. Defendant denies the allegations in paragraph twenty five of the Complaint.

COUNT I-ASSAULT
(AGAINST DEFENDANT FLORENCE WILSON)

26. Defendant repeats and incorporates by reference the answers contained in paragraphs 1-25 as if fully restated herein.

27. Defendant denies the allegations in paragraph twenty seven of the Complaint.

28. Defendant denies the allegations in paragraph twenty eight of the Complaint.

COUNT II-BATTERY
(AGAINST DEFENDANT FLORENCE WILSON)

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

30. Defendant denies the allegations in paragraph thirty of the Complaint.

31. Defendant denies the allegations in paragraph thirty one of the Complaint.

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

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

33. Defendant denies the allegations in paragraph thirty three of the Complaint.

34. Defendant denies the allegations in paragraph thirty four of the Complaint.

35. Defendant denies the allegations in paragraph thirty five of the Complaint.

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

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

37. Defendant denies the allegations in paragraph thirty seven of the Complaint.

38. Defendant denies the allegations in paragraph thirty eight of the Complaint.

COUNT V-NEGLIGENCE
(AGAINST ALL DEFENDANTS)

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

40. Defendant denies the allegations in paragraph forty of the Complaint.

41. Defendant denies the allegations in paragraph forty one of the Complaint.

42. Defendant denies the allegations in paragraph forty two of the Complaint.

COUNT VI-CONSPIRACY
(AGAINST ALL DEFENDANTS)

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

44. Defendant denies the allegations in paragraph forty four of the Complaint.

45. Defendant denies the allegations in paragraph forty five of the Complaint.

46. Defendant denies the allegations in paragraph forty six of the Complaint.

CAUSES OF ACTION

Defendant incorporates by reference here her answers to paragraphs 1-46 and denies that she is liable for the Plaintiff's harm under any of the causes of action set forth in the Complaint.

FIRST DEFENSE

The Complaint fails to state a legal claim against Defendant upon which relief can be granted.

SECOND DEFENSE

The Plaintiff's claims are barred by estoppel.

THIRD DEFENSE

Counts III (Intentional Infliction of Emotional Distress), IV (Negligent Infliction of Emotional Distress), and V (Negligence) are barred because Plaintiff failed to exhaust his administrative remedies.

FOURTH DEFENSE

Counts III (Intentional Infliction of Emotional Distress), IV (Negligent Infliction of Emotional Distress), and V (Negligence) are barred under the exclusivity provision of G.L. c.152, the Workers' Compensation Act.

FIFTH DEFENSE

This Court lacks subject matter jurisdiction over Counts III (Intentional Infliction of Emotional Distress), IV (Negligent Infliction of Emotional Distress), and V (Negligence) because such claims are properly brought before the Industrial Accidents Board.

SIXTH DEFENSE

The Complaint is barred by the statute of limitations.

SEVENTH DEFENSE

The Complaint fails as to Count VI² as the Plaintiff lacks standing to bring the claim.

EIGHTH DEFENSE

If the Plaintiff suffered harm or damage, as alleged, such harm or damage was caused in whole or in part by the negligence of the Plaintiff.

NINTH DEFENSE

Counts III, IV, V, and VI are barred by release as Plaintiff was a party to a contract with Harbor Health which contained a release of all claims against Harbor Health and its employees for actions that occurred prior to the date of execution.

TENTH DEFENSE

Counts III, IV, V, and VI are barred by accord and satisfaction as Plaintiff's claims were satisfied by the terms of a contract between Plaintiff and Harbor Health.

ELEVENTH DEFENSE

If the Plaintiff suffered harm or damage, as alleged, such harm or damage was caused by acts or omissions of a third party or parties for whose conduct the Defendant was not and is not legally responsible.

TWELFTH DEFENSE

Counts III, IV, and V are barred under the doctrine of injury by fellow servant.

THIRTEENTH DEFENSE

Counts III, IV, V, and VI are barred as Plaintiff waived such claims.

² Plaintiff's Complaint is misnumbered and a Count V appears twice, once for negligence and subsequently for conspiracy. In the interest of clarity, Defendant has renumbered the conspiracy count as Count VI.

FOURTEENTH DEFENSE

The Complaint is barred by laches

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully requests the Court to dismiss with prejudice the Complaint in its entirety and to grant her attorney's fees and costs pursuant to M.G.L.c.231, §6F, and for such further relief as the Court deems just and appropriate.

DEFENDANT'S COUNTERCLAIMS

PARTIES

1. Defendant Mirabito is an individual who resides at 33 Commercial Wharf, Boston, Suffolk County, Massachusetts. At all relevant times, Mirabito was a Nurse Practitioner and the Director of Clinical Operations at Geiger-Gibson.

2. Harbor Health is a Massachusetts corporation which is located at 250 Mount Vernon Street in Dorchester, Suffolk County, Massachusetts. Harbor Health operates several health centers, including Geiger-Gibson.

3. Plaintiff Dr. Baratz is an individual who resides at 159 Bellevue Street, Newton, Middlesex County, Massachusetts. At all relevant times, Dr. Baratz was employed by Harbor Health working as Urgent Care Director for Harbor Health and Medical Director at Geiger-Gibson.

FACTS

1. On or about September 3, 1999, Dr. Baratz entered into a severance agreement ("Severance Agreement") with Harbor Health which contained a general release. Pursuant to the

Severance Agreement, Dr. Baratz fully released "Harbor Health Services and all of its agents, officers, directors, and employees from any and all claims . . . arising from his employment . . ."

See Severance Agreement attached hereto as Exhibit A.

2. On or about November 30, 2001, Dr. Baratz filed the present lawsuit containing six counts.

3. The conduct which provides the basis for each count occurred prior to Dr. Baratz's execution of the Severance Agreement and was covered by the release contained therein.

4. The Defendant Mirabito is an employee of Harbor Health and was an employee of Harbor Health at the time the Severance Agreement was executed.

5. Defendant Mirabito was and is covered by the release contained in the Severance Agreement.

COUNT I – BREACH OF CONTRACT

6. Defendant repeats and incorporates by reference the allegations contained in Paragraphs 1 through 5 as if fully restated herein.

7. Defendant Mirabito is a third party beneficiary of the Severance Agreement.

8. Dr. Baratz's filing of the Complaint constitutes a breach of the Severance Agreement.

9. As a result of Dr. Baratz's breach of the Severance Agreement, Defendant Mirabito has suffered damages.

WHEREFORE, Defendant demands judgment against the Plaintiff and requests the following relief: compensatory, consequential and exemplary damages, costs and attorneys fees and/or every other form of damages available and as the court deems just and proper.

COUNT II - COVENANT OF GOOD FAITH AND FAIR DEALING

10. Defendant repeats and incorporates by reference the allegations contained in Paragraphs 1 through 9 as if fully restated herein.

11. A duty of good faith and fair dealing is implicit in the performance of every contract.

12. By accepting the consideration provided to him under the terms of the Severance Agreement and proceeding to violate the same, Plaintiff has violated the covenant of good faith and fair dealing.

13. As a consequence of Plaintiff's actions, Defendant has suffered damages.

WHEREFORE, Defendant demands judgment against the Plaintiff and requests the following relief: compensatory, consequential and exemplary damages, costs and attorneys fees and/or every other form of damages available and as the court deems just and proper.

COUNT IV- ATTORNEYS FEES AND COSTS

14. Defendant repeats and incorporates by reference the allegations contained in Paragraphs 1 through 13 as if fully restated herein.

15. G.L. c.231, §6F provides for attorneys fees and costs for frivolous actions.

16. The present action is frivolous and was brought in bad faith causing Defendant to suffer damage.

WHEREFORE, Defendant demands judgment against the Plaintiff and requests the court to grant the Defendant attorneys fees and costs and every other form of damages available and as the court deems just and proper.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
OF THE TRIAL COURT

ROBERT BARATZ, M.D.,
Plaintiff,

v.

TERESA MIRABITO, BRIAN TOOMEY
and FLORENCE WILSON,
Defendants.

C. A. No. 01-5506A

STIPULATION OF DISMISSAL WITH PREJUDICE AS TO ALL PARTIES

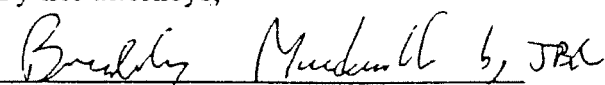
Pursuant to Mass. R. Civ. P. 41(a)(1), Plaintiff Robert Baratz, M.D., and Defendants Teresa Mirabito, Brian Toomey, and Florence Wilson, hereby agree and stipulate that all claims and counterclaims in this case hereby be dismissed with prejudice, all appeal rights waived, with each party to bear its own attorney's fees and costs.

PLAINTIFF ROBERT BARATZ, M.D.,
By his attorneys,



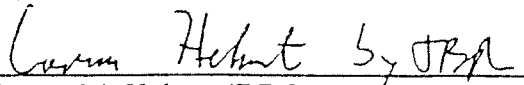
Jeffrey B. Renton (BBO # 265240)
GILBERT & RENTON LLC
23 Main Street
Andover, MA 01810
Telephone: (978) 475-7580

DEFENDANT FLORENCE WILSON,
By her attorneys,



Bradley A. MacDonald (BBO # 310380)
CUMMINGS, KING & MACDONALD
One Gateway Center, Suite 351
Newton, MA 02458
Telephone: (617) 630-5100

DEFENDANTS TERESA MIRABITO
and BRIAN TOOMEY,
By their attorneys,



Lorna M. Hebert (BBO # 559493)
MURPHY, HESSE, TOOMEY & LEHANE, LLP
300 Crown Colony Drive, Suite 410
P.O. Box 9126
Quincy, MA 02269-9126
Telephone: (617) 479-5000

DATED: April 14, 2003

RECEIVED

JUN 12 2002

DEPT. OF REGULATION & LICENSING
DIVISION OF ENFORCEMENT

Detail of Services

In the Matter of Dr. Waters Case # 97 Med 101; 97 Med 108

<u>Date</u>	<u>Service</u>	<u>Time in Hr/Min.</u>	<u>Expense</u>
3/14/02	travel to Wisc 11AM-8PM	9:00	
3/15/02	travel to Wisc 8AM-8PM	12:00	
Total	21.0 hrs @ 175/hr		3675.00
Travel expenses for 3/14-3/15 Boston to Madison (see attached sheet for details)			701.30
Total Mar 02		\$4376.30	

Enclosure 7

Sarah Chapman

From: Debbie Coolidge [dcoolidge@hbs.net]
Sent: Monday, October 27, 2003 10:13 AM
To: Sarah Chapman
Cc: jurimed2@earthlink.net
Subject: Fw: Kadile hearing resumption: cross of Dr.
Importance: High

----- Original Message -----

From: Raymond M. Roder
To: 'dcoolidge@hbs.net' ; 'lterry@wcoil.com'
Sent: Friday, October 24, 2003 2:25 PM
Subject: FW: Kadile hearing resumption: cross of Dr. Baratz

Ray, Here's more for you to consider on the matter of costs to settle. I'm still thinking \$20,000 is the right ball park. Ray

-----Original Message-----

From: Thexton, Arthur [mailto:Arthur.Thexton@drl.state.wi.us]
Sent: Friday, October 24, 2003 2:44 PM
To: Schweitzer, John
Cc: Frank R. Recker; Raymond M. Roder
Subject: Kadile hearing resumption: cross of Dr. Baratz

I have the below message from Dr. Baratz. Note that this is going to be extremely expensive, and I am absolutely not going to waive any costs resulting from this, even if we settle. I need this to be very clear. Of course, I am available Monday and Tuesday to work on settlement. But it appears that Wednesday is the deadline.

Arthur Thexton
Prosecuting Attorney
Wisconsin Department of Regulation & Licensing
1400 E. Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
608-266-9814
FAX 266-2264
arthur.thexton@drl.state.wi.us

-----Original Message-----

From: Robert S. Baratz, MD, PhD [mailto:imcsi@rcn.com]
Sent: Friday, October 24, 2003 12:55 PM
To: Thexton, Arthur
Subject: Re: Kadile hearing resumption

message received.

It will have to be by phone. I cannot travel on those days as I have scheduled activities on the weekend of Nov 8,9. My brother's 60th birthday is then, and my family has tickets to a play and a dinner planned. It is also the weekend of PRI-MED, the primary care CME conference that is held once a year (FRI-SUN). I am tentatively scheduled to be in California for testimony for the Calif. Dental Assn. on Wed evening (travel), Thursday and Friday (returning on the red eye).

I am on call Monday and Tuesday and the rest of the week (evenings). As things stand I will have to close the health center as I was the scheduled provider for Mon 10th and Tues the 11th. I will, however, try to

10/27/2003

arrange coverage. I will try to hold off on that for a few days next week, but to gain a replacement I have to get working on it by Wed of next week at the latest.

Once I commit to those days (10 and 11), I will have to bill the State of Wisconsin for my time as I will otherwise take a bath on costs, with no income at all. As it is my fee from the State of Wisconsin only pays for my time, but not lost overhead.

Robert S. Baratz, MD, PhD, DDS
159 Bellevue Street
Newton, MA 02458-1834

direct phone: 617-594-7776
direct fax: 617-630-1143

E-mail messages can be electronically altered
Unless otherwise noted, this message is confidential and for the recipient only.----- Original Message -----

From: Thexton, Arthur
To: Robert Baratz (Robert S. Baratz, MD, PhD [imcsi@rcn.com])
Sent: Friday, October 24, 2003 11:14 AM
Subject: Kadile hearing resumption

You should tentatively schedule yourself to be available for testimony by telephone for Monday and Tuesday, Nov. 10 and 11. Of course, the ALJ has expressed a preference for in-person testimony, but if that is not possible, he will accept telephone testimony. And, we should have all the rest of your direct testimony filed by a week beforehand.

Arthur Thexton
Prosecuting Attorney
Wisconsin Department of Regulation & Licensing
1400 E. Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
608-266-9814
FAX 266-2264
arthur.thexton@drl.state.wi.us

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JUN 12 2002

DEPT. OF REGULATION & LICENSING
DIVISION OF ENFORCEMENT

Detail of Services

In the Matter of Dr. Waters Case # 97 Med 101; 97 Med 108

<u>Date</u>	<u>Service</u>	<u>Time in Hr/Min.</u>	<u>Expense</u>
3/14/02	travel to Wisc 11AM-8PM	9:00	
3/15/02	travel to Wisc 8AM-8PM	12:00	
Total	21.0 hrs @ 175/hr		3675.00
Travel expenses for 3/14-3/15 Boston to Madison (see attached sheet for details)			701.30
Total Mar 02		\$4376.30	

Enclosure 7

Sarah Chapman

From: Debbie Coolidge [dcoolidge@hbs.net]
Sent: Monday, October 27, 2003 10:13 AM
To: Sarah Chapman
Cc: jurimed2@earthlink.net
Subject: Fw: Kadile hearing resumption: cross of Dr.
Importance: High

----- Original Message -----

From: Raymond M. Roder
To: 'dcoolidge@hbs.net' ; 'lterryc@wcoil.com'
Sent: Friday, October 24, 2003 2:25 PM
Subject: FW: Kadile hearing resumption: cross of Dr. Baratz

Ray, Here's more for you to consider on the matter of costs to settle. I'm still thinking \$20,000 is the right ball park. Ray

-----Original Message-----

From: Thexton, Arthur [mailto:Arthur.Thexton@drl.state.wi.us]
Sent: Friday, October 24, 2003 2:44 PM
To: Schweitzer, John
Cc: Frank R. Recker; Raymond M. Roder
Subject: Kadile hearing resumption: cross of Dr. Baratz

I have the below message from Dr. Baratz. Note that this is going to be extremely expensive, and I am absolutely not going to waive any costs resulting from this, even if we settle. I need this to be very clear. Of course, I am available Monday and Tuesday to work on settlement. But it appears that Wednesday is the deadline.

Arthur Thexton
Prosecuting Attorney
Wisconsin Department of Regulation & Licensing
1400 E. Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
608-266-9814
FAX 266-2264
arthur.thexton@drl.state.wi.us

-----Original Message-----

From: Robert S. Baratz, MD, PhD [mailto:imcsi@rcn.com]
Sent: Friday, October 24, 2003 12:55 PM
To: Thexton, Arthur
Subject: Re: Kadile hearing resumption

message received.

It will have to be by phone. I cannot travel on those days as I have scheduled activities on the weekend of Nov 8,9. My brother's 60th birthday is then, and my family has tickets to a play and a dinner planned. It is also the weekend of PRI-MED, the primary care CME conference that is held once a year (FRI-SUN). I am tentatively scheduled to be in California for testimony for the Calif. Dental Assn. on Wed evening (travel), Thursday and Friday (returning on the red eye).

I am on call Monday and Tuesday and the rest of the week (evenings). As things stand I will have to close the health center as I was the scheduled provider for Mon 10th and Tues the 11th. I will, however, try to

10/27/2003

arrange coverage. I will try to hold off on that for a few days next week, but to gain a replacement I have to get working on it by Wed of next week at the latest.

Once I commit to those days (10 and 11), I will have to bill the State of Wisconsin for my time as I will otherwise take a bath on costs, with no income at all. As it is my fee from the State of Wisconsin only pays for my time, but not lost overhead.

Robert S. Baratz, MD, PhD, DDS
159 Bellevue Street
Newton, MA 02458-1834

direct phone: 617-594-7776
direct fax: 617-630-1143

E-mail messages can be electronically altered
Unless otherwise noted, this message is confidential and for the recipient only.----- Original Message ----

From: Thexton, Arthur
To: Robert Baratz (Robert S. Baratz, MD, PhD [imcsi@rcn.com])
Sent: Friday, October 24, 2003 11:14 AM
Subject: Kadile hearing resumption

You should tentatively schedule yourself to be available for testimony by telephone for Monday and Tuesday, Nov. 10 and 11. Of course, the ALJ has expressed a preference for in-person testimony, but if that is not possible, he will accept telephone testimony. And, we should have all the rest of your direct testimony filed by a week beforehand.

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FAX 266-2264
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10/27/2003

e-mail as well as any attachments.

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1 A. There's also a letter from the senior associate
 2 commissioner of the FDA saying I worked for them.
 3 Q. All right.
 4 LAW JUDGE: Mr. Thexton's interruption is probably
 5 not proper. But it might not be bad to handle this at this
 6 moment. If you wish to see it, you may. Otherwise we can
 7 come back to it.
 8 MR. RECKER: I've got too much to do, your honor.
 9 LAW JUDGE: That's fine. Thank you.
 10 Q. You further go on, Doctor, in this 26, you say --
 11 quote -- "He" -- that being you -- "He is currently working
 12 with the State of Wisconsin regarding chelation therapy and
 13 use of hair analysis." -- end quote.
 14 A. I didn't make that statement. The --
 15 Q. Who --
 16 A. The people who wrote that statement made that
 17 statement.
 18 Q. So you disavow any knowledge of that statement?
 19 A. I disavow writing that statement because I didn't
 20 write that statement. It was written by Eastern Research
 21 Associates who are -- Eastern Research Group who -- who made
 22 the whole pamphlet. This was the meeting announcement.
 23 They did not show this to me for review. They extracted
 24 these things from my CV and from our discussions.
 25 Q. So --

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1 A. I never saw this before it was printed.
 2 Q. So either on your CV or in your discussions you
 3 indicated that you were currently working with the State of
 4 Wisconsin regarding chelation therapy and hair analysis?
 5 A. I did.
 6 Q. The next sentence, Doctor, says -- quote -- "Dr.
 7 Baratz is the national spokesperson for the American Dental
 8 Association regarding alleged mercury toxicity." -- end
 9 quote. Was that a true statement at the time that was made?
 10 A. No, it wasn't. And I didn't make that statement.
 11 They -- they've mistranscribed what it says on my CV.
 12 Q. Okay.
 13 A. It says the dates I was working for the ADA on my
 14 CV.
 15 Q. Okay. And that mid 1980's, was it not, Doctor?
 16 A. It was in the 80's and early 90's if I'm not
 17 mistaken.
 18 Q. Doctor, the last sentence, "He has published more
 19 than 150 papers." That's another mistake, isn't it?
 20 A. That is an error on their part and they -- they --
 21 they cut off the full statement as it appears.
 22 Q. Now, Doctor, we talked about the propensity for
 23 telling the truth and your experience as a witness. It's
 24 true, is it not, that you have been a witness in legal
 25 proceedings in a court of law, correct?

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1 A. Yes.
 2 Q. And administrative hearings such as this, correct?
 3 A. Yes.
 4 Q. And you've given multiple number of depositions in
 5 various legal proceedings, correct?
 6 A. A relatively small number.
 7 Q. And obviously you understand how important it is
 8 to tell the truth in any legal proceeding?
 9 A. It's important to tell the truth as you know it.
 10 Q. Now, in addition to being a witness you yourself
 11 have also been a plaintiff as you testified in the
 12 deposition of this matter in several cases, correct?
 13 A. I've been a plaintiff in some legal proceedings.
 14 Q. Right. And I believe you indicated in your
 15 deposition -- if you want -- that would be more fair, I'll
 16 hand you the deposition.
 17 MR. RECKER: Can I have the August deposition?
 18 Q. Do you recall indicating that you were a plaintiff
 19 in a legal action you brought against Harvard Health
 20 Services in 1983 or 1984?
 21 A. In -- Harvard Health Service?
 22 Q. Harvard Health Services.
 23 A. That was the name of it. That's not -- incorrect.
 24 Q. You didn't bring suit against Harvard Health
 25 Services?

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1 A. That's not the name of the suit.
 2 Q. Look at the deposition if you will, Doctor. Page
 3 59. Harvard Community Health. Is that better?
 4 MR. THEXTON: Do you mean page 58, counselor?
 5 Q. I'm sorry, page 59, line 22 -- quote -- "Are there
 6 any other lawsuits that you've brought as a plaintiff in
 7 regard to anything?" "Yes." "What other?" "I've had some
 8 breach of contract activity." "When?" "Pardon me?"
 9 "When?" "Answer: One back in the early 80's with Harvard
 10 Community Health Plan which was adjudicated and the jury
 11 found that they had breached the contract." "Is it early
 12 80's?" "Answer: '83, '84." "Question: Any other
 13 litigation you brought as a plaintiff?" "Answer: That's
 14 been filed with the courts? Just that? The litigation I
 15 told you about that's involving my arm." Now the litigation
 16 you told about previously in the deposition involving your
 17 arm was against Dr. Florence Wilson, correct?
 18 A. She was one of the defendants.
 19 Q. Okay. Now, Doctor, when you said just that
 20 litigation I told you about that's involving my arm you knew
 21 that was a lie at the time you answered it, didn't you?
 22 A. Excuse me?
 23 Q. I said you knew your answer was a lie at the time
 24 you answered it, did you not?
 25 A. What -- I'm not sure what your question is, sir.

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1 LAW JUDGE: If you insist on answering the
2 question that way we'll leave the answer. If you would like
3 to ask a little bit clearer question, in what you're
4 alleging it was a lie then you'll probably get a better
5 answer.

6 Q. Doctor, in that deposition you recalled a suit you
7 had filed in 1983 or 1984 against Harvard Community,
8 correct?

9 A. Yes.

10 Q. And then recalled a suit you had filed against Dr.
11 Wilson in 2001, correct? "Answer: That's been filed with
12 the courts? Just that? In the litigation I told you about
13 that's involving my arm." -- end quote. Two suits as a
14 plaintiff, Dr. Baratz. You very clearly testified there
15 were two suits as a plaintiff and I'm saying that was a lie,
16 was it not?

17 MR. THEXTON: Your Honor, I'm going to object to
18 the form of the question. Clearly if you read the next six
19 lines of the -- of the deposition that was not his entire
20 statement. And this is --

21 LAW JUDGE: The objection's overruled. Let's work
22 our way through it and it -- he characterized something as a
23 lie. It gets us into an emotional realm but I -- I can't
24 stop you from doing that. And I'm not saying it's
25 incorrect.

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1 former dean of the Boston College Law School.

2 Q. Dean Richard Huber, correct?

3 A. His name was Huber.

4 Q. And that suit was filed in 1992, correct?

5 A. I don't recall when it was filed specifically.

6 Q. Doctor, that suit arose out of your allegations
7 that you were jogging and you ran into the back of his car?

8 Correct?

9 A. That's an incorrect characterization of the
10 lawsuit.

11 Q. Well, you were jogging and you ran into his car,
12 is that correct?

13 A. After he waved for me to go ahead and then he
14 accelerated and -- to the point where I couldn't stop when I
15 was running and I crashed into this car, that is correct.

16 (Document marked as Exhibit 28 for identification)

17 Q. Doctor, I'm handing you what's been marked Exhibit
18 28. I'll represent to you that this -- these are docket
19 sheets from the trial courts of Massachusetts. If you would
20 turn to page three where it's captioned Baratz v. Huber?
21 Does it refresh your recollection you filed that suit in
22 October of 1992?

23 A. I have to look at the dates.

24 Q. All right, it'll speak for itself. Doctor, let me

25 ask you this. The former dean at the time you filed the

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1 Q. Doctor --

2 LAW JUDGE: Dr. Baratz will -- Dr. Baratz will
3 have to deal with it as best he can.

4 Q. Dr. Baratz, nowhere in the deposition did you tell
5 about the suit you brought against the Dean of Boston
6 College Law School, did you?

7 A. Excuse me?

8 LAW JUDGE: Could you repeat the question, please?

9 Q. Doctor, do you have a hearing problem? Am I not
10 speaking loud enough or what?

11 A. I answered the questions that were put to me that
12 day. In the framework and in the -- the way they were asked
13 and in the spirit in which they were asked and I did the
14 best of my knowledge answer the questions.

15 Q. Let's let --

16 A. Mr. Seeley was doing --

17 Q. -- the judge decide.

18 A. -- a deposition. And if he didn't follow up on a
19 question then I don't know to respond to that. I answered
20 his questions as best I could the way they were phrased to
21 me.

22 Q. Umm hmm. Let's talk about the suit you filed
23 against the dean of the Boston College Law School, which
24 happened in 1992, correct, Doctor?

25 A. I didn't file a suit against the dean. It was the

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1 suit was about -- he was over 70 years old, wasn't he?

2 A. I believe so.

3 Q. And you alleged injuries to your arms and your
4 hands, correct?

5 A. Those are part of what happened.

6 Q. Right. And you currently have alleged injuries to
7 your arms based upon the alleged conduct of Dr. Wilson,
8 isn't that correct?

9 A. I'm sorry? I'm not sure I understand your
10 question. Currently where?

11 Q. Well, I believe you have a workers comp claim
12 pending?

13 A. That claim is against the employer.

14 Q. Doctor, we'll get to that later. But did you not
15 file and allege that you were assaulted by a co-employee?

16 A. I stated I was.

17 Q. Okay.

18 A. Actually, no, she was a former employee. She was
19 no longer working for the agency at the time of this
20 incident.

21 Q. But that's not what you said on your claim, is it?

22 A. I don't have the claim in front of me.

23 Q. Well, you will have in a minute. You don't
24 recall?

25 A. It was filed by my attorney.

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1 Q. Okay. Oh, excuse me, Doctor. You don't recall
 2 signing your name and writing it in yourself?
 3 A. I don't recall seeing that recently. It was
 4 several years ago.
 5 Q. It was December 2nd of '02, wasn't it?
 6 A. I don't recall seeing it recently and I don't know
 7 what it specifically says.
 8 Q. Well, we'll get to that later. In any event the
 9 lawsuit you filed against the former dean of the law school
 10 resulted from your jogging into his car when he was turning
 11 off Center Street into the faculty parking lot, correct?
 12 A. No, he was turning into the main entrance. I
 13 wasn't jogging at the time. I was running at high speed.
 14 And there's a major difference.
 15 Q. Please explain what that difference is?
 16 A. Well, it's the difference between trying to stop
 17 when you're going 30 miles an hour versus trying to stop
 18 when you're walking.
 19 Q. Were you going 30?
 20 A. I wasn't going 30 but I was running as fast as I
 21 could.
 22 Q. Now, Doctor, you -- I'm suggesting reasons why you
 23 might have forgotten this in your deposition?
 24 A. I didn't forget it at all.
 25 Q. Oh, you didn't?

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1 whole thing was phrased and where it began and where the
 2 line of questioning began.
 3 LAW JUDGE: Are you saying you felt that it had
 4 been alluded to or covered in previous -- in the previous 58
 5 pages somewhere?
 6 A. Yes, or in --
 7 LAW JUDGE: That's --
 8 A. Or in declaration or whatever. Something Mr.
 9 Seeley was well aware of.
 10 LAW JUDGE: Okay, that was the answer I thought
 11 you were giving. I just want it on the record. Thank you.
 12 Q. Doctor, you implored the police to file leaving
 13 the scene of an accident charges against Dean Huber, did you
 14 not?
 15 A. Absolutely, because he did.
 16 Q. He did?
 17 A. He did.
 18 Q. He pulled into the parking lot?
 19 A. He pulled way into the back parking lot. I had no
 20 idea who he was or even what he was.
 21 Q. I thought you said he stopped and waved you on?
 22 A. If we wish to retry this case, we may.
 23 Q. Well, we'll get to that part. Let me just go on
 24 --
 25 LAW JUDGE: No, I'm going -- I'm going to

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1 A. It wasn't asked.
 2 Q. "Any other litigation that you brought as a
 3 plaintiff?" question. "Answer: That's been filed with the
 4 courts? Just that and the litigation I told you about
 5 that's involving my arm." How did that escape, Dr. Baratz?
 6 A. I think we had a discussion of that Dr. Seeley --
 7 Mr. Seeley and us in another part of the proceedings. That
 8 was my recollection. Now maybe I'm not recalling that
 9 specifically.
 10 Q. Okay. In any event you --
 11 A. But in the context in which he phrased the
 12 question that was the way it was -- that was the answer that
 13 he was looking for. He wanted to know the answer to his
 14 question and I gave him the best answer I could.
 15 Q. You just thought the lawsuit against the former
 16 dean was exempt from the question?
 17 A. No, I did not.
 18 Q. Okay. Doctor --
 19 LAW JUDGE: I'd like to get a fuller answer on
 20 that one, please.
 21 MR. RECKER: Sure.
 22 LAW JUDGE: Would you -- would you give us more on
 23 that, Dr. Baratz? Why -- why you did not mention the suit
 24 against Dean Huber at that point?
 25 A. Well, I have to go back and look at the way this

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1 interrupt here and ask how far afield we're going on this?
 2 MR. RECKER: We're going to credibility and why
 3 this witness might potentially lie under oath.
 4 LAW JUDGE: Based on his leaving it out of this
 5 deposition? Is that what it's -- you're hanging this on,
 6 that it was not mentioned in this deposition?
 7 MR. RECKER: Correct.
 8 LAW JUDGE: And you're suggesting there were
 9 reasons for doing that?
 10 MR. RECKER: Correct.
 11 LAW JUDGE: All right, I won't interrupt again for
 12 a while. Go ahead.
 13 Q. Dr. Baratz, you did implore the police to issue a
 14 leaving the scene of an accident citation, correct?
 15 A. I -- I did.
 16 Q. And they refused, correct?
 17 A. I'm not sure what they did.
 18 Q. Well, do you recall appealing that refusal to the
 19 magistrate?
 20 A. I may have.
 21 Q. And he refused, correct?
 22 A. I think that that may have been case --
 23 Q. And then you appealed --
 24 A. -- because of the status of the person involved.
 25 Q. And then you appealed the magistrate's decision

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1 directly to the judge and the judge refused, correct?
 2 A. I don't remember the details at this point. It
 3 was -- it was ten years ago.
 4 Q. Have you ever been accused of being a vindictive
 5 person?
 6 A. No.
 7 Q. Okay. In any event, you pursued this lawsuit for
 8 three years and it finally went to trial, correct?
 9 A. Yes, it did.
 10 Q. And on November 1st, 1995 the jury found in favor
 11 of Mr. Huber?
 12 A. They didn't find him guilty.
 13 Q. You lost your suit, correct?
 14 A. They didn't find him guilty.
 15 LAW JUDGE: That's a characterization. I don't
 16 think you should argue over it.
 17 MR. RECKER: Okay.
 18 Q. And they awarded you to pay costs, correct?
 19 A. They may have.
 20 Q. Well, you can look at page 06 on Exhibit 28, line
 21 19. "Judgment is ordered and judged the plaintiff, Robert
 22 S. Baratz take nothing, that the action be dismissed on the
 23 merits and that the defendant recover of the plaintiff his
 24 costs of the action." Now, do you recall?
 25 A. I've never seen this before.

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1 Q. Independent of this document do you recall that
 2 now?
 3 A. No.
 4 Q. Doctor, when you were answering Mr. Seeley's
 5 questions in this deposition of August '02 did you think he
 6 was just talking about breach of contract activity?
 7 A. I have to go back to the context of the question
 8 again.
 9 Q. Well, you failed to mention another suit, didn't
 10 you?
 11 MR. THEXTON: Well, objection to the question.
 12 LAW JUDGE: Basis?
 13 MR. THEXTON: There is -- it is totally
 14 unreferenced and it is argumentative. Really, I mean,
 15 another suit? What is he talking about?
 16 LAW JUDGE: I'll allow the witness to answer that
 17 question. If he doesn't recognize it, then Mr. Recker will
 18 have to do a little more leading.
 19 Q. Doctor, when you sued Harvard Community Services
 20 -- is that the proper name --
 21 A. No.
 22 Q. What is the proper name?
 23 A. Harvard Community Health Plan.
 24 Q. All right. You were employed for Harvard
 25 Community Health Plan part time as a dentist, right?

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1 A. I worked 20 hours a week.
 2 Q. And they fired you?
 3 A. The director of that department --
 4 Q. Yes or no?
 5 A. -- violated my contract and terminated employment
 6 in -- in -- in the context of that employment.
 7 Q. And you sued --
 8 A. Without cause.
 9 Q. And you sued them for breach of contract?
 10 A. Correct.
 11 Q. Former employer, correct?
 12 A. Correct. And won.
 13 Q. Now, you sued another former employer, Tufts
 14 University, did you not?
 15 A. I did.
 16 Q. And if you'll turn to page eight, we can look at
 17 that docket entry.
 18 LAW JUDGE: Let me ask Mr. Recker, how is this
 19 relevant? This seems to be a contract action and he does
 20 mention that there were contract issues. Is this --
 21 MR. RECKER: He --
 22 LAW JUDGE: -- a credibility issue?
 23 MR. RECKER: Absolutely.
 24 LAW JUDGE: How?
 25 MR. RECKER: He mentions one suit he recalled '83,

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1 '84. But he conveniently omits another suit against another
 2 former employer ten years later.
 3 A. Not so.
 4 LAW JUDGE: Just a moment. We've moved onto a
 5 part of the deposition that I'm not sure we looked at
 6 before. I saw the -- Dr. Baratz said, "I've had some breach
 7 of contract activity." So, I mean, that is a positive
 8 statement in that deposition.
 9 MR. RECKER: Go on, your honor, and read --
 10 LAW JUDGE: And we haven't gotten to that? Okay.
 11 MR. RECKER: And it's all about discussions and
 12 resolutions between attorneys without going to the courts.
 13 LAW JUDGE: This would be on --
 14 MR. THEXTON: That's not what he says. That is
 15 not -- a misrepresentation of what the --
 16 LAW JUDGE: Yeah, we need --
 17 MR. THEXTON: -- deposition says.
 18 LAW JUDGE: We need to have that foundation. I'm
 19 sorry, Mr. Recker, before we cross-examine him on that, I --
 20 you need to show me what he says in the deposition.
 21 MR. RECKER: Well, I already pointed to his
 22 express, unequivocal answer, "Just that," referring to the
 23 1983 Harvard suit, "And the litigation that I told you about
 24 that's involving my arm" period. Unequivocal response.
 25 LAW JUDGE: Okay, perhaps it wasn't asked and

Page 1041

1 answered. But on the same page I did notice on page 60 Dr.
2 Baratz said, "I've had some breach of contract activity."
3 And is that -- I'm -- give me a second to read this. Oh.
4 "Any other litigation that you brought as a plaintiff?" And
5 then at the bottom of page 60 it says, "There have been some
6 breach of contracts here and there, but they have been
7 resolved." Is that -- that's where we are?

8 MR. RECKER: Correct.

9 LAW JUDGE: So this was one that was not resolved?

10 MR. RECKER: Correct.

11 MR. THEXTON: Your honor, that answer continues
12 onto the first two lines of the next page which it is
13 important to read.

14 LAW JUDGE: All right. "But they have been
15 resolved with attorney/attorney discussions. To the best of
16 my knowledge I'm not sure the lawsuit was actually filed."

17 Q. "Question: What other breach of contract issues
18 have you had?" "Answer: They relate to business
19 activities." "Question: I'm sorry?" "Answer: They relate
20 to business activities." "Question: What business?" "Mr.
21 Thexton: Counsel, unless it was filed, I fail to see how it
22 could conceivably lead to relevant admissible evidence." I
23 submit, your honor, it was filed and it wasn't responded to.

24 LAW JUDGE: Okay, this does go on for a couple
25 pages. I just -- if there's going to be a contradiction of

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1 A. We had a number of meetings with counsel and the
2 case was settled.

3 Q. Would you turn to page eight, please, docket
4 sheet, caption Baratz, MD. versus Tufts University?

5 A. Yes.

6 Q. Now, Tufts was another employer that employed you
7 as a dentist, correct?

8 A. They employed me as a faculty member.

9 Q. In the dental faculty, correct?

10 A. It was the dental school, that is correct.

11 Q. Thank you. And they terminated your employment,
12 correct?

13 A. No, they did not. They terminated my pay. I was
14 still on the faculty for another two years after they
15 stopped paying me. The dean reneged on his contract to pay
16 me. That's what this action was about. I had nothing to do
17 with leaving the school.

18 Q. Another --

19 A. I did not leave the school.

20 Q. So this was another employer who broke their deal
21 with you?

22 A. He broke -- this particular dean broke his deal
23 with many people and other people engaged in the same sort
24 of activity. He failed to pay them.

25 Q. And that lasted about two years, did it not?

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1 the previous testimony, I need to define it here. We do get
2 through --

3 MR. THEXTON: The best that we have is he's not
4 sure.

5 LAW JUDGE: And -- and we do get down to page 62,
6 whether the statement -- I'm sorry, I'm jumping around in
7 the transcript. If any of you wants to fill it in, you can.

8 But in the middle of page 62 he does say contract issues,
9 that sort of thing. That they've all been resolved without
10 courts to the best of my knowledge and that's all I can
11 recollect at the moment. All right. Having reached that, I
12 need to let you ask some questions, Mr. Recker, about this
13 Harvard Community Health thing.

14 Q. Doctor, for whatever reason you didn't mention the
15 Harvard suit in the deposition, did you? I'm sorry, the
16 Tufts suit?

17 A. Not specifically. I alluded to it.

18 Q. And that --

19 A. And I'm not sure a suit was actually filed.

20 Q. Well, why don't you turn to page eight?

21 A. Well, as I said before --

22 Q. Of Exhibit 28.

23 A. I said on the top of page 61 I'm not sure that a
24 lawsuit was actually filed.

25 Q. Well, I can make you sure.

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1 A. I don't recall.

2 (Document marked as Exhibit 29 for identification)

3 LAW JUDGE: We could wait for redirect on this but
4 I'm going to interject. I do notice this case on page eight
5 of 29 was disposed by settlement. I -- okay.

6 Q. Doctor, now in addition to the suits we've talked
7 about as the plaintiff, there was another suit you filed as
8 a plaintiff, wasn't there?

9 A. Could you refer me to which suit you're talking
10 about?

11 Q. You don't have an independent recollection of the
12 times you've sued people?

13 A. I had an action against Florence Wilson and my
14 former employer.

15 Q. And Florence Wilson's suit was filed in 2001,
16 November of 2001. Would that be correct?

17 A. Probably. I don't remember the exact date.

18 Q. Why don't I get the -- the docket, please? Let me
19 ask you to clear up the jogging incident, Doctor. Other
20 than your 1992 jogging accident involving Mr. Huber's
21 automobile did you have any other incidents where you had
22 non-consensual physical contact with any person or
23 automobile when you were jogging?

24 A. My recollection is there was an incident years

25 before in Newton where somebody on his way to work ran a

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1 stop sign and nearly hit me and I ran into the side of his
 2 car going downhill near my house. And a magistrates action
 3 was brought and the case was settled.
 4 Q. You ran into another car?
 5 MR. THEXTON: Your honor, I will object to this
 6 tone and form of questioning.
 7 MR. RECKER: The tone comes with being a lawyer.
 8 I apologize, Mr. Thexton.
 9 LAW JUDGE: Right, and I -- and as a lawyer I
 10 think you can probably modulate your tone. I will ask you
 11 to watch that. As for the question let me again see how --
 12 Mr. Recker, are you saying that this was a -- an action
 13 filed in court?
 14 MR. RECKER: I'm trying to find out --
 15 LAW JUDGE: Do you have --
 16 MR. RECKER: -- what it was. Because I will get
 17 to the point in a brief second.
 18 LAW JUDGE: Well, okay. I -- we can't use this
 19 for fishing. And if you have information that this is a
 20 case filed, then I'll certainly let you question him about
 21 it. I haven't figured that out yet.
 22 Q. Doctor, in this other incident --
 23 LAW JUDGE: You may --
 24 Q. -- it involved you running into a car, correct?
 25 A. That was part of it.

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1 Q. Did you have any physical contact with the driver
 2 of the car?
 3 A. The driver got out of the car and threw me to the
 4 ground.
 5 Q. Okay.
 6 LAW JUDGE: Let me ask you, Mr. Recker, what
 7 relevance this is? If it needs to be --
 8 MR. RECKER: Is what, your honor?
 9 LAW JUDGE: What relevance this is -- this must go
 10 to credibility, not to anything else?
 11 MR. RECKER: I'm done with that.
 12 LAW JUDGE: Okay, well, I asked you too -- one
 13 question too late then perhaps. All right.
 14 MR. RECKER: It was a perfectly timed question.
 15 Q. Doctor, you recall a lawsuit you filed with the
 16 co-plaintiff being Dr. Steven Barrett?
 17 A. In a libel action in Canada.
 18 Q. And that --
 19 LAW JUDGE: This was in a libel action?
 20 Q. Yes, and that was in 2001, was it not?
 21 A. I don't remember the date of filing.
 22 Q. And for whatever reason you didn't feel that Mr.
 23 Seeley was asking that question either in the deposition,
 24 did you?
 25 A. I think he was asking more about injury claims,

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1 the context of the way he was asking questions, and I didn't
 2 recall that at the time.
 3 Q. Well, the incident with Dean Huber was an injury
 4 claim, wasn't it?
 5 A. Once again, I go back to the way the questions
 6 were phrased to me that day and I answered them the way I
 7 thought I was being asked.
 8 Q. Okay.
 9 A. That's all I can say. I made no attempt to hide
 10 anything from Mr. Seeley.
 11 (Document marked as Exhibit 30 for identification)
 12 Q. Doctor, I'm handing you what's been marked Exhibit
 13 30. I represent to you this is a docket sheet for the
 14 lawsuit you filed against Dr. Florence Wilson and others,
 15 correct?
 16 A. That's correct.
 17 Q. And the date of the filing -- on this docket sheet
 18 it indicates you filed suit on November 30th, 2001, is that
 19 right?
 20 A. That's right, that's what it says.
 21 Q. Doctor, do you recall being asked questions about
 22 this alleged assault in a deposition taken in Florida in
 23 2001?
 24 A. I think there may have been some questions asked
 25 about that.

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1 Q. You don't recall --
 2 A. I don't recall the specifics.
 3 Q. Okay.
 4 MR. THEXTON: Does this have an exhibit number?
 5 LAW JUDGE: Are we going to need --
 6 MR. RECKER: If you want it --
 7 LAW JUDGE: I'd rather have just a page of two
 8 from this if -- if it's necessary.
 9 Q. Doctor, I'm handing you a copy of the deposition
 10 you gave in a matter in Florida dated January 24th, 2001.
 11 Do you recall that?
 12 A. I recall being there then.
 13 Q. Okay. And on page 126 you were talking about the
 14 alleged assault by Dr. Wilson.
 15 LAW JUDGE: We need to pause.
 16 REPORTER: We need to change tapes.
 17 MR. RECKER: I'm sorry.
 18 (End tape 1 -- Begin tape 2)
 19 LAW JUDGE: Okay, as long as we've paused maybe
 20 we'll pause a little longer here. My preference would be to
 21 keep going beyond noon for a while but if we're going to do
 22 that, maybe we should take a break just for everyone's
 23 convenience. Is that all right with counsel or would you
 24 rather break -- go another half an hour and break for lunch
 25 at 12:00? Any preference? Okay. Anyone who can't make it

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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