

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

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LAW JUDGE: This is a continued hearing in the matter of disciplinary proceedings against Eleazar Kadile. For the record it is case number LS 01 12 06 1 MED. We have some people present who were not here many months ago when we last convened so I'm going to say just a few words. My name is John Schweitzer. I'm an administrative law judge appointed by the Medical Examining Board to conduct this hearing. I act as a judge ruling on evidence and procedure. At the end of the hearing I prepare a proposal to the Medical Examining Board. It's called a proposed decision with my recommendations for whether discipline is appropriate and if so what discipline. The Medical Examining Board then reviews that any may adopt it or may vary from my recommendations. That is all in the future.

Today we will be conducting additional testimony. We -- I've just got -- going to put a few things on the record as I said for the benefit of those hearing us today and also for even attorneys who are new today. We did have approximately a week of hearing on this matter last fall. I believe it was October. We terminated the testimony at the end of the week because the parties believe that they had an agreement. That did not ultimately happen and in the interim Dr. Kadile has changed his attorneys. He is now represented by Ray Roder, Frank Recker, Cynthia Hubbard. We have spent some time reaching the point where those attorneys are up to speed and we are conducting this hearing today for a very limited purpose. Let me explain that. The large -- largest portion of the state's testimony has been by Dr. Robert Baratz, who did testify at that previous week. Since then he has also filed additional written direct testimony. And we are convening today for a limited purpose, first of all to take some brief testimony from a state's investigator, Sherry Johnson, which I'm told will be very short. But beyond that then Dr. Baratz will take the stand again and the attorneys for Dr. Kadile have asked to cross-examine him on his qualifications. The conduct of this hearing today and tomorrow and if necessary on Thursday is going to be limited to that. Once we get through that discussion we're going to be breaking and taking another day or two and seeing whether there is any basis for settling the case. We're going to be conducting settlement negotiations. But we have to get this other material out of the way.

So that is what all of you can anticipate from today and the rest of this week. If you're interested in

attending. It is a public hearing. Members of the public, press, etcetera are welcome to attend. But of course I must maintain decorum and anyone who decides to interfere with the proceedings will be asked to leave.

We have two matters that are pending. Again, I'm just going to put those on the record. We have a motion in limine with regard to the statute of limitations. We have had not had the time to properly brief that and argue it so I'm going to hold it in abeyance. We're not going to try and decide that before we go ahead today. And we have some records which have just been received by Dr. Kadile's attorneys and we may spend some time talking about them but not right now. Probably a little bit later. I'm -- I'm prepared to move on. I'll ask the attorneys for both sides if they have anything they want to say or do before we begin with the testimony. Mr. Thexton?

MR. THEXTON: I would ask that you instruct everyone in the room to turn off his or her cell phone and pager.

LAW JUDGE: It is a disruption to have those go off. I would appreciate it if you would turn them off. I don't think I can order you to but it would certainly be polite of you to turn those off if you don't mind. If you are expecting a call and you have to take it I won't say you can't. You can leave it on. Anything else?

MR. THEXTON: I have nothing.

LAW JUDGE: Mr. Roder, I'm going to generally turn to you for the respondent's side. But of course you may talk to your colleagues at any time. Do you have anything we need to discuss before we start?

MR. RODER: No, I -- we're ready to proceed.

LAW JUDGE: All right. Thank you. I apologize. This room is not perfect in many ways. There is a sound from air conditioning which actually is beneficial at the moment since it's a bit hot. But if the people in the back are having trouble hearing I'd first recommend that you come up to the front of the seats. And then if you're really having trouble hearing you can raise a hand and I think the public is entitled to hear what is going on. So I will instruct someone to speak more loudly. Especially as the attorneys are facing me it may be difficult. But again, my first recommendation is come up front if you're having trouble hearing.

All right. We will begin. We will return to the taking of evidence. And Mr. Thexton, I'll ask you to call your next witness.

MR. THEXTON: Thank you, your honor. We're interrupting the testimony of Dr. Baratz at this time to call investigator Sherry Johnson.

LAW JUDGE: Ms. Johnson, you make take a seat.

MR. THEXTON: Your honor, at her deposition last week we marked as Exhibit 23 the exhibit that we will be using. And I'm furnishing you with an extra copy of the same. And counsel --

LAW JUDGE: And --

MR. THEXTON: -- has it from last week.

LAW JUDGE: All right, thank you. Ms. Johnson, allow me to -- to administer an oath to you. The words of an oath are not magical. In fact, I've changed them just so that people don't think it's a ritual. But what's most important is that you understand that your testimony must be as complete and accurate as possible. You know that, don't you?

WITNESS: Yes, sir.

LAW JUDGE: Okay, would you please repeat after me?

(Witness sworn)

LAW JUDGE: Thank you.

MR. THEXTON: Okay.

LAW JUDGE: Mr. Thexton.

MR. THEXTON: Thank you.

DIRECT EXAMINATION

BY MR. THEXTON:

Q. Please state your name and position?

A. My name is Sherry Marie Johnson. I'm a consumer protection investigator III with the Department of Regulation & Licensing.

Q. And how long have you been so employed?

A. Then years.

Q. And what did you do before you came to the department?

A. I worked as a police officer in Oshkosh and when I moved to Madison I worked in bookkeeping and Capital Security. And before that I was in college.

Q. Investigator Johnson, did there come a time when you were assigned to play a small role in the investigation of this case?

A. Yes.

Q. And would you describe that to the tribunal, please? How it -- how it came to pass that you played a roll in this case?

A. This case was assigned to an investigator named

Lisa Summers. She had a seminar that she wanted to attend and she knew I was going to be in the area where the seminar was being held and she asked if I would attend the seminar for her.

Q. And did you do so?

A. Yes, I did.

Q. And as we sit here today do you remember in any detail what happened at that seminar?

A. No.

Q. From your memory alone could you tell us even what day it occurred?

A. No.

Q. Okay. At the time -- or at or near the time that you attended did you create some record of what occurred?

A. Yes, sir.

Q. And at the time you created that record was the memory of -- of the seminar fresh in your mind?

A. Yes, sir.

Q. Okay. I show you what has been marked as Exhibit 23 which is before you there and ask if you can identify that document?

A. This document is a memo that I wrote and copies -- actually the original pamphlets that I picked up at that seminar.

Q. Okay. Did you receive each and every one of those pamphlets which are contained in Exhibit 23 at the seminar?

MR. THEXTON: May the record show that the witness is examining each of the documents.

LAW JUDGE: It may.

Q. May I ask you are you looking for something that you're not seeing?

A. No, they're all here.

Q. Do you remember the question?

A. You asked me to see if these were the documents I picked up at the seminar?

Q. Yes.

A. Yes, they are.

Q. Okay. And did you -- do you have some way telling in particular whether these are the original documents that you picked up at the seminar?

A. Yes. I had numbered and dated and initialed each document that I picked up at the seminar.

Q. And when did you do that in relation to when the seminar occurred?

A. I would have -- I don't remember but it's my style to have done it probably as soon as possible. I may have

done it actually at the seminar when I picked them up.

Q. All right. Does the memorandum listed as being authored by you and consisting of the first three pages of Exhibit 23 accurately reflect your memory of what happened at the seminar as of the time you wrote the memo?

A. Yes, sir.

Q. And at the time you wrote it did -- did you remember accurately what occurred at the seminar?

A. Yes, sir.

MR. THEXTON: Okay. I offer Exhibit 23 at this time.

LAW JUDGE: Is there any objection?

MR. RODER: Yes. We object to the exhibit on several grounds. First of all, the entire exhibit is irrelevant because it doesn't go to any of the counts in the complaint or any of the materials in the complaint. Second, we object to the memorandum insofar as the memorandum contains among other things not just what was supposedly said at the seminar but also impressions of the investigator who has indicated in her deposition that she was not going to be testifying as to any substance but has in fact done so in the content of the memo. And we would therefore move to strike certain portions which we'll identify here in a moment. So -- and I guess the final point is that we object to this exhibit because it relates to things that were said and done in 1995 and although we know that you postponed deciding on the motion in limine it would be beyond the six years and would also therefore be irrelevant. So those are the grounds on which we would object to -- to this. And we would ask the examiner to withhold ruling on admission in this matter until the state has actually connected up these documents to any testimony regarding Dr. Kadile's conduct.

LAW JUDGE: Thank you. I was about to turn to Mr. Thexton. Would you mind, Mr. Thexton, telling me if this is going to be connected with counts in the complaint or is it your assertion that it is?

A. Yes, it is, your honor. And as to the memo itself it is of course primarily the statements of the respondent which are set forth in the memo which are by definition not hearsay, the reason for introducing the memo. With respect to directly connecting it the -- one of the documents is a brochure which is published apparently by respondent and contains certain representations which are in fact the subject of the advertising counts. And as to some of the other documents I anticipate asking my expert about them because all of them being distributed by respondent at his

seminar are advertising and statements by adoption by the respondent directly.

MR. RODER: Mr. Examiner -- or --

LAW JUDGE: Yes.

MR. RODER: Okay. I guess a couple of concerns here. We understood that Dr. Baratz had already -- the state's expert in this matter had already completed his direct testimony and we haven't been able to find anything that really ties into these matters. So we believe that -- the fact that they're going to be tied in hasn't occurred and shouldn't occur since the state has finished its direct examination. Secondly, as I think maybe Mr. Thexton is conceding here indirectly, some portions of this memorandum are not what Dr. Kadile said or anybody associated with -- but rather are -- statements in effect or testimony in effect being made by -- by this witness and that they should be stricken.

LAW JUDGE: Thank you. If -- if we had a little more leisure and this were not being dragged out so long anyway I think I might enjoy the -- the opportunity to withhold ruling on this and come back to it later. I'm afraid if I do that I'm going to lose it just as we go through the next few months. So I'm going to make a ruling now and I'm going to overrule the objection. I'm going to admit it. It -- it -- just on its face does seem to have some connection to some of the counts in the original complaint with regard to at least advertising. And as far as the substance of this witness testifying to it, she has really testified I believe that she has no direct memory of it -- of the seminar and therefore cannot be cross-examined effectively. But that does not prohibit us from accepting a past recollection recorded over hearsay. And it does have certainly circumstantial guarantees of trustworthiness having been written by a relatively qualified person at a time shortly after the event. So although it is certainly imperfect as far as evidence goes because it can't be subject to cross-examination I'm going to overrule on that grounds. And as far as the -- the fact that it might fit into a time period that would be barred if I grant the motion in limine I will -- I will simply consider it in that group of, you know, evidence that will be barred if we get to that point. But since I'm handling it that way I want to -- I want to admit this into that body of evidence that we'll have to exclude if it's -- if the motion is granted. So the exhibit is admitted.

(Exhibit 23 received into evidence)

LAW JUDGE: Anything else Mr. --

MR. RODER: Your honor? Sorry. At least I would like to maybe complete my -- my point for the record.

LAW JUDGE: Your specific comments? Go ahead.

MR. RODER: Yes, I believe that the following lines would be -- should be stricken in any event given the purpose for which this is being offered.

LAW JUDGE: All right.

MR. RODER: This would be on page two in the second full paragraph which starts with, "Kadile said that chelation" --

E. Yes.

MR. RODER: It is our position that from the word "but" in the second line to the end of that sentence should be stricken as testimony by this witness and not by -- any -- any recording of what Dr. Kadile said. Similarly at the bottom of page two with the start of the parenthesis that says, "(known by this)" -- we believe that that should be stricken all the way through the first two lines to the completion of the sentence on page three with -- which ends with the word dyslexia. And this again is not what Dr. Kadile said. These are comments by the -- by this witness who does not purport to have any qualifications to speak to these issues.

LAW JUDGE: The specific -- thank you for noting that for the record. It is now in the record and it can be referred to later. However the specific comments that you speak of I do not believe require the investigator to have had expert qualifications. They are simply a -- the first one is noting that something was mentioned. At least that was her observation. The second one is relating a fact that the investigator claims to know based on her -- apparently her employment here. It does not require an expert degree of knowledge of medicine. Those comments are included in the overruled objection. But thank you for putting them on the record. Is there anything else, Mr. Thexton?

MR. THEXTON: I had no other questions of Investigator Johnson. Thank you.

LAW JUDGE: Any cross-examination?

MR. RODER: Yes.

CROSS-EXAMINATION

BY MR. RODER:

Q. Ms. Johnson, you prepared the three page memo which is part of Exhibit number 23?

A. Yes.

Q. And you prepared it from notes that you took at

the time of the presentation?

A. Yes.

Q. And you generally included in the memorandum essentially everything that were in the notes that you took at the time of the seminar?

A. That would have been my style. That is my style.

Q. So based on your habit you -- it would be fair for -- or accurate to conclude that whatever's in the memo is -- was entirely representative of what was in your notes for the hearing --

A. That's correct.

Q. -- seminar? Thank you. Now, if I recall correctly the seminar was scheduled to begin at 6:30?

A. Yes.

Q. And as far as you know the seminar began on time?

A. I don't recall.

Q. The -- your memorandum indicates that at the beginning of the seminar someone by the name of Ganya made a presentation? Is that correct?

A. The memo states that.

Q. And that the person spoke -- that person spoke for about 45 minutes?

A. Yes.

Q. After that person that you identified as Dr. Kadile began speaking, is that correct?

A. Yes.

Q. And the seminar concluded with questions and answers, is that correct?

A. Yes.

Q. The seminar concluded at approximately 9:15 p.m.?

A. Yes.

Q. The seminar question and answer session lasted approximately 20 minutes, is that correct?

A. I don't recall very well how long the question and answer session lasted.

Q. During the course of your deposition -- well, strike that. You were -- you were deposed in this matter Tuesday of last week, is that correct?

A. That's correct.

Q. And have you reviewed your deposition testimony?

A. Yes, I did.

Q. And with respect to your testimony at that point did you not estimate that the Q&A session lasted approximately 20 minutes?

A. Yes.

Q. Do you have any reason now to believe that that

estimate was inaccurate?

A. No.

Q. So if we take these time lines in mind that means that Dr. Kadile began speaking at approximately 7:15?

A. Yes.

Q. And he probably would have finished then speaking at about five minutes to 9:00?

A. Yes.

Q. As we -- as I just indicated or asked you about your deposition from last Tuesday you've had a chance to read it, have you not?

A. Yes.

Q. And do you remember how long it is?

A. The deposition?

Q. Yes, how many pages?

A. I believe it -- I think it was about 47 pages.

Q. Do you have a copy of it with you?

A. No, sir.

Q. I'll show you a copy of your deposition. And just to refresh your recollection why don't you look and see how many pages it was?

A. Including the statement at the back by the notary it's 47 pages.

Q. Okay. The part that includes just the testimony goes up to page 46, does it not?

A. Page 46.

Q. And your deposition began at 9:00 in the morning?

A. Yes.

Q. And concluded at about 10:23 a.m.?

A. Approximately.

Q. And there was at least one break that was taken during the course of your deposition?

A. Towards the end.

Q. How do you account for the fact that Dr. Kadile spoke from 7:15 p.m. to approximately five minutes to 9:00 p.m. and during the course of that time period you only generated a memo of three pages?

MR. THEXTON: I'm going to object to the question as argumentative.

LAW JUDGE: The objection's overruled. This is cross-examination. You may answer.

A. I wasn't attempting to transcribe the seminar. I noted some remarks that I found were interesting.

Q. So what -- what we have in this three page memorandum that is part of Exhibit 23 is points that you selected from Dr. Kadile's presentation and put those in the

memorandum, correct?

A. Yes.

Q. When you went to this seminar you went there at the behest of Lisa Summers, is that correct?

A. That's correct.

Q. And Ms. Summers didn't give you any directions as to what you were to do in terms of preparing notes or listening for any themes, did she?

A. I don't recall my conversations with Lisa Summers very well. I remember her asking me to attend the seminar and to pick up any pamphlets that may be handed out.

Q. Did she ask you to prepare a memo from what you heard?

A. That would have been a given.

Q. But you didn't take a tape recorder or anything so that you could check to hear what Dr. Kadile said versus what you had in your notes, did you?

A. No, sir.

Q. As to the statements in doctor -- in the memorandum that you attribute to Dr. Kadile did he provide any explanation over and above what's in your memorandum as to those statements?

A. I don't recall.

Q. You did indicate during the course of your deposition, did you not, that as far as the pamphlets or other documentation that is attached to Exhibit 23 besides the three page memorandum that none of that entered into the content of your memo, is that correct?

A. That's correct.

Q. And that if I were to ask you regarding the contents of any of the documents that are attached to Exhibit 23 besides the memo you really couldn't -- you weren't in a position today to discuss the contents with me, isn't that correct?

A. That's correct.

Q. And there is a statement in there regarding whether or not chelation therapy has been approved by -- by the FDA for arterial sclerosis. As we -- as you sit here today you have no basis for knowing why that statement is in the memo, is that correct?

A. I'm sorry, could you repeat that question?

Q. Yes. In the memorandum there was a statement -- I believe it's on page two -- to the effect that chelation therapy is not approved by the FDA for things other than metals and so forth. Do you recall that?

A. Yes.

Q. And isn't it fair to say that -- or accurate to say rather that you have no recollection of the basis for why you put that statement in the memo?

A. I don't recall.

Q. And the memorandum refers to something -- or attributes a statement to Dr. Kadile regarding something called traditional medicine, does it not?

A. Yes.

Q. And you have no recollection of what Dr. Kadile defined as traditional medicine in that context, do you?

A. Except for what's noted in the memo I don't recall.

Q. And as far as your recollection of the seminar is concerned while Dr. Kadile may have talked about specific toxic metals he didn't -- you don't recall which ones he talked about besides mercury?

A. I don't recall.

Q. And although the memo refers to chelation therapy as being useful for something called -- quote -- "other poisonings" -- close quote, you don't have any recollection of what Dr. Kadile referred to in that regard, do you?

A. I don't recall.

Q. And you don't have a recollection of what Dr. Kadile explained was the reason that chelation therapy might be useful for stroke, arthritis, chest pain, leg pain and -- etcetera?

A. I don't recall.

Q. And likewise you're not -- you have no recollection of Dr. Kadile's explanation about the utility of dimethylsulfoxide as a rub or as another form of treatment?

A. I don't recall.

Q. Your memorandum indicates that a number of the attendees appeared to be older individuals, is that correct?

A. Yes.

Q. But when I asked you about the quality of the questions that those individuals may have posed at the end of the seminar you said you really don't have a recollection about that, is that correct?

A. That's correct.

Q. And although the memorandum refers to four men showing up in leather jackets you merely pointed that out because you thought it was peculiar?

A. That's correct.

Q. But there was nothing about their presence that you found intimidating, is that correct?

A. That's correct.

Q. And you have no reason to associate them with Dr. Kadile?

A. No reason.

Q. I asked you regarding a statement in the memorandum about whether a person had a temperature drop in basal temperature of 0.01 degrees, do you recall that?

A. Yes.

Q. And I asked you if you knew how someone would measure such a temperature differential?

A. You asked --

Q. And --

A. -- me.

Q. -- your answer was?

A. I don't know.

Q. Are you sure you got that number right?

A. I don't recall.

Q. You might have gotten the number wrong?

A. I could have gotten the number wrong.

MR. RODER: That's all.

LAW JUDGE: Mr. Thexton, any redirect?

MR. THEXTON: No, thank you.

LAW JUDGE: Ms. Johnson, you're excused. If you'll give me that exhibit. Would you mind giving the deposition back to Mr. Roder on your way? Just a moment, Mr. Sexton. Let me make a comment or two now. Again, as I stated before I'm anticipating that Mr. Thexton will be calling Dr. Baratz to be available for cross-examination. Additional direct testimony has been filed in writing from Dr. Baratz and Mr. Thexton has made me aware of the fact that he wants to supplement that to some degree with some additional direct testimony. But we are not going to do that now. I've assured him that at some future date we will allow further direct testimony. And also before you call Mr. -- Dr. Baratz, please, Mr. Thexton, this would be a good time for me to mention that since this hearing was originally scheduled for yesterday a number of people showed up yesterday morning and had to receive the explanation for why we weren't meeting then and why we're meeting today. I was called on to have that explanation with a couple of people and one or two of those people wished to have a conversation with me about the merits of the case. And I suggested that would be inappropriate. At least one person who's returned today started saying that she had benefits from chelation many years ago and that was where we stopped. I don't know what the nature of the therapy -- nature of the

therapy was, whether it was traditional chelation or other chelation. I just need to put that on the record. I did have some conversations. Mostly I was trying to make sure that people weren't upset by having the hearing rescheduled. Having said that we can move on. Mr. Thexton?

MR. THEXTON: Thank you, your honor. And it does occur to me that in connection with Dr. Baratz pre-filed testimony I should offer the exhibits that -- that accompany it since they have been filed. These would be the two patient charts and the advertisement which I refer to in the testimony. Would you like me to do that now?

LAW JUDGE: Where are those? Do you have them? I have them.

MR. THEXTON: You don't have them yet, your honor. They were not among the exhibits which were offered during the last week of October when we last met.

LAW JUDGE: Okay. Mr. Roder, is there going to be any problem with these exhibits? If it's going to involve some lengthy discussion I may want to put it off. Do you know what Mr. Thexton is talking about?

MR. RODER: I don't. That's part of the problem. So to respond to your -- I --

LAW JUDGE: Since it's with the pre-filed testimony let's do that later, please, Mr. Thexton.

MR. THEXTON: Very good.

LAW JUDGE: Make yourself a note to do that at the end of the day. And so let's move on.

MR. THEXTON: Very good. Then recall Dr. Baratz.

LAW JUDGE: Doctor, would you come and take as always our elegant witness stand here? Having spent four and more days with Dr. Baratz as I said many months ago he knows that our hearing facilities are not perhaps as plush as some other locations. But we've gotten along well, I think. Doctor, I will repeat the oath that I gave you many months ago and then released you from at the end of that week. And we'll start over again, all right?

WITNESS: Thank you, your honor.

LAW JUDGE: Please repeat after me.

(Witness sworn)

LAW JUDGE: All right, thank you.

WITNESS: Your honor, could we have some water, please?

LAW JUDGE: Joel? Mr. Godard, who is on my staff -- we have a request for a carafe of water and some cups. Would you mind doing that? Thank you. You may -- now, let's see. Now, I'm actually not going to turn to you, Mr.

Thexton. Give me a second to refocus because I -- I actually hadn't thought of that. You are well aware, Doctor, that you are here for cross-examination presumably on your qualifications? You've been told that, haven't you?

WITNESS: Yes.

LAW JUDGE: All right. So this is no surprise to you?

WITNESS: That's correct.

LAW JUDGE: All right. I'll be turning the examination over to Mr. Roder, assisted as necessary by Mr. Recker and Ms. Hubbard. And I see nothing else to get in the way. You may proceed.

MR. RODER: Mr. Recker will handle the cross-examination of this witness.

CROSS-EXAMINATION

BY MR. RECKER:

Q. Dr. Baratz --

LAW JUDGE: All right.

Q. My name is Frank Recker, one of the attorneys representing Dr. Kadile in this matter. You recall giving testimony in this matter in October of 2002, do you not?

A. Yes.

Q. And do you recall at the beginning of that hearing testifying under oath that you quote, "were a person of high character and integrity and ethics" end quote?

A. I don't remember the exact quote. I remember discussing that matter.

Q. Would you like to look at the transcript?

A. Sure.

LAW JUDGE: Mr. Recker, if I may just comment. I mean, he has agreed that he made a similar comment. If you want the exact words, then we can look at the transcript.

Q. Do you recall testifying to those -- you were a person of high character, integrity and ethics, do you not?

A. I recall something to that effect.

Q. Do you recall testifying that that's what this trial was all about; character, integrity and ethics?

A. I don't recall that.

Q. All right. Well, let's -- let's hand you the transcript, Doctor.

A. Thank you.

Q. Doctor, turn to page 41, line 1.

A. Is this a certified copy of the proceedings?

LAW JUDGE: You can answer that, Mr. Recker, if you know?

Q. Yes, it is. Page 41, line one where you're

stating quote, "This man, Mr. Seely here, has made a number of untoward allegations even this morning about my character and I wish to reflect on each and everything I've done in my youth to show you that I am a person of high character and integrity and ethics which is what this trial is all about. And if I'm going to be emotional about it for a minute, I may." Do you recall that, Doctor?

A. Yes.

Q. Doctor, you realize that your testimony in this case could have serious consequences related to Dr. Kadile's ability to practice medicine in Wisconsin?

A. It might.

Q. Fair to say that you would not want the Wisconsin Board of Medicine or this administrative law judge hearing this matter to consider this -- your testimony credible if you were not a person of high character, integrity and ethics?

A. I'm not sure I would phrase it that way.

Q. How would you phrase it?

A. I would ask them to consider all the evidence in the case in a fair and open manner.

Q. You would agree that your credibility as an expert witness is an extremely important issue in this case, would you not?

A. I don't know if extremely important is --

Q. Okay.

A. -- correct language.

LAW JUDGE: Mr. Recker, before you go on just give me -- I'm not going to stop you. I just need a minute to process where we're going here. I'm following along here. So I can be ready. All right, go ahead.

Q. Doctor, you understand that your own propensity for telling the truth is an important matter in this case?

A. I don't believe I'm on trial in this case.

Q. Well, whether or not you're telling the truth, your testimony is an important issue, is it not?

A. I'm not sure that's one of the charges in this case.

Q. Okay. Well, just so we're on the same understanding as to what constitutes what behavior is indicative -- reflective of a person of high character, integrity and ethics, you would agree with me would you not that a physician of high character, integrity and ethics would not lie under oath in any legal proceeding?

A. I'm not sure I -- I understand your question fully. Could you please repeat it?

Q. You would agree with me, would you not, that a physician of high character, integrity and ethics would not lie under oath in any legal proceeding?

A. They shouldn't.

Q. You would agree that a physician of high character, integrity and ethics would not attempt to obfuscate the truth in any legal proceeding in which he were involved?

A. I'm not sure what you mean by the statement.

Q. You would agree that a physician of high character, integrity and ethics would not make false or misleading statements about his credentials?

A. They should not.

Q. You would agree that a physician of high character, integrity and ethics would not overstate his credentials or his opinions in any legal proceeding?

A. Well, I'm not sure I would agree with that statement because the word overstatement is one that requires qualification.

Q. You're not familiar with any ethical provision from any medical association that specifically uses the word overstating credentials in reference to an expert -- expert witness testimony?

A. I'm not.

Q. Okay, we'll get to that later. You would agree that a physician of high character, integrity and ethics would not disseminate a CV that contained false representations or which was misleading in any material respect?

A. You've asked me two questions. Could you separate them, please?

Q. Sure. You would agree that a physician of high character, integrity and ethics would not disseminate a CV that contained false representations?

A. Should not.

Q. You would agree that a physician of high character, integrity and ethics would not disseminate a CV that was misleading in any material respect?

A. Well, could you define what misleading means?

Q. If you don't understand, Doctor, that's fine.

A. I don't understand what you're saying.

Q. Okay. And you would agree that a physician of high character, integrity and ethics would not over bill the State of Wisconsin for services rendered as an expert witness?

A. Should not.

MR. RECKER: Your honor, do you -- may we label our exhibits as respondent 1 to keep it straight since everything up till now has been plain numbers from the state?

LAW JUDGE: Do you have them already pre-labeled?

MR. RECKER: No.

LAW JUDGE: I'm going to end up turning them into my numbering system. I'm not going to use the respondent 1.

MR. RECKER: Then just give us the next number.

LAW JUDGE: Okay, 24.

(Document marked as Exhibit 24 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 24. These are Bates stamp numbers on these pages. They go from page 482 to 513. And I will represent to you that these documents were obtained from the State of Wisconsin and relate to your contract for services in this matter. Doctor, looking at page 486 which is the last page of the employment contract of the state, that is your signature is it not?

A. Yes, it is.

Q. And on the first page it says it was entered into in December of 2000, is that correct?

A. Yes.

Q. And would it be fair to say that you signed this contract sometime after you had had contact with Mr. Thexton?

A. Yes.

Q. Mr. Thexton was contacting you in Massachusetts regarding your potential services in this case, is that correct?

A. That's my recollection.

Q. Did he tell you why he had to go to Massachusetts to find an expert in this case?

A. No.

Q. Did you tell him at that time you were disabled, were not practicing medicine?

A. He never asked me that question.

Q. Did he ask you whether or not you had any skeletons in your closet that might be embarrassing to the State of Wisconsin?

A. I don't recall that.

Q. Did you tell him of any such skeletons?

A. I'm not sure what you mean by a skeleton. Q. Anything you wouldn't want to come out in a public forum.

A. I don't recall.

Q. Okay. Doctor, if you turn to the second page of the contract. Okay, I believe it indicates your hourly rate is \$175, is that correct?

A. That's correct.

Q. And under paragraph A it appears that you are reimbursed at that rate even if you're traveling related to this case, correct?

A. At the state's request, yes.

Q. The state requested you be --

A. No.

Q. -- fully reimbursed?

A. When I travel at their request.

Q. Oh, yes. I understand. So when you travel from your home in Newton to the airport in Boston you're being paid this hourly rate?

A. That's correct.

Q. And if you sit in an airport for four hours waiting for your next flight you're being paid at this hourly rate?

A. If it's part of the trip.

Q. Okay. And under B, the expenses related to travel, correct?

A. It says expenses reimbursable.

Q. Okay. If you would turn to page 487. I believe this is the first invoice you submitted to the State of Wisconsin?

A. Yes.

Q. Doctor, it indicates secretarial time of 15 hours at \$30 an hour. Why are billing the state for secretarial time?

A. Because I was told I could do that.

Q. That's not what the contract says, is it?

A. That's not in that part of the contract. That was a memorandum that I received that said I could do that and I was instructed that I could do that.

Q. So, in other words -- look at paragraph B of the contract, Doctor. I'm sorry, paragraph C, expenses not reimbursed. It clearly indicates the only expenses you're going to be reimbursed for is travel, is that correct?

A. On this page that's what it says. There were other understandings about billing the state that were part of other memoranda that I have received by the state.

Q. So notwithstanding what this contract says you felt you were entitled to bill the state your secretarial?

A. I was told I could.

Q. Okay. Now, Doctor, your consulting services are

done in your home, are they not?

A. In -- sometimes.

Q. I believe you testified in multiple depositions that your consulting service was out of your home?

A. Well, that's where they're billed from. I mean, I may be reading something in a library.

Q. All right.

A. I may be traveling like I am today.

Q. And the secretary at home is your wife?

A. No, she is not.

Q. And you reimburse her \$30 an hour?

A. I reimburse --

MR. THEXTON: Objection, reimburse who?

Q. The secretary.

A. I -- I cover my secretary's expenses.

Q. But you're billing the state \$30 an hour for a secretary?

A. For the expenses. Those expenses include more than the secretary's time.

Q. Were you told that you were -- you were sought in this case because you were publicly known to be against complementary alternative medicine?

A. Absolutely not.

Q. Why were you being sought out?

A. Mr. Thexton never told me that.

Q. Okay.

A. He thought I had the right qualifications to answer the questions in the case.

Q. Okay. And did you make him aware of your affiliation with the National Council Against Health Fraud?

A. I gave him my CV.

Q. Did he tell you how he was given your name?

A. I don't recall if he did that.

Q. You don't recall him telling you Steven Barrett gave him your name?

A. I don't recall that. He may -- it may have happened but I don't --

Q. Who's Dr. Barrett?

A. Who is Steven Barrett? He is an author and he operates a large website.

LAW JUDGE: Mr. Recker, again let me ask you to pause. I think we may need to do a little accommodation here. We seem to have a large number of people who wish to get seated. I think we're running out of seats. Rather than deal with the confusion in the midst of questions and answers, I'd rather actually take a five minute break here

and make sure we have chairs for everyone. All right, off the record.

(Off the record)

LAW JUDGE: We have had a significant pause. Let me again bring a few people up to date on what we've been doing. Since there are new people in the room, I'd like to make sure that you understand what's happening. And I'm trying to figure out how far back to go on this. I think you are -- everyone attending this must be aware that this is a disciplinary proceeding by the Department of Regulation & Licensing against Dr. Eleazar Kadile. What we are spending our time doing today is talking to Dr. Robert Baratz, who is an expert witness for the state. Dr. Baratz has already given us a great deal of direct testimony on a previous occasion. Today we are spending our time only on cross-examination and discussion of Dr. Baratz' expert qualifications. So it will be limited entirely to that. I appreciate your being here. I appreciate your having an interest in this. It is a public hearing. You are of course welcome to attend. I must insist that you not make any unnecessary noise. If you would turn off any electronic devices, that would be helpful. And if for any reason there were to be a disruption I would ask you to leave. We were in the middle of some questioning when the large number of people arrived. If you are in the back and you absolutely cannot hear what's going on, if you would raise your hand, I will try to ask the attorney and the witness to speak up although there may be some limits to that. I will turn it over again in a second to the attorneys for Dr. Kadile. Again, they are Mr. Roder, Mr. Recker and Ms. Hubbard. Mr. Recker is asking the questions right now. Anything -- anything I've forgotten, Mr. Thexton? Can we just go on?

MR. THEXTON: I can't think of anything.

LAW JUDGE: Mr. Recker?

MR. RECKER: No, sir.

LAW JUDGE: All right. We are on the record. We will continue questioning. You may ask your next question, Mr. Recker.

Q. Dr. Baratz, if you would again refer to Exhibit 24, the page stamped 487? And this would be the first billings I believe you submitted to the State of Wisconsin dated March 5th, March 12th and then there's an entry 2/1 to 3/5, is that correct?

A. Yes.

Q. Now, Doctor, you indicated that when you were first contacted by Mr. Thexton you did not discuss your

position relative to complimentary alternative medicine, is that correct?

A. That's my recollection.

Q. Did you ever tell Mr. Thexton that you have been quoted quite often as stating complimentary alternative medicine is -- quote -- "marketing, not medicine" -- end quote?

A. Did I tell him that?

Q. Yes.

A. I don't recall telling him that.

Q. That -- you have been quoted very often saying that, is that not correct?

A. I don't believe that's correct.

Q. You disavow having made that statement?

A. You said very often. I don't know what very often means and where and when --

Q. Okay.

A. -- and under what circumstances.

Q. Have you not made that statement publicly on more than one occasions?

A. I don't recall if it was --

LAW JUDGE: How about taking the -- I'm sorry, how about taking the "not" out of that question? Have -- have you been -- I'm sorry, Mr. Recker?

Q. Have you been quoted on more than one occasion stating that complimentary alternative medicine is -- quote -- "marketing, not medicine" -- end quote?

A. I don't think I've ever seen a quote of mine that said that.

Q. Well, I'll show you a couple later.

A. There may be.

Q. There may be?

A. Well, there may be. But I'm not sure that I've ever seen them.

Q. Have you not said that?

A. I don't recall using those specific words.

Q. Okay. Did you tell Mr. Thexton of your affiliation with the National Council Against Health Fraud?

A. I answered that question already and I said it was on my CV.

Q. So you didn't --

LAW JUDGE: I believe --

Q. -- you didn't discuss that with Mr. Thexton?

A. I didn't discuss it. He has my CV and it's in there.

Q. Did you ever tell him that -- excuse me, Doctor,

you are currently the president of the NCAHF, is that correct?

A. I am.

Q. Did you ever tell him that NCAHF position on chelation is that it's unethical?

A. I never discussed with him the NCAHF position on chelation.

Q. All right. Is that not the NCAHF position that chelation is unethical?

A. I haven't read the position paper recently so I can't say specifically what it says.

Q. We have it. We'll help you, Dr. Baratz.

(Document marked as Exhibit 25 for identification)

Q. I'm handing you what's been marked Exhibit 25 which is a printout from the internet dated June 30th, 2003 captioned, "NCAHF Policy Statement on Chelation Therapy." Do you see, Doctor, you're president, correct? And --

A. I am the president.

Q. And you're not familiar with this policy statement?

A. Oh, I'm familiar with it. I just said I hadn't read it recently.

Q. Okay. Well, what's --

A. In terms of the specifics.

Q. Go down to the last paragraph above the line -- quote -- "The National Council Against Health Fraud believes that chelation therapy is unethical and should be banned." Is that news to you, Doctor?

A. Is what news to me.

Q. That this is the policy of the NCAHF?

A. It is a policy statement that the board adopted.

Q. Okay.

A. The board adopts all policy statements.

Q. Sure. And if you look at the top where it has the bullets, the third bullet, "Further use has no scientifically plausible rationale." Are you familiar with that policy statement?

A. In the context in which it's phrased, I am.

Q. Okay. And you're familiar with the fact that the NIH commissioned a 30 million dollar study on chelation therapy last year?

A. I'm not sure they commissioned a study.

Q. Are we playing more word games, Doctor?

MR. THEXTON: Your honor, I will object to the form of the question.

LAW JUDGE: Well, Mr. Recker, I'll ask you to ask

that -- I'm sorry, I understand what's going on. And I need to figure out how to control this dynamic. It is indeed a situation where a question is being asked, an answer is being given. It is being perceived by one side or the other as either not precisely right or not responsive. I don't want to spend the morning bickering over a word or two here and there.

MR. RECKER: I'll withdraw it, your honor, and re-ask it.

LAW JUDGE: A particular question, Mr. Recker, I will ask you to simply re-ask the question. Doctor, I will ask you to try to be responsive to the question, pointing out where you differ from it. We'll handle that as we go along. I --

Q. Dr. Baratz --

LAW JUDGE: I don't know how to handle it any better than --

Q. Are you familiar with the 30 million dollar study sponsored by the NIH?

A. I've seen announcements to that effect.

Q. On chelation therapy?

A. It deals in that -- with that in part.

Q. And your organization, NCAHF, is vehemently opposed to that study, is it not?

A. We've not made a policy statement on that.

Q. And you have not personally written about that?

A. Pardon me?

Q. You have not personally written about that study?

A. Not in the context of being president of NCAHF.

Q. In what context have you written about that study?

A. I may have written to colleagues about it.

Q. And generally speaking they were very negative comments about the study, were they not?

A. I'd have to see the comments before I could say whether they were positive or negative.

Q. You don't recall?

A. I write a lot of things to a lot of people. I get upwards of 150 emails a day. I get multiple phone calls. I have patient matters that I have to deal with. I can't remember each and every thing that I write. I have to see what it said.

Q. Doctor, at what point in your performing services for the State of Wisconsin did you come to realize that you were being consulted on the topics of chelation and hair analysis?

MR. THEXTON: Objection as to the form of the

question. Double barreled.

LAW JUDGE: Well, if the witness can answer it, you may. If the witness finds it confusing you can ask to have it separated.

A. Would you separate the question, please?

Q. Sure. I'm looking at a bill you submitted covering the period of time March '01. My question is at what point in your work for the State of Wisconsin did you realize you were being consulted in reference to chelation?

A. I -- I don't recall specifically because many records came at different intervals and it depends on when that issue came up in the records.

Q. And the same question with hair analysis. At what point in the relation did you understand that you were being consulted on the topic of hair analysis?

A. When those records appeared.

Q. Doctor, is it not true that the NCAHF has taken public positions against acupuncture? Did you need to consult with Mr. Thexton?

A. No.

Q. Do you want to answer the question?

MR. THEXTON: Your honor, I fail to see the relevance of this question. Acupuncture is not an issue in this case in any respect.

LAW JUDGE: Mr. Recker, I can understand if this is a general assertion of -- well, I'm not going to give you a long statement. Let's keep the issues as close as we can. Do you think this is relevant -- sufficiently relevant --

MR. RECKER: It goes to this witness' --

LAW JUDGE: -- that we should spend time on it?

MR. RECKER: -- total complete bias relative to the issues in this case.

LAW JUDGE: Okay, I sort of understand that. Give me a second. How many questions on this topic or on similar topics?

MR. RECKER: Four questions --

LAW JUDGE: Is this --

MR. RECKER: -- the same question, a different word at the end.

LAW JUDGE: Mr. Thexton, I'm going to allow it. Objection overruled.

A. Could you repeat the question, please?

Q. Sure. Is it not true that your organization, i.e. NCAHF, is publicly opposed to acupuncture?

A. I don't think that statement can be answered with a simple yes or no.

Q. The same question. Homeopathy?

A. Same -- same answer.

Q. Doctor, if you'll turn to page 488. Does this represent the typed up version of the bills you submit to the State of Wisconsin?

A. It's one of the bills submitted.

Q. Turn to page 490. You charged the state on April 30th for a one hour phone conference, \$175. There's no notation or indication of who you're talking to or with?

A. That doesn't indicate on that sheet, that's correct.

Q. Is there a reason for that?

A. No, it was just an omission.

Q. Omission?

A. Those calls are all to Mr. Thexton.

Q. So all your phone conferences listed on your bills are with Mr. Thexton?

A. Or with someone else from the state, yes.

Q. The same question, Doctor, page 49 -- I'm sorry, page 491 there seems to be a bill signed by you for \$12,191. It's dated April 30, 2001 and the date's crossed out. Do you have any idea what that is?

A. No, it's not my writing.

Q. It's not your signature at the bottom?

A. It's my signature but that -- the writing on the top is not my writing.

Q. Is the total due \$12,191 your writing?

A. No.

Q. And the "Okay to pay" -- or somebody -- do you know who that person is?

A. I assume it's someone in the state office.

Q. Page 493, again, June 30th, '01 a four hour telephone conference. That would be Mr. Thexton?

A. It would be.

Q. And \$700 for that conference?

A. He's the one that makes the calls.

Q. I'm sorry?

A. He's the one who makes the calls.

Q. Page 494, Doctor. There's -- there's an intense review of records in July of '01. Would this be the first time you actually had records to look at, medical records?

A. I don't believe so.

Q. But in July of '01 you billed the state for \$3,237.50 for your time, correct?

A. For time.

Q. Now, under expenses it says you purchased

materials via Quackwatch. What's Quackwatch, Doctor?

A. Quackwatch is a -- a website and a corporation.

Q. And tell the administrative law judge in what way your organization, NCAHF, is affiliated with Quackwatch?

A. They're separate organizations.

Q. Are you saying they're not affiliated?

A. There's no formal affiliation between them. They do some things conjointly but they have no formal, written affiliation.

Q. Dr. Barrett is president of Quackwatch?

A. He is.

Q. And he's vice-president of NCAHF?

A. He is.

Q. And you're colleagues?

A. I'm sorry?

Q. You're colleagues?

A. We know each other.

Q. In the same month your secretary spent 16 hours at \$30 an hour?

A. That's what it says.

Q. And that's just typing?

A. No, it's more than typing.

Q. What else is it?

A. She does many things.

Q. On this bill what more than typing is it?

A. She does research, she does inputting of data and organizing papers, labeling, numbering. A number of different things.

Q. Doctor, if you're being paid \$175 an hour by the state of Wisconsin why is your secretary doing research?

A. Because there are things that are menial like getting a book from the library that she does. And the state -- I don't think it's appropriate to bill the state for my time to go to the library to get a book.

Q. So you need to refer to books in this case?

A. Occasionally to look up things.

Q. On the next page, 495, August of '01, you billed the state almost \$5,000 for essentially creating your report in this matter, is that correct?

A. The bulk of the work effort there had to do with reports.

Q. By that you mean drafting your report as an expert witness in this matter?

A. Yes, the report had multiple parts, dealt with multiple patients. It was fairly complicated.

Q. How many patient records did you review, Doctor?

A. All the ones that were sent to me.

Q. Do you recall if it was four?

A. I think in this case there was a total of around six.

Q. I see. So you recall six records?

A. That's my recollection.

Q. And assuming the State of Wisconsin has paid you roughly \$50,000 through December of '02 would it be your testimony that those records were pretty thick?

A. I don't think that appropriate characterizes my effort or the time expended on this case. A lot of the expenses had to do with coming here for trial.

Q. But the number of hours expended and billed by you represents time you devoted to the issues in this case, correct?

A. It does.

Q. And it would be fair to say that you found these issues to be particularly complex?

A. In my view and in my way of defining complex, yes.

Q. Correct me if I'm wrong, Doctor, but you've never been involved in any proceeding where you've given critical expert testimony on chelation, have you?

A. I think I have.

Q. A legal proceeding?

A. I believe so if I recollect correctly.

Q. Tell us what it was?

A. I believe it had to do with one of the California cases. I think Hewlett had some chelation issues in it.

Q. That was an administrative hearing you were involved in?

A. Yes, sir. To the best of my recollection.

Q. Page 496. You spent nine hours reviewing a complaint. That would be the complaint ultimately filed against Dr. Kadile in this case?

MR. THEXTON: Object to the question as misstating the -- the facts.

Q. Doctor, tell me what --

LAW JUDGE: Let me -- you want to clarify that for Mr. Thexton?

Q. Sure. Your first entry, September 4th, '01, it says, "Review of complaint draft." Do you recall what that was, Doctor?

A. Not off the top of my head. I'd have to go back to my records.

Q. Would it be fair to say it was a rough draft of the complaint against Dr. Kadile forwarded to you --

A. I --

Q. -- by Mr. Thexton?

A. I don't recall specifically.

Q. So the people of Wisconsin have no idea why they paid \$1,575 in September of '01?

A. I don't think that's true at all. They know why because they saw what I billed them for.

Q. Because you said so?

MR. THEXTON: Objection.

Q. I'm sorry. Because it's stated on your bills.

LAW JUDGE: Let me go back to the objection. I'm sorry, what was it?

MR. THEXTON: The objection is to the argumentative tone and nature of the question. This is not a question of the witness. This is arguing with him and --

LAW JUDGE: Let's --

MR. THEXTON: And it's rude.

LAW JUDGE: Okay. I'll try to watch that. I'm -- I wasn't really conscious of that one. Mr. Recker --

MR. RECKER: I'll rephrase it.

LAW JUDGE: -- rephrase the question --

MR. RECKER: Sure.

LAW JUDGE: -- and --

Q. Doctor, let me back up a second. How would you define complex as it relates to the issues in this case?

A. Well, I think the records themselves have a great deal of complexity to them because they were very difficult to follow, they were hard to read. It was difficult to understand the -- what Dr. Kadile was trying to do from his records as well as trying to figure out what was really wrong with the patient so we could try to get some measure of that.

Q. Doctor, page 497 reflects time billings for October of '01, is that correct?

A. Yes.

Q. And assume for purposes of my next question the complaint against Dr. Kadile was filed in December of '01. Turn to page 498. Would this be reflective of the next time you spent devoted in this case?

A. I'm sorry, I -- I'm not clear on your question.

Q. Well, assuming the complaint was filed in December of '01 would this next bill dated July 25th representing services rendered in June '02, would that be the next entries, the next time submissions you submitted to the state?

A. Well, it's the next -- it's the next page after

497. And if they're in time sequence then that should be the next effort that was put forward.

Q. Doctor, this invoice from you reflects June 12th and June 13th. You traveled from your home in Newton, Massachusetts to Green Bay to attend the deposition of Dr. Kadile, is that correct?

A. That's my recollection.

Q. And you were paid 26 hours times \$175 an hour, right?

A. That's what it says.

Q. Plus expenses? So the State of Wisconsin pays you a total of \$5,289.50 for sitting in at Dr. Kadile's deposition, is that correct?

A. Well --

MR. THEXTON: Objection. Your honor, this is not cross-examination. This is argument. That's all that's going on here. He's objecting to the amount of the bill. He's not questioning -- this has -- also has nothing to do with Dr. Baratz' credibility whatsoever.

LAW JUDGE: Mr. Recker, I will note that you seem to have made a point about the billing and we may have commentary on that later. If you intend to go through the record simply verifying the amounts I don't think that's necessary.

MR. RECKER: All right.

LAW JUDGE: If there are specific dates on which you think there's misbilling then we would certainly like to look at that.

Q. Doctor, considering all the time and reports you generated prior to June '02 why did you feel it necessary to expend 26 hours and bill the state over \$5,000 to sit in on Dr. Kadile's deposition?

A. That wasn't my decision, that was Mr. Thexton's.

Q. Doctor, if you'd turn to page 508. This reflects billing for October of '02, is that correct?

A. That is correct.

Q. And it indicates that you were here in court -- I guess that means the administrative hearing -- for four days. Each day was over 11 hours, 11 to 12 hours, is that right?

A. I believe so.

Q. And is it your testimony that this matter went on for 12 hours or 11 hours each of those days?

A. No, the record is clear as to how long the court proceedings lasted. That's not the total amount of time I spent on those days.

Q. You spent more?

A. I did spend more time on those days. There was preparation time and discussions with Mr. Thexton.

Q. Doctor, if you'd look at page 511 it's a statement from you for \$18,415. And page 512 has the "okay to pay" -- or somebody with the state. You received that, did you not?

A. To the best of my knowledge I did.

Q. Now, Doctor, correct me if I'm wrong but these documents were produced by the state and they reflect no billings from you in the year '03?

A. That's correct.

Q. Why is that?

A. Because they're still being processed.

Q. Well, it seems like in Exhibit 24 you were very timely submitting the billings almost monthly. And yet here we are in July of '03 and you've not submitted the first bill?

A. Well, they weren't submitted monthly, they were submitted in batches about every three months because that's -- that's the way we did it. And the effort this year has been sporadic and that's why -- and I -- and my secretary had left in January so it's taken some time to get the bills done.

Q. Doctor, you recall that sometime after November of '02 Dr. Kadile was without legal counsel, do you know that?

A. I don't know that officially. I think I heard that.

Q. And at some point the administrative law judge directed that your remaining direct testimony in this matter be submitted in writing, correct?

A. I don't know that. I don't know that he directed that. I -- I don't know that.

Q. All right. Well, now, you spent a lot of time on this matter on January 30th, '03, did you not?

A. I spent sometime in January of '03, that's correct.

Q. Well, I said January 30th, '03.

A. That was one of the days that we were doing added testimony, that's correct.

Q. And when you say doing added testimony I'm referring to January 30, '03 where you and Mr. Thexton met in your attic, do you recall that?

A. We met.

Q. In your attic? Correct?

A. Pardon me? I have an office in my home and we met in my office. The office happens to be on the third floor

of a home. It is not an attic. It is an office.

Q. So if the court reporter referred to the meeting in the attic she'd be wrong?

A. That's her term, not mine.

Q. Okay. Now, you and Mr. Thexton instructed the remainder of your direct testimony on that day, did you not?

A. I don't think we constructed anything. He asked me questions and I responded.

Q. And do you recall at some point telling the court reporter to strike your answer, you wanted to substitute another answer?

A. I don't recall that.

Q. Okay. Do you recall that it lasted till about 7:00 at night?

A. I recall that it was a long day.

Q. And you haven't billed the state for that time yet?

A. Yes, I have. The bills are in process.

Q. When did you bill the state?

A. Recently.

Q. Any reason you waited six months?

A. I didn't have time to get the bills done.

Q. Dr. Baratz, do you recall participating in a panel discussion held by the Agency for Toxic Substances & Disease Registry, Division of Health Assessment & Consultation?

A. Yes.

Q. And that was in June of 2001 -- June of '01, correct?

A. I believe so.

Q. And you submitted written documentation -- written materials that you published prior to that seminar regarding your CV and your background, is that not correct?

A. There were multiple requests for materials from the consulting group that put on the seminar.

Q. But they had to be submitted prior to June of '01, did they not?

A. Some of them were. There were things that -- that came in later. There were many things that went back and forth regarding that conference.

(Document marked as Exhibit 26 for identification)

Q. Sure. I'm handing you Exhibit 26.

A. Yes.

Q. This was one of the pre-meeting brochures, was it not?

A. I don't know that for sure.

Q. All right.

A. I'd -- I'd have to see the whole brochure.

Q. On the first page it says, "Robert Baratz, president internal medical consultation services," that is you, right?

A. That's me.

Q. On the second page of this document, page 480, it says, "The panel" -- and your name is there, correct?

A. That's correct.

Q. Now, the second sentence says, "He was also the associate medical director for Harbor Health," but that was old news, right, Doctor? You left that in 1999?

A. That's correct.

Q. All right. It says, "He currently provides consulting services" -- and then you included, "US Food & Drug Administration." That was not a true statement, was it Doctor?

A. I'm sorry?

Q. That was not a true statement, was it? You were currently providing consulting services for the US Food & Drug Administration?

A. The -- the -- my relationship with the FDA is still an open one and ongoing.

Q. So is it your testimony that was a true statement on that resume?

A. That's what I've been told by the people at the FDA.

(Document marked as Exhibit 27 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 27 which is a letter from the FDA, Office of Internal Affairs, dated March 2nd, 2001. Have you seen this before?

A. I believe so.

Q. And are you aware that its contents say they have -- have no and never had any relationship with you?

A. Could you direct me to where it says that?

Q. Why don't you take your time and read it? Let me read the second paragraph, Doctor. "Between February, 28th, 2001 and March 2, 2001 special agents of the FDA, OIA made the following inquiries and failed to reveal Baratz either has/has had a consultant or contractual relationship with the FDA in general or specifically with the FDA office of criminal investigations, the enforcement branch of the FDA." Did they miss something in this inquiry, Doctor?

A. They sure did. They didn't find the reference to where I worked for the FDA because they didn't look in the right place.

Q. Where can we tell them to look?

A. Where did they fail to look?

Q. Yes.

A. In the regional office of the OCI that I was working for because the records were not centralized.

MR. THEXTON: Would you like to see that record, Mr. Recker --

MR. RECKER: Okay.

A. There's also a letter from the senior associate commissioner of the FDA saying I worked for them.

Q. All right.

LAW JUDGE: Mr. Thexton's interruption is probably not proper. But it might not be bad to handle this at this moment. If you wish to see it, you may. Otherwise we can come back to it.

MR. RECKER: I've got too much to do, your honor.

LAW JUDGE: That's fine. Thank you.

Q. You further go on, Doctor, in this 26, you say -- quote -- "He" -- that being you -- "He is currently working with the State of Wisconsin regarding chelation therapy and use of hair analysis." -- end quote.

A. I didn't make that statement. The --

Q. Who --

A. The people who wrote that statement made that statement.

Q. So you disavow any knowledge of that statement?

A. I disavow writing that statement because I didn't write that statement. It was written by Eastern Research Associates who are -- Eastern Research Group who -- who made the whole pamphlet. This was the meeting announcement. They did not show this to me for review. They extracted these things from my CV and from our discussions.

Q. So --

A. I never saw this before it was printed.

Q. So either on your CV or in your discussions you indicated that you were currently working with the State of Wisconsin regarding chelation therapy and hair analysis?

A. I did.

Q. The next sentence, Doctor, says -- quote -- "Dr. Baratz is the national spokesperson for the American Dental Association regarding alleged mercury toxicity." -- end quote. Was that a true statement at the time that was made?

A. No, it wasn't. And I didn't make that statement. They -- they've mistranscribed what it says on my CV.

Q. Okay.

A. It says the dates I was working for the ADA on my CV.

Q. Okay. And that mid 1980's, was it not, Doctor?

A. It was in the 80's and early 90's if I'm not mistaken.

Q. Doctor, the last sentence, "He has published more than 150 papers." That's another mistake, isn't it?

A. That is an error on their part and they -- they -- they cut off the full statement as it appears.

Q. Now, Doctor, we talked about the propensity for telling the truth and your experience as a witness. It's true, is it not, that you have been a witness in legal proceedings in a court of law, correct?

A. Yes.

Q. And administrative hearings such as this, correct?

A. Yes.

Q. And you've given multiple number of depositions in various legal proceedings, correct?

A. A relatively small number.

Q. And obviously you understand how important it is to tell the truth in any legal proceeding?

A. It's important to tell the truth as you know it.

Q. Now, in addition to being a witness you yourself have also been a plaintiff as you testified in the deposition of this matter in several cases, correct?

A. I've been a plaintiff in some legal proceedings.

Q. Right. And I believe you indicated in your deposition -- if you want -- that would be more fair, I'll hand you the deposition.

MR. RECKER: Can I have the August deposition?

Q. Do you recall indicating that you were a plaintiff in a legal action you brought against Harvard Health Services in 1983 or 1984?

A. In -- Harvard Health Service?

Q. Harvard Health Services.

A. That was the name of it. That's not -- incorrect.

Q. You didn't bring suit against Harvard Health Services?

A. That's not the name of the suit.

Q. Look at the deposition if you will, Doctor. Page 59. Harvard Community Health. Is that better?

MR. THEXTON: Do you mean page 58, counselor?

Q. I'm sorry, page 59, line 22 -- quote -- "Are there any other lawsuits that you've brought as a plaintiff in regard to anything?" "Yes." "What other?" "I've had some breach of contract activity." "When?" "Pardon me?" "When?" "Answer: One back in the early 80's with Harvard Community Health Plan which was adjudicated and the jury

found that they had breached the contract." "Is it early 80's?" "Answer: '83, '84." "Question: Any other litigation you brought as a plaintiff?" "Answer: That's been filed with the courts? Just that? The litigation I told you about that's involving my arm." Now the litigation you told about previously in the deposition involving your arm was against Dr. Florence Wilson, correct?

A. She was one of the defendants.

Q. Okay. Now, Doctor, when you said just that litigation I told you about that's involving my arm you knew that was a lie at the time you answered it, didn't you?

A. Excuse me?

Q. I said you knew your answer was a lie at the time you answered it, did you not?

A. What -- I'm not sure what your question is, sir.

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

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

A. Yes.

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

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

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

Q. Doctor --

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

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

A. Excuse me?

LAW JUDGE: Could you repeat the question, please?

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

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

Q. Let's let --

A. Mr. Seeley was doing --

Q. -- the judge decide.

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

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

A. I didn't file a suit against the dean. It was the former dean of the Boston College Law School.

Q. Dean Richard Huber, correct?

A. His name was Huber.

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

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

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

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

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

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

(Document marked as Exhibit 28 for identification)

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

A. I have to look at the dates.

Q. All right, it'll speak for itself. Doctor, let me ask you this. The former dean at the time you filed the suit was about -- he was over 70 years old, wasn't he?

A. I believe so.

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

A. Those are part of what happened.

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

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

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

A. That claim is against the employer.

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

A. I stated I was.

Q. Okay.

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

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

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

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

A. It was filed by my attorney.

Q. Okay. Oh, excuse me, Doctor. You don't recall signing your name and writing it in yourself?

A. I don't recall seeing that recently. It was several years ago.

Q. It was December 2nd of '02, wasn't it?

A. I don't recall seeing it recently and I don't know what it specifically says.

Q. Well, we'll get to that later. In any event the lawsuit you filed against the former dean of the law school resulted from your jogging into his car when he was turning off Center Street into the faculty parking lot, correct?

A. No, he was turning into the main entrance. I wasn't jogging at the time. I was running at high speed. And there's a major difference.

Q. Please explain what that difference is?

A. Well, it's the difference between trying to stop when you're going 30 miles an hour versus trying to stop when you're walking.

Q. Were you going 30?

A. I wasn't going 30 but I was running as fast as I could.

Q. Now, Doctor, you -- I'm suggesting reasons why you might have forgotten this in your deposition?

A. I didn't forget it at all.

Q. Oh, you didn't?

A. It wasn't asked.

Q. "Any other litigation that you brought as a plaintiff?" question. "Answer: That's been filed with the courts? Just that and the litigation I told you about that's involving my arm." How did that escape, Dr. Baratz?

A. I think we had a discussion of that Dr. Seeley -- Mr. Seeley and us in another part of the proceedings. That was my recollection. Now maybe I'm not recalling that specifically.

Q. Okay. In any event you --

A. But in the context in which he phrased the question that was the way it was -- that was the answer that he was looking for. He wanted to know the answer to his question and I gave him the best answer I could.

Q. You just thought the lawsuit against the former dean was exempt from the question?

A. No, I did not.

Q. Okay. Doctor --

LAW JUDGE: I'd like to get a fuller answer on that one, please.

MR. RECKER: Sure.

LAW JUDGE: Would you -- would you give us more on that, Dr. Baratz? Why -- why you did not mention the suit against Dean Huber at that point?

A. Well, I have to go back and look at the way this whole thing was phrased and where it began and where the line of questioning began.

LAW JUDGE: Are you saying you felt that it had been alluded to or covered in previous -- in the previous 58 pages somewhere?

A. Yes, or in --

LAW JUDGE: That's --

A. Or in declaration or whatever. Something Mr. Seeley was well aware of.

LAW JUDGE: Okay, that was the answer I thought you were giving. I just want it on the record. Thank you.

Q. Doctor, you implored the police to file leaving the scene of an accident charges against Dean Huber, did you not?

A. Absolutely, because he did.

Q. He did?

A. He did.

Q. He pulled into the parking lot?

A. He pulled way into the back parking lot. I had no

idea who he was or even what he was.

Q. I thought you said he stopped and waved you on?

A. If we wish to retry this case, we may.

Q. Well, we'll get to that part. Let me just go on

--

LAW JUDGE: No, I'm going -- I'm going to interrupt here and ask how far afield we're going on this?

MR. RECKER: We're going to credibility and why this witness might potentially lie under oath.

LAW JUDGE: Based on his leaving it out of this deposition? Is that what it's -- you're hanging this on, that it was not mentioned in this deposition?

MR. RECKER: Correct.

LAW JUDGE: And you're suggesting there were reasons for doing that?

MR. RECKER: Correct.

LAW JUDGE: All right, I won't interrupt again for a while. Go ahead.

Q. Dr. Baratz, you did implore the police to issue a leaving the scene of an accident citation, correct?

A. I -- I did.

Q. And they refused, correct?

A. I'm not sure what they did.

Q. Well, do you recall appealing that refusal to the magistrate?

A. I may have.

Q. And he refused, correct?

A. I think that that may have been case --

Q. And then you appealed --

A. -- because of the status of the person involved.

Q. And then you appealed the magistrate's decision directly to the judge and the judge refused, correct?

A. I don't remember the details at this point. It was -- it was ten years ago.

Q. Have you ever been accused of being a vindictive person?

A. No.

Q. Okay. In any event, you pursued this lawsuit for three years and it finally went to trial, correct?

A. Yes, it did.

Q. And on November 1st, 1995 the jury found in favor of Mr. Huber?

A. They didn't find him guilty.

Q. You lost your suit, correct?

A. They didn't find him guilty.

LAW JUDGE: That's a characterization. I don't

think you should argue over it.

MR. RECKER: Okay.

Q. And they awarded you to pay costs, correct?

A. They may have.

Q. Well, you can look at page 06 on Exhibit 28, line 19. "Judgment is ordered and judged the plaintiff, Robert S. Baratz take nothing, that the action be dismissed on the merits and that the defendant recover of the plaintiff his costs of the action." Now, do you recall?

A. I've never seen this before.

Q. Independent of this document do you recall that now?

A. No.

Q. Doctor, when you were answering Mr. Seeley's questions in this deposition of August '02 did you think he was just talking about breach of contract activity?

A. I have to go back to the context of the question again.

Q. Well, you failed to mention another suit, didn't you?

MR. THEXTON: Well, objection to the question.

LAW JUDGE: Basis?

MR. THEXTON: There is -- it is totally unreferenced and it is argumentative. Really, I mean, another suit? What is he talking about?

LAW JUDGE: I'll allow the witness to answer that question. If he doesn't recognize it, then Mr. Recker will have to do a little more leading.

Q. Doctor, when you sued Harvard Community Services -- is that the proper name --

A. No.

Q. What is the proper name?

A. Harvard Community Health Plan.

Q. All right. You were employed for HarvardA. I worked 20 hours a week.

Q. And they fired you?

A. The director of that department --

Q. Yes or no?

A. -- violated my contract and terminated employment in -- in -- in the context of that employment.

Q. And you sued --

A. Without cause.

Q. And you sued them for breach of contract?

A. Correct.

Q. Former employer, correct?

A. Correct. And won.

Q. Now, you sued another former employer, Tufts

University, did you not?

A. I did.

Q. And if you'll turn to page eight, we can look at that docket entry.

LAW JUDGE: Let me ask Mr. Recker, how is this relevant? This seems to be a contract action and he does mention that there were contract issues. Is this --

MR. RECKER: He --

LAW JUDGE: -- a credibility issue?

MR. RECKER: Absolutely.

LAW JUDGE: How?

MR. RECKER: He mentions one suit he recalled '83, '84. But he conveniently omits another suit against another former employer ten years later.

A. Not so.

LAW JUDGE: Just a moment. We've moved onto a part of the deposition that I'm not sure we looked at before. I saw the -- Dr. Baratz said, "I've had some breach of contract activity." So, I mean, that is a positive statement in that deposition.

MR. RECKER: Go on, your honor, and read --

LAW JUDGE: And we haven't gotten to that? Okay.

MR. RECKER: And it's all about discussions and resolutions between attorneys without going to the courts.

LAW JUDGE: This would be on --

MR. THEXTON: That's not what he says. That is not -- a misrepresentation of what the --

LAW JUDGE: Yeah, we need --

MR. THEXTON: -- deposition says.

LAW JUDGE: We need to have that foundation. I'm sorry, Mr. Recker, before we cross-examine him on that, I -- you need to show me what he says in the deposition.

MR. RECKER: Well, I already pointed to his express, unequivocal answer, "Just that," referring to the 1983 Harvard suit, "And the litigation that I told you about that's involving my arm" period. Unequivocal response.

LAW JUDGE: Okay, perhaps it wasn't asked and answered. But on the same page I did notice on page 60 Dr. Baratz said, "I've had some breach of contract activity." And is that -- I'm -- give me a second to read this. Oh. "Any other litigation that you brought as a plaintiff?" And then at the bottom of page 60 it says, "There have been some breach of contracts here and there, but they have been resolved." Is that -- that's where we are?

MR. RECKER: Correct.

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

MR. RECKER: Correct.

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

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

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

LAW JUDGE: Okay, this does go on for a couple pages. I just -- if there's going to be a contradiction of the previous testimony, I need to define it here. We do get through --

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

LAW JUDGE: And -- and we do get down to page 62, whether the statement -- I'm sorry, I'm jumping around in the transcript. If any of you wants to fill it in, you can. But in the middle of page 62 he does say contract issues, that sort of thing. That they've all been resolved without courts to the best of my knowledge and that's all I can recollect at the moment. All right. Having reached that, I need to let you ask some questions, Mr. Recker, about this Harvard Community Health thing.

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

A. Not specifically. I alluded to it.

Q. And that --

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

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

A. Well, as I said before --

Q. Of Exhibit 28.

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

Q. Well, I can make you sure.

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

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

A. Yes.

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

A. They employed me as a faculty member.

Q. In the dental faculty, correct?

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

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

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

Q. Another --

A. I did not leave the school.

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

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

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

A. I don't recall.

(Document marked as Exhibit 29 for identification)

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

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

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

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

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

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

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

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

A. My recollection is there was an incident years before in Newton where somebody on his way to work ran a stop sign and nearly hit me and I ran into the side of his

car going downhill near my house. And a magistrates action was brought and the case was settled.

Q. You ran into another car?

MR. THEXTON: Your honor, I will object to this tone and form of questioning.

MR. RECKER: The tone comes with being a lawyer. I apologize, Mr. Thexton.

LAW JUDGE: Right, and I -- and as a lawyer I think you can probably modulate your tone. I will ask you to watch that. As for the question let me again see how -- Mr. Recker, are you saying that this was a -- an action filed in court?

MR. RECKER: I'm trying to find out --

LAW JUDGE: Do you have --

MR. RECKER: -- what it was. Because I will get to the point in a brief second.

LAW JUDGE: Well, okay. I -- we can't use this for fishing. And if you have information that this is a case filed, then I'll certainly let you question him about it. I haven't figured that out yet.

Q. Doctor, in this other incident --

LAW JUDGE: You may --

Q. -- it involved you running into a car, correct?

A. That was part of it.

Q. Did you have any physical contact with the driver of the car?

A. The driver got out of the car and threw me to the ground.

Q. Okay.

LAW JUDGE: Let me ask you, Mr. Recker, what relevance this is? If it needs to be --

MR. RECKER: Is what, your honor?

LAW JUDGE: What relevance this is -- this must go to credibility, not to anything else?

MR. RECKER: I'm done with that.

LAW JUDGE: Okay, well, I asked you too -- one question too late then perhaps. All right.

MR. RECKER: It was a perfectly timed question.

Q. Doctor, you recall a lawsuit you filed with the co-plaintiff being Dr. Steven Barrett?

A. In a libel action in Canada.

Q. And that --

LAW JUDGE: This was in a libel action?

Q. Yes, and that was in 2001, was it not?

A. I don't remember the date of filing.

Q. And for whatever reason you didn't feel that Mr.

Seeley was asking that question either in the deposition, did you?

A. I think he was asking more about injury claims, the context of the way he was asking questions, and I didn't recall that at the time.

Q. Well, the incident with Dean Huber was an injury claim, wasn't it?

A. Once again, I go back to the way the questions were phrased to me that day and I answered them the way I thought I was being asked.

Q. Okay.

A. That's all I can say. I made no attempt to hide anything from Mr. Seeley.

(Document marked as Exhibit 30 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 30. I represent to you this is a docket sheet for the lawsuit you filed against Dr. Florence Wilson and others, correct?

A. That's correct.

Q. And the date of the filing -- on this docket sheet it indicates you filed suit on November 30th, 2001, is that right?

A. That's right, that's what it says.

Q. Doctor, do you recall being asked questions about this alleged assault in a deposition taken in Florida in 2001?

A. I think there may have been some questions asked about that.

Q. You don't recall --

A. I don't recall the specifics.

Q. Okay.

MR. THEXTON: Does this have an exhibit number?

LAW JUDGE: Are we going to need --

MR. RECKER: If you want it --

LAW JUDGE: I'd rather have just a page of two from this if -- if it's necessary.

Q. Doctor, I'm handing you a copy of the deposition you gave in a matter in Florida dated January 24th, 2001. Do you recall that?

A. I recall being there then.

Q. Okay. And on page 126 you were talking about the alleged assault by Dr. Wilson.

LAW JUDGE: We need to pause.

REPORTER: We need to change tapes.

MR. RECKER: I'm sorry.

(End tape 1 -- Begin tape 2)

LAW JUDGE: Okay, as long as we've paused maybe we'll pause a little longer here. My preference would be to keep going beyond noon for a while but if we're going to do that, maybe we should take a break just for everyone's convenience. Is that all right with counsel or would you rather break -- go another half an hour and break for lunch at 12:00? Any preference? Okay. Anyone who can't make it till 12:00 among the principals up front here? All right, then we'll just keep going. Thank you.

Q. Dr. Baratz, would you return to page 125 of that Florida deposition in which you gave sworn testimony? Line 19 you answered, "But I'm partially disabled due to an injury." "Question: What injury is that?" "Answer: I was assaulted and I have nerve injury in my arm." "Question: When was that, Doctor?" "Answer: When was the nerve injury or when was the assault?" "Question: When was the assault?" "Answer: The assault was in December of 1998." "Question: You've been disabled since that time?" "Answer: Partially disabled and then it worsened." "Question: You're on disability?" "Answer: I would imagine so." "Question: Do you get disability payments?" "Answer: They're still working on that." "Question: Who assaulted you?" "Answer: A former employee of one of the places I used to work." "Question: Why did they do that?" "Answer: I have no idea." "Question: They hit your arm or something?" "Answer: No, they pulled on it severely." "Question: What was the name of that place?" "Answer: That particular place?" "Question: Yes." "Answer: Harbor Health Services." "Question: What was the name of the employee that assaulted you?" "Answer: That matter is under litigation and I'm not privy to discuss that with you." "Question: You're a party in that lawsuit?" "Answer: Yes." "Question: You're the plaintiff?" "Answer: Yes."

Doctor, when you answered that question on January 24th, 2001 that was a lie, wasn't it?

A. I answered the question the way I thought he was answering -- asking the question. The matter was in discussion with my attorneys at the time. Whether the case had been filed yet or not, apparently it was filed later. But the matter was under review by my attorneys, and I was asked not to discuss it by my attorney. And that's what I was referring to.

Q. So this is your version of a truthful answer?

MR. THEXTON: Objection.

LAW JUDGE: Sustained. It's simply argumentative.

You can ask him another question.

Q. Continuing on, Doctor, the fact of the matter is when you answered saying you were the plaintiff and the matter was in litigation, you knew that no suit had been filed at that time, correct?

A. The workers comp action I believe was in process. And the other suit was in process as well. I don't know what the status of them was at the time.

Q. But you knew --

A. I was told not to discuss it because it was a matter that was still yet to be determined. That's -- I had asked my counsel about that and that's what I was advised to say.

Q. But that's not how you responded, is it?

MR. THEXTON: Objection, your honor.

A. I --

MR. THEXTON: This is argumentative -- again, what he said has been read into the record. That's it.

LAW JUDGE: Well, sustained on this narrow one. If you want to go over it again -- well, let me see if it's worth going over. If there's a specific phrase you want to go over, Mr. Recker, you may -- you may ask Dr. Baratz about it.

Q. Doctor, your last reason for saying -- for not responding to the questions about the assault and who assaulted you was that the matter was in litigation, correct?

A. And that's my understanding from my counsel.

Q. But yet when the matter was in fact in litigation in 2002 in your deposition in August and at this hearing in October you freely discussed the case, didn't you?

A. I discussed what I was able to in terms of the particulars of the case that had already been disclosed in court. They were public -- what I was talking about were things that I believe were public in the filings. That's my recollection.

Q. Doctor, on page 127 the next question was, line four, "Was there any -- was there any criminal charges brought as a result of that?" "Answer: That's not been fully determined yet." "Question: So, there's been no criminal trial?" "Answer: Not yet." Doctor, on January 24th, 2001 when you gave that answer you know that no one had filed a criminal complaint against Dr. Wilson, didn't you?

A. My attorney was considering it and it was still a matter under discussion.

Q. Was considering still filing an assault charge from an incident that happened on December 3rd, 1998?

A. That's what he said.

Q. You didn't call the police, did you?

A. I was specifically instructed not to call the police.

MR. RECKER: Your honor?

LAW JUDGE: Yes.

MR. RECKER: Do you want us to mark or introduce as an exhibit the four pages of the January 2001 deposition? Or would it be more expeditious just to introduce the deposition and mark the deposition as an exhibit?

LAW JUDGE: I would greatly appreciate just having the four pages. Do you have any objection to that, Mr. Thexton? If -- if it is admitted at all, can we just deal with the four pages?

MR. THEXTON: Yes, I would like that -- perhaps the cover sheet would also --

LAW JUDGE: Yes.

MR. THEXTON: -- or the cover --

MS. HUBBARD: Actually, that's part of the --

MR. THEXTON: Two pages.

MS. HUBBARD: -- of the four -- the cover sheet, 125 to 127.

LAW JUDGE: Well, that would be my preference. Thank you.

MR. RECKER: 31, your honor.

(Document marked as Exhibit 31 for identification)

LAW JUDGE: Thank you.

Q. Dr. Baratz, do you recall testifying in this proceeding before this hearing examiner that you were not seeing patients during the course of time between 1999 and 2002?

A. I believe so.

Q. And do you recall also in your deposition of August 19th, 2002 essentially stating the same thing?

A. I don't recall that specifically. I'd have to see the deposition.

Q. Okay. Go ahead. You have that in front of you, Doctor, the August 19, 2002 deposition. If you'd turn to page 59. Line nine. "But you haven't been practicing dentistry or practicing medicine clinically?" "Answer: I haven't been seeing patients." "Question: Since 1999?" "Answer: Correct."

MR. THEXTON: One more Q&A, please?

LAW JUDGE: If you don't mind, Mr. Recker?

MR. RECKER: Sure.

Q. "Question: Up until?" "Answer: This year." And this year being 2002, correct?

A. That's when this occurred. That's when this deposition was.

Q. Do you recall giving contrary testimony in the Florida deposition, Doctor?

A. No.

Q. Why don't you take -- I'm sorry, we have Florida too. Yes.

MS. HUBBARD: This one?

MR. RECKER: Yes.

Q. In the Florida case, Doctor, you recall giving two depositions. The second one was April 6th, 2001. You don't have to recall. We'll hand it to you in a second.

A. I only gave one deposition in the case.

Q. Maybe you forgot.

A. No, the deposition was interrupted and then resumed. I didn't forget. It was one deposition.

Q. Two different dates?

A. It was on two different dates.

Q. Looking at the April 6th, 2001 version of the one deposition, page 69, line 22, "Question: All right" --

MR. RECKER: Am I -- your honor, am I too far ahead of you? I'm sorry.

LAW JUDGE: Where are we again?

MR. RECKER: Page 69, line 22.

LAW JUDGE: Thank you.

Q. "Question: All right. Is there any human being then that you can tell us that could verify whether you brought patients to Carney Hospital?" "Answer: As I said before, the director of medical records could verify how many admissions I did in a given a year." "Question: Do you know the name of the person?" "Answer: I believe her name is Geraldine Geary." "Question: Okay. Have you been at Carney Hospital in the year 2001?" "Answer: No, I have not." "Question: Have you been at Carney Hospital in the year 2000?" "Answer: Yes." "Question: How many times?" "Answer: Oh, several." "Question: Is that more or less than five?" "Answer: I'm sorry?" "Question: Is that more or less than five?" "Answer: I would say more than five." "Question: Less than ten?" "Answer: Probably between five and ten is my recollection." Doctor, were you not clinically seeing patients in 2000 contrary to your sworn testimony in this matter?

A. No, it just -- I was just asked if I was in the

hospital. I go there for continuing education meetings and grand rounds. I was asked if I was in the building and I was.

Q. Look at the beginning of the question, Doctor. It says, "Is there any human being then that could tell us -- that could verify whether you brought patients to Carney Hospital?"

A. Yeah, that was a different train of thought question.

Q. Well, it's the same question and answers, Doctor?

A. No, but the question says is there anyone who could say that I've ever worked there and that I've brought patients there. And the answer is yes, the director of medical records. The next question was, was I in the building during the next year. I didn't say I saw patients then.

Q. Well, I think --

A. I was --

Q. Where do you see have you been in the building?

A. The question reads, "Have you been in Carney Hospital in the year 2001?" "Answer: No, I have not." Have you been in Carney Hospital in the year 2000? Yes, I've been in the hospital. I've been there. I go onto grand rounds there. I went there on a regular basis for grand rounds.

Q. So even though --

A. In order to maintain my medical staff privileges I have to go to grand rounds.

Q. Even though the preceding question is trying to find out who could verify the number of admissions you made in a given year, you then believed he was only asking how many times you'd walked into the hospital?

MR. THEXTON: Objection, that's argumentative.

LAW JUDGE: Overruled. I'm going to let that -- this question and answer be --

A. I answered the question that was posed to me. I don't ask the questions in a deposition. The attorney does.

Q. But you're not changing your testimony you gave in this matter that you didn't see dental or medical patients between 1999 and 2002?

A. I'm standing by what I said before, and I'm standing by what I said here. The words speak for themselves.

Q. Okay. Let's go to the January 24th, 2001 deposition in Florida. Do you have that in front of you? Page 85, line 13. "Question: You do not actively practice

dentistry?" "Answer: Yes, I do." This was January 24th, 2001. Correct, Doctor?

A. Yes.

Q. "Where?" "Massachusetts." "At what address?" "159 Bellied Street, Newton." That's your home, is it not, Doctor?

A. That is correct.

Q. Page 86, line eight. "Question: When was the last time you examined a patient there?" "Answer: About a week and a half ago." "Question: For what type of problem?" "Answer: A transaction of their lingual nerve." "Question: You actually did the transaction?" "Answer: No, that was their complaint." "Question: Did you refer them to somebody else?" "Answer: They were referred to me for an examination which is what you asked me." "Question: Okay, you examined them?" "Answer: Yes." "Question: Did you come to some sort of diagnosis or conclusion?" "Answer: Yes." "Question: Then did you refer them out or did you --" "Answer: They had already seen someone for that purpose. They were getting an opinion from me as to the nature of their disability." "Question: Oh, sort of consultation or second opinion?" "Answer: Yes." "Question: Any other dental patients you've seen in the last year?" "Answer: Yes." "Question: How many?" "Answer: About 15." Now, correct me if I'm wrong, Doctor, but this conflicts with the testimony you have given in this case that you did not clinically see dental or medical patients between 1999 and 2002?

A. I wasn't clinically treating these people. Most of these people were involved in -- in medical examination matters for litigation which is what I was alluding to there. That particular case involved a legal matter and I was an expert in that case. I wasn't treating that person. I was just merely verifying his -- his findings.

Q. That isn't practicing clinical dentistry in your mind?

A. Well, we can nitpick about the word what practicing clinical dentistry means?

Q. Can't we though?

A. Both of us being dentists, Mr. Recker. I mean -- but I wasn't actively seeing patients then. I was doing consultation work. I didn't hold out my shingle and say, you know, I'm seeing patients per se. This is someone who was referred for consultation regarding a legal matter for an -- an IME, an independent medical exam.

Q. Doctor, isn't it a fact that more recently you

testified that you were disabled and you could treat medical or dental patients between 1999 and 2002 for purposes of obtaining a disability claim?

A. I said I was partly disabled and I could not perform my work as an emergency physician which is what my occupation was as the time of my disability.

Q. And you don't recall --

A. That's what I said.

Q. You don't recall stating that you didn't see clinically patients in either medicine or dentistry between 1999 --

A. I don't know what you're referring to. You're referring to some kind of document or filing? I'm not sure what you're referring to?

Q. I'm referring to the deposition testimony we've already been over.

A. Well, specifically where?

Q. Do you have an August 19th deposition in front of you, Doctor? Page 59, line six? "Question: So from 1999 you were primarily -- you have been a consultant in the medical field in dentistry?" "Answer" --

A. I'm sorry, what page are you on?

Q. Page 59, line six. "Answer: That's one of the things I've done." "Question: But you haven't been practicing dentistry or practicing medicine clinically?" "Answer: I haven't been seeing patients."

A. Well --

Q. "Question: Since 1999?" "Answer: Correct." "Question: Up until?" "Answer: This year. 2002." Now, Doctor, that wasn't true? You were seeing patients between '99 and 2002?

A. Not by my definition of seeing patients.

Q. Oh, okay.

A. Seeing patients means charging patients for dental service. I wasn't seeing patients in that context. I wasn't performing that kind of work. I was doing consultative work.

Q. I see.

A. I mean, did I see physically a patient? Yeah. Were they my patient? No. They were somebody else's patient that I was performing an IME on.

Q. Doctor, in your view do you answer questions under oath --

MR. THEXTON: Objection.

Q. -- candidly and completely?

LAW JUDGE: Okay.

MR. THEXTON: Objection.

LAW JUDGE: I have a feeling what the objection is. Go ahead.

MR. THEXTON: This is an objection to the argumentative -- this is argument. This is not a question.

LAW JUDGE: I sort of thought it was going to be an argumentative question too. Mr. Recker, I'm going to ask you not to ask it.

MR. RECKER: Withdrawn.

Q. Doctor --

LAW JUDGE: You know, if you -- if you just ask it as a straight forward question I think it is a relevant question because that -- that is what we're hearing from this witness.

Q. Doctor, in your opinion do you answer questions under oath fully and completely?

A. I answer to the best of my ability the questions that are posed to me as I understand them.

Q. Have you ever stated in any of these depositions we've looked over that you didn't understand the question or the question was ambiguous?

A. Oh, probably many times.

Q. But not in the answers we reviewed?

A. I don't know what you've reviewed, Mr. Recker.

Q. Haven't you been here?

LAW JUDGE: Let's stop here. I -- the record's made on that one.

MR. RECKER: I'm sorry.

LAW JUDGE: The record is made on that one.

MR. RECKER: Thank you.

LAW JUDGE: Thank you.

Q. Doctor, you understand that your experience as a physician is relevant to this case?

A. It may be.

Q. You're not sure?

A. I think that's up to the -- the trier of facts to decide.

Q. But the nature of the scope of your experience as a physician is relatively important in this matter, is it not?

A. Well, I don't know how important it would be. That's for them to decide.

Q. Okay. Doctor, you practiced -- excuse me -- you completed your residency in 1991, correct?

A. In internal medicine.

Q. In anything?

A. I completed my internal medicine residency in 1991.

Q. Okay. And you started working part time for Carney Hospital at that time, correct?

A. I did.

Q. And you were working part time out patient clinic VA, correct?

A. I had already been working for the VA since 1988.

Q. But having completed a residency and being what I'll refer to as a finished Doctor, that was after 1991, was it not?

A. I was fully licensed in 1988 and was --

Q. Okay.

A. -- employed as a staff physician by the VA. There were no restrictions on my practice.

Q. Okay. And you ended your relationship with the VA in 1994?

A. They -- they went through a large rift and they eliminated most of the part time people at the VA at that time.

Q. And you ended your relationship with Tufts University in 1994?

A. The appointment at Tufts ended in '94, that's correct.

Q. And then you took a job with Harvard Health Services in 1994, '95, in that area?

A. It was in October of '94.

Q. All right. And that job had nothing to do with primary care, did it?

A. That's not true.

MR. RECKER: What number is that?

MS. HUBBARD: 32.

(Document marked as Exhibit 32 for identification)

Q. Doctor, at the time you began your employment at Harvard Health you were part time at Carney Hospital, correct?

A. Officially, yes.

Q. Your employment at Carney Hospital was purely in the emergency department, correct?

A. At that time.

Q. I'm handing you what's been marked Exhibit 32. It's a letter from you to Dr. Hock dated October 28th, 1994, correct?

A. It appears to be.

Q. Doctor, this was your responsive letter to Dr. Hoch regarding potential employment at Harvard Health,

correct?

A. I'd been already offered a contract. This was a response to the language of the contract.

Q. Right, you were negotiating?

A. I don't know if negotiation is the right word. We were trying to get the language right.

Q. Okay, well let's turn to page 369, the second page in your letter. Paragraph D -- quote -- "I am being hired to work at the Health Access Center, an urgent care facility. My duties there are not those of a primary care physician." So Doctor, is it not true you were hired at Harvard only to perform duties as urgent care medicine?

A. Well, this isn't the contract. This is our discussions of it. I don't recall the specifics of what we finally ended up with. I'd have to see the final contract.

Q. And you will, Doctor.

A. This was just my back and forth.

Q. You will. But this was your words saying your duties are not there -- not primary care medicine, correct?

A. Actually, they had drafted those phrases and I was trying to clarify some of the language in those phrases by reiterating what was -- was clearer.

Q. Why don't you back up at the top of that page. It says, "I propose the following." These were your proposals, correct?

A. Yeah, but what I'm saying is I didn't write that language. I rewrote what they had.

Q. To make it clear --

A. That's my recollection.

Q. You're not being hired as a primary care physician?

A. Initially that's what --

Q. All right.

A. -- my initial discussions with them involved.

Q. And then you indicate on paragraph two that you were currently three-fourths time employee at Carney Hospital, correct?

A. I believe I was at that time. That's my recollection.

Q. Doctor, I believe you testified in this matter that you were recruited by Harvard Health to develop and open and manage their urgent care facility. Is that accurate?

A. I recall something to that effect. I don't know whether that was the exact language.

Q. It wasn't totally --

A. I --

Q. -- true, was it, Doctor?

A. I was recruited by them for that purpose.

Q. Why don't you turn to page 371? Article six -- quote -- "Since I am a part time employee and currently working three-fourths time elsewhere it is clear that my responsibilities at Nepenset Health Center are not my primary duty." Is that correct?

A. That's what it reads.

Q. Okay. You were being employed to work a maximum 20 hours a week, correct? Providing urgent care medicine?

A. We were discussing that in this -- in this letter

--

Q. Okay.

A. Yes.

Q. Doctor, you also suggested that they strike the restrictive covenant provision in the contract, isn't that true?

A. Yes, because in Massachusetts they're unenforceable.

Q. And you say in article 17 -- quote -- "The courts have consistently held that 'restrict covenants' are unenforceable," etcetera. So you're pretty up on the law, were you not?

A. I consulted my attorney about this and that's the language --

Q. Okay.

A. -- he suggested I -- I send back to them.

Q. Look down the third line of that paragraph. It says -- quote -- "Since I am not engaging in a primary care practice at Nepenset it is irrelevant if in the future I open such a practice. Given the current direction of the healthcare industry in this county it is unlikely the concept of 'private practice' meaning independent professional activity is likely to continue and thus it is unlikely I would be in 'primary care private practice.'"

Q. In that area under those circumstances at that time given the -- the matter that was under discussion and why were discussing this at all.

Q. So --

A. They had a -- to clarify they had a covenant in there that basically said I couldn't practice in that census track. Well, I've been practicing there for years before at the hospital, at Carney, and was still practicing there. So part of their language would have prevented me from working at Carney or if I chose to in the future opening my own

office or working for someone else in that census track if there was another -- if I wanted to leave that employer or not. So the discussion had to do with that aspect of it because there was a restrictive covenant saying you couldn't practice within so many miles or something like this. And that's where I had spent the last seven years practicing. A lot of patients knew me in that area. So to exclude the ability to practice there was something that I didn't want to do. And that's what we were discussing.

Q. At the time you were talking with Harvard Health about employment your only job was part time Carney Hospital emergency department, correct?

A. My only employer other than my own self and in '92 I also was the president of an independent company and employed by them and still am. So that -- that isn't true that that was my only other employer.

Q. Let me make it more clear for you, Doctor. Your only other employment practicing clinical medicine was part time at Carney Hospital in the emergency department as of October 1994. Correct?

A. I was three quarter time at that time.

Q. And you were being hired to again perform services part time in the urgent care center, correct?

A. Half time. So half and three quarters makes it almost -- more than full time, that is correct.

Q. And at neither place your primary duties were primary medicine, primary care?

A. The --

Q. Can that be a yes or no?

A. I can't answer with a yes or no.

Q. Okay.

LAW JUDGE: You can -- you can withdraw the question if you don't want a longer answer.

Q. Withdraw. Doctor, you have never been board certified in any speciality medicine?

A. I'm board certified in oral medicine which is a specialized area of dentistry that straddles the border between medicine and dentistry. The board is not recognized by the American Board of Medical Specialities nor is it recognized by the ADA.

Q. Okay. My question again was you're not board certified in any branch of medicine, correct?

A. Not currently.

Q. You have taken and failed several times?

A. I have not passed the ABIM exam on a couple of occasions.

Q. Is that the same as failed?

A. If you say so.

LAW JUDGE: Is this a good stopping place for you? Okay, I want to just get a couple of details on the exhibits before we go but we'll -- and then we'll break. Exhibit 26, could you take a look at that, Mr. Recker and Ms. Hubbard? Exhibit 26? That was the --

MR. RECKER: Panel.

LAW JUDGE: Panel. Did you -- was there testimony or did you say when this was?

MR. RECKER: June 2001. It was acknowledged --

LAW JUDGE: It doesn't show up --

MR. RECKER: -- by the witness --

LAW JUDGE: -- there I don't think and I failed to make a note. And are there some other excerpts from transcripts that we can work on here. I think in the last ten minutes we had some other -- or did -- did we want to just put in the whole transcript?

MR. RECKER: It may be easiest.

LAW JUDGE: At this point it may be easier to just put in the whole transcript.

MR. RECKER: Fine.

MR. THEXTON: Which transcript are we talking about?

LAW JUDGE: Both of the Florida transcripts that

--

MR. THEXTON: Are they going to be considered together --

MR. RECKER: That was one --

LAW JUDGE: Well that --

MR. RECKER: -- deposition.

LAW JUDGE: They -- they will be two separate exhibits. It has been noted that they were a continued deposition.

MR. THEXTON: Yeah, although apparently they weren't paginated that way.

LAW JUDGE: Okay, we'll -- we will work on that later.

MR. THEXTON: Perhaps unfortunately.

LAW JUDGE: But I just want to make sure we handled those. It looks like we'll have to put in a tremendous amount of unnecessary material. I'd still like to find some alternative to that. However, one more thing, Mr. Thexton, there was some material that was provided to you and to me. It was given to Mr. Roder. I was -- sent to Mr. Roder within the last couple days. You know what I'm

talking about?

MR. THEXTON: I do.

LAW JUDGE: Will you have an opportunity to review that so we can discuss it later?

MR. THEXTON: Yes, I -- in view of the fact that it contains patient healthcare records I would like to discuss it in chambers.

LAW JUDGE: We may do that. Okay. How much time do we need for lunch? I guess we better set aside an hour. Community Health Plan part time as a dentist, right? Please try to be back here at 1:00. We'll break. Off the record. Thank you.

(Off the record)

(Documents marked as Exhibit 33 through 35 for identification)

LAW JUDGE: We are going to continue the hearing following a lunch break. I have just a couple comments to make before we get started. A number of people, especially in the back of the room, came up to me and said you're having trouble hearing. I'm not sure I can solve the problem. I simply explain it as best I can. And I will also encourage the people who are sitting in the back now to move forward. There are a few seats in the front and I am declaring them open. Feel free to move up. This is a hearing that is open to the public but it is not really a public hearing in the sense that some other hearings are public hearings where after the people up here get done talking the people in the audience are allowed to make comments. That is not so. I mean, you will not be asked to give your comments today or tomorrow. If -- if there is something, you know, that wasn't explained to you, I apologize. It is public for you to listen to but it is not public in the sense that you'll be asked to give your -- your responses. I'm going to upset the attorneys in this case by saying that if you really wanted to say something you would have to talk to the attorneys and get them to schedule you to be a witness on some other later date. But we are not doing that today. We really are not set up to amplify the sound that's being recorded. The microphones are going into a tape recorder. We don't have the ability to have five more microphones set up and amplify it for the back of the room. So I -- I simply apologize. If you can't hear we still have some seats up near the front. And it looks like -- unless people are just getting back late from lunch it looks like we now have enough seats for everybody to sit down, which is an improvement. I don't think there's

anything else we need to handle off the record. At the end of the day -- now I see no particular reason to push this day long but -- but as we get toward 4:00 or so we'll talk about how much more testimony we have to take and whether we should continue later today beyond 4:00 or break and just come back tomorrow morning. But we'll have that discussion when we see how much further we get.

MR. THEXTON: If --

LAW JUDGE: Mr. Thexton?

MR. THEXTON: If Mr. Recker is planning to go into the materials received from Massachusetts I am interested in discussing those in camera.

LAW JUDGE: Do you intend to get to this this afternoon?

MR. RECKER: I don't know, your honor. Can we wait?

LAW JUDGE: We'll stop -- we'll stop before that if we need to.

MR. RECKER: Okay.

LAW JUDGE: Okay, otherwise let's proceed. Mr. Recker, you may continue.

Q. Dr. Baratz, you recall reviewing the NCAH policy statement on chelation therapy? Exhibit 25?

A. This is a relatively new policy that came out in 2002.

Q. And you were president in 2002, correct?

A. Yes.

Q. Now, the official policy of the organization you're president of is that chelation therapy is unethical and should be banned?

A. In the context in which this statement is read in its entirety.

Q. And that's in the context in which it's used in this case, isn't it, Doctor?

A. This case involves matters that happened in the -- long before this statement was made.

Q. I understand that. But it involves chelation therapy as addressed in the statement, correct?

A. I'm not sure that that's accurate.

Q. Yeah. Are you aware that the Wisconsin legislature introduced a bill which would prohibit the medical board in going after a physician solely because he engages in the practice of chelation therapy?

A. No.

Q. Would you pick up what's been marked Exhibit 35.

LAW JUDGE: I'm not sure you're going to be able

to do --

MR. THEXTON: Your honor, I'm going to object at this point. This is collateral. He got his answer. That's it.

LAW JUDGE: And I was about to say I'm not really sure what you can get from this witness on this --

MR. RECKER: Well --

LAW JUDGE: -- exhibit.

Q. Doctor --

LAW JUDGE: You can ask your question --

Q. Fine --

MR. THEXTON: That four members --

LAW JUDGE: -- but I don't think it's going to go anywhere.

MR. THEXTON: Well, all we can get is the four members of the legislature have introduced a bill. End of discussion.

LAW JUDGE: And Dr. Baratz is not familiar with the bill. I'm not sure what purpose it would serve in asking him to comment on it. You can ask him a question that would be equivalent.

Q. Doctor, assuming that such a bill has been introduced would it be the position of NCHF that the Wisconsin legislature is encouraging a practice that your organization deems to be unethical?

A. I haven't read or studied this bill. I couldn't comment on it.

LAW JUDGE: Now if you -- now wait and see what happens.

Q. And I see we're on Exhibit 35. And my last exhibit was 32.

LAW JUDGE: I think we're probably doing something -- 33 and 34 with the --

MS. HUBBARD: The depositions.

LAW JUDGE: -- depositions, right?

MR. RECKER: Right.

MS. HUBBARD: Right.

LAW JUDGE: Right.

MR. RECKER: Okay.

LAW JUDGE: Thank you.

MR. RECKER: This is -- this is 36.

MS. HUBBARD: This is 36.

(Document marked as Exhibit 36 for identification)

LAW JUDGE: And Mr. Thexton, I think we were off the record when I -- we were on the record when I said maybe we'll accept the entire deposition. After we were off the

record I asked Ms. Hubbard if she would please give us just selected pages from those depositions. So we'll have to get that later.

Q. Doctor, I'm handing you what's been marked Exhibit 36, an online discussion you had on the internet responding to the subject of the power of prayer. Do you recall this?

A. I heard a show on the topic and there was an opportunity to respond.

Q. On the bottom of page two, stamped page two -- that's 293, that is your response, is it not? Dated March 11th, 2003?

A. Well, it appears to be. I'm not sure that this is what I wrote in its entirety.

Q. The question posed was, "Can the power of prayer, should it, that science was able to prove that prayer works would change whether or how you pray." Your response was, "To many questions for a simple issue." The next -- the third paragraph -- I'm sorry, the next paragraph, "Dr. Dossi and the concept of distant healing lack a rational testable measurable explanation for their hypothesis. One can study nonsense with science but that does not make the science non -- the nonsense scientific. I could make the same argument that Dossi made by invoking satanic worship instead of prayer and the outcome would be the same." Do you believe that, Dr. Baratz?

A. Do I believe what?

Q. What you just said there?

A. We're talking about a logical argument and I was framing a logical argument. I believe that what I said is what I said.

Q. Praying to Satan is just as effective?

A. That isn't what I said.

Q. Okay.

A. And I think for you to frame it another context is trying to distort what I said.

Q. The next page --

A. I said I could make the argument.

Q. Okay.

A. I didn't say I did make the argument.

Q. The next page, 294, the paragraph in the middle of the page. Quote -- "Those who promote and advocate CAM" -- complimentary alternative medicine, is that correct, Dr. Baratz?

A. No, that is not correct.

Q. Well, what do you -- what do you mean by CAM there?

A. In this context?

Q. What do you mean by CAM, the initials you put in your message?

A. It depends on the context in which it was used.

Q. You want to tell us how you used it?

A. Is that what you're asking me?

Q. I thought I did.

A. Well, you said what did I mean by it. And in this sentence there are those who do advocate and promote something called complimentary and alternative medicine which is neither complimentary nor alternative medicine. And some of them would have us believe that the laws of science don't apply to their work. That in other words you cannot use testable hypotheses against what they're saying to show whether it does or doesn't work. They don't want to test their hypotheses that way. And the laws of science do apply to what's proposed to work in medicine.

Q. My question was did you not use CAM as meaning complimentary alternative medicine in this paragraph?

A. I used it to refer to those who use that designation.

Q. Quote -- "Those who promote and advocate CAM would have us believe that the laws of science don't apply to their work. Sorry, they do. CAM is not medicine but a marketing term." What do you mean by that Doctor?

A. Exactly what I said.

Q. And you sign it, "President, National Council Against Health Fraud, www.NCAH.org. See also www.quackwatch.org." Is that the organization Quackwatch, you weren't sure what it was?

A. No, I was sure what it was.

Q. Well, then --

A. And you're misphrasing my testimony.

Q. Tell us again. I'm sorry, what is that?

A. What is it? It's a -- it's a website and an organization that exists in Pennsylvania.

Q. And you're a medical advisor for NCAH -- NCAHF, correct?

A. No, I'm the president of NCHAF.

Q. You're not also medical advisor?

A. To NCAHF? I don't think we have medical advisors.

Q. We'll get to that later. How about Quackwatch?

A. I believe I'm listed as a medical advisor to Quackwatch. And perhaps a dental advisor too.

Q. Doctor, do you recall testifying in this matter before this same administrative law judge in October of 2002

that clinically -- quote -- "Clinically in 1999 I was forced to stop emergency department work because I was assaulted at work by a deranged former employee of one of the agencies for which I worked who had known mental illness." Do you recall saying that?

A. I don't recall it but I may have said it.

Q. Would you like to see the transcript?

A. Sure.

LAW JUDGE: I don't think it's necessary.

MR. RECKER: All right.

LAW JUDGE: Mr. Thexton, you don't disagree with -- I -- that sounds like an accurate statement.

MR. THEXTON: Okay.

LAW JUDGE: Go ahead.

Q. Doctor, the deranged former employee that you're alleging forced you to stop emergency department work was Dr. Florence Wilson, correct?

A. That is the employee who used to work at our agency.

Q. Is that --

A. Who I -- I said assaulted me.

Q. Is that who you're referring to in this transcript in this hearing?

A. I suppose so.

Q. Okay. And Dr. Wilson is sitting right behind me, is she not?

A. That looks like her.

Q. Okay. And at the time of this alleged assault she was over 70 years old, is that correct?

A. I don't know what her age was?

Q. And approximately 120 pounds.

A. I don't know what her weight was.

Q. Does she look a lot different today than she did when she allegedly assaulted you?

A. I'm not sure I could answer that question.

Q. Doctor, in any event you testified before this administrative law judge that you were forced to stop emergency department work because of the assault, alleged assault by Dr. Wilson, is that correct?

A. If that's what my testimony said.

Q. And this alleged assault occurred on December 3, 1998, correct?

A. That's right.

Q. And Doctor, isn't it true --

LAW JUDGE: Just a second -- just a second, Mr. Recker. I think I'm going to take an opportunity since we

are videotaping this to ask the recorder to identify the person in the video that you just referred to, Mr. Recker. If you would do that clearly.

MR. RECKER: Dr. Wilson, could you please --

LAW JUDGE: I -- stand would be good.

MR. RECKER: Would you please stand for a second?

LAW JUDGE: Okay. Just so we know exactly who we're talking about, that's all. Thank you very much. You may sit down. Just as a comment the videotapes are very seldom reviewed by the Medical Examining Board in testimony but I figured that an advantage of having that technology is we might as well make that record. Thank you. You may continue.

MR. RECKER: Thank you.

Q. Doctor, isn't it true that you were not forced to stop emergency department work because of any alleged assault by Dr. Wilson but because you could not find employment?

A. That's not true.

Q. Isn't it true you were forced out of Harvard Health Services because of your poor performance?

A. That's not true either.

Q. Isn't it true that you were forced out of Harvard Health because you abused your position of authority and degraded persons who worked under your supervision?

A. I wasn't forced out of Harvard Health Services. I resigned on my own.

Q. Isn't it true you were forced out of Harvard Health for repeatedly breaking the employment policies of Harvard Health Services?

A. I wasn't forced out. It's not true.

(Document marked as Exhibit 37 for identification)

Q. Doctor, I hand you what's been marked Exhibit 37. These documents represent disciplinary memos given to you during your employment at Harvard Health Services?

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

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

Q. Dr. Baratz, the first memo dated April 23, 1999 -- quote -- "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 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 acknowledge the use of profane language and attribute it to your frustration over Ms. Brennan's handling of a patient related issue. You stated 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 behavior is most often counterproductive 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 incidence of similar behavior it is my determination that a first verbal warning is appropriate resolution -- 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." Now, Doctor, you have written something at the bottom of this. Would you care to read that?

A. I could read what's written.

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

A. "I disagree. I made one obscenity which was not directed at Ms. Brennan. I was not verbally aggressive or abusive." This involved a telephone conversation where I was called out of a meeting to be told about something that she had done which was a direct violation of policy in the department which she had been instructed not to do. "I immediately apologized for the use of the epitaph at which time she was abusive to me. I wish to have and see a copy of the complaint before signing this" -- which I was never given. And I have not been given a copy of the alleged complaint.

Q. Doctor, as a physician of high character, integrity and ethics is it fair to say you're familiar with

the provisions of the principals of ethics of the American Medical Association?

A. I haven't read them lately.

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

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

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

A. It might be.

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

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

LAW JUDGE: How does this relate --

MR. THEXTON: -- credibility of the testimony.

LAW JUDGE: -- to credibility --

MR. RECKER: Well, it relates --

LAW JUDGE: -- Mr. Recker?

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

MR. THEXTON: I think it's collateral.

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

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

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

MR. RECKER: Yes, sir.

LAW JUDGE: Okay, I need to take one further step then, Mr. Recker, which is you may by these memos raise an inference that there were problems at Harvard Health. Which by -- in inference that Dr. Baratz' statement about leaving voluntarily was wrong. Do -- do we reach the point in these memos that directly contradict his statement? There's not a firing memo here, right? These are simply personnel actions? Is that what we have?

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

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

MR. RECKER: Sure.

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

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

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

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

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

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

LAW JUDGE: All right.

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

WITNESS: Can we know that for sure?

LAW JUDGE: I'm going to accept that.

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

A. There are some.

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

A. At his insistence.

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

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

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

A. That's what it says.

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

A. That's the date we signed it.

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

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

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

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

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

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

Q. Did you sue Ms. Vito?

A. Yes.

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

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

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

A. Yes, she was an employee but --

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

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

Q. And you sued Mr. Tumi?

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

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

A. We withdrew it.

Q. Do you know the difference between withdrawing a suit and dismissal with prejudice?

A. I'm not aware, sir.

Q. Okay. Doctor, is it still your testimony that you voluntarily resigned, you weren't forced out of your job at Harvard Health?

A. We agreed to disagree and I resigned.

Q. And is it your testimony your resignation had nothing to do with your performance at Harvard Health?

A. I made \$350,000 a year for Harvard Health. But performance speaks for itself.

Q. Doctor, after you signed this agreement and you took the checks that were part of the agreement on September 3rd, 1999 you did not file suit alleging disability until November of 2001, correct?

A. That is the workers comp case, yes.

Q. No, Doctor, the suit. You remember we talked about the --

A. Oh.

Q. -- docket before? You filed suit in November of 2001 against Dr. Wilson and several other people?

A. Yes, I was advised by counsel to file that suit to get it in by the deadline of filing to protect my rights.

Q. And you could not find employment as a physician after you left Harvard Health, isn't that true?

A. I couldn't find employment as an emergency physician which is what I was trained to do at that point.

Q. So you weren't looking for a position as primary care physician?

A. I couldn't do it as well. I was in pain. I was having medical treatments and I was unable to do that kind of work at that time.

MR. RECKER: Your honor?

LAW JUDGE: Yes.

MR. RECKER: Could we talk about --

LAW JUDGE: Do you want to move onto that --

MR. RECKER: -- the records?

LAW JUDGE: Okay, we have an issue regarding records which may or may not be admissible. In this case in order to have that discussion we have to have it off the record. Otherwise they'd be in the record. So we're going

to need to just take a break for perhaps ten minutes. The attorneys and I will actually leave the room and discuss it and we'll come back and either move onto that or something else. So let's -- off the record.

(Off the record)

(Document marked as Exhibit 39 for identification)

LAW JUDGE: Thank you all. To those who are waiting for us we did have a discussion that lasted a little bit longer than expected but that is what always happens. A ruling is being made that certain records are not going to be admitted but certain records will be. And Mr. Recker, you may question on those if you want now.

MS. HUBBARD: Mr. Thexton, I'm assuming you still have your copies?

MR. THEXTON: I do. What's it marked?

MS. HUBBARD: 39.

Q. Doctor, I'm handing you what's been marked Exhibit number 39. Page three of that exhibit, is that a claim you filed with the Department of Industrial Action, State of Massachusetts?

A. I would imagine so. I have never seen it before.

Q. Doctor, it's your writing, isn't it?

A. No, it's not my writing.

Q. How about the signature at the bottom?

A. It's not my signature. I gave Ms. Hall my permission to sign my name to get the document in on time. But I never saw this document and she had my authority to sign it to submit the claim in a timely fashion.

Q. Where did she get the information to put on the form?

A. From me over the phone and from the prior attorney who was handling the case before he turned it over to her.

Q. And the fact you said it was -- it was late, it had to be filed right away?

A. It had to be filed in a timely fashion she told me and that I was unavailable to pass papers back and forth with her. So she said, "Can I sign your name to this," and I said yes.

Q. Now, this is dated December 2nd, '02 and that's four years minus one day after the alleged incident where you were attacked by Dr. Wilson, is that correct?

A. I'm sorry, I'm looking for the date.

Q. The bottom right column.

A. I see the date. Okay. And your question was?

Q. That is one day short of four years after the alleged of December 3rd, 1998, correct?

A. If that's the correct math, I suppose so.

Q. And you're aware that the statute of limitations for filing such claims in Massachusetts is four years?

A. I don't know. I'm not an attorney.

Q. Now in this -- on item number 17 it says, "Assault by co-employee." Where did Ms. Hall get that information?

A. I assume she garbled whatever I told her but that's -- it should have said ex-employee.

Q. I see. And to your knowledge would that have effected the potential coverage in anyway if you said ex-employee?

A. No, I don't think so.

Q. Okay.

A. Not from what she told me. Any on the job injury is an on the job injury, no matter how it happens.

Q. And you indicated you were -- number 13, the first day of total or partial incapacity to earn wages was December 3, 1998, correct?

A. That's what she wrote.

Q. Doctor, isn't it true you earned your wages at Harvard Health from that day all the way to the day you left on September 3, 1999?

A. Right, but they weren't the only ones I was working for during 1998. I was also working as an ER physician through a good portion of the year. I was unable to do that work after that time.

Q. Correct me, Doctor, but hadn't your relationship with Carney stopped -- ended before December 3, 1998?

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

Q. Where else were you working?

A. In '98, '99 -- I'm sorry -- I have to get my years right. In the most recent work I did as an emergency physician was with Martha's Vineyard Hospital.

Q. Martha's Vineyard, you were terminated from that position, were you not?

A. No. I had a one year contract and it -- it ran its length.

Q. And that ended prior to December 3rd, 1998, did it not?

A. It was -- ended in October I believe, the end of the month.

Q. So correct me if I'm wrong, the only employment you had on December the 3rd, 1998 in the practice of medicine was with Harvard Health Services?

A. I used to work part time in several other emergency departments including Jordan Hospital. And I

would get calls from time to time to work in other places but I couldn't because of my -- my time commitments. So it wasn't the only place.

Q. Do you recall testifying in a deposition in the Florida case that you had not had any contact with Martha's Vineyard or Jordan Hospital --

A. After this date --

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

A. I'm sorry, prior to?

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

A. Oh, prior to that date?

Q. Yes.

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

Q. My point is, Doctor, the only place you deriving income as of December 3rd, 1998 was Harvard Health Systems, correct?

A. No, that's not true. That's not the only place I derived income.

Q. Practicing medicine?

A. Seeing patients.

Q. Seeing patients.

A. There are other parts to the practice of medicine besides seeing patients.

Q. Okay, so as of December 3rd, 1998 the only job you had seeing patients was at Harvard Health Services, correct?

A. That's the only job I had seen patients at that time.

Q. Okay.

A. On that date.

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

A. It actually did.

Q. Please tell the judge how?

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

Q. And who other than you could verify that information?

A. Employment records could show that I worked many extra hours at Harvard Health Service over the years that I

was there. I was there for five years.

Q. Doctor, isn't it true that after these disciplinary memos we just talked about you were -- you -- all supervisory authority over employees was taken away from you?

A. Which disciplinary memo are you speaking to because there's different ones here.

Q. Well, that's true. There are. Well, the last memo, Doctor, dated July 22nd, 1999, "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 perceived by your peers and staff as threatening and highly disturbing." Do you recall -- isn't it true after July 22nd, 1999 you were removed of any supervisory authority over any other employee at Harvard Health?

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

Q. So it's your contention that after December 3rd, 1998, even though you were only gainfully employed as a physician practicing clinical medicine by Harvard Health you lost overtime because of your injury, is that what you're saying?

A. I lost that and I lost the ability to do ER work at other places.

Q. You weren't working any other place, were you?

A. I worked all of 1998 at other places. ER work is sporadic sometimes. You work, you know, two weeks at a time and then you don't work for two weeks. I'd worked in ER medicine for years.

Q. Doctor, isn't it true from the time you began your employment at Harvard Health in 1994 up to the day you left -- termination, September 3, 1999 -- you had received no raises during that entire time?

MR. THEXTON: Your honor, I -- really, I must object --

LAW JUDGE: Sustained --

MR. THEXTON: -- to the relevance of this question.

Q. Doctor, is it still your testimony that Harvard Health was completely satisfied and happy with your performance as a physician during your employment?

MR. THEXTON: Objection to the question because there's -- the premise is not established.

LAW JUDGE: It was as if it had been asked and answered before, right? I don't remember --

MR. THEXTON: Is it still your testimony that -- you know what -- what --

LAW JUDGE: Let's just rephrase it, please --

MR. RECKER: Sure.

LAW JUDGE: -- Mr. Recker.

Q. Doctor, is it not true that Harvard Health Services was not happy with your performance as a physician during your employment at Harvard Health?

A. That's a double negative question. Could you phrase it in a positive way?

LAW JUDGE: I was thinking the same thing.

A. I'm not quite sure what the question is.

Q. Is it not true that Harvard Health was dissatisfied with your services as a physician in their employee?

A. I've never received any notification for Harvard Health about any patient care matter, any unsatisfactory performance as a physician, my entire performance there as a physician.

Q. But you've already noted on the severance agreement where they refused -- they crossed out "positive letter of recommendation"?

A. We agreed on language. That has nothing to do with anything else. That's just the language we agreed on.

Q. Gotcha. Doctor, you indicated on the workers comp claim form that your weekly salary was \$2,400, is that correct?

A. My attorney filled out this form. I would have to look up what the numbers are. This goes back several years ago. And it says average weekly wages. It varied from week to week.

Q. Okay. The hourly rate remained the same, did it not, Doctor?

A. My base pay varied over time and it increased almost every year. And I had several raises while I was there.

Q. You had several raises while you were there?

A. Yes.

LAW JUDGE: You keep looking at me, Mr. Recker. Obviously your previous question might be in order now. If you have evidence to the contrary.

(Document marked as Exhibit 40 for identification)

Q. Doctor, you've been handed Exhibit 40 which is a letter to you dated October 20, 1994 from Dr. Robert Hock, the medical director. And there are entries on that letter that have your initials and your writing, correct?

A. On the front page, yes.

Q. And Doctor, you were changing the proposed hourly rate of 57.82 to \$60 an hour, correct?

A. Yeah, we did that.

Q. And on the second to last page of that exhibit, appendix B, physician base salary, again you crossed out 122,066 and changed it to 124,800 for your salary, correct?

A. That's what it says.

Q. That's your writing, is it not?

A. That's what it says.

Q. You initialed it?

A. That's what it says.

LAW JUDGE: I think the question was somewhat different. Is that your writing?

A. That is my writing and that's what it says.

Q. And also it is your writing \$60 per hour initialed by you, dated 10/24/94, correct?

A. Right, that was my initial pay at Harvard Health.

Q. Okay. Doctor, go back --

A. This is my initial contract with Harvard Health.

Q. Go back to Exhibit 38, severance agreement.

Paragraph B, severance pay, 40 hours per week times \$61.80 an hour." Is that \$1.80 difference in the five years the raises you were talking about?

A. That was one of them. My recollection is there was more than one.

Q. The document doesn't seem to verify that, does it?

A. It doesn't say it doesn't either.

Q. It says \$61.80 an hour, correct, Doctor?

A. That's what it says.

Q. And you started five years earlier at \$60 an hour, right?

A. The agency was a community health center.

Q. Right.

A. And --

Q. You just told the ALJ --

A. -- they --

Q. -- that you had several raises?

A. That's my recollection. I did.

Q. Your recollection is incorrect, is it not?

A. No, that was my pay at the time I left. According to this letter.

Q. Okay. All right. So according to the letter you -- over the period of five years you did realize an increase of \$1.80 per hour?

A. I don't remember specifically anymore. I know I

had several raises while I was there. This is -- this is quite a few years ago.

Q. Doctor, in your suit you filed November 2001 against Dr. Wilson, do you recall stating that you had documented lost wages of \$628,000 as a result of her alleged attack?

A. My attorney wrote that and that's what he wrote.

Q. You have no idea where he got that number?

A. We went over numbers and that's the numbers he derived.

Q. Doctor, if your base salary at Harvard was \$124,000 -- Let's call it \$125,000. You left them in '99. You've been paid for the full year. And you allegedly couldn't work for two years because of the assault by Dr. Wilson. Two times 125 comes out to be 250 in my math, how about yours?

A. I'm not sure what time period he was speaking to in the lawsuit. This had to do with several years, not one year, and it had to do with earnings as an ER physician in addition to my base pay at Harvard Health. I was earning considerable money as an ER physician.

Q. You weren't working as an ER physician prior to the incident, were you, Doctor?

A. Yes, I was. In 1998 I absolutely did work as an ER physician. I worked in '98, '97, '96, '95, '94 and backwards. All the way back to '91.

Q. Doctor, I'm handing you what's called civil action cover sheet in the lawsuit you filed against Dr. Wilson. Looking at paragraph B, "Documented lost wages and compensation to date." And Doctor, this was filed November 14th, 2001. "Documented lost wages and compensation to date, \$628,000." Do you have any idea where your attorney came up with that number?

A. Yes.

Q. Tell us?

A. He derived that number from my earnings.

Q. Your earnings at Harvard Health?

A. And other places over the period of time it involved.

Q. But you were still acting as a legal consultant in these years 2000, 2001, correct?

A. Likely.

Q. So can you tell the judge anymore about this documented lost wages?

A. Not unless we go back and I could find the numbers from which they were -- these were derived with Mr. Renton.

We have them. They're in his file.

Q. Doctor, on number E, "Reasonably anticipated lost wages, \$2,430,000," you were asking the court to award you against Dr. Wilson and others. Where did you come up with that number?

A. Mr. Renton came up with that number as is customary in the legal profession based upon his knowledge and experience.

Q. Did you review this before it was filed?

A. We discussed the numbers.

Q. And you agreed with him?

A. I agree with his assessment.

Q. Umm hmm.

A. He was my counsel and I agreed with him.

Q. So the total claim was over three million dollars, was it not?

A. That's what it says.

Q. And of course you believe when you filed this that you had a legitimate claim against Dr. Wilson, is that correct?

A. I did. I did believe that and I still do.

(Document marked as Exhibit 42 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 42. Do you recall seeing this before, your complaint you filed against Dr. Wilson and others?

A. Yeah, I've seen it before. I don't remember all the specifics.

Q. Okay. Where did the lawyer get the information that he put in this complaint? From his client?

A. From his client.

Q. And would you be surprised to know that the allegations about the assault are very different in this complaint as opposed to what you testified under oath to this judge?

A. I'd have to compare the --

MR. THEXTON: Object to the form --

A. -- two.

MR. THEXTON: -- of the question, "Would you be very -- would you be surprised to learn?" That's not an appropriate question.

Q. Now, Doctor, let me tell you -- why don't you pick up --

LAW JUDGE: Let me -- just stop a second --

MR. RECKER: Sure.

LAW JUDGE: -- Mr. Recker, only because I want to see how collateral this is. You're going to have to show me

that the statements are significantly different, not in some small detail. And I will let you do that, all right?

MR. RECKER: Transcript --

LAW JUDGE: All right, again, not in nitpicky --

MR. RECKER: Sure.

LAW JUDGE: All right, go ahead.

Q. The transcript of the hearing, do you have that, Doctor, from the October hearing, day one?

LAW JUDGE: That's the transcript of this hearing?

MR. THEXTON: Yes.

MR. RECKER: Yes, your honor.

LAW JUDGE: Okay.

MR. THEXTON: I'm sorry, which page are we on?

MR. RECKER: 109.

Q. Line 17.

A. I'm not sure I have that. What page, please?

Q. 109, line 17. Your answer was: "This individual was subsequently discovered to have been seeing patients at a health center after having left the employment of the health center. And I found her in the administrative office with a pile of charts and discovered that she was actually seeing patients who were former patients of her illegally, without insurance, without sanction of the -- without the authority of the health center. And this was something not good. And I discovered this and I asked her to give me the charts and to leave the premises. And at that point she attacked me. And I tried to get away from her. And I had the charts in my hand." So, Doctor, you walked up to her, she had charts, she attacked you, correct?

A. No, I think the clauses are out of order here. But I -- what I said was that I had the charts in my hand when she attacked me.

Q. "I asked her to give me the charts and to leave the premises and at that point she attacked me." Now, let's direct your attention to the complaint you filed against Dr. Wilson. Paragraph 21, "On or about December 3rd, 1998 Dr. Baratz observed Dr. Wilson sitting behind a desk at the health center reviewing private patient files in the presence of defendant Ms. Nervito. Dr. Baratz immediately confronted Dr. Wilson -- reminding her that she had no patient responsibilities and thus should not be looking at the files. Dr. Wilson responded she had found the files lying around but refused to return the files and stated that he, Dr. Baratz, would have to get the police to throw me out of here. Dr. Baratz quickly spoke with the director of human resources, Val McCrae, who stated that she would page

Mr. Tumi. While Dr. Baratz waited for Mr. Tumi to respond Ms. Nervito 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."

Doctor, those are two very -- different scenarios, are they not?

A. No, they're the same scenario and they say the same thing.

Q. To you they say the same thing?

A. They do.

Q. You continue in your complaint --

MR. THEXTON: Your honor, I renew my objection.

LAW JUDGE: Without commenting --

MR. THEXTON: To the extent that there's any difference at all it is clearly of the most minor character.

LAW JUDGE: And without adding my commentary to that I think I'm going to allow it to stand in the record for what it's worth.

MR. THEXTON: And I would ask you to control the

--

LAW JUDGE: With your comment as well.

MR. THEXTON: Great. Control the manner and motive of the interrogation of the witnesses by instructing counsel to move on.

LAW JUDGE: Well, what was your next question?

Q. Doctor, in the same paragraph of the complaint it goes on -- quote -- "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."

MR. THEXTON: Your honor, I -- again, I renew my objection.

LAW JUDGE: Right, and there is no question.

MR. RECKER: I'm still reading.

LAW JUDGE: Well, I'm going to stop you because I think it actually goes counter to my previous admonition not to bring up a matter if it is not a significant distinction. I'll make my comment. I -- there is indeed a difference in the testimony of these two. How this affects Dr. Baratz' credibility is beyond me. The -- the distinction on this one is not going to make any difference. Mr. Recker, I think you should move on.

MR. RECKER: Very good.

LAW JUDGE: Whether he took the -- I'm going to -- whether he took the files from Ms. Wilson or whether Ms. Wilson took the files from him does not say it didn't happen -- it didn't happen more or less the way he described it. It suggests that the story has been reasonably consistent. So I think the attempt to impeach him on that one was a failure. You can move on.

Q. Doctor, is it not true that two employees, two other employees did not intervene and were not involved at all in removing Dr. Wilson from your arm?

A. My recollection is there were two people who had to pull her away.

Q. And who was --

A. I so put that into my report at the time.

Q. Who were those people?

MR. THEXTON: Well, your honor, at this point --

LAW JUDGE: Objection sustained.

MR. THEXTON: -- this is collateral. Thank you.

Q. Doctor, you recall dismissing your lawsuit in April of '03?

A. Yes.

Q. And you recovered nothing from any defendant, isn't that true?

A. I can't answer that with a simple yes or no.

MR. THEXTON: Well, your -- and I'm going to object to the -- to the question anyway as not relevant.

LAW JUDGE: I think the dismissal question is -- is appropriate and the answer is appropriate. Beyond that, unless there's some real purpose that I don't understand here, I think it's collateral and irrelevant.

WITNESS: Your honor, I was wondering if we could take a break.

LAW JUDGE: If the witness requests that I would be happy to grant it. Let's try and keep it very quick. Let's pause the record.

(Off the record)

LAW JUDGE: And Mr. Recker, you may continue.

MR. RECKER: Sure.

(Document marked as Exhibit 44 for identification)

Q. Dr. Baratz, I'd like to speak a few moments about your qualifications to serve as an expert witness in this matter. I'm handing you what's been marked Exhibit 44, which is also Bates stamped 044. It's from the American Medical Association, advisory opinion regarding expert witness testimony. Are you familiar with this, Doctor?

A. I haven't seen it before.

Q. You have not?

A. Not to my recollection.

Q. Paragraph 2A states that, "The AMA believes that the minimum statutory requirements for qualification as an expert witness should reflect the following: I) That the witness be required to comparable education, training and occupational experience in the same field as the defendant." Please tell us how you've got comparable education, training and occupational experience in the same field as Dr. Kadile?

A. He maintains in documents I've seen that he practices general family type medicine. I've had essentially the same amount of time and have practiced in the same basic environment as Dr. Kadile.

Q. Doctor, what's your understanding of the time Dr. Kadile has engaged in primary care medicine?

A. I'd have to look up in the records exactly what he claims the times are. I know he -- earlier in his life he was listed as a psychiatrist for many years.

Q. So you don't know how much time -- how many years he's engaged in primary care?

A. Not exactly. I think in a ball park figure it may be ten to 15 years.

Q. And based on our previous lengthy testimony about your experience as -- in the emergency department is it your believe that you have the same occupational experience as Dr. Kadile?

A. In terms of practicing general medicine, I believe so.

Q. Now, you've never been engaged in what we call the private practice of medicine, is that true?

A. That's not true.

Q. Should we go back to the exhibit where you define for Dr. Hock what you consider to be private practice of medicine and how you were not engaged in that?

A. You're talking about two different things.

Q. Have you ever gone to work in your own office prior to 2002, seeing patients clinically?

A. As a physician, no, in my own office. Many physicians do not practice in their own offices. In the metropolitan Boston area the norm is to be working for either an agency or a group or a hospital.

Q. You've never treated families of patients over a course of years in primary care medicine, have you?

A. Whole families or whole individuals? You said whole families?

Q. Families, individuals --

A. I don't practice pediatrics. And I'm not a family practitioner in that -- that sense. I do see children. And I have seen many children. Currently I see children down to the age of 12 which is the norm for primary care internists.

Q. Doctor, after you got out of your residency in 1991 what was -- where and when was the longest period of time you engaged in primary care medicine?

A. Well, I was already practicing at the VA in a primary care practice from '88 to '94. They overlapped.

Q. Out patient clinic?

A. It was an out patient clinic --

Q. Part time --

A. -- but it was primary care.

Q. Part time, correct?

A. Well, I was a three quarter time at VA employee for many of those years.

Q. And you ended your relationship with the VA in 1994?

A. That's correct.

Q. And that's it for primary care experience?

A. Not at all. I think during residency I had plenty of primary care experience including out patient clinic. I had my own panel of patients.

Q. I'm talking about after 1991. After you completed your residency.

A. Until I assumed a -- a role where I had my own panel of patients in 2002 I wasn't practicing primary care medicine for individuals as a -- as being the principal primary care provider for those patients. I was doing much primary care because I was covering other people's practices all the time while I was working at Harvard Health Services for five years. I practiced in -- you know, what you'll call coverage capacity because that was one of my duties there in urgent care. So we saw patients when their own provider wasn't available, when they were on vacation, when they were too busy to see them and we saw them for their urgent matters. And that's primary care.

Q. I see. That's how you understand primary care?

A. That's --

Q. Urgent care? Urgent department of medicine?

A. That's one of -- no, that was what the department was called but that wasn't our only function.

Q. Doctor, item number three in that provision says, "And that the active medical practice or teaching experience must have been within five years of the date of the

occurrence giving rise to the claim." What's your understanding of the date of occurrence giving rise to the claim?

MR. THEXTON: Your honor, I will object to the question as -- first of all it's multi part because the complaint covers a number of years, a number of different patients and therefore the question can't be answered as -- as asked. And secondly it's not at all clear to me that this witness is -- is qualified to answer the -- the legal aspect of this question.

LAW JUDGE: I don't know that I'm going to sustain that objection. I think the witness can handle that. He may have to say he doesn't remember, doesn't know. But it is -- it's an appropriate question for the witness. Okay, I have other thoughts but --

MR. THEXTON: Well, I do think that he should be --

LAW JUDGE: Dr. Baratz --

MR. THEXTON: -- since the complaint contains many claims counsel should be required to specify which claim he's talking about.

LAW JUDGE: Well, all right. Let us agree there are a number of counts in the complaint. It is a complex question to ask what the date of the occurrence is that gives rise to the claim. We could go through them all -- Mr. Recker, and specify count by count what they are. Perhaps your real interest in questioning Dr. Baratz on this is when he had medical practice or teaching experience? It seems to me you could just establish that.

MR. RECKER: Well, your honor, that's fine. I'll rephrase the question. It also -- okay.

Q. Doctor, would it be accurate to say that having received over \$50,000 from the citizens of Wisconsin you're familiar with the allegations in this complaint?

MR. THEXTON: I would object to the --

LAW JUDGE: It is quite an argumentative question.

MR. RECKER: All right.

LAW JUDGE: You could just give him the last five words.

MR. RECKER: Okay.

Q. You are familiar, are you not, with the allegations in the complaint against Dr. Kadile?

A. Yes, without, you know, each and every one of them, yes.

Q. But you have reviewed them at length and you have issued numerous reports on those allegations, have you not?

A. I have reviewed them.

Q. All right. From your recollection of the issues in the complaint can you tell me what your recollection is as to the dates involved?

A. They go backwards in time from '94 for several years and some go up to '96 if I'm not mistaken.

Q. How far back in time do you recall they go?

A. There may be some that go to '91. I'm not -- the records themselves I think go to '91 in some cases. I'd have to look at each record to be certain of that but they do go back several years.

Q. Okay, so five years prior to 1991 you were still in medical school, correct?

A. During the period of time from '91 to '94 I was practicing primary care if that was your question.

Q. I don't think it was. Maybe that's what you heard.

A. That's what I thought you asked me before.

Q. Prior to 1991, five years prior to 1991 you were still in medical school?

A. I graduated medical school in '87. That makes five years from January of '91 to January of '86. I would have been in medical school in January of '86.

Q. Doctor, going down to part B of this AMA policy, almost down at the bottom it talks about a court case called Charles Jones upheld a trial court's discretion to allow cross-examination on the following issues, "The amount of compensation received for the expert's consultation and testimony." We've already talked about some of that. "II) The frequency of the physician's expert witness activities." Doctor, in -- in the year 2000 you derived the vast majority of your income from testifying as an expert, isn't that true?

A. No.

Q. Well, I thought you were disabled from the practice of medicine in 2000?

A. I've never been paid to testify.

MR. RECKER: You better get some money back.

Q. You've never been paid --

MR. THEXTON: Your honor, I will object to that sort of --

Q. -- to testify?

MR. THEXTON: -- running commentary --

MR. RECKER: I'm sorry.

LAW JUDGE: Well --

MR. THEXTON: -- and side comments --

MR. RECKER: I'm sorry.

LAW JUDGE: Yeah.

MR. THEXTON: -- and ask that it be stricken.

LAW JUDGE: Mr. Recker --

MR. RECKER: I'm sorry.

LAW JUDGE: -- in whatever spirit it was intended I think it was inappropriate.

Q. Doctor, please clarify what you mean you've never been paid to testify. Are you not being paid for your time here today?

A. I'm being paid for my time. My testimony is not for sale.

Q. Okay. My question then was in the year 2000 you derived the far greatest portion of your personal income from testifying in legal proceedings, correct?

A. That's not true.

Q. From your involvement in legal proceedings?

A. Could you define legal proceeding for me?

Q. Giving an expert opinion, Doctor, does that help?

A. An expert opinion in testimony? I testify very little. About once a year on average over the past ten years.

Q. Doctor, correct me if I'm wrong but in the year 2000 you filed an income statement with the State of Massachusetts that indicated you made over \$125,000 a year from your consulting services?

A. Consulting services involve a great many things that are not necessarily legal matters.

Q. Do they involve rendering opinions?

A. Sometimes.

Q. What else could they involve?

A. I work for medical device companies, with regulatory matters. I've worked for insurance companies with policy statements. Many things that don't necessarily involve litigation or courts or anything like that. I've been doing that for years.

Q. When's the last time you testified on behalf of a physician in any licensure matter?

A. 2003, in the State of Texas. It was a dentist, not a physician physician. A dentist.

Q. Well, I asked a physician. When's the last time you testified on behalf of any physician?

A. As I said before I testify very rarely. When I am asked to testify, I testify if it's within my scope of knowledge. I don't believe I've been asked to testify specifically in a physician matter.

Q. Would it not be true that over 95% of your testimony your expert opinions are given only against health care professionals?

MR. THEXTON: Objection to the form of the question. It's asking two different things?

LAW JUDGE: I didn't hear it, Mr. Thexton. Do you want to just rephrase it or do you want to figure out what Mr. --

Q. Isn't it true, Dr. Baratz, that 95% of your involvement in matters involving licensees you're involved against the licensee?

A. No, that's not true.

Q. Do you recall testifying in your August deposition that you've never been a witness on behalf of a physician?

A. I don't recall.

Q. Would you deny saying that?

A. I just don't recall.

MR. RECKER: Your honor, if it's warranted I will simply direct him to the page and the line.

LAW JUDGE: Is this -- I just -- he just testified that he's not been asked to testify for a physician --

MR. RECKER: Okay, I'm sorry.

LAW JUDGE: Is that inconsistent --

MR. RECKER: I didn't hear that.

Q. Doctor, are you familiar with the American College of Emergency Physicians?

A. Yes.

Q. Did you at one time belong to that organization?

A. I did.

(Document marked as Exhibit 45 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 45, "Principals of Ethics for Emergency Physicians." Have you ever seen these before?

A. No.

Q. Any particular reason why you didn't look to see these?

A. I'm not sure I understand your question.

Q. Would you turn to page 050 -- stamped 050? To page six of nine of the document. The caption, "Relationships with the legal system as an expert witness."

A. I see what you're pointing at.

Q. Okay. It indicates that they -- the American College of Emergency Physicians has suggested that to act as an expert witness at a minimum the physician should be board certified or board prepared in emergency medicine. You are not board certified or board prepared in emergency medicine,

are you, Doctor?

A. I'm board prepared in emergency medicine.

Q. And this organization can verify that, Doctor?

A. Not through that board, through another board.

There are two boards in emergency medicine.

Q. On which board are you prepared?

A. BCER -- Board Certification in Emergency Medicine.

Q. Have you ever taken the exam?

A. No, I have not.

Q. Doctor, the next paragraph states, "As an expert witness the physician has a clear ethical responsibility to be objective, truthful and impartial when evaluating a case on the basis of generally accepted standards of practice." Is it your belief you've adhered to that tenant in this matter?

A. I believe so.

Q. The next sentence, "It is unethical to overstate one's opinions or credentials." Again, is it your belief that you have not in this matter overstated your opinions or your credentials?

A. That's my opinion.

(Document marked as Exhibit 46 for identification)

Q. Dr. Baratz, the next document we're going to hand you we've marked as Exhibit 46. And it is the CV you supplied indicating it was updated on August 20th, 2002. Do you have that? Do you have it, Doctor?

A. I'm checking the document, sir. I have the document.

Q. Doctor, it indicates it was updated on August 20th, 2002. That was the day after your deposition was taken in this matter, was it not?

A. I don't recall the date of the deposition --

Q. Do you want to look at your August deposition, August 19th, 2002?

LAW JUDGE: There are four of those up here, Mr. Recker.

MR. RECKER: We can just -- if you would just judicially notice that the deposition was dated August 19th, 2002, your honor?

LAW JUDGE: I will if I can find it.

A. I believe this was a printout of that document that was in a Word format where the -- the date is snatched from the program where -- on the date it's printed. So I would have -- I would have to check my actual records to see if the -- the version that I sent to Mr. Thexton in preparation for this deposition had that date on it. But I

believe what you're looking at is when you click on "insert date" in a document the date is grabbed on the date in which it's printed. If you're looking for inconsistency I believe that's where it's from.

LAW JUDGE: Well, I -- I --

A. So that's --

LAW JUDGE: I will take judicial notice that the date that shows up on both the cover page and the final page of this deposition which was taken in Rhode Island is August 19th, 2002.

Q. Dr. Baratz, on Exhibit 46 under your name this has your address, your home address, city, state, telephone number, fax number, cellular number, email address, email address. And then it says, "CV updated August 20th, 2002." Who but you would have put that date in there?

A. The answer is the computer if that's the date it was actually generated. I think that we moved documents back and forth sometimes over the wires. And sometimes the -- the document itself has a -- a date stamp on it. I would have to go back to that date and see if I actually sent the document on that date.

Q. Do you --

A. My recollection is that Mr. Seeley had my updated CV before we did the deposition and was using it on that date. That's my recollection.

Q. Do you recall updating your CV on August 20th, 2002 as a result of many inconsistencies revealed in your deposition with your earlier version of the CV?

A. I don't recall that.

Q. One of which was 150 publications included oral statements you made?

A. I don't recall that.

REPORTER: Your honor, I need to --

LAW JUDGE: Pause?

REPORTER: Yes.

LAW JUDGE: All right, we'll stop for a minute.

(End tape 2 -- Begin tape 3)

(Document marked as Exhibit 47 for identification)

LAW JUDGE: All right, we're back on the record.

Q. Doctor, if you'll look at Exhibit 47. That is the CV that was submitted at the time of your deposition upon which you were questioned at your deposition on August 19th, 2002.

A. Excuse me?

MR. THEXTON: Yeah, I'm trying to figure out if there's a question there?

LAW JUDGE: It was a statement. I guess you were asking for confirmation.

MR. RECKER: Yeah, I mean --

LAW JUDGE: If you want to --

MR. RECKER: -- I can point to the deposition if

--

LAW JUDGE: Was this --

MR. RECKER: -- you want to?

Q. Exhibit 47, Doctor, is the CV used in your deposition on August 19th, 2002?

LAW JUDGE: Again, that's a statement.

Q. Correct. Do you accept that?

A. I don't believe so.

Q. Okay, why don't you believe so.

A. Because I -- I don't believe I saw a -- a CV put in front of me that day. And this one is an earlier one in time than that -- then 2002. This goes -- this goes back -- I don't know where this came from but I don't believe that was the document Mr. Seeley had that day. There's no date on this by the way.

Q. This was the deposition given to Mr. Seeley and marked at the time of your deposition --

A. Well, what's --

Q. -- the CV, do you recall that?

A. I don't see any markings on it.

MR. THEXTON: Well, not only that, your honor, but if you look at the index to that deposition it says, "Dr. Baratz' Curriculum Vitae, four pages." And this document, Exhibit 47, is more than four pages.

LAW JUDGE: That is correct. On page two of the transcript, for what it's worth, it says four pages.

Q. Doctor, do you have any idea where Mr. Thexton would have gotten Exhibit 47?

A. No.

LAW JUDGE: Would it be of any use to see if that was one that was marked in the prior hearing?

MR. RECKER: It was marked in the deposition but again --

LAW JUDGE: My question was --

MR. RECKER: -- Dr. Baratz disputed where it came from at that time. So, I'm not going to dwell on it.

LAW JUDGE: All right.

MR. RECKER: I've got enough to ask.

Q. Going back to Exhibit 47 -- 46, doctor which indicates it was CV updated August 20th, 2002. Under education and clinical experience you indicate the last

line, "12 years of clinical experience in primary care, emergency medicine, internal medicine." Now, that's a untrue statement, is it not?

A. No, it's not.

Q. So you're saying that as of August 2002 you had 12 years clinical experience in primary care?

A. No, I said 12 years of clinical experience in those areas combined.

Q. I see. Under current it says, "Medical director and president, South Shore Health Center, Inc., private practice of medicine and dentistry." Doctor, your South Shore Health Center is primarily an occupational medicine clinic, is it not?

A. That's not true.

Q. Aren't you primarily engaged in occupational medicine at that clinic?

A. No.

(Document marked as Exhibit 48 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 48, American Association of Medical Review Officers Registry. The second page, Braintree, Robert Baratz. That's you, is it not, Doctor?

A. That's me.

Q. And did you provide this information to them?

A. My administrator did.

Q. It indicates, "Services provided, collection facilities, alcohol testing, DOT physicians work capacity evaluations." My question is aren't you primarily engaged in occupational medicine at that facility?

A. No.

Q. Item three of the current on your CV, "President, National Council Against Health Fraud, Inc." Prior to being president, Doctor, you were executive director, correct?

A. For a few months.

Q. And you were on the board of directors -- you were on the board of directors?

A. I think for less than a year. I mean, at -- initially before I became elected as president.

Q. The next item is, "President, Skin Systems, Inc." That's your company?

A. That is a company in Massachusetts that I own.

Q. That's your company?

A. That is a company in Massachusetts that I own.

Q. Is that company engaged in the practice of medicine?

A. No.

(Document marked as Exhibit 49 for identification)

Q. I'm handing you what's been marked Exhibit 49, Doctor. The first page, "Commonwealth of Massachusetts," indicating you're president of that corporation, Skin Systems, Inc. Correct? Is that accurate?

A. I am the president.

Q. The second page, "Domain name registration," you're the administrative contact for skinsystemsinc.com, correct?

A. That's correct.

Q. You're responsible for that website, is that correct?

A. I'm the administrative contact.

Q. Do you have any input as to what's put on that website?

A. Sometimes.

Q. Page three, "Advertising and Laser Products, Laser Services, Laser Hair Removal, Smooth -- Wrinkle Smoothing Treatments, Microdermabrasion Skin Resurfacing." Is this company engaged in the practice of medicine?

A. No.

Q. "Collectively we represent more than 100 years of clinical experience." Who's "we," Doctor?

A. The -- the providers of care that we lease equipment to.

Q. This is Skin System's website and it says, "We represent."

A. Well, the operators -- the operators we lease equipment to do that. They are, you know, allied with us.

Q. We are dedicated and committed to provide you with the finest in skin care, cosmetic and beauty services." Again, "we" is --

A. Well, there are several employee at Skin Systems. We are all dedicated to providing the best we can.

Q. But you're not practicing medicine at Skin Systems?

A. Well, skin care, cosmetic and beauty services are not medicine.

Q. Laser hair removal isn't licensed?

A. I'm sorry?

Q. Laser hair removal doesn't require licensing?

A. Not in Massachusetts.

Q. The next page. "Microdermabrasion" -- the third line -- "Regular treatments will maintain a youthful appearance of the skin." Do you have any research that -- backs this up, Doctor, that statement?

A. I'm sorry?

Q. Do you have any research, clinical research that

--

A. I missed the statement. Where are you?

Q. Oh, middle paragraph. "Microdermabrasion: Regular treatments will maintain a youthful appearances of the skin."

LAW JUDGE: I'm going to stop you. Relevance?

MR. RECKER: I'm sorry?

LAW JUDGE: Relevance?

MR. RECKER: Well, this expert's tenant of every opinion he states in this case or has stated is that nothing should -- can be said to consumers unless it's backed up by verifiable scientific studies and data.

LAW JUDGE: I'll buy that. You can ask the question.

A. The Power Peel Company has clinical studies and we have their equipment that -- from which that statement is made.

Q. So you have personally seen the studies that verify that regular treatments will maintain a youthful appearance of the skin?

A. I've seen -- I've seen their studies.

Q. You wouldn't say anything like that unless it was backed up by verifiable clinical data, would you, Doctor?

MR. THEXTON: I'm going to object to -- to the form of the question here and to its content. It's just -- it's too broad.

LAW JUDGE: Well, it seems -- it actually seems somewhat repetitious and argumentative --

MR. THEXTON: And actually argumentative.

LAW JUDGE: Maybe I'm mistaken about that. I thought we have just -- aren't you just repeating --

MR. RECKER: Okay, sure.

LAW JUDGE: -- what we went over?

Q. The next page, Doctor. The fourth line from the bottom, the fifth line. "We are one of the few sites in New England able to offer you the opportunity to receive this state of the art technology at an affordable price from experienced health care providers. Don't be fooled by non-laser light sources claiming they are lasers." Again, Doctor, who is the "we" in "we are one of the few sites"? Is this Skin Systems you're talking about?

A. These are the providers of services that Skin Systems rents equipment to. And that's clearly indicated in the -- in the -- the links that are on the sites. Who they

are, where they are, what their backgrounds are.

Q. So a consumer reading this would not be confused in anyway?

A. I don't think so.

Q. In your opinion?

A. Not in my opinion.

Q. Doctor, on page 120, the second to last page. You also sell skin care products? "A balanced approach to home based skin care." Do you see that page, Doctor?

A. This page doesn't offer anything for sale. It's just a notice about the products that Glymed sells.

Q. "May now be purchased without the recommendation from a skin care professional."

A. Actually, that's a typo. It should say may not. If I'm not mistaken.

Q. On the next page, Doctor, at the top of the page it says, "Massachusetts residents add 5% sales tax. Shipping and handling charges are \$5 for up to three containers or combinations per order." Another mistake?

A. I'm sorry?

Q. Is that another mistake?

A. No, in Massachusetts we have to charge sales tax when someone buys products. There were products listed on this site. Korigen distance gages, windows, eye gear, crystals, a number of products. And they have to be taxed if they're sold within the state of -- Commonwealth of Massachusetts. It's the law.

Q. I thought you just testified these could not be purchased by consumers?

A. I'm not talking about this -- the skin creams and things. I'm talking about the other products we sell.

Q. Now, Doctor, doesn't page 121 come right after page 120 on the internet?

A. I don't know. I haven't looked at the website and it's been changed last week anyway. It's been completely updated.

Q. Well, this is dated June 27th, 2003. That's relatively current.

A. Well, it was completely changed last week.

Q. Okay.

A. It took us two weeks to get the ISP to get it changed to a new server. We had a new site that's been in the works for months.

Q. The sentence on the bottom of page 120, "Antioxidant vitamin combinations form an active base of the line, providing gentle exfoliation and cellular

nourishment." Again, Doctor, are you familiar with studies that -- scientific studies, double blind studies that verify that statement?

A. Clymed has studies that support their statement.

Q. And you know that for a fact?

A. I've seen the president. I've talked to her.

I've seen her studies. Go to their website and look at them.

Q. Doctor, on page three of that exhibit, page 114, at the bottom it says, "Contact information: Corporate Headquarters, 119 Boster Street R, Peabody, Massachusetts." Is that correct?

A. That's the office.

Q. And that's the same office address for the National Council Against Health Fraud, isn't it?

A. And several other businesses.

Q. Thank you for that addition. But it is National Council Against Health Fraud, of which you're the president, correct?

A. They share office space. That's right.

Q. And that rental space is paid by NCAHF?

A. Yes.

Q. And utilities?

A. They have sublease.

Q. I'm sorry?

A. They -- they pay rent.

Q. What's that about a sublease?

A. They pay a sublease for part of the space that's there from the major leaseholder. The floors are divided into different areas.

Q. Doctor, on -- back to your CV. Under current -- after president, Skin Systems it says, "Faculty, Northeastern University, basic and clinical medical sciences."

(Document marked as Exhibit 50 for identification)

Q. Doctor, I'm handing you an exhibit that we've marked 50 which is an internet search, Northeastern University.

MR. THEXTON: Before you embarrass yourself too far.

Q. We put in a word search for Robert affiliated with the university and Baratz and do you know of any reason why your name wouldn't come up?

A. Probably because it wasn't put in by the department. They don't list all the part time faculty.

Q. Doctor, do you see where they list plumbers,

lecturers, associate professors, clerks?

A. I have no idea what -- how they construct their website.

Q. But you have no explanation of why you wouldn't be on that website?

A. I -- I don't know how they construct their website, what their criteria are to be listed.

LAW JUDGE: We got sort of off on the exchange of documents. Let's make a record on exhibit numbers.

MR. RECKER: I'm sorry?

LAW JUDGE: Would you -- can we make a record on the exhibit number and identifying? You were referring to Exhibit number --

MR. RECKER: 50.

LAW JUDGE: -- 50, right? And I think your testimony about it is fine. We don't have to have Dr. Baratz identify it.

(Document marked as Exhibit 51 for identification)

LAW JUDGE: Did you want to do something with 51.

MR. RECKER: Your honor, I would like to use an exhibit just given to me by Mr. Thexton if that's all right with you?

MR. THEXTON: Would you let me furnish you with another copy as well?

(Document marked as Exhibit 52 for identification)

Q. Dr. Baratz, I'm handing you an exhibit that was just generously provided by Mr. Thexton. Can you identify that?

A. Yes, it's an annual appointment letter from Northeastern. It's the second one I've received.

Q. And that reflects that you've just been appointed? And it's dated June what -- June 10th?

A. June 12th. Actually, I've been reappointed. That's -- we get one every year. You see, it's annual appointment. This is the current one.

Q. Doctor, if you'll look at Exhibit 51? From Northeastern University payroll department -- Northeastern, I'm sorry -- faxed from the Northeastern University on July 11th. "Robert S. Baratz does not have a current affiliation nor is he listed in the payroll record with Northeastern University, Boston, Massachusetts." Can you explain why you wouldn't be listed?

A. Sure. I'm not on their regular payroll. When I was teaching there in 2000 -- the fall semester of 2002 I was paid by voucher and for our clinical teaching we're not paid. When the students come to our site it's a volunteer

position. We're not on payroll.

Q. And that's the nature of the appointment, is it not, Doctor? You agree to have students to come to your facility?

A. Well, that's part of it.

Q. All right.

A. Actually in 2002 I taught a full course in the fall semester at Northeastern.

Q. Were you paid for that?

A. Yes, I was.

Q. What was the course?

A. Anatomy and physiology for physician's assistants students.

Q. Basic sciences?

A. That's basic biomedical science. We I had -- it had clinical aspects to it as well.

Q. Doctor, your next current affiliation as of August 2002, it says "Faculty, Boston University School of Medicine, clinical sciences." That's another volunteer, non-paid, non-tenured position, is it not?

A. That one is. Yes, correct.

Q. And you have not been asked to do anything on behalf of Boston University School of Medicine for several years, correct?

A. That's not true.

Q. Tell me when you were last asked to do something?

A. About a couple weeks ago. In fact, I faxed a letter before I left accepting a student for the next clinical year.

Q. And you --

A. We had a student in the past clinical year.

Q. In your medical facility?

A. Yeah.

Q. And that's what gets you this -- gets you this -- quote -- "affiliation with the medical school," correct?

A. I've had a long standing affiliation with the medical school going back to 1976.

Q. The emergency department terminated your relationship with them on May 15th, 2001, didn't they?

A. The emergency department -- the department of emergency medicine?

Q. Correct.

A. At BU?

Q. Correct.

A. I was still in the department of medicine at that time. I had dual appointments. I was no longer teaching in

the department at Carney which is where the affiliation was so there was no reason to keep the appointment.

MR. THEXTON: You want the letter from BU? Do you want the letter from BU?

MR. RECKER: Sure. Mark it.

Q. Doctor, do you periodically review your credentials as you have it posted on various internet sites?

A. I can't tell you everywhere it is. I don't necessarily post them. Other people sometimes do and I'm not aware of everywhere they might be. I don't have, you know, 48 hours in every day.

Q. How about the ones affiliated with Quack Watch and NCAHF? Do you monitor those?

A. I don't regularly look at those. I have a very busy existence and I can't be chasing down every website that might have my name.

Q. So if they have outdated information about your affiliations that doesn't concern you?

A. It would if I'm made aware of it. If I'm made aware of it I -- I -- it's my practice to notify people to correct it.

(Document marked as Exhibit 55 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 55 which was just handed to us by Mr. Thexton. It's a letter from Boston University, is it not?

A. I'm sorry.

Q. That's a letter from Boston University?

A. It's a letter from the chief of the department of medicine.

Q. What's the date?

A. September 12th, 2002.

Q. And would you read that?

A. "Thank you for your recent letter requesting retention of your faculty appointment. In view of your continuing involvement with medical students we will retain your academic title as clinical assistant professor of medicine, an uncompensated position."

Q. So, because you allow medical students to periodically visit your medical facility you qualify for appointment to the faculty, is that correct?

A. It's required.

Q. I understand. But you called and asked to retain it?

A. I'm sorry?

B. Q. You called and asked them to retain it?

C. A. There was correspondence between me and the chief

D. of medicine about our activities and he wanted to be sure
E. that we were still seeing students. And I showed him that
F. we are. He doesn't always communicate with the people in
G. the first and second year teaching programs.
H. MR. RECKER: May we take a five minute break?
I. LAW JUDGE: There's a request for another break.
J. We can -- if we could just get an update on how we're doing
K. for this afternoon? Well, I'll talk to you about that
L. afterwards. Sure. Off the record.
M. (Off the record)
N. LAW JUDGE: Actually, before I allow you to
O. continue question I think this would be a good time, Mr.
P. Recker, to ask you whether this fits -- where -- where we
Q. are, I guess. You know, we could go late tonight if that
R. helps us accomplish something. We could break at a
S. reasonable hour. Do you have an idea of where we were are
T. in your cross-examination? Another day, another two days,
U. another -- is it going to make any difference?
V. MR. RECKER: I would say it probably would be
W. prudent to do a reasonable hour tonight and then proceed
X. tomorrow.
Y. LAW JUDGE: Okay, you're not feeling like --
Z. there's no chance --
AA. MR. RECKER: Close? No.
BB. LAW JUDGE: Okay. Then let's shoot for perhaps
CC. 4:00 or 4:15 to end if that all right, unless -- 4:30?
DD. 5:30? Going once, going twice? I'll ask you again at 4:30.
EE. You may continue.
FF. MS. HUBBARD: 56.
GG. (Document marked as Exhibit 56 for identification)
HH. LAW JUDGE: We are coming back to 53 and 54,
II. right?
JJ. MS. HUBBARD: Yes.
KK. LAW JUDGE: Okay, fine.
LL. MR. RECKER: I go wherever I'm told, your honor.
MM. LAW JUDGE: Thank you.
NN. Q. Doctor, I'm handing you what's been marked Exhibit
OO. 56 from the Quack Watch homepage scientific and technical
PP. advisors. And I believe you're listed on page 126 as a
QQ. medical advisor and 127 as a dental advisor, correct?
RR. A. Yes.
SS. Q. At the bottom of the first page -- I'm sorry, the
TT. middle -- it says, "This page was revised on January 28,
UU. 2003." And yet, Doctor, it has you as assistant clinical
VV. professor, departments of medicine and emergency medicine,
WW. Boston University. That's about two years out of line,

XX. isn't it?
YY. A. Well, it says on the other page. It doesn't say
ZZ. it on the page in which my name appears.
AAA. Q. Robert S. Baratz -- I'm sorry? The science --
BBB. LAW JUDGE: Would you just repeat the answer,
CCC. please?
DDD. A. What I said was that this page was revised, it
EEE. appears on the title page but it doesn't appear on the page
FFF. that my name is on.
GGG. Q. So they revised the page that's captioned,
HHH. "Scientific and Technical Advisors," but you don't know if
III. they also revised the credential page?
JJJ. A. I don't know. It doesn't say they did and it's
KKK. not my website.
LLL. Q. Well, whose website is it?
MMM. A. It belongs to quackwatch.org.
NNN. Q. And Quack Watch is affiliated with NCAHF, correct?
OOO. A. They have a -- a loose affiliation. We combine
PPP. our efforts on certain things.
QQQ. Q. But doctor --
RRR. A. They're not the same organization at all.
SSS. Q. Dr. Baratz, president of Quack Watch, correct?
TTT. A. Dr. Steven Barrett.
UUU. Q. Correct.
VVV. A. Yes, he is.
WWW. Q. He's vice-president of NCAHF, correct?
XXX. A. He has -- yeah, he may -- he may be the head of
YYY. his men's club too. I don't know. I don't know all his
ZZZ. credentials. I just know the ones that, you know, you
AAAA. mentioned.
BBBB. Q. Well, in any event page 126 and 127, as you can
CCCC. see they were printed out from the internet on June 29th,
DDDD. 2003?
EEEE. A. I can see that it was printed.
FFFF. Q. And the information under your name is incorrect?
GGGG. A. Well, then I'll call them up and ask them to check
HHHH. it -- to change it. Thank you for letting me know.
III. Q. Doctor, if you'll look at Exhibit 53 which is a
JJJ. statement from the department of emergency medicine, Boston
KKKK. University, dated July 9th, '03? "Dr. Robert Baratz does
LLLL. not have a current affiliation with Boston University's
MMMM. department of emergency medicine." That's accurate, is it
NNNN. not, Doctor?
OOOO. A. I don't currently have an affiliation, that's
PPPP. correct.
QQQQ. Q. "He was formerly a clinical assistant professor of

RRRR. emergency medicine that appointment was terminated on May
SSSS. 15th, 2001." Is that correct?
TTTT. A. It ended then. I think the word terminated has
UUUU. other meanings. I think they're meaning that it just
VVVV. stopped. It wasn't removed for any purpose other than what
WWWW. I said before.
XXXX. Q. But they in fact terminated the appointment?
YYYY. A. Well, faculty who are no longer affiliated with
ZZZZ. the department or don't keep appointments -- I had a
AAAAA. discussion with the chief of the department about it. He
BBBBB. sent me a letter and said that we're going to remove you
CCCCC. from the list of faculty because you're no longer seeing
DDDDD. patients and I said fine.
EEEE. Q. Because you're no longer seeing patients?
FFFF. A. In the emergency department at Carney which is
GGGGG. there site where I was on the faculty for seeing their
HHHHH. residence, that's correct.
IIII. Q. Well, in 2001 you hadn't seen any clinical
JJJJ. patients to practice medicine, correct?
KKKKK. A. I'm sorry?
LLLLL. Q. In 2001 you hadn't seen any clinical patients in
MMMMM. the practice of medicine?
NNNNN. A. I so testified.
OOOOO. Q. The same for 2000?
PPPPP. A. What I said before stands.
QQQQQ. Q. Doctor, if you'll look at Exhibit 54, which is a
RRRRR. series of emails, the last being on the bottom of the page
SSSSS. from Peter Reich, assistant to the dean. Do you know Peter
TTTTT. Reich?
UUUUU. A. No. Never heard of him.
VVVVV. Q. Assuming he is in fact the assistant to the dean
WWWWW. of Boston University, assuming in fact he states -- quote --
XXXXX. "Dr. Baratz' appointment is a secondary clinical
YYYYY. appointment. His primary appointment was terminated on May
ZZZZZ. 15th, 2001. The secondary appointment is non-paid,
AAAAA. non-tenured volunteer. The clinical designation means the
BBBBB. primary activity was patient care public health service." --
CCCCC. end quote. Would that be accurate?
DDDDD. A. I'm sorry, what -- would what be accurate?
EEEE. Q. That statement? Assuming that Mr. Peter Reich
FFFFFF. made that statement from Boston University, is that accurate
GGGGG. to your understanding?
HHHHH. A. Which statement? There are several.
IIII. Q. The one I just read.
JJJJ. A. Which one of them?
KKKKK. LAW JUDGE: Are you asking him --

LLLLLL. A. You asked me a multi part question.

MMMMMM. LAW JUDGE: It would be helpful, Mr. Recker. Are

NNNNNN. you focusing on the last sentence, the clinical designation?

OOOOOO. Is that what you're asking?

PPPPPP. Q. "His secondary appointment is non-paid,

QQQQQQ. non-tenured volunteer," is that correct?

RRRRRR. LAW JUDGE: Ask that.

SSSSSS. A. I don't know what he means by primary and

TTTTTT. secondary appointments. I think if -- if you -- if you lose

UUUUUU. your primary appointment then your secondary appointment

VVVVVV. becomes your primary appointment. Primary is the first

WWWWWW. appointment you have. If you only have one then it's your

XXXXXX. primary appointment. You can have a secondary without a

YYYYYY. primary. It's -- it's sort of not logical.

ZZZZZZ. Q. Doctor, just for the purposes of the

AAAAAAA. administrative law judge you've testified already that

BBBBBBB. you're not engaged in the practice of occupational medicine

CCCCCCC. currently?

DDDDDDD. A. I didn't say that at all.

EEEEEEE. Q. What kind of practice are you engaged in?

FFFFFFF. A. In medicine?

GGGGGGG. Q. Doctor, you understand your qualifications in this

HHHHHHH. case relate to your physician status?

IIIIII. A. I understand --

JJJJJJ. Q. And that's the practice --

KKKKKKK. A. -- Mr. Recker --

LLLLLLL. Q. -- of medicine --

MMMMMMM. A. -- and I'm not trying to bandy words with you.

NNNNNNN. But I've learned that when a lawyer asks you a question to

OOOOOOO. be very clear of what he's asking you because, as we've seen

PPPPPPP. earlier today, words get shifted around and if you don't ask

QQQQQQQ. it exactly the right way you don't answer it exactly the

RRRRRRR. right way. Then somebody later says, "Well, you didn't

SSSSSSS. respond to my question." So I'm just trying to be clear on

TTTTTTT. exactly what you're asking me.

UUUUUUU. Q. Do you not publicly state that you're engaged in

VVVVVVV. the practice of occupational medicine in Braintree,

WWWWWWW. Massachusetts?

XXXXXXXX. A. That's one of the things I do.

YYYYYYY. Q. Do you not publicly state you are engaged in the

ZZZZZZZ. practice of occupational medicine in Braintree,

AAAAAAA. Massachusetts?

BBBBBBB. A. That is one of the things I do.

CCCCCCC. LAW JUDGE: I think the previous question and

DDDDDDD. answer was, "Is that not all you do?"

EEEEEEE. MR. THEXTON: Well, primary --

FFFFFFFF. LAW JUDGE: Something like that.
GGGGGGGG. MR. THEXTON: -- was the modifier.
HHHHHHHH. MR. RECKER: I'm simply asking him about what he
IIIIII. says occupational medicine -- and he doesn't add anything to
JJJJJJ. it.
KKKKKKKK. LAW JUDGE: Well, I fail to get that in the last
LLLLLLLL. two -- repetition of question and answer.
MMMMMMMM. MR. RECKER: Okay.
NNNNNNNN. LAW JUDGE: Try it again. Actually -- we -- well,
OOOOOOOO. all right. As long as you've marked it. I was going to say
PPPPPPPP. I'm not sure there's impeachment here at all. I just don't
QQQQQQQQ. understand the question.
RRRRRRRR. MR. RECKER: Sure.
SSSSSSSS. LAW JUDGE: But we'll go over it.
TTTTTTTT. (Document marked as Exhibit 57 for identification)
UUUUUUUU. Q. Doctor, I'm handing you what's been marked Exhibit
VVVVVVVV. 57. This is an article you wrote as president of the NCAHF,
WWWWWWW. correct?
XXXXXXXX. A. It's part of something I wrote. It's been, you
YYYYYYYY. know, extracted.
ZZZZZZZZ. Q. How do you know it's been extracted and it's not
AAAAAAAAA. the full and complete article?
BBBBBBBBB. A. Well, because I was submitted to them I believe
CCCCCCCC. was longer. And this was --
DDDDDDDD. Q. This is --
EEEEEEEE. A. This was honed down to fit the space.
FFFFFFFF. Q. This is dated April 2nd, 2002? Correct?
GGGGGGGG. A. That's the date on it.
HHHHHHHH. Q. And you knew this for internet publication?
IIIIII. A. I think, "Health Facts and Fears," was also being
JJJJJJJ. published in -- in print form by the American Council on
KKKKKKKK. Science & Health at the time that I was asked about this. I
LLLLLLLLL. think it may appear in more than one place. I'm not certain
MMMMMMMMM. of it.
NNNNNNNN. Q. So you're aware it might appear both on the
OOOOOOOOO. internet and written documents, written material?
PPPPPPPP. A. I believe so.
QQQQQQQQQ. Q. Doctor, on page three it says -- after the article
RRRRRRRRR. it says, "Robert S. Baratz practices occupational medicine
SSSSSSSSS. in the Boston area and is president of the National Council
TTTTTTTTT. Against Health Fraud, a consumer advocacy group founded more
UUUUUUUUU. than 20 years ago to promote reliable health information."
VVVVVVVVV. Where did they get the information that you practiced
WWWWWWW. occupational medicine in the Boston area if not from you?
XXXXXXXXX. A. Well, that's one of the things I do. I think --
YYYYYYYYY. they're not saying that's all I do. There's limited space

ZZZZZZZZZZ. there. You know, they didn't put my whole CV there with all
 AAAAAAAAAAAA. the things that I do do. So I -- I didn't write that part.
 BBBB BBBB. It was obviously written by someone else.
 CCCCCCCCCC. Q. Now, Doctor, in this article itself you are very
 DDDDDDDDDD. critical of the White House commission, correct?
 EEEEEEEEEEE. A. Well, that's one interpretation of it.
 FFFFFFFFFF. Q. Well, I'm sure the judge can read it and get his
 GGGGGGGGGG. own understanding. But Doctor, correct me if I'm wrong,
 the
 HHHHHHHHHH. White House commission was supporting complimentary
 IIIIIIIII. alternative medicine, was it not?
 JJJJJJJJJ. A. Well, I don't think it's -- it's something we
 KKKKKKKKKK. could characterize in a simple yes or no question. The
 LLLLLLLLLL. White House commission was on board for a couple years.
 MMMMMMMMMM. They wrote a long and involved report. There are many
 NNNNNNNNNN. aspects to it, many recommendations. So I don't think we
 OOOOOOOOOO. can summarize that in a yes or no answer.
 PPPPPPPPPP. Q. The article was captioned, "White House commission
 QQQQQQQQQQ. pushes quackery," is it not, Doctor?
 RRRRRRRRRR. A. That's what it says.
 SSSSSSSSSS. Q. And your characterization of CAM is quackery, is
 TTTTTTTTTT. it not?
 UUUUUUUUUU. A. That's not necessarily true.
 VVVVVVVVVV. Q. Doctor, page three, the top of the page you state,
 WWWWWWWWWW. "The WHCCAMP represents quackery." Is that your
 statement?
 XXXXXXXXXXXX. A. Page three.
 YYYYYYYYYY. Q. Bates stamped 013.
 ZZZZZZZZZZ. A. That's 13.
 AAAAAAAAAAAA. Q. Page three of the document. The article.
 BBBB BBBB. A. And where --
 CCCCCCCCCC. LAW JUDGE: The second line.
 DDDDDDDDDD. A. I have to see with -- that's part of a longer
 EEEEEEEEEEE. paragraph. I have to see what it says there. Okay, I've
 FFFFFFFFFF. read it. Now could you ask me your question again?
 GGGGGGGGGG. Q. That is your statement, is it not?
 HHHHHHHHHH. A. No, it actually not what I wrote. Somebody
 IIIIIIIII. shortened it. It should -- it should say at the very least
 JJJJJJJJJ. that the report represents quackery.
 KKKKKKKKKK. Q. Well, it says, "The White House commission on
 LLLLLLLLLL. complimentary alternative medicine policy (WHCCAMP)"
 --
 MMMMMMMMMM. that's on the first page of the article where you write
 NNNNNNNNNN. that. So therefore you're saying that that policy
 OOOOOOOOOO. represents quackery, correct?
 PPPPPPPPPP. A. No, the word "report" is missing because it was

QQQQQQQQQQ. mentioned earlier in the article. It should have the word
 RRRRRRRRRR. "report" in there. I didn't -- I wasn't asked to edit this
 SSSSSSSSSS. after it was put up on the web.
 TTTTTTTTTT. LAW JUDGE: You're stating --
 UUUUUUUUUU. A. Look at the beginning of the paragraph. It says
 VVVVVVVVVV. "report" and it should -- it should reiterate it but I think
 WWWWWWWWWW. they were trying to save space so they cut the word
 out.
 XXXXXXXXXXXX. But it -- it's implied that it's the report.
 YYYYYYYYYY. Q. Let me direct your attention to the first
 ZZZZZZZZZZ. paragraph then.
 AAAAAAAAAA. LAW JUDGE: Well, do you want to ask that same
 BBBBBBBBBB. question inserting the word "report" into that sentence and
 CCCCCCCCCC. ask if that would be his --
 DDDDDDDDDD. Q. All right. Is that not your statement then, "The
 EEEEEEEEEEE. White House commission on complimentary and
 alternative
 FFFFFFFFFF. medicine policy report represents quackery,"?
 GGGGGGGGGG. A. I think there were major portions of that report
 HHHHHHHHHH. that do. And so does the National Council, which I was
 IIIIIIIIII. writing for.
 JJJJJJJJJJ. Q. Dr. Baratz, going back to Exhibit 46 of your CV,
 KKKKKKKKKK. updated August 20th, 2002. On the second page you have
 a
 LLLLLLLLLL. long list of other professional experience and employment
 MMMMMMMMMM. (highlights). One example in -- midway down the
 page, it
 NNNNNNNNNN. says, "1994/5, consultant, Commonwealth of Kentucky." I
 OOOOOOOOOO. believe you testified in your deposition that related to
 PPPPPPPPPP. your involvement in a dental case, is that correct?
 QQQQQQQQQQ. A. That -- that's correct.
 RRRRRRRRRR. Q. And that dental case I believe you testified
 SSSSSSSSSS. involved a dentist by the name of Dr. Morgan, correct?
 TTTTTTTTTT. A. That's correct.
 UUUUUUUUUU. Q. And you testified that you were -- well, your CV
 VVVVVVVVVV. indicates that you were a consultant for the Commonwealth
 of
 WWWWWWWWWW. Kentucky in that case, correct?
 XXXXXXXXXXXX. A. For the AG's office.
 YYYYYYYYYY. Q. The AG's office. You provided some testimony in
 ZZZZZZZZZZ. that matter, did you not, Doctor?
 AAAAAAAAAA. A. I believe I did.
 BBBBBBBBBB. Q. Doctor, isn't it a fact that the Commonwealth of
 CCCCCCCCCC. Kentucky, neither the AG's office nor the board of
 DDDDDDDDDD. dentistry, reached out to obtain your services?
 EEEEEEEEEEE. A. Excuse me?

FFFFFFFFFFFFFF. Q. Neither the AG's office of the State of Kentucky
GGGGGGGGGGGGGGG. or the board of dentistry contacted you to be a consultant
HHHHHHHHHHHHHHH. in any case specifically to Dr. Morgan?

IIIIIIIIII. A. No, they called me and asked me if I would -- if I
JJJJJJJJJJ. would assist the AG -- the assistant AG in the case.

KKKKKKKKKKKKKKK. Q. Doctor, is it not true that before you had any
LLLLLLLLLLLLLL. contact with the board of dentistry you had been retained
by

MMMMMMMMMMMMMMM. the patient's attorney as a potential expert on behalf
of
NNNNNNNNNNNNNNN. the patient?

OOOOOOOOOOOOOOO. A. There was a litigation case -- a court case
PPPPPPPPPPPPP. involving a gentleman against Dr. Morgan which was
brought

QQQQQQQQQQQQQQQ. to federal court in Kentucky and settled in the client's
RRRRRRRRRRRRRRR. favor. And the client asked me to help write a -- draft a
SSSSSSSSSSSSSSS. complaint to the board. And I assisted him in that.

TTTTTTTTTTTTTTT. Q. Thank you, Doctor. Again, my question was you
UUUUUUUUUUUUUUU. were in fact retained by the patient and his lawyer as an
VVVVVVVVVVVVVVV. expert for the patient in a malpractice case prior to any
WWWWWWWWWWWWW. contact with the Kentucky Board of Dentistry?

XXXXXXXXXXXXXXXXX. A. That's correct.

YYYYYYYYYYYYYYY. Q. You actually made the complaint about the dentist
ZZZZZZZZZZZZZZZ. to the Kentucky Board of Dentistry?

AAAAAAAAAAAAAAAAA. A. At the client's request.

BBBBBBBBBBBBBBBBB. Q. And then you testified, giving testimony on behalf
CCCCCCCCCCCCCCC. of the patient against the dentist, correct?

DDDDDDDDDDDDDDD. A. No, I don't give testimony for or against
anyone.

EEEEEEEEEEEEEEEE. I think that's a mischaracterization of my testimony.

FFFFFFFFFFFFFFF. That's a value judgment that the observer has to make. I
GGGGGGGGGGGGGGG. testify to the facts as I see them and they make the
HHHHHHHHHHHHHHH. judgment whether it's for, against, in between or
whatever.

IIIIIIIIII. Q. Well, when you -- when you were retained by the
JJJJJJJJJJJJ. plaintiff's attorney on behalf of that patient when you gave
KKKKKKKKKKKKKKK. testimony, weren't you testifying on behalf of the
patient?

LLLLLLLLLLLLLLLLL. A. I'm sorry?

MMMMMMMMMMMMMMMMM. LAW JUDGE: Do you --

NNNNNNNNNNNNNNNN. A. I was testifying to the truth as I saw it.

OOOOOOOOOOOOOOO. LAW JUDGE: Do you wish to ask the
question in

PPPPPPPPPPPPPPP. terms of who called him as a witness?

QQQQQQQQQQQQQQQ. Q. In the malpractice case who called you as a
RRRRRRRRRRRRRRR. witness?

SSSSSSSSSSSSSS. A. I never testified in that case in court. There
TTTTTTTTTTTTTTTT. was a deposition but there was no -- there was no trial. It
UUUUUUUUUUUUUUU. was settled on the first day of trial.
VVVVVVVVVVVVVVV. Q. And you gave a deposition as an expert for
the
WWWWWWWWWWWWWWW. patient on behalf of the patient, correct?
XXXXXXXXXXXXXXXXX. A. Well, that's who retained me. But I think
YYYYYYYYYYYYYYYY. characterizing it for and against I think
misrepresents what
ZZZZZZZZZZZZZZZ. testimony is about when you're an expert. You're there to
AAAAAAAAAAAAAAAAA. testify to the facts as you see them.
BBBBBBBBBBBBBBBB. Q. Who paid you in that case?
CCCCCCCCCCCCCCCC. A. I believe I was paid by the plaintiff in the --
in
DDDDDDDDDDDDDDDD. the torte claim and I can't remember whether I was
paid by
EEEEEEEEEEEEEEEE. the Commonwealth of Kentucky. I believe I was for some
FFFFFFFFFFFFFFFFF. time. And the testimony was done by telephone. I don't
GGGGGGGGGGGGGGG. believe I went there. So it was a short amount of
time and
HHHHHHHHHHHHHHH. some work with the AG in drafting the case.
IIIIIIIIIIIIIIII. (Document marked as Exhibit 58 for identification)
JJJJJJJJJJJJJJJ. Q. Doctor, let me hand you an exhibit marked 58 which
KKKKKKKKKKKKKKK. is a fax to me from the executive directors of the
Kentucky
LLLLLLLLLLLLLLLLL. Board of Dentistry dated July 7th, 2003. It included a
MMMMMMMMMMMMMMMM. brief summary of the testimony you
provided in that case at
NNNNNNNNNNNNNNN. the top of the second page. Quote -- "Dr. Baratz
testified
OOOOOOOOOOOOOOO. that he had been retained as an expert by Lise
Weil's
PPPPPPPPPPPPPPP. attorney and that he had contacted the Kentucky Board of
QQQQQQQQQQQQQQQ. Dentistry about this matter." Do you agree with
that
RRRRRRRRRRRRRRR. statement?
SSSSSSSSSSSSSSS. A. I believe that summarizes --
TTTTTTTTTTTTTTTT. Q. Okay.
UUUUUUUUUUUUUUU. A. -- what happened.
VVVVVVVVVVVVVVV. Q. So in a case where you filed a complaint
against
WWWWWWWWWWWWWWW. the dentist with the State of Kentucky, on
your CV you state
XXXXXXXXXXXXXXXXX. you're a consultant to the Commonwealth of
Kentucky. Is
YYYYYYYYYYYYYYYY. that how you extrapolate that?

ZZZZZZZZZZZZZZZZZZ. A. No, I think they were separate matters. The
AAAAAAAAAAAAAAAAAAAA. complaint was filed on behalf of the patient at his
request.
BBBBBBBBBBBBBBBBBB. And then the commonwealth came to me and asked
me if I would
CCCCCCCCCCCCCCCCCC. be an expert for them.
DDDDDDDDDDDDDDDDDD. Q. After you filed the complaint and initiated
EEEEEEEEEEEEEEEEEEEE. disciplinary action?
FFFFFFFFFFFFFFFFFFFF. A. It was on behalf of the patient. I believe he
GGGGGGGGGGGGGGGGGG. filed the complaint. I helped him draft it.
HHHHHHHHHHHHHHHHHH. Q. I believe it's --
IIIIIIIIIIIIIIIIII. A. I'd have to go back to my files and look at the
JJJJJJJJJJJJJJJJJJ. original document but I believe it was filed by him.
KKKKKKKKKKKKKKKKKK. Q. Well, if you look at the first line of this
second
LLLLLLLLLLLLLLLLLLLL. page, Doctor, it says, "Dr. Baratz testified that he
had
MMMMMMMMMMMMMMMMMM. been retained as an expert by Lise Weil's
attorney and that
NNNNNNNNNNNNNNNNNN. he had contacted the Kentucky Board of Dentistry
about this
OOOOOOOOOOOOOOOOOO. matter."
PPPPPPPPPPPPPPPPPP. A. Well, I did contact the board about the matter. I
QQQQQQQQQQQQQQQQQQ. was asked to.
RRRRRRRRRRRRRRRRRR. Q. And that's how you became in your mind a
SSSSSSSSSSSSSSSSSS. consultant for the Commonwealth of Kentucky?
TTTTTTTTTTTTTTTTTT. A. Not at all.
UUUUUUUUUUUUUUUUUU. LAW JUDGE: Mr. Recker, I need --
VVVVVVVVVVVVVVVVVV. A. That's not what I said.
WWWWWWWWWWWWWWWWWW. LAW JUDGE: I'm just going to
interrupt you for a
XXXXXXXXXXXXXXXXXXXX. second here. I know your pint is the entry on Dr.
Baratz'
YYYYYYYYYYYYYYYYYYY. vitae. I just need to make a comment about your
use of the
ZZZZZZZZZZZZZZZZZZ. document here. I really shouldn't accept this
because I
AAAAAAAAAAAAAAAAAAAA. don't think anything in here is inconsistent with
what Dr.
BBBBBBBBBBBBBBBBBB. Baratz said and therefore it's not -- would not be
CCCCCCCCCCCCCCCCCC. admissible. And there was another point which I've
already
DDDDDDDDDDDDDDDDDD. forgotten. I just -- I'm sorry. I needed to say your
use
EEEEEEEEEEEEEEEEEEEE. of the document to get to the question is not
necessarily

FFFFFFFFFFFFFFFF. strictly in line with rules I don't think. But go ahead.
GGGGGGGGGGGGGGGGGGGG. Oh, I know. Sorry, the other one. There is no
HHHHHHHHHHHHHHHHHH. identification on this document. And although you
were just
IIIIIIIIIIIIIIII. asking Dr. Baratz about his association with the attorney
JJJJJJJJJJJJJJJ. general's office it is very difficult certainly for me to
KKKKKKKKKKKKKKKKKK. draw any conclusion about that because I can't tell
at what
LLLLLLLLLLLLLLLLL. stage in any of the proceedings this document may
have been
MMMMMMMMMMMMMMMM. generated. Can you help me with that?
NNNNNNNNNNNNNNNN. MR. RECKER: At the top of the page, fax
772003,
OOOOOOOOOOOOOOOO. from Gary Munsee.
PPPPPPPPPPPPPPPP. LAW JUDGE: Are you saying this was just written
QQQQQQQQQQQQQQQQ. for you for this occasion?
RRRRRRRRRRRRRRRR. MR. RECKER: Correct.
SSSSSSSSSSSSSSSS. LAW JUDGE: Okay. I thought maybe this was an
TTTTTTTTTTTTTTTT. excerpt from another document.
UUUUUUUUUUUUUUUU. MR. RECKER: The second page is from the
Kentucky
VVVVVVVVVVVVVVVV. Board of Dentistry's records reflecting a factual
summary of
WWWWWWWWWWWWWWW. the involvement of Dr. Baratz.
XXXXXXXXXXXXXXXXXX. LAW JUDGE: And the only reason I --
YYYYYYYYYYYYYYYYYY. MR. THEXTON: If only you'd said so --
ZZZZZZZZZZZZZZZZ. LAW JUDGE: The only reason I bring it up
is that
AAAAAAAAAAAAAAAAAA. I can't tell whether this was drafted even
before the
BBBBBBBBBBBBBBBBBB. attorney general's office decided to go ahead with
the case.
CCCCCCCCCCCCCCCC. I gather this must be -- has been somewhere along
the line
DDDDDDDDDDDDDDDD. after the attorney general got involved?
EEEEEEEEEEEEEEEEEE. MR. RECKER: This was the disciplinary
action
FFFFFFFFFFFFFFFFFFFF. brought against the dentist by the Kentucky Board
of
GGGGGGGGGGGGGGGG. Dentistry. The -- the attorney general's
office is the
HHHHHHHHHHHHHHHH. prosecutor in Kentucky --
IIIIIIIIIIIIIIII. LAW JUDGE: This was --
JJJJJJJJJJJJJJJ. MR. RECKER: -- for dental board actions.
KKKKKKKKKKKKKKKK. LAW JUDGE: -- a document that
was the outcome of

LLLLLLLLLLLLLLLLLLLL. that?
MMMMMMMMMMMMMMMMMMMM. MR. RECKER: This is a
factual summary composed by
NNNNNNNNNNNNNNNNNNNN. the dental board of the testimony that was
given.
OOOOOOOOOOOOOOOOOOOO. LAW JUDGE: Thank you. That is a
help --
PPPPPPPPPPPPPPPPPPPP. MR. RECKER: And it is not entirely
conflictual at
QQQQQQQQQQQQQQQQQQQQ. all with what he already indicated.
RRRRRRRRRRRRRRRRRRRR. LAW JUDGE: All right, thank you.
SSSSSSSSSSSSSSSSSSSS. Q. Doctor, on the second page of your CV,
other
TTTTTTTTTTTTTTTTTTTT. professional experience and employment, you
indicate about
UUUUUUUUUUUUUUUUUUUU. ten entries down that you were from 2001-
open -- does that
VVVVVVVVVVVVVVVVVVVV. mean continuing until present or at least
until August of
WWWWWWWWWWWWWWWWWW. 2002?
XXXXXXXXXXXXXXXXXXXXX. A. Normally that's what it would mean.
YYYYYYYYYYYYYYYYYYYY. Q. 2001 -- blank -- you were -- you
were a consultant
ZZZZZZZZZZZZZZZZZZZZ. for the United States Senate, special committee on
aging.
AAAAAAAAAAAAAAAAAAAAA. So it's your understanding you're still a
consultant with
BBBBBBBBBBBBBBBBBBBB. the United States Senate, special committee
on aging?
CCCCCCCCCCCCCCCCCCCC. A. I haven't been asked to reappear
before the Senate
DDDDDDDDDDDDDDDDDDDD. committee and probably the dash should be
eliminated.
EEEEEEEEEEEEEEEEEEEE. Q. You testified on one occasion, is that
correct,
FFFFFFFFFFFFFFFFFFFFFF. Doctor?
GGGGGGGGGGGGGGGGGGGG. A. That's correct. I would point out that
I met with
HHHHHHHHHHHHHHHHHHHH. committee staff on three or four occasions
prior to
IIIIIIIIIIIIIIIIIIII. testimony.
JJJJJJJJJJJJJJJJJJ. (Document marked as Exhibit 59 for identification)
KKKKKKKKKKKKKKKKKKKK. Q. Doctor, we're going to hand you
what's been marked
LLLLLLLLLLLLLLLLLLLL. Exhibit 59 which is a printout from the Quack
Watch website

MMMMMMMMMMMMMMMMMMMM. purporting to be your speech before
the United States
NNNNNNNNNNNNNNNNNNNN. Senate, special committee on aging. Quote
"Hearing on
OOOOOOOOOOOOOOOOOO. swindlers, hucksters and snake oil salesmen:
the hype and
PPPPPPPPPPPPPPPPPP. hope of marketing anti-aging products to seniors,
September
QQQQQQQQQQQQQQQQQQ. 10th, 2001." end quote. And Doctor, you
were appearing
RRRRRRRRRRRRRRRRRR. because of your connection with the
National Council Against
SSSSSSSSSSSSSSSSSS. Health Fraud, is that correct?
TTTTTTTTTTTTTTTTTT. A. I think that was one of the reasons I was
asked to
UUUUUUUUUUUUUUUUUU. appear. I think there were others.
VVVVVVVVVVVVVVVVVV. Q. Now, at the time you appeared you
hadn't been
WWWWWWWWWWWWWWWW. practicing medicine clinically or
seeing patients for
XXXXXXXXXXXXXXXXXXXX. approximately two years, is that correct?
YYYYYYYYYYYYYYYYYY. A. I'd have to do the math but within --
from fall of
ZZZZZZZZZZZZZZZZZZ. '99 to -- this was fall of 2001. So about two years.
AAAAAAAAAAAAAAAAAAAA. Q. The --
BBBBBBBBBBBBBBBBBB. A. Perhaps a little less.
CCCCCCCCCCCCCCCCCC. Q. The second paragraph where you say
-- quote --
DDDDDDDDDDDDDDDDDD. "And even though I have done many things
in my professional
EEEEEEEEEEEEEEEEEEEE. life let me say that I am first and foremost a
clinician."
FFFFFFFFFFFFFFFFFFFF. That wasn't an accurate statement, was it?
GGGGGGGGGGGGGGGGGG. A. Well, I consider myself a clinician.
That's what
HHHHHHHHHHHHHHHHHH. I like to think of myself as. I take care of a
lot of
IIIIIIIIIIIIIIIIII. patients. I have for many years. I am a clinician, not an
JJJJJJJJJJJJJJJJJJ. ivory towered academic who doesn't see patients. I've been
KKKKKKKKKKKKKKKKKK. seeing patients for most of my professional
career.
LLLLLLLLLLLLLLLLLLLL. Q. Except at the time you gave this speech to
MMMMMMMMMMMMMMMMMMMM. congress you hadn't seen a patient in
over two years?
NNNNNNNNNNNNNNNNNN. A. I couldn't because I wasn't working
from an injury

OOOOOOOOOOOOOOOOOOOOOO. but that doesn't mean I wasn't a clinician.
PPPPPPPPPPPPPPPPPPPP. Q. I see. Doctor, on page 073 of that
presentation,
QQQQQQQQQQQQQQQQQQQQ. Bates stamp 73, do you have that page?
RRRRRRRRRRRRRRRRRRRR. A. I have it open.
SSSSSSSSSSSSSSSSSSSS. Q. All right. The middle of the page -- quote --
"So
TTTTTTTTTTTTTTTTTTTT. called chelation therapy is a case in point. This
concept
UUUUUUUUUUUUUUUUUUUU. has some appropriate uses in medicine,
mainly treatment of
VVVVVVVVVVVVVVVVVVVV. acute metal poisonings with arsenic and
lead. However, it
WWWWWWWWWWWWWWWWWW. has been contorted into
something else by a number of
XXXXXXXXXXXXXXXXXXXX. practitioners. These practitioners claim that
they can
YYYYYYYYYYYYYYYYYYYY. 'treat' calcified atherosclerosis of the arteries
of the
ZZZZZZZZZZZZZZZZZZZZ. heart and other organs with this technique. Others
claim it
AAAAAAAAAAAAAAAAAAAA. will lower cholesterol and to treat a number
of serious
BBBBBBBBBBBBBBBBBBBB. illnesses such as rheumatoid arthritis.
Millions of dollars
CCCCCCCCCCCCCCCCCCCC. in payments are collected for this procedure.
The evidence
DDDDDDDDDDDDDDDDDDDD. would suggest it is a giant scam." Doctor,
you are aware of
EEEEEEEEEEEEEEEEEEEE. the NIH study, correct?
FFFFFFFFFFFFFFFFFFFF. A. I'm aware that they're going to start a study.
GGGGGGGGGGGGGGGGGGGG. That hasn't started yet.
HHHHHHHHHHHHHHHHHHHH. Q. You're not aware that it started in
March of this
IIIIIIIIIIIIIIIIII. year?
JJJJJJJJJJJJJJJJJJ. A. I don't think patients have been enrolled yet.
KKKKKKKKKKKKKKKKKKKK. The study was funded last August but I don't
think they've
LLLLLLLLLLLLLLLLLLLL. enrolled patients yet.
MMMMMMMMMMMMMMMMMMMM. Q. Now, I -- would it be
fair to say that in your
NNNNNNNNNNNNNNNNNNNN. opinion that study is a waste of time?
OOOOOOOOOOOOOOOOOOOO. A. There are some pretty good studies
in the
PPPPPPPPPPPPPPPPPPPP. literature that would suggest that it -- the way it's

QQQQQQQQQQQQQQQQQQQQ. currently conceived with some of the
problems with that
RRRRRRRRRRRRRRRRRRRR. study, in its design and methodology, I think
it's accurate
SSSSSSSSSSSSSSSSSSSS. to say that it may be a waste of time.
TTTTTTTTTTTTTTTTTTTT. Q. Have you so informed the NIH?
UUUUUUUUUUUUUUUUUUUU. A. Yes.
VVVVVVVVVVVVVVVVVVVV. Q. Is the study going forward?
WWWWWWWWWWWWWWWWWW. A. That remains to be
seen.
XXXXXXXXXXXXXXXXXXXXX. MR. THEXTON: Your honor,
perhaps Dr. Waters could
YYYYYYYYYYYYYYYYYYYY. not attempt to give testimony while seated in
the gallery.
ZZZZZZZZZZZZZZZZZZZZ. LAW JUDGE: Thank you. I actually
couldn't hear
AAAAAAAAAAAAAAAAAAAAA. him.
BBBBBBBBBBBBBBBBBBBB. MR. RECKER: I didn't hear --
CCCCCCCCCCCCCCCCCCCC. LAW JUDGE: But if it is disturbing
anyone I'll
DDDDDDDDDDDDDDDDDDDD. ask the comments not be made.
Thank you.
EEEEEEEEEEEEEEEEEEEE. Q. Doctor, directing your attention to
the bottom of
FFFFFFFFFFFFFFFFFFFFFF. that page it says -- quote -- "The chelation therapist'
GGGGGGGGGGGGGGGGGGGG. mistakenly believes that treatment
with magnesium disodium
HHHHHHHHHHHHHHHHHHHH. EDTA will remove this calcium and
remove the atheromata.
IIIIIIIIIIIIIIIIIIII. This belief is unsupported by scientific theory, scientific
JJJJJJJJJJJJJJJJJJ. fact and practical experience." -- end quote. Isn't that
KKKKKKKKKKKKKKKKKKKK. precisely one of the issues the NIH
study is going to find
LLLLLLLLLLLLLLLLLLLL. out?
MMMMMMMMMMMMMMMMMMMM. A. No, they're not going
to study that in the study.
NNNNNNNNNNNNNNNNNNNN. That's one of the defects in the study.
They're not looking
OOOOOOOOOOOOOOOOOOOO. at that.
PPPPPPPPPPPPPPPPPPPP. Q. They're not looking at that?
QQQQQQQQQQQQQQQQQQQQ. A. That's not part of the study
design.
RRRRRRRRRRRRRRRRRRRR. Q. So they're not going to ascertain
whether it
SSSSSSSSSSSSSSSSSSSS. removes calcium?

TTTTTTTTTTTTTTTTTTTTTTTTTT. A. They're not going to ascertain
whether they're going to do what I said they were
UUUUUUUUUUUUUUUUUUUUUUUU. going to -- remove calcium
VVVVVVVVVVVVVVVVVVVVVVVVV. from atheromatas plaques. That's
not part of the study design. They're not going to
WWWWWWWWWWWWWWWWWWWWWWW. be taking out arteries and
XXXXXXXXXXXXXXXXXXXXXXXXXX. putting them under the microscope
from people who've been treated. That's correct, they're not
YYYYYYYYYYYYYYYYYYYYYYYYY. going to do that.
ZZZZZZZZZZZZZZZZZZZZZZZZZ. Q. That would be pretty impractical,
wouldn't it, Doctor?
AAAAAAAAAAAAAAAAAAAAAAAAAAA. A. Not necessarily actually. There are
BBBBBBBBBBBBBBBBBBBBBBBBBB. ways that
CCCCCCCCCCCCCCCCCCCCCCCCC. could be done. There are other ways it
could be explored.
DDDDDDDDDDDDDDDDDDDDDDDD. Q. Well, would have a tough
time getting patients to enroll in that study?
EEEEEEEEEEEEEEEEEEEEEEEEEE. A. Well, I think the -- the current study
FFFFFFFFFFFFFFFFFFFFFFFFFFFF. has some
GGGGGGGGGGGGGGGGGGGGGGGG. ethical problems with it too. As it's -
- as it's protocol calls for it.
HHHHHHHHHHHHHHHHHHHHHHHH. Q. The bottom of the page 074 you indicate in the
IIIIIIIIIIIIIIIIIIIIIIIIII. last paragraph -- quote -- "chelation therapy is only one of
JJJJJJJJJJJJJJJJJJJJJJJJ. many such areas of illegitimate
KKKKKKKKKKKKKKKKKKKKKKKKK. human experimentation," --
LLLLLLLLLLLLLLLLLLLLLLLLLLL. end quote. Is that still your current opinion,
Doctor?
MMMMMMMMMMMMMMMMMMMMMMMMM. A. I think there has been
a great deal of
NNNNNNNNNNNNNNNNNNNNNNNN. illegitimate human experimentation
regarding chelation
OOOOOOOOOOOOOOOOOOOOOOOO. therapy.
PPPPPPPPPPPPPPPPPPPPPPPPP. Q. Doctor, on the last page of your
presentation to
QQQQQQQQQQQQQQQQQQQQQQQQ. congress, page 80, the last paragraph
indicates, "Consumer
RRRRRRRRRRRRRRRRRRRRRRRR. advocacy groups such as the National
Council Against Health
SSSSSSSSSSSSSSSSSSSSSSSSS. Fraud, Inc. stand ready to work with all
levels of

TTTTTTTTTTTTTTTTTTTTTTTTTTT. government and any other interested parties
to address the
UUUUUUUUUUUUUUUUUUUUUUUUUU. problems I've outlined and to keep
our health care system as
VVVVVVVVVVVVVVVVVVVVVVVVVVV. scientific, effective and the best in
the world." -- end
WWWWWWWWWWWWWWWWWWWWWWWWW. quote. Now, Doctor,
you routinely offer the resources of
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX. the NCAHF and challenges against
the practice of chelation
YYYYYYYYYYYYYYYYYYYYYYYYYYY. therapy or any other form of
complimentary alternative
ZZZZZZZZZZZZZZZZZZZZZZZZZZZ. medicine, do you not?
AAAAAAAAAAAAAAAAAAAAAAAAAAAAA. A. I don't know what routinely
means.
BBBBBBBBBBBBBBBBBBBBBBBBBBB. Q. All right.
CCCCCCCCCCCCCCCCCCCCCCCCCC. A. And you've asked me several
--
DDDDDDDDDDDDDDDDDDDDDDDDDD. Q. All right.
EEEEEEEEEEEEEEEEEEEEEEEEEEE. A. -- questions in one there.
FFFFFFFFFFFFFFFFFFFFFFFFFFFFF. Q. NCAHF publicly states that it's ready
to assist in
GGGGGGGGGGGGGGGGGGGGGGGGGG. attacking CAM, correct?
HHHHHHHHHHHHHHHHHHHHHHHHHH. A. No, I don't believe that's
accurate.
IIIIIIIIIIIIIIIIIIIIIIIIIIII. (Document marked as Exhibit 60 for identification)
JJJJJJJJJJJJJJJJJJJJJJJJJJ. Q. Doctor, I'm handing you what's been marked
Exhibit
KKKKKKKKKKKKKKKKKKKKKKKKKK. 60, NIH news release. "NIH
launches large clinical trial on
LLLLLLLLLLLLLLLLLLLLLLLLLLL. EDTA chelation therapy for coronary artery
disease." Are
MMMMMMMMMMMMMMMMMMMMMMMMMM. you familiar with this?
NNNNNNNNNNNNNNNNNNNNNNNNNN. A. I've seen copies of this
before.
OOOOOOOOOOOOOOOOOOOOOOOOOO. Q. Are you aware that it's a five
year trial
PPPPPPPPPPPPPPPPPPPPPPPPPP. involving over 23,000 patients and over 100
research sites
QQQQQQQQQQQQQQQQQQQQQQQQQQ. across the country?
RRRRRRRRRRRRRRRRRRRRRRRRRR. A. Well, that's what they
propose to do. I don't
SSSSSSSSSSSSSSSSSSSSSSSSSS. think that's been done yet.
TTTTTTTTTTTTTTTTTTTTTTTTTTT. Q. Doctor, isn't that one of the areas
precisely

UUUUUUUUUUUUUUUUUUUUUUUUUUUUUU. you're critical of Dr. Kadile in this case?

VVVVVVVVVVVVVVVVVVVVVVVVVVVVVVV. A. What?

WWWWWWWWWWWWWWWWWWWWWWWWWW. Q. Utilizing EDTA chelation therapy?

XXXXXXXXXXXXXXXXXXXXXXXXXXXX. A. His -- his use of chelation therapy has been the

YYYYYYYYYYYYYYYYYYYYYYYYYYYY. subject of my prior testimony and I stand by my testimony.

ZZZZZZZZZZZZZZZZZZZZZZZZZZZZ. Q. Doctor, NCAHF has been involved in lawsuits

AAAAAAAAAAAAAAAAAAAAAAAAAAAA. against CAM practitioners, has it not?

BBBBBBBBBBBBBBBBBBBBBBBBBBBB. A. Not that I'm aware of.

CCCCCCCCCCCCCCCCCCCCCCCCCC. Q. How about pharmaceutical companies?

DDDDDDDDDDDDDDDDDDDDDDDDDDDD. A. I think some of the lawsuits that NCAHF has been

EEEEEEEEEEEEEEEEEEEEEEEEEEEE. involved in -- and I'm not sure they're pharmaceutical

FFFFFFFFFFFFFFFFFFFFFFFFFFFF. companies per se. I think they're -- they're not labeled as

GGGGGGGGGGGGGGGGGGGGGGGGGGGG. pharmaceutical manufacturers.

HHHHHHHHHHHHHHHHHHHHHHHHHHHH. Q. How are they labeled?

IIIIIIIIIIIIIIIIIIIIIIIIIIIIII. A. I think some of them are -- claim to be supplement makers. Some of them are -- claim to be

homeopathic

KKKKKKKKKKKKKKKKKKKKKKKKKKKK. dispensaries of various kinds.

LLLLLLLLLLLLLLLLLLLLLLLLLLLL. Q. Doctor, during your course as president of the

MMMMMMMMMMMMMMMMMMMMMMMMMMMM. NCAHF there's been litigation pending against vitamin making

NNNNNNNNNNNNNNNNNNNNNNNNNNNN. companies, marketers, have there not?

OOOOOOOOOOOOOOOOOOOOOOOOOOOO. A. There's been some lawsuits filed in the State of

PPPPPPPPPPPPPPPPPPPPPPPPPPPP. California. I can't tell you each and every one of them

QQQQQQQQQQQQQQQQQQQQQQQQQQQQ. because they were filed before I became president. They go

RRRRRRRRRRRRRRRRRRRRRRRRRRRR. back before my time. And they involve false advertising

SSSSSSSSSSSSSSSSSSSSSSSSSSSS. claims.

TTTTTTTTTTTTTTTTTTTTTTTTTTTT. Q. And when NCAHF files suit who pays for it?

UUUUUUUUUUUUUUUUUUUUUUUUUUUUUU. A. They are paid for by the attorney who promoted the
VVVVVVVVVVVVVVVVVVVVVVVVVVVVVV. suit.
WWWWWWWWWWWWWWWWWWWWWWWWWW. Q. I'm sorry?
XXXXXXXXXXXXXXXXXXXXXXXXXXXX. A. They were paid for by the attorney who prosecuted
YYYYYYYYYYYYYYYYYYYYYYYYYYYY. the suit.
ZZZZZZZZZZZZZZZZZZZZZZZZZZZZ. Q. The attorney who prosecuted the suit on behalf of
AAAAAAAAAAAAAAAAAAAAAAAAAAAA. NCAHF paid for the litigation?
BBBBBBBBBBBBBBBBBBBBBBBBBBBB. A. He volunteered his time for the litigation.
CCCCCCCCCCCCCCCCCCCCCCCCCCCC. That's correct.
DDDDDDDDDDDDDDDDDDDDDDDDDDDD. Q. Well, I -- more specifically lawsuits take money.
EEEEEEEEEEEEEEEEEEEEEEEEEEEE. Are you saying the attorney paid for everything involved out
FFFFFFFFFFFFFFFFFFFFFFFFFFFFFF. of his own pocket?
GGGGGGGGGGGGGGGGGGGGGGGGGGGG. A. He did.
HHHHHHHHHHHHHHHHHHHHHHHHHHHH. Q. I'm sorry?
IIIIIIIIIIIIIIIIIIIIIIIIIIIIII. A. He did.
JJJJJJJJJJJJJJJJJJJJJJJJJJJJ. Q. Including the filing fees, deposition costs?
KKKKKKKKKKKKKKKKKKKKKKKKKKKK. A. Correct.
LLLLLLLLLLLLLLLLLLLLLLLLLLLL. Q. And why would he do that, Doctor?
MMMMMMMMMMMMMMMMMMMMMMMMMMMM. MR.
THEXTON: If you know.
NNNNNNNNNNNNNNNNNNNNNNNNNNNN. Q. If you know?
OOOOOOOOOOOOOOOOOOOOOOOOOOOO. LAW JUDGE: It would be speculation. I was going
PPPPPPPPPPPPPPPPPPPPPPPPPPPP. to allow it. Go ahead.
QQQQQQQQQQQQQQQQQQQQQQQQQQQQ. A. I don't know.
RRRRRRRRRRRRRRRRRRRRRRRRRRRR. Q. Doctor, there is a statement in this NIH news
SSSSSSSSSSSSSSSSSSSSSSSSSSSS. release midway down the first page. It says, "Over 800,000
TTTTTTTTTTTTTTTTTTTTTTTTTTTT. patient visits were made for chelation therapy in the United
UUUUUUUUUUUUUUUUUUUUUUUUUUUU. States in 1997." Would it -- be your opinion that every one
VVVVVVVVVVVVVVVVVVVVVVVVVVVV. of those visits represented quackery on the part of someone?
WWWWWWWWWWWWWWWWWWWWWWWWWW. A. No, actually in investigating that claim there's

XXXXXXXXXXXXXXXXXXXXXXXXXXXX. no primary source for that
data -- for those data. There's
YYYYYYYYYYYYYYYYYYYYYYYYYYY. not one. There's no data to
support that. There's no
ZZZZZZZZZZZZZZZZZZZZZZZZZZ. reference. I've asked NIH, I've asked
American Heart. In
AAAAAAAAAAAAAAAAAAAAAAAAAAAA. fact, American Heart took it
off their website when I said
BBBBBBBBBBBBBBBBBBBBBBBBBB. to them that there was no primary
source for that
CCCCCCCCCCCCCCCCCCCCCCCCCC. information. That information came
from an advocacy group
DDDDDDDDDDDDDDDDDDDDDDDDDD. for chelation therapy but it
has no supporting data behind
EEEEEEEEEEEEEEEEEEEEEEEEEEE. it.
FFFFFFFFFFFFFFFFFFFFFFFFFFFF. Q. To whatever extent the numbers are
accurate would
GGGGGGGGGGGGGGGGGGGGGGGGGG. you state that every one of
those treatments represents
HHHHHHHHHHHHHHHHHHHHHHHHHH. quackery on someone's part?
IIIIIIIIIIIIIIIIIIIIIIIIIIII. A. I'd have to look at each one to make that kind of
JJJJJJJJJJJJJJJJJJJJJJJJJJ. decision.
KKKKKKKKKKKKKKKKKKKKKKKKKK. Q. Are you familiar with
the questions and answers
LLLLLLLLLLLLLLLLLLLLLLLLLLLL. contained on this document starting
with 097, questions and
MMMMMMMMMMMMMMMMMMMMMMMMMM. answers, the NIH trial
of EDTA chelation therapy for
NNNNNNNNNNNNNNNNNNNNNNNNNN. coronary artery disease?
OOOOOOOOOOOOOOOOOOOOOOOOOO. A. No.
PPPPPPPPPPPPPPPPPPPPPPPPPPP. LAW JUDGE: Give me a minute
again to interrupt
QQQQQQQQQQQQQQQQQQQQQQQQQQ. you Mr. Recker. I certainly
don't mind this line of
RRRRRRRRRRRRRRRRRRRRRRRRRR. questioning. But it had just occurred
to me that with the
SSSSSSSSSSSSSSSSSSSSSSSSSSSS. last couple of exhibits and with this line of
questioning
TTTTTTTTTTTTTTTTTTTTTTTTTTTT. I'm not sure we're sticking to the
subject which is Dr.
UUUUUUUUUUUUUUUUUUUUUUUUUUU. Baratz' qualifications --
cross-examination of his
VVVVVVVVVVVVVVVVVVVVVVVVVVV. qualifications. I -- you know,
if -- give me another minute
WWWWWWWWWWWWWWWWWWWWWWWW. or two to talk
about this because we have spent a lot of

XXXXXXXXXXXXXXXXXXXXXXXXXXXX. time over the last couple
months talking about continued
YYYYYYYYYYYYYYYYYYYYYYYYYYYY. direct testimony from Dr.
Baratz on the substantive issues
ZZZZZZZZZZZZZZZZZZZZZZZZZZZZ. and your preparations for cross
examining him on those
AAAAAAAAAAAAAAAAAAAAAAAAAAAA. issues. And it seems to me
that's what we're doing now.
BBBBBBBBBBBBBBBBBBBBBBBBBBBB. And if I let you do it now
maybe I shouldn't let you do it
CCCCCCCCCCCCCCCCCCCCCCCCCCCC. again later. I mean, do you
understand what I'm saying?
DDDDDDDDDDDDDDDDDDDDDDDDDDDD. MR. RECKER: Sure.
EEEEEEEEEEEEEEEEEEEEEEEEEEEE. LAW JUDGE: I'm not sure
this is the time to do
FFFFFFFFFFFFFFFFFFFFFFFFFFFFF.this. I happen -- you know, I -- this
is fine questioning
GGGGGGGGGGGGGGGGGGGGGGGGGGGG. and it's very important
questioning. But it's not what we
HHHHHHHHHHHHHHHHHHHHHHHHHHHH. talked about doing. So how
would you like to handle this?
IIIIIIIIIIIIIIIIIIIIIIIIII. In fact, I almost apologize for cutting you off because it
JJJJJJJJJJJJJJJJJJJJJJJJJJ. is, you know -- this is essential information and
essential
KKKKKKKKKKKKKKKKKKKKKKKKKKKK. examination.
LLLLLLLLLLLLLLLLLLLLLLLLLLLLLL. MR. RECKER: Allow me --
MMMMMMMMMMMMMMMMMMMMMMMMMMMM. LAW
JUDGE: I just --
NNNNNNNNNNNNNNNNNNNNNNNNNNNN. MR. RECKER: -- one
more question on this --
OOOOOOOOOOOOOOOOOOOOOOOOOOOO. LAW JUDGE: I just
noticed --
PPPPPPPPPPPPPPPPPPPPPPPPPPPP. MR. RECKER: -- on this
topic and then I'll save
QQQQQQQQQQQQQQQQQQQQQQQQQQQQ. --
RRRRRRRRRRRRRRRRRRRRRRRRRRRR. LAW JUDGE: --
where we were.
SSSSSSSSSSSSSSSSSSSSSSSSSSSS. MR. RECKER: -- the rest for
later on.
TTTTTTTTTTTTTTTTTTTTTTTTTTTTTT. LAW JUDGE: Okay.
UUUUUUUUUUUUUUUUUUUUUUUUUUUU. MR. RECKER: And
there -- there will be no new --
VVVVVVVVVVVVVVVVVVVVVVVVVVVV. no repetitive exhibits later on.
WWWWWWWWWWWWWWWWWWWWWWWWWWW. LAW
JUDGE: Okay.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Q. Doctor, is it your
testimony that Dr. Kadile
YYYYYYYYYYYYYYYYYYYYYYYYYYYYYYYY. practiced chelation therapy in
a manner that is different
ZZZZZZZZZZZZZZZZZZZZZZZZZZZZZZZZ. than chelation therapy that will be
tested in the NIH study?
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA. A. Based on the records I
saw, yes.
BBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBB. Q. And is that
comparison in your written opinions on
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCC. this case?
DDDDDDDDDDDDDDDDDDDDDDDDDDDDDD. A. I think my opinions
were generated before this
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE. study was announced.
FFFFFFFFFFFFFFFFFFFFFFFFFFFFFFFF. Q. Okay.
GGGGGGGGGGGGGGGGGGGGGGGGGGGGGG. LAW JUDGE: Can I
make sure I understand that?
HHHHHHHHHHHHHHHHHHHHHHHHHHHHHH. The question was will -- I just
want to make sure I didn't
IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII. get it backwards because I expected a follow up
question to
JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ. what I thought was the answer. Would you ask --
simply ask
KKKKKKKKKKKKKKKKKKKKKKKKKKKKKK. that question again? You
remember it --
LLLLLLLLLLLLLLLLLLLLLLLLLLLLLLLL. Q. It's true, is it not, that the NIH
study is going
MMMMMMMMMMMMMMMMMMMMMMMMMMMMMMMM. to address
modes and methods of chelation therapy as
NNNNNNNNNNNNNNNNNNNNNNNNNNNNNN. utilized by Dr. Kadile?
OOOOOOOOOOOOOOOOOOOOOOOOOOOOOO. LAW JUDGE: And
your answer was?
PPPPPPPPPPPPPPPPPPPPPPPPPPPPPP. A. I don't believe that's accurate.
QQQQQQQQQQQQQQQQQQQQQQQQQQQQQQ. LAW JUDGE: And
you don't want to follow up on
RRRRRRRRRRRRRRRRRRRRRRRRRRRRRR. that? Okay. That's fine.
SSSSSSSSSSSSSSSSSSSSSSSSSSSSSS. MR. RECKER: I'll be happy
to if you want to hear
TTTTTTTTTTTTTTTTTTTTTTTTTTTTTTTT. it.
UUUUUUUUUUUUUUUUUUUUUUUUUUUUUU. LAW JUDGE: Well --
VVVVVVVVVVVVVVVVVVVVVVVVVVVVVV. Q. In what manner,
Doctor?
WWWWWWWWWWWWWWWWWWWWWWWWWWWW. A. It's
going to be a controlled clinical trial which
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. he wasn't doing when he was
doing what he did. It's going

SS. through each of them individually.

TT. LAW JUDGE: Yeah, I -- I --

UU. MR. THEXTON: I certainly regret it.

VV. LAW JUDGE: I expect there will be some. Do you

WW. want to tell me, Mr. Thexton, the ones to which you do not

XX. have an objection? Would that be okay? Or the ones in

YY. which you do?

ZZ. MR. THEXTON: If I may have a moment, your honor.

AAA. LAW JUDGE: Okay.

BBB. MR. THEXTON: But, you know, really it involves

CCC. paging through each of them one by one so -- all right.

DDD. REPORTER: Do you want to go off the record a

EEE. minute?

FFF. LAW JUDGE: No, I'd like to stay on.

GGG. REPORTER: Okay.

HHH. LAW JUDGE: Can you hear us?

III. REPORTER: Yeah.

JJJ. LAW JUDGE: Okay. The audience is being very

KKK. good. Please don't start your conversations until you're

LLL. outside the room.

MMM. MR. THEXTON: Exhibit 24 is Dr. Baratz' contract

NNN. and apparently a selected compilation of -- of bills

OOO. submitted by him, although I have to say that it was not

PPP. well authenticated. Certainly each page was not

QQQ. authenticated and it's not clear to me that overall it was

RRR. authenticated. Nor is it self-authenticated. I also have a

SSS. real issue with its relevance because it -- it doesn't --

TTT. did not appear to impeach anything Dr. Baratz said nor are

UUU. the fees so clear -- I mean, he's not charging \$1,000 an

VVV. hour or something which would suggest bias inherently. You

WWW. -- you know from having heard the testimony on the patients

XXX. and been through their charts literally page by page with

YYY. Dr. Baratz that it takes a great deal of time to go through

ZZZ. the charts and -- and develop the opinions. So I -- to me

AAAA. it -- it also lacks any relevance.

BBBB. LAW JUDGE: Well, I would be willing to limit it

CCCC. to the pages which were testified to and we could remove

DDDD. half of them. If that's more trouble than it's worth I

EEEE. would admit the whole exhibit because it was relevant and

FFFF. there was relevant testimony about approximately half of it,

GGGG. I think. If you have serious concerns about the -- what is

HHHH. the word -- you know, legitimacy of any of these pages we

IIII. can focus on them. And I'd be happy to look at it.

JJJJ. Otherwise I'm -- I'm certainly going to admit that part

KKKK. which was testified to.

LLLL. MR. THEXTON: Okay, then shall we move on?

MMMM. LAW JUDGE: You want that as admission over
NNNN. objection or just an admission after an explanation?
OOOO. MR. THEXTON: Admission over objection.
PPPP. LAW JUDGE: Admitted over objection.
QQQQ. (Exhibit 24 received into evidence)
RRRR. MR. THEXTON: Thank you.
SSSS. LAW JUDGE: Number two. All right. 25 I have no
TTTT. objection to.
UUUU. MR. THEXTON: All right, 25 is admitted.
VVVV. (Exhibit 25 received into evidence)
WWWW. MR. THEXTON: I --
XXXX. LAW JUDGE: The list of the panel is 26.
YYYY. MR. THEXTON: Thank you. I had it slightly out of
ZZZZ. order. I do object to this on the grounds that it was not
AAAAA. shown to be authored or approved or adopted by Dr. Baratz in
BBBBB. anyway. And -- he said he did not author the paragraph on
CCCCC. him nor did he --
DDDDD. LAW JUDGE: Exactly --
EEEE. MR. THEXTON: -- have prior approval authority.
FFFF. LAW JUDGE: So it is -- it is actually the
GGGGG. difference between a document which is -- speaks -- which we
HHHHH. accept for the truth of the matter or really a document
IIII. which supports the testimony which shows that there were
JJJJ. some -- Dr. Baratz had concerns about the statements in it.
KKKKK. I -- I think it's a relevant document. It has to come into
LLLLL. evidence. The record shows that Dr. Baratz thought that
MMMMM. there were some statements in it that were inaccurate and
NNNNN. not because he wrote them. It's admitted.
OOOOO. (Exhibit 26 received into evidence)
PPPPP. MR. THEXTON: Next we have Exhibit 27 which also
QQQQQ. has authentication problems. It's -- appears to be a copy
RRRRR. of -- from the quality of the type face I would say that it
SSSSS. was originally a fax. And it is clearly the most classic of
TTTTT. hearsay.
UUUUU. LAW JUDGE: Do I accept it as sort of
VVVVV. self-authenticating or having guarantees of authenticity
WWWWW. just because it has FDA on the top of it?
XXXXX. MR. THEXTON: Well, it would be different if it
YYYYY. were the original. For example, if it bore the -- the
ZZZZZ. original letterhead or bore an original signature but --
AAAAAA. MR. RECKER: I believe Dr. Baratz testified that
BBBBBB. it was in error because this came from the national office
CCCCCC. as opposed to a regional office. So, I mean, he did talk
DDDDDD. about it. He was familiar with it --
EEEEEE. MR. THEXTON: Well, you questioned him about it.
FFFFFF. Of course he talked about it.

GGGGGG. LAW JUDGE: And he gave a response. And that is
HHHHHH. correct, I remember that.
IIIII. MR. RECKER: He disagreed with it and you're going
JJJJJ. to present another letter later I believe.
KKKKKK. MR. THEXTON: I have the letter dated three weeks
LLLLLL. later almost which shows why --
MMMMMM. LAW JUDGE: Well --
NNNNNN. MR. THEXTON: -- this one's wrong. But that
OOOOOO. doesn't make this admissible.
PPPPPP. LAW JUDGE: Let me see if we can get it in through
QQQQQQ. testimony from the attorneys. I mean, it is hearsay. I may
RRRRRR. allow hearsay in. I like to do that only if I believe it's
SSSSSS. reliable. Now, this looks reliable. Mr. Recker or anyone
TTTTTT. can you tell me anything about -- I mean, this really did
UUUUUU. come from the FDA? Tell me that?
VVVVVV. MR. RECKER: This really came from the FDA. I
WWWWWW. believe we can get you the original in a moment.
XXXXXX. LAW JUDGE: Okay. If we could get the original it
YYYYYY. would make it one step less --
ZZZZZZ. MR. THEXTON: Well, that would remove --
AAAAAAA. LAW JUDGE: -- objectionable.
BBBBBBB. MR. THEXTON: -- my authentication objection but
CCCCCCC. it would not remove my hearsay.
DDDDDDD. LAW JUDGE: Right. And I would -- I would admit
EEEEEEE. it as hearsay if it looks legitimate.
FFFFFFF. MR. RECKER: Is your letter hearsay?
GGGGGGG. LAW JUDGE: And I'm -- I'm -- you know, I'm saying
HHHHHHH. I'm letting hearsay in if I think it is reliable. Let us
IIIIII. try to get a more original copy of Exhibit 27 which I would
JJJJJJ. admit into evidence. If not, I'm going to believe that it
KKKKKKK. is from the FDA. I take --
LLLLLLL. MR. RECKER: Your honor, see if this is better.
MMMMMMM. LAW JUDGE: I can take a look at it and then you
NNNNNNN. can show it to --
OOOOOOO. MR. RECKER: Sure.
PPPPPPP. LAW JUDGE: -- Mr. Thexton. It is one step better
QQQQQQQ. copy than the -- is not an original. 3/2/01, the dates are
RRRRRRR. the same. Why don't you just show it to Mr. Thexton. It is
SSSSSSS. not perfect. It helps me a little bit. I'm not even
TTTTTTT. require that the original be in the -- or the semi-original
UUUUUUU. be in the record. 27 will be admitted over objection.
VVVVVVV. (Exhibit 27 received into evidence)
WWWWWWW. MR. RECKER: Do you want to make copies of this
XXXXXXXX. then?
YYYYYYY. LAW JUDGE: No.
ZZZZZZZ. MR. THEXTON: No.

AAAAAAAAA. LAW JUDGE: Unless Mr. Thexton wants to?
BBBBBBBBB. MR. THEXTON: No, I don't require additional
CCCCCCCCC. copies.
DDDDDDDDD. LAW JUDGE: 28 is a court filing as --
EEEEEEEEEE. MR. THEXTON: Again it's --
FFFFFFFFF. LAW JUDGE: -- are 29 and 30. Any objection?
GGGGGGGGG. MR. THEXTON: Only to relevance.
HHHHHHHHH. LAW JUDGE: And it was testimony -- I'm not going
IIIIIIII. to go back and try and figure that out again. They're
JJJJJJJJ. admitted.
KKKKKKKKK. (Exhibits 28 through 30 received into evidence)
LLLLLLLLL. LAW JUDGE: I didn't think them irrelevant at the
MMMMMMMMM. time so I'm not going to try and think that through again.
NNNNNNNNN. MR. THEXTON: And the same would be -- my same
OOOOOOOOO. objection would exist for 29 and 30 which are also docket
PPPPPPPPP. records.
QQQQQQQQQ. LAW JUDGE: The same ruling on all three of those.
RRRRRRRRR. You know, I do sort of hate to clutter up the transcript
SSSSSSSSS. with exhibit discussion but sometimes something will come
TTTTTTTTT. out that I need to keep on the record.
UUUUUUUUU. MR. THEXTON: Now, 31 is an excerpt from the
VVVVVVVVV. Florida deposition and apparently we are to receive the
WWWWWWWWW. entire deposition from that day as either 33 or 34.
XXXXXXXXX. LAW JUDGE: Except that I --
YYYYYYYYY. MR. RECKER: No --
ZZZZZZZZZ. MS. HUBBARD: Except --
AAAAAAAAAAA. LAW JUDGE: -- as I said once we were off the
BBBBBBBBBBB. record I did ask if we could --
CCCCCCCCCCC. MS. HUBBARD: Right.
DDDDDDDDDDD. LAW JUDGE: -- not accept the whole deposition.
EEEEEEEEEEE. MR. THEXTON: Ah.
FFFFFFFFFFF. MS. HUBBARD: There are two volumes --
GGGGGGGGGGG. MR. THEXTON: Oh, I got that right --
HHHHHHHHHHH. MS. HUBBARD: -- although they don't say volume
IIIIIIIII. one and volume two. So we were going to mark them as 33 and
JJJJJJJJJ.34. And I just need to double check the notes to make sure
KKKKKKKKKKK.I have the accurate pages before -- if we're going to try
LLLLLLLLLLL. and only --
MMMMMMMMMMM. LAW JUDGE: You'll excerpt --
NNNNNNNNNN. MS. HUBBARD: -- submit the few --
OOOOOOOOOO. LAW JUDGE: -- those pages --
PPPPPPPPP. MS. HUBBARD: -- pages that we talked about.
QQQQQQQQQQ. LAW JUDGE: That would be my request. Mr.
RRRRRRRRRR. Thexton?
SSSSSSSSS. MR. THEXTON: Well, my objection to 31 is that it
TTTTTTTTTTT. did not in fact impeach Dr. Baratz at all.

UUUUUUUUUU. LAW JUDGE: And the objection probably should have
VVVVVVVVVV.been made either by you or me at that point. And what --
WWWWWWWWW. MR. THEXTON: Well, the exhibit wasn't offered at
XXXXXXXXXX.that point so --
YYYYYYYYYY. MS. HUBBARD: 33 was --
ZZZZZZZZZZ. LAW JUDGE: So the entire --
AAAAAAAAAAAA. MS. HUBBARD: -- four pages that we did offer.
BBBBBBBBBBB. LAW JUDGE: Okay. You know, one of the
thoughts I
CCCCCCCCCCC. always have is that when something turns out not to be
DDDDDDDDDDD. inconsistent with a witnesses testimony it only helps the
EEEEEEEEEEE. witness to have it in there as corroboration. Do you wish
FFFFFFFFFFF. to object because it wasn't impeachment?
GGGGGGGGGG. MR. THEXTON: Yes.
HHHHHHHHHH. LAW JUDGE: Okay, let me look at it again and see
IIIIIIIII. what we were talking about there.
JJJJJJJJJ. MR. THEXTON: Yeah, I have to say I've lost which
KKKKKKKKKK. pages it was. My note taking was insufficiently fast.
LLLLLLLLLLL. LAW JUDGE: Exhibit 31 was pages 125, 126 and 127.
MMMMMMMMMMM. MS. HUBBARD: That -- your honor, if that's 31 then
NNNNNNNNNN. I don't believe that there's a need for both 33 and 34 since
OOOOOOOOOO. there's only one other volume. That takes care of the first
PPPPPPPPP. volume, the January version. Then the April version can
QQQQQQQQQQ. take up 33 and then 34 is unnecessary.
RRRRRRRRRR. LAW JUDGE: I thought we went back to both of
them
SSSSSSSSSS. again.
TTTTTTTTTTT. MR. RECKER: We did.
UUUUUUUUUU. MS. HUBBARD: Did you?
VVVVVVVVVV. MR. RECKER: Somewhere, yeah. I know we did
WWWWWWWWW. because that's when you said maybe we better put it all in,
XXXXXXXXXXX. the whole thing in.
YYYYYYYYYY. MS. HUBBARD: Okay.
ZZZZZZZZZZ. LAW JUDGE: But unless we can read the transcript
AAAAAAAAAAAA. I'm not sure we'll figure out what that line of questioning
BBBBBBBBBBB. went to.
CCCCCCCCCCC. MR. THEXTON: Well, that had to do with the
DDDDDDDDDDD. incident involving the former doctor from Harvard Health.
EEEEEEEEEEE. MR. RECKER: Well, he testified in the Florida
FFFFFFFFFFF. deposition that he couldn't talk about it because it was in
GGGGGGGGGG. litigation. And I had previously shown he didn't file
HHHHHHHHHH. litigation for ten months.
IIIIIIIII. MR. THEXTON: Right.
JJJJJJJJJ. MR. RECKER: So at best he tried to explain it
KKKKKKKKKK. away. And I still think it -- it does -- it does impeach
LLLLLLLLLLL. him. How much you want to put on it is another issue.

MMMMMMMMMMMM.

LAW JUDGE: I can tell it's late in the day.

My

NNNNNNNNNN.

concentration has just abandoned me.

OOOOOOOOOO.

MR. THEXTON: Well, he did say that in all

PPPPPPPPPP.

honesty, your honor. There is this -- the apparent -- the

QQQQQQQQQQ.

-- his use of the term litigation was not the same as a

RRRRRRRRRR.

lawyer would have used it.

SSSSSSSSSS.

LAW JUDGE: I would like to admit 31 even if it

TTTTTTTTTT.

did not actually impeach him. And the same for 33 and 34,

UUUUUUUUUU.

once we get those pages excerpted.

VVVVVVVVVV.

(Exhibit 31, 33 and 34 received into evidence)

WWWWWWWWWW.

MR. THEXTON: Okay. 32 is a letter to Dr.

Hoch --

XXXXXXXXXXXX.

H-o-c-h -- from Dr. Baratz which was again -- I guess it

was

YYYYYYYYYY.

authenticated but to me it didn't -- didn't actually show

ZZZZZZZZZZ.

anything. It certainly didn't impeach him. It certainly

AAAAAAAAAAAA.

didn't show bias or prejudice. It was apparently an

BBBBBBBBBB.

intermediate part of some negotiations. It's not the final

CCCCCCCCCC.

contract.

DDDDDDDDDD.

LAW JUDGE: That's true.

EEEEEEEEEEEE.

MR. THEXTON: Just -- this is a chunk out of the

FFFFFFFFFFFF.

middle of the negotiations. I -- I don't get its relevancy.

GGGGGGGGGG.

LAW JUDGE: Well --

HHHHHHHHHH.

MR. RECKER: Well, the relevance was I'd asked

him

IIIIIIIIII.

about being hired at Harvard for primary care and he said,

JJJJJJJJJJ.

yes, that was part of his thing. And the letter clearly was

KKKKKKKKKK.

that in his own words he was not being hired for primary

LLLLLLLLLLLL.

care. And even in the future he didn't intend to use --

MMMMMMMMMMMM.

practice primary care.

NNNNNNNNNN.

LAW JUDGE: And I think you had some comments

OOOOOOOOOO.

about whether he was working there three quarters time or -

-

PPPPPPPPPP.

MR. RECKER: Correct.

QQQQQQQQQQ.

LAW JUDGE: -- time somewhere else? It is a

RRRRRRRRRR.

little bit troubling because it is clearly just one step in

SSSSSSSSSS.

the middle of negotiations. It's -- we don't have the

TTTTTTTTTT.

contract to which this was a response, right?

UUUUUUUUUU.

MR. RECKER: Didn't we --

VVVVVVVVVV.

MR. THEXTON: Yeah, actually we do.

WWWWWWWWWW.

MR. RECKER: We do.

XXXXXXXXXXXX.

LAW JUDGE: Oh --

YYYYYYYYYY.

MR. RECKER: We do.

ZZZZZZZZZZ.

LAW JUDGE: -- is that the one that came in later?

AAAAAAAAAAAA.

MR. THEXTON: Later on.

BBBBBBBBBBBBBB. MR. RECKER: Right. They're all attached
CCCCCCCCCCCC. together.
DDDDDDDDDDDDDD. LAW JUDGE: Well --
EEEEEEEEEEEEEE. MR. RECKER: He refers in his letter to that
FFFFFFFFFFFFFF. contract which he marked up.
GGGGGGGGGGGGGG. LAW JUDGE: Okay, I didn't -- when I was looking
HHHHHHHHHHHHHH. at this I didn't --
IIIIIIIIII. MR. RECKER: I'm sorry.
JJJJJJJJJJ. LAW JUDGE: -- see it.
KKKKKKKKKKKKKK. MR. RECKER: And it was attached to Dr. Hoch's
LLLLLLLLLLLLLL. letter. Dr. Hoch sent him a letter. He wrote -- he marked
MMMMMMMMMMMMMM. it up and then he sent his letter along with Hoch's
written
NNNNNNNNNNNNNN. up letter --
OOOOOOOOOOOOO. LAW JUDGE: Okay.
PPPPPPPPPPPPP. MR. RECKER: -- along with the provisions of the
QQQQQQQQQQQQQ. contract.
RRRRRRRRRRRRR. LAW JUDGE: Well, that connects it a little better
SSSSSSSSSSSSS. for me. I was a little concerned about that. And we did
TTTTTTTTTTTTTT. get into -- there's a tremendous amount of testimony today I
UUUUUUUUUUUUU. must say that is going to be of marginal relevance in this
VVVVVVVVVVVVVV. case. But we did talk about the rate at which he was paid,
WWWWWWWWWWWWW. whether he had raises, etcetera. Those show up in
the
XXXXXXXXXXXXXXXX. contracts. The term primary care shows up. I think I will
YYYYYYYYYYYYYYY. let them in. And that would be 32.
ZZZZZZZZZZZZZ. (Exhibit 32 received into evidence)
AAAAAAAAAAAAAAA. LAW JUDGE: And I can anticipate that's
number --
BBBBBBBBBBBBBBB. Exhibit 40 also I believe is --
CCCCCCCCCCCCCCC. MR. RECKER: Correct --
DDDDDDDDDDDDDDD. LAW JUDGE: -- Dr. Hoch's letter.
EEEEEEEEEEEEEEEE. MR. THEXTON: Exhibit 40 is the final form of the
FFFFFFFFFFFFFFF. contract between Neponcet Health Center I believe which
GGGGGGGGGGGGGGG. otherwise is known as --
HHHHHHHHHHHHHHH. LAW JUDGE: Right.
IIIIIIIIII. MR. THEXTON: -- Harvard Health.
JJJJJJJJJJJJ. LAW JUDGE: I'm going to admit it. Do you have
KKKKKKKKKKKKKKK. any objection, Mr. Thexton?
LLLLLLLLLLLLLLL. MR. THEXTON: I do because A) I don't think it's
MMMMMMMMMMMMMMM. relevant and B) I don't think it impeached him, C) I
don't
NNNNNNNNNNNNNNN. think it goes to bias or prejudice.
OOOOOOOOOOOOOOO. LAW JUDGE: Well, there are a fair number
of
PPPPPPPPPPPPPPP. documents always that get in because they were testified to

QQQQQQQQQQQQQ. and they were relevant to the testimony, even
though it may
RRRRRRRRRRRRR. not end up being harmful to the witness or may not
impeach
SSSSSSSSSSSSSS. him at all. That's one reason I will let them in.
TTTTTTTTTTTTTTT. MR. THEXTON: So now we're on 33 and I have to
say
UUUUUUUUUUUUUU. I'm not clear on which excerpt this is.
VVVVVVVVVVVVVVV. MS. HUBBARD: And actually I've just
found for 33
WWWWWWWWWWWWW. it should be page 86 and 87 of the same
deposition that
XXXXXXXXXXXXXXXXX. we've already excerpted from where they're talking
about the
YYYYYYYYYYYYYYY. one patient --
ZZZZZZZZZZZZZZZ. MR. RECKER: January 24th?
AAAAAAAAAAAAAAAAA. MS. HUBBARD: The January 24th.
BBBBBBBBBBBBBBBB. MR. RECKER: That was again impeachment
testimony
CCCCCCCCCCCCCCC. about seeing patients into the time period when he
said in
DDDDDDDDDDDDDDD. this hearing he did not clinically see dental or
medical
EEEEEEEEEEEEEEEE. patients.
FFFFFFFFFFFFFFFFF. LAW JUDGE: Right.
GGGGGGGGGGGGGGG. MS. HUBBARD: Is that this --
HHHHHHHHHHHHHHH. MR. THEXTON: So this is relevant to the
argument
IIIIIIIIIIIIIIII. over what the word clinical means to doctors and lawyers.
JJJJJJJJJJJJJJJ. MR. RECKER: That would be one spin.
KKKKKKKKKKKKKKK. LAW JUDGE: And for that reason it comes
in.
LLLLLLLLLLLLLLLLL. (Exhibit 33 received into evidence)
MMMMMMMMMMMMMMMM. MR. THEXTON: And then what is
34? What is the
NNNNNNNNNNNNNNN. excerpt which --
OOOOOOOOOOOOOOO. MS. HUBBARD: Well, that --
PPPPPPPPPPPPPPP. LAW JUDGE: Now 34 was the other excerpt.
QQQQQQQQQQQQQQQ. MS. HUBBARD: That is the excerpt from
the April
RRRRRRRRRRRRRRR. that I'm still trying to piece together through the
notes.
SSSSSSSSSSSSSSS. MR. THEXTON: Okay.
TTTTTTTTTTTTTTTTT. LAW JUDGE: 35 is the bill?
UUUUUUUUUUUUUUU. MR. THEXTON: Yeah, the -- and the fact
that --

VVVVVVVVVVVVVVVVV. that a couple of legislators -- or in this case four of
them
WWWWWWWWWWWWWWWW. have co-sponsored a bill in the Wisconsin
legislature. I
XXXXXXXXXXXXXXXXXX. can hardly think of anything less relevant.
YYYYYYYYYYYYYYYYY. LAW JUDGE: Nor can I. You want to argue
that it
ZZZZZZZZZZZZZZZZZ. should be admitted into evidence? It's not. Okay. 36 is
AAAAAAAAAAAAAAAAAAA. the power of prayer.
BBBBBBBBBBBBBBBBB. MR. THEXTON: Well, you know, I guess
it's a
CCCCCCCCCCCCCCCC. statement by a -- of a witness offered against him.
But I
DDDDDDDDDDDDDDDD. don't see where it actually impeaches him in any
way.
EEEEEEEEEEEEEEEE. MR. RECKER: It goes to his bias and
credibility
FFFFFFFFFFFFFFFFF. as an expert in comparable and alternative medicine.
GGGGGGGGGGGGGGGG. MR. THEXTON: If it did but -- but it's
hardly --
HHHHHHHHHHHHHHHH. I can hardly think of a less controversial statement
than
IIIIIIIIIIII. medicine is and should be based upon science. It's --
JJJJJJJJJJJJJJ. MR. RECKER: I think -- I think I used that either
KKKKKKKKKKKKKKKK. because he had not -- he had disavowed any
recollection of
LLLLLLLLLLLLLLLLL. stating that CAM was a marketing term and wasn't
medicine
MMMMMMMMMMMMMMMMM. and there it was.
NNNNNNNNNNNNNNNN. LAW JUDGE: Our problem was we could
never get the
OOOOOOOOOOOOOOOO. question just what does CAM mean.
PPPPPPPPPPPPPPPP. MR. RECKER: True.
QQQQQQQQQQQQQQQQ. MR. THEXTON: Well, that's because it
means -- it
RRRRRRRRRRRRRRRR. has -- it's a term that is used by so many -- in so
many
SSSSSSSSSSSSSSSS. different ways that it is difficult to pin down. But --
TTTTTTTTTTTTTTTTT. LAW JUDGE: Okay. Well, I will express
my opinion
UUUUUUUUUUUUUUUU. that it proves almost nothing, probably nothing. But
once
VVVVVVVVVVVVVVVVV. again as a document supporting testimony that's in
the
WWWWWWWWWWWWWWWW. record I feel I should leave it in. 36 is in.
XXXXXXXXXXXXXXXXXX. (Exhibit 36 received into evidence)

YYYYYYYYYYYYYYYYYY.

MS. HUBBARD: If I could just interrupt,

Exhibit

ZZZZZZZZZZZZZZZZZZ.

34 would be the three pages, the cover page from

the April

6th, 2001 deposition --

LAW JUDGE: Umm hmm.

MS. HUBBARD: -- and pages 69 and 70.

MR. RECKER: And that related to seeing dental patients during the time when he was allegedly not seeing patients -- I'm sorry, Carney Hospital, seeing patients in the hospital. And he indicated in his mind that questioning had changed or something.

MR. THEXTON: Whether he'd been to the hospital --

MR. RECKER: Yeah.

LAW JUDGE: I don't --

MR. THEXTON: He said he was at the hospital -- so, all right. But for other purposes.

LAW JUDGE: "Have you been in Carney Hospital in the year 2000?" All right. "Several." Okay.

MR. THEXTON: So we are now to --

LAW JUDGE: 37.

MR. THEXTON: -- 37, the --

LAW JUDGE: -- disciplinary memos --

MR. THEXTON: -- disciplinary file contents.

Which I do object to as not admissible for any purposes relevant to this hearing. They're not relevant --

LAW JUDGE: What do you want to tell me? That -- I heard the objection. What do you want to tell me, Mr. Recker?

MR. RECKER: Character, integrity, ethics, credibility, holds himself up to be a certain level. He denied being let go from Harvard Health because of any poor performance. I think these memos clearly show a different story leading up to his severance agreement.

LAW JUDGE: The allegations -- now, these are clearly hearsay obviously. That's why we're arguing about them. The allegations are serious enough that they're the sort of thing that I think someone really should have the opportunity for some cross-examination on. Dr. Baratz gave his version of some of this and you got your version in, using that term loosely, in the testimony. Now, this was one case where although we had testimony about it I don't particularly want the document in the record in order to support that testimony. I'm very much inclined not to admit these letters as evidence. You were able to read most of the first one and much of one of the other ones. So it's in

the record. But I don't -- I'm concerned that there's other material in here that is probably grossly inadmissible. I'm not likely to admit these other than the fact that you've got a lot of it in the record already.

MR. RECKER: And again, they don't impeach his testimony? I believe they do.

LAW JUDGE: I think you -- you made the case that

--

MR. RECKER: I believe it goes --

LAW JUDGE: -- that it's very easy to argue that he was pressured into leaving.

MR. RECKER: I'm also going to introduce exhibits tomorrow dealing with ethical provisions these -- these acts will be in violation of. It goes to his credibility again as an -- as an expert in this case.

MR. THEXTON: But that would not --

MR. RECKER: And these documents were in the public form already in litigation.

LAW JUDGE: This is -- this is like prior bad acts.

MR. THEXTON: It is. It is. Character is not the issue in this case.

MR. RECKER: Well, that's not what he said.

LAW JUDGE: Well, he used the word character.

MR. THEXTON: That -- that does not --

MR. RECKER: "High character" --

MR. THEXTON: -- put it --

MR. RECKER: -- "integrity and ethics and that's what this trial is all about," -- end quote.

MR. THEXTON: That does not --

MR. RECKER: If that doesn't put in the middle, Arthur, in his mind -- your expert's mind --

LAW JUDGE: Okay, let's stop arguing, please.

MR. THEXTON: All right.

LAW JUDGE: They are not admitted at this point. You -- I'm -- if something comes up tomorrow that leads me to think that they are relevant I may reconsider that. I -- I don't believe that just because a person is a witness in a case and says, "I have a high character," that he's fair game for absolutely everything wrong he's ever done in his life. If it does not involve credibility on these issues or it does not directly impeach something he said. And I let you get a lot of it in to impeach his statements that he was not pressured out of the agency.

MR. RECKER: Doesn't that --

LAW JUDGE: I think --

MR. RECKER: -- impeach that statement?

LAW JUDGE: That's why I didn't stop you from testifying --

MR. RECKER: Doesn't that make them relevant and admissible?

LAW JUDGE: I don't -- the documents contain more than that. And in fact we stopped at something involving sexual harassment or even an affair apparently. And I'm hard pressed to see that that's the sort of thing that a person should open themselves up to by being an expert witness.

MR. RECKER: Do you not think the board of medicine would want to know the background of the -- of the only expert against licensee in the state?

LAW JUDGE: I don't think they're entitled to know absolutely everything about him. I think legal -- you know, there are -- there limits to what gets considered. It's not admitted at this point. I'll listen.

MR. RECKER: I just know how it could get more relevant than his performance as a supervising physician, as an MD, his disciplinary record, his behavior, his animosity, how he treated subordinate employees, how that might relate to the code of ethics and his testimony that, you know, everything was great at Harvard Health and he was a great guy and -- I mean --

LAW JUDGE: You have put a lot of that into the -- the testimonial record.

MR. RECKER: And you don't think the medical board will want to see that, be entitled to see that? The sole expert --

LAW JUDGE: I think I'm -- I think I'm going to tell them they don't want to see it.

MR. RECKER: Would -- would they want to know they're potentially hanging their hat on somebody with that background?

LAW JUDGE: Well, yes because it's not relevant to his testimony about various modalities of treatment. I could --

MR. RECKER: Doesn't -- isn't it relevant --

LAW JUDGE: I could swear at you, I could have an affair with you --

MR. RECKER: Is it relevant to his --

LAW JUDGE: -- but I don't think it is going to make me --

MR. RECKER: But is it relevant to his standing as a credible expert witness?

LAW JUDGE: I say no.

MR. RECKER: Over objection?

LAW JUDGE: Over objection.

MR. THEXTON: Next would be the severance agreement, Exhibit 38. And I again fail to see the relevance here. I -- counsel spent much time on this issue of the wording of paragraph seven which was apparently modified to read that they shall provide a letter of recommendation to Dr. Baratz' medical competency in the form attached hereto -- and by the way, which was not attached.

MR. RECKER: I had no documented dated September 3 or thereafter.

MR. THEXTON: Nonetheless it was not attached so -- for whatever reason. I don't see that that -- that this goes to any of the issues here. It doesn't go to this credibility on the issues of whether he -- he's a competent physician to testify about the medical issues in this case. And it doesn't go to his bias or prejudice and it doesn't go to his credibility.

LAW JUDGE: It was used to attempt to impeach I think with some small success, if I may go ahead and comment, his statement of the conditions under which he left his employment. And his statements about leaving Harvard Health are something that I have allowed some impeachment on. I -- I -- so it's admitted.

(Exhibit 38 received into evidence)

LAW JUDGE: It is one of those marginally relevant pieces.

MR. THEXTON: Okay, well, you know, this ends up forcing us to ask on -- on redirect what were the true circumstances. And then we end up arguing --

LAW JUDGE: Well --

MR. THEXTON: -- about that. And --

LAW JUDGE: But since it has come up, yes, I think you should on redirect. I think you may.

MR. THEXTON: I knew that's what you meant, your honor.

LAW JUDGE: I'm not trying to direct you.

MR. THEXTON: I knew that. Thank you. All right.

39.

MR. RECKER: What is 39?

LAW JUDGE: Workers compensation --

MR. THEXTON: Workers compensation.

LAW JUDGE: I would put that --

MR. THEXTON: You know it's turned out by the way not to be by him or even signed or adopted by him except

through his attorney who -- so I --

MR. RECKER: That's pretty standard.

MR. THEXTON: So I think it has -- it turned out to have no value.

LAW JUDGE: And it is in there only because it needs to support the testimony that we had about it. 38 -- 39 --

MR. THEXTON: 40.

LAW JUDGE: -- 39 is admitted.

(Exhibit 39 received into evidence)

LAW JUDGE: 40 is admitted. 41 is a --

MR. THEXTON: So 41 --

LAW JUDGE: -- civil action --

MR. THEXTON: Cover sheet.

LAW JUDGE: -- cover sheet.

MR. THEXTON: Apparently written and signed by the attorney.

MR. RECKER: In consultation he stated with him -- the attorney got the information from him.

MR. THEXTON: Again, I have -- I do not see where it goes to credibility, bias or medical competence. I mean, what we gain from this is that the attorney put a high number down for damages. Wow. Now, there's a truly unusual thing to do.

LAW JUDGE: Umm hmm.

MR. THEXTON: I'm sure we've never seen that before or done it, to name a higher figure for damages than -- than we might ultimately expect we're going to get.

MR. RECKER: I believe it's a documented lost wages.

LAW JUDGE: This is --

MR. RECKER: And it was in consultation with Dr. Baratz.

LAW JUDGE: Why don't you tell me why I should admit it, Mr. Recker?

MR. RECKER: Well, we had testimony about his lost income. He testified in this proceeding that he was disabled from practicing medicine. He testified about how much he was making. And then he turns around and sues for documented lost wages of 600 and something thousand dollars for the intervening alleged two years. I mean, if this doesn't go to credibility I don't know what does. This man files legal actions and he promised not to sue anyone. It goes on and on. If we're not responsible for our own conduct in filing lawsuits against people, well I guess that's why we are what we are in the system. I mean, it

clearly goes to his credibility.

MR. THEXTON: I think it so clearly does not.

LAW JUDGE: And this is so close to the other category that I excluded of the disciplinary memos where you have all of the information in the record that you need. I just -- I just don't think this document does anybody any good. But it's almost harmless to put it in the record. Whereas I think the other one is -- is somewhat harmful to put. It is prejudicial.

MR. RECKER: Did he not acknowledge that those numbers were from him?

LAW JUDGE: They --

MR. THEXTON: No.

LAW JUDGE: -- were derived -- not -- not directly from him I don't believe.

MR. THEXTON: He said that he -- the -- the -- discussed the matter with his attorney and then these were the figures that the --

MR. RECKER: They agreed on the numbers.

MR. THEXTON: -- the attorney selected or advised him to put down.

LAW JUDGE: Well, it -- it is not anymore prejudicial than what's already in the record. I'm going to admit it as supporting the testimony already given.

(Exhibit 41 received into evidence)

MR. THEXTON: 42 is the civil complaint certainly drafted and signed by an attorney.

MR. RECKER: I believe he testified very clearly that the information in that complaint was given -- was derived from him. And then we got into whether it was inconsistent with what he testified before this tribunal.

LAW JUDGE: And your inconsistency was who grabbed whose arm? Basically, right?

MR. RECKER: I believe if you look at it carefully one version is he walked up and was immediately attacked. The other version is he picked up the records, was walking away down the hall when she came up from behind and attacked him. One was seeing patients --

MR. THEXTON: I don't think there was anything about down the hall but he walked towards his office. But

--

LAW JUDGE: It sort of depends on I think your level of how inconsistency -- as I think I said, so I might as well not back from it. I see relatively little inconsistency between the two accounts. But it can be argued that there is an inconsistency so it's -- will come

in for that.

(Exhibit 42 received into evidence)

MR. THEXTON: And of course that is entirely collateral, so -- all right. The next is the stipulation to dismiss. It doesn't, you know, say anything.

LAW JUDGE: Any need to object to it.

MR. THEXTON: Except that, you know, the suit was -- was somehow settled.

LAW JUDGE: Do you need to object to it, Mr. Thexton?

MR. THEXTON: I hear you.

LAW JUDGE: Am I suggesting that you don't need to?

MR. THEXTON: I hear you.

LAW JUDGE: 43 is admitted.

(Exhibit 43 received into evidence)

MR. THEXTON: Okay. Exhibit 44 is the -- apparently some advisory opinion from a private organization to which Dr. Baratz is not shown to be a member. And therefore I am not entirely clear on how it can be used.

MR. RECKER: Well, it claims in his CV he's a member. I mean, we'll get to that.

MR. THEXTON: Okay.

MR. RECKER: He's a member.

LAW JUDGE: This is --

MR. THEXTON: Well, that would --

LAW JUDGE: You know, this is a proposal that each state should pass a law with these requirements in it?

MR. RECKER: Correct. It's the MA's policy --

LAW JUDGE: Model state legislation --

MR. RECKER: -- on expert testimony.

MR. THEXTON: Dr. Baratz denied any conduct which was inconsistent with anything in here.

MR. RECKER: Well, that's a matter of interpretation for the judge --

MR. THEXTON: Well, I -- I think that it is -- there can be little doubt that he denied --

LAW JUDGE: He denied it --

MR. THEXTON: So --

LAW JUDGE: You know, I don't know --

MR. THEXTON: We --

LAW JUDGE: -- what this document adds to what you've already got in the record. But I suppose you'd like to have it there?

MR. RECKER: Correct. The medical board might like to see it. Trust me, they're not familiar with such

things.

MR. THEXTON: Well, actually, it does occur to me that I have some AMA ethical stuff that I may put in myself, so --

MR. RECKER: As a matter of fact this was submitted with the motion in limine a long time ago, wasn't it?

MR. THEXTON: Not this one but another --

MR. RECKER: I thought it was that one.

MR. THEXTON: So --

LAW JUDGE: So do you object to it's admission, Mr. Thexton?

MR. THEXTON: I guess I have no comment so --

LAW JUDGE: Okay. I will admit it as of no harm.

(Exhibit 44 received into evidence)

LAW JUDGE: Now, the American College of Emergency Physicians?

MR. THEXTON: This is an organization to which Dr. Baratz formerly belonged when he practiced emergency medicine. However, emergency medicine is not an issue in this case. It is not alleged that Dr. Kadile practiced emergency medicine at any time or that any of the care rendered to any of these patients involved emergency medicine. And therefore I cannot think of its relevance.

LAW JUDGE: I believe the only purpose for which it was used was the phrase that to be an expert witness a physician should be board certified or board prepared.

MR. RECKER: And it's unethical to overstate opinions or credentials I believe it says.

LAW JUDGE: Unethical to overstate one's opinions or credentials. And I don't need the American College of Emergency Physicians to tell me that one. The former -- I just don't think this a standard that we can hold anybody to. You were allowed to question on it. I would be inclined to leave this one out.

MR. RECKER: Correct me if I'm wrong. Most of his professional career has been emergency medicine.

LAW JUDGE: Emergency.

MR. THEXTON: Well, if it had anything to do with this case --

LAW JUDGE: Okay.

MR. THEXTON: -- that would be one thing, but it doesn't. He wasn't testifying as an emergency physician.

LAW JUDGE: I think -- here's another case where I think you got everything from this document that you need to in the form of testimony. And it really is just two long

phrases from this nine page document. I don't see the relevance of the other nine pages. And I'm going to exclude it as an exhibit. It doesn't add anything to that.

MR. THEXTON: Okay. The -- now we come to 46 and 47, two versions of his CV, neither of which is well authenticated yet.

LAW JUDGE: I think I need to --

MR. THEXTON: I have to say I know where 46 came from but --

LAW JUDGE: Well, tell us.

MR. THEXTON: 46 came -- was transmitted to me after the August 19th deposition at the request of Mr. Seeley, who requested an updated CV. And Dr. Baratz transmitted it to me electronically and I transmitted it to Mr. Seeley electronically I think. I may have also sent it to him in writing because I certainly printed out the letter. And I also think that the date on it is in fact a Word field which automatically inserts the date of printing. And that's if I had printed this on August 21st, it would have said updated August 21st. If I had printed it on September 1st it would say updated September 1st.

LAW JUDGE: Are you saying that --

MR. THEXTON: So --

LAW JUDGE: -- Mr. Seeley wanted it --

MR. THEXTON: He asked --

LAW JUDGE: -- following the --

MR. THEXTON: Yes.

LAW JUDGE: -- an updated version following the August --

MR. THEXTON: Yes.

LAW JUDGE: -- 19th deposition anyway. So this date would appear to be right.

MR. THEXTON: So, yeah, it was printed on that date. And actually --

LAW JUDGE: Logically it had to have been updated on that date, right?

MR. THEXTON: Updating is a process that implies that an individual has gone through and checked each entry.

LAW JUDGE: Well --

MR. THEXTON: So --

LAW JUDGE: -- changed an entry or something.

MR. RECKER: Your honor, if you want to --

LAW JUDGE: 46 is going to be admitted.

MR. THEXTON: All right.

LAW JUDGE: Let's stop arguing about that.

(Exhibit 46 received into evidence)

MR. RECKER: All right. I just want to point out on page 48 of the August deposition Mr. Seeley had the same ongoing dialogue with Mr. Thexton. Baratz is saying, "I don't know where this CV came from." Or he was saying, "Well, I gave it to Mr. Seeley because I got it from you." And Baratz is saying, "Well, I'm not sure this is real." So

--

MR. THEXTON: Well, that's because --

MR. RECKER: -- the next day there was an August 20 updated and I -- I don't know of a word processing program that puts in the update -- CV update 8/20 right in the middle after the email address.

MS. HUBBARD: Well --

LAW JUDGE: It can.

MS. HUBBARD: -- technically it could if you said enter date here.

LAW JUDGE: Right.

MS. HUBBARD: However, the fact they had the same discussions about the first CV --

MR. RECKER: The day before --

MS. HUBBARD: -- that we're now having about the second CV --

MR. THEXTON: Well, it's --

MR. RECKER: Illustrates the problem.

MS. HUBBARD: -- is a little strange.

MR. THEXTON: The first CV, which is actually next on the list, 47, was furnished to me and -- when I first retained Dr. Baratz which at this point was I think two years earlier. So --

LAW JUDGE: I don't see the basis --

MR. THEXTON: I do have my letter --

LAW JUDGE: Okay.

MR. THEXTON: -- of August 21st which recites to Mr. Seeley, "I have already forwarded to you items one and three" -- and one is the current CV of Dr. Baratz.

MR. RECKER: That would be the August 20 update then?

MR. THEXTON: I -- I dated this letter August 21st and my recollection is that Dr. Baratz emailed the -- what became Exhibit 46 to me and I emailed it on to Mr. Seeley.

MR. RECKER: Now, all we need to do is put that in the record.

LAW JUDGE: Well, that's --

MR. THEXTON: We're on the record.

LAW JUDGE: We're on the record.

MR. THEXTON: So there it is.

LAW JUDGE: That's one reason I've got it going, keeping the reporter here well past her bedtime.

MR. THEXTON: Well, again, that does not say that Dr. Baratz actually went through and checked each entry. It merely recites that this was ultimately printed --

LAW JUDGE: It was --

MR. THEXTON: -- by Mr. Seeley on August 20th when I forwarded it to him.

LAW JUDGE: And it was provided as an updated CV on August 20th?

MR. THEXTON: It was.

LAW JUDGE: Right. Now, I -- I don't understand when 47 was done and I don't know that it's relevant?

MR. THEXTON: 47 I believe was furnished to me in perhaps 1999 or 2000, whenever it was I first retained Dr. Baratz.

LAW JUDGE: Did -- did this serve your purpose in some way, Mr. Recker?

MR. RECKER: Well --

LAW JUDGE: I just --

MR. RECKER: We haven't got to showing the differences --

LAW JUDGE: -- lost control --

MR. RECKER: -- between the two CV's. And of course that might be illusory with this witness but there were changes made after Mr. Seeley had brought up some questions about the earlier CV. So I guess we need to pin down that, you know, fine the updated one was in fact updated by Dr. Baratz on or about August 20th, 2002.

MR. THEXTON: Well, good luck getting that because I don't think that's what happened. But --

MR. RODER: That's what you just told us.

MR. THEXTON: That is not what I just told you.

LAW JUDGE: 46 was --

MR. THEXTON: 46 is an updated version of 47. I have no knowledge of when Dr. Baratz actually physically did the update. I doubt very much that he went home the night of August 19th and spent all night updating his CV so that he could email it to me on the 20th.

LAW JUDGE: I don't see any reason --

MR. THEXTON: So --

LAW JUDGE: -- he couldn't have. 46 is in. What do we want to do with 47? Is it worth -- are there inconsistencies there that you want it in for, Mr. Recker?

MR. RECKER: Yes.

LAW JUDGE: We don't know when it was made though,

right, except prior?

MR. RECKER: We never will. Yes, prior.

LAW JUDGE: There's a real strong reason I should exclude this, Mr. Thexton?

MR. THEXTON: I guess not, your honor.

LAW JUDGE: 47 is in.

(Exhibit 47 received into evidence)

LAW JUDGE: 48 is the EMRO registry of Dr. Baratz as providing certain services?

MR. THEXTON: Yes, I -- I don't see where that impeaches him but I guess it's okay.

LAW JUDGE: I'm having a little trouble with it also but you didn't -- there wasn't an objection --

MR. THEXTON: It doesn't say --

LAW JUDGE: -- there and I'm going to admit it.

(Exhibit 48 received into evidence)

MR. THEXTON: Now, the corporate records of Skin Systems and the last two pages appear to be --

LAW JUDGE: Are you going to argue against this? Because I'm inclined to let it in.

MR. THEXTON: Very good your honor.

LAW JUDGE: I mean, the statements related to verifying scientific tests, etcetera are of some relevance.

MR. THEXTON: Umm hmm.

(Exhibit 49 received into evidence)

MR. THEXTON: Okay, 50 and 51 appear to be worthless in light of 52. I'm going to move 52.

MR. RECKER: Well, to be fair let's have all three.

MR. THEXTON: Well, except that 51 -- 50 and 51 have no relevance to the case, do not impeach him.

MR. RECKER: Well --

MR. THEXTON: Do not suggest bias or prejudice and -- particularly in the case of 51 is not what you call authenticated.

LAW JUDGE: Well, that would be accepting 52 as being authoritative and 50 and 51 as having no value.

REPORTER: Judge, I need to change tapes.

LAW JUDGE: Okay. Hate to waste a tape on this.

(End tape 3 -- Begin tape 4)

LAW JUDGE: Okay, on the record. I think if I -- as I said if -- if we were to accept 52 as authoritative and ignore the other two that would be making a judgment right now that could be made, but I'm not going to. I think if I admit one, I admit all three of them.

MR. THEXTON: Well, I don't think 51 is at all

authenticated. I can't even read the signature. Who is this person? Kathleen something?

MR. RECKER: What's it say?

MS. HUBBARD: It says she's the payroll --

MR. RECKER: Head of payroll.

MR. THEXTON: Yeah, you know, anybody could write

--

MR. RECKER: Faxed from Northeastern University.

MR. THEXTON: Anybody could write this. Anybody could -- it's not on letterhead --

LAW JUDGE: Where did this come from?

MR. RECKER: It came from the payroll department of Northeastern University, faxed directly to us.

LAW JUDGE: To --

MR. THEXTON: That's not shown --

LAW JUDGE: To your office?

MR. RECKER: To my office.

LAW JUDGE: Well, it does happen to have that as a fax return on the top. I don't know how any typewriters can type that fax space.

MR. THEXTON: I think you can set up a fax machine

--

LAW JUDGE: It was at your --

MR. THEXTON: -- to say anything.

LAW JUDGE: It was at your request or someone in your offices request, Mr. Recker?

MR. RECKER: Our request.

MS. HUBBARD: Yes.

MR. RECKER: Direct communication with that person.

LAW JUDGE: Okay. Thank you. 50, 51 and 52 all admitted.

(Exhibits 50 through 52 received into evidence)

LAW JUDGE: 50 -- oh -- I have a similar one here. 53, 54 and 55 I believe go together, don't they?

MR. RECKER: Yes.

MR. THEXTON: Well, again, I'm going to move 55 and I think that they -- that that belies 53 and 54.

LAW JUDGE: And 54 actually has some useful information. And actually 53 has the date of termination which I think has been referred to. But that's also on 54. These are -- these are not so totally irrelevant that they need to be excluded. Nor are they prejudicial I don't believe in the light of 55. 53, 54 and 55 are admitted.

(Exhibits 53 through 55 received into evidence)

MR. THEXTON: Okay. 56 is the excerpts from the

Quack Watch site which show that somebody else hasn't updated Dr. Baratz' current credentials. I don't know what that goes to. Somebody who actually knows Dr. Baratz but --

LAW JUDGE: And it involves the interpretation of a web page.

MR. THEXTON: Well, to me the issue is does the fact that an independent website lists Dr. Baratz as having an affiliation which is in fact not current but did exist in the past, does that go to any issue in this case? And I have to say no.

MR. RECKER: Well, it goes to his credibility as an expert witness because at some point in time you may question what he just happens to look the other way and allow in the form of his credentials.

MR. THEXTON: Well, if you had any evidence --

MR. RECKER: And there are more exhibits coming --

LAW JUDGE: Are they --

MR. THEXTON: -- that -- if you had any evidence that suggested that, that would be one thing. But you don't.

LAW JUDGE: Well, you know, once -- once we end up having testimony on evidence one way or another -- and it looks like it may or may not be relevant, even if at the moment I think it may not be relevant, I don't think I should -- should exclude an exhibit. My preference is to have it there to support the discussion. 56 is in.

(Exhibit 56 received into evidence)

MR. THEXTON: 57 is a -- apparently an edited version of an article originally authored by Dr. Baratz.

LAW JUDGE: I think that certainly comes in. He's -- he made some explanation of it but it comes in with the explanation.

(Exhibit 57 received into evidence)

MR. THEXTON: 58 is this fax -- something from the Kentucky Board of Dentistry. It wasn't at all clear to me that it impeached Dr. Baratz at all or showed bias or prejudice or was otherwise relevant to an issue in this case.

LAW JUDGE: Well, it was really only just related to the entry on his CV that said he was a consultant to the Commonwealth of Kentucky.

MR. RECKER: He testified specifically that that consulting was with the dental board. And I'm simply saying a man complains against a dentist, testifies against the dentist and ends up calling himself consultant to the dental board.

MR. THEXTON: Well, there isn't enough evidence to establish that inference at all.

MR. RECKER: Well, he talked about it.

MR. THEXTON: He talked about it and he contradicted your proposed inference 100%. And you have no evidence to support the theory which you have just suggested.

MR. RECKER: I think he admitted it.

MR. THEXTON: I think you need to have your hearing check.

MR. RECKER: He was retained by the plaintiff's attorney. And then he complained to the dental board on behalf of the dentist --

LAW JUDGE: And the question --

MR. RECKER: -- on behalf of the patient.

LAW JUDGE: And the question was then whether he formed a relationship with the attorney general's office.

MR. RECKER: Right.

LAW JUDGE: Which is really not addressed in this

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MR. THEXTON: Not at all either way.

LAW JUDGE: -- exhibit.

MR. RECKER: No, it's his testimony. He testified he was a consultant to the Kentucky Board of Dentistry.

MR. THEXTON: And apparently he was.

MR. RECKER: Well, that's where we disagree.

LAW JUDGE: Well, this doesn't say he wasn't and it doesn't say he was.

MR. RODER: A special definition of the word consultant.

MR. RECKER: He makes the complaint. He testifies against the dentist and he calls himself a consultant.

MR. THEXTON: And?

LAW JUDGE: Well, this -- this gets into -- it really spends more time talking about his testimony for the -- in the case.

MR. THEXTON: This appears to be some type of summary --

MR. RECKER: It is --

MR. THEXTON: -- of the testimony prepared for the

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MR. RECKER: It is. It's a factual summary by the dental board that was faxed to me, that part of it.

LAW JUDGE: Now, do you want to argue strongly that this goes in, Mr. Recker, because I just -- you've got the basis for the testimony --

MR. RECKER: At this time of the day --

LAW JUDGE: -- in the record --

MR. RECKER: -- your honor --

LAW JUDGE: I don't want to -- no, I think 58 is not -- is just not a helpful document.

MR. THEXTON: Okay, 59 is his testimony before the Senate special committee on aging. I don't see -- I mean, I don't have any particular objection to its content. But I don't see that it impeaches him, goes to prejudice or bias or is in any other way relevant to the issues here. But I understand that they're going to say that it shows that he's somehow biased against chelation therapy.

MR. RECKER: Understand correctly.

MR. THEXTON: So --

LAW JUDGE: Okay. I think his own statements about it should go in. I don't know that we need 14 pages but if you want to offer the whole -- as you say, it's late in the day. I'm too tired to --

MR. RECKER: Yeah, I would offer the whole thing

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LAW JUDGE: -- separate them.

MR. RECKER: -- for the potential review of the board of medicine.

LAW JUDGE: Okay.

(Exhibit 59 received into evidence)

MR. THEXTON: And last and indeed least is the proposed trial to assess chelation therapy announcement and description and frequently asked questions. I -- I don't know that this goes to Dr. Baratz' bias, prejudice, credibility or his ability to give expert testimony.

LAW JUDGE: No, I think I want this in a different part of the case. I think I would allow you to offer this if we get, you know, testimony on these issues. I don't think this relates to the cross-examination of Dr. Baratz' qualifications. Do you -- can you accept that? I mean, if -- if we get to this -- the point in this case where we're talking about Dr. Kadile's --

MR. RECKER: Your honor, if you say it I can accept --

LAW JUDGE: -- treatment -- okay. This is not admitted.

MR. THEXTON: In other words, Dr. Chapel can offer it. Is that correct?

LAW JUDGE: Comparison of what Dr. Kadile has done with what the NIH is proposing to do would be relevant at some point. It is not relevant today.

MR. RECKER: I would mention that Dr. Baratz did have a lot of criticisms about that study in his testimony and how it wasn't going to achieve the objective it was supposed to achieve.

LAW JUDGE: Right. But if you ever get Dr. Baratz back on the stand --

MR. RECKER: All right.

LAW JUDGE: -- about substantive matters --

MR. RECKER: All right.

LAW JUDGE: -- you can test him about that. I keep saying these sort of contingent things as if this actually might settle. But we'll see.

MR. RECKER: I understand.

MR. THEXTON: Hope springs eternal.

MR. RECKER: Eternal.

LAW JUDGE: Okay, then just before we give up for the day remind me of what the other exhibits are with the pre-filed testimony? I don't think I have the energy to do it now but --

MR. THEXTON: Okay, I have two patient charts, Mr. Halberson's chart and Mr. Moroz's chart as furnished by former counsel. And I have the original newspaper ad which is the subject of the Moroz count.

LAW JUDGE: Okay.

MR. THEXTON: So those are the three exhibits I have with -- which would accompany the pre-filed testimony.

LAW JUDGE: And there are objections to these?

MR. RECKER: I don't think I've seen them.

MR. THEXTON: Yeah, I handed them to you this morning.

MR. RECKER: Oh, okay.

LAW JUDGE: You've had a lot of time to look at them.

MR. RECKER: I haven't seen them.

MS. HUBBARD: We haven't quite gotten to --

LAW JUDGE: Well, all right.

MR. THEXTON: Well -- really there's --

MR. RECKER: Can I -- can I --

LAW JUDGE: Let's -- let's deal with them tomorrow. I don't even expect you to do it tonight.

MR. RECKER: Fine, okay.

LAW JUDGE: But, I mean, if you can look at those.

MR. THEXTON: I do have one other thing and that is the state's learned treatise number 23. When I furnished it we had a very poor quality of copy because it was a fax of a fax. And I have a much better copy of this which has

already been filed. I'm not trying to add anything new. I'm just giving everybody a better copy, more -- more legible, of state's learned treatise number 23.

LAW JUDGE: Thank you. I'll accept that.

MR. THEXTON: Okay, thank you.

LAW JUDGE: Anything else? We will start in the morning right where we left off. And we're adjourned for the evening. Off the record. Thank you very much. 9:00.

CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Frank J. Wiener
December 27, 2002