

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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In the matter of the disciplinary proceedings against:

Eleazar Kadile,  
Respondent.

Case Number LS-0112061-MED  
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Day 7 Hearing before John N. Schweitzer

July 16, 2003  
1400 East Washington Avenue  
Madison, Wisconsin

APPEARANCES

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

APPEARANCES: (Cont.)

For Respondent:  
Raymond M. Roder  
Reinhart, Boerner, Van Deuren, S.C.  
22 East Mifflin Street  
Suite 600  
P.O. Box 2020  
Madison, WI 53701-2020

For Respondent:  
Frank R. Recker  
Cynthia J. Hubbard  
Frank R. Recker & Associates, Co, LPA  
267 North Collier Boulevard  
Suite 202  
Marco Island, FL 34145

Direct Cross  
DEPARTMENT'S WITNESS  
Robert Baratz            1228

REPORTER: On the record.

LAW JUDGE: This is the second day in the continued hearing in the matter of disciplinary proceedings against Eleazar Kadile. We will continue with cross examination of Dr. Robert Baratz. Now, doctor, I've -- in all of the mispronunciations of your name I've forgotten quite how you prefer it?

WITNESS: Judge, you're on target today.

LAW JUDGE: Baratz?

WITNESS: That's the we say it although there are other acceptable pronunciations and then there are some that we don't like.

LAW JUDGE: Okay. Thank you --

WITNESS: But anyway --

LAW JUDGE: And I don't believe there's anything to discuss before we go right to that. So let's proceed. Mr. Recker, you may continue your cross examination.

#### CROSS-EXAMINATION

BY MR. RECKER:

Q. Dr. Baratz, would you retrieve Exhibit 49, please?

LAW JUDGE: Let me see if we can find it. Which is that?

A. Can you tell me which it is?

Q. Yeah, that's documents relating to Skin Systems.

LAW JUDGE: And it has Commonwealth of Massachusetts on the front --

MR. RECKER: Correct.

LAW JUDGE: -- is that correct?

MR. RECKER: Yes.

Q. The second to the last page of that exhibit, doctor, if you would take a look at it. It's -- it's captioned the Glymed Plus Skin Care Products?

A. Yes.

Q. I was asking you questions about the middle sentence where it says, "Cell science is the first complete everyday home care line from Glymed Plus that encompasses many of the same ingredients as its professional line, only may now be purchased without the recommendation from a skin care professional." Do you see that?

A. Yes.

Q. And I believe you indicated that that was a mistake, that it should be "not" -- "may now not be purchased." Is that what your testimony was?

A. I was confused by your question yesterday. I thought you were referring to the professional line of

products. Because the -- Glymed has three or four different lines of products, one of which was new. And this was just taken from their materials and put up -- put up there by one of the people at our company.

Q. So your answer is that that is not a mistake, that sentence I just read?

A. I'm sorry, which is not a mistake?

LAW JUDGE: Why don't we ask a more direct question. What is your understanding of what may be purchased and what may not be purchased? Is that --

A. Well, Skin Systems doesn't --

LAW JUDGE: -- okay?

A. -- sell any of these products. They're all sold through providers.

LAW JUDGE: Okay.

A. This is just an ad that the providers have on the site because people access where to find the providers through the site.

LAW JUDGE: But apparently there is -- there's one line that may not be purchased without recommendation and one that may? Is -- do you understand --

A. Glymed has several different lines of products. One is an over the counter line of products. And they've developed a couple lines of products over the past year. And then there's a professional line of products that can only be purchased through a physician's office. These are not those products. I thought he was referring to that yesterday.

LAW JUDGE: Shall we look at that statement again or is that a sufficient answer? Do you want to --

MR. RECKER: Do you have it?

LAW JUDGE: I think I do but let's look at the specific sentence that we were reading. And doctor --

MR. RECKER: Your honor, we're going to hand you another --

MS. HUBBARD: Here's another copy.

MR. RECKER: -- copy.

LAW JUDGE: Thanks. I think the question is simply --

Q. In the second --

LAW JUDGE: -- is that a correct statement as written or --

A. For Glymed? You'd have to ask the company. The information they gave me said it was.

Q. Doctor, yesterday you testified it was an incorrect statement and it should have the word "not" in it?

A. Which -- well, which sentence are you referring to, please?

Q. The only one we've been talking about.

LAW JUDGE: This is Bates page 120, is that correct?

MR. RECKER: Yes.

LAW JUDGE: The first full sentence on that page?

A. Okay, I see the sentence. Now, could you please ask me the question again.

LAW JUDGE: Do you -- well, first of all do you know whether it's accurate or are you going to say that's up to cell science?

A. It's up to the company. That's their statement. We just reproduced it. They showed me their literature and this came from their literature. It's an advertisement. If the advertisement's false I think you should bring it up with the FTC.

Q. Okay, so --

LAW JUDGE: If you want to go over again the statement yesterday, you can. But --

Q. Are you going to change your statement yesterday that that is an incorrect sentence and should have the word "not" in it?

A. I misunderstood your question yesterday. And I thought you were talking about the professional line of products.

Q. Does that mean you're changing --

A. And that's the way I responded to your question yesterday.

LAW JUDGE: I don't think anything else is needed.

Q. Okay, do you recall holding this exhibit up yesterday when I was asking you about it and you said, "Well, this has all been changed." --

A. Well --

Q. "I updated the internet site a week or two ago."

A. The internet site has been updated. In fact, the Skin Systems, Inc. dotcom site was flipped over from the main site due to a -- a problem with trying to transpose the new site onto the server. So this has been temporary placed there. This is not the main site. This is old information which is supposed to have been taken down. The whole site. The whole site's been changed. If it hasn't come down yet that's probably because of our internet service provider. It took two weeks to get them to change servers.

Q. Doctor, I'm handing you what's been marked Exhibit 61 which is the identical copy of Exhibit 49, minus the --

Exhibit 49 as it relates to the website. And you'll see it was printed, yesterday, July 15th and you'll see that it's identical to the Exhibit 49 relating to the web content?

A. Right, the same one that says --

Q. Now --

A. -- October special on it from last year --

Q. Right.

A. -- which hasn't been taken down.

Q. So now it's your testimony you did not update the website?

A. No, we did update the website. The main website is called Dermosystems.com. For perhaps the past two years Skin Systems, Inc. redirects you to the main site which is Dermosystems.com. That site was changed within the last week. And this site was supposed to have been removed and they haven't done it yet. This was the old site which was supposed to be taken down. Primus, who's our internet service provider, has been very difficult to deal with. You can check their -- I can give you the -- if I had to I can give you the ticket numbers for all the attempts to get the sites changed over the last three weeks. I've been in contact with them almost everyday.

Q. So your testimony yesterday should have more properly said you believe it's been changed and updated but you're not sure?

A. I know the main site's been changed and updated. The main site is Dermosystems.com. Skin Systems, Inc. was not an active site until about three weeks ago when we were trying to rebuild the main site and we took everything off the old site, moved it over for storage until the new site could be rebuilt. There's a completely new set of software. If you go to Dermosystems.com you'll see a completely different website. Different software, different pictures, different links, a whole bunch of different things.

Q. Doctor, you are currently the president of NCAHF, correct?

A. That is correct.

Q. And that is non-profit corporation under the federal taxation laws?

A. That's my understanding.

Q. And NCAHF solicits money from the public?

A. It doesn't solicit money from the public. It -- people can contribute if they wish to. We don't openly solicit as -- we don't have solicitors, we don't have fund raisers.

Q. You have membership applications where you can

contribute money to the NCAHF?

A. Well, someone can join as a member and if they wish to add money on top of their membership they may.

Q. Okay. As president of the NCAHF it's true, is it not, you have a fiduciary obligation to act in the best interests of that entity?

A. I don't know. I'd have to consult our corporate counsel if I have that responsibility.

Q. Do you know what fiduciary obligation is?

A. Not in a legal sense.

Q. So as president of this non-profit corporation you don't know whether or not you have a fiduciary obligation to act in the best interests of the entity?

A. No, I'd have to consult counsel to find out what the exact meaning of that word is in the way you're asking it.

Q. Assuming your fiduciary -- assuming you have a fiduciary obligation that obligation includes acting in the best interests of the company, it's true is it not, doctor, that you would be required to support the policies and the positions of the NCAHF?

MR. THEXTON: I would object to the question on the grounds of vagueness.

LAW JUDGE: Overruled. I think that's an attorney's comment on the question. I -- the witness may try to answer the question if he understands it.

A. I don't understand your question.

Q. Do you believe you have a duty to support the positions and policies of the NCAHF as president?

A. I have a duty to the board of the directors to carry out their directives as the president. I don't run the organization. It's run by a board of directors.

Q. And if the board of directors established policies and protocols and positions it's your duty as president to carry those out, correct?

A. If so directed.

Q. It's true, is it not, doctor, that the NCAHF has a political agenda that includes attacking all forms of complimentary alternative medicine?

A. It's not a political organization. It's a non-profit organization. We're not lobbyists.

Q. You file suits against entities related to complimentary alternative medicine, don't you?

A. Personally, no.

Q. NCAHF files such suits?

A. I think NCAHF has filed some lawsuits against

companies for false advertising in the State of California.  
Under the business and professional code of California.

Q. And NCAHF has official policies regarding  
chelation therapy, acupuncture, homeopathy to name a few.  
Is that correct?

A. There have been a number of policies developed  
over the years by -- by the board. They're posted.

WITNESS: Excuse me, may I confer with Mr. Thexton  
for a moment?

LAW JUDGE: All right.

MR. RECKER: Your honor?

LAW JUDGE: Yes.

MR. RECKER: Is this an attorney/client conference  
or --

LAW JUDGE: Oh, well, hold on.

WITNESS: Judge, can I --

LAW JUDGE: -- please. I don't know.

(Off the record)

LAW JUDGE: Actually what was discussed outside  
was I think a rather polite way of asking me to ask the  
members of the audience not to indicate favor or disfavor of  
the witness's testimony. And you can internalize your  
responses but please don't by gesture or movement indicate  
that you think it's a good or a bad answer. It would be  
less distracting to us, please. You may continue.

Q. Doctor, isn't it true that if you in anyway  
supported a physician engaged in the practice of alternative  
medicine you'd be acting contrary to the policies and  
positions of the NCAHF?

A. Could you please define alternative medicine to  
me?

LAW JUDGE: Well, we've been around about this.  
Is there a way that we can use a phrase that's meaningful to  
both parties so we can actually get to the question? Mr.  
Recker, I will start with you. What do you intend by that  
phrase?

MR. RECKER: Well, your honor, yesterday we had a  
document introduced where Dr. Baratz was criticizing the  
White House commission on complimentary alternative  
medicine. I would say whatever that was encompassed by that  
commission in its use of CAM, that's how I am referencing my  
question.

LAW JUDGE: Okay, is that a definition that you  
can use, Dr. Baratz?

WITNESS: No, it is not.

LAW JUDGE: Well, give us -- I think you know -- I

think you have a pretty good idea of what Mr. Recker is trying to ask. Is there a phrase here that you find useful relating to your own personal experience or NCAHF's positions that we can simply use to get this question out about complimentary and alternative medicine?

WITNESS: Well, I think I know what he's trying to ask me but it's perhaps the wrong question. And it's not my job to ask the question, your honor.

LAW JUDGE: No, and I'm not asking you for the question. I'm just asking for a phrase that encapsulates this concept of -- what I understand as CAM. I mean, it's been used --

WITNESS: There is no such -- there is no such codified concept.

LAW JUDGE: Okay.

WITNESS: It is a hodgepodge of various people's thoughts, idea and practices that cannot be codified into a single term. And that is the difficult with that term. It is misleading and it does not have a precise definition. You have to talk about individual cases.

MR. THEXTON: I want to interpose an objection to the broadness and vagueness of the question and ask that he be directed to ask about the issues in this case. For example, chelation or the neutral -- provocation neutralization that was used to -- on the young boy who was there for allergy treatments. Let's talk about the treatments that were actually -- that are actually at issue in this case.

LAW JUDGE: Well, I'm not going to limit it to that at this point. It seems to me if we can communicate, if there is an area in which we agree that there is a body of alternative practices that NCAHF takes stands on and that other organizations take other stands on we could have a discussion in those terms. I understand your answer, doctor, however, that one group could mean this set of things and you could be answering in terms of this set of things. And therefore it would be a meaningless answer or a misinterpreted answer. So we do need some specificity in this.

WITNESS: Well --

LAW JUDGE: And we might need to get -- to get where Mr. Thexton is talking.

WITNESS: Right. If I may, your honor, the whole White House commission report does not even define the term. It's not defined in the whole report.

LAW JUDGE: Okay, and I'm going to accept the

concept that it is subject to misinterpretation so that one person supporting one alternative policy could feel that they were being attacked when someone was really talking about something else.

WITNESS: Well, and the very issue --

LAW JUDGE: So we need to get --

WITNESS: -- of whether it is an alternative or not is a question as well.

LAW JUDGE: Okay. Maybe we need to get -- Mr. Recker, can you work in terms of specifics -- specifics using chelation and any other terms you want to rather than the broad term? Or do you want to still try and work on the higher level?

MR. RECKER: I think the overwhelming -- by the time we're done with the exhibits it will be clear what Dr. Baratz understands or doesn't understand about the term CAM. So I'll move on.

LAW JUDGE: Well, okay. I -- you know, I find it a useful discussion. But I also realize -- in fact, the discussion shows me that there is ample room for misunderstanding.

Q. Doctor, NCAHF has taken positions opposed to chelation therapy, correct?

A. Recently.

Q. And similarly taken positions opposed to acupuncture, correct?

A. I don't recall the specifics of the acupuncture statement. They have -- there are many positions of the organization. I have to consult them when I --

Q. Do you recall --

A. -- I look at them.

Q. -- any position supporting acupuncture?

A. I'd have to go back and look.

Q. And that's a truthful answer, doctor?

A. What, that I don't know? I don't know --

Q. That you don't --

A. -- off the top of my head.

Q. That you don't know if the NCAHF has ever taken a position supporting acupuncture?

A. I don't know what supporting means and I would have to look at all the literature that's been posted, including probably ten years worth of newsletters to see if I could answer your question correctly.

Q. Doctor, as president of the NCAHF you could not support a physician who engaged in the practice of chelation therapy, correct?

A. No, that's incorrect.

Q. Why is it incorrect?

A. There are plenty of legitimate uses for chelation therapy.

Q. We're back to word games --

A. I don't support illegitimate --

Q. -- doctor.

A. -- ones.

Q. Okay. All right.

LAW JUDGE: Well, this is -- I can see this is something that needs to be done too. We do tend to use the word chelation therapy sometimes to mean only the complimentary and alternative form of it and sometimes to mean everything. So --

Q. Do you understand how the NIH study is going to address the issue of chelation therapy?

A. I've read the protocol.

Q. In that context you could not as president of NCAHF support a physician who utilized chelation therapy as it's going to be studied by the NIH?

A. What do you mean by support?

LAW JUDGE: I'm trying to figure out if there's some possible way I can intervene here.

Q. Doctor, you do not understand what the word support means?

A. No, I don't. Not in your question. I'm a scientist and doctor. If someone shows me a case I look at what's done and I say whether or not this is legitimate or not.

LAW JUDGE: I'm not sure I can force an answer and maybe we just -- you know, we live with the fact that that's the answer we get to that question.

Q. Doctor, is it not true you are polarized in your views regarding complimentary alternative medicine and medical practitioners utilizing any form of complimentary alternative medicine?

MR. THEXTON: I'm going to object to the question it's -- to the wording of that question. I -- polarized is

--

LAW JUDGE: Well, again, I don't know that there's a legitimate legal objection to that. In fact, I see Mr. Recker is using alternative ways of asking the same question to see if he can get an answer. So the objection is overruled. Do you need the -- do you have the question or did you -- do you need it repeated?

A. I have the question. I don't think I can answer

the question the way it was phrased because I don't understand the terminology.

LAW JUDGE: Do you want to just start with what is your position on?

Q. Doctor, what is your position on complimentary alternative medicine?

A. As stated a few minutes ago --

LAW JUDGE: We can start -- we can start with chelation or you can do CAM, whatever you want. CAM.

Q. What do you understand complimentary alternative medicine to encompass?

A. I've stated that a few minutes ago for the record. If I have to repeat it we can read back my answer.

LAW JUDGE: Reading back is a little bit more difficult with this equipment than on others and frankly I would appreciate your repeating it. I'm not --

A. Well, as best I can remember exactly how I said it the term -- the terms have no precise meaning. They have to be defined in each and every case as to what someone is talking about. There is no codification of things called complimentary and alternative medicine. The White House commission on that subject never defined the term. They spent more than a year and a half and two million dollars and never defined the term. There is no book you can find that says, "This is the bible of complimentary and alternative medicine. Everything else is not complimentary and alternative medicine." There is no such entity that you can pluck off the shelf and say, "This is it." It is a -- largely a marketing term in most people's views and I have said that in my testimony before the Senate. It's often abused by people and misused. And it's used to promote ideas and concepts that may have complete opposites with each other. In fact, some people claim they're doing it -- I'm a CAM practitioner are complete opposite physicians from others who say they are too. So it is a term that essentially is meaningless.

Q. As president of NCAHF what treatment modalities are commonly associated with complimentary alternative medicine?

A. There are many in all kinds of fields. I mean, everything from distant healing to chakras to -- many different things are claimed to fit into this so called entity. And you have to look at each one of them and say, "What is the evidence to support this particular therapy or technique?" They're looked at one at a time. That's what our organization does. We are -- we are people who look at

what people propose and see whether or not there is evidence to support them. If there isn't evidence to support them and they're being promoted for profit then we say so.

Q. Does a church promote prayer for profit?

LAW JUDGE: Sustained.

MR. THEXTON: Thank you.

LAW JUDGE: You don't need to answer that.

MR. THEXTON: I need to faster.

Q. Now would you give me some treatment modalities commonly associated with CAM?

A. I gave you some.

LAW JUDGE: You mentioned two. You wanted to ask

--

MR. RECKER: Yes.

LAW JUDGE: -- specifically?

MR. RECKER: Yes.

LAW JUDGE: Why don't you --

Q. As president of the NCAHF your -- you have to be aware of many positions taken by the NCAHF on many treatment modalities commonly associated with CAM. Can you list some of those?

LAW JUDGE: Okay, I'm --

A. We don't have --

LAW JUDGE: I'm sorry. Now let me go back to what Mr. Thexton said about keeping it to the issues of this case. I mean, I -- I've not really tried to say you can't talk about CAM as a general topic but now that it's pretty well defined that it is hard to define, would this not be better to have you ask a couple of specific questions of this --

MR. RECKER: Sure.

LAW JUDGE: -- witness? What is your position on chelation, on any other one you want to include in that.

MR. RECKER: But I believe we covered that with the policy statement from the NCAHF yesterday.

LAW JUDGE: That's adequate if you want it.

MR. RECKER: All right.

LAW JUDGE: That's fine.

Q. Doctor, it's true, is it not, you would never support any aspect of Dr. Kadile's medical diagnosis or treatment simply because he utilizes chelation therapy in the manner he does?

A. Well, that's not true.

Q. Why is it not true?

A. Because he did many things in his practice. You said any aspect. That's just not true. You have to tell me

which aspect.

Q. In any part of your report and your direct testimony did you support anything Dr. Kadile did?

A. I'd have to go back and look. I believe I did but I -- I'd have to go back and look.

Q. It's true, is it not, doctor, that virtually all of your recognition as a physician was a result of your position with the NCAHF?

A. I would disagree with that.

Q. What other recognition of -- as a physician do you have?

A. In what setting?

MR. THEXTON: You know, your honor, I'm going to object to the question. It's vague. I mean, his CV is in evidence. He's only been president of the -- and even a member of the coalition for a very few years. And that testimony is in the record.

LAW JUDGE: Okay, I'm not -- I'll sustain --

MR. THEXTON: This is -- this repetitious and it is so vague as to be unanswerable.

LAW JUDGE: Well, I -- I thought the question was in some way allowable. I think I will ask Mr Recker to rephrase it because it was a little too vague. I mean, I understand what you were saying but to ask this witness how he's recognized is not --

MR. RECKER: Fine.

LAW JUDGE: -- going to get us to the right place

--

Q. Doctor, isn't it true that virtually all of your recognition on the internet, in any form on the internet, is a result of your affiliation with the NCAHF?

A. All of what my what on the internet? My recognition? I don't know what that term means.

MR. THEXTON: You know, I'm also going to object on the grounds that he could not possibly have personal knowledge necessary to answer such a question. How -- how would anybody -- actually I'm not sure anybody could answer that question.

LAW JUDGE: Okay, I'm going to intervene here. I'm -- and Mr. Thexton, you stop me if you think I'm, you know, helping out too much. But I'm helping out trying to move it along --

MR. THEXTON: I understand.

LAW JUDGE: -- as I understand it. Okay. Let me try and rephrase your question, Mr. Recker, and see if I just can make it an answerable question. Whenever you have

seen your name mentioned in any context on the internet recently, within the past six months --

MR. RECKER: Five years.

LAW JUDGE: -- has it been in -- five years? Has it mostly been or has it been -- exclusively been in connection with your residency at NCAHF? Is that a question?

MR. RECKER: Yes.

A. The answer is no.

LAW JUDGE: Would you --

A. It has not.

LAW JUDGE: And I would ask you to go beyond that and tell me what -- in what other connections you've been mentioned that you've seen?

A. Well, a large number of defamations. Hundreds of them.

LAW JUDGE: Would that also be in your connection with NCAHF?

A. No.

LAW JUDGE: Okay, beyond the defamations? Any other -- I think what Mr. Recker would say recognitions for -- it -- I'm getting the impression the question is saying your current recognition in the medical community or notoriety in the medical community is with your connection with NCAHF.

MR. RECKER: Correct.

A. Let me say that the internet is not the judge of my recognition in the medical community.

LAW JUDGE: And I --

A. That is only one parameter. The internet is not controlled by anyone. What gets put there and not put there can come and go. I have no control over it. I don't regularly monitor it. And so on and so forth. It is not the judge of one's recognition in the medical community.

LAW JUDGE: And given that explanation, which I fully understand, I'm allowing Mr. Recker to ask my questions. Which is that's what you're known for right now on the internet, is that correct?

A. I'm not for what?

LAW JUDGE: Your association with NCAHF and those issues?

A. No, there are many references to me on the internet that having nothing to do with NCAHF.

LAW JUDGE: Okay. If you want to follow up, Mr. Recker, you can.

Q. Yes. What are those?

A. I would have to pop up Google and go through all the several thousand of them. I'm in some genealogy discussion groups. I'm in a discussion group that has to do with health fraud. I'm in a group of physicians that are interested in health care policy that regulate correspondence across the internet. I'm known by the media, been recognized by professional associations and so on and so forth. There are many, many other places my name appears on the internet where it doesn't say NCAHF.

Q. Can you reference or cite any internet source which refers to you in a manner which praises your abilities as a physician?

LAW JUDGE: You know, I think I will stop and not because it's an illegitimate question but I think we've gone as far as we need on internet recognition. And a point or two's been made.

Q. Doctor, I'm handing you what's been marked Exhibit 62 from the internet. This reflects your membership status from the AMA, does it not?

A. No, it does not.

Q. Well, doctor, this was obtained from the AMA website membership information and it says, "Primary practice, speciality self-designated emergency medicine." And this was printed off July 7, 2003. Tell me how it's wrong?

A. Because I'm not a member at the moment.

Q. So the records are inaccurate?

A. They're inaccurate.

Q. When were you last a member of the AMA?

A. Last year.

Q. And your CV reflects that?

A. I don't think it says the year. It just said I was a member. I hadn't paid my dues yet this year so I'm not officially a member.

Q. How about the American Dental Association?

A. I'm not currently a member of the ADA.

Q. When were you last a member of the AMA?

A. I already said that. Last year.

Q. Would that be calendar year?

A. Calendar year.

Q. So your membership expired December 31, '02?

A. I think so. I'm not sure whether their year corresponds with the calendar year but I know that I have a due notice and I haven't paid it yet.

Q. Doctor, when you were last a member in '02 is it not true you designated yourself with the AMA as emergency

medicine?

A. No, that's an old designation that they never updated.

Q. That you never updated?

A. They never updated it. I joined through the Massachusetts Medical Society and every year we put down what we are and what we aren't. They transmit the information to the AMA. I belonged to the MA for many years and when they put something down in their original database that's the way it is. I don't go back and check their database all the time. I don't check a lot of things all the time.

Q. Doctor, the office --

A. As I said yesterday.

Q. The office phone number designated on this AMA website, that's your South Shore Medical Center, isn't it?

A. That is my office.

Q. And that's Braintree?

A. That is in Braintree.

Q. And you took that over on -- in January of 2002?

A. That's correct.

Q. So they have the correct, accurate updated information in '02 for your office site but they have the wrong designation for emergency medicine?

A. They might.

Q. But again that's --

A. I don't control their website.

Q. That's their problem too, right?

A. Mr. Recker, I submit the information. If someone doesn't put it on there and I don't know about it then I can't change it. Now that you've brought it to my attention I'll be happy to tell them that.

(Document marked as Exhibit 63 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 63, a document provided to us by Mr. Thexton's office. Can you identify this?

A. It's a list of some of the publications I have and some of the places I've given talks and some abstracts that I have presented and published. It's appearances, some of them.

Q. Doctor, under "Papers" on the first page --

A. Yes.

Q. Correct me if I'm wrong but these are all relating to dentistry, are they not?

A. Well, I would disagree.

Q. Well, "Rat research, epithelium rats," excluding

that, they all clinically relate to dentistry, do they not?

A. No.

Q. Point out --

A. Health hazards have to do with medicine.

Q. Where's that?

A. Mercury and dental fillings, is there a problem?

Q. No, excuse me. Where's health hazards?

A. Health hazards is -- let's see -- there's two little ticks towards the bottom left when this says 1990.

"Minimizing the health risk -- minimizing the risk of health hazards in the dental workplace, critical review."

Q. How's that --

A. It has to do with --

Q. -- relate to -- how does that relate to the practice of medicine?

A. Well, it has to do with health in workplace.

That's medicine, that's not dentistry.

Q. Notwithstanding the fact it says dental workplace?

A. There are many workplaces. Dentistry's one of them. Dentists -- dentists --

Q. All right.

A. -- you know, are exposed to chemicals in their work and get illnesses from them. Those are medical illnesses, not dental illnesses.

Q. And that was published in dentist magazine?

A. It was.

Q. Do many physicians subscribe to that do you believe?

A. I have no idea.

Q. Okay. The second page, doctor, "Books and Memoranda." These are all prior to 1987. They all relate to dentistry, don't they?

A. No.

Q. Okay, which ones do not -- are not involved in your capacity as a dentist?

A. A laboratory guide for tissue and organ histology, that was for the medical school course in histology at Boston University. Histology, a course syllabus, the Medical School of Boston University for medical students. The --

Q. Excuse me, doctor. It says 1978, 1979, '81. Is that pursuant to your faculty position in anatomy?

A. I was on the anatomy faculty and several other appointments at Boston University.

Q. All right.

A. That's correct.

Q. Going down under, "Television, Radio and Popular Magazines," it's about four pages of listings, about 75 listings. Correct me if I'm wrong, these all relate to silver fillings, dental fillings, dental issues?

A. There is a -- they relate to medical issues. People -- people were alleging health effects from these materials. That's not a dental issue.

Q. Show me the medical articles, please, or television, radio?

A. They are all virtually medical issues because people were claiming allergies, intoxications, epilepsy, acne and many other medical problems as a result of dental fillings.

Q. All right. The first one --

A. Those are medical problems. They are not dental problems.

LAW JUDGE: If you want -- may I suggest you ask the question are there any that talk about medical concerns other than the health effects of dental fillings?

MR. RECKER: Thank you.

Q. Doctor, are there any -- any of these that talk about medical concerns other than the health effects of dental fillings?

A. Not in this listing. There are others that aren't on this listing. This listing ends after a period of time and it hasn't been updated. But there have been many more over the past three, four years. I was interviewed recently on coral calcium, Juice Plus, a number of other food supplements, ephedra, that having nothing to do with dentistry.

Q. And those interviews were pursuant to your position as the president of the NCAHF, were they not?

A. No.

Q. Doctor --

A. They didn't ask --

Q. -- we have those. Do you want to rethink --

A. -- I wasn't being interviewed as president --

Q. -- that answer again?

A. -- of the NCAHF.

Q. We have those. Do you want to consider that answer again?

A. I was not being interviewed as president of the NCAHF. I wasn't asked to appear because I was president of the NCAHF. And I was not speaking for the NCAHF in most of those interviews.

Q. Didn't those interviews also reference your

position in the NCAHF?

A. They may have. But that's not the context in which I was called by the reporter. I mean, I'm also a -- you know, a member of a church and a -- and I have kids and they belong -- you know, I might have been the member of the PTO at our school. Those are all positions I hold. If they want to reference those they may too.

Q. On page 019 of this exhibit at the bottom, "Selected Published Abstracts." Other than the article on rats and a rabbit these are all dental fillings, are they not?

A. No.

Q. Show us, please?

A. There are many --

Q. I'm sorry. I'm sorry.

A. Cranial facial fusion, the rat eyelid.

Q. I said other than rats and the rabbit.

A. You said dental. I'm not sure --

LAW JUDGE: That was a miscommunication. Please ask the question again.

Q. Not including the articles dealing with rats and a rabbit these are all dental related articles, are they not?

A. No. I don't know what dental related means specifically but I -- in my opinion they way I understand dental related I would say no.

Q. They're not related to the practice of medicine?

A. Some of them are.

Q. Which ones, doctor?

A. Systemic reactions.

Q. Where's that, doctor?

LAW JUDGE: The middle of 20.

A. Corneal epithelial wound healing. Diabetic microangiopathy. That was a human study.

MR. THEXTON: Third from the top on page 20.

A. Third from the top.

Q. 1979?

A. That's correct.

Q. And can you tell me which one of these were refereed journals?

A. Refereed journals? Starting with the selected published abstract, Anatomical Record, Journal of Cell Biology, J Dental Research, Anatomical Record, J Cell Biology, J Dental Research, Diabetes, J Dental Research, J Dental Research, Investigative Ophthalmology and Visual Sciences, J Dental Research, J Dental Research, J Dental Research, Clinical Research, Clinical Research, Clinical

Research, Clinical Research, J Dental Research for the next three, IDR which is J Dental Research and the American College of Physicians Abstracts would have been in the -- their journal, which is not -- which is another refereed journal. All these are refereed abstracts. They had to be selected to be -- appear from competition.

Q. And it's your belief that some of these relate to the practice of medicine?

A. They sure do.

Q. Under "Invited Talks" --

LAW JUDGE: I'm sorry, what page is that?

MR. RECKER: I'm sorry, the bottom of 20 --

LAW JUDGE: Okay.

Q. It starts at the bottom of 20. It's roughly four pages, roughly 67 entries. Isn't it true that none of these relate to anything you've done since you've completed your residency in 1991?

A. That's when the list ends. So the answer is none of these were given after I completed my residency because that's when the list ends and I completed my residency in 1991.

Q. Doctor, there are other articles on here that are from 1992. So is it current or not?

A. Oh, I'm sorry. I thought you were referring to a particular class of them. There are some articles that go past that. The last two, '93 and '94 --

Q. Well, I'm on -- on 019 there's a date line appearance on dental quackery dated 1997. So is this document current, at least through 1997?

A. I'm not certain.

MR. THEXTON: Well, while they're changing exhibits I will note that I believe that this exhibit is the same as Exhibit 2 which has already been received into evidence.

LAW JUDGE: 2, thank you. Let's go back in the box. Thank you. We'll look -- take a look at it later.

(Document marked As Exhibit 64 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 64. Have you seen this article before?

A. No.

Q. Turn to page -- Bates stamp 455, the second to the last page, the middle of the page.

A. 465?

Q. 455.

A. 455.

Q. The second to the last page of the document.

A. Yes.

Q. It references watchdog groups such as the National Council Against Health Fraud question these kinds of alternative psychological interventions. And there's a quote from you. Do you recall giving that?

A. I recall being interviewed by somebody from AMA.

Q. Do you prefer stating that you prefer to call non-proven techniques as complimentary?

A. It's not my quote and I didn't say that.

Q. Is that your position?

A. I'm sorry?

Q. Is that your position?

A. No.

Q. So this is another misquote --

A. It's not quoted.

Q. Well, it's a misrepresentation of what you believe in?

A. It's a misrepresentation of what I said.

Q. Okay.

A. It's not directly quoted. The reporter garbled what I said and it's not in quote.

Q. Well, how about the one that is in quotes? Quote -- "Fundamentally there is no alternative medicine."

A. That's what I said earlier.

Q. Is that your quote?

A. That term does not have precise meaning.

Q. "There's evidence based on non-evidence based. Alternative is a term I don't accepted. It's a backdoor attempt to legitimize otherwise illegitimate activities," -- end quote. Is that accurate?

A. That's an incomplete rendition of what I told the reporter. I said in many cases and that was not -- they didn't give the full quote.

Q. Oh, so in any many cases qualified what you were saying?

A. I spoke to the reporter for an hour.

Q. Okay.

A. She's reduced that to one quote.

(Document marked as Exhibit 65 for identification)

Q. I'm handing you Exhibit 65. Are you familiar with this article?

A. No.

Q. Do you know the gentleman pictured?

A. It appears to be a picture of Steven Barrett.

Q. And at the bottom of the first page it indicates -- quote -- "The National Council Against Health Fraud is

challenging these ideas in a lawsuit that accuses media power of violating California laws against false advertising. In connection with this case Robert S. Baratz, MD, DDS, PhD; Manfred Kroger, PhD and I have prepared a detailed analysis." You work with Dr. Barrett in challenging -- quote -- "unproven" -- quote -- treatment modalities, don't you?

A. Well, I think that's too broad a statement. Occasionally I have. And this is an example. And we detailed line by line the claims made by Media Power and how these claims were unsupported by the scientific literature. It's a critical analysis of their advertising.

Q. And you've joined in suits with Dr. Barrett?

A. I've joined in one lawsuit with Dr. Barrett where we were both libeled by someone and that suit is before the court in Canada.

Q. Well, what's this -- what's this paragraph referring to, the bottom of the first page?

A. NCAHF is embodied in what -- I'm sorry -- was involved in a lawsuit in California.

Q. So --

A. He said in connection with this case we have prepared a detailed analysis. So -- because of the issues in the case we did the analysis.

Q. You're president of NCAHF and Dr. Barrett is vice-president?

A. That is correct.

Q. Okay, and on the third page at the bottom it indicates Dr. Barrett operates five -- well, board chairman of Quack Watch and vice-president of NCAHF, operates five consumer protection websites, one of which includes NCAHF, correct?

A. He is the web master of the NCAHF website. So he physically operates the site.

Q. And the rest of these related sites?

A. I presume so --

MR. THEXTON: Objection --

Q. Well --

MR. THEXTON: -- to the form of the question which is double barreled. He said and the rest of these related

--

Q. Well, these sites are all related on the internet, aren't they, doctor?

LAW JUDGE: Okay. Very clear, and the rest of these five all -- all five of these sites you're questioning?

MR. RECKER: Yes.

A. Related to what?

Q. They're all interlinked on the internet?

A. They are?

Q. Oh, you don't know that?

A. I don't know that.

Q. Okay.

A. I don't know how they're set up from a server point of view.

Q. You're aware that Dr. Barrett operates all five of these sites?

MR. THEXTON: Objection as repetitious.

LAW JUDGE: Actually, it was asked -- and the answer was he presumes so.

MR. RECKER: Okay, I'm sorry.

(Document marked as Exhibit 66 for identification)

Q. I'm handing you what we'll -- what is marked Exhibit 66, doctor. An article from the "Dover Post" dealing with acupuncture.

MR. THEXTON: I'm going to object because acupuncture is in no way connected to this case?

LAW JUDGE: I may sustain that in trying to limit the issues but Mr. Recker, why should we --

MR. RECKER: Well, we talked previously about NCACH position and his rather ambiguous answers on the position on acupuncture and yet we have quotes here from Dr. Baratz dealing with the topic.

MR. THEXTON: So what?

LAW JUDGE: If -- if the topic is acupuncture I don't really think I'm going to let you extend into that area --

MR. RECKER: It --

LAW JUDGE: -- just because we could spend an awful lot of time --

MR. RECKER: All right.

LAW JUDGE: -- on a topic that's not --

MR. RECKER: But it also relates to the fact --

LAW JUDGE: -- related to this --

MR. RECKER: -- that NCAHF is in opposition to acupuncture. And I don't think Dr. Baratz was really -- willing to say that before.

LAW JUDGE: There was quite an ambiguity in the response to NCAHF's position on acupuncture. I'm going to sustain the objection nevertheless. I need to limit the issues.

MR. RECKER: And again, your honor, our purpose in

these presentations is again to demonstrate the witnesses total polarization for the stance supported by NCAHF which goes to his credibility as a witness in this case. That's all I'm trying to do here. So if you want me to skip other documents relating to his quote dealing with acupuncture, I'll do that.

LAW JUDGE: I do. And -- I will -- I'll make the comment that although we have had a lot of back and forth and some clear answers and some answers -- to get a question -- either the answers to the questions were not clear -- I think the record up until now amply supports Dr. Baratz' opinion of techniques that he feels are not scientifically proven in his phrase.

(Document marked as Exhibit 67 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 67. The first few pages being the homepage of the National Council Against Health Fraud and the next three pages being the National Council Against Health Fraud's speakers bureau. Do you recognize these documents?

A. They appear to be copies of our website --

Q. Now --

A. -- parts of it.

Q. -- the address on the front again, that's 119 Closter. That's the same address as Skin Systems, correct?

A. Same street address.

Q. Same offices?

A. Same building.

LAW JUDGE: We had testimony on the relationship

--

MR. RECKER: Okay.

LAW JUDGE: -- between the two.

MR. RECKER: That's fine.

Q. Doctor, under "About NCAHF" it says, speakers bureau. Do you see that bullet on the front page?

A. Yes.

Q. And if you click on that you get the last three pages, the speakers bureau?

A. If you say so.

LAW JUDGE: I think that's an appropriate response. I mean, you -- if you Dr. Baratz knows that you'll click on there and go there -- if you know you'll go there, that's fine. You can answer yes. If you're not sure you can --

Q. Under your name, doctor, the third line indicates that you've "had extensive experience in medical administration and as a consultant for government agencies,

professional associations, insurance companies and industry. He is an expert in material science, medical practices, quality of care, quality assurance, computer data systems and drug and device development. He can talk about all of these as well as many aspects of medical/dental quackery." Doctor, is it fair to say that the vast majority of your paid appearances as an expert in any matter is a result of this listing on the NCAHF speakers bureau?

A. Absolutely not.

Q. And would it be your position that your expertise is reflected on this document does not overstate your credentials, qualifications?

A. I think this is a -- an overview of some of the things I've done.

Q. Doctor, on the third page of the exhibit, page 106, it says, "Links to other sites." This is on the homepage of NCAHF. The third one is Chirobase, Quack Watch's skeptical guide to chiropractic history, theories and current practices." Were you unaware that this was a direct link from NCAHF?

A. I don't remember all the links on the site.

Q. How about the committee for the scientific investigation of claims of the paranormal, Psychop?

A. There are many links on the page. They change from time to time. I don't control them.

Q. You are affiliated with CSICOP, are you not?

A. Personally? I'm not a member.

Q. Are you listed as one of their advisors?

A. I don't know. But I'm not a member of the organization.

Q. Another direct link would be current issues in alternative medicine, correct? Do you see that? Also Homeo Watch, Quack Watch's skeptical guide to homeopathic history, theories and practices.

A. These are just links to other sites.

Q. On the homepage of your organization?

A. You know, I think it's important, Mr. Recker, to set the record straight about something you said before. I'm the president of NCAHF. That does not mean that I personally endorse everything NCAHF does. When I represent NCAHF I represent the board and their policies. You're trying to impute that everything NCAHF does I personally subscribe to. And that is not a logical deduction that you can make.

Q. Have you ever given a statement contrary to any position or policy of NCAHF?

A. Oh, I'm sure I have.

Q. Just can't refer to it --

A. At board meetings. We've -- we've debated these things. But you know, we're a democracy and the board votes on something. I can disagree with the board but if that's board policy, that's board policy. The President of the United States may not agree with what congress votes but if they have enough votes to override his veto it's going to happen.

Q. And you implement the policies per their direction?

A. I'm required to.

Q. Okay. Another line would be Quack Files and Quack Watch, you're aware of that?

A. Those are --

MR. THEXTON: Your honor, at this point I'm going to object on the grounds of relevancy.

LAW JUDGE: Well, I think the previous couple of answers would make further questioning on this -- I believe Dr. Baratz has stated that he does not know --

MR. THEXTON: Okay.

LAW JUDGE: -- everything or even necessarily endorse everything that's on here.

Q. Are you aware that NCAHF is part of the anti quackery ring?

A. There are what are called web rings which are linked sites on the internet which subscribe to a certain commonality and I believe that the NCAHF site is part of several rings. These are not conspiracy rings. They're -- they're just linked websites that, you know, one can go from one to the other because they identify each other.

Q. Doctor, I'm handing you what's been marked Exhibit 68. You're familiar with this membership application for the NCAHF?

A. This is a flyer that was produced for -- this -- this isn't the entire membership application. This is a flyer that was produced about NCAHF and there is a piece on that where you could apply. But it's not -- it is not the membership application. It's a flyer.

Q. Doctor, this is the only membership application you can obtain over the internet, isn't it?

A. That's incorrect.

Q. I see. Well, if you look at the second page where it talks about membership application, specifying different rates, different standards of membership, do you see that?

A. There are different rates for different categories

of membership. I'm not sure the word standard is an apt one.

Q. It says donations are tax deductible under IRS code -- tax code 5013C. Do you see that?

A. I do.

Q. And you see a little box there on that application? An empty box that says, "I support NCAHF's beliefs and purposes required for membership, not for newsletters and subscriptions." Do you see that?

A. Yes, I do.

Q. So, in order to be a member you have to check that box, is that correct?

A. That's board policy.

Q. Okay.

A. It's been that way for years.

Q. And I suppose you had to check that box also?

A. When I joined.

Q. And this money that comes in is directed to the Peabody Foster Street address, correct?

A. That's the postal address. It goes to a bank.

Q. And there's staff there that you have that takes care of that?

A. There is staff who process the memberships.

WITNESS: Your honor, could we take a short break for the --

LAW JUDGE: Yes.

WITNESS: -- rest room?

LAW JUDGE: Let's just check. Would you have just a little bit more -- we might want to finish that. If you're just taking a pause here why don't we take a longer pause?

MR. RECKER: It would be a good time because I'm going to try to expedite --

LAW JUDGE: Organize some things.

MR. RECKER: -- and organize and delete. So this might be a good time to do that.

LAW JUDGE: All right, let's go off the record. Thank you.

(Off the record)

LAW JUDGE: Mr. Recker, the -- it is still your questioning. We talked off the record about how much longer we'll be going. But you can just continue.

MR. RECKER: Relatively briefly, your honor.

(Document marked as Exhibit 69 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 69 which was taken off the NCAHF homepage. Are you familiar

with this?

A. Yes.

Q. Doctor, the second to last paragraph states, "Only a small minority of licensed medical practitioners use 'CAM' methods."

A. I'm sorry, I'm not finding where you are?

LAW JUDGE: Wait, let's make sure we know where we are. Where are you?

MR. RECKER: This is the first page, the second to the last paragraph.

LAW JUDGE: First page, okay.

A. Oh, I thought you meant the second to the last paragraph of the document.

MR. THEXTON: So did I.

A. The first page --

Q. Quote -- "Only a small minority of licensed medical practitioners use 'CAM' methods." And the last sentence of that paragraph says -- quote -- "However, there is good reason to believe that most provide substandard care and seek to undermine their patient's confidence in standard care," -- end quote. You support that statement, don't you?

A. NCAHF has made that statement and as a member -- that's a policy statement of NCAHF.

Q. The second to the last page of the document, the first name under press contact numbers is your name?

A. That's correct.

Q. Fair to say you had a good number of contacts from the press as a result of this?

A. I never counted them.

Q. I'm handing you what's been marked Exhibit 70, doctor. This was taken from the quackwatch.org website. At the top it indicates you can do a quackwatch/NCAHF super search. So these -- these internet sites are clearly linked, are they not?

MR. THEXTON: I'm going to object to the relevance of this.

LAW JUDGE: Well, to the extent that I've allowed questioning on all of these -- this goes no farther beyond

--

MR. RECKER: Right.

LAW JUDGE: -- beyond what we've already been talking about the objection is overruled. You may answer if you know the answer.

A. I don't know that the sites are linked.

Q. Okay. Well, look at the top of the page. Do you see those websites denoted up there with parallel lines

between them? Do you know whether or not that means they're linked?

A. No, I don't know what that means.

Q. You don't know. Okay.

A. They're just references to the sites.

(Document marked as Exhibit 71 for identification)

Q. I'm handing you what's been marked 71. A document -- a multi page document which is represented to be the Quack Watch homepage. Are you familiar with the cross links on this home page to NCAHF?

MR. THEXTON: Your honor, I'm going to object now on the grounds that this is repetitious.

Q. Okay. Are you familiar with this homepage?

LAW JUDGE: Apparently we're rephrasing the question? Is that right? Or --

MR. THEXTON: I object on the grounds that this line of questioning is repetitious.

LAW JUDGE: How much further are we going to go towards Quack Watch?

MR. RECKER: One more exhibit.

LAW JUDGE: Beyond this?

MR. RECKER: Yes.

LAW JUDGE: We may not end up letting the exhibits in. I'll see. But I'll allow you to ask a question or two on each of them. You can ask the question on the exhibit. I'm not sure I'm going to admit it as evidence. We'll see. Now, the question on this was?

Q. Are you familiar with this website?

A. Well, not intimately. I -- I know it exists and I have seen things on it. It's a huge website that more than 3,700,000 people have chosen to look at.

Q. Doctor, one of your bills to the State of Wisconsin was for documents retrieved from Quack Watch. Do you recall that?

A. Quack Watch the corporation, not Quack Watch the website. It was for copying some documents for Mr. Thexton that they had. I believe it was a book or it could have been a transcript. I don't remember which it was but it was something that's not on this site. It was something that is in the library of the -- of the company.

Q. So what was it in the library of the company from Quack Watch that you had to get for Mr. Thexton?

A. You know, I don't recall off the top of my head. It was a couple years ago. It was a document that they had already access to that we had to xerox and get to Mr. Thexton. He asked me to get it. I don't remember

specifically what it was. I could look it up but I don't have those notes with me.

(Document marked as Exhibit 72 for identification)

Q. I'm handing you what's been marked Exhibit 72 which was obtained from the Quack Watch homepage. Were you aware that -- I'm sorry, the Quack Watch website. Were you aware that charges that you assisted in drafting against Dr. Kadile were posted on the Quack Watch website?

MR. THEXTON: Objection to the premise of the question which is --

MR. RECKER: I believe --

LAW JUDGE: I will ask you --

MR. RECKER: -- we --

LAW JUDGE: -- to rephrase it. It's not necessary to state it --

MR. RECKER: All right.

LAW JUDGE: -- that way.

Q. Were you aware that the charges against Dr. Kadile were posted on the Quack Watch website?

A. I'm aware they're a public document and I believe they -- they're posted there. I think there's a reference to them there. I haven't looked for them there.

Q. Do you have any idea how many disciplinary charges against physicians around the United States are posted on the Quack Watch website?

A. No.

Q. Would it surprise you to learn that there are less than five?

A. I don't know.

(Document marked as Exhibit 73 for identification)

Q. Doctor, I'm handing you what's been marked Exhibit 63. Can you identify this?

LAW JUDGE: 73.

Q. I'm sorry. 73.

A. Well, it's something Dr. Barrett produced for our website that is information called I Health Pilot.

Q. So you're aware that this information about you is posted on this website?

A. No, I haven't looked at the website. I know -- you asked me if I knew what it was. I know that he asked me if I would help him set up this website and I said yes. And I'm aware that he's starting it. It's not an active site right now I don't think. I don't think it's got much information on it.

Q. You can see we downloaded this from the internet?

A. Oh, you may have. I -- I haven't looked at it.

Q. Did you have input into what's listed under your name?

A. Not directly. Had a copy of my CV. He extracted it.

Q. So he drafted this on his own?

A. Sure he did. Is there something there that's incorrect that I should change?

Q. Doctor, you didn't have anything to do with putting it there. I'm not going to answer that.

LAW JUDGE: Let's -- it could become a long conversation.

(Document marked as Exhibit 74 for identification)

Q. I'm handing you what's been marked Exhibit 74.

LAW JUDGE: Opinion -- I meant opinionated on both sides on that. Go ahead.

Q. Well, doctor, I will ask you one question since you raised the issue. It says you are also a board -- on the board of scientific advisors of the American Council on Science and Health. That is another organization that's anti what's generically referred to as CAM, is it not?

A. I don't think that they have an established policy on that. And I'm just an advisor to that organization. I'm not on the board of the organization. I'm a scientific advisor.

Q. It's another website that promotes your availability as an expert witness, is it not?

A. Not to my knowledge.

Q. Okay. Would you take a look at Exhibit 74? Have you seen this before?

A. I think I saw this a few years ago. This is a joke that was put up by a fellow named Peter Boditch who has a very large humor site on the web.

Q. It says -- it says, "Robert Baratz, TD Lang, Usenet Vigilante." Are you aware of that?

A. I'm aware that this is a humor site and that's where this exists. It's -- it's on a larger site called ratbags.com which is quote humorous. It has --

Q. Do you communicate via email through this website?

A. Through this website, no. I don't -- I'm not communicating through this website.

Q. Okay. Well, I'm sorry of my injudicious use of words. Do you communicate occasionally on the internet using these names, TD Lang, Usenet Vigilante?

A. No, that -- that's not my name. There's a column of names there. Roslyn Dalefield, David Green, Cindy -- Cindy Provence is a board member of the council. Janice

Lions is the secretary of the counsel. There's two columns. And mine is the left column and the people in the right column are other people. TD Lang is somebody else. I don't even know who TD Lang is.

Q. So you don't -- you don't receive emails through this website or send emails through this website?

A. No. It's run by someone in Australia.

Q. At the top it says, "Rounding up outlaw net quacks since 2000." Do you have any idea what that means?

A. You'd have to ask the guy who wrote it. That's Peter Boditch.

Q. On the bottom --

A. It's his website.

Q. -- right side it says, "Last updated August 22nd, 2002." Have you asked to have your name removed?

A. No, it's a joke.

MR. RECKER: Your honor?

LAW JUDGE: Yes.

MR. RECKER: In the interest of time I have four documents that could be judicially noticed representing decisions from various courts in the State of California in which NCAHF or its officers were involved. I would simply like to offer those as evidence of the policies, the actions by NCAHF as it relates to alternative medicine and some various court decisions on the same issues. So rather than have this -- this witness go through this process I would just like to have these judicially noticed and admitted for that purpose.

LAW JUDGE: Have you seen them, Mr. Thexton?

MR. THEXTON: No, your honor.

LAW JUDGE: And these are decisions or they're filings or what?

MR. RECKER: Decisions. Court decisions.

LAW JUDGE: If each of them is a decision I would be included to do so.

MR. RECKER: I'm sorry --

LAW JUDGE: But we need -- I -- I would be inclined to accept them and judicially notice them. But I need to let Mr. Thexton --

MR. RECKER: Oh, I'm sorry. Sure.

MS. HUBBARD: We have copies of everything.

LAW JUDGE: So before I say that I will accept them I need to go through that --

MR. RECKER: Sure.

LAW JUDGE: -- with him.

MS. HUBBARD: This is 75.

MR. RECKER: So, yeah, what's 75? 209?

MS. HUBBARD: Yes, but

--

(Documents marked as Exhibits 75 through 78 for identification)

WITNESS: Your honor, may I have a word with Mr. Thexton for a moment?

LAW JUDGE: It's all right with me. Mr. Recker, the witness has asked to talk to Mr. Thexton. I can --

MR. RECKER: As long as he keeps it clean.

LAW JUDGE: You may. Okay, were you in the room when I stated that we should not be using flash? If you can set -- if you can set that so it doesn't take flash then it will be no problem. I have through 78. Is that it or are there more? Okay.

MR. THEXTON: I do not -- oh, there it is. So I don't need 77. Okay.

LAW JUDGE: Okay, the request is -- and I'll wait for you, Mr. Thexton.

MR. THEXTON: Thank you, your honor.

LAW JUDGE: I am certainly inclined to admit them. You could of course question on them later if you wanted. Well, do you have a -- do you have a response?

MR. THEXTON: Your honor, I just -- I need more time than just the very few minutes we have here. These appear to be some orders by some judges. Two of them are appellat decisions. One of them is non-published. I just -- the two trial court orders appear to be interim decisions.

LAW JUDGE: Well, the only reason I seek your response right now is because Mr. Recker would be willing to just ask that they be admitted rather than to question the witness on them. And I'd prefer to do that. So if you were going to vehemently oppose them we'd need to have that argument here and I -- I would listen to you before I admit them.

MR. THEXTON: Well, I -- I'm going to -- they're certainly not certified copies and they're -- they're not published. So, you know, the only issue is authentication and then beyond that we get to relevance. Since Dr. Baratz doesn't appear to be named in any of these lawsuits I think the relevance may not be entirely clear.

LAW JUDGE: Or even the opportunity to question him on the content.

MR. THEXTON: Well, I would have that opportunity after -- presumably when it's my turn. But if I choose to.

I guess the request is that you take judicial notice of them and -- and I guess --

LAW JUDGE: Let me --

MR. THEXTON: Judicial notice is appropriate when the authenticity is incontestible. And -- and although it's contestable I'm not going to contest on the grounds of authenticity because it would be unprofessional conduct of them to present something that were -- that was not authentic. But without waiving any objection to their relevance I -- I guess if they are what they purport to be.

LAW JUDGE: Well, let me try to get one answer I think from the witness which would allow me to determine how we're going to handle them. If Dr. Baratz was -- was actively involved in these suits, in the preparation or argument of them, then it might be appropriate to ask him to comment on them if we don't accept the decisions. If he was not actively involved then I don't know that I would allow questioning of him on these issues anyway. And so we can reserve the issues of admission but still let Dr. Baratz go.

So having told you why I want to ask you the question, Dr. Baratz, were you actively involved in the legal preparation of any of these suits?

WITNESS: No.

LAW JUDGE: You did not consult with the attorneys in these cases?

WITNESS: They were filed before I was president.

LAW JUDGE: Okay. If I didn't ask the right question, Mr. Recker, you may supplement it. But I'm -- you understand? I -- the issue of whether I admit them is going to be between you and me and Mr. Thexton. It's --

MR. RECKER: Fine.

LAW JUDGE: Okay. Then that's dealt with. Do you have anything else, Mr. Recker?

MR. RECKER: No, sir.

LAW JUDGE: All right. Mr. Thexton, do you wish to have some time to decide whether or how much redirect testimony you want to have?

MR. THEXTON: Well, I have continuing direct examination and of course I would have redirect on the issues that have come up in these last two days. And if I may have a break to -- to confer with the witness and to talk about what -- what we are going to cover, what is not worth covering.

LAW JUDGE: Fine.

MR. THEXTON: And to prepare to proceed, I would be grateful.

LAW JUDGE: And let me just ask. You say you have continuing direct? And this is on these -- on the issues we've spent the last day and a half on or is --

MR. THEXTON: No, the continuing direct is as I mentioned in my email of last week. So we can do that now because we're all here and why shouldn't we?

LAW JUDGE: It would be such things as additional qualifications since the last hearing or changes?

MR. THEXTON: Yes.

LAW JUDGE: Okay, why don't you -- why don't you go off and decide how much of that there's going to be.

MR. THEXTON: Okay.

LAW JUDGE: And I may allow it. Or we can discuss whether I will allow it.

MR. THEXTON: Then perhaps this is a good time to offer the exhibits.

LAW JUDGE: There aren't so many of them. If you'd like to hand them to me right now.

MR. THEXTON: There are three.

LAW JUDGE: Or your -- okay. Have you had a chance now, Mr. Recker, to look at --

MR. RECKER: Have I see those?

LAW JUDGE: -- the exhibits?

MR. THEXTON: I gave them to you yesterday.

MR. RECKER: Oh, got them yesterday. Hadn't been looked at. That's fine.

LAW JUDGE: Why don't we do that when we come back?

MR. THEXTON: Very good.

LAW JUDGE: We'll take another break.

(End tape 1 -- Begin tape 2)

(Documents marked Exhibits 79 through 81)

LAW JUDGE: Mr. Thexton, the cross-examination completed. You may proceed with redirect. I think we'll discuss how much direct there is.

MR. THEXTON: Thank you, your honor. I do want to -- because I don't know how else to do it to present the three exhibits that accompany the pre-filed direct testimony. They are numbers 79, 80 and 81. 79 is an original advertisement in the Green Bay Press Gazette which I believe to be self-authenticating. Number 80 is the chart of a patient Felix Mroz together with the means by which it was obtained as presented by former counsel.

LAW JUDGE: That's M-r-o-z.

MR. THEXTON: Yeah. Exhibit 81 is the respondent's chart of patient Halverson. Also these --

these things were all discussed in the pre-filed direct testimony pursuant to your request. And so they accompany it. And I would offer them at this time.

LAW JUDGE: Am I -- I'll turn to Mr. Recker in a second. Or Mr. Roder, whoever wants to do this. So my preference is if we are -- I don't think we're going to the direct testimony? Are -- you're planning to supplement the direct testimony, is that correct?

MR. THEXTON: I have not yet finished my direct testimony of this witness.

LAW JUDGE: I understand. And we spoke about --

MR. THEXTON: I understand we're taking things out of order because of the convenience of the parties and --

LAW JUDGE: And --

MR. THEXTON: -- not uncommon to do so.

LAW JUDGE: It is explicit that you do have the right to some supplementation of that. I wasn't quite sure whether we're going to do that today or how much of it. If we are going to be coming back and doing a supplementation later just to complete all of the direct testimony I would -- I was thinking we would hold off a ruling on that till when we look at the pre-filed direct. But having saying that, Mr. Recker, we had a chance to look at these. Do you know how this relates to the pre-filed direct testimony? Do you have any objection to these as exhibits?

MR. RECKER: I must say in all honesty that we just got them yesterday. I haven't looked at them. I have no reason to -- obviously to dispute Mr. Thexton's statement that he got them from Mr. Seely. I would ask that if there's going to be further direct that it be submitted in writing and maybe at that time we can deal with the admission of all of this in light of all the direct testimony.

LAW JUDGE: Well, I gather this does go along with the pre-filed written direct testimony which would then be complete as it stands if I admit these. And we could deal with the supplementation as a separate issue. Let me just verify that you would have -- I don't know if you had a chance to talk about this. Do you have any objection to Exhibit 79 as an authentic document? Okay. With that --

MR. RECKER: No, sir.

LAW JUDGE: -- and with the guarantees -- circumstantial guarantees as well as the certification on Exhibits 80 and 81, subject to, you know, an extraordinary reversal of this decision if something comes up later --

MR. RECKER: Sure.

LAW JUDGE: I'm going to admit these into evidence and that means that the direct pre-filed testimony will now stand in the record with its supporting documents.

(Exhibits 7 through 81 received into evidence)

LAW JUDGE: Okay, Mr. Thexton.

MR. THEXTON: Thank you, your honor.

(Document marked as Exhibit 82 for identification)

REDIRECT EXAMINATION

BY MR. THEXTON:

Q. Dr. Baratz, if I could direct your attention to Exhibit 82 which has been placed in front of you. Did you in fact receive the original of this document in March of 2001?

A. Yes.

Q. Okay. And are the contents of it accurate and correct to your own knowledge?

A. Yes.

MR. THEXTON: I'd offer 82.

LAW JUDGE: I think I'll need to see that. For my benefit as well as the record this relates to the issue of an association with the Food & Drug Administration, correct?

MR. THEXTON: Yes, your honor. And it directly refutes or demonstrates the incompleteness --

LAW JUDGE: Okay.

MR. THEXTON: -- of an earlier exhibit that was presented.

LAW JUDGE: It's being offered now --

MR. THEXTON: Yes.

LAW JUDGE: -- as -- Mr. Recker? Do you --

MR. RECKER: Your honor, only to the extent that I would like to see the -- the letter referenced in the first sentence which I do not have.

LAW JUDGE: I'll ask if that's something that could be done, Mr. Thexton?

MR. THEXTON: If I have it, your honor, I will be happy to.

LAW JUDGE: And I think it was a similar document that we yesterday -- it was a fax of a fax and as long as -- I mean, as long as we're accepting non-originals.

MR. THEXTON: Well, this -- this witness has authenticated it as he had received the original. And he is the addressee.

LAW JUDGE: Okay.

MR. THEXTON: So --

LAW JUDGE: Thank you for reminding me. I see no reason to exclude this, this evidence. It certainly does

supplement the information we were given before. Exhibit 82 is admitted.

(Exhibit 82 received into evidence)

Q. Dr. Baratz, considerable time yesterday was expended on the issue of the -- the circumstances under which you left Harvard Health. At the time that you left Harvard Health what had been your position in the -- in the months immediately proceeding your departure?

A. I had several positions.

Q. What were they?

A. I was a care giver. In other words I had clinical duties in several places. I was the director of urgent care. I was previously the medical director of one of the health centers and I was the -- I'm trying to remember what my exact title was but I had administrative duties at the Elda Service Plan which was another component of the organization in terms of overview and supervision of pharmacy. I handled all hospital admissions, all consultations and also delivered patient care there at least two days a week at the Elda Service Plan.

Q. And at that time was your position at Harvard Health or your positions, did they constitute a full time job?

A. Yes.

Q. And were you compensated as such?

A. Yes.

Q. A reference was made yesterday to certain memoranda in your personnel file there which resulted in -- in your being suspended for a day and reprimanded. Did there come a time when Harvard Health informed you that there would be a change in your -- in how your position would be constituted at Harvard Health?

A. Yes.

Q. And what was that?

A. They wanted to change me over to full time clinical.

Q. Okay. And what would this have done to your other duties that you just described?

A. Some of those would be eliminated.

Q. Okay. And what you mean was they wanted to change you over to clinical duties?

A. Well, it was how my time was spent. In other words, I had some time in an administrative capacity that meant going to meetings and writing reports and doing various things and they wanted to re-arrange the way the administration was there. They do that on a regular basis.

And I was offered full time clinical duties.

Q. Were there any preconditions placed upon this offer of a full time clinical position?

A. No.

Q. Whose decision was it to not accept that offer?

A. Mine.

Q. Was there any pressure placed upon you by anybody in or on behalf of Harvard Health to not accept a full time clinical position?

A. To not accept? No, no pressure was placed on me.

Q. Reference was made yesterday to the amount -- the method by which your -- I guess I would just call it severance pay was calculated at the rate of \$61.80 per hour. Do you recall that?

A. I recall the conversation.

Q. Okay. Was in fact that your rate of pay at the time that you were negotiating your departure from Harvard Health?

A. No.

Q. Okay. What -- was your rate of pay higher or lower?

A. It was higher.

Q. What -- why does the severance agreement use a lower rate of pay for calculating the -- the rate at which you would be paid this week of transition time?

A. No, severance pay went beyond that.

Q. Ah.

A. It was --

Q. I stand corrected.

A. It was for a flat sum actually. It was what we negotiated.

Q. In addition to your hourly rate was there other -- was compensation received by you and other physicians at Harvard Health in -- in any other form?

A. Yes.

Q. What was that?

A. Well, because of their budgetary problems I guess physicians were put on a different pay mechanism so that instead of getting pay raises they were giving us quarterly bonuses because it appeared on the books differently in terms of how they billed and several other things. And they adopted this policy about half way -- the time I was there. A couple years when no raises were given to anybody but one of the raise mechanisms for physician providers was bonusing and it was based upon a quarterly system. So they didn't want to commit to -- they didn't want to change everyone's

contracts but they -- they sort of -- it allowed them not to bonus if they didn't have the money. So they -- but we did get the bonuses. Also when I did coverage in the hospital for in patients those were billed separately and I was paid separately. And that in fact was referenced in one of the documents yesterday.

Q. So all that is in addition to the 60 or 61.80 or whatever the hourly rate was?

A. Whatever the base -- so called base pay rate.

Q. All right. Now, there was considerable testimony yesterday about the injury that resulted from the incident involving Florence Wilson. Do you recall that exchange yesterday?

A. I recall we talked about it at some length.

Q. And you recall that Dr. Wilson was here?

A. She was here.

Q. Now, this incident occurred how long ago?

A. December of '98.

Q. Four and a half years?

A. Yes.

Q. Okay. Would you describe the medical mechanism of the injury that you suffered in December of 1998?

A. Yes. I need to elaborate.

MR. RECKER: I would only object --

Q. Please describe the medical mechanism of that injury?

LAW JUDGE: There's been an objection. So --

MR. RECKER: It just goes beyond anything he was asked yesterday.

MR. THEXTON: I --

LAW JUDGE: Well, it does and as soon as the question was asked I heard that. However, what was raised was really a question of legitimacy of the claim and we even focused on Ms. Wilson for a moment. I think I need to allow Dr. Baratz to -- to supplement that. So the objection's overruled.

MR. RECKER: Before you allow him to answer --

LAW JUDGE: All right.

MR. RECKER: -- is this not now opening the door for the medical records you excluded from the workers compensation file?

LAW JUDGE: Well, that's a good question.

MR. RECKER: I only ask that you think about it now before he answers.

LAW JUDGE: I'll ask Mr. Thexton to think about that too.

MR. THEXTON: I have thought about it, your honor.

LAW JUDGE: We -- as I said yesterday in the in camera discussion we are not trying the workers compensation case here.

MR. RECKER: But to some extent he's stating his position relative to documents that are in the file.

LAW JUDGE: I understand.

MR. THEXTON: Well, I -- okay, I am ready to proceed and I do wish to ask the question and I understand the risk.

LAW JUDGE: Okay. Well, let me consider the objection again with that in mind for how much collateral proof we would be having. I think I may not allow you to ask the question quite the way you did which is pretty much an open ended description of the injury. I think I need to allow you to ask something on this topic but --

MR. THEXTON: I do too.

LAW JUDGE: -- let me -- let me ask you to ask the -- whatever question you want again and I'll rule on it again.

MR. THEXTON: All right. Let me make it -- I'll try to narrow it just a little. But I believe this is substantially the same question. How is it possible that a woman of the stature and age that we saw that Dr. Wilson was yesterday could cause the injury that is described in the documents that we also saw yesterday?

LAW JUDGE: I'm going to allow that question.

MR. THEXTON: Okay.

LAW JUDGE: That is a direct response to what was asked yesterday.

A. I don't mean to be flip but there was reference made to Dr. Wilson weighing 100 and some odd pounds and it took two people to remove her from me, which is true. I would say that if a 60 pound Doberman pincher or a Rottweiler grabbed your arm it would take at least two people to pull them off. So is it possible for someone of that size and statute to cause an injury? The answer is yes from a medical point of view. Someone pulls on an arm and extends a -- a nerve and causes that to be stretched --

LAW JUDGE: I think I'm going to stop you, doctor. I apologize. But I -- I mean, this is sort of where I want to stop unless we insist on going farther and which we'll have another ruling. In essence -- no? I'm sorry. The answer was given to the question given. I think that's entirely appropriate. The mechanism of the injury or a medical description would open the door to another hour's

worth of discussion. I'm going to stop it there. You may ask another question if you wish, Mr. Thexton --

MR. THEXTON: Thank you, your honor --

LAW JUDGE: But --

MR. THEXTON: -- I -- I'm thinking as far as I can.

LAW JUDGE: All right.

Q. Is the size or weight of a person who pulls on an arm determinative of how serious the injury will be?

A. No.

Q. Okay. What other factors are relevant in determining how serious an injury is?

LAW JUDGE: And I'm going to stop.

MR. THEXTON: Okay.

LAW JUDGE: What we're doing now is setting out Dr. Baratz to be a medical expert testifying about his own injury which is really a matter of a different claim. The facts have been elicited. The individual we saw identified. Dr. Baratz' repetition of his claim that she did in fact cause the injury is on the record. We're stopping with facts and not medical testimony.

MR. THEXTON: Very good, your honor. Oh, and I would -- and like you say, if I may make an offer of proof. If permitted to go further I would offer to prove that Dr. Baratz would say that this really has more to do with the particular angle and direction of force than the size or strength of the individual involved and that it just happened that the way she grabbed him and what he -- the position he was in caused this injury. And he would show us the injury that occurred and the scars from the surgery that was necessary to correct it. So --

LAW JUDGE: Thank you.

MR. THEXTON: On his forearm.

Q. Okay. Dr. Baratz, today there have been several questions about your duties to the National Council Against Health Fraud. Do you remember that Mr. Recker asked a number of those types of questions?

A. Yes.

Q. Okay. My question to you is are you here today in your capacity as president of the National Council Against Health Fraud?

A. Absolutely not.

Q. At the time that I retained you were you the president of the National Council Against Health Fraud?

A. No.

Q. If hypothetically speaking you were to receive a

case file from someone seeking an expert witness such as myself or some other attorney and you were to determine that the practitioner had used chelation therapy in a manner, although perhaps not for removal of lead, that was appropriate to that patient's individual circumstances -- that's the hypothetical. Do you have that in mind?

A. Yes.

Q. Okay. Now, my question is would you consider your position as national -- as president of the National Council Against Health Fraud to be such that you would be unable to accept that case and render an opinion in accordance to what you truly believe?

MR. RECKER: Objection as to form.

LAW JUDGE: Okay, why?

MR. RECKER: Multiple premises built into the question.

LAW JUDGE: Well, it was a very complex question but as usual I'm going to see if the witness thinks he understood it.

MR. RECKER: I have no doubt that he did.

LAW JUDGE: Do object to the complexity?

MR. RECKER: Go right ahead, doctor.

LAW JUDGE: All right. You may answer if you remember.

A. I would have no problems in accepting a case of that nature and reviewing the case.

Q. Does the fact that you are the president of the National Council Against Health Fraud in anyway influence your opinions that you reach as -- in an individual case in which you are retained as a consultant or expert witness?

A. No, and it doesn't effect the way I practice medicine or how I deal with patients or how I answer the press when I'm asked as an individual.

Q. Now, if I may direct your attention to Exhibit 64. This is the article from amednews.com. Are they in front of you?

LAW JUDGE: Well, they are but these are probably not in order. So my guess is that I can find it more quickly than he can.

WITNESS: Thank you, your honor.

Q. And if we could go to the -- page four of five where Mr. Recker asked you about the first of two statements which are attributed to you in quotes. Okay? Are you there?

A. Well, he asked me about one that was quoted and one that wasn't quoted. If my recollection is correct.

Q. All right. So --

A. There's another quote that follows that that he didn't ask me about.

Q. Right, but I'm going to ask you about it. Now the paragraph following that it says -- it starts with, "If Dr. Gordon" -- and it's in quote marks and appears to be attributed to you. Have you read that paragraph?

A. Yes.

Q. Does it accurately quote you?

A. Yes.

Q. Does it accurately represent your views?

A. Yes.

Q. You know, I'm finished with Exhibit 64 now.

LAW JUDGE: You know, this is -- is maybe going a little bit beyond but since the previous quote and the unquoted statement were read into the record to make the transcript more complete would you care to -- I'm going to invite you to read that quote into the record.

MR. THEXTON: I accept that invitation, your honor, and perhaps the source of it --

LAW JUDGE: So that --

MR. THEXTON: -- would be the best person to read it.

LAW JUDGE: -- someone working only from the transcript doesn't have to find it.

Q. Okay. Doctor, would you read the paragraph which I just referenced?

A. Yes. Quote -- "If Dr. Gordon wants to use complimentary techniques for those affected by psychological trauma I think it is commendable. But call it what it is..." -- and there's dot, dot, dot where something was left out. "These things fall into the warm, cuddly comfort department," -- unquote. "He says, 'if things like prayer, massage and meditation improve the way a patient perceives they feel, that's a compliment to proven treatments. But it probably has no scientific basis for treating human disease,'" -- unquote.

LAW JUDGE: Thank you.

Q. All right. Because I believe it will helpful to the tribunal I'm going to ask some questions about the four judicial decisions which have been presented to you. These would be in the nature of voir dire I think. But however, beginning with number 75 --

MR. RECKER: Your honor, I thought your honor asked the question so we could skip this witness's involvement in these cases.

LAW JUDGE: I think so. I guess I was waiting to hear what the first question was.

MR. THEXTON: Yeah.

LAW JUDGE: If -- let me ask you before we even start, Mr. Thexton, then what nature of questions are you going to ask?

MR. THEXTON: These are intended to illicit his complete non-involvement in this cases.

LAW JUDGE: I -- we can put that on the record. Go ahead.

MR. THEXTON: Okay.

MR. RECKER: Personal involvement.

LAW JUDGE: Well, let's see what the answer is.

MR. THEXTON: Thank you.

Q. Directing your attention to Exhibit 75, Dr. Baratz, are -- are you in any way a party to this lawsuit?

A. Not to my knowledge.

Q. Are you a witness in this lawsuit to your knowledge?

A. No.

Q. Okay. Exhibit 76 and also 78. Dr. Baratz, these lawsuits are -- list the National Council Against Health Fraud, Inc. As the plaintiff and I wonder if you have any knowledge of these two lawsuits and while we're at it any other like them?

A. Yes, I have knowledge.

Q. Okay. And did you come to that knowledge as a result of your membership on the board of the National Council Against Health Fraud?

A. Yes.

Q. Okay, can you just tell us what you know about these cases?

A. Well, they were filed before I became a member of the board. They were approved by the board and they were in process when I joined the board. They've been going on for some time.

Q. Are these the only two such lawsuits?

A. No, there were more than 40.

Q. Okay. And --

A. All involving a similar question of law that had to do with the propriety of advertising directed against the citizens of the State of California under the business and professional code of the State of California.

Q. Okay.

A. To be simple about it.

Q. Yeah. Did the -- the National Council Against

Health Fraud appears to have lost these two at least as of the date of this appellant decision. Do you know if there were other outcomes to other lawsuits?

A. I do.

Q. What is your knowledge?

A. I think so far six of those suits were settled in our favor. There are others that are still before the courts.

Q. Okay.

A. The purpose of these suits was to request that the advertising be removed and in some cases the settlements involved removal of the advertising --

LAW JUDGE: I'm going -- I'm sorry -- I'm going to stop you.

MR. THEXTON: Okay.

LAW JUDGE: If we're going to talk about --

MR. THEXTON: All right. All right. It -- just it was really to --

LAW JUDGE: Right --

MR. THEXTON: -- put the matter in some perspective and --

LAW JUDGE: May I -- may I just do a follow up question though? You used the word "settled in favor." Do you know if that was an out of court settlement or a ruling by a court? Do you know?

WITNESS: They were out of court settlements with payments to --

LAW JUDGE: All right, thank you.

Q. Okay. Now, turning to Exhibit 77, are you a party to this lawsuit?

A. No.

Q. Okay. Have you been named as -- to your knowledge as a witness in this lawsuit?

A. No.

Q. I don't have any other questions about that. So --

LAW JUDGE: Thank you. I think that is well within what we were anticipating happening. I will at this point rule that I'll take judicial notice of the documents that have been provided from these court cases, 75, 6 and 8. They'll become part of the record. Administrative notice.

MR. THEXTON: Okay. Does that mean that they are received into evidence or what does that mean?

LAW JUDGE: It's -- I intended it to mean they'll be received as evidence.

MR. THEXTON: Okay.

LAW JUDGE: I must confess. Hold on. Let me with -- retract for the moment and withhold that ruling because it occurs to me that Dr. Baratz is --

MR. THEXTON: There's a serious relevance issue here, your honor.

LAW JUDGE: Let's argue that one again later.

MR. THEXTON: Okay.

LAW JUDGE: I'm sorry, I'm going to take back that ruling. We'll talk about it later.

MR. THEXTON: Thank you. Okay, now I need another minute, your honor.

LAW JUDGE: Umm hmm.

Q. Dr. Baratz, there was considerable testimony on -- examination about this issue of Skin Systems and its website and its -- who it sells to. And you made reference in your answers to the questions about leasing. I wonder if you would explain to me the organization of Skin Systems, Inc. and -- and just how -- how it can be that it does not sell products to the public but it leases to operators and -- and tie together the answers that you gave on cross and the website as it apparently used to appear?

A. Well, you've asked me a whole bunch of questions.

Q. Okay.

A. Could you ask them one at a time, please?

LAW JUDGE: Good idea.

Q. Okay. What -- how -- what is Skin Systems, Inc.?

A. It's a corporation in the State of Massachusetts.

Q. And in what business --

A. Commercial Corporation.

Q. And it what business is it engaged?

A. Principal business is in selling supplies to the trade in medical laser and skin care business. And also we lease equipment to independent operators who contract with us for a lease.

Q. Okay. And in addition to being the lessor and seller are you also a purchaser and lessee in -- yourself or through another company or business entity?

A. I'm not sure I understand your question.

Q. Okay. Do you lease this equipment to many customers?

A. We have a number of independent operators who lease from us. There's less than a dozen. We provide the equipment for them and insure it, make sure that it's properly functioning.

Q. And where are these operators located?

A. In Massachusetts.

Q. In more than one location?

A. Yes.

Q. Is one such location adjacent to your medical office in Braintree?

A. Yes.

Q. And are you or a company controlled by you one of -- that operator in your -- the office adjacent to you in Braintree?

A. It's changed over time. But principally the operator's still an independent entity. They have a contract which separates us.

Q. Okay. So it is that operator who is operating the skin removal -- the laser hair removal --

A. It's one of the types of lasers we have. It's not the only one.

Q. Okay.

LAW JUDGE: Can I help?

MR. THEXTON: Please.

LAW JUDGE: Well, can I suggest something here?

MR. THEXTON: Please.

LAW JUDGE: Because I remember the line of questioning as being the relationship between Skin Systems, Inc. as a sublessor of space from something else that is owned or operated by Dr. Baratz. Is that correct?

MR. THEXTON: That was -- a separate line of questioning.

MR. RECKER: NCAHF.

MR. THEXTON: Yeah.

LAW JUDGE: NCAHF?

MR. THEXTON: Yeah.

LAW JUDGE: Okay. And I actually didn't remember this other one. I thought perhaps --

MR. RECKER: I didn't ask --

LAW JUDGE: -- you were --

MR. RECKER: -- about it.

LAW JUDGE: No, and -- right. What you have just elicited I think is not what we were talking about before. I believe the only question was the -- any sublease arrangement between Skin Systems and NCAHF. If you wish to

--

MR. THEXTON: Well, perhaps --

LAW JUDGE: -- question him about that.

MR. THEXTON: Thank you, your honor.

Q. There was a line of questioning about the website, what pages that were printed here and whether certain products were for sale to the public and -- or were

available by prescription only. And actually that was more where I was headed. Because I felt confused by the testimony and the questions. Does Skin Systems, Inc. sell to the general public?

A. No.

Q. Who does Skin Systems, Inc. sell to?

A. It sells to independent operators who --

Q. And then --

A. -- are allied with us and to -- and to the trade.

Q. Okay. And does that include the line of skin care products which Mr. Recker showed us in the exhibit?

A. Yes.

Q. Okay. So those are basically for sale on a wholesale basis?

A. Yes.

Q. Okay. Now, Mr. Recker did ask you about the fact that Skin Systems and the National Council Against Health Fraud have the same street address. And I want to ask you what if any significance is there to the fact that these two entities apparently share a building?

A. No more than the fact that your office and the judge's office are in this building. You're in separate departments, separate entities to some degree. They just happen to conveniently be located in the same space and there's reasons for that.

Q. And what are those reasons?

A. Partly my convenience and partly because we got a good deal on the space in terms of rent.

Q. Okay. Are there other entities which also share that space with -- with the council and Skin Systems, Inc.?

A. Yes.

Q. Okay. And are they businesses that you own or control?

A. No.

MR. THEXTON: Your honor, I don't have any other questions that relate directly to the cross-examination conducted by Mr. Recker. I do have other examination of -- of Dr. Baratz which I would go forward with, although I have to say --

LAW JUDGE: Okay, why don't we --

MR. THEXTON: -- not much.

LAW JUDGE: Well, why don't we stop here and see if we have recross and we can finish this portion limited to the questions that have just been asked. Mr. Recker?

RECROSS EXAMINATION

BY MR. RECKER:

Q. Doctor, just for the record what years were you executive director of NCAHF?

A. I previously testified just for a few months.

Q. What year?

A. It would have been I think -- I'm trying to remember the -- it would be 2001 from about -- sometime during that summer until the fall time when I was -- or actually late fall when I was elected president.

Q. And prior to that you were on the board, correct?

A. For less than a year.

Q. In the year 2000 you were on the board?

A. I don't believe I was. It's not my recollection.

I think came on the board in 2001. The first board meeting I went to was in 2001.

Q. So were the NCAHF offices located in your building with Skin Systems prior to 2000?

A. No.

Q. You formed Skin Systems in the fall of 2000?

A. I believe it was October --

Q. That would be --

A. -- 2000.

Q. -- the fall of 2000?

A. Yes.

Q. And that's about the same time NCAHF opened their offices in the same facility?

A. No, the offices moved there after I became president in -- late 2001, early 2002.

Q. Doctor, in the article, Exhibit 64 that Mr. Thexton just questioned you about you read into the record a paragraph where you were quoted. Do you have that in front of you?

A. No, I don't. Now, I do.

Q. And notice on page Bates stamped 455 Mr. Thexton pointed out a quote that you had made and you read it and said it was completely accurate. Do you recall that?

A. I'm not sure he asked the question that way and I'm not sure that was the exact phraseology. He asked me if it was accurate. He didn't use the word completely accurate.

LAW JUDGE: Mr. Recker, I'm going to have to agree. The completely accurate was not used.

MR. RECKER: I forgot who I was asking questions of. I'm sorry.

Q. You testified that was an accurate quote, correct?

A. To the best of my recollection.

Q. Yet when I asked you a question about the

paragraph before you said that was an inaccurate quote?

A. No, I said there was a part of that that was referenced to me that wasn't quoted that was not accurate.

LAW JUDGE: There was also a phrase left out I believe.

Q. Umm hmm.

A. Which is what I --

Q. Was the quote in the paragraph before accurate or not?

MR. THEXTON: Which paragraph are we talking about?

Q. The paragraph that begins with, "Fundamentally there is no" --

MR. THEXTON: Okay.

Q. -- "alternative medicine."

MR. THEXTON: Okay.

A. To the best of my recollection what is in the quotes in that paragraph that starts, "Fundamentally there is no alternative medicine," to the best of my recollection is an accurate quote of what I told the reporter. I didn't have a tape recorder that day. I assumed that what she rendered was what I told her.

LAW JUDGE: Can I see it for just a second? Thank you. I was remembering something else. Go ahead.

Q. Doctor, you indicated that the license -- or that laser hair removal in Massachusetts was not licensed?

A. There's no licensure for laser hair removal technicians in Massachusetts.

Q. Okay. So any person could open up a laser hair removal shop?

A. If they have the ability to do so.

Q. And you lease equipment to such people?

A. We lease to people who are certified to be able to operate the equipment.

Q. By the manufacturer?

A. Generally, yes.

Q. Okay. So you have no qualms leasing laser hair removal equipment to people who have only passed the manufacturer's course in doing it?

A. No, I didn't say that.

Q. Well, you lease your equipment to such people, correct?

A. Would I? I'd have to look at their -- their background and their skills and insurance and a whole bunch of other things before I'd lease equipment to them.

Q. Doctor, without getting into the details about how

much you made at Harvard and that kind of stuff, is it fair to say -- is it accurate to say that the tax documentation you submitted to the State of Massachusetts is accurate?

A. Which tax documentation to -- in what reference to the state? I mean, I submit tax documents to the state every year for different reports, for different corporations. I'm -- I think the question's too vague for me to answer.

LAW JUDGE: If that's what --

Q. The tax documentation you submitted to the State of Massachusetts for purposes of your workers comp claim?

A. I don't know specifically what was submitted by my attorney.

Q. Well, your tax returns, whatever ones you gave to the State of Massachusetts, were they accurate?

A. I don't know what she submitted because I haven't seen the file.

Q. If she submitted tax returns on your behalf with your name on them were they accurate as far as you know?

A. The returns I gave her were accurate to the best of my knowledge. What she submitted I don't have direct knowledge of.

Q. You sell skin care products at South Shore Medical?

A. One of our operators does.

Q. In your medical office skin care products are sold?

A. Presently there are some that are sold there that are prescription -- that are required to be sold through a doctor's office.

Q. But the ones advertised on your website are not required to be obtained through a doctor's office, correct?

A. The page you referenced before are not. But Glymed puts conditions on the distribution of their products. They're not all sold to the general public. They have to be obtained through people they certify to sell their products.

MR. RECKER: Your honor, the only thing I would ask is that this witness -- given testimony about multiple lawsuits that I reserve the right to later on raise those issues about all this other litigation that has been -- he's testified to.

LAW JUDGE: And we're talking about what came about through your giving me four --

MR. RECKER: Mr. Thexton asked him questions and he started to answer --

LAW JUDGE: Right.

MR. RECKER: -- about all these other lawsuits and settlements, etcetera. I would just reserve the right to raise those issues later since I don't have them at hand.

LAW JUDGE: Okay. And you're referring for example to the fact that there were out of court settlements and there are other lawsuits pending?

MR. RECKER: Correct.

LAW JUDGE: Mr. Thexton, do you think there's anything unfair about giving Mr. Recker an opportunity to look at that and perhaps bring it up later?

MR. THEXTON: Well, if he thinks he can make it relevant. But, you know, the testimony is he wasn't even on the board when these were filed and didn't participate in the decision to -- to bring them so.

LAW JUDGE: Okay. But subject to that relevance objection which indeed will come too with Exhibits 75, etcetera, I will agree that you don't need to ask those questions right now. If you find something that you can make a showing that it should be relevant. Do you have anything else then?

MR. RECKER: Nothing else.

LAW JUDGE: All right. We technically on the dot have completed the scheduled cross-examination of Dr. Baratz on his credentials. I gather, Mr. Thexton, you would like to take these opportunity to complete what would be his direct testimony, much of which has recently been pre-filed. And I'd like to discuss that possibility. I'd like to do it if we can. But I need to know what we're talking about, maybe how long it's going to take, if it's going to be difficult for respondent to -- to really respond to. And we may not do it. You know, part of the reason we're doing this today is because it's been so difficult to get all the records to respondent's attorneys. So you need to tell me where we're going --

MR. THEXTON: Okay.

LAW JUDGE: -- and what we're going to do?

MR. THEXTON: Well, considering that he's reserved all his cross on the medical issues to a later time it's -- he would have plenty of time, whatever I ask Dr. Baratz to take that back to his office, digest it, prepare to cross-examine it. So I'm not sure that that particular objection --

LAW JUDGE: And --

MR. THEXTON: -- is -- is -- substantive.

LAW JUDGE: And in a sense -- let me interrupt.

That's a very good point. I mean, we can simply completely the direct. You've still got all your cross on all of the medical issues and this is presumably part of that possibly.

We'll see. What are you --

MR. THEXTON: Okay.

LAW JUDGE: What were you going to examine him on?

MR. THEXTON: So I was going to update his clinical experience since the last time he testified because it was eight months ago. And I put in the charge -- I did -- I did have a couple of questions that arose directly out of the pre-filed testimony upon later review of them. I was going to ask him another medical question about -- I want to ask him why people believe that they feel better even if medically they are not. And that's an expert opinion --

LAW JUDGE: Okay.

MR. THEXTON: -- type question. And then I -- my -- I have a note here that I was going to review some statements that were testified or in the memo by Investigator Johnson and in the materials that Dr. Kadile distributed at his seminar. But as I think about it there wouldn't be very many of those and I'm actually not very well prepared with that today. Because I -- really I was not expecting to be here doing this so quickly after you said that I was not going to be able to do it before we started the cross on Monday. So I abandoned that preparation and --

LAW JUDGE: Okay. It -- I'll turn to you in a second, Mr. Recker. It strikes me that actually it would be beneficial -- I don't want to use a loaded word -- but I mean it would be appropriate for the respondent's attorneys to have whatever information is being offered here, updating clinical experience, getting these opinions on the record and simply consider that as something that you will want to ask questions about when you eventually get to your cross on everything. So I would like to do -- take the direct testimony and not take cross examination on that today to complete the -- complete the direct testimony of Dr. Baratz. Is that acceptable? Do you have any problem with my doing that?

MR. RECKER: I strenuously object. The scheduling order made it clear that we were not going to get into this today, number one.

LAW JUDGE: All right.

MR. RECKER: Number two, I prefaced this morning with expediting my presentation so we could get into certain other things this afternoon, allowing Mr. Thexton time to do

what he just did. Third, this witness has had four days of direct already in October. He's had another 188 -- 188 pages he's submitted of additional direct. I don't see why we have to occupy our time now which we have specifically reserved for specific purposes with more direct. Everything else -- the last 200 pages has been submitted in writing. Why can't we do another 50 in writing at this point?

LAW JUDGE: Oh, I understand.

MR. THEXTON: Well, we could --

LAW JUDGE: It could be done in writing.

MR. THEXTON: You will --

LAW JUDGE: We could.

MR. THEXTON: There's no denying that.

LAW JUDGE: All right. All right. In -- then I will stick with the -- the language of the scheduling order, the expectations of the scheduling for this week. We'll limit the examination to what we just did. If there is additional direct testimony it can be filed, subject to any objections. We'll worry about that later. And we will adjourn the hearing portion of this in a moment. And as many of you know we have reserved the rest of this week for talking about whether there is any realistic possibility of settling this case. And we can begin that after a lunch break. That's what we'll do. Anything else?

MR. RECKER: Should I move for the admission now or do that later?

LAW JUDGE: Well, we need to take the time to go through all the exhibits. We'll do that. We shall be another half an hour probably. Anything else, Mr. Thexton?

MR. THEXTON: Certainly not that would detail Dr. Baratz.

LAW JUDGE: No. How about if we break for a couple minutes just to let people leave who don't care to listen to objections on evidence and allow Dr. Baratz to leave -- and anyone else. And let's just try and keep it to five minutes so that we move in and out. And then let's take care of the rest of the record and then we'll adjourn. Off the record.

(Off the record)

LAW JUDGE: We will discuss exhibits. Mr. Recker, your motion?

MR. RECKER: Yes, sir. Are we going to take them one at a time?

LAW JUDGE: Unless it's -- I mean, are you moving everything?

MR. RECKER: Yes.

LAW JUDGE: You may -- that's fine. Do it in one motion. Move all exhibits that were not previously which is what?

MR. RECKER: 61 to --

MR. THEXTON: 78.

MR. RECKER: Thanks, Arthur.

LAW JUDGE: There it is. 61 through --

MR. RECKER: 78.

LAW JUDGE: -- 78. All right.

MR. THEXTON: We'll you've already refused 66, so -- at least by implication. So --

LAW JUDGE: I believe so.

MR. THEXTON: All right. 61 is the skinsystemsinc.com webpage as printed yesterday. Dr. Baratz explained that this is not actually the website for the company currently.

MR. RECKER: Dr. Baratz yesterday said on that same exhibit -- he did not say it wasn't from his website yesterday. But in any event yesterday he said this is wrong. It's been updated. I simply wanted to show that that was not the case.

LAW JUDGE: Okay.

MR. RECKER: But he was unsuccessful in doing so.

MR. THEXTON: As he explained today.

LAW JUDGE: Right. Now, this is a case -- I don't know. I sometimes find very little consistency in my rulings. I will confess. Where the testimony on the -- you know, provides ample documentation on the fact that what is in 61 is no different from what was in the previous one. I guess 49. Do we need --

MR. RECKER: That -- that is true --

LAW JUDGE: -- the document?

MR. RECKER: That is true.

LAW JUDGE: Do we need the document?

MR. RECKER: That is true. That is true.

LAW JUDGE: No, I would prefer not to just put it in. So 61 is not admitted as evidence. AMA member listing, 62.

MR. THEXTON: I don't see where it is relevant, that it impeached anything or goes to any issue in this case but it shows that the AMA is behind in updating it's website. Big deal.

LAW JUDGE: It There are questions. I'm not absolutely sure what the answers are to some of the questions. I think it probably needs to be admitted.

(Exhibit 62 received into evidence)

MR. THEXTON: 63 is Exhibit 2, although in a somewhat different format. Exhibit 2 had -- was numbered but -- had the entries numbered.

LAW JUDGE: Well, for that reason only then let's leave it in only because the testimony will be easier to relate to this document. 63 is admitted.

(Exhibit 63 received into evidence)

MR. THEXTON: 64, well, I'll move 64. So --

LAW JUDGE: 64 --

MR. THEXTON: I guess we don't have a disagreement.

LAW JUDGE: No objection. 64 is admitted.

(Exhibit 64 received into evidence)

MR. THEXTON: 65 is unconnected to Dr. Baratz. It's not by him. It's not authorized by him. Apparently it's written by someone else and it's on a website that belongs to something called canoe.canada.

LAW JUDGE: You know, I agree with some of that although I -- my memory is that he said he did collaborate with Dr. Barrett --

MR. RECKER: Right.

LAW JUDGE: -- in preparing the step by step comparison.

MR. RECKER: Right.

LAW JUDGE: But aside from this, this is talking about enzyme deficiency. For what purpose is this offered, Mr. Recker?

MR. RECKER: The affiliation -- the connection with Barrett and that website.

MR. THEXTON: Well, in that case that is seriously repetitious. It's firmly established that Dr. Barrett is the vice-president of the National Council and that Dr. Baratz is a medical advisor to Quack Watch. So --

LAW JUDGE: Right. My feeling is here again, given not only previous references to Dr. Barrett and their relationship but his testimony that he collaborated with him on here, I am not sure that the information in this article is of any use to anyone. I mean, the discussion of enzyme deficiency is not going to prove anything. The connection with Dr. Barrett is supported by testimony. So the -- the document itself does not need to be in the record. It's not admitted.

MR. THEXTON: 66 is the Dover Post article about acupuncture and you cut out testimony --

LAW JUDGE: I think I stopped at that point. I would prefer not to admit this unless, Mr. Recker, you can

convince me otherwise?

MR. RECKER: No, your honor.

LAW JUDGE: I'm not admitting --

MR. RECKER: I'm not going to fight about it.

LAW JUDGE: Thank you. 66 is not admitted.

MR. THEXTON: And I don't see that 67 is a big issue.

LAW JUDGE: Is a big issue meaning what, no objection?

MR. THEXTON: Yeah.

LAW JUDGE: Okay. The NCAHF webpage with its links is admitted.

(Exhibit 67 received into evidence)

LAW JUDGE: All right. The flyer -- referred to as a flyer or a membership application? I don't feel -- Mr. Recker, I don't feel as strongly about this one but my feeling is again that the purpose was achieved in testimony saying that he must have checked a box saying I support NCAHF beliefs and purposes. Do you need the document in evidence?

MR. THEXTON: I'm not going to object to it so --

LAW JUDGE: I don't get a chance to -- all right. It's admitted. Thank you. Thank you very much.

(Exhibit 68 received into evidence)

MR. THEXTON: And I -- likewise I'm not going to object to 69.

LAW JUDGE: All right. Physician -- physician statement on the --

MR. THEXTON: Yeah.

LAW JUDGE: -- White House commission. If I didn't say it 67, 68 and 69 are all admitted.

(Exhibit 69 received into evidence)

MR. THEXTON: So Exhibit 70 shows that Steven Barrett has set up this sort of a super search thing on the websites for which he is apparently the web master. And I don't see what that proves. It's already testified that he takes care of the National Council Against Health Fraud website as the web master and --

LAW JUDGE: I don't think this document is going to add anything to the testimony we had.

MR. RECKER: I believe Dr. Baratz indicated that he wasn't aware with any affiliation with Quack Watch. He didn't know they were linked on the web. I think this does show some contrary --

LAW JUDGE: It doesn't show that he knew it but it does show that they certainly are at some locations.

MR. RECKER: Exactly.

LAW JUDGE: I'll -- all right, I'll admit it. You convinced me.

(Exhibit 70 received into evidence)

MR. THEXTON: Now 71 is some pages from the Quack Watch website.

LAW JUDGE: Right. I'm a little more skeptical of this.

MR. THEXTON: Yeah, I -- this does not -- to the extent that it shows that there may be a link to the National Council's website, I think that it's repetitious. And to the rest of it I don't see that it's relevant at all.

MR. RECKER: That was foundational support for the Kadile complaint which is on -- linked on that homepage on that website.

MR. THEXTON: Well, I have to say I don't see where any relevance to that fact was shown either.

MR. RECKER: The fact that Dr. Baratz happens to be an advisor for all these website, an expert in this case.

MR. THEXTON: All these websites?

LAW JUDGE: Did --

MR. RECKER: I didn't want to bore you with all the --

MR. THEXTON: Apparently not.

LAW JUDGE: Did Dr. Baratz say that he had something to do with putting this complaint on --

MR. THEXTON: He did not. He noted that it was a public record in Wisconsin, which it is. And he was not asked if he played any roll in posting this.

LAW JUDGE: Why should this be in the record, Mr. Recker?

MR. RECKER: Well, I think it goes to -- it's one more piece of the puzzle showing Dr. Baratz' affiliation with all these organizations and how one particular physician's disciplinary charts end up in toto on a related website when he happens to be the expert in the case. His connection with all these organizations, etcetera.

MR. THEXTON: Well, that's guilt by innuendo if I've ever heard it so --

LAW JUDGE: Well, and my problem is I thought he -- I honestly thought he -- I honestly thought he said something -- he had something to do with putting it out there. I'm accepting your statement that that question and answer were not given and I wish it had been.

MR. RECKER: I don't recall how he responded to his knowledge as to whether or not it was on there.

LAW JUDGE: I don't remember him using the phrase it was a public record.

MR. RECKER: Right.

LAW JUDGE: But I felt there was more than that.

MR. RECKER: Which implied his awareness but I don't remember there were anymore direct questions about that.

LAW JUDGE: Okay. I -- what I would like to do is admit one page of number 72. I mean, all I need --

MR. RECKER: That's fine.

LAW JUDGE: -- is page number one. I don't need the whole complaint, okay, to show that it is there. I therefore also don't really want Exhibit number 71. I mean, I don't think the -- the contents of the Quack Watch website in itself are of any evidentiary value in this.

MR. RECKER: I believe I asked him if he was aware of all the links on that home page to his organization and he said he didn't study or he -- I don't know what he said, something about thousand of pages on the internet.

LAW JUDGE: I don't find this a helpful document beyond what the testimony has been. So I'd rather not admit 71 just because it's -- doesn't prove much of anything.

MR. RECKER: 72, first page.

LAW JUDGE: But only page -- and only page one of Exhibit 72.

(Exhibit 82 received into evidence)

MR. THEXTON: Page 73 is a bio of Dr. Baratz written by apparently Steven Barrett.

MR. RECKER: Everything about Dr. Baratz is written by somebody else.

MR. THEXTON: Well, that is neither --

MR. RECKER: In any event --

MR. THEXTON: -- fair nor --

MR. RECKER: It does --

MR. THEXTON: -- accurate --

MR. RECKER: -- it does show --

LAW JUDGE: Well, let's avoid having --

MR. RECKER: Yeah --

LAW JUDGE: I mean, we can be jovial about these things --

MR. RECKER: It's another version --

LAW JUDGE: -- but let's avoid arguing.

MR. RECKER: It's another version of biography from a related website as shown on the other exhibit.

MR. THEXTON: Again, that -- this is an attempt to do guilt by association.

MR. RECKER: And I did ask him a question about one of the listings after he asked me if there were any errors.

MR. THEXTON: It's not by him. It's not approved by him and therefore adopted by him. And that doesn't -- doesn't impeach him. It doesn't go to his credibility. It doesn't go to any of the issues --

MR. RECKER: Well, I think he --

MR. THEXTON: -- of the case.

MR. RECKER: I think it goes to -- in fact, he did say he was talking to Dr. Barrett. He helped set up the page.

MR. THEXTON: So what?

MR. RECKER: So he gave him the information that's on the page.

MR. THEXTON: That doesn't mean --

MR. RECKER: So to the extent that it's another way for Dr. Baratz to market himself as an expert in this world, it's another website link and it's another version of his credentials. I think that's relevant to his credibility. How many versions are out there?

LAW JUDGE: And what is it you find about this exhibit that impeaches him in --

MR. RECKER: Oh, I think just on the face of it when you read it and you compare it to the bios and website and the one he submitted we have different spins. Carney Hospital is no longer a Carney Hospital. It's a Sister of Charity, etcetera. I mean, there's just -- I didn't have to go through the question with him because they're facially apparent.

LAW JUDGE: He also did say that he and Dr. Barrett I believe are working on this I Health pilot. I got the impression that he was --

MR. RECKER: And as a linked website --

MR. THEXTON: He said that Dr. Barrett had asked him to help. I don't think that that makes him -- that makes Barrett an agent of Baratz such that this -- these -- this text can now be attributed to Dr. Baratz by adoption or agency or any other principals.

MR. RECKER: I'm not even sure I --

LAW JUDGE: Well --

MR. RECKER: -- can attribute his CV to him, Art?

MR. THEXTON: Your honor?

LAW JUDGE: Okay, hold up. You know, if we're able to do it in a sort of -- with a certain tone we can do it. If it's not going to work then I need to make sure you

don't address each other and get off the track. I'm -- I'm going to let the document in to support his statement -- I mean his statements of -- that it was based on his CV but not written by him. It's -- that's the ruling.

(Exhibit 73 received into evidence)

LAW JUDGE: You want that over objection, Mr. Thexton?

MR. THEXTON: Yes.

LAW JUDGE: Okay. How about ratbags.com, Exhibit number 74?

MR. RECKER: He talked about it.

LAW JUDGE: Do you object?

MR. THEXTON: I -- I do.

LAW JUDGE: This is not being let in.

MR. RECKER: That's what I meant, your honor. He talked about it. I don't care if it's not in.

LAW JUDGE: Thank you.

MR. THEXTON: All right. Now we are at the --

LAW JUDGE: Okay, the five -- four cases. And you are absolutely right in at least your starting position, Mr. Thexton, that these do not seem to be directly related to Dr. Baratz as a party or as a witness. Now, the question is whether there's enough association I guess through NCAHF that there's something probative here.

MR. RECKER: Well, he testified he has a duty to carry forth the policies of the board of directors. Whether or not he was on the board or whatever he is the president. These cases give direct evidence on the policies of the board of directors, of the policies of NCAHF, which he has a duty to carry out. I think it's relevant to his connection with that organization, his perspective on the issues and his potential bias and credibility.

LAW JUDGE: Well, his testimony was that all four of these were begun before he was president so he --

MR. THEXTON: Well, excuse me, your honor but I -- lest there be a misstatement here only two of these cases even name the National Council as a party.

LAW JUDGE: Okay.

MR. THEXTON: The other two --

LAW JUDGE: Are varied.

MR. THEXTON: -- are between other people entirely.

MR. RECKER: Your honor, if it will help you within a matter of days I can produce a deposition from an office of NCAHF who testified under oath that Dr. Barrett and Dr. Baratz authorized and promoted the litigation on

those cases.

MR. THEXTON: All four of them?

LAW JUDGE: All four of them?

MR. THEXTON: Each --

MR. RECKER: Two --

MR. THEXTON: -- and everyone one of them?

MR. RECKER: Just two or three involving NCAHF.

LAW JUDGE: Okay, well let's separate them then.

Let's look first then at what I think are probably the easier calls. Mr. Recker, 75 and 77 the plaintiff is Dr. Barrett with or without someone else. Doctor --

MR. RECKER: 75, 77. Okay, your honor.

LAW JUDGE: I -- you'll have to convince me that those two should be admitted as evidence against Dr. Baratz. Do you want to try or do you want to just accept what I'm suggesting as my ruling here?

MR. RECKER: I'm going to accept your suggestion.

LAW JUDGE: Thank you. 75 and 77 -- let me just double check those. Yes, 75 and 77 are not admitted. Okay, with -- given the connection or given the fact that the NCAHF is the plaintiff in the other two cases are they -- are the rulings of any probative value on Dr. Baratz -- on the policies of NCAHF? They probably are. And Dr. Baratz' personal association with them only is he is -- it's imputed that he's bound to uphold the policies. So what the -- what these two documents show me is that NCAHF's policies are. Is that correct?

WITNESS: Correct.

LAW JUDGE: Is that an issue? I mean, I -- I mean, is that in question?

WITNESS: I'm sorry?

LAW JUDGE: Is that in question? What do either of these relate to chelation?

WITNESS: The -- the court decisions talk about the organization, it's viewpoints on alternative medicine, etcetera. And it's also discussed in the holding so I think it's very relevant.

LAW JUDGE: Okay, here let me back then to whether we're talking about CAM as it's been appreciated in general or whether there's -- is it relevant enough to say that NCAHF opposes CAM and therefore Dr. Baratz opposes CM and therefore he's biased against chelation therapy? I mean that's -- I more or less --

MR. RECKER: Well, yes, it's not a video but it certainly does raise the inferences.

LAW JUDGE: And of course ultimately a question is

-- is a reasoned opposition to something a bias?

MR. RECKER: And homeopathy isn't disbursed with this case.

LAW JUDGE: Thank you for reminding me. And as soon as you said the word I remember. Homeopathy is at least a -- a portion of the complaint. One of these two talk about homeopathy --

MR. THEXTON: The complaint, your honor -- the defense maybe but not the complaint.

LAW JUDGE: Isn't --

MR. RECKER: Well, I think it's part of the some of the criticisms you're -- Dr. Baratz has leveled in his --

MR. THEXTON: The word -- the word for homeopathy never appears.

MR. RECKER: No.

MR. THEXTON: And we --

MR. RECKER: He doesn't -- he may not use the word.

MR. THEXTON: Or in respondent's records.

MR. RECKER: But he uses -- he uses the lingo -- the lingo, the jargon. Don't ask me where in 15,000 pages he says that. I don't know.

LAW JUDGE: Well, I know --

MR. RECKER: I do recall seeing it.

LAW JUDGE: I know -- excuse me. We shouldn't overlap too much here. I do remember that many, many months ago we did have fights over whether Dr. Baratz was going to be allowed to testify as an expert on homeopathy.

MR. RECKER: Thank you.

LAW JUDGE: And I'm trying to remember why.

MR. RECKER: Thank you, that's good enough.

LAW JUDGE: And I'm trying to remember how that came up, if that was just another way of getting at his supposed bias against all complimentary and alternative medicines or whether that actually was an issue in this case. Secondly you're saying now it is -- it is not in the records? It is not an issue in the complaint, homeopathy

MR. THEXTON: The respondent has never claimed in the -- in the cases that we are examining to have been practicing homeopathy and certainly that word never appears in his chart.

LAW JUDGE: Can you remember why we were arguing over Dr. Baratz' qualifications.

MR. THEXTON: Yes. Yes, because some of the things that Dr. Kadile was doing, particularly with the boy, were homeopathic like -- even though not given that label

and not done according to the principles and precepts of homeopathy.

LAW JUDGE: Okay, so although it does not appear per se in the complaint it is -- somehow the issue may be relevant?

MR. THEXTON: Well, I have never thought so.

LAW JUDGE: Homeopathic treatment -- homeopathic treatment?

MR. THEXTON: I have never thought so but Mr. Seely did raise that as a defense and -- and --

LAW JUDGE: Okay. All right. That gets me back to -- I mean, this is an extraordinarily long string of inferences, of course. But what we also have is a court commenting on what the NCAH's position -- NCAHF's position is which may be accurate or not. It's not that courts are never inaccurate but --

MR. THEXTON: Or was in that case at least.

LAW JUDGE: Right. I'm -- I will split the difference here. I -- frankly I think that these court decisions are going to be of extremely limited value in telling me whether Dr. Baratz opinion on homeopathy or chelation is valid. But I will let them in. The two others, 76 and 78.

(Exhibits 76 and 78 received into evidence)

MR. THEXTON: That concludes or discussion of the exhibits. My records show that the exhibits that are as yet unresolved are 60, the NIH news release and other materials on tact study and 37, the Harvard Health memos. And that others -- and those have been apparently reserved. And then all others are determined.

LAW JUDGE: Well, thank you. I have written down that I've went ahead and determined those. But --

MR. THEXTON: Ah, well, then let me correct my records.

LAW JUDGE: But let me see what the respondent has.

MR. RECKER: No, you did say 60 hold off until we get to the issues.

LAW JUDGE: Okay, I'm sorry.

MS. HUBBARD: Did you say 37 --

LAW JUDGE: 37 was the disciplinary memos.

MR. THEXTON: Yes.

MR. RECKER: 37 you -- you denied over objection.

LAW JUDGE: That is what I have. Okay.

MR. RECKER: But I fail to --

LAW JUDGE: I mean, but I deny this -- it's not

admitted. --

MR. RECKER: Okay.

LAW JUDGE: -- into evidence, right.

MR. THEXTON: Yeah, refused. Very good. I will correct my records.

LAW JUDGE: Okay. And where are we on 60 then.

MR. THEXTON: Reserved.

MR. RECKER: It's the NIH Study.

MR. THEXTON: You said -- and you did. I remember that. You said --

LAW JUDGE: The actual proposal.

MR. THEXTON: The proposal.

MR. RECKER: The news release about that.

MR. THEXTON: Well, and the protocol and the FAQ.

LAW JUDGE: Okay. Do either of you have the energy to argue this to me? I'd like to --

MR. THEXTON: Your decision was that it should wait an appropriate witness before being introduced.

LAW JUDGE: That's right.

MR. RECKER: Now --

LAW JUDGE: Or at least -- at least Dr. Baratz' on direct which we're not going to have so --

MR. RECKER: But -- if you recall Dr. Baratz did poopoo that study, the release, it's the wrong protocols, etcetera, etcetera. So --

MR. THEXTON: He said that it would not actually answer the question that it was proposed to answer. But --

LAW JUDGE: Okay, well we will no longer -- you wanted to see if Dr. Chapel would be an appropriate one to comment on it. Or you at least mentioned, his name, Mr. Thexton?

MR. THEXTON: Well, I -- that is their named expert in the area chelation therapy. So the -- the thought does occur.

LAW JUDGE: Okay, should I admit it at this point based on the testimony of Dr. Baratz and what he's said about this?

MR. RECKER: It would be nice for housekeeping if we got it in now and didn't have to worry about it later.

LAW JUDGE: I confess the same thought. And I will. I'm assuming at some point or other in this proceeding that this is probably going to come in.

MR. RECKER: Correct.

LAW JUDGE: So I'll do it now and take care of it. Exhibit 60 is admitted.

(Exhibit 60 received into evidence)

LAW JUDGE: That seems to take care of it. Let me just have ten more seconds of your time. I think we are in fact done. Anything else, Mr. Thexton?

MR. THEXTON: I have nothing further at this time.

LAW JUDGE: Mr. Recker? Anyone else? Mr. Roder.

MR. RODER: I'm just curious to what or when we would be likely to receive the written record?

MR. THEXTON: Yeah, I wondered that myself.

LAW JUDGE: Receive what? I'm sorry.

MR. RECKER: I wonder why.

MR. RODER: I understood that there was going to be some additional --

MR. RECKER: I wonder why.

MR. RODER: -- written direct from Dr. Baratz?

LAW JUDGE: Oh, the additional direct testimony.

MR. RODER: And I don't think we set a deadline.

MR. RECKER: Do we pin Mr. Thexton to the wall by giving a date certain? Or do we discuss that later.

LAW JUDGE: I think we should discuss that at the end of the week.

MR. RECKER: All right.

LAW JUDGE: We may not need it.

MR. RECKER: All right.

LAW JUDGE: I mean, I --

MR. RECKER: Fair --

LAW JUDGE: Who knows? There's at least a ten percent chance that we might settle this. Maybe -- maybe only a ten percent chance. If so we wouldn't need to answer that question. Let's all strenuously try to remember that that's something we do not to ask if we don't get any farther.

MR. THEXTON: Well, clearly scheduling is something we can --

LAW JUDGE: Scheduling -- you're right.

MR. THEXTON: So --

LAW JUDGE: So that would be part of scheduling. So we have no answer to that one at the moment? We seem to be completed with this phase of the testimony. We will adjourn the hearing with parties, including Dr. Kadile if you're available -- should stay around now after lunch for beginning discussion of whether there are any opportunities for settling the case. The public will not be allowed in on those discussions. All right? We'll stop the record. Thank you very much all.

CERTIFICATION

I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.

Frank J. Wiener  
August 10, 2003