THOMAS JOSEPH

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June 22, 2015

Larry Novins, Esq., Board Member
Professional Responsibility Board
c/o Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0703

Dear Attorney Novins:

Thank you for your letter dated May 18, 2015. I really appreciate your confirming what many already recognize, which is that the State of Vermont lags the nation in having an attorney grievance committee or oversight body that its citizens and state can be confident in or proud of. In the current matter, the only lasting impression of your review is that you have shown no more credibility or integrity than Attorney Elizabeth R. Wohl of Downs Rachlin Martin PLLC. By denying the obvious, and overlooking plain evidence and law to the contrary, you are now participating in a cover up of attorney misconduct that any reasonable person, with a comparable education, would see completely differently.

Additional reviews of this very serious matter are already underway in the State of Tennessee where the damning allegations against Attorney Matthew Curley mirror those against Attorney Elizabeth R. Wohl though in Vermont, Ms. Wohl has been given a free pass for her well evidenced misconduct. In addition, a review by the federal Court system is also likely and their outcomes will be contrasted with the historical record of your now recorded complicity.

The Vermont Professional Responsibility Board "PRB" exhibits characteristics that illustrate that it is not "independent" or impartial. Indeed, the PRB has shown everyone by their handling of this matter that they cannot be relied upon to conduct an honest or credible review of anything. When the Chair and Vice Chair either recuse themselves voluntarily, or have to be asked to step aside because of possible conflicts, demonstrates that the reviewers of attorney misconduct allegations in Vermont are far too close to the work that is coming before them. Indeed, they should not be investigating their own colleagues they encounter in their daily private practice of law whether in state government or in private practice.

Moreover, when no cross checks or subsequent layers of review exist prior to a decision being made at the Vermont PRB, which differs significantly from what other states are doing including in the State of Tennessee where Chief Sandy Garrett of the Board of Professional Responsibility sets a very high standard. For example, in Tennessee, Chief Garrett ensures that multiple layers of review exist at every stage of their investigative process by a different group of eyes from the prior reviewers which ensures the integrity of the outcome whereas here in Vermont no cross checks exist which demonstrates why the Vermont Professional Responsibility Program is flawed from the outset ensuring that any decision or outcome is tarnished before it even gets underway.

My submission of a formal complaint against Attorney Elizabeth R. Wohl to the VT PRB **was not** to seek validation from you or the PRB of the merits of the allegations, as the evidence speaks for itself, but to ensure that the historical record reflects the position of all parties.

In your response, you state, "The Court permitted you and your counsel to correct infirmities it saw in the Complaint." (Emphasis mine). Mr. Novins, you are fundamentally mistaken if you think that I had the ability to correct the "infirmities" in the litigation as I could not appear *pro se* nor could I file anything on my own behalf in federal Court. Despite the Retreat's defense attorney's deployment of a "cluster bomb" in their Motion to Dismiss, my desire to file an Amended Complaint was never in question, but when you execute attorney-client agreements with FCA *qui tam* counsel you cede effective control over the litigation to your attorney's. They consult you as the relator or plaintiff, but, **they do not** have to follow your direction as it relates to the litigation. **I did not have an opportunity to file an Amended Complaint because my attorneys made that decision for me by their unwillingness to prepare an Amended Complaint. In some respects they were right: some of the things Judge Sessions' was demanding in his Opinion would not have identified or verified the fraud because his understanding of the case was fatally flawed by the purposeful attorney misconduct now under formal investigation in the State of Tennessee.** At bottom, my attorneys out of an abundance of caution and with their own professional obligations very close in mind made the decision for me to stand down so as to not risk putting forward anything in an Amended Complaint that wasn't consistent with what Judge Sessions' was demanding in his Opinion. Indeed, my attorney's honored their professional obligations before the Court while Attorney Elizabeth R. Wohl and Attorney Matthew M. Curley defecated on theirs.

Equally important, is that an Amended Complaint would have required a much deeper understanding of the Retreat's transactional behavior than what my second set of attorneys possessed. The architect of the case was Attorney Michael Lesser of Boston based Thornton & Naumes LLP and it was Attorney Lesser who suggested I had given the government a "turnkey" case as the ten years' worth of computer data I gave the state and federal governments doesn't lie and includes data to identify all losses suffered by all payers including substantial sums to private payers including Blue Cross/Blue Shield of Vermont and MVP Healthcare.

Indeed, despite their best effort at the time, my second set of attorney's Rich Cassidy of Hoff Curtis P.C. in Burlington and Boston based Attorney Timothy Cornell of Gardner Cornell P.C. were hindered as they did not have the benefit of time to learn the Retreat's transactional behavior with the depth that Attorney Michael Lesser and his team did at Thornton & Naumes LLP as active litigation did not allow it. In its simplest form, the Brattleboro Retreat was using a few keystrokes to erase credits due anyone. Often these credits were generated by double billing where sometimes the other party billed never knew that another payer had paid so they had no need to ask for a refund. In other cases a primary or secondary payer inadvertently paid the reverse of what they should have resulting in an overpayment. The Retreat would never voluntarily return these credits and because the majority of these payers had no idea they were owed a refund, the Retreat was able to easily enter a few keystrokes to ensure that those credits never

were voluntarily returned. In the majority of cases, the Retreat staff simply entered a couple of keystrokes in each instance to ensure any credit they wanted disappeared.

As you have already demonstrated that you have no clue about the realities of FCA *qui tam* fraud litigation, I will share another reality with you. Plaintiffs' are greatly disadvantaged when they have to identify new counsel midway into a federal Court campaign or in most *qui tam* cases when the government signals its intention to decline intervention as most *qui tam* law firms rely on the government intervening to foot the majority of costs associated with the litigation. In the vast majority of cases, plaintiff's such as myself have to re-sell the case all over again to new counsel while your federal lawsuit remains active on the federal docket. Bringing new attorneys up to speed on the Retreat's transactional behavior - - in the middle of litigation - - was no easy task as the Retreat's billing system AVATAR client ledgers are not quickly absorbed though the underlying import of the Retreat's transactional behavior was simple: they used a few keystrokes to erase a great deal of money owed to a great number of people. Also contributing to the difficulties of preparing an Amended Complaint was the Retreat's attorney's use of a "cluster bomb" which dispersed any semblance of order to the facts at hand and replaced them with misrepresentations and repeated lies of what was actually written in the complaint.

The record should also reflect that Judge William K. Sessions III's handling of the litigation was also troubling as the failure of the Court to see the devious misconduct was clear. Judge Sessions fell hook, line, and sinker for the misrepresentations and lies when the federal Complaint content stated more often than not the opposite of what Attorney Wohl deviously put forth in her legal pleadings. The very "deficiencies" you state the Court found, are the same deficiencies that don't exist!

Simply put, had Ms. Wohl not repeatedly put forth misinformation when citing what my attorneys actually asserted in the federal complaint, the Judge would have no reason to be confused or render an Opinion in the way in which he did. I have proven beyond any doubt that what Attorney Wohl repeatedly advanced was not representative of what she claimed my attorneys asserted on my behalf in the federal complaint. Moreover, Attorney Wohl was also not representing anything close to "good faith" arguments of law as the Vermont Rules of Professional Conduct demand in her pleadings before the Court - - further evidence of misconduct.

Your characterization of this very serious matter as representing at best "possible inconsistencies in response to a long, complicated document" despite the overwhelming evidence shows everyone that your ethical and moral compass is equally adrift. By overlooking clear evidence to the contrary, including Attorney Wohl's failure to notify the Court of misstatements of fact or law, once she took possession of the evidence given the government, demonstrates your willful complicity in the continuing miscarriage of justice. There is no Vermont pride to be had by anyone who is associated with the Vermont Professional Responsibility Program as it has proven it is no longer credible and likely needs substantial legislative reform.

Sincerely,

Thomas Joseph