THOMAS JOSEPH

P.O. BOX 2111
BRATTLEBORO, VERMONT 05303

September 17, 2015

Attorney Betsy Garber
Disciplinary Counsel
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

RE: File No: 37705-5-KB
Respondent: Matthew Michael Curley, #18613

Counsel for Defendant, The Brattleboro Retreat in the matter of
United States ex. rel. Thomas Joseph v. The Brattleboro Retreat
United States District Court, District of Vermont, Case No: 2:13-cv-55wks

Dear Attorney Garber:

As you are aware, I represent myself in the above captioned matter. In connection with our recent telephone conversation(s), I am submitting new information, and documents to be considered as part of the ongoing investigation.

Please note, this particular submission to the TN PRB was prepared with the knowledge that it would be shared with and reviewed by law enforcement, including both the State of Vermont Attorney General's Office as well as the United States Attorney's Office in Burlington, Vermont. Additionally, this submission is intended to give the TN PRB a broader picture of the increasing significance of the matter now before it. In many ways, the State of Vermont is looking to its big sister, the State of Tennessee to recalibrate its ethical compass. Simply put, Vermont lags the nation in transparency and in some measure are at greater risk because of its small size and population. The reality is that virtually all the key players in this matter including: lawyers, prosecutors, law firms, judges, elected officials, media, etc., all know each other in Vermont so it's doubly difficult to find folks with a fresh and impartial view of anything.

The lack of transparency in Vermont can be supported by the Center for Public Integrity report card for the State of Vermont where the state received an overall rating of D+ and the URL link can be found here: http://www.stateintegrity.org/vermont. It's also increasingly clear that our Vermont Professional Responsibility Board ("VT PRB") needs legislative reform as their rationale for not opening a formal file and review of attorney misconduct allegations involving local counsel Attorney Elizabeth R. Wohl deeply troubling. Downs, Rachlin Martin, PLLC casts a big

shadow in Vermont and not all of its activities are serving Vermont's best interests or that of justice very well.

To give the TN PRB perspective and some insight into the VT PRB and Vermont's many ethical challenges, a law school graduate in recent time, Attorney Andrew Delaney of Barre, Vermont shared the following in an e-mail exchange with me over the summer of 2015:

"I have to agree with much of what you say. It seems that on the one hand, the PRB is going after relatively innocent trust-account violations and on the other hand, sticking its collective head in the sand when it comes to serious ethical transgressions."

THE PROFESSIONAL RESPONSIBILITY BOARD OF THE SUPREME COURT OF TENNESSEE ("TN PRB") HAS A BIGGER BURDEN GIVEN THAT THE STATE OF VERMONT PROFESSIONAL RESPONSIBILITY BOARD ("VT PRB") TOSSED THE COMPLAINT & APPEAL OF ATTORNEY MISCONDUCT AGAINST CO-CONSPIRATOR ATTORNEY ELIZABETH R. WOHL OF DOWNS, RACHLIN MARTIN, PLLC.

The State of Vermont has a serious ethics problem which is now, in my view, interfering in and derailing the administration of justice. Vermont has an abundance of unregulated attorney misconduct in Vermont largely fueled by a weak disciplinary program so attorneys often exhibit ethical lapses though since no discernable policing exists for these transgressions, attorney misconduct in Vermont often goes unpunished. As a result, the TN PRB likely controls the outcome as to whether both Attorney Matthew M. Curley and his co-conspirator Attorney Elizabeth R. Wohl are held accountable for their professional misconduct in their respective states.

Additional information on the VT PRB handling of the Complaint and Appeal of co-conspirator Attorney Elizabeth R. Wohl can be found here:

http://www.brattlebororetreat.info/attorney-misconduct--wohl.html

By the TN PRB finding that Attorney Matthew M. Curley has committed serious violations of his professional obligations and engaged in ethical misconduct based on the increasing body of evidence, the TN PRB will immediately become a catalyst for Vermont to undertake an overdue and very much needed review and reform of our attorney misconduct regulating body, the Vermont Professional Responsibility Board ("VT PRB"). An affirmative finding of ethical misconduct by Attorney Matthew M. Curley in the State of Tennessee will demonstrate to Vermonters and our elected leaders that the VT PRB needs legislative reform for it doesn't have the capacity to carefully and impartially review this matter as it relates to co-conspirator Attorney Elizabeth R. Wohl given the reach of Downs, Rachlin Martin, PLLC, and the collective work of their attorneys many of whom are not representing the state's best interests nor that of justice.

By enforcing the Rules of Professional Conduct ("RPC") in the State of Tennessee, the TN PRB will send a strong message to all of America that Attorney Matthew M. Curley's brand of attorney misconduct has no place in American legal practice. The purposefully knowing state of mind of participating in a fraud and somehow thinking you're going to get away with it should never pollute our justice system again as it did with Attorney Matthew M. Curley and his co-conspirator Attorney Elizabeth R. Wohl.

By kicking Attorney Matthew M. Curley's license to practice law to the Tennessee state line, the TN PRB will be able to show they not only carried out their duty by honoring all Tennesseans pride in the high ethical standards they demand of their practicing attorneys but draw a much needed line in the sand to unwelcome attorney misconduct more broadly by attorneys all across the country. Indeed, the TN PRB has within its grasp the ability to make its own huge contribution to the public good by summoning the courage to hold Attorney Matthew M. Curley responsible for his participation in the fraud that has now derailed justice.

By applying the full statutory authority of the TN PRB and judiciously applying needed discipline to Attorney Matthew M. Curley, the TN PRB will be upholding the high ethical standards representative of all Tennesseans, and in doing so, will be helping to bring needed focus to Vermont and its unregulated attorney misconduct problem. By carrying out needed discipline, the TN PRB and the State of Tennessee will show how it is leading the nation and setting a very high ethical standard which Vermont and other states can now try to catch up to.

Today's web bonus » Suspect in fatal shooting of Vermont man in custody reformer.com

Let's Grow Kids recognizes Maskell

Patriots welcome BF athletes on Sept. 3

British admit Big Ben's bongs not on time

PERKINS Home & Building Center

Brattleboro Reformer

Wednesday, August 26, 2015 reformer.com

STATE PROBE

Retreat being investigated for fraud

Attorney general following up on complaints of alleged Medicaid fraud

By Dave Gram
The Associated Press

BRATTLEBORO » The Vermont attorney general's office is conducting a criminal investigation into the Brattleboro Retreat following a whistleblower's complaints about alleged Medicaid fraud at the private psychiatric hospital, The Associated Press has learned.

Attorney General William Sorrell acknowledged that his office was investigating, and his comments coupled with documents provided to the AP in response to public records requests show the probe has gone beyond the concerns first raised by former hospital employee Thomas Joseph.

"The investigation we are conducting is not narrow in scope," Sorrell said in an interview last week.

The Brattleboro Retreat, founded in 1834, is a major player in Vermont's mental health and addiction recovery system, with more than 3,500 inpatient admissions last year, and slightly more served in outpatient programs. Its 2014 annual report said about a quarter of its $65 million annual budget came from state Medicaid programs.

RETREAT » PAGE 5

The Vermont Attorney General's Office is investigating allegations of fraud at the Brattleboro Retreat filed by a former accountant at the mental health facility in southern Vermont.

Additional information related to the hospitals fraud can be found in the news article that ran in The Commons, Windham County's Independent Newspaper on Page A3 here:

http://www.commonsnews.org/site/site05/story.php?articleno=12811&page=1#.Veh5l_lViko

CRIMINAL INVESTIGATION OF DEFENDANT THE BRATTLEBORO RETREAT FOR MEDICAID FRAUD IS NOW UNDERWAY BY THE STATE OF VERMONT DIVISION OF VERMONT HEALTH ACCESS (DVHA) AND THE STATE OF VERMONT ATTORNEY GENERAL'S OFFICE MEDICAID FRAUD UNIT (MFRAU)

In a stunning turn of events, the historic psychiatric hospital, The Brattleboro Retreat, is now the target of a criminal investigation of "broad scope" as it relates to Medicaid fraud.

As it became obvious to me that my former attorneys were refusing to compile an Amended Complaint despite the overwhelming availability of evidence during formal litigation, I made a trip to Montpelier, our capital, unbeknownst to anyone including my own former attorney's and delivered to Vermont State Auditor Douglas Hoffer a USB drive which contained all evidence given the government and I asked Vermont State Auditor Douglas Hoffer in his official capacity to review the evidence as it related to the allegations of Medicaid fraud.

State Auditor Douglas Hoffer was my "Plan B" as I was forced to stand down in federal Court and not file an Amended Complaint by attorneys who were in effective control of the litigation but who did not possess the requisite understanding of the core allegations or transactional behavior necessary to prepare an Amended Complaint. My former attorneys also failed to see the fraud before the Court and didn't take any action to notify the Court as is required. The Brattleboro Retreat's attorney's brazen attempt to highjack justice with their misrepresentations and lies contained in their fraud-laden legal pleadings before the Court never considered the will of the people nor their tenacious efforts to see that justice be rendered.

In addition, I also provided Vermont State Auditor Douglas Hoffer's office with numerous emails that contained post filing supplemental analysis of the evidence prepared by myself and sent by my former Attorney Michael A. Lesser of Thornton & Naumes LLP directly to Assistant United States Attorney Nikolas "Kolo" Kerest of the U.S. Attorney's Office in Burlington, Vermont during the government's drive-thru investigation during the national rollback on enforcement as a result of sequestration in Washington, D.C. and the government's own abbreviated investigation and seal period. For more information on the government's wholesale retreat on fraud enforcement nationally, please visit URL here:

http://www.publicintegrity.org/2013/07/01/12909/medicare-fraud-outrunning-enforcement-efforts

Even during formal litigation and after I realized my attorneys were doing nothing proactively to prepare an Amended Complaint, I was continuing to analyze computer data and prepared additional extensive spreadsheet analysis of State of Vermont losses and sent them directly to Attorney Ed Baker, former Assistant Attorney General for the State of Vermont and former Director of the Medicaid Fraud Unit (MFRAU) while also copying State of Vermont Auditor Douglas Hoffer on all communications. The fact that I was facing a technical defeat in federal Court for purported pleading deficiencies while still churning out new and detailed analysis of State of Vermont losses during the summer of 2014 (when I was unemployed and flat broke) was extraordinary.

Moreover, near the end of litigation, my former attorneys negotiated an agreement with the hospital that essentially required me to relinquish all evidence in my possession. I was forced to resolve employment claims (NOTE: I never accepted nor benefited so much as a dime from the Retreat) for being terminated as a result of discovering the wholesale fraud as the historic hospital made it clear they would pursue counter claims or sue me for my taking the very "confidential" information required to prove the underlying massive fraud. I told the U.S. Attorney's Office around the time the agreement was finalized via e-mail that I simply could not accept any financial benefit knowing any funds would be co-mingled with those stolen and certainly not with the backdrop and knowledge that hundred(s) of the hospital's very patients, the most disadvantaged of our society, were denied refunds spanning a decade or more. Instead, I walked away without taking a dime knowing my integrity and conscience were intact. I simply could not accept any financial benefit until such time the historic Brattleboro Retreat was held accountable under the law for their massive and ghastly fraud which included denying their own patients the return of their money for more than a decade.

As the TN PRB surely knows, fraudsters often pursue counter claims and litigation to go after the whistleblower/relator for taking the very information needed to prove the fraud and our "government" allows it to happen. The only reason for The Brattleboro Retreat to pursue litigation against me now or ever is because they fear the truth. Often whistleblowers/relators, who fulfill their obligations to their country by doing the right thing and who endure very real hardships in their pursuit of justice, often are forced into forfeiting *on paper* any future potential recovery or relator share of federal funds when resolving employment claims. Fraudsters use a mutual release of claims as ransom so that you have no choice but to either forfeit the whistleblower or relator share of any state or federal recovery in exchange for not being sued for doing something heroic. For the record, I was not motivated by any financial reward and the historical record now shows that when I did have the opportunity to financially benefit, I chose to not take a dime.

My former attorneys never bothered to share that the legalese contained in the 10 page mutual release of claims document with the hospital included possible forfeiture of any future whistleblower or relator share of federal funds should the state or federal government pursue enforcement action (using my evidence and computer data) as is now underway with the state

criminal investigation and recover money on behalf of the taxpayers of the United States. As the historical record now shows, I did not have the best legal representation.

All things considered, I feel that after giving up nearly 5 years of my life, going far above what most would do in the interests of justice and enduring real hardships, I believe the state and federal governments have an obligation to honor my herculean efforts and proactively ensure any resolution includes a relator or whistleblower share as the law demands.

LAYING THE FOUNDATION FOR RECOVERY OF VERMONT'S MILLIONS: GETTING THE VERMONT FALSE CLAIMS ACT INTO LAW WITH RETROACTIVE ENFORCEMENT PROVISIONS

The Vermont False Claims Act was nowhere on the legislative or political radar until I filed the historic FCA *qui tam* in April 2013 as Vermont was one of only 20 states that did not have a state False Claims Act prior to May 2015.

After formal litigation ended in November 2014 and at the time when these proceedings commenced, I was also beginning to engage the legislature as it related to the need for a Vermont False Claims Act. In numerous meetings and engagements of state and elected officials, I lobbied hard for the Vermont False Claims Act and was determined to put my stamp on it with provisions that directly related to the State of Vermont's ability to recover many millions owed to it by The Brattleboro Retreat.

In my emotional testimony before a packed State of Vermont House Judiciary Committee earlier this year for H.120 or the Vermont False Claims Act, I was the one who forcibly put retroactive enforcement provisions on the table (because I knew that the State of Vermont had suffered millions in losses going back at least ten years) but went further and advocated strongly for the House Judiciary Committee to incorporate specific language to deter fraudsters like The Brattleboro Retreat and their dishonest attorneys in both the State of Vermont and the State of Tennessee from having the ability to pursue counter claims or from suing those who had the courage to stand up and fight for the State of Vermont and our troubled country.

In my testimony before the Senate Judiciary Committee, I hammered it home by encouraging the Senate Judiciary Committee to keep retroactive enforcement provisions in the proposed Act and the Senate Judiciary Committee did not disappoint as they voted unanimously to maintain the retroactive provisions and send the legislation onto the full Vermont Senate where it passed and became law.

And again, it was Vermont's biggest law firm, Downs Rachlin Martin PLLC, the employer of many in this high profile matter who had another attorney, John Hollar, testify as a paid lobbyist on the payroll of Downs Rachlin Martin PLLC to advocate/lobby *against retroactive enforcement provisions in the Vermont False Claims Act*. Fortunately, the Vermont False Claims Act became law in May 2015 with retroactive enforcement provisions taking effect in March 2016. What I did not know at the time of Attorney Hollar's testimony was that he was also Mayor Hollar, and

Mayor of our capital, Montpelier(!). Surely, Mayor Hollar knew that should his lobbying fail and retroactive enforcement prevail that his historic client would still be on the hook for the millions they have embezzled?

Only in Vermont would the Mayor of our capital have the audacity to sit in the witness chair and argue *against* the State of Vermont's ability to recover money from fraud retroactively (regardless of his rationale). Fortunately, I showed up unannounced the very morning the Senate Judiciary Committee voted on the Vermont False Claims Act and provided last minute dueling testimony to Mayor Hollar's prior testimony where I told the Senate Judiciary Committee that failure to provide for retroactive enforcement provisions would be the equivalent to granting amnesty to anyone who had embezzled state resources prior to enactment. The people won.

Many months after the agreement with the hospital had been executed, Vermont State Auditor Douglas Hoffer returned the USB drive to me after transferring all data to his office computer systems. By retaking possession of the USB drive, I have essentially retaken possession of all evidence given the government and surrendered to Downs Rachlin Martin in October 2014 all of which now represents a public disclosure. Additionally, there was evidence given the government that suggested the Retreat may have tried to make changes to historical records while I was still employed. Therefore, legitimate concern exists sufficient to demonstrate the need to preserve the information and data that evidences the Retreat has stolen huge sums from virtually everyone they have done business with.

STUNNING NEW ADMISSIONS CONFIRM DEFENDANT, THE BRATTLEBORO RETREAT IS LIABLE FOR REVERSE FALSE CLAIMS AND FALSIFICATION OF EVERY CMS-838 AS WELL AS OTHER REPORTING OBLIGATIONS INCLUDING HOSPITAL COST REPORT(S) DEMANDED BY THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (PPACA) (42 U.S.C. § 1320a-7k(d))

> *"Section 6402 of the Affordable Care Act (42 U.S.C. § 1320a-7k(d)) creates liability under the Federal False Claims Act for persons who fail to disclose and refund Medicare or Medicaid overpayments within the later of 60 days after the date the overpayment is identified or the date the next applicable cost report is due."*

As this section of the Affordable Care Act was self-implementing, therefore, all providers had an obligation to report or refund any overpayments received within the timeframe indicated above.

The PPACA was clear that an overpayment retained after the deadline for reporting and returning an overpayment is considered an obligation, 31 U.S.C. § 3729(b)(3), for purposes of "reverse" false claims liability under the FCA. Congress broadly defined "overpayment" to mean "any funds that a person receives or retains under" Medicare or Medicaid to which the person, "after applicable reconciliation, is not entitled." 42 U.S.C. § 1320a-7k(d)(4)(B). (See Exhibit B).

Nevertheless, after the enactment of PPACA, all health care providers receiving Medicare or Medicaid funds are required to "report" and "refund" any overpayments within 60-days from the date the overpayment is "identified" or within 60-days after the due date of any applicable cost report. In the Retreat's case you could use the date the payment was posted as the date the hospital first knew of the overpayment or at the latest 60 days from the entry of the reversal transaction that wiped the credit balance off its books and into their pockets. As many years have passed, it is obvious The Brattleboro Retreat not only has an incurred an obligation for reverse false claims act liability but is also now guilty of fraud. (See Exhibit B).

In the hospital's formal response to a recent inquiry by the State of Vermont Division of Vermont Health Access (DVHA), the historic psychiatric hospital remitted a check, signed by one of the fraudster's herself, Controller Lisa Dixon who remains on the payroll(!) as she used Retreat Check No. #100241 in the amount of $1,733.97 to remit just one of multiple overpayment amounts identified. Unfortunately, The Brattleboro Retreat's check was a little short. (See Exhibit C).

One of the two patient examples that DVHA inquired relates to one patient in particular who was referred to as patient "A.D." where extensive analysis was done previously and given to both state and federal law enforcement officials as well as Vermont State Auditor Douglas Hoffer. As co-conspirators Attorney Matthew M. Curley and Attorney Elizabeth R. Wohl had possession of this evidence for a period of time prior to Final Judgment being entered, both attorneys had an affirmative duty and obligation under the Rules of Professional Conduct ("RPC") in their respective states to take appropriate action and notify the Court of the fraud accordingly. They did nothing.

Attorney Elizabeth R. Wohl and co-conspirator Attorney Matthew M. Curley with the assistance of Attorney Craig Miscovich are now seeking to advance that this conceded instance of fraud was the only instance and a genuine "mistake"? *Really?* If so, how does Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl explain the 10,000+ pages of *similar* "mistakes" contained in the ten years of Payment Adjustment & Reversal Report computer data defense counsel now have possession of and which when factored with an average number of reversals that could appear on one page (even conservatively using 24+ reversals per page), would increase the number of "mistakes" to **240,000+** or more? (See Exhibit C)

DEFENDANT THE BRATTLEBORO RETREAT HAD STAGGERING CREDIT BALANCES MANY YEARS OLD ON THE BOOKS LATE IN 2013 DUE ALL PAYERS INCLUDING MULTIPLE STATE MEDICAID PROGRAMS, MEDICARE, TRICARE, THE VETERANS ADMINISTRATION, NUMEROUS COMMERCIAL/PRIVATE PAYERS AND STAGGERING AMOUNTS DUE PATIENTS ENSURING NO CHANCE EXISTED PRIOR CMS-838'S WERE SUBMITTED CORRECTLY AS REQUIRED BY LAW

By flagrantly maintaining such a large number of credits or money due others on the books for many years confirmed that indeed Mr. John Blaha, former Senior Vice President and Chief Financial Officer was doing what he said, balancing the refund of credits with maintaining the delicate balance of meeting payroll! The Retreat had in excess of $830,000.00 in credits due all

payers on the books (which had not yet been subject to "allowance reversal" transactions) very late 2013 - - including amounts years old to Medicare and multiple state Medicaid programs that overwhelmingly confirms the Brattleboro Retreat had been submitting fraudulent CMS-838's as well as fraudulent Hospital Cost Reports for many years and is guilty of fraud together with their devious attorney's.

The evidence now sufficiently demonstrates defense counsel's active participation in the fraud before a federal Court which has derailed justice causing harm to the most disadvantaged of our society, those with mental health and substance abuse challenges and many others. Defense counsel took no remedial steps as required of them under the RPC in the State of Tennessee or the State of Vermont to notify the Court as they had no intention of doing so because they were part of the conspiracy all along(!!!)

Perhaps state and federal law enforcement authorities will expand their criminal investigation to include Vermont's largest law firm, Downs, Rachlin Martin PLLC as multiple attorneys on staff have aided their client perpetuate a fraud in federal Court or proactively taken measures intended to allow their very large client escape the reach of justice (including those related to the firm's lobbying activities this year) that directly relates to the potential financial liability for the fraud should The Brattleboro Retreat be held accountable under the law for their transactional behavior. Indeed, Downs, Rachlin Martin PLLC., have had both motive and opportunity to commit fraud together with co-conspirator Attorney Matthew M. Curley as a huge financial incentive exists for all in seeing to it that their historic client escapes justice.

Below is extensive analysis of patient "A.D." which memorializes that this wasn't a "mistake" by any stretch and evidences with crystal clarity a devious scheme to embezzle money from virtually everyone the historic hospital did business with including using bogus dates of service and other accounting tricks to wash credit balances off its books for which it wasn't entitled to.

The detailed analysis was initially sent by my former attorney Michael A. Lesser of Thornton & Naumes LLP to Assistant United States Attorney Nikolas "Kolo" Kerest of the U.S. Attorney's Office which has now been shared with the State of Vermont Attorney General's Office including State Auditor Douglas Hoffer and now represents a public disclosure:

> **Payor: State of Vermont - DMH – Medicaid**
> **Patient: A.D.**
> Program: ARCC Room & Board (Adolescent)
>
> This client was in the care of the Brattleboro Retreat for an extended period - the client ledger is 84 pages long. At the time Relator identified the "allowance reversals" provided in his narrative for this example, he was not specifically looking to highlight the existence of duplicate or false claims, reimbursement discrepancies, or other irregularities which would evidence additional fraudulent transactional behavior. Instead, the focus was on the code "21" reversals that resulted from the additional fraudulent behavior.

Upon further review of the information initially provided to you, it is obvious that additional fraudulent behavior including, but not limited to, duplicate and false claims exist. In this example, Relator references the attached documents: 06/10/2010 letter addressed to John Blaha, Senior Vice President and Chief Financial Officer from Kathleen Denette, Rate Setting and Auditing Chief/Director for the State of Vermont that outlined the "Notice of Final SFY 2011 PNMI Per Diem Rate for Abigail Rockwell and Osgood programs for the rate period July 1, 2010 through June 30, 2011." Relator also refers to a similar document dated 06/25/11 which outlined "Notice of Final SFY 2013 PNMI Per Diem Rate for Abigail Rockwell and Osgood programs for the rate period July 1, 2012 through June 30, 2013." Both rate setting documents from the State of Vermont demonstrate that the reimbursement rate for 2008 remained consistent up to and including parts of 2013. For this level of care, the State of Vermont directed per diem rates for "treatment" at $247.71/day with an additional allocation for "room & board" at a set rate of $68.55/day. The third document is the patient's ledger. As pages 83 and 84 of the above client ledger demonstrate a reimbursement rate consistent with current levels for both treatment and room and board also indicate that these rates have not changed in years.

In reviewing the "allowance reversal" for date of service 11/10/08 found on page 83, it's clear that the $743.10 payment represented 3 days of residential care ($247.71 x 3 days = $743.10) or 2 days and $495.42 to which the Retreat was not entitled. Further, the Retreat entered a fraudulent date of service of 12/11/08 nearly a month after the client was apparently discharged on 11/15/08 to find a place holder for the two additional payments it received. One of the two payments posted to date of service 12/11/08 in the amount of $1,733.97 represents 7 additional days of "treatment" for which the Retreat was not entitled. Additionally, the payment of $1,238.55 represents 5 additional days of "treatment" for which it was not entitled. Additionally, there was no evidence that the State of Vermont recouped the $1,733.97 a week later on 12/18/08. Further, the (over)payment in the amount of **$1,238.55** posted to the **bogus date of service** 12/11/08 on 12/18/08 was not reported or refunded **but the subject of an allowance reversal nearly 2.5 years later on 08/14/11.** To further support the retention of all (over)payments we refer you to the AVATAR Follow Up entry by Jennifer Rathbun, Patient Account Representative, dated 08/10/11 which refers to a request for "allowance reversals" for all three amounts in question: $495.42, $1,733.00 and $1,238.55 which were actually later reversed by the Retreat's Cash Poster, Rose Dietz.

Referring to the Medicaid RA dated 12/19/08, we find further evidence of fraudulent behavior not only involving the above referenced client **"A.D."** but an (over)payment and likely duplicate and false claims involving patient **"A.B"** in the amount of $1,988.91 (page 4 of the RA). The handwritten notes, likely those of Rose Deitz, Cash Poster, demonstrates that the Retreat was not entitled to these (over)payments.

Unless the Retreat has a new accounting trick to share, they still owe the State of Vermont **$1,238.55** for patient "A.D." as well as **$1,988.91** for patient "A.B" as the overpayment's return is now 7 years past due ensuring that every CMS-838 and Hospital Cost Report have been affirmatively fraudulent for many years consecutively. By utilizing the AVATAR Payment & Adjustment Reversal Reports, state and federal law enforcement can refer to the computer data I provided them, to identify in which client ledgers the Retreat stashed the cash while removing any trace of these credit balances they owed anybody from their computer system by entering

> the "allowance reversals" or Code 21 entries that the computer data also evidences. I provided the state and federal law enforcement authorities with ten years of computer data which provides a roadmap to the losses suffered by all payers.
>
> In the client example for "A.D.", we see the Retreat receiving payment for 14 days (or $3,467.94) of residential treatment for which it was not entitled. As shown before, this is likely the result of duplicate and therefore false, claims. Additionally, when considering the apparent (over)payment of $1,988.91 for patient "A.B." we see the Retreat paid for dates of service that didn't exist. Again, this is likely the result of duplicate and false claims. Taken together, $5,456.85 of State of Vermont Medicaid Funds were mishandled and retained as part of the Retreat's well established and coordinated policy of overpayment retention.

In the analysis above, we see that the Defendant, The Brattleboro Retreat, just a few weeks ago review ***the very same*** remittance advice document that law enforcement now possesses as well as the Vermont's State Auditor Douglas Hoffer ***(which included handwritten admissions by the Retreat's Cash Poster attesting to the overpayments)*** and still the Defendant with the assistance of their dishonest defense counsel failed to be truthful or return the full amounts still due from 2008 for this one particular remittance advice from the State of Vermont in 2008! And, were supposed to believe Attorney Craig Miscovich and Downs, Rachlin Martin PLLC when they tell us the recent refund in July 2015 was really just a "mistake"?

If a provider fails to report and return a government overpayment within the 60-day timeframe contemplated by PPACA, the provider could face liability under the FCA and under the Civil Monetary Penalties Law (CMPL) statute. With respect to the FCA, the theory of liability associated with the provider's knowing retention of a government overpayment resides in 31 U.S.C. § 3729(a)(1)(G). If a provider is found to have violated the FCA, the provider could face damages up to three times the amount of single damages (the *actual* amount of damages suffered by the government), between $5,500 and $11,000 for *each* false claim, and reasonable attorney's fees and costs associated with instituting and litigating the FCA enforcement action. *Id.* § 3729(a)(1). (See Exhibit B).

PPACA also amended the CMPL to extend liability to instances where a provider "knows of an overpayment . . . and does not report and return the overpayment" as required by PPACA's 60-day rule. 42 U.S.C. §1320a-7a(a)(10). If a provider is found to have violated the CMPL, the CMPL provides for a civil monetary penalty of three times the total amount of reimbursement the provider received without regard to whether the provider was lawfully entitled to a portion of the proceeds. *Id.* In addition, the CMPL provides for varying administrative civil penalties for *each* false claim and possible exclusion from Medicare. *Id.* (See Exhibit B).

The matter before the TN PRB represents one of the most egregious cases of fraud that can exist as it involves real people who were already suffering when they sought care from The Brattleboro Retreat only to be robbed in broad daylight by the historic hospital's failure to return their money. The failure of the Retreat to return patient money voluntarily for many years is

representative of just how bad the Retreat has been engaging in sordid conduct and getting away with it under the guise of being a benevolent provider of mental health and substance abuse and addiction care. (Refer to Exhibit F and the hundreds of patient credits).

➔ **Note to PRB:** Complaint ¶ 113-128 refer to Patient 3 which is also the same patient example in the federal Complaint referred to as the "slush fund" example. Complaint ¶ 124 specifically states, "The result of this operation is that even if the $11,904.27 still reflected as a credit balance on Patient 3's episode 3 ledger were to be fully refunded to DMH, the Retreat has nonetheless concealed the existence of an $18,668.05 overpayment in DMH's favor."

Indeed, the Brattleboro Retreat and their devious defense attorney's only had to review an aging report of the hospital's aging credit balances (that had not been subject to a Code 21 "allowance reversal") to find the $-11,904.27 credit balance referred to as Patient 3 in the federal Complaint. More specifically, defense counsel and their client only needed to check their accounts payable records to identify when this credit balance was returned. Guess what folks? It wasn't returned until I notified senior management and specifically, the Retreat's Board of Trustees on September 11, 2013! (See Exhibit A).

On September 4, 2013, I sent an e-mail to Mr. John Blaha, who was then Senior Vice President & Chief Financial Officer and attached an Excel file that contained the outstanding credits showing due on the Retreat computer system AVATAR. The credits totaled $834,322.72 which had not been yet subjected to the Code 21 "allowance reversal." Also, copied on this e-mail were Mr. Rob Simpson, President and Chief Executive Officer, Mr. Jeffrey Corrigan, Vice President of Human Resources and Ms. Lisa Dixon, Controller. The Excel file included the very **$-11,904.27** credit referred to in the federal Complaint. The September 4th e-mail referred to an aging credit report date of May 2013 but there wasn't any refund activity of any significance so the report for May 2013 would be consistent with any aging report generated on or after Wednesday, September 11, 2013, when I forwarded the same e-mail to a majority of the Board of Trustees of the hospital but did not forward the Excel file as it contained patient related identifiers. Attached as **Exhibit E** you find a trough of aging credits due virtually all payers including multiple state Medicaid programs, Medicare and other federal health benefit programs, huge amounts due commercial insurance companies and stunning amounts still owed to the historic hospitals patient population that had been showing as due for many years. (See Exhibit A).

Downs, Rachlin Martin, PLC (DRM) should have given their client the best legal advice which would have been for the hospital to voluntarily approach the government and participate in a Self-Disclosure Protocol to neutralize or stop the accrual of civil penalties. In many respects, Downs, Rachlin Martin has not served The Brattleboro Retreat very well as they were more concerned with their own financial interests than what would have been in the best interests of their client, The Brattleboro Retreat and consistent with Rules of Professional Conduct ("RPC") in both the State of Tennessee and the State of Vermont. Now the hospital has likely exhausted the opportunities that would have allowed the hospital to approach the government to ensure

that the civil penalties stopped accruing given that False Claims Act liability now exists. (See Exhibit E).

Within just a couple of days after my e-mail on September 11, 2013 to the Board of Trustees of the Brattleboro Retreat, ALL of my former colleagues were suddenly redirected to research credits that had been on the books for many years(!). (See Exhibit A).

➔ **Note to TN PRB:** Complaint ¶ 113-128 refer to Patient 3 which is also the same patient example in the federal Complaint referred to as the "slush fund" example. Complaint ¶ 124 specifically states, "The result of this operation is that even if the **$11,904.27** still reflected as a credit balance on Patient 3's episode 3 ledger were to be fully refunded to DMH, the Retreat has nonetheless concealed the existence of an $18,668.05 overpayment in DMH's favor."

Days before I was asked to leave the hospital for the last time in October 2013, I was in Rose Dietz's office, the Retreat's Cash Poster. On Ms. Dietz's desk was a refund/check request for the Department of Mental Health (Vermont) in the amount of **$11,904.27**. Exactly the credit and amount referred in Complaint ¶ 124. Had I not taken the extraordinary actions to include notifying the Board of Trustees of the Brattleboro Retreat of the hospitals massive fraud, the Retreat very likely never would have initiated the return of **$11,904.27** that had been showing as due to the State of Vermont for many years(!).

"A very brief and incomplete review of the material presented suggests that all three elements of the 'fraud triangle' were in place," he added. "Financial pressures forcing the Retreat to choose which of its obligations to meet; an opportunity to acquire funds by writing off credit balances; and a conjectural rationalization — that if payers do not request refunds then they do not want or deserve them."

Mr. Hugh Prichard, CPA, Office of Vermont State Auditor Douglas Hoffer

The conjectural rationalization is brought home in stunning new evidence of actual credits due everyone that were still on the books of The Brattleboro Retreat late in 2013. Not only were these credits already years old but were showing as due after the government unsealed the federal complaint. The existence of this huge trough of aging credit balances confirms without any hesitation that defense counsel knew of their client's fraud long before they rolled the dice with their fraud-laden Motion to Dismiss and other legal pleadings and confirms Mr. Prichard's "conjectural rationalization" as noted above.

Total Credits Showing Due All Payers October 2013	$-834,322.72
Unapplied Cash Prepayment for VT State Hospital Patients	$-379,946.00
Credits due Blue Cross/Blue Shield Associated Companies	$-123,199.51
Credits due Multiple State Medicaid, Medicare & FHBP	$-73,707.98
Credits due Discharged Patients	$-86,878.25
Credits due Patients Showing As Active or Not Discharged	$-50,663.08

Credits due AETNA Commercial Insurance	$-34,563.13
Credits due CIGNA Commercial Insurance	$-19,225.09
Credits due UBH/United Behavioral Health	$-16,386.41
Credits Residing in **5 Unapplied Cash** Ledgers	$-26,397.45
Other Credits	$-23,355.92

Questions for the TN PRB to consider:

Question 1: Are we supposed to believe that Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl didn't know about my e-mail communications in September 2013 to senior management including the e-mail forwarded to the Board of Trustees that included the Excel file with a trough of credits that had been on the books for many years?

Question 2: Are we supposed to believe that Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl never knew or discussed with their client the existence of such a large number of credits due all payers which their client had flagrantly allowed to exist in defiance of federal law?

Question 3: Are we supposed to believe that Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl never knew or discussed with their client how the hospital handled its credit balances previously or how many credits the hospital showed as due or aging at the time of unsealing the federal Complaint or at the time litigation commenced?

The record with this submission should affirmatively demonstrate that defense counsel have knowingly, willfully, and with purposeful intent carried forward their clients fraud in a federal Court and are now complicit with their clients escape from justice - - an escape which was also aided by former United States Attorney Tristram Coffin who not only resigned 30-45 days after my case died on the federal docket to go to work for Downs, Rachlin Martin PLC to represent the hospital but who also admitted to letting crooks off the hook while U.S. Attorney (because he felt the penalties were too severe!) when he testified before the Vermont House Judiciary Committee as it was taking testimony for the State of Vermont False Claims Act which became law in May 2015. (See Exhibit D).

As is now overwhelmingly evident, Attorney Tristram Coffin as our former United States Attorney has admitted that he assisted and provided safe passage from justice of the very client he now represents. Whether it's The Brattleboro Retreat or Joe's Hot Dog Stand, former U.S. Attorney Coffin admitted to letting crooks off the hook. Prosecutorial discretion was never intended to allow a historic hospital to embezzle many millions from everyone they did business with and escape justice. (See Exhibit D).

The Brattleboro Retreat should pay full restitution including steep civil penalties demanded by the Vermont False Claims Act as well as the federal False Claims Act utilizing the wealth of the hospital's real estate assets that have nothing to do with the core hospital together with the

future garnishment of Medicare/Medicaid earnings for many years into the future to repay the state and federal governments for the ghastly amounts it has embezzled which would allow the historic hospital to continue to serve those who desperately need care. **Civil penalties should be representative of the breathtaking scale of the historic hospital's fraud and violation of the public trust.** The state and federal governments should also ensure that the Retreat return the millions they have embezzled from commercial or private payers spanning a decade.

The Retreat's behavior has been among the worst and should face stiff financial penalties as a result of any settlement with state and federal law enforcement officials. The Brattleboro Retreat has been successful together with its PR machine of generating the false impression that the hospital is continually suffering financially but the reality is the Brattleboro Retreat is no more non-profit than is Mobil Oil as the hospital simply spends beyond its means (lining the pockets of many) while claiming poverty at every opportunity it can benefit them. The state and federal governments should also proactively honor my relator share of any proceeds recovered as no whistleblower/relator should ever have to forfeit any reward just because of retaliatory threats of being sued by iconic fraudsters like The Brattleboro Retreat.

Indeed, as we remind ourselves that the Tenn. Sup. Ct. R. 8, RPC 1.0(d) definition of "Fraud" or "fraudulent" and Tenn. Sup. Ct. R. 8, RPC 1.0(f) definition of "Knowingly, "known," or "knows" confirms conclusively that Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl knew of the fraud long ago, took possession of the evidence that removed any remaining doubt in October 2014 and before final judgment was entered, and still took no remedial action as required of them under the Rules of Professional Conduct ("RPC") in the State of Tennessee and the State of Vermont.

In many respects this matter is not just about Attorney Matthew M. Curley or his co-conspirator Attorney Elizabeth R. Wohl but about the future of our country. Given the systemic problems in our judicial system and our country as a whole, this egregious misconduct simply cannot be allowed to be tolerated in any form nor can the country afford to allow Attorney Curley to have another "bite at the apple" and to the possible future financial detriment of the American people who have already suffered enough.

While the evidence is mounting not only for Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl so too is it for state and federal law enforcement authorities who now see The Brattleboro Retreat cutting checks on amounts owed to the State of Vermont that were deliberately wiped off its books seven years ago with the use of reversal transactions!

State and federal law enforcement should also know and make it a priority to identify all other state psychiatric hospitals currently using the AVATAR PM software. While an employee, I understood the Retreat's computer system AVATAR PM was being used in many other state hospital psychiatric systems. I've had grave concerns for a long time that the ease with which The Brattleboro Retreat was able to manipulate the AVATAR PM billing system to embezzle

millions might very well be occurring in other states but on a collectively larger scale. I urge state and federal law enforcement to make this a priority as it could evidence huge losses nationwide.

I strongly encourage the Board of Professional Responsibility of The Supreme Court of Tennessee to summon the courage that I did in pursuing the litigation and to pursue all disciplinary measures available to hold Attorney Matthew M. Curley accountable to the fullest extent possible.

Attorney Curley has demonstrated overwhelmingly that his continued practice of law endangers the public welfare and should never again have the opportunity to pollute our justice system or be allowed to be a participant in litigation where he could cause such huge financial harm to the American people as overwhelmingly evidenced in this matter.

To conclude, given the breathtaking new evidence, I would respectfully request consideration by the TN PRB that they consider any interim suspension options available to it given the immediate risk Attorney Matthew M. Curley poses to the public welfare by his continued practice of law.

Thank you for your continued diligence and review of this very important matter.

Respectfully,

Thomas Joseph

Thomas Joseph