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August 2, 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, I am submitting an analysis of the Defendant's Reply in Support of its Motion to Dismiss to the Board of Professional Responsibility ("BPR") of The Supreme Court of Tennessee prepared by Attorney Matthew M. Curley of Bass, Berry & Sims PLC and co-counsel/co-conspirator Attorney Elizabeth R. Wohl of Downs Rachlin Martin PLLC.

The Defendant's Reply in Support of its Motion to Dismiss represents the second successive occasion where Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl intentionally, and with purposeful disregard for their professional obligations set out to deceive and defraud a federal Court with their repeated misrepresentations and lies in their now successful attempt to derail justice with their arguments of fact and law that track in the opposite direction of their conceded knowledge of the Wartime Suspension of Limitations Act ("WSLA") as well as in direct opposition to the actual facts and written word contained in the federal Complaint.

In addition to the WSLA, defense counsel's audacious and blatant misrepresentations and lies before the Court of federal Complaint content together with their arguments contained in their fraud-laden Motion to Dismiss and Reply in Support of its Motion to Dismiss, fall, very short, of representing anything close to "good faith" arguments of fact or law before the tribunal as demanded by the Rules of Professional Conduct ("RPC") in both the State of Tennessee and the State of Vermont.

In consideration of Attorney Matthew M. Curley and his co-conspirator's second successive occasion of purposeful deception and fraud before the tribunal, should evidence to everyone that Attorney Matthew M. Curley has exhausted any "get out of jail free card" given that he has no prior disciplinary record with the BPR in the State of Tennessee.

When you piece together the level of deception and misrepresentations employed by these two attorneys not just with the purposeful concealment and omission in their pleadings of the WSLA before the Court (which in itself evidences fraud before the tribunal given their conceded knowledge of the tolling of statute of limitations whenever fraud of a pecuniary nature of the government is at issue), but in the numerous occasions where both attorneys asserted information they claimed to be (or not to be) in the federal Complaint but upon careful review you realize they advanced and cited (incorrectly with purposeful intent) the direct opposite of what my attorneys actually stated in the federal complaint, the extent of their wholesale disregard for their professional obligations and purposeful fraud before the Court begins to come into focus.

As previously shared in my 02/16/2015 submission to the BPR, the United States Court of Appeals for the Second Circuit in the matter of *United States ex rel. Fair Laboratory Practices Associates v. Quest Diagnostics Inc., 734 F.3d 154 (2d Cir. 2013)* held that the FCA does not preempt state professional ethics rules. The Second Circuit stated that "[n]othing in the [FCA] evinces a clear legislative intent to preempt state statutes and rules that regulate an attorney's disclosure of client confidences," 734 F.3d at 163, and it explained that although the FCA permits relators to bring *qui tam* suits, "it does not authorize [such] person[s] to violate state laws in the process." *Id.*

Moreover, because the Court in *United States ex. rel. Fair Laboratory Practices Associates v. Quest Diagnostics, Inc.*, made clear that not only does the FCA not preempt state ethical rules but, if an interpretation of a state ethical rule is "inconsistent with or antithetical to federal interests, a federal court interpreting that rule must do so in a way that balances the varying federal interests at stake." As a *qui tam* relator, I was suing on behalf of the United States of America and our government's interests, therefore, there should be no doubt that the federal interests in the federal Complaint should be primary. (Refer to Grievance Committee for the S.D.N.Y. v. Simels 48 F.3rd 640, 646 (2d Cir. 1995) and *United States ex. rel. Doe v. X. Corp.*, 862 F. Supp. 1502, 1507 (E.D.Va. 1994) and also refer to 31 U.S.C. 3730(b).

Indeed, Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl consistently sought to rely upon the heightened pleading standard of the plaintiff to argue that the federal Complaint was deficient, but failed to recognize that in the Second Circuit they also had a heightened pleading standard to handle with care, as well as balance, any arguments of fact and law where "federal interests" were at stake as demonstrated by *United States ex. rel. Fair Laboratory Practices Associates v. Quest Diagnostics, Inc.*. By advancing arguments of law that jeopardized, and significantly reduced the statute of limitations or the period of time the "federal" government could recover any amounts embezzled by fraud of a pecuniary nature, it is

abundantly clear that defense counsel failed to consider or attempt to "balance the varying federal interests" while purposely and willfully plotting to advance self-serving arguments (mostly generated by their manufactured garbage as they repeatedly advanced false and misleading assertions before the Court) that overwhelmingly tipped the scale and favored their historic client in direct opposition to established controlling case law within the Second Circuit as well as their conceded knowledge of the WSLA.

In *United States ex. rel. Fair Laboratory Practices Associates v. Quest Diagnostics, Inc.*, Attorney Matthew Curley and co-counsel not only had an obligation to "*balance the varying federal interests"* in the litigation but also to only do so with "good faith" arguments of law within the boundaries of controlling and persuasive case law in the Second Circuit. The historical record of the litigation and pleadings before the Court, evidence overwhelmingly that Attorney Matthew M. Curley and co-counsel preferred to make up their own rules, and more often than not, cited incorrectly (purposely) the direct opposite of what my former attorneys actually stated in the federal Complaint when making *alleged* "good faith" arguments in their pleadings before the Court. In totality, they flat out lied repeatedly in their legal pleadings to deceptively advance misrepresentations of fact and law to defraud the Court, carve out an escape of liability for their historic client's years of misconduct while providing them a safe passage from justice.

Had I not discovered the WSLA personally on the website of Bass, Berry & Sims PLLC very late in the litigation, defense counsel might have gotten away with their devious scheme which rivaled only that of their historic clients' fraudulent transactional behavior. The fact that my own former attorney(s) did not assert the WSLA or identify the fraud afoot by defense counsel's purposeful misrepresentations of fact and law before the Court was unfortunate. However, it is essentially a non-issue for the matter before the BPR and does not, in any way, hide, diminish or provide an escape for Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl's professional obligations before the Court as demanded by the Rules of Professional Conduct in the State of Tennessee and the State of Vermont.

Moreover, I believe it is crucial to review some basic definitions as defined by The Supreme Court of Tennessee before I reveal the stunning and affirmative evidence of blatant misrepresentation(s) and fraud before the Court by Attorney Matthew M. Curley and his co-conspirator Attorney Elizabeth R. Wohl:

> Tenn. Sup. Ct. R. 8, RPC 1.0(d) "Fraud" or "fraudulent" denotes an intentionally false or misleading statement of material fact, an intentional omission from a statement of fact of such additional information as would be necessary to make the statements made not materially misleading, and such other conduct by a person intended to deceive a person or tribunal with respect to a material issue in a proceeding or other matter.
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> Tenn. Sup. Ct. R. 8, RPC 1.0(f) "Knowingly, "known," or "knows" denotes actual awareness of the fact in question. A person's knowledge may be inferred from circumstances.

Purposeful Misrepresentations (FRAUD) before the Court
By Defense Counsel Attorney Matthew M. Curley of Bass, Berry & Sims PLC
And Co-conspirator Attorney Elizabeth R. Wohl of Downs Rachlin Martin PLLC

Reply In Support of Motion to Dismiss: Preliminary Statement ¶ 1: As to his allegations that the Retreat made false claims and false statements regarding such claims, Mr. Joseph effectively concedes that he has failed to identify "any" particular false claim that was actually submitted to a government payer. (Emphasis mine) His claims, instead, are premised on allegations that the Retreat submitted false quarterly refund reports and annual cost reports to Medicare. He also concedes, however, that he has never seen a quarterly or annual cost report submitted by the Retreat and has no knowledge of the content of any such report, and is instead asking the Court to infer that *every* quarterly and annual report *must have* been false. Generalized and speculative allegations of this sort are insufficient under Rule 9(b) of the Federal Rules of Civil Procedure. (Emphasis Mine)

➔ **BPR**: The BPR should ask Attorney Curley where in the federal Complaint did I "concede" not ever having seen a quarterly credit balance report or Annual Cost Report? At best, Attorney Curley's own brand of "speculation" is on display here and should demonstrate to everyone that Attorney Matthew M. Curley is affirmatively, a card carrying hypocrite. This should also evidence to the BPR that Attorney Curley has been caught red-handed advancing bogus statements (misrepresentations and lies) that fall very short of "good faith" arguments which are not based on anything in the federal Complaint but on Attorney Curley's and co-counsel's own brand of "speculation."

Defense counsel go further in their Preliminary Statement ¶ 1: They state, "He also concedes, however, that he has never seen a quarterly or annual cost report submitted by the Retreat and has no knowledge of the content of any such report, and is instead asking the Court to infer that *every* quarterly and annual report *must have* been false. Generalized and speculative allegations of this sort are insufficient under Rule 9(b) of the Federal Rules of Civil Procedure." Counsel falsely suggest I was asking the Court to infer their falsity when in actuality, I was telling the Court of their falsity as evidenced in federal Complaint ¶'s 96, 97, 98, 99 102, 103, 115, 174, 175, 176, and 177.

➔ **BPR**: Complaint ¶ 96: When the Retreat has billed a charge in error, it has accepted an overpayment for that charge but then conceals the existence of the overpayment by entering an offsetting amount under posting code 21, or an allowance reversal. When an allowance reversal is applied to negate an amount paid in error by a government health care benefit program, the Retreat retains overpayments due and payable to the United States, Vermont, Connecticut, Massachusetts, and Nebraska in violation of its obligation to refund such overpayments in a reasonably timely manner.

➔ **BPR**: Complaint ¶ 97: Application of allowance reversals entered under posting code 21 to an overpayment renders the Retreat's quarterly credit balance reports submitted to Medicare and Medicaid on form CMS-838 inaccurate. The Retreat is required, as a condition of payment, to submit accurate form CMS-838 credit balance reports so that the government can be assured of obtaining a refund of amounts it has overpaid for medical services.

➔ **BPR**: Complaint ¶ 98: When the Retreat accepts and retains duplicate or otherwise erroneous payments it receives for services covered by Medicare, Medicaid, Tricare, and other government health care benefit programs, these overpayments are initially reflected on individual patient ledgers as balances due to the various government payers. When Rose Dietz or others acting pursuant to Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard's instructions enter allowance reversals into those same patient ledgers in amounts calculated to offset these overpayments, the ledgers no longer reflect that a balance is due the government payer that made the overpayment.

➔ **BPR**: Complaint ¶ 99: As a result of the Retreat's practice of using code 21 allowance reversals to offset overpayment credits due government payers, any computer reports for overpayments or credit balances would not reflect the existence of overpayments on accounts manipulated in this manner.

➔ **BPR**: Complaint ¶ 102: Such overpayments credits are routinely concealed by the Retreat by applying a posting code 21 allowance reversal in an amount calculated to offset the credit balance owed to Medicare or Medicaid due to the overpayments. This operation results in the patient ledger erroneously showing a zero balance when in reality, a credit remains due and payable to a government health care benefit program, and thus represents knowingly fraudulent avoidance or concealment of an obligation due and payable to the government.

➔ **BPR**: Complaint ¶ 103: This operation is knowingly fraudulent because an entry posted using code 21 is only legitimately associated with an entry of an allowance or discount credit posted using code 20 which the code 21 posting reverses, whereas in the operations described in more detail below, entries posted using code 21 are associated with entries posted using a code 10, which is for payments received by the Retreat and would be associated with a code 11 or code 50 posting if the Retreat had granted an overpayment credit or refunded an overpayment, respectively.

➔ **BPR**: Complaint ¶ 115: In addition, the same method is used to simply transfer overpayments from patient ledgers to an "Unapplied Cash" record using posting code 11, normally reserved for insurer recoupments of overpayments, effectively concealing the existence of the overpayments from anyone attempting to locate them using the patient ledgers and ensuring that such overpayments will not be reflected in the Retreat's form CMS-838 credit balance reports.

➔ **BPR**: Complaint ¶ 174: On information and belief, each and every form CMS-838 (the quarterly credit balance reports the Retreat is required to submit to CMS through the CMS carrier or fiscal intermediary) submitted by the Retreat from 2003 to present time has omitted, with the knowledge and intent to defraud, overpayments due and payable to government health benefit plan payers. Each such CMS-838 contains a section that requires the preparer to certify that the information contained in the form is true and complete to the best of the certifying person's knowledge.

➔ **BPR**: Complaint ¶ 175: On further information and belief each such certification was signed by Robert Simpson, John Blaha, Lisa Dixon, or Jennifer Broussard, with knowledge of its falsity and with an intent to conceal the existence of overpayments due and payable to government health care benefit plan payers. Submission of accurate and complete form CMS-838's on a quarterly basis is a condition of payment of Medicare and Medicaid reimbursements.

➔ **BPR**: Complaint ¶ 176: The Retreat is also required to prepare an annual cost report for submission to its CMS-contracted carrier or fiscal intermediary that reflects the true costs of delivering services to beneficiaries of government health care benefit plans. This report, like form CMS-838, requires the preparer to certify that the information contained in it is true and complete, to the best of the preparer's knowledge.

➔ **BPR**: Complaint ¶ 177: Because the Retreat has a policy or practice of retaining overpayments from commercial insurers, self-pay patients, and government health care benefit plans, the allowances (code 20 entries) that remain falsely reflect that the Retreat gave larger discounts for services rendered to government health care benefit plan beneficiaries than it actually did. As a result, each and every cost report submitted to CMS from 2003 to present time through the Retreat's carrier and/or fiscal intermediary reflected higher unreimbursed costs of case than it actually incurred. On information and belief, these reports were prepared with knowledge of or reckless disregard for their falsity and certified, falsely, as accurate and complete by Rob Simpson, John Blaha, Lisa Dixon and/or Jennifer Broussard. Submission of accurate and complete annual cost reports to CMS is a condition of payment of Medicare and Medicaid reimbursements.

➔ **BPR**: The inference of falsity argument advanced by defense counsel together with their false assertion contained in the Preliminary Statement ¶ 1 that I had *"no knowledge of the content of any such report"* was flat out devious and representative of counsel's purposeful misrepresentations and lies before the Court. Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl pretended that Complaint ¶'s 96, 97, 98, 99, 101, 102, 103, 113, 115, 174, 175, 176 and 177 did not exist and skipped over them in their entirety. Counsel have previously admitted that "***the legal standards applicable to this analysis involved a review of the facts as set forth in Relator Joseph's own complaint, with the assumption for purposes of the Motion to Dismiss that such facts are true***." Had defense counsel considered Complaint ¶'s 96, 97, 98, 99, 101, 102, 103, 113, 115, 174, 175, 176 and 177 as true for the purposes of their

arguments before the Court, or hadn't decided to skip right over the thirteen (13) paragraphs in the federal Complaint in their entirety as they did, would leave no "good faith" basis to assert that I had *"no knowledge of the content of such report"* when the federal Complaint makes clear that I did have knowledge and it was overwhelmingly conveyed in at least thirteen (13) paragraphs of the federal Complaint. More to the point, those same thirteen (13) paragraphs of the federal Complaint made it abundantly clear that just a **single** "allowance reversal" in **any** quarterly period would render the corresponding CMS-838 fraudulent and any CMS-838's submitted thereafter would only compound the fraud as Medicare demands providers report any overpayments going back in time to when the provider first began participating in the Medicare program. Indeed, Relator Thomas Joseph had stated numerous legal claim(s) for relief many times over as overwhelmingly evidenced in the federal Complaint.

➔ **BPR**: In Complaint ¶ 115 the overwhelming falsity of the hospitals CMS-838's is driven home as the hospital used "Unapplied Cash" ledgers (the Unapplied Cash ledgers were essentially fictitious patient client ledgers) for each of the ten years at issue in the federal complaint. Once again, having just a single credit balance in the "Unapplied Cash" ledger for any quarter or year, would render their quarterly credit balance report for the corresponding periods inaccurate and fraudulent as any credits residing in Unapplied Cash ledgers would never be captured by any aging report of credit balances the hospital could generate from their computer billing system known as AVATAR.

Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl completely overlooked Complaint ¶ 115 to advance falsehoods as they consistently ignored multiple paragraphs of the federal Complaint (including ¶'s 96, 97, 98, 99, 101, 102, 103, 113, 115, 174, 175, 176, and 177) to assert bogus and meritless arguments whose sole purpose was to pollute the facts while advancing knowingly erroneous and misleading arguments (that had no merit) but which succeeded in confusing the Court and derailing the administration of justice.

Both attorneys knew that the inference of falsity argument was manufactured, bogus and not based on reality or anything resembling "good faith" arguments of fact or law. Additionally, the meritless nature of the inference of falsity argument is driven home by the existence of thirteen (13) federal Complaint paragraphs that overwhelmingly demonstrate that their argument had no merit and should have been dead on arrival. However, Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl considered the risk and decided to assert it anyway as they got lucky when Judge William K. Sessions, III, bought their misrepresentations and lies hook, line and sinker.

Defense counsel would have been able to glean and concluded based on their own knowledge and skill set as individuals and practicing attorneys that what they falsely asserted was particularly devious despite the thirteen (13) federal Complaint paragraphs that made clear that their "inference of falsity" argument before the Court was false, misleading, and indeed

fraudulent given the overwhelming specificity contained in thirteen (13) federal Complaint paragraphs that confirmed that their argument was baseless.

There was no need to cite any specific CMS-838 quarterly report or annual cost report for any period and defense counsel knew this because the overwhelming import of the entire federal Complaint indicated without question that the historic hospital had been cooking the books for over a decade while submitting false and fraudulent quarterly credit balance reports and annual cost reports each and every time as the federal Complaint evidences in at least thirteen (13) federal complaint paragraphs.

Additionally, the hospital enjoyed higher reimbursement rates from both Medicare and Medicaid as any reimbursement rates like Diagnosis Related Group (DRG) used by Medicare to determine reimbursement rates for Medicare providers as well as any state Medicaid program like the State of Vermont's Medicaid program PNMI (for adolescent residential level of care) also relies on accurate provider cost data to calculate accurate reimbursement rates per diem under the State of Vermont Medicaid program. The federal Complaint makes clear that the hospital cost data was fraudulent for a decade and the reimbursement rates The Brattleboro Retreat received from both Medicare and state Medicaid programs whose rates are based on accurate cost data would have been skewed fraudulently in favor of the historic hospital.

In the case of the State of Vermont, the state suffered particularly high losses in the PNMI program which the computer data given the government and which now the defendant and defense counsel has possession of overwhelming evidences the massive fraud that has occurred.

Despite at least thirteen (13) paragraphs to the contrary, Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl have the audacity to advance that the plaintiff/relator "has no knowledge of the content of any such report." Not only does this not pass the "good faith" smell test, but also defies defense counsel's obligations as an Officer of the Court to promote justice, honor their ethical duty to tell the Court the truth, including avoiding dishonesty or evasion of any kind.

By failing to consider or acknowledge at least thirteen (13) federal Complaint paragraphs that overwhelmingly demonstrated their falsity, evidences that neither attorney ever considered the facts in the Complaint as true, nor at all, as they mislead the Court with meritless arguments suggesting the failure to identify one quarterly or annual cost report were indicative of a deficiency. The overwhelming import of at least thirteen (13) paragraphs of the federal Complaint left no doubt that every single quarterly and annual cost report was fraudulent which defense counsel could discern on their own and without the help of their client. This wasn't mere "speculation" but overwhelming and affirmative proof of the fraudulent import of their historic client's ghastly transactional behavior. Because of the overwhelming and affirmative proof that provided far more "specificity" than defense counsels' erroneous claims that "specificity" didn't

exist in the federal Complaint, demonstrates affirmative misrepresentation that states a claim for relief under the Rules of Professional Conduct in the State of Tennessee many times over.

Moreover, defense counsel's collective and egregious misconduct reveals to the world the requisite scienter needed to understand ***their*** state of mind which now demonstrates to everyone defense counsel's complicity in conspiring with their historic client to carry out a massive fraud in a federal Court of law.

Attorney Matthew M. Curley and his co-conspirator allowed their narcissistic bravado to fuel their deception and fraud before a federal Court of law. Moreover, by engaging in this collective and egregious misconduct, they defecated on their professional obligations, caused significant financial harm to multiple states, the U.S. Treasury, commercial insurance companies, school districts and worse, the historic hospital's own patient population who were the most disadvantaged of our society.

> Reply In Support of Motion to Dismiss: Preliminary Statement ¶ 2: His FCA claim premised on his belief that the Retreat improperly retained overpayments fares no better. He fails to identify any actual overpayments and instead relies upon assumptions he draws from internal accounting codes allegedly used by the Retreat. The examples supposedly demonstrating the Retreat's alleged retention of overpayments lack any specificity, are convoluted, and/or are well outside the FCA's six-year statute of limitation. Because he has failed to state viable FCA claims, his Complaint must be dismissed. (Emphasis Mine)

➔ **BPR**: In Paragraph 2 of the Preliminary Statement contained in the Reply in Support of Motion to Dismiss found above you see clearly Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl assert blatant misrepresentations suggesting: "He has failed to identify any actual overpayments" when ***paragraph after paragraph*** of the federal Complaint identifies the amounts of numerous overpayments together with overwhelming specificity but counsel boldly assert another affirmative misrepresentation by suggestion the "overpayments lack any specificity."

The stunning depths of defense counsel's purposeful and affirmative misrepresentations and fraud before the Court are brought home here with devastating clarity. In the following paragraphs, I not only identify ***overpayment after overpayment*** with remarkable "specificity" nearly a dozen and a half times but do so with overwhelming "specificity" that defense counsel have asserted falsely doesn't exist.

➔ **BPR**: Complaint ¶ 106: Because Patient 1 was also an indigent Medicaid beneficiary, the Retreat submitted a claim for payment for his patient responsibility in the amount of $952.00 to Medicaid of Vermont. On April 20, 2006, the Retreat received $3,891.66 from Medicare Part A for Patient 1's inpatient per diem charges for DOS 3/21/2006. The April 20, 2006 payment resulted in an overpayment of $3,330.77, or $3,891.66 less than the $560.89 that Medicare Part A legitimately was required to pay, which, when reduced by the amount of $77.11 which the

Retreat would normally write off as a discount to Medicare Part A, equals $3,253.66. The patient ledger reflects that when the Medicare A overpayment to the Retreat was posted on April 20, 2006 using posting code 10, a simultaneous entry using posting code 21 (signifying an allowance reversal) was posted in the amount of $3,253.66 eliminating the entire balance of the overpayment from the patient ledger.

➔ **BPR**: Complaint ¶ 110 (Abbreviated): On October 26, 2005, there are entries posted using code 10 associated with DOS 09/26/05 and 09/27/2005 indicating that Medicare A paid $3,485.84 and $3,485.85, respectively, for these DOS, indicating that the Retreat was overpaid in the amount of $5,009.01 for these DOS. If the Retreat intended to report or refund the overpayment to CMS, there would be a posting using code 11 or code 50, indicating a reversal of payment credit or actual refund, respectively.

➔ **BPR**: Complaint ¶ 112 (Abbreviated): The net result of these transactions is that the ledger for this episode erroneously and fraudulently shows a zero balance when it should reflect an overpayment due and payable to CMS in the amount of $5,009.01.

➔ **BPR**: Complaint ¶ 119 (Abbreviated): Immediately following the first of these large (over)payments there is an entry posted on the same day under code 21 in the amount of $-673.90, reversing the allowance that the Retreat had originally posted on July 2010. (Also, refer to Complaint ¶'s 113-118)

➔ **BPR**: Complaint ¶ 124 (Abbreviated): The result of this operation is that even if the $11,904.27 still reflected as a credit balance (Note to BPR: A credit balance in this context represents an overpayment that had not been yet subject to an intentional allowance reversal) 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 to DMH's favor. In addition, that amount was posted on the "Unapplied Cash" ledger as an offset to a purported self-pay payment reversal in the same amount posted using code 16 some two weeks earlier on January 20, 2011. The amount of $18,668.05 also appears on a Cash Reconciliation Report, listing the poster as Rose Dietz, the Retreat's cash poster and the patient ID associated with the payment as number 30444, the "patient ID" assigned to the "Unapplied Cash" ledger. This amount exactly matches the amount listed as recouped from a set of claims that would have otherwise have been paid on the Medicaid RA issued to the Retreat on February 21, 2011.

➔ **BPR**: Complaint ¶ 127: Finally, the printed RA appearing in the Retreat's hardcopy records conclusively shows that such an illegitimate juggling of overpayments is in fact what happened: it contains a handwritten annotation in Rose Dietz' handwriting showing that the recoupment of overpayments made with respect to Patients 4 through 7's claims was "paid for" by the Retreat using an overpayment amount transferred from Patient 3's ledger, stating unequivocally that the amount of $6,932.84 had been "took [sic] from o/p [Patient 2]." This annotation also establishes that these operations were all performed by Rose Dietz acting at the direction of Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard's instruction.

➔ **BPR**: Complaint ¶ 141 (Last sentence): This resulted in an overpayment from VSH in the amount of $49,321.89.

➔ **BPR**: Complaint ¶ 147: Even assuming that it was proper for the VA to pay between 74% and 94% of the Retreat's nominal charges for the services it rendered besides room and board, because the Retreat had agreed by contract to charge only $1,000.00 per day for room and board to this particular patient, the payment of $13,801.44 it received from the VA represents an overpayment due and payable to the VA in the amount of $5,370.40.

➔ **BPR**: Complaint ¶ 148 (Last sentence): Accordingly, the overpayment for Patient 9, episode 2 should be adjusted upward by at least $569.77, which is the difference between 55% of the Retreat's nominal charges for all services for all services beyond room and board and the amount it actually received from the VA for those services, for a total overpayment stemming from the payment posted on December 30, 2009 of $5,940.17.

➔ **BPR**: Complaint ¶ 149 (First sentence): In addition, the Retreat received a second payment from the VA for the same services and DOS that was posted on January 5, 2010 totaling $1,196.00.

➔ **BPR**: Complaint ¶ 150 (Abbreviated): The entire payment amount of the January 5, 2010 payment was an overpayment, as the Retreat had already been paid more than it should have been for those services with the December 30, 2009 VA payment. The Payment/Adjustment report further documents that the posting and simultaneous concealment of the January 5, 2010 overpayment from the VA was performed by Rose Dietz.

➔ **BPR**: Complaint ¶ 153: Finally, there are two entries associated with service code 11000 on DOS 04/18/2005 that exactly offset each other, were posted on July 13, 2005 using code 10 and code 21, respectively, and are in the amount of $6,099.95. This very large overpayment was made by Medicare A, and the presence of code 21 (reversal of a discount or allowance credit) means the Retreat failed to report the existence of the overpayment and pocketed the cash instead. On information and belief, Rose Dietz performed the transactions discussed in this paragraph activing pursuant to Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard's instructions.

➔ **BPR**: Complaint ¶ 158: For Patient 11, episode 6, these offsetting entries represent overpayments concealed by the Retreat in the amount of $3,260.70. For Patient 12, episode 3, these offsetting entries represent overpayments concealed by the Retreat in the amount of $4,975.46. For Patient 13, episode 3, these offsetting entries represent overpayments concealed by the Retreat in the amount of $3,250.26. Finally, for Patient 14, episode 2, those offsetting entries represent overpayments of $2,672.74. In total, the ledgers for these four patients' signal episodes involving DOS in a limited range April or May 2005 contain evidence of overpayments

received and concealed by the Retreat in the amount of $14,159.16 that have been (and remain) due and payable to Medicare Part A.

➔ **Note to BPR**: Because each CMS-838 Quarterly Credit Balance Report requires providers to report outstanding credits from the beginning of time a provider first began to participate in the Medicare program evidences in this one example that every single CMS-838 from April/May 2005 until present time was indeed fraudulent. There is no doubt Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl knew this by simply reading the federal Complaint despite their fraud-laden arguments contained in their Motion to Dismiss and Reply In Support of their Motion to Dismiss.

The following paragraphs not only identify additional overpayments as the preceding paragraphs but do so in a way that underscores the depths that defense counsel went to mislead the Court with falsehoods that defied their professional obligations as Officers of the Court. Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl purposely, and with willful disregard for the truth insert highly misleading language to suggest the following overpayment example was "puzzling" and "later repaid in full." For the record, there is nothing "puzzling" about the attempted theft of $105,000.00 from the Commonwealth of Massachusetts. Defense counsel's assertions that the example was "puzzling" or "later repaid in full" couldn't be further from the truth had defense counsel not purposely deviated from their professional obligations to treat the facts in the federal Complaint as true for purposes of their arguments or not been engaged in *proactive deception* in their pleadings before the Court which overwhelmingly demonstrate affirmative misrepresentations that states a claim for relief under the Rules of Professional Conduct of the State of Tennessee many times over.

➔ **BPR**: Complaint ¶ 160: On May 19, 2008, the Retreat posted using code 10 a payment in the amount of $1,875.00 it had received for that service and DOS from the Massachusetts Behavioral Health Partnership (MBHP), a Medicaid program created and administered by the State of Massachusetts. This was an unusual amount in that it was paying the full nominal charge imposed by the Retreat; ordinarily, Medicaid does not pay the full nominal charge for medical services.

➔ **BPR**: Complaint ¶ 161: On June 20, 2008, the Retreat posted a second payment for this service and DOS from MBHP using code 10 in the amount of $600.00, which is immediately followed in the ledger by an entry using code 20, indicating a discount or allowance credit in favor of the payer, in the amount of $1,275.00. Then, on October 6, 2009, the Retreat received and posted to this service and DOS a payment from MBHP in the amount of $103,125.00, an amount that was obviously far in excess of the charge to which it was applied.

➔ **BPR**: Complaint ¶ 162: No further activity occurred in this patient and episode's account until eight months later on June 25, 2010, when MBHP took back $105,000.00 after discovering the May 19, 2008 and October 6, 2009 overpayments. Rather than report these overpayments to CMS as soon as it was aware of them, which could not have been any later than June 20, 2008

(the date of the second payment from MBHP), the Retreat, on October 6, 2009, also posted an entry to the same service and DOS using code 21, normally reserved to indicate a reversal of a discount or allowance credit previously granted to a payer, in the amount of $105,000.00, effectively concealing the existence of the May 19, 2008 and October 6, 2009 overpayments from anyone using only ledger balances to check for overpayments.

➔ **BPR**: Complaint ¶ 163: Further, the Payment/Adjustment Report for October 6, 2009, shows that the code 21 entry used to conceal the existence of this massive overpayment was posted by Rose Dietz. In addition, the cash reconciliation report documents for October 6, 2009 show that Rose Dietz entered 55 individual postings referring to Patient 15's episode 2 ledger using code 11 in the amount of $103,125.00.

➔ **BPR**: Complaint ¶ 164: Under normal circumstances, use of code 11 would indicate that the Retreat had tendered a refund to the payer, here MBHP, but that is not what happened here. Instead, the Retreat entered these amounts on the patient ledger using code 21, which would have and did have the effect of removing them from the ledger balance in such a way as to not result in a credit to the payer's account being entered; MBHP only discovered and recouped these amounts due to its own efforts, and not due to any attempt by the Retreat to comply with its obligation to report and promptly repay any overpayments it becomes aware of.

➔ **Note to BPR:** As the Retreat did not enter an "allowance reversal" until eight months after when the 2nd overpayment was received, the first overpayment of $1,875.00 remained as a credit due the Commonwealth of Massachusetts (MBHP) on the client ledger where it was posted (which was done to account/reconcile the cash receipts for the first overpayment date of May 19, 2008). The fact that the Retreat took purposeful steps to remove the larger credit balance eight months later together with second and much larger overpayment further evidences that these overpayments were never included in the CMS-838's or Quarterly Credit Balance Reports the hospital was obligated to report and underscores the fraudulent nature of all CMS-838's during the entire ten year period at issue in the federal Complaint. Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl would have been able to decipher this on their own and without the assistance of their client which further reinforces the emerging narrative that both attorneys not only knew of the fraud but *proactively conspired* to advance the fraud before the Court as they knowingly, intentionally, and purposefully advanced affirmative misrepresentations together with bogus and meritless arguments to pollute the facts and perpetuate a massive fraud in a federal Court of law.

Additionally, to underscore the devious nature of defense counsel's misconduct they clearly ignored the highlighted text in Complaint ¶ 161, 162, 163 and 164 and interjected false, misleading and purposeful confusion by suggestion on MTD page 23 that these paragraphs "suffer from puzzling inconsistencies" and deviously state purposely that *"$105,000 was later repaid in full."* Both attorney's asserted knowing falsehoods when the federal complaint made overwhelmingly clear that the Retreat did nothing to proactively return this money and had the overpayment not been forcibly returned to MBHP when they deducted this massive

overpayment from a larger amount being paid the hospital on June 25, 2010, the hospital would have never returned this massive overpayment as they had already taken steps months earlier to remove the credit from the client ledger so that no trace of it remained nor would it have ever appeared on any aging report of outstanding credits the hospital could generate.

Further, their misleading assertions were advanced intentionally, knowingly, willfully and employed purposely to deviously assist their client manufacture a false narrative which did have the effect of confusing Judge Sessions' in his Opinion. The Retreat never intended to return this money as they reversed the second huge overpayment on the same day it was received(!). Shame on Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl for advancing such desperate and pathetic lies before a federal Court of law.

➔ **BPR**: Complaint ¶ 169: In addition, from the attached contract for services and remittance advice, it is clear that Nebraska Medicaid did not contemplate paying more than $476.10 per diem for both inpatient care and educational services. It is also apparent from the accompanying reports that Rose Dietz entered both the overpayments and the accompanying "allowance reversals" concealing those overpayments. On information and belief, this was done with the knowledge and at the insistence of Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard. The total amount of overpayments concealed on this patient and episode ledger along amounts to $38,338.72.

➔ **BPR**: Complaint ¶ 173: These amounts add up to the full amount of the nominal charge, and thus should have constituted payment in full from Tricare to the Retreat for this DOS and service code. However, there is an additional payment from Tricare recorded in the amount of $7,374.96, posted using code 10 on 07/13/2005. Nearly two years later, there is another entry for this DOS and service code, posted on 06/02/2007 using code 21 in the amount of $7,374.96 the exact amount of the overpayment from Tricare. This entry, on information and belief, was posted with the knowledge and at the instance of Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard by Rose Dietz, and was furthermore posted in a purposeful attempt to conceal the existence of the overpayment due Tricare.

➔ **BPR**: Complaint ¶ 174: On information and belief, each and every form CMS-838 (the quarterly credit balance reports the Retreat is required to submit to CMS through the CMS carrier or fiscal intermediary) submitted by the Retreat from 2003 to present time has omitted, with the knowledge and intent to defraud, overpayments due and payable to government health benefit plan payers. Each such CMS-838 contains a section that requires the preparer to certify that the information contained in the form is true and complete to the best of the certifying person's knowledge.

➔ **BPR**: Complaint ¶ 175: On further information and belief each such certification was signed by Robert Simpson, John Blaha, Lisa Dixon, or Jennifer Broussard, with knowledge of its falsity and with an intent to conceal the existence of overpayments due and payable to government

health care benefit plan payers. Submission of accurate and complete form CMS-838's on a quarterly basis is a condition of payment of Medicare and Medicaid reimbursements.

➔ **BPR**: Complaint ¶ 176: The Retreat is also required to prepare an annual cost report for submission to its CMS-contracted carrier or fiscal intermediary that reflects the true costs of delivering services to beneficiaries of government health care benefit plans. This report, like form CMS-838, requires the preparer to certify that the information contained in it is true and complete, to the best of the preparer's knowledge.

➔ **BPR**: Complaint ¶ 177: Because the Retreat has a policy or practice of retaining overpayments from commercial insurers, self-pay patients, and government health care benefit plans, the allowances (code 20 entries) that remain falsely reflect that the Retreat gave larger discounts for services rendered to government health care benefit plan beneficiaries than it actually did. As a result, each and every cost report submitted to CMS from 2003 to present time through the Retreat's carrier and/or fiscal intermediary reflected higher unreimbursed costs of case than it actually incurred. On information and belief, these reports were prepared with knowledge of or reckless disregard for their falsity and certified, falsely, as accurate and complete by Rob Simpson, John Blaha, Lisa Dixon and/or Jennifer Broussard. Submission of accurate and complete annual cost reports to CMS is a condition of payment of Medicare and Medicaid reimbursements.

➔ **NOTE TO BPR:** If I failed to identify any overpayments as defense counsel falsely assert in their Preliminary Statement ¶ 2 and claim that I failed to provide any specificity, please ask Attorney Matthew M. Curley how he explains away the existence of overpayments identified in at least nineteen (19) Complaint paragraphs and whose specificity is provided in overwhelming detail in Complaint ¶'s 106, 110, 112, 119, 124, 127, 141, 147, 148, 149, 150, 153, 158 (4 overpayment identified), 161, 162, 163, 164, 169 and 173**???**

Reply In Support of Motion to Dismiss: Preliminary Statement ¶ 2: His FCA claim premised on his belief that the Retreat improperly retained overpayments fares no better. He fails to identify any actual overpayments and instead relies upon assumptions he draws from internal accounting codes allegedly used by the Retreat. The examples supposedly demonstrating the Retreat's alleged retention of overpayments lack any specificity, are convoluted, and/or are well outside the FCA's six-year statute of limitation. Because he has failed to state viable FCA claims, his Complaint must be dismissed. (Emphasis Mine)

➔ **Note to BPR**: In the following paragraphs, I will address Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl's false assertions from the statement contained in the Preliminary Paragraph ¶ 2 above that the plaintiff/relator "instead relies upon assumptions he draws from internal accounting codes allegedly used by the Retreat. In the following paragraphs, I will provide overwhelming evidence that what defense counsel stated was not only false and misleading but contrary to the written word of the federal Complaint and represents affirmative misrepresentation and fraud before the tribunal.

➔ **BPR**: Complaint ¶ 2: Relator's claims are based on the Retreat's submission of false and fraudulent patient reimbursement claims and billing documents to the United States, including the Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration (HCFA)), and the States of Vermont, Connecticut, Massachusetts, and Nebraska to obtain payments for various mental health care services during the period from at least January 1, 2003 continuing through the date of the filing of this Complaint.

➔ **BPR**: Complaint ¶ 13: Relator states that all allegations in this Complaint are based on evidence obtained directly by Relator independently and through his own labor and efforts. The information and evidence he has obtained or of which he has personal knowledge, and on which these allegations of violations of the False Claims Act are based, consist of documents, computer data, conversations with authorized agents and employees of the Retreat, and his own direct observation of manipulations of computer accounting data or other actions taken by such authorized agents and employees of the Retreat. Relator is therefore an original source and has direct and independent knowledge of the instant information within the meaning of the False Claims Act, 31 U.S.C. §§ 3730(e)(4)(B). On or about September and December, 2012, prior to filing this complaint, Relator Thomas Joseph provided information concerning these allegations of fraud to the government.

➔ **BPR**: Complaint ¶ 124: 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. In addition, that amount was posted on the "Unapplied Cash" ledger as an offset to a purported self-pay payment reversal in the same amount posted using the code 16 some two weeks earlier on January 20, 2011. The amount of $18,668.05 also appears on a Cash Reconciliation Report, listing the poster as Rose Dietz, the Retreat's cash poster and the patient ID associated with the payment as number 30444, the "patient ID" assigned to the "Unapplied Cash" ledger. This amount exactly matches the amount listed as recouped from a set of claims that would otherwise have been paid on the Medicaid RA issued to the Retreat on February 21, 2011.

➔ **Note to BPR**: In Complaint ¶ 124 above I provide overwhelming "specificity", identity actual overpayment amounts and demonstrate conclusively that "beliefs", "assumptions" and "internal accounting codes" **DID NOT** form the basis of the allegations but actual hard copy Medicaid RA documents and hard copy Cash Reconciliations Reports were cited as a basis for the complaint allegations.

➔ **BPR**: Complaint ¶ 125: The cash reconciliation report records for January 20, 2011, contain a series of payments from DMH posted on January 20, 2011 using code 10 totaling $18,668.05, but there are no corresponding code 11 entries for those same entries for those same claims to indicate that DMH had recouped overpayments from the claims the code 10 postings represent. Instead, later in the same report records, there is an entry posted on January 20, 2011 using code

16 and purportedly representing a reversal of a self-payment from the "Unapplied Cash" ledger in the amount of $18, 668.05.

➔ **Note to BPR:** : In Complaint ¶ 125 above I provide overwhelming "specificity", identity actual overpayment amounts and demonstrated conclusively that "beliefs", "assumptions" and "internal accounting codes" were not the sole basis of the allegations but refer to actual hard copy cash reconciliations documents.

➔ **BPR**: Complaint ¶ 127: Finally, the printed RA appearing in the Retreat's hardcopy records conclusively shows that such an illegitimate juggling of overpayments is in fact what happened: it contains a handwritten annotation in Rose Dietz' handwriting showing that the recoupment of overpayments made with respect to Patients 4 through 7's claims was "paid for" by the Retreat using an overpayment amount transferred from Patient 3's ledger, stating unequivocally that the amount of $6,932.84 had been "took [sic] from o/p [Patient 2]." This annotation also establishes that these operations were all performed by Rose Dietz acting at the direction of Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard's instruction.

➔ **Note to BPR**: In Complaint ¶ 127 above evidences that a "printed RA" (or remittance advice) in the Retreat's hardcopy records along with the handwritten notes and an admission of overpayment from the Retreat's Cash Poster Rose Dietz was the basis for the allegation of overpayment.

➔ **BPR**: Complaint ¶ 137: The anomaly of a Medicaid program paying more for the same services than Medicare Part A throughout the ledger is partially resolved by looking to the RA for the Medicare Part A payments made to the Retreat for Patient 8's entire episode 8 as well as the Payment/Adjustment Report for June 7, 2012. The RA reveals that CMS imposed a downward adjustment of $148,410.17 from the Retreat's nominal charges of $219,945.96 for the 94 per diem days that made up Patient 8's episode 8, leaving $71,535.79 that CMS believed represented the full reasonable value of the service at the per diem rate.

➔ **Note to BPR**: Complaint ¶ 137 demonstrates that it wasn't as defense counsel falsely assert "beliefs", "assumptions" and "internal accounting codes" that formed the basis for the allegations in this instance but "the RA for the Medicare Part A payments" in the Retreat's hardcopy records along with the Payment/Adjustment Report for June 7, 2012.

➔ **BPR**: Complaint ¶ 138: The RA also shows that CMS determined that the Medicare Part A payment would be further reduced by $21,508.00 to account for the required patient responsibility portion of the remaining charges, for a net payment of $50,027.81. Turning to the Payment/Adjustment Report for June 7, 2012, the mystery of why Medicaid would pay more for a service than Medicare Part A does is fully resolved: on June 7, 2011, three postings related to this particular RA were posted to Patient 8's ledger for episode 8.

➔ **BPR**: Complaint ¶ 140: The third posting was posted using code 61, which designates the amount that is supposed to be the patient's responsibility, and was in the amount of $70,829.81. Here again the Retreat's records diverge from the RA, as the RA indicated that only $21,508.00 was to be designated as patient responsibility. The patient responsibility amount listed in the Retreat's records exceeds the amount CMS designated on its RA as patient responsibility by $49,321.89.

➔ **BPR**: Complaint ¶ 142: The Retreat's record of submission of this claim to VSH, contained in the cash reconciliation report documents for June 2, 2012. Because 100% of the reasonable value of the services paid by Medicare Part A was determined by CMS to be $71,535.79, but the Retreat actually received a total of $120,857.62, the total overpayments the Retreat received for this one patient's eight episode alone amounts to $49,321.83. The cash reconciliation report documents for June 2, 2012 show that Rose Dietz performed the transactions described in this paragraph acting pursuant to Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard's instructions.

➔ **BPR**: Complaint ¶ 145: The ledger, the attached cash reconciliation report document, and the follow-up notes report for this patient and episode show that the Retreat was paid, in addition to 94% of its nominal charges (with one exception for DOS 06/15/2009, which was paid at only 74%) for services beyond room and board, 94% of its nominal charge for room and board, or $767.20 more for each DOS than the Retreat had agreed to accept as payment in full for room and board exclusive of physician's and other miscellaneous charges.

➔ **BPR**: Complaint ¶ 150: The entire amount of the January 5, 2010 payment was an overpayment, as the Retreat had already been paid more than it should have been for those services with the December 30, 2009 VA payment. The Payment/Adjustment report further documents that the posting and simultaneous concealment of the January 5, 2010 from the VA was performed by Rose Dietz. On information and belief, Rose Dietz also performed the other transactions described in this paragraph actual pursuant to Robert Simpson, John Blaha, Lisa Dixon, and/or Jennifer Broussard's instructions.

➔ **BPR**: Complaint ¶ 163: Further, the Payment/Adjustment Report for October 6, 2009, shows that the code 21 entry used to conceal the existence of this massive overpayment was posted by Rose Dietz. In addition, the cash reconciliation report documents for October 6, 2009 show that Rose Dietz entered 55 individual postings referring to Patient 15's episode 2 ledger using code 11 in the amount of $103,125.00.

➔ **BPR**: Complaint ¶ 169: In addition, from the attached contract for services and remittance advice, it is clear that Nebraska Medicaid did not contemplate paying more than $476.10 per diem for both inpatient care and educational services. It is also apparent from the accompanying reports that Rose Dietz entered both the overpayments and the accompanying "allowance reversals" concealing those overpayments. On information and belief, this was done with the knowledge and at the insistence of Robert Simpson, John Blaha, Lisa Dixon and/or Jennifer

Broussard. The total amount of the overpayments concealed on this patient and episode ledger alone amounts to $38,338.72.

➔ **Note to BPR**: In Complaint ¶ 169 above the Nebraska contract was not attached to the federal Complaint but given to the government at the time of filing. Nonetheless, the contract and remittance documents formed the basis for this overpayment example. Despite this, Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl fraudulently advance and mislead the Court by suggesting the allegations were based on "beliefs", "assumptions" and "internal accounting codes" when actual hard copy evidence together with remittance documents and handwritten admissions of overpayments by the Retreat's Cash Poster formed the basis for the allegations contained in the federal Complaint with overwhelming "specificity" which defense counsel also falsely assert I had failed to provide.

Attorney Matthew M. Curley should be asked to explain or justify how he felt the Rules of Professional Conduct allowed for such lapses in his professional obligations to falsely assert that the allegations in the federal Complaint were based on "beliefs", "assumptions" and "internal accounting codes" when it's obvious in Complaint ¶ 127 alone that actual remittance documents (RA's), handwritten notes, hardcopy records and admissions by the Retreat Cash Poster formed the basis for this one example not to mention computer data that verified all of these transactions?

Indeed, this entire discussion represents a seminal moment for the BPR as Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl show everyone very clearly that they were not merely advancing their client's arguments before the Court, but rather, advancing purposeful misinformation and affirmative misrepresentations to deceive everyone including the Court. More damning, the ***alleged*** "good faith" arguments they were advancing were not based on their client's proprietary or confidential information or knowledge, but representative of arguments whose basis could have been formed from their personal knowledge, information and assessment which they had control over and could discern simply by reading ALL paragraphs of the federal Complaint which they likely did in their review of the allegations but selectively chose to omit in their arguments before the Court(!).

Collectively, this should provide damning evidence of Attorney Matthew M. Curley's intentional and willful fraudulent misconduct that state multiple claims for relief in violation of Tenn. Sup. Ct. R. 8. RPC 1.16(b)(2), RPC 1.16(b)(3), RPC 3.3(a)(1), RPC 3.3(a)(2), RPC 3.3(a)(3), RPC(a)(3)(b), RPC(a)(3)(c), RPC 3.3(a)(3)(e), RPC 3.3(a)(3)(f), and RPC 3.3(a)(3)(g) and others. Refer also to Tenn. Sup. Ct. R. 8. RPC 3.3 Comment 2, 3, 4, 5 and 6.

Additionally, as previously shared in my February 2015 submission to the BPR, RPC 3.3 Comment 2 makes clear that Attorney Curley and co-counsel had every reason to present their client's case with "persuasive force" but that force is qualified by the requirement that it be done in a way to *"refrain from assisting to perpetuate a fraud upon the tribunal."*

As previously shared, all evidence given the government was surrendered to co-conspirator Attorney Elizabeth R. Wohl of Downs Rachlin Martin PLLC in Brattleboro, Vermont on October 30, 2014 and final Judgment was entered on November 17, 2014. Therefore, from October 30, 2014 to November 17, 2014, Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl had in their possession the evidence that would have demonstrated to both of them the wholesale fraud that their historic client had been engaging in for a decade. Attorney Matthew M. Curley's obligation to correct false statements of material fact would not have expired until at least November 17, 2014 when the Court moved on the unopposed Motion for Final Judgment. Attorney Curley's failure to notify the Court as required by the RPC provides additional claims of professional misconduct as demanded by the Rules of Professional Conduct for the State of Tennessee.

In order to understand and fully appreciate the severity, seriousness and egregious nature of Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl's misconduct before the Court requires a reflection on the very nature and fundamentals of the practice of law. In its simplest form, Attorney Matthew M. Curley and co-conspirator Attorney Elizabeth R. Wohl were *allegedly* acting as Officers of the Court in the litigation. In this fundamental capacity as practicing attorneys before a Court of law, both Attorney Matthew M. Curley and Attorney Elizabeth R. Wohl had an obligation to promote justice. Further, they had an absolute ethical duty to tell the Court the truth, including avoiding dishonesty or evasion of any kind. (Gerald and Kathleen Hill, The People's Law Dictionary, Fine Communications, 2015). I respectfully ask that the BPR consider these fundamentals very carefully. In my opinion, they clarify and make clearer the stunning indictment of Attorney Matthew M. Curley's and co-counsel's wholesale misconduct and fraud before the tribunal.

The impact of their collective misconduct is brought home by the Court finding that nearly 2/3 of the 32 patient examples were time barred. Given that Attorney Matthew M. Curley was well aware of the WSLA how can anyone suggest that he told the truth to the Court or had avoided dishonesty or had not purposely engaged in evasion before the Court? Attorney Curley and co-counsel not only demonstrated a complete disregard and disrespect for our judicial system, but by failing to "balance the varying federal interests" as prior controlling case law in the Second Circuit demands they plotted to deceive the Court in an effort to obtain safe passage from justice for their historic client's years of misconduct. As if anything more was needed, they now have been caught red-handed with affirmative misrepresentations in their pleadings which included erroneous claims I had failed to identify any overpayments and that I failed to provide any specificity of those overpayments despite overwhelming evidence including paragraph after paragraph of federal Complaint content that conclusively shows they flat out lied repeatedly in an effort to roll the dice in their collective efforts to proactively perpetuate a massive fraud in a federal Court of law.

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.

I call upon, and implore, 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. Accountability should also include the consideration of disbarment as 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.

Thank you for your continued diligence and investigation of this very serious matter.

Respectfully,

Thomas Joseph